

India and Canada expel diplomats amidst accusations, historical ties to Vienna Convention highlighted

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October 7, 2023

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In the recent India-Canada diplomatic tension, one of the important things that took place was the sending back of Indian diplomats from Canada. They alleged that India is involved in the killing of Khalistani Canadian citizens on Canadian soil. They further said that one Indian diplomat was directly involved in the killing of the Canadian citizen.

Therefore, they used the famous international law on diplomacy principle of Persona non grata. In simple terms, it refers to the practice of a state prohibiting a diplomat from entering the country, or as in the current case, the diplomat is already present in the country, he or she is not considered part of the consulate from the time the principle of persona non grata comes into effect.

In response, India also expelled one diplomat from the Canadian High Commissioner, India. Though this is not new in international relations, many times states use this principle in case states have hostile relations. Even after expelling diplomats from each country, the states continue to have hostile relations.

Intelligence gained by the “Five Eyes” network which is an intelligence alliance comprising of Australia, Canada, New Zealand, the United Kingdom, and the United States, all these countries are part of the UK-USA Agreement which is a treaty for joint cooperation.

This network led to Canada’s public accusation that the Indian government may have played a role in the assassination of a Sikh separatist activist on Canadian soil, the US Ambassador to Canada said. Prime Minister of Canada has said that authorities had been investigating “credible allegations” that New Delhi was potentially behind the June killing of Hardeep Singh Nijjar, a Sikh separatist activist, who was gunned down by two masked men in Surrey, British Columbia.

India has vehemently denied the claims, calling them “absurd and motivated.” India’s foreign ministry spokesperson Arindam Bagchi said Canada has provided “no specific information” to support the allegations. In this respect the significance of diplomatic relations needs to be reiterated as well as the development of international law in this regard and highlight some of the past incidents where such issues had cropped up and the possible way forward.

Diplomatic missions are the cornerstone of international relations. These missions work as a representative of the country in foreign land. Diplomatic missions’ premise and diplomats are key to maintaining external relations.

Since ancient times, international law has been developing diplomatic laws. It is interesting to note that post-Second World II diplomatic laws are codified. The United Nations took the initiative to codify all the customary laws relating to diplomacy. Finally, in 1961, the world enacted the Vienna Convention on Diplomatic Relations. All the important countries were part of making the laws. Even though very few countries had ratified the treaty, most of the provisions of this treaty are customary principles of international law.

Therefore, they are automatically applicable to them. Diplomatic missions and premises are the land of the sending country in the host country. The premise and diplomats enjoy immense power and immunity. This immunity is essential for their function.

According to Article 9, the same treaty says that a receiving state may “at any time and without having to explain its decision” declare any member of a diplomatic staff *persona non grata*. A person so declared is considered unacceptable and is usually recalled to his or her home nation. If not recalled, the receiving state may refuse to recognize the person concerned as a member of the mission.

This is a very well-established law of international relations. States need not give any reason for such actions. Hosting states have all the right to send the diplomat of the receiving country. Therefore, sending back the diplomat is not unusual or a violation of

any international law. Similarly, it is also noticeable that the other country whose diplomat is sent back, they too uses this persona non grata.

Historically, India has faced such issues in various matters, the most prominent being the Italian Marines case famously known as the Enrica Lexis case. This case dealt with the killing of two fishermen on the Kerala coast on board an Indian vessel named the “St. Antony”. It was alleged that the two Italian marines aboard the “Enrica Lexie” killed the fishermen.

The case was brought before the Kerala High Court which subsequently went to the Supreme Court which restrained the Marines from leaving the country but later on the undertaking of the Italian Ambassador, they were allowed to go home to cast their votes.

However, the undertaking was violated and the Italian Ambassador argued that their return would violate the provisions of the Vienna Convention on Diplomatic Relations, 1961 to which both India and Italy were member states. This case later went to toward the arbitral proceedings that were instituted under the United Nations Convention on the Law of the Sea (“UNCLOS”) on 26 June 2015 .

As per the award given in this case by the Permanent Court of Arbitration, the marines were granted immunity as state officials, and a right of relief at the hands of India was pronounced in the form of compensation for the loss of life, physical harm, damage to property, and moral harm suffered due to the incident.

Similarly, another event that caused a lot of disruption between India and the US was the Devyani Khobragade case, she was India’s Deputy Consul General at its diplomatic mission in New York City at that time and was arrested on charges of visa fraud and perjury under Title 18, United States Code, Section 1546.

In this case, the US was silent on an order that was passed by the High Court in Delhi regarding an injunction to proceed against Devyani. Their actions were argued to have violated Article 43 of the Vienna Convention on Consular Relations that provide immunity to consular officers and employees from the jurisdiction of authorities in the receiving state.

Going forward, as shown through the Indo-Canadian issue, the need of the hour is for India to maintain its strategic autonomy as done in this case which in the changing geopolitical framework assumes significance with the rise of China, the US’s indeterminate Indo-Pacific policy, and a multi-polar Asian paradigm.

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