



## Diplomatic Gatekeeping, Privileges and Immunities

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**Abstract:** This paper takes a look at the tenacious place of diplomatic gatekeeping in 21<sup>st</sup> century international relations. Using descriptive methods of qualitative analysis it explores the politico-legal environment within which diplomatic rights and responsibilities emerged. Against the backdrop of the enjoyment of diplomatic privileges and immunities by the representatives of extra-state entities the rationale for the global deployment of diplomat-like personnel by non-state actors is questioned. Aside establishing the nexus between law and practice the paper submits that although diplomatic history is replete with transformations yet the main crux of the leeway granted to diplomatically privileged individuals is to enable foreign Missions perform their functions continuously unhindered.

**Keywords:** Diplomacy; Privileges and immunities; International actors; Gatekeeping

### 1. Introduction

This piece engages with the role of the diplomat in the dialogue between political entities. It seeks to understand the logic of the emergence, legality and effects of diplomatic privileges, immunities and obligations on the various exogenous influences and endogenous dynamics that shaped diplomacy contributions to global peace and security. In addressing the nature of the intersections of diplomacy problematic regarding the progression towards a more stable and peaceful global polity it is necessary to pay attention to the institutional vacuum that led to the creation of the diplomatic privileges and immunities.

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The birth of new states since the treaties of Westphalia (1648), the growth of organizations created to ensure better understanding between international actors and the increasingly complex web of interdependence have combined to extend the arena for diplomatic exchanges. Given the potential implications of diplomatic functions there is need for the creation of an atmosphere conducive for fruitful representation, negotiation, information generation and communication. Diplomatic privileges and immunities provide that platform. Yet, without serious attempts to understand the mutual dependence between diplomatic law and practice; international law as well as the theory and praxis of international politics (the very environment within which law operates; i.e. where international treaties and agreements are reached) have all the while been narrowly analyzed as different and distinct entities which vitiated an eclectic and multi-perspective understanding of the politico-legal environment of diplomatic privileges and immunities. This chapter is an attempt to lift the veil.

The article is divided into seven interconnected sections, the first of which is the introduction. It introduces the cruise of an assessment of diplomatic privileges and immunities contributions to global peace and security. The second section speaks to the mode of data generation for the paper which is intended to establish a conceptual framework within which to engage the questions of the study. We then go on, in the section that follows, to x-ray the transformation historicity of diplomacy. In section four, we answer the Qualities and Obligations of the Diplomat. Section five critic the concept and institution of diplomatic privileges and immunities: the concept and institution. The sixth details how the enjoyment of diplomatic privileges and immunities as *rights* by diplomats ameliorate and sustains a modicum of peacefulness in interstate relations. The concluding section summarizes the key arguments and draws attention to their implications.

## **2. Data and Methodology**

This article is historical, interpretative and analytical. It is also conceptual and qualitative in nature. The qualitative approach facilitates new perspectives on things about which much is known or to gain also more in-depth information that may be difficult to convey quantitatively. The chapter draws insights from relevant virtual and physical secondary constructs such as scholarly exegesis, empirical materials and historical evidence using the theoretical prism of functionalism as postulated in the seminal works of Mitrany (1933) and Haas (1958). The basic

argument of functionalism, according to Haas (1958) and Mitraný (1933: 101), is that the international political system has to be analyzed within the context of international integration – the collective governance and material interdependence between states – which develops its own internal dynamic as states integrate in limited functional, technical and economic areas. Using this problem of international governance as core analytical foci the descriptive analysis cast light on the identified empirical and normative questions that are directly related to the contemporary concerns of statesmen and students of international affair. For convenience of systematic organization of thought, the thrust of analysis in the chapter is schematically presented under a number of select themes and carefully formulated to prosecute the paper's derived assumption to wit: diplomatic privileges and immunities are useful for the attainment of global peace and security.

### **3. Diplomacy: A Historicity of Transformation**

From the era of cuneiform diplomacy in the ancient Middle East (3400–3200 B.C.) to the reign of the *proxenos* under the classical diplomacy of the Roman Republic (509–27 B.C.) and the Roman Empire (27 B.C.–641 A.D.) to Italian Renaissance during when nuncio (*nuncius*) and procurator emerged up to the twitter diplomacy of the 21<sup>st</sup> century the world of diplomatic gatekeeping has transform markedly. The transformation affects the conceptualisation of who a diplomat is. Is he a professional governmental functionary who represents a sovereign in another capital or just anyone who carries on a delegated duty, in the international arena, on behalf of powerful entities, including states, intergovernmental organizations, multilateral corporations, etc.? It is no longer clear who could rightly carry the barge.

The multifarious challenges throw up by the developments of the 21<sup>st</sup> century notwithstanding, with the advancement and universal deployment of information communication technology (ICT), one of the trailblazers of our time, human history comes to its golden age. Among other things, digital technology symbolises an agenda, popularises an idea and creates expectations that are daily unravelled. Although the omnipresence litigations of digital determinism to most traditional professions are profound, multifaceted and ever-evolving the challenge to diplomatic relations are stringently consequential. For instance, the novelty of the digital age is eroding some of the leeway that diplomatic functionaries customarily

relish. In this instance, the schedules of resident ambassadors are threatened as state sovereigns and other entities increasingly used modern ICT gargets to communicate directly and across borders, rather than through diplomatic representatives. Moreover, the increasingly advanced globalisation brought about by a media that is more prompt to react via the Internet and 24-hour news channels makes propaganda a more effective weapon of bilateral and multilateral relations. And the craving to know it first elevates international eavesdropping (like the ones reveal through *Wikileaks*) as narratives of usefulness and desirability are created around it, particularly for entities that may be willing to appropriate the tactical head-start it confers.

Closely related to the foregoing challenges to the roles of diplomats is the global pandemic birthed by the emergence of the Coronavirus infectious disease (COVID-19). CoVid-19 is the newest amongst the infections of the Severe Acute Respiratory Syndrome (SARS-CoV) and Middle Eastern Respiratory Syndrome (MERS-CoV). First noticed in late 2019, in the Huanan food market of Wuhan, China, modern globalisation spreads CoVid-19 across the world in unprecedented manner. The spread brings many of the enduring norms of human civilisation under seismic pressures in ways that had not occurred in a hundred years. The news of the effects of the epidemic is constantly on people's Television screen. The disease and its resultant pandemic, in turn, lead to increased global demand and supply of vaccines, lateral testing, use of personal protective equipment (PPEs), mechanical ventilators, medical oxygen, infection control supplies including disinfectants, sanitizers and other essential medical equipment in the bid to curtail further spread. In the meantime, most national borders were shut with international flights cancelled, diplomatic engagements called off. As if those were not enough headaches for citizens, executive orders temporarily suspending certain segments of globally recognized human rights including restrictions on movement and public gatherings were signed in many countries as the world locked down. And as telephoning and social media became the only 'safe' havens of human interactions the topical item on the news stream are stories and statistics of survival and of deaths from CoVid-19. For a moment, particularly around the middle of 2020, the world literally stood still.

Furthermore, and against the background of the global transformations, it is no longer the case that diplomats exclusively represent states and sovereigns. Non-sovereign entities such as for instance international organisations<sup>1</sup> of all kinds, humanitarian organizations (e.g. International Committee of the Red Cross and Red

Crescent (1863); the Bill and Melinda Gates Foundation), sub-state actors (e.g. Parliaments, Political parties, provinces, etc.) and private sector (corporations – Airbnb, Apple, Facebook, Google, Netflix) are notably represented in state capitals, *relate* with state actors on the same parameter, enjoy the privileges and immunities that use to be exclusive reserves of state sovereigns and their representatives (a kind of independence?) even though they may not be recognised as sovereign entities but surely as stakeholders in international politics. Nonetheless, the job prescriptions of many of the non-state diplomats are poorly done either because they lack the credentials or they do not know enough to seek expert advice. Notwithstanding, the profusion and diversification of diplomatically represented actors not only create networks of diplomacies but means that the traditional definition of diplomacy as the carrying out of a nation's external relations through the implementation of foreign policy (Devin, 2016: 127) by diplomats is an unsustainable state-centric approach to international relations. The foregoing developments are among the popular passions and special interests emptying diplomacy of its signifiers and leading its ship astray.

But, in all of that, modern diplomacy, be it bilateral or multilateral, is aimed at improving mutual understanding between international actors in an atmosphere conducive for intellectual disputations and contestations, quiet contemplations and reflections cumulating in beneficial agreements and treaties (Oxford Handbook of Modern Diplomacy, 2013). To fulfil the noble mission, the practice of diplomacy has had to evolve unique and uncommon traditions, procedures, rules and regulations which are its recognisable features. For diplomatic intercourse to function well the traditions include 'diplomatic privileges and immunities' as irreducible benchmark.

However, privileges and immunities are one aspect of the diplomatic culture that is sadly misunderstood in autocratic societies and one with which anarchists are uncomfortable. Unfortunately, many diplomats themselves lack a full grasp of its meaning and import for and thus use it as a license for misbehavior. We will return to this point later but it suffices for now to note that an easily forgettable fact in extant discourse is how much the practice of diplomatic privileges and immunities, owe to international politics. The debts are in terms of its origin, its etymology and trajectory, growth, as well as its symbols and traditions. In other words, the establishment policy of the latitude allowed to diplomats cannot be comprehensively understood outside inter-state politics. Politics is "the authoritative allocation of values in a society", or the process of determining "who

gets what, when, how” (Lasswell, 1958). Of course, the maxim that all humans are political animals is an indisputable truth in the sense that all are subject to and play politics in different forms and under different guises.

In general, diplomatic politics as an activity is the mechanism for determining how the comity of nations is ordered and governed. But the activities of diplomatic politics operate in an environment of laws, under agreed codes of conduct and rules of behavior, which are often spelt out; in this case in the 1961 Vienna Convention on Diplomatic Relations. Thus, there exists a symbiotic relationship between politics on the one hand, and law on the other. It is, in reality, a relationship of inextricable interdependence, whereby politics determines laws and the laws conversely dictate and regulate political activity. And of course politics is played within the ambience of law, hence the notion of the “rule of law” which prescribes that none is above the law as the relations between and amongst international actors are subject to the dictates of the law of nations. It can be safely asserted therefore that though it is law that creates politics, defines its rules, processes and procedures, but it is those who have and wield global political power that are responsible for making laws by which the state-system is governed.

However, it often happens in international relations that although two things coincide, it is not clear which causes which. For instance, it appears that diplomatic protocol guide practice but it is at least possible that things are the other way around. It might be that the diplomatic functionaries that are protected by privileges and immunities are willing to tolerate more control from their accredited states. All the same, the provisions for diplomatic privileges and immunities were not fashioned in a void. They were created within constraints of what is possible. Arising from this, the ascription of diplomatic privileges and immunities to certain entities and persons must be understood as time-honored universal culture that has survived and remained sacrosanct over the centuries. Such privileges and immunities, no doubt, occupy a curious place in the continuous, confidential and discreet process of adjusting relations and differences between the actors in the contemporary international system.

In most nations of the world diplomatic agents are accorded every possible consideration and facility to permit the performance of the functions of their roles. The general observance of the need to allow diplomats perform their functions to the utmost is at the heart of the codification of privileges and immunities into the legal framework on diplomacy. The framework has been so encompassing to the

extent that the languages for the texts of treaties, conventions, etc., are included. For instance, under the United Nations the authentic languages for treaties, conventions, etc. are Chinese, French, Russian, English and Spanish according to Article III of the Charter of the United Nations. Yet, diplomatic history has shown that the attempt to reduce the art of diplomacy to rules is as vain and futile as the attempt to teach the art of social intercourse.

#### **4. Qualities and Obligations of the Diplomatic Gatekeeper**

States, being notional persons who cannot speak to each other in the manner of individuals are officially represented by the diplomatic corps. The corps may consist of individuals specializing in all sphere of human endeavor including military, naval and air attaché (Nicolson, 1950) as well as experts in Commerce, Finance, Economics, Labor, the Press, etc. (Langhorne 2004; Lee and Hudson 2004; Hocking 1999). Beyond that, courtesy, truthfulness, confidence, consistency and discretion (Nicolson, 1950: 126) being the hallmarks of the diplomatic enterprise make most states to be punctilious about the caliber of their representatives. Though States are free in the selection of their representatives in foreign lands diplomatic agents have been refused by receiving states for several reasons. And to avoid the unpleasantness arising from the refusal of a diplomatic agent it is now customary for an accrediting state to obtain prior consent (*agrément*) from the receiving state on the personage of the agent to be sent. This is done confidentially, as a rule, to afford the receiving state the opportunity to cross-check the personal character or their previous record to determine the acceptance of the individual agent.

Generally, the diplomat must be loyal, impartial and appreciate the wider perspectives of policy. They should, ordinarily, be a citizen of the sending state. It is seldom that the national of a state is accepted as the envoy of a foreign state in his own country. The diplomat must have a mind trained by the study of literature, and by that of history. They must have practical acquaintance with international affairs in general and comprehension of the interests of the home country in particular (Blackwill, 2013). They must have knowledge of men, be able to interpret looks and glances, ready to understand the opponent's point of view and skill in refuting his objections. The diplomat must have integrity, commonsense, versatility and imagination. They must have a good temper, good health and good looks. The diplomat must have the capacity to be judge of evidence and abhor

falsehood. They must be an astute communicator, listening well and not talking more than is necessary to induce others to talk. They must continuously exert every effort of memory to carry away correctly what is heard in order to draw up correct report.

Furthermore, to enable their cordial amalgamation with the inhabitants of the host country the diplomat must be able to sacrifice his national prejudices, to conform to the habits and manners of the receiving state including learning to speak the local language (a great advantage to obtain information and verify same) (public diplomacy). They must be on guard against the usage of their table to criticize the affairs, the manners and customs of the host country. They must keep their papers and cyphers securely safe, be prepared for the stage-trick of artful opponents and not allow any to carry away any official document on the pretext to “study it more carefully”. According to Kennedy (1922), the successful diplomat is conciliatory and firm, eludes difficulties, is courteous and unhurried, easily detects insincerity, has a penetrating intellect and a subtle mind combined with a keen sense of honor, has an intuitive sense of fitness and is adaptable, at home in any society and effective in the chanceries of the old diplomacy or on the platforms of the new.

What then are the functions of diplomatic gatekeepers? Members of the diplomatic corps are usually instructed to watch over the maintenance of good relations, to protect the interests of countrymen and to report to the home government on all matters of importance. The diplomatic gatekeeper is also expected to promote their country's trade by providing advice and assistance for private exporters (commercial diplomacy). The diplomat is basically in charge of the day-to-day contacts between the sending and the receiving states. This personal touch provided by diplomats prevents the problem of authenticity (including premature links through eavesdropping on electronic devices) associated with the quantum leaps in the advancement of technology and the usage of multi-level channels of communication for everyday contacts between heads of governments. Yet these new channels continued to be explored either because the diplomatic corps are made up of incompetent political appointees, or of career officers whom political leaders prefer to bypass because they are not trusted.

Diplomatic gatekeepers are not only functionally indispensable in the attainment of each state's national interest through the implementation of foreign policy they are parts of the power ‘galaxy’ that shape foreign policy formulation via the feedback they provide to home states. In this civilized tenor the corps may not seek or



receive instruction from any government or from any other authority external to its home state. They are to refrain from any action which might reflect on their position as representatives of sovereigns responsible only to their nations.

## **5. Diplomatic Privileges and Immunities: The Concept and Institution**

Diplomatic privileges and immunities neither connote irresponsibility nor are they a license for professional misbehavior. Rather, they mean no more and no less than the security guarantee for the persons of the diplomatic functionaries and their effects from jurisdictional elements (such as political interference, legal prescriptions or rulings from municipal courts) of receiving states so as to effectively represent (Sharp, 1991), negotiate (Rosoux, 2013, pp. 795–821), gather information and communicate with, as well as perform other ancillary functions (Wiseman, 2015) for, the accrediting state(s) without let or hindrance; without censorship or becoming targets of attack, repression, intimidation or even loss of jobs because they act in the best interest of the accrediting state(s). In other words, the digital age notwithstanding, the micro-practices required of state diplomats demand a nimbleness, initiatives, discretions and niceties that cannot be attained in an environment constrained by municipal happenings.

The micro-history of diplomacy shows that the institutionalization of privileges and immunities in the discharge of the functions of State began to be contemplated in Europe during the fifteen and sixteen centuries. The practical foundations were laid down by Machiavelli (1469–1527), D'Ossat (1536–1604), Kaunitz (1710–1794), Metternich (1773–1859), Pozzo di Borgo (1764–1842), Lord Malmesbury (1764–1820), Talleyrand (1754–1838), Lord Stratford de Redcliffe (1786–1880), Count Cavour (1810–1861) and Prince Count Bismarck (1815–1898). The foundations were cemented by those who participated in the Congress of Cateau-Cambresis (1559), the members of the 194 delegations who negotiated the Congress of Westphalia (1643–1648), the 80 delegations present at the Congress of Utrecht (1712–1713), the more than 200 heads of missions who took part in the Congress of Vienna (1814–1815) and those at the Congress of Paris (1856). Not forgetting the contributions of those at the Congress of Berlin (1878), the representatives of the 44 states that took part in the peace conference in The Hague (1907), the 70 delegates representing 27 states in the Treaty of Versailles (1919) and the representatives of the 50 states that signed the United Nations Charter at the end of the San Francisco Conference in June 1945. Being representatives of sovereigns

(Cohen, 2017: 22) the personalities achieved relative successes in the discharge of the responsibilities of their offices partly due to the conduciveness of the environments within which they operated.

The above list as well as those in the historical archives of diplomacy (The Royal Archives of Mari, 1700–1670 B.C.; the Amarna Archives, 1460–1220 B.C.) shows that it is not only members of the diplomatic corps who enjoy diplomatic immunities and privileges. They have continuously been extended to other organizations and officials. For instance, under Article 24 and Article 46 of the Hague Conventions for the Pacific Settlement of International Disputes, of 1899 and 1907 respectively the members of the constituted arbitration tribunals enjoy privileges and immunities. Under Article 7 of the Covenant of the League of Nations officials engaged in its business enjoy immunities. Article 19 of the Statute of the International Court of Justice (Article 19 of the Statute of the International Court of Justice) conferred immunities and similar rights on the Registrar, his staff, as well as members of the court. And on 13<sup>th</sup> February 1946 the General Convention on the Privileges and Immunities of the United Nations was adopted by the General Assembly (GA) of the United Nations just as the GA adopted the International Convention on Privileges and Immunities for the Specialized Agencies of the United Nations on 21<sup>st</sup> November 1947. The pristine essence of the ascription is to conceal the beneficiaries far away from the problems and realities of the society to enable concentration on the ultimate goal of fashioning out global harmony.

Over the years the privileges and immunities have relatively produced the hoped-for shot in the arm for diplomacy as the gatekeepers are able to focus their energies into diplomatically productive engagements rather than figuring out how to respond to the municipal happenings of receiving states. In actual sense, taking all the rules into account, the rights and obligations of diplomatic functionaries have just about canceled one another out, though with mild progressivity, so that diplomats' relative experiences have been just about the same in accrediting and accredited states. That is to say, overall diplomatic protocol has not changed human experiences very much.

## **6. Diplomatic Rights and State Sovereignty: Actualizing a Nexus**

By 'diplomatic rights' we mean essentially, though not exclusively, the immunities and privileges which diplomats enjoy and must be seen to enjoy in the discharge of their duties. They refer to the exemption of the representatives of foreign sovereigns from the legal jurisdiction of their host states. The immunities of diplomatists from the legal jurisdiction of receiving states are recognized principles of international law. Yet, since one of the irreducible paraphernalia of state sovereignty is international recognition by other states (Trooboff, 1975) (that is, the ability to conduct relations with other states) the necessities of international intercourse imply that the rights of diplomatists are no personal privileges of the agent but of the rights which states earned and perpetually exercise for being states. The exercise of the rights implies that the membership of the international system undertakes their best efforts to insure the preservation of the sovereign statuses and responsibilities of states and would not seek to obstruct the agents in the discharge of their responsibilities. This is desirable since state sovereignty portend that each sovereign entity is entitled to perpetual security and complete respect from each other. The security and respect are accepted as the irreducible responsibilities of states to each other and sanctioned by and enforceable within international law. The fact that a few actors do not, or that actors' interpretation vary, are causes of considerable tension and many of the failings in diplomacy. This observation equally applies to municipal law. The difference is that unlike what subsists in the domestic arena no central authority exists at the international level to punish those who breach the law. That in itself is offset by the reciprocal honors and protection which states owe to each other provided the agents would not abuse the privileges, incite the people to insurrection, and furnish intelligence to the enemies or plot against the safety of the government of the other state. From the origins of diplomacy in the Greek city states, through Byzantium, Venice and 18<sup>th</sup> century France, to its apotheosis in Edwardian Europe the immunities and privileges enjoy by diplomats theoretically strengthen the equality that exists between and among sovereign states in the international system.

In most cases the diplomatic corps on an annual basis furnishes the Ministry for Foreign Affairs of the host country with a full list of the names of its members for whom immunity is claimed. Since the diplomatic corps are delegations of sovereign states before each other the fulfillment of the object of diplomatic exchange affirms the retention of the dignity of sovereignty. Consequently, the enjoyment of independence, immunities and ceremonial prerogatives in the

discharge of the duties of diplomatic corps becomes a strict right, universal custom and consent of nations. According to Grotius (1625) the immunities of diplomatic agents form an exception to the rule that all persons and things within a sovereign state are subject to its jurisdiction.

The common rule, that he who is in a foreign territory is subject to that territory, does, by the common consent of nations, suffer an exception in the case of ambassadors; as being, by a certain fiction, in the place of those who send them, and by similar fiction they are, as it were, *extra territorium*; and thus, are not bound by the Civil Law (*civili jure*) of the People among whom they live (Grotius, 1625).

The exception is part of the aspirations towards the emergence of a civilized comity of nations. It should be clear by now that the international protocol (diplomatic customs and common practices) on diplomatic privileges and immunities has for centuries conditions the actions and inactions permissible in the inter-state relation. To assure the performance of the instructions of the accrediting state a diplomatic corps is therefore exempt from the civil and criminal jurisdiction of local tribunals, from all taxations and police regulations. Its residence may not be entered by the host state's authorities without permission. Its movables are exempt from custom duties and officers. However, in many countries the nationals of the host state attached to a foreign embassy, other than menial servants, are not entitled to the protection afforded to the diplomatic body.

Diplomatic immunities are further classified into inviolability, freedom of communication and exemption from the local jurisdiction. The uses of these terms are more modern than the application of the principles. Inviolability, as the chief attribute of the diplomatic character speaks to the obligation of the government of the host state to guarantee a higher degree of protection, above that accorded to a private person, to the diplomatic agent, their family, suite, servants, houses (as diplomatic sanctuaries), carriages, goods, archives, documents and official correspondence. Freedom of Communication is compulsory for the discharge of the functions of the diplomatic corps.

For the discharge and expedition of his business and negotiations, an uninterrupted exchange of correspondence with his own court or government is necessary to the envoy. The correspondence of an envoy sent through the ordinary post comes under special protection of international law; the messengers dispatched by him to his court and vice versa enjoy, in times of peace, inviolability for their person and

the dispatches they carry—complete inviolability, even in territory of a third state (Schmelzing, 1820, p. 224).

To enable an unhindered communication between the diplomat and their home state the diplomatic bags are sealed with official seal, and being properties of a foreign sovereign must neither be opened nor searched provided they contain nothing objectionable within the limits imposed by diplomatic privileges and immunities. The couriers of the diplomatic dispatches bear special passports; granted exemption from local civil and criminal jurisdiction, have rights of innocent passage through *third* States.

The jurisdictional immunities of diplomats cover criminal and civil trial or punishment. Immunity from criminal trial entails that should a diplomat commits an ordinary crime in the host state they cannot be tried, require to attend, compel to witness, or punished by the local courts of law of the host country. The diplomat is also protected from the jurisdiction of local civil tribunals' award or judgment. Whereas upon good reason such as the violation of international law or the commission of an unexpected intentional offenses of grievous gravity by the diplomat might justify summary action (Oppenheim, 1952). The state may choose to have the person of the offending diplomat seized, dismissed and or interned as a person covered by diplomatic immunity from the proceedings in the local jurisdiction is not necessarily immune from legal liability. Before embarking on summary action, a state must satisfy itself, not only that the objective outweighs the possible diplomatic backlash, but also that the offense(s) are well founded in fact and international law. Nevertheless, summary action must be carried out with extreme caution given its potential clashes with the basic principle of international law, that diplomatic immunity must be protected.

Yet, diplomatic history teaches that the foregoing course of action has hardly been undertaken without reciprocal response from the state whose diplomat(s) is so treated. Consequently, the conventional practice is to, as far as circumstances allow, forestall the supervening of friendly relations by having a diplomat who has contravene the law recalled under safe-conducts by a concurrence between the governments of the sending and host states to the effect that the agent has become objectionable and their continued presence would no longer serve the purpose of their mission, and therefore unacceptable. This, of course, is a naturally more desirable course of action. In all, the need for the members of the diplomatic corps to exercise their representative character and attributes without coming into conflict

with the laws of the host state is a sometimes successful, sometimes futile, instrument that states use to reduce diplomatic friction in the complicated global system. Yet, the possibilities of summary actions are just warts on diplomatic practice, albeit important warts as they create reflexive ambitions on the parts of diplomats who are spurred to question their own practices, in comparison with those of others, in time and space.

At another level however, any injury done to the diplomatic agents in their country of accreditation is an insult both to the sending as well as the receiving state. That explain why more often than not it is only through the government of the sending state that an aggrieved person can get proper redress against a member of the diplomatic corps. The flip side of the diplomat's rights is that they cannot invoke the provisions of the local legislation or proceedings of the host state against anyone while sheltering themselves behind diplomatic privilege. However, the right of a diplomat to waive the privilege and submit to the local jurisdiction is recognized by law. Yet that right may not be exercised without obtaining the consent of the home state. The requirements on the consent of the sending state may not apply to the spouse, family and domestic servants of the diplomat.

The foregoing also applies to the provisions of international law on fiscal privileges. The diplomat is not subject to the income tax law of the host state and thus exempted from the application of the receiving state's general tariff laws and regulations. In most cases the diplomatic corps are exempt from direct and personal state taxes like income-tax. Any monies received such as diplomatic emoluments, salaries or wages connected with the work of the corps is immune from taxation in the receiving State. The stamps, seals, office stationery, official forms, signs and flags as well as other properties which are essential requirements for the proper functioning of the diplomatic mission are mostly exempt from custom duties and excise. The custom privileges may, on pre-concerted agreements between the states (intended to have an obligatory character i.e. the assumption of legal rights and duties), be extended to include local taxation or licenses such as driver's license, dog, sporting guns and game licenses, etc.

## 7. Conclusion

The very notion of modern diplomacy needs some serious re-thinking as a basis for global peace and security. It is the lack of proper understanding and appreciation of the critical essence of diplomatic privileges and immunities that is responsible for their limited significance to global peace and stability. Yet, notwithstanding the questioning of the universalism and pragmatism of international law extant custom of diplomatic intercourse defines the actions that actors may and may not take by arriving at a consensus among them. And since most actors are conscious of the international public opinion of their reputation they must always try to justify their diplomatic actions and inactions in terms of global best practices. In other words, everyone agrees on the imperative of global peace and stability though there is disagreement on how to pursue it. But, in the aftermath of the Cold War the global community can use the universal acceptance of diplomatic privileges and immunities to garner the political will for a move away from antagonism to cooperation in the pursuit of global peace and security.

## Notes

1. Most International organizations have adopted an international civil service that is neutral, impartial, and independent from member states and acted in the organization's interests (see the oath of loyalty established by the League of Nations in 1932 or article 100 of the United Nations Charter).

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