



# The Indian Journal for Research in Law and Management

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## Diplomatic and Consular Relations: Its Functions and Law relating to International Organizations

**Introduction:** The status of diplomatic agents has been recognized by people of all nations from ancient times. Diplomatic agents were needed by states to negotiate and consult with each other. Since they were representing their states in other states, certain immunities and privileges were required to be conferred on them.

**Diplomatic relations:** After establishment of the United Nations, it was considered that an international convention on diplomatic intercourse, privileges and immunities would contribute to the development of friendly relations among nations, irrespective of their differing constitutional and social system. Therefore, the purpose and principles of United Nations Charter concerning the sovereign equality of states, the maintenance of international peace and security, and the promotion of friendly relations among nations, the Vienna Convention on Diplomatic Relations was adopted on 18<sup>th</sup> April 1961. It entered into force on 24<sup>th</sup> April 1964. The purpose of granting privileges and immunities is not to benefit individuals but to ensure the efficiency performance of the functions of the functions of diplomatic missions as presenting states. The convention has not only codified the law on diplomatic relations to substantial extent, but also resulted in the progressive development of international law on the subject.

### 1. Functions of a Diplomatic Mission:

According to Article 3, the functions of a diplomatic mission consist, *inter alia*, in:

- (a) Representing the sending state in the receiving state;
- (b) Protecting the interests of the sending state and of its nationals in the receiving state 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.

### 2. Provision Relating to Diplomatic Staff of the Mission:

In principle, the member of the diplomatic staff of the mission should be of the nationality of the sending state. However, with the consent of receiving state, the sending state may appoint nationals of the receiving state as member of the diplomatic staff of its mission. The consent so given by the receiving state may be withdrawn at any time. Further, the receiving state may reserve the same right with regard to nationals of a third state, who are not nationals of the sending state.

Article 9 enables receiving state to declare any member of the diplomatic staff of the sending state as *persona non grata*. Thus, the receiving state may at any time 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 member of the staff of the mission is not acceptable. No explanation is required to be given by the receiving state about its decision. The sending state in such a case shall either recall the person concerned or terminate his functions with the mission. A person may also be declared *non grata* or not acceptable before arriving in the territory of the receiving state. If the sending state refuses or fails to carry out its obligations within a reasonable period, the receiving state may refuse to recognize the person concerned as a member of the mission.

### **3. Immunity From Civil, Administrative and Criminal Jurisdiction of Receiving state:**

According to Article 31, a diplomatic agent is to enjoy immunity from the criminal jurisdiction of the receiving state. A diplomatic agent guilty of serious or persistent breaches may be declared *persona non grata*. He shall also enjoy immunity from its civil and administrative jurisdiction, except in the following cases:

- (i) A real action relating to private immovable property situated in the territory of receiving state, unless he holds it on behalf of the sending state for the purpose of the mission;
- (ii) An action relating to any professional or commercial activity exercised by the diplomatic agent in the receiving state outside his official functions.

**Consular Relations:** Consuls are concerned with administrative issues rather than political affairs. For instance, they issue visas and passport and generally promote the commercial interest of their state. Since the 18<sup>th</sup> century, the status has been based upon general usages rather than law, together with bilateral agreement. On 24 April 1963, the United Nations Conference on Consular Relations adopted the Vienna Conventions on Consular Relations, the Optional protocol concerning Acquisition of Nationality and the Optional protocol came into force on 19<sup>th</sup> March 1967. In *Case Concerning US Diplomatic and Consular staff in Tehran*, the International Court of Justice stated that the obligations disregarded by Iran were part of general international law and not merely contractual obligations established by Vienna Convention on Consular Relations.

**1. Law Relating to Special or *ad hoc* Missions:**

In addition to diplomatic and consular relations which the state maintains among themselves, in some cases, states send out special mission or *ad hoc* mission to other state to deal with some particular and specific matter. To deal with these kinds of special or *ad hoc* missions, the Conventions on Special Missions was adopted in 1969. The Conventions came into force in June 1985. These missions enjoy certain immunities which are based on the Vienna Conventions on Diplomatic Relations, 1961.

**2. Immunities of International Organisations:**

The international organisations must be conferred with certain privileges and immunities for their functioning. Such privileges and immunities are conferred by way of treaty as there is no customary law on the subject. The immunities conferred on them include immunity from legal process, financial controls, taxes, duties, etc. <sup>i</sup>

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By

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