

## Abuse of Diplomatic Immunities and Its Consequences Under the Vienna Convention: A Critical Study

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### Abstract

*The right of each State to declare any diplomatic or consular agent persona non grata is one of the oldest principles of diplomatic and consular law. The principle of persona non grata aims to ensure justice for both the State seeking to evict a diplomat (receiving State) and the State whose diplomat is being evicted (sending State). This is because both principles can guarantee the dignity and equality of sovereign states. The Vienna Convention on Diplomatic Relations of 1961, need to respect the laws and regulations of the receiving State, and not to interfere in its internal affairs. This paper attempts to answer questions that relate to the existing remedies of hosting States in response to diplomatic intervention in their domestic affairs, measures that exist to restraint the issues of diplomatic abuses, the circumstances that give hosting States the possibility to refer to this sanction, the effectiveness of this remedy, and the position of international conventions in relation to this declaration.*

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**Keywords:** Diplomatic law, Vienna Convention, diplomatic immunity, persona non grata, Sovereignty, sending State, hosting State,

## I. INTRODUCTION

Diplomatic representation in modern times has become a major requirement for a state to have close bilateral relationships with other countries mainly in the fields of politics, economics, commerce and culture. Diplomats have granted immunities and privileges, such as personal immunity, inviolability of the homes of diplomats, immunity from jurisdiction, customs privileges, and freedom from taxes and obligations. In addition to immunities and privileges, diplomatic officers also enjoy a principle of inviolability, which means that they will be inalienable means a potent form of immunity forbidding all physical interference with **foreign** diplomatic premises, communications, and personnel by state apparatus of the receiving state.<sup>1</sup> Inviolable means inalienable, protected by a fair legal system,<sup>2</sup> or secure from

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<sup>1</sup> JOHN H. CURRIE, PUBLIC INTERNATIONAL LAW 108 (2d ed. 2008); see also DAVID H. OTT, PUBLIC INTERNATIONAL LAW IN THE MODERN WORLD 161–62 (1987).

<sup>2</sup> *Inviolable means inalienable*, CAMBRIDGE DICTIONARY, <https://dictionary.cambridge.org/us/dictionary/english/inviolable> (last visited Feb. 7, 2021).

assault or trespass.<sup>3</sup> Personal inviolability is the oldest established rule of diplomatic law and closely connected with diplomatic immunity. It is a physical privilege in nature and is thus distinct from the diplomatic immunity from criminal jurisdiction.<sup>4</sup> A fundamental concept of diplomatic law is that of diplomatic immunity, which derives from state immunity. The rights, duties, and privileges of diplomatic envoys have continued to develop over many centuries. The concept of diplomatic agents residing in another country dates back to the fifteenth century but the role of diplomats has evolved with the passage of time where two friendly states exchanged the diplomats, i.e., the right of a State to receive and send diplomatic envoys to another State.<sup>5</sup> At the Vienna Congress in 1815, some common understanding was reached on this subject among States. In April 1961, the Vienna Convention on Diplomatic Relations<sup>6</sup> was concluded in which this subject has been further extended.<sup>7</sup> The Vienna Convention on Diplomatic Relations (1961) contains the most widely accepted description of the International Law on diplomacy. The convention splits the functions of diplomatic agents into six categories: representing the sending State; protecting the sending State's nationals within the receiving State; negotiating with the receiving State; notifying the sending State of conditions and developments within the receiving State; promoting friendly relations between the two States; and developing economic, cultural, and scientific relations between the two States.<sup>8</sup>

The receiving State is under a legal obligation to respect, assist, and protect him and not to interfere with his official functions.<sup>9</sup> A diplomatic agent is granted different inviolabilities and privileges, as well as immunity, from the jurisdiction of the receiving State in order to enable him to exercise his official functions independently and effectively and to avoid any interferences on the part of the receiving State.<sup>10</sup> *Persona non grata* is "[a]n expression in reference to a foreign diplomat who is no longer welcome to the government to which he is accredited after he has already been received and has entered upon his duties, or before arriving in the territory of the receiving State."<sup>11</sup> It can apply to foreign diplomats, who are otherwise protected by diplomatic

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<sup>3</sup> *Inviolable*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/inviolable> (last visited Feb. 7, 2021).

<sup>4</sup> IAN BROWNLIE, *PRINCIPLES OF PUBLIC INTERNATIONAL LAW* OXFORD UNIVERSITY PRESS, 358 (7th ed. 2008).

<sup>5</sup> EILEEN DENZA, *DIPLOMATIC LAW: A COMMENTARY ON THE VIENNA CONVENTION ON DIPLOMATIC RELATIONS* 112–13 (3rd ed. 2008).

<sup>6</sup> Vienna Convention on Diplomatic Relations, Apr. 18, 1961, 23 U.S.T. 3227, 500 U.N.T.S. 95.

<sup>7</sup> DENZA, *supra* note 5, at 112–13.

<sup>8</sup> Vienna Convention, *supra* note 6.

<sup>9</sup> *Id.*

<sup>10</sup> GRANT V. MCCLANAHAN, *DIPLOMATIC IMMUNITY: PRINCIPLES, PRACTICES, PROBLEMS* 147–50 (1989).

<sup>11</sup> Amer Fakhoury, *Persona Non Grata: The Obligation of Diplomats to Respect the Laws and Regulations of the Hosting State*, 57 J. L. POL'Y & GLOBALIZATION 110, 111 (2017) (quoting MELQUIADES GAMBOA, *A DICTIONARY OF INTERNATIONAL LAW AND DIPLOMACY* 210–11 (1973)).

immunity from arrest and other kinds of prosecution as they are considered not liable to lawsuit or prosecution under the host country's laws.<sup>12</sup>

Proclaiming a diplomat *persona non grata* usually results from an unfriendly attitude toward the (prospective) receiving state. It could be the violation of rules of host state or violation of international law, or improper diplomatic behavior or indiscretions, in such situation the host state may proclaim a diplomat *persona non grata* for any or no reason.<sup>13</sup> The sending State must then recall its agent, or the host State may ignore the presence of the diplomatic agent or expel the diplomat from its territory. The right of the receiving State to request the recall of offending diplomats was already supported by Gentilis, Grotius, and Vattel.<sup>14</sup> However, it soon became clear that this right was not only a theoretical construction of scholars, but it was corroborated by the general practice where the sending State would comply with a receiving State's request for recall of the concerned diplomat.<sup>15</sup> The process of dealing with diplomats who are no longer welcome has now been fully recognized in Article 9 of the Vienna Convention on Diplomatic Relations:<sup>16</sup>

"The receiving State may at any time and without having to explain its decision, notify the sending State that the head of the mission or any member of the diplomatic staff of the mission is *persona non grata* or that any other member of the staff of the mission is not acceptable. In any such case, the sending State shall, as appropriate, either recall the person concerned or terminate his functions with the mission. A person may be declared *non grata* or not acceptable before arriving in the territory of the receiving State. If the sending State refuses or fails within a reasonable period to carry out its obligations ... the receiving State may refuse to recognize the person concerned as a member of the mission."<sup>17</sup>

The most common response when foreign diplomatic and consular officials act inappropriately is to declare those officials *persona non grata* and expel them from the country. While this is traditionally a remedy for offenses committed by the actual personnel being expelled, it is entirely at the host country's discretion and several nations have used it to respond to objectionable activities on the part of a foreign government as a whole.<sup>18</sup> It has

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<sup>12</sup> MCCLANAHAN, *supra* note 10.

<sup>13</sup> ERNEST SATOW, A GUIDE TO DIPLOMATIC PRACTICE (4th ed. 1957).

<sup>14</sup> Timothy J. Lynch, *Theories of Diplomacy*, in THE OXFORD ENCYCLOPEDIA OF AMERICAN MILITARY AND DIPLOMATIC HISTORY 330 (2013).

<sup>15</sup> J. CRAIG BARKER, THE PROTECTION OF DIPLOMATIC PERSONNEL 42–43 (2006).

<sup>16</sup> Vienna Convention on Diplomatic Relations, Done at Vienna on 18 April 1961. Entered into force on 24 April 1964. United Nations, Treaty Series, vol. 500, p. 95.

<sup>17</sup> JOSEPH. G. STARKE, AN INTRODUCTION TO INTERNATIONAL LAW 2011, 2014 (9th ed. 1984).

<sup>18</sup> *Id.* at 400, 406.

been used on some occasion as a symbolic gesture and a way for a country to show displeasure with the actions of another country or entity. It has also been used to expel diplomats accused of espionage, as was the case in 2016 when India expelled a Pakistani diplomat<sup>19</sup> after he was arrested and accused of running a spy ring. The declaration has been mostly used in a tit-for-tat expulsions of diplomatic agents, it was common during the Cold War,<sup>20</sup> but still persist. In 2009, Venezuela and Israel expelled each other's diplomats after an Israeli attack on the Gaza Strip.<sup>21</sup> The United States and Ecuador had a similar exchange of expulsions after diplomatic cables were linked to secret-sharing with WikiLeaks.<sup>22</sup> Therefore, this is descriptive analyses of the problem of abuse of privileges and immunities and its adverse implications on the balance between such immunities and privileges that were granted under Vienna Conventions and the duty to respect local laws and regulations, with reference to a few notable cases.

## II. DEFINITION OF PERSONA NON GRATA

*Persona non grata* in Latin: it means an unacceptable or unwelcome person. A diplomat who is no longer welcome to the government to which he is accredited.<sup>23</sup>

Diplomats have been declared *persona non grata* for making disparaging remarks against the host government, violating its laws, interfering with its politics, meddling with its domestic affairs, using offensive language and criticizing its head of state. "Usually the appended host government requests for sending diplomats to recall the offending diplomat. This request is normally complied with."<sup>24</sup>

In their *International Law Dictionary*, Bledsoe and Boleslaw define the term as follows:

The term *persona non grata* indicating that a diplomatic agent of a state is unacceptable to the receiving state. This can take place either before the individual is accredited, indicating that the proposed appointee is unacceptable to the host state and will not be received, or after the accreditation process in

<sup>19</sup> PTI, *Espionage case: India declares Pakistan Mission Staffer Persona Non Grata*, *INDIAN EXPRESS* (Oct. 28, 2016), <https://indianexpress.com/article/india/india-news-india/espionage-case-pakistan-mission-staffer-declared-persona-non-grata/>.

<sup>20</sup> DIPLOMATIC LAW IN A NEW MILLENNIUM 27–28 (Paul Behrens ed. 2017).

<sup>21</sup> *Israel Expels Venezuela Envoy*, BBC NEWS (Jan. 28, 2009, 4:33 PM), [http://news.bbc.co.uk/2/hi/middle\\_east/7856612.stm](http://news.bbc.co.uk/2/hi/middle_east/7856612.stm).

<sup>22</sup> Naomi Mapstone, *Ecuador Expels US Ambassador Over Cable*, *FINANCIAL TIMES* (Apr. 6, 2011), <https://www.ft.com/content/d78c9d8e-5fc9-11e0-a718-0014feab49a>.

<sup>23</sup> EILEEN DENZA, *DIPLOMATIC LAW: COMMENTARY ON THE VIENNA CONVENTION ON DIPLOMATIC RELATIONS* 61 (4th ed. 2016).

<sup>24</sup> R. Higgins, *The Abuse of Diplomatic Privileges and Immunities: Recent United Kingdom Experience*, 79 *AM. J. INT'L L.* 645 (1985).

response to some real or alleged impropriety by the diplomatic agent.<sup>25</sup>

### III. THE HISTORICAL DEVELOPMENT AND CONCEPT

The history of diplomatic relations and the personal inviolability of diplomatic envoys can be traced back to several ancient civilizations.<sup>26</sup> During the Ancient Greek times, ambassadors were referred to as “messengers of the gods.”<sup>27</sup> The Romans also considered diplomatic immunity to be sacred and they placed a great emphasis on the inviolability of envoys.<sup>28</sup> The Romans accordingly developed the College of Fetials, a semi-religious and semi-political body for conduct of external relations.<sup>29</sup> The above rule required that mistreatment of foreign envoys would be considered a capital crime and that the trial proceedings should be held in public.<sup>30</sup>

During the Islamic period, diplomatic immunity was originated by the Prophet Muhammad (570–632 AD) himself while dealing with other nations and their representatives.<sup>31</sup> Throughout the history of Islamic jurisdiction diplomats were granted protocols by the host community.<sup>32</sup> Prophet Muhammad himself followed those protocols such as; receiving delegations, facilitating their livelihood and providing accommodations during their stay in the Madina.<sup>33</sup> In honoring the delegation, it is stated that the Prophet Muhammad had welcomed the delegation of Tajeed and honored them and then ordered Bilal to improve their hospitality.<sup>34</sup> Listen to the delegation first: Based on Ghalush Ahmad, the Prophet Muhammad received the delegation, and listened to them first to know the subject matter and then replied to them, or he ordered to one of his companions to respond.<sup>35</sup>

Later the Muslim leaders maintained such protocols, in fact they budgeted certain amount of money each year to spend for receiving missions and hosting them based on accurate rules and traditions which are followed in order to

<sup>25</sup> BLEDSOE & BOCZEK, *supra* note 11, at 112–13.

<sup>26</sup> J. CRAIG BARKER, *THE PROTECTION OF DIPLOMATIC PERSONNEL* 29 (2006).

<sup>27</sup> G. R. Berridge, *Diplomacy, Theories Of*, in *THE OXFORD ENCYCLOPEDIA OF AMERICAN MILITARY AND DIPLOMATIC HISTORY* 329, 330 (Timothy J. Lynch ed., 2013).

<sup>28</sup> BARKER, *supra* note 26, at 30.

<sup>29</sup> *Id.* at 33.

<sup>30</sup> *LAW AND RELIGION IN THE ROMAN EMPIRE* 133 (Olga Tellegen-Couperus ed., 2012).

<sup>31</sup> See Alford T. Welch et al., *Muhammad*, in *THE OXFORD ENCYCLOPEDIA OF THE ISLAMIC WORLD* (John L. Esposito ed., 2009).

<sup>32</sup> M. Cherif Bassiouni, *Protection of Diplomats Under Islamic Law*, 74 *AM. J. INT’L L.* 609, 609–33 (1980).

<sup>33</sup> Almutairi Husain Jaez et al., *Importance of Diplomatic Immunities in Islamic Law (Shariah)*, 6 *J. CIV. LEGAL SCIS.* 221 (2016).

<sup>34</sup> AHMAD SALIM BA UMAR, *al-Fiqh al-Siyasi li*, al-Hasanat al-Diplomasiyah, 99.

<sup>35</sup> Ghalush, Ahmad Ahmad. *Assirah Al-Nabawiyah Wal Da’awatu Fil Ahdil Madani*, (2004) *Mu’assasat Al-Risalah*, 660–61

achieve what is marked by an Islamic state.<sup>36</sup> Muslim administrators used to specify certain amount of money each year for the receiving missions and envoys to launch the Islamic rules and traditions.<sup>37</sup> Muslim leaders always tried to take good care of the selection of diplomats. That is why it could be said that diplomatic immunity has importance in Islamic Law. Furthermore, even after providing maximum protection, if envoys face a problem, there are laws to protect them in every type of situation including war and peace, chaos and harmony. Additionally, it has never been neglected in the Jurisprudence of Islam, that the diplomats have to show in the best manner to represent one's own nation.<sup>38</sup>

In the sixteenth century, the Mendoza affair contributed to the strengthening of the concept of diplomatic immunity.<sup>39</sup> In 1580, the English government accused Don Bernardino de Mendoza, the Spanish Ambassador in London, of the crime of conspiracy against the sovereign for his involvement in the Throckmorton plot.<sup>40</sup> The plot aimed to eliminate Elizabeth I and to free Mary, Queen of Scots.<sup>41</sup> Though the Ambassador was finally expelled, it gave rise to the rule that the diplomat enjoys immunity from criminal jurisdiction, subject to the receiving State's right to act in self-defense against the violent acts of the diplomat.<sup>42</sup>

After this period, the concept of *droit d'ambassade* had emerged.<sup>43</sup> It recognized the right of states to send and receive diplomatic representatives.<sup>44</sup> Following the adoption of the Treaty of Westphalia in 1648, the modern state-system emerged.<sup>45</sup> The Treaty of Westphalia wanted to maintain the prevailing balance of power in Europe and thereby necessitated the close monitoring of the external situation.<sup>46</sup> So, as a result, the establishment of permanent diplomatic missions became the normal practice.<sup>47</sup>

<sup>36</sup> Jaeez et al., *supra* note 33.

<sup>37</sup> Saleh HM, *Diplomacy in the Islamic Sharia*, J. TIKRIT UNIV. LEGAL POL. SCI. (2009).

<sup>38</sup> *Id.*

<sup>39</sup> DOUGLAS M. JOHNSTON & W. MICHAEL REISMAN, *HISTORICAL FOUNDATIONS OF WORLD ORDER: TOWER AND THE ARENA* 358 (2008).

<sup>40</sup> Stephen C. Neff, "Historic Moments in International Law: The Envoy from Hell—and What to Do with Him", INT'L JUD. MONITOR, [http://www.judicialmonitor.org/archive\\_spring2014/historic.html](http://www.judicialmonitor.org/archive_spring2014/historic.html) (last visited Feb. 5, 2020).

<sup>41</sup> Gordon-Smith, Alan. *The Babington Plot*. London: Macmillan (1936)

<sup>42</sup> Barry Cohen, *The Diplomatic Relations Act of 1978*, 28 CATHOLIC UNIV. L. REV. 797, 804 (1978).

<sup>43</sup> LINDA F. FREY & MARSHA L. FREY THE HISTORY OF DIPLOMATIC IMMUNITY 16 (Ohio State University Press, 1999).

<sup>44</sup> *Id.*

<sup>45</sup> COSTAS M. CONSTANTINOU, ON THE WAY TO DIPLOMACY *passim* (University of Minnesota Press, 1996).

<sup>46</sup> BISWANATH SEN, A DIPLOMAT'S HANDBOOK OF INTERNATIONAL LAW AND PRACTICE 80 (Gerald Fitzmaurice et al. eds., 1965).

<sup>47</sup> *Id.*

A forceful debate on the scope of diplomatic privileges and immunities continued over the next two centuries among leading international scholars of European countries, such as, Hugo Grotius, Albericus Gentilis, Richard Zouche, Cornelius Van Bynkershoek and Emer de Vattel.<sup>48</sup> These authors gave various explanations for granting diplomatic privileges and immunities. Their writings have greatly contributed to the development of diplomatic laws.<sup>49</sup>

Diplomats are equipped with immunities and privileges to carry out their diplomatic functions effectively. The first attempt to codify diplomatic immunities were stipulated in the Regulation of Vienna in 1815. This regulation is still valid and was revised at the Vienna Convention in 1961, asserting the existing rules of international customary law regarding immunity and privileges of diplomatic agents.<sup>50</sup> The Vienna Convention, which was successfully signed by many states, constitutes a multilateral treaty and can be treated as a codification product.<sup>51</sup> The Convention declares that any rule of international customary law which has been applicable over time and contains certain provisions constituting the progressive development of international law in the field of diplomatic law is valid.<sup>52</sup> This is in conformity with the opinion or perception given by Ian Brownlie, who points out that the rules of international law governing diplomatic relations are based on state practices which have run for a long time and have been backed also by legislation and decisions of national courts.<sup>53</sup> Those provisions and principles, including the *persona non grata* principle, have been codified or incorporated into the Vienna Convention on Diplomatic Relations.<sup>54</sup>

Existence of the *persona non grata* principle, developed through international customary law and codified in Article 9 of the Vienna Convention, is intended to construct and create balance, worthiness, and justice between the principle of sovereignty and territorial jurisdiction on one hand, and the principle of inviolability and immunity on the other hand.<sup>55</sup>

In Article 9, paragraph one of the Convention, it is asserted that '*persona non grata*' shall be addressed to the head of a mission. If the receiving State finds the Ambassador, or any other diplomatic agent, unacceptable after this person personally offends the receiving State, the receiving State can formally request the diplomat be recalled.<sup>56</sup> Although the sending State must then

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<sup>48</sup> Timothy, J. Lynch, Theories of Diplomacy, in OXFORD ENCYCLOPEDIA OF AMERICAN MILITARY AND DIPLOMATIC HISTORY 330 (2013).

<sup>49</sup> BARKER, *supra* note 15, at 63–65.

<sup>50</sup> STARKE, *supra* note 17, at 211, 214.

<sup>51</sup> BARKER, *supra* note 15, at 63–65.

<sup>52</sup> ERNEST SATOW, *SATOW'S DIPLOMATIC PRACTICE* (Ivor Roberts ed., 6th ed. 2009).

<sup>53</sup> IAN BROWNLIE, *PRINCIPLES OF PUBLIC INTERNATIONAL LAW* 346–348, 359–363 (3d ed.1979).

<sup>54</sup> *Id.* at 359.

<sup>55</sup> OTT, *supra* note 1, at 161–62.

<sup>56</sup> Eileen Denza, *Vienna Convention on Diplomatic Relations*, U.N. AUDIOVISUAL LIBRARY OF INTERNATIONAL LAW (2009), <https://legal.un.org/avl/ha/vcdr/vcdr.html>.



comply, if it delays or declines, the receiving State can proceed to a notice of *persona non grata* in accordance with Article 9 of the Vienna Convention on Diplomatic Relations.<sup>57</sup> In the more serious event of disagreements over policies or actions, states may sever diplomatic relations.<sup>58</sup> In less important instances of displeasure, the Ambassador may be recalled for consultations. A notice of *persona non grata* may not be used solely for lowering the mission's staff count,<sup>59</sup> which is a separate process dealt with in Article 11 of the Vienna Convention on Diplomatic Relations.<sup>60</sup>

The old and established fundamental principle is that the receiving State did not have to tolerate the continued presence of a diplomat who became unacceptable.<sup>61</sup> According to scholars, such as Hugo Grotius, Alberico Gentili, Cornelis van Bijnkershoek and others, this unacceptability usually derived from a norm proscribing political intrigue against the sending State, in which case the receiving State could expel the diplomat with minimum notice.<sup>62</sup> The only question was whether the State could try the diplomat for a crime.<sup>63</sup> Thus, after deciding to commence planning against another State, the receiving State could simply declare that the sending State's Ambassador displeased them. The inference can be drawn that unacceptable diplomats might well be unacceptable through either no fault of their own, or through having

<sup>57</sup> Vienna Convention on Diplomatic Relations, *supra* note 6, at art. 9. "The receiving State may at any time and without having to explain its decision, notify the sending State that the head of the mission or any member of the diplomatic staff of the mission is *persona non grata* or that any other member of the staff of the mission is not acceptable. In any such case, the sending State shall, as appropriate, either recall the person concerned or terminate his functions with the mission. A person may be declared *non grata* or not acceptable before arriving in the territory of the receiving State. If the sending State refuses or fails within a reasonable period to carry out its obligations under paragraph 1 of this article, the receiving State may refuse to recognize the person concerned as a member of the mission." *Id.*

<sup>58</sup> *Breaking Relations*, EDIPLOMAT, <http://www.ediplomat.com/nd/glossary.htm> (last visited Feb. 28, 2021.) "The formal act of severing diplomatic relations with another state to underscore disapproval of its actions or policies. It is generally an unwise step, because when relations between states are most strained is when the maintaining of diplomatic relations is most important. It makes little sense to keep diplomats on the scene when things are going relatively well and then take them away when they are most needed. An intermediate step which indicates serious displeasure but stops short of an actual diplomatic break is for a government to recall its ambassador indefinitely. This is preferable to a break in relations as his embassy will continue to function; but again this comes under the heading of cutting one's nose to spite one's face. If a dramatic gesture of this kind is needed, it is far better promptly and publicly to recall an ambassador for consultations, and then just as promptly return him to his post." *Id.*

<sup>59</sup> ERNEST SATOW, *SATOW'S DIPLOMATIC PRACTICE* 131 (Ivor Robert ed., 7th ed. 2017).

<sup>60</sup> Vienna Convention on Diplomatic Relations, art. 11, Apr. 18, 1961, 23 U.S.T. 3227, 500 U.N.T.S. 95.

<sup>61</sup> Jonathan Brown, *Diplomatic Immunity: State Practice Under the Vienna Convention on Diplomatic Relations*, 37 INT'L & COMP. L. Q. 53 (1988).

<sup>62</sup> *Id.*

<sup>63</sup> ALBERICI GENTILIS, *DE LEGATIONIBUS* 66–69, 75–82, 85–89 (1585); JEAN HOTMAN, *THE AMBASSADOR* PP 65–71 (1603); HUGO GROTIUS, *THE RIGHTS OF WAR AND PEACE* BOOK II (1625), reprinted in *NATURAL LAW AND ENLIGHTENMENT CLASSICS* P 389 (Knud Haakonssen ed., 2005); CORNELIUS VAN BYNKERSHOEK, *DE FORO LEGATORUM LIBER SINGULARIS: A MONOGRAPH ON THE JURISDICTION OVER AMBASSADORS IN BOTH CIVIL AND CRIMINAL CASES* 55–59 (1946).

insufficient ability to both detect and neutralize receiving State scheme. Perhaps this kind of norm is long-standing, universal, and widespread.<sup>64</sup>

While the right to declare an agent *persona non grata* was uncontested, the requirement to state to give reasons alongside a request for recall. It was thus the first main controversial point to be addressed by the International Law Commission when it engaged in the codification of diplomatic and consular law.<sup>65</sup> Whilst the International Law Commission's adoption of Mr. Tunkin's proposed Article 9 in 1958 was silent and gave no reasoning, commentary to the provision stated.<sup>66</sup> However, it was the French delegation at the Vienna Conference that suggested that the provisions of Article 4 of the Vienna Convention of Diplomatic Relations and the express need not to give reasons in cases of refusal to give *agrément*,<sup>67</sup> should be consistent with the proposed Article 9.<sup>68</sup> The divergent perspectives were ultimately resolved, reasons no longer be given by the receiving State when requesting the Sending State to recall the agent concern.<sup>69</sup>

Both during the work of the International Law Commission and subsequently at the Vienna Conference, a second controversy broke out with respect to the existence of an obligation for the sending State to abide by the request for recall.<sup>70</sup> It was finally agreed that the sending State was internationally obliged to recall the agent concerned or to terminate his functions with the mission. "If the sending State refuses or fails within a reasonable period to carry out this obligations . . . the receiving State may refuse to recognize the person concerned as a member of the mission."<sup>71</sup>

#### IV. CONCEPT OF DIPLOMATIC IMMUNITY

Diplomatic agent's performing different tasks in a State is covered by the inviolability principle, that is, the diplomatic agent concerned is inviolable. This principle means; diplomatic agents are free from any sort of arrest or detention by the authorities of the receiving state and secondly, the latter has

<sup>64</sup> See Frederic L. Kirgis, *Custom on a Sliding Scale*, 81 AM. J. INT'L L. 146 (1987).

<sup>65</sup> DAVID J. BEDERMAN, *INTERNATIONAL LAW IN ANTIQUITY* 85 (2001).

<sup>66</sup> Report of the International Law Commission to the General Assembly, U.N. Doc. A/3859 (1958), at 95, ¶ 6, reprinted in [1958] 2 Y.B. Int'l L. Comm'n 78, U.N. Doc. A/CN.4/SER.A/1958/Add.1.

<sup>67</sup> *Agrément*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/agreement> (defining it as "the approval of a diplomatic representative by the state to which he or she is to be accredited").

<sup>68</sup> U.N. Conference on Diplomatic Intercourse and Immunities, Preparatory Documents, at 8, U.N. Doc. A/Conf.20/14/Add.1 (Vol. II), annex (Mar. 6, 1961).

<sup>69</sup> Vienna Convention on Diplomatic Relations art. 9, Apr. 24, 1964, 23 U.S.T. 3227, 500 U.N.T.S. 95.

<sup>70</sup> *See id.*

<sup>71</sup> *Id.*; see Vienna Convention on Consular Relations art. 23, Mar. 19, 1967, 596 U.N.T.S. 261; see also EILEEN DENZA, *DIPLOMATIC LAW: A COMMENTARY ON THE VIENNA CONVENTION ON DIPLOMATIC RELATIONS* (4th ed. 2016).

a duty to protect diplomatic agents.<sup>72</sup> Besides the diplomatic agents, the principle of inviolability also covers the premises of the mission, archives and documents of the mission, domicile or private residence, correspondence or papers and properties of diplomatic agents. In reality, this principle is translated and incorporated into what is known as immunity.

One of the pillars of modern International Law is the diplomatic immunities of the diplomatic agent. According to Grotius, diplomatic agents, though physically present upon the soil of the country to which they are accredited, but they are treated to remain for all purposes upon the soil of the country to which they represent.<sup>73</sup> This is called the extra-territorial theory which is based on fiction and is discarded by modern jurists.<sup>74</sup> There are, however, representational and functional theories, which are the basis for granting diplomatic immunities to the diplomatic agents. The Vienna Convention of 1961 supports these two theories for diplomatic immunities.<sup>75</sup>

Modern diplomatic immunity was codified in 1961 by the Vienna Convention on Diplomatic Relations.<sup>76</sup> Section 7 of that Act is titled ‘Vienna Convention on Diplomatic Relations to have force of law.’<sup>77</sup> These Articles<sup>78</sup> provide far-reaching immunity for diplomats, members of their families, their agents, and their property from being monitored, searched, arrested, charged, or prosecuted.<sup>79</sup>

For example, Article 29 of Vienna Convention states:

“The person of a diplomatic agent shall be inviolable. He shall not be liable to any form of arrest or detention. The receiving State shall treat him with due respect and shall take all appropriate steps to prevent any attack on his person, freedom or dignity.”<sup>80</sup>

## V. PERSONAL SAFETY

The person of a public minister is sacred, inviolate, safe, or immune from the criminal jurisdiction of the domestic courts of states “Whoever offers any violence to him, not only affronts the Sovereign he represents, but also hurts the common safety and well being of nations; he is guilty of a crime against the

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<sup>72</sup> See Brown, *supra* note 61.

<sup>73</sup> HUGO GROTIUS, *THE RIGHTS OF WAR AND PEACE* (2005).

<sup>74</sup> PÄR K. CASSEL, *FOUNDATIONS OF JUDGMENT: EXTRATERRITORIALITY AND IMPERIAL POWER IN NINETEENTH-CENTURY CHINA AND JAPAN* 9 (2012).

<sup>75</sup> Brown, *supra* note 61.

<sup>76</sup> *Id.*

<sup>77</sup> *Id.*

<sup>78</sup> Vienna Convention on Diplomatic Relations, *supra* note 6, arts. 22, 24, 29, 30.

<sup>79</sup> DENZA, *supra* note 5, at 112–13.

<sup>80</sup> Vienna Convention on Diplomatic Relations, *supra* note 6, art. 29.

whole world.”<sup>81</sup> International law takes any violation of the personal immunity enjoyed by the envoys seriously. Many States have framed laws which severely punish persons acting in violation of this rule of protection.<sup>82</sup> The foreign State to which a diplomatic envoy is accredited has a duty to take immediate steps to prosecute the offender.<sup>83</sup>

## VI. IMMUNITY FROM CRIMINAL JURISDICTION

Article 31, paragraph 1, of the Vienna Convention of 1961, provides that a diplomatic agent shall enjoy immunity from the criminal jurisdiction of the receiving State.<sup>84</sup> This provision conforms to the customary rules of international law.<sup>85</sup> According to Article 41, it is the duty of all persons enjoying immunities and privileges to respect the laws and regulations of the receiving State.<sup>86</sup>

When a diplomatic agent commits a serious criminal breach of law, she/he may be declared *persona non grata*, but can never be prosecuted by the host State.<sup>87</sup>

Due to personal inviolability, a diplomatic agent may not be arrested or detained under any circumstances.<sup>88</sup> The police can, of course, arrest such a

<sup>81</sup> *Respublica v. De Longchamps*, [1 U.S. 111](#), 116 (Pa. 1784); see Ira Stechel, *Terrorist Kidnapping of Diplomatic Personnel*, 5 CORNELL INT'L L. J. 189, 201 (1972).

<sup>82</sup> RICHARD TUCK, *THE RIGHTS OF WAR AND PEACE: POLITICAL THOUGHT AND THE INTERNATIONAL ORDER FROM GROTIUS TO KANT* 130 (1999); *THE FEDERALIST* (James Madison, Alexander Hamilton & John Jay); see *Respublica v. De Longchamps*, 1 U.S. 111 (1784) (Charles Julian De Longchamps (the "Chavelier De Longchamps") was accused of verbally assaulting the Consul General of France to the United States on May 17, 1784, in the house of the French Minister. Two days later, De Longchamps allegedly "violently did strike" the consul on a public street. The Court refused to imprison De Longchamps for an indeterminate period of time. It therefore fined him 100 French Crowns, imprisoned him for two years, and forced him to pay bail as collateral for good behavior of seven years).

<sup>83</sup> Stechel, *supra* note 81.

<sup>84</sup> Vienna Convention on Diplomatic Relations, *supra* note 6, art. 31.

<sup>85</sup> C. J. LEWIS, *STATE AND DIPLOMATIC IMMUNITY* 135 (3rd ed. 1990). For example, the Spanish ambassador Mendoza was expelled in 1584 on suspicion of conspiracy against the English queen. *Id.* But at the same time, the French ambassador d'Aubépine, who fell under similar suspicion three years later, continued to act as ambassador to Queen Elizabeth after the French king had ignored a request for his recall and he was not tried for his acts. *Id.*

<sup>86</sup> Vienna Convention, *supra* note 6, at 13–14.

<sup>87</sup> Robert Longley, *How Far Does Diplomatic Immunity Go?*, THOUGHT CO (Sept. 2, 2019), <https://www.thoughtco.com/diplomatic-immunity-definition-4153374>.

<sup>88</sup> It is interesting to note that in his statement, when answering to the request of a senator about French policy concerning diplomatic immunity, the French Prime Minister said that a diplomatic agent may not be arrested or detained except in case of un flagrant délit (offence) that is a case requiring no further collection of evidence. The value of this kind of a statement is very doubtful and these on-the-spot arrests, under the circumstances whatsoever, clearly violate the inviolability of a diplomatic agent. See *Immunité diplomatique et atteinte aux droits de l'homme*, Journal Officiel Sénat (Dec. 16, 1999).

person in good faith, but when they learn that the person is entitled to personal inviolability, the police must release him immediately.<sup>89</sup>

#### VII. IMMUNITY FROM CIVIL JURISDICTION

A diplomatic agent is not liable to be sued for a debt or any other contract or for a tort of any kind.<sup>90</sup> Many countries have passed laws which prevent the issue of civil processes against diplomatic envoy.<sup>91</sup> This exemption from civil jurisdiction continues until the diplomatic agent leaves the foreign State.

A diplomatic agent cannot be arrested for his debts. His property also cannot be seized or attached in payment of his debts.<sup>92</sup> He cannot be summoned in the courts of the receiving State as a witness.<sup>93</sup> Article 31, Paragraph 1, of the Vienna Convention of 1961 provides likewise that diplomatic agents are immune from civil and administrative jurisdiction of the receiving State.<sup>94</sup> The immunity from civil jurisdiction is subject to waiver. If the person claiming privileges is of a lesser rank than the head of the legation, the waiver must be from a superior envoy of his Government.<sup>95</sup>

#### VIII. INVIOABILITY OF MISSIONS PREMISES

The mission premises, including the surrounding land, benefit from the immunity of the sending State and hence are protected from any external interference.<sup>96</sup>

Article 22 of the Vienna convention states that:<sup>97</sup>

1. The premises of the mission shall be inviolable. The agents of the receiving State may not enter them, except with the consent of the head of mission.

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<sup>89</sup> IAN BROWNLIE, *PRINCIPLES OF PUBLIC INTERNATIONAL LAW* 358 (Oxford University Press, 5th ed. 1998).

<sup>90</sup> EILEEN DENZA, *DIPLOMATIC LAW: COMMENTARY ON THE VIENNA CONVENTION ON DIPLOMATIC RELATIONS* 3 (Oxford University Press, 3rd ed. 2008).

<sup>91</sup> *Id.*

<sup>92</sup> Jonathan Brown, *Diplomatic Immunity: State Practice Under the Vienna Convention on Diplomatic Relations*, 37 INT'L COMPAR. L. Q. 53, 78 (1988).

<sup>93</sup> *Id.*

<sup>94</sup> Vienna Convention, *supra* note 6, art. 31 (stating "I. A diplomatic agent shall enjoy immunity from the criminal jurisdiction of the receiving State. He shall also enjoy immunity from its civil and administrative jurisdiction, except in the case of (a) a real action relating to private immovable property situated in the territory of the receiving State, unless he holds it on behalf of the sending State for the purposes of the mission. (b) an action relating to succession in which the diplomatic agent is involved as executor, administrator, heir or legatee as a private person and not on behalf of the sending State; (c) an action relating to any professional or commercial activity exercised by the diplomatic agent in the receiving State outside his official functions.").

<sup>95</sup> Brown, *supra* note 61, at 53.

<sup>96</sup> DENZA, *supra* note 90, at 10.

<sup>97</sup> Vienna Convention, *supra* note 6, art. 22.

2. The receiving State is under a special duty to take all appropriate steps to protect the premises of the mission against any intrusion or damage and to prevent any disturbance of the peace of the mission or impairment of its dignity.
3. The premises of the mission, their furnishings and other property thereon and the means of transport of the mission shall be immune from search, requisition, attachment or execution.<sup>98</sup>

#### IX. ARCHIVES, DOCUMENTS AND OFFICIAL CORRESPONDENCE

Article 24 and 27 of the Vienna Convention provide that archives and documents of the mission are always inviolable, including all official correspondence. The Vienna Convention also provides that the diplomatic bag shall not be opened or detained at any time.<sup>99</sup> However, the situation is different in the United Kingdom where, due to abuse of the diplomatic bag through the sale of drugs, scanning of the bags is done on specific occasions when there are strong grounds of suspicion, but *only* in the presence of a member of the diplomatic mission.<sup>100</sup>

#### X. WAIVER OF IMMUNITY

Article 32 makes clear that the sending State can waive the right to diplomatic immunity.<sup>101</sup>

Article 9 of the Vienna Convention 1961, provides that:

1. "The receiving State may at any time and without having to explain its decision, notify the sending State that the head of the mission or any member of the diplomatic staff of the mission is *persona non grata* or that any other member of the staff of the mission is not acceptable. In any such case, the sending State shall, as appropriate, either recall the person concerned or terminate his functions with the mission. A person may be declared *non grata* or not acceptable before arriving in the territory of the receiving State."<sup>102</sup>
2. "If the sending State refuses or fails within a reasonable period to carry out its obligations under paragraph 1 of this

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<sup>98</sup> Vienna Convention, *supra* note 6, art. 22.

<sup>99</sup> Mark S. Zaid, *Diplomatic Immunity: To Have or not to Have, that is the Question*, 4 ILSA J. INT'L & COMPAR. L. 623 (1998).

<sup>100</sup> *Id.* at 623; *see also* J. CRAIG BARKER, ABUSE OF DIPLOMATIC PRIVILEGES AND IMMUNITIES: A NECESSARY EVIL? 146 (1996).

<sup>101</sup> Vienna Convention, *supra* note 6, art. 32.

<sup>102</sup> *Id.* art. 9.

Article, the receiving State may refuse to recognize the person concerned as a member of the mission.”<sup>103</sup>

The principle of inviolability and immunity are very similar and inseparable. In general, people say that the immunity of the diplomatic agent is based on the principle of inviolability, which means that the essence of the inviolability principle is the same with the immunity enjoyed by the diplomatic officer.<sup>104</sup> The immunity itself belongs to the sending State and a diplomatic officer cannot abrogate or waive his immunity without an approval from the sending State.<sup>105</sup> It is a prerogative right owned by the government of his State of origin but immunity is not a prerogative right of the diplomatic agent concerned.<sup>106</sup> In the event of misconduct, however, only the sending state has the authority to take action, for instance by recalling the diplomat or waiving his/her diplomatic immunity.<sup>107</sup>

#### XI. EFFECTS OF A FORMAL DECLARATION OF ‘PERSONA NON GRATA’

Given that the reasons need not be given by the receiving State when declaring a diplomatic or consular agent of the sending State *persona non grata*, the declaration of a diplomatic agent as *persona non grata* is correlatively utterly discretionary. The receiving State may thus make use of it for various reasons, whether for the behavior of the agent himself or due to the actions of the sending State.<sup>108</sup>

A diplomatic agent can be declared *persona non grata* at any moment, even prior to his entry into the territory of the receiving State.<sup>109</sup> In such situation, he could be denied access to the territory and would not be endowed with the privileges or immunities attached to his function.<sup>110</sup> Article 23 sub clause 3 of Vienna Convention on Consular Relations, 1963 provides that a person appointed as a member of a consular post may be declared unacceptable before arriving in the territory of the receiving State or, if already in the receiving State, before entering on his duties with the consular post. In any such case, the sending State shall withdraw his appointment and

<sup>103</sup> *Id.* art. 9.

<sup>104</sup> MICHAEL HARDY, *MODERN DIPLOMATIC LAW* 58 (Manchester University Press ed. 1968).

<sup>105</sup> CHARLES JAMES LEWIS, *STATE AND DIPLOMATIC IMMUNITY* 154 (3rd. ed. 1990); *see also* D. J. HARRIS, *CASES AND MATERIALS ON INTERNATIONAL LAW* 894–96 (5th ed. 1998).

<sup>106</sup> *See* HARDY, *supra* note 104.

<sup>107</sup> Gov’t of the Neth., *Diplomatic Immunity: not carte blanche for misconduct*, <https://www.government.nl/topics/embassies-consulates-and-other-representations/diplomatic-immunity> (last visited Feb. 7, 2021); *see also* Mark S. Zaid, *Diplomatic Immunity: To Have or not to Have, That is the Question*, 4 *ILSA J. INT’L & COMPAR. L.* 623 (1998).

<sup>108</sup> HARDY, *supra* note 104, at 58–60.

<sup>109</sup> Vienna Convention on Consular Relations art. 23, Apr. 24, 1963, 596 U.N.T.S. 261, [https://legal.un.org/ilc/texts/instruments/english/conventions/9\\_2\\_1963.pdf](https://legal.un.org/ilc/texts/instruments/english/conventions/9_2_1963.pdf) (last visited Feb. 24, 2021).

<sup>110</sup> *Id.*

the receiving State is not obliged to give to the sending State reasons for its decision.<sup>111</sup>

In practice, a formal declaration of *persona non grata* by the receiving State is rarely issued; it is normally sufficient to request the removal of a diplomat or consular.<sup>112</sup> Very often, the diplomatic or consular agent leaves or is withdrawn before any formal notification is needed.<sup>113</sup>

The sending State is not entitled to expel the agent following a declaration of *persona non grata*. A declaration *persona non grata* only obliges the sending State to *recall* the agent concerned back to their home State.<sup>114</sup> Only if the sending State does not recall its agent, the receiving state is allowed to consider the agent an ordinary foreign person without any immunity or privilege.<sup>115</sup> According to the International Court of Justice, if the sending State does not recall the agent concerned, the loss of diplomatic and consular privileges is ‘almost immediate.’<sup>116</sup> Expulsion is thus, not the automatic consequence of the declaration *persona non grata*. In any case, the agent concerned must be offered a reasonable time to leave the country while he remains entitled to the privileges and immunities attached to his function.<sup>117</sup>

A 1932 Harvard Research article explained similar principles, but added: “If a sending State refuses, or after a reasonable time fails, to recall a member of a mission whose recall has been requested by the receiving State, the receiving State may declare the functions of such person as a member of a mission to have been terminated.”<sup>118</sup> Although it might not dismiss or terminate him, the Harvard Research reflected the then widespread practice of the receiving State’s desire for recall prevailing over the sending State’s resistance,<sup>119</sup> suggesting it reflected the customary international law.

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<sup>111</sup> *Id.*

<sup>112</sup> EILEEN DENZA, *DIPLOMATIC LAW: COMMENTARY ON THE VIENNA CONVENTION ON DIPLOMATIC RELATIONS* (2016).

<sup>113</sup> *Id.*; see also ERNEST SATOW, *A GUIDE TO DIPLOMATIC PRACTICE* (1957).

<sup>114</sup> HARDY, *supra* note 104; see also Vienna Convention on Consular Relations art. 25(c), Apr. 24, 1963, 596 U.N.T.S. 261, [https://legal.un.org/ilc/texts/instruments/english/conventions/9\\_2\\_1963.pdf](https://legal.un.org/ilc/texts/instruments/english/conventions/9_2_1963.pdf) (last visited Feb. 24, 2021).

<sup>115</sup> Vienna Convention on Diplomatic Relations art. 9(2), Apr. 18, 1961, 500 U.N.T.S. 95; Vienna Convention on Consular Relations art. 23(2), Apr. 24, 1963, 596 U.N.T.S. 261.

<sup>116</sup> United States Diplomatic and Consular Staff in Teheran (U. S. v. Iran), Judgment, 1980 I.C.J. 3, ¶ 86 (May 24).

<sup>117</sup> Eritrea-Ethiopia Claims Commission, Partial Award, Diplomatic Claim, Eritrea’s Claim No. 20, 19 December 2005, 9 Diplomatic Claim—Eritrea’s Claim 20 (Eri. v. Eth.), Eri. Eth. Claims Comm’n, Partial Award, ¶ 35 (Dec. 19, 2005).

<sup>118</sup> *Codification of International Law*, 26 SUPPLEMENT TO THE AM. J. INT’L L. 1, 79 (1932); see EILEEN DENZA, *Diplomatic Privileges and Immunities*, in *THE HARVARD RESEARCH IN INTERNATIONAL LAW: CONTEMPORARY ANALYSIS AND APPRAISAL* P 155–72 (John. P. Grant & J. Craig. Barker eds. 2007).

<sup>119</sup> EILEEN DENZA, *DIPLOMATIC LAW: COMMENTARY ON THE VIENNA CONVENTION ON DIPLOMATIC RELATIONS* 64 (4<sup>th</sup> ed. 2016).



## XII. NOT JUST DIPLOMATS

It's not only diplomats who have been declared *persona non grata* status. Actor Brad Pitt was declared *persona non grata* by China after starring in the 1997 film "Seven Years in Tibet," though the ban was lifted in 2014 when he accompanied his then wife, Angelina Jolie, on a film tour.<sup>120</sup>

Israel declared Günter Grass, a German novelist, poet and playwright who won a Nobel Prize in 1999, *persona non grata* in 2012 after he depicted the country as endangering global peace.<sup>121</sup>

On May 20, 2009, American actor Alec Baldwin was declared *persona non grata* by the Philippine government after an appearance in an episode of the Late Show with David Letterman, where he joked about availing a "Filipino or Russian mail-order bride." Philippine senator and actor Ramon Revilla Jr. said Baldwin's wife would be "unlucky" and that "there will be trouble" if Alec Baldwin were to travel to the country.<sup>122</sup>

In June 2013, Spanish opera singer Montserrat Caballé was included in a list of *persona non grata* in Azerbaijan for visiting of Nagorno Karabakh without permission of Azerbaijan.<sup>123</sup>

## XIII. FEW NOTABLE LAW CASES RELATING TO *PERSONA NON GRATA* AND ANALYSIS

An early and celebrated case was that of Don Bernardino de Mendoza (1540–1604), Spanish Ambassador to Queen Elizabeth I of England, who was ordered to leave within fifteen days when investigations disclosed his involvement in a plot aimed at deposing the Queen and replacing her with Mary Queen of Scots.<sup>124</sup>

At the center of this plot were diplomatic letters between himself and King Phillip II of Spain. They used a code, which only Mendoza and the King could decipher.<sup>125</sup> Although this 'participation' therefore could not be particularized, Queen Elizabeth sent an envoy to Spain, demonstrating that she had a disagreement with Mendoza personally, but not with Spain. Her message was that she would welcome another Ambassador. This attempt to maintain

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<sup>120</sup> Fergus Ryan, *Brad Pitt, Set To Promote 'Allied' In China, Ending Two-Decade 'Ban,' CHINESE FILM INSIDER*, (Oct. 27, 2016), <http://chinafilm insider.com/brad-pitt-set-promote-allied-china-ending-two-decade-ban/>.

<sup>121</sup> *Harriet Sherwood, Günter Grass Barred from Israel over Poem*, GUARDIAN (Apr. 8, 2012), <https://www.theguardian.com/world/2012/apr/08/gunter-grass-barred-from-israel>.

<sup>122</sup> *Alec Baldwin's 'Filipina mail-order bride' remark irks senators*, PHILIPPINE STAR (May 20, 2009, 12:00 AM).

<sup>123</sup> AZERBAIJANI MINISTRY OF FOREIGN AFFAIRS (August 6, 2013), <https://web.archive.org/web/20130806212103/http://mfa.gov.az/files/file/Arzuolunmaz%20Shexslerin%20Siyahisi-2013.pdf>.

<sup>124</sup> JOHN HUNGERFORD POLLEN, S.J., *MARY QUEEN OF SCOTS AND THE BABINGTON PLOT 53–54* (Scottish Historical Society ed., 1922).

<sup>125</sup> Dalia M. Leonardo, 'Cut off this rotten member': *The Rhetoric of Heresy, Sin, and Disease in the Ideology of the French Catholic League* 247, 250–88 CATHOLIC HISTORICAL REVIEW (2002).

friendly relations naturally failed, the King having understood all the correspondence. However, expelling a diplomat for personal reasons, not attributed to the sending State, became a norm of diplomatic custom,<sup>126</sup> possibly as a newly standardized method of directing intrigue at the sending State.

The practice advocated by Emer de Vattel (1714–1767) became general during the more placid political climate of the nineteenth century.<sup>127</sup> ‘Expulsion’ cases disappeared and requests for recall were complied with discreetly and without public demands for reasons, although the facts often became known and appeared in diplomatic handbooks.<sup>128</sup> The United States complied with this practice by recalling their *chargé d’affaires* from Lima in 1846, after he had described a decree officially communicated to him by the Peruvian Ministry of Foreign Affairs as “a compound of legal and moral deformities presenting to the vision no commendable lineament, but only gross and perverse obliquities.”<sup>129</sup> The Secretary of State commented in his dispatch to Mr. Jewett that:

[I]f diplomatic agents render themselves so unacceptable as to produce a request for their recall from the government to which they are accredited, the instances must be rare indeed in which such a request ought not to be granted. To refuse it would be to defeat the very purpose for which they are sent abroad, that of cultivating friendly relations between independent nations.<sup>130</sup>

However, the Don Bernardino de Mendoza case, discussed above, suggests more that the sending State ought to recall its Ambassador as soon as the receiving State articulated its suspicion of his activities.

Great Britain’s position was different. In a similar case, during the process of *agrément*, meaning ‘approval,’ Britain demanded reasons for a recall request and argued a right to consider the reasons provided.<sup>131</sup> Thus, upon the 1848 dismissal of Sir Henry Bulwer (1801–1872), British Ambassador to Madrid, Lord Palmerston articulated, for the first time, the British practice in terms of the conjoined sending State ‘dignity and interests’, as follows:

<sup>126</sup> IVOR ROBERTS, *SATOW’S DIPLOMATIC PRACTICE* 207, ¶ 15.7 (6th ed, 2009); *see also* EMMERICH DE VATTEL, *THE LAW OF NATIONS OR THE PRINCIPLES OF NATURAL LAW, OF THE RIGHTS, PRIVILEGES, AND IMMUNITIES OF AMBASSADORS AND OTHER PUBLIC MINISTERS* 371 (Charles G. Fenwick trans., 1758); *see also* JOHN A. WAGNER, *HISTORICAL DICTIONARY OF THE ELIZABETHAN WORLD: BRITAIN, IRELAND, EUROPE, AND AMERICA* 302–03 (1999).

<sup>127</sup> Philip A. Hamburger, *Beyond Protection*, 109 *COLUM. L. REV.* 1823 (2009).

<sup>128</sup> DENZA, *supra* note 5, at 62–63.

<sup>129</sup> *Id.* at 62.

<sup>130</sup> *SATOW’S DIPLOMATIC PRACTICE*, *supra* note 52, at ¶ 15.8; *see* Acceptability of Ambassador or Minister, 4 *HACKWORTH DIGEST*, ch. 24, § 385, at 447–52.

<sup>131</sup> Vienna Convention on Diplomatic Relations, *supra* note 6, art. 4 (“1. The sending State must make certain that the *agrément* of the receiving State has been given for the person it proposes to accredit as head of the mission to that State. 2. The receiving State is not obliged to give reasons to the sending State for a refusal of *agrément*.”).

The Duke of Sotomayor, in treating of that matter, seems to argue as if every government was entitled to obtain the recall of any foreign minister whenever, for reasons of its own, it might wish that he should be removed; but this is a doctrine to which I can by no means assent . . . .

. . . [I]t must rest with the British Government [in such a case to determine whether there is or is not any just cause of complaint against the British diplomatic agent, and whether the dignity and interests of Great Britain would be best consulted by withdrawing him, or by maintaining him at his post.<sup>132</sup>

These different interpretations of the procedure were evident in 1888, when Lord Sackville was a British Minister in Washington.<sup>133</sup> The United States declared him *persona non grata* after he caused to be published, during an election, a letter advising a former British subject how to vote.<sup>134</sup> The Marquis of Salisbury stated as follows:

It is, of course, open to any government, on its own responsibility, suddenly to terminate its diplomatic relations with any other state, or with any particular minister of any other State. But it has no claim to demand that the other state shall make itself the instrument of that proceeding, or concur in it, unless that state is satisfied by reasons, duly produced, of the justice of the grounds on which the demand is made.<sup>135</sup>

In the Case Concerning United States Diplomatic and Consular Staff in Tehran (Hostages Case), in the International Court of Justice, Iran's Minister of Foreign Affairs argued that seizing the United States Embassy and detaining its diplomatic and consular staff took place in the context of "continual interference by the United States in the internal affairs of Iran, the shameless exploitation of our country, and numerous crimes perpetrated against the Iranian people, contrary to and in conflict with all international and humanitarian norms."<sup>136</sup> The ICJ held that, even if established, these alleged criminal activities could not justify Iran's conduct "because diplomatic law itself provides the necessary means of defence against, and sanction for,

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<sup>132</sup> Letter from Viscount Palmerston to Señor Isturiz (June 12, 1848), in *Intercourse of States*, 4 MOORE DIGEST, ch. 15, § 640, at 538–39.

<sup>133</sup> See T. H. Sanderson, *West, Lionel Sackville Sackville, second Baron Sackville*, in OXFORD DICTIONARY OF NATIONAL BIOGRAPHY (2004) (ebook).

<sup>134</sup> See Charles S. Campbell, Jr., *The Dismissal of Lord Sackville*, 44 J. AM. HIST. 635 (1958) (journal renamed in 1964 from *The Mississippi Valley Historical Review*).

<sup>135</sup> Letter from Lord Salisbury to E. J. Phelps (Dec. 24, 1888), in *Intercourse of States*, 4 MOORE DIGEST, ch. 15, §640, at 538.

<sup>136</sup> United States Diplomatic and Consular Staff in Tehran (U.S. v. Iran), Judgment, 1980 I.C.J. 3 (May 24) ¶ 10.

illicit activities by members of diplomatic or consular missions.”<sup>137</sup> It also held that Article 9 of Vienna Convention provided a remedy for abusing diplomatic privileges.<sup>138</sup> Because it provided no obligation to give reasons, it took account of the difficulty that may be experienced in practice of proving such abuses in every case or, indeed, of determining exactly when exercise of the diplomatic function, expressly recognized in Article 3(1)(d) of the 1961 Convention, of “ascertaining by all lawful means conditions and developments in the receiving State”<sup>139</sup> may be considered as involving such acts as “espionage” or “interference in internal affairs.”<sup>140</sup> Article 9 formed part of a “self-contained regime” which foresaw possible abuse by members of missions and specified the means to counter such abuse.<sup>141</sup> Iran had at no time declared any member of the diplomatic staff in Tehran *persona non grata*, and did not therefore “employ the remedies placed at its disposal by diplomatic law specifically for dealing with activities of the kind of which it now complains.”<sup>142</sup>

Thus, the ICJ avoided dealing with whether the receiving State could act summarily against diplomats’ criminal activities, as already agitated by the scholars.<sup>143</sup> This suggested that the International Court of Justice was wary of exercising a power of justiciability in this matter. Thus, Iranian authorities no doubt considered it safer in their community to detain United States officials than to allow them to continue freely committing the acts alleged in the ICJ.

In 1976, Egypt declared the Libyan Ambassador *persona non grata*, after they discovered him circularizing leaflets against President Sadat’s government.<sup>144</sup> They suspected him of clandestine operations against Egypt.<sup>145</sup> In 1980, the U.S. Department of State received warnings that assassinations and kidnappings of those opposed to Colonel Gaddafi’s Libyan regime could take place in the United States.<sup>146</sup> Thus, the United States

<sup>137</sup> *Id.* ¶ 83.

<sup>138</sup> Vienna Convention on Diplomatic Relations, *supra* note 6, art. 9.

<sup>139</sup> The Department of State Bulletin, (Jan.1980) Volume 80 number 2034, Office of Public Communication, Bureau of Public Affairs, 57–58.

<sup>140</sup> SATOW, *supra* note 59, ¶ 10.23.

<sup>141</sup> DENZA, *supra* note 5, at 64.

<sup>142</sup> Nicolas Angelet, *Le Droit des Relations Diplomatiques et Consulaires dans la Pratique Récent du Conseil de Sécurité*, Le, 32 REV. BDI 149, 151–52 (1999) (suggesting that Iran’s response was a violation of international law).

<sup>143</sup> ALBERICI GENTILIS & THOMAS VAUTROLLIER, DE LEGATIONIBUS (Vol. II, chs. XIII, XVII, XVIII, XIX, XXI, 1585); JEAN HOTMAN & JAMES SHAW, THE AMBASSADOR 65–71 (London, 1603); HUGO GROTIUS, THE RIGHTS OF WAR AND PEACE, BOOK II 5–7 (Liberty Fund ed. 2005) (1625); *see also* CORNELIUS VAN BYNKERSHOEK, DE FORO LEGATORUM ch. XI (1721), *reprinted in* CORNELIUS VAN BYNKERSHOEK, A TREATISE ON THE LAW OF WAR, chs. XVII–XX (The Lawbook Exchange, ed. 2007).

<sup>144</sup> DENZA, *supra* note 23, at 66.

<sup>145</sup> ERNEST MASON SATOW, SATOW’S GUIDE TO DIPLOMATIC PRACTICE ¶ 21.24 (Lord Paul Gore-Booth ed., 5<sup>th</sup> ed. 1979); *see also* *Libyan Envoy is Expelled from Egypt*, THE TIMES, July 1, 1976, at 7.

<sup>146</sup> BRIAN L. DAVIS, QADDAFI, TERRORISM, AND THE ORIGINS OF THE U.S. ATTACK ON LIBYA 37–38 (1990).

declared two members of the Libyan Washington mission *persona non grata* for unacceptable conduct, requiring them to depart the United States within 48 hours.<sup>147</sup> Four more members of the mission were expelled in the next month.<sup>148</sup> The Libyan People's Bureau said it was not a diplomatic mission, so Article 9 of the Vienna Convention on Diplomatic Relations did not apply. Nevertheless, it withdrew its specified officials.<sup>149</sup> In 1980, the British government declared *persona non grata* the London Head of the Libyan People's Bureau for his public comments on violent events involving Libyans in the United Kingdom.<sup>150</sup> After a breach of relations between Libya and the United Kingdom in 1984, Libya's United Kingdom interests came under the protection of Saudi Arabia.<sup>151</sup> In 1995, the Head of the Libyan Interests Section of the Saudi Arabian Embassy, who was a Libyan diplomat, was asked to leave after concern he participated in surveillance and intimidation of opponents of Colonel Gaddafi's regime.<sup>152</sup>

In 1991, Germany demanded an Iraqi diplomat depart within forty-eight hours' notice after his unlawful import of a Kalashnikov rifle to threaten Kurdish demonstrators at the Iraqi Embassy.<sup>153</sup> In 1995, the United Kingdom declared an attaché in the Embassy of Iraq *persona non grata* after he collected intelligence data for the Directorate-General of Intelligence of Iraq about dissident Iraqi students in Britain.<sup>154</sup>

In 2007, after the poisoning of Alexander Litvinov with Polonium-210, the United Kingdom expelled four Russian diplomats due to Russia's refusal to extradite a Russian citizen, Andrey Lugovoy, to stand trial for the murder in Britain.<sup>155</sup> Russia also declined to co-operate with the United Kingdom to resolve the matter. The UK Foreign Secretary, David Miliband, described the measure in the British House of Commons as a "clear and proportionate signal

<sup>147</sup> Mitchell S. Ross, *Rethinking Diplomatic Immunity: A Review of Remedial Approaches to Address the Abuses of Diplomatic Privileges and Immunities*, 4 AM. U. J. INT'L L. & POL'Y 173, 173–80 (1989).

<sup>148</sup> *Id.*

<sup>149</sup> Certain Duties of Diplomatic Officers, 1980 Digest of United States Practice in International Law, ch. 4, §1, at 330.

<sup>150</sup> Iain Cameron, *First Report of the Foreign Affairs Committee of the House of Commons*, 34 INT'L COMP. L. Q. 610 (1985); see also Foreign Affairs Committee, Government Report on Review of the Vienna Convention on Diplomatic Relations and Reply to "The Abuse of Diplomatic Immunities and Privileges", 1984-85, HC 05-I, ¶ 31–82.

<sup>151</sup> Denza, *supra* note 23, at 63–67.

<sup>152</sup> Edward Gorman & Stewart Tendler, *Libya and Britain Send Envoys Home in Diplomatic Row*, TIMES: LONDON, Dec. 12, 1995, at 8.

<sup>153</sup> Denza, *supra* note 23, at 66–67; see also *Envoy Exposed*, THE TIMES (London), Apr. 10, 1991, at 10.

<sup>154</sup> Michael Binyon, *Britain Expels Iraqi Envoy Accused of Spying on Students*, THE TIMES (London), Oct. 26, 1995, at 12.

<sup>155</sup> ROBERT H. DONALDSON ET AL., THE FOREIGN POLICY OF RUSSIA: CHANGING SYSTEMS, ENDURING INTERESTS 231–38 (5th ed. 2014).

to the Russians.”<sup>156</sup> Foreign Secretary Miliband did not suggest that the four expelled diplomats were complicit in the murder.<sup>157</sup> A declaration by the Presidency on behalf of the European Union on this case expressed regret that Russia had failed to cooperate.<sup>158</sup> It did not endorse the United Kingdom’s expulsion of the Russian diplomats.<sup>159</sup>

The Government of Finland has declared *persona non grata* the North Korean *chargé d’affaires* and three other diplomats following the discovery that Finland had been used as a staging post for drugs destined for other countries in Scandinavia.<sup>160</sup> On the following day, the North Korean Ambassador to Norway and Sweden was also declared *persona non grata* for similar reasons.<sup>161</sup> In 1999, the United Kingdom required the withdrawal of a Liberian diplomat found to be smuggling arms in breach of a U.N. arms embargo on Liberia.<sup>162</sup> The diplomat claimed that the item in question (an armored car for the Liberian President) had no offensive capacity.<sup>163</sup>

The Singapore Government requested the recall of a United States diplomatic agent for interference in the domestic affairs of Singapore in 1988, after he was trying to persuade anti-Government lawyers to stand for election.<sup>164</sup> In the same year, Nicaragua expelled the United States Ambassador, along with seven diplomatic agents, for destabilizing Nicaragua by fomenting revolt.<sup>165</sup> The actions of both Singapore and Nicaragua caused American retaliation in the form of expulsions in Washington, D.C.<sup>166</sup>

<sup>156</sup> DENZA, *supra* note 23, at 68; *see also* Jacques Hartmann, *The Lugovoy Extradition Case: Public International Law*, 57(1) INT’L & COMPAR. L. Q. 194, 194–200 (2008).

<sup>157</sup> *See* SATOW, *supra* note 59, at 203; Hartmann, *supra* note 156, at 194–95.

<sup>158</sup> DENZA, *supra* note 23, at 68.

<sup>159</sup> Press Release, Council of the European Union, Declaration by the Presidency on Behalf of the European Union on the Litvinenko Case, U.N. Press Release 11976/07 (July 18, 2007).

<sup>160</sup> Charles Kraus, *North Korea, the Smuggler State*, WILSON CENTER (Sept. 18, 2017), <https://www.wilsoncenter.org/blog-post/north-korea-the-smuggler-state> (“In the fall of 1976, North Korean diplomats were expelled from Denmark, Finland, Norway, and Sweden for smuggling alcohol, tobacco, and drugs.”).

<sup>161</sup> Robert B. Semple Jr., *The New York Times*, Scandinavians Press Investigation of Reported Korean Smuggling (Oct. 21, 1976), <https://www.nytimes.com/1976/10/21/archives/scandinavians-press-investigation-of-reported-korean-smuggling.html>.

<sup>162</sup> ADEKEYE ADEBAJO, LIBERIA’S CIVIL WAR: NIGERIA, ECOMOG, AND REGIONAL SECURITY IN WEST AFRICA 180–85 (2002); *see also* Sunday E. Edeko, *The Security Implications of Civil Wars in Africa: Liberia and Darfur in Perspective*, 1 SACHA J. HUM. RTS. 50 (2011).

<sup>163</sup> Clement e Adibe, *The Liberian conflict and the ECOWAS and UN partnership*, *Third World Quarterly*, Vol 18, No 3, 1997, 471, 488.

<sup>164</sup> Harris Gardiner & Kumar Hari, *Outrage in India, and Retaliation, Over a Female Diplomat’s Arrest in New York*, *NY TIMES* (May 12, 1988), <https://global-factiva-com.proxy.lib.uiowa.edu/ga/default.aspx>.

<sup>165</sup> Stephen Kinzer, *Nicaraguans Expel 3 Americans, Charging ‘Macabre Plot’ On Aide*, *NY TIMES* (June 7, 1983) <https://global-factiva-com.proxy.lib.uiowa.edu/ga/default.aspx>.

<sup>166</sup> *Id.*

In 2008, Serbia expelled the ambassadors of Montenegro and Macedonia in response to their sending State's recognition of Kosovo.<sup>167</sup>

The Indian diplomat, Devyani Khobragade (Deputy Consulate General), was declared an unwanted person (*persona non grata*) and expelled by the government of the United States in December 2013.<sup>168</sup> As she was alleged to be involved in counterfeiting visa data (or a visa document) for her servant.<sup>169</sup> She was also alleged to have given a false statement about the wages of her domestic servant. Before she was expelled, the government of the United States captured and detained her.<sup>170</sup> The government of United States asked the government of India for permission to waive her diplomatic immunity with the aim of bringing her as an accused in front of a court, but the government of India refused the demand of United States stating that there was no reason to eliminate or waive her immunity.<sup>171</sup> On March 12, 2014, Judge Shira Scheindlin ordered that all charges against Khobragade be dismissed because she had diplomatic immunity at the time of her indictment on visa fraud charges. Prior to the indictment, she was posted to the United Nations.<sup>172</sup> Two days later, Khobragade was re-indicted on the same charges.<sup>173</sup> The implication was that the United States could little and declared the diplomat (Deputy Consulate General of India) an unwanted person.<sup>174</sup>

In most of the cases of espionage and involvement in terrorism, the unacceptable activities would have been authorized or at least condoned by the sending State. It is usual in these circumstances for the sending government whose diplomats are required to leave to plead their innocence, to claim that

<sup>167</sup> Belgrade Ministry of Foreign Affairs, Press Releases from Ministry of Foreign Affairs (2008); see DW staff, *Serbia Expels Macedonian, Montenegrin Envoys Over Kosovo*, DW (Oct. 10, 2008), <https://www.dw.com/en/serbia-expels-macedonian-montenegrin-envoys-over-kosovo/a-3704625>.

<sup>168</sup> Nilanjana Bhowmick, *U.S. to Review Indian Diplomat's Arrest and Strip Search After New Delhi Backlash*, TIME (Dec. 18, 2013), <https://world.time.com/2013/12/18/us-to-review-devyani-khobragade-arrest-and-strip-search/>; see also Gardiner Harris, *Outrage in India and Retaliation, Over a Female Diplomat's Arrest in New York*, NY TIMES (Dec. 17, 2013), <https://www.nytimes.com/2013/12/18/world/asia/outrage-in-india-over-female-diplomats-arrest-in-new-york.html> (last visited Dec. 17, 2019).

<sup>169</sup> Chris Franciscani, *Reuter Timeline: Case of Devyani Khobragade, Indian diplomat arrested in New York*, REUTERS (Dec. 21, 2013), <https://www.reuters.com/article/usa-india-timeline-devyani-khobragade-idINDEE9BJ0FS20131220>.

<sup>170</sup> *Id.*

<sup>171</sup> Narayan Lakshman, *Devyani Seeks Dismissal of Visa Fraud Case in U.S. Court*, HINDU (May 18, 2016, 6:57 AM), <https://www.thehindu.com/news/international/world/devyani-defends-call-to-dismiss-us-visa-fraud-case/article5667558.ece?homepage=true>.

<sup>172</sup> William Booth, *New Indictment Filed Against Indian Diplomat Devyani Khobragade in U.S. Visa Fraud Case*, WASH. POST. (Mar. 14, 2014).

<sup>173</sup> K.P. Nayar, *JNU to Diplomatic Rescue, Sighs of Relief as Devyani's Husband Lands India Job*, TELEGRAPH (Feb. 10, 2014), <https://www.telegraphindia.com/india/jnu-to-diplomatic-rescue-sighs-of-relief-as-devyanis-husband-lands-india-job/cid/212017>.

<sup>174</sup> Dominique Debucquoy-Dodley, *Indian Diplomat Devyani Khobragade Indicted Again*, CNN (Mar. 13, 2014, 9:45 AM), <https://edition.cnn.com/2014/03/14/justice/indian-diplomat-indicted/index.html> (last visited Apr. 27, 2021).

the requirement to withdraw them was unjustified, and to carry out a reciprocal expulsion.

#### XIV. EFFECTIVENESS OF ARTICLE 9 - VIENNA CONVENTION 1961

The effectiveness of Article 9 may be deduced from the fact that there appear to be virtually no cases where a receiving State has found it necessary to resort to its power under paragraph 2 of the Article to refuse to recognize the person concerned as a member of the mission.<sup>175</sup> One such exceptional case was that of a Cuban diplomat, Mr. Imperatori, who maintained his innocence of the charges made against him by the United States and publicly expressed his wish to defend himself in a United States court.<sup>176</sup> Following the expiry of the period given to him to leave, he was, however, deported by the United States authorities to Canada.<sup>177</sup> In most cases, particularly where a diplomat has been detected in some personal misconduct, he leaves or is withdrawn without the receiving State making any formal notification withdrawing his recognition as a member of the mission.<sup>178</sup> Whether the request for withdrawal becomes public at all, and the formality of the language in which it is described, owe more to the circumstances and to the political pressures on the sending and the receiving State than to the nature of the conduct which has caused offence.<sup>179</sup>

It is not possible to come to a firm conclusion on what is a 'reasonable period' for the purposes of Article 9. The precedent shows that where a receiving State has imposed a deadline for departure, it has been much shorter than is granted in the case of normal termination of a diplomat's functions and the application of Article 39 of the Convention.<sup>180</sup> Forty-eight hours' notice seems to be the shortest which could be justified as 'reasonable'.<sup>181</sup> Those declared *persona non grata* or not acceptable historically have left well within any deadline.<sup>182</sup> However, in 2006, a French judge issued nine arrest warrants

<sup>175</sup> One anomalous—and questionable—exception was the *Diplomatic Immunity from Suit Case*, (1966-70) *Fontes Iuris Gentium*, Series A., Sectio II, Tomus 6, 484; and (1970) N.J.W. 1514 (in German); *61 I.L.R. 498*, where the Provincial Court of Heidelberg upheld the immunity from prosecution of a student whose original notification as a member of the mission of Panama had been rejected by the German Government and who following an accident due, it was alleged, to his drunken driving, had also been declared *persona non grata*. The court said that if the diplomat was not withdrawn his immunity subsisted until the receiving State gave actual notice under Art 9.2. EILEEN DENZA, *DIPLOMATIC LAW: COMMENTARY ON THE VIENNA CONVENTION ON DIPLOMATIC RELATIONS* 34 (4th Ed. 2016).

<sup>176</sup> *Id.* at 348–50.

<sup>177</sup> *AJIL* 2000 534.

<sup>178</sup> Hansard HC Debs WA cols 284–86, printed in 29 June, 1981 *BYIL* 435 at 436.

<sup>179</sup> DENZA, *supra* note 175, at 72–73.

<sup>180</sup> *Id.*

<sup>181</sup> *Id.*

<sup>182</sup> MICHAEL RICHTSTEIG, *WIENER ÜBEREINKOMMEN ÜBER DIPLOMATISCHE UND KONSULARISCHE BEZIEHUNGEN. ENTSTEHUNGSGESCHICHTE, KOMMENTIERUNG, PRAXIS* 32–38, 91 (1994).



against Rwandans for the murder of the former President of Rwanda. In turn, Rwanda recalled its ambassador to Paris and ordered the French Ambassador to Rwanda to leave within twenty-four hours. Other French diplomats were ordered to leave within seventy-two hours.<sup>183</sup> These exceptionally short deadlines were, however, imposed in the context of a total breach of diplomatic relations.<sup>184</sup> Under the partial award made in *Eritrea's-Ethiopia Claim: Partial Award 20*,<sup>185</sup> they were not—under the circumstances of an outbreak of hostilities between the two States—in breach of Article 9 since they allowed the expelled diplomats to gather their families and belongings before departure. This was made in response to Eritrea's allegation that periods of twenty-four hours and forty-eight hours' notice for diplomats to leave were unduly short.<sup>186</sup>

## XV. CONCLUSION

It is disturbing to note that diplomatic crimes and misconduct are on the rise in recent times. The principle of diplomatic immunity is a well-established principle of international law. It is a universal fact that diplomacy is a fundamental fact of international life and without it, the international life would be in danger. The abuse of privileges and immunities by diplomats, as well as by governments, constitute one of the major challenges to the success of the Vienna Convention. The rule of law demands that even the crimes committed by diplomats should be duly recorded. However, many times the problem is due to the broad interpretations of the immunities and privileges facilitated by the states. Therefore, Vienna Convention stresses that the object behind diplomatic protection is “to ensure the efficient performance of the functions of diplomatic missions as representing states,” and not because the diplomat is the representative of another sovereign.<sup>187</sup>

Diplomatic immunity law itself foresees the possibility of its abuse and “specifies the means at the disposal of the receiving state to counter any such abuse.”<sup>188</sup> They (receiving states) mainly include the options of declaration of *persona non grata* and the waiver of privileges and immunities by the sending

<sup>183</sup> LINDA MELVERN, CONSPIRACY TO MURDER: THE RWANDAN GENOCIDE 180–83 (2006); see also Hereward Holland, *Rwanda Says France Drops Kabuye Arrest Warrant*, REUTERS (Apr. 1, 2009, 12:26 AM), <https://www.reuters.com/article/ozatp-rwanda-france-kabuye-20090401-idAFJ0E53001S20090401>.

<sup>184</sup> EILEEN DENZA, PERSONA NON GRATA DIPLOMATIC LAW: A COMMENTARY ON THE VIENNA CONVENTION ON DIPLOMATIC RELATIONS 72 (2016).

<sup>185</sup> ERITREA-ETHIOPIA CLAIMS COMMISSION (EECC): PARTIAL AWARD REGARDING WESTERN FRONT, AERIAL BOMBARDMENT AND RELATED CLAIMS ERITREA'S CLAIMS, 1, 3, 5, 9–13, 14, 21, 25 & 26.” *International Legal Materials*, vol. 45, no. 2, 2006, 396–429.

<sup>186</sup> 135 ILR 519; Rep. of Int'l Arbitral Awards, Eritrea—Ethiopia Claims Commission—Partial Award: Diplomatic Claim—Eritrea's Claim 20, Vol. XXVI at 381 (2005).

<sup>187</sup> Vienna Convention on Diplomatic Relations and Optional Protocols, *supra* note 115.

<sup>188</sup> J. CRAIG BARKER, *THE PROTECTION OF DIPLOMATIC PERSONNEL* 85 (2006); see generally S. 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*, 3 CHINESE J. GLOB. GOVERNANCE 182 (2017).

state. Though these options are not very effective in state practice. Thus, it is submitted that the broader interpretation of the requirements of waiver should not be viewed as an option to counter the menace of the abuses of the privileges and immunities. In that situation, it may be advised that any exception to the concept of diplomatic immunity should be interpreted narrowly and in line with the goals and purposes of the Vienna Convention.

A declaration of *persona non grata* is closely related to the principle of inviolability and immunity. Not every declaration of *persona non grata* culminates in expulsion because sometimes, after some deliberations, the receiving state merely submits a warning to the diplomat against further violation of its laws. However, a declaration of *persona non grata* usually results in expulsion of the concerned diplomat, as well as issuing a deadline for the diplomat to leave. This usually occurs if it is proven that the diplomat conducted a serious crime capable of threatening the security of the receiving State. The declaration of *persona non grata* is an adequate check on the principles of immunity and inviolability. It is the maximum sanction that can be applied to a diplomat whose actions damage the receiving state. However, when diplomatic relations between states are severed as a result of war or other reasons, expulsion could be carried out without the declaration of *persona non grata*. The right of the receiving state to request the recall of offending diplomats was already supported by Gentilis, Grotius, and Vattel.<sup>189</sup> But it soon became clear that this right was not only a theoretical construction of scholars, but it was corroborated by general practice whereby the sending state would comply with a receiving state's request for recall of the offending diplomat.

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<sup>189</sup> HEDLEY BULL ET AL., HUGO GROTIUS AND INTERNATIONAL RELATIONS 63–95 (Hedley Bull, Benedict Kingsbury, & Adam Roberts eds., 1992).