**NOTE 12: INVIOLABILITY OF DIPLOMATIC MISSION**

**12.0. INTRODUCTION**

During the last class, we discussed the Importance of Diplomatic Missions, essentially, their functions. From the recognised functions of a diplomat, we derived the corresponding functions of the diplomatic missions, which include protection of national interests, negotiation, reporting, and promotion of friendly relations. We also said that Diplomats enjoy inviolability (of the Diplomat, his/her premises and vehicle), immunity of jurisdiction, and tax exemption. However, this does not mean impunity in case they break the local law: they can be recalled by their governments and prosecuted in their home countries, or they can be declared ‘**persona non grata’** and be expelled. Today, the subject of **Inviolability of Diplomatic Missions** is our focus.

**12.1. WHAT IS INVIOLABILITY?**

It means prohibiting violation; secure from destruction, violence, infringement, or desecration. For example, an inviolable sanctuary/premise; an inviolable promise. It also refers to incapable of being violated; incorruptible; unassailable: inviolable secrecy. In diplomatic practice, inviolability applies to persons and property of the diplomats and everything that belongs to them.

**Article 22** of the **1961 Vienna Convention on Diplomatic Relations** states three areas that cannot be violated, as follows:

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 23**

1. The sending state and the head of the mission shall be exempt from all national, regional or municipal dues and taxes in respect of the premises of the mission, whether owned or leased, other than such as represent payment for specific services rendered.

[Article 22 of the Vienna Convention on Diplomatic Relations which deals with the inviolability of the diplomatic mission premises. The Article expresses that along with the premises of mission being inviolable, the agents of the receiving state may not enter them, except with the consent of the head of the mission. Under the Article, the receiving is under a special duty to take all appropriate measures to protect the premises of the mission and to prevent any disturbance of the peace of the mission or impairment of its dignity. Lastly, the Article states that 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]. (<https://opil.ouplaw.com/view/10.1093/law/9780198703969.001.0001/law-9780198703969-chapter-20>). Accessed April 6, 2020]

**12.2. INVIOLABILITY OF MISSIONS**

**MISSIONS**

Official premises (\*), their furnishings and other contents therein, the mission’s archives (wherever they may be), the means of transport of the mission are, in principle, immune from search, requisition, legal attachment or execution.

However, in the event of a fire or any other accident on the premises of a consular post that require immediate protective measures, approval of such measures by the head of the consular post shall be taken for granted.

**OFFICIAL CORRESPONDENCE** is immune from requisition.

The archives and official documents of a consular post headed by an honorary consular officer are inviolable at any time and wherever they may be, provided that they are kept separate from other papers and documents and, in particular, from the private correspondence of the head of a consular post and of any person working with him, and from the materials, books or documents relating to their profession or trade (Vienna Convention on Consular Relations, Article 61).

**DIPLOMATIC AND CONSULAR BAGS** should enable Governments to correspond with the Missions and the Missions to exchange correspondence in sealed bags. The bags, which may only contain correspondence, official documents or articles for official use, must bear visible external marks of their character together with the seal of the sending state (or of the mission) to ensure bags are sealed inviolably.

Diplomatic and consular bags may not be opened, detained, controlled electronically or X-rayed. “Nevertheless, as regards the consular bag, if the competent authorities of the receiving State have serious reason to believe that the bag contains something other than the correspondence, documents or articles referred to [in the VCCR of 1963], they may request that the bag be opened in their presence by an authorised representative of the sending State.” (VCCR, Article 35(3)., Vienna, 1963).

Diplomatic bags passing through a third state travel in the same conditions provided they are identifiable as such.

The employee or “courier” who carries the bag is provided with an official document certifying its diplomatic or consular character and guaranteeing its inviolability and that of the courier until he has delivered to the consignee the bag in his charge.

It must be clearly shown that the sender or the consignee of such bags is an Embassy or a consular post.

A diplomatic or consular bag may be entrusted to the captain of an aircraft, provided he has been furnished with an official document indicating the number of packages constituting the bag.

**12.3. INVIOLABILITY OF THEIR AGENTS**

**AGENTS**

Agents entitled to immunity:

* Diplomatic agents
* administrative and technical staff
* career consular officers
* their families

DIPLOMATIC AGENTS, the administrative and technical staff of an Embassy, as well as their families, enjoy **full diplomatic privileges and immunities**. They are thus not liable to arrest or detention.

Career consular officers are not liable to arrest or detention pending trial, except in the case of a grave crime and pursuant only to a decision by the competent judicial authority - VCCR, 1963, Art.41(1). They shall not be committed to prison save in execution of a judicial decision of final effect - VCCR, 1963, Art.41(2).

**THE PRIVATE RESIDENCE** of the diplomats and administrative and technical staff of an Embassy is not liable to any form of investigation on the part of any government service (police, customs, judicial authorities, etc.) save express authorisation from the head of the diplomatic mission.

**THE PERSONAL LUGGAGE OF DIPLOMATS**, career consular officers and their families are exempt from Customs inspection unless there are serious grounds for believing that it contains articles not intended for the official use of the mission or their personal use, or articles the import or export of which is prohibited (in this case the inspection is carried out in the presence of the agent or of his/her authorised representative).

Honorary consular officers, Embassy administrative and technical staff and consular employees are not entitled to this exemption.

**The documents, correspondence and private property** of a diplomat or of a member of an Embassy’s administrative and technical staff are not liable to requisition save under exceptional circumstances, when an action is brought against him/her and when it relates to private immovable property situated, for example, on Nigerian territory, to a succession in which the diplomatic agent is involved as executor, administrator, heir or legatee, or to any professional or commercial activity exercised in Nigeria outside his/her official functions [- VCDR, 1961, Art.31(1).]

**12.4. OCCURRENCE OF VIOLABILITY**

This is an exception to the principle of the Vienna Convention. Incidences of violation of diplomatic missions have occurred in some countries under certain circumstances. For instance, in Iran (1979), Libya ( ), Iraq (2019). In all the three cases, the United States embassies were occupied, damaged, and certain diplomats killed. This was unacceptable to the diplomatic community

**12.5. INVIOLABILITY**

| **Functions** | **Physical integrity** | **Private residence** | **Personal luggage** | **Private documents, correspondence and property** |
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| Diplomatic agents and their families | Not liable to arrest or detention | Not liable to administrative investigation except with express authorisation from head of mission | Exempt from Customs inspection unless there is serious ground for it - VCDR, 1961, Art.36(2) | Enjoy inviolability, allowing for exceptions - VCDR, 1961, Art.30(2) |
| Career consular officers and their families | Liable to arrest or detention in the case of grave crime, in execution of a judicial decision. Imprisonment in execution of a judicial decision of final effect | Possible administrative investigation | Exempt from Customs inspection unless there is serious ground for it - VCCR, 1963, Art.50(3) | Enjoy inviolability, allowing for exceptions (VCCR, 1963, Art.50) |
| Administrative and technical staff | Not liable to arrest or detention | Not liable to administrative investigation except with express authorisation from head of mission | Inspection by Customs possible | Enjoy inviolability, allowing for exceptions - VCDR, 1961, Art.30(2) |

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