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Consideration of effective measures to enhance the protection, security and safety of diplomatic and consular missions and representatives

Report of the FEMUN Secretary-General

Summary

The present report summarizes the analysis on the efficiency of the international efforts towards protection of diplomatic and consular missions all over the globe, and describes the current actions that are aimed at providing immunity to diplomats. Ensuring the safety of diplomatic and consular missions cannot be achieved unless the studying and analysis of the case of violence is conducted. The Member States are to cooperate in exchanging information and providing assistance to judicial authorities in order to bring offenders to justice. The protection of diplomatic and consular missions is regulated by the principles of international law, in this regard, in order to enhance this protection the principles need to be reasserted by investigating new modalities of application capable of putting a stop to the violations.

The UN GA has adopted a set of resolutions that are identifying the key areas of development of approach to the issue and exact measures how to improve the actions of countries towards it. Resolution 49/49 endorsed the necessity of countries cooperation in the field, while resolution 35/142 asked Member States to report to the UN SG on the cases of violence against diplomats. Further the resolution 65/27 firstly identified the term “diplomatic protection”.

Nevertheless, despite numerous international documents are covering the issue Member States do not fully consider the importance of information exchange about cases of violence to the diplomats and consuls by that means preventing the investigation process. The problem is to be addressed on the national and regional level with the assistance of the international community.

I. Past international actions

1. The rules of international law concerning diplomatic protection were established throughout the human history, long before being codified. Even in antiquity intermediaries were protected in the interest of building peace among states. The inviolability of diplomatic and consular missions has been an essential rule of international relations as the inter government relations are built through diplomatic dialogue and represents the highest level of cooperation. Thus, diplomats are building bridges between states, eradicating problems and discontent. In its turn, the mission of consul has been aimed at protection of citizens of the consul's own country, and to facilitate trade and cooperation between the peoples of two states.
2. The immunity of diplomats and consuls had many differences and stipulations – diplomatic privileges and immunities guarantee that diplomatic agents or members of their immediate family: 1) cannot be arrested or detained; 2) cannot have their residences entered and searched; 3) cannot be subpoenaed as witnesses; 4) cannot be prosecuted. Consular immunity was not so extensive and covered only offense, committed while performing duties. They may be arrested for a felony and pursuant to a warrant as well as their residence may be entered and searched; and their immunity did not spread on consul's family members.
3. Forming the legal basis for diplomatic immunity and reaffirming principle rules for diplomatic law, the first international treaty - *Vienna Convention on Diplomatic Relations* – was adopted in 1961. This document designates the freedom of diplomats' actions and allows them to carry out their duties without fear, harassment or interference from the host country. Underlining the importance of concerted action of diplomatic and consular missions for mitigation omnifarious disagreement between the host country and represented one, the *Vienna Convention on Consular Relations 1963* declared consular immunity as a part of diplomatic immunity and stated duty and responsibilities of consular representation. Currently these conventions are ratified by 191 and 179 states respectively.¹²
4. The latest step in determination of diplomatic protection was made in 1973 with adoption of the *Convention on the Prevention and Punishment of Crimes against Internationally*

¹ Vienna Convention on Diplomatic Relations (1961)

http://legal.un.org/ilc/texts/instruments/english/conventions/9_1_1961.pdf, accessed 1 March, 2017.

Vienna Convention on Consular Relations (1963) <http://www.fuech.eu/pdf/viennaconvention.pdf>, accessed 1 March, 2017.

Protected Persons, including Diplomatic Agents. A term “internationally protected persons” appeared defining untouchability to all heads of state, heads of government, foreign ministers, ambassadors, other official diplomats, and members of their families.³

5. The United Nations General Assembly Sixth Committee included the current issue in the list of agendas in 1980 at the request of Denmark, Finland, Iceland, Norway and Sweden through resolution 35/142. Agreeing on the first resolution 42/154 *Consideration of effective measures to enhance the protection, security and safety of diplomatic and consular missions and representatives*, the Committee made the first steps towards provision of protection to the diplomats. The document encouraged Member States to cooperate in the framework of diplomatic and consular missions and representatives condemned all acts of violence against diplomatic missions and requested Member States to report to the United Nations Secretary-General as far as aforementioned violence occur and on measures taken to bring the offender to justice and eventually to communicate, in accordance with its laws, the final outcome of the proceedings against the offender, and to report on measures adopted with a view to preventing a repetition of such violations.⁴

6. The latest disturbances were listed in the reports of the United Nations Secretary-General 71/130 and 69/185. Also, the United Nations General Assembly (UN GA) resolutions became the tool of the first request to submit to the General Assembly at its further sessions a report of the Secretary-General containing any view he wished to express and to clarify the reporting procedure in case of violence against diplomatic and consular missions and representatives.

7. Thus, Report of the United Nations Secretary-General 47/325 (1992) stressed the nations’ attention on the necessity of analyzing and studying violence against diplomatic and consular missions and representatives and encouraged to consider the agenda as one of main priority of the Committee work.⁵

³ Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents (1973) http://legal.un.org/ilc/texts/instruments/english/conventions/9_4_1973.pdf, accessed 1 March, 2017.

⁴UN GA Sixth Committee Resolution 42/154 (1984) on “Considering effective measures to enhance the protection, security and safety of diplomatic and consular missions and representatives” <http://www.un.org/documents/ga/res/42/a42r154.htm>, accessed 1 March, 2017.

⁵ Report of the Secretary-General to the UN GA Sixth Committee 47/325 (1992) on “Considering effective measures to enhance the protection, security and safety of diplomatic and consular missions and representatives”: http://repository.un.org/bitstream/handle/11176/190089/A_47_325-EN.pdf?sequence=3&isAllowed=y, accessed 1 March, 2017

8. Further, the UN GA Sixth Committee adopted in 1995 the resolution 49/49 admitted the fact of failure of respecting inviolability of diplomatic and consular missions and representatives and recommended Member States to cooperate closely with the State in whose territory abuses of diplomatic and consular privileges and immunities may have occurred, including by exchanging information and providing assistance to its judicial authorities in order to bring offenders to justice.⁶

9. The agenda gained a new stage of development, when in 2006 the UN GA took note of the draft articles on diplomatic protection adopted by the International Law Commission and included this item in the list of agendas. The first resolution 65/27 *Diplomatic protection* (2008) adopted by the UN GA Sixth committee defined the term “*diplomatic protection*” and declared the right to exercise diplomatic protection, accompanying the statement with detailed recommendation on consistent actions for ensuring security and preventing violence.⁷

10. The European Union experience in provision diplomatic and consular missions with the protection, security and safety is unique in the way of solving and mitigating urgent situations that may occur in the framework of Europe. Hereby, the European Union Member States are the first ones in the world, who admitted the importance of consular work and made first steps in attracting nations to protect consuls and to ensure them with support of receiving state in consular work. All decisions of the EU on consular and diplomatic protection were published in *Legal Framework in the European Union Member States* (2010), illustrating also cases for consul protection with references on international legal practice.

II. Present international actions

11. The last report of the United Nations Secretary-General to the UN GA Sixth Committee was delivered in 2016 and pointed out the necessity of Member States reporting to the Secretary-General on any violations towards diplomatic and consular missions, in a concise and expeditious manner and in accordance with the guidelines prepared by the Secretary-General.

⁶ The UN GA Sixth Committee Resolution 49/49 (1995) on “Considering effective measures to enhance the protection, security and safety of diplomatic and consular missions and representatives ”

http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/49/49, accessed 1 March, 2017

⁷ The UN GA Sixth Committee Resolution 65/27 “*Diplomatic protection*” (2008)

<http://www.refworld.org/pdfid/479066e62.pdf>, accessed 1 March, 2017

12. Report of the UN GA Sixth Committee (2016) is dedicated to the session 71st of the General Assembly. The Agenda called *Rule of Law at the National and International Levels* has straight connection with the protection of diplomacy on the sovereign territory. Thus, the report contains recommendation of the UN GA Sixth Committee on the popularization and propagation the rule of International Law.⁸

13. International Law Commission is directly related to the protection of diplomats and consuls as this UN entity is capable to adopt amendments on international laws or conventions. The commission has been elaborating measures on immunity of State officials from foreign criminal jurisdiction since 2007 and published them in the *Annual Report of International Law Commission 2016*.

III. Observations and recommendations

14. The European Union representative in his statement on security of diplomatic missions in the United Nations General Assembly in 2015 claimed that since 1980 the UN GA Sixth Committee has been studying the international issue about security of diplomatic and consular missions. Stressing the attention on numerous violence incidents, which put in jeopardy diplomatic and consular missions, representative and European States see the crucial importance of effective protection of diplomatic and consular staff in the conduct of international relations. Thus, it is necessary to reassert principles of international law, which are related to diplomatic and consular relations and investigate new modalities of application capable of putting a stop to these violations, was mentioned.

15. In the last report in 2016 for the General Assembly Sixth committee, the Secretary-General strongly condemns all violence on diplomatic and consular missions happened and urges Member States to report to the Secretary-General on all serious violation of the protection, security and safety of diplomatic and consular missions and representatives as well as missions and representatives with diplomatic status to international intergovernmental organizations and on measures taken to minimize consequences and to bring the offender to justice.

16. The essential cogwheel in the international relations is consuls and their missions, however currently, many states disregard their work. Efficient work of consul requires improving

⁸ Report of the UN GA Sixth Committee (2016) on the “Rule of law at the national and international levels” http://www.un.org/ga/search/view_doc.asp?symbol=A/71/515, accessed 5 March, 2017

the international legal framework for the protection of consular missions and consular officers against terrorist and other attacks.

IV. Further research

17. While discussing this topic the General Assembly is to understand the history of the issue and motivation of Member States to ensure security for diplomats. Why international obligations are not always followed by states? Are all states of the conventions meaningful now? Why embassies all over the world are burglarized, vandalized and undergo violence of different type?

18. The United Nation Secretary-General reported to the UN GA Sixth Committee that in May 2016 the Ambassador of Serbia was shot in Libya. No official report has been provided by the Libyan security services, so full details regarding the perpetrators and their accomplices are unavailable.

19. One more murder of diplomat was committed in 2016. The Russian diplomat was killed while performing in Turkey by a police officer. Turkish government conducted the investigation, reported about results to the Russia Federation. The murderer was killed while gun shooting.

20. Unfortunately, these cases of violence towards diplomats are not the only ones. In 2016 four attacks on embassies and diplomatic buildings were traced, all of them became the cause of death and injuries of diplomatic and consular stuff. The following diplomatic and consular missions were threatened with death: the embassy of Saudi Arabia on the territory of Iran; the diplomatic mission of Australia on the territory of Iraq; Chinese diplomatic mission on the territory of Kyrgyzstan; the German embassy on the territory of Afghanistan. The last incident caused of six human deaths and 120 people's injuries.

21. Thus, the question of ability of host country to provide with protection diplomatic and consular missions is highly important. How to ensure diplomats protection during visiting and traveling within host country? How to ensure safe presence of diplomat and consuls in hot spots, when conflict has been recently started?

V. Bibliography

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http://legal.un.org/ilc/texts/instruments/english/conventions/9_1_1961.pdf, accessed 1 March, 2017.

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http://legal.un.org/ilc/texts/instruments/english/conventions/9_4_1973.pdf, accessed 1 March, 2017.

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http://www.un.org/ga/search/view_doc.asp?symbol=A/71/515, accessed March 5, 2017 accessed 5 March, 2017.

Report of the Secretary-General 71/130 (2016) to the United Nations General Assembly Sixth Committee on “*Considering effective measures to enhance the protection, security and safety of diplomatic and consular missions and representatives*” <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N16/212/33/PDF/N1621233.pdf?OpenElement6>, accessed 5 March, 2017.

The United Nations Chronicle “*New Security Risks and Challenges for Consuls*”

<https://unchronicle.un.org/article/new-security-risks-and-challenges-consuls>, accessed 5 March, 2017.

Institute for International Law, *Working Paper No. 151 – March 2015 “Diplomacy, Secrecy and the Law”* https://ghum.kuleuven.be/ggs/publications/working_papers/new_series/wp151-160/wp151-duquet-wouters.pdf, accessed 5 March, 2017.

The EU’s Contribution to ‘*the Strict Observance and the Development of International Law*’ at the United Nations General Assembly Sixth Committee <https://ghum.kuleuven.be/ggs/wp177-wouters-hermez.pdf6> accessed 5 March, 2017.

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<http://www.un.org/en/ga/sixth/65/DiploProtect.shtml>, accessed 5 March, 2017.

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VI. Useful links

Internationally Protected Persons: The Status of Consular Employees

https://law.yale.edu/system/files/documents/pdf/cglc/yale_law_school_-_internationally_protected_persons.pdf

The Role of Private Security Contractors in Diplomatic Security

<https://www.thecipherbrief.com/article/role-private-security-contractors-diplomatic-security>

Security Operations for Transformational Diplomats

<http://thesimonscenter.org/wp-content/uploads/2014/09/IAJ-5-3Fall-2014-36-44.pdf>

European Diplomatic Programme

https://eeas.europa.eu/headquarters/headquarters-homepage_id/2464/European%20Diplomatic%20Programme

EUI Working Paper. Diplomatic and consular protection in EU law: misleading combination or creative solution

http://cadmus.eui.eu/bitstream/handle/1814/14354/LAW_2010_11.pdf?sequence=1&isAllowed=y

Protection and security of diplomatic missions. Czech experience

http://www.mzv.cz/jnp/cz/o_ministerstvu/organizacni_struktura/diplomaticky_protokol/x2_protection_and_security_of_diplomatic.html

Embassy Security: From the Outside In

http://www.rand.org/content/dam/rand/pubs/perspectives/PE100/PE103/RAND_PE103.pdf

Diplomatic Handbook

https://www.mfa.is/media/PDF/Diplomatic_Handbook_March2010.pdf

Sofie Schrevelius Larsson - The positive duty to protect diplomatic missions and personnel

<http://lup.lub.lu.se/luur/download?func=downloadFile&recordOId=1561800&fileOId=1565754>

The Abuse of Diplomatic Privileges and Immunities: Recent United Kingdom Experience

https://www.ilsa.org/jessup/jessup07/basicmats/ajil_higgins_article.pdf

The Responsibility of states for protection the diplomatic agents

http://www.culturaldiplomacy.org/academy/content/pdf/participant-papers/2013-12-annual/The_Responsibility_Of_States_For_Protection_The_Diplomatic_Agents_Zainab_Waheed_Dahham.pdf