INTERNATIONAL AGREEMENTS REGULATING DIPLOMATIC IMMUNITY IN THE LIGHT OF UZBEKISTAN'S POSITION

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https://doi.org/10.5281/zenodo.7095263

There are certain categories of persons and bodies which, under international law, are immune from the jurisdiction of municipal courts. The two principal categories are foreign states (sovereign or state immunity) and their diplomatic agents (diplomatic immunity). In international law state immunity refers to the legal rules and principles determining the conditions under which a foreign state may claim freedom from the jurisdiction (the legislative, judicial and administrative powers) of another state (often called the 'forum state').

Rules on state immunity form part of customary law and are sometimes incorporated in international treaties like the 1972 European Convention on State Immunity. On the national level, a number of states with a common law background have enacted special statutes, such as the 1976 Foreign Sovereign Immunities Act (FSIA) of the United States, the 1978 State Immunity Act of the United Kingdom (SIA) or the 1985 Foreign States Immunities Act of Australia.

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 for both their official and, to a large extent, their personal activities .

Most of the modern law on diplomatic immunity is contained in the 1961 Vienna Convention on Diplomatic Relations. The entry into force of the Vienna Convention on Diplomatic Relations marks the evolution to maturity of a branch of international law which derives from customs in existence three thousand years ago.

This was swiftly followed by the 1963 Vienna Convention on Consular Relations and the 1969 UN Convention on Special Missions. The rationale for extending immunity to diplomats and consular staff is generally accepted to be based upon the functional necessity theory. In order for officials and diplomatic and consular missions to perform their functions fully immunities are applied.

Diplomatic personal inviolability in some form has long been universally recognized. Ancient civilizations, both Western and Eastern, accorded envoys personal inviolability.

Article 29 of the Vienna Convention provides: "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".

The rationale for extending immunity to diplomats and consular staff is generally accepted to be based upon the functional necessity theory. In order for officials and diplomatic and consular missions to perform their functions fully immunities are applied.

Article 31(1) of the Vienna Convention provides:

"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 a private person…;

(c) an action relating to any professional or commercial activity exercised by the diplomatic agent in the receiving State outside his official functions" .

Immunities and privileges start from the moment the person enters the territory of the receiving state on proceeding to take up his post or, if already in the territory, from the moment of official notification under Article 39.

Consuls, like diplomats, represent their state in another state, but, unlike diplomats, they are not concerned with political relations between the two states. They perform a wide variety of non-political functions: issuing passports and visas, looking after the shipping and commercial interests of their states, and so on. Consulates often are based in provincial towns as well as in capital cities.

The 1963 Convention codified the law on consular relations; but some writers have argued that the immunities conferred on consuls by the Convention are wider than the immunities enjoyed by consuls under customary law.

Like diplomats, career consuls are generally inviolable. Honorary consuls are accorded immunity for their official acts but remain liable for their acts not related to consular business.

International organizations and their officials are often entitled to immunities in accordance with the terms of the constituent treaties that created them.

According to Peter Malanczuk , it is uncertain to what extent international organizations enjoy immunities under customary law; in practice the matter is usually regulated by treaties, such as the 1946 General Convention on the Privileges and Immunities of the United Nations , which entered into effect in

September 1946 and has 162 parties as of October 2021, not including the Republic of Uzbekistan . International organizations usually also conclude a headquarters agreement with the state that hosts their facilities that can detail the provision of inviolability as well as immunities for the organization and its officials.

1946 Convention expanded upon and helped implement in some states Article 105 of the U.N. Charter . Article 105 provides that the representatives of U.N. members and U.N. officials shall "enjoy such privileges and immunities as are necessary for the independent exercise of their functions in connection" with the United Nations . There is also the Convention on the Privileges and immunities of the Specialized Agencies , which provides for immunities of organizations related to the United Nations under 57 and 63 of the U.N. Charter. As of October 2021, the Convention has 129 parties, including the Republic of Uzbekistan .

In addition, some countries recognize immunity for temporary missions and special envoys from another country . For example, there is a Convention on Special Missions, which came into force in June 1985. As of October 2021, the Convention had 39 parties, not including the Republic of Uzbekistan . The Convention provides that officials from a foreign state on special missions are entitled to immunity to the extent required by the performance of the person's official duties .

By article 31 members of special missions have no immunity with respect to claims arising from an accident caused by a vehicle, used outside the official functions of the person involved, and by article 27 only such freedom of movement and travel as is necessary for the performance of the functions of the special mission is permitted.

Rules regulating the various aspects of diplomatic relations constitute one of the earliest expressions of international law.

However, the field of diplomatic immunity faces challenges in a sense of legal regulations.

International organizations and their officials are often entitled to immunities in accordance with the terms of the constituent treaties that created them, and immunities derived from customary international law. Recent codification of norms and rules of customary international law regarding international organizations' immunity in the form of international conventions has shown the distinction between state practice when it comes to the scope of immunity of international organizations.

The reason for the difference in interpretation of state practice concerning IOs' immunity can be the unpopularity of ratification or accession by states to international conventions on IOs' immunity.

The recognition of immunity for special missions is being challenged by the recent state practice worldwide. The main reason for it can be the same as for international organizations. Some countries recognize immunity for temporary missions and special envoys from another country. Although there already exists relevant international convention, very few countries recognize immunity for temporary missions and special envoys from another country (only 39 states acceded to this convention).

Taking into consideration challenges in diplomatic immunity under international law, the following proposals are elaborated so as to promote diplomatic law in the international community and the Republic of Uzbekistan:

1. It is important to encourage states, including the Republic of Uzbekistan to ratify or accede to the General Convention on the Privileges and Immunities of the United Nations of 1946.

It is worth highlighting that the study of the feasibility of accession by the Republic of Uzbekistan to this Convention is provided in the Decree of the President of the Republic of Uzbekistan dated December 24, 2019 PF-5896 "On the establishment of a visa-free regime and visa facilitation for foreign nationals with a biometric passport of the United Nations" .

The participation of the Republic of Uzbekistan in this Convention will reaffirm the country's commitment to the United Nations, the most influential and universal international organization in the world, and its Charter, and will serve to create the necessary legal conditions for the effective functioning of this organization in the country.

2. It is essential to urge states, including the Republic of Uzbekistan to ratify or accede to the Convention on Special Missions of 1969.

The participation of the Republic of Uzbekistan in this Convention will reaffirm the country's commitment to immunity of special missions under international law and provide an opportunity for national legislation to distinguish immunities given by a country between diplomats and special missions.

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