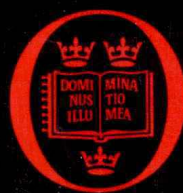


LUKE T. LEE

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CONSULAR LAW  
AND PRACTICE

SECOND EDITION



CLARENDON PRESS

OXFORD

# Consular Law and Practice

Second Edition

LUKE T. LEE

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## To All Consular Officers

*Whose dedication to the protection and assistance  
of their nationals promotes, in the aggregate,  
the basic human rights of all peoples.*

## Preface

THE publication in 1961 by Stevens & Sons of the first edition of this volume was followed by the adoption, two years later, of the Vienna Convention on Consular Relations by the United Nations Conference on Consular Relations. The Convention was a product of four major forces: restatement of existing laws (*lex lata*), adoption of desirable laws (*lex ferenda*), concordance with the Vienna Convention on Diplomatic Relations, and mutual concessions aimed at securing the widest possible adherence to the Convention. While the 1961 edition, along with the Draft Articles on Consular Relations adopted by the United Nations International Law Commission in 1961, contributed to the first two forces, there was a need for a systematic analysis of the Convention as a whole focusing, in particular, on the last two forces. This need was addressed in this author's *Vienna Convention on Consular Relations* (Leiden: A. W. Sijthoff, 1966) and *The Vienna Conventions on Diplomatic and Consular Relations*, co-authored with Philippe Cahier in the Carnegie Endowment for International Peace's *International Conciliation* (Jan. 1969/No. 571).

The lapse of almost three decades since the appearance of the first edition calls for a revised second edition that will not only consolidate the relevant materials of the first edition and the two subsequent publications, but also bring developments in the consular field up to date. Particular attention is given to the impact of the Vienna Convention on Consular Relations on subsequent State practice as reflected in treaties, laws and regulations, and judicial decisions, as well as to areas for possible improvement.

Foremost among those to whom I am indebted for their invaluable assistance in the preparation of this revised edition is Mrs Eileen Denza, former Legal Counsellor of the Foreign and Commonwealth Office and currently Counsel, European Communities Committee, House of Lords. An expert in diplomatic law (author of *Diplomatic Law* (Dobbs Ferry, New York: Oceana Publications, and London: The British Institute of International and Comparative Law, 1976), among others), Mrs Denza not only ably assisted me in the editing of the manuscript, but also brought

her vast knowledge in substantive fields—in both theory and practice—to bear on the improvement of the manuscript. Her tireless and conscientious input has made this book richer in content and more balanced in scope.

I would like to express my enduring appreciation to Professors Leo Gross of the Fletcher School of Law and Diplomacy and Louis B. Sohn of Harvard Law School, who together supervised my doctoral dissertation—the progenitor of this book—and encouraged me to prepare the revised edition. To Professor Ian Brownlie of Oxford University goes the credit of making possible the publication of this edition by the Oxford University Press.

I am grateful to innumerable consuls and diplomats, particularly members of the Consular Corps of Washington, whose monthly luncheon meetings are occasions not only for social gathering, but also for exchange of views and ideas towards the creation of a more effective consular system.

I am also greatly obliged to Stevens & Sons, publisher of the first edition of this book; A. W. Sijthoff, publisher of *The Vienna Convention on Consular Relations*; and other publishers for their permission to reproduce portions of my works previously published by them.

My present work in the refugee field and my Adjunct Professorship in Refugee Law at the Washington College of Law of the American University have enabled me to focus on the protection and assistance of persecuted individuals, whatever their nationality, as well as on the privileges and immunities of their protecting agencies and officials, such as the United Nations High Commissioner for Refugees (UNHCR), the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), and members of their staffs. The extension of consular-like functions to all individuals requiring protection and assistance based on human rights and the application of consular privileges and immunities, which are functional in nature, to international protecting agencies and officials, are welcome developments—further underscoring the importance of consular law.

Finally, it cannot be overemphasized that the views expressed in this revised edition, like those in the first edition, are entirely my own, and may not be attributable in any way to the Office of the United States Coordinator for Refugee Affairs or the Department of State.

L.T.L.

*Bethesda, Maryland*  
*May 1990*

## Abbreviations

<i>AFAR</i>	<i>Australian Foreign Affairs Record</i> (now Australian Foreign Affairs and Trade, <i>Monthly Record</i> )
AIT	American Institute in Taiwan
<i>AJIL</i>	<i>American Journal of International Law</i>
<i>Annual Digest</i>	<i>Annual Digest of Public International Law Cases</i> (covering 1919–49; retitled <i>International Law Report</i> since 1950)
<i>Argentina, Digest</i>	<i>Digesto Consular Argentino</i> (1984)
—, <i>Regulation</i>	<i>Reglamento Consular</i> (2 vols., 1947)
<i>Australia, Instructions</i>	Dept. of Foreign Affairs, <i>Manuals of Information and Instructions</i> , vols. 15–18
<i>Australian Yb. Int'l L.</i>	<i>Australian Yearbook of International Law</i>
<i>Belgium, Manuel</i>	<i>Manuel des Missions diplomatiques et des Postes Consulaires du Royaume de Belgique</i> (updated yearly)
BDTC	British Dependent Territories Citizens
BN(O)	British Nationals (Overseas)
BOC	British Overseas Citizenship
<i>Brazil, Service Instructions</i>	<i>Instruções de Serviço</i> (13 vols., Consular and Juridical Department, Ministry of Foreign Affairs, Brasilia)
<i>BYIL</i>	<i>British Year Book of International Law</i>
<i>Canada, Manual</i>	<i>Manual of Consular Instructions</i> (2 vols., loose-leaf)
<i>Canadian Yb. Int'l L.</i>	<i>Canadian Yearbook of International Law</i>
<i>Chinese Yb. Int'l L.</i>	<i>Chinese Yearbook of International Law and Affairs</i>
CCNAA	Coordinating Council for North American Affairs (Taiwan)
CFR	Code of Federal Regulations (USA)
<i>Colum. L. Rev.</i>	<i>Columbia Law Review</i>
<i>Cong. Rec.</i>	<i>Congressional Records</i> (USA)
CSCE	Conference on Security and Co-operation in Europe
<i>Czechoslovakia, Collection</i>	<i>Zbierka Sluzobnych Predpisov</i> (Collection of Internal Regulations, Ministry of Foreign Affairs, Prague)

de Cussy, <i>Règlements consulaires</i>	Baron Ferdinand de Cussy, <i>Règlements consulaires des principaux états maritimes de l'Europe et de l'Amerique</i> (Leipzig, 1851)
DCC	Development Coordinating Committee (US Agency for International Development)
Denmark, <i>Instructions</i>	<i>Instruks for Udenrigstjenesten</i> (Instructions for the Foreign Service) (1988). English translation in Denmark, <i>Instructions for the Foreign Service</i> (1965) (to be updated)
Denza, <i>Diplomatic Law</i>	Eileen Denza, <i>Diplomatic Law</i> (London, 1976)
Dept. of State <i>Digest</i>	<i>Digest of United States Practice in International Law</i> (Washington, DC, 1973-80)
DGFM	Dirección General de Fabricaciones Militares
DLR	<i>Dominion Law Reports</i> (Canada)
Dominican Republic, <i>Manual Consular</i>	<i>Manual Consular</i> (by Gloria Milan y Lugo, Santo Domingo, 1971)
EAS	Dept. of State, <i>Executive Agreement Series</i>
EC	European Community
ECR	<i>European Court Reports</i>
El Salvador, <i>Law</i>	<i>Ley organica del servicio consular</i> (1948)
FAM	<i>Foreign Affairs Manual</i> (USA)
Feller and Hudson, <i>Laws and Regulations</i>	A. H. Feller and Manley O. Hudson (eds.), <i>Diplomatic and Consular Laws and Regulations</i> (2 vols., 1933)
Finland, <i>Guide</i>	<i>Diplomatic Privileges and Immunities in Finland: A Guide for Foreign Missions</i> (1981, applicable to consuls)
France, <i>Manuel</i>	<i>Manuel Pratique des Consulats</i> (by Abel Verdier, 2 vols., 1946; 3 vols., 2nd edn., 1957)
FSM	<i>Foreign Affairs Manual</i> (USA, 12 vols., 1960-current)
FSO	Foreign Service Officer
GATT	General Agreement on Tariffs and Trade
Germany, Federal Republic, <i>Statute</i>	<i>Gesetz über die Konsularbeamten, ihre Aufgaben und Befugnisse (Konsulargesetz)</i> , 11 Sept 1974-BGBL I 2317
—, <i>Handbook</i>	<i>Handbuch der Konsularischen Praxis</i> (by Dr Gottfried Hecker, Munich, 1982)
—, <i>Consular Law</i>	<i>Konsularrecht</i> (by Hoffmann-Glietsch 1985, Verlag R. S. Schulz, 8136 Perscha)
Greece, <i>Law</i>	Loi 4952 (Dispositions relatives au service consulaire, Ministères des Affaires Etrangères, Inspection des Autorités Consulaires, 1951)
Guatemala, <i>Law</i>	<i>Derecho Consular Guatemalteco</i> (by Laudelino Moreno, 1946)
Hackworth, <i>Digest</i>	G. H. Hackworth, <i>Digest of International Law</i> (8 vols., Washington, DC, 1940-4)



Haiti, <i>Law</i>	<i>Loi sur le Service Consulaire</i> (Port-au-Prince, 1949)
Harvard Research <i>Draft</i>	Harvard Law School, Research in International Law, ii, <i>Draft Convention on the Legal Position and Functions of Consuls</i> , 26 <i>AJIL</i> (Supp. 1932), p. 189
<i>HKLR</i>	<i>Hong Kong Law Reports</i>
Hungary, <i>Principles</i>	<i>Guiding Principles for Honorary Consular Officers of the Hungarian People's Republic</i> (Consular Department, Ministry for Foreign Affairs, Budapest, 1988)
Hyde, <i>International Law</i>	C. C. Hyde, <i>International Law Chiefly as Interpreted and Applied by the United States</i> (2nd rev. edn., 3 vols., 1945)
ICAO	International Civil Aviation Organisation
ICM	See IOM
ICJ <i>Rep.</i>	International Court of Justice, <i>Reports of Judgments, Advisory Opinions and Orders</i>
ILC <i>Draft</i>	International Law Commission, <i>Draft Articles on Consular Relations and Commentaries. Report of the International Law Commission Covering the Work of Its Thirteenth Session, 1 May–7 July 1961</i> ; UN Gen. Ass., <i>Official Records</i> , Supp. No. 9 (A/4843); <i>YILC</i> , 1961, ii, 89–128.
<i>ILM</i>	<i>International Legal Materials</i> (published by the American Society of International Law)
<i>ILR</i>	<i>International Law Report</i> (see <i>Annual Digest</i> )
IMCO	See IMO
IMO	International Maritime Organization (formerly IMCO, Intergovernmental Maritime Consultative Organization)
IOM	International Organization for Migration (formerly ICM, Intergovernmental Committee for Migration)
INS	Immigration and Naturalization Service (US Department of Justice)
<i>Int'l &amp; Comp. L. Q.</i>	<i>International and Comparative Law Quarterly</i>
Israel, <i>Manual</i>	Foreign Ministry's <i>Foreign Service Manual: Consular Instructions</i> ( <i>Takanon Sherut Hahutz: Inyanim Consularim</i> ) (regularly updated)
<i>Italian Yb. Int'l L.</i>	<i>Italian Yearbook of International Law</i>
ITC	International Tin Council
ITU	International Telecommunication Union
Japan, Act	Immigration-Control and Refugee-Recognition Act (Cabinet Order No. 319 of 1951)
—, <i>Visa Information</i>	<i>Visa Information (Visa Application Procedures for Entry into Japan)</i> (Visa Division, Ministry of Foreign Affairs, October 1987)
<i>JO</i>	<i>Journal Officiel</i> (France)

LNTS	League of Nations <i>Treaty Series</i>
LEE	Luke T. Lee, <i>Consular Law and Practice</i> (1st edn., 1961)
Mexico, <i>Consular Law</i>	<i>Derecho Consular Mexicano</i> (by Ramon Xilol Ramirez, 1982)
—, <i>Organic Law</i>	<i>Ley Orgánica del Servicio Exterior Mexicano y su Reglamento</i> (1982)
—, <i>Practice</i>	<i>Practica Consular Mexicana</i> (by Cecilia Molina, 2nd edn., 1978)
<i>Mich. L. Rev.</i>	<i>Michigan Law Review</i>
Moore, <i>Digest</i>	John Bassett Moore, <i>Digest of International Law</i> (8 vols., Washington, DC, 1906)
Netherlands, <i>Manual</i>	<i>Consular Manual</i> (3 vols., 1951, pending reorganization)
<i>Netherlands Yb. Int'l L.</i>	<i>Netherlands Yearbook of International Law</i>
<i>N.Y.L. Sch. J. Int'l &amp; Comp. L.</i>	<i>New York Law School Journal of International and Comparative Law</i>
New Zealand, <i>Instructions</i>	<i>Consular Instructions</i> (regularly updated)
Nicaragua, <i>Regulation</i>	<i>Reglamento del Servicio Consular de Nicaragua</i> (Managua, 1937)
<i>NJ Eq.</i>	<i>New Jersey Equity Reports</i> (1930–48)
Norway, <i>Instructions</i>	<i>Instruks for Utenrikstjenesten</i> (1986)
OAS	Organization of American States
ODP	Orderly Departure Programme (UNHCR)
OECD	Organization for Economic Co-operation and Development
OENO	Federation of Greek Maritime Unions
<i>OJ</i>	Official Journal of the European Community
Oppenheim, <i>International Law</i>	L. Oppenheim, <i>International Law</i> (8th edn., by H. Lauterpacht, 1955)
PRC <i>Treaty Series</i>	<i>Chung-hua jen-min kung-ho-kuo t'iao yüeh chi</i> (Treaty Series of the People's Republic of China)
PCIJ	Permanent Court of International Justice
Portugal, <i>Regulation</i>	<i>Regulamento Consular Português</i> (approved by Decree No. 6:462 of 7 March 1920, Lisbon, 1921)
<i>San Diego L. Rev.</i>	<i>San Diego Law Review</i>
Satow, <i>Guide to Diplomatic Practice</i>	Sir Ernest Satow, <i>Guide to Diplomatic Practice</i> (5th edn., 1979)
SCR	Supreme Court Reports, 1876–1922 (Canada)
SJ Res.	Senate Joint Resolution
Soviet <i>Regulations</i>	Regulations concerning the diplomatic and consular missions of foreign states in the territory of the Union of Soviet Socialist Republics (order of 14 January 1927 of the Central Executive Committee and the Council of People's Commissars of the USSR)

Spain, <i>Consular Functions</i>	<i>La Función Consular en el Derecho Espanol</i> (by Jesús Núñez Hernández, Ministerio des Asuntos Exteriores, Madrid, 1980)
—, <i>Consular Organization</i>	<i>La Organizacion Consular</i> (by Jaime Abrisqueta Martinez, Madrid, 1977)
Stuart, <i>Practice</i>	G. H. Stuart, <i>American Diplomatic and Consular Practice</i> (2nd edn., 1952)
Sweden, <i>Instructions</i>	<i>Utrikesdepartementets Föreskrifter</i> (UF) (1988)
Switzerland, <i>Regulation</i>	<i>Règlement du Service diplomatique et consulaire suisse</i> (du 24 novembre 1967) (Etat le 1 <sup>er</sup> janvier 1979)
TIAS	<i>Treaties and Other International Acts Series</i> (USA)
Trinidad and Tobago, Act	Privileges and Immunities (Diplomatic, Consular and International Organisations) Act, ch. 17:01 (Act 23 of 1965, amended by 45 of 1979) (L.R.O. 1/1980)
United Kingdom, <i>Instructions</i>	<i>General Instructions to Her Majesty's Consular Officers</i> (Lonon: H.M. Stationery Office, 1949)
UNCTAD	United Nations Conference on Trade and Development
UNHCR	United Nations High Commissioner for Refugees
UNLS	United Nations <i>Legislative Series</i>
UNRWA	United Nations Relief and Works Agency for Palestine Refugees in the Near East
UNTS	United Nations <i>Treaty Series</i>
USC	United States Code
USCA	United States Code Annotated
US <i>For. Rel.</i>	United States <i>Foreign Relations</i>
USIA	United States Information Agency
USIS	United States Information Service
US <i>Regulations</i>	<i>Foreign Service Regulations of the United States</i> (1941, replaced by FSM)
UST	<i>United States Treaties and Other International Agreements</i>
USTS	United States <i>Treaty Series</i>
Uruguay, <i>Legislation</i>	<i>Legislación Consular del Uruguay</i> (by Romeo Maeso, 1945)
Vienna, <i>Off. Rec.</i>	United Nations Conference on Consular Relations, <i>Official Records</i> (Vienna, 4 March–22 April 1963), vol. i UN Doc. A/CONF.25/16.
Whiteman, <i>Digest</i>	Marjorie M. Whiteman, <i>Digest of International Law</i> (15 vols., Washington, DC, 1963–73)
<i>Yale J. Int'l L.</i>	<i>Yale Journal of International Law</i>
YILC	<i>Yearbook of the International Law Commission</i>
<i>Yearbook of the AAA</i>	<i>Hague Yearbook of International Law</i> (Association of Attenders and Alumni of the Hague Academy of International Law)

*Zourek Report*

Draft Provisional Articles on Consular Intercourse and Immunities, Report by Jaroslav Zourek, Special Rapporteur, United Nations International Law Commission, UN Doc. A/CN.4/108.

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