

**CJI/DEC. 03 (CI-O/ 22)**

**DECLARATION ON THE INVIOABILITY OF DIPLOMATIC PREMISES  
AS A PRINCIPLE OF INTERNATIONAL RELATIONS AND ITS RELATION  
TO THE CONCEPT OF DIPLOMATIC ASYLUM**

THE INTER-AMERICAN JURIDICAL COMMITTEE,

TAKING INTO ACCOUNT THAT:

Through resolution AG/RES. 2959 (L-O/20), the General Assembly instructed the Committee on Juridical and Political Affairs to hold a meeting to reflect collectively on the inviolability of diplomatic premises as a principle of international relations and its relationship with the concept of diplomatic asylum, the report on which, with the main results of the collective reflection, was forwarded to the Inter-American Juridical Committee;

At its 99<sup>th</sup> regular session, the Inter-American Juridical Committee included in its agenda the issue of the inviolability of diplomatic premises as a principle of international relations and its relation to the concept of diplomatic asylum;

WHEREAS:

There are 193 States party to the 1961 Vienna Convention on Diplomatic Relations, including all 35 member states of the Organization of American States;

Under Article 22 of the Vienna Convention on Diplomatic Relations of 1961, the premises of diplomatic missions are inviolable, and no exception to this rule is permitted;

Subsequent State practice, including that of the American States, confirms that the rule contained in Article 22 of the Vienna Convention on Diplomatic Relations precludes any exceptions;

The International Court of Justice has recognized that the principle of the inviolability of the premises of the diplomatic mission constitutes one of the very foundations of diplomatic law;

The Vienna Convention on Diplomatic Relations of 1961 establishes that persons enjoying privileges and immunities must respect the laws and regulations of the receiving State and have a duty not to interfere in the internal affairs of the receiving State, and that the premises of the mission must not be used in a manner incompatible with the functions of the mission;

Several member states of the Organization of American States are Party to the Havana Convention on Asylum of 1928, the Montevideo Convention on Political Asylum of 1933, and the Caracas Convention on Diplomatic Asylum of 1954;

Some member states of the Organization of American States recognize the granting of diplomatic asylum as a particular norm under customary international law;

The Resolution of the 27th Meeting of Consultation of Ministers of Foreign Affairs of August 24, 2012 reiterated the full validity of the principles and rules governing diplomatic relations between

States, especially those referring to full respect for the inviolability of the premises of diplomatic missions and consulates, and reaffirmed that such principles and rules constitute fundamental rules for the peaceful coexistence of all countries that make up the international community;

The Inter-American Court of Human Rights held that suspicion of misuse of the premises of the diplomatic mission, as when, for example, local laws violated, does not -- even in situations involving the granting of diplomatic asylum -- entitle the receiving State to forcibly enter the premises of the diplomatic mission, and that Article 22 of the Vienna Convention on Diplomatic Relations does not establish any exception to the inviolability of the premises of the diplomatic mission; and,

The International Court of Justice maintained that the rules of diplomatic law themselves provide the necessary means for the receiving State to deal with abuses concerning inviolabilities, including the inviolability of the premises of the diplomatic mission, provided for in the 1961 Vienna Convention on Diplomatic Relations. Such measures include, for example, the declaration of a member of the mission as *persona non grata* or the severance of diplomatic relations, with the consequent request for the immediate closure of the diplomatic mission,

DECLARES THAT:

1. The rule on the inviolability of the premises of the diplomatic mission does not admit any exceptions.

2. Possible abuses of the rule on the inviolability of the premises of a diplomatic mission, in situations relating to the granting of diplomatic asylum, must be resolved by resorting exclusively to the measures provided for in diplomatic law.

This declaration was unanimously approved at the meeting held on August 9, 2022, by the following members: Dr. José Luis Moreno Guerra, Dr. José Antonio Moreno Rodríguez, Dr. Cecilia Fresnedo de Aguirre, Dr. Ramiro Gastón Orias Arredondo, Dr. Martha del Carmen Luna Véliz, Dr. Mariana Salazar Albornoz, and Dr. Eric P. Rudge.

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**EXPLANATORY NOTE  
REGARDING THE DECLARATION ON THE INVIOABILITY OF DIPLOMATIC  
PREMISES AS A PRINCIPLE OF INTERNATIONAL RELATIONS  
AND ITS RELATION TO THE CONCEPT OF DIPLOMATIC ASYLUM**

The purpose of this explanatory note is to briefly describe the core provisions of the “Declaration on the inviolability of diplomatic headquarters as a principle of international relations and its relation to the concept of diplomatic asylum.”

The first two paragraphs, preceded by the phrase "TAKING INTO ACCOUNT THAT", present the mandate of the Inter-American Juridical Committee (the Committee) to address the matter. The General Assembly decided to refer the matter to the Committee, after first facilitating its task by arranging for the Committee on Juridical and Political Affairs (CAJP) to hold a meeting to reflect collectively to gather ideas on the matter. That session, held on April 30, 2021 (OEA/SG DDI/doc.8/21), benefited from the participation of specialists in the field, supplemented by comments and observations from the States. The Permanent Representative of Mexico to the OAS, Ambassador Luz Elena Baños Ríos, and the Chair of the Committee, Dr. Luis García-Corrochano, contributed some initial remarks. The following specialists addressed the issue: George Rodrigo Bandeira Galindo (Brazil), Íñigo Salvador Crespo (Ecuador), Pablo Monroy Conesa (Mexico), Alonso Illueca (Panama), and María Teresa Infante

(Chile). The following delegations to the OAS made comments on the subject: United States, Mexico, Panama, Ecuador, the Dominican Republic, Canada, Argentina, Brazil, and Colombia.

After collective reflection, the matter was referred to the Committee and included in its agenda, and Dr. George Rodrigo Bandeira Galindo was appointed rapporteur.

The following paragraphs, preceded by the expression "WHEREAS", set forth the legal basis for the operative part of the Committee's statement.

The 1961 Vienna Convention on Diplomatic Relations is one of the most widely accepted treaties in the international community. There are 193 States parties to this treaty, including the 35 member states of the Organization of American States (OAS).<sup>1</sup> Although doctrine and case law have never questioned the customary nature of Article 22 of the Convention, which refers to the inviolability of the premises of a mission,<sup>2</sup> in practice the question is not relevant to the issue at hand, since it is a rule of a conventional nature applicable to all OAS member states.

Article 22 of the Vienna Convention on Diplomatic Relations does not provide for any exception to the inviolability of mission premises. This was emphasized by several delegations at the CAJP's collective reflection session (Mexico, Panama, the Dominican Republic, Brazil, and Colombia). The Inter-American Court of Human Rights categorically affirmed the same.<sup>3</sup> Whereas the second part of article 22, paragraph 1, establishes a general prohibition, addressed especially to the authorities of the receiving State, in the form of an obligation not to do ("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"), paragraph 2 provides, for the receiving State, a clear obligation to do ("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"). The International Court of Justice stated that failure to protect the inviolability of the premises of a diplomatic mission constitutes an omission that may entail the international responsibility of the receiving State.<sup>4</sup>

The subsequent practice of States, including OAS member states, has clearly consisted of not admitting exceptions to the rule of the inviolability of the premises of a diplomatic mission. Eileen Denza states that, in almost all operations conducted by law enforcement on mission premises, such activities have been brief or incidental and have not been justified by the host State as it considers them violations of international law.<sup>5</sup> The aforementioned positions of some OAS member states, as well as the silence of others with respect to the justification of the possibility of exceptions to inviolability, are relevant factors for establishing a subsequent practice that corroborates the explicit meaning of Article 22 of the 1961 Vienna Convention on Diplomatic Relations. Moreover, the resolution of the Twenty-Seventh Meeting of Consultation of Ministers of Foreign Affairs (RC.27/RES.1/12 rev. 3) points to a sound practice along those lines in the regional context, by mentioning "full respect for the inviolability of the premises of diplomatic missions" and rejection of "any attempt to jeopardize the inviolability of

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<sup>1</sup> See [https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg\\_no=III-3&chapter=3&clang=\\_en#EndDec](https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=III-3&chapter=3&clang=_en#EndDec).

<sup>2</sup> INTERNATIONAL COURT OF JUSTICE. United States Diplomatic and Consular Staff in Tehran, Judgment. *ICJ Reports 1980*, p. 31. The International Court of Justice, in citing article 22 of the Convention, noted that the obligations arising therefrom are based on general international law: "In the view of the Court, the obligations of the Iranian Government here in question are not merely contractual but also obligations under general international law." (ICJ English text).

<sup>3</sup> INTER-AMERICAN COURT OF HUMAN RIGHTS. Advisory Opinion OC-25/18 of May 30, 2018, requested by the Republic of Ecuador. *The institution of asylum and its recognition as a human right in the Inter-American system of protection* (Interpretation and scope of Articles 5, 22.7 and 22.8, in relation to Article 1.1 of the American Convention on Human Rights), par. 106. "Article 22 of the Vienna Convention on Diplomatic Relations does not provide for any exception to the principle of inviolability."

<sup>4</sup> INTERNATIONAL COURT OF JUSTICE. United States Diplomatic and Consular Staff in Tehran, p. 44.

<sup>5</sup> DENZA, Eileen. *Diplomatic Law: Commentary on the Vienna Convention on Diplomatic Relations*. 4<sup>th</sup> ed. New York: Oxford University Press, 2016, p. 121. In this regard, see SICARI, Vincenzo Rocco. *O Direito das Relações Diplomáticas. [The Law of Diplomatic Relations]*. Belo Horizonte: June 12, 2007. p. 132.

the premises of diplomatic missions." Although the resolution was the subject of explanations by certain States, none of them questioned the non-existence of exceptions to the inviolability of the premises of diplomatic missions.

It is also important to remember that the Havana Convention on Diplomatic Officers of 1928, which has 15 States Parties<sup>6</sup>, plays an important part in this practice, since its Article 16 is clear in not admitting exceptions to the inviolability of mission premises ("No judicial or administrative functionary or official of the State to which the diplomatic officer is accredited may enter the domicile of the latter, or of the mission, without his consent.").

The International Court of Justice stated that "the principle of the inviolability of the persons of diplomatic agents and the premises of diplomatic missions is one of the very foundations of this long-established régime, to the evolution of which the traditions of Islam made a substantial contribution. The fundamental character of the principle of inviolability is, moreover, strongly underlined by the provisions of Articles 44 and 45 of the Convention of 1961."<sup>7</sup> Although this fundamental character has already been understood as a possible suggestion of the imperative nature (*jus cogens*) of the rule on the inviolability of mission premises<sup>8</sup> and the Permanent Representative of Mexico to the OAS has expressly indicated its character as a "peremptory norm of international law", there is not enough State practice, not even in OAS member states, to corroborate such an idea. However, this does not undermine the importance and compelling nature of the inviolability of diplomatic mission premises for diplomatic law and for international relations themselves.

Article 41(1) of the 1961 Vienna Convention on Diplomatic Relations stipulates: Without prejudice to their privileges and immunities, it is the duty of all persons enjoying such privileges and immunities to respect the laws and regulations of the receiving State. "Without prejudice to their privileges and immunities, all persons enjoying such privileges and immunities shall respect the laws and regulations of the receiving State. They also have a duty not to interfere in the internal affairs of that State." Paragraph 3 states: "The premises of the mission must not be used in any manner incompatible with the functions of the mission as laid down in the present Convention or by other rules of any special agreements in force between the sending and the receiving State." Such rules clearly demonstrate that the accrediting State may not abuse the immunities and inviolabilities regime. The existence of this regime is directly linked to the idea set forth in the preamble of the Convention: "Realizing that the purpose of such privileges and immunities is not to benefit individuals but to ensure the efficient performance of the functions of diplomatic missions as representing States." In the particular case of diplomatic asylum, if the receiving State considers that it was wrongly granted, it may require the sending State to comply with Article 41(1). However, such a requirement cannot give rise to violation of the premises of the diplomatic mission or to the establishment of exceptions to its inviolability, as the International Court of Justice itself emphasized when it pointed out that, in such a case, the receiving State, even in situations that affect its security<sup>9</sup>, may avail itself only of the remedies established in the Vienna Convention on Diplomatic Relations itself, such as the declaration of *persona non grata* or the severance of diplomatic relations<sup>10</sup>. This is the reason why States are prohibited from applying countermeasures that impair respect for the inviolability of the premises of the diplomatic mission

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<sup>6</sup> See <https://www.oas.org/juridico/spanish/firmas/a-25.html>. For English, see: <https://grberridge.diplomacy.edu/havana-conventions/#officers>

<sup>7</sup> INTERNATIONAL COURT OF JUSTICE. United States Diplomatic and Consular Staff in Tehran, p. 40 (*ICJ English text*)

<sup>8</sup> See, for example, WAGNER, Niklas et al. *Vienna Convention on Diplomatic Relations of 18 April 1961: Commentaries on Practical Application*. Berlin: Berliner Wissenschafts-Verlag, 2018, p. 135.

<sup>9</sup> SALMON, Jean. *Manuel de Droit Diplomatique*. Brussels: Bruylant, 1994, p. 199.

<sup>10</sup> INTERNATIONAL COURT OF JUSTICE. United States Diplomatic and Consular Staff in Tehran, pp. 39 and 40.

established in the International Law Commission's draft articles on international liability for internationally wrongful acts<sup>11</sup>.

From another point of view, it is difficult to conceive of the use of Article 41(1) or (3) as an impediment to the granting of diplomatic asylum. The International Law Commission, which prepared the draft that would be embodied in the 1961 Vienna Convention on Diplomatic Relations, was categorical in stating that the granting of asylum, as regulated by treaties, was valid between the parties, even though its draft did not deal with asylum: "The question of asylum is not dealt with in the draft but, in order to avoid misunderstanding, it should be pointed out that among the agreements referred to in paragraph 3 there are certain treaties governing the right to grant asylum in mission premises which are valid as between the parties to them."<sup>12</sup> It is also true that the deliberations of the International Law Commission show that the granting of asylum does not depend on agreement between States.<sup>13</sup> The decision to exclude from the draft any treatment of the question of asylum indicates, moreover, that one can hardly associate the State's prerogative to grant asylum with a diplomatic function as defined in the Convention,<sup>14</sup> an issue that was not foreseen at the time and cannot be said to have been resolved today either, as evidenced by the position of the United States in the CAJP.

Diplomatic asylum is clearly recognized in international law. It is recognized in three regional conventions: the Havana Convention on Asylum of 1928, the Montevideo Convention on Political Asylum of 1933, and the Caracas Convention on Diplomatic Asylum of 1954. Although, strictly speaking, these conventions are binding only on a certain number of OAS Member States, their existence has not prevented other States from unilaterally granting protection to certain persons, in their diplomatic missions, in very particular circumstances, as indicated in the remarks by the United States and Canada at the CAJP session.

Apart from the treaties, some States consider that the granting of diplomatic asylum is on its way to becoming an international customary rule, as Mexico pointed out at the CAJP session, or could even be considered a Latin American regional customary rule, as Brazil and Colombia emphasized on the same occasion. However, the International Court of Justice has already rejected - albeit for lack of evidentiary proceedings - the applicability of a customary international rule on the matter to a Latin American State.<sup>15</sup> For its part, for all OAS States,<sup>16</sup> the Inter-American Court of Human Rights, did not find any regional customary international rule on the granting of diplomatic asylum, although it has envisaged the lawfulness of granting diplomatic asylum as an expression of the sovereignty of States. Accordingly, there are no sufficiently solid grounds for referring to a customary international rule on the granting of diplomatic asylum applicable to the entire inter-American or even Latin American sphere. However, this does not exclude the possibility of such a customary rule in subregional arrangements.

The resolution of the Twenty-Seventh Meeting of Consultation of Ministers of Foreign Affairs of August 24, 2012 is important for identifying the practice of OAS member states. This importance is shown not only by the non-existence of exceptions to the inviolability of diplomatic mission premises.

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<sup>11</sup> COMMITTEE OF INTERNATIONAL LAW. Draft articles on the liability of States for internationally wrongful acts, with commentary. *Yearbook of the International Law Commission*, Volume II, Part Two, p. 31: "Article 50. Obligations that cannot be affected by countermeasures [...] 2. The State taking countermeasures shall not be exempted from the fulfillment of the obligations incumbent upon it: [...] (b) To respect the inviolability of diplomatic or consular agents, premises, archives, and documents."

<sup>12</sup> INTERNATIONAL LAW COMMISSION. Draft articles on diplomatic relations and immunities. *Yearbook of the International Law Commission*, Volume II, 1958, p. 104.

<sup>13</sup> NASCIMENTO E SILVA, G. E., *Diplomacy in International Law*. Leiden: Sijthoff, 1972, p. 106.

<sup>14</sup> See BEHRENS, Paul. *Diplomatic Interference and the Law*. Oxford: Hart Publishing, 2016, p. 240, and HUGHES-GERBER, Laura. *Diplomatic Asylum: Exploring a Legal Basis for the Practice under General International Law*. Cham: Springer, 2021, p. 93.

<sup>15</sup> INTERNATIONAL COURT OF JUSTICE. Colombian-Peruvian asylum case, Judgment of November 20th 1950. *ICJ Reports 1950*, pp. 276 to 278.

<sup>16</sup> INTER-AMERICAN COURT OF HUMAN RIGHTS *Advisory Opinion OC-25/18*, par. 162.

It is also evidenced by the significance and compelling nature of the decision to uphold the inviolability of the premises of diplomatic missions within the international community and the Americas.

The assertion by the Inter-American Court of Human Rights that the receiving State may not forcibly enter the premises of diplomatic mission, even when it suspects their misuse,<sup>17</sup> constituted a recognition of the categorical affirmation by the International Court of Justice that diplomatic law is an "autonomous" regime.<sup>18</sup> Such autonomy is not reflected in recognition of the fragmented nature of international law<sup>19</sup>; instead, it means that the rules of diplomatic law themselves, specifically those contained in the 1961 Vienna Convention on Diplomatic Relations, provide the means to deal with violations of the rules of that regime, including the declaration of *persona non grata* and the severance of diplomatic relations.

The operative part of the Declaration succinctly reflects the ideas that the inviolability of the premises of diplomatic missions admits of no exceptions and that the only way to combat the abuse of such inviolability is to have recourse to the means provided for in the positive rules of diplomatic law.

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<sup>17</sup> INTER-AMERICAN COURT OF HUMAN RIGHTS *Advisory Opinion OC-25/18*, par. 106: "Furthermore, the Court considers that the suspicion of misuse of the inviolability of these premises, whether due to violations of local laws or the continued shelter of an asylee, clearly does not constitute a justification for the receiving State to forcefully enter the premises of the diplomatic mission, in violation of the principle of inviolability."

<sup>18</sup> INTERNATIONAL COURT OF JUSTICE. *United States Diplomatic and Consular Staff in Tehran*, p. 40: "The rules of diplomatic law, in short, constitute a self-contained régime which, on the one hand, lays down the receiving State's obligations regarding the facilities, privileges and immunities to be accorded to diplomatic missions and, on the other, foresees their possible abuse by members of the mission and specifies the means at the disposal of the receiving State to counter any such abuse." (ICJ English text)

<sup>19</sup> The term was analyzed by the International Law Commission from this point of view. See INTERNATIONAL LAW COMMISSION. *Fragmentation of international law: difficulties arising from the diversification and expansion of international law. Report of the Study Group of the International Law Commission Finalized by Martti Koskenniemi*. UN Doc A/CN.4/L.682 (13 April 2006).