

## Diplomatic Relations (485 to 492)

### Why is Diplomatic Relations Important?

- Critical to the effective cooperation and relations between states and between states and international organisations.
- Some of the oldest customary rules at int'l law deal with diplomatic protection/immunities and privileges.
- Why protection? – diplomacy is at the core of effective negotiations, thus protection of representatives is essential to establishing a network of relations and the success of negotiations.
- The customary rules of diplomatic relations have been codified in the 1961 Vienna Convention on Diplomatic Relations (refer to page 486 articles 29 and 31 of the Convention).

### Terms

- Diplomats are often referred to as emissaries, ambassadors or representatives.
- Embassies are the official residences and offices of diplomatic staff.
- Consulates are official offices of diplomatic staff located in major cities within any given state.

### Diplomatic Immunity

- Immunity is a privilege of the state and not any given diplomat.
- Article 29 – “The person of a diplomatic agent shall be inviolable.” This means that a diplomat is:
  - Entitled to protection from physical harm.
  - Not subject to arrest, detention or any other suspension of liberty.
  - Granted recourse to the rules of int'l protocol in the Convention.
- Article 22 – “The premises of the mission shall be inviolable.” This means the mission is:
  - Free from unauthorised entry by the host state (although not foreign territory).
  - Protected under the doctrine of *non-interference*, which extends to files, documents, diplomatic bags, and diplomatic couriers as a means of communication between diplomats and the home state.
  - Libyan Embassy situation – a UK police officer shot outside the embassy in London. The shot originated from within the premises. There was no investigation or charges to follow. The weapon entered via a diplomatic bag. Ability to enter because premises no longer being used for diplomatic purposes?
- It is the responsibility of the host state to protect embassies and uphold immunities as an act of reciprocity.
- US Diplomatic and Consular Staff in Tehran Case (487) – Iran failed to uphold its responsibilities to ensure the protection of the United States' embassy and consulates, their staffs, their documents, their means of communication, and their staffs' freedom of movement. Additionally, Iran failed to take every necessary and appropriate step to end the attack and occupation, restore order and offer reparations.

### Abuse of Special Status

- Smuggling illegal commodities, debt avoidance, escaping criminal charges, etc.
- Palacios situation (1983) – Nicaraguan diplomat doubles as drug dealer.
- Typically punishment of diplomats carried out by home state.
- The general rule is that diplomats are immune to prosecution (Knyazev situation – Russian diplomat in Canada). A home state may waive immunity in cases of serious crimes unconnected with the individual's diplomatic role.
- Issue of intelligence agents operating from embassies and the ubiquitous practice of wiretapping (technically against the spirit of the Convention).

### Diplomatic Asylum

- Protection sought in embassies of other countries by individuals fearing for their safety.
- Asylum often revolves around citizenship and its political value.
- The embassy may grant or refuse asylum based on the factors at hand (questionable interference in another state's political affairs and likelihood of strain on relations).
- Convention on Diplomatic Asylum governs the international rules surrounding asylum.

## **Consular Relations**

- Non-diplomats may also be charged with consular duties (e.g., advocating and protecting nationals in host state, obtaining legal representation for nationals, liaising with local authorities on behalf of home state, and applying pressure / protest if a host state is violating rights of a national).
- Issue – access to prisoners –
  - Upon detention of a foreign national, the host gov't must advise the consular post of the detention.
  - The arresting gov't must assist the detainee to contact their consulate.