Misuse of Diplomatic Immunities and Law Enforcement of Diplomatic Immunities and International Rights

Mohammad Abolfathi and Nayyereh Rahimi Moghaddam

(Department of Political Science, Razi University, Kermanshah, Iran)

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Abstract: from the newest discussions in field of diplomatic rights, is misuse of diplomatic immunities. In this paper, at first the concept of immunity is detected and diplomatic rights documents is stated. And then philosophic and legal basis of immunity endowment to government representatives are analyzed. By this the goal of diplomatic immunities is revealed and two obligated principles stated by board of the deputies are allowed to state: 1- principle of not interfering. 2- Respect to laws and principle of receptive state. And then it continues with some abuse samples of diplomatic immunities and at last law enforcement of immunity abuse is stated.

Key Words: political diplomat, political immunities, diplomatic rights, international rights

1. Introduction

Diplomatic immunities have a long history in government and nations relations. From principles that developed nations observe and respected is the principle of envoys. Regarding this "Griseous" father of international mother in law says: "two principles have always been in nation’s law and is concerned to ambassadors; at first, to welcome them and be aware of any invasion for them.

Envoys immunity is stated as the international right first rule. From seventh century by creation of embassies in Europe immunity of mission places was recognized as a modern international principle.

Concept of immunity: in Persian juridical literature, immunity means safety and security. Arab lawyers would use words like respect, exception, exemption and privilege as different as translation and equivalent for immunity. but in juridical concept , generally , immunity means that its owner is immune to persecution and state officers and by privilege we mean those advantages that common people do not have right to use them. Generally speaking immunities are in direct relation with international rights; in contrast to privileges that are defined based on mutual relations.

Before that, these two subjects must be mentioned. First: diplomatic rights conventions and the other base of granting diplomatic immunities.

Diplomatic right convention: rights commission of United Nations that is based on thirteen article of chart is agent to make and develop international rights. Their effort result is as follows,
1) Vienna convention on diplomatic relations: United Nations consultant says: "public or common laws represented in this convention are obligatory to all of the international members." most of the principle of this convention is to coordinate common laws.
As a result it can be used as symmetry for common rights even for those states that are not members. Until 1981 the number of states joined to this convention was 137 that make it an important source in diplomatic relations.
2) Conventions on special missions: this convention is based on 1961 convention and is
related to mutual temporary missions among states.
3) Vienna convention about state agents in their relations with international organizations: above mention organization was resolute in 1988 as "law about merging Islamic republic of Iran to conventions about states deputation in relation to international organizations."
4) Convention about prevention and crime penalty under international support including political deputies: The convention mentioned above was resolute in Iran parliament in 1978. Based on first article of this convention individuals under international support are: "heads of states, foreign ministers representative, employers, official figures and deputies or agents of one of the international organizations.

This convention basically is an emphasis on support of political agents based on laws and conventions concluded before. 1973 convention (New York convention) was obligatory in 1977 and seventy countries were its members.
5) Convention scheme about status of diplomatic courier and diplomatic pack. That is not allowed to be with diplomatic agent. This convention is a complimentary to prior convention concerning diplomatic pack and courier. This convention is the last effort of the international rights commission for diplomatic rights that is still in design stage and is not obligatory.
Roots of granting immunity: lawyers have stated different ideas for justification and explanation of these roots among them these three are the most important. A) Representative theory. B) Extra, territorial theory.
A) Representative theory: Montesquieu says in the book "Rooh Al Ghavanin" (Spirit of laws):" from the rights of nations is that their rulers attend to ambassador exchange. Ambassadors don’t obey the receptive country and its ruler. They are official language of the sender. They speak on behalf of an independent figure and nothing should stop them; if they misuse of representative epithet they can be dismissed to their country.
In this statement Montesquieu states both philosophy of immunity and law enforcement of misuse of diplomatic immunities. Among other defenders, there is "Fuci" who says: “the reason for existence of immunities is definition of representative and must have necessary independent for the mission and avoid any violence that is damaging dignity of states which attend to exchange ambassadors.
B) Extra Territorium Theory: theory of “along the land” and along the country is other names of this theory that is due to different translation. Grosious, creator of his theory says: “based on international laws epiphany of stated in ambassador is assumed and based on this, ambassadors attend to their duties out of the state soil. As a result they are not to observe rules of the state where they have mission. Extra territorium theory is in complication with actual contemporary laws and ends with not accepted results because it didn’t have any defender.
C) Interest of function theory: to be able to his duty representative must be in adjusted situation and complete independent and must have freedom of action. This freedom is to benefit from privileges and immunities. International court of justice emphasized United States diplomatic and consoler’s employers in Tehran and says: “Diplomats immunities is derived from representative features and their diplomatic duties. In case that receptive state makes the immunity commitment, sender state is to observe receptive states laws and principles and have responsibility for its agent and also avoid interfering internal affairs. Sender state has responsibility for representative and international laws put the liability position on sender state about all of the representative actions, in case of loss or any damage to host state and its nations. Concerning representative behaviors in host state to principles are most

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important and are repeated in diplomatic right
documents including: A) the principle of no
interfering and, B) respect laws of host state.
A) The principle of No interfering: this principle
is a common and accepted process. But owing
that international affairs of states have an
increasing effect on foreign policy in large
number of cases this principle is removed by
trick. Economic and monitory aids are of these
tricks. United states 35 year interference in Iran
internal affairs must also get into mind. Another
subject is borders between interference and
espionage; Based on Canada juridical process,
wherever diplomat’s behavior threatens security of
receptive state, their immunity will be aborted.
B) Principle of respect laws and rules of
receptive state: international court of justice in
"Hayes De La Tore" case states that: it is
obligatory to political representative to respect
rules of receptive state. The most important ones
are including: respect to public health rules,
receive driving license and observe its
obligations, make use of mission places in a way
that interferes with duties, respect to public
institutes and linking instruments, not attending
commercial activities. Being indifference of
principles and rules of receptive state in
protection of immunity is the most obvious
meaning of misuse of immunity. In fact
immunity of states representatives is a
confidence for them in order to do their duties
without any barrier. of course most of the
diplomatic incidence maybe invisible by public;
Because their published damage mutual
relations. In a report, from 1982 to 1988, 147
heavy crimes was made by diplomats that 30
cases was made by diplomats themselves, 60
cases by their relatives and 57 cases was made
by other members of diplomatic mission .

Different kinds of immunity misuse: every
right is recognized and supported in order to
make benefit. But it’s natural that if it become
the case of misuse, the first consequence will
be demands to bond it. Here are some samples:
1) Misuse of mission place: immunity of places
is in order of representatives do their duties
freely and independently; But misuse of them in
a way that interferes with duties, is a kind of
violation and misuse of immunities. Cooperation
of two Russian diplomats to a plane robbery and
clashes with security guards in Beirut airport is
other case of misuse. Shooting a police woman
in Libya embassy in London in 1984 that ended
with her death.
2) Misuse of residence immunity: if immunity
owners make use of their private housing in a
way that interferes with their duties, receptive
state must be supported in front of this misuse.
It’s obvious that housing immunity doesn’t
mean to violate receptive state laws. For this
case we can mention weapon storing in house of
one of Iraqi militant relatives in Pakistan. As
well in 1972 guard forces in Zaire follow that
Senegal affiliates in Kinshasa were smuggling
diamonds in their house.
3) Granting refuge in diplomatic places:
personal immunity is the first rule of
international rights. In court of justice in Canada
and United States if diplomats do something
which violates security of receptive state, their
immunity will be aborted. As a result in case of
security and obvious crime, personal immunity
is aborted.
4) Misuse of diplomatic pack: it has been found
from alive human being to dead body in
diplomatic packs and luggage. Apparently these
kinds of misuse are risky for receptive state. And
by increasing number of sabotage and terroristic
actions, it’s not possible to submit diplomatic
packs. One of the most famous misuses of
diplomatic pack is placement of dead body of
Nigerian political adversary in diplomatic pack
in 1984 in London airport that was detected
because the bag was stinking.
5) Misuse of personal luggage: personal luggage
is different from diplomatic pack because
personal luggage cannot be opened without
permission. But opening personal luggage is

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possible due to use of forbidden objects and tools, even if the owner have objection. Based on a report, 16 Europe embassies were active in smuggling antique objects. Other cases are including smuggling cigarette, drug and alcohol in large amount. As far as two ambassadors Latin America were members of smuggling bands.

6) Driving offences: cars have been used in carrying illegal goods and even weapon and releasing suspects. In a report referring to 1976 and 1977 driving offences by diplomats in England have been 92958 cases and in some cases it leads to murder. Another case is one of the Saudi diplomats' sons in Virginia sex abuse on a 16 year old girl is of the crimes committed by diplomat’s affiliates.

Law enforcement of immunity misuse: misuse of immunities is an exception in granting immunities; but its expansion makes some concerns in internal and international levels. These kinds of misuse expand public rage and on the other side seem that diplomatic immunity interferes with justice and international rights. There are some law enforcement anticipated in documents of diplomatic rights in case of misuse made by representatives:

1) Announcement of the person as “unfavorable element” by receptive states.
2) Repeal of offender by sender state.
3) Terminate offender duties by sender state and termination of his immunity until establishment of court of law.
4) Termination of diplomatic relations.

Based on the first clause of the 32 article of 1961 convention, sender state is free to terminate immunity of its representative. This subject is almost same in other diplomatic right conventions. In 1992 diplomats from Prague abused a woman sexually and then murder her in the United States of America.

Due to this heavy crime, Virginia state forces captured him and consequently the court of law finds him guilty. Prague officials didn’t show any reaction Virginia court avoided to recognize diplomatic immunity and sentence him to execution.

Conclusion and suggestion: the number of diplomats that have immunity is estimated to 400,000 worldwide. Countries which host for international organizations observe the attendance in most of them. In diplomatic rights conventions, the number of individuals for mission is not exactly showed; and the number of representatives is limitless. For this it’s just recommended that the number of representatives do not cross the normal level. As a result this right must be given to receptive state that asks sender state to decrease the number of mission members.

As well there are some solutions to pay back losses to the receptive state and resist against the misuse of Diplomatic immunities. Including:

1) Termination of diplomatic relations: for example United States suspended Libya office in Washington in 1981 to prevent danger of terrorism.
2) Allegation of affected states at sender state.
3) Insurance for commission places and embassies: in this case affected state is sure because insurance company pays the cost of the losses without interference of External elements.

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