

Original Work For Independent Study and Mentorship

A Suggested Revision to the Vienna Conventions on Diplomatic Relations

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Foreword

The Vienna Conventions on Diplomatic Relations¹ has been one of the most principle documents that governs International relations. Countries all over the world have ratified and codified it into law in different ways. Multiple rules and articles have governed the relations between states for over 50 years. A new concept at the time, the VCDR in practice has been successful in governing the relations between states, however the VCDR has some components to it that in theory were sound ideas, but in practice have become problematic for states.

One of the most influential things the VCDR covers is the use of immunity for foreign nationals doing diplomatic business in a receiving state. Under articles 27-36 of the agreement, any foreign mission is granted immunity from forfeiture in a receiving state along with the inviolability of diplomatic property in order to facilitate diplomatic intentions without the interference from a receiving state no matter how good relations between those two countries are. Later articles outline that the State can withdraw immunity at its own discretion and that if a sending country does not wish to waive immunity for a foreign official, then the states can cut ties and a 3rd neutral state will handle the proceedings of the embassy and/or consulate². This has brought major questions of ethics into light as well like in the case of English citizen Harry Dunn was killed by an American diplomat's wife driving recklessly³ where charges were not brought up because then President Donald Trump did not waive her immunity and she was sent back to the US despite public outcry. This has also been documented in other cases throughout the UK, most notably the Dikko Affair and the death of police Constable Fletcher⁴. Furthermore over a 10 year span from 1974-1984, there were 546 occasions where people avoided arrest due to diplomatic immunity⁵. These cases and similar cases throughout the world have caused heightened tensions and the severing of ties all over the world, which only make it harder for citizens of a country to be abroad in a different country. So in practice, immunity is easily abused

¹ United Nations, "Vienna Convention on Diplomatic Relations," October 1961, https://legal.un.org/ilc/texts/instruments/english/conventions/9_1_1961.pdf.

² Sean D Murphy and Thomas Buergenthal, "Texas State Law Library Remote Database Login," Texas.gov, 2023, <https://subscription-westacademic-com.ezproxy.sll.texas.gov:2443/book/Preview?chapterUri=%2Fdata%2Fbooks%2F26139%2Fdocbook%2Fsection17.xml&highlightTerms=dipomats%2Cdipomat>.

³ Melissa Chan, "A Teenager's Death Has Put Diplomatic Immunity under a Spotlight," Time, October 9, 2019, <https://time.com/5696300/diplomatic-immunity-harry-dunn/>.

⁴ Rosalyn, Higgins. "UK Foreign Affairs Committee Report on the Abuse of Diplomatic Immunities and Privileges: Government Response and Report." *The American Journal of International Law* 80, no. 1 (1986): 135–40. <https://doi.org/10.2307/2202485>.

⁵ Rosalyn Higgins, "The Abuse of Diplomatic Privileges and Immunities: Recent United Kingdom Experience," *American Journal of International Law* 79, no. 3 (July 1985): 641–51, <https://doi.org/10.2307/2201891>.

and after 50 years there is just cause for amending the VCDR to keep diplomatic ties during cases of diplomatic immunity.

Articles of Revision

Proposed Article 1

1. A foreign agent shall enjoy immunity from criminal jurisdiction of the receiving state as outlined in Article 31 of the Vienna Conventions on Diplomatic Relations and Article 43 of the Vienna Conventions on Consular Relations⁶ except in the cases of
 - a. Any exception already outlined in the current edition of the Vienna Conventions on Diplomatic Relations or Vienna Conventions on Consular Relations
 - b. Any evidence of manslaughter or any degree of murder is presented to the head of the mission and the sending state's foreign ministry/state department
 - i. Procedure for a foreign national associated with the suspicious death of someone outlined in Proposed Article 2 paragraph 3
 - c. Any diplomat is not fully immune from any petty theft
 - i. Immunity based on petty theft is awarded based on value of suspected items stolen
2. Any state that waives immunity for their foreign national within 4 weeks of the accusation shall default to procedure outlined by the accusing state's procedure.

Proposed Article 2

1. Any foreign national accused of any crime is not allowed to leave the accusing state for a period of 3 weeks
 - a. The foreign national is allowed to take refuge in their consul and the accusing state is not allowed to enter the diplomatic mission with the intention of or commit the action of detaining the accused national
 - i. Any accused national improperly detained will be granted full immunity from the crime to which they are accused of unless the state has waived immunity within 7 days of the first public accusation.

⁶ United Nations, "Vienna Conventions on Consular Relations," April 24, 1963, https://legal.un.org/ilc/texts/instruments/english/conventions/9_2_1963.pdf.

1. If the accusing state refuses to return the improperly detained national, the state is justified in use of force for self defense under article 51 of the UN Charter⁷
 - a. However the maximum proportion of retaliation for the sending state is only limited to espionage and covert military action in which no citizen of the accusing state is killed.
2. Any foreign national accused of petty theft is not granted full immunity but rather granted partial immunity based on the severity of their crime.
 - a. The foreign national is allowed to take refuge in the mission but not allowed to leave the country whilst the accusing state is accusing said national of crime for a period of 4 weeks
 - b. If the petty theft totals under \$1,000 US within a period of 2 months then the national is entitled to immunity from jail time and can only be levied a fine worth the item stolen maximum
 - c. If the petty theft totals between \$1,000-\$10,000 US within a period of 6 months then the national is entitled to immunity from over 3 months of imprisonment and fines may not total more than 1.5 times the worth of the item stolen
 - d. If petty theft totals greater than \$10,000 US within a period of 1-2 years then the national is not entitled to any immunity but rather the maximum penalty that can be taken in 6 months imprisonment and fines may not total more than 2 times the worth of the item stolen
 - e. Any process for the state to appeal the ruling of an accusing state's conviction will be outlined in Proposed Article 3
3. If any foreign national is brought up on manslaughter and/or murder charges, the foreign national is not entitled to immediate immunity but rather entitled to benefits outlined below.
 - a. Immunity from manslaughter and murder for driving on the wrong side of the road and the death of a citizen through reckless endangerment. However, the national is not immune from reckless endangerment charges and is not immune from a license suspension pending the action of the accusing state
 - b. Full representation from their home country and a thorough presentation of evidence that the national could be tied to the scene at the time of the incident in question before moving forward with prosecution.
 - c. The foreign national is forbidden from leaving the accusing state for 6 months after the first accusation and if the foreign national has left the state before the first public accusation, they must be returned and can seek shelter in the state's mission.

⁷ Justia, "Use of Force under International Law," Justia, June 9, 2021, <https://www.justia.com/international-law/use-of-force-under-international-law/>.

- i. If the national refuses to go back to the accusing state, the sending state must provide reasoning and claim arbitration within 3 days of the first public accusation or all benefits will be forfeited.
- 4. If there is not a current mission present when a foreign national is accused/tried for the national to take refuge in a third party mission may be used as an alternative based on the agreement from both the sending state and the third party state.

Proposed Article 3

1. If the sending state objects to the charges brought against the accused national, they may request a settlement through International Arbitration
 - a. If arbitration is requested the rules of arbitration will be governed under the rules of the Foreign Sovereign Immunities Act⁸ from the US as to maintain neutral arbitration laws. If the US is involved in the arbitration, a neutral third party state's arbitration rules will be agreed upon by each state's designated protocol managers.
 - b. All arbitration procedures will be run by a protocol manager chosen from each side, working to understand each side and acting as liaison between the arbitrator and the arguments of each side. These protocol managers⁹ must be well versed in any languages required by the two parties and work with the arbitrator after arguments are presented to make sure that the proper verdict is delivered and followed through.
2. Diplomatic properties do not count as proper writs of attachment, no matter the purpose, and the leans may only be placed on a state's property if the state is required to pay compensatory damages from a civil suit like *Hegna vs. Islamic Republic of Iran*¹⁰ and used as compensation only if the state cannot or has refused to pay the damages within 3 months.
3. If a state wishes to pursue an appeal or retrial of any arbitration case previously argued, they must let the state and the protocol managers in charge of proper arbitration know their reasoning and may only request a retrial up to three times, changing arbitration rules or arbitrators a maximum of 2 times per retrial.

⁸ Peter Rodino, "Foreign Sovereign Immunities Act" (1975), Foreign Sovereign Immunities Act.

⁹ Macs Reynolds, Independent Study & Mentorship Interview with Macs Reynolds, interview by Neel Mehra, November 29, 2023.

¹⁰ Justia, "*Hegna v. Islamic Republic of Iran*, 287 F. Supp. 2d 608 (D. Md. 2003)," Justia Law, 2003, <https://law.justia.com/cases/federal/district-courts/FSupp2/287/608/2476171/>.

Proposed Article 4

1. Scanning for weapons or persons is allowed on diplomatic baggage but as per Article 27 of the Vienna Conventions on Diplomatic Relations, the bag may not be opened or detained without scanning.
 - a. If weapons or persons are found from the scans and are believed to be of great risk to the hosting state, the search of the bag is justified under Article 51 of the UN Charter as anticipatory self-defense. However, no papers or anything that is not a clear weapon of threat to the hosting country may be seized. Additionally, no papers, files, drives, or any device that might contain diplomatic information may be removed from the bag. Furthermore, the search of the diplomatic baggage must be done in the presence with a representative of the state's already present mission or a representative of a 3rd party nation if diplomatic ties are being reestablished.
 - b. Any weapons or humans trafficked in diplomatic baggage may be brought up on all charges and if states do not wish to sever immunity they may request International Arbitration outlined under Proposed Article 3 Paragraph 1

Proposed Article 5

1. If any state wishes to sever diplomatic ties with another state for any reason at all they must first justify their issues and attempt to work it out through arbitration governed by third party arbitration procedure as outlined in Proposed Article 3 Paragraph 1.
 - a. If no agreement has been reached a state may sever diplomatic ties and end the mission in the country under the management of a chosen state's management
 - i. The vacating state must leave at least one official and the head of the mission for 60 days to ensure that the transfer of management is handled properly. Furthermore, all known nationals of the vacating state must be notified of the new procedure for help and representation 30 days before the mission is dismantled.
 - b. Any other procedure that must be undertaken is governed by Articles 44-45 of the Vienna Conventions on Diplomatic relations

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