INTERNATIONAL COURT OF JUSTICE

THE JADHAV CASE

THE REPUBLIC OF INDIA v. THE ISLAMIC REPUBLIC OF PAKISTAN

COUNTER-MEMORIAL OF THE ISLAMIC REPUBLIC OF PAKISTAN

13TH DECEMBER 2017

EXHIBIT

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Counter-Memorial on behalf of the Islamic Republic of Pakistan

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13th December 2017

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EXPERT REPORT OF DAVID WESTGATE

A. INTRODUCTION AND QUALIFICATIONS

1. My name is David Westgate, of 208 Ember Lane, East Molesey, Surrey KT8 0BS. I am instructed on behalf of Dr. Faisal DG South Asia of the MOFA Pakistan to examine a passport and provide an independent expert opinion as to its authenticity.

2. I served as part of the United Kingdom Home Office and Immigration Intelligence for more than 27 years, during which time I obtained considerable experience of border control procedures and document verification. During the whole of my service I handled travel documents on a daily basis. I have been a member of the Heathrow Terminal 4 forgery team, from 1990 until 2001 and then served on attachment to the Foreign and Commonwealth Office as Immigration Airline Liaison Officer based New Delhi serving the whole of northern India and Nepal advising airlines and border security control officials on forgery and fraud in travel documents. I have also served as a visa officer on secondment to the Foreign and Commonwealth Office in Karachi, Pakistan. On return to the UK in 2004 until I left the Home Office in February 2017 I served as Chief Immigration Officer at the National Document Fraud Unit, (NDFU). The NDFU is the centre of knowledge and information for the Home Office for all travel documents. I have provided evidence in both Crown and Magistrates courts representing the Home Office in cases involving document fraud.

3. In the course of my work, I have examined many thousands of travel documents. Specifically, I have experience of Indian travel documents due to my 3 years' experience in the region and the follow up work I conducted whilst serving at the NDFU.

4. I have delivered training on document fraud and immigration control procedures to several overseas border and intelligence groups as well as visa officers and police. As a former Chief Immigration Officer and member of the management team of the National Document Fraud

Unit, I have held lead responsibility for research into secure documents and security features in high security documents on behalf of the Home Office and other government departments. I have spoken at several international conferences on document security.

5. I am presently engaged in Forensic analysis and business support for a major international company that produces passports and identity cards.

6. A copy of my most recent Curriculum Vitae is attached here to at Annex 1.

B. EXAMINATION OF PASSPORT IN THE NAME OF HUSSEIN MUBARAK PATEL

(i) Provision of passport and authentication

7. On 7 November 2017 I conducted a physical examination of the passport in London, United Kingdom. The document was handed to me in an unsealed envelope. During the course of my examination I used a long wave Ultra Violet (UV) light source and magnification.

8. A PDF (comprising 36 pages) of the passport is attached as Annex 2. This is a complete and accurate copy of the document I have examined.

(ii) Details of passport

9. The document that was presented to me purports to be an Indian passport of the "L" series of which I am very familiar. Although I held no comparison material, from my knowledge, expertise and familiarity with these documents I can state that it is a genuine document and not a counterfeit. The document contains various security elements which together make the document what it is. I noted the presence of a high quality cylinder mould watermark throughout the document, random UV fluorescent fibres and high quality print. The main portrait in the document is inkjet printed and there was no evidence to support that this image had been manipulated. There is an additional ghost image which is made up of personal data in a wave pattern which adds further confirmation to the authenticity of the image and data. The laminate has a security print on the insides which I found to be clear and undamaged. I found no evidence that the image is not original to the document.

10. I further examined the document for evidence of forgery or fraud. From my review of the document, I have extracted the following details:

    a. Passport number: L9630722

b. Name: Hussein Mubarak Patel
c. Date of birth: 30/08/1968
d. Place of birth: Sangli, Maharashtra
e. Nationality: Indian
f. Date of issue: 12/05/2014
g. Place of issue: Thane
h. Date of expiry: 11/05/2024
i. Name of father: Mubarak Asghar Patel
j. Name of mother: Chanchal Mubarak Patel
k. Name of spouse: Muskan Hussein Patel
l. Address: 11-C, Jasdanwala Complex, 3rd floor, Old Mumbai Pune Highway, Panvel, Navi Mumbai PIN:410206, Maharashtra, India
m. Details of old passport:
    i. Number: E6934766
    ii. Date of issue: 25/11/2003
    iii. Place of issue: Pune
n. File number: TH1077763719414

11. I further examined the various entry, exit and other official endorsements in the document. I have no comparison material to compare these to and so I cannot state conclusively that they are genuine. They do, however, contain specific elements that would give a very strong indication that they were genuine. For example; detailed imprints in the ink endorsements using specialist inks. Of particular note was the visa vignette purporting to be an entry visa issued by the Islamic Republic of Iran on Page 6 of the document. This contains many high security elements that are not available to non secure printers. The vignette contained high quality offset print, Optical Variable Ink, a Diffractive Optical Variable Device (DOVID), and highly detailed UV rainbow print. I did note that the data in the Machine Readable Zone at the bottom of this vignette did not conform with the specification as directed by the International Civil Aviation Organisation (ICAO) in their document 9303 which sets out the format of such data. There was no evidence of alteration or other forgery relating to any of the endorsements.

12. From my examination of the endorsements, I can conclude that the individual has purportedly used this passport to travel extensively to and from the following countries:

a. India;

b. Islamic Republic of Iran;

c. United Arab Emirates;

d. Republic of Iraq.

13. A list of stamps as I have been able to view them in English in terms of jurisdiction and dates is provided below. I should emphasise that this is not complete as some of the stamps are in a foreign language or not as clear as they could be.

Passport page	**Date**	**Country**
1	N/A	
2	N/A	
3	23 December 2014 25 January 2015 22 or 27 February 2015 27 May 2015	India (arrival) India (departure) India (departure) India (departure)
4	19 November 2015 UNCLEAR STAMP – xx-xx-1394 01-8-1394 (Persian calendar)	Iran (entry and reentry visa) Iran (entry) Iran (exit)
5	19 January 2016	India (departure)
6	11 August 2014	Single entry visa for Iran
7	29 August 2014 28 November 201[x] (unclear date)	India (departure) India (departure)

	7/4/1393 (Persian calendar)	Iran
8	25 July 2015	Iran (date of residence permit)
9	23 December 2014 UNCLEAR STAMP – 31 OR 21-9-1393 (Persian calendar)	Iran (date of multiple exit and reentry visa) Iran
10	3 October 2014 8/12/1393 – Persian calendar 7/9/1393 – Persian calendar 11/7/1393 – Persian calendar 2 or 3/10/1393 – Persian calendar	India (arrival) Iran (entry) Iran (entry) Iran (exit) Iran (exit)
11	31 January 2015 3 July 2015 14 July 2015 24 October 2015	India (arrival) India (departure) India (arrival) India (arrival)
12	25 January 2015 31 January 2015	United Arab Emirates (entry) United Arab Emirates (exit)

	17 March 2015 25-12-1393 (Persian calendar)	India Iran
13	12 June 2015	Iran (multiple exit and reentry visa)
14	12-4-1394 (Persian calendar)	Iran (entry)
15	24 July 2016	Iran (date of residence permit)
16	9 October 2015	Iran (multiple exit and reentry visa)
17	10 November 2015 23/4/1394 – Persian calendar 19/7/1394 – Persian calendar	India Iran exit Iran entry
18	10 November 2015 2 June 2015 10 October 2015 1 June 2015	United Arab Emirates (entry) India (arrival) India (departure) United Arab Emirates (exit)
19	12 November 2015 12 November 2015	United Arab Emirates (exit) India (arrival)
20	24 March 2016	Iran (exit and reentry visa)
21	BLANK	
22	BLANK	
23	BLANK	
24	BLANK	
25	BLANK	

26	BLANK	
27	BLANK	
28	BLANK	
29	BLANK	
30	27 May 2015 11 December 2014	United Arab Emirates (entry) Republic of Iraq (entry)
31	BLANK	
32	BLANK	
33	BLANK	
34	BLANK	
35	BLANK	
36	N/A	
37	N/A	

14. Whilst not a complete list of the apparent entries and exits from various jurisdictions, the stamps on the passport indicate at least 17 instances of the passport holder being subject to immigration checks in India. In addition, the passport holder was subject to immigration checks in the United Arab Emirates, Iraq and Iran.

15. From my knowledge and understanding of the airport immigration system in India, the immigration counters are connected to a central database, and any irregularities in the authenticity a passport would ordinarily be flagged up on such a database. Thus I would observe that the frequency with which the individual presented the passport at the immigration counter in India for entry and for exit is very strong supportive evidence of the authentic nature of the passport. In addition, if there were issues concerning the holder of an authentic passport, such as an Interpol I24/7 notice, and Indian central watch-list entry, criminal proceedings, issues relating to identity, these would be very likely to be spotted at the point of encounter with the immigration authorities when the passport was scrutinised by officials in India. Such officials would be examining hundreds of passports on a daily basis, and would thus have considerably more experience in respect of such documents.

(iii) Concluding observations on passport

16. Based upon my observations and my experience and examination of the passport, I am satisfied that it is an authentic Indian passport which I believe must have emanated from the Indian authorities.

C. DUTIES OF AN EXPERT

17. In preparing this report, my attention has been drawn to the Civil Procedure Rules of England and Wales, and in particular, Part 35 (Experts and Assessors) and Practice Direction 35 (Experts and Assessors). Both Part 35 and Practice Direction 35 are attached hereto as Annex 3.

18. I fully understand my duties to the courts when giving an expert report.

D. DECLARATION OF TRUTH

19. I confirm that I have made clear which facts and matters referred to in this report are within my own knowledge and which are not. Those that are within my own knowledge I confirm to be true. The opinions I have expressed represent my true and complete professional opinions on the matters to which they refer.

DAVID WESTGATE

8th November 2017

(1)

David Westgate

Address: 208 Ember Lane, East Molesey, Surrey, KT8 0BS

Contact: 07523 703102, 0208 398 7788

Email: davidandwinnie@gmail.com

Professional profile

Employed by the Home Office for 27 years until February 2017. Was a member of the management team of the National Document Fraud Unit, a specialist unit within the Home Office that is the centre of information, training and examination of high security documents. I provided print, technical and legal advice on the procurement, design, proofing and implementation for all UK secure vignette products, polycarbonate cards and other secure high value documents produced by the Home Office and other government departments. I have held this role for the last 11 years and had sole responsibility for the last 8 years whilst working for the Home Office. I am currently work for Gemalto UK, a supplier of high security documents, passports and id cards advising on security within documents and forensic analysis.

Career History

Gemalto UK Ltd; Business support and Forensic Analysis. Providing advice on document production bids and forensic analysis of security features within documents. February 2017 until present.

Chief Immigration Officer; National Document Fraud Unit 2004- Feb 2017

Key responsibilities and achievements:

UK representative to the International Civil Aviation Organisation (ICAO) New Technologies Working Group (NTWG), document design and construction, border security advice, and interoperability issues with documents supporting ICAO 9303

UK representative to the ICAO TAG in support of HM Passport Office.

UK representative to the EU Article 6 Committee for the design, development and issuance of EU uniform format visas and residence permits. Working with EU colleagues, I provide technical, print security and advice on integration of security features into common format EU documents. Lead member of the print security team of the Article 6 sub committee on design. I instigated this work and the setting up of the print security sub committee for the design of a new revamped design of the EU UFV

UK lead to the EU Laissez-Passer programme, providing advice on procurement issues and guiding them through the requirements.

UK representative to ICAO MRTD programme of regional events, delivering papers at these, most notably in Qatar and Nigeria.

Provided specialist document intelligence training to several government authorities worldwide

Lead security design consultant to the DVLA for the UK driving licence programme.

Programme delivery for the London 2012 and Glasgow 2014 Accreditation Cards from requirements document to lessons learned. No credible counterfeits of either document were detected. I was commended for my work on the London 2012 bid.

Sound understanding of PKI infrastructures, chip technology and reading. Gave a presentation at the ICAO symposium on the benefits of the ICAO PKD and how it worked.

Speaker at various national and international events. I have delivered presentations to ICAO Symposium and ICAO TAG. I have presented at every Security Document World (SDW) event for the last 8 years including chairing sessions, Q+A debates as well as opening and closing the event. I have also spoken at two Intergraf events and was asked to speak again this year. Have delivered presentations at several other document security/print security events.

Line management responsibility for 7-10 specialist document examiners and intelligence officers providing guidance and support, Leading on Personal DevelopmentR moderation meetings for staff.

Received specialist training on polycarbonate manufacture, construction, print and personalisation of polycarbonate products and how they are integrated into the passport process.

Introduction of several new vignette products with enhanced security, negotiated with a holographic supplier to revamp and redesign the holographic seal on various UK vignettes at their cost

Have provided several document security evaluations for various foreign governments at their request.

Immigration Intelligence Liaison Manager, New Delhi, India 2001-2004

Working closely with Indian Intelligence Officers, police, UK Security Service and the visa sections across the whole of north India and Nepal. Advising Indian and Nepal border control on documentation and security. This work required high levels of tact and diplomacy in order to achieve results.

Immigration Officer and Chief Immigration Officer Heathrow 1990-2001

Front line immigration work. I became the lead forgery trainer for Terminal 4 providing training to colleagues and airlines. During this period I also had outside attachments, to the NDFU, Immigration Enforcement and as a visa officer in Karachi, Pakistan.

1980-1990 various government departments and roles at Executive Officer level

Security Clearance to Developed Vetting level (DV) until December 2017

Education: Our Lady's Catholic Secondary School, Corby Northants

Qualifications none above GCE "A" level

Hobbies and interests: Motorcycles, cycling, travel, political history, collecting old bank notes

References available on request

8th Nov 2017

(2)

भारत गणराज्य REPUBLIC OF INDIA

इसके द्वारा, भारत गणराज्य के राष्ट्रपति के नाम पर, उन सभी से जिनका इससे संबंध हो, अनुरोध एवं आवेदन की जाती है कि वे धारक को बिना किसी रोक-टोक के स्वतंत्र रूप से आने-जाने दें, और उसे हर तरह की ऐसी सहायता और सुरक्षा प्रदान करें जिसकी उसे आवश्यकता हो।

THESE ARE TO REQUEST AND REQUIRE IN THE NAME OF THE PRESIDENT OF THE REPUBLIC OF INDIA ALL THOSE WHOM IT MAY CONCERN TO ALLOW THE BEARER TO PASS FREELY WITHOUT LET OR HINDRANCE AND TO AFFORD HIM OR HER, EVERY ASSISTANCE AND PROTECTION OF WHICH HE OR SHE MAY STAND IN NEED.

भारत गणराज्य के राष्ट्रपति के आदेश से
BY ORDER OF THE PRESIDENT OF THE REPUBLIC OF INDIA

सं. र. भोरकर
S. R. BHORKAR
अधिक्षक / Superintendent
पासपोर्ट कार्यालय, ठाणे,
Passport Office, Thane

पासपोर्ट
PASSPORT

सत्यमेव जयते

भारत गणराज्य
REPUBLIC OF INDIA

भारत गणराज्य REPUBLIC OF INDIA

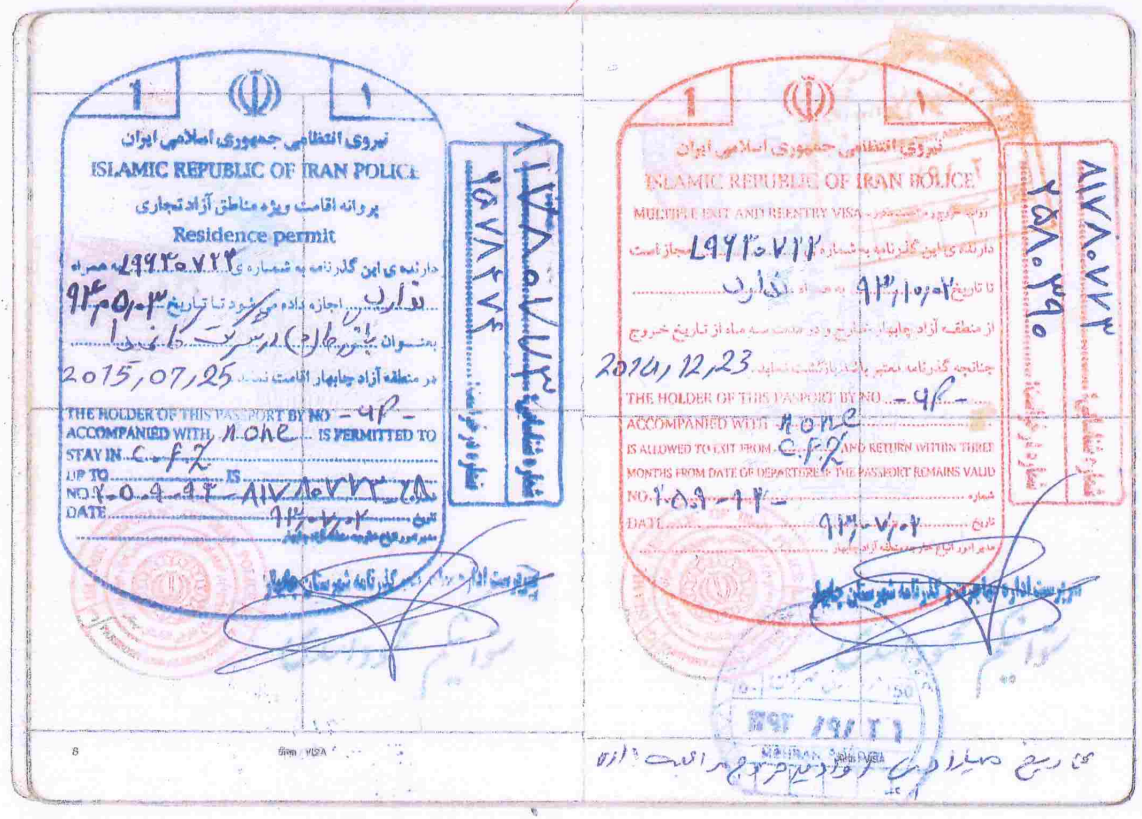
प्रकार / Type	P
राष्ट्र कोड / Country Code	IND
पासपोर्ट नं / Passport No.	L9630722
उपनाम / Surname	PATEL
दिया गया नाम / Given Name(s)	HUSSEIN MUBARAK
राष्ट्रीयता / Nationality	INDIAN
लिंग / Sex	M
जन्म तारीख / Date of Birth	30/08/1968
जन्म स्थान / Place of Birth	SANGLI, MAHARASHTRA
जारी करने का स्थान / Place of Issue	THANE
जारी करने की तिथि / Date of Issue	12/05/2014
समाप्ति की तिथि / Date of Expiry	11/05/2024

P<INDPATEL<<HUSSEIN<MUBARAK<<<<<<<<<<<<<<<<<<<<

L9630722<8IND6808301M2405115<<<<<<<<<<<<<<<0

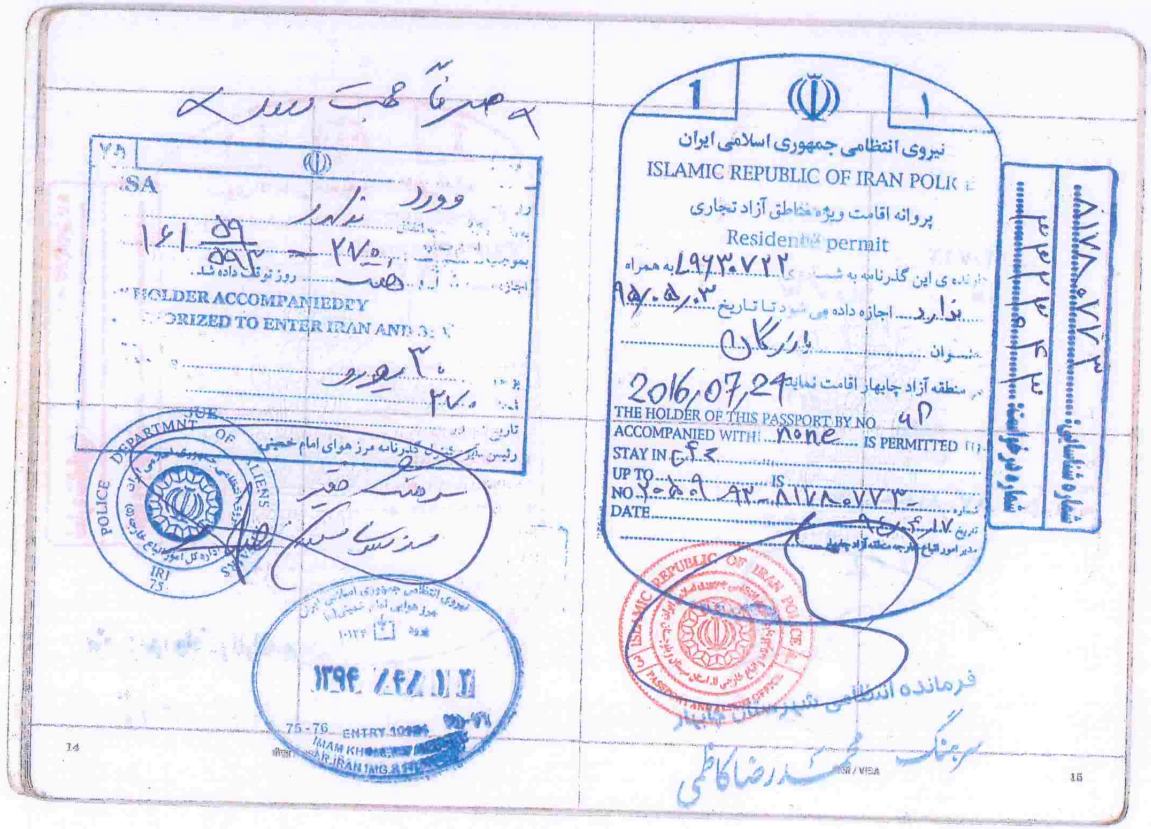
IMMIGRATION INDIA
D4-016
JAN 2016
DEPARTURE
CSI AIRPORT, MUMBAI


VISA
ISLAMIC REPUBLIC OF IRAN
جمهوری اسلامی ایران
IMAM KHOMEINI AIRPORT
IMMIGRATION INDIA
CSI AIRPORT MUMBAI
DEPARTURE
29 AUG 2014
28 AUG 2014
نام حسین پاتل
ملیت هندوستان
همراهان ندارد
نوع روادید C
اعتبار از ۱۳۹۳/۰۵/۲۰ تا ۱۳۹۳/۰۷/۱۸
مدت اقامت ۳۰
یکبار
No of entries ONCE
Duration of stay 30 Days
Pass No L 9630722
Validity from 11/08/2014 Until 10/10/2014
Acc NONE
ملاحظات
سرکنسولگری - کنسولگری
L 96307227IND3008683M1010145<S600811
V<MUM<PATEL<<HUSSEIN<<<<<<<<<<<<<<<
جابر شاکر نسب - وابته
JABER SHAKER NASAB
ATTACHE
12291309


نیروی انتظامی جمهوری اسلامی ایران
ISLAMIC REPUBLIC OF IRAN POLICE
پروانه اقامت ویژه مناطق آزاد تجاری
Residence permit
ISLAMIC REPUBLIC OF IRAN POLICE
MULTIPLE EXIT AND REENTRY VISA
2015/07/25
2016/12/23
THE HOLDER OF THIS PASSPORT BY NO
ACCOMPANIED WITH NONE
IS ALLOWED TO EXIT FROM
AND RETURN WITHIN THREE
MONTHS FROM DATE OF DEPARTURE IF THE PASSPORT REMAINS VALID
DATE


IMMIGRATION INDIA
A3-025
24 OCT 2015
ARRIVAL
CSI AIRPORT, MUMBAI
IMMIGRATION INDIA
A4-024
14 JUL 2015
ARRIVAL
CSI AIRPORT, MUMBAI
IMMIGRATION INDIA
D1-024
03 JUL 2015
DEPARTURE
CSI AIRPORT, MUMBAI
IMMIGRATION INDIA
A3-130
13 JAN 2015
ARRIVAL

ENTRY
06097
25 JAN 2015
UAE
EXIT
10938
31 JAN 2015
ISLAMIC REPUBLIC OF IRAN POLICE
MULTIPLE EXIT AND REENTRY VISA
THE HOLDER OF THIS PASSPORT BYNO
ACCOMPANIED WITH
IS ALLOWED TO EXIT FROM
MONTHS FROM DATE OF ISSUE AND RETURN WITHIN THREE
NO
DATE
MINISTRY OF IMMIGRATION INDIA
17 MAR 2015


نیروی انتظامی جمهوری اسلامی ایران
ISLAMIC REPUBLIC OF IRAN POLIC
پروانه اقامت ویژه مناطق آزاد تجاری
Residence permit
ISA
HOLDER ACCOMPANIEDBY
ORIZED TO ENTER IRAN AND
POLICE DEPARTMNT OF ALIENS
IRI
75-76 ENTRY
IMAM KHOMEINI AIRPORT
R.IRAN ING A.T.H.
2016/07/24
THE HOLDER OF THIS PASSPORT BY NO
ACCOMPANIED WITH none IS PERMITTED
STAY IN
UP TO IS
NO
DATE
IMMIGRATION / VISA
14
15

نیروی انتظامی جمهوری اسلامی ایران
ISLAMIC REPUBLIC OF IRAN POLICE
MULTIPLE EXIT AND REENTRY VISA
10 NOV 2015
ISLAMIC REPUBLIC OF IRAN


UAE
01 JUN 2015
09916
EXIT
IMMIGRATION INDIA
D3-115
DEPARTURE
CSI AIRPORT, MUMBAI
10 OCT 2015
02 JUN 2015
UAE
10 NOV 2015
10133
ENTRY
IMMIGRATION INDIA
AI-015
12 NOV 2015
UAE
12 NOV 2015
11576
EXIT

2016,03,24

1

نیروی انتظامی جمهوری اسلامی ایران

ISLAMIC REPUBLIC OF IRAN POLICE

EXIT AND REENTRYVISA - روادید خروج و مراجعت

دارنده ی این گذرنامه به شماره L9623022 مجاز است

تا تاریخ ...... همراه 95,01,05

از منطقه آزاد چابهار خارج و در مدت سه ماه از تاریخ

خروج چنانچه گذرنامه معتبر باشد بازگشت نماید.

THE HOLDER OF THIS PASSPORT SY NO.

ACCOMPANIED WITH none

IS ALLOWED TO EXIT FROM ...... UP TO ......

AND RETURN WITHIN THREE MONTHS FROM DATE OF

DEPARTURE IF THE PASSPORT REMAINS VALID

NO. 2054-93817807 شماره

DATE 94,12,04 تاریخ

مدیر امور اتباع خارجه منطقه آزاد چابهار

سرپرست اداره مهاجرت و گذرنامه منطقه آزاد چابهار

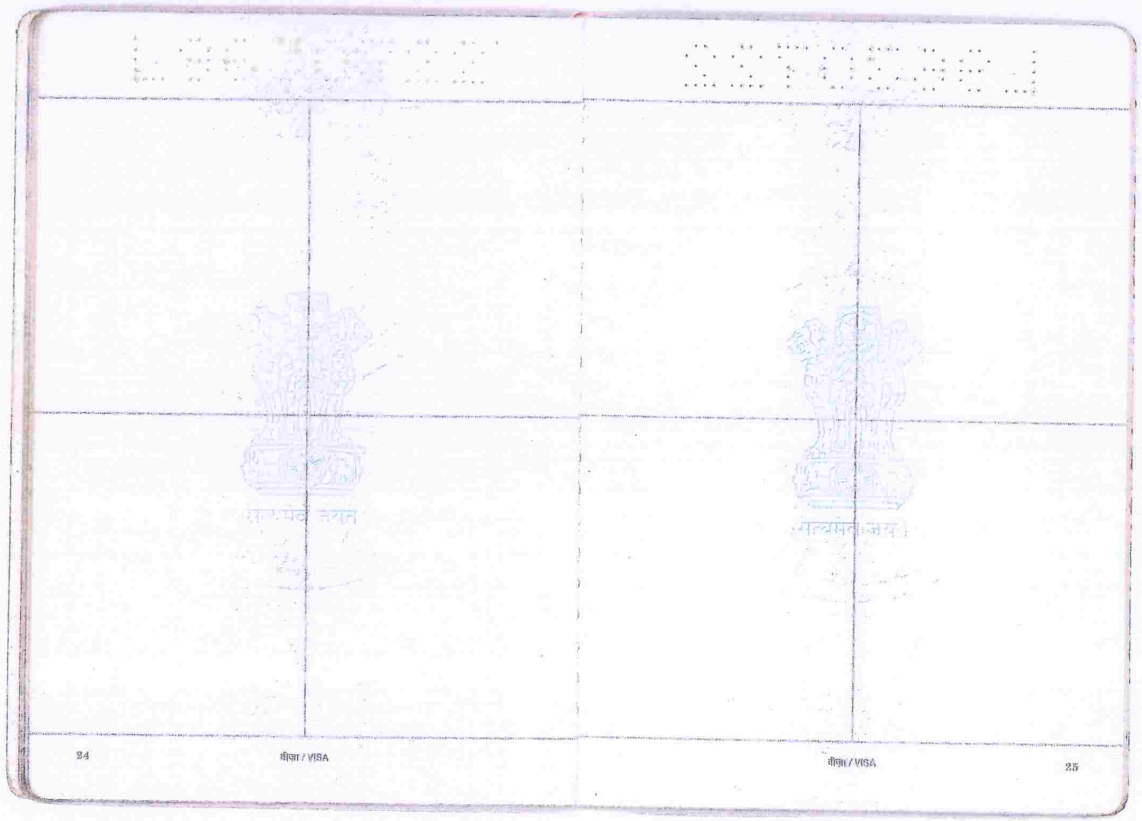
ISLAMIC REPUBLIC OF IRAN

20 वीज़ा / VISA

वीज़ा / VISA 21

वीज़ा / VISA

वीज़ा / VISA

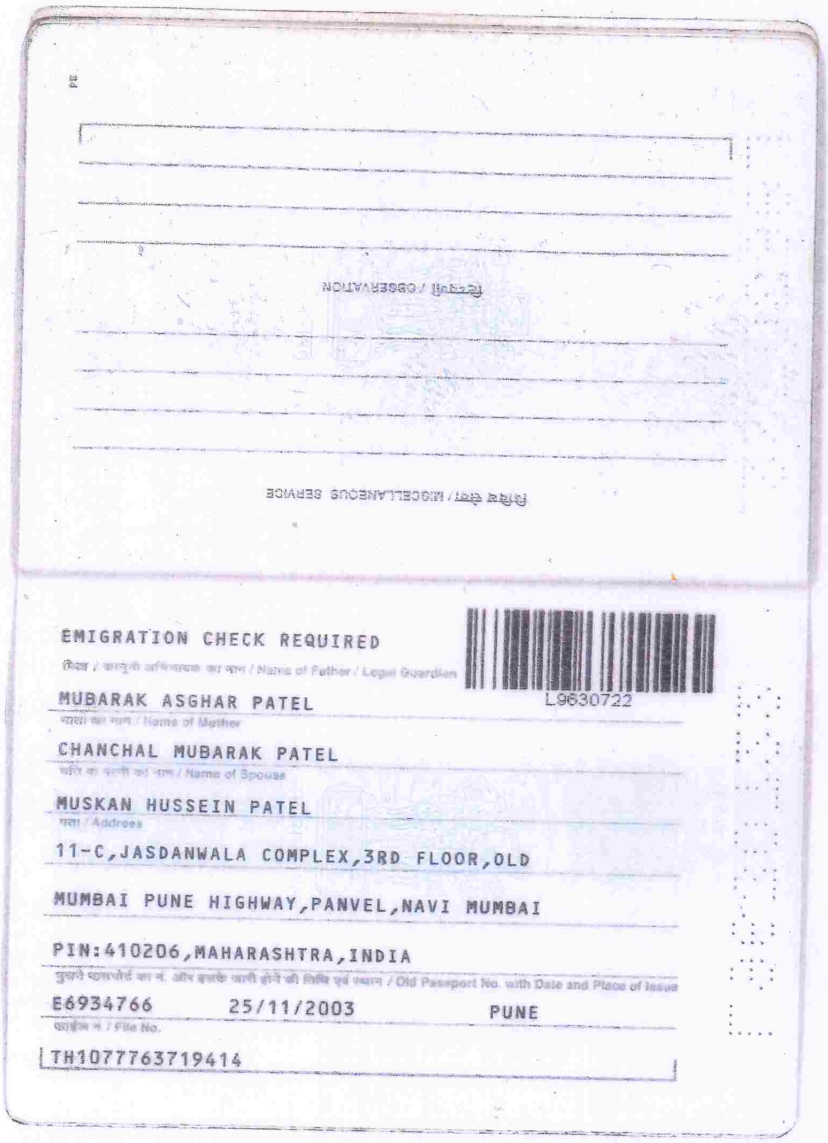


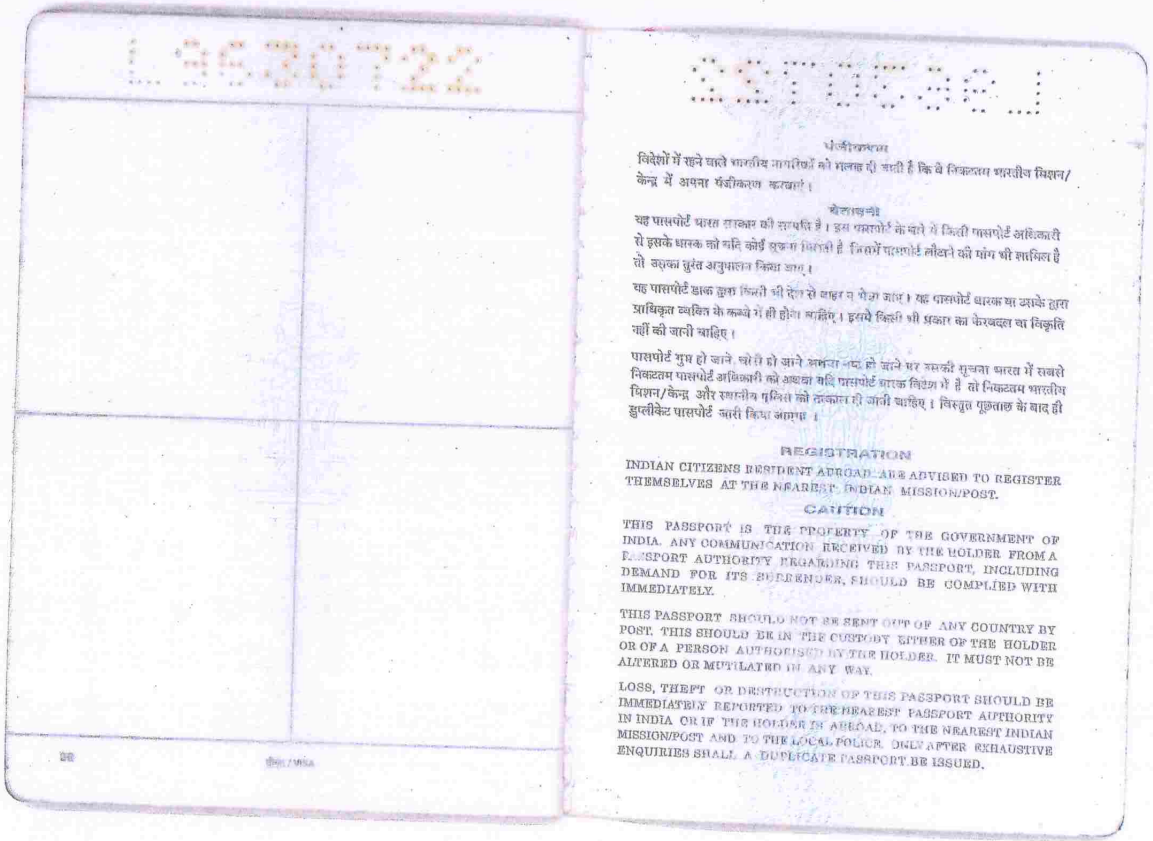
26
ਸਫ਼ਾ/ Page
ਸਫ਼ਾ/ Page
27

11 DEC 2014

UAE
10315
27 MAY 2015
10315
ENTRY
11 DEC 2014
ENTRY
REPUBLIC OF IRAQ
زيارة الاماكن المقدسة
زيارة لمدة (٣٠) يوم فقط

32
वीजा / VISA
वीजा / VISA
33


टिप्पणी / OBSERVATION
विविध सेवा / MISCELLANEOUS SERVICE
EMIGRATION CHECK REQUIRED
पिता / कानूनी अभिभावक का नाम / Name of Father / Legal Guardian
MUBARAK ASGHAR PATEL
L9630722
माता का नाम / Name of Mother
CHANCHAL MUBARAK PATEL
पति या पत्नी का नाम / Name of Spouse
MUSKAN HUSSEIN PATEL
पता / Address
11-C,JASDANWALA COMPLEX,3RD FLOOR,OLD
MUMBAI PUNE HIGHWAY,PANVEL,NAVI MUMBAI
PIN:410206,MAHARASHTRA,INDIA
पुराने पासपोर्ट का नं. और इसके जारी होने की तिथि एवं स्थान / Old Passport No. with Date and Place of Issue
E6934766 25/11/2003 PUNE
फाईल नं / File No.
TH1077763719414



पंजीकरण

विदेशों में रहने वाले भारतीय नागरिकों को सलाह दी जाती है कि वे निकटतम भारतीय मिशन/केन्द्र में अपना पंजीकरण करवाएं।

चेतावनी

यह पासपोर्ट भारत सरकार की सम्पत्ति है। इस पासपोर्ट के बारे में किसी पासपोर्ट अधिकारी से इसके धारक को यदि कोई सूचना मिलती है जिसमें पासपोर्ट लौटाने की मांग भी शामिल है तो उसका तुरंत अनुपालन किया जाए।

यह पासपोर्ट डाक द्वारा किसी भी देश से बाहर न भेजा जाए। यह पासपोर्ट धारक या उसके द्वारा प्राधिकृत व्यक्ति के कब्जे में ही होना चाहिए। इसमें किसी भी प्रकार का फेरबदल या विकृति नहीं की जानी चाहिए।

पासपोर्ट गुम हो जाने, चोरी हो जाने अथवा नष्ट हो जाने पर इसकी सूचना भारत में सबसे निकटतम पासपोर्ट अधिकारी को अथवा यदि पासपोर्ट धारक विदेश में है तो निकटतम भारतीय मिशन/केन्द्र और स्थानीय पुलिस को तत्काल दी जानी चाहिए। विस्तृत पूछताछ के बाद ही डुप्लीकेट पासपोर्ट जारी किया जाएगा।

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Justice

PART 35 - EXPERTS AND ASSESSORS

Contents of this Part

Duty to restrict expert evidence

35.1

Expert evidence shall be restricted to that which is reasonably required to resolve the proceedings.

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Interpretation and definitions

35.2

(1) A reference to an 'expert' in this Part is a reference to a person who has been instructed to give or prepare expert evidence for the purpose of proceedings.

(2) 'Single joint expert' means an expert instructed to prepare a report for the court on behalf of two or more of the parties (including the claimant) to the proceedings.

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Experts – overriding duty to the court

35.3

(1) It is the duty of experts to help the court on matters within their expertise.

(2) This duty overrides any obligation to the person from whom experts have received instructions or by whom they are paid.

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Court's power to restrict expert evidence

35.4

(1) No party may call an expert or put in evidence an expert's report without the court's permission.

(2) When parties apply for permission they must provide an estimate of the costs of the proposed expert evidence and identify –

(a) the field in which expert evidence is required and the issues which the expert evidence will address; and

(b) where practicable, the name of the proposed expert.

(3) If permission is granted it shall be in relation only to the expert named or the field identified under paragraph (2). The order granting permission may specify the issues which the expert evidence should address.

(3A) Where a claim has been allocated to the small claims track or the fast track, if permission is given for expert evidence, it will normally be given for evidence from only one expert on a particular issue.

(3B) In a soft tissue injury claim, permission—

(a) may normally only be given for one expert medical report;

(b) may not be given initially unless the medical report is a fixed cost medical report. Where the claimant seeks permission to obtain a further medical report, if the report is from a medical expert in any of the following disciplines—

(i) Consultant Orthopaedic Surgeon;

(ii) Consultant in Accident and Emergency Medicine;

(iii) General Practitioner registered with the General Medical Council; or

(iv) Physiotherapist registered with the Health and Care Professions Council, the report must be a fixed cost medical report.

(3C) In this rule, 'fixed cost medical report' and 'soft tissue injury claim' have the same meaning as in paragraph 1.1(10A) and (16A), respectively, of the RTA Protocol.

(Paragraph 7 of Practice Direction 35 sets out some of the circumstances the court will consider when deciding whether expert evidence should be given by a single joint expert.)

(4) The court may limit the amount of a party's expert's fees and expenses that may be recovered from any other party.

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General requirement for expert evidence to be given in a written report

35.5

(1) Expert evidence is to be given in a written report unless the court directs otherwise.

(2) If a claim is on the small claims track or the fast track, the court will not direct an expert to attend a hearing unless it is necessary to do so in the interests of justice.

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Written questions to experts

35.6

(1) A party may put written questions about an expert's report (which must be proportionate) to –

(a) an expert instructed by another party; or

(b) a single joint expert appointed under rule 35.7.

(2) Written questions under paragraph (1) –

(a) may be put once only;

(b) must be put within 28 days of service of the expert's report; and

(c) must be for the purpose only of clarification of the report,

unless in any case –

(i) the court gives permission; or

(ii) the other party agrees.

(3) An expert's answers to questions put in accordance with paragraph (1) shall be treated as part of the expert's report.

(4) Where –

(a) a party has put a written question to an expert instructed by another party; and

(b) the expert does not answer that question,

the court may make one or both of the following orders in relation to the party who instructed the expert –

(i) that the party may not rely on the evidence of that expert; or

(ii) that the party may not recover the fees and expenses of that expert from any other party.

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Court's power to direct that evidence is to be given by a single joint expert

35.7

(1) Where two or more parties wish to submit expert evidence on a particular issue, the court may direct that the evidence on that issue is to be given by a single joint expert.

(2) Where the parties who wish to submit the evidence ('the relevant parties') cannot agree who should be the single joint expert, the court may –

(a) select the expert from a list prepared or identified by the relevant parties; or

(b) direct that the expert be selected in such other manner as the court may direct.

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Instructions to a single joint expert

35.8

(1) Where the court gives a direction under rule 35.7 for a single joint expert to be used, any relevant party may give instructions to the expert.

(2) When a party gives instructions to the expert that party must, at the same time, send a copy to the other relevant parties.

(3) The court may give directions about –

(a) the payment of the expert's fees and expenses; and

(b) any inspection, examination or experiments which the expert wishes to carry out.

(4) The court may, before an expert is instructed –

(a) limit the amount that can be paid by way of fees and expenses to the expert; and

(b) direct that some or all of the relevant parties pay that amount into court.

(5) Unless the court otherwise directs, the relevant parties are jointly and severally liable(GL) for the payment of the expert's fees and expenses.

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Power of court to direct a party to provide information

35.9

Where a party has access to information which is not reasonably available to another party, the court may direct the party who has access to the information to –

(a) prepare and file a document recording the information; and

(b) serve a copy of that document on the other party.

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Contents of report

35.10

(1) An expert's report must comply with the requirements set out in Practice Direction 35.

(2) At the end of an expert's report there must be a statement that the expert understands and has complied with their duty to the court.

(3) The expert's report must state the substance of all material instructions, whether written or oral, on the basis of which the report was written.

(4) The instructions referred to in paragraph (3) shall not be privileged(GL) against disclosure but the court will not, in relation to those instructions –

(a) order disclosure of any specific document; or

(b) permit any questioning in court, other than by the party who instructed the expert,

unless it is satisfied that there are reasonable grounds to consider the statement of instructions given under paragraph (3) to be inaccurate or incomplete.

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Use by one party of expert's report disclosed by another

35.11

Where a party has disclosed an expert's report, any party may use that expert's report as evidence at the trial.

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Discussions between experts

35.12

(1) The court may, at any stage, direct a discussion between experts for the purpose of requiring the experts to –

(a) identify and discuss the expert issues in the proceedings; and

(b) where possible, reach an agreed opinion on those issues.

(2) The court may specify the issues which the experts must discuss.

(3) The court may direct that following a discussion between the experts they must prepare a statement for the court setting out those issues on which –

(a) they agree; and

(b) they disagree, with a summary of their reasons for disagreeing.

(4) The content of the discussion between the experts shall not be referred to at the trial unless the parties agree.

(5) Where experts reach agreement on an issue during their discussions, the agreement shall not bind the parties unless the parties expressly agree to be bound by the agreement.

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Consequence of failure to disclose expert's report

35.13

A party who fails to disclose an expert's report may not use the report at the trial or call the expert to give evidence orally unless the court gives permission.

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Expert's right to ask court for directions

35.14

(1) Experts may file written requests for directions for the purpose of assisting them in carrying out their functions.

(2) Experts must, unless the court orders otherwise, provide copies of the proposed requests for directions under

paragraph (1) –

(a) to the party instructing them, at least 7 days before they file the requests; and

(b) to all other parties, at least 4 days before they file them.

(3) The court, when it gives directions, may also direct that a party be served with a copy of the directions.

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Assessors

35.15

(1) This rule applies where the court appoints one or more persons under section 70 of the Senior Courts Act 1981[1] or section 63 of the County Courts Act 1984[2]as an assessor.

(2) An assessor will assist the court in dealing with a matter in which the assessor has skill and experience.

(3) An assessor will take such part in the proceedings as the court may direct and in particular the court may direct an assessor to –

(a) prepare a report for the court on any matter at issue in the proceedings; and

(b) attend the whole or any part of the trial to advise the court on any such matter.

(4) If an assessor prepares a report for the court before the trial has begun –

(a) the court will send a copy to each of the parties; and

(b) the parties may use it at trial.

(5) The remuneration to be paid to an assessor is to be determined by the court and will form part of the costs of the proceedings.

(6) The court may order any party to deposit in the court office a specified sum in respect of an assessor's fees and, where it does so, the assessor will not be asked to act until the sum has been deposited.

(7) Paragraphs (5) and (6) do not apply where the remuneration of the assessor is to be paid out of money provided by Parliament.

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Footnotes

1. 1981 c. 54. Back to text
2. 1984 c. 28. Back to text

Justice

PRACTICE DIRECTION 35 – EXPERTS AND ASSESSORS

This Practice Direction supplements CPR Part 35

Contents of this Practice Direction

Introduction

1 Part 35 is intended to limit the use of oral expert evidence to that which is reasonably required. In addition, where possible, matters requiring expert evidence should be dealt with by only one expert. Experts and those instructing them are expected to have regard to the guidance contained in the Guidance for the Instruction of Experts in Civil Claims 2014 at www.judiciary.gov.uk. (Further guidance on experts is contained in Annex C to the Practice Direction (Pre-Action Conduct)).

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Expert Evidence – General Requirements

2.1 Expert evidence should be the independent product of the expert uninfluenced by the pressures of litigation.

2.2 Experts should assist the court by providing objective, unbiased opinions on matters within their expertise, and should not assume the role of an advocate.

2.3 Experts should consider all material facts, including those which might detract from their opinions.

2.4 Experts should make it clear –

(a) when a question or issue falls outside their expertise; and

(b) when they are not able to reach a definite opinion, for example because they have insufficient information.

2.5 If, after producing a report, an expert's view changes on any material matter, such change of view should be communicated to all the parties without delay, and when appropriate to the court.

2.6

(1) In a soft tissue injury claim, where permission is given for a fixed cost medical report, the first report must be obtained from an accredited medical expert selected via the MedCo Portal (website at: www.medco.org.uk).

(2) The cost of obtaining a further report from an expert not listed in rule 35.4(3C)(a) to (d) is not subject to rules 45.19(2A)(b) or 45.29I(2A)(b), but the use of that expert and the cost must be justified.

(3) 'Accredited medical expert', 'fixed cost medical report', 'MedCo', and 'soft tissue injury claim' have the same meaning as in paragraph 1.1(A1), (10A), (12A) and (16A), respectively, of the RTA Protocol.

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Form and Content of an Expert's Report

3.1 An expert's report should be addressed to the court and not to the party from whom the expert has received instructions.

3.2 An expert's report must:

(1) give details of the expert's qualifications;

(2) give details of any literature or other material which has been relied on in making the report;

(3) contain a statement setting out the substance of all facts and instructions which are material to the opinions expressed in the report or upon which those opinions are based;

(4) make clear which of the facts stated in the report are within the expert's own knowledge;

(5) say who carried out any examination, measurement, test or experiment which the expert has used for the report, give the qualifications of that person, and say whether or not the test or experiment has been carried out under the expert's supervision;

(6) where there is a range of opinion on the matters dealt with in the report –

(a) summarise the range of opinions; and

(b) give reasons for the expert's own opinion;

(7) contain a summary of the conclusions reached;

(8) if the expert is not able to give an opinion without qualification, state the qualification; and

(9) contain a statement that the expert –

(a) understands their duty to the court, and has complied with that duty; and

(b) is aware of the requirements of Part 35, this practice direction and the Guidance for the Instruction of Experts in Civil Claims 2014.

3.3 An expert's report must be verified by a statement of truth in the following form –

I confirm that I have made clear which facts and matters referred to in this report are within my own knowledge and which are not. Those that are within my own knowledge I confirm to be true. The opinions I have expressed represent my true and complete professional opinions on the matters to which they refer.

Part 22 deals with statements of truth. Rule 32.14 sets out the consequences of verifying a document containing a false statement without an honest belief in its truth.)

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Information

4 Under rule 35.9 the court may direct a party with access to information, which is not reasonably available to another party to serve on that other party a document, which records the information. The document served must include sufficient details of all the facts, tests, experiments and assumptions which underlie any part of the information to enable the party on whom it is served to make, or to obtain, a proper interpretation of the information and an assessment of its significance.

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Instructions

5 Cross-examination of experts on the contents of their instructions will not be allowed unless the court permits it (or unless the party who gave the instructions consents). Before it gives permission the court must be satisfied that there are reasonable grounds to consider that the statement in the report of the substance of the instructions is inaccurate or incomplete. If the court is so satisfied, it will allow the cross-examination where it appears to be in the interests of justice.

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Questions to Experts

6.1 Where a party sends a written question or questions under rule 35.6 direct to an expert, a copy of the questions must, at the same time, be sent to the other party or parties.

6.2 The party or parties instructing the expert must pay any fees charged by that expert for answering questions put under rule 35.6. This does not affect any decision of the court as to the party who is ultimately to bear the expert's fees.

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Single joint expert

7 When considering whether to give permission for the parties to rely on expert evidence and whether that evidence should be from a single joint expert the court will take into account all the circumstances in particular, whether:

(a) it is proportionate to have separate experts for each party on a particular issue with reference to –

(i) the amount in dispute;

(ii) the importance to the parties; and

(iii) the complexity of the issue;

(b) the instruction of a single joint expert is likely to assist the parties and the court to resolve the issue more speedily and in a more cost-effective way than separately instructed experts;

(c) expert evidence is to be given on the issue of liability, causation or quantum;

(d) the expert evidence falls within a substantially established area of knowledge which is unlikely to be in dispute or there is likely to be a range of expert opinion;

(e) a party has already instructed an expert on the issue in question and whether or not that was done in compliance with any practice direction or relevant pre-action protocol;

(f) questions put in accordance with rule 35.6 are likely to remove the need for the other party to instruct an expert if one party has already instructed an expert;

(g) questions put to a single joint expert may not conclusively deal with all issues that may require testing prior to trial;

(h) a conference may be required with the legal representatives, experts and other witnesses which may make instruction of a single joint expert impractical; and

(i) a claim to privilege(GL) makes the instruction of any expert as a single joint expert inappropriate.

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Orders

8 Where an order requires an act to be done by an expert, or otherwise affects an expert, the party instructing that expert must serve a copy of the order on the expert. The claimant must serve the order on a single joint expert.

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Discussions between experts

9.1 Unless directed by the court discussions between experts are not mandatory. Parties must consider, with their experts, at an early stage, whether there is likely to be any useful purpose in holding an experts' discussion and if so when.

9.2 The purpose of discussions between experts is not for experts to settle cases but to agree and narrow issues and in particular to identify:

(i) the extent of the agreement between them;

(ii) the points of and short reasons for any disagreement;

(iii) action, if any, which may be taken to resolve any outstanding points of disagreement; and

(iv) any further material issues not raised and the extent to which these issues are agreed.

9.3 Where the experts are to meet, the parties must discuss and if possible agree whether an agenda is necessary, and if so attempt to agree one that helps the experts to focus on the issues which need to be discussed. The agenda must not be in the form of leading questions or hostile in tone.

9.4 Unless ordered by the court, or agreed by all parties, and the experts, neither the parties nor their legal representatives may attend experts discussions.

9.5 If the legal representatives do attend –

(i) they should not normally intervene in the discussion, except to answer questions put to them by the experts or to advise on the law; and

(ii) the experts may if they so wish hold part of their discussions in the absence of the legal representatives.

9.6 A statement must be prepared by the experts dealing with paragraphs 9.2(i) - (iv) above. Individual copies of the statements must be signed by the experts at the conclusion of the discussion, or as soon thereafter as practicable, and in any event within 7 days. Copies of the statements must be provided to the parties no later than 14 days after signing.

9.7 Experts must give their own opinions to assist the court and do not require the authority of the parties to sign a joint statement.

9.8 If an expert significantly alters an opinion, the joint statement must include a note or addendum by that expert explaining the change of opinion.

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Assessors

10.1 An assessor may be appointed to assist the court under rule 35.15. Not less than 21 days before making any such appointment, the court will notify each party in writing of the name of the proposed assessor, of the matter in respect of which the assistance of the assessor will be sought and of the qualifications of the assessor to give that assistance.

10.2 Where any person has been proposed for appointment as an assessor, any party may object to that person either personally or in respect of that person's qualification.

10.3 Any such objection must be made in writing and filed with the court within 7 days of receipt of the notification referred to in paragraph 10.1 and will be taken into account by the court in deciding whether or not to make the appointment.

10.4 Copies of any report prepared by the assessor will be sent to each of the parties but the assessor will not give oral evidence or be open to cross-examination or questioning.

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Concurrent expert evidence

11.1 At any stage in the proceedings the court may direct that some or all of the experts from like disciplines shall give their evidence concurrently. The following procedure shall then apply.

11.2 The court may direct that the parties agree an agenda for the taking of concurrent evidence, based upon the areas of disagreement identified in the experts' joint statements made pursuant to rule 35.12.

11.3 At the appropriate time the relevant experts will each take the oath or affirm. Unless the court orders otherwise, the experts will then address the items on the agenda in the manner set out in paragraph 11.4.

11.4 In relation to each issue on the agenda, and subject to the judge's discretion to modify the procedure –

(1) the judge may initiate the discussion by asking the experts, in turn, for their views. Once an expert has expressed a view the judge may ask questions about it. At one or more appropriate stages when questioning a particular expert, the judge may invite the other expert to comment or to ask that expert's own questions of the first expert;

(2) after the process set out in (1) has been completed for all the experts, the parties' representatives may ask questions of them. While such questioning may be designed to test the correctness of an expert's view, or seek clarification of it, it should not cover ground which has been fully explored already. In general a full cross-examination or re-examination is neither necessary nor appropriate; and

(3) after the process set out in (2) has been completed, the judge may summarise the experts' different positions on the issue and ask them to confirm or correct that summary.

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IN THE MATTER OF COURT PROCEEDINGS

Case Concerning the Vienna Convention on Consular Relations 1963

EXPERT REPORT OF

Anthony Paphiti

And

Professor Charles Garraway CBE

Trial of Espionage and Terrorism Cases Before Military Courts

Biographical

Anthony Paphiti

Anthony Paphiti was called to the Bar in 1975 by the Honourable Society of the Inner Temple. He practised at the Bar in London, focusing mainly on crime and conflict of laws, as counsel in Crown Court, High Court and Court of Appeal cases. In 1981 he joined the Army Legal Corps as a legal officer. His principal role for much of his service was as a prosecutor. He eventually became the officer functionally responsible for the Army Prosecuting Authority, which was an independent authority set up pursuant to the 1996 reforms and, through the Director Army Legal Services, the statutorily appointed Army Prosecuting Authority (APA), was answerable to the Attorney General. While serving with the APA, he was involved in considering prosecution in many cases arising out of allegations of serious misconduct and crime committed by British soldiers in Iraq.

He was the first legal adviser to the NATO Allied Command Europe Rapid Reaction Corps Headquarters (HQ ARRC) and was involved in the negotiations to establish the Memorandum of Understanding between all participating nations. He subsequently served with HQ ARRC for almost four years, in which time he drafted the Operational Law plan for deployment to the Former Yugoslavia, provided the legal advice underpinning the rules of engagement for the force, and, once in theatre, drafted the framework Technical Arrangement and Annexes which, once agreed, were used as the basis for clarifying the applicable Status of Forces Agreement.

He was a government adviser in the case of *Grieves-v-United Kingdom* [2003], (Application 57067/00), which was heard before the Grand Chamber of the European Court of Human Rights (ECtHR) concerning a challenge to the structure of the UK court-martial system as a violation of Article 6 § 1 of the Convention on the grounds of a lack of independence and impartiality, and fairness.

He worked with the Armed Forces Bill Team in the development of the Armed Forces Act 2006, which harmonised the disciplinary systems of the three Services.

He retired from the army in 2006 and is currently a military law consultant with the Aspals Consultancy. In this regard, he has given evidence to the United States Response Systems To Adult Sexual Assault Crimes Panel, and has submitted advisory papers to the United Kingdom House of Commons Defence Committee in respect of combat immunity (UK Armed Forces: Legal framework for future operations) and hybrid warfare (Russia: Implications for UK defence and security). He is also the author of the Military Justice Handbook, For Court Martial Practitioners (2013).

Professor Charles Garraway CBE

Professor Garraway served for thirty years as a legal officer in the United Kingdom Army Legal Services, initially as a criminal prosecutor but latterly as an adviser in the law of armed conflict and operational law. He represented the Ministry of Defence at numerous international conferences and was part of the UK delegations to the First Review Conference for the 1981 Conventional Weapons Convention, the negotiations on the establishment of an International Criminal Court, and the Diplomatic Conference that led to the 1999 Second Protocol to the 1954 Hague Convention on Cultural Property. He was also the senior Army lawyer deployed to the Gulf during the 1990/91 Gulf Conflict. Whilst still serving, he taught international humanitarian law at King's College, London as well as acting as Course Director on the military courses run by the International Institute of Humanitarian Law, San Remo, Italy, where he remains on the teaching staff. On retirement from the Army, he spent three months in Baghdad working for the Foreign Office on transitional justice issues and six months as a Senior Research Fellow at the British Institute of International and Comparative Law before taking up the Stockton Chair in International Law at the United States Naval War College, Newport, Rhode Island in August 2004 for the year 2004/5.

He was a Visiting Professor at King's College London from 2002 to 2008, and at the London School of Economics from 2007 to 2008, teaching the Law of Armed Conflict, and an Associate Fellow at Chatham House from 2005 to 2012. He has been a Fellow at the Human Rights Centre, University of Essex since 2006 and was awarded an Honorary Doctorate by the University in 2012. From 2006 to 2017, he was a Member of the International Humanitarian Fact Finding Commission under Article 90 of Additional Protocol I to the Geneva Conventions of 1949, and a Vice-President from 2012-2015.

He worked for the British Red Cross from 2007 to 2011 and now works as an independent consultant. He was appointed CBE in 2002. He has worked on a number of expert groups including the ICRC projects on "Direct Participation in Hostilities" and "Occupation" as well as the Harvard Program on Humanitarian Policy and Conflict Research project on air and missile warfare. He was the General Editor of the United Kingdom Manual on the Law of Armed Conflict (JSP 383) from 2008 to 20013 and carries out a number of consultancies for Government and international organizations, including the Commonwealth Secretariat. In 2011, he chaired the Commonwealth Working Group that updated the Commonwealth Model Law on the International Criminal Court. He has published widely on the law of armed conflict, human rights law and international criminal law and is a consultant editor of Practitioner's Guide to Human Rights Law in Armed Conflict, recently published by Oxford University Press.

AP

EXECUTIVE SUMMARY

Summary of instructions

1. We have been jointly instructed on behalf of the Ministry of Foreign Affairs for the Islamic Republic of Pakistan to provide an independent expert report addressing in overview the following issues with reference to our review of a representative example of the laws and procedures of UN member States, as well as with reference to our own experience as former serving senior Military officers in the British army with responsibilities for Legal issues:

   a. What is the State practice regarding the jurisdictional basis, process and procedure for Military Courts?

   b. Are Military Courts vested with jurisdiction to try the offence of "espionage"?

   c. Are Military Courts vested with jurisdiction to try terrorism offences?

   d. From our examination of open source materials, is the jurisdiction, practice and procedure of the Pakistani Military Courts manifestly unfair, or does it reflect practices and procedures common to Military Courts generally?

   e. Does the "review and reconsideration" jurisdiction of the Pakistani Courts (as most recently confirmed in *Said Zaman Khan v Federation of Pakistan through Secretary Ministry of Defence, Government of Pakistan* (Civil Petition No. 842 of 2016) provide (i) a potentially effective safeguard (ii) which is additional to the legal avenues of redress provided for in many other jurisdictions?

2. The context for this report is proceedings brought before the International Court of Justice by the Republic of India against the Islamic Republic of Pakistan concerning an allegation that an individual, Commander Jadhav, was entitled to and denied consular access pursuant to the Vienna Convention on Consular Relations 1963. In those proceedings, we understand specific reference has been made to the Military Courts of Pakistan. It is in that regard that we address the issues identified above.

Conclusions

3. We can briefly state our conclusions as follows;

   a. While most Military Courts do have jurisdiction to try the civilian offences of espionage and terrorism, in addition to related military offences of a similar nature, this is often limited to offences committed by persons already subject to Service jurisdiction. Modern State practice in most jurisdictions is that the civil authorities of the state will undertake any prosecution of these offences where there is concurrent jurisdiction.

   b. The Military Courts of Pakistan are soundly based in statute which provides the substantive legal basis for their jurisdiction, practice and procedure. Article 10 of the Constitution of Pakistan guarantees a defendant the right to consult and be defended by a legal practitioner of his choice. This constitutional right is reflected in

Rule 23 of the Pakistan Army Rules 1954. This jurisdiction is not inconsistent with practices and procedures common to military courts generally and does not appear to us to be manifestly unfair.

c. We do not consider that the "espionage" jurisdiction of the Military Courts of Pakistan (finding its source in a statute law of 1923[1] during the British India period) is *per se* unfair or otherwise improper.

d. In the case of Pakistan, the "judicial review" function of the Civilian Courts (as identified in *Said Zaman Khan v Federation of Pakistan through Secretary Ministry of Defence, Government of Pakistan* (Civil Petition No. 842 of 2016), see paragraph 132 below) appears to provide a potential effective safeguard against manifest failings in due process

e. Military Courts in other jurisdictions are vested with jurisdiction to try terrorism matters.

f. We are aware of general criticisms made of the Courts which try terrorism offences both in India and Pakistan. We are not in a position to consider whether those criticism are valid without further extensive research and review.

[1] The Official Secrets Act, 1923: http://www.fia.gov.pk/en/law/Offences/3.pdf

ABBREVIATIONS

AFA	Armed Forces Act 2006
AFDA	Armed Forces Discipline Act 1971
CMA	Court Martial Act 2007
CPS	Crown Prosecution Service
CSD	Code of Service Discipline
DFM	Defence Force Magistrate
DORA	Defence of the Realm Act 1914
DORRs	Defence of the Realm Regulations
DSPA	Director Service Prosecuting Authority
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
ERA	Employment Rights Act 1996
ICJ	International Court of Justice
ICCPR	International Covenant of Civil and Political Rights
PAA	Pakistan Army Act 1952
PA(A)A	The Pakistan Army (Amendment) Act 2015 and 2017
PIDA	Public Interest Disclosure Act 1998
RoP	Rules of Procedure
SAC	Summary Appeal Court
SCC	Service Civilian Court
SDA	Service Discipline Acts
SJS	Service Justice System
SOFA	Status of Forces Agreement
SPA	Service Prosecuting Authority
UCMJ	Uniform Code of Military Justice

AUSTRALIA

Jurisdiction of Military Courts:

1. The Defence Force Discipline Act (DFDA)[2] creates and establishes the Australian military justice system that includes three tiers of service tribunals, Summary Trials (essentially by commanding officers), Defence Force Magistrates (DFMs) and Courts Martial.
2. The DFDA sets out disciplinary jurisdiction and describes service offences, punishments, powers of arrest, and the organization and procedures for service tribunals, appeals, and post-trial review.
3. The DFDA includes several service offences that are unique to the profession of arms, such as: imperilling the success of operations; mutiny; failing to carry out orders; desertion; absence from duty; negligence in performance of a duty; and prejudicial conduct. However, under s. 61 of the DFDA, "Territory offences" are included when committed by a person subject to the DFDA. Section 61 provides:

"Offences based on Territory offences

(1) A person who is a defence member or a defence civilian is guilty of an offence if:

(a) the person engages in conduct in the Jervis Bay Territory; and
(b) engaging in that conduct is a Territory offence.

(2) A person who is a defence member or a defence civilian is guilty of an offence if:

(a) the person engages in conduct in a public place outside the Jervis Bay Territory; and

(b) engaging in that conduct would be a Territory offence, if it took place in a public place in the Jervis Bay Territory.

(3) A person who is a defence member or a defence civilian is guilty of an offence if:

(a) the person engages in conduct outside the Jervis Bay Territory (whether or not in a public place); and

(b) engaging in that conduct would be a Territory offence, if it took place in the Jervis Bay Territory (whether or not in a public place).

(4) The maximum punishment for an offence against this section is:

(a) if the relevant Territory offence is punishable by a fixed punishment—that fixed punishment; or

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[2] See: https://www.legislation.gov.au/Details/C2016C00811

(b) otherwise—a punishment that is not more severe than the maximum punishment for the relevant Territory offence.

(5) Strict liability applies to paragraphs (1)(b), (2)(b) and (3)(b).

Note: For strict liability, see section 6.1 of the Criminal Code.

(6) To avoid doubt, section 10 of this Act does not have the effect that Chapter 2 of the Criminal Code applies to the law in force in Jervis Bay, for the purpose of determining whether an offence against this section has been committed.

Note: Section 10 of this Act applies Chapter 2 of the Criminal Code to the content of this section, but not to the content of the law in force in Jervis Bay. To determine, for the purposes of this section, whether Chapter 2 of the Code applies to Jervis Bay law, it is necessary to consult Jervis Bay law.

4. The DFDA applies to a Defence Member, defined as:

(a) a member of the Permanent Navy, the Regular Army or the Permanent Air Force; or

(b) a member of the Reserves who:

(i) is rendering continuous full-time service; or
(ii) is on duty or in uniform.

The DFDA can also apply to certain civilians, defined as "Defence civilians", in limited circumstances. A "Defence civilian" is "a person (other than a defence member) who:

(a) with the authority of an authorized officer, accompanies a part of the Defence Force that is:

(i) outside Australia; or

(ii) on operations against the enemy; and

(b) has consented, in writing, to subject himself or herself to Defence Force discipline while so accompanying that part of the Defence Force.

5. There are two types of court martial provided for in s.114:
(1) A general court martial, which shall consist of a President and not less than 4 other members.
(3) A restricted court martial, which shall consist of a President and not less than 2 other members.

6. A court martial has, subject to section 63 (Jervis Bay Territory) and to 115 (1A),[3] jurisdiction to try any charge against any person.

[3] No jurisdiction to try a charge of a custodial offence. These are offences committed by persons in custody. See s. 54A.

7. A commanding officer "has jurisdiction to deal with any [charge of a service offence] against any person".[4] He may not try a "prescribed offence", such as treason, murder, manslaughter or bigamy and other specified offences in s.104. All service personnel being tried summarily by their commanding officer must be given the option of being tried by Defence Force Magistrate or electing court martial.

Judiciary

8. The Judge Advocate General may, by instrument in writing, appoint an officer who is a member of the judge advocates' panel to be a Defence Force magistrate. DFMs must be military legal officers and are appointed by the Judge Advocate General, by authority of the chain of command extending from the Chief of the Defence Force.[5] A member of the judge advocates' panel is appointed for a maximum period of 3 years but is eligible for reappointment: see subsection 196(2A).
9. A DFM has the same jurisdiction and powers as a restricted court martial (including the powers of the judge advocate of a restricted court martial). They provide an alternative to Courts Martial for dealing with serious service offences.
10. A judge advocate presides over the court martial trial. Section 117 of the DFDA states that a person is eligible to be the judge advocate of a court martial if, and only if, the person is a member of the judge advocates' panel, which is a panel of officers enrolled as legal practitioners for not less than 5 years.[6]

Legal Representation

11. Persons tried before a court-martial are entitled to legal representation by either a member of the Defence Force or a legal practitioner or, where the trial is held in a place outside Australia, a member of the Defence Force or a legal practitioner, or a person qualified to practise before the courts of that place.

Appeals

12. After conviction, the proceedings of a court-martial are referred to a competent reviewing authority, which should be completed within thirty days of receipt. The accused may petition the reviewing authority. The proceedings may be further reviewed by the "Chief of the Defence Force or a service chief".[7] Whether or not review is complete, a convicted

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[4] *Ibid*, s.107 & 108A(1)

[5] "Chapter 2 - Australia's military justice system: an overview": https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Foreign_Affairs_Defence_and_Trade/Completed_inquiries/2004-07/miljustice/report/c02

[6] *Ibid*, s.196

[7] *Ibid*, s.155

person or the prescribed acquitted[8] person, as the case may be, may lodge an appeal, or an application for leave to appeal, to the Defence Force Discipline Appeal Tribunal, under s.156. The Tribunal consists of a President, a Deputy President and such other persons as are appointed to be members, all of whom are judges of the Federal Court of Australia or Supreme Courts of a State or Territory.

Espionage

13. There has been no military court in recent times that has had to deal with espionage cases. The Defence Force Discipline Act does not have such an offence. However, using section 61, it would be possible to charge a person before a Service Court, with a breach of the Criminal Code Act as being part of the law of the Jervis Bay Territory. This includes the offence of espionage.[9]

[8] Prescribed acquittal means an acquittal of a service offence by a court martial or a Defence Force magistrate on the ground of unsoundness of mind, *ibid* s. 3 Interpretation

[9] [9] The Criminal Code Act offence of espionage is dealt with here: https://www.legislation.gov.au/Details/C2004A01028

AP

CANADA

Jurisdiction of Military Courts

14. The National Defence Act 1985[10] (NDA) creates and establishes the Canadian military justice system that includes 2 tiers of service tribunals, Summary Trials (essentially by COs) and Courts Martial (presided over by a Military Judge).

15. The Code of Service Discipline (CSD), which is found at Part III of the NDA, is the statutory foundation of the Canadian military justice system. It sets out disciplinary jurisdiction and describes service offences, punishments, powers of arrest, and the organization and procedures for service tribunals, appeals, and post-trial review.

16. A "service offence" is an offence under the NDA, the Criminal Code or any other act of Parliament committed by a person while subject to the CSD. The CSD includes several service offences that are unique to the profession of arms, such as: misconduct in the presence of the enemy; mutiny; disobedience of a lawful command; desertion; absence without leave; negligent performance of duty; and conduct to the prejudice of good order and discipline. However, under s. 130 of the NDA, any other civilian offence under the Criminal Code or other federal law can also be charged as a service offence.

17. The CSD applies to Regular Force members at all times and to Reserve Force members in specified circumstances, such as when on duty, in uniform, in a CAF vehicle, etc. The CSD can also apply to civilians in limited circumstances, such as while accompanying a CAF unit that is on service or active service.

18. When a person subject to the CSD commits an offence under the Criminal Code or any other federal law, the NDA provides jurisdiction to deal with the matter in the military justice system. Similarly, the NDA also provides for military jurisdiction over acts that would constitute offences under the relevant foreign law applicable in the place where the acts are committed. However, not all offences can be charged and tried within the military justice system. The CAF has no jurisdiction to try any person charged with having committed within Canada the offences of murder, manslaughter, or any offence under the sections of the Criminal Code relating to the abduction of children. There are also many cases where both the civilian and military systems could have jurisdiction over a matter, and where a decision must be taken as to who will exercise jurisdiction. For example, if a service member strikes a superior in a bar outside of a base in Canada, the civilian authorities could pursue charges under section 266 of the Criminal Code for a simple assault. Alternatively, the military authorities could pursue a charge of striking a superior officer contrary to section 84 of the NDA.

Judiciary

19. The courts are presided over by a military judge. He is appointed by the Governor in Council and will be an officer who is a barrister or advocate of at least 10 years' standing at the bar of a province and who has been an officer for at least 10 years. On appointment he takes an oath to carry out his duty impartially.

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[10] http://laws-lois.justice.gc.ca/eng/acts/N-5/page-1.html

Legal Representation

20. The accused is entitled to representation by either a legally qualified military defence counsel or, the Director of Defence Counsel Services may engage on a temporary basis the services of counsel, being persons who are barristers or advocates with standing at the bar of a province, to assist the Director of Defence Counsel Services.

Appeals

21. Every person subject to the Code of Service Discipline has, subject to subsection 232(3), the right to appeal to the Court Martial Appeal Court from a court martial in respect of conviction and or sentence.

Espionage

22. In Canada military courts (military justice) do have jurisdiction to try those persons subject to the Code of Service Discipline with espionage or related offences.

23. Regarding the specific offence of spying/espionage or related security offences there are several options under the CSD (more limited under civilian jurisdiction). For example Section 78 of the National Defence Act provides:

> "78. Every person who spies for the enemy is guilty of an offence and on conviction is liable to imprisonment for life or to less punishment." (1 September 1999)

24. Similarly, Section 75 of the National Defence Act provides:

> "Every person who
>
> a. improperly holds communication with or gives intelligence to the enemy,
> b. without authority discloses in any manner whatever any information relating to the numbers, position, materiel, movements, preparations for movements, operations or preparations for operations of any of Her Majesty's Forces or of any forces cooperating therewith,
> c. without authority discloses in any manner whatever any information relating to a cryptographic system, aid, process, procedure, publication or document of any of Her Majesty's Forces or of any forces cooperating therewith,
> d. makes known the parole, watchword, password, countersign or identification signal to any person not entitled to receive it,
> e. gives a parole, watchword, password, countersign or identification signal different from that which he received,
> f. without authority alters or interferes with any identification or other signal,
> g. improperly occasions false alarms,
> h. when acting as sentry or lookout, leaves his post before he is regularly relieved or sleeps or is drunk,
> i. forces a safeguard or forces or strikes a sentinel, or

j. does or omits to do anything with intent to prejudice the security of any of Her Majesty's Forces or of any forces cooperating therewith,

is guilty of an offence and on conviction, if the person acted traitorously, shall be sentenced to imprisonment for life, and in any other case, is liable to imprisonment for life or to less punishment." (1 September 1999)"

25. There may be lesser offences such as Conduct To The Prejudice of Good Order & Discipline pursuant to s.129 NDA.

26. There is also the option of charging offences under other Canadian Federal Statutes pursuant to s.130 NDA. For example, espionage charges under Canada's Criminal Code or the Security Offences Act could be available. While other Federal Statutes would be engaged, the charges would be service charges.

Espionage Case

27. While it is quite possible to deal with espionage or related offences in the military justice system, there have been no modern examples of such a case.

28. The most recent case in 2012 involved ex-Sub-Lieutenant Jeffrey Delisle. He was a former Sub-Lieutenant in the Royal Canadian Navy who passed sensitive information from the top-secret Stone Ghost intelligence sharing network to the Russian spy agency GRU. Delisle's actions have been described as "exceptionally grave" by Canada's Department of National Defence (DND) and "severe and irreparable" by the Canadian Security Intelligence Service.

29. In October 2012 Delisle pleaded guilty to breach of trust and two counts of passing secret information to a foreign entity, contrary to the Security of Information Act. He was sentenced to 20 years in penitentiary, minus time served, by the Chief Judge of the Provincial Court of Nova Scotia on February 8, 2013. On February 13, 2013 the Department of National Defence announced that Delisle had been stripped of his commission and service decorations and been dishonourably discharged.

30. This case could have been addressed within the military justice system. There were a variety of reasons that resulted in the decision to deal with the matter under civilian jurisdiction. Civilian police, security agencies and prosecutorial services will likely push for such matters to be dealt with in the civilian system, sometimes for very good legal/evidentiary reasons.

INDIA

Jurisdiction of Military Courts

31. The Army Act 1950[11] and The Army Rules 1954[12] define the persons subject to the Act wherever they may be, namely:-

(a) officers, junior commissioned officers and warrant officers of the regular Army;

(b) persons enrolled under this Act;

(c) persons belonging to the Indian Reserve Forces;

(d) persons belonging to the Indian Supplementary Reserve Forces when called out for service or when carrying out the annual test;

(e) officers of the Territorial Army, when doing duty as such officers, and enrolled persons of the said Army when called out or embodied or attached to any regular forces, subject to such adaptations and modifications as may be made in the application of this Act to such persons under sub- section (1) of section 9 of the Territorial Army Act, 1948 (56 of 1948).[13]

(f) persons holding commissions in the Army in India Reserve of Officers, when ordered on any duty or service for which they are liable as members of such reserve forces;

(g) officers appointed to the Indian Regular Reserve of Officers, when ordered on any duty or service for which they are liable as members of such reserve forces;

(i) persons not otherwise subject to military law who, on active service, in camp, on the march or at any frontier post specified by the Central Government by notification in this behalf, are employed by, or are in the service of, or are followers of, or accompany any portion of, the regular Army.

32. The Indian military discipline structure is laid down in the Army Act 1950 (as amended). The Act defines a number of Service offences and also, under section 69, provides jurisdiction over civil offences, subject to certain exceptions laid out in section 70. Section 125 provides that:

"When a criminal court and a court-martial have each jurisdiction in respect of an offence, it shall be in the discretion of the officer commanding the army, army corps, division or independent brigade in which the accused person is serving or such other officer as may be prescribed to decide before which court the proceedings shall be instituted, and, if that officer decides that they should

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[11] http://lawmin.nic.in/ld/P-ACT/1950/A1950-46.pdf

[12] http://www.lawsindia.com/Advocate%20Library/Amendments/Army%20Rules%201954/Army%20Rules%201954.htm

[13] http://lawmin.nic.in/ld/P-ACT/1948/A1948-56.pdf

be instituted before a court- martial, to direct that the accused person shall be detained in military custody. "

33. Jurisdiction under sections 69 and 70 of the Act in relation to any person subject to it is also extraterritorial.

34. Section 70 does not cover Civil offences by a person subject to the Act who commits an offence of murder against a person not subject to military, naval or air force law, or of culpable homicide not amounting to murder against such a person or of rape in relation to such a person. Such offences shall not be tried by a court-martial, unless the accused commits any of the said offences

    a. while on active service, or

    b. at any place outside India, or

    c. at a frontier post specified by the Central Government by notification in this behalf

35. There are 4 types of court-martial,

    a. general courts-martial (comprised of not less than five officers, each of whom has held a commission for not less than three whole years and of whom not less than four are of a rank not below that of captain). No sentence of death shall be passed by a general court-martial without the concurrence of at least two-thirds of the members of the court;

    b. district courts-martial (consisting of not less than three officers, each of whom has held a commission for not less than two whole years. An officer cannot be tried by this court. See s.119);

    c. summary general courts-martial (consisting of not less than three officers). No sentence of death shall be passed by a summary general court-martial without the concurrence of all the members; and

    d. summary courts-martial (held by the commanding officer of any corps, department or detachment of the regular Army. Can only try private soldiers who do not hold higher rank). This court cannot pass sentence of death or transportation, or of imprisonment for a term exceeding one year if the officer holding the summary court-martial is of the rank of lieutenant colonel and upwards, and three months if such officer is below that rank.

36. The most severe punishments that a court martial may award, under s.71 AA, are:

    a. Death (not available to a district court martial);
    b. transportation for life or for any period not less than seven years;
    c. imprisonment, either rigorous or simple, for any period not exceeding fourteen years;
    d. cashiering, in the case of officers;
    e. dismissal from the service.

37. The Army Rules, in R.36, provide that where it appears to the officer convening a court-martial, or to the senior officer on the spot, that military exigencies, or the necessities of discipline render it impossible or inexpedient to observe the rules concerning the right of

the accused to prepare defence or being given proper warning for trial, or being provided with a defending officer, then the respective rule may be suspended.

Judiciary

38. Every general court-martial shall, and every district or summary general court-martial may, be attended by a judge advocate, who shall be either an officer belonging to the department of the Judge Advocate General, or if no such officer is available, an officer approved of by the Judge Advocate General or any of his deputies.[14]

39. The act does not stipulate that the judge advocate must be legally qualified. However, as at February 2017, applications for appointment were invited from men and women who are Indian citizens. Applicants are required to have scored minimum 55% marks in the LLB exam, should be eligible for registration with Bar Council of India / State and should be physically and mentally fit to serve in the Army.[15]

Representation of the accused

40. Section 95 of the Indian Army Rules 1954[16] provides as follows:

> (1) At any general or district court martial, an accused person may be represented by any officer subject to the Act who shall be called "the defending officer" or assisted by any person whose services he may be able to procure and who shall be called "the friend of the accused".
>
> (2) It shall be the duty of the convening officer to ascertain whether an accused person desires to have a defending officer assigned to represent him at his trial and, if he does so desire, the convening officer shall use his best endeavours to ensure that the accused shall be so represented by a suitable officer. If owing to military exigencies, or for any other reason, there shall in the opinion of the convening officer, be no such officer available for the purpose, the convening officer shall give a written notice to the presiding officer of the court-martial, and such notice shall be attached to the proceedings.
>
> (3) The defending officer shall have the same rights and duties as appertain to counsel under these rules and shall be under the like obligations.
>
> (4) The friend of the accused may advise the accused on all points and suggest the questions to be put to the witnesses, but he shall not examine or cross-examine the witnesses or address the court".

41. The Constitution, however, provides in PART III, Article 14, for equality before the law: " The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India." It may be considered that this carries with it the right to legal representation.

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[14] AA 1950, s.129

[15] 19 JAG Judge Advocate General Course Notification of Indian Army https://www.ssbinterviewtips.in/job-notification/judge-advocate-general-notification-eligibility-indian-army/1

[16] http://www.lawsindia.com/Advocate%20Library/Amendments/Army%20Rules%201954/Army%20Rules%201954.htm#A95

Right of Appeal

42. The proceedings of courts-martial other than summary courts-martial, are subject to confirmation by a superior authority.[17] A confirming authority may, when confirming the sentence of a court-martial, mitigate or remit the punishment thereby awarded, or commute that punishment for any punishment or punishments lower in the scale laid down in section 71.

43. Any finding or sentence of a court-martial which requires confirmation may be once revised by order of the confirming authority and on such revision, the Court, if so directed by the confirming authority, may take additional evidence. The court, on revision, shall consist of the same officers as were present when the original decision was passed, unless any of those officers are unavoidably absent.

44. Any person subject to the Army Act who considers himself aggrieved by a finding or sentence of any court-martial which has been confirmed, has the right, under section 164, to present a petition to the Central Government, the Chief of the Army Staff or any prescribed officer superior in command to the one who confirmed such finding or sentence, and the Central Government, the Chief of the Army Staff or other officer, as the case may be, may pass such order thereon as it or he thinks fit.

45. The Army Act itself makes no express provision for a right of appeal. However, PART III, Article 32 of the Constitution provides " The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed." The Supreme Court has the power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari. The right guaranteed by this article cannot be suspended except as otherwise provided for by the Constitution. Constitutional fundamental rights may, however, be restricted when martial law is in force in any area.

Espionage

46. Section 13(1) of the Official Secrets Act 1923[18] as applied in India states as follows:

> "(1) No Court (other than that of a Magistrate of the first class specially empowered in this behalf by the appropriate Government) which is inferior to that of a District or Presidency Magistrate shall try any offence under this Act".

47. However, it is unlikely that a court-martial would be deemed "inferior" to a District or Presidency Magistrate and so it would theoretically be possible for a Service court to try a person subject to Service law under section 69 of the Army Act 1950. In addition, where appropriate, it would be possible to charge a Service offence under section 34(d) of the Act, which provides that it is an offence where a person subject to service jurisdiction:

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[17] See *ibid*, Chapter XII

[18] https://archive.india.gov.in/allimpfrms/allacts/3314.pdf

"treacherously holds correspondence with, or communicates intelligence to, the enemy or any person in arms against the Union".

48. There does not appear to be any similar provision under Indian law equivalent to Section 2(1)(d) of the Pakistan Army Act 1952.[19]

Sentencing in respect of espionage offences

49. As applied in India, Section 3 of the Official Secrets Act 1923 (Penalties for spying) provides as follows:

> "3. Penalties for spying
> (1) If any person for any purpose prejudicial to the safety or interests of the State-
>
> (a) approaches, inspects, passes over or is in the vicinity of, or enters, any prohibited place; or
>
> (b) makes any sketch, plan, model, or note which is calculated to be or might be or is intended to be, directly or indirectly, useful to an enemy; or
>
> (c) obtains, collects, records or publishes or communicates to any other person any secret official code or pass word, or any sketch, plan, model, article or note or other document or information which is calculated to be or might be or is intended to be, directly or indirectly, useful to an enemy or which relates to a matter the disclosure of which is likely to affect the sovereignty and integrity of India, the security of the State or friendly relations with foreign States;
>
> he shall be punishable with imprisonment for a term which may extend, where the offence is committed in relation to any work of Defence, arsenal, naval, military or air force establishment or station, mine, minefield, factory, dockyard, camp , ship or aircraft or otherwise in relation to the naval, military or air force affairs of Government or in relation to any secret official code, to fourteen years and in other cases to three years.
>
> (2) On a prosecution for an offence punishable under section 10 ; it shall not be necessary to show that the accused person was guilty of any particular act tending to show a purpose prejudicial to the safety or interests of the State, and, notwithstanding that no such act is proved against him, he may be convicted if, from the circumstances of the case or his conduct or his known character as proved, it appears that his purpose was a purpose prejudicial to the safety or interests of the State; and if any sketch, plan, model, article, note, document, or information relating to or used in any prohibited place, or relating to anything in such a place, or any secret official code or pass word is made, obtained, collected, recorded, published or communicated by any person other than a person acting under lawful authority, and form the circumstances of the case or his conduct or his known character as proved it appears that his purpose was a purpose prejudicial to the safety or interests of the State, such

[19] See paragraph 124 below

sketch, plan, model , article, note, document, information, code or pass word shall be presumed to have been made, obtained, collected, recorded, published or communicated for a purpose prejudicial to the safety or interests of the state".

50. However, the death penalty does exist elsewhere in Indian military law. Section 34 of India's Army Act 1950 provides for "offences in relation to the enemy and punishable with death", as set out at paragraph 47 above.

Terrorism

51. It appears that in India, rather than utilising military tribunals, Section 11 of the National Investigation Agency Act 2008[20] provides for the establishment of Special Courts for the trial of terrorism offences, including activities defined as "terrorist acts" by Section 15 of the Unlawful Activities (Prevention) Act 1967 (as amended).[21]

[20] http://lawmin.nic.in/ld/P-ACT/2008/The%20National%20Investigation%20Agency%20Act,%202008.pdf
[21] http://lawmin.nic.in/ld/P-ACT/1967/A1967-37.pdf

ISRAEL

Jurisdiction of the Service Courts [22]

52. The IDF operates an internal judicial system, separate from the State of Israel's general judicial system. Its legislative basis is the Military Justice Law, which was promulgated by the Knesset in 1955. This law established amongst other things, specific provisions concerning the structure, jurisdiction and procedure of the military courts and also organized the activities of investigating institutions leading up to trial.

53. Furthermore, the Military Justice Law codifies an array of military offences that fall within the scope of the military court's jurisdiction, in addition to general criminal offences recognized by the State of Israel. The principal consideration in favour of the existence of a separate legal system in the IDF relates to the army's unique nature, embracing specific values, such as camaraderie and military discipline.

54. An additional reason for the existence of a separate military legal system is the degree of efficiency acquired. Whilst not impeding any rights of the accused soldier, the military system is accelerated and more suitable than the civilian system in managing proceedings against service members standing trial. The system's efficiency is far more imperative than that of the public's, as a disciplined and efficient military is certainly a requirement in times of conflict and emergency.

55. The Military Court system includes three regional courts of first instance, corresponding to the regions of military Command: the Southern, Northern and Central courts. A special court exists in cases relating to officers with the rank of Lieutenant Colonel and above and all offences committed by officers or soldiers which may warrant the death penalty.

56. Military courts are authorized to hear all cases that involve IDF service members, in the regular and reserve services. This includes indictments relating to all offences against the laws of the State of Israel, including general jurisdiction relating to offences committed anywhere in the world in times of war and peace. In the case of non-military offences, parallel jurisdiction exists between the civilian and military court systems.

57. Under such circumstances, the forum of trial rests in the discretion of the Military Advocate General, and is determined according to the degree of correlation between the offence and military service. In certain cases, military courts also hold jurisdiction over civilians employed specifically by the military under contract; those who have received weapons from the army under certain conditions and restrictions; and those belonging to the reserve forces.

Judiciary

58. Due to the army's unique nature, military judges are required to have formerly served in the IDF, as they will be called upon to decide upon specific issues that are raised within its framework and that are related to its operations and special norms of behaviour.

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[22] Much of this preliminary detail is taken from the Israeli Defence Force website page entitled, Criminal proceedings in the military courts: http://www.law.idf.il/647-2350-en/Patzar.aspx

59. Military Courts of first instance are generally comprised of three judge panels. The head of the panel is a professional judge, with a legal education and judicial experience. The judge belongs to the military courts unit and is appointed by the president of the State of Israel, in a process that is similar to the appointment of judges in the State's civilian legal sector. However, he is a military officer. Court decisions are passed by a majority and are subject to appeal.

Court Proceedings in the Military Legal System

60. Military court proceedings are essentially identical to those of the criminal justice system in the State of Israel. Deliberations begin with the reading of the indictment to the accused and his response. In those cases where the defendant pleads guilty – submissions are heard from both sides concerning the punishment and then a sentence is passed. Should a defendant plead innocent, a full evidentiary trial is held. Each side presents witnesses who are then cross-examined by the opposition. The trial is conducted according to the existing law of evidence customary in Israel by the adversarial system, which determines strict rules on the admissibility of evidence and its presentation in court.

Legal Representation

61. The judicial process before the military court begins by submitting an indictment according to the instruction of a senior military advocate. The indictment is thereafter served to the accused, and at that time the soldier is informed of his entitlement to legal representation at trial. All defendants indicted in the military courts, except those appearing for traffic offences, are entitled to free legal representation by the Military Defense Counsel Division. Those who prefer private representation may do so, provided that their lawyer has been certified to appear before a military court.

Appeals

62. Final decisions given by the Courts of First Instance are subject to appeal to the Military Court of Appeals. Both a convicted soldier and the prosecution have the right to appeal. In certain circumstances it is also possible to appeal the decisions of the Military Appeals Court to the Israeli Supreme Court after receiving special permission by the Supreme Court. Permission is generally only granted when there arises an important, difficult or novel legal issue.

63. The Military Court of Appeals serves as the highest judicial body in the adjudication of offences under military law. In rare cases, however, petitions regarding a decision of the military courts on issues of jurisdiction and reasonableness can be filed with the Israeli High Court of Justice.[23]

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[23] PRESUMED GUILTY - Failures of the Israeli Military Court System, *Addameer Prisoner Support and Human Rights Association*, November 2009, at p.7 : http://www.addameer.org/files/Reports/addameer-report-presumed-guiltynove2009.pdf

Prosecution For Espionage

64. There are three legal instruments under which prosecution for espionage can take place in Israel:

65. **(1) The Military Justice Act 1955** [24] - this grants jurisdiction to military courts in criminal and disciplinary offences, committed within or outside Israel, by IDF soldiers (during regular-mandatory or voluntary-professional military service), reservists, civilians employees or contractors, as well as by prisoners of war (art 10).

66. In case where the suspect has been discharged from the IDF, a military court will still have jurisdiction, provided an indictment is submitted within one year from the date the criminal offence was allegedly committed.

67. Given that the sanction for espionage may carry the death penalty, the trial takes place in a "special military court" (art 197). Final decisions are subject to appeal to the Military Court of Appeals. Both a convicted soldier and the prosecution have the right to appeal. Decisions of the Military Court of Appeals may be appealed with leave to the Israeli Supreme Court, provided the case raises an important, difficult or novel legal issue.

68. Civilian courts have concurrent jurisdiction in criminal offences (arts 13-14), although in practice soldiers in active (mandatory and voluntary) service are tried in military courts. Reservists are tried in a civilian court. There are several examples in the case law but they are in Hebrew and have not been obtained for the purposes of this report, in view of the requirement for translation.

69. **(2) Penal Law 5737 – 1977** [25] this applies to all offences committed in Israel, as well as to offences committed outside Israel against, inter alia, its national security ("an external offence"). Part II, Chapter Seven, is concerned with "National Security, Foreign Relations and Official Secrets". Article 2 sets out the principal offences of Treason, as follows:

    a. Committing "an act liable to impair the sovereignty of the State with the intention to impair that sovereignty", which on conviction carries the death penalty or to life imprisonment [§97];

    b. Causing war, being an act committed with intent to bring about military action against Israel which on conviction carries the death penalty or to life imprisonment [§98];

    c. Assistance to enemy in war, includes " the provision of information with the intention that it fall into the enemy's hands, or in the knowledge that it will reach the enemy, and it is immaterial that war was not in progress when the information was provided" which on conviction carries the death penalty or to life imprisonment [§99];

    d. Evincing resolve to betray is committed when an act that evinces one of the intentions said in sections 97, 98 or 99, on conviction carries the sentence of ten years imprisonment;

[24] http://www.law.idf.il/647-2350-en/Patzar.aspx
[25] Available at http://www.hamoked.org/files/2012/115026_eng.pdf

e. Service in enemy forces by a person owing allegiance to the state of Israel is subject to a sentence of fifteen years imprisonment.

70. There is a further offence of Mutiny with intent to impair national security [§107], which on conviction carries a sentence of fifteen years imprisonment.

71. Although many jurisdictions would regard an act of espionage as a treasonable offence, Espionage is specifically listed as a separate offence in Article Four, [§111], which defines the offence as follows:

> If a person knowingly delivered information to or for the enemy, then he is liable to ten years imprisonment; if the information is likely to benefit the enemy, then he is liable to fifteen years imprisonment; if he thereby intended to injure national security, then he is liable to life imprisonment; if by negligence he caused to be delivered to or for the enemy information likely to benefit him, then he is liable to three years imprisonment.

72. In practice, Israeli and foreign civilians will be charged in a (civilian) District Court which has jurisdiction over offences carrying the sanction of more than seven years imprisonment in accordance with the 1984 Courts Act (less serious offences are prosecuted in Magistrate Courts). This is also true in any case where the secret information was gathered by the defendant while on reserve duty.[26]

73. (3) **Order Regarding Security Provisions (Judea and Samaria) (No. 1651), 5770-2009** [27] authorises the prosecution of Palestinian residents of the occupied territory in military courts established by the Military Commander of the West Bank. These courts should not be confused with the Israeli Military Justice system.

74. Civilians are tried for espionage (and related offence s) under the Penal Law, before the relevant Israeli civil courts. There is no jurisdiction to try a civilian before a military court.

75. Soldiers are generally tried before military courts (where there is an appropriate evidentiary basis and subject to all relevant policy considerations). Military courts have jurisdiction over offences under the Military Justice Law (1955) as well as over offences under the Israeli Penal Law (1977) (the civil criminal code). The Penal Law includes a chapter of espionage-related offences, including the offence of Espionage in Article 112 and the offence of Aggravated Espionage in Article 113. The Military Justice Law does not include an offence of espionage *per-se*, but it includes related offences such as Treason (Article 43) and Assisting the Enemy (Article 44).

76. In practice, soldiers were tried for such offences only in very few isolated cases. One of the more famous cases is the Nafsu case, in which an IDF lieutenant was convicted by a military court of multiple counts of treason and assisting the enemy under the Military Justice Law, and of aggravated espionage and aiding the enemy in wartime under the Penal Law. In an appeal to the Israeli Supreme Court, Nafsu claimed the inadmissibility of his confessions, since they were given after he was subjected to unacceptable means of pressure, including violence, by his interrogators. Based on the findings of the Chief Military Advocate himself, which confirmed most of Nafsu's claims, the Supreme Court annulled Nafsu's conviction and punishment, and instead convicted him of the offence of exceeding authority to the point of endangering state security, an offence for which the

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[26] See, for example, Criminal Appeal 1803/08 Shamir v. State of Israel

[27] http://nolegalfrontiers.org/military-orders/mil019ed2.html?lang=en

maximum penalty is far lower than the prison term Nafsu had already served (7.5 years), which led to his immediate release (See Nafsu v. Chief Military Advocate).[28]

77. In addition, until 2000 there was also a military court operating within Israel which tried people accused of security offences under the Defense (Emergency) Regulations (1945), but these regulations do not include the offence of espionage.

West Bank

78. There is also a separate system of military courts with jurisdiction over the West Bank area, including in criminal matters, where Palestinians are tried for security offences. Even though the court has jurisdiction also over Israelis, they are usually tried in the Israeli courts. In these military courts an accused can be tried under the Order regarding Security Provisions [Consolidated Version] (Judea and Samaria) (No. 1651) (2009) for the offences of Espionage (Article 239) and Aggravated Espionage (Article 240), and for other related offence s. It is understood that this is not common.

[28] Links regarding this case: http://versa.cardozo.yu.edu/opinions/nafsu-v-chief-military-advocate ; http://www.jpost.com/Magazine/The-interesting-life-of-Izzat-Nafsu-490464

KENYA

Jurisdiction of Military Courts

79. The Kenya Defence Forces Act 2012[29] outlines the military justice structure. Section 4 of the Act provides that:

> " This Act applies to the following persons-
>
> (a) every member of the regular forces;
>
> (b) an officer or service member of the reserve force, whether of the regular or volunteer reserve who is called out for service or is in training;
>
> (c) auxiliary reserve force;
>
> (d) any person who, though not otherwise subject to this Act, is serving with the Defence Forces under an engagement, and has agreed to be subject to this Act;
>
> (e) cadets;
>
> (f) an alleged spy of the enemy;
>
> (g) a person who, though not otherwise subject to this Act, is in civil custody or in service custody in respect of any service offence committed or suspected to have been committed by the person;
>
> (h) a person who, pursuant to a treaty or agreement between Kenya and the State in whose armed forces the person is serving, is attached or seconded as an officer or non-commissioned member to the Defence Forces, subject to such exceptions, adaptations and modifications as may be prescribed by regulations;
>
> (i) a person, not otherwise a member of the Defence Forces, who accompanies any unit or other element of the Defence Forces that is on active service in any place; or
>
> j) a person attending a Defence Forces institution of the Defence Forces established under this Act or any other written law, subject to such exceptions, adaptations and modifications as may be prescribed by regulations.

80. A number of Service offences are outlined and the Act allows for jurisdiction in relation to persons subject to service jurisdiction in relation to civil offences under section 133. The Act also provides for both summary and court martial jurisdiction. Section 56 makes it clear that nothing in the Act or any order, disciplinary code, rules, regulations or manual shall affect the jurisdiction of any civil court to try a person for any offence triable by a civil court.

81. The Kenya Rules of Procedure (RoP) also make a similar provision to that which existed in the R.104 of the UK Army RoP 1926, providing for exceptions from the Rules on account of the exigencies of service. Kenyan RoP R.101(4) applies this exception to the

[29] See: http://kenyalaw.org/lex//actview.xql?actid=No.%2025%20of%202012

service of documents to an accused 24 hours before the appropriate superior authority investigates and deals summarily with the charge, the preparation of his defence and in the interests of security (R.102)

Judiciary

82. The court-martial may sit in any place, whether within or outside the Republic of Kenya. [s.162(1)]. It is presided over by a judge advocate who shall be either a magistrate or an advocate of not less than ten years standing, who is appointed by the Chief Justice. Evidence is heard in open court and the same rules of admissibility of evidence shall apply as in civilian courts.

Representation of Accused

83. Representation is allowed by an officer inferior in rank to the trial authority, provided that he is not " a person trained as a Lawyer". There is no right to legal representation before a court-martial, save where the potential sentence is death.[30] As this sentence applies to cases of espionage, legal representation would therefore be available.

Appeals

84. Section 186 provides a right of appeal to the High Court and subsequently to any other superior court, against the conviction, the sentence, or both. The Director of Public Prosecutions may appeal to the High Court against the sentence. In the event of an acquittal, the Director of Public Prosecutions may appeal to the High Court against that acquittal.

Espionage

85. In Kenya, Espionage is an offence which is triable by Court Martial. Section 60 of the Defence Forces Act (No. 25 of 2012)[31] sets out the nature of the offence (which it refers to as "spying") as well as punishment for it. Espionage is mentioned in the definition of the term "threat" in the National Intelligence Service Act (NO. 28 OF 2012) and it is the Penal Code (Chapter 63, Laws of Kenya) where the serious offences of Treason, subversion etc are defined and punishment provided.

86. The provision in section 60 is limited to offences committed " in time of war or armed conflict" and, on conviction by a court-martial, carries the penalty of death or other punishment provided for by the Act. Although it states that it applies to "A person who is subject to this Act", it will be noted that section 4(f) makes so subject ""an alleged spy of the enemy". Thus this section is not limited in scope to members of the armed forces or others made subject to service jurisdiction in the normal manner. There are also offences such as treason under section 40 of the Penal Code which would encompass espionage and could be tried under section 133 of the Defence Forces Act.

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[30] *Ibid,* s151

[31] http://www.kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/KenyaDefenceForcesAct_No25of2012.pdf

AP

87. Unauthorised communication with an enemy or providing intelligence to the enemy or to any unauthorised person, amounts to an offence under section 59 of the Act and the perpetrator shall be liable, upon conviction by a court-martial (a) to suffer death or any other punishment provided for by this Act if the offence is committed with intent to assist the enemy; or to imprisonment for life or any less punishment provided for by this Act, in any other case.

Espionage Cases

88. It has not been possible to discover any actual cases where these provisions have been used.

NEW ZEALAND

Jurisdiction of Military Courts

89. The Armed Forces Discipline Act 1971 (AFDA)[32] governs the disciplinary process in the New Zealand armed forces and applies to all acts done or omitted whether in New Zealand or elsewhere. The Act applies to persons who are subject to the Act (with only two exceptions)[33] at the time of the trial and must have been subject to the Act at the time of the offence. whether they are within New Zealand or not. This will include, when on active service, employed civilians and those accompanying the force.[34] When outside New Zealand, attached or employed civilians and family of members of any part of the Navy, the Army, the Air Force or employed/attached civilians and residing with them are subject to the AFDA.[35]

90. A commanding officer may exercise summary powers of punishment, with a right of appeal to the Summary Appeal Court. More serious cases will be tried in the Court Martial. This court was established under section 8 of the Court Martial Act 2007(CMA).

91. Offences against the civil law of New Zealand committed by any person subject to the AFDA, whether at home or abroad, also commits an offence against section 74 AFDA and is triable by the Court Martial.

92. Except with the consent of the Attorney-General, a person subject to the AFDA may not be tried by the Court Martial for an offence against section 74 which is alleged to have been committed in New Zealand if the corresponding civil offence is treason, murder, manslaughter, sexual violation, or bigamy.

93. All prosecutions are undertaken by the Director of Military Prosecutions, who is a legally qualified officer over 7 years experience. He is required by s.101K of AFDA to "act under the general supervision of the Solicitor-General in the same manner and to the same extent as a Crown Solicitor." All accused persons have the right to legal representation.

Judiciary

94. The Court Martial is presided over by a civilian judge, independently appointed by the Governor-General, under s.12 of the CMA. The Chief Judge must assign the Judge for the proceedings.

95. Section 2 AFDA states that the "Commonwealth force" includes every Judge.

96. For the purpose of any trial in the Court Martial and of any proceedings under section 63, the court must consist of one Judge and either five military members, where the proceedings relate to an offence for which the maximum penalty is life imprisonment or a

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[32] See http://legislation.govt.nz/act/public/1971/0053/latest/whole.html#DLM401068 , brought into force, on 1 December 1983, by the Armed Forces Discipline Act Commencement Order 1983 (SR 1983/232): http://legislation.govt.nz/regulation/public/1983/0232/latest/DLM90841.html

[33] Spies and prisoners of war who become subject to the Armed Forces Discipline Act 1971 after capture, and can be tried for offences committed before becoming subject.

[34] Section 16 AFDA.

[35] *Ibid*, Schedule 1

term of imprisonment of 20 years or more (a serious offence); or one Judge and three military members in any other case. For the purpose of any other proceedings in the Court Martial, the court may consist of 1 Judge.

Legal Representation

97. Under article 24 of the New Zealand Bill of Rights Act 1990,[36] every accused has the right, under section 24(c), to legal representation; and the right to a hearing by an independent court. In relation to an appeal, the AFDA s. 141 gives the right to every defendant to be represented by a lawyer.

Appeals

98. Appeals from the Court Martial lie to The Court Martial Appeal Court.[37] Section 9(2) of the CMAA authorises the Director of Military Prosecutions to appeal to the court against the sentence imposed by the Court Martial, unless the sentence is one fixed by law. With the leave of the court appealed to, a party to an appeal may appeal his conviction to the Court of Appeal or the Supreme Court against any decision of the court in the appeal.

Espionage

99. Military tribunals in New Zealand have had jurisdiction over spies in the past. While New Zealand armed forces caught spies in World War I (particularly at Gallipoli and in Palestine) no records have been traced. It is anticipated that the reason for this is that any such formality may have been brief. Even if recorded, a lot of the court martial papers were never sent to New Zealand. A large number of such records also disappeared in the infamous "King Edward's Barracks Fire" of the 1960s – so there may have been some trials now lost to history. It is equally likely that captured spies were handed over to the British HQ and dealt with there.

100. Part II of the AFDA makes specific provision for " Offences involving treachery, cowardice, and looting " and lists nine such offences.[38] Sections 26 and 27 are unique in that they apply to all persons, not solely persons subject to the AFDA. They establish the offences of spying and seducing members of the armed forces from their duty.

101. These offences are limited to acts occurring outside New Zealand, whether on board a naval ship or within a defence area. They are punishable by imprisonment for life.[39]

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[36] http://www.legislation.govt.nz/act/public/1990/0109/latest/DLM225526.html

[37] Court Martial Appeals Act 1953: http://legislation.govt.nz/act/public/1953/0100/latest/whole.html#DLM283240

[38] Aiding the enemy; Communication with the enemy; Unauthorised disclosure of information; Spying in ships or establishments abroad; Seduction from duty or allegiance; Cowardly behavior; Offence to create alarm or despondency; Offences in relation to capture by the enemy; Looting

[39] This offence can only be tried before the Court Martial, see Armed Forces Discipline Act 1971 s 108(2)(c).

There is no requirement for the accused to owe allegiance to The Queen in right of New Zealand. One merely has to "spy for the enemy". There is no definition of "spy".

102. Jurisdiction is established by AFDA section 13 which provides that where a person (being a person not otherwise subject to the Act) is alleged to have committed an offence against section 26 or section 27, that person shall, on the recording of the allegation in the form of a charge, be deemed to be subject to this Act,—

    (a) until the charge against that person is, on investigation, dismissed by a disciplinary officer; or

    (b) until the disciplinary officer finds that person not guilty on the charge; or

    (ba) until that person is acquitted by the Court Martial; or

    (c) If that person is convicted, until the sentence has been carried out or that person has served his sentence (including any further sentence imposed upon him while serving that sentence) or that person is released in due course of law from any imprisonment or detention imposed under the sentence.

103. The AFDA, section 90, provides that where any provost officer or any other member of the Armed Forces, or any person exercising authority under a provost officer, finds any person outside New Zealand committing an offence against section 26 (spying in ships or establishments abroad) or section 27 (seduction from duty or allegiance), or whom he has reasonable grounds to suspect is committing or has committed any such offence, he may arrest that person without warrant. On making an arrest under subsection (1), the provost officer, member of the Armed Forces, or person exercising authority under a provost officer shall, as soon as practicable, deliver the arrested person into service custody to be dealt with in accordance with the Act.

104. In reality, short of an actual military occupation it is highly unlikely that this would happen and certainly none of the extant Status of Forces Agreements (SOFAs) provide for it. It might be different if the spy were actually a New Zealander of course – but even that is not certain. It is not clear where the sentence of life imprisonment would be served.

105. The other relevant provision is the Crimes Act 1961 section 78, Espionage. Unlike the AFDA provision, this offence applies only to a person who owes allegiance to the Sovereign in right of New Zealand. Also unlike AFDA s 26 it can be committed within or outside New Zealand. It is punishable by imprisonment for a term not exceeding 14 years. The offence must be committed with intent to prejudice the security or defence of New Zealand. It includes all of the usual run of spying activities. Where the accused was otherwise subject to service jurisdiction, the Court Martial could try this offence by virtue of AFDA s 74(1) which essentially incorporates the entire criminal law of New Zealand into the AFDA. New Zealand does not have a service nexus requirement and the military has concurrent jurisdiction with the civil authorities.

106. So a New Zealand soldier who, with intent to prejudice the security or defence of New Zealand, communicates information or delivers any object to a country or organisation outside New Zealand, could be tried before the Court Martial, or before the High Court. It is more likely to be the latter if it occurred in New Zealand – but that would be open to discussion with the Police and Solicitor General .

107. In practice, since 1983 when the AFDA came into force, New Zealand has not tried anyone for an offence of this nature. In fact in the legal history of New Zealand there is only one spy trial (Dr Bill Sutch) and he was acquitted.

NIGERIA

Jurisdiction of Military Courts

109. Service jurisdiction is governed by the Armed Forces Act 1993.[40] There is provision for summary and court martial jurisdiction. For the most part, jurisdiction is limited to personnel within the Armed Forces of Nigeria as defined in section 270 of the Act. There is, however, the possibility of extending jurisdiction to civilians under section 272 which states that:

> "where a unit is on active service and a person is employed in the service of that unit or any part thereof or accompanies the unit or part thereof and is not otherwise subject to service law, Part XII of this Act shall apply to the person so employed or accompanying the unit as it applies to members of the Armed Forces.".[41]

110. Under section 114 of the Act, service jurisdiction is granted over civil offences, defined as "an act or omission punishable as an offence under the penal provisions of any law enacted in or applicable to Nigeria".

111. The military justice system permits summary dealing by commanding officers, where there is no right to legal representation. There are two types of court-martial: a general court-martial, consisting of a President and not less than four members, presided over by a judge advocate, and a special court-martial, consisting of a President and not less than two members, also presided over by a judge advocate.

112. Under the Armed Forces (Disciplinary Proceedings)(Special Provisions) Act 1990, the appropriate Council Board of each of the three armed forces may institute or continue disciplinary proceedings against any person subject to military law, whether or not criminal proceedings have been instituted in a civilian court in Nigeria or elsewhere and whether or not the grounds of the criminal proceedings are substantially the same as those upon which the disciplinary proceedings are based.

Judiciary

113. The judge advocate must be a commissioned officer who is qualified as a legal practitioner in Nigeria with at least three years post-call experience or failing that he shall on request by the convening officer be nominated by the Directorate of Legal Services of the respective services of the Armed Forces. Save for matters of the interests of security, or when deliberating on finding or sentence, courts sit in public.

Legal Representation

114. The defendant before a court-martial does have the constitutional right to legal representation,[42] and to a fair hearing within a reasonable time. The presumption of innocence operates.

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[40] http://www.lawnigeria.com/LawsoftheFederation/ARMED-FORCES-ACT.html

[41] Armed Forces Act 1993:

[42] Ibid, article 21(5)(c): http://www.worldstatesmen.org/nigeria_const1960.pdf

Appeals

115. The sentence of a court-martial is subject to confirmation. The accused may petition the confirming authority before confirmation is announced. A confirming authority may direct that a court-martial shall revise its finding of guilty in any case where it appears to him that the finding was against the weight of evidence or some question of law determined at the trial and relevant to the finding was wrongly determined.

116. Appeals from Courts-Martial lie to the Court of Appeal with the leave of the Court of Appeal.[43] The time limit is 40 days of the date of promulgation of the finding of the court-martial. Where a sentence of death was pronounced by the court-martial, leave to appeal is not required, however, the appeal must be lodged within 10 days of promulgation of the sentence.[44]

117. After confirmation of a finding or sentence of a general court-martial or of a special court-martial, an accused person may submit a petition for review of the finding or sentence to a reviewing authority, which shall be the appropriate Service Council or Board or, (so far as the delegation extends), an officer to whom the powers of the relevant Service Council or Board as reviewing authority, or any of those powers, may be delegated.

Espionage

118. There are a number of offences under the Armed Forces Act which might incorporate espionage including aiding the enemy (section 45), communicating with the enemy (section 46), mutiny (section 52) and injurious disclosures (section 88). There are also offences under the Official Secrets Act which could be tried in relation to persons subject to service jurisdiction under section 114 of the Armed Forces Act.

119. There is no formal procedure for deciding on issues of jurisdiction where both civil and military have the legal capability to deal with an offence. Where the case is strictly military, it will normally be dealt with by the service authorities but where it has civil elements, the suspect will be dismissed from the military and tried by the civil courts.

Terrorism

120. There is no specific offence of terrorism under the Armed Forces Act and persons subject to service jurisdiction who commit such acts would normally be tried for the appropriate equivalent offence such as murder under section 106 of the Act.

121. In cases involving terrorist groups such as Boko Haram, only the Federal High Court has jurisdiction to try such cases since most of the accused persons are not subject to service law.

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[43] Armed Forces Act 2004, Section 183

[44] *Ibid*, s.184

PAKISTAN

Jurisdiction of Military Courts

122. Service jurisdiction is exercised under the Pakistan Army Act 1952 ("PAA 1952"), [45] as amended by the Pakistan Army (Amendment) Act 2015[46] and extended for a further two years by the Pakistan Army (Amendment) Act 2017.[47] Provision is made for summary and court martial jurisdiction and the Act lays out in section 2 those persons subject to the Act. It also outlines service offences and provides under section 59 for jurisdiction over civil offences.

123. Persons subject to the jurisdiction of the act are

> (a) officers, junior commissioned officers and warrant officers of the Pakistan Army;
>
> (b) persons enrolled under The Indian Army Act, 1911, before the date notified in pursuance of sub-section (2) of section 1, and serving with the Pakistan Army immediately before that date, and persons enrolled under this Act;
>
> (bb) persons subject to the Pakistan Navy Ordinance, 1961, or the Pakistan Air Force Act, 1953, when seconded for service with the Pakistan Army, to such extent and subject to such regulations as the Federal Government may direct;
>
> (c) persons not otherwise subject to this Act, who, on active service, in camp, on the march, or at any frontier post specified by the Federal Government by notification in this behalf, are employed by, or are in the service of or are followers of, or accompany any portion of the Pakistan Army; ...
>
> (d) persons not otherwise subject to this Act who are accused of –
>
> ...
>
> (ii) having committed, in relation to any work of defence, arsenal, naval, military or air force establishment or station, ship or aircraft or otherwise in relation to the naval, military or air force affairs of Pakistan, an offence under the Official Secrets Act 1923.[48]

124. The other offences listed under section 2(1)(d) of the PAA relate to terrorism, attacks on Pakistan or military installations, belonging to any terrorist group or organization using the name of religion or a sect, providing or receiving funding from any foreign or local source for the illegal activities specified in s.2(1)(d). This is dealt with in more detail in paragraph 157 below.

125. The Federal Government has the power to transfer to court martial any proceedings in respect of any person who is accused of any offence falling under sub-clause (iii)[49] or

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[45] Copy accessed at http://www.nasirlawsite.com/laws/paa1952.htm

[46] http://www.na.gov.pk/uploads/documents/1449574923_658.pdf

[47] In force from 7th January 2017: http://www.na.gov.pk/uploads/documents/1491460313_135.pdf

[48] http://www.fia.gov.pk/en/law/Offences/3.pdf

[49] Committing specified acts while claiming or known "to belong to any terrorist group or organization using the name of religion or a sect."

sub-clause (iv)[50] of clause (d) of sub-section (1), pending in any court for a trial under this Act. Where a case is transferred under sub-section (4), it shall not be necessary to recall any witness or again record any evidence that may have been recorded.[51]

126. There are four types of court-martial in Pakistan, namely, general Court martial (not less than five officers each of whom has held a commission for not less than three whole years and of whom not less than four are of a rank not below that of captain); district Court martial (not less than three officers each of whom has held a commission for a continuous period of not less than two years); field general Court martial (not less than three officers); and summary Court martial (held by the commanding officer of any corps of unit or any detachment thereof).

127. The Field General Court Martial has maximum sentencing power of passing a sentence of death.

128. When a Criminal Court and a Court martial have each jurisdiction in respect of a civil offence, it shall be in the discretion of the prescribed officer to decide before which Court the proceedings shall be instituted and, if that officer decides that they shall be instituted before a Court martial, to direct that the accused person shall be detained in military custody.

129. Article 8 of The Constitution of Pakistan provides that laws that are inconsistent with or in derogation of Fundamental Rights will be void. However, this is restricted in article 8(3):

> The Provisions of this Article shall not apply to—
>
> (a) any law relating to members of the Armed Forces, or of the police or of such other forces as are charged with the maintenance of public order, for the purpose of ensuring the proper discharge of their duties or the maintenance of discipline among them;

130. See also the further restriction in relation to terrorism cases, discussed at paragraph 154 below.

131. Article 10A. guarantees the right to a fair trial and due process.

132. In *Said Zaman Khan v Federation of Pakistan through Secretary Ministry of Defence, Government of Pakistan* (Civil Petition No. 842 of 2016), 16 petitions for judicial review of convictions/sentences handed down by military tribunals were brought before the Supreme Court. The Supreme Court stated, inter alia:

> "93. ...It is by now a well settled proposition of law, as is obvious from the judgments of this Court, referred to and reproduced hereinabove, that the powers of Judicial Review under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, against the sentences and convictions of the FGCM is not legally identical to the powers of an Appellate Court. The evidence produced cannot be analyzed in detail to displace any reasonable or probable conclusion drawn by the FGCM nor can the High Court venture into the realm of the "merits" of the case. However, the learned High Court can

[50] Committing a specified offence when claiming or known to belong to any terrorist group or organization using the name of religion or a sect to raise arms or wage war against Pakistan.

[51] Ibid, s. 2(6), PA(A)A 2017

always satisfy itself that it is not a case of no evidence or insufficient evidence or the absence of jurisdiction.

...

103. The nature and extent of the power of Judicial Review in matters arising from an action taken under the Pakistan Army Act, 1952, has by and large been settled by this Court through its various judgments, referred to above. It now stands clarified that neither the High Court nor this Court can sit in appeal over the findings of the FGCM or undertake an exercise of analyzing the evidence produced before it or dwell into the "merits" of the case. However, we have scanned the evidence produced and proceedings conducted by the FGCM. The Convict pleaded guilty to the charges, which were altered to not guilty by operation of the law. There was a judicial confession of the Convict before a learned Judicial Magistrate, which was proved in evidence by the said Judicial Magistrate, who appeared as a witness. Such confession was never retracted by the Convict. Other relevant evidence, including eye witnesses of the occurrence was also produced. The prosecution witnesses made their statements on Oath and were cross-examined by the Defending Officer. Opportunity to produce evidence in defence was given, which was declined. The Convict was permitted to address the Court and made a statement, wherein he again admitted his guilt. In the above circumstances, it is not possible for us to conclude that it was a case of no evidence or insufficient evidence nor is it possible to hold that the conclusions drawn by the FGCM are blatantly unreasonable or wholly improbable.

104. A perusal of the record of the FGCM reveals that in order to ensure a fair trial and to protect the rights of the Convict, the relevant Rules were complied with. The Summary of evidence had been taken and was laid before the FGCM, as is apparent from the record of the proceedings thereof. An Interpreter was appointed with the consent of the Convict in terms of Rule 91 of the Pakistan Army Act Rules, 1954. The nature of the offense for the commission whereof, the Convict was charged, was explained to him as too the possible sentence that would be awarded, as required by Rule 95. He was given an opportunity to prepare his defence and engage Civil Defence Counsel, if he so desired, in terms of Rules 23 and 24. On his exercising the option not to do so, a Defending Officer was appointed in terms of Rule 81. He was given an opportunity to object to the constitution of the FGCM and to the Prosecutor as well as the Defending Officer, in terms of Section 104 and Rule 35 also. No objection, in this behalf, was raised. The Members of the FGCM, the Prosecutor, the Defending Officer and the Interpreter were duly sworn in, as required by Rules 36 and 37. The charge was formally framed to which incidentally, the Convict pleaded guilty. The evidence was recorded on Oath. An opportunity to cross-examine was granted, which was availed off and an opportunity was also given to produce evidence in defence in terms of Rule 142, which was declined. He was also allowed to record his own statement and to address the Court in terms of Rule 143 wherein he admitted his guilt. The sentence was passed, which has been confirmed in accordance with Section 130 and the Appeal therefrom was dismissed by the Competent Authority. It

appears that the provisions of the Pakistan Army Act and the Rules framed thereunder, applicable to the trial at hand have not been violated. Even otherwise, the procedural defects, if any, would not vitiate the trial in view of Rule 132 of the Pakistan Army Act Rules, 1954 nor did the High Court have the jurisdiction to enter into the domain of the procedural irregularities in view of the judgment, reported as Mrs. Shahida Zahir Abbasi and 4 others (supra), especially as no prejudice appears to have been caused to the Convict nor any such prejudice has been pointed out by the learned counsel or specifically pleaded before the High Court."

Judiciary

133. Every general Court martial shall, and every district or field general Court martial may, be attended by a judge advocate, who shall be an officer belonging to the department of the Judge Advocate General, Pakistan Army or, if no such officer is available, a person appointed by the convening officer.[52] It is not clear if such person must be legally qualified although it would appear to be inconsistent with the constitutional guarantee of a fair trial under Art 10A if they were not.

Legal Representation

134. Article 10 of the Constitution guarantees a defendant the right to consult and be defended by a legal practitioner of his choice. This constitutional right is reflected in Rule 23 of the Pakistan Army Rules 1954 ("PAR 1954") which provides as follows:

> "Rights of the accused to prepare defence.–
>
> (1) An accused person for whose trial a court martial has been ordered to assemble shall be afforded proper opportunity of preparing his defence, and shall be allowed free communication with his witnesses, and with any friend, defending officer, or legal advisor whom he may wish to consult.
>
> (2) As soon as practicable after an accused person has been remanded for trial by a general or district court martial, and in any case not less than twenty-four hours before his trial, an officer shall give to him gratis a copy of the summary of evidence [or an abstract of evidence] or, in the case of an officer where there is no summary of evidence, an abstract of evidence, and explain to him his rights under these rules as to preparing his defence and being assisted or represented at the trial, and shall ask him to state in writing whether or not he wishes to have an officer assigned by the convening officer to represent him at the trial if a suitable officer should be available. The convening officer shall be informed whether or not the accused so elects".

135. Rule 26 PAR 1954, which reflects Rule 104 of the UK RoP 1926, provides as follows:

> "Suspension of Rules on the grounds of military exigencies or the necessities of discipline.– Where it appears to the officer convening a court martial, or to the senior officer on the spot, that military exigencies, or the necessities of

[52] *Ibid,* s.103

discipline, render it impossible or inexpedient to observe any of sub-rules (4), (5), (6), (7) and (8) of Rule 13 or Rules 14, 15, 23, 24 and sub-rule (2) of Rule 81 he may, by order under his hand, make a declaration to the effect specifying the nature of such exigencies or necessities, and thereupon the trial or other proceedings shall be as valid as if the rule mentioned in such declaration had not been contained herein. Such declaration may be made with respect to any or all of the aforesaid rules in the case of the same court martial:

Provided that the accused shall have full opportunity of making his defence, and shall be afforded every facility for preparing it which is practicable, having due regard to the said exigencies or necessities".

136. In the explanatory notes to Rule 26 PAR 1954, the following is stated:

"d. The power of dispensing with Rule 23 (1) is intended to be exercised only where it is necessary to try a person before he can communicate with a witness or friend at a distance. The rule should never be dispensed with except in extreme cases, and even then the accused must be allowed free communication with any witness or friend upon the spot".

137. Rule 91 PAR 1954 provides as follows:

"Defending officer and friend of the accused.–

(1) At any general or district court martial, if an accused person is not represented by counsel, he may be represented by an officer subject to the Act who shall be called "the defending officer" or assisted by any person whose services he may be able to procure and who shall be called "the friend of the accused".

(2) It shall be the duty of the convening officer to ascertain whether an accused person not otherwise represented desires to have a defending officer assigned to represent him at his trial and, if he does so desire, the convening officer shall use his best endeavours to ensure that the accused shall be so represented by a suitable officer. If owing to military exigencies, or for any other reason, there shall, in the opinion of convening officer, be no such officer available for the purpose, the convening officer shall give a written notice to the president of the court martial, and such notice shall be attached to the proceedings.

(3) The defending officer shall have the same right and duties as appertain to counsel under these rules and shall be under the like obligations.

138. (4) The friend of the accused may advise the accused on all points and suggest the questions to be put to the witnesses, but he shall not examine or cross-examine the witnesses or address the court".

Appeals

139. The finding and sentence of a General Court Martial, a Field General Court Martial and a District Court Martial require confirmation in order to be valid.[53]

[53] PAA, s. 119.

140. Any person subject to the PAA who considers himself aggrieved by the finding or sentence of a general, field general or district Court martial may submit a petition, before confirmation of such finding or sentence, to the officer empowered to confirm it and, after confirmation, to the Federal Government or the Chief of the Army Staff or to any prescribed officer who is superior in command to the one who confirmed such finding or sentence. Under the authority of section 126, the Confirming Officer may order that the court revises the finding or sentence. The Court, on revision, shall consist of the same officers as were present when the original decision was passed unless any of those officers are unavoidably absent.

141. Section 133 of the PAA places a bar on appeals against any decision of a Court martial save as provided in the Act. For the removal of doubt it is expressly declared that no appeal or application shall lie in respect of any proceeding or decision of a Court martial to any Court exercising any jurisdiction whatever except in the circumstances provided for in paragraphs 142 and 145 below.

142. **Hadd Cases**:[54] Any person to whom a court martial has awarded a sentence of hadd under an Islamic law may, within sixty days from the date of the sentence, prefer an appeal against the finding and sentence of the court martial to a Court of Appeals consisting of the Chief of the Army Staff or an officer, being a Muslim, designated by him in this behalf, hereinafter referred to as the Court of Appeals for Hadd cases. (2) No sentence awarded by a court martial as hadd under an Islamic law shall be executed unless it is confirmed by the Court of Appeals. [s.133A].

143. Where the sentence is awarded by the court-martial under an Islamic law, the officer or officers so designated shall be Muslims.

144. Every Court of Appeal may be attended by a judge advocate who shall be an officer belonging to the Judge Advocate General's Department, Pakistan Army, or if no such officer is available, a person appointed by the Chief of the Army Staff. [s.133B(1)].

145. **Other Cases**: Any person to whom a court-martial has awarded a sentence of death, imprisonment for life, imprisonment exceeding three months, or dismissal from the service after the commencement of the Pakistan Army (Amendment) Act, 1992, may, within forty days from the date of announcement of finding or sentence or promulgation thereof, whichever is earlier, prefer an appeal against the finding or sentence to a Court of Appeals consisting of the Chief of the Army Staff or one or more officers designated by him in this behalf, presided by an officer not below the rank of Brigadier in the case of General Court-Martial or Field General Court-Martial convened or confirmed or counter-signed by an officer of the rank of Brigadier or below as the case may be, and one or more officer, presided by an officer not below the rank of Major General in other cases, hereinafter referred to as the Court of Appeals.[s.133B].

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[54] A punishment fixed in the Quran and hadith for crimes considered to be against the rights of God. The six crimes for which punishments are fixed are theft (amputation of the hand), illicit sexual relations (death by stoning or one hundred lashes), making unproven accusations of illicit sex (eighty lashes), drinking intoxicants (eighty lashes), apostasy (death or banishment), and highway robbery (death). Strict requirements for evidence (including eyewitnesses) have severely limited the application of hudud penalties. Punishment for all other crimes is left to the discretion of the court; these punishments are called tazir. See *Oxford Islamic Studies On-Line*: http://www.oxfordislamicstudies.com/article/opr/t125/e757

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Espionage

146. The PAA makes no specific reference to spying or terrorism, although it does set out similar types of offences in section 2(1)(d) in relation to persons not otherwise subject to the Act. The substantive civil offence of spying is set out in the Official Secrets Act 1923 (see paragraph 150 below).

147. Those subject to military law may be prosecuted for offences specified in s.24 (Offences in relation to enemy and punishable with death), which includes treacherous communication with an enemy, and s.26 (treacherously make known the parole, watchword or countersign to any person not entitled to receive it, or treacherously give a parole, watchword or countersign different from what he received) which, if committed on active service, carries the maximum punishment of death.

148. The trial of persons involved in espionage is a time-tested phenomenon and in a number of cases the superior courts of Pakistan have upheld the jurisdiction of the court martial.

Sentencing for espionage offences

149. Section 60 PAA 1952 (Punishments) provides as follows:

> "Punishments may be inflicted in respect of offences committed by persons subject to this Act and convicted by courts martial according to the scale following, that is to say,–
>
> (a) death ...".

150. As applied in Pakistan, Section 3(3) of the Official Secrets Act 1923 (Penalties for spying) provides as follows:

> "(3) A person guilty of an offence under this section shall be punishable,–
>
> (a) where the offence committed is intended or calculated to be, directly or indirectly, in the interest or for the benefit of a foreign power, or is in relation to any work of defence, arsenal, naval, military or air force establishment or station, mine-field, factory, dockyard, camp, ship or aircraft or otherwise in relation to the naval, military or air force affairs of Pakistan or in relation to any secret official code, with death or imprisonment for a term which may extend to fourteen years; and
>
> (b) in any other case, with imprisonment for a term which may extend to three years".

Espionage Cases

151. **Zahir Shah** - The case concerned an allegation that the accused was spying for the US and providing them sensitive documents relating to the Pakistan Army,[55] in return for which a huge amount was allegedly received from the US authorities in Afghanistan, comprising an initial payment of $11,000. Shah was convicted by a Field General Court

[55] "PESHAWAR: PHC puts army legal branch on notice in spying case", *DAWN*, 4 February 2009: https://www.dawn.com/news/442893

Martial under the Official Secrets Act and was sentenced to four years rigorous imprisonment. In the High Court, the applicant challenged his detention through habeas corpus proceedings. The Deputy Attorney General questioned the jurisdiction of the high court in hearing the case stating the Constitution barred courts from hearing cases pertaining to detention under the Army Act. He stated that there was incontrovertible evidence that the petitioner was spying for the US and providing them sensitive documents relating to the Pakistan Army. The outcome of this case could not be ascertained through open sources.

152. **Former Indian Navy officer Kulbhushan Jadhav**[56] – Jadhav was tried by Field General Court Martial (FGCM) and sentenced to death on the charges of "espionage and sabotage activities". It was reported in the Indian press that "Jadhav confessed before a magistrate and court that he was tasked by Indian spy agency Research and Analysis wing to plan, coordinate and organise espionage and sabotage activities seeking to destabilise and wage war against Pakistan through impeding the efforts of law enforcement agencies for the restoration of peace in Balochistan and Karachi".

153. We have reminded ourselves that the issue before the ICJ is the question of consular access. We have also reminded ourselves that the ICJ does not seek to act as a Criminal Court of Appeal. Accordingly, we have not engaged in any further consideration or analysis of the specifics of the Commander Jadhav case.[57]

Terrorism

154. After the 2014 Peshawar school massacre, when six terrorist gunmen opened fire on staff and children at the Army School, killing 141 people including 132 children,[58] the government introduced the Constitution (Twenty First Amendment) Act, 2015,[59] which was signed into law by the President on 7 January 2015. It is valid for two years. Its provisions provide that terrorists groups including any such terrorists fighting while using the name of religion or a sect, captured or to be captured in combat with the Armed Forces or otherwise are tried by the courts established under the Acts mentioned hereinafter in section 2, namely, The Pakistan Army Act, 1952, The Pakistan Air Force Act, 1953, The Pakistan Navy Ordinance, 1961 and The Protection of Pakistan Act, 2014. The reasons are stated as follows:

> An extraordinary situation and circumstances exist which demand special measures for speedy trial of offences relating to terrorism, waging of war or insurrection against Pakistan and prevention of acts threatening the security of Pakistan. There exists grave and unprecedented threat to the territorial integrity

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[56] Reported in *India Today*, April 10, 2017: http://indiatoday.intoday.in/story/kulbhushan-jadhav-death-sentence-pakistan-military-courts-ispr/1/925690.html ; see also the report in DAWN, 10 April 2017: https://www.dawn.com/news/1326109

[57] Application Instituting Proceedings before the International Court of Justice, 8 May 2017: http://www.icj-cij.org/files/case-related/168/19422.pdf ; See also, ICJ Order for Provisional Measures, dated 18 June 2017, http://www.icj-cij.org/files/case-related/168/168-20170518-ORD-01-00-EN.pdf

[58] " Peshawar school massacre: 'This is Pakistan's 9/11 – now is the time to act'", Guardian, 19 December 2014: https://www.theguardian.com/world/2014/dec/19/peshawar-school-massacre-pakistans-911

[59] http://www.pakistani.org/pakistan/constitution/amendments/21amendment.html

of Pakistan by miscreants, terrorists and foreign funded elements. Since there is an extraordinary situation as stated above it is expedient that an appropriate amendment is made in the Constitution.

155. The constitutional provision makes void any laws inconsistent with or in derogation of fundamental set out in Art 8 of the Constitution.

156. Military courts' jurisdiction in respect of terrorism is to be found in the following provisions:

157. The Pakistan Army (Amendment) Act 2015 inserted new text into Section 2(1)(d) PAA 1952 as follows:

"(iii) claiming or are known to belong to any terrorist group or organization using the name of religion or a sect: and

(a) raise arms of wage war against Pakistan, or attack the Armed Forces of Pakistan or law enforcement agencies, or attack any civil or military installations in Pakistan; or

(b) abduct any person for ransom, or cause death of any person or injury; or

(c) possess, store, fabricate or transport the explosives, fire-arms, instruments, articles, suicide jackets; or

(d) use or design vehicles for terrorist acts; or

(e) provide or receive funding from any foreign or local source for the illegal activities under this clause; or

(f) act to over-awe the state or any section of the public or sect or religious minority; or

(g) create terror or insecurity in Pakistan or attempt to commit any of the said acts within or outside Pakistan, shall be punished under this Act and

(iv) claiming or are known to belong to any terrorist group or organization using the name of religion or a sect and raise arms or wage war against Pakistan, commit an offence mentioned at serial Nos. (i), (ii), (iii), (v), (vi), (viii), (ix), (x), (xi), (xii), (xiii), (xv), (xvi), (xvii) and (xx) in the Schedule to the Protection of Pakistan Act, 2014 (X of 2014)".

158. The statutory provisions also cover those who are alleged to have "abetted, aided or conspired in the commission of any offence" under 2(1)(d)(iii) or (iv).

159. Any person arrested, taken into custody or detained under the PA(A)A, after transfer of his custody to the military unit he is attached with for trial, shall be produced before the standing military court specially empowered by the convening authority for this purpose or Commanding Officer. The accused will be provided grounds of arrest within twenty-four hours of arrest.

UNITED KINGDOM

Jurisdiction of Military Courts

160. In 2006 there was a radical overhaul of the three separate Service Justice Systems. The three separate legal frameworks, namely, The Army Act 1955, The Air Force Act 1955 and The Naval Discipline Act 1957, were brought together under the chapeau of the Armed Forces Act 2006[60] (AFA 2006), subsequently amended by the AFA 2011 and AFA 2016. One body of law now governs the disciplinary procedures of all Services and, thus, streamlined the Service disciplinary systems. It made it easier for jurisdiction to be exercised when one Service member was placed under command of a different Service.

161. In 2006 the separate service prosecuting authorities of the Army, Navy and Air Force were replaced by a new organisation called the Service Prosecuting Authority (SPA), which is headed by the Director Service Prosecutions(DSP). Since the inception of the SPA, the Director has been a civilian appointee. He and his organisation are completely independent of the three military chains of command and he is answerable to the Attorney General.[61]

162. The Service Justice System (SJS) now has three legal processes available:

    a. Summary Discipline (for those subject to service law);

    b. Court Martial (for those subject to service law and, in certain cases, those subject to Service discipline);

    c. Service Civilian Court (for those subject to Service discipline)

163. The SJS comprises a summary disciplinary process, for minor disciplinary offences, and a Court Martial trial for those more serious offences. The summary justice system is only exercisable in respect of service personnel and excludes accompanying dependants or members of the civilian component overseas.

164. Wherever they are based in the world, members of the armed forces and, outside the United Kingdom, their dependants and accompanying civilians, are subject to the provisions of the SJS.

165. A commanding officer may exercise summary powers of discipline, in accordance with the provisions of the AFA 2006, over any person under his command who is subject to service law from the time the offence is committed to the end of the summary hearing of the charge.

166. Offences that may be dealt with at a summary hearing are listed in section 53 of AFA 2006. [62] These charges may be heard summarily provided the accused is—

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[60] http://www.legislation.gov.uk/ukpga/2006/52/contents

[61] Morris -*v*- United Kingdom, ECtHR [2002] ECHR 162, 26 Feb 2002, Application: 38784/97, at §§21, 52 & 62.

[62] For example, looting of any vehicle, equipment or stores abandoned by an enemy (s4(3)), absence without leave (s9), disobedience to lawful orders (ss12-13), failure to attend or perform a duty (s.15)and conduct prejudicial to good order (s19).

(a) an officer of or below the rank of commander, lieutenant-colonel or wing commander; or

(b) a person of or below the rank or rate of warrant officer.

And the accused is—

(a) subject to service law,

(b) a member of a volunteer reserve force, or

(c) a member of an ex-regular reserve force who is subject to an additional duties commitment,

from the time the offence is committed to the end of the summary hearing of the charge.

167. Aside from the Service disciplinary offences set out in s.53, a CO may also deal with some substantive criminal offences, too. There are two sets of criminal offences that the CO may deal with at a Summary Hearing, both of which are set out in Schedule 1 to the Armed Forces Act 2006: those he can deal with without permission from Higher Authority (for example, section 1 of the Theft Act 1968) and those for which permission is needed (for example, assault occasioning actual bodily harm). Where the offence is listed in Part 2 of Schedule 1, or an offence of attempting such an offence, section 54 requires that the CO must first obtain permission from Higher Authority before he may hear the charge. If that permission is refused, the charge must be referred to the DSP as there is no authority for it to be dealt with summarily.

168. The powers of punishment of a commanding officer are restricted to those set out in the table at section 164. In relation to a private solider/airman/sailor, he may award up to 28 days in military detention. If he wishes to award more than that, he must obtain permission from his superior in the chain of command (higher authority). Then he may award up to 90 days detention. Before a commanding officer deals summarily with any charge, he must give the accused the right to elect trial by court martial. If the serviceman accepts summary dealing and the charge is found proved, he may appeal this and punishment to the Summary Appeal Court (SAC).

169. Whether or not the accused appeals the finding and award to the SAC, it is open to the Reviewing Officer[63] to do so in any event where he believes that any matter arising at or from the summary hearing should be brought to the notice of the court, or subsequently, any matter of which the court was not aware should have been brought to the notice of the court.

170. Section 154 of the AFA 2006 abolished the *ad hoc* court martial and introduced a standing court martial, from which appeal against sentence and or conviction is made to the Court Martial Appeal Court.

171. The jurisdiction of the Court Martial is set out in section 50 of AFA 2006. Any offence committed against Part 1 of the AFA 2006[64] may be dealt with by the relevant Service disciplinary authorities. Section 42 of the AFA 2006 provides the mechanism for the

[63] A review under this section may be carried out by (a) the Defence Council; or (b) any officer appointed by the Defence Council to carry out the review or any class of review which includes the review. *Ibid*, s.152

[64] There are other offences listed in s.50, in addition to purely criminal, but are not listed here as they are not relevant to the point under consideration.

AP

Service Court to try any act that (a) is punishable by the law of England and Wales; or (b) if done in England or Wales, would be so punishable. This would effectively include murder, treason and terrorism offences.

172. A person previously subject to service law or subject to service discipline may still be arrested and tried for any offence committed while subject to service law or subject to service discipline provided it is less than six months since they ceased to be so subject. Such person is to be treated in relation to the offence as if he were still subject to service law in the rank or rate which he held when he was last a member of HM forces or, if a civilian, as if he were still subject to service discipline.[65]

173. Save for what is said in paragraph 174 below, there is no requirement for the DSP to obtain the consent of the Attorney General to prosecute a service offence, (namely, an offence against part 1 of the AFA 2006, which includes criminal offences charged under s.42). Moreover, no enactment requiring the consent of the Attorney General or the Director of Public Prosecutions (DPP) in connection with any proceedings has effect in relation to proceedings under this Act [section 326].

174. The exception is provided by s. 61(2), which specifies that a person who has ceased to be subject to military law for more than six months may be charged with an offence if the Attorney General consents.

Within UK

175. As was aptly pointed out in the former Manual of Military Law,[66] although the provisions apply *mutatis mutandis* to the other two Services:

> "A man who joins the Army.... Does not cease to be a citizen. With a few exceptions, his position under the ordinary law of the land remains unaffected. If he commits an offence against the civil law he can be tried and punished for it in the civil courts. In respect of civil rights, duties and liabilities the ordinary law in general also applies to him, although a few privileges are granted to him and a few restrictions are imposed upon him for the purpose of enabling him the better to fulfil his military duties.
>
> Whilst officers, warrant officers, non-commissioned officers and soldiers remain subject (with the above qualifications) to the ordinary law of the United Kingdom, they are subject to an entirely distinct legal code known as "military law".

176. In the United Kingdom, the civil authorities have primacy of jurisdiction over criminal offences.[67] Therefore, when a Serviceman commits a criminal offence a decision must be reached between the military and civil authorities about who investigates and who prosecutes. Prosecution decisions are determined in accordance with the Prosecutors' Convention,[68] to ensure that cases are conducted in a way that is just and which best

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[65] These provisions are contained in sections 67 and 68 of the AFA 2006.

[66] Part 1, Amendment 20, page 1, paragraphs 2 and 3

[67] Military Justice Handbook For Court Martial Practitioners, Anthony Paphiti, Authorhouse 2013, at p.36

[68] Updated 2012 https://www.gov.uk/guidance/the-prosecutors-convention-2009-updated-2012

serves the overall public interest, so that the public can have confidence in the outcome. It provides, *inter alia,*

> 1.1 ... sets out the responsibilities of prosecutors where a suspect's conduct could be dealt with by criminal or civil/regulatory sanctions and/or where more than one prosecuting authority and investigating body share the power to take action.
>
> 1.2 In such cases, depending on the extent to which more than one authority is pursuing or wishes to pursue an investigation, decisions will have to be taken about whether and how investigations should proceed and as to the choice of criminal charges or civil or regulatory sanction.

177. The aim is to make an informed decision about the most appropriate means of proceeding in the public interest.

178. The Service Prosecuting Authority is a party to the Prosecutors Convention and is named in Schedule 1 thereto.

179. There is no power in the United Kingdom for a commanding officer to exercise disciplinary authority over a civilian, as civilians are not subject to military discipline while in the UK. Rather, the ordinary law of the land applies.

Outside the UK

180. The AFA 2006 extends its application to servicemen who are "subject to service law", and their dependants and civilians "subject to Service discipline".[69] Overseas, there are two courts within the SJS. These are the Court Martial and the Service Civilian Court. Persons subject to Service discipline may be tried before the Service Civilian Court, if there is one in the country they are based, and/or by court martial.

181. In countries where British forces are based, there is usually some form of agreement to cover the status of those forces and to deal with tax and jurisdictional arrangements. These matters are resolved through either a Status of Forces Agreement (SOFA), such as that which NATO forces use between themselves, or through a Memorandum or Letter of Understanding (MOU/LOU). In relation to the NATO SOFA,[70] Article VII sets out the circumstances when jurisdiction may be exercised by the Sending state, that is, the force based on the territory of a Host nation. For British Forces (Sending state) based in Germany (Host nation), there is a NATO Supplementary Agreement which provides more detailed guidance on the relationship and responsibilities of each party state in respect of its forces.[71]

182. What this effectively means is that there is no jurisdiction to try persons who fall outside those categories. A foreign spouse of a service person would fall outside the jurisdiction of the Service authorities where the spouse was based in the country of his/her

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[69] Civilians Subject to Service Discipline, AFA Sch 15 (as amended by s.22 AFA 2011)

[70] See https://www.nato.int/cps/en/natolive/official_texts_17265.htm

[71] See http://webarchive.nationalarchives.gov.uk/20121109055132/http://www.mod.uk/NR/rdonlyres/A921BCF9-97C5-4716-8262-44F96196061E/0/nato_sofa_supplementary_agreement.pdf

nationality.[72] The same might not, necessarily, apply to the children of the family. Much would depend upon their nationality.

183. The law applied in the Service Justice System is English law. This is made clear in section 42. While lawyers from other jurisdictions within the Kingdom may act as defence advocate,[73] they need to be conversant therefore with the relevant provisions of English criminal law.

184. Serious cases involving allegations of murder, manslaughter, rape, armed robbery and Official Secrets Act breaches have been dealt with by court martial in Germany. In each case, the defendant was represented by a civilian British lawyer.

185. Consequently, foreign servicemen or foreign civilian personnel, unless specifically made subject to British service law by agreement, such as attached Commonwealth personnel, cannot be tried before a British Service Court, as they are not persons subject to Service law or Service discipline.

Constitution Of Service Courts

The Court Martial

186. Since the AFA 2006 there is a standing Court Martial.

187. The Court Martial's procedures are contained in the Armed Forces (Court Martial) Rules 2009,[74] as amended by the 2013 Rules.[75] They contain further provisions relating to the constitution of the court and the lay members who may be appointed.

188. The court is comprised of a legally qualified civilian judge advocate, who is independently appointed by the Lord Chancellor's department. In cases where the maximum sentence is two years imprisonment or detention, the judge advocate will sit with a board of at least three but not more than five lay members. In those more serious cases where the punishment is more than 2 years imprisonment, the judge advocate will sit with a board of at least five but not more than seven lay members.[76] A "lay member" is an officer or warrant officer subject to service law.

189. Warrant Officers may not be lay members of the court where the defendant being tried is an officer. In any other case, the maximum number of warrant officers that may sit as lay members on a board is two.[77]

190. The judge advocate may sit alone in preliminary proceedings, or variation proceedings, or in certain specified cases relating to sentencing of civilian offenders or ex-servicemen.[78]

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[72] Article VII(4): "The foregoing provisions of this Article shall not imply any right for the military authorities of the sending State to exercise jurisdiction over persons who are nationals of or ordinarily resident in the receiving State, unless they are members of the force of the sending State."

[73] AF(CM)R 2009, r. 39(2)

[74] http://www.legislation.gov.uk/uksi/2009/2041/contents/made

[75] http://www.legislation.gov.uk/uksi/2013/1851/contents/made

[76] Under the 1955 Acts, a District Court Martial was a court comprising the JA and three officers, while the General Court Martial was a court comprising at least 5 officers. The AFA 2006 abolished these *ad hoc* courts.

[77] The Armed Forces (Court Martial) Rules 2009, r.31

Service Civilian Court

191. As a commanding officer has no disciplinary power over civilians, and cannot deal with them summarily, the Service Justice System (SJS) provides for a specific court to try civilians subject to Service discipline for less serious offences. The Service Civilian Court[79] may sit in any place other than in the British Islands. The SCC comprises a single judge advocate, sitting alone. As a preliminary matter, the court will decide whether the charges before it should be more suitably tried before the Court Martial. The prosecutor may make submissions in this regard. Where the SCC decides that it should try a charge, the defendant must be given the right to elect trial by Court Martial. If there is more than one defendant, an election by one will be binding on the others.

192. The SCC may not impose imprisonment for more than 12 months in respect of any one offence. Where the SCC imposes two or more terms of imprisonment to run consecutively their aggregate must not exceed 65 weeks.

193. There is a right of appeal from the SCC to the Court Martial against conviction and/or sentence. Such appeals are by way of a re-hearing of the evidence.

Legal Representation

194. Everyone who appears before a Service court has the right to be legally represented by a person holding a professional legal qualification from England and Wales, Scotland and Northern Ireland, or anyone who is a person having in any of the Channel Islands, the Isle of Man, a Commonwealth country or a British overseas territory rights and duties similar to those of a barrister or solicitor in England and Wales, and subject to punishment or disability for breach of professional rules.[80]

195. There is a single non-statutory Authority dealing with all aspects of criminal legal aid for those prosecuted through the Service Criminal Justice System. There are very detailed provisions relating to the non-statutory scheme, outlined in Joint Service Publication 838, which is described as "The definitive guide to all legal aid matters for court martial, service civilian court, summary appeal court and overseas civilian court proceedings. Of particular interest to defendants/appellants and all who are directly or indirectly involved in service justice system."[81]

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[78] The Armed Forces (Court Martial) Rules 2009, rule 27

[79] See Part 11 AFA 2006, ss277-288

[80] The Armed Forces (Court Martial) Rules 2009, r.39 and Armed Forces (Service Civilian Court) Rules 2009, r.26

[81] https://www.gov.uk/government/publications/jsp-838-the-armed-forces-legal-aid-scheme

Espionage

Pre-1955

196. In 1914 the Asquith government introduced the Defence of the Realm Act, or DORA for short.[82] It

> was a simple act. It was passed in order to control communications, the nation's ports and subject civilians to the rule of military courts. It was amended six times during the course of the war, eventually being used for everything from banning narcotics to censoring the press.[83]

197. Section 1(a) of the Act permitted the making of regulations, in particular "To prevent persons communicating with the enemy or obtaining information for that purpose or any purpose calculated to jeopardise the success of the operations of any of His Majesty's forces or to assist the enemy."

198. The ability to try a civilian by court martial was regarded as very controversial. Lord Halsbury argued, "I do not think that the liberty of the subject is so trifling a matter that it can be swept away in a moment", arguing that the principle of trial before a jury is a principle which is very deep in British jurisprudence, "and one which we should all respect."[84] Consequently, the following year the Act was amended by section 1 of the Defence of the Realm (Amendment) Act 1915, to allow those arrested under DORA the choice whether to be tried by civil trial instead of a military court martial.[85]

Post-1945

199. The Official Secrets Acts 1911-1989 provide the main legal protection in the UK against espionage and the unauthorised disclosure of information. Section 1 of the Official Secrets Act 1911 (as amended by the 1920 and 1939 Official Secrets Acts) sets out offences related to spying, sabotage and related crimes. The Official Secrets Act 1989 creates an offence for the unlawful disclosure of information in six specific categories by employees and former employees of the security and intelligence services, and for current and former Crown Servants and Government contractors.[86]

200. In the case of civilians, the decision of whether to prosecute someone under the Official Secrets Acts lies with the Attorney General. Prosecutions under the Acts are rare - fewer than one a year. As stated above, any allegation against a person subject to Service law would be subject to prosecution by the Service Prosecuting Authority. However, there

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[82] The Act was supplemented by Regulations (DORRs)

[83] Parliament and the First World War: https://www.parliament.uk/about/living-heritage/transformingsociety/parliament-and-the-first-world-war/legislation-and-acts-of-war/defence-of-the-realm-act-1914/ For the text of the Act, see: https://www.legislation.gov.uk/ukpga/1914/29/pdfs/ukpga_19140029_en.pdf

[84] November 27, 1914, House of Lords Debates, 5th Series, Volume 18, Column 205: http://hansard.millbanksystems.com/lords/1914/nov/27/defence-of-the-realm-consolidation-bill#column_205

[85] 1. — (1) Any offence against any regulations made under the Defence of the Realm Consolidation Act, 1914,(d) which is triable by court martial may, instead of being tried by a court martial, be tried by a civil court with a jury, and when so tried the offence shall be deemed to be a felony punishable with the like punishment as might have been inflicted if the offence had been tried by court martial.

[86] "The Official Secrets Acts and Official Secrecy", *House of Commons Library* paper, May 2, 2017: http://researchbriefings.parliament.uk/ResearchBriefing/Summary/CBP-7422

would be consultation under the Prosecutors Convention to determine the appropriate forum.

201. Section 1 of the Official Secrets Act 1911 creates offences connected with spying and espionage. Under section 1, a person commits the offence of spying if, "for any purpose prejudicial to the safety or interests of the state", they enter a prohibited place defined under the Act; make a plan, sketch, model or note which is calculated to be useful to an enemy; or communicate a plan, sketch, model or note calculated to be useful to an enemy.

202. Following a notable legal case in 1962,[87] the Law Lords ruled that section 1 was not solely limited to spying, but included sabotage and other acts of physical interference.

203. The maximum term of imprisonment for offences related to espionage under section 1 of the Official Secrets Act 1911 (as amended by the Official Secrets Act 1920) is fourteen years. However, longer sentences are possible for a series of offences.

204. The maximum penalty for offences connected with the unauthorised disclosure of information under the Official Secrets Act 1989 is two years' imprisonment or an unlimited fine, or both.

Military Offences - Assisting an Enemy

205. The AFA 2006 does make provision for the trial and punishment of offences of assisting an enemy, and misconduct on operations. These provisions are contained in sections 1-5.[88] Not all are relevant to the issue of espionage or terrorism, save for the offence in section 1.

206. The offence of assisting an enemy, under section 1, is proved where a person subject to service law, without lawful excuse intentionally communicates with an enemy; gives an enemy information that would or might be useful to the enemy; fails to make known to the proper authorities any information received by him from an enemy; provides an enemy with any supplies; or harbours or protects an enemy other than a prisoner of war.

207. A person subject to service law who has been captured by an enemy also commits an offence of assisting an enemy if, without lawful excuse, he intentionally serves with or assists the enemy in the prosecution of hostilities or of measures likely to influence morale; or in any other manner not authorised by international law. This would cover conduct whereby a captured individual worked for the enemy's media and broadcast propaganda messages on their behalf.

208. A person guilty of an offence under this section is liable to any punishment mentioned in the Table in section 164, and any sentence of imprisonment imposed in respect of the offence may be for life.

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[87] Chandler v Director of Public Prosecutions [1962] 3 W.L.R. 694

[88] Armed Forces Act 2006: http://www.legislation.gov.uk/ukpga/2006/52/part/1/crossheading/assisting-an-enemy-misconduct-on-operations-etc

Espionage Cases Tried by UK Service Courts

209. **Carl Hans Lody** [89]– Lody was a junior lieutenant in the German Naval Reserve who spied in Britain and Ireland at the start of the First World War. He had been a personal acquaintance of the first director of German Naval Intelligence, Commander Fritz Prieger, and in May 1914 he volunteered for service with the department. He was originally given the task of reporting from southern France, but he was re-tasked in August 1914 with spying against Britain and specifically the naval bases in the Edinburgh-Leith area. German admiralty's files show that Lody had in fact become a spy of his own free will and had signed a formal agreement with the naval intelligence department before the war had begun.

210. Lody had little training for espionage. His only means of communication with his superiors in Germany was by telegrams and letters to neutral countries. He sent a number of telegrams using a simple code, but other highly incriminating messages were sent in plain text without any coding. He did not know that MI5 was monitoring letters and telegrams abroad, or that his messages would be intercepted. Lody was detected in his very first message home.

211. He was tried in public by court-martial for "war treason", a rarely-used charge which treated espionage as a war crime and was punishable by the death penalty. Lody admitted in court that he had been a spy and had been sent to Britain by his superiors in Berlin. He refused to name Fritz Prieger, the person who had recruited him: "that name I cannot say as I have given my word of honour". He was convicted and taken to the Tower of London to be executed by firing squad on the morning of 6 November 1914.

212. **Willem Roos**,[90] was a Dutch national who spied for Germany, having been recruited as a spy by the German naval intelligence service N. He was tried by court martial in Westminster's Middlesex Guild Hall on 17 July, the day before Janssen, and admitted his guilt. The court martial sentenced Willem Roos and Haicke Janssen to death. On the early morning of 30 July 1915, Roos was executed in the Tower of London by firing squad.

213. **Haicke Janssen**,[91] was a Dutch national who admitted espionage charges brought against him. The court martial in Westminster Guild Hall on 16 July sentenced him and Willem Roos to death by firing squad. On the early morning of 30 July 1915, Janssen and Roos were executed in the Tower of London by firing squad.

214. **Ernst Melin**,[92] was a Swede, aged 49 in 1915, and the son of a member of the Swedish parliament. During lunch with German colleagues whom he met in Hamburg, it was suggested that he should go to London and find out naval and military secrets. Melin subsequently accepted the German's offer and went to London and took lodgings in Hampstead near Belsize Park Underground Station on 12 January 1915. Two incriminating parcels were intercepted by the security services, inside of which when examined, was some hidden writing in both English and German. The Gravesend parcel contained another innocently worded letter in English, but under examination yet more

[89] UK Security Service (MI5) records: https://www.mi5.gov.uk/carl-hans-lody
[90] Case Summary: http://www.stephen-stratford.com/janssen_and_roos.htm
[91] Case Summary: http://www.stephen-stratford.com/janssen_and_roos.htm
[92] Case Summary: http://www.stephen-stratford.com/ernst_melin.htm

invisible writing, in English, was discovered. This invisible letter was discussing the movements of certain Royal Navy ships, and whether Melin would be able to find out more definite information. Melin's court-martial took place on 20-21 August 1915 at the Middlesex Guildhall. Melin was found guilty and sentenced to death. He was executed by firing squad on 10 September 1915.

215. **Augusto Alfredo Roggen**, [93] was the son of a German who had become a Uruguayan citizen in 1885, and he himself was married to a German lady. He had a good command of English. He arrived in England on 30 May 1915. Roggen sent two postcards to Holland. They were both intercepted, as they had been sent to addresses familiar to the British Security Services. On 9 June 1915, Roggen booked into the Tarbet at Loch Lomond, Scotland. He purchased a map of Loch Lomond and the head of Loch Long, which is part of the Firth of Clyde. Loch Long was significant as it was a restricted area, and fishing was banned. It had previously been used for testing torpedoes. On 9 June 1915 Roggen was arrested and found to be possession of a Browning revolver with 50 rounds of ammunition, together with fluids used for writing invisible messages. He was also unable or unwilling to explain the postcards sent to known enemy espionage addresses. Roggen was tried by courts-martial at Middlesex Guildhall, Westminster, on 20 August 1915. Roggen gave no evidence and made no statement. He was found guilty and sentenced to death. Roggen was shot by firing squad at 6am on 17 September 1915.

a. **Fernando Buschman**,[94] was the son of a naturalised Brazilian Father and Brazilian Mother, who was originally from Denmark. He started up a business in Brazil called Buschman & Bello importing food from Germany and England, in turn exporting bananas and potatoes back to thes countries. After the outbreak of the First World War, Buchman travelled to Hamburg so he could tidy up his business affairs, which had been badly affected by the anti-German feeling in the UK. He had had correspondence with Dierks, a Dutch business known as a major organising officer for spies sent to the UK. His communications had been intercepted by British Security Services but he denied any espionage. His court-martial took place on 29-30 September 1915, at Middlesex Guildhall, and he pleaded not guilty. Buschman presented evidence on his own behalf. Buschman was found guilty and sentenced to death by shooting. At 7am on 19 October 1915, he was executed by firing squad.

216. **Irving Guy Ries**, [95] - Irving Guy Ries was an alias, and during his court-martial he consistently refused to disclose his real name, as he stated that he wished to protect other people, mainly in the USA. On 4 July 1915 he arrived in England. British Security Services intercepted a telegram dated 9 July 1915, transferring the sum of £40, sent to Ries by N.M. Cleton of 72a Prevenier Stracht, Rotterdam. This Dutch address was already viewed by the British Security Services as another address using by German spy organisations. He travelled further afield, to London, Liverpool, Newcastle Glasgow and Edinburgh. On 9 August 1915, Ries went to the American Embassy in London to obtain a visa for his passport, as he wished to travel to Rotterdam. When the American Vice-Consul examined his American Passport, he noticed that the passport appeared to be a forgery. The American let Ries leave the Embassy and then contacted the police. When

[93] Case Summary: http://www.stephen-stratford.com/augusto_roggen.htm
[94] Case Summary: http://www.stephen-stratford.com/buschman.htm
[95] Case Summary: http://www.stephen-stratford.com/irving_ries.htm

questioned by police, he admitted the passport was a forgery. Herefused to provide details about his birth, apart from saying that his Father was Dutch and his Mother was Scottish. He also denied working for the Germans, and stated that the telegrams he received from Rotterdam were payments for legitimate business transactions. He was tried by court-martial held at Middlesex Guildhall on 28-29 September 1915. Ries pleaded not guilty. Ries does not appear to have actually sent any information to the Germans. The implication was that Ries was travelling to Rotterdam, so he could present a verbal report. Ries was found guilty and sentenced to death by shooting. At 7am on 27 October 1915, Ries was executed by firing squad.

217. **Albert Meyer**,[96] 22, At the time his arrest, Albert Meyer was 22 years old. In June 1914, he started working as a cook at Cabins Ltd, Oxford Street, London. He then worked as a waiter in Blackpool, before returning to live in various lodging in London's Soho area. He tended to move around, as he kept making promises about paying his rent to his various landladies, but not usually paying it. He was allowed to travel to Holland, returning to UK during May 1915, and moved into lodgings in the Soho area. On 20 May 1915, Albert Meyer married Catherine Rebecca Godleman at St. Pancras Registry Office. British Security Services intercepted a letter sent to a suspicious address in The Hague, Holland. Late in August 1915, another suspicious letter was intercepted by the British Security Services. He was tried by court-martial held at Middlesex Guildhall on 5-6 November 1915. He was found guilty and sentenced to death by shooting. Meyer's appeal was rejected. The Danish Embassy denied that Meyer was a Danish subject, and it appears that he was either German or Turkish. At 7.45am on 2 December 1915, Albert Meyer was executed by firing squad.

218. **Ludovico Hurwitz-y-Zender**,[97] was born in Lima, Peru, in 1878. His Father as Peruvian, although his Grandparents were Scandinavian who decided to settle in Peru. Zender was well educated and fluent in English and French. In August 1914, Zender left Peru for Europe, travelling via the USA, claiming that he was intending to trade in paper, handkerchiefs and various food products. He eventually arrived in Glasgow. Part of the evidence against him was that British Security Services had intercepted telegrams sent during late May 1915 to an address in Oslo, which they knew was acting as a collection point for the German Intelligence Services. All the telegrams were sent by Zender, all were signed in his own name and gave his address as 59 Union Street in Glasgow. Zender was tried by court-martial on 20-22 March 1916, at Caxton Hall Westminster. He pleaded not guilty, but he was found guilty and sentenced to death by shooting. Zender's appeal was rejected, as was an appeal from the Peruvian Embassy. At 7am on 11 April 1916, Zender was executed by firing squad.

219. **Private Schurch** - The only record discovered from the Second World War[98] was of the trial of Private Theodore John William Schurch, RASC,[99] who was tried on 12 September 1945 by General Court-Martial at Duke of York's HQ, Chelsea SW3. He was charged with nine counts under the Army Act 1881[100] in that he committed a civil offence

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[96] Case Summary: http://www.stephen-stratford.com/albert_meyer.htm

[97] Case Summary: http://www.stephen-stratford.com/zender.htm

[98] Stephen Stratford's British Criminal and Military History, 1900 to 1999: http://www.stephen-stratford.com/schurch.htm

[99] Royal Army Service Corps

[100] Probably section 4(3): Treacherously holds correspondence with or gives intelligence to the enemy, or treacherously or through cowardice sends a flag of truce to the enemy.

that is to say treachery contrary to Section 1 of the Treachery Act 1940. He faced an additional charge of desertion. He was found guilty on all ten charges and sentenced to death. Schurch was hanged at Pentonville Prison on 4 January 1946.

220. There is no other record of any case in recent times being tried by UK Service Court for espionage. While jurisdiction has been exercised in relation to Official Secrets Act offences, these offences were low level offending, involving careless handling of classified information, as detailed below.

221. **RAF Case** - Official Secrets Act allegation, eventually prosecuted under s.69 of the Air Force Act 1955, as Conduct to prejudice of air-force discipline.[101] He was tried in the 1980s by RAF Court-Martial. The defendant was an RAF Cpl. He pleaded guilty and was reduced to the ranks. He did not receive a custodial sentence.

222. **Army Corporal** – Official Secrets Acts allegations prosecuted in or about 1998 before a court martial in Germany, under the substantive provisions of the Official Secrets Act. The defendant pleaded guilty at court martial and was sentenced to 6 months military detention.

Espionage Cases Tried by UK Civilian Courts

223. **Carl Muller and John Hahn**- Muller was enlisted as a secret agent by the Germans, not least because he could speak a number of languages fluently. In February of 1915, he joined forces with John Hahn. Hahn, who was British-born and a British subject, although his parents were both German. When Hahn was 14, his Father sent him to Germany, where he remained for a number of years, before returning to England. However, with the outbreak of war Hahn had serious financial problems which left him vulnerable to bribery. The two men sent incriminating letters to the Germans. Muller was tried at the Central Criminal Court (Old Bailey) on 2-4 June 1915 and pleaded not guilty. He was convicted and sentenced to death. He was executed on 23 June 1915. Hahn pleaded guilty at his trial and was sentenced to seven years imprisonment.

224. **George Traugott Breeckow and Lizzie Louise Wertheim**.[102] Breeckow was born in Germany but later became a US citizen. He returned to Germany on 28 May 1914 and tried to obtain work as an Imperial Messenger, or courier, to neutral countries, especially the USA. He arrived at Gravesend, using the alias of Reginald Rowland, on 11 May 1915. He travelled to London where he booked into the Ivanhoe Hotel, Bloomsbury Street and subsequently sent a letter to his contact, Mrs Wertheim. Mrs Wertheim had been recruited by German Intelligence. The couple travelled to Bournemouth and then to various locations in Scotland which contained naval ports that were prohibited for aliens to enter. On 4 June 1915, Breeckow was arrested. While examining Breeckow's property, some rice paper was found hidden inside a shaving brush. On this paper, in Breeckow's handwriting, were the details of several Royal Navy vessels. Wertheim was arrested on 9 June 1915. When her possessions were searched, a letter addressed to

[101] Any person subject to air-force law who is guilty, whether by any act or omission or otherwise, of conduct to the prejudice of good order and air-force discipline shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

[102] Case Summary: http://www.stephen-stratford.com/breeckow.htm

one of Breeckow's aliases was found. Both Breeckow and Wertheim were tried together at the Central Criminal Court (Old Bailey) in London, on 14-17 September 1915. Both pleaded not guilty to the charges, although during the trial Breeckow admitted a great deal which protected Wertheim. The jury took just eight minutes to decide that both of them were guilty. Wertheim was sentenced to ten years imprisonment, and Breeckow was sentenced to death by shooting. Breeckow's appeal to the Court of Criminal Appeal, and Petition to King George V were all refused. At 7am on 26 October 1915, Breeckow was executed by firing squad.

225. **Cyprus Spy Case**[103] – This involved allegations against eight members of 9 Signal Regiment, namely five airmen and three soldiers, based at Ayios Nikolaos in Cyprus. They were tried for handing over thousands of classified documents to Soviet agents. The case was tried at the Central Criminal Court in London. The prosecution was almost wholly dependent on confessions extracted by Service police.[104] The facts were,

> On 3rd February 1984 a senior aircraftsman of 9 Signal Regiment based in Cyprus failed to complete unit clearance procedures prior to being posted back to the United Kingdom. On the 6th February he was interviewed by the Deputy Unit Security Officer of the Regiment. From this interview it appeared that a breach of security had occurred and the senior aircraftsman was arrested. His case was referred to the RAF Provost and Security Service in Cyprus. Subsequently, the Army Special Investigations Branch was also brought in since it appeared that soldiers as well as RAF personnel were involved. As is the standard procedure where a breach of the Official Secrets Acts may have occurred, the Ministry of Defence Security authorities brought the matter to the attention of the Director of Public Prosecutions during the course of their investigation. On the 15th March 1984, in view of the seriousness of the alleged breaches of security, the director asked the Metropolitan Police Special Branch to assume responsibility for the conduct of the investigation and in the light of their investigation he considered that the evidence justified prosecutions under the Official Secrets Acts.
>
> On the 11th April the Attorney General consented to the prosecution of seven servicemen who were charged on the 13th April. The Attorney-General subsequently consented to the prosecution of an eighth serviceman, who was charged on the 8th June 1984.

226. The servicemen charged were all acquitted.[105] The main reason for this was "the defendants were subjected to long periods of interrogation and detention"[106] such that their resulting signed confessions, "apparently without any supporting evidence",[107]

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[103] See *Op Cit*, FN109

[104] Historical Dictionary of British Intelligence, 2nd Edition (2014), by Nigel West (the the pen name of the military historian, Rupert William Simon Allason), at p.48.

[105] Summary of the facts from the statement to the House of Lords by The Parliamentary Under-Secretary of State, Home Office (Lord Glenarthur), Official Secrets Trial: 9 Signal Regiment, HL Deb 29 October 1985 vol 467 cc1482-92: http://hansard.millbanksystems.com/lords/1985/oct/29/official-secrets-trial-9-signal-regiment

[106] *Ibid*, Lord Boston of Faversham, at §1484

[107] *Per* Lord Wigoder, ibid, §1485. See, at §1486: "I think, in this case that the question must arise as to whether the provost and security services have in fact the experience or the impartiality, in carrying out investigations of this sort, to do so entirely satisfactorily. Clearly, the Special Branch have to be brought in on a

which comprised the principal evidence against them were ruled as voluntary at their trial.

227. The case led to the production of a Report by David Calcutt QC based on his inquiry into the investigations carried out by the service police in Cyprus in February and March 1984. This concluded that "the actions of the Service police in Cyprus had been in good faith throughout, but the police were over zealous in regard to the suspected breaches of security (that is, the counter-intelligence function) at the expense of observing the legal safeguards necessary if an offender is to be brought to justice..."[108]

228. **Maychell Case**[109] – In or about 1993, a Territorial Army[110] Intelligence Corps officer, Captain Carole Maychell, was accused of spying for Russia. It was alleged she had had a relationship with an East German businessman named Peter Zuckerman. It was said that she had visited him without official permission from the military authorities and had been passing secrets to the Russians over a 10-year period. Captain Maychell had been arrested by the Army's Special Investigations Branch (SIB). Captain Maychell was never prosecuted. She was awarded

> "more than £50,000 in an out-of-court settlement. It is compensation for the mental torment caused by her ordeal at the hands of MI5 and the Army's Special Investigation Branch six years ago that she says drove her repeatedly to attempt suicide as she teetered on the brink of madness."[111]

Terrorism

Tried by UK Service Court

229. **The Easter Uprising 1916** - This was an armed rebellion by Irishmen during the course of which 171 people were tried by Field General Courts Martial.[112] 14 of the death sentences were confirmed, and they were then shot at Kilmainham Jail, Dublin.[113]

230. No recorded cases could be found of any serviceman being tried before a Service Court for any type of terrorist offence.

231. It is theoretically possible for an offence of terrorism to be tried before the court martial. In practice, and following the Prosecutors Convention, the DSP would consult with the Attorney General and DPP over the most appropriate forum for disposal, in accordance

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case of this nature. It is apparent from the satement made today that some 36 days elapsed from the original discovery that there had been a breach of security to the time that the Special Branch were brought in."

[108] Espionage and Secrecy (Routledge Revivals): The Official Secrets Acts 1911, Rosamund Thomas (1991), at p.199

[109] See, *Op Cit*, FN104, "Historical Dictionary of British Intelligence", at p.280

[110] Now called the Army Reserve

[111] See News reports: http://photos1.blogger.com/blogger/1330/2129/1600/Carole%20Maychell%20Case.png and Blog of Michael John Smith, https://parellic.blogspot.com/2006/08/carole-maychell-affair-spy-who-never.html See also, "TA officer charged with spying is released", *Independent*, 9 April 1993: http://www.independent.co.uk/news/uk/ta-officer-charged-with-spying-is-released-1454341.html

[112] National Archives records: http://www.nationalarchives.gov.uk/help-with-your-research/research-guides/ireland-easter-rising-1916/#6-courts-martial-and-prisoners

[113] Stephen Stratford's British Criminal and Military History, 1900 to 1999. The 1916 Easter Uprising: http://www.stephen-stratford.com/easter.htm

with the interests of justice and maintaining public confidence. While there have been no such cases in recent times, if the court martial were to try a terrorism case, the prosecution would be likely to draw upon the expertise of Treasury counsel to do so.

Tried by UK Civilian Courts

232. There have been several quite recent cases of servicemen involved in terror offences or extremist behaviour (in particular, belonging to radical right wing groups).

233. **Ciaran Maxwell** – A British soldier (Royal Marine) charged Contrary to section 5 Terrorism Act 2006 with N.Ireland-linked terror offences, Maxwell allegedly obtained chemicals and components for bombs between 2011 and 2016, as well as an image of a Northern Ireland police pass and items of police uniform. He was also charged with "creating and maintaining hides in England and Northern Ireland to store explosive substances, explosive devices, components for explosive devices, ammunition, weapons." [114] At his trial at the Central Criminal Court (Old Bailey)on 3rd February 2017, he admitted his guilt. On 31 July 2017, he was sentenced to 18 years imprisonment.[115]

234. **Extremism** - Four British soldiers[116] were arrested on suspicion of right-wing terrorism – they were alleged to be members of banned UK neo-Nazi group National Action. The arrests under the Terrorism Act were made following a police force-led operation supported by the army. The Army spokesman confirmed that the matter is now the subject of a civilian police investigation.[117] It is therefore highly likely that any eventual trial will be before the civilian courts.

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[114] https://www.geo.tv/latest/113420-British-soldier-charged-with-NIreland-linked-terror-offences

[115] BBC News, 31 July 2017: http://www.bbc.com/news/uk-northern-ireland-40774233

[116] "British soldiers arrested on suspicion of right-wing terrorism", *CNN*, September 5, 2017: http://www.cnn.com/2017/09/05/europe/british-army-national-action/index.html

[117] " Neo-Nazi arrests: National Action suspects are in the Army", *BBC News*, 5 September 2017: http://www.bbc.com/news/uk-41161233

UNITED STATES OF AMERICA

Jurisdiction of Military Courts

235. The Uniform Code of Military Justice (UCMJ)[118] is a Congressional Code of Military Criminal Law applicable to all military members worldwide. This provides for both the structure of military justice, both summary and by court martial, and defines in Article 2 those subject to the UCMJ. This includes members of the armed forces, reservists on active duty, National Guard in federal service as well as certain other categories including prisoners of war.

236. The UCMJ includes what are known as the Punitive Articles (UCMJ Subchapter X. Punitive Articles Section 877 Article 77), which are the enumerated offences enacted by Congress that may be tried in the military courts created by Congress in the UCMJ. Almost all of these offences require, as a jurisdictional predicate, that the person accused was "subject to the Code" at the time of the violation.

237. There are three kinds of courts-martial in each of the armed forces --

(1) General courts-martial, consisting of--

(A) a military judge and not less than five members; or

(B) only a military judge, if before the court is assembled the accused, knowing the identity of the military judge and after consultation with defense counsel, requests orally on the record or in writing a court composed only of a military judge and the military judge approves;

(2) Special courts-martial, consisting of--

(A) not less than three members; or

(B) a military judge and not less than three members; or

(C) only a military judge, if one has been detailed to the court, and the accused under the same conditions as those prescribed in clause (1)(B) so requests; and

(3) Summary courts-martial, consisting of one commissioned officer.

238. The General court-martial has jurisdiction to try persons subject to the UCMJ for any offence made punishable by the UCMJ. General courts-martial also have jurisdiction to try any person who by the law of war is subject to trial by a military tribunal and may adjudge any punishment permitted by the law of war. However, a general court-martial of the kind specified in section 816(1)(B)[119] of this title (article 16(1)(B)) shall not have jurisdiction to try any person for any offence for which the death penalty may be adjudged unless the case has been previously referred to trial as noncapital case.

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[118] The copy accessed for this report was available at: http://www.au.af.mil/au/awc/awcgate/ucmj.htm

[119] A military judge sitting alone, without court members, with the consent of the accused

239. Special courts-martial have jurisdiction to try persons subject to the UCMJ for any noncapital offence made punishable by the UCMJ and, under such regulations as the President may prescribe, for capital offences. Special courts-martial may not pass a death sentence, dishonourable discharge, dismissal, confinement for more than six months, hard labour without confinement for more than three months, forfeiture of pay exceeding two-thirds pay per month, or forfeiture of pay for more than six months. A bad-conduct discharge may be adjudged provided certain specified conditions are fulfilled.

240. Summary courts-martial have jurisdiction to try persons subject to the UCMJ, except officers, cadets, aviation cadets, and midshipman, for any noncapital offense made punishable by the UCMJ. No person with respect to whom summary courts- martial have jurisdiction may be brought to trial before a summary court- martial if he objects thereto, in which case, trial may be ordered by special or general court-martial as may be appropriate. Summary courts-martial may, under such limitations as the President may prescribe, adjudge any punishment not forbidden by the UCMJ except death, dismissal, dishonourable or bad- conduct discharge, confinement for more than one month, hard labour without confinement for more than 45 days, restrictions to specified limits for more than two months, or forfeiture of more than two-thirds of one month's pay.

241. A military judge shall be detailed to each general court-martial. Subject to regulations of the Secretary concerned, a military judge may be detailed to any special court-martial. The military judge shall preside over each open session of the court-martial in which he has been detailed. A military judge shall be a commissioned officer of the armed forces who is a member of the bar of a Federal court or a member of the bar of the highest court of a State and who is certified to be qualified for duty as a military judge by the Judge Advocate General of the armed force of which such military judge is a member.[120]

Legal Representation

242. The UCMJ gives a right to be represented by counsel. Section 827. ART. 27(2) provides

> Trial counsel or defense counsel detailed for a general court-martial-
>
> (1) must be a judge advocate who is a graduate of an accredited law school or is a member of the bar of a Federal court or of the highest court of a State; or must be a member of the bar of a Federal court or of the highest court of a State; and
>
> (2) must be certified as competent to perform such duties by the Judge Advocate General of the armed force of which he is a member.

[120] UCMJ, Section 826. ART. 26: http://www.au.af.mil/au/awc/awcgate/ucmj.htm#826.%20ART.%2026.%20MILITARY%20JUDGE%20OF%20A%20GENERAL%20OR%20SPECIAL%20COURT-MARTIAL

Appeals [121]

243. In all cases, where a review of the court-martial is required, it shall be reviewed by the officer with authority to convene a general court-martial for the command which held the trial and, subsequently, by the department that includes the armed force of which the accused is a member. In other words, if the accused is a soldier, by the Army Department etc.

244. If his submission is not successful, he may appeal to the Court of Military Review and from there to the Court of Military Appeals. This court will automatically review cases in which the sentence, as affirmed by a Court of Military Review, extends to death. Ultimately, appeal lies to the United States Supreme Court, under a writ of certiorari.

Espionage and Spying

245. Article 106a covers espionage and provides that:

> (A) (1) Any person subject to this chapter who, with intent or reason to believe that it is to be used to the injury of the United States or to the advantage of a foreign nation, communicates, delivers, or transmits, or attempts to communicate, deliver, or transmit, to any entity described in paragraph (2), either directly or indirectly, any thing described in paragraph (3) shall be punished as a court-martial may direct, except that if the accused is found guilty of an offense that directly concerns (A) nuclear weaponry, military spacecraft or satellites, early warning systems, or other means of defense or retaliation against large scale attack, (B) war plans, (C) communications intelligence or cryptographic information, or (D) any other major weapons system or major element of defense strategy, the accused shall be punished by death or such other punishment as a court- martial may direct.
>
> (2) An entity referred to in paragraph (1) is–
>
> (A) a foreign government;
>
> (B) a faction or party or military force within a foreign country, whether recognized or unrecognized by the United States
>
> (C) a representative, officer, agent, employee, subject, or citizen of such government, faction, party, or force.
>
> (3) A thing referred to in paragraph (1) is a document, writing, code book, signal book, sketch, photograph, photographic negative, blueprint, plan, map, model, note, instrument, appliance or information relating to the national defense."

246. The persons "subject to this Chapter" is a reference to the personal jurisdiction established by the UCMJ in Article 2. Persons "subject to the Chapter" as defined in Article 2 include members of the armed forces, reservists on active duty, national guard

[121] S UBCHAPTER IX. Post-Trial Procedure and Review of Courts-Martial

in federal service; but also some others: retired members of the armed forces,[122] prisoners of war in US custody (but note they do not become subject to the UCMJ until they are captured and become POWs), cadets and midshipmen, among others.

247. There is, however, one crime enumerated in the Punitive Articles that does NOT require the accused be "subject to this chapter" at the time of the offense: Spying. This states (note the absence of the "subject to this chapter language):

> 906. ART. 106. SPIES
>
> Any person who in time of war [123] is found lurking as a spy or acting as a spy in or about any place, vessel, or aircraft, within the control or jurisdiction of any of the armed forces, or in or about any shipyard, any manufacturing or industrial plant, or any other place or institution engaged in work in aid of the prosecution of the war by the Unites States, or elsewhere, shall be tried by a general court-martial or by a military commission and on conviction shall be punished by death.

248. A military court (court-martial or military commission) therefore is vested with jurisdiction over "any person", which includes individuals not subject to the Code, if they commit this offence (which carries a mandatory death penalty). However, there is one major restriction: the "in time of war" limitation.

249. The meaning of "time of war" for the Punitive Articles is defined by the Manual for Courts Martial,[124] the "regulations" issued by the President pursuant to the authority delegated to him by the UCMJ to provide "rules and procedures" to implement the UCMJ. Specifically, the Rules for Courts Martial provides:

> (19) "War, time of. " For purpose of R.C.M. 1004(c)(6) and of implementing the applicable paragraphs of Parts IV and V of this Manual only, "time of war" means a period of war declared by Congress or the factual determination by the President that the existence of hostilities warrants a finding that a "time of war" exists for purposes of . . . Part IV (the Punitive Articles) of this Manual.

250. This means is that if the US has declared war, or if a President made this factual determination that a time of war exists for purposes of the UCMJ/Manual for Courts Martial, and if an individual engages in espionage in violation of Article 106, a military court could try that individual. However, as far as is known, there has not been a "time of war" finding in the past 50 years. The U.S. has not declared war on another nation since 1942 (Romania was the last nation it declared war against).

251. Consequently, while it is possible to exercise jurisdiction in certain circumstances, there is no contemporary practice asserting this jurisdiction.

---

[122] The rather bizarre case of former Master Sergeant Hennis who was tried and convicted of the murder of a mother and child. On appeal a re-trial was ordered and he was acquitted. He then re-enlisted in the Army, eventually retiring in 2004 as a master sergeant. When DNA analysis had improved, experts said the DNA from the victim's rape kit was consistent with Hennis' DNA. A team of military attorneys evaluated the case and the Army decided to pursue it. Hennis was recalled to active duty two years after his retirement and promptly arrested on three counts of murder. He was re-tried and convicted and sentenced to death: CNN report available at http://www.cnn.com/2014/07/18/us/death-row-stories-hennis/index.html

[123] Emphasis added

[124] Available: http://jsc.defense.gov/Portals/99/Documents/MCM2016.pdf?ver=2016-12-08-181411-957

DUTIES OF AN EXPERT

252. In preparing this report, our attention has been drawn to the Civil Procedure Rules of England and Wales, and in particular, Part 35 (Experts and Assessors) and Practice Direction 35 (Experts and Assessors).

253. We fully understand our duties to the courts when giving an expert report.

DECLARATION OF TRUTH

254. I confirm that I have made clear which facts and matters referred to in this report are within my own knowledge and which are not. Those that are within my own knowledge I confirm to be true. The opinions I have expressed represent my true and complete professional opinions on the matters to which they refer.

ANTHONY PAPHITI

29 November 2017

PROFESSOR CHB GARRAWAY CBE

29 November 2017

[LAST PAGE]

Pakistan, terrorists & China: Read how India's superspy Ajit Doval wants to tackle all 3

By *Dinesh Narayanan*, ET Bureau | Updated: Sep 30, 2016, 02.41 PM IST

Many see national security advisor Ajit Doval's hand in the strategic shift in India's diplomatic engagement and military preparedness.

It is well known that **Ajit Doval** has prime minister Narendra Modi's ear and, by many accounts, a firm hand in shaping India's foreign policy and strategic responses. It is now common to refer to his approach as the Doval doctrine. What exactly is it? ET pieced together what it could be from the public speeches and interactions Doval has had before and after he became the National Security Advisor.

The initial bonhomie of the Narendra Modi government with Islamabad having blown off in a spate of cross-border attacks and an escalating conflict in Kashmir, India has rapidly begun a global diplomatic offensive against Pakistan and beefing up its military muscle.

On Friday, it struck a deal to buy 36 Rafale fighters from France. In the past few months it has been, with Israeli help, developing and testing missiles of different range. Meanwhile, it beefed up strategic cooperation with the US with the signing of the Logistics Exchange Memoranda of Agreement that allows access to supplies and services support to each other's military.

While the guns seem to be trained on Pakistan, the developments indicate that India is building strategic depth against China as well, especially in the Indian Ocean.

Many see national security advisor Ajit Doval's hand in the strategic shift in India's diplomatic engagement and military preparedness. The NSA believes India has to be prepared for a two-front war. "India has two neighbours, both nuclear powers (which) share a strategic relationship and a shared adversarial view of India," he said at the Hindustan Times Leadership Summit last November.

Reproduced here are Doval's strategy for Pakistan, China and Kashmir articulated in his public speeches and interactions. They have been edited for clarity.

How to Tackle Pakistan

February 21, 2014. SASTRA University, Thanjavur, Tamil Nadu

We engage an enemy in three modes. One is a defensive mode. That is, all the chowkidars (security guards) and chaprasis (attendants) you see outside. If somebody comes here we will prevent him (from hurting us). We will defend. One is defensive offence. That is, to defend ourselves we will go to the place from where the offence is coming. The third is the offensive mode, where you go outright.

Nuclear threshold is a difficulty in the offensive mode but not in the defensive offence mode. We are working today only in the defensive mode. In defensive offence we start working on the vulnerabilities of Pakistan—it can be economic, internal security, political,

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SPOTLIGHT

Political Potpourri

Kerala's red army sees red with wayward Moody attack

The tirade went on a while before the truth dawned on a more literate fellow traveller Laibak Khan chipped in by saying Tom Moody is innocent.

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its isolation internationally by exposing their terrorist activities. It can be defeating their policies in Afghanistan—making it difficult for them to manage internal political balance or internal security.

In the defensive mode if you throw a hundred stones at me, I may stop 90 but still 10 would hurt me.

How to Smother Terrorists

February 21, 2014. SASTRA University, Thanjavur, Tamil Nadu

Deny them (terrorists) weapons, funds and manpower. Funding is denied to terrorists by countering it with funds. If they (Pakistan) have got a budget of Rs 1,200 crore and we can match it with Rs 1,800 crore, they (terrorists) are all on our side. They are mercenaries.

India is a much bigger economy. We will match them money for money, deny them weapons and we will deny them recruitment. That is extremely important. (We have to) work amongst Muslim youth. We have to work among the youth through Muslim organisations. Muslim organisations are willing, and are capable and keen to save their children from their (terrorists) influence.

We not only have deterrence (against) Pakistan but even (against) the separatists. I have been with an organisation where we maintain a lot of contact with these groups. The Hurriyat or the separatists cannot be paid by the ISI (Pakistan spy agency Inter-Services Intelligence) or influenced by the ISI more than what Indian intelligence or the Indian state can do. We are much more powerful than them. Why is it that they still always tilt towards Pakistan? Why is it that there is no one who is prepared to speak on behalf of India among the Kashmiri Muslims? They cannot as strongly articulate the Indian position. (Because) they are afraid of ISI. They have been given the highest form of security, the comfort, even their medical treatment is borne by the Indian government.

This policy of appeasement and no deterrence has impelled people to become anti-national and take all the advantages from India. There is no cost involved in that. You can take all advantages and still remain antinational and still undermine India's national interests. That is the root cause.

And I can never win because either I lose or there is a stalemate—you start war at your time, you throw stones when you want, you have peace when you want, you have talks when you want. In the defensive offence mode, we will see where the balance of equilibrium is.

Pakistan's vulnerability is many times higher than that of India. Once they know that India has shifted its gear from the defensive mode to defensive offence, they will find that it is unaffordable for them. You can do one Mumbai, you may lose Balochistan. There is no nuclear war involved in that and there is no troops engagement. If you know the tricks, we know the tricks better than you.

Facing China

August 21, 2010, Universal Brotherhood Day at Vishwa Adhyayan Kendra or Centre for International Studies

China's comprehensive national power is about three times higher than India. And in the next 50 years we will not be able to equal it. China is converting its economic power into its military and strategic power at a very fast rate, faster than what we had anticipated. They have advanced their strategic ability build-up by about 10 years. They have become almost a blue-water Navy.

I think the best strategy for India would be to develop its missile capacity to a very high degree. China is extremely vulnerable today because all its comprehensive national power will be burst if its economic installations are threatened. And as China is progressing at a very fast pace its economic installations are coming up very fast. You know we say what sort of strategic weapons can we use against Pakistan. There is nothing.

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Some cotton and wheat fields, apart from that what is there? Who do you hit? Whereas they can hit a lot of things in India to de-capacitate you. If China understands that India's missile striking capacity is so much that we can reach Guangzhou, Shanghai and the port areas, that is, within 24 hours their economic capacity would be de-capacitated (it will be a deterrence). India has got to make up its mind to develop its strategic missile capacity.

Fortunately, I think, there has been a lot of pressure and the government has been going ahead and I think in the last three years there has been considerable progress.

Second, we still have air superiority over them. We will probably have to make up for the delays that have come up in (buying/developing) the long range and mid-air refuelling planes. There is no point in going for tanks. Tank battles are over. In China, in any case, it will not be there and in Pakistan they may not be required. So let us not go in for the development of MBT (main battle tank) but probably [spend time and money on] light combat aircraft.

But the most important thing is will you be able to outdo China in some of the selected critical areas of economic activity. We had a serious edge in IT but now they are catching up fast. We had the edge in services with our knowledge of accountancy, law and banking but probably we are losing that edge also. Manufacturing they are already ahead. We will have to think of our entrepreneurs our businessmen, we have to think the new paradigms in which growth models have to operate. Because the goodwill for India, the support for India in this area of activity globally is much more than for China.

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Cabinet note for Delhi's first smart sub-city project soon

By *Rajat Arora*, ET Bureau | Updated: Nov 20, 2017, 01.15 AM IST

NEW DELHI: The ministry of housing and urban affairs plans to soon float the cabinet note for Delhi's first smart sub-city project, the Rs 12,000-crore Vasant Kunj Extension, to be

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Moody's backs Modi, upgrades India's sovereign

BJP leader threatens to ‘break’ Pakistan into ‘four pieces’

Foreign National SEPTEMBER 30, 2017 BY AGENCIES

NEW DELHI: BJP leader Subramanian Swamy has threatened that India would break Pakistan into four pieces.

India, he added, would be ready for such a move around April 2018. In an interview with an Indian news agency, he said: “There is no need for India to weep, but it will teach a lesson to Pakistan.”

He said that now China had mended its ways. “Now China has also started speaking against Pakistan,” he claimed. Swamy said that China was asking Pakistan to improve its ties with India. Reacting to Subramanian Swamy’s statement, AML chief Sheikh Rasheed said that Pakistan’s security is insurance of India.

“India will be eliminated if it made any mistake,” he maintained. PTI vice-chairman Shah Mahmood Qureshi said that the evil eye being cast on Pakistan will be gouged out. Jamaat leader Sirajul Haq said that India has waged an undeclared war. “We will not let India establish its hegemony in the region,” he maintained.

Exchange of Communications Between the President of the United States and Maxim M. Litvinov People's Commissar for Foreign Affairs of the Union of Soviet Socialist Republics

Source: *The American Journal of International Law*, Vol. 28, No. 1, Supplement: Official Documents (Jan., 1934), pp. 2-11
Published by: American Society of International Law; Cambridge University Press
Stable URL: http://www.jstor.org/stable/2213466
Accessed: 30-10-2017 16:12 UTC

communication could give. I am glad to note that you also reached the same conclusion.

There is no doubt that difficulties, present or arising, between two countries, can be solved only when direct relations exist between them; and that, on the other hand, they have no chance for solution in the absence of such relations. I shall take the liberty further to express the opinion that the abnormal situation, to which you correctly refer in your message, has an unfavorable effect not only on the interests of the two states concerned, but also on the general international situation, increasing the element of disquiet, complicating the process of consolidating world peace and encouraging forces tending to disturb that peace.

In accordance with the above, I gladly accept your proposal to send to the United States a representative of the Soviet Government to discuss with you the questions of interest to our countries. The Soviet Government will be represented by Mr. M. M. Litvinov, People's Commissar for Foreign Affairs, who will come to Washington at a time to be mutually agreed upon.

I am, my dear Mr. President,

Very sincerely yours,

MIKHAIL KALININ

Mr. FRANKLIN D. ROOSEVELT,
President of the United States of America,
Washington.

EXCHANGE OF COMMUNICATIONS BETWEEN THE PRESIDENT OF THE UNITED STATES AND MAXIM M. LITVINOV PEOPLE'S COMMISSAR FOR FOREIGN AFFAIRS OF THE UNION OF SOVIET SOCIALIST REPUBLICS[1]

President Roosevelt to Mr. Litvinoff

THE WHITE HOUSE
Washington, *November 16, 1933*

My dear Mr. LITVINOV:

I am very happy to inform you that as a result of our conversations the Government of the United States has decided to establish normal diplomatic relations with the Government of the Union of Soviet Socialist Republics and to exchange ambassadors.

I trust that the relations now established between our peoples may forever remain normal and friendly, and that our nations henceforth may coöperate for their mutual benefit and for the preservation of the peace of the world.

I am, my dear Mr. Litvinov,

Very sincerely yours,

FRANKLIN D. ROOSEVELT

Mr. MAXIM M. LITVINOV,
People's Commissar for Foreign Affairs,
Union of Soviet Socialist Republics.

[1] Press release from the White House.

Mr. Litvinoff to President Roosevelt

Washington, *November 16, 1933*

My dear Mr. PRESIDENT:

I am very happy to inform you that the Government of the Union of Soviet Socialist Republics is glad to establish normal diplomatic relations with the Government of the United States and to exchange ambassadors.

I, too, share the hope that the relations now established between our peoples may forever remain normal and friendly, and that our nations henceforth may coöperate for their mutual benefit and for the preservation of the peace of the world.

I am, my dear Mr. President,

Very sincerely yours,

MAXIM LITVINOFF
People's Commissar for Foreign Affairs,
Union of Soviet Socialist Republics

Mr. FRANKLIN D. ROOSEVELT,
President of the United States of America,
The White House.

Mr. Litvinoff to President Roosevelt

Washington, *November 16, 1933*

My dear Mr. PRESIDENT:

I have the honor to inform you that coincident with the establishment of diplomatic relations between our two governments it will be the fixed policy of the Government of the Union of Soviet Socialist Republics:

1. To respect scrupulously the indisputable right of the United States to order its own life within its own jurisdiction in its own way and to refrain from interfering in any manner in the internal affairs of the United States, its territories or possessions.

2. To refrain, and to restrain all persons in government service and all organizations of the government or under its direct or indirect control, including organizations in receipt of any financial assistance from it, from any act overt or covert liable in any way whatsoever to injure the tranquillity, prosperity, order, or security of the whole or any part of the United States, its territories or possessions, and, in particular, from any act tending to incite or encourage armed intervention, or any agitation or propaganda having as an aim, the violation of the territorial integrity of the United States, its territories or possessions, or the bringing about by force of a change in the political or social order of the whole or any part of the United States, its territories or possessions.

3. Not to permit the formation or residence on its territory of any organization or group—and to prevent the activity on its territory of any organization or group, or of representatives or officials of any organization or group—which makes claim to be the government of, or makes attempt upon the territorial integrity of, the United States, its territories or possessions; not to form, subsidize, support or permit on its territory military organizations or groups hav-

ing the aim of armed struggle against the United States, its territories or possessions, and to prevent any recruiting on behalf of such organizations and groups.

4. Not to permit the formation or residence on its territory of any organization or group—and to prevent the activity on its territory of any organization or group, or of representatives or officials of any organization or group—which has as an aim the overthrow or the preparation for the overthrow of, or the bringing about by force of a change in, the political or social order of the whole or any part of the United States, its territories or possessions.

I am, etc.,

MAXIM LITVINOFF

President Roosevelt to Mr. Litvinoff

THE WHITE HOUSE
Washington, *November 16, 1933*

My dear Mr. LITVINOFF:

I am glad to have received the assurance expressed in your note to me of this date that it will be the fixed policy of the Government of the Union of Soviet Socialist Republics:

[Here follow, *ipsissimis verbis,* the four numbered paragraphs of Mr. Litvinoff's letter preceding.]

It will be the fixed policy of the Executive of the United States within the limits of the powers conferred by the Constitution and the laws of the United States to adhere reciprocally to the engagements above expressed.

I am, etc.,

FRANKLIN D. ROOSEVELT

President Roosevelt to Mr. Litvinoff

THE WHITE HOUSE
Washington, *November 16, 1933*

My dear Mr. LITVINOV:

As I have told you in our recent conversations, it is my expectation that after the establishment of normal relations between our two countries many Americans will wish to reside temporarily or permanently within the territory of the Union of Soviet Socialist Republics, and I am deeply concerned that they should enjoy in all respects the same freedom of conscience and religious liberty which they enjoy at home.

As you well know, the Government of the United States, since the foundation of the Republic, has always striven to protect its nationals, at home and abroad, in the free exercise of liberty of conscience and religious worship, and from all disability or persecution on account of their religious faith or worship. And I need scarcely point out that the rights enumerated below are those enjoyed in the United States by all citizens and foreign nationals and by American nationals in all the major countries of the world.

The Government of the United States, therefore, will expect that nationals of the United States of America within the territory of the Union of Soviet Socialist Republics will be allowed to conduct without annoyance or molestation of any kind religious services and rites of a ceremonial nature, including baptismal, confirmation, communion, marriage and burial rites, in the English language, or in any other language which is customarily used in the practice of the religious faith to which they belong, in churches, houses, or other buildings appropriate for such service, which they will be given the right and opportunity to lease, erect or maintain in convenient situations.

We will expect that nationals of the United States will have the right to collect from their co-religionists and to receive from abroad voluntary offerings for religious purposes; that they will be entitled without restriction to impart religious instruction to their children, either singly or in groups, or to have such instruction imparted by persons whom they may employ for such purpose; that they will be given and protected in the right to bury their dead according to their religious customs in suitable and convenient places established for that purpose, and given the right and opportunity to lease, lay out, occupy and maintain such burial grounds subject to reasonable sanitary laws and regulations.

We will expect that religious groups or congregations composed of nationals of the United States of America in the territory of the Union of Soviet Socialist Republics will be given the right to have their spiritual needs ministered to by clergymen, priests, rabbis or other ecclesiastical functionaries who are nationals of the United States of America, and that such clergymen, priests, rabbis or other ecclesiastical functionaries will be protected from all disability or persecution and will not be denied entry into the territory of the Soviet Union because of their ecclesiastical status.

I am, etc.,

FRANKLIN D. ROOSEVELT

Mr. Litvinoff to President Roosevelt

Washington, *November 16, 1933*

My dear Mr. PRESIDENT:

In reply to your letter of November 16, 1933, I have the honor to inform you that the Government of the Union of Soviet Socialist Republics as a fixed policy accords the nationals of the United States within the territory of the Union of Soviet Socialist Republics the following rights referred to by you:

1. The right to "free exercise of liberty of conscience and religious worship" and protection "from all disability or persecution on account of their religious faith or worship."

This right is supported by the following laws and regulations existing in the various republics of the Union:

> Every person may profess any religion or none. All restrictions of rights connected with the profession of any belief whatsoever, or with

the non-profession of any belief, are annulled. (Decree of Jan. 23, 1918, Art. 3.)

Within the confines of the Soviet Union it is prohibited to issue any local laws or regulations restricting or limiting freedom of conscience, or establishing privileges or preferential rights of any kind based upon the religious profession of any person. (Decree of Jan. 23, 1918, Art. 2.)

2. The right to "conduct without annoyance or molestation of any kind religious services and rites of a ceremonial nature."

This right is supported by the following laws:

A free performance of religious rites is guaranteed as long as it does not interfere with public order and is not accompanied by interference with the rights of citizens of the Soviet Union. Local authorities possess the right in such cases to adopt all necessary measures to preserve public order and safety. (Decree of Jan. 23, 1918, Art. 5.)

Interference with the performance of religious rites, in so far as they do not endanger public order and are not accompanied by infringements on the rights of others is punishable by compulsory labor for a period up to six months. (Criminal Code, Art. 127.)

3. "The right and opportunity to lease, erect or maintain in convenient situations" churches, houses or other buildings appropriate for religious purposes.

This right is supported by the following laws and regulations:

Believers belonging to a religious society with the object of making provision for their requirements in the matter of religions may lease under contract, free of charge, from the Sub-District or District Executive Committee or from the Town Soviet, special buildings for the purpose of worship and objects intended exclusively for the purposes of their cult. (Decree of April 8, 1929, Art. 10.)

Furthermore, believers who have formed a religious society or a group of believers may use for religious meetings other buildings which have been placed at their disposal on lease by private persons or by local Soviets and Executive Committees. All rules established for houses of worship are applicable to these buildings. Contracts for the use of such buildings shall be concluded by individual believers who will be held responsible for their execution. In addition, these buildings must comply with the sanitary and technical building regulations. (Decree of April 8, 1929, Art. 10.)

The place of worship and religious property shall be handed over for the use of believers forming a religious society under a contract concluded in the name of the competent District Executive Committee or Town Soviet by the competent administrative department or branch, or directly by the Sub-District Executive Committee. (Decree of April 8, 1929, Art. 15.)

The construction of new places of worship may take place at the desire of religious societies provided that the usual technical building regulations and the special regulations laid down by the People's Commissariat for Internal Affairs are observed. (Decree of April 8, 1929, Art. 45.)

4. "The right to collect from their co-religionists . . . voluntary offerings for religious purposes."

This right is supported by the following law:

> Members of groups of believers and religious societies may raise subscriptions among themselves and collect voluntary offerings, both in the place of worship itself and outside it, but only amongst the members of the religious association concerned and only for purposes connected with the upkeep of the place of worship and the religious property, for the engagement of ministers of religion and for the expenses of their executive body. Any form of forced contribution in aid of religious associations is punishable under the Criminal Code. (Decree of April 8, 1929, Art. 54.)

5. Right to "impart religious instruction to their children either singly or in groups or to have such instruction imparted by persons whom they may employ for such purpose."

This right is supported by the following law:

> The school is separated from the church. Instruction in religious doctrines is not permitted in any governmental and common schools, nor in private teaching institutions where general subjects are taught. Persons may give or receive religious instruction in a private manner. (Decree of Jan. 23, 1918, Art. 9.)

Furthermore, the Soviet Government is prepared to include in a consular convention to be negotiated immediately following the establishment of relations between our two countries provisions in which nationals of the United States shall be granted rights with reference to freedom of conscience and the free exercise of religion which shall not be less favorable than those enjoyed in the Union of Soviet Socialist Republics by nationals of the nation most favored in this respect. In this connection, I have the honor to call to your attention Article 9 of the treaty between Germany and the Union of Soviet Socialist Republics, signed at Moscow October 12, 1925, which reads as follows:

> Nationals of each of the contracting parties . . . shall be entitled to hold religious services in churches, houses or other buildings, rented, according to the laws of the country, in their national language or in any other language which is customary in their religion. They shall be entitled to bury their dead in accordance with their religious practice in burial-grounds established and maintained by them with the approval of the competent authorities, so long as they comply with the police regulations of the other party in respect of buildings and public health.

Furthermore, I desire to state that the rights specified in the above paragraphs will be granted to American nationals immediately upon the establishment of relations between our two countries.

Finally, I have the honor to inform you that the Government of the Union of Soviet Socialist Republics, while reserving to itself the right of refusing visas

to Americans desiring to enter the Union of Soviet Socialist Republics on personal grounds, does not intend to base such refusals on the fact of such persons having an ecclesiastical status.

I am, etc.,

MAXIM LITVINOFF

Mr. Litvinoff to President Roosevelt

Washington, *November 16, 1933*

My dear Mr. PRESIDENT:

Following our conversations I have the honor to inform you that the Soviet Government is prepared to include in a consular convention to be negotiated immediately following the establishment of relations between our two countries provisions in which nationals of the United States shall be granted rights with reference to legal protection which shall not be less favorable than those enjoyed in the Union of Soviet Socialist Republics by nationals of the nation most favored in this respect. Furthermore, I desire to state that such rights will be granted to American nationals immediately upon the establishment of relations between our two countries.

In this connection I have the honor to call to your attention Article 11 and the Protocol to Article 11, of the Agreement Concerning Conditions of Residence and Business and Legal Protection in General concluded between Germany and the Union of Soviet Socialist Republics on October 12, 1925.

ARTICLE 11

Each of the contracting parties undertakes to adopt the necessary measures to inform the consul of the other party as soon as possible whenever a national of the country which he represents is arrested in his district.

The same procedure shall apply if a prisoner is transferred from one place of detention to another.

FINAL PROTOCOL

Ad Article 11.

1. The consul shall be notified either by a communication from the person arrested or by the authorities themselves direct. Such communications shall be made within a period not exceeding seven times twenty-four hours, and in large towns, including capitals of districts, within a period not exceeding three times twenty-four hours.

2. In places of detention of all kinds, requests made by consular representatives to visit nationals of their country under arrest, or to have them visited by their representatives, shall be granted without delay. The consular representative shall not be entitled to require officials of the courts or prisons to withdraw during his interview with the person under arrest.

I am, etc.,

MAXIM LITVINOFF

President Roosevelt to Mr. Litvinoff

THE WHITE HOUSE
Washington, *November 16, 1933*

My dear Mr. LITVINOFF:

I thank you for your letter of November 16, 1933, informing me that the Soviet Government is prepared to grant to nationals of the United States rights with reference to legal protection not less favorable than those enjoyed in the Union of the Soviet Socialist Republics by nationals of the nation most favored in this respect. I have noted the provisions of the treaty and protocol concluded between Germany and the Union of Soviet Socialist Republics on October 12, 1925.

I am glad that nationals of the United States will enjoy the protection afforded by these instruments immediately upon the establishment of relations between our countries and I am fully prepared to negotiate a consular convention covering these subjects as soon as practicable. Let me add that American diplomatic and consular officers in the Soviet Union will be zealous in guarding the rights of American nationals, particularly the right to a fair, public and speedy trial and the right to be represented by counsel of their choice. We shall expect that the nearest American diplomatic or consular officer shall be notified immediately of any arrest or detention of an American national, and that he shall promptly be afforded the opportunity to communicate and converse with such national.

I am, etc.,

FRANKLIN D. ROOSEVELT

Memorandum

In reply to a question of the President in regard to prosecutions for economic espionage, Mr. Litvinov gave the following explanation:

> The widespread opinion that the dissemination of economic information from the Union of Soviet Socialist Republics is allowed only in so far as this information has been published in newspapers or magazines, is erroneous. The right to obtain economic information is limited in the Union of Soviet Socialist Republics, as in other countries, only in the case of business and production secrets and in the case of the employment of forbidden methods (bribery, theft, fraud, etc.) to obtain such information. The category of business and production secrets naturally includes the official economic plans, in so far as they have not been made public, but not individual reports concerning the production conditions and the general conditions of individual enterprises.
>
> The Union of Soviet Socialist Republics has also no reason to complicate or hinder the critical examination of its economic organization. It naturally follows from this that every one has the right to talk about economic matters or to receive information about such matters in the Union, in so far as the information for which he has asked or which has been imparted to him is not such as may not, on the basis of special regulations issued by responsible officials or by the appropriate state enter-

prises, be made known to outsiders. (This principle applies primarily to information concerning economic trends and tendencies.)

Mr. Litvinoff to President Roosevelt

Washington, *November 16, 1933*

My dear Mr. PRESIDENT:

Following our conversations I have the honor to inform you that the Government of the Union of Soviet Socialist Republics agrees that, preparatory to a final settlement of the claims and counter-claims between the Governments of the Union of Soviet Socialist Republics and the United States of America and the claims of their nationals, the Government of the Union of Soviet Socialist Republics will not take any steps to enforce any decisions of courts or initiate any new litigations for the amounts admitted to be due or that may be found to be due it, as the successor of prior governments of Russia, or otherwise, from American nationals, including corporations, companies, partnerships, or associations, and also the claim against the United States of the Russian Volunteer Fleet, now in litigation in the United States Court of Claims, and will not object to such amounts being assigned and does hereby release and assign all such amounts to the Government of the United States, the Government of the Union of Soviet Socialist Republics to be duly notified in each case of any amount realized by the Government of the United States from such release and assignment.

The Government of the Union of Soviet Socialist Republics further agrees, preparatory to the settlement referred to above, not to make any claim with respect to:

(a) judgments rendered or that may be rendered by American courts in so far as they relate to property, or rights, or interests therein, in which the Union of Soviet Socialist Republics or its nationals may have had or may claim to have an interest; or,

(b) acts done or settlements made by or with the Government of the United States, or public officials in the United States, or its nationals, relating to property, credits, or obligations of any government of Russia or nationals thereof.

I am, etc.,

MAXIM LITVINOFF

President Roosevelt to Mr. Litvinoff

THE WHITE HOUSE
Washington, *November 16, 1933*

My dear Mr. LITVINOV:

I am happy to acknowledge the receipt of your letter of November 16, 1933, in which you state that:

[Here follow, *ipsissimis verbis,* the agreements as stated in Mr. Litvinoff's letter preceding.]

I am glad to have these undertakings by your government and I shall be pleased to notify your government in each case of any amount realized by the Government of the United States from the release and assignment to it of the amounts admitted to be due, or that may be found to be due, the Government of the Union of Soviet Socialist Republics, and of the amount that may be found to be due on the claim of the Russian Volunteer Fleet.

I am, etc.,

FRANKLIN D. ROOSEVELT

Mr. Litvinoff to President Roosevelt

Washington, *November 16, 1933*

My dear Mr. PRESIDENT:

I have the honor to inform you that, following our conversations and following my examination of certain documents of the years 1918 to 1921 relating to the attitude of the American Government toward the expedition into Siberia, the operations there of foreign military forces and the inviolability of the territory of the Union of Soviet Socialist Republics, the Government of the Union of Soviet Socialist Republics agrees that it will waive any and all claims of whatsoever character arising out of activities of military forces of the United States in Siberia, or assistance to military forces in Siberia subsequent to January 1, 1918, and that such claims shall be regarded as finally settled and disposed of by this agreement.

I am, etc.,

MAXIM LITVINOFF

Joint Statement by the President and Mr. Litvinov

THE WHITE HOUSE
Washington, *November 16, 1933*

In addition to the agreements which we have signed today, there has taken place an exchange of views with regard to methods of settling all outstanding questions of indebtedness and claims that permits us to hope for a speedy and satisfactory solution of these questions which both our governments desire to have out of the way as soon as possible.

Mr. Litvinov will remain in Washington for several days for further discussions.

Madera Tribune, Number 37, 15 December 1938 — Officials Silent in Spy Cases VICE CONSUL VISITED PAIR IN LA. JAIL Silence Strengthens Belief International Aspect Is Serious U. S. SECRETS SAFE Only Lnformation of Japs Military Program Was Taken by Pair [ARTICLE]

Officials Silent in Spy Cases VICE CONSUL VISITED PAIR IN LA. JAIL Silence Strengthens Belief International Aspect Is Serious U. S. SECRETS SAFE Only Lnformation of Japs Military Program Was Taken by Pair

LOS ANGELES, Dec. 15. —Mikhail Ivanushkin, Soviet vice-consul of New York, conferred in jail with one of two Russians held on charges of stealing American naval secrets and promised a statement sometime today. Ivanushkin talked with Mikhail Gorin, 34, manager of Soviet tourist agency, in the county jail. Gorin, a Soviet citizen, was held with Hafis Salich, 33, a naturalized American, under $25,000 bond. REFUSE COMMENT Accompanying the vice-consul were United States Attorney Benjamin Harrison, and a federal agent. Harrison and the federal agent, a member of the federal department of justice, also refused to comment. Official silence of both governments in the case strengthened belief that it had a serious international aspect. TALK IN RUSSIAN The vice consul was permitted to talk with his countryman in Russian but only in the presence of a member of the naval intelligence, Lieutenant William Maxwell, who was called into the conference because he understands the language. Ivanushkin, accompanied by two aides, T. Baranov and S. Michael, arrived last night by plane. They guarded him from cameramen and refused to answer questions of reporters. Baranov was described as a civil engineer; Michael as an interpreter. HELD INCOMMUNICADO Both prisoners, arrested Sunday, had been held incommunicado. Gorin, however, was allowed to telephone the Soviet embassy at Washington three times and indicated that he was trying to furnish bond. He formerly was attached to the consulate here. Salish, “loaned” to the naval intelligence office at San Pedro by the Berkeley police department was accoused of passing on to Gorin secrets of Japanese naval strength that the United States had obtained. He has lived in this country 15 years, is a linguist. The navy reportedly wanted him because he spoke Japanese. San Pedro is frequented by Japanese fishing boats, which the American Legion has long accused of “spying” on the United States fleet. One of its west coast bases is San Pedro. The campaign bore fruit and in recent years more than 50 fishing boats have been libeled for illegal registry. ONLY JAPAN SUFFERS An FBI spokesman said of the Russians’ arrests: “To sum this case up, what these men did was to steal the secret information we had obtained on the Japanese military, and converted it to their own use. They let us do all the work, and they hoped to get all the benefit from this material.” The suspects were not accused of trafficking in United States defense secrets. Their cases probably will go to a federal grand jury next Wednesday. Their bonds are returnable .December 24.

Madera Tribune, Number 209, 9 March 1950 — Russ Spy's Sentence Suspended Judy Coplon Gets 15 Years; Gubitchev Ordered Deported [ARTICLE]

Russ Spy's Sentence Suspended Judy Coplon Gets 15 Years; Gubitchev Ordered Deported
NEW YORK (U.R) Valjntin A. Gubitchev, Russian engineer, was sentenced to 15 years in prison today for attempting to obtain United States defense secrets from government girl Judith Coplon. KfU the sentence will be suspended on the day he deported from the United States. Miss Coplon was ordered to spend 15 years in Federal prison as a traitor to her country. Federal Judge Sylvester Ryan agreed to suspend Oubltchev's sentence at the personal request of Secretary of State Dean Acheson and Attorney General .1. Howard McGrath. They recommended that he be deported and that he leave the United States within two weeks. Ryan said he bowed to the request and would suspend Gubitchev's sentence the day he left the country. He ordered him accomimrtied to a departing ship by a U. S. marshal. But there was no leniency for Miss Coplon. Ryan announced that he woald deny any request for bail for her pending appeal. I "It is about time that she paid I some of the penalty" Ryan said, I remarking that she now had been twice convicted of betraying her government. He ordered her to begin serving
the 15-year sentence as soon as she completed a sentence of .40 ' months to 10 years imposed last summer in Washington for stealing U. S. government secrets. WASHINGTON (U.R) - The State Department hinted today I that Valentin A. Gubitchev is ire ing offered a chance to leave the United Slates .o prevent Soviet retaliation against American citizens in Russia, and other Raster ti European countries.

BIOGRAPHY

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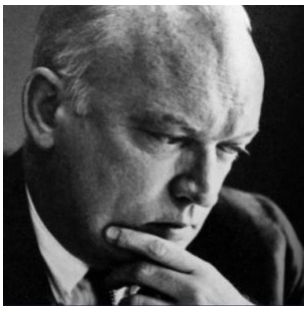

James B. Donovan

Lawyer (1916–1970)

Lawyer James B. Donovan defended Soviet spy Rudolf Abel in a 1957 espionage trial, and later negotiated the exchange of Abel for American Francis Gary Powers.

NAME
James B. Donovan

OCCUPATION
Lawyer

BIRTH DATE
February 29, 1916

DEATH DATE
January 19, 1970

EDUCATION
Fordham University, Harvard Law School

PLACE OF BIRTH
Bronx, New York

PLACE OF DEATH
Brooklyn, New York

AKA
James B. Donovan
Jim Donovan

FULL NAME
James Britt Donovan

Synopsis

Born in 1916 in New York City, lawyer James B. Donovan worked for the International Military Tribunal at the end of World War II. He defended Soviet spy Rudolf Abel in a 1957 espionage trial, and in 1962 he brokered the exchange of Abel for U.S. pilot Francis Gary Powers. Donovan later convinced Cuban Premier Fidel Castro to release nearly 10,000 prisoners. He died in 1970 in Brooklyn, New York.

Early Years and Career

James Britt Donovan was born on February 29, 1916, in the Bronx, New York. The younger son of parents John Sr., a prominent surgeon, and Harriet, a concert pianist and teacher, he went on to academic success at the Catholic All Hallows Institute and Fordham University. Originally intending to be a journalist, he instead enrolled at Harvard Law School, earning his LL.B. in 1940.

Donovan worked for the Office of Scientific Research and Development and the Office of Strategic Services during World War II, attaining the rank of Navy commander. Afterward, he was named associate prosecutor of the International Military Tribunal at Nuremberg, where he assembled photographic evidence for use against Nazi officers charged with war crimes.

Returning to private practice, Donovan served as chief counsel in major trials across the United States. In 1950, he was a founding partner of the Watters & Donovan Law Firm in New York City's financial district.

Spy Trial and Exchange

In 1957, Donovan accepted a request from the Brooklyn Bar Association to represent Rudolf Abel, a high-ranking Soviet spy who had immersed himself in an artistic community before his arrest for espionage. Despite overwhelming evidence against his client, Donovan managed to avoid the death penalty in part by arguing that Abel could prove useful for a prisoner swap should an American of similar rank be captured by the Soviets.

That foresight proved keen when American jet pilot Francis Gary Powers was shot down in the Soviet Union and imprisoned for espionage in 1960. Due to his relationship with Abel, Donovan became the conduit between the U.S. government and Soviet intelligence, and in early 1962 he was sent to Europe to "explore the situation." Following a week of negotiations at the Soviet embassy in East Berlin, Powers and Abel were simultaneously released from custody on the Glienicke Bridge between East and West Germany on February 10, 1962. Donovan subsequently received the Distinguished Intelligence Medal from the Central Intelligence Agency for his work.

Cuban Negotiations

Having earned a reputation for his high-stakes negotiating skills, Donovan was tapped by the Cuban Families Committee to obtain freedom for detained Cubans and Americans imprisoned during the failed Bay of Pigs invasion of 1961. Over the course of several trips to the island, one of which included his 18-year-old son, Donovan gained the confidence of Cuban Premier Fidel Castro. He eventually secured the release of more than 1,100 survivors of the invasion, as well as another 8,500 political prisoners.

Late Career, Death and Legacy

Named vice president of the New York City Board of Education in 1961, Donovan unsuccessfully ran for a U.S. Senate seat in 1962. He was elected president of the Board of Education in 1963, and oversaw the program during a two-year period marked by strife over the desegregation of city schools. Around this time, Donovan wrote two memoirs: *Strangers on a Bridge* (1964) and *Challenges* (1967).

In 1968, Donovan was appointed president of Brooklyn's Pratt Institute, where he faced more conflict from both students and faculty over civil rights and antiwar demonstrations. He died of heart failure at Brooklyn's Methodist Hospital on January 19, 1970.

A collection of Donovan's papers survives at the Hoover Library & Archives in Stanford, California, and he was the subject of the 2006 biography *Negotiator* by Philip J. Bigger. The story of his success in arranging the Powers-Abel exchange has been brought to the big screen in *Bridge of Spies* (2015), with film icon Tom Hanks starring as the New York lawyer thrust into delicate Cold War terrain.

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MAYOR QUITS CLUB OVER BIAS CHARGE

BUCKLEY TO RUN FOR HOUSE AGAIN

THURMOND SAYS LETTER VANISHED AT MARINE OFFICE

Morristown Finds Quiet Way to Spur School Integration

ARMS AIDE WARNS ON LETTING SOVIET BEAT U.S. TO TESTS

POWERS IS FREED BY SOVIET IN AN EXCHANGE FOR ABEL; U-2 PILOT ON WAY TO U. S.

TRANSFER IS MADE

American Student Is Also Released in East Germany

Soviet Rebuffed on Berlin In Effort to Curb Flights

ROBERT KENNEDY DEBATES LEFTIST

ISRAEL DEVALUES POUND TO 3 TO $1

Powers is Freed by Soviet in an Exchange for Abel; U-2 Pilot on Way to U.S.

TRANSFER IS MADE

American Student is Also Released in East Germany

By Tom Wicker

Special to The New York Times

Washington, Saturday, Feb. 10 -- Francis Gary Powers has been released by the Soviet Union in exchange for the release of Col. Rudolf Abel, the convicted Soviet spy, the White House announced at 3:20 A. M.

Frederic L. Pryor, an American student held by East German authorities since August, 1961, also has been released. He was turned over to the American authorities in Berlin.

Mr. Powers, the White House said, is in Berlin en route to the United States.

Colonel Abel was deported and has been released in Berlin.

Result of Long Effort

The White House announcement said that efforts to obtain Mr. Powers' release had been under way for some time. It added that the United States, in its recent efforts, had had the "cooperation and assistance" of James B. Donovan, a New York lawyer.

The announcement of the releases and the exchange with the Soviet Union was made by Pierre Salinger, the President's press secretary, at a White House news conference just after 3 A. M.

Mr. Powers was downed in a U-2 plane while making a high-altitude reconnaissance flight over the Soviet Union in May, 1960. At a Moscow trial later he pleaded guilty to espionage charges and was sentenced to ten years - three in prison and seven in a prison colony.

The U-2 incident occurred just before a Big Four summit meeting was to have taken place in Paris. After reaching Paris, Premier Khrushchev unloosed a barrage of diatribe against the United States and used the incident to disrupt the planned meeting.

Colonel Abel was convicted in the United States of espionage charges in 1957 and given a thirty-year sentence. This sentence has been commuted by President Kennedy.

Mr. Powers and Colonel Abel were exchanged in the middle of the Glienicker Bridge between Wansee and Potsdam. The border between East Germany and West Berlin runs through the middle of the bridge.

The exchange was carried out at 2:52 A. M. today, Eastern Standard Time. That was 8:52 A. M. in Berlin.

Mr. Pryor was released at the Friederichstrasse checkpoint just before the two others were

OTHER HEADLINES

Arms Aide Warns on Letting Soviet Beat U.S. to Tests: Key Kennedy Adviser Says Last Soviet Blasts in Air Made Substantial Gain

Thurmond Says Letter Vanished at Marine Office: It Showed Up Later on Desk of Shoup, Senator Reports -- General is Silent

Shelter Program For Communities Sent to Congress: U.S. Would Pay All or Part of Cost of Structures for 20,000,000 People: $450,000,000 Is Sought: Schools, Hospitals or Other Nonprofit Groups Would Be Eligible for Funds

Soviet Rebuffed on Berlin In Effort to Curb Flights

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Buckley to Run for House Again: 'Not Worried' Over

exchanged.

President Kennedy was notified about 3 A. M. that the exchange had been completed. He knew it was under way, and was awaiting word from Berlin.

Possible Primary Election Contest

City Bids States and U.S. Join on New Haven Aid

Government officials said they could give no details about the movements of Mr. Power before the exchange. He had been in prison in Moscow.

They said, however, that they expected him to be on his way to the United States in a short time.

Members of the Powers family were notified of the flier's release about five minutes before the White House announcement.

Deal Studied Since 1960

The possible exchange of Mr. Powers for Colonel Abel had been speculated upon almost from the day of the U-2 pilot's conviction in Moscow Aug. 19, 1960.

There also was considerable discussion of the way the two men conducted themselves from the time of their arrests to their imprisonment.

In the Powers case, the United States admitted that the U-2 flight was for espionage. The Eisenhower Administration termed such actions a necessity.

Nothing but silence surrounded the Abel case. Neither Colonel Abel nor the Soviet Government said a word about the espionage.

Colonel Abel was arrested at a Manhattan hotel on June 21, 1957. He had been posing as an artist with a studio in Brooklyn Heights.

In the studio, Federal agents found a hollow pencil used for concealing messages, a wooden block with microfilm and a code book.

Colonel Abel was convicted in 1957 and sentenced to a thirty-year prison term. He had been at the Federal penitentiary in Atlanta, Ga.

Oliver Powers, the U-2 pilot's father, had asked for such an exchange before the trial of his son opened in Moscow.

The U-2 pilot's release came little more than a year after Moscow's freeing of two surviving crew members of the United States RB-47 reconnaissance plane shot down off the Soviet Union on July 1, 1960.

Mr. Kennedy's announcement of the RB-47 survivors' release was made in a dramatic televised news conference on Jan. 25, 1961, his first in office.

The two survivors are Capt. John R. McCone of Tonganoxie, Kan., and Capt. Freeman B. Olmstead of Elmira, N.Y.

Mr. Donovan was the court-appointed lawyer who defended Colonel Abel in his 1957 espionage trial in New York.

The Soviet officer appealed his conviction to the United States Supreme Court on the grounds that some of the evidence used against him was seized unconstitutionally by Federal agents.

On March 28, 1960, the Supreme Court rejected the appeal.

Colonel Abel was the highest ranking Soviet officer ever tried on espionage charges in the United States.

He was specifically charged with conspiring to pass defense and nuclear secrets to the Kremlin - a charge that could have brought the death penalty.

However, Mr. Donovan argued that the Russian might someday be exchanged for some American being held behind the Iron Curtain.

Two and a half years later, Mr. Powers was down over the Soviet Union.

The Russians claimed that they knocked down the high-altitude jet with rockets. The crash site was 1,300 miles inside the Soviet Union, near the industrial center of Sverdiovsk.

Mr. Powers' father, Oliver, said at his home in Pound, Va., that the news of his son's release came as a "complete surprise."

"I'm very glad," he said.

The elder Mr. Powers said he had thought his son would have to spend seven or eight years, at least, in a Soviet prison.

The father, who attended his son's Moscow trial, at first refused to believe he was on the way home.

"Are you sure this is true?" he asked repeatedly.

Mrs. Powers also expressed joy at the news.

"I'm sure thankful, really thankful, if its true," she said.

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Go to another day.

Front Page Image Provided by UMI

UNITED PRESS INTERNATIONAL OCTOBER 18, 1960

UPI-3

(AMERICANS)

VIENNA--TWO AMERICAN TOURISTS EXPELLED FROM THE SOVIET UNION STRONGLY DENIED TODAY THEY PLEADED GUILTY TO CHARGES OF ESPIONAGE BEFORE A SOVIET MILITARY COURT.

MARK KAMINSKY, 32, OF JEFFERSON TOWNSHIP, MICH., AND HARVEY BENNETT, 26, OF BATH, MAINE, TOLD A NEWS CONFERENCE AT THE U.S. CONSULATE HERE THEY WERE THROWN OUT OF RUSSIA AFTER SEVEN WEEKS OF DETENTION IN KIEV, WESTERN UKRAINE, AND UZHGOROD.

KAMINSKY TOLD UPI EARLIER THE SOVIET MILITARY TRIAL THAT SENTENCED HIM TO SEVEN YEARS' IMPRISONMENT "WAS LIKE ALL SOVIET TRIALS -- GUILTY UNTIL PROVEN INNOCENT."

KAMINSKY SAID HE PLEADED GUILTY TO THE OFFICIAL CHARGE OF "COLLECTING MATERIAL AND CONDUCTING ACTIVITIES INCOMPATIBLE WITH THOSE OF A REGULAR TOURISTS".

"SINCE THEY HAD ALL MY FIIMS AND NOTES ON MILITARY ACTIVITIES, HE SAID, "IT WAS OBVIOUS THAT I WAS NOT SIMPLY A TOURIST."

BENNETT DENIED REPORTS BY TASS THAT HE DENOUNCED KAMINSKY BEFORE THE MILITARY COURT WHICH TRIED HIM ON SEPT. 12.

"I SIMPLY AGREED THAT PERHAPS WE WERE NOT NORMAL TOURISTS," HE SAID. "HOWEVER, WHEN I ASKED THEM WHAT THEY CONSIDERED NORMAL TOURISTS, THEY SIMPLY POINTED AT US AND SAID 'YOU ARE NOT'."

KAMINSKY AND BENNETT ARRIVED HERE THIS MORNING. THE MEN SAID THEY WERE "VERY HAPPY TO TALK TO AN AMERICAN AGAIN" AS THEY CHATTED WITH A UPI REPORTER NEAR THE FREIGHT OFFICE WHERE THEY UNLOADED THE RENTED CAR THAT TOOK THEM INTO THE SOVIET UNION.

THE AMERICANS TOLD UPI THEY WERE ARRESTED AND TAKEN TO KIEV IN THE WESTERN UKRAINE. KAMINSKY SAID HE WAS JAILED FOR SEVEN WEEKS WHILE BENNETT SPENT THE TIME IN A KIEV HOTEL.

BENNETT SAID HE WAS TREATED "ALL RIGHT" IN THE HOTEL AND KAMINSKY SAID HIS SOVIET JAILERS TREATED HIM "VERY WELL...SURPRISINGLY WELL." BOTH LOOKED WELL.

BOTH SAID THEY HAD NO IDEA WHY THEY WERE RELEASED. "IT IS A MYSTERY TO US." SAID BENNETT.

THEY SAID THEY PLANNED TO TAKE THE FIRST PLANE OUT OF VIENNA FOR THE UNITED STATES.

BENNETT SAID HE WAS SURPRISED TO LEARN THE U.S. GOVERNMENT HAD MADE REPEATED EFFORTS TO FIND THEM DURING THE TWO MONTHS AFTER THEY DISAPPEARED IN THE SOVIET UNION.

"WE HAD NO IDEA THAT OUR CASE HAD AROUSED SUCH A FUROR IN THE UNITED STATES," BENNETT TOLD UPI.

"IN FACT, THE RUSSIANS ASKED ME ONLY LAST WEEK WHY THERE HAD BEEN NO INQUIRIES FROM THE AMERICAN AUTHORITIES ON OUR FATE."

10/18--GE851A

Frederick Barghoorn, 80, Scholar Detained in Soviet Union in 1963

By BRUCE LAMBERT
Published: November 26, 1991

Frederick C. Barghoorn, a longtime Yale professor who became the center of an international incident when Soviet officials jailed him in Moscow on espionage charges and released him only under pressure from President John F. Kennedy, died Wednesday night.

He was 80 years old. He died at Willows Convalescent Home in Woodbridge, Conn. The cause of death was respiratory failure, his family said.

A well-known scholar on the Soviet Union, Mr. Barghoorn was seized in 1963 as he was completing a trip in that country made to conduct interviews for a book.

As he later recalled, he arrived in front of the Metropole Hotel when a stranger walked up and handed him a roll of papers. Before he could examine them, Soviet officers instantly appeared, clapped on handcuffs and whisked him off to Lubyanka prison. He was held incommunicado for days. When word of his arrest got out, American diplomats protested and demonstrations were held at Yale and elsewhere.

President Kennedy, in what would be his last White House news conference, denounced the action as "unjustified." He declared that Mr. Barghoorn "was not on any intelligence mission of any kind" and called the detention "a very serious matter." The President said American relations with the Soviet Union were "greatly damaged" and warned that impending wheat sales were jeopardized.

After 16 days of his confinement, the Soviets finally released Mr. Barghoorn and expelled him. They said they were deferring to "to the personal concern expressed by President Kennedy." But as they deported the professor, they still insisted he was a spy. Gratitude to Kennedy

He was greeted by a rally of 2,200 people at the Yale campus. He repeatedly expressed gratitude for the President's intervention to rescue him and was emotionally crushed when Mr. Kennedy was assassinated a few days later.

Mr. Barghoorn denied being a spy and called the episode "inexplicable and mysterious." He said on all his trips to the U.S.S.R. he had taken great care to avoid trouble by refusing to visit anyone's home, spend more than a few minutes with a woman or carry a camera. He said his imprisonment was wearying but that he was not mistreated. Asked if was interrogated, he said wryly, "Most of the time."

Because of the incident, the United States called off negotiations with the Soviets on cultural exchanges, but the talks were consummated later.

Born in Queens Village in New York City, Mr. Barghoorn grew up there and in Dayton, Ohio. He got his undergraduate degree from Amherst College and his doctorate in history from Harvard. He worked for the State Department in Washington in the 1930's, and for much of the 1940's worked in the press section of its embassy in Moscow. From 1949 to 1951, he headed a Federal project interviewing 200 Soviet defectors to analyze their Government and society.

He also taught at the University of Chicago and Columbia University, but spent most of his career in Yale's political science department. He wrote several books and numerous articles for The New York Times and professional journals.

The survivors include his wife, the former Nina Piroumoff, of New Haven, and a nephew, Steven, of Carlisle, Mass.

By Mr. WATTS:
H.R. 7444. A bill for the relief of M. Sgt. Ray S. Molen, U.S. Air Force; to the Committee on the Judiciary.
By Mr. BOB WILSON:
H.R. 7445. A bill for the relief of Moktar Kourda; to the Committee on the Judiciary.

SENATE

THURSDAY, MARCH 16, 1967

The Senate met in executive session at 9 o'clock a.m., and was called to order by the Acting President pro tempore.

Rev. John R. Esaias, Jr., minister, Oxon Hill Methodist Church, Oxon Hill, Md., offered the following prayer:

Eternal God, our Father, Thou hast set us in the midst of the perplexities of a changing social order. Give us the courage and ability to set our own house in order.

Our Nation has grown proud of its affluence. We boast of our industrial and agricultural productivity. Help us to see the perils of prosperity. "Adversity has slain its thousands, but prosperity has slain its tens of thousands." Realizing this may we look out with compassion upon the hungry and needy nations of the world and share with them our abundance to save our own souls. We see ourselves as Dives in our Lord's parable and the needy nations as Lazarus. We sense the great gulf between us. May Thy divine providence enable us to bridge this gulf by a great outpouring of our resources that will make all our previous efforts pale into insignificance.

Let Thy judgment fall on those who do as the prophet of old said, "Make evil their good and good their evil." May Jesus Christ come to cleanse the temple of our minds of their evil motives. We see to repent of our misdoings and be reconciled to Thy eternal goodness revealed in Jesus Christ our Lord. Amen.

THE JOURNAL

On request of Mr. MANSFIELD, and by unanimous consent, the reading of the Journal of the proceedings of Wednesday, March 15, 1967, was dispensed with.

NOMINATIONS

Mr. MANSFIELD. Mr. President, I yield myself 1 minute, and I ask unanimous consent that the nominations on the Executive Calendar be considered.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

FEDERAL FARM CREDIT BOARD

The legislative clerk proceeded to read sundry nominations to the Federal Farm Credit Board.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the nominations be considered en bloc.

The ACTING PRESIDENT pro tempore. Without objection, the nominations are considered and confirmed en bloc.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the President be immediately notified of the confirmation of these nominations.

The ACTING PRESIDENT pro tempore. Without objection, it is ordered.

ORDER OF BUSINESS

Mr. MANSFIELD. I yield 5 minutes to the distinguished Senator from Kansas.

Mr. CARLSON. I appreciate the courtesy of the distinguished majority leader.

TRIBUTE TO REAR ADM. HOWARD A. YEAGER

Mr. CARLSON. Mr. President, last Saturday I was shocked to learn of the tragic death of Rear Adm. Howard A. Yeager, commandant of the 9th Naval District.

Admiral Yeager was born and reared in my home State of Kansas, and was a personal friend of mine. He had an outstanding military career and a record that brought him national and international acclaim.

Admiral Yeager, a veteran of 44 years with the Navy, gave the signal which launched the invasion of France on D-day. He was executive officer of the U.S.S. *Nevada* at the time.

Recognized as one of the Navy's top experts in amphibious operations, he held three major commands in that field. The most recent was as commander of amphibious forces in the Pacific.

Admiral Yeager was commander of a destroyer squadron which bombarded Wonsan, North Korea, during hostilities there and also was responsible for landing American Marines on the shores of Lebanon in July 1958.

At the time of his death, he was just completing his assignment as commandant of the 9th Naval District, the Nation's largest, and was to have retired on April 1 and become assistant to Joseph Wright, president of Zenith Radio Corp.

It was only a week ago that Illinois Gov. Otto Kerner proclaimed March 31 as Admiral Yeager Day and made him an honorary citizen of Illinois. Political, civic, business, and religious leaders of the Chicago area had planned a farewell tribute to the career officer on his retirement.

He is survived by his wife, Mary Jean, daughter of Mr. and Mrs. Roy Bailey of Salina, Kans. Roy Bailey was for many years editor of the Salina Journal. His stepmother, Mrs. Mabel Yeager, lives in Topeka, Kans.

Admiral Yeager will be greatly missed by his many friends and associates.

He will be buried this afternoon at Annapolis with full military honors.

CONSULAR CONVENTION WITH THE SOVIET UNION

Mr. CARLSON. Mr. President, as a member of the Committee on Foreign Relations, I had the opportunity to hear the testimony on the part of the proponents and opponents of the Consular Convention. We heard testimony from a number of witnesses in both open and executive sessions.

Based on the testimony taken, I am convinced there is much misunderstanding about the effect of the treaty among both the opponents and supporters of ratification.

This treaty was sought by Washington primarily to give the American Embassy in Moscow a better legal basis for protecting the large number of American tourists who travel in Russia. This treaty would secure rights for our Americans in the Soviet Union which they do not now have.

Under present Soviet law, Soviet citizens and foreigners alike can be held incommunicado for 9 months or more during investigation of a criminal charge.

The Consular Convention contains major concessions by the U.S.S.R. It specifies that U.S. officials will be notified immediately—within 1 to 3 days—when an American citizen is arrested or detained in the U.S.S.R., and it stipulates that these officials will have rights of visitation without delay—within 2 to 4 days—and on a continuing basis thereafter.

Ever-increasing numbers of Americans travel to the Soviet Union, and the number which encounters difficulties rise proportionately. Between 1962 and 1966, the number of Americans traveling to the U.S.S.R. rose by 50 percent to 18,000, while the number of Soviet travelers remained static, about 900 per year.

Since the convention was signed in 1964, more than 20 arrests or detentions of American citizens in the U.S.S.R. have come to our attention. In none of these cases have we been notified of the incident or allowed to visit the American within a reasonable period and certainly not within the time limits specified in this treaty.

Meanwhile, our own constitutional system and democratic society automatically provide Soviet travelers here with protections similar to those our travelers would obtain from the convention.

Without the protection of such an agreement, Americans have frequently been isolated in Soviet prisons for long periods and kept from contact with American Embassy consular officers.

No formal proposals or plans are pending for the opening of separate consular offices of either country in the other. If at a later date it is decided to be appropriate to open one outside the respective capitals, it would be the subject of careful negotiation on a strict quid pro quo basis. Such an office would probably involve 10 to 15 Americans in the Soviet Union, with the Soviets permitted to send the same number here.

In accordance with Secretary Rusk's statement before the Committee on Foreign Relations, we would plan to consult that body and the State and local officials of the community to be affected, before concluding such an agreement.

Although, as noted, such an arrangement would be reciprocal, the fact that the Soviet society is a closed one while the United States is open, and the fact that the U.S. citizens needing service and protection when traveling in the Soviet Union far outnumber Soviet citizens with like needs in the United States, indicate that the balance of advantage would be on our side.

Committee on Foreign Relations, be printed in the RECORD at this point.

There being no objection, the minority views were ordered to be printed in the RECORD, as follows:

MINORITY VIEWS

We do not concur with the recommendation of the Committee on Foreign Relations that the Senate give its advice and consent to ratification of the Consular Convention with the Union of Soviet Socialist Republics. We believe that the disadvantages of the convention for the United States are sufficiently grave to outweigh the advantages which are claimed for it.

Our concern relates principally to the provisions in the convention under which consular officers and employees of the sending state are given immunity from the criminal jurisdiction of the receiving state. This convention is the first to which the United States has been a party which provides for unlimited exemption from criminal jurisdiction for consular personnel. Previous consular conventions have provided for immunity from criminal jurisdiction for consular personnel with respect only to misdemeanors but not to felonies. We believe that if the provisions regarding immunity had not been included in the convention, the Soviet Union would not have agreed to it and that, in fact, these provisions were a principal Soviet objective. The testimony of witnesses from the Department of State has been contradictory on the question of whether the Soviet Union or the United States first proposed including these immunity provisions in the convention.

In any case, we believe that the extension of immunity to include felonies would open the way to espionage and other forms of subversion on the part of Soviet consular personnel. If this convention is ratified, and if the Soviet Union then establishes a consulate or consulates in the United States, the officers and employees of these consulates would be able to engage in espionage and subversion knowing that they will not be liable to prosecution but only to expulsion.

It is true that the establishment of a Soviet consulate or consulates would mean only a small increase in the number of Soviet officials with immunity from criminal jurisdiction (as of July 1, 1965, there were 249 Soviet officials and 150 dependents who enjoyed diplomatic immunity). We are convinced, however, that there is a predisposition on the part of Soviet officials to engage in espionage and subversive activities, a predisposition which is an important consideration regardless of the numbers involved. In this connection, it is important to recall the testimony of J. Edgar Hoover, Director of the Federal Bureau of Investigation, before a subcommittee of the Committee on Appropriations of the House of Representatives on March 4, 1965. In a statement inserted in the record justifying the appropriations being requested for the Federal Bureau of Investigation, Mr. Hoover said:

"In regard to the Communist-bloc espionage attack against this country, there has been no letup whatsoever. Historically, the Soviet intelligence services have appropriated the great bulk of official representation and diplomatic establishments in other countries as bases from which to carry on their espionage operations. Over the years, the number of such official personnel assigned to the United States has steadily increased."

In testimony relating to this statement during the March 4 hearing Mr. Hoover stated that "our Government is about to allow them [the Soviet Union] to establish consulates in many part of the country which, of course, will make our work more difficult." Mr. Hoover then inserted in the record of the hearing several other brief statements. The first read, in part, as follows:

"The methods used to collect the data sought by the Communist-bloc intelligence services are almost as varied as the types of data which they endeavor to collect. One of their mainstays is the collection of information—classified and otherwise—through espionage operations involving personnel legally assigned to official Soviet and satellite establishments in the United States. The focal points of these operations continue to be the United Nations and the Communist embassies, legations, consulates, and news or commercial agencies in our country. Such gathering of information is conducted by the Communist representatives using the legal cover of their diplomatic or other official status to cloak their spying activities.

"Historically, the Soviet intelligence services have appropriated the great bulk of official positions abroad, primarily using their official representatives and diplomatic establishments in other countries as bases from which to carry on their espionage operations."

A second statement related specifically to the question of new Soviet consulates. It read as follows:

"Long seeking greater official representation in the United States which would be more widely spread over the country, a cherished goal of the Soviet intelligence services was realized when the United States signed an agreement with the Soviet Union on June 1, 1964, providing for the reciprocal establishment of consulates in our respective countries.

"One Soviet intelligence officer in commenting on the agreement spoke of the wonderful opportunity this presented his service and that it would enable the Soviets to enhance their intelligence operations.

"In involving the great bulk of their official personnel in intelligence activity in one way or another, the Soviets utilize to the fullest extent possible any and all official means such as the United Nations, trade delegations, and the like, as transmission belts to carry additional intelligence personnel into this country."

More recently, on July 14, 1965, Mr. Hoover, reviewing the major phases of the operations of the Federal Bureau of Investigation during the past fiscal year, stated:

"The great majority of the 800 Communist-bloc official personnel stationed in the United States, protected by the privilege of diplomatic immunity, have engaged in intelligence assignments and are a dangerous threat to the security of the United States."

We believe that these statements of the chief investigative officer of the United States should be given serious consideration. It is also worth looking at the record of the activities of Soviet officials in the United States. According to information supplied by the Department of State, since 1946, 27 Soviet Embassy and consular officers and personnel in the United States have been arrested or expelled for intelligence activity.

These 27 included personnel assigned to the Soviet Embassy in Washington, the Soviet consulate general in New York (which was closed in 1948), the Soviet mission to the United Nations, and the United Nations Secretariat. In the same period, 13 diplomatic, consular, and international organization officials from Czechoslovakia, Hungary, and Rumania were expelled from the United States for intelligence activities.

There is another grave aspect to these immunity provisions and that is the chain reaction that will be set off if this convention is ratified. The provisions regarding immunity will then apply not only to Soviet consular personnel but may also apply to consular personnel of the 27 other countries with which the United States has consular conventions or agreements which contain a most-favored-nation clause. These 27 countries include 2 other Communist countries: Rumania and Yugoslavia. As a practical matter, as there are no Rumanian consulates in the United States at present, there would not be any immediate increase in the number of Rumanian official personnel enjoying complete immunity from criminal prosecution. If any Rumanian consulates were established in the United States in the future, however, their consular personnel would enjoy such immunity.

We are thus opposed to the convention because we consider the provisions granting unrestricted immunity from criminal jurisdiction to Soviet consular personnel to be unwise. We believe that these immunity provisions will encourage Soviet subversion by placing Soviet consular personnel outside the criminal jurisdiction of the United States. We also believe that it is not in the interests of the United States to extend this immunity to several hundred, perhaps as many as 400, persons which would be the case given the fact that most-favored-nation clauses are found in consular conventions and agreements the United States has with 27 other countries.

FRANK J. LAUSCHE.
BOURKE B. HICKENLOOPER.
JOHN J. WILLIAMS.
KARL E. MUNDT.

INDIVIDUAL VIEWS OF SENATOR THOMAS J. DODD (DEMOCRAT, CONNECTICUT) ON THE PROPOSED RATIFICATION OF THE CONSULAR CONVENTION WITH THE SOVIET UNION

I wish to express my opposition to the ratification of the Consular Convention With the Soviet Union.

I am opposed to it not because this clause or that clause has been poorly drawn, but on grounds of basic principle.

The signing of the consular convention will in no way serve to improve communications between the Soviet Government and the Government of the United States, because it is not the function of consulates to communicate or to participate in diplomatic conversations.

Nor is there any reason to believe that the opening of several American consulates in the Soviet Union and several Soviet consulates in the United States will encourage the development of friendlier relations between the Soviet and American peoples, or that it will persuade the Soviet leaders to call off the cold war.

On the contrary, it is my conviction that the establishment of Soviet consulates in this country will only serve to provide the Kremlin with an enhanced cold war capability and that it will, in the long run, only fan popular hostility toward the Soviet Union because of the incurable addiction for espionage of all Soviet diplomats.

The record of Soviet diplomatic espionage is so massive and consistent that I think it can properly be taken for granted that every Soviet diplomat and diplomatic employee must be considered a member of the Soviet espionage apparatus and a recruiter for this apparatus.

Mr. J. Edgar Hoover, Director of the Federal Bureau of Investigation, has underscored the seriousness of this problem in repeated statements over the years.

In a speech which I made on the floor of the Senate in October of 1962, I listed 17 Soviet nationals who had used their positions at the United Nations for purposes of espionage and who had been obliged to leave the United States when their activities had been exposed. Since that time the number of such cases has grown to 21. In addition to these Soviet nationals who had used their diplomatic status at the United Nations as a cover for espionage against the United States, a total of 12 Soviet nationals attached to the Soviet Embassy in Washington have similarly been obliged to leave the country when their espionage activities were exposed.

I am appending to this statement a summary list of Soviet nationals at the United Nations and Soviet nationals attached to the U.S.S.R. Embassy who have engaged in espionage against the United States.

It has been argued that the Consular Convention With the Soviet Union is in no sense exceptional because it is similar in substance to our consular conventions with other nations.

This statement is not entirely accurate because the provision in the convention which gives consular officers and employees immunity from criminal jurisdiction makes this the first convention which grants such unlimited exemptions to all consular personnel. Senators Lausche, Williams of Delaware, Hickenlooper, and Mundt in the minority views which they jointly presented, have dealt with this matter in considerable detail.

But even if it were true that the convention with the Soviet Union is similar in substance to our consular conventions with other nations, this argument would still ignore the fact that the other nations with whom we have consular conventions are not committed to our destruction, are not seeking to subvert friendly governments all over the world, and are not waging cold war against us.

More than one administration spokesman has made the point that those who oppose our policy in Vietnam for some strange reason fail to comprehend the fundamental nature of Communist tyranny and the nature of Communist aggression.

I, too, feel that the anti-Vietnam demonstrations that have taken place on our campuses reveal an appalling lack of comprehension of the basic facts about communism.

But the fault for this does not lie entirely with our educational system or with the indifference of our citizens to the facts of history.

To a very large degree, I believe that the lack of comprehension displayed by the many honest critics of our Vietnam policy stems from the persistent efforts, under both Democratic and Republican administrations, to gloss over the tyranny of communism, to ignore the Kremlin's persistent anti-American tirades, to minimize its subversive activity in other countries, to grant the Soviet regime respectability, and to encourage the illusory belief that the Soviet regime is just another civilized government whose philosophy happens to be different from ours.

To a large degree, this lack of comprehension has been encouraged by things like Khrushchev's invitation to visit this country, by our willingness to sweep the issue of Hungary under the rug at the United Nations, by muting the criticism of communism on Voice of America programs.

The consular convention which we are now being called upon to ratify is, in my opinion, an error of the same order—an error that blurs the differences between freedom and communism and that makes it easier for the Communist cadres on our campuses to incite the academic community against our policy in Vietnam.

I believe that we have nothing to gain from this consular convention, that it will not, by any stretch of the imagination, serve to bring about a true abatement of tensions between the Soviet Union and the United States, and that it will contribute significantly to the spread of popular befuddlement on the issue of Vietnam and on the cold war in general.

I am loath to oppose the administration on an issue such as this at so critical a period in history. But I would be untrue to my conscience and undeserving of any popular confidence if I were to mute my criticism on this issue in deference to the administration's attitude.

I, therefore, wish to go on record against the ratification of the consular convention and I would urge my colleagues to examine the record closely before they cast their final vote.

LIST OF U.S.S.R. EMBASSY PERSONNEL WHO HAVE BEEN DECLARED PERSONA NON GRATA BECAUSE OF ESPIONAGE ACTIVITY

Yuri Vasilyevich Novikov

Novikov entered the United States April 24, 1948, as an attaché of the Soviet Embassy, Washington, D.C. He subsequently held the position of second secretary and from 1950 through July 1952 acted as editor of the official publication of the Soviet Embassy, the Information Bulletin.

In April 12, 1951, Novikov, by meeting a source in Washington, D.C., was identified as the new Soviet principal in an espionage operation which had its origin in Austria in 1949. Novikov, on April 12, 1951, appeared at the designated place on the proper date, at the designated time, and gave the password previously agreed upon between the source and his Soviet espionage superiors in Austria.

The original principals in this operation in Austria were two naturalized citizens, Otto Verber and Kurt L. Ponger, who were brought back to the United States and upon entering guilty pleas, were, on June 8, 1953, sentenced for violation of the espionage statute.

Novikov operated the controlled source in the United States until April 22, 1952, and on 10 occasions sought classified material.

On January 14, 1953, Novikov was declared persona non grata by the Department of State in connection with his espionage activity. He departed the United States on January 19, 1953.

Igor Aleksandrovich Amosov

Amosov entered the United States February 17, 1952, as assistant Soviet naval attaché.

Amosov was the third Soviet principal in an intelligence operation directed by the Soviets from their naval attaché's office. He served in this capacity from June 7, 1952, until his departure in February 1954. Targets assigned by Amosov to the controlled source included radar developments, details of the latest cargo ships, manuals reflecting details of the latest electronic developments, and bombsight data. He paid the source a total of $2,000 for his services.

While the operation functioned under Amosov's control, he did not accept any material directly from the source. Amosov furnished instructions to the source in Washington, D.C., and the material was passed in the New York City area with the source following a set procedure of obtaining acknowledgment signals and, thereafter, delivering the material to a designated drop area. Amosov was declared persona non grata by the State Department on February 3, 1954, as a result of his activities in this case and he left the United States on February 7, 1954.

Aleksandr Petrovich Kovalev

Kovalev arrived in the United States October 8, 1950, as a second secretary of the Soviet delegation to the United Nations.

For approximately 2 years as assistant Soviet naval attaché in Washington, D.C., he had been operating a controlled source, obtaining from him material of intelligence significance. On April 19, 1952, the assistant Soviet naval attaché told the source that in the future, material obtained was to be microfilmed and the undeveloped film was to be delivered to the Soviets by means of a dead drop located in the New York area rather than through direct delivery to the assistant naval attaché. The source was told to park his car in a designated area in New York City at a designated time and to place a package wrapped in red paper therein so that it could be seen through the rear window in the event material was to be passed. An additional signal by way of marking a telephone directory in a New York restaurant was perfected to indicate to the source that the material delivered to the dead drop was picked up.

A trial run of this arrangement occurred in New York City on April 23, 1952, on which date Kovalev was observed in the immediate vicinity of source's car, which was parked in the designated area and in which was placed a package wrapped in red paper. Thereafter, the source deposited material in the dead drop and on April 24, 1952, Kovalev was observed making the predesignated mark in the telephone directory in the New York restaurant.

Material of intelligence significance was left by the controlled source in the New York dead drop area on October 1 and December 3, 1952, which material was retrieved by the Soviets. On June 7, 1952, the source was given by his Soviet principal in Washington $500 to purchase an electronic device for delivery to the Soviets and an additional $500 in payment for delivery of a microfilm reproduction of portions of a manual dealing with an automatic steering device for ships. The controlled source last heard from his Soviet principal on April 1, 1953, on which date he was told that a meeting scheduled for April 3, 1953, would not be held.

Kovalev was declared persona non grata by the Department of State for his actions in this case on February 3, 1954, and he departed the United States February 10, 1954.

Leonid Igorovich Pivnev

Pivnev entered the United States on March 17, 1950, as assistant Soviet air attaché.

On November 2 and 3, 1953, while on a tour throughout the Southwest, Pivnev purchased aerial maps of Tulsa, Okla., and vicinity and Dallas, Tex., and vicinity. Pivnev did not identify himself as a Soviet official when purchasing these maps.

In the spring of 1953, through a Washington businessman, he endeavored to utilize the businessman's address as a mail drop. He explained to the businessman that he would have mail delivered to him at the businessman's address, which mail was to be addressed to a fictitious person and which, upon receipt, was to be delivered by the businessman to him.

On March 24, 1954, he inquired at a Virginia aerial photographic concern as to the possibility of purchasing aerial maps of Chicago, Ill. He instructed the firm to seek such maps and agreed to pay approximately $8,000 for them. On that date he purchased 33 aerial photographs of Washington, D.C., and vicinity. Pivnev, in contacting this firm, identified himself as one "George." He did not indicate his official connection with the Soviet Embassy.

On May 3, 1954, he contacted a Washington, D.C., photographer, introducing himself as a Mr. George Tinney, a representative of a private firm desirous of purchasing aerial photographs of New York City at a scale of 1:20,000 to 1:40,000 feet. Photographs of this type were not commercially available. On May 13, 1954, he agreed to pay the photographer $700 to obtain the photographs. He advanced on that date the sum of $400 as partial payment.

On May 20, 1954, when meeting with the photographer for the purpose of obtaining the photographs, he was accosted by special agents of the Federal Bureau of Investigation on which occasion he identified himself. On May 29, 1954, the Department of State declared Pivnev persona non grata for his action, and he departed June 6, 1954.

Ivan Aleksandrovich Bubchikov

Bubchikov entered the United States December 1, 1954, as an assistant Soviet military attaché.

From July 1955 through May 1956, Bubchikov maintained contact with a naturalized American citizen of Russian origin who was employed as a sales engineer. In July 1955 he appeared at the sales engineer's residence

late in the evening and sought his cooperation in securing data concerning jet fuel, atomic submarines, and aeronautical developments. Bubchikov promised the engineer large sums of money; however, even though seemingly important information was furnished to him, he did not fulfill his promise of large payments. During the course of this operation it was featured by clandestine meetings, complex recognition signals, and a variety of "drop areas" in which the source deposited material for the Soviet.

In view of his activities in connection with the engineer, the Department of State, on June 14, 1956, declared Bubchikov persona non grata for engaging "in espionage activities incompatible with his continued presence in this country." He departed the United States June 24, 1956.

Yuri Pavlovich Krylov

Krylov entered the United States May 4, 1955, as assistant Soviet military attaché, Washington, D.C.

In April 1956, Krylov was introduced to the manager of a Washington electronics supply house. Through the Washingtonian, who cooperated with the Federal Bureau of Investigation Krylov purchased hard-to-get electronic equipment.

In August of 1955, Krylov contacted an employee of the Atomic Energy Commission and attempted to obtain from him information concerning the technical aspects of nuclear power. In December 1955, he contacted a former commissioner of the Atomic Energy Commission in an effort to develop information concerning atomic energy for space heating. In February 1956, he attempted to purchase 26 unclassified films on peacetime atomic energy.

In February 1956, he endeavored to join the Society of American Military Engineers and to subscribe to the publication "The Military Engineer," which contained information concerning U.S. fortifications.

On January 14, 1957, the Department of State declared Krylov persona non grata as a result of his activities. He departed the United States January 26, 1957.

Gennadi Fedorovich Mashkantsev

Mashkantsev served as an employee of the consulate division of the Soviet Embassy, Washington, D.C., handling repatriation matters. He arrived in the United States October 25, 1956.

On March 12, 1957, he appeared at the home of Petr Pirogov, Russian flyer who, with Anatoli Barsov, defected to the United States in Austria in 1948. Barsov redefected to Russia in 1949 and, according to Vladimir Petrov, the former Soviet intelligence officer who defected in Australia, after lengthy interrogation was executed.

Upon visiting Pirogov, Mashkantsev delivered to him a lengthy handwritten letter purportedly from Barsov. The letter petitioned Pirogov to return to the U.S.S.R. Examination of the letter established that it was not in the handwriting of Barsov but was a carefully prepared simulation. As a result, on April 17, 1957, Mashkantsev was declared persona non grata for "improper activities directed toward inducing return to the Soviet Union of persons who have sought asylum in the United States." Mashkantsev departed April 25, 1957.

Nikolai Ivanovich Kurochkin

Kurochkin entered the United States, April 4, 1956, as a third secretary of the Soviet Embassy, Washington, D.C.

In the fall of 1956, Charles T. Beaumet, a professional writer, contacted the Soviet Embassy seeking statistics as to hosiery production in the Soviet Union. He met Kurochkin, who supplied the desired statistical data and, after a series of meetings, informed Beaumet that if he would obtain military information to be incorporated in articles Kurochkin was writing for Russian military journals, he would share with him his proceeds from the articles. Thereafter, Beaumet, ultilizing the entree he enjoyed as a reporter, obtained training and field manuals of the U.S. Army which he turned over to Kurochkin. For the various manuals delivered to Kurochkin, Beaumet was paid approximately $450. Included among the manuals sought by Kurochkin were two which were classified. The classified manuals were not delivered to the Soviet.

On June 6, 1958, Kurochkin was declared persona non grata for engaging in highly improper activities incompatible with his diplomatic status. He departed from the United States on June 11, 1958.

Evgeni Alekseevich Zaostrovtsev

Zaostrovtsev entered the United States August 2, 1957, as a second secretary of the Soviet Embassy, Washington, D.C.

On February 23, 1958, Zaostrovtsev met a State Department Foreign Service officer in training, at a social function. There followed intensive efforts on the part of Zaostrovtsev to cultivate the State Department employee for intelligence purposes. Between February, 1958, and February 6, 1959, he met with the State Department employee on 15 occasions. He obtained from the State Department employee material concerning the training program of Foreign Service officers and endeavored, without success, to obtain classified documents from State Department files concerning the political and economic affairs in the area of the Government employee's future foreign assignment. He paid the Government employee $150 for information furnished to him.

As a result of his dealings with the State Department employee, the Department of State on May 13, 1959, made an informal request of the Soviet Embassy for Zaostrovtsev's recall. Zaostrovtsev departed the United States on May 15, 1959.

Gennadiy G. Sevastyanov

Gennadiy Sevastyanov arrived in the United States in March 1959 to serve as an attaché in the cultural division of the Soviet Embassy in Washington, D.C. On April 6, 1963, an individual whom the Russians identified as "Vladimir Gridnev" arrived in the United States as a temporary employee of the Soviet Embassy. Actually "Gridnev" was not the man's true name. He had been brought to the United States under this pseudonym to assist in the attempted recruitment of his brother, a Soviet defector now employed by the Federal Government, as a Russian spy.

Under the eye of Sevastyanov, "Gridnev" approached his brother outside his brother's home in a suburb of Washington on the night of April 28, 1963. Sevastyanov also stood by while meetings were held between the brothers on April 30 and May 2, 1963; and he attempted to obtain details of the work which "Gridnev's" brother was performing for the Federal Government as well as to recruit him as an espionage agent.

"Gridnev" left the United States early in May 1963. His brother held one other meeting with Sevastyanov—on the night of June 13, 1963. "Gridnev's" brother cooperated fully with the FBI following his initial contact by the Soviets on April 28, and FBI agents made motion pictures, as well as still photographs, of the meetings between the three men on April 30 and May 2.

Sevastynanov was declared persona non grata by the U.S. State Department on July 1, 1963.

Boris V. Karpovich

On January 7, 1965, Boris V. Karpovich was declared persona non grata by the U.S. Government for conduct incompatible with his diplomatic duties and he departed the United States on January 12, 1965. (See p. 72 of Mr. Hoover's testimony, March 4, 1965, copy attached.)

Stefan M. Kirsanov

On June 2, 1965, Kirsanov was declared persona non grata by the U.S. Department of State for "activities incompatible with his diplomatic status." Kirsanov and his wife departed the United States June 10, 1965, for Russia.

LIST OF SOVIET U.N. REPRESENTATIVES AND SOVIET U.N. EMPLOYEES WHO HAVE ENGAGED IN ESPIONAGE AGAINST THE UNITED STATES

Vassili Molev

While attached to the Soviet delegation to the United Nations, in 1953 (handling maintenance, purchase of supplies and similar matters) Vassili Molev met Boris Morros on a date and at a time and place previously designated by Morros' Soviet intelligence superiors in Austria. Molev accepted from Morros a report prepared in New York by Jack Soble and given by Soble to Morros in accordance with instructions from their Soviet superiors. Photographs, both still shots and motion pictures, of this meeting were taken by FBI personnel. Immediately following the arrest of Jack Soble on espionage charges on January 25, 1957, the U.S. Department of State declared Molev persona non grata. Molev at that time was employed (in a similar capacity) by the Soviet Embassy. He left the United States on January 28, 1957, en route to Russia.

Mikhail Nikolaevich Svirin

Mikhail Nikolaevich Svirin, a Soviet assigned to the Soviet U.N. delegation from August 1952 to April 1954, was identified by Yuri A. Rastvorov, a former Soviet intelligence officer, as a member of the Ministry of Internal Affairs and a very experienced intelligence officer. Svirin was also identified by Reino Hayhanen a former Soviet intelligence agent. On two occasions in January and February 1953, Svirin was observed in the area where Boris Morros was scheduled to meet with his Soviet superior. Morros subsequently met Vassili Molev on March 3, 1953, at the scheduled meeting place.

Maksim Grigorievich Martynov

Maksim Grigorievich Martynov last entered the United States on November 3, 1954, as a member of the Soviet representation to the U.N. Military Staff Committee. In August 1954 a highly placed Army officer in Germany was introduced to a Soviet under clandestine circumstances in the Soviet sector of Berlin. The officer did not discourage the Soviet's approach and meetings in New York were arranged. A code phrase was established for recognition purposes. The New York contact turned out to be Martynov. On two occasions, a special agent of the FBI, made up to resemble the Army officer, met with Martynov. On the second occasion January 15, 1955, FBI agents, with State Department permission, accosted Martynov, who identified himself, but claimed diplomatic immunity. On February 21, 1955, the Department of State declared Martynov persona non grata for the above activity and he departed the United States February 26, 1955.

Aleksandr Konstantinovich Guryanov

Aleksandr Konstantinovich Guryanov entered the United States March 26, 1955, as an employee of the Soviet delegation to the U.N. On April 25, 1956, he was declared persona non grata by the U.S. Department of State as a result of his implication in the improper repatriation to the U.S.S.R. of five Soviet seamen who left the United States on April 7, 1956. The seamen were members of the crew of the Soviet tanker *Tuapse* who previously defected to the United States. The Department of State informed the Soviet Government that Guryanov's activities made his presence in the United States no longer desirable and he departed May 9, 1956.

Boris Fedorovich Gladkov

Boris Fedorovich Gladkov entered the United States December 15, 1953, as naval

adviser to the Soviet representation in the Military Staff Committee of the UN. In January 1955, Gladkov, at a cocktail party, met a sales engineer for a New York marine engineering firm. He cultivated the sales engineer and held a number of clandestine meetings with him. Through the engineer, on June 14, 1955, he received two unclassified publications dealing with marine boilers. During his meetings with the sales engineer which continued on a regular basis through June 1956, Gladkov furnished the engineer $1,550 for services rendered. On June 22, 1956, the Department of State declared Gladkov persona non grata. He departed July 12, 1956.

Rostislav E. Shapovalov

Rostislav E. Shapovalov entered the United States September 27, 1955, as a second secretary of the Soviet delegation to the U.N. On May 7, 14, 17, and 21, 1956, he contacted a Russian emigre in New York and urged him to return to Russia. The emigre, Michael Schatoff, a former officer in the Russian Army, was a classmate of Shapovalov at a New York university. On August 20, 1956, the Department of State declared Shapovalov persona non grata for his activities in attempting to induce Schatoff to return to the Soviet Union. Shapovalov departed the United States September 12, 1956.

Viktor Ivanovich Petrov

Viktor Ivanovich Petrov arrived in the United States February 17, 1953, as a translator employed at the U.N. Secretariat. According to the FBI, Petrov, during 1955–56, established contact with an aviation draftsman for the purpose of seeking classified information concerning U.S. military aircraft development. On August 20, 1956, the U.S. representative to the U.N. brought the matter to the attention of the Secretary General, who agreed to dismiss Petrov. Petrov departed the United States on August 23, 1956.

Konstantin Pavlovich Ekimov

Konstantin Pavlovich Ekimov entered the United States October 17, 1955, as second secretary of the Soviet delegation to the U.N. Ekimov was accused before the Senate Internal Security Subcommittee of participating in the abduction of Tanya Chwastov, aged 2, and American-born daughter of a Russian refugee. He took part in dockside arrangements which enabled Alexei Chwastov to leave the United States with his infant daughter. This move was against the wishes of the child's mother who remained in the United States. Ekimov was declared persona non grata by the Department of State on October 29, 1956, and he departed the United States on November 30, 1956.

Vladimir Arsenevich Grusha

Vladimir Arsenevich Grusha was formerly assigned as first secretary of the Soviet delegation to the U.N. On March 5, 1957, Grusha had a rendezvous with a Ceylonese employee of the U.N. Secretariat, Mr. Dhanapalo Samarasekara, in the latter's automobile, after Mr. Samarasekara had been observed entering the offices of the Ceylonese delegation and extracting certain papers from a file cabinet. Based on information developed by the FBI, the Department of State declared Grusha persona non grata on March 25, 1957, and he departed from the United States on April 10, 1957.

Kirill Sergeevich Doronkin

Kirill Sergeevich Doronkin arrived in the United States March 12, 1956, to serve as film editor, radio and visual division of the Department of Public Information, U.N. Secretariat. In October 1958 special agents of the FBI observed a clandestine meeting between Doronkin and a source that had been recruited for the specific purpose of obtaining aerial photographs of the Chicago area. The source reported to the FBI that the package which he turned over to Doronkin at this meeting contained the requested aerial photographs. The U.S. mission to the U.N. delivered a note to the Secretary General of the U.N. on January 15, 1959, requesting Doronkin's dismissal from the U.N. Doronkin's contracted term of employment terminated March 3, 1959, and he was not reemployed by the U.N. He departed from the United States March 11, 1959.

Vadim Aleksandrovich Kirilyuk

Vadim Aleksandrovich Kirilyuk arrived in the United States September 11, 1958, as a political affairs officer employed by the Department of Trusteeship and Information for Non-Self-Governing Territories, U.N. Secretariat. During the period from June through September 1959, Kirilyuk met with an American citizen in a clandestine manner on five occasions. On these occasions he requested data concerning cryptographic machines and instructed the American to seek employment with a vital U.S. Government agency. Kirilyuk's meetings with the source on August 28, 1959, and on September 18, 1959, were observed by special agents of the FBI. The Secretary General of the U.N. was informed of Kirilyuk's espionage activity on December 17, 1959. On January 7, 1960, the Soviet delegation to the U.N. was advised of Kirilyuk's activities, whereupon Kirilyuk and his family left the United States on January 10, 1960.

Igor Y. Melekh

Igor Y. Melekh, a Soviet national was assigned to the U.N. Secretariat in October 1958. According to the FBI, Melekh asked a New York freelance medical illustrator, Willie Hirsch, to provide intelligence data such as a map of Chicago showing military installations. Melekh and Hirsch were indicted by the Federal grand jury in Chicago on October 27, 1960, and both were placed under arrest by the FBI on the same day. They were charged with three counts including espionage and conspiracy. Melekh claimed diplomatic immunity; however, this was denied by the courts and he was released under $50,000 bond. On March 24, 1961, a U.S. district court ruled that, if Melekh departed from the United States by April 17 and if the Attorney General moved for dismissal of the indictment, the court would dismiss as to both defendants. Melekh left the United States for the Soviet Union on April 8, and the indictments against both Melekh and Hirsch were dismissed on April 11, 1961.

Yuri A. Mishukov and Yuri V. Zaitsev

Yuri A. Mishukov was employed as a translator by the U.N. on November 11, 1957. Yuri V. Zaitsev was employed on August 9, 1961, as a U.N. political and security council affairs officer. On September 15, 1962, the FBI disclosed that Mishukov and Zaitsev had established an espionage arrangement with an American citizen and between June and August of this year had paid him $3,000. Two days after the Justice Department made its announcement, the U.N. announced that Mishukov had left for Moscow last July 5 and Zaitsev had done so August 7.

Eugeni M. Prokhorov and Ivan Y. Vyrodov

Both Eugeni M. Prokhorov and Ivan Y. Vyrodov were members of the permanent mission of the U.S.S.R. to the U.N. On September 28, Prokhorov and Vyrodov were apprehended by FBI agents in the act of receiving classified information concerning the U.S. Navy from Y1c Nelson Cornelius Drummond. They were released after establishing their identity. On September 29 the U.S. delegation to the U.N. demanded that the Soviet delegation expel Prokhorov and Vyrodov.

Ivan D. Egorov

On July 2, 1963, FBI agents arrested two persons in New York City and two persons in Washington, D.C., on charges of conspiring to spy for Russia. The pair arrested in New York City were Ivan D. Egorov, an employee of the Office of Personnel, United Nations Secretariat, and his wife, Aleksandra I. Egorova. Charges against these two were dismissed on October 11, 1963, contingent upon their immediate departure from the United States. At the same time, the Soviets released the Reverend Walter Ciszek, a Catholic priest, and Marvin Makinen, a college student, both of whom had been in prison in Russia.

The pair arrested in Washington, D.C., on July 2, 1963, were identified as Robert K. Baltch and Joy Ann Baltch. Actually, these were not their true names.

Gleb Pavlov, Yuri Romashin, and Vladimir Olenev

On the night of October 29, 1963, John W. Butenko, an American engineer, was arrested by FBI agents in New Jersey after delivery to Gleb Pavlov of an attaché's case containing detailed documents of military interest. Also arrested was Igor A. Ivanov, an employee of Amtorg Trading Corp., who was accompanying Pavlov.

Yuri Romashin had served in countersurveillance capacity during the clandestine meeting between Pavlov and Butenko on the night of October 29, 1963. Vladimir Olenev had previously accompanied Pavlov during meetings with Butenko. These three men were members of the Soviet mission to the United Nations and were declared persona non grata by the U.S. State Department on October 30, 1963. They departed from the United States on November 1, 1963.

Butenko and Ivanov were convicted on December 2, 1964, on charges stemming from this espionage plot.

Mr. LAUSCHE. Mr. President, in conclusion, we want peaceful coexistence. This Congress has tried to achieve it. We have shown a charitable and eleemosynary attitude toward people all over the world.

It is argued that Russia has let up on its perpetuation of the tensions. Can anyone point out tangible evidence where that lessening has occurred? I would like to hear it. I have tried to find it. I have searched for it. But instead of finding it, every word that comes to me indicates an avowed, unrelenting, eternal purpose to destroy our country.

Mr. President, I wanted to vote for this Consular Convention, but neither my reasoning, nor my intuition, nor the promptings of my soul would permit me to do so. I will vote against the convention.

Mr. SCOTT. Mr. President, I ask unanimous consent that an editorial of the Wall Street Journal, which puts the Soviet-American Consular Convention in proper perspective, be printed in the RECORD.

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

[From the Wall Street Journal, Mar. 14, 1967]

THE WRONG TARGET

The Senate was wise, we think, to reject an amendment intended to cripple the Soviet consular treaty, and it will also be wise to reject further proposed impediments.

The treaty would allow each nation to open consular offices in the other's chief cities, supplementing the embassies in capitals. This would give Americans traveling in the Soviet Union better access to the protections U.S. officials can offer, which is clearly a gain for U.S. citizens.

There has been complaint that Russian consulates in the U.S. would facilitate Soviet espionage. But since we would be trading listening-posts in our open society for listen-

ing-posts in their closed one, the balance would again seem to favor our side.

In other words, here is one treaty which shows a profit for the U.S. Yet some members of the Senate have offered amendments and reservations designed to scuttle the pact. The most notable is a proposal which would bar the treaty's implementation while the Soviets continue to supply arms used against U.S. troops in Vietnam.

It's an approach with a nice patriotic sound, and at first hearing it even has a logical ring. The ring goes off key, however, the moment someone asks just how such a course would advance the best interests of the U.S. Certainly it would not stop the flow of Soviet arms or yield any other benefit we can think of.

The treaty is part of President Johnson's campaign to normalize relations with the European Communist nations. Ultimately, the U.S. must seek to live as normally as possible with these nations despite their alien ideology and the Soviet record of treachery; the alternative is to prepare for a nuclear showdown. Steps toward more normal relations might also have some slight tendency to aggravate splits in the Communist camp.

This "bridge-building" contains manifest dangers. Each part of it must be carefully examined on its merits. The Senate would serve a real purpose in scrutinizing, say, the outer space treaty for any evidence of booby traps.

On the consular treaty, though, the Administration seems to be on solid footing while the pact's foes have their heads in the clouds. It hardly serves the U.S. interest to sabotage a deal in its own advantage.

Mr. HANSEN. Mr. President, I have made two brief comments on the Consular Convention before us and I hesitate to again inflict my views on the Senate. However, there are several points raised in my letters which I feel should be answered on the Senate floor. I wish also to place myself on record as to the reasons for the position I shall take on this convention.

I want to make clear at the outset that as a very junior Member of the U.S. Senate, I am certainly not an expert on foreign policy. This, indeed, is my first involvement in treaty legislation.

I shall express opinions based on the best information obtainable. They will be opinions based on correspondence I have exchanged with the Department of State, numerous telephone conversations with that Department, personal conversations I have had with Secretary Rusk, and certainly on the views of my constituents contained in correspondence delivered by the pound to my Senate office.

My views and opinions are based also on the very excellent speeches which Senators on both sides of the aisle and on both sides of this issue have delivered during the more than 2 years the Consular Convention has been pending before the Senate.

One's attitude toward the Consular Convention must, of necessity, be predicated on certain major premises and assessments. It seems apparent that while the Soviet Union can be expected to continue supporting forces in its ideological corner, Russian leaders are carefully avoiding a major confrontation with the United States.

In a no-holds-barred contest with Red China for leadership of the Communist world, no one should expect Russia to transform her social order for the sake of a Consular Treaty. To predicate all contracts between our two countries entirely on the basis that Russia must first cease being Communist is to close the door on any hope for even limited agreements of mutual benefit.

CHANGING COMMUNISM

Communism violates too dramatically the aspirations of man, the realities of economics and the existence of a Supreme Being, to survive as a system. I believe that we are seeing today in Europe the beginning of the end of Communism, as anything more than a defunct ideology of revolution. The end of the process is many years away, but communism is losing its grip on the millions it once held so tightly in its fist.

I have no doubt that with the passage of time, the Soviet system itself will become less militant and more responsive to the needs of its own people. I think history indicates and contemporary events substantiate the fact that Russian communism will draw inward to save itself. The Soviet Union will come to think of itself as a nation of people and consumers, rather than as the faunt of a rapacious philosophy of international conquest. But that time if far in the future.

As we deliberate this consular convention, we must consider today's world and today's priorities—priorities dictated by the war in Vietnam, the threat of war elsewhere, and the general hostility of communism. These are facts at hand—not theories or inevitabilities in the distance. We must judge effects on the present before we commit ourselves entirely to the hopes of the future.

THE WAR AND RUSSIA'S INTEREST

Some Senators speak of the possibility of talks involving the United States, Moscow, Hanoi, and possibly Peking, as a means of bringing peace to Vietnam.

What evidence is there from any reliable source that the Communist world is less than delighted to have the United States bogged down in a bloody and costly land war in Asia?

Despite its clear reluctance to risk an Armageddon with the United States, there is no question that to most of the Communist world, the United States is the "main enemy," the largest single obstacle between the Communist world and its massive expansion.

Why, then, would the Soviet Union take pity on the United States and honestly seek an end to the war? What would Russia possibly gain by pulling America's chestnuts out of the fires of southeast Asia?

Unless we were to cave in at the conference table and hand South Vietnam over to Hanoi, no future peace would serve communism's interests so well as the present war.

The Soviet Union may be in the process of changing, but today as we discuss this treaty she is still an enemy who has sworn to bury us. Change is far in the future although, as I have said, I think it is coming.

From Russia's standpoint, nothing so good as Vietnam has existed since Korea. No Russians, if we may believe reports, have died in Vietnam.

With a contribution that is but a fraction of America's commitment of men, money, and machines, the Soviet Union is keeping a half-million American troops pinned down in Asia.

With a modest logistics commitment, she is driving a second-rate Asian dictator to naked aggression across the boundaries of a nation that has had sovereignty longer than 43 of the members of the United Nations.

The Soviet Union is fighting a war by proxy against the United States and South Vietnam. In an earlier age, we would have responded in kind. Today we make treaty talk. We ought to remember the admonition of Carl Schurz:

Nothing that is wrong in principle can be right in practice.

The preamble to the consular convention speaks of the signators as seeking to strengthen friendly relations. It is a denial of reality to presume that this treaty will strengthen friendly relations while American boys are being killed with Russian weapons in a war that Russia could stop.

None of us believes that the Soviet Union will stop being Communist for the sake of a treaty with the United States. But there are different brands of communism, not all of which seek actively to control other nations or actively underwrite wars of aggression.

If the people of the Soviet Union wish to live in a Communist society, that is their business. But when they seek to export communism through the use of terror, subversion, sabotage, and open war, then it becomes the legitimate concern of all nations.

CHARGES PRO AND CON

Mr. President, a number of statements and allegations with respect to specific provisions of the treaty have been made on the Senate floor and in the letters that have come to my office. These, I feel, compel a reply.

In my own research on the convention, I have turned to the public record, the Library of Congress, various diplomatic histories of the United States and the Department of State. Despite what research I have done, I am not attempting to represent myself as a foreign policy expert. I am far from it. But I have made a sincere effort to develop a few points which I think are pertinent to our debate. Some of these points would seem to militate for, others against, ratification of the Consular Convention.

It has been alleged on the Senate floor that we are attempting establishment of consulates and the attendant protective covenants for our citizens by treaty rather than by Executive order because the Soviets would need the weight of treaty law in changing their domestic law to allow for early access to incarcerated Americans.

This allegation, I believe, is at variance with the facts.

I cite as reference both the State Department and the Library of Congress, which say, in essence, that Soviet criminal law, as spelled out in the Basic Principles of Criminal Procedure, allows for up to 9 months' isolation of persons under investigation. This is an allowable

maximum. It is designed to give Soviet authorities maximum latitude in isolating the investigated party. But not all of this latitude need be consumed. The Soviet authorities may, at their discretion, grant access at any time, to any person being held in pretrial custody. Access to detained foreigners is less a matter of Soviet law than of Soviet willingness to grant to others the same courtesies, civilities and standards of humane conduct which Soviet nationals can enjoy in almost every Western country.

I might add parenthetically that this comes as a rather interesting commentary on the often-discussed question of legislating morality.

As the State Department pointed out in a letter to me under date of March 9, 1967:

> Since this convention was signed in 1964, we have been granted access to each American who has been held more than a few days.

This small, but significant concession by the Soviet Union comes, I might point out, prior to ratification and the effectuation of the Convention which we here discuss.

It has been alleged that a new treaty is not necessary because of covenants agreed to in 1933 by President Roosevelt and Soviet Foreign Minister Litvinov. I believe that this assertion is at variance with facts, which make the premise tenuous on at least two points.

As I understand the issue, Soviet Foreign Minister Litvinov, in a letter dated November 16, 1933, told President Roosevelt that the Soviet Union was prepared to negotiate a consular convention containing provisions for access to American citizens detained in Russia. The consular convention of that era was to come immediately after establishment of diplomatic relations between the two countries and was to contain provisions analogous to a German-Russia treaty in force at that time. This was fine as far as it went, except that the consular treaty was never negotiated in accord with the Roosevelt-Litvinov agreement.

But even had the agreement of 1933 been consummated, it would have been a moot point. In the German-Russian treaty the access provisions became effective upon the termination of the investigation. According to the State Department, both the Soviet Union and Germany accepted this interpretation of the agreement. The Germans saw their people after they had been investigated, which could take up to 9 months.

The treaty before us specifies that U.S. officials will be notified immediately; that is, within 1 to 3 days, when an American citizen is arrested or detained by the U.S.S.R. It stipulates that these officials will have rights of visitation without delay, within 2 to 4 days, and on a continuing basis thereafter.

It has been alleged that this convention will, or could, compromise the rightful position of the United States in opposition to recognition of the forced incorporation of the Baltic States into the Soviet Union. Much as I sympathize with the plight of the brave people of Latvia, Lithuania, and Estonia, I do not believe that their fears in this area are justified.

The Department of State has assured me in a letter, which I shall ask to have printed in its entirety, that—

> As a practical matter, if the Soviet Union were divided into two or more consulate districts, the Soviets would regard the Baltic States as belonging in one of the districts. We would not wish to try to exclude the Baltic States from a consular district, for we would wish to continue to attempt to protect Americans who might be arrested there, as we do now through the Soviet Ministry of Foreign Affairs. In any case, this or any other arrangement we might contemplate, would have no bearing on our policy of nonrecognition of the forcible annexation of the Baltic States by the Soviet Government. We have no plans to establish any consulates in the Baltic States.

I have been given other oral assurances that the U.S. Government has absolutely no intention of altering its position of nonrecognition of the enslavemet of the Baltic States. Nothing in the consular convention would change this policy, although as a practical matter, the American Government might make efforts to represent American citizens incarcerated by Soviet authorities in the Baltic States.

It has been alleged that provisions of the treaty favor the Soviet Union over the United States, particularly with respect to immunity from arrest, which would be enjoyed by consular officials. This again, as I am sure no Senator would disagree, is at variance with the facts. All provisions of the treaty are reciprocal. As a practical matter, however, the United States will stand to gain more than the Soviet Union through the provisions of access to its citizens.

It has been alleged that the United States would be in a position of having to grant immunity upon request to consular officials from any country having a most-favored-nation clause in a treaty with the United States. Again, I quote the Department of State:

> Countries having most favored nations clauses in treaties with the United States would be able to request immunities with consular offices only if they are willing to grant us reciprocal rights. Therefore, any step in this direction would be on the basis of mutual agreement. Further, if for some reason, we were unwilling to grant these immunities, we would insist on renegotiation of the treaty with the country concerned or if necessary we could abbrogate the most favored nations clause in this treaty.

The letter from which I quoted goes on to make the point that Yugoslavia is the only Communist country which has consulates here and with which we have a treaty containing the most-favored-nation clause. Yugoslavia has 13 consular officials in the United States and there is no indication that the Yugoslavs would be at all interested in entering into a mutual immunity arrangement. But even if they did, their consular people are known and identified by the FBI. They would be only a part of nearly 10,000 diplomatic people in the United States already enjoying full immunity.

For the record, Mr. President, I ask unanimous consent in this context that there be printed at the conclusion of my remarks, a paper listing the nations with which we have most-favored-nation agreements, their total consular personnel, and other data.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. HANSEN. Mr. President, it has been alleged, particularly in a cleverly executed, but misleading comic strip distributed by Liberty Lobby, that the consular convention "clearly provides for the opening of consulates." The article cited as the authority for this statement is article II, but if the gentlemen of Liberty Lobby would again read the treaty they would find that this article contains no such provision. Nor does any other in the treaty. To quote the State Department again:

> The convention does not authorize, propose, suggest, provide for or require the opening of a single consulate in the USSR or a single Soviet Consulate in the US. It does not permit the Soviets to send a single extra person to this country, nor does it let us send anyone to the USSR.

Consulates, if and when there are any, will be the subject of separate negotiation.

It has been alleged, particularly in correspondence, that there is something immoral about American citizens wishing to travel to the Soviet Union. Implicit in this allegation is the inference that the travelers are either less patriotic than those who stay at home, that they are insipid enough to be seduced by the Soviet system, or that they are pink enough to defect. This is unvarnished nonsense.

I have lived in the pleasant company of American citizens for 54 years, and I have a high regard for their patriotism, their motivation, and above all, their intellectual curiosity. I also regard them as the finest salespeople in the world, not only in the context of the economic system which is emulated in every free country, but as salesmen of their ideas and their beliefs; in selling their God and their ideals; and in selling Americanism.

I do not fear the effects that will flow from American travel to the Soviet Union, in terms of ideas or exposure.

And, conversely, Mr. President, I do not fear the effect travel in the United States will have on the Soviet tourist. I have confidence in America's ability to proselytize "by osmosis"—and by that, I mean to impress positively and constructively those from other lands who visit her shores.

Americans cannot fully appreciate the spiritual experience of an Eastern European who stands for the first time on American soil. To be able, for the first time in his life, to say what he thinks, without fear of imprisonment; to be able to take any job he is capable of performing and to leave that job at his option; to enjoy the right of privacy in thought and opinion. This is what freedom—by American definition—means. I am not fearful in the least of its wondrous effect upon the traveler who first experiences it on American soil.

It has been alleged on the Senate floor that the convention is a license to spy,

favoring the Soviet Union. I think this hyperbole is certainly unfair to our own intelligence people. It casts doubt upon the loyalty and integrity of those in government who, rightly or wrongly, as history may determine, see in this treaty an effort toward giving us a world in which we may live in peace and freedom.

It also disregards the obvious fact that overt espionage is a double-edged sword. I think it fair to assume that our consular officials could learn much about life in that broad expanse of Russia beyond the environs of Moscow. They are a full match for the Russians.

Consider that our open society, believing that truth and information is our best protection, prints more of its vital information than most nations secure under lock and key.

I am informed by those who have had some experience in the intelligence business that deep agents, which Russia certainly has here, and which I hope we have over there, do not work out of embassies or consulates.

The point has been made in Senate discussion that the immunity from arrest provisions of the consular treaty go too far. First, if we were to accept the premise—which I do not—that ratification at this time is in our national interest, it would follow that we do not wish to subject those staffing our consulates to the threat of unwarranted seizure, or incarceration. I would want them to have all possible protection.

Second, as has been pointed out also, both the British and Japanese Governments have negotiated consular conventions with the Soviet Union, with immunity provisions going beyond those in the United States-U.S.S.R. Consular Convention. The provisions of the United States-U.S.S.R. agreement are no longer entirely unique.

HAD HOPED TO SUPPORT TREATY

At one point, Mr. President, I had hoped to be able to support this convention. There are strong and convincing arguments for it. But for the war in Vietnam, I believe I would have supported it.

I find little in the language or provisions of this convention to which I can object. But to bring this convention before the Senate and the American people at what must be the most inopportune time in our history defies logic and reason. Beyond the unfortunate choice of timing, my objections to this treaty stem from the effect that it could have on trade between our two countries, and the effect that this trade could have on Russia's ability to wage war in Vietnam.

In this context, I have written Secretary of State Rusk to ask that he reject the proposed loan of American dollars for construction of an automobile plant in the Soviet Union. This loan for some $50 million would provide sophisticated machine tools that could be used in making cars—or military vehicle components. I intend to have more to say on this matter at a later date. But for the time being, I ask unanimous consent that my letter to Secretary Rusk and his reply be printed in the RECORD at the conclusion of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibits 2 and 3.)

Mr. HANSEN. Mr. President, it is also worth considering that coming in wartime, this convention will deal a powerful psychological blow to our fighting men and allies in Vietnam. It will indicate to the so-called third world, whose leaders have not shown the capacity for sophisticated comprehension of big-power diplomacy, that the United States regards itself as being at peace and at war with the same power at the same time. This is an anomoly the delicacy of which will be understood in few capitals.

Were our confrontation with the current pace setter of international communism confined to the rhetorical, commercial, and theoretical arena, I could see definite advantages to the consular convention. But the area today is neither theoretical nor tranquil. It is bloody, costly war, and Russia has the ability to stop the war—if she genuinely desired the friendly relations alluded to in the preamble to this convention.

As I asserted on the Senate floor on March 13:

> I appreciate the importance of better understanding among the nations of the world. I think that were it not for the fact that we are today involved in this conflict, there is every argument and every reason, and there should be every desire on our part, to enter into this sort of arrangement; but this is not the time. The priorities are set by the situation in Southeast Asia.

Mr. President, the great international question is not one of "better understanding" between ourselves and Russia. They understand us only too well.

The questions which divide the Soviet Union and the United States are crucial as any in history. The issues are not just aid and trade; or economic competition; they are the most fundamental questions of peace and war; of aggression and containment. They are questions of the importance of the human being; of the relationship of the government to the governed; of freedom and captivity; and of the existence of a Supreme Being in our universe.

These differences have built an unbridgeable chasm of action and philosophy between international communism and American democracy. No consular convention can, or should be able to, erase these differences to bridge this chasm.

EXHIBIT 1

List of States having Most-Favored-Nation Provisions in Agreements with the United States:

Argentina	Latvia
Austria	Liberia
Belgium	Mexico
Bolivia	Morocco
Colombia	Nepal
Costa Rica	Norway
Cuba	Paraguay
Denmark	Philippines
Estonia	Rumania
Ethiopia	Saudi Arabia
Finland	Spain
France	Sweden
Germany	Switzerland
Greece	Thailand
Honduras	Yemen
Iran	Yugoslavia
Ireland	Zanzibar
Italy	

Possible most-favored-nation coverage of States with consular establishments in the United States

Country	Total consular personnel	Possible most-favored-nation coverage based upon American Embassy estimates
Argentina	18	
Austria	3	3
Belgium	15	15
Bolivia	3	
Colombia	33	
Costa Rica	9	9
Denmark	16	
Ethiopia	0	
Finland	7	
France	44	
Germany	41	
Greece	9	
Honduras	10	10
Iran	15	15
Ireland	30	30
Italy	151	151
Liberia	5	5
Mexico	58	
Norway	17	
Paraguay	2	2
Philippines	28	28
Rumania	0	
Spain	14	
Sweden	15	
Switzerland	22	22
Thailand	0	
Yugoslavia	13	
Total	577	290

EXHIBIT 2

MARCH 7, 1967.

Hon. DEAN RUSK,
Secretary of State,
Washington, D.C.

DEAR MR. SECRETARY: The purpose of this letter is to request that you review, reconsider and reject the proposed U.S. government loan to the Institute Mobilaire Italiano, which would underwrite, through the Export-Import Bank, the sale of some $50 million in machine tools to the Soviet Union.

I appreciate that the Administration wishes to aid Communist countries in moving their economies away from the military sphere and toward a more consumer-oriented and peaceful emphasis; however, I think the United States is picking a rather poor time in history in which to strengthen the economy of a nation that is the chief supplier of another Communist nation with which we are at war.

In view of the massive Soviet aid being poured into North Vietnam—aid which is the backbone of Hanoi's ability to continue a bloody and costly war—I find it impossible to justify, politically or otherwise, the commitment of American tax dollars to helping the Soviet Union; particularly when one cause of the USSR's inability to produce motor vehicles for its own use is the large numbers of trucks it is manufacturing and shipping to North Vietnam. As you know, the Soviet Union is supplying the trucks and troop carriers which our airmen are being called upon daily to destroy, often at great personal risk. How, in a time of war, can aid to an enemy be justified or rationalized?

I think I speak not only for myself, but for a good many Americans when I venture the opinion that American subsidization of a nation which we are fighting by proxy in Vietnam is somewhat analogous to aiding Nazi Germany during World War II—the main difference being that Hitler fought the United States openly and directly. The Soviet Union today has others engaged in combat in her behalf.

Even assuming that the automobile plant to be built in the Soviet Union by the Fiat Company of Italy would be primarily for the production of peaceful goods, it is true that by strengthening the Soviet economy, we would still be contributing to her capac-

ity to supply the Communist regime of North Vietnam.

I am not opposed to the concept of building bridges between East and West, so long as those bridges are built in a time of peace for purposes of peace, and are not bridges across which the materiel of war flows from the warehouse of our enemy to his battlefield.

I urge the proposed loan through the Export-Import Bank be reconsidered so that the United States will not be put in the unconscionable position of subsidizing the economy of a nation which is contributing directly to the continuation of a terribly costly war in Southeast Asia.

Sincerely yours,

CLIFFORD P. HANSEN,
U.S. Senator.

EXHIBIT 3

DEPARTMENT OF STATE,
Washington, March 9, 1967.

Hon. CLIFFORD P. HANSEN,
U.S. Senate,
Washington, D.C.

DEAR SENATOR HANSEN: Thank you for your letter of February 28, 1967, to Ambassador MacArthur concerning the US-USSR Consular Convention. The questions which you raise go to the heart of several important issues.

First you asked whether Soviet law specifically forbids access to an arrested person until the conclusion of the preliminary investigation or whether Soviet authorities have discretion in this matter. Soviet criminal law does not deal with the question of access to arrested persons in general terms. There are no guarantees that arrested persons can see or talk to anyone while the preliminary investigation of the alleged crime is in course, and in practice Soviet citizens are held incommunicado during this period which may extend as long as nine months. Under Article 47 of the Code of Criminal Procedure of the Russian Soviet Federated Socialist Republic, which is the model procedural code for the other republics of the USSR, defense counsel is permitted to participate in a case "from the moment the accused is informed of the completion of the preliminary investigation."

Soviet practice in dealing with American citizens has varied. We were never permitted access to Professor Barghoorn prior to his expulsion from the Soviet Union. Likewise we were never granted access to Gary Powers in the 21 months he was held in jail or to Lieutenants McKone and Olmstead after their RB-47 was shot down over international waters. On the other hand, *since this Convention was signed in 1964 we have been granted access to each American who has been held more than a few days.* Thus Soviet practice appears to have improved since the Consular Convention was negotiated, but in none of these cases has the notification or access been as prompt and as frequent as the treaty provides.

As you point out in your letter the President has the power to exchange consulates with the USSR without a treaty. But simple establishment of consulates would not have any effect on our rights to notification and access to American citizens in the Soviet Union. For this reason we believe that a consular treaty is required. The existence of such a bilateral undertaking, containing specific assurances on access and notification, would prevent the Soviets from saying to us, as they have in the past, that their own law *or procedure* prevents their granting prompt notification and access rights

The second question you ask concerns the amount of money spent per capita by the 18,000 Americans who travel to the Soviet Union each year and the 900 Soviet citizens who visit this country. We have no reliable figures for either category of traveler. I would estimate that the typical American traveler to the Soviet Union would spend 4 to 5 days in Moscow and Leningrad and about $300 exclusive of transportation to and from the USSR. Most Soviet citizens going abroad are permitted by the Soviet Government to obtain only about $100 in foreign exchange. Therefore, no Soviet visitor to this country could legally bring more than $100 here. The rest of their expenses would presumably be paid by relatives in the US. Arrangements for covering the expenses of Soviet exchange visitors in the US vary. In some cases their living expenses here are paid by American sponsors and the living expenses of corresponding American exchange visitors in the Soviet Union are handled by Soviet sponsors. In other cases, the sending state covers all the expenses of its exchange visitors, which of course are usually considerably in excess of $100.

Third, you ask what our position is regarding the reciprocal establishment of consulates with the USSR while the war in Vietnam continues. There are no formal proposals or plans pending for the opening of a US consulate in the USSR or a Soviet consulate in the US. The ratification of this treaty would not automatically lead to the separate negotiations for the reciprocal opening of consulates. Secretary Rusk has undertaken to consult the Senate Foreign Relations Committee and other interested Senators before proposing any such negotiations to the Soviet Government. Obviously, one or the major factors which Secretary Rusk—and, presumably, the Senators consulted—would take into account in considering the exchange of consulates would be the international environment, including the situation in Vietnam.

Fourth, you ask whether the US would accept the demarcation of a consular district which include any or all the Baltic states and whether we plan to establish American consulates in these countries. As a practical matter if the Soviet Union were divided into two or more consular districts, the Soviets would regard the Baltic states as belonging in one of the districts. We would not wish to try to exclude the Baltic states from a consular district for we would wish to continue to attempt to protect Americans who might be arrested there, as we do now through the Soviet Ministry of Foreign Affairs. In any case, this or any other arrangement we might contemplate would have no bearing on our policy of non-recognition of the forcible annexation of the Baltic states by the Soviet Government. As for the question of establishing consulates, the most which we can foresee would be the establishment of one American consulate, probably in Leningrad. We have no plans to establish any consulates in the Baltic states.

Fifth, you asked whether the United States would have to grant immunity unilaterally to consular officers from countries having most favored nation clauses in consular treaties with the US on their request. Specifically you ask about the case of Yugoslavia. Countries having most favored nation clauses in treaties with the United States would be able to request immunities for their consular officers only if they are willing to grant us reciprocal rights. Therefore any step in this direction would be on the basis of mutual agreement. Further, if for some reason we were unwilling to grant these immunities we could insist on renegotiation of the treaty with the country concerned, or if necessary we could abrogate the most favored nation clause in this treaty. As a practical matter we would not contemplate such action.

Yugoslavia is the only communist country which has consulates in this country and with which we have a consular treaty containing a most favored nation clause. We have asked our Embassy in Belgrade whether or not they believe that the Yugoslavs would be interested in seeking immunities for their consular officers through the operations of the most favored nation clauses. The Embassy estimates that Yugoslavia would not be interested in such action as they would be unwilling to grant similar provisions to employees of our consulate in Yugoslavia. The Yugoslav Government has not been consulted on this matter.

Finally, you ask about the Department's policy with respect to the punishment of nationals of communist countries who do not possess diplomatic immunity. Such cases, of course, are within the jurisdiction of State or Federal law enforcement agencies, depending upon the nature of the crime in question. In the relatively few cases which have involved some aspect of foreign policy or international relations, the Department of State customarily consults with the other agencies involved and we have sought to provide advice which would advance the national interest. This has been true whether the foreign national involved comes from a communist country or a non-communist country.

Please let me know if I can provide you with further information on any of these points. I hope you will be able to support this important treaty.

Sincerely,

WILLIAM B. MACOMBER, Jr.,
Assistant Secretary for Congressional Relations.

Mr. MANSFIELD. Mr. President, I suggest the absence of a quorum, with the time to be taken out on this side.

The PRESIDING OFFICER. Without objection, it is so ordered; and the clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MANSFIELD. Mr. President, I yield 20 minutes to the distinguished minority leader, the Senator from Illinois [Mr. DIRKSEN].

The PRESIDING OFFICER. The Senator from Illinois is recognized for 20 minutes.

Mr. DIRKSEN. Mr. President, from the day I reached Washington, 34 years ago this month, I have manifested an interest in Soviet affairs and activities.

It was in November of that year that Franklin D. Roosevelt brought about the recognition of the Soviet Union and a resumption of diplomatic relations with that country.

The ink on that document was scarcely dry before infiltration and subversion began. Nor have my suspicions or doubts concerning Soviet purposes and objectives been appreciably allayed.

Through the years, I have done my full share in assailing Soviet efforts to undermine and weaken our free enterprise system.

However, in a third of a century, there have been changes and developments. Both nations have grown toward a population of 200 million. Both nations have moved forward in science, in technology, in military strength, in modern weaponry, in diplomatic skill, in the use of nuclear power, and in industrial might.

Both nations are members of the United Nations. Both nations hold permanent membership on the Security Council.

One has pioneered the North Atlantic Treaty Organization and the other the Warsaw Pact.

HISTORICAL DICTIONARY *of*

CHINESE INTELLIGENCE

I.C. SMITH AND
NIGEL WEST

for time served, placed on one year of supervised release, ordered to pay a fine of $250 and a $100 special assessment fee and ordered to attend an export education training program sponsored by the U.S. Department of Commerce. Hanson was sentenced to two years' probation, fined $250 and a $100 special assessment fee, ordered to perform 120 hours of community service, and also ordered to attend an export training program sponsored by the U.S. Department of Commerce. *See also* INDUSTRIAL ESPIONAGE; TECHNOLOGY ACQUISITION; UNITED STATES OF AMERICA (USA).

HANSON HUANG. A Chinese American born in **Hong Kong** in 1951, Harvard-educated lawyer, Hanson Huang was detained in Beijing under mysterious circumstances in January 1982, and although embassy diplomats experienced great difficulty in gaining consular access to him, his old friend Katrina Leung, codenamed **PARLOR MAID**, was able to visit him in prison on her very first attempt. Apparently arrested in his hotel while employed by Armand Hammer's Occidental Oil, Hanson was sentenced to 15 years' imprisonment for espionage after having resigned from Webster and Sheffield, his firm in New York, mentioning that he intended to seek treatment for his cancer in the People's Republic of China (PRC). After graduating from Harvard Law School, Hanson had gained a post at the prestigious Chicago firm Baker and McKenzie.

The PRC authorities made no public reference to Hanson's arrest until February 1984, and there was no obvious reason for his incarceration as he had been considered previously, while a student in the **United States**, as a PRC loyalist who had campaigned for the PRC's sovereignty during the territorial dispute over the Diaoyutai Islands, in the East China Sea, claimed by both **Taiwan** and **Japan**.

HAO FENGJUN. In June 2005, Hao Fengjun defected from the PRC consulate in Sydney, just two weeks after the first secretary, Chen Yonglin, had taken the same decision. Hao said he was a member of the Ministry of Public Security and was assigned to the 610 Office, which had been created in 1999 to monitor and disrupt Falun Gong activities overseas. Hao told his Canadian Security Intelligence Service debriefers that there were 1,000 Chinese spies in Canada, and two years later, he gave similar evidence to the U.S. Senate Select Committee on Intelligence. *See also* AUSTRALIA; UNITED STATES OF AMERICA (USA).

HARBIN INSTITUTE OF TECHNOLOGY. Although closely associated with the **People's Liberation Army**, the Harbin Institute of Technology is a legitimate academic establishment with several entire departments in the

Free Harry Wu

Published: July 11, 1995

In a cruel miscalculation, China has seized an American citizen and human rights activist, Harry Wu, and made him a victim of deteriorating relations with Washington. Over the weekend, they charged Mr. Wu with offenses that could bring his execution. The Clinton Administration rightly warns Beijing that it risks gravely damaging relations should it persist.

That is strong diplomatic language. But the Administration's reaction is moderate compared to that in Congress, where Mr. Wu has frequently testified in recent years and has made many friends. China will not be able to bully and bluster its way past this issue as it has with too many human rights issues in the past. Beijing must release Harry Wu.

Mr. Wu was detained by Chinese authorities on June 19, as he entered China from Central Asia. In violation of a treaty that guarantees diplomatic access to American citizens within 48 hours of detention, consular officials were kept from seeing Mr. Wu until yesterday, two days after he was formally charged with espionage, a capital offense.

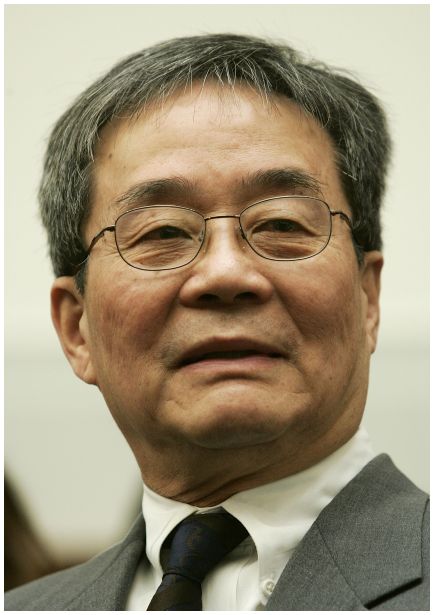
Mr. Wu knows the Chinese prison system too well. As a young man in the late 1950's, he took at face value Chairman Mao Zedong's invitation to let a hundred flowers of criticism bloom. That brought him 19 years imprisonment in forced-labor camps. After his release in 1979, he emigrated to the United States, eventually becoming an American citizen. Committed to expose the labor camp horrors he had experienced, Mr. Wu began returning to China in the early 1990's and secretly filming abusive practices inside Chinese prisons.

When Chinese authorities recognized Mr. Wu at a border crossing last month, they could have barred his entry, though his travel documents were apparently in order. Instead, Beijing grabbed him to register its anger over the American decision to give a visa to Taiwan's President, Lee Teng-hui, for a private visit last month. But if Beijing imagines that its persecution of Mr. Wu will lead to diplomatic concessions from Washington, it had best think again. On Sunday, House Speaker Newt Gingrich provocatively suggested that the Administration retaliate for Mr. Wu's arrest by resuming diplomatic ties with Taiwan. The status of Taiwan will have to be addressed someday in the future, but this is not the time or circumstance.

The issue today is Harry Wu. If Beijing persists in its mistreatment of him, it will alienate American opinion and draw renewed attention to the most repellent, least reformed aspects of Communist rule.

HARRY WU, 1937-2016

By Ellen Bork | April 27, 2016 | **The Weekly Standard Blog**



Getty Images

Harry Wu, the former Chinese political prisoner died Tuesday at 79. In the 1990s, Mr. Wu used his personal experiences and research to bring the matter of forced labor—and the products they exported to the West—into the then vigorous American debate over human rights in China. Thanks to Mr. Wu, the word "laogai" referring to a vast system of prison labor camps entered the vocabulary much as the term "gulag" had for the Soviet Unions two decades before.

The educated son of a Shanghai banker and his wife, Mr. Wu was sentenced to jail for 19 years at the age of 23 for speaking out against invasion of Hungary by the Soviet Union, then a Chinese ally. He survived prison by becoming "a beast." A prisoner could become a "millionaire" by tracking rats and finding a store of seeds, corn and grains of rice. Finding a live rat was even better.

After Mao's death eased the political climate, in a fluke, he was invited to visit a California university. An American professor had seen an article of his, published in France, about a geological device. That got him to the United States, but lacking financial support, he worked odd jobs to get by, including making doughnuts on the night shift.

Unable to forget his comrades, he visited China surreptitiously to gather information on conditions and Western businesses' reliance on forced labor. In 1995, he was detained as he tried to enter China at a Kazakhstan border crossing. His work was certainly known to the Chinese. He'd collaborated with CBS's *60 Minutes*. Nevertheless, his friend and colleague Jeff Fiedler, the labor union official, rejected the notion that Mr. Wu was reckless. Wu was "truly the moral voice about the Chinese gulag … to him, there was no choice but to go back."

His fate was uncertain, and possibly dire. American diplomats were refused consular access. However, Wu later said he felt relief when he was charged with espionage, even though a conviction might have meant the death penalty. The Chinese were acknowledging he was in custody, and planned to use him as a bargaining chip. After several more weeks, and intense international pressure, he was expelled. U.S.-China relations got back to normal. Hillary Clinton went to the Beijing women's conference that September.

Mr. Wu knew that it was his American citizenship that saved him and guaranteed him decent treatment in a jail. "Your food, same as mine," the warden told him. He was grateful, but he didn't let the US off the hook. America had influence, and a role to play. He didn't think much of the idea that trade and investment by themselves would change China's human rights performance and opposed abandoning pressure. "Tell the Chinese leader, 'you want the money?'" You have to improve your human rights."

Harry was a tough guy, but he insisted he was not special. He could have died, as so many of his fellow inmates had. In that interview with Charlie Rose he said: "Many many of them, same as me, but they are nameless and faceless today. Nothing different. I'm just lucky." Maybe.

[Original Post (http://www.weeklystandard.com/harry-wu-1937-2016/article/2002149)](http://www.weeklystandard.com/harry-wu-1937-2016/article/2002149)

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H.RES. 178 • JUNE 29, 1995

CALLING ON THE PEOPLE'S REPUBLIC OF CHINA TO RELEASE U.S. CITIZEN HARRY WU UNCONDITIONALLY AND TO PROVIDE FOR AN ACCOUNTING OF HIS ARREST AND DETENTION

Prime Sponsor: Mr. Christopher H. Smith (NJ)

H.Res. 178 – Agreed to by the House on June 29, 1995

H. Res. 178

In the House of Representatives, U.S.,

June 29, 1995.

Whereas Peter H. Wu, known as Harry Wu, is a citizen of the United States;

Whereas Harry Wu entered the People's Republic of China with an American passport and a valid visa but has been detained incommunicado by Chinese authorities since June 19, 1995;

Whereas on June 23, 1995, the Government of the People's Republic of China notified the United States Government of its detention of Harry Wu;

Whereas on June 26, 1995, the United States Government requested that Chinese Government authorities provide prompt access to Harry Wu;

Whereas Article 35 of the United States-People's Republic of China Consular Convention of February 19, 1982, requires that access to a detained or arrested American citizen be granted no later than 48 hours after a request for such access is made;

Whereas, as of Wednesday, June 28, 1995, the People's Republic of China had failed to act in accordance with the 48-hour consular access provision of the Consular Convention; and

Whereas the Department of State has not been informed of where Harry Wu is being held, now what charges, if any, are being contemplated, and has not received any assurances that the obligations of the Government of the People's Republic of China under the Consular Convention will be met: Now, therefore, be it

Resolved, That—

(1) The House of Representatives expresses its condemnation of the arrest and detention of Harry Wu and its deep concern for his well-being and freedom.

(2) It is the sense of the House of Representatives that—

(A) the People's Republic of China must immediately comply with its commitments under the United States-People's Republic of China Consular Convention of February 19, 1982, by allowing consular access to Harry Wu;

(B) the People's Republic of China should provide a full accounting to the United States for Harry Wu's arrest and detention, and should immediately and unconditionally release him; and

(C) the President of the United States should use every diplomatic means available to ensure Harry Wu's safety and well-being, and to secure his immediate and unconditional release.

(3) The Clerk of the House shall transmit copies of this resolution to the President of the United States, to

the Embassy of the People's Republic of China in the United States, and to President Jiang Zemin of the People's Republic of China.

Attest:

Clerk.

PHILOSOPHY AND POLITICS

LEONARD C. MEEKER

The second issue concerned Chinese pirating of U. S.-copy-righted material—video-tapes, compact discs, and computer soft-ware. The Office of the Special Trade Representative pressed the Chinese to respect the copy-rights and take action against infringers. When there was no adequate response, the U. S. announced it would put 100% tariffs on about $1 billion of Chinese imports beginning 1 March 1995. The items banned were not central to U. S.-China trade, but this U. S. step evidently cconvinced the Chinese that the U. S. was serious about piracy. Further talks were held in Pei Ching at the end of February. Very early in the morning of Sunday 26 February troops of the People's Liberation Army raided and closed the Shen Fei plant at Shen Cheng in southern China, which had been mass-producing pirated compact discs and laser video discs. The raid was significant since the People's Liberation Army owns part of the Shen Fei company. The Pei Ching negotiations then reached an agreement in which China agreed to act against piracy and the U. S. lifted its threat of 100% tariffs. It remained to be seen whether the Chinese would be consistent in acting to suppress piracy.

In the summer of 1995 occurred one more dust-up in Sino-American relations over human rights. The Chinese arrested Harry Wu, a naturalized American citizen, on a charge of espionage. On previous trips to China he had photographed prison conditions and apparently intended to gather more evidence of human-rights violations this time. There were loud U. S. protests of his arrest and of Chinese refusal to allow access to him by U. S. consular officials. In August he was put on trial in Wu Han in central China. The press was excluded. Upon swift conviction he was sentenced to 14 years' imprisonment. He was then expelled from China.

The Clinton Administration hailed this outcome as virtual victory and announced that it paved the way for the President's wife to attend the September world conference on women to be held in Pei Ching. China said it was returning its Ambassador to Washington, and American officials made optimistic comments to the effect that relations were now improving after a period of strain. Mrs. Clinton did attend the conference and made good use of her opportunity to address the assemblage. She declared not only for women's rights—such as personal control over their child-bearing—but for human rights generally, including free speech, press, and assembly. Without mentioning the country's name, Mrs. Clinton pointed her remarks directly at China and its multiple tyrannies.

But the Chinese protested loudly when the U. S. issued a visa to Li Teng-hui, President of T'ai Wan, for a private visit to Cornell University. This time all they extracted from Washington was a repetition of the position that the U. S. considered there was a single China that included T'ai Wan. A New York summit meeting in October between President Clinton and Chinese President Jiang Ze-min produced no progress on human rights.

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An American convicted in China

The long and obscure arm of the law

Jul 5th 2010, 10:54 by The Economist | BEIJING

CHINA's criminal justice machine moves relentlessly and predictably. It thus come as no surprise to people who had followed the case that that Xue Feng (pictured above), an American geologist, was convicted on July 5th and sentenced to an eight-year prison term on charges of illegally obtaining state secrets related to the oil industry.

Criminal defendants in China enjoy little in the way of guaranteed access to legal counsel, rights to call their own witnesses, or the opportunity to challenge evidence and testimony against them. Seldom do Chinese criminal-court proceedings end with anything other than a guilty verdict. For the nine years ending in 2006, the national rate of conviction in first-instance criminal cases stood at over 99%.

Its predictable result notwithstanding, Mr Xue's case was far from typical. For one thing, the American ambassador to China, Jon Huntsman, was in attendance at Beijing's Number One Intermediate People's Court when the sentence was announced. For another, the wheels of justice turned more slowly than usual this time. The verdict came down more than 31 months after Mr Xue's initial detention in November 2007, after numerous false starts and postponements, in apparent violation of China's own laws governing the time allowed for prosecutors to conclude a case.

About Newsbook

This blog is the home of "The week ahead" video and podcast, the caption competition and other announcements from The Economist

Economist video

Mr Xue's family alleges that he was repeatedly beaten and tortured while in official custody—they say that police stubbed out cigarettes on his bare arms. Sadly the scenes they describe are all too common in cases like his.

Mr Huntsman's presence at the sentencing was a clear indication of the American government's interest in the case, but it was not the first. During an official visit to Beijing last November, Barack Obama quietly raised Mr Xue's case with Chinese leaders. Months earlier, American officials had been denied permission to send consular officials to observe court proceedings against him, again in violation of China's own laws.

According to the Associated Press, which first broke the news of this case, American officials were in doubt as to the wisdom of advocating more publicly on behalf of Mr Xue. Upon finally gaining consular access to American officials, Mr Xue told them he favoured a public campaign for his release. But officials were persuaded against this by Mr Xue's wife, who still lives in the United States. She argued that such a campaign might both harm his chances for release and endanger members of her family who live in China.

Born in China, Mr Xue was educated and later took citizenship in America. He ran afoul of Chinese law after arranging the purchase of a database on China's commercial oil industry on behalf of his American employer, an energy-consulting firm.

What counts as a state secret in China is notoriously murky and arbitrarily enforced. In another recent case an Australian citizen of Chinese origin was charged with violating state secrets for passing along commercial information related to the iron-ore market. Stern Hu had been employed by Rio Tinto, an Anglo-Australian mining giant.

Despite frequent and vocal representations made by Australia's government on Mr Hu's behalf, he was convicted on charges of bribery and violating trade secrecy, and sentenced in March to a prison terms of ten years. According to some of the Australians who have followed Mr Hu's case most closely, there are indications that he did indeed violate Chinese law. Though Australia's government failed to keep Mr Hu out of jail, its efforts to publicise his case may have benefited him in some measure. It seems that he at least has not been tortured.

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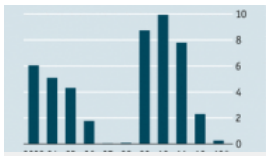

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Beijing Court Upholds Eight-Year Sentence for American Geologist Xue Feng

February 23, 2011

On February 18, 2011, a Beijing court upheld the eight-year prison sentence of Dr. Xue Feng, a naturalized American citizen convicted in July 2010 of trafficking state secrets. Chinese officials alleged that Xue trafficked state secrets when he helped the American company he worked for purchase commercial information on oil wells in China. Xue's case has been marred by numerous allegations of procedural abuses, with Chinese officials most recently denying a U.S. official access to Xue's appeal hearing in November 2010.

According to Western news media, the Beijing High People's Court upheld the eight-year prison sentence of the American geologist Xue Feng on February 18, 2011, (Associated Press, 2/18/11; New York Times, 2/18/11; Wall Street Journal, 2/18/11). Chinese officials took Xue into custody in late 2007 and the Beijing No. 1 Intermediate People's Court handed down its sentence in July 2010. As the Commission previously has reported, Xue's case has been marred by numerous procedural abuses, including torture allegations, denial of U.S. consular access in violation of a U.S.-China consular convention, and violations of China's Criminal Procedure Law in the lengths of time Xue was held during various stages of the criminal process. Chinese officials have wide latitude to declare information a state secret. The Commission previously has reported on both the scope of state secrets provisions and commercial secrets provisions in Chinese law. The state secret that Xue allegedly trafficked was commercial information that officials declared to be a state secret only after Xue had helped his company purchase it for commercial purposes.

Most recently, the New York Times reported that Chinese officials denied a request by a U.S. Embassy official to attend Xue's appeal hearing in November 2010, according a November 30, 2010, article. According to Article 35(5) of the U.S.-PRC Consular Convention of 1980, a U.S. consular official "shall be permitted" to attend a trial or other legal proceeding against a U.S. national.

For another discussion on Xue's case and information on China's recently amended state secrets law, see Overview—Nexus Between Human Rights and Commercial Rule of Law and Section II—Freedom of Expression in the CECC 2010 Annual Report.

Beijing's Bluster, America's Quiet: The Disturbing Case of Xue Feng

Richard Bernstein

David Rowley

Xue Feng

Quiet diplomacy, as it's called, has served for years as the principle guiding US relations with China: the theory is that it is far better to engage the Chinese government quietly, behind the scenes, rather than through more robust public confrontation. This approach, recommended by most influential experts on China, has been followed in political and economic dealings, and even when the human rights of American citizens are at stake. But how effective is quiet diplomacy in practice? Two cases have made this question urgent.

To judge from recent events, China itself has certainly not felt bound by the rules of quiet diplomacy. In its dispute with Japan—over the September arrest of a Chinese fishing trawler captain whose boat collided with two Japanese naval vessels in disputed maritime territory—the Chinese government went public right away with what appeared to be calculated fury. There were warnings of "strong countermeasures" and "severe consequences" for Japan if it didn't release the ship's captain immediately. Chinese police arrested four Japanese businessmen, allegedly for photographing an off-limits military installation—three have since been released; one is still being held. And even after the Japanese released the captain (who immediately declared his intention of going back to the disputed area), China continued to press for an apology and compensation.

Many observers argue that China's aggressive behavior will cost it in its relations with its neighbors and with the United States over the long term. Still, for the moment, very noisy diplomacy seems to have accomplished China's purpose—to secure the release of its detained citizen and, probably, to reassert its claims in the East China Sea. What is striking in the meantime is the contrast between Chinese behavior in a dispute involving the seizure of one of its citizens by another country and the behavior of other countries, including the United States, when China seizes one of theirs.

Take the case of Xue Feng, a naturalized American citizen who was working for an American company, IHS Energy. In 2007, he was arrested by Chinese police after he purchased a database on the Chinese oil industry through Chinese intermediaries. In July this year, after spending three years in Chinese prison, he was tried and convicted in a closed trial for "gathering intelligence" and "unlawfully sending abroad state secrets." He has been sentenced to a further *eight* years in prison.

The case would seem to be of special interest to the United States: the charges are difficult to understand, there are indications that Xue was mistreated while awaiting trial, and the prosecution plainly ignored both China's own laws and its treaty obligations. The database in question, which Xue acquired and gave to his employer, provided coordinates for the country's oil wells—information that American geologists say is freely available in most countries and had not been designated a "state secret" at the time of Xue's arrest.

Moreover, the US-China consular convention requires China to notify the American embassy within four days of its arrest of any American citizen—but the Chinese only carried out this notification after Xue had been in police custody for thirty-two days. China further violated the convention by banning American consular representatives from the trial. The grounds for the ban were that the trial involved "state secrets," though in fact the consular convention itself makes no exception for such cases.

More serious still, there is persuasive evidence that Xue was tortured during the three years he was held before his trial. When he was visited by a consular official, Xue showed cigarette burns he had received in prison, and said that he was forced to sign a confession. The content of the confession is not known, but if Xue's case followed the usual pattern in China, it would have been a central piece of evidence in the prosecution's case against him, despite the fact that Chinese law formally bans torture and coerced confessions are technically inadmissible at trial.

"By international standards, the trial was a farce," Jerome Cohen, a specialist on Chinese law at New York University Law School who is advising the Xue family, wrote in a recent article in *The South China Morning Post*,

> The defense was not allowed to summon witnesses. Prosecution witnesses' pre-trial statements were simply read out in court. There was no opportunity to cross-examine secret police about Xue's claims of torture and coercion.

> Nor could defense counsel question witnesses of the National State Secrets Bureau about its vague definitions of 'secrets' or 'intelligence' and why the oil database Xue had obtained for his company had not been declared protected information prior to his detention.

In the face of such harsh treatment of one of its own citizens, the response of the US government has been marginally more vigorous than it normally is in such cases. President Obama raised Xue's imprisonment with Chinese president Hu Jintao in private when the two met last November. The American embassy in Beijing sent diplomatic notes to the Chinese protesting their violations of the consular convention. And once the trial was finished, the American ambassador, Jon Huntsman—without criticizing China for imprisoning Xue or violating the consular treaty—publicly asked the Chinese to release him in light of "the long ordeal he has suffered." The American representative who visits Xue in prison every month is also the ambassador himself, and that is highly unusual.

Still, for the most part the Xue case has provoked no marked departures from the practice of quiet diplomacy. No public criticism of China on this matter has escaped the lips of any administration official. It has in this sense been handled much like another, very similar recent case, that of Stern Hu, an Australian citizen convicted earlier this year of bribery and stealing commercial secrets and giving them to his employer, the Australian mining company Rio Tinto. Even Congress, while threatening serious action on China's manipulation of its currency, has been completely silent on the Xue case, and on other recent human rights cases. I called James Webb, chairman of the Senate Foreign Relations Committee Subcommittee on East Asian and Pacific Affairs, to ask for his view of the Xue case, but a spokesman, seeming to illustrate the American reluctance to speak out about human rights violations in China, said the Senator declined to comment.

The question is whether more aggressive and immediate intervention by the United States in matters like that of Xue Feng would help. Perhaps there is some middle ground between quiet diplomacy as now practiced and China's politics of bluster and threat—some presidential comment, a statement by the secretary of state, a petition signed by academic specialists on China. The main reason Xue had been in prison for a year before his case was even reported in the press was his family's fear that calling any public attention to the matter would only worsen China's treatment of him. The American embassy in Beijing similarly kept quiet even in the face of China's violations of the consular convention—in large part, people familiar with the case have told me, out of deference to the Xue family's wishes, even though Xue himself was saying that he wanted his detention to be made known publicly.

It's hard to say for certain that the Xue family was wrong. This question is not easy in a country like China that is demonstrably prepared to jettison its own legal commitments if it feels its national interest—or just its national pride—requires it. But it's clear that quiet diplomacy didn't do much for Xue Feng. It might be time to rethink the whole idea.

October 6, 2010, 8:45 am

Dui Hua Welcomes Release of American Geologist Xue Feng

SAN FRANCISCO (April 3, 2015) – American geologist Dr. Xue Feng (薛锋) has been released from Beijing No. 2 Prison after serving all but ten months of his eight year sentence for "illegally procuring state secrets." In November 2012, he was granted a 10-month sentence reduction for good behavior. It was expected that he would receive another sentence reduction, but it was not granted.

In accordance with the verdict, Dr. Xue was deported the same day as his release. He arrived home in Houston on the evening of April 3.

At the time of his release, Dr. Xue was the only American citizen serving a sentence in a Chinese prison for the crime of endangering state security.

Born in 1965, Dr. Xue is a naturalized US citizen who earned his Ph.D. in geology from the University of Chicago. He was working in China for American energy and engineering consulting firm IHS when he was detained for introducing his employer to what he believed was a commercially available oil industry database. After IHS purchased the database, the data encompassed therein was classified as a state secret. Dr. Xue was taken into custody in Beijing on November 20, 2007 and placed under "residential surveillance" in a state security detention center. Contrary to the bilateral treaty on consular access which stipulates that embassies must be notified within four days of the detention of a citizen, officers of the United States Embassy were unable to see Xue for several weeks.

He was formally detained in February 2008. After repeated delays, Xue was tried in July 2009 and sentenced one year later on July 7, 2010. Xue was given no credit for the time he spent under residential surveillance. His case was upheld on appeal on February 17, 2011. He was then transferred from a state security detention center, where he had been held for more than three years, to Beijing No. 2 Prison to serve his sentence.

In November 2009, Dui Hua was asked by Xue's family to help him. The foundation has repeatedly raised his case with Chinese officials, and urged the US government to step up its efforts to secure better treatment and release. His case has been raised by numerous members of the US government including President Barack Obama and Rep. Kevin Brady (R-Texas), Xue's congressman. Xue has received regular consular visits from US Ambassadors Jon Huntsman, Gary Locke, and Max Baucus, as well as their senior aides.

"Dui Hua is delighted that Dr. Xue has finally been reunited with his family in America after a terrible ordeal," said John Kamm, Dui Hua's executive director. "The foundation wishes him every success as he rebuilds his life."

The Dui Hua Foundation
San Francisco

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As for 2015, there are more than 107,000 women in Chinese prisons, an increase of 3.2 percent since 2014. Women in China are being incarcerated at a rate ten times the rate of men.

Read Dui Hua's analysis.

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NEWS

‘Russian sleeper agent’ says he’s just an innocent banker

By Rich Calder

February 11, 2015 | 11:29am

Yevgeny Buryakov appears in federal court in January.
AP

An accused Russian sleeper agent who the feds say posed as a New York banker as part of a Cold War-style spy ring claims he’s innocent.

Evgeny “Zhenya” Buryakov, 39, pleaded not guilty in Manhattan federal court Wednesday to charges of conspiracy and illegally acting as an agent of a foreign government.

Dressed in a gray prison jumpsuit, Buryakov remained mum throughout most of the arraignment. His lawyer, Benjamin Naftalis, later declined comment.

Buryakov remains in US custody at Metropolitan Correctional Center, and his next court appearance is March 26.

Buryakov’s cover in New York was working at the Russian bank Vnesheconombank, while he was secretly employed by the Russian Foreign Intelligence Service, the SVR, the feds say.

He and two handlers who were diplomats — SVR agents Igor Sporyshev and Victor Podobnyy — allegedly conspired to gather economic intelligence including information about potential US sanctions on Russian banks.

They also tried recruiting sexy college students and other New York City women to serve as intelligence sources and replacements for ravishing Russky spy Anna Chapman, who was busted in 2010.

Sporyshev was caught complaining on tape about how he was not up to the task of recruiting the next Chapman because when it came to today’s young women, “in order to be close, you either need to f--k them or use other levers to influence them to execute my requests.”

Prosecutors also say the spy ring worked with the Kremlin-run TASS News Agency to ferret secret information from US stock market officials.

Sporyshev, 40, and Podobnyy, 27, allegedly posed as attaches with the Russian mission to the United Nations. They fled the US last year and in 2013, respectively, according to a Manhattan federal court complaint.

Buryakov was nabbed on Jan. 26 by a team of FBI agents outside the A&P supermarket in Riverdale.

Despite the link to the alleged spying, TASS has since acted as an injured party, recently quoting Moscow as demanding “prompt consular access” to Buryakov.

Buryakov faces up to 15 years in prison.

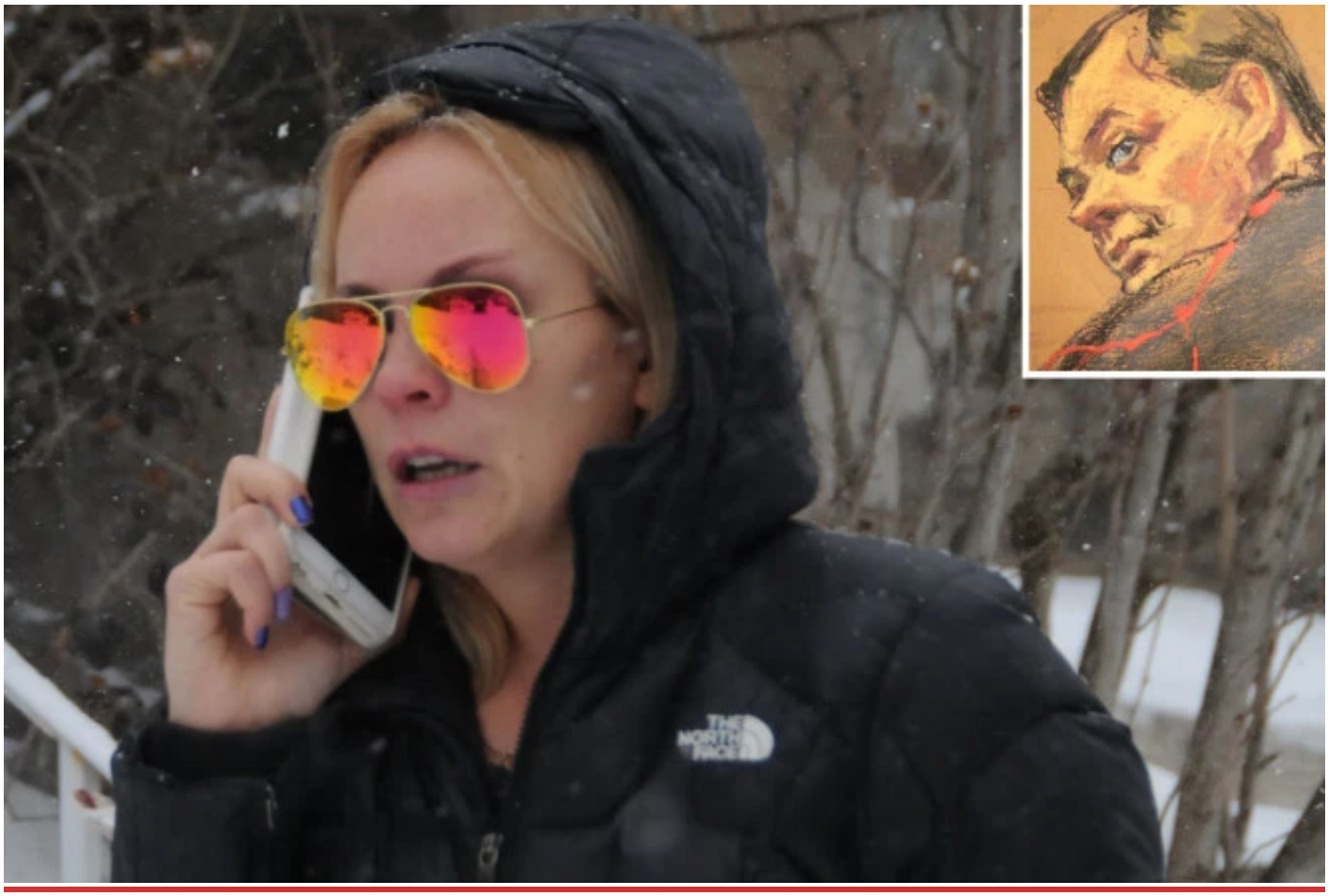
FILED UNDER ANNA CHAPMAN, ESPIONAGE, EVGENY BURYAKOV, IGOR SPORYSHEV, RUSSIA, SPIES, VICTOR PODOBNYY

NEWS

Kremlin-run news agency tells feds to lay off Russian spies

By Rich Calder

January 28, 2015 | 12:14am



The wife of accused spy Evgeny Buryakov (court sketch, inset) talks on the phone after his arrest for allegedly trying to recruit successors to Anna Chapman.
Robert Kalfus; Reuters

The Kremlin-run news service linked to a Russian espionage ring broken up by FBI agents in Manhattan issued a blistering demand to the United States Tuesday: Quit busting our bungling spies!

The TASS News Agency published an article saying America should put "a stop to the string of provocations . . . unleashed" by US authorities when they foiled a Cold War-style plot that tried — and failed — to recruit sexy college students to seduce American officials for their secrets.

The spy ring was also accused of working with an unnamed news agency to ferret secret information from US stock-market officials.

That news agency is widely believed to be TASS — a former Soviet house organ that worked closely with the KGB.

Despite the link to the alleged spying, TASS acted like the injured party Tuesday, taking umbrage at the treatment of its comrades. It quoted Moscow as demanding "prompt consular access" to Evgeny "Zhenya" Buryakov, a member of the ring who was arrested by the FBI Monday.

"One gets an impression the US authorities have decided to resort to their favorite tactic of unfolding spy scandals," TASS quoted Russian Foreign Ministry spokesman Alexander Lukashevich as saying.

"Due to Washington's hostile stance, Russian-US relations have long experienced no easy times. Apparently, the United States follows 'the worse — the better' principle."

Manhattan US Attorney Preet Bharara declined to comment.

Buryakov's cover in New York was working at the Russian bank Vnesheconombank, while he was secretly employed by the Russian Foreign Intelligence Service, the SVR, the feds say.

He and two handlers — SVR agents Igor Sporyshev and Victor Podobnyy — allegedly conspired to gather economic intelligence including information about US sanctions on Russia.

They also tried recruiting college students and other New York City women to serve as intelligence sources and replacements for ravishing Russky spy Anna Chapman, who was busted in 2010.

Anna Chapman
AP

Sporyshev was caught complaining on tape about how he was not up to the task of recruiting the next Anna Chapman because when it came to today's young women, "in order to be close, you either need to f--k them or use other levers to influence them to execute my requests."

Sporyshev, 40, and Podobnyy, 27, have moved out of the US and were not arrested.

Buryakov, 39, was denied bail by a Manhattan judge and remains in US custody.

FILED UNDER ANNA CHAPMAN, ESPIONAGE, EVGENY BURYAKOV, IGOR SPORYSHEV, RUSSIA, SPIES, VICTOR PODOBNYY

Moscow condemns arrest of 'spy' Yevgeny Buryakov as 'anti-Russian move'

VEB Bank employee arrested in New York and charged with gathering 'economic intelligence' along with two others who left the US

Alec Luhn in Moscow

Tuesday 27 January 2015 18.10 GMT

Moscow has condemned the arrest of a Russian man in New York on espionage charges as yet another instance of unfair persecution by the US.

Yevgeny Buryakov, an employee of state-owned VEB bank, was arrested on Monday and charged with gathering "economic intelligence" along with two other Russian men who had already left the United States.

In remarks carried by Russia's state-owned television channels, foreign ministry spokesman Alexander Lukashevich accused the United States of detaining Russian citizens without presenting evidence and warned that this "anti-Russian campaign" would "undermine" cooperation between the Washington and Moscow.

"The American authorities have once again decided to resort to their favorite practice of drumming up spy passions," Lukashevich said. "Russian-American relations are already undergoing a difficult period because of Washington's hostile position. Apparently acting on

the principle of 'the worse it gets, the better,' the United States has decided to launch the latest move in its anti-Russian campaign."

"We insist on an end to the series of provocations that the US intelligence services have unleashed against Russian representatives, immediate consular access to Yevgeny Buryakov, the rigorous observation of the rights of this Russian citizen and his release," Lukashevich added.

Konstantin Dolgov, the foreign ministry's human rights ombudsman, said Russians were increasingly being persecuted in the United States and pledged to "work to end illegal actions against our citizens".

"In general, the hunting of Russian citizens by US law enforcement is continuing, and it's being done systematically," Dolgov told state news channel Rossiya 24, adding that Russians "won't get a fair trial in the United States".

When reached by the Guardian by phone, President Vladimir Putin's spokesman Dmitry Peskov declined to comment on the arrest of the alleged spy, saying he didn't know the details of the case.

MP Sergei Mironov, who heads the party A Just Russia, told reporters that the case against Buryakov was political, called the accusations of industrial espionage "just silly" and suggested Russia would respond by outing US spies on its own soil.

"It would be strange if they didn't catch yet another spy in America. Because their logic is, 'We adopted sanctions, they didn't work … what next? We need to catch a spy,'" Mironov said.

"There's a very good practice called 'an eye for an eye,'" he added. "I think our intelligence services have members of the diplomatic corps who are obviously not entirely within the law."

Analysts on state television similarly argued that the espionage charges were overblown and likely meant to improve the United States' bargaining position in future negotiations with Russia.

"Americans working in Moscow meet every day with Russians to clarify one position or another, it's normal diplomatic practice," said Igor Korotchenko, editor of the journal National Defence.

Mikhail Lyubimov, a former Soviet KGB agent in London who later became a spy novelist, told the newspaper Moskovsky Komsomolets that the espionage accusations levelled against Buryakov were "not serious".

"This was very likely fabricated, because usually in crisis situations such as the one that has recently arisen with the United States, espionage cases play into the hands of those who want to spark conflict and worsen relations," Lyubimov said.

But whereas Lyubimov doubted there would be serious diplomatic fallout from the incident, another former Soviet spy, Yury Kobaladze, told the newspaper that "signs of the cold war are coming back".

"When relations between countries are normal and well-meaning, all spy scandals, no matter how serious, are peacefully decided behind the scenes," Kobaladze said.

Andrei Soldatov, an expert on the Russian intelligence services told the Guardian that like the 10 suspected Russian "sleeper agents" captured in the US in 2010 and later exchange for four

Russian citizens accused of spying, the Buryakov spy scandal “raises big questions” about the efficacy of Russian intelligence gathering.

“The Americans couldn’t find anything they had gotten, they just talk about attempts to get information and to recruit at a very low level,” Soldatov said.

Unlike the latest spy fiasco, the 2010 scandal sparked a media furor in Russia. Each member of the “Illegals Program” was extensively covered, and after then-PM Putin said their capture was “the result of a betrayal, and betrayers always meet a bad end,” the Russian media debated who gave the agents up. Putin, a former intelligence agent himself, even met with the spies and said he had sung patriotic songs with them. One of the agents, Anna Chapman, was celebrated as a femme fatale both in Russia and the west and became a television host upon her return to her homeland.

“In 2010, there was political PR campaign to show that Russia still has the ability to send spies to America, there was a political message so it was covered a lot,” Soldatov said. “This time there isn’t such a political message.”

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A man identified as convicted Russian spy Evgeny Buryakov is pictured on a commercial flight during his repatriation into the custody of Russian authorities in a photo rele... more +

Evgeny Buryakov, a Russian spy who posed as a New York banker, was deported from the United States on Wednesday in accordance with the conditions of his early release from federal prison over the weekend.

According to U.S. Immigration and Customs Enforcement, Buryakov, 42, was escorted onto a commercial flight by Cleveland-based law enforcement officials and "turned over to Russian authorities."

Court documents filed by the U.S. Department of Justice describe how Buryakov operated under "non-official cover" as a high-ranking employee in the Manhattan office of the Russian-owned Vnesheconombank (VEB) while he passed information to Igor Sporyshev and Victor Podobnyy, two Russian Foreign Intelligence Service (SVR) agents tasked with gathering "economic intelligence" about the United States.

Evgeny Buyakov, seen in an ID photo obtained by ABC ... more +

In 2013, Podobnyy attempted to recruit Carter Page, who later served as a foreign policy adviser to Donald Trump's presidential campaign, as an intelligence source. Page has acknowledged that he is in fact the "Male-1" identified in a recently unsealed FBI complaint, which describes the group's attempts to draw Page into their information-gathering operation.

"You promise a favor for a favor," Podobnyy said. "You get the documents from him and tell him to go [expletive] himself."

Page, who cooperated with the FBI's investigation of Buryakov, told ABC News that the group's attempts were unsuccessful, and any information he passed to SVR agents was "immaterial."

Russian spy ring in NYC exposed

Posted by Jenny Jiang on Wednesday, January 28, 2015 · Leave a Comment

Federal prosecutors charged three Russians for spying on the United States on behalf of the Russian government.

Evgeny Buryakov, 39, was arrested in New York City on Monday. Buryakov posed as an employee of Russian bank Vnesheconombank in Manhattan while serving for SVR, a Russian intelligence agency. He is being held without bail.

Buryakov is accused of collecting intelligence on U.S. sanctions against Russian banks and efforts to develop alternative energy resources.

Gathering such intelligence is useful for Russia as the country tries to abate a worsening economy battered by Western sanctions (imposed in response to Russia's annexation of Crimea in Ukraine) and decline in oil prices. The Russian currency – ruble – has seen dramatic depreciations in recent months, and this week the credit ratings agency Standard & Poor's downgraded the ruble to "junk" status.

Buryakov's handlers – Igor Sporyshev, 40, and Victor Podobnyy, 27 – were charged with conspiracy to "aid and abet Buryakov in

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his work as an unregistered agent of Russia operating within the United States."

However, Sporyshev and Podobnyy held positions with diplomatic immunity, which protected them from arrest and prosecution in the United States. Sporyshev served as a Russian Federation trade representative in New York between 2010 and 2014, and Podobynyy was an attaché to the Permanent Mission of the Russian Federation to the United Nations from 2012 to 2013, according to federal prosecutors.

The Justice Department confirmed that Sporyshev and Podobnyy have left the U.S. and were not arrested.

Federal authorities have been monitoring the three suspects since March 2012.

Sporyshev and Podobnyy were accused of trying to recruit employees from "major" companies and young women from a New York university to serve as "intelligence sources for the SVR".

"These charges demonstrate our firm commitment to combating attempts by covert agents to illegally gather intelligence and recruit spies within the United States," said Attorney General Eric Holder. "We will use every tool at our disposal to identify and hold accountable foreign agents operating inside this country – no matter how deep their cover.

The charges against Buryakov, Sporyshev, and Podobnyy were brought four years after 10 Russian spies – including Anna Chapman – were convicted and expelled from the United States.

"Following our previous prosecution with the FBI of Russian spies, who were expelled from the United States in 2010 when their plan to infiltrate upper levels of U.S. business and government was revealed, the arrest of Evgeny Buryakov and the charges against him and his co-defendants make clear that – more than two decades after the presumptive end of the Cold War – Russian spies continue to seek to operate in our midst under cover of secrecy," said U.S. Attorney Bharara. "Indeed, the presence of a Russian banker in New York would in itself hardly draw attention today, which is why these alleged spies may have thought Buryakov would blend in. What they could not do without drawing the attention of the FBI was engage in espionage. "

Russia's Foreign Ministry claimed that the U.S. has "no proof to back up the charges" against the three men.

"One gets an impression the US authorities have decided to resort to their favorite tactic of unfolding spy scandals," said Russian Foreign Ministry spokesman Alexander Lukashevich. "We insist on a stop to the string of provocations against Russian representatives unleashed by US secret services, and on immediate consular access to Buryakov, on the strict observance of the Russian citizen's rights and on his release."

Learn More:

- Justice Department: Attorney General Holder Announces Charges Against Russian Spy Ring in New York City
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- itar-tass.com: US court refuses to release on bail Russian man charged with espionage
- itar-tass.com: Moscow urges stop to US secret services' provocations against Russian officials
- fbi.gov: Ten Alleged Secret Agents Arrested in the United States
- fbi.gov: Ten Russian Agents Plead Guilty and are to be Removed from the United States

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#WORLD NEWS
AUGUST 30, 2016 / 1:41 PM / A YEAR AGO

China charges U.S. woman with espionage

Reuters Staff

BEIJING (Reuters) - An American businesswoman held in China since March last year has been charged with spying, China's Foreign Ministry said on Tuesday, the latest development in a case that has added to U.S.-China tensions.

Sandy Phan-Gillis, from Houston, Texas, who is of Chinese ancestry and is a naturalized U.S. citizen, was arrested in March 2015 and had been held without charges since then.

"Based on our understanding, Phan-Gillis, because of her suspected crimes of espionage, has been charged according to law by the relevant Chinese department," Chinese Foreign Ministry spokeswoman Hua Chunying told reporters at a regular briefing.

"China is a country ruled by law. The relevant Chinese department will handle the case strictly according to law," she said, without elaborating.

It was unclear what violations the charge covers.

News of the charges against Phan-Gillis comes just ahead of a visit to China by U.S. President Barack Obama, who will arrive on Saturday for a G20 summit in the city of Hangzhou. Obama is scheduled to hold bilateral meetings with Chinese President Xi Jinping on Saturday.

Obama's visit comes at a time of heightened U.S. tensions with China, particularly over Beijing's extensive territorial claims in the South China Sea, but also over issues such as cyber spying.

In July, a Chinese man, Su Bin, 51, was sent to prison for 46 months in the United States after pleading guilty to conspiring to hack into the computer networks of major U.S. defense contractors.

A U.S. State Department official said the United States was “deeply concerned” about Phan-Gillis’ welfare and had repeatedly pressed China to provide further details of the case and to allow U.S. consular officers “full and unfettered” access to her.

“We urge Chinese authorities to explain the reasons for Ms. Phan-Gillis’ ongoing detention,” the official said.

The official said the United States was also calling on China to “to review and consider seriously” the recommendation of the U.N. Working Group on Arbitrary Detention that Phan-Gillis be released.

The Chinese government has chided the U.N. group for saying her detention violated international human rights norms.

The U.S. consulate in Guangzhou had been providing consular assistance to Phan-Gillis, including monthly consular visits, the State Department official said.

Her husband, Jeff Gillis, said the “charges are absolutely false,” and called for her release.

He said the charges include an accusation that his wife went on a spy mission to China in 1996. Her passport at that time shows that she made no trip to China that year, he said in a statement.

Phan-Gillis had said in a letter transcribed by a U.S. consular official in China that her detention was because of politics and not for any crime.

She visited China on a trade delegation from Houston and was detained while attempting to cross from the southern city of Zhuhai to Macau.

China’s state secret law is extremely broad, encompassing everything from industrial data to top leaders’ birthdays. Information can also be declared a state secret retroactively.

Reporting by Michael Martina; Additional reporting by Jon Herskovitz in Austin, Texas and David Brunnstrom in Washington; Editing by Robert Birsel, Jeffrey Benkoe and Frances Kerry

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The New York Times | https://nyti.ms/2q0DIAB

ASIA PACIFIC

China Sentences Phan Phan-Gillis, U.S. Businesswoman, in Spying Case

By CHRIS BUCKLEY APRIL 25, 2017

BEIJING — An American businesswoman from Houston was sentenced to three and half years in prison in China on spying charges on Tuesday, over two years after Chinese security officers spirited her away and 20 or more years after the alleged espionage was said to have taken place, her lawyer said.

But the businesswoman, Phan Phan-Gillis, often called Sandy, may soon be deported to the United States, allowing her to reunite with her husband, Jeff Gillis, who has adamantly rejected the accusations and fought for her freedom, said her lawyer, Shang Baojun.

After a secret trial in the morning in Nanning, the capital of the Guangxi region in southern China, a judge declared Ms. Phan-Gillis guilty, sentenced her and ordered her expelled from China — but left unclear whether she had to serve out her prison sentence before being deported, Mr. Shang said by telephone.

“A court can order expulsion from the country for foreign nationals either after serving a sentence or concurrent with a sentence starting, but the judge wasn’t clear on which applied here, so I also have to wait to read the verdict,” Mr. Shang said. “Of course, I hope that they’ll deport her as soon as possible, but we have to wait until we see the written verdict to be sure.”

It could be days before he receives the written judgment, he said.

The uncertainty about the sentence has added an agonizing twist to a case that turned Ms. Phan-Gillis’s husband into an amateur detective and lobbyist, seeking to clear his wife of the accusation that she had worked as a spy for the

American authorities. Mr. Gillis said by email that he did not want to comment on the trial.

The United States Consulate in Guangzhou, in southern China, has handled Ms. Phan-Gillis's consular needs while she has been held in Nanning, 315 miles to the west. The consulate confirmed that she had stood trial but gave no details.

"We continue to follow Ms. Phan-Gillis's case closely," the consulate's press office said by email. "We have regularly raised Ms. Phan-Gillis's case with Chinese officials, including at the most senior levels."

China's president, Xi Jinping, has redoubled the government's longstanding warnings that it faces dire threats from foreign spies and subversion, and state security officers have appeared increasingly active. Other foreigners have also been tried on spying charges, including a Canadian man released last year soon after his trial ended with a guilty verdict. But ethnic Chinese people appear especially vulnerable, because officials have fewer scruples about detaining them.

Calls to the Nanning Intermediate People's Court, where Ms. Phan-Gillis was tried, went unanswered, and there was no word of the trial in Chinese news media. The Chinese Ministry of Foreign Affairs did not respond to faxed questions about the case.

"The continued detention of Sandy Phan-Gillis is inexplicable and unacceptable," Senator John Cornyn of Texas said in an emailed comment on the verdict. "Beijing should release her immediately so she can return to her family in Houston."

Ms. Phan-Gillis, 57, was seized near a border crossing by Chinese security officers in March 2015, when she was accompanying a delegation of officials and businesspeople from Houston, including the mayor pro tem at the time, Ed Gonzalez.

Ms. Phan-Gillis was born in Vietnam into an ethnic Chinese family, and she fled in her teens by boat, eventually settling in the United States. She worked as a consultant for Houston businesses interested in Chinese customers and investment, as well as for Chinese businesses interested in Texas, and she traveled often to southern China.

At first, Mr. Gillis said, he kept quiet about Ms. Phan-Gillis's detention and hoped that Chinese investigators would release her after realizing the charges were groundless.

But as the months wore on, Mr. Gillis concluded that the Chinese authorities would not back down, and he turned to public appeals to seek her freedom.

He was told that she had been formally arrested in September 2015, days before Mr. Xi arrived in the United States for a visit.

"I really don't want to be disruptive. I don't want to ruin anybody's party," Mr. Gillis said at the time. "I just want to get my wife back."

Ms. Phan-Gillis was indicted last July, setting in motion preparations for the trial. Mr. Gillis said then that the claims in the indictment crumbled under closer scrutiny. The prosecutors claimed that Ms. Phan-Gillis had spied in China for a time in 1996 when she was not even in the country, he said.

In the indictment, the prosecutors also claimed that Ms. Phan-Gillis had tried to recruit Chinese people living in the United States to work for a "foreign spy organization." Mr. Gillis said that claim was also false. "The charges are beyond ridiculous," he said.

The lawyer, Mr. Shang, said he could not discuss what specific accusations prosecutors made at the trial, because lawyers are forbidden to publicly disclose national security cases without approval. But their broad accusation was that Ms. Phan-Gillis "engaged in activities harmful to Chinese national security" in both China and the United States between 1995 and 1998, he said.

At the trial, Ms. Phan-Gillis pleaded guilty to the spying charge, he said.

"After the verdict was read out, the chief judge didn't ask her whether she'd appeal," Mr. Shang said. "But when I met her yesterday and previously and asked her, she said she wouldn't appeal, as long as she could leave China as soon as possible."

Ms. Phan-Gillis previously said that she was innocent, but she may have changed her position in the hope of early release and a return home. A United Nations human rights panel last year demanded her release after finding that she had suffered arbitrary detention and deprivation of access to lawyers.

"They put words in my mouth," Ms. Phan-Gillis told a visiting American consular officer, according to an earlier account given by Mr. Gillis.

Follow Chris Buckley on Twitter *@ChuBailiang*.

Adam Wu contributed research.

Dui Hua Welcomes Return of Sandy Phan-Gillis to the United States

SAN FRANCISCO (April 28, 2017): On April 25, 2017, the Nanning Intermediate People's Court in Nanning, capital of China's Guangxi Zhuang Autonomous Region, convicted American businesswoman Sandy Phan-Gillis of espionage and sentenced her to three and one-half years' imprisonment and deportation. On April 28, Ms. Phan-Gillis was deported. She arrived in Los Angeles the same day. She was met upon arrival by her husband and members of her family.

Ms. Phan-Gillis was taken into custody by agents of the Nanning State Security Bureau on March 19, 2015 at the Zhuhai border crossing in Guangdong Province. She was taken to Nanning where, on March 20, 2015, she was placed under residential surveillance in a designated location (RSDL), a coercive measure under which a suspect can be held without access to a lawyer or members of family for up to six months. At the time Ms. Phan-Gillis was taken into custody and placed under RSDL, she was the President of the Houston-Shenzhen Sister City Association. She was exiting China with a trade delegation led by the Mayor Pro Tem of Houston, Ed Gonzalez; Ms. Phan-Gillis was a member of the Mayor's International Trade and Development Council and was known for her efforts to promote good relations between the United States and China.

After six months under RSDL, Ms. Phan-Gillis, who suffers from serious medical problems and was hospitalized in Nanning on two occasions, was formally detained and transferred to the Nanning Number Two Detention Center. She was formally arrested on suspicion of assisting in the theft of state secrets on October 26, 2015. The case was handed over to the procuratorate on May 26, 2016. Only then was she allowed to meet a lawyer, 14 months after she was taken into custody. In July, 2016 she was indicted for espionage and the case was sent to the Nanning Intermediate Court, which postponed the trial on at least two occasions.

The crime of espionage is one of the most serious crimes in the Criminal Law, carrying a maximum sentence of death. Dui Hua has recorded 186 cases of espionage in its prisoner database. Of these 28 people were given life sentences, eight were given sentences of death with two-year reprieve, and eight were sentenced to death. At the lower end of the spectrum, seven were given sentences of three years in prison and three (including Ms. Phan-Gillis) were given sentences of three and a half years.

On April 20, 2016, the United Nations Working Group on Arbitrary Detention (WGAD) determined that Ms. Phan-Gillis had been arbitrarily detained in violation of international law. The WGAD decision, which was announced on June 29, 2016, marked the first time in its 25-year history that this group of experts had determined that an American citizen had been arbitrarily detained by the Chinese government.

Shortly before her conviction and deportation, Ms. Phan-Gillis was allowed a video call with her father who had suffered a major heart attack and had spent several days in a hospital intensive care unit. She has received monthly visits by officers of the Consulate General of the United States in Guangzhou.

Ms. Phan-Gillis' return to the United States comes three weeks after President Xi Jinping's visit to the United States for talks with President Trump. Negotiations to secure the release of Ms. Phan-Gillis intensified during Secretary Tillerson's visit to Beijing in March 2017. Tillerson's State Department was assisted by the White House in bringing the negotiations to a successful conclusion.

At the request of her husband, Jeff Gillis, Dui Hua's executive director John Kamm worked for more than 19 months to help bring about her release, raising her case in more than two dozen meetings with Chinese government and party officials and placing her name on many prisoner lists.

Kamm said: "Ms. Phan-Gillis' return to her family in the United States is the result of her husband and daughter's heroic work over a period of two years. They were assisted in this effort by officers of the American Embassy in Beijing, the American Consulate in Guangzhou, and the Department of State and White House National Security Council in Washington; Members of Congress led by Congressman Al Green of Texas' Ninth Congressional District; Senator Marco Rubio and the Congressional Executive Commission on China; Andrew Duncan, Chairman of Los Angeles-based film company June Pictures; the Houston city government, the Mo Shaoping Law Firm; and private citizens, notably friends and family of Jeff Gillis and Sandy Phan-Gillis, as well as human rights and civil society groups. There has been intense media interest in her case."

Kamm also thanked members of the Chinese government with whom he met on many occasions to discuss Ms. Phan-Gillis' case.

Kamm noted that "More than 100 American citizens are currently being deprived of their freedom in China. Some are held in detention centers, a few for long periods without adjudication; others are in prison, convicted and sentenced for offenses

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As for 2015, there are more than 107,000 women in Chinese prisons, an increase of 3.2 percent since 2014. Women in China are being incarcerated at a rate ten times the rate of men.

Read Dui Hua's analysis.

under China's Criminal Law; still others are forbidden from leaving the country because of commercial disputes or because a relative is suspected of a crime. We must not forget them."

Top ↑

US businesswoman Phan Phan-Gillis sentenced in China on spying charges

'Sandy' Phan-Gillis disappeared while on a business trip to China in 2015 and little had been heard of her case until her sentence

Associated Press

Wednesday 26 April 2017 02.45 BST

An American woman detained during a business trip to China and charged with spying was sentenced on Tuesday to three and a half years in prison, raising the possibility that she may be allowed to return home soon.

Phan Phan-Gillis has faced an uncertain fate since March 2015 when she disappeared from her group traveling in southern China. She was later accused of espionage, which carries a possible death sentence. A United Nations panel has said her detention violated international norms and the US has long pressed China to resolve the case fairly.

The US state department confirmed that she had been sentenced on Tuesday. While Phan-Gillis's trial was closed to the public, a representative from the American consulate in Guangzhou, China, was allowed to attend the public announcement of the verdict against her, the department said.

Under Chinese law, Phan-Gillis could be eligible now for parole and deportation, said John Kamm, founder of the San Francisco-based Dui Hua Foundation, which monitors human rights

and legal issues in China. Kamm said he expects China to parole Phan-Gillis “fairly soon.”

The Chinese embassy in Washington did not respond to a message about her case.

Phan-Gillis is of Chinese descent, but was born in Vietnam and is an American citizen who lived in Houston and worked as a business consultant. Known by friends as “Sandy”, she made numerous trips to China for business and as a volunteer to promote cultural and business exchanges.

She disappeared from the rest of her group during a trip in March 2015 to promote business opportunities in Houston. It took her husband, Jeff Gillis, almost two weeks to confirm through American consular officials that she had been detained by Chinese state security.

China’s opaque legal system often provides little or no explanation for why someone is detained or punished. Her Chinese lawyer, Shang Baojun, told the Associated Press last year that Phan-Gillis was charged with spying, but he could not discuss the case further because it involved state secrets. Jeff Gillis, who did not return a message on Tuesday, said last year that he was told his wife was accused of conducting a spy mission in 1996, then trying to recruit new spies the following two years – allegations he called “beyond ridiculous.”

Jeff Gillis looks through documents he has collected in support of his wife in Houston. Photograph: David J. Phillip/AP

“I have the passport that shows that she didn’t even have a visa in 96, no entries or exits,” he said. “I have her pay stubs that show that she was not off on extended leave.”

The Dui Hua Foundation said Phan-Gillis was the first American citizen to be convicted of spying in a Chinese court since 1973. But Phan-Gillis’ three and a half year prison term is on the low end of sentences for espionage charges, according to Dui Hua’s research.

China sometimes releases foreigners as an apparent sign of goodwill. Last year it allowed Kevin Garratt, a Canadian citizen held for two years and accused of spying, to return home after Canada’s prime minister, Justin Trudeau, mentioned Garratt to top officials in Beijing.

In Phan-Gillis’ case, Kamm credited the Trump administration and particularly secretary of state Rex Tillerson, who visited Beijing last month. Kamm said he was told by “people who were in the room” that Tillerson pressed Phan-Gillis’ case in private meetings.

“If US-China relations were not going as well as they are right now, I think this outcome would have been different,” Kamm said.

Topics

- China

Madera Tribune, Number 293, 15 January 1953 — 2 Americans Seized On Spy Charge [ARTICLE]

2 Americans Seized On Spy Charge
WASHINGTON' (TP.)— Two Americans have been arrested in Austria as spies for Russia, the .Justice Department announced today. The two —Otto Verber and Kurt L. Ponger, both of New York — j were charged with conspiring with Yuri V. Novikov, second secretary of the Soviet embassy here. This government promptly declared Novikov persona non grata —unacceptable—and demanded his recall by Russia immediately. Verber and Ponger, both naturalized citizens, were arrested in their native Vienna yesterday by U. S. Army intelligence officers. A military plane is flying them to Washington for arraignment, probably later today. Verber is a former U. S. Army officer. Secret Indictment A federal grand jury indicted them on espionage charges Tuesday. but the indictment was kept sealed pending their arrest. The two-count indictment charged 14 specific overt acta to carry out an espionage conspiracy with Novikov, starting in 1949. The Americans were charged with conspiring with Novikov, a former Red army officer, to pass defense information to Russia. The indictment said they planned to deliver to Russia “documents, writings, sketches, plans, maps, notes, instruments and information relating to the national defense of the United States” and that they tried to obtain intelligence and counterintelligence information about the U. S. Army and Air Force. Question About Penalty Legal experts said there is some question whether the two Americans, if convicted, would be guilty of wartime or peacetime espionage activities. Espionage in wartime carries a maximum penalty of death. In peacetime the maximum penalty is 20 years in prison. Novikov, who joined the Russian | embassy here in April, 1948, was a member of the Soviet army from 1942 to 1946. He was made second secretary in 1950. State Department officials said they believed this was the first I time the United States has demanded the ouster of a Russian embassy official here since the two governments established relations in 1933. Was Army Lieutenant The Justice Department said Verber. 31, was born in Vienna. 1
I was naturalized in 1943. and corn ; missioned a 2nd lieutenant in the ! I'. S. Army in 1944. It said he served on a military intelligence team in Europe until j February, 1945, and subsequently was employed as an interrogator I lor the War Crimes Commission in Nuernberg. The Justice Department said that before his arrest he lived in the American zone of Vienna and s enrolled in the University of Vl-i-i na under the Q.I. bill of rights. Brothers-In-lam The department said the 39-year-oW I’onger also was born in ■'fiennu, (ust entered this country in 1940, and was naturalized in ■February, 1943. The department said that Ponger Is "reportedly a brother-in-law" cf Verber. It said that he also was employed by the War Crimes Commission in Europe. The indictment charged that the defendants arranged to receive messages and instructions from P.ussia an 1 to employ other people ac contact men in this country and in Austria. One act cited said that Pongee arranged a meeting here between a government employe and Novikov. It did not identify the employe. Another charged that in April, 1951, Novikov did meet and confer here with a government employe.

The Washington Post

Russian Diplomat Is Accused Of Spying

By Vernon Loeb; David A. Vise December 9, 1999

The FBI accused a Russian diplomat of espionage yesterday, one week after Russian authorities detained and ordered the expulsion of an American diplomat in Moscow on similar grounds.

U.S. officials said Stanislav Borisovich Gusev, a second secretary at the embassy here, was caught outside State Department headquarters while collecting information transmitted from a listening device planted in a high-level conference room on the seventh floor. That is the most secure part of the building, where Secretary of State Madeleine K. Albright and other top officials have their offices.

Gusev was held briefly by the FBI and then turned over to the Russian Embassy because he claimed diplomatic immunity, the U.S. officials said. The State Department said Gusev had been declared persona non grata and must leave the United States within 10 days.

While U.S. officials formally denied that the arrest was in retaliation for the incident in Moscow, it clearly followed the pattern of tit-for-tat espionage cases that were common during the Cold War but have been rare since the breakup of the Soviet Union in 1991.

Last week, Russian authorities briefly detained Cheri Leberknight, 33, a second secretary in the U.S. Embassy in Moscow. Alexander Zdanovich, a spokesman for the Federal Security Service, one of the successor organizations to the Soviet KGB, said Leberknight was "caught red-handed trying to get from a Russian citizen documents on military and strategic information classified as state secrets." She was quickly turned over to U.S. officials in Moscow but was ordered to leave the country within 10 days.

After Gusev was detained yesterday afternoon, Undersecretary of State Thomas R. Pickering summoned Russian Ambassador Yuri Ushakov to the State Department and lodged a protest, just as the Russian Foreign Ministry did with U.S. Ambassador James F. Collins in Moscow last week.

A Russian Embassy official said Gusev had been working in Washington for about a year. The embassy had no other immediate comment.

U.S. officials said Gusev's apprehension resulted from a long counterintelligence investigation by the FBI, which cooperated with the State Department Diplomatic Security Service in finding the bug on the seventh floor using electronic gear.

"This is an example of good, solid, standard counterintelligence by the FBI," one U.S. official said. "The FBI observed him outside the State Department on several occasions. It became apparent what he was doing."

Another senior official said, however, that there was cause for concern about a possible high-level security breach. "The larger issue here is, if they were able to get that device in there, what else is in the building and what is the State Department going to do about it? That is a huge issue," he said.

The detention of Leberknight, the American diplomat in Moscow, came shortly after the announcement that a U.S. naval code clerk, Daniel King, 40, had been arrested for passing secrets to Russia in 1994. King had been assigned to the National Security Agency in Fort Meade, Md., and he allegedly mailed a computer diskette containing classified information to the Russian Embassy.

Staff writers Steven Mufson and Walter Pincus contributed to this report.

Los Angeles Times

FROM THE ARCHIVES

Newly Open U.S. Embassy Is Still a Work in Progress
July 1, 2004

U.S. Scurries to Find How Spy Planted Bug

December 10, 1999 | BOB DROGIN and ERIC LICHTBLAU | TIMES STAFF WRITERS

WASHINGTON — Stunned FBI agents and U.S. diplomatic security officers scrambled Thursday to determine how--and when--a Russian spy secretly planted a sophisticated eavesdropping device inside a State Department conference room used by high-level officials and whether national security was put in jeopardy as a result.

U.S. officials also identified Stanislav Borisovich Gusev, the 54-year-old Russian diplomat who was arrested Wednesday as he monitored the "bug" from a bench outside the State Department, as a member of the technical staff of the SVR, Russia's foreign intelligence service.

U.S. officials said that the espionage case marks the first time State Department headquarters is known to have been successfully bugged. "This was a very bold operation," said a senior official. "It's about as aggressive as it gets."

State Department officials said they have no record that Gusev ever was inside the sprawling building, however. The investigation thus has focused on identifying the spy who placed the tiny electronic device in a seventh-floor meeting room near a high-security area that includes Secretary of State Madeleine Albright's offices.

"They don't know yet how it got there," said another senior official. "It could be a visitor. It could be a workman. It could be a Russian agent in place" in the State Department. He added, "They don't have a suspect."

Officials said that 50 to 100 meetings were conducted in the room from early last summer, when Gusev first came under suspicion, until his arrest Wednesday. Investigators planned to interview everyone who attended the meetings in an attempt to assess the severity of the security breach.

Gusev was arrested by the FBI outside the State Department as he adjusted reception equipment designed to monitor transmissions from the device, officials said. He was turned over to the Russian Embassy after claiming diplomatic immunity but was ordered to leave the United States within 10 days.

Officials said that Gusev entered the United States in March and was on his last assignment before retirement. But they do not know how long the bug has been in place.

Officials said that installation of the device required access to the meeting room, perhaps including taking photographs, then a return trip to place it. Neil Gallagher, an assistant FBI director, called the placement "very professional."

"It's just not slapped on here," he said. "The ordinary person would not see it."

Neither did State Department diplomatic security and counterintelligence experts. Their routine sweeps of crucial parts of the building with sensitive electronic equipment did not locate the bug. One official said that the device was only found a few weeks ago, months after the FBI first became suspicious of Gusev.

FBI agents first noticed the Russian early last summer, when they saw him standing outside the State Department headquarters and thought he was acting oddly. Gusev was subsequently found to visit every week or so, "literally just walking around the surrounding street," Gallagher said. Gusev's driving and parking also raised suspicion, since he apparently was "trying to position his car in an ideal location" for a clandestine technical operation.

Gallagher described the subsequent search for the bug inside the eight-story building, which occupies an entire city block, as "literally attempting to find a needle in a haystack." Ironically, investigators began searching the building from the first floor up, in part because they believed the executive secretariat on the seventh floor was secure.

When the device finally was found, counterintelligence experts were shocked. "We have not seen a device of that sophistication before," Gallagher said. He declined to provide details.

A senior official insisted that Gusev was only able to listen to conversations in real time. But other intelligence experts were skeptical, saying that it was far more likely he was servicing a device designed to secretly record and encrypt conversations and then broadcast the compressed data in an intense, targeted burst when triggered from outside.

That would explain both the regular timing of Gusev's weekly visits--which officials said did not correspond to the scheduling of key meetings or talks inside--as well as the inability of normal electronic

sweeps to detect ongoing transmissions.

Gallagher said that the device was left in place to avoid tipping off the Russians. He said security teams conducted an aggressive sweep of top-level offices in the building to search for other devices but found none. Senior officials were warned to avoid sensitive conversations near the bug. Officials refused to say whether deliberate disinformation was fed to the device after it was detected.

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US 'spy' Ryan Fogle expelled after CIA refused to stop recruiting, say Russians

Federal Security Service says US embassy official was expelled because CIA persisted in trying to recruit Russians for espionage

Miriam Elder in Moscow

Wednesday 15 May 2013 16.36 BST

Russia's decision to expose and expel a suspected spy working undercover at the US embassy in Moscow came after the CIA failed to stop its recruitment efforts following the previously unrevealed expulsion of a US spy earlier this year, a Russian intelligence officer has alleged.

Speaking to state-run television, an anonymous officer with the Federal Security Service (FSB) said Russia had expelled an "operative of the Moscow *rezidentura*" in January, using Soviet-era spy slang. "We asked our American colleagues not to continue such acts in relation to Russian citizens. Nonetheless, they didn't listen to us," the officer said, his face and voice masked for television.

The revelation came one day after Moscow's widely publicised detention of Ryan Fogle, whom it accused of being a CIA agent working undercover as the third secretary at the US embassy in Moscow.

The Russian foreign ministry declared Fogle persona non grata and ordered him to leave the country "in the shortest possible time".

He was caught while allegedly attempting to convince an FSB agent focused on fighting terrorism in the troubled north Caucasus to work for the CIA. US interest in the region has grown following the revelation that the two men suspected of bombing the Boston marathon last month had roots in Chechnya and Dagestan.

The FSB officer said US recruitment efforts had, however, begun to increase about two years ago.

"For the last two years, we have seen persistent CIA attempts to flip members of law-enforcement agencies in Russia," the officer said. He said Fogle's arrival in Russia in spring 2011 had immediately rung alarm bells and he was "monitored upon arriving in Russia".

"We can now say that this is not the first act of espionage that the American took personal part in," he said.

The foreign ministry summoned the US ambassador to Moscow, Michael McFaul, on Wednesday to issue a formal protest. The US embassy has refused to comment on the case.

Fogle's detention led the news in Russia on Wednesday, with state-run television repeatedly airing footage of the "spy accessories" he was allegedly carrying when caught, which included several wigs and sunglasses, as well as a compass and map of Moscow.

The bizarre mix of distinctly unmodern spyware, as well as a poorly phrased letter appealing to the desired recruit for help, prompted analysts to wonder if part of the bust had been staged.

That suspicion was increased on Wednesday, when state-run television released an alleged telephone conversation in which Fogle appeals to his target. "We have to meet today - it's impossible tomorrow, only today," a man presented as Fogle says in Russian. "As I said, you can make up to $1m a year or I have $100,000 with me. But it's definitely now. Yes or no? Now."

Foreign diplomats in Russia function under the assumption that their telephones are tapped.

Despite the new revelations, there were indications that the spy scandal might pass quickly, as the US and Russia seek to boost co-operation over Syria and the Boston bombing investigation. The attempts to forge better ties come after a year of steadily worsening relations, when Russia regularly accused the US of using its state department and spy agencies to foment opposition to Vladimir Putin.

On Wednesday, Yury Ushakov, Putin's foreign policy adviser, said: "What's surprising is that this crude and clumsy recruitment happened against the background of a clear statement by President Obama and President Putin on the importance of enhancing co-operation and contact between the two countries' special services."

Yet he added: "I don't think that this can significantly influence our co-operation, all the more so because its importance was declared on the highest level." Putin has not commented on the scandal.

Topics

- Russia
- Espionage
- Europe
- CIA
- US foreign policy

A

IMMEDIATE

MINISTRY OF FOREIGN AFFAIRS
ISLAMABAD

Subject: Indian External Affairs Minister's visit to Pakistan (2-5 October, 2005)

In the recently held Foreign Ministers' level review meeting of the Composite Dialogue, the Indian side proposed changes to the existing agreement on consular access and agreement on visa matters.

2. Copies of the proposed Indian drafts are enclosed with the request that the same may kindly be examined and views conveyed to this Ministry at the earliest.

Encls: as above

(Tariq Zameer)
Director (India)
Tel/fax 9204310

- Secretary, Ministry of Interior, Islamabad
- Directorate General ISI (Brig. Khan Ahmed Sufyan), Islamabad

M/o Foreign Affairs' UO No.Ind (I)-1/20/2005, dated 06-10-2005

(2)

DRAFT AGREEMENT ON CONSULAR ACCESS

The Government of India and the Government of Pakistan, desirous of furthering the objective of human treatment to nationals of either country arrested, detained or imprisoned in the other, have agreed to reciprocal consular facilities as follows:

i) Each Government will maintain a comprehensive list of the nationals of the other country under its arrest, detention or imprisonment. The lists shall be exchanged as soon as possible on 1st January and 1st July every year.

ii) Immediate notification of any arrest/detention/imprisonment of any person of the other country shall be provided to the respective High Commission.

iii) Each Government shall give consular access to all nationals of the other country under arrest, detention or imprisonment within three months of the date of arrest/detention/sentence.

iv) Both the Governments agree to release and repatriate persons who are under their arrest, detention or imprisonment except those who have either been convicted or are under trial or have not yet completed their sentences after conviction. Such persons will be released and repatriated by the respective Governments within one month of confirmation of their National status. Others will be repatriated after similar confirmation of nationality and completion of their sentences.

FOR THE GOVERNMENT OF REPUBLIC OF INDIA

FOR THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF PAKISTAN

Code

1. Original Agreement of New Delhi, November 2, 1982 – Text in normal type
2. Portions proposed to be deleted – A strikethrough line
3. Changes proposed – Bold, Italicised text.

DRAFT ~~PROTOCOL OF~~ *AGREEMENT ON* CONSULAR ACCESS WITH MODIFICATIONS

The Government of India and the Government of Pakistan, desirous of furthering the objective of human treatment to nationals of either country arrested, detained or imprisoned in the other, have agreed to reciprocal consular facilities as follows:

i) Each Government will ~~make a determined effort to draw up~~ *maintain* a comprehensive list of the nationals of the other country under its arrest,detention or imprisonment ~~until the date of this protocol.~~ The lists shall be exchanged as soon as possible *on 1st January and 1st July every year.*

ii) ~~Lists of persons arrested, detained or imprisoned after the date of this protocol shall be exchanged at regular intervals.~~ *Immediate notification of any arrest/detention/imprisonment of any person of the other country shall be provided to the respective High Commission.*

iii) ~~Each Government shall give consular access on a reciprocal basis to nationals of one country under arrest, detention or imprisonment in the other country, provided they are not apprehended for political or security reasons/offences. Request for such access and the terms thereof shall be considered on the merits of each case by the Government arresting the person or holding the detenus/prisoners and the decision on such requests shall be conveyed to the other Government within four weeks from the date of receipt of the request.~~ *Each Government shall give consular access to all nationals of the other country under arrest, detention or imprisonment within three months of the date of arrest/detention/sentence.*

iv) ~~Both Governments agree to discuss modalities of release and repatriation of persons who are under their arrest, detention or imprisonment and who have not been convicted on trial or have completed their sentence.~~ *Both the Governments agree to release*

and repatriate persons who are under their arrest, detention or imprisonment except those who have either been convicted or are under trial or have not yet completed their sentences after conviction. Such persons will be released and repatriated by the respective Governments within one month of confirmation of their National status. Others will be repatriated after similar confirmation of nationality and completion of their sentences.

FOR THE GOVERNMENT OF
REPUBLIC OF INDIA

FOR THE GOVERNMENT
OF THE ISLAMIC
REPUBLIC OF PAKISTAN

****

Government of Pakistan
Ministry of Interior

.....

Sub: INDIAN EXTERNAL AFFAIRS MINISTER'S VISIT TO PAKISTAN(2-5 OCTOBER,2005).

Reference Ministry of Foreign Affairs U.O No.1-Ind(1)/20/2005, dated 6th October 2006, on the above subject.

2. It is stated that proposed Indian Draft regarding changes to the existing protocol on consular access has been examined carefully. This Ministry agree to clause i-iii of the Indian proposals. As regards clause iv, it has a loop hole as the indians may utilize the pre-trial/conviction period for putting pressure for the release of arrested/detained persons. To prevent demand for immediate repatriation on arrest /detention, until investigations prove such person innocent, this caluse has been modified accordingly.

3. Furthermore, in December 2004, the two sides had agreed to introduce a mechanism for early repatriateion, without any sentence, of inadvertent border crossers and of those under16 apprehended by either side. It is proposed that the decision taken earlier in this regard may be made part of the protocol on consular access and as such it would be more beneficial to our side as number of border crossers from our side is greater than that of Indians. Keeping inview these aspects clause v &vi have also been added to the proposals forwarded by the Indian side.

4. It is requested that proposed changes from Pakistan side (Annexure) may be forwarded to the Indian Government for consideration.

5. Views on Visa Agreement will follow shortly.

(Ghulam Muhammad)
Section Officer (India-II).
Ph: 9207440

Ministry of Foreign Affairs (Mr. Zaheer A. Janjua, Director-India), Islamabad
Ministry of Interior U.O. No. 9/11/2005 dated 15-4-2006.

ANNEXURE

DRAFT AGREEMENT ON CONSULAR ACCESS

(6)

The Government of India and the Government of Pakistan, desirous of furthering the objective of human treatment to nationals of either country arrested, detained or imprisoned in the other country, have agreed to reciprocal consular facilities as follows:-

I) Each Government will maintain a comprehensive list of the nationals of the other country under its arrest, detention or imprisonment. The lists shall be exchanged as soon as possible on 1st January and 1st July every year.

II) Immediate notification of any arrest/detention/imprisonment of any person of the other country shall be provided to the respective High Commission.

III) Each Government shall give consular access to all nationals of the other country under arrest, detention or imprisonment within three months of the date of arrest/ detention /sentence.

iv) Both the Governments agree to release and repatriate persons who are under their arrest, detention or imprisonment provided investigations prove such persons innocent. However these persons will be released and repatriated by the respective Government within one month of confirmation of their National status. The persons who have either been convicted or are under trial or have not yet completed their sentences after conviction will be repatriated after similar confirmation of nationality and completion of their sentences.

v) Inadvertent border crossers under 16 apprehended by either side may be released without sentencing.

vi) In special cases which call for/require compassionate and humanitarian considerations either side may exercise its discretion subject to its laws and regulations, to allow early release and repatriation of civil prisoners and fishermen.

FOR THE GOVERNMENT OF REPUBLIC OF INDIA

FOR THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF PAKISTAN

MINISTRY OF FOREIGN AFFAIRS
ISLAMABAD

No. Director (India)-1-/1/2006 May 2, 2006

Subject: Draft Agreement on Consular Access

Dear Deputy High Commissioner,

Reference above subject.

2. During the visit of the Indian External Affairs Minister to Pakistan in October 2005, the Indian side had handed over a draft Agreement on Consular Access. The Indian draft has been examined by the concerned authorities and a revised draft has been received, which is attached.

3. It is requested that the High Commission may also critically examine the enclosed draft before forwarding it to the Indian side.

With regards

Yours sincerely,

Zaheer A. Janjua
Director (India)

Mr. Afrasiab Mehdi Hashmi,
Deputy High Commissioner
High Commission for Pakistan
New Delhi

HIGH COMMISSION FOR PAKISTAN
NEW DELHI

DLI—268
22-6-06

No.Pol-I|18|2006 21 June 2006

My dear Director General,

As the Ministry is aware, the following events are scheduled in the bilateral context with India in the near future on which Ministry's instructions/advise etc are requested:

Release of fishermen and civilian prisoners by 30 June 2006 who have completed requisite procedures in respect of their release, in accordance with Pakistan-India Joint Statement issued in Islamabad after the Interior/Home Secretary level talks on 31 May 2006

2. Exact list of Indian prisoners/fishermen to be released by our side along with the date of their release and the exit point from Pakistan to India i.e. Wagha/Munabao may be communicated to the Mission. Other instructions on the subject if any, are also requested.

Agreement arrived at between Pakistan and India to start the Srinagar-Muzaffarabad Truck Service to facilitate cross-LoC trade in the first half of July 2006

3. The list of items to be exported from AJK to IoK has been received by this Mission from the Ministry. However, the list of items to be imported from IoK to AJK is awaited which may kindly be expedited. Both lists are required to be sent to the MEA. The requisite lists from the Indian side are awaited which on receipt shall be sent to the Ministry.

4. Director General (South Asia) had conveyed to the Indian side that a delegation from the AJK Chambers of Commerce would visit IoK first (followed by a reciprocal visit from the other side). Requisite information including composition of our delegation and dates of the visit etc from our side, are awaited. In the meanwhile, the MEA had sent us a list of their delegation that was forwarded to the Ministry on which JS Dilip Sinha has reminded the Mission on a quick clearance from Islamabad.

5. Matters relating to setting up two meeting points for the divided families along the LoC [in addition to the five crossing points agreed upon earlier], were also discussed by our side with the Indian delegation at the above meeting on which Ministry's instructions are requested because apparently there does not

Director (India)'s Office
Diary No. 2586
Dated 24-6-2006

Dy No. 1267 (IND-I)
Dated 5/7/06

2/50-G, Shantipath, Chanakyapuri, New Delhi - 110021
Phones : (91-11) 26110601/2/5. Fax : (91-11) 26872339. E-mail : pakhc@nda.vsnl.net.in

seem to be any decision arrived at on this particular matter between Pakistan and India.

Secretary level Pakistan-India talks on Wullar Barrage, Islamabad on 22-23 June 2006

6. A detailed up-dated brief on the talks may kindly be sent to the Mission once the meeting is over.

Talks on Indus Waters Commission in Lahore on 25-26 June 2006

7. Detailed up-dated brief may kindly be sent to the Mission once the talks are over.

Pakistan-India Joint Commission technical level talks on Information and Education

8. The talks were scheduled to be held in New Delhi on 20-21 June 2006 which could not take place because of some difficulties from the Indian side. MEA has been requested to provide a new set of dates which on receipt shall be conveyed to the Ministry. It is strongly recommended that our delegation for the talks may come to Delhi with proper briefing. Brief on the meetings may kindly be sent to the Mission in advance.

Meeting between Pakistan's ANF and India's NCB at the level of Directors General in New Delhi on 11-12 July 2006

9. Composition of our delegation along with their itinerary is requested. Similar request has been made to the Indian side. Detailed brief on the subject may kindly be sent to the Mission by coming bag.

Review meetings and Plenary Session

10. According to our calendar of events, Foreign Secretary level review meeting under the Composite Dialogue Framework is scheduled to take place in New Delhi on 20 July followed by Foreign Minister level review meeting on 21 July and Joint Commission Plenary Session headed by Foreign Ministers in New Delhi on 22 July 2006, instructions on which are requested.

11. It may be recalled that Defence Secretary level talks on Siachen were held in New Delhi on 23-24 May followed by talks here on Sir Creek on 25-26 May 2006. Detailed up-dated briefs on the two talks are requested.

16 3/4

12. During the visit to Pakistan in October 2005 by the Indian Minister for External Affairs, the Indian side had handed over to us drafts of the following agreements/protocols:

a) Agreement on Consular Access;
b) Revised Protocol on visits to religious places – 1974 ;
c) Visa agreement;
d) Executive programme on cultural exchanges.

13. So far the Mission has received the amended draft from our side on Consular Access which has been forwarded to the MEA. Our response to the other three agreements/protocols is awaited which may kindly be expedited.

14. A Sikh Jatha would be proceeding to Pakistan on 26 June 2006 in connection with the death anniversary of Sikh Maharaja Ranjit Singh. The Mission is taking action on the matter in terms of issuance of visas.

15. Indian film Mughl-e-Azam is scheduled to be screened in Karachi on 24 June 2006. On written instructions from Interior Division and after having discussed the matter with our Ministry, the Mission is issuing visas to around 50 Indian artists who have been invited by the sponsors for the premier.

16. Detailed report has been sent to the Ministry by last bag on inspection carried out by a team of this Mission [that went to Mumbai] of the three properties proposed by the Indian side to establish Pakistan's Consulate General in the Maharashtran capital. The Mission is awaiting more information from the owner of the Shankala Bungalow after which our recommendations would be forwarded. Similarly, a report is being sent to the Ministry by tomorrow's bag on the plot of land in Mumbai on which we would like to construct our own buildings in connection with the Consulate General, instructions on which of the Ministry have been requested.

Yours sincerely,

17/6/2006

(Afrasiab)
Deputy High Commissioner

Mr. Jalil Abbas Jilani,
Director General (SA),
Ministry of Foreign Affairs,
Islamabad

17 4/4

Copy to:

1. DG (FMO), Ministry of Foreign Affairs, Islamabad.
2. Director (FSO), Ministry of Foreign Affairs, Islamabad.
3. Additional Secretary (AP), Ministry of Foreign Affairs, Islamabad.
4. Director (India), Ministry of Foreign Affairs, Islamabad.
5. Director (Kashmir Affairs), Ministry of Foreign Affairs, Islamabad.

8

IMMEDIATE

GOVERNMENT OF PAKISTAN
MINISTRY OF INTERIOR
NATIONAL CRISIS MANAGEMENT CELL

******

Subject: **Third Round Of Pakistan India Composite Dialogue: Foreign Secretary Level Review**

Please refer to your u.o. letter No. Director (India)-1/1/2006 dated 5-7-2006 on the subject.

2. Record/Summary of the Interior/Home Secretary-level talks between Pakistan and India held in Islamabad on May 30-31 is enclosed, as desired please.

Lt Col
(Muhammad Imran Yaqub)
Director (Operations)
for Director General

Ministry of Foreign Affairs (Mr. Zaheer A.Janjua, Director (India), Islamabad
NCMC u.o. No. 5/5/2005 (O&I), dated 8th July, 2006

Diary No. ... Dated 10-7-2006 Dated 12/7/06

For addition to the brief 10/7 Tesi. 1/31

DD I

GOVERNMENT OF PAKISTAN
MINISTRY OF INTERIOR
NATIONAL CRISIS MANAGEMENT CELL
*****

D

1/31

SUMMARY
THIRD ROUND OF PAK-INDIA COMPOSITE DIALOGUE ON TERRORISM AND DRUG TRAFFICKING

- Pak-India Interior/ Home Secretary level talks on Terrorism and Drug Trafficking under the 3rd round of composite dialogue were held in Islamabad from 30th to 31st May 2006. Pakistan side was led by Secretary Interior Mr. Syed Kamal Shah and Indian side by Home Secretary Mr. V.K. Duggal. Composition of both the delegations is attached at Annex "A".

- Opening Statement from Secretary Interior Mr. Syed Kamal Shah

  - On 30 May, 2006 Secretary Interior Mr. Syed Kamal Shah formally welcomed the Indian Delegation and remarked that:-

    - The problems between neighbours are often difficult and even intractable but the more difficult the problem, the greater the need for continuing our dialogue. Simultaneous progress in all segments of Composite Dialogue would certainly bring about dividends of peace on a sustainable basis.
    - Terrorism is a mutual curse, a bane for society and an impediment to unstinted growth and advancement.
    - Highlighted the efforts of Government of Pakistan to combat terrorism.
    - Highlighted Pakistan's efforts at Regional/ International forums to fight the menace of terrorism.
    - Re-iterated that terrorism cannot be equated with the right of people to self-determination and liberation struggles against alien and colonial domination or foreign occupation, as enshrined in the UN Charter and recognized by the NON-aligned Movement of which both Pakistan and India are leading members.
    - Indicated concern of Government of Pakistan on the presence of huge contingent of security forces in IHK and excesses committed during 2005/2006.
    - Welcomed the recent remarks made by the Prime Minister of India in Srinagar in which he proposed to ameliorate the human rights situation in Indian Occupied Kashmir.
    - Conveyed satisfaction on progress in various fields including Drug Trafficking and release of Prisoners by both sides.

Appreciated the level of cooperation between FIA and CBI in the fields of illegal human trafficking, illegal immigration and counterfeit currency.

- Highlighted Pakistan's role to fight the menace of Drug Trafficking at Bilateral, Regional and International evels. Showed satisfaction over level of cooperation that exist between Pakistan and India in the field.
- Indicated that MoU on drugs control between the two countries is in the final stages and is likely to be signed during next round of talks between Secretary Narcotics of Pakistan and Indian Union Home Secretary scheduled in July 2006.

Opening Statement from Union Home Secretary Mr. V.K. Duggal

- Union Home Secretary Government of India thanked the hosts for warmth and hospitality and stated that:-
  - Many positive developments had taken place in Pakistan-India relations since April 2003 including the ceasefire along the LoC "which is holding," increase in people to people contact and resumption of bus and train services.
  - Indian Mission in 2005 issued close to 100,000 visas and last year's earthquake had brought the two countries together.
  - Remarked that India had evidence of the existence of a number of terrorist training camps in Pakistan and that terrorist infiltration in Kashmir has not stopped; rather it has gone up". Lashkar-e-Tayyabba and other banned organizations had launched attacks in India including Jammu & Kashmir, Varanasi and Bangalore.
  - Pakistani nationals have been apprehended by Indian security forces on account of involvement in explosions, fake currency etc.
  - Stating that terrorist outfits "are trying to derail Pakistan-India peace process," he added that Khalistani organizations were also functioning in Pakistan.
  - Indian Home Secretary also reiterated interest in signing Extradition; and Mutual Legal Assistance treaties with Pakistan. Indian Home Secretary insisted that he had brought a draft with him which he intended to handover to Secretary Interior.
  - Requested clemency for Indian national 'Sarabjit Singh" sentenced to death for espionage in Pakistan.
  - Indicated willingness of government of India for engagement in more CBMs.
  - Quoted his PM for zero tolerance in J&K.
  - Specifically indicated involvement of LeT and JM in terrorist activities in India.

- Raised concern on uncontrolled activities of JDP and Hafiz Saeed.
- Demanded extradition of 35 most wanted Indian criminals including Daud Ibrahim.
- Demanded release of Indian POWs. Proposed that relatives of Indian POWs may be allowed access to Pakistani jails.
- Indicated that stable and prosperous Pakistan is in the interest of India.

Pakistan Response

- Secretary Interior Government of Pakistan strongly rebutted Indian allegations of existence of terrorist camps and forcefully raised the question of Indian involvement in terrorist activities in Pakistan. Secretary Interior also highlighted following:-
  - Pakistan is the worst victim of terrorism.
  - Highlighted Pakistan's efforts to fight terrorism both on Eastern and Western borders.
  - Indicated that Pakistan itself was victim of terrorism citing the examples of recent major terrorist incidents i.e attack on US consulates, Chinese engineers at Hub and Nishtar Park.
  - Firmly replied to the question of terrorist camps in AJ&K and indicated that entire AJ&K was open to international community for rehabilitation and relief work and none could indicate the presence of any militant infrastructure.
  - Indicated presence of 72 terrorist training camps on Indian side.
  - Activities of Indian consulates in Afghanistan were highlighted.
  - Denied presence of Daud Ibrahim in Pakistan.
  - Informed the Indian delegation that information contained in the dossier handed over by Indian side in 2005 was evaluated and was found unsubstantiated.
  - Demanded extradition of 53 Pakistani fugitives hiding in India.
  - Advised that issues of Extradition Treaty, Mutual Legal Assistance treaty should be routed through proper channels in accordance with rules of business.
  - Raised the issue of delayed counselor access to civilian prisoners and fishermen and emphasized the need to streamline internal procedures. Also indicated the desire to keep the issue of civilian prisoners permanently on the agenda of composite dialogue.
  - On Sarbajit Singh's clemency issue, the Secretary replied that he should follow the legal course.

Indian Response

- Indian Home Secretary appreciated the positive attitude of Government of Pakistan. However, remarked that there are two ways of addressing the problems. He said, "we can use the personal cordiality and keep denying or we can move forward with sincerity of purpose". Justified presence of Indian Consulates in Afghanistan and highlighted development work being undertaken in Afghanistan by Indian companies. Alleged that Agencies in Pakistan are supporting Talibans.

- Pakistan Response

  - DG NCMC Brigadier Javed Iqbal Cheema highlighted Government of Pakistan's initiatives to curb and control Terrorism, Extremism and Militancy. Emphasized that Pakistan neither supports nor sponsors terrorism. We reject terrorism in all its forms and manifestations. Pakistan stands by its commitment that its soil would not be allowed to be used for terrorism against any country. Indicated that Government of India on the contrary had never provided evidence to support alleged involvement of Pakistani nationals in acts of terrorism in India. Highlighted that Masood Azhar remained in India for six years and was not even indicted. Questioned the authenticity of Indian claims regarding presence of Dawood Ibrahim in Pakistan and also highlighted that inspite of our demands Government of India has never provided evidence against Pakistani nationals allegedly involved in hijacking of Indian aircraft.
  - DG FIA highlighted level of cooperation between FIA and CBI. Apprised that Additional DG Tariq Khosa has been nominated as leader of Joint Study Group from Pakistan, nomination from Indian side was still awaited.
  - Secretary Interior Syed Kamal Shah also highlighted that our inquiries had indicated that India is being used as transit country for human smuggling.

- Indian Response

  - Expressed satisfaction over candid discussions.

- Adjournment

  - Meeting on first day adjourned by sharing each other's concerns.
  - Dossiers containing information and respective concerns were exchanged.

- Joint Statement

On 31 May 2006 after detailed discussions and consultations Joint Statement was prepared and readout to media. Joint statement is enclosed at Annex B.

13

Annex – "A"

OFFICIAL DELEGATIONS

TALKS ON TERRORISM & DRUGS TRAFFICKING UNDER
THE 3RD ROUND OF COMPOSITE DIALOGUE
TO BE HELD IN ISLAMABAD
28th May - 1st June 2006

Pakistani Side

1. Syed Kamal Shah, Secretary Interior
2. Mr. Qamar Zaman Ch. Additional Secretary
3. Mr. Tariq Pervez, Director General FIA
4. Brig Tahir Saleem, Force Commander, ANF
5. Dr. Shoaib Suddle, Director.General NPB
6. Brig Javed Iqbal Cheema, Director General NCMC
7. Mrs. Sohaila Mushtaq, JS (IP&N)
8. Mr. Khan Ahmed Suffian, JS, MoI
9. Mr. Khursheed Anwar Butt, JS, MoI
10. Mr. Akhtar Tufail, Additional Secretary (Asia Pacific), MOFA
11. Mr. Afrasiab, Deputy Commissioner, New Delhi
12. Lt Col Muhammad Imran Yaqub, Dir Operations NCMC
13. Mr. Zaheer A. Janjua, Dir India MOFA

Indian Side

1. Mr. V. K. Duggal, Union Home Secretary.
2. Mr. K. C. Verma, Director General, NCB
3. Mr. M. L. Sharma, Addl Director, CBI
4. Mr. Dilip Sinha, JS (PAI), MEA
5. Mr. Rajinder Kumar, JS, MHA
6. Mr. L.C. Goyal, JS, MHA
7. Mr. D. S. Mishra, JS, MHA
8. Mr. P.K. Mishra, Director, MHA
9. Mr. Vikram Dev Dutt, Staff Officer to Home Secretary
10. Mr. Shiv Shankar Menon, High Commissioner
11. Mr. T.C.A. Reghavan, Deputy High Commissioner
12. Mr. A. Gitesh Sarma, Counsellor
13. Mr. Sibi George, First Secretary

Most Immediate
Niaction

18

Fax Message

From: Foreign Islamabad
To: ~~Foreign Islamabad~~ Pakistan New Delhi
No. Ind (I)-1/31/07 (F)
Dated July 3, 2007

Deputy High Commissioner from Assistant Director (India-I)
Repeated to Director (India)

Subject: Draft Agreement on Consular Access

Auached is the draft agreement on Consular Access forwarded to our High Commission vide letter No. Director (India)-1/1/2006 of May 2, 2006, as desired.

(Fozia Manzoor)
Assistant Director (India-I)

Encl: As Above

Please Issue
Radio Officer

03/7/07

1/31/07/r

DRAFT AGREEMENT ON CONSULAR ACCESS

The Government of India and the Government of Pakistan,

siro s of furthering the objective of human treatment to nationals of either

)unt arrested, detained or imprisoned in the other country, have agreed to

ecip cal consular facilities as follows:-

I) Each Government will maintain a comprehensive list of the nationals of the other country under its arrest, detention or imprisonment. The lists shall be exchanged as soon as possible on 1st January and 1st July every year.

II) Immediate notification of any arrest/detention/imprisonment of any person of the other country shall be provided to the respective High Commission.

III) Each Government shall give consular access to all nationals of the other country under arrest, detention or imprisonment within three months of the date of arrest/ detention /sentence.

iv) Both the Governments agree to release and repatriate persons who are under their arrest, detention or imprisonment provided investigations prove such persons innocent. However these persons will be released and repatriated by the respective Government within one month of confirmation of their National status. The persons who have either been convicted or are under trial or have not yet completed their sentences after conviction will be repatriated after similar confirmation of nationality and completion of their sentences.

v) Inadvertent border crossers under 16 apprehended by either side may be released without sentencing.

vi) In special cases which call for/require compassionate and humanitarian considerations either side may exercise its discretion subject to its laws and regulations, to allow early release and repatriation of civil prisoners and fishermen.

FOR THE GOVERNMENT OF REPUBLIC OF INDIA

FOR THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF PAKISTAN

JOINT PRESS STATEMENT

The fourth round of Home/Interior Secretary Level Talks between India and Pakistan on Terrorism and Drugs Trafficking, as a part of the continuing Composite Dialogue process between the two countries, was held in New Delhi on July, 3-4, 2007. The Indian delegation was led by Shri Madhukar Gupta, Union Home Secretary while the Pakistan delegation was headed by Syed Kamal Shah, Secretary, Ministry of Interior.

2. Frank and candid discussions were held in a constructive and friendly atmosphere.

3. Both sides strongly condemned all acts of terrorism and underlined the imperative need for effective and sustained measures against terrorist activities.

4. The two sides recognized that terrorists and criminals in either country need to be given swift and effective punishment.

5 Both sides welcomed the release of prisoners and fishermen by each other on the eve of these Talks as a gesture of goodwill and on humane considerations.

6. They also agreed to release by August 14-15, 2007, those prisonsers who have been granted consular access, whose national status has been verified and who have completed their prison sentences. To this end, they agreed that immediate steps will be taken by either side to reconcile their numbers to facilitate their early release on completion of necessary formalities.

7. The two sides also agreed to release by August 14-15, 2007 the remaining fishermen in each other's custody on completion of due process. They further decided to take immediate steps to release the fishing boats, excluding trawlers, in each other's custody.

8. Both sides agreed that the recently formed Committee on Prisoners, comprising eminent retired judges from the two countries, is a useful instrument to facilitate release and repatriation of prisoners who have served their prison sentences. It was agreed that action would be initiated to hold two meetings, one in India and the other in Pakistan, within a period of 3 months by which time the necessary reconciliation of numbers of prisoners on both sides would have been completed.

9. Separate working groups discussed in detail the drafts of the revised Visa and Consular Access Agreements aimed at liberalizing and making existing provisions more effective. The text of the Agreement on Consular Access has

been finalised. Also, they made considerable progress towards early finalisation and signing of the Visa Agreement.

10. Both sides assessed as positive the existing cooperation and information sharing between the Narcotics Control Bureau of India and the Anti Narcotics Force of Pakistan and agreed that both Agencies would enhance mutual cooperation in terms of effective and sustained steps to control drugs trafficking. They also agreed that a Memorandum of Understanding (MoU) between the two drug control agencies will be signed at the earliest possible.

11. Both sides appreciated the continuing interaction between the Central Bureau of Investigation of India and the Federal Investigation Agency of Pakistan in the areas of human trafficking, illegal immigration and counterfeit currency, and underlined the need to further intensify it. The nodal points in both Agencies will meet periodically to facilitate early disposal of Interpol related cases.

12. It was agreed to continue the discussions within the framework of the Composite Dialogue.

New Delhi
July 3, 2007

MOST IMMEDIATE

Fax Message

From Parep New Delhi
To Interior Division
Repeated to Foreign Islamabad
No. VIN-2/2/2007
Date 4 July 2007

Secretary Interior from Director General (South Asia)
Repeated to: AS (AP), Spokesperson and Director (FSO)
Also repeated to: Ms. Viqar un Zeb, Joint Secretary, Interior Division

Pursuant to the joint statement issued this morning, and as agreed by the leaders of the two delegations, the officials of the two sides met again today to discuss the draft Visa Agreement and fine tune the draft Agreement on Consular Access which had already been finalized yesterday. I led our side while the Indian side was led by Joint Secretary Raghavan.

2. The draft Agreement on Consular Access has now been finalized in all respects and is attached for your approval. The text covers all main points of concern to us. After the leaders of both delegations have confirmed their approval of the text, the draft will be processed by both governments through their respective legislative channels as required. Modalities and the timing for the signing of the Agreement will be worked out through diplomatic channels.

3. The two sides also discussed at length the draft Visa Agreement. I would like to report that an agreement has been reached on most of the provisions of the draft. However, two issues remain outstanding. The draft as discussed and finalized on July 4 is attached for your perusal with outstanding issues shown in square brackets.

4. On further details of the discussions held today and the issues that were raised, I will be briefing you on my return to Islamabad.

(Aizaz Ahmed Chaudhry)
Director General (SA)

30 (284)

July 4, 2007

Draft Agreement on Consular Access

The Government of Pakistan and the Government of India, desirous of furthering the objective of humane treatment of nationals of either country arrested, detained or imprisoned in the other country have agreed to reciprocal consular facilities as follows:

(i) Each Government shall maintain a comprehensive list of the nationals of the other country under its arrest, detention or imprisonment. The lists shall be exchanged possible on 1st January and 1st July each year.

(ii) Immediate notification of any arrest, detention or imprisonment of any person of the other country shall be provided to the respective High Commission.

(iii) Each Government undertakes to expeditiously inform the other of the sentences awarded to the convicted nationals of the other country.

(iv) Each Government shall provide consular access within three months to nationals of one country under arrest, detention or imprisonment in the other country.

(v) Both Governments agree to release and repatriate persons within one month of confirmation of their national status and completion of sentences.

(vi) In case of arrest, detention or sentence made on political or security grounds, each side may examine the case on its merits.

(vii) In special cases, which call for or require compassionate and humanitarian considerations, either side may exercise its discretion subject to its laws and regulations to allow early release and repatriation of persons.

This agreement shall come into force on the date of its signing.

For the Government of the
Islamic Republic of Pakistan

For the Government of the
Republic of India

Secret/ByBag

HIGH COMMISSION FOR PAKISTAN
NEW DELHI

No. Pol-1/14/2007

10 July 2007.

Subject:- **Minutes of the meeting of Pakistan-India Secretary-level talks on Terrorism & Drug Trafficking under the Fourth Round of the Composite Dialogue (3-4 July 2007, New Delhi)**

My dear Director General,

Enclosed please find Minutes of the Meeting on the above subject for record.

Warm regards

Yours sincerely,

(Riffat Masood)
Counsellor (P-I)

Encl: as above

Mr.Aizaz Ahmad Chaudhry
Director General (SA)
Ministry of Foreign Affairs
Islamabad.

CC:
Syed Kamal Shah
Secretary Interior
Islamabad.

2,50-G Shantipath, Chanakyapuri, New Delhi-110021
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Minutes of the meeting of Pakistan-India Secretary-level talks on Terrorism & Drug Trafficking under the Fourth round of the Composite Dialogue
(New Delhi, July 3 – 4, 2007)

The Fourth Round of Interior Secretary-level talks with Pakistan-India on Terrorism and Drug Trafficking under the composite dialogue process were held in New Delhi on 3rd July 2007. Mr. Madhukar Gupta led the Indian delegation while Syed Kamal Shah, Secretary Ministry of Interior, headed Pakistan's delegation. **(Lists of delegation attached)**. The talks had to be curtailed by one day, as Secretary Interior had to return to Pakistan in view of the situation arising out of the Lal Masjid standoff. During the meeting the following points were raised by both sides:

- Terrorist attacks in each other's countries
- Infiltration and Cross-border terrorism
- Human rights violations in Kashmir
- CBMs on Kashmir
- Release of prisoners and fisherman
- Consular Access to prisoners
- Judges Committee on Prisoners
- Visit of families of POWs to Pakistan
- Visa Agreement
- CBI-FIA cooperation
- MoU on drugs trafficking
- Hostile propaganda in the media

2. After welcoming the Pakistani delegation the **Indian Home Secretary** in his opening remarks pointed to the need to move the dialogue process forward. He mentioned that during his recent visit to Jammu & Kashmir he had noticed the positive impact of the CBMs and the desire of the population to have these expanded. He said that issues of terrorism have vexed both the countries and now hold the potential of improving relations. He made the following points:

- Expressed "pain" that some terrorist elements continue to operate openly and find "fertile ground" in Pakistan to target India, thereby radicalizing the young population in India specifically mentioning LeT, JeM and Al-Badar, which he said get facilitation and help from agencies.

- India had "pervasive and continuous" evidence, which has also been endorsed by other members of the international community that such elements are still operating from Pakistan. Some in Pakistan stating that their activities were in the interest of that country may have encouraged these groups.
- Harbouring of fugitives is a critical issue, which continues to dog the two countries. India had already gave a list of 35 fugitives who continue to live in

Pakistan and will give a list of 8 more during this meeting which includes the names of Azam Cheema and Abdul Shahid alias Bilal.

- Gave an emphatic assurance that India was not involved in any destabilizing activity in Baluchistan since it was not in India's interest and there were no fugitives being harboured by India. However, he welcomed any specific details from us for further investigation.

- Emphasized that no prisoners have been flown from Afghanistan and lodged in Indian jails.

- Stated that Pakistan's allegations on the World Punjabi Congress held in Patiala in 2004 were unfounded, as Chief Minister Punjab himself and several members of the Pakistan Parliament had attended the Congress.

- Stressed the need to check drug trade and hoped that the MoU on Drug Demand Reduction and Prevention of Illicit Trafficking in Narcotic, Drugs, Psychotropic Substances, Precursor Chemicals and Related Matters would be signed during the meeting.

- Appreciated the release of fishermen and civilian prisoners who had been released from Pakistan and reminded that a large number of fishermen and over 300 boats still remain in Pakistan's custody.

- On the issue of POWs he appreciated the efforts made by Pakistan in allowing the families to visit 10 jails although some expectations still remained with the families.

- There was a need to make the Visa Agreement more liberal and suggested that working level groups be set up to study the matter.

- There was a need to curb hostile propaganda which was reflected in the media

- Useful collaboration between the Central Bureau of India (CBI) and Federal Investigation Agency (FIA) should continue and mentioned that 5 -- 8 fugitives against whom red-collar notices had been issued, had been identified due to the collaboration between the two countries.

- Highlighted the importance of finalizing a Treaty on mutual Legal Assistance and Extradition and acknowledged that this would be an incremental process.
- He also mentioned that India was keen to hold the next meeting of the Joint Anti-Terrorism Mechanism in New Delhi by the end of July.
- Listed six points on which there could be a convergence of views during this meeting and felt a decision could be arrived at:

1. CBI-FIA cooperation which could be expanded to include, human trafficking, fake currency, smuggling and fugitives
2. Finalization of Treaty on Mutual Legal Assistance
3. Return of fishermen and boats
4. Signing of MoU on drug trafficking
5. Release of civilian prisoners
6. Visa Agreement.

3. In his response **Secretary Interior** thanked his Indian counterpart for the warm hospitality extended to the delegation and on a lighter note he mentioned that the tradition of hospitality between the two countries should continue. He raised the following points in response to the Indian Home Secretary's observations:

- On the Visa Agreement there could be some progress and it could be implemented in an incremental manner to show progress. In this regard he specifically mentioned that those articles on which there was convergence of views.

- On the charges of elements operating in Pakistan against India, he made the following points:

  a) All banned organizations are being monitored by agencies and the government is coming down hard on such organizations.
  b) Measures are being taken to check the radicalization of the youth.
  c) Pakistan is not facilitating militancy and evidence in this lies in the fact that Pakistan itself has been a victim of terrorism due to its action against militants.

- Refuted the Indian allegation that certain elements were working to destabilize India, as it was not in Pakistan's interest. He added that any information received by Pakistan on fugitives is responded to promptly and this practice will continue. On the question of 8-more militants in particular the two names mentioned by Home Secretary Gupta, Interior Secretary replied that information on Bilal was incorrect and Pakistan would welcome any fresh information about him or Azam Cheema. He pointed out that Pakistan had given a list of 4 fugitives to the Indian but had not received any response from India.

- On the question of POWs he said that there were none in Pakistan and added that few of the family members who had visited Pakistan in search of missing POWs had been quite satisfied by the information provided through jails. He emphasized to the Home Secretary that Attock Fort was not a prison but solely a military establishment and no prisoners were lodged there.

- Agreed that the question of hostile propaganda needed to be addressed

- Shared the Home Secretary's views on the useful collaboration between the CBI and FIA, which should continue.

- Secretary Interior suggested that it would be possible in this meeting to; a) finalize the agreement on consular access which was purely in public interest and would give a positive impact; b) Finalize dates for the meeting of the Committee of Judges on prisoners; c) Visa Agreement.

- Stressed Pakistan's concern on foreign sponsored activities particularly in Baluchistan and Sindh and reminded the Indian side of information provided to it on the activities of its Consulates in Afghanistan

- On Kashmir, Secretary Interior appreciated the positive impact of the CBMs, which he agreed needed to be expanded. He, however, expressed concern at the continuing human rights violations in J&K.

4. At this point, **Brig ® Javed Iqbal Cheema, DG (NCMC)** added that information sharing on Shahid Bilal, and Indian national, was the subject of the Joint Anti-Terrorism Mechanism Group and therefore should be taken up at that forum. As regards Azam Cheema, he said that in 2004, Interpol had issued a red collar notice on the individual and when Pakistan had asked for more details on the subject, the Interpol had been unable to provide this.

5. **Indian Home Secretary** in his response stated that the Indian side, which would be handed over to Pakistan during this meeting, had prepared a dossier on hostile propaganda.

6. **The Indian Home Secretary** agreed on the human rights violations in Kashmir and said that the Indian government was cognizant of the human rights situation in Kashmir. He said India was taking a number of measures to minimize if not eliminate the human rights violations. He added that there should be forward movement in the CBMs, which needed to be streamlined and the Ministries of Foreign Affairs of the two countries could discuss this aspect further. However he agreed that the two delegations were on the same "wave length" on this issue.

7. **The Indian Home Secretary** suggested that three sub-groups be formed to discuss the following issue threadbare: -

i)
ii) The agreements on consular access and visas. The release of fishermen and civilian prisoners.
iii) MoU on Drug Trafficking.
iv) CBI and FIA cooperation.

8. **Interior Secretary** agreed and added that there was a need to agree on a time frame for the release of prisoners and fisherman. The Secretary pointed out that many prisoners remained in jails despite the fact that they had completed their sentences.

9. **Indian Home Secretary** responded that India had already started an exercise to monitor the time and duration of the prison sentences in order to streamline the system.

10. The three sub-groups worked through the rest of the day on the above topics. While there was considerable progress in the first and last sub-groups dealing with fisherman/prisoner issues, visa and consular access agreements and CBI-FIA cooperation, there was no forward movement in the MoU on drugs trafficking, which was not signed during this meeting.

11. The meeting ended on a positive note with both sides showing commitment to continue the discussions and conclude the various agreements in order to move the process.

12. Dossiers were also exchanged by both sides on terrorist activities as well as hostile propaganda against each other's countries by the media.

Recorded by:
Riffat Masood
Counsellor (Political)

Government of Pakistan
Ministry of Interior
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Sub: FOURTH ROUND OF INTERIOR/ HOME SECRETARIES LEVEL TALKS HELD IN NEW DELHI ON JULY 3-4, 2007 - DRAFT AGREEMENT ON CONSULAR ACCESS.

Reference Fax Message No. Pol-1-/71/2007 dated 4th July 2007, received from DG(South Asia) on the above subject.

2. It is stated that the competent authority has accorded approval to the Draft Agreement on Consular Access finalized by the Foreign Ministries of Pakistan & India in New Delhi on July 4, 2007.

3. It is requested that further action may please be taken accordingly under intimation to this Ministry.

(Ghulam Muhammad)
Section Officer (India-II).
Ph: 9207440

Ministry of Foreign Affairs (Mr. Aizaz Ahmed Chaudhary, DG-SA), Islamabad
Ministry of Interior U.O. No.9/11/2005 dated 20-7-2007.

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MINISTRY OF FOREIGN AFFAIRS
ISLAMABAD

August 10, 2007

No. Director (India)-1/1/2007

The Ministry of Foreign Affairs of the Islamic Republic of Pakistan presents its compliments to the High Commission of the Republic of India in Islamabad and has the honour to state that during the Interior/Home Secretary-level talks on Terrorism and Drugs Trafficking under the Fourth Round of the Pakistan-India Composite Dialogue held in New Delhi on July 3-4, 2007, the two sides had finalized the text of the Agreement on Consular Access. It was further agreed that each side would complete its internal procedures and notify the other. The internal procedures on the Pakistan side have been completed. A copy of the agreed text of the Agreement on Consular Access is attached.

The Ministry of Foreign Affairs shall be grateful if the esteemed High Commission could inform the concerned Indian authorities that the Pakistan side is ready to sign the Agreement on Consular Access at mutually convenient dates and appropriate level.

The Ministry of Foreign Affairs of the Islamic Republic of Pakistan avails itself of this opportunity to renew to the High Commission of the Republic of India the assurances of its highest considerations.

High Commission of the Republic of India
Islamabad

Issued.

Draft Agreement on Consular Access

The Government of Pakistan and the Government of India, desirous of furthering the objective of humane treatment of nationals of either country arrested, detained or imprisoned in the other country have agreed to reciprocal consular facilities as follows:

(i) Each Government shall maintain a comprehensive list of the nationals of the other country under its arrest, detention or imprisonment. The lists shall be exchanged possible on 1st January and 1st July each year.

(ii) Immediate notification of any arrest, detention or imprisonment of any person of the other country shall be provided to the respective High Commission.

(iii) Each Government undertakes to expeditiously inform the other of the sentences awarded to the convicted nationals of the other country.

(iv) Each Government shall provide consular access within three months to nationals of one country under arrest, detention or imprisonment in the other country.

(v) Both Governments agree to release and repatriate persons within one month of confirmation of their national status and completion of sentences.

(vi) In case of arrest, detention or sentence made on political or security grounds, each side may examine the case on its merits.

(vii) In special cases, which call for or require compassionate and humanitarian considerations, either side may exercise its discretion subject to its laws and regulations to allow early release and repatriation of persons.

This agreement shall come into force on the date of its signing.

For the Government of the
Islamic Republic of Pakistan

For the Government of the
Republic of India

भारत का उच्चायोग
जी 5, डिप्लोमेटिक इन्क्लेव
इस्लामाबाद

HIGH COMMISSION OF INDIA
G-5, Diplomatic Enclave,
ISLAMABAD

Most Immediate

No. ISL/CON[illegible]/2007

The High Commission of India in Islamabad presents its compliments to the Ministry of Foreign Affairs, Government of the Islamic Republic of Pakistan and with reference to the latter's note verbale No. Director (India)-1/1/2007 dated 10 August 2007 enclosing the text of the Draft Agreement on Consular Access, has the honour to state that the concerned Indian authorities have conveyed their concurrence with the text of the Draft Agreement on Consular Access.

2. The High Commission of India in Islamabad availis itself of this opportunity to renew to the Ministry of Foreign Affairs, Government of the Islamic Republic of Pakistan, the assurances of its highest consideration.

Islamabad, 3 March 2008

Ministry of Foreign Affairs,
[Kind Attn: Mr. Suljuk Mustansar Tarar, Director (India)]
Government of the Islamic Republic of Pakistan,
Islamabad.

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Government of Pakistan
Law and Justice Division
Law-II Section
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No.1(139)2008-Law-II

Islamabad, the 19th May 2008

OFFICE MEMORANDUM

Subject: SIGNING OF CONSULAR ACCESS AGREEMENT WITH INDIA.

The undersigned is directed to refer to the Ministry of Foreign Affairs U.O. No. DG(SA)-1/1/2008, dated 16th May, 2008 on the above mentioned subject and to state that the text has already been agreed to between the two Governments. This Division has also cleared the same from the legal point of view.

(Muhammad Kaleem Khan)
Section Officer.

Ministry of Foreign Affairs,
(Mr. Masood Khalid
Additional Secretary [Asia & Pacific]
Islamabad.

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Government of Pakistan
Ministry of Foreign Affairs
Islamabad

Subject: Agreement on Consular Access

The agreement on Consular Access between Pakistan and India was signed after the Foreign Minister level review meeting held in Islamabad on 21 May 2008. The Agreement seeks to ensure humane treatment of nationals of either country arrested, detained or imprisoned in the other country and expeditious release of prisoners who have completed their sentences.

2. Enclosed please find copy of the Agreement on Consular Access for information, record and appropriate action.

Encl: As above

(Aizaz Ahmed Chaudhry)
Director General (South Asia/SAARC)

Ministry of Interior (Syed Kamal Shah, Secretary), Islamabad.
Ministry of Foreign Affairs U.O. No Director (India)-1/1/2008 dated 23 May 2008.

Copy for information to:

(i) Ministry of Law, Justice & Human Rights (Justice Agha Rafique Ahmed Khan, Secretary), Islamabad
(ii) Directorate General ISI (Brig. Shahid Ahmed), Islamabad.

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Agreement on Consular Access

The Government of Pakistan and the Government of India, desirous of furthering the objective of humane treatment of nationals of either country arrested, detained or imprisoned in the other country have agreed to reciprocal consular facilities as follows:

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(vi) In case of arrest, detention or sentence made on political or security grounds, each side may examine the case on its merits.

(vii) In special cases, which call for or require compassionate and humanitarian considerations, each side may exercise its discretion subject to its laws and regulation to allow early release and repatriation of persons.

This agreement shall come into force on the date of its signing.

Done at Islamabad on 21 May, 2008 in two originals, in English language, each text being equally authentic.

Satyabrata Pal
High Commissioner of India
For the Government of the
Republic of India

Shahid Malik
High Commissioner of Pakistan
For the Government of the
Islamic Republic of Pakistan

No. 67758

Certificate of registration

The Secretary-General of the United Nations

hereby certifies that the following international agreement has been registered with the Secretariat, in accordance with Article 102 of the Charter of the United Nations:

No. 54471. **Pakistan and India**

Agreement on consular access between the Government of the Islamic Republic of Pakistan and the Government of the Republic of India. Islamabad, 21 May 2008

Registration with the Secretariat of the United Nations: Pakistan, 17 May 2017

Done at New York on 12 June 2017

For the Secretary-General

Certificat d'enregistrement

Le Secrétaire général de l'Organisation des Nations Unies

certifie par la présente que l'accord international indiqué ci-après a été enregistré au Secrétariat, conformément à l'Article 102 de la Charte des Nations Unies :

No. 54471. **Pakistan et Inde**

Accord sur l'accès consulaire entre le Gouvernement de la République islamique de Pakistan et le Gouvernement de la République de l'Inde. Islamabad, 21 mai 2008

Enregistrement auprès du Secrétariat des Nations Unies : Pakistan, 17 mai 2017

Fait à New York le 12 juin 2017

Pour le Secrétaire général

UNITED NATIONS
Le Conseiller juridique
The Legal Counsel
ORGANISATION DES NATIONS UNIES

No. 54471*

Pakistan
and
India

Agreement on consular access between the Government of the Islamic Republic of Pakistan and the Government of the Republic of India. Islamabad, 21 May 2008

Entry into force: *21 May 2008 by signature, in accordance with its provisions*

Authentic text: *English*

Registration with the Secretariat of the United Nations: *Pakistan, 17 May 2017*

**No UNTS volume number has yet been determined for this record. The Text(s) reproduced below, if attached, are the authentic texts of the agreement /action attachment as submitted for registration and publication to the Secretariat. For ease of reference they were sequentially paginated. Translations, if attached, are not final and are provided for information only.*

Pakistan
et
Inde

Accord sur l'accès consulaire entre le Gouvernement de la République islamique du Pakistan et le Gouvernement de la République de l'Inde. Islamabad, 21 mai 2008

Entrée en vigueur : *21 mai 2008 par signature, conformément à ses dispositions*

Texte authentique : *anglais*

Enregistrement auprès du Secrétariat des Nations Unies : *Pakistan, 17 mai 2017*

**Aucun numéro de volume n'a encore été attribué à ce dossier. Les textes disponibles qui sont reproduits ci-dessous sont les textes originaux de l'accord ou de l'action tels que soumis pour enregistrement. Par souci de clarté, leurs pages ont été numérotées. Les traductions qui accompagnent ces textes ne sont pas définitives et sont fournies uniquement à titre d'information.*

[ENGLISH TEXT – TEXTE ANGLAIS]

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