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**THE UNTOUCHABLES: TRANSNATIONAL ORGANIZED CRIME BEHIND DIPLOMATIC
INTERCOURSE AND IMMUNITIES**

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Abstract

Since its initiation in 1961, 187 nations have signed the Vienna Convention on Diplomatic Relations, thus agreeing to a standard set of principles regulating the diplomatic intercourse. In recent years, cases of offence with the involvement of diplomatic agents have brought diplomatic advantages to sharp criticism. This article is not concerned with violations of administrative rules such as traffic offence. Neither does it is concerned with single occurrences of violence committed by diplomatic agents. The main focus is to investigate various types of abuse of diplomatic immunities and privileges for the purpose of organizing, facilitating, and/or conducting criminal activities that have become recognized as transnational organized crime. The findings of the article shed light to a wider understanding of diplomatic entitlements that may serve as facilitators of transnational organized crime.

Keywords: diplomatic immunity; diplomatic privilege; transnational organized crime; drug trafficking; cigarette smuggling; bribery; visa malfeasance

Introduction

Scholars have continuously been warning about the monstrous manifestations of transnational organized crime (TOC), some of which have mutated to unprecedentedly complex and sophisticated forms including those that involve various combinations of collaboration between criminal actors and political elites (Lupsha & Pimentel 1997; Bailey & Godson 2001; Godson 2003). Shelly (1999) has repeatedly mentioned the problem of the involvement of the Russian mafia into promoting its own candidates who acquired parliamentary immunity following their election to the Parliament. According to her research, the immunity from prosecution granted to parliamentary representatives in countries like Russia has encouraged organized crime to invest large sums in the collaboration with politicians with such privileges. By

entering the political process, organized crime can deter or undermine domestic law enforcement and secure profitable criminal enterprises.

Personal inviolability and immunity, however, have been conventionally extended not only to heads of states and members of the government, but also to *diplomatic agents*.¹ Historically accorded in recognition that the diplomatic agent represents a different sovereignty and also in order that the legitimate pursuit of his official duties are not impeded in the jurisdiction of a foreign state, diplomatic agents are granted *diplomatic immunities and privileges*² that generally guarantee:³

- *personal inviolability*: a diplomatic agent is not liable to arrest or detention;
- *immunity from criminal jurisdiction*: a diplomatic agent may not be detained or arrested, or prosecuted for criminal violations under the jurisdiction of the receiving state;
- *immunity from civil and administrative jurisdiction*: courts in the receiving state may not commence any civil/administrative lawsuit against a diplomatic agent, apply the law of the receiving state, and render judgments;
- *exemption from taxation*: diplomatic agents are exempt from dues and taxes, including relief from customs duties on motor vehicles imported in the country of their mission registered on special series of number plates such as “CD”, “C” or “K.”⁴

Given these degree of protection by the international law, diplomatic agents are difficult targets for the receiving state even in cases when they get involved in various types of *serious crimes*⁵ such as those that have been recognized as *transnational organized crime*.⁶ Diplomatic

¹ A “diplomatic agent” is a generic term that has traditionally denoted a public officer who acts as an intermediary between a foreign nation (the receiving state) and the nation which employed and accredited the diplomatic agent (the sending state). Their main function is to supervise and transact the affairs of the nation employing them, as well as protect the interests and welfare of the sending state’s citizens in the jurisdiction of the receiving state. Most legal dictionaries apply the term to a general pool of public officers ranging from the first order officials such as ambassadors plenipotentiary and permanent representative to officials of the second order that include envoys, *chargé d’affaires*, and consuls of various ranks.

² There is little distinction between diplomatic privileges and immunity, which have in many cases been applied interchangeably. Although there has not been unanimity in conceptual approaches, “privileges” mainly pertain to the right to commit certain activities and engage in relationships that others are not entitled to, whereas “immunities” relate to the exemption from local jurisdiction.

³ Not every diplomatic agent or staff member of a diplomatic mission is entitled to full diplomatic immunity. Variations in the extent of advantages vary depending on the status of agents. See Section 1.4.

⁴ Number plates vary depending on the status of agents: “CD” for personal vehicles of diplomats; “C” for personal vehicles of consular officials; “K” for vehicles of administrative and technical staff and consular employees.

⁵ A “serious crime” is a “conduct constituting an offence punishable by a maximum deprivation of liberty of at least four years or a more serious penalty” (definition adopted from the United Nations Convention against Transnational Organized Crime (VCDR: Art. 2, b)).

⁶ According to the United Nations Convention against Transnational Organized Crime, “transnational organized crime” refers to offences that are transnational in nature and involve an organized criminal group. An organized criminal group applies to “a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit (CTOC: Art. 2, a). The offence is “transnational,” when (a) it is committed in more than one State; (b) it is committed in one State but a substantial part of its preparation, planning, direction or control takes place in another State; (c) it is committed in one State but involves an

privileges and immunities established with the adoption of the Vienna Convention on Diplomatic Relations of 1961⁷ renders it practically impossible for any local authority in the receiving state to exercise legitimate power over accredited diplomatic agents.

Although the idea of diplomatic immunity is not meant to benefit individuals personally, diplomatic immunities and privileges might appear ripe for widespread abuse (VCDR: Preamble). To casual observers, diplomatic privileges and immunities merely excuse diplomats from paying parking tickets. This certainly presents a major problem in cities that host large contingents of diplomatic missions such as London, Washington, D.C., or New York. Only in London hosting more than 57 countries, foreign diplomats owe GBP 58 mln congestion charges (unpaid parking tickets and minor traffic offences) (BBC News 2012). The few data available, however, testify that the problem of the abuse of diplomatic privileges and immunities is far worse. Diplomats, their families, staff of diplomatic missions, and servants have been featured in offenses ranging from corruption and smuggling to drug trafficking and human smuggling.

Average law enforcement officers are not accustomed to deal with offenders entitled to a special treatment even when caught red-handed. According to the U.S. Department of State, the police and law enforcement officers are too often inclined to be “overly generous” to diplomatic agents without a full understanding of the parameters of the diplomatic status (U.S. Department of State 2011: 2). Given the reputational damage, the authorities of the sending state that accredited the fraudulent diplomat have rarely publicized the abuse. Oftentimes, minor offences have also been tolerated by the receiving state in the name of securing the diplomatic intercourse with the sending state.

This article is a qualitative analysis of various types of abuse of diplomatic immunities and privileges for the purpose of organizing, facilitating, and/or conducting illicit activities. The goal is to provide a more systematic overview of the complexity and ambiguity related to diplomatic privileges and immunities and their potential contribution to the empowerment, continuity, and profitability of TOC. How, under what conditions, and in what capacity have diplomatic agents been involved in TOC? In which ways have diplomatic agents abused the principles of diplomatic immunity in favor of TOC?

Driven by these questions, the article delves into the analyses of diplomatic privileges and immunities as established by the VCDR and engages into the discussion of the problem of mistreatment and abuse of personal inviolability and diplomatic immunity from criminal jurisdiction in respect of TOC. Special focus is placed upon the scope of personal inviolability and immunity from criminal prosecution, and the class of diplomatic agents who are entitled to receive it.

The data have been collected from primary (official reports and media sources) and secondary sources. Governmental reports and press releases, public speeches, publications in the press, documentaries and news broadcasted by the media, academic journals and relevant academic publications, as well as the grey academic literature (crime reports and policy analyses issued by advocacy organizations) have also provided valuable insights.⁸ References to specific criminal groups or declarations of names of offenders have been largely avoided. The goal of the

organized criminal group that engages in criminal activities in more than one State; or (d) it is committed in one State but has substantial effects in another State (CTOC: Art. 3, Par. 2).

⁷ Hereinafter the Vienna Convention on Diplomatic Relations of 1961 is referred to as the VCDR.

⁸ In order to anticipate ethical issues that may arise, it is important to warn the reader that any person mentioned in the article in the context of an alleged offence should be considered innocent until proven guilty by a court decision. Most criminal cases have been provided to illustrate the arguments of the theoretical framework based on a *de facto* presumption of guilt. These cases, however, are not always supported by a *de jure* sentence that is the only legal condition to validate the involvement of a suspect in offence.

article if not to disrupt criminal rings or provide a practical guide for criminal investigators. Rather, this research is a way to evaluate trends that have not been sufficiently studied in conventional research on TOC.

The findings of the article shed light to a wider understanding of diplomatic privileges and immunities that oftentimes serve as contributing factors to transnational criminal activities. The article demonstrates that although being an essential instrument of effective international relations, diplomatic privileges and immunities, particularly the ones related to personal inviolability and immunity from criminal jurisdiction, have favored criminal actors and have contributed to the development of highly sophisticated criminal strategies.

1. General background on diplomatic entitlements⁹

1.1. Inviolability

1.1.1. Inviolability of diplomatic missions

Before going any further, it is necessary to look at the principle of a diplomatic mission's inviolability closely associated with the diplomatic intercourse. This section is important as it reveals how diplomatic premises and official correspondence may benefit criminal activities. Given the diplomatic immunities, the abuse of these provisions may serve as an excellent shield for dishonest diplomatic agents and their partners in a number of illegal activities, who may store illegal goods in the territory of the mission, or use the diplomatic pouch to traffic illegal goods and/or smuggle contraband.

The VCDR establishes that *diplomatic premises*¹⁰ that conventionally understood as “the buildings or parts of buildings and the land ancillary, thereto, irrespective of ownership, used for the purposes of the mission” are inviolable (VCDR: Art. 1, i). The VCDR prohibits the authorities of the receiving state from entering the premises of a diplomatic mission without a permission of the head of the mission (VCDR: Art. 22, Par. 1). The receiving state has “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” (VCDR: Art. 22, Par. 2). No search is allowed with regard to the property of the mission, including its transport vehicles (VCDR: Art. 22, Par. 3). Diplomatic premises and the property in them as well as the means of transport of the mission are immune from search, requisition, attachment, or execution.

Inviolability not only refers to diplomatic premises but also to *diplomatic bags* (also *diplomatic pouch*) intended for the confidential conveyance of *official correspondence*¹¹ between a government and its missions abroad (VCDR: Art. 27, Par. 2). The term also includes correspondence between national delegations and international organizations. Interestingly, the term a “bag” does not pertain to any restrictions in terms of the size or shape of diplomatic correspondence. Diplomatic bags may in reality consist of trucks or even large containers. The only necessary prerequisite of diplomatic correspondence is that it bears “visible external marks” that signify the diplomatic belonging (VCDR: Art. 27, Par. 4). Diplomatic bags are free from electronic and other technical checks including audio and video surveillance. When passing

⁹ I am indebted to Iskender A. Bakaev from the Law Faculty of the Moscow State Institute of International Relations for comments on the earlier draft of this article. In particular, I thank him for his insights into the overall legal analysis of the Vienna Conventions and related legal texts.

¹⁰ The term “diplomatic premises” refers to the office, where the chief of a diplomatic mission and his staff work.

¹¹ Official correspondence relates to communication sent and received by missions relating to their functions.

through a third state, diplomatic bags are travel under the same conditions as in the country of the mission, provided they are identifiable as such. The courier is provided with an official document certifying its diplomatic belonging and guaranteeing its inviolability (including that of the courier) as well until the bags are delivered to the consignee.¹²

1.1.2. Personal inviolability

The principle of the personal inviolability entitled to diplomatic agents is one of the oldest established rules in international law. It has been universally recognized as one of the “most fundamental rules of both customary and conventional law,” and an “essential prerequisite” for the effective conduct of bilateral relations between states (Boczek 2005: 52). The idea of personal inviolability pertains to the protection of the private residence, papers, correspondence, and property of diplomatic agents that the receiving state should guard from any kind of interference. Guided by the theory of *functional necessity*, the rationale behind this diplomatic privilege is to provide protection to a diplomatic agent and his/her family from interference from working abroad, unjust imprisonment by the host government, and other impediments of the work of diplomatic missions in the receiving state (Wilson 1984: 117-118; Ross 1989: 178-179; Värk 2003: 113).

With certain legal protections, agents with diplomatic immunities are allowed official and personal correspondence, or other items between a diplomatic mission and its home government and other official organizations and establishments. The private residence of an appointed diplomatic representative and his family is also protected by the VCDR and has exactly the same inviolability as the premises of the mission (VCDR: Art. 30, Par. 1). A diplomatic representative’s personal baggage is also exempt from inspection, unless there are serious grounds for presuming that it contains articles not covered by the exemptions” (VCDR: Art. 36, Par. 2). These are articles that are not associated with his official functions and responsibilities. A customs investigation is allowed in cases when the diplomatic agent is suspected in possessing articles, “the import or export of which is prohibited by the law or controlled by the quarantine regulations of the receiving state” (VCDR: Art. 36, Par. 2).

1.2. Jurisdiction

1.2.1. Immunity from criminal jurisdiction

Diplomatic immunity is a principle of international law by which certain foreign governmental officials are exempt from criminal jurisdiction. A diplomatic agent who commits a criminal offense under the jurisdiction of the receiving state cannot be prosecuted in local courts. The scope of offences which may be considered is very broad. It is not “immunity from legal liability, but immunity from suit” (Värk 2003: 113-114). In this sense, immunity from criminal jurisdiction of the receiving state is distinct from personal inviolability (VCDR: Art. 31). Personal inviolability generally precludes handcuffing, arrest, or detention in any form and is usually considered more of a physical constraint of activities of the receiving state against a diplomatic agent, whereas diplomatic immunity from criminal jurisdiction pertains to procedural privileges protecting a diplomatic agent from criminal prosecution and most civil law suits (ibid).

Although some diplomatic agents are granted full immunity from criminal jurisdiction that applies immunities in their professional and private lives, this type of diplomatic immunity is

¹² It must be clearly shown that the sender and/or the consignee of diplomatic bags is an embassy or a consular post accredited by the sending state to a foreign country with a diplomatic mission.

not absolute. What it implies is that an offending diplomatic agent cannot be sued in courts of the receiving state unless she/he either submits to the jurisdiction or her/his immunity is lifted by the sending state. The reaction of the receiving state to a criminal offence committed by a diplomatic agent depends on the gravity of the alleged offence.

In the context of serious crimes for which admonition is not considered the appropriate punishment, the receiving state may request the sending state to waive the immunity of the offending diplomatic agent (VCDR: Art. 32, Par. 1). If the sending state refuses or fails within a reasonable period lift the immunity of a diplomatic agent in question, the receiving state may declare any member of the diplomatic staff of a mission *persona non grata* (or “unwelcome person”), refusing to recognize the person concerned as a member of the mission (VCDR: Art. 9, Par. 1, 2). This may be done at any time and there is no obligation to explain such a decision (VCDR: Art. 9, Par. 1). In these situations, the sending state recalls the person or terminates his/her functions with the mission. If the sending state declines to recall this agent, the receiving state may worsen or even breaking off diplomatic relations between the states concerned may follow (Boczek 2005: 65). What is important to point out is that the waiver of immunity does not prevent committing serious crimes, only allowing justice to take its course *ex post facto*. There seems to be little left for states to take any preemptive measures against abuse of diplomatic immunities and privileges.

1.3. The extent of diplomatic privileges and immunities

The extent of diplomatic advantages varies depending on the status of agents. The Vienna Convention on Diplomatic Relations of 1961 and the Vienna Convention on Consular Relations of 1963¹³ have codified the practices of contemporary diplomatic and consular intercourse. According to these conventions, diplomatic privileges and immunities are entitled to persons according to their rank in a diplomatic mission and according to the need for immunity in performing their duties.

Different levels of diplomatic officials, their staff and families are subjects to certain types of privileges and immunities or to none of them. The table below provides a summary of diplomatic privileges and immunities accredited to three categories of agents: (a) diplomatic corps; (b) members of administrative and technical staff; and (c) the service staff. The entitlement of diplomatic privileges and immunities within these three groups is analyzed along three types of missions: (a) diplomatic missions (embassies), (b) consular missions (consulates), and (c) missions to international organizations. The table also includes information about the entitlement of diplomatic advantages to members of families of diplomatic agents.¹⁴ Altogether, the table presents general rules that are subject to exceptions. Some of the exceptions and legal nuances, such as those established on the basis of special bilateral agreements. These exceptions require additional legal scrutiny that has is beyond the scope of this article.

The entitlement of diplomatic immunities and privileges varies along various groups of agents. The diplomatic corps are afforded the highest level of privileges and immunities. Members of the diplomatic corps enjoy full immunity in their professional and private lives. For

¹³ Hereafter the Vienna Conventions on Consular Relations of 1963 is referred to as the VCCR.

¹⁴ The VCDR does not provide any rigid guidance about who may be considered the family. Members of a diplomatic agent’s family must be a part of his household. They enjoy the same immunities and privileges and the diplomatic agents with the exception if they are nationals of the receiving (VCDR: Art. 37, Par. 1). Interpretation of these terms, however, has produced multiple definitions. One of the views is that the term “family” includes at least spouses and children of different age, while a “household” may also refer to private servants who do not have any blood relationship to the diplomatic agent concerned, but who live under the same roof with him.

other agents, immunities are valid for most of the cases solely within the performance of the functions prescribed by their mandates.

Diplomatic corps enjoy personal inviolability, immunity from jurisdiction and inviolability of diplomats' residences and property. They are liable to arrest or detention. Neither is their private residence liable to administrative investigation except with express authorization from the head of the mission. The principle of personal inviolability also applies to their recognized family members that accompany an accredited diplomatic representative (VCDR: Art. 37).

Administrative and technical staff members of diplomatic missions (officers, typists, mail and file clerks) have a lower level of immunity. They and their families enjoy inviolability to the same extent as the diplomatic corps (unless they are nationals or permanent residents of the receiving state), except that their personal baggage is not exempt from inspection, they are granted the immunity from civil jurisdiction for official acts only, and they have to pay duties and taxes imposed by the receiving state. Consular officers have a lower level of immunity.

Consular officers are not granted absolute immunity from the receiving state's criminal jurisdiction. They may be prosecuted for an offence by a local court. They may be arrested or detained in cases of grave crime, in execution of a judicial decision. Their private residences are not exempt from administrative investigation. They, however, are exempt from customs inspection unless there is serious ground for it (VCCR: Art. 50, Par. 3). Consular exemption from criminal and civil jurisdictions is granted for official acts only.

As it may have been expected, diplomatic immunities and privileges do not apply to members of service staff (chauffeurs, cleaning staff) since they do not perform acts directly related to the official duties of the mission.

CATEGORY	DIPLOMATIC IMMUNITIES					DIPLOMATIC PRIVILEGES
	Inviolabilities			Immunities from Jurisdiction		Privileges
	<i>Immunity from Arrest and Detention</i>	<i>Residence May be Entered</i>	<i>Inviolability of Personal Baggage and Correspondence</i>	<i>Immunity from Criminal Jurisdiction</i>	<i>Immunity from Civil and Administrative Jurisdiction</i>	<i>Duties and Taxes Exemption</i>
DIPLOMATIC MISSIONS <i>(according to the Vienna Convention on Diplomatic Relations of 1961, VCDR)</i>						
Diplomatic Corps + Family	Yes¹	No	Yes (unless there is a serious ground for it such as in VCDR, Art.36, Par. 2)	Yes	Yes (allowing for exceptions, VCDR, Art.31, Par. 1)	Yes (with exceptions in VCDR, Art. 34)
Member of Administrative and Technical Staff + Family	Yes¹	No (except with authorization from head of mission)	Yes (with exceptions in VCDR, Art. 36, Par. 1)	Yes	Yes (for official acts, otherwise, No)	No

Service Staff	No	Yes	No	No	No	No
CONSULAR MISSIONS <i>(according to the Vienna Convention on Consular Relations of 1963, VCCR)</i>						
Career and Honorary Consular Officers ¹⁵	Yes (with exceptions in the case of grave crime, in execution of a judicial decision, VCCR, Art. 41, Par. 1)	Yes ³	Yes (unless there is serious ground for it; VCCR, Art.50, Par. 3)	Yes (for official acts ⁴ , otherwise, No)	Yes (allowing for exceptions in VCCR, Art.43, Par. 2)	Yes (with exceptions in VCCR, Art. 49)
Consular Employees ¹⁶	No	Yes	No	Yes (for official acts, otherwise, No)	Yes (for official acts, otherwise, No)	Yes (with exceptions in VCCR, Art. 49)
Service Staff	No	Yes	No	No	No	No
<p>NB:</p> <p>¹ Reasonable constraints, however, may be applied in emergency circumstances involving self-defense, public safety, or the prevention of serious criminal acts.</p> <p>² A small number of senior officers are entitled to be treated identically to “diplomatic agents.”</p> <p>³ Note that consular residences are sometimes located within the official consular premises. In such cases, only the official office space is protected from police entry.</p> <p>⁴ Official acts are acts accomplished in performance of mandate functions</p>						

Table 1. Variations in the entitlement of diplomatic privileges and immunities¹⁷

One of the problems with the multiplicity of agents in the diplomatic intercourse broadly conceived is the one of *standardized nomination*. Since the practice of states granting immunities and privileges to diplomatic agents has not been uniform, the inconsistency has caused

¹⁵ A “consular officer” refers to any person, including the head of a consular post (i.e. consulate-general, consulate, vice-consulate, or a consular agency), entrusted in that capacity with the exercise of consular functions (VCCR: Art. 1, a).

¹⁶ A “consular employee” means any person employed in the administrative or technical service of a consular post (VCCR, Art. 1, e).

¹⁷ Although the table is largely the author’s own compilation, the idea has been borrowed from the U.S. Department of State Guidance for Law Enforcement and Judicial Authorities (U.S. Department of State 2011, 22).

controversies with the classification of mandates and responsibilities (Brown 1988: 56). For instance, a driver may be notified as a member of administrative and technical staff that also implies full immunity from criminal jurisdiction, whereas he should more appropriately be considered as service staff. It may also be possible, as Brown suggest, that administrative and technical staff is notified as members of the diplomatic staff, who enjoy full privileges of duty-free imports throughout the entire duration of their mission. There are limitations to rigidity on those properly entitled to privileges and immunities that may be a problem for preventing offence and abuse.

2. Cases of abuse of diplomatic immunities and privileges in the context of TOC

There has been a conventional belief that diplomatic agents are scrupulous and dutifully servants of their nations. This sentiment may have been applicable to the majority of foreign missions. Some diplomatic agents have abused their diplomatic status. Forms of abuse, however, have not been uniform. The empirical analysis below is primarily concerned with three categories of criminal offence:

- (a) cases of criminal offence, in which diplomatic privileges and immunities have been abused without the diplomatic agent involved knowing about it;
- (b) cases of criminal offence, in which diplomatic privileges and immunities have been deliberately exploited by a diplomatic agent to aid the organization or facilitate the proceedings of a criminal activity in exchange for a private gain;
- (c) cases of criminal offence, in which a diplomatic agent abused the entitlements of the diplomatic status, acting as the principal perpetrator of a criminal act.

2.1. Diplomatic agents as victims of organized crime

One should not generalize the involvement of diplomatic agents in criminal activities. Diplomatic immunities and privileges may be exploited by criminal groups without the diplomatic agent involved knowing about the offence. For instance, criminal actors may use counterfeit diplomatic bags to smuggle illegal goods across jurisdictions. If law enforcement officers cannot differentiate the authentic diplomatic pouch from counterfeit, they do not have the authority to open the shipment.

In a rather ingenious method of transnational drug smuggling, two diplomatic bags with 35 pounds of cocaine worth USD 2 mln were shipped from Mexico City to the UN Headquarters in New York (MacFarouhar 2012). Protected by the international law, the counterfeit “diplomatic” correspondence was meant to escape inspection at the border and reach New York through Cincinnati, where it would be picked up by local dealers. According to the investigation, the officials working with UN correspondence became suspicious of the bags because of the “poorly concocted version of the UN logo on them.... There was no wording, no address, no manifest, no airway bill” (ibid). When the bags were opened, the contents revealed 14 notebooks wrapped in cellophane. Each of the notebooks camouflaged 2.2 pounds of cocaine.

In a similar case, the Gardai¹⁸ and the Irish customs service smashed a Nigerian drug trafficking organization using counterfeit diplomatic bags to smuggle cocaine into Ireland in 2011 (Brandy 2011). The law enforcement officers became suspicious of the privileged Venezuelan diplomatic pouch to be addressed to a provincial area in Athy, Co Kildare. Having delivered the pouch to its address under surveillance, 20 kilograms of cocaine worth EUR 1.5 mln were seized in an underground parking area of an apartment complex (ibid).

¹⁸ *GARDAI* is Irish for “Guard of the Peace of Ireland” that refers to the police force in Ireland.

Since the members of a diplomatic agent's family are also bears of diplomatic privileges and immunities, they have featured as perpetrators. Allegedly, the sponsor of their diplomatic status – the diplomatic agent – was not aware of their activities. Crimes with the involvement of children of influential parents have been some of the bread-winning stories of the yellow press. In April 1994, Brian and Daren Bernal, sons of Richard Bernal, Jamaica's ambassador to the United States and the Organization of American States (OAS), were arrested at the Norman Manley International Airport in Jamaica before they could board a flight to Washington, D.C. They were charged with trafficking 46 kilograms of compressed marijuana packed in cans of pineapple juice. Following the investigation, they were sentenced and charged with a total fine of JMD 150,000 (Griffith 1997: 86). In a more recent case, the wife of a DRC's diplomat to Serbia was arrested. Using the protection provided by diplomatic immunity, she attempted to smuggle illegal Albania-produced cigarettes. She was arrested in Romania with 18,000 cigarette packets hidden in her car in 2011 (BBC News 2011).

Theft and forgery of diplomatic identify have been central to some criminal activities. Criminals who obtain a fraudulent diplomatic identification document may use it to commit other crimes, including terrorism, financial fraud, narcotics trafficking, and alien smuggling. Fugitives often seek to change their identities and travel internationally as part of their criminal activities. "Smuggling organizations show a high level of sophistication and have a variety of ways in which they obtain or produce the necessary documents, such as photo substitution, visa transposition and forgery of visas, residence permits and passports" (UNODC 2011: 99). One of the people smuggling schemes, in which forged diplomatic passports were involved, was disrupted in 2001. Chinese citizens used fake Chinese diplomatic identification documents to funnel Chinese nationals through Central Asia to Europe. More than two dozens of illegal Chinese migrants were seized by the Pakistani police in Karachi. According to the investigation, the detainees were convinced they were seeking domestic service jobs and would reach the destination with fake passports solicited for USD 5,000 each (CNN News 2001).

2.2. Diplomatic agents as facilitators of criminal activities

The stunning lack of oversight and accountability still pervades the visa culture of some nation's foreign missions. Visa malfeasance including the fraudulent issuance, procurement, counterfeiting, and forgery of visas has been committed by diplomatic agents. Visas for smuggling migrants may be obtained on fraudulent grounds by the connections that smugglers have at consulate services. Corrupt practices target crucial public officials, such as clerical staff for visa applications. Research by UNODC and IOM has stressed the importance of corruption in the smuggling process (UNODC 2011: 102).

Some high profile cases demonstrate some of the ways, in which diplomatic agents may act as facilitators of criminal activities. In 2005, the former honorary Swiss consul in Oman Heinz Oskar Wieland was given a nine-month suspended prison sentence for falsifying visa application forms and inadequate charging over them (Swissinfo 2005). He issued 134 visas illegally and pocketed up to USD 143,000 between 1999 and 2003. The court also ruled his to refund more than USD 130,000 for the damage he had caused to Switzerland's international reputation. Mr. Wieland partly admitted his guilt, claiming responsibility only for a portion of manipulated visas (ibid).

A more clear-cut example of the collaboration between organized crime and diplomatic agents can be demonstrated with the visa malfeasance case of the Swiss embassy in Pakistan. In 2006, the Foreign Ministry of Switzerland confirmed up to 100 cases of visa fraud at its diplomatic mission in Islamabad (Hassan 2011). Pakistani human trafficking rings allegedly infiltrated the visa section of the Swiss embassy through corrupt employees. "The local mafia in Pakistan has attempted to influence the Swiss embassy's visa department," suggested Swiss

Foreign Ministry senior official Martin Dahinden (Swissinfo 2006). The public statement led to the closure of the visa department of the Islamabad mission.

Staff members at German embassies have also been suspected of having accepted bribes for issuing Schengen visas into the EU.¹⁹ The allegations were made against staffs working at embassies in Russia, Ukraine, Moldova, Africa, and South America. According to the investigative report of the German Foreign Ministry, staff members apparently overlooked false statements in visa applications, accepting a payment for “service” (Sinico 2010). These violations and, more generally, Joschka Fischer’s lax visa-issuing regulations are believed to also have directly “aided massive human trafficking operations in Eastern Europe and Ukraine in particular, bringing tens of thousands of illegal workers and prostitutes into Germany between 2000 and 2003” (Deutsche Welle 2005).

2.3. Diplomatic agents as principal perpetrators

There are no comprehensive statistics available on the amount of serious crimes committed by diplomatic agents as principal perpetrators. However, the importance of this phenomenon is unprecedented. The cases below indicate the threatening scale of criminal activities and the ease with which they, although interdicted, were committed.

In 2011, two employees of the Polish embassy in Moscow were arrested with a contraband cargo containing 100,000 cigarettes when crossing the Belarus-Polish border (RIA 2011a). A border guard spokesman said the embassy employees (RIA 2011b) were hiding the contraband cargo in a car with diplomatic plates. Allegedly, the smugglers were seeking to make a profit from the asymmetry of prices for cigarettes in Russia and the EU (ibid).

Infamous for the involvement of diplomatic agents in drug trafficking have been some of the states in Central Asia, serving as the *entrepôt* for drugs from Afghanistan. Scholars and policymakers have often emphasized the high probability of drug trafficking organizations merging with the government and law enforcement agencies (Marat 2006; Kupatadze 2012; Shelley 2006; Scott 2006). Several officers of Tajik law enforcement agencies as well as diplomats have been arrested and charged in Russia and Kyrgyzstan for wholesale opiate smuggling. In May of 2000, 62 kilograms of heroin, USD 54,000, and a check worth GBP 1,261 mln were detained in Kazakhstan’s former capital Almaty in cars owned by the Embassy of Tajikistan in Kazakhstan (Paoli et al 2007: 258). Further investigation led to the seizure of 14 kilograms of heroin found in the apartment and 10 kg in the garage of the trade representative of the Tajik Embassy to Kazakhstan. According to the Russian security service officers, 10 kilograms of heroin were found in the diplomatic bag sent by these public officials (FKSN 2010; Shvedov 2003). The trade representative was convicted to 15 years of imprisonment on drug charges, whereas the ambassador managed to flee Kazakhstan.

In 2009, Agim Haxhiu, second secretary of the Albanian embassy in Macedonia, was arrested in Turkey. The diplomat was detained at the Turkey-Bulgaria border with 65 kilograms of heroin with the street value of EUR 2.5 mln. The Albanian Ministry of Foreign Affairs lifted his diplomatic privileges and immunity, leading to his prosecution according to Turkish laws and international conventions (Today’s Zaman 2009).

One of the most controversial cases of the involvement of diplomatic agents in drug trafficking has been attached to North Korean diplomatic missions. The U.S. report, for instance,

¹⁹ According to some press releases, the accused were local employees based in the consular section of German diplomatic missions in the respective country. Berlin prosecutors have reported that local consular employees were receiving several hundreds of euro in cash in exchange for issuing visas on a fast track or turning a blind eye to visa applications that should have been rejected.

accounts for at least 50 documented incidents in more than 20 countries around the world, in which North Korean diplomats were arrested or detained (Perl 2006). “Such events, in the context of credible, but unproven, allegations of large scale state sponsorship of drug production and trafficking, raise important issues for the United States and its allies in combating international drug trafficking” emphasizes the U.S. congressional report concerned with drug trafficking, trafficking of counterfeit U.S. currency, and other smuggling activities by North Korean diplomats over the past 27 years (ibid). A senior U.S. diplomat has branded North Korea a “criminal regime” involved in arms sales, drug trafficking and currency forgery (BBC News 2005). According to most conservative estimates of criminal proceeds generated by North Korean criminal networks suggest as much as USD 500 mln per year (Wyler & Nanto 2008). One such case was recorded in 2004, when the Turkish police arrested two North Korean diplomats accredited in Bulgaria. The diplomatic agents were detained in the act of handing 700,000 fenethylline pills (a synthetic drug known as Captagon) smuggled from Bulgaria to two Turkish citizens located in Istanbul. According to the investigation by the Turkish police, the diplomats were using their diplomatic plated-cars in transporting the drug shipment (BBC News 2004). North Korean diplomats have also featured in cigarette smuggling. In 2009, the Swedish police seized 230,000 cigarettes smuggled into the Nordic country from Russia. Swedish customs officials discovered the contraband in the car driven by two North Koreans who claimed diplomatic immunity. According to the investigation, the diplomatic agents detained were accredited diplomatic immunity in Russia, but had no accreditation in Sweden. Thus, there was no violation of searching their vehicle (Reuters 2009). North Korean diplomatic agents were also busted at the Polish-Ukrainian border’s check point “Jagodzinie,” when allegedly trying to smuggle 20,000 cigarette packs in the car of diplomats working in the North Korean mission to Warsaw (Kyiv Post 2011).

Conclusion

There has been a conventional belief that diplomatic agents are scrupulous and dutifully servants of their nations. It is a rule of international law, as laid down in Art. 41 of the VCDR, that diplomatic agents “must respect the laws and regulations of the receiving state and that the inviolability of diplomatic premises may not be abused in any manner incompatible with diplomatic functions.” This sentiment may have been applicable to the majority of foreign missions. Some diplomatic agents, however, have abused the advantages of the diplomatic status. The standard practice as indicated in this article suggests that the international community, nation states, and diplomatic agents have faced problems with misuse, or more precisely the abuse, of provisions of the Vienna Conventions and other related legal documents in respect of serious crimes. Unfortunately, there is a criminogenic vacuum in the diplomatic intercourse that filthy diplomatic agents have exploited for the purpose of personal enrichment and/or other illegitimate gains.

The most stereotypical abuse that has been widely publicized in the media pertains to parking tickets and other minor violations of traffic ordinance. These offences are among the least egregious types of violations. Abuse of diplomatic privileges and immunities has often extended to also include serious breaches of the law, including, *inter alia*, trafficking in illegal goods and smuggling contraband, illegal migration and money laundering, corruption and visa fraud. If one is to condense the message of the article, it should be a warning about how serious alleged offences presented are. Even if there might be some exaggeration in this assessment, the few criminal cases that are brought to court are enough to show the extent of the threat the involvement of high-ranking public officials in transnational organized crime.

Surely, the only way to stop these incidents is to rethink the fundamentals of the diplomatic entitlements. Much of the old system of diplomatic relations requires adjustments.

One of the potential areas to be considered pertains to the provisions of the Vienna Conventions. Given that the VCDR and the VCCR make no attempt to distinguish crimes according to their gravity, one may want to draw a line between crimes of different gravity and discuss the corresponding degree of immunity. In cases of minor offences committed by diplomatic agents, they should not indeed be disturbed from effective performance of diplomatic functions. In cases of serious and large-scale criminal activities with the involvement of diplomatic agents, the international community may want to limit the possibility of exploitation of the diplomatic status by discouraging particular diplomatic entitlements or the degree of their influence. Diplomatic immunities and privileges should not, under any condition, be used as a license for committing crimes.

References

- Bailey J, Godson R (2001) Organized crime and democratic governability: Mexico and the U.S.- Mexican borderlands. University of Pittsburgh Press, Pittsburgh
- BBC News (2011) Congo diplomat's wife smuggled cigarettes in Romania. 13 June. <http://www.bbc.co.uk/news/world-africa-13749628> [accessed 4 July 2012]
- Boczek BA (2005) International Law: A Dictionary. Scarecrow Press, Lanham,
- Brandy T (2011) Diplomatic bags used to smuggle cocaine. The Independent, 27 May. <http://www.independent.ie/national-news/diplomatic-bags-used-to-smuggle-cocaine-2659623.html> [accessed 4 July 2012]
- Brown J (1988) Diplomatic immunity: state practice under the Vienna Convention on Diplomatic Relations. The International and Comparative Law Quarterly, 37 (1): 53-88
- Deutsche Welle (2005) Former diplomats turn against Fischer. Deutsche Welle, 30 March. <http://www.dw.de/dw/article/0,,1534869,00.html> [accessed 9 July, 2012]
- FKSN (2010) Narco traffic through Tajikistan is the threat to the future of Russia (Tajikskiyi narkotraffik – ugroza buduschemu Rossii). Mass Media Digest, 29 November. <http://www.fskn.ru/includes/periodics/review/2010/1129/05239240/detail.shtml> [accessed 4 July 2012]
- Godson R (2003) Menace to society: political-criminal collaboration around the world. Transaction Publishers, Piscataway
- Griffith IL (1997) Drugs and security in the Caribbean: sovereignty under siege. Pennsylvania State University Press, University Park
- Hassan A (2011) Swiss visas case: court summons owners of four travel agencies. The Daily Times, 18 October. http://dailytimes.com.pk/default.asp?page=2011\10\18\story_18-10-2011_pg11_1 [accessed 5 July 2012]
- Kupatadze A (2012) Organized crime, political transitions and state formation in post-Soviet Eurasia. Palgrave Macmillan, New York
- Kyiv Post (2011) United press international: diplomats arrested for cigarette smuggling. Kyiv Post, 24 May. http://www.kyivpost.com/content/ukraine-abroad/united-press-international-diplomats-arrested-for-.html#.T_WpM9mU2MI [accessed 5 June 2012]
- Lupsha PA, Pimentel SA (1997) The nexus between crime and politics: Mexico. Trends in Organized Crime, 3(1): 65-67
- MacFarouhar N (2012) U.N. sees an unexpected arrival: bags of drugs. The New York Times, 26 January. <http://www.nytimes.com/2012/01/27/world/americas/30-pounds-of-cocaine-turn-up-in-un-mailroom.html> [accessed 4 July 2012]

- Marat E (2006) The state-crime nexus in Central Asia: state weakness, organized crime and corruption in Kyrgyzstan and Tajikistan. Silk Road Paper, Institute for Security and Development Policy
- Paoli L, Rabkov I, Greenfield V, Reuter P (2007) Tajikistan: the rise of a narco-state. *The Journal of Drug Issues*, 37 (4): 251-279
- Perl RF (2006) Drug trafficking and North Korea: issues for U.S. policy. CRS Report for Congress, 27 November, Congressional Research Service, Library of Congress
- Reuters (2009) Diplomats arrested for cigarette smuggling. Reuters, 20 November. <http://www.reuters.com/article/2009/11/20/us-northkorea-odds-idUSTRE5AJ2Z420091120> [accessed 5 June 2012]
- RIA (2011a) Two Polish diplomats fired over attempted cigarette smuggling. RIA Novosti, 5 November. <http://en.ria.ru/world/20111105/168430620.html> [accessed 7 July 2012]
- RIA (2011b) Polish foreign minister Sikorski fired two employees of the Polish embassy in Moscow (Glava MID Polshy Sikorski uvolil dvukh sotrudnikov posolstva v Moskve). RIA Novosti, 5 November. <http://ria.ru/incidents/20111105/481016975.html> [accessed 7 July 2012]
- Ross MS (1989) Rethinking diplomatic immunity: a review of remedial approaches to address the abuses of diplomatic privileges and immunities. *The American University Journal of International Law and Policy*, 4: 173-205
- Scott ER (2006) Uncharted territory: Russian business activity in Abkhazia and South Ossetia. In: Orttung R, Wenger A, Perovic J (eds.) *Russian business power: the role of Russian business in foreign and security relations*. Routledge, New York, 217-239.
- Shelley L (1999). Congressional statement of Louise Shelley. U.S. House of Representatives, Committee on Banking and Financial Services, 22 September
- Shelley L (2006) The drug trade in Russia. In: Orttung R, Wenger A, Perovic J (eds.) *Russian business power: the role of Russian business in foreign and security relations*. Routledge, New York
- Shvedov A (2003) The inviolable narco-traffic (Neprikosnovennyi narkotraffic). *Izvestiya*, 21 September. <http://izvestia.ru/news/281564> [accessed 5 June 2012]
- Sinico S (2010) German embassy staff suspected of accepting bribes for visas. Deutsche Welle, 19 December. <http://www.dw.de/dw/article/0,,6356955,00.html> [accessed 10 July 2012]
- Swissinfo (2005) Ex-honorary consul convicted of visa fraud. Swissinfo, 28 November. http://www.swissinfo.ch/eng/Home/Archive/Ex-honorary_consul_convicted_of_visa_fraud.html?cid=4873936 [accessed 6 July 2012]
- Swissinfo (2006) Islamabad embassy target of organized crime. Swissinfo, 3 May. http://www.swissinfo.ch/eng/Home/Archive/Islamabad_embassy_target_of_organised_crime.html?cid=5155786 [accessed 6 July 2012]
- Today's Zaman (2009) Turkey holds Albanian diplomat in heroin bust. Today's Zaman, 8 May. http://www.todayszaman.com/newsDetail_getNewsById.action?load=detay&link=174723 [accessed 5 June 2012]
- U.S. Department of State (2011) Diplomatic and consular immunity: guidance for law enforcement and judicial authorities. U.S. Department of State, Bureau of Diplomatic Security. <http://www.state.gov/documents/organization/150546.pdf> [accessed 27 July 2012]
- UNODC (2000) United Nations Convention against Transnational Organized Crime. United Nations Office on Drugs and Crime, Vienna.
- UNODC (2011) Smuggling of migrants: a global review and annotated bibliography of recent publications. United Nations Office on Drugs and Crime, Vienna. http://www.unodc.org/documents/human-trafficking/Migrant-Smuggling/Smuggling_of_Migrants_A_Global_Review.pdf [accessed 29 July 2012]

- Värk R (2003) Personal inviolability and diplomatic immunity in respect of serious crimes. *Juridica International*, VIII: 110-119
- VCCR (1963) Vienna Convention on Consular Relations. United Nations, Vienna, 24 April
- VCDR (1961) Vienna Convention on Diplomatic Relations. United Nations, Vienna, 18 April
- Wilson RA (1984) Diplomatic immunity from criminal jurisdiction: essential to effective international relations. *Loyola of Los Angeles International and Comparative Law Review*, 7: 113-138
- Wyler LS, Nanto DK (2008) North Korean crime-for-profit activities. CRS Report for Congress, Congressional Research Service, Library of Congress, 25 August.
<http://www.fas.org/sgp/crs/row/RL33885.pdf> [accessed 5 July 2012]
- CTOC (2000) "United Nations Convention against Transnational Organized Crime, United Nations Office on Drugs and Crime. Available at:
<http://www.unodc.org/art/docs/Convention%20on%20transnational%20organized%20crime%202000.pdf> [accessed 3 July 2010].
- CNN News (2001) Immigration scam cracked, says Pakistan. 5 June.
http://articles.cnn.com/2001-07-05/world/pakistan.people.smuggling_1_fake-passports-immigration-scam-chinese-nationals?_s=PM:asiapcf [accessed 7 July, 2012]
- BBC News (2012) Diplomats owe £58m in c-charges. 5 July. <http://www.bbc.co.uk/news/uk-politics-18725937> [accessed July 31 2012]
- BBC News (2005) US says N Korea criminal regime. 7 December.
<http://news.bbc.co.uk/2/hi/asia-pacific/4505960.stm> [accessed 5 June 2012]
- BBC News (2004) N Korea envoys smuggled drugs. 9 December.
<http://news.bbc.co.uk/2/hi/europe/4083977.stm> [accessed 5 June 2012]