



Assessment of Human Rights and Diplomatic Immunities

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Abstract

This article discusses the subject of diplomats that is draws from the French word "diplomate," which refers to an individual whose role is to communicate on behalf of the country. Diplomats have both domestic and international status. The early history of the Middle Eastern area, the Mediterranean region, India and China has been known to have diplomatic negotiation. The principle of diplomatic status is considered to be the foundation of foreign law, as well as the customary laws of sovereign immunity are as ancient as diplomacy itself.

This illustrates the foreign law, which is not inherently separate from domestic law. Human rights should be protected first and foremost by avoiding their abuses, punishing the violators adequately and ensuring a suitable solution. It is also important, as important as grappling with infringements, to recognize systemic barriers to justice. Since diplomatic immunity covers accredited entities from domestic authority, the expected implementation of the oppressive legal order is essentially interfered with. This essay describes the tension concerning human rights as well as diplomatic immunity through qualitative study.

Keywords: Diplomatic immunity, foreign laws, Domestic authority, Human rights, Sovereign rights violation, Barriers to justice

Introduction

Diplomatic Immunity and Human Rights: A Brief History

Diplomatic immunity is characterized on the basis of a long antiquity of state assistance. According to the 1961 Vienna Convention [1], it formalized the current customary public diplomacy law as well as fixed a few other contradictory practices of the Member States and presented other laws and regulations contributing to the formation of diplomatic laws that are based primarily with a well-received multi-lateral agreement and ancient customary law [2].

Whilst there is a different storey about international and regional human rights laws. The concern was more or less limited to military operations and enslavement until the dawn of the 21st century, however a major change resulted form after the world war 2 [3]. The outcome was the implementation of the international covenant as well as a series of multi-lateral treaty follow-up and values-specific conventions that soon supported international human rights laws. International and regional human rights rule is thus a comparatively recent phenomenon created by many Conventions, several of which have been concluded in the mid of the 21st century [4].

The word "diplomat" is originates from the french word "diplomat," that refers to a person with the mission of negotiating for the Nation. Envoys (or Diplomats) are both domestic and globally valued. The principle of diplomatic immunity does indeed have a long tradition of international human rights law and traditional sovereign immunity laws are as traditional as diplomacy itself [5]. The sources of negotiation from the India, the Middle East, Mediterranean, and China are traced in early Histories.

Historical Evolution in India¹

India is known to be the house of one of the most traditional diplomatic practices worldwide, as many indigenous civilisations might study the origin of diplomatic contact as well as the absolute independence of the judiciary of diplomatic ambassadors. The origins of which date back to the fourth century BC of Arthashastra are significant sources in our knowledge in earlier Indian political history. The 'science of politics' is documented by the great Sanskrit scholar Kautilya living during the Mauryan dynasty.

According to Adhikarans volumes 6 to 13, it relates widely to international and security matters. Kautilya 's diplomatic rule was based on Sama-daam-bheda-danda's doctrine (persuasiveness, rewards as well as the threat of power). Indeed, the "cardinal points" of the former Indians political structure is called the 4 ideals [6].

In compliance with this theory the monarch or ambassador can use the strategy of mediation or diplomacy in the first place when negotiating with international forces, then, if it fails, he should use the methods of gifts or bribers. If the required outcomes are not obtained through the use of both two strategies, then the enemy can then attempt to generate disharmony. If all these choices fail, he will then use the weapon of threat of war or aggression in last resort. However, only one approach can be used at a time by the monarch or negotiator.

These rules may be applied either together or individually, depending on the personal qualities of the international leader or rival. Furthermore, Kautilya also explained, by referring to *Matasyapurana*, the other contentious and

¹<https://brill.com/view/journals/cjgg/3/2/article-p182>

aggressive *bheda* as well as *danda* practices, which suggest that the one as well as the same policies could not be pursued every time and also against everyone, for there are holy and evil people on earth [7].

The old treaty also specifies the diplomat's qualifications and responsibilities. In the satisfaction of the subjects the King's virtue lies, and his well as his own profit lies in what is advantageous to the people. It is not well for the King what is dear to him, but it is valuable for him what is dear to the subjects. It is assumed that during their service the diplomats will adopt this psalm.

In addition, the Treaty speaks of the period during which diplomats' privileges and obligations begin and end. As per Kautilya, it is the obligatory on the part of the messenger to keep the prestige intact of the king while conveying the message of the king. But whatever is the message the messenger should not be harmed.

Further as per the Manusmriti (the ancient Hindu standards of conduct) guests have been given a highest regard. It had been stated that the guest should be given place to sit and food to stay fit. Ancient Tamil society have showed a similar respect towards the guest. The important Tamil literature, such as, *Thirukkural*, *Tholkappium*, *Puranuru* and *Silappadikaram*, includes references to various facets of diplomatic practises. In addition, there was references on the role of an ambassador in ending the conflict in the Tamil work of literature Puranura which may be translated "Four hundred poetries of outside world and life." "Even if a diplomat's speech or actions offended, they weren't really taken into custody".

Likewise, the Kingdom of Maurya used to have a dynamic diplomatic system, particularly under emperor Ashoka. Yet he gave more exposure to peace negotiation and "buddhist negotiation" than to war diplomacy with respect to his strategy of renouncing the war. In conclusion, it is asserted that the importance of these concepts to the growth of international foreign relations law can not be ignored, considering the simplistic character of these laws. The early diplomatic practise in India has been steadily replaced by the advent of the Mughals and British by new diplomatic values and customs [9].

Historical Evolution in Other Legal Systems²

Diplomats were named "emissaries of Heaven" at the ancient period of Greek people. The breach of the identity of an ambassador was generally viewed as insulting against the gods. It is remembered that the ideas of the Greeks take on a very peculiar role in the history of diplomatic immunity. Since the Ancient Greeks the envoys have been "powerfully secured." Interestingly, it was due to the divine wrath by the assassination of the diplomats of the Darius throughout the fall of sparta and athens in 491 BC [10]. As the Greeks, parliamentary privilege was also seen in Romans as holy and the inviolability of envoys was stressed quite high [8].

The Romans established the college of fetials for foreign affairs as a semi-religious and semi-political organization. This university was at the time the primary centre of diplomatic action and established a series of laws called 'fetial law' as this institution was considered. The personal inviolability of envoys was significant in this special legislation. This law mandated the prosecution of international emissaries as a serious felony as well as the trials to be performed in public.

The Mendoza affair helped to reinforce the principle of sovereign immunity mostly during sixteenth century. In 1580, for its role in the Throckmorton Case, the UK government convicted Don Bernardino de Mendoza, the Spanish Diplomat to england, of the treason offences against the monarch. Queen Elizabeth I would have to have been eliminated and Mary, Queen of Scotland, to be released. The expertise of two top attorneys, Alberico Gentili as well as Jean Hotman, were asked to decide if the Envoy had the right of privilege as his petition was taken before the public tribunal. While Gentili argued that the officer should be dismissed only, Hotman claimed that he was to be arrested because of his official misconduct. The envoy, even though dismissed, had the provision that the envoy had the freedom to take action against the aggressive actions of the diplomatic subject to the freedom of the receiving country to rule on its own terms [5,6].

The principle of the right of embassy was also developed during the same time. It recognized states' right to send diplomatic officials and to accept them. The result was that in 1648 the Treaty of Westphalia was implemented and the existing state structure came into being.

A significant discussion on diplomatic rights and immunities has taken place over the intervening two decades. Many leading international law writers, including Hugo Grotius, Ayrault, Albericus Gentilis, Richard Zouche, Van Bynkershoek, and Emer de Vattel, were based on this. These scholars clarified the way diplomatical rights and immunities were given. There are three major theories of diplomatic law, specifically, '*representation theory*'.

²https://brill.com/view/journals/cjgg/3/2/article-p182_182.xml?language=en

'*extraterritoriality theory*', and '*substantive requirement theory*', which have been established in various publications [12].

Prevention, Punishment and Remedy relating to Diplomatic Immunities and Human Rights

From a legal principle a legal right is created. Legal standard is a coercive structure which basically imposes moral obligations and transforms into legal rights in connexion with the violated group. Coercive actions as punishments for breaches of civil commitments and human rights are provided for in the Civil Norms. A punitive court order aims mainly to prohibit and punish one for interfering with one-another's interests.

International law does not vary significantly from national law frameworks. The interests of the citizens can be secured by first and foremost prevention of their breaches, sufficient penalty for the violators and sufficient remedy.

Prevention refers mostly to removing systemic barriers, which are the source of inequality, in the field of human rights. It is also critical, as significantly as grappling with abuses, that systemic barriers to justice be established. Since the diplomatic immunity of certified entities is beyond national integrity, the planned execution of the repressive legal order is in fact interfered with.

In cases of immunity, the second feature of penalties within the punitive legal framework described as punishment indicates a deficiency. Remuneration is the cornerstone of the socio-economic strategy is known as 'regulatory laws.' Therefore, in the context of human rights, the problem can be resolved in amending diplomatic law to ensure that breaches are punishable sufficiently to meet the principle of punishment.

A issue arising from the operation of diplomatic immunities is that the criminal can not be forced to pay restitution for his illegal activity to the survivor. This leads to a stronger case of reform, since the third protection is lacking: the appropriate remedy for victims of accredited people's human rights violations.

Diplomatic Law and Human rights are the main reason which lead to a possibly colliding of the two sets of laws, not only because a host state can not sanction a protected wrongdoer, but also because of the inability of the receiving state to make a satisfactory recourse to effective prevention before the wrong is committed.

Human Rights vs. Diplomatic Immunities: Some Examples of Collision

The association between violence and human rights in general is one of the embodiments of the inherent correlation between human rights and severe violation of immunity. One writer indicated, for example, that acts of violence had the impact of bullying in common. This works eymologically and tautologically and makes the person think about physical injury and intense anxiety.³

³ <http://www.legalserviceindia.com/articles/dhuman.htm>

(i) Right to Life: One indicator of the conflict among rights to live including diplomatic immunities was when a British law enforcement officer was assassinated in April 1984 and eleven Libyan protesters were wounded outside the Libyan Embassy in London. In this situation, the British justice system can not investigate and convict any unnamed sources who have supposedly shot at the victim via the Embassy's window. Likewise, the suspected violator could not be compelled to pay the victims' relatives and eventually lead to difficulties judging them, because it was probable that the assailant was first influenced by knowledge of the diplomatic privileges available.

(ii) Slavery: There were also registered diplomatic slaves, some forced to go to bed on the streets, eat table scraps and, often, whipped or sexually assaulted, for interminable hours, seven days a week, for little to no pay. Your master's passports were discounted as escape cover.

In one instance, an Egyptian ambassador posted in the United States kept a Bolivian worker as a virtual hostage. She worked seven days a week and never got a cent. Diplomat kept her passport after she contracted a debilitating illness that induced inflammation and infections and declined her medical attention.

In comparison, justice should be served and civil rights upheld where diplomatic immunity is not open. The storey of two women who lived in the house of the Princess of Kuwait's Royal family as slaves in London shows this. One told the police "she's battered, kicked, killed and died of malnutrition." The princess argued then that she had no legal right to the diplomatic immunity she had earned. She was sentenced in February 1985, suspended for two years, to six months in prison and ordered the slings to pay £ 2,000 in damages, fees and restitution.

(iii) Security of the Person: In the 1982 shots at a Washington night club, the victim of the Brazilian ambassador son never recovered fully himself from injuries and received mental health support. In another instance, the Mexican UN Ambassador broke through a car from a man in the city of New York and pointed a gun to his head, since this man was staying in an area reserved for envoys for 5 minutes. However, the ambassador has not been charged.

(iv) Rights of the Child: In accordance with Article 19 of the Child Rights Convention it states, among other things, that all measures effective to safeguard children from all forms of physically or psychologically violent behavior shall be dealt by the State Parties.

In one case, a nine-year - old child from the Zimbabwean Republic mission was sent to an inn after his school authorities discovered him being bruised and scourged severely. The child was hung by the ankles as well as beaten and afterwards slashed down so he did fall on his head. A further event in London concerned a US ambassador who, after an English High Court decision, awarded his German wife possession of the girls, whisked his 2 daughters into the U.S. The girls of 10 and 13 years old were continually refused to be brought back to England. The English Court, evidently dissatisfied with the exclusion argument, said that it would appear odd for a country that ratified the Hague Convention on the Illegal Enlistment of Children and Slavery to avoid the convention by demanding exemption from the convention.

Table 1: Federal Civil Cases that involved International Organization Officials, Consulars Diplomats, Military personnels, and Others [13,14]

Name of the Nation	Detailing of Case	Sponsor	Outcome/Status
UnitedArabEmirates(UAE)	U.S. v. Tolan, No11-00536	UAE Embassy	The defendants fled the jurisdiction and“remain at large.”
India	Bhardwaj v. Dayal, No. 11-cv-04170 (S.D.N.Y. June 20, 2011)	Consulate General of India	Settled
Philippines	Cruz v. Maypa, No. 13-cv-00862 (E.D. Va. filed July 16, 2013)	World Bank	Settled with Settlement Amount \$140,000
Indonesia	Arma v. Prakoso, No. 14-cv-03113	Indonesia’s Embassy	Terminated (voluntarily)
Malawi	Lipenga v. Kambalame, No. 14-cv-03980	Republic of Malawi Embassy	Still pending
India	U.S. v. Khobragade, No.1:14-cr-00176-WHP	Consulate General of India	Still pending
Pakistan	Hussain v. Shaukat, No. 16-cv-322	Pakistan’s Embassy	Still pending

Conflict of Resolution

The main issue is about the immunities of diplomatic nature which is supposed to continue in such case too when human rights breach has been identified, or if human rights should be safeguarded, even though this means limiting diplomatic and consular immunity.

Diplomatic immunities have been maintained by conventional approach by the long-term history by immunities by ambassadors and State officials. However it will challenge the level of diplomatic immunity in the discussion over protection for human rights. This means, in other words, that 'actions done in official roles' can be protected by

immunities. Moreover, constitutionally guaranteed privileges can take precedence over international immunities, since a constitutional provision is of greater legal standing than a Treaty provision.

Of course, it is still supposed to be differentiated in the matter of human rights violations, such as the right to life including physical validity and civil dignity, as there is not a issue that is special in that it affects diplomatic and consular privileges but a generic issue that would take the required degree of versatility to identify and appropriate solutions.

Conclusion

Given the practical requirement of the fundamental principle of diplomatic immunity, any conduct claiming immunity must be expected to satisfy the diplomatic purpose. It is further argued that human rights abuses can not, by any definition, be defined as part of a diplomatic or consular operation, nor can any authorized activity be accepted. This notion was specifically articulated in the report of the British Foreign Relations Committee, which says that violence or other illegal acts can not be explained with respect to certain diplomatic roles.

In reality, diplomats should not be called diplomats when behaving as criminals, and so they do not benefit from the immunities of which diplomats have a right. There is an impediment, however, because the international community sees immunity in certain countries as the requirement for effective diplomacy. They claim that, without it, diplomats and family members are vulnerable to all kinds of diplomatic stresses.

It has not been practicable to make any difference between ambassadors who deserve immunity and others that do not. The case that diplomatic immunity is given only to essential missions has collapsed completely. Therefore, the equilibrium between civil/human rights including diplomatic immunity is very crucial.

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