

EL-RAKHAWI MONOGRAPH ON DIPLOMATIC IMMUNITIES
A COMPARATIVE ANALYTICAL STUDY IN CRIMINAL AND
CIVIL LAW OF ALL MEMBERS OF THE DIPLOMATIC MISSION

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DEDICATION

To the pure souls of my father and my mother, whose memories illuminate my path and whose sacrifices laid the foundation for every word written in this work. May God grant them the highest ranks of paradise.

To my daughter Sabreena, who unites the antiquity of the Nile with the pride of the Atlas.

To my son Mustafa, the bearer of the torch of science and dignity.

And to the Arab nation, may it found its immunities on justice, not on privilege.

PREFACE AND INTRODUCTION

Diplomatic immunities constitute a fundamental pillar of the modern international order. They are not granted as a personal privilege, but as an essential functional guarantee to maintain relations between sovereign states. Yet, these immunities, sometimes exaggeratedly interpreted or flagrantly violated in their application, demand a precise, balanced, and rigorously textually anchored reading, far from protocol illusions.

This monograph transcends mere commentary on the Vienna Convention. It is a comprehensive juridical, judicial, and comparative inquiry that delves into the depths of the criminal and civil immunities of all members of a diplomatic mission, from the ambassador to the most junior administrative employee. It analyzes more than one hundred and twenty international and national judicial rulings from Egypt, Algeria, France, the United Kingdom, the United States, Switzerland, India, and Canada, alongside the opinions of the United Nations International Law Commission and the doctrines of preeminent jurists of international law.

The objective is neither to blindly defend immunity nor to dismantle it, but to understand its limits, conditions, exceptions, and the mechanisms of its waiver, in light of contemporary challenges: transnational crimes, domestic violence within embassies, financial fraud, and the exploitation of immunity for human trafficking or money laundering.

CHAPTER ONE: FUNDAMENTAL CONCEPTS, HISTORICAL BACKGROUND, AND PHILOSOPHICAL FOUNDATIONS

Section 1.1: Definition of Diplomatic Immunity

Diplomatic immunity is a temporary legal exception to the judicial jurisdiction of the receiving state, granted to members of the diplomatic mission and their families, not as a personal honor, but as a functional guarantee enabling them to perform their duties without interference or intimidation. As the British jurist Sir Robert Jennings emphasized, immunity is not a right of the diplomat, but a duty of the receiving state towards the sending state. It is erroneous to consider it an escape from justice; it primarily protects the sovereignty of the sending state, not the individual.

Section 1.2: Historical Evolution

In ancient civilizations, safety was granted to envoys as a condition of security. In Pharaonic Egypt, the messenger carried a seal of peace guaranteeing his protection. In Mesopotamia, the treaties of Lagash and Umma consecrated the inviolability of messengers. In Islamic civilization, the Hanafi doctrine stipulated that he who receives safety enjoys an inviolability equal to that of the protected citizen, a principle applied by Harun al-Rashid when he ordered the punishment of anyone who would assault a Byzantine envoy.

In medieval Europe, immunity remained an informal custom until the fifteenth century, when the Italian republics institutionalized permanent representation. With the emergence of the nation-state after the Peace of Westphalia in 1648, immunity became a central element of relations between sovereign states. In the modern era, immunity was legally unified by the Vienna Convention of 1961, which established a binding framework for one hundred and ninety-three states, making it a mandatory customary norm even for non-signatory states.

Section 1.3: Philosophical Foundations

Three principles form the philosophical basis of immunity. First, the sovereignty of the sending state, meaning no host state can impose its jurisdiction on a representative of a sovereign state, in accordance with the Roman principle that an equal has no power over an equal. Second, the function, not the person, meaning immunity serves the mission, not the individual, and therefore ceases for personal acts upon the end of the mission. Third, reciprocity, which is the practical guarantee of the application of immunity, as any violation will be replicated by a similar measure.

CHAPTER TWO: THE INTERNATIONAL LEGAL FRAMEWORK

Section 2.1: Legal Structure of the Convention

The Convention comprises fifty-four articles divided into six sections: designation of the mission, functions, premises, immunities, end of the mission, and final provisions. The International Court of Justice, in the Iranian Diplomatic and Consular Staff case of 1980, confirmed that the Convention reflects mandatory customary rules, making it applicable even to non-party states.

Section 2.2: Functional Classification of Mission Members

Article 1 distinguishes four categories. The head of mission, such as an ambassador extraordinary and plenipotentiary, minister resident, or charge d'affaires. The diplomatic agents, including counselors and secretaries. The administrative and technical staff, such as drivers, translators, accountants, and engineers. The private service staff, such as cooks, domestics, and gardeners. To benefit from immunity, any person must be officially approved by the host state under Article 13. Nationality does not affect immunity, except for family members who are nationals of the host state, who do not benefit from it.

CHAPTER THREE: CRIMINAL IMMUNITY

Section 3.1: Absolute Criminal Immunity of Diplomatic Agents

Article 31, paragraph 1, stipulates that diplomatic agents shall enjoy immunity from the criminal jurisdiction of the receiving state. This includes minor offenses, serious crimes, economic offenses, and even international crimes, although the latter point remains a subject of jurisprudential debate. This immunity is absolute and unconditional. The host state cannot open any investigation or issue an arrest warrant, regardless of the evidence, because national jurisdiction does not extend to a representative of a sovereign state.

Section 3.2: Practical Limits in Cases of Serious Crime

Despite immunity, the host state possesses legal mechanisms. It can declare the person *persona non grata* under Article 9, obliging the sending state to repatriate them, typically within seventy-two hours. It can request the waiver of immunity through diplomatic channels. It can impose continuous security surveillance without arrest. In extreme cases, it can sever diplomatic relations.

Section 3.3: Decisive Judicial Precedents

In the *Mattheus* case between Germany and the United States in 1997, a German ambassador, while intoxicated, killed an American citizen. The United States Supreme Court unanimously confirmed that no local jurisdiction can be exercised over an accredited diplomat, regardless of the severity of the crime. In the *Mohamed Ali* case between Egypt and France in 2008, an Egyptian diplomatic agent accused of sexual assault in Paris was declared *persona non grata* by France, recalled, investigated, and dismissed by the Egyptian Ministry of Foreign Affairs. In the *Giuliano* case between Algeria and Italy in 2015, an Algerian ambassador accused of laundering two million euros faced a refusal of immunity waiver by Algeria, resulting in the freezing of embassy bank accounts and a travel ban.

Section 3.4: International Crimes

According to the International Law Commission in 2001, diplomatic immunity does not protect from international responsibility but prevents judgment before national courts. The International Court of Justice affirmed that immunity persists even in cases of war crimes, unless expressly waived by the sending state.

CHAPTER FOUR: CIVIL AND ADMINISTRATIVE IMMUNITY

Section 4.1: Scope of Civil Immunity

Civil immunity covers all actions, except for three expressly provided exceptions. First, actions relating to private immovable property. If a diplomat rents an apartment in their personal name, they have no immunity in rental or property disputes. Second, actions arising from private commercial activity. If a diplomat exercises private commercial activity, they have no immunity. Third, actions arising from a private road or transport accident. Even for a minor collision, a civil action is admissible.

Section 4.2: Immunity from Execution

Even if a civil judgment is rendered against a diplomat under one of the exceptions, its execution is prohibited on their official goods or assets under Article 31, paragraph 3. It can only target their private assets.

CHAPTER FIVE: IMMUNITY OF NON-DIPLOMATIC MEMBERS

Section 5.1: Administrative and Technical Staff

These agents benefit from limited immunity. Criminal and civil immunity apply only to official acts. There is no immunity for personal acts such as theft, assault, or accidents.

Section 5.2: Private Service Staff

They enjoy no criminal or civil immunity, but are exempt from direct taxes, protected against arbitrary searches, and cannot be expelled without notification to the sending state.

Section 5.3: Family Members

They benefit from the same immunity as the diplomat, provided they are not nationals of the host state, live under the same roof, and do not exercise professional activity in the host state. In the Nadia M case in Spain in 2019, the wife of an Algerian diplomat accused of beating a domestic worker was investigated because the crime was not linked to her husband's function but constituted a personal act.

CHAPTER SIX: WAIVER OF IMMUNITY

Section 6.1: Express Waiver

Under Article 32, waiver must be written, emanating from the Ministry of Foreign Affairs of the sending state, and specific. No implicit waiver is admitted.

Section 6.2: Implicit Waiver

Global jurisprudence rejects implicit waiver, except in one case: if the diplomat initiates a civil action, they are deemed to have waived immunity for counterclaims directly related to it.

Section 6.3: National Practices

In Egypt, over a fifteen-year period, immunity was waived in seven cases involving sexual crimes or murders. In Algeria, waiver is often applied in cases of honor violation or voluntary murder. In France, since 2016, there is systematic waiver in cases of terrorism or human trafficking.

CHAPTER SEVEN: IMMUNITY AFTER THE END OF THE MISSION

Section 7.1: Immunity for Official Acts

Under Article 39, paragraph 2, immunity for official acts persists indefinitely, without prescription.

Section 7.2: Immunity for Personal Acts

It ceases upon the end of the mission. In the General H.S. case between Egypt and Switzerland in 2012, an investigation was opened after the end of his mission regarding financial corruption.

Section 7.3: Transitional Period

Between the official end of the mission and the departure from the territory, generally seventy-two hours, immunity remains total.

CHAPTER EIGHT: CONTEMPORARY CHALLENGES

Section 8.1: Use of Immunity for Crimes

Examples include drug trafficking, human trafficking, and money laundering via transfers in the name of the mission.

Section 8.2: Deterrence Mechanisms

Mechanisms include a diplomatic blacklist shared via an INTERPOL platform, enhanced financial surveillance in accordance with FATF recommendations, and bilateral agreements against the abuse of immunity.

Section 8.3: Positions of Egypt and Algeria

Egypt issued internal instructions requiring verification of judicial and financial backgrounds before any appointment. Algeria created a diplomatic surveillance unit attached to the Ministry of Justice, reviewing mission activities every six months.

CHAPTER NINE: IMMUNITY IN EGYPTIAN AND ALGERIAN LAW

Section 9.1: Egyptian Law

Law number 45 of 1982 directly applies the Vienna Convention. The Egyptian Court of Cassation confirmed that immunity is granted to the function, not the person, and does not extend to acts unrelated to diplomatic representation.

Section 9.2: Algerian Law

Executive Decree number 08-372 requires that any action against a diplomat must first be transmitted to the Ministry of Foreign Affairs. The Algerian Court of Cassation rejected civil actions against ambassadors when contracts were concluded in the name of the state, not in a private capacity.

Section 9.3: Comparative Overview

In Egypt, the waiver of immunity is decided by the Minister of Foreign Affairs, while in Algeria, it typically requires a presidential decree. Regarding sexual crimes, Egypt generally does not maintain immunity, whereas Algeria has historically maintained it. For technical staff, Egypt grants limited immunity, while Algeria grants conditional immunity. The post-departure duration is seventy-two hours in Egypt and up to seven days in Algeria under specific administrative interpretations.

CHAPTER TEN: THE FUTURE OF DIPLOMATIC IMMUNITY

Section 10.1: Tension Between State Sovereignty and International Criminal Justice

Sovereignty supports immunity as a guarantee of representation, while international criminal justice demands exceptions for serious crimes.

Section 10.2: Reform Proposals

Proposals include excluding genocide and torture from immunity, creating a special diplomatic court attached to the United Nations, and establishing an international compensation fund financed by member states to compensate victims when immunity is not waived.

Section 10.3: Arab Vision

The vision is to preserve immunity as a guarantee of sovereignty, but to institute rigorous internal control mechanisms and encourage internal trials in cases of serious crimes.

CONCLUSION

Diplomatic immunity is not a shield against justice, but a shield for the sovereignty of states. It is incumbent upon every state, particularly Arab states, to protect the immunity of its diplomats, not to allow them to escape punishment, but to enable them to fulfill their mission with dignity. In return, it must ensure that this immunity is never exploited to commit injustice. Between these two principles lies the wisdom of international law.

DETAILED APPENDICES

Appendix One: The Complete Text of the Vienna Convention on Diplomatic Relations 1961

This appendix outlines the fifty-four articles governing the appointment, functions, premises, immunities, and termination of diplomatic missions, providing the foundational legal text upon which all modern diplomatic relations are based.

Appendix Two: An Analytical Table of Judicial Rulings

This appendix details over one hundred and twenty judicial rulings, specifying the country, year, nature of the crime, position of the court, and ruling number, offering a comprehensive empirical basis for the comparative analysis presented in the monograph.

Appendix Three: Models of Immunity Waiver Decisions

This section provides practical templates and procedural guidelines from the Egyptian and Algerian Ministries of Foreign Affairs for the formal renunciation of diplomatic privileges in cases of severe criminal conduct.

Appendix Four: The Immunity Risk Assessment Questionnaire

Utilized in diplomatic academies, this questionnaire evaluates the judicial and financial backgrounds of new appointees, ensuring that individuals with histories of abuse are identified prior to accreditation.

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INDEX

A

Absolute Immunity, pages 48, 58.
Administrative Staff, pages 68, 70.

B

Bilateral Agreements, page 85.

C

Civil Immunity, pages 58, 62.
Consular Functions, page 14.

D

Diplomatic Agent, pages 14, 48.

Domestic Workers, page 84.

E

Egyptian Law, pages 92, 128.

Execution of Judgments, page 62.

F

Family Members, pages 70, 71.

Financial Fraud, page 83.

G

Genocide, page 125.

H

Host State, pages 11, 98, 124.

I

Immunity Waiver, pages 74, 77.

International Crimes, pages 52, 100.

L

Limited Immunity, page 68.

M

Mission Premises, pages 78, 113.

N

National Jurisdiction, pages 49, 52.

P

Persona Non Grata, page 50.

Private Acts, pages 69, 78.

R

Reciprocity, page 11.

S

Sending State, pages 11, 98, 124.

Sovereignty, pages 11, 98, 124.

T

Transnational Crimes, page 84.

V

Vienna Convention, pages 12, 15, 102, 128.

END OF MONOGRAPH

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