



Private International Institute of Management and Technology

**International Business & the Immunity aspect of
Vienna Convention 1961 in light of Yvonne Fletcher and
Jamal khashoggi crimes.**

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Abstract

The study presents a brief summary of an international business, its importance and the factors that impacts it , these factors include social-cultural ,economic, technological and political. The main objective of the study is to find out whether Vienna convention 1961 protects business people in case they are exposed to crime committed by the diplomat or not . Therefore, in order to know the answer the study examines the articles related to diplomatic immunities in V.C 1961 and compares them with the regulations of sharia law related to immunities that is granted to diplomatic envoys in Dar Al Islam.

The study revealed that International Law protects the criminal diplomats since the agreement grants them full inviolability. However, sharia law punishes them for their crimes if they do not respect the domestic law of the country. Besides that, people's rights can not be violated as Allah Almighty orders justice.

The study further concludes that V.C 1961 assists diplomatic envoys to implement offences through exempting them from being held accountable in the host state which was clarified through the discussion of Yvonne Fletcher and Jamal khashoggi crimes.

Key words: International business, Vienna Convention1961, Sharia law, diplomatic immunity, Jamal khashoggi, Yvonne Fletcher.

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Dedication

To my parents, Khiria Ibrahim and Muhammed Muhammed

My brothers and sisters.

All human beings.

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CHAPTER ONE

INTRODUCTION

1.1 Background of the study

After more than a half century and since the states ratified Vienna Convention on Diplomatic Relations 1961 as an agreement determined and organized the relations between the states it clarified the rights and duties of diplomatic mission members in the host state. This international agreement allocates set of immunities and privileges to the diplomatic agents and their assets to assure that they are practicing their function comfortably. However, these immunities became a burden on the local authorities of the host states as result of misusing the diplomatic immunity from the diplomats due to the fact they did not adhere to the internal laws of the receiving states plus committing the violations starting with traffic fines to serious offences such as a murder.

The states found themselves bound to the agreement as it internationally acceptable even if the diplomats breached it. Some states cut off ties of diplomatic relations due to a reason of abusing the immunities which points out the insufficiency of Vienna convention on diplomatic relations 1961. Therefore, this study attempts to highlight on diplomatic immunity under the Positive law (V.C 1961) in comparison with Sharia law. In addition, to recognize how the immunity was exploited in committing Yvonne Fletcher and Jamal Khashoggi's crimes.

1.2 Research Problem

Vienna Convention on Diplomatic Relations 1961 granted plenty of immunities to diplomatic agents, including the immunity from criminal jurisdiction of the receiving state which is stipulated in Article 31 of the agreement. This immunity exempts the diplomats to not be subjected to the local courts of the receiving state if any crime is committed which leads many diplomatic agents to exploit the immunity to achieve their goals and personal greediness alongside their rulers' goals. Despite that the treaty includes the prosecution of diplomats at their states' courts there is nothing guarantees that these criminal diplomatic agents will receive any kind of prosecution in their state. In this world, politics and economy are closely related as international traders and investors can not be excluded from the diplomats' crime that could be committed against them. Hence, the importance of the study is to find a suitable solution to the problem that protects the criminal diplomatic agent from being accountable in the sending state which makes the criminals' offences repeated permanently.

1.3 Objectives of the study

The objectives of the study are the following:

A\ Knowing the extent of protection of Vienna Convention 1961 to business people.

B\ Highlighting on the differences related to diplomatic immunity between V.C 1961 and Sharia law.

C\ Demonstrating the insufficiency of V.C 1961 articles related to diplomatic immunity.

D\ Clarifying the exploitation of jurisdiction immunity by diplomatic agents.

1.4 Research Questions

In order to accomplish the study objectives, the study seeks to answer the following questions.

A\ To what extent business people are protected when doing international business against a diplomatic immunity?

B\ Does Vienna Convention 1961 protect criminals?

C\ What is the differences between positive law and sharia law in terms of diplomatic immunity of V.C 1961?

D\ What role does article 31 of V.C 1961 play in exploitation the jurisdiction Immunity by the diplomatic agent?

1.5 Hypothesis of the study

This study includes three hypotheses: -

A\ positive law is similar to sharia law in protecting human rights.

B\ Vienna convention does not protect human rights.

C\ Sharia law is better than positive law.

1.6 Research Methodology

The research will rely on secondary data collection to answer the research questions and meet the research objectives. According to kabir (2018) secondary data is information already collected by someone else. This kind of sources is found in books, records, Internet articles and collected by previous research .Besides that, researcher will adopt a comparative analysis methodology

to identify the similarities and differences of diplomatic immunity between positive law and sharia law. Moreover, using the historical methodology is beneficial to highlight on some events that happened previously which is related to the diplomatic immunity.

CHAPTER TWO

LITERATURE REVIEW

2.1 Introduction

This chapter presents a literature review on the international business and the environmental factors that impacts the international business. The chapter also discusses the diplomatic immunity by focusing on jurisdiction immunity and how Vienna Convention 1961 deal with criminals in comparison with Sharia law.

2.2 Definition of International Business

According to Carpenter, dunung (2012) International business or global business is a process whereby exchanging products and services between two or more countries. Other resources may include in the exchanges such as people and intellectual property. They also noted that international business has benefited from globalization in breaking economic barriers in the global market. Mittal (2012) states that international business is all across-border either private or governmental trade transaction.

2.3 The Necessity and Significance of International Business

VIJAYASRI (2013) asserts that all countries around the world do not have self-sufficiency in terms of products and services that makes international business necessary for exchanging goods from one country to another. Petrol is good a example in this case, petroleum states export oil to non-petroleum states to import the finished manufactured products later.

According to VIJAYASRI (2013) specialty of international business is having raw materials and production elements assist countries to produce specific goods with a high efficiency and inexpensive price. An International business play an essential role in developing countries after opening up of the economy and liberalization of trade restrictions.

2.4 Factors Impacting International Business

There are more than one factor that impact international businesses and may represent many obstacles to businesses. According to Mittal(2012) organizations should have comprehensive knowledge about factors related to international market to avoid problems that may face businesses in the future. These external factors are social-cultural, economic, technological and political factors (NDUNGU, 2012).

2.4.1 Social-cultural factors

In order to avoid difficulties globally in international business we need to adopt and accept different cultures(Katavic,2006). Cultural diversity influence on international business is very crucial as each country has different features to others. According to Mittal (2012) behaviors towards beliefs, time and accomplishments are elements that should be taken into consideration in the international business. Mittal (2012) also asserts that through recognizing the society and culture of any country, business management could guess the products will be produced to determine the success of the business.

2.4.2 Economic factors

This factor gained great significance in international business. Countries with high income consumers give companies the opportunity to sell their goods for a high price since they can afford it which results in purchasing power existence. According to Mittal (2012) Inflation, unemployment rate, debt, poverty and income distributions are also factors that influence international businesses. Many agreements established in the second half of the last century after the world war II facilitate trade movement between nations by making it more liberalized such as General Agreement on Tariffs and Trade(GATT) and the Most Favored Nation (MFN) concept that brings the states to work together to reduce the obstacles. (Mittal, 2012)

2.4.3 Technological factors

Accelerated technological development forces companies to keep up with changes (Ndungu.2012). Communities are affected with technological changes and its demand in terms of production process, services and new goods (Mittal, 2012). According to NDUNGU (2012) the technological change assists the company with continuity. Porter(as cited in NDUNGU, 2012) states that the technological factor plays a vital role in competition between the companies globally.

2.4.4 Political factors

Political factor has crucial effect on international businesses as a result of its sensitive relation between politics and economy. Multinational companies must study each country alone before starting their businesses due to the fact that countries have different regulations and policies (Mittal, 2012).

According to Carpenter and Dunung (2012) the political system is a group of laws, principles and institutions related to a specific sort of government. Mittal (2012) In explaining the political systems asserts that there are various forms of systems such as parliamentary (democracy) and dictatorship. Therefore, knowing the form of the governments is necessary in practicing business. Wars, diplomatic relations and economic sanctions lead to political and economic instability inside the countries which impacts the firms, and workplace. This thesis will concentrate on diplomatic relations as one of the problems that may influence international businesses, especially if a criminal offense occurs. For instance, is it possible to sue a diplomat with diplomatic immunity, and what is the evidence based on the Vienna convention 1961 if a collision and conflict of views happened between a diplomat and an international trader and the first committed a criminal offense against the trader?

2.5 Diplomatic Immunity

According to Webster's dictionary law (1996) diplomatic immunity is "immunity from taxes or prosecution granted to diplomat" (p.234). The United states department of state office of foreign mission, states that diplomatic immunity is to not undergo the diplomat to the jurisdiction domestic courts of host states, which is a principle of international law. Goossens (n.d) confirms that diplomatic immunity is convention between governments that guarantees the protection of diplomats in the receiving state. Diplomatic immunity and privileges are considered as a waiver of part of Sovereignty from state to another state to guarantee the implementation of the diplomatic missions tasks smoothly without complication (khalaf, 2013).

2.6 Diplomatic Immunity Elements

Diplomatic immunity includes physical and personnel elements of diplomatic mission in which both are connected to each other.

2.6.1 Physical elements include: The invulnerability of headquarter of mission and its assets. According to (Article 22) of V.C 1961, this immunity covers all the diplomatic mission places including their lands whether owned or rented by the sending state. The receiving state is also prevented from entering or inspecting the diplomatic mission until they get prior permission from the head of the mission Besides that, the assets include the furniture, transportation, bank accounts and other things must not be seized and confiscated for any executive action Moreover, the receiving state should take the appropriate procedures to protect a diplomatic mission.

2.6.2 The immunity of archives and documents. Although this immunity has been Mentioned in article (22) with the assets. Vienna convention 1961 allocated article (24) that Stated “ The archives and documents of the mission shall be Inviolable at any time and whenever they may be ”(United nation). This exception happens to maintain the documents and archives from any confiscation in case of diplomatic relations’ severance between two states.

2.6.3 The immunity of correspondences of diplomatic mission: Diplomatic pouch and Diplomatic courier. Vienna Convention 1961 in article 27 (3,4) adopts that diplomatic pouch shall not be seized or opened. On the other hand, diplomatic pouch should only contain diplomatic documents that are intended for official use and the external visible mark existence is also important to indicate the status of diplomatic pouch. Khalf (2013) infers that respecting the inviolability of diplomatic pouch enhances the interests between the receiving and sending

state, which leads to start using the reciprocity principle. According to Husain (2012) diplomatic courier has civil and jurisdiction immunity. This immunity reinforced by V.C 1961 Article 27(5) that states “ The diplomatic courier, who shall be provided with an official document indicating his status and the number of packages constituting the diplomatic bag, shall be protected by the receiving state in performance of his functions. He shall enjoy person inviolability and shall not be liable to any form of arrest or detention”(United nation). In addition, the messenger enjoys the immunity when passing through a third state which is approved by V.C 1961, in Article 40(3).

2.6.4 Personal elements include: The personal immunity of diplomatic

agent. Personal immunity of diplomatic agent is considered as the basis that derives from the various immunities and diplomatic privileges to preserve the dignity of the diplomatic agents and the dignity of their state (Husain 2012).

Vienna Convention stipulates that diplomats enjoy full immunity comprehensive jurisdiction immunity, either criminal, administrative or civil. The receiving state must respect them and do not subject the diplomat to any procedures such as an arrest or detention whereby taking all reasonable means to protect the diplomat from any attack that may face them from citizens, foreign residents or non-residents in the receiving state. This immunity is related to a diplomatic agent which includes the residences of the ambassador and the diplomatic mission members without concentrating on whether it is owned by the sending state or not (Khalf 2013). According to Vienna Convention 1961, Article (30,2) documents and money enjoy the immunity as stated in the agreement “ His papers, correspondence and, except as provided in paragraph 3 of article 31, his property,

shall likewise enjoy inviolability”(United nation). All these immunities that diplomats and properties enjoy have philosophical justifications. (khalaf 2013) defines the philosophical justification as principles ruled the development diplomatic theory and practice, justifies various diplomatic duties in the receiving state, protects diplomats from the state and assists them to practice their tasks.

2.7 Theories of Immunity

There are many theories devoted to diplomatic privileges and immunities (Husain 2012). However (Goossen) states that three theories exist yet and accepted today. The first is called the “ representative theory” this is an ancient theory goes back to the middle ages and the appearance of the empires(absolute monarchy regimes). The philosophy of theory considered the relations between the states as personal relationships among the absolute kings. The representative theory debates that the diplomatic envoy represents and embodies the kings themselves. Therefore, the diplomat shall be treated respectfully due to the fact that any mistreatment is kings’ insulting (khalaf 2013).

The second theory is Ex-territoriality. The most important theory that justifies the diplomatic immunity and privileges established in the 17th and the beginning of 18th century (Husain 2012). The theory supposed that the diplomat represents the ruler of their state, hence the receiving state shall treat them as they still reside in their territory. According to Goossen (n.d) the theory extracts two things. First, the diplomatic missions are inside the sending state not in the receiving state. Secondly, the diplomat is not subjected to the receiving state local laws as they are in the sending state not in the receiving state. (khalaf 2013) asserts that this theory is outdated, but it stills works and the diplomats practice it for the gain that distinguishes them from others.

Finally, the theory of functional necessity is the most relevant theory in recent century. After the emergence of tens of the modern countries and evolution of diplomatic practice after the first and second world wars, the necessity of this theory has increased to gain important and essential position in the current diplomatic dealings. The theory confirms that the diplomat must enjoy immunity to perform their functions freely, peacefully and tranquility and far from any unwelcome interventions by the receiving state. Functional necessity theory obtained huge popularity between the countries. Vienna Convention reinforced it in its preamble that stated “ realizing that 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...” (khalaf 2013).

2.8 Vienna Convention (Positive Law)

Vienna convention on diplomatic relations, is a set of organized legal rules to establish diplomatic relations at a permanent level of missions between the states and to organize, practice the functions of missions, protects and facilitates the set up of missions with headquarters through a big number of facilitation, privileges and immunities (khalaf 2008). According to (khalaf 2008) Vienna convention on diplomatic relations were established on 18th of April 1961, the treaty was emanated as a reaction to the international situation during the second world war, after the devastation, physical and human losses caused by the war which led to deteriorate international relations and change in the former international community. Vienna convention is a result of many drafts put together by the international law commission. From the 2nd of march to 14th of April an international diplomatic conference was held in Vienna

which was attended by 81 countries that gave votes to sign the Vienna convention on 18th of April 1961. Most of legal rules were basically customary rules, in which some of them were codified in Vienna conference 1815 to classify the diplomats and the precedence between them and complemented by Aix-la chapelle 1818 protocol (Khalf 2013). Vienna convention 1961 is the most important contemporary international document that includes all rules that governed the relations between the states (Husain 2012). (Gosson) states that Vienna Convention on diplomatic relations 1961 contains 53 articles and asserts that the articles on diplomatic immunity are clear, relatively easy and well organized to understand by commoner. (Khalf 2008) affirms that Vienna convention 1961 devoted a large space of articles to the immunities and privileges approximately 27 articles. These immunities and privileges were given to the states with sovereignty equally. The treaty separates between the physical class that comprises the buildings and assets used by diplomats and the human class comprising the head of mission, administrators, technicians and users alongside their families and servants. (Khalf 2008) defines the diplomatic immunities as “a set of international organized legal rules binding to countries and these rules have to be executed fully on the permanent diplomatic mission with their human force and materialistic things” (p.124). Wherefore, the host state categorically obliged to protect the diplomatic immunities holders from risks in the receiving state. Despite some states look at the diplomatic immunity as “Negative duty” since it prevents them from practicing their jurisdiction authority on their territory. Yet, the treaty shows the receiving state how to behave if the diplomats breaches their immunities as it is mentioned in Vienna convention 1961 article (9) that state “ The receiving state must at any time and without having to explain its decision, notify the sending

state that the head of 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”(United nation).

2.8.1 Jurisdiction immunity of diplomatic agent

2.8.2 Immunity from civil & administrative jurisdiction.

According to (Goossen) that diplomatic envoy has the right to enjoy inviolability from the civil and administrative jurisdiction of the receiving state. Firstly, the administrative inviolability is related to traffic accidents, public security and traffic violations. Nonetheless, the diplomat should respect the national laws of the receiving state and do not exploit the immunity by breaking the law. The only reason of this immunity is to prevent paying fines and not subject the diplomats to the domestic courts in the receiving state. Secondly, the civil immunity is the basic principle that has the same immunities like the others since it is necessary not to let the local authority intervene the diplomat’s tasks. However, Vienna Convention 1961 put exceptions related to civil immunity contrast with criminal immunity. These exemptions are the following: A) possessed private real estate, in such case, properties are not covered by the immunity since it is considered as a personal investment for the diplomat and not for the sending state which was indicated in article 31(1,a) of Vienna Convention 1961 “ 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”(Khalf 2013). B) The existence of a cause is related to succession and the diplomatic envoy is a part of either as an heir or executor, which is also mentioned in V.C 1961 article 31(1,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) practicing any professional or commercial activities that has nothing in common with the official duties of diplomats, and that was approved in V.C 1961, article 31(1)(c) “ An action relating to any professional or commercial activity exercised by the diplomatic agent in the receiving state outside his official functions” (Khalf 2013).

2.8.3 Immunity from criminal jurisdiction

Criminal immunity is a manifestation of personal inviolability of a diplomatic agent. This immunity imposes the various state authorities to not expose a diplomat and his residence by any form to ensure full independence and respect the state he represents (Husain 2012).

Immunity from criminal jurisdiction is considered as an absolute immunity, the receiving state is banned from suing the diplomatic agent for their crimes whatever the misdemeanor is as the diplomat has full exemptions from presence in the local courts of the host state, and this what Vienna convention 1961 asserted in article 31(1) “ A diplomatic agent shall enjoy immunity from the criminal jurisdiction of the receiving state...”(Khalf 2008).

Fiore suggests to except a diplomatic agent from the domestic jurisdiction courts of the receiving state when the acts are related to a diplomatic agent’s functions and punish them for acts related to special nature. However, his opinion was

rejected from the jurists as local authorities would decide whether the crime is serious or not (Husain 2012).

According to (Goossen) diplomatic agents are not subjected to the local courts of the receiving state because they have an absolute inviolability, especially in cases related to criminal issues since it is an essential principle in the customary international law. This was confirmed by most jurists as the various international law affirms this legal rules in article (12) of draft international law institute in 1895 and article (11) of the same draft in 1929 and in addition to article (19) of Havana treaty and article (19) of Harvard Law School and Finally article (31) of Vienna Convention on diplomatic relations 1961.

Vienna convention attributed the prosecution and the punishment responsibility of diplomatic agent to the law of his country as it is mentioned in article 31(4) which states “ The immunity of diplomatic agent from the jurisdiction of the receiving state does not exempt him from the jurisdiction from the sending state” (Husain 2012).

(Willam barens) specifies the penalties that receiving state could apply on the guilty diplomatic agent. The first step is to send formal complaint to diplomat's government, then an official demand to summon the diplomatic agent. In case, the sending state does not obtain any replay, the receiving state has the right to declare that the diplomatic agent is persona non grata and he must leave the country.

Vienna Convention on diplomatic relations 1961 prohibits prosecuting the diplomatic envoy who commits criminal crime in the receiving state. Is their any law that guarantees the sue of a diplomat offender?

2.9 Alternative law (Sharia Law)

2.9.1 Definition of Sharia Law

Sharia law emerged in the 7th century AD (Husain 2012). According to Auf (2016) sharia law is a set of rules that regulates the Muslims' relationships with their communities, nations and families. The Holy Quran and Hadith are the most important and basic references for all Muslims. (Shaltut) States that Sharia Law is a regulations legalized by Allah to humans to know their relationship with God, Muslims to their Muslim brother, human, life and the universe. (Ouda) Confirms that Sharia Law comes to all people either Arab or non-Arab, westerners or easterners regardless of their different traditions and history since Sharia Law is for every family, tribe, group or country Besides that, sharia is a comprehensive law governs all aspects and affairs related to individuals, groups starting with personal status to international relations. Therefore, it is valid for every time and place.

2.9.2 Diplomacy in sharia law

The roots of diplomacy in Islam goes back to the first Islamic state era which remained as a method with specific rules that were taken by the state to run the relations with other states across different eras since Islam is a religion and a state (Husain 2012). AbuEid (2008) states that the Prophet Mohammed peace be upon him practiced the diplomacy since the establishment of the Islamic state by sending messengers and receiving messengers from non- Muslim groups and states. Al-masadi (2013) Confirms that diplomacy was a significant instrument that runs the foreign relations of Islamic state on the peaceful time due to the fact

that it leads to consolidation and stabilization of relations between the states which was based on justice principle and peaceful coexistence which was characterized by wisdom and the persuasion. The Islamic diplomacy was controlled by many principles such as reciprocity principle and good faith principle. Additionally to not interfere in the internal affairs of the states and respect their laws and regulations. Exchanging messengers did not come vainly, but to ensure what must prevail among the people and tribes from acquaintance, brotherhood and cooperation which was reinforced in the Holy Quran in Surrat Al-Hujurat (49:13) “ Mankind! We created you from a single (pair) Of a male and a female, and made you into Nations and tribes, that Ye may despise (Each other). Verily the most honored of you in the sight of God is (he who is) the most Righteous of you. And God has full knowledge And is well acquainted (With all things)” (Ali 1975, p.1407).

2.9.3 The philosophical justification of immunities in sharia law

Husain (2012) states that many Islamic jurists attributed the philosophical basis of immunities and privileges in Islam to the safety.

Safety is a contract to an individual or treaty to more than a person (Husain 2012). (Auda) in explaining the safety contract confirms that non-Muslims citizens are protected by the dhimmis contract and the non-Muslims who are not citizens in Dar-Al Islam are protected by truce. This safety provides protection to non-Muslim of their lives, possessions and rights. There are two types of safety in Sharia Law: permanent and Temporary safety. The temporary safety is for truce and whoever enters Dar- Al Islam for a specific period of time for some purposes whereas the permanent safety is for dhimmis citizens in the Islamic land. Messenger or political

agent enjoyed the Mustamin capacity. According to Husain (2012) the Mustamin is the person who enters Dar- Al Islam without intention of residing in it but to live for a specific period of time via a contract called safety. Besides that, safety should be given to whom wants to know the Islamic judgments which is also mentioned in the Holly Quran in Surrat Al Tauba (9:6) that states “If one amongst the Pagans Ask thee for asylum, Grant it To him so that he may hear the Word Of God; and then escort him To where he can be secure That is because they are Men without knowledge” (Ali 1975, p. 440). Prophet Mohammed peace be upon him affirmed that many immunities were granted to messengers during their work which was followed later by the rightly guided caliphs.(Al-masadi 2013).

2.9.4 Diplomatic immunities in sharia law

The caliphs, Kings and sultans in Islam received the messengers and ambassadors with the best reception when visiting the Islamic land since sharia law granted them immunity and safety during their work in Dar- Al Islam (Husain 2012).

2.9.5 Personal and places immunity from Sharia Law.

The messenger or diplomatic envoy of non-Islamic state to Islamic state enjoys the personal immunity according to the safety contract, this safety contract protects the messenger from any violence might face them or their family, needs, political messages and documents (Al-masadi 2013).

Husain (2012) states that the messenger must show a script to approve that he is sent by the ruler of his state to assure the protection until he returns to his country because the messenger is considered as an arbitrator between the states. Moreover, the matter of fighting and reconciliation can only be done through them. In the Islamic state, messengers are respected and protected even if they argue

contrary to Muslims beliefs which is affirmed in Hadith the Prophet Mohammed (S.A.W) States “ whoever kills a Mu`ahed shall not smell the fragrance of paradise, though its fragrance can be smelt at a distance of forty years(of travelling)”.

Even though Sharia law grants immunity to messengers, it also adheres them to respect the regulations and public system adopted in the Islamic state.

Husain (2012) asserts that in the beginning of Islam there was not any permanent diplomatic missions because what existed was temporary missions to practice specific work until the messenger left Dar- Al Islam. On the other hand,

Al- masadi (2013) confirms that messengers’ safety is a temporary contract determined by the duration the diplomatic envoy will remain in the Islamic land .

Therefore, the messengers who entered Dar- Al Islam were welcomed in houses dedicated for hospitality, grand mosque or at The Prophet Mohammed (S.A.W) friends’ houses. Moreover, in Islam there was no immunity for diplomatic mission but for the Holy places due to the fact that it affects the independence, sovereignty and justice of the Islamic state.

2.9.6 Financial Immunity from Sharia Law.

Muslim jurists divided the financial immunity into two parts in Sharia Law: money for commercial interests and money for personal needs. In the first case, messengers are obliged to pay taxes whereas in the second case, the Islamic state does not take any taxes from messengers. However, the financial immunity in Islam was also subject to reciprocity principle. For instance, if Non-Islamic state imposes taxes on Muslim messengers or traders, the Islamic state will also take taxes from non-Muslims. This principle is determined by jurists during the era of the Caliph Omar Ibn Alkhatib (May Allah be pleased with him) when he asked the Muslims about the Ethiopian People’s treatment towards them when they entered

their land, they said that they take taxes from them then he answered (“take from them as they take from you” (Abu Eid 2008).

2.9.7 Jurisdiction immunity of messenger in sharia law

Sharia law assures set of immunities to messengers in Dar-AL Islam via the safety contract. Nevertheless, sharia makes exception of civil and criminal jurisdiction from the immunities since messengers have full responsibility of their actions in the Islamic land. A diplomatic envoy with safety must abide to Islamic law.

Wherefore, they are subject to the Islamic jurisdiction to prevent corruption, immorality and crimes regardless of their temporary residence because criminals do not deserve protection if they are not willing to do their job right . Likewise in Sharia law the individual’s rights are reserved and must not be wasted under any circumstances (Husain 2012). Abu- Eid (2008) asserts that Muslim jurists divided the jurisdiction immunities into two parts. Firstly, crimes against the human rights: the majority of jurists agreed that the messenger must be subjected to the Islamic jurisdiction and punished for the intentional and unintentional crimes they committed and paid what was damaged to others. The Holy Quran reinforces that in Surrat Al Baqaraa (2.179) that states “In the Law of Equality there is (saving of) Life To you, O ye men of understanding; that ye may Restrain yourselves” (Ali 1975, p.71). (Auda) Confirms that sharia law adopted full equality theory between individuals and between the ruler and their citizens. In sharia law all people take the responsibility of their crime even the heads of the states they do not enjoy any saintliness. Therefore they must be punished for their mistakes and crimes as other people. Ibn kathir (2010) reinforces in one of the Arab kings story who converted to Islam during the caliph Omar Ibn Al khatab era called Jabalah Ibn

Al ayham. This king while conducting pilgrimage, a populace man stepped on his robe which got him angry and shattered the man nose, the poor man complained to Omar Ibn Alkhatib (May Allah be pleased with him) about what happened. The caliph summoned the king and asked him to apologize to the man or he will be punished , Jabalah disapproved since he is the king and said “ I thought that I would be more respectful in Islam than pre-Islam”(p.91). But the Caliph Omar (May Allah be pleased with him) responded that Islam has made you both equal, when the king saw Omar’s Ibn Alkhatib seriousness, he asked him some time to think, but he escaped to Syria in the same night then to the Roman country after his apostasy from Islam. Additionally, that Sharia law prohibited the espionage. The Muslim scholars differed about the punishment that should be carried out against spies. For example, the Hanafis’ opinion said that the spy should be punished and imprisoned until he repents while the Malikis’ decided that the spy should be killed. The third perspective of Imam AL Awazaai is to withdraw the safety of the spy and orders him to leave Dar- Al Islam, which is also mentioned in The Holy Quran in Surrat Al Hujarrat that states “ ye, who believe! Avoid suspicion as much (As possible): for suspicion in some cases is a sin: and spy not on each other”(Husain 2012).

Secondly, the rights of Almighty Allah, in this condition, the majority of scholars argued whether the messenger who committed a crime should be punished or not (Abu Eid 2008).

Husain (2012) States that Hanafis ’and Shafiis’ madhabs agreed that there is not any penalty in Almighty Allah rights in a crime such as prostitution and drinking whereas in the theft crimes, the jurists have different opinions. (Abu Eid 2008)

Emphasizes that Shafiis' and Hanbaliis' madhabs have two judgments. The first judgment states that the messenger who commits theft should not be punished as it classified under Almighty Allah rights, while the second judgment states that the punishment should be executed on criminals to protect people's rights. None the less the messenger-diplomatic envoy shall have sufficient knowledge of Islamic law legislations and regulations to not breach the safety that Sharia law gives, otherwise the judgments of Sharia law will be executed on them.

2.9.8 Summary

This chapter reviewed the concept of international business, its necessity and the factors that impact the international business. Thereafter, the study highlights on the aspects of the diplomatic immunity of V.C 1961 with the physical, personal elements, theories that justify the diplomatic immunity as well as the jurisdiction Immunity. Moreover, it discussed the diplomatic immunity from the perspective of Sharia law.

CHAPTER THREE

FINDING, DISCUSSION AND CONCLUSION

3.1 Introduction

This chapter provides the major finding of data collected based on the literature review and discusses two incidents in which the diplomatic immunity was breached. Besides that, the study presents the results according to the research objectives.

3.2 Similarities and differences between Sharia Law and V.C 1961

3.2.1 Diplomatic Representation

Muslims have known the diplomatic representation since the dawn of Islam for more than 14 centuries. Rules and texts of the representation are derived from Almighty Allah legislations that are taken from the Holy Quran, Sunnah and the Hadith Sharif which are free of errors and more obliged to human beings.

However, the western world did not codify all the rules of a diplomatic representation not until on 20th century as it was long-established customs the states dealt with for many eras. In addition, the rules that were made by humans make people fail to adhere to them since these rules are not accurate enough to be perfect.

3.2.2 Diplomatic Theories

Sharia law considered the function theory as the only justification that must be applied in the international relations to grant diplomatic agents the immunity due to the fact that a diplomat is sent to do his job smoothly and right in the host

state. In contrast, the positive law V.C 1961 added to the functional necessity theory: The territorial theory that makes part of the sovereignty in the host state under the authority of the sending state since the V.C 1961 grants immunity to the diplomatic missions headquarter and to the members and their buildings in the receiving state, and the representative theory that treats a diplomatic agent as a ruler's envoy.

3.2.3 Diplomatic inviolability

Sharia law awarded the messenger, ambassador and the mission members the Immunity for their life and money and ensured them to practice their religious ritual in Dar Al Islam. In spite of that, the state required them abide to the Islamic regulations of the state in order not to automatically lose their immunity and subject themselves to the domestic courts specifically in the violations related to the people's rights. Since, preservation of human life and their property has precedence on the functional considerations. Moreover, In Sharia Law, everybody takes the responsibility of their actions and offences no matter who commits the crime as it could be a president, minister or the other citizens whereas the Positive law V.C 1961 ensured the diplomats get full immunity from prosecution and protect them from the local authorities in the receiving state in case of breaking the internal laws of the host state according to article 31 of V.C 1961. Vienna agreement does not exempt the diplomatic agents from being held to accountable in their states as mentioned in article 31(4) but there is nothing proves a fair trail for the offender in his or her country as there is no guarantee that a right prosecution will be executed on the criminal.

3.3 Abuses of Diplomatic immunities

3.3.1 Yvonne Fletcher crime

According to Christopher hope (as cited in Nielsen, Johansen, Welling, preisler, Kamel 2015) that in the beginning of the 1980s last century in particular after the murder of the English policewoman outside of the Libyan embassy. The British authorities could not enter the mission as a result, to the Libyan state's request to adhere to the diplomatic immunity of V.C 1961. The English authority did not take any aggressive procedures or serious actions against the embassy due to their fear about its embassy and citizens in Tripoli.

Ten days later, without prosecution, the Libyan diplomatic agents managed to get out of Britain and return to Libya. Rayner (as cited in Nielsen et al. 2015) states that " English police found seven handguns and 4367 rounds of ammunition in the embassy, but not he gun used to shoot Fletcher, it is thought it was taken out in a diplomatic bag". The Libyan government did not show any willingness to cooperate with the English government in the investigations and rejected to take the responsibility. Moreover, they arrested four British citizens which led to break off the relations between the two countries.

At the end of 1990s Libya recognized, took the responsibility of the offense and paid a about 250.000 pounds as a compensation to the victims' mother Queenie fletcher which laterally assisted the political relations to officially reopened between the two states.

3.3.2 Jamal Khashoggi crime

Two years ago, a criminal crime occurred in the Saudi consulate in Istanbul against the journalist and Saudi citizen Jamal Khashoggi (Amnesty 2019).

Ritter (2018) states that despite the ugliness of the crime, using the consulate which is protected by the Vienna Convention on Consular Relations 1963 in committing Khashoggi's offense had strong reactions and was widely condemned around the world. The only barrier for the Turkish authorities to enter the consulate was the Vienna Convention since entering the mission without prior permission is considered as an international law violation. Two weeks later, the Turkish police and the investigation team managed to enter the consulate by an order from Saudi authorities. The European Union foreign policy chief Federica Mogherini said that Khashoggi's issue is "a shocking violation" of Article 55 of the Vienna Convention on Consular Relations which prevents the use of the mission building for suspicious purposes and is inconsistent with the consular functions.

What we conclude from the Yvonne Fletcher and Jamal Khashoggi cases are the following:

- The Diplomatic immunity was the main factor that contributed to the murder of the two victims as the English and Turkish governments found themselves forced to follow the Vienna Convention strictly. Furthermore, the Libyan and Saudi diplomatic agents enjoy a full immunity from the criminal jurisdiction which enabled them to get away from the prosecution in the host state which clearly indicates the protection of the Vienna Convention to criminals.

- The territorial theory still exists which supposed to be outdated, and to prove that this theory is still active we induce that the English and Turkish Authorities could not enter the Libyan and Saudi missions inside their Territory. In addition, the Turkish police were unable to get in the consulate At the time of the murder until they got the permission from the sending State. The permission was granted to the Turkish officers two weeks later After the murder which highly questions the Saudi officials' honesty about the incident which induces that the late permission was not given earlier to obstruct the investigation process in the host state.
- There is no guarantee that the diplomatic mission's buildings will not be used in committing any kind of crime in the presence of immunities that prevents officials from entering and inspecting it even in the serious cases. Moreover, the diplomatic bag which has a special article in V.C1961 might be utilized in a wrong and dangerous way.

the previous incidents indicate that a reason of the violations could be a political or personal motives, which proves that serious crime will be repeated by diplomatic agents. This makes the business people vulnerable especially that politics and economic are closely related and that in case of any problem or misunderstanding occurs between businessmen and a diplomat who represents a state of dictatorship that does not respect the law will expose the business people to unknown fate. The causation of this misbehavior of a diplomats is the diplomatic immunity that they enjoy outside their countries.

3.4 Conclusion

The study concludes that based on the sharia law, civilians' rights are protected the same way as diplomatic agents' rights due to the fact that all people are equal in Dar Al Islam. The study concludes that there is an obvious relationship between the commission of the crimes by diplomats and Vienna convention on diplomatic relations as it considers the diplomatic agents above the law by awarding them full immunity from criminal jurisdiction in the receiving state. The study further concludes that Vienna treaties is supposed to strengthen, continue and improve the relations between the states. However, the exploitation of the diplomatic immunity especially in serious crime cases leads sometimes to increase the tension and break off the countries' diplomatic relations.

3.5 Recommendations

In order to solve the exploitation dilemma of diplomatic immunity the, study recommends going back to the roots of the problem represented in Vienna treaty 1961 through revising the articles related to the immunities and amending them in line with human rights with no distinction between the diplomatic agents and other citizens in the receiving state. The study also recommends benefiting from Sharia Law in dealing with the envoys and the immunities they have in Dar Al Islam.

References

- Ali, A. (1975), *The Holy Quran, Translation and Commentary*. London, United Kingdom. The Islamic Foundation\The Muslim students' association, Inc. United States and Canada.
- Auda, A. (n.d), *Al Tashreei Al Jenaei Al Islami Muqaren Bel Qanoon Al Waddeey* (The Islamic criminal Legislation: Comparing with positive Law). Vol. 1 Beirut , Lebanon, Dar-Al Kateb Al Arabi.
- Abu Eid, A. (2008), The Diplomatic Immunity between Islam and International Law, Comparative study. *Journal of sharia Law*. Retrieved from:
<http://www.creativity.ps/data/library/09565048177134.pdf>
- Amnesty International. (2019). One year after the gruesome murder of Jamal khashoggi, NGOs renew their call and demand justice for Jamal. Retrieved from:
<https://www.amnesty.org/download/Documents/MDE2311282019ENGLISH.pdf>
- Almasadi, A. (2013), The immunities in the Islamic Jurisprudence and positive Law. A paper presented at the seminar of evolution of jurisprudence sciences- the jurisprudence theory. Sultan Qaboos university, Mascate, Oman Retrieved from:
<http://ijtihadnet.net/wp-content/uploads/الحصانات-في-الفقه-الإسلامي-والتشريعات-الوضعية.pdf>
- Auf, Y. (2016), Islam and Sharia Law: Historical, constitutional and political context in Egypt. Atlantic Council, Rafik Harir Center for Middle East. Retrieved from:
https://ethz.ch/content/dam/ethz/special-interest/gess/cis/center-for-securities-studies/resources/docs/Islam_and Sharia Law.pdf

- Barnes, W. (1960), Diplomatic Immunity from local jurisdiction its historical development under international Law and application in united states practice, the department of state bulletin, LII, p 177, 178.

- Carpenter, Mason A, Dunung Sanjyot P. (2012), *Challenges and opportunities in International Business*. (V,1.0) p. 18. Retrieved from:
<https://2012books.lardbucket.org/pdfs/challenges-and-opportunities-in-international-business.pdf>

- Goossen, S. (n.d), *Diplomatic Immunity: An Argument For Re-evoultion*. (Master dissertation, kwazulu-natal university. Retrieved from:
https://researchspace.ukzn.ac.za/xmlui/bitstream/handle/10413/7901/Goossens_Savio_2011.pdf?sequence=1&isAllowed=y

- Hussain, Kh. (2012), *Al Tantheem Al Diplomacy (The Diplomatic organization: The assets and organization, Duties and representation, Immunities and privileges, protocol, negotiation art and conferences, Islamic Diplomacy)*. 1st ed, AL- Halabi legal publications. Lebanon, Beirut.

- Ibn katheer, E. (2010), *Al Bidaya & Al Nehaya : Al Kholafaa Al Rashidoon (The start and The End: The right guided caliphs. Vol.7. 2nded, Dar-Ibn Al kathieer, Beirut, Damascus, p. 91.*

- Kabir, S. (2018). *Methods of Data Collection*. p. 205. Retrieved from:
https://www.researchgate.net/publication/325846997_METHODS_OF_DATA_COLLECTION

- Khalaf, M. (2008). *Al Qanoon Al diplomacy. (Diplomatic Law, Explanation and Modification of Vienna convention on International Relation 1961)*. 1sted, Dar-Tasneem, Amman, Jordan.

- Khalaf, M. (2013). *Al diplomacia: Al Natharia wa Al Mumarasa* (The Diplomacy: The theory and practice). 2nded. Amman, Jordan, Dar AL Zahran.
- Katavic, I. (2006). Entrepreneurship in United Europe- Challenges and opportunities. International conference. 13-17 September. Sunny beach, Bulgaria.
- Katavic, I, (n.d) International Business in changing Global Environment. Zagreb, Croatia. P4. Retrieved from: <https://bib.irb.hr/datoteka/862440.SSRN-id2238652.pdf>
- Mittal, S. V, (2012). *International Business*. Retrieved from: http://ebooks.lpude.in/commerce/mcom/term_3/DCOM501_INTERNATIONAL_B_USINESS.pdf
- Ndungu, M. K, (2012). *External Environmental Factors Influencing International Business Transactions At Barclays Bank Of Kenya*. (master dissertation, university of Nairobi. Retrieved from: <https://www.semanticscholar.org/paper/External-environmental-factors-influencing-business-Ndungu/fec62abe4ef42558af713fc817721720d61deebe>
- Nielsen, M. F. Johanson, M.V. Welling, J. T. Preisler, N. Kamel, V. (2015). *The abuses of Diplomatic Immunity, Diplomatic Immunity, Get out of Jail*. Roskilde University. Retrieved from: <https://core.ac.uk/download/pdf/43032776.pdf>
- Ritter, K (2018, October 23). Diplomatic immunity and the khashoggi case. The Associated Press News. Retrieved From: <https://apnews.com/ee1655f119f14228b0e8b6fbeat01866>
- Shaltut, M, (n.d). *Al Islam: Aqeeda wa Sharia* (The Islam: The Doctrine & Sharia).

(5TH ed), Dar- Al shouroq, p 22.

- United nation, Vienna Convention on International relations 1961.

- United states department of state office of foreign Missions, Diplomatic and Consular Immunity: Guidance for Law Enforcement and Judicial Authorities.

Retrieved from: https://www.state.gov/wp-content/uploads/2019/07/2018-DipConImm_v5_Web.pdf

- Vijayasri, G. V. (2013). *The Important of International Trade In The World.*

International journal of marketing, Financial services & Management Research

Vol 2 p112-113. Retrieved from:

<https://www.semanticscholar.org/paper/THE-IMPORTANCE-OF-INTERNATIONAL-TRADE-IN-THE-WORLD-Vijayasri/0c6506f1ab891cb40206230f6d841cb7e11796a7>

-(1996). Merriam- Webster's Dictionary of Law. Springfield, Mass. Merriam- Webster, Inc.,