

IMMUNITIES AND PRIVILEGES OF DIPLOMATIC OFFICER: THEORIES, CONVENTIONS, AND THE COURTS

By

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Abstract

The concept of immunities and privileges of diplomatic officers is an age long practice. In the same way, the appointment of country representatives in another country to perform some function and duties. However, there have been changes in the way nations relate amongst themselves, yet the basic functions of diplomacy remain stagnant. The host country ensures the safety and personal freedom of ambassadors, guarantees freedom to work unhindered for the benefit of the sending and further clothe the representatives with immunities and privileges. This practice is now internationally recognised, as several legislations and treaties have been signed in to ensure the protection and preservation of this immunities. This paper explores the various legal protection under international law, differentiates between their functions. it further justifies why these protections are necessary, explains the theories of law that supports this rationale and their implications thereof. These privileges and immunities are usually agreed upon by the nations and or international organisations, with heavy reliance on international customary principles and practices. The paper further discusses the two major Vienna conventions and other connected laws. It concludes by explaining the extent to which diplomatic powers can be exercised and the protection available where a diplomat goes beyond and above his limit. It notes that diplomatic immunity is for a functional protection and explains the remedy for both the sending and receiving state where the privilege is abused by anyone.

Keyword: *Immunities, Privileges, Diplomatic Officers, Conventions, Court*

Introduction

Diplomats are persons who reside in foreign countries as the representative of the sending country, they carry out their legal or political transactions based on their foreign policies. Diplomats who represent their country abroad enjoy diplomatic immunity. This protects them against prosecution in the receiving state for the entire period in which they hold their diplomatic post. The international agreements on diplomatic immunity can be found in the Vienna Convention on Diplomatic Relations. For instance, the receiving state is not permitted to prosecute diplomats, and must protect them, along with their families and property. The main of the convention is to allow diplomats to carry out their work without hindrance in the receiving state. They can do this only if they do not face any risk of reprisals the latter states government. Functions of diplomatic agents are determined by the rules and the regulations of international law and domestic laws of the states. International law confers diplomatic immunity on diplomats from the exercise of jurisdiction by receiving states.

In this study, there will be definition of key concepts as it relates to international law. Concepts such as immunity, international organizations, special missions, privileges will all be defined. This study is set out to discuss the immunities and privileges of diplomatic officials, international organizations and for agents on special missions as regulated and conceived by international law and the courts. It will further examine areas of concern. However, it will be of importance to clarify the meaning of a few terms.

We start the discussion by defining diplomatic mission. It is anecdotally defined as the intention or actualization of diplomatic ties between sending states or international organizations and receiving states for specific or general purposes.

The term ‘receiving state’ refers a diplomatic mission or consular post that is accepting the presence of another state within its territory. Where it is dealing with an international organization, it is commonly referred to as ‘host state’. Furthermore, where a diplomatic mission is accredited to several states, in such an instance, all the states that such a person has been accredited to will be referred to as receiving states.¹

Another thing that will feature in this study is International Organization (IO). It will be elaborately discussed in a later chapter. By way of definition, IOs are organizations that possesses a universal recognition, with specific mandates and largely funded by national governments.² We must however note that international organizations such as the United Nations and its specialized agencies also enjoy immunities and privileges by virtues or treaties and headquarters arrangements which qualify them for several privileges and immunities. Although this law governing IOs differ for each of these organizations considering their functions and peculiar needs. In the same light ‘special missions’ are diplomatic missions for all purposes but with specific responsibilities. They are regulated by the 1969 New York Convention on Special Missions. We shall now attempt a brief discussion.

Special Mission

It is conceived that the idea of special mission developed shortly after the Second World War and was used to foster development among states. This practice is conducive, convenient, and arguably less resource consuming and capable of managing various international tasks. The expression ‘special missions’ is used to explain official missions of a state meant to represent the interest of the sending state in other state(s) for specific purposes.³ Special missions are missions though distinct from permanent diplomatic missions and consular missions, they are

¹ Sanderijn, Duquet, and J Wouters. ‘What the eye cannot see: Justifying limits to freedom of information in the diplomatic context.’ (2020) *Transparency and Secrecy in European Democracies*. Routledge, 117.

² International organization. (n.d.) *WordNet 3.0, Farlex clipart collection*. (2003-2008). Retrieved January 18, 2022, available at <https://www.thefreedictionary.com/international+organization>

³ *International Law Commission Yearbook, 1960*, vol. II, A/4425, para. 38

missions from the sending state with the consent of the receiving states to perform specific task for a limited period.⁴

For a long time, the practice continued but there was no regulation in the field until the 1960s, when appropriate codification was introduced by the United Nations and approved on the December 8, 1969, known as the New York Convention on Special Missions. We must be aware that special mission is temporary missions meant to perform specific task. Its specific nature also distinguishes it from institutional or private representation offices. Special missions may consist of several people who may be representatives and members of staff of the mission, but the mission head is a person ascribed that responsibility by the sending state.

Members of a special mission enjoy privileges and immunities which includes exempted from national dues and taxes regarding the premises they occupy when on mission. We must clearly note that persons contracting with the sending state shall not enjoy such exemptions.⁵ In addition to the sending state notifying the receiving state of the nature and type of special missions, sending states are to intimate the receiving state of the special mission's route and the status of the travelling deputies and members of staff. This is done to ensure for adequate protection within the territory of the receiving states. These missions may also take various forms as they may function as a sole mission or joint mission. As the name implies, a joint mission may act as representative to two or more states with the receiving states. As with a sole special mission, the sending states are also required to notify the receiving state of their intention of sending joint special missions.

International Organisations

These are basically international organizations that are founded under international or a combination of several countries, with such organizations having its own distinct and universal or transnational legal personality.⁶ Although most of the international organizations are relatively modern entities, it however agreed in international law that they should be ascribed privileges and immunity in order to function and discharge their duties well. The rationale behind this provision is because of their operation which cuts across different territories or countries, more so, they should not be subjected to multiplicity of national laws as this will only hinder their duties. Although immunities and privileges exist between personnel of these IOs, and national missions, the basis is however different.

Privileges and immunities are usually agreed upon by the nations and the IOs in advance, through treaties detailing the grant of immunities and privileges. Some countries have further gone ahead to enact national laws on privileges and immunities for some categories of persons

⁴Article 1 of the NYCSM gives a more elaborate definition.

⁵ M Polkowska, 'Space Security and Diplomacy in International Organizations: Some Legal Aspects', *Humanities and Social Sciences* 28.1 (2021), 89

⁶ M Mendelson., 'The Definition of 'International Organization 'in the International Law Commission's Current Project on the Responsibility of International Organizations'. *International Responsibility Today*. Brill Nijhoff, 2005. 371.

that may not be covered by treaties (an example is the United States). This is to help enforcement agents remain guided with people within that category.

When we take the example of the United States, personnel of international organizations with headquarters and other offices within the country enjoy only immunity regarding their official acts.⁷ This may not entirely be the same for heads of such organization or the most senior executive. In most cases, they enjoy immunities and privileges like those awarded diplomatic agents. Personnel of national missions to international organizations especially permanent representatives also enjoy immunities and privileges but are categorised based on the duties they perform.

Immunities and Privileges

Defining or distinguishing between immunity and privileges is not an easy task as both terms could sometimes be used interchangeably. A working distinction will be offered to express that immunity relates to exemption or protection from substantive laws.⁸ Privileges could be viewed from a perspective of facilities granted to someone or select people to enable them function or carry out their duties.⁹ States have the exclusive powers to legislate and exercise jurisdiction within its territory and over its subjects. This jurisdiction may not be absolute as it is constrained by certain limitations under international law. There is a rational that official representatives of a foreign state should be deemed as that foreign state, then it may be sensible for the host state to restrain itself from exercising jurisdiction in matter relating to another State. The host State could be said to have waived its part of its territorial jurisdiction regarding the foreign state.

It is believed that immunities are generally of three categories under International Law: namely, state, functional and personal immunity. They may apply in varying ways but serve related purposes. One of the major rationales for creating immunity status among sovereign states is partly to the maxim of *par in parem non habet imperium* (which can be translated to mean-equals cannot exercise sovereignty over each other) by implication, the courts of one country cannot exercise jurisdiction over a foreign sovereign (at least without consent) immunities is thus granted among the things in international law, to ensure for non-interference in another country's national laws. Immunities and privileges may therefore be needed for the purpose of allowing foreign States perform their public functions in the host State.¹⁰

Categories of diplomatic mission delegate and staff are based on the function they perform. The term *diplomatic agents* are the phrase used for ambassadors as well as other diplomatic officers who interact directly with officials of host nation.¹¹ They enjoy the highest legal

⁷Organizations Immunities Act, 22 USC 2881.

⁸ I Roberts (ed.), *Satow's Diplomatic Practice*, 6th ed., Oxford University Press, Oxford, 2009, p. 121.

⁹ E Debuf., 'The ICRC's legal status, privileges and immunities.' *International Review of the Red Cross* 97.897-898 (2015): 319

¹⁰ S. Sadiq., 'The Privileges and Immunities of Diplomatic Envoys Under International Law.' (2020) (4) (19) *International Journal of Social Sciences*; 111-124.

¹¹P. Behrens, 'Diplomatic Law in a New Millennium' (Oxford University Press, 2017) p101.

immunity.¹² The next categories are *administrative and technical staff* of the mission who supports the activities of the diplomatic agents. This includes secretaries (The term secretary used is however different from the diplomatic rank of ‘Secretary’), clerical personnel, office managers and professional security personnel. The final category are *service staff members*, which includes drivers, cleaners, or general maintenance officers. They enjoy the least category of privileges and immunity.¹³

Inviolability

In simple English terms, inviolability is a source of protection from violation or infringement¹⁴

It is a diplomatic entitlement which been arranged in the Vienna Convention on Diplomatic Relations (VCDR). This benefit is to the effect that diplomatic missions will enjoy exclusivity. In other words, diplomatic premises (and offices) and the buildings within the diplomatic landscape or land ancillary thereto once it is used for the purpose of diplomatic missions are inviolable.¹⁵ The receiving state or any other states is prohibited from entering such premises without getting the authorization of the mission head.¹⁶ Furthermore, the receiving State has a duty to always ensure that the premise is well secure and always protected. Invasion and intrusion must be prevented by the receiving states.¹⁷

Another implication of the privileges of inviolability is to the effect that vehicles and other means of transportation including properties belonging to a mission cannot be searched.¹⁸ In the same vein, diplomatic bags are exempt from search,¹⁹ irrespective the size of the bag. The only prerequisite is that such a bag should bear some form of external markings, indicating that it is confidential and a diplomatic belonging.²⁰ the same rule applies is the diplomatic belonging is passing through another state on transit, all diplomatic belongings, and properties, including files and official communications enjoy inviolability.

Officials of Foreign States

Diplomatic agents enjoy complete immunity unless their immunity is waived by the sending state. Their civil immunity is only limited under four circumstances: (a) the first, being where it is in connection with real estate not done on behalf of the mission, (b) secondly, where in connection with roles played as executors to properties being dispersed in the host nation, (c) where connected with expert or marketable activities outside the opportunity of their official

¹² S. Sadiq., ‘The Privileges and Immunities of Diplomatic Envoys Under International Law.’ (2020) (4) (19) *International Journal of Social Sciences*; 119

¹³ I. Roberts, *Satow's Diplomatic Practice* (Oxford University Press, 2016) 244.

¹⁴ "Inviolability." *The American Heritage Roget's Thesaurus*. 2014. Houghton Mifflin Harcourt Publishing Company Accessed on 18 Jan, 2022 Available at <https://www.thefreedictionary.com/inviolability>

¹⁵ VCDR, Article 1, i

¹⁶ VCDR; article 22, para 1

¹⁷ VCDR, Article 22 para 2

¹⁸ VCDR, Article 22 para 3

¹⁹ VCDR, Article 27, para 2

²⁰ VCDR, Article 27, para 4

duties, or (d) where it is in regard of counterclaims on the same matter where they have been the introducing party in a suit. Members of the family, forming part of the household of diplomatic agents enjoy precisely the same privileges and immunities as do the supporting diplomatic agents.²¹ Diplomats enjoy the uncommon immunity and privilege of personal inviolability, exemption from civil, criminal, and administrative jurisdiction, exemption from taxation, including reliefs from custom levies and duties. At this point, it will be timely to discuss a few of these diplomatic entitlements.

Theoretical Framework

Context will be given to this study by examining some of the conceptual basis and rationale for granting immunities. This aspect of the study will examine the functions of some concepts used and the relationship between law and these concepts as reflected by a major school of legal theory in relation to internalized theories within diplomatic and consular law.

Positivist Theory of Law

The extent of favourable or unfavourable nature of jurisprudential theory is based on the relatedness of such event i.e, its interaction with other accepted legal theories. these assumptions can be manifestly inferred by jurist when analysing laws, creation of commissions in reaching a positivist conclusion. Positivism on its part tends to assume that sovereign states may not be subjects of international law and not the other way round i.e states have no obligation except in circumstances where through valid agreement or by general custom its acquiescence to limiting some of its powers.²² Positivism therefore expresses the unlimited powers of a sovereign state within its jurisdiction which under normal circumstances cannot be questioned or interfered with.²³

HLA Hart is one of the leading legal philosophers of the 20th century with core claims as to the effectiveness of legal positivism. he expressed this opinion severally in his works discussing the development of modern state actors and their reliance on the evolution of the notion legal positivism. His major account is presented in his classical work titled '*the concept of law*' which is also based on the shortcomings in Austin's account on the same theoretical viewpoint.²⁴

Austin on his part concluded that law is a science and a jurisprudential key which prescribes the order or command within the society backed by sanctions or the threat of it by a sovereign properly so-called. According to Austin, law is a command that is backed by sanction to prescribe accepted behaviours. The sovereign is to be conceived as someone who issues out

²¹ A.N. Marković and V. Baltezarević, 'The Abuse of Diplomatic Immunity and Privileges as a Modern Security-Diplomatic Challenge.' (2020) (17) (4) *Megatrend revija* 7-16.

²²B. Leiter, 'Marx, Law, Ideology, Legal Positivism' *Virginia Law Review*, (2015)1193

²³A. Somek, 'The Legal Relation: Legal Theory after Legal Positivism' (Cambridge University Press, 2017)268

²⁴H. Herbert and L. Adolphus, "The New Challenge to Legal Positivism" (2016) (36) (3) *Oxford Journal of Legal Studies*, 467

directives but may not be in the habits of obeying them. Flowing from the Austinian standpoint, the sovereign is a person and not a government as we may have come to know in recent times.

Hart however dissatisfied with this belvedere, argued that these resources are inadequate in the explanation of the usefulness and purpose of law, he tried repositioning the theory especially from the temporal and normative dimensions. Hart's argument is that the law survives the sovereign who issues them, and that the directive of the new sovereign also has the same effect of law; explaining that both the ruler and the law are important components of the law. Hart's account of the theory is to the effect that laws are sets of rules and guidelines that may not necessarily command the doing of something.²⁵

The legal framework of diplomatic and consular law VCDR 1961 and VCCR 1963 are a positive law that supports the immunities and privileges of diplomatic officials that constitute the basis of global interaction among states. By implication, state signatories to the positive laws are under the obligations to fulfil its powers in accordance with the requirements of international law of treaties.

Crucial to the explanation of Hart's positivism is the internal aspect or the internal point of view. As states continue to build relations with one another they likely open themselves to international rules of diplomacy, and international best practices which continue to help in regulating their actions. Although they still enjoy their sovereignty, they however, continue to respect and agree to become regulated by international law.

Theory of Extraterritoriality

It is unclear as to how the theory was established. Early research holds the theory to be a practice of the Ottoman Empire²⁶ before gaining acceptance in most European states. The theory relies on a sending having its presence and observing and scouting for trade opportunities in the receiving state. In other for a smoother relation, the physical presence or designated area accorded to the sending state should be respected as an extension of that state. This in turn becomes a privilege enjoyed by state officials of foreign countries, as they are to be respected as representatives of the sending state, they are also exempt from the national laws of the receiving state. Their activities are not regulated by the receiving state for reasons of their embassies and consular offices being described as the extra-territory of their sending states. An obligation for the receiving state as well as a privilege for the sending state.

A safe place to start the discussion of extraterritoriality is by examining the word jurisdiction. Under international law, the term is used to describe the legal right of a country to enact, enforce and regulate its own laws.²⁷ In other words, it could be seen as the power to exert authority

²⁵Y.S. Park, L. Konge, and R.A. Anthony, 'The Positivism Paradigm of Research' (2020) (95) (5) *Academic Medicine* 692.

²⁶ U Özsu., 'The Ottoman Empire, the Origins of Extraterritoriality, and International Legal Theory.' *The Oxford Handbook of the Theory of International Law* (2016) 127.

²⁷D.L. Hofman, 'Extraterritoriality and International Organizations. *Recordkeeping in International Organizations*' (Routledge, 2020) 99

over people in a particular State. Therefore, states have the authority to exercise their sovereignty and powers over their region. This in turn can be referred to as the territory principle.²⁸ The principle can however be examined either in the negative or the positive. While in the positive aspect, the state can exercise its authority over all citizens irrespective of their status. Meanwhile in the negative, the state cannot exercise its authorities beyond its borders. Jurisdiction can be associated with the concept of national sovereignty, largely because the criterion for national sovereignty includes Defined Territory, Population and Permanent Government. Powers can and should only be exercised within the territory of a state.²⁹

Whereas, power can only be exercised within the territory of a state, the residents or nationals are those who are subjected and bound by the jurisdiction of that state. The government on their part are the legal component of the state saddled with the responsibility of making the laws and to enforce it in regulating the state. By implication other states cannot take actions that will affect another state, this is because their jurisdiction is limited within their territories, it does not go beyond their boundaries- except with the permission of that country.

To that extent, jurisdiction can be said to be closely related to territory. Territory imposes a limit to the extent of jurisdiction exercisable by a state (this is also known as *rationnnae loci*) international law therefore permits a state to exercise jurisdiction and at the same time delineates the exercise of jurisdiction among states based on their territory, which also informs the extent to which national courts can exercise its powers.³⁰

Extraterritoriality is not a modern phenomenon, neither is not exclusive to the discussions on international law, the idea had been previously discussed in the application of security laws, conflict of laws, intellectual property. Sub fields such as terrorism, labour relations and data protection regulation have also had their fair share of discussion using the concept of extraterritoriality. In the context of international integration, the concept is concerned with the managing national jurisdictions.³¹

As stated earlier, jurisdiction does not go beyond national boundaries but continuous interaction and the knowledge that countries do not exist in isolation has made it become obvious that absolute or complete jurisdiction may not after all be beneficial within international law. For that reason, international law suggested the need for reasonable cross interaction and obligation of extended jurisdiction, though regulated by international conventions. That practice has ensured that some individuals and states will enjoy additional jurisdiction outside their national territories although previous headquarter arrangement and prior agreement must have been reached.³²

²⁸M. Pal., *'Early Modern Extraterritoriality, Diplomacy, and the Transition to Capitalism'*. (Routledge, 2019).128

²⁹A J Colangelo., 'A unified approach to extraterritoriality.' *Virginia Law Review* (2011),1019

³⁰M. Hart, 'Introduction: Four Types of Extraterritorialities' (Columbia University Press, 2020) 14.

³¹V. Mainetti, "The League of Nations and the Emergence of Privileges and Immunities of International Organizations" (Brill Nijhoff, 2015) 328.

³²(n 31) 331.

Extraterritoriality is a concept that enables the law or permits a type of law to be applied to circumstances or events outside the territory of the enacting state. In relation to diplomatic law, extraterritoriality presents an opportunity for a sending state to occupy a designated area within the territory of the receiving state, and such an area is to be designated and treated as the exclusive district of the sending state. Usually this will be the embassy or consulate of the sending state that is situated within the receiving state.³³

The idea behind this theory is that if diplomatic missions are to provide protection for the dealings of the sending state in other o ensure fairness and to ensure that the officials of that sending state are independent and are not obstructed from performing their task. The embassy and consular offices re designated as extra territories including the residences of officials depending on their diplomatic rank. The receiving state is to ensure reasonable protection of those buildings, preventing from intrusion of any kind.

Theory of Functional Necessity

This theory suggests that immunity and privileges are needed by diplomatic agents to successfully perform their functions abroad. This theory has been given more recognition after the Second World War, by implication, states increased, so did diplomatic agents increase.³⁴ Furthermore, it is contended that the theory helps to preserve world peace and for states to have mutual respect, irrespective of the geographical size and financial standing of the states.

Immunities and privileges are to be granted to diplomatic agents in accordance with their ranks.³⁵ The preamble of the VCDR also emphasizes that privileges and immunities is not beneficial to the individual, but in ensuring the efficient discharge of diplomatic tasks. Scholars argue that this theory is needed for immunity purposes, because diplomats may find it difficult to exercise their duties if they are not accorded privileges. Immunity will also help them feel safer and more comfortable to work in any region without any hindrance in the exercise of their duties.

Diplomats are also needed to help a state fulfil its important function of maintaining communication between civilizations, in a bid to further its relation and foreign policies. It therefore became imperative that this official communication line is protected as well as the state messengers. Inviolability of the diplomats is consequently needed and should be protected to guard against the inconceivable fallout that may arise in the event of any abnormality. functional necessity may be regarded as the underlying factor for diplomatic immunity.³⁶

Diplomatic immunity been a major discourse under diplomatic and consular law, is arguably traceable to the natural school of thought. The explanation is that diplomats are official

³³M.Z Alaneed, 'Diplomatic Judicial Immunity' (2019) (11) (2) *Revue Jurisprudence*: 193.

³⁴G.R. Berridge, 'Diplomacy: Theory and Practice' (Springer, 2015) 568.

³⁵J.C Barker, 'The Protection of Diplomatic Personnel' (Routledge, 2016) 473.

³⁶N.R. De Carles., 'Early Modern Diplomacy, Theatre and Soft Power: The Making of Peace'. (Springer, 2016).208

messengers of their states and therefore should be protected to avoid conflicts and societal peace bearing in mind their important functions. This, however, explains little on the need for protected classes of person. The modern-day gravitation towards immunity is rooted in the Vienna conventions of 1961 and 1963. The purpose for the privileges is clearly expressed in the preambles is essentially for individual diplomat but for efficient performance of their diplomatic missions.

Grotius and Ayrault also used the theory of functional necessity in explaining ambassadorial immunities in part, as against the usage of other theories. Grotius further used the theory to explain the principle of inviolability of residences of ambassadors and their person which he expressed in Latin saying '*omnio coaction abesse a legato debet*' (meaning- an ambassador ought to be free from all compulsion).³⁷ This reasoning was also applied in the *Barbuits Case*, where the theory was used in interpreting the Diplomatic Privileges Act of 1708. The court held that the privilege of a public minister is to give effect for the course he represents.³⁸

With the weakening of the extraterritoriality theory in the early 19th century, functional necessity grew considerably. One of the factors that contributed to the growth was the need to maintain close friendly ties with other states and to prevent any form or armed conflicts.³⁹ Another likely reason is the establishment of public international organizations which were designed to protect common interest. The theory also explains the extent of immunity that should be granted depending on the functionality of the diplomatic personnel.⁴⁰

The theory serves as the basis for diplomatic immunity but has not been free of criticisms. A major disapproval regarding the theory is that it fails to explain its application. Also, distinction is not offered between the immunities to be offered to diplomatic agents as against independent sovereign.⁴¹ Although some counter-argued that only official acts of a diplomatic agent are covered in this instance. Whatever the side we align with, there seem to be consensus that some form of immunity is needed by diplomatic personnel and that they should be always protected. Therefore, the degree of necessity that is needed to guarantee the diplomat's inviolability is what needs consideration when extending immunities and privileges to any diplomatic personnel.

Theory of Personal Representation

This theory predates the establishment of formal or permanent missions. It is a natural attribute that a mission represents the will or interest of its sender. It is a direct relationship between the sender and its agent. The theory further helps with the preservation of peace and friendliness. This direct relationship implies that the envoy is regarded as the personal agent of the

³⁷T.A. Sowerby, 'Early Modern Diplomatic History' (2016) (14) (9) History Compass. 447

³⁸C.W. Jenks, 'The Legal Personality of International Organizations' (Routledge, 2017) 238.

³⁹F. McConnell, and J. Dittmer, Diplomatic Culture, The SAGE Handbook of Diplomacy (2016) 104.

⁴⁰V. Pouliot and J. Cornut. 'Practice Theory and the Study of Diplomacy: A Research agenda' (2015) (50) (3) *Cooperation and Conflict*, 297.

⁴¹Ibid 313

sovereign, if the honour of the sender is to be respected, it is natural to regard the agent with the honour of the sender. Although there might be no legal explanation, it is a move that explains and provides for independence and equality of states. It further explains the loyalty of the diplomat to its sovereign irrespective of where his duties will be discharged.

Vattel and Bynkershoek in their explanations of the theory, expressed that an ambassador is not a subject of the receiver but remains subject of its sender.⁴² Grotius further argued that it will be an insult if a representative is arrested or detained as it would amount to undermining the sovereign's authority and powers, therefore envoys represent the authority of the sender, and the same weight and respect should be accorded in representative capacity.⁴³ That was the rationale that led England into adopting the 1708 Diplomatic Privileges Act which remained in force until the Vienna conventions were adopted.

Although the theory is linked with equality and independence of states but must not be confused with the right of embassy of that of territorial jurisdiction. In the case of *Schooner Exchange v Mcfaddon*, the judge explained that states have absolute territorial jurisdiction, and cannot be interfered with, limitations to that rule must only be self-imposed and there must be tacit consent between the states involved. Besides that, there must be express agreement regarding immunities and privileges.⁴⁴

The tacit consent rule may be a justification for immunities and privileges because it also based on reciprocity, which is an underlining factor for the theory of representative character.⁴⁵ Arguments are in the continuum firstly that the theory is weakened by a change from monarchical systems to a more parliamentary controlled system.⁴⁶ Diplomatic missions are based on state structures, the practice of having an allegiance to a sovereign ruler is gradually becoming obsolete. More so, instances of non-recognition of a particular government may also impact the theory of representative character.

In a nutshell, the theory identifies the envoy with the sovereign. The envoy is to be seen as the physical representation of the sending sovereign nation. The envoy is to be accorded the respect of his master. For example, an ambassador which may be the head of the mission becomes the official representative of the sending state. It is argued that the principle of personal inviolability is derived from this theory. This theory was accepted and allowed in the resurgence of diplomatic affairs especially when diplomatic envoys were majorly members of the royal families. The head of sending states were usually in the habit of sending their relatives

⁴²F. Iurlaro, 'Vattel's Doctrine of the Customary Law of Nations between Sovereign Interests and the Principles of Natural Law' (2019) *The Law of Nations and Natural Law 1625-1800*, 279.

⁴³E. McGill, 'Grotius, and Law' (Routledge, 2017) 492.

⁴⁴S.E. Ekpo, 'Jurisdictional Immunities of the State (Germany v. Italy): The Debate over State Immunity and Jus Cogens Norms' (2017) (8) *QMLJ*, 151.

⁴⁵A.F. Cooper, and J. Cornut. 'The Changing Practices of Frontline Diplomacy: New Directions for Inquiry' (2019) (45) (2) *Review of International Studies*: 319.

⁴⁶C. Bjola and M. Kornprobst. 'Understanding International Diplomacy: Theory, Practice and Ethics' (Routledge, 2018).72

as diplomats. Attack on a diplomatic agent will then be treated and understood as attack on the ruler of the sovereign state or the monarch himself because of the close family ties.⁴⁷

Vienna Convention on Diplomatic Relations 1961

The first instrument to be discussed is the Vienna Convention on Diplomatic Relations, which is an international treaty that identifies the context for diplomatic relations among different independence states. The Convention expresses the privileges of diplomatic missions that creates for the opportunity to perform their responsibilities without fear in the territory of the host nation. The VCDR serves as the foundational instrument for diplomatic relations.⁴⁸

The VCDR has been globally accepted and serves as an instrument of great importance in diplomatic relations. This may be attributed to the extensive and preliminary research carried out by the International Law Commission, stability of the general standards of diplomatic practice and to the efficacy of penalties and restriction against non-compliance by stakeholders.

However, the Vienna Convention on Diplomatic Relations applies differently to states, while some apply the provisions of rules directly, some have domesticated into their legislation and made amendments to their national legislation. does not apply directly in every state, some states have interchanged the convention's rules into their own national legislation.⁴⁹

The VCDR came to effect as a draft proposal from the International Law Commission. And later adopted in April of 1961. The VCDR is an effect of an outline by the International Law Commission. The Convention was adopted in April of 1961 by the UN Conference on Diplomatic Intercourse and Immunities organized in Vienna, Austria, from 2 March to 14 April 1961.⁵⁰ The VCDR eventually entered into force on the 24 of April 1964.

The VCDR in its preamble recognizes customary international law, detailing the principles, purpose, ethos, and rationale for the need to maintain international peace and security and to make the world a friendlier place to live in whilst also maintaining economic relations amongst states. We must be quick to express that the privileges are not in any way meant for the individuals or representatives of government as incentives, rather it is meant to ensure the smooth running of the organizations and governments and create a general functionality process for discharging responsibilities.

The VCDR details the process for maintaining, establishing, appointing, and terminating of diplomatic envoys and how those relationships are to be maintained and respected. It is a huge document in the context of regulating diplomatic relations, specifying the functions of

⁴⁷ P. Jones, 'Track Two Diplomacy in Theory and Practice' (Stanford University Press, 2020)116

⁴⁸ United Nations, Audiovisual Library of the United Nations: Vienna Convention on Diplomatic Relations, Vienna, 18 April 1961. <http://untreaty.un.org/cod/avl/ha/vcdr/vcdr.html>. accessed 28 August 2021.

⁴⁹ R. Bonello, 'Vienna Convention on Diplomatic Relations: Abuse Arising Therefrom' (LL. D thesis, University of Malta 2004) 8.

⁵⁰ Available at https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=III-3&chapter=3&clang=_en. accessed 28 August 2021.

diplomatic missions, explaining the rules regulating appointments of officials, and the declarations of *persona non grata* of a diplomat who is deemed culpable of an offence. It further establishes out the rules regarding privileges and immunities enabling diplomatic missions to react without fear of bullying or harassment through local laws administration and to transmit freely and receive intel from their home government. The VCDR also makes provision for withdrawal from a mission by reason of security or for breach of diplomatic agreements or relations. There also exist the possibility of establishing permanent missions in collaboration with a third state to ensure for protection of their national interest.⁵¹

There are about 53 articles in the Convention which can be separated into various sections including the recommendations on the creation of diplomatic missions, the privileges and the appointment of diplomatic officers and the procedure for suggestion of credentials for heads of diplomatic missions. This could be noticed within Articles 1 up until 19. Article 20-28 discusses the regulation of immunity and freedom for diplomatic missions, including economic protection and a range of tax exclusions. The nature and extent of immunities and privileges granted to diplomats and other staff were further discussed in Articles 29-36.

The Convention also includes a law of immunity and privileges for family members of diplomatic agents and support staff working for them and a regulation regarding the signature, accession, ratification, and coming into force of the Convention. The Vienna Convention also gave three categorizations for diplomatic officers of foreign states: the diplomatic agent who are referred to as the mission head or other foreign members of the consular and diplomatic team of the mission, not being nationals of the receiving or host states. They include ambassadors or other administrative and technical staff which may consist of clerks, messengers, security guards and chefs.⁵² The other two categories are basically nationals of the receiving state who are employed by the sending state.

An important aspect of diplomatic immunities is the sacredness of mission grounds excluding any right of entry by law administration officers of the receiving State and guarding against intrusion and imposition from the receiving State, therefore there is a duty to protect the buildings from damage, disorder as well as other forms of disturbances. We must note that in the event of any emergency, the buildings may not still be registered not including the approval of the mission head. Additionally, paragraph 3 of the VCDR explains that all properties and assets including the means of transport of the mission shall not be subjected to any search. The implication of this provision is that the premises and properties of a mission cannot be entered or searched.⁵³

⁵¹D.C. Cosmina-Ioana & B. Nicoleta. 'The Diplomatic Mission and its Function'. (2019) *The Annals of the University of Oradea*. 259

⁵²E. Denza, 'Diplomatic Law: Commentary on the Vienna Convention on Diplomatic Relations' (Oxford University Press, 2016)303

⁵³ ILC, 'Draft Articles on Diplomatic Intercourse and Immunities with Commentaries' (1958) UN Doc (A/13/9) 95. 'Nevertheless, the rule has a value of its own in that it provides that the premises must not be entered even in pursuance of a judicial order. If the premises are leased or rented, measures of execution may of course be taken against the private owner, if it is not necessary to enter the premises of the mission.'

Further to that the mission's archive and other forms of communication outside the mission also enjoys the same protection by virtue of Article 24— they cannot also be subjected to legal proceedings or enquiry. Communication should also be seamless between the sending state and its mission. This is protected by the wordings of Article 27. The protection also extends to diplomatic bag carrying such messages which may not be unlocked or apprehended even on suspicion of abuse. This is to ensure that an important aspect of diplomacy which is communication and sovereignty is always protected.

A diplomat himself is free from violation as confirmed by Article 29 and article 31, in the same way, they are to enjoy immunity from civil and criminal jurisdiction, although the immunity might be waived by the sending state or be surrendered by the diplomat. The rule on waiver is elaborated more in article 32. Article 34 provides for tax exemptions as it relates to official duties and in some instances, it also extends to personal and ordinary life events. Article 36 supports the exemption from paying duties on importations made by a diplomatic mission.

Articles 37 sets out a code for the care of family members and other support team, although the exact nature of treatment, protection or privilege varies and is based on prior agreement between both states. These privileges are not entirely exclusive as it must relate to acts or actions within their official capacity, this is further elaborated in Article 38. Also, the immunity only affects permanent representative of the sending states. This is to ensure that the whole mechanism for privileges and immunities is not brought into disrepute. is not brought into disrepute and that the actions are to further the cause of diplomatic missions thereby ensuring for the smooth and efficient performance of diplomatic duties and not for personal gains.

There protection will also come to an end on the termination of their diplomatic duties or when they are re assigned to another mission. This is expressed in Article 39(2).⁵⁴ We must however note the concept of residual immunity, which explains that they continue to enjoy immunity for acts done in their official capacity even after they are no longer in mission. They cannot be questioned or queried nor be subjected to legal inquiry after the completion of their duty. Such protection shall continue to subsist.⁵⁵ Another rationale to this rule is that it is be dangerous not to grant immunity to a former diplomat as it will open a channel for instituting legal proceeding which will impact the nature of information been disclosed.⁵⁶ In other words, both incumbent and former diplomats are protected by virtue of the nature of information at their disposal.

Some national courts have however tried applying the VCDR. The question usually is whether national courts have jurisdiction to interpret and apply the VCDR over civil or criminal proceedings and what evidence may be permissible in such proceedings of a national court. The Convention has also been relied on by future treaties controlling immunities and privileges.

⁵⁴E. Denza, 'Diplomatic Law: Commentary on the Vienna Convention on Diplomatic Relations' (Oxford University Press, 2016) 353.

⁵⁵VCDR, Article 39(2)

⁵⁶ P. Webb, 'The Immunity of States, Diplomats, and International Organization in Employment Disputes: The New Human Rights Dilemma?' (2016) (27) *EJIL* 754.

The preamble and provisions have continued to prove useful in sketching the 1963 Vienna Convention on Consular Relations 1961 and as well as the NYCSM on Special Missions of 1969.

Vienna Convention on Consular Relations 1963

The Vienna Convention on Consular Relations (VCCR) is an international treaty that defines the legal and institutional agenda regarding consular relations between states. The convention arranges consular practices and principles that developed from custom of states and various bilateral agreements between states. The VCCR expresses a universal guideline of standards on consular relations.

Although the VCCR came into force two years after the passage of the VCDR, it continues to serve as the model document regulating Consular activities. The United Nations Conference on Consular Relations was the basis for the creation of the Vienna Convention on Consular Relations, which also included Optional Protocol on Consular Relations on the Acquisition of Nationality as well as the Optional Protocol on Consular Relations focused on the Compulsory Settlement of Disputes. By 1966, the convention and the other two protocols came into force. There are about 79 articles in the VCCR, and the preamble explains that where the convention is inadequate, customary international law principles is to be applied at achieving the best result. We shall now consider some provision in the VCCR.

There are thirteen functions of a consul listed in the VCCR, which includes protection in the receiving State of the interests of the sending State and its citizens, and all its commercial entities within the limits acceptable under universal law, and advancing its political, economic, cultural, scientific, and societal interactions between the receiving State and the sending State.

The wordings of article 23 offers that the receiving state may at any time and on their own terms pronounce a specific member of the consular staff as being *persona non grata*, which puts the sending state in a position to compulsorily recall the individual within a reasonable time, or otherwise the individual may lose their protection.

As with the VCDR, Article 31 of the VCCR provides that consular premises will remain inviolable i.e., Although the premises might be in another state, but the host nation may not enter the consular premises without express permission and approval of the head of the Consul and the receiving state must do everything to protect the consul from intrusion both internally and externally.

In the same way, article 35 supports the fact that communication between the mission and their home country must be preserved and protected, similarly, consular packages including consular courier are not to be detained or seized or searched.

Article 36 of the VCCR concludes that communication between consular officers and nationals of the sending state should remain privileged. The Vienna Convention expects that consular officers will be able to freely discuss with nationals and officials of the sending state.

Furthermore, where foreign nationals have been arrested or detained the host state shall give notice without any delay of the accused having a right to have their embassy or consulate notified of that arrest. Consular officers shall also have the right to visit a national of the sending State who is in prison, correction center, custody, or detention, to converse, correspond with them and where applicable be able to arrange for legal representation for them.

Also, where the vessel of the sending state runs aground, wrecked or collapses within the shores or territorial waters of the receiving state, the receiving state will inform the sending state without delay. Same is expected where a national of the sending state dies within the territory of the receiving state. They are expected to inform the sending state, according to Article 37.

Article 40 provides that consular officers are also to be protected and respected. The receiving state will take appropriate step to ensure that they prevent any attack to their person. Their freedom and dignity are also to be guaranteed. They should be able to move around freely.

Articles 58-68 deals with consular officers appointed in honorary capacity, including their powers and function. In recent times, the right to consular notification and access as provided for in the Vienna Convention has come under debate and continue to be disputed in courts and in interpretation under international law. In the case of *Breard v. Greene*⁵⁷, Article 36 came under the scrutiny of the federal circuit courts. Interpretations continue to differ from the non-recognition of fundamental rights as conferred by the VCCR, where no appropriate remedy is available, to the possibility of individually enforcing those rights.

In 1999, the Inter-American Court of Human Rights issued an advisory, distinguishing that Article 36 creates individual rights, as an exemption to what are basically States' rights and obligations accorded elsewhere in the Convention.⁵⁸ The International Court of Justice in 2001 in the case of *LaGrand - Germany v. United States of America*⁵⁹ held that where a violation of article 36 has been established, the remedy should be in reviewing and reconsidering the sentences. A noticeable change was in the case of *Avena and other Mexican Nationals case - Mexico v. United States of America*⁶⁰ which marked a turning point regarding Article 36 VCCR. The ICJ clearly recognized the mutuality of both individual and State's rights, by declaring that violations of the rights of an individual under Article 36 may entail a violation of the rights of the sending State as a distinct yet related right, whilst the violations of the rights of the latter may entail a violation of the rights of the individual which may or may not involve the state.

Although the Court was quick to note the fact that it concerned Mexican nationals and it cannot be taken to imply that the conclusions reached by it in the *Avena's* case do not apply to other foreign nationals who may be in similar situations in other foreign countries. This will mean that whatever decision needed to be taken, it must be double reviewed when it concerns foreign

⁵⁷523 U.S. 371, 1988.

⁵⁸Advisory Opinion of the Inter-American Court of Human Rights: Due Process of Law is a Fundamental Right (OC-16/99), p 82.

⁵⁹ICJ Reports 2001, 466.

⁶⁰I. C. J Reports 2004, 36.

nationals. This may also prove consequential for country who still operate the death penalty punishment for offenders, as it is expected that international jurisprudence and customary law, must be followed which must reflect fairness and justice from an international law perspective.

New York Convention on Special Mission 1969

The New York Convention on Special Missions was adopted by the UN General assembly on the 8 December 1969,⁶¹ which also included an Optional Protocol on the Compulsory Settlement of Disputes⁶² and a resolution regarding the Waiver of Immunity in Respect of Civil Claims.⁶³ Although the Convention had been in force since 1985, it did not get the needed acceptance and support, basically because it is perceived to be granting privileges and immunities beyond what is functionally necessary for a special mission. An example of such *ultravires* provision is where the Convention granted immunities and exemptions from tax to technical and support staff, as well as their family members.⁶⁴ As of now, the Convention has about 38 parties, with 12 of those countries being signatories.

The Convention though promising, its preamble was directed towards creating functional immunities for special missions:

The preamble in its opening statements explained the purpose of privileges and immunities relating to special missions, which was clearly stated not to benefit individuals but in ensuring the performance and functioning of special missions as missions representing their sending State'. The convention further affirms that things not covered by Convention will be subjected to International customary law.

Article 1(a) for the purposes of the Convention, defines a special mission as a provisional mission, representing the State, which is sent by one State to another with the consent of both states for the purpose of dealing with it on specific questions or of performing in relation to it a specific task for limited purposes. Article 2 is explicit about getting prior consent from the receiving state i.e that the sending State must have in the past, obtained the consent of the receiving State to the mission itself. In the same way, article 11 expects that the receiving State must be notified of the arrangement and structure of the special mission and any subsequent changes whatsoever. The Convention on Special Missions provides that members of special

⁶¹ Convention on Special Missions, 8 December 1969, in force 21 June 1985, 1400, UNTS 231. The resolution adopting the Convention was adopted by a non-recorded vote of 98–0–1 (Malawi abstaining): Convention on Special Missions and Optional Protocol concerning the Compulsory Settlement of Disputes, UNGA Res 2530(XXIV), UN Doc. A/RES/2530(XXIV), 8 December 1969.

⁶² Optional Protocol to the Convention on Special Missions concerning the compulsory settlement of disputes, 8 December 1969, in force 21 June 1985, 1400, UNTS 339. As of October 2017, there were 17 States Parties.

⁶³ Settlement of Civil Claims in Connection with the Convention on Special Missions, UNGA Res 2531(XXIV), UN Doc. A/RES/2531(XXIV), 8 December 1969, which recommended 'that the sending State should waive the immunity of members of its special mission in respect of civil claims of persons in the receiving State when it can do so without impeding the performance of the functions of the special mission, and that, when immunity is not waived, the sending State should use its best endeavors to bring about a just settlement of the claims'.

⁶⁴ New York Convention, article 32

missions will have the same privileges and immunities as the staff of permanent diplomatic missions although with some exceptions.

According to article 29, Representatives of the State on special missions are inviolable and cannot be arrested or detained. The receiving State is expected to take reasonable steps to ensure that they are safe from attacks on their person and that their freedom or dignity is guaranteed. Furthermore, they are to enjoy immunity from criminal jurisdiction or the national jurisdiction of the receiving State. see generally Article 31(1).

They also enjoy immunity from the administrative, bureaucratic, and civil jurisdiction of the host State, but with no better exceptions than members of the diplomatic mission,⁶⁵ They however enjoy an additional exception for actions relating to accidental damages caused by a vehicle used outside the official functions as contained in Article 31(2)(d).⁶⁶

Administrative and technical staff of the mission are entitled to the same inviolability and immunities, except that immunity from civil and administrative jurisdiction 'shall not extend to acts performed outside the course of their duties' (Article 36). Both service staff and private staff of a mission are exempt from dues and taxes on the emoluments they receive by reason for their employment (Articles 37 and 38). However, service staff enjoy immunity from the jurisdiction of the receiving State in respect of acts performed in the course of their duties (Article 37), while private staff enjoy privileges and immunities 'only to the extent permitted by the receiving State', with the proviso that 'the receiving State must exercise its jurisdiction over private staff in such a manner as not to interfere unduly with the performance of the functions of the special mission' (Article 38).

Members of the families enjoy the same privileges and immunities provided the family member is part of the special mission, provided (i) they accompany such members of the special mission and (ii) they are not nationals of or permanently resident in the receiving State (Article 39). As with the Vienna Convention on Diplomatic Relations, there is no definition of 'members of the family'.

Members of a special mission entitled to privileges and immunities under the Convention enjoy such from their entry into the territory of the receiving State to enable them in performing their functions in the special mission or, if they are already present, from the moment their appointment to the special mission is notified to the receiving State (Article 43). Privileges and immunities normally cease when the functions of a member of the special mission come to end 'now when he leaves the territory of the receiving State, or on the expiry of a reasonable period in which to do so, but shall subsist until that time, even in the case of armed conflict.

⁶⁵ Article 31 of the Vienna Convention on Diplomatic Relations.

⁶⁶The exceptions shared with permanent missions include actions (a) relating to private immovable property situated in the territory of the receiving State, unless the person concerned holds it on behalf of the sending State for the purposes of the mission; (b) relating to succession in which the person concerned is involved as executor, administrator, heir or legatee as a private person and not on behalf of the sending State; (c) relating to any professional or commercial activity exercised by the person concerned in the receiving State outside his official functions.

However, in respect of acts performed by a member in the exercise of his or her functions, immunity continues to subsist (Article 43). The private accommodation of the representative and members of the diplomatic staff of a special mission enjoy the same inviolability and protection as the premises of the special mission (Article 30), even though they may often be of a very temporary nature, for example in a hotel.

The Convention on Special Missions is quite like the Convention on Diplomatic Relations in its grant of facilities, privileges, and immunities to protected persons. In addition to the road-traffic exception to immunity from administrative and civil jurisdiction mentioned above, the exemption from taxation is for the premises of the special mission applies only to the extent, nature and duration of the functions performed by the special mission;⁶⁷ the head of mission's consent to enter and protect the premises of the mission can be implied where there is fire or other disaster that seriously endangers public safety and security and it is has not been possible to obtain express permission;⁶⁸ also, the special mission's archives as well as other documents when necessary, be inscribed with visible external marks for the purpose of identification⁶⁹

Members of special missions are expected to travel through a third States, although it is expected that the transit State would have been informed in advance, either through a visa application or other notification, necessary and has given its consent.⁷⁰ It is also possible for a combination of States to each send a special mission at the same time to another State for issues with common interest, unless where the State objects.⁷¹ Special missions from two or more States may however meet in the territory of a another State, where the express consent of that State has been sought.⁷² Conclusively, like the Vienna Convention on Diplomatic Relations, the NYCSM imposes a duty on members of special missions to respect and keep the law of the receiving State⁷³.

Convention on Privileges and Immunities of United Nations, 1946.

The United Nations General Assembly on 13 February 1946 in New York adopted the Convention on the Privileges and Immunities of the United Nations which was entered into force on the 17th of September 1946. It is also known as the 'New York Convention'. The Convention gives special status to the United Nations, its assets, and officials, and clothes' it with privileges and immunities and expects the same protection to be granted to its member states.

The Convention has been ratified by no fewer than 162 of the 193 UN member states. The general assembly by resolution 179(II) adopted the Convention on Privileges and Immunities of the Specialized Agencies to extend similar privileges to the specialized agencies of the UN.

⁶⁷ NYCSM, Article 24

⁶⁸ NYCSM, Article 25

⁶⁹ NYCSM, Article 26

⁷⁰ NYCSM, Article 42

⁷¹ NYCSM, Article 6

⁷² NYCSM, Article 18

⁷³ NYCSM, Article 47

About 127 states have so far adopted the special protection for specialized agencies, with the convention been divided into 9 Articles and 36 sections.

Article 104 of the UN Charter explains that the organization shall enjoy in the territory of each member states legal capacity and protection necessary for the exercise of their functions and for the fulfilment of their purposes. Furthermore, Article 105 of the UN Charter which provides that the organization, as well as representatives of member states and officials of the UN shall enjoy privileges and immunities necessary for the independent exercise of their functions. It goes to explain that the Article that gives protection and establishes privileges and Immunities of UN is 104 and 105 of the UN Charter.

The Convention also empowers the UN with legal or juridical personality capable of perpetual succession. The wording of Article 1 explains that the U.N. shall possess legal and territorial personality with capacity to contract with others, institute legal proceedings and to own and dispose of both moveable and immoveable property. Article II on its part, offers the capacity to hold, make and retain property, funds, and assets. In the same way that its officials are to enjoy immunity, section 2 provides that the UN's property and assets shall be enjoy immunity except where the immunity has been surrendered or relinquished. As expected, section 3 provides that the premises of the UN in all locations shall be inviolable, property and assets of the UN wherever they are located shall be immune from interference of any kind. The UN and all its documents shall also be inviolable, according to section 4. Its assets, property, and income shall also be exempted from direct taxes and custom duties in all jurisdictions.⁷⁴

Article III provides for protection with respect to communication facilities. Article IV provides for operational immunity of delegates and its officials. Article V provides for immunity of other officials that may not yet have been captured in previous article who will also for the purpose of carrying out their duties efficiently, need protection. Experts on missions for the UN shall be accorded privileges and immunities, necessary for the independent exercise of their tasks when on mission, including all matters allied to their mission. Article VII provides for free passage for the United Nations while the next Article expects powers to settle disputes.

The provision of this the UN Convention is in close resemblance to the provisions of both Vienna Conventions⁷⁵ and the New York Convention.⁷⁶ These international treaties provide privileges, immunities, inviolability and exemptions from taxes and duties for diplomatic officers, consular officers, and members of a special mission.

Conclusion

Summarily, diplomatic agents enjoy some level of protection when been assigned or commissioned to work in other states. Officials of international organization also enjoy similar protection which comes in the form of immunities and privileges. These agents are also not be unviolated. The receiving state or host country (in terms of representative of international

⁷⁴ Section 7 UN charter

⁷⁵Vienna Convention on Diplomatic Relations of 1961 and the Vienna Convention on Consular Relations of 1963.

⁷⁶ Convention on Special Missions of 1969.

organizations) will ensure that their official residences are always protected. By implication they will be immune from prosecution from local or national courts where they are working to ensure that are able to discharge and perform their functions adequately and not be subjected to their receiving states. The extent of privilege enjoyed is however limited to the function of the agent is to perform.

With regards to the theories, it is seen that they are intertwined and cannot exist in isolation as it will be difficult to argue in favour of the theory of extraterritoriality and personal representation without an attachment with other theories; where this is done, satisfactory juridical basis will become increasingly difficult to achieve. The theory that stands out the most in explaining the concept of diplomatic immunities and privileges will seem to be the functional necessity theory as it explains the need that such a protection is needed for the effective discharge of diplomatic functions. The theory also a useful measure in discussing or determining the amount or extent of immunity that should be accorded any diplomatic agent, furthermore, it allows for flexibility in its application.⁷⁷

Diplomatic immunity is primarily functional. As noted earlier, it is needed for the effective discharge of diplomatic functions. The codification of diplomatic privileges is celebrated as a landmark in international law, representing the first international instrument in that aspect of international law. Despite the codification diplomats continue to abuse their privileges claiming diplomatic immunity from based on their diplomatic status. State parties sometimes make it difficult by selectively interpreting the law in the favour of diplomats who abuse their privileges; and in some instances, lacking the will to prosecute diplomatic agents who abuse their privileges, thereby, neglecting the principle of reciprocity.

There are instances where States have indirectly sponsored crimes within another State, using diplomatic channels. International court's jurisdiction is limited, nonetheless, States in the strictest sense of it cannot be committed to prison terms. Receiving states have more often found themselves having to internally resolve crisis created by diplomatic agents of foreign countries. One of the most resorted solutions is declaring the officer or representative *persona non grata* a solution which does not in itself reverse the wrong committed. Although international law continues to regulate this area, but national and international politics seem to play out from the appointment up until reassignment. This study encourages further research into the appointment and selection of diplomats.

⁷⁷S.R Subramanian, 'Abuse of Diplomatic Privileges and the Balance between Immunities and the Duty to Respect the Local Laws and Regulations under the Vienna Conventions: The Recent Indian Experience' (2017) (3) (2) *The Chinese Journal of Global Governance*, 217.