



PacificMUN 2018

Dare to Speak | February 23-25

LEGAL
Backgrounder Guide

LEGAL - Topic A

PacificMUN 2018



Dare to Speak.

Dear delegates,

My name is Linda Dai and I am ecstatic to be serving as the Director of LEGAL at Pacific Model United Nations 2018. Currently, I am a Grade 11 student at Crofton House School and have been an active participant in Model United Nations since my first conference in Grade 8. Pacific Model United Nations will be the first Model United Nations (MUN) conference that I will direct at and I am honoured to be running such an enriching committee. Each of my MUN experiences have created new learning environments and networking opportunities that caused me to fall in love with MUN. Through engaging debate and interesting resolutions, I have been able to explore the world of politics and international relations. I have met amazing friends, drank countless caramel macchiatos, and developed a more cognisant global awareness. I genuinely hope that this weekend provides a similarly positive yet challenging experience. The dais for LEGAL is extremely excited for the approaching conference. Elizabeth Vaz is a first-year student at UBC studying life sciences and business management. She will be serving as the Chair of LEGAL and has been involved in Model United Nations since she was in Grade 9. Ever since she was on Secretariat Team of PacificMUN during its first iteration in 2017, Elizabeth has held this conference in a special place in her heart. Additionally, Jonathan Song is a Grade 11 student at Vancouver College who is serving as your Assistant Director. Although he only started Model United Nations in his Grade 10 year, Jonathan has developed a strong love for MUN's invigorating debate. The LEGAL staff team greatly looks forward to seeing you all at PacificMUN 2018.

The topics for debate in LEGAL are critical for the development of the international community. Over the course of the weekend, we will be debating on The Issues Regarding Diplomatic Immunity and The Implementation of an International Carbon-Tax. Both topics reflect a diverse range of conflicts that are currently being combatted on a global scale. Each member-State will have different perspectives in regards to tangibly solving the complex array of problems that surround each subject. As your director, I look forward to meeting you and wish delegates the best of luck in their preparation for this conference! If you need any assistance or have any questions feel free to contact me at legal@pacificmun.org

Sincerely,
Linda Dai
Director of Legal

Committee Description

LEGAL originated as the United Office of Legal Affairs in 1946. It was created as a separate department within the United Nations and later formed an individual office. This office became the sixth committee of the General Assembly in the United Nations. This committee acts as the primary forum for legal questions and provides a platform for debate surrounding international law. At its latest conference, the seventy-second meeting in 2017, Legal discussed numerous topics such as International Terrorism, Universal Jurisdiction, and The Responsibility of International Organizations. One of the most notable actions of LEGAL was creating the International Trade Law Branch which was established to manage the international trading of products and goods between countries.

Comprised of 193 delegations, LEGAL commonly collaborates with other UN bodies on a series of conflicts. Although law-making and similar reinforcements also take place in other specialized agencies, conflicts that fall under the general umbrella of reform in regards to international law are usually negotiated within the Sixth Committee. LEGAL has continually devoted its efforts to global progressive development and its member-States meet annually to discuss the most critical issues. From negotiating treaties to combating social stigmas, LEGAL has the general authority to recommend and influence lawful resolutions on a universal scope. The Sixth Committee can also provide advice to other UN bodies, excluding topics that fall under the Security Council's mandate.

Topic Overview

Diplomatic immunity references a piece of international legislation that limits a foreign government's ability to prosecute a diplomat, who is working in a foreign host country, for certain crimes. This privilege applies differently in various circumstances and takes into account details such as the sovereign official's family, role, and a myriad of other factors. High-ranking ambassadors or embassy employees who represent their nation in another country, and their family members, are granted the highest level of immunity. These individuals are exempt from court prosecution, detainment, arrest, and property raids. This means that they can deny their presence in criminal court and can legally avoid harassment suits in local civil courts when applicable. When present in another country, diplomatic officials and representatives can disregard and ignore common charges such as parking tickets and local taxes. However, the system has faced controversial criticism. There are those who persist that government ambassadors for exploiting and taking advantage of this "get-out-of-jail free card," claiming that they are abusing their power and not taking full responsibility for their harmful actions. On the other hand, the supporters of this law say that diplomatic immunity is necessary as this legislation allows for diplomats to focus on their work without being harassed by accusations under the local justice system. This potentially also benefits diplomats who do not understand unique civil laws in different nations, as it allows innocent mistakes, such as forgetting specific tax payments, to be overlooked. The diverse array of legal networks that exist makes diplomatic immunity an extremely sensitive topic. As delegates, nations would need to consider both sides of the controversy and attribute their individual sovereign beliefs on an international scale during the debate.

Timeline

3000-2000 B.C: Concept of Diplomatic Immunity in Ancient Indian epics

In the historic Indian story Ramayana, messengers and diplomats were given immunity from harsh punishments like death. This is shown when the demon king Ravana was unable to kill his younger brother Hanuman because of this ancient practice.¹

1709: British Parliament Grants Immunity to Foreign Ambassadors

After Count Andrey Matveyev, who at the time was a Russian resident residing in London, received an extensive amount of verbal and physical threats and abuse from British bailiffs. Resultantly, the nation granted him immunity from the aforementioned legal harassment. Soon after, European diplomats realized that diplomatic immunity was required in order to efficiently and effectively do their work in other regions of the world. Therefore, a preliminary concept of legislation spreads across Western Europe granting special rights to diplomats.

1815: Congress of Vienna

A meeting with ambassadors from European states discussing the rising conflicts that came out of the French Revolutionary and Napoleonic Wars. This was the first attempt to adopt diplomatic immunity into the forum of diplomatic law.

1938: Havana Convention on Diplomatic Officers

The Convention outlined key elements of diplomatic immunity; a key one being that states have the right of being represented before each other through diplomatic officers.²

1961: Vienna Convention on Diplomatic Relations

This convention formed the legal basis for this law on an international scale. At this conference, a treaty was signed by 60 signatories (which is now ratified by almost every country in the world) that specify the framework for diplomatic occupations in foreign nations. It enables diplomats to perform their mission without harassment from the host country.³

1979-1981: Iran Hostage Crisis

The Iran Hostage Crisis is considered to be one of the most well-known violations of diplomatic immunity. 52 American diplomats and citizens were hostages for 444 days in an intense standoff when a group of Iranian Revolution supporters took over the U.S Embassy in Tehran. Although the perpetrators of this crime did not represent the Iranian state, it states in the legislation of diplomatic immunity that the host nation is responsible for protecting the property from which diplomats work on.

February 1999: Shimokoji Domestic Abuse Scandal

The Japanese Consul-General, Mr. Shimokoji, admitted to punching his wife in Vancouver, British Columbia after she showed up to the hospital with a black eye. However, the Consul-General could not be arrested because of his sovereign immunity as a Japanese representative in Canada. After the controversy and negative media coverage that followed after his statement was released, the Japanese Ministry of Foreign Affairs waived Mr. Shimokoji's diplomatic immunity. He was given an absolute discharge, meaning he was found guilty but free of registered conviction, in Canadian courts but suffered career problems in Japan.

1 <http://www.bl.uk/onlinegallery/sacredtexts/ramayana.html>

2 <http://grberridge.diplomacy.edu/havana-conventions/>

3 http://legal.un.org/ilc/texts/instruments/english/conventions/9_1_1961.pdf

The CIA employed Raymond Allen Davis who, at the time was working at an American Embassy in Lahore, Pakistan. However while in Pakistan, he shot his firearm shooting two civilians. He stated that it was self-defense in an attempted robbery. The case got complicated when the U.S State Department stated that Davis was a diplomat and therefore should get released on the basis of immunity. Since Pakistan is a signatory to the treaty passed at the Vienna Convention, Davis was released from custody and returned to the U.S around two months later. He also received compensation from the citizens' families in the form of verbal apologies and gifts and was free from all charges.

2013: Borodin's Arrest

Dmitri Borodin, a Russian diplomat, was arrested in the Hague, The Netherlands, on allegations of child abuse under the influence of alcohol.⁴ The Russian Government demanded an apology for The Netherlands' violation of Borodin's immunity. This heightened the existing tension between the two nations.

Historical Analysis

Diplomatic immunity is depicted to have come from three main concepts: right of personal representation, extraterritoriality⁵, and undisrupted function: working without distraction. Throughout history, additional political and legal factors have shaped this unique piece of legislation to what it is today. There have been consistent conflicts surrounding this topic ever since its creation, but only in recent years has the controversy sparked for some to call for complete reconsideration in regards to the legitimacy of this policy.

Historically, the implementation of immunity for leaders and those with power was a common practice. In ancient civilizations, throughout regions like India, China, Egypt, and Greece, diplomatic immunity was used to protect the safety and freedom of diplomatic messengers. It made sure that the ambassador's journey when completing missions was danger-free and problem-free. This can be seen in ancient texts and stories such as the epic Ramayana. As a result of the practicality and commonality of this immunity, the elevated role of those who embodied the role of a diplomat soon became a customary tradition.

Taking a look at the usage of diplomatic immunity on an international and historical scale, a major player who saw the law take its form were the French. Diplomacy amongst this group of people was used to assert a balance of power in the hierarchy. The system that was maintained at the time of French diplomat Francois de Callieres from years 1645-1717 was created in a time of France's weak military to give authoritative leaders strength.⁶ De Callieres accounted for immunity during this time period. In his records, he mentions the fundamentals of diplomatic immunity, such as confidence, moderation, and compromise, while still stating that such diplomacy must be conducted in a "juste milieu." In its purest form, historical diplomatic immunity would neglect the legislative obstacles and discrepancies that would accumulate in diplomatic services.

4 <http://www.aljazeera.com/news/europe/2013/10/netherlands-apologise-for-russia-envoy-arrest-2013109141624653249.html>

5 <http://www.dictionary.com/browse/extraterritoriality>

6 http://www.caio-ch.org/reforms/Intern_Paper_I.pdf

Historical controversies arose because of the spread of international embassies. As the location of these political structures became permanent, blurred lines in regards to the status and role of a diplomat started to cause tension between nations. Since there was a lack of official legal support for immunities granted to traveling envoys under English Law, political decision-making went under fire for its inconsistency. For example, in 1556, the council decided not to persecute a French ambassador because they did not want to provoke a war with France. However, in 1569, a Spanish ambassador in a similar situation was reduced to the same legal rights as a normal citizen and was imprisoned for inappropriate sovereign behavior.⁷ Definite protests against diplomatic immunity started during the French Revolutionaries. These revolutionaries openly attacked the mysterious luxuries and privileges that were hidden behind this seemingly innocent immunity. Thomas Jefferson also famously disapproved of diplomatic service in general calling diplomats the, "Pest of the peace of the world" and the catalyst to, "Nearly all the wars of Europe."⁸

Despite the increased outcry, little changed until the nineteenth century. Although diversified practices spread awareness surrounding abuse of power and slightly altered state to state practice, the overall functionality of diplomatic immunity remained the same. After important time periods like the industrial revolution, normalized contact across seas and between sovereign governments further developed the legislation. Not only was there more transparency in the modern status of a diplomat and the limitations of the immunity that came with the occupation, but there was also new areas of special privilege that would come with the creation of non-governmental organizations.

Current Situation

In modern times, the topic of diplomatic immunity is discussed with a high amount of sensitivity. A recent increase in the amount of alleged violations and exploits under this special law has caused many to call into question its effectiveness in giving these workers unique rights and if the pros outweigh the cons of negative backlash. These controversies have rarely escaped the limelight of public critique. From the widely publicised Iran Hostage Crisis in 1979 to more recently when Saudi Businessman Sheikh Walid Juffali used a diplomatic immunity defense against his ex-wife, former model Christina Estrada after she made an attempted claim to his approximated £4bn profits.⁹ This created a highly unusual battle in London's courts and brought back concerns regarding Juffali's appointment in 2014 as the permanent representative to the IMO whose secretariat abides in London. The final verdict denied Juffali of this appeal because he was a permanent British resident and thus was only immune to prosecution for official acts; however, this drawn-out court case attracted lots of international scrutiny. To many, the verdict was the epitome of why diplomatic immunity was outdated and unnecessary, while to others, the case further demonstrated the fair rulings of the usage of special diplomatic privilege because of its outcome.

The conventional intention of diplomatic immunity and its purpose to protect embassy staff from hostility in the host country is a longstanding component of international relations that dates back centuries. In the United Kingdom, diplomatic immunity covers and shelters around 25,000 people¹⁰, a value that includes the family members of diplomatic officials. In 2010, William Hague, who was Foreign Secretary at the time, released information that detailed 18 crimes of which UK diplomats have been accused of in that year. This included sexual assault, threats, blackmail, human trafficking, and driving under the influence of alcohol.¹¹ Moreover, in December 2016 it was published that political embassy employees had accumulated £95m in

7 http://www.caio-ch.org/reforms/Intern_Paper_I.pdf

8 http://www.usdiplomacy.org/history/overview/history_thomasjefferson.php

9 <http://www.bbc.com/news/magazine-35882967>

10 <http://www.bbc.com/news/magazine-35882967>

11 <http://www.bbc.com/news/10436729>

unpaid financial charges in London, many of which were excused because of their defense that these funds were taxes and therefore inapplicable under the Vienna Convention.¹²

In the United States, diplomatic immunity proves to be just as controversial. On May 17th, 2017, nearly a dozen people were injured in a short confrontational brawl that took place between two groups of people outside the Turkish ambassador's home in Washington, DC.¹³ Authorities say that members of the Turkish President's security clashed with nearby protesters. Many of the alleged assailants might not be subjects in criminal court because of their immunity in the United States as foreign representatives. This event brings attention to another key element of diplomatic immunity, the idea of reciprocity. In the specific case of the conflict in Washington, the State Department gains long-term benefits in exchange for letting the incident go without criminal charges. If the Turkish officials are covered by immunities when working in the United States, even amongst violent actions such as these, then it guarantees that American diplomats will be exempt from similar charges in foreign courts. In order to fully apprehend the limitations that come with charging government officials with crime, the department has to keep in mind the future consequences of continuing to prosecute foreign diplomats and agents with a charge that may fall under the Vienna Convention and similar immunities.

In the common question of which court holds more power, local law or international law, it is important to recognize the regulations that come with each form of prosecution. International law, a law of which diplomatic immunity and the Vienna Convention falls under, manages how one country treats another country's consulates, delegations, and authoritative workers. The policies that are implemented are meant to facilitate peaceful negotiations between multiple sovereignties. A modern justification of this policy is the fact that state officials are immune from a listed amount of intrusions during their employment in offices abroad. From an international stance, the Vienna Convention on Diplomatic Relations specifically states that all 190 parties must be compliant to the "special duty to take all appropriate steps to protect the premises of the mission against any intrusion or damage and to prevent any disturbance of the peace of the mission or impairment of its dignity."¹⁴

Under legislative measures, such as the ones listed, it seems almost impossible to revoke diplomatic immunity without facing consequences. However, in a multitude of cases, those accused can be brought to justice in their own country. The Vienna Convention allows for host nations to, under exceptional circumstances, be liable for prosecution and lawful action if they choose to declare, "persona non grata" and expel diplomats from civil service. The civil servant will be highly encouraged to repeal diplomatic immunity and be tried in the court without ambassadorial status.

In conclusion, although modern diplomacy has evolved and expanded since its creation in history, the fundamentality of diplomatic immunity has remained the same. The application of this law has brought forward both positive reinforcement in the relations between nations and negative protests targeted at cases of alleged abuse in this system. Current depictions have heightened the pressure on governments to act fairly, although the present-day idea of what is just and what isn't has greatly manipulated international prosecution across a wide array of platforms due to applications of diplomatic immunity.

12 <https://www.ft.com/content/f731628a-9f31-11e5-beba-5e33e2b79e46#axzz43kQrZdZ2>

13 https://www.washingtonpost.com/posteverything/wp/2017/05/18/diplomatic-immunity-protects-all-officials-even-erdogans-thugs-thats-good/?utm_term=.b312028ef26f

14 http://legal.un.org/ilc/texts/instruments/english/conventions/9_1_1961.pdf

Past UN Involvement

Since the initial discussion on diplomatic privilege and special rights at the Vienna Convention in 1961, the United Nations has brought forward limited action to address the controversies surrounding this piece of legislation. This is mainly due to the fact that as an organization, the United Nations and its ambassadors are woven into the policies that have been subjected to criticism. After the creation of the UN in 1945, one of the preliminary conventions passed by its delegations was the 1946 Convention on the Privileges and Immunities of the United Nations.¹⁵ This resolution set out and stated certain privileges and immunities that the UN staff had. At the time of the creation of UN immunity, the workforce had around 300 workers and was mainly a diplomatic organization. Currently, the United Nations has 44,000 employees on missions around the world, serving in a variety of human rights, cultural preservation, and peacekeeping operations.

The Convention that the UN originally passed was used to ensure that host states could not utilize fraudulent charges as threatening political weapons against UN workers. Today, immunity is described as one that protects those under the Convention from “legal processes.” What this entails is the full right to decline cooperation in an investigation, whether it be handing in evidence, providing a testimony, or showing up in court, unless said immunity can only be revoked and waived by the Secretary-General.

Recent expansions in the UN’s missions, such as taking over functions in Namibia, Timor-Leste, and Bosnia during political transitions, have not yet led to revisions in agents’ diplomatic immunity. A widely reported incident due to these expansions is the 25% increase in allegations of sexual assault of women and children against UN Peacekeepers in 2014.¹⁶ The Security Council’s resolution in 2016 attempted to address these claims and combat sexual exploitation in areas where UN soldiers resided. However, many still feel that it is not clear whether or not peacekeepers will be punished for their actions.

Potential Solutions

As a committee, LEGAL is faced with the complex task of untangling the disputes that diplomatic immunity has brought to the international community. Perhaps it is most important to take into account current problems and contextualize them through a historical perspective. It can be seen in many consistent cases that the root of the issue may lie with placing diplomats and foreign officers into a special category. Sorting these workers into a separate and elevated status has given the assumption that diplomats are above the law. The seemingly obvious solution to address the controversy is implementing an alternative legal system. This third-party, potentially comprised of international judges and practitioners, would ensure mechanisms in place would provide adequate legal protection for all bodies affected. The key in this initiative would be to have this panel be completely and unquestionably independent from both the UN and all sovereign governments. However, this is easier said than done; the big question is how can we balance immunity in a way that not only allows for fair trial in court but also still enables diplomats to complete their mission without distraction? Moreover, is it possible for an independent body to rule completely segregated from outside influence?

Another possibility would be to further develop the idea of, “*persona non grata*.” With this, there could potentially be the creation of an additional policy under the Vienna Convention that ensures that the home country of the diplomat would investigate all serious allegations in their own nation’s courts. This means that the envoy will have to address all charges when back in their own nation, but would be able to work freely

15 <http://legal.un.org/avl/ha/cpiun-cpisa/cpiun-cpisa.html>

16 <http://theconversation.com/what-can-be-done-to-stop-the-united-nations-abusing-its-immunity-61227>

when abroad. Although this would solve the issue of abuse of power and potential distraction, it brings up the question of whether or not host countries will manipulate this expansion for personal political gain. In the long term, this would also be very time-consuming, perhaps even to the point where the diplomat's own nation will start to disregard the importance of all cases brought to them because of the frequency of allegations. If the charge is harsh enough, the public may wish for the diplomat to discontinue working in the nation altogether. This would diminish the entire purpose of diplomatic immunity. If delegations choose to pursue this resolution, they will have to do extensive research on how to tangibly execute such a law.

To address problems in the UN and its bodies, a probable answer to the problem could be to establish an independent tribunal that would hear the claims of those who have allegedly been hurt by workers' actions. The objective of an independent tribunal would be to provide remedies and consolation to individuals or groups harmed by international organizations while also providing functional immunity to organizations as a whole so that they are able to follow their agenda. This action would align with the United Nations overarching responsibility to prioritize human rights and maintain international law respectfully. Nonetheless, much like other propositions, the creation of such a system would be a long-term process, and arguably lessen the strain on diplomats to take responsibility for their actions, as many international bodies already have similar administrations in place with no recognizable impact.

Bloc Positions

European Nations

Perhaps one of the most highly recognized supporters of diplomatic immunity, the earliest traces of similar legislative initiatives can be seen in many European civilizations, specifically in France and the United Kingdom. Although London courts have been praised for their overall verdicts, European countries, in general, have faced the most media backlash in regards to their diplomats' actions in host nations. Particularly, the abuse of migrant domestic workers from their diplomatic employers has received a great deal of attention. A majority of the cases surrounding immunity privileges have been criticised for abuse of power and violation of human rights, reflecting a justice system that carries more historical values in regards to the role of a diplomat.

Asian Nations

Diplomatic immunity in Asian nations has been more private in its dealings with government officials. In China, media censorship has limited the public's awareness with all government relations. Asia's stance on diplomatic immunity is neither positive or negative. Many Asian nations have been widely known to prosecute diplomats and act independently based on internal investigations. Therefore, the lack of backlash from the general public may not be due to a lack of misconduct, but rather a lack of transparency.

The United States

Some of the most public disputes regarding diplomatic immunity have taken place on American grounds, particularly near foreign embassies. As a country that often hosts many foreign ambassadors because of its many international relations and being the host grounds to the United Nations Headquarters, there have been many cases where protests have gone violent and the security hired by diplomats has had to intervene. The nation has had to address many claims of unfair court rulings and continues to battle the controversy without directly condemning the actions of both foreign and American diplomats.

Canada and Oceania

As rather politically neutral and peaceful countries, Canada and Oceania have faced a reasonably small amount of backlash for their diplomatic immunity dealings. However, last year a deal between the ACT government and the Department of Foreign Affairs and Trade stated that diplomats residing and working in Canberra, Oceania will no longer have immunity from road rules and restrictions.¹⁷ Although this caused some tension amongst nations such as Russia and Indonesia, who have a substantial amount of sovereign missions going on in the region, the country has since been praised for taking initiative in preventing diplomatic ignorance of standard road rules.

Discussion Questions

Does your nation support the possibility of reforming diplomatic immunity and its related policies?

Has your government taken action in preventing diplomatic officers from abusing their immunity?

Under what circumstances, if any, has your nation's legal system chosen to prosecute a diplomat?

Overall, has diplomatic immunity had a positive or negative effect on your country's relations with other sovereignties?

What changes has your country made to its foreign policy as a result of special privileges granted to envoys?

In what ways has the media affected the reputation of diplomats?

How can we address allegations without violating or revoking diplomatic immunity?

Further Reading

<https://www.state.gov/documents/organization/150546.pdf>

http://legal.un.org/ilc/texts/instruments/english/conventions/9_1_1961.pdf

<http://legal.un.org/avl/ha/cpiun-cpisa/cpiun-cpisa.html>

<http://www.un.org/en/sections/what-we-do/uphold-international-law/>

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