



A Pandora's Box: Analyzing the Inviolability of Diplomatic Bags

- Arya Mitkari (II B.A.LL.B.)

Diplomatic immunity and privileges have increasingly been taken advantage of by several States. The immunity has sometimes been used to sponsor criminal and illegal activities in the receiving State. The purpose of these privileges, as mentioned in the Vienna Convention on Diplomatic Relations, 1961 (VCDR), is not to benefit individuals, but rather to ensure efficient performance of the diplomatic missions. Article 27(3) of VCDR establishes the inviolability of archives, papers, documents, etc., of the mission. The diplomatic bag, which holds all these confidential documents, is intended for the conveyance of official documents between the government and its missions abroad.

Customary international law, prior to the codification of VCDR, identified the free communication privilege and established principles of no delay and no censorship. Traditional customary law respected the diplomatic bag since diplomatic relations are based on mutual consent, but on valid suspicion, allowed the receiving State to

inspect or return the article to the sending State. Since diplomatic bags are neither subject to detaining nor checking, they have often been used to abuse diplomatic privileges. Several instances like the firing of a machine gun from the Libyan People's Bureau in London, a Nigerian minister fleeing to escape trial, and the most widespread abuse being that of drugs and arms trafficking, have linked the use of diplomatic bags to malicious intent. The receiving States, due to the principle of personal inviolability, under Article 29 cannot arrest the individual, so the diplomats are tried in their jurisdiction. The maximum the receiving State can do for a crime of this intensity is to enforce *persona non grata*, as per Article 9, this enables the receiving State to expel the diplomat, which to a great extent eliminates the need to worry about abuse of diplomatic status and is oftentimes used as a preventive measure.

The term "articles intended for official use" under Article 27(4) has been the cause of controversy since it does not talk about the size of the article and the types of articles that qualify for "official use."

News at a Glance

The Ethiopian Human Rights Commission (EHRC) claimed that the federal security forces have killed at least 45 civilians in Ethiopia's Amhara region. The independent state body alleged that the civilians were killed for being supposedly affiliated with the ethnic Amhara armed group, Fano. For more information see [here](#).

A report released by the Office of the UN High Commissioner for Human Rights (OHCHR) highlights human rights violations and abuses endured by Syrians upon their return to Syria. The report outlines a combination of challenges awaiting returnees, including general insecurity in the aftermath of the civil war, as well as ongoing violations of human rights law and international humanitarian law. For more information see [here](#).



Customary law contemplated the bag being hand-sized, however, the contemporary world has not particularly adopted this view. The US has sent shipments of huge cartons and boxes in diplomatic bags. A common issue is also regarding the interpretation of “for official use.” The majority of the States, including the US, have interpreted it as everything which is not illegal.

The International Law Commission recognized the need for a firmer set of rules to address the abuse and non-intrusive examinations. A separate convention was suggested but never garnered any support internationally. However, the articles need not be discarded, but rather be amended to eliminate the ambiguity, particularly with regard to the size and contents of the diplomatic bags. The reimplementing of the customary law practice introduces an appropriate balance between the receiving and sending State. Additionally, it improves the common interests of the two States and increases efficiency in international relations.

Revisiting Inviolability of Diplomatic Premises: Balancing Immunity with Emergencies

- Vishwajeet Deshmukh (V B.A.LL.B.)

Diplomatic law is the most successful as most nations are party to the Vienna Convention on Diplomatic Relations 1961 (VCDR). The principle of reciprocity serves as a deterrent against breaching diplomatic law. The principle of inviolability of diplomatic premises and diplomat’s residence are cornerstones of diplomatic law as detailed in Articles 22 and 30 of the VCDR. These articles impose a special duty on the receiving State to protect such areas, also requiring consent from the head of mission for anyone to enter the premises. A plain reading of these articles and international law practice suggests the critical principle that the inviolability of diplomatic residences enjoys near-absolute protection, with limited exceptions.

These immunities granted to diplomats under international law are necessary for the smooth performance of their functions, safeguarding them from interference or harassment by

News at a Glance

The Appeals Court in The Hague ruled that the Dutch government has to stop the export of F-35 fighter jet parts to Israel over concerns that Israel is using the aircraft in violation of international law. The court agreed with several human rights groups and overturned a lower court’s ruling. It concluded that there is a clear risk that F-35 fighter jets might be used to commit serious violations of international law. For more information, see [here](#).

The Panamanian Ministry of Foreign Affairs announced that it denied the request from the Nicaraguan government to provide safe passage for ex-president Ricardo Martinelli to leave the country after the Nicaraguan government granted asylum to the former Panamanian leader. For more information, see [here](#).



domestic laws of host countries. However, an emergency can put the receiving State into a quandary, choosing between adhering strictly to diplomatic law and taking necessary action to protect human life and uphold security. In times of natural disasters like floods, earthquakes, fires, and pandemics, obtaining consent from the mission head for assistance in diplomatic spaces can be challenging due to factors like communication disruptions or confusion. This can create complex situations, as illustrated by the March 1991 fire at the American embassy in Moscow, where Soviet firefighters reportedly waited outside for permission before intervening.

Instances can occur when criminal acts by third parties create a threat to diplomatic premises. Additionally, these criminal activities may even be sponsored by diplomats themselves, creating a challenging situation for the receiving State on how to take reasonable steps to protect human life and people within the mission premises. When Police Officer Yvonne Fletcher was fatally shot outside the Libyan embassy in London, the UK refrained from entering the embassy for

investigation, respecting the inviolability of mission premises. Instead, the UK broke off diplomatic relations with Libya and safe passage was provided for all diplomats out of the country.

Maintaining the absolute inviolability of premises can present a significant challenge for the receiving State when addressing criminal activities within a diplomatic mission. In another case, on October 2, 2018, Saudi journalist Jamal Khashoggi was killed at the Saudi consulate in Istanbul, Turkey. The Turkish Foreign Ministry sought permission to search the consulate building, but it was denied. Eventually, Saudi Arabia conducted a trial, resulting in the conviction of five individuals.

Apart from the above, a third emergency may arise when a person seeks diplomatic asylum in mission premises. Such an individual may seek asylum if an imminent threat occurs to their life or to escape prosecution in that State. In 2012, Julian Assange sought asylum in the Ecuadorian Embassy in London to avoid prosecution over allegations of sexual assault. British authorities did not enter the premises due to the privilege enjoyed by mission

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The European Commission (EC) announced that it is drafting new Digital Service Act (DSA) guidelines on false information aimed to strengthen and protect election integrity. The guidelines are aimed to combat election risks which may arise from misinformation. They will be applicable to all designated "Very Large Platforms" and "Search Engines" in order to ensure they implement "the best practices and possible measures to mitigate systematic risks on their platforms that may threaten the integrity of democratic electoral processes. For more information, see [here](#).

Nicaragua formally requested permission to intervene in South Africa's genocide case against Israel before the International Court of Justice (ICJ) over the ongoing Israel-Hamas war. Nicaragua argued that the country has "an interest of a legal nature which may be affected by the decision in the case." It is unclear whether or not Nicaragua has been permitted to intervene in the proceedings at present. For more information, see [here](#).



premises. In 2019, Ecuador consented, and British police arrested him. In such a situation, the receiving State can do nothing except request the mission head to hand over such an individual.

The draft articles of the VCDR did not permit 'emergency' entry into the embassies. Therefore justification under the Convention for entry into the mission even under an emergency would be highly controversial. The legal position of entry in a mission with implied consent in case of a natural disaster remains uncertain under customary law.

Where crime is sponsored by the diplomatic mission, the right to self-defence of the receiving State is recognized. Usually, such abuse is curbed under Article 9 of the VCDR, where the receiving State at any time declares any member of mission *persona non grata* and expels them from the country.

There are no express provisions in the VCDR to regulate asylum offered on the premises. The ICJ, in *Columbia v. Peru*, ruled that in the absence of custom or local law, an ambassador has no right to offer asylum indefinitely to anyone who is requested by police or other

authorities. At the same time, the surrender of a refugee may not be enforced by entry to an embassy or other inviolable premises.

In conclusion, a balance between the inviolability of diplomatic premises and addressing emergencies remains a complex issue in international law. To find solutions during emergencies while preserving the sanctity of diplomatic spaces, both receiving and sending States need to consider open communication, diplomatic sensitivity, and the spirit of cooperation enshrined in the VCDR.

Diplomatic Immunity: Why and When is it Waived?

- Aayushi Kashyap and Tanu Priya (I B.A.LL.B.)

The sending State gives diplomatic immunity to a person, who in an official capacity, represents it in a foreign State. Article 29 of the Vienna Convention on Diplomatic Relations, 1961 (VCDR) articulates the legal immunity provided to members of diplomatic missions, invigorating the principle of inviolability so that diplomatic agents can function effectively with minimal interference.

News at a Glance

Māori protesters marched to Waitangi to oppose the Treaty Principles Bill, allowing changes to the "principles" of the Treaty of Waitangi (Te Tiriti o Waitangi) – New Zealand's founding document that established British and Māori governance of New Zealand. The ACT party argues that these principles provide people with "different political rights based on birth," meaning that Māori have a stronger voice in political decisions and that this violates political equality. For more information, see [here](#).

UN Special Rapporteur on Torture, Alice Jill Edwards, urged the UK government to stop the impending extradition of Julian Assange to the US. She urged the government to carefully consider Assange's appeal and cited significant concerns that his extradition could put him at risk of treatment amounting to torture. For more information, see [here](#).



Diplomatic immunity has evolved and different theories have laid the groundwork depicting how States can take a proactive stance for the security of their diplomatic personnel. In some cases, this has led to the termination of bilateral relations as observed in the hostage crisis of US diplomats in Iran in 1979.

However, in a majority of the cases, the sending State prefers to recall the diplomat. States are often reluctant to waive diplomatic immunity as observed in the case of Devyani Khobragade, but in cases where crimes are of such grave nature that the receiving state can no longer accept the diplomat in question, the sending state has to waive the diplomatic immunity. In 2002, the Colombian government waived immunity over diplomat Jairo Soto-Mendoza who was accused of murder and thus faced trial in London where a jury acquitted him and cleared him of all the charges in 2003. Rare occurrences of waiver primarily stemmed from personnel involvement in serious crimes such as murder, sexual offences, war crimes, crimes against humanity, torture, slavery, etc. unrelated to their diplomatic role, leading to a public uproar thereafter.

The waiver of immunity can be done under Article 32 of the VCDR, which states that the waiver must always be express. An instance where diplomatic immunity was waived is that of a Georgian diplomat named Gueorgui Makhardze when he caused the death of a teenage girl fomenting public outcry. Later, he admitted his crime and was imprisoned by the United States.

The sending State demonstrates its accountability and regard for the rule of law either by initiating disciplinary actions or judicial proceedings against the diplomat per its laws, taking into consideration the circumstances of the case, or by waiving the immunity of a diplomat involved in the serious crime. The waiver helps to reinstate the faith of the international community in the sending State which has to maintain a delicate balance between foreign relations and the security of its diplomats. Thus, diplomatic immunity is waived so that justice can take its due course, human rights are safeguarded, and criminals do not get impunity by way of their privilege.

News at a Glance

UN Secretary-General António Guterres announced a review of whether the UN Relief and Works Agency for Palestinians in the Near East (UNRWA) is “ensur[ing] neutrality” and properly responding to allegations of possible breaches. The announcement came after Israel accused UNRWA of involvement in the October 7 Hamas attacks. The accusation caused several countries, including the US, to halt funding to the agency. For more information, see [here](#).

The European Union (EU) imposed sanctions against five individuals from Guatemala that “undermine[d] democracy, the rule of law or the peaceful transfer of power in Guatemala.” The sanctions followed a Council decision purported to freeze assets of those who were “responsible for, engaging in, providing support to, or benefitting from, actions that undermine democracy, the rule of law or the peaceful transfer of power in Guatemala.” For more information, see [here](#).



The Inviolability of Diplomatic Premises: The Consequences of Attacks on the Premises

- Devansh Bhatt (IV B.A.LL.B.)

The concept of inviolability ensures the sacredness of diplomatic and consular establishments. Although it does not exempt premises from legal obligations, individuals present on diplomatic premises have the option to seek refuge from legal proceedings. Inviolability, in the context of diplomatic premises, signifies that entry is strictly prohibited without explicit permission from the person heading the mission. Consent must not be based on assumption, even in emergencies. Furthermore, the premises, along with their contents and fixtures, are shielded from any search, requisition, attachment, or execution. This immunity extends to refraining from entering the premises even under the authority of a judicial order. These immunities are covered under Article 22 of the Vienna Convention of Diplomatic Relations, 1961 (VCDR) and Article 31 of the Vienna Convention on Consular Relations (VCCR).

As per Article 22 of the VCDR, the host country is expressly obligated

to safeguard the mission's premises, preventing any form of violence and violations of inviolability. Additionally, the immunity from search extends to the mission's premises, encompassing furnishings, property, and transportation means. This highlights their privileged status and legal immunity.

As previously highlighted, violations of diplomatic inviolability, without a valid defence, will ultimately result in the receiving State bearing international responsibility. The legal ramifications of such breaches are outlined in Articles 28 to 33 of the Draft Articles on Responsibility of States for Internationally Wrongful Acts (ARSIWA), with Articles 29 to 31 being especially pertinent to the principle of diplomatic inviolability. According to Article 29, even if a receiving State has previously breached or is currently breaching these obligations, it still has to fulfil its duties under the principle of inviolability. To elaborate, regardless of any breaches committed by the receiving State, its obligation to uphold the immunity granted by principle of inviolability remains intact. In the

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The International Court of Justice (ICJ) ruled that it has jurisdiction to determine aspects of a case, brought by Ukraine against Russia, concerning allegations of genocide under the Convention on the Prevention and Punishment of the Crime of Genocide. The ICJ rejected Russia's claim that it did not have jurisdiction to rule on the case. It did, however, accept that it does not have jurisdiction to determine Ukraine's claim that the use of force by Russia when it first invaded Ukraine undermined the rules governing states in the Convention on the Prevention and Punishment of the Crime of Genocide. The Court also held that it was not within its power to decide whether Russia recognizing Lugansk and Donetsk as independent states breached the convention. For more information, see [here](#).



Tehran Hostages Case, despite the receiving State's initial failure to protect the US embassy and diplomatic personnel, it retained an ongoing responsibility to fulfil these obligations. Iran admitted that it failed in its diplomatic duties and accepted responsibility for the intentional neglect, making it a state responsibility.

Article 30 states that if a nation is proven to be in violation of diplomatic inviolability, it has to (a) immediately cease the act and (b) may provide a guarantee of non-repetition of the act. As an example, after the forceful assault on the Chinese embassy in The Hague in 2009, the official apology from the Dutch foreign minister explicitly emphasized the government's dedication to "prevent the recurrence of such incidents" in the future.

Article 36 of the ARSIWA states that when a State is found to be responsible for an internationally wrongful act, it is obligated to provide compensation for the resulting damage, especially when restitution is not sufficient to remedy the harm. The compensation to be provided extends to all financially quantifiable damages,

encompassing not only direct losses but also considerations such as loss of profits, as long as these damages can be proven and established. The definition rightly acknowledges that it extends beyond physical harm to encompass emotional or moral harm to the integrity of diplomats and diplomatic premises. This recognition aligns with the broader understanding of harm in international law, demonstrating an advanced approach to compensation for violations.

The concept of inviolability serves to protect the sanctity of diplomatic and consular premises, granting a privileged status and legal immunity to individuals within and the property itself. Thus, VCDR and ARISWA, seek to strike a delicate balance between safeguarding the sanctity of diplomatic and consular premises and ensuring accountability for receiving States.

News at a Glance

Australia's Minister for Foreign Affairs announced that the government was imposing additional sanctions on five entities with direct links to the Myanmar military. Targets of the sanctions include the Myanmar Foreign Trade Bank and the Myanmar Investment and Commercial Bank, two major banks that support the regime's activities. The sanctions "are a response to the regime's ongoing repression of the people of Myanmar, escalating violence, and the continuing deterioration of the political, humanitarian and security situation," three years after the military seized power in an illegal coup. For more information, see [here](#).

Farmers protested outside the European Parliament in Brussels, demanding relief from taxes and rising costs, as European leaders met during a summit. They were met by police action with water hoses and tear gas. The protests are a part of a growing farmers movement across Europe to demand action on rising costs. For more information, see [here](#).



Diplomatic Immunity: Privilege or Exception

- Sumit Panpatte (II B.A.LL.B.)

The Vienna Convention on Diplomatic Relations (VCDR) is a codification of customary international law on diplomatic immunities and privileges. Its purpose is to facilitate international diplomacy by balancing the foreign policy interests of the sending State and the territorial sovereignty of the receiving State. The term 'diplomatic immunity' is a principle of international law by which foreign diplomats are not subject to the jurisdiction of local courts. It is an exception to the general rule of the territorial jurisdiction.

These special privileges and the immunities accorded to foreign diplomats exist for civilized international relations and shield foreign representatives from local laws, enabling them to effectively perform their duties. Its purpose is often misused by the diplomats. Occasional abuse of diplomatic immunity has also served to prejudice the public attitude towards this practice, it creates public negativity, especially for police who navigate its complex boundaries.

This exception to the diplomats can enable them to commit crimes like traffic violations, theft, or even serious offences like assault or drunk driving without facing legal consequences. Diplomatic immunity hinders investigations into crimes committed by the diplomats, making it difficult to hold them accountable, The 2019 hit-and-run case involving an American diplomat's wife in the UK highlighted the challenge of prosecuting offenders with immunity. The abuse of immunities and privileges by diplomats and their families is one of the main challenges faced by the VCDR. Even some diplomats can exploit immunity to engage in serious crimes like smuggling, trafficking, or assault, leading to undermining the respect for the local laws.

In 2017, a Sudanese diplomat in the US avoided sexual abuse charges using diplomatic immunity from the VCDR. Thus, creating a sense of impunity and a potential threat to public safety. It encompasses functional and personal aspects, which enables them to evade criminal liability for crimes. This leads to the growing international concern over the abuse of diplomatic immunity. The existing

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As fighting surges in eastern DR Congo since last week in the region has displaced an estimated 135,000 people from the town of Sake – on the northern banks of Lake Kivu – who are moving towards the provincial capital, Goma, about 25 kilometers away. The agency further said that it received reports of bombs falling on civilian areas in Sake and Goma, where an estimated 65,000 internally displaced persons (IDPs) are sheltering, prompting "significant concerns" for their safety. The escalating use of heavy artillery and shelling in clashes around Goma poses grave threats to civilian and displaced populations, threatening more casualties and the destruction of buildings used as communal shelters. For more information see [here](#).



framework lacks appropriate punishments and raises concerns about rising incidents and the potential for served diplomatic relations. To avoid unnecessary international repercussions, a more nuanced approach is needed to address the broader issues.

The option of 'persona non grata' is granted to the receiving State under [Article 9](#) of the Vienna Convention, allowing them to expel a diplomat rather than pursue domestic prosecution. This is the sole recourse available in response to a diplomatic agent who has committed a crime in the receiving State. Consequently, the diplomat in question cannot be held accountable in the court of the receiving State unless the sending country [consents](#) to it.

The abuse of diplomatic immunity needs proper routes to curb the problem. International politics [require](#) effective and efficient action without derailing international relations. The host country [should](#) promote and enforce compliance with the laws of the receiving country among diplomats. The sending State and the receiving State should establish cooperation to prevent crimes by diplomats, which can be

[done](#) through open communication and information sharing between sending and receiving States. Although it does not act as a definitive barrier to diplomats committing crimes in the receiving State, they can be valuable tools in the broader effort to prevent and address diplomatic crimes. Its [effectiveness](#) depends on promoting understanding, building trust, and upholding the principles of cooperation and good faith. Ultimately, if there is no cooperation between States, diplomatic law [loses](#) its purpose.

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Upcoming Activities

Climate Change and Migration

Trinity College Dublin's School of Law calls for the submission of paper proposals (up to 500 words) for a symposium on 'Climate Change and Migration', to be held on 2 May 2024. The symposium aims to develop a nuanced and multidisciplinary perspective on such legal issues. Situated in a broader context of climate justice, the symposium will bring together scholars across disciplines, including law, geography, political science and sociology. The deadline for submission of abstracts is 28 February 2024. For more information, see [here](#).

BIICL Short Courses Spring 2024

The British Institute of International and Comparative Law (BIICL) has launched its programme of short courses for spring 2024. The programme will cover public international law, climate change law, international trade law and the context of the war in Ukraine. For more information, see [here](#).