

# BOFAXE

## Protecting the VIP (Very Important Premises) at All Costs (Part 1) and Trumping Human Rights in the Process?

— As all things in life, diplomatic missions come with up- and downsides. Being the singled-out representation in inter-state relations allows for unique political contacts, but also oftentimes provokes protestors to direct their anger at diplomatic missions to protest the sending States' policies. This phenomenon can be observed regularly, be it US, French and UK embassies in the Democratic Republic of Congo in January 2025 ([here](#)), the US embassy in Columbia in April 2024 ([here](#)) or before the Russian embassy in Germany in November 2024 ([here](#)). Such events may cause political tensions but also concern international law. While Art. 22 (2) Vienna Convention on Diplomatic Relations (VCDR) obliges to protect diplomatic premises, Art. 21 International Covenant on Civil and Political Rights (ICCPR) protects assemblies from State restrictions. This post seeks to analyse whether and how collective protests before embassies may play out these different obligations against each other.

### What Are We Dealing With?

Art. 22 (2) VCDR obliges “to protect the premises [...] against any intrusion or damage and to prevent any disturbance of the peace of the mission or impairment of its dignity”. Whether States must act depends on their case-to-case-assessment of the perceived threat ([Denza, p. 138](#)). Threats can be sorted in two categories. The physical integrity affected by “intrusion or damages” is more graspable, because it is rather descriptive than normative. Contrarily, the formulation “peace of the mission or [...] its dignity” is less self-explaining.

Let us thus initially look at international jurisprudence. The International Court of Justice (ICJ) in its [Case Concerning United States Diplomatic and Consular Staff](#) (1980) analysed Iran's protective obligation. However, it merely held that “the Iranian Government failed altogether to take any ‘appropriate steps’” (*ibid*, [para. 63](#)). It is possible to draw from the omission to condemn peaceful protests that these must be compatible with Art. 22(2) VCDR ([Harrison, p. 306 f.](#)). This would, however, be rather weak-footed if one considers that the Court refrained from analysing Art. 22 VCDR in detail. Similarly, the Human Rights Committee did not reference the VCDR at all when assessing a gay-rights demonstration before the Iranian Embassy in Moscow ([Alekseev v. Russian Federation, 2009](#)). There does, however, seem to be a tentative agreement and practice that peaceful protest before premises does not demand action ([Richtsteig, p. 48, 51; Harrison, p. 306; cf. Denza, p. 140 ff](#)). The exact content of this *opinio juris* – whether States interpret the VCDR, the ICCPR or are based on national civil liberties – is, however, ambiguous and thus not too illustrative.

The term “peace”, generally, is pursued in correspondingly-named conflict-ending treaties ([here](#)) and serves as cornerstone to the United Nations ([Art. 1\(1\) UN-Charter](#)). While diplomatic relations are essential to peacefully resolve differences (ICJ, [para. 39](#)), a concept of peace that is engaged by, e.g., armed conflicts and human rights violations (Wood/Sthoeger, [p. 66](#)) does not suit the context of diplomatic relations. The Australian Supreme Court (AuSC), understands peace to be challenged through “a nuisance which interferes with the quiet of a mission” ([para. 30](#)). This coincides with peace's ordinary meaning, referring to the absence of “external disturbance, interference or perturbation” ([here](#)). Peace may accordingly be *inter alia* affected by the “sustained chanting of slogans”, “organized passing and repassing [...] to compromise or deter access” (AuSC, [para. 30](#)).

The term “dignity”, meanwhile, is commonly associated with human dignity and human rights (cf. Preamble ICCPR and [Universal Declaration of Human Rights](#)).

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# BOFAXE

## Protecting the VIP (Very Important Premises) at All Costs (Part 2) and Trumping Human Rights in the Process?

In its diplomatic context, the term of the mission's dignity was mentioned in an ICJ separate opinion ([here](#)) and is superficially dealt with in national jurisprudence (cf. [Denza, p. 141 ff.](#); in 2024 by the [German Constitutional Court](#)). In its abovementioned analysis, the AuSC understood the mission's peace and dignity to be partially congruent ([para. 30](#)). The latter may especially be affected through, e.g., burning flags of the sending State, dumping "farm commodities" or "offensive or insulting behaviour in the vicinity of and directed against the mission" (*ibid*, [para. 30](#)).

When no clear case is established, protecting the mission's peace and dignity thus hinges on determining thresholds – when is a nuisance unbearable or behaviour not only confrontative but insulting? In determining these thresholds, States have significant leeway and power to incorporate local customs and context, granting significant power to enact wide-ranging limitations as means – the ends of which they determine themselves.

### ... so, Human Rights?

In determining whether the mission's peace and dignity are engaged, Art. 22 (2) VCDR often entails a difficult balancing of the protection of diplomatic premises with the *national* civil liberties ([Denza, p. 140](#)). For present purposes, we look at Art. 21 ICCPR and its relation to the VCDR. When it comes to two instruments being applicable to the same situation, two options are conceivable (ILC, [para. 56 ff.](#)). Firstly, both may apply while the more specific rule concretizes the more general one (*ibid*, [para. 98 ff.](#)), giving effect to the extent possible by interpreting them in light of each other through Art. 31(3)(c) [Vienna Convention on the Law of Treaties](#). (*ibid*, [p. 108](#)). Secondly, if no harmonious interpretation can be reached (WTO Panel, [para. 9.92-9.96](#)), the more specific provision must prevail. Let us thus see how measures required under Art. 22(2) VCDR can be construed under Art. 21 ICCPR.

Art. 21 ICCPR protects *peaceful* assemblies excluding assemblies entailing widespread "physical force [...] likely to result in injury or death, or serious damage to property" (Human Rights Committee [HRC], [para. 14](#)). Precautionary restrictions may be taken to combat real and significant risks to the safety of persons or of serious property damages ("public safety", *ibid*, [para. 43](#)). Any measure to this end must be proportionate, preferring limitations over prohibitions (*ibid*, [para. 36 f.](#)). Insofar, ICCPR and VCDR are congruent and the ICCPR may serve as a yardstick to prevent damages and intrusions, since the latter will likely coincide with applying or threatening force to diplomatic staff denying the protesters entry.

Assemblies which are "disrupting" are another issue. The grounds for limiting assemblies are exhaustively listed in Art. 21 ICCPR ([Siracusa Principle A.1](#); HRC, [para. 41](#)), namely: national security, public safety, public order, the protection of public health or morals, and the protection of the rights and freedoms of others. Let us consider which grounds may serve to protect "peace" and "dignity" of missions.

"Public order", protecting societal values of fundamental importance (cf. *ibid*, [para. 44](#)) does rather not interfere with diplomatic relations, as does "public health". Public morals refer to convictions widely held in society (cf. *ibid*, [para. 46](#)), which realistically do not exist in relation to the protection of diplomatic premises. "Rights and freedoms of others" may, at first glance, include the peace and dignity of diplomatic premises, if Art. 22 (2) VCDR were to bestow peace and dignity as rights on the sending State and States were "others" in the sense of an individual-focused Human Rights treaty. The HRC, however, understands this formulation to only refer to human rights of persons outside the assembly ([para. 47](#)).

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# BOFAXE

## Protecting the VIP (Very Important Premises) at All Costs (Part 3) and Trumping Human Rights in the Process?

### “National Security” as a Potential Last Straw

There is one ground left: “national security” protects “the existence of the nation, its territorial integrity or political independence against a credible threat or use of force” (*ibid*, [para. 42](#)). A creative argument might link territorial integrity and political independence with the protection of diplomatic premises: by maintaining diplomatic relations, States exercise their political independence and, furthermore, contribute to resolving differences peacefully (ICJ, [para. 39](#)). Invoking this to limit assembly faces multiple issues. The authoritative interpretation of Art. 21 by the HRC demands credible, and insofar concrete, threats. Detaching interests in territorial integrity or political independence from the need to substantiate an immediate peril and simultaneously abstracting these concepts would allow for near boundless “*raison d’état*”-arguments, undermining the pivotal role of the freedom of assembly. This aligns well with the HRC’s approach that, through emphasizing the exhaustive nature of Art. 21 ICCPR and strict tests of necessity (HRC, [para. 36 ff.](#)) as well as its fundamental importance (*ibid*, [para. 1](#)), favours a wide-reaching interpretation of the freedom of assembly (cf. *ibid*, [para. 36 ff.](#)).

Consequently, protecting the peace and dignity of the mission as protected goods under Art. 22 (2) VCDR cannot be conceptualized through the limiting clauses under Art. 21 ICCPR. If States thus perceive a threat to peace and dignity stemming from an assembly, they face a dilemma. Measures against the assembly as a whole are not conceivable since the obligations cannot be harmonized, which leaves us with a conflict of norms. Such conflicts are commonly resolved through the principles of “*lex posterior derogat lex priori*” (ILC, [para. 225 ff](#)) and “*lex specialis derogat lex generali*” (ILC, [para. 56 ff](#)). The VCDR’s entry into force (1964) clearly precedes the ICCPR (1976), meaning that the ICCPR prevails under the *lex posterior* rule. The same applies for the *lex specialis* rule: Art. 22 (2) VCDR covers a wide array of threats, including assemblies, while Art. 21 ICCPR is exclusively dedicated to assemblies. By consequence, the peace and dignity cannot be protected by measures taken assembly as a whole, because the protective scope of Art. 21 ICCPR supersedes Art. 22 (2) VCDR.

### Conclusion

This conclusion may seem unsatisfactory. However, assemblies always touch upon a range of rights under the ICCPR (HRC, [para. 9](#)). Beyond this scope of this post but within the realm of possibilities are thus measures against individuals under, e.g., Art. 19 ICCPR. The conflict of norms may also not be unexpected. Art. 22 (2) VCDR enables and requires the exercise of State power and the diplomatic inviolability and the rules protecting diplomatic inviolability represent one of the oldest lineages of international law (cf. Denza, [p. 111 f.](#)) that serve to maintain stable diplomatic relations through immunities (cf. the preambles to the VCDR and agreements on [consular](#) and [special missions](#)). In contrast, Human Rights stand in a relatively new tradition that views international law as means to different ends, protecting individual liberty by, *inter alia*, limiting State power.

When these two very different regimes collide, a balanced approach is indispensable. When drawing lines in determining what threats are tolerable, basing one’s assessment on human rights has multiple upsides. It comes with established yardsticks and test of proportionality and thereby reduces risk of arbitrary decisions. Thereby, human rights provide a framework and guidance for protestors as to when their protest must not be protected.

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