

DIPLOMATIC MISSION: PRIVILEGES AND IMMUNITIES

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Abstract

Nowadays, one of the most crucial means for achieving the state's foreign policy objectives through designated officials is diplomacy. The state as a subject of international law in relations with other states is represented through its own bodies. Therefore, through diplomatic representations, states interact with one another, watch out for their interests, notify one another, and advance ties between them. Unquestionably, they have long been accorded certain rights, or have benefited from certain privileges and immunities, in order to successfully perform their tasks and activities. In this study, we would therefore attempt to provide information on the facilities provided to representatives of diplomatic mission in the states where they are accredited, freedom of movement and communication, privileges and immunity of members of the diplomatic mission, as well as cases from the practice of international law, keeping in mind that the foreign service of a state is composed of a large number of members who make up its diplomatic mission and who enjoy privileges and immunities.

Keywords: diplomacy, diplomatic privileges and immunities, international law, diplomatic mission, foreign policy, diplomatic practice.

*True law is right reason in agreement with nature;
it is of universal application, unchanging and everlasting;
it summons to duty by its commands, and averts
from wrongdoing by its prohibitions.*

Cicero

Introduction

One of the most renowned fields in international relations is international law, which is concerned with the privileges and immunities granted to representatives of the diplomatic mission throughout the execution of their duties. These rights, benefits, and amenities are sometimes referred to as "diplomatic privileges and immunities." The diplomat's role as a state's envoy entails a variety of benefits and privileges. The representative of a diplomatic mission is awarded privileges and immunities that allow them to carry out their duties without interference. Moreover, a diplomatic envoy is exempt from the territorial jurisdiction of the state to which he is accredited due to the diplomatic protection bestowed upon them. However, diplomatic privileges and immunities have not been established in a uniform manner.

For a rather long time, this area of international law has had a customary character, and from diplomatic practice, we can observe that only a small number of senior diplomats with diplomat status have historically had diplomatic privileges and protection. This area of international law was once again affected at the beginning of the 20th century, and the Havana Convention on Diplomatic Representatives, though of a regional nature, was approved in 1928 which demonstrates the interest that states had at the time in regulating some matters from the field of diplomacy through agreement.

Additionally, the Vienna Convention on Diplomatic Relations was approved in Vienna in 1961

as part of the International Law Commission's attempt to codify international law after the United Nations was established. This endeavour was led in this direction mostly by International Law Commission. Following the Vienna Convention on Diplomatic Relations' adoption in 1961, the Vienna Convention on Consular Relations and the Convention on Special Missions were both approved in Vienna in 1963 and 1969, respectively. Vienna witnessed the adoption of the Vienna Convention on the Representation of States in Their Relations with International Organizations of a Universal Character in 1975. Therefore, it may be claimed that a system of standards that govern matters of international law linked to diplomacy, such as the rights, privileges, and immunity of diplomatic representatives, have been established with the enactment of the Vienna Conventions.

1. The evolution of diplomacy through history

Diplomacy and diplomats have norms that are as ancient as the governments themselves. The first traces of diplomacy and diplomats may be discovered in the countries of the Near East, when political communities were constituted for the first time inside specific areas. Diplomatic regulations were in their infancy and were maintained by the monarchs themselves, who had a service of special officials at their disposal. For the first time in history, some laws in international relations were respected in the countries of the ancient Near East. Thus, monarchs and leaders of other kingdoms formed frequent contact, exchanged diplomatic representatives, and developed a protocol to receive and protect such representatives, as well as the procedures that had to be followed for their accreditation near foreign courts .In addition to the Middle East, China and India confronted diplomatic rules. Chinese states, maintained contact with one another through "travellers" (ambassadors) who did not have a permanent address and moved from one state to the next .

Furthermore, written documents have been found from ancient India that include diplomatic norms. The Laws of Manu are among the most important of these writings. Diplomacy, according to these precepts, is the art of avoiding conflict and promoting peace. According to the Laws of Manu, war and peace are dependent on ambassadors, who are the primary agents in promoting peace or initiating conflicts between states. Diplomats were required to tell their sovereign about the intentions of foreign sovereigns in order for their country to avoid any unanticipated harm. For these reasons, the Laws of Manu require diplomats to be talented and well-educated in order to earn the sympathy of others. It was recommended that they be carefully picked, at a mature age, bold and good orators who would be pious in carrying out the responsibilities entrusted to them. They had to decipher foreign sovereigns' goals not only through their words and deeds, but also through gestures and facial expressions .

Diplomatic representatives' unique privileges are among the oldest and most respected standards in international law. Even the Bible mentions David being enraged at the abuse of his emissaries in Hanun's court, for which the king of Judah initiated the Ammonite war. However, in ancient times, the laws of communication between peoples were based on religious premises: "Religious ceremonies and precepts everywhere sanctified the inviolability of nobles and ambassadors. Because they were protected by holy and religious assets, ambassadors, eunuchs, and fugitives admitted as refugees in temples or other buildings of worship were obliged to be inviolable ."

When discussing diplomatic standards, notably the safety and inviolability of diplomatic officials, one cannot overlook Ancient Greece. Heralds, diplomatic officials, priests, and temples were all safe in ancient Greece. As a result, the ambassadors were deemed inviolable, and

anybody who abused him was harshly punished. Even in Ancient Rome, if the inviolability of ambassadors was violated, Rome required and practiced handing over the perpetrators if they were Roman citizens. As a result, ambassadors were given particular security and were held in high esteem .

When considering diplomacy and diplomats, it is important to mention that even Arab peoples have accepted diplomatic representatives' inviolability. Later, in the 15th century, powers such as Florence, Milan, and Venice established permanent diplomatic missions in England, Spain, and other countries. Diplomatic emissaries became a regular institution in the second half of the 17th century. The inviolability of diplomatic representatives was already a law that was respected by all of the governments that comprised the international community at the time.

The management of issues such as diplomatic missions' privileges and immunities, as well as other diplomatic regulations, has grown in importance, particularly throughout the 20th century. At this time, the Havana Convention on Diplomatic Relations was adopted, which had primarily a regional character, and subsequently in Vienna, the Vienna Convention on Diplomatic Relations of 1961 was adopted, as were additional agreements connected to consuls a few years later, special missions. Following the acceptance of these agreements, we may infer that there are regulations governing the establishment of diplomatic representation.

2. The concept, composition and scope of the diplomatic mission

In the context of diplomatic practice, when we refer to a "diplomatic mission," we mean one of the state organizations for extra-national representation that has been established and is functioning legally in another state and whose standing is governed by the Vienna Convention, bilateral agreements, and national laws of the states. Three forms of representations are described in diplomatic practice for the various diplomatic-consular representations; these three types of representations are those: the embassy, missions to any international organization and consulates. There are a certain number of people that make up the diplomatic mission who are referred to as "members of the mission" or "members of the mission staff." Consequently, the diplomatic mission includes the following categories in accordance with the Vienna Convention on Diplomatic Relations: the diplomatic personnel, administrative and technical personnel and service personnel .

The mission chief and all diplomats, including secretaries, attachés, and advisors, fall under the first group. The second group comprises of those who work as archivists, radio operators, coders, and administrative staff for diplomatic people. Security personnel, drivers, chefs, housekeepers, porters, and other staff make up the third group of the diplomatic mission.

Typically, members of the mission's diplomatic staff must be citizens of the issuing state. They may only become citizens of the receiving state with that state's agreement, which it may be revoked at any moment .

The number of individuals who comprise a state's diplomatic mission is a matter for the sending state and is determined by its financial and manpower capabilities. However, in most circumstances, it is governed by a treaty between governments. According to the Vienna Convention on Diplomatic Relations, if no definite agreement is reached on the number of mission members, the receiving state may request that this number be reduced to what it considers reasonable and normal, taking into account the circumstances and conditions in the receiving state as well as the needs of the mission in question .

Since diplomatic mission representatives have duties relevant to the fundamental interests of their governments, they have long been credited with a variety of rights for which they are the subject of this research in order to successfully carry out these tasks in the receiving state.

3. Diplomatic representatives' advantages, privileges, and immunities

The diplomatic mission relies on the accrediting state and its government to fulfil its commitments. The accrediting state is required to allow the mission's activities to flourish and to provide it a number of facilities, immunities, and privileges. The Vienna Convention on Diplomatic Relations of 1961 states unequivocally: "The state of accreditation must, or facilitate the reception in its territory, within the framework of its legislation, of premises necessary for its mission from the sending state, or to assist the sending state in providing the premises in another way ." It should also assist missions in finding acceptable homes for their people if necessary .

The mission is granted freedom of movement and communication among other things in order to carry out its task. One of the benefits provided to the mission and its members is freedom of mobility. The Vienna Convention on Diplomatic Relations also affirms freedom of travel, emphasizing: the accrediting state enables and defends the mission's unrestricted mobility for all official purposes. The mission may exploit any authorized methods of communication, including diplomatic couriers and code or cipher messages, in interacting with the government as well as other missions and consulates of the sending state wherever they may be. The mission, on the other hand, may only install and use a radio transmitter with the agreement of the receiving state .This flexibility is confirmed by the 1969 Convention on Special Missions (Article 27) and the Vienna Convention on the Representation of States in Their Relations with International Organizations of a Universal Character (Article 26).

Freedom of communication is another facility provided to diplomatic missions in order for them to carry out their tasks in the receiving state. As a result, freedom of communication requires diplomatic missions to have the security to communicate and receive information related to the performance of their tasks. According to the Havana Convention on Diplomatic Representatives (1928), states must give diplomatic representatives with every facility necessary for the fulfillment of their duties, including the ability to communicate freely with their governments . Even the Vienna Convention on Diplomatic Relations (1961) specifies unequivocally that the receiving state enables and defends the mission's unrestricted communication for all official purposes .

The accrediting state must give the diplomatic representative with free action space on its territory where the diplomatic envoy is accredited in order for him to fulfil his role without hindrance. Diplomatic privileges are the advantages, rights, benefits, and esteem enjoyed by diplomatic staff and the diplomatic mission in diplomatic practice. By diplomatic immunity, we imply that diplomatic staff is immune from criminal, civil, and administrative prosecution in the accrediting state. The regulations governing diplomatic representatives are quite outdated, and a portion of them entered diplomatic practice through international custom.

Although the regulations governing diplomatic privileges and immunity are not recent, they have not always been followed. Thus, history records that the Russian emissary was imprisoned by his creditors while going along the street in London in 1708. He arrived in the prison after greeting the Queen of England, Anne, and before receiving his letter of withdrawal, he received his passport. Despite great opposition and outcry, the delegate was imprisoned and guarded in a tavern. His creditors freed him after his friends paid his bail.

When Queen Anne heard of the incident through the state secretary of foreign affairs, she expressed her sympathy and assured the delegates that she would discover the offenders and severely punish them. Following this case, the English Parliament passed the Diplomatic Privileges Act in 1708, which provides for the punishment of anyone who, via their conduct, would damage or attack diplomatic personnel .

Similarly, in the Netherlands it is against the law to attack, damage, or insult authorized representatives, agents, and other representatives of the king, princes of the Republics, or others who have the character of public servants in any way, whether it be by verbal or physical abuse directed at their persona, escort, servants, buildings, or other members .

The Vienna Convention on Diplomatic Relations of 1961, the Convention on Special Missions of 1969, the Vienna Convention on the Representation of States in their Relations with International Organizations of a Universal Character, as well as numerous other international agreements and national laws of states, all contain provisions governing diplomatic privileges and immunity today. According to the Vienna Convention on Diplomatic Relations, all individuals with diplomatic privileges and immunities are required to uphold the principle of non-interference in the internal affairs of the state in which they hold an accredited position and to follow the laws of that state .

“Diplomatic representatives are inviolable with regard to their persons, private or official residence, and property,” according to the Havana Convention on Diplomatic Representatives . All classes of diplomatic representatives, all members of the diplomatic mission's official staff, family members living under the same roof, and the mission's files, archives, and communications are all covered by this protection under the treaty.

The Vienna Convention on Diplomatic Relations also states “the diplomatic agent's person is sacred. No type of detention or arrest is permitted for them. The receiving state accords them the respect they are due and takes all practical precautions to protect their person, freedom, and dignity”. The Convention guarantees the protection and inviolability of the diplomatic representative's private house, papers, and personal property in addition to the inviolability of diplomatic representatives. In actuality, the diplomatic representative is protected even if they commit a crime. The recipient state's sole choice in such circumstances is to deem it non-grata.

The state may demand satisfaction or compensation for offenses against and insults directed at the diplomatic envoy. The satisfaction comes with pleading guilty. The inviolability of diplomatic ambassadors has occasionally been compromised throughout diplomatic history. Dey Hussein was said to have hit the French Consul with a fly whisk three times in the face after the French Consul failed to answer the dey's questions regarding France's outstanding debt to Algeria. The French took offense at this action and set out to blockade Algeria. German ambassador Ketteler was slain by Chinese soldiers in China during the years of 1899 and 1901 during the so-called "Boxer Rebellion." The major nations wanted China to apologise and to initiate a memorial near the scene of the German representative's assassination, acts that would have allowed the Chinese leader to demonstrate remorse for the diplomat's killing. China concurred. China agreed to comply with this request only when armed intervention by the great powers took place.

Moreover, the amount of immunity granted to diplomats has been increased by Gentili . In the advice provided to the English government, Gentili asserts that the Spanish ambassador enjoys protection and cannot be brought before the court in the case of Bernardino de Mendoza, who has been charged with organizing a plot against Elizabeth, the Queen of England, in favour of

Mary Stuart. The English government has given its approval to this stance and has only returned Mendoza to Spain as punishment .

The privileges and immunities of diplomatic representatives are only in effect for a specific period of time, according to international practice. The Vienna Convention on Diplomatic Relations states that diplomatic representatives are entitled to diplomatic privileges and immunity as soon as they set foot on the territory of the country where they are accredited, or if they are already there, as soon as their appointment is made known to the ministry of foreign affairs or another ministry for which permission has been granted . When a diplomatic envoy has finished performing their duties and has left the nation where they were accredited, their privileges and immunities are no longer in effect.

In circumstances when a particular amount of time elapses between the time a diplomatic envoy is relieved of his duties and departure, international law allows him to continue to benefit from his privileges and immunities for a fair amount of time. International law further stipulates that even in the case of a diplomatic envoy's passing, his family members are still entitled to the privileges and immunities up until the conclusion of a reasonable term that allows them to depart the receiving state's territory.

The issue of whether diplomatic representatives enjoy privileges and immunities when passing through third countries or if their passports are only valid in the country where they are accredited has long been a source of controversy in the concept of international law. According to numerous writers, diplomatic ambassadors should be granted privileges and immunities while traveling through other nations, whether they are en route to their new post or returning from one.

In addition to diplomatic personnel, the diplomatic mission's headquarters and the diplomatic representative's private house are inviolable. In this regard, the Vienna Convention on Diplomatic Relations states that: The diplomatic mission's premises are inviolable, and nobody dares access them without permission; in other words, even the host state's government cannot enter them unless given permission by the mission's leaders. The receiving state is required to assure the safety of the diplomatic mission, as well as the integrity and security of its assets, including its buildings, vehicles, and communication. The receiving state must also take all necessary precautions to avoid any unlawful entry to the mission's premises, their damage, a disturbance of their peace, or a breach of their dignity. The mission's buildings, furnishings, and other possessions cannot be subject to control, requisition, confiscation, or execution actions. The same goes for the mission's vehicles .

The flag and coat of arms of the sending state may be displayed by the mission's head in the buildings, including their house and mode of transportation. Any use of the diplomatic mission's facilities that conflicts with the mission's objectives or violates international law is prohibited .

Another crucial aspect of diplomatic immunity is the inviolability of the mission's archives and records. Archives and mission-related papers are always protected regardless of their location . Even in times of conflict, the receiving state must ensure their preservation by a specific individual or grant the opportunity that they will be handed to a third state, or that they will be moved to a state designated by the sending state .

In addition to being excluded from pre-trial and civil jurisdiction, diplomatic immunity also includes immunity in administrative and police proceedings, according to certain authors.

Criminal immunity means that the diplomatic representative has absolute protection from criminal prosecution. They cannot be imprisoned or arrested, nor can they be compelled to testify in court. The matter is handled through the diplomatic channels of the two governments when a

diplomatic representative commits a severe crime. Thus, the case of the murder of diplomat Balmaceda, secretary of the Chilean legation in Brussels on February 24, 1906, by the 16-year-old Carlos Waddington, whose father was charged with work in the same mission, is known in diplomatic practice. Shortly after the assassination, Carlos Waddington fled to the Chilean embassy and claimed diplomatic immunity. The Belgian people were enraged and surrounded the embassy building, determined to capture Carlos Waddington. The Belgian police were placed in the defense of the mission building to prevent the crowd from breaking into it. On March 2, Chile waived Waddington's diplomatic immunity and ordered that he be handed over to Belgian authorities .

As this case demonstrates, even if diplomatic officials are protected by diplomatic immunity, the receiving state may ask the sending state to waive that privilege in the event of major criminal acts. The receiving state may prosecute the diplomatic envoy for the offense they committed while representing their country abroad if the sending state has now waived criminal immunity. The only option available to the receiving state if the sending state refuses to renounce the representative's diplomatic immunity is to proclaim them *persona non grata* and request that they depart. Consequently, everyone is required to obey the laws and legal requirements of the receiving state under the Vienna Convention on Diplomatic Relations, regardless of privileges and immunities .

Civil jurisdiction is not subject to diplomatic immunity. This means that the diplomatic envoy is immune from legal action, including civil lawsuits. However, it should be emphasized that the diplomatic representative's protection from civil lawsuits is not absolute, which means that a civil lawsuit may be filed against them when it comes to their personal interests. In other words, if their property rights are unrelated to the discharge of their official duties, they are not regarded as inviolable . In the following situations, diplomatic officials' civil immunity does not apply:

- a) In the event of a litigation involving privately owned property situated on the territory of the receiving state, the diplomatic envoy is not immune from liability. The property that the diplomatic envoy retains on behalf of the sending state or for the purposes of the mission is an exception to this rule.
- b) In the case of a lawsuit that refers to the inheritance with which the diplomatic representative appears as executor (executor) of the will, manager of the inheritance, heir or right bearer (legatee) in a private capacity and not on behalf of the sending state for reasons of necessity of the mission.
- c) The diplomatic representative does not enjoy immunity in the lawsuit that refers to the free profession or any commercial activity, if he exercises this in the host state outside of his diplomatic functions.

In case the diplomatic representative appears in court as a plaintiff, it is considered that diplomatic immunity has been waived. Diplomatic representatives are exempt from the police power of the state where they are accredited. The police orders and regulations of the receiving state do not extend to external diplomatic representatives. However, this does not mean that they can behave as they please, e.g., drive the vehicle on the left side, as is customary in their own country, exceed the speed limit or park the vehicle in unauthorized places . Instead, it is to be anticipated that diplomatic officials will willingly abide by the current police regulations .

Diplomatic missions are immune from the receiving state's fiscal rights, and the receiving state is never allowed to compel the diplomatic mission to pay any form of taxes. The sending state and the head of the mission are exempt from all national, regional, or municipal taxes and duties for the premises of the mission of which they are the owners or tenants, unless it is the case for taxes

and fees that are received as payment for special services, as stated in the Vienna Convention .Such immunity should not be interpreted in any way as a prohibition against paying special expenses, such as water supply, electricity, gas, telephone services, etc., since in this case paying for them cannot be regarded as paying taxes but rather as paying for specific services that improve the comfort of diplomatic representatives .

Even diplomats are immune from the receiving state's monetary obligations. Thus, article 34 of the Vienna Convention emphasizes that the diplomatic agent is exempt from all personal or property, national, regional, or municipal taxes and duties with the exception of:

- (a) Indirect taxes of a nature that are typically included in the price of goods or services.
- (b) Taxes and taxes on private real estate located in the territory of the receiving state except when the diplomatic agent possesses them on behalf of the sending state for the purposes of the mission.
- (c) Inheritance rights that are received by the receiving state subject to the provisions of paragraph 4 of article 39.
- (d) Taxes and taxes on private income that have their source in the receiving state and capital taxes levied on investments made in commercial enterprises located in the receiving state.
- (e) Taxes and taxes received as remuneration for special services rendered.
- (f) Of registration, secretarial, mortgage and stamp rights related to real estate, subject to the provisions of Article 23.

The Vienna Convention on Diplomatic Relations also provides for the exemption from payment of any type of customs data for the diplomatic representative. According to the convention, the receiving state grants the entry and exemption of customs duties, taxes and other obligations except for costs for analogous services on items intended for official use of the mission as well as articles intended for the personal use of the diplomatic agent or members of his family, including articles intended for his installation.

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