

The Responsibility of states for protection the diplomatic agents

Zainab Waheed Dahham

PHD student

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Business School; Law- University of Huddersfield
, HD1 3DH, UK.

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Abstract:

The states always have relations between each other. The states keep in mind that the exchange of diplomatic agents is a main mean to keep this relation for long term, for this reason the diplomatic missions are established on one another's territory. Diplomats represent their states, so the host state has a duty to protect the diplomats from any attack and any act or insults to their dignity. However, during the revolution states lose their control.

The attacks on diplomats is not a new phenomenon, it is traced back to the ancient world. However several legislations were enacted to protect diplomatic personnel.

This study aims to clarify the legislations that deal with protection of diplomatic persons and show the responsibility of a host state to protect them. In addition, party who responsible for protection of diplomatic agents during the revolutions will identify themselves.

Definitions:

- Diplomacy: is a system of contact between states, represented by negotiations between the agents of those states (Shaw. M, 2010)
- In 19th century, diplomacy was narrowly defined as negotiations between sovereign states aiming to manage their relations. See (Carrier.R, 1999)

- Diplomatic agents: According to the Vienna Convention on Diplomatic Relations, 1961 "is the head of mission or a member of the diplomatic staff of the mission"
- Diplomats or Ambassadors: are persons who represent their states in other states (may be diplomatic agents or an official at foreign ministry). (Berridge. G& Liloyd. L, 2012)

Introduction & Background:

Diplomacy means that two or more countries start a relationship through diplomats - representatives of their states or temporary ambassadors who may be based at home or in the state with whom the relationship is held. The process of diplomacy starts when one state notifies another about its desire to start a political relationship, and negotiates to send an envoy to represent the country.

States have always needed to have channels to deal with each other.

Diplomacy is a system to manage this contact between the states and is represented by negotiations between agents of states. It is a historical arrangement which is governed by international law(Shaw,2010).

Attacks on diplomats are not a new phenomenon. Although ancient world had always tried to ensure their diplomatic staff have been protected from attack, the lives of envoys have not always been safe and many risked being killed by hosting states during the course of their duties. For example, in ancient Roma, that when another states sent their ambassador to negotiation with Roma. The latter take these diplomats as a hostage and start contact with the sending state, in order to force this state to agree with their agreement or conditions. That means they were not serious in their relations with other states. The life of diplomats was unsafe, that in case this country did not accept this agreement, they will kill this ambassador and declare the war.

In the 1920s and 30s also diplomatic staff were the subject to several attacks. In Marseilles in 1934 King Alexander of Yugoslavia and Jean Louis Barthou, the French foreign minister, were killed in a terrorist attack. (Maria.T, 2005)

According to information released in 1976, "at least 13 diplomatic, quasi-diplomatic and consular persons have been killed since 1947, including five American, five nationals assigned to the United States, one British, one Spaniard and one Turk. Five of these were killed in the Middle East, five in Vietnam, one in Ethiopia, one in Mexico, and one in the Soviet Union". (Maria.T, 2005)

In 1970 17 diplomats were kidnapped which was a clear signal to Western states that this group of people had become the favoured target of terrorists. (Maria.T, 2005)

International law has to deal with the protection of diplomatic and consulate personnel and, for this reason, several conventions have been created. For example, there was the Vienna Convention on Diplomatic Relations 1961. That the Article 29 of this convention states "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". However, this protection is not peace time, but extends to a time of armed conflict. That Article 39 of 1961 convention says "When the functions of a person enjoying privileges and immunities have come to an end, such privileges and immunities shall normally cease at the moment when he leaves the country, or on expiry of a reasonable period in which to do so, but shall subsist until that time, even in case of armed conflict. However, with respect to acts performed by such a person in the exercise of his functions as a member of the mission, immunity shall continue to subsist".

According to the Article 44 of the 1961 convention, that the duty of the host state in armed conflict is facilitate the deportation these diplomats. "The receiving State must, even in case of armed conflict, grant facilities in order to enable persons enjoying privileges and immunities, other than nationals of the receiving State, and members of the families of such persons irrespective of their nationality, to leave at the earliest possible moment. It must, in particular, in case of

need, place at their disposal the necessary means of transport for themselves and their property". On the other hand, in order the diplomats do not prevent from those immunity, they should not - interference in the internal affairs of the host state. Article 41-1 states "Without prejudice to their privileges and immunities, it is the duty of all persons enjoying such privileges and immunities to respect the laws and regulations of the receiving State. They also have a duty not to interfere in the internal affairs of that State". And Article 41-3 states that "The premises of the mission must not be used in any manner incompatible with the functions of the mission as laid down in the present Convention or by other rules of general international law or by any special agreements in force between the sending and the receiving State".

The consular relation followed automatic the diplomatic relations between the states. The Article 2/2 of the Vienna Conventions of Consular Relations in 1963 provides that "the consent given to the establishment of diplomatic relations between two States implies, unless otherwise stated, consent to the establishment of consular relations".

Also according to the Article 27/1 of this convention 1963, that in case of the relations between the sending and host states broke off, the latter has duty to protect the consular premises. That "the receiving State shall, even in case of armed conflict, respect and protect the consular premises, together with the property of the consular post and the consular archives"

A large number of the conventions which dealt with terrorism also dealt with the protection of diplomats in indirect ways.

In the 1960s and 70s international law attempted to solve the problem of terrorism. The Convention Against Terrorism was enacted in 1973, (the Convention On The Prevention And Punishment Of Crimes Against Internationally Protected Persons, Including Diplomatic Agents) was created. This convention granted the diplomatic agents special protection. Article 1/a say " A Head of State, including any member of a collegial body performing the functions of a Head of State under the constitution of the State concerned, a Head of Government or a Minister for Foreign Affairs, whenever any such

person is in a foreign State, as well as members of his family who accompany him;" and Article 1/b

"Any representative or official of a State or any official or other agent of an international organization of an intergovernmental character who, at the time when and in the place where a crime against him, his official premises, his private accommodation or his means of transport is committed, is entitled pursuant to international law to special protection from any attack on his person, freedom or dignity, as well as members of his family forming part of his household"

.Also the Convention Against The Taking Of Hostages was drafted in 1979 to protect the diplomats from any attacks might be occur. Both treaties require the laws of individual states to deal with the problem of terrorism and to enforce proper punishments.

The Sixth Committee of the United Nations General Assembly also attempted to deal with terrorism, but instead of drafting a convention it established an Ad Hoc Terrorism Committee. In 1972 its 35 members met but were unable to decide a common position.

The most important declaration relating to the protection of diplomatic person is the Measures to Eliminate International Terrorism. It was assumed in 1994 by the United Nation General Assembly. In 1979 the International Convention Against Hostage Taking which dealt with the problem of the kidnapping of diplomatic personnel was introduced. This is a serious issue particularly Arabs countries, where attacks on members of diplomatic or consular missions are common.

States may be absolutely responsible for any attacks on diplomatic or consulate staff. However during the revolutions the states lost control.

On the other hand, during the armed conflict diplomats have the protection, according to the international law as we mentioned above and according to the Geneva Convention Related to The Protection of Civilian Persons in Time of War 1949. This convention states that the diplomats regard as a civil person and any attack on them regard international criminal crime. Article 4 of this convention determine the person who has protection that "Persons protected by the Convention are those who at a given moment and in any manner

whatsoever find themselves, in case of a conflict or occupation, in the hands of persons a Party to the conflict or Occupying Power of which they are not nationals. In addition, the Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of international armed conflicts (Protocol I) (with annexes, Final Act of the Diplomatic Conference on the reaffirmation and development of international humanitarian law applicable in armed conflicts dated 10 June 1977 and resolutions adopted at the fourth session). Adopted at Geneva on 8 June 1977. The Article 50 defined the Civil person that " A civilian is any person who does not belong to one of the categories of persons referred to in Article 4 A (1), (2), (3) and (6) of the Third Convention and in Article 43 of this Protocol. In case of doubt whether a person is a civilian, that person shall be considered to be a civilian.

2. The civilian population comprises all persons who are civilians.

3. The presence within the civilian population of individuals who do not come within the definition of civilians does not deprive the population of its civilian character".

This protocol also states the protection of the civilian objective in Article 52. That "Civilian objects shall not be the object of attack or of reprisals. Civilian objects are all objects which are not military objectives as denned in paragraph 2.

2. Attacks shall be limited strictly to military objectives. In so far as objects are concerned, military objectives are limited to those objects which by their nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage.

3. In case of doubt whether an object which is normally dedicated to civilian purposes, such as a place of worship, a house or other dwelling or a school, is being used to make an effective contribution to military action, it shall be presumed not to be so used."



Libyan attack American diplomat



Libyan attack American diplomats

The main aims of this study are:

- 1- To suggest improved ways which govern the protection of an embassy and consulate staff.
- 2- To establish the legally responsible parties of attack on an embassy or consular members in case of revolution.

Research questions:

- 1- Who undertakes the responsibility to protect diplomatic missions and its members?
- 2- Which party is going to be in charge? And whose is task to identify such responsibilities?
- 3- Which statutes we should apply? Is it the local legislation or international conventions?
- 4- Which courts have the jurisdiction?
- 5- What are the reasons of these attacks and of lack in respect of international relations?

Impact of research:

The research is important as, so far, no researcher has investigated the protection of diplomatic staff during the revolution when the government had no control.

The research should examine the history of diplomatic relations, in order to show how diplomacy has developed. The history will also underline the significant role diplomacy has played in solving international conflicts. It will also help to determine the party's responsibility for attacks on diplomatic staff and which statutes should be applied.

Methodological construct:

- Data collection will rely on the qualitative approach.
- Interviews
- The historical Method
- The Theoretical Method:
 - 1- Reciprocity Theory
 - 2- Sovereignty Theory
- Legal Theories
 - 1- Functional necessity theory
 - 2- Representative character theory
 - 3- Extraterritoriality theory
- The legal Method
- The Analytical Method

Conclusion:

States commonly want to conduct relations with each other in order to negotiate political situations and the convergence of views. This will

help to avoid the war or any other conflicts that may occur. However, in case of disagreement or dispute between the countries, the state can declare that their relations have broken off.

Diplomatic relations are forged by envoys who have an important role in political situations with other states. States understand the significance of diplomats and that's why they agree to grant them immunity from attack. Diplomatic agents represent their states; therefore the receiving state should not be compromise their safety and should also protect them from any attack. However, several attacks on diplomatic staff have occurred in different centuries.

Recent events in Arabic countries which have been called Revolutions Arab Spring are regarded as a serious period in which states have lost control and have been unable to protect diplomats. However there have been no laws can be applied to punish the criminals during the revolution.

Several journals reports argued that the attack on diplomats during the revolution is a responsibility of host state, but evidence that the host state contribute with these events or support the criminals will need to approve this responsibility. On the other hand, others papers reports say the host states during the revolution cannot protect nationals how it can defend the sending states envoys, and that need military strong These countries lacked this ability.

According to CRS Report for congress, 2013, it is responsibility of U.S to protect their employ. The Diplomatic Security (D.S) according to the Omnibus Diplomatic Security and Antiterrorism Act of 1986, as amended has obligation to protect all the United State employees abroad.

The international legislation dealt with the responsibility of states to protection the diplomats.

For example, international law provides the diplomatic agents not in peace but also in event of war and international human law that the fourth Geneva Convention relative to the protection of civilian persons in time of war 1949 provides the protection to the diplomatic staff also during the war.

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