

Persona Non Grata: The Obligation of Diplomats to Respect the Laws and Regulations of the Hosting State

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Abstract:

The components of the international system after World War II are interacting in more complicated way. This complexity between some countries has accelerated the use of the term "*Persona non grata*" which accords hosting states the right to prevent diplomatic representatives of other states to enter into its territory or to expel them immediately from the country. In spite of the fact that the receiving state has no right to intervene in the nomination of the foreign diplomats of other countries, it still has the right to oppose their presence in its territory. Usually the states refer to this diplomatic declaration as a result of violation of articles 41 and 42 of the Vienna Convention on Diplomatic Relations of 1961, which require the need to respect the laws and regulations of the receiving State, and not to interfere in its internal affairs. This study attempts to answer questions that relate to the existing remedies of hosting states in response to diplomatic intervention in their domestic affairs, measures that exist to restraint the issues of diplomatic abuses, the circumstances that give hosting states the possibility to refer to this sanction, the effectiveness of this remedy, and the position of international conventions in relation to this declaration.

Keywords: Diplomatic law, Vienna Convention, diplomatic immunity, persona non grata, Sovereignty, sending State, hosting state, TIT for TAT, International Court of Justice, UN Charter.

Introduction and History of the Principle

In a course of lectures which he gave in 1937 at The Hague Academy of International Law on the subject of "*Islam and jus gentium*", Professor Ahmed Rechid of the Istanbul law faculty gave the following account of the inviolability of the envoy in Muslim law:

"In Arabia, the person of the ambassador had always been regarded as sacred. Prophet Muhammad consecrated this inviolability. Never were ambassadors to Prophet Muhammad or to his successors molested. One day, the envoy of a foreign nation, at an audience granted to him by the Prophet, was so bold as to use insulting language. Muhammad said to him: 'If you were not an envoy I would have you put to death.' The author of the 'Siyer' which relates this incident draws from it the conclusion that there is an obligation to respect the person of ambassadors." Ahmed Rechid adds further on: "The Prophet always treated the envoys of foreign nations with consideration and great affability. He used to shower gifts upon them and recommended his companions to follow his example, saying: 'Do the same as I'¹. According to Denza, the right of the receiving State to request the recall of offending diplomats was already supported by Gentilis, Grotius and Vattel². But it soon becomes clear that this right was not only a theoretical construction of scholars for it was corroborated by general practice whereby the sending State would comply with a receiving State's request for recall of the concerned diplomat. A pertinent example is Queen Elizabeth I of England's expulsion of Don Bernardino de Mendoza, Spain's Ambassador, once his involvement in treason became clear³. 1888 another dispute has been occurred between one of the actual big five states namely United states of America and United Kingdom, as the latter was not willing to comply with requests for recall as long as the reasons for declaring an agent were not provided. The United Kingdom posited that it expected reasons to be given alongside any request for recall, enabling the sending State to both examine and determine any action upon such requests⁴. The right of each state to declare any diplomatic or consular agent persona non grata is one of the oldest principles of diplomatic and consular law, echoed as far back as the work of the international law's founding fathers⁵.

¹ Ahmed Rechid, "L'islam et le droit des gens", 60 Recueil des cours de l'Academie de droit international. 1937-III, pp. 421 f. mentioned by Judge Tarazi, opinion dissident, case concerning united states diplomate and consular staff in Tehran (united states of America v. Iran) judgment of 24 may 1980, p.60

² During the seventeenth century and for hundreds of years afterwards, those legal expert or philosophers laid the foundation of modern international law

³ Roberts Ivor, Satow's Diplomatic Practice - 6th edition, Oxford University Press, 2009, p. 207

⁴ Jean d'Aspremont, Persona Non Grata, Published in R. Wolfrum (ed.) Max Planck Encyclopedia of International Law (OUP, 2009), p.2; E Satow, Guide to Diplomatic Practice (5th edn., Gore-Booth (ed.), Longman, London 1979), p. 406; C Calvo, International Law (5th edn, Paris, 1896), p. 213;

⁵ Jean d'Aspremont, Persona Non Grata, R. Wolfrum edition, Max Planck Encyclopedia of International Law, 2009, p. 1;

Three major points will be examined during this research:

- 1: Definition:
- 2: Sovereignty vis-vis Immunity: Powerful Arm in International Diplomacy
 - 2.1: The Functions of a Diplomatic Agents
 - 2.2: United Nations Charter and the statement of Persona non Grata
- 3: Persona Non Grata: Any time, the door is widely open
 - 3.1: Political motivation
 - 3.2: Violating the criminal laws of the hosting countries

1. Definition:

In diplomacy, the term *persona non grata* comes from the Latin terminology which literally means "person not appreciated or unwelcome person" or «personne qui n'est pas la bienvenue, ou personne indésirable» in French language. In spite of the fact that it is the only recourse of the receiving state toward foreign diplomats who exceed the limits of their functions, it is still the most severe and serious sanction which one country can impose on foreign diplomats, who are under the umbrella of diplomatic immunity from detention and other categories of prosecution. In his book of 1973 Professor Gamboa wrote and gave his personal definition by saying that: "An expression in reference to a diplomat who is no longer welcome to the government to which he is accredited after he has already been received and has entered upon his duties, or before arriving in the territory of the receiving State"¹. In their *International Law Dictionary*,² Bledsoe and Boleslaw define the term as follows: A Latin term indicating that a diplomatic agent of a state is unacceptable to the receiving state. This can take place either before the individual is accredited, indicating that the proposed appointee is unacceptable to the host state and will not be received, or after the accreditation process in response to some real or alleged impropriety by the diplomatic agent.

It's important to distinguish between two terms related to the consequences resulting from the violation the domestic law: expulsion and deportation. Henry Campbell clarifies the term by saying that "a declaration of *persona non grata* which precedes the expulsion of a diplomatic agent by a receiving state does not apply to a foreigner whose status is not diplomatic or consular; the expulsion of foreigners is normally called deportation and is based on various reasons but not as a result of the declaration of *persona non grata*, which is only used for a diplomatic agent"³.

Under international law it has long been recognized that every sovereign nation has the right to determine whether it will receive a diplomatic envoy from another nation and whether it will continue to receive and conduct official business with an envoy who has been accepted⁴. The statement of *persona non grata* is not automatic for the hosting states. Since the international relations are so complicated and based on mutual interests, the receiving governments are reluctant to use this right even when they have evidences that the foreign diplomats have abused their status and exceed their missions. Higgins, in this regards, explain more this point by giving examples, especially if there be a mentionable community of expatriates of the receiving state in the sending state and therefore the extent to which receiving states will avail themselves of the opportunities for response to abuse of diplomatic status depends in large measures upon whether that expatriated community is perceived to be at risk and that exactly what happened when the serious Libyan People's Bureau incident has occurred, the United Kingdom restrained itself from harsher reactions as it was concerned with the security and well-being of some 8,000 Britons resident in Libya⁵.

Vienna convention on Diplomatic Relations VCDR and Vienna Convention on Consular Relations VCCR cover all the procedures and rules concerning the exercise of diplomatic or consular relations and the provisions for diplomatic or consular immunity. These conventions run a complete framework for the establishment, maintenance and termination of diplomatic or consular relations on a basis of State responsibility, which means that if any state violates its international obligations it must be held accountable for its actions.

The Vienna Convention on Diplomatic Relations⁶ of 1961 has examined the declaration of *persona non*

¹ Gamboa, Melquiades, A Dictionary of International Law and Diplomacy (Quezon City, Philippines: Phoenix Press, 1973), pages 210-211

² Bledsoe, Robert and Boczek, Boleslaw, The International Law Dictionary (Oxford: ABC-CLIO, 1987), page 112

³ Black, Henry Campbell (1979): "Black's Law Dictionary, Fifth Edition.

⁴ Eileen Denza, Diplomatic Law, Commentary on the Vienna Convention on Diplomatic Relations, Fourth Edition, Oxford Commentaries on International Law, Published: 14 January 2016, p. 40; Elisabeth Zoller, securite nationale et diplomatie multilatérale [l'expérience des états-unis comme état hôte de l'organisation des nations unies], annuaire français de droit international xxxiv - 1988 - éditions du cnrs, paris, pp. 109-129

⁵ R. Higgins. The Abuse of Diplomatic Privileges and Immunities: Recent United Kingdom Experience. – American Journal of International Law, 1985, vol. 79, p. 645.

⁶ Vienna Convention on Diplomatic Relations, Done at Vienna on 18 April 1961. Entered into force on 24 April 1964. United Nations, Treaty Series, vol. 500, p. 95

grata under the provisions of Article 9. The 1963 Vienna Convention on Consular Relations has examined the same matter under Article 23.

1. *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 staff of the mission is persona non grata or that any other member of the staff of the mission is not acceptable. In any such case, the sending State shall, as appropriate, either recall the person concerned or terminate his functions with the mission. A person may be declared non grata or not acceptable before arriving in the territory of the receiving State*

2. *If the sending State refuses or fails within a reasonable period to carry out its obligations under paragraph 1 of this article, the receiving State may refuse to recognize the person concerned as a member of the mission.*

2. Sovereignty vis-a-vis Immunity: Powerful Arm in International Diplomacy

One of the most important and oldest principles of diplomatic law is the Diplomatic immunity. this principle of international law under which some foreign government officials are not subjected to the jurisdiction of local courts and other authorities for both their official and their personal activities¹. The Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents² of 1973, accord them a clear and special protection. The convention says that any crimes against diplomatic agents create a serious threat to the maintenance of normal international relations which are necessary for cooperation among States³. So it is in the interest of each state to respect the obligations and responsibilities arising from the diplomatic law. For that reason, it has frequently been observed that there is generally good compliance with the law of diplomatic immunity because the reciprocal benefits of compliance are visible and manifest⁴. Diplomatic law, according to the terms used by international court of Justice provides the necessary means of defence against, and sanction for, illicit activities by members of diplomatic or consular missions⁵.

A very crucial and vital point should be understood by diplomatic or consular representatives that the objective of these privileges and immunities are not to benefit them or their families but to ensure the efficient and effective performance of their official missions on behalf of their governments, and that's exactly what the preamble of the Vienne Convention of 1961 has mentioned: "...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...".

The Immunity given to foreign representatives does not mean permissibility⁶. If public international law gives diplomatic or consular privileges and immunities from the criminal jurisdiction of the receiving state and from its civil and administrative jurisdiction, it does not mean that once diplomatic or consular privileges and immunities are abused by foreign agents, the receiving state does not have the right to refer to the declaration of persona non grata to deal with such abuses⁷. In this regards, Ian Brownlie has mentioned that "...immunity is

¹ In this direction please see Zabyelina, Yuliya. "Respectable and Professional? A Review of Financial and Economic Misconduct in Diplomatic Relations." International Journal of Law, Crime and Justice, Volume 44, pp. 88-102; David B. Michaels, International privileges and immunities: A case for a universal statute, Springer, July 1971; Ashman, Chuck, and Pamela Trescott. 1987. Diplomatic Crime. Washington, D.C.: Acropolis; Barker, J. Craig. 1998. "State Immunity, Diplomatic Immunity and Act of State: A Triple Protection Against Legal Action?" International and Comparative Law Quarterly 47 (October): 950-8; Denza, Eileen. 1998. Diplomatic Law: A Commentary on the Vienna Convention on Diplomatic Relations. 2d ed. Oxford: Clarendon Press, New York: Oxford Univ. Press; Opara, Victor Nnamdi. "Sovereign & Diplomatic Immunity as Customary International Law: Beyond R. v. Bow Street Stipendiary Magistrate & Others, ex parte Pinochet Ugarte." Wisconsin International Law Journal 21 (spring): 255-297.

² Annexed to General Assembly resolution 3166 (XVIII) of 14 December 1973, Entered into force on 20 February 1977, United Nations, Treaty Series, vol. 1035, p. 167

³ Preamble of the convention.

⁴ Rosalyn Higgins, the abuse of diplomatic privileges and immunities: recent United Kingdom experience, American journal of international law, July, 1985, 79 amjil 641, p.1; reciprocity principle, also called TIT for TAT exchange: <https://www.state.gov/r/pa/prs/ps/2016/12/266145.htm>

The Department took these actions as part of a comprehensive response to Russia's interference in the U.S. election

⁴ Tit for tat is an English expression that is used to refer to "retaliation or for any "equivalent action given in return. Merriam-Webster, 2015, "Dictionary Entry: tit for tat," at merriam-webster.com (online), see [www.merriam-webster.com/dictionary/tit%20for%20tat]

⁵case concerning united states diplomate and consular staff in Tehran (united states of America v. Iran) judgment of 24 may 1980, paragraph 83, p. 39; Nicolas Angelet, le droit des relations diplomatiques et consulaires dans la pratique régente du conseil de sécurité, revue belge de droit international, éditions bruyant, bruxelles, 1999/1, p. 151

⁶ It is important to mention that "not all acts performed by a diplomatic agent remain forever immune from the jurisdiction of the receiving state" see J. E. Donoghue. Perpetual Immunity for Former Diplomats? A Response to —The Abisinito Affairs: A Restrictive Theory of Diplomatic Immunity? I – Columbian Journal of Transnational Law, 1988 – 1989, vol. 27, pp. 615 – 630.

⁷ In this direction see J. Craig Barker, International Law and International Relations for the 21st century, Continuum, 2000, p. 167

enjoyed by a diplomatic officer and it gives him exemption from the jurisdiction of the host state, particularly if he is involved in any violation of law in the receiving state. Nevertheless, the immunity enjoyed is not something dogmatic and sacred because his immunity from the jurisdiction of the receiving state is subject to restrictions or exceptions in certain cases¹. Immunity for diplomatic or consular agents does not mean that such agents have a green light to do whatever they want in the receiving state. Privileges and immunities are not absolute. Diplomatic immunity is not intended to serve as a license for persons to flout the law and purposely avoid liability for their actions². Article 41 from the Vienna Convention on Diplomatic Relations states in paragraph 1 that “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”. Paragraph 3 from the same article states that “The premises of the mission must not be used in any manner incompatible with the functions of the mission as laid down in the present Convention or by other rules of general international law or by any special agreements in force between the sending and the receiving State”. The widely accepted statement of *persona non grata* could provide a reasonable, practical and fair balance between two conflicting ideas: the interests of the sending state that their diplomats walk liberally without restrictions with respect for the territorial sovereignty of the hosting state.

2.1: *The Functions of a Diplomatic Agents*

According to article 3, paragraph 1 of the Vienna Convention on Diplomatic Relations of 1961, The functions of a diplomatic mission consist, inter alia, in:

- (a) Representing the sending State in the receiving State;
- (b) Protecting in the receiving State the interests of the sending State and of its nationals, within the limits permitted by international law;
- (c) Negotiating with the Government of the receiving State;
- (d) Ascertaining by all lawful means conditions and developments in the receiving State, and reporting thereon to the Government of the sending State;
- (e) Promoting friendly relations between the sending State and the receiving State, and developing their economic, cultural and scientific relations.

In this context it should be observed that the functions and status of a diplomatic representative are quite different from the functions and status of a consular representative. While the former has functions in political affairs, the latter has functions mainly in commercial affairs, regarding, inter alia, trade, economy, culture and administration affairs relating to the interest of its citizens³. Actually, the correct understanding of the aforementioned article 3 should be in parallel with article 43 from the same convention, which examines the termination of the diplomatic agent’s mission. According to this last article, the function of a diplomatic agent comes to an end, inter alia:

- (a) On notification by the sending State to the receiving State that the function of the diplomatic agent has come to an end;
- (b) On notification by the receiving State to the sending State that, in accordance with paragraph 2 of article 9, it

¹Marcel Hendrapati, Legal Regime of *Persona Non Grata* and the *Namru-2* Case, Journal of Law, Policy and Globalization www.iiste.org, ISSN 2224-3240 (Paper) ISSN 2224-3259 (Online) Vol.32, 2014, pp. 164-165.

According to article 31 from VCDR

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.

² United States department of state office of foreign missions: Diplomatic and Consular Immunity: Guidance for Law Enforcement and Judicial Authorities, Guidance for Law Enforcement and Judicial Authorities, p.5. <https://www.state.gov/documents/organization/150546.pdf>; Rosalyn Higgins, the abuse of diplomatic privileges and immunities: recent United Kingdom experience, American journal of international law, July, 1985, 79 *amjil* 641, p.1

³ Marcel Hendrapati, Legal Regime of *Persona Non Grata* and the *Namru-2* Case, Journal of Law, Policy and Globalization www.iiste.org, ISSN 2224-3240 (Paper) ISSN 2224-3259 (Online) Vol.32, 2014, p. 163

refuses to recognize the diplomatic agent as a member of the mission. But the question what is the time needed that the expelled diplomats have to enjoy before leaving?

Another point that should be examined is the period during which foreign diplomats have to leave the country after being declared *persona non grata*. According to article 39, paragraph 2 of the Vienna Convention on Diplomatic Relations¹, the diplomats enjoy “*reasonable period*” or “*délai raisonnable*” in French, before leaving. Paragraph 2 of Article 23 of the Vienna Convention on Consular Relations², has used the term “*reasonable time*”. *in spite of the fact that both terms are clear, but in the same time has different interpretations*. Actually, the international practice in this regards are not unanimous. Anthony Aust affirms that unless the circumstances are quit exceptional, fourth-eight hours is the minimum reasonable period, seven to fourteen days being normal³. In some cases, the unwelcomed diplomats are given 10 days, like what has been done in 1999 with Mr Gusev, Russian diplomat in the U.S., accused of espionage⁴. Some countries have settled the matter by adopting legislations that regulate diplomatic missions which clarify what was not clarified by diplomatic law. Canada, for example, has adopted the Foreign Missions and International Organizations Act of 1991 in which they explain that the reasonable period or reasonable time should not exceeding 10 days commencing on the day on which notice is given that a person is *persona non grata* or not acceptable⁵.

Generally, most countries give the expelled representatives 72 hours to leave the country⁶. Recently The United States of America has declared *persona non grata* 35 Russian officials operating in the United States who were acting in a manner incoherent with their diplomatic status⁷, and gave them 72 hours to leave the American territories.

The logical consequence that follow the declaration of *persona non grata* is that the sending state must then recall its agent or, should not recall occur, the host state may ignore the presence of the diplomatic agent or expel the diplomat from its territory.⁸ In other words the receiving state can refuse to recognize him as a member of the mission so that he will no longer enjoy any privileges or immunities⁹. However, we cannot ignore that in some rare and extreme situations the immediate departure of foreign representatives could be asked by hosting states. The position of the United States delegation to the United Nations Conference which drafted the Convention of 1961 reflects the understanding of the U.S. government that a receiving state may require the immediate departure of a member of the diplomatic mission. In commenting on the question of allowing a “reasonable period” in which the sending state must act following a *persona non grata* determination, the delegation stated: “In aggravating circumstances, or where national security is involved, the receiving State may demand his [the diplomat’s] immediate departure¹⁰. We believe that once the 72 hours, or the determined period given to the foreign diplomats has been expired, they became consequently like an ordinary foreigners and they are susceptible of arrest or judge by the hosting state. For that reason and as a result of *persona non grata* statement, the Vienna convention of 1961, in terms of article 9, inviting the sending State that they shall, as appropriate, either recall the person concerned or terminate his functions with the mission. for Damien Vandermeersch it possible « de recourir aux sanctions propres au droit diplomatique, en déclarant l’intéressé *persona non grata*, ce qui impliquerait qu’il ne jouirait plus d’aucune protection particulière et que son arrestation, son extradition éventuelle et son jugement seraient possibles s’il devait se trouver par la suite sur le territoire

¹ “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...”.

² “If the sending State refuses or fails within a reasonable time to carry out its obligations under paragraph 1 of this article, the receiving State may, as the case may be, either withdraw the *exequatur* from the person concerned or cease to consider him as a member of the consular staff”.

³ Anthony Aust, *Handbook of International Law*, Cambridge University Press, second edition, 2010, p.113

⁴ This case has been mentioned by Sean D. Murphy, *United States Practice in International Law: Volume 1, 1999–2001*, Cambridge University Press, p.26

⁵ The expression (a) reasonable period in paragraph 2 of Article 9 of the Vienna Convention on Diplomatic Relations, set out in Schedule I, and (b) reasonable time in paragraph 2 of Article 23 of the Vienna Convention on Consular Relations, set out in Schedule II, shall be read as a reference to a period, *not exceeding ten days*, commencing on the day on which notice is given that a person is *persona non grata* or not acceptable. <http://laws-lois.justice.gc.ca/eng/acts/F-29.4/FullText.html>

⁶ In this direction see Joshua e. Keating, so, how do you expel an ambassador, anyway? just tell 'em to get packing. magazine FP, may 29, 2012

⁷ <https://www.state.gov/r/pa/prs/ps/2016/12/266145.htm>

The Department took these actions as part of a comprehensive response to Russia’s interference in the U.S. election

⁸ In this direction see Bledsoe, Robert and Boczek, Boleslaw, *The International Law Dictionary* (Oxford: ABC-CLIO, 1987), page 112

⁹ Anthony Aust, *Handbook of International Law*, Cambridge University Press, second edition, 2010, pp. 112-113; Tim Hillier, *Sourcebook on Public International Law*, Cavendish Publishing, 1998, p. 316; Biswanath Sen, *A Diplomat’s Handbook of International Law and Practice*, Martinus Nijhoff, 1965, p. 44

¹⁰ John M . Harmon, Assistant Attorney General, Office of Legal Counsel, *Presidential Power to Expel Diplomatic Personnel from the United States*, April 4, 1980, pp.211-212

d'un de ces Etats »¹.

2.2: United Nations Charter and the statement of *Persona non Grata*

One of the most important objectives of the United Nations as set forth in the Charter is to develop friendly relations among nations. In the same time, we all aware that the United Nations act in accordance with the sovereign equality of all its Members and those members shall fulfill in good faith their obligations and shall resolve their international challenges by peaceful means, inter alia other important principles². The principle of sovereign equality in the legal system of the United Nations requires recognition of the state as noble institution of international law³. The structure of public international organizations is formed from states, and thus first, we speak about states⁴. The principle of sovereignty means that all the United Nations member states, either they are part of the big five or not, or they are permanent members in the Security council or not, all are equal states and interact with each other based on the principles enshrined in the UN Charter. From this important principle, the scholars extract another primordial principle namely the principle of non-intervention in the domestic affairs of another states. This principle which is one of the fundamental duties of the State, has been codified in many multi-agreements⁵ and international jurisdiction⁶. International Court of Justice in its famous case *Military and Paramilitary Activities in and against Nicaragua Case (Nicaragua v United States of America)*, after confirming that this principle is part and parcel of customary international law (para. 202), has put forward the following definition of the non-intervention principle by saying: "bearing on matters in which each State is permitted, by the principle of State sovereignty, to decide freely. One of these is the choice of a political, economic, social and cultural system, and the formulation of foreign policy. Intervention is wrongful when it uses methods of coercion in regard to such choices, which must remain free ones. The element of coercion, which defines, and indeed forms the very essence of, prohibited intervention, is particularly obvious in the case of an intervention which uses force, either in the direct form of military action, or in the indirect form of support for subversive or terrorist armed activities within another State"⁷. Furthermore, this principle has been inserted in many bilateral agreements where we can easily notice the following provision: "*two parties of contracting state avow, in spirit of friendship and cooperation, to compliance with the principles of equality, mutual benefits, mutual respect of each other's national sovereignty and territorial integration and non-interference in each other's internal affairs*"⁸.

¹ Damien Vandermeersch, « Quelques réflexions à propos de la responsabilité pénale des dirigeants en exercice en matière de crime de droit international. La situation en Belgique », in *Livre noir – Terrorisme et responsabilité pénale internationale*, Paris 2002, éd. S.O.S. Attentats, p. 343,

² Article 2 from the United Nations Charter says that The Organization and its Members, in pursuit of the Purposes stated in Article 1, shall act in accordance with the following Principles. 4. All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations. 5. All Members shall give the United Nations every assistance in any action it takes in accordance with the present Charter, and shall refrain from giving assistance to any state against which the United Nations is taking preventive or enforcement action. 6. The Organization shall ensure that states which are not Members of the United Nations act in accordance with these Principles so far as may be necessary for the maintenance of international peace and security 7. Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII.

³ the 1933 Montevideo Convention are as follows: The state as a person of international law should possess the following characteristics, (a) a permanent population; (b) a given territory; (c) government; (d) jurisdiction to establish international relations with other states

⁴ Behrooz Moslemi, Ali Babaeimehr, Principle of sovereign equality of states in the light of the doctrine of responsibility to protect, *international journal of humanities and cultural studies*, special issue, December 2015, p. 689

⁵ The Charter of the Organization of the American States, of 30 April 1948, held in Bogotá, Colombia, came into effect on 13 December 1951. article 16-18; Treaty of Friendship, Cooperation and Mutual Assistance Between the People's Republic of Albania, the People's Republic of Bulgaria, the Hungarian People's Republic, the German Democratic Republic, the Polish People's Republic, the Rumanian People's Republic, the Union of Soviet Socialist Republics and the Czechoslovak Republic, called The Warsaw Security Pact: May 14, 1955 article 8 etc

⁶ ⁷ *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Jurisdiction and Admissibility, 1984 ICJ REP. 392 June 27, 1986, para 205; Morrison, Fred L. (January 1987). "Legal Issues in The Nicaragua Opinion". *American Journal of International Law*. 81 (1): 160–166. doi:10.2307/2202146. JSTOR 2202146. "Appraisals of the ICJ's Decision. *Nicaragua vs United State*"; Walker, Thomas W. (2003). *Nicaragua: Living in the Shadow of the Eagle*, 4th Edition. Westview Press. pp. 25–27; Maier, Harold G. (January 1987). "Appraisals Of The ICJ's Decision: *Nicaragua V. United States (Merits)*". *The American Society of International Law*. 81 (1): 77–78. doi:10.2307/2202132. JSTOR 2202132. 81 A.J.I.L. 77.

⁸ bilateral agreement on 24 February 1950 after founding the People's Republic of China with the former Soviet Union to

The Declaration that has been adopted on 9 December 1981 by the United Nations General Assembly on the Inadmissibility of Intervention and Interference in the Internal Affairs of States, is primordial in this matter when the Assembly has declared that no State has the right to intervene directly or indirectly for any reason whatsoever in the internal or external affairs of any other State... Considering that full observance of the principle is of the greatest importance for the maintenance of international peace and security and for the fulfilment of the purposes and principles of the Charter of the United Nations¹, the statement of *persona non grata* followed by expulsion could be considered as a mechanism to achieve a reasonable solution or breakthrough by the government of the receiving state in the framework of defending and maintaining its national sovereignty and dignity²

It seems to be still well-established the diplomats should not interfere in the internal affairs of the State to which they are accredited. But even here, as the leading work on the subject points out, there is a “tension between the duty of a diplomat under Article 41 of the Vienna Convention, not to interfere in the internal affairs of the receiving State and the opinion of liberal States that human rights are a matter of legitimate international concern whose active promotion is a major part of their foreign policy”³.

3. *Persona Non Grata*: Any time, the door is widely open

I believe that many receiving states, in the name of securing effective performance of diplomatic functions, are tolerable toward certain misuse of the diplomatic missions, especially if offences or crimes were minor. However, the reaction of hosting states would be completely different in case of serious crimes such as murder, espionage, etc.

Examining the categories that could lead the hosting countries to use this serious sanctions against the representatives of foreign governments varies from situation to another one. We can observe many reasons through the practical application of this statement. We have to admit as Mr Stein says that There is no single standard for what can get a diplomat expelled. Indeed, countries are given great leeway as to the type of behavior that can be considered worthy of slapping the “*persona non grata*” label on a diplomat from another nation⁴. Gamboa says in this matters that: "Diplomats have been declared *persona non grata* for making disparaging remarks against the host government; violating its laws; interfering with its politics; meddling with its domestic affairs; using offensive language against it; criticizing its head of state and a similar grounds." Usually the appended host government requests for sending diplomats to recall the offending diplomat. This request is normally complied with diplomatic law⁵. Proclaiming a diplomat *persona non grata* usually results from an unfriendly attitude toward the (prospective) receiving state, violation of its laws or of international law, or improper diplomatic behavior or indiscretions, although the host state may proclaim a diplomat *persona non grata* for any or no reason⁶. Ian Brownlie states that the recourse to this practice was used extensively during the cold war to remove suspected spies. In the modern era, it is most frequently invoked for espionage, involvement in terrorist or subversive activities, and other criminal behavior⁷. We can summarize these reasons as follows:

1. violating hosting state's laws
2. negative position of the sending states toward the interests of the hosting states
3. pre-emptive action toward the sending state
4. interfering with its politics, or any domestic affairs

establish the relation of friendship, alliance and mutual assistance.

¹ Resolution adopted by the General Assembly, 36/103. Declaration on the Inadmissibility of Intervention and Interference in the Internal Affairs of States, 9 December 1981, Thirty-sixth session, Agenda item 58 b

² Marcel Hendrapati, Legal Regime of *Persona Non Grata* and the Namru-2 Case, Journal of Law, Policy and Globalization www.iiste.org, ISSN 2224-3240 (Paper) ISSN 2224-3259 (Online) Vol.32, 2014, pp. 164-165.

According to article 31 from VCDR

³ Eileen Denza, Diplomatic Law, Commentary on the Vienna Convention on Diplomatic Relations, Fourth Edition, Oxford Commentaries on International Law, Published: 14 January 2016, 472 Page; E. Denza. Diplomatic Law: A Commentary on the Vienna Convention on Diplomatic Relations. 2nd ed. Oxford: Oxford University Press, 1988, pp. 279 – 281; Speaker: Sir Michael Wood, Legal Adviser to the Foreign and Commonwealth Office from 1999 to 2006; barrister, 20 Essex Street, the principle of non-intervention in contemporary international law: non-interference in a state's internal affairs used to be a rule of international law: is it still?, a summary of the Chatham House International Law Discussion Group Meeting held on 28 February 2007. The meeting was chaired by Elizabeth Wilmshurst. Participants included legal practitioners, academics, NGOs, and government representatives.

⁴ David Cole Stein, speaking of foreign policy, why is this Venezuelan diplomat still in the U.S.? <http://www.countercontempt.com/archives/4144>

⁵ Gamboa, Melquiades, A Dictionary of International Law and Diplomacy (Quezon City, Philippines: Phoenix Press, 1973), pages 210-211

⁶ Bledsoe, Robert and Boczek, Boleslaw, The International Law Dictionary (Oxford: ABC-CLIO, 1987), page 112

⁷ Ian Brownlie, James Crawford, Brownlie's Principles of Public International Law, Oxford University Press, 8th edition, p. 401

5. Visiting sensitive areas in hosting countries without prior permission
6. using aggressive or undiplomatic language la against the exterior or interior hosting state's policies.
7. criminal behavior either minor or major
8. criticizing its head of state or any high ranking personality
9. offenses against the security of the state such as espionage either political or economic
10. War and severance of diplomatic relation between countries

The question *persona non grata* was one of the controversial points that the International Law Commission has to deal with. The issue at that time was if the receiving State has to justify its decision or not. After long discussion between the members, they met agree that the hosting states are not obliged to explain, clarify or justify the reason for referring to this sanction. Diplomatic law has accredited them this possibility via article 9 which has been adopted by 28 voices against 16 and 26 abstentions, that: "*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 staff of the mission is persona non grata or that any other member of the staff of the mission is not acceptable*"¹. This possibility has been followed long before this date when the American states have been adopted the Havana Convention on diplomatic officers of 1928 in accordance with article 8 that emphasized that "...States may decline to receive an officer from another or, having already accepted him, may request his recall, without being obliged to state the reasons for such a decision..."².

However, it seems rational and fair that the states which recourse to this statement give explanation to the sending states and submit evidences of culpability of the foreign diplomat in order to avoid any accede of right³.

The reasons of expulsion could be divided into two categories, C 1. politically and C 2. criminally

3.1: Political motivation

In spite of the fact "the reality is that traditional diplomats have interfered, and will continue to interfere, in the domestic political affairs of a host country"⁴. the relation between hosting-sending states can determine the possibility to refer to this action and the quickness to apply it. The equation is easy to understand and to implement: The more the relation is strong, and above all, based on mutual interests, the more the states are reluctant to refer to it. The more the relation is fragile, and above all, based on conflicting interests, the more the states are not hesitating to use it.

Examples form the international scene make this equation evident specially from the complicated relations between USA and some Latin American countries. In 2010, Hugo Chavez refused to accept Larry Palmer as U.S. Ambassador to Venezuela because Palmer had "suggested that morale is low in Venezuela's military"⁵. Recent example when U.S. State Department has decided to expel *chargé d'affaires* at the Syrian embassy in Washington⁶, decision which followed by the governments of some western countries. The move represents a further deterioration in relations between the United States and Syria following the closure of the U.S. Embassy in Damascus⁷. In September 1952, the American Ambassador to the Soviet Union, George F. Kennan, was declared *persona non grata* after making a statement which the Soviets believed linked them to Nazi Germany. The Soviets refused to allow Kennan to reenter the Soviet Union⁸. In October 2008 Serbia expelled ambassadors of Montenegro and the Republic of Macedonia after these countries recognized the independence of Kosovo⁹.

In 2008 Former Ambassador to Venezuela Patrick Duddy has been expelled and was announced on television by Venezuelan President Chávez himself in a public speech to his supporters, declaring that he had been expelled '*in solidarity*' with the decision of expulsion of the American Ambassador to Bolivia Phil

¹ SALMON J., Manuel de droit diplomatique, Bruxelles 1994, éd. BRUYLANT, pp. 481ss.

² **Havana Convention on Diplomatic Officers, 1928, Convention on Diplomatic Officer, The American Journal of International Law, Vol. 22, No. 3, Supplement: Official Documents (Jul., 1928), Pp. 142-147; entry into force: 05/21/29, on the date of deposit of the second instrument of ratification**

³ in this regards see Franciszek Przetacznik, les pouvoirs decoulant pour l'etat accreditaire de l'inviolabilite personnelle de l'agent diplomatique, mcgill law journal, vol. 17, 1967, p. 396 "...bien que la convention de vienne prevoit que l'etat accreditant n'a pas le devoir de motiver sa decision de reconnaissance de l'agent diplomatique *persona non grata*, il paraft toutefois juste et necessaire pour eviter les abus, pour l'etat accreditaire fournisse une motivation de son acte et prouve la culpabilite de l'agent diplomatique..."

⁴ Shahidul Alam, Stretching the Parameters of Diplomatic Protocol: Incursion into Public Diplomacy, Exchange: The Journal of Public Diplomacy, Vol. 2 [2013], Iss. 1, Art. 5, p.12

⁵ David Cole Stein, speaking of foreign policy, why is this Venezuelan diplomat still in the u.s.? <http://www.countercontempt.com/archives/4144>

⁶ Expelling has occurred in response to the massacre of at least 108 people in the Syrian town of Houla.

⁷ Joshua e. Keating, so, how do you expel an ambassador, anyway? just tell 'em to get packing. magazine FP, may 29, 2012

⁸ Kennan, George F. (1967), Memoirs: 1925-1950, Boston: Little, Brown and Company, OCLC 484922. 152

⁹ <http://www.dw.com/en/serbia-expels-macedonian-montenegrin-envoys-over-kosovo/a-3704625>

Goldberg. According to Joshua e. Keating, the Former Ambassador to Venezuela Patrick Duddy has been expelled due to the remarks he had made to the media about the Venezuelan government's unwillingness to cooperate on combating drug trafficking¹. Malawi expelled Britain's ambassador after WikiLeaks leaking some news in which he made disparaging comments about the country's president.

3.2 *Violating the criminal laws of the hosting countries*

One important difference should be firstly clarified between Vienna convention on diplomatic relations of 1961 (VCDR) and Vienna convention on consular relations (VCCR) of 1963. If VCDR offer the person of a diplomatic agent very high level of protection in terms of detention or arrest², however, VCCR accord the hosting state the possibility to arrest the counselor agents in the case of the *grave crime*³. VCCR gave its members states the possibility to define the term *grave crime* as per their legislation. The Canadian Foreign Missions and International Organizations Act of 1991 says in this matter that "...the reference in paragraph 1 of Article 41 of the Vienna Convention on Consular Relations to a *grave crime* shall be construed as a reference to any offence created by an Act of Parliament for which an offender may be sentenced to imprisonment for five years or more⁴. Nevertheless, and in all cases, the statement *persona non grata* rest a successful pressure tool in diplomatic field and in the hand of the hosting countries.

Expulsions aren't always politically motivated, if an official enjoying diplomatic immunity is accused of a serious crime, expulsion is usually the host country's only recourse. the Philippines expelled a Panamanian embassy official accused of rape⁵. The same crime has been committed against two American women by Manuel Ayree, son of the third attaché to the Ghanaian delegation, but the police released Manuel due to his diplomatic immunity and the State Department's only remedy was to declare him *persona non grata* and expel him from the United States.⁶ Another example of a situation when a declaration of *persona non grata* led to expulsion was the declaration of an Indian diplomat, Devyani Khobragada *persona non grata* by the United States Government after she was accused of faking the visa of her house maid⁷. In February 1973, there was case of Iraq Embassy in Islamabad. The incident began when a container that was addressed to the Iraqi Embassy in Islamabad accidentally was damaged. As the result Pakistani customs officials revealed that 59 crates which was filled with weapons, explosives materials and ammunition that will be received by the Belouchistan Rebels⁸. Then, Pakistani government informed the case to the Ambassador of Iraq. It was proved that the weapons were imported by diplomatic immunity and privileges in to Pakistan which was then stored at the Embassy of Iraq. Therefore, Government of Pakistan asked for permission to examine it. Although Iraq's Ambassador rejected it, Pakistani police had been given orders to keep checking those crates with the presence of Iraqi ambassadors and they found the weapons in storage. As the result, Government of Pakistan had protested against the Government of Iraq and declared *persona non grata* to the Iraqi ambassador Hikmat Sulaiman and other consular staff⁹. In 1976 the entire diplomatic staff of the North Korean missions to Denmark, Finland, Norway, and Sweden were declared *Persona non grata* following the revelation that the embassies were a front for illegal import and sale of

¹ Joshua e. Keating, so, how do you expel an ambassador, anyway? just tell 'em to get packing. magazine FP, may 29, 2012

² Article 29 from VCDR of 1961

³ Article 41 paragraph 1 from VCCR of 1963 "*Consular officers shall not be liable to arrest or detention pending trial, except in the case of a grave crime and pursuant to a decision by the competent judicial authority*"

⁴ <http://laws-lois.justice.gc.ca/eng/acts/F-29.4/FullText.html>

⁵ Joshua e. Keating, so, how do you expel an ambassador, anyway? just tell 'em to get packing. magazine FP, may 29, 2012

⁶ This case has been mentioned by Ali M. Farahmand, Diplomatic Immunity and Diplomatic Crime: A Legislative Proposal to Curtail Abuses, Journal of Legislation, Volume 16 | Issue 1 Article 7, p. 99; C. Ashman & P. Trescott, Diplomatic Crime (1987)

⁷ AP/Reuters/AFP/LOK (2014), "Diplomat India Diusir dari Amerika Serikat", Daily Kompas, 11 Jan 2014; many cases have been mentioned by diverse works: Anna Sidorova, Espionnage Economique En Droit International Public, Memoire De Master, Droit international économique, Université de Lausanne Printemps 2016; B. BESSON et J-C POSSIN, Du renseignement à l'intelligence économique, Cybercriminalité, contrefaçon, veilles stratégiques : détecter les menaces et les opportunités pour l'entreprise, 2e éd., Paris, 2001; A. BEZBOGOV, A. YAKOVLEV, U. MARTEMYANOV, La sécurité des systèmes d'exploitation, Moscou, 2008; P. DAILLIER, M. FORTEAU, A. PELLET, Droit international public, 8e éd., Paris, 2009; É. DAVID, Éléments de droit pénal international et européen, Bruxelles, 2009; L. DEMBINSKI, The modern law of diplomacy, External missions of states and international organizations, Dordrecht, 1988; F. LAFOUASSE, L'espionnage dans le droit international, Paris, 2012; L. OPPENHEIM, International law, Volume I, Londres, 1955; C. ROUSSEAU, Le droit des conflits armés, Paris, 1983; J. SALMON, Dictionnaire du droit international public, Bruxelles, 2001;

⁸ The Balochistan Liberation Army (also Baloch Liberation Army, or BLA) is a Baloch militant organization based in Pakistan and Afghanistan. Raza, Irfan (10 April 2006). Dawn <http://www.dawn.com/news/187183/bla-declared-terrorist-organisation-banned>.

⁹ This incident has been mentioned by alfian listya kurniawan, Amendment Urgency of Vienna Convention 1961 on Diplomatic, Mar 14, 2013, p. 3-4; "The Friday Times: Caught! (But what?) by Shahid Saeed". Thefridaytimes.com. Retrieved 14 October 2014; Baluch, Ahmad K. Inside Baluchistan, a Political Authorbiography by Mir Ahmad Khan Baluch.

drugs, cigarettes, and alcohol¹. There was another example involving a diplomat of India, Devyani Khobragade (Deputy Consulate General) who was declared an unwanted person and expelled by the Government of United States because he was alleged to be involved in counterfeiting visa data (or visa document) for his servant². On March 30, 2011, Kuwait has declared three Iranian diplomats, including the Ambassador, personae non grata for allegedly spying³

Some states have been taken some preventive measures by informing the foreign representatives that the immunities given to them are not to benefit individuals but to ensure the efficient performance of the functions of diplomatic missions. That exactly what has been done by the French government, through their diplomatic portal, reminding the diplomatic agents that it is imperative to abide by the rules of the Highway Code: “individuals given parking tickets in the event of illegal parking are invited to pay the fines they have incurred. Vehicles may be towed away to ensure the safety of users of public highways and to eliminate risks of parking infringements. In this case, the amount paid for the return of the vehicle will not be reimbursed under any circumstances. Furthermore, drink-driving is an offence which, under general law, carries criminal sanctions. For safety reasons, drivers enjoying diplomatic status are advised to agree to undergo a breath test if requested to do so by a police officer. Certain forms of behavior are incompatible with the functions exercised by members of Missions (trouble with neighbors, disrespectful attitudes, breach of the rules of courtesy, etc.). In the event of serious or repeated infringements, Protocol Department will be brought to take various measures ranging from a simple warning to a declaration of persona non grata⁴.

It is easy to say that diplomats acting in a way unharmonious with their diplomatic status should not benefit from any immunity granted to them by diplomatic law, but the proper, accurate, and clear interpretation of the Vienna Convention of 1961 supports the view that immunity and inviolability will not collapse even when diplomats abused their positions.

Conclusion

One of the most important matters in the field of international relations is that pertaining to the rights and duties of diplomatic officers as per the terms used by Havana Convention of 1928. Thirty-three years later, the Vienna Convention came to provide a comprehensive structure for the creation, preservation and termination of diplomatic relations on a basis of the principles of the United Nations, including the famous statement of persona non grata. This convention is usually regarded as codifying existing rules of customary law, and it has been observed that a strict respect by the states due to reciprocity principle. In this regards, the key elements of diplomatic law are the immunity of diplomatic staff which is the most fundamental rule of diplomatic law. the diplomatic agent is inviolable which result that he or she should not be detained or arrested, and enjoy a complete immunity from criminal prosecution in the receiving state. To deal with this immunity, diplomatic law tries to moderate this last principle by giving the hosting state a license to ask the foreign diplomates to leave the territory once they exceed their diplomatic mission. However, we have to admit that some states have deliberately exceeded the limits imposed by diplomatic law, specially article 41 and 42 from the Vienna convention of 1961 and intervened in an ugly way in the domestic affairs of other states due to their awareness of the limited sanction that could be imposed on their representatives through the expulsion from the territory via persona non grata statement. For that reason, many scholars share the view that the international community must seriously revisit this statement which places not only diplomats, but their families, above the law⁵. International law declares undoubtedly that diplomatic immunity is not absolute or unconditional, however the response of international law towards the violation and the abuses of the diplomatic privilege needs to be revisited by United Nations. Some breaches such as rape, murder, kidnapping, violation of international criminal law, genocide, war crimes and crimes against humanity should never be considered as part of official functions and those who participate in these actions should bear the responsibility even if they are under the umbrella of diplomatic immunity.

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¹ Roberts ivor, *Satow's Diplomatic Practice - 6th edition*, Oxford University Press, 2009, p. 213

² AP/Reuters/AFP/LOK (2014), “Diplomat India Diusir dari Amerika Serikat”, *Daily Kompas*, 11 Jan 2014

³ <http://www.breakingnews.com/topic/ryan-fogle/>

⁴ <http://www.diplomatie.gouv.fr/en/the-ministry-of-foreign-affairs/protocol/immunities/article/respect-for-local-laws-and>

⁵ Mitchell S. Ross, *Rethinking Diplomatic Immunity: A Review of Remedial Approaches to Address the Abuses of Diplomatic Privileges and Immunities*, *American University International Law Review*, Volume 4 | Issue 1 Article 6, 1989, p. 205

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Conventions, treaties and Charter

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