

# Dual Citizenship and Mandatory Military Service in the Republic of Korea

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*ABSTRACT: The Republic of Korea (“South Korea”) requires male citizens to perform military service. U.S. citizens who also hold South Korean citizenship—those born in the United States to parents who are citizens of South Korea—are not immune from this requirement. Many dual citizens of the United States and South Korea, however, are not aware of their dual citizenship status, often because even their parents are ignorant of the fast-changing citizenship laws of South Korea. This Note proposes bilateral and unilateral solutions to provide better notification to U.S.-S.K. dual citizens who are unaware of their dual citizenship status to avoid scenarios in which a U.S. citizen is compelled to serve a foreign power with which the citizen has virtually no connection or allegiance.*

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INTRODUCTION

In 2003, Young Chun was a twenty-four-year-old American living temporarily in the Republic of Korea (“ROK”).<sup>1</sup> Born in Champaign, Illinois to South Korean immigrants and raised in the suburbs of Chicago and, later, Seattle, Chun was a U.S. citizen; he barely spoke or understood the Korean language.<sup>2</sup> Graduating from the University of Washington in 2002, he accepted a yearlong position as an English teacher in South Korea,<sup>3</sup> where English-language proficiency is highly valued and which frequently employs native English speakers for conversational instruction.<sup>4</sup> Once in the country, Chun was surprised to discover that he was also a citizen of South Korea, a fact of which even his parents were ignorant.<sup>5</sup>

Chun was presented with an even bigger surprise at the conclusion of the yearlong program. Just as his stay was coming to an end, he received a letter from the South Korean Department of Justice; he was barred from leaving the country until he had served the two-year mandatory military service required of all male South Korean citizens.<sup>6</sup> In a panic, he decided that if he had to perform military service, he would rather serve as an American in the American military.<sup>7</sup> Chun enlisted with American armed forces stationed in

1. John Iwasaki, *The Accidental Citizen Soldier*, SEATTLE POST-INTELLIGENCER (Mar. 15, 2011, 12:41 PM), <https://www.seattlepi.com/local/article/The-accidental-citizen-soldier-1141729.php> [https://perma.cc/WG6R-NFJV]. “Republic of Korea” is the official title of the nation after the division of the Korean peninsula in 1948. *South Korea – Summary*, KOREA.NET, <https://www.korea.net/AboutKorea/Society/South-Korea-Summary> [https://perma.cc/7YCV-52YS] (presenting the official stance of the South Korean government). Because the country is colloquially referred to as “South Korea” due to its geographical relationship to its northern neighbor, the Democratic People’s Republic of Korea, or North Korea, I will use “South Korea” interchangeably with the “Republic of Korea.”

2. Iwasaki, *supra* note 1.

3. *Id.*

4. See Deepti Mani & Stefan Trines, *Education in South Korea*, WORLD EDUC. NEWS & REVIEWS (Oct. 16, 2018), <https://wenr.wes.org/2018/10/education-in-south-korea> [https://perma.cc/JB6U-3G3G] (“English remains the most coveted foreign language for [South] Koreans, and [South] Korea is one of the largest markets for English language training (ELT) worldwide.”).

5. See Sam Paterson, *Book Describes Life in Korean Army*, KOR. TIMES (July 22, 2016, 7:01 PM), [https://www.koreatimes.co.kr/www/news/culture/2016/07/142\\_210050.html](https://www.koreatimes.co.kr/www/news/culture/2016/07/142_210050.html) [https://perma.a.cc/5FC2-LFRH].

6. John Power, *How One American Citizen Was Forcibly Drafted into the South Korean Army*, NARRATIVELY (July 20, 2015), <https://narratively.com/how-one-american-citizen-was-forcibly-drafted-into-the-south-korean-army> [https://perma.cc/6EgW-QGQR].

7. *Id.*

South Korea and spent one day as an American soldier.<sup>8</sup> On the next day South Korean immigration inspectors intercepted him as he was boarding a plane that would have taken him to basic training in the United States.<sup>9</sup> Thus, though Chun was ignorant of his dual citizenship status when he arrived in South Korea, had virtually no connection to South Korea, could barely speak or understand its language, and always considered himself an American, he was compelled to serve two years in the South Korean army.<sup>10</sup>

Chun's life was turned upside down nearly two decades ago, but the problem persists to this day, as a recent case demonstrates. Tong "Don" Yi, a U.S. citizen and U.S. Army veteran, immigrated to the United States when he was nine years old.<sup>11</sup> In 2019, Yi visited South Korea to attend his father's funeral and see to his estate.<sup>12</sup> While attempting to leave the country he was detained by police and was temporarily held, because his name appeared in a registry of male citizens who had failed to perform military service.<sup>13</sup> His plight received the attention of U.S. Senators Sherrod Brown and Rob Portman of Ohio, Yi's home state.<sup>14</sup> After a short investigation revealed that he had naturalized as an American citizen a few years prior to his visit to South Korea—a denunciatory act of South Korean citizenship in the eyes of the South Korean government and thus relieving one of military duty—Yi was permitted to return home.<sup>15</sup>

If the circumstances of Chun and Yi are exceptional cases, no one can demonstrate just how exceptional they are. Neither the United States nor South Korea keeps publicly available statistics on the number of U.S. dual citizens conscripted by the South Korean government. But anecdotal evidence of self-help seekers suggests that there is a sizeable, but invisible, population of individuals affected by South Korea's policy. Chun, who started a blog about issues in mandatory military service in South Korea after his own experiences, occasionally relates the stories of those who contact him for information and

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8. Paterson, *supra* note 5.

9. *Id.*

10. *Id.*

11. Brian Dugger, 'They Had Put a Travel Ban on Me, and I Didn't Know Why': Perrysburg Restaurant Owner Being Prevented from Leaving S. Korea, WTOL11 (Feb. 10, 2019, 7:01 AM), <https://www.wtol.com/article/news/local/they-had-put-a-travel-ban-on-me-and-i-didnt-know-why-perrysburg-restaurant-owner-being-prevented-from-leaving-s-korea/512-203bebac-6b6d-4740-9d61-3c9683offace> [<https://perma.cc/YN36-ABQ6>].

12. *Id.*

13. *Id.*

14. *Id.*

15. Tom Henry, *Home Safe: Restaurant Owner Detained in South Korea Returns to Toledo*, BLADE (Mar. 4, 2019, 11:20 PM), <https://www.toledoblade.com/local/suburbs/2019/03/04/perrysburg-tea-tree-bistro-owner-detained-south-korea-returns/stories/20190304176> [<https://perma.cc/488K-5EKB>]. For naturalization as waiver of military service, see *infra* notes 88–91 and accompanying text.

advice, including two recent cases in 2019.<sup>16</sup> Accounts of concerned individuals seeking answers abound on social media platforms such as Reddit;<sup>17</sup> one harrowing (if true) story involves a user posting after being detained at a South Korean airport where he had landed from the United States mere hours before.<sup>18</sup> To be sure, such anecdotes should be taken with a grain of salt; nevertheless, the Subreddit “r/Korea,” which boasts nearly three-hundred thousand members, has dedicated a portion of the Travel section of its “Frequently Asked Questions” page to provide resources for those seeking answers about mandatory military service in South Korea before visiting the country.<sup>19</sup>

This Note argues that the governments of South Korea and the United States should take greater measures to inform dual citizens who are not aware of their dual citizenship status that they risk conscription if they choose to travel to South Korea. This Note does not deny that South Korea’s defense needs are legitimate; or that a mandatory military service is a legitimate means by which South Korea can meet those defense needs; or that the conscription of dual citizens is a legitimate exercise of its authority. Because the South Korean government will likely be unwilling to improve notice requirements to potentially affected dual citizens out of concern for undermining its conscription and nationality laws, the United States should take a more active role in protecting its dual citizens before they travel abroad. And although this Note focuses exclusively on the relationship between the United States and South Korea, whatever protection the U.S. government affords its South

16. Young Chun, *Attention All Male F-4 Visa Holders (Korean-Heritage, Other-Nationality Males)*, YOUNG CHUN, WRITER (Aug. 18, 2019), <https://youngjinchun.wordpress.com/2019/08/18/attention-all-male-f-4-visa-holders-korean-heritage-other-nationality-males> [https://perma.cc/WGZ5-CBKH] (relating information passed on to him by two anonymous sources, one a then-current conscriptee and another “being pressured to join”).

17. See, e.g., /u/FileMignon, *Hey Reddit, How Can I Avoid Going to the Military?*, REDDIT (May 2, 2010, 4:55 PM), [https://www.reddit.com/r/AskReddit/comments/bz5yk/hey\\_reddit\\_how\\_can\\_i\\_avoid\\_going\\_to\\_the\\_military](https://www.reddit.com/r/AskReddit/comments/bz5yk/hey_reddit_how_can_i_avoid_going_to_the_military) [https://perma.cc/5BLJ-9DZA] (seeking advice (allegedly) as a “South Korean student currently attending an American university” on how to avoid South Korean military service); /u/19332001911, *Received a Letter Saying I Am in “Defiance of the Law” and That I Have to Go to Korea for Military Service*, REDDIT (Oct. 1, 2019, 10:25 PM), [https://www.reddit.com/r/berkeley/comments/dc4pag/received\\_a\\_letter\\_saying\\_i\\_am\\_in\\_defiance\\_of\\_the](https://www.reddit.com/r/berkeley/comments/dc4pag/received_a_letter_saying_i_am_in_defiance_of_the) [https://perma.cc/8992-2T2R] (seeking advice (allegedly) about military service after discovering dual citizenship status); /u/stevejobsided, *Korean Military Conscription and H1B... Life Flipped Upside Down*, REDDIT (Apr. 7, 2021, 12:09 PM), [https://www.reddit.com/r/immigration/comments/mm6uma/korean\\_military\\_conscription\\_and\\_h1b\\_life\\_flipped](https://www.reddit.com/r/immigration/comments/mm6uma/korean_military_conscription_and_h1b_life_flipped) [https://perma.cc/Q8TF-K7B9] (seeking advice (allegedly) as a twenty-two-year-old accepted to an American graduate school).

18. /u/A2CMilitaryThrowaway, *I’m in Shock. I Just Got Drafted by the Korean Military. I’m a Recent Admit to Brown. What Do I Do?*, REDDIT (July 14, 2019, 2:24 AM), [https://www.reddit.com/r/ApplyingToCollege/comments/cdoaib/im\\_in\\_shock\\_i\\_just\\_got\\_drafted\\_by\\_the\\_korean](https://www.reddit.com/r/ApplyingToCollege/comments/cdoaib/im_in_shock_i_just_got_drafted_by_the_korean) [https://perma.cc/9R7H-PF53] (seeking advice (allegedly) as a recent undergraduate admittee of Brown University arrested at a South Korean airport).

19. *Military Service Obligations (Conscription)*, REDDIT: KOREA: LIFE, NEWS, & IDENTITY (June 12, 2020), <https://www.reddit.com/r/korea/wiki/faq/travel/conscription> [https://perma.cc/58QF-JYPP].

Korean dual citizens is likely to apply to U.S. dual citizens of other countries whose military service policies differ from those of the United States.

The Note proceeds as follows. Part I provides a background on the historical tension between military service requirements imposed by nations on their citizens and dual citizenship, the relaxation of those requirements in the twentieth century leading to widespread acceptance of dual citizenship, and the problems posed by the military requirements of South Korea in a liberal era of widespread dual citizenship. Part II focuses the issue presented by South Korea's conscription laws on the lack of adequate notice on the parts of both the South Korean and U.S. governments. Finally, Part III offers proposals to improve notice, proposals that can be affected bilaterally (that is, with the cooperation of both nations) and unilaterally (by the actions and policies of only one nation).

## I. DUAL CITIZENSHIP AND MILITARY OBLIGATION IN HISTORY AND IN MODERN KOREA

### A. THE NINETEENTH AND EARLY-TWENTIETH CENTURIES

Military conscription has been a challenge to dual citizenship as long as the modern nation state has existed<sup>20</sup> and was the chief impediment to the widespread recognition of dual citizenship prior to the twentieth century.<sup>21</sup> Throughout the nineteenth and early-twentieth centuries, dual nationality caused international tension as nations sought to secure reserves of citizen-soldiers.<sup>22</sup> Sometimes tensions flared into open conflict. A famous example from U.S. history is the British Navy's "impression" of American sailors born in Great Britain into British naval service—an issue that contributed to the outbreak of the War of 1812.<sup>23</sup> The British justification for the practice was typical of the way governments thought about citizenship in that time: Former subjects of the British Empire owed "perpetual allegiance" to the Empire and such an allegiance imposed obligations that survived a mere change in

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20. Triadafilos Triadafilopoulos, *Dual Citizenship and Security Norms in Historical Perspective*, in DUAL CITIZENSHIP IN GLOBAL PERSPECTIVE: FROM UNITARY TO MULTIPLE CITIZENSHIP 27, 30 (Thomas Faist & Peter Kivisto eds., 2007) (tracing the need for the massive citizen army as "the primary tool of state survival" to Napoleonic France in the late eighteenth century); see also Peter J. Spiro, *Dual Nationality and the Meaning of Citizenship*, 46 EMORY L.J. 1411, 1417 (1997) (footnote omitted) ("Instances of dual nationality are almost as old as the concept of nationality itself, and the phenomenon has been deplored for just as long.")

21. Stephen H. Legomsky, *Dual Nationality and Military Service: Strategy Number Two*, in RIGHTS AND DUTIES OF DUAL NATIONALS: EVOLUTION AND PROSPECTS 79, 84–85 (David A. Martin & Kay Hailbronner eds., 2003) ("[T]he potential for conflicting military obligations underlay much of the historical worry about dual nationality.")

22. Rey Koslowski, *Challenges of International Cooperation in a World of Increasing Dual Nationality*, in RIGHTS AND DUTIES OF DUAL NATIONALS: EVOLUTION AND PROSPECTS 157, 158 (David A. Martin & Kay Hailbronner eds., 2003).

23. Spiro, *supra* note 20, at 1423 ("British impressment policy was an important contributing factor in the outbreak of war in 1812.")

nationality.<sup>24</sup> More practically, Britain was attempting to recover lost manpower from the breakaway of the American colonies, a loss of a significant pool of eligible conscriptees keenly felt during its ongoing conflicts with Napoleonic France.<sup>25</sup>

Conscription of dual citizens persisted as a political issue into the twentieth century. For example, the conscription of dual U.S.-Italian citizens who were naturalized in the United States, and some of whom even served in the U.S. military, was a perennial source of political tension between the United States and Italy in the early-twentieth century.<sup>26</sup> The Italian government continued to draft dual citizens during the First World War, even as the two nations became allies once the United States entered the war in 1917.<sup>27</sup> Only the unexpected end of the war in 1918 and the subsequent signing of military service agreements between the Allied nations averted a “potential crisis.”<sup>28</sup> Similar incidents throughout the nineteenth and early-twentieth centuries sparked disputes with other nations and proved to be “a persistent irritant to U.S. bilateral relations.”<sup>29</sup>

Mass immigration made the issue of dual citizenship and military conscription particularly pressing for the United States in the late nineteenth and early-twentieth centuries. Since the ratification of the Fourteenth Amendment, the United States has conferred citizenship to individuals born within its territories; many countries whence immigrants came determined citizenship by ancestral lineage, and this difference in policy guaranteed that children born to these immigrants would have conflicting claims of citizenship and thus would have to resolve issues related to military obligations of one or both nations.<sup>30</sup> The United States accordingly took an active role in seeking diplomatic resolutions with nations from which immigrants were emigrating, entering into bilateral agreements, that is, agreements struck directly

24. “Perpetual allegiance” was a foreign policy term of art, that “[n]atural born subjects owe an allegiance . . . which is intrinsic and perpetual, and which cannot be divested by any act of [the subjects’] own.” PETER J. SPIRO, *AT HOME IN TWO COUNTRIES: THE PAST AND FUTURE OF DUAL CITIZENSHIP* 12 (2016) (internal quotations omitted).

25. *Id.*

26. Bahar Gürsel, *Citizenship and Military Service in Italian-American Relations, 1901–1918*, 7 *J. GILDED AGE & PROGRESSIVE ERA* 353, 360–74 (2008).

27. *Id.* at 364–74 (“Despite their service in the U.S. Army, [Italian-American soldiers] could be listed as deserters in the Italian army. . . . [In April] 1918, the U.S. War Department requested information about Italian American servicemen from their commanding officers and then presented a list of the naturalized and alien Italian soldiers in the U.S. Army to the Italian government for exemption from military service in Italy.”).

28. *Id.* at 375.

29. SPIRO, *supra* note 24, at 58–59; *see also* Koslowski, *supra* note 22, at 158–59 (“[At the time of the War of 1812,] France, Spain, Prussia, and other German states routinely drafted naturalized Americans when they visited their homelands.”).

30. Triadafilopoulos, *supra* note 20, at 31 (citing the increasing incidence of multiple citizenship “as a consequence of vastly increased levels of international migration and states’ insistence on defining membership idiosyncratically”).

by and between two states.<sup>31</sup> These agreements generally sought to eliminate the issue of potentially conflicting military obligations by preventing dual nationality altogether; they stipulated that naturalization in the United States invalidated any other citizenship held by the naturalized citizen.<sup>32</sup> By the First World War, the United States had entered into twenty-six<sup>33</sup> “Bancroft” treaties, so named after the U.S. Ambassador to the North German Federation who pioneered the first American agreement of this kind in 1868 with the nation to which he was Ambassador.<sup>34</sup>

To assist the executive branch in its diplomatic efforts to protect the rights of Americans overseas, Congress enacted a law that, *inter alia*, authorized the President to demand the release of citizens “unjustly deprived of [their] liberty by or under the authority of any foreign government,” and, if the demand “is unreasonably delayed or refused, . . . [to] use such means, not amounting to acts of war, as he may think necessary and proper to obtain or effectuate the release.”<sup>35</sup> Though the law applied only to those who were conscripted under the principle of perpetual allegiance and not those with actual dual citizenship, the law signaled a general anxiety of the U.S. government about the treatment of Americans abroad.<sup>36</sup>

At the same time that the United States was entering into the Bancroft treaties, much of the rest of the industrializing world was making similar bilateral agreements among itself.<sup>37</sup> The first attempt to create a multilateral agreement on the subject of dual citizenship and military conscription occurred

31. Koslowski, *supra* note 22, at 159.

32. *Id.*

33. *Id.* (citing Italy and Switzerland as the most notable holdouts of the “major [European] sending states”).

34. *Id.* at 158.

35. An Act Concerning the Rights of American Citizens in Foreign States, ch. 249, § 3, 15 Stat. 223, 224 (1868). That provision is now codified under 22 U.S.C. § 1732 (2018).

36. See Abner J. Mikva & Gerald L. Neuman, *The Hostage Crisis and the “Hostage Act,”* 49 U. CHI. L. REV. 292, 330–36 (1982). For the effect that the conscription of American citizens abroad, especially in the German states, had on the formation of the Citizens in Foreign States Act, see *id.* at 314–17.

37. SPIRO, *supra* note 24, at 59–60. The United States has since abrogated or withdrawn from all such treaties. ALFRED M. BOLL, MULTIPLE NATIONALITY AND INTERNATIONAL LAW 185 n.40 (2007) (noting that the United States had withdrawn from all but one of its Bancroft Treaties, its treaty with Bulgaria, in 1923). The Obama Administration terminated the Bancroft treaty with Bulgaria by Jan. 1, 2016. Compare U.S. DEP’T OF STATE, TREATIES IN FORCE: A LIST OF TREATIES AND OTHER INTERNATIONAL AGREEMENTS OF THE UNITED STATES IN FORCE ON JANUARY 1, 2013 34 (2013) (listing Bancroft treaty (i.e., “Naturalization treaty”) with Bulgaria as treaty in force), with U.S. DEP’T OF STATE, A LIST OF TREATIES AND OTHER INTERNATIONAL AGREEMENTS OF THE UNITED STATES IN FORCE ON JANUARY 1, 2016 51 (2016) (omitting the Bancroft treaty). No official information concerning the United States’ treaties in force during 2014 and 2015 do not exist because the U.S. Department of State did “not publish . . . Treaties in Force for 2014 or 2015 due to continuing efforts to update information technology and treaty records used by the Office of Treaty Affairs.” 2 IGOR I. KAVASS & ADOLF SPRUDSZ, KAVASS’S GUIDE TO THE UNITED STATES TREATIES IN FORCE: 2014–15 SUPPLEMENT TO TREATIES IN FORCE 2013 v (2016).

in 1930, when the League of Nations assembled the Conference for the Codification of International Law at The Hague to address general issues arising out of dual citizenship.<sup>38</sup> Among the provisions adopted by the Conference was the Protocol Relating to Military Obligations in Certain Cases of Double Nationality (conventionally called the “1930 Hague Protocol”), which proposed a uniform approach to the issue.<sup>39</sup> An overly ambitious document with only twenty-six signatories, it was nevertheless an important international recognition of the problem.<sup>40</sup>

The bilateral agreements throughout the nineteenth and early-twentieth centuries, the 1930 Hague Protocol, and subsequent international agreements,<sup>41</sup> differing in its particulars, all attempted to eliminate conflicting obligations to serve in the military of more than one nation.<sup>42</sup> Where a person was a citizen of two nations that both required military service, the nation that had the superior claim to the citizen’s service was typically determined either by choice of the citizen to be conscripted or by his country of “habitual residence.”<sup>43</sup> The 1930 Hague Protocol explicitly endorsed the latter approach: “A person possessing two or more nationalities who habitually resides in one of the countries whose nationality he possesses, and who is in fact most closely connected with that country, shall be exempt from all military obligations in the other country or countries.”<sup>44</sup>

Such agreements, though important steps toward the recognition of the inescapable fact that dual citizenship was proliferating everywhere, were only stopgap measures. In an era of recurrent warfare and shifting international alliances, bilateral agreements to prevent conflicts of military obligations became moot when the parties, allies at the time of signing, came to occupy opposing sides of the next war.<sup>45</sup>

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38. Legomsky, *supra* note 21, at 91–92.

39. Protocol Relating to Military Obligations in Certain Cases of Double Nationality, *opened for signature* Apr. 12, 1930, 50 Stat. 1317, 178 L.N.T.S. 227 (entered into force May 25, 1937) [hereinafter The Hague Protocol].

40. Legomsky, *supra* note 21, at 92.

41. *Id.* at 92–94 (discussing the two most important subsequent international agreements: first, the 1963 Convention on the Reduction of Cases of Multiple Nationality and on Military Obligations in Cases of Multiple Nationality and, second, the 1997 European Convention on Nationality).

42. *Id.* at 95.

43. *Id.* at 95–96.

44. The Hague Protocol, *supra* note 39, art. 1.

45. See, e.g., SPIRO, *supra* note 24, at 60 (“Italian cooperation [after the First World War] ended with the outbreak of the Second World War, during which many U.S.[-]Italian dual citizens were conscripted.”).



B. *THE DECLINE OF MANDATORY MILITARY SERVICE AND INCREASE OF DUAL CITIZENSHIP IN THE LATE TWENTIETH CENTURY AND BEYOND*

The global military situation after the Second World War created an entirely new dynamic in the relationship between national military obligations and dual citizenship.<sup>46</sup> In the years following the end of the Second World War, conscription as national policy became less common, removing an “ongoing flash point[] for conflict stemming from dual nationality” and enabling a more liberal and widespread international acceptance of dual citizenship.<sup>47</sup>

The polarization of the major powers into the camps of the United States and the Soviet Union made armed conflict between the constituents within each camp less likely—it seemed exceedingly unlikely, for example, that France and England, both members of the North Atlantic Treaty Organization, the American-led “security community,” would go to war against each other in the twentieth century<sup>48</sup>—and thus reduced the need to maintain large national standing armies.<sup>49</sup> Technological and strategic changes to warfighting also allowed nations to reduce the size of their standing armies: The technological sophistication of modern armed forces required fewer and more specialized servicemembers rather than massive numbers of civilian conscriptees.<sup>50</sup> Perhaps most importantly, the invention and proliferation of nuclear weapons served as a deterrent against the kind of wars that required the massive citizen armies drafted by governments in the nineteenth and early-twentieth centuries.<sup>51</sup> Accordingly, mandatory military service became—and is still becoming—an increasingly rare practice.<sup>52</sup>

46. Triadafilopoulos, *supra* note 20, at 33. Changes to the global military situation were only one, albeit important, factor in the increasingly widespread acceptance of dual citizenship in the twentieth century. See David A. Martin, *New Rules on Dual Nationality for a Democratizing Globe: Between Rejection and Embrace*, 14 GEO. IMMIGR. L.J. 1, 7–14 (1999) (citing the military situation that encouraged “peace” between nations as one factor for the embrace of dual citizenship among others such as globalization, an expanding international human rights regime, and the spread of democracy).

47. Martin, *supra* note 46, at 7.

48. Legomsky, *supra* note 21, at 89–90.

49. Triadafilopoulos, *supra* note 20, at 33.

50. *Id.* at 34 (“Advances in weapons, transportation and communications technologies helped drive . . . [a] ‘revolution in military affairs,’ leading to important changes in how states interacted with their respective peoples . . . .”); see also Legomsky, *supra* note 21, at 90 (footnote omitted) (“Advances in air, naval, weapons, information, and communication technology have made military operations less reliant on infantry and other personnel, especially unskilled personnel . . . mak[ing] conscription both less desirable and less essential.”).

51. MARTIN VAN CREVELD, *THE RISE AND DECLINE OF THE STATE* 344 (1999) (“[F]ear of escalation no longer allowed . . . countries to fight each other directly, seriously, or on any scale. . . . [W]herever nuclear weapons appeared or where their presence was even strongly suspected, major interstate warfare on any scale [was] in the process of slowly abolishing itself.”).

52. Best estimates place the number of countries with an active conscription policy at fewer than one third overall. Drew DeSilver, *Fewer than a Third of Countries Currently Have a Military Draft; Most Exclude Women*, PEW RSCH. CTR. (Apr. 23, 2019), <https://www.pewresearch.org/fact-tank/2019/04/23/fewer-than-a-third-of-countries-currently-have-a-military-draft-most-exclude-women> [https://perma.cc/3R4T-NUGR]. Comprehensive and up to date information is difficult to gather,

Without the fierce competition over manpower for mass civilian armies, nations today are no longer forced to play the “zero-sum game” of competing against each other for pools of eligible citizen-soldiers.<sup>53</sup> After centuries of international tension and diplomatic conflict, some scholars of international law now declare that “[m]ilitary service for dual nationals [as a diplomatic issue] . . . is not even on today’s radar screen.”<sup>54</sup>

### C. DUAL CITIZENSHIP AND MILITARY CONSCRIPTION LAW IN SOUTH KOREA

As most members of the international community discontinue compulsory military service for their citizens, South Korea shows no indication of changing with the times.<sup>55</sup> The reason for the policy’s permanence is quite clear: “South Korea inhabits a dangerous neighborhood.”<sup>56</sup> Though an armistice ended the Korean War, neither North nor South Korea have officially acknowledged the end of the conflict.<sup>57</sup> Both nations see themselves as the rightful claimant to the entire Korean peninsula and its population.<sup>58</sup> Despite affirmative steps in 2018 to bring about an official conclusion to the Korean War,<sup>59</sup> a great deal

because some countries change their conscription policies with the needs of the current political and strategic moment. See, e.g., Fan Wang, *Taiwan Extends Mandatory Military Service to One Year*, BBC (Dec. 27, 2022), <https://www.bbc.com/news/world-asia-64100577> [<https://perma.cc/D5EE-5Q8G>] (reporting on the fluctuating length of Taiwanese military service between the 1990s and 2022, including a December 2022 decision to lengthen service from four months to one year, which will take effect in January 2024).

53. Triadafilopoulos, *supra* note 20, at 31.

54. T. Alexander Aleinikoff & Douglas Klusmeyer, *Plural Nationality: Facing the Future in a Migratory World*, in *CITIZENSHIP TODAY: GLOBAL PERSPECTIVES PRACTICES* 63, 79 (T. Alexander Aleinikoff & Douglas Klusmeyer eds., 2001).

55. On the contrary, there may soon be a significant increase in the number of people conscripted as the conscription of women citizens is being openly discussed in mainstream Korean political discourse. In *South Korea, Women in Military Becomes Gender Battleground*, S. CHINA MORNING POST (May 20, 2021, 7:00 AM), <https://www.scmp.com/news/asia/east-asia/article/3134106/south-korea-women-military-becomes-gender-battleground> [<https://perma.cc/K5C4-BCZA>].

56. Chung Min Lee, *South Korea’s Military Needs Bold Reforms to Overcome a Shrinking Population*, CARNEGIE ENDOWMENT FOR INT’L PEACE (June 29, 2021), <https://carnegieendowment.org/2021/06/29/south-korea-s-military-needs-bold-reforms-to-overcome-shrinking-population-pub-84822> [<https://perma.cc/6EPW-UGWG>].

57. BRUCE CUMINGS, *THE KOREAN WAR: A HISTORY* 35 (2010) (“No peace treaty has ever been signed, and so the peninsula remains in a technical state of war.”).

58. Compare, e.g., CONSTITUTION OF THE REPUBLIC OF KOREA, art. 3 (S. Kor.), translated in Korea Legislation Research Institute’s online database, [https://elaw.klri.re.kr/eng\\_service/lawView.do?lang=ENG&hseq=1](https://elaw.klri.re.kr/eng_service/lawView.do?lang=ENG&hseq=1) [<https://perma.cc/DDM5-TYJL>] (“The territory of the Republic of Korea shall consist of the Korean peninsula and its adjacent islands.”), with SOCIALIST CONSTITUTION OF THE DEMOCRATIC PEOPLE’S REPUBLIC OF KOREA, ch. I, art. 1 (N. Kor.), translated in Foreign Languages Publishing House of the DPRK’s website, [http://www.naenara.com.kp/main/index/en/politics?arg\\_val=leader3](http://www.naenara.com.kp/main/index/en/politics?arg_val=leader3) [<https://perma.cc/3AZR-AJF2>] (“The Democratic People’s Republic of Korea is an independent socialist State representing the interests of all the Korean people.”).

59. Permanent Mission of the Democratic People’s Republic of Korea & Permanent Rep. of the Republic of Korea to the U.N., Letter dated Sept. 6, 2018 from the Permanent Mission of the Democratic People’s Republic of Korea & Permanent Rep. of the Republic of Korea to the United Nations addressed to the Secretary-General, U.N. Doc. A/72/109 (Sept. 10, 2018) (presenting

of mistrust and animosity remains between the two nations.<sup>60</sup> Additionally, “[the People’s Republic of] China’s growing military footprint” in East Asia underlies the South Korean government’s decision to maintain a large standing army.<sup>61</sup>

Mandatory military service has been a foundational aspect of South Korea’s military policy since its inception as a modern nation state.<sup>62</sup> Before the peninsula divided politically into North and South, the U.S. Military Government Office—established in Korea after its liberation from Japan at the end of the Second World War—instituted a military conscription.<sup>63</sup> After division of the peninsula in 1948, the newly established South Korean government, foreseeing that conflict with its new northern neighbor was imminent, established the Military Service Law in 1949, which mandated service for all able-bodied men years twenty or older.<sup>64</sup> The law also established the Military Manpower Administration (“MMA”), which oversees the process of conscription in South Korea to this day.<sup>65</sup>

Under the current successor of the Military Service Law, the Military Service Act, “[e]very [citizen of the] masculine gender of the Republic of Korea” is obliged to “perform mandatory military service.”<sup>66</sup> Prior to turning twenty, “[e]very person liable for military service” must report for a mandatory “draft physical examination . . . to determine whether he is suitable for military service” by the age of twenty.<sup>67</sup> Once physically cleared, those liable for military service must submit themselves for conscription unless they are: (1) a student at “a high school or higher”; (2) “taking a prescribed course at a training institute”; or (3) “[a]n outstanding athlete . . . enhanc[ing] the national prestige.”<sup>68</sup> Those who do not meet these criteria but are still unable to report “on the date for fulfillment of . . . duty due to a disease, mental or physical disorder, disaster, employment, etc.” may request to postpone

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to the U.N. the English text of the Panmunjom Declaration on Peace, Prosperity and Reunification of the Korean Peninsula, in which the parties “agreed to declare the end of war this year that marks the 65th anniversary of the Armistice Agreement”).

60. See, e.g., Choi Si-young, *North Korea’s Overture on Talks Is a Test: Experts*, KOR. HERALD (May 10, 2022, 9:21 PM), <http://www.koreaherald.com/view.php?ud=20210926000199> [<https://perma.cc/5RJK-5VG6>] (reporting on skeptical interpretation of “North Korea’s offer to reopen inter-Korean dialogue” as “a test to see South Korea’s response”).

61. Lee, *supra* note 56.

62. *Landmarks*, REPUBLIC OF KOR., MIL. MANPOWER ADMIN., <https://www.mma.go.kr/eng/contents.do?mc=mma0000843> [<https://perma.cc/CCM2-LYEC>].

63. *Id.*

64. *Id.*

65. *Id.*

66. Military Service Act, art. 3(1) (2011) (S. Kor.), *translated in* Korea Legislation Research Institute’s online database, [https://elaw.klri.re.kr/eng\\_service/lawView.do?hseq=32750&lang=ENG](https://elaw.klri.re.kr/eng_service/lawView.do?hseq=32750&lang=ENG) [<https://perma.cc/L8NR-8PH8>]. All subsequent citations of the provisions of the Military Service Act will refer to this translation.

67. *Id.* art. 11(1).

68. *Id.* art. 60(2).

service.<sup>69</sup> However, “the date for fulfillment of . . . duty shall not pass the date he attains the age of 30.”<sup>70</sup> Once conscripted, conscriptees serve for a minimum of twenty-four months, with variations depending on the branch of service.<sup>71</sup>

The preceding requirements apply to Korean males eligible for military service who have no other foreign allegiance.<sup>72</sup> For dual citizens of South Korea and the United States, however, the process can become immensely more complicated. South Korea determines citizenship by *ius sanguinis* (ancestral lineage)<sup>73</sup>; the United States determines citizenship by *ius soli* (place of birth)<sup>74</sup>; therefore, one can become a dual citizen of both South Korea and the United States by being born in the United States to at least one parent who holds South Korean citizenship.<sup>75</sup> The South Korean government is made aware of a child born overseas through the Register of Family Relations, to which all Korean citizens must register their children.<sup>76</sup> However, children who are not reported in the Register of Family Relations are still liable for military service if the South Korean government determines that the parents failed to report their child in violation of Korea’s nationality laws.<sup>77</sup>

In the case of a male citizen born with dual citizenship, he must renounce his South Korean citizenship by the time he turns eighteen in order to avoid military service obligations.<sup>78</sup> All such male South Korean citizens between twenty-five and thirty-seven must apply for an overseas travel permit from the

69. *Id.* art. 61(1).

70. *Id.* art. 61(1).

71. *Id.* art. 18(2). Conscripts serve twenty-four months in the Army, twenty-six months in the Navy, or twenty-eight months in the Air Force. *Id.*

72. *See id.* art. 70 (outlining procedures for Korean nationals who participate in long-term “overseas travel”).

73. Nationality Act, art. 2 (2016) (S. Kor.), *translated in* Korea Legislation Research Institute’s online database, [https://elaw.klri.re.kr/eng\\_service/lawView.do?hseq=40003&lang=ENG](https://elaw.klri.re.kr/eng_service/lawView.do?hseq=40003&lang=ENG) [<https://perma.cc/Q95L-NC4Z>]. All subsequent citations of the provisions of the Nationality Act will refer to this translation.

74. 8 U.S.C. § 1401.

75. SIMON DOKYUNG LEE, *Dual Citizenship South Korea*, DUAL CITIZENSHIP REP., <https://www.dualcitizenshipreport.org/dual-citizenship/south-korea> [<https://perma.cc/MVL9-KU25>] (“[W]hoever is born to a Korean national immediately becomes a Korean citizen regardless of where he or she was born.”). For the sufficiency of one citizen parent for the child to be a citizen, see Nationality Act, art. 2(1) (“A person whose father or mother is a national of the Republic of Korea at the time of the person’s birth.” (emphasis added)).

76. Act on Registration of Family Relations, art. 44 (S. Kor.), *translated in* Korea Legislation Research Institute’s online database, [https://elaw.klri.re.kr/eng\\_service/lawView.do?lang=ENG&hseq=33071](https://elaw.klri.re.kr/eng_service/lawView.do?lang=ENG&hseq=33071) [<https://perma.cc/53CG-VPVC>]. Those who have children abroad must report the birth “with the head of an embassy or consulate . . . who has jurisdiction over the relevant region.” *Id.* art. 34.

77. MIL. MANPOWER ADMIN., OVERSEAS TRAVEL PROCEDURE GUIDEBOOK FOR CONSCRIPTION CANDIDATES 2015, at 36 (2015) (“[I]f you have acquired Korean nationality by birth, naturalization, or other ways stipulated by the Nationality Act but did not take actions to register family relations, your substantial status of having acquired the Korean nationality remains intact.”).

78. Military Service Act, art. 8, *amended by* Act No. 10704, May 24, 2011 (S. Kor.).

MMA if they wish to live overseas but have not yet fulfilled their military service.<sup>79</sup> These citizens, if they have been living abroad before age twenty-five, are required to apply for an oversea travel permit no later than January fifteenth of the year they turn twenty-five.<sup>80</sup> Failure to apply for a permit and traveling or living overseas will constitute “evasion of enlistment” and may be punishable by imprisonment up to three years.<sup>81</sup> Those who have obtained overseas permits but “return[] to . . . [South] Korea for the purpose of permanent[] resid[ence]” are obligated to perform their military duty.<sup>82</sup>

For those born with only South Korean citizenship, but who attain foreign citizenship later in life, the later-acquired citizenship annuls their South Korean citizenship.<sup>83</sup> They are thus exempt from service, provided that they have abided by the laws outlined above.<sup>84</sup>

The South Korean government created detailed conscription laws for dual citizens in order to prevent dual citizens—typically the wealthier members of Korean society with the means to emigrate from the country—from avoiding their military obligations.<sup>85</sup> The South Korean government feels particularly pressed to have all available and eligible men serve in light of the fact that its country possesses the world’s lowest birthrate. Data from 2021 indicate that South Korea has a fertility rate—“the total number of children that would be born to each woman if she were to live to the end of her child-bearing years and give birth to children in alignment with the prevailing age-specific fertility rates”—of 0.81, a figure that projects to halve South Korea’s population by the end of the twenty-first century.<sup>86</sup> Dire population statistics presage a serious manpower shortage in the coming decades for the South Korean armed forces.<sup>87</sup>

In recent decades, the South Korean legislature has taken measures to curtail the ability of dual citizens to use their dual citizenship to circumvent

79. *Id.* arts. 70, 71.

80. *Id.* art. 70(3).

81. *Id.* art. 88(1), amended by Act No. 11849, Jun. 4, 2013 & Act No. 12560, May 9, 2014. Presumably, those who are liable under this provision are given an option to choose between a prison sentence and military service.

82. *Id.* art. 70(6).

83. Nationality Act, art. 15(1) (S. Kor.); see also MIL. MANPOWER ADMIN., *supra* note 77, at 38 (“According to the Nationality Act of Korea, if a Korean national is voluntarily naturalized as a foreign national or citizen, that person automatically loses Korean nationality.”).

84. See MIL. MANPOWER ADMIN., *supra* note 77, at 38.

85. CHULWOO LEE, EUR. UNIV. INST., REPORT ON CITIZENSHIP LAW: THE REPUBLIC OF KOREA 9 (2019), <https://cadmus.eui.eu/handle/1814/62184> [<https://perma.cc/H4NK-gLCN>].

86. *Fertility Rates*, ORG. FOR ECON. COOP. & DEV., <https://data.oecd.org/pop/fertility-rates.htm> [<https://perma.cc/DVU2-VZL7>]. To see South Korea’s birth rate, click on “Highlighted Countries” drop-down menu; then type in “Korea” in the field provided under “Highlight Countries”; select “Korea.” *Id.*

87. See Dasl Yoon & Timothy W. Martin, *South Korea is Having Fewer Babies; Soon It Will Have Fewer Soldiers*, WALL ST. J. (Nov. 6, 2019, 6:27 AM), <https://www.wsj.com/articles/south-korea-is-having-fewer-babies-soon-it-will-have-fewer-soldiers-11573039652> [<https://perma.cc/PPD9-ZGKZ>].

military service, the most important of which was a 2005 amendment to the Military Service Act.<sup>88</sup> The amendment closed a loophole by preventing those born with dual citizenship—who at that time “could freely renounce their [South Korean] citizenship” at any time—from “renounc[ing] their . . . citizenship and thereby avoid[ing] conscription even though they live[] in Korea” that was practically indistinguishable from their non-dual-citizen countrymen.<sup>89</sup> The current law now requires citizens born with dual citizenship to renounce their South Korean citizenship before the age of twenty.<sup>90</sup> The amendment and its restrictions on a person’s right to renounce citizenship have proven controversial, but it has survived constitutional challenges in South Korea’s Supreme Court.<sup>91</sup>

*D. SOCIETAL AND CULTURAL VIEWS IN SOUTH KOREA ON MANDATORY  
MILITARY SERVICE*

South Korea’s enduring commitment to mandatory military service is not merely geopolitical but also cultural. Despite deep ambivalence about the ultimate utility of the institution, South Koreans are undivided in the belief that its obligations should apply equally to citizens regardless of social and economic class.<sup>92</sup> The popular wave that led to the 2005 amendment to the

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88. LEE, *supra* note 85, at 9. Dual citizens are far from being the only citizens who want to avoid conscription. Single citizenship holders of South Korea sometimes undertake dangerous, self-destructive means to avoid conscription. See, e.g., Siobhán O’Grady, *How Do You Get Out of Military Service? These South Koreans Tried to Gain Weight — Fast.*, WASH. POST (Sept. 12, 2018, 1:21 PM), <https://www.washingtonpost.com/world/2018/09/12/how-do-you-get-out-military-service-these-south-koreans-tried-gain-weight-fast> [<https://perma.cc/A3CR-F4KX>] (reporting on means used by South Korean male citizens to avoid military service, such as extreme weight gain, intentional self-injury, or unnecessary medical procedures).

89. LEE, *supra* note 85, at 9.

90. *Id.*

91. *Id.* at 47. The right to renounce citizenship has historically been and remains a thorny problem in international law. In 1948, the newly created United Nations issued the Universal Declaration of Human Rights, which asserted that “[n]o one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.” G.A. Res. 217 (III) A, Universal Declaration of Human Rights, art. 15(2) (Dec. 10, 1948). However, this right was not codified by the United Nations General Assembly in the subsequent International Covenant on Civil and Political Rights, a multilateral treaty signed and ratified by 172 countries. Savannah Price, Note, *The Right to Renounce Citizenship*, 42 FORDHAM INT’L L.J. 1547, 1554–56 (2019). Today, almost every nation provides its citizens a process to renounce citizenship, but the right is not an absolute one and can be conditioned by certain requirements such as mandatory military service. *Id.* at 1555.

92. See, e.g., *The Soldier’s Tale: Abuse in the South Korean Army*, ECONOMIST (Jul. 14, 2005), <https://www.economist.com/asia/2005/07/14/the-soldiers-tale> [<https://perma.cc/VW56-GWYK>] (“There have long been suspicions that the sons of the rich and influential have been able to buy or negotiate their way out of military service.”); see also Nora Hui-Jung Kim, *Flexible Yet Inflexible: Development of Dual Citizenship in South Korea*, 18 J. KOR. STUD. 7, 15 (2013) (“Most ‘ordinary’ Koreans were convinced that those dual citizens willing to forsake their nationality did so not out of political protest, but rather to avoid military service.” (quoting Sungmoon Kim, *Liberal Nationalism and Responsible Citizenship in South Korea*, 11 CITIZENSHIP STUDS. 449, 451 (2007))).

Military Service Act discussed above is a vivid demonstration of that belief.<sup>93</sup> In 2002, Seung-Jun “Steve” Yoo, then one of South Korea’s biggest up-and-coming popstars, renounced his South Korean citizenship at the age of twenty-six after naturalizing as a U.S. citizen with the clear intent of avoiding South Korea’s mandatory military service.<sup>94</sup> The South Korean public felt the decision as a betrayal of country and unleashed a furious backlash.<sup>95</sup> In response to the public outcry, the government enacted a lifetime ban of Yoo from the country and vowed renewed vigilance against so-called draft dodgers.<sup>96</sup>

As a cultural institution, conscription has a complicated place in Korean society. On one hand, it is considered a right of manhood and a civic and patriotic duty.<sup>97</sup> On the other hand, South Korean cultural dynamics place immense pressure on young people, particularly young men, to succeed, and military service in the prime of a young man’s life only exacerbates the pressure.<sup>98</sup> The younger generation’s discontent with the institution is evident in a survey by Gallup Korea in May 2021: Forty-two percent of South Korean adults said they supported the conscription system as it currently exists, a six percentage point decline from 2016.<sup>99</sup> The declining prestige of the institution has resulted in an increasing number of exemptions from service. For example, in December 2020, South Korea amended the Military Service Act to allow artists to postpone service until the age of thirty, a change from

93. See *supra* notes 88–91 and accompanying text.

94. Yezi Yeo, *The Good, the Bad, and the Forgiven: The Media Spectacle of South Korean Male Celebrities’ Compulsory Military Service*, 10 MEDIA, WAR & CONFLICT 293, 299–303 (2017).

95. *Id.*

96. *Id.*

97. Stella Kim, *A Dreaded Rite of Passage: South Korea’s Mandatory Military Service*, BROWN POL. REV. (Dec. 1, 2013), <https://brownpoliticalreview.org/2013/12/a-dreaded-rite-of-passage-korea-s-mandatory-military-service> [<https://perma.cc/E6UT-BT2R>] (reporting that despite shifting cultural norms in South Korean society, especially in the newer generation, “to most Koreans, military conscription is a culturally significant experience”).

98. South Korea is a proverbially competitive and stressful environment for its younger population. See Mike Williams, *A Hope in Hell*, AUSTL. BROAD. CO.: SHIFTING CULTURES (Jan. 30, 2020, 12:18 AM), <https://www.abc.net.au/news/2020-01-30/south-korea-hell-joseon-sampo-generation/11844506> [<https://perma.cc/8K8J-SNGY>] (reporting on the popularization of the term “Hell Joseon”). As a result, South Korea has the highest suicide rate among countries in the Organisation for Economic Co-operation and Development (“OECD”). *Suicide Rates*, ORG. FOR ECON. CO-OP. & DEV., <https://data.oecd.org/healthstat/suicide-rates.htm> [<https://perma.cc/NP2N-EFDR>]. To see South Korea’s suicide rate, click on “Highlighted Countries” drop-down menu; then type in “Korea” in the field provided under “Highlight Countries”; select “Korea.” *Id.*

99. John Yoon, *South Korea Reconsiders a Rite of Manhood: The Draft*, N.Y. TIMES (Oct. 17, 2021), <https://www.nytimes.com/2021/10/17/world/asia/south-korea-conscription.html> [<https://perma.cc/H3L8-6C3L>] (reporting on the “growing public discomfort with conscription” in South Korean society).

the previous age of twenty-eight.<sup>100</sup> Colloquially called the “BTS Law,”<sup>101</sup> this amendment allowed a member of the internationally renowned K-Pop group BTS, Kim Seok-Jin, who was twenty-eight at the time, to perform for two more years before he was no longer able to postpone military service.<sup>102</sup> Now, a recent bill proposes to allow exceptions to military service, already in place for high-achieving classical musicians and athletes who perform in the Olympic and Asian Games, for K-pop artists.<sup>103</sup> According to the Korean Broadcasting System, a major public broadcaster in South Korea, the proposal of exempting K-pop stars polled at forty-seven percent opposed, 44.7 percent in favor.<sup>104</sup>

Apart from the unpopularity that is the natural result of two years of compelled service, the loss of the institution’s prestige is, in part, attendant on a long-recognized culture of mistreatment within the South Korean military.<sup>105</sup> Accounts of abuse and negligently caused deaths were historically common in the South Korean military, but after high profile cases in the past decade,<sup>106</sup> the government has undertaken serious attempts to address these issues.<sup>107</sup> The number of non-combat deaths, for example, has fallen from eight hundred deaths per year in the 1980s to one hundred deaths per year.<sup>108</sup>

Although conscription as an institution has lost some of its prestige, it remains for now an entrenched part of South Korean society and politics. Public concerns about conscription appear to be aimed less at retiring the draft than at reforming it.

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100. Military Service Act, art. 61, *amended by* Act No. 9946, Jan. 25, 2010 (S. Kor.).

101. Choe Sang-Hun, *New ‘BTS Law’ Is Passed in South Korea. An Army of Fans Rejoices.*, N.Y. TIMES (Apr. 12, 2021), <https://www.nytimes.com/2020/12/01/world/asia/korea-bts-law-military-deferment.html> [<https://perma.cc/8Y82-AH69>].

102. Shin Ji-hye, *Bill Reignites Controversy Over BTS Conscription*, KOR. HERALD (Aug. 24, 2021, 2:18 PM), <http://www.koreaherald.com/view.php?ud=20210824000793> [<https://perma.cc/C2NQ-8GPX>].

103. *Id.*

104. *Id.*

105. See, e.g., Lucy Williamson, *South Korea Military Faces ‘Barracks Culture,’* BBC (Aug. 12, 2011), <https://www.bbc.com/news/world-asia-pacific-14448486> [<https://perma.cc/PXZ6-9AJ6>] (reporting on bullying in the Korean Military, which in July 2011, led to a marine killing four fellow servicemen).

106. Choe Sang-Hun, *Outrage Builds in South Korea in Deadly Abuse of a Soldier*, N.Y. TIMES (Aug. 6, 2014), <https://www.nytimes.com/2014/08/07/world/asia/outrage-builds-in-south-korea-over-military-abuse.html> [<https://perma.cc/6ED8-EKH4>] (reporting on the death of a conscripted twenty-year-old private due to beatings by fellow soldiers that led to the resignation of the South Korean Army’s chief of staff, among others).

107. For an overview, see Yong Kwon, Yubin Huh & Janet Hong, *Growing Calls for Military Reform*, KOR. ECON. INST. (Sept. 24, 2021), <https://keia.org/the-peninsula/growing-calls-for-military-reform> [<https://perma.cc/GPV2-569W>].

108. Williamson, *supra* note 105.



## II. THE URGENCY AND SCOPE OF THE ISSUE BETWEEN THE UNITED STATES AND SOUTH KOREA

### A. THE NEED TO ADDRESS THE ISSUE PRESENTLY

The conscription of U.S. citizens abroad should be, as it has historically been, a concern for the U.S. government.<sup>109</sup> Nevertheless, it is in no position to tell the South Korean government how to address its legitimate defense concerns: “Every sovereign state has the right to defend itself and to determine its own defense and national security needs.”<sup>110</sup> The official stance of the United States, as stated by the Department of State, is that the United States cannot intervene once a foreign nation conscripts a dual citizen abroad.<sup>111</sup> However, when the United States is in a position to give notice to its citizens before they take on the risk of conscription, it should take reasonable steps to do so. At minimum, three reasons should motivate the United States to take immediate action.

First, it is possible that the number of conscription-eligible South Korean citizens may drastically increase in the near future. As discussed above, South Korea is expected to experience drastic shortages in manpower in the coming decades due to their low fertility rate—the world’s lowest.<sup>112</sup> To combat this issue, the South Korean public is considering proposals to expand mandatory military service to female citizens.<sup>113</sup> According to recent polling data, forty-six percent of South Korea’s population supports such proposals.<sup>114</sup> Therefore, it is possible that the pool of U.S.-S.K. dual citizens affected by mandatory military service may effectively double in the near future.

Second, the issue of conscription of dual citizens appears a relatively benign issue when the foreign power that is conscripting U.S. citizens is a

109. See discussion *supra* Section I.A.

110. Legomsky, *supra* note 21, at 85.

111. *Advice About Possible Loss of U.S. Nationality and Foreign Military Service*, U.S. DEP’T OF STATE, <https://travel.state.gov/content/travel/en/legal/travel-legal-considerations/Advice-about-Possible-Loss-of-US-Nationality-Dual-Nationality/Loss-US-Nationality-and-Foreign-Military-Service.html> [<https://perma.cc/V249-34G6>] (“Although the United States recognizes the problems that may be caused by such foreign military service, there is nothing that we can do to prevent it since each sovereign country has the right to enact its own laws on military service and apply them as it sees fit to its citizens and residents.”).

112. See *supra* notes 86–87 and accompanying text.

113. See, e.g., Timothy W. Martin & Andrew Jeong, *South Korea’s Military Is Shrinking and Some Say Women Must Answer the Call of Duty*, WALL ST. J. (June 3, 2021, 9:39 AM), <https://www.wsj.com/articles/south-koreas-military-is-shrinkingsome-say-women-must-answer-the-call-of-duty-11622727598> [<https://perma.cc/H7GN-HAXC>] (reporting on 2022 presidential candidate Park Yong-jin’s proposal to expand the draft to include female citizens, which reportedly has about fifty percent approval of the country’s citizens in their twenties and thirties).

114. Yoon, *supra* note 99 (reporting on Gallup Korea data showing “that [forty-six] percent of adults support [drafting women.] compared to [forty-seven] percent who don’t”).

reliable geopolitical ally of the United States.<sup>115</sup> The two countries enjoy a strong relationship: first, because of their economic interdependence—South Korea is the United States’ seventh-largest trading partner, while the United States is South Korea’s second-largest, only behind China—and second, because they share joint security interests in East Asia.<sup>116</sup> However, this need not always be the case. As discussed above, history indicates that the conscription of U.S. citizens could be by a hostile nation, and recent conscription policies in Russia demonstrate that such phenomena are not merely historical artifacts.<sup>117</sup> Because the adverse consequences of such cases could be high, the United States should establish means to address them should they arise.

Third, South Korea is not the only conscripting country with whom the United States share dual citizens.<sup>118</sup> Though the number of U.S.-S.K. dual citizens may be relatively small—data is not available to suggest how many citizens are truly affected—the aggregate number of U.S. citizens who are dual citizens of other countries and are being conscripted by them may be in fact quite large. Therefore, the apparent size of the problem as regards to South Korea should not obscure the fact that South Korea may represent only a small portion of a much larger issue.

#### B. THE ASYMMETRY OF CONCERN BETWEEN SOUTH KOREA AND THE UNITED STATES

Despite the pressing nature of the issue, it is unlikely that the United States and South Korea will reach a bilateral agreement that effectively addresses the issue of adequate notice to dual citizens of their military obligations. Stephen H. Legomsky demonstrates how bilateral treaties—once the most common way of dealing with international issues arising out of the conflict between dual citizenship and military service—can present difficulties for the kind of disparity in military obligations imposed by the United States and

115. WESTON S. KONISHI, CONG. RSCH. SERV., R40851, SOUTH KOREA: ITS DOMESTIC POLITICS & FOREIGN POLICY OUTLOOK 6–7 (2009) (reporting on the positive state and outlook of the U.S.-R.O.K. alliance).

116. MARK E. MANYIN, EMMA CHANLETT-AVERY & LIANA WONG, CONG. RSCH. SERV., IF10165, SOUTH KOREA: BACKGROUND AND U.S. RELATIONS 1–2 (2023).

117. See *supra* notes 23–25 and accompanying text. In 2022, when the Russian government announced the mobilization of citizens for the conflict in Ukraine, the U.S. Embassy in Moscow advised U.S.-Russian dual citizens either to refrain from travelling to Russia or, if they were in Russia, to depart immediately as “Russia may refuse to acknowledge dual nationals’ U.S. citizenship . . . and conscript [them] for military service.” *Security Alert for U.S. Citizens in Russia*, U.S. EMBASSY & CONSULATES IN RUSS. (Sept. 27, 2022), <https://ru.usembassy.gov/security-alert-for-u-s-citizens-in-russia> [<https://perma.cc/39AU7HD5>].

118. For example, Israeli law may subject dual citizens of the United States and Israel to mandatory military service. See, e.g., *Arrangement for Military Status (Israeli Citizens)*, CONSULATE GEN. OF ISR. IN MONTREAL, <https://embassies.gov.il/montreal/ConsularServices/Pages/Arrangement-for-Military-Status.aspx> [<https://perma.cc/6P4F-593X>] (“According to Israel’s Defense Law, service in the [Israeli Defense Forces] is obligatory. This law applies to . . . citizens of the State of Israel, whether they are residing in Israel or abroad, even if they have another nationality.”).

South Korea, the former having no mandatory service requirement and the latter having such a requirement:

If . . . a dual national of the United States and El Salvador habitually resides in the United States, but is conscripted by El Salvador during a brief visit there, the United States might well be requested to intervene diplomatically on behalf of that individual. Since the United States does not maintain its own draft, however, the likelihood of a dispute is much less than it would otherwise be, and the nature of the national interests at stake also differs from that faced by drafting states. Consequently, treaty negotiations between the United States and El Salvador most likely would differ appreciably from treaty negotiations between two states that continue to conscript.<sup>119</sup>

As in Legomsky's hypothetical, "the nature of the national interests at stake" is also at odds between the United States and South Korea. While the United States wants to protect its dual citizens from unexpected and unwanted military service, South Korea wants to prevent its dual citizens from skirting conscription law. Due to its geopolitical situation, South Korea has a strong incentive to continue conscription and, therefore, a strong incentive to avoid policies that could undermine its conscription laws. A policy that could be interpreted as giving preferential treatment to, or generally being lenient toward, dual citizens for purposes of the draft may undermine conscription by incentivizing South Korean citizens to have children abroad in order to protect them from the burden of military service.

Finally, to compound the problem between South Korea and the United States on the subject of conscription of dual citizens, the majority of South Koreans with dual citizenship are dual citizens of the United States and those who abandon South Korean citizenship for that of another nation do so largely to obtain U.S. citizenship.<sup>120</sup> Therefore, it would be difficult for the United States, in light of that fact that "the acquisition of US citizenship is the greatest cause of loss of ROK citizenship," to have much success negotiating with South Korea on a bilateral agreement on improving notice of the risks of conscription.<sup>121</sup>

### C. THE FUNDAMENTAL PROBLEM OF NOTICE

The key issue in the conscription of dual citizens is that of adequate notice. Many U.S.-S.K. dual citizens are simply not aware of their dual citizenship status, a condition not uncommon among children of immigrant parents worldwide. This is true not only of South Koreans but potentially of

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119. Legomsky, *supra* note 21, at 99.

120. LEE, *supra* note 85, at 41.

121. *Id.*

any citizen in any country. A particularly high-profile case of ignorance of one's dual citizenship status occurred recently in Australia. Federal Australian politicians—dual citizens of Australia and, typically, New Zealand, Britain, or Canada—were forced to abdicate their seats in parliament, because they were unwittingly in violation of the Australian Constitution's restriction against “[a]ny person who . . . is a subject or a citizen or entitled to the rights or privileges of a subject or a citizen of a foreign power” from holding a political office.<sup>122</sup>

The downfall of these Australian politicians illustrates how easy it is to be ignorant of one's status as a dual citizen in a world where immigration is more prevalent than ever. Many parents do not properly warn their children of potential issues with dual citizenship, because they themselves are ignorant of the citizenship laws of their former country. Moreover, the late twentieth and early-twenty-first centuries have been a period of constant change in citizenship laws: South Korea's Nationality Act has undergone fifteen substantial amendments since 1948—the founding of the country—but the last twelve amendments have occurred in quick succession in the new millennium.<sup>123</sup> At the moment, those who unwittingly hold dual citizenship with South Korea make an uninformed choice when they travel to South Korea. Presumably, dual citizens of South Korea will not knowingly undergo the risk of conscription if they have no intention to serve in the military. They would instead, for example, ask family members to meet them in mutually safe places or, since video conferencing technology is more accessible and reliable than ever, meet online.

Frustratingly, the information for potentially affected dual citizens is available but not highly visible. The U.S. Department of State, for example, in a warning buried in its official website, advises those traveling abroad that “the United States . . . can do [nothing] to prevent [conscription abroad] since each sovereign country has the right to enact its own laws on military service and apply them as it sees fit to its citizens and residents.”<sup>124</sup> Elsewhere on its website, it warns travelers with dual nationality that they “may be subject to mandatory military service in a foreign country” and that “[t]his obligation may be imposed immediately upon arrival or when attempting to depart the country.”<sup>125</sup> Those with a particularly well-attuned sense of caution can even check the Department of State's advisories for travel in South Korea. There,

122. *Australian Constitution* s 44(i); see, e.g., Louise Yaxley, *David Feeney Resigns from Parliament Over Dual Citizenship, Prompting Batman By-election*, AUSTL. BROAD. CORP. (Feb. 1, 2018, 12:41 AM), <https://www.abc.net.au/news/2018-02-01/david-feeney-to-resign-from-parliament-over-dual-citizenship/9382470> [<https://perma.cc/2ZSF-6SSP>] (having British citizenship); and Christopher Knaus, *Western Australian Liberal Senator Ben Small Resigns Over Dual Citizenship*, GUARDIAN (Apr. 15, 2022, 12:17 AM), <https://www.theguardian.com/australia-news/2022/apr/15/wa-liberal-senator-resigns-over-dual-citizenship> [<https://perma.cc/Q9EP-9X6N>] (having New Zealand citizenship).

123. LEE, *supra* note 85, at 2–5.

124. *Advice About Possible Loss of U.S. Nationality and Foreign Military Service*, *supra* note 111.

125. *Travelers with Dual Nationality*, U.S. DEP'T OF STATE—BUREAU OF CONSULAR AFFS. (Sept. 1, 2022), <https://travel.state.gov/content/travel/en/international-travel/before-you-go/travelers-with-special-considerations/Dual-Nationality-Travelers.html> [<https://perma.cc/3GCL-FAMQ>].

if the banner at the center of the page advising travelers of “Exercise Normal Precautions” (the lowest advisory tier) does not already lull readers into a false sense of security, one can find stowed under “Local Laws & Special Circumstances” the warning that “[d]ual national males (including U.S. service members) may be subject to compulsory military service.”<sup>126</sup> While these warnings are visible—if not prominently displayed on the Department of State website—the critical issue remains that those who should inquire about conscription often do not know that they should because of the opaque and mercurial nature of South Korean citizenship laws. There is a greater need for awareness of whether one holds dual citizenship status—only then can those who could be affected by its consequences effectively protect themselves.

### III. PROPOSALS FOR BILATERAL AND UNILATERAL SOLUTIONS

#### A. *THE IMPASSE FOR BILATERAL SOLUTIONS*

There are inherent conflicts of concern between South Korea’s military needs and the United States’ desire to keep its citizens inviolate abroad.<sup>127</sup> These conflicts create barriers to cooperation between the United States and South Korea on the issue of conscription of dual citizens and make proposals such as providing immunity from conscription to U.S.-S.K. dual citizens or carving out exceptions for them from the provisions of the Military Service Act impractical.

Despite the likely insurmountable impasse between the two countries on this issue, both could better mitigate potential issues that may arise by keeping data on the prevalence of the conscription of dual citizens. The United States, the sending party, cannot keep track of how many of its U.S.-S.K. dual citizens are conscripted against their will without the cooperation of the South Korean government, the receiving party. Such data sharing would at least increase the understanding of the scope of the issue and would enable both countries to craft better policy.

Information that South Korea could share with the United States includes the identities of children born to South Korean citizens and reported to the Register of Family Relations through a South Korean embassy in the United States.<sup>128</sup> With this information the United States can notify these citizens either of their obligation to choose between U.S. or South Korean citizenship by eighteen years old or of the risk of conscription they undertake should they elect to visit South Korea. South Korea could also inform the United States any time a U.S.-S.K. dual citizen has been prevented from

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126. *South Korea International Travel Information: Local Laws & Special Circumstances*, U.S. DEP’T OF STATE—BUREAU OF CONSULAR AFFS. (Jan. 26, 2023), <https://travel.state.gov/content/travel/en/international-travel/International-Travel-Country-Information-Pages/SouthKorea.html> [https://perma.cc/H9NK-R4ZV].

127. See *supra* Section I.B.

128. See *supra* discussion accompanying notes 76–77.

leaving South Korea due to unfulfilled military obligations. Notwithstanding the significant privacy issues that proposals like these would have to overcome,<sup>129</sup> they would be a significant improvement on the current situation in which there is almost no cooperation between the two nations on this issue.

### B. UNILATERAL SOLUTIONS

Even if no bilateral agreement can be reached to resolve conscription of unwitting dual citizens, each country can take unilateral steps to reduce the risk of unwanted and unexpected conscription.

In light of its defense needs, the South Korean government would likely be willing to take fewer measures to resolve the issue out of fear of undermining its own conscription policy. One fairly innocuous measure it could employ, however, is to give notice to visa applicants that dual citizenship status could require military service.<sup>130</sup> For U.S. citizens, no visa is required to travel to South Korea for stays shorter than ninety days.<sup>131</sup> Those applying for longer stays as foreign students or English instructors must apply for a long-term visa.<sup>132</sup> Such applicants may be at particular risk of conscription, as one could easily imagine a Korean-American male of military age would want to spend time in South Korea as either a student or an English instructor. Notice of the possibility of conscription can be placed, for example, on the visa application form itself, which already provides space for notices on other important matters.<sup>133</sup>

If it wishes, the South Korean government can give an even more comprehensive warning to potentially affected dual citizens through its newly initiated Korea Electronic Travel Authorization (“K-ETA”) portal,<sup>134</sup> which every U.S. citizen traveling to South Korea must submit at least twenty-four

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129. See generally JOHN W. KROPF & NEAL COHEN, GUIDE TO U.S. GOVERNMENT PRACTICE ON GLOBAL SHARING OF PERSONAL INFORMATION (3d ed. 2015) (discussing privacy concerns that arise from G2G (government-to-government) data sharing agreements).

130. For example, Elliott Kim, who is a member of the Washington Commission on Asian Pacific American Affairs, proposed that the Korean government provide this “notice to visa applicants” when Young Chun was conscripted in 2004. Iwasaki, *supra* note 1.

131. *General Information*, CONSULATE GEN. OF REPUBLIC OF KOR. IN CHI., [https://overseas.mofa.go.kr/us-chicago-en/wpge/m\\_4833/contents.do](https://overseas.mofa.go.kr/us-chicago-en/wpge/m_4833/contents.do) [<https://perma.cc/LKP4-3LPD>] (“[A] U.S. citizen does not require a visa for a stay up to [ninety] days for tour, short term business, provided that he/she has proof of transportation out of the country and sufficient funds for the stay.”).

132. *Long-Term Visa*, CONSULATE GEN. OF REPUBLIC OF KOR. IN CHI., [https://overseas.mofa.go.kr/us-chicago-en/wpge/m\\_20640/contents.do](https://overseas.mofa.go.kr/us-chicago-en/wpge/m_20640/contents.do) [<https://perma.cc/AJ89-LERT>].

133. CONSULATE GEN. OF THE REPUBLIC OF KOR. IN CHI., VISA APPLICATION FORM 5, <https://overseas.mofa.go.kr/viewer/skin/doc.html?fn=20201212054219645.pdf&rs=/viewer/result/202110> [<https://perma.cc/VHP2-QCDY>] (containing a section that provides notice for several other important matters for visa applicants).

134. Kan Hyeong-Woo, *Korea's Electronic Travel Authorization Takes Effect*, KOR. HERALD (Sept. 1, 2021, 4:31 PM), <http://www.koreaherald.com/view.php?ud=20210901000871> [<https://perma.cc/X2WG-V3SY>].

hours prior to embarking for South Korea.<sup>135</sup> A notice placed in the application would cast the widest net for alerting dual citizens of the risk of conscription.

As for the United States, there are several ways that the government could mitigate the risk of conscription with a more robust notification practice. The broadest-reaching and simplest is notification through the Selective Service System (“SSS”). Established in 1917 in response to the need for soldiers during the First World War,<sup>136</sup> the federal agency oversees the registration of almost every male citizen of the United States between the ages of eighteen and twenty-five for the contingency of a military draft.<sup>137</sup> With very few exceptions, all male citizens are by law required to register with the SSS,<sup>138</sup> including dual citizens.<sup>139</sup> Although at the present only males need register, the comprehensiveness of the SSS is such that, despite historical opposition, there have been serious attempts to extend the registration requirement to women and those efforts continue today with renewed vigor.<sup>140</sup> The SSS is extremely thorough and excels in notifying the citizen of his obligation to register through contact information retrieved through, e.g., records of the Department of Homeland Security, state Departments of Motor Vehicles, and public high schools.<sup>141</sup> Because state and federal laws have conditioned many important benefits and privileges on registration in the SSS,<sup>142</sup> virtually every

135. *Message for U.S. Citizens: Korea Electronic Travel Authorization Required as of September 1*, U.S. EMBASSY & CONSULATE IN THE REPUBLIC OF KOR. (July 20, 2021), <https://kr.usembassy.gov/072021-message-for-u-s-citizens-korea-electronic-travel-authorization-required-as-of-september-1> [https://perma.cc/J2FT-JN9Y].

136. *Historical Timeline*, SELECTIVE SERV. SYS., <https://www.sss.gov/history-and-records/timeline> [https://perma.cc/7XLF-52UN].

137. *Who Needs to Register*, SELECTIVE SERV. SYS., <https://www.sss.gov/register/who-needs-to-register> [https://perma.cc/PLT3-SCE5].

138. 50 U.S.C. § 3802(a) (“Except as otherwise provided in this chapter it shall be the duty of every male citizen of the United States, and every other male person residing in the United States, who, on the day or days fixed for the first or any subsequent registration, is between the ages of eighteen and twenty-six, to present himself for and submit to registration . . .”).

139. *Immigrants & Dual Nationals*, SELECTIVE SERV. SYS., <https://www.sss.gov/register/immigrants> [https://perma.cc/K2MG-8B8g].

140. In 1981, the U.S. Supreme Court held, in the face of Equal Protection and Due Process challenges, that male-only registration was constitutional. *Rostker v. Goldberg*, 453 U.S. 57, 78 (1981) (“Men and women, because of the combat restrictions on women, are simply not similarly situated for purposes of a draft or registration for a draft.”). Changing norms about women in the armed forces, however, have prompted a reconsideration of this and subsequent decisions. See, e.g., JONATHAN M. GAFFNEY, CONG. RSCH. SERV., LSB10491, EXPANDING THE SELECTIVE SERVICE: LEGAL ISSUES SURROUNDING WOMEN AND THE DRAFT 3–4 (2020); see generally Andrew J. Haile, *Redrafting the Selective Service Act: Women and the Military Draft*, 28 UCLA J. GENDER & L. 121 (2021) (arguing that the Selective Service Act violates the Due Process Clause of the Fifth Amendment and advocating for amendment of the Act to require registration by women).

141. *Frequently Asked Questions: General Questions*, SELECTIVE SERV. SYS. (explaining under “I just got a reminder to register in the mail. How did you get my name and address?”), <https://www.sss.gov/faq> [https://perma.cc/7KMR-WLC2].

142. For example, the federal government conditions federal government employment and student financial aid eligibility on enrollment in the SSS. *State-Commonwealth Legislation*, SELECTIVE

male in the United States registers; the compliance rate in 2017 was estimated to be about seventy-three percent of all eligible eighteen-year-olds and ninety-two percent of all twenty- to twenty-five-year-olds.<sup>143</sup>

Registration for the SSS is therefore an ideal vehicle for notifying male dual citizens of their potential military obligations to foreign countries for two reasons. First, essentially every American male citizen is expected to register into the SSS, and therefore every young man would have an encounter with the SSS. Notice on the registration form or other material may alert dual citizens that, in addition to their obligation to the United States, their dual citizenship status may obligate them to a military of a foreign country. For dual citizens in areas of the country where their national or ethnic demographic is not well represented, the broad reach of the SSS makes it particularly useful as a broadcasting tool. Because of its far reach, it has the potential to alert South Koreans in areas where there is not a strong community of South Koreans. In areas of heavy South Korean concentration, dual citizens may at least have the benefit of anecdotes about conscription.

Second, registration into the SSS presents the only time in the life of the majority of American men that they give any consideration to military service. Demographic data of America's volunteer forces suggest that most American men will not give service in the armed forces of their country—let alone that of another—much thought after their mandatory registration with the Selective Service.<sup>144</sup> The period of Selective Service registration, therefore, is an ideal moment to notify citizens of not only their military obligation to the United States but of their potential obligation to foreign states.

Notice through the SSS can be achieved in at least two ways. First, the Selective Service agency could place language on the physical mailing materials that it sends out to citizens who have not yet registered, typically sending a registration card and other “outreach materials.”<sup>145</sup> In addition to promoting registration with the SSS, these materials also answer basic policy questions such as “Why don't women have to register?” and explains that registration enables eligibility for “Student Loans and Grants,” “Federal Job Training,” “Government Jobs,” and “U.S. Citizenship.”<sup>146</sup> These materials

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SERV. SYS., <https://www.sss.gov/register/state-commonwealth-legislation> [<https://perma.cc/6F N2-87BL>]. Some states, such as Arizona, have adopted the same requirements for state government jobs and student financial aid. *Id.*

143. KRISTY N. KAMARCK, CONG. RSCH. SERV., R44452, THE SELECTIVE SERVICE SYSTEM AND DRAFT REGISTRATION: ISSUES FOR CONGRESS 20 (2019).

144. See Katherine Schaeffer, *The Changing Face of America's Veteran Population*, PEW RSCH. CTR. (Apr. 5, 2021), <https://www.pewresearch.org/fact-tank/2021/04/05/the-changing-face-of-americas-veteran-population> [<https://perma.cc/NZC3-VSSN>] (reporting on, among other facts, the decreasing percentage of the U.S. population who join the military).

145. *Outreach Materials*, SELECTIVE SERV. SYS., <https://www.sss.gov/news-and-media/outreach-materials> [<https://perma.cc/6FJQ-BG6S>].

146. *Brochure*, SELECTIVE SERV. SYS., <https://www.sss.gov/wp-content/uploads/2022/08/Brochure.pdf> [<https://perma.cc/HKZ8-8R8F>].



could easily accommodate a statement that registration with the SSS does not satisfy the military obligations of foreign nations of which the recipient of the materials might, even unwittingly, be a dual citizen. The notice could be phrased in a question format as much of the promotional material is—“Are you a dual citizen?” or “Could you be a dual citizen?”—and provide a QR code that takes mobile device users directly to the SSS website.<sup>147</sup>

Second, and related to the use of a QR code, the SSS could provide information on its website about the potential military obligations imposed by dual citizenship similar to the warnings provided by the Department of State.<sup>148</sup> Ideally, the SSS would collaborate with the Department of State to better connect already existing resources with the dual citizens that need them. The SSS could direct dual citizens who visit their website to the Department of State’s travel advisory guides, which typically contains a warning about compulsory military service for dual nationals.<sup>149</sup> Most helpfully of all, the SSS website could preidentify certain countries where conscription of dual citizens has occurred in the past. Thus, it could reach dual citizens most at risk, dual citizens of South Korea included.

There are other, less comprehensive ways that the U.S. government might attempt to give U.S.-S.K. dual citizens notice of their military service obligation. For example, the United States could put such notice on U.S. passport applications. This, of course, has the benefit of reaching dual citizens who are presumably contemplating international travel. The United States may also attempt to enlist the private sector for help in alerting dual citizens of the risks of conscription abroad. For example, the government could request or mandate that airlines notify their customers when purchasing tickets that their customers’ destinations may expose them to the risk of conscription abroad. Although this would have the benefit of alerting those potentially at risk at the point of purchase, when people are generally more alert to the requirements and advisories of international flight, the government would likely have a difficult time ensuring compliance with airlines who may shirk at the prospect of dissuading passengers from flying.

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147. For the use of QR codes in SSS outreach materials, see *id.*; *Registration Form*, SELECTIVE SERV. SYS., <https://www.sss.gov/wp-content/uploads/2022/08/Form-1-Resized.pdf> [<https://perma.cc/XHA2-8W66>]; *Register with the Selective Service*, SELECTIVE SERV. SYS., <https://www.sss.gov/wp-content/uploads/2022/05/Registration-Card-5.19.pdf> [<https://perma.cc/98K8-963F>].

148. See *supra* notes 124–26 and accompanying text.

149. For South Korea, see *supra* note 126. See also, e.g., *Turkey International Travel Information: Local Laws & Special Circumstances*, U.S. DEP’T OF STATE—BUREAU OF CONSULAR AFFS. (Sept. 5, 2019), <https://travel.state.gov/content/travel/en/international-travel/International-Travel-Country-Information-Pages/Turkey.html> [<https://perma.cc/AG83-ECTN>] (“Male dual nationals over the age of [eighteen] may be subject to Turkish conscription and compulsory military service.”).

## CONCLUSION

The United States has a duty to protect its citizens overseas. A failure to give adequate notice to dual citizens who are at risk of conscription abroad is a dereliction of that duty. If the South Korean government is, somewhat understandably, reticent to act out of concern for undermining its own defense policies, the United States should take a more active role in preventing the forced conscription of its own citizens by a foreign power to whom the conscriptee likely feels no connection or allegiance.

The history of the Korean peninsula in the twentieth century has been characterized by trauma from the forced separation of families due to war. Both the U.S. and South Korean governments should take reasonable steps to prevent this legacy from continuing into the twenty-first century stop the separation of families due to conscription.