

RECENT INDIA-CANADA TENSIONS AND THE APPLICATION OF VIENNA CONVENTIONS AND ADDITIONAL PROTOCOLS IN PROTECTING DIPLOMATS: A LEGAL AND DIPLOMATIC ANALYSIS

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Abstract: This article delves into the historical evolution of diplomatic relations, clarifying its distinction from contemporary international law. While Hugo Grotius is acknowledged as the Father of International Law, diplomatic relations' significance lies in sovereign interactions. Diplomacy, a broader term, encapsulates the methods by which states negotiate, interact, and communicate, emphasizing equality. The pivotal role of diplomatic staff, guided by the Vienna Conventions, is explored. The metamorphosis of diplomats from historical notoriety to professionalism is outlined, with a focus on the mid-nineteenth-century resolution of semantic ambiguities. The article also analyzes the 1961 Vienna Convention on Diplomatic Relations, emphasizing diplomatic immunity and the role of permanent missions in international diplomacy.

Keyword: ugo Grotius, diplomatic relations, Vienna Conventions, international law, diplomacy, diplomatic staff, mid-nineteenth century, diplomatic immunity, permanent missions.

1.0 Introduction

Hugo Grotius, who is regarded as the Father of contemporary International Law, did not create the idea of diplomatic relations, nor does it have its roots in the practise of contemporary international law. The term "diplomatic relations" mainly describes the interactions between sovereign bodies. In contrast, the term Diplomacy encompasses the methods by which States (Nations) negotiate, interact, consult, and communicate, founded on the principle of equality among state parties. States engage in constant interactions, and to facilitate this ongoing process, Diplomatic staff is essential. Ambassadors (High Commissioners) and their staff are responsible for conducting Diplomatic Relations, primarily governed by the Vienna Conventions of 1961 and 1963, with our focus mainly on the 1961 Vienna Convention. It's worth noting that matters related to Customary International Law (Jus cogens) governs diplomatic relations particularly in areas not covered by the Vienna Convention of 1961.

Diplomats, who historically had an unsavoury reputation in earlier times, have gained much higher regard in recent years, except during the immediate aftermath of the First World War, when some attributed blame to them for the catastrophe. The challenges faced during the Cold War and occasional mistreatment in unsettled states since 1945 have, at times, elevated diplomats to the status of heroes. This transformation is associated with the development of a distinct and recognizable profession, particularly since the nineteenth century, with its unique body of knowledge and skills, leading to the training of suitable candidates. The semantic ambiguity between describing international political argument processes and the administrative mechanism of diplomacy itself emerged during the seventeenth century. This ambiguity was only resolved in the mid-nineteenth century, primarily driven by international lawyers, as there was a growing need to establish general international agreements on the rules governing this aspect of diplomacy.

When seen as an act as well as an art form, diplomatic discourse is comparable to a heterosexual relationship. Because it requires specialised knowledge and a thorough comprehension of the laws and conventions that regulate this long-standing practise, it is regarded as an art. However, it does not allow for showmanship, as a diplomatic agent represents an entire nation, and their actions are perceived as those of their country. Since it covers state-to-state initiatives to promote goodwill regardless of the differences in their constitutional and social structures, it counts as an act. To maintain international peace, security, and the advancement of friendly ties between nations, a convention is required to govern diplomatic relations between governments. This article looks at some of the most

important clauses of the 1961 Vienna Convention on Diplomatic Relations and offers the author's opinions on several hot-button topics. It offers a succinct analysis of the 1961 Vienna Convention on Diplomatic Relations' relevance and ends with useful suggestions.

Since there are clear benefits to both parties in this area of international law, it is commonly agreed that the law of diplomatic immunity is often well-followed. Almost all states that welcome foreign diplomatic missions have their own embassy located on the territory of the sending state. Every state wants its diplomats, including diplomatic bags, embassies, and archives, to be able to operate overseas with the safeguards provided by international law. Respecting these duties towards the diplomatic community inside one's own nation is thought to be essential to maintaining the provisions of international law pertaining to diplomatic privileges and immunities. The conduct of contacts between a state's representative organs working on another state's territory and the receiving state is governed by diplomatic law. By striking a balance between the sending state's foreign policy goals and the recipient state's territorial sovereignty, it serves to promote international diplomacy. The basic norm of territorial jurisdiction is suspended by diplomatic immunity, allowing diplomats to carry out their duties with the essential secrecy and security. However, diplomats are not allowed to disobey local laws because of this immunity. For the purpose of conducting international diplomacy, there are several kinds of diplomatic missions, each regulated by a unique set of diplomatic laws. However, the cornerstone of international engagement is the permanent missions that governments establish within each other's territory.

2.0 Cause of India-Canada Diplomatic Tension

To address the existing discord, the presence of diplomats is imperative. We have strongly encouraged the Indian government to refrain from insisting on reducing the diplomatic representation of Canada and to assist with the current Canadian investigation. In particular, with regard to the privileges and immunities accorded to accredited members of Canada's diplomatic mission, we expect India to uphold its commitments under the 1961 Vienna Convention on Diplomatic Relations.

The current rift between Canada and India started in September 2023 when Canadian Prime Minister Justin Trudeau said in a House of Commons speech that there were "credible allegations" of Indian

participation in the murder of Hardeep Singh Nijjar, a Canadian Sikh separatist leader. On June 18, 2023, Nijjar was shot and died in Surrey, British Columbia.

Trudeau's statement was founded on intelligence reports from the Canadian Security Intelligence Service (CSIS). However, India has vehemently denied any role in Nijjar's assassination and accused Canada of meddling in its internal affairs.

Since then, tensions have escalated. India has halted visa services for Canadians and reduced the number of Canadian diplomats stationed in India. Canada, in response, has expressed deep concern over India's actions and reiterated its commitment to maintaining a strong and positive relationship with India.

Several factors have contributed to the recent strain in India-Canada relations. The substantial Sikh diaspora in Canada, where Sikhs are a religious minority, supports the idea of an independent Sikh homeland in India. Additionally, the rise of Hindu nationalism in India has led to accusations that Canada harbors Sikh separatists, prompting calls for Canadian government action against them.

The ongoing tension between India and Canada is a matter of mutual concern, given their robust economic and cultural ties. Both nations have a shared interest in de-escalating tensions and finding an amicable resolution.

In the ongoing India-Canada diplomatic tensions, recent developments have added layers of complexity to the situation. Let's delve deeper into these developments and their implications:

- **India's Temporary Suspension of Visa Services for Canadians:** India decided to temporarily halt its visa services for Canadian citizens. This action effectively means that Canadians who wish to travel to India for various purposes, such as tourism, business, or personal visits, will face considerable challenges in obtaining the necessary visas. The suspension of visa services is a tangible and impactful response, symbolizing India's dissatisfaction with Canada's actions or statements.
- **Canada's Reduction in Indian Diplomats:** In response to the escalating tensions, Canada made a significant move on October 24, 2023, by announcing a reduction in the number of Indian diplomats stationed in Canada. This decision carries diplomatic significance as it diminishes the representation and

personnel available for official engagements and negotiations between the two countries. By reducing the diplomatic presence, Canada is signalling its discontent and potentially limiting channels of communication between the two nations.

- **India's Accusation of Interference:** India made a serious allegation against Canada, accusing it of interfering in India's internal affairs. This accusation underscores the highly sensitive nature of the diplomatic dispute, implying that Canada's actions or statements are perceived as meddling in India's domestic matters. Allegations of interference can significantly strain diplomatic relations and often lead to reciprocal actions.
- **Canada's Expression of Deep Concern:** In response to India's actions and allegations, Canada conveyed its deep concern. This diplomatic language emphasizes Canada's unease about the trajectory of the diplomatic discord. Furthermore, Canada reiterated its commitment to maintaining a robust and positive relationship with India, highlighting its eagerness to preserve the bilateral relationship's core strengths.

The timeline for a resolution to these tensions remains uncertain. Diplomatic disputes are inherently intricate and can endure for extended periods. Achieving a resolution depends on the willingness of both nations to engage in diplomatic dialogue, address each other's grievances, and seek compromises. The duration of the dispute's resolution is uncertain, contingent on diplomatic efforts and negotiations between India and Canada. While historical cooperation and amicable relationships between the two nations are positive factors, the timing of a diplomatic resolution remains elusive, as it hinges on the complexities of the ongoing diplomatic interactions.

It is important to acknowledge that both India and Canada have a track record of collaboration and a foundation of friendship. There is an optimistic outlook that they will find common ground to resolve their disagreements and advance with a shared commitment to mutual respect.

3.0 Impact of India-Canada Diplomatic Strain

The recent tensions in diplomatic relations between India and Canada have brought about concerns regarding their potential ramifications on commercial and economic cooperation. These concerns have notably affected the progress of the Early Progress Trade Agreement (EPTA), which was intended to be a preliminary step toward the more extensive Comprehensive Economic Partnership Agreement (CEPA). Unfortunately, the EPTA negotiations have been "paused," and a scheduled trade mission to India in October has been cancelled. The worry extends to the long-term implications for broader commercial and economic engagement if relations continue to deteriorate.

Canada was India's 35th-largest trading partner overall in the fiscal year 2022–2023, according to information from the Ministry of Commerce's Trade Stats database. Furthermore, at the sixth Ministerial Dialogue on commerce & Investment (MDTI) in Ottawa in May, it was reported that bilateral commerce in products between India and Canada reached C\$12 billion in 2022—a phenomenal 57% increase in trade from the previous year. Bilateral services trade made up C\$8.9 billion of this total.

The Trade Promotion Council of India (TPCI) highlighted how trade between the two countries is balanced. Canada is ranked 14th in the world in terms of imports, with a 2.3% share; but, its 0.9% stake in India's export markets places it in 32nd place, indicating "low potential." Nonetheless, there has been a notable surge in Indian exports in recent times, with a Compound Annual Growth Rate (CAGR) of 32%. Aside from fossil fuels, the following industries had substantial compound annual growth rates during this time: iron and steel, rubber, electrical machinery, nuclear reactors, clothing, pearls, furniture, and plastics.

India remains a "priority market" for Canada, and it was the 10th largest trading partner among North American countries. The Global Canada department has emphasized India's significance as Canada seeks to strengthen its economic ties to the Indo-Pacific under a comprehensive regional strategy.

India and Canada had a balanced trade relationship in the fiscal year 2022–2023, with India importing roughly \$4.05 billion in commodities from Canada and exporting about \$4.11 billion. Coal, coke, briquettes, fertilisers, iron and steel, and lentils are among the main exports from India. On the other hand, major imports from India include pharmaceuticals, iron and steel goods, marine products, organic chemicals, and different types of clothing and textiles.

The CEPA was suspended in order to tackle "trade in goods, trade in services, rules of origin, sanitary and phytosanitary measures, technical barriers to trade, and other areas of economic cooperation." Data that is currently available indicates that equivalent ad valorem tariffs on dairy goods, grains, meat, fish, cocoa, clothing, and textiles are high for India. While most of India's main exports suffer low tariff barriers, this delay may delay the lowering of trade obstacles in these industries.

According to Invest India, a website run by the National Investment Promotion and Facilitation Agency, Canada is the 18th-largest foreign investor in India.

Alongside large pension funds like the Canadian Pension Fund (CPP), which raised its assets in India to almost \$15 billion, a number of Canadian businesses have made their mark in India. The Ontario Teacher's Pension Plan (OTPP), with \$3 billion in assets, and Caisse de dépôt et placement du Québec (CDPQ), with around \$8 billion in investments, are two other pension funds that have a significant amount of exposure to India.

While observers in Canada believe that these positions might not be immediately at risk, operational inconveniences may arise due to potential travel restrictions amid the ongoing tensions.

4.0 Balancing Sovereign Interests: Upholding Article 11 of the Vienna Convention on Diplomats

A noteworthy advancement in international law is represented by Article 11 of the Vienna Convention. It developed in reaction to historical circumstances, especially in the seventeenth century, when the size and opulence of an ambassador's entourage had a significant impact on the status of an embassy. During that period, a number of receiving states had difficulties as a result of the overabundance of personnel from certain diplomatic missions stationed on their soil, which occasionally resulted in the abuse of their privileges and immunities. At the past, attempts to solve this issue frequently required lowering the rights and immunity of employees at lower positions. While the Vienna Convention was being prepared, it was clear that high numbers of mission workers were once again creating issues in certain capital cities.

The Rapporteur's draught presented the idea of granting the receiving State the power to control the size of a diplomatic mission, which was the first attempt to address this issue. This authority has been used more frequently in recent years to handle issues like terrorism and diplomatic immunity abuses.

There was broad consensus among the participants in the International Law Commission's debates regarding the need to establish a regulation controlling mission size rather than relying on talks between rival parties. Another area of agreement among the members was the importance of striking a balance between the interests of the sending and receiving States. However, there were notable differences in the approaches taken to create this regulation. Certain countries grounded their approach on customary law, which is currently referenced in Article 7 of the Convention, claiming that once authorization for diplomatic relations was granted, the sending State had the last say on the composition and number of the mission staff. The receiving State retained the authority to designate a mission member persona non grata, but having too many people on a mission was not considered a good reason to take this action.

When there is no specific agreement on the mission's size, the receiving State may require that the mission's size remains within limits it deems reasonable and normal, considering its circumstances, conditions, and the specific needs of the mission. The receiving State may also, within similar bounds and without discrimination, refuse to accept officials of a particular category.

With a focus on the sending state, the International Law Commission's 1957 compromise gave the receiving state the authority to set mission size limits "within the bounds of what is reasonable and customary, having regard to the circumstances and conditions in the receiving State and to the needs of the particular mission." The commission emphasised that agreement was the standard means of limiting the number of mission staff. Nevertheless, smaller States' influence caused the balance to shift again in favour of the receiving State at the Vienna Conference, approving a change from Argentina that substituted the subjective standard of what the receiving State deems "reasonable and normal" for the objective standard of what is "reasonable and normal." Consequently, the receiving State may, with certain restrictions, unilaterally choose the size of a mission in the absence of agreement.

The International Law Commission's reformulation of the text by Sir Gerald Fitzmaurice gave rise to Article 11's particular ban against discrimination in paragraph 2. This clause was removed from paragraph 1 because it may have implied that all missions in a particular capital must have exact numerical equality, which is not feasible. Instead, it was isolated in paragraph 2, which dealt with numerical restrictions.

In reality, when a diplomatic mission's size is limited, the capital of the State whose mission has been limited frequently experiences reciprocal or retaliatory acts. This was specifically addressed by the UK government in its 1985 Review of the Vienna Convention, which said that restricting the size of all missions as a general rule may result in an increase in inappropriate activity and possible retribution against British missions overseas. Rather, the UK government took into account variables including the behaviour pattern of a mission, the size of the UK mission in the State in question, and the causes of any notable differences in mission size between London and the UK mission overseas.

The UK government recognised in its 1985 assessment that when questions regarding the nature of a mission's operations surfaced, it was necessary to limit mission size more proactively. They did, however, stress that these restrictions would be imposed case-by-case, taking into account their relations with the relevant nation and the possibility of reprisals. In general, they would refrain from making precise ceilings public in order to preserve goodwill and lower the possibility of reprisals.

For instance, in 2015, Venezuelan President Hugo Maduro ordered the US to cut its diplomatic personnel to seventeen, the same number of employees Venezuela kept in its Washington, D.C. embassy. This choice was taken amid worsening ties as a result of claims that the US had supported a coup against the communist government. These kind of restrictions, which are predicated on numerical equality for all diplomatic missions in a given city, are uncommon; one notable exception is Gabon, which in 1973 imposed a ceiling of 10 personnel for diplomatic, administrative, and technical duties in Libreville.

5.0 Conclusion

The diplomatic tensions between India and Canada have introduced concerns about their impact on economic and commercial collaboration. Negotiations for the Early Progress Trade Agreement (EPTA) have been paused, causing a delay in a trade mission that was set to strengthen bilateral economic ties. While the trade balance between the two countries is reasonably equitable, there are concerns about the impact on various industries and potential delays in easing trade barriers, particularly in sectors with high tariffs.

India is a priority market for Canada, and the economic links to the Indo-Pacific are a central focus for both countries. Canada is a substantial foreign investor in India, and several Canadian companies have established a presence in the country. Major pension funds, like the Canadian Pension Fund (CPP), have increased their investments in India, indicating significant financial interests.

Despite these economic ties, the duration of the diplomatic tensions and their ultimate resolution remains uncertain. Both nations have historically maintained a cooperative and friendly relationship, and it is hoped that they can find common ground and move forward with mutual respect. The potential consequences on economic and commercial spheres, while a source of concern, will depend on the course of diplomatic interactions between India and Canada.

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