

ABSTRACT

Diplomatic Immunity: The History and Enduring Significance

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Is diplomatic immunity a transitory or permanent feature of international life?

This dissertation will answer this question by exploring the theory, history, and contemporary understanding of diplomatic immunity. A case study of the recently verified Amarna Age will provide evidence of this nature. After affirming that diplomatic immunity is indeed a permanent and essential feature of international relations, this study shall examine the intersection of the public's current understanding of this practice and the duties of the modern state. A case study of a recent outcry against diplomatic immunity will be examined to highlight how tensions can manifest in today's networked society.

Given that some manifestation of diplomatic immunity is a natural and permanent feature of international relations, what methods can be utilized to hold diplomats accountable while also preserving this important practice?

This dissertation will map a few ways that accountability can be fostered within the current system of international relations without requiring a major overhaul of current international treaties.

Diplomatic Immunity: The History and Enduring Significance

by

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DEDICATION

To the Lord, first and always.
With God, all things are possible.

PREFACE

Criminals with a certain occupation have committed the full spectrum of crime and “gotten away” with it: diplomats. Abusive and rude behavior,¹ rape,² smoking on planes, making jokes about bombs on planes,³ DUIs/ DWIs,⁴ slaughtering sheep in the street,⁵ human trafficking,⁶ unpaid rent,⁷ domestic abuse of family and employees,⁸ and murder⁹ are common if sensational stories that arise when diplomatic immunity is discussed.¹⁰ Diplomatic agents are granted immunity from civil and criminal prosecution¹¹ in the host country to ensure their safety and prevent mistreatment, and yet

¹ *Business Recorder*. (2013, February 12). “Taking Undue Advantage of Diplomatic Immunity!”

² Wallace, Carol and Michael J. Weiss. (1983, January 17). “The Untouchables: Diplomats in America.” *People*. Vol. 19 No. 2.

³ Shane, Scott. (2010). “Assessing Response to Illegal Smoke and Quip.” *The New York Times*.

⁴ McKay, Jeff. (2008). “The Diplomats’ Guide to Drinking and Driving.” *CNSNews.com*.

⁵ Trex, Ethan. (2010). “9 Shameless Abuses of Diplomatic Immunity.”

⁶ Semple, Kirk. (2013, June 25). “Housekeeper in New Jersey Accuses Peruvian Diplomat of Human Trafficking.” *The New York Times*.

⁷ Romano, Jay. (1996, March 31). “YOUR HOME; Diplomats And Their Immunity.” *The New York Times*.

⁸ Castro, Amanda M. (2014). “Abuse of Diplomatic Immunity in Family Courts: There’s Nothing Diplomatic about Domestic Immunity.” *Suffolk University Law Review* 47(2).

⁹ Keating, Joshua E. (2011). “Can You Get Away With Any Crime If You Have Diplomatic Immunity?” *Foreign Policy*.

¹⁰ Note, for every article referenced in the above footnotes, an abundance of similar cases exist.

¹¹ With three notable and clearly enumerated exceptions to civil immunity noted in the treaty called the Vienna Convention on Diplomatic Relations of 1961, in terms of the rules of diplomatic immunity for contemporary times.

many increasingly wonder if diplomatic immunity is instead protecting the injustices perpetrated by corrupt diplomats.

Before delving into these concerns, I must note that diplomatic immunity manifests in some form in every recorded international system, and thus the specific terms used to describe the ruling power and diplomats themselves vary greatly over time. To avoid confusion when discussing enduring patterns and commonalities across the ages, I will use the following general terms:

- The terms “sovereigns” and “powers” will refer to any organized ruling person(s) with political power, including, but not limited to, princes, oligarchies, papacies, and democracies.
- “Diplomat” will cover all envoys, messengers, legati, fetials, ambassadors, etc. It will be used to refer to people employed by their powers to engage in diplomatic relations with other powers.¹²

By using general terms, I hope to avoid confusion as I discuss in broad strokes the evolution of practices culminating in the version of “diplomatic immunity” articulated and abided by in treaty today.¹³ When a higher level of precision is necessary, I will use specific terminology in context.

While there are many opinions and arguments about the type and extent of protections that should be granted to other organs of the state – such as consulates, embassy staff, corporate representatives – I will be focusing only on diplomats and their protections in this work. Yoram Dinstein argues one can and should distinguish between diplomats as a representative of a power and any other “organ” of the state. Diplomatic

¹² Today, under Article 1 of the Vienna Convention on Diplomatic Relations of 1961, “diplomatic agent” refers specifically to “the head of the mission or a member of the diplomatic staff of the mission.” *Vienna Convention on Diplomatic Relations, 1961*. (1961). United Nations.

¹³ There are many trees in this forest.

immunity, as it arose and was codified, is particular to diplomats serving the furtherance of diplomatic relations for the powers that be. It does not extend to any and every other person, such as a tourist or a financial adviser for the state.¹⁴ Throughout history, powers have frequently granted different degrees of protection to visiting dignitaries, based on the role one serves in the diplomatic retinue, but throughout this study, we are referring only to fully credentialed diplomats who can act autonomously on behalf of the state and who therefore qualify for the full protection of diplomatic immunity from their host state, as it was practiced in their era of history.

The purpose of diplomats (as the purpose of diplomacy) is to facilitate relations among powers, by carrying out negotiations, gathering information, and representing their sovereign in a foreign land.¹⁵ The goal of diplomatic immunity is to allow diplomats to fulfill this purpose; it makes their safety paramount (personal inviolability) and often further exempts diplomats from the jurisdiction of their host's legal courts to achieve this safety. Diplomats cannot properly achieve their goals if they fear detainment, harassment, or death at the hands of their host. The desires to survive and to avoid harm would distort their motivations and fundamentally compromise both the agents and trust in outcomes from their actions. The most recent articulation of diplomatic immunity can be found in the Vienna Convention on Diplomatic Relations (VCDR), which codified previous practices into a written treaty on April 18, 1961. It reflects the above understanding, stating in the preamble, “*Realizing* that the purpose of such privileges and immunities is

¹⁴ Dinstein, Yoram. (1966). “Diplomatic Immunity from Jurisdiction Ratione Materiae.” *The International and Comparative Law Quarterly* 15(1): 76–89.

¹⁵ Article 3. *Vienna Convention on Diplomatic Relations, 1961*. (1961). United Nations.

not to benefit individuals but to ensure the efficient performance of the functions of diplomatic missions as representing States.”¹⁶

Despite the intention and role of diplomatic immunity in facilitating international harmony, many people are concerned about accountability should a diplomat violate the laws of their host country or commit human rights atrocities. While immunity can and does protect diplomats from false accusations, it can and has protected diplomats who took advantage of this protection, as well. The conversation around accountability often focuses on whether diplomats should be exempt from the criminal and / or civil jurisdictions of the host power. A common proposed solution is to further limit the scope of diplomatic immunity. This can be done by making diplomats subject to the laws of the host country or by limiting immunity to diplomatic behavior rather than diplomatic persons. However, the call to limit diplomatic immunity presupposes certain ideas that are not self-evidently true, including that host states can always be trusted to separate politics from the court of judgment, that active diplomats can be off-duty, that diplomacy is not necessarily a continuous affair, and that a limited form of immunity will not negatively impact international politics. In response to the proposals from these parties, I will suggest that calls to limit the current form of diplomatic immunity, however well-intentioned, are misguided. I argue that the nature of diplomatic work requires the safeguards of diplomatic immunity as it currently stands, and accountability for diplomats is better found through other means. While proposals for change are compelling as they are often motivated by a desire for justice for victims and based on a belief of human rights beyond citizen rights, I aim to remind relevant actors that diplomatic immunity is

¹⁶ Preamble. *Vienna Convention on Diplomatic Relations, 1961*. (1961). United Nations.

not a simple practice that can be shaped by the desire for a certain outcome. Instead, it is the natural manifestation of diplomacy.

The treatment of diplomats is a litmus test for the status of international stability. If a power officially recognizes another power (not necessarily agrees or aligns with them), then they are respectful of their diplomats. If a power either does not recognize another as legitimate or if they want to send a harsh message, then their treatment of those diplomats deteriorates; this naturally often leads to a further deterioration of the relationship between them. Therefore, while the exact manifestation of a form of diplomatic immunity varies across time and leaders, it is a consistent principle that operates in the above way. Powers react reciprocally to any behavior towards their diplomats. When the Westphalian system of states emerged onto the scene, state sovereignty became the new standard for legitimacy in the system. Sovereignty is, in essence, the right to act without being acted upon. It meant that states now held monopolized power to define law, utilize force, and engage in decisions for the common good. If states have sovereignty, it follows that they must send and receive diplomats in a way that consistently recognizes each other's legitimacy. This both affirms the power of states as such and facilitates stable diplomatic relations among them. The VCDR of 1961 codified the form of diplomatic immunity that the majority of states had thus far accepted as respectful of their sovereignty and necessary for continued relations. The vast majority of the world's nations have signed and ratified it, with a total of 193 states bound by its provisions. Palau and South Sudan are the only UN member states that are not party to the convention.¹⁷

¹⁷ *United Nations Treaty Collection*. Retrieved July 2021.

Proposals to limit the current practice of diplomatic immunity should not be entertained seriously without examining the potential consequence or alternatives to better achieve the goal of diplomatic accountability. Limiting diplomatic immunity will negatively affect international stability in part because it increases the probability that states will either abuse diplomats or act in a way that can be perceived as abuse. To aid my project, I will utilize the expertise of contemporary diplomats, as they are uniquely qualified to comment on the practical use and theoretical basis for diplomatic immunity. My contribution through this dissertation is to gather insight into its nature and efficacy from academic and diplomatic circles to reveal public misunderstandings about this principle.

When asked about diplomatic immunity in a round of personal interviews I conducted in 2016, diplomats from the United States of America immediately respond that it “keeps me safe” and that it “allows us to do our jobs.” They used words such as “essential” and “necessary.” One diplomat who asked to remain anonymous even went so far as to express frustration at the public perception that diplomatic immunity gives diplomats a free pass to do harm. This perception is rarely accompanied by a robust understanding of the impact of diplomatic immunity on currently abroad diplomats. A quick browse of popular media and news stories reflects and perpetuates this almost uniform reaction to diplomatic immunity; when diplomatic immunity is discussed, it is typically shown as protecting a criminal or hindering a just cause. The concept is rarely treated in a well-rounded or nuanced manner, leaving a skewed impression in the public. When good intentions, a sensational story, and skewed information meet, a passionate but misguided movement can arise. If a movement of this sort does indeed arise out of public

and / or academic sectors, it could potentially achieve its goal of limiting the scope of diplomatic immunity. The consequences of such an action have not been fully considered, and the situation is in desperate need of some context and alternative solutions.

The work of a diplomat contains many facets, not the least of which are representing one's country and promoting friendly relations between one's home and host states. I will show that arguments for limitation from a functional necessity interpretation will not only fail to achieve their objective but will also open a Pandora's box. By showing that diplomatic immunity is inextricably intertwined with diplomacy and the legitimacy of current power structures, I will show that the current treaty is sufficient for today's needs and is exactly what the international realm requires for stability.

Dissertation Chapters

In Chapter One, I will begin this inquiry by delving into the three main theoretical frameworks for diplomatic immunity of *representative character*, *exterritoriality*, and *functional necessity*. Generally, practice predates theory in this realm of international relations, however, the theoretical frameworks are useful lenses to use when approaching the historical overview, which I turn to in Chapters Two through Four. I will begin with a case study of the practice of diplomatic protections in the Amarna Age to round out the current literature on the history of diplomatic immunity. The Amarna Age is a time period that relatively recently has been introduced to modern academia through the discovery of the Amarna Tablets. It predates the Greeks and arguably is the earliest instance of a stable international system (and society) that can be verified. The purpose of

this examination is to show that we see even in this earliest evidenced age that a form of diplomatic immunity is necessary.

Then in Chapters Three and Four, I will do a two-part historical overview of diplomatic immunity, tracing its existence from Ancient Greece until the establishment of the VCDR of 1961. The goal of this broad (but not exhaustive) overview is to showcase that diplomatic immunity in some form is a natural and indeed essential manifestation for any stable system involving two or more powers. These chapters will be largely descriptive in nature, and they will also show that the manifestations of diplomatic immunity rarely stray from the rules of reciprocal behavior amongst powers. Chapter Three will focus on early historical practices, tracing major developments from Greece to the Renaissance. Chapter Four will cover modern practices that developed as international relations shifted into a more legal basis for politics, starting with “New Diplomacy” and ending with a summary of the VCDR of 1961, since this treaty guides today’s practices.

In Chapter Five, I will focus on contemporary challenges to diplomatic immunity, namely the crisis of the modern state, public perception as influenced by news and entertainment media, and the influence of a technically empowered public on the traditional state. The diplomatic response of U.S. diplomatic officials to these challenges will be introduced, with focus on the U.S. Foreign Policy Association (FPA) and original interviews with U.S. Foreign Service Agents. The following chapter will be a case study of the Anne Sacoolas-Harry Dunn case as an example of the tension between current public understanding and the reality of diplomatic immunity practices.

By the end of this dissertation, I aim to have painted a self-evident portrait of the inevitability of diplomatic immunity. This greater understanding should provide a clear lens to approach discussions of contemporary challenges to the sovereign states, such as ever-evolving communication networks and motivated social movements. My goal is to justify that diplomatic immunity agreements keep diplomats safe and further to show that any disruption to current practices can elicit swift, reciprocal action and should be entered into with the gravest of caution.

CHAPTER ONE

Theory of Diplomatic Immunity

Realizing that the purpose of such privileges and immunities is not to benefit individuals but to ensure the performance of the functions of diplomatic missions as representing States...

- Preamble, Vienna Convention on Diplomatic Relations, 1961

Diplomacy provides an alternative to violence for powers to interact with one another in each international system or society. Ernest Satow (1843-1929) chose to open his influential work by defining diplomacy as “the application of intelligence and tact to the conduct of official relations between the governments of independent states, extending sometimes also to their relations with vassal states.”¹ He adds further definitions from a variety of sources in the first chapter, “Diplomacy in General,” and they emphasize different elements of diplomacy, such as its being the science or art of negotiation;² building rapport between nations; promoting tranquility, peace, and dignity; being the science of relations that exist between diverse states; and serving as the manifestation of reciprocal interests.³ Diplomacy, and thus the work of diplomats, is inextricably tied to communication. The origin of the word diplomat comes from the

¹ Satow, E. (1917). *A Guide to Diplomatic Practice, Volume I* (Vol. 1). Cambridge University Press. 1.

Ernest Satow was a respected British diplomat who compiled one of the first comprehensive studies in English about diplomacy.

² Some choose science; some choose art; some choose both.

³ Satow, E. (1917). *A Guide to Diplomatic Practice, Volume I* (Vol. 1). Cambridge University Press. 1-2.

Greek διπλῶν (to double), which refers to how official documents from princes were folded; documents are a medium of communication and can also be used to confer privilege when originating from someone with authority and power.⁴ Eventually, the direct connection to documents conferring privilege lapsed, but the term itself endured for those who are today called diplomats and for their business, diplomacy.⁵

Effective diplomacy requires immunity for those enacting it, especially when it is between hostile powers.⁶ The concept of the inviolability of diplomatic agents is a perennial one that can be found in systems with two or more powers due to the simple fact that interference with their persons would make their duties of negotiation impossible. It can also be stated as the common-sense adage: “Don't shoot the messenger.” Even before the establishment of permanent embassies and continuous diplomacy, as is widely practiced today, the literature of disparate and seemingly unconnected international systems gives extended attention to the protection for diplomatic messengers (which includes, but is not limited to, the ancient Greeks, Romans, Indians, and Chinese). Sometimes the concept was backed by religious beliefs, and at other times by formal agreements, but it persisted in either case.

⁴ Satow, E. (1917). *A Guide to Diplomatic Practice, Volume 1* (Vol. 1). Cambridge University Press. 2-3.

⁵ Marks, Sally. (2019, January 17). “Diplomacy.” Encyclopedia Britannica.

⁶ As Emer de Vattel says in *Le Droit des Gens*: “The reasons which make embassies necessary and the persons of ambassadors sacred and inviolable have no less force in time of war than in time of peace. On the contrary, the necessity and the indispensable duty which belligerents are under of preserving some means by which they may come to an understanding and re-establish peaceful relations, is an additional reason why the person of ministers . . . should be even more sacred and inviolable . . . Accordingly, it is one of the most sacred laws of war that protection shall be given to those who carry messages or proposals from the enemy.” 373.

The “good form” and particulars of diplomatic immunity, privileges, and justifications thereof vary depending on historical context. But at the root of them all are two basic concepts: 1) messengers represent their countries, so treatment of them carries implications for the status of their country, 2) sovereign powers operate according to a principle of reciprocity, which in this area is *do unto other messengers as you would have done unto yours*. Even as justification for the protection of diplomats evolved from religious to secular, and as agreement about details (e.g. travel through third party countries) changed, the reciprocal principle of the protection of envoys is seen in healthy, multi-party international systems. The violation of this principle portends or follows a rupture of diplomatic relations. When diplomats are willfully harmed, powers often resort to the alternative to diplomacy: violence. Additionally, respect for diplomats may be absent or limited in systems that are hegemonic or imperial, in which little need for respect of a lesser party is required, as force or threat of force is enough to align behavior. Hence, Satow’s asserted that diplomacy’s application of intelligence and tact extends only “sometimes” to relations with vassal states.

The endurance of diplomatic immunity through the ages, despite many violations of its spirit, illustrates that the benefits of the communication it facilitates amongst the ruling powers outweighs the costs of its potential misuse. References to diplomatic practices like immunity can be found in even the oldest recordings of history discovered to date, etched in clay tablets. Called the *Amarna tablets*, this ancient correspondence among Egypt and its neighboring kingdoms in the 1300s BC shows a consistent concern with the “messengers” (the precursors of diplomats).⁷ The highest authorities of the most

⁷ Westbrook, Raymond, and Raymond Cohen. (2000). “Amarna Diplomacy: The Beginnings of International Relations.” *The American Historical Review* 105(4): 1451.

powerful civilizations discussed how to treat messengers, what response poor treatment of messengers would warrant, and whether messengers could and should shoulder the blame for actions taken by their masters. Discussions about the scope of diplomatic immunity and consequences for its violation have continued since then. The scope adopted by an international system has varied, based upon the framework in which diplomatic immunity is defined at that time. While the manifestations have varied, there has consistently been a form of diplomatic immunity and strong reactions to any violations of that form in international systems. In this next section, I will identify the three main frameworks used for diplomatic immunity throughout history and show the thread of *reciprocity* that connects them. The three frameworks used are *personal inviolability*, *extraterritoriality*, and *functional necessity*.

1.1 Theoretical Frameworks Overview

In the earliest ages, many ancient powers sought to achieve the physical safety of diplomats by way of religion. Some powers efficiently chose religious figures who were already considered inviolable to also act as diplomats. Professor Montell Ogdon explains it as a process under which these peoples “utilized the importance of an ambassador’s functions, employed officials already possessed of sanctity to go upon diplomatic missions.”⁸ We see this in Ancient Rome in the practice of *fetials*, a board of priests who also served political ends. Ancient powers also consistently invoked the gods to protect diplomats, the divine being the only “authority” that could bind a sovereign. If one power

⁸ Ogdon M. (1937). "A New Regime of Diplomatic Immunity: The Diplomatic Relations Act of 1978." *Tulane Law Review*. 54.

harmed the diplomat of another, they would invite swift and certain reciprocal punishment, justified by the gods but meted out by man.

While religious backing and the concept of the sanctity of the person of the diplomat were utilized particularly in religious cultures, they do not sufficiently explain why diplomatic immunity amongst religiously disparate peoples is often observed. For example, why would diplomats be protected when negotiating between a Christian and Muslim country, or when a religious nation interacted with a pagan one? It is this phenomenon that backs J. Craig Barker's claim that "the cloak of religious sanctity was utilized as a form of guarantee against harm being done to persons who were regarded as fulfilling an essential role in society."⁹ In other words, while religious sanctity was a useful means to protect diplomats, the true motivation to protect them arose due to widespread recognition that the work of diplomats is essential to the stability of any international system. In addition to religious sanctity, civilizations have used nobility and aristocratic persons with inherent status in a similar maneuver to further ensure the safety of diplomats.¹⁰ Regardless, it is the logic of necessity rather than the reverence of religiosity (or nobility) that more fully explains the consistent preoccupation with the safety of diplomats throughout history and among disparate communities.

Later in history, as permanent diplomatic relations were established and international law began to bud, there grew the need to enumerate clear diplomatic privileges and immunities. Many protections had grown in practice beyond the clear and

⁹ Barker, J. C. (1996). *The abuse of diplomatic privileges and immunities: a necessary evil?* Dartmouth. 34.

¹⁰ It is worth noting that this move works better in international systems that are more like an international society, i.e. in which the powers share similar values and cultures that would all revere the religious or nobles selected for diplomatic duty.

accepted personal inviolability of the agent, and agreement was necessary on the multitude of practices and etiquettes. The practice was bulky, the room for misunderstanding plentiful, and the privileges more broad than necessary for diplomatic purposes. It is a complex history, which will be delved into with more detail in the historical chapters. The development of diplomatic immunity over time is widely accepted to have three theoretical – though not necessarily sequential - phases: representative character, extritoriality, and functional necessity.¹¹

All three theoretical frameworks intend to ensure the protection of the diplomat and to exempt diplomats from the jurisdiction of the state they are visiting. While the justification shifts, these are the central ends they are trying to achieve. It is commonly recognized that the safety of diplomats is required for effective communication, potential negotiation, and information gathering to occur. The enforcement of this principle is mutual, or *reciprocal*. Powers want their messages to be conveyed, their status recognized, and their messengers to be safe; therefore, they grant their protection to foreign diplomats in their country, with the expectation that their diplomats will be treated similarly. Reciprocity is the fundamental reason diplomatic immunity reiterates throughout history. While the term *reciprocity* can be used vaguely in common vernacular, it does have a core meaning. According to Robert Keohane, reciprocity implies “actions that are contingent on rewarding reactions from others and that cease when those expected reactions are not forthcoming.” Action cuts both ways, returning ill for ill and good for good, or to put it another way: “people should meet smiles with

¹¹ Barker, J. C. (1996). *The abuse of diplomatic privileges and immunities: a necessary evil?* Dartmouth. 34-35.

smiles and lies with treachery.”¹² To state it more precisely, reciprocity refers to “*exchanges of roughly equivalent values in which the actions of each party are contingent on the prior actions of others in such a way that good is returned for good, and bad for bad.*”¹³ In addition, reciprocal action implies an exchange of equivalents and cannot be said to exist in cases of exploitation or when force is used by a stronger power to elicit a desired reaction from a subordinate. This latter point is most relevant to the study of diplomatic immunity in cases of imperial or suzerain powers interacting with their vassal states as opposed to their perceived equals.¹⁴ Even in the case of world politics with equivalent powers, precise measurement is difficult as it often deals with imprecise objects such as pledges of protection, economic trade, cultural exchanges, and goodwill. As we examine the three theoretical frameworks (i.e. representative character, extritoriality, and functional necessity), it is important to hold onto the thread of reciprocal action throughout them all.

1.2 Representative Character Theory

One theoretical way to justify the personal inviolability of diplomats is to (fictionally) equate them with their sovereign, a ploy particularly prolific in the ages of kings and queens. Royalty often had the final word; their will was law, and in many cases, they were considered either to be blessed by the gods or to be actual gods. One Great King writes to Pharaoh in the Amarna Age, “You are a king; you d[o] as you

¹² Keohane, Robert O. (1986). “Reciprocity in International Relations.” *International Organization* 40(1): 1–27. P 5-6

¹³ Ibid., 1–27. 8.

¹⁴ Satow, E. (1917). “The Right of Legation.” *A Guide to Diplomatic Practice, Volume 1* (Vol. 1). Cambridge University Press. 175-180.

please.”¹⁵ If a power wants relations with another power (for reasons of status, commerce, or stability), then it does not harm or kill the leader. To attack a royal is an act of aggression against the entire country they rule. As such, the person of royalty can be said to be inviolable. This principle can be theoretically transferred to his or her diplomats, who are “re-presenting” their sovereign, much as an actor re-presents, or presents again, a character on a stage. They are not actually the same person, but for a single play, all in the theater act as if they are.

Why would sovereigns bother sending representatives instead of going themselves? The main reasons were safety and expense. In the first case, royals understood the rewards for harming or deposing them could be high. A country in turmoil can be advantageous to its rivals in a variety of circumstances. Therefore, kings would negotiate to meet on neutral grounds, sometimes even going so far as to construct new forts for the express purpose of protecting against surprise attack from the other side. 15th century Burgundian diplomat Philippe de Commynes further claimed that the way to establish a solid relationship with another prince was never to meet in person, rather utilizing trusted emissaries, instead.¹⁶ In addition to safety concerns, it was very expensive for kings to properly represent their prestige and status to their own citizens and the other parties. A prominent example of the potential cost of a personal meeting can be found in the June 1520 meeting between Francis I and Henry VII. Known as the “Field of the Cloth of Gold,” the estimated cost for this meeting equaled as much as the

¹⁵ EA4, Moran, W. L. (2003). *Amarna studies: collected writings*. The Great King is trying to negotiate a daughter from Egypt as his wife, after being denied. He says this to convince Pharaoh not to rely on advisers or tradition for his denial. Of course, Pharaoh is aware that he may do as he pleases, and it pleases him to deny the Great King again.

¹⁶ *Conference diplomacy*. (n.d.). Encyclopedia Britannica.

“taking of a city,” by the time the thousands of entourages and the tents sewed with gold thread were all tallied. Despite the high cost, negotiations failed, and distrust continued between the two monarchs.¹⁷ While the arrival of a representative did often elicit pomp and circumstance due to the prestige of the one who sent them, it was still far less than if the sovereign traveled themselves. Therefore, royalty often sent representatives instead.

A useful analogy to approach the benefits and limitations of representative character theory is that of an actor’s relation to the character he or she plays. In her chapter “Shakespeare’s Kingmaking Ambassadors,” Joanna Craigwood notes that early modern treaties “drew repeatedly on theatrical parallels to understand how an ambassador might speak and act in the person of his sovereign sender, and by the end of the sixteenth century, comparisons of ambassadors to actors were widespread.” Due to this comparison, she took an in-depth look at the behavior and common understanding of diplomats at the time Shakespeare wrote his plays.¹⁸

Craigwood emphasizes that diplomatic relations indisputably played a role in establishing sovereignty. Even though the definitions of determining statehood crystallized after the Peace of Westphalia (1648) formalized the European state system, recognition by other powers has always been important in practice in any international system. The exchange of diplomats was a key component of expressing this recognition.

¹⁷ Frey, Linda, and Marsha Frey. (1999). *The History of Diplomatic Immunity*. Ohio State University Press. 130-31.

¹⁸ Craigwood, Joanna. (2016). “Chapter 12: Shakespeare’s Kingmaking Ambassadors.” Powell, J., & Rossiter, W. T. *Authority and Diplomacy from Dante to Shakespeare*. Routledge. 200.

She cited here for evidence Timothy Hampton, *Fictions of Embassy: Literature and Diplomacy in Early Modern Europe* (Ithaca, 2009), p 143; Abraham de Wicquefort, *L’Ambassadeur et ses fonctions* (2 vols, The Hague, 1680), vol. 2, p. 3.

Their authority originated from their rulers, while their representation of their rulers in turn solidified their authority.

In the Henry VI plays, they initially set up kings as “substance” or as authors of the fates of men and nation; diplomats in turn as juxtaposed as shadows or mere representation. As the plays continue, it becomes evident this is a false opposition. In the plays as in real life, diplomats were not merely puppets or “shadows” of their rulers. Representation is a form of authorship, as it is not possible to recreate without also creating. The corollary of that point is that diplomats simultaneously represent *and* author their sovereigns.¹⁹

With the responsibility given to diplomats comes risk, since each one “has equal freedom to misrepresent, re-author, even destroy . . .”²⁰ The play *Hamlet* also explores this power of envoys, with Hamlet revising his own diplomatic commission, “an act of re-authorship that leads to the diplomatic destruction of kings.”²¹ The risk of intentional (or unintentional) re-authoring implies one must exercise care in choosing and training diplomats. The influence they have in both representing and, unavoidably, authoring the relations of their state with others cannot be understated. While abuse is always a possibility in any position of power, it is often an exception that proves the rule. In the case of diplomats, the risks they bear and represent are greater than the risk of not sending anyone at all. When a diplomat travels to another country, the risk to their person is borne solely by themselves. The risk of them misrepresenting the country can easily be

¹⁹ Ibid., 199, 203-24.

²⁰ Ibid., 200.

²¹ Ibid.

solved by recalling them if they cross any lines. But if the king sends no one in their stead, the deterioration of diplomatic relations and loss of information is a risk born solely by the king and his country. When seen this way, it is not surprising that kings choose to send ambassadors. Given that it is a clear benefit to a king to send a diplomat in his stead, then it is also in the king's interest to request and provide protection for appointed diplomats. Even with the risk of abuse, they need a chance of successfully carrying out their mission.

Emer de Vattel, author of *The Law of Nations* (1758) and diplomat in his own right,²² connects the representative character of diplomats to their right of protection. He describes the representative character of diplomats (called here ministers / ambassadors) in the following way: "The minister who bears what is called preeminently the *representative character* is appointed to represent his sovereign, even as to his very person and dignity."²³ He later expounds more fully on the consequences of ill-treatment of diplomats, due to this representative character:

The respect which is due to sovereigns should reflect upon their representatives, and particularly upon an ambassador, as representing the person of his master in the highest degree. He who offends and insults a public minister commits a crime all the more worthy of severe punishment, in that he may be the means of involving his sovereign and his country in serious difficulties. It is just that he should be duly punished, and that the State should make, at his expense, full

²² Vattel, Emer de. (1916). *Le Droit Des Gens: Ou Principes de La Loi Naturelle, Appliqués à La Conduite et Aux Affaires Des Nations et Des Souverains*. vii.

The author of the foreword, Albert de Lapradelle, claims he approaches this work "as a cultured diplomat who desires to instruct in the principles of the philosophy of his time those in charge of public affairs."

²³ Ibid., 367.

Emer de Vattel's work *Le Droit Des Gens*, or *The Law of Nations*, arguably modernized the practice of international law. He was an international lawyer, and this work is also said to have influenced thinkers and movers of the American founding.

satisfaction to the sovereign who has been offended in the person of his minister.²⁴

In the above passage, Vattel is clear that even mere offense is worthy of severe punishment, beyond just physical harm. Retribution from the sovereign of an offended diplomat is assumed to be forthcoming, hence raising the stakes for anyone who would violate the dignity or person of a diplomat. After this passage, he then discusses the recourse for a native injured by a foreign envoy; while the native may complain to their sovereign, who may then demand redress from the foreign envoy's sovereign, the private citizen may go no further. He further notes that it is no dishonor if vengeance is not granted, as the "interests of the State" trump personal codes of honor. The universal society and the welfare of Nations, according to Vattel, require open communication in the forms of embassies and the diplomats who fill them, and therefore the person of diplomats must be sacred:

Whoever does violence to an ambassador or to any other public minister not only does an injury to the sovereign whom the minister represents, but he attacks the common safety and welfare of all nations and renders himself guilty of a grievous crime against all Nations.²⁵

While one may debate whether any single aspect of international relations can form an international society, all systems and societies with roughly equivalent powers require open lines of communication to maintain the stability of their relations. Therefore, a host country is not only bound to do no harm, but actively required to protect and provide security for a visiting diplomat:

It is particularly the duty of the sovereign to whom a minister is sent to afford security to the person of the minister. To receive a minister in his representative

²⁴ Ibid., 371.

²⁵ Ibid.

capacity is the equivalent to promising to give him the most particular protection and to see that he enjoys all possible safety.²⁶

Vattel extends this same requirement of protection to third party countries that a diplomat may pass through, basing his argument on the interests of a society of nations.²⁷ The question of third-party protection is a recurring one across the centuries, due in large part to the practical obstacle of geography as diplomats travel from one country to another. International systems have answered this question very differently over the ages, with some mutually agreeing to extend protection to all traveling diplomats, others requiring special writs or papers to be requested prior to travel, and all debating fiercely over whether any agreements apply when the third party is at war with either the host or receiving state. While the answers have varied, the question is always on the proverbial table.

In terms of the bilateral obligations of powers to exchange diplomats, the principle of reciprocity also holds in this framework. Since powers do not rule over one another, it is important that each treats the others' diplomats with a similar respect and level of protection as the other. To neglect or mistreat them is the equivalent of disrespecting their sovereign and country directly. It also risks a reciprocal reaction, and powers historically are meticulous in their tit-for-tat retaliations. A contemporary example can be found in Russia's November 2019 detainment of a sick American military officer on their way to the hospital. Russian officials delayed his evacuation for hours, though he and his staff were eventually allowed to proceed. Though little detail is

²⁶ Ibid.

²⁷ Ibid.

known of the particulars, with sources citing the “delicate” nature of such diplomatic interactions, Russia did release a statement claiming this was a tit-for-tat response for the treatment of their former prime and foreign minister, Yevgeny Primakov. Russia charged that the United States allegedly allowed one of their diplomats to be detained by the authorities on their way to buy cancer medicine for the gravely ill minister. This medicine was eventually delivered to the foreign minister in Moscow, after John Kerry was involved.²⁸ The particular and public nature of Russia’s justification highlights how thoroughly reciprocal action is taken on the international level, to almost a petty level. All systems, whether new or ancient, establish symbolic and practical ways to convey reciprocity in action and status.

Representative character theory is discussed in the context of royalty because that is the system in which it is most often utilized and most clearly consistent. By sending a representative that also represented their power, prestige was increased. To combat any potential to harm the agent as a message to the royal, the promise of reciprocal punishment increased. In a practical sense, the chance of reciprocal punishment was higher for harm done to agents of the state even over harm done to rulers; if an agent was harmed, the integrity of the state was preserved and thus it would be able to respond with the intact force of its country.

Representative character theory, however, becomes more difficult to utilize in international systems that incorporate alternative ruling structures, and it has adapted or fallen off for several reasons. One, the powers granted with a personal representative

²⁸ Crowley, Michael, and Eric Schmitt. (2019). “Russia Held Up an Ailing American Military Attaché From Leaving Moscow.” *The New York Times*.

character are broad, and there is a difference between being the originator of authority and representing that authority. Two, this justification can be difficult to reconcile with foreign sovereigns, particularly when there is a disparity in power, culture, or religious beliefs. Three, the modern world is a system of states and nations, not the same as god-like kings. Finally, it also lends little guidance to questions of scope of immunities or the demarcation of protections for private versus public acts.²⁹

Marsha and Linda Frey also call personal representative theory into question as even a historical contextual framework, claiming that the sixteenth century jurists who coined the term based it on “questionable logic and historically unsound reasoning.” The Frey’s have three supporting points for this claim. One, this theory rests on the idea of state sovereignty, which only technically solidified after the Middle Ages. Two, the concept of ambassador immunity predates the concept of sovereign immunity, as having enough power to send a diplomat was sufficient to then require their protection. And three, ambassadors often had *more* protection than the sovereign would in ancient and medieval worlds.³⁰ This latter point would indicate that diplomat privileges operated according to a different logic than the proposed one of representative character theory.

1.3 Exterritoriality Theory

In addition to the idea of representative character, there also arose a curious legal fiction called extritoriality. The idea is that the diplomat is only subject to the legal jurisdiction of their own territory and has manifested as both 1) any soil the diplomat

²⁹ Farhangi, Leslie Shirin. (1986). “Insuring against Abuse of Diplomatic Immunity.” *Stanford Law Review* 38(6): 1517–47. 1520.

³⁰ Frey, Linda, and Marsha Frey. (1999). *The History of Diplomatic Immunity*. Ohio State University Press. 85-86.

inhabits counting as their natural soil, and 2) the residence of the diplomat in the host country being declared foreign soil. The latter manifestation was most prevalent. It is considered a fiction for, just as the diplomat does not in actuality become their sovereign in representative character theory, the land is not actually collected from the home country, packaged, and sent to the host country for construction of the residence. Neither does a diplomat carry around soil from their home country, nor does the land they walk on then need to be walked by a native of the country to reclaim it as their own territory. Rather, this legal fiction requires a declaration and is used as the basis for granting protection to diplomats.

As a point of distinction, the other theoretical frameworks of representative character theory and functional necessity theory can and do include protections of the embassy, but as an extension of their core claims about the nature of the diplomatic role. In extraterritoriality theory, the declared territory is used as the basis for protections. For example, someone arguing from the basis of representative character may say the residence of diplomat gains protection and separation from the jurisdiction of the host country because the diplomat is representing their sovereign and the residence is necessary for them to perform their duties. In extraterritoriality, the land itself is outside the jurisdiction of the host country. It is considered foreign country, which justifies the immunity of both the diplomat's person and residence from search and seizure.

We see similar mental acrobatics in previous times, such as two practices by the *fetials* in Ancient Rome: the carrying of sacred herbs and the ceremonial throwing of the spear. In early Ancient Rome, they utilized *fetials*, "a semipolitical priestly board of

twenty men drawn from the noblest families,”³¹ and they sent them in groups of two or more for protection and accountability. One fetial was specifically designated as the *vebenarius* to gather sacred grasses and herbs from the citadel before their travels. These held religious and symbolic properties that protected them, symbolizing “both the authority and the inviolability” of the diplomats, “who literally took a piece of his own country with him wherever he went.”³² They proclaimed these diplomats were under no jurisdiction but Rome's, and therefore protected by Rome and the gods. To harm or hinder them was to risk retribution. In the other case, Ancient Rome had a series of steps for declaring war that began in their city-state days. One of the final steps, called *indictio belli*, entailed a fetial throwing a magical spear into foreign land to counteract the enemy's power. As Rome grew into an empire, foreign lands were further afield, which was a practical obstacle to both the act of and the time constraints required by the ceremony. To work around this obstacle, the Romans “adopt[ed] a curious legal fiction” and had a prisoner of war buy a plot of land in the Circus Flaminius district. They then declared it hostile territory and threw the spears into that plot of land.³³ While neither of these are an exact match for the manifestation of behavior named extraterritoriality by later jurists, they do show similar mental acrobatics - or use of fiction - to achieve political ends.

Satow, in his famous guide to diplomatic practice, devotes his shortest chapter to the topic of extraterritoriality. He affirms it is legal fiction, agreeing with the assessment

³¹ Ibid., 39.

³² Ibid.

³³ Ibid., 41-43.

of authors like Hugo Grotius: “The term is not to be strictly interpreted according to its literal meaning,” Satow cautions. “...it is a metaphor, not a legal fact, and it is better, therefore, to drop it in considering what are the immunities of the different classes of persons enumerated.” Satow, writing at the turn of the 20th century, shows that this term quickly and thoroughly fell out of use due to not being practical. As an example of its weakness in practical application, he references the difficulty of maritime privileges. Countries used to grant public armed ships in foreign ports as a fictional territory for their home country; but then people attempted to extend this fiction to private ships and then further to merchant ships. This extension was ultimately untenable, as obeying local jurisdiction is key in the exchange of goods. Just as the legal fiction was ultimately untenable in its application to ships, so too does Satow indicate its impracticality in a diplomatic context.³⁴

Diplomacy and the judicial basis for immunities and privileges have largely moved away from the fiction of extraterritoriality, due to inherent complications. For example, if the inviolability is based on the land, then theoretically, it becomes difficult to determine any limits to it. Does immunity extend to staff? To visitors? To native criminals seeking refuge from their country? What is the scope of sanctuary laws? What protections are offered to a diplomat when they leave their residence? On what basis?

The *franchise du quartier* of the nineteenth century is one particularly egregious situation that occurred from this principle being taken to its natural conclusions. In the beginning of the nineteenth century, diplomatic privileges and immunities were much

³⁴ Satow, E. (1917). A Guide to Diplomatic Practice, Volume 1 (Vol. 1). Cambridge University Press. 240-241.

more significant and had a wider scope than the basic requirements of personal inviolability. This is because in the previous couple of centuries, “states, which were asserting the absolute character of their newly found sovereignty, had progressively permitted the expansion of both personal privileges as well as territorial privileges.”³⁵

In other words, as one state granted greater privileges, other states would reciprocate until the courtesy of greater privileges became the custom and expectation. As questions of asylum and immunity were engaged over time through conversations between states, the protection granted to the person of the diplomat was extended to their family, to their staff, to all unofficial members of the household, and then to anyone seeking asylum. Their territory, which began as the embassy, was then extended to the private residence of the diplomats and then to areas of the surrounding city. This surrounding area was called *franchise du quartier* and became havens for criminals and outlaws, particularly in Madrid and Rome. These situations became untenable, with special maps even being created in some areas to help guide people through the safe passages.³⁶ The liberties and abuses of this system were largely responsible for the next era’s restriction and wariness of diplomatic immunity.

The difficulties navigating this framework, particularly with the ever-present tune of reciprocal action by other powers, made it ultimately unsatisfactory. Since the VCDR of 1961 formalized diplomatic protections into treaty form, today’s diplomats, powers, and academics largely reason through the framework of *functional necessity*.

³⁵ Barker, J. C. (2016). *The Protection of Diplomatic Personnel*. Routledge. 47.

³⁶ Barker, J. C. (1996). *The abuse of diplomatic privileges and immunities: a necessary evil?* Dartmouth. 44-45.

1.4 Functional Necessity Theory

The VCDR of 1961 establishes the current agreement for diplomatic privileges like diplomatic immunity, and it is founded on the functional necessity framework. The premise of functional necessity is pragmatic, arguing that diplomats need certain protections to fulfill their functions. The VCDR sets up the functional necessity basis from the beginning in the Preamble: “*Realizing* that the purpose of such privileges and immunities is not to benefit individuals but to ensure the efficient performance of the functions of diplomatic missions as representing States.”³⁷ The basis, qualifications for, and scope of diplomatic immunity are therefore determined by what is required for the functions of the job to be carried out. Note that the VCDR clearly articulates that none of the protections are designed to benefit the individual or to grant them a “get-out-of-jail-free” card. Rather, the privileges and immunities articulated in the treaty are considered *necessary* for the role to exist and for the diplomat to *function*. Diplomatic immunity from the law of the host state has long been viewed as necessary for effective diplomatic relations to be held between states. Therefore, diplomatic immunity exists for the sake of relations between states and not for the sake of the individual’s benefit.

In her article “Insuring against Abuse of Diplomatic Immunity,” Leslie Shirin Farhangi further articulates the weight of this theory:

If diplomats were liable to ordinary legal and political interference from the state or other individuals, they would be dependent on the good will of the receiving state. Considerations of safety and comfort might materially hamper the exercise of their functions.³⁸

³⁷ Preamble. *Vienna Convention on Diplomatic Relations, 1961*. (1961). United Nations.

³⁸ Farhangi, Leslie Shirin. (1986). “Insuring against Abuse of Diplomatic Immunity.” *Stanford Law Review* 38(6): 1517–47. 1521.

She also cites the Cold War as a prime example of the need to protect diplomats from harassment by local authorities to facilitate their functioning, and, indeed, to facilitate the function of the diplomatic process in general.³⁹

The theory of functional necessity does require a nuanced approach to deal with 1) how the protection of the physical person of the diplomat impacts their functionality, and 2) the scope of behavior that would qualify as part of their function. It could and has been argued that functional necessity theory would preclude any private acts by a diplomat from any form of immunity, but this is not what is seen in international theory or practice, nor is it what is codified in the VCDR. Indeed, when you are a representative of your country in a foreign nation, it is hard to determine when any action could truly not have public ramifications, much like the way any of a celebrity's actions are subject to public scrutiny and have implications for their reputation.

Ambassador Brattskar, Norway's permanent representative to the UN at the time of his presentation in 2016, stated that diplomats are *always* watched and considered to be acting publicly when they are in a host country. The concept of being a "private individual" is not possible until they return home.⁴⁰ Article 31 of the VCDR can be similarly interpreted, as it explicitly grants immunity from all criminal jurisdiction of the receiving state *and* immunity from civil and administrative jurisdiction,⁴¹ except for three clear exemptions in civil matters: 1) action pertaining to private and immovable property

³⁹ Ibid.

⁴⁰ Brattskar, Hans. (2016, January 26). "Diplomacy." Class Lecture, Diplomacy from Baylor University, Waco, TX.

⁴¹ This exemption, of course, can be revoked by their sending state at any time as a courtesy or matter of justice, but then the ability to enforce the sentence would require a second intervention and active exemption.

in the receiving state that is not held on behalf of the sending state, 2) matters of succession, again not on behalf of the sending state, in which the diplomat is involved in any capacity, and 3) professional or commercial action that is exercised outside their official functions.⁴² By carving out these specific exceptions, it also makes clear the wide scope of immunity from all other jurisdictions.

Yorma Dinstein's article "Diplomatic Immunity from Jurisdiction Ratione Materiae," published a few years after the ratification of the VCDR of 1961, does an excellent job providing a clear approach to this matter. Dinstein explains there are two types of protection in effect while the diplomat is in office: *ratione personae* and *ratione materiae*. *Ratione personae* applies to the actual, physical person of the diplomat, "irrespective of the nature of the acts which are the subject of the legal proceedings."⁴³ This has been referred to previously in this paper as "personal inviolability" and is well established as a necessary and historical protection for any diplomat. To be a functional organ of their state, diplomats need to be exempt from local jurisdiction and protected by dint of who they are, so it also refers to immunities from local jurisdiction in this case. This type of protection exists *while* one is a diplomatic agent.

After their time in the role ends, then the issue of diplomatic immunity switches to *ratione materiae*, or subject-matter jurisdiction, which refers to a court's authority to decide a particular case. It is "restricted in its application to official acts performed in the discharge of diplomatic duties, but its duration is indefinite."⁴⁴ In other words, diplomats

⁴² "Chapter III. Privileges and Immunities, Diplomatic and Consular Relations, Etc.: 3. Vienna Convention on Diplomatic Relations. Vienna 18 April 1961." 164.

⁴³ Dinstein, Yoram. (1966). "Diplomatic Immunity from Jurisdiction Ratione Materiae." *The International and Comparative Law Quarterly* 15(1): 76–89. 76.

⁴⁴ *Ibid.*, 76–89.

cannot be hindered while in office based on the inviolability of their body; once they leave office, they lose personal inviolability. However, immunity can indefinitely attach to the specific, official actions they took while discharging diplomatic duties. This is so that any diplomatic work they did during their tenure cannot be jeopardized at the potentially capricious whims of political enemies. This is codified in Article 39 (2) of the VCDR:

When the functions of a person enjoying privileges and immunities have come to an end, such privileges and immunities shall normally cease at the moment when he leaves the country, or on expiry of a reasonable period in which to do so, but shall subsist until that time, even in case of armed conflict. However, with respect to acts performed by such a person in the exercise of his functions as a member of the mission, immunity shall continue to subsist.⁴⁵

While a diplomat is in office, the protection of the person and their acts exists simultaneously, but the more comprehensive *rationae personae* acts as an umbrella over *rationae materiae*, so it would be easy to erroneously assume they are sequential. Rather, they are simultaneous, but the latter is only required after the office holder has left their post.

Therefore, in the concept of functional necessity, the duties of the diplomats become the measuring stick by which the scope of protections are measured. Their duties and what protections enable them to fulfill them (or lack of protections would hinder them from doing so) lend the force for *rationae personae* protection while in office, and then the continuation of protections *rationae materiae* after their office is concluded.

⁴⁵ Article 39, Section 2. *Vienna Convention on Diplomatic Relations, 1961*. (1961). United Nations.

1.5 Chapter Summary

After review of the three frameworks, it is evident why functional necessity is the predominant framework for the codification of diplomatic immunities in the VCDR, still in effect today. It is both a result of the more legal international relations of today, and a more useful framework for navigating questions of privilege than the other frameworks would be in modern context. It also provides a more meaningful way to determine the nature and scope of diplomatic protection. However, all three frameworks are in line with a perennially recurring baseline seen in the history of diplomats and their immunity: the protection of diplomats allows them to facilitate international relations. Their protection, through immunities and privileges granted and enforced by the host state, is necessary for them to perform their functions. Whether the justification or mechanism used to do so is religion, kingly dignity, territory, the law of nations, a Christian commonwealth, or common sense, we see a form of diplomatic immunity recurring because it is necessary. When protections are “universally” recognized, protected, and esteemed in each system, we see a form of stability and increased conflict resolution capabilities in that system. Conversely, when diplomats are not protected or are dishonored, it tends to reflect or portend a rupture in relations.

CHAPTER TWO

Case Study of the Amarna Age

Recalling that peoples of all nations from ancient times have recognized the status of diplomatic agents...

- Preamble, Vienna Convention on Diplomatic Relations, 1961

This chapter consists of a substantial case study of the Amarna Age as it pertains to their practice of diplomatic protections. Previous works on diplomatic immunity in English include Frey and Frey's *The History of Diplomatic Immunity*,¹ Satow's *A Guide to Diplomatic Practice*,² and J. Craig Barker's *The Abuse of Diplomatic Privileges and Immunities: A Necessary Evil?*³ All of these were all published in 1999 or earlier. While the Amarna tablets were discovered in 1887, they were not translated into English until William Moran undertook the work in 1992. Therefore, none of these important works in diplomatic immunity literature references the Amarna tablets or the behavior of this early system regarding diplomatic immunity. Only after Moran translated them were the texts available for widespread study, and indeed the translation prompted a 1996 academic conference and subsequent publishing of contributing articles in a book called *Amarna*

¹Frey, Linda, and Marsha Frey. (1999). *The History of Diplomatic Immunity*. Ohio State University Press.

² Satow, E. (1917). *A Guide to Diplomatic Practice, Volume 1 and Volume 2*. Cambridge University Press.

³ Barker also published a later book called *The Protection of Diplomatic Personnel* in 2006. However, he does not reference the Amarna tablets in this work, either.

Diplomacy: The Beginnings of International Relations in 2000.⁴ Substantial comment on the lessons of the Amarna Age for diplomatic immunity is not relayed in the works of Satow, Barker, or Frey & Frey, and so my examination will fill this void. In a later chapter, I will turn to the digital age, including a focus on “Twitter diplomacy,” the increasing power of public opinion, and the implications for diplomats and diplomacy. This will provide the other bookend: the reexamination of diplomatic immunity and debates about its role and scope in the digital age.

In this overview of the Amarna Age, it will be shown that diplomatic protections were granted due to the representative character of diplomats, as fits with the existence of an international society composed of monarchies, the use of divinity as a source of legitimacy of kings, and its appearance in the early years of recorded history. The logic of reciprocity is strongly in force in this system, as well, which provides an interpretive framework to approach the motivations and actions of powers in their diplomatic relations. For example, powers both desired good treatment of their messengers and feared reprisal should they insult or harm the messengers of others; these motivations provided strong enforcement incentives to treaties about the exchanges of messengers. The existence of this type of behavior and the assumption of protection for their equivalent of diplomats in this earliest example of an international system are key. They show both the perennial existence of and the strong necessity for protection for diplomats to facilitate the existence of diplomatic relations across cultures, geographies, and times.

⁴ Westbrook, R., & Cohen, R. (Eds.). (2000). *Amarna Diplomacy: The Beginnings of International Relations*.

2.1 Amarna Tablets: Discovery and Significance

In the late 1800s, natives digging amongst ancient ruins by the Nile discovered a collection of clay tablets.⁵ Although they were soon scattered through sale and acquisition by collectors and museums, it was eventually recognized this was a collection of correspondence showing one of the earliest glimpses into an international system. Ancient Near East historians and language scholars quickly recognized the Amarna period showed evidence of “cuneiform culture” (an early instance of a cosmopolitan culture). In other words, they possessed written language as well as evidence of international sophistication, with many cultures interacting. The tablets were primarily written in Babylonian - the language of international relations, local affairs, and learning - apart from a few that are in Assyrian (EA 15), Hurrian (EA 24), and Hittite (EA 31-32).⁶ The scattering of the letters along with the difficulties of translating an ancient language were initially significant barriers to their accessibility to a wider scholarly community.

The letters can be grouped into the following three headings, only the first two of which are dealt with in the Westbrook book: 1) international correspondence, 2) imperial documents, and 3) training documents. While the imperial documents intentionally deal more directly with domestic, administrative affairs, they also deal with Egypt’s relations with its neighbors, hence providing “a common thread” between the first two categories of letters.⁷ As the editors of Amarna Diplomacy say in their introduction, this

⁵ Moran, W. L. (2003). *Amarna studies: collected writings*. Eisenbrauns. xiii.

⁶ Ibid., xix.

⁷ Westbrook, R., & Cohen, R. (Eds.). (2000). *Amarna Diplomacy: The Beginnings of International Relations*. 1-2.

contribution to a historical review helps answer the question of whether diplomatic immunity is a transitory or a permanent feature of international life. How was it understood in past times? What functional equivalents survive today, and do they fundamentally differ?⁸

As a final note on the project, the organizers had to contend with the concern that perhaps the ancient Near Eastern Great Kings are separated by too wide a gulf of cultural and material differences from the present global community of the United Nations to warrant comparison. One of the scholars, Dr. Kevin Avruch, notes the difficulties in substantive analysis given the absence of observational data to submit to contemporary interpretation.⁹ However, the group overall concludes that “there are certain constants in the conduct of international actors that are predicated on the logic of international interactions and the structure of the international community.”¹⁰ In other words, while the context of the culture and system in place are the starting point, contemporary analysis and theories can be applied to grant further understanding of this system.¹¹ These letters also allow current scholars to work *diachronically*, i.e. to test modern theories born from recent time periods against information from another era.¹²

⁸ Ibid., 5.

⁹ Avruch, Kevin. (2000) “Reciprocity, Equality, and Status-Anxiety in the Amarna Letters.” Westbrook, R., & Cohen, R. (Eds.). *Amarna Diplomacy: The Beginnings of International Relations*. 228.

¹⁰ Westbrook, R., & Cohen, R. (Eds.). (2000). *Amarna Diplomacy: The Beginnings of International Relations*. 3.

¹¹ Ibid. They utilize rational choice theory, decision-making theory, strategic analysis, psychology, and diplomatic theory, for example, throughout the chapters.

¹² Ibid., 5.

2.2 Historical Context

The texts were created during the Late Bronze Age, ca. 1500-1100 B.C.E., with the Amarna Age falling in the fourteenth century, after the time of Hammurabi.¹³ While it is not the earliest evidence indicating international relations, it is the first international correspondence we see that lays out the practices and expectations of an international *system*. It is a system of Great Powers “engaged in regular dynastic, commercial, and strategic relations.”¹⁴ It is worth noting, as well, that this system was not temporary or consistently tumultuous. Rather the Amarna system achieved international stability for at least two hundred years, with few major wars. This raises questions about the participants’ conflict resolution mechanisms and how – if at all – the system in place mitigated violent reactions to conflict.¹⁵

2.3 Evidence of an International System

The Amarna Age qualifies as an international system, in which the Great Kings were aware that each other’s existence affected their own rule, as evidenced by their reciprocal actions and concerns with comparative status. An international system is defined by its interactions, insofar as states must take account of the potential actions of at least one other.¹⁶ There is debate about whether the Amarna system is a sophisticated system or if it qualifies as an international society, which Hedley Bull defines as “exist[ing] when a group of states, conscious of certain common interests and common

¹³ Ibid., xiii.

¹⁴ Ibid., 4.

¹⁵ Ibid., 5-6.

¹⁶ Ibid., 43-44.

values, form a society...”¹⁷ However, all agree that the political system was certainly sufficient for the needs of the time. As will be demonstrated in this section, the members of the “Great Kings Club,” as it is referenced throughout the work, certainly took account of each other’s past and potential actions. Great attention was given to status symbols, commercial exchange, and relative relations.

The Amarna Age is characterized by what has been called the “Great Kings Club.” This “club” was a collection of countries that recognized the right of the others to rule their own territories without interference (i.e. they recognized each other’s sovereignty) and held diplomatic, commercial, and cultural relations. Egypt was an influential player, but newer to this interaction, as it had traditionally refused to recognize even the humanity of outsiders, let alone any semblance of equality. Egypt had relations with its vassal states, which are detailed in the correspondence, but also with other Great Kings. Egypt’s relationships with the vassals operated according to the principle of submission; the metaphorical language involved an up and down concept, with vassals often saying they threw themselves at the Pharaoh’s feet seven times. These relationships required obedience to the Pharaoh’s word.

The relationship amongst the Great Kings, on the other hand, operated according to the rules of reciprocity; this is like the relationship we see amongst modern nations today, with the mutual recognition of each other’s rights to rule.¹⁸ Any interactions required communication and negotiation between the powers, since they could not simply

¹⁷ Bull, H. (2002). *The anarchical society: A study of order in world politics*. Basingstoke, U.K.: Palgrave. 13.

¹⁸ Westbrook, R., & Cohen, R. (Eds.). (2000). *Amarna Diplomacy: The Beginnings of International Relations*. 48.

order their fellow kings into submission. Rather, they had to interact in a way that sought to maintain a balance of power and that opened the possibility of a mutually beneficial resolution (or at least avoided violence). The relationships amongst the Great Kings Club are of considerable relevance to this inquiry.

First, the Great Kings operated in an anarchical system, moderated by a shared cultural belief in some form of the divine. Even if they did not worship the same gods, they tended to be polytheistic societies that could recognize the existence and power of multiple divinities.¹⁹ They often relied on religious ceremonies to solidify treaties and swore oaths to gods to prove their commitment and to recognize a divine enforcer of agreements. The Amarna Age was an internationally anarchical system rather than a hierarchical one, since there was no physical, superior binding power over the kings.²⁰ Thus, the gods were used as a mechanism to “enforce” oaths and signal commitment, but these agreements were entered into by the Kings, rather than having this order imposed directly upon them by an outside force. Contributor Steven R. David points out, as well, that treaties were frequently infringed, wars did erupt, and aggrieved parties did not defer action to the gods alone, often taking it into their own hands as a form of self-help.²¹ Therefore, one can say they definitively operated within an anarchical system wherein the kings were the highest authorities, and the Great Kings could not command one another. In addition, they were not explicitly commanded by any external force, such as the gods, an overarching legal system, or a concept of a law of nations.

¹⁹ Ibid., 49.

²⁰ Ibid., 43.

²¹ David, Steven R. (2000). “Realism, Constructivism, and the Amarna Letters.” Westbrook, R., & Cohen, R. (Eds.). *Amarna Diplomacy: The Beginnings of International Relations*. 64.

Second, in this anarchical system, the Great Kings articulated their relationship through the metaphor of “brotherhood.” These rulers called each other brothers, though they were not necessarily bound to one another by genetics or by marriage. Rather, this metaphor reflected the available paradigms for their relationships, and to be included as a brother was to be recognized as a power who could participate in the political transactions of the time.²² Contributor Carlo Zaccagnini notes that a recurring theme of the letters is brotherhood or “the insistence of Great Kings that they should express ‘friendship’ or ‘love’ to each other. This familial relationship was to be made manifest in a constant exchange of women and gifts.”²³

Steven R. David articulates most clearly the truth behind the metaphor of brotherhood used by the Great Kings: “That leaders of countries would refer to one another as ‘brother’ did not prevent them from fearing one another, subverting the power of potential rivals, and occasionally going to war with one another.”²⁴ It does, however, provide useful connotations and reflections for conflict amongst brothers, which does occur even among those tied by direct familial bonds. David “detected clear signs of the

²² Westbrook, R., & Cohen, R. (Eds.). (2000). *Amarna Diplomacy: The Beginnings of International Relations*. 47.

Note, a familial metaphor continues throughout history, notably in European modern times (though many of these were related in closer regions). Satow indicates many correspondences when a queen, such as Catherine, was sometimes called brother ceremonially before being called sister.

Jönsson compares it to the language of “the family of nations” often used in today’s ceremonial speeches. Jönsson, Christer. (2000). “Diplomatic Signaling in the Amarna Letters.” Westbrook, R., & Cohen, R. (Eds.). *Amarna Diplomacy: The Beginnings of International Relations*. 193.

²³ Zaccagnini, Carlo. (2000). “The Interdependence of the Great Powers.” Westbrook, R., & Cohen, R. (Eds.). *Amarna Diplomacy: The Beginnings of International Relations*. 228.

²⁴ David, Steven R. (2000). “Realism, Constructivism, and the Amarna Letters.” Westbrook, R., & Cohen, R. (Eds.). *Amarna Diplomacy: The Beginnings of International Relations*. 64.

working, in effect if not intention, of an international system governed by Realpolitik and maintained in equilibrium by the balance of power.”²⁵

Reciprocity is a key concept to unlock the behavior of the Great Kings in the Amarna Age and of contemporary powers navigating the protection of their diplomats throughout time. Since reciprocity can result in tit-for-tat scenarios, it can be a stabilizing force, or it can result in ever escalating behavior that leads to destabilization. As such, stabilizing systems often utilize several reinforcing tactics to shore up agreements, signal intent, and adjust the stakes. Geoffrey Berridge articulates this clearly in his contributing essay in which he explores whether the Amarna Age qualifies as a sophisticated diplomatic system. He states:

All diplomatic agreements are underpinned in greater or lesser degree, and either directly or indirectly, by reciprocity: enjoyment of the fruits of an agreement is more likely if they are shared, as promised, with the other side. However, for any number of reasons, one or more of the parties to an agreement may subsequently feel less pulled by this calculation. As a result, a sophisticated diplomatic system has well-understood methods for reinforcing agreements.²⁶

These methods, according to Berridge, are an impressive form, with ratification by sovereign bodies, sealed agreements at public and significant ceremonies, enforceable obligations (by court or nominated arbitrator), and arranged guarantees by third-party Great Powers or binding authorities. Berridge rates the Amarna systems as “sophisticated” in this category of diplomatic agreement. For examples, he cites agreements engraved in silver tablets, ceremonial rituals, systems of hostage holding with

²⁵ Westbrook, R., & Cohen, R. (Eds.). (2000). *Amarna Diplomacy: The Beginnings of International Relations*. 228.

²⁶ Berridge, Geoffrey. (2000). “Amarna Diplomacy: A Full-Fledged Diplomatic System?” Westbrook, R., & Cohen, R. (Eds.). *Amarna Diplomacy: The Beginnings of International Relations*. 220.

messengers, agreements sworn before divine witnesses, sacrifices to the gods and rituals upon agreement, and belief in divine retribution for failed oaths.²⁷

Contributor Christer Jönsson later discusses the difference between specific and diffuse reciprocity. As an example, specific reciprocity can be seen in a single transaction - such as a house or car – in which items of equivalent value are exchanged between specific partners. General reciprocity is more often seen in groups of families or close friends, in which equivalence, timeline, and partners are less clearly delineated. In the latter, immediate and exact equivalence is not called for in every interaction.²⁸ Jönsson uses Keohane's definition and framework in this section. She notes that in today's international relations, stable patterns of specific reciprocity are more prevalent than genuine cases of diffuse reciprocity. The same pattern can be seen in the Amarna letters, with reciprocity being a theme, but much more centered around (demand for and complaints of violation of) specific bilateral reciprocity. An example of the expectation for military support and reciprocity can be found in Tushratta's letter to Egyptian Pharaoh Nimmureya, in which he proposes that they should dispatch military help for one another if an enemy ever invades either of them.²⁹

To get a fuller picture, one must also remember that patterns of specific reciprocity between Actor A and Actor B do not operate in isolation; the relationships they each have with other actors directly affect expectations they have of one another, depending on the status they believe they are owed or they want to attain. This is one of

²⁷ Ibid., 220-221.

²⁸ Jönsson, Christer. (2000). "Diplomatic Signaling in the Amarna Letters." Westbrook, R., & Cohen, R. (Eds.). *Amarna Diplomacy: The Beginnings of International Relations*. 196.

²⁹ Westbrook, R., & Cohen, R. (Eds.). (2000). *Amarna Diplomacy: The Beginnings of International Relations*. (EA 24:III 110-18 sec. 26).

the reasons reciprocity in anarchical international systems is rarely fully generalized, as potential asymmetry in the relationships of the system is vehemently noted and jealously discussed. Satow illustrates the behavior of jockeying for positions relative to other actors in their sphere as perennial behavior, and not exclusive to the Amarna Age. He details practices over time of diplomatic etiquette and gives significant attention to whose carriages go where and about the order of names signed on treaties.³⁰ We see similar behavior amongst the Great Kings with carriages in EA 1:89-92 and with treaty signing in EA 42:15-26.

2.4 Messengers and Diplomatic Protections

Berridge defines diplomacy as “essentially a means of communication designed to promote negotiations, gather information, and clarify intentions, in relation to enemies as well as friends.”³¹ Immunity of their messengers would be essential for their diplomacy to operate at a sophisticated level. Amarna diplomacy had the institution - here defined by Bull as a set of habits and practices shaped towards the realization of common goals - of the regular exchange of messengers.³² Zaccagnini writes:

Satisfactory treatment of foreign messengers on their mission abroad is the primary ingredient of the Amarna - and also earlier and later - diplomatic code. Frequent allusions to high-quality hospitality and offer of gifts and, at the same

³⁰ Satow, E. (1917). *A Guide to Diplomatic Practice, Volume 1 and Volume 2*. Cambridge University Press. 26-51.

³¹ Berridge, Geoffrey. (2000). “Amarna Diplomacy: A Full-Fledged Diplomatic System?” Westbrook, R., & Cohen, R. (Eds.). *Amarna Diplomacy: The Beginnings of International Relations*. 212.

³² Westbrook, Raymond. (2000). “International Law in the Amarna Age.” Westbrook, R., & Cohen, R. (Eds.). *Amarna Diplomacy: The Beginnings of International Relations*. 50.

time, protests or coy explanations for the detainment of foreign envoys are common themes of Late Bronze Age court-to-court interactions.³³

He also points to “a regular chain of exchanges” as providing the foundation for positive international relationships, as well as being a result of these relationships.

Messages took specific form in Amarna diplomacy. A point, articulated about Egypt's orders to its vassal states by Na'aman, is also applicable to inter-King relations:

“Egyptian orders were delivered mainly verbally, by officials, and even royal letters were brought by experienced messengers who were able to elaborate on obscure points.”³⁴ The constant exchange of both merchants and messengers “not only reassured the parties about their friendship but also implied the dispatch and arrival of material goods.”³⁵ As a baseline, it seems a year turnaround was reasonable. Zaccagnini quotes EA 33 as one point of evidence for this, “And year by year let my messenger go [into your presence] and, on your part, year by year let your messenger come from [your country?] into my presence.”³⁶

The methods of diplomacy at the time, while not a continuous 24-hour-a-day affair nor the case of the resident envoys of later ages, did employ cuneiform tablets and envoys to create and maintain a “permanent web of formal relations.”³⁷ These relations

³³ Zaccagnini, Carlo. (2000). “The Interdependence of the Great Powers.” Westbrook, R., & Cohen, R. (Eds.). *Amarna Diplomacy: The Beginnings of International Relations*. 151. EA 20:69-70. EA 16:43-55.

³⁴ Westbrook, R., & Cohen, R. (Eds.). (2000). *Amarna Diplomacy: The Beginnings of International Relations*. 134.

³⁵ Zaccagnini, Carlo. (2000). “The Interdependence of the Great Powers.” Westbrook, R., & Cohen, R. (Eds.). *Amarna Diplomacy: The Beginnings of International Relations*. 148.

³⁶ Zaccagnini, Carlo. (2000). “The Interdependence of the Great Powers.” Westbrook, R., & Cohen, R. (Eds.). *Amarna Diplomacy: The Beginnings of International Relations*. 148. EA 33.

³⁷ Westbrook, R., & Cohen, R. (Eds.). (2000). *Amarna Diplomacy: The Beginnings of International Relations*. 52.

even included Egypt, a country that historically had refused to deal with outsiders, as they were not even considered human. The Great Kings used formal expressions and repetitive phrases that were well understood by all. Commerce flowed between the countries, wives were exchanged,³⁸ and gifts carried symbolic weight for status and relations amongst the “brothers.” The fact that these norms and “rules” were sometimes broken or bent does not invalidate the existence of the rules, as claims of their infringement held weight, reflected the “love” of one brother for another, and were often used to provide a foundation for counter negotiations for greater wealth or status. An example of this phenomenon can be seen in EA 4: the Babylonian king refers to a snub Pharaoh gave him, at least in his eyes, followed by a threat of direct reciprocity, and then a request for a higher bride price with a strict deadline.³⁹ While at first glance this correspondence reads as a rupture of relations, the king rather uses it as an opening bid to continue negotiations for a more favorable exchange.

The safety of messengers was no exception to this trend. The Kings were most preoccupied with ensuring their safety. They connected their safety to respect of their status and indication of relationship amongst the Kings. Any violations of their messengers was noteworthy and condemnable.⁴⁰ It is notable that rarely - if ever - are messengers outright harmed or killed by a Great King. Rather, they are far more often detained. Pharaoh was a particularly prolific practitioner of this technique, using it to

³⁸ Egypt had notable cultural differences on the matter of exchanging wives, not discussed at length here.

³⁹ Westbrook, R., & Cohen, R. (Eds.). (2000). *Amarna Diplomacy: The Beginnings of International Relations*. 198.

To shore up his point, he recounts an incident when his request for an Egyptian wife was rejected.

⁴⁰ Ibid., 52.

show his superiority. Indeed, the safety of messengers is most often endangered when they are traveling between lands and are harmed by criminals or roaming tribes, rather than by kings.

Rules can be recognized not only by their statement and observations of compliant or patterned behavior, but also by “complaints of their violation,” as contributor Rodolfo Ragionieri phrases it.⁴¹ While these complaints can sometimes be seen as bargaining tools for negotiation, they do not lose their force as ways to glimpse norms and rules of the day, as the negotiation tactic would be empty without some form of shared understanding or obligation to back it up. In his discussion of ceremonial bargaining, he talks about the use of delay or temporary refusal of a partner's request to apply pressure, as evidenced by detention of foreign messengers and declarations of an inability to fulfill a request, typically said to be temporary. The former method is presumed to be used to pressure the other to a more favorable move, concession, or action.⁴² EA 9 and EA 28 are complaints about violations of rules, while EAs 1, 2, 4, and 29 are about the unsatisfactory fulfillment of promises. Gifts, a sign of status as well as commercial value, are often a focus, as is the treatment of messengers. Pharaoh is often taken to task for his treatment of messengers, as he seems to take every opportunity to demonstrate his superiority in these cases.⁴³ A specific example of this can be seen with the case of the Mittanian King Tushratta in his correspondence with Pharaoh, in which he

⁴¹ Ragionieri, Rodolfo. (2000). “The Amarna Age: An International Society in the Making.” Westbrook, R., & Cohen, R. (Eds.). *Amarna Diplomacy: The Beginnings of International Relations*. 47.

⁴² Westbrook, R., & Cohen, R. (Eds.). (2000). *Amarna Diplomacy: The Beginnings of International Relations*. 147-148.

⁴³ Ibid., 47-48.

uses a claim of specific reciprocity to his own ends. In EA 28 and 29, he states in no uncertain terms that he will detain Pharaoh's messengers, including the esteemed Mane, until his own are released to him. This is a clear tit-for-tat scenario.⁴⁴ In EA 29 specifically, he expands on his offer. Not only will he reciprocally release Pharaoh's messengers once Pharaoh releases his, but he will also send a larger mission to Egypt, which can be interpreted as a sign of good faith and the signaled intent to increase friendly relations.⁴⁵ Christer Jönsson notes that claims for diffuse reciprocity are more often seen in bids to start or renew friendly relations, while requests for specific reciprocity increase after such relations are successfully established.⁴⁶ In terms of violation of immunity, Geoffrey Berridge states that while a diplomatic system can survive occasional lapses of the norm - either when state officials themselves commit misdeeds or when they fail vigorously to pursue culprits - their violations must be only occasional and widely understood to be exceptions rather than the rule.⁴⁷

The safe passage of diplomats facilitates diplomacy, and when practiced amongst "equals," is required for stable relations and diplomacy. It also amounts to a recognition of the right of the other power to rule its people without direct interference, i.e.

⁴⁴ Westbrook, R., & Cohen, R. (Eds.). (2000). *Amarna Diplomacy: The Beginnings of International Relations*. 197.

EA 28, 29.

⁴⁵ Ibid., 200.

EA 29.

⁴⁶ Jönsson, Christer. (2000). "Diplomatic Signaling in the Amarna Letters." Westbrook, R., & Cohen, R. (Eds.). *Amarna Diplomacy: The Beginnings of International Relations*. 197.

⁴⁷ Berridge, Geoffrey. (2000). "Amarna Diplomacy: A Full-Fledged Diplomatic System?" Westbrook, R., & Cohen, R. (Eds.). *Amarna Diplomacy: The Beginnings of International Relations*. 213.

recognition of its sovereignty. Assyria's attempt to join the Great Kings Club highlights this issue. King Assur-uballit of Assyria attempted to emerge as a great power by sending an envoy to Egypt for the first time - "Do not delay the messenger who I sent to you for a visit. He should visit and then leave for here."⁴⁸ Burna-Buriash of Babylonia protested this acceptance of his messengers, since it affected rules governing the great kings' power, prestige, and commercial relevance. Eventually Burna-Buriash accepted the change, even marrying the Assyrian king's daughter to further legitimize the Assyrian role on the international scene, making this a successful ploy by Assyria.⁴⁹ It is notable that the Assyrian does not call Egypt his brother until the next letter, EA 16, when he has been accepted into the club by Pharaoh. Upon acceptance, he immediately claims the norms of other kings, complaining about how their exchange of gifts fails to measure up against the Egypt-Mittani exchange and about the mistreatment of his ministers.⁵⁰

The message of King Assur-uballit of Assyria continued his command not to delay the messenger with a further instruction: "He should see what you are like and what your country is like, and then leave for here."⁵¹ This is in line with one of the primary roles of any diplomat, gathering information. While this need led to the formation of permanent embassies in later years, in this time, the distance was too far and the technology too rudimentary to sustain resident envoys. Raymond Cohen argued that "many of the documents contained intelligence material, purposefully collected on the

⁴⁸ EA 15

⁴⁹ Westbrook, R., & Cohen, R. (Eds.). (2000). *Amarna Diplomacy: The Beginnings of International Relations*. 48.

⁵⁰ Ibid., 159.

⁵¹ EA 15

military threat posed to Egypt by the other Great Kings.”⁵² Information is required to preserve successful international relationships and to navigate unsuccessful ones. Foreign policy decisions require organized information. Egypt's correspondence clearly shows an orderly process for gathering this information to make sound decisions in its attempt to maintain a dominant Great Power role.⁵³ While there is more clear evidence of Pharaoh doing this, given that most of the documents are from or to him, the other Great Kings clearly do the same, and it is the norm.

Naturally, establishing credibility of these ancient reports, and at times proposing verification methods, is both an honest concern and a tactic for deferring the wrath of another. The Rib-Hadda's correspondence showcases this. We see proactive affirmations of his truthfulness and several preemptive proposals for reasonable verification of his reports - EA 68, 69, 89, 90, 94, 102, 107 - as David shows.⁵⁴ It often relies on having Pharaoh send a commissioner or messenger to certain sites. Messengers were used to establish credibility, even being called on as witnesses for demands like the gift statutes being pure gold in older days, as in EA 27. For example, in EA 1, Pharaoh Amenhotep III accuses Babylonian messengers of lying and causing strife. He claims the countries are quarreling because they say no gifts are given to them from Pharaoh, when in fact, he claims he always sends one of the two messengers away with much finery (with the obligatory dig that it is more than others send).

⁵² Cohen, Raymond. (2000). “Conclusion: The Beginnings of International Relations.” Westbrook, R., & Cohen, R. (Eds.). (2000). *Amarna Diplomacy: The Beginnings of International Relations*. 228.

⁵³ Westbrook, R., & Cohen, R. (Eds.). (2000). *Amarna Diplomacy: The Beginnings of International Relations*. 98.

⁵⁴ David, Steven R. (2000). “Realism, Constructivism, and the Amarna Letters.” Westbrook, R., & Cohen, R. (Eds.). *Amarna Diplomacy: The Beginnings of International Relations*. 95.

In the presence of multiple exchanges – or repeat games – a class of messengers arose who had gained prestigious reputations. Rulers would send this trustworthy class with handwritten tablets to confirm the credibility of their discourse. Mane and Keliya are two such individuals, praised as more trusted and trustworthy than others.⁵⁵ As the timeline in the tablets progresses, rulers will even state that only words from them or from the tablets should be taken as true.⁵⁶ Keliya, Mittani's counterpart to Egypt's Mane, held the rank of *sukkallu* or “minister” or our modern “ambassador.”⁵⁷ Choosing well-respected messengers can also have symbolic significance, such as the selection of Mane and Keliya discussed in EA 17 and 24. Christer Jönsson gives the modern example of the U.S. choice of Averell Harriman to lead Soviet - U.S. talks in 1963, which signaled sincerity and seriousness to the Soviets who were well acquainted with him from his previous service.⁵⁸ Conversely, it can be an insult to send those not in the profession, as is indicated by Pharaoh’s umbrage when the Babylonian King sent a delegation of “nobodies” - including an assherder - instead of proper dignitaries.⁵⁹

The establishment, prestige, and protection of messengers were natural manifestations of what was clearly an established international system. So the question arises, if the role of messengers arose as a result of consistent relations among kings, did

⁵⁵ EA 24:II 15-18.

⁵⁶ EA 24. EA 32.

⁵⁷ Westbrook, R., & Cohen, R. (Eds.). (2000). *Amarna Diplomacy: The Beginnings of International Relations*. 206.

⁵⁸ Jönsson, Christer. (2000). “Diplomatic Signaling in the Amarna Letters.” Westbrook, R., & Cohen, R. (Eds.). *Amarna Diplomacy: The Beginnings of International Relations*. 202.

⁵⁹ Westbrook, R., & Cohen, R. (Eds.). (2000). *Amarna Diplomacy: The Beginnings of International Relations*. 203.

EA 1.

they also show a corresponding burden of protection (immunity) for them? Did the treatment of diplomats significantly affect the relations amongst kings? In short, yes.

Once received, the treatment of messengers reflected the state of the relations between the kings and shaped the tenor of future interactions.⁶⁰ When Tushratta was attempting to forge friendly relations with Egypt, he emphasized the distinction and honor with which he received Egyptian messengers. He also goes out of his way to praise Mane, stating he is the only one like him in the world.⁶¹ The purpose of this correspondence was to treat Pharaoh's messengers favorably in the hopes that doing so would result in more favorable relations between the rulers. Alternatively, kings could also delay messengers to interrupt communication or emphasize their power. As indicated, this was a tactic often used by Pharaoh,⁶² and we can see a similar practice in modern diplomacy when a state recalls an ambassador home for a "consultation." In both cases, the parties are reflecting an unwillingness to communicate with the other party. This can be done due to an ongoing conflict or as part of a bargaining strategy in negotiations.⁶³

⁶⁰ Ibid., 202.

⁶¹ EA 20, 21, 24.

⁶² In addition, EA 28 deals almost exclusively with the scandal of the detainment of express messengers, accurately describing the predicament of the messengers and the disagreements caused by the disruption of ordinary, everyday communication.

⁶³ Jönsson, Christer. (2000). "Diplomatic Signaling in the Amarna Letters." Westbrook, R., & Cohen, R. (Eds.). *Amarna Diplomacy: The Beginnings of International Relations*. 202.

The protection went further than good treatment, however, with a form of immunity exempting the envoy from local jurisdiction, as well. In the compilation of works that resulted from the 1996 conference, Cohen, Bozeman, Berridge, and Munn Rakin all conclude that messengers expected to be personally inviolable, allowing them the protection of a form of diplomatic immunity. Berridge does argue that the type of protection enjoyed in Amarna times were not as “sophisticated” as those “enshrined” in the VCDR of 1961, which is a fair claim. The VCDR was, after all, codifying thousands of years of practice while the Amarna Age is one of the earliest historical records. However, there is sufficient evidence, which Berridge does not refute, that the envoy's person was considered inviolate, and indeed, this was one of the earliest manifestations of this principle in a long line of systems. The practices of the Amarna Age set precedents that led to the immunity codified in the VCDR.

2.5 Chapter Summary

After examining the way in which the Amarna Age protects their envoys by holding them immune from local jurisdiction and further placing the burden of their protection upon the host country, Berridge notes that diplomatic immunity “constitutes the most fundamental feature of diplomacy.” Its scope includes the person of the diplomat and their staff, private residence, papers, communication methods, and transport. He also gives two main reasons for this type of immunity: 1) even a modest embassy in the course of its duty to gather information and deliver (at times, unwelcome) messages, may necessarily incite the wrath of the host government and/ or its people, and 2) no embassy can do any part of its job without special guarantees its personnel will be protected both physically and from false reports of law breaking that may hinder them.

“In short, the rule of diplomatic immunity is a response to functional necessity in circumstances that are, at worst, life-threatening.”⁶⁴

In conclusion, this case study on the treatment of diplomats in the Amarna Age fills a gap in the already extensive examination of the historical iterations of diplomatic immunity. The entwinement of diplomacy, the treatment of diplomats, and immunity with the rise and fall of international relations was evident in this earliest recorded international system. The evidence of these practices in an earlier unexamined system will be corroborated by the chronological examination of history. Diplomatic immunity is not a superfluous or outdated practice. Rather it shall be shown that it is essential to international systems, and it naturally manifests as a precondition and requirement for the existence of international relations. A brief examination of key points in world history will confirm this, as well as showcase the variations of immunity as it interplays with different international systems and societies.

⁶⁴ Berridge, Geoffrey. (2000). “Amarna Diplomacy: A Full-Fledged Diplomatic System?” Westbrook, R., & Cohen, R. (Eds.). *Amarna Diplomacy: The Beginnings of International Relations*. 213.

CHAPTER THREE

Early Historical Practices of Diplomatic Immunity

Believing that an international convention on diplomatic intercourse, privileges and immunities would contribute to the development of friendly relations among nations, irrespective of their differing constitutional and social systems...

- Preamble, Vienna Convention on Diplomatic Relations, 1961

In the next two chapters, I will provide a historical sketch to show the consistent manifestation of diplomatic immunity. This will be necessarily selective, and thus it will focus on broadly agreed upon significant times. The main purpose will be to show the enduring presence of a version of diplomatic immunity across time and to show that it is essential for the existence of any international system or society.

Since diplomatic immunity is essential to international stability, many impressive works have already examined its history and importance. Chief amongst them is a work by scholar-sisters Marsha L. Frey and Linda S. Frey. They compiled a comprehensive study of diplomatic immunity in their tome, *The History of Diplomatic Immunity*, which has been well -received and widely cited in the academic community. Richard Langhorne opens his complimentary review of their book in *The American Historical Review* with the following:

Diplomatic immunity is not a topic that sits near the top of most people's lists of important historical evolutions. It is the chief achievement of this book by Linda S. Frey and Marsha L. Frey that it completely demonstrates how wrong an assessment that is. The subject is placed squarely within the broader context of diplomacy as a whole and, where necessary, set against the changes in international politics that have propelled the evolution of diplomacy. It becomes

quite clear why immunity developed and why its history is a significant part of the history of international relations.¹

This section shall extensively reference the work of Frey and Frey as an authoritative source for any overview of the historical evolution of diplomatic immunity, using other sources as supplements.

As will be shown in this historical review, diplomatic immunity is required for the continued existence of international politics and for the potential development of any degree of international society. Powers must afford basic protections to exchanged diplomats by necessity, for only with these protections is the exchange possible, and only with the exchange is “intercourse between peoples possible.”² Reiterated throughout the Freys’ work is the refrain of how diplomatic immunity begins and evolves in any given international system: “Rooted in necessity, immunity was buttressed by religion, sanctioned by custom, and fortified by reciprocity.” The religion in that equation can be substituted by any number of variables, including but not limited to the ties of an international aristocracy, shared cultural values, hospitality, status, law, and function. Through them all, the process remains the same. A baseline protection of immunity is a necessity for international relations, and the particulars evolve in each system as powers engage in a series of multiple games.³ The more iterations amongst powers, the more the expedient and necessary protections turn into courtesies and customs, which then evolve

¹ Langhorne, Richard. (2000). “Review of The History of Diplomatic Immunity.” *The American Historical Review* 105(1): 178–79. 178.

² Frey, Linda, and Marsha Frey. (1999). *The History of Diplomatic Immunity*. Ohio State University Press. 3.

³ I am borrowing the term game from political game theory here. It indicates the engagement of political actors in an interaction that follows clear and repeatable rules. Game theory posits one can utilize preference ordering, the rules of the game, and number of iterations to determine probable outcomes between actors.

into expectations and rights. Reciprocity is the key to understanding diplomatic immunity, as it “echoes through the ages,” according to Frey and Frey. “...do unto their representatives as you would have them do unto yours.”⁴ It is a basic concept, but one with a long and colorful history.

The history of diplomatic immunity, broadly speaking, is entwined with religion in more ancient systems, and it gradually transitions into a legal basis in the modern era. International practice tends to outpace theoretical justifications in this area, so this chapter will focus on historical practice, with theoretical frameworks being addressed in a later chapter.

3.1 Ancient Greeks

For many jurists and scholars, the Ancient Greeks are the usual beginning of any study of international law and diplomacy. Until the discovery of the Amarna tablets, they were considered one of the first recorded peoples who established relations with one another with “some surety,” and therefore they by necessity also considered their diplomats – or heralds – as inviolate. Indeed, it was this presumption of inviolability that facilitated their relations with one another in a meaningful and repeatable way.⁵

Ancient Greece developed a hierarchy of messengers and diplomats, with heralds (*kerykes*) at the top and envoys at the bottom. The higher they were on the hierarchy, the more responsibility and autonomy they held, which also came along with a greater degree of protection. Herald would possess diplomatic inviolability, for example, while envoys

⁴ Frey, Linda, and Marsha Frey. (1999). *The History of Diplomatic Immunity*. Ohio State University Press. 4.

⁵ Ibid., 5.

often relied on safe conducts secured on their behalf by preceding heralds on an ad hoc basis.⁶ The stratification of diplomats with different degrees of responsibility, and therefore protection, is a common theme through the rest of history, including in the VCDR of 1961. The technological limitations of these earlier times are certainly a factor, as some lowly messengers were the ancient equivalent of a voice-recording or email. The highest level of diplomat had more autonomy and authority, and thus they were protected by the gods and under their law. The host state would refrain from abusing them, and even offer hospitality above and beyond what was required, for fear of reactions from the sending state and from the judgement of the gods. The hospitality extended towards diplomats may stem from their attitudes toward strangers. The Greek God Zeus was held to have honored strangers and expected hospitality to be extended to them. Thus strangers tended to be feared as an unknown but to be revered as protected by the gods. The Greeks were not the only ones to hold this attitude towards strangers, being in similar company with the Celts, the Gauls, and the Teutons.⁷

Being a stranger was enough to warrant good treatment, but the expectation of inviolability for messengers was rooted in a more direct connection to the gods (whether in real belief or in symbolism). Heraldry were seen to be descendants of Hermes, the messenger of the gods. As a symbol of their office, they would also carry a staff, called a caduceus, which looked like two serpents staring directly at one another. This imagery can be interpreted as symbolizing two hostile camps and direct negotiation, but it certainly signified that heralds were protected by divine law, with an authority conferred

⁶ Ibid., 13-18.

⁷ Ibid., 12.

upon them by divinity. Any harm to a herald required sanctions and sacrifices to the gods, in addition to political reparations.⁸

3.2 Romans

Greece and Rome held many similarly rooted practices about diplomats and their immunity. Roman practice and law heavily influence the future path of immunity, as it was studied and cited by many influential jurists and scholars. Therefore, I will spend the most time examining them in this chapter.

Like the Greeks, the Romans showed deference to the judgment of the gods should a diplomat be harmed. The Roman immunity of diplomats was “a practice dictated by political necessity and reinforced by religious sanction.”⁹ This duality led to the institution of the *fetials*, “a semi political priestly board of twenty men drawn from the noblest families, served both by the gods and the state, which visibly linked politics and religion.”¹⁰ Their task, according to Plutarch and Dionysius of Halicarnassus, was peace. They swore oaths to Jupiter and invoked Janus, custodian of the universe and guardian of alliances. They were empowered by the Senate to carry out a number of responsibilities, which included, but were not limited to, the ability to convey gifts, to negotiate commercial treaties, to negotiate bonds of alliance and friendship, to demand restitution for broken treaties and promises, to carry messages, to keep records, to preside over religious rituals, to mediate disputes, to turn over fugitives, to deliver prisoners of war, to make burial arrangements, to deal with extradition and proper treatment of other envoys,

⁸ Ibid., 16.

⁹ Ibid., 38-39.

¹⁰ Ibid., 39.

and to conclude peace. Both human law (*ius*) and divine law (*fas*) protected diplomats in tandem.¹¹ Due to this dual basis, attempts to attack diplomats flew in the face of laws of gods and men, even as the laws of man superseded religious sanctions over time.

Diplomats during Roman times were also granted the privilege of *jus revocandi domum*, which allowed them to have a case transferred to a court in their own province. However, they were required to conclude the contract before their appointment in order to claim this privilege. It was one of the many precedents that would be used by jurists of the Middle Ages and Renaissance and would influence future international law. These later interpretations led to the expansion of immunity and laid a foundation for public international justice.¹²

The work of a diplomat was dangerous, as even travel itself was fraught with peril. Thus, the Romans developed a standard practice of sending multiple diplomats “in case one or more became sick or incapacitated” while on the journey or while residing at the host state. Sending multiple diplomats also had several positive political goals, and this practice by Rome both “...made it difficult for a foreign power to corrupt the entire embassy and perhaps sought to reflect the complexity of political interests more accurately.” It also folded in internal accountability, as diplomats could act as a check on one another, while externally looking like a sign of great Roman power. Finally, the religious ceremonies of the fetial duties often were elaborate enough to require multiple people.¹³

¹¹ Ibid., 44. History also shows necessity and reciprocity are driving forces behind how divine and human law manifested regarding diplomats.

¹² Ibid., 46.

¹³ Ibid., 51-52.

The perils of diplomatic work were not limited to the dangers of the roads or roving robbers, however, and so the duties of heralds included the investigation of any violations of diplomatic immunity. Those found guilty of harming a diplomat could be executed, deported, or surrendered to the wronged state for retribution. This latter course was the most typical course of action, and it would appease both the gods and the wronged state. It paralleled the domestic law of *noxality*, under which a head of household could hand over a wrongdoer to the wronged party (the *noxus*) rather than paying compensation.¹⁴

Diplomats held great responsibility in politics and therefore also had a high expectation of protection from their hosts. In addition to these practices, Rome enforced the principle that any infraction of diplomat rights violated “the law of nations,” formally codifying inviolability in the Roman legal code. The *lex Julia de vi publica* granted immunity to diplomats, guaranteed freedoms of foreign ambassadors (even after war was declared), and agreed to surrender anyone who attacked an ambassador to the injured state. It is important to note most of these provisions were for diplomats in Rome’s earlier age; when Rome became an empire, more alien people or distant frontiers would not have been seen as equal or worthy of the same diplomatic consideration.¹⁵ This behavior is not unique to Rome, but rather a recurring pattern that highlights the nature of diplomacy and diplomatic immunity. Diplomatic immunity is always connected to sovereignty, or to state it more broadly, diplomatic discourse and immunity are extended only by and to powers recognized as autonomous in a given system. Any diplomat “who spoke and

¹⁴ Ibid., 39.

¹⁵ Ibid., 45.

acted for Rome reflected the majesty of Rome and personified the sovereignty of the state,” and thus should be respected. In the case of Rome, “[o]nly sovereign states could send ambassadors even on ad hoc missions.”¹⁶ For example, the private tribe leader Tacfarinas invited the anger of Roman emperor Tiberius for the insolent act of sending envoys to demand land, as if he were a hostile sovereign rather than a private and unrecognized leader. It is remarked that this provoked the emperor more than any previous personal or national slur.¹⁷

The Senate used symbolism and ceremony to confer and claim the baseline status of a sovereign and to increase their status in relation to others. For example, foreign heralds were required to notify the temple of Saturn when they arrived and had to wait to be granted an audience. Failure to follow customs was greeted with distrust and could jeopardize relations. In one situation, the Illyrians violated this custom by not announcing their arrival or following any other expectations. The ambassadors from Issa used this behavior to accuse them of being spies and preparing for war, so the Illyrians were ordered to leave Rome. Relations with the Illyrians were refused as a reciprocal action to a perceived movement towards war. Both the ejection of legations and the refusal to accept them back are always linked to the status of the relationship between powers; refusing to receive a legation often meant a breaking of relations. For example, when the Italian peninsula was invaded by the Carthaginian army, the Senate decided not to receive any of the Carthaginian envoys, meaning no negotiations, meaning no possibility of a

¹⁶ Ibid., 47.

¹⁷ Ibid., 47; Tacitus Annals 3.71.

compromise that could lead to peace. This was a reciprocal choice, and other states could and did do the same thing (e.g. Dalmatians in 157 B.C.).¹⁸

Rome also expected reciprocal treatment of diplomats, so every action held meaning. When the Senate or another power treated diplomats well, they often provided lodging and entertainment, particularly for friendly states; on the other hand, to insult an envoy could mean war. “Even when ambassadors plotted against the state, Rome still respected their immunity,” typically resorting to expulsion as opposed to any other kind of punitive action. “Roman mistreatment of an ambassador proved the exception and usually signified the rupture of relations.”¹⁹ Therefore, Rome held other powers to the same standard, and any insults would be met with the full weight of Roman power, as evidenced in the case of Tarentum (282 B.C.). He who refused to grant audience to Roman ambassadors. Instead, he and his entourage instead mocked their appearances, and one even urinated on the embassy leader's garments. The Roman leader stated the garment would be washed clean with their blood, and it was so, with Rome later declaring war. These attacks against diplomats were rare, and Rome reacted violently to those that did occur, which “underscores the importance of diplomatic exchange for Rome and her neighbors.” War often occurs when diplomats are killed, often delegating to them a similar role as canaries in a coal mine. While immunity is essential, it can be and is violated for symbolic and substantive ends, making it an inherently and perennially difficult job, fraught with dangers.²⁰ However, powers tend to defer to solutions less

¹⁸ Ibid., 53-54.

¹⁹ Ibid., 57-59.

²⁰ Ibid., 53-54.

permanent than death when they want to send a message, such as refusing audience, lodgings, and entertainment - or even occasionally seizing property. The choice to send calculated insults, even when the death of a diplomat would be easier or justified, reinforces the concept and role of immunity. These insulting steps could send a hostile message and lead to the desired war without physically harming any envoys.²¹ It also has the benefit of protecting their own diplomats in the same and other countries from facing reciprocal backlash.

Eventually, as Rome became more secularized, senatorial legates would displace the fetials. However, the practice of observing the inviolability of diplomats survived. The fetials were in many ways a product of ancient customs and habits, and they “addressed the needs of a society at war with neighboring states who shared the same institutions.” They had fewer and fewer functions that could not be practically replaced by legates in the late republic and the empire. But inviolability survived this change, also becoming embedded in legal, written law as Roman law was codified.²²

While Rome began with the necessity of diplomatic immunity as expressed through reciprocal protection of its diplomats, it did not further develop its practice of diplomatic immunity through custom or courtesy as the former city-state evolved into an empire. Relations became “based on hegemony, not equality,” and the Romans could demand what they wanted rather than requiring reciprocal diplomacy to achieve their ends. Diplomatic relations, and thus the concept of the inviolability of diplomats, are most clearly seen in systems in which there are multiple “equal” powers. The sovereignty

²¹ Ibid., 48-49.

²² Ibid., 44-45.

of these powers is recognized and a need for care with the other is required to avoid the alternative to diplomacy: war (i.e. legitimate violence). Thus in hegemonic systems (e.g. the Roman empire, Chinese emperors, Mongal Tartars, the Uighurs), a breakdown of the privileges of diplomats occurs. International law and its corresponding privileges are “not possible for people who are convinced that they are inherently superior to others and who have universalistic pretensions.”²³ A good indicator of universalistic pretensions occurs when one party dehumanizes the other, by equating it with a demon, the devil, or barbarians. A prime example of the rationale of this position can be found in the writings of John Stuart Mill as he describes relations with so-called barbarians:

To suppose that the same international customs, and the same rules of international morality, can obtain between one civilized nation and another, and between civilized nations and barbarians, is a grave error . . . because the rules of ordinary international morality imply reciprocity. But barbarians will not reciprocate.²⁴

Not only is there a fear that reciprocation will not occur, but in many ways the party that dehumanizes the other precludes any such chance for equitable behavior. A system in which multiple powers recognize each other and attempt to deal with one another employing means that may include violence but go beyond it – this sort of international system is required for the establishment of diplomacy. Such a system is therefore needed as a basis for a study of diplomatic immunity. The evolution of diplomatic protections along with the power structures of Rome corroborates this claim.

²³ Ibid., 6.

²⁴ Ibid., 5.

Mill, John Stuart. “A Few Words on Non-Intervention,” in *Collected Works*, vol. 21: *Essays on Equality, Law, and Education*. 118.

After the sack of Corinth and the destruction of the Achaean League in 146 B.C., this demarcation between “civilized” and “barbarian” starts to emerge more clearly in history. When dealing with barbarians, Rome was “brutal, aggressive, and treacherous, and openly expansionist,” and diplomatic immunity was violated more than honored. This was in stark contrast to the earlier years when Rome not only honored diplomatic immunity, but also treated visiting diplomats with hospitality, entertainment, and great ceremony (with the expectation of similar behavior toward their own diplomats, of course). Although the Romans violated their standards of diplomatic immunity in this practice with barbarians, which actually proves the need for relative equality to ensure respect for diplomatic immunity, their theoretical writings still upheld the ideals and rationale of it. Roman legalists and philosophers passed on this ideal to future generations, and the Roman ideal would have influence for generations to come.²⁵ Due to the extent of this influence, it has been prudent to take a little extra time to delve into the details and rationale of Roman diplomatic exchanges before the imperial era.

In summary, the conventions of diplomacy changed as Rome evolved from a small city-state to a world empire. Reciprocity and a relationship between equals ensured immunity in the early days, as undergirded by religious sanctions and the common use of fetial institutions amongst the italic states. In latter days, the empire of Rome enforced security and could dictate protection of its envoys while being far less careful in its own behavior towards the diplomats of other countries.

²⁵ Frey, Linda, and Marsha Frey. (1999). *The History of Diplomatic Immunity*. Ohio State University Press. 6-7.

3.3 Middle Ages

The Middle Ages lacked an empire to enforce security but the reciprocal relationships amongst the powers did manifest the same basic protections of diplomats. This protection was enforced, according to Frey and Frey, by law, by custom, by religion, and “most obviously” by the threat of reciprocal action.²⁶ Despite the absence of a major player like the Roman empire, diplomatic practices of the Middle Ages were remarkably similar across countries and centuries during this time, with only slow changes.²⁷

The jurists of the Middle Ages began the tradition of citing Roman legislation, relying heavily on their interpretation of Roman law to guide their conduct. The importance of diplomatic immunity was recognized not only in Roman law (as interpreted by jurists), but also in barbarian codes and in canons of the church, both of which were heavily influential in this time period. Again, it applied to the receiving state, rather than third parties, though the concept was known of the sending state procuring “safe-conduct” for its envoys as they traveled. Generally, envoys were inviolable, as well as their goods and entourage.²⁸

While the “power of the state and the sanctity of its representatives” were ideals buttressed by their Roman legacy, it was the commonly held Christian ideals of this time that allowed powers to hold a dual concept of inviolability and the accountability of the envoy in such a unique balance. In the Middle Ages, the social tissue that allowed for accountability during one’s office was largely due to the Christian commonwealth. Even

²⁶ Ibid., 76.

²⁷ Ibid., 7.

²⁸ Ibid.

the right to rule (*Dei gratia*) was granted by Divine Grace, rather than being a social entitlement, and so naturally diplomats were also accountable to God. Canon law was used as the basis for their inviolability in the first place and provided a common framework for diplomatic accountability. In terms of the latter, the Christian commonwealth widely held that all men belonged to God, so “[w]hen an envoy committed a crime, he broke the laws of God and man.” A diplomat could be held accountable to the ethics of Christianity, since the laws of God preceded and overrode the laws of humankind. If diplomats chose to commit a crime while holding this position, they were deliberately stepping outside the bounds of their office and therefore lost the protection inherent to that office. As Frey and Frey stated, “No one was exempt from the rules that bound the Christians together.” For example, Brunus, in his *de legationibus* (1548), believed that diplomats could be punished for adultery, even unto death, if they committed it during office since it would break one of the Ten Commandments.²⁹

Before moving to the next section, the behavior of the papacy and the interactions between East and West are of note during this time period. The Pope, whose duty included the care of all Christendom and the advancement of the appointed end of every institution and person in it, sent out representatives to be his eyes and arms in the accomplishment of those aims. The representatives also had a hierarchy of different roles with different responsibilities, such as the *legate a latere* (“sent from the side” of the Pope) and *legate missi* (“those sent”). As in our examination of earlier ages, we will

²⁹ Ibid., 120-121.

focus on the highest level of this hierarchy, specifically on those with the ability to negotiate on behalf of the Pope and even to hand out secular and spiritual judgments.³⁰

The Pope did try to protect those he sent, since travel could be dangerous and their mission important. To start, the Pope would follow the early Roman practice of sending more than one experienced representative for safety in numbers. And while the diplomats were considered inviolable by the nature of their job (and the importance of the one who sent them), the Pope would also play the age-old card of picking already eminent individuals to buttress this basic claim. These diplomats also enjoyed a number of privileges, including but not limited to, local hospitality, food and travel expenses, church hosting on their travels, protection by church officers and members, and the ability to levy spiritual rewards and punishments.³¹ The secular counterparts to these individuals were called “procurators” and could legally bind their principal, i.e. the power they were representing. While they did not have the extra buttress of religion for their protections, nor privileges such as being hosted by churches on their travels, they still were afforded basic protections due to the threat and promise of reciprocal action by other powers with their diplomats.³²

While the East and the West followed the differing teachings of Islam and Christianity, they similarly stressed the inviolability of diplomats, undergirded by religious sanctions.³³ Christian casuist Christine de Pisan offered the pragmatic reasoning for this behavior: “Christians should honor theirs [envoys] so that they in turn honor

³⁰ Ibid., 79.

³¹ Ibid.

³² Ibid., 82.

³³ Ibid., 88.

ours,”³⁴ with the caveat that anyone who endangers the common good forfeits any and all respect. For Muslims, the prophet taught that “mistreatment of an envoy constituted *casus belli* [*sic*].”³⁵ In his article called “Principles of Islamic International Law,” Farhad Malekian affirms that the principle of diplomatic immunity is an “integral part of Islamic customary international law” and has been so since the revelation and practice of the Prophet. The rules that govern international behavior are “as old as Islamic theology itself” and developed further through Islamic jurisprudence into the modern age. While the application and extent of immunity depend to some extent on jurisdiction and political circumstances, Islamic international law does cover the immunity of diplomats in the areas of family, baggage, homes, staff, and religious/local practices.³⁶

While both Christians and Muslims stressed the sanctity of diplomats, they also often accused the other of violating this principle, thus conflict still abounded and these relations could be tense. This led to the observation by scholar Hal Friedman that the practice of honoring diplomatic immunity could depend on whether a culture saw particular diplomats as “selfs” or “others” in relation to itself; while the cultures of Greek, Roman, Arabic, Persian, Indian, and various East Asian countries were similar in practicing immunity to varying degrees, the application could vary. He noted that “European Christians in the Arabic Muslim diplomatic world...were not likely to enjoy

³⁴ Ibid., 87.

³⁵ Ibid., 88.

³⁶ Malekian, Farhad. (2011). “PRINCIPLES OF ISLAMIC INTERNATIONAL LAW.” In *Principles of Islamic International Criminal Law*, A Comparative Search, Brill. 44-45.

full diplomatic immunity in the Muslim world, nor would Muslim envoys in Christendom.”³⁷

3.4 Renaissance

In the beginning of the Renaissance, through the thirteenth and fourteenth centuries in particular, the growth of sovereign states stimulated diplomatic activity, monopolized political power in the hands of the state, and replaced *ius gentium* (the law of nations) with *ius inter gentes* (a law among nations). Not inconsequentially, the warfare of this time encouraged diplomatic exchange and the establishment of resident embassies, both to keep an eye on hostile parties and to secure vital alliances. Garrett Mattingly points out that “questions of diplomatic privileges and immunities assumed a new urgency in an era of increased diplomatic contact.” Despite these changes, diplomatic immunity practices remained remarkably similar, bolstered and continued by the force of custom and law. Not until resident/ permanent embassies were a more stable practice did the practices of diplomatic immunity change and evolve with it.³⁸

3.5 Chapter Summary

In summary, diplomats enjoyed and expected protection during this time due to custom, to law, and to the ever-present threat of political reprisal should harm befall them. By a variety of customs, they held special status. This status was often denoted by ceremonial attire, such as the consecrated wands of the Frankish, the white wands and

³⁷ Friedman, Hal M. 2001. “Review of The History of Diplomatic Immunity.” *Journal of World History* 12(1): 193–96. 194.

³⁸ Frey, Linda, and Marsha Frey. (1999). *The History of Diplomatic Immunity*. Ohio State University Press. 8.

swords of the Celts, or Mongolian *paize* (a metal object).³⁹ In written law, as opposed to unwritten custom, the laws provided harsh penalties for any harm that befell a diplomat. This was so in both Roman and barbarian law. Indeed, these penalties tended to be much harsher than even harming a free man. This is due to the perception that to harm the individual diplomat also harmed their ruler, or “the honor of the king,” whose job it was to safeguard peace.⁴⁰ For example, King Henry V in 1414 explicitly listed harming a diplomat traveling with a letter of patent, i.e. safe conduct, as treasonable.⁴¹ And most importantly, the fear of reprisal (i.e. the fear of reciprocal action) ensured the focus and joint efforts of multiple powers to protect diplomats and avenge harm done to them. Frey and Frey emphasize that the threat of reprisal is not only the best safeguard for diplomats, but also particularly important when the two negotiating powers (or principals) hold sharply different cultures and religions: “Principals could depend on the threat of reprisal when they could rely on few, if any, shared norms.”⁴² The interactions of the Mongols, even with the Papacy, provide supporting evidence for this claim. Catholics tended to see the Mongols as a “detestable nation of Satan,” while the Mongolian Khan saw himself as the *Emperor of All Men and the Order of God*, which he told the Pope. Yet these two were still able to exchange diplomats due to the protections they offered to others’ diplomats and the swift reprisal should their own diplomats be harmed by any party. For example, a shah of Khwarazm in 1217 decided to test Genghis Khan by killing one of his

³⁹ Ibid., 89.

⁴⁰ Ibid., 91, 95.

⁴¹ Ibid., 95.

⁴² Ibid., 99.

diplomats and burning the beards off the others. Genghis Khan immediately went to war with him, declaring that this shah, Muhammad II, was not a king for “kings do not kill envoys.” He took the shah’s lands and wives, and he killed his sons. The shah escaped to a desert island in the Caspian Sea where he died. This swift and brutal reaction sent a message not only to the shah, but also to any other ruler who might threaten or harm the Khan’s diplomats.⁴³

⁴³ Ibid., 101.

CHAPTER FOUR

Modern Practices of Diplomatic Immunity

Believing that an international convention on diplomatic intercourse, privileges and immunities would contribute to the development of friendly relations among nations, irrespective of their differing constitutional and social systems..."

- Preamble, Vienna Convention on Diplomatic Relations, 1961

In this chapter, I will continue showcasing how different international societies believed diplomatic immunity was a requirement for friendly relations; violations were seen as an indication of unfriendly relations. Since the modern era is closer to current memory and well-documented in a variety of literatures, I will narrow the focus in this chapter to the following: a review of the development of new diplomacy, the impact of the reformation on the use of religion as a support for diplomatic immunity, the European stage as it set the foundation for today's international system, and the key treaty that defines today's international practices regarding diplomatic immunity. The advent of new diplomacy corresponded with an increase in academic discourse and legal writing on immunity; thus a survey of these areas will give us a view of the more key moments in recent immunity practice.

4.1 "New Diplomacy"

The development of permanent embassies is traditionally attributed to 15th century Italy. Italy at the time was comprised of competitive city-states that were separated from the rest of Europe by the Alps. Shared cultural norms and geographical closeness facilitated constant diplomatic intercourse and this institutional development.

When Europe, specifically Charles VIII of France, tried to intervene and conquer Italy, this sparked the spread of the diplomatic methods that had originated in the Italian peninsula.¹ It was further facilitated by the consolidation of power domestically by Spain, France, and England. The revival of commerce and the increase of the territorial state raised the stakes should any war occur. All this combined led to a strong desire for more information about other states. Ad hoc embassies, missions charged with specific business that ended when the business did, were appointed for longer and longer periods of time until eventually continuous and permanent embassies were formed.² This also reflected a shift in diplomatic relations from specific negotiations to gathering and relaying information.³ This so-called “new diplomacy” was characterized by a) giving general credentials to diplomats rather than specific charges, b) the insistence of the sending power on immediately replacing one diplomat with another, and c) the mutual belief of powers that failure to replace a diplomat required an explanation.⁴

The shift to new diplomacy did raise concerns and elicit pushback. It raised many questions about the line between information-gathering and spying. How is the information gathered? What information, if any, is off limits? As an example of pushback to this trend, Ferdinand of Aragon refused to grant long stays to diplomats for fear they would be misused as spies. Other attempts to slow down this trend included putting time limits on diplomatic visits (Martin V), downgrading ambassadors who stayed longer than

¹ J. Craig Barker. (1996). *The Abuse of Diplomatic Privileges and Immunities: A Necessary Evil?* Dartmouth. 20-21.

² Frey, Linda, and Marsha Frey. (1999). *The History of Diplomatic Immunity*. Ohio State University Press. 121-122.

³ Ibid., 123.

⁴ Ibid.

six months (Pius II), or even effusively praising mediocre diplomats to prevent their replacement with better ones (as happened to John Stile the English diplomat or Robert Wingfield).⁵ Perhaps the biggest and most successful efforts were by the papacy and secular powers to define and restrict the *droit d'ambassade*, or right to send and receive diplomats. By making this political move, they institutionalized this right to indicate acceptance and status. This iteration of a common phenomenon eventually became a “litmus test of sovereignty.”⁶

By the early 16th century, there was a significant increase in diplomatic activity within Europe. As it grew, so too did the need to enumerate clear privileges and immunities. Many practices extended beyond a basic inviolability of the person of the diplomat, and agreement was necessary among all actors. As a result, academic and legal theorizing on diplomatic privileges and protections significantly increased, as well. For comparison, from the first textbook on diplomatic practice published in 1436 to 1620 (a span of nearly two hundred years), forty-two authors and forty-three distinct tracts contributed to the literature. But within only a quarter of a century (1623 to 1648), twenty-two new authors added to the literature on the norms and privileges of ambassadors.⁷ Barker attributes the most significant contribution of this era to Grotius, with *De Jure Belli ac Pacis* in 1625, which shifted the focus from Roman doctrines to contemporary state practice as “the foundation of diplomacy and diplomatic law.”⁸ He

⁵ Ibid., 124-125.

⁶ Ibid., 126.

⁷ Ibid., 185.

⁸ Barker, J. Craig. (1996). *The Abuse of Diplomatic Privileges and Immunities: A Necessary Evil?* Dartmouth. 22-23.

wrote this amid the Thirty Years' War, and he was attempting, in part, to show also that the law of nations was more than an empty concept.⁹

4.2 *The Reformation*

The Protestant Reformation fractured the former international community, by challenging the established order, fragmenting Christendom, and ultimately shifting more power to the state as powers tried to deal with the fallout. The ideological conflict disrupted even territorial divisions amongst states, straining previous diplomatic institutions and former diplomatic civility. Unlike in previous eras where the fear of reprisal was sufficient to protect diplomats, militant Catholics and Protestants were often all too willing to take any excuse to “set aside their scruples” and deal harshly with enemies to their faith.¹⁰ As such, it grew much more dangerous for diplomats to go to a state ruled by an opposing faith in this conflict, if they could even get the state to accept them in the first place. Therefore, the diplomatic network contracted, resident embassies decreased as trust dissolved, and the diplomatic game was played on a smaller scale. Without the extra social tissue of a *res publica christiana*, diplomatic behavior and restraint shifted from diffuse patterns of reciprocity protecting diplomats to a pattern of specific reciprocity with protections being granted in bilateral exchanges.¹¹

The primary debates of this age centered on the right of chapel and the inviolability of the diplomat, the latter focusing particularly on how to handle diplomats

⁹ Frey, Linda, and Marsha Frey. (1999). *The History of Diplomatic Immunity*. Ohio State University Press. 186-187.

¹⁰ Ibid., 197.

¹¹ Ibid., 160-161.

accused of conspiracy against the host state. The issues were of course more likely to arise and to be more intense when between countries on differing sides of the religious divide. Often the practice of the religion of the diplomat would be illegal under the domestic law of the host state and make them further associated with political dissidence. However, the diplomat would also see practicing his faith as a higher responsibility, being God's law, and could even see spreading his faith and giving sanctuary to those who believed the same way as a responsibility of his post. The differences between the two sides were fueled by animosity and each was worried about even accepting a diplomat from the other, for fear it would be appointing an "enemy within," as Frey and Frey phrased it. These differences led to much conflict in this age, but in the end, they also "forced a reexamination and ultimately a reaffirmation of the necessity for diplomatic immunity."¹²

The right of chapel centered on the right – or lack thereof – for diplomats to practice their faith on embassy grounds and the further ability to allow local citizens to join them. England's troubles with Spanish ambassadors in the late 1500s provide a clear example of the tension that resulted from the uncertainty in this area. England had outlawed the hearing or saying of mass. Catholic diplomats attempted to use diplomatic immunity as justification to allow both themselves to hear mass *and* to enable local English Catholics to circumvent the laws by joining them. Spanish diplomats went so far as to commission special back doors into their buildings to allow secret access for locals and to hire chaplains who could also speak English. The English government unsuccessfully attempted to curtail this activity by asking foreign diplomats to bar

¹² Ibid., 197.

English Catholics from entering the embassy and by arresting people caught leaving them. While the laws often applied to those leaving the privileged place of the diplomatic embassy, zealous officials would sometimes trespass on the grounds to arrest English Catholics, causing fights with the servants and diplomatic incidents. These skirmishes were not small, and to give an idea of scale, an Easter mass in 1615 amassed between eight and nine hundred Englishmen, making the debate over the right of chapel impossible to ignore.¹³

The confessional differences “stretched the bounds of immunity” and forced states to confront the issue head on. As experience showed reactions to breaching embassy grounds could often be violent, the antagonists eventually, through necessity, began to seek some accommodation. States started granting more space to the grounds themselves, focusing laws on the areas around the embassy rather than the building itself to avoid more volatile scandals and conflict.¹⁴ The embassy chapel question also paved the way for powers to accept the fiction of extritoriality, as was described in the chapter on theory. As a reminder, the fiction of extritoriality was the act of legally treating the land of the embassy as foreign territory to avoid the awkwardness of applying local law to visiting diplomats. It was an expedient way to grant diplomats the protection necessary for the conduct of international relations, making it as much a requirement of survival through coexistence as a legal fiction.¹⁵ This theory granted a basis for existing practices

¹³ Ibid., 170-180.

¹⁴ Ibid., 160.

¹⁵ Ibid., 196.

as the political world evolved away from a common conception of Christian morality to a more territorial-based and secular law for diplomatic justifications.

The inviolability of diplomats' persons was both questioned and ultimately upheld during the Reformation. The documents of this day demonstrate the systematic dehumanization of the opposition, with each side calling the other barbarians or heathens. Just as in the times of the Roman empire or with the Mongolians, this dynamic led to an erosion in civility. With this erosion of civility, communication between states of opposing faiths became barely possible, but only carefully and with the assurance of diplomatic security.

The Mendoza incident is a good case study in which a state chose the expulsion of a diplomat rather than harsher actions, ultimately upholding diplomatic immunity. Don Bernadino de Mendoza was a scholar, soldier, and diplomat who was appointed as the Spanish ambassador to England in 1578. He was a devout Spanish Catholic, who was viewed with great suspicion and even hatred by many Englishmen. He did little to counteract this view, and consistently complained of the falseness, fickleness, and insincerity of the "evil minds" of the English court. He even lost his temper with Queen Elizabeth on one occasion, retorting in a fit of anger that cannon might make her hear him better. The English sentiment seemed justified when Mendoza was implicated in various conspiracies against the English government, including a particularly egregious one to overthrow the current Elizabethan regime. Even though his participation was undeniable, the key point here is that England did not kill or imprison him, despite a direct insult to the head of the state. Rather, England only expelled him from the country, holding to past practices and upholding the inviolability of diplomats. This was also a

more expedient action, as it solved London's problem without risking its own diplomats in a future incident that might invite reciprocal action by Spain or another country. The expedient solution in this case became precedent for future juristic arguments for total immunity.¹⁶

4.3 The European Stage

As the Reformation neared its end, the next great debate on the diplomatic arena centered around territorial rights, particularly on the European stage. Again, we see emphasis shifting from religious justification to a legal basis. While the diplomatic network had contracted in the upheaval of the Reformation, it recovered and grew in this era, with the late 17th century later becoming known as the beginning of the golden age of diplomacy.

Armand Jean du Plessis (1585-1642), known as Cardinal de Richelieu, is credited with being “the most important single figure” in consolidating French power and aiding the transformation of France into a centralized state. Richelieu was a practical politician and also something of a perceptive observer of political life, with most of his works focusing on the needs of Louis XIII, king of France in the late sixteenth and early seventeenth centuries. Richelieu began his time as chief minister when France was weak. The kingdom was not ready to challenge Habsburg dominance, as Habsburg dominions extensively bordered and almost surrounded France. Years of war, religious turmoil, and bitter domestic conflict had weakened France's finances, military, and foreign policy institutions. Therefore, the first decade or so of his appointment was occupied with strengthening the state administration, tempering heated domestic divisions, and

¹⁶ Ibid., 167-169.

solidifying the monarchy's power by crushing threats. His tactics against the Habsburgs tended to be oriented to the long-term goals of exhaustion, harassment, and solidifying other alliances – at times in opposition to Catholic zealots who disliked any alliances with Protestant powers.¹⁷

Cardinal Richelieu did not content himself with employing several negotiators for one and the same affair; he often divided the secret of his designs between them and he set many wheels a going in order to accomplish them. Besides the public ministers which he sent into each country, he often kept their secret agents and pensionaries, natives of the same country, who gave him advice of everything that passed there, without the knowledge and participation of the King's ambassadors, who often knew nothing of the commissions of those emissaries. And they sent him an account of the conduct of the King's ambassadors, as well as of the transactions in the court where they resided, by which means nothing escaped his knowledge, and he was in a condition to set the ambassadors right, when they failed in anything, either by their bad conduct, or for want of penetration.¹⁸

By strategically utilizing diplomats in this way, Richelieu was able to garner enough information to garner France greater influence in its political relations.

Richelieu's influence on France also came at a critical time in the evolution of diplomatic practices. Previously, diplomatic missions tended to be created on an *ad hoc* basis, created for a single purpose and disbanded when completed. The subsequent implementation of a continuous negotiation model – by way of the resident diplomat – was a newer practice. Both Richelieu and later Callières were convinced of the necessity of maintaining this practice and the broad range of benefits afforded to any state who did so.

¹⁷ Rehman, Iskander. (2019, June 25). *Raison d'Etat: Richelieu's Grand Strategy During the Thirty Years' War*.

¹⁸ Francois de Callieres. (1994). *The Art of Diplomacy*, eds. H.M.A. Keens-Soper and Karl W. Schweizer (Lanham, MD: University Press of America). 182.

Callieres served as a diplomat under Louis XIV and penned several well-respected books on diplomacy.

Richelieu's *Political Testament* devotes an entire chapter to outlining the benefits of continuous negotiation. He goes so far as to say that the benefit from this practice is "unbelievable unless it is known from experience."¹⁹ He himself took five or six years in Louis XIII's employ to realize this truth, but he became "so convinced of its validity" that he now asserts, "it is absolutely necessary to the well-being of the state to negotiate ceaselessly, either openly or secretly, in all places . . ."²⁰ The only qualification he places on these benefits is the need to have negotiations conducted "with prudence;" he sees benefits from negotiations regardless of location, time, or initial perceived utility.²¹

Continuous foreign negotiations are a practice with low risk and potentially high reward. Richelieu describes negotiations as "innocuous remedies which never do harm."²² This practice gains a great deal of information for diplomats, which is then passed on to the king. All this information grants foresight, or the ability to anticipate future events and therefore shape a more favorable environment for the state. Richelieu emphasizes the necessity of foresight to good government, stating that "Nothing is more necessary in governing a state than foresight, since by its use one can easily prevent many evils which can be corrected only with great difficulty to transpire."²³ By way of analogy, preventing a disease has a lower cost and lower risk than curing a disease already

¹⁹ Hill, Betram (ed.). (1961). *The Political Testament of Cardinal Richelieu: The Significant Chapters and Supporting Selections*. Madison, WI: University of Wisconsin Press. 92.

²⁰ Ibid.

²¹ Richelieu, Cardinal (1585--1642). (2012). In G. R. Berridge, & L. Lloyd, *The Palgrave Macmillan Dictionary of Diplomacy* (3rd ed.). Macmillan Publishers Ltd. Credo Reference. 92.

²² Ibid., 93.

²³ Ibid., 78.

acquired. Foresight combined with vigorous action enables a king to act at the moment of greatest advantage for the state.

To gain foresight effectively takes great occupation and uninterrupted attention, which is why relaxation is almost impossible for the best public officials. However, as a reward, the citizens can sleep without fear and profit from this devotion, as public officials can nip problems in the bud with less risk and energy than if they had to tackle the problem in full bloom. This lowers risk and allows one to choose the moment that would yield the greatest benefit:

He who negotiates continuously will find the right instant to attain his ends, and even if this does not come about, at least it can be said he has lost nothing while keeping abreast of events in the world, which is not of little consequence in the lives of states.²⁴

While experience proved the value of continuous negotiations to Richelieu, common sense also shows the advantages of continuous negotiations. Not only does the proximity of bordering states give them the chance to cause trouble, but it is also evident that neighbors can be a beneficial buffer to one's own walls/ borders. Ambassadors gain an advantage for their state by staying in constant communication at minimum, and on good terms if possible. Therefore, the job of a diplomat is a never-ending one, which filled in the gaps left by laws and treaties, and requires art as much as science, theory as much as specific practice.

While the shift away from so-called confessional politics lowered some tensions, the state system is inherently competitive, and its entry into the scene necessitated constant vigilance amongst the members of the system. Richelieu and Callières agreed that the stability of this system would rely heavily on continuous negotiation, as

²⁴ Ibid., 93.

facilitated by diplomats. In this scenario, diplomats hold an important role, with these two thinkers and practitioners seeing them as pilots through an uncertain time.²⁵ The lowering of tensions from the Reformation period combined with the increased diplomatic demands as residential embassies took place led to an expansion of the diplomatic network.

4.4 Vienna Convention on Diplomatic Relations (1961)

The expanded diplomatic network combined with legal treaties solidified how modern diplomacy would operate in the 20th and 21st centuries. The current age is defined largely by the legal and juridical steps taken to codify international practices, and specific events are closer to modern memory than those previously documented in this work. Therefore, rather than documenting recent history, I shall instead examine the key legal treaty that defined the practice of diplomacy in the 20th and 21st centuries: the Vienna Convention on Diplomatic Relations of 1961.

The shape of diplomatic immunity as understood and practiced today is defined by the VCDR of 1961. This international treaty, ratified by 190 states, codified the practices of diplomatic relations among sovereign states to date. From its beginning line of “*Recalling* that peoples of all nations from ancient times have recognized the status of diplomatic agents” to the signatures at the end, diplomatic immunity and the protection of the property, mission, and people are paramount. Given the sheer number of signatories and the diverse backgrounds they represent, this international treaty was clearly a matter of utmost importance and the product of overlapping consensus on the essential

²⁵ Frey, Linda, and Marsha Frey. (1999). *The History of Diplomatic Immunity*. Ohio State University Press. 215.

privileges and protections required by diplomats. Diplomats need the freedom given by diplomatic immunity to promote the image and reputation of their home country, to facilitate non-violent talks between states, to expand friendly relations, to decrease danger of conflict, to promote interests, and to gain information without fear of persecution.

The VCDR outlines definitions of the different roles in embassies (Article 1) and the official functions of diplomatic missions (Article 3). It details exactly how a state may appoint diplomats (Article 4, 6, 7, 9) and how states may in turn refuse these appointments for any reason and at any point before or during service (Article 4, 9). As per Article 2, “[t]he establishment of diplomatic relations between States, and of permanent diplomatic missions, takes place by mutual consent.” The VCDR reiterates throughout the need for mutual agreement between parties and codifies the right of states to reciprocally respond to one another. For example, Article 9 grants all receiving states the right to declare any member of any diplomatic staff as *persona non grata* (or PNG). There are no stipulations on this right, with the article explicitly stating that the host state may do so “at any time and without having to explain its decision.” The VCDR also covers how states should determine the size of missions (Article 11), codifies procedures for how heads of missions will begin their terms, and establishes precedence (Articles 15-18) and rights of succession within a mission (Article 19).

The rights of inviolability begin in Article 22, which covers the premises of the mission. Article 22 establishes that the premises of the mission are protected from unauthorized entry by host State officials, which includes being immune from “search, requisition, attachment or execution.” It further prescribes an active duty of the host state

to protect the premises from such intrusions or damages. As noted earlier, since the VCDR is created in alignment with the functional necessity framework, the inviolability of the grounds is based upon the need for protection in order for diplomats to fulfill their duties. Articles 24 and 27 also makes all archives and documents of a mission inviolable “at any time and wherever they may be.” Article 27 goes into particular detail to establish the definition and protection of diplomatic bags and couriers. Despite being one of the longest articles in the VCDR, the diplomatic pouch is still a hot topic of consternation amongst states, with debates ranging from the legality of using metal detectors to the misuse of them for drug or human smuggling.²⁶

Article 29 deals with the immunity of the person of diplomatic agents, stating:

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.

Again we see direct harm forbidden *and* a positive duty for the host state to protect diplomats residing in their countries. Article 31 specifies the broad scope of immunity in its prohibition of “arrest and detention,” granting diplomats immunity from criminal jurisdiction with no exceptions and immunity from “civil and administrative jurisdiction” with only three exceptions.²⁷ Even if a diplomat is involved in a case that falls under one of the three exceptions, any measures taken against must be consistent with their personal inviolability and residential inviolability (Article 31, Section 3).

²⁶ Cable, Floyd. (2016). Personal Interview.

²⁷ Article 31, Section 1, a-c, states that a diplomat does not have immunity in civil matters regarding a) private immovable property they hold in the host state, b) private succession matters where the diplomat is an executor, administrator, heir, or legatee of a will, and c) actions connected to private/commercial matters the agent exercises outside of his official functions.

Section 4 of this article specifies that diplomatic immunity does not exempt diplomats from the jurisdiction of their home state, and it is here that we see the lines drawn by a functional necessity framework. The person of a diplomat must be inviolable from restraint and misuse of legal channels to function, but once the diplomat has returned home and is no longer in a position of actively representing the state, then there is no reason why he or she should be exempt further from their prosecution and, if convicted, punishment by the state.

Diplomats would face legal liability in a host country only a) if they were engaged in private activities that fell under the three exceptions of Article 31, or b) if the sending state expressly waives their immunity per Article 32. A waiver must always be express, but either the host state may request it or the sending state may offer it in matters of international concern. Article 32, Section 4 does note that any granted immunity waivers allowing the diplomat to be tried under the host state's jurisdiction is not an automatic agreement to waive immunity for execution of judgment. The right to try is separate from the right to punish, and the host state would have to secure a second waiver to inflict any penalty.

Article 41 could be entitled the “do not abuse” article of the VCDR. Section 1 states that “it is the duty of all persons enjoying such privileges and immunities to respect the laws and regulations of the receiving State” as well as a duty not to interfere with its internal matters. However, this duty is “[w]ithout prejudice to their privileges and immunities,” meaning one cannot argue that a violation of their duty also necessitates a withdrawal of their immunity per the VCDR. The article on the duty of diplomats does not provide specific punishments or recourses for those who fail in this duty, other than

the steps already outlined in previous articles. Rather, the VCDR leaves it to the enshrined options of PNG and waivers, leaving any further enforcement to the discretion of the host state and bilateral agreements. Since all States are granted the ability to deny the appointment of a diplomatic agent or to end the diplomatic appointment of an agent at any time and for any reason, the VCDR does not include any escape clause, as it were, identifying any further way in which the actions of a diplomat in violating a prescribed duty could open the way for any other legal consequences for the offender.

A recent academic discussion between Georgia Beatty and Ben Keith sums up the contemporary status of diplomatic immunity. In this discussion, Beatty states that diplomatic immunity is a “key principle of international law” that “protects the agents of a foreign state from the criminal and in some cases also the civil jurisdiction of the receiving state.” The immunity codified in the VCDR exists primarily to protect the state, not the individual who benefits from it.²⁸ She also properly notes that state sovereignty is fundamentally linked to immunity:

Now the foundation of state immunity stems from the principle of sovereign equality on the international stage. All states are considered to be equals and therefore no state has the right to judge the actions of another state. This of course extends to diplomats themselves.²⁹

It extends to diplomats because 1) they act on behalf of their state, and 2) the ability of states to conduct international relations would be hindered if their agents were liable to be arrested or prosecuted.

²⁸ 5 St Andrew’s Hill. (2020, May 21). *5SAH - Anne Sacoolas - Extradition, Interpol and diplomatic immunity unravelled*. YouTube. 2:50-3:09.

²⁹ Ibid., 3:11-3:38.

The protections offered in the VCDR, such as the extension of immunity to the diplomat's family, are also designed to protect the state. Article 31 grants diplomatic agents immunity from the host state's criminal jurisdiction, while Article 37 extends that to members of the diplomatic agents' households. The policy reason for Article 37, according to Georgia Beatty, is "to do with protecting the state" again. The arrest or prosecution of family members "could be used as leverage against the agents of the states, and it would overall impede...their ability to engage in international relations." So we see here again that protection of the family serves the broader policy "of protecting the state itself and preserving its ability to properly engage in international relations."³⁰ It is designed to prevent any abuse of power that might leverage personal connections to put state secrets at risk or undermine the conduct of state policy. It protects the status of agents in a foreign state so they can do their jobs on behalf of their states.³¹

The main theoretical basis of the VCDR is thus functional necessity. It also bears repeating that diplomatic agents typically have two types of immunity, as codified in the VCDR and enacted in practice. First, diplomats have personal immunity, which is explicitly stated in the VCDR. Personal immunity is absolute personal inviolability, which means the diplomat (or a family member) cannot be arrested or prosecuted for any official or private act. This form of immunity, also called *ratione personae*, is attached to the office holder. Once diplomats leave office, they can no longer rely on immunity. Protection covers them only during their time in office. The second immunity is a functional immunity known as *ratione materiae*. This form of immunity attaches to the

³⁰ Ibid., 4:25-4:50.

³¹ Ibid., 5:07-5:26.

act itself, so long as it is an official act of state. Diplomats' immunity for their *official* acts is therefore extended indefinitely, even after they have left office. Beatty summarizes the implications of this reasoning: "...in office, they are essentially untouchable.

However, once they leave office, they can be prosecuted for acts committed during their time in office, but only those which were committed in purely private capacity.”³² While no article in the VCDR explicitly outlines the logic of *rationae materiae*, it is derived from practice and the consistent protection granted to official acts within the entire treaty. Perhaps the most explicit case of *rationae materiae* reasoning can be found in Article 38, which details the extent of privileges granted to diplomats who are also a permanent resident or national of the host state. Such a diplomat enjoys jurisdictional immunity and inviolability only for “official acts performed in the exercise of his functions.” The primary concern of this article was that any jurisdiction exercised by the host state must not “interfere with the performance of the functions of the mission.” The functionality of the mission is the foundational basis of the VCDR, and it is from this basis that the discussion of personal inviolability and functional immunity arises.

While the demarcation between official and private acts may be easy to discern in the case of the locals discussed in Article 38, it is not so easy to differentiate which actions, if any, qualify as private when a diplomat is a citizen of the sending state and operating in a representative capacity. Diplomats tend to see their jobs as public roles and assent that many of their colleagues do so as well. Maureen Mimnaugh (FSO) and Kim Shaw (Deputy Cultural Affairs Officer) granted personal interviews in which they contended that as a public figure, a diplomat does not really have private actions. It is

³² Ibid., 5:46-6:46. 6:47-7:02.

very difficult to discern what is private because even when diplomats behave innocuously, they can still be recognized as they go about their daily lives. Shaw recalled that in her service in Morocco, even wearing shirts with no English print and local style was not enough to blend in. Diplomats working with visa services were often recognized because they either helped or stopped individuals and their families seeking to emigrate to the U.S. Minnaugh seconded this experience, sharing how once she was simply at the grocery store when she was stopped and asked why she had refused a particular visa. Any actions such officials take, even while technically on private business, can also have an impact on the local opinion of the state they represent.³³ Therefore, diplomats are taught to be aware of their behavior while out and about as representatives of their country. As an example, Shaw notes that if a diplomat visibly gets drunk even on a night when he or she is technically off duty, it can be an embarrassment to the country. It can even have major implications for relations between the home and host states if the host culture dislikes alcohol or if the diplomat injures someone while drunk.³⁴ Floyd Cable, Diplomat in Residence for Texas, worked locally in the United States at the time of our interview and corroborated the views of Minnaugh and Shaw. He noted that diplomats working overseas are more public than many other jobs are. He stated, “When we are overseas, our understanding is that we are on duty 24/7. When someone engages in bad behavior, that can reflect badly on our diplomatic service and on our country.”³⁵

³³ Minnaugh, Maureen (Mo). (2016). Personal Interview.

³⁴ Shaw, Kim. (2016). Personal interview.

³⁵ Cable, Floyd. (2016). Personal Interview.

In a personal interview, Evan McCarthy (Diplomatic Liaison Division Chief) stated that the VCDR is a legal treaty that has stood the test of time. It is also a monumental task to get the majority of sovereign states to agree on a single test. Given the difficulty of negotiating and ratifying any treaty in the first place, there is great reluctance to touch a treaty that is working: “That’s how international law works.” By way of analogy, he likens the VCDR to the Force from the Star Wars movies, saying “they flow through everything and bind us.” He asserted that without the VCDR, the current system of inter-state diplomacy simply would not work.³⁶ J. Craig Barker, author of *The Abuse of Diplomatic Privileges and Immunities: A Necessary Evil?*, states, “Diplomatic methodology has changed little since 1961. While the use of the summit as an institution of international intercourse has undoubtedly increased over the last 25 years, the ambassador and his staff remain the linchpin of the whole system of diplomatic relations.”³⁷

4.5 Chapter Summary

Diplomatic immunity is granted to protect diplomats from danger and persecution in foreign lands; such protection is essential for a diplomat to do his or her duty, and thus for international relations to be carried on in an orderly way. As mentioned in the introduction, a common concern is whether immunity instead protects and perpetuates injustices committed by corrupt diplomats. The tales of corrupt diplomatic acts can be found on a scale starting with the eighteen million dollars in unpaid parking tickets in the

³⁶ McCarthy, Evan. (2016). Personal Interview.

³⁷ Barker, J. Craig. (1996). *The Abuse of Diplomatic Privileges and Immunities: A Necessary Evil?* Dartmouth. 30.

U.S. and steadily grows more horrifying from there. Drug smuggling, human trafficking, murder, drunk driving, extortion, shoplifting, and abuse of families and employees are common if sensational stories that arise when diplomatic immunity is discussed.

Yet, diplomatic immunity remains an essential privilege, as shown in the historical development of diplomatic immunity. The current practice of continuous negotiations (to the extent made possible by geography and evolving technology) and diplomatic protections has evolved by necessity, even between and across disparate cultures. Even those trying to change the game or reject “traditional” diplomatic practices, such as diplomats serving the governments of the French Revolution, eventually return to these realities. Accountability of the diplomat is always a consideration, as these protections are designed to protect the interests of the powers, not to grant a subset of the world population a free pass to criminal activity. However, the responsible party with the right to hold diplomats accountable varies depending on the system. For example, in Medieval Christendom, any Christian ruler might assert a duty to uphold natural or divine law, to which even diplomats could be held accountable anywhere. But in the modern system defined by territorial sovereignty, the right can only be jealously guarded by the sending state. Although international courts and social movements (such as the ICJ or social justice warriors) provide countervailing claims to this right, they do not currently have the force or authority to wrest it from the state. However, the state can and often is pressured into action by these institutions, particularly ones fueled by public opinion, which will be examined in the chapter on communication.

Diplomatic immunity is understood today as a legal matter and rests on the Vienna Convention on Diplomatic Relations of 1961. It has provided order and stability

for 60 years. The reason for this stability is due to the realities that a) diplomatic immunity is a requirement for international discourse, and b) the VCDR specifically addressed issues in its enforcement by codifying best practices. Current diplomats reacted viscerally to the suggestion that the VCDR should be amended; their livelihood is steeped in negotiation, and they are aware of how difficult it would be to get states to agree to any changes. Given the sheer number of signatories and the diverse backgrounds they represent, this international treaty was clearly a matter of utmost importance and the product of overlapping consensus on the essential privileges and protections required by diplomats. While the existence of diplomatic immunity has been consistent in international systems, changes to its scope have always coincided with major changes to the system itself. These changes often coincided with turmoil, and thus it is no easy feat to suggest changes to a principle that reflects the ruling structure of the time.

The endurance of diplomatic immunity despite the many violations of its spirit points to a consensus that the ability to have a means of communication among the political entities of a time is a benefit that outweighs the costs of its misuse. History, theory, and practitioners are all in alignment as to its important role in international security. However, calls to adjust the scope of diplomatic immunity are renewed with every publicized story of injustices committed by diplomats. Now that the survey of *how* the current version of diplomatic immunity evolved is concluded, focus will turn to contemporary challenges to diplomatic immunity in media portrayal and popular opinion.

CHAPTER FIVE

Contemporary Challenges to Diplomatic Immunity

Having in mind the purposes and principles of the Charter of the United Nations concerning the sovereign equality of States, the maintenance of international peace and security, and the promotion of friendly relations among nations...”

- Preamble, Vienna Convention on Diplomatic Relations, 1961

Having established the theory of and historical practice of diplomatic immunity, we are now equipped to engage questions about the current scope of diplomatic immunity in the Digital Age. Thus, I will now turn our focus to the impact of recent developments in communication technology on diplomacy. In this chapter, I will explore the framework and challenges brought about by communication networks and the increased influence of public opinion. I will review how technology has affected the roles of states and individuals and the implications of these changes on future controversy over diplomatic immunity. I will share the Foreign Policy Association’s evaluation of public perception when it comes to diplomatic immunity, and then I will review news and entertainment media portrayals to see whether they support his evaluation. I will end the chapter with an analysis of the Anne Sacoolas – Harry Dunn case, with a narrow focus on reviewing media portrayals and individual action rather than judging the facts in this ongoing case. Ultimately, I will aim to show that the challenges faced in this age considerably raise the risks of attempting to adjust the VCDR of 1961 and would challenge the sovereignty of the state. This will support my ultimate argument that the current codification diplomatic

immunity should be preserved and other mechanisms can and should first be utilized in cases of diplomats' misconduct.

5.1 The Relationship between Communication and Diplomacy

Diplomacy in essence is effective communication, and thus the innovations of the Information Age had a direct impact its practice. James (Jim) Dobbins, former American diplomat and member of the American Academy of Diplomacy, chose to begin his 2017 book *Foreign Service: Five Decades on the Frontlines of American Diplomacy* with a description of how developments in communication (and travel) technology have influenced diplomacy:

The face and modalities of diplomacy have changed a great deal since I first went abroad as an American representative nearly fifty years ago. Travel is now by jet plane, not steamship. Contact between responsible officials is often direct rather than through local intermediaries. Text, voice, and even visual communications are instantaneous, nearly always available, and essentially cost-free. These developments speed individual transactions, but they also add complexity to the system. There are many more nodes on the network than there used to be, and at the most basic level, there are many more countries.¹

Basically, Dobbins is pointing out the significant increase in human connection - and the speed of that connection - in the past fifty years alone. While these developments have introduced many efficiencies, such as the ability for diplomats to communicate with colleagues over smartphones and therefore have more time with family, they have also made other aspects of the job more difficult and uncomfortable. For example, international travel used to be such a rarity due to the time and difficulties involved that governments could afford to make it a luxurious experience for diplomats. As more and more officials traveled, the prices decreased, and the discomfort increased. The lower

¹ Dobbins, J. F. (2017). *Foreign Service: Five Decades on the Frontlines of American Diplomacy*. Brookings Institution Press. xiii-xiv.

cost of travel also meant more assignments in dangerous and distant places for employees.²

The advantages of instantaneous and affordable connections between nations are self-evident. For example, negotiations can now take place in real time, and high-level officials can appeal directly to other leaders and to local audiences. However, our modern communication network also requires bigger and more complex offices to handle the increased load of information. The system led by the Secretary of State in the United States of America is “in near constant motion” and suffers much wear and tear as a result. The bulkier staff and their constant motion create opportunities for outside actors (like the news media, corporations, and the public) to influence State Department behavior. The twenty-four-hour news cycle, in particular, “compel(s) reactions without time for reflection.” The action-reaction nature of this relationship can trigger a negative cycle of behavior. It may start with the State Department taking a controversial stance, which is then aired immediately in the news cycle, which then prompts a quick reaction by another government, which is then put under further scrutiny, and so on it continues. Even if the initial trigger is a necessary or misunderstood action, the immediacy that defines the current news cycle is the driving force. There are benefits to this increased scrutiny, including increased accountability of government behavior. However, it is not always prudent for a nation’s foreign policy to be reactive to domestic pressures nor for it to be so transparent to other countries.³ Secrecy is often necessary in the conduct of successful

² Ibid., xiv.

³ Ibid., xiii-xiv.

diplomacy.⁴ Additionally, the true “face of diplomacy,” as Dobbins called it, is the “usually incremental and often painstaking process by which nations move and are moved.”⁵ The need for immediacy in the current news cycle is at odds with the perennial need for deliberate movement in diplomacy.

However, Dobbins cautions that developments in communication have altered the actual nature of statecraft “less than one might think.” He elucidates, “Diplomacy is still largely about getting other governments to do what your government wants, and all governments are made up of people.” The first steps are always to find the right people with influence, establish a degree of mutual trust, and then to maneuver through one’s government to secure the necessary resources to achieve objectives in the other government.⁶ Communication technology simply expedites these processes. Therefore, the impact of technological developments on diplomacy is more evident in the examination of external pressures exerted through the scrutiny of the news and the public rather than in the examination of the impact on internal diplomatic processes.

5.2 Influence of Technologically Empowered Public on the State

The creation of the Internet began as a defense research project, but its popularization quickly added a new dimension to social and political life, like the Guttenberg printing press⁷ and television before it.⁸ While the Internet can and has

⁴ Ibid., 39.

⁵ Ibid., xv.

⁶ Ibid., xiv.

⁷ Owen, Taylor. (2015). *Disruptive Power: The Crisis of the State in the Digital Age*. Oxford University Press. 22-23.

⁸ Ibid., 3.

facilitated power struggles between states, such as the alleged Russian influence in recent American elections, it has also granted individual and ad hoc groups the ability to exert control at a level previously monopolized by the bureaucratic, institutional model of states. Individuals can gather into groups defined by a common interest, and these networks in turn can influence domestic and international politics.⁹

Throughout *Disruptive Power: The Crisis of the State in the Digital Age*, Taylor Owen shows how the introduction of the Internet into society challenges state sovereignty, in part because the Internet allows nonstate actors to have widespread influence on others without the historical constraints that have developed around state behavior.¹⁰ The hierarchical organizations of the state evolved with safeguards to slow political action, for the sake of adhering to the law and increasing accountability.¹¹ The institutional structures that were useful to the 20th century international community were built on an industrial model with centralized power and information; the 21st century community has been largely defined by digital access, decentralization, and huge leaps in computational power.¹²

In 20th century politics before the Internet, states were better able to shape the political narrative in media releases, in essence controlling the information the public and other states had. Even the information that was out of their control was somewhat predictable, enabling them to prepare counter news releases and manage the public

⁹ Ibid., 3-4.

¹⁰ Ibid., 9.

¹¹ Ibid., 190-191.

¹² Ibid., 189.

reaction. While news media can and did circumvent this control with investigative journalism, the cost of labor, time, and sometimes social standing could be high. Nowadays, anyone with a phone can quickly share information with minimal restriction. For example, Vice News and BuzzFeed have reported from the front lines of warzones, and individuals like Edward Snowden are able to share highly classified information directly with citizens.¹³ This information can then be disseminated in an equally fast manner, with the news cycle rewarding those who “break” the news first, and then posting “updates” if fact-checking proves any previous releases were not true. The nature of these networks is such that the ability for states to filter the source of information as in previous years has vanished; every five minutes, the world produces “enough data to fill a Library of Congress.”¹⁴ The State Department cannot grow fast enough to filter that amount of data in a meaningful way. Therefore, the power of information once held by the state shifts into the hands of external actors, such as Anonymous, WikiLeaks, or any number of viral movements.¹⁵ States and other international institutions are being forced to adapt, and some adaptations are more ethical than others. For example, autocratic regimes like North Korea or the PRC have been known to limit the Internet’s availability and to police posted content by their citizens, through systems such as Blue Coat Systems, Gamma International, and FinSpy.¹⁶

¹³ Ibid., 110-111.

¹⁴ Ibid., 42.

¹⁵ Ibid., 34-35.

¹⁶ Ibid., 10-11.

States can also adapt by incorporating Internet networks into their politics, such as the way the State Department has engaged in the soft power of public and digital diplomacy. Soft power, a concept attributed to Joseph Nye, is where an actor convinces others to want the same thing as the original actor, rather than forcing or incentivizing them into a behavior.¹⁷ Public diplomacy is when governments engage in educational media campaigns, academic and cultural exchanges, and direct engagement with a foreign public to communicate and frame policy. Digital public diplomacy is simply achieving those ends through digital means, such as when an ambassador tweets directly to citizens of the host country. Owen quotes the State Department as saying, “The role of new media in public diplomacy has gone from virtually non-existent to standard practice.” Indeed, as of the summer of 2014, Owen noted that the State Department ran around 405 social media pages.¹⁸ This commitment to digital diplomacy has only grown since then, as evidenced by a public document called Global Social Media Presence that was last updated on January 26, 2021. Today, the State Department has over 2,200 accounts, including 12 Flagship Accounts, 199 Domestic Accounts, and over a thousand regional accounts based in embassies around the world.¹⁹ These accounts include

¹⁷ Ibid., 154.

Jr, J. S. N. (2005). *Soft Power: The Means To Success In World Politics* (Illustrated edition). PublicAffairs.

¹⁸ Owen, Taylor. (2015). *Disruptive Power: The Crisis of the State in the Digital Age*. Oxford University Press. 158.

¹⁹ About Us - Office of Global Social Media. (n.d.). *United States Department of State*.

Department of State Social Media Sites: Domestic Accounts. (n.d.). *United States Department of State*.

Global Social Media Presence - United States Department of State.

platforms such as Instagram, Twitter, Facebook, Flickr, LinkedIn, Snapchat, and YouTube.

While the benefits of online engagement include fully leveraging the networks and technologies of the day to complement traditional diplomatic means, they also require incorporating anonymous participants, using platforms also used by criminal organizations, and forgoing the ability to filter out undesirable actors (ex: Anonymous) from diplomatic conversation. The State Department continues to increase digital engagement with both the domestic and foreign public despite risks since it must react to “fundamental shifts in the structure of information systems in modern societies.”²⁰ Owen goes on to claim that state participation in the online world will ultimately undermine its ability to act efficiently and consistently in its broader foreign policy, but that is a problem he relegates to the future, and so too shall we for the scope of this paper. Suffice it to say that the communication landscape has changed fundamentally how individuals engage one another politically, and the traditional holders of power have also been forced to respond and adapt (with varying degrees of effectiveness) to this change. The power of the state has been challenged by networked actors, and much of its power to inform and galvanize its population has been shifted to the network and the people who use it.²¹

5.3 Popular Media and Public Perception of Diplomatic Immunity

While the influence of networked citizens has grown, the public perception of diplomatic immunity is shaped by a narrow narrative in popular media. Popular media,

²⁰ Owen, Taylor. (2015). *Disruptive Power: The Crisis of the State in the Digital Age*. Oxford University Press. 161.

²¹ Ibid., 30.

defined as entertainment films and shows, contribute to the discrepancy between complex reality and the public perception of diplomatic immunity, according to Cable. A famous example is the ending of the movie *Lethal Weapon 2*. The villain claims diplomatic immunity, but Danny Glover's character kills him anyway.²² Cable said, "That's what people think. That's what features in Hollywood."²³

The type of references to diplomatic immunity in popular movies and series confirm Cable's assertion. In Alfred Hitchcock's *The Man Who Knew Too Much* (1956), a couple on vacation in Morocco accidentally stumble upon an assassination plot. Their son is kidnapped to ensure their silence, and he is hidden in a local embassy. Due to the protection of the embassy by immunity sanctions, the couple cannot rely on the authorities to reclaim their child. Therefore, diplomatic immunity is used as a plot device to challenge the highly sympathetic main characters.

In popular dramatic television series, it is also a common trope to introduce diplomatic immunity as an episodic plot device. For example, in *CSI: Miami* S03E15 "Identity" (02/14/05), *NCIS* S08E15 "Diplomatic Immunity" (02/16/11), *Scandal* S02E04 "Beltway Unbuckled" (10/25/12), *House of Cards* S02E25-26 "Chapter 25" & "Chapter 26" (02/14/14), *Madam Secretary* S01E13 "Chains of Command" (01/11/15), *Castle* S08E11 "Dead Red" (aired 02/16/16), and *Criminal Minds* S11E19 "Tribute" (3/30/16), diplomatic immunity appears as a plot device in which an evil diplomat getting away with criminal activities.

²² Donner, Richard (Director). (1989). *Lethal Weapon 2* [Film]. Warner Bros. Silver Pictures.

²³ Cable, Floyd. (2016). Personal Interview.

The episode from *Scandal* goes even further, exploring the legal and social options for justice left to victims of abusers of diplomatic privilege. In this case, fictional character Olivia Pope is seeking justice for a murdered young girl who was last seen with a Kurdistan diplomat. She attempts first to have the President of the U.S. demand the Kurdistan government revoke his immunity so she can bring him to justice in the courts. When this proves difficult, she places the victim's parents on national TV to gain public sympathy and joins protests not as an official, but as a fellow mother. Although the Kurdistan government refused to lift his immunity, the U.S. is able to deport the perpetrator. In the end, a colleague tries to comfort the main character, Olivia, telling her that she did good work on the case, which does not comfort her.²⁴ This episode highlights that even in more nuanced approaches to diplomatic immunity, the overarching themes are dissatisfaction with the system, a lack of context for diplomatic immunity beyond its abuse, and an inclination to utilize news and social media to rally where the courts fall short.

As a second example, *Castle* is a crime drama that follows the exploits of a New York City cop and an author in search of inspiration who follows her around from case to case. The episode from *Castle* introduces the term "diplobrats," which is slang for the children of diplomats who are also protected by immunity. In this episode, a diplobrat is the victim of a murder, though the episode portrays his demise as no real loss, for he had led a decadent and above-the-law lifestyle before his untimely death. The investigation by the featured pair is complicated and frustrating as most of their people of interest have diplomatic immunity and on the whole refuse to fully cooperate. As a twist, the murderer

²⁴ *Belway Unbuckled*. (n.d.). *Scandal Wiki*.

turns out to be the diplobrat's father. Not as a twist, they are unable to prosecute him due to his immunity, and he taunts the main characters about this freedom in typical villain fashion. "Justice" is served not through the law, but by the efforts of a Russian covert agent who assigns the murderer to a desolate outpost for the remainder of his life.²⁵ This episode glosses over the context of diplomatic immunity, highlights the injustice of a man getting away with murder, and points to alternative sources of justice outside of the current system.

As a final example, *Crossing Lines* is a 2013-2015 TV show about a fictional unit formed under the International Criminal Court. Its members help track and solve crimes that cross national borders. The series is introduced with a two-part pilot episode about a diplomat serial killer using his immunity to get away with murdering women. For a show whose theme is the difficulty of obtaining justice in our current international situation, its choice for the pilot's villain is significant. The writers and producers clearly believed the topic would be a strong enough hook for their audience to ensure a second season.

As globalization and advancing technologies draw the world into the palm of our hands, the public, politicians, and elites of society alike are becoming more and more aware of the activities of diplomats around the world. The misdeeds of diplomats garner special attention, particularly when they can be classified in the sensitive genre of human rights violations, and this in turn fuels calls to hold corrupt diplomats accountable. The issue is not to make diplomats *accountable* in any court, however, for in the current system diplomats can technically be held legally accountable for crimes. Recall that diplomatic immunity is not a license to break the law of any land; jurisdiction over a

²⁵ "Castle" recap: The spy who hugged me. (n.d.). EW.Com.

diplomat is simply reserved to the home country, to be tried by the laws of his or her home country and by burgeoning international law. The possible paths are necessarily circuitous, however, as they must account for the sovereignty of states and the complications of prosecuting individuals representing sovereign bodies. For example, the host country can, at any time and without any explanation, declare a visiting diplomat *persona non grata* and therefore send the diplomat back to the home country without, in theory, diplomatic repercussions.²⁶ As a sign of good faith, the home country can then choose to put the diplomat on trial when he or she returns, but it is not required to do so. Another alternative would be if the diplomat's home country agreed to waive his or her diplomatic immunity, which would allow the diplomat to be prosecuted under the laws and in the courts of the host country. However, this waiver provides only that the diplomat may be judged; a separate waiver must be given for the judgment to be executed.²⁷

The slowness inherent in these paths and the uncertainty of a judgment that may or may not come to pass in a different land is often not sufficient for critics or victims of the current system. The certainty of a justice wrought by the victim's own country and under its own laws is more appealing to righteous anger than the mere possibility of its realization at the hands of the diplomat's home country, if indeed the home country would even risk its reputation to charge, try, and punish its own agent. With every

²⁶ Article 9, *Vienna Convention on Diplomatic Relations*. (1961). United Nations, Treaty Series, vol. 500.

²⁷ Article 32, *Vienna Convention on Diplomatic Relations*. (1961). United Nations, Treaty Series, vol. 500.

publicized story of injustice committed by diplomats and protected by immunity, more attention is turned to the cause of narrowing its focus.

5.4 Influence of the American Public on U.S. Relations

Due to the integration of digital technology into all levels of political interaction, including State Department practices, diplomats are under constant scrutiny. Rapid technological advancements are ushering in what Cathryn Clüver, founding Executive Director of the Future of Diplomacy Project at Harvard Kennedy School, called a “watershed moment for diplomacy.”²⁸ The widespread use of Internet-based platforms like Twitter and blogs alters both the fabric and the general perception of international relations. An individual or group can more easily speak to large audiences than ever before in history, which only expedites the mobilization process of people for political action. Therefore, one can examine how the realities of this interconnected world influence a) the public’s understanding of foreign policy, and b) the public’s impact on international relations. For the scope of this work, we can further narrow our examination to the public’s understanding of and impact on diplomatic immunity cases.

Many public officials believe the American public is presented a one-sided narrative about diplomats and diplomatic immunity. Further, they see little incentive for the narrative dynamic to change, given the conflicting natures of media and of the U.S. State Department’s mission. On one hand, the idea of people seemingly getting away with crimes qualifies as both newsworthy and an attractive plot twist in entertainment media. Popular and news media tend to provide more coverage of crimes that are seemingly protected under diplomatic immunity than to the more mundane efforts of the

²⁸ King, MacDara. (2016). *America's Diplomats*. The Orchard.

State Department to protect the public. On the other hand, diplomacy often dictates finding quiet solutions with minimal public coverage for the sake of bilateral and multilateral international relationships. The State Department may not want other states requesting similar concessions as granted to close allies; an incident may also be embarrassing, and its airing possibly damaging to bilateral relations with another country and prompting a retaliatory publication of a comparable incident. In addition, many policies exist that create accountability for diplomats in the context of international diplomacy, but their existence is simply not widely known outside of professional circles. A blind spot is thus created in the public's knowledge about the principle of diplomatic immunity.

This blind spot has historically existed broadly across countries and specifically within American history; however, the introduction of social media has introduced the chance for cases of diplomatic immunity to go viral. When the chance of going viral is combined with the social media facilitation of citizen mobilization, then the risk of public interference in diplomatic matters also increases. The decentralized nature of social media means its influence on international politics is unaccompanied by a corresponding sense of responsibility or restraint. The lack of overarching filters for accuracy or validity in social media posts means “the junk gets mixed with the brilliant observations,” according to Ambassador Thomas E. McNamara, current board director and former president of the Diplomacy Center Foundation.²⁹ Discernment between these two falls to the individual level, which recent viral trends show is not a consistent failsafe for

²⁹ McNamara, Thomas. (2016). Speech at Event.

truthfulness or relevance. Ambassador McNamara has described how social media have changed the international world in the following way:

In the past, states talked to states, leaders to leaders, newspapers to newspapers. Now, blogs and social media are competing, too, and traditional methods are losing to them. Therefore, this changes diplomacy. This is one of the great challenges we are facing in the future in the State Department. I didn't have to pay attention to this in the past ten years. Now we do.³⁰

One of the ways social media changes diplomatic behaviors is by amplifying the voices of social actors outside the state, such as Columbian guerillas or activist groups, during delicate negotiations. The more parties that have a seat at the metaphorical negotiation table, the more complex the negotiations, the more difficult it is to come to a meaningful resolution.

Former U.S. Secretary of State John Kerry also believes social media have made negotiations more complex, specifically the use of Twitter to directly interact with public officials such as the Pope and presidents.³¹ This phenomenon has playfully been termed "Twitter diplomacy" in professional diplomatic circles. With this direct, constant, and almost immediate connection, public misperceptions can have a tangible impact on public agendas.

The interaction of increasing influence of non-state actors on international politics with public ignorance of the necessity of diplomatic immunity creates a dangerous situation. A lack of understanding about the theory and practice of diplomatic immunity could lend force to proposals to change its parameters. However, diplomatic immunity is not an external attachment to diplomacy that can be manipulated without consequence.

³⁰ Ibid.

³¹ King, MacDara. (2016). *America's Diplomats*. The Orchard.

Rather it is an extension of diplomacy's fundamental principles, reflecting concepts such as nonintervention in domestic affairs and the sovereignty of equal nations. Any change to the current treaty would have a widespread and immediate impact upon the practice of international relations. Cultivating awareness that this blind spot exists is an important first step to ensure such movements do not gain ground without reflection.

5.5 Diplomats' Evaluation of Public Knowledge on Immunity

The FPA aims to educate the American public, helping them develop informed opinions on global issues. When it comes to the topic of diplomatic immunity, they are hindered in this mission by typical news coverage. This is due, in part, to the attempt by news media to integrate themselves into the changing communication landscape. In reaction to the times, newspaper, radio, and television stations have created new positions such as Social Media Coordinators, Social Media Managers, and Directors of Social Media Strategy. They also face pressure to meet the demand for immediacy fostered in social media platforms, which necessarily involves a potential trade-off in accuracy in at least the beginning stages of a story. News companies are also experiencing a shift in their framing power, as “viral” stories dictate news coverage due to the demands of the local and global audiences. All this combined with the fear of becoming obsolete creates an incentive to prioritize stories that are immediately relevant and increasingly sensational, to generate “clicks” and “hits.” In this information environment, the mistakes and misunderstandings that occur during diplomatic negotiations will gain attention because of the global stakes, while their solutions gain less attention as they often require tact, complex considerations, and sometimes secrecy.

I directly interviewed several members of the U.S. Department of State to get their perspectives on diplomatic immunity, diplomatic missions, and the impact of news cycles and public opinion on their work. Unless cited otherwise, the following information in this section is derived from these interviews. Their given titles are the ones they held at the time of the interviews in 2016.

Floyd Cable, Diplomat in Residence at the University of Texas, stated that U.S. diplomatic officials generally believe that the American public is not knowledgeable about the principle of diplomatic immunity; he agrees with this assessment.³² The protection that diplomatic agents receive from prosecution ensures their safety, prevents mistreatment, and facilitates constant communication among nations. Although corrupt diplomats can and do misuse this privilege to escape judgment for their crimes, such stories are exceptions that most of the world powers have deemed an acceptable cost for the benefits. “Diplomatic immunity is not about protecting [wrongful] actions,” said Joanne Cummings, U.S. Foreign Service Officer, “but about protection from the capricious actions of government.”³³ Foreign Service Officer Kim Shaw gave the following example in her interview: “Part of the reason for diplomatic immunity is to avoid instances of false retaliation and bogus charges. Like if Putin decides to kick U.S. diplomats out for whatever reason.”³⁴ Cable said the public does not understand the nature or importance of diplomatic immunity, instead thinking that it is regularly abused.

³² Cable, Floyd. (2016). Personal Interview.

³³ Cummings, Joanne. (2016). Personal Interview.

³⁴ Shaw, Kim. (2016). Personal Interview.

“When they do hear about it,” he said, “it fosters resentment. Because something is always done wrong when they hear it about.”³⁵

Stories in which a criminal is protected by diplomatic immunity tend to fit the current news criteria of sensational, immediate, and relevant. People pay attention to the injustice of foreign government officials “getting away” with injustices such as abuse, human trafficking, unpaid parking tickets, and murder. However, the institutional and diplomatic paths used to provide accountability and to protect the public from abusers of their diplomatic privileges are often ignored or overlooked, not being sensational or immediate, even if relevant. Cable explains that this trend causes the public to be aware when diplomats abuse their privilege of immunity, but they are not equally informed of the context in which diplomatic immunity is offered and practiced. For example, Cable notes that sometimes American diplomats must perform actions that earn them the displeasure of their host government in order to fulfill their primary role of pursuing U.S. interests. Were it not for the protection of diplomatic immunity, they would either not be able to achieve American interests or would most likely be harmed in the pursuit of them.³⁶

Cable said that comprehension of this principle requires an understanding of its history,³⁷ which is not a topic commonly covered in standardized education or a typical news cycle. Diplomatic immunity, as has been shown in this work, is a political necessity that manifests itself in almost every international system. The endurance of diplomatic

³⁵ Cable, Floyd. (2016). Personal Interview.

³⁶ Ibid.

³⁷ Ibid.

immunity through the ages, despite many violations of its spirit, points to a consensus that the benefit of communication among the ruling powers of a time outweighs the costs of its potential misuse. As it allows diplomats to pursue national interests with other countries, diplomatic immunity is also essential to national security. But the American public arguably does not see diplomats as a part of American security, assigning that role purely to the military. In a presentation facilitated by the World Affairs of Greater Houston on November 17, 2016, Ambassador McNamara makes such a claim. “Over the past 240 years, diplomats have been the first line of defense for American security. That comes as a surprise to most Americans. We have come to an era where Americans have devalued diplomacy.”³⁸ He noted that the military and diplomats form a partnership to protect the United States. Without the military, the diplomatic corps would be “sterile and infertile,” while conversely the military would be destructive without the guidance of diplomacy. As that balance is lost, American security suffers. McNamara also believes that, in addition to not fully comprehending the role diplomats can and should play in U.S. security, “the American public does not understand the dangers their diplomats face.” He noted that relative to the size of the two institutions, the chance of violent death is eight times higher for members of the FSO than for a member of the military. The reasons for this center on locations and mission parameters. First, the military operates out of fortified bases and possesses plenty of firepower. Second, FSOs must leave their compounds to accomplish their jobs. “We have the same defenses as American tourists, but we walk on the streets a thousand more times, which increases our chances of being

³⁸ McNamara, Thomas. (2016). Speech at Event.

hit.” Therefore, while one may anticipate a higher proportion of casualties in the military services than in the Foreign Service, this is not the case.³⁹

Diplomats provide an invaluable service that directly affects the national security of our nation. They do not have the same firepower and numbers as the military to protect them, but they do have diplomatic immunity as a layer of protection against direct interference from their host governments. However, the ones who serve our nation in this capacity feel a distinct lack of comprehension of these key points from the American public.

Cheryl Cappiello from the Office of Foreign Missions in the U.S. Department of State agreed that the public mainly hears extreme cases of violations covered by diplomatic immunity. When it comes to real stories, the public does not realize that most of those who claim diplomatic immunity do not actually have it. Cappiello referred to an account of members of a Middle Eastern royal family who were racing yellow Ferraris in Beverly Hills, L.A. When the police pulled them over, they claimed diplomatic immunity, which was heavily emphasized in the headlines. “Sensational headlines get attention,” she said. However, when authorities checked with her office to confirm the status of these royal reckless drivers, it was discovered that they did not actually have immunity. “The public does not hear the rest of the story because of a short attention span or because there is no more news coverage,” she said. “This happens so often.”⁴⁰

Evan McCarthy, Deputy Assistant Secretary for Visa Services, said the discrepancy between the reality of diplomatic immunity and its public reputation is

³⁹ Ibid.

⁴⁰ Cappiello, Cheryl. (2016). Personal Interview.

worldwide. “The strawman of diplomatic immunity letting us get away with things is a problem,” McCarthy said. He noted that many citizens who were not in his field of work, whether in his home country of the U.S. or abroad, had a similar perception of immunity. People would easily and commonly joke with him that because he had immunity, he could get away with whatever he wanted. “Even as a joke,” he said, “this perception sets the stage for a perception that is not reflective of reality.” In actuality, State Department meetings about poor diplomatic behavior focus on holding the relevant party accountable. “When someone behaves poorly, the tenor of the meeting is ‘Let’s get them,’ and not conspiracy, cover-up, or acceptance.”⁴¹

Unfortunately, the discretion often required in these cases prevents State Department officials and diplomats from addressing skewed public perception of specific events directly. “The aftermath is not often in the media for the sake of the bilateral relationship,” Cappiello said.⁴² McCarthy compared this aspect of public awareness with personal human relationships: when a couple fights, the content or existence of the fight does not always need to be public.⁴³ By not constantly “airing their dirty laundry,” a couple projects an image of unity to others while also strengthening the trust in their own bond as they resolve issues; in a similar fashion, states in a bilateral relationship can have multiple motivations to keep altercations and their aftermath quiet. They may not want the action of an individual to tarnish the entire country’s reputation. They may not want a different nation to hear about the incident and use it as an excuse to act against diplomats

⁴¹ McCarthy, Evan. (2016). Personal Interview.

⁴² Cappiello, Cheryl. (2016). Personal Interview.

⁴³ McCarthy, Evan. (2016). Personal Interview.

in that country. They may have several negotiations in delicate stages and do not want the incident to distract from current progress. In addition, public exposure is a form of social punishment nowadays, and while the nation of the victim may want action to be taken against the individual, it may not want to take the further step of punishment in the international arena.

The bias that necessarily forms in a public that is primarily and consistently exposed to one-sided sensational stories of violations of diplomatic immunity could have disastrous consequences for international politics. Cable referenced the Justice Against Sponsors of Terrorism Act (JASTA) as a case study for what happens when a misinformed public uses the influence of today's communication technologies to mobilize a seemingly just political movement without reference to the international context. The bill, which would have allowed private families to sue the nation of Saudi Arabia, tapped into the emotion and desire for reparation for 9/11 felt by the American public. "While it was a quick sound bite for grieving families who suffered," Cable said, "it is not so simple as taking Saudi Arabia to court for satisfaction when most involved were diplomats or government officials who were subject to protections." When President Obama's rationale for his veto of the bill was published, previous supporters began to express regret. "They began to understand that this not only puts our own people at considerable risk, but it can also have an impact on international business deals and contracts," Cable said. He also pointed to the danger establishing such a precedent – of private citizens of one country suing the government of another – would have for the U.S. "We've had our own issues overseas," he said, citing a shooting incident by a government contractor in Pakistan who was not authorized to hold a gun. In this case, an

uneducated public that was equipped by the advancing communication technologies mobilized behind a strong cause. They even convinced Congress to pass a bill that had significant implications for U.S. interests, state sovereignty, and world security.⁴⁴

When a story about a violation of diplomatic immunity catches the public imagination, and there is a high probability in this communication environment that one will, the public is not currently equipped to evaluate the specific case in the context of international history and politics. “Everything is bigger than case-by-case situations involving immunity,” McCarthy said. “We can react strictly to the situation, but when it comes to the *relationship* with that country, there is an *immediate cost* that must be calculated in strategies.” Diplomatic officials who work at a desk for U.S. relations with a specific country do not think about their responsibility as responding to a series of issues. Rather, they conceive of their job as managing a *relationship* that encompasses issues.⁴⁵ If the public is hearing only about issues, it is not able to understand them in that greater context that must preoccupy the officials. The news media and popular media have contributed to this blind spot. We will now turn to a case study of a recent incident where an individual allegedly covered by diplomatic immunity accidentally killed a young local man. In the family’s understandable distraught and quest for justice, we will be able to see the blind spot held by the public and the affect a technologically empowered individual can have on the state.

⁴⁴ Cable, Floyd. (2016). Personal Interview.

⁴⁵ McCarthy, Evan. (2016). Personal Interview.

CHAPTER SIX

Case Study of the Anne Sacoolas – Harry Dunn Case

We want to push to get those dusty bits of paper back out of the back of beyond and get them reviewed... We have to get change.

- Family of Harry Dunn, October 14, 2019

On August 27, 2019, in England, Anne Sacoolas was driving on the wrong side of the road and struck a 19-year-old motorcyclist. The young man, named Harry Dunn, died of his injuries. Anne Sacoolas was the wife of a U.S. diplomat serving in England at the time, and therefore assumed to be covered by diplomatic immunity. She was recalled to the United States before charges could be served against her. The family of Harry Dunn was devastated at the loss of their son and angry at Mrs. Sacoolas for leaving the country. When the U.S. refused to waive immunity or take steps to hold her accountable, their anger was also fueled against the United States and the concept of diplomatic immunity itself.

It is important to note that in this case it has been some manner of debate a) if Mrs. Sacoolas' husband was considered a diplomat covered by diplomatic immunity, b) if therefore Mrs. Sacoolas was also covered by the privilege, and c) if Mrs. Sacoolas had her own diplomatic immunity as a secret member of a U.S. government agency.¹ While

¹ Chappel, B. (2020, February 16). *U.S. Court Sides With Family Of Man Killed In Crash Involving Diplomat's Wife*. NPR.org.

It was released in February 2020 that Anne Sacoolas worked for the CIA. It is important to note, her cover might not have been blown had it not been for the consistent pressure from the family.

the debate about her eligibility for diplomatic immunity is interesting, the fact that immunity is central to the case - first, as justification for removing Mrs. Sacoolas from her host country after her infraction and, second, as reason for declining to return her to the U.K. for judgment - is sufficient for this case study.²

Diplomatic immunity was cited and accepted as the reason Mrs. Sacoolas did not need to be immediately held accountable through the U.K. court system, and it was this reasoning that drove the subsequent behavior of Harry Dunn's family in their pursuit of justice for his death. Thus, in this case study, we will examine first the use of news media and social media to engage the public to pressure official channels. Second, we will highlight the clear evolution of understanding that took place in the narrative published by the family. Finally, we will see how the family predictably called for changes to diplomatic immunity due to gaps in their awareness of diplomatic immunity, combined with access to media that grants citizens power over current institutions.

The family of Harry Dunn felt early and strongly that the legal institutions of both the U.K. and the U.S. were against them, and they clearly believed that justice would be served only if they took the power of online networks and activism into their own hands. They were not necessarily wrong to assume so, as many officials expressed directly to

The U.K. high court would rule that she did indeed have diplomatic immunity at the time of the crash by February 2020. The case would eventually be brought to the Virginia courts, but with the understanding that she did indeed possess immunity at the time of the wreck.

² For those interested in the details, the husband of Mrs. Sacoolas worked at RAF Croughton. Staff of RAF Croughton were granted diplomatic immunity under a special bilateral treaty between the U.K. and the U.S. This immunity was extended to the families of diplomats under the conditions of the VCDR. In addition to this coverage, it was later revealed that Mrs. Sacoolas may have had her own role in the State Department that qualified her for immunity; her role may or may not have had ties to U.S. intelligence agencies. The discovery and publication of this knowledge took years to be revealed, and the subsequent revelation that her position at the State Department may have been a cover for her intelligence work came still later.

them the unlikelihood that their request to return Anne Sacoolas to U.K. soil would be honored. In fact, a lead investigating officer informed them that “there was less than a 1% chance of having anyone held accountable for the loss of their beloved son Harry Dunn.”³ Later, the United States State Department also issued a statement in January 2020 attempting to communicate the stakes and dire implications of bending to public pressure in this case.

It is the position of the United States government that a request to extradite an individual under these circumstances would be an abuse... The use of an extradition treaty to attempt to return the spouse of a former diplomat by force would establish an extraordinarily troubling precedent.⁴

Robert Eatinger, former acting general counsel for the CIA, accepted an interview with BBC to explain why he agreed waiving immunity in this case would have been a dangerous precedent. Diplomatic immunity is “one of the things that the U.S. considers sacrosanct,” he said, adding: “Once you’ve waived it for Mr. So-and-So, it opens up other issues.” While he understood that it seems unfair on a human level, he noted that the U.S. must consider its other relations and that a trial could expose details of other intelligence work in this case.⁵ For those reasons, he understood the refusal to waive Anne Sacoolas’ immunity. Foreign Secretary Dominic Raab sent a letter to the family in October 2019 detailing that while they requested a waiver of immunity, the U.S. government refused to do. Since her return and waiver were not granted, the next steps for the family would be

³ *Justice4Harry*, organized by Ciaran Charles. (2019, November 1). gofundme.com.

⁴ “Harry Dunn: Anne Sacoolas extradition bid inappropriate, says US.” (2020, January 11). *BBC News*.

⁵ McKelvey, T. (2021, March 6). “The mystery American woman wanted in the UK.” *BBC News*.

to pursue alternative means with the police and Crown Prosecution Service (CPS) to hold her accountable on U.S. soil.⁶

Even Prime Minister Boris Johnson weighed in, explaining it is not standard practice in a case such as this to return the individual to the host state for prosecution, especially once the person had been recalled home.⁷ The family was angered at what they deemed to be “irresponsible and unhelpful comments,” and further claimed Johnson had incited “a collective national outrage” that manifested in an inundation of messages from their supporters.⁸ Feeling that the legal institutions were not going to help them of their own volition, the family turned to the power of the press and networked communication to exert pressure on them. This attitude would carry on through the next three years of their campaign and is best summed up by this statement from the spokesman for the family, Radd Seiger:

Well, as both Governments are about to find out, both through the legal forums such as the Judicial Review, inquest and public and parliamentary enquiries and with the support of the nation behind us, they are touchable and things will change for the better. Safety first, always. The British, and American people who we count as our friends, are better than both Governments are currently behaving. We do not like unfairness. We will not tolerate injustice.⁹

An analysis of the language used by Seiger shows a bifurcation of the state from the people. It reflects the empowerment these individuals have through democratic rights and which is amplified through technological communication.

⁶ *Justice4Harry*, organized by Ciaran Charles. (October 2019). [gofundme.com](https://www.gofundme.com/justice4harry).

⁷ *Justice4Harry*, organized by Ciaran Charles. (January 17, 2020). [gofundme.com](https://www.gofundme.com/justice4harry).

⁸ *Justice4Harry*, organized by Ciaran Charles. (January 17, 2020). [gofundme.com](https://www.gofundme.com/justice4harry).

⁹ *Justice4Harry*, organized by Ciaran Charles. (April 10, 2020). [gofundme.com](https://www.gofundme.com/justice4harry).

The family channeled their pain into passionate activism. They contacted every news and social media outlet at their disposal, granting countless interviews and airing their grievances across Facebook and Twitter. They later directly attributed their success to the utilization of the media, stating “without both the print and broadcast media we would be nowhere and thank goodness for them.”¹⁰ Most notably, they and their hired representatives created a GoFundMe page.¹¹ Their goal was to raise money to fund the family’s legal efforts, spread awareness, and aid in their attempts to ensure another family was never put into a similar situation. They also utilized it as an open letter to the public, detailing their conversations and efforts regularly to their supporters. The GoFundMe page, as of August 2021, had 157 updates from the family of Harry Dunn; the updates are most often posted by the mother (Charlotte Charles), stepbrother (Ciaran Charles), or family spokesperson Radd Seiger. Over three thousand nine hundred people donated to the fund, raising over £155,000. Eleven thousand seven hundred people shared the webpage to spread the story, six thousand two hundred people follow it, receiving a notification every time the family posts an update.

The plight of the family of Harry Dunn received global attention. When they did eventually take the advice of their counsel and traveled to the United States to appeal directly to the president of the United States, they were so inundated with media requests that they decided to hold a press conference. When they reflected on this period a year later, they wrote on the GoFundMe page, “Fortunately for us, we were so overwhelmed by global media interest just a few hours into our trip to USA [sic] we had no choice

¹⁰ *Justice4Harry*, organized by Ciaran Charles. (April 25, 2020). [gofundme.com](https://www.gofundme.com).

¹¹ *Justice4Harry*, organized by Ciaran Charles. (n.d.). [gofundme.com](https://www.gofundme.com).

other than to call a press conference at short notice. It was a huge event.”¹² A local news outlet hosted a Facebook Live interview with them at the time. Despite being a local station, it garnered thirty-three thousand views. The comments were split between people learning about the situation for the first time or in full support of the family’s quest.¹³

During this visit, they were able to meet with then President Donald J. Trump. However, the meeting did not go well from the family’s perspective, as they left with the impression that the White House intended to buy them off and snap a “poster picture shot” of them shaking hands with Anne Sacoolas in resolution. Upon reflection after their visit on October 15, 2019, they posted scathing public commentary on their GoFundMe page: “It struck us that this meeting was hastily arranged by nincompoops on the run.”¹⁴ They were particularly upset with then National Security Adviser Robert O’Brien from this meeting, calling him an attack dog who “snapped, snarled and intimidated [sic] his way through the meeting within feet of grieving people!”¹⁵

Especially after this incident, the parents of Harry Dunn were vocal about their dislike of the U.S. government and its handling of this case, calling out the government’s character and alliance with Britain. In the early stages when they believed immunity claims were simply a cover up, they stated: “Friends tell each other the truth. If Britain and America are friends then we believe there should be no possibility of a citizen of one country hiding from justice in another while falsely claiming a privilege such as

¹² *Justice4Harry*, organized by Ciaran Charles. (2019, October 14). [gofundme.com](https://www.gofundme.com).

¹³ *The family of Harry Dunn, the British 19-year old killed in a collision involving the wife of a US diplomat, hold a press conference*. (n.d.).

¹⁴ *Justice4Harry*, organized by Ciaran Charles. (2019, October 16). [gofundme.com](https://www.gofundme.com).

¹⁵ *Justice4Harry*, organized by Ciaran Charles. (2019, October 17). [gofundme.com](https://www.gofundme.com).

diplomatic immunity.”¹⁶ Later in the campaign, after they had learned more about the VCDR of 1961, they maintained their condemnation of the U.S. but switched their focus to alleged abuse of the practice. They claimed the U.S. showed itself to be a hypocritical abuser of the intention of the VCDR by recalling Anne Sacoolas when she broke a law of the host country.¹⁷

The family of Harry Dunn continued their campaign, with constant updates on their website and interviews to news and social media outlets. They continually appealed to the public with phrases such as:

- “Diplomatic immunity is not the same as diplomatic impunity.”¹⁸
- “...diplomatic immunity is not a get out of jail free card.”¹⁹
- “No one is above the law. No one.”²⁰
- “The US Govt and its employees thought that they could kill our children and just walk away with impunity.”²¹

The family’s movement, called *Justice4Harry*, also gained a group of American women to their movement. Misty Morris was the Campaign Manager for this branch, and she orchestrated an online petition that “has now gone viral.” She and her fellow branch members believe that “using diplomatic immunity to evade justice is not how it’s supposed to work” and that this incident “is an embarrassment to our country and [sic]

¹⁶ *Justice4Harry*, organized by Ciaran Charles. (2019, October 15). [gofundme.com](https://www.gofundme.com/justice4harry).

¹⁷ *Justice4Harry*, organized by Ciaran Charles. (2020, March 1). [gofundme.com](https://www.gofundme.com/justice4harry).

¹⁸ *Justice4Harry*, organized by Ciaran Charles. (2019, November 27). [gofundme.com](https://www.gofundme.com/justice4harry).

¹⁹ *Justice4Harry*, organized by Ciaran Charles. (2019, December 24). [gofundme.com](https://www.gofundme.com/justice4harry).

²⁰ *Justice4Harry*, organized by Ciaran Charles. (2019, December 24). [gofundme.com](https://www.gofundme.com/justice4harry).

²¹ *Justice4Harry*, organized by Ciaran Charles. (2021, March 6). [gofundme.com](https://www.gofundme.com/justice4harry).

we won't let these leaders get away with it.”²² They rallied fellow U.K. citizens, organizing a blockade of the base in Europe and planning a biker ride to the U.S. embassy in solidarity for Harry Dunn who was killed on his bike.²³ We see here a clear example that the state's former monopoly of collective action and response to international challenges is challenged by the mobilization possible using online networks.

Ultimately, they understandably appealed to a moral code higher than international treaties. When explaining their decision to take the legal fight into the U.S. courts, they stated, “This is about right and wrong. As millions of people around the world can now plainly see, it cannot be right for any American visitor, whether a diplomat or not, to be allowed to leave the country having committed a serious crime.” They claimed that America would not stand for the response had the accident occurred on U.S. territory, despite evidence to the contrary.²⁴ They went so far as to say invoking diplomatic immunity was a “brazen and ruthless attack on British sovereignty.” They also claimed it damaged more than just the U.S. - Britain relationship, also being a “completely senseless and disgraceful attack on a close ally undermining the very foundations of the rule of international law and diplomacy.”²⁵

²² *Justice4Harry*, organized by Ciaran Charles. (2020, January 17). [gofundme.com](https://www.gofundme.com/justice4harry).

²³ Barstow, Ollie. (2020, February 27). “MASS RIDER PROTEST IN HONOUR OF HARRY DUNN TO DESCEND ON US EMBASSY.” *VisorDown*.

²⁴ Oberdorfer, Don. (1987, February 21). “Papua New Guinea Recalls Diplomat.” *The Washington Post*.

In 1987, Ambassador Kiatro Abisinio from Papua New Guinea drove under the influence and caused an accident, seriously injuring one American and causing damage to others. He was recalled to his home country, and the U.S. did not stop it. Rather, they allowed the issuance of a warrant to preclude Abisinio from returning to the U.S. without consequence once his ambassadorship was concluded. These are similar to the initial steps taken by the U.K. in the Harry Dunn case several decades later.

²⁵ *Justice4Harry*, organized by Ciaran Charles. (2019, October 25). [gofundme.com](https://www.gofundme.com/justice4harry).

While this language is obviously strong and compelling to those unaware of the context of diplomatic immunity, it is simply not the case that the practice of diplomatic immunity was a) something the U.S. would not tolerate on its own territory, b) an attack on British sovereignty, or c) the erosion of international law and diplomatic foundations. Rather, the honoring of diplomatic immunity in this case is an indication of the mutual sovereignty of the two nations, an honoring of their alliance and bilateral agreements, and an affirmation of one of the more explicit and enduring international treaties that has facilitated diplomacy over war.

In the early stages of the campaign, there are clear indications that the family did not fully grasp the purpose or practice of diplomatic immunity. On October 30, 2019, they accused the Trump administration of being “hell bent on breaking international laws, rules and conventions on diplomatic immunity” and of trying “to twist and contort the laws on diplomatic immunity to argue Mrs Sacoolas should be permitted to skip the U.K. after her actions and escape justice.” They also claimed to have received messages from “thousands and thousands” of supporters who “understand that whether you are a diplomat or not, you have to abide by the laws of the host country and if you break them you have to face up to the consequences of your actions.” While it is true that diplomats are expected to follow the laws of the host country, it is not accurate to state or imply that it is common practice for violators to be held accountable in the host country.²⁶ This is simply not the case.

²⁶ “Without prejudice to their privileges and immunities, it is the duty of all persons enjoying such privileges and immunities to respect the laws and regulations of the receiving State. They also have a duty not to interfere in the internal affairs of that State.”

Article 41, Section 1. *Vienna Convention on Diplomatic Relations, 1961*. (1961). United Nations.

In a Facebook live press conference with U.S. local KFDM News, the family began a hard and public push to review diplomatic immunity laws. Radd Seiger and Charlotte Charles both spoke during this conference. Seiger began by stating that international diplomatic laws were complicated and only three lawyers in the U.K. even truly understood them. He stated that with the passing of Harry, “this is now an opportunity to get ... the dusty books out, and get some really serious brainy people, and say what have we here?”²⁷ Harry Dunn’s mother, Charlotte, took this idea even further. She stated confidently, “those laws were written up in the sixties. There were hardly any cars on the road in the sixties,” going on to contend that an incident like the one involving her son would not have been considered in its drafting. Of course, as students of history know, diplomatic immunity was not positively constructed in the sixties, but rather it is an enduring practice that was only codified into this particular form through the VCDR. But at this point, the family had only begun delving into the history on it. She continued:

All these years on, those laws haven’t been looked at, they haven’t been reviewed, they haven’t been changed. We want to push to get those dusty bits of paper back out of the back of beyond and get them reviewed. And we will work really hard, especially with the money people are so generously donating through the GoFundMe... We have to get change.²⁸

As information about a secret 1995 treaty between the U.K. and the U.S. was revealed, the campaign began to shift its rhetoric from claiming that diplomatic immunity was against international law to claiming that it was misapplied to Mrs. Saccoolas. However, even in the entries in which they are more focused on the question of the

²⁷ *The family of Harry Dunn, the British 19-year old killed in a collision involving the wife of a US diplomat, hold a press conference.* (2019, October 14). 14:00-15:00.

²⁸ *Ibid.*, 20:00-22:50.

applicability of diplomatic immunity in the case, they consistently claimed that the Foreign Office does not have the legal power to enter into agreements, such as the VCDR of 1961 and the secret treaty, that breach its “human rights obligations” to the right to fair trial and the right to life.²⁹

When a near miss on the same road with another American driver with diplomatic plates occurred in 2020,³⁰ the family called on the U.K. government to take action to “make sure that never again will a so called ‘diplomat’ be allowed to evade justice.”³¹ When the news broke that the U.S. might request the extradition of Prince Andrew, they expressed outrage that the U.S. would make a such request when it had refused to honor the same request for Anne Sacoolas.³²

The family first mentioned the VCDR of 1961 on their GoFundMe page on February 6, 2020. They stated that “[r]eviewing and modernising the outdated diplomatic immunity provisions” in this treaty would be a major focus for their movement. They stated that the convention was “outdated, confusing and open to abuse.” They falsely claimed that the United States was establishing a precedent in teaching the world that diplomats can commit crimes and then return home, without reference to the vast history of diplomatic immunity described in this study. Nonetheless, the family claimed they would call for a new convention, as they contended that immunity is meant to protect diplomats in “hotspot countries” and any other use should be troubling to the world. But

²⁹ *Justice4Harry*, organized by Ciaran Charles. (2019, November 17). [gofundme.com](https://www.gofundme.com/justice4harry).

³⁰ “Diplomatic cars” seen on wrong side of road near Harry Dunn RAF base (2020, January 19). UK News | Sky News.

³¹ *Justice4Harry*, organized by Ciaran Charles. (2020, January 18). [gofundme.com](https://www.gofundme.com/justice4harry).

³² Note, the U.S. ultimately did not file the extradition request for Prince Andrew.

diplomatic immunity is not intended for use only in actively dangerous nations. It is essential to the continuation of international relations amongst all nations, even allies.

While the family is correct that it is not intended to be a get out of jail free card, the demand for a complete renegotiation of one of the VCDR shows a lack of understanding of the purpose and practice of diplomatic immunity. However, it is not a surprise that this would be a stance they would take. Indeed, as I have outlined, the overlap of current public education, communication networks, and international practices almost guarantee this outcome. And the family did not merely stop with press releases calling for a new convention. They had Seiger directly approach the Secretary General of the United Nations. He was granted a meeting by David Hutchinson, Principal Legal Officer in the Office of Legal Counsel. Radd Seiger posted the following about their meeting:

Prior to the meeting, I received a terse email from him stating that my invitation was misplaced and that the Secretary General had no lawful competence to get involved. It was a matter for Member States to address. The UN would not be shifted from that position in our brief meeting, nor would they call out the unlawful abuse of Vienna on the part of the United States Government. The parents are disappointed and do not understand why the body that convened Vienna would not take the lead in calling for a new convention. It therefore remains the case that any diplomat, anywhere in the world, is free to commit serious crimes with impunity. The parents will not be deterred from their noble mission.³³

While the United Nations understandably would not risk undermining an essential treaty to the peaceful diplomacy of the world, the family understandably at this point did not have the context to understand fully why revising the VCDR is not an appropriate or feasible solution for their concerns.

³³ *Justice4Harry, organized by Ciaran Charles.* (2020, February 6). [gofundme.com](https://www.gofundme.com).

By March 2020, the family exhibited a clearer understanding of the VCDR, even directly referencing the duty of diplomats to respect the rules of their host country as stated in Article 41. They also correctly noted that the U.S. did have the option to waive immunity, a political move it had sought from other countries in the past. Rather than attacking the VCDR directly, as they did previously, the family then shifted to attacking the U.S. for an “unspeakable act of abuse of the Vienna Convention.”³⁴ The coinciding of this shift with their recent visit to the United Nations is noteworthy. As they were educated about the role of diplomatic immunity directly from the highest authorities, they slowly started to evolve their approach to bringing about justice in this case.

As for their supporters, the comments they have left on their GoFundMe page have shown a range of understanding. They have been united in their outrage, which makes sense given these individuals have chosen to donate to the family and comment on their page. Some notable comments within the past year include:

- “I have donated a small sum, not just for the crime itself but to fight against the two government's ridiculous dismissal of fair justice with a get out of jail free card. If this continues we are all unsafe due to “diplomatic immunity”!!! If Harry had killed Mrs. Saccoolas in the same way what would have happened to Harry???” - John Page
- “This is a hugely shocking injustice and clearly not what diplomatic immunity was ever intended for. Would it be as hard to get justice if The Foreign Secretary or PM’s child had been the one to be killed? Would Americans stand for it if the situation were reversed?” - Pippa Bayfield
- “I donated because I want to see the driver face a trial. In my opinion it is disgusting that the driver is hiding behind diplomatic immunity...” - Andy Harris
- “This is a gross miscarriage of justice and misuse of the whole concept of diplomatic immunity. It is disgusting that Anne Saccoolas hasn't admitted her mistake and accepted the consequences. ..” - James Briggs

³⁴ *Justice4Harry*, organized by Ciaran Charles. (2020, March 1). [gofundme.com](https://www.gofundme.com).

Even in the comments on news articles that may attract a more varied audience, however, the common reaction has been outrage at the lack of visible accountability for those who violate the laws of the land while under the protection of diplomatic immunity. Like the family of Harry Dunn, the public has been quick to turn to the idea of revising diplomatic immunity in order to solve the perceived problem.

The family is currently attempting to hold Mrs. Sacoolas accountable through the jurisdiction of her home country in the United States, per Article 31, Section 4 of the VCDR of 1961: “The immunity of a diplomatic agent from the jurisdiction of the receiving State does not exempt him from the jurisdiction of the sending State.”³⁵ In addition, as neither Mrs. Sacoolas nor her husband is actively working on U.K. soil as a diplomatic agent, she is no longer covered by immunity and the case can be brought forth.³⁶ From the perspective of this paper, it is notable that the concept of diplomatic immunity itself came under attack so rigorously when a) the eligibility of Mrs. Sacoolas

³⁵ Article 31, Section 4. *Vienna Convention on Diplomatic Relations, 1961*. (1961). United Nations.

See also Article 39, Section 2: “When the functions of a person enjoying privileges and immunities have come to an end, such privileges and immunities shall normally cease at the moment when he leaves the country, or on expiry of a reasonable period in which to do so, but shall subsist until that time, even in case of armed conflict. However, with respect to acts performed by such a person in the exercise of his functions as a member of the mission, immunity shall continue to subsist.”

³⁶ In an academic analysis of this case, scholar Georgia Beatty explains that once Mrs. Sacoola returned to the United States and her and her husband’s diplomatic functions ended, so too did their diplomatic immunity cease. This is due to the two types of diplomatic immunity: 1) personal immunity, and 2) functional immunity. Personal immunity covers the diplomat and his or her family from prosecution and arrest for any official or private act. This immunity is attached to the office holder, so it also ceases once he or she leaves office. Functional immunity is attached to actions of the state, meaning immunity for actions done directly in the line of duty would continue after the agent left office. The former is in play here, as a car crash is not an official act of the state. “In office, they are essentially untouchable,” Beatty says. “However, once they leave office, they can be prosecuted for acts committed during their time in office but only those which were committed in a purely private capacity.”

5 St Andrew’s Hill. (2020, May 21). *5SAH - Anne Sacoolas - Extradition, Interpol and diplomatic immunity unravelled*. YouTube. 5:46-7:02.

for immunity is the first place was still a matter of contention, and b) the crime was a tragic accident in which no malicious will could be assigned. Inevitably, there will be another case in which a fully-fledged diplomat with the undeniable privilege of diplomatic immunity will commit a crime that is heinous. The history of violations of diplomatic immunity is clear and an excellent predictor of future misconduct. This conversation will arise again. It will arise among a public that is no more suitably educated on the history or importance of diplomatic immunity to national and international security and peace. The case of Anne Sacoolas and Harry Dunn raises the question: how will the future conversation go in a public case when immunity is assured and the crime even more offensive to the private citizen's sensibilities?

CHAPTER SEVEN

The Way Forward

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, Vienna Convention on Diplomatic Relations, 1961

The Policy Development and Coordination Division Director of the Office of Foreign Missions, Cheryl Cappiello, has said the VCDR was crafted and ratified because “everyone understood and still understands that diplomats need protection to do their job.”¹ Diplomats need the freedom given by diplomatic immunity to promote the image and reputation of their home country, to facilitate non-violent talks between states, to expand friendly relations, to decrease danger of conflict, to promote interests, and to gain information without fear of persecution.

However, people outside of professional diplomatic circles are not necessarily included in this assessment. Many citizens do not recognize the nature or role of diplomatic immunity in protecting diplomats and facilitating international relations. The public’s lack of knowledge is evident in its reaction to diplomats who abuse their privilege, as it condemns the principle of immunity rather than the diplomats themselves. The public is often not aware of the avenues open to states to enforce justice nor the high stakes of any move to reduce the scope or effectiveness of diplomatic immunity. This

¹ Cappiello, Cheryl. (2016). Personal Interview.

lack of knowledge is largely due to a lack of education in this subject and a consistent skewed narrative of the “diplomat villain” as portrayed in news and popular media. When an incident occurs that reaches the public eye, it is a common reaction to, correctly, condemn the action and then demand, ignorantly, that the primary solution lies in adjusting the 1961 VCDR. We cannot legislate away a key function of international relations without significant unintended consequences.

In this final chapter, we will first examine the less publicized ways diplomats are held accountable. This information will come directly from U.S. diplomats, and it will include avenues specific to the VCDR, as well as practices by the U.S. not explicitly granted in the treaty. Then we will turn to a proposed alternative to increase accountability by applying a stricter interpretation of functional necessity theory to the VCDR. Finally, we will return to the wisdom of Richelieu and Callieres. As they are arguably founding members of the diplomatic world order as it has developed today, their insights on how to hire, incentivize, and punish diplomats can provide a focus for modern attempts to address when diplomats violate their duty as outlined in Article 38 of the VCDR.

7.1 Current Mechanisms of Accountability

As networked connectivity increases in the world, the public is becoming increasingly aware of the activities of diplomats around the world. Even mundane violations of local law can foster a skewed perception of diplomats in the public mind, such as the intractable situation of unpaid parking tickets in New York City. Joanne Cummings, USFSO, described the different perceptions of the same issue by diplomats and public: “Many foreign diplomats feel that NYC is disingenuous about wanting tickets

paid because they won't pay to make parking available or possible," she said, explaining how the infrastructure of the city itself hinders diplomats from obeying parking laws. For one, the city has a dense population in a limited land area. In addition, the United Nations headquarters are located there, which necessitates the residence of more diplomats in New York City than any American city other than Washington D.C. The city has limited options to provide diplomatic-only parking, and so diplomats do not feel they are able to comply fully with strictures placed upon them. The public, however, does not see the context. Cummings notes: "Conversely, U.S. and NYC residents think diplomats just do not care, which shapes U.S. opinion of diplomats and diplomatic immunity. There is no other situation like this in the world."²

The example may be unique, but the dynamic between the public and diplomats on New York parking is far from atypical, as already illustrated. The misdeeds of diplomats garner special attention, particularly when they can be classified in the sensitive genre of human rights violations, and this in turn fuels calls to hold corrupt diplomats accountable. The issue is not to make diplomats accountable in simply any court, however, for in the current system diplomats can be held legally accountable for crimes. Diplomatic immunity is not a license to break the law of any land; jurisdiction over a diplomat is simply reserved to the home country, to be tried under the laws of the home country and international law.³

The possible paths are necessarily circuitous, however, as they must account for the sovereignty of states and the complications of prosecuting individuals representing

² Cummings, Joanne. (2016). Personal Interview.

³ *Vienna Convention on Diplomatic Relations, 1961*. (1961). United Nations.

sovereign bodies. For example, the host country can, at any time and without any explanation, declare foreign diplomats *persona non grata* and therefore send them back to their home.⁴ A diplomat with full immunity may be exempt from prosecution, but the host country can choose to not let him or her return.⁵ As a sign of good faith to the international community, the home country can also choose to put them on trial when they return, but it is not required to do so. A host country sometimes chooses to make a public declaration of the bad behavior to encourage the home country to act, the incentive being to gain political capital by doing so.⁶ Since states also value their international reputation, they are often likely to police their own people, albeit quietly for the same reason. Another alternative would be if the diplomat's home country agreed to waive his or her diplomatic immunity, which would allow prosecution under the laws and in the courts of the host country. To this end, the Office of Foreign Missions instructs police officers at a crime to gather evidence even from those with full diplomatic immunity. "We are called when any perpetrator that claims diplomatic immunity is under suspicion," Cappiello said. "We will tell law enforcement on the spot if they can arrest them or not – we have that quick of a response. Then, during business hours, that person is dealt with. There are talks with local law enforcement and prosecutors, and we discuss the consequences." They then examine all the information to see whether a case can be made for prosecution; if so, they present the evidence to the home country and ask it to

⁴ Ibid., Article 9.

⁵ Shaw, Kim. (2016). Personal Interview.

⁶ Cummings, Joanne. (2016). Personal Interview.

lift the diplomat's immunity. The OFM may also write letters and work through other diplomatic channels to request compliance.⁷

Reputation also plays a big role in deterring abuse of diplomatic immunity. Diplomats have a concern for their own reputation in terms of their career, and states have a concern for their international reputation. The former gives diplomats an internal incentive to honor the duty outlined in Article 38 of the VCDR, while the latter incentivizes states to hold diplomats accountable insofar as they are able. Diplomats represent states, and thus their actions reflect on the state. When diplomats shame their state with their behavior, they risk their career. Not only do they lose trust with that specific country, meaning they will most likely never be reassigned or accepted again at that post, they also lose trust with their home state, which may demote or remove them from their rank and role.⁸ Shaw states, "When you hear about diplomats who abuse diplomatic immunity, you can only think, 'How sad.' We live a charmed life in many ways. To throw it away is such a waste."⁹

Cappiello notes that host countries have ways to deal with diplomats who abuse immunity.¹⁰ While the importance of a state can and does deter the U.S. from requesting a waiver to prosecute its diplomats on U.S. soil, Washington can choose to deny a future visa application from that diplomat or keep it in limbo. In this way, the State Department avoids any political problems that might arise from pursuing a public recourse.

"Diplomatic immunity means immune from consideration of prosecution," Shaw states.

⁷ Cappiello, Cheryl. (2016). Personal Interview.

⁸ Ibid.

⁹ Shaw, Kim. (2016). Personal Interview.

¹⁰ Cappiello, Cheryl. (2016). Personal Interview.

“But we do not have to let them come back.”¹¹ McCarthy confirms that the U.S. will also pre-emptively bar diplomats from U.S. soil if they are known human rights abusers or have ever abused their immunity during office.¹² Secrecy is not prudent in every situation, however, and the U.S. can also use public condemnation to try to force a response, much as the Great Kings Club utilized condemnation to aid negotiations or confirm status. Cummings said, “If someone misbehaves in the U.S., we may make a public declaration of the bad behavior without charging them to allow their home country to step in and take action.” The home state could show goodwill and separate itself from its representative’s behavior by doing so, and so this can be an effective tactic. The U.S. will then wait for a reaction and respond accordingly.

In addition to these mechanisms, the U.S. State Department and OFM have many tactics available to them through treaty, administration, and aid. For one, they can leverage any foreign aid they are granting to enforce certain behavior on diplomats from an aid-recipient country. For example, the U.S. may take the price of unpaid parking tickets out of offered assistance to a country if its diplomats refuse to comply. For another, if a diplomat consistently abuses his or her driving privileges, the State Department can also revoke diplomatic license plates. As another example, the State Department requires a high level of car insurance be maintained in order to receive diplomatic plates. This requirement has been in place since the 1970s, and it ensures accountability, a certain amount of restitution for victims, and a recourse to remove

¹¹ Shaw, Kim. (2016). Personal Interview.

¹² McCarthy, Evan. (2016). Personal Interview.

chronically unsafe drivers from the road without diplomatic incident.¹³ In other words, there are many informal or seemingly unrelated steps the U.S. can take to incentivize behavior and punish unruly diplomats.

The primary enforcement mechanisms utilized, however, are those provided by the VCDR. Cappiello succinctly summarizes the typical steps taken by the U.S. against misbehaving diplomats. If they commit a crime, the OFM will gather and examine evidence. If a prosecutor could make a case based on the evidence, then OFM may request a waiver of immunity. If the home country does not grant the waiver, OFM will then “PNG” the diplomat in question – that is, declare the diplomat *persona non grata* – and send him or her home. “We’re not a justice system,” Cappiello notes, “but we can say it is no longer acceptable for them to be here.”¹⁴ While the U.S. Government cannot technically control what happens to diplomats once they are returned to their country, the consequences of such a rupture can be huge.¹⁵ Even allies can find disruptions in their negotiations and the goodwill of their citizens when a violation occurs, as illustrated in the Anne Sacoolas case study. Most professional diplomats recognize all these factors and behave responsibly, which Evan McCarthy says is evidenced by the nature of the immunity violation cases that crosses his desk at his job. “I spend most of my time with family that is protected by diplomatic immunity,” he notes, “because they do not have the same incentives to behave [as diplomats].”¹⁶

¹³ Cappiello, Cheryl. (2016). Personal Interview.

¹⁴ Ibid.

¹⁵ McCarthy, Evan. (2016). Personal Interview.

¹⁶ Ibid.

The U.S. also has specific procedures and attitudes when its own diplomats commit an infraction overseas. Cummings says that while some diplomats do have an attitude about bending rules, such as speeding, it is a categorically bad idea to break laws *because* they have immunity. She states that the U.S. holds its diplomats to a higher standard and level of integrity than necessarily shown by foreign diplomats or even as required by the VCDR.¹⁷ Cappiello confirms that if a U.S. diplomat behaves badly, he or she is reprimanded. However, the U.S. prefers to bring its diplomats home first and to hold them accountable under their own justice system. One reason American diplomats may be removed from the host state is to protect them from vigilante justice by the locals, should that danger exist. In addition, the U.S. is governed by the rule of law, while other states are police states and have laws not in alignment with U.S. order.¹⁸ It would require an extreme case for the U.S. to hand diplomats over for prosecution in the host state. The U.S. does take the behavior of diplomats seriously; McCarthy finds it interesting that the behavior of diplomats makes the short list for summary pages for the Secretary of State. Summary pages articulate the priorities for the United States with a particular country, and they include topics like nuclear arms treaties, war - and the behavior of diplomats.¹⁹

7.2 Proposed Alternative Mechanisms of Accountability

Given that diplomatic immunity is a diplomatic principle, any argument to limit it necessarily carries assumptions about diplomacy. A major one is that the profession of

¹⁷ Cummings, Joanne. (2016). Personal Interview.

¹⁸ Cappiello, Cheryl. (2016). Personal Interview.

¹⁹ McCarthy, Evan. (2016). Personal Interview.

diplomat has clearly and legally definable divisions between public and private actions. Hence most proponents of limiting diplomatic immunity argue based on the functional necessity approach to diplomats and their immunity. To recap, the functional necessity interpretation argues that only actions *necessary* to perform the *functions* of a diplomat are diplomatic and therefore covered by immunity. Therefore, diplomats can and should be prosecuted for private actions under the laws of the state where they committed a crime. Since they are being tried as private individuals, the argument states, the international political implications can be circumvented.

In her 2014 article, Nina Maja Bergman pushes the functional necessity approach to its logical limits in order to respond to the unjust exploitation of domestic workers by diplomat employers.²⁰ She points to the difference in legal application that occurs depending on whether diplomatic immunity is interpreted according to the U.S. State Department in “Statements of Interest” or the underlying functional necessity theory of the VCDR. The U.S., she argues, has adopted too broad an interpretative framework for the VCDR, “effectively erod[ing] any exception to immunity” and stepping outside the intention and language of the text. The treaty should be interpreted, she claims, through the lens of functional necessity, in which a differentiation between diplomatic acts and private acts for personal gain exists. To expand the range of prosecutable behavior by diplomats, she wants states, particularly the U.S., to interpret more loosely the commercial activity exemption, in which private commercial transactions are exempt from immunity. This approach would allow recourse to exploited workers, which the

²⁰ Bergmar, Nina Maja. (2014). “Demanding Accountability Where Accountability Is Due: A Functional Necessity Approach to Diplomatic Immunity under the Vienna Convention.” *Vanderbilt Journal of Transnational Law* 47(2).

current stance of the U.S. State Department and judiciary does not. She argues that diplomatic immunity should be restricted according to this functional necessity approach, both to protect the human rights of guests to one's country and to encourage the same respect in other countries.

While it is true that the VCDR does demarcate between public and private actions in matters of financial investments, private property laws, and inheritance, I contend that Bergman overstates the scope and implications of her interpretation. She claims the text emphasizes the mission in order to give primary importance to the uninterrupted conduct of diplomacy rather the protection of every action by diplomats. She supports this interpretation by noting the different levels of immunity granted to individuals based on their place in the mission and by citing the preamble's statement that the purpose of immunities "is not to benefit individuals but to ensure the efficient performance of the function of diplomatic missions as representing States."²¹ Hence Bergman seeks to discourage diplomatic misbehavior by disaggregating the individual from the mission and attaching immunity to the latter.²² However, diplomatic missions are not possible without individuals, and the VCDR's preamble clearly grants privileges precisely because of diplomats' responsibility to maintain international peace and security and to promote friendly relations among nations of differing constitutional and social systems.²³ Being a successful diplomat is a high-stakes, difficult task that requires a special skill set and

²¹ Preamble, *Vienna Convention on Diplomatic Relations, 1961*. (1961). United Nations, Treaty Series, vol. 500.

²² Bergmar, Nina Maja. (2014). "Demanding Accountability Where Accountability Is Due: A Functional Necessity Approach to Diplomatic Immunity under the Vienna Convention." *Vanderbilt Journal of Transnational Law* 47(2).

²³ Preamble, *Vienna Convention on Diplomatic Relations, 1961*. (1961). United Nations, Treaty Series, vol. 500.

delicate touch, and unique protections to match. Trying to highlight the ineffectiveness of *persona non grata*, Bergman is quick to point out that states rarely invoke it, but the reticence of states to use an internationally agreed upon and nonviolent method of accountability emphasizes the importance of maintaining a broad conception of diplomatic immunity. Diplomats must be free to do their job of facilitating state communication. Additionally, one cannot understate that even acts of insult and humiliation can sometimes be a part of the international game between leaders as they navigate the world stage. If a state is experiencing civil unrest to such a degree that it affects other states, or if a state is making an economic decision that threatens the success of other states, diplomats may be instructed to speak or act in a way that conveys displeasure or a threat. If the host state takes offense, there is always a risk it may take out its displeasure on the diplomat in unofficial ways. If offense is taken at these actions carried out under orders from superiors, the diplomat should not be in physical danger for doing his or her job effectively. For these reasons, the argument that the changing world requires a change in diplomatic immunity parameters seems a thin one.

Alternatively, some people believe the source of difficulties is the spirit of globalism. Globalism creates a shift in loyalty from the nation-state to a cosmopolitan worldview, to the detriment of diplomacy. One such scholar, Angelo Codevilla, notes the impact of this global phenomenon on U.S. diplomats and attempts to re-educate them on the nature of their jobs and diplomacy. He writes in his 2014 article “What U.S. Foreign Service Officers [FSOs] Should Know” that U.S. FSOs should remember that they work for the American people, should learn about the other country without going native, and

should avoid cosmopolitan influence in the execution of their duties.²⁴ He contends that people like Woodrow Wilson who claim America is meant to be “champions of humanity” are asking diplomats to “mind the world’s business.” But he and people like Walter Lippmann²⁵ believe it is the job of diplomats “to mind America’s business.” Furthermore, diplomats must choose one or the other, as “[t]hese views of your job are incommensurable.”²⁶ While Codevilla correctly notes the importance of loyalty and professional behavior, he misses how the global phenomenon could be the solution rather than the problem he perceives. A global movement condemning human rights violations has clearly already arisen, even if the follow-through is often complicated by other international factors. As states come to perceive that being seen as protectors of human rights is essential to their international reputation, they will correspondingly be able to gain political capital by more strictly policing their own diplomatic corps, which will in turn promote a greater rigor in the hiring standards and continued employment of their diplomats. While a legal solution or even an adjusted interpretation of our current treaties might seem a quick fix, the complexities of international politics will reward a plan that acknowledges the state of affairs as it is, rather than a reactive plan based on what should be. While slower and more difficult to measure, the reinvigoration and promotion of a Callieres-type model of diplomacy will allow social tissue be built, soft power utilized, and the power of reputation to be utilized to positive ends.

²⁴ Codevilla, A. M. (2014). “What U.S. Foreign Service Officers Should Know.” *Modern Age*, 56(4), 43.

²⁵ Ibid., 53.

Walter Lippmann authored the 1943 book called *Foreign Policy: Shield of the Republic*, which Codevilla contends expresses exactly what the job of an FSO should be.

²⁶ Ibid.

I do not believe outright amending or even restrictively interpreting the VCDR would be a successful endeavor, and so I propose an alternative. Instead of separating individuals from the mission to make them more open to prosecution, I suggest elevating the requirements for even being included in the mission. I propose accountability is best achieved without the risks to international stability by reinforcing the form and professionalism of diplomacy in the eyes of the public, the diplomatic culture, and the states.

7.3 Accountability According to Richelieu and Callieres

The theoretical basis for this proposal can be found in the writings of Francois de Callieres, who was influenced by Cardinal Richelieu's political feats in ushering in an era of continuous negotiations and consolidated state power.²⁷ Callieres was a French diplomat and special envoy of Louis XIV. He was a direct beneficiary of Richelieu's political thoughts and diplomatic system. He is also credited with popularizing the notion that diplomacy should be continuous among states and practiced by professionals.

Callieres' work is salient to the discussion of diplomatic immunity, and not just because his seminal piece was titled *The Art of Diplomacy*. He, like proponents of a narrow functional necessity approach, agrees that being a diplomat is a job. However, his position differs from those who would use the job description to differentiate between the individual and the mission. Rather, Callieres asserts that the work of diplomacy is never over, and all actions - including the dinner parties and conversations with heads of states and even wandering the streets - reflect on the diplomat's home country and fulfill basic

²⁷ Callières, François de. (1983). *The Art of Diplomacy*, Keens-Soper, H.M.A. & Schweizer, K.W. editors. New York: Holmes and Meier Publishers.

diplomatic duties. Even offering bribes to employees of officials of the host government are part of the job, which is undeniably a violation of the laws of the host country. With this understanding, the range of “private actions” that do not have public diplomatic implications shrinks dramatically.

Given his conception of the diplomatic role, Callieres has high standards for who qualifies to be a diplomat. He chooses the opening sentence of his work on diplomacy to emphasize the need for high standards when appointing diplomats:

The art of negotiating with sovereign Princes is of so great importance, that the fate of the greatest States *often depends on the good or bad conduct, and on the capacity of the ministers who are employed therein. So that Princes, and their chief ministers, cannot be too careful in examining into the natural and acquired endowments of the persons whom they send into foreign countries*, to cultivate a good correspondence between them and their ministers, to make treaties of peace, alliance and commerce, and others of the like nature; to defeat those treaties which other Princes may be negotiating to the prejudice of their Sovereign, and in general to take care of the respective advantages which may be obtained of foreigners, according as occasion shall present (emphasis added).²⁸

In summation, the fate of even the greatest states depends on solid negotiation, so a prudent king must carefully appoint diplomats who are naturally disposed and properly educated to fulfill this demanding role. Callieres claims later that even a “small number of ministers, well chosen” offer great services to their ruler for small expense, even as much benefit as standing armies would provide.²⁹ They have the potential to equip their rulers to “determine the fate of his neighbors, to maintain peace, or to forment war among them, according to [the prince’s] own interests.” However, he cautions this is only possible based on the conduct and qualifications of the diplomats engaging in the

²⁸ Ibid., 65.

²⁹ Ibid., 73.

negotiations. Therefore, he details the necessary qualifications for people suitable for this role.³⁰

Diplomats require talents and dispositions, chief among them being self-aware of their strengths. Diplomats also require good communication skills, a keen mind able to forge treaties, the cunning to discover and disrupt schemes contrary to their home state, and the dexterity to take advantage of their circumstances. They must be smart, but not overly pedantic. They should be able to avoid distractions, have clear judgment, and possess an even temper. They should have an easy and engaging manner to gain confidence among many. They need to be able to keep secrets without appearing to do so. They should be courageous in case they face danger and be able to act in line with long-term benefits without ignoring the short-term costs.³¹ Above all, they must be vigilant, constantly gathering information for their ruler so they may make decisions to shape circumstances, rather than merely reacting to them after the fact. In order to discern what information is useful, they will also need to be highly educated in current affairs, party interests, and all relevant laws and customs. This education should not overly focus on the dead and gone, nor should it be a closeted education. Rather, they should focus on the affairs of the living, a state of mind encouraged by having a vigorous life, and training in an apprenticeship.³²

Callieres also posits that the diplomat should see the utility of his reputation “as a real good” in his own life. Diplomats should recognize that it is in their interest to

³⁰ Ibid., 74.

³¹ Ibid., 75-84.

³² Ibid., 97-99.

establish a good reputation, since it will increase the chance of success in future negotiations, cause him to be well-received as he travels, and establish trust in his future promises.³³ By seeing their reputation as important to their career, diplomats are incentivized to maintain the dignity of their office.

Should diplomats still choose to violate the public faith, then Callieres contends they do not deserve to keep their office. However, Callieres also notes that they should not be punished in the host country, even if they were to plot conspiracies against the government. He states:

...to avoid violating the Law of Nations, which ought always to be held sacred, it is much better to send back such ambassadors, than to punish them. Guards may be put upon them, to hinder them from continuing their practices until they be out of the kingdom; and this may be done under a pretext of taking care of their safety.³⁴

He does acknowledge that rulers ought to demand reparation from the ruler of the sending state. But he notes that the ruler should also make this request only if a) it is in his interest, and b) he is aware satisfaction may be refused. In the latter case, he should prudently “wink at it” and exhibit his disdain by sending the envoy away with the shame of his own behavior weighing him down.³⁵ If the ruler has appointed wise and qualified diplomats, however, they should avoid improper behavior even if they are protected from punishment. They will be incentivized by reason, the protection of their reputation, and – at minimum – the awareness that the rage of the populace is easily stirred.³⁶

³³ Ibid., 84.

³⁴ Ibid., 122.

³⁵ Ibid., 123.

³⁶ Ibid., 122.

However, Callieres lays blame for treacherous behavior by diplomats first and foremost on the ruler for choosing poorly. In these cases, the ruler “has himself been the first cause of prejudice he has received by him, because he neglected to make a good choice.” Again Callieres returns to the fact that rulers need to appoint diplomats who are skillful, knowledgeable in the role, and marked by integrity. To attract the right kind of people to these roles, rulers should provide “more degrees of honour and fortune.”³⁷ More public honor would also have the benefit of incentivizing diplomats to behave nobly.

In other words, promoting Callieres’ type of diplomatic culture incentivizes high standards, rewarding diplomats who do a good job, and providing a reasonable basis for a home country to punish bad ones as a sign of good faith. It also circumvents the risks of relying on the still weak state of the international law scene and inoculates both diplomats and governments against the use of immunity loopholes for personal gain. The current age can learn from Callieres’ assessment, both because he was key in establishing the form of diplomacy practiced today and because he provides clear explanations of how accountability can be fostered by maintaining high standards for diplomatic appointment and conduct.

7.4 The Way Forward

Undeniably, international relationships are affected when diplomats violate local laws and are covered by diplomatic immunity. Failure to behave well can and does harm bilateral relationships, even among good allies. “The consequences are HUGE,” said McCarthy. According to him, the U.S. goes beyond what is required in honoring the

³⁷ Ibid., 100.

privileges of foreign diplomats within its borders to take advantage of reciprocity and ensure full immunity for American diplomats throughout the world. “We could not have people in Russia or China without assurance of full protection,” he said.³⁸ We even saw in the case study on Anne Sacoolas and Harry Dunn that an accident can stir bad blood even between traditionally close allies like Britain and the U.S.

When asked whether any changes to the VCDR or current diplomatic immunity practices would be possible or beneficial, diplomats viscerally and resoundingly rejected the idea:

- “No! Don’t renegotiate!” Cummings said. “If you open one item of the VCDR, you have to open *all* of them.”³⁹
- “To have everyone agree to something like the VCDR is *huge* and difficult to achieve,” said McCarthy.⁴⁰
- “It would be like re-making a movie that was already well made,” said Shaw, “and we would be losing more than we could hope to gain.”⁴¹
- “The VCDR isn’t simply a positive law, it is the codified practice of centuries of politics,” said Cappiello. “The practices the VCDR is based on exist because everyone understood and understands that diplomats need protection to do their job.”⁴²

They did not doubt that any changes to diplomatic immunity would immediately cripple international relations. “The U.S. would voluntarily pull out all our people across the world. It’s that serious. We would get the hell out,” McCarthy said.⁴³

³⁸ McCarthy, Evan. (2016). Personal Interview.

³⁹ Cummings, Joanne. (2016). Personal Interview.

⁴⁰ McCarthy, Evan. (2016). Personal Interview.

⁴¹ Shaw, Kim. (2016). Personal Interview.

⁴² Cappiello, Cheryl. (2016). Personal Interview.

⁴³ McCarthy, Evan. (2016). Personal Interview.

Key members of the U.S. Department of State recognize that changes in communication technology are changing international politics, and they are looking to adjust in a way that allows them to fulfill their mission of protecting U.S. interests at home and abroad. As the ability for non-state actors to influence global agendas increases with technological developments, the need for propagation of informed research to the public about diplomatic immunity and diplomacy also increases. U.S. national security and prosperity are currently tied to its ability to remain a super-power, which is in turn made possible by the continual efforts of its diplomats. “We are a Great Power by ourselves,” said Ambassador McNamara, “but only as a leader in a great coalition are we super.”⁴⁴

I posit that the United States Foreign Service must adapt to the challenge presented by the current information environment in the new century, namely the perpetuation of misinformation about diplomacy in news, popular, and social media. The problem of public education is a central concern of the Foreign Policy Association (FPA), and the task would most naturally fall to that organization. The United States government established the FPA over a hundred years ago to educate the public. Its stated mission to “serve as a catalyst for developing awareness, understanding, and informed opinion on U.S. foreign policy and global issues” remains relevant.⁴⁵ Additionally, the FPA performs its services with no government support, meaning it is financially independent from government agendas and able to share objective information on world affairs.⁴⁶

⁴⁴ McNamara, Thomas. (2016). Speech at Event.

⁴⁵ Foreign Policy Association, (2017).

⁴⁶ Lateef, Noel V. (n.d.). *Foreign Policy Association: President's Message*.

The FPA has already made steps in the right direction of sharing diplomatic context with the American public. In March 2016, the FPA released a documentary entitled *America's Diplomats*, which was designed to educate American citizens on the origins and purpose of the U.S. Foreign Service. In the film, professional members of the Foreign Service expressed worry that the U.S. was not doing enough to correct public misperceptions about diplomatic professionals. Notably, Ambassador Nancy McEldowney (Director of the Foreign Service Institute) and J. William Burns (former career Foreign Service Officer and President of the Carnegie Endowment for International Peace) said that the United States needs to be a better advocate for its own diplomacy and diplomats. The documentary's Executive Producer and FPA's Chief Information Officer, MacDara King, suggested that the most pressing question facing diplomats is, "How can the Foreign Service adapt to a new century?"⁴⁷

The FPA is currently hindered in its mission to develop informed opinions on global issues by typical news coverage and popular media depictions of diplomatic immunity. But it could easily utilize the social media platforms available, as well as other forms of entertainment and news media, to begin correcting misperceptions and diversifying the narrative of diplomatic immunity currently shown to the public.

Georgetown's Institute for the Study of Diplomacy (ISD) has also made recent strides in educating the public with its relatively new podcast, *Diplomatic Immunity*. The series centers around "frank and candid conversations with experts on issues facing diplomats and national security decisions makers around the world."⁴⁸ While not every

⁴⁷ Foreign Policy Association. (2016).

⁴⁸ *Diplomatic Immunity* [Podcast].

episode explicitly covers diplomatic immunity, I believe the choice of title illustrates the hot-button topic immunity has become in the public sphere. In addition, this podcast does an excellent job of providing context and a practical, nuanced perspective to diplomatic topics. It is nearing its two-year anniversary, and I believe its continuation would be a great service to the American public. The *American Diplomat* is another such podcast, which focuses on first-person storytelling from American diplomats who have participated in significant events.⁴⁹ It will be reaching its fifth anniversary soon, showing the sustainability of such a project is certainly possible. While it does not necessarily report directly on issues of diplomatic immunity, it does provide a platform that can supply context and expert analysis of key events.

Finally, as Callieres notes, it is ultimately the responsibility of the state to appoint qualified people to diplomatic roles and to maintain the integrity of the role itself. If diplomats were required to pass rigorous standards world-wide to achieve their posts, diplomacy would benefit. If diplomats were publicly honored for good service, good behavior would be incentivized. If states held a firm line that egregious violations of diplomatic immunity would be handled justly in the home state, goodwill amongst states would increase. Although it is understandable that a legal age would default to requiring an amendment to treaties to reduce infractions of diplomatic immunity, it is not the answer. It is extremely unlikely that such an endeavor would succeed, and there would be immediate consequences to the relationships of every nation in the world should the attempt be made. Rather, more social solutions such as raising standards of hiring, increasing professionalism in the diplomatic corps, and emphasizing reputation would

⁴⁹ *American Diplomat Podcast – Our Stories, Heard Only Here* [Podcast].

have a more lasting impact on the proper observance of diplomatic immunity while also inviting firm and proportionate responses to violations.

In addition to increased professionalism and the actions of the home government to encourage good behavior, Cummings adds the importance of good leadership. Trainers and leaders must be clear and consistent about what is and is not acceptable; she admits this can be difficult to achieve in such a large program and leaders have sent mixed messages from time to time.⁵⁰ Nevertheless, good leaders could also shift the focus from changing the VCDR to the tools needed to deal with infractions. The executive is able to negotiate and the Senate to approve treaties to give tools to help mitigate issues, the OFM can continue to incentivize good behavior and punish bad behavior by adjusting access, and the U.S. can keep a consistently high standard for diplomatic conduct within its own borders and abroad.

⁵⁰ Cummings, Joanne. (2016). Personal Interview.

Mo Minmaugh agreed.

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