

THE EFFECT OF THE DIPLOMATIC RELATIONS ACT

Diplomatic privileges and immunities do not confer a license to commit a wrong. This statement reflects the attitude of those United States citizens familiar with the issue of diplomatic privileges and immunities.¹ Diplomatic immunity may be broadly defined as "the freedom from local jurisdiction accorded under international law by the receiving State to [foreign diplomats and to] the families and servants of such officers."² Modern diplomatic immunity was first recognized by the father of international law, Grotius, in his 1625 publication *De Jure Belli ac Pacis*, in which he stated:

There are two maxims in the law of nations relating to ambassadors which are generally accepted as established rule: The first that ambassadors must be received and second that they must suffer no harm.³

From the moment of its recognition, diplomatic immunity has too often become a convenient vehicle for abuse, making diplomats who enjoy such privileges members of an "overly protected class."⁴ In an effort to confront this problem and its ramifications in legal, political, and social spheres, the United States Congress enacted the Diplomatic Relations Act.⁵ The legislation has been operative for

1. William Macomber, the United States Ambassador to Turkey, expressed the view that "[d]iplomatic Immunity is not license and those who use it as such abuse the hospitality which has been extended to them [and] strain rather than improve relations." Kenneth Turan, as author of the article goes on to say: "the hard facts remain that abuse of the privilege is an all-too-common fact of life." Turan, *The Devilish Demand of Diplomatic Immunity*, WASHINGTON POST, Jan. 11, 1976, at 6, col. 1. See also Gupte, *Privileges for Diplomats Stir Resentment and May Be Curbed*, N.Y. Times, July 18, 1978, § II, at 8, col. 4.

2. LIBRARY OF CONGRESS, HISTORY OF THE CONCEPT OF DIPLOMATIC IMMUNITY (1979), reprinted in SENATE COMM. ON FOREIGN RELATIONS, 96th CONG., 1st SESS., REPORT ON LEGISLATIVE HISTORY OF THE DIPLOMATIC RELATIONS ACT 12 (COMM. PRINT 1979) [hereinafter cited as LEGISLATIVE HISTORY OF THE DIPLOMATIC RELATIONS ACT].

3. *Id.* at 14 (*Quoting* B. SEN, A DIPLOMATIC HANDBOOK OF INTERNATIONAL LAW AND PRACTICE 6 (1965)).

4. Foreign diplomats have been titled "the most elite of the human species." Anderson & Whitlen, *The Diplomatic Immunity Charade*, Washington Post, Nov. 14, 1975, § C, at 18, col. 1.

5. Diplomatic Relations Act of 1978, 22 U.S.C.A. §§ 254(a-e) (West Supp. 1980); see also 28 U.S.C.A. §§ 1351, 1364 (West Supp. 1980) [hereinafter cited as Act]. The Act took effect on December 29, 1978, ninety days after its enactment on September 30, 1979. The Act was prompted by numerous bills introduced during the 94th through 96th Sessions of Congress.

two years, and the issue is whether or not it has succeeded in correcting the problems which prompted its enactment. Notably, the Act eliminates conflicting United States laws,⁶ decreases the large number of diplomats in the United States entitled to claim diplomatic immunity,⁷ assists in reducing hostilities exhibited by American citizens toward diplomats who claim diplomatic immunity⁸ and allows personal recourse by United States citizens against diplomatic tortfeasors.⁹

This Comment examines the circumstances which created the need for the new legislation and outlines the provisions of the Act.¹⁰ The effect of the Diplomatic Relations Act is then analyzed by surveying the major problem areas of pre-existing abuses of diplomatic privileges and immunities in the United States. The analysis then focuses on whether the legislation has improved or corrected the problem, and suggests remedies where appropriate. This Comment demonstrates that while the Diplomatic Relations Act is necessary for American domestic and foreign policy, it has not resolved all of the problems and abuses that diplomatic immunity creates. Among those problems are the continued exemption status accorded many diplomats, enforcement difficulties, the inadequacies of the insurance requirement, the special considerations given to some nations, and reciprocity. Finally, this Comment concludes that voluntary compliance by the diplomats, coupled with increased responsibility by the sending state for the acts of their diplomats, would greatly reduce the problems created by diplomatic privileges and immunities. Domestic and international measures are then suggested, such as the further reduction of immunities and an international convention dealing with the abuses of diplomatic privileges and immunities, to ensure the future success of the Diplomatic Relations Act.

6. LEGISLATIVE HISTORY OF THE DIPLOMATIC RELATIONS ACT, *supra* note 2, at 15-18.

7. S. REP. NO. 95-958, 95th Cong., 2d Sess. 3 (1978), *reprinted in* LEGISLATIVE HISTORY OF THE DIPLOMATIC RELATIONS ACT, *supra* note 2, at 57.

8. Pace, *N.Y. and the Diplomats, A Fearful Coexistence*, N.Y. Times, Aug. 14, 1977, § IV, at 4, col. 2.

9. LEGISLATIVE HISTORY OF THE DIPLOMATIC RELATIONS ACT, *supra* note 2, at 22.

10. The scope of this article does not include an indepth explanation of the Act. For such an explanation, *see generally* LEGISLATIVE HISTORY OF THE DIPLOMATIC RELATIONS ACT, *supra* note 2; Note, *Diplomatic Immunity, The Diplomatic Relations Act*, 19 HARV. INT'L L.J. 1019 (1978); Note, *The Diplomatic Relations Act of 1978 and Its Consequences*, 19 VA. J. INT'L L. 131 (1978).

I. THE NECESSITY OF THE DIPLOMATIC RELATIONS ACT

The Diplomatic Relations Act was prompted by the dual system of immunity which existed under prior domestic laws.¹¹ The two systems existing in the United States between 1972 and 1978 were the anachronistic Statute of 1790¹² and the Vienna Convention of Diplomatic Relations.¹³ The Statute of 1790 provided complete immunity to all diplomatic personnel and their families,¹⁴ while the Vienna Convention restricted the privileges and immunities of certain diplomats.¹⁵ The Diplomatic Relations Act repealed the old statute and adopted portions of the Vienna Convention,¹⁶ thereby eliminating the duality.

A second factor which emphasized the need for the Act was the large number of diplomats in the United States entitled to claim diplomatic immunity.¹⁷ As of 1978, the number of persons in the United States able to claim diplomatic immunity exceeded 30,000,¹⁸ ranging in scope from the valet to the ambassador.¹⁹ This large number resulted from the fact that the United States was "one

11. See *supra* note 6.

12. Act of Apr. 30, 1790, Ch. 9, §§ 25-27, 1 Stat. 112, as amended by 22 U.S.C. 252 (1976) (repealed 1978) [hereinafter cited as Act of Apr. 30, 1790].

13. Vienna Convention on Diplomatic Relations, Apr. 18, 1961, 23 U.S.T. 3227, T.I.A.S. No. 7502, 500 U.N.T.S. 95 [hereinafter cited as Vienna Convention]. "The Vienna Convention is the authoritative statement of diplomatic privileges and immunities codifying customary international law of diplomatic relations and resolving inconsistencies of State practice, including those relating to the scope of immunities and to whom they apply." Kerley, *Some Aspects of the Vienna Conference on Diplomatic Immunity*, 56 AM. J. INT'L L. 88 (1962).

As of December 31, 1977, 127 states had deposited instruments of ratification of or accession to the Vienna Convention with the U.N. Secretary General. U.N. Multilateral Treaties: List of Signatures, Ratifications, Accessions as of 31 Dec. 1977, U.N. Doc. ST/LEG/SER. D/11 51 (1977).

The United States Senate ratified the Vienna Convention on September 14, 1965, the ratification was deposited on November 13, 1972, and the Vienna Convention was entered into force for the United States on December 13, 1972. The Senate's ratification appears at 111 CONG. REC. 23,773 (1965).

14. Act of Apr. 30, 1790, *supra* note 12, at § 25.

15. Vienna Convention, *supra* note 13, at arts. 29-37.

16. Act, *supra* note 5, at § 254b.

17. S. REP. NO. 95-958, *supra* note 7.

18. *Id.* For a detailed explanation of those previously entitled to immunity see *Diplomatic Immunity Legislation: Hearing Before the Senate Committee on Foreign Relations on H.R. 7819*, 95th Cong., 2d Sess. 27 (1978), reprinted in LEGISLATIVE HISTORY OF THE DIPLOMATIC RELATIONS ACT, *supra* note 2, at 138.

19. In one case, an attempt was made to extend immunity to the pet of a diplomat. The Barbados ambassador to the U.N. "lodged an official complaint with the State and Justice Departments over his dog. He charged that local officials . . . were trying to shoot the animal. It had sunk its teeth, apparently, into at least eight indignant citizens. But the am-

of the most lenient nations in the world where immunity was concerned.”²⁰ Foreign countries have been limiting diplomatic immunities for years.²¹

Consistent with foreign practice, the Diplomatic Relations Act follows the pattern of reducing all types of immunity. Antedating passage of the Diplomatic Relations Act, the Foreign Sovereign Immunities Act of 1976²² reduced the claims of sovereign immunity by foreign governments. Under the Foreign Sovereign Immunities Act a foreign government can only exclude itself from a lawsuit in limited circumstances.²³

Hostilities exhibited by American citizens toward the diplomats receiving immunity was a third factor prompting passage of the Diplomatic Relations legislation.²⁴ These hostilities manifested themselves in an alarming rate of burglaries, muggings, and other assaults against foreign diplomats in the United States. A notable incident was the severe beating of a Liberian diplomat by a gang of youths in New York city in 1973.²⁵ The Act was regarded as necessary to help temper the attitude developing in the United States that diplomats were an “overly privileged class.”²⁶

Further incentive for promulgating the Act was provided by the lack of adequate recourse under prior laws against diplomatic tortfeasors.²⁷ United States citizens injured by diplomatic tortfeasors were left without compensation or a means of redress for their injuries, as the diplomat could claim immunity and escape liability. The lack of recourse became especially serious in cases of traffic accidents caused by diplomats.²⁸

These four factors — the dual system of immunity, the large number of diplomats eligible for immunity, the developing hostilities, and the lack of compensation for those injured by diplomatic tortfeasors — combined to bring about passage of the Diplomatic Relations Act.²⁹

bassador contended that his dog, like himself, deserved diplomatic immunity.” Anderson & Whitten, *supra* note 4.

20. U.S. NEWS & WORLD REP., Sept. 4, 1978, at 34.

21. Washington Post, Sept. 19, 1978, § A, at 17, col. 1.

22. 28 U.S.C. § 1605 (1976) [hereinafter cited as Foreign Sovereign Immunities Act].

23. *Id.*

24. Pace, *supra* note 8.

25. *Id.*

26. Gupte, *supra* note 1.

27. HISTORY OF THE CONCEPT OF DIPLOMATIC IMMUNITY, *supra* note 2, at 22.

28. *Id.* See text accompanying notes 70-99 *infra*.

29. The Department of State has sponsored appropriate legislation to curtail the abuses

II. THE DIPLOMATIC RELATIONS ACT

The Diplomatic Relations Act repeals the 1790 law, replaces it with the Vienna Convention, and provides additional domestic laws to rectify the abuses of diplomatic immunity.³⁰ By replacing the prior law with relevant provisions from the Vienna Convention, the Act has become the sole United States law on diplomatic privileges and immunities.³¹ The Act adopts the classification system of the Vienna Convention³² in that it regulates the degree of immunity to which various diplomatic personnel are entitled.³³ The system

in every session of Congress since 1965, the year the Vienna Convention was ratified. S. REP. NO. 95-958, *supra* note 7, at 3..

30. Act, *supra* note 5, at § 254b.

31. One government official regarded the Act as a positive step in the area of diplomatic immunity. Letter from Richard Gookin, Deputy Chief of Protocol, Department of State, to the author, Oct. 18, 1979 (on file with *California Western International Law Journal*).

After commending such an action Richard Gookin, Deputy Chief of Protocol of Department of State said that

[t]he [Vienna] Convention is the basic modern expression of international law on the subject, it has gained the adherence of over 130 nations, and it for the first time renders the majority of diplomatic mission personnel in this country amenable to judicial process in civil actions. These and other features of this multilateral treaty make it a clear improvement over the previous legal regime, which was ambiguous in its contradictory mixture of old and new and worked a denial of legal remedies to our citizens in many situations.

32. Act, *supra* note 5, at § 254a:

DEFINITIONS

SEC. 2. As used in this Act—

(1) the term 'members of a mission' means—

(A) the head of a mission and members of the diplomatic staff of a mission,

(B) members of the administrative and technical staff of a mission, and

(C) members of the service staff of a mission,

as such terms are defined in Article 1 of the Vienna Convention;

(2) the term 'family' means—

(A) the members of the family of a member of a mission described in paragraph (1)(A) who form part of his or her household if they are not nationals of the United States, and

(B) the members of the family of a member of a mission described in paragraph (1)(B) who form part of his or her household if they are not nationals or permanent residents of the United States,

within the meaning of Article 37 of the Vienna Convention;

(3) the term 'mission' includes missions within the meaning of the Vienna Convention and any missions representing foreign governments, individually or collectively, which are extended the same privileges and immunities, pursuant to law, as are enjoyed by missions under the Vienna Convention; and

(4) the term 'Vienna Convention' means the Vienna Convention on Diplomatic Relations of April 18, 1961 (T.I.A.S. numbered 7502; 23 U.S.T. 3227), entered into force with respect to the United States on December 13, 1972.

The Act makes no reference to personal servants, the seventh category under the Vienna Convention, *supra* note 13, at art. 1.

33. The head of the mission and members of the diplomatic staff of a mission and their families are given total immunity pursuant to Articles 29-37 of the Vienna Convention, *supra* note 13. Members of the administrative and technical staffs and their families are given total

follows a "functional theory" granting immunity commensurate with the rank of the official whereby only the highest ranking diplomats have complete immunity and the lower ranking diplomats have no immunity.³⁴ By following the system applied under the Vienna Convention, the Diplomatic Relations Act closes the era of total civil and criminal immunity.

The Diplomatic Relations Act also sets forth new laws to curtail the misuse of diplomatic immunity. The Act authorizes the President, on the basis of reciprocity, to extend more or less favorable treatment to any sending state than is provided under the Vienna Convention.³⁵ The President can, in effect, waive the provisions of the new law or require additional standards for a given country. The new law also requires diplomatic missions, members of the missions, and their families to carry liability insurance at levels established by the President.³⁶ The insurance protects against risks arising from the operation of automobiles, vessels, or aircraft in the United States.³⁷ Another provision of the new legislation creates a direct-action statute which provides an injured party with a right under federal law to proceed directly against the insurance company when the insured diplomat enjoys immunity from suit.³⁸ Finally, the Act amends the Judiciary Code, repealing the Supreme Court's exclusive jurisdiction over suits involving diplomats, and establishing original jurisdiction in the Federal District Courts as well as the Supreme Court.³⁹

III. MAJOR AREAS OF ABUSE OF DIPLOMATIC IMMUNITY

Even before its passage, many observers felt the Act would not curtail the abuses of diplomatic privileges and immunities,⁴⁰ and

immunity except from civil or administrative jurisdiction for acts performed outside the course of their employment and members of the service staff are only given immunity for acts performed in the course of their duties, pursuant to Article 37 of the Vienna Convention, *supra* note 13.

34. *Diplomatic Immunity Legislation*, *supra* note 18, at 119 (statement of Howard Metzenbaum).

35. Act, *supra* note 5, at § 254c.

36. *Id.* at § 254a.

37. Regulating rules for insurance requirements have been promulgated by the Department of State. *Id.* See text accompanying notes 77-84 *infra*.

38. 28 U.S.C. § 1364 (1978).

39. *Id.* at § 1351.

40. N.Y. Times, Dec. 30, 1978, at 20, col. 6. "We're going to have a bunch of lawyers arguing on the basis of the Vienna Convention and digging into experience with it from around the world," claims Virginia Schlundt, counsel for the House Subcommittee on International Operations. Washington Post, Sept. 21, 1978, § A, at 17, col. 3.

although the Act has rectified many problems, it has not completely eliminated the misuse of diplomatic privileges and immunities in the United States. The major areas of continuing abuse include exemption,⁴¹ the on-duty exception,⁴² enforcement,⁴³ traffic accidents and the insurance requirement,⁴⁴ other legal injuries,⁴⁵ the traffic and parking dilemma,⁴⁶ special considerations,⁴⁷ and reciprocity.⁴⁸

A. Exemption

The Diplomatic Relations Act has reduced the overall number of persons entitled to claim diplomatic immunity.⁴⁹ High-ranking diplomats and their families, numbering about 8,000,⁵⁰ still retain complete immunity, subject only to the mandatory insurance requirement.⁵¹ This means that a United States citizen injured by a high ranking diplomat or a member of his or her family would have no judicial means of recovery unless the tort involved the diplomat's motor vehicle, vessel, or aircraft, which are required to be covered by insurance.⁵² Other injuries suffered by United States citizens remain without remedy—such as those resulting from unpaid bills or breaches of contract.

On the other hand, members of the administrative and technical staffs and their families have lost civil and administrative immunity for acts performed outside the course of their employment.⁵³ Embassy service personnel enjoy immunity only for acts performed in the course of their duties.⁵⁴ Top diplomatic agents and members of the administrative and technical staffs do,

41. N.Y. Times, Oct. 3, 1978, at 50.

42. Vienna Convention, *supra* note 13, at art. 37.

43. *Diplomatic Privileges and Immunities: Hearings and Markup Before the Subcommittee on International Relations of the Committee on International Relations*, 85th Cong., 2d Sess. 216, 217 (1977) (Answers to Questions 1 & 3 of Part II of Appendix 4, Questions Submitted by the Subcommittee on International Operations to the Department of State and Their Responses), reprinted in *LEGISLATIVE HISTORY OF THE DIPLOMATIC RELATIONS ACT*, *supra* note 2, at 580-81.

44. HISTORY OF THE CONCEPT OF DIPLOMATIC IMMUNITY, *supra* note 2, at 22.

45. See note 100 *infra*.

46. See text accompanying note 102 *infra*.

47. Act, *supra* note 5, at § 254c.

48. See notes 20 & 21 *supra*.

49. See text accompanying notes 32-34 *supra*.

50. N.Y. Times, Oct. 3, 1978, at 50.

51. Act, *supra* note 5, at § 254c.

52. *Id.*

53. Vienna Convention, *supra* note 13, art. 37.

54. *Id.*

however, retain full criminal immunity.⁵⁵ As a result, "4,000 out of 6,000 embassy employees in the Washington, D.C. area will be subject to normal civil suit for their unofficial acts."⁵⁶ Two thousand remain completely immune.

To further reduce the privileges and immunities granted to foreign diplomats, a bill has been introduced in Congress which would grant immunity only to the heads of a mission, two subordinates, and their families.⁵⁷ Such a measure would provide only a small number of diplomats with civil immunity and would reduce the number of tort victims who have no remedy.

One possible alternative to eliminating the problems involved with awarding high ranking diplomats complete immunity would be to further limit the immunity of all diplomatic personnel to acts committed in the course of their official duties. This would provide a remedy to United States citizens for injuries caused by a diplomat's unofficial acts, while still protecting the foreign sovereign's conduct of official affairs. Those acts committed in the course of employment would be covered by the claim of sovereign immunity, while those committed outside employment would not. Such a step would, however, be inconsistent with the Vienna Convention, and would require the United States' call for and succession to a new international convention on diplomatic relations. The further reduction of immunities is necessary; however, careful attention should be given to insure that such a reduction not aggravate the related problem of the on-duty exception.

B. On-Duty Exception

The administrative, technical, and service staffs, who are not normally exempt from civil liability, enjoy immunity for acts committed in the scope of their employment.⁵⁸ It is therefore essential that the present problem of determining when a diplomat is on-

55. DEPARTMENTAL ORDER, DISTRICT OF COLUMBIA, METROPOLITAN POLICE DEPARTMENT, DIPLOMATIC IMMUNITY, Gen. Order 308, No. 12 (Dec. 28, 1979) [hereinafter cited as D.C. POLICE PROCEDURE].

"Full criminal immunity means that the person entitled to such immunity may not be detained or arrested or subjected to a body search, may not be prosecuted and may not be required to give evidence as a witness, unless immunity is waived in writing by the embassy affected."

56. Press Release of Hon. Joseph L. Fischer (United States Representative from Virginia) Oct. 2, 1978.

57. H.R. 3841, 95th Cong., 1st Sess. (1977), *reprinted in* LEGISLATIVE HISTORY OF THE DIPLOMATIC RELATIONS ACT, *supra* note 2, at 661.

58. Vienna Convention, *supra* note 13, at art. 37.

duty or off-duty be resolved.⁵⁹ The lives of diplomatic personnel often revolve around the embassy missions; some diplomats could be considered to be on-duty twenty-four hours a day. The Diplomatic Relations Act does not define a diplomat's official acts and thus has not provided a solution. To date, no official definition has been offered as to when a diplomat is on or off duty. Any viable answer to the problem of the on-duty exception must include a strict definition of those diplomatic acts which are official and within the scope of the diplomat's duties and those which are not. A definition which considered a diplomat on-duty only during his normal working hours, while restrictive, might be better than the present definitional void. The primary advantage would be that it would eliminate any potential for subjective determinations by the courts as to whether a diplomat should be granted immunity because his improper action was committed during the conduct of his official duties.

C. Enforcement

The ultimate success of the Diplomatic Relations Act is in proper enforcement. The primary method for enforcement of the Act is the prevailing concept of *persona non grata*,⁶⁰ which under international law allows the President to request the recall or declare "unacceptable" a diplomat who does not comply with the requirements of the Act.⁶¹ This enforcement method, which also existed under prior law, is not on record as having ever been used.⁶² The Department of State's desire to handle disputes by resolving the matter with the embassy insures comity with the diplomat's nation.⁶³ The reluctance to use this enforcement measure suggests its ineffectiveness. The United States Government's refusal to use *persona non grata* also suggests that this method of enforcement will not be used for future violations of the Diplomatic Relations Act and, therefore, other enforcement measures must be considered.

59. As a spokesman for the Nigerian Embassy said, "[t]his is a very difficult thing to know when somebody is not on duty." See *supra* note 41.

60. *Persona non grata* describes "[i]n international law and diplomatic usage, a person not acceptable [for reasons peculiar to himself] to the court or government to which it is proposed to accredit him in the character of an ambassador, or minister." BLACK'S LAW DICTIONARY 1300 (4th ed. 1968).

61. The use of *persona non grata* is specifically granted by the Vienna Convention, *supra* note 13, at art. 9.

62. *Diplomatic Privileges and Immunities*, *supra* note 43.

63. *Diplomatic Immunity Legislation*, *supra* note 18, at 52 (Report on State Department Protocol Office's Handling of Complaints Lodged Against Diplomatic Missions).

When a tortious act is committed within the scope of a diplomat's official duty, another enforcement method available is a suit against the foreign country. This is, however, subject to the requirement that the diplomat's tortious conduct is not covered by the foreign nation's claim of sovereign immunity.⁶⁴ This prerequisite limits the viability of judicial action since few claims by American citizens against foreign diplomatic personnel involve acts committed during the course of the diplomat's official duty, and sovereign immunity is claimed anyway. It is essential that the curtailment of the misuse of diplomatic privileges and immunities come from the diplomats themselves and their sending states.

The assistance of other nations in policing the new legislation is perhaps the best means of enforcement. Israel has been instrumental in enforcing the Diplomatic Relations Act and has a strict system which penalizes diplomats for their abuses.⁶⁵ Another example of this initiative is the British Embassy's policy of always paying their traffic fines. "We have a strict rule," an Embassy spokesman said, "no one is to claim diplomatic immunity."⁶⁶ Assistance by other nations in enforcing the Act is fundamental, since it will take the concerted efforts of all nations to eradicate the misuse of diplomatic privileges and immunities. An international convention is recommended to establish a cooperative system of assistance between nations to end the abuses of diplomatic privileges and immunities. Such a convention could provide an effective means of enforcement if various nations agreed to penalize their diplomats who abuse diplomatic privileges and immunities.

An enforcement provision is presently contained in the Vienna Convention which requires those enjoying diplomatic privileges and immunities to respect the laws and regulations of the receiving state.⁶⁷ The success of the Act will depend on such measures and the general attitudes and behavior of the diplomats themselves. The practicalities of enforcing the Act, however, are left in the hands of the United States government.

One of the ways in which the United States is dealing with

64. Foreign Sovereign Immunities Act, *supra* note 22, at § 1605(A)(5).

65. N.Y. Times, Apr. 4, 1979, at 3, col. 1; N.Y. Times, Apr. 5, 1979, § III, at 16, col. 5.

66. Gupte, *supra* note 1.

67. Vienna Convention, *supra* note 13, at art. 41, para. 1:

Without prejudice to their privileges and immunities, it is the duty of all persons enjoying such privileges and immunities to respect the laws and regulations of the receiving States. They also have a duty not to interfere in the internal affairs of that State.

practical enforcement is the establishment by the Department of State of a center which law enforcement officials can call around the clock to verify the identities of those claiming diplomatic immunity and to determine the boundaries of the immunity to which such an individual is entitled. The center assists police in situations in which the claimant needs to establish a right to immunity but cannot produce sufficient evidence of his status. This procedure reduces conflict between the police officer and the diplomat asserting immunity.⁶⁸ Specified procedures for dealing with persons claiming diplomatic immunity, as have been developed by individual police departments, provide another manner of practical enforcement.⁶⁹ The police officer — knowing the specific procedure in advance — can deal courteously with the person asserting immunity. More of these methods are needed. The limited effectiveness of *persona non grata* and suits against a foreign sovereign for the tortious acts of its agents means that enforcement of the Diplomatic Relations Act is based primarily on compliance by the diplomats themselves. In addition, increased responsibility by the sending state for the acts of their diplomats would go a long way towards reducing the problems created by abuses of diplomatic privileges and immunities.

D. Traffic Accidents and the Insurance Requirement

Among the civil claims against foreign diplomats, disputes over traffic accidents and resulting injuries constitute the largest number of complaints regarding the misuse of diplomatic immunity.⁷⁰ When damage or personal injury occurred under the old laws the victim was left without a remedy because the diplomatic tortfeasor was able to claim immunity.⁷¹ This problem has been

68. OFFICE OF THE CHIEF OF PROTOCOL, DEPARTMENT OF STATE, GUIDANCE TO LAW ENFORCEMENT AUTHORITIES IN THE METROPOLITAN WASHINGTON AREA ON DIPLOMATIC IMMUNITY AND RELATED MATTERS, § V, at 7 (Jan. 1, 1979).

69. See D.C. POLICE PROCEDURE, *supra* note 55.

70. HISTORY OF THE CONCEPT OF DIPLOMATIC IMMUNITY, *supra* note 2, at 22.

71. To a recent request for statistics regarding the number of United States citizens unable to obtain compensation for losses resulting from accidents involving diplomats, the State Department's Office of Protocol made the following response:

There are no statistics available on the number of U.S. Citizens who have been unable to obtain compensation for losses, or other satisfaction of grievances, because of diplomatic immunity. The State Department would know of such uncompensated claims only if the claimant brought the matter to the Department's attention. As a rule, cases are referred to the Department only when the claimant is seeking assistance in securing redress. At any time the Department's Office of Protocol is working on some two dozen or more such cases, endeavoring through correspondence and discussion with the employing embassies to bring about a just

partially remedied by the reduction in the number of diplomats able to claim civil immunity⁷² and the requirement of mandatory vehicle insurance for all diplomatic personnel in the United States.⁷³ The insurance requirement is perhaps the most tangible benefit of the Diplomatic Relations Act. Prior to its passage only seventy-five percent of the diplomats in the United States carried motor vehicle insurance.⁷⁴ Despite the insurance requirement's beneficial effect in decreasing abuses of immunity for traffic disputes, it has come under criticism for a number of reasons, four of which deserve discussion.

1. *Low Minimal Amount of Required Coverage.* The insurance requirements, established by the President,⁷⁵ are implemented pursuant to the Department of State's Regulations on Liability Insurance⁷⁶ and require only a minimal amount of coverage.⁷⁷ Even though the guidelines recommend amounts which would fairly compensate an injured victim,⁷⁸ diplomats are only required to obtain the minimum legal coverage in the jurisdiction in which the vehicle is registered.⁷⁹ Thus, although this puts them on par with other residents of the jurisdiction, their immunity beyond the effec-

settlement of the dispute. Negotiations in exceptional instances may go on for two or three years, but usually a settlement of some sort is reached. No attempt has been made to keep statistics on the relatively small number of cases where it has not been possible to effect a resolution.

Id. at 22-23 (statement of Hampton Davis, Ass't Chief of Protocol, Dep't of State).

72. Act, *supra* note 5, at § 254a, d.

73. *Id.* at § 254e.

74. *Diplomatic Immunity: Hearing Before the Senate Subcommittee on Citizens and Shareholders Rights and Remedies on the Committee on the Judiciary on S. 476, S. 477, S. 478, S. 1256, S. 1257, H.R. 7819, 95th Cong., 2d Sess. 10 (1978)* (statement by Richard Gookin, Deputy Officer of Protocol, Department of State), reprinted in LEGISLATIVE HISTORY OF THE DIPLOMATIC RELATIONS ACT, *supra* note 2, at 234.

75. Act, *supra* note 5, at § 254e(b).

76. Compulsory Liability Insurance for Diplomatic Missions and Personnel, 22 C.F.R. § 151 (1978).

77. *Id.* at § 151.4:

Minimum limits for motor vehicle insurance

The insurance shall provide not less than the minimum limits of liability specified in the financial responsibility, compulsory insurance or other law of the jurisdiction where the motor vehicle is principally garaged.

78. *Id.* at § 151.5:

Recommended limits for motor vehicle insurance.

Every person subject to the Act and every mission should have and maintain insurance adequate to afford reasonable compensation to accident victims. Minimum limits of liability of \$100,000 per person and \$300,000 per incident for bodily injury, including death, and \$50,000 per incident for property damage, including loss of use, are recommended to meet this objective.

79. *Id.* at § 151.4. Diplomats are only required to meet the following standards:

tive coverage allows diplomats to escape liability where United States Citizens remain liable. One way of compensating for the diplomats' immunity from further suit would be to require all diplomats to carry higher minimum amounts of insurance coverage.

David P. Stewart, Special Assistant to the Legal Advisor of the Department of State, conceded that "[t]he prudent person would have more than the [minimum] amount required."⁸⁰ In addition, all diplomatic missions must certify that their diplomats meet the insurance requirements and supply sufficient evidence to the Department of State,⁸¹ which can refuse to issue diplomatic license plates upon failure to meet such standards.⁸²

	Bodily injury or death to one person	Bodily injury or death to two or more persons	Property damage per accident
Diplomats in Washington, D.C.:			
District of Columbia	\$10,000	\$20,000	\$ 5,000
Virginia	\$25,000	\$50,000	\$10,000
Maryland	\$20,000	\$40,000	\$ 5,000
New York City	\$10,000	\$20,000	\$ 5,000

Collected from OFFICE OF PROTOCOL, DEPARTMENT OF STATE, COMMUNICATION TO CHIEFS OF MISSIONS (1978) (Table of Minimum Liability Insurance Imposed by Automobile Financial Responsibility Laws in Washington, D.C., and New York City Metropolitan Areas).

80. Washington Post, Feb. 8, 1979, § DC, at 3, col. 1.

81. 22 C.F.R. §§ 151, 151.8 (1978):

Evidence of insurance for motor vehicles.

(a) Every mission must periodically, and otherwise upon official request, furnish evidence satisfactory to the Department of State that the required insurance is in effect for the mission, its members and their families. Every senior United Nations official must also periodically furnish evidence satisfactory to the Department of State that the required insurance is in effect.

(b) The Department of State will accept as satisfactory evidence that the required insurance is in effect:

(1) A written statement of self-certification signed by the Chief of Mission, indicating that the mission, its members and their families have and will maintain insurance throughout the period of registration of all vehicles owned or leased or otherwise regularly used, and showing the name of the insurance company or companies and identifying each policy by number and name of insured; and

(2) A written statement of self-certification signed by a senior United Nations official, indicating that he or she has and will maintain insurance throughout the period of registration on all motor vehicles owned or leased or otherwise regularly used, and showing the name of the insurance company or companies and identifying each by number and name of insured.

(c) A certification under paragraph (b) of this section by a Chief of a Mission to the United Nations or by a senior United Nations official shall be delivered to the Counselor for host country affairs of the United States Mission to the United Nations. All other certificates shall be delivered to the Chief of Protocol, Department of State.

82. *Id.* at § 151.9:

Evidence of insurance required for diplomatic license plates and waiver of fees.

The Department of State will not endorse on behalf of any person subject to the Act or any mission any application for diplomatic motor vehicle license plates

2. *Destruction of the Voluntary Insurance Market by the Direct-Action Statute.* The direct-action statute⁸³ contained within the Diplomatic Relations Act is simply a subrogation device. It allows an injured party to proceed directly against the insurance company rather than the individual when the insured diplomat enjoys immunity. A problem with the direct-action statute is that it could impair a diplomat's ability to obtain liability insurance in the United States. Diplomats could "be forced into assigned risk pools or other residual market mechanisms." The cost of insurance would increase, and those insurance companies who have the largest share of the market in both metropolitan Washington, D.C. and metropolitan New York would be forced to bear the brunt of the burden."⁸⁴ Any increased costs would, however, be passed along to the consumers.

3. *Recourse Available Only for the Amount of the Insurance Coverage.* Along with the problem created by a minimal amount of insurance coverage, the new insurance requirements present an additional problem for accident victims who sustained injuries greater than the amount of the diplomat's insurance coverage. Under the new Act the injured individual lacks further recourse against a diplomatic tortfeasor because unlike most citizens,⁸⁵ the diplomat is not subject to a lawsuit beyond the effective insurance coverage. Even though this dichotomy operates only as to those diplomats entitled to complete immunity,⁸⁶ it has nonetheless created problems.

A Congressional proposal has been made to establish a federal fund where no other remedy is available.⁸⁷ The reason for such a fund is that "if the government feels that it is necessary to grant

or any application for waiver of motor vehicle registration fees without prior receipt of satisfactory evidence from the Chief of Mission or other duly authorized official that the required insurance is in effect.

83. Act, *supra* note 5, at § 1364. For a detailed analysis of the statute, see *supra* note 10. The direct-action statute was a major controversy throughout the enactment of the Act. The validity of direct-action statutes was endorsed by the United States Supreme Court in *Watson v. Employers Liability Corp.*, 348 U.S. 88 (1954).

84. H.R. REP. NO. 1410, 95th Cong., 2d Sess. 20 (1978) (Dissenting Views of Hon. Thomas N. Kindness & Hon. Carlos J. Moorehead), *reprinted in* LEGISLATIVE HISTORY OF THE DIPLOMATIC RELATIONS ACT, *supra* note 2, at 108.

85. At a hearing before the Department of State on the Insurance Guidelines, Paul Keifer of the Foggy Bottom-West End Advisory Neighborhood Commission complained that "If I get in an accident and the damage exceeds my insurance coverage, I expose my personal assets to liability," and that diplomats would not under the Act. See *supra* note 82.

86. Act, *supra* note 5, at § 254a, d.

87. S. 478, 95th Cong., 1st Sess. (1977). See also H.R. 1535, 95th Cong., 1st Sess. (1977);

certain extraordinary privileges to promote our foreign policy, then it must also assure that no American citizen is injured by these parties.”⁸⁸ Another proposal would require diplomats “to post an indemnification bond or fund . . . to compensate victims”⁸⁹ who suffer injuries beyond the amount of the mandatory insurance coverage.

4. *Non-Retroactivity of the Insurance Requirement.* The Diplomatic Relations Act is not retroactive and some of the victims of past accidents remain uncompensated. Although suggestions have been made for compensating these victims where the claim of immunity was successful,⁹⁰ few have actually been compensated.⁹¹ Some type of relief should also be made available for the uncompensated victims of past traffic accidents caused by diplomats who then enjoyed immunity from civil suit. For example, Congress could establish a fund to compensate past victims for their losses, limiting any recovery to either a maximum dollar amount or actual damages.

If these four problems can be overcome the insurance requirement has the potential to play a significant role in eliminating the misuse of diplomatic immunity. As set forth in the new legislation the compulsory liability insurance and direct-action statute are given wide recognition in domestic and international law: “Under existing international law a host state may impose reasonable conditions upon anyone operating a motor vehicle in its territory. There is no question that Congress is constitutionally empowered to require all persons enjoying diplomatic immunity to carry compulsory liability insurance.”⁹² Compulsory insurance is required

S. 477, 95th Cong., 1st Sess. (1977); S. 1257, 95th Cong., 1st Sess. (1977), *reprinted in* LEGISLATIVE HISTORY OF THE DIPLOMATIC RELATIONS ACT, *supra* note 2.

88. *Citizens and Shareholders Rights and Remedies*, *supra* note 74, at 35 (Testimony of Lawrence S. Blumberg, Esq.).

89. *Diplomatic Privilege and Immunities*, *supra* note 43, at 79 (statement of Arthur Feld, of Bulman, Goldstein, Feld & Dunie, Attorneys at Law).

90. LEGISLATIVE HISTORY OF THE DIPLOMATIC RELATIONS ACT, *supra* note 2.

91. Such a case was an *ex gratia* payment from the government of Panama to Dr. Halla Brown, formerly Chief of the George Washington Allergy Clinic, who became a paraplegic as the result of an automobile crash caused by a Panamanian technical secretary. *Citizens and Shareholders Rights and Remedies*, *supra* note 74, at 9 (Testimony of Hampton Davis, Former Assistant Chief of Protocol, United States Department of State). The famed case of Dr. Brown was instrumental in the enactment of the Diplomatic Relations Act.

92. *Diplomatic Immunity Legislation*, *supra* note 18, at 59 (statement of Bruno Ristau, Chief, Foreign Legislation Unit, Civil Division, Department of Justice).

domestically in twenty-eight states⁹³ and in eighty-nine foreign countries with whom the United States has diplomatic relations.⁹⁴ Direct-action statutes exist in some form in at least twelve of the domestic states⁹⁵ and in sixty-five foreign countries.⁹⁶ Compulsory insurance and the right of an injured party to proceed directly against the diplomat's insurance company has also been the subject of a major multinational convention, The European Convention on Compulsory Insurance Against Civil Liability in Respect of Motor Vehicles.⁹⁷ The Convention, which requires each signatory to enact mandatory insurance laws allowing the individuals to recover directly from the insured, has worked well.⁹⁸ European citizens are required by law to carry insurance, and injured parties sue the insurance company directly. Although the Convention is not aimed specifically at diplomats, insurers are not able to use diplomatic immunity as a defense.⁹⁹ With their domestic and international recognition, compulsory insurance and the direct-action statute prescribed by the new legislation are assisting in reducing claims against diplomats for traffic accidents and, ultimately, abuses of diplomatic immunity.

E. Other Legal Claims

United States citizens suffer other injuries caused by diplomats in addition to those resulting from traffic accidents. Claims by landlords against diplomat tenants for property damage or failure to pay rent and by the business community against diplomats for unpaid bills are representative.¹⁰⁰ The reduction in number of

93. *Id.* at 19 (statement of Richard Gookin, Assistant Chief of Protocol for Diplomatic and Consular Liaison, Department of State).

94. *Id.* at 35 (Analysis of Responses to Department of State Enquiry on Automobile Liability Insurance).

95. 124 CONG. REC. H9949 (1978) (remarks of Mr. Fascell).

96. *Diplomatic Immunity Legislation*, *supra* note 18, at 36 (Analysis of Responses to Department of State Enquiry on Automobile Liability Insurance). This survey concluded that the overwhelming majority of United States posts abroad (112-4) reported that the system in their host countries was working well.

97. The European Convention on Compulsory Insurance Against Civil Liability in Respect of Motor Vehicles, *done* Apr. 20, 1959, Annex I, 720 U.N.T.S. 119 (1970).

98. H.R. REP. NO. 1410, *supra* note 84, at 4.

99. The European Convention on Compulsory Insurance Against Civil Liability in Respect of Motor Vehicles, *supra* note 97, art. 7(2). *See also Diplomatic Privilege and Immunities*, *supra* note 43, at 115 (statement of Hampton Davis, Assistant Chief of Protocol for Diplomatic and Consular Liaison, Department of State).

100. Legal claims against foreign diplomats often become preposterous, as illustrated by the case of one diplomat who via his immunity was able to escape a claim of \$1,768.75 for his liquor debt. *See supra* note 20.

those entitled to civil immunity partially resolved these problems; however, as previously noted, 8,000 diplomats retain complete immunity.¹⁰¹ The previously discussed suggestion to make all diplomats liable for all actions except those performed in the course of their official duties would assist here as well.

F. *The Traffic and Parking Dilemma*

Traffic violations, such as speeding, running stop signs, and not paying parking tickets are the most common areas for abuse of diplomatic immunity.¹⁰² The magnitude of the problem is illustrated by the 25,000 parking tickets issued to United Nations officials in New York City alone.¹⁰³ Police in Washington, D.C. issued 52,830 parking tickets to automobiles bearing diplomatic plates in 1976, of which only 10,445 were paid.¹⁰⁴ This abuse has constantly plagued United States citizens and can be regarded as one of the practical reasons for enacting the new law. These two cities, which house most of the diplomats to the United States, are the most affected by diplomatic abuses. Other nations have also experienced abuse by foreign diplomats residing in their country. For example,

There are too many sad cases on record of individuals who have suffered grievous losses with no indemnification. Some of the more noteworthy examples include:

1. Mrs. Failey Smith, wife of the late dean of the White House press corps Merri-man Smith, rented a home to a legal attache at the French Embassy. She claims that the diplomat caused \$11,000 worth of damage to the house—and she could not collect on the bill.

2. . . .

3. The first secretary at the Embassy of the Republic of Zambia on August 1, 1976 drove his car into two parked cars in a D.C. neighborhood, virtually destroying them. The owners of those parked cars could collect nothing from the First Secretary, nothing from the Embassy of Zambia, and nothing from the State Department.

4. A professor and his wife rented their Scarsdale home during a 1975-76 sabbatical abroad. The renter was the former Guatemalan representative to the United Nations. Upon returning from the sabbatical, the American couple found what they claimed to be \$14,683 in damages. They were offered a mere \$900 from the Guatemalan Embassy, a sum they considered too paltry compared to the damages caused. They have collected nothing.

5. The Dittmar Corp., the owner of owner 1,600 rental units in suburban Virginia found that so many diplomats were breaking their leases and leaving apartments in poor condition that from 1970 through 1975 they refused to rent to diplomats from nations they felt to be particular wrong-doers. The Justice Department took the Corporation to court in 1975 and forced them to resume renting to all diplomats.

Diplomatic Privileges and Immunities, *supra* 43, at 48 (Prepared Statement of Stephen J. Salarz, A Representative in Congress from the State of New York).

101. *See supra* note 50.

102. *Diplomatic Privileges and Immunities*, *supra* note 43, at 40-41 (statement of Hon. Walter E. Fauntroy, a Delegate in Congress from the District of Columbia).

103. These tickets amount to five million dollars. *See supra* note 50.

104. *Diplomatic Privileges and Immunities*, *supra* note 43, at 40 (statement of Hon. Walter E. Fauntroy, a Delegate in Congress from the District of Columbia).

England issued 93,000 parking tickets to diplomats in 1976.¹⁰⁵

Under the Diplomatic Relations Act diplomats will continue to escape parking tickets and traffic violations because such violations are generally classified as criminal offenses from which most diplomatic personnel are immune.¹⁰⁶ One possible remedy available to the states would be to reclassify parking and traffic violations as civil offenses,¹⁰⁷ leaving only those diplomats who enjoy complete immunity unaffected. For those states unable to reclassify parking violations, stricter enforcement and voluntary compliance by the diplomats remain the only remedies. Diplomatic personnel could avoid these charges by claiming that they were on official business at the time that the infraction occurred, thus invoking their immunity.¹⁰⁸

The new law has done little to alleviate the parking and traffic violations problem and additional legislation is needed to remove the possibility of further diplomatic abuse. Currently, only one bill has been proposed in this area and it provides for reimbursement to local governments for revenues lost because of their inability to collect parking fines from foreign diplomats.¹⁰⁹ Political reluctance and the lack of Congressional funding has prevented its passage.

G. Special Considerations

Another problem with the abuse of diplomatic immunity manifests itself in the section of the Diplomatic Relations Act which provides that the President may, on the basis of reciprocity, waive provisions of the Act or extend more or less favorable treatment than is provided under the Vienna Convention for a given country.¹¹⁰

105. *ECONOMIST*, Mar. 26, 1977, at 23.

106. Act, *supra* note 5, at § 254d.

107. This has been suggested by a Congressional Committee as a means of controlling traffic violations by diplomatic personnel who do not enjoy immunity from civil jurisdiction. S. REP. NO. 95-958, *supra* note 7, at 4. New York City and the District of Columbia have taken such a measure. *Washington Post*, Jan. 13, 1979, § C, at 1, col. 1.

108. See generally text accompanying notes 58 & 59 *supra*.

109. H.R. 7309, 95th Cong., 1st Sess. (1977), reprinted in *LEGISLATIVE HISTORY OF THE DIPLOMATIC RELATIONS ACT*, *supra* note 2, at 672.

110. Act, *supra* note 5, at § 254c:

AUTHORITY TO EXTEND MORE FAVORABLE OR LESS FAVORABLE TREATMENT

SEC. 4. The President may, on the basis of reciprocity and under such terms and conditions as he may determine, specify privileges and immunities for members of the mission, their families, and the diplomatic couriers of any sending state which result in more favorable treatment or less favorable treatment than is provided under the Vienna Convention.

Even though this "watering down" provision must theoretically be carried out on a reciprocal basis,¹¹¹ it nevertheless reduces the effect of the Act because some nations via reciprocal arrangements are not required to comply fully with the Diplomatic Relations Act. Thus, equal treatment is not given to all foreign delegations and the objective of equality in awarding diplomatic privileges and immunities is defeated.

The special considerations provision was prompted by the Department of State's insistence that bargaining power is needed to protect those American diplomats in countries where prosecution by local authorities could be dangerous because the judicial systems provide minimal due process.¹¹² Another concern with the passage of the Diplomatic Relations Act was that it might cause recriminations abroad,¹¹³ and this also became a basis for the special considerations provision.

To date, the more or less favorable treatment provision has only been used once, in the reciprocal agreement between the Union of the Soviet Socialist Republics and the United States.¹¹⁴ This agreement expresses the desire of these two countries to continue a pre-existing agreement which provides for more lenient standards for diplomatic privileges and immunities than those contained in the Act, with full diplomatic immunity being given to all Soviet diplomatic personnel except personal servants.¹¹⁵ Ironically, the Soviet Union is the worst offender of diplomatic privileges and immunities of those nations received by the United States.¹¹⁶

111. *Id.*

112. *Diplomatic Immunity Legislation*, *supra* note 18, at 53 (statement of Hampton Davis, Former Assistant Chief of Protocol, Department of State).

113. "Since the United States has more diplomats abroad than any other country, there is some concern in that unless the matter is sensitively dealt with, there might be recriminations abroad." Gupte, *supra* note 1; *see also* Washington Post, Sept. 21, 1978, § A, at 17, col. 3.

114. Union of the Soviet Socialist Republic-United States, Agreement on Privileges and Immunities of Embassy Staff, *reprinted in* 18 INT'L LEGAL MATS. 56 (1979). The applicable provisions are paragraph 2 of the United States Note:

The Department of State, with the cooperation of municipal authorities of the District of Columbia, shall endeavor to the fullest to secure better parking conditions than those which now exist for members of the Staff of the Soviet Embassy in Washington. . . .

and, paragraph 3:

The Department of State will use its good offices to avoid unjustified increases in insurance premiums in connection with the introduction of compulsory automobile and transport insurance for diplomatic and consular missions of the Union of the Soviet Socialist Republics in the United States of America and their members.

115. *Id.*; D.C. POLICE PROCEDURE, *supra* note 55, at 5.

116. The Soviet Embassy received 12,270 parking tickets in the Washington area alone between January, 1976 and April, 1977. Washington Post, Sept. 21, 1978, § A, at 17, col. 3.

Another problem present with special considerations is that the required reciprocity is not always equal. For example, more favorable treatment is being accorded to the Soviets, who can theoretically escape their traffic tickets and other obligations under the reciprocal agreement,¹¹⁷ while American diplomats in the Soviet Union are restricted by strict regulations.¹¹⁸ The problems with the special considerations provision necessitates an immediate reconsideration of existing policy. This provision was included mainly for political reasons and in order to guarantee congressional and administrative powers in carrying on foreign affairs. These reasons do not, however, mandate such special considerations.

The special considerations provision, rather than assisting in limiting misuse, creates a means for abusing diplomatic privileges and immunities by offering more lenient treatment than is provided in the Diplomatic Relations Act. In order to eliminate the abuse of privileges and immunities, all receiving missions must be treated equally, and no special considerations can be given.

H. Reciprocity

One reason behind the passage of the Diplomatic Relations Act was the fact that American diplomats overseas were being accorded fewer immunities than their counterparts in the United States. This continues to be a problem with American missions in some countries; as a result, the issue of reciprocity is raised. For example, foreign government employees in the United States are exempt from regular taxes and fees on privately owned vehicles, vehicle operation permits, and in some cases local gas taxes; however, in South Africa, Morocco, and Canada, American diplomats are subject to these fees. Foreign diplomats in the United States are also generally exempt from sales taxes, while sales taxes are imposed on United States personnel in Italy, Belgium, Sweden, and the United Kingdom.¹¹⁹ Currently, absent reciprocal agreements

The Soviets are the chief offenders of abuses of diplomatic immunity. *Washington Post*, Aug. 12, 1979, at 37.

117. *Washington Post*, Sept. 21, 1978, § A, at 17, col. 3.

118. See generally *Diplomatic Immunity Legislation*, *supra* note 18, at 35 (Analysis of Responses to Department of State Enquiry on Automobile Liability Insurance).

119. *Id.* at 81 (statement of Hon. H. Lydle, President, American Foreign Service Association). Another illustration is the fact that American diplomats stationed in European Countries who are signatories to the European Convention on Insurance had to comply with mandatory insurance provisions while European diplomats in the United States had no such requirement until the Act. H.R. REP. 1410, *supra* note 84, at 4.

like the one between the Soviet Union and the United States,¹²⁰ certain countries impose stricter standards on foreign diplomats while their diplomats receive more privileges in the United States.¹²¹

The United States diplomats have had an excellent record of not abusing their privileges and immunities.¹²² In fact, in a number of instances the United States has waived the immunity of their officials abroad.¹²³ Only four or five diplomatic missions received by the United States have agreed to similar waivers.¹²⁴ The idea of waiving immunity for civil claims was adopted in a separate document to the Vienna Convention, titled "Consideration of Civil Claims."¹²⁵ By this document high-ranking diplomats who currently enjoy complete immunity would be treated equally with other diplomats by relinquishing their right to civil immunity. This approach suggests a viable solution to some of the problems confronting the use of diplomatic immunities, however, an unwillingness to cooperate weakens its effectiveness.

The problem of reciprocity can best be remedied by an international agreement. For example, the United States might initiate

120. See *supra* note 114.

121. Cf. *Diplomatic Immunity Legislation*, *supra* note 18, at 35 (Analysis of Responses to Department of State Enquiry on Automobile Liability Insurance).

122. The United States Government instills the non-abuse of diplomatic privileges and the immunities in their personnel as is provided in Section 225.1 of the *Foreign Affairs Manual*:

A diplomatic or consular officer or other representative of the United States shall not take advantage of the protection afforded by reason of the officer's official position nor should the officer evade the settlement of just obligations.

reprinted in Id. at 34 (Waiver of Immunity of United States Diplomats Abroad). A deputy of the Office of Protocol of the Department of State has also informed the Senate Committee on Foreign Relations that all of our foreign service posts see to it that all American staff members carry insurance meeting the prescribed minimum levels on their personally owned vehicles whether or not it is a requirement under local law or regulations and that American diplomats are expected to pay fines imposed on them as a result of traffic violations. *Id.* at 19, 55 (statement of Richard Gookin, Assistant Chief of Protocol for Diplomatic and Consular Liaison, Department of State).

123. See generally *id.* at 34 (Waiver of Immunity of United States Diplomats Abroad).

124. *Citizens and Shareholders Rights and Remedies*, *supra* note 74, at 5 (statement by Richard Gookin, Deputy Officer of Protocol, Department of State).

125. Consideration of Civil Claims, *adopted* April 14, 1961 by the United Nations Conference on Diplomatic Intercourse and Immunities, United Nations Conference on Diplomatic Intercourse and Immunities Official Record, *done* March 2-April 14, 1961, Vol. II, Annexes 90, 50 U.N.T.S. 95. The resolution states:

Recommends that the sending State should waive the immunity of members of its diplomatic mission in respect of civil claims of persons in the receiving State when this can be done without impeding the performance of the functions of the mission, and that, when immunity is not waived, the sending State should use its best endeavors to bring about a just settlement of the claims.

a treaty to update the Vienna Convention in an effort to rectify the existing problem of abuse of diplomatic immunity. Similarly, an international treaty modeled after the European Convention on Compulsory Insurance Against Civil Liability in Respect of Motor Vehicles would be beneficial. Another approach to the unequal distribution of privileges and immunities would be to work out solutions through international organizations; a system of penalties for abusers of diplomatic immunity could be created and monitored by an international organization.

IV. CONCLUSION

The Diplomatic Relations Act has become an essential ingredient in American domestic and foreign policy. Nevertheless, the Act has had limited success because it does not solve the panoply of problems which prompted its passage.

The goals for enacting the legislation have been fulfilled. There are no longer conflicting domestic laws concerning diplomatic immunity in the United States; the number of immunities granted to foreign diplomats and some of the animosities exhibited toward foreign diplomats by American citizens have been reduced; and there is now a right to personal recourse by a United States citizen against the diplomatic tortfeasor. Even though the Act has resolved many problems, it still allows for abuse of diplomatic privileges and immunities.

Among the problems not relieved by the Diplomatic Relations Act are grants of almost total immunity to high-ranking diplomats, the difficulty in determining on-duty immunity status of diplomats, problems in enforcing the Act, and ineffective insurance protection. In addition, the problems created by parking and traffic violations remain unresolved by the Act. Reciprocity and the unequal distribution of privileges and immunities provided for in the special considerations provision of the Act also present problems.

These problems must be addressed by domestic or international legislation to further eradicate these abuses. Suggestions for corrective legislation include the further reduction of immunities, a narrow definition of acts performed in the course of the diplomat's duties, higher mandatory insurance coverage, further recourse to United States citizens after those amounts are paid, and additional enforcement measures. Effective enforcement, including diplomatic compliance and policing by the sending state is essential to the success of the Diplomatic Relations Act. Rigid rules and regu-

lations for parking and traffic violations and the abrogation of the special considerations provision of the Act is also urged to curtail diplomatic immunity abuses in the United States. International legislation to rectify the reciprocity problem would be of additional assistance. Ultimately, the diplomats' individual compliance with the new law will play an essential role in terminating the abuses of diplomatic privileges and immunities. The measures recommended will ensure the future success of the Diplomatic Relations Act and protect the vital function of diplomatic privileges and immunities in international law.

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