Selected Aspects of International and Municipal Law Concerning Passports

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SELECTED ASPECTS OF INTERNATIONAL AND MUNICIPAL LAW CONCERNING PASSPORTS

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Today, on our shrinking planet, the passport is playing an increasingly significant role. It is used as an instrument to frustrate travel, to prevent the individual from leaving his own country, or to preclude the bearer's ingress to some foreign territory. Despite its significance, major treatises and textbooks on international law reveal very little information concerning its use. The purpose of this article is to discuss some contemporary state and international practices concerning passports and to foster additional interest and research on the topic.

WHO MAY RECEIVE A NATIONAL PASSPORT?

At the present time, a nation is able to issue a passport to anyone it wishes according to its own municipal law. This prerogative has seldom been challenged. Whether a person is entitled to a passport may arise incidental to some other aspect of international concern such as a state trying to protect the bearer of its document. In practice, nations issue passports only to their own nationals. The term "national" is used in both the municipal and international sense. For example, in the Nottebohm Case\(^1\) the petitioner was a national of Liechtenstein in the municipal sense and accordingly received a Liechtenstein passport, but he was not recognized as a Liechtenstein national in international law. A person who holds a passport from a state and passes the effective nationality test employed in Nottebohm is said to be a national \emph{qua} the passport-issuing state in the international sense of the term.

Occasionally, the municipal sense of the term "national" has been stretched in order to provide certain persons with passports. In the aftermath of the Arab-Israeli conflict of 1967, Spain, France, and Italy gave a very flexible interpretation to their nationality laws as a humanitarian gesture, thus enabling them to issue passports to certain Jews in the United Arab Republic. For example, Spanish passports were given to descendants of Jewish families expelled from Spain in the fifteenth

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century because Spain still considered them eligible for Spanish nationality.²

National passports may also be issued to persons who give permanent or temporary allegiance to the issuing state.³ A national passport may be issued to someone without indicating the nationality of the bearer in the document.⁴ A passport may also be issued to a person who has been given asylum⁵ in the issuing state. Furthermore, neither the act of obtaining a passport nor the possession and use of the document should be regarded as a renunciation or an attempted change of nationality.⁶

It is possible for a state not to have nationality legislation. For example, Israel did not enact nationality legislation until 1952. When Israel and the United States signed the Treaty of Friendship, Commerce and Navigation at Washington in August 1951, an Exchange of Notes also took place. It was agreed that for purposes of the Treaty, the United States was prepared, pending enactment of nationality legislation by Israel, to consider persons holding or entitled to hold Israeli passports or traveling documents as nationals of Israel.⁷

**Types of Passports**

The types of passports issued by any state vary according to its policy.⁸ Most states issue at least two, an ordinary or regular passport

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³ The United States, for example, may issue a United States passport to "persons owes allegiance to the United States", as well as its citizens. 8 M. WHITEMAN, DIGEST OF INTERNATIONAL LAW 230, 234–38 (1967); see also 3 G. HACKWORTH, DIGEST OF INTERNATIONAL LAW 117–18 and 447 (1942).
⁴ 5 BRITISH DIGEST OF INTERNATIONAL LAW 277–78 (1965). A British passport was issued in 1906 under these circumstances. Also, the British Secretary of State for Foreign Affairs was able to give a passport to anyone he chose, although he would not indicate that the bearer was a British subject, if indeed the bearer had this status. Id.
⁵ Costa Rica issued Dr. Ramon Villeda Morales, the former president of Honduras, a diplomatic passport when he took asylum in Costa Rica following his exile. The Washington Post, July 13, 1964, at 16.
⁸ The types of passports issued by the United States are discussed in 8 M. WHITEMAN, supra note 3, at 204–17 and 3 G. HACKWORTH, supra note 3, at 445–65. The types
and a diplomatic passport. It is significant that the type of passport bears no relationship to the treatment or status accorded the holder in a foreign country. The fact that the bearer holds a diplomatic passport does not mean that he is entitled to any diplomatic privileges and immunities in a foreign country. When a state or government introduces a new type, it will normally announce the future usage of this document or seek prior approval to avoid any question concerning the document's authenticity. The introduction of collective passports may be formally announced if the issuing authority is uncertain whether other states would accept and recognize the document. Travel and identity documents intended for usage in lieu of passports differ from national passports in that international acceptance and recognition depends upon formal agreement.

Ownership of the Passport

Most states recognize that the passport is the property of the issuing government which can claim its return from a foreign government taking custody of the document. Most states no longer take custody of a foreign passport without prompt notification and return of the passport to the representatives of the issuing authority. In spite of the ownership of the passport by the issuing state, most states do not

of passports issued by the United Arab Republic are discussed in Y. Kader, Les Passports 30 (1953). The types of Canadian passports issued are mentioned in Canadian Passports, 5 External Affairs 75-78 (1953).


10. Note, for example, the British request to Spanish officials for the return of British passports of the British pilots, Copleston and Taylor, who left their belongings and passports in Majorca before their flight with Mr. Tshombe, the kidnapped Congolese ex-Prime Minister. Their plane was diverted at gunpoint to Algiers where the pilots were held captive in 1967. The Daily Telegraph, Nov. 11, 1967, at 16. For the United States position see 3 G. Hackworth, supra note 3, at 437.

11. In the South African case of R. v. Teplin, 1950(2) S. Afr. L. R. 250, 254 (1950), the court questioned whether a magistrate was entitled to order the surrender of an Israeli passport in a maintenance action. On appeal, the court could find no authority by which the magistrate had power to order surrender of the passport, but thought "that he had full power to achieve the object which he intended to achieve by making the surrender of the passport one of the conditions of the suspension of the sentence", that is, to keep him from leaving the country and out of reach of the process of the court. Obviously, the court neglected to consider the international aspect of the case, i.e., that Teplin could not be deprived of his Israeli passport without permission of the Israeli Government.
withdraw it or require it to be returned for cancellation on the death of the bearer.

**Naturalization**

Passports are ordinarily recognized as a matter of comity and without prior arrangements by other members of the international community. It is considered a breach of courtesy by a friendly state to ask the bearer of a valid national passport to present additional evidence of his nationality. An affront of this nature was cast by Mexico to bearers of United States passports in the 1870's.\(^\text{12}\) A slightly different situation in 1913, led to the American termination of its 1832 Treaty of Commerce and Navigation with Russia.\(^\text{13}\) For thirty years prior to the termination, Russian authorities refused to recognize the United States passports of former Russian subjects who had become naturalized American citizens. Additional inquiries were made regarding the bearer's religion and race. The United States had negotiated the Treaty to obtain equal protection for all classes of its citizens and regarded the Russian failure to honor all American passports as a violation of the Treaty.\(^\text{14}\)

The issue of discrimination against certain classes of passport holders was raised in 1956 in the British House of Commons. The debate centered on the refusal of certain Arab States to grant visas to British subjects of the Jewish faith. The regard for the British passport by the Arab States concerned was described in the House of Lords as a "violation of international comity." Protests were registered but no further action was taken by the British Government.\(^\text{15}\) These acts by the Arab States in the 1890's, Russia and Austria-Hungary were responsible for similar affronts to holders of United States passports. Id. at 986-92.

\(^\text{12}\) J. Moore, Digest of International Law 985-86 (1906). In the 1890's, Russia and Austria-Hungary were responsible for similar affronts to holders of United States passports.

\(^\text{13}\) Dec. 18, 1832, 8 Stat. 444 (1846), T.S. No. 299. Article 1 of the Treaty read: There shall be between the territories of the high contracting parties, a reciprocal liberty of commerce and navigation. The inhabitants of their respective States, shall, mutually have liberty to enter the ports, places, and rivers of the territories of each party, wherever foreign commerce is permitted. They shall be at liberty to sojourn and reside in all parts whatsoever of said territories, in order to attend to their affairs, and they shall enjoy, to that effect, the same security and protection as natives of the country wherein they reside, on condition of their submitting to the laws and ordinances there prevailing, and particularly to the regulations in force concerning commerce.

\(^\text{14}\) See 6 Am. J. Int'l L. 186-91 (1912).

States have been considered a breach of international courtesy rather than a failure to observe international comity.

Recognition and acceptance of a passport issued by a state for the purpose of admitting the bearer into its territory does not mean that the admitting state recognizes the naturalization of the bearer.

THE PASSPORT AS AN INSTRUMENT OF FOREIGN POLICY

The passport sometimes serves as a useful tool in the conduct of a country's foreign relations. In the long-standing Anglo-Persian dispute over the sovereignty of the Bahrein Islands, the United Kingdom, in exercising control over the Islands, ordered Persians wishing to enter to carry passports as if they were foreigners seeking admission.

The present Spanish-British controversy over Gibraltar also involves passports and travel documents. In support of its claim, Spain announced that beginning February 1, 1965, persons living in Spain who worked in Gibraltar would not be able to cross the border by presenting their passports (which was the former practice) unless they held a frontier workers' pass. Persons who elected to live in Gibraltar after February 1, 1965, were not allowed to use their passports to visit Spain. Beginning March 7, 1965, British subjects residing in Spain were not allowed to use their passports to visit Spain.


17. Agreements pertaining to a change of nationality and recovery of passports on such change are not unknown. On July 17, 1963, Austria and Denmark concluded an agreement concerning the exchange of naturalization notices and other notices on the acquisition of nationality. The governments agreed to notify each other of the naturalization (including acquisition of nationality by declaration and recovery of nationality) of nationals of the other contracting party. Identity papers issued by the authorities of the other contracting party, including passports, which are invalidated by the naturalization were to be attached to the notice of this step and sent to the other party. 479 U.N.T.S. 263.


19. The background to the different claims can be found in the British White Paper of April 1965 found in United Kingdom, Miscellaneous No. 12 (1965), Cmdn. No. 2632 and the Spanish Red Book on Gibraltar, Documents on Gibraltar Presented to the Spanish Cortes by the Minister of Foreign Affairs (non-official transl. 1965). See also British Practice in International Law 1965-II 237 (E. Lauterpacht ed. 1966).

had their workers' passes withdrawn and they were unable to use their British passports for commuting purposes.\textsuperscript{21} Spain also declined to recognize the validity of British passports which bore endorsements by Her Majesty's Consuls in Spain showing that they were issued or renewed on behalf of the Government of Gibraltar, or passports issued or renewed in Gibraltar in exercise of the prerogative powers of the Governor of Gibraltar.\textsuperscript{22} Spain's action indicated an acceptance of some British passports but not others, a policy similar to that of the Russian Czarist Government with respect to the American passports held by naturalized American citizens of the Jewish faith.\textsuperscript{23} The Spanish rationale was that the "issuing of passports in the name of the so-called Government of Gibraltar is one further manifestation of the aggressive policy of 'faits accomplis' which has been steadily carried out from that territory in disregard of the Treaty of Utrecht . . . ." \textsuperscript{24} The British position was that a passport, bearing reference to the Government of Gibraltar, did not constitute recognition of that Government as a state.\textsuperscript{25}

Many countries restrict the travel of their nationals to specified countries or geographical regions. The passport plays a significant role in this respect because the issuing state can stamp the restricted areas on the passport. Restrictions may be imposed against countries which the issuing state does not recognize, against countries with which it does not maintain diplomatic representation, in areas where armed conflict exists, or nations where disasters are prevalent.\textsuperscript{26} These geographical restrictions are imposed unilaterally and can be circumvented by journeying to the prohibited area without using a passport. The "off-limits" area or state does not commit any violation of international law by admitting such person to its territory. Nevertheless, the area

\textsuperscript{21} Note from the British Embassy, Madrid, to the Spanish Ministry of Foreign Affairs, March 1, 1965, in \textit{British Practice in International Law} 1965-I, \textit{supra} note 19, at 41.

\textsuperscript{22} See Note from the Foreign Secretary to the Spanish Ambassador in London, March 30, 1965, in \textit{British Practice in International Law} 1965-II, \textit{supra} note 19, at 24.

\textsuperscript{23} In 1911, the United States abrogated the Treaty of Commerce and Navigation, concluded between the United States and Russia in 1832, due to persistent Russian discrimination against American passport holders of the Jewish faith. See Bentwich, \textit{Russian Passport Question}, 98 \textit{Fortnightly Rev.} 517 (1912); Comment, \textit{The Passport Question between the United States and Russia}, 6 \textit{Am. J. Intl. L.} 186 (1912).

\textsuperscript{24} \textit{British Practice in International Law} 1965-I, \textit{supra} note 20, at 25-26.

\textsuperscript{25} \textit{Id.} at 26.

\textsuperscript{26} For the practice of the United States see 8 \textit{M. Whiteman}, \textit{supra} note 3, at 269-306; 3 \textit{G. Hackworth}, \textit{supra} note 3, at 531-36.
restrictions and invalidation of passports for the region do bring pressure to bear upon the area in question. One immediate effect would normally be reflected in the tourist trade, e.g., the United States’ restrictions on travel to Cuba.

**Dual Nationality**

It is a principle of international law that each state is competent to lay down its own rules for the acquisition and loss of nationality. Application of this principle creates situations of dual nationality. Bar-Yaacov, in his study, *Dual Nationality*, describes situations whereby acquisition of dual nationality is possible by the combined operation of the laws of two states:

Dual nationality is acquired at birth by children born in a State which has adopted the principle of *jus soli*, by virtue of which nationality is acquired by the fact of birth within the territory of the State, of parents who are nationals of another State which applies the principle of *jus sanguinis*, under which nationality is acquired by descent, irrespective of place of birth. Dual nationality also arises when an individual who acquires a new nationality by naturalization does not thereby lose the nationality of his home State. Marriage causes dual nationality when one of the spouses acquires the nationality of the other spouse while also retaining the earlier nationality. Transfer of sovereignty may bring about the acquisition of dual nationality by residents of the transferred territory who obtain the nationality of their new sovereign while retaining the nationality of the State within whose territorial jurisdiction they were prior to transfer.  

Dual nationality can also arise through registration, adoption, legitimation, recognition of paternity, appointment to a public office, or enlistment in the armed forces of a foreign country.

There are several specific state practices concerning dual nationality and passports. Most states do not warn their own nationals that they might be nationals of another state. Great Britain is an exception, for its passport contains the following warning:

**Dual Nationality**

Persons born in foreign countries of British fathers or born in the United Kingdom or Colonies of foreign parents, women mar-

ried to aliens, women who acquired British nationality on marriage or by registration and naturalized persons may possess a foreign nationality in addition to British nationality.

When in the country of their second nationality, such persons cannot avail themselves of the protection of Her Majesty’s representatives against the authorities of the foreign country and are not exempt by reason of possessing British nationality from any obligation “such as military service” to which they may be liable under the law.

Generally, dual nationals may legally possess passports issued by the authorities of both countries, and a bipatrid’s use of one passport does not necessarily divest him of his nationality in the other state. In 1933, the United States Assistant Secretary of State advised a native-born American woman who married a Persian that use of her Persian passport did not divest her of her American citizenship, but “if such a woman expects to depend upon the protection of the Government of the United States it is advisable for her to provide herself with an American passport.” Conversely, in 1934 a United States citizen by naturalization and Italian by origin applied for, and received, an Italian passport describing him as an Italian. The United States regarded the act as prima facie evidence of acceptance of Italian nationality which could result in the loss of American citizenship.

An exception to the use of passports from two nations arose as a result of Israel’s adoption of “return” as a means of acquiring Israeli nationality. By operation of the Israel Nationality Law and Law of

28. The British Joint Under-Secretary of State for Foreign Affairs informed the House of Commons, in June 1962, that “[w]here a person possesses both United Kingdom citizenship and the citizenship of another Commonwealth country, there is no objection . . . to his holding a United Kingdom passport in addition to a passport of the other Commonwealth country.” 502 PARL. DEB., H.C. (5th ser.) 227-28 (1952).

29. In re M. M. and X. M., [1933-34] ANN. DIG. 295 (No. 117) (Greek Counsel d’Etat 1934). The petitioners who were born in England of a Greek father and were dual nationals remained Greek despite the fact that they traveled with British passports. Prior to the passage of the American Nationality Act of 1940, § 401, 54 Stat. 1168, a provision appeared in the draft bill presented to the House Committee on Immigration and Naturalization which would have made the use of a foreign passport an expatriating act. However, it was deleted in subcommittee. See H.R. REP. No. 6127, 76th Cong., 1st Sess. 25 (1940).

30. 3 G. Hackworth, supra note 3, at 353-54.

31. Id. at 212-14. In 1929, the Department of State advised that a native-born American citizen who acquired Irish nationality under the Irish constitution while in Ireland, and who subsequently used an Irish passport, did not affirmatively accept Irish citizenship. Id. at 212.
Return, a Jew of any nationality who takes up permanent residence in Israel will be deemed to have "returned", and will have Israeli nationality conferred upon him irrespective of any declaration or act of will on his part. On becoming a national of Israel, the individual could receive an Israeli passport. Prior to 1955, the Netherlands did not allow its nationals, who became dual nationals under the procedure outlined, to hold an Israeli passport simultaneously with their Dutch passport.

In the 1920's, a number of controversies arose out of the use of an American passport by naturalized Americans who entered or desired to enter their state of origin. The Greek Government, in 1920, seized American passports of naturalized Americans of Greek origin who had failed to obtain its consent to their naturalization. It was desired that these persons use Greek passports for their return trip to the United States. The conflict was resolved when the Greek Government relaxed its law governing the request of approval for naturalization. In 1921, French consular officers in the United States refused to attach visas to American passports presented by naturalized Americans of French origin. They insisted that these persons obtain French passports describing themselves as French citizens. The problem was partially resolved when the French consular agents informed these potential travelers of the nationality which would be attributed to them in French territory and of the conditions of admission.

On January 17, 1929, the United States Consulate General at Constantinople reported that Turkish authorities seized American passports of American citizens born in the United States of Turkish parents or naturalized Americans of Turkish origin, if they were naturalized without the consent of the Turkish Government. Further, they had expelled the bearers from Turkey. Once these people entered Turkey, the

35. 3 G. Hackworth, *supra* note 3, at 178-79.
36. *Id.* at 174-75. One of the easiest ways to resolve this conflict is through bilateral international agreement. See Exchange of notes constituting an agreement relating to an understanding with respect to the issuance by the Yugoslav Government of entry and exit visas for American citizens visiting Yugoslavia, March 25, 25, 1950, 1 U.S.T. 471, T.I.A.S. 2087, 98 U.N.T.S. 199.
United States could not assist them, and it consequently discouraged Turkish-American travel to Turkey.37

In 1937, Portuguese authorities treated naturalized American citizens of Portuguese origin as Portuguese citizens until their naturalization was recorded on their birth certificates in Portugal. The following year, the Department of State informed the American consular officer at Lisbon that

The possession of an American passport on the part of a former Portuguese national should . . . imply that the individual concerned has been naturalized in the United States. . . . Portuguese authorities should accept a passport itself as prima facie evidence of the naturalization of a person who is known to such authorities to have been at one time a citizen of Portugal . . . 38

In April 1959, the Department of State advised a person of both American and Swiss nationality that he would not lose his American citizenship if he accepted a Swiss passport. As an American citizen, however, he was expected to utilize an American passport when a travel document was required.39

THE PASSPORT AS PROOF OF NATIONALITY BEFORE INTERNATIONAL AND MUNICIPAL COURTS

One commentator noted,

The first essential of an international claim is a showing that the claimant is entitled to the protection of the state whose assistance is invoked. . . . Until [that] right . . . has been established, there is no occasion to consider the facts and law of the case for the purpose of determining whether there is a just grievance against a foreign state.40

Nationality is the link which must exist between the individual and the state taking up his claim. The following passage by Kunz on the subject of nationality in international law is most significant:

37. 3 G. Hackworth, supra note 3, at 198-99.
38. Id. at 391.
39. 8 M. Whittem, supra note 3, at 171. But see the Department of State's statement of October 12, 1955, to "dual citizens" on the use of a foreign passport which could give rise to possible loss of American citizenship. "Dual Citizens" Warned of Possible Loss of Citizenship, 33 DEPT. OF STATE BULL. 658-59 (1955).
40. 5 G. Hackworth, supra note 3, at 802.
International law gives to sovereign states the competence to determine by municipal law who are their nationals only in principle. They have a wide discretionary competence, but their competence is not unlimited; it is, indeed, in a wide and somewhat vague way, limited by general international law. The states may choose between many and different connections for granting their nationality; all of these are often conflicting principles. ... But all these various principles, however different, have one thing in common: there is between the state granting its nationality and the person to which it is granted, some connection which present-day international law considers sufficient. ... Hence, if a state confers its nationality on a person, in consequence of the competence given to it by international law and within this widest limitation established by general international law, it executes not only an act of municipal law, but it executes an international competence given to it. ... If, on the other hand, a state confers its nationality in disregard of this broad limitation, it acts in violation of international law by conferring it, e.g., on a person who has no connection at all with this state or a connection which, under present-day international law is not recognized as sufficient. ... 41

International customary law and many municipal laws do not recognize the passport as conclusive proof of nationality. By international convention, states can prescribe the rules for proving nationality before international courts and tribunals. In the absence of agreed evidentiary rules for this proof, international tribunals rely upon the customary rules of international law. Cases have come before international tribunals where the passport has been considered to be some evidence of nationality. 42 In the Nottebohm Case, the International Court of Justice regarded the acceptance of Nottebohm's Liechtenstein passport by Guatemala, through the act of affixing a visa, as an act to facilitate his entry into Guatemala, "and nothing more." 43 The court looked behind the

42. In the case of Ruinart Pere & Sons v. Franzmann, [1927-28] ANN. DIG. 303 (No. 198) (Franco-German Mixed Arbitral Tribunal, 1927), an Argentine passport was accepted as proof of nationality. See also Comment, Is Passport Conclusive Proof of Voluntary Acquisition of Citizenship, 3 J. OF THE INDIAN L. INST. 87-89 (1961).
43. Nottebohm Case (Liechtenstein v. Guatemala) (Second Phase), [1955] I.C.J. 1, 17. Judge Read, dissenting, regarded Guatemala's acts of affixing its visa to the passport and admitting him, as acts setting certain legal relationships qua Nottebohm and vis-à-vis the protecting state, which then had the right to extend diplomatic protection to him. Id. at 47.
passport to determine Nottebohm's effective nationality. This approach illustrates the insignificance of the role of the passport as evidence of nationality before the World Court.

On the municipal level, Canada,\textsuperscript{44} the Federal Republic of Germany,\textsuperscript{45} India,\textsuperscript{46} Israel,\textsuperscript{47} and the United States\textsuperscript{48} accept the passport as rebuttable proof of nationality.\textsuperscript{49} Since many states are somewhat reluctant to regard the passport as anything more than "some" evidence of nationality, it is not surprising that international tribunals have not desired to place great emphasis on the document as proof of nationality.

Passports, however, have been useful as corroborative evidence concerning nationality before international tribunals.\textsuperscript{50} Nevertheless, international tribunals and municipal courts have not regarded the use of a foreign passport as conclusive proof that the bearer has given up his nationality. In \textit{In re Bulla},\textsuperscript{51} the Upper Silesian Arbitral Tribunal found that application for and use of a passport by a dual-national did not mean that the bearer had discarded his other nationality since he used

\begin{itemize}
\item \textsuperscript{45} P. Weis, \textit{Nationality and Statelessness in International Law} 288 (1956).
\item \textsuperscript{46} India appears to apply two standards: one with respect to persons who have gone to Pakistan and acquired a Pakistani passport, and the other with regard to persons who have gone elsewhere and acquired a passport in their country of residence. The former is illustrated in the case of Sharafat Ali Kahn v. State of Uttar Pradesh, [1960] All India Rptr. 637; and the latter, in the official statement made by the Indian Ministry of External Affairs on April 13, 1960, with respect to persons of Indian origin residing in the Tibet region of China, that “possession of Chinese passports . . . does not necessarily result in their loss of Indian nationality.” Singh & Nawaz, \textit{The Contemporary Practice of India in the Field of International Law} (1960)-I, 3 \textit{Int'l Studies} 65, 81 (1961).
\item \textsuperscript{47} Greenbaum v. Oizerman, [1949] Ann. Dig. 182 (No. 51) (Israel Dist. Ct. Tel-Aviv).
\item \textsuperscript{49} \textit{See, e.g.}, Perez v. Del Molino, [1941-42] Ann. Dig. 278 (No. 74) (Argentina, Cámara Comercial de la Capital, 1942). The converse is true of the South African practice. \textit{See} P. Weis, \textit{supra} note 45, at 228 n.41.
\item \textsuperscript{50} The United States of America on behalf of Anna D. Cournoulos v. The Republic of Turkey, reported in F. Nielsen, \textit{American-Turkish Claims Settlement, Opinions and Report} 460 (1937); The United States of America on behalf of John Giwergiz v. The Republic of Turkey, reported in F. Nielsen, \textit{American-Turkish Claims Settlement, Opinions and Report} 272 (1937). This was the practice under the Mixed Tribunal of Egypt. \textit{See} the cases listed in A. Makarov, \textit{Allgemeine Lehren Des Staatsangehörigkeitsrechts} 342 n.113 (1947).
\item \textsuperscript{51} [1933-34] Ann. Dig. 233 (No. 111) (Upper Silesian Arbitral Tribunal, 1933).
\end{itemize}
the passport to obtain employment at a time when unemployment was widespread where he resided. An Argentine court held in *In re Von Pannwitz*,\(^2\) that an Argentine citizen married to a British subject was obliged by the extraordinary and grave circumstance of World War II to use a British passport, and such use did not result in a loss of her Argentine citizenship. In *Wildermann v. Stinnes*,\(^3\) the Mixed German-Rumanian Tribunal refused to ascribe any importance to the legal use of a Soviet passport as a basis for holding possible renunciation of Rumanian nationality. Finally, in *Kabane v. Parisi and Austria*,\(^4\) the Austrian-Rumanian Mixed Arbitral Tribunal had to determine whether prior to the Peace Treaty of St. Germain (1919), Rumanian Jews were considered stateless and thus excluded from the term *ressortissant* within the meaning of article 249 of the Treaty. The tribunal found that the Rumanian Jews received Rumanian passports when traveling abroad and were liable to military service, but they were deprived of all political rights. On the basis of this evidence, it was held that they were neither stateless nor foreigners but formed a special kind of *ressortissant*, and Rumania had to treat them as Rumanian *ressortissants*.

In 1955, the Italian-United States Conciliation Commission presiding over the *Merge Claim* relied heavily on the use of an Italian passport by a dual national along with the absence of a habitual residence in the United States, to conclude that the claimant was dominantly an Italian national under article 78 of the Peace Treaty.\(^5\) Under the treaty, exclusive use of either a United States or Italian passport was admitted as persuasive evidence of the dominant nationality in the *Spaulding Claim*,\(^6\) the *Zangrilli Claim*,\(^7\) and the *Puccini Claim*.\(^8\)

### Protection

It is a universally recognized rule of customary international law that every state has the right to protect its citizens abroad.\(^9\) However, there is no duty on the part of a state to grant such protection. What

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52. [1949] *Ann. Dig. 219* (No. 64) (Cámara Federal de la Capital, Argentina, 1949).
53. [1923-24] *Ann. Dig. 224* (No. 120) (Roumanian-German Mixed Arbitral Tribunal, 1924).
54. 8 *Recueil des decisions des tribunaux mixtes* 943 (1929).
57. *Id.* at 459.
58. *Id.* See also *Ruspoli Claim*, 24 *I.L.R. 457* (Italian-United States Conciliation Comm’n, 1957).
function, if any does the passport play in relation to protection? One commentator has indicated that

the passport is a prima facie, though not a final, warrant of diplomatic protection. Possession of a passport does not always carry a guaranty of protection, nor does the refusal to issue one indicate a definite forfeiture or withdrawal of protection. . . . Protection is not dependent upon a passport, and while its possession is in international law an evidence of citizenship, its absence is not fatal to protection.60

The municipal law of the issuing state may provide that the issuance of a passport to one of its nationals will be a guarantee that the state will protect the bearer while abroad. The state can breach that guarantee, however, without violating international law. On the other hand, possession of a passport may be a means for the bearer to indicate his right to receive protection from the issuing State.61 By presenting his passport to diplomatic and consular officers representing his nation the bearer may be saying, "I am a national of X, if you are going to exercise protection, I am one entitled to receive it."

In the Nottebohm Case, the Liechtenstein passport was not accepted as evidence that the issuing state had a right to protect the bearer; nevertheless, Ceylon, Indonesia, and Iraq have taken the view that the right to diplomatic protection of one who possesses plural nationality emanates from the country which issues the passport.62 In this instance, the passport-protection relationship is of prime importance as the passport designates who may exercise protection. Some states will indicate the requisite conditions for diplomatic protection. One such condition may

60. E. M. Borchard, The Diplomatic Protection of Citizens Abroad 493-94 (1915). In Joyce v. Director of Public Prosecutions, [1946] 1 All E.R. 186, (C.A.), the court said, "It is, I think, true that the possession of a passport by a British subject does not increase the Sovereign's duty of protection, though it will make his path easier."

61. 3 G. Hackworth, supra note 3, at 460; 8 M. Whitman, supra note 3, at 197. In the Joyce case the court said, "By the possession of that document the British passport he is enabled to obtain in a foreign country the protection extended to British subjects." [1946] 1 All E.R. at 191. There has been much criticism of the Joyce case. See J. Hall, Trial of Joyce (1946); R. West, The Meaning of Treason (1952); Barry, Treason, Passports and the Ideal of Fair Trial, 7 Res Judicata 276 (1956); Biggs, Treason and the Trial of William Joyce, 7 U. of Toronto L. J. 162 (1947-48). For a contrary opinion see Lauterpacht, Allegiance, Diplomatic Protection and Criminal Jurisdiction Over Aliens, 9 Camb. L. J. 330 (1947).

call for the individual to follow his state's procedure in obtaining a passport. 63

A situation may develop where a national no longer wants the protection of his government. In Chruszcz v. Chruszcz, 64 before the Supreme Court of Sweden in 1955, a Polish national who had been living in Sweden since 1944, sent his passport for extension to the new regime in 1946. The Polish Government refused to extend the passport issued by the former regime but offered to issue a new passport which the applicant refused to accept since he opposed the new government. The court found that this individual still enjoyed protection from Poland, because he was offered a new passport. During the early years of the Nazi era in Germany, however, German Jews received German passports but were not given protection following enactment of the denationalization laws. 65

It is not contrary to international law for a state to issue passports to non-nationals, although the issuing state may not be able to protect such bearers. These passports do receive international recognition. In this regard, Switzerland has undertaken the protection of the interests of other states such as the present United States interests in Cuba. Thus, Swiss legations and embassies have issued "protection passports" to bona fide nationals of countries whose interests are being protected. A protection passport will be issued by the Swiss authorities if the applicant has registered as a national of a country whose interests are being protected, and his national passport expired or was otherwise invalid. Bearers of protection passports must surrender their document to the nearest consular post of their nationality or at the post of entry of their country so that it can be returned to Switzerland.

Deportation

It is generally recognized that a state has a sovereign right to expel aliens 66 through deportation. 67 In American law, deportation has been defined as "the removal or sending back of an alien to the country from which he came." 68 The deportation process involves municipal and

63. With respect to the United States see 3 G. Hackworth, supra note 3, at 534-35.
64. 22 I.L.R. 419 (Supreme Court, Sweden, 1955).
66. See generally, J. Clark, Deportation of Aliens From The United States To Europe 339-40, 410-16, 432-44, 450-54 (1931); 3 G. Hackworth, supra note 3, at 717; id. at 461-62; 8 M. Whiteman, supra note 3, at 603.
67. 1 L. Oppenheim, supra note 59, at 691.
international aspects. In a sense, deportation is a unilateral act because the country in which the alien finds himself decides to expel him. In the absence of treaty, the deportee may be able to choose the state to which he is to be deported, or he may be deported to the country from which he last entered the deporting country. In the alternative, he may be deported to the country in which he was born, the country in which his place of birth is situated at the time that he is ordered deported, any country in which he resided prior to entering the country from which he entered the deporting state, or the country which had sovereignty over his birthplace at the time of his birth. These possibilities may be incorporated in the municipal law of the deporting country. In any case, the consent of the country to which the deportee is to be sent must be obtained before the act of deportation can be consummated. A Canadian court, in *Re Janoczka*,69 described the international aspects of deportation as arising in the following way:

The right of expulsion of a foreign citizen whose presence is found to be objectionable does not seem to be conditional on the acquiescence of the country of the foreign citizenship but apparently international comity requires that communication take place. Such communication takes the form of a passport application. At all events the practice to that effect does exist and must be recognized.70

Deportation can be frustrated if the deportee does not possess a passport, and the deporting state cannot arrange for the deportee's state of nationality or receiving state to issue him a passport. In the Brazilian case of *Feldman v. Justiça Publica*,71 Brazil could not effect the deportation of a Rumanian national since the Rumanian Government refused to issue the deportee a passport.

Although a request for a passport may be made to a consul of the deportee's nationality, it may become necessary to make the request through diplomatic channels if the passport can only be issued by a country's department of foreign affairs. States may intentionally frustrate the deportation through deliberate procrastination.72 If the deportee refuses to render sufficient information regarding his nationality, he can cause the deportation to be delayed indefinitely. The inability of a

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70. Id. at 128.
71. [1939] ANN. DIG. 393 (No. 144) (Supreme Ct., Brazil).
72. J. CLARK, supra note 66, at 414.
state to secure a passport to effect a deportation order against a stateless person might result in complete frustration of the deportation.\textsuperscript{73}

If the deportee has a valid passport from any state, that state cannot refuse to accept him. Sometimes neighboring states do not require passports for deportees to be returned to their territories. This approach is illustrated by the Canadian-American practice. However, the passport is usually required by the receiving state in order to avoid the “dumping” of undesirable aliens who are not their nationals. Normally, the deporting state will pay the passport fee for persons to be deported from its territory unless the deportee has sufficient funds to pay for the passport himself. At one time, it was United States practice to issue a passport in preference to any other travel document for Americans being deported to the United States.\textsuperscript{74} Today, no passport is required for the deportation of a United States citizen, although the Department of State may authorize the issuance of a certificate of identity to effect the deportation.\textsuperscript{75}

The non-recognition of governments may also play a role in deportation. The United States did not recognize Italy’s claim to sovereignty over Albania in 1939. The question arose whether the United States immigration authorities should request a passport from the Italian authorities in order to deport an Albanian. Factual control over Albania necessitated a request to Italy to execute the deportation, and the American immigration authorities were instructed by the Department of State to request only a permit, but to “avoid asking for a ‘passport’ . . . since a ‘passport’ would be a more formal document than a mere permit for use in deportation.”\textsuperscript{76} Consular registration certificates issued by the United States have also served as satisfactory travel documents for purposes of deportation.\textsuperscript{77}

States may conclude international conventions to govern the rules and procedure to be followed in deportation matters. At Bonn on May 31, 1954, Sweden and the Federal Republic of Germany concluded an agreement\textsuperscript{78} concerning a reciprocal obligation to accept certain persons deported from the other country. Under the agreement, the Federal

\textsuperscript{73.} See the Canadian case, Re Hanna, 8 D.L.R.2d 566 (1957), and the English case, Rex v. Goldfark, [1936] 1 All E.R. 169 (Crim. A.).

\textsuperscript{74.} 3 G. HACKWORTH, supra note 3, at 461.

\textsuperscript{75.} 8 M. WHITEMAN, supra note 3, at 321.

\textsuperscript{76.} 2 M. WHITEMAN, supra note 3, at 657-58. Italy could have frustrated the deportation by offering a passport.

\textsuperscript{77.} 3 G. HACKWORTH, supra note 3, at 461.

\textsuperscript{78.} 200 U.N.T.S. 39. The agreement came into force June 1, 1954.
Republic consented to accept German nationals whom the Swedish Government proposed to deport without formality or diplomatic representation in Sweden. Such persons were to be accepted without a valid passport, as long as their German nationality was supported by documentary evidence or other factors substantiating the claim. A German passport, valid or expired, was to be acceptable documentary evidence of nationality. The deportees were to be accepted at designated frontier stations merely on presentation of the German passport or other specified documentary evidence, and Sweden was to issue the German authorities a receipt for the individual. If it eventually appeared that the deportee was not a German national at the time of deportation, Sweden would be obliged to accept the return of the deportee. Sweden agreed to accept Swedish nationals whom the Federal Republic wished to deport under the same conditions and procedure. On the same date, Denmark and the Federal Republic of Germany also concluded an agreement concerning deportation. This agreement is quite similar to the Sweden-Federal Republic of Germany Agreement, although it differs in that the deportee is to be accepted even if he did not possess a valid passport, “provided that documents are produced furnishing conclusive or prima facie evidence” of the deportee’s nationality. Similarly, an agreement concluded on February 4, 1958, between Belgium and the Netherlands provided for each to accept its nationals deported by the other, although they did not possess a passport, as long as they possessed some document relating to their nationality. Thus, it would appear that the easiest way to effect the deportation would be to present the deportee’s passport.

In the 1961 Austrian-West German Agreement concerning the acceptance of persons at the frontier, each agreed to accept its nationals whom the other nation wished to deport, if a presumption was established as to the deportee’s nationality. The presumption of Austrian nationality would be established by an Austrian passport, even if it had been wrongfully issued or had expired, or by documentary evidence of identity (such as a travel document or identity card). The presumption of either French or Austrian nationality may be established,

79. Id. 53. The agreement came into force on June 1, 1954.
in the words of the 1962 Austria-France Agreement,\textsuperscript{82} "... by a passport or identity document even if the same was not drawn up in proper form or has expired within the past ten years." This agreement also provides, on a reciprocal basis, for the non-acceptance of a national of either contracting party if, for example, the undesirable leaves Austria after a stay of not less than one month and less than six months before such request is made and enters France in an illegal manner. In such a case, an application can be made to the Austrian Embassy in France within six months after the date of the illegal entry, and the Austrian authorities will be obliged to transmit a \textit{laissez-passer} to the French authorities within three months of submission of the application. In the alternative, Austria may inform France why she will not accept the person concerned. The fact that Austria has expelled, deported, or banished the person cannot preclude Austria's obligation to issue a \textit{laissez-passer}. Once the \textit{laissez-passer} is issued by the Austrian Embassy, acceptance of this person has to be accomplished within twelve months of the date of issue.\textsuperscript{83} The \textit{laissez-passer} must be valid for transit through third states in accordance with any agreements with such states by either of the contracting parties.

Finally, it is worth noting how other nations handle deportation of dual nationals. Burma, Ceylon, Indonesia, India,\textsuperscript{84} Iraq, and Japan deport a dual national to the country which issued him a passport. If he holds no passport, Indonesia and Iraq will issue the deportee an alien's passport and deport him to a country of his choice.\textsuperscript{85} If the dual national holds a passport from each state of which he is a national, presumably the deportee will be asked to which of these states he wishes to be deported.

**Recognition of States and Governments**

In \textit{Recognition in International Law}, Lauterpacht declared that "there is, as a rule, no conduct, however conclusive in ordinary circumstances, the normal legal consequences of which cannot be averted or inter-


\textsuperscript{83} The Austria-Italy Agreement concerning the acceptance of persons at the frontier concluded at Vienna on April 22, 1963, also provided for the acceptance of non-nationals but no mention is made in any travel document as to the deportee's nationality or identity. 491 U.N.T.S. 53.

\textsuperscript{84} On the deportation law of India see A. Sinha, \textit{Law of Citizenship and Aliens in India} 213 (1962).

\textsuperscript{85} \textit{Asian African Legal Consultative Committee}, \textit{supra} note 62, at 60.
interpreted by a clear manifestation of a contrary intention." 86 Also, it is well to recall Hackworth's statement that "an act which would normally have the effect of recognition—short of one involving formal diplomatic relations with a foreign state or government—may be deprived of that quality by an express declaration of the government performing it that it is not intended to constitute recognition." 87 The passport continues to play a significant role in the recognition and non-recognition of states and governments. When one state or government recognizes the existence of another, it usually recognizes the other's passports. No international agreement need be signed to constitute the recognition of passports; it is merely the operation of the comity of nations.

States

Recognition of a new state was defined in 1936 by the Institute of International Law as:

The free act by which one or more States acknowledge the existence on a definite territory of a human society politically organized, independent of any other existing State, and capable of observing the obligations of international law, and by which they manifest therefore their intention to consider it a member of the international community. 88

During the Sino-Japanese controversy, the League of Nations was active in attaining a consensus among its member states against the recognition of Manchukuo. On June 14, 1933, the Secretary-General of the League addressed a letter to the members of the League and to certain non-member states containing a number of recommendations prepared by the Advisory Committee of the League in accordance with the League Assembly's policy of non-recognition of Manchukuo. The recommendation pertaining to passports stated that

... a Government which did not recognize the existing regime in Manchuria either de jure or de facto could not regard as a passport a document issued by authorities dependent on the 'Manchukuo Government', and could not, therefore, allow any of its own agents to visa such a document. On the other hand, there

86. H. Lauterpacht, Recognition in International Law 369 (1947).
87. G. Hackworth, supra note 3, at 161.
is no reason why an inhabitant of the territory subject to the 'Manchukuo' authorities who is desirous of proceeding abroad should not receive an identity-document or a *laissez-passer* from the consul or the country which he wishes to visit. The same procedure might be adopted as regards countries of transit, unless the authorities of the countries of transit were willing—as in fact they probably would be—to visa the identity-document or *laissez-passer* issued by the authorities of the country of destination. The consul would have to make sure of the identity of the applicant, and there would be no reason why he should not, for this purpose, utilize the documents issued by the 'Manchukuo' authorities and called by the latter passports, *laissez-passer*, etc.

The above considerations, which apply to ordinary passports, apply with even greater force to diplomatic passports or diplomatic visas on diplomatic or ordinary passports. 89

A desire to be just to the inhabitants of Manchukuo resulted in the inclusion of the clause allowing members to issue their own identity and travel documents to the inhabitants of the illegal regime. Whether states did, in fact, issue these documents is unknown. To what country would the holder of such a document be deportable if he were found to be an undesirable in the issuing state or in a state other than Japan, El Salvador, Italy, Germany, and Hungary which recognized Manchukuo?

In accordance with the Russo-German non-aggression pact of 1939, the Baltic States, Lithuania, Latvia, and Estonia were occupied by the Soviet Union in that year. Then the three states were incorporated into the Union of Soviet Socialist Republics and de facto ceased to have any existence. On the heels of the incorporation, the Soviet Embassy in the United Kingdom inserted the following notice in the front page of *The Times*:

**U.S.S.R.**

Notice is hereby given that ALL CITIZENS OF LITHUANIA, LATVIA and ESTONIA who are beyond the confines of the U.S.S.R., and are not deprived of citizenship by the Governments of the Lithuanian, Latvian and Estonian Soviet Socialist Republics, must register as Soviet citizens, before the 1st November, 1940,

Failure to recognize the de jure extinction of the Baltic States has been the policy of a number of countries including Canada,\textsuperscript{91} the United Kingdom,\textsuperscript{92} and the United States.\textsuperscript{93} As part of their policy of non-recognition of the Soviet incorporations, these three states carry on diplomatic relations with the Lithuanian, Latvian and Estonian representatives residing in their countries. The diplomatic and consular missions of the Baltic States in these western countries continue to enjoy the same diplomatic privileges as do other foreign representatives. Members of the Baltic legations are included in the Diplomatic Lists of the Department of State in the United States, of the Department of External Affairs in Canada, and of the Foreign Office in the United Kingdom. Latvian, Lithuanian and Estonian passports are still being issued or renewed by the authorized representatives of the three Baltic States and these documents are recognized for travel and immigration purposes. Thus, an Estonian national would be permitted to enter the United States on presentation of a valid Estonian passport. This does not mean that a bearer of a Soviet passport who comes from the Estonian Soviet Socialist Republic\textsuperscript{94} would be refused admission to the United States because Soviet passports are also recognized by the United States. Interestingly, the only persons who could authenticate their passports in order to leave the Soviet Union would be the officials of that regime.\textsuperscript{95} Baltic refugees have taken refuge in countries sympathetic to their position.\textsuperscript{96} Such persons would not be granted passports by the Soviet Union, but they can receive a passport from their state’s representatives where they continue to function. Sometimes a state will issue

\textsuperscript{90} F. Pick, \textit{The Baltic Nations} 135-36 (1945).
\textsuperscript{93} See \textit{Zalcmanis v. United States}, 173 F. Supp. 355 (Ct. Cl. 1960); W. Bishop, Jr., \textit{International Law} 241 n.31 (2d ed. 1962); 2 M. Whitman, \textit{supra} note 3, at 1134-35.
\textsuperscript{94} On the legal status of the Baltic Soviet Socialist Republics see K. Marek, \textit{Identity and Continuity of States in Public International Law} 391 (1954).
\textsuperscript{96} See \textit{Kaasik, The Legal Status of Baltic Refugees}, 1 \textit{Baltic Rev.} 21 (1945).
Baltic refugees in their territory a travel document in accordance with one of the refugee conventions. 97

Non-recognition of the German Democratic Republic means that East Germans wanting to visit NATO countries cannot use East German passports because these documents will not be recognized. Consequently, residents of East Germany who are permitted to leave their territory apply to the Allied Travel Office in Berlin 98 for a Temporary Travel Document. Once granted the travel document, the bearer is obliged to obtain a visa from the diplomatic or consular representative of any country he plans to visit. The document has been issued to all East German applicants except political leaders and holders of Federal German passports. 99 Further insight into the practice surrounding the issuance of these travel documents was provided in 1965 by the British Parliamentary Under-Secretary of State for Foreign Affairs who indicated that “the criteria governing the eligibility of East Germans for temporary travel documents are agreed in NATO and are confidential.” He went on to say that each application was judged on its merits, and persons considered as likely to engage in undesirable political activity during their visit would be refused a Temporary Travel Document. 100

Without recognizing the East German regime, the Federal Republic of Germany concluded a pass agreement 101 with that regime on December 17, 1963. The success of the agreement led to the signing of a protocol on passes 102 by the East German State Secretary and the West Berlin Senate Counselor which enables West Berliners to visit their relatives in East Berlin during certain periods beginning October 30, 1964.

More recently, the passport has been utilized by the East German

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98. Originally the Allied Travel Office in Berlin was a quadripartite organization: France, the United Kingdom, the U.S.A., and the U.S.S.R. However, at present only the first three powers remain as members.


100. 266 Parl. Deb., H.C. (5th ser.) 956-57 (1965).


authorities to create the impression that the German Democratic Republic enjoyed equal sovereignty with the Federal Republic of Germany and to gain further diplomatic recognition. On June 12, 1968, the East German authorities announced *inter alia*, that West Germans would be required to carry passports, with visas from the East German authorities in order to travel to and from Berlin.\(^{103}\)

Southern Rhodesia's Unilateral Declaration of Independence on November 11, 1965, has resulted in a number of developments concerning passports. Once in the position to do so, the Rhodesian regime issued their own passports to persons adjudged to be their citizens. Also, for some years after the declaration, citizens of the United Kingdom and Colonies resident in Southern Rhodesia, continued to travel with British passports. It is notable that the United Kingdom, which does not recognize either the German Democratic Republic or Rhodesia, will not admit bearers of German Democratic passports\(^{104}\) but has freely admitted bearers of Rhodesian passports.\(^{105}\) The acceptance of the Rhodesian passport, however, does not mean that the United Kingdom has recognized Rhodesia, for it is not the British intention to do so.

More recently, the British attitude has changed. Holders of British passports who reside in Southern Rhodesia have had their passports withdrawn on entering the United Kingdom,\(^{106}\) and in some cases the bearer received an emergency passport,\(^{107}\) regarded as a one-way return ticket to Southern Rhodesia. Rhodesians traveling with unexpired British passports have also had their passports confiscated by British consular representatives, when entering states other than the United Kingdom, in conformity with the British policy announced to the House of Commons on January 25, 1966 that "[i]n general the passport facilities granted to persons known to be active supporters of the illegal regime, whether such persons are Rhodesian citizens, United Kingdom citizens or dual are confined to documentation for their return to Rhodesia, though exceptions may be made in compassionate cases."\(^{108}\)

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103. N.Y. Times, June 13, 1968, at 1. Before the announced change, West Germans presented only identity cards for travel to and from West Berlin.


106. Id. May 9, 1968, at 1; id. May 10, 1968, at 1, 6; id. May 11, 1968, at 5; The Sunday Times (London), May 12, 1968, at 4.


On May 29, 1968, the Security Council of the United Nations adopted a resolution designed to introduce more stringent measures to bring down the Smith regime. All members of the United Nations were asked to:

(a) Prevent the entry into their territories, save exceptional humanitarian grounds, of any person travelling on a Southern Rhodesian passport, regardless of its date of issue, or on a purported passport issued by or on behalf of the illegal regime in Southern Rhodesia; and

(b) Take all possible measures to prevent the entry into their territories of persons whom they have reason to believe to be ordinarily resident in Southern Rhodesia and whom they have reason to believe to have furthered or encouraged, or to be likely to further or encourage, the unlawful actions of the illegal regime in Southern Rhodesia. . . 109

To implement the resolution, the British House of Commons passed The Southern Rhodesian (United Nations) Order, 1968, article 11 of which read: “all Rhodesians traveling on Rhodesian passports dating from either before or after the declaration of independence will be denied entry to Britain unless they claim United Kingdom citizenship or in case of exceptions made for humanitarian reasons as specified in the resolution.” 110 Under the Order, not only would persons holding Rhodesian passports have been banned but also British residents in Southern Rhodesia holding British passports—if it could be shown that they rendered substantial aid and comfort to the Smith regime. The Order did not become law due to its rejection by the House of Lords.

The setback in the House of Lords was overcome by the Southern Rhodesian (United Nations Sanctions) Order, 1968,111 which took effect on June 14, 1968. A second Order112 superseded it nineteen days later. Section 13(a)(ii) of the second order restricted entry into the

United Kingdom of persons who were not citizens of the United Kingdom or Colonies who tendered

to an immigration officer a document being or purporting to be a current passport or other document establishing a person's identity or nationality issued by, in the name of, on behalf of, or under the authority of the Government of Southern Rhodesia, or the Governor or any Minister or any other officer of the Government of Southern Rhodesia, or any person or body of persons in Southern Rhodesia exercising or claiming to exercise any governmental functions in relation to that country, by whatever name described (including any person or body of persons claiming to be the Government of that country or to be a Minister or Ministers or any officer of such a Government or otherwise to exercise authority on behalf of such a Government). . . .\textsuperscript{113}

The British Government set up an independent advisory committee to review administrative decisions to withdraw British or Rhodesian passports from citizens normally living in Southern Rhodesia. This committee only advises the Commonwealth Secretary who has the final decision.\textsuperscript{114} These efforts of the United Kingdom to implement the Security Council's action of May 29, 1968, regarding passports and travel are indicative of the measures taken by many members of the United Nations.\textsuperscript{115}

\textsuperscript{113} The Commonwealth Secretary advised the House of Commons that ten categories of Rhodesians were likely to be denied entry into Great Britain. The list included: those claiming to hold office as officers administering the outlaw government; the Prime Minister and Ministers under the 1965 "constitution"; the Speaker and Rhodesian Front Members of the legislature in Rhodesia; leading officials of the Front; members of the advisory committee to the Economic Council of the "cabinet" members; members of the Board of the Reserve Bank of Southern Rhodesia who continued to act in that role in spite of the Board's suspension by Order in Council in January 1966; the chairman, vice-chairman and senior executives of the Rhodesia Broadcasting Corporation and Rhodesia Television Ltd. The list is completed by persons purporting to represent the "independent state" of Rhodesia in foreign countries; the senior executive staff of "Air Rhodesia"; officers and senior officials of the "National Export Council" of Rhodesia; and, officers and senior officials of the "Tobacco Export Promotion Council" and the "Tobacco Corporation" of Rhodesia. Also included were persons believed to have furthered or encouraged any activities to evade or contravene sanctions against Rhodesia. The Times (London), July 2, 1968, at 4.

\textsuperscript{114} Id., June 19, 1968, at 1. The question of rightful or wrongful withdrawal of the passport would be excluded from the jurisdiction of the Parliamentary Commissioner (The Ombudsman). Id., June 8, 1968, at 11.

The Arab States' non-recognition of Israel has led to a rather interesting and unusual position relative to bearers of non-Israeli passports. Bearers of passports of any state who have visited Israel as indicated by an Israeli visa or stamp on their passport, have been refused admission into the Arab States as part of the continuous policy of non-recognition. As a consequence, some persons seeking to visit a number of Arab states and Israel may apply for and receive two passports enabling them to visit the Arab States with one passport and Israel with the other passport. Other visitors simply visit the Arab States first.

**Governments**

Recognition of a government "implies that the recognized Government is, in the opinion of the recognizing State, qualified to represent an existing State. This Act of recognition . . . may be express, that is by formal declaration . . . or implied when it is a matter of inference from certain relations between the recognizing State and the . . . new Government. The manner of recognition is not material, provided that it unequivocally indicates the intention of the recognizing State." States need not accord any official standing to passports issued by governments which they do not recognize. Nevertheless, depending upon the policy of the admitting state, the bearer may be admitted.

Prior to recognizing the Franco Government of Spain in 1938, Franco agents in the United States issued passports for use in other countries. Although the United States did not recognize the Franco passport prior to 1938, American visas were granted to applicants who presented this document. The Consular Regulations of the United States in force as of January 1, 1936, stated that "[a]n alien may present a passport issued by a government not recognized by the United States. However, no notations or stamps of any sort will be placed on the passport nor will the seal of the consulate be placed thereon, in the absence of special instructions." A similar prohibition was in force with respect to travel documents

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118. 4 G. Hackworth, *supra* note 3, at 697-98.
119. 1 G. Hackworth, *supra* note 3, at 339. The procedure of issuing a visa to a bearer of a travel document or passport issued by an unrecognized government is described *id.* at 338-39.
issued by unrecognized governments.\textsuperscript{120} Following the Argentinian severance of diplomatic relations with the Axis powers in 1944, the President of Argentina was forced to resign. The American ambassador to Argentina was instructed that the embassy should perform no services in relation to passports issued after the date of the president’s resignation thus avoiding any action which might imply recognition of the new government.\textsuperscript{121} The current position of the United States with regard to passports issued by governments with which it does not have formal relations is that

the Department of State may authorize the placing of a visa in such passports as a matter of policy with the understanding that this action does not imply recognition of the issuing authority. The issuance of a non-immigrant visa may be evidenced in some other manner, such as impressing the visa stamp on a specially prescribed form. \textellipsis\textsuperscript{122}

During World War II, German occupation of many European countries resulted in eight\textsuperscript{123} foreign governments becoming governments-in-exile in England with the consent of the British Government. These governments-in-exile issued passports to their nationals\textsuperscript{124} which received international recognition from the Allies and from the United Nations group established on January 1, 1942. This practice has recently led

\textsuperscript{120} 2 M. Whitteman, \textit{supra} note 3, at 574.
\textsuperscript{121}  Id. at 525.
\textsuperscript{122}  Id. at 656.
\textsuperscript{123}  Belgium, Czechoslovakia, Greece, Luxembourg, the Netherlands, Norway, Poland, and Yugoslavia.
\textsuperscript{124}  See Chruszcz v. Chruszcz, 22 I.L.R. 419 (Sup. Ct. Sweden, 1955). Following the conclusion of agreements between the governments-in-exile and the United Kingdom, these passports and other identity documents issued by the governments-in-exile were also recognized by the British Minister of Labour and authorities in the National Service as proof of nationality and lawful residence in the United Kingdom for the purpose of registering the bearer in the British war industry.

the United Nations Legal Advisor to rule that "the decisive feature of a travel document [and a passport] is therefore not that it is issued by, or on behalf of the authority that is in de facto control of the country or territory, but rather that it will be accepted as valid by other countries." 125

When recognition is withdrawn from a government, the passports which that regime issued or may issue, might continue to be recognized. Withdrawal of recognition of the Chinese Nationalist Government by Denmark, the Netherlands, Sweden, Switzerland, and the United Kingdom has not meant a cessation of recognition of the passports issued by that government.126

In order to resolve the political fate of West New Guinea (West Irian) after several years of dispute, Indonesia and the Netherlands concluded an agreement127 on August 15, 1962. By its terms, administration of the territory was transferred to a United Nations Temporary Executive Authority (UNTEA). In addition, the agreement provided that:

1. The UNTEA shall have the authority at its discretion to issue travel documents to Papuans (West Irianese) applying therefor without prejudice to their right to apply for Indonesian passports instead;

2. The Governments of Indonesia and of the Netherlands shall at the request of the Secretary-General furnish consular assistance and protection abroad to Papuans (West Irianese) carrying the travel documents mentioned in the previous paragraph, it being for the person concerned to determine to which consular authority he should apply.128

Accordingly, the Acting Secretary-General of the United Nations requested both governments to undertake consular assistance and protection abroad to Papuans.129 On September 21, 1962, the Secretary-General addressed a circular letter to the members of the United Nations, in which he referred to the agreement and asked them to confirm whether they would recognize and accept the travel documents as valid. A number of governments including Burma, India, Japan, Thailand, Tunisia,

127. The agreement is found in Annex A, U.N. Doc. S/5169 (1962). Ratifications were exchanged on September 20, 1962, and the agreement entered into force on the following day.
128. Id. at 17.
129. Id. at 18.
Norway and the Soviet Union signified their readiness to accept these travel documents which were issued at the United Nations Headquarters in New York under the authority of the Administrator for West New Guinea.\textsuperscript{180}

On October 27, 1966, the United Nations General Assembly resolved\textsuperscript{181} to terminate South Africa's right to administer South West Africa. An eleven member Council for South West Africa was created by the General Assembly on May 19, 1967, and entrusted with certain powers and functions for its administration.\textsuperscript{182} The question arose, whether the Council had the power to issue travel documents to the inhabitants or citizens of South West Africa before it actually entered the Territory. The experience of the World War II governments-in-exile demonstrated that governments did not have to be in de facto control over the country or territory that they claimed to represent. With the additional precedent set in the case of West New Guinea, the Council was considered qualified to arrange for the issuance of travel documents to nationals of South West Africa. In the opinion of the United Nations Legal Advisor, the Council could authorize the issuance of travel documents but should call them "travel documents" rather than "passports." The document's validity would depend upon its acceptance by members of the United Nations, hence a need arose for the Secretary-General to contact the membership\textsuperscript{183} on the issue as he had done in 1962 with respect to West Irian.\textsuperscript{184}

The Council for South West Africa decided to proceed with arrangements for the issuance of travel documents in its own name.\textsuperscript{185} It recognized the need for inclusion of a return clause in the document.

\textsuperscript{180} U.N. Doc. A/AC. 131/4, at 3 (1967).
\textsuperscript{183} At the request of the Council for South West Africa, the Secretary-General asked the membership of the United Nations and Specialized Agencies if they were willing to recognize the travel document to be issued to South West Africans. Forty governments replied to the Secretary-General's communication, a majority of which signified their readiness to approve the document. U.N. Doc. A/AC. 131/10 & Add. at 1 (1970). On March 20, 1969, the South African Minister of Foreign Affairs, speaking of the United Nations travel document for Namibians, said that "such action would not only be illegal, but patently ridiculous". He regarded the documents as "mainly intended for terrorists and agitators who are enemies of South West Africa and its people". 6 \textit{U.N. Monthly Chronicle}, June 1969, 31, at 32.
to encourage widest recognition and maximum effectiveness. Accordingly, the Council acted in consultation with the United Nations Acting Commissioner for the Territory to draft regulations for issuance of travel documents. At the same time, it determined whether neighboring governments were agreeable in principle to the return to their countries of South West Africans using the documents.\textsuperscript{136}

Progress was slow, but on January 30, 1970, the Security Council of the United Nations appointed an ad hoc Sub-Committee on Namibia\textsuperscript{137} to study ways of implementing the organization's resolutions on Namibia. The Zambian representative on the Security Council wanted the sub-committee to consider the "possibility of having United Nations passports issued to Namibians recognized by all States."\textsuperscript{138} Meanwhile, the United Nations Council for Namibia continued on its own course in an effort to find a solution through negotiations with the Republic of Zambia. On February 26, 1970, the Council announced\textsuperscript{139} that it had agreed on the text of an agreement\textsuperscript{140} to be concluded through an exchange of letters with the Zambian Government on the procedures for issuing travel and identity documents for Namibians.

Under the agreement, the Zambian Government recognizes and accepts the travel and identity documents issued to Namibians by the

\textsuperscript{136} Id. at 21.

\textsuperscript{137} On June 12, 1968, the General Assembly in Resolution 2372, 22 U.N. GAOR Supp. 16A, at 1, U.N. Doc. A/67116/ Add. 1 (1968), proclaimed that South West Africa was to be known as Namibia and the Council for the territory was to be officially known as the United Nations Council for Namibia. In the same resolution the General Assembly decided that "[t]he Council shall continue with a sense of urgency its consultations on the question of issuing to Namibians travel documents enabling them to travel abroad."

\textsuperscript{138} 7 U.N. MONTHLY CHRONICLE, Feb. 1970, at 5. While the ad hoc Sub-Committee has not submitted its report to the Security Council at the time of this writing, there is little likelihood that the United Nations would issue any "passport" as indicated in the opinion of the United Nations Legal Advisor. During the deliberations on privileges and immunities by the Preparatory Commission of the United Nations, that body suggested the institution of an international passport issued by the organization to its officials. Report of the Preparatory Commission of the United Nations, U.N. Doc. PC/20, at 62, 74 (1945). However, the Sixth Committee of the General Assembly in discussing the subject endorsed the term "laissez-passer" for "passport". The latter term was considered inappropriate because the United Nations did not have any nationals. U.N. Doc. A/C. 6/31 (1951).


\textsuperscript{140} I am most grateful to Mr. Agha Abdul Hamid, Acting Commissioner, Office of the Commissioner for Namibia, for a copy of the draft agreement. When the agreement enters into force an Office of the Council for Namibia will be opened in Lusaka. A delegation of the Council for Namibia will be visiting several other African capitals to negotiate similar agreements on travel documents for Namibians.
United Nations Council for Namibia. Applications for the travel document are submitted to officials of the Zambian Government who in turn normally consult a representative of the Council and may also consult with a representative of the Organization of African Unity. Zambia need not consult the Council if it decides not to grant the applicant a right of return to Zambian territory for reasons of national security or public order, or if circumstances require immediate consideration, and the government is satisfied with the bona fides of the applicant and is prepared to grant the right of return. The Zambian Government will grant the right to return, initially for a period of up to two years from the date of issue, and the travel document will bear an inscription and certification to that effect. Upon expiration of the two year period, Zambia may extend the travel document's validity for a similar period.

In the event that Zambia is unwilling to grant a Namibian applicant the right to return, the United Nations Council for Namibia is at liberty to secure for the applicant the right of return to a country other than Zambia or find a country which would accept the individual without a return clause. The Council for Namibia, recognizing Zambia's difficult position because of its geographical proximity to Namibia and the problems arising from the entry of Namibians into Zambia, undertakes to ensure that other member states of the United Nations share in the granting of asylum and right of residence to Namibians.

CONCLUSION

As the title of this article denotes only selected aspects of international law and municipal law concerning passports are reflected here—more remain to be uncovered. Despite the vast number of people crossing international boundaries today, the subject of passports receives scant attention from legal scholars. With very few exceptions, the researcher attempting to gather information about municipal law passport practices directly from civil servants or governments will meet with little success. Major treatises, student casebooks, and introductory works on international law are either silent on the subject or grudgingly devote a paragraph or two. One positive step to encourage further investigation into the passport area can emanate from the compilation of state passport laws and administrative procedures, a project

141. See 3 G. Hackworth, supra note 3, at 435; 3 J. Moore, supra note 12, at 855; 2 F. Warton, Digest of International Law of the United States 191 (1886); 8 M. Whiteman, supra note 3, at 194.
of stature comparable to the 1954 United Nations compendium of *Laws Concerning Nationality.* The United Nations is ideally suited to undertake the task and has already demonstrated concern in the field. It is the hope of the author that this article may nurture new investigations into passport-related subjects.
