

# Searching and seizing digital evidence inside a consulate: A violation of international law?

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## Introduction

Under international law, the Vienna Convention on Consular Relations (“VCCR”) 1963 details the privileges and immunities granted to a consulate.

Article 31 of the VCCR states that the authorities of a Receiving State shall not enter that part of the consular premises used for the purpose of work of the consular post except with the consent of the Head of the consular post. However, a consulate is not immune from search by the authorities of the Receiving State. Article 31 does not apply to a consulate headed by a honorary consul.

A dilemma is that even if law enforcement officers of the Receiving State are in possession of a search warrant issued by a court of the Receiving State to search a consulate, Article 31 of the VCCR prohibits the law enforcement officers from entering the consulate unless the consul has given consent.

## The Case Scenario

A local employee of the consulate is a suspect in a fraud case in the Receiving State which is not related to his consular duties. The police of the Receiving State want to secure the digital data of the local employee stored in the server of the consulate for investigation. The digital data can be accessed via a desktop in the consulate or remotely via the Internet.

The police of the Receiving State have been issued a search warrant by the local court to only search and seize the digital data of the local employee stored in the consulate. However, the consul has refused to allow the police of the Receiving State to enter the consulate to execute the search warrant.

Assuming that the police have the technical capability to conduct remote searches, i.e. to use a computer to access and examine data physically stored outside the premises, of the server of the consulate via the Internet. Is it lawful for the police to conduct a remote search without consent but not violating the VCCR?

## Questions

1. Do the police officers of the Receiving State have the legal power to execute their duties inside the consulate of the Sending State?
2. Which law, the Sending State or the Receiving State, should the police officers of the Receiving State apply inside the consulate premises?
3. Would the digital data seized from the consulate of the Sending State be admissible in the court of the Receiving State?

## Answer to Question 1

Yes. The consulate of the Sending State does not have extraterritorial jurisdiction. However, the police officers still need consent from the consul to physically enter the premises.

## Answer to Question 2

The laws of the Receiving State are applicable to the consulate of the Sending State as it is under the legal jurisdiction of the Receiving State.

## Answer to Question 3

Yes. As long as the police of the Receiving State properly execute the search warrant by complying with its own procedures for securing digital evidence via remote search, the digital data seized should be admissible in the court of the Receiving State.

## Result

A practical way for the police of the Receiving State to overcome the problem of being prevented from entering the consular premises is to employ remote search to search and seize digital data inside the consulate without physically entering the consulate. As long as the digital data seizure complies with the procedures of the Receiving State, it should be admissible in court.

## Conclusion

This analysis should apply to any consulate headed by a career consul.

If a consulate is headed by an honorary consul, police officers of the Receiving State may enter the consulate even without consent from the consul. As long as the police have a search warrant, they can seize anything except consular archives and documents.

## References

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Fig. 1 British Consulate-General in Hong Kong



Fig. 2 Consulate-General of the U.S. in Hong Kong