



DIPLOMATIC CRITICISM OF GOVERNMENTAL POLICIES: IRAQ AS A CASE STUDY

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ABSTRACT

Despite warnings by the Vienna Convention on Diplomatic Relation 1961 (VCDR) concerning ambassadors' interference in the internal affairs of receiving states, a Saudi Ambassador is acting in a manner that suggests he cannot serve the interests of his country without interfering in the internal affairs of Iraq. The questions are whether the current mechanism of VCDR is adequate to redress the problem of interference in the internal affairs of receiving states, and whether the Saudi ambassador's comments should be considered as interference in Iraq? This paper therefore, examined the extent to which contributions of the Saudi Ambassador constitute interference in the internal affairs of Iraq, while also identifying effective ways to improve the laws on diplomatic interference during internal conflicts. It critically analysed the VCDR alongside a literature review and concluded that the VCDR obliges ambassadors to abstain from interference in the internal political life of receiving state stands, and that the Saudi Ambassador was in violation of VCDR by demonstrably intervening in Iraqi internal affairs via his (un-)diplomatic criticism of Iraqi governmental policies not directly related to his country's interest. Hence the recommendation that appropriate punishments equal to the damage caused by such ambassador's actions and/or words be meted out.

Keywords: Diplomatic Criticism, Iraq, Interference in the Internal Affairs, Internal Conflict

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INTRODUCTION

This paper studies the case of the Saudi Ambassador to Iraq in 2016. Despite the warnings of the Vienna Convention on Diplomatic Relation (VCDR) (Article 41 of VCDR) (United Nations, 1961), concerning Ambassadors not interfering in the internal affairs of receiving states, the Ambassador clearly felt he could not serve the interests of his own country (Saudi Arabia) without interference in the internal affairs of Iraq. The researcher describes the events in order to examine the extent to which this Ambassador's action constitutes interference in the internal affairs of Iraq. The questions are whether the current mechanism of VCDR is adequate to redress the problem of interference in internal affairs of receiving states, and whether the Saudi ambassador's comments constitute a political interference in the internal affairs of Iraq?

The research critically analyses the VCDR itself and related literature, which generally affirms the obligation of

ambassadors to abstain from interference with the internal political life of the receiving state (article 41[1] of VCDR). However, Ambassadors may intervene to protect the receiving state's interest (Article (3/b) of VCDR). Critics allege that the first Saudi ambassador to Iraq who was appointed in 2015 after a quarter-century of cut-off the relationships between Iraq and Saudi Arabia was clearly interfering in the internal affairs of Iraq, using populist Sunni Arab rhetoric to exacerbate sectarian problems in Iraq and to undermine its national government, in the interests of Saudi Arabia, which seeks to present itself as the champion of Sunni Arabs against the Shia-dominated Iraqi government (Rawabat Centre, 2015)

THE DEFINITION OF DIPLOMATIC INTERFERENCE

While alluding to its prohibition, the VCDR did not in fact define diplomatic interference or specify instances of offending behaviour (Behrens, 2006), which creates potential confusion among diplomats concerning what this term means and their duty with regard to it. Diplomats



often find themselves in conflicting situations wherein they wish to champion the interests of their own countries in host states (which are their fundamental role), while wishing to avoid diplomatic interference. Generally, the modus operandi is left to the intelligence and judgement of diplomats and receiving states. However, diplomatic interference is illegal under international law, and traditional gentlemen's agreements no longer suffice in modern diplomacy (Behrens, 2006). The VCDR warns diplomats to abstain from interference in internal affairs of receiving states in article 41 (1), which states that:

“Without prejudice to their privileges and immunities, it is the duty of all persons enjoying such privileges and immunities...not to interfere in the internal affairs of that State’

Also, Article 12 of the Havana Convention on Diplomatic Officers states that:

“Foreign diplomatic officers may not participate in the domestic or foreign politics of the State in which they exercise their functions’

Moreover, Article 40 of the Draft Articles Drawn up by the Asian-African Legal Consultative Committee and Article 40 of the Draft Articles Drawn up by the International Law Commission provide that the ambassador must refrain from interference in internal affairs of receiving states (Sen, 1965). However, scholars are still perplexed in attempting to unravel the operational meaning of this term. Loma sky and Tesón consider that the act of ambassador constitutes interference when two conditions exist -the act involves pressure or coercion, or the attempts of one state with coercion to affect another state to do or not do action (Tesón, 2015)

However, according to art 3 (1) (b) the duty of an ambassador is to protect the interest of his or her country that:

“Protecting in the receiving State the interests of the sending State and of its nationals, within the limits permitted by international law”

It is unclear the how far the protection of the interests of the sending state can justify the actions of diplomats, – for

instance, whether this would go as far as allowing a diplomat to criticize the legal or penal processes in the receiving state. The researcher believes that rationale of safeguarding sending state interests cannot go this far, even if a citizen of the sending state is tried in a court of the receiving state. Diplomatic intervention in judicial affairs of the host state is manifestly interference, compromising the independence of the judiciary and undermining democratic governance by exerting executive control over civil society institutions.

An example of this was manifest in June 2016 when the Saudi Ambassador to Iraq, visited the Nasiriyah Prison in Southern Iraq, and said that Saudi nationals suspected of terrorism were not treated fairly, based on prisoner testimonials alleging torture. The Saudi Ambassador subsequently stated that his country is seeking to re-trial of the Saudi prisoners, adding that Riyadh has evidence to prove prisoners underwent "pressure" during the investigation. A number of Saudi nationals have been executed for terrorism in Iraq, and eight are currently awaiting execution.

As affirmed by the Iraqi Minister of Justice, visits by consular officials and representations of Arab and foreign guests to Iraqi prisons are part of international human rights requirements subject to reciprocity (i.e. with Iraqi delegations being able to visit Iraqi prisoners in foreign countries); however, to use this as a pretext for an attack on the fundamental integrity of a foreign state's judicial and penal system is gross abuse, particularly coming from a country known to be a prolific violator of human rights. According to art 41(1) (b) an ambassador should refrain from anything that would be an interference including his or her private contacts, writing, all related information linked to political, economic or military contexts in the receiving State, and shall not advocate political parties or undermine the host government.

The action of the receiving state against political diplomatic interference in most cases is to declare the ambassador a persona non grata, as in 2013 when the Venezuelan government expelled a US envoy and two others accused of meeting with opposition leaders. (Aljazeera “” (Qatar, 2013) Later in 2014 the Venezuelan





government again declared numerous American diplomats personas non grata, including Charge d' Affaires Calixto Ortega Rios, after accusing them of plotting to sabotage the economy and organising protests in Caracas against President Maduro (BBC News, 2014). Diplomats have no right to meet political opposition figures in the absence of official government representatives, as essentially diplomatic contact is between the diplomat and the state. Consequently, meeting with opposition violates article 41(1) (b) of VCDR and art. 27(1) states that:

“The receiving State shall permit and protect free communication on the part of the mission for all official purposes...”

This communication should be for official purposes, not to encourage opposition of the legitimate government. The Saudi diplomats to Iraq in this regard visited Sunni and Kurdish parliamentarians, who are regarded as opposition to the Shia-majority government. (S. News 2016) Egregious affronts by diplomats can result in their expulsion from the host state, such as for 'plotting against the head of state, spreading misleading information about the putsch, meeting with the former government, denial of the visa to the son of senior Fijian official.' (Behrens, 2006)

INTERNATIONAL LAW AND THE DIPLOMATIC INTERFERENCE

Under the VCDR, it is the duty of receiving states to grant immunity and privileges to diplomats. Article 19 of the VCDR states that:

“The person of a diplomatic agent shall be inviolable”. He shall not be liable to any form of arrest or detention. The receiving State shall treat him with due respect and shall take all appropriate steps to prevent any attack on his person, freedom or dignity’

Ambassadors are granted immunity and privileges to discharge their duties effectively, therefore the receiving state is obliged in accordance with international law and practice to allow diplomats every opportunity to carry on

their activities without let or hindrance, and in this matter to treat him in manner befitting his position and accord him the necessary immunity and privileges. (Sen, A Diplomat's Handbook of International Law and Practice 1991) However, these privileges and immunity are granted on the condition that they do not interfere with the internal affairs of that State. Article 41 (1) of the VCDR states that:

“... it is the duty of all persons enjoying such privileges and immunities... not to interfere in the internal affairs of that State”

It is clear from this article that ambassadors should take into account a range of responsibilities when performing their duties in the territory of the receiving state, including those they owe to the receiving state itself in terms of respecting its laws and regulations, and abstaining from any act that constitutes an interference in its internal affairs, including engagement in internal political affairs, instigating any security threats to the government, or criticizing its actions for other than home country interests, with appropriate respect for local customs and traditions including religious and cultural beliefs, being careful to participate in important events experienced by the state.

In this legal position, ambassadors might face dilemmas in their duty to protect their own national interests and the duty of non-interference in the internal affairs of the receiving state. Article 3 of the VCDR determines the tasks and functions of ambassadors as being to represent the sending state at the receiving state, and to protect the interests of the citizens of the former, fostering the development of friendly relations between both countries and to negotiate with the receiving country authorities. This entails that ambassador's report on the political situation of the receiving state, which can range from a simple and universally tolerated bulletin to implicit interference in the receiving country's affairs akin to espionage.

An example of this was seen in January 2016, when Saudi Arabia and Iraq resumed official diplomatic relations for the first time since the first Gulf War in 1990. The newly





appointed Saudi Ambassador chose the occasion of his first interview to lambast the policies of the Iraqi government and accuse it of sectarianism. In his dialogue with the Iraqi channel ‘Alsumaria’, he gave his opinion about the Shia militia al Hashed al Shabi, implying that it was armed by the Iraqi government and Iran, and that Sunnis would be persecuted in Iraq if they could not be armed, accusing Iran of “interference in internal Iraqi affairs, clearly, and the creation of armed militias”, which he cited as justification for Saudi Arabia arming Sunni insurgents, and concluded with some conventional internationalist rhetoric about the urgent need to “find a radical solution to the environment that contributed to the emergence of Daesh and terrorism”. (A. A. News 2016) Rather than seeking to promote relations between Iraq and Saudi Arabia in the current window of rapprochement, as all parties seek to counter the Daesh insurgency, this Ambassador’s comments could stir up the hornet’s nest of sectarianism to undermine the Iraqi government in the short-term interests of Saudi Arabia.

THE LEGAL IMPACT OF POLITICAL DIPLOMATIC INTERFERENCE

An ambassador is to abstain from interference in the internal political life of the receiving state, although it is part of their function to watch political events with an attentive eye, and report their observations to their government; beyond this, they have no right to take part in the political life of the host state, or to encourage some political interests and cajole or threaten others. While some scholars distinguish between official interference on behalf of the sending state and autonomous interference by ambassadors themselves, international law views any interference as illegal. (Robert Jennings and Arthur Watts 1996)The researcher agrees with this opinion, noting that the immunity and special protection of diplomats is predicated on their impartiality and non-interference in internal affairs.

If ambassadors violate this understanding, the receiving state then has right to protest, or in more serious cases request the sending state to recall him and appoint another individual in his place, or if his interference is very

flagrant, dismiss and expel the diplomat. There have been many instances of this kind, although in many cases it is doubtful whether an ambassador concerned really abused his office for the purpose of interfering with internal politics. (Robert Jennings and Arthur Watts 1996) In most cases the receiving state declares the particular diplomat to be persona non-grata, whereupon a successor swiftly resumes normal diplomatic relations. States have generally been reluctant to invoke the provisions of article 9(1) of the VCDR 1961 regarding the power to declare a diplomat persona non grata except for cases of espionage. (Mwenda 2011)Art 9 (1) of VCDR 1961 states that:

“The receiving State may at any time and without having to explain its decision, notify the sending State that the head of the mission or any member of the diplomatic staff of the mission is persona non grata or that any other member of the staff of the mission is not acceptable...”

This leaves two options for the receiving state: summon the ambassador or end his or her mission. Art. 9 (1) states that:

“... In any such case, the sending State shall, as appropriate, either recall the person concerned or terminate his functions with the mission...”

In Eritrea in 2001, the EU made an official protest to the government at a wave of arrests of opposition members. Since Belgium at the time held the Presidency of the European Union, and had no mission in Eritrea, the protest was delivered by the Italian ambassador, who was promptly declared persona non grata. (Mwenda 2011)

The reaction of states to interference by diplomats in their internal affairs varies. Some undiplomatic words and actions potentially affecting the internal affairs of receiving states passed without response or with only mild disapproval from the receiving state. for example, the Sudanese ambassador to the United Kingdom, Ghazi Algosaiibi, published in an Arabic newspaper a poem praising Palestinian suicide bombers while saying that the



heart of the White House was filled with darkness; the Foreign and Commonwealth Office declined to comment on the poem. (Denza 2016) A few months later he described the Israeli occupation of Palestinian land as worse than the Nazi occupation of Europe, which the Foreign and Commonwealth Office described as ‘wrong and insensitive’. The Israeli ambassador to Sweden in 2004 publicly vandalized an exhibit at the Museum of National Antiquities in Stockholm on the ground that it glorified Palestinian suicide bombers. Even before the Swedish government summoned the ambassador to hear his explanation, the Israel Foreign Ministry with backing of the then Prime Minister Ariel Sharon summoned the Swedish ambassador in Tel-Aviv in order to express its disgust at the exhibits. (Denza 2016)

More recent events included in 2011, when the UK ambassador to Syria, Simon Collis, not only attended a vigil for human rights activists who had died after being held and tortured by Syrian security forces, but later issued a blog approved by the Foreign and Commonwealth Office entitled ‘The truth is what Big Brother says it is’, accusing the Syrian government of denying entry to the foreign journalists, systematically imprisoning Syrian journalist and bloggers and cutting satellite phone and television channels. The UK embassy was closed in March 2012 for security reasons and the ambassador was thus released from any conventional constraints in his criticisms of the regime, which became even more outspoken. (Denza 2016)

The UK ambassador to Sudan, Nicholas Kay, was summoned in 2011 for reprimand by the Ministry of Foreign Affairs after writing a blog post in which he criticized the Sudanese government for its refusal to allow international aid into conflict zones, and expressed concerns over soaring food prices in Khartoum, describing Sudan as a country where ‘hungers talks the land’. The Foreign and Commonwealth Office made clear that it actively encouraged such public comments and saw them as a means of communicating British foreign policy objectives. Blogs have also caused protest in the receiving states North Korean and Iran. It is clear that not all diplomats believe that this novel departure from

diplomatic discretion is necessarily to be encouraged. (Denza 2016)

THE ACT OR SAYING OF AMBASSADOR WHICH CONSIDER INTERFERENCE IN INTERNAL AFFAIRS OF STATE

It is not easy to determine whether the act or saying of an ambassador comprises interference; it ultimately depends on the particular situation in which the event occurs. (Sen, 1965) Sometimes there is confusion between the duty of ambassador to protect the interest of his country and that might require taking part in public opinion about the policy of receiving state, especially when this policy relates to the interest of the sending state.

It is accepted that there is nothing wrong on the part of a diplomat to take an interest in the internal affairs of the state. Indeed, in the fulfilment of conventional duties diplomats must correctly appraise the internal situation of the receiving state and to remonstrate against policy on behalf of the sending government if they are perceived to be against the interests of the sending state. However, an attempt to interfere with governmental functions in shaping its policy by means of approaches to opposition parties, or to organise opposition or criticism of the government is overstepping the bounds of propriety and interfering in the internal affairs of the host state. (Sen, 1965) The duty of the sending state is not to intervene in the domestic affairs of the receiving state are an important rule of international relations. (Denza 2016)

Article 12 of the Havana Convention Regarding Diplomatic Officers stated that:

“Foreign diplomatic officer may not participate in the domestic or foreign policies of the state in which they exercise their functions”

Whereby a diplomat on instructions makes some statement or takes steps regarded by the receiving state as interference in its internal affairs. VCDR Article 41(1) relates to personal comments or activities by diplomats not made on instructions. The most famous incident of this kind was when Lord Sackville, a British minister in





Washington, in 1888 wrote a letter advising the recipient, who had pretended to be naturalized citizen of British birth, how he should vote in the forthcoming presidential election. This letter was made public, in breach of the promise of secrecy which the correspondent had given, and led to the dismissal of Lord Sackville by the Government of the United States. (Denza 2016)

The memory of these affairs might explain the vigour with which the US embassy disassociated itself from a UK conservative party fund raising appeal in 2001 which suggested that previous generous donors had gained access to the outgoing US ambassador. The Embassy spokesman swiftly made clear that to link the ambassador to a fundraising drive by any political party was incorrect and inappropriate. (Denza 2016) The duty of non-interference in internal affairs in article 41(1) of the VCDR is closely tied to the duty to respect the laws of the receiving state. (Denza 2016) The difficulty faced by diplomats in observing this the rule of non-interference is illustrated in the case of the fall of the Communist regime of Ceausescu in Romania in December 1989. Some UK diplomats joined in the march of students and workers which overwhelmed the national television studio, later defending their conduct on the grounds that they were swept along by the tide of revolution, and that they were properly engaged in the diplomatic function of observation. A former British ambassador, however, commented publicly on these accounts noting that whatever the personal feeling of individual diplomats, active participation as distinct from observation in the politics of the country to which their ambassador is accredited is inconsistent with their diplomatic status. (Denza 2016)

Some receiving states may, on the other hand, regard as improper interference in their internal affairs words or actions seen in the eyes of the sending state or its envoy as general encouragements of democratic freedom. With the greater emphasis in the modern international relations on the encouragement and protection of human rights in other state, conflicts between the diplomatic duty of non-interference and the objective of promoting the observation of human rights are becoming more frequent. In 1988 a First Secretary at the US Embassy was expelled

by the government of Singapore on the grounds of encouraging a local lawyer to stand against the government candidate in a general election. The Ministry of Interior made it clear that only his diplomatic immunity protected him from arrest and indefinite detention without trial, and that any other diplomat who advocated other wider democratic or press freedom in Singapore would also be expelled.

Even attempts to seek political information may be interpreted as interference in internal interference. In 1998 China strongly attacked British Counsel-General officer in Hong Kong for inviting candidates in a forthcoming election to meet British diplomats. In 2000 the government of Myanmar accused the British ambassador of meddling in internal affairs and overstepping universal diplomatic norms by attempting to reach the house of the pro- democracy opposition leader Aung Suu Kyi; the Foreign and Commonwealth Office however defended the ambassador's conduct and emphasised that human rights are a matter of international concern, and democratically elected political parties should be able to receive visitors. (Denza 2016)

In democratic countries ambassadors can encourage the knowledge of the leaders of different political parties, though they may be opposed to the current government, but any interaction with the opposition in a dictatorial country may well render an ambassador persona non grata under the pretext of interference in the internal affairs of the receiving state. Expression of opinions publicly supportive of or against a party would be normally being regarded as interference as well. (Sen, A Diplomat's Handbook of International Law and Practice 1965) Interference in course of the protection of the interest of an ambassador's state again is allowed according to some. (Denza 2016)

In this regard the Saudi ambassador to Iraq expressed his views publicly in his first interview in Iraqi 'Al Samurai Channel', criticising the policy and approach of the Iraqi government for favouring Shias and asking them to change their approach in this regard. (Jazeera 2016). This is obvious interference in the internal affairs of Iraqi affairs, and was made in the interests of Saudi Arabia. The





Iraqi government therefore could have considered him persona non grata based on this interference, (Sen, A Diplomat's Handbook of International Law and Practice 1965) but he was merely summoned to explain his position. (Jazeera 2016)

CONCLUSION

This paper concludes that diplomatic agent shall adhere to the principle of non-interference in the internal affairs of the receiving state and observe a position of strict neutrality, refraining from criticizing the decisions of the political and administrative authority of that state. The VCDR obliges ambassadors to abstain from interference in the internal political life of the receiving states (thus the Saudi Ambassador would be in violation if he intervened in Iraqi affairs to pursue his own national interest), but exceptions can be made if ambassadors intervene to protect receiving state interests.

However, the only remedy the receiving state has in the face of the interference in internal political life of the receiving state by ambassadors is to 'summon' them to explain their actions officially (which usually enables some form of face-saving apology to be issued), or to declare them persona non grata under article 9 of VCDR, which serves to exacerbate the problem as it is perceived as an insult to the sending nation, potentially causing the end of the diplomatic mission. VCDR sought to balance between the sovereignty of the sending and receiving states, and it works well in normal (peaceful) conditions, but in a scenario such as Iraq the stakes are raised and the remedies of the VCDR do not help in the long-term development of diplomacy in conflict and post-conflict states.

Determining whether the act or saying of ambassador is political interference in internal affairs of receiving states is not easy, and is conditional on individual circumstances. However, the duty non-interference cannot override the responsibility of an ambassador to protect the interest of his sending state within the limits permitted by international law, therefore the dereliction of duty by of Saudi ambassador in accordance with Article 41 of the

Vienna Convention, by interference in the internal affairs of the Iraqi State and repetition of such interference after having been summoned, provides sufficient motivation and authority for the Iraqi government to apply the content of Article 9, paragraph 1, of the VCDR, to consider him persona non grata.

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