

The Vienna Convention on Diplomatic Relations, 1961: A Comparative Analysis of State Relations Within the International System

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Abstract— *This paper offers a critical examination of the 1961 Vienna Convention on Diplomatic Relations and its bearing on inter-state relations within the contemporary international system. Diplomatic immunity, a concept with a long historical pedigree traceable to ancient China and Egypt, exists to shield diplomatic agents from prosecution, lawsuits, threats, and coercion while they serve abroad, and has long functioned as a mechanism for fostering cordial relations between states, particularly in periods of tension. Earlier codification efforts—including the 1815 Congress of Vienna and the 1928 Havana Convention; proved inadequate to the evolving needs of the international community, ultimately giving rise to the 1961 Convention, now widely ratified and regarded as one of the most successful and durable instruments of customary international law.*

This study works through the Convention's provisions to identify its strengths and weaknesses, the extent to which it has been misused, the United Nations' response to such misuse, and possible reforms to enhance its effectiveness. The analysis is grounded in Realist theory, given its emphasis on state rationality and centrality, understanding diplomatic relations as fundamentally oriented toward the protection of state interests. The paper finds that weak application and interpretation of the Convention have repeatedly generated inter-state conflicts requiring remedy. It recommends that diplomatic postings be filled strictly on merit to avoid embarrassment from poorly trained personnel; that the Convention be enforced evenly to preserve cordial relations; that diplomats who breach prescribed standards of conduct face firm sanction; that states misusing embassies for espionage or other improper activity face consequences; that the Convention undergo periodic review to keep pace with evolving diplomatic practice; and that the United Nations commit more fully to ensuring universal compliance in the interest of global peace and security.

I. INTRODUCTION

This paper traces the historical background to the Vienna Conventions on Diplomatic and Consular Relations, taking each aspect in turn.

The Regulation adopted by the 1815 Congress of Vienna was the first international instrument to codify any part of diplomatic law. It simplified the previously convoluted rules on ranking heads of diplomatic missions and established that precedence among them should be fixed by date of arrival at post. States did not begin codifying the immunities and privileges of diplomatic agents until the 1928 Havana Convention, drawn up among members of the Pan-American Union, though its terminology and rules did not accurately capture prevailing practice. A more influential contribution came from the 1932 Draft Convention produced by the Harvard Research in International Law project. The creation of the International Law Commission within the United Nations then opened the door to a comprehensive codification exercise confirming rules that, while broadly accepted, were not always respected. The groundwork for the Vienna Conference followed the UN's usual approach to codifying international law in areas already rich in state practice, precedent, and doctrine. In 1952 Yugoslavia proposed giving the subject priority, and following discussion in the Sixth (Legal) Committee, the General Assembly asked the International Law Commission to make codification of the law on diplomatic intercourse and immunities a priority. The Commission appointed Sweden's Mr Sändstrom as Special Rapporteur, and his report underpinned the draft articles the Commission adopted in 1957. The Sixth Committee debated these articles and circulated them to UN member states and specialised agencies for comment; the Commission incorporated feedback from twenty-one governments

and, in 1958, produced revised and expanded articles, recommending that they serve as the basis for a convention, a recommendation the General Assembly endorsed. Eighty-one states attended the Vienna Conference, held from 2 March to 14 April 1961, and the resulting Convention was signed on 18 April. It entered into force in 1964 and, by early 2018, had 192 parties, making it one of the most widely ratified conventions in existence.

1.1 What was the aim of the act (legal context)?

The Vienna Convention on Diplomatic Relations set out to codify the long-standing customary rules governing diplomatic missions carried out by diplomatic agents between states. It was designed as an international treaty that would give future diplomatic relations a settled framework and guarantee certain rights and immunities to all parties. Its preamble states that it seeks to affirm and regulate the rules of customary international law and to secure friendly relations among nations regardless of differences in their constitutional and social systems. The Convention aimed to foster friendly relations between states and to allow diplomatic missions to function without coercion or harassment from either side. It pursued this by laying down clear obligations for the receiving state, spelling out the immunities available to a diplomatic agent, and setting out the duties owed by the agent representing the sending state.

1.2 What main changes did it make to the law?

The 1961 Convention gathered and codified a substantial body of rules – 53 articles in total, covering envoys and diplomatic missions. These rules bind every signatory state, whether it is sending an agent abroad or hosting one from elsewhere.

The Convention sets out obligations for the receiving state, which bears overall responsibility for protecting mission agents on its territory by putting adequate safeguards in place and ensuring missions can operate without unnecessary interference. This extends to exempting mission premises and transport from search, and Article 27 further requires that communications between an agent and the sending state remain secure, meaning the receiving state cannot seize a diplomatic agent's documents, even where it has reasonable grounds to suspect their contents.

Diplomats from the sending state likewise enjoy immunity while in the receiving state, including protection from arrest or detention even where the conduct in question is personal rather than mission-related. Article 31 confirms that an agent is immune from the receiving state's criminal jurisdiction, while immunity from civil jurisdiction is qualified by specific exceptions, including conduct falling outside official duties. Article 32 allows the sending state to waive these immunities, and most of the protections available to the agent extend to their family as well.

The Convention also, for the first time, set down in writing the duties and functions of diplomats. An agent's conduct is meant to serve the sending state's mission rather than personal gain, and while enjoying the privileges the Convention confers, an agent is equally obliged to respect the receiving state's laws and refrain from interfering in its internal affairs.

II. THEORETICAL FRAMEWORK

Few instruments produced through the United Nations' codification process have achieved the near-universal reach of the Vienna Convention on Diplomatic Relations. Almost every sovereign state has ratified it, and compliance among parties remains consistently high. Several factors account for this: the International Law Commission's preparatory drafting was unusually thorough; the delegates who negotiated the final text at Vienna showed a marked willingness to compromise; the core rules of diplomatic law had already proven stable for roughly two centuries before codification began; and reciprocity gives every state a direct stake in observance, since a state that mistreats a foreign diplomat exposes its own envoys abroad to the same risk.¹

2.1 Historical Context

Long before any treaty codified diplomatic law, most societies that wished to deal with one another peacefully – rather than through conquest, treated envoys as untouchable. That protection began as a religious obligation rather than a legal one: a herald had to be able to travel safely to negotiate a truce, or there could be no basis for settling disputes at all. This kind of personal inviolability is documented among the Greek city-states and in ancient India, but it mattered less once Rome, and later Byzantium,

¹Drawing on Eileen Denza, 'Vienna Convention on Diplomatic Relations', United Nations Audiovisual

Library of International Law (2009)
<<https://legal.un.org/avl/ha/vcdr/vcdr.html>>.

came to dominate their regions -both empires were built on subjugation rather than coexistence, and had correspondingly little use for it.

The practice re-emerged with the Renaissance. Amid the religious wars of the sixteenth century, European sovereigns began granting protection from criminal prosecution even to ambassadors suspected of plotting against them, on the theory that predictable treatment of envoys served everyone's interest. By the Peace of Westphalia in 1648, permanent embassies had become the ordinary way states conducted business with one another, and over the following century a body of customary rules took shape: immunity for ambassadors and their households from civil and criminal proceedings, inviolability of embassy premises, and exemption from local taxes and customs duties. Grotius, Bynkershoek, and Vattel each recorded these customs in the seventeenth and eighteenth centuries. Formal codification came much later. The 1815 Congress of Vienna dealt with only one narrow but contentious issue -the ranking of heads of mission, which it resolved by fixing precedence to date of arrival rather than rank or title, ending disputes that had previously turned on ceremonial status and access to the host sovereign. Substantive immunities and privileges were not codified until the 1928 Havana Convention, negotiated among Pan-American states, though its drafting did not track actual practice closely. The 1932 Harvard Research draft did a better job of capturing the customary rules as they stood. It was the later creation of the UN's International Law Commission that opened the door to a genuinely comprehensive codification -one that would need to resolve several points on which state practice still diverged, including the immunities owed to junior mission staff and the treatment of a diplomat who happened to hold the nationality of the host state.

III. NEGOTIATING HISTORY

The path to the 1961 Convention followed the UN's usual method for codifying a field already rich in precedent and practice. Yugoslavia asked the General Assembly in 1952 to prioritize the topic; the Assembly in turn directed the International Law Commission to treat it as a priority, and the Commission put Sweden's A.E.F. Sandström in charge as Special Rapporteur. His work formed the basis of draft articles adopted in 1957, which were

then circulated to UN member states for comment. Input from twenty-one governments shaped a revised 1958 draft, which the Commission recommended as the basis for a treaty - a recommendation the General Assembly accepted. Eighty-one states then met in Vienna from March to April 1961 to finalize and sign the Convention.

The negotiations succeeded partly because there was little to fight over: the underlying rules of diplomatic conduct had been settled for two centuries, and because every state simultaneously sends and receives diplomats, no state had an incentive to weaken protections it would need reciprocated abroad.

The one genuinely contentious issue was communications technology. States with advanced infrastructure wanted an unqualified right to operate wireless transmitters inside their missions; others worried this could be used to broadcast propaganda or otherwise evade the receiving state's regulatory reach, since the transmitter would sit on inviolable premises the host state couldn't inspect. A compromise text requiring "proper arrangements" for such use, which some feared implied a right of inspection, was floated and then withdrawn in the interest of consensus.

A comparable compromise resolved the question of the diplomatic bag. Earlier custom had allowed a suspicious receiving state to challenge a courier and demand the bag be returned unopened or inspected jointly. The Commission ultimately rejected any inspection right at all: the bag could never be opened or detained, though the sending state remained under a duty to use it only for official material -the rule that became Article 27.

Junior mission staff; secretaries, translators, and similar personnel without diplomatic rank posed a third sticking point, since states had previously treated their immunities very differently. A British-proposed compromise broke the deadlock: full immunity from criminal prosecution, but no immunity from civil suits over conduct unrelated to their official duties (a traffic accident while off-duty, for instance).

IV. KEY PROVISIONS

The Convention supplies a complete legal framework for how diplomatic relations begin, operate, and end, resting throughout on the consent of both states involved. It defines what a mission is for, how appointments are formalized, how a state can declare a diplomat persona non grata, and how precedence is determined among heads of mission. Its central purpose is to let missions function without interference from local law enforcement while communicating securely with their home governments, and it also addresses how relations can be scaled back or broken off, and how a third state can step in to protect a sending state's interests where no mission exists.

A handful of articles do most of the practical work. Article 22 makes mission premises inviolable-receiving-state officials cannot enter without the head of mission's consent, even in an emergency, and the host state bears an affirmative duty to protect the premises from intrusion or damage. Article 24 extends that inviolability to mission documents and archives, wherever they're kept. Article 27 protects communications between a mission and its home government, and specifically bars the receiving state from opening or seizing the diplomatic bag under any circumstances -arguably the single most important guarantee in the whole Convention, since secure communication is what makes a mission useful at all.

Articles 29 and 31 cover the diplomat personally: inviolability from arrest, and immunity from both criminal and civil jurisdiction (with defined exceptions to the civil immunity, reflecting areas where states hadn't previously agreed). Article 32 lets the sending state waive any of these immunities. Article 34 exempts diplomats from local taxation, subject to specific carve-outs, and Article 36 exempts their imports from customs duties for the length of the posting.

Articles 37 and 38 round out the framework: the first extends a scaled-down version of these protections to family members and junior staff, and the second strips most immunities from anyone who holds citizenship or permanent residency in the receiving state, keeping only protection for their official acts. Together these two provisions sharply narrowed the pool of people who could exploit diplomatic status, consistent with the Convention's underlying premise

that immunity exists only to the extent a mission actually needs it to function.

V. INFLUENCE OF THE VIENNA CONVENTION ON DIPLOMATIC RELATIONS

The Convention's influence is hard to overstate. It came into force within three years of adoption, and nearly every state has since ratified it- an unusually fast and complete uptake for a multilateral treaty. Reservations entered by particular states on contested points have mostly been abandoned or simply fallen into disuse, leaving a strikingly uniform regime in practice.

It has weathered real criticism. In the 1980s, the shooting of a London police officer from inside the Libyan mission - after which the UK severed relations and the entire mission left the country protected by immunity- sparked debate about whether the Convention's protections went too far. More recent scholarship has raised similar concerns about immunity shielding human-rights abuses, including torture, from any legal remedy. Despite this, the core protections have proven remarkably durable, on the theory that they're already calibrated to what diplomacy genuinely requires.

Public concern has shifted mostly to physical security: embassy sieges, bombings (most devastatingly the 1998 US embassy attacks in Kenya and Tanzania), and kidnapping of diplomats for ransom, a problem largely brought under control once governments agreed collectively not to negotiate with hostage-takers. The most serious breach of the Convention itself came in Tehran, where Iran's revolutionary government tolerated the year-long detention of US embassy staff. The US took the case to the ICJ, which found extensively in its favor (United States Diplomatic and Consular Staff in Tehran, 1980); a ruling that helped the US retain international backing until Algerian mediation secured the hostages' release. In 2005, the ICJ likewise upheld a Ugandan counterclaim in *Armed Activities on the Territory of the Congo (DRC v. Uganda)*, finding that Congolese troops had violated Article 29 by mistreating staff at Uganda's Kinshasa mission.

Domestic courts apply the Convention constantly; usually in disputes over the precise scope of civil-

jurisdiction exceptions, the meaning of “permanent resident,” or how to balance mission dignity against the right to protest nearby. None of these routine cases involve the kind of fundamental breach seen in Tehran or Kinshasa.

The Convention has also become a template elsewhere: it shaped the 1963 Vienna Convention on Consular Relations, the 1969 Convention on Special Missions (less successfully, since that treaty didn't fully account for how different special missions are from permanent ones), and is regularly cited by analogy in agreements covering international organizations' staff and premises, and in the 2004 UN Convention on Jurisdictional Immunities of States and Their Property.

VI. FINDINGS AND RECOMMENDATIONS

This research has sought to answer the questions raised at the outset.

It has established that diplomatic immunity existed well before the Vienna Convention, and that its purpose has always been to protect diplomatic agents in the discharge of their official functions while fostering friendly relations between states: the rationale for immunity established in ancient times carries through into the Vienna Convention, which now governs diplomatic relations.

The paper has also tried to shed light on when diplomatic immunity tips into abuse. The governing instrument makes clear that immunity is granted not for the personal benefit of the diplomatic agent but to promote the effective performance of official diplomatic functions.

The research further shows that, although the VCDR governs diplomatic relations, it has not been effective in curbing abuse of the immunities and privileges it grants, since diplomatic agents can invoke the principle of inviolability as cover for such abuse. It also finds that an absolutist reading of the inviolability principle tends to come at the expense of the human rights of citizens in host states, raising the further question of whether the VCDR should take precedence over human rights, or the reverse.

Receiving states have generally tolerated this kind of abuse out of reciprocity to protect their own diplomats serving abroad and to preserve diplomatic relations. Drawing on case studies of individual

diplomats, this paper has tried to map some of the ways immunity has been interpreted, and to show that, in most cases, no action is taken to bring the offending agent to justice.

The VCDR obliges diplomatic agents to obey the laws of the receiving state. When agents abuse their immunities, they breach this duty, and in most cases it is the citizens of the receiving state who bear the consequences. Because a state owes responsibilities to its own citizens, the receiving state should be able to protect them and hold accountable diplomats who violate their rights.

The VCDR has been used as a shield against jurisdiction in the receiving state, resting on the principle of inviolability, and it provides for an essentially absolute form of immunity, even though its preamble frames immunity as a means of enabling diplomats to perform their official functions efficiently, not as an end in itself. The Convention should be reviewed and revised so that certain conduct by diplomatic agents falls outside the scope of the immunity they enjoy.

Such revisions might exclude from immunity any conduct that falls outside a diplomatic agent's official mandate, particularly where that conduct infringes the rights of citizens in the host state, in other words, confining immunity strictly to official duties. Deterrent measures are also needed to discourage diplomatic agents from acting outside their official capacity in ways that breach the receiving state's laws, meaning the VCDR should be strengthened in this respect. Where a diplomatic agent has been recalled to the sending state, the VCDR should provide a mechanism — whether through the receiving state or a designated third party - for ensuring that agents who have abused their immunity and privileges are supervised and brought to justice in the sending state, even where they remain outside the receiving state's jurisdiction. Where prosecution in the sending state proves unworkable for lack of evidence, the receiving state should have the right to prosecute. A diplomatic agent should be subject to the receiving state's jurisdiction where their conduct breaches fundamental norms of that state and falls outside their official functions.

Neither the immunity of the mission nor that of the diplomatic bag should be treated as absolute. The VCDR should provide exceptions where mission

premises or the diplomatic bag are used to carry out criminal activity affecting the receiving state. Diplomatic police should be given greater authority to bring proceedings against diplomatic agents guilty of criminal conduct, or of deliberately acting outside their official functions in ways that disregard the receiving state's laws without bearing on their official role, and should also be empowered to investigate suspected abuse of diplomatic immunity -powers that should be written into the VCDR itself. Throughout any such process, the diplomatic agent should be treated with respect and dignity. Because diplomacy forms part of international law and exists partly to represent states, there is also a risk that a receiving state might pursue proceedings against a diplomatic agent in bad faith, which could itself damage relations between states. An ad hoc tribunal should therefore be established to rule independently on cases of immunity abuse that are criminal in nature, distinguishing conduct that is genuinely grave, since what counts as grave in the receiving state may be regarded as minor elsewhere, in which case recall of the diplomat, rather than prosecution, would guard against malicious proceedings. This tribunal should also be able to review a diplomat's conduct more broadly, penalising conduct that is criminal or that infringes the rights of citizens of the receiving state. The existing VCDR already provides for declarations of persona non grata and for waiver of immunity; these mechanisms for addressing abuse should be applied more strictly. Taken together, these recommendations would help deter diplomatic abuse by signalling to other diplomats serving abroad that such conduct carries consequences.

VII. CONCLUSION

This paper has shown that abuse of diplomatic immunity does occur, and that the VCDR, as the instrument governing diplomacy, has not been adequate to curb it which is pointing to a clear need to reform the Convention.

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