

The inviolability of the diplomatic premises in case of emergency

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By virtue of the 1961 Vienna Convention on Diplomatic Relations (“VCDR”), 1963 Vienna Convention on Consular Relations (“VCCR”) and customary international law diplomatic premises are inviolable. [9] Although any entrance into the premise without consent of the mission is highly controversial, it may be justified in certain limited circumstances, [3] for instance, if an emergency imperiling human lives occurs. However, there is no clear definition of such circumstances, because, as the International Law Commission stated, it would lead to more controversy than it would avoid. [6] Mostly, delegations are of the opinion that it would be dangerous to allow foreign states to judge when circumstances require their assistance. Therefore, heads of the missions decide on this matter in each case.

On the one hand, the VCDR is silent on the subject, and even though its preliminary drafts addressed the entrance in emergency, [5] these provisions were deleted from the final version of the treaty. On the other hand, article 31.2 of the VCCR states that agents of the receiving state may enter into the premise in case of a “disaster” requiring their prompt protective actions. [10] The issue, which causes interest, concerned the scope of these disasters, that may include several occasions.

Firstly, the VCCR specifies that fire in the premise falls under the definition of emergency. On the UN meeting on the inviolability of diplomatic premises delegations mostly agreed that in such a case the consent of the head of the mission to allow agents of the receiving state should be assumed. [7] However, in the Vienna Conference’s debates amendments of cooperation between heads of the missions in case of fire were withdrawn. [12] Furthermore, state practice shows that delegations will prefer to protect their archives than co-operate with foreign emergency services. The reason for that may be illustrated with an incident in 1977 where during a fire in the US Embassy in Moscow several firemen proved to be KGB agents sent for gathering information.

Secondly, emergency situations may include actions directed against members of the receiving state. [4] In such a case, interference into the embassy may be justified under the principle of self-defence (which is in harmony with international law). It was taken into consideration in an incident where in 1984 the UK searched in the Libyan Embassy after the local policewoman was shot from the premise. In fact, the principle of self-defence was not used as a justifiable ground for entry. Although the search was declared essential for the protection of the UK police, [4] the 1984 events were considered insufficient to meet the test of necessity for self-defence, which must leave no choice of means and moment for deliberation. [2, 8]

Thirdly, some argue that cyber-attacks may constitute an emergency. [13] But such an artificial disaster can hardly fall under this definition, because the VCCR was drafted in an age, which had not seen the advent of computers or computer viruses. On the contrary, the dictionary meaning of a word “disaster” is not limited by natural disasters, but also includes men-made ones. [1] Hence, cyber-attacks, that freeze computers’ availability and require prompt actions, can be interpreted as emergency situations. In such a case, agents of the receiving state may enter the premises to shut down their computers and communication lines, until the problem is solved. From another point of view, cyber-attacks are only about information and

financial loss, what does not satisfy the VCCR criterion of threat to human lives. Furthermore, article 22.3 of the VCDR safeguards the inviolability of premises and immunizes them from, *inter alia*, requisition, attachment or execution. [11] Therefore, the agents of receiving state may shut down communication lines and computers in the premise only if an attack relates to cyber-crime, that endangers human lives.

To conclude, only the Vienna Convention on Consular Relations and *opinion juris* provide grounds for entry into the embassy in several emergency situations. There are still many disagreements regarding entrance in case of fire or using of self-defence principle to justify actions of the receiving state. The situation with cyber-attacks is even more complicated, since it appears to be a new threat to diplomatic and consular activity. Furthermore, existing state practice is still inconsistent and insufficient in all of the cases. Hence, it is for us to wait and follow future state practice, which will probably form in the years to come.

Источники и литература

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