

CONSULAR ASSISTANCE IN DOMESTIC LEGAL FRAMEWORKS

Research Briefing

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REDRESS

Ending torture, seeking justice for survivors

EXECUTIVE SUMMARY

This Briefing identifies different approaches towards the provision of consular assistance to a State's nationals in domestic legal frameworks. In doing so, it addresses the responsibilities a State owes towards its nationals when they are located outside its territorial borders.

The Briefing offers to policy-makers an overview of models of consular assistance which already exist in a range of different States. It draws on, and updates, findings from earlier studies.

The Briefing outlines four different models for the provision of consular assistance at a domestic level. First, a policy-based model where consular assistance is provided through the exercise of executive powers and/or the royal prerogative. This is the model currently in operation in the United Kingdom. Second, a model where the operation of consular authorities is outlined in legislation, but the legislation does not establish a legal right to consular assistance. Instead, the legislation may establish the operation of diplomatic and consular functions and/or an expectation that consular assistance is to be provided, but falls short of establishing a legal right. Third, a model whereby the State's constitution asserts an obligation on the State to protect and/or assist its nationals when they are located abroad. This commitment can range between a legal obligation and political aspiration. Finally, a model whereby domestic law and regulations codify a duty or obligation on the State to provide consular assistance.

The models flow from a weak to a strong legal basis, with some States embedding overlapping approaches. The strongest model would:

- offer (both to State nationals affected and to State officials) more certainty on the scope of consular assistance as a positive measure to ensure the protection of the rights of the national abroad (including their fundamental human rights); and
- afford the national an avenue to either ensure compliance with a right to consular assistance or obtain redress through the judicial system where there had been a failure to do so.

This Briefing complements REDRESS's [Principles for a legal right to consular assistance](#), published in January 2024, designed to help shape a legal right to consular assistance in the United Kingdom. REDRESS has argued that moving consular assistance onto a legislative footing would ensure more robust safeguards and greater certainty for British nationals at risk of human rights abuses abroad and solidify the State's responsibility to secure the rights and wellbeing of its most vulnerable citizens.

In particular, REDRESS has argued that a legal right to consular assistance in cases of human rights violations would benefit British nationals by giving their rights primacy over foreign policy and trade considerations, solidifying the UK's prevention obligations under human rights treaties (such as the UN Convention against Torture), providing greater certainty, transparency and consistency to British nationals and their families regarding the level of support that they and their families can expect, and clearer routes to accountability when things do go wrong.

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This Briefing has been co-authored by Dr Conall Mallory, Senior Lecturer in Law at the School of Law, Queen's University Belfast, and Chris Esdaile, Senior Legal Advisor at REDRESS, as part of REDRESS's ongoing work towards introducing a legal right to consular assistance for British nationals detained abroad.

EVALUATION

Introduction

There is a general acceptance that States hold an obligation to provide consular support and assistance to its nationals when they are abroad, and yet this is an area on which the law has traditionally remained silent.¹ In international law, the Vienna Convention on Consular Relations 1963 codified centuries of consular practice in respect of a State's obligations towards other States. While the treaty establishes individual rights vis-à-vis the host State, it says nothing in respect of the relationship between a national and their home State.² The Consular Relations Act 1968 gives domestic effect to that treaty in the United Kingdom and is similarly mute regarding this relationship.³

This Briefing outlines comparative practices on the legal framework for the provision of consular assistance in domestic law. It draws on, and updates, findings from earlier studies. Two of these studies are particularly worth noting. The first is the Citizens Consular Assistance Regulations in Europe Project 2010.⁴ This project delivered a comprehensive report aimed at establishing the legal regulation of consular assistance in the then 27 member States of the European Union.⁵ The second report is a comparative study from 2019 of eight nations entitled 'Consular Services to Citizens Abroad'.⁶ It was commissioned by the Standing Committee on Foreign Affairs of the Dutch House of Representatives and completed by the independent, not for profit, policy research organisation RAND. The present Briefing updates some of the information contained in these reports and provides a wider range of examples in respect of the domestic legal frameworks concerning consular assistance. Nonetheless, like the earlier reports it does not attempt to provide an exhaustive overview of the legal status of consular assistance across the globe, or the quality or effectiveness of the assistance that is provided by the different States.

We identify essentially four different models for the provision of consular assistance at a domestic level:

- First, a policy-based model where consular assistance is provided through the exercise of executive powers and/or the royal prerogative. This is the model currently in operation in the United Kingdom, and also in Australia, Canada, Cyprus, Ireland, and the Netherlands.
- Second, a model where the operation of consular authorities is outlined in legislation, but the legislation does not establish a legal right to consular assistance. Instead, the legislation may establish the operation of diplomatic and consular functions and/or an expectation that consular assistance is to be provided, but one which falls short of establishing a legal right. Examples of this approach are found in Portugal, France and Germany.
- Third, a model whereby the State's constitution asserts an obligation on the State to protect and/or assist its nationals when they are located abroad. This commitment can range between a legal obligation and a political aspiration. The model is widely used in States which adopted a written constitution during the last century. Examples of this approach are found in Bulgaria, Estonia and Croatia.
- Finally, a model whereby domestic law and regulations codify a duty or obligation on the State to provide consular assistance, often including the scope of such assistance, and identifying who is eligible for such support. This model is the most pertinent to the study, and examples can be found in Romania, Mexico, Belgium, and Austria.

The models flow from a weak to a strong legal basis, with some States embedding overlapping approaches. A

1 Luke T Lee and John Quigley, *Consular Law and Practice* (Oxford, OUP 2008) 131.

2 Article 36 Vienna Convention on Consular Relations 1963. See further *LaGrand Case (Germany v. United States of America)*, Judgment, I.C.J. Reports 2001, p. 466 [89].

3 Consular Relations Act 1968

4 Faro, Sebastiano and Moraru, Madalina, *Consular and Diplomatic Protection: Legal Framework in the EU Member States* (1 December 2010), Final Report of the CARE (Citizens Consular Assistance Regulation in Europe) Project, 2010, available at SSRN: <https://ssrn.com/abstract=1998833> or <http://dx.doi.org/10.2139/ssrn.1998833> (the CARE Report)

5 This report was published prior to the United Kingdom's exit from the EU in January 2020 and the accession of Croatia in 2013.

6 Stijn Hoorens, Fook Nederveen, Tuure-Eerik Nieme, Victoria Jordan, Kate Cox and Marc Bentinck, *Consular Services to Citizens Abroad* (RAND, 2019) available at: https://www.rand.org/pubs/research_reports/RR4288.html

weak form model would find the provision of consular assistance as a mere political or moral obligation. In such jurisdictions consular assistance would not be provided on a legal basis, but instead as a privilege, resulting from the exercise of policy and administrative discretion. At this end of the spectrum, avenues for legal recognition and accountability may be limited. At the other end, a strong legal model would be where the provision of consular assistance is viewed as a legal obligation on State officials, thus providing real certainty to individuals as to what they can expect. Typically, this would be enshrined in a written constitution and elaborated through legislation. Such a strong legal basis would tend to include clear provisions of the extent, scope, and circumstances in which consular assistance would be provided. At its strongest, it would afford the national an avenue to either ensure compliance or obtain redress through the judicial system.

Before outlining the respective models, three points need to be highlighted. The first relates to States' international human rights obligations. In recent years there has been a gradual awakening of international committees, experts, and judicial bodies, to the critical role which consular assistance can play in ensuring that an individual's human rights (including fundamental rights such as the right to life, and the right not to be tortured) are respected and protected.⁷ This recognition has particularly been linked to the awareness of the vulnerability of the individual in, for example, an emergency, detention in a foreign legal system, on death row, or in transit. As such, in cases where specific actions are required from States for a right to have meaningful effect, the former UN Special Rapporteur on extrajudicial executions has argued that such actions should be treated as obligations.⁸ The domestic applicability of international law obligations will therefore have a significant influence on the assertion and recognition of a right to consular assistance.

For the United Kingdom, the caselaw of the European Court of Human Rights is particularly instructive. To date, the Strasbourg-based Court has not heard an application directly relating to a right to consular assistance.⁹ Nonetheless, the Court has long established that a State's obligations under the Convention are not territorially limited and that diplomatic and consular agents hold human rights obligations on behalf of the State.¹⁰

The second point is that, even in the strongest models outlined in this Briefing, States do not always label the provision of consular assistance as a 'right' to be enjoyed by its citizens.¹¹ More often, a right may be discerned through the language which is adopted in domestic legislation and/or through constitutional protections. In this Briefing, we identify a legal right as arising where the terminology positions a duty, responsibility, or obligation, on a State official to provide consular assistance. The existence of the obligation on the State/State official establishes the corresponding right to be enjoyed by their national.

However, there are examples where a 'right' to consular assistance is restricted by, for example, the circumstances on the ground, the behaviour of the national, the laws of the host State and the safety of consular officers. Situated in the domain of foreign affairs, consular assistance has also traditionally not been the subject of litigation. In some circumstances and legal jurisdictions, commitments may even be non-justiciable. Where it has been litigated, judicial practice in some jurisdictions has sometimes afforded the decision-maker a wide degree of discretion in their decision-making. Thus, even when a provision appears to establish a strong legal basis for consular assistance it may subsequently be interpreted during litigation as limiting the scope of such a

7 The importance of adequate consular assistance is increasingly being recognised in respect of the protection of human rights. See, for example, UN General Assembly, *Resolution on the protection of migrants*, A/RES/54/166 (24 February 2000); Agnès Callamard, *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Application of the death penalty to foreign nationals and the provision of consular assistance by the home State*, 1/74/318 (20 August 2019); Christof Heyns, *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions*, A/73/0/304 (7 August 2015) [109]; Fionnuala Ni Aoláin, Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism *The Death Penalty, Extended Detention, Fair Trial and Foreign Fighters* (2018) available at: <https://www.ohchr.org/en/special-procedures/sr-terrorism/activities>; UN Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW), *Joint general comment No. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families* and No. 23 (2017) of the Committee on the Rights of the Child on *State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return*, CMW/C/GC/4-CRC/C/GC/23, 16 November 2017 [17(e)]; Siobhán Mullally, *Report of the Special Rapporteur on trafficking in persons, especially women and children*, A/HRC/47/34 (17 May 2021) [43].

8 UN General Assembly, *Report of the Special Rapporteur of the Human Rights Council on extrajudicial, summary or arbitrary executions: Application of the death penalty to foreign nationals and the provision of consular assistance by the home State*, A/74/318 (20 August 2019) [33].

9 The former European Commission on Human Rights recognised the possibility for consular officials holding obligations: *X v UK* (1977) 12 DR 73. The European Court of Human Rights has heard applications which touch on consular issues and where inferences may be drawn concerning the importance of consular assistance: e.g. *Lebois v Bulgaria*, (application no. 67482/14) and *Aarrass v. Belgium* (application no. 16371/18)

10 ECtHR, *Al-Skeini v UK* (2012) application no. 55721/07 [134].

11 Romania serves as one example of a state which has declared a right for nationals and a corresponding obligation on diplomatic and consular officers: Law 248/2005 Regime of free movement of Romanian citizens abroad Art 4(1). Austria is similarly clear about its legislation establishing a legal right, see [Note Verbale Austria to UN OHCHR](#) (16 May 2022).

right or render it inapplicable in practice to protect the rights of nationals abroad.

A final point of note is that this is a field where there has been a steady increase in domestic developments, particularly in European jurisdictions. In recent years, it is striking that Slovenia, Estonia, Latvia, Lithuania, Portugal, Belgium and Austria have all either introduced new legislation relating to consular assistance, or updated existing provisions. In all cases, these innovations have provided clarity with respect to their nationals' relationship with their home State. It also shows a progressive realisation by States on the importance of consular assistance as a positive measure to protect the fundamental rights of nationals abroad.

Existing legal frameworks

Further details of specific State legislative and constitutional provisions are given in the table on pages 9-10.

Model #1: Executive powers

While there has been an increasing move towards codification of consular responsibilities into legislation or regulations at a domestic level, this practice is by no means universal. The basis for the provision of consular assistance offered by several States remains a matter of policy, through the exercise of executive powers and/or the royal/crown prerogative. This is the contemporary model for Australia, Canada, Cyprus, Ireland, the Netherlands, and the United Kingdom in the provision of consular assistance. The model tends to afford considerable flexibility to the State and consular assistance is not seen as an individual right of a national, but instead a privilege which is exercised at the discretion of the State. In terms of practical implementation, this model is heavily dependent on consular manuals and guides which are provided to nationals to clarify expectations around what can be expected of consular agents. In several countries, including Australia, Ireland and the United Kingdom, expectations around what assistance can be provided are addressed through a Consular Charter.¹² However, such discretionary models provide neither individuals nor State officials with certainty of what can/will be provided to the individual, and usually lack robust mechanisms to allow action to be demanded from the State, even when the individual may have suffered (or be at risk of) human rights violations.

Model #2: Legal foundation to consular assistance

An alternative model is where the provision of consular assistance is outlined in domestic legislation, but the legislation does not establish a legal right to consular assistance. This can occur where legislation relating to consular affairs is entirely silent on the relationship between the State and its nationals. For example, despite the provision of consular assistance being an exercise of the crown prerogative, Canadian consular authorities are organised through foreign affairs-based legislation.¹³ The relevant legislation gives responsibility to particular ministries and government offices to provide consular assistance to nationals, and yet there is no clarity in respect of whether the provision of such assistance to its nationals is a legal obligation on the part of the State, and nor does it define its scope. Where an individual wishes to challenge decisions relating to consular assistance, they are required to do so through public and administrative law principles. For instance, litigation has been brought in Canada in respect of a legitimate expectation to receive consular assistance.¹⁴

Legislation may also be drafted in a way so as to address the relationship between the State and its national, but without enshrining a legal right to consular assistance. For instance, French decrees relating to consuls general, honorary consuls and vice-consuls and consular agents, appear to provide a duty on these offices in relation to the "protection of French nationals and their interests",¹⁵ and yet it has been noted that French law does not bring together the provisions relating to consular assistance into a single text, and this wording has not been determined to establish a 'right to consular assistance'.¹⁶ In Germany, a duty is positioned on consular officials

12 See [Consular Service Charter](#) (Australia); [Consular Assistance Charter](#) (Ireland); [Consular Charter](#) (United Kingdom).

13 See Foreign Missions and International Organizations Act, S.C. 1991, c. 41; and the Department of Foreign Affairs and International Trade Act SC 2013, c 33

14 *Khadr v Canada (Minister of Foreign Affairs)*, 2004 FC 1145

15 Decree No. 76-548 of June 16, 1976 relating to consuls general, honorary consuls and vice-consuls and consular agents, Art 11.

16 ECtHR, *H.F and others v France*, application no. 24384/19 [80].

to provide assistance to German citizens abroad in the Law on Consular Officers, their Functions and Powers 1974,¹⁷ but this is subject to the discretion of the relevant officer. Thus, while there may be an expectation that German Consuls will assist German nationals, the embedded discretion means that this provision falls short of establishing a legal right. Likewise, in Portugal (which we also consider below in Model #3 in view of the inclusion of assistance to nationals abroad in its constitution), the commitment to consular assistance, whilst specifically including the provision of support and regular visits to those detained or imprisoned, and providing advice on certain legal processes, is only provided “when necessary and possible”, effectively preserving a strong discretionary element.¹⁸

In the United States there are a series of laws which touch on consular assistance and national protection and which are augmented through relevant policy documentation. For instance, US Code 4802 positions the responsibility on the Secretary of State to coordinate diplomatic and consular posts and to “provide for the safe and efficient evacuation of United States Government personnel, dependents, and private United States citizens when their lives are endangered”. US Code 2670 authorises the Secretary of State to provide emergency medical assistance to citizens incarcerated and destitute abroad. Elsewhere, US Code 1732 obligates assistance in certain circumstances, such as when an individual is unjustly deprived of their liberty by a foreign government, and hostage recovery.¹⁹ Federal Regulations also appear to apportion obligations on agents to assist Americans abroad.²⁰ Nonetheless, while these laws and regulations appear to position an obligation on State agents, when challenged, the judicial practice has been to deny relief to the individual with courts identifying that the provision of such assistance remains at the discretion of State officials. While it could be said that this therefore falls short of an obligation to provide ‘consular assistance’ in general, it clearly provides some certainty for nationals as to what they can expect from their government in specific circumstances.

Model #3: Constitutional obligation

The next category is where a State’s constitution recognises an obligation towards its nationals when they are abroad. Examples in this model tend to remain silent on the scope of consular assistance to be offered, instead indicating a general obligation towards nationals. For example, the Bulgarian Constitution notes that “[a]ny Bulgarian citizen abroad shall be accorded the protection of the Republic of Bulgaria”.²¹ This is reinforced in respect of Article 26(1) which notes that Bulgarian citizens benefit from the rights enshrined in the Constitution wherever they are. Similarly, the Croatian Constitution commits the State to “safeguard the rights and interests of its citizens living or residing abroad”.²² Likewise, the Estonian Constitution states: “The Estonian government also protects its citizens abroad”.²³ Finally, in Portugal, the Constitution notes that “Portuguese citizens who find themselves or who reside abroad enjoy the State’s protection in the exercise of the rights and are subject to the duties that are not incompatible with their absence from the country”,²⁴ although we have already noted above the residual discretion which effectively applies to this apparent ‘obligation’.

These States therefore include a constitutional obligation to provide assistance to its nationals wherever they may be, and therefore nationals of these States have a corresponding constitutional right to receive such assistance. The extent, scope, and justiciability of such a right will vary, with constitutional commitments of this nature sometimes being seen as political or aspirational.²⁵ Nonetheless, in many jurisdictions these commitments can still hold material value, for example, as interpretive aids in related litigation.

Model #4: Obligations set out in domestic law and regulations

The final category is where a State articulates the obligations of consular authorities through domestic law and regulations. However, the extent and scope of legislative commitments in this category vary widely.

17 Law On Consular Officers, Their Functions and Powers 1974, Article 5(1).

18 Decree 51/2021, Article 29.

19 22 U.S Code 1732 – Release of citizens imprisoned by foreign governments; 22 U.S Code 1741 - Assistance for United States nationals unlawfully or wrongfully detained abroad.

20 22 C.F.R. 71.6

21 Constitution of the Republic of Bulgaria, Article 25(5)

22 Croatian Constitution, Article 10.

23 Estonian Constitution Article 13.

24 Portuguese Constitution, Article 14.

25 Note that in the CARE Report, constitutional commitments made by Bulgaria, Estonia, Latvia, Lithuania, Poland, Portugal and Romania were considered to provide a fundamental right to consular protection: see the CARE Report p.608.

There are some examples which may appear more like Model #2, but where judicial interpretation has solidified the obligation. For instance, the Danish Foreign Service Act 1983 notes that the Danish Foreign Service “provides assistance to Danish citizens”, but this has apparently been judicially interpreted to give rise to a legal obligation.²⁶

In some States, a legislative basis serves to augment a constitutional commitment towards protections of nationals abroad, and creates a much more robust obligation on the part of the State, and the greatest certainty for nationals as to what their government will provide them. For instance, as well as noting in its constitution that “[t]he State of Lithuania shall protect its citizens abroad”, Lithuania has also passed domestic legislation which details the responsibilities of consular agents in the event of, for example, a natural disaster, catastrophe, acts of terrorism, mass riots, war or armed conflict; death and detention.²⁷ As well as its constitutional recognition, Estonia’s Consular Act 2009 details the roles, functions, appointments and obligations of Consular Officials. For instance, it denotes that:

*A consular officer or an honorary consul shall provide consultation and assistance to persons in distress in the consular district in order for them to contact their families or other persons close to them or return to Estonia or in order for their rights to be protected or hospitalisation or other issues to be arranged for them.*²⁸

In Romania, a constitutional commitment to consular assistance is combined with a clear legal right to consular assistance in domestic legislation, although the scope of such assistance is not specified in detail:

(1) During the stay abroad any Romanian citizen has the right to assistance and protection from diplomatic missions, as well as to the consular offices of Romania.
*(2) The diplomatic missions and consular offices of Romania abroad have the obligation to provide support and assistance, under the law, with the support of competent institutions in the country, Romanian citizens in difficulty or who request aid in order to return to the country, as well as to take all necessary steps to inform Romanian citizens of the occurrence of situations likely to endanger their safety or health.*²⁹

Several States have strong form protection in their domestic law even where they do not enshrine a constitutional commitment towards protection of nationals abroad. For example, the Mexican Foreign Services Act places an obligation on the Mexican Foreign Service to “[p]rotect, in accordance with the principles and norms of international law, the dignity and rights of Mexicans abroad and to exercise actions aimed at satisfying their legitimate claims”.³⁰ Accompanying regulations then detail comprehensive measures to ensure consular assistance is an effective protection of the rights of Mexican Nationals, including the provision of advice (including legal advice) and information on Mexicans’ rights and obligations vis-à-vis the foreign State where they are located, and a guarantee of consular visits to Mexicans who are detained, imprisoned, hospitalised or in other types of misfortune.³¹ Similarly, Indonesian legislation obligates officials to provide protection to Indonesian’s abroad.³² The full scope of protections are then outlined, and occasionally updated, in domestic regulations. The current regulations contain detailed provisions on the form of consular assistance provided, ranging from prison visits to passport replacement, and notarial functions to representation before foreign courts.³³

Finland also provides an example of a detailed legal articulation of consular responsibilities. Notably, it states that the Ministry of Foreign Affairs will monitor the implementation of the interests and rights of Finnish citizens, “taking into account internationally recognised human rights and other international obligations”.³⁴ It also goes

26 Danish Foreign Service Act 1983, s1(3); see also the CARE Report, p.146.

27 Consular Statute 1995, Art 14-22.

28 Estonia Consular Act 2009, s52(1). See also Finland’s Consular Services Act (498/1999) s.12 and Lithuania’s Consular Statute ss14-22.

29 Law 248/2005 Regime of free movement of Romanian citizens abroad Art 4(1).

30 Mexican Foreign Service Act 1994, Art 2(II).

31 Regulations to the Mexican Foreign Service Law.

32 Law No. 37/1999.

33 Ministry of Foreign Affairs Regulation No. 5 of 2018, on the Protection of Indonesian Nationals Abroad.

34 Consular Services Act (498/1999; amendments up to 174/2019), s4.

into detail in respect of persons in distress,³⁵ and crisis.³⁶ Similarly, Slovenian legislation clarifies the expectation of assistance (1) in case of deprivation of liberty or detention; (2) for victims of a crime; (3) in the event of a serious accident or serious illness; (4) in case of death; (5) in crisis situations; (6) when issuing a passport for return.³⁷ Recent Austrian legislation takes a similar approach including the provision of assistance in cases of (1) arrest and detention; (2) being a victim of a crime; (3) a serious accident or illness; (4) in the event of a death and (5) support and repatriation in emergencies.³⁸

In certain frameworks there appears to be an enhanced obligation in respect of particular groups. For instance, Lithuanian legislation has particular provisions for persons lacking full legal capacity.³⁹ Slovenian legislation notes that special attention is paid “to minors and vulnerable groups of individuals, such as, for example, persons who are incapable of doing business, the disabled, persons with mental health problems, the homeless and victims of domestic violence”.⁴⁰

It is not uncommon for certain legislative provisions to establish the State’s obligation to consular assistance, while simultaneously limiting its scope of such protection in some circumstances. For instance, Slovenian legislation notes that consular assistance “is provided to a reasonable extent in such a way that basic protection of the rights and interests of the citizens of the Republic of Slovenia is ensured”.⁴¹ Elsewhere, Austrian legislation⁴² recognises instances where it is expected that consular assistance will be offered, providing a good level of certainty for its nationals as to what will be provided.⁴³ Nonetheless, it limits the applicability of the obligations in circumstances where the person concerned: insufficiently took into account generally available information on hazardous situations; did not sufficiently consider specific dangers usually associated with travelling abroad; has not made sufficient financial provision for travelling abroad, medical treatment in an emergency, or the return journey; or failed to inform the consular authorities in a timely fashion and in full of all circumstances relevant to the performance of consular duties.⁴⁴ It further notes that assistance may be restricted if it could only be protected by endangering the life or health of other persons or public order and safety.⁴⁵ Similarly, the Belgian right to assistance is limited in circumstances in which the Belgian national had travelled to a region against clear foreign office advice; travelled to a conflict zone; or took excessive personal risks.⁴⁶

35 Ibid s12.

36 Ibid ss 15-18.

37 Slovenia Consular Act 2018, s3.

38 Austrian Federal law about the performance of consular duties s3(2).

39 Lithuanian Consular Statute 1995 (last amended 2022), Art 19.

40 Slovenia Consular Act 2018, s4(2).

41 Slovenia Consular Act 2018, s4(1).

42 Federal law about the performance of consular duties, 2019.

43 s.3(2).

44 s.3(3).

45 s3(4)5.

46 Belgian Consular Code 2013 (as amended 2018) s.83.

COMPARATIVE EXAMPLES

The below table sets out the legal position of consular assistance across 28 States and, where possible, includes hyperlinks to the relevant documents. For ease of reference, each State's position is simplified and categorised in terms of the Models outlined above, although, for the reasons discussed above, their respective positions are often somewhat nuanced and may, for example, straddle more than one of the Models identified. Those categorised as having a legal obligation to consular assistance (Model #4) are highlighted.

State	Position	Source
Austria	Legal obligation Framed as a 'consular duty'; right can be restricted in certain circumstances.	Federal law about the performance of consular duties 2021 s3 Note Verbale Austria to UN OHCHR, 16 May 2022
Australia	Executive power Policy	Australian Consular Services Charter
Belgium	Legal obligation Specific obligations given to consular posts, although right can be restricted.	Consular Code 2013 (updated 2021) ss78, 83, 90
Brazil	Legal foundation Brazilian missions are 'responsible for'	Decree No. 24.113 of 1934
Bulgaria	Constitutional obligation	Bulgarian Constitution Article 25(5)
China	Constitutional obligation	Constitution of the People's Republic of China 2004 Art 50
Canada	Executive power and Legal foundation which organises Canada's foreign service	Foreign Missions and International Organizations Act, S.C. 1991, c. 41; Department of Foreign Affairs and International Trade Act SC 2013 s10(2)
Croatia	Constitutional obligation	Croatian Constitution Article 10
Cyprus	Executive power Policy	Information on Consular Services
Denmark	Legal obligation Danish authorities 'provide assistance'	Danish Foreign Service Act 1983 s1(3)
Estonia	Legal obligation Constitution and domestic law noting a consul 'shall provide'	Estonian Constitution Article 13 and Consular Act 2009 s52
Finland	Legal obligation A mission 'shall advise and assist'	Consular Services Act 1999 (amended 2019) s11-14.
France	Legal foundation	1976, Article 11
Germany	Legal foundation	Law On Consular Officers, Their Functions And Powers 1974, Article 5(1)
Hungary	Constitutional obligation	Hungarian Constitution Article 69(3)

Indonesia	Legal obligation Domestic law	<u>Law No. 37/1999</u> and implementing regulation, MOFA Regulation No. 5/2018
Ireland	Executive power Policy	<u>Consular Assistance Charter</u>
Kazakhstan	Legal obligation Constitution and consular charter outlining 'obligations' of consular officials	<u>Consular Charter of The Republic Of Kazakhstan 2016 (amended 2021) s41.</u> <u>Constitution of the Republic of Kazakhstan Article 11(2)</u>
Latvia	Legal obligation Constitution and domestic law noting authorities will 'ensure the protection'	<u>Latvian Constitution Article 98 and Diplomatic and Consular Services Law s2(1) (last amended 2021)</u>
Lithuania	Legal obligation Constitution and domestic law framing that Consular officers 'shall' provide assistance	<u>Lithuanian Constitution Art 13 and Consular Statute 1995 Art 14-22 (last amended 2022)</u>
Malta	Executive power Policy	<u>Policy based on HR protection</u>
Mexico	Legal obligation Domestic law	<u>Mexican Foreign Service Act 1994 Article 2(II)</u>
Netherlands	Executive power Policy	<u>Embassies, Consulates and Other Representations</u>
Poland	Legal obligation Constitution and domestic law	<u>Polish Constitution Art 36 and legislation</u>
Portugal	Legal foundation Constitution and domestic law outlining consular agents are 'responsible for providing support' in certain situations.	<u>Constitution of the Portuguese Republic Article 14; Decree 51/2021, Art 29.</u>
Romania	Legal obligation Statute specifically identifies the 'right to assistance and protection'	<u>Romanian Constitution Art 17 and Law 248/2005 Regime of free movement of Romanian citizens abroad Art 4(1)</u>
Slovenia	Legal obligation Domestic law	<u>Instructions for Honorary Consular Officers of the Republic of Slovenia No. 501-11/2022/5 of 19 July 2022 Art 7; Act on Foreign Affairs, Art 24(1).</u>
United States of America	Legal foundation Supplemented by policy.	<u>US Code 4802 C(1), US Code 2670 (J); US Code 1732 .</u>

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redress.org

REDRESS

Unit G01, 65 Glasshill Street

London, SE1 0QR

United Kingdom

+44 (0)20 7793 1777

info@redress.org

 [REDRESSTrust](#)

 [redresstrust](#)

 [company/REDRESS](#)

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