

Prosecution of the Diplomatic Envoy

محاكمة المبعوث الدبلوماسي

Lama Allan Abu Samra

PhD Student , Hungary

Abstract

With the development of diplomatic practice as well as international relations, so did the rules for immunities diplomatic privileges, and the theoretical concepts that seek to grant this immunity have evolved to form this last is the most basic pillar of international relations, and due to the great importance of the issue of diplomatic relations between states and their implications for the peaceful functioning of international relations, Likewise, the close relevance of the issue of judicial immunity is the purpose for which it was reported Diplomatic immunity , as well as the large number of crimes, abuse.

Keywords: Diplomatic Law, International relations, Immunity

ملخص:

مع تطور الممارسة الدبلوماسية وكذلك العلاقات الدولية ، كذلك تطورت قواعد الحصانات والامتيازات الدبلوماسية ، والمفاهيم النظرية التي تسعى لمنح هذه الحصانة لتشكل هذا الأخير هو الركيزة الأساسية للعلاقات الدولية ، ويرجع ذلك إلى مع تطور الممارسة الدبلوماسية وكذلك العلاقات الدولية ، كذلك تطورت قواعد الحصانات والامتيازات الدبلوماسية ، والمفاهيم النظرية التي تسعى لمنح هذه الحصانة لتشكل هذا الأخير هو الركيزة الأساسية للعلاقات الدولية ، ويرجع ذلك إلى مع تطور الممارسة الدبلوماسية والعلاقات الدولية ، وكذلك فعل تطورت قواعد الحصانات الامتيازات الدبلوماسية ، والمفاهيم النظرية التي تسعى إلى منح هذه الحصانة لتشكيل هذا الأخير هو الركيزة الأكثر أساسية للعلاقات الدولية ، ونظرا لأهمية كبيرة لمسألة العلاقات الدبلوماسية بين الدول وآثارها على الأداء السلمي للعلاقات الدولية ، وبالمثل ، فإن الأهمية الوثيقة لمسألة الحصانة القضائية هي الغرض الذي من أجله تم الإبلاغ عن الحصانة الدبلوماسية ، فضلاً عن العدد الكبير من الجرائم والاعتداء.

Prosecution of the Diplomatic Envoy

With the development of diplomatic practice as well as international relations, so did the rules for immunities diplomatic privileges, and the theoretical concepts that seek to grant this immunity have evolved to form this last is the most basic pillar of international relations, and due to the great importance of the issue of diplomatic relations between states and their implications for the peaceful functioning of international relations, Likewise, the close relevance of the issue of judicial immunity is the purpose for which it was reported Diplomatic immunity and its connection to human rights, as well as the large number of crimes, abuse, etc.

On the international level, abuse and persistence of abuse committed by envoys occurs Diplomats, which may lead to obstruction of the conduct of diplomatic relations, as this is a study Judicial immunity is extremely important in the field of international relations due to the resulting they were the victims of cases of abuse that showed the members of diplomatic missions located around the world.

Likewise, the diplomatic envoy's enjoyment of absolute judicial immunity does not mean that he is not subject to any other judiciary, nor does it mean to take away the rights of others when he violates the laws of the country to which he is accredited and does not respect his duties, pledges and obligations, and to achieve the idea of justice and fairness that must prevail between nations, peoples and states to ensure the rights of all Individuals from countries, organizations and individuals, international jurisprudence, jurisprudence and practice have tended to approve some means that can be used to hold accountable and sue the diplomatic envoy to compel him to respect and implement his obligations and commitments.

Studying the extent of the criminal judicial immunity of a diplomatic envoy requires clarifying the diplomatic immunity of the diplomatic envoy in the sending country, and how the diplomat is tried before his country and the diplomat is prosecuted, and accordingly, in this paper we will address the following topics:

1. Prosecution of the Diplomat by the Courts of the Host State
2. Prosecution of the Diplomat by the Courts of the Sending State

3. Prosecution of the Diplomatic Envoy by International Criminal Court

1. Prosecution of the Diplomat by the Courts of the Host State

The fact that a diplomatic envoy enjoys absolute judicial immunity does not mean that he is not subject to another court, nor does it mean to take away the rights of others when he violates the laws of the country he is accredited with and does not respect his duties, pledges and obligations, and to achieve the idea of justice and fairness that must prevail between nations, peoples and states to guarantee the rights of all persons. From countries, organizations and individuals, jurisprudence, jurisprudence and international practice have tended to approve some means that can be resorted to and to hold accountable and sue the diplomatic envoy for a campaign to respect and implement his obligations and commitments.

The diplomatic envoy is subject to the courts of the receiving country in two cases, namely, his country waiving his diplomatic immunity, and the case of the diplomatic envoy's resort to the courts of the receiving state.

1.1 Waiver of judicial immunity

International law grants the diplomat agent judicial immunity in the country he is delegated to, in order to fulfill the interests of his government, and on this basis, judicial immunity revolves around three sides: the diplomatic envoy, his state, and the country accredited to it. So who is entitled to waive the judicial immunity enjoyed by the diplomat?

Basically, the diplomatic envoy is not subject to the jurisdiction of the country he is delegated to, and in this capacity he enjoys absolute judicial immunity in criminal matters, whether during the exercise of his functions or outside it, and in addition to that he possesses absolute civil and administrative judicial immunity in all the acts he performs in the name of his country related to the purposes of the mission. This is based on the functional concept on which diplomatic immunities and privileges are based and which do not serve the interests of individuals but rather are in place to ensure the effective performance of the mission's functions.

In line with the idea of fairness and justice and avoiding obstacles facing the means of resorting to the courts of the approved state, international jurisprudence has tended to approve the principle of waiver of judicial immunity as a possibility only and not as an imposition on states.¹

And if the diplomatic envoy is a representative of his country in the receiving state, is it permissible for him to waive his judicial immunity as the representative of his state? Or is it the exclusive right of his country only? Is the situation different for the head of state?

First of all, it is important to point out the above, except that the judicial immunity of the envoy is not a matter of his own that he can dispose of and waive as he pleases without returning to the official authorities in his country.²

Waiver of judicial immunity is a right for the sending state and not for the diplomatic envoys, because this immunity was granted to them because they represent that country which is originally considered, and the diplomatic envoy is considered a branch, in relation to this text.³

Hence, the diplomatic envoy is not entitled, in any case, to decide to waive his judicial immunity. Also, the courts are not entitled to accept this waiver if it is not directly issued by the concerned authorities in the country of the envoy.⁴

This waiver is not usually dependent on the occurrence of the accident that requires its implementation, but it may be decided before the lawsuit is filed against the diplomatic member, by stipulating it in the laws of his country, or within the framework of a treaty that approves this waiver, which is concluded by the approved state with the state accredited to it, and the diplomatic envoy is not valid, That his person waive this immunity without obtaining the permission of his country, which is entitled to this assignment, when it neglects it to show justice, clarify the truth, or anything else, whether in the sending state or in the country to which he is delegated.⁵

A jurisprudential trend has gone to the necessity of distinguishing between the head of the mission and the state, as the government of the head of the diplomatic mission must approve when waiving his immunity, and the acceptance of the head of the mission upon assignment to the other members of the mission. In fact, the head of the mission, even if he represents his country, but the text of the *The Vienna Convention on Diplomatic Relations of 1961* ifor 1961 ordered that the waiver be issued by the state and not by the head of the mission, without distinguishing between the head of the mission or other members of the mission.⁶

Article (32) of the Vienna Convention on Diplomatic Relations of 1961 contains the provisions of this assignment, and it stipulates the following:

1. The immunity from jurisdiction of diplomatic agents and of persons enjoying immunity under article 37 may be waived by the sending State.
2. Waiver must always be express.
3. The initiation of proceedings by a diplomatic agent or by a person enjoying immunity from jurisdiction under article 37 shall preclude him from invoking immunity from jurisdiction in respect of any counterclaim directly connected with the principal claim.
4. Waiver of immunity from jurisdiction in respect of civil or administrative proceedings shall not be held to imply waiver of immunity in respect of the execution of the judgement, for which a separate waiver shall be necessary.⁷

It is customary for the head of the diplomatic mission, as the official representative of his state, to notify the waiver order to the official authorities in the host country after dialogue with the government of his country. The diplomatic delegate has no right to object to such a decision before the courts. Waiver of immunity is an absolute right for the country of the envoy. No other party has report.⁸

The sending state may inform the sending state of this waiver, in the way it deems appropriate, such as reporting through the embassies of both countries in the other country.

As for the head of state, some jurists have argued that the president of the state may waive his judicial immunity directly before him, and accept to submit to the jurisdiction of the courts of the other state, even if this acceptance is a waiver from him of his position and the dignity of his state by submitting to the authorities of a foreign state and a waiver of his status.⁹

It is worth noting that the acceptance by the state of the diplomatic envoy to waive his immunity applies directly to his family members and the people working in his service, with immunity, as the envoy is not entitled to take a unilateral decision to lift the immunity of any member of his family and followers without the approval of his state's government.¹⁰

It also relates, accordingly, to the requests and subsidiary defenses related to the original lawsuit, until a judgment is issued in it exclusively, and if he waives his immunity from himself, it will not have any legal effect on him, even if it is in a written declaration.¹¹

Article 32/3 of the Vienna Convention of 1961 stipulates that: "A diplomatic representative or a person enjoying judicial immunity under Article 37 shall not have the right to invoke judicial immunity in relation to any interlocutory request directly related to the original request."

Likewise, the governments' decision to lift the judicial immunity of the envoy is done after careful and serious study of the motives and reasons that necessitate taking such an important and sensitive decision. Such a decision not only harms the interest of the envoy, but also the credibility of the state and its diplomatic corps.¹²

In any case, the receiving state does not have the right to waive the immunity of a foreign diplomatic envoy who works in a diplomatic mission in it. It is only for the approved country.¹³

Immunity is considered a privilege of the sending state and for its interest, and therefore the diplomatic envoy cannot waive it by his own will. The waiver must be made by the sending state, and the waiver must be explicit and not implicit, whether the situation relates to waiver of civil judicial immunity, or criminal judicial immunity. Ghazi Al-Sabrini said that the waiver must be issued by the country of the diplomatic envoy, with an official memorandum signed by the head of the mission based on instructions issued by his government, in his capacity as the representative of his state in the receiving country, and everything that comes out of the head of the mission, whether verbally or in writing, is considered to be issued by his country.¹⁴

On the other hand, lifting the judicial immunity of the envoy or waiving it as a defendant does not mean the violation of his immunity, privileges and other rights. Nor does this mean the application of any executive rulings issued against him, such as being detained or confiscating his money and property. Lifting the immunity and relinquishing it to appear before the court is something. The violation of the inviolability of the envoy and his other immunities is another. The aggrieved person can resort to the court of the envoy's country in order to apply the judgments issued against the diplomatic envoy on the territory of his country and from his money and property on it.¹⁵

The waiver of judicial civil immunity is not followed by the waiver of the immunity of execution required by the judgment issued by the competent judicial authorities, and this is what was stipulated in Article 32/4 of the Vienna Convention of 1961: (The waiver of judicial immunity in relation to any civil or administrative case does not. It implies any waiver of immunity with respect to the execution of the sentence, but in this last case an independent waiver is required.

As for the issuance of the ruling, the waiver does not include the procedures for its implementation, as it affects the person and prestige of the diplomat, so the matter requires a new waiver from his country, until he is obligated to implement this ruling.¹⁶

It is mentioned that in 1985, the International Law Commission at the United Nations distinguished between the waiver of criminal judicial immunity, which is always explicit, and the waiver of civil judicial immunity, which may be implicit. However, the Vienna Convention of 1961 did not take the opinion of the Commission and required that the waiver be explicit in all Adverbs.¹⁷

Whatever the case, the diplomatic representative who wants to initiate a lawsuit before the local judiciary of the receiving state must obtain in advance the approval of his government to waive his immunity to avoid possible possibilities, such as losing the case or the defendant filing an interceptive lawsuit that may embarrass the position of the diplomatic representative.¹⁸

1.2 The diplomatic envoy's resort to the courts of the receiving country

The Vienna Convention on Diplomatic Relations of 1961 mentions that a diplomat may not invoke immunity if he is the one who files the case before the lawsuit courts approved by them in 1961.

It becomes clear to us that the diplomatic envoy cannot uphold the judicial immunity he enjoys when he turns to the courts of the receiving country to file a case before them when the following conditions are met:

- 1- That the opposing lawsuit filed by the defendant against the diplomatic delegate is directly related to the lawsuit filed by the plaintiff.
- 2 - That the diplomatic envoy instituted the case before the courts of the receiving country, whether the case is civil or penal.¹⁹

2. Prosecution of the Diplomat by the Courts of the Sending State

If the judicial immunity of the diplomatic envoy restricts the national territorial jurisdiction of the national courts and means that the diplomatic envoy enjoys exemption from being subject to the territorial judiciary of the country he is dispatched to, then this exemption does not mean that the diplomatic envoy is out of obeying the laws and regulations in the country he is dispatched to.²⁰

On the basis of this rule, it becomes clear to us that the diplomatic envoy does not enjoy any immunities and diplomatic privileges in his country and based on the fact that the residence of the

diplomatic envoy abroad is nothing but a temporary residence and that his permanent residence in his country of origin has tended to adopt the possibility of filing a case against the diplomatic envoy. Before the courts of his country and prosecute him for acts that violate local laws and regulations in the receiving state, given that while he does not enjoy any immunity in his country, any judgment taken against him can be executed.²¹

It is basically that the law was only established to protect society and ensure its stability, and it is not the task of the national law authority to lay down the necessary rules to deal with the violations that happen in another society, as the law of each country is concerned with establishing the means that ensure respect for the rule of laws issued by it.²²

Obedience to the laws, regulations and traditions of the resaving state is at the forefront of the duties imposed on the diplomatic representative, and the guarantees established for him in order to preserve his independence. It is unacceptable to turn into a license for him to violate the law, for he is truly independent, but he is not entitled to do whatever he pleases, rather he has To ensure that his actions are within the limits permitted by the laws, regulations and customs observed in the country in which he exercises his duties.²³

The reason for exemption from being subjugated to the regional judiciary of the country to which he is dispatched is not the envoy's departure from the law of that state, because respecting the laws of the country to which he is dispatched comes at the top of the hierarchy of duties that the diplomatic envoy is obligated to, in addition to that he is bound by guarantees in order to ensure his independence and freedom, so that they should not be reflected on It is a permissibility and a license for it to violate the law, and this is what was stipulated in the first paragraph of the Vienna Convention on Diplomatic Relations, where it affirmed that "Persons who benefit from these advantages and immunities have a duty to respect the laws and regulations of the state they are accredited with without prejudice to the immunities and privileges established for them".

Based on this, the failure of the diplomatic envoy to submit to the national judiciary in the country to which he is dispatched does not mean his evasion of the rule of law and the abstention of his trial or prosecution for his actions and actions.

, He remains subject to the law of his state and its judicial authority, and he can be held accountable before its courts for what he is refraining from from the jurisdiction of the country he is sent to consider as a result of his judicial immunity.²⁴

The International Law Commission of the United Nations suggested in its draft was given in 1985 in Article 24/4 that ((The judicial immunity enjoyed by the envoy in the receiving country does not exempt him It is within the jurisdiction of his country where he remains subject to the law of this state, and that the competent court is the seat of his government, unless the legislation of this state specifies another court)).²⁵

If the diplomatic envoy commits any offense in the country to which he is dispatched, then he may not be sued before its regional courts, as the government of his country will summon him and try him before the courts of his country.

In fact, the diplomatic envoy's lack of respect for international law does not give the receiving state the permission to violate the rules of this law and intend to try him before its own courts. Rather, his trial can be conducted through the courts of his country.²⁶

Article 31/4 of the 1961 Vienna Convention stipulates that "The diplomatic envoy enjoying judicial immunity in the receiving state does not exempt him from the judiciary of the accredited state .

With slow procedures and uncertain and unsecured results, Philip Cahier mentions how many basic difficulties that prevent recourse to the approved state courts in some cases are mentioned in the reference to Ali Al-Shami. The first of these difficulties is related to the determination of the necessary law to determine the place of residence of the diplomatic envoy, as it is possible that the state's legislation is noticed. Approved as a valid law for the house of the latter in which the diplomat resides or the house of the seat of his government, i.e. the capital of the approved state.²⁷

Philip Cahier²⁸ says, ((Every recourse to the courts of the approved country becomes impossible. This is in addition to the other difficulties related to the state of the offense or the annulment of the pledge. That which was concluded abroad, as if there is a valid law, the latter two cannot decide the case because in most cases the local legislation does not punish some of them, since it mainly depends on the regional standard, and therefore the court becomes incompetent. Also, even if there is a court of jurisdiction. The authority to rule in the case based on the rules of private

international law, it is possible that the judgment is issued contrary to what was expected with regard to the laws of the country receiving it.²⁹

Article 31/5 of the Special Missions Convention of 1969 stipulated that "The fact that the representatives of the sending state in the special mission and its diplomatic personnel enjoy judicial immunity does not exempt them from the jurisdiction of the sending state").

However, the interpretation that accompanied the provisions of the Vienna Convention of 1961 explicitly referred to considering the capital of the state of the diplomatic envoy as his official residence that could be prosecuted before its courts.³⁰

The previous texts presented the distinction between immunity from the law and immunity against jurisdiction. The immunity of a diplomatic envoy is immunity from the law, or from judicial procedures, and it is not immunity from responsibility. His state or the country to which he is delegated.³¹

Countries often issue instructions and directives to confront the abuse of diplomatic immunities, stressing the importance of respecting local laws, regulations and regulations, and drawing the attention of the diplomatic corps accredited to them to specific measures it deems appropriate to confront cases of abuse.³²

Article 12 of the decisions of the Institute of International Law in its session held in Cambridge in 1985 stipulated that "The diplomatic envoy shall not be subject to civil jurisdiction except before the courts of his country, and the plaintiff shall resort to the court of the capital of the country of the diplomatic envoy unless the envoy argues that his residence is another city and provides Proof of this".³³

Similarly, the Vienna Convention on Diplomatic Relations of 1961 stipulated that the diplomatic envoy's enjoyment of judicial immunity in the intended state does not exempt him from the jurisdiction of his state.³⁴

The courts of the country of the diplomatic envoy have the mandate to hear civil and criminal cases that arise on the territory of the receiving state, and he has no right to argue for lack of spatial jurisdiction for the case because the Vienna Convention on Diplomatic Relations of 1961 accepted

that. Filing the case does not require waiving his immunity because he does not enjoy it in his country, and there is no need to obtain the approval of the Minister of Foreign Affairs for his trial.³⁵

The following exceptions apply to the right to bring a case in the sending state of the diplomat³⁶:

1 - In the event that the lawsuit relates to the exceptions set out on judicial immunity, through which the plaintiff has been permitted to resort to instituting a lawsuit in the country that accredits the diplomat, such as claims related to inheritance, property belonging to him, and his practice of commerce, then in these cases the plaintiff may refer to the courts of the country accrediting the diplomat.

2- If his country waives the judicial immunity that he enjoys, that waiver of immunity prevents the prosecution of the case in the courts of the diplomat's country.

3- If the lawsuit is related to the diplomat's country, that is, the official status of the diplomatic envoy, then in this case the case is not filed in the courts of the country dependent on the diplomatic envoy, but it is filed directly against his country.

4- If the lawsuit relates to acts of sovereignty, it is not permissible to file a lawsuit against the diplomatic envoy in the receiving state or the country of the diplomatic envoy, because the acts of sovereignty enjoy immunities even in the accredited state.

3. Prosecution of the Diplomatic Envoy by the International Criminal Court

The aim of establishing the International Criminal Court was to punish the perpetrators of serious international crimes. Among these crimes is a crime against humanity, war crimes and genocide, as well as the crime of aggression. Accordingly, we can say that the International Criminal Court is a permanent international judicial body that has the power to exercise its jurisdiction over persons who commit crimes against the international ICC statute.

The International Criminal Court is also based on a basic rule, which is that its statute does not take into account the absolute diplomatic immunity, and recognizes individual international criminal responsibility, and the court can pursue any official, whether the state ratifies its system, or not.

This is in the case if the diplomatic envoy has performed another military action or a high-ranking official, such as being a civilian commander and has the authority to declare war or order the two soldiers to commit crimes, then it is considered an order or execution for committing crimes

(Article 5). The International Criminal Court may try and punish him. He can commit crimes of an international character.

To talk about the jurisdiction of the International Criminal Court, we can divide the topic into two requirements:

3.1- The first requirement: immunity from arrest of a diplomat

3.2- The second requirement: the competent authority to try the diplomat

3.1 Immunity from arrest of a diplomat

The countries to which the diplomat is delegated are obliged to preserve the envoy, preserve his life, respect his dignity, guarantee his freedom, and provide him with all facilities away from inconvenience, and accordingly any attack or insult to him from the point of view of diplomatic law is considered an assault on the nature of the state and its representative³⁷, and this is what the Vienna Convention confirmed for diplomatic relations.

Based on the foregoing, does the International Criminal Court have the right to request legal aid from a state and to hand over representatives to a third country and bring them to trial?

Article 27 of the Rome Statute stipulates that official capacity is not considered: (1 - This statute applies to all persons equally without any discrimination due to the official status of a person, whether he is a head of state or government, a member of a government or parliament, an elected representative and an employee. Governmentally, it is not exempted in any way from criminal liability under this statute, nor is it in itself a reason to reduce the sentence)).

Paragraph 2 of the same article: ((Immunities or special procedural rules that may be related to the official capacity of a person, whether within the framework of national or international law, do not prevent the court from exercising its jurisdiction over this person)).

The court may request his state to hand him over to the court to conduct his trial for crimes committed within the jurisdiction of the court, and his state has no right to refuse to extradite him if it is a principal party of the criminal court, otherwise it is not obligated.

3.1.1-The arrest of the diplomat, who is a citizen of the receiving country

When a diplomatic envoy is a citizen of the country to which he is dispatched and works for a foreign diplomatic mission, he does not have diplomatic immunity, then his government can hand him over to the court, but in the event that he possesses the diplomatic capacity and his state is a party to the statute of the International Criminal Court, then the country to which he is dispatched receives the diplomat. On the basis that he is one of its citizens, and without the need to obtain permission or approval from the sending state, considering that he is not one of its citizens, and that his country has the right to hand him over to the International Criminal Court.³⁸

3.1.2 - procedures for arresting the diplomat

Since the diplomat enjoys diplomatic immunity in order to exercise his duties, and he works in the interest of his country in another country, the receiving state has two opposing obligations, the first obligation requiring refraining from arrest.

The diplomat has immunity from detention that was legalized by the Vienna Convention on Diplomatic Relations of 1961, and the second is an obligation dictated by the statute of the International Criminal Court, so is he entitled in this case to surrender the diplomat to the International Criminal Court?

Article 98 of the statute of the International Criminal Court proclaims: "The court may not direct a request for provision or assistance that requires the requested state to act in a manner inconsistent with its obligations under international law with regard to state immunities or diplomatic immunity for a person or property belonging to a third state, unless the court can first obtain the cooperation of that third state in order to waive the immunity."³⁹

Here, we see that the court has been prevented from submitting a request for legal aid or extraditing persons enjoying judicial immunity to the sending state, except in the case where the court was able to obtain a waiver of the immunity requested by the state of the diplomatic envoy.

3.2The authority competent to arrest a diplomat

Initially, the International Criminal Court must submit a request to the sending state to obtain its consent to waive his immunity from the arrest, and after that the court submits a request to the sending state with a copy of the waiver of his immunity for arrest procedures, and finally the court

submits a request to waive the judicial immunity issued by His country, and the state asks it to hand him over to the country to which he is dispatched, and the waiver here is not considered a trial but rather an arrest and surrender.

The International Criminal Court submits a request to waive the immunity of the diplomatic envoy from arrest in his country by diplomatic means, or any other appropriate channel specified by each state upon ratification, acceptance, approval or accession to the International Criminal Court, and each state party may make subsequent changes in determining the channels. The request may also be referred through the International Criminal Police Organization or any appropriate regional organization.⁴⁰ The statute requires its member states to cooperate fully with the court in what it conducts within the court's jurisdiction of investigating and prosecuting crimes.⁴¹

3.2.1- The state's failure to arrest the diplomat

If the country in which the diplomat is accredited refuses to extradite him despite his state's relinquishment of his immunity, then the International Criminal Court may notify the Assembly of Member States in the statute of the court, which is the General Assembly, and the Assembly of States in turn takes what it deems appropriate, but if the complaint is submitted by the UN Security Council. The court informs the Security Council of the host country's refusal to hand over the wanted diplomat, and the court's statute does not refer to the actions taken by the Security Council.⁴²

3.2.2- The arrest of the diplomat in a third country:

It is clear that a diplomat who is in the territory of a country that has not been approved or passed through to reach his work, and that his presence there for personal reasons for tourism or treatment, he does not enjoy immunity, so he may be handed over to the court in his capacity as a private person, not a diplomat, because he does not enjoy immunity from arrest.⁴³

3.2.3 - Request the diplomat to testify:

Article (27) of the Statute of the International Criminal Court stipulates that "immunities or special procedural rules that may be related to the official capacity of a person, whether within the

framework of national or international law, do not prevent the court from exercising its jurisdiction over this person."⁴⁴

And he considers it among the general principles that do not prevent the International Criminal Court from exercising its jurisdiction towards diplomats.

Looking at the text, we see that it included all that the court has jurisdiction to exercise vis-à-vis the diplomat, including immunity from testimony. In criminal cases, the witness may be compelled to testify before the court. However, asking the diplomat to testify before the court requires that his state waive his immunity from arrest and not from testimony.⁴⁵

Immunity is not required to waive, because immunity from testimony is not different from judicial and criminal immunity, so the court has the right to sue without the concession of his state. Immunity from arrest is not against the court, so the court may arrest him without the consent of his country, but it is against the receiving state. Because it faces two contradictory obligations, which are the international agreements that bind it to immunity, and the statute of the court from which immunity was stripped.⁴⁶

4-The competent authority to initiate the case in the International Criminal Court

4.1 - One of the states parties to the statute of the court:

The Assembly of States Parties is the body authorized to oversee the mechanisms of the International Criminal Court's work, and the efficiency of the provisions of the Statute and the Rules of Procedure, Evidence and other principles that the Court applies or regulates its work. It should be noted that the Assembly helped develop international cooperation and encouraged the development of international law.⁴⁷

States Parties have the right to notify the Public Prosecutor to investigate any case in which one or more crimes within the jurisdiction of the Court appear to have been committed and to request him to investigate the case with the aim of deciding whether to charge one or more specific persons with committing those crimes.⁴⁸

With regard to spatial jurisdiction, the court relies primarily on the principle of "regional criminal jurisdiction", which means that the crime is committed in the territory of a state party to the court's statute or that the crime is committed by one of its subjects .. as Paragraph 2 of Article 12⁴⁹

authorizes the court To exercise its jurisdiction if one or more of the following states are a party to this statute or accept the jurisdiction of the court in accordance with Paragraph 3: -

- A) The state in whose territory the conduct in question occurred or the country of registration of the ship or aircraft if the crime was committed on board a ship or aircraft
- B) The state in which the person accused of the crime is one of its nationals.

4.2 The court's ICC prosecutor of his own accord:

Some countries supported granting the public prosecutor the power to initiate the complaint on his own, as they considered that his position is independent and does not require prior permission to conduct the investigation, in addition to that this authority will be a guarantee against frivolous complaints, and it will also protect the public prosecutor from undue political pressure as well.

Some countries also objected to granting the public prosecutor the power to investigate the court on his own initiative, and demanded that the complaint be filed only with states parties to the court's statute. The guarantees that exist regarding granting the public prosecutor this power are insufficient, which makes the position of the public prosecutor the highest position in the court, and his powers are very broad, which makes his position therefore ineffective and the result was the end of the matter, which is to grant the public prosecutor the authority to initiate the investigation on his own accord according to Paragraph⁵⁰ (c) of Article (13) of the court's statute based on the information it receives regarding the occurrence of a crime within the jurisdiction of the court, as well as the role it plays regarding referrals submitted by member states or the Security Council.

4.3- the Security Council:

A case can be referred by the UN Security Council, which is the body responsible for maintaining security and international peace⁵¹, based on what was stated in Chapter Seven of the Rome Statute in Article 39 thereof

Which stated: "The Security Council decides whether there has been a threat to the peace, a breach of it, or whether an act has occurred

It is an act of aggression and provides its recommendations, or decides what measures must be taken to preserve peace And international security.

If we try to focus on the relationship between the court and the Security Council, we find that it can be summed up in three points

According to the text of Article 17 of the draft agreement on the relationship between the United Nations and the court

The International Criminal Court, namely: First, the referral made by the Security Council acting under Chapter Seven

. Secondly, the postponement of the investigation or prosecution, which is completely different from the first procedure

Third, it relates to the court's recourse to the Security Council and its assistance when states that have a relationship with the investigation process breach the obligation to cooperate with the court, to take whatever measures it deems necessary under these circumstances

We note that the Security Council is a political and not legal body, and the possibility of exploiting this power by defaming state officials, and the authority of the Security Council is discretionary, as some important disputes have not been considered by the Security Council as crimes, the best example of this is the occupation of Kosovo and the occupation of Iraq in 2003. By an international threat.⁵²

Conclusion

After the in-depth study the completion of the method of trying the diplomat in violation of the law, whether at the national level or the sending state, leading to the criminal court, we reached the following:

Results and recommendation :

- 1- Judicial immunity does not mean escaping from responsibility, for the liability remains against him, and what follows from the defense of immunity is the difference in the courts that decide the case, as the jurisdiction is transferred to the jurisdiction of the country of the envoy.
- 2- The fact that the diplomatic envoy is not subject to criminal justice in the country he is sending to is the most important result of judicial immunity, as criminal immunity is a manifestation of the personal inviolability of the diplomatic envoy.
- 3 - The diplomatic envoy is subject to the courts of the receiving state in two cases, namely, his country waiving his diplomatic immunity, and the case of the diplomatic envoy's resort to the courts of the receiving state.

4. Since judicial immunity is not an exemption from prosecution of the diplomatic envoy and thus enabling his trial before the courts of his country, it is therefore necessary for the Vienna Convention on Diplomatic Relations to include a provision whereby the sending state must send a (judicial memorandum) to the country to which he is dispatched and after the trial is held stating that the envoy is He has been tried before its national courts and a final judgment has been issued against him, with a certified copy of the judgment attached.

5. Adding a new text to the Vienna Convention on Diplomatic Relations that includes the obligation of the envoy upon termination of his position to present to the authorities of the country to which he is dispatched by diplomatic means (a written document) stating his clearance of any debts or financial obligations that arose while he was in the sending state.

6. States that sign or intend to sign or ratify the Statute of the International Criminal Court must not enter into such agreements that exempt from extradition, because such agreements lead to the void of Article 98 of its content, as well as signing such agreements violates Article 32. From the Vienna Convention on the Law of Treaties.

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