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DIPLOMATIC REPRESENTATIVES, MISSIONS, AND CONSULATES

DIPLOMATICKÉ ZASTÚPENIE, MISIE A KONZULÁTY

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I Introduction

Article 1 of the Convention categorizes diplomatic staff into four distinct classifications. The individuals referred to can be classified into four categories: (a) diplomatic agents, who are either the head of a mission or a member of the diplomatic staff; (b) administrative and technical personnel employed by the mission; (c) service staff, responsible for domestic tasks within the mission; and (d) private servants, who are not employed by the sending State and perform domestic duties for a member of the mission. According to the Convention, the diplomatic agent's person is inviolable and they cannot be arrested or detained. A diplomatic agent enjoys absolute immunity from criminal jurisdiction. In terms of civil and administrative jurisdiction, a diplomat maintains their immunity while carrying out their official responsibilities[1]. Conversely, there is evidence of a more stringent stance. The separation between the subordinate diplomatic and embassy personnel designated by the sending State, and the domestic attendants and relatives of the ambassador became well-defined. There was evidently a simultaneous rise in the number of junior diplomats, as previous authors imply a difference between the secretary of the embassy and the secretary of the ambassador. Zouche's earlier remarks also indicate the presence of multiple ambassadors who were not formally accredited but rather served as subordinate representatives. This differentiation was accompanied by an inclination to diminish the legal protection of personal servants, especially if they engaged in commerce or were citizens of the host country. Three Diplomatic couriers are now given distinct treatment from other members of the suite, ensuring the inviolability of their persons and messages for practical reasons. This can be considered as a recognition of the established State practice, as no

1 Benedek (1979)

Abstract (EN)

This paper discusses the intricacies of diplomatic privileges and immunities as outlined in the Vienna Convention. It highlights the distinction between privileges granted to representatives of states versus those of international organizations. The classification of diplomatic staff into four categories is explained, emphasizing the inviolability and immunity of diplomatic agents. Changes in definitions and practices since 1958 are explored, along with the importance of proper notification and certification of diplomatic status. The roles of heads of missions, particularly the doyen of the diplomatic corps, are outlined, as well as the significance of acceptance or rejection of diplomatic representatives by receiving states. The article concludes with insights into the termination of diplomatic missions and the authority of states to impose conditions on diplomatic privileges and immunities.

Keywords (EN)

diplomatic privileges, immunities, staff classification, definitions, notification, status, heads of missions, acceptance/rejection, termination, and regulation within the framework of the Vienna Convention

Abstrakt (SK)

Predkladaný príspevok pojednáva o zložitosti diplomatických výsad a imunít tak, ako sú uvedené vo Viedenskom dohovore. Zdôrazňuje rozdiel medzi privilégiami udelenými predstaviteľom štátov a privilégiami medzinárodných organizácií. V príspevku je vysvetlené zatriedenie diplomatického personálu do štyroch kategórií s dôrazom na nedotknuteľnosť a imunitu diplomatických zástupcov. Ďalej sú preskúmané zmeny v definíciách a postupoch od roku 1958. ako aj dôležitosť riadneho oznamovania a osvedčovania diplomatického štatútu. Načrtnuté sú úlohy vedúcich misií, najmä doyena diplomatického zboru, ako aj význam prijatia alebo odmietnutia diplomatických zástupcov prijímajúcimi štátmi. Článok uzatvára pohľad na zánik diplomatických misií a právomoc štátov ukladať podmienky na diplomatické výsady a imunity.

Kľúčové slová (SK)

diplomatické výsady, imunity, zaradenie personálu, definície, oznamovanie, postavenie, vedúci misií, prijatie/odmietnutie, ukončenie a regulácia v rámci Viedenského dohovoru

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government that has been found guilty of interfering with another's diplomatic communication has ever accepted liability or defended its actions based on any international regulation[2].

1 Classification

In 1958, the International Law Commission replaced the previous definitions that focused on the relationship between the sending State and its envoys. Instead, they introduced new definitions in Article 1(a) and (d). The definition of diplomatic staff in (d) now emphasizes the formal appointment rather than the authorized duties The United States' modification at the Vienna Conference expanded the definition of a private servant in Article 1(h) by including the phrase 'and who is not an employee of the sending State'. These words clarify the difference between private servants and members of the service staff of the mission[3]. The 'definitions' in Article 1(a) to (h) of the Convention regulate the appointment, rights, and immunities of several kinds of individuals, which are mostly of a formal nature. The sole definitions that are objective and function-based are those pertaining to 'administrative and technical staff' and 'service staff'.

The receiving State benefits from official notification and certification since it limits advantages and immunities to those entitled. Many "claims" to immunity have been submitted to the courts, but without evidence of getting State acceptance, they will be denied. A diplomatic passport does not guarantee diplomatic status.

At most it can be a ''red flag" to local authorities; at most it will be a "amber light" alerting people to the bearer's travel requirements and respect. A "diplomatic visa" does not guarantee diplomatic agent status. A foreign government employee in an inviolable embassy does not automatically qualify for diplomatic status. An identification card from a foreign ministry does not prove diplomatic status; it just suggests immunity. Diplomatic immunity does not apply to non-official drivers of inviolable embassy cars. Non-state representatives will not receive immunity. No ambassadors-at-large from states without foreign relations control will be admitted. The courts have decided that the persons concerned are not entitled to diplomatic immunity in all these circumstances because the government has not stated that the appointments have been legally made and accepted or that they have diplomatic status. In some circumstances, the sending State appointed representatives in good faith. The receiving State must "accord" diplomatic status to a representative of the sending State for the freedom of appointment to work[4]. Article 14 of the Vienna Convention on Diplomatic Relations of 196 divides mission chiefs into three classes.

The governments decide what agents to accredit, usually exchanging the same class. Although receiving ambassadors from many nations, the Swiss Confederation long appointed solely ministers to lead its foreign missions. In 1956, the Federal Assembly authorized the Federal Council to turn Swiss legations into embassies, and in 1957, Swiss mission heads were given the title "ambassador." US agents were no higher than envoys until 1893. Queen Victoria's reign began with British ambassadors in Vienna, Paris, St. Petersburg, and Constantinople. St. Petersburg had an envoy and minister from 1844 to 1860. The Berlin legation became an embassy in 1862, Rome in 1876, Madrid in 1887, Washington in 1893, Tokyo in 1905, Brussels in 1909, Rio de Janeiro in 1919, Lisbon in 1924, Buenos Aires in 1927, Warsaw in 1929, and Santiago in 1930. The Vienna embassy became a legation in 1920 and remained until 1938 when the Anschluss with Germany ended. It's an embassy again. In 1963, Bulgaria, Hungary, and Romania's legations in London became embassies. This was declared a 'normalising process' without political importance. The Times reported the end of the 'invidious practice' of ranking foreign relations by importance. The 1972 promotion of the British presence in Peking to embassy status was a major advance in UK-China relations[5].

The Holy See created the position of apostolic pronuncio in 1965. It is similar to the apostolic nuncio, which is a first-class diplomatic representation, but it is accredited to states who have not granted the Holy See's representative the title of dean, or doyen, of the diplomatic corps. The prefix pro comes before the name nuncio to imply substitution, according to Cardinale, who outlined the history of the titles and roles of the Papal delegates. To put it another way, the Holy See sends a pro-nuncio while it waits to appoint a nuncio with de jure deanship to a particular position. However, in 1994, the pro-nuncio title was shelved in favor of fresh diplomatic postings. Beginning in 1994, newly appointed officials in every capital were granted the title of nuncio and were not granted the automatic deanship of the diplomatic corps. Given that the Vienna Convention does not recognize pro-nuncio as a title, it is possible that the adjustment was made with the intention of lowering the number of diplomatic titles[6].

2 Young (1964)
3 Denza (2016)
4 Brown (1988)
5 Gore-Booth (1979)
6 Denza (2016)

Internuncios were Papal representatives who may have been temporary but were permanent in the second class by 1815. Apostolic representatives represent the Church and Catholics in a territory, not a sovereign or foreign minister. A minor degree of alteration was needed to adapt the Vienna Regulation to current diplomatic use, demonstrating its universal acceptance by other States out of courtesy or convenience. Article 14 paragraph 1 of the Vienna Convention supersedes 1815 Vienna Regulation Article 1. Only three text changes were performed. Since the Vienna Convention classifies "heads of mission," Papal legates, who were always ad hoc emissaries in the Papal diplomatic service, had to be removed from the first class. The first class included 'and other heads of mission of equivalent rank' for High Representatives of States in the French Communauté and High Commissioners of States in the British Commonwealth. These chiefs of mission are not accredited because the sending and receiving States share a Head of State. Ghana proposed the additional phrases at the Vienna Conference to substitute a UK proposal that was too detailed for a generic international convention. The 1815 language was changed to remove the words "ou autres," which referred to ministers resident (who were covered as a third class by the Protocol of Aix-la-Chapellead hoc emissaries to heads of state, and internuncios. The Conference relegated ad hoc ambassadors to the New York Convention on Special Missions, leaving only internuncios, who were specifically included. Ministers resident, already a shrinking class in 1815, were outdated[7].

The US Department of State has retained the authority to ascertain the appropriate categorization of personnel. In contrast, a US court has stated that the State Department must follow the specific normal procedure for proper notification. However, the court also emphasized that the State Department does not have unlimited authority to determine whether notifications of appointment are adequate or inadequate in specific cases, particularly when the rights and privileges of third parties may be impacted[8].

The UK Foreign and Commonwealth Office sometimes "informally persuade missions to withdraw a nomination in cases where the appointee is fulfilling an administrative and technical rather than a diplomatic function". Within the Vienna Convention's constraints, the UK government amended and enhanced its notification rules and processes after its 1985 review. In practice, proper staff classification prevents a driver from being notified as a member of the administrative and technical staff, which has full immunity from criminal jurisdiction, when he or she should be considered a member of the service staff, which has immunity only for acts performed in the course of duty. The same rules apply to administrative and technical staff (who can import duty-free only "in respect of articles imported at the time of first installation") whose governments want to recognize them as diplomatic staff. The notification mechanism allows the receiving State's foreign ministry to determine diplomatic agent status. The sending State appoints, but the receiving State determines status. Diplomatic agent recognition is not in the Convention. The courts, which determine immunity, say recognition is up to the executive government, or the foreign ministry. Many nations use this legal procedure[9].

Article 10 mandates notification requirements not previously imposed by customary law. Domestic administrative practice required notification in most capitals. The receiving State usually prepared a generic list from embassy notifications. The diplomatic register or list was used differently by each state.

Some states treated diplomatic list admission negotiations as agreements for subordinate diplomats. In Engelke v Musmann, the Attorney-General explained that British practice required ambassadors to provide a list of staff members performing diplomatic functions to the Secretary of State periodically. The list is not accepted on behalf of His Majesty, and after investigation, recognition is often withheld from a person whose name appears on the furnished list, either because his diplomatic status is in doubt or because the Secretary of State considers the number of claimants excessive. France proposed revising Article 7 of the Convention to require getting State approval for diplomatic list membership, but the Vienna Conference rejected it. The general list may have also indicated privileges and immunities' start and end dates. Most States consider preparing and publishing a list of individuals who claim immunity due to delays and omissions in notifications of new appointments and termination of functions. The Crown, speaking through the Attorney-General, declares that a particular person at the key moment is qualified to be on the list, not the list itself. Under the Act of 1708, the Sheriff's List identified those on whom serving process was illegal. No one was prosecuted for this offense, but the listings helped tradesmen and others determine who was exempt from goods taxes and jurisdiction. The Diplomatic Privileges Act 1964 eliminated the Sheriff's List and the Act of1708 offense. In the US, a Statute of 1790, based

7 *Ibid*.
8 Brown (1988)
9 *Ibid*.

on the Act of 1708, mandated the posting of lists in the District of Colombia Marshal's office with limited purposes[10]. Once a new ambassador has assumed his full responsibilities, he promptly notifies his fellow diplomats with a personalized letter issued to each head of mission representing a country with whom his own country maintains regular relations.

As per the customary format for these letters, the ambassador declares his arrival and assumption of duties. He expresses his anticipation to meet his colleagues and to uphold and enhance the strong personal and official relationships that have existed between their countries and their respective missions[11].

The application of the regulations outlined in Article 16 defines the selection of the head of mission who becomes the doyen of the diplomatic corps. This selection is based on either the seniority of their arrival date or, in the case of the representative of the Holy See, the local customs. The Vienna Convention does not explicitly refer to the position of doyen or outline their responsibilities. The doyen serves as the spokesperson for his diplomatic colleagues, addressing issues of mutual interest such as status, protocol, privileges, and immunities. He represents the diplomatic corps during public events. He shares updates of mutual interest with coworkers and may offer guidance on local customs and manners. In the government of the receiving State, the doyen serves as the primary method of communication and consultation. However, in capitals with a significant number of resident diplomats, it has been common practice to use circular notes to transmit broad matters to all heads of mission. The doyen assumes the role of spokesperson through casual discussions with colleagues and is not anticipated to engage in political matters[12]. Traditionally, it was the norm that only a diplomat may be designated as chargé d'affaires, and several nations declined to acknowledge individuals as chargé if they held a position lower than that of a second secretary. However, in situations where the head of the mission does not have any subordinate diplomatic personnel, it becomes necessary for the embassy building and archives to be entrusted to a non-diplomatic staff member in the event of the head's absence or inability to perform their duties[13].

2 Appointment

Essentially, there is no legal distinction between a general refusal to accept any diplomatic representative and a specific refusal to accept a particular individual. This is because a state is not obligated to provide reasons for declining such requests, and there are no legal criteria to determine if the refusal is unjustifiable. Fifteen Given the veracity of this statement, the rationales behind nations' frequent rejection of migration hold no legal significance but rather fall exclusively within the realm of national policy. An individual can be deemed persona non grata if their presence poses a risk to the successful completion of their mission. Both the requesting state and the state refusing the envoy have a vested interest in ensuring that an envoy who is personally unacceptable does not assume their duties[14].

Illustrative instances could encompass a regal nuptial ceremony or the commemoration of a deceased leader, during which designated emissaries had convened. The termination of special missions can occur through alternative means, as explicitly stated in Article 20 of the New York Convention on Special Missions. One In numerous instances mentioned before, a formal recall from the sending state may be unnecessary[15]. The diverse forms of political systems in the contemporary world of nation-states are too complex to be condensed into a single classification scheme. The behavior of states, on the other hand, is not influenced by preconceived categorizations, but rather by assessing the specific circumstances of the state in question in relation to a certain ability or entitlement[16]. Previously, the United Kingdom has also been hesitant to adopt the process of agréation. In 1832, Tsar Nicholas I of Russia declined to meet with Sir Stratford Canning, the British Ambassador, because Canning's appointment had been authorized by Lord Palmerston and publicly announced in the gazette several days before the Russian Ambassador in London was informed about it. The British Government asserted its autonomy in selecting ambassadors and, in response to the rejection, opted to keep the embassy unoccupied for a period of three years. Britain thereafter adhered to the tradition of agrément, but it required explanations for any refusals. In 1917, Satow argued that there is a debate regarding whether a refusal must be accompanied by a statement explaining the reasons behind it. However, it can be confidently stated that if, in such a situation, the reasons are requested but not provided, or if the government whose candidate has been rejected deems the given grounds insufficient, that country has the right to decline the appointment and instead choose to maintain its diplomatic

10 Denza (2016)
11 Gore-Booth (1979)
12 Denza (2016)
13 *Ibid*.
14 Preuss (1932)
15 Gore-Booth (1979)
16 Preuss (1932)

representation through a Chargé d' Affaires. The inclination for more influential states to assume the approval of a proposed appointee has endured. In 2004, both the United States and the United Kingdom publicly disclosed the names of the individuals they planned to appoint as ambassadors to Iraq. This happened before Iraq regained its sovereignty, which allowed it to have the authority to accept or reject these individuals[17].

Article 4 of the Vienna Convention provides an exemption to the general rule stated in Article 7, allowing the sending State to have full discretion in selecting the members of the mission's personnel. The rationale for the criterion stems from the unique importance of appointing a head of mission and the necessity for them to be personally acceptable to both States in order to effectively conduct diplomacy between them. Therefore, the requirement for agrément is only applicable to chiefs of mission. Chargés d'affaires ad interim, in contrast to chargés d'affaires en titer who are not chiefs of mission, are not protected by Article 4. The clarity of the provisions in Articles 14 and 19 of the Convention was not altered by the addition of modifications in Article 4, as this was opposed by both the International Law Commission and the Vienna Conference[18]. The acceptance of the right of legation as a mere capability provides a solid foundation for a state to refuse to accept subordinate members of a foreign mission, or to end their duties after accepting them. It is logical to presume that if a state has the authority to reject the appointment of a chief of mission, then it is also entitled to reject a member of the mission's personnel. The infrequency of granting this refusal does not serve as evidence that its implementation would amount to a breach of international law. The recipient state may opt to achieve the desired outcome by encouraging the appointing state to take action, rather than relying on the option to reject, which might potentially harm the amicable ties between the involved governments. As an extension of its authority to reject any diplomatic connections, a state has the power to establish requirements for accepting certain persons or groups from foreign missions[19]. As the receiving State is not obligated to provide reasons for rejecting agrément, there are no legal limitations on its freedom to make a decision in this regard. Reasons for a denial may only become public if the procedure fails to achieve its intended outcome. Many of the incidents mentioned in the literature, where the reasons have become public, occurred before the procedures outlined in Article 4 of the Vienna Convention were established. Typically, it is widely acknowledged in practice that the grounds for rejecting approval should pertain to the individual nominated for the position of head of mission, rather than the diplomatic relations between the sending and receiving countries. However, if the basis for denial is based on public statements made by the proposed head of mission in meetings or legislative discussions in their home country, the boundary between acceptable and unacceptable behavior may be subtle. In 1891, the Chinese Government declined to recognize Mr. Blair as the US Minister to China due to his alleged involvement in vehemently criticizing China during his time in the US Senate when lobbying for the Exclusion Act of 1888. The Chinese Foreign Office expressed their willingness to welcome Mr. Blair if the Exclusion Act were to be revoked[20].

The practice of double accreditation has a long history in diplomatic relations. Textbook authors provide multiple examples of situations in which a single representative was officially recognized by two rulers, or by one ruler to represent two or more countries. The United Kingdom in 1825 Canning denied Argentina's suggestion to accredit a Minister who was already accredited to Paris, stating, "I believe it is not excessive, in terms of protocol, to require a separate minister for England alone." While it is possible that such instances of rejection may have been concealed through the customary practice of confidential request for agrément, objections appear to have been few and restricted to situations where there was political sensitivity between the two potential receiving States. The text does not clearly differentiate between situations where a diplomat is assigned to represent the interests of a third country due to a diplomatic fallout (now covered by Article 45(b) of the Convention), and situations where two countries formally accredit a diplomat with an indefinite purpose, motivated by cost-saving measures on the part of the sending country or countries. According to Article 5 of the Havana Convention of 1928, each country has the right to assign one diplomatic officer to represent it before one or more countries. Some States may delegate their representation to a sole diplomatic officer. This formulation lacks provisions for both notification and objection to the principle[21].

In the second scenario, the process of agréation allows the receiving State to have complete discretion in granting or denying consent for double accreditation, while being informed of the initial appointment when considering approval for the second appointment.

17 Denza (2016)
18 *Ibid*.
19 Preuss (1932)
20 Denza (2016)
21 *Ibid*.

However, in the first scenario, the second State to which the envoy is sent may not be aware of his other appointment when it grants agrément. If the first State is not informed about the proposed second appointment, it would have no recourse under the Havana Convention except to request the recall of the envoy from its own capital[22].

By imposing certain criteria, states can prevent foreign diplomatic missions from having their nationals present on their territories, so avoiding a situation that goes against the policies of most states. States have the option to agree to allow the entry of domestic or service personnel of a mission, but only if they do not have diplomatic immunity, or if their immunities are limited. In the future, it seems that governments worldwide are in substantial agreement that the privileges currently held by members of this group are excessive and no longer serve a reasonable purpose of facilitating the successful functioning of their mission. The number is 8. A receiving state has the authority to decrease the immunities of service members, either by established practice or statute, to a level that is suitable given current circumstances. This practice can be justified based on the notion that the authority to exclude also includes the authority to impose conditions, even if it is not explicitly grounded in that idea. The aforementioned argument, proposed as a rationale for the state's prerogative to decline foreign diplomats or impose conditions on their reception, should be distinguished from the "concession theory" regarding the basis of diplomatic immunities, which might be readily mistaken for it. The notion of diplomatic privileges and immunities is based on the idea that when a state accepts a diplomatic agent, it implicitly acknowledges that the agent will be immune from its legal authority[23].

3 Reception and Termination

As per Article 10 of the Vienna Convention on Diplomatic Relations, the Ministry for Foreign Affairs of the host country must be informed about the appointment of members of the diplomatic mission. This includes providing details about their arrival, such as the date and location, as well as their departure or the end of their duties with the mission. The practice of receiving States requiring progressively detailed notifications has somewhat diminished the freedom of appointment and classification of staff. According to Article 10, the receiving State must inform the ministry for foreign affairs of the appointment, arrival, and departure or termination of functions of members of the mission. Equivalent notifications are necessary for those who also benefit from privileges or immunities. Practically, certain states have mandated the submission of extensive facts as a prerequisite for the notification procedure. Using this information, the foreign ministry can assess whether the individual who was notified meets the criteria for the designated staff, taking into account their previous employment or positions[24]. The Federal Court of Australia states that the government of Australia has the exclusive authority to acknowledge the status of diplomatic individuals. Once a person is officially recognized as having a specific status, they possess certain privileges and rights. The aforementioned status is intended for use in a court of law. The Court of Appeal of Ghana, in the case of Armon and Another v. Katz, stated that the acceptance and recognition of individuals who work at an embassy are acts of sovereignty that rely on the comity of countries. The Ministry of Foreign Affairs is the sole government department responsible for overseeing the exercise of sovereignty and possessing specialized knowledge about the recognition of diplomatic agents by this country[25]. An ambassador no longer makes a formal state entry into the capital of the sovereign to which he is accredited. The foreign minister may greet a special envoy at the railway station or airport, but this is rare due to the pressure of modern job. When an Ambassador or High Commissioner arrives in the UK capital, the Assistant Marshal of the Diplomatic Corps greets him on behalf of the Secretary of State for Foreign and Commonwealth Affairs. Diplomatic agents often travel discreetly, but may see colleagues from their home nations during long journeys. The new head of mission should immediately notify the Minister for Foreign Affairs of his arrival in the capital and inquire when he can be received. He may also notify the Master of Ceremonies or Introducer of Ambassadors in various capitals. Send a letter. He also urges the Minister for Foreign Affairs to accept the head of state's orders for an audience to show his credentials, which he must provide in advance. London calls this copy the Working Copy. French term it copie figuree. London used copie d'usage until recently. This document should be in the same language and wording as the original but not signed. Type, photocopy, print, or handwrite it as needed. Translations are useful, especially when the original is in a language the receiving country does not speak, but they are not a substitute for the Working Copy[26].

22 *Ibid*.
23 Preuss (1932)
24 Brown (1988)
25 *Ibid*.
26 Gore-Booth (1979)

A court or state official brings an envoy and his suite to the palace in one or more carriages. The ambassador usually arrives alone and begs permission to present his credentials after the ceremony. He is introduced to the head of state by the Master of Ceremonies or an equally important court or state official in most capitals. He often speaks differently due to local custom. Returning home is as ceremonial as going to the audience. In most countries, the ambassador calls the other ambassadors first after presenting his credentials, however envoys, ministers resident, and charges d'affaires call first. He may also hold one or two official receptions for diplomats and notable figures from official and social life, whose names the court or state official provides. The married ambassadress must call on and receive the wives of the above people. Return visits must always be scheduled as soon as possible. Ambassadors and envoys extraordinary, ministers plenipotentiary, and diplomatic emissaries of lower rank were traditionally received separately. Today, practically every accredited chief of mission, no matter how tiny his staff, is an ambassador, therefore the decreased ceremonial for lower-ranking diplomats is outmoded. Previously, an envoy extraordinary, minister plenipotentiary, or minister resident went to his audience alone in his carriage and made no speech when presenting his credentials. In certain capitals, he brought his staff and presented them after his audience. It was considerably simpler than ambassador audiences[27].

Article 43 demonstrates the impact of the intense strain that the Vienna Conference was operating under during its last phases. The article's extent and objective are ambiguous, and the regulations it establishes are inadequate. The Conference was cognizant of this matter, but was unable to allocate sufficient time to elucidate the text. The Article should not only specify the numerous means by which the duties of a diplomatic agent might be terminated, but also the specific moment when this happens. Article 13 specifies the criteria for determining when the head of mission is officially deemed to have started his duties, while Article 43 should serve as its equivalent, indicating when a diplomatic agent is considered to have finished his duties in the host country. This question is significant in determining whether a specific action taken by a departing diplomat should be considered an official act, thereby granting them immunity under Article 39.2. Alternatively, it addresses whether a departing head of mission continues to be responsible for receiving communications from the receiving State and acting in that capacity under the laws of the receiving State. This includes matters such as managing a trust or handling the disposition of property belonging to the sending State. However, it appears that the International Law Commission viewed the provision as primarily descriptive and of questionable value in the process of codifying diplomatic law. Although the Vienna Conference acknowledged the need for a comprehensive list of situations that would terminate the activities of a diplomatic envoy, they were unable to create such a list[28].

4 Staff

Discussing different levels and types of staff will determine the extent of immunity and privileges they are granted. The scope of immunity and privileges has shifted from the previous practice of absolute immunity to a more limited form of immunity. Article 10 of Vienna convention of consular relations 1963 addresses the obligations for notification between the sender and receiving States. Previously, these responsibilities were not mandated by traditional regulations but were determined by widespread usage. The host country must be informed on the appointment of consular personnel as well as their and their families' arrivals and departures. Notifying each other is essential for ensuring consular operations run smoothly and fostering positive relationships between countries.

As stated in Article 7 of the Vienna Convention on Diplomatic Relations of 1961, the sending state has the right to freely select the individuals who will serve as staff members of the diplomatic mission. Regarding military, naval, or air attaches, the host country may request their names to be submitted in advance for approval. The host country maintains the authority to designate a diplomat as persona non grata, either prior to or following their arrival in the country. The number is 5. The subsequent instances from history exemplify some of the awkward situations that might arise when a government's rejection of a diplomat as persona grata is challenged[29].

The sending State's discretion to nominate and dismiss mission workers is widely considered to include dismissal. With the widespread limitation of foreign sovereign State immunity, this liberty is important. In many jurisdictions, individuals can now bring proceedings against foreign States for employment contracts, but diplomatic mission members have rarely succeeded in bringing proceedings for unfair dismissal or other breaches of their employment contracts. Section 16(1)(a) of the State Immunity Act

27 *Ibid*.

28 Denza (2016)
29 Roberts (2016)

19788 protects foreign states' immunity from such proceedings in the UK by stating that the statutory limitation of immunity in respect of certain contracts of employment between the State and an individual 'does not apply to proceedings concerning the employment of the members of a mission within the meaning of the Convention'. This Act did not apply retroactively, hence Browne-Wilkinson J, President of the Employment Appeal Tribunal, decided that jurisdiction over claims by diplomatic mission members was excluded in Sengupta v Republic of India.

They perform the foreign State's public functions, hence the tribunal may need to investigate the diplomatic mission's conduct. In our opinion, in common law a State is immune from unfair dismissal claims by diplomatic mission employees doing their jobs. The Tribunal's judgment was strengthened by citing other jurisdictions' decisions that helped build public international law. In the United Arab Emirates and another, the UK Employment Appeal Tribunal confirmed that section 16 of the State Immunity Act 1978 conferred state immunity even when mission members seeking to sue their employer had no privileges or immunities[30].

The UN Convention on Jurisdictional Immunities of States and their Property, adopted by the General Assembly on December 16, 2004,19 allows national courts to determine employment disputes in diplomatic missions unless the employee is a diplomatic agent (defined in the Vienna Convention) or has been recruited to perform specific functions in the exercise of governmental authority. These limitations to local jurisdiction over State employment contracts are narrower than section 16(1)(a) of the State Immunity Act 1978 but taken together. They seem adequate to protect a sending State's ability to appoint and fire diplomatic mission staff. They would allow local courts to hear junior diplomatic mission staff allegations of contract discrimination, such as unpaid salaries, uneven pay, or working conditions. They have been criticised for leaving uncertainty (e.g., about the meaning of 'particular functions in the exercise of governmental authority') and allowing defendant States to claim those dismissal proceedings would 'interfere with the security interests of that State'[31].

The White Paper highlights that the Vienna Convention does not provide a clear description of staff categories, hence verifications typically focus on factors including nationality, residency, and family status following notice. The FCO finds it extremely challenging to determine whether an individual should be classified as a diplomat, a member of the administrative and technical staff, or part of the mission. The solution must involve information from external sources, such as exchanges within the European Community, and the readiness to use the persona non grata sanction when necessary[32].

A mission leader's main duty is to follow Ministry orders and report back. Regardless of the request, the person must promote government activities and share vital information. This reciprocal relationship between the Ministry and mission leaders depends on their contributions. Different countries' needs and resources shape policy. Technology lets the Ministry and mission immediately collaborate on policy.

If the Ministry makes policy decisions and the mission head implements them, the focus will be on the Ministry's people and resources, reducing international service personnel. If heads of mission substantially influence policy-making, the Ministry can run with a minimal workforce, while abroad posts can be well-staffed. Staffing distribution plans and officer type affect diplomats' abroad deployments. Commercial or press attaches with many local contacts may stay longer than diplomatic secretaries. Longevity in a diplomatic position allows one to establish personal contacts, learn the host nation's language, history, politics, and culture, and adapt to the local environment. Service personnel may become emotionally attached to the country's problems, making it harder for them to advise their government impartially. He can also miss home and national activities. The Ministry's personnel department head sets assignments and durations, a crucial role. Diplomats face many obstacles worldwide, and selecting a posting that matches their personality and character is as vital as managing them[33].

5 Family

The Vienna Conference attempted to define "members of the family forming part of the household," but was unsuccessful. The United Kingdom allows adult children aged 18 or over to be accepted if they are residing with the members of the mission and not permanently employed. The White Paper makes an intriguing point that our decision to accept or reject a notification does not definitively determine status. A court is responsible for determining the status of a dependent if they are charged of criminal conduct in uncertain situations[34]. The Vienna Conference in 1961 did not reach a consensus on the definition of "the members of the family of a diplomatic agent form his household"

30 Denza (2016)
31 *Ibid*.
32 Higgins (1986)
33 Feltham (1998)
34 Higgins (1986)

as stipulated in Article 37.1.Immunities granted to the diplomat. The International Law Commission chose the formulation instead. The priority of receiving states is the mat concerning diplomatic entourages, as sending states also aim to avoid unnecessary financial burdens. Receiving States may face pressure when approving employment for diplomats, as they typically prohibit family members from engaging in professional or commercial activities for personal profit without specific approval or bilateral agreements. Additionally, diplomats often receive fiscal privileges such as free or subsidised education. There are other offences committed by family members and the resulting immunity[35].

The Canadian Department of External Affairs informed all heads of mission of its policy in a Circular Note dated 8 July 1986.The term "member of the family" refers to individuals who are reliant on the diplomatic agent and typically includes: "the spouse, the aged or infirm parents of either spouse; unmarried sons/ daughter under the age 21 who live with their parents; unmarried sons/daughters between the ages of 21 and 25 who are attending a Canadian educational institution full-time and living with their parents; and unmarried sons/daughters over the age 21 who are physically or mentally disabled.[36]"

In the context of the Vienna Convention on Diplomatic Relations in the United States, "family forming part of household" refers to the spouse of the mission member and their unmarried children under 21 years old, who are not part of another household and live solely in the principal's residence. Moreover, the term "family" encompasses anyone under the age of 23 who are enrolled full-time in a higher education institution. Non-household members residing exclusively in the principal's household, recognised by the sending State as part of the family under exceptional circumstances and with the Department of State's approval, may be considered "family" under the Vienna Convention. Under unusual circumstances, the sending State must formally request consideration from the Department of State and provide a detailed reason for the exception[37].

6 Diplomatic Missions

Diplomats who are citizens or permanent residents of the country they are working in are only entitled to immunity from legal jurisdiction and personal protection for official actions carried out in the course of their duties, although additional privileges and immunities may be provided by specific countries. Non-diplomatic personnel and private servants who are citizens or permanent residents of the host state are entitled to privileges and immunities determined by the host state. Limitations on individuals in these groups should not excessively disrupt their ability to carry out their mission functions[38].

Article 11 of the convention states that if there is no specific agreement on the size of a mission, the receiving State can request that the mission size be kept within reasonable limits based on the circumstances and conditions in the receiving State and the needs of the mission.

The receiving State has the right to reject officials of a specific type in a fair and non-discriminatory manner[39]. This article was the International Law Commission's draft Article 10:

1. If there is no formal agreement on the mission size, the receiving State may refuse to accept a size that is unreasonable and abnormal, taking into account its circumstances and the mission's needs.
2. The receiving State may reject officials of a certain category without discrimination.

The first paragraph of the Commission's Article 10 defined "what is reasonable and normal," as a basis for addressing mission size disputes between the sending and receiving states. This threshold was ambiguous, but the Commission remarked that dispute resolution criteria are typically vague. The standard's significance was that it made mission size a justiciable topic, allowing arbitration or judicial settlement. The Commission's remark also suggested this. In 1957 '9 and 1958 60 Commission remarks, the US stated that it was impractical to limit the recipient state's mission size discretion[40].

7 Special Missions

The privileges and immunities granted to special missions and their members closely resemble those granted to permanent diplomatic posts as outlined in the Vienna Convention. There are some changes due to the unique character of special missions and a reevaluation of the wording of the Vienna Convention. Article 2 I of the agreement provides special rights for visiting heads of state. It states that a head of state leading a special mission must receive the same facilities, privileges, and immunities as heads of state on an official visit, as per international law. The article states that high-ranking officials, such as the Head of the Government and the Minister of Foreign Affairs,

35 Brown (1988)
36 *Ibid*.
37 *Ibid*.
38 Feltham (1998)
39 Kerley (1962)
40 *Ibid*.

will receive additional facilities, privileges, and immunities in the receiving State or a third State during special missions beyond what is outlined in the current Convention, in accordance with international law. It is uncertain whether additional privileges and immunities are mandated by international law for visiting heads of government or ministries. While some states may consider a head of government to be equivalent to a head of state, ministers have never been recognised under customary law as having any royal privileges[41]. Members of a special mission have more restricted personal immunity compared to diplomats. This includes being liable for damages resulting from an accident caused by a vehicle used outside their official duties. Public opinion in capital cities with significant numbers of individuals eligible for diplomatic immunity expresses displeasure against the immunity granted in vehicle accident claims. Subordinate staff, nationals, and permanent residents of the receiving state are granted immunities and privileges in accordance with the Vienna Convention. Family members are entitled to privileges and immunities on the Vienna scale only if they are accompanying special mission members. The issue of identifying a 'member of the family comprising part of the home' does not apply to special missions[42]. Transit states are subject to the same duties as outlined in the Vienna Convention for members of special missions. However, obligations only apply if the transit state has been told in advance, either through the visa application or notification, about the transit of the individuals as part of a special mission, their family members, or couriers, and has not objected to it. This highlights that, similar to members of diplomatic missions, there is no automatic right to pass through a third state. The third state must give authorization for transit before being obligated to provide any special privileges to members of special missions[43].

8 Termination of Missions

Diplomatic missions can be removed by mutual agreement between governments due to changed circumstances making the missions redundant or uneconomic. Missions can be recalled as a strategic foreign policy decision. In the past, withdrawing a mission and cutting off diplomatic relations often preceded war during times of direct gunboat diplomacy. Typically, the mere threat of such action by a major power was enough to prompt a smaller power to reassess its foreign policy. Today, this tactic is sometimes employed more as a kind of protest rather than a threat. However, its impact is often restricted and typically outweighs the difficulty it causes to everyone involved[44]. Article 43 of the Vienna Convention on Diplomatic Relations pertains to the conclusion of diplomatic duties. The Article states that a diplomatic agent's function ends when the sending State notifies the receiving State that the agent's function has ended, or when the receiving State notifies the sending State that it refuses to recognise the agent as a member of the mission as per Article 9. The chapter also examines how dispute can terminate the duties of a diplomatic agent. A change in administration that does not involve the Head of State, or the constitutional replacement of an elected Head of State due to death, resignation, or the end of their term, does not automatically terminate the role of the diplomatic agent. Recognition, once granted, may be retracted under specific conditions. It is easier to do with regards to de facto recognition, as it is inherently a careful and temporary evaluation of a specific scenario. If a de facto government no longer maintains effective control, the basis for its recognition may cease to exist and recognition may be withdrawn. It is generally an initial acceptance of political reality that can be revoked based on changes in political circumstances. De jure recognition is a decisive and irrevocable step[45]. Even if a mission is withdrawn and diplomatic relations are officially ended, contacts are usually not completely cut off. Due to the growing interdependence of states, diplomatic relations often continue to some extent, facilitated by a third party country with a permanent mission in the host state. Sometimes, only the mission leader departs, typically 'for consultation', and comes back shortly after. In increasingly severe situations, the head of the mission and most of the staff leave, but a symbolic 'Interests Section' remains under the protecting power's mission to safeguard their country's interests. They maintain their personal diplomatic privileges and immunities, communicate with their government under privilege on behalf of the 'protecting' power, and operate as usual but are not allowed to fly their national flag or display their national emblem on their official premises. If they show a flag or emblem, it will represent the 'protective' power[46].

41 Gore-Booth (1979)
42 *Ibid*.
43 *Ibid*.
44 Feltham (1998)
45 Shaw (2017)
46 Feltham (1998)

II Conclusion

Diplomatic agents are not mere representatives; they are entrusted with the intricate task of navigating the complex web of international relations. Their specialized knowledge encompasses not only the policies and priorities of their home country but also an understanding of the socio-political dynamics of the host nation. This expertise enables them to negotiate treaties, resolve disputes, and promote cooperation across borders. Without this specialized knowledge, diplomatic agents would struggle to effectively advance their nation's interests on the global stage. The classification of heads of missions is more than just administrative; it is a crucial mechanism for ensuring that diplomatic personnel are equipped with the appropriate authority and privileges to carry out their duties. Ambassadors, for example, are often tasked with representing their country at the highest levels of government in the host nation, requiring them to possess not only diplomatic acumen but also a deep understanding of protocol and etiquette. Consuls, on the other hand, focus primarily on providing consular services to their country's citizens abroad, necessitating a different skill set altogether. Immunity, a cornerstone of diplomatic practice, serves to shield diplomats and their staff from interference by the host country's legal system, thereby safeguarding their ability to perform their duties effectively. However, this immunity is not absolute; it is granted within certain parameters and can be waived in cases of egregious misconduct. Family members of diplomats, while enjoying derivative immunity, are also subject to certain restrictions and responsibilities, underscoring the balance between privilege and accountability within the diplomatic community. The role of diplomatic missions transcends mere representation; they serve as hubs of communication, negotiation, and collaboration between nations. As such, the staff of diplomatic missions must be well-versed not only in the intricacies of diplomacy but also in the laws and customs of the host country. This dual competency enables them to navigate the complexities of international relations while ensuring compliance with local regulations and norms. In addressing the potential misuse of diplomatic immunity within the realm of criminal jurisdiction, policymakers must tread carefully to avoid undermining the essential functions of diplomacy. While instances of abuse must be addressed decisively, any reforms must be crafted with a nuanced understanding of the roles and responsibilities of diplomats and their staff. By promoting transparency, accountability, and adherence to international norms, policymakers can mitigate the risk of abuse while preserving the integrity and efficacy of diplomatic practice.

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