Дәріс 7

L 7. Immunity and privileges of the diplomatic mission, its employees

**Diplomatic immunity**

Diplomats who represent their country abroad enjoy diplomatic immunity. This protects them against prosecution in the receiving state for the entire period in which they hold their diplomatic post.

**International agreements on diplomatic immunity**

The international agreements on diplomatic immunity can be found in the [Vienna Convention on Diplomatic Relations](http://legal.un.org/ilc/texts/instruments/english/conventions/9_1_1961.pdf). For instance, the receiving state is not permitted to prosecute diplomats, and must protect them, along with their families and property. The main aim of the Convention is to allow diplomats to carry out their work without hindrance in the receiving state. They can do this only if they do not face any risk of reprisals the latter state’s government.

These agreements are vital to international relations. Diplomats attempt to ensure that relations between countries run as smoothly as possible. This sometimes means that they have to raise difficult issues in a direct manner. In doing so they take into account local customs and sensibilities in order to ensure that their efforts achieve the maximum effect.

The Vienna Convention allows Dutch diplomats to pursue the interests of Dutch citizens and businesses in foreign countries as effectively as possible, even where there are doubts about legal certainty. Dutch diplomats can also use their influence to remind receiving states of their international obligations, for instance to comply with human rights.

**Diplomatic immunity: a two-way street**

Diplomatic immunity only works if every country, including ours, abides by the rules. The way that the Netherlands treats foreign diplomats has an impact on how other countries treat our diplomats. We must treat foreign diplomats in the Netherlands with the same respect and in accordance with the same standards that we expect of others abroad.

**Diplomatic immunity: not carte blanche for misconduct**

The Vienna Convention does not give diplomats carte blanche for misconduct. Diplomatic immunity does not place diplomats above the law and diplomats are obliged to conduct themselves in accordance with the laws of the receiving state. 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.

Long ago, diplomats acted as a form of guarantee for the good conduct of the sending state. If that state did not conduct itself appropriately, its diplomat would be held responsible. Sometimes the consequences could even be fatal. Nowadays, the opposite applies: if a diplomat breaks the law, responsibility lies in the first place with the sending state.

**DIPLOMATIC LAW: PRIVILEGES AND IMMUNITIES**

Starting with the evolution of diplomatic privileges and immunities and ending with the question of whether the Vienna Convention on Diplomatic Relations should be revisited in the Internet era, this course introduces participants to diplomatic law in general and diplomatic privileges and immunities in particular. Combining a theoretical introduction with practical exercises, participants will become familiar with current developments in the field of diplomatic privileges and immunities.

**By the end of the course, participants should be able to:**

* •  Explain the difference between the concepts of immunities, privileges and facilities, providing examples of each.
* •  Describe the legal basis of diplomatic privileges and immunities, including as it relates to individuals, states and representatives, diplomatic missions, and consular missions.
* •  Explain the theoretical justifications for privileges and immunities and how regulation has evolved.
* •  Describe the privileges and immunities of states and their representatives (including heads of states and governments, other ministers and officials, diplomatic missions and diplomatic agents).
* •  Compare and contrast the privileges and immunities of diplomatic missions and agents with those of consular missions and agents.
* •  Analyze cases of use and abuse of diplomatic privileges and immunities in the modern era, and taking these into account, argue in favour of, or against, revisions to the Vienna Convention on Diplomatic Relations.

**Excerpt from course materials**

*...Illegal parking is a particular problem in the main centres of multilateral diplomacy such as New York City, Geneva, Vienna, Paris, and London. The magnitude of the problem can be illustrated by the fact that between November 1997 and the end of 2002, diplomats in the US accumulated 150,000 unpaid parking tickets – a total of US $18 million of unpaid fines...The authorities of a receiving state may choose different strategies to enforce local parking regulations in spite of diplomatic privileges and immunities... In many diplomatic centres, the first step is to introduce proper evidence and reporting to the head of a diplomatic mission... The next step is to make those reports public. Publicity puts additional pressure on diplomats and diplomatic missions to observe local parking rules.*

**Course outline**

1. **Principles and Concepts, Evolution and Instruments**: We look at the difference between the concepts of immunities, privileges, and facilities, and the historical evolution of privileges and immunities. We describe the main legal instruments that regulate privileges and immunities: mainly international conventions and treaties, and finally focus on the different theoretical justifications for privileges and immunities.
2. **Privileges and Immunities of States**: Starting by defining state immunity, we also examine the general source of legitimacy of privilege and immunity in customary law and conventions. We study how law and conventions form and condition absolute and qualified state immunity, closing with an examination of specific cases of immunity: heads of state and governments; immunities of ministers, state officials and parliamentarians; and ministers of foreign affairs.
3. **Immunities of Diplomatic Missions**: In order to represent their sending states, diplomatic missions need appropriate status so that they are not subject to the jurisdiction and power of receiving states. We discuss the types and functions of diplomatic missions and take a close look at the immunities accorded to diplomatic missions.
4. **Privileges and Facilities Accorded to Diplomats and Missions**: We further examine the facilities and privileges accorded to diplomatic missions and individual diplomatic agents, in particular inviolability of communication and freedom of movement. These privileges rest on the authority of the Vienna Convention on Diplomatic Relations, which we analyse carefully.
5. **Immunities of Diplomatic Agents**: The purpose of granting immunities and privileges to diplomats is to enable them to carry out their functions effectively. Although personal immunities and privileges of a diplomatic agent apply directly, in fact, they are awarded to the sending state and the individual diplomat enjoys them only in his or her capacity as an agent of the state.
6. **Consular Privileges and Immunities**: We consider the codification of consular law, then we examine the regulations that govern the establishment of consular relations. We also outline the regulations governing consular posts and consular functions, as well as the privileges, immunities, and facilities they are granted. Finally, we look at the privileges and immunities of consular officers.
7. **Special Missions and International Organisations**: We define privileges and immunities of international organisations and their legal and conceptual foundations, using the UN as our primary example. Following from the rights of organisations, international civil servants have certain privileges and immunities. The privileges and immunities of missions to international organisations are distinct from those of diplomatic missions.

8. **Abuse of Privileges and Immunities**: Should the Vienna Convention on Diplomatic Relations be revisited? Diplomatic privileges and immunities usually receive attention only when exceptions or abuses are reported in the news. We examine some of these issues, most notably traffic violations, the protection of public order, London’s congestion charge, and abuse of the diplomatic bag. Finally, we examine whether a revision of the Vienna Convention is needed and wanted.

**Methodology**

This course is conducted entirely online over a period of ten weeks. Reading materials and tools for online interaction are provided through an online classroom. Each week, participants read the provided lecture text, adding questions, comments and references in the form of hypertext entries. Lecturers and other participants read and respond to these entries, creating interaction based on the lecture text. During the week, participants complete additional online activities (e.g. further discussion via blogs or forums, quizzes, group tasks, simulations or short assignments). At the end of the week, participants and lecturers meet online in a chat room to discuss the week’s topic. To complete the course successfully, participants must write several essay assignments. Courses are based on a collaborative approach to learning, involving a high level of interaction.

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| **Diplomatic Immunity** |
| Diplomatic immunity is a principle of international law by which certain foreign government officials are not subject to the jurisdiction of local courts and other authorities. The concept of immunity began with ancient tribes. In order to exchange information, messengers were allowed to travel from tribe to tribe without fear of harm. They were protected even when they brought bad news. Today, immunity protects the channels of diplomatic communication by exempting diplomats from local jurisdiction so that they can perform their duties with freedom, independence, and security. Diplomatic immunity is not meant to benefit individuals personally; it is meant to ensure that foreign officials can do their jobs. Under the concept of reciprocity, diplomats assigned to any country in the world benefit equally from diplomatic immunity.The [Vienna Convention on Diplomatic Relations of 1961](http://www.ediplomat.com/nd/treaties/diplomatic_relations.htm) and the[Vienna Convention on Consular Relations of 1963](http://www.ediplomat.com/nd/treaties/consular_relations.htm) codified most modern diplomatic and consular practices, including diplomatic immunity. More than 160 nations are parties to these treaties. The conventions provide immunity to persons according to their rank in a diplomatic mission or consular post and according to the need for immunity in performing their duties. For example, diplomatic agents and members of their immediate families are immune from all criminal prosecution and most civil law suits. Administrative and technical staff members of embassies have a lower level of immunity. Consular officers serving in consulates throughout the country have an even lower level of immunity. Members of an embassy's service staff and consular employees are immune only for acts performed as part of their official dutiesIt is true that diplomats are exempt from the criminal, civil and administrative jurisdiction of the host country. However, this exemption may be waived by their home country. Moreover, the immunity of a diplomat from the jurisdiction of the host country does not exempt him/her from the jurisdiction of his/her home country. It is also within the discretion of the host country to declare any member of the diplomatic staff of a mission persona non grata (or unwanted person). This may be done at any time and there is no obligation to explain such a decision. In these situations, the home country, as a rule, would recall the person or terminate his/her function with the mission. The Vienna Convention provides for specific measures that can be taken by both the home and host countries in cases of misuse or abuse of diplomatic privileges and immunities. On the whole, diplomatic privileges and immunities have served as efficient tools facilitating relations between States. No UN Member State has so far proposed rescinding the Convention or re-writing its provisions.Diplomatic privileges and immunities guarantee that diplomatic agents or members of their immediate family:* May not be arrested or detained
* May not have their residences entered and searched
* May not be subpoenaed as witnesses
* May not be prosecuted
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