

**Houston Area
Model United Nations
Standard Committee**



LEGAL

**Chair | Bobby Youstra
Topic B Background Guide
Houston Area Model United Nations 48
February 2-3, 2022**

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Note to Delegates

Delegates,

My name is Bobby Youstra, and I'm very excited to be your LEGAL committee chair for HAMUN 48. I'm a sophomore studying computer science at UT Austin. I first started doing MUN in my freshman year of high school and ever since then I've thoroughly enjoyed researching and debating all sorts of international issues, within crisis and general assembly settings, from the Venezuelan crisis to the sovereignty of outer space. I've enjoyed crisis staffing and directing in the past, but this will be my first experience chairing a general assembly committee so I hope you enjoy this LEGAL committee.

Within the broader United Nations, the LEGAL committee (also known as the Sixth committee of the General Assembly) plays a very important role in determining how the world works together and settling key agreements and standards for international law more generally. The two topics for this committee will be both hugely instrumental in defining sovereignty within the region of East Asia and in determining the 21st-century rules of international diplomacy.

Throughout the committee, I encourage all of you to be engaged, understand the multiple differing perspectives and views on these topics, and to speak up and represent your country's position. International diplomacy is often much messier than it seems, and I want you to embrace and understand the messy details that define most modern diplomatic cooperation and international policy. Finally, I want to stress the importance of representing your country accurately while being cognizant and respectful of other delegates' differing opinions. With that, I can't wait to see y'all in committee this February!

Bobby Youstra

Chair of LEGAL

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Brief history of LEGAL

Otherwise known as the sixth committee of the United Nations, the LEGAL committee is responsible for upholding international law, promoting justice, and preventing international terrorism in collaboration with some of the other counter-terrorism focused committees in the UN[4].

Established to fulfill the GA's responsibility to encourage "the progressive development of international law and its codification" as specified in Article 13 of the UN charter[1], LEGAL has played a big role as one of the largest arbitrators of international law. One of LEGAL's biggest achievements include 1961's Vienna Convention on Diplomatic relations[2] which established the basic laws governing international diplomacy.



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Conceptualization

Modern diplomatic immunity as we know it today was established in the Vienna Convention on Diplomatic Relations in 1961, with it specifically saying that “A diplomatic agent shall enjoy immunity from the criminal jurisdiction of the receiving State,” also including immunity from “civil and administrative jurisdiction,” subject to a few exceptions. These exceptions include: actions relating to “private immovable property” that is not held by the diplomat’s country for diplomatic purposes, actions which treat the diplomat as a private citizen outside of diplomatic affairs, or any business the diplomat may conduct in the host country outside his or her diplomatic affairs[9].

Thus, diplomatic immunity shields all diplomats from possible criminal prosecution almost worldwide (with the notable exceptions of South Sudan and Palau)[14]. While diplomats are expected to remain in the good graces of their home country and also typically are reprimanded back home if they do anything criminal that makes the country look bad. Article 32 also reserves the right for the home country to revoke a diplomat’s diplomatic immunity in the case of rogue actors[13]. However, objections over the severity or complete lack of the consequences that the diplomat may face has caused controversy nonetheless.

For example, Harry Dunn, a British Teenager was struck by a wife of Anne Sacoolas, a wife of an American diplomat, who later would flee the UK on a private jet to much public vitriol in 2019[1]. That case has yet to be resolved, with the US refusing to extradite her to the United Kingdom under diplomatic immunity and the UK wanting “justice for Harry Dunn”[12]. This example is one of the many abuses of diplomatic immunity, and while rare, still reveal a deep flaw within international law.



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History

The concept of diplomatic immunity got its start in the ancient world with ancient Greece guaranteeing free passage envoys of heralds, or ambassadors of opposing armies in war-time. This was then fleshed out by the Romans, guaranteeing the “unassailability of ambassadors,” even during wartime. This concept of ambassadors granted free passage continued throughout the middle ages, even though they were still accountable for crimes committed during the diplomatic mission. It wasn’t until the Renaissance when the concept of permanent embassies between states were brought up as Europeans were being divided by the Reformation.

With the establishment of permanent embassies, the importance and prominence of diplomatic immunity grew until the Congress of Vienna in 1815[2]. There, ambassadors were seen to be a direct representative of the head of state and have all the privileges that they would have[3]. Such a concept of ambassadors only gained prominence in the decades following, culminating with the Vienna Convention on Diplomatic Relations in 1961, representing diplomatic immunity as we know it today. This resolution was the work of the UN’s International Law Commission (ILC), which was founded with the goal of “progressive development of international law” from UNGA resolution 174 in 1947[4].



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Case Study: Diplomatic Immunity and the Iranian Hostage Crisis

The Iranian Hostage Crisis was inseparable from the Iranian Revolution, which was invoked after decades of unrest over the rule of the Shah, who was installed in a coup by the CIA after a democratically elected government attempted to nationalize the oil reserves. After the Shah's government fell in February 1979 and the Shah was admitted to the US for medical care in October of the same year, student protestors overran the U.S embassy in Tehran, beginning the long Iranian Hostage Crisis that would last until January 1981 with the inauguration of President Ronald Reagan and the new Algiers Accords[6]. Before that, the new Iranian government, led by Ayatollah Khomeini, refused to release the hostages despite frequently being subjected to public torture in front of crowds and TV cameras[5].

The Iranian Hostage Crisis thus represented a huge shortcoming with the Vienna Convention on Diplomatic Relations with it being particularly vulnerable during times of unrest and government turmoil within the host country. How could diplomatic immunity be guaranteed in the face of a new government that did not care about violating international law?



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Case Study: The Diplomatic Relations Act of 1978

The United States, in an effort to get its federal law up to the standards of the Vienna Convention, passed the Diplomatic Relations Act of 1978. However, in noticing a recent uptake of automobile-related damage by diplomats especially in the District of Columbia, the US chose to require automobile insurance for those who drove vehicles within the diplomatic community[8]. In doing this, the United States sought to minimize the amount of damage that would be left uncompensated by allowing insurance providers to fill the gap. In addition, it also allowed the President to curtail diplomatic immunity or “require additional standards for a given country,” and it reduced the number of people who are eligible for diplomatic immunity within the United States in the first place.

However, beyond automobile or other vehicle-related accidents, US citizens still have no recourse in the event of damages from diplomats. There is also the option of suing the home country of the diplomat, but that is subject to the foreign nation not claiming sovereign immunity. Thus, the Diplomatic Relations Act, like many other proposed solutions, relies on the restraint, punishment, and internal policing home countries do on their diplomats themselves[7]



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Case Study: *persona non grata*

Within the already established Vienna Convention, Article 9 lays out a host country's most powerful weapon against diplomatic immunity, a concept known as *persona non grata*. *Persona non grata* allows the host country "at any time and without having to explain its decision" to no longer recognize that diplomat as a member of the diplomatic mission of their home country. This means that, after a "reasonable period" of time, the host country can treat the diplomat as any normal foreigner, subject to any possible laws or prosecution[9]. Thus, this allows the host country to expel diplomats it may find objectionable in the case of an abuse of diplomatic immunity or for other considerations. This has often resulted in diplomatic conflict after major incidents that escalate into tit-for-tat diplomatic expulsion.

A prolific recent example would be after several European countries including Germany, Denmark and Lithuania have expelled several Russian diplomats. One of those countries was Poland, which expelled 45 Russian diplomats. In response, Russia expelled 45 Polish diplomats. This tit-for-tat was made possible through *persona non grata* and has effectively reduced the amount of diplomatic and consular services that countries can provide during times of conflict.



Case Study: Harry Dunn

As mentioned previously, Harry Dunn was a 19 year old British teenager who while riding his motorcycle in a town known as Northamptonshire, was part of a car crash that would end up taking his life. What was different about this car crash is that the driver responsible, Anne Sacoolas, was the wife of a US diplomat. She promptly then fled the UK and returned back to the US claiming that her diplomatic immunity absolved her from any prosecution. However, after requests to extradite her back to the UK for questioning and possible prosecution, then-US Secretary of State Mike Pompeo refused[12].

Despite President Joe Biden taking office in January 2021, his administration has maintained the claim that Sacoolas was subject to diplomatic immunity, pressure from the UK government notwithstanding[15]. Therefore, the case of Harry Dunn shows how diplomatic immunity can often cause real harm to the citizens of the host country and great care should be taken to question when it is appropriate to claim diplomatic immunity.



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Questions to Consider

How can we insure diplomatic immunity in the cases of rogue actors or host government instability?

Is there an effective way beyond *persona non grata* and internal restraints for diplomats to be held accountable for damages towards local citizens while guaranteeing the fundamentals of diplomatic immunity?

Is reforming diplomatic immunity even possible or is the status quo "good enough"?

When should countries revoke diplomatic immunity through *persona non grata*?



Sources

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