



Laws Relating To Diplomacy - A Study

KEYWORDS

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Introduction

There will always be room for diplomacy, but in its present form, it is largely an 18th century relic that badly needs re-thinking and refashioning. --Walter Laqueur Diplomacy is a Latin word derived from the word diplomawhich means an official document, is the art and practice of conducting negotiations between representatives of groups or states. It usually refers to international diplomacy, the conduct of international relations. ¹Diplomacy is the means by which States throughout the world conduct their affairs in ways to ensure peaceful relations. The main task of individual diplomatic services is to safeguard the interests of their respective States abroad. This concerns as much the promotion of political, economic, cultural or scientific relations as it does international commitment to defend human rights or the peaceful settlement of disputes. Historically, diplomacy means the bilateral relations among the sovereign countries.² It is a system of official State to State communication and also determines a States power i.e. a State's power is a function of the quality of its diplomacy. It is the quality of diplomacy that gives weight and direction to the other elements of power. The quality of diplomacy is the control centre of a State's power and determines how successful a state will be in bringing about the maximum effect possible from the potential of the individual raw material elements to achieve what is in the state's best interests.³

Diplomacy is an instrument of foreign policy for the establishment and development of peaceful contacts between the governments of different states through the use of intermediaries mutually recognized by the respective parties. Relations between States are based on the policy orientation of each State toward the other.⁴

The international state system which exists today evolved from the Treaty of Westphalia in 1615. This system is structured so that:

- (1) Each sovereign State is equal in stature and standing to every other sovereign state in the system and
- (2) There is no entity superior to the States which can impose order on the system.

As a result, each State has been and remains concerned with assuring its well-being and survival and in doing so must rely first and foremost upon its own efforts. Consequently, throughout history, States have mobilized their resources to increase their power vis-a-vis other States. Within this setting in today's world, diplomats have a key role to play for it is they who are singularly representative of the most important element of a state's power.

The fundamental practices of international diplomacy (e.g.

diplomatic immunity) have remained unchanged over time and have been strictly observed. With the appearance on the scene of non-western states, with differing legal systems, values and religions, there are fears how long the system will be sustainable.⁵

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Diplomatic law governs the conduct of relations between representative organs of a state operating within the territory of another state, and the receiving state. Its purpose is to facilitate international diplomacy, balancing the pursuit of the foreign policy interests of the sending state with respect for the territorial sovereignty of the receiving state. Diplomacy operates at the boundaries between politics and law, and between the internal needs or interests of the state and their explanation in an external "language." It translates state policies and needs into the language of international law. It is therefore deeply bound to the idea of rule-following, and the practice of diplomacy is constituted by the political appeal invested in the idea of "compliance." Diplomacy means providing rule-following explanations for the choices of the state.⁷ One could imagine other moral schedules for diplomacy at other times and places, where the primary value involved reconciling state needs to, say, justice or natural law or sustainability or some other good. Rule-following is the defining feature of modern diplomacy.

One of the least controversial precepts in international law is the inviolability of diplomatic missions, including personnel and communications. Early attempts to formalize this norm include the Congress of Vienna (1815) and the Convention regarding Diplomatic Officers (Havana, 1928). Modern statements, ratified by 187 nations and embedded in customary law are found in the Vienna Convention on Diplomatic Relations (1961). Articles 22, 27, and 29 are unequivocal:

Article 22.

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 or execution.

Article 27.2: The official correspondence of the mission shall be inviolable.

Article 29: 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.

From a [long historical gaze](#), the purpose of such protections is reflective of the international state system itself. Diplomats are the means, the agents, for the proverbial "relations" between States.

The institution of diplomacy

The institution of diplomacy, with its concomitant privileges and immunities, has withstood the test of centuries and proved to be an instrument essential for effective cooperation in the international community, and for enabling States, irrespective of their differing constitutional and social systems, to achieve mutual understanding and to resolve their differences by peaceful means. Diplomatic law is international law that governs permanent and temporary diplomatic missions. Some of the main elements are the immunity of diplomatic staff; the diplomatic mission and its grounds should be secure from assault or trespass i.e. inviolability of the mission/embassy, and the security of diplomatic correspondence and diplomatic bags. It is a principle of customary international law. Because of its practicality it is recognized between States and is followed by nation States as it is based/works on reciprocity.

A diplomatic agent is inviolable a fundamental rule of diplomatic law i.e. the agents enjoy diplomatic immunity which is an exception to the general rule of territorial jurisdiction.⁸ They carry out their functions within the framework of necessary security and confidentiality. However, this does not mean that diplomats should or can flout local laws; they still have to adhere to the local laws of the host State, hence contributing to the balancing of interests. Diplomats should not be detained or arrested, and enjoy complete immunity from criminal prosecution in the receiving State, although there is no immunity from the jurisdiction of the sending state.⁹ If a diplomat commits an offence the host State can declare him or her persona non grata and therefore has to leave the host State. The sending state must recall this person within a reasonable period of time, or otherwise this person may lose their diplomatic immunity.¹⁰

Generally though, the law of diplomatic immunity is normally adhered to because it is visible and is based on principle of reciprocity, if not followed there will be no reciprocity. That is, if the diplomat does not follow the local law the diplomat can be expelled and the same will be reciprocated by expulsion of the diplomat of the host State in the sending State.

Each State that hosts a diplomatic mission has its own embassy in the territory of the sending State. Each State expects its diplomats based in a foreign country abroad, diplomatic bags, embassies and archives, to receive protections provided by international law vis-à-vis the host country expects the same from the sending State. The diplomatic community in one's own country is widely perceived as a major factor in ensuring that there is no erosion of the international law requirements on diplomatic privileges and immunities. Diplomatic Immunity privileges

extend directly from the 1961 Vienna Convention on Diplomatic Relations, or VCDR. The Convention deals with exemptions from criminal as well as civil laws of a host nation in most circumstances. Generally, embassy territory and communications, as well as a diplomatic agent's person and personal property, are considered inviolable under the Convention. Article 31 of the Convention exempts diplomatic agents from the civil and criminal jurisdictions of host states, except for cases in which a diplomatic agent (1) is involved in a dispute over personal real property, (2) has an action involving private estate matters or (3) is in a dispute arising from commercial or professional business outside the scope of official functions.

Conclusion

The ability to practice diplomacy is one of the defining elements of a state, and diplomacy has been practiced since the formation of the first city-states. Originally diplomats were sent only for specific negotiations, and would return immediately after their mission concluded. Diplomats were usually relatives of the ruling family or of very high rank in order to give them legitimacy when they sought to negotiate with the other state.

Due to the difference in size, culture, beliefs etc of the world community, there can be differing interpretations to situations or circumstances, which leads to the importance of diplomats to smoothen out the relations between the States to avoid hostility and in worst case scenarios, avoidance of war. The ability to cast possible solutions to problems in terms which allow for all interested parties to better their situation indicates a keen ability on a diplomat's part not only to disseminate information but also to receive and interpret it.

In effect, recognition by policymakers of the key role diplomats can play in the attempt to control or influence the behaviour of other States reinforces the *raison d'être* of diplomats in a changing world where peaceful resolution of disputes is prized.