



Does diplomatic law really protect?

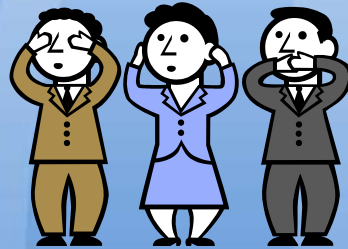
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Compliance with international law

Conventional view

- VCDR and VCCR are complied with internationally.



Realistic view

- Compliance is dependent upon competing interests of the state

Snowden Revelations

- Communications are being monitored regularly
- Is there justification for this monitoring?
- Is it “Might makes right”?

OR

- Are there legitimate justifications?



Khobragade Incident

- Indian Deputy Consul General arrested, strip searched and charged with Visa fraud in New York



- Was this a breach of VCCR?
- Was this a breach of American domestic law?



Is Diplomatic Immunity absolute?

Preamble to VCCR

“Realizing that the purpose of such privileges and immunities is *not to benefit individuals* but to ensure the efficient performance of functions by consular posts on behalf of their respective States”

Preamble to VCDR

“Realizing that the purpose of such privileges and immunities *is not to benefit individuals* but to ensure the efficient performance of the functions of diplomatic missions as representing States”

Domestic Law and International Law

Domestic Law

- Law of the country or state

International Law

- Law of Nations

Monist States

- States where international treaties are automatically also domestic law

Domestic Law and International Law

Dualist State

- State where international treaties are not automatically part of domestic law
- Domestic legislation required for treaty
- USA is dualist
- VCDR implemented by statute 22 U.S. c.§ 254d
- VCCR NOT implemented in the US by statute

VCCR Article 41

Personal inviolability of consular officers

1. Consular officers shall not be liable to arrest or detention pending trial, except in the case of a grave crime and pursuant to a decision by the competent judicial authority.

2. Except in the case specified in paragraph 1 of this article, consular officers shall not be committed to prison or be liable to any other form of restriction on their personal freedom save in execution of a judicial decision of final effect.

Article 43 of VCCR

Immunity from jurisdiction

Consular officers and consular employees shall not be amenable to the jurisdiction of the judicial or administrative authorities of the receiving State in respect of acts performed in the exercise of consular functions.

Article 29 of VCDR

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.

US Domestic Law and International Law

VCCR article 41 not part of American law

- Arrest search and charges not contrary to American law
- Arrest search and charges contrary to international law
- US courts apply American law only
- US court apply treaties, if implemented
- US courts therefore interpret treaties

US Domestic Law and International Law

VCDR Article 41 part of American Law

- Why?
- VCDR is subject of US legislation
- Therefore diplomat entitled to immunity under American law
- Consular officer not entitled to this immunity under American law

Possible justifications for these breaches

Rationale for diplomatic consular protection

- Extra-territoriality
- Interference with duties
- Protection from interference by receiving state

Human Rights versus Diplomatic Law

- JUS COGENS – higher norms of international law
- Human rights law “trumps” diplomatic law

Rome Statute

International Criminal Court

- Article 27 – no immunity based upon position in the government
- Preamble – statute codifies customary law
- All countries have the right and obligation to bring perpetrators to justice
- Jurisdiction not exclusive to ICC

Conflict for Diplomats and Consular Officers

- Does this justify US actions described?
- Are VCCR and VCDR in need of change as a result?

