Forum: 6th General Assembly
Issue: The question of diplomatic immunity
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Position: Deputy chair

Introduction

27th of August 2019, a nineteen-year-old male was killed in a motorcycle accident. Not because he was going too fast, but because someone was driving on the wrong side of the road. That someone was Anne Sacoolas, wife of a US diplomat. Protected by diplomatic immunity she was not charged. It once again brought to the surface, the question of diplomatic immunity. To who and to which extent it should be implemented. All states have the responsibility to ensure the safety of their population and make sure that the human rights of their inhabitants are met.

At the Vienna convention on diplomatic relations, it is decided that diplomatic immunity will be implemented. The convention aimed to allow diplomats to, without hindrance, carry out their work in the receiving state. It protects diplomats from being prosecuted in the receiving state for their entire period of being a diplomat.

Diplomatic immunity exists to keep safe these diplomats that are in a position in which they have to make decisions in the interest of the citizens of the sending state, which sometimes creates doubts about legal certainty. When the receiving state needs to be reminded of their international obligations, that is also the diplomat’s job. Therefore, they must be safe for them to not be endangered whilst abroad.

In article 29 of the Vienna Convention on Diplomatic Relations (1961) it is stated that “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.” Thus, this system seems to be proved controversial. For a diplomat, there is, despite the possibility of waiving immunity (as this is can only be done by the sending country), no consequences to their actions in receiving states. Parking tickets, taxes, murder, misconduct in general, in theory, a diplomat, when committing misconduct in a receiving state, is no longer taken accountable for this in the receiving state as they cannot be prosecuted in the receiving state.

This creates an issue as equal protection is being violated and states can no longer ensure their population that their human rights are met.

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2 https://www.government.nl/topics/embassies-consulates-and-other-representations/diplomatic-immunity 22/11/19
Definition of Key Terms

State
According to the Oxford English Dictionary, a state is “an organized political community under one government; a commonwealth; a nation.

Diplomatic Agents
Government representatives who are sent by one country to live and work in another, to serve as intermediaries between the two countries.

Diplomatic immunity
The legal definition of Diplomatic immunity is a principle of International law that provides foreign diplomats with protection from legal action in the country in which they work.

International Law
The body of law that governs the legal relations between or among states or nations.

Equal protection
The constitutional guarantee that no person or class of persons shall be denied the same protection of the laws that is enjoyed by other persons or other classes in like circumstances in their lives, liberty, property, and pursuit of happiness.

Legal instruments
A document that states some contractual relationship or grants some right.

Dispute
Cambridge dictionary states a dispute is an argument or disagreement, especially an official one between, for example, workers and employers or two countries with a common border.

Requisition
According to the Cambridge dictionary, a requisition is a formal or official request for something needed.

Reciprocal
“A reciprocal action or arrangement involves two people or groups of people who behave in the same way or agree to help each other and give each other advantages.”

Convention
An agreement between states covering particular matters, especially one less formal than a treaty.

Receiving State
A state to which an offender requests transfer of supervision or is transferred.

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4 https://dictionary.cambridge.org/dictionary/english/reciprocal 25/11/19
5 https://www.google.com/search?client=safari&rls=en&xsrf=ACYBGNv4ZW5d8sZm3D4iKgmOuNnhVnWHBQ%3A1574667816802&ei=KlbhXJ2JMlCAl-gPvM6WeA&q=definition+convention&oq=definition+convention&gs_l=psy-ab.3...0.2.0.148.1582.18j2......0....1..gws-wiz.......0.71j35i39j0i203i0i221i0i30j0i20i263j0i10l_h1S5aKCFo&ved=0ahUKEwiY_e_e7oTmAhUwwAlHTynBQ8Q4dUDCAo&uact=5 25/11/19
**Provision**

The business definition is an article, clause or stipulation in an agreement, contract, deed, instrument, or statute that explains a specific condition, effect, implication, qualification, or requirement.

**Waiver of immunity**

When someone’s immunity is waived, or they waive it themselves. They can no longer protect themselves from self-incrimination so that his/her testimony can be held against him/her during legal proceedings in court⁶.

**Background Information**

The history of diplomatic immunity starts far back in time. In fact, the Romans already implemented the law of diplomatic immunity. Though it was already a concept from the Greeks. When people in a similar position to what we know as diplomats travelled through the Roman empire, they got a free pass through the different civilisations. It has long been agreed that there needs to be a guarantee of security for messengers to maintain advancement in their mutual interest⁷. We find that diplomatic immunity made its way into the middle ages as well, it continued to be applied to envoys so they could complete their missions. As diplomatic immunity stayed in existence and humankind evolved, so did diplomatic immunity. After the middle ages around the 17th century, we notice that resources become precedents and courtesies into rights. Thus, this became a legal issue.

Diplomatic immunity is however not only enjoyed by diplomats. It is also enjoyed by consular offices and other mission personnel⁸.

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⁶ [https://definitions.uslegal.com/w/waiver-of-immunity/](https://definitions.uslegal.com/w/waiver-of-immunity/) 11/12/19
Not everyone enjoys the same degree of diplomatic immunity. Diplomatic agents get the highest degree of diplomatic immunity, together with their family members (for them counts that they enjoy it under the terms of art. 37.1). Administrative and technical staff enjoy the same immunity as diplomatic agents when they are on duty (as they enjoy it under the terms of art. 37.2). This means they cannot be criminally charged except for personal matters. Service staff enjoys it under terms of art. 37.3, which means they only have functional immunity.

Consular officers are limited to functional immunity under terms of art. 41, 43.1, 44.1. Their families do not enjoy any immunity whatsoever.

Intergovernmental organizations are normally enjoying functional immunity.

These different levels of immunity ensure that total immunity is not granted to those who are not in a position of the absolute need of it.

Diplomatic immunity exists so that receiving states cannot manipulate diplomatic missions. It was created to ensure nations can, in reality, engage in diplomacy. 10

When giving this gracious offer of trust, it is easy to abuse it. The secrecy they are entitled to makes for better work by diplomats between countries, but when the secrecy it not rightfully used, diplomats become a risk to the receiving state.

Although there are also diplomats that are respectful to their receiving states and other human beings in general, they are not enough to disregard this problem.

**Some examples of diplomatic abuse;**

**UK, 1982:** A box marked “household effects”, that came from a ship carrying embassy materials, is dropped from a forklift at the harbour. As a result, the box is revealed to be filled with six hundred pounds of marijuana.

**Rome, 1984:** Moans are heard from a bag, labelled “diplomatic bag”. Upon opening this bag, an Israeli man is found inside.

**Oslo, Helsinki, Copenhagen, 1976:** North Korean diplomats were caught smuggling marijuana. As well as 400 kilos of hashish into Cairo. 11

**London, 1985:** A man is stopped because he is suspected of having drugs in his possession. Turns out he is a Zambian diplomat, and he is let go. 12

**Manhattan, 1996:** Diplomats racked up 15.8 million dollars’ worth in parking summons.

**1989:** A Mozambique representative to the UN wants to divorce his wife. He waives his diplomatic immunity, takes the matter to court, loses the trial, invokes his diplomatic immunity privileges to keep

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11 https://inside-politics.blogspot.com/2012/10/diplomatic-immunity.html 19/11/19
USA, 2010: A Qatari diplomat smokes on a plane and makes jokes that are perceived to be a terrorist threat, leading F-16 fighter jets to escort the plane to its final destination.
Manhattan, 1996: A west African diplomat is 20,000 dollars behind on his rent.
London, 1984: Six Iranian diplomats publicly slaughter a sheep in the street.

Thus, we see due to their immunity some diplomats misbehave but aren’t punished. The situations are occurring till this day which leads us to believe, if it happened in the past and is still happening now, it will not simply stop, and measures are to be taken.

**What states can do against diplomatic abuse**

The sending state can waive the immunity, allowing the diplomat that committed misconduct to be punished. As mentioned in the key terms, by waiving immunity someone can self-incriminate in court. Therefore, when this measure is taken the receiving state can demand that the diplomat be prosecuted.

The receiving state can as well declare a diplomat a “persona non grata” (unacceptable) which forces them to return to the sending state. It is then clear that the diplomat has exceeded him- or herself in disrespecting the receiving states’ wishes. However, it doesn’t allow the receiving state to prosecute the diplomat.

Lastly, a diplomat can be completely severed of all diplomatic ties by their sending state. They will in that case no longer be a diplomat and has no diplomatic immunity, exposing him/her to being able to be proceeded by their former receiving state. However, this, as in the latter two cases, causes “unwanted tension between the nations and jeopardizes current progress.”

**Major Countries and Organizations Involved**

**USA**

Diplomats from the USA placed in the UK are abusing their diplomatic immunity by committing diplomatic crimes. In the USA itself, other diplomats take their diplomatic privileges a level too far as well.

**India**

Indian diplomats placed in New York and Italy are causing uproar whilst cases are made against them but can’t be put in action because of their diplomatic immunity. Meanwhile, the diplomatic crimes are severe and pose a threat to the rights of the people in these countries.

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14 [https://inside-politics.blogspot.com/2012/10/diplomatic-immunity.html](https://inside-politics.blogspot.com/2012/10/diplomatic-immunity.html) 20/10/19

UK

The United Kingdom has had loads of trouble with diplomats in their own country mostly. They are constantly dealing with diplomats that are misusing their immunity and putting UK citizens at risk.

Germany

When a Saudi Arabian diplomat was found to allegedly be guilty of abusing an Indonesian woman, Germany used their right to Persona non Grata. This changes their position to work together with other diplomats which is important to look into.  

Brazil

Brazil who is number ten when it comes to the number of diplomatic missions is also facing disputes as diplomats in from sending states are misbehaving themselves on Brazilian grounds.

Timeline of Events

<table>
<thead>
<tr>
<th>Date</th>
<th>Description of event</th>
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<tbody>
<tr>
<td>September 22nd, 1949</td>
<td>Convention on the Privileges and Immunities of the United Nations</td>
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<tr>
<td>April 18th, 1961</td>
<td>Vienna Convention on Diplomatic Relations</td>
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<td>1970 - now</td>
<td>Occurences of Diplomatic Abuse</td>
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<td>Around 2010 - Now</td>
<td>Individuals are so shocked by diplomatic abuse that they start petitions to remove diplomatic immunity altogether. There’s poor understanding of the need for diplomatic immunity.</td>
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<tr>
<td>October 20th, 2017</td>
<td>Report of the Committee on relations with the host country. This recognizes once again that the question of Diplomatic Immunity needs to be discussed again.</td>
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Relevant UN Treaties and Events

- Report of the Committee on relations with the host country, 20 October 2017 (A/72/26)
- Resolution 1660, 28 February 2006 (S/RES/1660)
- Vienna Convention on Consular Relations, 24 April 1963
- Agreement on the Privileges and Immunities of the International Criminal Court, 9 September 2002
- Convention on the Privileges and Immunities of the United Nations, 22 September 1949 (A/940ADD.1)

17 http://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1602&context=auilr 19/11/19
• Vienna Convention on Diplomatic Relations, 18 April 1961

Previous Attempts to solve the Issue

An issue like this doesn’t get resolved in one convention therefore we need multiple. Two conventions and nineteen resolutions have revolved around this issue. With new people, new ideas and new motivation. The Vienna Convention on diplomatic relations was the first one to make a step in tackling this issue. It defined who are diplomats and therefore limited the privileges of those in their company but who were enjoying diplomatic privileges. In the treaty, it is specified what the privileges are of a diplomat on a diplomatic mission\(^\text{18}\). The legal basis for diplomatic immunity is the fact that diplomats need to be able to perform their mission safely and feel safe\(^\text{19}\). Thus, this was a very important treaty. That made a start in discussing and solving the issue currently at hand.

The United Nations Convention on jurisdictional immunities of states and their property\(^\text{20}\) is also to be mentioned. When diplomats disregard the life of others under the cover of diplomatic immunity that has not only an effect those people but also on the immunity of a state. That on their grounds one person can misbehave completely, even misbehave according to the laws of their sending country, but the rest of their population can’t. It undermines the state thus we keep this in mind and look at this convention when we try to solve the issue of diplomatic immunity.

It takes a while to figure out how to resolve such a problem. It’s difficult and loopholes are to be expected. Loopholes are the case in these conventions and resolutions, that is not rare. Important is to find them and find solutions to them.

Possible Solutions

Your priority during this convention is to find new solutions and to perfect ones that already exist. Do this whilst regarding the following. Safety of diplomats is still to be kept. Try to find solutions that guard the safety whilst limiting the privileges. For instance, congressional legislation to limit or eliminate diplomatic immunity, congressional legislation providing monetary compensation plans for victims of diplomatic crimes, states legislation to limit diplomatic immunity, a multinational treaty granting a special diplomatic international criminal court jurisdiction over diplomatic crime (DICC)\(^\text{21}\). Think as well about the individuals that are affected by diplomatic abuse. Setting up a claims fund, for example, could help a state to at least compensate for those who suffered. There’s poor understanding when it comes to individuals who aren’t involved in politics, as to why diplomatic immunity would be important. They see

\(^{18}\) https://www.britannica.com/topic/diplomatic-immunity 10/12/19
\(^{19}\) https://en.wikipedia.org/wiki/Vienna_Convention_on_Diplomatic_Relations 10/12/19
\(^{20}\) https://www.refworld.org/docid/4280737b4.html 11/12/19
\(^{21}\) https://scholarlycommons.law.hofstra.edu/cgi/viewcontent.cgi?article=2321&context=hlr 25/11/19
only what goes wrong because of it. They also need to be able to understand why it has good effects as well. When retrospective claims of diplomatic immunity are made, without prior notification, it is useful to think of a way to implement, through for example, precedents, a functional approach22. A functional approach, in this case, would rely on article 39 of the Vienna Convention on Diplomatic Relations23. When making your resolution keep in mind, diplomatic immunity was installed to create a two-way street of respect. Though it is abused from time to time, this two-way street of respect is most important. When making your resolutions foremost keep in mind the following two things in regard of the question; Diplomats need to be limited in their immunity so that they can’t as easily abuse it. States need to find a way in which they can report the abuse or a diplomat without breaking the respective bond with each other.

Bibliography

“Definition of a Convention.” Google Search, Google, www.google.com/search?client=safari&rls=en&sxsrf=ACYBGNT4ZW5d8sZm3D4lKgmOuNNhVnWHBQ%3A1574667816802&ei=KlbbXZjJMLCAi-gPvM6WeA&q=definition%2Bconvention&oq=definition%2Bconvention&gs_l=psy-ab.3...0l6j0i22i30j4.2964.6421...6689...0...0.148.1582.18j2...0....1...gws-wiz.......0i71j35i39j0i203j0i22i10i30j0i20i263j0i10.l_hIS5aKCFo&ved=0ahUKEwiY_e_e7oTmAhUw-wAIHHTynBQ8Q4dUDCAo&uact=5%2B25


22 http://ilawyerblog.com/where-do-we-find-a-solution-to-the-abuse-of-diplomatic-immunity/ 12/12/19
23 https://www.ejiltalk.org/a-diplomat-in-name-only-judicial-scrutiny-of-diplomatic-appointments/#more-14073 12/12/19


William G. Morris. “Constitutional solutions to the problem of diplomatic crime and Immunity” *Hoefstra law review*, 2007,
[https://scholarlycommons.law.hofstra.edu/cgi/viewcontent.cgi?article=2321&context=hlr](https://scholarlycommons.law.hofstra.edu/cgi/viewcontent.cgi?article=2321&context=hlr)