

DIPLOMATIC SECURITY

Is diplomacy a safe profession?

Legal and practical aspects of diplomatic immunity and inviolability of diplomats and of diplomatic missions.

Historical cases and personal experience.

Functioning of the missions in times of wars and armed conflicts.

Role of diplomatic protocol in conflict resolutions.

DIPLOMATIC LAW AND REALITIES

The most important rules of diplomatic law provide that:

- The person of ambassador (envoy, diplomat) is inviolable
- A special protection must be given to the messages which he sends and receives from his sovereign.

These rules have been observed from time immemorial among civilized states.

During XVI-th and XVII-th centuries it came to be accepted both:

- In state **practice** and
- By the writers on international **law**.

It was respected, that even if ambassador had engaged in conspiracy or treason against the receiving sovereign he was immune from criminal jurisdiction of the receiving state.

He could be expelled, but he could not be detained or tried.

The principle of “extritoriality” were everywhere terminated by the end of the Second World War.

So you cannot argue that the diplomat is not legally present in the receiving State or that the embassy is deemed to be a foreign territory.

Inviolability of the ambassador’s residence was generally established in customary international law by XVIII-th century.

In the present days practically, all states are parties to the Vienna Convention on Diplomatic Relations signed in 1961 so it could be considered as virtually universal.

Privileges and immunities are based on functional need.

Art.1 of **the Vienna Convention on Diplomatic Relations** gives the definition of **“the premises of diplomatic mission”** – are the buildings or parts of the buildings and the land ancillary thereto, irrespective of ownership, used for the purposes of the mission including the residence of the mission.

Art.22 declares **“inviolability of the mission”** what means that:

- Premises may not be entered by the police, even by the fire brigade. (Pakistan 1973 search - as a measure of self-defence -of Iraq embassy for arms intended for rebel tribes in Baluchistan; fire in US Embassy in Moscow 1977,1988, opening of new building June 2000)
- Also Embassy cars (means of transport) are protected from search, requisition, attachment or execution; (obstructive parking; routine security search; special means taken by receiving states for driving offences);
- “appropriate steps to protect the premises” – imply that the extent of protection provided must be proportionate to the risk or threat to the premises;
- Embassy bank accounts are not covered by art.22 but cannot be subject to executions as they serve sovereign purposes of a foreign state. (Iraqi Embassies’ accounts in 1990).

Art. 30 adds, that “The private residence of a diplomatic agent shall enjoy the same inviolability and protection as the premises of the mission”.

That is a diplomatic law universally accepted by international community.

In real-life attacks on diplomatic missions happen quite often.

Let me mention few examples.

1829 TEHRAN Russian Envoy to Persia, Gribojedov killed , after Russo – Persian War 1826-1828; for the protection and asylum to 3 Armenians; compensation – diamond Shah – 88,7 carats.

Diplomatic asylum is a result of customary international law.

It is regarded as a matter of humanitarian practice rather than a legal right.

US Embassy in Budapest – Cardinal Mindszenty;

Ecuador Embassy in London – Julian Assange, 2012)

Russia – Edward Snowden – 2013

1989 – Czechoslovakia, Poland, Hungary – East Germans

1990 – Albanians in foreign embassies

2002 – Beijing – North Koreans

SECURITY OF FOREIGN MISSIONS

1900 PEKING Boxer Rebellion under the slogan “Support the Qing! Destroy the Foreigner”. The incident that sparked the attack on the Beijing Legation Quarter was the killing of a Boxer’s boy by German soldiers. 900 soldiers of US, UK, France, Germany, Japan plus 2800 Chinese Christians took refuge in the diplomatic enclave and defended it for 55 days. The Chinese government decided to take side of the Boxers rebellion. Several hundred soldiers and civilians were killed and wounded. After 55 days rescue mission of thousands of British, American, Japanese, Russian and French forces saved the defenders of Legation Quarter.

Highest number of attacks took place against US diplomatic missions. Life has never been easy for American diplomats posted in foreign countries.

There were more than 50 bloody attacks in the last 50 years.

US Embassies were attacked in Saigon (1965, 1968), Manila (1964), Republic of China (1967).

Tehran November 4, 1974 , 52 American hostages were held for 444 days.

Rescue mission 24 April 1980; 8 US soldiers, 1 Iranian civilian died; 2 aircrafts destroyed

(Personal witness).

Then: Beirut 1981 - 61 dead

1982 - 14 dead

1983 - 64 dead

1984 - 24 dead

In 1998 simultaneous attacks on the US Embassies in Nairobi (212 dead) and Dar es Salam (11 dead).

In this century

Karachi 2002 – 12 dead; 2003 – 2 dead

Saana 2008 – 19 dead

Benghazi 2012 – 4 (including ambassador).

250 names of US diplomats who have died while in the US service abroad.

Some other dramatic cases.

1996 LIMA, Peru 14 members of anti-government guerrilla organization took hundreds of diplomatic and other officials. They released majority but held 72 men for 126 days. In operation of Peruvian antiterrorist units 14 terrorists, 1 civilian and 2 soldiers were killed.

UK Embassy in Istanbul 2003 – 71 persons killed

Spanish Embassy in Guatemala 1980 – 36 killed

Number of violent protests against the embassies of the Western Countries after publishing by the Danish newspaper **controversial cartoons of prophet Muhammad. Several Western embassies were attacked (in Lebanon, Iran and Syria). Christians and Christian churches were also targets of violent retribution.**

In 1999 during the the war in former Yugoslavia Chinese Embassy was bombarded “by mistake”. 3 Chinese were killed. US government paid 28 mln US \$ in compensation.

There is a general practice, that **receiving State pays “on gratia” basis all claims for the damage** to inviolable premises. Because full responsibility of the local government is to protect and to pay compensation.

In case of attacks on diplomatic missions it is not advisable to use guns and weapons to fight the mob. It can only provoke and incite attackers.

There were a few incidents of **attacks against Polish diplomatic missions.**

In 1982 4 young man occupied Polish Embassy in Bern (Switzerland) and hold the ambassador and diplomats. Polish authorities agreed that Swiss antiterrorist units intervened and released the hostages. The men were arrested and sentenced by Swiss court.

1990 – Beirut attack on Polish Commercial Counsellor (Operation Bridge)

2007 – attack on Polish Ambassador in Baghdad (BOR agent killed)

2013 – mine (booby trap) explosion close to a convoy of Polish Ambassador.

PERSONAL INVIOLABILITY

Is the oldest immunity established and the most universally recognized.

Not only the premises of the embassy are inviolable, but Art.29 of the Convention says about **personal inviolability of the diplomats** what means:

- immunity from any action by law enforcement officers of the receiving State
- “all appropriate steps should be made to prevent any attacks on his person, freedom or dignity”.

A diplomat cannot be compelled:

- to submit to a breath test or other medical examination
- to undergo screening or physical search before boarding an aircraft, **but in practice** diplomats in general do submit to X-Ray screening on a voluntary basis; and it is permissible for an air carrier to deny boarding to any diplomat who refuses screening.

What is unfortunate, that diplomats are victims of **kidnappings**. In the 70-ties of last centuries in Latin America there were many kidnappings of diplomats with the demands of release of political prisoners.

States whose diplomats are particularly vulnerable to kidnappings or attacks (such as US, Turkey, Israel) provide or organize **their own security** to an increasing extent even though the primary obligation to protect belongs to the receiving State.

Bodyguards should respect the laws of the receiving State regarding the carrying of firearms or use of violence.

US ambassador was released for 15 prisoners.

Swiss ambassador for 70 prisoners.

There were also kidnappings which resulted in death of diplomats e.g. German ambassador in Guatemala.

There can be no a priori definition of procedure to be applied in case of kidnappings, but experience has shown that the capitulation leads only to an escalation in terrorists demands.

The Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons including Diplomatic Agents approved in 1973 and the principle: **“No bargaining with the kidnappers”**

The incidents of this particular form of hostage taking declined soon afterwards.

Unfortunately, other forms of terrorists' attacks against diplomats and diplomatic missions are sad reality of international life.

(Case of Beaty in Baghdad).

STATUS OF THE HEAD OF STATE

It is curious anomaly, that the position of the head of state and the personal privileges and immunities which attached to this office remain largely based on customary international law.

Personal immunity ceases when a head of state is no longer in office.

Protection of American Diplomats

is organized by BUREAU OF DIPLOMATIC SECURITY, employing 34.000 people, which is supervising US Diplomatic Security Service composed of c. 2000 Special Agents (Federal Agents).

Director of BDS:

- leads a force of Special Agents
- Diplomatic Couriers
- Security Engineering Officers
- Security Technical Specialists

Aim of BDS is to:

- Safeguard all personnel in diplomatic missions
- Protect classified information at diplomatic missions.

At posts there is Regional Security Officer (Security Attaché.

At home DSS protects:

- The Secretary of State (and his residence)
- US ambassador to UN
- Foreign dignitaries and diplomats
- 100 domestic State Department facilities

DSS is acting in 31 US cities and in more than 160 foreign countries.

DSS is investigating:

- Crimes against passports and visas
- Activities of foreign intelligence agencies directed against State Department employees
- Threat analysis and cybersecurity.

Diplomatic Courier Service no longer concentrates on hand carried pouches but protect supplies, equipment and construction materials bound for overseas posts.

There are 480 special agents at 275 diplomatic missions (Regional Security Officers) in 157 countries.

US spending on Diplomatic Security amounts in 2015 to 4,7 billion US dollars which makes about 30% of State budget (15,7bln \$).

Freedom of Movement of all members of diplomatic mission. (Art.26) used to be a normal practice in XVIII and XIX century. After the II World War USSR introduced restrictions (30 km from Moscow). Other EE countries introduced similar restrictions, so US, UK, France reciprocated.

(Practice in Pakistan, Iraq).

Special protection for **missions' communications** (Art.27) is in practical terms probably the most important, but was one of the most controversial.

Intercepting of telephone conversations, electronic mail, faxes etc. are not detected because of the sophistication of methods of interception.

(Radio frequencies)

Diplomatic bag is fully protected (art.27), it cannot be open, but could be electronically screened for search of explosives, metals or drugs.

Modern screening methods are capable of compromising the security of contents such as cipher equipment and even of reading documents.

PNG

In case of request of the receiving State to recall of a diplomat sending State is to comply with that request.

Only if compliance is delayed or refused, procedure set out in Art.9, formal notification follows.

In 1971 British Government requested withdrawal of 105 Soviet government officials, many of them diplomats. SU introduced reciprocal limits on the British Embassy in Moscow.

In 1985 SU expelled 25 UK staff from the Embassy. UK did the same. SU withdrew local staff from the British Embassy.

In march 2018 European countries and USA expelled over 130 Russian diplomats (23 from UK, 60 from US) following the poisoning of S.V.Scripal and his daughter. Russians reciprocated with equal number.

BREACH OF DIPLOMATIC RELATIONS

Starts when initiating State notifies the receiving State.

Privileges and immunities prevail until diplomats leave the country. They could be accredited as diplomatic agents of the protective power, should they stay in that capacity.

Members of the diplomatic mission and its premises have to be protected by the receiving State. (Art.45-46)

POLAD AS PROTECTIVE POWER. Case of Iraq.

Poland – US ; Algeria – Iraq. Differences.

“SECRET DIPLOMACY” – can mean

- The contents of negotiations
- Knowledge that negotiations are going on
- The content of any agreement issuing from negotiations
- The fact that any agreement at all has been reached
- Often the secrecy of the identity of the person or persons involved in the negotiations.

Famous secret negotiations:

1950 – 1970 US – ChinaPR (1950-55 Geneva; 1955-70 Warsaw, total 136 meetings)

1972-1973 Kissinger – Le Duc Tho (parallel to Vietnam Peace Conference in Paris)

1992-1993 Israel – Palestinians Oslo Accords 1993 (parallel to Madrid Middle East Peace Conference)

Back-channel diplomacy through third person or persons e.g. businessman, professors, retired politicians etc.

Track two diplomacy – through specialised consultancies on security matters; for instance, for negotiating ransoms for kidnapped businessmen, officials (diplomats), ships, ships crews.

Peaceful Settlements of International Disputes is done through direct negotiations and consultations between the Parties conducted through “diplomatic channels”.

If they fail – could be raised to the level of ministers, Prime Ministers or Head of States.

In any negotiations precondition for success is the political will to work for agreement.

In the case of difficulties different technics may be used:

- To submit the dispute to a third party for resolution
- To apply **clause “without prejudice”** which allows the parties to discuss certain matters while leaving the most controversial issues alone. For instance “question of sovereignty” was put aside in UK-Argentina on Falkland Islands; or in Antarctic Treaty of 1959.

Sometime bilateral treaties can include a clause on a process of settling disputes (according to a law of a given country or by arbitration).

GOOD OFFICES of third party could provide an additional channel of communication for the parties. It could be done by a third State or States. The good offices does not mean active participation in negotiating. That could be done by Secretary General of UN or by his Special Envoy.

Sometimes negotiations are proceeded by fact finding mission composed of the persons of mutual trust.

JWP 12/05/2018