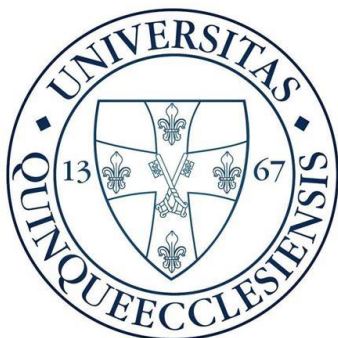


DISSERTATION SUMMARY



**Reforming Diplomatic Immunity: Striking a  
Balance between Privilege and Accountability in  
Modern Diplomacy**

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## 1. Introduction

Diplomatic immunity has originated from ancient customs<sup>1</sup> and codified in current international law by treaties such as Vienna Convention on Diplomatic Relations.<sup>2</sup> An intricate balance between privilege and responsibility is involved in diplomatic immunity. Historically, enabling communication and protect diplomatic staff was the purpose of the framework. However, diplomatic immunity is occasionally questioned due to cases of misuse, where diplomats and their associates manage to avoid being subject to local laws for their criminal actions.<sup>3</sup> This thesis aims to examine the complex and diverse aspects of diplomatic immunity through analysis of the historical development, legal basis, related benefits, and difficulties associated with diplomatic immunity.

The origins of diplomatic immunity demonstrate mutualism between independent nations, where the safeguarding of diplomats guarantees uninterrupted exchange and bargaining between countries.<sup>4</sup> Protecting ambassadors from unwarranted intervention and retaliation while they navigate the complex nuances of international relations is an integral part of the concept of diplomatic inviolability.<sup>5</sup> Therefore, protection of diplomats have been essential in building confidence, enabling communication, and reducing tensions between different countries.<sup>6</sup>

Nevertheless, the current implementation of diplomatic immunity remains a subject of criticism. Instances of abuse, where diplomatic staff avoid legal repercussions for misconduct, undermine the legitimacy and effectiveness of diplomatic immunity. Diplomats as well as their friends have been accused of using misusing their privileged status to commit crimes, ranging from little violations to serious offenses, without facing consequences. Therefore, concerns have raised regarding accountability and fairness on the global stage.<sup>7</sup>

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<sup>1</sup> James S. Parkhill, *Diplomacy in the Modern World: A Reconsideration of the Bases for Diplomatic Immunity in the Era of High-Tech Communications*, 21 *Hastings Int'l & Comp. L. Rev.* 565 (1998). p. 568 Available at: <https://repository.uchastings.edu/hastingsinternationalcomparativelawreview/vol21/iss2/3>

<sup>2</sup> Williams, Sharon A. "Book review: Crimes against internationally protected persons: prevention and punishment, by Louis M. Bloomfield and Gerald F. FitzGerald." *Canadian Bar Review* 54.1 (1976): 197-198.

<sup>3</sup> Mitchell S. Ross, *Rethinking diplomatic immunity: A review of remedial approaches to address the abuses of diplomatic privileges and immunities* 4 (2011)

<sup>4</sup> Fox, H. (2008). *The law of state immunity* (2nd ed.). Oxford University Press.

<sup>5</sup> J. Craig Barker, *The protection of diplomatic personnel* (University of Sussex 2006) 29

<sup>6</sup> Garrett. R d Mattingly, *Renaissance diplomacy* (1988) 59

<sup>7</sup> Mitchell S. Ross, *Rethinking diplomatic immunity: A review of remedial approaches to address the abuses of diplomatic privileges and immunities* 4 (2011)

This thesis presents a comprehensive study of suggested reforms that aim to rebalance the relationship between privilege and accountability in the context of diplomatic immunity. A range of alternative solutions has been proposed to address the deficiencies of the current paradigm, including suggestions for legislative reforms and the investigation of alternative conflict resolution systems. Moreover, this study aims to examine the practicality, effectiveness, and ethical considerations of these approaches to establish a course of action that maintains the ideals of justice and fairness, while retaining the fundamental aspects of diplomatic engagement.

### **1.1. The Purpose of the Study and Research Necessity**

This study serves as a broad representation of how diplomatic immunity contributes to the promotion of effective foreign relations, while addressing concerns related to accountability and justice. Potential solutions such as treaty amendments and the creation of an international diplomatic criminal court have been analysed. Via the use of thorough investigation and thoughtful analysis, it sheds light on the route towards a fairer and more responsible framework for diplomatic interactions. The overarching aim of this thesis is to contribute to the continuing discussion regarding the necessity and limitations of diplomatic immunity in the contemporary global context. Through suggesting effective measures and solutions issues surrounding diplomatic immunity can be tackled to improve the level of responsibility within the diplomatic community.

This investigates ongoing difficulties related to personal inviolability and diplomatic immunity in contemporary diplomatic law. First, a thorough examination of existing academic research and legal structures was carried out, with special emphasis on the Vienna Convention on Diplomatic Relations. This review offers fundamental insights into the understanding and implementation of diplomatic privileges. In addition, practical examples were examined to provide a clearer understanding of the practical consequences of diplomatic immunity. The data collection process consisted of examining government discussions, legislative texts, and performing web research. Furthermore, valuable perspectives on the practical application and potential abuses of diplomatic privileges were obtained by exchanging emails with embassies and foreign affairs offices, thereby collecting insights from diplomatic practitioners.

A thorough assessment of cases involving possible misapplication or exploitation of diplomatic immunity was conducted, with a particular focus on grave offences such as homicide, collusion, war crimes, and crimes against humanity. This investigation evaluated the

level of tolerance exhibited by receiving governments and examined various viewpoints on accountability within the diplomatic community.

The necessity of this research stems from the lack of clarity and uniformity in international law regarding diplomatic immunity. Ambiguities and variations in practice among different states remain present. Understanding these complexities is crucial for policymakers, diplomats, and legal scholars to navigate diplomatic relations effectively and ensure compliance with international norms and regulations. While diplomatic immunity is a cornerstone of international law, its current framework often fails to hold diplomats accountable for criminal conduct, leading to impunity and undermining the rule of law. Therefore, there is a pressing need to reform diplomatic immunity to align it with functional necessity and ensure that it does not impede the pursuit of justice for victims of diplomatic misconduct.

## **1.2. Research Objectives**

This thesis aims to enhance our understanding of diplomatic immunity to examine the challenges surrounding it, identify reforms, and improve diplomatic practices. Therefore, this thesis explores the historical development, complexities, contemporary challenges, and potential reforms of diplomatic immunity.

1. Examine the historical evolution, definitions, and practical application of diplomacy, including the roles of diplomatic personnel and the authority of states in diplomatic relations.
2. Analyze the legal frameworks and practices governing diplomatic privileges and immunities, including the reception and termination of diplomatic missions.
3. Explore the complexities surrounding diplomatic immunity, its historical development, contemporary challenges, and potential reforms.
4. Investigate the mechanisms and limitations surrounding the prosecution of diplomatic personnel for misconduct, including the waiver of diplomatic immunity and jurisdictional issues.
5. Propose recommendations for enhancing the effectiveness and accountability of diplomatic practices, including reforms to diplomatic immunity and enforcement mechanisms.

## 2. The Development of Diplomatic Immunity

Diplomacy is a dynamic force, shaping international relations while continuing to evolve over millennia. Significant milestones along the history include the English Diplomatic Privileges Act of 1708 when the codification of diplomatic immunity took place, highlighting the importance of the 'freedom and safety of envoys'.<sup>8</sup>

Diplomatic immunity represents a longstanding feature of international relations. The origins of diplomatic immunity date back to ancient civilizations such as India, China, Greece, and Rome, where mutual benefits were identified, and envoys often safeguarded from significant risks. The profound respect for envoys is reflected by acts such as religiously sanctioning protection and escort provisions represent some of the Ancient practices. Diplomatic immunity evolved over time with legislative milestones including the the English Diplomatic Privileges Act of 1708. Furthermore, the principles continued to progress through the Middle ages and Renaissance, underlining the critical role of diplomacy in maintaining peace through international communication.<sup>9</sup>

In 1815, the Congress of Vienna established regulations for diplomacy, introducing precedence rules for diplomatic agents, shaping modern diplomatic practices.<sup>10</sup> During the 19<sup>th</sup> century, a national legal frameworks integrated diplomatic privileges. Furthermore, efforts were directed towards universally codifying diplomatic protections. The Vienna Convention on Diplomatic Relations of 1961 represents a milestone in international law, where the principles of diplomatic immunity were codified.<sup>11</sup> Despite challenges, the Vienna Convention remains a cornerstone, promoting international cooperation and guaranteeing the effective functioning of diplomatic missions.<sup>12</sup>

While performing official duties, consuls may claim immunity from a court's jurisdiction as outlined in reciprocity agreements, national laws, or treaties. Consular immunity is different from the wider immunity enjoyed by diplomatic officers. Consular immunity is not

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<sup>8</sup> English Diplomatic Privileges Act of 1708, 7 Anne c.12.

<sup>9</sup> English Diplomatic Privileges Act of 1708, 7 Anne c.12.

<sup>10</sup> English Diplomatic Privileges Act of 1708, 7 Anne c.12.

<sup>11</sup> Denza, Eileen. *Diplomatic law: commentary on the Vienna convention on diplomatic relations*. Oxford University Press, 2016.p3

<sup>12</sup> Williams, Sharon A. "Book Review: Crimes Against Internationally Protected Persons: Prevention and Punishment, by Louis M. Bloomfield and Gerald F. FitzGerald." *Canadian Bar Review* 54.1 (1976): 197-198.

extended to personal or unofficial actions, but is rather specific to consular functions. The case of *Arcaya v. Paez* illustrated that, under customary international law, defamatory declarations by consuls do not qualify for immunity, and obtaining diplomatic status can only temporarily stop any ongoing prosecution initiated before diplomatic status was conferred.<sup>13</sup> The Vienna Convention on Consular Relations of 1963 defined consular immunity within such parameters, highlighting the obligations of the host country in ensuring the security and safety of consular personnel.<sup>14</sup>

Influenced by democratic ideals and global conflicts, a shift in foreign sovereign immunity can be seen in history from complete protection to more responsible practices. Up to the late 1800s, international law granted absolute immunity to foreign states. However, the rise of communism and World Wars expanded the economic activities of foreign states, prompting for limitations and responsibility on absolute immunity. “Restricted” immunity emerged by the mid-twentieth century, excluding non-governmental activities while maintaining immunity for governmental actions. Distinct from diplomatic agents, international officials operate under treaties such as Article 105(2) of the United Nations Charter, to ensure immunities and privileges to act freely in international service, with obligations to adhere to laws and fulfil personal duties.<sup>15</sup>

The concept of diplomatic immunity has been the subject of debate through different theoretical frameworks in the international law:<sup>16</sup>

**A. Representative Character Theory:** This theory is rooted in historical diplomacy and views diplomats as representatives of sovereigns. Thus, acts against diplomats were regarded as affronts to the states, emphasizing absolute immunity. This theory diminished with the rise of democratic nations after the French and American revolutions, as there was a shift in sovereignty towards legal entities. This theory was criticized for failing to address the actions of diplomats in third countries as well as for excluding family members from the immunity.<sup>17</sup>

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<sup>13</sup> *Id.*

<sup>14</sup> VIENNA CONVENTION ON CONSULAR RELATIONS, 1963, *supra* note 24.

<sup>15</sup> Charles H. II Brower, *International Immunities: Some Dissident Views on the Role of Municipal Courts*, 41 *Va. J. Int'l L.* 1 (2001).

<sup>16</sup> Yu-Long Ling, *A Comparative Study of the Privileges and Immunities of United Nations Member Representatives and Officials with the Traditional Privileges and Immunities of Diplomatic Agents*, 33 *Wash. & Lee L. Rev.* 91 (1976), *supra* note 30, 127-128-129.

<sup>17</sup> 130-128 أبو الوفاء، أحمد، (2012) قانون العلاقات الدبلوماسية والقنصلية، ط1، دار النهضة العربية، القاهرة، ص 130-128 Abu Al-Wafa, Ahmad, (2012) Law on Diplomatic and Consular Relations, 1st Edition, Dar Al-Nahda Al-Arabiya, Cairo, pp. 128-130

**B. Theory of Extraterritoriality:** Grotius initially proposed this theory. It suggests that diplomatic premises are extensions of the territory of the sending state. Furthermore, it proposes that diplomats, supporting principles like diplomatic asylum, are not subject to local jurisdiction. While this theory gained judicial recognition, it faced criticism for conflicting with the sovereignty of the host state. The theory was particularly criticized for creating legal loopholes, such as evading local jurisdiction for crimes committed within embassy grounds.<sup>18</sup>

**C. Theory of Functional Necessity:** This theory emerged to adapt diplomatic immunities to rather modern international relations, restricting immunity to actions necessary for the function of diplomats. It highlights complying with the laws of the host state if deemed necessary and respecting public order. This theory gained support from international conventions such as the Vienna Convention on Diplomatic Relations, and aims to balance the operational needs of diplomats with the security concerns and sovereignty of the host state. However, the theory's application can be vague in defining the extent of necessary immunities.<sup>19</sup>

Overall, the Extraterritoriality theories and Representative Character reflect practical and historical challenges in diplomatic relations. On the other hand, the Theory of Functional Necessity gained prominence for aligning contemporary international norms with immunities in addition to ensuring respect for host state security and laws while facilitating effective diplomatic functions.<sup>20</sup>

Diplomatic immunity guarantees the performance of diplomatic duties while respecting national security without legal hindrance. Mutuality justifying extending immunity. The United Nations updates diplomatic accords in an effort to modernize the practices, acknowledging the vital role of immunity in international law. Diplomatic immunity has been crucial historically, starting from ancient civilizations to the Vienna Convention of 1961. Supporting diplomatic missions and fostering international relations remains pivotal despite changes.<sup>21</sup>

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<sup>18</sup> غازي حسن صابريني (2002) الدبلوماسية المعاصرة ، دراسة قانونية ، الطبعة الأولى ، عمان ، بيت الثقافة ، ص 131

Ghazi Hassan Sabrini (2002), *Contemporary Diplomacy, Legal Study*, 1st Edition, Amman, House of Culture, p131

<sup>19</sup> Oliver, C. (1962). Certain Expenses of the United Nations (Article 17, Paragraph 2, of the Charter). *American Journal of International Law*, 56 (4), 1053-1083.

<sup>20</sup> Claudia H. Dulmage, *Diplomatic Immunity Implementing the Vienna Convention on Diplomatic Relations* no. 3, *CASE WESTERN RESERVE JOURNAL OF INTERNATIONAL LAW* 10 827–32 ((1978)).

<sup>21</sup> von Pufendorf, S. (2009). *The Law of Nature and Nations*. (C. Oldfather, Trans.). Oxford University Press.

### **3. The Privileges and Immunities Afforded to Missions, Diplomatic Agents, and Their Families, and Instances of Their Misuse**

The diplomatic immunity protections diplomats from legal repercussions in the host country, covering both immunities and privileges interchangeably. Diplomatic immunity misuse includes committing a violent crime, unauthorized use of a diplomatic bag, and enabling terrorism through an embassy.<sup>22</sup>

Under Article 22 of the Vienna Convention on Diplomatic Relations, diplomatic premises enjoy immunity, preventing the authorities of a host country to interfere without authorization from head of the mission. This immunity also extends to protect against legal actions and in emergencies.<sup>23</sup> The 1984 incident at the Libyan People's Bureau in London tested the concept of inviolability, where a standoff caused by a shooting highlighted the challenges of enforcing immunity in cases of extreme criminal activity.<sup>24</sup>

Diplomatic documents and archives are also inviolable under Article 24 of the Vienna Convention, protected at all locations and times. This safeguarding ensures the secure keeping of sensitive diplomatic records and communications from seizure or interference, representing an important aspect of diplomatic immunity.<sup>25</sup>

For diplomatic missions, freedom of communication allows unobstructed access to communication channels, including the use of secure communication methods encrypted messages. Nevertheless, explicit permission from the authorities of the host country are required for installations like wireless transmitters.<sup>26</sup>

These principles underline the delicate balance between the host countries responsibility to ensure respect and security for international law and diplomatic privileges within the diplomatic relations context.

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<sup>22</sup> Farahmand, A. (1989-1990). Diplomatic Immunity and Diplomatic Crime: A Legislative Proposal to Curtail Abuses. *Journal of Legislation*, 16, 97

<sup>23</sup> Satow, E. M. (2017). *Satow's Diplomatic Practice* (Edited by Lord Gore-Booth, pp. 110-111). Oxford University Press.

<sup>24</sup> S.L Wright, *Diplomatic Immunity: Proposal for Amending the Vienna Convention to Deter Violent Criminal Acts* 5, BOSTON UNIVERSITY INTERNATIONAL LAW (1987).

<sup>25</sup> *ILC Yearbook 1957* vol II p 137, Commentary on draft Art 18. [Yearbook of the International Law Commission 1957 Volume II \(un.org\)](#)

<sup>26</sup> FELTHAM, R. G., *DIPLOMATIC HANDBOOK*, *supra* note 99, 39.



The importance of safeguarding diplomatic communications has long been recognized by international norms despite shortcomings in these practices. In rare instances, the state accused violations would argue that the interception was unauthorized. If the intercepted communications reveal a threat against the host state, the actions might be justified to protect essential interests. An example from England's Civil War illustrates this point. The interception led to the expulsion of an implicated Portuguese agent. The agent sent a humorous packet in retaliation to provoke their deportation.<sup>27</sup>

With advancements in communication technology, secure communication has enhanced. Wealthier nations have adopted wireless technology, deeming it their right to free diplomatic communication without receiving authorization from the host state. On the other hand, developing countries, which are unable to afford the installations of wireless technology, fear potential misuse. Thus, the Vienna Convention has been amended to address such concerns.<sup>28</sup>

Diplomatic bags enjoy substantial protection under the Vienna Convention. Diplomatic bags have remained immune from search even if suspected of holding unauthorized items. Furthermore, limited immunity primarily has been granted to diplomatic couriers, while performing transport duties. These bags should be identifiable and contain official articles and documents only. They are immune from search or seizure when properly labeled, even during passage through a third-party country. However, many challenges remain regarding the use and definition of both diplomatic bags and couriers. Moreover, Efforts directed to standardize the treatment of diplomatic bags have met resistance due to worries regarding diplomatic immunity misuse.<sup>29</sup>

Another vital aspect of diplomatic protocol is the inviolability of mission premises. Inviolability to mission premises is granted under the Vienna Convention. However, defining the beginning and end of this inviolability is rather complex. Compliance with conditions and notifying the receiving state for use of premises is generally required. The premises may retain inviolability after the end of a diplomatic mission. Debates are ongoing within the United

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<sup>27</sup> Lord Gore-Booth (ed) Satow's Guide p116

<sup>28</sup> Ibid pp 116-117

<sup>29</sup> Ibid

Nations regarding update of diplomatic protocols showcase the tension between preventing potential misuse and maintaining diplomatic privileges.<sup>30</sup>

While historical practices as well as modern advancements have molded the current state of diplomatic protocols and communications, the balance between diplomatic immunity and preventing misuse remains a delicate issue. Efforts to standardize and update these practices continually face challenges, emphasizing the delicate nature of international diplomacy.<sup>31</sup>

Diplomatic immunity and privilege are crucial for international relations, ensuring diplomats are able to act without local pressures and independently. Based on reciprocity, these privileges, protect diplomats from, legal actions, harassment and attack by the host state. Article 29 of the Vienna Convention preserves the inviolability of diplomatic agents, offering protecting from detention or arrest and requiring host states to ensure their liberty and physical well-being. The importance of these protections is showcased in examples such as that occurring in 1968 in Guatemala City. Where an American Ambassador was killed in an attempted kidnapping by Fuerzas Armadas Rebeldes. Another example highlighting the failure of the Guatemalan government to meet its obligations under the Vienna Convention includes the kidnap and murder of a German Ambassador in 1969 by the same group.<sup>32</sup>

These cases illustrate the shortcomings of current protections and highlight the need for stronger international mechanisms. Following the seizure of the US Tehran embassy in 1979, the case against Iran at the ICJ, provided more emphasis for the need to uphold diplomatic inviolability. The Court ruled that, by failing to prevent the attack and militants' actions, Iran violated its obligations.<sup>33</sup>

These challenges highlight the growing need for an international treaty addressing offenses against diplomats, similar to treaties on sabotage and aircraft hijacking. Such a treaty

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<sup>30</sup> LORD GORE-BOOTH EDITER, SATOW'S GUIDE TO DIPLOMATIC PRACTICE, *supra* note 66, 111–112.

<sup>31</sup> Diplomacy Network, The Role Played by the Vienna Convention on Diplomatic Privileges and Immunities in Diplomatic Practice (2023). <https://diplomacynetwork.com/the-role-played-by-the-vienna-convention-on-diplomatic-privileges-and-immunities-in-diplomatic-practice/>

<sup>32</sup> *Ibid.*

<sup>33</sup> International Court of Justice. "United States Diplomatic and Consular Staff in Tehran (United States of America v. Iran)." Judgment, 24 May 1980. I.C.J. Reports 1980, p. 3. Available at: ICJ website

would define clear legal procedures for penalizing and preventing attacks on diplomats, thereby ensuring accountability and improving international cooperation.<sup>34</sup>

As cornerstone of international relations, diplomatic immunity ensures the inviolability of diplomats as well as their premises via protecting them from legal rule by host countries. This legal protection is important for the function of diplomats without interference. However, it poses challenges when misused. Article 22 of the Vienna Convention on Diplomatic Relations outlines the inviolability of diplomatic missions and grants exemption from legal proceedings. Yet, incidents similar to the 1984 Libyan People's Bureau standoff in London expose challenges, particularly when host countries extend broadly de facto diplomatic immunity. While host countries are responsible for protecting mission facilities, application may prove to be problematic, as showcased by the British response to the incident of Libyan People's Bureau.<sup>35</sup>

#### **4. National legislation and Remedies for Diplomatic Violation**

The issue of whether ambassadors should have absolute immunity from criminal prosecution, regardless of the nature of the alleged offense, is a longstanding and contentious problem. The clarity of the source and scope of immunity is evident both in international law and United States domestic law. The user's text is empty. However, every time a new offense or tragedy occurs, regardless of how infrequent they may be, the public discussion on diplomatic immunity resurfaces.

Undoubtedly, diplomatic immunity is an indispensable necessity, albeit it is never truly wicked. Nevertheless, even with that acknowledgment, there are enhancements that can be enacted to perhaps avert future transgressions or calamities. At a minimum, the public perception of diplomatic immunity may improve.

Diplomatic immunity is an international principle of law. However, this thesis will examine diplomatic immunity in the United Kingdom and the United States of America due to the significance of these countries in international diplomacy. Furthermore, these countries host a great number of diplomats and can set precedents influencing global diplomacy. Policy

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<sup>34</sup> Ibid.

<sup>35</sup> *Breaking Diplomatic Ties*, at <https://dotnepal.com/breaking-diplomatic-ties/>.

recommendations to improve diplomatic immunity can be informed by studying diplomatic immunity in these countries with global impact.

The Diplomatic Relations Act has not imposed significant restrictions on diplomatic immunity; diplomats still maintain sufficient protection to successfully carry out their tasks. The Act has resulted to enhanced safeguarding of private persons by narrowing down the categories of personnel granted immunity, by constraining the immunity of eligible individuals, and by empowering the President to exercise discretion in granting more or less favourable treatment to diplomats. The Act does not completely resolve all issues that may arise from claims of immunity resulting from exchanges between diplomats and private persons, despite the fact that it does limit a significant portion of the immunity that is no longer needed or wanted in contemporary society. Despite causing significant distress to numerous local governments, ambassadors remain exempt from the obligation to pay for their parking infractions.<sup>36</sup>

Since the initial effort to establish a set of laws governing diplomatic relations in 1895, there has been a single principle regarding diplomatic immunity: immunity continues to exist even after the end of diplomatic status, but only for official actions. After a diplomat's tour of duty is completed, they are subject to the jurisdiction of the courts of the receiving state because diplomatic immunity only provides a procedural defence and does not grant them complete exemption from liability. Only the official actions of the diplomat are permanently protected from legal action. The long-established customary rule was officially included in article 39(2) of the Vienna Convention in 1961 and has been continuously followed by states. Mr. Larschan substantiates his claim that the United States has recently embraced a "restrictive" understanding of article 39(2) by referencing materials that directly contradict his argument. He asserts that the supposed mistake made by the United States in interpreting the Vienna Convention is indicative of a consistent disrespect for international responsibilities. This disregard poses a risk to the integrity of the principle of *pacta sunt servanda*. These significant allegations certainly generate reader curiosity. However, if these interpretations are exclusively based on a completely incorrect understanding of a particular treaty, it is the credibility of legal research that is compromised, rather than the credibility of the principle of *pacta sunt servanda*.

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<sup>36</sup> Benedek (n 22)

In order to address the issue of abuse, it is necessary to carefully consider the security of American diplomats in comparison to the importance of holding foreign diplomats accountable for their unlawful and illegal actions.

The misuse of diplomatic immunity poses a problem to both the legislative and judicial branches of the United States government. By fostering collaboration and actively seeking resolutions, the United States can ensure accountability for diplomats' activities without jeopardising the safety of its own diplomats overseas or compromising the judiciary's rightful role in changing the regulations governing this legal domain. To achieve a resolution that benefits the victims of abuse and upholds the objectives of diplomatic immunity, the government and courts can implement insurance and other compensation measures, along with criminal culpability in severe situations. If the financial threat posed to diplomats does not result in severe consequences for their personal freedom, the risks of reciprocity may be deemed acceptable in order to enhance the accountability of diplomats for their criminal and tortious actions.<sup>37</sup>

Diplomatic immunity is a mechanism used by governments to guarantee that diplomatic workers can do their lawful duties. However, it is important to weigh the advantages of enhanced international relations resulting from these grants of protection against the responsibility of the recipient government to safeguard the welfare of its population.<sup>38</sup>

The State Department's narrow perspective is incompatible with the fundamental purpose of diplomatic immunity. Diplomats are granted a distinct international legal standing to enable them to serve as representatives of their country without being subject to intimidation, interference, or retaliation. The goal of diplomatic immunity has been fully realised due to its absolute nature with regards to the criminal jurisdiction of the receiving State. The efficacy of the exemption rule in promoting diplomacy primarily depends on its simplicity and clarity.<sup>39</sup>

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<sup>37</sup> *ibid*

<sup>38</sup> Paul F. Roye (n 20)

<sup>39</sup> Bradley Larschan, 'The Abisinito Affair A Restrictive Theory'

## **5. Possible Remedies to Prevent the Misuse of Diplomatic Immunity**

The many approaches that have been proposed are not fool proof solutions to the problem of abuse, but they might assist in lowering the incidence of abuse. The removal of diplomatic immunity does not compromise the functioning of the diplomatic process, nor does it change the definition of the idea of functional necessity.

The employment of bilateral treaties is the recommended course of action, and countries ought to pursue this course of action to figure out what the right levels of immunity should be between members of diplomatic personnel and the families of such members. In addition, the states would be free to make written agreements that are customized to their specific diplomatic requirements, and they would be expected to adhere to those accords. This would be a condition of the freedom to create written agreements.

The formation of a Permanent International Diplomatic Criminal Court has the potential to be an undertaking that is fruitful on the long run. However, it could have the same effect as the International Criminal Court and the International Court of Justice in the sense that the decisions and judgments of the courts will not be taken seriously, and powerful states may choose to ignore them. This would be the case if it had the same effect as the International Criminal Court and the International Court of Justice. In addition to that, a change needs to be made to the Vienna Convention, which, as was indicated previously, is a difficult task.

In conclusion, our comprehensive examination of the process for trying diplomats for violations of the law, whether at the national level or within the sending state, leading to potential prosecution before a criminal court, has yielded significant findings and recommendations. First, judicial immunity does not absolve diplomats from responsibility; rather, it entails a transfer of jurisdiction to the courts of the envoy's home country. Second, the essence of judicial immunity lies in the personal inviolability of the diplomatic envoy, ensuring they are not subject to criminal justice proceedings in the country to which they are accredited. Third, diplomatic envoys may be subject to the jurisdiction of the receiving state's courts under specific circumstances, such as the waiver of diplomatic immunity by their home country or if the agent voluntarily seeks recourse to the courts of the host country. To enhance accountability and transparency, it is recommended that the Vienna Convention on Diplomatic Relations incorporate provisions requiring the sending state to inform the host country of any legal proceedings against a diplomatic agent and obligating departing diplomats to provide

documentation confirming the clearance of financial any obligations incurred during their tenure.<sup>40</sup>

At the conclusion of this thesis, which addressed two main aspects, one focusing on the conceptual framework of diplomatic immunity, and the other on its practical aspects, the following conclusions can be drawn:

Diplomatic envoys enjoy various judicial immunities within the territory of the receiving state, ensuring the proper performance of their duties. These immunities encompass safeguarding their personal inviolability and protection from any assaults they may face, as well as personal and financial rights granted as a mark of respect for them and their sending state, including judicial immunity in disputes that arise between them and others.

Judicial immunity refers to the exemption of diplomatic envoys from the jurisdiction of the receiving state's courts throughout their tenure. Article 31 of the Vienna Convention on Diplomatic Relations of 1961 elucidates the extent of diplomatic envoys' judicial immunity.

The fact that diplomatic representatives are not subject to the jurisdiction of the receiving state does not exempt them from the jurisdiction of the sending state, as this merely applies the general rule in this regard. Hence, all suits can be brought against them in their sending state.

The judicial immunities granted to diplomatic envoys, as stipulated, and regulated by international treaties and conventions, particularly the Vienna Convention on Diplomatic Relations of 1961, have evolved over time to reflect the diplomatic relations between peoples, tribes, and states throughout history.

The source of the immunities granted by states to diplomatic envoys through the establishment of diplomatic relations aims to strengthen the bonds of friendship and goodwill between them to achieve mutual interests. These immunities will only be successful if they are based on rules, regulations, and principles, whether international or domestic, with the Vienna Convention on Diplomatic Relations of 1961 serving as the primary source of these immunities.

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<sup>40</sup> Al-Fatlawi, previous reference, p. 366, quoted from Security Council resolutions: Resolution 1721/2006 and Resolution 1739/2007  
07-20600 4 S \ RES \ 1739 (2007)

The Vienna Convention on Diplomatic Relations of 1961 has adopted the principles of functional necessity and representational capacity as the basis for the immunities guaranteed to diplomatic envoys, with a tendency to expand diplomatic immunities and privileges. Article 37 of the Convention affirms that technical and administrative staff are entitled to diplomatic immunities and privileges, as they undertake tasks of special importance for the mission compared to the tasks performed by some members of the diplomatic staff.

The immunities enjoyed by diplomatic envoys vary between criminal, civil, and administrative immunities, and include immunity from execution and from giving testimony. Concerning civil judicial immunity, it is granted to the diplomatic envoy in civil suits related to official acts carried out on behalf of their state. However, there are exceptions related to their personal actions, which may also enjoy immunity but in specific circumstances.

The Vienna Convention on Diplomatic Relations of 1961 has adopted the principle of limiting civil immunity to actions and acts performed by the diplomatic envoy in their personal capacity. These actions and acts relate to property rights, property-related lawsuits, inheritance, and actions related to professional and commercial activities.

In conclusion, the origins of the immunities granted to diplomatic envoys are found in the establishment of diplomatic relations between states, aiming to reinforce mutual interests and relationships. These immunities have evolved over time, regulated by international treaties and conventions, with the Vienna Convention on Diplomatic Relations of 1961 serving as a fundamental framework for diplomatic immunities and privileges.

The immunity enjoyed by diplomats is procedural, preventing their prosecution in the receiving state, but it is not substantive immunity. One of their most precise duties is to avoid abusing diplomatic privileges and immunities and their impact on international security. It includes compliance with and respect for the laws of the sending state. Therefore, if a diplomat abuses immunity by committing crimes unrelated to diplomatic functions, they will not escape punishment. There are various ways to confront and prosecute any misuse of immunity and to hold them accountable for their crimes.

Immunity assumes function, and function entails protection. Any action that does not arise from the function constitutes an abuse of immunity by its holder. Such abuses can jeopardize international security, leading to tension between the involved states, possible severance of relations, or even declaration of war, all of which have negative repercussions.



The prosecution of diplomats who commit serious crimes, particularly those related to war crimes. Alternatively, creating a criminal court within the International Criminal Court to handle diplomatic crimes and punish the criminals among diplomats.

Establishing a compensation fund in the receiving state, where the state can request necessary compensation from diplomatic missions whose members commit crimes. The fund would then pay these compensations to the victims of these crimes. The necessity of reviewing the Vienna Convention on Diplomatic Relations concluded in 1961, as more than sixty years have passed since its inception.