



Measures to Enhance the Protection and Safety of Diplomatic Missions and Representatives

by Rebecca Beach
ODU Model United Nations Society

Introduction

Diplomacy, the backbone of all international relations, requires that officials involved maintain a status of *diplomatic immunity*. After the second World War, diplomacy shifted to a new and united goal; to keep the world as a whole, from war. The United Nations is an instrument of this goal, and the thousands of embassies around the world are the boots on the ground that make it happen. But, diplomacy itself is under attack by changing attitude among Member States and change in the very nature of conflict.

The immunity system is under stress from the growing complexity of global diplomacy. The exact number of diplomats is unknown. In the United Kingdom alone, 23,000 foreign officials have diplomatic immunity.¹ There has been a steady rise in embassy and diplomatic attacks since 1979, the year of the most spectacular embassy attack of the contemporary era, the take-over of the US embassy in Tehran, Iran. Since then there have been multiple attacks occurring every single year. In 2018 alone, there were 19 attacks on diplomats and diplomatic missions, mostly in the Middle East, but also in Europe and the United States.² While many of these attacks did little damage, they all currently affect the climate for diplomacy.



After the 1998 al Qaeda bombing of the US Embassy in Nairobi, Kenya

Diplomatic immunity (the freedom of diplomatic missions from interference by a host government) and diplomatic security (freedom from violent attack, physical interference, and interception of private communications) is of highest importance when missions are negotiating resolution of armed conflicts. It also involves freedom from terror attacks. Attacks by al Qaeda terrorists on the US and Israel embassies in Kenya and Tanzania in 1998 killed 223, mostly passers-by.³ After the American-led invasion of Iraq in 2003, diplomatic sites in Baghdad were routinely attacked with mortar and rocket fire. The worst was an attack on the mission of the United Nations that killed 21 international civil servants and injured more than 150. Intended to keep the UN from

¹ 'Harry Dunn crash: What is diplomatic immunity?' *BBC News*, 13 October 2019,

<https://www.bbc.com/news/uk-49984737>

² 'List of attacks on diplomatic missions', *Wikipedia*, n.d.,

https://en.wikipedia.org/wiki/List_of_attacks_on_diplomatic_missions

³ '1998 US Embassies in Africa Bombings Fast Facts', *CNN*, 3 August 2019,

<https://www.cnn.com/2013/10/06/world/africa/africa-embassy-bombings-fast-facts/index.html>



Measures to Enhance the Protection and Safety of Diplomatic Missions and Representatives



resolving the emerging insurgency, the attack succeeded.⁴

When the American Ambassador to Libya was attacked and killed in Benghazi, Libya, in 2012, along with three security personnel, the issue of diplomatic security rose again to the top of the United States' foreign policy agenda.⁵ It also is important to ensure the security of diplomacy against any form of eavesdropping that compromises their confidentiality. Previously, this mostly meant security against intelligence agencies like the US' Central Intelligence Agency (CIA) or Russia's Federal Security Service (FSB). Increasingly, it also means ensuring their security against individuals misusing electronic intercepts for their own purposes, sometimes connected to state agendas, sometimes not.

For the UN General Assembly's Sixth Committee (Legal), no issue is of more immediate interest to official representatives. With diplomatic security, not much can happen. Recent General Assembly sessions sought new ways to protect diplomatic missions and staff. It is a topic of high priority in the 6th committee (Legal), because "protection [is] one of the cornerstones of international relations." Without new tools to enhance diplomat safety, diplomacy will become more dangerous, hard to conduct, and less likely to happen. Nations will continue to fail in their duties to protect embassies within their borders from violence.⁶

Recent Events

⁴ 'UN should never be a target, Baghdad bombing survivors stress, 15 years after deadly attack', *UN News Centre*, 18 August 2018, <https://news.un.org/en/story/2018/08/1016462>

⁵ 'Benghazi Mission Attack Fast Facts', *CNN*, 9 September 2019, <https://www.cnn.com/2013/09/10/world/benghazi-consulate-attack-fast-facts/index.html>

The foundation of diplomatic security is the principle of *extraterritoriality*, first codified in the Treaties of Westphalia in 1648.⁷ Extraterritoriality gives diplomatic personal all the legal protection they would have at home. It means their missions, property and bodies are governed by the domestic law of the country they represent, not the law of their host countries. A diplomat and diplomatic mission from Peru, in Bogotá, Colombia, for example, is legally still in Peru. Extraterritoriality is based on diplomatic *reciprocity*; all governments recognize the extraterritoriality of each other's missions. This ensures their security and freedom from intimidation, their ability to work with confidence.



WikiLeaks founder Julian Assange in the Embassy of Ecuador, London

An example of this principle was the flight of Julian Assange. Famous for organizing the leak of millions of American classified documents in 2010 through his organization, WikiLeaks, he also was charged with rape in Sweden. While

⁶ 'Diplomatic Protection Cornerstone of International Relations, Sixth Committee Speakers Stress, Voicing Concern over Rising Attacks', *UN News Centre*, 18 October 2018, <https://www.un.org/press/en/2018/gal3577.doc.htm>

⁷ 'International Law: Extraterritoriality', *Encyclopaedia Britannica*, n.d., <https://www.britannica.com/topic/diplomatic-immunity>



Measures to Enhance the Protection and Safety of Diplomatic Missions and Representatives



living in London in 2012, he avoided extradition to Sweden for prosecution by fleeing to the Embassy of Ecuador. Although Assange was not an Ecuadorian official and did not have diplomatic immunity, the embassy had extraterritoriality. So long as he stayed there, he could not be arrested by British police. Only in 2019, when the Ecuadorian government changed its policy on Assange, was he forced to leave their embassy, and was immediately arrested by London police.⁸



Embassy of the DPRK (North Korea) in Madrid, guarded by the Spanish National Police

Recent UN action of the issue also was spurred by the 22 February 2019 attack on the North Korea embassy based in Madrid, Spain.⁹ The attack was carried out by a group called “Free Joseon” and involved a raid by ten assailants who proceeded to beat and interrogate the staff inside. They eventually made their escape with all of the computers, files, and personal devices of the staff.¹⁰

The security of foreign embassies is the responsibility of the host government—in this case the Government of Spain—but states are hard pressed to keep up rapidly evolving threats.

⁸ Charlie Savage, Adam Goldman and Eileen Sullivan, ‘Julian Assange Arrested in London as U.S. Unseals Hacking Conspiracy Indictment’, *New York Times*, 11 April 2019, <https://www.nytimes.com/2019/04/11/world/europe/julian-assange-wikileaks-ecuador-embassy.html>

As a result, most foreign missions have their own security arrangements. It is very common for an embassy of a major power like China, Russia or the United States, to have between twenty and forty professional security personnel, often from their militaries. Smaller embassies often hire local security guards.

The Madrid Police were unable to respond immediately, slowed by language problems—they had no staff who spoke Korean—but also by their lack of jurisdiction; legally they could not enter the embassy without explicit permission by the North Korean ambassador. Since he had no authority from his government in Pyongyang, Spanish security personnel could not be admitted.



Near the site where Harry Dunn of the UK was killed by the wife of an American Diplomat who fled the country claiming diplomatic immunity.

This highlights the difficulty states have in responding to these situations. The concept of more free reign response to disturbances within embassies leaves the possibilities for many legal loopholes that nations could take to interfere with internal matters within residing consulates.

⁹ ‘North Korean Embassy in Madrid raid’, *Wikipedia*, n.d., https://en.wikipedia.org/wiki/Raid_on_the_North_Korean_embassy_in_Madrid

¹⁰ ‘What happened at North Korea's embassy in Spain?’ *BBC News*, 13 March 2019, <https://www.bbc.com/news/world-europe-47553804>



Measures to Enhance the Protection and Safety of Diplomatic Missions and Representatives



The ability for host nations to falsify their reasonings to gain access to a mission and its documents poses a real threat to the National Security of all nations, especially for citizens who work outside of their borders. If local police forces were able to enter embassies without permission from that nation, the possibilities of infiltrations, attacks, and illegal gains of foreign documents would be undoubtedly high.

While protecting diplomatic missions is essential, there is a cost. Diplomatic missions, as the sovereign territory of a foreign country, are ripe for misuse of diplomatic immunity. Missions can be misused for crime, protection of criminals or terrorists. There have been many incidents of embassies becoming a center of attacks. In 2018, the Saudi Arabia Consulate (a mission below an embassy, mostly dedicated to providing diplomatic services for citizens and travelers) in Istanbul, Turkey, was the scene the killing of a Saudi dissident, Jamal Ahmad Khashoggi. The suspects—officials from Saudi intelligence agencies—were able to leave Turkey normally; Turkey was unable to stop them under extraterritoriality.¹¹ Extraterritoriality is a very strong element of international law, so diplomatic personnel accused of violent attacks almost always are allowed to return home.

Recent UN Responses

The keystone document for diplomatic immunity and protection is *The Vienna Convention on Diplomatic Relations* of 1961. After bitter negotiations, with states disagreeing on the extent of diplomatic immunity, a compromise emerged restricting the privileges of immunity exclusive to diplomats, their families, and staff.

¹¹ 'When Embassies Become Places of Terror: A Look Back at Horrific Incidents in History', *Associated Press*, 15 August 2018, <https://www.haaretz.com/world-news/when-embassies-become-places-of-terror-a-look-back-at-horrific-incidents-in-history-1.6566392>

The Convention focuses only on permanent (long term) envoys. It does not offer protection to visiting officials and other *ad hoc* representatives or other internationally protected persons, nor does it give immunity to individuals granted asylum in a diplomatic mission. For example, when the wife of an American official in the United Kingdom killed a driver in a traffic accident, she did not have diplomatic immunity. This right was asserted by President Donald Trump, but actual terms would have to be negotiated.¹²

With many specific issues to be resolved at its 73rd session in 2018, the General Assembly Sixth Committee (Legal) was the scene of intense debate on the security of diplomatic missions. Consideration was initiated under the co-sponsorship of Denmark, Finland, Iceland, Norway, and Sweden (the Nordic Five). The Committee reviewed the Secretary-General's recent report on diplomatic security and found renewed drive to seek more protections for diplomatic missions.

Overall consensus was found on the need for states to "strictly observe and enforce relevant customary international law and treaty law" over delegations and diplomatic offices within their borders. After long discussion through three committee meetings, the body introduced the draft resolution entitled "Consideration of effective measures to enhance the protection, security and safety of diplomatic and consular missions and representatives". It was adopted without a vote (by consensus) in that same meeting. The consensus—showing no opposition—revealed the extent of international

¹² Amy Woodyatt and Martin Goillandeau, 'UK says diplomatic immunity for US suspect in teen's death 'no longer pertinent'', *CNN*, 13 October 2019, <https://edition.cnn.com/2019/10/13/uk/harry-dunn-immunity-intl-gbr-scli/index.html>



Measures to Enhance the Protection and Safety of Diplomatic Missions and Representatives



agreement, but also that the resolution had been diluted to avoid controversy.¹³

Under the terms of the draft resolution, the General Assembly would, *inter alia*, strongly condemn all acts of violence against diplomatic and consular missions and representatives, as well as against missions and representatives to intergovernmental organizations and officials of such organizations, and emphasizes that such acts can never be justified. The Assembly would also urge States to strictly observe, implement and enforce, including during a period of armed conflict, all the applicable principles and rules of international law.¹⁴

The resolution reaffirms basic principles of diplomatic immunity, above all the need to ensure the security of diplomatic communications and records. Diplomatic Missions and Member States hosting them are expected to “to strictly comply with the applicable rules of international law governing the protection and inviolability of premises of diplomatic missions, consular premises and premises of permanent missions with diplomatic status to international intergovernmental organizations.”



The US Marine Security Guard Detachment welcomes Ambassador Maria Brewer to the U.S. Embassy Freetown, Sierra Leone, 2017

Country and Bloc Positions

The best source of insight into Member State positions of this issue is their own statements in recent deliberations.¹⁵ Not all countries have engaged these deliberations. For example, China is notable by its absence. Their national positions are readily appreciated from the following examples:

European Union (EU), strongly condemns attacks against diplomatic and consular missions, especially those against German premises and equipment in Afghanistan and the Austrian embassy in Libya. Any kind of violent act against diplomatic and consular missions or their staffs can never be justified, wherever they occur. Adding that the physical safety of diplomatic and consular missions and representatives, which is a prerequisite for their smooth functioning, is a common interest and

¹³ ‘Consideration of effective measures to enhance the protection, security and safety of diplomatic and consular missions and representatives (Agenda item 84)’, UN General Assembly, 2018, https://www.un.org/en/ga/sixth/73/protection_of_diplomats.shtml

¹⁴ Consideration of effective measures to enhance the protection, security and safety of diplomatic and

consular missions and representatives, UN General Assembly resolution 71/145, 20 December 2016, <https://undocs.org/A/RES/71/145>

¹⁵ ‘Diplomatic Protection Cornerstone of International Relations, Sixth Committee Speakers Stress, Voicing Concern over Rising Attacks’, UN News Centre, 18 October 2018, <https://www.un.org/press/en/2018/gal3577.doc.htm>



Measures to Enhance the Protection and Safety of Diplomatic Missions and Representatives



must be secured, he urged all States concerned to bring perpetrators to justice.

EU Member States believe that Host States have a special duty to take all appropriate steps to protect diplomatic missions and consular premises under the Vienna Convention on Diplomatic Relations of 1961 and the Vienna Convention on Consular Relations of 1963, he continued. Particular attention must be paid to threats posed by terrorists and other armed groups, as attested by events that occurred in Somalia and Afghanistan. As well, diplomatic and consular staffs are under a duty to comply with their respective obligations under the Vienna Conventions, especially their obligation to respect laws and regulations of their host States.

Iran notes that the most serious violations are not of diplomatic immunity, but humanitarian law. The UN should focus more on humanitarian violations, especially those against the ‘Palestinian occupied territory’. The country referred to by Iranian officials as ‘the occupying power’, they say continues to refuse to observe its various obligations under the Geneva Convention and relevant Security Council resolutions. “The result of these breaches has been severe suffering of civilians,” he added. Similarly, the war in Yemen shows that the most important issue is foreign military intervention, which Iran says causes immense human suffering.

Non-Aligned Movement (NAM): The UN’s largest voting bloc, the 120-Member State NAM sees the issue in terms of tension between the exaggerated rights of former colonial powers and the needs of emerging governments of newly independent countries still coping the legacy of colonial rule. For example, Cuba, sees violations of diplomatic immunities largely as the work of former colonial powers. These violations not only have a negative impact on relations between States, but also constitute a

flagrant violation of the Vienna Conventions. Stopping illegal attacks by covert colonial security services is their first goals.

Other NAM leaders, led by Egypt, stress *humanitarian rules* relating to the protection of victims in armed conflicts. Protecting diplomats is vital, note NAM members, but so is protecting civilians whose lives are harmed by the inhumane action of enemy governments, especially Israel. All such violators must be urged to comply fully with the provisions of international humanitarian law. Arab Member States and many supportive governments are most concerned over the situation in the occupied State of Palestine. International humanitarian law and human rights law, they maintain, are essential to finding a peaceful solution to the Israeli-Palestinian conflict.

Russian Federation: is concerned with the degradation in the past two years by some States regarding universally recognized norms. Russian officials note the acts of the United States authorities illustrate this. The United States, they say, during the period from December 2016 to April 2018 took a range of provocative hostile measures against a number of Russian official missions, property, staff and family members. These measures sought to expel Russian official mission staff and families from the premises that they occupy on lawful grounds. On 29 December 2016, the United States State Department notified the Russian Federation Embassy on the withdrawal of consent to use for official business part of the premises in Washington D.C. and part of the Mission in New York. The problem has been under consideration by the Committee on Relations with the Host Country for two years. These actions are a gross violation of diplomatic and consular law and are incompatible with the United Nations Charter and the Union of Soviet Socialist Republics and United States Consular Convention of 1964. If this course of action is normal, then diplomatic missions will not be



Measures to Enhance the Protection and Safety of Diplomatic Missions and Representatives



able to operate. A bad example is contagious, he said.

The United States has stressed the importance of protecting diplomats from harmful acts by non-State actors. Noting the increasing incidence of events like the Benghazi attacks. As the nature and circumstances of attacks on diplomatic and consular personnel have evolved, preventive and protective measures must also adapt. Any steps that are necessary to protect a diplomatic or consular mission will depend on potential threats. The United States seeks to ensure that all its diplomats benefit from enhanced security training and good practices to help mitigate the risks its personnel face every day. Moreover, the US relies on collaboration with its partners in host States to facilitate protection and prevention. Its diplomatic and consular missions overseas often work with local law enforcement and other authorities to prepare for eventualities by conducting drills and sharing information when appropriate.

Proposals for UN Action

The following is a list of widely debated options for international action to enhance diplomatic immunity and security. The list is not comprehensive, but intended only as a starting point for Member States as they try to address the problems facing the global community:

Call on Member States to reaffirm their obligations to ensure the diplomatic immunity of diplomatic missions. If nothing else, Member States should be able to agree on such a basic statement. But some Member States may find such action disappointing and insist on stronger action. Opposition is likely, though, from Member States more concerned with criticizing specific adversaries, unwilling to offer them a veil of principles behind which to defend themselves.

Measures to ensure the security of diplomatic missions from attack by non-government actors. Ensuring the physical security of diplomatic missions is a major problem for host governments, who typically have one to two hundred foreign missions in their national capital, and often hundreds more consular offices elsewhere on their territory. Foreign governments usually prefer to make their own security arrangements, but must rely on host government as well, especially for services like fire protection and heavy security measures. When threats come from protestors, private groups or unorganized mobs, host government must play a bigger role. But that should that role be? What can host governments do without undermining the self-governance of diplomatic missions? And who pays the expense?

Shift security costs to host governments, making them responsible for basic arrangements. This approach is a logic development of “My Country First” approaches, trying to shift the burdens of international diplomacy to others. This will be difficult for poorer governments and unsatisfactory to others, who expect greater security preparations for their missions. Exceptions will have to be made for unique national requirements. A special fund to help poorer governments would have to be established, including a source of funds and system for distributing them

Shift security costs to foreign missions, making them responsible for basic arrangements. This will require host governments to yield more sovereign power to foreign missions, allowing the latter to bring bigger security forces and regulate more of their own communications, possibly including control of the streets surrounding diplomatic missions. This might appeal to wealthier states that can afford the cost and benefit from the power and control. It will be difficult for poorer governments, which normally expect host governments to take care of basic security



Measures to Enhance the Protection and Safety of Diplomatic Missions and Representatives



services. A special fund to help poorer governments would have to be established, including a source of funds and system for distributing them.

Focus not on universal principles, but specific Member States. Many Member States see the UN primarily as a place to attack and belittle their adversaries, not for reform of universal principles. Rather than addressing the need for reform throughout the international system, it might be preferred to target UN attention on specific Member States whose actions are felt to

be arbitrary, disruptive or dangerous. These member States, by failing to uphold global normative principles of diplomatic immunity and impartiality, can be addressed specifically, called to reform their laws, regulations or policies. Iran, Russia, and Syria, for example, has been at the forefront of effort to criticize the United States for restricting its diplomats or revoking their diplomatic immunity and demanding they leave the country (by being declared *Persona non grata*, Latin for ‘Person not appreciated’, or PNG).

Bibliography

Associated Press, 2018. ‘When Embassies Become Places of Terror: A Look Back at Horrific Incidents in History’, *Associated Press*, 15 August 2018, <https://www.haaretz.com/world-news/when-embassies-become-places-of-terror-a-look-back-at-horrific-incidents-in-history-1.6566392>

BBC, 2019. ‘What happened at North Korea's embassy in Spain?’ *BBC News*, 13 March 2019, <https://www.bbc.com/news/world-europe-47553804>

BBC, 2019. ‘Harry Dunn crash: What is diplomatic immunity?’ *BBC News*, 13 October 2019, <https://www.bbc.com/news/uk-49984737>

CNN, 2019. ‘1998 US Embassies in Africa Bombings Fast Facts’, *CNN*, 3 August 2019, <https://www.cnn.com/2013/10/06/world/africa/africa-embassy-bombings-fast-facts/index.html>

CNN, 2019. ‘Benghazi Mission Attack Fast Facts’, *CNN*, 9 September 2019, <https://www.cnn.com/2013/09/10/world/benghazi-consulate-attack-fast-facts/index.html>

Encyclopaedia Britannica, n.d. ‘International Law: Extraterritoriality’, *Encyclopaedia Britannica*, n.d., <https://www.britannica.com/topic/diplomatic-immunity>

Savage, Charlie, Adam Goldman and Eileen Sullivan, 2019. ‘Julian Assange Arrested in London as U.S. Unseals Hacking Conspiracy Indictment’, *New York Times*, 11 April 2019, <https://www.nytimes.com/2019/04/11/world/europe/julian-assange-wikileaks-ecuador-embassy.html>



Measures to Enhance the Protection and Safety of Diplomatic Missions and Representatives



UN General Assembly, 2018. ‘*Consideration of effective measures to enhance the protection, security and safety of diplomatic and consular missions and representatives (Agenda item 84)*’, UN General Assembly, 2018, https://www.un.org/en/ga/sixth/73/protection_of_diplomats.shtml

UN General Assembly, 2016. *Consideration of effective measures to enhance the protection, security and safety of diplomatic and consular missions and representatives*, UN General Assembly resolution 71/145, 20 December 2016, <https://undocs.org/A/RES/71/145>

UN News Centre, 2018. ‘UN should never be a target, Baghdad bombing survivors stress, 15 years after deadly attack’, *UN News Centre*, 18 August 2018, <https://news.un.org/en/story/2018/08/1016462>

UN News Centre, 2018. ‘Diplomatic Protection Cornerstone of International Relations, Sixth Committee Speakers Stress, Voicing Concern over Rising Attacks’, *UN News Centre*, 18 October 2018, <https://www.un.org/press/en/2018/gal3577.doc.htm>

Wikipedia, n.d. ‘List of attacks on diplomatic missions’, *Wikipedia*, n.d., https://en.wikipedia.org/wiki/List_of_attacks_on_diplomatic_missions

Wikipedia, n.d.. ‘North Korean Embassy in Madrid raid’, *Wikipedia*, n.d., https://en.wikipedia.org/wiki/Raid_on_the_North_Korean_embassy_in_Madrid

Woodyatt, Amy, and Martin Goillandeau, 2019. ‘UK says diplomatic immunity for US suspect in teen's death 'no longer pertinent', *CNN*, 13 October 2019, <https://edition.cnn.com/2019/10/13/uk/harry-dunn-immunity-intl-gbr-scli/index.html>