

## The inviolability of diplomatic and consular premises

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This was the first article ever to be published about the existence and legal implications of the **Diplomatic and Consular Premises Act 1987**, which suddenly hit the headlines worldwide in August 2012, during the Ecuadorian Embassy crisis in London. I wrote the article whilst working in my first job as a very young and fresh-faced articled clerk for an international law firm in London, whose clients included the embassies of a coterie of friendly states in the Middle East and Africa. Part of my research involved conducting interviews with senior officials at the Foreign and Commonwealth Office, who very kindly provided me with access to their library, which has hanging on its walls a 20 foot long anaconda snake called Albert, of whom I remember my generous and attentive hosts were rather fond. The article is cited as an authority by Wikipedia and a fully revised version will feature on the internet Diplomatic Law Guide ([www.diplomaticlawguide.com](http://www.diplomaticlawguide.com)).

### Introduction

*Inviolability guarantees the sanctity of diplomatic and consular premises.*

*Whilst it does not place premises above the law, anybody who remains on diplomatic or consular premises can take refuge from the law.*

*The **Diplomatic and Consular Premises Act 1987** ('the Act') is the vehicle for reforming the government's powers for dealing with the abuse of diplomatic and consular premises.*

*Under the Act where premises are misused, their diplomatic or consular status may be lost, together with all concomitant rights, (including inviolability).*

*Two important consequences result from loss of status; the sending state is liable to pay the rates of the premises, and significantly, the premises can be entered and searched.*

*This article considers the circumstances under which inviolability may be lost.*

### **Background**

*Following the incident at the Libyan People's Bureau 17 April 1984, and the attempted abduction of Mr Umaru Dikko on 5 July 1984 the government undertook a thorough review of the action available to it for dealing with abuse of diplomatic privileges under the **Vienna Convention on Diplomatic Relations**.*

*In a white paper published in 1985 the government stated inter alia that it would do the following:*

- 1. implement a firmer policy toward the application of the **Vienna Convention**;*
- 2. limit in its discretion the size of individual missions on a case by case basis;*
- 3. take administrative measures to deal with abuse of diplomatic premises and to limit the extent of mission premises in accordance with international law and practice.*

*These changes were to take effect without the amendment of the **Vienna Convention**.*

### **The Act**

*The main thrust of the Act is directed at increasing the government's powers in relation to the control of diplomatic and consular premises.*

*The effect of the Act on inviolability is only one aspect of the Act and is not spelt out in its main provisions, but takes effect within them.*

*The main provisions of the Act fill a gap in the government's legislative powers in dealing with diplomatic or consular premises.*

*Before this no legislative powers existed to prevent diplomatic missions from establishing their premises in any part of London, nor were there any powers to acquire title to former diplomatic premises which were empty for long periods, causing environmental, health, security and other hazards.*

*The Act is primarily addressed to these problems, and permits the government inter alia:*

- 1. to prevent missions from setting up offices in sensitive parts of London;*
- 2. to deal with the problem of empty former diplomatic premises by acquiring title to them and then selling them;*
- 3. to remove diplomatic status from premises which are being misused;*
- 4. to retaliate in kind if an overseas government insisted that a British mission move from existing premises or withheld consent to the acquisition of new premises.*

*The government contend that the Act is not draconian, and that its provisions bring our law into line with the laws and practices of other countries, and in particular that of the US.*

*The Act received the Royal Assent on 15 May 1987 and was brought into force in stages.*

*Its full provisions came into force on January 1988.*

### **Inviolability of diplomatic premises**

*Inviolability in relation to diplomatic premises means that the premises may not be entered without exception unless the head of the mission has given his consent.*

*Consent may not be implied, even where there is an emergency on the premises.*

*In addition the premises, their furnishings, and fixtures are immune from any search, requisition, attachment or execution, with the effect that the premises must not be entered even in pursuance of a judicial order.*

*If diplomatic relations are broken and even in the event of armed conflict the receiving state is required by the Vienna Convention to respect and protect the premises.*

### **Inviolability of consular premises**

*Some but not all consular premises are inviolable.*

*The consular premises that are inviolable are those buildings or parts of buildings and the land ancillary thereto that are used exclusively for the purposes of the work of the consular post.*

*These premises enjoy inviolability to the same extent as diplomatic premises, however consent is implied in the case of emergency, and the authorities of the receiving state may enter the premises without obtaining consent in the case of fire or other disaster requiring prompt protective action (see **Art 31(2) of the Vienna Convention on Consular Relations 1963**).*

### **The purpose of inviolability**

*The classic reason why a receiving state grants inviolability to a 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).*

### **The effect of inviolability**

*The effect of inviolability is twofold:*

- 1. the receiving state must ensure that its own agents do not infringe the inviolability of the mission's premises, and*
- 2. the receiving state is under a special duty to take all appropriate steps to protect the premises from any invasion or damage and to prevent any disturbance of the peace of the mission or impairment of its dignity.*

### **Premises that are inviolable**

*The following premises are inviolable under international law under the articles of the **Vienna Convention on Diplomatic Relations**, and under the articles of the **Vienna Convention on Consular Relations**.*

*The relevant articles of these conventions were transformed into English law by the provisions of the **Diplomatic Privileges Act 1961**, and by the **Consular Relations Act 1968**.*

*Hereafter all references are to the **Vienna Convention on Diplomatic Relations**, unless otherwise stated.*

- 1. The premises of a diplomatic mission (Art 22) (which means the buildings or parts of buildings and the land ancillary thereto used for the purposes of the mission including the residence of the head of the mission) (**Art 1**).*
- 2. The official private residence of the ambassador or other head of the mission (**Art 22**).*
- 3. The private residence of a diplomatic agent (**Art 30**) (i.e. the private residence of an accredited diplomat or of a person carrying on a primary function in relation to the business of the mission including a member of*

*the technical and administrative staff at the discretion of the receiving state (Art 37, paragraph 2)).*

- 4. Premises occupied as a private residence by a visiting head of state (s.20 of the State Immunity Act 1978).*

*However inviolability only attaches throughout the duration of the visit).*

- 5. Consular premises (Art 31 of the Consular Convention) (i.e. the buildings or parts of buildings and the land ancillary thereto irrespective of ownership used exclusively for the purposes of the consular post ).*

### **How the Act affects inviolability**

*Inviolability is a right.*

*It attaches to premises by virtue of their status.*

*If that status is removed the right is extinguished.*

*The Act affects inviolability by enabling the government to control the status of premises, and thereby the right to inviolability.*

*The Act only applies to premises of a mission (i.e. its business offices and the official residence of the head of the mission) and does not affect the inviolability of any other premises, and in particular the private residences of diplomatic agents remain unaffected.*

*The Act regulates the present and future status of mission premises.*

*From 1 January 1988 the only premises which, prior to the Act, enjoyed diplomatic or consular status which continue to do so, are those premises that have been accepted by the Secretary of State.*

*In future his consent must be obtained as a pre-condition to new premises enjoying diplomatic or consular status.*

*A provisional list of accepted premises in the case of each mission was attached to a diplomatic circular letter sent to the heads of all missions on 7 August 1987.*

*A final list was attached to a diplomatic circular letter sent on 3 February 1988.*

*The first letter notified missions of the Act and outlined its effect.*

*The second letter informed them that the Act had come into force, and that the land described on the attached list in each case would continue to be treated as diplomatic or consular premises.*

*It also advised them that if they had any other land which they wished to have recognised as diplomatic or consular premises, and in future if they acquired land which they wished to be treated as diplomatic or consular premises, that they would need to notify the Secretary of State and obtain his consent to the premises having that status.*

*The letter also explained that status could be lost or be withdrawn by the government.*

### **Loss of status**

*Status may be lost in one or two ways:*

- 1. automatically, when a state ceases to use land for the 'purposes of its mission', or exclusively for the purposes of a consular post (s.1(3)(a) of **the Act**) or*
- 2. by the Secretary of State withdrawing his acceptance or consent (s.1(3)(b)).*

### **Withdrawal of acceptance or consent**

*Before acting under s.1(3)(b) the Secretary of State must be satisfied that*

*withdrawal of acceptance or consent is permissible under international law (s.1(4)).*

*He would be advised by his officials in the Foreign Office as to whether his action would be permitted under the **Vienna Convention**, and under the rules of customary international law that have grown up around it.*

*In determining whether or not to act he is required to have regard to all material considerations, and in particular:*

- (a) to the safety of the public;*
- (b) to national security;*
- (c) to town and country planning*

*s.1(3)(b) of the Act conflicts with **Art 41(3) of the Vienna Convention on Diplomatic Relations**.*

*This article was not transformed into English law by the **Diplomatic Privileges Act 1964** but is relevant to the interpretation of s.1(3)(b) of the Act because it forms part of the **Vienna Convention**, which in turn forms part of international law, and since the Secretary of State must be satisfied before withdrawing diplomatic or consular status, that to do so is permissible under international law.*

***Art 41(3)** provides in effect that inviolability is not lost where a mission uses its premises in any manner incompatible with the functions of its mission.*

*This interpretation of **Art 4(3)** is predicated on the **travaux préparatoires** to the **Vienna Convention** which state that 'failure to fulfil the duty laid down in (**Art 41(3)**) does not render **Art 22** (inviolability of the mission premises) inoperative'. See p.104 of the Yearbook of the International Law Commission 1958, Vol II.*



*Thus to the extent that a purpose expands upon a function, and where otherwise the Secretary of State would be satisfied that his action is permissible under international law, status and thereby inviolability may be lost.*

*But where a purpose could also be a function, unless a countervailing rule of international law results in the Secretary of State being able to satisfy himself that his action is permissible under international law, then it is a moot point whether he can act because misuse of diplomatic premises would not result in the premises ceasing to be 'premises of a mission, and as such they would continue to be inviolable under **Art 22 of the Vienna Convention**.*

### **The Secretary of State's certificate**

*Under s.1(7) of the Act a certificate issued by or under the authority of the Secretary of State stating any fact relevant to the question of whether or not land was at any time diplomatic or consular premises, is conclusive of that fact in any proceedings.*

*In theory the Secretary of State could manually operate s.1(3)(a) under s.1(7) by certifying that premises had ceased to be used for the purposes of a mission or exclusively for the purpose of a consular post.*

*In practice this would not happen, because where a certificate will be treated as conclusive in court proceedings, the Foreign Office will only certify as to a matter that is within their exclusive knowledge.*

*Furthermore, it would appear that intelligence on the use to which premises are being put is not a matter to which the Foreign Office would be prepared to certify.*

*The matters in relation to which a certificate will be issued may include the confirmation by the Foreign Office that it has received notification from a mission that it has or will cease to use premises as diplomatic or consular*

*premises.*

### **Use of the Act**

*Since withdrawal of status could be interpreted as a hostile act, the government are unlikely to use the Act where this may result in retaliation against our mission and against British interests in the sending state.*

*In the foreseeable future the Act might be used to reclaim vacant mission premises that are being occupied by squatters.*

*The Act is also likely to be used where intelligence has convinced the authorities that a gross misuse of mission premises is taking place, for example where premises are being used to traffic in drugs.*

*Even then the Act will only come into play after other less offensive options have either been rejected or have failed.*

*For both legal and political reasons the Act is unlikely to be used in a crisis situation, but this cannot be ruled out altogether.*

*Perhaps the most forthright use of the Act will occur where a sending state requires our mission in their state to move from existing premises or withholds consent for the acquisition of new premises, because the Act enables the government to retaliate against the sending state's mission in the UK by responding in kind.*

### **Conclusion**

*Before the Act came into force the lack of a clear-cut procedure for removing inviolability before action could be taken deterred the authorities from taking action that involved entering mission premises.*

*As the law stood inviolability ceased by force of law under s.2 of the **Diplomatic Privileges Act 1964** in relation to diplomatic premises where premises were being used for purposes other than the purposes of the mission.*

*But even if the authorities were sure of their facts by taking action they ran the risk that the inviolability of the premises might subsequently be upheld in the courts with the embarrassing result that their action would have been illegal.*

*The only effective option available to the government for bringing misuse to an end was to break off diplomatic relations with the sending state concerned, and when diplomatic premises were used to perpetrate an act of terrorism in 1984 this is how the government responded.*

*The Act places the government's powers on a firmer footing.*

*A procedure now exists for removing inviolability before action is taken.*

*However it is a moot point whether the authorities can enter premises immediately after their diplomatic or consular status has ceased.*

*The Foreign Office appear to take the view that by analogy with **Art 39 of the Vienna Convention** (which provides for the termination of personal immunities) **Art 22** of the convention implies that inviolability will continue for a reasonable time after the premises have ceased strictly to be used as premises of a mission.*

*In the final analysis the Act strengthens the government's hand and if used will produce a change in the rules of engagement for dealing with problems on mission premises.*

*Missions that are not already alert to the Act's possibilities should be aware that if they misuse mission premises they do so now at their own peril.*

*Whilst the Vienna Convention placed a theoretical limitation on how premises of a mission could be used, the effect of the Act is to place a practical limitation on how they can be used.*

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