

## Lecture 6 | Part 2

### Subject: Diplomatic Immunities and Privileges

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#### 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.

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

Questions to be addressed:

- How and when Diplomatic Immunities and Privileges can be granted on full or limited basis?
- What are the Immunities and Privileges that are accorded to Diplomats?
- What is the legal Basis of Diplomatic Immunities and Privileges?
- What is the duration of Diplomatic immunities and privileges?
- When Diplomatic Immunities and Privileges will be ended?

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### Legal Basis of Diplomatic Immunities and Privileges of the Diplomatic Missions

What is the legal Basis of Diplomatic Immunities and Privileges related to the Diplomatic Missions?

- There are two theories:
  1. Theory of extra territoriality
  2. Representativity Status Theory/Functional Theory.

### “Personal” Diplomatic Immunities and Privileges

What are the general provisions that is related to the Personal enjoyment of Diplomatic immunities and Privileges? **Or** what are the types of Diplomatic immunities and Privileges?

➤ General Provisions:

**First: Full diplomatic privileges and immunities** are applicable to;

(a) diplomats.

(b) members of their families forming part of their household provided they are not nationals or permanent residents of the state in which the diplomat is serving.

**Second: Limited diplomatic privileges and immunities** are afforded to **three** categories of members of the staff of a mission:

(a) those who are nationals or permanent residents of the state in which they are serving;

(b) members of the administrative and technical staff;

(c) private servants of members of the mission.

### **What are the personal Full diplomatic privileges and immunities?**

#### 1. Personal Inviolability and Protection;

All diplomats enjoy personal inviolability, and members of their family forming part of their household similarly enjoy inviolability provided that they are not nationals or permanent residents of the host state. A state which accepts the establishment of a foreign diplomatic mission is bound to ensure complete protection to all members of that mission and to their families against physical violence whatever its source, and from attacks on their dignity and freedom.

#### **VCDR, Article (29)**

‘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’.

#### 2. Immunity from Criminal Jurisdiction;

A diplomat and members of his family forming part of his household (provided that they are not nationals or permanent residents of the host state) are immune from the criminal jurisdiction of the host state.

#### **VCDR, Article (31)**

‘A diplomatic agent shall enjoy immunity from the criminal jurisdiction of the receiving State’.

#### 3. Immunity from Civil and Administrative Jurisdiction;

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### **VCDR, Article (31/1, 3 & 4)**

1. A diplomatic agent 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.

3. No measures of execution may be taken in respect of a diplomatic agent except in the cases coming under subparagraphs (a), (b) and (c) of paragraph 1 of this article, and provided that the measures concerned can be taken without infringing the inviolability of his person or of his residence.

4. The immunity of a diplomatic agent from the jurisdiction of the receiving State does not exempt him from the jurisdiction of the sending State.

#### **4. Waiver from Diplomatic Immunity;**

The immunity from jurisdiction of an individual entitled to such protection may be waived only by his government. A waiver of immunity from civil or administrative proceedings does no more than allow the person concerned to stand trial; a second and specific waiver is required before the judgement can be put into effect.

### **VCDR, Article (32)**

1. The immunity from jurisdiction of diplomatic agents and of persons enjoying immunity under article 37 may be waived by the sending State.

2. Waiver must always be express.

3. The initiation of proceedings by a diplomatic agent or by a person enjoying immunity from jurisdiction under article 37 shall preclude him from invoking immunity from jurisdiction in respect of any counterclaim directly connected with the principal claim.

4. Waiver of immunity from jurisdiction in respect of civil or administrative proceedings shall not be held to imply waiver of immunity in respect of the execution of the judgement, for which a separate waiver shall be necessary.

### 5. Inviolability of Correspondence;

The papers and correspondence of a diplomat and of members of his family forming part of his household (provided that they are not nationals or permanent residents of the host state) are inviolable.

**VCDR, Article (27/2 & 30/2)**

'The official correspondence of the mission shall be inviolable. Official correspondence means all correspondence relating to the mission and its functions'.

### 6. Inviolability of Property;

The property of a diplomat and of members of his family forming part of his household (provided that they are not nationals or permanent residents of the host state) is inviolable.

**VCDR, Article (30,2)**

'His papers, correspondence and, except as provided in paragraph 3 of article 31, his property, shall likewise enjoy inviolability'.

### 7. Exemption from Liability for Public Service & Military Obligations;

A diplomat and members of his family forming part of his household (provided that they are not nationals or permanent residents of the host state) are exempt from all personal and public services and from military obligations such as requisitioning, billeting or military contributions and from jury service.

**VCDR, Article (35).**

'The receiving State shall exempt diplomatic agents from all personal services, from all public service of any kind whatsoever, and from military obligations such as those connected with requisitioning, military contributions and billeting'.

### 9. Exemption from Liability to serve as a witness;

**VCDR, Article (31/2)**

'A diplomatic agent is not obliged to give evidence as a witness'.

**10. Exemption from National and Local taxation; VCDR, Article (34)**

A diplomatic agent shall be exempt from all dues and taxes, personal or real, national, regional or municipal, except:

- (a) Indirect taxes of a kind which are normally incorporated in the price of goods or services;
- (b) Dues and taxes on 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;
- (c) Estate, succession or inheritance duties levied by the receiving State, subject to the provisions of paragraph 4 of article 39;
- (d) Dues and taxes on private income having its source in the receiving State and capital taxes on investments made in commercial undertakings in the receiving State;
- (e) Charges levied for specific services rendered;
- (f) Registration, court or record fees, mortgage dues and stamp duty, with respect to immovable property, subject to the provisions of article 23.

**11. Exemption from Custom Duties;**

**VCDR, Article (36)**

A diplomat and members of his family forming part of his household (provided that they are not nationals or permanent residents of the host state) are entitled (in accordance with local regulations, which must not defeat diplomatic privilege) to import articles for their personal use. including articles required for the upkeep of then establishment, and are exempt from customs and other similar duties in respect of such articles. They are, however, liable to related charges for services, e.g. storage and cartage; and must comply with the regulations of the host state in respect of any articles imported duty-free that they subsequently) sell or otherwise dispose of.

**12. Exemption from Social Security Provisions;**

**VCDR, Article (33/3)**

A diplomat and members of his family forming part of his household (provided that they are not nationals or permanent residents of the host state) are exempt from the social security provisions of the host state Private servants in the sole employ of a diplomat are also exempt, provided that they are not nationals or permanent residents of the host state and that they are covered by the social security provisions of their own state.

**13. Exemption from Inspection of a Personal Luggage;**

**VCDR, Article (36/2)**

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A diplomat and members of his family forming part of his household (provided that they are not nationals or permanent residents of the host state) are exempt from the inspection of personal luggage, unless there are serious grounds for believing that it contains articles that do not come within the scope of the privileges permitted, or illegal imports or exports. In this event the inspection is conducted only in the presence of the diplomat or of his authorized representative.

**14. Freedom of Travel;**

**VCDR, Article (26)**

All members of the staff of a diplomatic mission are entitled to travel freely and without restriction in the state in which they are serving, except in those areas to which access is limited on grounds of national security. This principle is not always adhered to, and certain states limit the freedom of certain diplomats to special travel zones;

**15. Travel through a Third State;**

**VCDR, Article (40)**

Provided that they have any necessary visas, diplomats and members of their family, whether travelling with them or separately, are entitled to inviolability and all other immunities necessary to ensure a safe journey when passing through a third state on their way to or from a post. To ensure this they should be provided by their Ministry with a letter (preferably in the language of the third state or states) giving the purpose of their journey; or with a diplomatic visa issued by a diplomatic or consular representative of that state. It is not normal for their luggage to be inspected, and the authorities should have very good reasons before doing so.

**16. Reciprocal Obligation of Diplomats;**

**VCDR, Article (41)**

The granting of privileges and immunities by a state implies the acceptance of a high standard of responsibility and integrity on the part of the recipient. He may not interfere in the internal affairs of that state nor allow official premises to be put to any purpose other than their proper and recognized function; and he should not take advantage of his immunity from the jurisdiction of the courts to disregard its laws in such matters as motor-car accidents, speeding and parking.

**17. Diplomatic passports;**

Are issued by most states to those of their nationals who are entitled to diplomatic immunity and in the case of some states, to persons of high standing or connection. The UK practice is

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to issue diplomatic passports on a strictly controlled basis and only to diplomats for the duration of their posting in a British diplomatic mission overseas. They are usually taken not as evidence of entitlement to immunity (this being a function prima facie of the Diplomatic List), but as evidence of appointment only; they nevertheless often serve a useful purpose. Identity cards may be issued by the receiving state for the same purpose.

## 18. Representatives to International Organizations;

### **VCDR, Article (5/3)**

1946 Convention on the Privileges & Immunities of the United Nations.

In certain cases, resident (and sometimes non-resident) representatives of states to international organizations are entitled to the same privileges and immunities as diplomats. Representatives to the United Nations and its Specialized Agencies normally receive a wide range of privileges and immunities under the 1946 Convention on the Privileges and Immunities of the United Nations, and the similar Convention regarding the Specialized Agencies.

## 19. Members of Visiting Diplomatic Missions;

It is customary for states to grant privileges and immunities to visiting

representatives of foreign states. Within this category come Heads of State or their representatives whether on a state occasion or on an informal visit, members of arbitration tribunals and government delegates to conferences or congresses. They are granted diplomatic immunities and privileges based on '**The New York Convention on Special Missions, 1969**'.

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## **Limited Diplomatic Immunities and Privileges**

**Non- Diplomatic Staff of a Mission who are not Nationals or Permanent Residents of the state in which they are serving:**

### **VCDR, Article 37 (29-36).**

- ✚ Members of the administrative and technical staff of a mission and members of their families forming part of their household (provided that they are not nationals or permanent residents of the state in which they are serving) are entitled to the full

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immunities given to a diplomat except that immunity from civil and administrative jurisdiction does not extend to acts performed outside the course of their duty;

- ✦ Also, full diplomatic privileges except that they are not exempt from the inspection of their luggage, and exemption from customs duties is limited to articles imported at the time of their arrival in the state to take up their appointment there; nor are they entitled to privileges and immunities while travelling through third states to take up an appointment, though such states are obliged not to hinder their passage.
- ✦ Members of the domestic ('service ') staff of a mission who are not nationals or permanent residents of the state in which they are serving are entitled to immunity in respect of acts performed in the course of their duties, exemption from dues and taxes on the emoluments they receive in respect of their employment, and exemption from social security provisions in respect of their employment with a diplomatic mission provided that they are covered by the social security provisions of their own country.
- ✦ Private servants of members of the diplomatic staff of a mission who are not nationals or permanent residents of the state in which they are serving are exempt from dues and taxes on the emoluments they receive in respect of their employment, but are not otherwise entitled to any privileges or immunities other than those that the host state may choose to grant; it is, however, bound to exercise its jurisdiction over them in such a manner as not to interfere unduly with the performance of the functions of the relevant mission.

### **2. Diplomats and Other Members of the Staff of a Mission who are Nationals or Permanent Residents of the Host State:**

- ✦ Diplomats who are nationals or permanent residents of the state in which they are serving are entitled only to immunity from jurisdiction and personal inviolability in respect of official acts performed in the exercise of their functions, though other privileges and immunities may be granted in particular states.
- ✦ Other (non-diplomatic) members of the staff of a mission and private servants who are nationals or permanent residents of the state in which they are serving enjoy only those privileges and immunities that the host state considers appropriate. Any limitations placed on persons in these categories, however, must be such as not to interfere unduly with the performance of the functions of their mission.

### **Duration of the Immunities and Privileges**

Personal privileges and immunities apply from the moment the member of a mission enters the host country to take up his post or, if already in the country, from the moment his appointment is notified to the appropriate Ministry. **(VCDR, Article 39).**

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**When or in which cases the diplomatic Privileges and immunities come to an end? What about diplomat's family?**

when he leaves the country on the conclusion of his functions, or (if he does not leave immediately) after a reasonable interval of time (e.g., 4-6 weeks in the UK, 20 days in France, USA 5 months). In the event of the break up of relations between both states it is different (e.g, Swiss set 3 days for Germany during 1945, Iraq one week or 2 days based on the situation). Therefore, states specify this duration based on the

In the event of the death of a member of a mission, the members of his family continue to enjoy the privileges and immunities to which they were entitled for a reasonable period of time sufficient to enable them to leave the country.

**VCDR, article (39/ 2&3)**

2. When the functions of a person enjoying privileges and immunities have come to an end, such privileges and immunities shall normally cease at the moment when he leaves the country, or on expiry of a reasonable period in which to do so, but shall subsist until that time, even in case of armed conflict. However, with respect to acts performed by such a person in the exercise of his functions as a member of the mission, immunity shall continue to subsist.

3. In case of the death of a member of the mission, the members of his family shall continue to enjoy the privileges and immunities to which they are entitled until the expiry of a reasonable period in which to leave the country.