

Lecture 6 | Part 1

Subject: Diplomatic Immunities and Privileges

KEYWORDS:

Diplomatic Immunities & Privileges | VCDR | Inviolability | Premises | Correspondence | Jurisdiction
Personal Immunity and Privilege | Exemption | Diplomatic Bag | Military Obligation | Diplomatic Passport
| Custom Duties | Waiver from Diplomatic Immunity.

Important Note: Articles that are included in this lecture are **ONLY** for understanding and clarification purposes.

Questions to be addressed:

- What is meant by Diplomatic Immunities and Diplomatic Privileges?
 - What is the difference between Diplomatic Immunity and Diplomatic Privilege?
 - What are the Immunities and Privileges that are accorded to Diplomats?
 - What are the Immunities and Privileges that are granted to the Diplomatic missions?
 - How Diplomatic Immunities and privileges can be classified?
- **Important Note: Articles that are included in this lecture are ONLY for understanding and clarification purposes.**

Meaning and Definition of the term 'Immunity and Privilege'

Diplomats and Representatives of state accorded special immunities and they enjoy privileges that granted to them via international law in order to achieve and implement their tasks and activities. Therefore, Diplomats have the immunities and privileges in the host state where they sent to NOT in their (Sending State). by other means, they enjoy these immunities while they are aboard representing their own country.

The Vienna Convention on Diplomatic relations (VCDR - 1961) used the term '**Immunities and Privileges**' **43** times. However, it didn't present specific definition to these two words, even though there is no one unified and

comprehensive definition by the scholars and researchers. Hence, some scholars didn't make any difference between both words and some used them separately. They believe that Immunity means a legal grantee and privilege as special or high respect.

Immunity

- Root and Origin of the word: in Latin is 'Immunitas' which is derived from the word 'immunis'.
- Meaning of Immunity: Protection from or exemption from legal action or a particular duty.
- Definition:
 - ✚ Cambridge Dictionary defined it as; the special rights that diplomats have while working in a country that is not their own, such as freedom from legal action.
 - ✚ Merriam-webster: an international law that gives foreign diplomats special rights in the country where they are working.
 - ✚ Legal Definition of immunity: exemption from a duty or liability that is granted by law to a person or class of persons. Or
 - ✚ immunity (as from taxes or prosecution) granted to a diplomat.

Privilege

- Root and Origin of the word: originally is a Latin derived from the word 'Privilegium'.
- Meaning Privilege: It means gift, privacy or priority or franchise or a special credit granted to a particular person or a group.
- Definition:
 - ✚ Cambridge Dictionary: an advantage that only one person or group of people has, usually because of their position or because they are rich.
 - ✚ a special advantage or authority possessed by a particular person or group.

- ✚ legal protection that a person or a group has because of their position within a society, for example the right to keep particular discussions, etc. private.

Classification of Diplomatic Privileges and Immunities

Diplomatic Privileges and Immunities are classified as below:

- A. Immunity and Privileges of the **Diplomatic Missions or agents.**
- B. **Personal** Immunity and Privileges related to the '**Diplomats**'.

Privileges and Immunities in respect of the **Diplomatic Missions:**

1. **Inviolability and Immunity of the Premises and Its Property:** **VCDR, Article (1/i, 20 – 22, 41/3)**

The premises of a mission and the private residence of the head of a mission are inviolable, as are those of members of the diplomatic and administrative and technical staff of the mission provided that they are not nationals or permanent residents of the host state. They may not be entered by agents of the host state without the permission of the head of mission concerned; the host state is obliged to ensure that all appropriate steps are taken to protect such premises against intrusion or damage, and to prevent any disturbance of the peace of the mission or impairment of its dignity. The premises, together with their contents and the means of transport belonging to the mission, are immune from search, requisition, legal attachment or execution. Motor vehicles belonging to members of the diplomatic and administrative and technical staff enjoy the same immunity, but special provisions apply to traffic offences in different countries. Generally speaking, diplomats are treated as nationals in respect of such offences, save that they are not prosecuted, but the offence is reported to the head of mission.

Article 1,I

The "premises of the mission" are the buildings or parts of buildings and the land ancillary thereto, irrespective of ownership, used for the purposes of the mission including the residence of the head of the mission.

Article 20

The mission and its head shall have the right to use the flag and emblem of the sending State on the premises of the mission, including the residence of the head of the mission, and on his means of transport.

Article 21

1. The receiving State shall either facilitate the acquisition on its territory, in accordance with its laws, by the sending State of premises necessary for its mission or assist the latter in obtaining accommodation in some other way.
2. It shall also, where necessary, assist missions in obtaining suitable accommodation for their members.

Article 22

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 the mission.
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.

VCDR, Article 41/3

“The premises of the mission must not be used in any manner incompatible with the functions of the mission as laid down in the present Convention or by other rules of general international law or by any special agreements in force between the sending and the receiving State”.

2. Inviolability of the Records, Documents, Correspondence and Archives:

VCDR, Article 24

The records, documents, correspondence and archives of a mission are inviolable at any time and wherever they may be.

3. Freedom and Inviolability of the Communications:

A diplomatic mission is entitled to communicate freely for all official purposes and to have access to every facility for this in the state in which it is situated.

It may use any suitable methods including couriers and messages in code or cipher to communicate with its own government and with any of its government's missions and consulates wherever they may be situated. A wireless transmitter, however, maybe installed and used only with the consent of the host government.

VCDR, Article 27

1. The receiving State shall permit and protect free communication on the part of the mission for all official purposes. In communicating with the Government and the other missions and consulates of the sending State, wherever situated, the mission may employ all appropriate means, including diplomatic couriers and messages in code or cipher. However, the mission may install and use a wireless transmitter only with the consent of the receiving State.
2. The official correspondence of the mission shall be inviolable. Official correspondence means all correspondence relating to the mission and its functions.

4. The Diplomatic Bag, Pouch or Valise.:

This is a sealed bag or container clearly marked as such, containing only official documents and articles for official use. A diplomatic bag usually falls into one of two categories depending on the importance of its contents: accompanied or unaccompanied. The diplomatic bag is inviolable: it may not be opened or detained, and every facility must be given for its swift despatch. It may be carried by a diplomatic courier who is entitled to the protection of the state which he is visiting or in which he is serving in the performance of his functions. He enjoys personal inviolability, and is not liable to any form of arrest or detention.

A diplomatic courier is usually a full-time employee of a Ministry of Foreign Affairs, and on every journey must be provided by his Ministry or head of mission with a document indicating his status and the number of packages constituting the diplomatic bag. Where there is no regular diplomatic courier a state or mission may designate an individual- often an official of appropriate nationality who is making the journey for other reasons - as a diplomatic courier for a specific journey. Provided that he is furnished with the appropriate documents by his Ministry or head of mission he will be granted the same immunities and personal inviolability as a regular courier until such time as he has delivered the diplomatic bag in his charge. In normal circumstances a diplomatic bag may be entrusted to the captain of an aircraft, provided he enters or leaves the country through an authorized place of entry. A member of the mission concerned is entitled to hand the bag directly and freely to the captain, and similarly to receive it from him. The captain concerned must be provided with a document stating the number of packages

constituting the bag; but he himself is not considered as being a diplomatic courier. When communications between a state and its diplomatic mission have to pass through a third state, that state must furnish the same inviolability as is accorded by the receiving state. Diplomatic bags properly identified are inviolable while in transit through third states, as are diplomatic couriers. Couriers must, however, obtain any appropriate visas.

VCDR, Article 27/3-7

3. The diplomatic bag shall not be opened or detained.
4. The packages constituting the diplomatic bag must bear visible external marks of their character and may contain only diplomatic documents or articles intended for official use.
5. The diplomatic courier, who shall be provided with an official document indicating his status and the number of packages constituting the diplomatic bag, shall be protected by the receiving State in the performance of his functions. He shall enjoy person inviolability and shall not be liable to any form of arrest or detention.
6. The sending State or the mission may designate diplomatic couriers ad hoc. In such cases the provisions of paragraph 5 of this article shall also apply, except that the immunities therein mentioned shall cease to apply when such a courier has delivered to the consignee the diplomatic bag in his charge.
7. A diplomatic bag may be entrusted to the captain of a commercial aircraft scheduled to land at an authorized port of entry. He shall be provided with an official document indicating the number of packages constituting the bag but he shall not be considered to be a diplomatic courier. The mission may send one of its members to take possession of the diplomatic bag directly and freely from the captain of the aircraft.

5. Exemption from Taxation:

A diplomatic mission is exempt from all national, regional and municipal dues and taxes in respect of the mission premises, whether owned or leased, except for those charges which represent payment for specific services rendered (e.g. water, electricity, refuse collection). This exemption does not extend to persons entering into contracts with a head of mission or his government - for which reason such contracts usually stipulate that it is the head of the mission or his government who are responsible for any rates or taxes on the premises. A diplomatic mission is also exempt from dues and taxes in respect of any fees and charges that it levies as part of the normal functions of a mission.

VCDR, Article 23

1. 1.The sending State and the head of the mission shall be exempt from all national, regional or municipal dues and taxes in respect of the premises of the mission, whether owned or leased, other than such as represent payment for specific services rendered.
2. 2.The exemption from taxation referred to in this article shall not apply to such dues and taxes payable under the law of the receiving State by persons contracting with the sending State or the head of the mission.

VCDR, Article 28

The fees and charges levied by the mission in the course of its official duties shall be exempt from all dues and taxes.

6. Right to Import, Exemption from Custom Duties.

A diplomatic mission is entitled to import (subject to existing laws) articles for the official use of the mission, and is exempt from customs and other similar duties in respect of such articles. It is not exempt from charges for related services, e.g. storage or cartage. Goods imported duty free may not be sold or otherwise disposed of in the host state except in accordance with the conditions laid down by the state.

VCDR, Article 36/1

1. The receiving State shall, in accordance with such laws and regulations as it may adopt, permit entry of and grant exemption from all customs duties, taxes, and related charges other than charges for storage, cartage and similar services, on:
 - (a) Articles for the official use of the mission;
 - (b) Articles for the personal use of a diplomatic agent or members of his family forming part of his household, including articles intended for his establishment.