

# Admission of Foreign Tourists and the Law of Nations

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## *I. Right to Refuse Admission to Foreign Tourists*

It appears that the prevailing view on the admission of aliens can be summarized by quoting *Lauterpacht*<sup>1)</sup>:

“Apart from special treaties of commerce, friendship, and the like, no state can claim the right for its subjects to enter into, and reside on, the territory of a foreign state. The reception of aliens is a matter of discretion, and every state is by reason of its territorial supremacy competent to exclude aliens from the whole, or any part, of its territory”.

This view seems to be so generally accepted that it is quite unnecessary to trouble the reader with references to the wealth of material supporting it. The rule is certainly also a reasonable one: unlimited migration across the borders could harm the labor and housing markets and it could even endanger the security of the admitting state. But is it equally reasonable to allow states to exclude even foreign tourists<sup>2)</sup>, persons

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<sup>1)</sup> *Oppenheim/Lauterpacht, International Law, Vol. 1 (ed. 8, London 1967) 675–76.*

<sup>2)</sup> In this paper, the term “tourist” is used to denote temporary visitors staying in the visited country for a relatively short period of time and financing their stay from abroad. Immigrants seeking permanent residence or employment are not included. About these groups, see *Plender, International Migration Law (Leiden 1972)*. Other very special groups, e.g. shipwrecked persons or refugees waiting for immigration visas to a third country, are also beyond the scope of this paper. In addition to the term “tourist”, terms “visitor” and “traveller” will be used with the same meaning.

who come in order to spend only a limited time in the admitting state, without taking up permanent residence or work there? What is more, these persons finance their stay in the admitting country with means from abroad and thus represent no economic burden. Quite to the contrary, the visitors contribute to the balance of payment of the visited state. Consequently, most states welcome foreign tourists and make quite an effort to attract them<sup>3</sup>).

There is no doubt that the states have, under the contemporary law of nations, the right to regulate and limit the stream of foreign visitors to their territories. Large-scale foreign tourism may entail also many negative consequences for the visited country, for example in the social, cultural and national security fields, and it must be within the sovereign prerogatives of each state to defend itself against such consequences. But does this mean that a state may exclude all foreign visitors, *i.e.* that it may close its territory to all foreigners except for a handful of diplomats and businessmen?

Undoubtedly, there is no "human right" to visit a particular foreign country. No such right has been mentioned in the 1948 Universal Declaration of Human Rights. Neither there is any mention of it in any of the conventions pertaining human rights. No support can be found for it in the legal literature on the subject or in the decisions of international tribunals.

On the other hand, the Charter of the United Nations obliges all member states to develop friendly relations among nations and to achieve co-operation in the fields of economy, culture and education<sup>4</sup>). This obligation has been affirmed by the General Assembly of the United Nations in its Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations of October 24, 1970<sup>5</sup>). On the basis of this Declaration, it has been asserted by some authors that a state is forbidden by international law to close its borders to all foreigners<sup>6</sup>). The Final Act of the recent Conference on Security and

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<sup>3</sup>) Lickorish, *International Tourism and Government Action*, 2 *Journal of World Trade Law* 210-23 (1968).

<sup>4</sup>) Articles 1 (3), 55 and 56 of the U.N. Charter.

<sup>5</sup>) Resolution 2625 (XXV), published in e.g. 9 *International Legal Materials* 1292-97 (1970).

<sup>6</sup>) E.g. Potočný, *Mezinárodní právo veřejné* (Praha 1973) 195.

Co-operation in Europe<sup>7)</sup> explicitly recognizes the importance of international tourism for international understanding and co-operation.

A country that excludes all foreign visitors will almost certainly also forbid its own nationals to travel abroad. The refusal to admit foreign tourists will thus be an element in the attempt of the state in question to isolate its population from all international contacts, to prevent friendly relations or even family ties like marriages between its nationals and foreigners. The aim of such a "quarantine policy" might be to make it possible for the government to create the impression that foreigners are strange and evil persons. Alas, the countries which at present apply a policy close to "quarantine" are exactly the countries that on all possible occasions speak highly of international friendship and understanding. Nevertheless, it is submitted that a total or almost total exclusion of foreign visitors is dangerous to international friendship and understanding and that a state applying this policy in time of peace can hardly be said to fulfil *bona fide* its obligations under the Charter of the United Nations.

At the present moment, there seems to be no country in the world explicitly forbidding all foreign tourism. It is, however, a fact that some states come in practice very close to such prohibition. Still, the provisions of the United Nations Charter are too vague to allow us to establish that the refusal to admit any foreign tourists amounts to international tort. Of course, there might be a bilateral or multi-lateral international treaty according to which the states assume the obligation to admit foreign nationals on the basis of reciprocity. The frequent agreements on abolition of visas are good examples. Only the states already admitting foreign visitors will, however, accede to such agreements. They are thus normally of no avail against governments adhering to the "policy of quarantine". It should, in any case, be possible to say that the lawfulness of this policy under the contemporary law of nations is dubious.

But even if it should be admitted that any country has the right to forbid all foreign tourism, the refusal to admit a particular tourist may conceivably be illegal from the point of view of international law. For example, should a country normally admitting tourists be allowed to make exceptions as to visitors of a certain race, religion or political opinion?

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<sup>7)</sup> Signed in Helsinki on August 1, 1975, published e.g. in 14 International Legal Materials 1292-1325 (1975).

In the following, we shall consider the usual requirements imposed by various countries on persons seeking entry to their territories as tourists<sup>8)</sup>. Special groups of travellers, for example refugees and stateless persons, will not be considered<sup>9)</sup>.

## *II. Passports*

In the vast majority of cases, the foreign visitor is required to present his passport to the immigration officials of the country he is about to visit. What is a passport? In form, it is usually a booklet with the title "passport" in one or several languages printed on its title page together with the name and emblem of the state issuing it. It contains the photograph and signature of the holder, as well as other information identifying the holder, for example the place and date of his birth, his occupation, his description (color of hair, eyes, special marks, etc.). The passport is normally issued by the country of which the bearer is a national and the stamp and signature of the issuing authority confirm the accuracy of the text and of the photograph. The period of validity of the passport is also indicated, as well as its territorial validity. The territorial validity is shown by enumeration of countries or by a general clause, for example "Valid for all countries of the world". Finally, the passport indicates its serial number. The passport contains a number of blank pages intended for the use of both domestic and foreign authorities, for example for entry or exit visas and entry and exit stamps. All printed text appears usually not only in the language

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<sup>8)</sup> The information on entry requirements in various countries that will be used in the following text is taken, in part, from the own experience of the author, but mostly from the ABC Guide to International Travel, published quarterly by ABC Travel Guides Ltd in England for the needs of travel agencies. The edition used is that for April–June 1975. Since the entry requirements change often and suddenly, the examples that will be used may already be obsolete. In the own experience of the author, the actual practice of some countries differs substantially from the regulations formally in force, for example if great freedom of decision is left to the discretionary power of the particular immigration officer at the border.

<sup>9)</sup> On travel documents for refugees and stateless persons, see the 1951 Convention Relating to the Status of Refugees and the 1954 Convention Relating to the Status of Stateless Persons (article 28 and Annex of both Conventions). See also the 1959 European Convention on the Abolition of Visas for Refugees (European Treaty Series No. 31).

of the country of issue but also in translation into one or more of languages common in international circulation, for example English or French.

What is the legal importance of a passport? Do all national passports have the same legal value? At a first, superficial view, there might be great differences. Almost all passports contain, by tradition, on one of the first pages some kind of a stipulation addressed to authorities, both domestic and foreign, which will come into contact with the bearer. Thus, a Greek passport issued while Greece still was a Kingdom provides the following:

“The diplomatic and consular authorities of the Kingdom of Greece and those of friendly countries are kindly requested to grant every legitimate protection and assistance to the bearer of this passport”.

A Czechoslovak passport gives the following information: «Le porteur de ce passeport est sous la protection de la République socialiste tchécoslovaque».

The Swedish passports say nothing more than “The bearer of this passport is a Swedish citizen”.

It is obvious that the provisions of these three passports are not identical in their meaning. Should this imply that the legal value or relevance of the three passports is different? Hardly. The quoted clauses do not cover all the legal relevance of the passports. A passport is more than just a certificate of nationality and it is more than just a kind request addressed to diplomatic and consular (why not other?) authorities.

A passport is, first of all, a document of identity. It makes it possible to establish the name, age, etc. of the bearer. Normally, also the nationality of the bearer can be concluded from the possession of the passport, even if the passport itself does not say anything about the holder's citizenship. It is natural that the authorities of the visited country want to know whom they are letting in. A passport is a *prima facie* evidence of identity and nationality<sup>10</sup>).

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<sup>10</sup>) Starke, An Introduction to International Law (ed. 7, London 1972) 340. According to the Report of the Commission of the European Communities, Bulletin of the European Communities, Supplement 7/75, p. 8, the passport is a document issued by a national administrative body to the nationals of the country concerned, attesting their identity *vis-à-vis* foreign authorities.

The passport informs, further, that the authorities of the country issuing it consent (or, rather, consented at the time of issuing) to the travels abroad of the bearer. The holder of a passport is probably not a runaway criminal.

Further, the possession of a passport makes it simple to prove to the diplomatic or consular authorities of the issuing state that the person in question is their responsibility. Thus, should the presence of the traveller become undesirable, the admitting state is fairly sure that the country that issued the passport will accept the traveller.

The passport will also identify the bearer as a beneficiary of various treaties concluded between the issuing country and the country admitting the visitor, for example treaties on abolition of visas.

The fact that a state insists that its nationals travelling abroad should be in possession of a valid passport does not, of course, entail any duty under international law for other states to admit only such travellers from that state who possess such document. Thus even if the passport says "Not valid for Israel" or "Not valid for countries of the Communist bloc", Israel or the communist countries are quite free to admit the traveller. It is, however, a current practice that states normally require that foreigners seeking entry should be in possession of a passport valid for the journey<sup>11</sup>). This might easily be interpreted as a peculiar obedience of the visited country to the state of the nationality of the traveller. In the words used in a French Government Bill of 1919<sup>12</sup>),

«le régime des passeports apporte une entrave sérieuse à la liberté de la circulation; il offre en plus l'inconvénient de subordonner l'accès et le séjour sur notre territoire au bon vouloir des autorités étrangères qui restent maîtresses d'arrêter ou de limiter l'immigration de leurs nationaux en France par le refus de la délivrance des passeports . . .».

This obedience to the policies of foreign states as to issuance of passports appears to be especially repugnant since the states refusing entry to the traveller because he lacks a valid passport become instruments of the home country of the traveller in pursuing its own aims which may be as selfish as they are unknown. These aims may even be contrary to international law.

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<sup>11</sup>) Thus, for admission to Sweden, the Aliens Decree (*Utlänningskungörelse*) of May 23, 1969, article 4(2).

<sup>12</sup>) Quoted from Borella, *Le passeport*, *Revue générale de droit international public* 1960, 301-334, at 325.

It is not the purpose of this paper to examine the right of any human being to leave any country including his own which has been expressed as a human right in conventions and declarations<sup>13</sup>). It is submitted, nevertheless, that if the state is under obligation to allow its citizens to travel abroad, then it must logically also be under obligation to issue passports to them. If it refuses to do so, should other states accept this dictate? Of course not. The true reason why most states require that foreign tourists should possess a valid passport does not lie in any wish to help foreign states in their efforts to control the travel of their nationals, but rather in practical considerations like the possibilities to control the identity of the visitor, to establish that there is a foreign state ready to accept the visitor if he becomes undesirable in the visited country and a certain probability that a passport holder is a law-respecting person<sup>14</sup>). It should be asked whether at least some of these advantages could not be guaranteed equally well or even better by means of other documents than national passports.

As it has been pointed out by Borella<sup>15</sup>), in an organized community of nations it should be fully conceivable to entrust the issuance of passports to an international body. As desirable as this might be, it is hardly realistic to propose this solution at the present state of world affairs. Of course, the solution may become more practical some time in the distant future. Speaking of distant future<sup>16</sup>), it is also quite conceivable that the role of a passport will be taken over by a computer-adapted card which will make it possible for any immigration officer or hotel receptionist to obtain all desirable information upon the bearer within seconds through local terminals of a world-wide computer system. The same system could also make it possible, for anybody having access to it, to find out within seconds the country, the town or even the hotel where a particular traveller is staying. Such progress — if it still could be called so — will, hopefully, be preceded by a world-wide liberalization of international travel consisting

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<sup>13</sup>) The Universal Declaration of Human Rights of December 10, 1948 (article 13); The International Covenant on Civil and Political Rights of December 16, 1966 (article 12); The American Convention on Human Rights of November 22, 1969 (article 22); cf. The International Convention on the Elimination of All Forms of Racial Discrimination of December 21, 1965 (article 5).

<sup>14</sup>) Laws of certain countries, e.g. of Czechoslovakia, restrict issuance of passports to certain categories of persons with criminal background.

<sup>15</sup>) Borella, *op. cit.* (note 12) 312.

<sup>16</sup>) It is possible that this future is not so distant. Preparations to replace traditional passports with computer-adapted cards are at present being made within the Council of Europe and the International Civil Aviation Organization.

of abolition of the passport and visa requirements. Such abolition would undoubtedly be a progress, although it would, in fact, mean only a return to the state of things before the World War I! But even after such abolition of passports, the travellers will need some kind of identity documents texted in one of the world languages, for example in order to cash their travellers checks, rent cars or receive registered mail. This role could, however, be as well fulfilled by, for example, a driver's license internationally unified in form.

A rather amusing effort to establish "world passports" has, in fact, already been made by a private person, the well-known "first citizen of the world", Mr. Garry Davis. Mr. Davis showed his hostility to national passports already in 1948, when he solemnly burned his American passport in front of the Palais de Chaillot in Paris. More recently, he established himself in France and began selling passports of his own brand to the general public, for which he was sentenced to three months in jail and 1000 francs fine<sup>17)</sup>. The most surprising aspect of this story is that the passports issued by Mr. Davis have obviously been recognized, explicitly or implicitly, by 28 governments! It is, nevertheless, hardly probable that passports issued by a private body have any real chance of being universally accepted.

The recent efforts of the states members of the European Communities to create a "European passport"<sup>18)</sup> have not led to creation of a passport that would be issued by an international body, for example by an organ of the Communities. Instead, the "European passport" will be issued by the authorities of the particular member countries to their own nationals. The creation of the "European passport" will in no way affect agreements concluded by individual member states with non-member countries as to treatment of their nationals. The "European passport" is in practice a national passport, although the passports of the states members of the E.E.C. will obtain similar outward appearance. This outward uniformity is intended to have mainly a psychological effect, "one which would emphasize the feeling of nationals of the nine member states of belonging to the Community"<sup>19)</sup>.

<sup>17)</sup> *Ministère public v. Garry Davis* (Trib. correctionnel Mulhouse July 10, 1974), *Revue générale de droit international public* 1974, 1149-50. It can be added that Mr. Davis decided to appeal against the judgment to a special world court which he intends to create for that purpose!

<sup>18)</sup> See Commission Report in *Bulletin of the European Communities, Supplement 7/75*, pp. 8-21; *Facomprez, Den europeiske pasunion er blevet en realitet: Europa* (Danish edition) No. 10/1975, pp. 24-25.

<sup>19)</sup> Commission Report in *Bulletin of the European Communities, Supplement 7/1975*, p. 9.



In the present international practice, most states admit at least some foreigners upon presentation of other documents than passports, for example national internal identity cards<sup>20</sup>). This is, however, practically always limited to nationals of particularly friendly nations. Some countries admit certain nationals upon presentation of any proof of citizenship, for example birth certificate or a voter's card<sup>21</sup>). A number of states are willing to honor expired passports of certain nationalities, provided that the passport expired less than a certain time period, usually five years, ago<sup>22</sup>). Some countries have gone so far as to abolish the passport requirement in general as to foreign tourists. Thus, Honduras requires a tourist card, obtainable from Honduran consulates, plus a proof of identity, not necessarily a passport. According to the regulations in force in Surinam, persons coming as tourists for a period of not more than forty days must have only a legitimate identity document with photograph. Similarly liberal attitude is shown by Bermuda<sup>23</sup>).

On the other hand, there are also countries which put high demands on foreign passports. According to Swedish law<sup>24</sup>), a foreign passport can be recognized as such only if it contains certain information, for example it must contain the signature of the bearer and the confirmation by the foreign issuing authority that the bearer has signed the passport with his own hand. A bearer of a passport not containing such confirmation should, at least in theory, be refused entry to Sweden. Fiji will admit the visitor only if his passport is valid for all countries; validity for a journey to Fiji is obviously not sufficient. It is, of course, undesirable to impose one's own ideas about how a passport should look like on foreign countries and a stubborn persistence might, in practice, lead to excluding visitors of certain nationalities altogether. A multilateral international convention could be of much use here<sup>25</sup>). In the meantime, the

<sup>20</sup>) At least 75 states and territories admit certain foreign nationals upon presentation of national internal identity cards.

<sup>21</sup>) E.g. United States citizens are admitted in this way to Bahamas, Mexico, Venezuela and several other states and territories.

<sup>22</sup>) E. g. Austria, Central African Republic, Chad, Congo (Brazzaville), Dahomey, France, Gabon, Greece, Italy, Luxembourg, Mali, Mauretania, Netherlands, Niger, Senegal, Spain and Togo.

<sup>23</sup>) All three countries make exceptions for nationals of certain communist countries.

<sup>24</sup>) The Aliens Decree of May 23, 1969, article 4(4).

<sup>25</sup>) About the efforts on international level to unify the form of passports, see Reale, *Le problème des passeports*: 50 *Rec. des Cours* 89–182 (1934), and Borella, *op.cit.* (note 12) 310–11. Until now, these efforts have been without substantial success. Some progress has been made within the Council of Europe

"*telle-quelle* principle" known in the law of trademarks should be applied also in the field of passports. A passport complying in form with the laws of the issuing country should be considered to be formally complete in all other countries, unless it is quite useless as a passport, for example because it does not contain information sufficient for the identification of the bearer.

A quite independent problem is whether passports issued by a government not recognized by the government of the visited country can, and should, be recognized. This is a very practical problem and different governments have solved it in different ways. The problem should deserve a detailed study of its own, but such study would be out of place in this limited paper. Nevertheless, it must be pointed out that we live in a world where certain governments, although undoubtedly effectively controlling large population and territory, have by some states been denied recognition under many years because of political reasons. This lack of recognition, for example of East Germany, China, Taiwan, Israel or South Africa<sup>26</sup>), did not often prevent the states or their nationals from having certain private, for example commercial or family, relationships. As long as the countries are at peace, at least the travel for family purposes should be made possible. There are many ways to do so, but the simplest way how to achieve this is undoubtedly to recognize the passports, in the same way as marriages celebrated in a not recognized country by its officials and in accordance with its law should be recognized. True, passports are of a more "public-law" nature than a marriage, but they are used by private persons for private purposes. The practical aspects should be more important than the theoretical considerations.

### III. Visas

In this paper, the term "visa" shall be used to denote a permission to enter the country issuing the visa, provided that the permission is given in advance and in the individual case. Thus, the "visas" given in some countries to all foreign visitors at the border

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in the matter of collective passports for young persons (European Treaty Series No. 37). Within the Council of Europe, several other treaties have been elaborated with the aim of facilitating the tourist traffic between the member states (e.g. European Treaty Series Nos. 19 and 25).

<sup>26</sup>) Rhodesia is a special case, see note 46 *infra*.

itself against payment of a fee are rather entry stamps combined with collection of fees than real visas<sup>27)</sup>.

The visa is usually granted in the form of a stamp in the passport by the diplomatic and consular missions of the issuing state. A fee is often required and sometimes also the consent of the central authorities of the issuing country. Occasionally, this traditional form of visa is replaced by other forms, under different names, but playing the same role. Thus, some countries require, instead of visa, a tourist card issued by their consulates or embassies<sup>28)</sup>. Other countries, although perhaps generously abolishing the visa requirement for certain nationals, require that all visitors should be in possession of a permit to be obtained in advance from embassies or consulates abroad. Such permit may be called "No Objection Certificate"<sup>29)</sup>, "Visitors Pass"<sup>30)</sup>, or "Entry Permit"<sup>31)</sup>.

Only a very limited number of countries require visas from all visitors<sup>32)</sup>. Tourists of many nationalities are often exempted from the visa requirement, usually on the basis of a treaty or reciprocity, but sometimes even one-sidedly<sup>33)</sup>. It remains, however, a principle in most countries that foreign tourists need visas, unless explicitly exempt from the requirement. The exemption may then, in some countries, cover most of the states of the world<sup>34)</sup>. In some countries, it seems, the opposite approach is used: no tourist needs a visa in absence of a provision to the contrary<sup>35)</sup>. Even here, it is more the extent of the exceptions than the main rule that reflects the general attitude towards the admission of foreign visitors.

In many states, there are several categories of visas. In this paper, only the visas normally used by foreign tourists are of interest. Such visas are often called "tourist visas" or "visitors visas". They must be

<sup>27)</sup> E.g. Nepal, Ethiopia and Hungary. Nationals of some countries require even here real visas.

<sup>28)</sup> E.g. Mexico and some other Latin American countries.

<sup>29)</sup> E.g. Kuwait and Oman.

<sup>30)</sup> E.g. Uganda.

<sup>31)</sup> E.g. Sierra Leone.

<sup>32)</sup> E.g. Albania and China.

<sup>33)</sup> E.g. United States citizens do not need visas when travelling in Western Europe, whereas visitors from Western Europe need visas for travel to the United States, although these visas are issued free of charge and "for a life-time".

<sup>34)</sup> E.g. Sweden.

<sup>35)</sup> E.g. Bulgaria (up to two months); Barbados (21 days); Cameroon (10 days); Cyprus ("short tourist trips"); Guayana (14 days); Malaysia (7 days); Philippines (21 days); Surinam (3 months); Thailand (7 days).

distinguished from similar permits given to foreign workers coming to seek employment or to foreigners who are just passing through the country in transit. Some states, for example Albania, seem not to know any individual tourist visas at all. While all foreigners need a visa to visit Albania, such visas are issued only for business visits or to groups of ten or more persons.

What is the legal nature of a tourist visa from the viewpoint of international law? Although the visa is normally granted on the basis of a foreign passport and in the form of a stamp or inscription into a foreign passport, the visa does not reflect any relationship of the state issuing it towards the state which issued the passport. The granting of a visa is an act not directed towards the state of the traveller's nationality, but only towards the traveller as individual. Thus, if a country refuses to admit a foreigner in spite of the fact that it previously issued a valid visa to him, it does not break any promise given to the home country of the foreigner, since no such promise exists. The legal relationship emanating from the granting of a visa is thus a relationship between the traveller and the granting state under the latter's administrative law and not a relationship between states. The situation is different if there is an agreement between the two states according to which the tourist should be admitted without a visa. If such a tourist is refused entry, the state refusing him might incur international responsibility. This is, nevertheless, hardly probable. The relevant treaties usually contain an *ordre public* clause giving each state a free hand if it considers that it needs it. Besides, the states will not usually press their rights under such treaties in order not to endanger their own freedom of action<sup>36</sup>).

It must also be mentioned that the granting of a visa need not, under the administrative law of the country to be visited, guarantee that the holder will be permitted to enter the country. The permission to enter is in many states at the discretion of the immigration officer at the port of entry. Some countries stamp a reservation to this effect into the passport simultaneously with the visa itself<sup>37</sup>). This might seem to be a threat to legal security. A traveller who in due course procured himself a visa and paid a lot of money for a trip to a distant country may see himself rejected at the border of the country to be visited. Normally, however, such traveller will not have any problems of this kind, provided

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<sup>36</sup>) Starke, *op.cit.* (note 10) 345.

<sup>37</sup>) E.g. Sri Lanka.

that he complies with other requirements imposed upon foreign visitors by the laws of the state he intends to visit (see *infra*).

Some states have agreed that a visa issued by one of them will be valid for entry to territories of them all<sup>38</sup>). Such agreements could contribute substantially to a liberalization of international travel. For example, a common West European visa to be granted by any West European country might make travel substantially easier for such nationals who still need visas for West European countries. In fact, a similar West European visa is being planned within the European Communities<sup>39</sup>).

In connection with visas, a few words may be said about some other requirements imposed in some states on foreign tourists seeking entry. The probably most wide-spread requirement is that of health and vaccinations. It is only natural that each country protects itself against introduction of contagious diseases. Other health requirements, for example the restrictions applied in some countries on persons suffering from deaf mutism or serious mental deficiency, are primarily used to exclude permanent immigrants, not temporary visitors<sup>40</sup>). The same is valid as to requirements of some countries, for example the United States, that the immigrant has not been convicted of a crime involving moral turpitude<sup>41</sup>).

In addition to the previously mentioned requirements, some countries demand that entering tourists should be in possession of funds sufficient for the journey<sup>42</sup>) or that they should be able to present documents and tickets permitting travel to another country<sup>43</sup>). Finally, a very limited number of states impose an obligatory daily exchange of money upon foreign tourists<sup>44</sup>). The aim of this unhospitable requirement is not to force the visitor into overspending or to discriminate against

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<sup>38</sup>) E.g. the Benelux countries, Convention of April 11, 1960, see Bulletin of the European Communities, Supplement 7/75, pp. 17-18.

<sup>39</sup>) See Commission Report, Bulletin of the European Communities, Supplement 7/75, pp. 10-14.

<sup>40</sup>) Cf., Plender, *op.cit.* (note 2) 265-71.

<sup>41</sup>) Cf., Plender, *op.cit.* 272-76.

<sup>42</sup>) E.g. Belize, Bermuda, Fiji, Iceland, the Benelux countries, Sweden. The states are usually liberal in their practice and subject the tourists to control in this respect only in exceptional cases.

<sup>43</sup>) This is usual in cases of transit visas. Bahamas, Cameroon, Cuba, Fiji, Gambia, Iceland, Netherlands and many other countries impose this requirement also when the traveller is not in transit.

<sup>44</sup>) E.g. Czechoslovakia, Hungary, East Germany and Romania.

poorer visitors, since the compulsory amount is usually relatively low. In the countries where compulsory daily exchange is applied, there is usually a flourishing black market for "hard" currencies where the tourist may obtain substantially more for his funds than at the official banks. The compulsory daily exchange is thus a rather desperate attempt to force the traveller to exchange at least a part of his money on the official money market. All these restrictions appear to be fully compatible with international law.

The regulations of many countries provide that any foreigner may be refused admittance if "public good", "public policy", "national security" or other similarly vague concepts demand that the admittance should be refused<sup>45)</sup>. No objections can be made against these clauses in general; their application in practice may, however, be such that it violates international law.

#### *IV. Discriminative Treatment of Certain Visitors*

It follows from what has been said before that the states do not treat all foreign tourists alike in the matter of admission. Certain nationals need visas, others are discharged of this requirement. Nationals of certain states perhaps do not even need a passport to be admitted. This different treatment depending on the nationality (citizenship) of the tourist is so generally accepted and practiced that it would be ridiculous to assert that it amounts to a discrimination forbidden by international law, for example as violating human rights. Some states go so far as to exclude citizens of certain countries from admission<sup>46)</sup>

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<sup>45)</sup> Plender, *op.cit.* (note 2) 260-64.

<sup>46)</sup> Israelis, Rhodesians and South Africans are refused entry in many countries. Some other examples: Lebanese are not admitted in Gabon, citizens of Ghana and Ivory Coast in Guinea, citizens of communist countries in Nicaragua, citizens of Oman in Libya, citizens of Honduras in El Salvador, citizens of Bangladesh and Pakistan in Uganda, Ethiopians in Syria, nationals of South Yemen in Saudi Arabia, nationals of some Arab states in Israel and citizens of some communist states in Thailand. As to Rhodesians, the refusal to admit them can be motivated by the U.N. Security Council resolution of March 18, 1970, No. 277 (1970), published in e. g. 9 International Legal Materials 636-40 (1970), although the resolution can hardly be interpreted to forbid member states to grant admission to Rhodesians or to recognize Rhodesian passports. The term "calls upon member states" used by the Security Council does not mean "demands" or "decides".

and even this appears to be consistent with contemporary international law. Of course, the state whose nationals are refused entry will probably interpret the refusal to be an unfriendly act. But it is natural that the states should have the right to treat, in the matter of admission, the citizens of friendly states better than the persons owing their allegiance to unfriendly powers. The legitimate interests of national security also motivate the difference. The same legitimate interests seem to motivate also the discrimination on the basis of the residence of the traveller<sup>47)</sup>.

If thus the discrimination on the basis of nationality and residence seems to be lawful under international law, can the same be said about the discrimination of tourists depending on their race, ethnic origin, political or religious opinions? Such discrimination is, alas, not rare.

As to religion, it may be mentioned that Jordan refuses entry to Jehova's witnesses.

As to political opinions, the United States normally refuses to issue visitors visas to communists.

As to race and ethnic origin, Costa Rica refuses admission to Gypsies, regardless of nationality. Saudi Arabia, Iraq, Jordan and Syria do not admit Jews. Also Lebanon accords in some situations better treatment to non-Jews than to Jews. South Africa conditions the visa exemption granted to visitors from some countries by pure white descent of the person concerned. According to the regulations of Australia, British subjects of European or Maori descent are in some respects treated better than other Britons. In New Zealand, nationals of United Kingdom and Ireland are admitted without visa only if they are wholly of European origin. A number of states not admitting South Africans or Rhodesians limit this restriction to white nationals of these countries<sup>48)</sup>. Several states have adopted special, more restrictive rules for the entry of British visitors of Asian descent<sup>49)</sup>. Some similarity to ethnic discrimination have also the rules in Cuba, where persons of Cuban origin are refused admission regardless of citizenship, and in El Salvador, which does not admit travellers of Honduran origin, regardless of present citizenship.

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<sup>47)</sup> E.g. Australia does not admit persons known to be ordinarily resident in Rhodesia, regardless of nationality.

<sup>48)</sup> E.g. Ethiopia, Guinea and Liberia.

<sup>49)</sup> E.g. Belgium, Brunei, Denmark, Egypt, France, Greece, India, Netherlands, Pakistan and Sri Lanka.

It is one of the principal ideas behind the concept of human rights in contemporary international law that nobody should suffer disadvantages simply because of his race or political and religious beliefs. In several articles, the Charter of the United Nations demands respect for human rights and for fundamental freedoms for all without distinction as to race or religion<sup>50</sup>). The Universal Declaration of Human Rights of 1948 and the multilateral conventions on human rights<sup>51</sup>) declare that the human rights recognized in the Declaration and in the conventions should be guaranteed to all individuals without distinction as to race, religion and political or other opinion. But, since it is not a human right or a fundamental freedom to be admitted as a tourist to a foreign state<sup>52</sup>), it appears that the mentioned provisions do not hinder any country to refuse admission to any foreigner on the basis of his race, religion or political views.

The racial discrimination is a special problem<sup>53</sup>), since the majority of states have acceded to the International Convention on the Elimination of All Forms of Racial Discrimination, adopted by the United Nations General Assembly in 1965<sup>54</sup>). But even this convention, when defining "racial discrimination"<sup>55</sup>), limits itself to such preferences based on race or ethnic origin that impair the enjoyment, on an equal footing, of human rights and fundamental freedoms. In the list of civil rights to be granted without distinction as to race or ethnic origin<sup>56</sup>), the right to freedom of movement within the state and the right to leave

<sup>50</sup>) Articles 1(3), 13(1)(b), 55(c) and 56.

<sup>51</sup>) Article 2 of the Universal Declaration of Human Rights of 1948; article 2 of the 1966 Covenant on Economic, Social and Cultural Rights; article 2 of the 1966 Covenant on Civil and Political Rights; article 14 of the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms; article 1 of the 1969 American Convention on Human Rights.

<sup>52</sup>) The 1948 Universal Declaration and the various conventions grant only the freedom of circulation within the territory of a state and the freedom to leave any country. The right of every individual to enter his own country is also proclaimed. This must be interpreted, *e contrario*, to mean that there is no human right or fundamental freedom to enter a foreign country. The conceivable exceptions, e.g. the right of shipwrecked or air-crashed travellers to be admitted, are not considered in this paper. See Plender, *op.cit.* (note 2) 120–22.

<sup>53</sup>) On racial discrimination in the selection of immigrants for employment, see Plender, *op.cit.* 153–58.

<sup>54</sup>) Annexed to Resolution No. 2106 (XX) of December 21, 1965, published in e.g. 60 A.J.I.L. 650–61 (1966).

<sup>55</sup>) Article 1(1).

<sup>56</sup>) Article 5(d).



any country are explicitly mentioned, as well as the right to return to one's own country. The right to enter a foreign country is not mentioned. Consequently, it can be concluded that the convention does not prohibit the states to discriminate, in the matter of admission, foreign tourists of a certain race or ethnic origin. Some limited support for the view that such discrimination is forbidden and unlawful under international law can be drawn from the United Nations Declaration on the Elimination of All Forms of Racial Discrimination, adopted by the General Assembly in 1963<sup>57</sup>). This declaration condemns all types of racial discrimination, without defining such discrimination as inequality in the enjoyment of human rights and fundamental freedoms. This makes it theoretically possible to interpret "racial discrimination" in the declaration as a wider term than the "racial discrimination" as defined in the 1965 convention. Thus, it could cover also the discrimination in the matter of admission, although the admission to a foreign country is not a human right or a fundamental freedom. Still, the legal standing of the 1963 declaration, as well as the precise definition of racial discrimination in the 1965 convention, make it impossible to draw the conclusion that racial discrimination as to admission of foreign tourists is contrary to international law.

But even if the states may exercise their right of admitting or refusing aliens according to discretion, they should not abuse their right by proceeding in an arbitrary manner. An arbitrary racial or religious discrimination is, it is submitted, a case of *détournement de pouvoir* which should not be overlooked in the international community. It is, however, possible that a discrimination which at first glance might seem to be racial, for example by the use of terms like "Asian descent", is quite legitimate. Thus, the policy of a number of states to impose on Britons of Asian descent the requirement of presentation of documents proving that they will be admitted to return to their home countries is a practical precaution based on the simple fact that such Britons are often rejected at the borders of their own "home countries", *i.e.* United Kingdom or East African states. It would be incorrect to accuse the first mentioned states of racism. They simply protect themselves from uncontrolled permanent immigration. Their regulations only reflect racism practiced in other countries. It is not difficult to prove that these regulations are not based on any theories about

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<sup>57</sup>) Resolution 1904 (XVIII) of November 20, 1963, published e.g. in 58 A.J.I.L. 1081-84 (1964).

inferiority of Asians, since they have been adopted also in India, Pakistan and Sri Lanka. Problematic is also the discrimination of persons of Cuban origin by Cuba. This is, in practice, rather a discrimination because of political opinion than because of ethnic origin.

Several states require that the visitor asking to enter the country should look in a certain way. In Malawi, female travellers will not be permitted to enter if wearing short dresses or trouser-suits; skirts and dresses must cover the knees. Male tourists with long hair and flared trousers and "hippies" are also forbidden entry. "Hippies" are denied admission also in Indonesia, Malaysia, Morocco and Uganda. According to the laws of Uganda, female visitors must wear full length skirts. In Singapore, admission may be refused to male visitors with hair reaching below the collar or extending over ears or eyebrows. In some countries, for example in Thailand, entry may be refused to anybody whose general appearance and clothing do not comply with the government's requirements, *i.e.* to persons of unkempt or improper appearance according to the standards accepted in each particular state. Whatever one's own feelings concerning hippies and miniskirts might be, it must be accepted that each country is fully entitled to prevent cultural chocks and public offence in its territories.

In some countries, the visitor will be refused entry if his passport indicates that he has visited, or intends to visit, a certain third state. Authorities of some Arab countries will not accept a passport which contains a visa for Israel, either valid or expired, or any other indication that the bearer has visited Israel<sup>58</sup>). Nicaragua refuses to grant entry to persons whose passports contain visas for Cuba. Travellers holding Taiwan visas in their passports are prohibited from entering China. In fact, Iraq seems to go so far as to refuse admission to holders of passports containing a declaration that the passport is valid for Israel. What is the position of international law towards these restrictions?

First of all, it must be stressed that the countries applying the restrictions have no legitimate reason to do so. The interests of national security are not at stake, since all these countries seem to be willing to allow the traveller to enter if he changes his passport. In fact, some businessmen openly trade with and travel to, for example, both Israel and the Arab states. All they have to do is to possess two passports. The national security motive is thus hardly the real one. Quite to the

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<sup>58</sup>) E.g. Iraq, Kuwait, Libya, South Yemen, Sudan, Yemen Arab Republic, Saudi Arabia.

contrary, a more liberal policy would make it possible to find out already at the point of entry that a certain tourist has visited also the disliked third state. Because of the exchanged passports, such control is now impossible. What is then the true motive of the restrictions? Is, perhaps, the hatred towards some foreign states so strong that the officials refuse to touch a passport that has already been touched by the hands of the officials in the "enemy" state<sup>59</sup>? Hardly. The principal *raison d'être* of the restrictions seems to be that they might influence foreign citizens not to visit the hated third country. Thus, a Swedish tourist must, before booking a trip to Israel, consider that an Israeli entry stamp in his passport would force him to change the passport, with all the inconvenience and cost this entails, should he wish to visit an Arab country later on. But the countries against which the restrictions are directed adapt themselves very quickly to them. Thus, Israeli, South African or Rhodesian visas and entry or exit stamps are, if the tourist requires it, given on a separate sheet of paper and not into the passport which consequently bears no sign of the tourist's visit in those countries.

But is it, at all, admissible that a state exercises pressure on foreign nationals as to the countries where they should or should not spend their holidays? Although it is difficult to find any rule of international law forbidding such indirect pressure, it is submitted that such practice is at least an abuse of power.

#### *V. Exit Permits for Foreign Tourists*

Lauterpacht writes<sup>60</sup>):

"Since a state holds only territorial and not personal supremacy over an alien within its boundaries, it can never, in any circumstances, prevent him from leaving its territory, provided he has fulfilled his local obligations, such as payment of rates and taxes, of fines, of private debts, and the like".

This generally accepted principle should not be interpreted to mean that a foreigner who has no debts in the visited country is entitled to

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<sup>59</sup>) The term "enemy" is here somewhat incorrect, since the restricting state is not necessarily at war with the country the visa or stamp of which is attributed invalidating effect on the passport.

<sup>60</sup>) Oppenheim/Lauterpacht, *op.cit.* (note 1) 690.

leave as he pleases. If he wants to leave, he must comply with a number of administrative regulations in force in the visited territory. In practically all states, the visitor has to leave through an authorized border checkpoint; he must not simply start walking over the border where he pleases or cross the border when the immigration office is closed.

Some countries go even further. They demand that the foreigner who intends to leave the country should obtain, already before coming to the border, a special permission to leave called exit permit or exit visa. For the purposes of this paper, such compulsory permits are of interest only if they are applied not solely on local residents of foreign nationality but also on foreign tourists. In most of these states, the exit permit is not required if the tourist's stay in the country was shorter than a certain period of time, for example six months<sup>61</sup>), three months<sup>62</sup>), one month (30 days)<sup>63</sup>), ten days<sup>64</sup>) or 48 hours<sup>65</sup>). Some states require the exit visa from everybody, regardless of the length of the stay in the country<sup>66</sup>).

It appears that the exit visa requirement, as long as it is simply a formality, is not contrary to international law, although it certainly is a nuisance to foreign visitors who may be stopped at the border and sent back to the capital city in order to arrange the exit permit. But if the permit is more than a formality, for example if it is arbitrarily refused without proper reasons or motivation, it is obvious that the state refusing to let the tourist go will incur international responsibility. It is submitted that unnecessary prolongation of the time spent waiting for the permit should also amount to international tort.

Some states, for example Ecuador, do not require exit permits, but tourists wishing to leave the country must pay a special fee in order to be allowed to leave. There seem to be no objections against such fee as long as it is of nominal amount, for example two U.S. dollars as in Ecuador. But if the fee is of substantial amount, it can be tolerated only if the travellers are individually and explicitly informed about it before they enter the territory of the state in question.

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<sup>61</sup>) E.g. Syria.

<sup>62</sup>) E.g. Iran.

<sup>63</sup>) E.g. Afghanistan, Ethiopia, Burma, Costa Rica.

<sup>64</sup>) E.g. Bangladesh.

<sup>65</sup>) E.g. Togo, Honduras (holders of tourist cards exempt).

<sup>66</sup>) E.g. Cameroon, Yemen Arab Republic, Cuba, El Salvador (holders of tourist cards exempt) and Libya (holders of one-entry visas exempt).