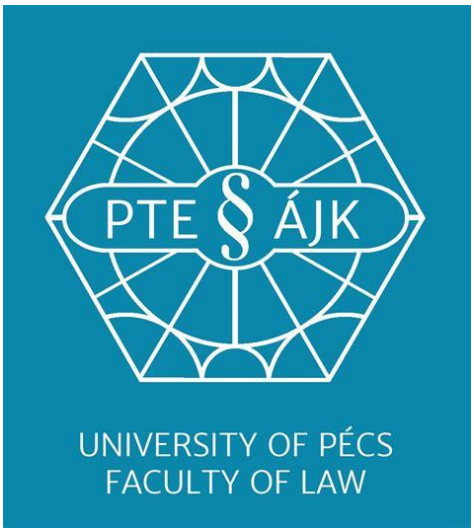
Doctoral (PhD) Dissertation

Lama Allan Abusamra

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

Supervisor**: Dr. habil. Ágoston Mohay, PhD**



Doctoral School of Law

University of Pécs

Pécs

2024

Table of Contents

Acknowledgment

I would like to extend my deepest gratitude to my supervisor, Dr. Habil. Mohay Ágoston PhD, whose unwavering guidance, invaluable insights, and steadfast support have been instrumental throughout the journey of this doctoral research. Their expertise, encouragement, and commitment to excellence have not only shaped the direction of this thesis but also nurtured my academic growth and professional development. I am profoundly grateful for their mentorship, patience, and dedication, which have inspired me to strive for intellectual rigor and scholarly excellence. Their constructive feedback, constructive criticism, and unwavering belief in my capabilities have been a source of motivation and empowerment, guiding me through the challenges and triumphs of the research process. I am truly fortunate to have had the privilege of working under their mentorship, and I am indebted to them for their invaluable contributions to this dissertation. My sincere appreciation extends to their ongoing support and encouragement, which have been a cornerstone of my academic journey.

Furthermore, I want to express my deep appreciation for Hungary and to the Tempus Foundation and the Stipendium Hungaricum Scholarship for their financial support during my study in Pécs. I am grateful for their assistance in enabling me to complete this academic program. Additionally, I want to extend my heartfelt gratitude to the staff of the International Law Department, Doctoral School of Law at the University of Pécs, Administrative Staff of the Faculty of Law.

Special recognition is due to my parents, family, and friends for their unwavering support, encouragement, constructive ideas, and kindness throughout my academic journey, including this study. Without their help, I would not have been able to complete the educational journey effectively. And a big thanks to the Interantional PhD Student representative Ala' Salem to the support, effort, help and advice during my PhD journey.

I would also like to extend my gratitude to my host institution, the University of Zurich, for welcoming me as a research and PhD invited student. Special thanks go to Prof. Dr. Daniel Moeckli, my host professor, for his invaluable effort and advice in improving the quality of my research. I am also grateful for the access resources provided by the University of Zurich library, as well as for the academic research consultant, Dr. Kimberly Lewis, a postdoctoral fellow at Stanford University, for all her effective research tips.

Additionally, I would like to express my gratitude to the University of Copenhagen, where I completed my PhD teaching course and practical training. Special thanks to Dr. Eva Ulstup for providing these opportunities. I also deeply appreciate the support and guidance from Elżbieta Wójcik-Leese, Academic Language Consultant, and Dr. Hanne Petersen from the Law Faculty. Thank you to everyone who has supported me throughout this academic journey.

Chapter 1

1.1. Introduction

Diplomatic immunity, originating from ancient customs and codified in current international law by treaties such as the 1961 Vienna Convention on Diplomatic Relations, involves an intricate balance between privilege and responsibility. Although the historical purpose of the framework was to enable communication and protect diplomatic staff, it is occasionally being questioned due to cases of misuse. In these circumstances, diplomats and their associates manage to avoid being subject to local laws for their criminal actions. This thesis aims to examine the complex and diverse aspects of diplomatic immunity, by analyzing its historical development, legal basis, related benefits, and difficulties.

The origins of diplomatic immunity demonstrate a mutually beneficial connection between independent nations, where the safeguarding of diplomats guarantees uninterrupted exchange and bargaining between countries. The concept of diplomatic inviolability is an integral part of this tradition, protecting ambassadors from unwarranted intervention and retaliation while they navigate the complex nuances of international relations. These protections have been essential in building confidence, enabling communication, and reducing tensions between different countries.

Nevertheless, the current implementation of diplomatic immunity is susceptible to criticism. Instances of abuse, where diplomatic staff exploit their immunity to avoid legal consequences for malfeasance, undermine its legitimacy and effectiveness. Diplomats and their friends have been accused of using their privileged status to commit crimes without facing consequences, ranging from little violations to serious offenses. This raises important concerns about accountability and fairness on the global stage.

This thesis conducts a thorough study of suggested reforms that aim to rebalance the relationship between privilege and accountability in the context of diplomatic immunity. A range of alternatives has been proposed to address the deficiencies of the current paradigm, including suggestions for legislative reforms and the investigation of alternative conflict resolution systems. 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 also keeping the fundamental aspects of diplomatic engagement.

This study seeks to gain a comprehensive understanding of how diplomatic immunity contributes to the promotion of effective foreign relations, while also addressing concerns related to accountability and justice. It does so by analyzing potential solutions such as treaty amendments and the creation of an international diplomatic criminal court. This thesis aims to contribute to the continuing discussion about the necessity and limitations of diplomatic immunity in the contemporary global context. This study aims to shed light on the route toward a fairer and more responsible framework for diplomatic interaction in the twenty-first century, using thorough investigation and thoughtful analysis.

With its roots in ancient traditions and formally incorporated into contemporary international law by agreements such as the 1961 Vienna Convention on Diplomatic Relations, diplomatic immunity involves balancing privileges with accountability. It was intended primarily to streamline communication and ensure the safety of diplomatic personnel, but it has been abused in some cases.

In this way, diplomats, as well as their subordinates, are protected from legal prosecution for their illegal activities within the jurisdiction of a country. This thesis aims to explore the complex and diverse aspects of diplomatic immunity by analysing its historical evolution and legal foundation, as well as the benefits and difficulties it entails.

1.2. The Purpose of the Study

According to Shaw, rules governing diplomatic relations are among the earliest manifestations of international law.[1] The topic of diplomatic immunities is widely accepted and uncontroversial in the field of international law. This is because all states have a common interest in maintaining stable diplomatic relations, although not all states adhere to this in practice.. The principle of personal diplomatic immunity, as stated in Article 29 of the 1961 Vienna Convention on Diplomatic Relations (VCDR), is the most fundamental and longstanding tenet of diplomatic law. Among other things, it ensures that the person of a diplomatic agent is inviolable.[2]

Diplomacy is accurately described as the practice of achieving agreement and resolution without resorting to violence or force[3] Diplomacy, although typically associated with relations between states, might be considered post-statist because it encompasses methods and mindsets that surpass the divisive and vilifying attitudes required for the application of force. [4] Diplomacy seeks to achieve adjustments by bargaining and compromise, without resorting to the use of force, as highlighted by Watson.[5]

A diplomat must be able to express the interests of his home country, so that the cooperative relations established can fulfill national and common interests. To make the tasks of diplomatic representatives easier, they are given special rights. These rights are immunities. These rights are not only attached to officials or Heads of Representatives, but also to family members, diplomatic staff and other supporting staff.

---

[1] Shaw, Malcolm N. *International law*. Cambridge university press, 2017.
[2] Seokwoo Lee & Hee E. Lee, *Asian Yearbook of International Law, Volume 27 (2021)* 27, 40 (2024).
[3] Sofer, Sasson. "Old and new diplomacy: A debate revisited." *Review of International Studies* 14.3 (1988): 196.
[4] Watson, Adam. *Diplomacy: the dialogue between states*. Routledge, 2013.P219
[5] John Hoffman, *Reconstructing Diplomacy* 5, BRITISH JOURNAL OF POLITICS AND INTERNATIONAL RELATIONS 525–42 (2003).

Article 29 of the 1961 Vienna Convention on Diplomatic Relations discusses the application of the Convention to the relationships between states. According to the article:

"The person of a diplomatic agent shall be inviolable. He shall not be liable to any form of arrest or detention. The receiving state shall treat him with due respect and shall take all appropriate steps to prevent any attack on his person, freedom, or dignity." Moreover, diplomatic immunity has been recognized as principle of international law, which means that the diplomat (state officials) cannot be subjected to domestic jurisdiction in the receiving state. This principle is also known as special protection towards the employees of sending states that become the representative of their states.[6]

The persistent concerns in current diplomatic law revolve around the issues of personal inviolability and diplomatic immunity from criminal prosecution. Diplomatic representatives and other foreign officials have historically enjoyed certain rights that protect them from state- or judicial intrusion, which could potentially hinder their freedom and prevent them from exercising their functions. These protections are especially important in circumstances where penal processes are intended to restrict personal or financial liberty as a form of punishment or deterrence. Although international agreements like the Vienna Convention on Diplomatic Relations offer a protective structure, there are still practical obstacles in implementing its rules, as demonstrated by the continued difficulties encountered by nations and diplomatic agents.

Regrettably, there are instances where diplomats underestimate the scope of their rights and privileges, leading to the misuse or overuse of inviolability and immunity.

Rumahorbo, Surya Ceasar, Limitations of Diplomatic Immunity for Diplomat Family Members Reviewed from the 1961 Vienna Convention (Case Study of Accident Events of Diplomat Family Members that Caused Death of Citizens of the Recipient Country) (December 18, 2023). Available at SSRN: https://ssrn.com/abstract=4667393 or http://dx.doi.org/10.2139/ssrn.4667393

Although host states may occasionally disregard minor offences to support diplomatic activities, the issue arises as to whether personal inviolability and diplomatic immunity should be permitted in instances of grave offences such as murder, conspiracy, war crimes, and crimes against humanity. This thesis seeks to investigate these concerns, analyzing possible solutions and measures to tackle instances of diplomatic status abuse.[7] The questions of personal inviolability and diplomatic immunity from criminal jurisdiction continue to pose significant challenges in contemporary diplomatic law. Diplomatic representatives and other foreign officials have long been granted special privileges that effectively shield them from any interference with their freedom. These privileges are particularly important when it comes to legal proceedings that aim to restrict their financial or personal liberty as a form of punishment or deterrence. Nevertheless, empirical evidence suggests that both governments and diplomatic agents continue to encounter difficulties in comprehending the applicable clauses of the Vienna Convention on Diplomatic Immunity.Regrettably, diplomats are prone to occasionally misinterpreting the full scope of their privileges and consequently exploiting, or more accurately, misusing their inviolability and immunity. The receiving state may tolerate such abuses in order to ensure the efficient execution of diplomatic tasks, as long as these abuses only consist of minor infractions or crimes. Must receiving governments and the international community allow personal inviolability and diplomatic immunity in cases involving serious crimes such as murder, conspiracy, war crimes, and crimes against humanity? This thesis aims to discuss the aforementioned difficulties and explore potential solutions to address these problems and prevent abuses of diplomatic status.[8]

---

[7] Rene Vark, *Personal Inviolability and Diplomatic Immunity in Respect of Serious Crimes* 8, JURIDICA INTERNATIONAL 110–19 (2003), (visited Dec. 6, 2022).

[8] Vark, Rene. "Personal inviolability and diplomatic immunity in respect of serious crimes." *Juridica Int'l* 8 (2003): 1

The problem of diplomatic privileges and immunity abuse is of great importance as it has a profound impact on international relations, the enforcement of laws, and the global perception of justice. Instances of abuse, in which diplomatic personnel exploit their immunity to evade legal repercussions for wrongdoing, erode the credibility and efficacy of diplomatic immunity. Studies have demonstrated numerous instances in which diplomats have engaged in grave offences such as human trafficking, sexual abuse, and even murder, but have managed to evade legal consequences by virtue of their diplomatic immunity.

1.3. Methodology

This study utilised a comprehensive research technique to investigate ongoing difficulties related to personal inviolability and diplomatic immunity in contemporary diplomatic law. At first, a thorough examination of existing academic research and legal structures was carried out, with specific attention given to the Vienna Convention on Diplomatic Relations. This review offered fundamental insights into the understanding and implementation of diplomatic privileges.

In addition, historical cases and 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. 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. The research conducted a thorough assessment of cases involving possible misapplication or exploitation of diplomatic immunity, 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 different viewpoints on accountability within the

diplomatic community. The primary objective of the study is to suggest effective measures and solutions to tackle these problems and improve the level of responsibility within the diplomatic community. This will be achieved by analysing relevant literature, historical instances, practical illustrations, and insights from experienced diplomats.

1.4. Research Necessity

The necessity of this research stems from the lack of clarity and uniformity in international law regarding diplomatic immunity. While there are established conventions such as the Vienna Convention on Diplomatic Relations, there remain ambiguities and variations in practice among different states. Understanding these complexities is crucial for policymakers, diplomats, and legal scholars to navigate diplomatic relations effectively and ensure compliance with international norms and regulations. Diplomatic immunity is a cornerstone of international law, designed to facilitate diplomatic relations and protect diplomats in their official duties. However, the misuse or abuse of diplomatic privileges can have significant consequences for both sending and receiving states. Understanding the nuances of diplomatic immunity, including the processes of declaring *persona non grata* and waiving immunity, is crucial for maintaining diplomatic order and addressing instances of misconduct or criminal behavior by diplomatic agents. Additionally, in contemporary international relations, diplomatic immunity has become increasingly problematic due to instances of abuse and misconduct by diplomatic personnel. The current framework of diplomatic immunity 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. Additionally, addressing the

reciprocity issue and enhancing enforcement mechanisms are essential for maintaining the integrity of diplomatic relations.

As one of the world's largest diplomatic communities, the United States have many diplomatic missions around the world. Other nations often accused Western diplomats of espionage during the Cold War, regardless of their legality. To understand the balance between diplomatic immunity protection and liability, this thesis analyzes empirical data. According to research conducted in the United States, diplomats who possess immunity rarely engage in illegal activities. Just five of the 80,000 major offenses recorded in the District of Columbia between March 1986 and February 1988 involved diplomats shielded by immunity. This statistical database improves the study carried out on diplomatic immunity and international justice in the thesis. State's vigorous response to diplomatic incidents, particularly those related to alcohol, highlights the difficulty in regulating and overseeing these gatherings. From 1993 to 1996, a total of thirty-seven ambassadors were suspended for engaging in such conduct. Although efforts have been made, the problem of local law enforcement personnel reporting offences to the Department of State in an inconsistent manner has not yet been completely rectified. [9]

Reports frequently highlight cases of abuse of diplomatic immunity, which can lead to public anger and strained diplomatic relations. In 2019, a tragic car accident occurred in the United Kingdom involving Anne Sacoolas, the wife of the United States Ambassador. In 2019, Anne Sacoolas, the wife of an American ambassador, was involved in a horrific car accident in the United Kingdom. For example, consider the specific circumstances surrounding her position. As a result of her declaring diplomatic immunity and leaving for the United States without first being brought to trial, this incident received significant media

[9] Zaid, Mark S. (1998) "Diplomatic Immunity: To Have Or Not To Have, That Is The Question," *ILSA Journal of International & Comparative Law*: Vol. 4: Iss. 2, Article 29.
Available at: https://nsuworks.nova.edu/ilsajournal/vol4/iss2/29

attention and sparked public outrage. As a result of such circumstances, the state's public statements and demands for justice highlight the need to implement reforms within the legal system.[10]

This thesis examines the aforementioned concerns to get a thorough comprehension of the concept of diplomatic immunity on a global level, its impact on international diplomacy, and the difficulties it presents to the United States and foreign policy.

This edition emphasises the worldwide importance of diplomatic immunity, using the United States as a case study, and offers a detailed description of the safeguards, responsibility, and inquiries associated with foreign diplomacy.

The purpose of this thesis is to investigate these facets and to suggest improvements that are feasible.These instances illustrate the urgent nature of the problem and highlight the need for innovative legislative solutions that have the potential to strike a balance between the advantages enjoyed by diplomats and accountability mechanisms that are designed to prevent and punish misuse. The purpose of this thesis is to investigate these facets and to suggest improvements that are feasible.

1.5. Research Problem

The study aims to address the complexities and ambiguities surrounding diplomatic practices, particularly focusing on the reception and termination of diplomatic missions, the legal frameworks governing diplomatic privileges and immunities, and the prosecution of diplomatic personnel for misconduct. Additionally, it seeks to explore the historical

[10]Huneeus, Alexandra. "The legal struggle for rights of nature in the United States." *Wis. L. REv.* (2022):P91.

development and contemporary challenges related to diplomatic immunity, including its implications for international law and diplomatic relations.

1.5. Objectives

1. To 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. To analyze the legal frameworks and practices governing diplomatic privileges and immunities, including the reception and termination of diplomatic missions.

3. To explore the complexities surrounding diplomatic immunity, its historical development, contemporary challenges, and potential reforms.

4. To investigate the mechanisms and limitations surrounding the prosecution of diplomatic personnel for misconduct, including the waiver of diplomatic immunity and jurisdictional issues.

5. To propose recommendations for enhancing the effectiveness and accountability of diplomatic practices, including reforms to diplomatic immunity and enforcement mechanisms.

1.6. Structure of the thesis

Diplomatic immunity's history and growth are covered in Chapter 2 of this thesis. Three main immunity concepts are examined, emphasizing their importance in international relations. The chapter also compares the Vienna Convention to the UN Convention of Diplomatic Relations and the Vienna Convention Consular Convention in establishing immunity.

Chapter 3 discuss the Judical immunity for diplomats in international law in 3 parts, Civil Judical Immunity,Immunity from Criminal Jurisdiction and Finaly with Adminstrative Judical Immunity.

Chapter 4 explores the mechanisms outlined in the Vienna Convention to prevent any potential misuse, such as the identification of individuals as *persona non grata* and the submission of immunity exemptions.

More specifically, Chapter 5 examines several approaches to handling offenses, suggests modifications to the Vienna Convention based on the functional necessity theory, encourages bilateral agreements, and backs the creation of an international criminal court that would be permanent for diplomats.

In Chapter 6, the examination focuses on the responses of the United Kingdom and the United States to diplomatic immunity. The emphasis is placed on their significant worldwide impact and strong legal frameworks. The selection of these countries was based on their notable contributions to global diplomacy and their substantial expertise in managing diplomatic matters. The text examines legislative initiatives designed to reduce the misuse of diplomatic immunity, assessing their efficacy and their relevance in other contexts. The historical episodes that have significantly influenced their approaches underscore the intricate equilibrium between giving diplomatic privileges and ensuring accountability. This

analysis compares different legal systems and cultural contexts to understand how they affect the management of diplomatic privilege. It aims to identify the most effective procedures and areas that need improvement on a worldwide scale. The chapter provides valuable insights for international law discussions, offering guidance to policymakers and legal experts on effectively addressing difficulties related to diplomatic immunity in accordance with established standards.

The thesis explores the practical difficulties of managing diplomatic privileges and immunities and makes the case for tighter restrictions on diplomatic immunity as a means of lowering crime rates and improving the efficiency of prosecution.In conclusion, the thesis calls for increased public understanding of the ramifications of diplomatic immunity and emphasizes the need for international participation in these issues.

Chapter 2. The Development of Diplomatic Immunity

2.1. Introduction

Diplomacy, a dynamic force shaping international relations, has evolved over millennia, and Kurizaki's exploration of its history provides insights into its enduring core functions. Spanning from ancient Near Eastern Amarna to Byzantine, Greek, Roman, and French diplomacy in the 17th and 18th centuries, the historical trajectory of diplomacy unveils its resilience amidst global transformations.[11] Notably, diplomatic institutions have weathered the storms of rising nationalism, the advent of democracy, and the integration of non-European nations into the international system.

Mitchell S. Ross emphasizes the paramount importance of envoys' freedom and safety as the first priority in diplomatic conduct. In his view, diplomatic travel should be shielded from basic dangers such as hostile attacks and challenging terrains.[12] Diplomatic inviolability, as articulated by Hugo Grotius in the 17th century, surpasses any potential benefits derived from punitive measures. Samuel von Pufendorf underscores the diplomat's role in the Law of Nations, asserting that their function is intrinsically linked to the pursuit or preservation of peace, a fundamental objective.[13]

Emer de Vattel's influential 1758 work, “The Law of Nations” (or “*le Droit des Gens*”), steered diplomatic practice for nearly two centuries. Envoys, representing kingdoms in negotiations, played a crucial role, while their misconduct revealed a determination to harm the kingdom—an institution prevalent in medieval and Renaissance contexts. The quest

[11] Kurizaki, Shuhei. "Efficient secrecy: Public versus private threats in crisis diplomacy." *American Political Science Review* 101.3 (2007): 543-558.
[12] Ross, Mitchell S. "Rethinking diplomatic immunity: A review of remedial approaches to address the abuses of diplomatic privileges and immunities." *Am. UJ Intl'l L. & Pol'y* 4 (1989): 173.
[13] von Pufendorf, S. (2009). *The Law of Nature and Nations*. (C. Oldfather, Trans.). Oxford University Press.

for peace and understanding led to the allowance of ambassadors to move freely, marking a pivotal shift in diplomatic norms.[14]

The first systematic attempt to codify diplomatic immunity within common law came with the English Diplomatic Privileges Act of 1708. This legislative milestone brought stability to diplomats in England, shielding them from abrupt and drastic legal status changes initiated by a monarch. Diplomatic immunity, by the end of the seventeenth century, evolved into one of the principles underpinning state equality and sovereign immunity. As Sir Ernest Satow notes, it became clear that diplomatic immunity was not merely a personal safeguard but, in reality, the immunity of the sending state.[15]

The twentieth century witnessed a transformation in the foundations of diplomatic immunity. The secularization of society eroded the notion that one person symbolized the state by divine order, yet the concept of immunity endured. Diplomacy and diplomatic immunity experienced growth and refinement following the Peace of Westphalia in 1648.[16]

Hazel Fox, in a contemporary context, underscores that diplomatic immunity is now granted to recognize the sovereign independence of the sending state. This recognition extends to the public nature of acts performed by diplomats, rendering them exempt from the jurisdiction of the receiving state. Additionally, diplomatic immunity safeguards the diplomatic mission and its staff, ensuring their efficient performance of functions without interference.[17]

---

[14] Vattel, E. (1758). *The Law of Nations*.
[15] English Diplomatic Privileges Act of 1708, 7 Anne c.12.

[16] Gross, Leo. "The peace of Westphalia, 1648–1948." *American Journal of International Law* 42.1 (1948): 20-41.
[17] (Fox, H. (2008). *The Law of State Immunity* (2nd ed.). Oxford University Press).

Diplomatic immunity, a longstanding tenet of customary international law, was established to safeguard foreign government personnel stationed overseas from reprisals during times of international wars and to foster civilised international relations.[18]

The foundations of modern diplomacy were established during the period of Renaissance Italy in the 15th century and further developed with the creation of the Westphalian system in the 17th century. However, the basic principles of diplomacy have existed since the emergence of social communities and political collectives, dating back to ancient times. Nicolson (1963, 2) states that the origins of diplomacy can be traced back to a time before recorded history. However, based on the evidence available, the earliest documented diplomatic activity occurred approximately 3400 years ago. This involved interactions between the Eighteenth Dynasty of Egypt during the New Kingdom period and other major powers in the ancient Near East.[19]

2.2. Where did Diplomatic Immunity Originate from?

Diplomatic immunity has been a longstanding characteristic of diplomatic interactions for millennia. The tradition of sparing messengers instead than executing them upon arrival likely originated from the earliest encounters between nations. However, it was in ancient Greece around the 13th century that the concept of diplomatic immunity was first documented in a systematic manner.[20]

---

[18] Mitchell S. Ross, *Rethinking Diplomatic Immunity: A Review of Remedial Approaches to Address the Abuses of Diplomatic Privileges and Immunities* 4 (2011).
[19] Shuhei Kurizaki, *A Natural History of Diplomacy: Chapter 3 of the Book Manuscript in Progress When Diplomacy Works* unpublished manuscript,
Click or tap here to enter text.

Ancient, civilized states established and implemented the concept of diplomatic immunity. The historical records of the ancient Greeks, Romans, Chinese, Indians, and provide undeniable evidence that these civilizations did, in fact, recognise the concept of diplomatic immunity.

These states recognized the reciprocal benefits of ensuring the safety and protection of foreign diplomats. Consequently, they bestowed immunity upon one another's ambassadors, irrespective of the gravity of the transgressions committed by the foreign representative.[21]

The ambassadors were subjected to peril, savagery, and even homicide. The messengers faced significant perils during their journeys to deliver messages to a recipient ruler. They were not only at risk of being temporarily detained, but also faced the possibility of encountering road blockages or being kidnapped by robbers. Additionally, there was a danger of being captured by rulers of the territories they passed through, especially if those rulers were enemies of the intended recipient.[22]

While messengers did not enjoy the same diplomatic protections as modern diplomats, they were not entirely without safeguards. Both senders and recipients took precautions to ensure their security. These measures included special requests from senders to recipients for safe travel and the messenger's security. Additionally, international agreements or customs sometimes ensured the safety of messengers traveling between states. Escorts and defense mechanisms were also common, with messengers often accompanied by armed escorts or provided with means of defense to ensure protection throughout their journey, especially in hazardous regions. Furthermore, the potential for retaliation or negative consequences for harming a messenger served as a deterrent against attacks or interference.

---

[21] *Ibid.*, p.568.

[22] Elgavish, David. "Did diplomatic immunity exist in the ancient Near East." *J. Hist. Int'l L.* 2 (2000): p.77

These practices were crucial for ensuring the secure transport of messengers and maintaining communication channels between governments, demonstrating effective security measures even in the absence of formal diplomatic immunity.[23]

According to the evidence, diplomatic inviolability was religious. The reprisals were carried out because the conduct was a sacrilege to be avenged, not because the ambassador or his sending State thought it had been violated. In ancient India, the exchange of *ad hoc* envoys between themselves and from outside India was marked by selection of individualsqualified for the highest office within the state, rank-based classification of diplomatic agents, and religiously sanctioned veneration of the agent. Even if he committed a crime hecould not be executed. However, mutilation might be given to a non-priestly emissary under specific situations. Chatterjee, analyzing the development of international law in India, concludes: (i) Diplomatic agents were considered sacred. (ii) That a diplomatic agent or distinguished foreign guest might bring duty-free money, gifts, jewelry, and other goods to his nation. The State to which he was accredited was required to provide protection for him, and a diplomatic agent enjoyed complete freedom of movement inside the country.[24]

To the Romans, protection of diplomatic agents was religious. The college of Fetiales, which oversaw complicated missions and formalities for a bellum custom and the safekeeping of all Rome-signed treaties, was made up of political priests The Romans considered the protection of diplomatic agents to be of great religious importance. The college of Fetiales, consisting of political priests, oversaw complex missions and formalities pertaining to declarations of war and the maintenance of treaties recognised by Rome.[25]

---

[23] *Ibid.*

[24] Chatterjee, Charles. *International law and diplomacy*. Routledge, 2013.

[25] Young, Eileen. "The development of the law of diplomatic relations." *Brit. YB Int'l L.* 40 (1964): 141.

Livy records a case in 456 B.C. in which laymen were sent to the Aequi to complain of a treaty breach and demand reparation, while the Feciales were only used for war or peace.[26]

In a later period after 456 B.C, three to ten distinguished warriors or politicians were granted credentials and instructions and dispatched on ad hoc missions, and the Lex Gabinia authorized the Senate to meet foreign envoys each February. The Lex Julia de Vi made it an offence to infringe an ambassador's inviolability, which does not appear to have covered residence, servants, or dispatches, and it was the custom to surrender to the aggrieved State any person who had committed such a violation, failure to do so being considered a legitimate cause of war.[27]

However, these fundamental principles were not further developed in subsequent Roman legal literature due to the cohesive nature of the expanding Roman empire, which hindered the advancement of international law as understood in modern times, and also because the practice of exchanging envoys between autonomous nations was substituted by the practice of dispatching provincial representatives from the municipia. Multiple texts from the Digest confirm that individuals were granted immunity from legal action. One specific example is V. I. xxiv., which states that the reason for this immunity is to prevent interference with the duties of a diplomatic mission.In the writings of the sixteenth and seventeenth centuries, this text was frequently used to justify the concept of an ambassador being exempt from civil lawsuits according to international law. Bynkershoek, in his work “De Foro Legatorum“ published in 1744, was the first to explicitly state that the references made by legal experts were not about ambassadors of an independent ruler, but rather about deputies who were subjects of the Emperor. Furthermore, it was emphasised that these opinions and

[26]Livy. Books VIII-X With An English Translation. Cambridge. Cambridge, Mass., Harvard University Press; London, William Heinemann, Ltd. 1926: no copyright notice.p.327
[27] Quigley, John Bernard. "Diplomatic and Consular Law in the Age of Empire." *Ohio State Legal Studies Research Paper* 784 (2023).

accounts of Roman practices could not establish international law. other texts addressed the role of the legatus who initiated legal proceedings, the potential for legal action against the legatus' property[28], and the jurisdiction of a court in a criminal case. These texts were also referenced in later times when similar issues arose with ambassadors from independent nations.[29]

2.2.1. The Middle Ages and The Renaissance and Classical Periods

Assaults on diplomatic workers are undoubtedly a recurring occurrence in the realm of international affairs. Throughout history, the limited occurrence of such attacks serves as evidence of the long-standing emphasis on the inviolability of diplomatic agents. There is speculation that a type of diplomatic inviolability may have existed prior to recorded history. The earliest documented evidence of early diplomatic ties and the concept of diplomatic inviolability can be traced back to ancient civilizations. In their comprehensive work documenting The History of Diplomatic Immunity, Frey and Frey present compelling evidence that envoys have consistently had a privileged and secure status dating back to the era of the Ancient Greeks. For instance, when mentioning Herodotus, they recount the severe punishment that Athens and Sparta faced in 491 B.C. due to their act of assassinating the messengers sent by Darius.The Greek envoys' inviolability was shown by the presence of a staff, which represented the sacredness of their person or acted as a symbol or emblem of their position.[30]

The increasing intricacy of European cultures during the later Middle Ages resulted in a corresponding intensification of diplomatic connections and the necessity to establish

[28]Young, Eileen. "The development of the law of diplomatic relations." *Brit. YB Int'l L.* 40 (1964): 143.
[29] *Ibid.*
[30] Barker, J. C. (2016). *The protection of diplomatic personnel*. Routledge.

diplomatic contacts with increasingly remote nations. The outcome did not involve the replacement of the nuncius, whose existence and responsibilities remained unchanged from the Merovingian era until the fifteenth century. Instead, it led to the emergence of a new official known as the procurator, which gave rise to the English phrases "proctor" and "proxy". The office of the procurator did not emerge during the early Middle Ages, however, its importance was primarily related to legal matters rather than diplomatic affairs. In the latter part of the eleventh century, officials of the papacy were provided with procurations, and it is certain that other authorities were also sent representatives to engage in private agreements. One hundred years later, during the Peace of Constance in 1183, Frederick Barbarossa granted his emissaries the right to negotiate and finalise peace agreements through the use of procuration. The Emperor consented to unconditionally adopt and disseminate the conclusions reached on his behalf.[31]

Many ancient cultures' diplomatic law was influenced by religion, as evidenced by references in De Legationibus Libri Tres to the importance of religious ceremonies for early diplomats. The Roman College of Fetials, governing diplomatic ties in Roman times, exemplified this influence by creating the jus fetiale and conducting war declarations with considerable ceremony. Even in antiquity, before the advent of current international law, ambassadors enjoyed unique protection and privileges, not by law but by religion, as they were considered holy. While religion played a crucial role in ancient civilizations' diplomatic law, it would be simplistic to overemphasize its significance, as it mainly explains the inviolability of ambassadors within specific religiously homogenous communities. However, the cloak of religious sanctity was utilized to protect important figures in early diplomatic law. Until the establishment of permanent diplomacy, diplomatic law was primarily based on the inherent necessity of inter-tribal and inter-state relations, with religious sanctity

[31] Keith Hamilton and Richard Langhorne, *The practice of diplomacy: Its evolution, theory, and administration* (2nd ed. Routledge 2011) 35

securing envoys' inviolability. The need for a detailed enumeration of diplomatic privileges and immunities arose with the emergence of the 'new' diplomacy and permanent diplomatic relations, as the diplomatic process no longer solely justified such privileges and immunities, which had expanded beyond the traditional inviolability of diplomatic agents.[32]

In the early 15th century, Western society did not have enough resources to establish stable nation-states. It has the capability to do so within the context of the Italian city state. The shorter distances internally presented challenges in transport and communication, which in turn affected the collection of taxes and the maintenance of central authority. However, these challenges were manageable and could be resolved effectively. The capital wealth and per capita productivity of the Italian towns may not have exceeded (although it was slightly higher) those of the more affluent regions north of the Alps. However, due to the high population density and limited territory under their control, the Italian city states were able to acquire the resources needed for effective governance, a feat that was previously unattainable for the large and loosely organised northern kingdoms. As a result, not only did each capital experience a stronger attraction due to the regular actions of paid officials, but the entire state was able to quickly and easily mobilise its armies, a feat that is rarely achievable outside of the Alps. Externally, scale had a dual impact. The relatively higher efficiency of the new Italian nations, due in part to their smaller territories, allowed them to pursue their foreign policy goals with more consistency and flexibility compared to other regions in Europe. Simultaneously, the existence of neighbouring military forces in the confined region of northern Italy, possessing equal effectiveness, agility, and predatory tendencies, necessitated constant vigilance in matters of international relations.[33]

---

[32] Craig Barker, 'The theory and practice of diplomatic law in the renaissance and classical periods' [1995] Diplomacy and Statecraft, 1
[33] Garrett. R d Mattingly, *Renaissance Diplomacy* (1988) 59

2.2.2. The modern age and the Vienna Congress

The Congress of Vienna left a lasting legacy in the organization of permanent diplomacy, with regulations established by the powers in 1815 still relevant two centuries later. Among the treaties and declarations signed at Vienna, the Regulation on the Precedence of Diplomatic Agents introduced new rules that reshaped diplomatic traditions, defining hierarchical categories for diplomatic representatives and establishing rules for precedence based on the date of arrival. This regulation became the foundation of modern diplomacy, adopted throughout Europe and beyond in the 19th and 20th centuries. It marked a significant departure from past disputes over precedence among diplomats, which had been a contentious issue since the early modern era. The Vienna Regulation aimed to break with past conflicts and establish a new principle of ceremonial equality among diplomatic representatives, reflecting the changing dynamics of European politics following the French Revolutionary and Napoleonic wars. Ultimately, the Congress of Vienna's diplomatic regulations laid the groundwork for a new order of precedence and ceremonial equality that would shape international relations for centuries to come.[34]

In the nineteenth century, diplomatic privileges that had emerged during the Classical Periods, such as the franchise du quartier and droit de chapelle, started to be seen as antiquated and fell out of favour among theorists, although they were not completely discarded in reality. Furthermore, by the eighteenth century, there was a widespread recognition of the absolute protection of diplomats in situations that occur beyond the borders of the host country. Envoys in transit and those from belligerent powers transiting through neutral states were given inviolability, as were envoys during combat, regardless of their location in war zones or under siege. In addition, during the nineteenth century, governments made a consistent attempt to include precise regulations addressing the protection of

[34] Randall Lesaffer, 'Vienna and the codification of diplomatic law'

diplomatic immunity inside their own national legal frameworks. Authorities and judicial bodies are progressively recognising the fundamental protection of diplomats and diplomatic buildings by incorporating established practices and traditions into local legislation. In the later part of the nineteenth century, there were significant efforts to establish universal legislation concerning diplomatic privileges and immunities. The codifications mentioned, such as Bluntschli's Draft Code (1868), Fiore's Draft Code (1890), and the Resolution of the Institute of International Law, Cambridge (1895), had extensive portions that dealt with the idea of diplomatic inviolability. These codifications played a vital role in strengthening and solidifying this principle.[35]

2.3. Vienna Convention on Diplomatic Relations of 1961

Throughout history there was a need to establish a legal code to ensure the function of diplomats. The first attempt to codify the immunity of diplomats into a law occurred in1815 with the Congress of Vienna.[36] In 1928, the Havana conference[37] followed on Diplomatic Officers. In 1961, under a UN General Assembly mandate, the International Law Commission drafted the text of the Vienna Convention on Diplomatic Relations as a part of the codification process of customary international law.[38] The Vienna Convention has achieved global acceptance and its provisions, which were initially seen as innovative in establishing customary norms or resolving conflicting practices, are now considered established legal principles. There have been attacks on the protected status of diplomats, with some arguing that it cannot be justified when immunity is abused, and others stating

[35] Bao, Yinan. *When old principles face new challenges: a critical analysis of the principle of diplomatic inviolability*. Diss. University of Sussex, 2014.P 81–82
[36] Lesaffer, Randall. "The congress of Vienna (1814–1815)." *Oxford Historical Treaties online* (2015).
[37] Varlez, Louis. "Migration problems and the Havana Conference of 1928." *Int'l Lab. Rev.* 19 (1929): 1.
[38] Stanford, J. S. "The Vienna Convention on the Law of Treaties." *The University of Toronto Law Journal* 20.1 (1970): 18-47.

that it should be overridden when it conflicts with the right to access justice or human rights. Over the past, diplomats have increasingly become prominent and extremely susceptible targets for terrorist attacks. Despite these attacks, the Convention has remained unharmed. The Vienna Convention on Diplomatic Relations remains a significant point of reference in the advancement of other areas of international law.[39] Furthermore, to specifically protect diplomats from harm, the United Nations Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, Including Diplomatic Agents, was unanimously adopted by the General Assembly in New York on December 14th, 1973. This convention represents a significant advancement in the global fight against terrorist activities. This is because the abduction of a diplomat directly and significantly engages principles of international law. The Vienna Convention on Diplomatic Relations 1961 codifies international customary law, which acknowledges the unique position of diplomatic agents and their inviolability. The 1973 New York Convention is founded upon this well recognised standard.[40]

The treaty was the outcome of a conference organized by the United Nations, which involved eighty-one governments. The United Nations convention in Vienna thoroughly builds on the comprehensive set of customary rules and practices dating back to 1815. It was based on considerable research and discussions conducted by the International Law Commission, whose draft articles served as the foundation for the conference.[41]

The Harvard Research on Diplomatic Privileges and Immunities aims to clarify the legal differentiation between the official and non-official actions of diplomatic agents. It establishes a distinction between "exemption from jurisdiction" and "non-liability for official

[39] Denza, E. (2016). *Diplomatic law: commentary on the Vienna convention on diplomatic relations*. Oxford University Press. 1 (2016).
[40] 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. Garretson, *"The Immunities of Representatives of Foreign States" (1966) 41 New York University Law Review 69.*

acts." The latter is defined as follows in Article 18: A host country is prohibited from holding a person accountable for any actions they do while carrying out their duties as a member of a diplomatic mission.[42]

The Vienna Convention on Diplomatic Relations was ratified on April 18, 1961 and became effective on April 24, 1964. This treaty is the primary document that governs diplomatic relations. The Vienna Convention comprises fifty-three articles that regulate the conduct of diplomats, with thirteen specifically addressing the matter of immunity.

The preamble of the Vienna Convention acknowledges that its purpose is to promote friendly relations among nations, regardless of their varying constitutional and social systems. It also states that the privileges and immunities provided are not intended to benefit individuals, but rather to ensure the effective functioning of diplomatic missions as representatives of States.[43] The Vienna Convention expressed the global apprehension regarding the provision of absolute immunity to diplomats of all ranks. The Convention's explicit objective is to facilitate the representation of sending states by diplomatic missions. The architects did not create it with the intention of benefiting the person.[44]

Given the principles and core values outlined in the United Nations Charter, which emphasise the equal sovereignty of nations, the preservation of global peace and security, and the promotion of friendly relations among nations, it is crucial to acknowledge that establishing an international agreement on diplomatic communication, privileges, and legal protections would enhance positive relationships between countries, regardless of their different constitutional and social structures. It is important to understand that these

---

Dinstein, Yoram. "Diplomatic immunity from jurisdiction ratione materiae." *International & Comparative Law Quarterly* 15.1 (1966), 79–80.

[43] Veronica L. Maginnis, *Limiting Diplomatic Immunity: Lessons Learned from the 1946 Convention on the Privileges and Immunities of the United Nations*, 999–1000.

[44] Ross, *Rethinking Diplomatic Immunity: A Review of Remedial Approaches to Address the Abuses of Diplomatic Privileges and Immunities, supra* note 6.

privileges and immunities are intended to facilitate the efficient operation of diplomatic missions as representatives of their respective states, rather than to provide personal advantages. Moreover, it is confirmed that although the regulations of the existing Convention make a substantial contribution to customary international law, subjects that are not explicitly covered by the articles of the Convention shall nevertheless be governed by customary international law.[45]

Article 22 made mission premises inviolable without exception. The Convention is unclear on when inviolability stops. However, the law's precise declaration of inviolability and the requirement that no pretext of public emergency or embassy immunity misuse may justify entry by the receiving State's authorities were significant. Article 27 protects all diplomatic communication, which is crucial to a diplomatic mission's privileges and immunities. The Convention amended the usual norm that allowed supervised search of questionable diplomatic baggage, with the sending State retaining the option to return the challenged bag. The Convention stated that diplomatic bags "shall not be opened or detained". One of the most contentious issues during the Vienna Conference was whether the receiving State must approve to the installation of a wireless transmitter, which the newer States appeared to have won.[46] Also, the Vienna Convention's right of the sending State to communicate by "all appropriate means" was perhaps more important in the long run. Since communication methods have increased and undetected interception has gotten easier, the right to unfettered communication is even more crucial as a guide to lawful activity.[47]

Article 31 clarified diplomats' civil immunity exceptions. Exceptions for the diplomat's private real property and professional or commercial activity in the receiving State

[45] Denza,Diplomatic Law,Supra no1,14,10
[46] Denza, Eileen. *Diplomatic law: commentary on the Vienna convention on diplomatic relations*. Oxford University Press, 2016.P3
[47] Denza, Eileen. *Diplomatic law: commentary on the Vienna convention on diplomatic relations*. Oxford University Press, 2016.P3

demonstrate the functional approach to immunity. The first exception has caused confusion and litigation concerning its breadth. However, it balances the need to protect diplomats from frivolous or malicious lawsuits that could hinder their work with the need to minimize diplomatic immunity abuse that could leave claimants with no forum to resolve land disputes. Diplomats' exemption from witness testimony was another major change in Article 31.[48] All tax exemption exceptions in Article 34 demonstrate the functional approach to privileges. These exceptions include items unconnected to a diplomat's official responsibilities or normal life in the receiving State, dues that are not taxes but levies for services, and taxes where refund or exemption would be administratively difficult. National tax legislation must follow the Convention's structure. It usually relieves the migrating diplomat and his family from dealing with the tax regimes of consecutive host States and reduces the prospect of profiting from extraneous activities or investments.[49]

Article 37 of all the Convention articles was the hardest to resolve according to Denza,[50] because states treat junior diplomatic staff and families differently. Only administrative and technical personnel immunity from official acts was customary law. Even mission junior member categorization wording differed greatly Article 37 again rigidly applied the idea of efficient mission performance and limited administrative and technical staff's civil immunity to acts conducted in the course of their jobs while granting them full criminal immunity. A minimum of privilege and immunity was given to service staff. States that, like the UK and US, had previously granted full privileges and immunities to all members of the "ambassador" suite', Article 37 drastically reduced the armies of privileged persons in their capitals who threatened to discredit diplomatic immunity by their sheer numbers and occasional irresponsibility. When some states granted immunity for official

[48] Vienna Convention on Diplomatic Relations
[49] Denza, Eileen. *Diplomatic law: commentary on the Vienna convention on diplomatic relations*. Oxford University Press, 2016.P3
[50] Denza, Eileen. *Diplomatic law: commentary on the Vienna convention on diplomatic relations*. Oxford University Press, 2016.P3

activities to all subordinate staff, it led to expanded privileges and immunities and was vehemently challenged. Few states raised reservations about the administrative and technical staff regime. Article 37 provided a clear consensus guideline for all states. Finally, Article 38 stripped citizens and permanent residents of the receiving State of all privileges and immunities beyond diplomats' official immunity.[51]

2.4. Consuls and the Vienna Convention on Consular Relations of 1963

When can a consul claim immunity from a court's jurisdiction, whether the council represents an aggrieved person or a foreign consul or diplomat? When might conculs claim immunity?

The 1957 case of Arcaya v. Paez raised all of the aforementioned problems and also addressed how diplomatic status affects jurisdiction over a foreign consul in the US.[52]

Arcaya v. Paez, presented three international law issues: A) How does customary international law define con›‹sular immunity? B) How does diplomatic status affect a consul action?[53] The ruling in the instance, in terms of the establishment of consular legal precedent, is two-fold. Initially, it is important to note that a defamatory statement made by a consul does not qualify as an official action that would grant them consular immunity according to customary international law. Furthermore, the later attainment of diplomatic status by a consul serves to temporarily halt a lawsuit that was initiated against them prior to obtaining this status. The potential for misuse associated with the second point can be mitigated by the recipient state by diplomatically indicating its intention to impose retaliatory actions if it suspects that the sending state is exploiting diplomatic appointments to exempt its consuls

[51] *Ibid.*, p.4.
[52] R B Lillich, *"A Case Study in Consular and Diplomatic Immunity" (1960-1961) 12*.
[53] *Ibid.*

from accountability for unofficial actions. Presumably, the absence of any previous case before Arcaya v. Paez can be attributed to the fact that there was no legal precedent addressing the impact of acquiring diplomatic immunity on a current lawsuit against a consul. In the instance of the United States and a United Nations appointment, the absence of a check complicates the situation. This is because the diplomatic appointment is to the United Nations, which will immediately accept it. Once the Department of State verifies the legitimacy of a United Nations appointment, it simply acts as a rubber stamp, without further involvement. If the condition has been fulfilled, it is not possible for it to decline acknowledging an individual's diplomatic status.

In this context, of the commentators might propose various measures or actions that could have been taken to prevent the issue from occurring in the first place. These measures could include better communication, clearer policies or guidelines, early intervention to address underlying issues, or proactive steps to mitigate potential conflicts.

The unique and specific circumstances of the situation may raise doubts about the wisdom of the Headquarters Agreement, in which the United States generously granted complete diplomatic privileges and immunities to officials and permanent representatives of the United Nations. The United Nations Charter specifically grants immunity solely for lawsuits stemming from official activities performed within the extent of one's official duties.

Given that this particular issue only occurs in the United States, and it is improbable that most states will grant litigious consuls United Nations postings, it seems that this question holds little practical significance. Typically, the receiving state can discreetly examine and prevent any misuse of this component of the Arcaya v. Paez case. Of greater significance are the remarks concerning consular immunity and the involvement of the

Department of State in deciding its application.This case was serves as a frequent reference point for similar situations.[54]

Consuls, unlike diplomatic officers, are not granted the extensive immunity from civil and criminal jurisdiction of the host country that diplomats receive. Consuls are granted specific privileges and immunities from local jurisdiction, which are outlined in treaties, national laws and regulations, or based on reciprocity or politeness. The consular immunity from the jurisdiction of receiving State courts is predicated on the specific functions carried out by a consul.[55]

According to Article 17(2) of the Vienna Convention on Consular Relations, if a consular officer represents an inter-governmental organization, they are not entitled to any additional protection from legal jurisdiction when performing consular duties. This limitation applies to consular officers under the current Convention. However, it is important to note that the Vienna Convention on Consular Relations already grants immunity to consular officers only for acts carried out in the course of their consular functions, as stated in Article 43, paragraph 1.[56]

Typically, career officers are not allowed to participate in any professional or commercial endeavors in the country they are stationed in for personal profit. It is anticipated that they possess the citizenship of the country in which they are providing their services. Nevertheless, the selection of a host country national for a position can only occur with the explicit consent of the host government, and this consent can be withdrawn at any given moment. On the other hand, an honorary consular official, although often a citizen of the country they represent, not needs to be one.[57]

---

[54] *Ibid.*
[55] Chatterjee, Charles. *International law and diplomacy*. Routledge, 2013.
[56] Whomersley, *Some Reflections on the Immunity of Individuals for Official Acts*, 855–56.
[57] Feltham, Ralph G. "Diplomatic Relations." *Diplomatic Handbook*. Brill Nijhoff, 2004. 1-8. 51.

While it is true that non-professional consuls did not have the same privileges as professional consuls, the Vienna Convention on Consular Relations, which is considered a formalization of customary international law regarding consular immunity, includes explicit provisions for granting immunity to honorary consuls.[58]

In accordance with the Vienna Convention on Consular Relations of 1963, consular personnel are afforded several privileges and immunities, although these safeguards are not as comprehensive as those accorded to diplomatic officers.. According to Article 40 of the Convention, the host country is obligated to show proper respect to consular staff and must take necessary measures to avoid any kind of harm or violation against them. This article highlights the need of guaranteeing the security and welfare of consular officers, and mandates the host country to implement essential steps to avert any harm to their physical safety, liberty, or honor.[59]

2.5. Diplomatic Immunity of United Nations Officials

The history of foreign sovereign immunity is a well-recognized narrative in which independence and special rights have gradually given way to responsibility and democratic principles. International law granted complete protection to foreign states until the late 1800s. However, the two World Wars and the emergence of communism led to a significant increase in the economic operations of foreign states and consequently, their impact on everyday human life. These historical factors led to a need for governments to be more responsible and accept corresponding limitations on the concept of absolute sovereign immunity. Furthermore, the dissemination of democratic principles strengthened the widespread opposition to anything that resembled privilege. Therefore, during the mid-twentieth century,

[58] *A C Thomas "Diplomatic Privileges Act 71 of 1951 as Amended by the Diplomatic*.
[59] Vienna Convention on Consular Relations. 1963

absolute sovereign immunity was replaced with "restricted" immunity, which maintains immunity for the governmental actions of foreign governments but does not grant immunity for their non-governmental actions.[60]

The rapid growth of multinational organizations necessitates determining the legal status of its membersPeople in this profession are called "international officials," although their status remains unclear. The press and public often tie diplomatic privileges and immunities to international authorities. Diplomatic agents have a unique status based on international customs and usage, while international authorities are governed by treaties and conventions. Diplomatic agents have had privileges and immunities from states for millennia. However, nations are not required to confer special status to international authorities under classic international law principles. Article 105(2) of the UN Charter provides the legal foundation for providing privileges and immunities to international officers. Article V of the UN Charter . states that UN officials have privileges and immunities to act without impediment, although neither the Charter nor the Convention define "international official."

Suzanne Basdevant1's 1931 definition remains relevant:[61] International public officials are appointed by an international community or its organ to perform continuous functions in its interest, subject to a specific personal status, based on an international treaty.

This definition suggests that foreign officials have unique traits. Firstly, they differ from diplomatic agents.

While the extent of privileges and immunities for diplomats is still debated, they are undoubtedly entitled to special status. The Staff Regulations declare that the immunities and privileges granted to the United Nations by Article 105 of the Charter are for the benefit of

[60] Charles H. II Brower, *International Immunities: Some Dissident Views on the Role of Municipal Courts, 41 Va. J. Int'l L. 1 (2001).*

[61] Basdevat, Suzanne. Les Fonctionnaires Internationaux. Paris: Sirey, 1931"Basdevat, Suzanne. International Civil Servants. Paris: Sirey, 1931"

the Organization, not the official. These and immunities do not excuse staff workers from fulfilling their private commitments or following laws and police rules. If privileges and immunities arise, staff members must notify the Secretary-General for waiver consideration.[62]

2.6. The Legal Basis for Granting Immunities and Privileges to the Diplomatic Agent

International Law scholars have sought to find a legal basis for the concept of diplomatic immunities and privileges of the diplomatic agent as a special diplomatic system and as a series of privileges within the legal basis and within the international law[63].

In this regard, there have been a variety of theories. The most important of these are:

A. Representative Character Theory

B. Theory of extraterritoriality

C. Functional Necessity Theory

[62] 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.

[63] الجسور,ناظم عبد الواحد, 1422ه,أسس وقواعد العلاقات الدبلوماسية والقنصلية,ط1,دار مجدلاوي للنشر والتوزيع ,عمان, ص 149-150
Al-Jusoor, Nazem Abd al-Wahid, 1422 AH, Foundations and Rules of Diplomatic and Consular Relations, 1st Edition, Majdalawi House for Publishing and Distribution, Amman, pp. 149-150

A. Representative Character Theory

This theory is the oldest as it has a deeply rooted basis in the history of diplomacy. The basis of this theory goes back to the Middle Ages, as the international relations were personal among Heads of States until the French Revolution. The agent and the heads of missions were considered as personal representatives to their States and their Heads of States. Henceforth, any aggression against them was viewed as if it is against the State and its Head[64]. This theory considers the diplomatic mission and agent as local extension to the sending State, hence the local provisions and laws of the receiving State do not apply, as it was assumed by way of fiction that the agent has not left his country and as he is carrying his job in his own country, though he is essentially on the land of the receiving State.[65] Moreover, the principle at the time was that of equality between Kings and Princes who were seen as embodiment to their countries. And it was not imaginable to subject them to law, depending on the principle of equality and that equal people have no power or dominance on each other.[66]

Some judges and scholars indicated that diplomatic immunities and privileges should be equal with the rights granted by the State and that any violation against the diplomat is not only considered against the State, but also against the whole world[67]. This theory is based on

---

[64] سلامة,عبد القادر,(1997), التمثيل الدبلوماسي والقنصلي المعاصر,ط1,دار النهضة العربية ,القاهرة, ,ص170
Salama, Abdel Qader, (1997), Contemporary diplomatic and consular representation, , Dar Al-Nahda Al-Arabiya, Cairo,, p. 170

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

[66] [66] الغنيمي ,محمد طلعت,(1973),الوسيط في قانون السلام ,ط1,دار معارف الاسكندرية ,الأسكندرية, ,ص964وأنظر ايضا :.خير الدين عبد اللطيف محمد(1993),الحصانات الدبلوماسية القضائية ,المكتبة العربية للنشر والتوزيع ,الدوحة, ,ص 24
Al-Ghunaimi, Muhammad Talaat, (1973), Mediator in Peace Law, First Edition, Dar Maarif Alexandria, Alexandria, p. 964 See also: Khair al-Din Abd al-Latif Muhammad (1993), Judicial Diplomatic P964

[67] الملاح,فاوي, (1981)سلطات الأمن والحصانات الدبلوماسية,ط1,دار المطبوعات الجامعة,الأسكندرية, ,ص254
Al-Mallah, Fawy, (1981) Security Powers and Diplomatic Immunities, 1st Edition, University Press, Alexandria, p. 254

the formulation of Montesquieu that says that the diplomatic agent is the voice of the prince and this voice must be free and no obstacles to his work are permissible.[68]

Criticism of the Theory: This theory belonged to the absolute monarchy system, as the character of the State was mixed with the character of the Head of State, whether he was a king or a prince, where sovereignty was attributed to the Head of State as a person and not to the State as a legal entity distinct from the personality (character) of the Head of State. However, this theory lost its importance after the establishment of the national State with a democratic system, particularly after the American and French revolutions. The concept of this theory has retracted in modern times, and it has been criticized by researchers and scholars, despite the sense of the diplomatic agent as the representative of his/her State through his job and title of the State's sovereignty as a legal and political entity.[69]

Henceforth, it became impossible to accept this theory in modern diplomatic application for the following reason:

1. This theory did not provide a clear interpretation for some of the matters required by the diplomatic work. It did not explain the immunities enjoyed by the agent in case of his presence in a third State in which he has no representational capacity[70].
2. This theory is loose and is based on a serious fallacy in relation to the task of managing international affairs.

---

[68] علي صادق أبو الهيف (1987) قانون دبلوماسي ، الطبعة الأولى ، الإسكندرية ، مؤسسة المعرفة بالإسكندرية ص 136.
ملايين. Ali Hassan al-Shami (2009), Diplomacy and Diplomatic Law, Part One, Beirut, Dar Al-Alam for Millions,P.452

[69] احمد ابوالوفاء مرجع سابق ,ص241Ahmad Abu Al-Wafa, previous reference, p. 241

[70] سهيل الفتلاوي ، مرجع سابق ، ص. 126 سهيل حسين الفتلاوي (2006) الدبلوماسية بين النظرية والتطبيق ، الطبعة الأولى ، عمان ، بيت الثقافة,ص126.
Suhail Hussain Al Faitlawi (2006), Diplomacy between theory and practice, 1st edition, Amman, House of Culture,P126

3. This theory contradicts the immunities and privileges enjoyed by the family members of the diplomatic agent who are deprived of the representational capacity, except the wife of the diplomat within certain limits.[71]

B. Theory of extraterritoriality

Beside the above-mentioned theory, a new theory emerged. This theory explains and justifies immunities and privileges. It was agreed to call this theory extra-territoriality theory. It was based on the theory of possession or personal sovereignty.

This theory is based on assumption like the theory of representativeness through which the ambassador is considered as the representative of the Head of State and by this assumption, the ambassador is regarded as outside the territorial jurisdiction of the State which the ambassador is accredited to.[72]

It was Grotius who was the first to establish this theory and he considered that immunities and privileges must be based on this theory. He points out that according to the law of nations, this fiction that an ambassador represents the actual person of his sovereign engenders the further fiction that he must be regarded as being outside the territory of the power to which he is accredited.[73]

He viewed that the diplomatic headquarters of the mission where the diplomatic functions are practiced are an extension of the territory of the State represented by the

[71] سموحي فوق العادة (1973) ، الدبلوماسية الحديثة ، الطابق الأول ، بيروت ، بيت الصحوة العربية ص279.
Smouhi fouk Alada (1973), Modern Diplomacy, 1st floor, Beirut, The Arab Awakening House

[72] علي حسن الشامي (2009) ، الدبلوماسية والقانون الدبلوماسي ، الجزء الأول ، بيروت ، دار العلم للملايين.
Ali Hassan al-Shami (2009), Diplomacy and Diplomatic Law, Part One, Beirut, Dar Al-Alam for Millions,P.452

[73] Look at "selon le droit des gens ,comme un ambassadeur represente par une espece de fiction -2 personne meme de son Matrie ,il est aussi regarde ,per une fiction semblable , comme etant hors des terres de la puissance aupres de qui il exerce ses fonctions et de la vient qui l n'est point tenu d'observer les lois civiles du pays etranger ou il demeure en ambassade".,Par M.Merlin ,Recueil alphabetique de dorit ,France,1827,p279

diplomatic envoy. This means that the diplomatic agent resides in the territory of the State he has been accredited to, but he must be considered as a resident of the State of origin. On the base of this understanding, the diplomatic representative is not subject to the law of the receiving State and as the headquarters of the diplomatic mission as an extension of the territory of the State he represents (the sending state).[74]

The diplomatic representative was considered as if the diplomat has not left the sending State and as if the diplomat is still living on its soil.[75]

Within the framework of this theory, a problem faced jurists in that time, which was represented in the difficulty of making reconciliation between two principles. The principle is the absolute sovereignty of State on its territory. The second has to do with non-submission of the diplomatic representatives to the local laws of the host state. Advocates of this theory view that diplomatic envoys must be treated as if they were not residing on the territory of the receiving State. According to this theory, crimes and actions committed and carried out inside the embassy are considered as if occurring in a foreign region ruled by the law of the country he represents. Moreover, this theory justifies the right of diplomatic asylum and does not permit the receiving State's authorities to enter the the mission's premises.[76]

The establishment of this viewpoint was solidified with the advent of permanent diplomatic missions by foreign nations. Diplomatic immunity, based on this notion, was not

---

[74] علي صادق أبو هيف ، قانون دبلوماسي ، مرجع سابق ، ص 122-123
Ali Sadiq Abu Haif, Diplomatic Law, Previous Reference, pp. 122-123

[75] 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

[76] فاوي الملاح,مرجع سابق ص262
Fawi Al-Mallah, previous reference, p. 262

established until diplomatic posts were established within the boundaries of sending governments.[77]

A Milan court (Italy) applied this theory in a ruling in 1951. The rule implied that the ambassador of Yugoslavia in Italy was considered as not residing in Italy but as if he was residing within the boundaries of his country of nationality, and he was thus not subject to the Italian jurisdiction.[78]

Critiques of the Theory:

1. Contradiction: This contradiction is based on the assumption that the diplomatic agent is a resident of two places in the same time i.e. the receiving State in reality and hypothetically in the sending State. For this, researchers consider this theory as contradictory with reality.[79]
2. Inappropriateness to actual reality and the ongoing situation. It is agreed that the diplomatic agent must comply with laws and regulations of the receiving State and pay certain local fees for actual services and that commercial activities must be subject to the laws and rules in force in the where the diplomatic agent actually resides. In fact, the theory of extra-territoriality is not commensurate with the current, ongoing situation and with the principle of State sovereignty over its territory.[80]
3. Absurd and unacceptable results stem from this theory. This is reflected in the fact that if a crime was committed in the mission headquarters, the offence

[77] خير الدين عبد اللطيف محمد,الحصانات الدبلوماسية القضائية ,مرجع سابق ,ص 30,
Khair al-Din Abd al-Latif Muhammad, Judicial Diplomatic Immunities, Previous Reference, pg. 30,
[78] Reports of International Arbitral Awards, Recueil des Sentences Arbitrales, Flegenheimer Case—Decision No. 182, 20 September 1958, Volume XIV, pp.328
[79] وليد خالد الربيع ,(لا يوجد سنه نشر),الحصانات والامتيازات الدبلوماسية في الفقة الاسلامي والقانون الدولي دراسة مقارنة ,الكويت,جامعه الكويت,ص9
Walid Khaled Al-Rabie, (There is no publication year), Immunities and Diplomatic Privileges in Islamic Jurisprudence and International Law, Comparative Study, Kuwait, Kuwait University, p.9
[80] الدبلوماسية د. علي الشامي ص455
Diplomacy dr. Ali Al-Shami, p. 455

must be subject to the laws and judiciary of the sending State, regardless of the nationality of the offender. If a criminal resorts to the mission headquarters after committing a crime, local authorities cannot detain him without certain procedures to be followed, as if he had escaped to another region. This is actually in contradiction to the principle of sovereignty of the receiving State and this is not acceptable to the receiving State. Some jurists, henceforth, pointed out that the imaginary perception on which this theory is based is not useful, vague, wrong and risky.[81] The preservation of embassy buildings as sacrosanct is a fundamental aspect of diplomatic immunity, and this principle was pivotal in the Julian Assange case. Assange, the originator of WikiLeaks, sought sanctuary at the Ecuadorian embassy in London to evade extradition. As per the Vienna Convention on Diplomatic Relations, it is forbidden for local authorities to access diplomatic premises without consent. This means that the UK police cannot arrest Assange inside the embassy.[82] The principle of inviolability guarantees that embassies are shielded from any intervention by the host country, thereby securing the operations and staff of the diplomatic mission. The case of Assange serves as a clear example of the adherence to the convention by the UK, although under considerable political pressure to apprehend him. The case also underscores the intricacies and possible misuses of diplomatic refuge, when the receiving nation is unable to violate the embassy's premises in order to implement domestic legislation. Assange's extended presence in the embassy highlights the intricate

[81] وليد خالد الربيع ,(لا يوجد سنه نشر),الحصانات والامتيازات الدبلوماسية في الفقة الاسلامي والقانون الدولي دراسة مقارنة ,الكويت,جامعه الكويت,ص9
Walid Khaled Al-Rabie, (There is no publication year), Immunities and Diplomatic Privileges in Islamic Jurisprudence and International Law, Comparative Study, Kuwait, Kuwait University, p.9
[82] Marquette University Law School Faculty Blog. (2012, August). Diplomatic Premises Immunity in the Case of Julian Assange. Marquette University Law School Faculty Blog. https://law.marquette.edu/facultyblog/2012/08/diplomatic-premises-immunity-in-the-case-of-julian-assange/

equilibrium between upholding international diplomatic standards and dealing with legal and criminal issues.[83]

4. Differences of the legal systems in countries makes the diplomatic agent act in accordance with the law of his State, not with the law of the receiving State. Meanwhile, his actions may be contrary to the laws of the host State and may not prevent him from doing these actions which violate its laws. And this is considered unacceptable.

Thus, the United Nations has fully excluded this theory through conventions and agreements it has drafted since 1946 until now and adopted the functional concept instead. Despite differences of jurists' views, no one can deny the importance of this theory for a long time by adopting it as a basis for resolving disputes and contributing to development of theoretical concepts and immunities in diplomatic relations.[84]

C. Theory of Functional Necessity

Diplomatic relations and the role of the State and its functions have developed in all aspects. This has led the international community to look for practical bases that go in line with these developments.[85] So came the theory of functional necessity and restricted the diplomatic immunities and privileges and considered that the diplomatic agent needs to be committed to respect of public order and to take into account the rules of the receiving State.[86]

---

[83] University of Melbourne. "International Law, Diplomatic Asylum, and Julian Assange." Pursuit, University of Melbourne, Publication Date. https://pursuit.unimelb.edu.au/articles/international-law-diplomatic-asylum-and-julian-assange#:~:text=

[84] الزبن,هايل,(2011)الأساس القانوني لمنح الحصانات والامتيازات الدبلوماسية ,رسالة ماجستير,ص45
Al-Zabin, Hayel, (2011) The Legal Basis for Granting Diplomatic Immunities and Privileges, Master Thesis, p. 45

[85] الشامي ,علي حسين,مرجع سابق ص 457
Al-Shami, Ali Hussein, previous reference, p. 457

[86] راتب ,عائشة,(1963)التنظيم الدبلوماسي والقنصلي ,دار النهضة العربية ,القاهرة , ص 129

Article 13 of the 1976 of the Convention of Immunities and Privileges of the Islamic Conference Organization states that immunities and privileges shall not be granted to representativeness of member states for their own benefit but to ensure their full independence in the management of their functions with the organization.[87]

This principle is corroborated by other significant international documents, such as Article 31of the Vienna Convention on Diplomatic Relations[88] and article 43 of the Vienna Convention on Consular Relations.[89] This emphasises the significance of diplomatic and consular immunities in enabling the efficient execution of international interactions. Precedents set by the International Court of Justice, as demonstrated by the "Certain Expenses of the United Nations" case[90] reinforces the need to safeguard the independence and effectiveness of international organizations through immunities. Additionally, the work of the International Law Commission, particularly in its Draft Articles on Diplomatic Protection, underscores the prevailing understanding that immunities and privileges serve the overarching goal of ensuring the smooth functioning of diplomatic missions[91]

Academic sources offer thorough examination of the reasoning behind diplomatic immunities and privileges, highlighting their crucial function in upholding efficient diplomatic relations. In her influential book "Diplomatic Law: Commentary on the Vienna Convention on Diplomatic Relations," Eileen Denza thoroughly examines the intricate

Ratib, Aisha, (1963) Diplomatic and Consular Organization, Dar Al-Nahda Al-Arabiya, Cairo, p. 129

[87] The 1976 Islamic Conference Agreement

[88] Vienna Convention on Diplomatic Relations, 1961, Article 31

[89] Vienna Convention on Consular Relations, 1963, Article 43

[90] Pharand, A. Donat. "Analysis of the Opinion of the International Court of Justice on Certain Expenses of the United Nations." *Canadian Yearbook of International Law/Annuaire canadien de droit international* 1 (1963): 272-297.

[91] Draft Articles on Diplomatic Protection, 2006. Official Records of the General Assembly, Sixty-first Session, Supplement No. 10 (A/61/10)

equilibrium between the concerns of the states sending and receiving diplomatic representatives while granting them immunities and privileges.[92]

These academic sources support the commonly accepted theory that the immunities and privileges given to representatives of member states in international organisations are mainly intended to ensure that they can perform their official duties without obstruction, while also balancing the interests of the states that send them and the states that receive them.

Evaluation of the theory

This theory has received considerable support both theoretically and practically.[93] The international community has preferred this theory because it is the most comprehensive and most logical and is consistent with the modern trends in contemporary international law. The previous two theories, however, did not provide the accepted objective justification for the basis of granting diplomatic immunities and privileges. The theory of functional necessity has been pointed to by the work report of the International Law Institute in Vienna in 1934. The report stated that the basis of diplomatic immunities is the functional interest. Moreover, this theory has been dealt with in the report of the International Law Committee presented to the General Assembly of the United Nations in 1956.[94] Finally, this theory has been adopted by the 1961 Vienna Convention on Diplomatic Relations. In the introduction of the convention, it is stated that the member states of this convention believe that immunities and privileges mentioned are not for the purpose of making individual distinct, but to enable

[92] Denza, Eileen. *Diplomatic law: commentary on the Vienna convention on diplomatic relations*. Oxford University Press, 2016.

[93] مرجع سابق: الدكتور علي صادق أبو هيف, ص5
Dr. Ali Sadiq Abu Haif: Previous Reference, pg. 5

[94]. General Assembly of the United Nations. (1956). Report of the International Law Committee. Bos, Maarten. "The International Law Commission's Draft Convention on Arbitral Procedure in the General Assembly of the United Nations." *Netherlands International Law Review* 3.3 (1956): 234-261.

diplomatic missions, as representatives ofStates, to perform their function in an efficient manner.[95]

There is, however, a note on this theory; it is considered somewhat vague. Diplomatic immunities and privileges have been granted to facilitate support relations among States, to what extent should these immunities be granted?

In the light of this theory, the diplomat must be given specific rights and privileges in line with what is necessary to carry out their mission. But, on the other hand, there is another fact relevant to the national security of the host State, that is, defining the limits of the immunities and privileges enjoyed by the diplomatic envoy. States are inclined to adopt this theory for their internal security.

2.7. Conclusions

Diplomat enjoys diplomatic immunities and privileges based on the requirements of his position, to respect the requirements of the national security of the country to which he is dispatched, and this is consistent with the contemporary international work trend. It is possible to combine the theory of the requirements of employment with the principle of reciprocity to lay a philosophical Countries have invoked the principle of reciprocity to provide justifications for extending immunity and privileges to diplomatic officials. This principle addresses the deficiency of the idea of functional need, which was unable to provide an explanation for the granting of immunity in situations that are not related to diplomatic functions. The United Nations is now making attempts to establish new accords for

95 التمثيل الدبلوماسي والقنصلي المعاصر السفير عبد القادر سلامية ص170،مرجع سابق انظر ايضا العلاقات الدبلوماسية والقنصلية د. البكري ص104,انظر ايضا بحث الحصانات والأمتيازات الدبلوماسية ,د وليد خالد الربيع
Contemporary diplomatic and consular representation, Ambassador Abdel-Qader Salameya, p. 170, previous reference. See also diplomatic and consular relations, Dr. Al-Bakri, p. 104, see also the discussion of diplomatic immunities and privileges, Dr. Walid Khaled Al-Rabie

diplomatic relations. These accords seek to adjust to progress in diplomacy, technology, security, and shifts in international relations and diplomatic methods.[96]It has been widely acknowledged for a long time that diplomatic immunity is an essential component of international law. Historically, it has been seen as an absolute need for a diplomat stationed in a receiving nation to be able to carry out his responsibilities without being impeded by legal proceedings or criminal prosecution.[97]

The widespread acknowledgment of diplomatic immunity as an indispensable component of international law is deeply rooted in historical imperatives. Over the centuries, this recognition has evolved into a fundamental principle, grounded in the absolute necessity for diplomats stationed in a receiving nation to execute their responsibilities without the specter of legal proceedings or criminal prosecution impeding their actions. This enduring acknowledgment underscores the pivotal role that diplomatic immunity plays in the delicate balance of international relations. The importance of diplomatic immunity has remained a constant throughout the ebb and flow of international relations. Diplomats, entrusted with the crucial task of representing their respective nations, negotiating agreements, and fostering diplomatic dialogue, must be shielded from legal impediments that could arise in the host country. Without such protections, the effectiveness of diplomatic missions and the achievement of diplomatic objectives could be jeopardized.

The historical tradition of diplomatic immunity spans ancient civilizations such as Greece, Rome, China, India, , underscoring the significance these states placed on ensuring the safety and protection of foreign diplomats. This practice, rooted in diplomatic courtesy, also held religious and sacred significance in various cultures. Recognizing the value of

[96] 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).
[97] 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).

safeguarding diplomatic envoys, states developed a longstanding tradition of extending immunity to foreign representatives.

A pivotal moment in the codification of diplomatic immunity came with the Vienna Convention on Diplomatic Relations, ratified in 1961. This international treaty has since become a cornerstone in international law, establishing customary norms and legal principles. Despite occasional challenges to the protected status of diplomats, the Convention remains a crucial reference point for the conduct of diplomats and the promotion of friendly relations among nations.

The transition from absolute sovereign immunity to restricted immunity is emphasized, accompanied by the emergence of international officials as a distinct professional category. The input draws attention to the legal foundation for providing privileges and immunities to international officers, differentiating between diplomatic agents and international officials.

In conclusion, this comprehensive exploration traverses' historical traditions, legal precedents, and the intricate landscape of international law related to diplomatic and consular immunity. By addressing the Vienna Convention on Diplomatic Relations and extending the discussion to consular immunity and the legal standing of international officials, the input offers valuable insights into the multifaceted dimensions of diplomatic and international immunity.[98]

[98] *Ibid.*

Chapter 3. The Priviliges and Immunities Afforded to Missions, Diplomatic Agents, and their Families, and Instances of their Misuse

3.1. Introduction

The concept of diplomatic immunity encompasses two fundamental elements. The diplomatic immunity safeguards the inviolability of the diplomat and precludes any legal jurisdiction, whether administrative, civil, or criminal, from being imposed on them by the host country.[99] There is minimal differentiation between immunity and privilege, and in numerous instances, both terms have been utilized interchangeably. "Privileges" can be described as exclusive entitlements or rights that others do not possess, whereas "immunities" can be defined as the exemption from the authority of a local jurisdiction[100].

The present instances of diplomatic immunity misuse can be categorized into three groups:[101]

1. The commission of violent offences by diplomats.
2. The unauthorised utilisation of the diplomatic bag.
3. Foreign countries often provide support for state terrorism, which is frequently enabled through their embassies in the host country.[102]

[99] Juliana J. Keaton, *Does the Fifth Amendment Takings Clause Mandate Relief for Victims of Diplomatic Immunity Abuse*.
[100] Dr. Franciszek Przetacznik, *The History of the Jurisdictional Immunity of the Diplomatic Agents in English Law*.
[101] Farahmand, A. (1989-1990). Diplomatic Immunity and Diplomatic Crime: A Legislative Proposal to Curtail Abuses. *Journal of Legislation, 16*, 97
[102] *Ibid.*

3.2. Diplomatic Missions

3.2.1. Inviolability of Missions

According to Article 22 of the Vienna Convention on Diplomatic Relations,'[t]he premises of the mission must not be violated.' The concept of 'inviolability' encompasses two unique facets. The first benefit is the exemption from any legal proceedings or actions by law enforcement officials of the host country. This rule can be found in paragraphs 1 and 3 of Article 22. Entry into the premises is prohibited for all local authorities, including but not limited to the police, building safety or health inspectors, and even the fire brigade in case of a fire, without the authorization of the head of the mission.

Despite suspicions of misuse of inviolability and incompatible utilisation of premises with the mission's functions, as forbidden by Article 41, the receiving state lacks the authority to enter the premises without agreement. Nevertheless, for instance, the Pakistani Government formally notified the Iraqi Ambassador that it possessed compelling information suggesting that weapons, which had been transported into Pakistan with diplomatic immunity, were being housed within the premises of the Iraqi Embassy. The Pakistani government formally requested authorization to conduct a thorough search of the property. Despite first refusing, the Ambassador eventually granted permission for the police to carry out the search in his presence, which resulted in the uncovering of significant amounts of weaponry concealed in containers. The Pakistani government lodged a vehement protest with the Iraqi government, formally branded the agent as *persona non grata*, and summoned back their own representative.[103]

[103] Bureau of Intelligence and Research. (2007, October 11). Intelligence notice, Pakistan: The Iraqi arms caper and the larger picture. Department of State. Retrieved from https://2001-2009.state.gov/documents/organization/97518.pdf.

The host country does not have the power to seize any part of the mission's premises, even for valid public purposes like expanding roads. For instance, when the British government desired to build a new Underground Railway line beneath multiple diplomatic compounds, they refrained from employing compulsory purchase powers. Instead, they sought express consent from each embassy to construct tunnels beneath its buildings. Legal immunity encompasses both the property located on mission grounds and the means of transportation utilised by the mission. Diplomatic vehicles enjoy immunity from search, confiscation, seizure, or enforcement. Nevertheless, it is widely acknowledged in London that if a car causes substantial obstruction and the driver's identity cannot be determined, it may be taken away, as long as no penalties or fines are imposed on the embassies involved in the incident.[104]

The host country has a specific obligation to ensure the safety and security of the mission's facilities by preventing any unauthorized access or harm, and by maintaining the peace and dignity of the mission. The mission's premises shall be exempt from any search, requisition, attachment, or execution. Furthermore, the inclusion of an extra paragraph explicitly prohibiting the delivery of legal documents by a process-server inside the mission premises was suggested by Japan.[105] The comment accompanying the proposal stated that the sponsor's aim was to provide clarity on the validity of service by mail. This method had been accepted in the commentary of the International Law Commission but had been deemed illegal by a decision of the Supreme Court of Japan. During the twenty-second meeting of the Committee, the sponsor of this amendment decided to withdraw it.[106]

---

[104] Satow, E. M. (2017). *Satow's Diplomatic Practice* (Edited by Lord Gore-Booth, pp. 110-111). Oxford University Press.

[105] Kerley, E. L. (1962). Some aspects of the vienna conference on diplomatic intercourse and immunities. American Journal of International Law, 56(1), p.97

[106] Kerley, *"Some Aspects of the Vienna Conference on Diplomatic Intercourses and, supra* note 102.

The reason for the withdrawal was that the Committee had reached a unanimous consensus that service could be done through mail. The Conference records do not reflect the existence of a consensus, as only five delegations considered the Japanese amendment and one of them opposed the idea of service by mail.[107] The premises of a mission and the private residence of the mission's head are immune from violation, as are those of the diplomatic and administrative and technical staff of the mission, as long as they are not citizens or permanent residents of the host country. Agents of the host state are not allowed to enter without the permission of the head of mission. The host state must take all necessary measures to protect the premises from intrusion or damage, and to prevent any disturbance or disrespect towards the mission. [108]

The premises, along with their contents and the mission's transportation, are granted immunity from search, requisition, legal attachment, or execution. Motor cars owned by diplomatic and administrative and technical staff personnel are granted the same immunity, however specific regulations regarding traffic violations vary among nations. In general, diplomats are regarded like citizens when it comes to these offenses, with the exception that they are not subject to prosecution. Instead, the offense is reported to the head of the diplomatic mission.[109]

The events that took place at the London Libyan "People's Bureau" on April 17, 1984 highlight the shortcomings of measures in deterring unlawful behaviour within the framework of diplomatic immunity established by the Vienna Convention. A gathering of Libyan protesters, who are in opposition to Libyan leader Colonel Muammar el-Qaddafi, had congregated in front of the People's Bureau to express their disapproval of Colonel Qaddafi's treatment of students in Libya. The gathering was behaving in a peaceful manner when,

---

[107] Kerley, *"Some Aspects of the Vienna Conference on Diplomatic Intercourses and, supra* note 102.
[108] Vienna Convention on Diplomatic Relations (1961), Article 22(1)
[109] FELTHAM, R. G., DIPLOMATIC HANDBOOK, *supra* note 101, 38–39.

abruptly, the mob was targeted by machine gun fire originating from the People's Bureau. An officer of the police detachment surrounding the protestors was killed by gunfire. Thirteen individuals sustained injuries, with five of them being in a severe condition. Fourteen The British police promptly established a perimeter around the embassy to prohibit both admission and leave. British Home Secretary Leon Brittan requested that Libya grant permission for British police to access the premises to search for suspects and collect forensic evidence. However, Libyan officials instantly criticized and rejected this demand. The Libyan government responded to the British action by issuing orders for its police to besiege the British embassy in Tripoli. Thirty-five individuals, including the British ambassador, were detained within the premises of the British embassy. A deadlock occurred as each government detained officials from the other. Later, British officials identified the legally permissible alternatives that were accessible.[110]

British officials determined that the most probable course of action to apprehend the gunman was to close the People's Bureau and assess the eligibility of each resident for diplomatic immunity according to the Vienna Convention. Two Individuals who do not qualify for immunity would be arrested for interrogation and potential legal action. Twenty-three However, the British government did not provide an explanation for why this alternative was not implemented.[111] Was not implemented due to reasons not explained by the British government. After the shooting, the Libyan authorities freed 25 people from the Tripoli embassy after failed negotiations. The reason for this action is unclear. Libya refused British requests to search the People's Bureau during negotiations. Although the Libyan government offered to deploy an investigatory team to London and prosecute suspects in Libyan municipal courts, the British declined. With little progress in negotiations, the British

[110] Hagan, Joe D., et al. "Foreign policy by coalition: deadlock, compromise, and anarchy." *International Studies Review* 3.2 (2001): 169-216.
[111] Wright, Stephen L. "Diplomatic Immunity: A Proposal for Amending the Vienna Convention to Deter Violent Criminal Acts." *BU Int'l LJ* 5 (1987).

cut ties with Libya and ordered the People's Bureau occupants to leave the UK within seven days. The British assured safe exit and pledged not to check bags.[112]

After 11 days of siege at the Libyan People's Bureau, the occupants fled Britain with British police protection. As the Libyan government released its last British diplomatic personnel, they returned home. The Libyans were searched and questioned by British police in London before their departure. Police in Britain let the Libyans' belongings, including the weapon used in the shooting, to leave the country without scrutiny. British police examined the People's Bureau after its inhabitants left, finding firearms. The British decision to offer de facto diplomatic immunity to all Libyans in the People's Bureau regardless of diplomatic status is speculative. British officials likely prioritized protecting the eight thousand British people in Libya and the besieged British embassy in Tripoli over prosecuting the shooting suspects. British judgment can be explained by Vienna Convention language. The UK has to let Libya withdraw its accredited diplomatic personnel without intervention because both countries signed the Vienna Convention. The Libyan People's Bureau event shows the Vienna Convention doesn't stop crime. Embassy staff are immune from criminal prosecution, which encourages lawbreakers. N.Y.C. and D.C. police often confront criminals with diplomatic immunity.[113]

From 1974 to mid-1984, the prosecution of 546 offences in London were avoided due to diplomatic immunity that would have resulted in a six-month prison sentence. Diplomatic immunity has safeguarded many other crimes. The Vienna Convention allows receiving governments to declare a *diplomat persona non grata* as the only protection against a suspected criminal. *A persona non grata* proclamation forces the sending state to recall or terminate the individual's diplomatic duties, forcing them to leave the receiving state. In murder cases, like at the Libyan People's Bureau in London, *persona non grata* declarations

[112] *Ibid*, p.179
[113] *Ibid* p.180

are not sufficient due to the harsher penalty of people convicted in non-diplomatic immunity settings. As an alternative or addition to the *persona non grata* declaration, the governments might sever diplomatic relations. In the Libyan People's Bureau incident, the United Kingdom took this action.[114]

In an effort to prevent the abuses of diplomatic immunity in violent crimesWight proposesan alternative for an amendment of the Vienna Convention to deter violent criminal acts.[115] The Vienna Convention aims to provide immunity exclusively to genuine diplomatic agents, genuine embassies, and genuine diplomatic luggage, while excluding terrorists who pretend to be diplomats. In my opinion, the two Libyan assassins, the People's Bureau where they were located, and the bags that held their weapons are not covered by the requirements of the treaty. There is ample justification to doubt if the murderers, who are likely members of the governing committee, were officially recognized and authorized as legitimate diplomatic representatives. According to Article 4, Section 1 of the Vienna Convention, the host country has the authority to assess and evaluate the nomination of a diplomat before accepting and accrediting them. If the diplomat is found to be unsatisfactory, the host country can reject their accreditationDue to the sudden seizure of the embassy by Qaddafi loyalist students, the British government was unable to exercise its right, as per the Convention, to proclaim them *persona non grata* prior to their arrival in Britain.[116]

The British police, following a brief and concise interrogation with the Libyans just before their departure, released a statement affirming that they held diplomatic status. The methodology behind the police's decision remains ambiguous. Diplomatic passports do not provide definitive proof in this matter.

---

[114] "The Shoot-Out at the Libyan Self-Styled People's Bureau: A Case of State-Supported International Terrorism." *SDL Rev.* 30 (1984): 1

[115] *Ibid.*

[116] Goldberg, Arthur J. "The Shoot-Out at the Libyan Self-Styled People's Bureau: A Case of State-Supported International Terrorism." *SDL Rev.* 30 (1984): 1.

The second component of the inviolability of diplomatic premises is to the obligation of the host country to provide protection. According to Article 22 of the Vienna Convention, the country receiving a diplomatic mission has a specific obligation to take necessary measures to safeguard the mission's premises from any unauthorized entry or harm, and to prevent any disruption of the mission's tranquility or compromise of its prestige. The term 'appropriate' steps refer to the necessity of ensuring that the level of protection offered is commensurate with the level of risk or danger to the premises. It is evident that the state receiving the embassy cannot reasonably be expected to permanently deploy police officers outside each embassy building. Furthermore, it is important to note that all houses of diplomatic, administrative, and technical staff are equally entitled to the security that comes with inviolability. However, if the entity is aware of an imminent aggressive protest, or if the ambassador notifies it of an unauthorized entry or an imminent assault, then it is obligated to offer appropriate security measures in response to the threat or to expel the trespassers upon request. The internal legislation is not required, nor is it a common practice, to impose particularly harsh punishments for attacking or trespassing on embassy property, or to criminalize minor insults to the premises or the flag of the mission. However, such provisions have been very prevalent.[117]

The US applied to the ICJ after Iranian terrorists occupied its Embassy in Tehran on November 4, 1979, and kidnapped its diplomatic and consular workers. On the United States' request for provisional measures, the Court held that diplomatic envoys and embassies were inviolable, and it indicated provisional measures to restore the Embassy premises to the United States and release the hostages. The Tehran hostage crisis, which unfolded from 1979 to 1981, involved the seizure of the United States Embassy in Tehran by Iranian militants, leading to the prolonged captivity of American diplomats and citizens. This crisis not only tested diplomatic relations between the United States and Iran but also raised fundamental

[117] Lord Gore-Booth (editor) Satow's Guide to Diplomatic Practice (5th ed.), *supra* note 68, p.111.

questions about the extent and limitations of diplomatic immunity under international law.During the crisis, the Iranian militants violated the inviolability of the U.S. Embassy premises, breaching the diplomatic immunity protections guaranteed by the Vienna Convention on Diplomatic Relations. The prolonged detention of diplomats and staff members challenged the principles of diplomatic immunity and raised complex legal and diplomatic issues. The United States, in response to the crisis, pursued various diplomatic and legal avenues to secure the release of its citizens, including seeking recourse through the ICJ. While the ICJ ultimately ruled on the case of United States Diplomatic and Consular Staff in Tehran (United States of America v. Iran) in 1980, it faced challenges in enforcing its decisions due to Iran's refusal to recognize the court's jurisdiction.The Tehran hostage crisis remains a pivotal case study in understanding the practical implications of diplomatic immunity, the role of international law in resolving diplomatic disputes, and the challenges of enforcing legal rulings in the face of political tensions. Analyzing this case in detail would provide valuable insights into the complexities of diplomatic relations and the legal framework governing diplomatic immunity.[118] In its judgment of 24 May 1980, the Court found that Iran had violated and was still violating obligations owed to the United States under conventions in force between the two countries and rules of general international law, that this violation engaged its responsibility, and that the Iranian Government was bound to secure the immediate release The Court reiterated the importance of international law governing diplomatic and consular interactions. It noted that while militants' actions on November 4, 1979, could not be directly attributed to the Iranian State due to a lack of information, the State had done nothing to prevent the attack, stop it short, or force the militants to leave and release the hostages. The Court found that after 4 November 1979, certain Iranian State organs approved the allegations and decided to propagate them, turning them into Iranian State acts. Despite the absence of the Iranian Government and after

[118] Bowden, Mark. *Guests of the Ayatollah: The Iran Hostage Crisis: The First Battle in America's War with Militant Islam*. Open Road+ Grove/Atlantic, 2007.

rejecting Iran's two communications arguing that the Court could not and should not hear the matter, the Court rendered judgment. By Order of 12 May 1981, the matter was discontinued and removed from the List, therefore the Court did not have to rule on recompense for the US Government's injury.[119] Article 1 from Optional Protocol concerning the Compulsory Settlement of Disputes Adopted by the General Assembly of the United Nations state that " Disputes arising out of the interpretation or application of the Convention shall lie within the compulsory jurisdiction of the International Court of Justice and may [120]accordingly be brought before the Court by a written application made by any party to the dispute being a Party to the present Protocol.".[121] . There are currently no universally accepted rules for implementing Article 41 paragraph 1. It is doubtful that such guidelines could be developed, as opinions on what constitutes unacceptable interference in the internal affairs of a receiving country differ across different locations and periods. The Memorandum on Diplomatic Immunity and Human Rights Assistance addressed the specific challenges faced by diplomats when providing support in cases related to human rights. It concluded that any effort to gain global recognition that such assistance does not constitute interference in internal matters would probably have a negative impact.[122]

The blanket requirement of immunity covers the gravest offense against a government, which is espionage. This threat to national security is referred to as a "clandestine activity" carried out by an individual authorized by a foreign government with the intention of acquiring confidential information about another country's military defense. This conduct is strictly forbidden by the Vienna Convention on Diplomatic Relations.[123]

---

[119] 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.
[120] Buffard, Isabelle, and Stephan Wittich. "United States Diplomatic and Consular Staff in Tehran Case (United States of America v Iran)." *The Max Planck Encyclopedia of Public International Law* (2012).
[121] Aldrich, George H. "What constitutes a compensable taking of property? The decisions of the Iran–United States claims tribunal." *American Journal of International Law* 88.4 (1994): 585-610.
[122] DENZA, DIPLOMATIC LAW, *supra* note 14, 379–380.
[123] United Nations. "Vienna Convention on Diplomatic Relations." Adopted on 18 April 1961, entered into force on 24 April 1964. United Nations Treaty Series, vol. 500, p. 95. Available at: UN Treaty Collection.

During espionage operations, the sending State discreetly places an intelligence collector within the diplomatic organization. Upon the arrest of the agent, it is customary for the sending State to request the protection of diplomatic immunity. Since the operative cannot be subjected to punishment, the receiving State responds by declaring the collector *persona non grata* and ordering their immediate departure. This action effectively ends the collector's diplomatic privileges and immunities.[124]

Espionage must be considered within this legal framework. Espionage is illegal in all modern states, including the US, where Title 18 U.S.C. section 793[125] protects only national defense information, which collectors usually seek. Classified information gathering and dissemination by nationals and aliens are restricted for utmost security. The death sentence is the maximum punishment during conflict and lower in peacetime to deter violators and underline the crime's seriousness.

An espionage operation involving diplomatic officials of the sending State will be investigated by a State's counterespionage agency for as long as necessary to uncover the most intelligence sources. When participants are arrested, the sending State promptly seeks diplomatic immunity. The criminal trial will charge participating nationals of the harmed host State with espionage or conspiracy. The transmitting State's citizens are immune and can only be named co-conspirators, not defendants. Once they invoke immunity, foreign agents are labeled *persona non grata* and sent to their home country.[126]

The deliberate nature of espionage action is the primary defining factor of contemporary statutes. The concept of specific intent is naturally addressed. Simply having a rational basis to believe that information will be utilized to harm the country or benefit

[124] Nathaniel P. Ward, *Espionage and the Forfeiture of Diplomatic Immunity*.
[125] 18 U.S. Code § 793 - Gathering, transmitting or losing defense information. https://uscode.house.gov/view.xhtml?path=/prelim@title18/part1/chapter37&edition=prelim
[126] *Ibid.*

another state is also enough. The purpose behind engaging in espionage is inconsequential. One important current provision is that the information does not have to harm the state from whom it is taken. An offense is perpetrated regardless of whether the foreign nation that stands to gain is an ally.[127] Diplomatic and consular workers are exempt from prosecution for espionage due to their privileged status, which may serves as an incentive for engaging in illicit activities. For the receiving State to address the matter, it must first have valid grounds to revoke the privileges and immunitiesAccording to current international law, the receiving State must provide sufficient evidence of abuse of diplomatic privileges by the collectors. Such a demonstration could potentially result in a clash with domestic legislation and would constitute a violation of treaty law.[128] Every diplomatic privilege can be abusedWhen a sending state invokes immunity for espionage, it is taking advantage of the immunities provided under the Vienna Convention . It exploites its rights and immunities under international law, with international implications. In such a case, the receiving state may see that it is justified in voiding espionage privileges and immunities to protect national security secrets. The receiving state can alter its domestic laws, however this deviates from the VCDR treaty priviliges and immunities and represents a breach of international law. A rejection of criminal immunity for espionage would subject the collector to domestic sanctions and deter future privilege and immunities abusesEspionage immunity must assist the state before being eliminated. The United States, with its global dominance and advanced intelligence gathering capabilities, has the ability to act independently. Diplomatic missions occasionally offer support to intelligence operations by providing personnel and aid. However, if this practice were restricted, it would result in the loss of diplomatic privileges and immunities for hostile parties targeting the US. As a result, they would have to carry out intelligence activities without the usual support and protection provided through diplomatic channels. In any case, such actions are considered as blatant infringement of the VCDR.

[127] Leslie S. Edmondson, *Espionage in Transnational Law, 5 VAND. J. Transnat'l L. 434* 434–58 (1972).
[128] Behrens, Paul. Diplomatic interference and the law. Bloomsbury Publishing, 2016..

It is thus clear that there are international trends urging that the criminal agent of the diplomat be limited. Judicial immunity is absolute in criminal justice as the diplomatic agent is in their diplomatic mission, in a host state..[129]

Due to the immunity granted to authorized diplomats, they cannot be subjected to prosecution under local laws. Therefore, it is customary to label such individuals as *persona non grata* and request their immediate recall. Irrespective of the facts regarding the espionage, there is no specific obligation to provide a response. Canada made the uncommon decision to recall the leader of its diplomatic mission to the U.S.S.R. following the defection of a cipher clerk who exposed a "spy ring" operated by Soviet embassy staff[130]. However, the United States solely expressed its objection to the act of covertly monitoring its diplomatic building in Moscow. Although diplomatic practice shows that there are indeed consequences that result from the detection of espionage, there is still a significant amount of uncertainty. The principle of maintaining peace appears to be established in a single scenario: when a covert operative is apprehended within the borders of another nation, without any additional breach of international law, it results in a diplomatic exchange of written communications, a formal objection, and a denial of the allegations.[131]

Currently, international law does not acknowledge a universal entitlement to diplomatic asylum. Moreover, diplomatic missions are not normally obligated to provide asylum. Diplomatic immunity and inviolability are indeed distinct from diplomatic asylum in international law. Diplomatic immunity shields diplomats from prosecution and interference in carrying out their duties, while inviolability protects diplomatic premises from unauthorized entry or search. Diplomatic asylum, on the other hand, involves providing refuge to individuals within a diplomatic mission, a practice not universally recognized in

---

[130] Whitaker, Reginald. "Origins of the Canadian Government's Internal Security System, 1946–1952." *Canadian Historical Review* 65.2 (1984): 154-183.
[131] Edmondson, Leslie S. "Espionage in Transnational Law." *Vand. J. Transnat'l L.* 5 (1971): 434.

international law. While diplomats enjoy these protections, the provision of diplomatic asylum is not a guaranteed entitlement, and diplomatic missions are typically not obligated to offer asylum. This distinction underscores the complex and nuanced nature of diplomatic relations, where legal principles intersect with diplomatic practices and considerations of national interest.[132]

Nevertheless, international law acknowledges that diplomatic refuge can be given in specific exceptional circumstances or based on extraordinary humanitarian considerations. These requirements are typically fulfilled when an individual confronts a severe and impending threat of violence for which the local authorities are incapable of providing protection, or for which they actively encourage or permit. Ordinary criminals seeking to evade the normal legal procedure will not be awarded asylum or temporary safe harbor. The "right of asylum" or temporary refuge refers to the exclusive prerogative of the "representing" State, exercised by its head of post, to provide an invitation, The Canadian stance and implementation can be succinctly summarized as follows: Asylum may only be granted by consulates and diplomatic missions abroad in exceptional situations, and not as a regular practice. In the specific situations we are referring to, temporary asylum may be granted based on humanitarian reasons to an individual, regardless of their Canadian citizenship status. This would occur if the person's life is at immediate risk due to political unrest or riots. It is important to ensure that the intervention by the mission is clearly understood as being driven by humanitarian motives and not misinterpreted otherwise.[133] In a 1827 case, the coachman employed by Mr. Gallatin, who served as the United States Minister and Head of Mission in London, was apprehended in the stable of the Legation on allegations of assault. The correspondence reveals that the British Government supported the action taken, whereas

[132] Martha, Rutsel Silvestre J., and Kit De Vriese. "On Their Sovereign's Secret Service: Special Envoys Detained while in Transit." Chinese Journal of International Law 22.3 (2023): 529-556.
[133] Green, Leslie C. "Trends in the Law concerning Diplomats." *Canadian Yearbook of International Law/Annuaire canadien de droit international* 19 ,132–57 (1981).

Mr. Gallatin, who had already fired the servant, disagreed with the expressed opinions. In response to this case, the British Government implemented measures to prevent any future arrests of a foreign minister's servant without prior communication to the minister. This was done to ensure that the minister's convenience could be taken into account when executing the warrant.[134]

While international law allows for some enforcement actions to be taken against assets of foreign states within the jurisdiction of the host state, the specific language used, for instance, in the UK 1987 State Immunity Act, along with the requirement for sufficient evidence in the form of an ambassador's certificate and the burden of proof on the judgment creditor, effectively prevents the implementation of these limited enforcement measures. If there is a desire to expand the authority to seize assets for commercial obligations, alternative approaches can be considered without making direct changes to the 1978 Act.[135]

3.2.2. Inviolability of Archives and Documents

The archives and documents of the mission shall be inviolable at any time and wherever they may be. The protection of diplomatic archives at the mission's premises is derived from the protection of those premises themselves. Archives in transit are safeguarded by the lesser protection of the diplomatic bag and courier. The issue of the legal standing of diplomatic documents that are not physically located within a diplomatic mission or in the possession of a courier or mission member, and may not be readily recognized as diplomatic archives, has only been addressed by courts and governments in the twentieth century. The establishment of inviolability in all these circumstances has been explicitly defined solely through the implementation of Article 24 of the Vienna Convention.[136] The International Law

[134] Lord Gore-Booth, Satow's Guide of Diplomatic Practice, supra note 68, p. 110.
[135] Hazel Fox, *Enforcement Jurisdiction, Foreign State Property and Diplomatic Immunity*, THE INTERNATIONAL AND COMPARATIVE LAW QUARTERLY pp. 115-141, 141 (1985).
[136] *ILC Yearbook* 1957 vol II p 137, Commentary on draft Art 18. Yearbook of the International Law Commission 1957 Volume II (un.org)

Commission and the Vienna Conference expanded diplomatic archive protection beyond prior international law. First, the International Law Commission chose "inviolable" to convey that the receiving State must abstain from internal interference and that it must protect the archives from unauthorized interference. Second, the Vienna Conference added ‘at any time’ to emphasize that inviolability persisted after diplomatic ties were broken or military combat began. Article 45 allows the sending State to transfer these archives to a third State, the safeguarding authority, to ‘respect and protect’ them. However, diplomatic archives and documents retain their inviolability under Article 24 after they are no longer ‘used for the purposes of the mission’, unlike ‘premises of the mission’ under Article 1(i) of the Convention. [137]

The International Law Commission and the Conference added the words ‘wherever they may be’ to Article 24, making it clear beyond argument that archives not on the mission's premises or in the custody of a mission member are inviolable. The Conference explicitly rejected France and Italy's proposal requiring conspicuous official signs for archives and documents outside mission premises. A US amendment that defined ‘archives and documents’ as ‘the official records and reference collections pertaining to or in the custody of the mission’ was withdrawn. Archives are separate from other mission property, which under Article 22(3) is not inviolable except on mission grounds.[138] The receiving State must immediately restore lost or stolen archives and cannot utilize them for judicial actions or other purposes.[139] The Convention does not define ‘archives and documents’. Their inviolability does not depend on their identification, and they are not required to be identified outside mission grounds (unlike the diplomatic briefcase).[140] The negotiators clearly wanted

[137] gg Corthay, Eric L. "The Inviolability of Mission Premises: an Absolute Principle Surrounded by Excuses." *The International Legal Order in the XXIst Century/L'ordre juridique international au XXIeme siècle/El órden jurídico internacional en el siglo XXI*. Brill Nijhoff, 2023. 455-473.
[138] *Ibid*, pp.158–159
[139] *Ibid*, pp.158–59.
[140] *ILC Yearbook* 1958 vol I pp 135–6 (Mr Liang, Mr Zourek)legal.un.org/ilc/publications/yearbooks/english/ilc_1958_v1.pdf

to define the term broadly, so they added "and documents" to encompass negotiation materials and draft memos, which are not archives. Article 1(1)(k) of the Vienna Convention on Consular Relations states that '"consular archives" includes all the papers, documents, correspondence, books, films, tapes and registers of the consular post, together with the ciphers and codes, card-indexes and any article of furniture intended for their protection or safekeeping Given diplomatic missions' wider immunities, it would be absurd to apply a narrower definition of "archives" to diplomatic archives than to consular archives. The Vienna Diplomatic Convention has applied this extensive definition. Since the goal is to maintain the secrecy of stored information, 'archives and documents' should include current storage techniques like computers and computer drives. Modern international accords that provide international organizations diplomatic inviolability and immunity contain more stringent storage procedures guidelines[141]. For instance, the Headquarters Agreement between the UK and the International Maritime Organization grants inviolability to 'all archives, correspondence, documents, manuscripts, photographs, films and recordings belonging to or held by the Organization and to all information contained therein'. However, a precise description of current information storage technologies may not keep up with the growth of approaches.. It is advisable to rely on the clear intention of Article 24 to encompass all physical items that store information.[142]

3.2.3. Freedom of Communication and the Inviolability of Official Correspondence

A diplomatic mission has the right to communicate without any restrictions for all official purposes and to have unrestricted access to all facilities inside the host state. The entity utilizes coded or encrypted messengers and communications to communicate, using any

[141] Deniza,p.160
[142] *Ibid*, pp.160–61.

suitable methods, including its own government and its government's embassies and consulates, regardless of their location.

However, the installation and use of a wireless transmitter are only permissible with the explicit authorization of the governing authority of the hosting country.[143]

International practice had long recognized the right to safeguard diplomatic communications, though it was imperfect. In rare cases of interception complaints, the state challenged would argue it was unauthorized. If the interception revealed a conspiracy against the receiving state, it may claim exceptional defense of its essential interests. Adair describes Parliament's regular interceptions of dispatches during the Civil War, justified by tensions in England. He states that the Portuguese agent was deemed suspicious and expelled after being implicated in conversations with King Charles during the capture of royal correspondence at Naseby. Knowing his destiny was sealed, the ambassador wanted revenge for the parliamentary spies' interfering with his letters. He enclosed an old news-sheet, a figure of a man hanged, and a few pairs of spectacles in an important-looking packet. To ensure that the parliamentary commissioners, who were not ironic, would not miss the joke, he added a note saying that he hoped the spectacles would help them decipher the valuable information he was sending abroad. No democracy can take a joke against itself, and no democratic administration dares to consider it funny: Parliament was enraged and demanded his deportation.[144]

Secure communication was enabled thanks to cipher improvements and wireless message transmission. However, states approached diplomatic wireless differently. Only the wealthier states could afford to install it, and they believed that the inviolability of the premises and their right to free diplomatic communication meant they did not need the

[143] Feltham, R. J., Diplomatic Handbook, *supra* note 99, 39.
[144] Lord Gore-Booth (ed) Satow's Guide p116

receiving state's consent. The less developed regimes could not afford wireless in its missions and feared that uncontrolled transmitters could be used for propaganda against them. They added 'the mission may install and use a wireless transmitter only with the approval of the receiving State' to the Vienna Convention. The sending state must follow international telecommunications regulations if a transmitter is deployed.. The receiving state, as outlined in the International Telecommunication Convention, bears no liability.[145]

3.2.4. Diplomatic Bag and Diplomatic Couriers

Under the Vienna Convention, the diplomatic luggage is better protected than under customary law. It was generally acknowledged that the receiving state could dispute a bag containing unauthorized items. If this happened, the sending state might return the bag unopened or open it in front of the receiving state's authorities.[146] This is no longer allowed for diplomatic bags. Even if it is suspected that the bag is being used to transport weaponry or other illicit exports or imports, the receiving state may not require the bag to be returned or opened. States were cognizant of the risks of misuse, but they were even more aware that officials may abuse any right of search by claiming to suspect a bag. Since this does not entail opening or holding the bag, the receiving state or airline authorities may subject it to detection devices that detect explosives, metal, or drugs. If the test shows suspicion, the airlines may refuse to carry it.[147]

The diplomatic courier must carry a passport and a paper identifying his bag's packages, just as the diplomatic bag must be clearly identifiable by an official seal. This is necessary since the courier's luggage can be searched. The courier's only privileges are those

[145] *Ibid*, pp.116–117
[146] *Ibid*, p.117
[147] *Ibid*.

needed to transport the bag, such as personal inviolability and immunity from arrest and detention. Otherwise, he lacks diplomatic agent tax and customs benefits and personal immunity from suit. Even more clearly, an ad hoc courier's limited inviolability comes from carrying the diplomatic bag, as his inviolability ends when he delivers it. Modern commercial airplane pilots can carry diplomatic bags 'by hand of the pilot' under the Vienna Convention.. In such a case, the pilot is more than just a courier. They are entrusted with the responsibility of carrying a diplomatic bag and have the authority to board the plane and personally handle it.[148]

The diplomatic bag is a secure bag or container that is clearly labelled as such, and it contains only official documents and articles meant for official purposes. A diplomatic bag is usually categorised into two types depending on the importance of its contents: accompanied or unaccompanied. The diplomatic bag is highly protected, as it is meant for fast delivery. The contents of the package cannot be accessed or held, and a diplomatic courier, who is authorised by the state they are visiting or working in, may transport the package with all necessary privileges and protections.

If a state's communication with its diplomatic mission needs to go through a third state, that third state must provide the same level of protection as the receiving state. Diplomatic bags that are correctly labeled are immune from being opened or violated while being transported through other countries, just like diplomatic couriers. However, couriers are required to obtain the necessary visas.[149]

This thesis does not provide an extensive explanation of the International Law Commission's efforts regarding the diplomatic courier and the diplomatic bag without a diplomatic courier. It Since 1989, there has been a lack of consensus in the Sixth Committee

[148] *Ibid*, pp.117–18
[149] *Ibid.*

of the United Nations General Assembly on the organisation of an international conference to discuss the draft articles. This Commentary does not include an extensive account of the International Law Commission's efforts on the diplomatic courier and the diplomatic bag that is not accompanied by a diplomatic courier. It appears unlikely that there will be any international discussions, let alone an international agreement, to create a protocol that would modify or enhance the Vienna Convention on Diplomatic Relations or other multilateral agreements that regulate the status of different types of official bags. The primary obstacle that hindered the substantial efforts of the International Law Commission and its Special Rapporteur from achieving results was the presence of two potentially conflicting goals - the development of a consistent framework to regulate various types of bags and the intention to prevent misuse of diplomatic bags. Furthermore, there was a lack of consensus within the Commission and among Member States regarding the relative importance of these objectives. While the concept of a uniform system may have seemed appealing and simpler to manage, it failed to acknowledge the fact that the distinction in the treatment of diplomatic bags and consular bags, as outlined in the 1961 and 1963 Conventions, was not an irregularity but rather a reflection of the varying levels of sensitivity in diplomatic and consular communications. The standardization of treatment for all official bags based on the greater level of protection afforded to diplomatic bags was not acceptable to the States that were seriously worried about the misuse of diplomatic immunity during the 1980s. However, smaller States lacking sufficient resources to send extensive coded wireless transmissions or provide couriers for their bags found it unacceptable that standardization of treatment should occur based on the 'challenge and return' provision outlined in Article 35 of the Vienna Convention on Consular Relations. At that time, the Communist States unanimously supported measures that would establish consistent treatment at a higher level of inviolability. They were essentially the only ones advocating for the adoption of new rules in the form of a convention. As a result, what came forth was not a consistent system and, in many ways, it

did not accurately represent the actual practices of states or the desires of the majority of states.[150]

The issue of defining the boundaries of what might be considered a diplomatic bag, as well as the process of identifying it, was carefully examined in relation to the 1985 Report of the House of Commons Foreign Affairs Committee on the Misuse of Diplomatic Immunities and Privileges. While the Committee's probe was well under way after the April 1984 shooting from the Libyan People's Bureau, Umaru Dikko, a former minister in Nigeria[151], was abducted on the streets of London. Surveillance was implemented at airports, and concerns were raised when two large boxes, equipped with ventilation, arrived at Stansted airport with the purpose of being loaded onto a Nigeria Airways plane. Upon receiving notification from the Foreign and Commonwealth Office that the crates did not qualify as diplomatic bags (the reasons for this are explained later), customs officials proceeded to open them. The Nigerian High Commission members were present during the inspection and discovered Mr. Dikko, who was unconscious and accompanied by a doctor, along with two other individuals.

There were also compelling suspicions that weapons stored in the Libyan People's Bureau had been transported into the United Kingdom using Libyan diplomatic bags.[152] It was presumed that the weapons used in the shooting and killing of a policewoman were removed from the country when the Bureau was evacuated after diplomatic relations between Libya and the United Kingdom were severed.[153]

Another issue brought up by the abduction pertained to accreditation. Two diplomats at the High Commission were deemed unwelcome and the High Commissioner, Major-

[150] Denza, Diplomatic Law, *supra* note 12, 206.
[151] Galloway, Colin. "The Dikko affair and British-Nigerian relations." *The Round Table* 78.311 (1989): 323-336.
[152] The Guardian. "1984: Umaru Dikko's Abduction."
[153] *Ibid*, p.195

General Halidu Hananiya, who had returned to Lagos for urgent discussions, was officially notified that he would not be allowed to return. However, the argument of diplomatic immunity presented on behalf of the Nigerian arrested at Stansted, Major Mohammed Yusufu, was rejected. Although he had a diplomatic passport, the protocol section of the FCO was not formally notified of his affiliation with the High Commission personnel.[154]

3.2.5. Commencement and Termination of Mission Immunities

When mission premises are inviolable is unclear from the Convention and travaux préparatoires. In the Harvard Draft Convention, inviolability requires notice to the receiving State that a diplomatic mission or member is occupying premises.[155] Although the Vienna Convention has comprehensive rules for notifying privileges and immunities holders and establishing entitlement beginning and ending, there are no such provisions for premises.[156] In 1957, many International Law Commission members offered alternative solutions. Ago was of the opinion that it was customary to inform the receiving State of mission-use properties, and inviolability might begin upon delivery. Sir Gerald Fitzmaurice [157]said mission-used properties were inviolable which 'began from the moment they were placed at the disposal of the mission'. It was typical to assert inviolability for new structures throughout interior installation and decorating, asBartos stated: He was of the opinion that the topic 'was

[154] Iain Cameron, *First Report of the Foreign Affairs Committee of the House of Commons*, The International and Comparative Law Quarterly, pp. 610–620.
[155] American Society of International Law. "Article 3." *American Journal of International Law* Supplement, vol. 26, 1932, p. 50.
[156] Denza, Eileen. *Diplomatic law: commentary on the Vienna convention on diplomatic relations*. Oxford University Press, 2016. p146
[157] Yearbook of the International Law Commission 1957 volume I. (n.d.). https://legal.un.org/ilc/publications/yearbooks/english/ilc_1957_v1.pdf, pp. 52–53.

a very delicate one, and in the absence of any established norm, it would be more sensible for the Commission to avoid from raising the matter', which was largely accepted.[158]

Some instances support Mr. Bartos' criteria. In Petrococchino v Swedish State, a French court ruled in a tenancy dispute that:[159]

'The acquisition of real property by a foreign State does not ipso facto invest that property with the privilege of exterritoriality: it is necessary that the property be completely appropriated to the service of the embassy In Beckman v Chinese People's Republic, the Swedish Supreme Court refused to exercise jurisdiction in a dispute over the validity of a sale of real property to China, holding that China could plead immunity because 'the property in this case is used by the Republic for its Embassy in this country'.[160]

In four cases, Tietz[161] and others v People's Republic of Bulgaria, Weinmann v Republic of Latvia, Bennett and Ball v Hungary, and Cassirer and Geheeb v Japan, the Supreme Restitution Court for Berlin stressed that a State's remote intention to use its property for mission premises did not grant immunity from local jurisdiction. West Berlin property was sold to foreign states that utilized it as mission premises until 1945 in all four situations. Latvia, Bulgaria, and Hungary had no diplomatic ties with Germany in 1959, whereas Japan had an embassy in Bonn. In wartime or diplomatic breaches, the premises' immunity may be 'suspended', the court noted. However, 'no diplomatic activity whatsoever, in the sense of the conduct of diplomatic relations between a sending sovereign and a receiving sovereign, existed in West Berlin' and the premises' immunity had expired. If

[158] Denize,146
[159] Petrococchino v. Swedish State. (1929, October 30). *Annual Digest of Public International Law Cases, 5*, 306-307. Cambridge University Press. https://doi.org/10.1017/CBO9781316151327.253
[160] Denza, p.46
[161] Tietz and others v People?s Republic ofBulgaria 28 ILR 369 at 379.

Berlin became capital of a united Germany again, immunity would rely ‘only upon an actual and existing use of the premises’, not on intention to use the buildings for missions. [162]

As an example, the 2003 US-PRC agreement on the building of embassies in Beijing and Washington grants the two embassies inviolability as mission premises "from the date of delivery of possession."[163]

Article I of the Convention defines mission premises as 'the structures or sections of buildings and the land supplementary thereto, irrespective of ownership, utilized for the mission's objectives, including the head's dwelling. Neither the transmitting nor receiving state may unilaterally declare particular structures diplomatic premises.. In reality, establishing when mission premises start and stop is difficult. The Vienna Convention clearly states where personal rights and immunities begin and end, but not for mission buildings. It is well established that a sending state's possession of property, even if distantly intended for diplomatic reasons, does not render it inviolable. 15 However, if the sending state has notified the receiving state of its acquisition of premises for use as an ambassador's residence or embassy offices and obtained any local law consents (embassy premises do not exempt them from local building or planning laws), those premises are generally considered mission premises while they are being prepared for occupation and use. After a diplomatic mission leaves, buildings remain inviolable for a 'reasonable time' of a few months, and diplomats retain privileges and immunities. Unused buildings may lose their 'premises of the mission' status and inviolability if diplomatic ties are terminated or the mission is recalled. Article 45 of the Vienna Convention requires the receiving state to 'respect and defend' them and their property and archives.[164]

---

[162] Russian Commercial Representation (Greece) Case, No 185. Seventh report on jurisdictional immunities of States and their property, by Mr. Sompong Sucharitkul, Special Rapporteur. A/CN.4/388 and Corr.1 (E only) & Corr.2 (F only)

[163] Denza, *Diplomatic Law*, supra note 12, at 145–146.

[164] Lord Gore-Booth, ed., *Satow's Guide to Diplomatic Practice*, supra note 66, at 111–112.

3.3. Diplomatic Agents' Privileges and Immunities

3.3.1. Introduction

In this upcoming part, we will delve into the research topic, which examines the extent of diplomatic immunity, specifically in cases where a diplomat commits a criminal offense. This situation raises concerns as it contradicts the fundamental principles upon which diplomatic relations between countries are established, namely, the promotion of economic, social, and cultural ties. The occurrence of such crimes committed by a diplomatic agent undermines the very purpose of fostering these relations. This issue necessitates an investigation into the fundamental characteristics and attributes of diplomatic immunity. It has been observed in global conventions and customary international law that states generally do not relinquish the immunity of their diplomatic representatives unless the diplomat engages in a non-task-related criminal act, thereby permitting prosecution within the host state's jurisdiction.

To begin with, the provisions contained in the Vienna Convention on Diplomatic Relations clearly outline the steps involved in establishing diplomatic missions. The convention offers states the option, if they so choose, to establish diplomatic missions to one another. The convention then requires the host nation to make it easier for missions to relocate there. The agreement is important because without its rules, establishing diplomatic relations would be unregulated and ungoverned. The convention is essential because it safeguards the host state's authority to declare certain staff members *persona non grata* and lays down the conditions for the termination of diplomatic ties between states. This is significant because it allows for the termination of diplomatic ties between governments to

be done amicably and without escalating existing tensions. The recall of the Kenyan ambassador to Somalia in 2019 following a diplomatic conflict over the two states' shared maritime border serves as an illustration of when the provision on severance of diplomatic ties, which also implies the recall of diplomatic agents, is appropriate. [165]The protocol also ensures the security of diplomatic cargo and facilities. This is important since it restricts the host state's potential for harassment. According to the convention, the sending state must give its permission before the host state may enter a diplomatic post. This safeguards diplomatic protocol and ensures the security of important state information when it is being transported within and outside of the mission. Additionally, the treaty defends and ensures channels of contact between diplomatic missions and the sending governments. The convention states that the receiving state must ensure the development of all communication channels required for diplomatic missions, including satellite communication. This is significant because it upholds the convention and permits the effective maintenance of diplomatic relations, which depends heavily on communication between the sending state and its mission.[166]

3.3.2. Personal Inviolability

Diplomatic privileges and immunities are founded on long-standing custom. They are crucial to the management of relations between independent sovereign states, because they allow ambassadors and their staff to act independently of any local pressures in negotiations, to represent a foreign state while being protected from attack or harassment, and to speak freely to their own governments. Such privileges and immunities are supplied on the principle of

[165] Africanews." *Somalia Recalls Ambassador to Kenya in Row Over Alleged Political Interference*, 1 Dec. 2020, https://www.africanews.com/2020/12/01/somalia-recalls-ambassador-to-kenya-in-row-over-alleged-political-interference/.
[166] 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/

reciprocity, which has shown to be the best assurance possible that the laws would be followed. Any government that denies privileges or immunities to a diplomat on its soil is aware that doing so puts it at risk for both the collective protest of the corps diplomatique in its own capital and retaliation against its own representative from the government whose diplomat it has insulted.[167]

Article 29 of the Vienna Convention presently ensures the safeguarding of the inviolability of diplomatic agents on a personal level. In a similar way to the concept of mission premises being inviolable, this notion can be understood from two perspectives. Firstly, it is important to note the existence of immunity shielding them from any legal action by law enforcement officers of the receiving state. The individual in question cannot be subjected to arrest or detention. In the event that a diplomat is under suspicion of committing an offense, it is possible that they may receive an invitation to accompany a police officer to a police station for the purpose of verifying their identity. However, it is important to note that the diplomat cannot be subjected to arrest or any form of coercion in order to comply with this request. The second aspect, which presents challenges in terms of interpretation, pertains to the unique responsibility of safeguarding: The host state is obligated to treat the individual with appropriate regard and must undertake all necessary measures to prevent any form of assault on their physical well-being, personal liberty, or inherent worth.[168]

Clearly of a different scale, a number of prominent ambassadors were abducted in the late 1960s and early 1970s. To capture the head of mission of an embassy, there was no need to storm and destroy the building. The objective of a mass demonstration might be to express a natural or induced national feeling, whereas the motives behind the abductions of specific ambassadors were far more cold-blooded and deliberate. Nearly always, the goal was to pressure a government into making a specific concession under the threat that, if the

[167]Lord Gore-Booth (editor) Satow's Guide to Diplomatic Practice (5th ed.), *supra* note 14.4, p.107
[168] *Ibid.*

concession was withheld, a person would die and the government would be held accountable both publicly and in the eyes of the nation the victim represented.[169]

The US applied to the ICJrt after Iranian terrorists occupied its Embassy in Tehran on November 4, 1979, and kidnapped its diplomatic and consular staff. On the United States' request for provisional measures, the Court held that there was no more fundamental prerequisite for relations between States than the inviolability of the premises of embassies and indicated provisional measures for restoring the Embassy premises to the United States and releasing the hostages. In its Judgment of 24 May 1980, the Court found that Iran had violated and was still violating obligations owed by it to the United States under conventions in force between the two countries and rules of general international law, that this violation engaged its responsibility, and that the Iranian Government was bound to secure the staff's immediate release. The Court reiterated the importance of international law governing diplomatic and consular interactions. It noted that while militants' actions on November 4, 1979, could not be directly attributed to the Iranian State due to a lack of information, the State had done nothing to prevent the attack, stop it short, or force the militants to leave and release the hostages. The Court found that after 4 November 1979, certain Iranian State organs approved the acts complained of and decided to perpetuate them, turning them into Iranian State acts. Despite the absence of the Iranian Government and after rejecting Iran's two communications arguing that the Court could not and should not hear the matter, the Court rendered judgment. By Order of 12 May 1981, the matter was discontinued and removed from the List, therefore the Court did not have to rule on reparation for the US Government's injury.[170]

---

[169] Gore Booth, p. 216

[170] International Court of Justice. "Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory." Accessed June 10, 2024. https://www.icj-cij.org/case/64.

The anticipated transgressions primarily encompass acts of homicide, abduction, assaults on individuals, violent assaults on both public and private properties, as well as any acts of intimidation or endeavors to perpetrate any of the aforementioned transgressions.[171] The sending and receiving states must agree on the 'necessary procedures' to protect diplomats and other inviolable individuals. The Vienna Convention's negotiators inserted "appropriate" to clarify that the receiving state's obligations are limited. In major capitals, several thousand diplomats, their families, and the embassies' administrative and technical staffs and their families are entitled to inviolability. It would be impossible to provide special police protection for each of them. However, if there is proof of a threat to a diplomat's safety, such as a mob attack or a planned kidnapping, the sending state can demand that the receiving state provide exceptional protection, such as an armed guard.[172] In cooperation with the receiving state, a wealthy sending state may safeguard vulnerable diplomats. The receiving state's gun and violence regulations apply to sending state bodyguards. The receiving state's 'necessary procedures' to defend personal inviolability do not entail submitting to kidnappers' demands after a diplomatic kidnapping.[173]

On August 28, 1968, in Guatemala City, an attempted kidnapping shocked the globe. When his official automobile was halted in a downtown roadway, American Ambassador John C. Mein was returning to his office from lunch at the Embassy residence. Mr. Mein leaped out and ran when he saw several young people in fatigue uniforms approaching the automobile and was shot dead. Fuerzas Armadas Rebleeds stated the next day that he was killed "while resisting political kidnapping." Seven months later, on 2 March 1969, the Federal German Ambassador, Count Karl von Spreti, was kidnapped by the same organization and compelled to release seventeen political prisoners. While the diplomatic

[171] *Ibid.*
[172] Diplomatic Agents' Privileges and Immunities | Közigazgatási és Infokommunikációs Jogi PhD Tanulmányok (pte.hu)
[173] Gore-Booth, 1979.

corps was negotiating with the Guatemalan government and the German government was pressing for release on the conditions suggested, the price was upped to twenty-five detainees and US$ 700,000, which the Germans volunteered to pay. The Guatemalan government argued that the executive order could not overturn court verdicts for some detainees. The kidnappers' deadline passed and Count von Spreti body was found with a bullet wound in the temple on 5 April.[174] The protection of diplomatic agents and their premises is established by customary international law, as evidenced by the provisions outlined in the 1961 Vienna Convention on Diplomatic Relations. The state that is the recipient of diplomatic missions bears a distinct responsibility to actively prevent any acts of aggression against the personal well-being, liberty, and honor of diplomats, as well as to ensure the protection of diplomatic premises.

These examples demonstrate clear and flagrant breaches of the norms outlined in the Vienna Convention on Diplomatic Relations (VCDR). The aggressive acts targeting Ambassadors Mein and von Spreti exemplify the Guatemalan government's inability to fulfil its diplomatic responsibilities as outlined in the Vienna Convention on Diplomatic Relations (VCDR). The tragic consequences underscore the pressing necessity for strong international procedures to prevent such offences and guarantee responsibility.

In order to strengthen this system of protection, there has been a growing acknowledgment of the need for an international agreement that expressly deals with offences committed against diplomats. Like accords addressing aeroplane hijacking and sabotage, this treaty would create explicit legal procedures for preventing and penalising such acts, promoting increased international collaboration to protect diplomatic agents.

To summarise, the incidents involving Ambassadors Mein and von Spreti not only demonstrate serious violations of diplomatic protection but also emphasise the urgent

[174] *Ibid.*

requirement for improved international legal mechanisms to uphold and enforce the inviolability of diplomatic personnel, as mandated by the Vienna Convention on Diplomatic Relations (VCDR). International cooperation plays a crucial role in ensuring the prevention and punishment of offenses committed against diplomats. Considering this objective, there has been a growing recognition of the need for an international convention, similar to those addressing the hijacking and sabotage of aircraft, that focuses on establishing legal mechanisms to prevent and penalize acts of aggression against diplomats.[175]There has been a growing recognition of the need for an international convention, similar to those addressing the hijacking and sabotage of aircraft, that focuses on establishing legal mechanisms to prevent and penalize acts of aggression against diplomats.[176]

3.3.3. Immunity from Jurisdiction

This section will provide an introductory examination of immunity, specifically focusing on its various aspects including criminal, civil, administrative, and tax immunity. Immunity plays a vital role in the field of law, providing persons or institutions with safeguard against certain legal consequences or responsibilities. Nevertheless, in order to comprehend the intricacies of each form of immunity and comprehend its extent and consequences, we will undertake a more thorough investigation in the forthcoming chapter.

Jurisdictional immunity refers to the legal principle that individuals who possess this immunity are exempt from being summoned before courts for any unlawful acts or offenses committed in the host country while serving in a permanent diplomatic mission. The immunity is primarily procedural in nature, although it is not limited to this aspect alone. According to the well-known ruling in the which was decided by the Court of Appeal of

[175] *Ibid.*
[176] *Ibid.*

England and Wales[177], it is important to note that diplomatic privilege does not confer immunity from legal accountability, but rather grants exemption from the jurisdiction of the host country. Therefore, the diplomatic agent's jurisdictional immunity entails that, when a motion is made on behalf of the individual in question, a court in the receiving State will declare itself lacking the authority to adjudicate on the substantive aspects of a legal proceeding initiated against said individual. Jurisdictional immunity encompasses all forms of jurisdiction, including criminal, civil, and administrative.[178]

The diplomatic agent's immunity from criminal jurisdiction entails that they are exempt from being summoned before the criminal courts of the host State for any unlawful acts or offenses committed in that State while carrying out their diplomatic mission. Criminal jurisdiction encompasses the legal processes involved in prosecuting and penalizing unlawful acts or offenses. According to C. Hurst, it is important to note that being immune from a country's criminal jurisdiction does not automatically guarantee complete immunity from being subjected to constraint by local authorities.[179]

To name a striking example, in the early hours of Friday, February 13, 1987, an automobile operated by Kiatro 0. Abisinito, the Ambassador Extraordinary and Plenipotentiary of Papua New Guinea to the United States, collided with three stationary vehicles and a vehicle halted at a stop sign on Wisconsin Avenue in the northwestern region of Washington, D.C. Ambassador Abisinito was transported to Georgetown University Hospital in a state of unconsciousness, subsequently experiencing a rapid recovery. During his hospitalization, he was formally accused by the District of Columbia police of "negligently operating a motor vehicle by failing to exercise proper care and attention while driving." According to the police report, it was indicated that the individual in question

[177] Dickinson v. Del Solar (1930) 1 KB 376 (CA).
[178] Przetacznik, F.: The History of the Jurisdictional Immunity of the Diplomatic Agents in English Law. Anglo-American Law Review, (1978) 7(4), pp. 348-395. https://doi.org/10.1177/147377957800700402
[179] *Ibid.*

exhibited clear signs of intoxication. However, it is noteworthy that no impartial assessment or examination was conducted by the authorities, as a gesture of deference towards his diplomatic immunity. Following the occurrence of the accident, Ambassador Abisinito was promptly summoned back to his home country in accordance with the established diplomatic protocol.[180] Although the ambassador was immune from prosecution at that moment, a criminal accusation against him would prevent him from returning to the United States in the future. This functioned as a cautionary message to ambassadors, emphasising the need of adhering to the law.[181]

The inclusion of personal character within the scope of ordinary diplomatic immunity from jurisdiction can be considered an integral component of positive international law. The personal exemption, nevertheless, ceases to exist upon the conclusion of the duties of the diplomatic agent, either upon their departure from the host country to which they are accredited or, if they choose to remain after a reasonable duration has transpired. At this critical juncture, when diplomatic immunity ratione personae cease to exist entirely, diplomatic immunity ratione materiae emerges as a prominent factor. The aforementioned type of immunity is limited in its scope to official actions carried out in the fulfillment of diplomatic responsibilities, yet it remains in effect indefinitely.[182]

The Department of State's Office of Foreign Missions referred the incident to the U.S. Attorney for the District of Columbia, Joseph DiGenova, for investigation and possible criminal prosecution hours after the tragedy. The ambassador was indicted in April.10 This is the first time the US or any other nation has tried an ambassador after his or her accreditation has expired for an act that happened while accredited. The Abidin-to issue and

[180] Larschan, B: The Abisinito Affair: A Restrictive Theory of Diplomatic Immunity, *26 Colum. J. Transnat'l L. (1988) 283*, pp. 283-285.
[181] McClanahan Diplomatic Immunity 132-133 and Pecoraro "Diplomatic Immunity: Application of the Restrictive Theory of Diplomatic Immunity" (1988) 29 Harvard International Law Journal 533

the Department of State's effort to establish a restrictive conception of diplomatic immunity have raised questions about a receiving State's duties under international law.[183]

Diplomatic immunity is applied to domestic employees' compensation claims under Article 31.1(c). However, mission members and their families can work outside the mission or provide paid professional services. Thus, the spouse of a mission member who works as a doctor, teacher, or administrator in the receiving State may be sued.

The obvious immunity exception for such activities has removed an essential barrier to spouses and other family members of diplomats working independently in the receiving State in many States. Some States have agreements stating the absence of immunity, or a specific guarantee may be a condition of allowing a spouse to work, however, Parties to the Vienna Convention do not need such a safeguard.[184]

Regarding the matter of exemption from jurisdiction, it is applicable, according to Harvard research[185], throughout the duration of the diplomatic office, encompassing both official and private actions. The central argument is that while foreign diplomats are subject to local law in relation to private acts, their immunity is limited to the "exercise of jurisdiction." However, when it comes to official acts, their immunity extends to both the jurisdiction and the law of the receiving State.[186] Diplomatic immunity, whether based on personal or functional grounds, is primarily manifested in an exemption from legal proceedings. The distinction between the two types of immunity is characterized by the temporary nature of the former, which ceases upon the completion of the assignment, while

[183] Larschan, B: The Abisinito Affair: A Restrictive Theory of Diplomatic Immunity, *26 Colum. J. Transnat'l L. (1988) 283,* pp. 283-285.
[184] Denza, E.: Diplomatic Law: Commentary on The Vienna Convention On Diplomatic Relations, *European Journal of International Law, (2009) Volume 20, Issue 4.* pp. 1286–1288.
[185] Harvard Research in International Law, 1932. *Diplomatic Privileges and Immunities*. Cambridge: Harvard Law School, pp.97, 99.
[186], Dinstein "Diplomatic Immunity from Jurisdiction Ratione Materiae" (1966) 15 International & Comparative Law Quarterly p. 79-80.

the latter persists beyond that timeframe. However, there is no discernible differentiation in their association with regional legislation. The conclusion aligns with both the literal interpretation and underlying principles of Article 39 (2) of the Vienna Convention. Furthermore, it adheres to the overarching principle articulated in Article 41 (1), which stipulates that individuals who benefit from privileges and immunities have an obligation to uphold the laws and regulations of the host country, while still preserving their own privileges and immunities.[187] A high-ranking Afghan diplomatic official, enroute to purchase an air-conditioning unit from a Queens-based appliance store, collided his vehicle with that of a woman during a disagreement pertaining to a parking spot. The female individual was positioned adjacent to the edge of the road, reserving a parking area for her male companion, who was maneuvering his vehicle in reverse to occupy said space. Following the disclosure of his identity as an Afghan diplomat, the diplomat firmly asserted his request for the woman to provide him with personal space. Subsequently, he proceeded to verbally offend her and intentionally collided his vehicle with hers.[188]

When a diplomatic agent wants to pass via a third country while travelling to or from the country where they have been appointed, two concerns emerge. Firstly, does international law automatically provide them with free access, particularly in times of peace? Furthermore, do they have any particular rights and exemptions during their journey? It is important to note that the approach to both issues differs greatly over different historical periods. Furthermore, it is crucial to acknowledge that immunity in a third state.[189]

During the late 19th and early 20th centuries, there was a general increase in travel restrictions and tighter controls imposed by states. As a result, foreign diplomats were

---

[187] *Ibid.*

[188] Goodman, D. H. (1988). Reciprocation as a Means of Curtailing Diplomatic Immunity Abuse in the United States: The United States Needs to Play Hard Ball. *Houston Journal of International Law, 11*, 393–413, p. 404

189 Gore-Booth, 1979, p.122–123.

required to obtain a visa in advance, if such a visa was necessary for an ordinary traveler of the same nationality. The response of the French Government to the passage of M. Soule demonstrates a shift in perspective.[190]

The absolute exemption of a diplomat from civil jurisdiction may not be universally applicable. This aspect is subject to much more detailed regulation and exceptions in the Vienna Convention on Diplomatic Relations (VCDR).

It is widely acknowledged among nations that a diplomat is granted immunity from the civil process in relation to any matter that is directly or indirectly related to their official duties. Nevertheless, there is a divergence of opinions among nations regarding the extent to which diplomatic immunity extends to the private matters of diplomatic personnel. While a significant portion of nations grant comprehensive immunity from any form of civil jurisdiction, a smaller faction has expressed an opposing perspective. The alternative perspective, which may be considered more favorable, would not provide an exemption from local civil jurisdiction in cases that are completely unrelated to the official responsibilities of the minister but rather pertain solely to a commercial or professional endeavor in which they are involved. In general, when an individual who is granted, diplomatic immunity initiates a civil lawsuit against a citizen of the host country, the citizen has the right to file a counterclaim against the diplomatic agent. Nevertheless, although the agent has relinquished his immunity by initiating legal proceedings against the national, about the counterclaim, the minister has not waived his entitlement to be shielded from the enforcement of the civil judgment in the event that the national prevails in the litigation.[191]

---

[190] *Ibid.*
[191] Koffler, W. F.: A Passing Glimpse at Diplomatic Immunity" Kentucky Law Journal, (1965), 54 (2).

3.3.4. Inviolability of Diplomats' Residence and Property

Historically, there was a lack of differentiation in practical terms between the "residence of the ambassador" and the "premises of the embassy" until a relatively recent period. In the context of a diplomatic mission, it was customary for the composition of the entourage to include an ambassador, potentially accompanied by a secretary who, by contemporary standards, would be recognized as possessing diplomatic privileges. Additionally, the ambassador's family and a retinue, primarily responsible for attending to the ambassador's personal needs and bolstering their social standing, rather than engaging in diplomatic tasks, would reside and operate from a unified dwelling. However, in the current century, there has been a significant increase in the number of diplomatic and official personnel, surpassing the capacity of the ambassador's residence. As a result, it has become customary for official activities to take place in a separate office building referred to as the chancery, while the ambassador's private residence may be physically detached from it. The commonly observed convention was to grant inviolability to the residences of staff members, excluding the ambassador. However, this matter was rarely disputed as these residences were not susceptible to politically motivated attacks to the same extent as the embassy and thus did not typically require additional police protection measures. The definition of 'premises of the mission' in the Vienna Convention is limited to the ambassador's residence. However, Article 30 stipulates that the private residence of a diplomatic agent is also granted the same level of inviolability and protection.[192]

In 2005, the International Court of Justice (ICJ) deemed the counterclaim filed by Uganda against the Democratic Republic of the Congo (DRC) in the case of the Democratic Republic of the Congo v Uganda as admissible. Uganda's counterclaim asserted that Congolese soldiers had mistreated and threatened Ugandan diplomats in Kinshasa, thereby violating Article 29 of the Vienna Convention on Diplomatic Relations, which ensures the inviolability of diplomatic agents. The ICJ

[192] Gore-Booth, 1979, p. 122.

determined that this purported violation pertained to rights owed directly to Uganda, thereby obviating the requirement for the affected diplomats to exhaust local remedies. In the same year, the Eritrea Ethiopia Claims Commission affirmed Ethiopia's assertion that Eritrean guards unlawfully detained the Chargé d'Affaires of Ethiopia for less than one hour, thereby violating his inviolability under Article 29. Additionally, Ethiopia was found to have violated Article 29 by conducting searches of the persons and luggage of Eritrean diplomats who were mandated to depart the country. Both cases highlight the critical importance of Article 29 of the Vienna Convention, which stipulates that diplomats are inviolable and must not be subject to any form of arrest or detention, and that the receiving state must treat them with due respect and take all appropriate steps to prevent any attack on their person, freedom, or dignity.[193]

It is important to acknowledge that personal inviolability prohibits the personal delivery of legal documents to a diplomat or any other individual who is entitled to diplomatic immunity. While service of process does not entail arrest or detention and does not directly infringe upon the person, freedom, or dignity of the diplomat, it does represent the exercising of jurisdiction by the receiving State to enforce its laws. Consequently, it violates the principle of personal inviolability, similarly to how serving processes through mail on premises that are considered inviolable (as previously discussed in relation to Article 22) also breaches their inviolability. In 2000, an Irish criminal court determined that the act of serving legal documents on the British Ambassador to Ireland violated both his personal inviolability and the inviolability of the British Embassy in Dublin, rendering the service of proceedings ineffective. In the case of Reyes v Al-Malki, the English Court of Appeal affirmed that personal service of process on a diplomatic agent is prohibited under Article 29. The prohibition is equally applicable in cases where service is attempted on a diplomat or an individual who possesses diplomatic inviolability, acting as an agent for their government, a distinct political entity of their government, or a political party. As a result, United States courts determined that the service of legal documents on President Jiang Zemin of China,

[193] Denza, 2009, pp. 221–222.

during his visit, could not be executed through the Falun Gong Control Office. Similarly, the service of legal documents on President Mugabe of Zimbabwe, as the representative of the political party ZANU, was also deemed invalid by the US courts.[194]

The act of examining the personal belongings of a diplomat in extraordinary situations represents a significant deviation from the customary principle of a diplomat's property being immune from interference in the host country. Additionally, it is important to note that if a diplomat refuses to permit the inspection or testing of their baggage by agents of an air carrier, in accordance with the prevailing practices established in response to the rise of hijacking and terrorism on aircraft, the carrier is not obligated to provide transportation services to the diplomat[195]Article 36 does not contain any explicit provisions pertaining to the search of incoming consignments of articles intended for the official use of a diplomatic mission or for the personal use of a diplomat. Consequently, the regulation of this matter falls within the purview of the receiving state. The sending state retains the prerogative to dispatch any highly sensitive items that it prefers not to be subjected to inspection by utilizing a diplomatic bag. The contents of the bag must be designated for official purposes, with no additional restrictions on their nature.[196]

3.3.5. Commencement and Termination of Privileges and Immunities

Article 39 of the Vienna Convention states that personal privileges and immunities commence when the entitled person enters the receiving state to take up his post. If he is already in the receiving state, his privileges and immunities begin when the Ministry of Foreign Affairs receives notification of his appointment. This provision clarifies the critical

[194] Denza, 2009, pp. 223-224.
[195] Gore-Booth, 1979, p. 140
[196] Gore-Booth, 1979, p. 140.

date for diplomatic agent immunities, which can be the date of appointment, formal credential presentation (for heads of mission), or arrival in the territory. If legal proceedings have already begun when immunity arises, it may be raised to stop them (unlike a waiver, which cannot be stopped by the sending state). If the receiving state is told of the appointment as a diplomatic agent of a person against whom criminal actions are pending or suspects the appointment was intended to hinder civil processes, this may pose problems. When told of the diplomatic appointment of a person facing serious criminal accusations, the UK Government asked the state to withdraw the notification, which it did. If a state refused to withdraw a notification, the receiving state could declare the individual *persona non grata*, but it would also have to argue that the procedure was an abuse of diplomatic immunity and that it was not required to grant the normal period of immunities that might allow the person to leave the country with impunity.[197] According to Article 39(2), individuals would maintain their immunity for acts carried out in the course of their official duties as members of the mission. Based on this formulation, it can be inferred that the immunity granted to an individual in a receiving state would not extend to actions performed outside the scope of their official duties as a member of a diplomatic mission. This is the case even if the individual enjoyed immunity from prosecution at the time.[198]

Once an agent has been recalled and departed from the receiving state, it is important to note that they are not entitled to any form of immunity should they choose to return in an unofficial capacity. The possibility of him continuing his career in the diplomatic service of his own country is irrelevant. The perspective is underscored by the viewpoint expressed by the Queen's Advocate in the year 1840. The British Chargé d'Affaires stationed in Munich was reassigned during a period of absence on leave. Despite the absence of any publicly stated reasons for his return to Munich, he later made a visit to the city after his successor

[197] Gore-Booth, 1979, pp.129–130.
[198] Shaw, M. N.: *International Law, Sixth Edition,* Cambridge University Press (2017). p 769.

had assumed full responsibility in office. During his tenure, the Bavarian authorities initiated legal proceedings against him. The Queen's Advocate provided counsel to Lord Palmerston, asserting that given the prevailing circumstances, the former Chargé d'Affaires did not possess diplomatic immunity and that there were no valid reasons to warrant intervention by the British Government in his favor.[199]

Irrespective of the grounds for the termination of a diplomat's appointment or their continued affiliation with the diplomatic service of the sending state, the diplomat maintains their immunity from the jurisdiction of the host state for the duration required to conclude their affairs and return to their home state. In situations where a diplomat is expelled due to engaging in activities that pose a threat to the security of the state, it is possible for a diplomat to be subjected to restraint in the interest of public safety. However, it is important to note that the inviolability of the diplomat's person is still upheld.[200]

Due to the variability of circumstances associated with each case, it is unfeasible to establish definitive parameters regarding the duration required for an individual who has concluded their diplomatic duties to finalize their preparations for departure. Typically, the issue can be resolved through a process of consultation among the relevant officials. Following the rupture in diplomatic relations between the United States and Turkey in April 1917, the Turkish Chargé d'Affaires stationed in Washington expressed his request for a temporary stay in the United States due to health issues. The host state did not raise any objections to this request.[201] The assertion that a diplomat's immunity ceases immediately upon the conclusion of their mission is inconsistent with established norms and conventions. The prevailing and more favorable perspective allow the diplomat a reasonable duration to vacate the premises. This interpretation suggests that the need for a duration of time for the

[199] Jones, R. R.: Termination of Diplomatic Immunity 1948, British Year Book Of International Law. Royal Institute Of International Affairs. pp.262–279.
[200] Jones, 1948.
[201] *Ibid.*

officer to disengage from their assigned task has been understood. Challenges often arise regarding the initiation and duration of diplomatic status and immunity in cases where the government of the sending state has experienced a change that deviates from the constitutional or legal procedures outlined in the sending state's recognition by the receiving state.[202]

3.4. Judicial immunity for diplomats in international law

In this section, we will discuss the settled jurisprudence and principles of international law regarding the non-submission of diplomats to the local judiciary of the state to which they are accredited, encompassing criminal, civil, and administrative matters. Since the seventeenth century, these principles have been firmly established. However, there has been significant jurisprudential and legal debate surrounding the extent of diplomatic immunity. Through this research, we will meticulously review and analyze these jurisprudential views to gain a comprehensive understanding of diplomatic immunity

3.4.1. Introduction

Some jurists view judicial immunity as the non-action of the local judiciary on cases in which defendants enjoy judicial immunity[203], and this is an exception or an exemption or in another words non-submission of the diplomatic agent to the national jurisdiction of the receiving State, where the diplomatic agent enjoys the judicial immunity in its three forms: civil, criminal and administrative. Judicial immunity gives the diplomatic agent special treatment

[202] Koffler, 1965.
[203] د.فتحي والي –قانون القضاء المدني –دار النهضة العربية –القاهرة سنة 1972,ص653
Dr. Fathi Wali - Civil Justice Law - Arab Renaissance House - Cairo in 1972, p. 653

that transcends normal persons, gives him/her due respect in his representative capacity and provides him/her with independence and freedom to perform his/her duties in the fullest possible extent in a climate of tranquility.

These immunities extend to encompass the actions of the diplomat. The point of demarcation is that the diplomat, at the time of filing a complaint, is entitled and qualified to resort and invoke immunity. In 1921, the French Court of Cassation confirmed this rule, stating that it does not matter whether the diplomat has committed himself to the post as a diplomat in the host State, but the important factor is that the diplomat holds a diplomatic post at the time of filing a complaint so that the diplomat can invoke and resort to the immunity[204].

The reason for the diplomatic envoy's enjoyment of such privileges under international law is that he performs his duties as required. And that these privileges and immunities are enjoyed in the receiving State and do not benefit him in the sending State.[205]

To clarify the above-mentioned points, this part is divided into the following subjects:

1. Civil Judicial Immunity.
2. Criminal Judicial Immunity.
3. Administrative Judicial Immunity.

---

[204] غازي الصابرني ,2002,الدبلوماسية المعاصرة,الدار العلمية الدولية لنشروالتوزيع عمان,ص77
Ghazi Al-Sabrni, 2002, Contemporary Diplomacy, International Scientific House for Publishing and Distribution, Amman, p. 77

[205] سهيل حسين الفتلاوي (2006) الدبلوماسية بين النظرية والتطبيق ، الطبعة الأولى ، عمان ، بيت الثقافة ، ص. 196
Suhail Hussein Al-Faitlawi (2006), Diplomacy between theory and practice, 1st Edition, Amman, House of Culture, pg. 196

4.4.2. Civil Judicial Immunity

The judiciary is considered as one of the functions of the modern State and it is one of the acts of sovereignty that the State holds and exercises through relevant and competent judicial authority. The judiciary may be defined as the authority of ruling under the law in particular adversity.[206]

In some countries it was customarily recognized that envoys were subject to civil jurisdiction. Such a case happened in Spain where the diplomatic agent was subjected to civil jurisdiction in the rule issued on 15th June 1737, on the basis that the law that grants immunities is contrary to justice and to natural law.[207] This understanding has, however, changed by the issuance of the Vienna Convention on Diplomatic Relations in 1961 and stated that the diplomatic agent shall enjoy civil judicial immunity.

4.4.2.1 Definition of Civil Judicial Immunity

Civil Judicial Immunity may be defined as the exemption of the diplomatic agent from all civil lawsuits against him. The courts of all states in which he is accredited may not bring him to judiciary or trial for debt or to prevent him from travelling when he does not pay his debts or to seize his money. In this sense, he may not be compelled to appear before national courts.[208]

---

[206] Al-Fatlawi, Sahibal Hasan, previous reference, p. 178

[207] رياض ,فوائد عبد المنعم , (1963)"الحصانة القضائية الدولية "المجلة المصرية للقانون الدولي ,عدد11,القاهرة, ,ص 55 د.فتحي والي
Riad, Fawad Abdel Moneim, (1963) "International Judicial Immunity", The Egyptian Journal of International Law, Issue 11, Cairo, p. 55 .

[208] فوق العادة ، سموحي (1960) ، الحصانة القضائية الدولية ، الطبعة الثانية ، الدبلوماسية والبروتوكول ، مكان النشر غير متوفر ، دمشق ، ص. 91 ، وبهذا المعنى د. علاء الدين عامر ، (2001) الوظيفة الدبلوماسية ، الشروق للنشر والتوزيع ، عمان ، تح. أول ص. 220
Faouq Aladah, Smouhi (1960), International Judicial Immunity, 2nd Edition, Diplomacy and Protocol, Place of Publication None, Damascus, p. 91, and in this sense Dr. Alaa Eddin Amer, (2001) The Diplomatic Position, Sunrise House for Publishing and Distribution, Amman, ed. First p. 220

The civil immunity of the diplomatic agent prevents his appearance before the local civil courts in the territories of the receiving State because of violations carried out by the agent in his private capacity. These violations may include practices related to the rights of individuals or groups and to personal commitments related to special actions that fall outside the official tasks of the envoy. The possession of immovable property, real estate, commercial and financial borrowing, and the coverage of financial obligations imposed on the services provided to the agent are examples of private, personal actions outside the official functions of the envoy.[209]

Envoys may not be prosecuted by courts of the receiving State for debts or be prevented from leaving the host country for not paying debts or confiscation of property. Therefore, the diplomatic agent may not be compelled to appear before local courts.[210]

For an extended peripd, jurisprudence and international law did not agree on the civil immunity of the envoy. By the end of the 19th century, the diplomatic agent remained to enjoy extensive diplomatic immunity relevant to official as well as non-official work. Jurisprudence and judiciary took another trend, differentiating between the official functions of the agent where they are included under the umbrella of judicial immunity and the private personal functions to be considered outside the scope of the judicial immunity.[211]

Opinion on the identification of the scope of the immunity before civil judiciary was divided to have two approaches.

---

[209] خالد حسن الشيخ (1999) ، الدبلوماسية والقانون الدبلوماسي ، (الطبعة الأولى) ، عمان ، مطبعة عدنان أبو جابر ، ص. 352
Khaled Hassan Al-Sheikh (1999), Diplomacy and Diplomatic Law, (First Edition), Amman, Adnan Abu Jaber Press, p. 352

[210] القاضي فهد المغاريز ,الحصانة الدبلوماسية ,ط1,دار الثقافة ,عمان ,ص112
Fahd Al-Magharez, Diplomatic Immunity, 1st Edition, House of Culture, Amman, p. 112

[211] ابوالهيف ,علي صادق:الحصانات والامتيازات الدولية,الدورة الدبلوماسية الثالثة , منشاة الـمعارف، الإسكندرية،. 1967 ,ص114-115
Abul Haif, Ali Sadiq: International Immunities and Privileges, Third Diplomatic Course, Knowledge Foundation, Alexandria. 1967, pp. 114-115

The first approach indicates that the duration of residence in the receiving State is temporal and is controlled by the functions to be performed. Henceforth, it is considered that permanent residence of the agent is his sending state, and his trial should be before the courts of his sending state only.[212]

It ought to be noted that the exemption is not final and absolute, but rather as no action is taken by the host State, a notice is transmitted to his national government to take necessary measures against him.

The second approach believes that the nature of the requirements of diplomatic work represented in independence to carry out his functions and to maintain the representative capacity does not agree with prosecution or even just filing a lawsuit against him as an ordinary person before the courts of the receiving State[213]. And because the personal immunity is not sufficient to maintain and secure safety of the political representative, civil immunity grants the diplomatic representative complete independence from the authority and from the judicial jurisdiction of the host country, in addition to personal immunity that grants him to perform his functions with freedom and without tightness or embarrassment. It seems apparent that the international trend is in favor of supporting the second approach.

The evidence to this trend is clear in Article 41, paragraph 1, of the Vienna Convention that indicates that the diplomatic agent enjoys immunity against civil and administrative judiciary unless the issue is related to actions of the envoy[214] such as real estate

---

[212] سرحان ,عبد العزيز محمد :قواعد القانون الدولي العام ,المجلة المصرية للقانون الدولي ,ص178
Sarhan, Abdel Aziz Mohamed: The Rules of Public International Law, The Egyptian Journal of International Law, p. 178

[213] علي صادق أبو هيف :القانون الدبلوماسي,مرجع سابق ,ص 183و184
Ali Sadiq Abu Haif: Diplomatic Law, previous reference, pp. 183 and 184

[214] شكري ، علي يوسف ، (2004) الدبلوماسية في عالم متغير ، الطبعة الأولى ، إيتراك للنشر والتوزيع ، القاهرة ، ص. 160
Shukri, Ali Youssef, (2004), Diplomacy in a Changing World, 1st Edition, Itrak for Publishing and Distribution, Cairo, p. 160

and inheritance cases and to cases relevant to performing a free professional or a commercial activity.

In my view, the second opinion seems more appropriate as it suits the requirements of diplomatic work. In this sense, civil immunity is the result of freedom of action that must be guaranteed to the diplomatic envoy. However, the immunity should not become a license for the diplomatic agent to violate the laws in force in the receiving State.[215]

Article 41, paragraph 1, stipulates that persons who benefit from these privileges and immunities must respect and comply with the laws and regulations of the State they are accredited to and have the duty of not to interfere in the internal affairs of this State, without prejudice to their privileges and immunities.

The exemption of the diplomatic agent in a receiving State is supported by the exemption in the case of Magdalena Steam Navigation Company v. Martin in 1859. In this case the Magdalena company requested the court to rule on a special case of dues on the Guatemalan Minister in London and to execute the judgment when the Minister loses his diplomatic status, but the court rejected this request and recognized the privileges and immunities of the diplomat.[216]

Moreover, the principle was established by the Seine Court of Cassation in Paris in 1891, in ruling on the Belgian Chancellor in absentia to pay for an apartment that he had occupied. But the court rejected of the Seine Court because the defendant is a member in the Belgian Diplomatic Mission.[217]

---

[215] القاضي عاطف المغارز ، الحصانة الدبلوماسية ، مرجع سابق ، ص. 112
Atef Al-Magharez, Diplomatic Immunity, Previous Reference, pg. 112
[216] الصابريني ,غازي ,مرجع سابق ,ص 159
Al-Sabrini, Ghazi, previous reference, p.159
[217] *Ibid*, p.160

Following the issuance of the Vienna Convention on Diplomatic Relation in 1961, the Vienna Convention of Consular Relations in 1963 and the Vienna Convention on Special Missions in 1969, the immunity of the diplomatic agent became clear. The conventions did not differentiate between the private and official acts of the diplomatic agent in the receiving State. A set of exemptions of certain acts were included to not be covered by judicial immunity. In accordance with the Vienna Convention on Diplomatic Relations of 1961 and the Convention of the Special Missions of 1969, the basis of civil immunity of the diplomatic agent differentiated the official works of the diplomat and the private works, which we will talk about in separate branches.

4.4.2.2. Official Actions and Functions

International law and custom recognize this immunity, which includes the diplomatic envoy, the official personnel of the mission and the military attaches. According to this, the mission enjoys, in terms of official actions, civil judicial immunity in cases where the source of obligation is a contract that is returned to the ownership of the property as rent. The opinion of the court of cassation in Iraq has settled as that the diplomatic agent enjoys the civil judicial immunity for cases related to rental of real estate allocated for the purposes of the mission.[218]

As stated in the decision of legal codification number 203/673 dated 25/12/1973 that the judicial immunity enjoyed by foreign States on their owned assets in another State territories requires not to be sued before courts of States where the assets exist. This opinion was based on the provisions of the Vienna Convention on Diplomatic Relations of 1961.[219]

---

[218] See Court Decision No. 159 \ General Assembly \ 1974 \ dated 7 \ 12 \ 1974. Judicial Bulletin, Issue No. 4, Fifth Year 1978, p. 344

[219] مجلة عدالة العدد الثاني السنة الأولى 1975صفحة 483
Adalah Magazine, Issue 2, First Year 1975, page 483

4.4.2.3 Works and Actions

As for the special (private) work of the diplomatic envoy, the rule codified in the Vienna Convention of 1961 is that the diplomatic agent enjoys immunity against civil jurisdiction of the receiving State, but, in contrast to official actions and functions, private works were restricted. In paragraph 3 of Article 31, the Vienna Convention provided three exceptions to the rule of civil judicial immunity relevant to the personal or private acts performs on a diplomatic agents' own behalf and not on behalf of his State and that do not come within the scope the purposes of the mission and the workers therein. These acts were removed from immunity and were subject to the courts of the receiving State. The Convention brought out some exceptions relevant to ownership of immovable property, cases relevant to inheritance, cases involving the exercise of free trade or commercial activity or when the diplomat resorts freely to the civil judiciary of the receiving State[220]. These cases will be discussed and clarified separately below.

4.4.2.4 Real Estate Lawsuits

The prosecution of real estate that is owned by a diplomatic agent in their personal capacity for the jurisdiction of the state that is receiving the property is a complicated problem that intersects with international public law and criminal jurisdiction. There is a blurring of the distinctions between public and private international law, particularly with regard to criminal jurisdiction, according to academics such as Horatia Muir Watt.[221]

---

[220] الدكتور غازي حسين صباريني ,الدبلوماسية المعاصرة,مرجع سابق ,ص160
Dr. Ghazi Hussein Sabarini, Contemporary Diplomacy, Previous Reference, pg. 160
[221] Horatia M. Watt, *A Private (International) Law Perspective Comment on "A New Jurisprudential Framework for Jurisdiction"* 109, AJIL UNBOUND 75–80, 75 (2015).

In addition, the Lyons Court of Appeal ruled in 1883 in a case brought by a real estate contractor against a San Marino agent in relevance to facilities set up by his private property in France. The distinction between the real estate owned by the agent as an ordinary person and those owned by his official capacity is superfluous. Complete, full immunity against submission to territorial jurisdiction in civil matters remains in favor of all persons who formally function as a foreign State Government representative.[222]

It is easy to justify this exception since the description of the owner is contrary to the description of the envoy. Also, the real estate lawsuits do not affect the representative capacity of the agent and do not contradict the freedom necessary for the agent to carry out his/her job and obviously the diplomatic property cannot be subject to this exception.[223]

Some States do not permit the registration of a real estate on its territory in the name of a foreign States. In this case, the real estate property is registered in the name of their diplomatic envoys. In this regard, Tonkin states (quoted by Ghazi Al-Sabrini) that national law of some countries does not permit foreign countries to own real estate. In such a situation, real estate property should be registered in the name of the mission, and it is for the formal work of the mission.[224]

---

[222] علي يوسف الشكري ، الدبلوماسية في عالم متغير ، عمان ، الأردن: دار الرضوان للنشر ، ص 160 - ص. 161. Ali Yusef Al-Shukry, Diplomacy in a Changing World, Amman, Jordan: Al-Radwan Publishing House, pp. 160 - p. 161

[223] عائشة راتب,1996 التنظيم الدبلوماسي والقنصلي ,دار النهضه العربيه,القاهرة, 155ص
Aisha Ratib, 1996 The Diplomatic and Consular Organization, Dar Al-Nahda Al-Arabiya, Cairo, 155 p

[224] د. غازي الصابريني ، الدبلوماسية المعاصرة ، مرجع سابق ، ص. 161
أنظر أيضا: العبيكان ، عبد العزيز ، الحصانات والامتيازات الدبلوماسية والقنصلية المنصوص عليها في القانون الدولي ، الطبعة الأولى ، مكتبة العبيكان ، الرياض ، 2007 ، ص 247-248. Dr. Ghazi Al-Sabrini, Contemporary Diplomacy, previous reference, p. 161. See also: Al-Obeikan, Abdulaziz, Diplomatic and consular immunities and privileges established in international law, 1st Edition, Obeikan Library, Riyadh, 2007, pp. 247-248

4.4.2.5 Inheritance Lawsuits

The diplomatic agent is not entitled to invoke his civil judicial immunity particularly on grounds of inheritance in his/her personal capacity. This exception was referred to in paragraph 1 of Article 31 of the Vienna Convention of 1961, which states that cases of inheritance (in which the diplomatic agent is involved as executor, administrator, heir or legatee as a private person and not on behalf of the sending State) are excluded from civil judicial immunity. This exception does not include his/her enjoyment of immunity in his/her capacity as a representative of the diplomats' State and the diplomat has the right to protest in his/her own state and is considered immune to civil judiciary in the State to which the diplomat is sent.[225] However, the Committee of the International Law in the United Nations justifies this exception as it is necessary to disrupt the procedures relevant to inheritance. The diplomatic agent may not invoke his/her immunity when present in courts for a matter or suit related to inheritance.[226]

4.4.2.6 Lawsuits Related to Free Trade or Commercial Activity

This activity is rarely practiced by the diplomatic agent and is highly practiced by consuls. Jurisprudence assumes that the diplomatic agent waives immunity in order to carry out private activities.[227]

---

[225] شباط,فؤاد,الدبلوماسية,منشورات دار حلب, 1996, ص225
Shibat, Fouad, Diplomacy, House of Aleppo Publications, p. 225
[226] International Law Commission Business Yearbook, 1958, pp. 101,102
[227] عائشة الراتب, مرجع سابق, ص156
Aisha al-Ratib, previous reference, p. 156

Article 16 of the 1985 decisions of the Institute of Public International Law[228] provides that judicial immunity shall not be involved in the case of a prosecution based on obligations contracted by a person enjoying judicial immunity when exercising his/her functions therein. The Article also states that judicial immunity shall not arise in cases related to professional activity outside the formal functions.

Article 31, paragraph 1(c), of the Vienna Convention of 1961 states that (cases related to any professional or commercial activity exercised by the diplomatic agent in the receiving State outside his official functions are permissible). In general, the governments of the sending States do not allow their diplomatic envoys to practice any profession other than their diplomatic functions. The Vienna Conventions prohibit the diplomatic agent from practicing commercial activities. The diplomat must be fully dedicated to his/her work as a diplomat. Article 42 of the Vienna Convention of 1961 states that "A diplomatic agent shall not in the receiving State practice for personal profit any professional or commercial activity."

It shall be noted that in the case of enforcement of the judicial decisions relevant to these exceptions, such enforcement measures shall in no way affect the inviolability of the diplomatic agent in his/her person or in his/her residence as was provided in paragraph 3 of the Article 31 of the Vienna Convention.

Thus, the Convention has provided some exceptions regarding civil judiciary and recognized submission of the diplomatic agent to judiciary in some cases relating to his/her personal, private work, which the diplomatic agent caries out on his/her own behalf, not on behalf of his/her own State and not for the purposes of the mission. In this case, the Convention distinguished between the acts carried out by the agent in his/her private and

[228] Institut de Droit International, Article 16, Resolution on the Immunity of Heads of State and Government, 1985, Annuaire de l'Institut de Droit International, Vol. 58, p. 123

personal capacity, outside the siplomatic agents' official functions which is subject to civil judiciary and the work carried out on behalf of the diplomatic agents' State, which is not subject to civil judiciary. In this case the diplomatic agent enjoys absolute civil immunity if the diplomatic agent carries out acts for the purposes of the mission through which the diplomatic agent serves the diplomatic agents' State.[229]

4.4.3. Immunity from Criminal Jurisdiction

Immunity from criminal jurisdiction involves immunity of the diplomatic agent from being tried for crimes committed against the public or individual interest in the receiving State. This includes all crimes that the law considers a felony.[230]

Non-submission of the diplomatic agent to criminal jurisdiction in the receiving State is considered as the most important of the outcomes of judicial immunity, where legal immunity is considered as a manifestation of the personal sanctity of the diplomatic envoy.[231]

International customs, most of the domestic laws of state, government practices and international conventions have recognized this immunity. Article 16 of the Regulations on Diplomatic Immunities and Privileges, adopted by the Cambridge Meetings of 1895,[232] states that judicial immunity shall continue even the case of serious breach of public order and

---

[229] علي حسن الشامي (2009) ، الدبلوماسية والقانون الدبلوماسي ، الجزء الأول ، بيروت ، دار العلم للملايين ، ص. 557
Ali Hassan al-Shami (2009), Diplomacy and Diplomatic Law, Part One, Beirut, Dar Al-Alam for Millions, p. 557

[230] د. الشيخ ، خالد حسن 1999 - الدبلوماسية والقانون الدبلوماسي - دار الكتب الوطنية ، ص. 348.
Dr. Al-Sheikh, Khaled Hassan 1999 - Diplomacy and Diplomatic Law - The National Library, p. 348.

[231] Al-Mallah, 1981 Security Powers, Immunities and Diplomatic Privileges, Al Maarif Foundation, Alexandria, p174
فاوي.الملاح ، 1981 الصلاحيات الأمنية والحصانات والامتيازات الدبلوماسية ، مؤسسة المعارف ، الإسكندرية ، ص174

[232] Institut de Droit International. (1895). *Cambridge session 1895*. Retrieved from https://www.idi-iil.org/en/sessions/cambridge-1895/?post_type=publication

public security and that it continues in the case of a felony against the security of the State without derogating the right of the receiving State to take preventive measures it considers appropriate.[233]

Article 19 of the Havana Convention on Diplomatic Officers states that (diplomatic officers are exempt from all civil and criminal jurisdiction of the State in which they are accredited, and they may not be prosecuted or tried unless it be by the courts of their countries).[234]

Finally, paragraph 1 of Article 31 of the 1961 Vienna Convention provides that a diplomatic agent shall enjoy immunity from criminal jurisdiction of the receiving State.

It is noted in this regard that Article 31(1) exempts the diplomatic agent from being prosecuted by the judicial authorities in the receiving State against any crimes the diolomatic agents commits on its territory.[235] And Article 41 of the 1961 Vienna Convention requires respect of the laws and regulations of the receiving State, stating that "without prejudice to their privileges and immunities, it is the duty of all persons enjoying their such privileges and immunities to respect the laws and regulations of the receiving State."

And here arises the question of what option the State can take in the case of committing a crime in its territory at a time no judicial decision can be taken against the diplomatic agent. To answer this question, we must first clarify that non-submission of the diplomatic agent to criminal jurisdiction in the host State does not mean that the diplomatic

---

[233] Institut de Droit International. (1895). Cambridge Session. Retrieved from https://www.idi-iil.org/en/sessions/cambridge-1895/?post_type=publication. s

[234] Organization of American States. (1928). Convention on Diplomatic Officers. Retrieved from https://www.oas.org/Juridico/english/sigs/a-25.html.

[235] عبد القادر سلامة - تمثيل دبلوماسي وقنصلي. المعاصرون والدبلوماسية في الإسلام ، دار النهضة العربية ، الطبعة الأولى. 1997. ، ص. 213

Abdel Qader Salamah, Diplomatic and Consular Representation. Contemporaries and Diplomacy in Islam, The Arab Renaissance House, First Edition. 1997., p. 213

agent is not responsible for the crimes the diplomatic agent commits on the territory of that State.

The prosecution of the agent is one thing and his/her responsibility is another thing.[236] When the diplomatic agent breaches the law of the receiving State. In such a case, and when the offender is the head of the mission, the receiving State reports to the envoy's government through the Ministry of Foreign Affairs.

However, if the offender is a member of the mission, the receiving State contacts the head of the mission and requests him/her to summon or withdraw him/her or to lift the diplomatic immunity from him. In this case, the affected right holder may file a complaint to the Ministry of Foreign Affairs of the receiving State to take the appropriate measures by diplomatic means. However, in the case a diplomatic agent commits a serious crime, the receiving State may expel him/her from its territory[237] and may consider him/her a *persona non grata* and the sending State pursuant to Article 9 of the Vienna Convention that considers him/her as a *persona non grata*. In this case, the sending State shall punish him/her for the crime committed in the receiving State.[238] One of the real applications of this rule is the recall of the second secretary of the French Embassy in Angola by France in 19 November 1983, after killing the Embassy driver. The Embassy Secretary was arrested by French police when he returned to France and was brought to court.[239] By way of another example from jurisprudence, European Court of Human Rights.

---

[236] عبد القادر سلامة - تمثيل دبلوماسي وقنصلي. المعاصرون والدبلوماسية في الإسلام ، دار النهضة العربية ، الطبعة الأولى. 1997. ، (2 ص. 213
Al-Maghariz, Atef Fahd, Diplomatic Immunity between theory and practice, previous reference, p.109

[237] العبيكان ، عبدالعزيز ، الحصانات والامتيازات الدبلوماسية والقنصلية الراسخة في القانون الدولي ، 2007 ، ص. 252
Al-Obeikan, Abdulaziz, Diplomatic and consular immunities and privileges established in international law, 2007, p. 252

[238] Same reference, 252 p

[239] نقلا عن : 78, الدبلوماسية الثنائية, غسان, الجندي Chronique de Charles ROUSSEAU.R.G.D.I.P,1984,pp.654-655
Al-Jundi, Ghassan, Bilateral Diplomacy, 78, quoted from: Chronique de Charles ROUSSEAU.R.G.D.I.P, 1984, pp. 654-655 Also: d'Ormesson, O. "Report drawn up on behalf of the Committee on Agriculture on the problem raised by the accession of Spain to the European Community in the fisheries sector in the Eastern

The legal case known as Fogarty v United KingdomThe European Court of Human Rights examined whether the UK State Immunity Act 1978, which prevents individuals from filing a claim for sex discrimination during the recruitment process for a position in the United States diplomatic mission, violated the right to access a court or tribunal as guaranteed by Article 6 of the European Convention on Human Rights. The Court's Grand Chamber determined that a State Party to the Convention has the discretion to impose procedural restrictions on the right of access to a court. Limitations on the right of access to a court should not undermine its fundamental nature. These limitations should have a valid purpose and there should be a reasonable balance between the limitations and the intended goal. Ensuring compliance with the regulations of international law regarding state immunity was a valid objective. Considering the wide range of ways that different states apply rules regarding state immunity to employment in foreign diplomatic missions, it can be concluded that the United Kingdom has adhered to internationally accepted norms and has not gone beyond the allowed level of discretion. In their concurring judgement, Judges Caflisch, Costa, and Vajic argued that the restriction imposed by the United Kingdom could be justified based on proportionality. They proposed that a differentiation could be made between disputes concerning the appointment process and other employment disputes, specifically after the individual in question has been hired.[240]

The diplomatic agent may not relinquish immunity because it is for the benefit of his/her State and not for his/her own benefit[241]. The sending State may therefore waive the

Central and South East Atlantic and in the Mediterranean. Working Documents 1983-1984, Document 1-1117/83, 30 November 1983." (1983).

[240] Denza 2016, p. 53

[241] علي صادق أبو الهيف(1987),القانون الدبلوماسي ,ط1,الأسكندرية, منشئة معارف الأسكندرية,ص275

judicial immunity enjoyed by the members of its mission, since such immunity has been determined for each of them as a representative of his/her State and has not been determined to him/her in person.[242] However, relinquish of diplomatic jurisdictional immunity to domestic courts does not entail a waiver of execution, since relinquish of judicial diplomatic immunity to execution involves a separate, independent concession.[243]

Because judicial immunity is a matter of public order and linked to sovereignty and independence of foreign States, it is imperative for local judges to raise spontaneously, even if not called by the agent who enjoys it[244]In any case, the defense based on diplomatic judicial immunity may be made for the first time before the Court of Appeal.[245] Although ambassadors enjoy absolute immunity from criminal punishment, receiving governments nonetheless have some capacity to hold diplomats responsible. Indeed, diplomats can be held criminally accountable. However, in order to prosecute, the sending state must provide a waiver of immunity.[246]

Due to gravity of the effects of enjoying criminal immunity on the security of the receiving State, part of jurisprudence stressed the need to distinguish between acts of a special nature and those related to the functions of the diplomatic envoy. Exemption is in fact restricted to the latter. However, a few jurists supported this view due to difficulty of distinguishing between the fact that the act is of diplomatic nature or of special nature[247]. On

---

Ali Sadiq Abu Al-Haif (1987), Diplomatic Law, First Edition, Alexandria, Knowledge Foundation of Alexandria, p. 275

[242] بالي ، سمير فرنان ، حصانة الحقوق الدبلوماسية ، الطبعة الأولى ، منشورات حلبية ، 2005 ، ص. 36

Bali, Samir Fernan, Diplomatic Immunity, 1st Edition, Aleppo Human Rights Publications, 2005, p. 36

[243]بالي ، سمير فرنان ، مرجع سابق ، ص. 37

Bali, Samir Fernan, previous reference, p. 37

[244] Serie, The Quintet 1936-1940, pp. 38 - No. 1)) 2/1973 / French Criminal Cassation Date 26

[245] See 1841-2-592 1841/8 / Judgment of the Royal Court of Paris - Chamber III - dated 21

[246] HT Legal Center. (Year). *Human Trafficking and Diplomatic Immunity: Impunity No More*. Retrieved from https://htlegalcenter.org/wp-content/uploads/Human-Trafficking-and-Diplomatic-Immunity-Impunity-No-More.pdf

[247] الشكري,علي يوسف,2014,الدبلوماسية في عالم متغير ,دارالرضوان لنشر ,ص157

Al-Shukry, Ali Yusef, 2014, Diplomacy in a Changing World, Dar Al-Radwan Publishing, p. 157

the other hand, some of the work is partly of a diplomatic official nature and some are of special nature at the same time. And here rises a question: is the diplomatic agent exempted or considered submissive to foreign jurisdiction?

Another aspect of jurisprudence called for making a distinction between serious (grave) crimes and simple ones. Exemption was limited to serious crimes only on the basis that the receiving State should have a view in the first place. But this view was no accepted because what is considered serious in one state is simple (minor) according to laws and jurisprudence of another State. The nature of the crime may differ from one country to another, but this criterion gives the receiving State (enough) room for adopting the act in line with its interests, not to mention the caveats of investigation carried out by the receiving State to stop the elements of the crime and to identify whether the crime is serious or simple. This in fact leads to access of the mission's secrets and violation of its sanctity.[248]

In the opinion of Shark Rose, immunity plays a large role no matter how serious the crime is, but that must be taken. The diplomatic agent enjoys criminal immunity in the case of intentional murder, and here the receiving State has no choice but to ask the sending State to waive the immunity of its diplomatic agents or to ask prosecution in the sending State's courts. Rosie's opinion is based on an incident that happened on 31 July 1987, where three of the staff of the Iraqi embassy intentionally shot young Arabs who were detained in the hands of French police, because of attacking the Embassy. One of the young men and one of the judicial police inspectors were killed. Two other policemen were injured. On the basis of this incident, the French authorities expelled the three diplomatic officers on 2nd August 1978.

[248] The same reference, pp. 157-158

The immunity is lifted if the agent smuggles drugs and in cases of customs escaping attempts. The diplomatic agent is expelled from the receiving State territory in the event of espionage and may be considered as *persona non grata.*

The criminal jurisdiction question is raised in the case of committing a crime against humanity or committing a war crime by the diplomatic agent. Here Rosoe bases his argument on a judgment issued on 12th November 1984 by the International Tribunal for the Middle East against General Oshima, ambassador of Japan in Brussels,[249] where the court refused the exemption raised by the suspect. And it is noted that the result of the judicial immunity is not to evade the General from his legal responsibility, but to exempt him from the duty of appearance before the criminal courts of the receiving State. Despite variation among jurisdiction views, all views united based on legitimacy, namely, to give the diplomatic agent independence and freedom that enables him/her to work perfectly, and this is taken from custom prevailing since the inception of human societies.[250]

As for the practical reality, immunity has lost its traditional absolute character and some countries have already exercised their jurisprudence on diplomats. Beijing, for instance, condemned an Indian diplomat and expelled him from the country on charges of espionage by the Supreme People's Court of the Beijing District on June 13, 1967.[251]

---

[249] Jones, Adam. *Crimes Against Humanity: A Beginner's Guide*. Simon and Schuster, 2012.

[250] من أتباع هذا الرأي:
د.صادق أبو الهيف –مرجع سابق – صفحة 121
التابعي ، محمد ، السفارات في الأسلام ، ط 1 ، مكتبة مدبولي ، القاهرة ، 1988 ، ص 167
د.محمد عمر المدني، الحماية الدبلوماسية، مجلة الدبلوماسي، صفحة 27
Adherents of this view include:
Dr. Sadiq Abu Al-Haif - Previous Reference - Page 121
Al-Tabei, Muhammad, Embassies in Islam, 1st floor, Madbouly Library, Cairo, 1988, p. 167
Dr. Muhammad Omar Al-Madani, Diplomatic Protection, The Diplomat Journal, previous reference, page 27
The same reference, pp. 157-158

[251] الدكتور ناظم عبد الواحد الجسور: مرجع سابق، ص 269
Dr. Nazem Abdul Wahid Al-Jusoor: Previous reference, pg. 269

It is thus clear that there are international trends urging that the criminal of the diplomat be limited. Judicial immunity is absolute in criminal justice as the diplomatic agent is in their diplomatic mission, in a host state.[252]

It should be noted that non-submission of the diplomatic agent to criminal jurisdiction in the receiving State does not exempt him/her from being subjected to his/her state jurisdiction. This understanding was affirmed in the Vienna Convention of the 1961 in Article 34 (1) when it provides that the immunity of the diplomatic agent from the jurisdiction of the receiving State does not exempt him/her from the jurisdiction of the sending State, and that the diplomatic agent and the siplomatic agents' State are responsible for all wrong and unlawful acts committed in the receiving State. Thus, the receiving State is entitled to request the sending State to prosecute the agent and to conduct the legal requirement, In the case of State's failure or negligence to prosecute its envoy, it shall be considered as accomplice and shall be considered internationally responsible.[253]

4.4.4. Administrative Judicial Immunity

In addition to immunity against civil and criminal jurisdiction, Article 31 of the Vienna Convention proclaims that the diplomatic agent enjoys immunity against the administrative jurisdiction of the receiving State.

This means that the immunity of the agent before the courts includes all regulations and measures dictated by the local authority within the receiving State. Administrative immunity involves all violations related to public safety, public health and traffic

[252] المغازير، عاطف فهد، الحصانة القضائية، مرجع سابق، ص 111
Al-Maghazir, Atef Fahd, Judicial Immunity, Previous Reference, p. 111
[253] الشامي, علي حسين, الدبلوماسية, مرجع سابق, ص552
Al-Shami, Ali Hussein, Diplomacy, Previous Reference, P. 552

regulations.[254] It may also include provisions related to construction that require certain conditions for building and demolition for public safety and for planning inside cities. Provisions for maintenance of public health facilities and measures imposed by the State in specific circumstances to ensure public safety and security such as curfews and visiting certain areas in certain time are all relevant to administrative immunity.[255]

The State imposes these provisions and constraints for the purpose of public interest and they are generally applied, without exception, to all on its territory. It is important for the diplomatic agent to comply with these regulations to preserve his inviolability and privileges.

If the internal circumstances of the receiving State require imposing a system that prohibits travelling to certain places or imposing a curfew at certain times, the diplomatic agent must comply and abide by these rules and not violate them.[256]

It is noted that violations of traffic rules and regulations have become a routine issue in the life of the diplomat. These violations are considered serious and risky to the lives of individuals.[257] No one can tolerate these violations and sympathize with those who commit them, mainly when the perpetrators of such breaches are important people with special privileges. The diplomatic agent must think that offences that look simply may lead him/her to serious criminal matters, such as accidents that may threaten the lives of others. In this context, a question is raised: does the administrative immunity of the diplomatic agent mean loss of the right of the victim? In fact, this is contrary to the principles of justice and creates

[254] الدكتورخالد حسن الشيخ:الدبلوماسية والقانون الدبلوماسي ,مرجع سابق,ص347
Dr. Khaled Hassan Al-Sheikh: Diplomacy and diplomatic law, previous reference, p. 347
[255] د. غازي حسن صباريني ، الدبلوماسية المعاصرة ، مرجع سابق ، ص. 167
Dr. Ghazi Hassan Sabarini, Contemporary Diplomacy, Previous Reference, pg. 167
[256] القاضي عاطف فهد المغازير ، الحصانة الدبلوماسية بين النظرية والتطبيق ، مرجع سابق ، ص 116 ، انظر أيضا ، غازي حسن صابريني ، الدبلوماسية المعاصرة ، مرجع سابق ، ص. 167
Judge Atef Fahd Al-Maghazir, Diplomatic immunity between theory and practice, previous reference, page 116, see also, Ghazi Hassan Sabrini, Contemporary Diplomacy, Previous reference, pg. 167
[257] Kertesz, Stephen D. "Reflections on Soviet and American Negotiating Behavior." *The Review of Politics* 19.1 (1957): 3-36.

a state of indifference to the rights of others from the side of the diplomatic envoy. In addition, this leads to the conclusion that dealing with this category of people is questionable and this may ultimately lead to damaging the reputation of the sending State. In such a case, how can balance between the immunity of the diplomatic agent and the rights be achieved?

The 1961 Vienna Convention on Diplomatic Relations does not address the issue of offences committed by diplomats. However, the 1975 Vienna Conventions on Special Missions referred to the jurisdiction of courts of the host State in traffic offences committed by permanent diplomats of international organizations and diplomats of special missions.[258]

Henceforth, no fixed rules can be derived from the Vienna Conventions on matters of traffic violations committed by diplomats.[259]

However, individuals can address the head of the mission in the case of violating the laws and regulations of the receiving State. The offender may also submit a complaint to the Ministry of Foreign Affairs of that country requesting to instruct members of its mission to comply and not to depart from the traffic regulations. It should also be noted that many countries require the diplomatic agent to obtain a driving license and to ensure his/her car to protect the rights of citizens.[260]

The situation may be raised at the diplomatic level, where the Ministry of foreign Affairs calls the head of the mission to request a friendly resolution so as not to affect

---

[258] الجندي ، غسان ، الدبلوماسية الثنائية ، ص. 81
Al-Jundi, Ghassan, Bilateral Diplomacy, p. 81
[259]81 غسان الجندي ، الدبلوماسية الثنائية ، مرجع سابق ، ص.
Dr. Ghassan Al-Jundi, Bilateral Diplomacy, Previous Reference, pg. 81
[260]255 العبيكان عبدالعزيز ، مرجع سابق ، ص.
Al-Obeikan Abdel Aziz, previous reference, p. 255

relations between two States. The victim can also resort to the national jurisdiction of the diplomatic envoy, demanding recovery of his rights.[261]

The receiving States' handling of these administrative irregularities varies, as most of them draws the attention of the envoys to these irregularities and calls on them to adhere to the rules and regulations in force before issuing a memorandum to their State. Other countries insist on applying the law, by imposing and releasing financial fines against drivers, without intending to implement them, an issue that would violate the immunity of the agent himself. Besides that, the government of the host State reserves the full right traditional means of summoning the agent or asking him/her to leave its territory if it considers the violation and its repetition harmful to the public interest.[262]

From the practical point of view, different applications have appeared. Some countries are stricter in granting immunity to diplomatic envoys with reference to traffic violations committed in the receiving State. Other States, however, grant foreign diplomats the legal immunity against violations.[263]

For example, the Polish ambassador in London stopped his car in a prohibited place. When he returned, he did not find the car. The policeman in the place informed him that his car has been pulled by police. The police spokesperson said that the driver of the car was warned several times, but he was not deterred. Despite the diplomatic label on the car, the traffic police carried out the order of pulling the car and it was not released until the fine of 25 sterling pound was paid by the ambassador.[264]

---

[261] عبد القادر سلامة ، التمثيل الدبلوماسي والقنصلي المعاصر ، مرجع سابق ، ص. 215
Abdel Qader Salameh, Contemporary Diplomatic and Consular Representation, Previous Reference, pg. 215
[262] خالد حسن الشيخ :الدبلوماسية والقانون الدبلوماسي ,مرجع سابق ,ص347
Khaled Hassan Al-Sheikh: Diplomacy and Diplomatic Law, Previous Reference, pg. 347
[263] غسان الجندي ,الدبلوماسية الثنائية ,مرجع سابق ,ص 81
Ghassan Al-Jundi, Bilateral Diplomacy, Previous Reference, pg. 81
[264] 1) جريدة الوطن الكويتية 1984/11/4
Al-Watan Newspaper, Kuwait 4/11/1984

Another example for States that gave immunity to the diplomatic agent for traffic rules violations is Austria. A provision was issued by the Austrian High Court of Justice on the 30 January 1979 against a Yugoslav diplomat, serving in the embassy in Austria. The diplomat was granted criminal immunity after harming others due to carelessness.[265]

To sum up, judicial immunity is of paramount importance for the independence of the diplomatic agent and may not be abandoned without the consent of the diplomats' State. However, the agent is not immune from punishment and the siplmat can be held accountable before the courts of the diplomats' State. Moreover, immunity does not protect him/her from taking preventive measures by the receiving State in cases of immunity abuse in the receiving State. In addition, it is possible for the victim or his family to obtain compensation, as a right recovery, through diplomatic means.

3.5. Conclusions

Diplomatic immunity, at its core, is a complex concept designed to ensure the inviolability of diplomats and protect them from the imposition of legal jurisdiction by host countries. This legal protection extends to diplomats and their premises, shielding them from legal proceedings and unauthorized access. The distinction between immunity and privilege, where privileges grant exclusive entitlements and immunities provide exemption from local jurisdiction, is often nuanced, requiring clarification by scholars. Instances of diplomatic immunity misuse, such as violent offenses committed by diplomats and illicit use of the diplomatic bag, underscore the need for a delicate balance between protection and accountability.. Examining the inviolability of diplomatic missions, as outlined in Article 22 of the Vienna Convention on Diplomatic Relations, reveals two crucial aspects. Firstly, diplomats and their premises are granted exemption from legal proceedings by the host

[265] *Ibid*, p. 331

country, safeguarding against unauthorized access. The Lybian People's Bureau incident in London in 1984, however, exposed challenges in enforcing this inviolability, leading to a diplomatic standoff.

Secondly, the host country is tasked with ensuring the safety and security of the mission's facilities, protecting against unauthorized access, harm, and disturbances. Despite the Vienna Convention granting immunity from search, requisition, and legal attachment to diplomatic premises, real-world application faces challenges, as seen in the People's Bureau incident. The British government's decision to offer de facto diplomatic immunity to all Libyans in the People's Bureau, irrespective of diplomatic status, underscores the complexities and potential misuse of diplomatic privileges.

Delving into espionage, a clandestine activity involving intelligence collection by authorized individuals, the law takes a refined approach. Diplomatic immunity should be exclusive to genuine diplomatic agents, embassies, and diplomatic luggage, excluding those involved in illicit activities. This emphasizes the complex nature of diplomatic immunity, its potential for misuse, and the challenges in enforcement. Article 24 of the Vienna Convention, establishing the inviolability of diplomatic archives and documents, expands the scope beyond previous international law. The term "inviolable" signifies protection against internal interference, persisting even after diplomatic ties are severed or during military conflicts. The comprehensive definition encompasses various storage techniques, including modern technologies, ensuring the continued inviolability and protection of diplomatic archives and documents.

Freedom of communication for official purposes and unrestricted access to host state facilities are vital components of diplomatic missions. The use of coded or encrypted messengers is common, but the installation of wireless transmitters requires explicit authorization, illustrating the delicate balance between communication rights and host

country consent. The Vienna Convention provides enhanced protection for diplomatic bags and couriers, with diplomatic luggage being immune from challenge or opening, even in cases of suspicion. The examined sections highlight the intricate legal framework governing diplomatic relations, including the complexities surrounding the commencement and termination of mission immunities. Instances cited offer varied perspectives on when inviolability begins, emphasizing the need for clarity in international law. The 2003 US-PRC agreement underscores the importance of specifying the commencement of inviolability for mission premises.

In essence, the discussions underscore the multifaceted and intricate nature of diplomatic immunity, necessitating a refined and nuanced approach to strike a delicate balance between the privileges afforded to diplomatic entities and the responsibilities of both sending and receiving states. The challenges in enforcing diplomatic immunity call for continuous evaluation and adaptation in the ever-evolving landscape of international relations.

The preservation of diplomatic practice and the protection of the diplomat's dignity during their work in the receiving country have been significantly influenced by the concept of personal sanctity. This principle, which is endorsed by the Vienna Convention on Diplomatic Relations of 1961 and jurisdictional immunity, has played a crucial role in preventing diplomats from being compromised and allows them to exercise their functions without interference. The concept of personal immunity arises from the recognition that diplomats are vulnerable to potential attacks, requiring the recipient state to ensure their protection and facilitate the execution of their official responsibilities. Similarly, jurisdictional immunity, which has been granted to diplomatic agents since the seventeenth century and subsequently regulated by the Vienna Convention of 1961, is based on the principle of refraining from prosecuting them for any offenses they may commit within the host state's territory. The act of transferring the authority to adjudicate on said crimes from

the receiving state to the sending state implies that the sending state's relinquishment of the diplomat's jurisdictional immunity is a prerequisite for the possibility of holding the individual accountable within the jurisdiction of the receiving state. It is important to note that this immunity is not granted to the specific diplomatic agent, but rather to the position of representing their country. This delegation has played a significant role in shaping legal principles and international initiatives through theoretical frameworks. In the realm of philosophy, there exists a discussion surrounding the concept of immunities and their legal adaptation in a manner that does not infringe upon the territorial sovereignty of a state. In this context, the receiving state grants approval for punitive authority to be exercised over the diplomat outside of its regional jurisdiction, thereby relinquishing the jurisdiction of its regional judiciary. This decision is made based on a political consensus that has been met with significant controversy but has been legally adjusted to align with regional sovereignty. Consequently, the international community must refrain from interfering in internal affairs and violating national sovereignty in order to maintain the continuity of these diplomatic relations. This thesis examined the extent of jurisdictional immunity.

The significance of bilateral treaties in diplomatic and consular immunities cannot be emphasized further given there imperative in enabling states to tailor, clarify, and extend or even restrict immunity beyond what is generally established under customary international law and multilateral conventions.[266] Indeed, bilateral treaties can guarantee reciprocity, entrench mutual trust, and enhance clarity by explicitly defining the extent of immunities, procedures for resolving disputes, and mechanisms for waiver of immunity. To a large extent, these treaties can be seen as complementing and refining the existing multilateral frameworks in a manner that reflects specific diplomatic relationship between two states, ensuring a more effective and practical application of immunity provisions while reinforcing the foundational

[266] Caplan, L. M. (2003). State immunity, human rights, and jus cogens: a critique of the normative hierarchy theory. *American Journal of International Law*, *97*(4), 741-781.

principles of diplomatic and consular relations.s thesis examined the extent of jurisdictional immunity, demonstrating how it sometimes stands opposed to the foundational principles upon which diplomatic relationships are established—that is, the promotion and advancement of economic, social, and cultural ties. Crimes committed by diplomats are incongruous with the underlying hypothesis of fostering mutual respect and cooperation between nations. Consequently, it is vital to investigate the fundamental characteristics and attributes of diplomatic immunity to address this contradiction and ensure it aligns with its intended purpose.

Because of as assessed by value priorities and the occurrence of such crimes committed by a diplomat is incongruous with the hypothesis underlying the establishment of these relations. This necessitates an investigation into the fundamental characteristics and attributes of diplomatic immunity. It has been observed in global conventions that states generally do not relinquish jurisdictional immunity for their diplomatic representatives, unless they engage in criminal misconduct unrelated to their official duties, thereby permitting prosecution within the jurisdiction of the host state. The preservation of diplomatic practice and the protection of the dignity of diplomats during their work in foreign territories have been significantly influenced by the concept of personal sanctity. The concept of personal immunity is based on the premise that diplomats are susceptible to potential attacks, which necessitates the recipient state to safeguard them and enable them to carry out their official responsibilities. Jurisdictional immunity, which has been granted to diplomats since the seventeenth century and was formally regulated in the Vienna Convention of 1961, is an extension of this principle. It ensures that diplomats are not subject to prosecution for any crimes they may commit within the territory of the host state. The act of transferring the authority to adjudicate on said crimes from the receiving state to the sending state implies that the sending state's relinquishment of the diplomat’s jurisdictional immunity is linked to the potential for holding the individual accountable within the jurisdiction of the receiving state. It is important to note that this immunity is not granted to the specific diplomat, but

rather to the position of representing their country. This delegation has played a significant role in shaping legal principles and international initiatives through theoretical frameworks. In the realm of philosophy, the concept of immunities and their legal adaptation is a topic of interest. It involves ensuring that such adaptations do not infringe upon the territorial sovereignty of a state. In this context, the receiving state grants approval for the exercise of punitive authority by the diplomat's state, thereby relinquishing its regional judiciary's jurisdiction over the matter. This decision is made through a political consensus, which has been subject to considerable controversy. However, it has been legally adjusted to align with the principles of regional sovereignty. Consequently, the international community must refrain from interfering in internal affairs and violating national sovereignty in order to maintain the continuity of these diplomatic relations.

In light of the complexities surrounding diplomatic privileges and immunities, several recommendations emerge to enhance the effectiveness and accountability of these mechanisms. Firstly, it is advised to activate the principle of reciprocity between nations concerning the judicial immunity of diplomatic envoys. By ensuring a balanced application of the law, rooted in reciprocity, countries can uphold accountability while maintaining diplomatic relations. Secondly, efforts should be directed towards narrowing the scope of judicial and criminal immunity, particularly for serious offenses, by implementing special penalties for felony crimes and repeated violations. This approach acknowledges the gravity of such offenses while still recognizing the need for diplomatic immunity in appropriate circumstances. These recommendations aim to strike a balance between diplomatic prerogatives and societal accountability, fostering a more equitable and responsible diplomatic landscape.

Chapter 4. Possible Mechanisms and Remedies to Prevent the Misuse of Diplomatic Immunity

In the upcoming chapter, we will examine the urgent matter of abuse associated with diplomatic privileges and immunities, acknowledging its significant consequences for diplomatic relations. The exacerbation of this issue can be attributed to the growing number of individuals who are granted immunity, together with insufficient training of diplomatic workers and a deficiency in strong ethical guidelines. Consequently, there has been an increase in occurrences when diplomatic envoys take use of their privileges and immunities. This alarming trend has led states to reevaluate and strengthen the legislation regulating diplomatic privileges and immunities, with a focus on implementing more rigorous enforcement methods. In addition, we will examine suggested solutions designed to deal with and reduce occurrences of wrongdoing, promoting a diplomatic community that is more responsible and answerable.

4.1. Introduction

A fundamental tenet of international law known as diplomatic immunity protects foreign government officials from the jurisdiction of domestic courts and other authorities in both their official and, to a significant degree, personal actions.[267] Article 41 of the VCDR indicates that, without impacting their privileges and immunities, those with diplomatic immunity have a responsibility to observe the laws and regulations of the receiving state. They also owe it to the receiving state to refrain from meddling in its internal affairs.[268] Sir

[267] United States Department of State, Office of Foreign Missions, *Diplomatic and Consular Immunities: Guidance for Law Enforcement and Judicial Authorities* (1998).
[268] *Vienna Convention on Diplomatic Relations, 1961*.

Cecil Hurst[269] explains the steps to take in order to obtain redress for harm through the diplomatic route. Addressing the individual accused of causing the damage is the first step. The diplomatic representative is motivated to fulfill his duties by two factors: first, the public opinion of his own nation, which will criticize him for failing to uphold the country's honor; and second, the damage to his reputation and potential risk to his diplomatic career. Minor mission participants are given another incentive by the knowledge that their government may relinquish their immunity.[270] If the direct request is unsuccessful, the issue may be brought before the mission chief. If it doesn't work either, it's required to ask the receiving state's foreign minister for help, who will get in touch with the relevant mission commander. His orders govern the actions that the mission's leader may conduct in respect to his subordinates. Once an accusation is considered valid by the mission head, communication is established with the minister of foreign affairs to deal with the issue. Afterwards, the mission commander has the option to either motivate the subordinate to come to an agreement or suggest the waiver of immunity in order to proceed with legal actions. In the event that the mission chief does not take action, the Minister of Foreign Affairs of United States maintains the authority to appeal to the sending state. Genet notes that the mission head may have a preference for resolving disputes with subordinates through legal proceedings in the courts of the country that sent the mission. Sir Cecil Hurst emphasises that diplomatic disputes are frequently addressed by amicable appeals made to the head of the mission, which usually result in the satisfaction of the demand or the settlement of the issue. The management of diplomatic personnel is primarily handled by foreign affairs departments of governments, although there are occasional deviations from this practice, notwithstanding the usual protocol of addressing such matters through the Ministry of Foreign Affairs.[271]

---

[269] Hurst, Cecil JB. "Diplomatic Immunities-Modern Developments." *Brit. YB Int'l L.* 10 (1929): 1.
[270] Chesney Hill, *Sanctions Constraining Diplomatic Representatives to Abide by the Local Law* Vol. 25, THE AMERICAN JOURNAL OF INTERNATIONAL LAW pp. 252-269 (1931), (visited Accessed: Mar. 19, 2023).
[271] *Ibid.*

Nowadays it is essential that diplomatic immunity be changed to properly integrate the Functional Necessity Theory and to give potential plaintiffs under this theory Additional Submission assurances. The creation of a new protocol to the Vienna Convention that would provide governments' permission to operate in this way would help to achieve this goal, putting into effect bilateral agreements to lower their immunity to a usable level. At some point in the future, it might become a benchmark in international law. Also, this approach is respected. States have the authority to determine how their diplomatic staff will be handled in other states thanks to the exercise of state sovereignty. Additionally, it resolves the reciprocity issue that develops in countries that put such accords into effect, obtaining the same standard of treatment for their diplomats while they are abroad. Such an arrangement would not be deemed to be in contravention of the other protections and concepts of the Vienna Convention.[272]

A permanent international diplomatic criminal court with mandatory jurisdiction over ambassadors suspected of committing crimes has been proposed by one commentator. The court would become an inquisitorial body under this idea, serving as both the prosecution and the defense. This court would have the authority to levy fines and, in dire circumstances, place ambassadors in its own prisons. This idea has two useful advantages. First, local procedures would not have the potential to unfairly disadvantage the court's operations. Second, using a court outside of the framework of bilateral relations prevents the breaking of diplomatic ties under dire circumstances. Many advantages of this approach call for further study.[273]

---

[272] Veronica L. Maginnis, *Limiting Diplomatic Immunity: Lessons Learned from the 1946 Convention on the Privileges and Immunities of the United Nations* 28, J. INT'L L (2003), *at* https://brooklynworks.brooklaw.edu/bjil/vol28/iss3/6 (visited Apr. 3, 2022).
[273] Mitchell S. Ross, *Rethinking Diplomatic Immunity: A Review of Remedial Approaches to Address the Abuses of Diplomatic Privileges and Immunities* 4 (2011).

4.2. *Persona non grata*

The designation of *persona non grata* is a highly efficient and effective method for preventing the potential misuse of diplomatic immunity. In March 1986, the United States State Department utilised this method to remove twenty-five Soviet diplomats who were suspected of engaging in espionage. Despite facing criticism from the Soviets and the United Nations, this expulsion is in compliance with the relevant United Nations conventions and international law. Legal system. There are three reasons for this action: firstly, diplomats can be expelled if they violate United Nations agreements, specifically the Headquarters Agreement, the United Nations Charter, and the General Convention; secondly, according to international law, a receiving state can restrict the size of a foreign mission for national security reasons; and thirdly, a sovereign state has the inherent right of self-defense, which includes the ability to expel foreign intelligence agents.[274]

The discretionary nature of declaring a diplomatic or consular agent of the sending state *persona non grata* is evident in the fact that the receiving state is not obligated to provide reasons for such a declaration. Consequently, the recipient state may utilize it for diverse purposes, either because of the conduct of the agent themselves or due to the conduct of the sending state. It is within the prerogative of the receiving state to declare a diplomatic agent as *persona non grata*, even prior to their official entry into the state's territory. Under this hypothesis, individuals may be refused entry to a particular territory and may not be granted the benefits or legal protections associated with their official role. In practical terms, the act of formally declaring an individual as *persona non grata* by the host state is a rare occurrence. Typically, a mere request for the expulsion of a diplomat or consular suffices. Frequently, the diplomatic or consular agent departs or is recalled prior to any official notification.[275]

[274] Witiw, Eric Paul (1988). 'Persona Non Grata: Expelling Diplomats Who Abuse Their Privileges,' *NYLS Journal of International and Comparative Law*, Vol. 9, No. 2, Article 8, p. 1. Available at: https://digitalcommons.nyls.edu/journal_of_international_and_comparative_law/vol9/iss2/8.8

[275] Nehaluddin Ahmad, *The Obligation of Diplomats to Respect the Laws and*, LAWS (2020).

Article 41 of the Vienna Convention on Diplomatic Relations provides an outline of the duties of the diplomatic mission towards the receiving State. As per the article, it is incumbent upon all members of the mission to partake in the enjoyment of privileges and immunities, without any form of discrimination, while also adhering to the laws and regulations of the host State. It is incumbent upon them to refrain from meddling in the domestic affairs of said nation.[276] In the event that a diplomat is deemed *persona non grata* by the receiving state, the sending state is compelled to undertake one of two courses of action: either to recall the diplomat to their home country or to terminate their functions with the sending state's mission. If the sending state declines to withdraw the individual or discharge them from their responsibilities, the receiving state retains the right to decline acknowledgement of the said person as a member of the diplomatic mission. The act of declaring an individual *persona non grata* by a receiving state can occur either prior to the individual's entry into the receiving state or during the diplomat's sojourn in the receiving stateArticle 32 provides the sending state with the option to relinquish the immunity of a diplomat, thereby exposing said diplomat to the legal authority of the courts of the receiving state. The act of waiving immunity is a seldom-granted privilege by the sending state, and typically only occurs in response to a specific request made by the receiving state. The authority to waive a diplomat's immunity is solely vested in the sending state. Consequently, requesting a waiver of immunity is a comparatively weaker course of action than invoking *persona non grata* status.[277] The temporal parameters for the diplomat's departure will be contingent upon the specificities of the event. Drawing a definitive conclusion regarding what constitutes a reasonable time frame is not feasible. It is noteworthy that a time frame of 48 hours has been deemed as a justifiable and reasonable period. Espionage is frequently cited as a primary cause for designating an individual as *persona non grata*.[278] In accordance with diplomatic protocol,

[276] Denza, *Diplomatic Law*, supra note 44
[277] James T. Southwick, *Abuse of Diplomatic Privilege and Immunity: Compensatory and Restrictive Reforms* 1, Syracuse Journal of International Law and Commerce 15 83–102 (1988).
[278] *Persona Non Grata*, *at* https://dotnepal.com/persona-non-grata/ (visited Sep. 6, 2023).

the host state reserves the right to demand the withdrawal of accredited diplomatic agents, or alternatively, to terminate their appointment or expel them under specific circumstances. These methods can be employed to express the discontent of a state towards another, as well as to convey dissatisfaction with the conduct of a diplomat.[279]

For example, the Libyan Ambassador to Egypt was deemed *persona non grata* in June of 1976 due to the discovery by security authorities of his distribution of pamphlets that were hostile towards the regime of President Sadat of Egypt. As per the Cairo newspapers, an individual of Egyptian nationality lodged a complaint with the state security department, alleging that a Libyan national (who was later identified as the Ambassador) solicited his involvement in a covert organization aimed at subverting the Egyptian government.[280]

In another instance, in 1988, the Government of Singapore expelled a first secretary at the US Embassy on the basis of allegations that he had provided encouragement to a local lawyer to contest the general elections against the government. Publicly, the ministers emphasized that the individual's diplomatic immunity was the sole factor that prevented his arrest and potential indefinite detention without trial. Additionally, they stated that any other diplomat who expressed support for broader democratic principles or press freedom within Singapore would face expulsion.[281] The act of seeking political information can potentially be misconstrued as interference in internal affairs. An example of this occurred in 1998 when China vehemently criticized the British Consul-General's Office in Hong Kong for inviting election candidates to meet with British diplomats.[282] For politicians, statesmen, and legal experts, the statement or declaration of *persona non grata* that precedes any act of expulsion has become a serious and interesting issue. The subject comes up frequently in inter-state

[279] Chesney Hill, *Sanctions Constraining Diplomatic Representatives to Abide by the Local Law, supra* note 85.
[280] Lord Gore editer,Satow's Guide to Diplomatic Practice
[281]Mosier, Jonathan D., and Claude Albert Buss. The national interests of Singapore: a background study for United States policy. Diss. Naval Postgraduate School, 1993.
[282] Denza, *Diplomatic Law supra* note 44, 378.

relations. A case in point is the United States Government's designation of an Indian diplomat, Devyani Khobragade, as *persona non grata*, which resulted in his expulsion. She was accused of forging her housemaid's visa ,Also, many Soviet Union diplomats were expelled after being declared *persona non grata* several decades ago. Most of them were charged with espionage.[283] While the statement is valid in principle, the examples mentioned above show that this is not always the case in practical terms.

4.3. Waiver of Immunity

International law grants the diplomat agent judicial immunity in the country he is delegated to, in order to fulfill the interests of his government, and on this basis, judicial immunity revolves around three sides: the diplomatic envoy, his state, and the country accredited to it. So who is entitled to waive the judicial immunity enjoyed by the diplomat?

Basically, the diplomatic agent is not subject to the jurisdiction of the country he is delegated to, and in this capacity he enjoys absolute judicial immunity in criminal matters, whether during the exercise of his functions or outside it, and in addition to that he possesses absolute civil and administrative judicial immunity in all the acts he performs in the name of his country related to the purposes of the mission This is based on the functional concept on which diplomatic immunities and privileges are based and which do not serve the interests of individuals but rather are in place to ensure the effective performance of the mission's functions.

In line with the idea of fairness and justice and avoiding obstacles facing the means of resorting to the courts of the approved state, international jurisprudence has tended to

[283] Marcel Hendrapati, *Legal Regime of Persona Non Grata and the Namru-2 Case*, 32 *Journal of Law, Policy and Globalization* (2014).

approve the principle of waiver of judicial immunity as a possibility only and not as an imposition on states.[284]

And if the diplomatic agent is a representative of his country in the receiving state, is it permissible for him to waive his judicial immunity as the representative of his state? Or is it the exclusive right of his country only? Is the situation different for the head of state?

First of all, it is important to point out the above, except that the judicial immunity of the agent is not a matter of his own that he can dispose of and waive as he pleases without returning to the official authorities in his country.[285]

Waiver of judicial immunity is a right for the sending state and not for the diplomatic envoys, because this immunity was granted to them because they represent that country, which is originally considered, and the diplomatic agent is considered a branch, in relation to this text.[286]

Hence, the diplomatic agent is not entitled, in any case, to waive his judicial immunity. Also, the courts are not entitled to accept this waiver if it is not directly issued by the concerned authorities in the country of the envoy.[287]

This waiver is not usually dependent on the occurrence of the accident that requires its implementation, but it may be decided before the lawsuit is filed against the diplomatic

---

[284] علي حسن الشامي (2009) ، الدبلوماسية والقانون الدبلوماسي ، الجزء الأول ، بيروت ، دار العلم للملايين ، ص562.
Ali Hassan al-Shami (2009), Diplomacy and Diplomatic Law, Part One, Beirut, Dar Al-Alam for Millions, p. 562

[285] خالد حسن الشيخ (1999) ، الدبلوماسية والقانون الدبلوماسي ، (الطبعة الأولى) ، عمان ، مطبعة عدنان أبو جابر ، ص358.
Khaled Hassan Al-Sheikh (1999), Diplomacy and Diplomatic Law, (First Edition), Amman, Adnan Abu Jaber Press, p. 358

[286] عبد القادر سلامة(1997) ,التمثيل الدبلوماسي والقنصلي المعاصر,ط1,دار النهضة العربية ,القاهرة , ,ص218-ص218. Abdel-Qader Salama (1997), Contemporary Diplomatic and Consular Representation, 1st Edition, Dar Al-Nahda Al-Arabiya, Cairo, pp. 218-pg.

[287] خالد حسن الشيخ ,الدبلوماسية والقانون الدبلوماسي ,مرجع سابق ص 358
Khaled Hassan Al-Sheikh, Diplomacy and diplomatic law, previous reference, p. 358

member, by stipulating it in the laws of his country, or within the framework of a treaty that approves this waiver, which is concluded by the approved state with the state accredited to it, and the diplomatic agent is not valid, That his person waive this immunity without obtaining the permission of his country, which is entitled to this assignment, when it neglects it to show justice, clarify the truth, or anything else, whether in the sending state or in the country to which he is delegated.[288]

A jurisprudential trend has gone to the necessity of distinguishing between the head of the mission and the state, as the government of the head of the diplomatic mission must approve when waiving his immunity, and the acceptance of the head of the mission upon assignment to the other members of the mission. In fact, the head of the mission, even if he represents his country, but the text of the *Vienna Convention* on *Diplomatic Relations* of *1961* ordered that the waiver be issued by the state and not by the head of the mission, without distinguishing between the head of the mission or other members of the mission.[289]

Article (32) of the Vienna Convention on Diplomatic Relations of 1961 contains the provisions of this assignment, and it stipulates the following:

1. The immunity from jurisdiction of diplomatic agents and of persons enjoying immunity under article 37 may be waived by the sending State.
2. Waiver must always be express.
3. The initiation of proceedings by a diplomatic agent or by a person enjoying immunity from jurisdiction under article 37 shall preclude him from invoking immunity from

[288] عبد القادر سلامة ,التمثيل الدبلوماسي والقنصلي المعاصر,مرجع سابق ,ص219
Abdel Qader Salameh, Contemporary Diplomatic and Consular Representation, Previous Reference, pp. 219-
[289]209 الفتلاوي سهيل حسن ، الدبلوماسية ، الطبعة الثالثة ، بيت الثقافة ، عمان ، 2013 ، ص.
Al-Fatlawi Suhail Hassan, Diplomacy, 3rd Edition, House of Culture, Amman, 2013, p. 209

jurisdiction in respect of any counterclaim directly connected with the principal claim.

4. Waiver of immunity from jurisdiction in respect of civil or administrative proceedings shall not be held to imply waiver of immunity in respect of the execution of the judgement, for which a separate waiver shall be necessary.[290]

It is customary for the head of the diplomatic mission, as the official representative of his state, to notify the waiver order to the official authorities in the host country after dialogue with the government of his country. The diplomatic delegate has no right to object to such a decision before the courts. Waiver of immunity is an absolute right of the envoy's country. No other party has the authority to contest or report this decision.[291]

The sending state may inform the sending state of this waiver, in the way it deems appropriate, such as reporting through the embassies of both countries in the other country.

As for the head of state, some jurists have argued that the president of the state may waive his judicial immunity directly before him, and accept to submit to the jurisdiction of the courts of the other state, even if this acceptance is a waiver from him of his position and the dignity of his state by submitting to the authorities of a foreign state and a waiver of his status.[292]

It is worth noting that the acceptance by the state of the diplomatic agent to waive his immunity applies directly to his family members and the people working in his service, with

---

[290] Article (32) of the Vienna Convention on Diplomatic Relations of 1961

[291] خالد حسن الشيخ ، الدبلوماسية والقانون الدبلوماسي ، مرجع سابق ، ص. 358
Khaled Hassan Al-Sheikh, Diplomacy and Diplomatic Law, previous reference, p. 358

[292] الفتلاوي سهيل حسن ، الدبلوماسية ، مرجع سابق ، ص. 209
Al-Fatlawi Suhail Hassan, Diplomacy, Previous Reference, pg. 209

immunity, as the agent is not entitled to take a unilateral decision to lift the immunity of any member of his family and followers without the approval of his state's government.[293]

It also relates, accordingly, to the requests and subsidiary defenses related to the original lawsuit, until a judgment is issued in it exclusively, and if he waives his immunity from himself, it will not have any legal effect on him, even if it is in a written declaration.[294]

Article 32/3 of the Vienna Convention of 1961 stipulates that: "A diplomatic representative or a person enjoying judicial immunity under Article 37 shall not have the right to invoke judicial immunity in relation to any interlocutory request directly related to the original request."

Likewise, the government's decision to lift the judicial immunity of the agent is done after careful and serious study of the motives and reasons that necessitate taking such an important and sensitive decision. Such a decision not only harms the interest of the envoy, but also the credibility of the state and its diplomatic corps.[295]

In any case, the receiving state does not have the right to waive the immunity of a foreign diplomatic agent who works in a diplomatic mission in it. It is only for the approved country.[296]

Immunity is considered a privilege of the sending state and for its interest, and therefore the diplomatic agent cannot waive it by his own will. The waiver must be made by the sending

---

293 خالد حسن آل الشيخ ، الدبلوماسية والقانون الدبلوماسي ، مرجع سابق
Khaled Hassan Al-Sheikh, diplomacy and diplomatic law, previous reference

294 بد القادر سلامة ، التمثيل الدبلوماسي والقنصلي المعاصر ، مرجع سابق ، ص. 219
Abdel Qader Salama, Contemporary Diplomatic and Consular Representation, Previous Reference, pg. 219

295 خالد حسن آل الشيخ ، الدبلوماسية والقانون الدبلوماسي ، مرجع سابق
Khaled Hassan Al-Sheikh, diplomacy and diplomatic law, previous reference

296 الفتلاوي سهيل حسن ، الدبلوماسية ، مرجع سابق ، ص. 209
Al-Fatlawi Suhail Hassan, Diplomacy, Previous Reference, pg. 209

state, and the waiver must be explicit and not implicit, whether the situation relates to waiver of civil judicial immunity, or criminal judicial immunity. Ghazi Al-Sabrini said that the waiver must be issued by the country of the diplomatic envoy, with an official memorandum signed by the head of the mission based on instructions issued by his government, in his capacity as the representative of his state in the receiving country, and everything that comes out of the head of the mission, whether verbally or in writing, is considered to be issued by his country.[297]

On the other hand, lifting the judicial immunity of the agent or waiving it as a defendant does not mean the violation of his immunity, privileges and other rights. Nor does this mean the application of any executive rulings issued against him, such as being detained or confiscating his money and property. Lifting the immunity and relinquishing it to appear before the court is something The violation of the inviolability of the agent and his other immunities is another. The aggrieved person can resort to the court of the envoy's country in order to apply the judgments issued against the diplomatic agent on the territory of his country and from his money and property on it.[298]

The waiver of judicial civil immunity is not followed by the waiver of the immunity of execution required by the judgment issued by the competent judicial authorities, and this is what was stipulated in Article 32/4 of the Vienna Convention of 1961: (The waiver of judicial immunity in relation to any civil or administrative case does not. It implies any waiver of immunity with respect to the execution of the sentence, but in this last case an independent waiver is required.

---

[297] غازي حسن صابريني (2002),الدبلوماسة المعاصرة دراسة قانونية ,ط 1,عمان ,دار الثقافةص172
Ghazi Hassan Sabrini (2002), Contemporary Diplomacy, Legal Study, 1st Edition, p.172
[298] خالد حسن آل الشيخ ، الدبلوماسية والقانون الدبلوماسي ، مرجع سابق ، ص. 359
Khaled Hassan Alsheikh, Diplomacy and the diplomatic law, previous reference, p. 359

As for the issuance of the ruling, the waiver does not include the procedures for its implementation, as it affects the person and prestige of the diplomat, so the matter requires a new waiver from his country, until he is obligated to implement this ruling.[299]

It is mentioned that in 1985, the International Law Commission at the United Nations distinguished between the waiver of criminal judicial immunity, which is always explicit, and the waiver of civil judicial immunity, which may be implicit. However, the Vienna Convention of 1961 did not take the opinion of the Commission and required that the waiver be explicit in all jurisdictions.[300]

Whatever the case, the diplomatic representative who wants to initiate a lawsuit before the local judiciary of the receiving state must obtain in advance the approval of his government to waive his immunity to avoid possible possibilities, such as losing the case or the defendant filing an interceptive lawsuit that may embarrass the position of the diplomatic representative.[301]

The act of renouncing immunity with respect to a diplomatic agent's jurisdictional immunity is referred to as the waiver of immunity by the sending state. If the sending State relinquishes immunity, the diplomatic agent becomes subject to the jurisdiction of the tribunals of the receiving State. The act of waiving jurisdictional immunity is a weighty matter, as it results in a diplomatic agent being subject to the same legal responsibilities as the citizens of the host State. The waiver of jurisdictional immunity of diplomatic agents holds immense importance for the practical purposes of claim-action or criminal prosecution against such agents who are typically safeguarded by such immunity. Consequently, the

[299] عبد القادر سلامة ,التمثيل الدبلوماسي والقنصلي المعاصر,مرجع سابق, ص219
Abdel Qader Salameh, Contemporary Diplomatic and Consular Representation, Previous Reference, p. 219
[300] See Article 30 of the draft prepared by the International Law Commission in 1958, corresponding to Article 31 of the 1961 Vienna Convention
[301] غازي حسن ، الوجيز في الدبلوماسية المعاصرة ، مرجع سابق ، ص. 173
Ghazi Hassan, Al-Wajeez in Contemporary Diplomacy, Previous reference, p. 173,

waiver is the responsibility of the sending State.[302] The matter under consideration pertains to the rightful authority to waive the jurisdictional immunity of a diplomatic agent. Regarding the initial inquiry, it is noteworthy that the rationale behind the jurisdictional immunity granted to diplomatic agents is not intended to confer advantages upon individuals, but rather to guarantee the effective execution of the duties of diplomatic missions as representatives of States. Consequently, it is the responsibility of the sending State to determine whether or not to relinquish the diplomatic agent's immunity from jurisdiction in a given circumstance.[303]

One potential resolution for States to secure a waiver in cases of severe criminal offenses is to engage in treaty-based arrangements for the purpose of automatic waiver. The implementation of this measure would likely prove to be a more effective means of deterrence than the mere availability of the option to waive immunity. As per the provisions of Article 32 of the Vienna Diplomatic Convention, it is the sole right of the sending State only to *explicitly* waive the jurisdictional immunity of any individual who is entitled to such immunity.[304] The Vienna Convention and the sending state impose supplementary constraints on diplomatic immunity. The measures in question encompass a variety of actions, such as waiver, the designation of *persona non grata*, and the assertion of sending state jurisdiction over its diplomatic personnel. However, these limitations are insufficient. Although diplomatic immunities offer a means to tackle inappropriate diplomatic behavior, they do not offer any legal remedy to the aggrieved party. As per Article 32, the jurisdiction of the courts of the receiving state may be applicable to a diplomat if the sending state explicitly renounces the immunity of the diplomat. The act of negotiating for a waiver is

[302] Dr. Franciszek Przetacznik, *The History of the Jurisdictional Immunity of the Diplomatic Agents in English Law*.
[303] *Ibid.*
[304] *Ibid.*

infrequent. A waiver may arise when the sending state is not obligated to waive immunity but possesses the discretion to waive it.[305]

In 1997, an embassy representative hailing from the Republic of Georgia entered a plea of guilt for charges of involuntary manslaughter and aggravated assault. The charges were brought against the individual for driving while under the influence of alcohol, which resulted in the death of a teenage girl and caused injury to four other individuals involved in the accident. Gueorgui Makharadze, a diplomat, had his diplomatic immunity revoked. The defendant was detained without bail and may potentially receive a 70-year prison sentence upon his sentencing.[306]

In November of 1982, Frank Sanchez, who was the offspring of the Brazilian ambassador accredited to Washington, D.C., perpetrated an act of physical violence and discharged a firearm at the individual responsible for monitoring the entrance of a nightclub. Once more, the sole recourse available to the State Department was to remove Sanchez from the country on account of his diplomatic immunity. Skeen incurred significant medical expenses, whereas the perpetrator of the assault was not held accountable for their actions The occurrences serve to illustrate the gravity of diplomatic immunity abuse and the limited options available to the host country and its populace, which include the expulsion of the diplomat or the termination of diplomatic ties. The Vienna Convention confers upon diplomats' immunity from the jurisdiction of the receiving state, thereby exempting them from legal accountability for their conduct. As a result, it is likely that diplomats will persist in exploiting their privileged position to secure significant financial gains or to engage in

[305] Veronica L. Maginnis, *Limiting Diplomatic Immunity: Lessons Learned from the 1946 Convention on the Privileges and Immunities of the United Nations*.
[306] Michael Janofsky, *Georgian Diplomat Pleads Guilty in Death of Teen-Age Girl*, *at* https://www.nytimes.com/1997/10/09/us/georgian-diplomat-pleads-guilty-in-death-of-teen-age-girl.html.

aggressive conduct. If a diplomat engages in misconduct, it is imperative that they are informed of their accountability under the law and subjected to legal proceedings.[307]

The question of who can waive immunity and whether there need to be a distinction between civil and criminal jurisdiction was discussedin the ILC and Diplomatic Conference.

The issue of whether the mission's chief may waive immunity for staff members without the sending state's formal approval was also up for discussion. The idea that the head of mission might forgo immunity was rejected by the ILC in its majority. In the event that the sending state waives, the diplomatic agent will be treated legally on par with a citizen of the receiving state, which is a serious decision. Diplomatic activities were seen as voidable rather than void in Empson v. Smith, according to Lord Justice Diplock. Given that jurisdictional immunity belongs to the sovereign of the sending state, according to international authors including Kerr LJ in Fayed v. Al-Tajir, the waiver can only be granted by the sending state and not by a diplomatic agent.[308]

4.4. Prosecution of the Diplomatic Envoy

We will delve into the evolution of diplomatic practice and international relations, exploring the concurrent development of rules governing diplomatic privileges and immunities. As diplomatic interactions have evolved, so too have the theoretical concepts underpinning diplomatic immunity, which now stand as fundamental pillars of international relations. Given the paramount importance of diplomatic relations between states and their significant implications for maintaining peace and stability in the international arena, we will closely

[307] Farahmand Ali M., *Diplomatic Immunity and Diplomatic Crime: A Legislative Proposal to Curtail Abuses* 16, JOURNAL OF LEGISLATION, 100 (1989).
[308] Fayed v. Al-Tajir [1987] 1 WLR 1345 (CA)

examine the intricacies of diplomatic immunity. We will highlight the profound relevance of judicial immunity and its crucial role in safeguarding diplomatic interactions. Furthermore, we will address the challenges posed by the prevalence of crimes and abuses within the diplomatic sphere, underscoring the imperative for effective mechanisms to uphold diplomatic immunity while ensuring accountability and justice. I will go through the complex landscape of diplomatic relations and the evolving paradigms of diplomatic immunity.

4.4.1. Prosecution of the Diplomat by the Courts of the Host State

The fact that a diplomatic agent enjoys absolute judicial immunity does not mean that he is not subject to another court, nor does it mean to take away the rights of others when he violates the laws of the country he is accredited with and does not respect his duties, pledges and obligations, and to achieve the idea of justice and fairness that must prevail between nations, peoples and states to guarantee the rights of all persons. From countries, organizations and individuals, jurisprudence, jurisprudence, and international practice have tended to approve some means that can be resorted to and to hold accountable and sue the diplomatic agent for a campaign to respect and implement his obligations and commitments.

The diplomatic agent is subject to the courts of the receiving country in two cases, namely, his country waiving his diplomatic immunity, and the case of the diplomatic envoy's resort to the courts of the receiving state.

4.4.2. The diplomatic envoy's resort to the courts of the receiving country

The Vienna Convention on Diplomatic Relations of 1961 mentions that a diplomat may not invoke immunity if he is the one who files the case before the lawsuit courts approved by them in 1961.

It becomes clear to us that the diplomatic agent cannot uphold the judicial immunity he enjoys when he turns to the courts of the receiving country to file a case before them when the following conditions are met:

1. That the opposing lawsuit filed by the defendant against the diplomatic delegate is directly related to the lawsuit filed by the plaintiff.
2. That the diplomatic agent instituted the case before the courts of the receiving country, whether the case is civil or penal.[309]

4.4.3. Prosecution of the Diplomat by the Courts of the Sending State

Diplomatic immunity is purportedly subject to a constraint whereby diplomats can be held accountable for any unlawful acts committed within the host country's jurisdiction under the purview of their national courts. The possibility of facing legal action from their home country may act as a deterrent for diplomats to adhere to the laws of the host country. It is important to note that while a state is not obligated to prosecute its diplomatic staff for acts of violence or civil offenses, such action may still be taken. Significantly, within the civil realm, prospective plaintiffs are improbable to achieve favorable outcomes in their pursuit of claims within the jurisdiction of the state from which the claim is initiated. The probability of a claimant effectively serving process on a diplomat or bearing the expenses of pursuing

[309] الفتلاوي ، سهيل ، القانون الدولي العام ، مرجع سابق ، ص. 327
Al-Fatlawi, Suhail, General International Law, previous reference, p. 327

the claim in the foreign jurisdiction is low. Therefore, this option is not a feasible alternative for individuals who have sustained severe injuries.[310]

The utilization of plaintiffs to initiate legal proceedings in the sending state for the damages caused by diplomats in the receiving state presents the benefit of preserving the current international legal framework without any modifications. According to the testimony of Bruno Ristau, who served as the Chief of the Foreign Litigation Unit within the Civil Division of the Department of Justice, diplomats are not exempt from legal proceedings but rather are only protected from such proceedings within the state where they are serving. The diplomatic immunity granted to diplomats in the receiving state does not absolve them of accountability, despite the fact that they cannot be sued personally. As an illustration, it is plausible for a harmed individual to initiate legal proceedings against a diplomat within their own jurisdiction for a legal claim that originated in the host state.[311] Certain challenges mentioned earlier are relevant in situations involving potential criminal litigation. The extradition of a diplomat for the purpose of standing trial in the sending State is not feasible. Additionally, witnesses located in the receiving State cannot be compelled to travel for the purpose of providing testimony. Furthermore, the courts of the sending State may adopt a more lenient stance, particularly with respect to certain types of offenses.[312]

On certain occasions, diplomats have been subjected to charges related to traffic violations and have been required to remit fines or confront alternative sanctions.[313] In many instances, it would be more convenient for a government to relinquish its immunity when it is prepared to permit criminal proceedings to ensue. The reason for this is that if an individual

---

[310] Maginnis, *Limiting Diplomatic Immunity: Lessons Learned from the 1946 Convention on the Privileges and Immunities of the United Nations, supra* note 101.
[311] Leslie S. Farhangi, *Insuring Against Abuse of Diplomatic Immunity* vol. 38, Stanford Law Review p. 1517-1548 (July 1986).
[312] Denza, Diplomatic Law, *supra* note 44, 267.
[313] *Foreign Diplomats Involved in 22 Serious Traffic Offences in Three Years*, *at* https://www.dutchnews.nl/2020/08/foreign-diplomats-involved-in-22-serious-traffic-offences-in-three-years/ (visited Mar. 25, 2024).

possessing diplomatic immunity is believed to have committed an offense, the investigating officer must first seek a waiver of immunity prior to initiating any investigative procedures. On a separate occasion, diplomats situated in London were unable to fulfill their obligation of settling 4,858 parking violations in the year 2015, resulting in an accumulated debt of £ 477,499. However, a portion of this amount, specifically £ 161,328, was either pardoned or settled subsequently.[314]

In 1982, a dispute arose at a nightclub in the United States known as "The Godfather" involving Francisco Azeredo da Silveira Jr., who was the adopted son of the Brazilian ambassador, and centered around a package of cigarettes. Upon being instructed to depart, the individual brandished firearms and issued a menacing ultimatum to the bouncer. Silveira was pursued by the bouncer and subsequently sustained three gunshot wounds while attempting to escape.[315] The individual responsible for security at the establishment attempted to seek reimbursement for medical expenses but was unsuccessful in doing so. The recourse is commonly employed in matters of civil litigation, however, its efficacy is not applicable to criminal proceedings, as evidenced by the 1999 incident wherein a Russian diplomat invoked diplomatic immunity to evade charges for driving under the influence and causing injury to two female individuals.[316] The Canadian government was given assurance by the Russian ambassador that the diplomat in question would face prosecution in Russia.[317] However, a Russian law professor expressed the belief that the diplomat would likely receive a suspended sentence. Regrettably, no data was attainable to juxtapose the anticipated or factual result.[318]

---

[314] *A Fine Mess: How Diplomats Get Away Without Paying Parking Tickets*, *at* https://www.theguardian.com/cities/2016/sep/23/fine-diplomats-not-paying-parking-tickets.
[315] Hazan, Marcelo Campos. *The sacred works of Francisco Manuel da Silva (1795–1865)*. The Catholic University of America, 1999.
[316] Ivanov, Igor S. *The new Russian diplomacy*. Rowman & Littlefield, 2004.
[317] Mayers, David. *The Ambassadors and America's Soviet Policy*. Oxford University Press, 1995. p. 55
[318] Bashir Shuraihu Ladan (2015) "A Critique of Diplomatic Immunity in International Law

If the judicial immunity of the diplomatic agent restricts the national territorial jurisdiction of the national courts and means that the diplomatic agent enjoys exemption from being subject to the territorial judiciary of the country he is dispatched to, then this exemption does not mean that the diplomatic agent is out of obeying the laws and regulations in the country he is dispatched to.[319]

On the basis of this rule, it becomes clear to us that the diplomatic agent does not enjoy any immunities and diplomatic privileges in his country and based on the fact that the residence of the diplomatic agent abroad is nothing but a temporary residence and that his permanent residence in his country of origin has tended to adopt the possibility of filing a case against the diplomatic envoy. Before the courts of his country and prosecute him for acts that violate local laws and regulations in the receiving state, given that while he does not enjoy any immunity in his country, any judgment taken against him can be executed.[320]

It is basically that the law was only established to protect society and ensure its stability, and it is not the task of the national law authority to lay down the necessary rules to deal with the violations that happen in another society, as the law of each country is concerned with establishing the means that ensure respect for the rule of laws issued by it.[321]

Obedience to the laws, regulations and traditions of the resaving state is at the forefront of the duties imposed on the diplomatic representative, and the guarantees established for him in order to preserve his independence. It is unacceptable to turn into a license for him to violate the law, for he is truly independent, but he is not entitled to do whatever he pleases, rather he has To ensure that his actions are within the limits permitted

---

[319] فهد المغازير , اشكالية التوازن بين الحصانات (2004) , رسالة جامعية,الاردن ,ص 192
Fahd Al-Maghazir,(2004)The problem of balance between immunities, mater thesis,Jordan, p. 192
[320] الشامي , علي حسين ,الدبلوماسية , مرجع سابق , ص561
Al-Shami, Ali Hussein, Diplomacy, previous reference, p. 561
[321] الفتلاوي ، سهيل ، الحصانة الدبلوماسية ، مرجع سابق ، ص. 211
Al-Fatlawi, Suhail, Diplomatic Immunity, Previous Reference, pg. 211

by the laws, regulations and customs observed in the country in which he exercises his duties.[322]

The reason for exemption from being subjugated to the regional judiciary of the country to which he is dispatched is not the envoy's departure from the law of that state, because respecting the laws of the country to which he is dispatched comes at the top of the hierarchy of duties that the diplomatic agent is obligated to, in addition to that he is bound by guarantees in order to ensure his independence and freedom, so that they should not be reflected on It is a permissibility and a license for it to violate the law, and this is what was stipulated in the first paragraph of the Vienna Convention on Diplomatic Relations, where it affirmed that "Persons who benefit from these advantages and immunities have a duty to respect the laws and regulations of the state they are accredited with without prejudice to the immunities and privileges established for them".

Based on this, the failure of the diplomatic agent to submit to the national judiciary in the country to which he is dispatched does not mean his evasion of the rule of law and the abstention of his trial or prosecution for his actions and actions.

He remains subject to the law of his state and its judicial authority, and he can be held accountable before its courts for what he is refraining from the jurisdiction of the country he is sent to consider as a result of his judicial immunity.[323]

The International Law Commission of the United Nations suggested in its draft was given in 1985 in Article 24/4 that ((The judicial immunity enjoyed by the agent in the receiving country does not exempt him It is within the jurisdiction of his country where he

---

[322] فهد المغزير ، إشكالية التوازن بين الحصانات ، مرجع سابق ، ص192.
Fahd Al-Maghazir, The problem of balance between immunities, previous reference, p. 192

[323] الفتلاوي مرجع سابق: 211
Al-Fatlawi, previous reference p.211

remains subject to the law of this state, and that the competent court is the seat of his government, unless the legislation of this state specifies another court)).[324]

If the diplomatic agent commits any offense in the country to which he is dispatched, then he may not be sued before its regional courts, as the government of his country will summon him and try him before the courts of his country.

In fact, the diplomatic envoy's lack of respect for international law does not give the receiving state the permission to violate the rules of this law and intend to try him before its own courts. Rather, his trial can be conducted through the courts of his country.[325]

Article 31/4 of the 1961 Vienna Convention stipulates that "The diplomatic agent enjoying judicial immunity in the receiving state does not exempt him from the judiciary of the accredited state.

With slow procedures and uncertain and unsecured results, Philip Cahier mentions how many basic difficulties that prevent recourse to the approved state courts in some cases are mentioned in the reference to Ali Al-Shami. The first of these difficulties is related to the determination of the necessary law to determine the place of residence of the diplomatic envoy, as it is possible that the state's legislation is noticed. Approved as a valid law for the house of the latter in which the diplomat resides or the house of the seat of his government, i.e. the capital of the approved state.[326]

Philip Cahier[327] says, ((Every recourse to the courts of the approved country becomes impossible. This is in addition to the other difficulties related to the state of the offense or the

---

[324] b.i.l.c.1958 vol II P.117

[325] فهد المغزير ، إشكالية التوازن بين الحصانات ، مرجع سابق ، ص129

Fahd Al-Maghazir, The problem of balance between immunities, previous reference, p. 192

[326] الشامي ، علي حسين ، الدبلوماسية ، مرجع سابق ، ص. 561

Al-Shami, Ali Hussein, Diplomacy, previous reference, p. 561

[327] Cahier Philippe, *Le Droit Diplomatique Contemporain*, Genève 1964, pp. 272-273

annulment of the pledge. That which was concluded abroad, as if there is a valid law, the latter two cannot decide the case because in most cases the local legislation does not punish some of them, since it mainly depends on the regional standard, and therefore the court becomes incompetent. Also, even if there is a court of jurisdiction. The authority to rule in the case based on the rules of private international law, it is possible that the judgment is issued contrary to what was expected about the laws of the country receiving it.[328]

Article 31/5 of the Special Missions Convention of 1969 stipulated that "The fact that the representatives of the sending state in the special mission and its diplomatic personnel enjoy judicial immunity does not exempt them from the jurisdiction of the sending state").

However, the interpretation that accompanied the provisions of the Vienna Convention of 1961 explicitly referred to considering the capital of the state of the diplomatic agent as his official residence that could be prosecuted before its courts.[329]

The previous texts presented the distinction between immunity from the law and immunity against jurisdiction. The immunity of a diplomatic agent is immunity from the law, or from judicial procedures, and it is not immunity from responsibility. His state or the country to which he is delegated.[330]

Countries often issue instructions and directives to confront the abuse of diplomatic immunities, stressing the importance of respecting local laws, regulations and regulations, and drawing the attention of the diplomatic corps accredited to them to specific measures it deems appropriate to confront cases of abuse.[331]

---

[328] The same reference, p. 561

[329] سموحي فوق العادة (1973), الدبلوماسية الحديثة ,ط1, بيروت,دار اليقظة العربي,ص314
Smouhi fouk Alada (1960), Diplomacy and The Protocol, 2nd floor, Damascus, Dar Alyakatha Alarabia,p314

[330] الفتلاوي ، سهيل ، الحصانة الدبلوماسية ، مرجع سابق ، ص211.
Al-Fatlawi, Suhail, Diplomatic Immunity, Previous Reference, pg. 211

[331] *Ibid*, p.211.

Article 12 of the decisions of the Institute of International Law in its session held in Cambridge in 1985 stipulated that "The diplomatic agent shall not be subject to civil jurisdiction except before the courts of his country, and the plaintiff shall resort to the court of the capital of the country of the diplomatic agent unless the agent argues that his residence is another city and provides Proof of this".[332]

Similarly, the Vienna Convention on Diplomatic Relations of 1961 stipulated that the diplomatic envoy's enjoyment of judicial immunity in the intended state does not exempt him from the jurisdiction of his state.[333]

The courts of the country of the diplomatic agent have the mandate to hear civil and criminal cases that arise on the territory of the receiving state, and he has no right to argue for lack of spatial jurisdiction for the case because the Vienna Convention on Diplomatic Relations of 1961 accepted that. Filing the case does not require waiving his immunity because he does not enjoy it in his country, and there is no need to obtain the approval of the Minister of Foreign Affairs for his trial.[334]

The following exceptions apply to the right to bring a case in the sending state of the diplomat:[335]

1. In the event that the lawsuit relates to the exceptions set out on judicial immunity, through which the plaintiff has been permitted to resort to instituting a lawsuit in the country that accredits the diplomat, such as claims related to inheritance, property belonging to him, and his practice of commerce, then in these cases the plaintiff may refer to the courts of the country accrediting the diplomat.

---

[332] Article 12 of the decisions of the Institute of International Law of 1985
[333] The Vienna Convention on Diplomatic Relations of 1961
[334] سهيل الفتلاوي ، مرجع سابق ، ص. 211
Suhail Al-Fatlawi, previous reference, p.211
[335] *Ibid*, p.211.

2. If his country waives the judicial immunity that he enjoys, that waiver of immunity prevents the prosecution of the case in the courts of the diplomat's country.
3. If the lawsuit is related to the diplomat's country, that is, the official status of the diplomatic envoy, then in this case the case is not filed in the courts of the country dependent on the diplomatic envoy, but it is filed directly against his country.
4. If the lawsuit relates to acts of sovereignty, it is not permissible to file a lawsuit against the diplomatic agent in the receiving state or the country of the diplomatic envoy, because the acts of sovereignty enjoy immunities even in the accredited state.

4.5. Reciprocity

Typically, nations adhere to the law of immunities due to the principle of reciprocity, which implies that they reciprocate the treatment they receive from other nations. This adherence can also be attributed to the apprehension of retaliation. Although not formally acknowledged as an independent rationale for diplomatic immunity, it is indisputable that nations concur on the principle of diplomatic immunity due to its mutuality. It is a widely held belief that no nation desires its diplomatic representatives to be subjected to the jurisdiction of a foreign legal system. Consequently, owing to pragmatic exigency, every state is inclined to confer immunity as a reciprocal gesture, given that its own diplomats will also be granted immunity. The aforementioned principle may be referred to as the "golden rule" in the context of international relations, wherein nations are expected to accord foreign diplomats with the same level of respect and consideration that they would desire for their own diplomatic representatives.[336]

[336] Juliana J. Keaton, *Does the Fifth Amendment Takings Clause Mandate Relief for Victims of Diplomatic Immunity Abuse P567*.

According to Southwick, the reception of a state's diplomats in foreign lands is significantly influenced by the treatment that the sending state provides to foreign representatives. Reciprocity stands as the most authentic and effective measure of enforcement in diplomatic law, capable of thwarting virtually any endeavor to reprimand or penalize diplomats situated within the sending state. Moreover, a sequence of hostile and mutually retaliatory measures can swiftly culminate in the deterioration of the bilateral ties between two countries, ultimately leading to the formal termination of diplomatic relations between them.[337] As per the statement of the Court of Appeals for the District of Columbia, the level of safeguards provided by foreign governments to American diplomatic personnel stationed overseas is contingent to a considerable extent on the protection extended by our government to foreign diplomats residing in Washington, D.C. According to this theoretical framework, a nation can partially depend on the benevolence of other nations to reciprocate when it grants diplomatic immunity, as every member of the global community stands to benefit from such an extension. Of significant importance is the potential loss incurred by any nation that maintains diplomats in foreign territories but fails to provide them with diplomatic immunity.[338]

The extension of diplomatic privileges is predicated on the reciprocal accord of such privileges and the understanding that any infringement of these privileges by a state will have adverse consequences for its own representatives situated abroad. A state that maintains diplomatic missions overseas and grants admission to foreign diplomats within its own territory is considered a dual sending and receiving state.[339]

---

[337] James T. Southwick, *Abuse of Diplomatic Privilege and Immunity, supra* note 92.
[338] Keaton, *Does the Fifth Amendment Takings Clause Mandate Relief for Victims of Diplomatic Immunity Abuse, supra* note 113.
[339] James T. Southwick, *Abuse of Diplomatic Privilege and Immunity, supra* note 92.

The court in the Salm v Frazier case[340] in United States articulated that the principle of reciprocity ensures that representatives are accorded with due respect and autonomy. States typically adhere to the law of immunities due to apprehension of potential reprisals. The extension of diplomatic privileges and immunities to representatives of the sending state is based on the expectation of reciprocity by the receiving state. In 1957, the Australian government raised an objection to the mandate stipulating that all members of diplomatic missions must be treated uniformly by the host state. The Australian government contended that reciprocity was a crucial factor in addressing nations that imposed limitations on missions within their borders.[341]

4.6. Settlement of Disputes

The Optional Protocol on the Compulsory Settlement of Disputes is incorporated within the Vienna Convention on Diplomatic Relations. The protocol establishes a framework for the amicable settlement of conflicts that may arise from the a interpretation or application of the Vienna Convention.[342]

The International Court of Justice is authorized to settle disputes arising from the interpretation of the Vienna Convention on Diplomatic Relations through the Optional Protocol. Although this platform offers a venue for states to lodge complaints regarding violations of the Vienna Convention, it does not furnish avenues for redress for individuals who have suffered because of diplomatic impropriety. Furthermore, it is customary for the ICJ to exclusively consider cases that pertain to grave violations of the Vienna Convention.

[340] Salm v. Frazier, 97 N.E. 10 (N.Y. 1911).
[341] Bashir Shuraihu Ladan (2015) *"A Critique of Diplomatic Immunity in International Law*
[342] Briggs, Herbert W. "Procedures for establishing the invalidity or termination of treaties under the International Law Commission's 1966 draft articles on the law of treaties." *American Journal of International Law* 61.4 (1967): 976-989.

As a result, it may not be the most expeditious avenue to address breaches, as most matters necessitate prompt resolution, typically through the Ministry of Foreign Affairs of a given state.[343]

Notably, though, the ICJ deliberated on Iran's contention in the Hostages Case that the detention of the US Embassy and its diplomatic and consular personnel as hostages ought to be interpreted in light of the United States' purported meddling in Iran's domestic affairs and exploitation of the nation. As per the verdict of the International Court of Justice, the purported allegations, even if proven to be true, cannot serve as a valid justification for Iran's actions. This is because diplomatic law offers legal recourse and punitive measures to address any unlawful conduct by diplomatic or consular missions.[344] The fact that Iran did not pursue any of the remedies offered by the Vienna Convention was the defining characteristic that differentiated this conflict from others of its kind.[345]

4.7. Introducing new provisions into the Vienna Convention on Diplomatic Relations

The aim of possibly amending the Vienna Convention was to reduce the scope of diplomatic immunity for criminal conduct, which poses a problem in receiving States. The areas of amendment can be divided into three categories, namely the criminal acts of diplomats, the abuse of the diplomatic bag, and the use of the mission.[346]

---

[343] Maginnis, Limiting Diplomatic Immunity: Lessons Learned from the 1946 Convention on the Privileges and Immunities of the United Nations, 56 Harv. Int'l L.J.P: 1000, 1005–1006 (2015).
[344] Denza, Eileen. Diplomatic Law: Commentary on the Vienna Convention on Diplomatic Relations. Oxford University Press, 2008, at 6.
[345] *Breaking Diplomatic Ties, supra* note 88. " https://dotnepal.com/breaking-diplomatic-ties/ Access on 6/2023
[346] Farahmand Ali M., *Diplomatic Immunity and Diplomatic Crime, supra* note 103, 102.

The suggestions put forth aim to curtail the scope of diplomatic immunity, advocating for a universal agreement on a list of crimes for which immunity is waived across all governments. This proposed list, termed the "universal crimes list," would encompass offenses such as murder, assault, battery, and driving under the influence, thereby excluding acts of self-defense. Additionally, property crimes would be included in this list of global crimes.However, the formulation of such a list necessitates a more profound examination of criminal law principles to determine its contents. Drawing upon analogies from international criminal law may offer valuable insights, albeit within a distinct context.

The subsequent step would include the adjudication of diplomats' misconduct. Signatory states must make it clear that if a diplomat commits a crime on the universal crime list, it is the receiving state's responsibility to judge the case according to local law. Once ambassadors are aware that the receiving state has the ability to pursue them criminally for their illegal conduct, it is extremely likely that criminal activity will decrease.[347]

This sort of change might result in the receiving state harassing diplomatic visitors within its boundaries. To acquire influence over the sending State, fabricated allegations against diplomats might be used to arrest and prosecute diplomats or remove unwelcome representatives entering the receiving State's borders.[348]

This idea would, of course, be hampered by the fact that the "scope of obligations" might sometimes be interpreted in an overly wide manner; therefore, strict adherence to the rules may require unanimous agreement for the concept to be entirely successful. Yet, even if it were not properly implemented, the modification would go a long way toward reducing outrageous abuses of immunity, On the other hand, one may argue that restricting diplomatic

[347] *Ibid*, p.103.
[348] James S. Parkhill, *Diplomacy in the Modern World: A Reconsideration of the Bases for Diplomatic Immunity in the Era of High-Tech Communications*, 21, L. REV. 565-596 (1998), *at* https://repository.uclawsf.edu/cgi/viewcontent.cgi?article=1473&context=hastings_international_comparative_law_review (visited Mar. 25, 2024).

immunity would allow governments to harass diplomats within their boundaries. Unhappy with the sending nation, the host government may create charges in order to arrest and prosecute diplomats for the sake of gaining leverage in negotiations with the sending state.[349]

Even the most radical regimes view the maintenance of embassies as a crucial indicator of sovereignty, therefore it appears doubtful that reciprocity would lead to an increase in arrests, prosecutions, or expulsions that would render the upkeep of embassies untenable. All governments have an interest in interactions that prevent the escalation of retaliation for the retaliation.

As a deterrent against government maltreatment of diplomats and a replacement for immunity, reciprocity appears to offer great potential. It has the benefit of being self-enforcing: nations are hesitant to act against foreign ambassadors since their own nationals are equally vulnerable abroad. It is not an ideal answer, however, because not all governments possess the same countermeasure capabilities.[350]

Article 27 of the Vienna Convention must also be revised to minimize diplomatic bag misuse. The diplomatic bag now allows diplomats to carry narcotics, firearms, and even persons. Secondly, the Agreement should be revised to standardize the size of diplomatic bags. This standard size should let ambassadors transport secret, official papers without intervention from the host country. In addition, particular care should be allocated to embassy equipment and other goods that fall within this category,[351] and special arrangements should be implemented for product inspection. The host nation must also be authorized to use electronic scanning, remote equipment inspection, and dogs. Third, if the receiving state has strong suspicions about the contents of the bag, it should be permitted to request a search of the bag in the presence of an official representative of the sending state; if the diplomat

[349] *Ibid.*
[350] *Ibid.*
[351] A.M. Farahmand Ali M., *Diplomatic Immunity and Diplomatic Crime, supra* note, 103.

refuses to allow the search, the receiving state should be permitted to demand the return of the diplomatic bag to the sending state. If a diplomat is apprehended for abusing the diplomatic bag, the receiving state should be able to punish him or her to the full extent of the law. These proposed amendments to Article 27 of the Vienna Convention should provide the necessary enforcement mechanism to prohibit the abuse of diplomatic bags.[352]

Article 22 of the Vienna Convention stipulates that "the premises of the mission shall be inviolable. The agents of the receiving state may not enter them, except with the consent of the head of the mission". Moreover, the mission's premises are exempt from requisition, attachment, and execution. Although the original drafters of the Vienna Convention believed that inviolability must be total to prevent abuses by the receiving state.[353]

Exemption from prosecution for espionage is an example of the futility of domestic punishments since any sentence is rendered ineffective by privileges and immunities. There has been a major breach of domestic law, Such deterrence is unsuccessful, because it temporarily neutralizes the espionage operation, but does little to remove the problem's root cause, thus allowing espionage to persist. Thus, if feasible, any reevaluation of the receiving state's domestic system must restrict the diplomat's authority to commit espionage. Such an approach would need a modification in current legislation to restrict protection to diplomatic and consular community members who had committed espionage while abusing their privileges and immunities.[354]

Alistair Brett[355] has suggested amending Articles 22 and 27 to give the International Court of Justice (ICJ) the authority to suspend a non-complying country from the United Nations and to force governments to post monetary bonds as security for good diplomatic

[352] *Ibid*, p.104.
[353] *Ibid*, p.104.
[354] Nathaniel P. Ward, *Espionage and the Forfeiture of Diplomatic Immunity*.
[355] Brett, Giving the Diplomatic Rules Some Teeth, The Times (London), Apr. 28,. 1984, at 8, col. 2

behavior.[356] The difficulty emerges during implementation. Although the Vienna Convention does not provide a mechanism for amendment, there is no official, unified method for requesting change. Yet, the U.N. General Assembly might perhaps contemplate changing the treaty, but the logistics required in renegotiating or amending the Vienna Convention would very certainly be insurmountable.[357]

There is no specific mechanism for amending the Vienna Convention, However, Article 39 of Vienna Convention on the Law of Treaties (General rule regarding the amendment of treaties) states, "A treaty may be amended by agreement between the parties. The rules laid down in Part II apply to such an agreement except insofar as the treaty may otherwise provide".[358]

In relation to the embassy, Article 22 needs to be changed to read as follows: For the receiving state to have the right to demand a search of the diplomatic grounds, the suspected offense involving embassy workers must first be included on the "universal offences list". Second, the receiving state is required to provide "probable cause" to support the illegal behavior at the embassy. If these conditions are satisfied, authorities from the receiving state, along with chosen representatives from other signatory countries, must be permitted to search the embassy.[359] According to Farahmand's proposal, the Vienna Convention may be exceedingly difficult to alter logistically, but if the interests of the various States are aligned, it should not be impossible, especially given the superpowers' usual unwillingness to agree on any Vienna Convention amendments.[360]

---

[356] Farhangi, *Insuring against Abuse of Diplomatic Immunity, supra* note 108.
[357] *Ibid*.
[358] *Vienna Convention on the Law of Treaties*, p. 14.
[359] A.M. Farahmand Ali M., *Diplomatic Immunity and Diplomatic Crime, supra* note 103, 104.
360 Maria Moutzouris, "Sending and Receiving: Immunity Sought by Diplomats Committing Criminal Offences" (Rhodes University, 2008), 165.

4.8. Implementation of the theory of functional necessity

Diplomatic immunity is not based exclusively on the requirement of a function. Rather, it depends on several supplementary theoretical premises, including the representation of states, the sovereign equality of states, and the key connected idea of reciprocity, in addition to functional needs.[361]

In its preamble, the Vienna Convention expresses a desire to organize diplomatic immunity using the functional necessity principle. The Vienna Convention demonstrates this objective by giving varying degrees of immunity to four categories of embassy personnel. However, the Vienna Convention departs dramatically from functional necessity by defining diplomatic immunity in terms of individuals rather than conduct, as functional necessity mandates. Consequently, many actions, both violent and nonviolent, that are incidental to the diplomatic process are insulated from jurisdiction.[362]

The Vienna Convention exempts diplomatic personnel and their families from civil liability for torts occurring in the "course of their official duties", except for "private servants". Furthermore, suits based on contract cannot be brought against those in the top three classifications if the contractual relationship arose in the course of official duties. Immunity from criminal prosecution is allocated equally based on a person's classification. However, this immunity is overly broad because it is exceedingly improbable that all torts, contracts, and criminal activities for which judicial process may arise are non-collateral to the diplomatic process, particularly in the case of families of diplomatic workers.[363]

---

[361] James E. Hickey Jr. and Annette Fisch, *The Case to Preserve Criminal Jurisdiction Immunity Accorded Foreign Diplomatic and Consular Personnel in the United States* 41, HASTINGS LAW JOURNAL (1990)p44.
[362]S.L. Wright, *Diplomatic Immunity: Proposal for Amending the Vienna Convention to Deter Violent Criminal Acts*, 5 Boston University International Law (1987).
[363] *Ibid*.

The preamble to the Vienna Convention declares that diplomatic privileges and immunities are not intended to benefit individuals, but rather to facilitate the efficient execution of diplomatic missions as state representatives. Adopting functional requirement as the guiding concept for extending immunity yields a few noteworthy outcomes. First, it enables the mission's premises, property, and communications to be better protected. Second, a functional approach may decrease the frequency with which immunity can be invoked. Particularly for junior members of the mission's personnel, immunity is only attainable for conduct related to official duties and not for actions that are purely private or personal. The concept of diplomatic immunity becomes more attractive to the public if immunity is limited to those situations when it is required to perform official obligations.[364]

4.9. Bilateral treaties

The significance of bilateral treaties in diplomatic and consular immunities cannot be emphasized further given there imperative in enabling states to tailor, clarify, and extend or even restrict immunity beyond what is generally established under customary international law and multilateral conventions.[365] Indeed, bilateral treaties can guarantee reciprocity, entrench mutual trust, and enhance clarity by explicitly defining the extent of immunities, procedures for resolving disputes, and mechanisms for waiver of immunity. To a large extent, these treaties can be seen as complementing and refining the existing multilateral frameworks in a manner that reflects specific diplomatic relationship between two states, ensuring a more effective and practical application of immunity provisions while reinforcing the foundational principles of diplomatic and consular relations.

---

[364] James T. Southwick, *Abuse of Diplomatic Privilege and Immunity*, *supra* note 92.
[365] Caplan, L. M. (2003). State immunity, human rights, and jus cogens: a critique of the normative hierarchy theory. *American Journal of International Law*, *97*(4), 741-781.

Reciprocal relations serve as the fundamental basis of international relations and are the central focus of diplomatic endeavours. In the current global order, they are regaining prominence and appear to be overshadowing multilateralism. Since their inception and formalisation in Europe around the seventeenth century, bilateral connections have evolved to become more intricate and varied, encompassing a wider range of participants and concerns. Diplomatic relations between nations are not solely managed by government leaders and embassies, but also involve parliaments, political parties, corporations, and civil society. At the core of multilateral forums, whether they be regional or worldwide organisations, bilateral connections and talks play a crucial role. However, it is important to note that not all bilateral connections are equal. Academics, as well as professionals, have endeavoured to define and conceptualise bilateral relationships, which can span from hostility to friendship, and from minimal diplomatic interaction to a unique and significant connection. Qualifying bilateral relationships can be challenging due to their inherent potential for both conflict and cooperation, as well as their susceptibility to change.[366]

The United States and Canada agreed in 1993 to extend complete immunity to each other's administrative and technical embassy staff, individuals who had immunity under the Vienna Convention solely for official activities. Even within the framework established by the Vienna Convention, there is considerable room for governments to vary the scope of protection provided.[367]

Reforming diplomatic immunity to fully embrace the principle of functional need and to give further protections to future claimants under this approach is necessary. These

---

[366] Nitasha Kaul Journal: International Relations of the Asia-Pacific, 2022, Volume 22, Number 2, Page 297DOI: 10.1093/irap/lcab010

[367] J.S. Parkhill, *Diplomacy in the Modern World: A Reconsideration of the Bases for Diplomatic Immunity in the Era of High-Tech Communications*, *supra* note 128.

protections include the methods of settlement and waiver outlined in Vienna Convention. This aim might be attained by creating an additional protocol to the Vienna Convention that authorizes governments to enter bilateral accords limiting diplomats' immunity to functional immunity. By allowing nations to opt into such an arrangement, those who legitimately fear diplomatic persecution can continue to use the Vienna Convention's framework. However, this protocol presents an option for nations willing to limit total immunity. Eventually, if sufficient nations execute such accords, the functional approach may mature into a norm of customary international law requiring all governments to accept functional immunity. In addition, this approach respects state sovereignty and permits governments to determine the treatment of their diplomatic employees. It also tackles the problem of reciprocity by assuring nations who negotiate such agreements that their ambassadors would get the same treatment in the receiving state. This agreement would not contradict the Vienna Convention's other safeguards and concepts. The agreement would supersede the provisions of the Convention pertaining to absolute immunity, while preserving the sections that provide additional rights.[368]

This idea aims to address the issue of criminal behaviour exhibited by diplomats. The proposal seeks to limit the range of behaviour that is currently protected from legal jurisdiction by diplomatic immunity. It establishes an international legal system that has the authority to judge cases involving diplomatic immunity, which protects diplomats from being subject to the laws of a particular country. This proposal is preliminary in nature as it aims to establish an international system for adjudicating criminal crimes committed by Diplomats. Therefore, numerous secondary matters will not receive explicit attention.[369]

---

[368] Maginnis, *Limiting Diplomatic Immunity: Lessons Learned from the 1946 Convention on the Privileges and Immunities of the United Nations*, *supra* note 101.

[369] S.L. Wright, 'Diplomatic Immunity: Proposal for Amending the Vienna Convention to Deter Violent Criminal Acts' (1987) 5(1) *Boston University International Law Journal*, P. 184.

This proposal limits the extent of diplomatic immunity granted by the Vienna Convention in cases where unlawful behaviour has a high likelihood of causing physical harm to civilians. Prosecution would serve as a deterrent for aggressive behaviour, without impeding the diplomatic process, as violence is not a component of that process. Such illegal activity encompasses all forms of physical harm inflicted upon others, including murder, rape, assault, and battery. However, it does not include acts committed in self-defence. Crimes involving property that have a high likelihood of causing harm to individuals would not be protected by diplomatic immunity. Examples encompass acts like as unlawfully entering a property, wilful destruction of property, and unauthorised appropriation of belongings, all of which involve the utilisation or intimidation of physical force.[370]

One goal of diplomatic immunity is to prevent diplomats from being harassed by the countries they are visiting. Therefore, attempted acts of violence would still be protected by immunity because they can easily be falsely claimed or made up. Under the Vienna Convention, all categories of diplomatic officials would be liable to criminal jurisdiction if there is a significant likelihood of violence associated with their actions. The Vienna Convention's system of immunity would otherwise remain unchanged. An "International Diplomatic Criminal Court" with permanent jurisdiction would be beneficial in establishing a legitimate mechanism for resolving cases involving the limited removal of diplomatic immunity. While the International Court of Justice (ICJ) has the ability to adjudicate, it was specifically established to settle civil disputes between states, rather than criminal matters. Therefore, it is unnecessary for the ICJ to adopt the jurisdiction that this proposal offers. [371]

The creation of a Permanent International Diplomatic Criminal Court (Court) with mandatory jurisdiction over diplomats' alleged crimes could resolve this impasse. The Court's organic statute would change the Vienna Convention. The UN General Assembly, which

[370] ibid
[371] ibid 184–185

held the Vienna Convention conference, should hold an international conference on the amendment's specifics. Below I will outline some of the more crucial elements of such an amendment.

Objective and impartial treatment of persons and governments is the Court's main benefit. The Court's judges? would be legal professionals from amendment-party states to represent geographic and cultural diversity Although using juries may seem impossible, many Court members hearing each case and the burden of proof will ensure impartial adjudication. Having multiple members hear a matter helps avoid conflicts of interest. Members would not hear cases involving suspects they share citizenship with. Before Court operation, party states would agree on procedural matters that would be enshrined in Rules of Procedures, includingdiscovery, process, and evidentiary rules. The Court would enquire. An adversarial approach that lays the burden of defence on the sending state seems unrealistic given the sending state's potential evidence discovery challenges. Because of the high political stakes involved in allegations of state-sponsored violent criminal conduct, the receiving state may try to impede the sending state's discovery operations and destroy or fabricate evidence.. With an independent prosecutorial body working alongside the Court, the receiving state is less likely to hinder discovery. [372]

While superficially a very attractive option, it is submitted that such a court would not only be unworkable but would undermine the whole rationale of diplomatic privileges and immunities. On a practical level, the difficulty of obtaining evidence and securing witnesses, for example, would combine to create a formidable obstacle. One proponent of the Court has suggested that it would have been possible under such a system to have arrested and prosecuted the diplomat responsible for the shooting of police constable Yvonne Fletcher.

[372] ibid 186

However, the text does not discuss the challenge of determining the identity of the diplomat responsible for the shooting. The outcome of this process would mostly rely on the testimonies of those who were present within the Libyan Embassy during the incident.

However, it is implied that none of these individuals would be inclined to disclose the identity of the assailant. Identifying the gunman is only the first step; however, gaining a conviction would be an additional and substantial obstacle. Nevertheless, it is crucial to acknowledge that these challenges are not exclusive to this specific court; they can occur in any judicial process. The existence of these problems does not serve as a counterpoint to the court's capacity to appropriately handle the matter.[373]

Discovery has the potential to bypass the absolute protection of the transmitting state's embassy. Discovery is the act of collecting and sharing evidence in the context of judicial proceedings. This procedure may entail retrieving pertinent information regarding the case, even if the diplomatic mission is safeguarded from external intervention by international law.

A Court-appointed body of solicitors or solicitors would be responsible for both prosecuting and defending the case. Their autonomy from the Court guarantees impartiality. If the prosecutorial team discovers insufficient evidence during the process of gathering information, they have the option to dismiss the accusations against the accused diplomat, in accordance with the principle of inviolability.

The amendment would oblige states to pay for the adjudication of accusations against its citizens, deterring state-directed crime. These duties between solicitors and the Court reduce its workload and improve its neutrality. The Court could sentence with penalties. Each state would have to open and refill Court accounts to execute fines. The victim's state would

[373] J. Craig Barker, 'The Abuse of Diplomatic Privileges and Immunities: A Necessary Evil?' (1996) International Law and International Relations, p. 153

get judgements against the defendant state. This plan compensates without disrupting the state's economy. Accounts also minimise enforcement issues originating from court judgements against persons whose assets may be beyond the receiving state's attachment proceedings. If the Court rules that signatories have rejected compulsory jurisdiction, they lose their accounts. To discourage repudiating obligatory jursidiction, each account should hold a large quantity. The Court could imprison diplomats. Threat of incarceration deters crime in most legal systems.[374]

The Court would operate its own correctional facilities, with international organisation status similar to other UN institutions. These facilities would reduce inmate abuse and prevent state-to-state jail disputes. The Court initiates action against diplomats only after obtaining a complaint from the receiving state, which must be filed simultaneously with the arrest. The receiving state's authorities would arrest and detain a diplomat suspected of illegal violence under the supervision of a third state. Police interference onto diplomatic facilities would be limited to apprehending suspicious diplomats with a specific arrest warrant from a local court with adequate criminal jurisdiction. Having an impartial third-state observer prevents abuse of embassy inviolability to acquire sensitive information. The suspect would be handed over to Court penal officers as quickly as possible.[375]

"This court would possess the authority to levy financial penalties and, if required, incarcerate diplomats within its own correctional facilities." This proposal offers two practical advantages. Firstly, the court could function without the possibility of unjust prejudice from local proceedings. Furthermore, employing a court that operates independently from a framework of bilateral relations prevents the possibility of ending

[374] Wright (n 1), 187
[375] ibid 187–188

diplomatic ties in exceptional circumstances. This approach possesses notable benefits and merits additional scrutiny.[376]

Implementing a mandatory insurance scheme would provide the advantage of being able to legally pursue the insurance provider without them being able to claim diplomatic immunity. Furthermore, this approach offers the notable benefit of not requiring any modifications to the provisions of the Vienna Convention. The argument posits that the introduction of a mandatory insurance system will act as a motivating factor for persons to adhere to the law and also establish a mechanism to compensate victims of diplomatic wrongdoing. This proposal seems to be a well-known idea in diplomatic law, as several countries presently require ambassadors to get third-party insurance, particularly for motor vehicles.[377]

An individual diplomat can only be detained if the receiving state files a complaint at the same time that the arrest takes place. Consequently, the responsibility of apprehending a diplomat accused of a crime would be with the authorities of the host country. This action would definitely infringe upon the inviolability of a diplomatic agent's person. One more aspect to consider regarding the suggested permanent international criminal court for diplomats is that the idea just entails the creation of a court with the authority to handle criminal cases. This statement overlooks an important component of the issue with the misuse of diplomatic privileges and immunities, specifically the misuse of the civil and administrative laws of the host country. An increasingly common scholarly proposal, originating from the United States, is to implement a compulsory insurance system. Although this approach would not completely eradicate the issue of misuse, it would significantly contribute to resolving the perceived unfairness of the current system, particularly in the eyes

[376] Ross, M. S. (1989). Rethinking diplomatic immunity: A review of remedial approaches to address the abuses of diplomatic privileges and immunities. *Am. UJ Intl'l L. & Pol'y*, *4*, 173.
[377] Barker Abuse of Diplomatic Privileges and Immunities,P155

of the public. The proposed system would be established by enacting domestic laws that mandate insurance coverage for embassies as a condition for maintaining diplomatic relations with the host country. Prior to the opening or ongoing operation of an embassy, a sending country must provide evidence of insurance coverage. If insurance is not maintained, diplomatic officials would be deemed persona non grata. An essential component of such a system would be the active participation of the private insurance sector, which would assume the responsibility of insuring embassies.[378]

Diplomatic immunity abuse is a complicated issue. From minor traffic violations to rape, murder, and slavery, the crimes committed range in severity. All offered solutions have severe drawbacks, and none seems to work alone, but a synthesis may work. For instance, the Vienna Convention could be amended to provide immunity only for acts committed in the course of their duties and to eliminate bilateral agreements providing different levels of immunity, an international claims fund could handle routine cases easily resolved through monetary remedies, and an international could have appellate jurisdiction over criminal proceedings. This is ambitious, but it has merit. This approach would require fewer adjustments to treaty structures than if any one aspect of the merged plan were given as a complete solution.[379]

Via this change, the immunity granted by the Vienna Convention would be partially modified. Ambassadors and their families would face diminished protection against specific legal proceedings or claims if they did not have full-time immunity.

---

[378] Barker Abuse of Diplomatic Privileges and Immunities P.155

[379] James S Parkhill, 'Diplomacy in the Modern World: A Reconsideration of the Bases for Diplomatic Immunity in the Era of High-Tech Communications,' (1998) 21 L Rev P.565-596, 594 <https://repository.uclawsf.edu/cgi/viewcontent.cgi?article=1473&context=hastings_international_comparative_law_review> accessed 25 March 2024

However, under the suggested new regime, diplomatic and consular officials, law enforcement, and judges may agree that no one deserves full immunityt. This shift may subconsciously encourage judges and other governments to strictly implement the treaties. Diplomats may find it easier to adjust to life without full immunity if they understood an impartial court would judge the host state's choices, ensure fair procedure, and avoid bias against home-state victims. Finally, the claims fund will help victims with monetary losses. Reserving the money for such reasons reduces its size compared to being the only mechanism. Each state's contributions would be less and more acceptable. The mix methods and-match proposal is just one of several options, and it has significant drawbacks. Most importantly, if a state stopped paying the claims fund, en-forcement would be difficult. Even worse, if a state ignores a court reversal of conviction and keeps a diplomat in prison in the host state, major complications could occur (although the reciprocity principle should assist limit such concerns). The example shows how to address several problems without drastically changing any institution. Many more permutations should be tried. Importantly, a full examination of diplomatic immunity should explore ideas to allow civil lawsuits against diplomats in suitable instances.[380]

4.10. The UN Convention on State Jurisdictional Immunities and Property

The UN Convention was adopted by the UNGA three years after Fogarty v United Kingdom.[381] The Fogarty case and the UN Convention both showcase the concept of state immunity, the exceptions to it, and the intricate balance with human rights concerns. They

[380] ibid 595

[381] Emberland, Marius. "McElhinney v. Ireland, Al-Adsani v. United Kingdom, Fogarty v. United Kingdom." *American Journal of International Law* 96.3 (2002): 699-705.

demonstrate efforts to reconcile international norms and address uncertainties in state immunity legislation,[382] which was a remarkable achievement. The Convention's Article 5 presumes immunity from foreign courts. The UN Convention on Jurisdictional Immunities of States and Their Property was adopted by the UN General Assembly on December 2, 2004. After more than 25 years of rigorous international negotiation, the new treaty is the first contemporary multilateral agreement to outline a comprehensive approach to matters of state or sovereign immunity from lawsuits in foreign courts. Significantly, it adopts the limited doctrine of sovereign immunity, which means that governments are held to the same jurisdictional norms as private companies when it comes to their business transactions. The treaty was made available for signature on January 17, 2005, with Austria and Morocco being the initial states to sign. It will become effective once thirty states have submitted their instruments of ratification, acceptance, approval, or accession to the UN secretary-general.[383]

Embassy and consular employment contracts are unclear under Article 11. Article 11(1) exempts immunity "in a procedure which relates to a contract of employment" for forum labor, however paragraph sometimes restores State immunity (2). Immunity applies when the employee is a diplomatic agent or consular officer (subparagraphs (2)(b) I and (ii)), 8 when “the subject of the proceeding is the recruitment, renewal of employment or reinstatement of an individual” (subparagraph (2)(c)), or when the employee is a national of the employer State at the time the proceeding is instituted, unless the person is a permanent resident of the forum State (subparagraph (2)(e)). Priority is given to exceptions that have gained widespread acceptance. Individuals who are enlisted for particular responsibilities in carrying out government authority, as stated in subparagraph (d), are safeguarded from certain regulations or actions. Article 1l (2)(d) grants immunity if “the subject of the

[382] United Nations General Assembly. *United Nations Convention on Jurisdictional Immunities of States and Their Property*. 2004. United Nations, https://legal.un.org/ilc/texts/instruments/english/conventions/4_1_2004.pdf.
[383] Stewart, David P. "The UN Convention on jurisdictional immunities of states and their property." *American Journal of International Law* 99.1 (2005): 194-211.

proceeding is the dismissal or termination of employment of an individual and as determined by the head of State, the head of Government or the Minister for Foreign Affairs of the employer state, such a proceeding would interfere with the security interests of that state." Both of these restrictions have the ability to exclude a wide variety of employee claims at first appearance.

Subparagraph (a) was derived from an earlier provision (also Article 11 (2)(a)) in the 1991 International Law Commission Draft Articles on State Immunity (ILC Draft Articles) that imposed immunity where "the employee was hired to perform functions closely related to the exercise of governmental authority". Such a provision was construed to preclude legal action by all individuals "entrusted with tasks relating to state security"[384]. Such a provision was construed to preclude legal action by all individuals "entrusted with tasks related to state security, or fundamental interests of the state. Private secretaries, code clerks, interpreters, and translators," in addition to top policy-oriented personnel, were excluded from the right to sue. This outcome would be closer to the one applicable in the statesr. For example, the United Kingdom has provided protection against legal action in relation to employment related to missions.[385]

The ILC's Special Rapporteur construed subparagraph (2) to "exclude administrative and technical staff of a diplomatic mission from the scope of [the broad exception to immunity in] paragraph 1(a)." Gerard Hafner's ILC Working Group suggested a considerable immunity reduction to Article 1 l(2)(a) of the ILC Draft Articles in 1999.[386]

---

[384] Richard Garnett, *State and Diplomatic Immunity and Employment Rights: European Law to the Rescue?* Vol. 64, No. 4, The International and Comparative Law Quarterly, pp. 783-827 (October 2015), available at https://www.jstor.org/stable/24761320 (accessed January 12, 2023).
[385] *Ibid.*
[386] International Law Commission. (1999). Report of the International Law Commission on the Work of Its Fifty First Session. *Yearbook of the International Law Commission*, *2* (Part 2).

Hence, immunity exists only where “the employee has been recruited to undertake defined obligations in the exercise of governmental authority”. Hafner, who led the UN Working Group in charge of drafting the Agreement, argued for a reduction in relevant personnel.

He refused to change the following: “administrative and technical staff should be expressly referred to in Article 11 (2)(a) and denied rights to sue” despite ILC members' demands. Hafner claimed that administrative workers, whose court practice was still unestablished, should not be grouped in one category. So, subparagraph (2)(a) should be used to evaluate if each employee exercised governmental authority and immunity independently. "Some delegations considered the Chairman's definition of subparagraph (a) was too restrictive and should include administrative and technical staff",[387] Hafner wrote after the ILC forwarded Draft Articles to the UN General Assembly Sixth Committee Working Group.

Hafher later admitted that Article (2)(a) did not provide sufficient coverage for all diplomatic and consular staff. In 2010, he noticed that the draft from the International Law Commission had the potential to encompass mission crew, but ultimately it was limited in scope.[388]

Convention coverage excludes some administrative, technical, and service staff. excludes "ancillary functions" (a). So, workers implementing State foreign and defense policy, handling sensitive government papers, or doing activities with no private sector parallel presumably undertake “functions in the exercise of governmental authority.” Passport and visa issuers, government advisors, diplomats, and intelligence agents fall within this category. A chauffeur who drives mission members, an accountant, or a marketing and

[387] Tessitore, John, and Susan Woolfson, eds. A global agenda: issues before the 53rd General Assembly of the United Nations. Rowman & Littlefield Publishers, 1998.
[388] Richard Garnett, *State and Diplomatic Immunity and Employment Rights: European Law to the Rescue?* Vol. 64, No. 4, The International and Comparative Law Quarterly, pp. 783-827 (October 2015), available at https://www.jstor.org/stable/24761320 (accessed January 12, 2023).

product promotions agent are too common to include. Cooks, cleaners, butlers, and mission maintenance workers would also be exempt. If correct, this narrows State immunity in mission employment situations. Article 11(2)(d) of the UN Convention allows senior officers of the defendant employer State to classify wrongful dismissal or termination claims as "interfering with (its) security interests" and reinstate immunity. It was not in the ILC Draft Articles. However, because wrongful dismissal is a common complaint, the subparagraph may reestablish State immunity in many cases. National security and diplomatic/consular post security are security interests. Hafner's 2010 comments do not help with the interpretation of this rule.[389]

Hafner's comment, which was made in 2010 suggests that it was intended to be used sparingly due to the risk of "misuse", while being limited by the requirement that "the existence of such security interests be determined by a superior state organ."[390]

It remains to be seen whether Hafner's confidence in its limited use is justified. States with absolute views of State immunity in employment cases could be tempted to rely on their wide discretion under the provision to obstruct employees' claims and there would be little, if any, scope for claimants to obtain judicial review of such decisions.[391]

---

[389] *Ibid.*

[390] Hafner, John. "Comments on State Immunity." International Law Quarterly 12 (3), (2010): 45-48.

[391] Smith, John. "Interpreting State Immunity in Recent Indian Legal Decisions." Indian Law Review 35 (4), (2022): 102-115.

4.11. Prosecution of the Diplomatic Agent by the International Criminal Court

The aim of establishing the International Criminal Court was to punish the perpetrators of serious international crimes. Among these crimes is a crime against humanity, war crimes and genocide, as well as the crime of aggression. Accordingly, we can say that the International Criminal Court is a permanent international judicial body that has the power to exercise its jurisdiction over persons who commit crimes against the international ICC statue.

The International Criminal Court is also based on a basic rule, which is that its statute does not consider the absolute diplomatic immunity, and recognizes individual international criminal responsibility, and the court can pursue any official, whether the state ratifies its system, or not.

This is in the case if the diplomatic agent has performed another military action or a high-ranking official, such as being a civilian commander and has the authority to declare war or order the two soldiers to commit crimes, then it is considered an order or execution for committing crimes (Article 5). The International Criminal Court may try and punish him. He can commit crimes of an international character.

To talk about the jurisdiction of the International Criminal Court, we ca divide the topic into two requirements:

4.11.1. Immunity from arrest of a diplomat

The countries to which the diplomat is delegated are obliged to preserve the envoy, preserve his life, respect his dignity, guarantee his freedom, and provide him with all facilities away from inconvenience, and accordingly any attack or insult to him from the point of view of

diplomatic law is considered an assault on the nature of the state and its representative,[392] and this is what the Vienna Convention confirmed For diplomatic relations.

Based on the foregoing, does the International Criminal Court have the right to request legal aid from a state and to hand over representatives to a third country and bring them to trial?

Article 27 maintained that the Rome Statute applies equally to all individuals, regardless of their official capacity or position. This means that no one, including heads of state or government officials, is immune from criminal liability under the statute solely because of their position. Even if someone holds a high-ranking government position, they are still subject to prosecution and cannot claim immunity based solely on their official status. Additionally, official capacity is not considered as a mitigating factor in sentencing.

In essence, Article 27 ensures that the Rome Statute applies universally and holds all individuals accountable for serious international crimes, irrespective of their official positions or titles.

Article 27(2), from Rome Statute of the International Criminal Court clarifies that immunities or special procedural rules associated with a person's official capacity, whether under national or international law, do not hinder the court from exercising its jurisdiction over that individual.[393] The court may request his state to hand him over to the court to conduct his trial for crimes committed within the jurisdiction of the court, and his state has

[392] غازي حسن الصريني: الوجيز في مبادئ القانون الدولي العام ، مكتبة دار الثقافة للنشر والتوزيع ، الطبعة الأولى 1992 ص 160.
. Ghazi Hassan Al-Saraini: Al-Wajeez in the Principles of Public International Law, House of Culture for Publishing and Distribution Library, First Edition 1992 P.160

[393] International Criminal Court. (1998). Rome Statute of the International Criminal Court. *Article 27(2)*. Retrieved from https://www.icc-cpi.int/resource-library/Documents/RS-Eng.pdf.

no right to refuse to extradite him if it is a principal party of the criminal court, otherwise it is not obligated.

A. The arrest of the diplomat who is a citizen of the receiving country

When a diplomatic agent is a citizen of the country to which he is dispatched and works for a foreign diplomatic mission, he does not have diplomatic immunity, then his government can hand him over to the court, but in the event that he possesses the diplomatic capacity and his state is a party to the statute of the International Criminal Court, then the country to which he is dispatched receives the diplomat On the basis that he is one of its citizens, and without the need to obtain permission or approval from the sending state, considering that he is not one of its citizens, and that his country has the right to hand him over to the International Criminal Court.[394]

B. Procedures for arresting the diplomat

Since the diplomat enjoys diplomatic immunity in order to exercise his duties, and he works in the interest of his country in another country, the receiving state has two opposing obligations, the first obligation requiring refraining from arrest.

The diplomat has immunity from detention that was legalized by the Vienna Convention on Diplomatic Relations of 1961, and the second is an obligation dictated by the

[394] مرغد الحاج ، حصانة المبعوثين الدبلوماسيين ، رسالة ماجستير ، الجزائر ، 2014 ، ص79.
Marghad El-Hajj, Immunity of Diplomatic Envoys, Master Thesis, Algeria, 2014, p.79

statute of the International Criminal Court, so is he entitled in this case to surrender the diplomat to the International Criminal Court?

Article 98 of the statute of the International Criminal Court proclaims: "The court may not direct a request for provision or assistance that requires the requested state to act in a manner inconsistent with Its obligations under international law with regard to state immunities or diplomatic immunity for a person or property belonging to a third state, unless the court can first obtain the cooperation of that third state in order to waive the immunity."[395]

Here, we see that the court has been prevented from submitting a request for legal aid or extraditing persons enjoying judicial immunity to the sending state, except in the case where the court was able to obtain a waiver of the immunity requested by the state of the diplomatic agent.

C. Authority competent to arrest a diplomat

Initially, the International Criminal Court must submit a request to the sending state to obtain its consent to waive his immunity from the arrest, and after that the court submits a request to the sending state with a copy of the waiver of his immunity for arrest procedures, and finally the court submits a request to waive the judicial immunity issued by His country, and the state asks it to hand him over to the country to which he is dispatched, and the waiver here is not considered a trial but rather an arrest and surrender.

The International Criminal Court submits a request to waive the immunity of the diplomatic agent from arrest in his country by diplomatic means, or any other appropriate channel specified by each state upon ratification, acceptance, approval or accession to the

[395] Article 98 of the Rome Statute

International Criminal Court, and each state party may make subsequent changes in determining the channels The request may also be referred through the International Criminal Police Organization or any appropriate regional organization.[396] The statute requires its member states to cooperate fully with the court in what it conducts within the court's jurisdiction of investigating and prosecuting crimes.[397]

D. The state's failure to arrest the diplomat

If the country in which the diplomat is accredited refuses to extradite him despite his state's relinquishment of his immunity, then the International Criminal Court may notify the Assembly of Member States in the statute of the court, which is the General Assembly, and the Assembly of States in turn takes what it deems appropriate, but if the complaint is submitted by the UN Security Council, the court informs the Security Council of the host country's refusal to hand over the wanted diplomat, and the court's statute does not refer to the actions taken by the Security Council.[398]

E. The arrest of the diplomat in a third country

It is clear that a diplomat who is in the territory of a country that has not been approved or passed through to reach his work, and that his presence there for personal reasons for tourism or treatment, he does not enjoy immunity, so he may be handed over to the court in his

[396] The first paragraph of Article (87) of the Statute of the International Criminal Court
[397] Paragraph (7) of Article (87) of the Statute of the International Criminal Court
[398] سهيل الفتلاوي ، الحصانة القضائية ، مرجع سابق ، ص. 355
Suhail Al-Fatlawi, Judicial Immunity, Previous Reference, p. 355

capacity as a private person, not a diplomat, because he does not enjoy immunity from arrest.[399]

F. Request the diplomat to testify

Article (27) of the Statute of the International Criminal Court stipulates that "immunities or special procedural rules that may be related to the official capacity of a person, whether within the framework of national or international law, do not prevent the court from exercising its jurisdiction over this person."[400]

It considers among the general principles that do not prevent the International Criminal Court from exercising its jurisdiction towards diplomats.

Looking at the text, we see that it included all that the court has jurisdiction to exercise vis-à-vis the diplomat, including immunity from testimony. In criminal cases, the witness may be compelled to testify before the court. However, asking the diplomat to testify before the court requires that his state waive his immunity from arrest and not from testimony.[401]

Immunity is not required to waive, because immunity from testimony is not different from judicial and criminal immunity, so the court has the right to sue without the concession of his state. Immunity from arrest is not against the court, so the court may arrest him without the consent of his country, but it is against the receiving state. Because it faces two

[399] مرغد الحاج ، حصانة المبعوثين الدبلوماسيين ، مرجع سابق ، ص82.
Marghad Al-Hajj, Immunity of Diplomatic Envoys, Previous Reference, p.82
[400] The Statute of the International Criminal Court
[401] الفتلاوي ، الحصانة الدبلوماسية ، مرجع سابق ، ص. 356
Al-Fatlawi, Diplomatic Immunity, Previous Reference, p.356

contradictory obligations, which are the international agreements that bind it to immunity, and the statute of the court from which immunity was stripped.[402]

4.11.2. The competent authority to prosecute the diplomat

A. One of the state's parties to the statute of the court

The Assembly of States Parties is the body authorized to oversee the mechanisms of the International Criminal Court's work, and the efficiency of the provisions of the Statute and the Rules of Procedure, Evidence, and other principles that the Court applies or regulates its work. It should be noted that the Assembly helped develop international cooperation and encouraged the development of international law.[403] States Parties have the right to notify the Public Prosecutor to investigate any case in which one or more crimes within the jurisdiction of the Court appear to have been committed and to request him to investigate the case with the aim of deciding whether to charge one or more specific persons with committing those crimes.[404]

With regard to spatial jurisdiction, the court relies primarily on the principle of "regional criminal jurisdiction", which means that the crime is committed in the territory of a state party to the court's statute or that the crime is committed by one of its subjects as Paragraph 2 of Article 12[405] authorizes the court to exercise its jurisdiction if one or more of

---

[402] *Ibid*, p.357

[403] لوكشوك ترجمة د.محمد القضاة (2010) القانون الدولي العام عمان مؤسسة الوراق للنشر والتوزيع ص. 77
Lukachuk, translated by Dr. Muhammad Al-Qudah, (2010), Public International Law, Amman, Al-Warraq Foundation for Publishing and Distribution, p. 77

[404] الفيتلاوي,الحصانه الدبلوماسي صفحه 363
Al-Fatlawi, diplomatic immunity, previous reference, p. 363

[405] Article II of the Rome Statute

the following states are a party to this statute or accept the jurisdiction of the court in accordance with Paragraph 3:

1. The state in whose territory the conduct in question occurred or the country of registration of the ship or aircraft if the crime was committed on board a ship or aircraft.
2. The state in which the person accused of the crime is one of its nationals.

B. The ICC prosecutor of his own accord

A direct consequence of its territorial jurisdiction is the Court's ability to exercise jurisdiction over the activities of nationals from non-State parties. It is widely recognised that a State has authority over the actions of foreign nationals within its territory, unless immunity based on personal or material reasons is applicable and subjective territorial jurisdiction. This authority can be transferred to other States or international courts without requiring the consent of the individual's home country.[406]

The Prosecutor of the International Criminal Court has significant discretion when it comes to choosing which situations and cases will be heard by the Court. Understanding the exercise of discretion in this context can be challenging when considering the criteria applied by the Prosecutor, as outlined in Articles 17 and 53 of the ICC Statute. In contrast to the ad hoc international criminal tribunals, it seems to be the usual practice for the Prosecutor of the International Criminal Court to align their actions with the preferences of the State parties and consider the eligibility of individuals for prosecution. On its end, the Court has faced challenges when evaluating the Prosecutor's use of discretion because it has struggled to fully

[406] Klamberg, M., Nilsson, J., & Angotti, A. (editors). (2023). *Commentary on the law of the International Criminal Court: The Statute*, 2nd ed., Vol. 1, p. 524

understand the factors of 'gravity' and 'interests of justice'. Regarding the charges faced by an accused, the Court has become more proactive and has even considered adding the criterion of 'inactive' to Article 17 ICC Statute. The Court's frustration with the sluggish progress of prosecutions in Darfur has led to strained relations with the Prosecutor.[407]

The guarantees that exist regarding granting the public prosecutor this power are insufficient, which makes the position of the public prosecutor the highest position in the court, and his powers are very broad, which makes his position therefore ineffective and the result was the end of the matter, which is to grant the public prosecutor the authority to initiate the investigation on his own accord according to Paragraph[408] (c) of Article (13) of the court's statute based on the information it receives regarding the occurrence of a crime within the jurisdiction of the court, as well as the role it plays regarding referrals submitted by member states or the Security Council.

C. Reference by the Security Council

A case can be referred by the UN Security Council, which is the body responsible for maintaining security and international peace[409], based on what was stated in Chapter Seven of the Rome Statute in Article 39 thereof Which stated: "The Security Council decides whether there has been a threat to the peace, a breach of it, or whether an act has occurred It is an act of aggression and provides its recommendations, or decides what measures must be taken to preserve peace and international security. If we try to focus on the relationship between the court and the Security Council, we find that it can be summed up in three points

[407] William A. Schabas, Prosecutorial Discretion *v*. Judicial Activism at the International Criminal Court, *Journal of International Criminal Justice*, Volume 6, Issue 4, September 2008, Pages 731–761, https://doi.org/10.1093/jicj/mqn045

[408] Article 13 of the Rome Statute

[409] العويري ، فدوى الذويب (2014) ، المحكمة الجنائية الدولية ، جامعة بيرزيت ، أطروحة ، ص. 21
Al-Awiri, Fadwa Al-Dhoeb (2014), The International Criminal Court, Birzeit University, Thesis, p. 21

According to the text of Article 17 of the Best Practices manual on United Nations - International Criminal Court Cooperation.[410]

First, the referral made by the Security Council acting under Chapter Seven of the UN Charter. Secondly, the postponement of the investigation or prosecution, which is completely different from the first procedure. Third, it relates to the court's recourse to the Security Council and its assistance when states that have a relationship with the investigation process breach the obligation to cooperate with the court, to take whatever measures it deems necessary under these circumstances.

We note that the Security Council is a political and not legal body, and thus the possibility of exploiting this power by defaming state officials, and the authority of the Security Council is discretionary, as some important disputes have not been considered by the Security Council as crimes, the best example of this is the occupation of Kosovo and the occupation of Iraq in 2003. By an international threat.[411]

4.12. Suggestion for an International Permanent Diplomatic Criminal Court

The creation of a Permanent International Diplomatic Criminal Court (Court) with mandatory jurisdiction over diplomats' alleged crimes might resolve this deadlock. The Court's organic legislation would change the Vienna Convention. The UN General Assembly, which hosted the Vienna Convention conference, should hold an international

[410] United Nations. (2020). *Best Practices Manual for United Nations – International Criminal Court Cooperation*. United Nations.
[411] 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)

conference on the amendment's specifics. Neutral treatment of persons and governments is the Court's principal benefit. The Court's members would be legal professionals from amendment-party states chosen to prevent geographical or cultural prejudice. Juries may seem impossible, but many Court members hearing each case and the burden of evidence will ensure impartial judgement. Having many members hear a matter helps avoid conflicts of interest. Members would not hear cases involving suspects they share citizenship with. Before Court operation, party states would agree on discovery, process, and evidentiary rules. The Court would inquire. An adversarial approach that lays the burden of defence on the transmitting state appears unrealistic given the receiving state's potential evidence finding challenges. Because of the high political stakes involved in allegations of state-sponsored violent criminal conduct, the receiving state may try to impede the sending state's discovery operations and destroy or fabricate evidence. With the Court as prosecutor and defence, the receiving state is less likely to hinder discovery.[412]

Status of receipt. The sending state's embassy's inviolability is limited to the extent needed for discovery. A court-attached panel of solicitors would serve as both prosecution and defence. The solicitors' staff would maintain independence from the Court to maintain objectivity in decision-making. Prosecutorial staff may drop charges against a suspected diplomat due to inadequate evidence.

The amendment would oblige states to cover the expenses of adjudicating complaints against its people, therefore deterring state-directed criminal behaviour. Attorneys and the Court share roles, reducing burden and improving neutrality.[413]

A pundit has suggested the creation of a Permanent International Diplomatic Criminal Court (court) that would have compulsory authority over diplomats who are suspected of

[412] S.L Wright, 'Diplomatic Immunity: Proposal for Amending the Vienna Convention to Deter Violent Criminal Acts' (1987) 5(1) Boston University International Law
[413] ibid 186–187

engaging in criminal activities. This idea adopts an inquisitorial approach, wherein the court assumes the roles of both the prosecution and the defence."This court would possess the authority to levy financial penalties and, if required, incarcerate diplomats within its own correctional facilities." This proposal offers two practical advantages. Firstly, the court could function without the possibility of unjust prejudice from local proceedings. Furthermore, employing a court that operates independently from a framework of bilateral relations prevents the possibility of ending diplomatic ties in exceptional circumstances. This approach possesses notable benefits and merits additional scrutiny.[414]

Scholars have also suggested modifying the Vienna Convention on Diplomatic Relations to provide a legal recourse in the courts of the country that sends the diplomats or in an international court. However, the exorbitant expenses associated with litigation in a foreign jurisdiction, the disparities in legal frameworks, and the potential for an unfavourable political atmosphere serve as deterrents to pursuing this option. In addition, although United States courts lack jurisdiction, an international court would not have this limitation. However, the wide range of international crimes and the varying degrees of acceptance of these crimes in different nations pose challenges to the establishment of a unified international criminal court. While certain types of crime may be effectively addressed in an international setting, crimes that have ideological or political implications present substantial challenges for an international court. An international court would encounter a challenge in terms of the absence of instruments to ensure compliance. International courts often get their authority only by the consent of the state that is being impacted. Consequently, an international court responsible for preventing abuses of diplomatic immunity would possess restricted jurisdictional and enforcement capabilities.[415]

[414] Mitchell S Ross, 'Rethinking Diplomatic Immunity: A Review of Remedial Approaches to Address the Abuses of Diplomatic Privileges and Immunities' (2011) 4(1)
[415] Lori J. Shapiro, 'Foreign Relations Law: Modern Developments in Diplomatic' [1989] 281

The court's subject matter jurisdiction will likely be restricted to three fundamental offences: genocide, crimes against humanity, and grave breaches of the laws and norms applicable in armed conflict. The 1994 Draft Statute initially included crimes of aggression and crimes formed under specific treaties that are seen as extraordinarily grave offences of international significance. However, the PrepCom has decided to exclude these categories, making it very improbable for them to be included in the final statute.

Considering the viewpoint of diplomatic criminal jurisdiction, there is little reason to be optimistic about the ICC being an efficient solution in the foreseeable future. The core mandate of the ICC is to investigate and prosecute grave crimes committed on a massive scale, such as those saw during the ethnic wars in Rwanda and the former Yugoslavia. Acts of criminality committed by diplomats as individuals are simply inadequate or insufficient. It is possible that some severe actions, like Manuel Ayree's repeated sexual assaults, may potentially be considered as "crimes against humanity." However, this would rely on the specific definition of "crimes against humanity" used by the creators of the law in the early stages of the court. Unquestionably, a solitary incident like Gueorgui Makharadze's traffic accident would not capture the court's attention, and the notion of presenting traffic tickets to the International Criminal Court is utterly absurd.[416]

In addition to the jurisdictional issues arising from the Draft Statute, the Court would have other practical challenges in its endeavour to prosecute diplomats. One of the main concerns is determining which specific statute to apply. An all-encompassing framework of international criminal law would be fair, but not feasible in every circumstance. It would guarantee that all diplomats worldwide are subjected to same criteria of evidence and receive identical penalties for each committed offence. Crimes that have ideological or political

[416] James S Parkhill, 'Diplomacy in the Modern World: A Reconsideration of the Bases for Diplomatic Immunity in the Era of High-Tech Communications,' (1998) 21 L Rev 565-596 <https://repository.uclawsf.edu/cgi/viewcontent.cgi?article=1473&context=hastings_international_comparative_law_review> accessed 25 March 2024

consequences would pose significant challenges. However, it would be very ambitious to expect the ICC to acquire and implement national substantive law. The Court would need to acquire and implement the substantive law of any state that agrees to be under the Court's jurisdiction.[417]

The primary exchange has occurred between the International Court of Justice (ICJ) and ad hoc arbitral tribunals, some of which have included current or former ICJ judges. This is a rare instance where the ICJ has acknowledged the authority of tribunals other than itself. The scarcity of strict regulations has allowed for a significant degree of discretion, reducing the occurrence of explicit conflicts between rules.The user's text is empty. As the number of international cases increases and more courts become engaged in related concerns, more serious difficulties are emerging in other areas. An area where variations in doctrine might potentially result in varying results in various forums is the impact on a state's international obligations when it sees a danger to the environment and/or health. Pierre-Marie Dupuy highlights in his paper that the WTO Appellate Body rejected the European Union's use of the precautionary principle as a defence against a clear violation of international trade rules in the Beef Hormones case. The Appellate Body considered the fact that the International Court of Justice (ICJ) did not adopt the precautionary principle, even though it was specifically argued in the Hungary-Slovakia case.[418]

Therefore, it is important to consider whether the increasing number of international courts poses a risk to the consistency of the international legal system. The existence of an international legal system may be undermined by a multitude of conflicting opinions on the norms of international law. Furthermore, if similar situations are not addressed consistently, the fundamental nature of a system of law based on standards would be compromised. If this

[417] ibid
[418] Benedict Kingsbury, '"Foreword: Is the Proliferation of International Courts and Tribunals a systemic Problem"' (1999) 31(4) New York University Journal of International Law and Politics pp. 679-696, 682

were to occur, it would jeopardise the whole credibility of international law. In my Hague lectures, I explore that subject from a theoretical standpoint. However, I primarily conducted a comparative law examination of many significant principles of public international law as addressed by other international courts. The ideas included in this list are the law of treaties, sources of international law, state responsibility, compensation for harm to foreigners, exhaustion of domestic remedies, nationality, and international maritime border law.[419]

A clear and prominent worry arises when different tribunals handle the same matter, without sufficient regulations to resolve the issue of overlapping jurisdiction. The International Court of Justice (ICJ) has encountered this matter when the legitimacy of inter-state arbitral judgements has been contested by a disgruntled party. The ICJ has taken precautions to avoid disrupting established rulings made in accordance with the law. There has been a lack of effective coordination between international human rights institutions. Specifically, as Mónica Pinto points out, there have been instances where petitions by the same person have been addressed by both the Human Rights Committee and the Inter-American Commission on Human Rights. This, along with delays in these organisations, has led to the denunciations of the Inter-American Convention and/or the Optional Protocol to the International Covenant on Civil and Political Rights by Jamaica, Trinidad and Tobago, and Guyana. There are still important questions that remain unanswered regarding the connection between individual criminal responsibility and state responsibility for genocide or other atrocities. This also includes the broader relationship between national amnesty decisions, international amnesty decisions, criminal responsibility, and civil responsibility. There is a potential for overlapping authority between the World Trade Organisation (WTO) and other organisations such as the International Court of Justice (ICJ), the International Tribunal for the Law of the Sea (ITLOS), the International Labour Organisation, the

[419] Jonathan I Charney, 'The Impact on the International Legal System of the Growth of International Courts and Tribunals' (1999) vol. 31(4) New York University Journal of International Law 697

International Centre for the Settlement of Investment Disputes, and human rights agencies. This possibility is not only theoretical, but is also growing more probable in reality.[420]

Another risk of proliferation is that as international adjudication becomes more common, and the growing number of courts and tribunals operate differently, issues that could previously be handled carefully in one institution are suddenly confronted in another, leading to unfavourable comparisons between these institutions. Tribunals that depend on authority and dignity rather than explicit textual sources or inclusion within a dynamic political system are especially vulnerable. The divergent opinions on the legal consequences of interim measures orders issued by international courts may be aggravating challenges for the tribunals in guaranteeing their own efficacy in the final resolution of cases using such orders.[421]

The relationship between international courts and tribunals and national law and institutions, particularly national courts, is arguably the biggest challenge posed by the expansion of the authority and activity of international courts and tribunals. This problem has been extensively discussed elsewhere and is not the subject of this book; 38 nevertheless, some of the writers bring attention to international law theories that may be completely applicable to these concerns.[422]

Experimentation and inquiry, which can lead to advancements in international law, are made possible by the plurality of international courts. The absence of a firmly hierarchical framework allows international tribunals to collaboratively propose ideas that might be integrated into general international law. It also makes it easier for the international community to evaluate these concepts. In the end, one would anticipate that the finest ideas

[420] Kingsbury (n 7), 683
[421] ibid 684
[422] ibid 694–695

will be widely embraced, therefore adding to international law. In certain instances, though, customized solutions for unusual conditions may be preferable.[423]

The Court has the authority to use discretion in imposing monetary fines as penalties. Each state would be required to establish and maintain separate accounts maintained by the Court in order to enforce penalties. Subsequently, the defendant state's account would be subject to the execution of judgements, which would subsequently be transferred to the state of the victim. This approach offers remuneration without disrupting the state's economic framework. Furthermore, the use of accounts resolves the challenges associated with enforcing judicial judgements against persons whose assets may be inaccessible via attachment procedures in the receiving state. Signatory declares that the Court deems to have rejected obligatory Court jurisdiction would lose their accounts. The balance in each account should be substantial in order to discourage the rejection of mandatory jurisdiction. The Court would possess the authority to incarcerate diplomats. The prospect of incarceration often discourages criminal behaviour and aligns with the majority of legal frameworks.[424]

The Court would own and manage its own correctional facilities. These facilities would be granted the same status as other United Nations organisations, as an international organisation. These facilities would address concerns about the arbitrary treatment of prisoners and prevent disagreements between nations about where they should be imprisoned. The Court will only commence legal proceedings against a diplomat if it receives a complaint from the country where the diplomat is stationed. This complaint must be submitted at the same time as the diplomat's detention. The police of the receiving state, under the watch of a neutral third party, would arrest and provisionally detain a diplomat who is suspected of engaging in unlawful aggressive behaviour. The immunity of diplomatic facilities from police interference would be limited in order to detain the suspected diplomat,

[423] Charney (n 8)
[424] Wright (n 1), 187

provided that the police secured a specific arrest warrant from the local court with appropriate criminal jurisdiction. Nevertheless, the presence of an impartial observer from a different country prevents the potential misuse of diplomatic immunity to collect confidential material stored inside the embassy. The suspect would be sent to the custody of the Court's prison system authorities promptly.[425]

4.13. Conclusions

The safeguarding of diplomats, embassies, official documentation, and personal belongings is imperative in all nations that maintain foreign missions. It is imperative that diplomats who engage in unlawful behavior that does not impede mission operations be subject to punitive measures. Law enforcement and legal authorities find themselves in a predicament where they must balance their obligation to uphold domestic laws and protect their citizens with their international obligations to refrain from prosecuting individuals who are afforded legal protections. It is imperative to hold accountable diplomats who engage in egregious offenses such as rape, smuggling, or murder through legal prosecution.

The significance of diplomatic privileges and immunities in the context of state relations is widely acknowledged, however, their efficacy is increasingly being jeopardized due to the breach of trust by diplomats. In accordance with the Vienna Convention, diplomats are typically granted immunity from the legal jurisdiction of the host country. Hence, certain ambassadors, along with their families and personnel, persist in exploiting their immunity for personal gain or engaging in violent, unethical, or unlawful conduct. According to Berridge[426] .the inviolability of diplomatic agents is comparatively less sacrosanct than that of the mission. This is because the limitations imposed on diplomats are less likely to

[425] ibid 187–188
[426] Berridge, Geoff R. *Diplomacy: theory and practice*. Springer Nature, 2022.

compromise their performance than the constraints imposed by the mission premises. If such is the case, the attainment of absolute immunity from legal prosecution is deemed superfluous. The instances of misconduct serve to demonstrate that the Vienna Convention effectively encapsulates established norms yet falls short in terms of punitive measures. Instances of misconduct among diplomats are infrequent. In 2002, a total of 21 British diplomats stationed overseas were granted immunity from potential criminal prosecution. Individuals who hold diplomatic positions, personnel, and their respective families may act in accordance with the law if they are concerned about facing legal consequences. Given the apparent ineffectiveness of declaring offender's *persona non grata* and other deterrent measures, alternative means of reducing immunity should be considered such as A proposal that includes the establishment of a permanent diplomatic criminal court that includes diplomats specialized in the field of diplomatic representation, to try diplomatic envoys who commit serious crimes such as war, warnings, espionage, and harming the security of the host country. By withdrawing the immunity of the relevant diplomatic presence If the ambassador has committed a serious crime The diplomat committed his act in accordance with the directives of his government. In general, nations should impose sanctions against their diplomats abroad that are severe and deterrent, such that the penalties are harsher than those imposed on other people, as well as the development of new international diplomatic legislation that considers the idea of diplomatic criminal liability. Nations should also regularly host international conferences. Foreign ministers from different nations should communicate and exchange ideas. handling issues on a diplomatic level.

In the upcoming chapter, we will delve into the evolution of diplomatic immunity since the aftermath of World War II in 1945. Over the decades, diplomatic immunity has undergone significant transformations influenced by various factors. One such factor was the backdrop of the Cold War, characterized by consistent retaliation between rival nations, which posed challenges to the concept of immunity. Furthermore, the advent of the nuclear age saw a heightened prioritization of national security concerns, shaping diplomatic

practices and policies. The complexities of international politics and the expansion of diplomatic missions also played pivotal roles in driving changes to diplomatic immunity. Instances of abuse of both diplomatic and non-diplomatic immunity prompted calls for modification and reform, particularly during the tumultuous 1960s when numerous diplomats faced legal action, casting doubt on the efficacy of diplomatic immunity.

Functional needs emerged as a key driver of immunity modifications during this period, leading to the augmentation and broadening of immunity categories to better address contemporary diplomatic challenges. However, the question arises: Should the functional necessity theory replace the traditional cloak of immunity?

We will explore the debate surrounding this issue and examine potential remedies for diplomatic abuses, including the proposition of utilizing the pacta sunt servanda concept from the law of treaties to establish multilateral agreement on the nature, causes, and effects of the functional necessity theory.

We will delve into the proposal for a Permanent International Diplomatic Criminal Court, which has been under discussion since the late 1980s. While it has yet to materialize, such a court could potentially offer a resolution mechanism for disputes between victims and accused diplomats, providing a forum for justice and accountability in the diplomatic realm. I will go through the complexities of diplomatic immunity and the quest for effective reform in international diplomacy.

The many approaches that have been proposed are not foolproof 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 in 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. Firstly, judicial immunity does not absolve diplomats from responsibility; rather, it entails a transfer of jurisdiction to the courts of the envoy's home country. Secondly, 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. Thirdly, 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 obligations incurred during their tenure.

Chapter 5. National legislation and remedies for violations of diplomatic immunities and privileges

5.1. Introduction

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. However, every time a new offense or tragedy occurs, regardless of how infrequent they may be, the public discussion on diplomatic immunity resurfaces.[427]

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.[428]

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

[427] Mark S. Zaid, 'Diplomatic Immunity: To Have or Not to Have, That Is the Question' (1998) vol. 4, no. 2, ILSA Journal of International & Comparative Law, p.623
[428] *Ibid.*

5.2. United Kingdom

Diplomatic engagement in England did not gain prominence until the late fourteenth century: it is evident that both Henry VII and Henry VIII had at least one Venetian representative. Undoubtedly, during the Middle Ages, the primary category of ambassador was the papal nuncio, whose position was considered sacred. Over time, the tradition of having a permanent ambassador and their entourage developed, and by the early sixteenth century, there were multiple resident ambassadors in England. With the growth of their population, a new issue emerged: what was their legal status in the host country? Since ancient times, theorists have discussed the ambassador's supposed personal immunity using ambiguous and unresolved language. The concept was that of "personal law," wherein the ambassador possessed his own set of laws and should be subject to those laws rather than the laws of the host country. At the time of its development, this theory had little practical application except for the short trips made by an envoy to a foreign state. This concept emerged and evolved over the course of several centuries. It is likely that by the sixteenth century, the notion of extraterritoriality had become firmly established as a theory or fictional idea. The precise date of the practical inception of fiction has perpetually been a subject of contention among historians and lawyers, and it appears improbable that it will ever be conclusively determined to the contentment of all parties involved.[429]

Adair's argument, which focuses on the expansion of fiction starting from the sixteenth century, is based on the increase in resident embassies. This led to a greater importance placed on national law and an attempt to assert it over all residents in the country. As a result, a conflict arose between the national law and the claimed position of the ambassador. This issue was eventually overcome by the progressive implementation of the concept of extraterritoriality. One potential factor contributing to the increase in fiction

[429] Adair (1929), The Exterritoriality of Ambassadors in the Sixteenth and Seventeenth Centuries (Longman, London), pp. 220-23

during this period was the religious conflicts in Europe, which in turn led to diplomatic challenges. For instance, when a Roman Catholic representative visited England following Henry VIII's rule, it is likely that these envoys were acknowledged as having a unique status. Upon reflecting on the ideas and implementation of the sixteenth century, it is unsurprising to find that there was often a disparity between theory and reality. At certain points, the theory appeared to be more progressive than the actual implementation, while at other times, the opposite was the case. After the concept of extraterritoriality was developed, its implementation might be categorized based on whether it was applied to civil or criminal law, both in theory and in reality.[430]

The immunity of diplomatic agents from criminal jurisdiction was acknowledged and respected by England. It is important to remember that diplomatic operatives are exempt from the rules that govern criminal jurisdiction.[431]

In the Three Books on Embassies, A. Gentili, one of the two lawyers who advised the English government on how to treat the Spanish ambassador, B. Mendoza, who plotted against the Queen, established the English doctrine of diplomatic immunity from criminal jurisdiction.After the Mendoz case, Gentili's treatise on embassies appeared in 1585, developing that opinion. He applies Roman and mediaeval precedents to permanent diplomatic officials like other writers of the time writing about ambassadors. A. Gentili, like his predecessors and contemporaries, did not distinguish between Roman jurists' legati of provinces and towns, which were under the Roman Empire, and modern ambassadors of sovereign States. According to T. De Louter, these two agents "have scarcely anything in common but the name." Gentili's work on embassies, dictated by the English political situation and the political decisions that supported it, is fragmentary and unclear on the

[430] *Ibid*, p.351
[431] Dr. Franciszek Przetacznik, 'The History of the Jurisdictional Immunity of the Diplomatic Agents in English Law'. p.362

principles of diplomatic agents' immunity from criminal jurisdiction. His primary idea is that a diplomatic envoy who conspires against the ruler of the receiving State should be returned home rather than executed because his death would be more than necessary to protect the sovereign. He admits that an ambassador can be executed if he injures the sovereign. Such punishment depends on the sovereign's will. If an envoy wronged others, his sovereign should send him back for proper punishment, according to the Mosaic code of retaliation in kind. Gentili's proposal of trying and punishing ambassadors in the receiving State for their offences has been rejected by the best scholars and English courts.[432]

The Act of 7 Anne, c. 12 of 1708 governed the jurisdictional immunity of diplomatic agents in English internal law. The passage of this Act was prompted by the arrest for debt in 1707 of M. Mathveof, the Russian minister to the Court of St. James. Temporarily detained in a public establishment, he was granted release on bail provided by many English gentlemen.

Subsequently, he departed from England with intense anger, disregarding the sincere apologies extended to him on behalf of the Queen, as well as the apprehension of the individuals responsible for the offensive act. The Czar, deeply upset, addressed the issue; no form of punishment would have been deemed sufficient restitution by him. Any sentence that the court may have issued would have been perceived as a new offence.[433]

The decisions of English courts have acknowledged the jurisdictional immunity of the members of the diplomatic staff of the permanent diplomatic mission. This recognition is evident in several cases, among others. Taylor v. Best involves a legal case between Taylor and Best, who was the first secretary of the Belgian legation. The cases mentioned include Republic of Bolivia Exploration Syndicate, Ltd. involving the second secretary of the

[432] *Ibid.*
[433] *Ibid.*

Bolivian legation, and Parkinson v. Potter involving the attache of the Portuguese legation. This exemption was also acknowledged in other instances, including the second secretary of the Mexican le§ation in 1886, an attache of the Portuguese legation about 1847, and a chief secretary of the Spanish legation in 1872. In relation to the immunity of diplomatic agents' servants, section 6 of the Act of 7 Anne mandated the registration of their names with a Secretary of State (later the Secretary of State for Foreign Affairs). Additionally, it required the transmission of a list of these registered names to the Sheriffs of London and Middlesex. The Foreign Office consistently declined to include individuals in the list sent to the Sheriffs if they did not appear to have jurisdictional immunity.[434]

Prior to 1709, there was no recognition that the international concepts of diplomatic immunity had been integrated into English law. It is worth noting that there were no successful cases where immunity was claimed and upheld. While it is comprehensible that international writers may argue for the inclusion of international law under the common law, their assertions on this matter cannot be acknowledged. Based on this survey, it is evident that Lord Mansfield's perspective, along with those who shared his views, was that the voice of the judge is not the voice of God, and that the Statute of 1708, despite being commonly believed to simply clarify existing common law, actually introduced the principle of international law into the common law and established penalties for its violation for the first time.[435]

The Diplomatic Privileges Act 1964 repealed Act 7 Anne. This amendment to the Diplomatic Privileges and Immunities Act implements the Vienna Convention on Diplomatic Relations 1961. The explanatory memorandum to the Diplomatic Privileges Act 1964 states that this Bill replaces the existing legislation relating to privileges 1 of the Diplomatic

[434] *Ibid.*
[435] Buckley, Margaret (1966). Origins of diplomatic immunity in england. University of Miami Law Review, 21(2), p.365

Privileges Act 1964, and its provisions replace any previous law or rule in Relates to the issues you address. In accordance with Article 31(1) of the Vienna Diplomatic Convention, which was adopted into English domestic law through the Diplomatic Privileges Bill 1964, a diplomatic representative is granted immunity from the criminal jurisdiction of the state. Host country. According to the International Law Commission, which drafted this rule, immunity from criminal jurisdiction is "full", meaning that it provides full protection and immunities to diplomatic representatives in the United Kingdom. Clause 2 of the 1964 Bill gives legal authority to the applicable provisions of the Vienna Convention.[436]

It is important to note that England, represented via its delegates, had a highly active role in each of these situations. The Vienna Convention was in the process of being developed, and during this time, a significant contribution was made in formulating the jurisdictional immunity of the diplomatic agent. The incorporation of Article 21 (1) of the Vienna Diplomatic Convention into English domestic law marks the culmination of the establishment of diplomatic agents' immunity from criminal jurisdiction. In England, the establishment and formalization of diplomatic agents' immunity from criminal prosecution in case law started in the sixteenth century with the A. de Noailles case. This immunity was further solidified through subsequent cases such as Leslie, Mendoza, and others, ultimately resulting in the complete recognition of this immunity. The development of English theory in this topic began with A. Gentili and reached its highest point with R. Zouche. Immunity from criminal jurisdiction was acknowledged in both case law and international law. This recognition was also reflected in the Act of 7 Anne, c. 12, and reached its highest point in the Diplomatic Privileges Act of 1964.[437]

---

[436] Dr. Franciszek Przetacznik, 'The History of the Jurisdictional Immunity of the Diplomatic Agents in English Law', p.369
[437] *Ibid.*

The initial matter pertained to the practicality and appropriateness of pursuing modifications to the Vienna Convention itself. Based on the data provided by the FCO, the Committee concluded that it was highly improbable that there would be support for a stringent amendment of the Convention. Conversely, there seemed to be a trend towards an augmentation of immunity in some domains.. Furthermore, even if such adjustments were possible, they may not necessarily be advantageous for the long-term well-being of the UK.Given this circumstance, the Committee concluded that the government should adopt a more stringent approach to enforcing the current safeguards in the Convention to prevent abuse. The statement suggests that the government should be more prepared than before to use its authority under Article 11(1) to restrict the size of a mission when there is a valid reason to be concerned about the overall nature of the mission's operations. The FCO was advised to promptly gather information regarding incoming mission staff members at the earliest opportunity. The Committee doubted that requiring a curriculum vitae from new appointees to the diplomatic staff of a mission, either before or shortly after their arrival in the country, would be inconsistent with Article 7 of the Convention. This article allows the sending State to freely choose its representatives. The statements made by Sir Antony Acland, Permanent Secretary at the FCO, that extensive checking would be required and that little information would be revealed, did not convince it. The concerns expressed by the trade union side of the diplomatic service, regarding the potential rejection of staff who had served in a country whose host government did not reciprocate, also did not sway its opinion.[438]

The Committee's main suggestion to prevent diplomatic privilege misuse was that diplomatic baggage should be electronically inspected when the government deems it necessary. Abuse of the diplomatic bag is nothing new, but with the rise of international terrorism, the UK government appears to have toughened its view that measures short of

[438] Iain Cameron, 'First Report of the Foreign Affairs Committee of the House of Commons' The International and Comparative Law Quarterly pp. 610-620, 616

“opening or detention” the bag are not in violation of Article 27(3). Previously, the UK government has not scanned or allowed other countries to scan British baggage. The travaux prdparatoires further show that the bag's inviolability was not meant to depend on following Article 27(4)'s prohibition against transporting non-official items. Whether scanning works is the main issue. Shielding a “prohibited” object is easy, and even if a suspicious object or blank appeared on the screen, the bag could not be returned (except in Bahrain or Kuwait). Sir Francis Vallat said screening “puts you in that tantalis-ing position of having suspicions raised without solving the problem.” Since the receiving State is obligated not to open the bag, the courier could be asked to do so, but he would likely refuse. Diplomatic baggage can only be checked for prohibited materials by dropping them when offloading them from the plane and hoping they break open. The sending State would undoubtedly object to such a practice. However, this desperate method only works with huge, unaccompanied bags, and firearms can be disassembled and carried in hand luggage. The Committee appeared to believe that screening capability and intention to employ it may deter lawbreakers. The Committee advised keeping records of bag size, shape, and frequency entering the country. The Committee acknowledged that a bag's size or shape cannot be rejected, but thought the information would be valuable. Such a system would stop significant travel in illegal commodities, as in Pakistan in 1973 or Scandinavia in 1980,56 but it is unlikely to reveal the typical traffic pattern. The Committee rejected the trade union side of the diplomatic service's fear that offended States' countermeasures would include blanket challenges and British bag returns, disrupting crucial security communication.[439]

[439] *Ibid*, pp.618–619

The Great Britain, Foreign and Commonwealth Office White Paper accurately [440]highlights that the size of the UK mission in a particular nation should not be the only factor in determining the number of diplomats from that country allowed in London.

In several instances, diplomatic embassies in London surpass the corresponding British posts abroad in terms of size. This highlights the specific significance of London as a hub for commercial, financial, and political activities, including being the headquarters for many international commodities organisations. In addition, several missions use London as a central hub from which to operate.

Include other nations in addition to the United Kingdom. The Great Britain, Foreign and Commonwealth Office White Paper [441]has a particularly intriguing section on diplomatic premises, including features that often go unnoticed by the general public. Issues pertaining to the purchase of title, location, tourist offices, rating relief, and other related matters are noted and potential solutions are suggested. One important choice is to no longer provide diplomatic status to individual tourism bureaus. There are signs that lawmakers are contemplating enacting laws to regulate the procurement and divestment of diplomatic properties in London in accordance with the Vienna Convention. Readers of this Journal are encouraged to explore the extensive and compelling material and arguments included in the Government's report, which covers topics such as the diplomatic bag and immunity from civil and criminal jurisdiction. These issues concerning the understanding and management of the Vienna Convention should be considered in light of efforts at the political level to establish global collaboration against terrorism and misuse of diplomatic privileges. Efforts within the Council of Europe and the European Eco- nomic Community are recalled, and no doubt less-public collaboration on these topics has also been tightened between like-minded

[440] Great Britain, Foreign and Commonwealth Office. *White Paper on Miscellaneous No. b, CMD. 9497.* London: HMSO, 1985.No.5
[441] Ibid

governments. The combined reports from the Foreign Affairs Committee and the Government offer an intriguing demonstration of "international law in action." They highlight the challenges that arise when interpreting and implementing a multilateral treaty, and propose suitable solutions within the framework of the international treaty obligation.[442]

Before the enactment of the State Immunity Act, English courts had ruled that a pre-existing agreement to renounce immunity or accept the jurisdiction was not a valid waiver for the specific legal proceedings at hand.[443] In the case of Empson v Smiththe English Court of Appeal determined that the principles established in previous cases regarding diplomatic immunity were applicable. It was concluded that the court must be officially informed and involved in the legal processes before diplomatic immunity may be effectively waived. One could argue that, considering the decision that the principles governing the waiver of state immunity also apply to the waiver of diplomatic immunity, and considering the changes made when the European Convention on State Immunity was incorporated into English law, English courts should now acknowledge the potential for a State to make an advance commitment to waive diplomatic immunity. In 1989, the issue was raised in the case of A Company Ltd v Republic of X,[444]. The first ruling said that, based on previous legal precedents, the State could only be legally obligated if it had given its permission or made a promise at the time when the court was requested to exercise jurisdiction. However, the case only addressed the unique scenario of potential execution against mission buildings and diplomatic homes. therefore did not pertain to a clear renouncement of diplomatic immunity, and therefore was not pursued further in an appellate court. Therefore, it should not be assumed that a previous commitment by a State to renounce diplomatic immunity would unquestionably be considered a legitimate renunciation of diplomatic immunity under

[442] Rosalyn Higgins, 'UK Foreign Affairs Committee Report on the Abuse of Diplomatic Immunities and Privileges: Government Response and Report' (1986) 80 The American Journal of International Law pp. 135-140

[443] Mighell v Sultan of Johore [1894] 1 QB 149

[444] mpson v Smith [1966] 1 QB 426

English law. If the agreement was clearly stated and made in exchange for anything of value, there is no fundamental reason why the State, which has the authority to waive immunity, should not be bound by its commitment. There is scant evidence suggesting that ambassadors may sometimes waive diplomatic immunity for certain diplomats. However, these waivers have been respected and their efficacy has not yet been put to the test.[445]

The backing of the global community is vital, since the degree of collaboration required to isolate a country that has exploited the system is very significant. More precisely, the British plan suggested that all major western powers, who strongly disapproved of the system's misuse, should come to a consensus on a unified course of action, regardless of what that action may entail. The proposed course of action was for the organisation to collectively reject any diplomatic connections with the offending state.This strategy fails to sufficiently address the need of Europe and America to establish and maintain diplomatic ties with these states. Political instability and a proclivity towards terrorism alone may not usually justify the abandonment of the advantages of diplomatic engagement.[446]

The Syrian Embassy in London informed one of its diplomats that he would be compelled to go if he persisted in defying a court order to evacuate residential premises. The homeowners were unsuccessful in obtaining legal ownership of their own unoccupied property, and their attorneys presumed that the ambassador would claim immunity from the enforcement of the court order. The issue was finally settled by the Syrian Embassy's decision to repatriate the diplomat responsible for the offence. The Great Britain, Foreign and Commonwealth Office.[447] White Paper offers a significant amount of information that would be of interest to someone studying diplomatic privileges and immunities. It is believed that

[445] Eileen Denza, *Diplomatic law: Commentary on the Vienna Convention on Diplomatic Relations* (Oxford commentaries on international law, Fourth edition, Oxford University Press 2016), pp.279–280
[446] Leslie S Farhangi, 'Insuring against Abuse of Diplomatic Immunity' (1986) vol. 38(6) Stanford Law Review pp. 1517–1548
[447] Great Britain, Foreign and Commonwealth Office. *White Paper on Miscellaneous No. b, CMD. 9497.* London: HMSO, 1985.No.5

the Vienna Convention has established the current customary rule on the topic, even for countries that are not party to it. Therefore, even if terminating acceptance was legally allowed, a state would still be in a very similar situation. The section highlights that issues of misuse mostly stem from the interpretation of Article 7 of the Convention, which grants the sending State the freedom to choose the staff members of the mission.[448]

The English Court of Appeal in Reyes v Al-Malki [449]also found Tabion v Mufti's [450]reasoning persuasive and supported by commentators, refusing to disregard it because the US court had given "substantial deference" to a State Department statement of interest on the interpretation of "commercial activity". In the lead judgement, Lord Dyson, Master of the Rolls, noted that the ordinary meaning of the words was consistent with the Vienna Convention as a whole and diplomatic immunity: "If a diplomatic agent does what he is sent to the receiving State to do, then the activities which are incidental to his life as a diplomatic agent in the receiving State are covered by the immunity." A clear link existed between Article 34(d) excluding taxes on private income from the receiving State and capital taxes on investments in commercial undertakings, and Article 42 prohibiting diplomats from engaging in professional or commercial activity for personal gain in the receiving State. The Vienna Convention travaux préparatoires showed that participants did not consider contracts of employment for domestic services at a mission 'professional and commercial activities'. An employment contract allowed a diplomatic agent to execute his duties.The plaintiff argued in Reyes v Al-Malki that the UK Government's acceptance that the plaintiffs had been trafficked as defined by international agreements transformed their engagement into a commercial activity so as to be caught by the exception to immunity in Article 31.1(c). The Court held that a diplomat's economic benefit from employing an employee below the market rate did

[448] Higgins, R. (1986). UK Foreign Affairs Committee Report on the Abuse of Diplomatic Immunities and Privileges: Government Response and Report. American Journal of International Law, 80(1), p.137
[449] Reyes v. Al-Malki and another [2017] UKSC 61
[450] Tabion v. Mufti, 73 F. Supp. 2d 98 (D.D.C. 1999).

not imply that he w International accords did not address diplomatic immunity, which the 1961 Vienna Convention did.Article 4 of the European Convention on Human Rights and Fundamental Freedoms required Parties to penalise and prosecute acts that forced or compelled a person to work, but this was not a superior rule of international law that waived diplomatic immunity.[451]

The legal interpretation of "commercial activity" as defined in the Vienna Convention on Diplomatic Relations (VCDR) is the reason why Tabion v Mufti is significant to Reyes v Al-Malki. Such a case as Tabion is very important because it forms one of those previously examples which are essential in defining what "commercial activity" means in Reyes v Al-Malki. In particular, when it came to analyzing if a diplomat' s recruitment of domestic employees amounts to "commercial activities" that would invalidate diplomatic protection, the English Court of Appeal observed this principle backing its reasoning.

In Reyes v Al-Malki, hiring workers at rates lower than those prevailing in the market for personal profit was not an argument within Article 31.1(c) of VCDR according to the Court. Essentially, Tabion has helped support the notion that this kind of job cannot be regarded as a trade activity leading to immunity from arrest for Ambassadorial diplomats.

I did not specifically refer to Tabion v Mufti at first but its significance is evident from its contribution towards how the Court of Appeal understood Reyes v Al-Malki. Hence, it is important how the judge made up his mind regarding inferences made on justifications provided by the court in Tabion

The administrative, technical, and service workers, who are often not protected from civil liability, are granted immunity for acts they commit while carrying out their job responsibilities. Hence, it is imperative to address the current issue of establishing the

[451] Denza, p.252

distinction between a diplomat's on-duty and off-duty status. Diplomatic workers typically centre their life on embassy missions, with some ambassadors effectively being on duty around the clock. The United States Diplomatic Relations Act lacks a clear definition of a diplomat's official acts, resulting in the absence of a remedy. Currently, there is no established and authoritative definition of the specific circumstances that determine whether a diplomat is considered to be on duty or off duty. In order to address the issue of the on-duty exemption, it is necessary to provide a precise definition of the diplomatic acts that are considered official and fall under the responsibilities of a diplomat, as well as those that do not. An alternative definition that limits a diplomat's responsibility to their regular working hours, albeit restricted, could be an improvement compared to the current lack of a clear definition. The main benefit would be the elimination of any possibility for judges to make subjective judgements regarding whether a diplomat should be awarded immunity due to their unlawful actions carried out in the course of their official duties.[452]

5.3. United States of America

In 1790, the United States implemented legislation that declared international law and aimed to apply the principle of diplomatic immunity within the country. The 1790 act provided diplomatic agents with absolute immunity from the civil and criminal jurisdiction of both the United States and any state. Foreign diplomatic officials accredited to the United States government enjoyed immunity from arrest or incarceration, and their property was protected from seizure or attachment. Any writ or procedure issued against such individuals was invalid. Individuals who acquired or carried out a legal order or legal document against diplomatic staff were liable to monetary penalties and a maximum of three years of

[452] Vincent P. Belotsky J, 'The Effect of the Diplomatic Relations Act' [1981] California Western International Law Journal, p. 354

incarceration. The courts interpreted the immunity provision in a wide and inclusive manner. The immunity it afforded extended beyond measures specifically aimed at seizing or attaching property or chattels. Furthermore, this law had been understood to grant complete protection from both criminal and civil authority not only to the diplomatic representative but also to their immediate family members and the administrative, technical, and service staff of the diplomat. This immunity is also granted by law to private employees working in the diplomat's household, as long as they are foreign nationals with valid visa status. American citizens who were registered with the Department of State and serving in foreign diplomatic missions were also immune from legal proceedings, except for lawsuits related to debts incurred prior to their service.[453]

Section 25 of the Act of April 30, 1790, governed the granting of diplomatic immunity in the United States until it was revoked by the current Act. The initial statute was based on a British law passed in 1708, which marked the first official acknowledgment of diplomatic immunity in Anglo-Saxon legal system.Section 25 of the Act of April 30, 1790, governed the granting of diplomatic immunity in the United States until it was revoked by the current Act. The initial statute was based on a British law passed in 1708, which was the first official acknowledgment of diplomatic immunity in Anglo-Saxon legal system.[454]

During the "Cold War," the United States implemented a reciprocal approach. During that period, as a response to the mistreatment of its officials in the Soviet Union, the United States imposed travel restrictions on Soviet staff within its boundaries. However, United States law still provided full security to most foreign diplomats.

---

[453] Paul F. Roye, 'Roye "Reforming the Laws and Practice of Diplomatic Immunity" (1978-1979) 12 University of' (1987) 12(1) University of Michigan of Law Reform p. 94

[454] Marmon Jnr, "The Diplomatic Relations Act of 1978 and its Consequences" (1978) Virginia Journal of International Law, p.134

The current theory of diplomatic immunity is founded on the principle of functional necessity. This principle asserts that a diplomat can only carry out their duties effectively if they are shielded from the potential harm of bias or dishonesty in national courts, as well as from unfounded legal actions brought for improper reasons.Courts in a host nation are prohibited from scrutinising the actions of a foreign representative in a manner that contradicts how these actions would be perceived by the courts of the sending State. The principle of functional need is stated in the preamble of the Vienna Convention. It explains that the privileges and immunities granted to diplomats are not intended for the personal advantage of individuals, but rather to support the effective functioning of diplomatic missions as representatives of their respective countries.[455]

Diplomatic immunity is a fundamental aspect of international law. Traditionally, diplomats in receiving countries must be free from legal issues and prosecution to fulfil their jobs. In the Total diplomatic immunity has been the law in the US since 1790. The doctrine was so widely recognised that in 1906, Secretary of State Elihu Root stated that diplomatic agents' immunities are based on the law of nations, requiring no citation. As early as 1815, governments attempted to establish the ordinary law of diplomatic relations. In 1961, 45 states signed the Vienna Convention on Diplomatic Relations, completing this effort. Foreign ambassadors are granted complete protection from criminal jurisdiction under Article 31 of the Convention, with three exceptions for civil and administrative jurisdiction. These include: a) real actions involving immovable property in the receiving State, unless held for the sending State's mission; b) succession actions involving the agent as a private person; and c) proceedings involving the agent's private, professional, or commercial activities.This differs from the immunity conferred under 22 U.S.C. §252-54, which grants diplomatic agents, their families, and administrative and technical staff total immunity from criminal and civil

[455] M. L Benedek, '"The Diplomatic Relations Act: The United States Protects Its Own."' (1979) 5(2) Brooklyn Journal of International Law, p.384

jurisdiction. Despite being passed by the Senate in 1965 and signed by the President in 1972, the Vienna Convention has not been effective in the US due to the statutes from 1790 still in place. Although attempts have been made to address this anomaly, none have proved successful. However, one of several proposals may become law this year. Congress is considering a system to put the United States on par with other Convention members, as it grants total immunity to foreign diplomats but does not receive reciprocity for its diplomats abroad and foreign countries require visiting diplomats to carry liability insurance.[456]

The Diplomatic Relations Act, introduced in 1977, aims to repeal immunity provisions, extend Vienna Convention privileges and immunities to diplomatic personnel from countries not ratified by the Convention, allow the President to grant immunities more favorable than those specified in the Convention, and direct dismissal of actions brought against immune personnel but require liability insurance. However, the bill lacks an adequate system to make insurance proceeds available to victims of diplomatic personnel. Other bills introduced this term include S. 478, introduced by William D. Hathaway, which requires the US to make compensation for any indictments caused by immune diplomats and establishes an Assistant Secretary for Claims Against Foreign Ministers and Diplomats within the Department of State. Other proposals include the Diplomatic Immunities Act, introduced by Senator Charles Mathias, H.R. in 1484, which repeals sections 253 and 254 of Title 22, which create criminal penalties for wrongful suit against immune persons and certain exceptions to suits against servants in the employ of diplomatic personnel.[457]

The immunity provisions of the Act of 1790 were in opposition to the Vienna Convention. The previous legislation did not make a distinction between various categories of diplomatic personnel when it came to granting immunity. The valet of the ambassador is

[456] Claudia H. Dulmage, 'Diplomatic Immunity: Implementing the Vienna Convention on Diplomatic Relations: Case Western Reserve Journal of International Law 10' (1978), pp.827–828
[457] *Ibid.*

granted the same level of immunity as the ambassador, in accordance with the Convention. However, personal servants of diplomatic agents are granted very limited immunity. The 1790 law did not differentiate between private and official acts, whereas under the Convention, even high-ranking diplomats can be held legally responsible for specific private behaviour. The Act of 1790, as construed, granted diplomatic immunity to a diplomat's family irrespective of the nationality of its members. According to the Convention, family members who are citizens of the host country do not have any immunity.[458]

According to the 1790 statute, diplomatic agents were not completely exempt from the restrictions imposed by United States law. By filing a lawsuit, an individual who has diplomatic immunity voluntarily relinquished their immunity and made themselves liable to counterclaims that are directly related to the original claim. Although the waiver of immunity resulting from a lawsuit did not include a waiver of immunity from the enforcement of subsequent judgements. The embassy or foreign government involved has the authority to waive diplomatic immunity. Nevertheless, despite the waiver of such immunity, there was a hesitancy to initiate legal action due to the potential consequences of wrongfully suing or criminally prosecuting a diplomat, which could result in fines or imprisonment. Diplomats, who are protected from legal proceedings, are still liable to face non-judicial penalties. One option is to submit a formal complaint to the government of the diplomat who has caused the offence. Alternatively, an official request can be made for the diplomat to be recalled. Alternatively, the federal government has the option to declare him *persona non grata* and issue an order for the offender to depart the country. These sanctions were used sparingly and were only applied in the most extreme circumstances. Furthermore, the expulsion of foreign officials failed to provide compensation to United States residents who may have suffered significant injuries due to the illegal or careless actions of the diplomatic official in question. The Department of State frequently intervened and, when suitable, endeavoured to

[458] Marmon Jnr, p.139

notify the diplomat's embassy about disputes, urging them to facilitate a fair resolution. Nevertheless, several American citizens have faced challenges in receiving compensation or reaching a satisfactory resolution of disputes, despite the diligent efforts made by the Department of State.[459]

The Diplomatic Relations Act was enacted in response to the concurrent system of immunity that was in place under previous domestic legislation.The two systems that were in place in the United States from 1972 to 1978 were the outdated Statute of 1790 and the Vienna Convention of Diplomatic Relations. The Statute of 1790 granted absolute immunity to all diplomatic personnel and their families. The Vienna Convention imposed limitations on the privileges and immunities granted to specific diplomats. The Diplomatic Relations Act nullified the previous law and incorporated some aspects of the Vienna Convention, thus eliminating the existence of two separate systems.Another factor that highlighted the necessity for the Act was the significant number of diplomats in the United States who were eligible to assert diplomatic immunity. “By 1978, the United States had over 30,000 individuals who were eligible to assert diplomatic immunity, including individuals with roles as varied as valets and ambassadors.”[460]

The Diplomatic Relations Act, a US law, reduces immunity for diplomats, following the Foreign Sovereign Immunities Act of 1976. This act limits foreign governments' claims of sovereign immunity, allowing them to exclude themselves from lawsuits in limited circumstances. Hostilities towards diplomats receiving immunity led to an alarming rate of burglaries, muggings, and assaults against them in the US. The Act aimed to temper the perception that diplomats were an “overly privileged class.” The lack of adequate recourse under prior laws against diplomatic tortfeasors also fueled the Act, as citizens injured by diplomats were left without compensation or redress, especially in cases of traffic accidents

[459] Paul F. Roye, p.95
[460] Vincent P. Belotsky J, p.356

caused by diplomats. The Act was deemed necessary to address these issues and protect the rights of diplomats in the United States.[461]

To fully comprehend judicial deference in immunity cases, one must recognise the distinction between utilising immunities as a means to challenge jurisdiction and the obligation of diplomatic personnel to comply with local laws. According to the concept of diplomatic immunity, a person with immunity is still subject to the restrictions imposed by law and must still comply with them. He retains legal liability for obligations that he personally incurred. Diplomatic immunity ensures that the state is unable to use its punitive authority to punish an immune individual for their failure to comply with the law or fulfil their obligations. The granting of diplomatic immunity is not intended to benefit the individual recipient, but rather to promote enhanced international relations. The 1790 Statute aimed to prevent minor disruptions to diplomatic missions that could lead to retaliatory measures by the sending state or disrupt delicate diplomatic relations. To cater to these political interests, courts interpreted exceptions to the 1790 law in a restrictive manner and occasionally provided immunity to individuals who were no longer legally eligible for the privilege. Due to the significant historical and legislative limitations on judicial involvement in diplomatic matters, the judiciary was not an effective platform for resolving diplomatic issues.[462]

The Court of Appeals for the District of Columbia Circuit upheld the decision of a U.S. marshal to decline serving a summons on the Tunisian ambassador in the case of Hellenic Lines, Ltd. v. Moore. In the court's ruling, Chief Judge Bazelon emphasised that while a Marshal cannot evade their responsibility to serve legal documents by simply being aware of a defence to the lawsuit, the court must still ensure their protection if serving the documents would violate international law and potentially expose them to criminal charges

[461] *Ibid.*
[462] Cohen, B. (1978). The Diplomatic Relations Act of 1978. Cath. UL Rev., 28, P 808..

in the United States. Carrera v Carrera affirmed that the Act of 1790 provided legal protection for diplomats, shielding them from both civil litigation and criminal prosecution. The only exemption, as specified in section 27.2, pertained to United States citizens or residents who were employed by a foreign mission. They may face legal action in U.S. courts for debts incurred prior to joining the mission. The Diplomatic Relations Act abolishes the previous practice of granting diplomats in the United States complete immunity from both civil and criminal prosecution. Remaining virtually unaltered for nearly two centuries.[463]

The Diplomatic Relations Act of 1978 established the Vienna Convention as the United States' law, repealing the Crimes Act of 1790. It allows foreign emissaries to enjoy privileges and immunities specified in the Convention, and the President can increase or decrease these privileges. It is no longer a crime for a private citizen to bring a suit against a diplomat, but the action can be missed if immunity can be established. The Act also increased the jurisdiction of federal district courts to include diplomats as third-party defendants. Major changes include exceptions to diplomatic immunity, including civil suit in private capacity for real property, succession, professional or commercial activities, and limited immunity for administrative and technical staff. The Act requires individuals with immunity to obtain liability insurance for risks arising from motor vehicle, vessel, or aircraft operations.[464]

The Diplomatic Relations Act also establishes new legislation to restrict the abuse of diplomatic immunity. The Act grants the President the authority to offer more or less favourable treatment to any sending state, based on the principle of reciprocity, compared to what is provided under the Vienna Convention. The President has the authority to either waive the provisions of the new law or impose additional standards on a specific country. In addition, the recently implemented legislation mandates that diplomatic missions, as well as their members and families, must possess liability insurance coverage at specific thresholds

[463] Marmon Jnr, p. 136
[464] Benedek, p. 387

determined by the President. This insurance provides coverage for potential hazards that may occur while operating automobiles, vessels, or aircraft within the United States. Another provision of the new legislation establishes a direct-action statute that grants an injured party the right, under federal law, to directly pursue legal action against the insurance company in cases where the insured diplomat is immune from being sued. The Act modifies the Judiciary Code by removing the Supreme Court's sole authority over lawsuits involving diplomats. It also grants original jurisdiction to both the Federal District Courts and the Supreme Court.[465]

The Diplomatic Relations Act also establishes new legislation to restrict the abuse of diplomatic immunity. The Act grants the President the authority to offer more or less favourable treatment to any sending state, based on the principle of reciprocity, compared to what is provided under the Vienna Convention. The President has the authority to either waive the provisions of the new law or impose additional standards on a specific country. In addition, the recently implemented legislation mandates that diplomatic missions, as well as their members and families, must possess liability insurance coverage at specific thresholds determined by the President. This insurance provides coverage for potential hazards that may occur while operating automobiles, vessels, or aircraft within the United States. Another provision of the new legislation establishes a direct-action statute that grants an injured party the right, under federal law, to directly pursue legal action against the insurance company in cases where the insured diplomat is immune from being sued. The Act modifies the Judiciary Code by removing the Supreme Court's sole authority over lawsuits involving diplomats. It also grants original jurisdiction to both the Federal District Courts and the Supreme Court.[466]

There is one important point that needs to be clarified. Diplomatic immunity provides greater protection to Americans than it poses harm to them. Undoubtedly, the United States

[465] Vincent P. Belotsky J, p.349
[466] R. S Garley, '"Compensation for 'Victims' of Diplomatic Immunity in the United Sates A Claims Fund' (1980), p.148

boasts one of the most extensive diplomatic presence worldwide, if not the absolute highest. During the Cold War, certain countries would not hesitate to orchestrate an accident or crime with the intention of harassing diplomatic personnel from Western nations. This was especially true when there were suspicions that the diplomat was an undercover intelligence agent. Accusing the diplomat of a crime provided a convenient means to compel their departure from the country. Considering that numerous foreign legal systems do not meet our standards for ensuring sufficient due process, it is highly preferable to ensure that our foreign service members and intelligence agencies are not vulnerable to unjust prosecution or interrogations.[467]

Foreign diplomats are granted the same courtesy as a result of safeguarding our personnel. However, does it constitute a just and equitable transaction? Indeed, the answer is affirmative when one takes into account the statistics. There are more than 18,000 individuals in the United States region who possess some type of diplomatic immunity."Seldom do any of these individuals engage in criminal activities." During the period from March 1986 to February 1988, out of a total of 80,000 reported serious crimes in the District of Columbia, only five were perpetrated by diplomats. The State Department has made concerted efforts to promptly respond to diplomatic incidents, especially those related to alcohol-related offences. From 1993 to 1996, the licences of thirty-seven diplomats were temporarily revoked. It is the responsibility of local law enforcement to notify the State Department of any offences. Regrettably, this does not consistently happen.[468]

The Diplomatic Relations Act preserves most of the existing legislation regarding diplomatic privileges and immunities. The Foreign Sovereign Immunities Act of 1976 remains unaltered. This act allows lawsuits for monetary compensation to be filed against

[467] Mark S. Zaid, 'Diplomatic Immunity_ To Have Or Not To Have That Is The Question' [1997] ILSA J Int'l & Comp L, pp.626–627
[468] *Ibid.*

foreign governments for personal injury, death, property damage, or loss occurring within the United States. These lawsuits can be pursued when the harm is caused by the wrongful actions of the foreign government or its officials while carrying out their official duties. With the exception of punitive damages, a sovereign is equally responsible as any individual. The Foreign Sovereign Immunities Act also allows for the enforcement of any liability insurance policy owned by a sovereign, even though there is no obligation to acquire insurance.[469]

The Department of State maintains a “Blue List” which includes diplomatic officers and their families, and a "White List" which includes administrative and service personnel who are non-diplomatic employees of embassies and legations. These lists are used to classify diplomatic personnel. According to the Crimes Act, individuals mentioned on either list were granted complete immunity, which includes safeguards for their wrongful actions carried out beyond the limits of their employment. When it comes to actions related to questions of diplomatic immunity, the judiciary is required to adhere to the classifications outlined in the Blue and White Lists. The determination of an individual's immunity is contingent upon the designation made by the Department of State, rather than the sending State. The Diplomatic Relations Act does not impact consular privileges and immunities. Instead, these are regulated by the 1963 Vienna Convention on Consular Relations and customary international law. Four According to that Convention, consuls are usually not subject to the legal or administrative authority of the receiving State when carrying out their official duties.[470]

The Diplomatic Relations Act has decreased the total number of individuals eligible to assert diplomatic immunity.Forty-nine Approximately 8,050 high-ranking diplomats and their families continue to possess full immunity, with the exception of the obligatory insurance requirement. Consequently, if a citizen of the United States sustains an injury

[469] Benedek, p.389
[470] *Ibid.*

caused by a diplomat of high rank or a member of their family, they would not have any legal recourse for compensation unless the wrongdoing involved the diplomat's insured motor vehicle, vessel, or aircraft. Two There are other injuries experienced by United States citizens that have not been resolved, such as those caused by unpaid bills or violations of contracts.

However, the administrative and technical staff, as well as their families, no longer have legal protection from civil and administrative consequences for actions taken outside of their official duties.[471]

The supplementary regulations of the DRA mandate that all foreign nationals involved in a mission must obtain and sustain liability insurance in order to acquire diplomatic licence plates and registration for the motor vehicles they use in the United States. The Act additionally states that private individuals who have been harmed in a collision with an insured diplomat have the right to directly sue the insurer in order to seek financial compensation. Therefore, in regards to the damage caused by the careless operating of a motor vehicle by a diplomat in the United States, the direct action provision of the DRA established a solution for individuals that was not before accessible under US law.[472]

According to the Vienna Convention, the host country has the authority to designate any embassy staff member as *persona non grata* and remove them from the host country. As to a commentator's statement in 1981, this power has never been utilised, as there is no documented evidence of its usage. However, the United States has indeed exercised this authority, but exclusively in instances related to espionage. However, even in this specific region, the United States Government has exercised great caution in utilising the powers of *persona non grata* and expulsion due to the prevailing apprehension of potential retaliation. An incident that occurred recently illustrates the immense capacity for power that can be

[471] Vincent P. Belotsky J, p.360
[472] Garley, pp.145–146

unleashed when these abilities are put into practice. The United States Government removed Lieutenant Colonel Yuri N. Pakhtusov, a Soviet military attaché stationed at the Soviet embassy in Washington, D.C., on March 8, 1989, for suspected espionage. Exactly one week later, on March 15, 1989, the Soviet Government removed Lieutenant Colonel Daniel Francis Van Gundy, who held the position of assistant army attache at the American embassy in Moscow. The Soviet Government officially admitted that this expulsion was a diplomatic retaliation. Considering the United States Government's use of the *persona non grata* and expulsion powers on its own accord, it is not unexpected that these powers are not utilised based on the complaint of an individual citizen.[473]

If a tortious act is performed while a diplomat is doing their official duties, another option for seeking legal redress is to file a lawsuit against the other government. However, this condition applies only if the diplomat's wrongful behaviour is not protected by the foreign country's claim of sovereign immunity. This requirement restricts the possibility of legal action because very few cases involve American citizens suing foreign diplomats for acts committed while performing official duties, and sovereign immunity is usually invoked regardless. The diplomats themselves and their sending states must take responsibility for curbing the misuse of diplomatic privileges and immunities. International cooperation in enforcing the new rules is the most effective method of ensuring compliance.[474]

According to the Diplomatic Relations Act, diplomats will still be able to avoid paying parking tickets and traffic penalties because these offences are typically considered criminal acts, and most diplomatic staff are granted immunity from them. An available

[473] Juliana J Keaton, 'Does the Fifth Amendment Takings Clause Mandate Relief for Victims of Diplomatic Immunity Abuse', p.548
[474] Vincent P. Belotsky J, p.363

solution for the nations would be to redefine parking and traffic violations as civil offences, thereby exempting only those diplomats who have absolute immunity.[475]

According to the Act, ambassadors are still able to avoid being held responsible for parking tickets and traffic offences, as they are classified as criminal offences. One potential resolution is to designate these crimes as civil infractions, so exempting only the diplomats who possess absolute immunity.[476]

Another issue arising from the misuse of diplomatic immunity is evident in the provision of the Diplomatic Relations Act. This provision allows the President to, based on reciprocity, either waive certain provisions of the Act or grant more or less favourable treatment compared to what is outlined in the Vienna Convention for a specific country.[477]

One specific limitation of the DRA is that it does not include provisions for compensating injuries caused by torts or abuses of diplomatic immunity, except for cases involving the use of motor vehicles, aircraft, or vessels.[478]

During the congressional hearings that led to the enactment of the DRA, an additional proposal was introduced, along with the liability insurance and direct action provisions, to complement the Vienna Convention. This plan aimed to create a claims fund, managed by the Department of State, that would provide compensation to American citizens for any personal injuries or property damage resulting from the improper actions of a foreign diplomat with diplomatic immunity. While the concept of a claims fund was ultimately removed from the DRA, its intention ought to be reconsidered.[479]

---

[475] *Ibid*, p.371
[476] *Ibid*, p.371
[477] *Ibid*, p.371
[478] Paul F. Roye, p.106
[479] Garley, pp.136–137

The current Diplomatic Relations Act (DRA) in the United States is considered insufficient in safeguarding the rights of private citizens due to two primary reasons. Firstly, there are still many instances where private citizens are unable to seek compensation for the harm caused by the wrongful or criminal actions of a diplomat. Secondly, there are significant challenges in implementing and managing the liability insurance and direct action provisions of the DRA, which may hinder their effectiveness.[480]

The concept of a claims fund was initially incorporated into multiple direct action and liability insurance measures that were suggested for the DRA. .The purpose of the fund was to serve as a final solution for victims who were unable to receive compensation due to diplomatic immunity or the absence of liability insurance. It appears that these claims fund plans were restricted to providing compensation just for damages arising from motor vehicle accidents.[481]

During the hearings over the proposed Diplomatic Relations Act (DRA), several legislators raised apprehension that the DRA would not adequately provide compensation to victims in various cases.Comma Legislators who were worried submitted multiple legislation that aimed to offer victims some redress in cases where immunity precluded them from seeking compensation. The proposed measures aimed to create compensation funds funded by the U.S. government.The funds would provide reparation to private individuals who have suffered injuries and are unable to pursue a successful legal case under the DRA.Due to various circumstances, these bills were not included in the DRA. Stephen Solarz, a representative from New York, introduced a bill that aimed to address the deficiencies in the

[480] *Ibid*, p.137
[481] *Ibid*, p.137

coverage provided by the DRA. The Solarz measure has a broader scope than just automotive accidents involving American citizens and diplomats.[482]

The primary advantage of a claims fund is that it allows for the preservation and protection of the rights of private persons, while minimising any negative impact on the diplomat's capacity to fulfil the mission's actual representative tasks. It is important to note that compensation from the claims fund will only be given if it is determined that the applicant has no alternative legal recourse available, either under the DRA or another law, due to the diplomat's immunity. For the fund's recovery to occur, it is essential that the ambassador concerned is granted immunity from judicial proceedings for the alleged act.Therefore, the claims fund plan would neither eliminate or remove the individual diplomat's right to immunity when that privilege is correctly asserted.[483]

Representative Stephen J. Solarz of New York proposed an extension of the claims fund concept to address the deficiencies in the coverage provided by the DRA.His comprehensive proposal aimed to create a Bureau of Claims that would be responsible for granting fair and complete compensation to individuals harmed by foreign diplomats, as well as reimbursing local governments for the revenue they lost due to their inability to collect parking fines from foreign diplomats.The Solarz bill aimed to offer redress to private individuals harmed by the tortious or criminal actions of a diplomat, in cases when immunity laws would otherwise preclude them from seeking compensation.Eighty-eight Therefore, the extent of coverage was not restricted just to cases where the diplomat displayed careless behaviour while operating a motor vehicle.[484]

---

[482] David H Goodman, '"Reciprocation as a Means of Curtailing Diplomatic Immunity Abuse in the United States: The United States Needs to Play Hard Ball' [1988] Hous J Int'l L 11 393, p.409
[483] Garley, pp. 57–158
[484] *Ibid*, p.150

The concept of a claims fund is based on the principle that an individual who is harmed in the United States by a foreign diplomat with immunity should have the ability to directly seek compensation from the United States government. All valid claims for compensation should be fulfilled. The State Department should utilise its influence and "good offices" to actively pursue restitution from the mission in question for the claim that was paid from the fund on behalf of that mission. However, the disbursement of a valid claim from the fund should not depend on whether or not compensation is received or is expected to be received from the responsible mission. This is because an offending mission's obligation to reimburse the fund is entirely voluntary. Once it has been established that the specific diplomat in question is legally protected from liability for the harmful action, neither the diplomat nor their diplomatic post can be legally obligated to provide compensation to the victim.[485]

The proposal mandated the establishment of a "Bureau of Claims" by the State Department to determine the causation of injuries resulting from incidents involving a diplomat. The bureau would subsequently ascertain the precise quantum of restitution owed to the victim.The diplomat's participation in the compensation mechanism is essential for the success of this plan. The diplomat assumes the role of a "witness" in the decision of culpability, while maintaining their diplomatic immunity status unaffected. According to the idea, the United States government provides the necessary funds for the claims fund. Once an agreement has been reached with the victim, the State Department will subsequently pursue repayment from the mission.Some suggested strategies to promote voluntary reimbursement from the foreign mission include expanding bilateral immunity agreements to participating countries, implementing the *persona non grata* procedure, and exerting

[485] *Ibid*, p.154

political and economic pressure on the sending states of diplomats who have caused offence.[486]

In September 1988, the Senate Foreign Relations Committee approved the motion to advance Senate Bill No. S. 1437 to the full Senate for deliberation. This proposed legislation includes the following provisions:1. Despite this, according to the Vienna Convention on Diplomatic Relations and the Vienna Convention on Consular Relations, individuals who are part of a foreign diplomatic mission (excluding diplomatic agents) or a foreign consular post (excluding consular officers) are not granted immunity from the criminal jurisdiction of the United States (or any State) for any violent crime, drug trafficking, reckless driving, or driving while intoxicated or under the influence of alcohol or drugs. From a limited perspective, legislation like S. 1437 would eliminate the protection from legal prosecution for foreign diplomatic and consular staff who are not classed as diplomatic agents or consular officers, as well as their family members. This would make them subject to being arrested, detained, and prosecuted.[487]

The Helms amendment, Named in honour of Senator Jesse Helms, who vigorously advocated for these modifications. if passed, would have relaxed the limitations on prosecuting diplomats in the United States. It would have allowed law enforcement officials to investigate, charge, and prosecute diplomats for illegal activities within the boundaries set by the Vienna Convention. The State Department does not automatically provide certification of immunity to the courts. The certification would only be issued upon the foreign minister of the sending state making a formal request. If the Vienna Convention necessitated prosecution, the Helms amendment would have mandated the Secretary of State to promptly request a waiver of immunity from the foreign state in circumstances involving severe

[486] Mitchell S Ross, 'Rethinking Diplomatic Immunity: A Review of Remedial Approaches to Address the Abuses of Diplomatic Privileges and Immunities' (2011) 4(1), p.193
[487] James E. Hickey Jr. and Annette Fisch, 'The Case to Preserve Criminal Jurisdiction Immunity Accorded Foreign Diplomatic and Consular Personnel in the United States' (1990) 41 Hastings Law Journal, p.351

criminal offences. If the request for exemption was rejected, the Secretary of State would have the authority to label the diplomat as unwelcome and require their leave. The Helms amendment would have modified the definition of a family member, the laws concerning diplomatic pouches, and the minimum insurance coverage for diplomats. Each mechanism outlined in the amendment adheres to the Vienna Convention, but would lead to more rigorous implementation of its obligations. The proposal will additionally establish a recording mechanism to oversee and preempt the reentry of expelled diplomats. The Helms amendment would restrict preferential treatment of diplomats to only what is mandated by the Vienna Convention, thus preventing excessive retribution that concerns the State Department.[488]

Advocates for the unilateral revocation of immunity from criminal jurisdiction for foreign diplomatic workers, which is granted as a legal entitlement under international law, contend that there is no theoretical rationale for such immunity. The argument is based on the incorrect premise that the only reason for diplomatic immunity is to ensure that foreign diplomatic workers can work effectively in the host country. By imposing limitations on the concept of diplomatic immunity, it becomes quite straightforward to assert that engaging in illegal activities falls beyond the appropriate role of diplomatic staff. Consequently, there is no theoretical basis to justify immunity from criminal prosecution. The argument is flawed for two reasons. Initially, it is important to note that immunity from being subject to state criminal jurisdiction is not just based on functional necessity. Rather, it is supported by various ideas, all of which are contradicted by the unilateral removal of immunity from criminal jurisdiction.[489]

Furthermore, the act of unilaterally revoking immunity from criminal jurisdiction significantly hinders the efficient operation of diplomatic personnel. Exemption from

[488] Lori J. Shapiro, 'Foreign Relations Law: Modern Developments in Diplomatic' (1989), p.304
[489] James E. Hickey Jr. and Annette Fisch, p.357

criminal jurisdiction is not based purely on functional necessity. Instead, it relies on various interrelated theoretical foundations, such as the depiction of states, the equal status of states, the significant principle of reciprocity, and functional indispensability. Professor Brownlie properly characterised the underlying rationales for the current rule on diplomatic privileges and immunities as not resting on any single theory, particularly not solely on functional need.[490]

Senator Helms (Republican, N.C.) expressed his rationale for presenting S. 1437 in a straightforward manner, by directly alluding to the "37,000 individuals residing in this country who have the freedom to commit any crime, regardless of its severity, violence, or heinousness, and evade prosecution. "Some authors have falsely asserted, in a sensationalised manner, that the United States is seeing "a minor surge in diplomatic crimes" that is "escalating beyond management."[491]

Applying criminal jurisdiction to those who are currently immune would violate established customary international law and treaties that the United States has agreed to.[492] The United States grants immunity from criminal jurisdiction to consular officers, family members, and, in most cases, embassy employees (including those not typically entitled to immunity) of the USSR, the People's Republic of China, Hungary, Poland, Bulgaria, the German Democratic Republic, the Philippines, and Romania through special bilateral agreements. Therefore, the United States has a clear obligation under customary international law, multilateral conventions, and specific international agreements to provide protection from criminal jurisdiction to the foreign diplomatic staff mentioned above. The United States cannot unilaterally disregard these international legal duties.[493]

---

[490] *Ibid*, p.358
[491] *Ibid*, p.363
[492] *Ibid*, p.366
[493] *Ibid*, p.376

Not unilaterally criminalising specific parts of the immune foreign diplomatic and consular community in the US has domestic and international policy justifications. Initially, unilaterally removing criminal immunity threatens US diplomatic and consular staff. Over 30,000 American diplomats and their families live abroad. These individuals have the same criminal immunity as foreign diplomatic and consular personnel in the US under sovereign equality, reciprocity, and international law. Without consultation or agreement from other states, S. 1437 or a similar bill would undoubtedly be passed by other states, exposing US diplomatic and consular officials to local criminal laws. Foreign judicial systems with few procedural safeguards and less respect for criminal defendants' rights increase the possibility of false allegations against U.S. diplomats. The Iran hostage crisis shows that politically difficult times, when free diplomatic talks are demanded, can lead to wrongful criminal arrest and incarceration., unilateral legislation, also threatens international diplomatic privileges law.[494]

Custom dictates that the United States must threaten retaliation if this friendly appeal does not succeed. This retaliation can be carried out in one of three ways: the State Department can expel foreign diplo- mats more readily; the United States can refuse to waive diplomatic im- munity more often; or U.S. diplomats can abuse foreign states' immunity systems more often. While the United States should not encourage its diplomats to commit crimes, the State Department might stop discourag- ing its diplomats from refraining from immunity abuse in foreign states. For example, the State Department should not discipline its diplomats if they accumulate a large amount of unpaid parking fines. Once the for- eign states are made aware of the rising amount of unpaid parking tick- ets, the foreign states will order their diplomats to stop abusing diplomatic immunity in the United States. Unless foreign states take these threats of retaliation seriously, how- ever, the threats will not effectively deter future wrongful conduct and will not compel foreign states to repay the

[494] *Ibid*, p.379

United States. Recent incidents have shown the United States' determination to make foreign states take the threats seriously.[495]

Article 39(2) states that all privileges and immunities "shall normally cease" with the diplomat's departure or the end of a reasonable time to depart, but they will continue until then. However, "However, with respect to acts performed in the exercise of his functions as a member of the mission, immunity shall continue to subsist." This qualifier makes no sense for the "termination period," since the first sentence states that all immunities apply. The second phrase qualifies the first sentence's claim that immunity stops when the assignment ends by stating that immunity for official activities never ends. A Restrictive Theory interpretation of article 39(2) would be inconsistent with the context in which it was written. IfLarschan's Bradley [496]reading is true, the paragraph would declare diplomats' immunity during termination in internally contradictory terms but not after termination. ILC omission seems unlikely. Codifying diplo-matic intercourse and immunity was its mission." Since customary international law on immunity termination was clear, the Convention could include it.[497]

The U.S Department of Foreign Affairs has implemented a programme to oversee infractions and identify operators who consistently receive citations. This programme will notify Chiefs of Mission of infractions through the use of diplomatic notes. The Department will evaluate points for all traffic infractions based on the standardised point system established by the American Association of Motor Vehicle Administrators. If, at any point within a span of two years, a member of a mission or their family accumulates eight or more points, the Department will assess whether driving privileges should be maintained for that

[495] Goodman, p.412
[496] Larschan, Bradley. (1988). The abisinito affair: restrictive theory of diplomatic immunity. Columbia Journal of Transnational Law, 26(2), 283-296.
[497] Joan E. Donoghue, 'Perpetual Immunity for Former Diplomats-- A Response to the Abisinito Affair: A Restrictive Theory of Diplomatic Immunity,' (1989) 27(3) Columbia Journal of Transnational Law, p. 615

individual or if they should be suspended for a suitable duration. According to this programme, the severity of the infringement determines the amount of points assigned. Specific violations, such as operating a vehicle while intoxicated or engaging in dangerous driving that causes bodily harm, will be promptly evaluated since they will be considered as eight-point offences.Each instance of speeding will be evaluated and assigned either two or four points, depending on how much the speed exceeds the posted restrictions. Each parking infringement will be allocated a single point. The Department advises the Chiefs of Mission to engage in discussions regarding traffic citations with their personnel, and to inform all members of the mission about the Department's emphasis on public safety and the newly implemented procedures.[498]

The perception of diplomatic immunity in the United States is often misunderstood, as it often arises from unflattering contexts such as parking violation abuses, criminal escapes, or drunk driving. The 1997 tragic death of a teenage girl and a public dispute between officials of the City of New York and diplomatic missions over parking violations led to a debate over diplomatic immunity. Opinion polls showed an ignorance of the greater good obtained through the use of diplomatic immunity worldwide and a recognition that some changes are necessary. A survey conducted between January 28, 1997, and February 4, 1997, found that 55% of respondents agreed that diplomatic immunity should supersede the laws of the United States, federal, state, and local government. However, 53% said no, and 42% were mixed. Misconceptions about diplomatic immunity extend to local law enforcement personnel, as the State Department training sessions for local law enforcement personnel begin by breaking down misconceptions and stereotypes about dealing with persons with diplomatic immunity.[499]

---

[498] Jonathan Brown, 'Diplomatic Immunity: State Practice under the Vienna Convention on Diplomatic Relations' (1988) 37(1) : The International and Comparative Law Quarterly pp. 53-88

[499] Mark S. Zaid, 'Diplomatic Immunity_ To Have Or Not To Have That Is The Question', pp.624–626

5.4. Conclusions

In the end, Englands progress concerning diplomatic immunity reveals a transition from vague ideas to concrete legal frameworks. At first founded on an antiquated notion of ambassadors as individuals who commanded great respect or, at least, some degree of esteem, conflicts began to arise between national laws and claimed privileges of diplomats when permanent embassies were established during the sixteenth century. Legal scholars such as Alberico Gentili played a role in laying down early principles regarding immunity before they took shape in landmark legislations like the Act of 7 Anne in 1708.[500]

The Diplomatic Privileges Act 1964 was seen as the culmination of the assimilation of the Vienna Convention on Diplomatic Relations into UK legislation; it thus marked a significant move to expansive diplomatic immunity. This sequence depicts an ongoing battle between safeguarding diplomats interests and preventing abuse of these interests which remains pertinent today.[501]

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

[500] Dr. Franciszek Przetacznik, 'The History of the Jurisdictional Immunity of the Diplomatic Agents in English Law', p.362
[501] Ibid,P369

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.[502]

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. Larschan Bradley 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.[503]

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.[504]

---

[502] Benedek, p.392
[503] Joan E. Donoghue, p.360
[504] Lori J. Shapiro, p.294

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.[505]

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.[506]

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.[507]

---

[505] *Ibid*, p.306
[506] Paul F. Roye, p.96
[507] Bradley Larschan, 'The Abisinito Affair A Restrictive Theory', p.294

6. Thesis conclusions

Due to the fact that many diplomatic personnel had violated judicial immunity that was granted to them by the Vienna Convention on Diplomatic Relations of 1961, this study investigated the legal repercussions that would result from this violation.

The research demonstrated that the diplomatic immunity that is bestowed upon the diplomatic envoy is of utmost importance in the context of international relations between states. This is because it serves as a fundamental foundation for the envoy's mission when they are dispatched from one nation to another. Providing confidence to host countries of the diplomatic responsibilities of the ambassador of the sending state is the purpose of this.

On the other hand, the diplomatic envoy is also obligated to comply with the laws of the state that is welcoming them. The failure to comply with local rules may result in disruptions to the bilateral ties that exist between the states that are sending and receiving the packages. According to the findings of the study, the state that is receiving the envoy is not able to bring charges against them because of judicial immunity; nevertheless, the state may use other methods, as provided in the Vienna Convention on Diplomatic Relations.

These are the most significant findings that were discovered through the research about the diplomatic envoy’s immunity from court proceedings. In every piece of law, both internal and foreign, there was a unanimous agreement that these exemptions should be recognised in every theoretical respect. In practice, however, there was a discernible divergence and diversity in the application and scope of their respective approaches. For instance, in certain countries, civil and administrative judicial immunity, and immunity from testifying were subject to restrictions, whereas in other countries, these protections were not subject to any restrictions at all. In addition, there is a discernible lack of application of judicial protection for diplomatic envoys in international practices, which is a violation of

the Vienna Convention. As a result of situations such as embassy invasions, assassinations, and hostage-taking, individuals have taken use of diplomatic immunity in order to avoid judicial procedures for conduct that are not related to their diplomatic duties. These activities include kidnapping and murder. Because of this, human rights have been violated, and victims of the activities of diplomatic personnel have been informed that they would not receive compensation. The demonstration of state sovereignty and national capacities is vital for the effective operation of their tasks and obligations, and diplomatic exchanges, in which envoys serve as official and permanent representatives, are a necessary means of doing this.

Due to the fact that they represent a sovereign state, diplomatic envoys are required to have immunities that allow them to carry out their duties without interference from local authorities. This is because the diplomatic envoy is responsible for a wide range of obligations during their assignment to the state that is receiving them. Therefore, any actions done must be related to the mission of the state that is sending the representative, and immunities alone are sufficient to assure the smooth operation of the mission and prevent interference.

The problem of judicial immunity is something that states pay attention to, and many nations have included provisions in their domestic legislation that insulate diplomatic envoys from local jurisdiction.

It is possible to use diplomatic immunity as a defence against charges that are not supported by evidence, particularly during times of elevated tension between the sending and receiving powers. In the opposite direction, it can also serve as a means of protection for those who commit crimes.

There are variations in the judicial procedures that countries use with regard to civil and administrative judicial immunity. Some jurisdictions recognise immunity without making a distinction between official activities and personal actions. When compared to the

tendency in the judiciary in nations, which is a reflection of Article 31 of the Vienna Convention on Diplomatic Relations, this is somewhat different.

Providing vital testimony in judicial situations involving persons or their country, which has a favourable influence on the rights and prestige of their country, is not something that can be prevented by the diplomatic envoy.

Criminal offences that are committed by the diplomatic envoy not only have a negative impact on the safety of the host state, but they also constitute criminal offences according to the laws of the host state, which carry serious consequences. Due to the fact that minor offences, such as traffic violations committed by the diplomatic envoy, can result in both financial and physical losses, some nations have recognised the need to address this issue by mandating that individuals possess proper insurance, thereby providing protection to the injured party through the diplomat's insurance firm.

The diplomatic envoy is protected from legal prosecution on the basis of judicial immunity; nevertheless, this does not absolve them of any legal liability that may arise as a consequence of illegal behaviour. Under the rules of the Vienna Convention, a nation may forgo its judicial immunity in order to be tried in the courts of the state that is hosting the nation.

The diplomatic immunity that is granted to the envoy is only applicable to the diplomatic tasks that they perform in the state that is receiving them; it does not extend to matters that are of a private nature. The prosecution of diplomatic envoys by states is extremely uncommon, particularly in cases that involve matters of national security.

When a diplomatic envoy commits crimes that are listed in the statutes of the International Criminal Court, the court has jurisdiction over the situation. This extends the court's jurisdiction even if the state in question is not a party to the main court.

When a state decides to waive judicial immunity for its diplomatic envoy, the ambassador is required to not only declare the waiver, but also provide evidence of it through the cooperation of foreign ministries between the two nations. This evidence must then be presented in later court actions against the diplomatic envoy. There is a distinction between waiving executive immunity and waiving judicial immunity in actual, practical situations.

The conclusion of this study resulted in the formulation of a number of recommendations concerning the judicial immunity of the diplomatic envoy. These proposals include the introduction of changes to the Vienna Convention on Diplomatic Relations of 1961, with the purpose of guaranteeing that the envoy of the sending state takes the required actions to investigate violations and faces trial if it is proven that they have violated the laws of the receiving state, with collaboration.

Results and Suggestions for Improvement

Based on the findings of the study, judicial immunity is characterised by distinct personal limits, procedural features, and precise spatial and temporal scopes for the activities that it protects against. The concept of judicial immunity embraces all forms of offences, regardless of whether or not they are related to official obligations. These offences include violations, misdemeanours, and felonies. A substantial amount of attention has been drawn to the misuse of judicial immunity by diplomatic envoys by international organisations. These organisations are now seriously contemplating steps to resolve this issue, particularly in light of the fact that the Vienna Convention of 1961 has not been successful in accomplishing its original aim. Diplomatic representatives are not exempt from the jurisdiction of the judiciary of their sending state, even if they are exempt from the jurisdiction of the country in which they are receiving their diplomatic duties. There are three types of immunities that fall under the umbrella of diplomatic immunity: criminal, civil, and administrative.. there are certain

exceptions to this rule for personal acts, which are also protected by immunity, but only in limited circumstances. In accordance with the Convention, civil immunity is limited to personal acts, which include property rights, inheritance, and activities that are professional or commercial in nature.

On the basis of these findings, it is suggested that diplomatic accords that govern rules pertaining to diplomatic relations be reexamined because they are not keeping up with the changing international relations of industrialised countries. There should be a greater level of specificity in the interpretation of diplomatic immunities in national laws than what is provided in the Vienna Convention. Furthermore, a new clause should be added to the Vienna Convention that requires a departing envoy to provide a written document to the authorities of the receiving state through diplomatic channels, verifying that they have no outstanding debts or financial responsibilities that were accumulated during their term to the authorities of the receiving state.

7. Bibliography

Books and Monographs

1. Adair, J. (1929). The Exterritoriality of Ambassadors in the Sixteenth and Seventeenth Centuries. Longman.

2. Benedek, M. Lawrence. *The Diplomatic Relations Act: The United States Protects Its Own*. Brooklyn Journal of International Law 5, no. 2 (1979): 379-405.

3. Denza, Eileen. *Diplomatic law: commentary on the Vienna convention on diplomatic relations*. Oxford University Press, 2016.

4. De Vattel, Emmerich. "The Law of Nations or the Principles of Natural Law (1758)." Fenwick, C (trans) (1916).

5. Farahmand, Ali M. *Diplomatic Immunity and Diplomatic Crime: A Legislative Proposal to Curtail Abuses*. Journal of Legislation 16, no. 97 (1989): 97-111.

6. Feltham, R. G. *Diplomatic Handbook*. London: Longman, 1998.

7. Gore-Booth, Lord, ed. *Satow's Guide to Diplomatic Practice*. 5th ed. London: Longman, 1979.

8. Keaton, Juliana J. *Does the Fifth Amendment Takings Clause Mandate Relief for Victims of Diplomatic Immunity Abuse*. PhD diss., Harvard Law School, 2008.

9. Klamberg, M., Nilsson, J., & Angotti, A. (editors). (2023). *Commentary on the law of the International Criminal Court: The Statute*, 2nd ed., Vol. 1

10. Przetacznik, Dr. Franciszek. *The History of the Jurisdictional Immunity of the Diplomatic Agents in English Law*. Anglo-American Law Review 7, no. 4 (1978): 348-395. DOI: 10.1177/147377957800700402.

11. Roberts, Ivor, ed. *Satow's Guide to Diplomatic Practice*. 6th ed. Oxford: Oxford University Press, 2016.

12. von Pufendorf, S. (2009). The Law of Nature and Nations. (C. Oldfather, Trans.). Oxford University Press.

13. Wright, S. L. *Diplomatic Immunity: Proposal for Amending the Vienna Convention to Deter Violent Criminal Acts*. Boston University International Law Journal 5, no. 1 (1987): 103-124.

14. Watson, A. (2013). Diplomacy: The Dialogue Between States. Routledge.

15. Dr. Fathi Wali. *Civil Justice Law*. Arab Renaissance House, Cairo, 1972.

    - د. فتحي والي - قانون القضاء المدني - دار النهضة العربية - القاهرة في عام 1972.

16. Ghazi Al-Sabrni. *Contemporary Diplomacy*. International Scientific House for Publishing and Distribution, Amman, 2002.

    - غازي الصابرني، 2002، الدبلوماسية المعاصرة، الدار العلمية الدولية للنشر والتوزيع، عمان.

17. Suhail Hussein Al-Faitlawi. *Diplomacy Between Theory and Practice*. 1st Edition, Amman: House of Culture, 2006.

    - سهيل حسين الفتلاوي (2006)، الدبلوماسية بين النظرية والتطبيق، الطبعة الأولى، عمان، بيت الثقافة.

18. Riad, Fawad Abdel Moneim. "International Judicial Immunity". The Egyptian Journal of International Law, Issue 11, Cairo, 1963.

- رياض، فوائد عبد المنعم، (1963) "الحصانة القضائية الدولية"، المجلة المصرية للقانون الدولي، عدد 11، القاهرة.

19. Faouq Aladah, Smouhi. *International Judicial Immunity*. 2nd Edition, Diplomacy and Protocol, Damascus, 1960.

- فوق العادة، سموحي (1960)، الحصانة القضائية الدولية، الطبعة الثانية، الدبلوماسية والبروتوكول، دمشق.

20. Dr. Alaa Eddin Amer. *The Diplomatic Position*. Sunrise House for Publishing and Distribution, Amman, 2001.

- د. علاء الدين عامر، (2001) الوظيفة الدبلوماسية، الشروق للنشر والتوزيع، عمان.

21. Khaled Hassan Al-Sheikh. *Diplomacy and Diplomatic Law*. 1st Edition, Amman: Adnan Abu Jaber Press, 1999.

- خالد حسن الشيخ (1999)، الدبلوماسية والقانون الدبلوماسي، الطبعة الأولى، عمان، مطبعة عدنان أبو جابر.

22. Fahd Al-Magharez. *Diplomatic Immunity*. 1st Edition, House of Culture, Amman.

- فهد المغازير، الحصانة الدبلوماسية، الطبعة الأولى، دار الثقافة، عمان.

23. Abul Haif, Ali Sadiq. *International Immunities and Privileges*. Third Diplomatic Course, Knowledge Foundation, Alexandria, 1967.

- أبوالهيف، علي صادق: الحصانات والامتيازات الدولية، الدورة الدبلوماسية الثالثة، مؤسسة المعارف، الإسكندرية. 1967.

24. Sarhan, Abdel Aziz Mohamed. *The Rules of Public International Law*. The Egyptian Journal of International Law.

- سرحان، عبد العزيز محمد: قواعد القانون الدولي العام، المجلة المصرية للقانون الدولي.

25. Shukri, Ali Youssef. *Diplomacy in a Changing World*. 1st Edition, Itrak for Publishing and Distribution, Cairo, 2004.

    - شكري، علي يوسف، (2004) الدبلوماسية في عالم متغير، الطبعة الأولى، إيتراك للنشر والتوزيع، القاهرة.

26. Aisha Ratib. *The Diplomatic and Consular Organization*. Dar Al-Nahda Al-Arabiya, Cairo, 1996.

    - عائشة راتب، 1996 التنظيم الدبلوماسي والقنصلي، دار النهضه العربيه، القاهرة.

27. Al-Obeikan, Abdulaziz. *Diplomatic and Consular Immunities and Privileges Established in International Law*. 1st Edition, Obeikan Library, Riyadh, 2007.

    - العبيكان، عبد العزيز، الحصانات والامتيازات الدبلوماسية والقنصلية المنصوص عليها في القانون الدولي، الطبعة الأولى، مكتبة العبيكان، الرياض، 2007.

28. Shibat, Fouad. *Diplomacy*. House of Aleppo Publications, 1996.

    - شباط، فؤاد، 1996، الدبلوماسية، منشورات دار حلب.

29. Ali Hassan al-Shami. *Diplomacy and Diplomatic Law*. Part One, Beirut, Dar Al-Alam for Millions, 2009.

    - علي حسن الشامي (2009)، الدبلوماسية والقانون الدبلوماسي، الجزء الأول، بيروت، دار العلم للملايين.

30. Dr. Al-Sheikh, Khaled Hassan. *Diplomacy and Diplomatic Law*. The National Library, 1999.

- د. الشيخ، خالد حسن، 1999 - الدبلوماسية والقانون الدبلوماسي - دار الكتب الوطنية.

31. Al-Mallah. *Security Powers, Immunities and Diplomatic Privileges*. Al Maarif Foundation, Alexandria, 1981.

- لملاح، 1981، الصلاحيات الأمنية والحصانات والامتيازات الدبلوماسية، مؤسسة المعارف، الإسكندرية.

32. Abdel Qader Salamah. *Diplomatic and Consular Representation. Contemporaries and Diplomacy in Islam*. The Arab Renaissance House, 1st Edition, Cairo, 1997.

- عبد القادر سلامة، التمثيل الدبلوماسي والقنصلي المعاصر، الطبعة الأولى، دار النهضة العربية، القاهرة، 1997.

33. Ali Sadiq Abu Al-Haif. *Diplomatic Law*. 1st Edition, Alexandria, Knowledge Foundation of Alexandria, 1987.

- علي صادق أبو الهيف (1987)، القانون الدبلوماسي، الطبعة الأولى، الأسكندرية، منشئة معارف الأسكندرية.

34. Bali, Samir Fernan. *Diplomatic Immunity*. 1st Edition, Aleppo Human Rights Publications, 2005.

- بالي، سمير فرنان، حصانة الحقوق الدبلوماسية، الطبعة الأولى، منشورات حلبية، 2005.

35. Ghazi Hassan Sabreini. *Contemporary Diplomacy: A Legal Study*. 1st Edition, Amman, House of Culture, 2002.

- غازي حسن صابريني (2002)، الدبلوماسة المعاصرة دراسة قانونية، ط 1، عمان، دار الثقاف

Articles in Edited Volumes

1. Cameron, Iain. "First Report of the Foreign Affairs Committee of the House of Commons." *The International and Comparative Law Quarterly* 37, no. 4 (1988): 610-620.

2. Goldberg, Arthur J. "The Shoot-Out at the Libyan Self-Styled People's Bureau: A Case." In *International Law and Diplomacy*, edited by James E. Smith, 84-96. New York: Harper & Row, 1984.

3. Young, Eileen. "The Development of the Law of Diplomatic Relations." In *The Evolution of International Law*, edited by Sarah Williams, 123-147. London: Routledge, 1992.

Journal Articles

1. Barry Cohen. "The Diplomatic Relations Act of 1978." *American Journal of International Law* 72, no. 3 (1978): 491-504.

2. Benedek, M. Lawrence. "The Diplomatic Relations Act: The United States Protects Its Own." *Brooklyn Journal of International Law* 5, no. 2 (1979): 379-405.

3. Bradley, Larschan. "The Abisinito Affair: A Restrictive Theory." *Columbia Journal of Transnational Law* 26, no. 2 (1988): 283-301.

4. Brown, Jonathan. "Diplomatic Immunity: State Practice Under the Vienna Convention on Diplomatic Relations." *The International and Comparative Law Quarterly* 37, no. 1 (1988): 53-88.

5. Claudia H. Dulmage. "Diplomatic Immunity: Implementing the Vienna Convention on Diplomatic Relations." *Case Western Reserve Journal of International Law* 10 (1978): 583-620.

6. Cohen, B. (1978). The Diplomatic Relations Act of 1978. Catholic University Law Review, 28(4), 808

7. Dinstein, Y. "Diplomatic Immunity from Jurisdiction Ratione Materiae." *The International and Comparative Law Quarterly* 15, no. 1 (1966): 76–89.

8. Edmondson, Leslie S. "Espionage in Transnational Law." *Vanderbilt Journal of Transnational Law* 5, no. 2 (1972): 434-456.

9. Farhangi, Leslie S. "Insuring against Abuse of Diplomatic Immunity." *Stanford Law Review* 38, no. 6 (1986): 1517-1548.

10. Farahmand Ali, M. (Year). Diplomatic Immunity and Diplomatic Crime. Journal of Legislation, 16, 97.

11. Garley, R. S. "Compensation for Victims of Diplomatic Immunity in the United States: A Claims Fund." *American University Law Review* 30, no. 2 (1980): 229-252.

12. Goodman, Daniel H. "Reciprocation as a Means of Curtailing Diplomatic Immunity Abuse in the United States: The United States Needs to Play Hard Ball." *Houston Journal of International Law* 11 (1988): 393-420.

13. Huneeus, Alexandra. "The legal struggle for rights of nature in the United States." Wis. L. REv. (2022):P91

14. Hickey, James E. Jr., and Annette Fisch. "The Case to Preserve Criminal Jurisdiction Immunity Accorded Foreign Diplomatic and Consular Personnel in the United States." *Hastings Law Journal* 41, no. 2 (1990): 281-322.

15. Higgins, Rosalyn. "UK Foreign Affairs Committee Report on the Abuse of Diplomatic Immunities and Privileges: Government Response and Report." *The American Journal of International Law* 80, no. 1 (1986): 135-140.

16. Jones, R. R. (1948). Termination of Diplomatic Immunity. British Year Book of International Law, 262–279

17. Joan E. Donoghue. "Perpetual Immunity for Former Diplomats: A Response to the Abisinito Affair: A Restrictive Theory of Diplomatic Immunity." *Columbia Journal of Transnational Law* 27, no. 3 (1989): 615-634.

18. Jonathan Brown. "Diplomatic Immunity: State Practice under the Vienna Convention on Diplomatic Relations." *The International and Comparative Law Quarterly* 37, no. 1 (1988): 53-88.

19. Kurizaki, Shuhei. "Efficient secrecy: Public versus private threats in crisis diplomacy." American Political Science Review 101.3 (2007): 543-558.

20. Larschan, Bradley. "The Abisinito Affair: A Restrictive Theory of Diplomatic Immunity." *Columbia Journal of Transnational Law* 26, no. 2 (1988): 283-301.

21. Lori J. Shapiro. "Foreign Relations Law: Modern Developments in Diplomatic Immunity." *Georgetown Law Journal* 77, no. 1 (1989): 281-306.

22. Lillich, Richard B. "A Case Study in Consular and Diplomatic Immunity." Syracuse L. Rev. 12 (1960): 305.

23. Margaret Buckley. "Origins of Diplomatic Immunity in England." *University of Miami Law Review* 21, no. 2 (1966-1967): 335-348.

24. Mark S. Zaid. "Diplomatic Immunity: To Have or Not to Have, That Is the Question." *ILSA Journal of International & Comparative Law* 4, no. 2 (1998): 623-654.

25. Marmon Jr., John H. "The Diplomatic Relations Act of 1978 and Its Consequences." *Virginia Journal of International Law* 19, no. 2 (1978): 383-404.

26. Paul F. Roye. "Reforming the Laws and Practice of Diplomatic Immunity." *University of Michigan Journal of Law Reform* 12, no. 1.

27. Preuss, Lawrence. "Capacity for Legation and Theoretical Basis of Diplomatic Immunities." *American Journal of International Law* 26 (1932): 694-713.

28. Ross, Mitchell S. "Rethinking diplomatic immunity: A review of remedial approaches to address the abuses of diplomatic privileges and immunities." Am. UJ Intl'l L. & Pol'y 4 (1989): 173.

29. Sofer, S. (1988). "Old and new diplomacy: A debate revisited." Review of International Studies, 14(3), 196.

30. Ward, Nathaniel P. "Espionage and the Forfeiture of Diplomatic Immunity." *American University International Law Review* 9, no. 2 (1993): 683-727.

Websites

1. Diplomacy Network. "The Role Played by the Vienna Convention on Diplomatic Privileges and Immunities in Diplomatic Practice" (2023). [Online] Available: https://diplomacynetwork.com/the-role-played-by-the-vienna-convention-on-diplomatic-privileges-and-immunities-in-diplomatic-practice/.

Legal recourse

1. **Vienna Convention on Diplomatic Relations (1961)**:

United Nations. Vienna Convention on Diplomatic Relations. 1961. Available at: https://legal.un.org/ilc/texts/instruments/english/conventions/9_1_1961.pdf

2. **Vienna Convention on Consular Relations (1963)**:

United Nations. Vienna Convention on Consular Relations. 1963. Available at: https://legal.un.org/ilc/texts/instruments/english/conventions/9_2_1963.pdf

3. **United Nations Legal Framework**:

United Nations. Charter of the United Nations. Available at: https://www.un.org/en/about-us/un-charter

Other Sources

1. United States Department of State Office of Foreign Missions. *Diplomatic and Consular Immunities United States: Guidance for Law*. Washington, D.C.: U.S. Department of State, 2017.

2. Jones, R. R. "Termination of Diplomatic Immunity 1948." *British Year Book Of International Law, Royal Institute Of International Affairs* 25 (1948): 262-279.

3. Koffler, W. F. "A Passing Glimpse at Diplomatic Immunity." *Kentucky Law Journal* 54, no. 2 (1965): 230-240.

4. Great Britain, Foreign and Commonwealth Office. (1985). *White Paper on Miscellaneous No. B, CMD. 9497*. HMSO. No. 5.