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The Obligation of Diplomats to Respect the Laws and Regulations of the Hosting State: A Critical Overview of the International Practices

Nehaluddin Ahmad 

Faculty of Law and Shariah, Sultan Sharif Ali Islamic University (UNISSA), Simpang 347, Jalan Pasar Gadong, Brunei; ahmadnehal@yahoo.com

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Abstract: Under Article 9 of the Vienna Convention on Diplomatic Relations, a receiving state may “at any time and without having to explain its decision” declare any member of a diplomatic staff *persona non grata*. A person so declared is considered unacceptable and is usually recalled to his or her home nation. If not recalled, the receiving state “may refuse to recognize the person concerned as a member of the mission.” However, despite the codification of the above rules, which is largely based on pre-existing customary international law, the opportunity for diplomatic protection is not free of issues and controversies. In recent times, unfortunately, there has been a growing tendency amongst diplomats to abuse their diplomatic status, in order to commit acts prohibited by law and claim immunity from the legal process. This paper addresses the problem of abuse of immunities and privileges and its adverse implications on the balance between immunities and the duty to respect the local laws and regulations. We analyze several past cases of declaration of *persona non grata* involving various countries.

Keywords: diplomatic law; Vienna Convention; diplomatic immunity; *persona non grata*; sending state; hosting state

1. Introduction

A diplomatic representative is a symbol of the bilateral relationship between two states. They enjoy immunities and have been granted privileges. In addition, to enjoy such immunity and privileges, diplomatic officers also enjoy a principle of inviolability, which means that they are inviolable by the state apparatus of the receiving state (Ott 1987). 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 the centuries. The concept of diplomatic agents residing in another country dates back to the 15th century (Denza 2008), but the role of diplomats has evolved with the passage of time, where two friendly states exchange diplomats (i.e., it is the right of a state to receive and send diplomatic envoys to another state). In 1815, at the Vienna Congress, some common understanding was reached on this subject among states. In April 1961 (23 U.S.T. 3227, 500 U.N.T.S. 95), the Vienna Convention on Diplomatic Relations was concluded, in which this subject was further extended (Denza 2008). [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 (Denza 2008).

The receiving state is under legal obligation to respect, assist, and protect the diplomat and to not interfere with their official functions. A diplomatic agent is granted different inviolabilities and privileges, as well as immunity from the jurisdiction of the receiving state, in order to enable them to exercise their official functions independently and effectively and to avoid any interference on the part of the receiving state (McClanahan 1989).

“An 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 (Bledsoe and Boczek 1987).” This can apply to foreign diplomats, who are otherwise protected by diplomatic immunity from arrest and other normal kinds of prosecution (McClanahan 1989). The sending state must then recall its agent or, should recall not occur, the host state may ignore the presence of the diplomatic agent or expel the diplomat from its territory (Satow 1957).

The right of the receiving state to request the recall of offending diplomats has been supported by Gentilis, Grotius, and Vattel. However, it soon became clear that this right was not only a theoretical construction of scholars, for it was corroborated by general practice whereby the sending state would comply with a receiving state’s request for the recall of the concerned diplomat. The process of dealing with diplomats who are no longer welcome has now been fully recognized under Article 9 of the Vienna Convention: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. 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 (Starke 1984).

The most common response when foreign diplomatic and consular officials act inappropriately is to declare those officials *persona non grata* and to expel them from the country, if diplomatic parlance fails. 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 (Starke 1984, pp. 400, 406). It has been used, on some occasions, as a symbolic gesture as 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 diplomat² after he was arrested and accused of running a spy ring. The declaration has been mostly used, in a tit-for-tat fashion, since the end of the Cold War.³ In 2009, Venezuela and Israel expelled each other’s diplomats after an Israeli offensive on the Gaza Strip.⁴ The United States and Ecuador had a similar exchange of expulsions after diplomatic cables were linked to the secret-sharing non-profit WikiLeaks. Therefore, we present a descriptive analysis 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 the Vienna Conventions and the duty to respect local laws and regulations, with reference to a few notable cases.

¹ The Vienna Convention on Diplomatic Relations. Available online: https://legal.un.org/ilc/texts/instruments/english/conventions/9_1_1961.pdf (accessed on 7 June 2020).

² Espionage case: India declares Pakistan Mission staffer *persona non grata*. 2016. The Indian Express.

³ Patrick Reeve, Russia has said it will expel 60 U.S. diplomats and close the American consulate in St. Petersburg as part of a tit-for-tat retaliation against the coordinated wave of expulsions of dozens of Russian diplomats ordered by the United States and other countries earlier this week over the poisoning of a former spy in Britain. *cbc news*, 30 March 2018. The news further stated. The clash over the spy poisoning is one of the most serious since the end of the Cold War, with the breadth of the expulsions unprecedented. Available at <https://abc7chicago.com/3278922/> (accessed on 16 July 2020).

⁴ Israel expels Venezuela envoy. *BBC News Online*. 28 January 2009. Retrieved 1 February 2009.

2. Definition

In Latin: An unwelcome person. A diplomat who is no longer welcomed by the government to which they had been accredited. In diplomacy, a *persona non grata* (Latin: 'Person not appreciated') (Denza 2016).

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 against it, criticizing its head of state, and similar grounds. "Usually the appended host government requests for sending diplomats to recall the offending diplomat. This request is normally complied with (Gamboa 1973)."

In their *International Law Dictionary*, Bledsoe and Boczek defined the term as follows:

A Latin term 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 response to some real or alleged impropriety by the diplomatic agent.⁵

3. 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 (Barker 2006). During the Ancient Greek times, ambassadors were referred to as 'messengers of God' (Timothy 2013). The Romans also considered diplomatic immunity to be sacred and placed a very high emphasis on the inviolability of envoys.⁶ The Romans accordingly developed the *college of fetials*, a semi-religious and semi-political body for conduct of external relations.⁷ This rule required that the mistreatment of foreign envoys would be considered a capital crime and that the trial proceedings should be held in public (Olga 2012).

During the Islamic period, Diplomatic Immunity was originated by the Prophet Muhammad (570–632) himself, while dealing with other nations and their representatives. Throughout the history of Islamic Jurisdiction, diplomats were granted protocols by the host community. Muslim administrators used to specify certain amount of money each year for the receiving missions and envoys to launch the Islamic rules and traditions (Saleh 2009). Muslim leaders always tried to take good care of the selection of diplomats. This is why it can be said that diplomatic immunity has importance in Islamic Law. The Prophet Muhammad presented noble examples of receiving and sending delegations, as well as appointing protocols for the purpose of preserving a peaceful environment in surrounding territories.⁸

In the 16th century, the Mendoza affair contributed to the strengthening of the concept of diplomatic immunity (Douglas and Reisman 2007). In 1580, the English Government accused Don Bernardino de Mendoza, the Spanish Ambassador to London, of the crime of conspiracy against the sovereign for his involvement in the Throckmorton Plot (Stephen 2014). The plot aimed to eliminate Elizabeth I and to free Mary, Queen of Scots. Although 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 (Barry 1979).

After this period, the concept of *droit d'ambassade* came into vogue (Linda and Frey 1999). It recognized the right of states to send and receive diplomatic representatives. Following the adoption of the Treaty of Westphalia in 1648, the modern state-system emerged (Costas 1996). The Treaty aimed to maintain the prevailing balance of power in Europe and, thereby, necessitated close monitoring of the external situation. As a result, the establishment of permanent diplomatic missions became normal practice (Sen 1965).

⁵ Supra. Bledsoe, Robert and Boleslaw, Boczek.

⁶ Supra J. Craig Barker p. 30

⁷ Ibid., p. 33

⁸ Ibid.

A forceful debate on the scope of diplomatic privileges and immunities continued over the next two centuries. It was a central point for many leading publicists of international law, including Hugo Grotius, Albericus Gentilis, Richard Zouche, Van Bynkershoek, and Emer de Vattel. These authors gave various explanations for granting of diplomatic privileges and immunities. Their writings greatly contributed to the development of diplomatic laws.

In order to carry out the diplomatic functions effectively, diplomats are equipped with immunity and privileges; these provisions are stipulated in the Regulation of Vienna, 1815. This regulation is still valid and was revised at the 1961 Vienna Convention, asserting the existing rules of international customary law regarding the immunity and privileges of diplomatic agents (Starke 1984). The Vienna Convention, which was successfully signed by many states, constitutes a multilateral treaty and can be treated as a codification product. The Convention declares any rule of international customary law which has been applicable for a very long time and contains certain provisions constituting progressive development of international law in the field of diplomatic law valid. It is in conformity with the opinion or perception given by Ian Brownlie, who pointed out that the rules of international law governing diplomatic relations are based on state practices which have run for a long time and which have been backed by the legislation and decisions of national courts (Brownlie 1979).

Existence of the *persona non grata* principle developed through international customary law and was codified in Article 9 of the Vienna Convention. It 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 (Ott 1987).

In Article 9, paragraph 1 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 that the diplomat be recalled (Eileen 2009). Although the sending state must then 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.⁹ In the more serious event of disagreements over policies or actions, states may sever diplomatic relations.¹⁰ In less important instances of displeasure, the Ambassador may be recalled for consultation. A notice of *persona non grata* may not be used solely for lowering the mission's staff count (Sir Ivor 2017), which is a separate process dealt with in Article 11 of the Vienna Convention on Diplomatic Relations.¹¹

An old and established fundamental principle is that the receiving state does not have to tolerate the continued presence of a diplomat who has become unacceptable. According to the scholarship, this unacceptability usually derives from a norm proscribing political intrigue against the sending state, in which case the receiving state may expel the diplomat with minimum notice. The only question

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. *Vienna Convention on Diplomatic Relations 1961*, done at Vienna on 18th April 1961, entered into force on 24 April 1964, United Nations, Treaty Series, vol. 500, p. 95, art. 9.

¹⁰ Breaking Relations. 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. eDiplomat, *Glossary of Diplomatic Terms*, 2016, <<http://www.ediplomat.com/nd/glossary.htm>>, retrieved 23 May 2018.

¹¹ *Vienna Convention on Diplomatic Relations 1961*, done at Vienna on 18th April 1961, entered into force on 24 April 1964, United Nations, Treaty Series, vol. 500, p. 95, art. 11.

was whether the state could try her or him for a crime (Gentilis 1585; Hotman 1603; Grotius 2005). Thus, after deciding to commence intrigue against another state, the receiving state could simply state the sending state's Ambassador displeased it, inferring that unacceptable diplomats might as well be unacceptable through either no fault of their own, or through having insufficient ability to both detect and neutralize the receiving state's intrigue. Arguably, this kind of norm is long-standing, universal, and widespread (Kirgis 1987).

While the right to declare an agent *persona non grata* was uncontested, the requirement to state reasons alongside a request for recall was the first main controversial point to be addressed by the International Law Commission when it engaged in the codification of diplomatic and consular law. Whilst the International Law Commission's adoption of Mr. Tunkin's proposed Article 9 in 1958 was silent on the need to give reasons, its commentary stated that this was left open to the discretion of states (International Law Commission (ILC) 1958, vol. II, p. 91, para. (6)). At the Vienna Conference, however, it was the French delegation which 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*, should be consistent with the proposed Article 9 (A/Conf.20/C1/L3; French amendment). The divergent perspectives were ultimately resolved: Reasons need no longer be given by the receiving state when requesting the sending state to recall the concerned agent (Article 9 of the 1961 Vienna Convention on Diplomatic Relations and Article 23 of the 1963 Vienna Convention on Consular Relations).

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 the obligation of the sending state to abide by the request for recall. It was finally agreed that the sending state was internationally *obliged* to recall the concerned agent or to terminate their functions within the mission. If the sending state refuses or fails to carry out this obligation within a reasonable period, the receiving state may refuse to recognize the person concerned as a member of the mission (Article 9 of the 1961 Vienna Convention on Diplomatic Relations and Article 23 of the 1963 Vienna Convention on Consular Relations).

4. Concept of Diplomatic Immunity

A diplomatic agent performing different tasks within a state is covered by the inviolability principle: That is, the diplomatic agent is considered inviolable. Besides diplomatic officers, the principle of inviolability also covers the premises of the mission, archives and documents of the mission, domiciles or private residences, correspondence or papers, and the properties of diplomatic agents. In reality, this principle is translated and incorporated into what is known as immunity.¹²

One of the pillars of modern international law is the diplomatic immunities of Ambassadors. According to Grotius, diplomatic agents, though physically present upon the soil of the country to which they are accredited, are to be treated to remain, for all purposes, upon the soil of the country which they represent. This is called extra-territorial theory, which is based on fiction. This theory has been discarded by modern jurists. However, there are representational and functional theories which serve as the basis for granting diplomatic immunities to diplomatic agents. The Vienna Convention supports these two theories for diplomatic immunities.

Modern diplomatic immunity was codified in 1961 by the Vienna Convention. Section 7 of the Act is titled "Vienna Convention on Diplomatic Relations to have force of law." These articles provide far-reaching immunity for diplomats, members of their families, their agents, and their property against being monitored, searched, arrested, charged, or prosecuted.

Some of the protections provided under the Vienna Convention include:

¹² Vienna Convention on Diplomatic Relations Arts 22, 24, 29 and 30. Supra Ivor Roberts, *Satow's Diplomatic Practice*. See also Denza E, *Diplomatic Law: A Commentary on the Vienna Convention on Diplomatic Relations* (4th edn, Oxford University Press, 2016).

4.1. Personal Safety

Article 29 of the 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.

Article 29 provides for the personal safety of a diplomat. In the case of *Respublica v De Longchamps*,¹³ it was stated that “[t]he person of a public minister is sacred and inviolate. Whoever offers any violence to him, not only affronts the Sovereign he represents, but also hurts the common safety and wellbeing of nations; he is guilty of crime against the whole world” (Stechel 1972; Tuck 1999). International law takes a serious view of any violation of the personal immunity enjoyed by envoys. Many states have framed laws which severely punish persons acting in violation of this rule of protection. The foreign state to which a diplomatic envoy is accredited has a duty to take immediate steps to prosecute the offender.¹⁴

4.2. Immunity from Criminal Jurisdiction

Article 31, paragraph 1 of the Vienna Convention provides that a diplomatic agent shall enjoy immunity from the criminal jurisdiction of the receiving state. This provision conforms to the customary rules of international law (Lewis 1990).¹⁵ 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. When a diplomatic agent commits a serious breach of law (criminal law), they may be declared *persona non grata* but can never be prosecuted by the host state.

Due to personal inviolability, a diplomatic agent may not be arrested or detained under any circumstances.¹⁶ The police can, of course, arrest such a person in good faith but, once it is known that the person is entitled to personal inviolability, the police must release them immediately.

4.3. Immunity from Civil Jurisdiction

A diplomatic agent is not liable to be sued for a debt or any other contract or for tort of any kind. Many countries have passed laws which prevent the issue of civil processes against diplomatic envoys. This exemption from civil jurisdiction continues until they leave the foreign state.

A diplomatic envoy cannot be arrested for their debts. Their property also cannot be seized or attached as payment of his debts. They cannot be summoned in the courts of the receiving state as a witness. Article 31, paragraph 1 of the Vienna Convention provides, likewise, that diplomatic agents are immune to the civil and administrative jurisdiction of the receiving state. 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; however, there is likely a presumption that, in submitting to jurisdiction, such a person was acting on instructions to this effect.

¹³ 1 U.S. 111 (1784). In this case Charles Julian De Longchamps (the ‘Chavelier De Longchamps’) was accused of verbally assaulting the Consul General of France to the United States on 17 May 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.

¹⁴ Supra Stechel, I.

¹⁵ Lewis C.J., *State and Diplomatic Immunity* (3th edn, Lloyd’s of London, 1990) p. 135. For example, the Spanish ambassador Mendoza was expelled in 1584 on suspicion of conspiracy against the English queen. 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.

¹⁶ 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*; 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 whatsoever circumstances, clearly violate the inviolability of a diplomatic agent. See *Journal Officiel Sénat*, (16 December 1999) p. 4137.

4.4. Inviolability 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. Article 22 of the Vienna Convention states the following:

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 protect the premises.
3. The premises, furnishings, and other property are immune from search, requisition, attachment, or execution.

4.5. Archives, Documents, and Official Correspondence

Articles 24 and 27 of the Vienna Convention provide that the archives and documents of the mission, at any time and wherever they may be, are inviolable, including official correspondence. Furthermore, the Vienna Convention also provides that a diplomatic bag shall not be opened or detained at any time. 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.

4.6. Waiver of Immunity

Article 32 makes it clear that the sending nation can waive the right to diplomatic immunity.

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 as the immunity enjoyed by the diplomatic officer (Hardy 1968). The immunity itself belongs to the sending state and a diplomatic officer cannot abrogate or waive his immunity without the approval of the sending state. It is a prerogative right owned by the government of his state of origin and it (immunity) is not a prerogative right of the diplomatic agent concerned.¹⁷

5. Effects of a Formal Declaration of 'Persona Non Grata'

Given that the reasons need not to 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, in consequence, utterly discretionary. The receiving state may, thus, make use of it for various reasons, whether due to the behavior of the agent himself or due to the actions of the sending state.¹⁸

A diplomatic agent can be declared *persona non grata* at any moment, even prior to their entry into the territory of the receiving state.¹⁹ In such a hypothesis, they could be denied access to the territory and would not be endowed with the privileges or immunities attached to their function.²⁰

In practice, a formal declaration *persona non grata* by the receiving state is rarely issued; it is normally sufficient to request the removal of a diplomat or consular. Very often, the diplomatic or consular agent leaves or is withdrawn before any formal notification (Satow 1957).

The sending state is not entitled to expel the agent following a *persona non grata* declaration. The declaration of *persona non grata* only obliges the sending state to *recall* the agent concerned. 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. According to the International Court

¹⁷ Ibid.

¹⁸ (Hardy 1968).

¹⁹ Vienna Convention on Diplomatic Relations Art 9 and Vienna Convention on Consular Relations Art 23.

²⁰ (Hardy 1968).

of Justice (ICJ), if the sending state does not recall the agent concerned, the loss of diplomatic and consular privileges is “almost immediate.”²¹ This means that this person can be expelled if not recalled by the receiving state or if they fail to voluntarily leave the country, provided that the conventional and customary rules related to the treatment of foreigners are respected. 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 they remain entitled to the privileges and immunities attached to their function.²²

The 1932 Harvard Research explained similar principles, but added, “[i]f 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.”²³ In fact, the receiving state may refuse to accept or receive a foreign diplomat. Although it might not dismiss or terminate them, the Harvard Research reflected the then-widespread practice of the receiving state’s desire for recall prevailing over the sending state’s resistance (Denza 2016), suggesting it reflected customary international law.

6. Not Just Diplomats

It is not only diplomats who have been slapped with *persona non grata* status. Actor Brad Pitt was declared *persona non grata* by China after starring in the 1997 film ‘Seven Years in Tibet,’ although the ban was lifted in 2014 when he accompanied his then-wife Angelina Jolie on a film tour (Ryan 2016).

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 (Sherwood 2012).

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 his (Baldwin’s) wife would be “unlucky” and that “there will be trouble” if Alec Baldwin were to travel to the country (Orosa 2009).

In June 2013, Spanish opera singer Montserrat Caballé was included in a list of *persona non grata* in Azerbaijan for visiting Nagorno Karabakh without the permission of Azerbaijan.²⁴

7. Prominent Law Cases Relating to *Persona Non Grata* and Analysis

A pertinent example is Queen Elizabeth I of England’s expulsion of Don Bernardino de Mendoza, the Spanish Ambassador, once his involvement in the treason plot became clear (Denza 2008).

Don Bernardino de Mendoza was ordered to depart within 15 days, after investigations identified his participation in a plan to replace the Queen with Queen Mary of Scotland in 1583. At the center of this plot were his diplomatic letters between himself and King Phillip II of Spain. They used a code which only Mendoza and the King could decipher (Dalia 2002). Although this “participation,” therefore, could not be particularized, Queen Elizabeth sent an envoy to Spain, demonstrating that she had a personal disagreement with Mendoza, but not with Spain. Her message was that she would welcome another Ambassador. This attempt to maintain friendly relations naturally failed, the King

²¹ *Case Concerning United States Diplomatic and Consular Staff in Tehran (United States of America v Iran)* Judgement of 24 May 1980 p. 86.

²² Eritrea-Ethiopia Claims Commission, Partial Award, Diplomatic Claim, Eritrea’s Claim No. 20, 19 December 2005 p. 9.

²³ Clifton E. Wilson, *Diplomatic Privileges and Immunities: The Retinue and Families of the Diplomatic Staff*, *The International and Comparative Law Quarterly* Vol. 14, No. 4 (Oct., 1965), pp. 1265–95, Several attempts have been made to codify the principles of diplomatic law. The two most important documents, however, prior to the 1961 Vienna Convention on Diplomatic Relations, were the 1928 Havana Convention on Diplomatic Officers and the *Harvard Research Draft Convention on Diplomatic Privileges and Immunities* of 1932.

²⁴ Azerbaijani Ministry of Foreign Affairs, ‘List of Undesirable People’ Archived from the original (PDF) on 6 August 2013. <<https://web.archive.org/web/20130806212103/http://mfa.gov.az/files/file/Arzuolunmaz%20Shexslerin%20Siyahisi-2013.pdf>> (accessed on 2 August 2013).

having understood the correspondence. However, expelling a diplomat for personal reasons, not attributed to the sending state, afterwards became a norm of diplomatic custom (Ivor 2009; John 1999), 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. ‘Expulsion’ cases disappeared and requests for recall were complied with discreetly and without public demand for reasons, although the facts often became known and appeared in diplomatic handbooks. The United States complied with this practice by recalling their chargé d’affaires at 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.” The Secretary of State commented, in his dispatch to Mr. Jewett,²⁵ that:

“If 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.”²⁶

However, the Don Bernardino de Mendoza case (as discussed above) suggests more that the sending state ought to recall its Ambassador as soon as the receiving state articulates its suspicion of their activities.

Britain’s position was different. In the similar case during the process of *agrément*²⁷ (meaning ‘approval’), it demanded reasons for a recall request and argued the right to consider the reasons provided. Thus, upon the 1848 dismissal of Sir Henry Bulwer (1801–1872), the British Ambassador to Madrid, Lord Palmerston articulated, for the first time, the British practice in terms of the conjoined sending state’s “dignity and interests,” as follows:

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 . . . it 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 (Moore and Wharton 1906).

These different interpretations of the procedure were evident in 1888, when Lord Sackville was British Minister in Washington. 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. 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 (Moore and Wharton 1906).

²⁵ Albert Gallatin Jewett (November 27, 1802–April 4, 1885) was the American Chargé d’Affaires to Peru from 1845 through 1846, under the administration of US President James K. Polk.

²⁶ Moore (1905) vol IV, pp. 484–553, esp pp 494 (Jewett), 499 (Marcoleta), 502 (Catacazy), 531 (Poussin); Hackworth, *Digest of International Law* vol IV pp. 447–52, Satow (6th edn 2009) p. 15.8.

²⁷ 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 agreement. *Vienna Convention on Diplomatic Relations 1961*, done at Vienna on 18th April 1961, entered into force on 24 April 1964, United Nations, Treaty Series, vol. 500, p. 95, art. 4.

In the Case Concerning United States Diplomatic and Consular Staff in Tehran (Hostages Case) at the ICJ, Iran's Minister of Foreign Affairs argued that seizing the United States Embassy and detaining its diplomatic and consular staff took place because of "continual interference by the United States in the internal matters 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."²⁸ 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 defense against, and sanction for, illicit activities by members of diplomatic or consular missions."²⁹ It held also that Article 9 provided a remedy for abusing diplomatic privileges. As it provided no obligation to give reasons, it took account:

[O]f 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' may be considered as involving such acts as 'espionage' or 'interference in internal affairs' . . . 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. 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.'³⁰

Thus, the ICJ avoided dealing with whether the receiving state could act summarily against criminal activities of diplomats, as already agitated by scholars ([Gentilis 1585](#); [Hotman 1603](#); [Grotius 2005](#)).³¹ This suggested that the Court was wary of exercising the power of justiciability in this matter. Thus, Iranian authorities no doubt considered it safer in their community to detain the U.S. officials than to allow them to freely continue 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. They suspected him of clandestine operations against Egypt ([Lord 1976](#)). In 1980, the United States 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. Thus, two members of the Libyan Washington mission were declared *persona non grata* for unacceptable conduct, requiring them to depart the United States within 48 h. Four other members of the mission were expelled within the next month. The Libyan People's Bureau said it was not a diplomatic mission and, so, Article 9 of the Vienna Convention on Diplomatic Relations did not apply. Nevertheless, it withdrew its specified officials ([United States Department of State 1980](#)). In 1980, the British government declared the London Head of the Libyan People's Bureau *persona non grata* for his public comments on violent events involving Libyans in the United Kingdom.³² 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. 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 had participated in the surveillance and intimidation of opponents of Colonel Gaddafi's regime.³³

²⁸ Letter from the Government of Iran to the ICJ on 9 December 1979.

²⁹ *United States Diplomatic and Consular Staff in Tehran (U.S. v. Iran)*, 1980 ICJ Reports 3 (May 24), p. 83.

³⁰ *Ibid.*, pp. 81–87. On Security Council response, see Nicolas Angelet, 'Le Droit des Relations Diplomatiques et Consulaires dans la Pratique Récent du Conseil de Sécurité', *Revue Belge de Droit International*, (vol. 32, 1999) pp. 149–77, 151–52, suggesting that Iran's response was a violation of international law.

³¹ Cornelius van Bynkershoek, *De foro legatorum* (1721), ch. XI republished in Cornelius van Bynkershoek, *A Treatise On The Law Of War* ([Van Bynkershoek 2007](#)) chs XVII–XX.

³² Cameron I, *House of Commons Foreign Affairs Committee Report*, (1985) vol. 34, Issue 3, July 1985, pp. 610–20, paras 61–69; Great Britain, Parliament, House of Commons, Foreign Affairs Committee, *Diplomatic Immunities and Privileges: Government Report on Review of the Vienna Convention on Diplomatic Relations and Reply to "The Abuse of Diplomatic Immunities and Privileges"*, (Volume 9497 of Command papers, H.M. Stationery Office, 1985) pp. 31, 82.

³³ *The Times*, 12 December 1995.

Germany demanded that an Iraqi diplomat depart within 48 h, after his unlawful import of a Kalashnikov rifle to threaten Kurdish demonstrators at the Iraqi Embassy in 1991 (Denza 2016). The United Kingdom declared an attaché in the Embassy of Iraq *persona non grata* after he collected intelligence data for the Iraq Directorate-General of Intelligence about dissident Iraqi students in Britain in 1995.³⁴

The North Korean chargé d'affaires and three other diplomats have been declared *persona non grata* by the Government of Finland, following the discovery that Finland had been used as a staging post for drugs destined for other countries in Scandinavia. The North Korean Ambassador to Norway and Sweden was also declared *persona non grata*, for similar reasons, on the following day.³⁵ The United Kingdom required the withdrawal of a Liberian diplomat found to be smuggling arms in breach of a UN arms embargo on Liberia during 1999. The diplomat claimed that the item in question (an armored car for the Liberian President) had no offensive capacity.³⁶

The Singapore Government requested the recall of a United States diplomatic agent for interference in the domestic affairs of Singapore in 1988. He was trying to persuade anti-Government lawyers to stand for election.³⁷ In the same year, Nicaragua expelled the United States Ambassador, along with seven diplomatic agents, for destabilizing Nicaragua by fomenting revolt. Both the Singaporean and Nicaraguan actions precipitated retaliation of the United States, by means of expulsions at Washington.³⁸

In 2008, Serbia expelled the Ambassadors of Montenegro and Macedonia, in response to the recognition of Kosovo by the sending States.³⁹

In 2007, the United Kingdom Government expelled four Russian Embassy diplomats in response to Russia's declining to extradite the Russian Andrey Lugovoy to be tried in Britain for murdering Alexander Litvinov by poisoning him with polonium-210. Russia also declined to co-operate with the United Kingdom to resolve the matter. The U.K. Foreign Secretary, David Miliband, described the measure in the British House of Commons as a "clear and proportionate signal to the Russians." He did not suggest that the four expelled diplomats were complicit in the murder (Jacques 2008).⁴⁰ A Presidency of the European Union Declaration on this case expressed regret that Russia had failed to co-operate. It did not endorse the United Kingdom's expulsion of the Russian diplomats (Denza 2016). In 2008, Serbia expelled the Ambassadors of Montenegro and Macedonia, in response to the recognition of Kosovo by the sending states.⁴¹

Devyani Khobragade (Deputy Consulate General), an Indian diplomat, was declared an unwanted person and expelled by the Government of United States in December 2013, as she was allegedly involved in counterfeiting visa data (or visa documents) for her servant and was also alleged to have given a false statement about the wages of her domestic servant. The Government of the United States captured and detained her before she was expelled. The Government of the 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 demands of the United States. On March 12, 2014, Judge Shira Scheindlin ordered that all charges against Khobragade be dismissed, as she had diplomatic immunity at the time of her indictment on visa fraud charges, due to her posting to the United Nations prior to the indictment (Booth 2014). Two days later, Khobragade

³⁴ *The Times*, 26th October 1995.

³⁵ *The Times*, October 1976, 16, 21, 22, and 23

³⁶ *Observer*, 25 July 1999.

³⁷ *The Times*, 12th May 1988.

³⁸ *The Times*, 13th and 16th July 1988.

³⁹ Press Releases from Ministry of Foreign Affairs, Belgrade, 9 and 10 October 2008.

⁴⁰ Hansard, HC Debs, 16 July 2007, cols. 21–28; Ivor Roberts, *Satow's Diplomatic Practice*, 6th edn, Oxford University Press, Oxford, 2009, para 15.16.

⁴¹ Press Releases from Ministry of Foreign Affairs, Belgrade, 9th and 10th October 2008.

was re-indicted on the same charges.⁴² The implication was that the United States could have done only that if it had declared the said diplomat as an unwanted person.

The unacceptable activities of espionage and terrorism could 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 the requirement to withdraw them was unjustified, and to carry out a reciprocal expulsion.

8. Efficacy of Article 9, Vienna Convention 1961

The effectiveness of Article 9 may be deduced from the fact that 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.⁴³ One such exceptional case was that of a Cuban diplomat, Mr. Imperatori, who maintained his innocence with regard to the charges made against him by the United States and publicly expressed his wish to defend himself in a United States court. Following the expiry of the period given to him to leave, he was, however, deported by United States authorities to Canada.⁴⁴ In most cases, particularly where a diplomat has been detected in some personal misconduct, they leave or are withdrawn without the receiving state making any formal notification withdrawing their recognition as a member of the mission.⁴⁵ 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.

It is difficult to come to a firm conclusion on what is a “reasonable period” for the purposes of Article 9. The practice 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. The notice of 48 hours seems to be the shortest which could be justified as “reasonable.” Those declared *persona non grata* or not acceptable typically leave well within any deadline.⁴⁶ In 2006, the issue of arrest warrants by a French judge against nine Rwandans for the murder of the former President of Rwanda led Rwanda to recall its Ambassador to Paris and to require the French Ambassador to Rwanda to leave within 24 h and other French diplomats within 72 h. These extremely short deadlines were, however, imposed in the context of a total breach of diplomatic relations.⁴⁷ In the partial award made in Diplomatic Claim, Eritrea’s Claim 20 (*Eritrea v Ethiopia*), the Arbitral Tribunal References held, in response to Eritrea’s allegation, that periods of 25 and 48 h to leave was given to diplomats were unduly short, but that they were not—under the circumstances of an outbreak of hostilities between the two states—in breach of Article 9, as they did, in practice, allow the diplomats expelled to gather their families and belongings before departure.⁴⁸

9. Conclusions

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, without which international life will be in danger. It has been observed that the abuse of privileges and immunities by diplomats, as well

⁴² Nayar, K.P. (10 February 2014). “JNU to diplomatic rescue”. telegraphindia.com. Calcutta, India.

⁴³ The strange and doubtful exception was the *Diplomatic Immunity from Suit Case*, 61 ILR 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.

⁴⁴ AJIL 2000 p. 534.

⁴⁵ Hansard HC Debs 29 June 1981 WA cols 284–6, printed in 1981 BYIL 435 at 436.

⁴⁶ Richtsteig (2nd ed., 1994) pp. 14, 32; Denza E, *Diplomatic Law: Commentary on the Vienna Convention on Diplomatic Relations*, (4th ed., Oxford University Press, 2016).

⁴⁷ *The Times*, 25 November 2006.

⁴⁸ 135 ILR 519; RIAA Vol XXVI 381.

as by governments, constitutes one of the major challenges to the success of the Vienna Conventions. The rule of law demands that even the crimes committed by diplomats should be duly brought to book. However, at many times, it has been found that the problem was due to the broad interpretation of the immunities and privileges put upon by the states. Therefore, it must be stressed that the object behind diplomatic protection is “to ensure the efficient performance of the functions of diplomatic missions as representing states” and not because that the diplomat is the representative of another sovereign body.

It has been observed that 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.” They mainly include the options of declaration of *persona non grata* and the waiver of privileges and immunities by the sending state. Though these options are not very effective in practice, 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 such situations, 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 Conventions.

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 deliberation, 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 the expulsion of the concerned diplomat, as well as issuing a deadline for the diplomat to leave. This usually occurs if it has been proven that they have conducted a serious crime capable of threatening the security of the receiving state. As such, it is the maximum sanction that can be applied to a diplomat whose actions damage the receiving state.

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