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Mechanisms That Could Be Used to Prevent Diplomats from Abusing the Immunities and Privileges of Their Authority

Summary

The issue of abuse pertaining to diplomatic privileges and immunities is of significant concern, as it has the potential to disrupt diplomatic relations. This issue can be attributed to the rise in the number of individuals who are granted immunity. Insufficient training of diplomatic personnel and a deficiency in ethical guidelines have played a role in the increasing occurrence of diplomatic envoys exploiting their diplomatic privileges and immunities. This has prompted states to enforce the regulations governing diplomatic privileges and immunities more strictly and to propose remedies to combat such misconduct.

Keywords: *persona non grata*; Vienna Convention; diplomatic immunity; sending state; hosting state; diplomatic law

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.¹ Article 41 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 that state to refrain from meddling in its internal affairs.² Sir Cecil Hurst explains the steps

¹ United States. Department of State. Consular Notification and Access: Instructions for Federal, State, and Local Law Enforcement and Other Officials Regarding Foreign Nationals in the United States and the Rights of Consular Officials to Assist Them. vol. 2. US Department of State, 1998, p. 2.

² *Vienna Convention on Diplomatic Relations*, 1961.

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.³ If the direct request is unsuccessful, the issue may be brought before the mission chief. If it does not work either, it is 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. If the mission chief considers the accusation justified, he will inform the minister of foreign affairs. He may then urge his subordinate to settle, or he may request that immunity be waived so that the matter may be heard in court.⁴ The Minister of Foreign Affairs may appeal to the sending state if the head of the mission does not act. Genet notes that the mission chief may prefer that a lawsuit against his subordinate be filed in the sending state's courts. According to Sir Cecil Hurst, cordial requests made to the mission leader are nearly always enough to guarantee the fulfilment of the claim or to result in a manner to resolve the conflict. The majority of governments provide for the management of diplomatic personnel through their foreign affairs departments. Although it is normal to handle issues through the Ministry of Foreign Affairs, there are certain exceptions to this rule.⁵

2. Persona Non-Grata

Historically, severing diplomatic ties between nations has been regarded as a significant measure, frequently resulting in armed conflict. In 1793, diplomatic relations between Great Britain and France were terminated subsequent to the execution of Louis XVI, which was fol-

³ C. Hill: *Sanctions constraining diplomatic representatives to abide by the local law*. "American Journal of International Law" 1931, vol. 25, no. 2, p. 254.

⁴ Id.

⁵ Id.

lowed by France's declaration of war within a few days. In certain circumstances, the severance of diplomatic ties is employed as a final recourse to halt egregious violations. The regime of Qaddafi in Libya, which gained control through a military coup in 1969, has been alleged to have engaged in the misuse of diplomatic immunities. Specifically, they have been accused of concealing terrorist weapons within their missions and employing diplomatic bags and coded messages to communicate terrorist plans. In an effort to address these violations, the United States took measures to shut down the Libyan People's Bureau. In a comparable vein, diplomatic relations between Britain and Libya were severed as a final recourse subsequent to the exhaustion of alternative measures, following the demise of Constable Fletcher during the Libyan shooting incident in London.⁶ The act of severing diplomatic ties has the potential to impede diplomats hailing from a particular nation from engaging in unlawful activities within the host state. However, it is plausible that the offender may evade prosecution. Notwithstanding the severance of diplomatic relations between two nations, communication and negotiation may still be facilitated through an "interests" section, as stipulated by Articles 45 and 46 of the Vienna Convention. This enables a cohort of diplomatic representatives from a particular sovereign entity to operate under the banner of a different sovereign entity. During the Gulf War of 1991, diplomatic relations between Iraq and the UK were severed. However, Iraq was able to maintain a presence for conducting diplomatic affairs through an interests section that was attached to the Embassy of Jordan in the UK. The establishment of interests sections can serve as a measure towards achieving reconciliation between states that have become disengaged. In 1955, diplomatic relations between the Soviet Union and South Africa were terminated. However, owing to their mutual economic interests in the marketing of gold and diamonds, as well as domestic developments in South Africa during the 1980s, interests sections were established under the auspices of the Austrian embassies in Moscow and Pretoria.⁷

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 dec-

⁶ *Breaking Diplomatic Ties*, at <https://dotnepal.com/breaking-diplomatic-ties/>.

⁷ *Id.*

laration. Consequently, the recipient state may utilize it for diverse purposes, either as a result 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.⁸

Article 41 of the Vienna Convention on Diplomatic Relations provides an outline of the duties of the diplomatic mission towards 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.⁹

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. In the event that 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 state. Notwithstanding the widespread practice, as well as the provisions of Article 7 of the Vienna Convention, there exists a resistance towards the frequent employment of denying entry to the selected envoys of the sending state.

⁸ N. Ahmad: *The obligation of diplomats to respect the laws and regulations of the hosting state: A critical overview of the international practices*. "Laws" 2020, vol. 9(3), p. 7.

⁹ E. Denza: *Diplomatic Law: Commentary on the Vienna Convention on Diplomatic Relations*, 2016.

Article 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.¹⁰

The temporal parameters for his 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*.¹¹ In accordance with diplomatic protocol, 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 diplomat¹². For example, 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.¹³ 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

¹⁰ J. T. Southwick: *Abuse of diplomatic privilege and immunity: compensatory and restrictive reforms*. "Syracuse J. Int'l L. & Com." 1988, vol. 15, p. 92.

¹¹ *Persona Non Grata*, at <https://dotnepal.com/persona-non-grata/> (visited Sep. 6, 2023).

¹² C. Hill: *Sanctions constraining diplomatic representatives to abide by the local law*. "American Journal of International Law" 1931, vol. 25.2, p. 256.

¹³ L. Gore-Booth (ed.): *Satow's Guide to Diplomatic Practice*, fifth edition, 1979, p. 186.

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. 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.¹⁴ 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 relations. A case in point is the United States Government's designation of an Indian diplomat, Devyani Khobragada, as *persona non grata*, which resulted in his expulsion. She was accused of forging her housemaid's visa (Kompas 2014). Also, many Soviet Union diplomats were expelled after being declared *persona non grata* several decades ago. The vast majority of them were charged with espionage.¹⁵ While the statement is valid in principle, the examples mentioned above show that this is not always the case in practical terms.

3. Waiver of Immunity

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. In the event that 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

¹⁴ Denza: *Diplomatic Law*, *supra* note 7, p. 378.

¹⁵ M. Hendrapati: *Legal regime of Persona Non Grata and the Namru-2 case*, "Journal of Law, Policy and Globalization" 2014, p. 161.

such immunity. Consequently, the waiver is the responsibility of the sending state.¹⁶ 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.¹⁷

One potential resolution for states to secure a waiver in cases of severe criminal offenses is to engage in contractual 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 mandatory for the government of the sending state to explicitly waive the jurisdictional immunity of any individual who is entitled to such immunity.¹⁸ 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 infrequent. A waiver may arise when the sending state is not obligated to waive immunity, but possesses the discretion to waive it.¹⁹ In 1997, an embassy representative hailing from the Republic of Georgia en-

¹⁶ F. Przetacznik: *The history of the jurisdictional immunity of the diplomatic agents in English law*. "Anglo-American Law Review" 1978, vol. 7, no. 4, p. 384.

¹⁷ Id.

¹⁸ Id.

¹⁹ V. L. Maginnis: *Limiting diplomatic immunity: lessons learned from the 1946 Convention on the privileges and immunities of the United Nations*. "Brook. J. Int'l L" 2002, vol. 28, p. 1002.

tered 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.²⁰ In November 1982, Frank Sanchez, who was the offspring of the Brazilian ambassador situated in Washington, DC, perpetrated an act of physical violence and discharged a firearm at the individual responsible for monitoring the entrance of a nightclub, identified as Kenny Skeen. 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 aggressive conduct. In the event that a diplomat engages in misconduct, it is imperative that they are informed of their accountability under the law and subjected to legal proceedings.²¹

The question of who could waive immunity and whether there needs to be a distinction between civil and criminal jurisdiction was discussed in the ILC and 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 diplo-

²⁰ M. 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>.

²¹ A. M. Farahmand: *Diplomatic immunity and diplomatic crime: A legislative proposal to curtail abuses*. "Journal of Legislation" 1989, vol. 16, p. 100.

matic agent will be treated legally on par with a citizen of the receiving state, which is a serious decision. Diplomatic activities were seen as avoidable rather than void in *Empson v. Smith*, according to Diplock LJ. 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.²²

4. Jurisdiction of the Sending State

This includes immunity from being detained or arrested in another nation, even if their activities were not related to the mission and were instead personal. This is explained in full in Article 31 of Vienna Convention, which stipulates that an agent will be exempt from the criminal jurisdiction of the receiving state. A diplomatic agent will also have some protection from a state's civil jurisdiction, but the Convention clearly specifies several limitations. This also includes behaviors categorized as outside of official obligations.²³ In the event of an injury, an individual has the legal right to initiate legal proceedings against a diplomatic representative in the courts of the sending state, as the representative is not entitled to immunity in such circumstances. The majority of states offer a platform for legal action against public officials who operate beyond the boundaries of their respective state's jurisdiction. Nonetheless, it appears that this particular course of action has seldom been employed with respect to diplomats.²⁴ 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

²² B. S. Ladan: *A Critique of Diplomatic Immunity in International Law*, 2015, p. 100.

²³ *All Answers Ltd*, 'Vienna Convention on Diplomatic Relations 1961' (Lawteacher. Net, June 2023) <<https://www.Lawteacher.Net/acts/vienna-Convention-Diplomatic-Relations-1961.Php?Vref=1>> Accessed 18 June 2023, at <https://www.lawteacher.net/acts/vienna-convention-diplomatic-relations-1961.php#citethis>.

²⁴ C. Hill: *Sanctions Constraining Diplomatic Representatives to Abide by the Local Law*, *supra* note 3, p. 255.

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 the claim in the foreign jurisdiction is low. Therefore, this option is not a feasible alternative for individuals who have sustained severe injuries.²⁵

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 serves 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.²⁶ 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.²⁷

It is a common practice to confer diplomatic immunity upon diplomats, thereby exempting them from legal prosecution for traffic infractions. Notwithstanding, this does not imply that they are immune to legal regulations. On certain occasions, diplomats have been subjected to charges related to traffic violations and have been required

²⁵ Maginnis: *Limiting Diplomatic Immunity: Lessons Learned from the 1946 Convention on the Privileges and Immunities of the United Nations*, *supra* note 17, p. 1004.

²⁶ L. S. Farhangi: *Insuring against abuse of diplomatic immunity*. "Stanford Law Review" 1986, vol. 38, pp. 1517–1548, 1532.

²⁷ Denza: *Diplomatic Law*, *supra* note 7, p. 267.

to remit fines or confront alternative sanctions.²⁸ In the majority of 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 in the event that an individual 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.²⁹ The aforementioned instances demonstrate that Diplomats are frequently provided with immunity from legal proceedings pertaining to traffic infractions. Notwithstanding, this does not imply that they are immune to legal obligations. This idea has the capacity to be developed so that it may be used to more dangerous offenses.

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. The individual responsible for security at the establishment attempted to seek reimbursement for medical expenses, but was unsuccessful in doing so. The aforementioned 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. The Canadian government was given assurance by the Russian ambassador that the diplomat in question would face prosecution in Russia. However, a Russian law professor expressed the belief that the diplomat would likely re-

²⁸ *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/>.

²⁹ *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>.

ceive a suspended sentence. Regrettably, no data was attainable to juxtapose the anticipated or factual result.³⁰

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.³¹

According to Southwick’s review, 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.³² As per the statement of the Court of Appeals for the District of Columbia, the level of safeguarding provided by foreign governments to American diplomatic personnel stationed overseas is contingent to a considerable extent on the protection extended

³⁰ B. S. Ladan: *A Critique of Diplomatic Immunity in International Law*, 2015, p. 69.

³¹ J. J. Keaton: *Does the Fifth Amendment Takings Clause Mandate Relief for Victims of Diplomatic Immunity Abuse*. “Hastings Const. LQ” 1989, vol.17, p. 575.

³² J. T. Southwick: *Abuse of Diplomatic Privilege and Immunity*, *supra* note 8, p. 89.

by our government to foreign diplomats residing in Washington, DC. 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.³³

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.³⁴

The court in the *Salm v. Frazier* case 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.³⁵

6. Settlement of Disputes

The Optional Protocol on the Compulsory Settlement of Disputes is incorporated within the Vienna Convention on Diplomatic Relations. The present protocol establishes a framework for the amicable settlement of conflicts that may arise from the construal or implementation of the Vienna Convention.³⁶

³³ Keaton: *Does the Fifth Amendment Takings Clause Mandate Relief for Victims of Diplomatic Immunity Abuse*, *supra* note 27, p. 575.

³⁴ J. T. Southwick: *Abuse of Diplomatic Privilege and Immunity*, *supra* note 8, p. 89.

³⁵ B. S. Ladan: *A Critique of Diplomatic Immunity in International Law*, p. 70.

³⁶ Optional Protocol concerning the Compulsory Settlement of Disputes, 1963.

The International Court of Justice (ICJ) 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 as a result of diplomatic impropriety. Furthermore, it is customary for the International Court of Justice (ICJ) to exclusively consider cases that pertain to grave violations of the Vienna Convention. 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.³⁷ The International Court of Justice (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.³⁸ 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.³⁹

7. Conclusion

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 obli-

³⁷ Maginnis: *Limiting Diplomatic Immunity: Lessons Learned from the 1946 Convention on the Privileges and Immunities of the United Nations*, *supra* note 17, p. 1004.

³⁸ Denza: *Diplomatic Law*, *supra* note 7, p. 64.

³⁹ *Breaking Diplomatic Ties*, *supra* note 31.

gations 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 Berridge⁴⁰, 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 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 aforementioned 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 gathering 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 diplomatic mission concerned if the ambassador has committed a serious crime, the diplomat is acting in accordance with the instructions of his government. In general, nations should impose sanctions against their diplomats abroad that are severe and deterrent,

⁴⁰ G. R. Berridge: *Diplomacy: Theory and Practice*, Springer Nature, 2022, p. 118.

such that the penalties are harsher than those imposed on other people, as well as the develop new international diplomatic legislation that takes into account 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.

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Mechanizmy, które można zastosować, aby zapobiec nadużywaniu przez dyplomatów immunitetów i przywilejów przysługujących im władzy

Streszczenie

Kwestia nadużyć w zakresie przywilejów i immunitetów dyplomatycznych budzi poważne obawy, ponieważ może potencjalnie zakłócać stosunki dyplomatyczne. Problem ten można przypisać wzrostowi liczby osób, którym przyznano immunitet. Niewystarczające przeszkolenie personelu dyplomatycznego i brak wytycznych etycznych odegrały rolę w coraz częstszym wykorzystywaniu przez przedstawicieli dyplomatycznych przysługujących im przywilejów i immunitetów dyplomatycznych. Skłoniło to państwa do bardziej rygorystycznego egzekwowania przepisów dotyczących przywilejów i immunitetów dyplomatycznych oraz do zaproponowania środków mających na celu zwalczanie takich niewłaściwych zachowań.

Słowa kluczowe: persona non grata; Konwencja Wiedeńska; immunitet dyplomatyczny; stan wysyłający; państwo przyjmujące; prawo dyplomatyczne