

## INVIOABILITY DOCTRINE IN INTERNATIONAL LAW

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We often encounter the expression `inviolable` while studying the theme of immunities and privileges. Scholars define "inviolable" as a set of legal relations that are protected from violation by other subjects of law.<sup>1</sup> The inviolability of diplomatic premises is a core principle in international law that governs the conduct of states and their representatives in foreign territories<sup>2</sup>. This principle is enshrined in the Vienna Convention on Diplomatic Relations (VCDR) of 1961<sup>3</sup> and has been widely accepted by states, becoming a cornerstone of diplomatic practice and international relations. This article will discuss the role of inviolability of diplomatic premises in both international and domestic law, as well as the challenges and controversies surrounding its application.

When it comes to the inviolability of international organizations and special missions, the term is usually used to refer to protection from unauthorized entry into their buildings, as well as protection against the examination of their archives and data without their permission or consent.

To fully understand the concept of diplomatic immunity, it is essential to have a clear understanding of the concept of inviolability, which is a fundamental aspect of immunities and privileges. It is worth noting that basic diplomatic immunities and privileges are granted automatically from the moment of arrival on the territory of another state, regardless of the existence of any special agreements. The principle of personal inviolability remains a cornerstone of diplomatic law, and diplomatic immunity is granted to subjects of modern international law who possess the key feature of inviolability.<sup>4</sup>

To understand the significance of inviolability in international law, it is necessary to examine its relationship with the term "immunity". As previously mentioned, immunity refers to a set of privileges and immunities granted to a subject of international law engaged in foreign relations. These privileges include a range of special personal rights and benefits that facilitate the work of foreign representatives.<sup>5</sup> Inviolability, on the other hand, refers to the exemption of diplomatic agents and their premises from the administrative, criminal, and civil jurisdiction of the host state.

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<sup>1</sup> William Worster, *Cases and materials on the Law of International organizations*, Abingdon , Oxon New York, Routledge, 2021. P 450, p-309.

<sup>2</sup> Berridge, G.R. (2010). *Diplomacy: Theory and Practice*. Basingstoke: Palgrave Macmillan.

<sup>3</sup> Vienna Convention on Diplomatic Relations, Apr. 18, 1961, 23 U.S.T. 3227, 500 U.N.T.S. 95. Retrieved from [https://www.un.org/ru/documents/decl\\_conv/conventions/dip\\_rel.shtml](https://www.un.org/ru/documents/decl_conv/conventions/dip_rel.shtml)

<sup>4</sup> Rene` Vark "Personal Inviolability and Diplomatic Immunity in Respect of Serious Crimes". University of Tartu. JURIDICA INTERNATIONAL VIII 2003. P-111. [https://juridicainternational.eu/public/pdf/ji\\_2003\\_VIII\\_110.pdf](https://juridicainternational.eu/public/pdf/ji_2003_VIII_110.pdf)

<sup>5</sup> I. S. Iskevich, A. V. Podolsky "DIPLOMATIC AND CONSULAR LAW". Publishing house of FGBOU VPO "TSTU. Tambov 2014. P-39. // И. С. Искевич, А. В. Подольский «ДИПЛОМАТИЧЕСКОЕ И КОНСУЛЬСКОЕ ПРАВО». Издательство ФГБОУ ВПО «ТГТУ. Тамбов 2014. Стр-39.

In international law, the inviolability of diplomatic premises is rooted in the concept of state sovereignty<sup>6</sup>. The VCDR<sup>7</sup> establishes the inviolability of diplomatic premises, declaring that they "shall be inviolable" and that the "agents of the receiving State may not enter them, except with the consent of the head of the mission."<sup>8</sup> This principle is intended to protect the functioning of diplomatic missions and to maintain the independence, dignity, and equality of states<sup>9</sup>.

The inviolability of diplomatic premises also extends to the protection of diplomatic personnel and their families<sup>10</sup>, as well as diplomatic archives and documents<sup>11</sup>. This protection allows for the safe and effective conduct of diplomatic relations, as well as the preservation of state secrets and sensitive information.

However, the inviolability of diplomatic premises is not absolute and can be subject to certain exceptions and limitations<sup>12</sup>. For instance, in cases of a breach of diplomatic relations or a threat to the security of the premises, the receiving state may take necessary protective measures<sup>13</sup>. Additionally, the sending state is obliged to respect the laws and regulations of the receiving state and not interfere in its internal affairs<sup>14</sup>.

Inviolability is divided into personal inviolability (inviolability of the members of the missions), inviolability of premises of the missions, inviolability of the correspondence, archives and documents, which are accepted as imperative norms<sup>15</sup>.

Firstly, inviolability should be analyzed as an aspect of personal inviolability. Subjects of modern international law (diplomatic agents<sup>16</sup>) enjoy complete personal inviolability, which means that they may not be handcuffed (except in extraordinary circumstances), arrested, or detained; and neither their property (including vehicles) nor residences may be entered or searched<sup>17</sup>.

Secondly, if personal inviolability is accepted as individual and as spreading immunity to their property, the purpose of inviolability of the premises is related to freedom and security in the exercise of functions. The classic reason why a receiving state grants inviolability to a

<sup>6</sup> Shaw, M.N. (2017). *International Law*. Cambridge: Cambridge University Press.

<sup>7</sup> Vienna Convention on Diplomatic Relations, Apr. 18, 1961, 23 U.S.T. 3227, 500 U.N.T.S. 95. Retrieved from [https://www.un.org/ru/documents/decl\\_conv/conventions/dip\\_rel.shtml](https://www.un.org/ru/documents/decl_conv/conventions/dip_rel.shtml)

<sup>8</sup> *Ibid.*, Article 22(1).

<sup>9</sup> Denza, E. (2016). *Diplomatic Law: Commentary on the Vienna Convention on Diplomatic Relations*. Oxford: Oxford University Press.

<sup>10</sup> Vienna Convention on Diplomatic Relations, Apr. 18, 1961, 23 U.S.T. 3227, 500 U.N.T.S. 95. Article 29. Retrieved from [https://www.un.org/ru/documents/decl\\_conv/conventions/dip\\_rel.shtml](https://www.un.org/ru/documents/decl_conv/conventions/dip_rel.shtml)

<sup>11</sup> *Ibid.*, Article 24.

<sup>12</sup> Denza, E. (2016). *Diplomatic Law: Commentary on the Vienna Convention on Diplomatic Relations*. Oxford: Oxford University Press.

<sup>13</sup> Vienna Convention on Diplomatic Relations, Apr. 18, 1961, 23 U.S.T. 3227, 500 U.N.T.S. 95. Article 45. Retrieved from [https://www.un.org/ru/documents/decl\\_conv/conventions/dip\\_rel.shtml](https://www.un.org/ru/documents/decl_conv/conventions/dip_rel.shtml)

<sup>14</sup> *Ibid.*, Article 41(1).

<sup>15</sup> Ya.A.Usikova "Diplomatic immunities and privileges: history and modernity" "Belgorod State National Research University". Belgorod 2018. Page-12. // Я.А.Усикова «Дипломатические иммунитеты и привилегии: история и современность» «Белгородский государственный национальный исследовательский университет». Белгород 2018. Стр-12.

<sup>16</sup> According to Article 1 of the Vienna Convention on diplomatic relations from 1961 a "diplomatic agent" is the head of the mission or a member of the diplomatic staff of the mission.

[https://legal.un.org/ilc/texts/instruments/english/conventions/9\\_1\\_1961.pdf](https://legal.un.org/ilc/texts/instruments/english/conventions/9_1_1961.pdf)

<sup>17</sup> *Diplomatic and Consular Immunity: Guidance for Law Enforcement and Judicial Authorities*. United States Department of State Office of Foreign Missions Washington, D.C. 20522-2008. Revised August 2018.

sending state is to permit the sending state the freedom to use the premises of its mission for the purposes of the mission's functions in the manner of the sending state's own choosing (the franchise de l'hotel)<sup>18</sup>.

The principle of inviolability is emphasized by the provisions of Articles 44 and 45 of the 1961 Vienna Convention (as well as Articles 26 and 27 of the 1963 Vienna Convention). These provisions require that both the members of a diplomatic mission and the premises, property, and archives of the mission be respected by the receiving state, even in the event of armed conflict or a breach in diplomatic relations. However, it should be noted that the observance of this principle does not prevent a diplomatic agent who is caught committing a crime from being briefly arrested by the police of the receiving state to prevent the commission of the particular crime. The Applicant Government acknowledges this fact.<sup>19</sup>.

In conclusion, the inviolability of diplomatic premises is a fundamental principle in international and domestic law that serves to protect the conduct of diplomatic relations between states. While the principle is not without its challenges and controversies, it remains a vital component of the international legal order and the peaceful resolution of disputes between nations.

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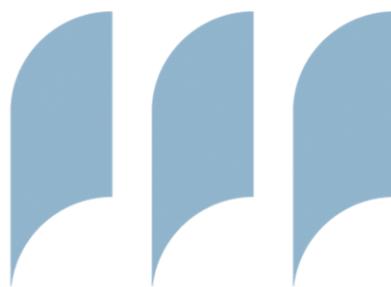
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<sup>18</sup> Carl Islam "The inviolability of diplomatic and consular premises" Exon (Article p-4).

<sup>19</sup> William R. Slomanson "Fundamental Perspectives on International Law" International Relations Western State University – Son Diego. P-180-181.

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