

NEAR EAST UNIVERSITY
GRADUATE SCHOOL OF SOCIAL SCIENCES
MASTER OF LAWS IN INTERNATIONAL LAW PROGRAMME (LL.M)

MASTER'S THESIS

PROTECTION OF DIPLOMATIC ENVOYS IN INTERNATIONAL LAW

PREPARED BY

Arzo Noruldeen Abdullah

NICOSIA

2017

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Abstract

Diplomacy is the communications system of an international society, the most important purpose of which is to promote negotiated agreements between states. Since the end of the fifteenth century it has consisted chiefly of missions stationed permanently abroad that enjoy sufficient immunity from local jurisdiction to enable them to function even in hostile circumstances. The ministry of foreign affairs, the nerve center of this system may not have the influence it attained in the nineteenth century but it remains important for the coordination of foreign policy. Following the First World War, however, the dominance of traditional bilateral diplomacy, though secured with unprecedented firmness by the Vienna Convention on Diplomatic Relations (1961), was increasingly eroded by multilateral diplomacy, summitry, and direct telecommunication. Multilateral conferences bring together all of the parties whose agreement on an issue is necessary and advertise the priority they are giving it to the world. However, standing conferences freeze the founding power structure, while meetings held in public encourage posturing rather than serious negotiation. Fortunately, more importance is now attached to confidential discussion, while reaching agreement by consensus is now the favored method of decision-making. In crises the telephone is especially valued by friendly states, not least at the highest levels. Nevertheless, even enthusiastic supporters of telecommunication acknowledge its limitations. As for summits, seen as the province of amateurs, these have always made diplomatists nervous. Nevertheless, experience has improved their performance. Mediation is also an important feature of the world diplomatic system. Official, unofficial, or some combination of both, mediation tends to be most successful when one party has formal responsibility. Without diplomacy in all of its manifestations, complex relations between states on a regular basis would be impossible and it is for this reason that diplomacy is the most important institution of international society.

ÖZ

Diplomasi, en önemli amacı müzakere edilmiş anlaşmaları devletler arası teşvik etmek olan, uluslararası toplumlara has bir iletişim sistemidir. Yüzyıl sonlarından beridir diplomasi yurt dışına kalıcı olarak atanmış, yerel adli yargının sağladığı dokunulmazlığa sahip belli başlı görevlerin, düşman ortamlarda bile görevini icra edebilmesine olanak verecek şekilde oluşturulmuştur.

Bu sistemin komuta merkezi olan Dışişleri Bakanlığı her ne kadar. Yüzyılda sistemin eriştiği noktanın etkilerini barındırmasa da, yabancı politikanın koordinasyonu açısından hala önem taşımaktadır. Birinci dünya savaşını takiben, geleneksel iki taraflı görüşmelerin hakimiyeti, diplomatik ilişkiler adına yapılan Viyana konvansiyonu (1961) tarafından eşî benzeri görülmemiş bir şekilde güven Oaltına alınmış olsa da, çok uluslu diplomasi tarafından yıpratılmış ve direkt iletişim sağlanan çok uluslu konferanslarda, ortak karar vermesi şart olan tarafların bir araya getirilmesi gerekliliği ortaya çıkmış ve tüm dünyaya da bunun önceliği belirtilmiştir. Buna rağmen, daimi konferanslar kurucu güç yapısını bloke etmekte, halkın önünde yapılan toplantılar ciddi müzakereler yerine yapmacık tavırlar oluşmasını teşvik etmektedir.

Neyse ki, günümüzde asıl önem özel görüşmelere verilirken, karar oluşturma sürecinde tercih edilen yöntem artık mutabakata giderken fikir birliğine uyulması yönündedir.

Krizler döneminde telefon, özellikle en yüksek kademede değil, dost devletler tarafından da değerli kabul edilmektedir. Bununla beraber, telekomünikasyonun bu coşkun destekçileri bile sınırlılıklarını kabul etmiş durumdadır. Amatörlerin vilayeti olarak kabul edilen zirveler ise, diplomatların yine de gergin olmalarına yol açmaktadır fakat tecrübeleri performanslarını artırmaktadır. Arabuluculuk da, dünya diplomatik sisteminin önemli hususiyetlerinden biridir. Resmi, gayri resmi veya ikisinin karışımı şeklinde görebileceğimiz arabuluculuk, taraflardan birisinin resmi sorumlulukları olması halinde daha başarılı olmaktadır.

Bütün tezahürleri ile birlikte, diplomasi olmadan devletler arası muntazam, karmaşık ilişkiler mümkün olamazdı ve sırf bu yüzden bile diplomasi uluslararası toplumların ön önemli kurumlarından biri kabul edilmektedir.

Dedication

I dedicate this dissertation to my long-lost beloved brother, Aral. A special feeling of gratitude to my loving father Dr. Nuruddin Abdullah and my devoted mother Salwa, whose words of encouragement and push for tenacity ring in my ears. My brothers Abdullah and Chateen have never left my side and are very special.

I also dedicate this dissertation to my many friends who have supported me throughout the process. I will always appreciate all they have done.

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Thirdly, it is with great honor and respect that I acknowledge my mother and father, they have been my source of strength and wisdom and for that I am deeply grateful, and also a special thanks to my friends, Ahmed Kokhi, Aslı Korkmaz, Amad Ahmed, Alaa Ahmed and Belav Haider.

ABBREVIATIONS

AD.....Anno Domini

BC.....Before Christ

ICC.....International Criminal Court

UN.....United Nations

UNSC.....United Nations Security Council

USA.....United States of America

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INTRODUCTION

The diplomatic relations of sovereignty as the emergence of countries in the field of international relations necessarily require entry into the branching relationships with other similar countries have, which stands with them in terms of sovereignty and independence. Because states are political and social bodies, cannot live isolated from the international community because the links of dealing, cooperation and integration binds countries to their own peoples to each other and impose on them the need to connect Nations, which required the exchange of diplomatic envoys between the countries for the management of foreign affairs.

The importance of protecting the Apostles increased in the modern age when the number of states has increased, with increasing the number of diplomatic missions in international custom systems immunity of a diplomatic envoy from the local judiciary and the immunity from arrest, inspection and this immunity extended to include members of his family and servants, his correspondence and his financial resources, the imposition of the state treated him well fits him Because he represents the president of his state in the Certified State.

Despite all this, this protection or immunities differ from state to another depending on the nature of international relations between the countries, there have been numerous bilateral treaties to regulate this immunity.

In order to unite the diplomatic immunity between States, the international community have set an international treaty to ensure the stability of the immunity enjoyed by the diplomatic envoy.

The unification of these States without Unite these States without effect the international relations, where the Sixth Committee of the United Nations was able to write down the custom International in the project of international convention, which organized the diplomatic rules known as the Vienna Convention Diplomatic Relations presented to the states and ratified in 1961, and then in 1963 the Vienna Convention for Consular Relations has been set, and the Vienna Convention for special missions in 1969 and Vienna Convention on representing States in their relations with international organizations in 1975.

There is no doubt that diplomatic immunity is an exception to the general origin under which subordinate all crimes that falls on the territory of a State for rule of this State, we find that while the owner has immunity not to succumb to domestic law of this state, Because of the

principle of respect the immunity of a diplomatic agent is one of the Principles in the history of the international community this absolute immunity gives the envoy Diplomatic states have resorted to the use of diplomatic status to protect the criminals who commit Serious crimes. Including war crimes, crimes against humanity, crimes of aggression and genocide, giving them the Diplomacy capacity to be in the protection of the legal accounting, hence alert the international community to this Case, deprive the diplomatic agent from his immunity when he commits a crime within the crimes. The basic Rome Statute of the International Criminal Court that held in 1998, stipulated to deprive the diplomatic envoy from his immunity when he committee one of the crimes within the jurisdiction of the Court In this sense, we call immunity the diplomatic immunity its better than Judicial immunity because they represent the immunity from arrest and search of his home, correspondence, money, let him Pass and move, Financial exemptions adherence the States to provide the need for him and his family and to prevent abusing him ,Accordingly, we will discuss what is immunity with its images, types and its exceptions throughout history.

That figured it out, so our Problematic was in the search.

1-Problematic

Stems research the topic of a major problem:

The extent and scope of the diplomatic agent immunity

This major problem subdivided into:

What is the concept of diplomatic immunity?

What is the source of diplomatic immunity?

Why are these diplomatic immunity and its legal reasons?

What are types of diplomatic immunity?

What is the nature, extent and scope of diplomatic immunity-

What are the contained exceptions that are useful to this immunity-

To what extent the accountability of diplomatic envoy and restrict his immunity can be?

To what extent this diplomatic immunity should be followed and applied

If the diplomatic envoy didn't subject to the jurisdiction of the state courts have authorized , even if committed great crimes is that make him above law.

2- Importance of the Subject

This subject practical have other Scientific importance, and can be recognized by the objectives of the study so the scientific importance comes from the study of the subject of the legal system and the diplomatic envoy to try to understand and grasp the different aspects to which they relate and then realize the role of a diplomatic agent in the linking of diplomatic relations and strengthen the relationship between states and not to make it tense.

Well aware of the shortcomings in the legal texts which includes a recommendation in terms of applications and legal implications that affected the immunity of Diplomatic envoy to contribute in a very greater activation and developed of these texts the practical significance lies in the highlight of the air unrealistic for countries with regard to the granting of this diplomatic envoy protection , freedom to contact , the necessary facilities for the performance of his job away from the theoretical side .

3- Reasons for Choosing the Subject

The motivation that made us address and choose this issue is dealing with Previous studies which affect the essence of the personal study of diplomatic envoy from all legal habitat through the provisions of the Vienna Convention on Diplomatic Relations of 1961 as well as relating articles to the status of a diplomatic agent and his international position , In addition to the tendency of the aspects which affect the subject considering it as international legal circle, its content depends on the concepts of diplomatic work and foreign relations between the countries.

4- Subject Goals

Through this study, we aim to achieve the following goals:

Trying to adjust the concept of diplomatic immunity on the items of all international legal text and doctrinal views so that we can address our topic of the proposed for study.

Knowing the limits of the immunities and privileges enjoyed by diplomatic envoy

Knowing the basis legal and the origin of these immunities and privileges that enjoyed by diplomatic envoy

Highlight on the scope of the immunities and privileges statement for diplomatic envoy-

In terms of people, time and place.

- How to deal with the diplomatic agent when this immunity exploits in serious crimes shaking National security of the state reception or transit.
- Knowing of the most important gaps and shortcomings experienced by the Vienna Convention on Diplomatic Relations of 1961.

5- Previous Studies

We can say that the presented studies that provided on the diplomatic immunity of the diplomatic envoy was all the same in terms of the theoretical and practical side, where studies have not got out from legal text for all immunities, privileges agreements and the possibility of analyzing although there is no difference between states of the possibility of the application of these immunities and privileges, therefore our research can be an act for example, previous research in the same field.

CHAPTER ONE

THE DIPLOMATIC IMMUNITY

The concept of diplomatic immunities and privileges has been linked from the beginning to the concept of Diplomacy, whether the origin of the term or terms of the evolution of the use of derivation of the word, the first Diplomatic rules are not at the level of courtesy or fitness, or the art of negotiation, but these Diplomacy rules in the first class are at the level of the immunities and privileges on the basis of this the other rules will originate for diplomatic action.¹

In ancient societies, from tribal and primitive, The decision of granting these immunities and privileges, is the foundation to secure Contact and friction between each other. The protection of envoy and secure his arrival It was one of the basic objectives of diplomacy, the personal privacy was The first rule that set in the way of the adoption of immunities, and this was about the principle of non-exposure the envoy or take his life, in order to secure the mission for which he had sent for it With this Communities evolution, in order to keep more on the diplomatic envoy Person the protection and immunity of envoys it has become Sacred thing and placed under the protection of God.²

In addition to the growth of the human mind from the social mind) Tribal (He has started to emerge about his relations from his little surroundings to establish the fullest extent relationships with other tribes, and creates political groups 'This first human groups figured out the principle of the exchange of the Apostles and temporary envoys and approved some Immunities and privileges.

¹ Grant V. McClanahan, Diplomatic Immunity: Principles, Practices, Problems, C. Hurst & Co. Publishers, 1989, p55.

² - Ali Hassan Al-Shami ; Diplomatic ; Origins Evolution Rules And The System Of Diplomatic Immunities And Privileges, The House Of Culture Publishing And Distribution, Amman, The Third Edition Of The First Edition In 2010, Page 424.

Killing the ambassador or harm him or insults him was a reason for starting the fight by His tribe, some tribes have been punished with death all those who kill envoy or insults him just like Alnaho tribes In Central America the privileges that reflects the extent of their r reverence of their mission, they were greeting the envoys with Hospitality and welcoming, or offer them flowers on a kind of honor.³

Accordingly, we divide this chapter into three topics:

1.1 Immunity in Old Europe

The old European societies consist of two major civilizations, the Greek and Romania civilization Greek civilization did not know the diplomatic methods to solve the international problems until the sixth century "Before Christ", where new features of diplomacy emerged the Greeks started to Choose Ambassadors of the most brilliant lawyers to defend their interests abroad.

In the fifth century BC Diplomatic missions system appeared, though his Primitive image, and as a result of increasing the diplomatic missions, the Greek civilization Recognized with some privileges Diplomacy to diplomatic envoys and considered the international relations cannot be directed by Deception, Considering to the existence of a specific tacit law above direct national interests, but the Greeks did not Confess during this period of judicial immunity for diplomatic envoy, Where wars between the Greeks was semi-permanent while other diplomatic rules were in better than rules of Judicial immunity in general and in particular the evolution of the idea of negotiations and increasing the rate of holding Conference.⁴

Despite the evolution of civilization and science of Romanian in general, They did not know during this period the Diplomatic privileges and judicial immunities for Diplomat envoy If a foreign diplomatic envoy required to enter to Rome, he shall wait outside the city for certain

³ Suhail Hussein Fatlawi; Diplomatic Immunity For The Diplomatic Envoy , Legal Study Compared The Egyptian Office Of The Distributionpublications P. 10

⁴ Linda Frey, Marsha Frey, The History of Diplomatic Immunity, Ohio State University Press, 1999,p258.

period until the Senate in Rome decides to allow him to enter After that the Council ask the investigating judge to seek, The Board may sometimes refuse the Diplomat envoy to enter Rome.⁵

The Romans began to look to foreign diplomatic agent is characterized by a gradual and knew the principle of Judicial immunity and other diplomatic privileges private rules sat for the diplomatic envoy that marked privileges and immunities enjoyed by the foreign diplomatic agent and considered that The source of these rules is the law of nations and the old custom. In the last reign, Romans cared about the diplomatic missions and how to expel and welcoming them in peacetime Recognition of judicial immunity was no longer under the peaceful relations only, but even at the wars.

This immunity extended and covered heads and members followers of the mission, and if anyone of them committed a crime, he will not be trail in the courts of Rome, but just to the border to his country to take Necessary procedures Against him however the immunity does not include their place of residence, and it does not enjoy by the servants it is different from mission of a state to another depending on the nature of the existing political relations.

1.1.1 The Evolution of Immunity in Europe

The fact that the diplomatic immunity of a diplomatic agent steeped in history, it is due to the aforementioned two civilizations, However it did not extend fully due to cracking. Disruption because of political systems and international relations at the time Which was characterized by instability, Considering the number of wars that were semi-permanent, which proved naturally what a diplomatic agent enjoyed with immunities and privileges qualifies him to perform his duties fullest possible.⁶

⁵ Sohail Hassan Al-Fatlawi, The Diplomatic Immunity Of The Diplomatic Envoy (Legal Study) Comparison, The Egyptian Office Of The Distribution. Publications, Egypt, 2002, P 182.

⁶ Andrew C. Isenberg, The Oxford Handbook of Environmental History, Oxford University Press, 2014.p248
<https://books.google.iq/books?id=vkluBAAAOBAJ&pg=PT106&dq=:+the+evolution+of+immunity+in+Europe:>

Mr. Mawale: divides the evolution of the rules of judicial immunity into four periods depending on the evolution of international relations:

- 1-Stage of temporary diplomatic missions.
- 2- Stage of permanent diplomatic missions.⁷
- 3-Stage of stability of the diplomatic representation
- 4- Stage of development of diplomatic norms.

Thus, this demand includes the following sections:

1.1.2 The Stage of Temporary Diplomatic Missions

This phase begins between the years 470 and ends in 1475 AD, and first appeared to send Temporary diplomatic missions to foreign countries to represent the negotiations to resolve the differences that exist between them among the factors that helped to send temporary diplomatic missions is the weakness of the Roman Empire, weakness in military power , didn't have the ability to solve its international problems ,and impose its control by war as it did previously at this stage he where seeing the diplomatic as a spy, his purpose was to achieve. Narrow interests, which led to the violation of the sanctity of diplomatic by some Rulers At this stage, the role of the diplomat was tied to a certain period specified by the envoy mission for her.

This stage characterized to reject the diplomat because of the poor outlook, ending a diplomatic mission was with the end of the task entrusted to him.

[&hl=ar&sa=X&ved=0ahUKEwj85bnC87DRAhXIOBQKHQavAogQ6AEILTAA#v=onepage&q=%3A%20the%20evolution%20of%20immunity%20in%20Europe%3A&f=false](#) .

⁷ Abdul Aziz Bin Abdul Rahman Al Obeikan - Diplomatic Immunities And Privileges Of International Law, Obeikan Riyadh2007 P. 67.

1.1.3 The Stage of Permanent Diplomatic Missions (1475-1815)

At this stage, the evolution of diplomatic concepts flourished, and headed toward the stability and organization as a result of the evolution of international relations in this era.

The reason for the emergence of disputes between the State and Church, which led to the reduction of ecclesiastical influence in government, and the discovery of the American continent, and the intensification of the colonial struggle for control of the weak states inadvertently plundering its resources.⁸

The Byzantines who knew diplomacy Venice and Venetians are the ones who put the template Italian cities, but also France and finally to all European countries.

The Byzantine emperors created the first government department to deal with foreign affairs system, And they trained professional staff as ambassadors in foreign countries, and most of the researchers sees in the development of Diplomacy that Venice is applied permanent diplomatic, and the reasons that helped it was having naval and military power also depends on the expansion of trade in all countries, in addition to the British and French competition for the Arab world treaty with France since the state Ottoman Empire in 1535, which France got some concessions in areas under the minority Of the Ottoman Empire.⁹

These factors have led to the desire of countries to reduce the risk of war between them coordinate and protect its interests And directing potential towards the control of other nations, which required holding multiple treaties Including through diplomatic envoys dispatched for this purpose and had signed the Treaty of 1648 a positive role in the stability of the European balance and reduce the risk of war, as a result of International contract and coordinate vital interests between these countries, the number of diplomatic envoys has increased To other countries.

⁸ Ghazi Hassan Sabarini, Contemporary Diplomatic, Legal Study of the House of Culture, Oman 0.2011, P. 36.

⁹ Nasser Abdulaziz Bin Abdulrahman Al-Obeikan, Diplomatic Immunities And Privileges Of International Law Riyadh Obeikan Company, 2007, P. 104.

Permanent missions appeared which led to the emergence of disputes between Diplomatic envoys and the powers of the state in which they work or with the citizens of the receiving State. The impact of the new political circumstances, states are starts to recognize some of the immunities and privileges as for the principle of reciprocity. Diplomatic envoy has enjoys immunity and privileges, such as that other countries envoy in the state, also the scope of immunities and privileges includes Diplomat envoy after he was limited to representatives of the church only.

International deal start to grant diplomatic envoys some of judicial immunities in criminal matters, arrested, not to be tried in national courts, not be forced to testify to Investigative or judicial authorities and not to be abused. This phase has seen relatively recovery for the Immunity but it did not take unwanted development.

1.1.4 Stability Phase of Diplomatic Representation

This stage begins from the Congress of Vienna in 1815 to the First World War in 1914, during this period the diplomatic concepts developed rapidly after three centuries after the Treaty, diplomatic representation where he headed towards stability, turning in solving international problems, Diplomatic envoys has drifting away from acts of espionage and they started to use political concepts in order to Consolidating the international relations.

Congress of Vienna was crystallized in 1815 and the Protocol "X La Chappel" 1818 Principles of International diplomacy, but this development was not choice to judicial immunity as tis rules Still ambiguous, and its concept differs from state to state, and are difficult to understand as well, usually Arbitrarily from diplomatic envoys. it is often violated by the local authority, This is mainly due to the compete of the powerful nations on regions of the world, which has led to increased contact between these countries to identify areas of influence, and

it was necessary for diplomatic envoys to enjoy immunities and privileges to be able to accomplish their mission to the fullest.¹⁰

As for the developing countries, economic and social circumstances were weak they cannot handle the Diplomacy burden and sending its envoy to the outside, either under the control of colonialism, which takes care of its affairs, Through their representatives in addition to the Vienna Convention in 1815 although it is organized Many aspects of diplomatic rules but they have not dealt with the organization of the rules relating to Judicial immunity and left to State practice. International institutions and scientific societies contributed in the development of judicial immunity, which has submitted of proposals projects research agreements and raised the legal ramifications.

1.1.5 The Evolution of Diplomatic Norms

This period starts from the first war, and ends at the creation of the United Nations after the outbreak of First World War which led to the collapse of international relations between states, but those concepts soon regained its evolution legally, despite the chaos in the climate of international relations, and the use of war as a way to control other countries, Soviet Union appeared during this period as an Eastern military force, considered the appeal of capitalism western nations , as they were developing countries International theater events, given to liberate most of the colonial domination, in spite of that and because of their potential Economic, human and geographical importance they were able to be influenced on the international political life also Industrialized countries need to discharge the broad production and the need for developing countries to discharge initial material and access to goods and technology.

¹⁰ Farouk Al-Majdalawi, Diplomacy Between War And Peace, Majdalawi Masterpieces Publishing, Amman, Jordan 0.2010, P. 2.

The basic national interests are dynamic elements determine the behavior of states and changes in The degree of its priorities among them, the State's foreign policy and other step determine the right Analysis To the point of importance of these interests.¹¹

This mutual need or common interests contributed to increase diplomatic envoys of Countries, and the appearance of representatives of various international organizations, which has led to the emergence of multiple problems between the envoys and the authorities of the receiving State or Its citizens. Often these problems reflected the nature of international relations between countries in general, as a result found in the countries of the forum Organization rules for privileges and judicial immunities in its nature, basis and scope. According to the time, place and the people who are entitled to enjoy .States has tended to attempt codify these rules in international documents to become a reference for installing these rules including:

- Project of the American Institute of International Law Convention of 1925
- Project Fillmore 1926.
- Monetary Classification Committee of the International law of the League of Nations project in 1927.
- Havana agreement for diplomatic envoys that approved by the US Sixth International Conference on. 1928.
- Decision of the International Law Institute of Diplomatic Immunities of 1929.

Harvard Draft Convention on diplomatic privileges and immunities for the year 1932 Judicial immunity rules have witnessed in the era of the United Nations much has been characterized peek And stability for its successful attempts to codify the rules of judicial immunity in the

¹¹ Khalil Hussein, International Relations Theory And Reality, People And Issues, Publications Of Halabi, Lebanon, The First Edition, .2011, P. 16.

General Agreement At the level of international law, but on the level of the Islamic regime is something else.

1.2 The Concept of Diplomatic Immunity and its Legal Basis and Sources

The common concept is that the diplomatic agent enjoys many privileges and diplomatic immunities within the region of the receiving state through these circumstances privileges and immunities guarantees the performance of his duty and his mission Assigned to him, and included personal sanctity of any type of abuse. In addition to that, everything related to financial and personal rights that granted for him and his state out of respect. However, these circumstances immunity is not Recognize yet that what is its significance or meaning that aspire to and what distinguishes it from other privileges to answer that we divided the section into three demands:

1.2.1 Determine the Concept of Immunity and Distinguish them from other Privileges

The meaning of the privileges and immunities has not obtain precise and clear definitions. international jurists has been used by These terms (Privileges and Immunities) without obtain distinguish between them and some have tried to do, so (Homer Shold) has gave for privileges the meaning step or High appreciation and immunities a system excludes Whereby some people from applying ¹²some internal laws and submit to sanctions Resulting from a breach of these laws, and that the privileges mean replacing the rule of domestic law of The host nation with a special law that applied to the diplomats Employees.

The origin of the word immunities and privileges goes to the Latin word (immunitas) and (munus) means exemption from certain burdens therefore, this demand described in the following sections:

1.2.1.1 Definition of Judicial Immunity

Robert law explains the immunity in several meanings, which is:

1- Exemption from burden or a privilege granted legally for a certain category of persons.

2-immunity is a privilege granted by owner to another owner or to the Foundation that grant the agents Owners in this great owner field. ¹³

Notes from the word immunity from a historical perspective means Financial exemption and tax collection Various immunities centered on the word financial immunity and that is for each immunities is The Robert Dictionary says that the modern law gives the word immunity a meaning of exemption from general rules in item of judiciary and finance, immunity according to the international law means that States cannot subject against its will to Eliminate another state.

The word immunity in Roman law: it is exempt from municipal burdens and pay taxes and Do forced labor and housing soldiers.

However, the word privilege means advantage or preference in which any special preference given to an individual or class of individuals with the possibility to enjoy them outside the framework of the general law.

Historically means rights and Preferences or utilitarian theory or that owned by some People by virtue of their lineage birth, as nobility by virtue of their jobs and their involvement.

The term judicial immunity is the best terms and the most widely used at the time Present and can be relied upon which is taken by the Vienna Convention on Diplomatic Relations of In 1961, the Vienna Convention on Consular Relations of 1963.

Immunity in language is a source from the verb fortress, and said the place is a fortress impregnable, and the fort is no place is connected to his stomach. ¹⁴

¹³ Yusuf Hassan Yousef, International Diplomacy, The National Center For Legal Versions, Egypt 0.2011, P. 95.

The elimination of the judicial verdict or a chapter or cutting. The idiomatically not contained in the Vienna Convention on Diplomatic Relations of 1961, a specific definition judicial immunity.

The scholars of international law (jurisprudence) defined the judicial immunity as the exemption or exception or not subject of diplomatic envoy to the jurisdiction.

As well as the meaning of judicial immunity transfer of jurisdiction of the Independent State courts to of the sending State Courts in suit that one of its parties a diplomatic envoy.

The transfer of jurisdiction in Lawsuits stemming from the private international law because the diplomatic envoy is foreign party.¹⁵

The transfer of jurisdiction in penal Lawsuits to a personal database Penal Code, which state's Individuals requires to subject to its laws regardless to the place of the crime , As defined glossary terms of social immunity in general as exempt individuals from obligation or liability as exempt from application of the general rules in judicial financial matters Diplomatic immunity known as exempt certain persons or bodies from the state of the judiciary in Countries that depend on them, and in the case of the prosecution on them and these include representatives of foreign countries and recognized by international bodies.¹⁶

The legal definition of diplomatic immunity has been known as a glossary of legal terms Under the principle of non-subordination of the local diplomatic envoy to eliminate the state that represents the state, and home and diplomatic mission house Enjoy protection and privacy as there is for government employees may enter It only with the consent from them or from the Prime Minister

¹⁴ Alaa Abu Amer, Diplomatic Function, The Inception Of Its Institutions, Rules, Laws, An Earlier Reference P 206.

¹⁵ Sohail Hassan Al-Fatlawi, Diplomatic Immunity, Op. Cit., P. 56.

¹⁶ Yusuf Hassan Yousef, International Diplomacy, The National Center For Legal Releases, Op. Cit., P. 97.

And defined by the United Nations Association and the International Convention saying immunity means the privilege of exemption from The exercise of jurisdiction, or the dominance of local authorities.

1.2.1.2 Characterize the Judicial Immunity of Personal Sanctity

Personal Sanctity considered as the oldest privileges that enjoyed by a diplomatic envoy, The basis on which branch from other privileges ,Sanctity means that a person of a diplomatic envoy Guaranteed inviolable, and should be Treated with decent ways characterized by kindness and beautiful without the use of the means of violence against him, may not be arrested or restrict his freedom, whatever was the reasons and take The necessary means to protect himself and his own money or his private and temporary residence and Official business headquarter. So the diplomatic envoy is immune from prosecution in the receiving State, This privilege regaining its diplomatic envoy, and on this basis the privacy differ from judicial immunity in the following aspects.

1 - The privacy considered one of continuous permanent privileges enjoyed by Diplomatic envoy not awarded on what he is doing or Issued, as for the judicial immunity They do not arise only at a time when diplomatic envoy commits an offense Require the conduct of his trial before the courts of the receiving State.¹⁷

2 - To enjoy of personal Sanctity is in the face of local authorities and individuals, as for judiciary immunity, the enjoyment is only in the face of the judiciary.

3 - The Sanctity of the diplomatic envoy person fixed franchise may not be waived by him or by sending state because it is right for the character closely as a human being and a

¹⁷ Mamdouh Abdel Karim Hafez, Private International Law, The First Edition, Freedom House, Baghdad, P. 210.

representative of a foreign state as for judicial immunity it may be waived by the sending State as they planned for him.¹⁸

4 - A diplomatic envoy enjoys personal Sanctity for him and his money absolutely, The Vienna Convention did not respond any exception that restricts from this, except in special cases the limitation on His money, and in the framework of which is diplomatic envoy subjected under to the jurisdiction Local, as for judicial immunity the Vienna Convention cited by multiple exceptions It authorized the submission of a diplomatic envoy to the jurisdiction of the receiving State.

1.2.1.3 Characterize the Judicial Immunity of Personal Privileges

A diplomatic envoy enjoys a number of privileges not enjoyed by citizen of the receiving State.¹⁹

1 - The right to Access to the receiving State and to navigate in and out of and committed to the Vienna Convention for Diplomacy relations in 1961 Special Missions Convention in 1969 Receiving State to guarantee freedom of movement and travel in its territory, taking into account the restricted areas and receiving State should provide House for residence of a diplomatic envoy in the case of not being able to get a place in the areas identified by the receiving State.²⁰

2 - Diplomatic funds should not be inspected nor the person who imposes on the citizens of the receiving state.²¹

3 - Diplomatic envoy should not be subject to costs and personal burdens that imposed on Citizens of receiving state even foreign that exist there, he shall not tasked to perform military service Temporary or permanent even if the receiving state is at war with another country or

¹⁸ Rehab Shadia, The Immunity Of A Diplomatic Agent, An Article, Published In The Journal Of Human Rights, An Earlier Reference P. 10.

¹⁹ Vienna Convention On Diplomatic Relations, 1961, Article 26.

²⁰ - Vienna Convention On Diplomatic Relations, 1961, Article 21.

²¹ Vienna Convention For Special Missions, Of 1969, Article 27.

Civil war or grab his house or his car to be used in military operations, and may not be Assigned to volunteer in the People's Army or to carry out rescue for the country's vulnerability to Normal war disasters.²²

4 -Provide comfort for the diplomatic envoy, and ensure the exercise of personal rights where the host state provide the necessary supplies and make him comfortable and free of complications residence.²³

The Personal privileges different from judicial immunity we recognize it in the following points:

A. That the privileges based on what progressed the receiving State Judicial immunity Depends on the issuance of a specific behavior of a diplomatic agent exceeds the Local provisions laws.

B. Personal privileges precisely is unspecified as for the judicial immunity, the state does not allowed to increase immunity cases more than what is contained in international conventions.

C. A diplomatic envoy cannot use the personal privileges and cant layoff by himself. The judicial immunity does not have the right to assign them but due to the state.

1.2.1.4 Characterize the Judicial Immunity of Fiscal Privileges

1- The state is not affected by the granting of financial privileges to employees of foreign mission In its territory because the recipe Reciprocity requires that treats its employees abroad the same privileges The immunity Jurisdictions in which diplomatic envoy commit violation of the law and may not get benefit by diplomat envoy to receiving State if he did not commit an offense .

²² - Vienna Convention On Diplomatic Relations, 1961, Article 32.

²³ - Vienna Convention On Diplomatic Relations, 1961, Article 35.

2 - Source of financial privileges that are issued by the Vienna Convention of 1961, the rules of courtesy and reciprocity while judicial immunity source of international custom.

3- exemption the diplomatic of taxes and fees in the receiving State may not impose it and take it from him, as for enjoy of judicial immunity in a foreign country Diplomat envoy does not absolve from submitting to the jurisdiction of the judicial state in the same case. Because the state are determined to lift the immunity of a diplomatic envoy and introduced him to eliminate or not.

1.2.2 The Legal Basis for Diplomatic Immunity

Many theories have developed on the foundation or legal basis for diplomatic immunity and these are the most important theories.

1.2.2.1 Theory of Regional Extension

This theory is based on the jurisdiction specialization of the state, applicable to all citizens Whether they are inside or outside the home state, and that the diplomatic mission as a mission house along to the end Of the sending region of the State ²⁴and as apart that cannot be divided from the State property and subject to its sovereignty and that the attack on the house of the Mission is an attack on state sovereignty and violation of the international law.

The receiving State cede part of its sovereignty is that this waiver is voluntary and overshadow the seeds of this theory is based on the old constitutional recoverable absolute sovereignty of the state, which requires non-idea Subject to any foreign jurisdiction controlled basis to link the state with its region.

There were some criticism towards this theory, which is based on the assumption placebo as it is impossible to rate from the scientific point and the perception of this theory is to explain the cases which is subjected to the diplomatic envoy to the jurisdiction of the receiving State

²⁴ - Suhail Hussein Fatlawi, Diplomatic Law, Dar Wael For Publishing And Distribution, Egypt 0.2010, P 257.

courts such as the occult-related to the Real estate and litigation that related to the legacy and business which exercised by his personal benefit.

Also, taking an extension for the jurisdiction of the courts of the sending State includes crimes within the mission house by people who do not enjoy judicial immunity while the international summit and deal Competence in all these things will be of the receiving State. It is a colonial tendency of where the diplomatic moves of neutral and shall not be observer by power party of the receiving State.

The majority of countries abandoned this theory considered that foreign diplomatic missions and its headquarters an integral part of the receiving State.²⁵

1.2.2.2 Theory of Representativeness

This theory sees that the State and its president enjoy judicial immunity to foreign courts and as long as the diplomatic envoy is a representative of his country and its president, it draws judicial immunity from them and the Exemption from the jurisdiction of the receiving State. In fact, it is an exemption for his state and president According to the rules of international law.

This theory has emerged in the Middle Ages and is based on the grounds that a diplomatic agent Represents a state that Was sent by Considering that the state has owns sovereignty so that the Sovereignty should have been passed on to him, which will not be in effect only if he granted Necessary Privileges and immunities To embody the sovereignty. Among the most famous of those who say it, we find the French-Faqih "Monatescu", as that is the diplomatic representative of the prince who sends it must be a Free envoy often this Envoy is not satisfied by country in which it resides, and then can be attributed to crimes and if violations Permissible prosecuted and punished.

²⁵ Hussainqadri, Diplomacy And Negotiation, The Best Publications Gillies 2007, P. 53.

The representativeness of the diplomatic envoy comes to him for being a deputy of his country and to lead his role Whatever the location was, he must be protected and maintained his dignity, and prevent abusing him, or any Encroachment against him as representing of his own body This theory has been criticized, because the differences between the head of state and diplomatic envoy In terms of function and capacity, privileges both on the external level or internal cannot Be at the same level. In addition to that, it cannot explain many of the applicable conditions as immunities and privileges that enjoyed by a diplomatic envoy in a third country that is not supported, Customs fees and what he imported for personal use, for courtesy.²⁶

1.2.2.3 The Theory of Function Requirements

It is a modern theory emerged when the intensified debate among scholars and immunities and privileges popped as Necessity task to lead a diplomatic mission to the best which is useful upgrade international cooperation The revitalization of international relations between all states Hence The ruling on the Privileges and Immunities are what diplomat give from Tranquility and comfort in the performance of his mission, and the specialists agree at the moment that this view is Closest to the logic because it is in line with reality and extend to all of the images that the diplomat may exist .

The previous theories have not been able to explain properly.²⁷ It also did not provide Correct explanation of a diplomat representing the organizations, if organizations do not province where and therefore unjustified It is the safest (function requirement's) This is referred to by the International Law Commission in its report Of the General Assembly in 1956, if we assume that the requirements of the diplomatic function is the foundation which the International Convention can be assigned to be concluded to determine the minimum benefits

²⁶ Hassan Qaderi, *Diplomacy And Negotiation*, Publications Khairgalees, Algeria, Op. Cit., 2007, P. 54.

²⁷ Ali Hussein Al-Shami, *Diplomacy, Its Inception, Evolution, Rules And System Of Diplomatic Immunities And Privileges*, Op. Cit. P. 43.

And immunities that should be enjoyed by diplomatic envoys, actually the Vienna Convention of 1961 crossed on this trend.²⁸

Despite some criticism of the theory of what might beset by ambiguity or others seek to exploit it to pass the diplomatic function, but it is the most realistic, and proven deal on which it is best suited and most appropriate, thus making sure that the theory of necessities function is the only legal basis for diplomatic privileges and immunities. The purpose of this is to expand the scope of judicial immunity enjoyed by diplomatic envoy.²⁹

1.2.2.4 The Basis of Diplomatic Immunity

1) Reciprocity of Treatment

Proponents of this view believe that the granting of diplomacy immunities and privileges which is based on international legal obligation, reciprocity of treatment, means granting immunity to diplomatic envoy to the approved state versus awarding a diplomatic envoy in the state of first envoy the same immunities and privileges and violation means the violation of immunity as for State sending envoy. This what the Vienna Convention on Diplomatic Relations of the year 1961 pointed out.

2) The Attitude of the Vienna Convention on the Basis of Diplomatic Immunity

According to the preamble of the Vienna Convention on Diplomatic Relations of 1961 as follows: "Recognizing that the purposes of such privileges and immunities is not reported individuals but to ensure the effective performance of the functions of diplomatic missions as a representative of the state.

First Opinion: expressing that the judicial immunity of a diplomatic envoy for acts and behaviors that related to official function, but it does not explain the judicial immunity of a

²⁸ Ali Hussein Al-Shami, Diplomacy, Its Inception, Evolution, Rules And System Of Diplomatic Immunities And Privileges, Op. Cit. P. 43.

²⁹ Hassan Qaderi, Diplomacy And Negotiation, A Former Reference P 5.

diplomatic envoy also guaranteed by the Convention, as for the acts and behaviors that fall outside the formal scope of its work.³⁰

Second Opinion: This opinion sees that the Convention took the theory of functional interest.

Representativeness and Functional.

The final purpose of the authors of the Convention to make explicit on representativeness and functional interest theory to expand the scope of judicial immunity for diplomatic envoy, although the Convention took the two theories as basis for immunity, but it does not consider the diplomatic envoy as a representative of his state. That majority of scholars went to that as well, also did not consider it as a representative individually for the state, but also considered within the diplomatic mission as the representative of the state.

³⁰ Fouad Abdel-Moneimreathy, *The Principles Of Private International Law In The Lebanese And Arabic Law 1*, The Arab Renaissance Publishing House, Beirut, 1969, P 440.

CHAPTER TWO

SOURCES OF DIPLOMATIC IMMUNITY

Diplomatic immunity rules has evolved as a result of the States practice until became a binding customary rules for all countries, but the differences in the political community, international conditions, conflicts of interest and the lack of stability in international relations which led to differing application of the judicial immunity rules , depending on the circumstances and conditions.

For the purpose of unification of these rules, states tended to codify these rules in the bilateral or collective international agreements (Vienna Convention on Diplomatic Relations of 1961), and that the national courts in all countries are obliged to apply custom and conventions, According to the Constitution requirements of each state, in addition to the decisions of the internal laws guarantees the judicial immunity for diplomatic envoy the international or national judge finds that the case it is governed by multiple sources involved in giving a unified solution, by judge Implemented these sources and support his judgment on them, but the problem arises when the solutions offered by these sources, and raised the problem of conflict vary among these sources, any source to grow on the other and be enforceable.³¹

In this requirement, we are talking about the main sources of diplomatic immunity.

2.1 International Custom

The World custom considers one of the most important sources of international law since ancient times, by development of diplomatic representation between the countries needs Have emerged for a new system divides the exchange of temporary diplomatic missions, eliminates the desire of countries to uphold the principle of freedom of diplomatic envoy, and to ensure

³¹ Abdul Aziz Ibn Nasser Ibn Abdul Rahman Al Obeikan, International Immunities And Privileges Of International Law, Op. Cit., P. 69.

permanent sanctity extends its presence from different considerations. With the expansion of the international community as a result of the multiplicity of sovereign states, the international community is limited in the beginning on a Christian Europe countries, in the seventeenth century Russia included, the United States of America in 1732, Latin America in the nineteenth century 19 and The Ottoman Empire in 1852 then expanded to include other countries.³²

In addition to the equality of rights and duties, and the evolution of international transactions and increase contacts between people as a result of the development of ways of communication, and the emergence of disputes between countries, it led to the necessity of having some people representing the state to protect its interests abroad and resolving disputes that appeared.³³

The need for permanent representation appeared to become a reality in the fourteenth century, when states began to exchange envoys, among them, due to the new economic conditions, The emergence of collective mental and the evolution of state function, and paved the way for a new framework of international relations for various systems in war and resolve conflicts through peaceful means. It was required to increase the number of diplomatic envoys, customary of judicial immunity. the first application of judicial immunity appeared in London 1654 and Paris in 1718 and then applications rolled which the customary of principle of treatment Reciprocity appeared through it that contributed a positively in the development of judicial immunity and by the time the judicial immunity rules in international relations became as customary provisions binding. International Customary has been in force until the issuance of the Vienna Convention of 1961. It is the only source of judicial immunity.

The Vienna Convention on Diplomatic Relation shave taken by that, as stated in the preamble to the Convention the following:Stressing the need for the continuation of customary

³² Farouk Al-Majdalawi, *Diplomacy Between War And Peace*, Op. Cit. P. 43.

³³ Ali Sadiq Abu Heev, *Diplomatic Law*, Al Eskandria, Faculty Knowledge, 1975, P. 185.

international law in regulating matters that are not explicitly regulated by the provisions of the Convention" as well as the Vienna Convention for special missions the same talk.³⁴

It means that the custom still plays an important role in the organization of judicial immunity despite what maligned it from obscurity and instability. However international custom is a source of diplomatic law, which has oldest presence in the past custom has occupied pride of place among these sources and many of the current international rules such as rules on diplomatic and consular relations are customary rules in the first place.

2.1.1 International Conventions

Bilateral international conventions and collective considers as one of the most important ways that have helped to develop and prove the rules of judicial immunity, which contributed effectively and seriously to codify the rules of customary international law, the texts are clear and rigor and certainty. The United Nations played a major role in holding multilateral agreements related to the rules of immunity, since its founding to the present time for its multi-international conferences resulted in the development of international agreements binding on all countries to ensure the judicial immunity of the diplomatic envoy , is that these agreements although addressed organize some of diplomatic rules, but it did not specify the details of the judicial immunity rules and scope in terms of time, place and people however, it left it for the rules of international custom. The reason for this is that judicial immunity rules not covered by the agreements in detail as they affect the judicial sovereignty of the host country. Countries at that time did not want to commit itself to the texts of explicit contained in international conventions but it sees determining that should left for the nature of international relations and its internal laws.³⁵

The multilateral agreement provided expressly for the immunity of diplomatic envoys, which is an agreement of diplomatic envoys taken by the Sixth International American Conference

³⁴ The Preamble Of The Vienna Convention On Diplomatic Relations, 1961.

³⁵ Yousefiammal, Lessons In Public International Law, Dar Balqis White House, Algeria, 2010 2011, P. 48.

That signed in Havana in 1928, the agreement that concluded between Denmark, Finland, Ireland, Norway and Sweden, signed in 1955.

At the level of the League of Nations until 1927 the International Law Commission of experts of the League of Nations has made a report for the league of Council to organize diplomatic immunities and privileges , however, the Council did not wrap to the Committee decision which delete the topic from the agenda of the Hague Conference in 1930.³⁶

Among the most important international conventions as well, the convention of privileges and immunities of the Arab League approved by the university in 1953 and Have been ratified according to law No (11) for the year 1955 in addition to what the United Nations role in 1975 An international conference has made called the United Nations Conference of representation States in their relations with international organizations in Vienna.

"in 1959, in its fourteenth General Assembly decided to call for an international conference in 1961 from representatives of States to study concluding on relations and diplomatic immunities agreement, then codify many of the customary rules vague and explicit to the legal rules governing immunity and give grantees to the envoy.³⁷

2.1.2 The Internal Laws

Despite the presence of international custom and international conventions as sources of rules of judicial immunity, the majority of states headed to the issuance of a private judicial immunity laws for diplomatic envoys in this aspect, especially before the issuance of the Vienna Convention of 1961 there for these rules can be the easiest example to guardian judge of the treaties and international custom.

States that guaranteed judicial immunity for diplomatic envoy in legislation positivism, Britain, Norway, and Australia in the legislation issued in 1808, Austria in 1811 and Germany

³⁶ Hussainsuhail Al-Fatlawi, *The Diplomatic Immunity Of The Diplomatic Envoy*, Op. Cit., P. 81.

³⁷ Ali Hussein Al-Shami, *Diplomacy, Origins And Its Evolution, Rules And The System Of Immunities And Privileges*, Op. Cit., P. 11.

in 1866, and the Soviet Union in 1937 and China in 1929, and in the fifties of this century the majority of countries issued a special legislation included judicial immunity for diplomatic envoy Such as Argentina and Denmark in 1955 and all of Canada, Ecuador and Sudan in 1952 and other states.

There was a significant difference in this legislation states called "diplomatic immunities law" and other countries have been singled specific legislation and judicial immunity but cited in provisions of scattered texts and laws according to Type of immunity that enjoyed by a diplomatic envoy. Despite the freedom of the national legislature in issuance of laws to suit the political conditions freely and appropriate, the special judicial immunity in all countries converged solutions and trends due to the global trend dominant laws .³⁸

of these rules, states find themselves obliged to follow these solutions and trends that arise from one source which is international custom and if the majority of countries have ratified the Vienna Convention of 1961, this agreement did not include immunity details, but general principles has been put also leaving the details for the international practice, there for courts in some states find themselves obliged to follow the rules of customary international law while didn't stated about texts on the Vienna Convention, which may be difficult for the judge situation .therefore some states headed to Issuing laws to supplemented the rules of judicial immunity, such as Britain, Soviet Union and the United States of America.

2.1.3 Conflicts Between the Sources of Judicial Immunity

Previously stated that judicial immunity derives its bases from different legal sources of international costmary, international conventions and national laws these sources have been involved to provide a unified solution to the issue that is mentioned to judge, which will help to decide and assigns his rule to all of it. However, the difficulty arises when the solutions

³⁸ - Sohailhussain Al-Fatlawi, The Diplomatic Immunity Of The Diplomatic Envoy, Egyptian Office Of The Distribution Of Publications, 2002, The Legal Comparative Study Pp 32-38.

offered by these sources. In this case, the judge must choose the right base between these sources and settle the conflict whereby.

The selection of appropriate base among the disputed sources is not subject to a single system but it is a matter in which international courts differed from national courts where each particular derive trend in including sources that are including judicial immunity rules to separate the conflict.³⁹

Therefore dispute must submit to the International Court of Justice, which has jurisdiction over disputes arising between nations, if agreed to refer the dispute to the mentioned court whether dispute the interpretation of treaty or customary rule or a matter of international law or investigation if this proved it would be a breach of international obligation. If the trial court found that the incident before it is governed by several rules from different sources.

They have recourse to the provisions of Article 38 of the Statute of the Court to determine the applicable rule. However, with regard to the conflict norm of judicial immunity as the arising Disputes from the competent national court considering the breach of a diplomatic envoy or the extent and scope of judicial immunity, the situation is different in terms of jurisdiction and legal base Due to the application.

In terms of specialization it should related to the Mandatory court and Do not depend on the concurrence of both parties, the first article of the Optional Protocol on the compulsory has Stipulate about Mandatory settlement for disputes annex to the Vienna Convention on Diplomatic Relations, "the intervention of disputes concerning the interpretation of the Convention or the application of the compulsory jurisdiction of the International Court of Justice, and therefore may be submitted to the Court case filed by the newspaper of any party in the disputes in this protocol."⁴⁰

³⁹ Suhail Hussein Fatlawi, Diplomatic Immunity, Op. Cit., P. 85.

⁴⁰ Optional Protocol On The Compulsory Settlement Of Disputes, Supplement, The Vienna Convention On Diplomatic Relations, Law, No. 20 Of 1962.

" In addition submit the dispute to a national court usually applied rules by gradient, which refers to its legal system and moving the courts in the majority of states that apply the legislative texts, when there is no provision which governed in accordance with custom rules and then extend the effects of texts in relation to the general principles of law in accordance with the Justice rules.

National judge bound to apply the legislation first and then the custom, principles of Islamic law then the rules of justice guided by the provisions adopted by the judiciary and jurisprudence and laws of another state that converge with national laws. ⁴¹

so it can resolve the conflict if it is internal matter but if it was about the rules of immunity, it requires the application of rules of the Vienna Convention of 1961, which was ratified by the state and international custom for national legislation, whether the laws was previous or subsequent of the Vienna Convention for the year 1961.

but if it was outside the headquarters, they enjoy the same immunity as well and this was confirmed by the international law Commission project that has a special sanctity of the archives and documents of the diplomatic mission and other provision in article 22 that decides considered archives and documents shall be inviolable and not be compromised, the Committee mentioned a comment on this text The diplomatic documents and archives immunity is an immunity stand-alone independent of the immunity of the places where they are located. And for previous considerations gathered nations decided at the Congress of Vienna to the adoption of the Vienna Convention, drafted Article 24 of the interview text (1) of Article 22 of the draft law states text which explicitly: archives and documents of the mission sanctity safeguarded at all times and in every place where there are these privacy absolutely It may not be disputed by any reason and shall be valid even if the diplomatic relations or war have been broken. ⁴²

⁴¹ -Statute Of The International Court Of Justice, Article 38.

⁴² Ibrahim Dessouki, Contemporary Diplomatic Relations Between Theory And Practice, Previous Reference.

2.1.4 Assessments Immunities for Conducting Mission Acts

This Section includes a set of immunities and privileges that the mission will help to carry out the required work to the fullest and these facilities cannot be dispense with the mission in their work it is as follows:

Freedom of the Communication and Mobility

It is related to communication and freedom of mobility in order to facilitate the establishment of the diplomatic mission and functions of the official investigation purposes entails that make a lot of In order to achieve its official purposes consequent to conduct many ongoing between them and the government of the state-based communications and correspondence These contacts and correspondence have the absolute freedom, as approved by Article 27 of the Vienna Convention of 1961.

It stated, It authorizes the approved of the state the sanctity of contact for all official purposes and maintain this freedom The mission is able in contact with the government of the state and its accredited missions and other requirements wherever they are, to use all appropriate messages, including diplomatic apostles and sent messages of symbols and code, the mission is not able to set or use a wireless transmitter only with the consent of the receiving State, The second paragraph of the same article also stipulates that the inviolability of the official correspondence of the mission shall be inviolable and the meaning of the official correspondence is all correspondence relating to the mission and functions of the consulate" in addition to the freedom of mobility to perform the tasks of Article 26 of the diplomatic relations of the 1961 Convention.⁴³

-Flag-raising and the use of the logo of Article 20 of the Vienna Convention on Diplomatic Relations of 1961 or put the logo and flag in places of the mission and the mission car.⁴⁴

⁴³ Vienna Convention On Diplomatic Relations, 1961, Article 20.

⁴⁴ Vienna Convention On Diplomatic Relations, 1961, Article 27.

-Financial and customs exemptions and it means the intended to finance any exemption from taxes on real estate in other words exemption from all property taxes owed on the house mission in accordance with the tax system of the State.

Exemption from applying the social security to the members of the mission. receiving State is not allowed to apply the social security as they are working on their territory in order to post double social system for members of the diplomatic mission calculated their laws that stipulated to this system , this what the Vienna Convention, sat in its article.⁴⁵

2.2 The Types of Diplomatic Immunities and Privileges

Covering diplomatic immunities and privileges, as we pointed out previously for elements of mission, physical and personal, both linked to the matter and complement to first one includes the mission headquarters (embassy House and what contents in addition to chairman house secondly, all of its employees in order to illustrate. we review each immunities separately as follows:

2.2.1 Immunity that Related to the Headquarters and Archives Mission

The mission used in the exercise of its functions, activities and in its communications and its relationship with the host state and to other foreign missions and international organizations a set of headquarters and special places that include buildings and parts of the structure and the land attached to it, regardless of the owner, that used in the mission purposes, including the home of the head of mission, also includes Others offices that are part of the mission is established in places where the mission established by the consent of the receiving State. ⁴⁶

⁴⁵ Vienna Convention On Diplomatic Relations, 1961, Article 33.

⁴⁶ Mahmoud Khalaf, Diplomacy (Theory And Practice), Dar Zahran Publishing, Amman, Jordan 0.2010, P. 265.

2.2.1.1 The Sanctity of the Mission Headquarters

The sanctity of the headquarters of the mission shall be inviolable because it cannot carry out its work fully only if they are for inspection actions of public authority in the host country to some other housing within its territory and away from all the police forces because it will lead to instability of personnel Mission in their headquarters and affect them and can lead in turn to the identification of state secrets.⁴⁷

House Mission became immunity based on the international agreement is not permissible exposure to this house and Due respect toward the State of the required exemption from the local authorities intervened and immunity headquarters As is known, does not derive from the immunity of the head of mission, according to it can link between them, but are connected to the state of the sending of the mission as the mission headquarters is based in the host country.

The mission headquarters includes all accessories that followed and every house or residence used by the mission extends to immunity, whether state-owned envoy or owned by one of the people who work for it or leased from third parties and is considered the mission headquarters is surrounding the yard and garden and place of parking as part of the mission headquarters enjoy this immunity and headquarters the mission is not the sanctity of the public authority may enter only with the consent of the head of the mission Article 22 of the Vienna Convention on In its report on the "special places of the mission is Safeguarded sanctity it is not permissible for certified public authority men to enter it unless the consent of the head of the mission as stipulated in Article 45 that "take into account in the case of the severance of diplomatic relations between the two countries or the temporary or permanent summons to one of the missions of the following provisions:⁴⁸

⁴⁷ Ibrahim Dessouki, *Contemporary Diplomatic Relations Between Theory And Practice*, Arab Renaissance Publishing House, Cairo, 2007, P. 83.

⁴⁸ Vienna Convention On Diplomatic Relations, 1961, Article 22.

A -The Certified countries, even in the case of Armed Conflict must respect and protect the Mission House, as well as its property and archives.⁴⁹

B - It is Permissible to the Certified State to promise guarding the mission house, as well as its funds and archives, to the Third State accepted by the receiving State and thus imposes immunity of these documents and to respect confidentiality, and do not steal it.

But despite the presence of this immunity it is not absolute, but has restricted to cases such as:

1 - In the case of sheltering fugitives or granting of political asylum.

2- In the case of a fire at mission headquarters.

3- In the event of an attack on a present at the headquarters of the mission and this person calls men authority Local public.

4 - If you use the mission's headquarters to threaten the security and stability of the host country (store weapons).

2.2.1.2 The Sanctity of the Mission Documents and Archives

All the documents and archives of the diplomatic mission enjoys with private sanctity impose lack of exposure and respect for confidentiality and private privacy of archives and documents is an extension of the immunity enjoyed by the mission headquarters if the mission headquarters.

2.2.2 Immunity on Correspondence of Mission Diplomatic

This immunity is only a natural result of the immunity of the mission headquarters and the extension of it, which is within the contents of the headquarters indicated by the article (22).

As it consistent with the definition and identification (first Article/ paragraph 2) the specialize

⁴⁹ Vienna Convention On Diplomatic Relations Of 1961, Article 45.

on places of the mission, but the Convention devoted a special material due to the exceptional unchecked which is Article 24 which states.⁵⁰

"Archives and documents of the mission have inviolable sanctity at all times and in any place that are exist" and here the new and exception lies, at any time until the time of the severance of diplomatic relations between the two states, which are usually entrusted to a third country recognizes her (nominally) the headquarters of the mission and what they contain, and on this basis demands can be divided to:

2.2.2.1 The Immunity of the Diplomatic Bag

To ensure the inviolability of all official correspondence of diplomatic mission it is permitted and with facilities to use a private mailing parcels traditionally been to name it the diplomatic bag, which mentioned in Article 27, paragraph (3 and 4).

Paragraph 3: The diplomatic bag shall not be opened and booked as for Paragraph (4), identifies the concept of the bag stipulating the packages component of the diplomatic bag must bear external signs shows description of diplomatic and may contain only diplomatic documents.⁵¹

or objects for official use" the agreement means that it should not be larger than the normal size, which may raise doubts among the approved state which leads to think that it may be used for illegal purposes, or even for personal purposes, which entails that these state action is justified to justify the doubts which opened the bag and inspected, if such custom happen it must be done with the permission by the Ministry of Foreign Affairs, for this state, and always in the presence of a representative of the mission if they adopted and did not find anything inside, it shall apologize courtesy.

⁵⁰ Vienna Convention On Diplomatic Relations, 1961, Article 24.

⁵¹ Vienna Convention On Diplomatic Relations, 1961, Article 24.

In the opposite case , if any, justification found for their behavior, he must proof that in front of a representative of the stakeholder embassy and another Embassy of another state ('eye witness) that his state linked a good relations with the state of the mission and then the official protest in the sending State and opening of an investigation in that if the involvement of its president or one of the diplomats of its members proved the receiving State only have to declare that this Unwanted person and ask leaving its territory.

Although this is a legitimate action of the receiving state, but it is not an international customary, it did not refer to the Vienna Convention of 1961.⁵²

2.2.3 Immunities and Privileges of Consular Mission

Although consuls enjoy the immunities and privileges less than the diplomatic corps. In fact, the distinction between the diplomatic mission and consular mission and between diplomatic and consul not justified realistically Each one of them lead a public service and all of them foreign state and consular work is much broader than the diplomatic work sometimes confused between the diplomatic work and consular work as long as his wider range of diplomatic work and it is closely directed to the approved state authorities and its citizens. The possibility of charges against him he must enjoy with protection and immunity more than diplomat and his case in legal terms is less than diplomatic status.

2.2.3.1 The Most Important Facilities and Immunities to Consular Mission

1 -Facilitating the Mission Work:

- Certified State has all the facilities to the consulate to enable it to discharge its duties fully.

⁵² Memorandum Of Master In Public Law, The Legal System Of The Diplomatic Bag Courier, Prepared By The Student Lena Mammeri - Mohamed KHIDER Biskra, Academic Year 2011-2012 P 36.

- Consuls can raise the national flag and Logo State on buildings and vehicles and the House residence of the Head of Consular Mission and his main car.
- If the consulate is within the diplomatic mission, the consular mission headquarters enjoy the same immunities and privileges of diplomatic mission headquarters.
- If a State has adopted other consular mission in the receiving State and the absence of a diplomatic mission in this case the closure of one of the consulates for the second consulate may guard the mission headquarters that have been closed and the exercise of consular work outstanding. If the enclosed in another city in this case, the second consulate cannot protect them and do not open more consulates in the same city, but, it may open a commercial or cultural Consulate. In this case it may closure such consulate the second consulate can guard it.⁵³ The Certified State Oblige to facilitate and assist the consular mission to get the mission headquarters and their own buildings practically, obtaining a mission headquarters and Employees, possessed in the capitalist countries because often these states allow consular mission to buy buildings and registered in their names, as long as it is permissible to own real estate, consular missions may purchase and have their own buildings, but the problem is to get the mission headquarters and difficulties appear in the socialist countries the mission cannot get that as all buildings owned by the state.
- Certified State don't have the right to interference in the work of the consulate and to determine working hours, method of work and rest days or holidays, consular missions may not come during the special holidays for their state and official holidays for the receiving state.

⁵³ Yusuf Hassan Yousef, International Diplomacy, Previous Reference., P. 61.

2 -Sanctity of the Consulate

Consular Mission headquarters enjoy with sanctity is certified State authority don't have the right to enter the consulate buildings used by the consular mission without the consent of the President of the consular mission or the relevant regulator or the head of the diplomatic mission of the certified State, while in case of fire or disaster that requires immediate protection procedures is not require to take approval.

- The receiving State shall take all appropriate measures to prevent the storming of the consulate mission headquarters or destroying it. Provide necessary supplies to protect the mission and impose security and stability and to ensure the functioning of the good.
- Consular buildings, furniture, belongings and their Means of transport in any way to confiscation for the purposes of civil defense or public interest and in cases of necessary seizure for these halls shall take all appropriate measures to avoid putting obstacles to the exercise of consular functions as pay for the sending State fair and adequate compensation. ⁵⁴
- Enjoy the archives and documents consular mission shall be inviolable and care at anytime and anywhere. ⁵⁵
- Buildings of consular mission, assets and private cars are not subjected to grab for the purposes of relief experienced by countries in case of disasters.

3-Exemption from Taxes

The exemption includes the consulate buildings, Head of the Consular Mission which originally owned or leased by the certified state or any person work on its behalf of all the

⁵⁴ The Convention Of Consular Missions Of 1963, Article 31.

⁵⁵ The Convention Of Consular Missions Of 1963, Article 33.

taxes and fees imposed on foreign citizens in connection with the sale or purchase or lease of real state.⁵⁶

4 -Freedom of Movement: Members of the consular mission has the freedom of movement within the approved state to implement their official position so they may have mobility and travel within the territory of the State whenever their work requires it, the certified state has no authorities to prevent them from moving , taking into account the laws of the state and regulations relating to wider organized entry for security reasons.⁵⁷

5 -Freedom of Communication

- The consular mission allows the freedom of communication for official purposes with the rights and with the diplomatic missions or other consular missions accredited in other states of the State.
- The consulate may call all of the state institutions and also have the right of correspondence when it comes to the formal work, however the consulate may not take action instead of the diplomatic mission.
- Using all kind of, telephone and telecommunications, online communications and Internet. The Consular Mission have no right to use radio contact, without the approval of the State.
- Consular protection for the courier and not harassed while carrying the bag to and from the state.
- State is obliged to have adopted the protection and maintenance of the official correspondence of the mission consulate and it is not permissible to use means to have a look.

⁵⁶ Consular Missions Agreement For 1963 Article 32.

⁵⁷ Missions Agreement For 1936 Article 34.

- The State is not authorized to open the Bag or consulate bag unless it thought that there are substantial reasons that requires opening the bag in the presence of approved representative to open it, the bag should be returned to the source from which it came. The parcels must be carried that is consist of the consulate bag external sign. A Phenomenon indicates their nature, and only contains official correspondence and documents allocated for official use.
- The courier of consulate bag must not be subjected in any form of The arrest or capture- the courier of Consular bag must not be subjected in any form to be arrest or capture) - consulate bag Could depend on the captain of the ship or the commander of a civilian aircraft, ⁵⁸this case, he must have an official document specifies the number of the Packages that Comprising the bag, but he does not consider as a courier of Consulate bag, the consular send one of its members to receive the bag from the captain or the commander of the plane and freely in agreement with the local authorities.

6- Consular Communication with Nationals of its State

Consuls enjoy a freely contact with nationals of their country, meeting them and follow up on their problems in any area where they are existing.

In the case of jailing a one of consular national or detained in any way, authorities of the receiving State must notify the consulate to take procedures for the consular citizens to give them rights to meet their nationals of their country that are prisoners and arrested to talk and texting them and provide them agents defending on them in court, On condition that they will not interfere in the affairs of the judiciary, and to be up consuls to the problems of the citizens of their state within laws of the Certified State.⁵⁹

⁵⁸ Convention Of The Consular Missions Of 1963, Article 35.

⁵⁹ Convention Of The Consular Missions Of 1963, Article 36.

The certified state authorities must commit to notify the consulate in case of death of a national of their state and the appointment of guardian for minors.⁶⁰

Consular Citizens may contact competent local authorities in a circle of competence and powers of the Supreme State extent permitted by the laws and regulations or international conventions.⁶¹

7- Consular Fees and Collection

The Consulate may have the aggregated fees and collections of the documents or have granted access to its state or other actions by either nationals of their state or nationals of the certified state, and the state has no right to prevent it and taxation, all what it can do is to act the same.⁶²

2.2.3.2 The Privileges and Immunities of Consuls

1- Personal Privileges

Consuls enjoy the following exemptions:

The exemption from alien registration restrictions absolve consuls and their families living in their patronage from all the obligations, in the laws and regulations of the certified State with regard to the registration of aliens and residence permits in the approved state(2) whom cannot visit the reviewed Consul residence department to approve his residence.⁶³

Exemption from work permits, members of the consular mission shall be exempt from the obligations imposed by the laws and regulations of the State of residence for foreign workforce.⁶⁴

⁶⁰ Convention Of The Consular Missions Of 1963, Article 37.

⁶¹ Convention Of The Consular Missions Of 1963, Article 38.

⁶² Mission And Consular Agreement For 1963 Article (39).

⁶³ Mission And Consular Agreement For 1936 Article (46).

⁶⁴ Mission And Consular Agreement For 1936 Article (47).

Exemption from social insurance system, which relieves the consuls of the provisions of the social insurance imposed by the approved State.⁶⁵

-Exemption from the official tax, which exempted consuls and their family members who live with them from all taxes and fees and personal legacy and testament.

Exemption from Customs Duties and Inspection with the Exception of

1 -Indirect taxes that integrate in the prices of goods and services

2-Inheritance and legacy taxes transfer the ownership, which must have approved by the funds in the territory of the state.

3 - Taxes and fees that imposed on the funds private Immovable property in the territory of the receiving State.

4 - Taxes on private income including profit of the head of the territory of the receiving State and taxes on capital which deducted from the ongoing investments in Commercial projects.

5 - Registration fees, judicial fees, mortgage fees and stamp required by the work of the consul in the state at the pleadings of its institutions.⁶⁶

6 - Exemption from customs duties and customs inspection, consuls shall be exempt from the word customs duties and other taxes and surcharges with the exception of storage, transportation and similar services fees, as exempted intended for personal use of Consular member and members of his family living in auspices including things to his residence and relieved Members of consular officers and family members living in auspices of customs inspection of their personal baggage.

7 - Export the Properties of the deceased Consul authorized State is obliged to allow the export of Properties deceased of the Consul, which the exported will be prohibited at time of

⁶⁵ Mission And Consular Agreement For 1936 Article (48).

⁶⁶ Convention Of Consular Missions, 1963, Article (49).

death, failure to collect a national, local or tag fees on a partnership or ownership of Properties that link its presence in the sending state in the presence of the deceased as a consular Mission member or one of the members of the consular mission.⁶⁷

8 - Exemption from personal services, the receiving state exempts the members of consular mission and members of their family who live with them from all personal and public services the state whatever its nature was.⁶⁸

2 – Personal Sanctity

The receiving State is committed to respecting the consuls and take the necessary measures to prevent attacks on their persons, not compromised of their personality and dignity.⁶⁹

-Consuls should not be detained or imprisoned except in the case of the Serious offense under the decision of specialized judicial authority In the case of arrested in real reasons they should respect them and not compromising on their personality and inform the state about that.

- No one shall be imprisoned or restrict their liberty, unless the implementation of the court order that, Administrative authorities don't have the right to exposure them.

- If filed a lawsuit against one of the consuls, he should be brought in front of the competent authorities, however, the competent parties must take into consideration the position of the Consul and respect him and does not prevent him from exercising his acts.⁷⁰

- In the case of Arrest and reservation of one of the consular members or Criminal prosecution. the receiving State should notify the head of the mission and whether the head of the consular mission is intended to these Procedures ,the receiving State notify the authorized State by a diplomatic ways .⁷¹

⁶⁷ Convention Of Consular Missions, 1963, Article (50).

⁶⁸ Convention Of Consular Missions, 1963, Article(51).

⁶⁹ Convention Of Consular Missions, 1963, Article(40).

⁷⁰ Convention On Consular Missions, 1963, Article (41).

⁷¹ Convention On Consular Missions, 1963, Article(42).

3 - Judicial Immunity

The Vienna Convention on Consular relations that Held in 1963, sets a general rule regarding to the judicial immunity enjoyed by the consuls, which are:

- Consul enjoy absolute immunity in criminal issues they are not subject to the jurisdiction of the courts of the receiving State only for their official acts and as for their private acts they do not enjoy such immunity just like the diplomatic envoys Stated in the text of Article 43 of the Convention , enjoy immunity of consular business.

Consuls enjoyed absolute immunity from civil suits only in respect of all their official work, they don't enjoy with judicial immunity for suits that are outside of official business, also they do not enjoy with civil immunity in the following official business:

1 - Claims arising from a contract concluded in knowing member or citizen consular and this contract was not implicitly frank as an agent of the sending State.

2- Proceedings to know a third party for damage resulting from an accident in sending to the state caused by a boat or a ship or aircraft, if these claims are not related to official work.

3- Enjoys administrative immunity, and it means immunity from administrative court, and the decisions of the administrative authority in the receiving State and this immunity is also restricted with regard to the formal labor.⁷²

4- Commitment to perform the witness

Terms of article 44 of the Convention for the courts approved the state has to request the presence of the consul to testify before the courts, and if he got the refusal then it is not permissible to take mandatory action or criminal force him to appear, also, the consul is obliged to perform witness in respect of the official work or provide official documents.⁷³

⁷² Consular Mission Agreements For 1963 Article (43).

⁷³ Consular Mission Agreements For 1963 Article (44).

5-Waiver of immunities and privileges

The State is approved to waive the judicial and administrative impunity enjoyed by consuls and if his Consular Mission agreements State waived for his immunity may be trial and if that work was being done has to do with the official duty and such a waiver should be explicitly and in written either that the consul is that it may compromise on judicial immunity once asylum to stay the proceedings before the approved state courts.⁷⁴

⁷⁴ Consular Mission Agreements For 1963 Article (45).

CHAPTER THREE

INVIOABILITY OF THE DIPLOMATIC ENVOY, METHODS OF ACCOUNTABILITY AND SCOPE OF HIS IMMUNITY

The sanctity of personal mission extends not only to its premises, archives and documents and mailings but also extends to the relevant diplomatic envoy and to members of his family and such inviolability is an absolute and comprehensive with the envoy his residence his papers and mailings moving and passing through the territory of a third country, scholars and writers enact such inviolability and confirmed All diplomatic agreements, where some scholars confirms that the principle of the inviolability of diplomatic envoys controlled everything in this area as it one of the earliest manifestations of international law, which is the basic concession where descend from all other privileges as narrow results that relate to him as Introductions, which is necessary for basic rights for the independence, sovereignty and Mutual respect for states, diplomats envoy representing their state every hostile act directed against diplomatic agent is the prejudice to the State itself which is an insult directed at a nation or abuse is directly over the other State and an assault on international law and on the basis of all nations. Despite the existence of such inviolability which is a source of diplomatic immunity.

But the latter scope specified in accordance with the international law and the owner is responsible for his actions and ways which set by international law for the diplomatic envoy, and this, is what we will see in this chapter.⁷⁵

⁷⁵ Ali Hassan Al-Shami Diplomacy (Origins, Evolution And Rules According To Diplomatic Immunity And Privileges) P234.

Before that it is necessary to find out what is the diplomatic envoy, who is a representative of the government of his country and he does not do it only in formal occasions, but has to submit protests and Consulting to the host government and highlights the government's policies to the host country and present a report to his government about political events and political conditions and related issues .He is the eye of his country that it sees from it also its ear and tongue.

3.1 Immunities and Privileges of Diplomatic Mission Members

With the adoption of functional concept of diplomatic privileges and immunities to members of the mission who derive their immunities and privileges from the mission as a body stand alone it derives its immunity from the state as the representative of the state and thus enjoy the members of the diplomatic mission of the immunities and privileges of the variety include personal judicial and executive immunity as well as customs and fiscal exemptions.

However these immunities and privileges do not include members of the mission in the same class, size and comprehensiveness there is a difference in terms of coverage of the mission of these immunities members some of them enjoy absolute immunities and some have a comparative immunities restricted to certain conditions relating to the nature of their business, jobs nationality and residence.

the Vienna Convention of 1961 confirmed this variation for exemption immunities of the diplomatic mission, when he distinguished between four categories of members who belong to the mission and make up its structure according to the first article: ⁷⁶

Diplomat employee including the head of mission and military attaches from Marines air Force trade cultural and family members.

Administrative staff and technicians and their families.

⁷⁶ The Vienna Convention On Diplomatic Relations, 1961 Article (1).

User's workers in the mission.

Private servants of is the receiving State.

The agreement confirmed that the members of the mission with diplomatic status enjoy absolute immunities, as for the rest of the members they enjoys restricted immunities to certain conditions specified in the agreement in articles 37 .⁷⁷

However it is important for this is the members of the mission with diplomatic status whether ambassador to the State or international staff member of international missions so the research can be divide into Two demands:

3.1.1 Personal Immunities for Diplomatic Envoy

A diplomatic envoy enjoys a range of immunities and privileges to his person as one of the rare classes that enjoys a Special legal status, and thus Vienna Convention did not ignore for the text on these immunities and privileges, that states abide by and not to be breach because in breach of the order of international responsibility on this violation:

3.1.1.1 Self-Sanctity (Personal Sanctity)

Personal sanctity Historically has been addressed by sanctuary feature based on the representativeness of the diplomatic envoy where It is not permitted to Inviolate his dignity , with the development of the concept of the state and its sovereignty, the personal immunity has based on the exigencies of the job and ensure the effective performance of its functions, with all tranquility and freedom away from all the inconvenience, harassment or disability and respect for the Representation Character and respect for the dignity of the state. Article 29 of the Vienna Convention of 1961 has been confirm, which states:

That the sanctity of a person of the diplomatic envoy shall be inviolable and may not be subjected to any form of arrest or detention, and the approved state must treat him with

⁷⁷ Vienna Convention On Diplomatic Relations, 1961, Article 37-38.

decent Respect and all appropriate procedures to prevent any attack on his person freedom or dignity,⁷⁸ this article imposed on the approved state a duty to take all necessary procedures to prevent any attack suffered by a diplomatic envoy, and to prevent any action or conduct detrimental to him or carrying material or moral damage, including mug or media slander which carries an insult not only to a person of a diplomatic envoy but also to the state that he representing it. Thus such inviolability is due and not sticking out they are protected in spite of it, and cannot waive them because they are not planned for his favor but the decision in favor of the state which is as Fushi says: fixed right connected to capacity and his duty is to stick to it because in maintenance inviolable self respect for the independence of the represented state.⁷⁹

In case of evacuated of the receiving state to have this duty and violated the sanctity of a diplomatic envoy by any person for any reason the international liability shall be on the receiving State and therefore, a duty to give moral and material compensation, at first glance the case may seem simple, but if not treated in time can cause in a war between the two countries in this context, some believe that the occupation of France to Algeria in 1830 is the result of an affront to its general consul (Donald) without offered an apology or satisfaction necessary from the Algeria authorities.

Nevertheless we find this rule exception allowed by the Internationals jurisprudence and custom the state The receiving State able (and exception) to take some action against a diplomatic agent in the case that we say that the duty of the diplomatic is to respect domestic laws of the receiving state and does not behave exposure National security to risk and for more explanation Indicate that in the event that diplomatic attempt or even to access to forbidden military zone, it is the right of the state to use force against him to prevent him from it and fall his immunity and become persona non grata, in this context in 1984 many of French

⁷⁸ Convention On Diplomatic Relations Of 1961, Article 29.

⁷⁹ Hussainqadri, Diplomacy And Ngotiation, Previous Reference P. 58.

states has found many of Soviet diplomats accused of espionage and carry out acts. In contrast the eastern European countries has expelled Western diplomats for the same reasons.⁸⁰

3.1.1.2 The Sanctity of Residence of Diplomatic Envoy and his Documents, Mailing and Funds

Article 30 of the Vienna Convention of 1961 Stated on the following:

1 - Private Residence of Diplomatic Envoy Enjoys the Same Freedom and the Same Protection For Places of the Mission.⁸¹

2 - As Well as Enjoying Inviolability of Documents and Mailings, as Well as his money in the limits laid down in the third paragraph of Article (31).

Which refers to" Shall not take any enforcement action against a diplomatic agent, except... Without compromising the sanctity of the envoy or his residence.⁸²

If we conclude from the texts of these articles that personal sanctity of envoy extends to his residence furniture documents mailings and even his money deposited in a bank in the receiving State.⁸³

It is important to note that dwelling of the envoy or his place of residence Includes dwelling of the head of the mission and the residences of diplomats members include whether a dwelling attached to the mission headquarters, as usual for the diplomatic envoys of some socialist countries previously or permanent residence of the head of mission, whether the property of the receiving of State or the members of the mission houses with the same previous characteristics, or even if it is a temporary dwelling wing room in a government or private hotels as it happens in the third poor countries in the world and no matter how different types of housing, what is important is to be a private residence for the diplomatic

⁸⁰ Mahmoud Khalaf, Diplomatic Theory And Practice, Previous revision, P. 274.

⁸¹ Convention On Diplomatic Relations Of 1961, Article 30.

⁸² Convention On Diplomatic Relations Of 1961, Article 31.

⁸³ Wasimhossam El-Din Al-Ahmad, Legal Immunities, Legal Publications Halabi, Lebanon 2010, P. 277.

employee, in this case he should enjoy full immunity with Everything inside to provide the comfort and tranquility of the diplomatic envoy to do his performance of the mission to its best.

3.1.1.3 Freedom of Movement, Communication and Inviolability of the Archives and Documents

Freedom of Movement: The host countries should provide enjoyment to all members of the special or permanent mission and especially the diplomatic envoy to the State or organization of freedom of movement and travel in its territory to the extent necessary to exercise the mission and without prejudice to the laws and regulations related to regions banned or orderly entry for reasons of security in accordance with Article 26.⁸⁴

Freedom of Communication: The host country allows the special mission or diplomatic envoy to these sanctity and lack of exposure to them and using the means of communication of various kinds.

The Sanctity of his Papers and Mailings: As well as his money and personal belongings that made for his stability, it may not be searched or seized unless there are reasons for the assumption that they contain substances not covered by the exemption provided for in Article 36 of the Convention and exempt from all customs duties, taxes and costs and other similar non-storage, transport and services in the first paragraph the second condition.

Materials for private use for diplomatic envoy or to members of his family of his household, including materials intended for stability.⁸⁵

The Sanctity of Diplomatic Family

The family of diplomatic agent enjoys with the same immunities and privileges, it has been proven by stated in the Vienna Convention on Diplomatic Relations of 1961 in Article 37

⁸⁴ Vienna Convention On Diplomatic Relations, 1961, Article 26.

⁸⁵ Vienna Convention On Diplomatic Relations Of 1961, Article 36.

members of the family of diplomatic agent, who lives with him in one house gets benefit from the Privileges and immunities that provided in the articles: and the Ministry of Foreign Affairs of the receiving State has usually not opposed to what embassy offer only in rare exceptional cases.

3.1.2 The Judicial Immunities for Diplomatic Envoy

We mean by judicial diplomatic immunities those that characterize the diplomatic agent for special treatment from ordinary people and to ensure a lasting respect for its representativeness also provides him with freedom and full independence to perform its mission serenely.

If this is the duty of the receiving State so the duty of the diplomat that does not believe that his immunity this mean freedom from responsibility or to obey domestic laws of these receiving State, but the right is the opposite which means that this immunity it was given to him to distinguish it from other foreign expatriate on this State or even all of its citizens, and the person characteristic should be role models for others and to act both during his official duty or person within this range, the most important thing is that this immunity, which protects them from laws of the receiving state (laws of Article 41) ⁸⁶does not mean in any way conditions it has become is above the law (but the fact that it is subject to him in this case is subject to the law of his own country, in case lift his immunity by the receiving State and return to his country continue to sue him in front of jurisdiction) Article 31, paragraph 4 .

3.1.2.1 Criminal Judicial Immunity

Jurisprudence and diligence immunity of a diplomatic agent have passed the judicial in the absolute international issues has been approved by the sanctions, as it cannot be subject to the

⁸⁶ Vienna Convention On Diplomatic Relations, 1961, Article 42.

state to spend any of the images, and whoever committed acts and acts a crime punishable by the law of the receiving State.⁸⁷

To be sure it came in the text of the article (31/1)Of the Vienna Convention that the diplomatic envoy exemptions of the criminal justice system, in accordance with this text definitively it may not trial the diplomatic envoy for any act that occurs from it and we assume that if regional authorities have the right to take procedures against the diplomatic envoys in the event of a crime of someone or suspicion ,⁸⁸ though it may take action against them arrest, detention , trial and allows them to anticipate sanctions to become so at the mercy of the governments of approved countries.⁸⁹

And when they could retain their exploitation in carrying out their tasks as well as the secrets of their governments immune violated under the pretext of addressing all crimes that may be attributed to them or located in their headquarters and that the trial in front of the criminal justice might be a way to defame them or to avenge their enthusiasm and their activity in Defense of the interests of their countries to the Government accredited countries 4 here are some hypotheses that need to be clarified. Does the meaning of exemption from subjected to criminal justice makes the envoy do whatever he wants and what the quality of the crimes that can be punished by outside the state, whether this immunity extends to the rest of the family if they violate the law regulations and systems of the state whether it's from family members of the mission or any member of the mission and their families, which he heads, which is a situation of Vienna Convention of breach to judicial immunity of diplomatic missions.

We try to answer these hypotheses without disputation of the scientific sources and the position of the crimes that fall from the envoy, some thinker's distinction in the field of minor offenses and serious crimes. some scholars addresses if the criminality Activity of the

⁸⁷ Ali Hassan , Diplomacy, (Origins, Evolution And Bases), P. 548.

⁸⁸ Ibrahim Dessouki, Contemporary Diplomatic Relations Between Theory And Practice, Arab Renaissance Publishing House, Cairo 2007, P. 11.

⁸⁹ Vienna Convention On Diplomatic Relations Of 1961, Article (31\1).

diplomatic envoy directed against the authorized State as if he conspiring on it or sought to ignite a revolution there or play with the regime system or forgery its official papers or falsity of its currency or participated in one of the previous crimes, here authorized state must to have prevent commissioned the envoy to territory confiscate with Informing his country about his situation to take the accountable for what is attributed to him because they do not have the right to arrest or imprisoned or brought him to the courts in front of jurisdiction and shall not be used against any act of violence inference regional extension to the job or representativeness, because any insult to him directed to the sending State As for his family to families of diplomatic missions, they enjoy all the immunities enjoyed by the diplomatic envoy as long as they are residing with him and because the texts came General not unrestricted Whether the act was person or other, is exempt from the submission to the judiciary in the approved state members the diplomatic mission.⁹⁰

On condition that the members of the Mission are not members of the receiving State and have not stay permanently.

However we find as stated that the Algerian penal code does not allow for diplomatic envoy of conspiracy espionage or his actions lead which ignite war and forging official papers or money laundering, and it is found in Article 71 of the Algerian Penal Code in paragraph 3 which states punishable by temporary imprisonment from 10 to 20 years both with being agents of a foreign state intelligence that would harm the military or the diplomatic center of Algeria or economic interests.⁹¹

3.1.2.3 Civil Judicial Immunity

The diplomatic envoy enjoys judicial immunity in cases which are source of the obligation in the contract whether the contract of contracts which are listed on the right of ownership as he buying or selling real estate or gift list in the receiving State or chattels such as furniture

⁹⁰ Ibrahim Dessouki, *Contemporary Diplomatic Relations Between Theory And Practice.*, P. 115.

⁹¹ Algerian Penal Code, Article 71, Paragraph 3.

and supplies used for the purposes of the mission Or contracts that respond to the usufruct thing as renting or investing real estate or movables for the purposes of the mission, as well as the diplomatic representative enjoy judicial immunity from lawsuits arising of harmful act. It is not permissible to sue him for damages caused to others as a result of an unlawful act committed during the practice of the official function that means the courts of the receiving State may not brought him to trial due to lack of repayment of debts obliged to repay and thus prevent him from leaving the country because the exemption of diplomatic representative of habeas corpus in the receiving State grants mainly to diplomatic envoy to be able to carry out his duties to the best. In fact, the lack of caving the diplomatic envoy to spend the host nation in civil matters is due to two considerations:

1 - His residence in this country no matter how long imposed by the functional tasks and this is a place of constant residence in the state that followed as the original headquarters and should be prosecuted for his works and his actions in front of the courts of this state without other.⁹²

2 - The nature of his work in state envoy and his money which is necessity retaining its independence in carrying out its mission and to maintain the appearance of his representative era of his state are incompatible with the possibility of raising the criminal proceedings against him and prosecuted like any normal individual in front of the State courts in which these tasks holds.

Because of the identification difficulty between diplomatic official or personal tasks, and though it has stated in the Vienna Convention on Diplomatic Relations of 1961 some exceptions and considered it as a personal mission for the diplomatic envoy, and therefore does not apply to the immunity and the exceptions in Article(31\1)⁹³ as it :

⁹² Wasimhossam El-Din Al-Ahmad, Legal Immunities, P. 59.

⁹³ -Vienna Convention On Diplomatic Relations Of 1961, Article (31/1).

A diplomatic envoy enjoys judicial immunity in civil judicial and administrative only in the following cases:

1 - Real suits related to special real estate funds , located in the territory of the receiving State unless he was not acquired them on behalf of the approved for use in the state the purpose of the mission.

There is no doubt that a diplomatic envoy have Real Estate to invested to his favor and not a private to the mission or his private residence, subject to the laws of the state, which have the absolute sovereignty, as for funds and property that Intended for official use of diplomatic mission so it's not subject to the domestic laws of the host country.

If there are exceptions they are related to some business in civil and administrative matters by the diplomatic envoy outside the official functions and as a private and personal as he subject to the civil judicial of the receiving state.⁹⁴

2 - Cases related to matters of inheritance and bequests which enters as an outlet or a director or an heir or recommended to him, and that on its own is not on behalf of the accredited state, that means the diplomatic representative is not entitled to invoke judicial immunity of civil process as associated suit personally of private inheritance or legacy which linked specially to that, but if linked as a representative of his state even in this case he enjoys civil judicial immunity and can protest it.

3 - Lawsuits that related to any professional or commercial activity in the receiving state outside his official functions, it happens that the diplomatic representative shall exercise any commercial profession away from his competence if he did so he is not subject to the judicial of approved state this Purpose is rare to happen to the diplomatic envoy as it happens a lot to the consuls.

⁹⁴ Mahmoud Khalaf Diplomacy (Theory And Practice),P. 277.

There is fourth exception mentioned to Article(32/3) Of the Vienna Convention on Diplomatic Relations to speak about judicial immunity which address the situation if a diplomatic envoy himself may file a lawsuit against the local judiciary for matters within the scope of the exemption barring him after that to protest his judicial immunity about the suits and Sub-Requests relate to the his original suits because his acceptance of the jurisdiction of the judiciary regional appealed to him remains a secret until the final chapter in the conflict and all the ramifications of the issues concerning him and that international action and international courts are full of incidents that confirms it said, for example: ⁹⁵

In 1963, the Rome Court quash the judgment of the Italian court in a civil suit filed third secretary of Chile Embassy in Italy.

As well as in 1940 when the Supreme Court rejected the American civil lawsuit against the first secretary of the Brazil Embassy. ⁹⁶

3.1.2.4 Immunity from Administrative Competence

Article (31\1) of the Vienna Convention of 1961 on diplomatic envoy stated that he enjoyed immunity from administrative judiciary of the receiving State.

This immunity include violations related to general security, general safety traffic systems and general health, but notes that most of the irregularities that you get are violations of regulations and instructions of the traffic in the receiving State these violations caused dangers and immunity against the policeman jurisdiction which means the exception of a diplomatic agent from the submission of the laws and regulations of the police in the approved State which doesn't mean liberation of respect for those laws and regulations, respecting laws and regulations and traditions of the receiving State in the forefront of the duties imposed on diplomatic envoy.

⁹⁵ Vienna Convention On Diplomatic Relations Of 1961 Article (32/1).

⁹⁶ Wasimhossam El Din Ahmed , Legal Immunities, P. 64.

If diplomatic envoy did not take into account the provisions and did an act which requires culpability or requires to raise the matter to the Administrative or judicial bodies The state authorities may not take any actions that give Offense to the General system and the Public interest in the receiving State is entitled to do Call attention friendly and invites him to follow the existing rules, if he did not respond, he can claim to the sending State also it has the right to request to this state summoned or the cost to leave its territory when the secretary of the United States Blin appropriate, and in this case the United States the issue can be referred in Paris 1923, which finally forced to pay compensation for the incident, which he has committed.⁹⁷

3.1.2.5 Immunity in the Testimony Procedures and Execution of Judgments

Although some refers to the failure to call a diplomatic envoy to testify in court advantage, but it actually says it is an extension of judicial immunity and affiliates due to different views on this subject and large uncertainties concerning to the immunity and lack of agreement idiosyncratic not even practice for it which leads us to say that the legal character for this immunity is doubtful.

Despite stating in a scientific text in Article (31\2) of the Vienna Convention a diplomatic agent is not required to witness and by reading this paragraph, we conclude that they are clear of non-mandatory of diplomatic envoy that leads to testify in front of the courts for the tasks related to his job, but if these issues were not unrelated to his job. Not work or is not due to diplomatic comply with the performance of the testimony in a cases such as criminal, civil or administrative it is possible from justice to serve in the receiving State and does not harm him personally, taking note that it is not required to appear in front of the courts for the

⁹⁷ -Mahmoud Khalaf, Diplomacy, Theory And Practice, P 278.

performance of such a testimony, but by virtue of his distinguished. ⁹⁸ It is able to testify at the formal request through the Ministry of Foreign Affairs of the receiving State in two ways:

First in writing and sent it formally to the competent authorities through its embassy and the Ministry of Foreign Affairs of the receiving State.

The second one is to testify in front of Mandatory Judge attend personally at the Mission headquarters, at the diplomatic work place or his private house.

Immunity of Implementation

The executive immunity is an extension of the immunity of the Executive State means the exclusion of adopting and implementing measures of the seizure or arrest or searches versus the foreign state would prejudice its sovereignty and exploitation or compromising the dignity and prestige so these executive immunity include all state facilities and its people from diplomats, consular staff, heads of state and the governments. the executive immunity intervened to prevent the execution of any judgment has been issued against him by the local judiciary that would prejudice its dignity and sanctity were contained in the text on the immunity of implementation in paragraph 3 of Article 31 of the Vienna Convention on diplomatic relations, which states the following: ⁹⁹

Shall not take any executive action against a diplomatic agent except in the cases provided for in items A -B - C - of this article on the condition of the possibility of taking these actions without prejudice to the inviolability of his person or his house.¹⁰⁰

In addition, the Vienna Convention on Diplomatic Relations considered that the waiver of judicial immunity does not entail automatically waive implementation immunity but has to be

⁹⁸ Ali Hussein Al-Shami, *Diplomacy, Origins, Evolution, Its Bases, And The System Of Immunities And Diplomatic Privileges*, P 55.

⁹⁹ Convention On Diplomatic Relations Of 1961, Article (31\3).

¹⁰⁰ Wasimhossam El-Din Al-Ahmad, *Legal Immunities*,. 60.

a waiver of another independent from the first to execute the judgment that has been issued, This was confirmed by the Convention in the paragraph four of the Article 32, which stated :

"Waive any immunity for any civil or administrative proceeding does not involve waiving his immunity for the execution of the judgment in this case there must be an independent waiver."¹⁰¹

It should be noted that the Vienna Convention of 1961 did not address the implementation immunity only for Civil judiciary or management without the criminal justice system because of the dangerous that organized by the implementation of the Provisions of the local judiciary in criminal matters that directly affect the self-integrity of diplomatic envoy that confirmed by articles 29.30 of the agreements ¹⁰² which makes the international Labor confirms the base of implementation immunity.

In the case of (Suarez V. Suarez), Minister Plenipotentiary for Bolivia in London in 1917 which content that the minister was in private charge left to his family and a waiver on the occasion of his order this legacy for immunity in their own affairs and the court judged that the plaintiff pay a sum of money but he refused to pay the amount adjudged sheltered by his immunity for enforcement action the court could not force him to it and in 1921 the Supreme Court held in Vienna that the embassies in any foreign country is not a place to perform.

3.1.2.6 Financial Immunity (Financial Exemptions)

Vienna Convention stated a number of financial exemptions the receiving States should be consider for the mission, including the delegated state.

Exemption from Real Estate Taxes

The Sending mission and its president exempt from all taxes and fees that owned or leased by the condition that it is not relate to taxes and fees for the performance of special sanctity.

¹⁰¹ -Vienna Convention On Diplomatic Relations, Of 1961, Article 32, Paragraph 4.

¹⁰² Vienna Convention On Diplomatic Relations, Of 1961, Article 29\30.

Exemption from all Fees and Direct Taxes

Article 34 provides for the exemption of a diplomatic agent from all personal taxes and fees in-kind, national, regional and municipal except the following: ¹⁰³

Indirect taxes that is embody in the form of a natural price of goods or services.

Taxes and fees on private real estate that located in the territory of the receiving State unless a diplomatic envoy held by the sending State for the purposes of the mission.

Legacies taxes charged by the receiving State.

Taxes and fees on private income that its source is receiving state or taxes on capital imposed on the commercial jobs in the receiving state.

Taxes and fees updated from the special services.

Registration fees, Enrolment and mortgage and the nature of immovable real state funds.

Exemption from Customs Fees

Article 36 of the Vienna Convention of 1961 stated that

1 - The receiving State in accordance with legislative and regulatory provisions adopted grant the right of the entry and exemption from customs fees and other fees and revenues associated with the exception of creativity expenses and transportation expenses attributable similar services: ¹⁰⁴

1 - Denominated things for the use of the Mission.

2 -Denominated things for personal use of the diplomatic envoy or to members of his family who live with him, including returning to his residence things.

¹⁰³ Vienna Convention On Diplomatic Relations, Of 1961, Article 34.

¹⁰⁴ Vienna Convention On Diplomatic Relations, Of 1961, Article 36.

In addition, there are advantages Grant to the diplomatic envoys, including:

Allowing them to enter the customs area and access to the plane (Representative) ambassadors and existing indigenous business and attaches fighter.

Exemption from gasoline production fees on condition of reciprocity.

The exemption from holding road fees reciprocity.

- Exemption from many of the licensing fees (cars driving licenses, weapons, fishing) in accordance with the principle of reciprocity, immunities and privileges of a diplomatic envoys family.¹⁰⁵

3.2 Ways f Accountability of Diplomatic Envoy and the Scope of his Immunity

If the judicial immunity of a diplomatic envoy is from the general order and that all The receiving state obligate internationally stipulates that guarantees given to him, this privilege does not justify the diplomatic Envoy The right of breaching laws and regulations that issued by the receiving state according to his will, and he Immune from any account on the contrary, since it is subject to multiple rules to ensure respecting rules and regulations of the receiving state and the rights of its citizens and preserve the rights of the relationship with citizens Those affected by the holding of a diplomatic envoy of his judicial immunity. In addition, we explain in this Section these the scope of his immunity for both time and place.

3.2.1 Ways of Accountability of Diplomatic Envoy

A diplomatic envoy may subject to the courts of the receiving State if the state waived his immunity, or subject to his state courts if the state sticks to his immunity. The receiving State may resort to peaceful means and if the wave of his immunity did not happen, there are

¹⁰⁵ - Ibrahim Ahmed Khalifa, International Law In The Diplomatic And Consular, The New University Of Alexandria, 2007, P. 21.

diplomatic means employed by the stakeholders to get their rights to claim damages suffered because of diplomatic envoy actions.¹⁰⁶

3.2.1.2 Subjecting to the Receiving State Courts

A diplomatic envoy subject to the receiving State courts in two cases: the case of waiving his diplomatic immunity by his state that he enjoyed by in the receiving state, acceptance to subject to courts, and in the case of resort the diplomatic envoy to the courts of the receiving State and set up a suit to Claiming his Rights.

First Case: Waiver of Judicial Immunity

The judicial immunity is a privilege granted by the international law to diplomatic envoy to lead properly and protect the interests of his state as required and therefore the judicial immunity concerning three parties, diplomatic envoy and his state and the receiving state from the side that is entitled to waive his judicial immunity the Vienna Convention on diplomacy Relations of 1961 stated on the right of the receiving State to waive the judicial immunity that annoyed by a diplomatic envoy.¹⁰⁷

If the diplomatic envoy is the representative of his state at the receiving state so is it permissible for him to give up the judicial immunity as a representative of his country as For the president of state as for some writers it is permissible for the president of the state to waive his immunity, and accept to submit to the jurisdiction of courts of the receiving state this acceptance is a concession from him from his position and dignity of the state to undergo the authorities of a security state and waive of his described As for the diplomatic envoy, opinion has gone to the need to distinguish between the mission and the members of the

¹⁰⁶ Hussainsuhail Al-Fatlawi, Diplomatic Law, P. 290.

¹⁰⁷ Convention On Diplomatic Relations Of 1961, And The Paragraph Of The Convention On Special Missions, The First Paragraph, Article 32.

mission, it should be approved by the government of diplomatic mission Prime in the waiver of his immunity and consent of the other head of the mission.¹⁰⁸

In fact the head of the mission, even if he was representing his country but the text of the Vienna Convention on Diplomatic Relations of 1961 recommended that the waiver must be issued by the state, not from the head of the mission, without distinction between the head of the mission or other persons of the mission and to make receiving state feels that the its Government has decided to waive the immunity that enjoyed by the diplomatic envoy such waiver should be explicit rather than implicit if the state agreed to conduct the investigation with him, this does not consider as a waiver of his immunity, but must be followed by approval for waiving the judicial immunity is clearly in the right conditions the receiving State It has no right to waive the immunity of foreign envoy who works at the diplomatic mission but it is only by the receiving state.

Second Case: Resorting of the Diplomatic Envoy to the Receiving State Courts

The diplomatic envoy may resort to the receiving state courts to claim suit in front of it to push and exposure of his person and his property. The resort of diplomatic envoy to the approved state courts means that admitting the justice of the judiciary and accept to submit to its authority by his will. Is it permissible for a defendant in this case to use the rights guaranteed by law, and proves the validity of a lawsuit of diplomatic envoy to show his arguments or to evaluate opposite lawsuit against a diplomatic envoy.¹⁰⁹

The Vienna Convention on Diplomatic Relations of 1961 stated that the diplomatic envoy might not protest on judicial immunity if he sued in receiving state courts for any application communicates directly opposed the original request. It is therefore clear that a diplomatic envoy can uphold the judicial immunity that granted to him when he resorted to the courts of the authorized State to have a case in front of it when the following conditions are met:

¹⁰⁸ Sohail Hassan Al-Fatlawi, Diplomatic Immunity, P. 255.

¹⁰⁹ Hassan Suhail Al-Fatlawi, Diplomatic Law, P. 292.

1 - The diplomatic envoy assesses the suit in front of the receiving state courts, whether the suit is civilian or subjective.

2 - The lawsuit filed by the defendant against a diplomatic envoy should be connected directly to the case filed by the plaintiff. Considering the consequences of asylum of diplomatic envoy to the courts of the receiving State and subject to the jurisdiction of such courts for lawsuit opposite which is presented by the disciplinary responsibility by the state, there for in many times he tries to get his right by agreement with the other party.¹¹⁰

Consequently, if the diplomatic envoy held a suit in front of the receiving State in a particular case, the defendant have to evaluate the corresponding lawsuit in the same subject and the defendant or other could not file a suit, it has nothing to do with the subject of the lawsuit.

3.2.1.3 File a Case in Front of Cocurts of Receiving State

The stability -in-law is set only to protect society and ensure its stability and the task of the national law is not to set Necessary rules to address what happens from violations in another society, where the legislation of each country is Specializes in setting means to ensure respecting the rule of law that issued by the State, and the consequences of this rule that national courts are not competent in general, Considering the disputes that arise outside the territory of its own state.

Because the purpose of judicial immunity is to protect the diplomatic envoy of the accusations and harassment that might be exposed to him, if he subjected to the courts of the receiving State, it does not mean that he is safe from any accountability, and that he can do whatever he wants and harm others if he enjoyed judicial immunity in the receiving State, he does not enjoy such immunity in his country there for the international law has authorized the use of

¹¹⁰ Convention On Diplomatic Relations, 1961, Article (32).

state diplomatic envoy courts to file a suit against him and account him for the damage he caused to others.¹¹¹

According to that, the Vienna Convention on diplomatic relations of 1961 stated that the diplomatic envoy should enjoy judicial immunity in the receiving State. The convention has taken the decision by the international custom.¹¹²

Consequently, the courts of the diplomatic envoy state have jurisdiction in civil and criminal cases arising in the territory of the receiving State and have no right to such a plea spatial lawsuit because the Vienna Convention on Diplomatic Relations of 1961, passed it and that the prosecution does not require waiver of immunity because he Do not enjoy it in his state also there is no need to take approval of the Foreign Minister for his trial.

Is contained on the right of filing suit in the state of diplomatic envoy the following exceptions:

1 - If the case requires the exceptions set out on the judicial immunity, which allows under which the defendant may have recourse to the prosecution in the receiving state so the suit is private of inheritance and his own real estate and trade practice In such cases, the prosecutor heave to review the courts of receiving state.

2 - If his state waived his judicial immunity that he enjoyed by that the waiver on the immunity granted follow up the suit in the State courts of the diplomatic envoy.¹¹³

3 - If the case is related to the diplomatic envoy, which mean it is relate to his state, in this case the proceedings are not held in the courts of approved state, but held in his state directly.

4. If the case is related to the work of sovereignty, it is not possible to file a suit on diplomatic envoy in the receiving State or the state of the diplomatic envoy because of any acts of sovereignty enjoy immunity even in the approved State.

¹¹¹ Suhail Hussein Fatlawi, Diplomatic Immunity, P. 283.

¹¹² Convention On Diplomatic Relations Of 1961, The Fourth Paragraph Of Article (31).

¹¹³ Sohail Hassan Al-Fatlawi, Diplomatic Law, P. 294.

3.1.2.4 Diplomatic Methods Accountability of the Diplomatic Envoy

If the diplomatic envoy enjoys judicial immunity in the approved state to do his work correctly, and the dimensions of the possibility to fabricate false accusations against him and not to be subjected to the investigative and judicial proceedings that affects his person but this justification should not be a way evades them of legal liability, is not permissible to take advantage of the immunity enjoyed by arranging irregularities, and forwarded to the state courts often raises difficulties and trouble with the relationship.¹¹⁴

That is why there must be a balance between the need to protect the person of a diplomatic envoy and would not be subjected to any measure which affects his dignity and harm to his reputation and the reputation of the state .among the stakeholders get the rights from it, this budget cannot be achieved only by resorting to diplomatic means which leads to respect the personality of diplomatic envoy and deliver the right for his family.¹¹⁵

Perhaps the easiest diplomatic way is to review the rights holders of the Foreign Ministry and the foreign minister takes necessary procedure, but it does inform it by a request of stakeholders. This way, as we see are the most common and effective way and often the head of the diplomatic mission response to such requests and inform his countrymen to implement their obligations in order to maintaining friendly relations with the authorized state and maintain the reputation of the state towards the citizens of the approved state.

The distinction must be made between the two cases, the case of whether the damage to third parties resulting from the conduct of official business of the diplomatic envoy, in this case the diplomatic envoy should not be blame for his work by the state or by a diplomatic mission as long as this work was directed or approved by the State and that the State in this situation is responsible to tell the injured party about the damage and give him his rights, he may resort

¹¹⁴ <http://thediplomaticenvoy.com/tag/cia/> .

¹¹⁵ Suhail Hussein Fatlawi, Diplomatic Immunity, P. 293.

to the Foreign Ministry of his State demanding them to take action to protect their rights by the diplomatic envoy .

The second case: If the damage to the third party is not by the official work of the diplomatic envoy, but by his own work, the state or the mission often ask him to settle friendly accountability, and the state may held accountable on him , In order not to cause the severance of diplomatic relations .¹¹⁶

The Minister of Foreign Affairs of the receiving State may move from diplomatic mission to settle the matter friendly. However, this request does not have it mandatory then the Mission can refuse to do so, but the application work often the mission resort to settle the dispute friendly in order to maintain the proper functioning of diplomatic relations between the two countries the Foreign ministry of the receiving state may decide to settled the topic or lock it in order to maintain friendly relations of the two countries. Cutting diplomatic relations consider as the most important reasons for the end of the task of diplomatic task is also considered as the establishment of any permanent mission need to be an agreement between the two states stipulated in the Vienna Convention on Diplomatic Relations,¹¹⁷ and the interference of external minister of the receiving state has not stipulated in the Vienna Convention on diplomatic relations of 1961, and the Convention of special missions of 1969, but it is required by the necessary process to get stakeholders on their rights, without prejudice to judicial immunity enjoyed by a diplomatic envoy.

3.2.2 The Scope of Application of Diplomatic Privileges and Immunities

These diplomatic privileges and immunities enjoyed by the diplomatic envoy is not always a recipe, do not enjoy it in all his life to the last period of his presence in the diplomatic service but it is a temporary period begins and ends at a certain time. After that period his privileges

¹¹⁶ Ahmed Abu Al-Wafa, Severance Of Diplomatic Relations, Cairo, Dar Al Nahda, 1991, P. 81.

¹¹⁷ Mr. Abu Abaya Severance Of Diplomatic Relations www.Panet.Coil/Articles/63/68/S-150726.63.68.Html 2015/05/01 H19.46.

expires. The diplomatic envoy does not enjoy such privileges and immunities in any place where there is even a specific place, and he do not enjoy it outside the boundaries of a specific area. If he was still enjoying his diplomatic status. Therefore in this demand, we address the scope of application of these immunities in terms of people who benefit, and in terms of time and place designated for their application.¹¹⁸

3.2.2.1 Scope of Immunities and Privileges in Terms of People (Members of the Mission)

The members of the diplomatic mission enjoys immunities and privileges that set in the Vienna Convention of 1961, will the members of the mission be all on one level in the enjoyment of these immunities or that there is a disparity in the enjoyment of these immunities and privileges? Indeed, the countries of the world take the doctrine of one but both see the state it is entitled to the immunities and privileges of diplomatic Some of them drive between diplomatic envoys who are called diplomat between attachés and advisers and secretaries, administrators technicians and owners of the first direction each from England, America Denmark and a common second direction France and Germany employee Switzerland and Sweden, with the exception of users private servants this is one of the most important problems that The International Law Commission of the United Nations faced , as established by the diplomatic privileges and immunities of the project.¹¹⁹

1 - Diplomats Members

The diplomat members who apply to them the describe of members of the diplomatic corps, representing the head of the mission consultants, Secretaries and attaches They do not dispute them regarding their enjoyment of all prior immunities and Privileges clarified but the enjoyment provided in condition that they are not nationals of the receiving State.

¹¹⁸ Syed Ibrahim Dessouki, Contemporary Diplomatic Relations Between Theory And Practice, P. 137.

¹¹⁹ Ibrahim Ahmed Khalifa, The Diplomatic And Consular International Law, P. 33

If the sending State shall have allowed one of its nationals to operate a diplomatic function in a diplomatic mission but only enjoy immunity for official acts performed by the occasion to perform his job and can be enjoyed otherwise immunities if accompanied by the sending State.

2 - The Family of a Diplomatic Envoy

The family of a diplomatic envoy enjoys with all the immunities and privileges that enjoyed by a diplomatic envoy which stated in Articles 29 \ 36 of the Vienna Convention on Diplomatic Relations, which include personal and judicial immunity and financial exemption, they should not be arrested or detained, or imprisoned, as exempt from Local judiciary and they also have financial benefits in terms of taxes or customs duties and their luggage shall not be searched except in previous cases that clarified.¹²⁰

We note that the term of family members is general term which did not specify who they are requested family members that they enjoy this immunity and could be among those who is the guardian, which left without specifying a certain age they could be minors or adult the authors had to know that the Risk young people is lighter than the risk of older persons , those to enjoy this immunity they must be a national of that State or residents on a permanent basis and also have to be based on an ongoing basis with the envoy in the residence and in one living.

Administrators and Technicians Members of the Mission

Administrators and technicians Members as trustees of archives and account managers and clerks are considers them as diplomatic mission force, but the status of the diplomatic corps members apply to them. the Article 22/37¹²¹ of the Vienna Convention of 1961 dealt with, adding a special privileges of their own , which stipulates the following: the staff of the mission from administrators and technicians, as well as their family members who live with

¹²⁰ Vienna Convention Relations Of 1961, Article 29-36

¹²¹ Vienna Convention On Diplomatic Relations Of 1961, Article 37, Paragraph 2.

him in one living enjoys benefit of privileges and immunities which provided in Article 29 to 35, in condition that they are not nationals of the receiving State and their residence is not permanently, except for the exemption of Civil and Administrative Justice of the approved state that laid down in the first item of Article 31 does not apply to acts that fall outside the headquarters of their jobs as well as they benefit from the privileges that provided in the first item of Article 31.

As For the news that received by them from the starting of their resident acknowledge that many of the Arab countries (Tunisia, Libya, Morocco, Saudi Arabia) and other countries in the world, had opposed the Congress of Vienna the second paragraph of Article 37,¹²² and a large number of countries declined to vote on them and Egypt impounded on The text of this article as the privileges and immunities of the administrative and technical staff were not stable of the international custom, so the holders of this theory not to grant the privileges and immunities to members of the administrative and technical mission only in their Work limits while carrying out their official duties , but in the enjoyment of administrators and technicians, as We have explained previously they fall under their hands all the documents related to the work of the diplomatic mission. if it Had to leave, and there was no provision defines though little of this immunity for them. All documents of diplomatic mission in their possession it had to liable to be shared with the public authorities in the mission headquarters of the approved state because immunity related to patriotism that they had to perform and it does not relate to his person and all its secrets would be revealed.¹²³

4 - Users of the Mission

They do not enjoy immunity only for acts that fall from them during official business also exempted from taxes and fees on the wages they receive for their work, they do not become one of its nationals it is able to give them what they want from the immunities and privileges

¹²² Vienna Convention On Diplomatic Relations Of 1961, Article 37.

¹²³ - Mr. Ibrahim Dessouki, Contemporary Diplomatic Relations Between Theory And Practice,. P. 14.

to add distinction to some of their nationals, or taking into account their resident in overcome the difficulties that faced by the members of the diplomatic mission.

5 - Private Servants

They are working in home services to a member of the mission they are not members of the approved state such as : The nanny chef maid they enjoy exemption from taxes and duties on what they receive of their service wage as well as they enjoy other immunities allowed by the sending state.

6 - Expiration Cases of Task of the Diplomatic Envoy

We find this in Article 43 of the Vienna Convention on Diplomatic Relations of 1961:

- The case of the death of President of the State.
- The outbreak of war changing the Regime system of the state from royal to the Republic, or vice versa, or because of a revolution or a coup.
- The demise of the state.
- Abolition of the function if the financial situation worsened in the state.
- Severance of diplomatic relations.¹²⁴

2.2.2.2 Time Scope of the Immunities and Privileges

International customary manner that members of diplomatic missions enjoys immunities and privileges from the date of entering the territory of the receiving State or formal notification from the date of their appointment if they are approved in the receiving state. Everyone have the right in their position. The Vienna Convention, proved in its article 39 that the case of his existence in the country should inform his appointment to the Foreign Ministry or any other ministry that agree with that the member benefit of the immunities and privileges derived in

¹²⁴ Hadinain Al-Maliki, The Severance Of Diplomatic Relations, University Corporation For Studies And Publishing And Distribution, Beirut 0.2011. P.15.

the previous limits that have been studied throughout the time that he remains a concern for the office, whether they actually perform their duties or that he is out of work because of a disease or vacation or otherwise.¹²⁵

The period of enjoyment of immunities and privileges of the diplomatic envoy ends with the end of his mission in the country where he was doing his job in, to the countries of the world in its international relations, the habit had been to keep the diplomatic envoy privileges after the completion of the mission of sufficient duration to manage his affairs for leaving the territory of the State if his resident takes a long time these privileges will fall and In case of death of the envoy privileges remains to his family to a period that is enough to arrange their affairs and leave the territory of the receiving State in a situation of armed conflict between the sending State and the receiving State.

Vienna Convention have decided in Article 234 which states that "if the tasks of one of the beneficiaries privileges and immunities is over naturally these privileges and immunities granted to this individual at the moment when the person leave the country or for a reasonable lapse but continues even in the case of armed conflict.

The third paragraph of this article state that, "in the event of the death of one of the mission members, the members of his family will continue to enjoy the privileges and immunities that benefit from them in reasonably period that allowed them to leave the receiving State".¹²⁶

A diplomatic envoy may remain in the territory of the sending State after the demise of Diplomatic status as referral him of pension or dismissed from his job or his resignation, is it permissible then sue him for the actions or behaviors that are issued during his diplomatic mission for which he enjoyed at that time, the local judiciary must consider that because of his immunity or then he cannot be tried because it occurred during his enjoyment of judicial immunity that already clarified.

¹²⁵ - Vienna Convention On Diplomatic Relations Of 1961, Article 39.

¹²⁶ - Vienna Convention On Diplomatic Relations, 1961, The Second And The Third Paragraph Of Article 39.

We find that the majority of scholars tend to distinguish between acts that took place because of his job performance and what he has committed in a personal capacity. Some of them tend to that he has the right to protest for the first category of outgoing as for the third category is not punishable by then.¹²⁷

Here we respond to this opinion that what is covered by the immunity may not be tried by that and probably enjoying this prolonged judicial immunity led to the fall of these crimes and thus this view have not any support, and it is shown by the third paragraph of Article 39 stating However his immunity as for work carried out by this person will continue during his duties as a member of the Mission.

3.2.2.3 Spatial Scale of the Diplomatic Privileges and Immunities

The members of the diplomatic mission enjoys immunities and privileges just during their presence in the territory of the receiving State , in the sense that the house was inhabited by diplomatic enjoys necessary immunity and protection also the Mission House enjoys with immunity that we addressed previously.¹²⁸

We refer to the private diplomatic envoy home not only the private home that he choose in the capital, but any house inhabited while doing his missions in the receiving state, so the immunity here include the home of his choice for a summer all of these places are within the territory of the receiving State, and Does not exceed beyond the other states because this states have no sovereignty on the other.

The question that arises that does the diplomatic envoy have the right to stick to immunity outside the territory of the receiving State The task of arrival of the diplomatic envoy to the place of work in the receiving State may require to pass in another country on his way to his

¹²⁷ - Mr. Ibrahim Dessouki, Contemporary Diplomatic Relations, Theory And Practice, P. 141.

¹²⁸ Cosimo Classics,Renaissance Diplomacy,Cosimo, Inc., 2009,p231,
https://books.google.iq/books?id=sQ7LYk8eu3sC&dq=Spatial+scale+of+the+diplomatic+privileges+and+immunities&hl=ar&source=gbp_navlinks_s .

place of work was going on a private visit to a third country for the purpose of the promenade, treatment or there may be unforeseen circumstances like the air factors and emergency landing while traveling on a plane.

Views are Differed on these subjects did not show clear base that can be guide, but we see that the customary international law has made to the state that he going through or fall out or treated there, to provide them with facilities that help him to get to his place of work, but the diplomatic envoy have no right to stick to his immunity in the territory of any third country.¹²⁹

Although it has been the practice, that receiving States accredited diplomatic envoy to the other country, because of relation between third state and the receiving state.

Article 40 of the Vienna Convention came stressing to prevent members of the diplomatic mission of the privileges and immunities first paragraph stated that" If envoy passes or exist in the province of a third country visa would be granted to him and so in the way of his departure for the performance of his duties or to take over his job, or on his way back to his country, these countries takes into account his inviolable and all other immunities that is necessary to enable it to pass or return and the same thing shall be for his family members who benefit from the privileges and immunities whether they are in the company of a diplomatic envoy or traveling separately to catch him or to return to their country.¹³⁰

his text is default of immunity that enjoyed by diplomatic envoy to the right of passage and return to perform his job if the Envoy was going for example to a vacation or for treatment or any other circumstances does it mean not enjoying this immunity he might commit a crime that he will be punish in this state, in which case he should be prosecuted in the third country and because this text has limited the immunity only on the performance of the task that he charged with if he was tried here all interests related to his state will disrupted at this time, and so we see that this paragraph should be reconsidered so the envoy shall not become

¹²⁹ Mr, Ibrahim Dessouki, Contemporary Diplomatic Relations, P. 142.

¹³⁰ - Vienna Convention On Diplomatic Relations Of 1961, Article 40.

under Sultan mercy of the third country. Which applies to a diplomatic envoy applies to members of his family.

As for administrative technicians and users staff in one of the missions the Vienna Convention have been imposed in the second paragraph of Article 40, the third State should not hinder their passage in their territories as well as for their family members.

The third paragraph of this article dealt with diplomatic mailing, the apostles and diplomatic couriers and the necessary protection provided for them during the transit in its territory if the majeure force created the diplomatic envoy or anyone else from officials with immunity in its territory.¹³¹

3.2.2.4 State Representatives in International Organizations

Working in international organizations two categories the first one is the representatives of foreign countries and the second one is the organization staff of agent's consultant's experts technicians administrators and others who are subject to the directives of the organization. The United Nations is one of the largest international organizations which include representatives of most of the countries appointed their representatives in the organization of their countries in the rank of ambassador or minister and their employees who agree on them between the General secretary and the US government and the government of the concerned countries while the United Nations personnel who are appointed by the organization which are delegates and their agents advisors experts secretaries of delegations and other staff.¹³²

The Representatives of States in the United Nations enjoys with judicial immunity in connection with what comes out of them from work within the scope of their official duties, as for the general secretary from Support staff their wives and children, they enjoy judicial immunity that enjoyed by diplomatic envoy and as for The immunities of United Nations

¹³¹ - Vienna Convention On Diplomatic Relations Of 1961. The Second And The Third Paragraph Of Article 40.

¹³² Convention Of Privileges And Immunities Of The United Nations, Of 1946 And Ratified In 1949. Article 4 And Article 18.

staff, they determined with those employees and the Secretary -General is the one who selects the varieties that the General Assembly approves it with the exception of employees and Daily paid workers of the United Nations staff enjoys judicial immunity for acts of their official capacity and do not have diplomatic status, As for the members of the International Court of Justice, they enjoy under the statute of judicial immunity for acts of their job.¹³³

Where(Article 19) of the mentioned system stated that ,members of the Court enjoys political privileges and exemptions in assuming their jobs, in 1946 President of the Court and the President of the Dutch government agreed that the members of the Court enjoys immunities that the heads of diplomatic missions enjoys with, and the author enjoys immunity that enjoyed by counselors and attaches of diplomatic missions in Den Haag, and the senior staff of the court enjoys immunity that enjoyed by the secretaries and attaches of diplomatic missions, and the others court staff enjoys immunity that enjoyed by their counterparts attached to missions diplomacy, the family members of court judges enjoys the same immunity that enjoyed by the head of the family.

And Representatives and employees of the judicial international organizations enjoys within the limits of the exercise of acts of their official position and enjoy the same immunity from prosecution enjoyed by the diplomatic envoy while the basic difference between the diplomats and employees of international staff in terms of immunities and privileges in accordance with the mentioned agreements that the diplomatic staff enjoying the immunities and full privileges.¹³⁴

As we find immunities of international staff, partial limited but this does not mean that the receiving State cannot grant privileges and immunities that are commensurate with position of

¹³³ Statute Of The International Court Of Justice. Article 19.

¹³⁴ – Article (5) – (6) The Convention Of The Privileges And Immunities Of Social Agencies That Signed In 1947 And Article 11 And 20 Of The Convention Of Immunities Of The League Of Arab States Signed In 1953 And Ratified In 1955.

international employee, but it may grant privileges and immunities as it deems appropriate not to be less than the required.

And in 1975 the Congress of Vienna approved a draft of Convention specialized on the Representation of States to international organizations, this agreement came with new provisions differ from previous agreements concerning the immunity of the representative of the state in international organizations, where they equated him with the diplomatic envoy and grant him judicial immunity that he deserve a in foreign countries in accordance with the Vienna Convention on diplomatic relations of 1961.

Article 30 of the Convention of Representation of States in international organizations of 1975 have granted judicial immunity in criminal matters. And judicial immunity restricted in civil and administrative matters, as is the case with the diplomatic envoy.¹³⁵

Some writers went to the mentioned Convention that awarded immunity from the jurisdiction to representatives of state in matters of criminal in the receiving State in respect of their official and private work of the jurisdiction in civil and administrative matters in acts that related to their official work. In fact the Convention granted representatives of the State absolute judicial Immunity in penal cases as for immunities in civil and administrative matters the representatives of States enjoy immunity in business whether they relate to official business or private business however this agreement reported some exceptions for private business as in the case of the diplomatic envoy.

The representative of the state in international organizations enjoys immunity from testimony and enforce judgments against him as it is for the diplomatic envoy.¹³⁶

As the members of family of the representative of the State in the international organizations and the Associates of the mission enjoys judicial immunity that enjoyed by the family

¹³⁵ - Article 30 Of The Convention Of Representation Of States In International Organizations Of 1975 That Is Accord To Article 31 Of The Convention On Diplomatic Relations Of 19 Agreement.

¹³⁶ - The Convention Of Representation Of States In The Organizations Of 1975 . Paragraph 2 Of Article 30.

members of a diplomatic envoy and members of the Departments of diplomatic mission also enjoy immunity does not excuse them from the jurisdiction of their courts. As for the delegation, which sends by the state to represent it at an international conference so he enjoys judicial immunity the immunity of a diplomatic envoy called a Permanent representative of the State in international organizations, where the president and members of delegations enjoys absolute judicial immunity in matters of criminal civil testify and execution of judgments against them in Regarding to acts arising from practice of their job only, As for their own business, they do not enjoy judicial immunity. the International Convention include in relations with the United Nations and the specialized agencies, international organizations and conferences that convened under its auspices, some writers went to that this agreement was not exposed to the status of national liberation movements, even though the General Assembly of United Nations recommended from the beginning of the seventies to grant national liberation as an observer in the United Nations and international conferences devices, and that the General Assembly recommended in 1974 to invite the Palestine Liberation Organization to attend the twenty-ninth session.

As for the immunities and privileges of the mission headquarters Article 20 - 21-22 of convention of the Representation of States in international organizations of 1975 and corresponding to Article 22 in the Convention of 1961.¹³⁷

- In relation to immunities of representative members of the Article 29-36 between representatives of the countries in international organizations.¹³⁸

-In relation to the duration of the privileges and immunities rule in Article 38, in the convention of the representation of states in international organizations.¹³⁹

¹³⁷ - Convention Of The Representation Of States In International Organizations Of 1975, Articles 20-21-22.

¹³⁸ - Convention Of The Representation Of States In International Organizations, Of 1975, Articles 29 To 36.

¹³⁹ - Convention Of The Representation Of States In International Organizations, Of 1975, Article 38.

3.3 The Jurisdiction of the International Criminal Court to Prosecute the Diplomat

The diplomatic envoy enjoys judicial, criminal and civil immunity from the judicial of the Certified state in accordance with the Vienna Convention on Diplomatic Relations, held in 1961 and the rules of international law, according to the nature of the diplomatic status that enjoyed by Regardless of the type of crime and the magnitude that he commit in the receiving State, also he enjoys immunity from arresting and search, so he may not be arrested and extradited to another state for an offense, After holding Rome Statute of the International Criminal Court in 1998 the status of the immunity that enjoyed by the diplomatic envoy has been changed so he no longer could use the enjoyment of diplomatic immunity Regarding with the four crimes that specializes by the court if the diplomatic envoy shall be subject to two opposite system the first one is the immunity that he enjoyed by in accordance with the Vienna Convention on diplomatic relations 1961, which prevented the prosecute and arrest upon him and the second one is Rome Statute in 1998, of the Criminal Court which allowed his prosecution, in a conflict of obligations of receiving states to between what he enjoys with immunity and between the obligation to arrest him and hand him over to the court a statement of people who enjoy diplomatic immunities and its scope briefly the extend of commitment of the receiving State to hand him over to the international Criminal Court and the side in which he entitled to move the case against the diplomat, crimes in which the diplomat is subject to the jurisdiction of the court.¹⁴⁰

3.3.1 The Mandate of the Criminal Court on Individuals

The International Criminal Court has jurisdiction to prosecute all persons, which is an independent court that is not subject to certain party. The court specializes to prosecute all individuals regardless of their political, military and diplomatic status that they enjoyed by. The state court includes trial and Punishment individuals that enjoys with diplomatic immunity in accordance with the rules of public international law and domestic law, as the

¹⁴⁰ The Rome Statute Of The International Criminal Court In 1998, The Second Paragraph Of Article 27.

subject of the jurisdiction of the heads of state, ministers and all who hold diplomatic status in the permanent or temporary missions.¹⁴¹

The second paragraph of Article 27 of the Rome Statute of the International Criminal Court has stipulated Immunities or special procedural rules which may attach to the official capacity following a person, whether under national or international law without exercising the court over such a person.¹⁴²

We find that this article includes all people who enjoy judicial immunity at the level of domestic law, as the head of state, a member of parliament head of government ministers and military, as well as those who enjoy judicial immunity according to the international law of the Vienna Convention on Diplomatic Relations permanent and temporary missions and special missions, through that and according to the public international law, people who enjoy international immunity and are subjected to the jurisdiction of the Court

The head of state and members of the government they have two types of first immunity internal immunity in accordance with the domestic law and international immunity if they represented their state in diplomatic missions abroad in accordance with the Convention on temporary missions outside their home countries either within the state do not enjoy with diplomacy according to international law, but they enjoy approved immunity in the constitution of their state and international laws.

Members of permanent missions when they represent their countries outside their home country, they are called diplomatic envoys of permanent missions outside their countries.

Members of the Interim missions they send them on missions end with the Task.¹⁴³

Representatives of States in its relations with the global nature of international organizations.

Members of consular missions that are working in the Permanent Missions outside.

¹⁴¹ Suhail Hussein Fatlawi, Diplomatic Immunity, P. 347.

¹⁴² - The Rome Statute Of The International Criminal Court Of 1998, The Second Paragraph Of Article 27.

¹⁴³ - The United Nations Convention On The Privileges And Immunities Of 1996.

Representatives of States in international organizations staff, the staff of the United Nations, specialized agencies and members of their families, those are allowed in the receiving state or passing on the territory of State and the Court's jurisdiction includes nationals of States Member in the statute or non-members, and thus the International Criminal Court has a general mandate to All individuals there who are not outside its competence and Ensee the following:

All persons are subject to the jurisdiction of the Court , regardless of their political, diplomatic, military and civilian character, and they don't excluded from the jurisdiction only in cases of illness, drunkenness and mental deficiencies and the case of legitimate defense.¹⁴⁴

the immunity may not pay in front of the International Criminal Court for those who enjoy it according to the rules of domestic law or international .

Any kind of immunity may not be pushed , whether judicial immunity or immunity from testimony or personal immunity like arresting and searching his home and his luggage except for the case of his arrest by the receiving State.

Those who enjoy with judicial are subject to the jurisdiction court, regardless of whether their countries waived their immunity or not to waive it.

Punishment carried out against diplomatic whether the state waived their own immunity did not give up on it.

The International Criminal Court has jurisdiction to prosecute the diplomat of only four crimes contained in the Statute of the Court and it is not competent to stand trial for other crimes that are not listed in the Statute of the Basic Statute of the Court and that was one of the serious crimes.

¹⁴⁴ - Statute Of The International Criminal Court Of 2002, The First Paragraph Of Article 31.

3.3.1.1 Immunity of Arresting the Diplomat

Vienna Convention on Diplomatic Relations of 1961 speaks that it gives him personal immunity or the sanctity of his person and his property, he may not be subjected to any form of arrest or detention and his home is enjoyed with immunity also his papers and mailings. So is it permissible for the International Criminal Court to ask the state for judicial assistance¹⁴⁵ of the basic Statute, persons who representing a third country referred to trial them is responded by Article 27 of the court, according to this article that mentioned above, the diplomat does not enjoy immunity from the jurisprudence of the International Criminal Court, and then as if he committed a crime within the jurisdiction of the court after the availability of its corners, he is subject to its jurisdiction, it is clear that a diplomatic envoy in his state does not consider as a diplomat and does not enjoy with diplomatic immunity so the court may demand from his state hand him to the court to conduct the trial for crimes within its competence and his state should not refrain from surrounding him to the Court if it was a party to the Statute of the Court, but if they did not join the non-binding to extradition.¹⁴⁶

According to this the Serbian government in 2008, handed over the President of the former Republic of Serbia "Radovan Karadzic" to the International Criminal court in Hague on charges of Genocide and war crimes, in 1995 he was charged and shared by its military commander "Ratko Mladic", the most famous charge the Massacre of "Srebrenica" which caused about 8,000 lives of Bosnian Muslims in 1995 so he was handed over to the court because Serbia is a member of the Statute of the Court and that he does not enjoy immunity by his state while he resident at it, and he enjoys immunity under the constitution of Serbia, that his state is doing to extradite him and this immunity does not prevent his extradition, because it is immunity which established according to local laws.

¹⁴⁵ - From The Statute Of The International Criminal Court Of 2002, Article 27.

¹⁴⁶ Public International Law and the Regulation of Diplomatic Immunity in the Fight Against Corruption, PULP, 2011, p149,
https://books.google.iq/books?id=VGS9yC4IIVMC&dq=Immunity+of+arresting+the+diplomat&hl=ar&source=gbs_navlinks_s.

1 - The Arrest of the Diplomat from Citizens of the Certified State

If a diplomatic envoy was one of the citizens of the receiving State and work for the interest of foreign diplomatic mission, in this case he does not enjoy diplomatic immunity. it is permissible for his state to hand him over to the Court , if the state was a party to the Statute of the Court and if he holds diplomatic status as the certified state has to hand him over of being one of its citizens without obtaining the approval of the receiving state.

2 - Procedures of Arresting the Diplomat

If the Rome Statute of the International Criminal Court had robbed the judicial immunity of the diplomat, but did not drop him immunity from arrest by the certified state, according to the Vienna Convention on Diplomatic Relations of 1961, suing the diplomatic or the International Criminal Court does not require a waiver of his Judicial immunity the Court have a direct jurisdiction for prosecution him.¹⁴⁷

If the diplomatic work in another country for the benefit of his state and exercised his diplomatic duties, he enjoys diplomatic immunity in the host country. In this case, shows two commitments contradictory the first one is the international commitment imposed upon him by the Vienna Convention on Diplomatic Relations of 1961 which is not allowed to arrest a diplomatic envoy because of his enjoyment of immunity from measures of arrest or detention, and the obligation imposed by the Statute of the International Criminal Court, so is it permissible to deliver the diplomat to the International Criminal Court.¹⁴⁸

Article (98) Responded on the Statute of the International Criminal Court and prevented them from submitting a request to the receiving State, asking them to legal assistance or extradition of persons to a third country enjoy judicial immunity because of diplomatic statue, unless the

¹⁴⁷ - Vienna Convention On Diplomatic Relations Of 1961, Paragraph 2.

¹⁴⁸ - Vienna Convention On Diplomatic Relations Of 1961, Article 29.

Court was able to get the state of the person who has diplomatic immunity waiver sought to immunity so that just demanding it is Out of the question.

The receiving State obliges in which the offender resides handed over to the court only after the waiver of immunity from making arrests, if the foreign diplomat is working in a particular state then charged with a crime within the jurisdiction of international Criminal Court, the Court shall not require the Court to proceed him unless his state waive his immunity, as stated surrender or assistance which would require the requested State to act inconsistently with its obligations under international law with respect to immunities of State or diplomatic immunity of a person or of a third State property, unless the Court can first obtain from the cooperation of that third State for the waiver of the immunity.¹⁴⁹

3.3.1.2 The Competent Authority of Requesting the Arrest of Diplomat

If the court is not authorized basically to submit an application to the certified state to arrest the foreign diplomatic and hand him over to it, so which party can demand from his state to waive his immunity.¹⁵⁰

In this case, before doing anything, the court should apply to the approved state that followed by the diplomat to take its agreement to waive the immunity of an arrest and then deliver after that the Court should request to the State with a copy of the waiver of immunity from prosecution issued by the state and asks them to hand him over to the approved state, the approved state followed a diplomatic waiver of immunity while the position of the receiving State is only by handing him.

The Court submits the request to waive the his diplomatic immunity from being arrested to his state through diplomatic means, or any other appropriate channel as may be designated by each State that is Party upon ratification acceptance approval or accession and each state that

¹⁴⁹ - Vienna Convention On Diplomatic Relations Of 1961, Article 98.

¹⁵⁰ Vienna Convention On Diplomatic Relations Of 1961, Article 68.

is party to conduct subsequent changes in determining the channels, the application may refer also through the international Criminal police Organization or any suitable regional and the duty of the statute on its member is to cooperate fully with the Court in conducted under the jurisdiction of the Court in crime investigations and prosecution.¹⁵¹

If his state waived his immunity from arrest. In this situation he must be arrested and that allows investigating in his home and his car, assets and mailing. as for the diplomatic mission and his official office it may not be inspected or enter because they belong to the approved state that enjoys with a private immunity on state funds ,the statute authorized the prosecution of the diplomat and did not allow to sue states.

1 - The Case of Abstention of the Receiving State from Arresting him

if the certified state refused to hand him over despite the waiver of state to his immunity, the International Criminal Court may feel Assembly of States Parties to the Statute of the Court, which is a general assembly that responsible for the organization, and take from the assembly of States in turn that sees what fits it but if the complaint submitted by the Security Council the court will be declared the security council to reject the host nation to hand him over statute of the court did not determine what are the actions that taken by the Security Council.

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2 - Arresting the Diplomat in the Third Country

If it is proven to the diplomat, on a private visit to another country for the purpose of tourism, medical treatment or any informal reason. It is clear that the diplomat who resides in the territory of the state didn't depend on it or go through it to get to work and his presence for personal reasons of tourism or treatment, he does not enjoy immunity and he may be surrendered to the Court not in diplomat statue but as an ordinary person because he does not enjoy immunity from being arrested. there is problem that block in the possibility of a

¹⁵¹ - Suhail Al-Fatlawi, Diplomatic Immunity, P. 355.

¹⁵² - Statute Of The International Criminal Court Of 2002, Paragraph 07 Of Article 87.

diplomatic trial, which is that some countries, including the United States threaten any country that deliver not only its diplomat envoy, but any citizen accused of a crime subject to the jurisdiction of the International Criminal Court, which means that the State deliver the diplomatic or other it shall be exposed by sanctions imposed by the United States of America.

3 - The Arrest of the Diplomat as a Witness

Article 87 of the Statute of the International Criminal Court reported a general principle that is the diplomatic immunity does not preclude without the exercise of jurisdiction by the Court upon what comes " special procedural rules which may be linked to the official capacity of a person, whether in the frame of national or international law, without exercise of Court jurisdiction over such person" the text includes all the court's jurisdiction be exercised upon the right of diplomatic including his immunity from testimony in the criminal justice is allowed to obligate the witness to perform of his testimony in front of the court, but the arrest of the diplomat by the authorized state to introduce testimony in the court, requires waiver from the state of his immunity from being arrested but not from the testimony , it is not require to waive his testimony so that the immunity from testimony does not differ from immunity in criminal cases of the court the right to prosecute without a waiver of state.¹⁵³

And immunity from being arrest is not in the face of the court, the court may seize him without the consent of his country, but in the face of the receiving State for being either commitments or contradictory which are international conventions that oblige it, by giving him immunity and the Statute of the Court, which robbed him his immunity.¹⁵⁴

¹⁵³ - Statute Of The International Criminal Court Of 2002, Article 87.

¹⁵⁴ - Sohail Hassan Al-Fatlawi, Diplomatic Immunity, P. 358.

3.3.2 The Crimes that Subject to the Jurisdiction of the Court

Not all crimes committed by the diplomatic subject to the jurisdiction of the Court even if that crimes were an international crimes as terrorism crimes international organized crime, drug crimes slavery and etc.

but is subject to the crimes reportedly that is limited in the term that called Serious Crimes it is vested that criminal cases carried by the base, "no crime no punishment without a legal text" that contained in the Statute of the competent court the diplomatic will not enjoy with judicial immunity if committed during it.

3.3.2.1 Rules of Prosecuting the Diplomat in Court

The Rome Statute of the International Criminal Court sat the following rules:

- 1 - The diplomat envoy do not enjoy with diplomatic immunity in the jurisprudence of the International Criminal Court, as diplomatic status does not exempt him from jurisdiction of the Court.
- 2 - He is subjected to the jurisdiction of the court wither he enjoys with it in accordance with the rules of international law or in accordance with the rules of domestic law.
- 3 - The diplomatic status does not exempt him from jurisdiction of the court, and yet it is no longer consider mitigating circumstance in Imposing sanctions on him.
- 4 - The diplomat is subject to the jurisdiction of the Court with the crimes that are subject to the jurisdiction of courts includes all entrants from all countries.¹⁵⁵
- 5 - If the Penal Code of the receiving State of the diplomatic envoy stipulates that not to be subjected to criminal jurisdiction because of his diplomatic statue in connection with offenses that he committed within the state, this does not exempt him from submitting to the jurisdiction of the International Criminal Court in this case he will be handed over to the

¹⁵⁵ Statute Of The International Criminal Court Of 2002, Articles 7 To 10.

court, if his state waived his diplomatic immunity he will not be is handed over that is stipulated by the majority laws of countries that the offense is punishable by the law of the State.¹⁵⁶

6 - The Court has no jurisdiction to protect diplomatic envoy if he commits crimes by the Statute of the Court, that is why the Security Council was not subjected to the crimes in Burundi, Rwanda and the crimes committed in Bosnia and Herzegovina to the jurisdiction of the International Criminal Court, because the crimes laid Before the holding of Rome Statute in 1998, but established their own criminal courts.¹⁵⁷

7 -the Diplomat may return to his country and the receiving state can't prevent him from returning.

8 - The diplomatic May not be trial for the same crime, if sentenced by another court whether national or international court, unless the trial is for the purpose of protection from criminal liability.¹⁵⁸

3.3.2.2 Cases in which the Diplomat Commits Crimes

Diplomat who works quietly and away from violence so how he can commit war crimes or crimes against humanity and crimes of aggression He commits it by:

- Crimes may be accused by the diplomat committed before his appointment in the diplomatic corps and these crimes may be committed in the course of his service to the armed forces, after demobilization they work in the diplomatic corps.
- The diplomatic corps in most civil wars feeding edges, and these help to commit war crimes.

¹⁵⁶ Rules, Politics, and the International Criminal Court: Committing to the Court, Yvonne Dutton, Routledge, 2013, p157,
https://books.google.iq/books?id=wbV_AAAAQBAJ&dq=Rules+of+prosecuting+the+diplomat+in+court&hl=ar&source=gbs_navlinks_s.

¹⁵⁷ - The Rome Statute Of The International Criminal Court, Article 11.

¹⁵⁸ - Statute Of The International Criminal Court, Paragraph 3 Of Article 20.

- Occupying Mission holds in the occupied territories the management of those lands were those committing war crimes or causing to commit it , as it known that the US embassy in Iraq is managing Iraq's military and political affairs, and accordingly, the diplomat may be one of the must people who commit war crimes.

3.3.2.3 Types of Crimes that the Diplomat Subjected to

Stated in Article 5 of the Statute of the International Special Introduction limited in the following:

Genocide

Crimes that means genocide includes: destroy a national, ethnical, racial or religious, in whole or in part which include: causing serious bodily or mental harm to members of the group.

- Subjecting a group intentionally for deliberately conditions of life calculated by the actual depreciation in whole or in part.
- Imposing measures intended to prevent births within the group.
- Forcibly of transferring children from a group to another group.¹⁵⁹

Crimes Against Humanity

It is crimes committed in the context of a widespread or systematic attack directed against any civilian population.

which Include, Murdering, severe deprivation towards the other From civil liberty in violation of fundamental rules of international law, torture, rape, sexual or enforced prostitution, forced pregnancy, enforced sterilization slavery.¹⁶⁰

¹⁵⁹ - The Rome Statute Of The International Criminal Court Of 2002, Article 5.

¹⁶⁰ The Rome Statute Of The International Criminal Court Of 2002, Article 6.

War Crimes

Crimes committed by the diplomatic immunity subjects if they are committed in the context of an overall political plan or in the process of committing widespread:

- Physical violations of the Geneva Conventions of 1949 in addition to the two Additional protocols 1977.¹⁶¹
- Exchange of civilians and citizens residing within relief missions and before rescue.
- General murder torture or inhuman treatment including the biological experiments.

Crimes of Aggression

Rome Statute does not provide for an explicit provision to define the crime of aggression, but the Assembly resolution which is the number of cases of aggression are:

- The damage by the armed forces of a State of the territory of another state.
- Bombings by the armed forces against the territory of another State.

Blockade of the ports or coasts of a State by the armed forces of another State.

- Sending armed gangs or groups, irregulars or mercenaries by the state or by its name and which carries out armed force against another State.¹⁶²

- The Security Council is determined that the actions of infringement is aggression crimes or not.

¹⁶¹ Immunities of State Officials, International Crimes, and Foreign Domestic Courts , <https://academic.oup.com/ejil/article/21/4/815/418198/Immunities-of-State-Officials-International-Crimes>.

¹⁶² - Suhail Hussein Fatlawi, Diplomatic Immunity, P. 360.

3.3.2.4 The Competent Authority to Move the Case Against the Diplomat

1 - General Prosecutor

Article 15 of the Statute of the court to General Prosecutor to initiate investigations by his own based on information related to crimes within the jurisdiction of the court.¹⁶³

The following notes stated on the authority of the General Prosecutor to move the lawsuit.

The Article 15 of the Statute of the Court provided to the Prosecutor and that means that the report of moving the suit is against the general prosecutor and not a chore, the General Prosecutor is required to move the case when available convincing evidence are provide, and that the text is contained on the General Prosecutor and not to the prosecutor.

-2 Is the duty of the General Prosecutor to establish an organ or institution investigating the crime within the jurisdiction of the court, and collect information and deliver it to the General Prosecutor.

- Giving the Prosecutor such power could lead to the independence of validity for political reasons, and what we have seen in the request of the General Prosecutor of the Court arrest of Omar Al Bashir, the Sudanese president in 2008, by accusing him for war crimes.

- Reality has proved that the prosecutor does not envisage justice and the realization of the right to investigate crimes committed after the court to the whole world felt confession by the American officials to crimes committed in Abu Ghraib prison, which all of these crimes are subject to the jurisdiction of the Court.

2 - Security Council

Security Council may refer the case to the prosecutor, according to Chapter six of the UN Charter.¹⁶⁴

¹⁶³ Statute Of The International Criminal Court, Of 2002. Article 15.

¹⁶⁴ - The Rome Statute Of The International Criminal Court, Of 2002. Paragraph 2, Article 13.

This means that any suit that the Security Council take Decision that threatening international security and peace in this case is permissible to ask the General Prosecutor to take the necessary measures to investigate or referral to the court and note that:

- The Security Council is a political body not a legal body that can investigate the occurrence crime types, (this power may determine the responsibility that could use to smear some of the responsible persons in the states).
- The Council consists of a number of countries, and these countries are locked including the International Criminal Court of Justice and the legitimacy they would have joined the Statute of the Court led by the United States and China.
- The Security Council authority to select a particular dispute because it threatens international peace and security discretionary power some important disputes the Security Council was not prepared to threaten international peace and security including beatings and the occupation of Kosovo also the occupation of Iraq in 2003, while smuggling of diamonds wood or other things are not important and does not threaten international peace and security.¹⁶⁵

3 - The legal Status of Individuals

Despite of the Statute of the Court it authorized the call of persons as witnesses, defendants, experts or lawyers in front of the court and provide them with protection and enjoy immunity that are enjoyed by the court staff, but he did not allow individuals to inform the prosecutor or the court of crimes committed against any others that the court did not allow a victim or a witness who reported a specific offense of access to the court, but the testimony of witnesses may be heard, only in the case that filed in the court , and this is contrary to justice. The Statute of the Court had to provide on the right of every person reviewing the deputy of

¹⁶⁵ - The Rome Statute Of The International Criminal Court, Article 48.

General Prosecutor of the court and ask him to move the lawsuit against certain association committed a crime within the jurisdiction of the Court.¹⁶⁶

¹⁶⁶ - See, Suhail Hussein Fatlawi, Diplomatic Immunity, P. 362.

Conclusion

Greeks and Romans Civilization was full of systems and events related to the origins and evolution of diplomatic immunity, and the respect and appreciation that regaining to the diplomatic envoy in that time.

The Arabs before Islam had a major role in the evolution of the immunity of a diplomatic envoy by traditions and customs prevailing at that time, especially the principle of safety to the apostles furnace or those who passing on their land and the prohibition of killing them.

After the evolution of the international community, and appearance of what called state and international organizations, especially after the First and Second World Wars, and the development of political relations, economic and trade between the countries. The urgent need to connect these relations many of the Convention appeared , which stipulates respect for diplomatic envoy, protect and granted immunities and privileges, which qualifies him for his diplomatic job and was the best of the Vienna Convention guide on Diplomatic Relations of 1961 and the Convention on consular missions of 1963 that gave diplomatic envoy set of rules that protects and makes them to perform mission and private judicial immunity as an advanced step towards the stability of the rules of diplomatic immunity and standardization at the international level, this agreement is, and what the contents of the important principles in diplomatic relations, especially when the international Court of Justice awarded the compulsory jurisdiction to consider emerging issues between countries about the difference in the interpretation of the rules of immunity the judiciary, which is worthy of recognition and praise awarded as well as the international Criminal Court to punish and accountability of a diplomatic envoy when committing major crimes against humanity or that of their competence. Despite the achievements of the Vienna Convention on Diplomatic Relations of progress.

But it is in fact the codification of the majority of the rules of customary international law that arose during the period of time in which developing countries were not appeared on the international scene, to share in the formation of these rules as well as it did not include all the rules of judicial immunity and referred to the application of customary international law if it lists on the text This is an evidence of lack in its provisions and texts.

Through our review to the issue of diplomatic immunity and their impact on human rights is clear to us that among the consequences on the enjoyment of a diplomatic envoy of penal judicial immunity it often leads to the loss of the affected rights to compensation as a result of the actions of diplomatic representatives, because the resort to spend the receiving State is not free of the problems and difficulties hampering resorted to private ones prohibitive commissioning incurred by the ordinary individual and slow procedures or non-guaranteed results.

Recommendations

We need to reconsider the provisions of the Vienna Convention as they relate to the immunity of diplomatic envoys, and even a diplomatic envoy does not end without trial. And work internationally on the modification or cancellation on some of the texts of which in terms of the international indicators that we take these results and recommendations:

- Arrangement of an international legal committee by the United Nations panel of developing and powerful states to restore the terms and provisions of the Convention, especially the principle of reciprocity the strange thing is that we cannot treat a powerful country like the United States of America with the State of Mali according to the balance of power so we find that this principle is in place for the benefit of the powerful countries.
- The establishment of diplomatic criminal court permanent authority to prosecuting the diplomats who commit serious crimes especially those that related to war crimes.
- The establishment of a fund for claims handled by the host nation, and bear the receiving state lawsuit and guarantees in the approved State and facilitate the resort to spend the approved state costs for accounting diplomat on the basis of reciprocity and enable them to take compensation as a result of diplomatic crimes.
- If the diplomatic envoy offense is repeated to traffic regulations and permanently and did not stick out, despite being warned by the Foreign Ministry, the competent authorities must withdraw driving License from him and prevent him from driving in the future.

- His testimony must be performed before the court, especially in criminal offenses if the performance expressed his desire that the authorities should simplify procedures in order to do so.
- Removal of serious crimes that threaten the political, economic or social state that would put the lives of citizens in danger from the scope of immunity system.
- The text on diplomatic ways in which an individual may review the right to get on the right, and the need for a competent Division in the Ministry of Foreign Affairs to follow up on complaints of citizens.
- A review of Article 40 of the Vienna Convention on Diplomatic Relations of 1961, especially with regard to the diplomatic status in a third country during vacation or illness or a summer and committing crimes during, personally or one of his family members.

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