

Some treaties provide methods for amending processes. Some even establish elaborate institutional mechanisms for regular review and amendment. A good example of this is the regularly scheduled Conference of the Parties established under the *United Nations Framework Convention on Climate Change*. This is the conference that, in 1997, adopted the *Kyoto Protocol* (see Chapter 18).

Unfortunately, not all treaties, especially those concluded before 1945, have provisions for amendment or termination. This limitation can lead to problems if circumstances change and one of the parties seeks to avoid its obligations by claiming that strict application of the treaty is no longer appropriate. International law deals with such situations by permitting some parties to escape their historical obligations if a fundamental change of circumstance has occurred that was not foreseen when the treaty was made. This rule supports the current view that treaty relations should be seen as part of a continual adjustment in international relationships to keep pace with change.

CHECK YOUR UNDERSTANDING

1. In what ways are treaties a key part of international law? Consider how they are negotiated, ratified, and enforced.
2. What is a "federal state clause," and why does Canada need to include one in its treaties?
3. Why are dispute resolution mechanisms needed for treaties?
4. Use the *Ottawa Convention Banning Landmines* as an example to explain how an international issue may be addressed by a treaty.

Diplomatic Relations

International law is also expressed through state practice, which results in what is known as customary international law. Some of the oldest rules of international law deal with diplomatic protection. The protection of diplomatic representatives sent to foreign states was one of the first customs to be recognized as essential to the success of negotiations. The ancient rules applying to diplomats were codified in the 1961 *Vienna Convention on Diplomatic Relations*, and have been supplemented by other rules that take into account the growth of international organizations and missions (diplomatic bodies) interacting with these organizations.

States and international organizations interact with one another by communication and negotiation through an established network of diplomatic relations. Emissaries, ambassadors, and representatives travel the world on a regular basis, and embassies (the official residences and offices of these diplomatic representatives) are found in most major world cities. International relations have been made easier through advances in communications technologies such as telephone, e-mail, fax, and dedicated

Turning Points in the Law



The Vienna Convention on Diplomatic Relations, 1961

The expansion in the number of international organizations and areas covered by international law after 1945 meant that clear rules had to be established to deal with diplomatic relations among states. The ancient rules governing the treatment of envoys and diplomats were codified in the 1961 *Vienna Convention on Diplomatic Relations*. Since then, other rules have been added to take into account missions to international organizations.

The articles in the convention concern the immunity, inviolability, and protection afforded to the premises of the mission, to property relating to the mission's functioning, and to persons representing states diplomatically or those concerned with such representation.

Article 9, for example, allows for the receiving state to reject a representative sent by the sending state without explaining the reasons for that rejection. The sending state has to accept that decision.

Article 22 sets out the protections afforded to the mission buildings:

1. The premises of the mission shall be inviolable. The agents of the receiving State may not enter them, except with the consent of the head of the mission.
2. The receiving State is under a special duty to take all appropriate steps to protect the premises of the mission against any intrusion or damage and to prevent any disturbance of the peace of the mission or impairment of its dignity.
3. The premises of the mission, their furnishings and other property thereon and the means of transport of the mission shall be immune from search, requisition, attachment [seizure] or execution [seizure for debt].

Article 29 guarantees protection to diplomats:

The person of a diplomatic agent shall be inviolable. He shall not be liable to any form of arrest or detention. The receiving State shall treat him with due respect and shall take all appropriate steps to prevent any attack on his person, freedom or dignity.

Article 31 provides diplomatic immunity:

1. A diplomatic agent shall enjoy immunity from the criminal jurisdiction of the receiving State. He shall also enjoy immunity from its civil and administrative jurisdiction...
2. A diplomatic agent is not obliged to give evidence as a witness.
3. No measures of execution may be taken in respect of a diplomatic agent...
4. The immunity of a diplomatic agent from the jurisdiction of the receiving State does not exempt him from the jurisdiction of the sending State.

In return for these guarantees, diplomats and members of missions have a duty to respect the laws and regulations of the receiving state and not to interfere in its internal affairs.

Questions

1. Why might a receiving state reject a diplomat selected by the sending state?
2. Why is diplomatic immunity an important concept for international relations?
3. In the period of the Cold War hostilities between communist and non-communist states after World War II, there were instances of embassies being "bugged" and phone lines tapped. What recourse might a state have that was violated in this way?



"hotlines" such as the Kremlin-White House emergency line, or the video hotline between the US Department of Energy's Emergency Operations Center in Washington, DC, and the MinAtom Situation and Crisis Center in Russia. Despite these technologies, much diplomacy and negotiation are still carried on by professional diplomats on a face-to-face basis. The integrity and security of face-to-face communication has always required the support of legal rules for the protection of diplomats, their staff and families, embassies, consulates, and means of diplomatic communications.



The text of the *Vienna Convention on Diplomatic Relations* can be found at www.emp.ca/dimensionsoflaw

Diplomatic Immunity

The fundamental rule expressed in the Vienna Convention is that the "person of a diplomatic agent shall be inviolable." This means that diplomats are entitled to protection from physical harm and are not subject to arrest or detention (imprisonment or suspension of liberty) without recourse to the rules of international protocol set down by the Vienna Convention. Similarly, the premises of the mission or embassy shall be "inviolable" (note that, contrary to mistaken general belief, the territory of the embassy is not "foreign" territory of the sending state). In general, with respect to premises, this provision means that there can be no entry by agents or nationals of the host state without authorization from the sending state. The Vienna Convention extends this right of non-interference to such items as the files, documents, diplomatic bags (containers holding mail and other documents travelling to and from an embassy or consulate), diplomatic couriers, and means of communication. In the Iran hostages case that follows, the International Court of Justice noted:

[T]here is no more fundamental prerequisite for the conduct of relations between States than the inviolability of diplomatic envoys and embassies. ... [T]he institution of diplomacy, with its concomitant [associated] privileges and immunities, has withstood the test of centuries and proved to be an instrument essential for effective co-operation in the international community.

Case US DIPLOMATIC HOSTAGES IN IRAN

US Diplomatic and Consular Staff in Tehran Case, [1979] ICJ Rep. 23 (Order);

US v. Iran, [1980] ICJ Rep. 3 (Merits)

Facts

On November 4, 1979, several hundred Iranian students and other demonstrators took possession of the US embassy in Tehran by force, in protest at the admission of the deposed Shah of Iran into the United States for medical treatment. The demonstrators were not opposed by the

Figure 16.8 One of 60 American hostages—blindfolded and with his hands bound—is displayed to the crowd outside the US embassy in Tehran, November 1979.



reparations: formal economic compensation, often from one sovereign state to another, for harm done in the course of armed conflict

Iranian security forces. US consulates elsewhere in Iran were similarly occupied. The demonstrators, who had seized archives and documents, were still in occupation when this case was decided, holding 52 US nationals as hostages. The United States asked the International Court of Justice for a declaration calling for the release of the hostages, evacuation of the embassy and consulates, punishment of the persons responsible, and payment of reparations.

Decision

The events that were the subject of the United States' claims fell into two phases. The first related to the armed attack on the United States' embassy by militants on November 4, 1979. No suggestion was made that the militants, when they executed their attack on the embassy, had any form of official status as recognized "agents" of the Iranian state. Their conduct in mounting the attack—overrunning the embassy and seizing its inmates as hostages—could not, therefore, be regarded as an act of the Iranian government. The militants' conduct might be viewed in this way only if it were established that they had acted on behalf of the state, having been directed by some Iranian government authority to carry out a specific operation. The court found no credible evidence of such a link.

However, this finding did not, in the court's view, absolve Iran of responsibility for the attacks. Under the Vienna Conventions of 1961 and 1963, and also under general international law, Iran was required to take appropriate steps to ensure the protection of the United States' embassy and consulates, their staffs, their archives, their means of communication, and the freedom of movement of their staffs. Iran failed to do this.

The second phase of the claim related to events that followed the occupation of the US embassy by the militants and the seizure of the consulates at Tabriz and Shiraz. Once the occupation had taken place, the Iranian government was required to take every appropriate step to bring it to a speedy end, to restore the consulates at Tabriz and Shiraz to US control, and in general to restore order and offer reparations for the damage. No such steps were taken.

For these reasons, the court decided by majority vote that the Islamic Republic of Iran violated obligations owed by it to the United States of America under international conventions in force between the two countries, as well as under long-established rules of general international law.

Questions

1. Summarize the facts of this case.
2. What were the reasons for the decision of the International Court of Justice?
3. Do you think that this was a just decision? Explain your answer.
4. Is it necessary for all states to recognize and enforce rules of diplomatic relations? Explain.

While diplomatic protection is essential to the integrity of international relations, there have occasionally been problems related to abuses by diplomats of their special status. Such actions as smuggling drugs, selling duty-free liquor, avoiding legitimate debts, and drunk driving causing death threaten to tarnish the reputation of diplomacy. States concerned with public relations and the erosion of the principle of diplomatic immunity have often addressed these lapses by punishing misbehaving diplomats in the home country after refusing to allow a diplomat to be prosecuted in the receiving state (diplomats are generally considered immune to prosecution). In March 2002, a Russian diplomat was found guilty in Russia of involuntary manslaughter in the drunk-driving death of a woman in Ottawa and received a sentence of four years in a penal colony, although Russia was adamant that he should not be prosecuted in a Canadian court.

Diplomatic Asylum

The question of diplomatic asylum arises when a national from a given country seeks protection within the embassy of another country. When the United States invaded Panama in 1989, Panamanian leader Manuel Noriega sought refuge (or sanctuary) in the Vatican embassy in Panama City to avoid arrest by US troops. Ultimately, he gave up the protection of the embassy and surrendered to US authorities. One of the reasons (though not the only one) that he abandoned his safe haven was the fact that US soldiers played deafening rock music, 24 hours a day, over loudspeakers set

Fyi The Canadian embassy in Tehran sheltered six American embassy workers for 79 days during the hostage crisis, and supplied them with Canadian passports so that they could leave Iran. Ambassador Ken Taylor received a US Congressional Gold Medal in thanks for his actions.

diplomatic asylum: protection sought in embassies of other countries by individuals fearing for their safety

up around the Vatican embassy compound. It is obvious that this type of interference with embassy premises is questionable. In May 2002, two North Koreans managed to enter the Canadian diplomatic mission's compound in Beijing, China, seeking asylum and ultimately transfer to South Korea. This event strained the relations among the four governments involved.

Sometimes asylum is willingly given and respected. During the Hungarian revolution in 1956, Cardinal József Mindszenty sought asylum in the US embassy and lived there until 1971, when he was allowed to leave the country by the Hungarian communist authorities. Other times, countries refuse asylum. The institution of asylum is most highly developed in Latin America, where states have attempted to clarify the rules by agreeing to the *Convention on Diplomatic Asylum*.

Consular Relations

There is one embassy of a sending state in the receiving state. However, relations between states are managed by a number of officials other than those formally designated as diplomats and attached to the embassy. The most institutionalized of these officials are those charged with "consular" duties, the most important of which is protecting nationals of the sending state in the territory of the receiving state. Consulates and their staffs help obtain legal representation, act as "go-betweens" with local authorities, and generally protest if the rights of one of their citizens are in danger of being violated.

A current hot international issue with respect to consulates is access to prisoners, especially those charged with capital offences. Canada had to negotiate with Saudi Arabia about consular access to William Sampson, a Canadian who faced public beheading in Saudi Arabia after being charged, in 2001, with car bombings that killed a British man and injured several others. The International Court of Justice had to deal with similar issues in three applications against the United States (by Paraguay, Germany, and Mexico). In the case involving Mexico and the United States, Mexico alleged that

[c]ompetent authorities of the United States ... have arrested, detained, tried, convicted, and sentenced to death no fewer than 54 Mexican nationals, who are currently under sentence of death in those states, following proceedings in which competent authorities failed to comply with their obligations under article 36(1)(b) of the *Vienna Convention [on Diplomatic Relations]*.

The article mentioned requires that, upon detention of a foreign national, the government advise the "consular post" of the national's state of the detention. The arresting government must also help the detainee contact his or her consulate.