



Diplomatic Immunity

Evolution and Recent
Country Developments

Edited by
Marko Novaković

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To my graceful Faith and my faithful Grace

PREFACE

This book is not classical collection of papers, for a number of reasons. First of all, it features only seven chapters, so it closely resembles the monograph. The second peculiar feature is its cohesion despite the wide range of topics and approaches—something that is not obvious at the first glance. That was one of the main goals in editing this book—to have in one place in several chapters all main aspects of the diplomatic immunities issue: historical, comparative, case-law and theoretical approach. Finally, after agreeing on basic features of the topics, authors were given freedom in their methodology, structure or general approach in order to get the most of their thoughts, most original work, that will emphasize their personal touch and school of thoughts and area of law they are coming from.

My job as an editor was very easy because cooperation from the authors of all chapters was impeccable and I thank them for that. However, finding people from so many different backgrounds, with abilities to present in an understandable and well-founded manner and to bring something personal, both from their own education and from the region they are coming from, proved to be quite a challenge. Scholars are very keen on writing, but finding balance between creative inspiration and a pre-agreed topic and direction is something that can prove to be quite challenging. Especially when this freedom given to every author still implicates that basic rules have to be followed. Conveniently enough, the situation is the same with diplomats and diplomatic immunity in general. Giving a person such a vast and in the cases of criminal acts practically absolute immunity is a big responsibility and it has to be given only to the ones that are aware of the necessity to obey the laws despite the *lex imperfecta* character of the laws toward them.

This book will take a reader to the unique voyage—from the historical perspective of the development of the immunities of the envoy, through different customs and interesting traditions of the people, to the theoretical analysis of major issues and the case-law of several states and its approach to the diplomatic immunity. Even a reader who encounters with the diplomatic immunity for the first time and wants to acquire knowledge from theory to practice will be guided by this book from development of the diplomatic immunity, through its usage outside embassies to some contemporary cases. On the other hand, I am convinced that an experienced diplomat, practitioner and researcher will all find interesting subject tackled and analyzed in an original way.

The first chapter, “Diplomatic Immunity—An Admittedly Short Survey”, is presented by the most notorious authors on the history of diplomatic immunity and few people would be able to compress so many interesting, encyclopedical facts and stories in such a readable way. This is a perfect start for any voyage in the world of diplomatic immunity and a voyage even the post experience diplomat and research are very keen to do again.

Then we have more general articles, dealing with the questions raised from expanding the diplomatic immunity. The first is my chapter on the role of Secretary General in the preservation of the immunities of the United Nations (UN) and the correlation between diplomatic immunity of the highest officials of the UN and diplomats and consequences of that correlation to the UN status in general.

On that line, Kenneth K. Mwenda, an experienced practitioner and professor, is tackling an interesting question of “Integrity Risks Pertaining to Head of State and Diplomatic Immunity: How Political Considerations Impact on the Law.”

Afterwards, there are two chapters dealing with case-law and practice of the United Kingdom and Austria: “Immunity of Permanent and Special Missions’ Members: Consent, Certification and Scope in the United Kingdom”, by Verity Robson and another chapter by one of the leading experts in this area of expertise August Reinisch and his colleague Philipp Janig, “Diplomatic Immunities in Austrian Courts.”

Finally, at the end of our tour we are landing in India with two interesting pieces “Balancing Diplomatic Immunity: An Indian View Beyond the Khobragade Position” and “From Devyani to Italian Marine Case: India’s Brush with Diplomatic Immunity Laws” analyzing very interesting and vivid Indian practice in the diplomatic immunity field in the recent years.

Belgrade, Serbia

Marko Novaković

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CHAPTER 1

Diplomatic Immunity: An Admittedly Short Survey

Linda S. Frey and Marsha L. Frey

From earliest times to the present, many civilizations across the globe have accorded envoys basic protection. Necessity forced most cultures to accord envoys inviolability because only then were relations between different peoples possible. Religion further buttressed immunity, custom sanctified it and reciprocity fortified it. Although all civilizations have recognized the importance of protecting envoys from harm, the degree of protection accorded varied with each culture. The position of the envoy remained tenuous in some civilizations, especially those that had become hegemonic and harbored universalistic pretensions and those who regarded the other as barbarian. The rules, customs and conventions surrounding diplomatic immunity have been historically shaped and continue to evolve. The fundamental foundations of immunity have shifted over time from religious to legal; expediency became precedent. What had once been a courtesy

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