

DIPLOMATIC JUDICIAL IMMUNITY

الحصانة القضائية الدبلوماسية

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Abstract:

Diplomatic immunity is a form of legal immunity that ensures diplomats are given safe passage and are considered not susceptible to lawsuit or prosecution under the host country's laws, with the Vienna Convention on Diplomatic Relations, Diplomatic agents enjoy an almost absolute immunity from the jurisdiction of the receiving States during their term of office. The immunity from the criminal jurisdiction of the receiving State has an absolute character: there are no exceptions. This absolute immunity concerns all possible minor offences as well as grave crimes, such as the crimes against humanity. It is important to note that the immunity and inviolability of diplomatic agents do not stand in the way of investigation by the receiving State into allegations of abuse. The mere issuance of an order to investigate charges of abuse against diplomatic agents in function does not infringe the diplomatic immunity or inviolability.

keywords: *diplomatic immunity - Legal immunity - Diplomats - Crimes of diplomats - Vienna Convention on Diplomatic Relations.*

المخلص:

الحصانة الدبلوماسية هي شكل من أشكال الحصانة القانونية التي تضمن منح الدبلوماسيين ممرًا آمنًا ولا يُعتبرون عرضة للإجراءات القضائية أو المقاضاة بموجب قوانين البلد المضيف، مع اتفاقية فيينا للعلاقات الدبلوماسية، يتمتع العملاء الدبلوماسيون بالحصانة المطلقة تقريبًا من ولاية الدول المستقبلة خلال فترة ولايتها، تتمتع الحصانة من الولاية القضائية الجنائية للدولة المستقبلة بطابع مطلق ولا توجد استثناءات، تتعلق هذه الحصانة المطلقة بجميع الجرائم البسيطة المحتملة وكذلك الجرائم الخطيرة، مثل الجرائم ضد الإنسانية، ومن المهم الإشارة إلى أن حصانة وحرمة العملاء الدبلوماسيين لا تقف في طريق التحقيق من جانب الدولة المستقبلة في مزاعم سوء المعاملة، إن مجرد إصدار أمر بالتحقيق في تهم إساءة المعاملة ضد الموظفين الدبلوماسيين في الوظيفة لا ينتهك الحصانة الدبلوماسية أو الحرمة.

الكلمات المفتاحية: الحصانة الدبلوماسية - الحصانة القانونية - الدبلوماسيون - جرائم الدبلوماسيين

- اتفاقية فيينا للعلاقات الدبلوماسية.

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INTRODUCTION:

Diplomatic immunity is a form of legal immunity that ensures diplomats are given safe passage and are considered not susceptible to lawsuit or prosecution under the host country's laws, The importance of diplomatic immunity lies in the granting of full comfort to diplomats in order to complete their work without external pressure. The issue of diplomatic immunity is important as there are many incidents taking place inside embassies and committed by persons who are legally protected In accordance with the Vienna Convention on Diplomatic Relations, Diplomatic agents enjoy an almost absolute immunity from the jurisdiction of the receiving States during their term of office, During function a diplomatic agent enjoys personal immunity from jurisdiction as codified in Vienna Convention on Diplomatic Relations and can be divided into immunity from criminal, civil and administrative jurisdiction. The immunity from the criminal jurisdiction of the receiving State has an absolute character there are no exceptions. This absolute immunity concerns all possible minor offences as well as grave crimes, such as the crimes against humanity.

The problem of the study is the extent to which persons enjoying diplomatic immunity can be held accountable because the Vienna Convention on Diplomatic Relations has made their immunity absolute and limited to the possibility of holding them accountable for the acts they committed during the last post. The question is what is the extent of the accountability of the diplomatic staff regarding their criminal acts?

The analytical descriptive approach was used to study foreign references and to explain the relevant international conventions in an attempt to obtain an answer to the question pose 'This study shall remain within the general international law of the criminal apartment.

SECTION I:

THE CONCEPT OF DIPLOMATIC IMMUNITY

Diplomatic immunity is a form of legal immunity that ensures diplomats are given safe passage and are considered not susceptible to lawsuit or prosecution under the host country's laws, but they can still be expelled. Modern diplomatic immunity was codified as international law in the Vienna Convention on Diplomatic Relations (1961) which has been ratified by all but a handful of nations. The concept and custom of diplomatic immunity dates back thousands of years. Many principles of diplomatic immunity are now considered to be customary law. Diplomatic immunity was developed to allow for the maintenance of government relations, including during periods of difficulties and armed conflict. When receiving diplomats, who formally represent the sovereign, the receiving head of state grants certain privileges and immunities to ensure they

may effectively carry out their duties, on the understanding that these are provided on a reciprocal basis. so What is the judicial immunity?

A- DEFINITION OF DIPLOMATIC IMMUNITY:

In order to define diplomatic immunity, we first define diplomacy and then define diplomatic immunity:

1- DIPLOMACY:

Jurists differed in the definition of diplomacy, Diplomacy is a Greek term that moves to Latin and from there to European languages. The Romans used a diplomatic word to describe the qualities of diplomatic post, the function required by jobs such as literature and artificial love and the avoidance of criticism. This is the meaning of diplomacy in Latin, which means a hypocritical man has two faces,¹ But the meaning of diplomacy in law was also controversial among jurists, including those who said diplomacy was a diplomatic job, a profession or a diplomatic service, and some said diplomacy was the art of bargaining through diplomatic representatives who were authorized to settle disputes between nations using the means of negotiation.² Through the objectives, tasks and officials of the diplomatic function, diplomacy can be defined as "Science and art representing the positions of international legal persons in their foreign relations through specialized bodies called permanent and temporary diplomatic missions"³.

2- DIPLOMATIC IMMUNITY:

The Diplomatic immunity is an "exception, exclusion or non-subordination of the diplomatic envoy to the internal jurisdiction of the receiving State"⁴ is a principle of international law under which some foreign government officials are not subject to the jurisdiction of local courts and other entities because of their official activities and to a large extent their personal activities.⁵

Through the above We find that diplomatic immunity is a principle of international law in which some government officials enjoy the privileges and exceptions that prevent domestic jurisdiction from pursuing them. So What is the basis of such immunity?

¹ - Harold Nicolson, *diplomacy*, Oxford U.P, 3rd edition, 1969, p11.

² - Alexander Ostrower, *Language Law and Diplomacy*, university of Pennsylvania press Philadelphia, 1965, p102.

³ - Suhal H.Al-Fatlawi, *Diplomacy between theory and application*, Dar AlThaqafa for Publishing and Distribution, 3rd edition, Amman-Jordan, 2013, p92.

⁴ - Louis Cavar, *Positive International Public Law, Volume II*, Paris, 1962, p26.

⁵ - *Diplomatic and Consular Immunity, Guidance for Law Enforcement and Judicial Authorities*, booklet issued by United States Department of State Office of Foreign Missions, Washington, D.C, p10.

B- THE BASIS OF DIPLOMATIC IMMUNITY:

Theoretical Grounds for Diplomatic Immunity, Three theories seek to justify diplomatic immunity: representative of the sovereign, extraterritoriality, and functional necessity.

1- THE THEORY OF REPRESENTATIVE OF THE SOVEREIGN:

Also known as personal representation, holds that “the representative’s privileges are similar to those of the sovereign herself, and an insult to the ambassador is an insult to the dignity of the sovereign.” This theory has three major flaws. First, granting the foreign envoy the same degree of immunity as the sending state would “place the individual diplomat above the law of the host state.” Second, due to the evolution of popular rule, it is not always clear whom the diplomat represents. Third, “the theory extends no basis for protecting diplomats from the consequences of their private actions.” Consequently, the theory has been largely discredited.¹

2- THE THEORY OF EXTRATERRITORIALITY:

assumes that a diplomat is always on the soil of the sending country, As a result, a diplomat is not subject to the receiving country’s laws, The role of extraterritoriality theory in today’s discourse is not entirely clear. While some argue that the codification of the VCDR marked the official rejection of extraterritoriality, others hold that this legal fiction maintains widespread support, Many agree, however, that the theory sets forth an unjustifiably broad scope of diplomatic immunity.²

3- THE THEORY OF FUNCTIONAL NECESSITY:

the most widely recognized justification for diplomatic immunity, ensuring the performance of the diplomatic envoy task assigned to it is the basis from which the idea of judicial immunity,³ Under this line of reasoning, diplomatic immunity protects those acts incidental to the mission. This theory holds that diplomats engaging in official acts are immune to the jurisdictions of Internal courts, Under this line of reasoning, diplomatic immunity protects those acts incidental to the mission but “doesn't, however, afford protection and benefits to the diplomat as a person.” Hence, under this theory, when a diplomat “acts outside of the normal sphere of conducting international relations, a question arises as to whether immunity still applies”.⁴

¹ - Nina Maja Bergmar, *Demanding Accountability Where Accountability Is Due: A Functional Necessity Approach to Diplomatic Immunity Under the Vienna Convention*, *Vanderbilt journal of transnational law*, vol. 47:501, pp507-508.

² - *Ibid.*, P. 508

³ -D.j.Harris, *cases and international law*, London, 1973, p295.

⁴ - Nina Maja Bergmar, *op. Cit.*, P509.

**SECTION II:
DIPLOMATIC IMMUNITY FROM JURISDICTION**

In accordance with the Vienna Convention on Diplomatic Relations, Diplomatic agents enjoy an almost absolute immunity from the jurisdiction of the receiving States during their term of office, Article 31 of the Vienna Convention on Diplomatic Relations states: "1. A diplomatic agent shall enjoy immunity from the criminal jurisdiction of the receiving State. He shall also enjoy immunity from its civil and administrative jurisdiction, except in the case of:

(a) A real action relating to private immovable property situated in the territory of the receiving State, unless he holds it on behalf of the sending State for the purposes of the mission;

(b) An action relating to succession in which the diplomatic agent is involved as executor, administrator, heir or legatee as a private person and not on behalf of the sending State;

(c) An action relating to any professional or commercial activity exercised by the diplomatic agent in the receiving State outside his official functions.

2. A diplomatic agent is not obliged to give evidence as a witness

3. No measures of execution may be taken in respect of a diplomatic agent except in the cases coming under subparagraphs (a), (b) and (c) of paragraph 1 of this article, and provided that the measures concerned can be taken without infringing the inviolability of his person or of his residence.

4. The immunity of a diplomatic agent from the jurisdiction of the receiving State does not exempt him from the jurisdiction of the sending State."¹

Through the text of the previous article, we divided this section into two sections, the first Judicial Immunity and Function, the second Executive Judicial Immunity.

A - JUDICIAL IMMUNITY AND FUNCTION:

1- DURING FUNCTION:

During function, a diplomatic agent enjoys personal immunity from jurisdiction as codified in Article 31(1) the Vienna Convention on Diplomatic Relations and can be divided into immunity from criminal, civil and administrative jurisdiction.² The immunity from the criminal jurisdiction of the receiving State has an absolute character: there are no exceptions. This absolute immunity concerns all possible minor offences as well as grave crimes, such as the crimes against humanity. In the Arrest Warrant case the ICJ ruled that there is

¹ - Article 31 of the Vienna Convention on Diplomatic Relations, Done at Vienna on 18 April 1961. It entered into force on 24 April 1964, United Nations, Treaty Series, vol. 500, p95.

² - Ibid.

no exception for international crimes.¹ Although, in this case the ICJ was dealing with the immunity of a minister of foreign affairs, the outcome has direct consequence for diplomatic immunity as the protection of the functioning of the office is a prime reason for granting both immunities. It stated that:

"It has been unable to deduce from this practice that there exists under customary international law any form of exception to the rule according immunity from criminal jurisdiction and inviolability to incumbent Ministers for Foreign Affairs, where they are suspected of having committed war crimes or crimes against humanity"²

It is important to note that the immunity and inviolability of diplomatic agents do not stand in the way of investigation by the receiving State into allegations of abuse. The mere issuance of an order to investigate charges of abuse against diplomatic agents in function does not infringe the diplomatic immunity or inviolability. The receiving State can take action and prepare a file in anticipation of the ending of the diplomats' function. Diplomats may even be asked to give evidence, although only on a voluntary basis.³

In the *Djibouti v France* case for instance, the international justice Court first noted that to determine whether or not there has been an attack on immunity, one had to look at whether the Head of State, President of the Republic of Djibouti, was subjected 'to a constraining act of authority' and ruled that summons addressed to the President by the French investigating judge could not be construed as measures of constraint or attack by France on immunities from criminal jurisdiction. The summons were merely a voluntary invitation to testify which the President could freely accept or decline.⁴

Finally, it should be underlined that the privileges and immunities of diplomatic agents do not exempt these diplomatic agents from the duty to respect the laws and regulations of the receiving States except where these laws make a specific exception in their favors. For instance, diplomats are to be aware of and conform to the laws regarding firearms, traffic offences, theft and other serious crimes in the receiving States. However, in case a diplomatic agent violates the laws, he or she is exempt from adjudicatory and enforcement jurisdiction; and the only tool available to the receiving State, unless the sending State waives the immunity of its diplomatic agent, is a notification of *persona non grata*. According to Article 9 the Vienna Convention on Diplomatic Relations: the receiving State may at any time and without having to explain its decision, notify the sending State that the head of the mission or any member of the diplomatic

¹ - *Arrest Warrant of 11 April 2000 (Democratic Republic of Congo v Belgium)* ICJ, 41 ILM 536.

² - *Ibid.*

³ - Eileen Denza, *Diplomatic Law: A Commentary on the Vienna Convention on Diplomatic Relations*, Oxford University Press, 3rd edition, 2008, p306.

⁴ - *Certain Questions of Mutual Assistance in Criminal Matters (Djibouti v France)*, Judgment, ICJ Reports 2008, pp 170-171.

staff of the mission is persona non grata or that any other member of the staff of the mission is not acceptable.¹

2- AFTER FUNCTION:

The immunity from jurisdiction of diplomatic agents as provided in Article 31(1) of the Vienna Convention on Diplomatic Relations applies as long as diplomatic agents exercise their official function and ends when their function ends.² After function their immunity in the receiving State is limited to that set forth in Article 39(2) of the Vienna Convention on Diplomatic Relations "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".³

This so-called residual immunity is limited to official acts performed by the diplomatic agents within their official capacity because such acts are the acts of the sending State.⁴ Therefore, ex-diplomats can only rely on the functional immunity for protection covering official acts performed during his or her time in office. The rationale behind this is to prevent that an official in the receiving State is held responsible for acts that are those of the sending State. The residual immunity is therefore not intended to shield the diplomats, but rather the State that they represent in their official capacity.⁵

For example, if a diplomatic agent ends his/her official function in the Netherlands and moves to Belgium in order to take up a position, he/she ends his/her official function as far as the Netherlands is concerned. It should be noted that even though all the privileges and immunities cease to exist when diplomats depart from the receiving State, they still have a reasonable time to wind up their affairs during which they may continue to enjoy immunities.⁶

As far as functional immunity of former diplomats is concerned, tort claims concerning abuse of human and labor rights of domestic workers are normally unrelated to the function, as illustrated by the *Swarna v Al-Awadi* case. Vishranthamma Swarna, an Indian national, had come to work for Al-Awadi, Third Secretary to the Permanent Mission of the State of Kuwait to the United States, in New York City. Swarna was sequestered in the diplomat's house, denied access to the outside world, forced to work long hours with no privacy and little food, beaten and raped. After her escape, she managed to bring a default

¹ - Eileen Denza, *op. Cit.*, pp 460-462

² - Hazel Fox, *The Law of State Immunity*, 1st edition, 2002, p452.

³ - Article 39(2) of the Vienna Convention on Diplomatic Relations

⁴ - Eileen Denza, *op. Cit.*, p439.

⁵ - Hazel Fox, *op. Cit.*, p452.

⁶ - Eileen Denza, *op. Cit.*, p436.

judgments in the United States against the diplomat after he had left to take up a posting in France. When Al-Awadi responded to the case, he argued that he enjoyed jurisdictional immunity as a result of his diplomatic function. However, the District Court rejected this argument by pointing out that diplomats lose much of their immunity upon leaving their post, but where residual immunity did persist, it related only, in the words of the Vienna Convention, to ‘acts performed [...] in the exercise of this function as a member of the mission.’¹ As far as the notion of ‘official act’ is concerned, the Court explained that it encompasses the functions of the diplomatic mission as given in Article 3(1) of the Vienna Convention on Diplomatic Relations.²

However, if an act is "entirely peripheral to the diplomat’s official duties" then it will not fall under the residual immunity. The Court stated that "[not] all employment-related acts by a diplomat are official acts to which residual immunity attaches once the diplomat’s duties end" Employing a person unrelated to the diplomatic mission does not qualify as an act performed on behalf of the sending State. Since Al-Awadi hired Swarna to take care of his family’s personal affairs in his private residence, the Court decided that the employment contract between Swarna and Al-Awadi constituted a private act because the employment of a household worker did not fall within the meaning of Article 3 of the Vienna Convention on Diplomatic Relations, nor was it part of the implementation of the official policy of the sending State.³

It can be concluded from that, in cases of residual immunity, there is a distinction between private and official acts of the diplomatic agent. The diplomat would only enjoy residual immunity for official acts performed during function.⁴ The employment of a domestic workers, whose duties were limited to fulfilling the personal household needs of the diplomat and his or her family, is a private act that cannot be considered to be performed on behalf of or immutable to the sending State, even when the provision of those services for the diplomat happens to occur inside the premises that house the diplomatic mission.

B- WAIVER OF IMMUNITY:

There are Two rules determine the position of diplomats in office in regards to execution measures in the receiving State.

Article 31(1) of the Vienna Convention on Diplomatic Relations that “[n]o measures of execution may be taken in respect of a diplomatic agent except in the cases coming under subparagraphs (a), (b) and (c) of paragraph 1 of this article, and provided that the measures concerned can be taken without infringing the inviolability of his person or of his residence.” Hence, execution is only possible

¹ - *Swarna v Al-Awadi case 607 F.Supp.2d 509 – Dist. Court, SD New York (2009)*, <https://www.casemine.com/judgement/us/591466adadd7b049342a3bb3>, (17/05/2019).

² - *Ibid.*

³ - *Ibid.*

⁴ - *Eileen Denza, op. Cit., p441.*

in respect of cases coming within one of the exceptions to immunity from civil jurisdiction, and execution may never violate the inviolability of the agent's person (Article 29 of the Vienna Convention on Diplomatic Relations) and residence (Article 30(1) of the Vienna Convention on Diplomatic Relations). As far as former diplomats are concerned, execution measures are allowed, and their property in the receiving State is no longer inviolable once their function in the receiving State has ended and the diplomat has moved out permanently (Article 39(2) of the Vienna Convention on Diplomatic Relations).¹

1- IMMUNITY FROM JUDICIAL:

Under Article 32 of the Vienna Convention on Diplomatic Relations the receiving State could request the sending State to waive the immunity of the offending diplomat so that the latter could be tried in court for the offences committed by foreign diplomatic agents where admonition is not considered a satisfactory punishment.²

This would possibly strain the political relations between the two States less than when the receiving State would declare the diplomatic agent persona non grata under Article 9(1) of the Vienna Convention on Diplomatic Relations. Waiver has to be express and the possibility to revoke a waiver once it has been given does not exist.³

Immunity can only be waived by the sending State, not by the diplomatic agent himself. Notably, a waiver of immunity from jurisdiction does not signify waiver of immunity from execution. In other words, if the sending State waives the immunity from jurisdiction of the diplomat, the judgment that has been issued as a result of this cannot be enforced in the receiving State unless there is a separate waiver for the immunity from execution. The question whether the sending State may waive diplomatic immunity or submit to the jurisdiction of the courts of the receiving State prior to a dispute or in regards to future contracts is unsettled.⁴

In 1966 the English Court of Appeal in *Empson v Smith* decided that "there could be no effective waiver of immunity until the court is actually seized of the proceedings." However, Denza argues authoritatively that in view of developments since then this should no longer be the prevailing position: "if the undertaking was in clear terms and given for consideration, there seems no reason of principle why the State ... should not to be held to its agreement bound" . While States have in recent years more readily waived the immunity of their diplomatic agents, waiver is still the exception. Notably, a resolution to the Final

¹ - *Ibid.*

² - *Article 32 of the Vienna Convention on Diplomatic Relations.*

³ - *Article 9(1) of the Vienna Convention on Diplomatic Relations.*

⁴ - *Eileen Denza, op. Cit., pp332-334.*

Act of the Vienna Conference on Diplomatic Relations urging States to adopt a waiver in respect of civil claims was not supported by many States.¹

2- IMMUNITY FROM WAIVER:

A State may consent to the exercise of jurisdiction, which is also known as a waiver. It is a voluntary submission which requires that the State consents explicitly as is provided in Article 7 of United Nations Convention on Jurisdictional Immunities of States and Their Property.²

Both immunity from jurisdiction and immunity from execution can be waived by the receiving State. When one is waived, the other immunity continues to exist, until the State expresses explicit consent for it to be waived. In the absence of explicit waiver such consent to the exercise of jurisdiction over a State by the receiving State's courts cannot simply be presumed. As a consequence of the UNCJIS's presumption of lack of consent to jurisdiction on the part of a defendant State, Article 7(1) United Nations Convention on Jurisdictional Immunities of States and Their Property, requires that, for the purposes of the provision, a State's consent to the exercise of jurisdiction over it by a court of another State be express. Also, as the ILC commentary puts it, there is 'no room for implying the consent of an unwilling State which has not expressed its consent in a clear [...] manner.'³

Therefore, Article 7 United Nations Convention on Jurisdictional Immunities of States and Their Property, demands that the consent should be explicit. The ILC commentary further elaborates that any theory of 'implied consent [...] should be viewed not as an exception in itself, but rather as an added explanation or justification for an otherwise valid and generally recognized exception.' Explicit consent can be expressed in only three ways as enumerated in Article 7(1) (a) to (c) of United Nations Convention on Jurisdictional Immunities of States and Their Property.⁴

It is important to mention that Article 7 of United Nations Convention on Jurisdictional Immunities of States and Their Property has to be read alongside Article 20 of United Nations Convention on Jurisdictional Immunities of States and Their Property according to which consent to exercising jurisdiction does not imply consent to taking of pre- or post-judgement measures of constraint for the purposes of Articles 18 and 19 of United Nations Convention on Jurisdictional

¹- Eileen Denza, *op. Cit.*, pp337-339.

²- Article 7 of *United Nations Convention on Jurisdictional Immunities of States and Their Property*, Adopted by the General Assembly of the United Nations on 2 December 2004. Not yet in force. See General Assembly resolution 59/38, annex, *Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 49(A/59/49)*.

³- Roger O'Keefe 'Article 7' in Christian J. Tams (eds), *The United Nations Convention on Jurisdictional Immunities of States and Their Property: A Commentary* (OUP 2013) p116.

⁴- Roger O'Keefe, *op. Cit.*, pp 116-117.

Immunities of States and Their Property as immunity from jurisdiction is different from immunity from measures of constraint.¹

A State cannot invoke immunity in a case where it itself instituted the proceedings, intervened in such proceedings, or has taken any other step relating to the merits. However, 'failure on the part of a State to enter an appearance in proceeding before a court of another State [should] not be interpreted as consent by the former State to the exercise of jurisdiction by the court.'²

Lastly, consent also plays a part in the context of counterclaims. A State cannot invoke immunity where it instituted a proceeding before a court of another State and a counterclaim is lodged which arises out of the same legal relationship or facts,³ and conversely where a State advances a counterclaim in proceedings in a foreign court in response to a claim brought against it by another party to the proceedings.⁴

CONCLUSION

The conclusion of the article should mention: Judicial immunity was found to protect diplomats while carrying out the functions assigned to them, and in accordance with the Vienna Agreement on Diplomatic Relations and the UN Convention on Jurisdictional Immunities of States and Their Property, we find that diplomats can be held accountable if they commit illegal acts.

Article 31 of the Vienna Convention on Diplomatic Relations clarifies cases in which the diplomat does not enjoy judicial immunity, which in turn is divided into immunity during the post and post-employment immunity.

The Vienna Convention on Diplomatic Relations "When the functions of a person enjoying privileges and freedoms have come to an end, such privileges and immunities shall normally determine 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.

A State may consent to the exercise of jurisdiction, which is also known as a waiver. It is a voluntary submission which requires that the State consents explicitly as is provided in Article 7 of United Nations Convention on Jurisdictional Immunities of States and Their Property.

¹- *Ibid.*

²- *Article 8(1) United Nations Convention on Jurisdictional Immunities of States and Their Property.*

³- *Article 9(1) United Nations Convention on Jurisdictional Immunities of States and Their Property.*

⁴- *Article 9(3) United Nations Convention on Jurisdictional Immunities of States and Their Property.*

It is important to mention that Article 7 of United Nations Convention on Jurisdictional Immunities of States and Their Property has to be read alongside Article 20 of United Nations Convention on Jurisdictional Immunities of States and Their Property according to which consent to exercising jurisdiction does not imply consent to taking of pre- or post-judgement measures of constraint for the purposes of Articles 18 and 19 of United Nations Convention on Jurisdictional Immunities of States and Their Property as immunity from jurisdiction is different from immunity from measures of constraint

It appears as a final result that consent also plays a part in the context of counterclaims. A State cannot invoke immunity where it instituted a proceeding before a court of another State and a counterclaim is lodged which arises out of the same legal relationship or facts, and conversely where a State advances a counterclaim in proceedings in a foreign court in response to a claim brought against it by another party to the proceedings, In sum, if the receiving State were to waive its immunity of jurisdiction and immunity of execution by explicit consent, the embassy employees would face no difficulties in having their claim heard by the receiving State's courts; and if successful on the merits, the judgment may then be enforced.

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