



Royal University of Law and Economics

Final Report on

**The Actual Practice of Persona Non
Grata under Vienna Convention on
Diplomatic Relations, 1961**

Name of Students:

Ms. LIM PISOTHIKANHA

Ms. LAY SOMANICH

Name of Academic Advisor:

Ms. LY MOUY

International Program

Bachelor's Degree of International Relations

Cohort 7

Year of Submission: 2019

ACKNOWLEDGEMENT

First and foremost, this thesis has been supported by many professors, individuals, and friends. We would like to express our sincere thanks to them who kindly help us through this hard time. We might not accomplish our thesis writing smoothly without their guidance. Also, we would like to indicate our deeply appreciation to our advisor Lecturer **LY Mouy** for always assisting and supporting us in spite of her busy schedules. Without her patience, we would complete the task under pressure.

In addition, even though Professor **Raymond LEOS** is not our advisor, he still gives us advices and some instructions on lessons. Beside this, he provides us many essential references relating to our thesis topic. Anyways, he does not only support us during thesis time, but also the whole three years of our International Relations bachelor program.

Moreover, toward our gratitude to the government officials at the Ministry of Foreign Affairs and International Cooperation, they always contribute their knowledge and beneficial documents related to our thesis during the internship. Their experiences are useful enough to guide us to a brilliant path.

Undoubtedly, we never forget our beloved families, especially our parents who secretly stand behind and motivate us during difficult times. Indeed, they do not only support us by their hearts, but also assisting financially. Importantly, our parents have successfully gained the biggest achievement by pushing and giving us the opportunity to pursue the degree.

ABSTRACT

In this century, the cooperation between states is significant in order to develop religious, integration, economics, or diplomatic relations. In each state, the embassy plays an important role to represent state interests. Anyways, there are many cases happened over the world regarding the expelling of diplomats and recalling them back to the home state. The principle that helps receiving states to expel diplomats despite their immunities and privileges, is the **“Principle of Persona Non Grata, PNG”** which is under scope of the Vienna Convention on Diplomatic Relations, VCDR, 1961. This has become the sensitive issue for the bilateral relations between sending state and receiving state when there is a declaration of diplomats from receiving states. It does not only affect the relationship between states, but also the popularity of diplomats which will be worse and affect their future careers.

This dissertation will examine the limitation of this principle, and figure out some problems related with this principle since some states do not use this principle properly which could affect immunities and privileges of diplomats. For the first two chapters, it addresses the general background of the principle PNG, immunities and privileges and obligations of diplomats. The third chapter will be about the case studies which concerned about the diplomat expulsion by using this principle from receiving states. The declaration of the principle depends on many reasons such as political, economic, personal, and internal issues in receiving states which enable them to practice the principle on diplomats. This declaration sometimes can be a right or a wrong decision depending on receiving state’s decision. This dissertation will analyze those problems, and try to find the limitation which the government of receiving states can carry out this principle.

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LIST OF ABBREVIATION

PNG	: Persona Non Grata
VCDR	: Vienna Convention on Diplomatic Relations
VCCL	: Vienna Convention on Consular Laws
UN	: United Nations
MFA	: Ministry of Foreign Affairs
ILC	: International Law Commission
ALS	: Amyotropic Lateral Sclerosis

CHAPTER 1: INTRODUCTION TO THE STUDY

In theoretical definition, diplomacy is the communication method between different states, and the individual with states' delegates. Diplomacy functions the world peace order, and brings states' leaders come together to agree on mutual benefits, and find solutions on international crisis.¹ During the 21st century, the world becomes more connected between states. The connection refers to all fields included entertainment, economics, business, politic relations, as well as diplomatic relations. According to General Secretary of the UN, Ban Ki-Moon on Global Citizens Forum, he said "We must continue to work together through expanded partnerships and cooperation. We must also forge ahead through a driving commitment to global citizenship to help cope with these seemingly insurmountable challenges".² As cooperation and partnership is significant for the world and each state, states traditionally send their representatives to partner states in order to maintain relationships and continue the cooperation on various sectors such as economics, trade, culture, language and arts. In each state, there is a delegate to represent their states in international stages.

For the immunities and privileges of diplomats, it protects those who are working in the receiving state from any crimes or circumstances. It also protects the communication channel between diplomats and their states, and gives them independent and safety of providing political situation information of the receiving states to their home states by avoiding local jurisdiction. However, there is the one international principle which can weed out the diplomatic immunities and privileges anytime with any reason, and it is the Principle of Persona Non Grata. This principle said sending states need to ensure that the delegate

¹ "Best Delegate," *What is Diplomacy*, October 17, 2014, Accessed July 12, 2019, <https://bestdelegate.com/what-is-diplomacy/>.

² Ban Ki-Moon, "Ban Ki-Moon Centre for Global Citizens," *Ban Ki-moon delivers a speech on -The UN and Global Citizenship- at the 3rd Asia Leadership Forum*, September 17, 2018, accessed June 28, 2019, <https://bankimooncentre.org/ban-ki-moon-delivers-speech-un-global-citizenship-3rd-asia-leadership-forum>.

respects the rule of the receiving state. If they do not follow the rule, the principle of persona non grata will be declared. It is true that the local state has jurisdiction of kicking diplomats or foreign delegate in their own states with any ground based on the principle of persona non grata. However, diplomats are those who represent the sending state, so if persona non grata is always the case, and then they might have to work or conduct their mission under pressure which is contrast with Vienna Convention on Diplomatic Relations, VCDR, 1961.³ In addition, some states use this principle without limitations since some cases that were committed by delegates from sending states, were not serious enough to be used this principle. As a result, the declaration of persona non grata really affects the relationship between states, and this could ruin the politic and diplomatic relations. Consequently, the solution should be taken in order to limit the principle of persona non grata usage of the receiving states.

1. Statement of Problem

The principle of Persona Non Grata refers to the unwelcome person that the receiving state applies when diplomats from the sending state act improperly which affect the local state or government. In order to enable an effective function for diplomats, some receiving states tolerate with minor crimes of diplomats, but sometimes they also use this principle to expel diplomats when it was a serious crime such as murder, or plot which could affect the receiving states' security.

On the other hands, on some cases receiving states also use this sanction as an excuse of expelling diplomats without giving any reasonable decision. It is true that diplomats obliged with local laws; however, this principle plays the successful pressure tool in diplomatic field, and diplomats are in the hands of receiving states. This pressures of how

³ Article 29, Vienna Convention on Diplomatic Relations.

diplomats conduct their functions properly to make benefits or advantages to their home states. It will be more rational and fair if receiving states could give an explanation and evidences to sending states of their sanction on representatives of foreign states. Moreover, using this sanction is such a serious measure which could damage relationship between states, and the diplomats' work in the future if they were expelled unreasonable, so receiving state should have the limit in using this sanction. The report paper is going to analyze this problem.

2. Research Questions

Main Research Question:

- What reasons could be used by the receiving state in deciding when to declare persona non grata against a diplomatic agent?

Sub Research Questions:

- What is Persona Non Grata in international stages?
- What are the actual practices the persona non grata?
- What are the side effects of the principle?
- Do diplomatic immunities and privileges easily weed out by the persona non grata?

3. Research Objective

The main purpose of this research aims to examine the actual practice of Persona Non Grata. By doing so, the effect of using Persona Non Grata freely needs to be analyzed. In order to make the reasonable implementation of this principle, the act of this principle has to be improved in the world stage or International Organization such as the United Nation. By avoiding the violation of the immunities or privileges of diplomats, it needs to identify the law to get through this principle. It needs to disable this principle when there are unreasonable excuses occurred.

4. Research Methodology

There are various sources to prove this thesis topic and become more qualified. The principle was evaluated how it plays the right way when they decide to expel diplomats back to their home states. The research was evidenced by many useful methods, and we believe that these sources will provide the best quality for this thesis. Literally, this research paper intends to clearly clarify on the general overview of PNG, the objective as well as the limitation of the principle of *Persona Non Grata*.

Moreover, the whole quality and quantity of this research based on the information from scholar journals, books, and articles from the international conventions such as Vienna Convention on Diplomatic Relations (VCDR), Vienna Convention on Consular Relations (VCCR), the United Nations and other reliable websites. Beside this, the researchers collected effective information from the government officials at Ministry of Foreign Affairs and International Cooperation, and professors from the Royal University of Law and Economics by oral interview. They have numerous experiences, and knowledge, and they also specialize in this topic.

The researchers provided the quality and quantity to readers with accurate and trustful information. The researchers wrote this paper with a passion of analyzing with reasonable and appreciable in order to provide a clear understanding on the principle of **Persona Non Grata**. The researchers desired to guide the perfect consequence of this topic. The researchers provided the best analyzing with enough references and evidences to make this research paper became effective.

5. Scope and Limitation of Research

The scope of this research is to examine of how the Principle of *Persona Non Grata* actual practice is in contemporary international relations, and diplomacy. This will focus on

how to limit this principle if the expelling diplomat without acceptable reasons and to analyze the situation occurred in this principle is sufficient to implement it on the diplomat who has held the immunities and privileges. Moreover, this research will only concentrate on cases that have happened since 1990s till now which based on the real problems happened in the society, and references on the secondary date which approach from the credible international websites, and other Ministry websites.

6. Literature Review

The topic **Principle of Persona Non Grata** was not really famous during the past time, so the document of the principle is quite less, and there are only some scholars who have talked and wrote the report paper of that topic. On the other hands, this principle is used very frequently on modern era since receiving states all give priority to their own benefits, better than maintaining the good friendship. For some cases, it can happen due to political issue, and other personal acts of diplomats themselves. As this principle has been used quite a lot in present time, this report paper will indicate two scholars who also used to express their opinion on this principle.

According to the Dr. Marcel Hendrapati, Professor of Law Faculty, Hasanuddin University, he wrote one journal law about “**Legal Regime of Persona Non Grata and the Namru-2 Case**”. His report paper is also similar with this report paper since they both analyze several cases relating with the declaration of Persons non Grata. However, his report almost focuses on Indonesia of how the Indonesia has played out this principle so far and how much they have understood this principle. It also expresses the response of Indonesian Government to the abuse of immunity and privileges by personnel of the Navy Medical Research Unit-2., and diplomats.⁴

⁴ Marcel Hendrapati, *Legal Regime of Persona Non Grata and the Namru-2 Case*, (IISTE Organization, 2014), 161.

Dr. Amer Fakhoury, Associate Professor of Public International law and Associate Dean for the College of Law American University in the Emirates, Dubai, wrote a report paper which talked about **“Persona Non Grata: The Obligation of Diplomats to Respect the Laws and Regulations of the Hosting State”**. His report aims to answer the question that related with what actions receiving states could use toward the diplomatic interventions in their internal affairs to control the problems of diplomatic abuses, and this lead to the local government to use this principle as a sanction on the sending state by expelling diplomats who abuse the law. He also mentions of how effective the principle is, and the position of international convention in relation to this declaration.⁵

As this report paper is not very different so far from the two scholars’ report papers who are Dr. Marcel Hendrapati, and Dr. Amer Fakhoury. This report paper aims to analyze the actual practice of principle Persona Non Grata in contemporary international relations. It also raises up a limit case studies of how receiving states use as a reason for declaration persona non grata. This report paper tries to examine of how much this principle practice can be extended, and how the receiving states violates the immunities and privilege of diplomats based on this declaration.

⁵ Amer Fakhoury, *Persona Non Grata: The Obligation of Diplomats to Respect the Laws and Regulations of the Hosting State*, (IISTE Organization, 2017), 110.

CHAPTER 2: GENERAL OVERVIEW OF PERSONA NON GRATA, PNG

In chapter 2, there will be briefly talked about the history background of Principle Persona non Grata, and given various definitions from different sources and Vienna Convention on Diplomatic Relations. It also describes about the diplomatic obligations in receiving states. Furthermore, they are granted the diplomatic immunities and privileges from receiving states which are conceived under VCDR. These important points will be indicated above along with example for more clear understanding.

2.1 History Background of Persona Non Grata

The term principle “Persona non Grata” is defined differently according to different scholars or sources. The meaning can have more than one since countries have different perspectives, and they might not have think of the same thing as one. As a result, this part will explain three meanings of the principle which is one from the Latin or Roman Language meaning, the second meaning is from the Article 8 of the United Nation on Diplomatic Intercourse and Immunities, and the last one is from the Vienna Convention on Diplomatic Relations.

2.1.1 Various Definitions of Principle PNG

a. PNG = Undesirable Person and Unwelcomed Person

The language of persona non grata is linked to the dismissal of diplomats of receiving states. This term came from Latin or Roman language, and this means **“person is not wanted or undesirable person”** in English language. A declaration of PNG that dismiss diplomatic agents of sending state does not apply to foreigners who are not a diplomatic agent or consular. That dismissal of foreigner is called deportation, and it based on the reason of their actions or wrongful activities in the receiving state. This principle can only be used on the

diplomatic agents or consular.⁶ Some countries rarely use the principle PNG easily since it will affect badly to both friendship and partnership, and it could lead to another side use that principle back to them as the revenge. There were appropriated actions or crimes committed by delegates from sending states, and this makes PNG come back again in article 9 of Vienna Convention on Diplomatic Relations, 1961 and in article 28 of the Vienna Convention on Consular law, 1963.⁷

The person who was declared called the “**unacceptable or unwelcome person**”, and they recall back to their home countries. Previously, the principle of PNG wasn’t used broadly, but after that this principle appeared in the article 8 of the United Nation on Diplomatic Intercourse and Immunities which was the thirteen meetings of the committing of the whole.⁸ There were crimes happened in daily which were committed by diplomats from sending states, and some actions were really serious which pushed receiving states declared the principle of Persona Non Grata.

b. PNG = Under Vienna Convention on Diplomatic Relations

Under the Article 9 of VCDR, principle persona non grata can be declared by receiving states to any diplomatic staffs at any times and at any reasons. A person who is declared means that the receiving state does not want that diplomat to be working in his country anymore, and this is due to various reasons of receiving state. After the declaration, diplomats have to leave the receiving state to home country within period of time. Also, this can be happened even before new diplomat is coming to the receiving state since they can reject any new diplomats as they want.

⁶ Henry Campbell Black, *Black’s Law Dictionary 1979*, (West Publishing Company, 1979).

⁷ *Persona Non Grata*, R. Wolfrum (ed.) Max Planck Encyclopedia of International Law, 2009. May 24, 2019.

<https://poseidon01.ssrn.com/delivery.php?ID=017096020116088006013016000030090098015051021063079059125000031095123112109008069127006055125009047120052114025112025100019065052085021064086103093089087098002064028045087117113005004087107000115126027085064015116083064067031127086102066087101071027&EXT=pdf>

⁸ *United Nation on Diplomatic Intercourse and Immunities*, 1961. May 24, 2019. PDF file.

2.1.2 The Development of PNG under Vienna Convention on Diplomatic

Relations

As it was stated and explained clearly of the principle's meaning in the part of "Definition of PNG", this part will continue to describe the process of how the principle has been developed from the past till now in VCDR. For this part, it was argued of how the principle is used since sending countries made a complaint about receiving states to provide them a clear reason and proper investigation before expelling their diplomats or foreign delegates. This will explain how the principle was developed from giving reason to no reasons which was also stated in the VCDR.

The right of each state to declare diplomats or person with missions the principle *Persona non Grata*, PNG, is the oldest principle in the diplomatic work. It is the rights that still remain in debate, and now it has been expressed in the Vienna Convention on Diplomatic Relations, Article 9. It refers to the principle PNG, which had evolved since the past, and it concerned to give reasons to the sending states declaring the functions to the person with missions. The authority power allowed the receiving state to expel the concerned diplomats at any reasons or notices. Not all diplomatic staffs will be declared by the principle PNG since it only conducted on the higher position of diplomatic hierarchy. Diplomatic staffs that can be used this principle on are ambassador, chargé d'affaires, head of mission (minister, minister-counselor, and counselor), diplomatic secretary, attaché, and attaché assistance.⁹ For technical staffs, when they are committing something wrong, or causing a problem, they will only be asked to send back to home states unlike higher rank diplomats.

⁹ Adrián Fuentes Luque, "An Approach to Diplomatic Translation," Volume 3, No. 4 (October 1999), Accessed July 12, 2019, <https://translationjournal.net/journal/10dipl.htm>.

a. Don Bernardino De Mondoza (Spanish Ambassador)

An observed case was Don Bernardino de Mondoza, Spanish ambassador to Queen Elizabeth 1 of England, who was ordered to leave the England within the fifteen days period due to an action involvement of overthrown the Queen, and plan of replacing her with Mary Queen of Scots. Queen Elizabeth sent the her emissary to the Spain to negotiate and talk with the governments itself about this problem, and told the Spanish government that this is the personal conflict, and it did not have a matter concerned with the State. The Queen all welcomed any other diplomats or ambassadors to the England as usual without any disagreement. Even though the aim of continuing the friendly relationship was fail, the practice of expelling the diplomats with crimes has become a general case.¹⁰

b. Bruneau (Secretary to Spanish Ambassador)

Other recognized cases were with Bruneau, Secretary to Spanish Ambassador, who was expelled by Henry IV of France, and Cellamare, the latter Spanish Ambassador was taken to the border when the investigation pointed out his part in the plot against the French Regent. According to Vattel writing in 1750, international lawyer, when the immunity of criminal jurisdiction became a settled law, the receiving state had to appeal the sending state for the justices or requesting for the recall in case of expelling a diplomat.¹¹

c. Lord Sackville (British Minister)

The conflict began between the United States and the United Kingdom, and the request was not allowed by the United Kingdom of recalling their person back. They demand for the reasons alongside the request of declaring their agent. The United Kingdom proposed both sides to investigate, and examine any action upon the request. This happened when the United States declared Lord Sackville, the British Minister, Head of Mission, in Washington,

¹⁰ Eileen Denza, *Diplomatic Law: Commentary on the Vienna Convention on Diplomatic Relations*, (Oxford University Press, 2016), 61.

¹¹ Satow (1st edn 1917) vol I pp 246-8.

persona non grata in 1888. The United States based on the evidence of letter written by Lord Sackville to the former British citizen. In the letter, he advised that former British citizen of how to vote in the upcoming elections in the United State. The United Kingdom did not only premised on the reasons for the United State, but also the capacity to decide whether to accept the reasons from the United States, and the United States stated that the United Kingdom has to accept the request for a recall.¹²

The rights to declare persona non grata was not opposed by others, but it still remained controversial topic for the International Law Commission when there was a law codification of diplomatic or consular law, with the requirement of reasons alongside the request for recall. The International Law Commission's adoption of Mr. Tunkin's proposed the Article 9 in 1958 was unspeaking about the obligation to give reasons, so its commentary announce that it is the rights of state to decide about giving those reasons.¹³ Until the French delegation in the Vienna Conference, he suggested that the proposed of Article 9 should be the same as Article 4 since the Article 4 of Vienna Convention on Diplomatic Relations did not require the obligation of not giving reasons to the sending State for a refusal of *agrément*.¹⁴ The different views on this matter were eventually solved: the reasons need not be given to the sending state of requesting for a recall the person with missions or concerned diplomat. (Article 9 of the 1961 Vienna Conventions on Diplomatic Relations)

Through many practices and work of International Law Commission, and Vienna Convention, another disagreement blown up again by demanding the sending state to respect and obey the request for a recall from receiving state. Ultimately, it was agreed that it was international obligation for sending state to recall the concerned diplomats or person with

¹² Jean d'Aspremont, *Persona Non Grata*, (Published in R. Wolfrum (ed.) Max Planck Encyclopedia of International Law, OUP, 2009), 1-2.

¹³ ILC Yearbook 1958 vol. II, p. 91, para. (6)

¹⁴ Jean, *Persona Non Grata*, 2.

missions, and if the sending State refuses or fails within a period to carry out its obligations, the receiving State may refuse to recognize the person concerned as a member of the mission. (Article 9 of the 1961 Vienna Conventions on Diplomatic Relations)

2.1.3 Why was Principle Persona non Grata created?

Diplomat comes to represent their own countries in order to have a close relationship with that states, not only for politic, but also economic, commercial, trade, culture, and tourism. Beside the connection between states, there are the cases that happened by the diplomats from the sending states and this were declared the principle of PNG to expel that person to go back to the home country. The declaration of Persona Non Grata becomes the hot issues for the politician and other lawyers since this principle is a very serious principle and can knock down the foreign relations between states. There were lots of cases that relate to the principle of PNG are the case in 2014 (Indian diplomat, Devyani Khobragada persona non grata by the United States Government), the expelling of Indonesia diplomats. This principle was signed by many states and has been integrate into the Vienna Convention on Diplomatic Relations, 1979.¹⁵

The principle of Persona Non Grata developed under the article 9 of the Vienna convention,

“The receiving state can declare the principle of Persona Non Grata at any time without any explanation to the sending state to recall its person go back to the home country, in case the sending state refuse the decision under reasonable, the receiving state may decline that person as a number of mission.....”¹⁶

¹⁵ *Legal Regime of Persona Non Grata and the Namru-2 Case.*, Journal of Law, Policy and Globalization, 2014. May 26, 2019. <https://core.ac.uk/download/pdf/77621121.pdf>

¹⁶ Vienna Convention on Diplomatic Relations

The principle of PNG developed into the International Customary Law and was used in most of the countries and say that without this principle, there would be unorganized, and anarchy in this international community.¹⁷

2.2 The Obligations of Diplomats as Conceived in VCDR

As it was heard from above, it all talked like the history and the development of the principle *Persona Non Grata*. It was also explained what the principle is all about, and their condition to declare the principle to diplomats. This section will describe about the main obligations of diplomats in receiving state as said in VCDR. Even though diplomat is the special representative from sending state to receiving state, they still have an obligation to follow exact rule and law of the local in order to prevent any controversial from their action. This also bans some diplomats to act and perform the work properly.

2.2.1 The Obligation to Respect the Laws and Regulations of the Receiving State

The obligations of diplomats can be found in the Article 41 of VCDR, and paragraph 1 of Article 41 talks about the obligation to respect and follow the laws and regulations in the receiving states. Diplomats have to understand the rule and law in receiving state, and obliged to their law. They cannot violate the local law as they wish since they are the diplomats who have the special rights from the International law. For this article, it plays the most important role for the special protection toward diplomats in the receiving state. The wording of VCDR was always misleading to people that it refers to the immunities and privileges of diplomats. This clear distinction must be separated between these two concepts. For the case of the privilege in Article 41 (1), it means that exact laws do not apply to

¹⁷ *Legal Regime of Persona Non Grata and the Namru-2 Case.*, Journal of Law, Policy and Globalization, 2014. May 26, 2019. <https://core.ac.uk/download/pdf/77621121.pdf>.

diplomats, such as the exclusion of taxes, and punishment from car park. In contrast, this provision is where the certain laws and regulations cannot be enforced.¹⁸

According to Article 31 (4), the diplomatic agent cannot be immune from jurisdiction of his or her sending states, or any third state that can lawfully establish jurisdiction.¹⁹ For Article 32, the sending state can waive the diplomatic immunities in the receiving state, and this also motivates the person that enjoys immunities to respect and abide the local laws and regulations. The obligation can be removed from the contract law (e.g. the payment of house rent or debts of any services), labor law, penal law (the duty to respect the physical integrity of others), human rights law which is the great concern worldwide, traffic laws and regulations – most receiving states demand and remind diplomats to obey the traffic laws regularly.²⁰

The duty of respecting the local regulations and law also has in other provisions in VCDR. First, the Article 26 refers to the freedom of movement and travel of the members with missions in the restriction areas in receiving states.²¹ For example, this concerns about the territory of military zones or nuclear plants.²² Second, Article 36 of VCDR hold the similar duty to obey the local legislation about the guaranteed of entry in the territory of goods for official or personal use.²³ This article means to prohibit the receiving state not to import illegal products, drugs and weapons which could make disorder in the society. This also mentions about the permission for states to import goods in limits quotas such as alcoholic beverages, and fuel for vehicles. In case of Switzerland, they allow the products like

¹⁸ Article 41 (1), Vienna Convention of Diplomatic Relations.

¹⁹ Article 31 (4), Vienna Convention of Diplomatic Relations.

²⁰ “France Diplomatie,” *Respect for local laws and regulations*, July 2012, Accessed June 13, 2019, <https://www.diplomatie.gouv.fr/en/the-ministry-and-its-network/protocol/immunities/article/respect-for-local-laws-and>.

²¹ Article 26, Vienna Convention on Diplomatic Relations.

²² Frederic Dopagne, Sanderijn Duquet, and Bertold Theeuwes, *Diplomatiek recht toegepast in België* (Maklu, Antwerp 2014) 146.

²³ Article 36, Vienna Convention on Diplomatic Relations.

alcoholic beverages, and tobacco into the country with duties free by diplomatic missions in those quantities that are required for official purposes. The meaning of official purposes refers to various performances of diplomatic missions such as the small scale cocktail parties which are organized by the mission.²⁴ Third, on other occasions, the VCDR gives priority to the local law and regulations. For example, diplomats cannot perform marriage party in the embassy unless local law allows like in British Embassy, and they celebrated its first same sex marriage in the British Embassy in Hanoi.²⁵

2.2.2 The Obligation to not Interfere in the Internal Affairs of the Receiving State

The second obligation under the Article 41 (1) mostly points as a political purpose. The last sentence in this article said that diplomats obliged not to intervene into hosting state's internal issue.²⁶ This refers to diplomat can enjoy their immunities and privileges, but not to interfere in the internal affairs of the receiving state.²⁷ For this meaning, diplomats have no rights to talk or interfere in local affairs or matters such as Human Rights issue or opposition parties. They have rights to only function diplomatic work between countries since it is impolite to talk about domestic conflict. Based on the 1958 ILC Commentary, it did not allow involving in the political campaigns.²⁸ For instance, it is rare for diplomats to directly meddling even though it has been reported recently. Moreover, the receiving state does not appreciate that the ambassador to take side, and talk about it at pre-election groups.²⁹ Based in the 1958 ILC Commentary, it clearly agrees that giving speech for the purpose of protecting

²⁴ "The Federal Council, The Portal of the Swiss Government," *Ordinance on Customs Privileges of Diplomatic Missions in Bern and Consular Posts in Switzerland*, May 1, 2007, Accessed June 13, 2019, <https://www.admin.ch/opc/de/classified-compilation/19890162/index.html>.

²⁵ "GOV.UK," *The British Embassy celebrates its first same sex marriage in Vietnam*, July 28, 2014, Accessed June 13, 2019, <https://www.gov.uk/government/news/the-british-embassy-celebrates-its-first-same-sex-marriage-in-vietnam>.

²⁶ Article 41 (1), Vienna Convention on Diplomatic Relations.

²⁷ Paul Behrens, *Diplomatic Interference and the Law*, (Hart Publishing, Oxford 2016).

²⁸ ILC (n 4) 104.

²⁹ "RadioFreeEurope RadioLiberty," *Russia Diplomat Criticized For Speech At Serbian Opposition Rally*, November 02, 2011, Accessed June 13, 2019, https://www.rferl.org/a/russian_diplomat_criticized_for_speech_at_serbian_opposition_rally/24379085.html.

the interest of the diplomatic agent's country or its national interest with international law does not consider as interference in the internal affairs of the receiving state within this provision.³⁰ There is still a doubt that the protection of the interests of sending states to allow the diplomats to criticize the trail in the receiving state's court about the local staffs which is employed about sending state's government. In addition, criticizing the state is not permitted if it would danger the relationships between the latter and former government in the receiving state.³¹

Also, the preservation line of communication between diplomats with opposition groups, NGOs, and people of the sending state seems to be more debatable that has no clear answer about it, and there is still a violation from receiving state to the communication line of diplomats or ambassadors of sending state. It is not always the case happen every time, even though the receiving state empowers the diplomatic agent to have connection and interaction with Members of Parliament and representatives from business, academia, civil society organizations, arts, and so on. However, one benefit of having this gathering is to influence locally without having to commune with government bodies.³² When diplomats actively get involved with human rights conflicts in the receiving state, many countries still believe that this is the improper interference in the internal affairs of local state. Some legal scholars express their opinions and views on this concept whether to accept this human rights situation as an appropriate thing in a diplomatic context.³³ On the other hand, scholars insist that international human rights law makes diplomats as a receiving state government to respect,

³⁰ ILC (n 4) 104.

³¹ Michael Richtsteig, *Wiener Ubereinkommen uber diplomatische und konsularische Beziehungen: Entstehungsgeschichte*, (2nd edn, Nomos, Baden-Baden 2010) 102.

³² "PUBLIC LIBRARY OF US DIPLIMACY," *Reaching out to Syrain Civil Society*, December 21, 2006, Accessed June 14, 2019, https://wikileaks.org/plusd/cables/06DAMASCUS5422_a.html

³³ Jean Salmon, *Manuel de Droit Diplomatique* (Bruylant, Brussels 1994) 129.

promote, and protect local human rights issues. In the modern theory, it agrees to enable diplomats to reveal the human rights violation in the receiving state.³⁴

2.2.3 The Obligation to Abstain from Professional and Commercial Activities

According to Article 42 of VCDR, diplomatic agents cannot perform any professional and commercial activities which distinguish from the obligations in Article 41 of VCDR. Diplomatic agents cannot do any business or any commercial activities beside the diplomatic work. That business or commercial activities are banned for diplomatic agents since the local government concerns that they will use the diplomatic agents' status to perform their business, and it will affect and give an unfair competition to their local citizens. In the real case, diplomats usually use their status which has the immunity and privilege to purchase some products with a low price and the exception of taxation. In contrast with Article 41, Article 42 mainly focuses on the diplomatic agent rather than the enjoyment of people of their immunity and privilege. Therefore, family members of diplomatic agents still have freedom to perform the professional and commercial activities in the receiving state for their individual profit and benefits.³⁵ Moreover, the domestic regulations and laws will be applied to family members of diplomatic agents who wish to involve in the professional and commercial activities in order to abide the administrative law in local to get license for their business activities.³⁶ Also, family members of agents have to oblige the law that was enforced in the

³⁴ "University of Minnesota Human Rights Library," *International Law Institute, The Protection of Human Rights and the Principle of Non-Intervention in Internal Affairs of States*, 63 *institute de Droit International Annuaire* 338 (1989), Article 3, September 13, 1989, Accessed June 14, 2019, <http://hrlibrary.umn.edu/instree/1989b.htm>.

³⁵ Denza (n 1) 324; Salmon (n 42) 382.

³⁶ "COUNCIL OF EUROPE," *Committee of Ministers Explanatory Memorandum to Recommendation No. R (87) 15 of the Committee of Ministers to member states regulating the use of personal data in the police sector*, September 17, 1987, Accessed June 14, 2019, <https://rm.coe.int/168062dfd4>.

receiving state or other international organizations, European Union, on labor standards or regulations and qualification of the work production.³⁷

There is still an unsolved question about diplomatic agents' activities to define what kinds of activity are pointed as a "professional or commercial activity" as understood in the VCDR. In the history time, not all profit-making activities were debarred and were defined as professional or commercial activity. Based on the provision's meaning in Vienna Convention on Diplomatic Relations, 1961, it does not mean to exclude the diplomatic agents to involve in the activity of literature and art, or ban them from working as a counsel in proceedings before the International Court of Justice.³⁸ This meaning has been translated into some receiving states' national practice. In real practice of Swiss Law, the diplomatic agents can obtain the teaching activities on specialized subjects, and it is an acceptable activity for them.³⁹ In addition, the fundraising or charity events are the unclear activities whether to consider it as commercial activities. For the US Government system as a sending state, they do not allow the US ambassadors to engage with the "ice-bucking challenge" to collect the budget for Lou Gehrig's disease or can be called as amyotrophic lateral sclerosis (ALS).⁴⁰ Lastly, Article 42 definition, it only focuses on the diplomatic agents of performing the professional and commercial activities, but it does not ban the diplomats from operating the tasks which benefit and profit the sending state.

2.2.4 The Obligation Relating to how the Mission Conducts Official Business

For this obligation, it targets the conducting official business between sending states and receiving states through diplomatic missions in general under the Article 41 (2) of VCDR.

³⁷ "DIRECTIVE 2013/55/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 20 November 2013," *Official Journal of the European Union*, L 354/132 (December 28, 2013).

³⁸ UN Conference on Diplomatic Intercourse and Immunities (n 57) 212.

³⁹ Article 21 (3) Ordinance to the Federal Act on the Privileges, Immunities and Facilities and the Financial Subsidies granted by Switzerland as a Host State of 7 December 20017.

⁴⁰ Matthew Lee, "Associated Press," *US Diplomats Barred from Ice Bucket Challenges*, August 21 2014, Accessed 15 June 2018, <https://www.pbs.org/newshour/nation/ice-bucket-challenge-u-s-diplomats>.

This is the work for diplomat to perform the official business of sending state in the receiving state. Diplomats have duty to contact with any related ministries in local to discuss and negotiate with ministers of each ministry about the partnership in business. This business usually happens when both side have the bilateral agreement together on the specific sector. The diplomats have to contact with the receiving states' Ministry of Foreign Affairs or such other ministry as may be agreed. This condition concerned about the manner of the diplomatic function was conducted. The obligation permits a monopoly for sending states to conduct the official business in receiving states' MFA. The condition in Vienna Convention include the possibility of diplomatic function can be reach out to other government actors, and this action has to be in prior agreement.⁴¹ This rule also empowers a sending state's government to have a close contact and authority over their diplomatic mission with its civil servants.⁴² For the clear explanation of this principle, it means that a diplomat can have contacts with other ministries or other organization or institutions or administrations about their official business. This perspective in 1958 ILC Commentary focuses on giving the power to specialist attachés to have contact and deal with other ministries or government body directly.

2.2.5 The Obligation Relating to the Use of the Premises of the Mission

This obligation is under the Article 41 (3) in the Vienna Convention on Diplomatic Relations, the premises of the mission must not be used in any manner incompatible with the functions of the mission as laid down in the present Convention or by other rules of general international law or by any special agreements in force between the sending and the receiving State.⁴³ For this part, it means that the property or material of the embassy cannot be used with any private reasons of diplomatic agents. It can only be used for the embassy mission or

⁴¹ ILC Commentary (n 4), 104.

⁴² Robert (n 3), 153.

⁴³ Article 41 (3), Vienna Convention on Diplomatic Relations.

any official occasion in embassy. It prevents diplomatic agents to take an advantage on the embassy's property.

The receiving state sometimes rewards or gives something to the sending state embassy in the mission purpose; however, the diplomatic agents used their power to gain and take those material or premises as their own thing. This means that the property of the mission must not be used to against with the function of mission which has been already put in the present Convention or other general international law or agreements. According to the Article 21 (1) of Vienna Convention on Diplomatic Relations, it said that the Convention does not prevent the foreign state from purchasing the property in receiving states, but they have the obligation to give the authority to the receiving to facilitate the purchase.⁴⁴ Article 41 (3) shows that this obligation has to be analyzed for two perspectives: firstly it has to know in what manner diplomatic property is used, and secondly it has to examine how the diplomatic function is defined in VCDR, general international law, and agreements. The definition of "diplomatic functions" is mainly referred to the diplomat, and it means that diplomats need to know what their roles are, and what kind of behavior is appropriate to be used in that task.⁴⁵

2.3 The Immunities and Privileges of Diplomats

Even though diplomats have various obligations as it was describe above such as the obligations to respect the law and regulations, not to interfere in the internal affairs of receiving states, to abstain from professional and commercial business, and the relate to how the mission conducts official business, and the use of the premises of mission. However, diplomats are granted by various immunities and privileges as conceived in the **VCDR of Article 29 till Article 37** in the purpose to protect diplomats from receiving states' pressure. As it can be seen that working in the foreign state is not an easy task, diplomats need to have

⁴⁴ Article 21 (1), Vienna Convention on Diplomatic Relations.

⁴⁵ Chatterjee (n 5), 184.

special protection from the international law in order to conduct their work well without under any influence.

Immunities and Privileges of the diplomat were called as the customary law which protects the official representative from the sending state.⁴⁶ The diplomats were protected by their immunities and privileges escape from the criminal activities. Immunities and privileges are the special rights without violations which the receiving state needs to secure the special envoys or the representative. In specifically, not everybody works at the embassy has diplomatic immunities and privileges, only the people in the very top or higher level people like the ambassador, and the head of mission.

However, the immunity is different from the privilege. The immunity is very crucial for the ambassador and all those important immunities, no one can abuse the rights and property without any permission, protect the diplomat from jail or any other arrested actions, no one can abuse the rights of mobility or travel within the country except the restricted access.⁴⁷ For the privileges, is a right or an advantage, the ambassador has rights to import their own necessary items without paying tariff or tax since it will pay by the host of the state.⁴⁸ That equipment included vehicle, petroleum, office equipment, and other necessary items in the embassy. Moreover, for the personal requirement of the diplomat or family will provide by the special circumstances. The diplomatic immunities and privileges are the fully right enjoys by diplomats while performing missionary at the receiving state. Immunities and

⁴⁶ B Sen, "Diplomatic Immunities and Privileges," *Springer Link*. https://link.springer.com/chapter/10.1007%2F978-94-011-8792-3_5. (Accessed June 13, 2019)

⁴⁷ Joshua E. Keating, "Can You Get Away With Any Crime if You Have Diplomatic Immunity?," *FP*, February 15, 2011. <https://foreignpolicy.com/2011/02/15/can-you-get-away-with-any-crime-if-you-have-diplomatic-immunity/>. (Accessed June 13, 2019)

⁴⁸ "Diplomatic Tax Exemptions," *U.S. Department of States*, June 10, 2019. <https://www.state.gov/ofm/tax>. (Accessed Jun 13, 2019)

Privileges are not to benefit the individual, but to make sure the coherent purpose of the diplomatic mission to represent his state interest.⁴⁹

2.3.1 Significant of Immunities and Privileges

Actually, the immunities and Privileges of diplomat is very important during the mission, diplomat shall enjoy it and play an important duty very peacefully. Immunities and Privileges of diplomat are to protect the diplomat from the jurisdiction of the local court or the host state.⁵⁰ Besides this, it also provides the exception under the host state duties. All diplomats who entitled with immunities and privileges shall enjoy this from when he leaves the country and in the territorial of receiving state, until the specific reasonable time. If in case of passing away of the member of mission, their immunities and privileges will be offer to their family, so they can continue enjoy immunities and privileges until the time they leave the country.⁵¹ All under below is the exemption as well as the example of the immunities and privileges under Vienna Convention on Diplomatic Relations

a. Exemption from Jurisdiction

The receiving state should not exercise the jurisdiction over the diplomat or his family. Actually, the exception from jurisdiction for the diplomat is to provide the freedom to play the role over the mission.⁵² Article 31 (1), under Vienna Convention on Diplomatic Relations, the diplomat enjoys their immunity from the Civil and Criminal liabilities which mean that the receiving state does not use their national jurisdiction over the diplomat.⁵³

⁴⁹ "Immunity and Privileges of Diplomats and Their Family and Staff,"

<https://shodhganga.inflibnet.ac.in/bitstream/10603/38483/7/chapter%204.pdf> .(Accessed June 14, 2019)

⁵⁰ "Diplomatic and Their special Privileges," *DARYANANI LAW GROUP BLOG*, November 30, 2017.

<https://dlgisablog.com/blog/diplomats-and-their-special-privileges>. (Accessed July 1, 2019)

⁵¹ Article 39 (1)(2)(3), Vienna Convention on Diplomatic Relations.

⁵² "Diplomatic Privileges and Immunities," *Jstor*, pp. 99-101. (Accessed June 18, 2019)

⁵³ Article 31(1), Vienna Convention on Diplomatic Relations.

According to article 31(4) under Vienna Convention on Diplomatic Relations, even if diplomat doesn't have jurisdiction in the receiving state, but he will not exempt from jurisdiction by the sending state.⁵⁴

For an example, **Lipenga** was like a slave in the house of Jane **Kambalame** who is the diplomat of the United States from Malawi. Lipenga was hired by Jane Kambalame, and they have the same nationality. She was worked for 16 hours per day, and seven days per week, but she only received less than 50 cents per hour. Lipenga said that her life was depressed, but Kambalame rejected the allegations. Lipenga said that when she arrived in the United States, her life changed, her passport was taken by diplomat and kept her in the house, and Kambalame only told that he has diplomatic immunity. Diplomat of the United States violate the domestic workers, his diplomatic immunity send him free from the jurisdiction of the receiving state.⁵⁵

b. Exemption from Custom Duties

A receiving state should not be liable to the member of mission from the sending state on the internal duties, the export and import of the equipment which is for the official use during the mission; likewise, for the individual demands of his family.⁵⁶ This is the special right that diplomat was allowed to export or import the personal property to use in the embassy without any payment. The custom duties refer to the levy by the central government or manufacture on the import or export of goods and financial transaction.⁵⁷

The receiving state cannot force diplomat to pay any custom duty to the government since this will be the key against the International Law. According to article 23(1) under

⁵⁴ Article 31(4), Vienna Convention on Diplomatic Relations.

⁵⁵ Sarah Birnbaum, "This woman says she was trafficked by a diplomat. And it happens all the time," *PRI's The World*, July 24, 2017, <https://www.pri.org/stories/2017-07-24/woman-says-she-was-trafficked-diplomat-and-it-happens-all-time>. (Accessed July 4, 2019)

⁵⁶ *Supra* note 44, pp. 107, (Article 20)

⁵⁷ Surbhi S, "Difference between tax and duty," *Key Difference*, July 26, 2018. <https://keydifferences.com/difference-between-tax-and-duty.html>. (Accessed July 2, 2019)

Vienna Convention on Diplomatic Relations 1961, the diplomat from the sending state and the head of mission will not pay any dues and taxes for the receiving state in respect of the authorize of mission, it doesn't matter that they owned or rent or any other represent payment for the specific service.⁵⁸

Moreover, in article 34, diplomat should be out of all dues and taxes, whether personal or real, national, regional, municipal, but there are some exception such as indirect taxes which refer to the incorporate in the price of good or service, on the personal immovable property that located inside the host state since he put it on the purpose of mission, the dues on the private income and the capital tax on the commercial investment in the receiving state.⁵⁹

c. Exception from Taxation

The member of mission will not force any taxes for the receiving state even if national or local, upon the member of mission or his family, upon the salary, personal service, the income of the member of mission that are not inside the receiving state, since the member of mission, his family, administrative or personal service are not the national of the receiving state. In addition, they will not impose any tax upon the tangible or movable property, the business inside the territory of the receiving state, upon the compulsory purposes under his mission.⁶⁰

Vienna Convention on Diplomatic Relations rose that the exemption from taxation mentioned to the nonpaying tax to the government by the contracting person between the

⁵⁸ Article 23(1), Vienna Convention on Diplomatic Relations.

⁵⁹ Article 34, Vienna Convention on Diplomatic Relations.

⁶⁰ Supra note 45, pp. 114-115, (Article 22)

receiving state and the sending state.⁶¹ In addition, during the mission, all fee and charges impose by the mission will not have any payment.⁶²

Taxes are collected by a state on their citizens living in the territory of the state, however; the principle existed that taxes cannot be charged even if on the head of mission or diplomatic agents. All the things that diplomat bring to represent his sovereign state are not issue to taxation.⁶³ The special envoy does not pay all income tax and all direct personal tax which is wealth of person. However, the charge of local rate such as the charges for water, electricity, sewerage is concerned. In some countries, the envoy takes the sake from all these paying services, so the authorities would be admissible to suggest him to pay such cost, whilst some countries the envoy shall not pay even for water, electricity, or sewerage as the matter of gracious.⁶⁴

2.3.2 Persona non Grata Vs. Immunities and Privileges

The principle of Persona Non Grata appears to contradict diplomatic immunities and privileges. This principle is to power the receiving state to expel diplomat from the sending state without any reasons. The principle of PNG is to defend the receiving state from the abuse or violation of the sending state diplomat on their immunities and privileges, social norm; in case the diplomat did some act that effect to the host state immunity, so this principle will declare by the receiving state.⁶⁵ The declaration of the principle of Persona Non grata will send to the sending state to demonstrate that their special envoy's person will be recalled to back to the home country.

⁶¹ Article 23(2), Vienna Convention on Diplomatic relations.

⁶² ibid

⁶³ B.SEN, "ADiplomat's Handbook of International Law and Practice," 1965, pp. 140. (Accessed July 2, 2019)

⁶⁴ ibid

⁶⁵ Charity Simuli Wanyela, "Research Title: Diplomatic Privileges and Immunities: A Critical Analysis of the Vienna convention on Diplomatic Relations (1961)," 2009, 57-58. (Accessed June 14, 2019)

The diplomatic immunities and privileges are the right of the diplomat to enjoy mission in the other countries without jurisdiction of the host country while the principle of PNG comes to limit and violates the right of immunities and privileges of the special envoy. Of course, the diplomat has a full right to live independently while having immunities and privileges to defend them.⁶⁶ According to article (31) of VCDR, the diplomatic agent has a right to enjoy immunity from the criminal jurisdiction of the host state, they have the right to enjoy immunity from the civil and administrative jurisdiction, but in some cases are not include such as commercial activities by the diplomatic agent, the activities related to the immovable property that located in the territorial of the receiving state.⁶⁷ When the member of mission commits any unacceptable activities within the territory of the receiving state, the receiving state cannot prosecute its jurisdiction, what the state can do is to ask his/her to leave, and that's call the principle of Persona Non Grata. To illustrate, the real case happened between the Russian and the UK in 2018, the Russian foreign minister said that “we would be expelled the UK staffs from the Moscow in one week in return to the Britain’s decision to expelled Russian diplomats” as a result of Russian threat the Britain’s citizens and other British soil.⁶⁸

2.4 The Waiver of Immunities and Privileges

In fact, the diplomats have their immunities and privileges to secure them from jurisdiction of the receiving state. They are granted to assert exemption from the jurisdiction in the tribunal of the receiving state under the civil and criminal cases, but such immunity can be waived, and it is validity now. The diplomat is not allowed to waive the immunities by himself unless he asks for the permission from his state. As a result, the government of the

⁶⁶ Marsha L. Frey, Linda Frey, “Diplomatic immunity,” <https://www.britannica.com/topic/diplomatic-immunity> . (Accessed June 14, 2019)

⁶⁷ Article 31 (1), Vienna Convention on Diplomatic relation.

⁶⁸ “Russia spy poisoning: 23 UK diplomats expelled from Moscow,” *BBC*, March 17, 2018. <https://www.bbc.com/news/uk-43440992>. (Accessed June 19, 2019)

sending state comes to waive the immunity from the diplomat whether shall or shall not be waived on a special circumstance.⁶⁹

a. Express Waiver of Diplomatic Immunities

The waiver of immunities and privileges is referred to the rejection of diplomatic immunity when there are serious activities of the diplomatic representative from the sending state. For example, the state asks its person to leave in one or two weeks, but if he or she continue to stay there, then they will lose the immunities, the receiving state may request the sending state to waive the immunity.⁷⁰ While the waiver of immunity has expressed mean that the diplomatic agent will be justice by the court. However, there are rare cases that the sending state waiver the immunity of its own diplomatic agents; if the cases happened, the sending state will better to recall the special envoys to back the country.

Actually, the waiver of immunity is not used for averting serious crimes, but it is the way to allow the state jurisdiction when the crime has been committed. The sending state, head of mission, any specialized agency, an office of the United Nations, or any other organization might waive the immunity and privilege and a waiver must always be express and in writing.⁷¹

b. Implies Waiver of Diplomatic Immunities

Under Vienna Convention, it required that the waiver of diplomatic immunity must always be expressed. There are several circumstances that the waiver can be implies when “the diplomatic agent’s activities threaten the nationality of the receiving state.”⁷² One

⁶⁹ B.SEN, “ADiplomat’s Handbook of International Law and Practice,” 1965, pp. 129. (Accessed July 2, 2019)

⁷⁰ Rene Vark, “Personal Inviolability and Diplomatic Immunity in Respect of Serious Crimes,” *Juridica International*, 2003. <https://www.juridicainternational.eu/?id=12585>. (Accessed June 14, 2019)

⁷¹ Supra note 2

⁷² Richard C. Kay, “United States v. Deaver: Implied and Express Waivers of Diplomatic Immunity,” *Maryland Journal of International Law*, pp. 274. (Accessed June 19, 2019)

example of implies waiver of immunities and privileges is if you decide to stay after Persona Non Grata, your immunity is automatically lose.

CHAPTER 3: TO WHAT EXTEND COULD ANY DECISION ON PERSONA NON GRATA BE CARRIED OUT BY THE GOVERNMENT OF RECEIVING STATE?

The actual practice of principle PNG under Vienna Convention on Diplomatic Relations, 1961, in contemporary diplomacy is very broad which is extended from political issue until the personal acts of diplomats. It was said in the VCDR that the declaration of PNG does not require the receiving to state the reason to the sending state; however, it can be seen in the real case that it always relates with significant issues which lead to this sanction upon the sending state's diplomats. These reasons can be various described, but for this report thesis will discuss only the three main points which have happened in current situation. It is about the issues of **“Political Issue”**, and **“Personal/Individual Acts of Diplomats”**.

3.1 Case Studies Related with Principle PNG

To further illustrate, the below case studies can two important pointed that should be remembered. These two points always appear in most case studies. Firstly, the name and rank of diplomats are not usually mentioned. They are kept as a secret, so mostly they will only mention about country diplomats or ambassador without name. Secondly, one principle that is usually used when there is a PNG declaration is the Principle Reciprocal. Principle reciprocal is the basic law that mostly appears in the social situation about paying back of what they received. In fact, when receiving state declared PNG principle, the sending state mostly uses this principle back on receiving state's diplomats. This is what it called principle reciprocal.

3.1.1 Political Issue

3.1.1.1 Conspiracy

In the early year of the Vienna Convention, the action of spy is the most common around that time, and the principle of PNG was used to expel diplomats out from countries based on the reason of conspiracy of diplomats.

a. Democratic Republic of Congo Expelled British Diplomat

In 1999, the Democratic Republic of Congo declared the principle PNG to one British diplomat out of five UK government officials, including one American. The British diplomat was accused in the connection with alleged spying. A Foreign Office spokesman told a member of embassy staff to leave the country of Congo. The men were arrested in the hotel of capital city, Kinshasa after they found with marked maps city of Congolese troops. The reason for making Congolese government to expel diplomats is because Congolese Government forces were hands in with rebel groups who were going to overthrow the **President Kabila**. However, the British Foreign Office minister Tony Lloyd made a phone call to the president Kabila about this matter that the UK took this matter seriously, by not being convicted as a spy.⁷³

b. Democratic Republic of Congo Expelled Two United States Diplomats

Two United States diplomats were expelled by the Democratic Republic of Congo that accused two of them were involved in the plot against the government, and had intention of kill the president. The president administration announced that the two diplomats were expelled due to their bad behaviors which were not suitable to their status as diplomats. The two diplomats were asked to leave the country within 48 hours, and they are cultural adviser Denis Burgess, and political adviser Roger Moran.

Moreover, it was not only two diplomats that were accused of the plot scheme from the Congolese government, but there were two more US diplomats received the same charge, and they were under the investigation. Daniel Mulunda, the Nairobi-based regional head of

⁷³ "BBC News," *World: Africa Congo Expels UK Diplomats*, March 10, 1999, Accessed July 01, 2019, <http://news.bbc.co.uk/2/hi/africa/294052.stm>.

the All-African Conference of Churches, claimed that the unknown name US diplomat was arranging the meeting with opposition parties to overthrow president Kabila.⁷⁴

c. UK Expelled Twenty-Three Russian Diplomats

According to the London CNN News, twenty-three Russian diplomats were expelled from UK back to Moscow less than a week. British said that Russian government was behind the poisoning of a former spy in British.⁷⁵ It was not only twenty-three people leaved the UK, but it reached about 80 people including diplomats' families. There was a small crowd have farewell hug with each other in front of Russian Embassy. British and Russia has had a bitter diplomatic relations since the poisoning of Russian former double agent **Sergei Skripal**, 66, and his daughter **Yulia Skripal**, 33, happened in the English cathedral city of Salisbury. UK **Prime Minister Theresa May** accused Russian of using the chemical known as "Novichock" which was the chemical weapon that Russian used to produced, and there was no evidences if the Russian did really eliminate those stock of chemical. The Prime Minister said the Russian use this chemical to poison the former Russian spy, and the police was also discharged to the hospital after the investigation at the crime scene due to the poison.

However, the Russian denied the conviction from UK by saying that Prime Minister of UK did it for her passion after winning another 6 years as a president. As the response to the British acts, Russian also expelled twenty-three British diplomats due to the problems with British cultural institution in St. Petersburg.⁷⁶

3.1.1.2 Conflicts Between Sending State and Receiving State

It can be seen that the real situation in the world politics plays the most important part, and there are also many incidents happened due to that political conflicts. In diplomatic

⁷⁴ "BBC News," *Kinshasa expels US diplomats*, August 19, 200, Accessed July 01, 2019, <http://news.bbc.co.uk/2/hi/africa/888131.stm>

⁷⁵ "CNN News," *Russian diplomats expelled from UK head back to Moscow*, March 20, 2018, Accessed July 01, 2019, <https://edition.cnn.com/2018/03/20/europe/russia-diplomats-leave-uk-intl/index.html>.

⁷⁶ *ibid*

relations, it was also violated with the political conflicts with countries government. Diplomats were declared the principle persona non grata to leave the country due to that dispute. This political conflict only refers to the conflict that happened between states' leaders with the absence of diplomats who are contemporary working in the receiving state. This dispute is not involved anything with the diplomat, and it also occurs without diplomats conscious. The case studies below are the recent cases that are hitting the politic society, especially about Venezuela president expelling various countries' diplomats.

a. Venezuela Expelled Canada's Charge d'affaires

Mr. Craig Kowalik, Canada charge d'affaires to Caracas, was announced to leave the Venezuela by the principle persona non grata. Venezuela government used this principle to expel the Canada charge d'affaires, and accused Mr. Kowalik as a rude and persistent person by interfering into the internal affairs of Venezuela. Venezuela also accused Mr. Kowalik that he takes order from Trump Administration. Actually, the real reason behind this expelling is that Canada government has pressed sanction on senior Venezuela official which angered the Venezuela government. As a revenge on Venezuela government, on December 25, 2017, Canada also expelled Venezuela's ambassador to Ottawa, **Wilmer Barrientos Fernández**, and its charge d'affaires, **Ángel Herrera**.

Canada has criticized the government of **President Nicolás Maduro** about the human rights violations in the country. During the time of anti-government protest, more than 120 people were killed. Canada said they will not ignore this unlawful act of Venezuela government that robs the fundamental democratic and human rights of Venezuela people, and they also block the access of human rights assistance to their people. The act of Venezuela president government has already against with International Law which make Canada and

other region countries put pressure on anti-democratic Maduro government to restore the country back by stopping violating the human rights.⁷⁷

On March 06, 2019, Canada decided to temporarily shut down the Canadian Embassy in Venezuela since President Nicolás Maduro government disagreed to renew visa for Canadian diplomats.⁷⁸ Canadian Foreign Minister **Chrystia Freeland** said that Canada had no choice, but to suspend the operation in Venezuela since President Maduro government refused to recognize diplomats who had voice on the political situation in the country about criticism over dictatorship of President Maduro regime, and democratic restoration.⁷⁹

b. United States Expelled Two Venezuela Diplomats

On May 24, 2018, the United States declared persona non grata on two Venezuela diplomats to leave the country within 48 hours. In fact, the act of expelling two Venezuela is the response to the Venezuela government that had already declared persona non grata to the Charge d'affaires and Deputy Chief of Mission of the US Embassy in Caracas according to what the State Department spokeswoman **Heather Nauert** said. Venezuela expelled two diplomats of the United States because of the new US sanctions on the country due to the human rights violation and President Maduro government regime dictatorship. Venezuela accused Charge d'affaires, **Todd Robinson**, of “military conspiracy” against Caracas; however, US government did not accept this conviction from Venezuela government.

The new sanction of US toward Venezuela is to restrict the government from selling state assets because the US, the EU, and several Latin American counties did not recognize the vote of President Maduro. Venezuela used to be an oil-rich country, but now it has been

⁷⁷ “BBC News,” *Canada expels Venezuela diplomat in tit-for-tat move*, December 25, 2017, Accessed July 02 2019, <https://www.bbc.com/news/world-latin-america-42480986>.

⁷⁸ “Global News,” *Canada temporarily closing Venezuela embassy effective immediately, June 02, 2019*, Accessed July 02, 2019, <https://globalnews.ca/news/5344592/canada-closing-venezuela-embassy-effective-immediately/>.

⁷⁹ “DW News,” *Canada suspends operation at Venezuela embassy*, March 03, 2019, Accessed July 02, 2019, <https://www.dw.com/en/canada-suspends-operations-at-venezuela-embassy/a-49011031>.

different since the country was under the control President Maduro. Venezuela has faced many serve crises such as the economic inflation, the economic slump of the citizen, and the isolation from the world except China and Russia.⁸⁰

c. Spain and Russia Both Expelled Each Other Diplomats

It has appeared that two Russian diplomats in Madrid were expelled from Spain on the conviction of spying. As the response, the Russia had also expelled two Spanish diplomats after the following week by using the same reason as Spain toward their two diplomats. Also, the Spanish spokesman did not make any comment on the case of Russians involving in the economic espionage. According to BBC NEWS, it said that the Spanish foreign ministry spokesman indicated that the two Russian diplomats had been expelled for the reason of “activities incompatible with their status as diplomats”, and this context means the terms of diplomatic spying.⁸¹

It considered that this incident of expelling each other diplomats is the most serious one between Spanish and Russia since the Moscow restored their diplomatic relations with Madrid in 1997 after the death of veteran right-wing dictator Francisco. It has not been cleared yet about what case is that related with alleged spying.⁸² In short, it can be concluded that both country government had a private dispute with each other that lead to the expelling of each state’ diplomats by using the term of conspiracy because it has not been announced officially yet about what case of conspiracy is that diplomats are involved with.

⁸⁰ “DW News,” *US expels two Venezuela diplomats in diplomatic tit-for-tat*, May 24, 2019, Accessed July 02, 2019, <https://www.dw.com/en/us-expels-two-venezuela-diplomats-in-diplomatic-tit-for-tat/a-43905363>.

⁸¹ “BBC News,” *Spain-Russia spy row leads to diplomats’ expulsion*, March 06, 2012, Accessed July 01, 2019, <https://www.bbc.com/news/world-europe-12086186>.

⁸² *ibid*

3.1.1.3 Intervention of Receiving State's Internal Affairs

For the reason of intervention in internal affairs of receiving state, it has become a common reason for them to use when they expel diplomats of sending states. However, it is still the real reason for some cases.

a. The United States Expelled 35 Russian Diplomats

During Barack Obama regime, he expelled 35 Russian diplomats because he found the evidence that Russian had interfered in the American Presidential election. US intelligence said that Russian had ordered cyber spies to attack the Democratic National Committee (DNC) of candidate Hillary Clintons, and more political organization aiming to sway more popularity to candidate Donald Trump.⁸³ Diplomatic officials of Russian embassy in Washington and other consulates in San Francisco were ordered to leave the country within 72 hours due to the persona non grata declaration. Barack Obama said that the expelled 35 Russian diplomats were all Russian intelligences operatives in the United States.⁸⁴

Moreover, Barack Obama press sanctions on Russia's GRU and FSB intelligence agencies, and other six named Russian individuals. Before this sanction happened, CIA and FBI finalized this case that Russia was responsible for the Democratic National Committee hacking of embarrassing emails with the purpose of helping Donald Trump to win the election. For the Russian side, they did not response anything to Barack Obama sanctions as like they will know that Donald Trump would win the election.⁸⁵

⁸³ "The Guardian," *Obama expels 35 Russian diplomats in retaliation for US election hacking*, December 30, 2016, Accessed July 02, 2019, <https://www.theguardian.com/us-news/2016/dec/29/barack-obama-sanctions-russia-election-hack>.

⁸⁴ "The Telegraph," *Donald Trump praises 'very smart' Vladimir Putin for not expelling US diplomats in response to sanctions*, December 30, 2019, Accessed July 02 2019, <https://www.telegraph.co.uk/news/2016/12/29/obama-expels-35-russian-diplomats-election-hacking-row/>.

⁸⁵ Ibid.

b. Bolivia Expelled US Diplomats

On September 03, 2009, **Bolivia President Evo Morales** made an announcement to expel US diplomat out of the country after the intense investigation of US diplomat. Mr. President accused the US embassy second secretary, **Francisco Martinez**, involving with the opposition groups, and secretly had contact with them. Also, Morales secondly accused in public that Martinez had contacts with Bolivian police officer, and he invaded in the state oil company on behalf of the CIA. The state oil company is the close supporter of Morales. Morales said that US diplomat had involved in internal affairs of Bolivia.

The US government made a statement about the conviction of invading in Bolivia's oil company that Morales made on their diplomat. The US government said that Morales made the United States as a victim in his domestic politics. The US government did not understand these false accusations since President Morales said that he wants to secure the relationship with the United State, but at the same time he accused US diplomats wrongly according to an Embassy spokeswoman, **Denise Urs**.⁸⁶

c. Saudi Arabia Expelled Canadian Ambassador

On August 06, 2018, Saudi Arabia had declared **Canadian Ambassador, Dennis Horak**, persona non grata to leave the country within 24 hours according to what the Saudi Arabia Ministry of Foreign Affairs said. Saudi Arabia ministry said that Canadian ambassador intervened in the internal affairs in the case of "civil society activists in Saudi Arabia" capture.⁸⁷ Canada made an announcement for the immediate release of civil society activists including relatives of naturalized Canadian citizens. **Foreign Minister Chrystia Freeland** said that Canada will always support for human right protection in Canada and around the

⁸⁶ "NBC News," *Bolivia expels U.S. Diplomat*, September 03, 2009, Accessed July 03, 2019,

http://www.nbcnews.com/id/29601931/ns/world_news-americas/t/bolivia-expels-us-diplomat/#.XRwiRegzY2w.

⁸⁷ "Arab News," *Saudi Arabia Tells Canadian Ambassador To Leave, Says 'Persona Non Grata'*, August 06, 2018, Accessed July 03, 2019, <https://www.eurasiareview.com/06082018-saudi-arabia-tells-canadian-ambassador-to-leave-says-persona-non-grata/>.

world, and women's rights. She also tweeted that Canada seriously concerned about the detention of human rights activists in Saudi Arabia, including the **Samar Badawi** who was the significant human rights campaigners, and was sentenced in prison for 10 years of the Islam insult. **Hassan Yari**, a professor at Sultan Qaboos University in Oman specializing in international relations replayed back to Canadian criticism on its country is a big interference in internal affairs of the Kingdom of Saudi Arabia.

Saudi Arabia is very aggressive on this matter, by not only expel Canadian ambassador out of the county, but they also recalled its envoy in Ottawa. They suspended the trade agreement with Canadian government which is worth billions of dollars. More importantly, the students that received the Saudi scholarships to study in Canada will be transferred to other countries to continue their class according to the Saudi Arabia Education Ministry reported.⁸⁸

3.1.2 Personal or Individual Act of Diplomats

For this part, this is the diplomat responsibility on their wrong doing. There are some diplomats who behave badly during their missions in receiving state such as committing illegal trafficking, violating human rights, and domestic laws. This does not have anything to do with states' leader like the above part, and this is the diplomat personal act.

3.1.2.1 Illegal Trafficking

There are so many cases that happened as illegal trafficking and all cases are different categories of the trafficking. The illegal trafficking acts can be human trafficking, drug trafficking, wildlife trafficking, and else. As mentioned above, the diplomat shall enjoy their immunity during the mission in the receiving state, but their immunity can be lost by anytime

⁸⁸ "Aljazeera," *Saudi Arabia expels Canadian ambassador over criticism of arrests*, August 07, 2018, Accessed July 03, 2019, <https://www.aljazeera.com/news/2018/08/saudi-arabia-expels-canadian-ambassador-criticism-arrests-180806050810633.html>.

if they commit the illegal acts under the receiving state. These are the cases that happened under diplomat acts and were declared the principle of PNG by the receiving state.

a. The Ambassador of Indonesia was Expelled by the Government of United Kingdom

This serious case related to the privilege and immunity of diplomat, the son of **Nana Sutresna**, the ambassador in Indonesian Republic to United Kingdom was concerned in an illegal drugs (narcotics case and he had to talked with the authorities in England. He was suspected of bringing in a certain amount of heroin found in a car's cabin.⁸⁹ Anyways, the ambassador **Nana Sutresna** relieved by the government of Indonesia since he has finished his occupation, but some quarter had conjecture that before he was recalled back to his country, his diplomatic mission might not have finished.

After that the government of the United Kingdom had privately suggested the government of Indonesia called up its ambassador back to Indonesia, his family, and chief of diplomatic mission would be involved in this shameful action. In order to keep the relation between both countries, this case would be settled under the reason of the reputation of the ambassador.⁹⁰

3.1.2.2 Violation of Human Rights

The definition of Right is referred to right to life, right to be free from slavery, right to be free from torture, right to be free from cruel and unusual punishment, freedom of speech, freedom of thought. People have enough right to do what they want, but do not harm to other.⁹¹ The violation of human rights is refer to the cases which diplomat takes any action to

⁸⁹ *ibid*, pp. 168.

⁹⁰ *ibid*, pp. 169.

⁹¹ "Fundamental Human Rights," *Your Dictionary*, <https://examples.yourdictionary.com/examples-of-human-rights.html>. (Accessed July 3, 2019)

suffer human, violate their speech, as well as violate their right to life. All under below are the cases that happened in subject of violation of human rights.

a. New Zealand Expelled Unnamed Diplomat for Sexual Attack

The case happened in 2014 that one country diplomat was accused of sexual attack on 21-year-old girl in her Wellington home. According to the Ministry of Foreign Affairs and Trade (MFAT) spokesman said that the unnamed diplomat was expelled by New Zealand government after the sending state refused to waive his immunity as a diplomat. The local authorities had to release him from hauling after he claimed his diplomat immunity.

The police said that they had enough evidences to charge him with the assault case and intention to rape under the New Zealand law. The diplomat, who aged in his 30s, followed a 21-year-old girl to her home with those intentions. The police also charged him with burglary. The spokesman said that the New Zealand government demand diplomats to respect the New Zealand laws since there were many cases like this happened before and the victims have to live their life without getting any justice from the law. Also this is ridiculous for sending state's government let this man go back to home country without receiving any punishment.⁹²

3.1.2.3 Violation of Domestic Law

a. South Africa Expelled Rwanda Diplomats (Criminal Crime)

On March 08, 2014, South Africa asked three Rwanda diplomats to leave the country within 48 hours in the retaliation of Rwanda that secretly ordered the spy to murder an exiled Rwandan general's Johannesburg in his home. In return, Rwanda expelled six South African diplomats back by accusing South African maintain protesters of terrorists attacks in Rwanda.

There was an armed men broke into Johannesburg house of a former Rwandan army chief General Faustin Kayumba Nyamwasa, an exiled critic of Rwandan President Paul

⁹² "New Zealand News," *NZ expels sex case diplomat after attack on woman*, Jun 29, 2014, Accessed July 04, 2019, https://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=11283893.

Kagame. Luckily Mr. Nyamwasa was not at home during that time, and he survived from the assassination of President Paul Kagame. South African security services said that it is very absolute that those men were intelligence personnel attached to the Rwandan embassy. After this situation, South African police officers also have a deep investigation on another case about the murder of exiled Kagame opponent, former Rwandan spy chief Patrick Karegeya during New Year Eve. Another exiled opponent of Rwanda government also accused President Kagame and his government of the chief Patrick Karegeya murder case. For the comment of President Kagame and his government, they did not accept those convictions from South Africa, and exiled opponents; however, he made another speech that those traitors should not be forgiven and received any pity from them. In short, it can be summarized that the attempt, and the murder case are logically link with President Kagame, and his government based on his last speech in public. The United States also expressed the concerned over this matter, and called it as a “politically motivated murders of Rwanda exiles”.⁹³

b. Ecuador Expelled US Ambassador over Wikileaks Cable (Stealing Secret Information)

On April 05, 2011, **US Ambassador, Heather Hodges**, was declared persona non grata in Quito, Ecuador, over the reason of Wikileaks cable about Ecuadorean corruption. Ecuador found the evidence of US diplomat involved with sharing the secret document of Ecuador through website Wikileaks about the widespread corruption within the Ecuadorean police force. After this evidence was found, the Foreign Ministry, **Ricardo Patino**, asked US ambassador to leave the country as soon as possible. The United States did not agree with this alleging from Ecuador, and said that it is an unjustified decision. Before expelling US

⁹³ “Reuters,” *South Africa, Rwanda expel diplomats in row over Rwanda exiles*, March 08, 2014, Accessed July 03, 2019, <https://www.reuters.com/article/us-safrica-rwanda/south-africa-rwanda-expel-diplomats-in-row-over-rwandan-exiles-idUSBREA261BS20140307>.

Ambassador, Hodges, he was asked by Mr. Patino whether US invaded in Ecuadorean police force to can get such a restrict information. The answer of US ambassador is that it would be nothing new.

Mr. Patino told reporters in conferences that the conclusion of expelling US ambassador is because the answer of US ambassador was ridiculous, and failed to give a good explanation of his action. He continue his speech that this declaration of persona non grata did not attack the US country, but it only against one official who violate the domestic law to get the secret document of Ecuadorean state. In the cable conversation, the ambassador accused senior policeman, **Gen Jaime Aquilino Hurtado Vaca** for the responsible of corruption allegations, when President first made his commander in charge with the country's police force. The US embassy also has significant information of Hurtado corruption allegations such as extort bribes, human trafficking, wrong data of public funds, and other corruption of his personal value. However, Hurtado denied these convictions of US embassy.⁹⁴

3.1.2.4 Bad Behavior of Diplomats

Diplomats are often given certain privileges and immunities to guarantee that they are able to perform their responsibilities efficiently, as well as to enable public ties to be maintained, including during times of difficulty and armed conflict. Even though the diplomat does not prosecute by the receiving state, but they may be asked to leave the host country in the period of time.⁹⁵ According to Article 9 of Vienna Convention on Diplomatic Relations, the receiving state may be able to expel the diplomat from the sending state back to the home country by using the **principle of PNG** at any time without providing the specific reason.⁹⁶

⁹⁴ "BBC News," *Ecuador expels US ambassador over Wikileaks cable*, April 05, 2011, Accessed July 04, 2019, <https://www.bbc.com/news/world-latin-america-12979967>.

⁹⁵ Daniel Mumbere, "Rwanda joins list of African nations that have expelled rogue diplomats," *Africanews*, April 6, 2019, <https://www.africanews.com/2019/04/06/in-the-name-of-sovereignty-africa-expels-rogue-diplomats-from-western-powers/>. (Accessed July 3, 2019)

⁹⁶ Article 9, Vienna Convention on Diplomatic Relations.

a. Rwanda Expelled German Ambassador

On March 30, **Dr. Peter Woeste**, Germany's ambassador to Rwanda, left the country after the Kigali government informed the authorities in Berlin that they would not work with him anymore. Rwanda accused Woeste of making statement to the nation and its president, Paul Kagame, "Improper and abusive."

Olivier Nduhungirehe, Minister of State for Foreign Affairs, informed the East Africa newspaper that "we wrote the letter to Germany showing the reasons why we do not stand and work with your ambassador anymore, and Germany sides resolved by call its ambassador back to the sending state."⁹⁷

However, there were two times already that Rwanda is expelling the Germany diplomat. In 2008 is the first time having ordered the German special envoy to leave the country, following the arrest of its former chief of protocol, Rose Kabuye at the Frankfurt's airport.⁹⁸

b. Kuwait Expelled Filipino Ambassador

The ambassador of the Philippines was asked to leave the country in one week by Kuwait and told the sending state to call him back to the Manila. The declaration of Persona Non Grata was raised after showing the video of Philippine embassy saying that the ambassador of Philippine persuaded Filipino domestic working to flee from the their home because of the abusing of employer's households.⁹⁹ Kuwait said that the action of expels

⁹⁷ Daniel Mumbere, "Rwanda joins list of African nations that have expelled rogue diplomats," *Africanews*, April 6, 2019, <https://www.africanews.com/2019/04/06/in-the-name-of-sovereignty-africa-expels-rogue-diplomats-from-western-powers/>. (Accessed July 4, 2019)

⁹⁸ *ibid*

⁹⁹ "Kuwait expel Filipino envoy, recalls own ambassador," *ALJAZEERA*, April 26, 2018, <https://www.aljazeera.com/news/2018/04/kuwait-expels-filipino-envoy-recalls-ambassador-180425160337686.html>. (Accessed July 4, 2019)

ambassador of Philippine, **Mr. Renato Villa**, was revenge for “undiplomatic acts by Philippine embassy staff, encouraging Filipino domestic workers”¹⁰⁰ to flee employers’ home. The ministry told that they asked the envoy for three days to give the names of the Filipino living in Kuwait who had abducted domestic staffs from their home without any response from the embassy. The pronouncement came after Kuwait’s authorities called **Mr. Renato Villa**, over the statement he made that to rescue domestic worker who are abused by their employers have been documented in local press.¹⁰¹ As a result, the Philippines felt regret in public of what happened as the violation of the sovereignty of the receiving state. Nevertheless, the Philippine said that we appreciate and respect Kuwait Laws, but the security of our citizens is the first priority.¹⁰²

¹⁰⁰ *ibid*

¹⁰¹ Hussain al-Qatari, “Kuwait expels Philippine ambassador amid dispute,” *Philstar Global*, April 25, 2018, <https://www.philstar.com/headlines/2018/04/25/1809509/kuwait-expels-philippine-ambassador-amid-dispute>. (Accessed July 4, 2019)

¹⁰² “Kuwait expel Filipino envoy, recalls own ambassador,” *ALJAZEERA*, April 26, 2018, <https://www.aljazeera.com/news/2018/04/kuwait-expels-filipino-envoy-recalls-ambassador-180425160337686.html>. (Accessed July 4, 2019)

Chapter 4: The Impact of Persona Non Grata Usage

It can be seen that using principle PNG also causes the bad impact. As it was described in the case studies part, it can damage the states friendship and cooperation. The below part will talk about the impacts that are caused by the principle PNG. It should be remembered that this principle cannot be used easily since it is the extreme act between states. Every problem should be initially taken to the negotiation table before this PNG usage.

4.1 The Impact of Using Persona Non Grata

The impact of using principle PNG is divided into two categories which are the “**Impact on the Relations between States**”, and “**Individual Impact**”. This principle can lead to the broken diplomatic ties, and it is also the symbol of causing war such as a cold war, or a trade war. Using this principle does not only affect the state itself, but it also affects the diplomatic future career, reputation, and their mental concern.

4.1.1 Impact on the Relations Between States

The declaration of the principle Persona non grata actually affects both sides. The state impact here is referred to the whole state impact that the sending state and the receiving state can lose diplomatic relations on economic relations or agreements such as bilateral agreement, trade agreement and other agreements that both states have signed together. Besides this, it can be the light of war on trade or arm conflicts.

4.1.1.1 Breaking off Diplomatic Ties

Before each state sends their diplomats, their relationship and cooperation are working well and smoothly between them. However, the way of one country to show their displeasure of another country or entity's actions is the declaration of persona non grata which is used as

symbolic gesture.¹⁰³ It also expresses the unpleasant toward the sending state. Moreover, sending state will retaliate with the same reason by expelling their diplomat back.

This lead to the bad diplomatic relations between states and it results in delay diplomatic works as well as economic relations. For instance, when diplomats were declared *persona non grata*, they have to leave within a period of time that the receiving state has set out. Diplomats have to leave their work unfinished such as the Bilateral Agreement between states, since all those works have to be agreed and conducted by diplomat. It cannot be done without diplomat until the new diplomat is appointed. Beside, diplomats usually have to leave within 12 hours, so they do not have enough time to pack their belonging. The embassy workers will prepare their property and send it back to them.¹⁰⁴

In addition, it will affect the economics of both countries since the sending state sometime will be disappointed when the receiving state has expelled their own diplomat. For example, the sending state will limit products quota from the receiving state or they might reject some trade agreements.

In diplomatic law, the reason why the diplomatic immunities were created is because to give the rights to diplomats to work freely without worry or under anyone pressure. They do not have to worry about the stuff of being arrested by police or kicked out, and allow them function their work independently.¹⁰⁵ For instance, when one country usually uses the principle PNG toward their countries' partner, that one country will be thought of as a strict country, and other countries feel inconvenience of sending their diplomats since diplomats feel unsafe and under pressure working there. Their countries' partner might fear of being

¹⁰³ Davis VanOpdrop, "DW News," *What does it mean to be declared persona non grata?*, March 06, 2019, Accessed July 08, 2019, <https://www.dw.com/en/what-does-it-mean-to-be-declared-persona-non-grata/a-47800884>.

¹⁰⁴ "Diplomat News," *Persona non Grata*, May 16, 2018, Accessed July 08, 2019, <https://diplomatmagazine.com/persona-non-grata/>.

¹⁰⁵ Joshua E.Keating, "Can you get away with any crimes if you have diplomatic immunity," *FP*, February 15, 2011, <https://foreignpolicy.com/2011/02/15/can-you-get-away-with-any-crime-if-you-have-diplomatic-immunity/>. (Accessed July 7, 2019)

declared *Persona non Grata* toward their diplomats. These related to diplomatic relations that the country will not have a good relationship with each other.

4.1.1.2 Sign of War Between States

This usually happened during world war period because the declaration of *persona non grata* by receiving state is the sign of war with sending state. It can refer to the unwelcome diplomat, and it means that the receiving state does not save the sending state face. This illustrates that when the principle PNG is declared, other countries might have a doubt on sending state. They will wonder on what the sending state's diplomats have done such as breaking domestic laws, causing serious crimes, or interfering in hosting state's politics. The declaration of the Principle of *Persona non Grata* is the big concern for the sending state, and other countries might look at or treat the state like an offender.

Expelling diplomats as a group became the symbolic of Cold War, and this usually happened on Soviet Union, and its allies' diplomats. They were suspected of being intelligence agents, and were expelled by principle *Persona non Grata*, usually after a spy scandal. Naturally, the Russians and its allies retaliated back by kicking out western diplomats.¹⁰⁶ The significant expulsion was in 1971, and 90 Soviet diplomats were expelled by Britain. They were accused of being engaged with active espionage that was announced by Britain Foreign Office. Another 15 Soviet officials who were on abroad duties were not allowed to enter Britain again after the 90 Soviet diplomats' expulsion. After the expulsion, it affected nearly 550 Soviet diplomats in Britain which is approximately about 20 percent, and this was such a huge size and scope. The Soviet Unions retaliated back by only expelling 18 Britain diplomats from Moscow.¹⁰⁷

¹⁰⁶ "Diplomat News," *Persona non Grata*.

¹⁰⁷ "The Guardian News," *From the archive, 25 September 1971: Britain expels 90 Russian diplomat spies*, September 25, 2014, Accessed July 08, 2019, <https://www.theguardian.com/world/2014/sep/25/britain-russia-spies-expelled-archive-1971>.

During Cold War period, diplomatic expulsion was like a proxy war between the United States, and the Soviet Union. United States diplomats were likely to be expelled from any country that was influenced by the Soviet Union's ideology. Diplomatic expulsion was understood as the United States and Soviet Union relations, balancing, and counter-balancing. This expulsion still continued after the Cold War especially on the United States diplomats. They were expelled by the Soviet Union ally Cuban than any country in the world.¹⁰⁸

This situation causes the war between states, and if it is not the conflict by arms, it could be the economic conflict like trade war. If two countries were having war together, it affected the physical and mental health of people, economics, investigation, infrastructure, education. It does not damage both countries, but can lead to other countries. For example, the trade war case between China and United States on Huawei Company, but China expelled Canada's diplomat Persona Non Grata since Canada has the obligation treaty with U.S to arrest the CFO of Huawei in Canada. Canada was under the pressure between China and Huawei. The Countries relations between China and Canada became worst. As a result, the diplomat of Canada was pressured in this case since he did not commit anything wrong, he still expelled by China.

4.1.2 Individual Impact

The declaration of Persona Non Grata is not just having a bad impact between state and state, but it also affects individual that refers to the diplomat. The career of diplomat is working at the embassy to develop the relations with receiving state, but if he is expelled by a country, it will affect their background, future career, family, mental concern, as well as the loss of loyal from the other states.

¹⁰⁸ Anthony Jordan, *You're out! Explaining Non-Criminal Diplomatic Expulsion*, (University Libraries, 2018), 8.

4.1.2.1 Diplomatic Future Career

Diplomat is the state's representative and has the duty to negotiate a treaty, write a policy making report to its state, arrange visa for their citizens, especially to maintain good relations between states, since it is not only for politic relations, but also for trade. When the receiving state declares diplomats PNG, diplomats are asked to leave the country with no matter the reason is. It is the sign to tell that the receiving state is not welcome them anymore. This really affects to their career background, and it will lead to future career of diplomat.

Absolutely, a person who was declared PNG means that his career background is not good. Even though the diplomat was expelled to home country, he still can be a diplomat again in other country. Anyways, if that country found out that he had been declared the principle of Persona Non Grata, country might not accept him as a diplomat or easily put the principle of PNG on him again. This can say that the principle of Persona Non grata can lead to another principle of Persona Non Grata in the future. Also, the possibility of Persona non Grata in the future can be happened when diplomats are sent to the country with political instability, and the sending state and receiving state relationship are already severe.

Moreover, it affects diplomat's family, and they can be looked down as the same as diplomat. No one care what the reason is, and the declaration of persona non grata toward diplomats means that they have done something wrong in the receiving state. This can be the violation of domestic laws, or committing criminal crimes in the host state, so they will be face with the discrimination. This can be the cause of their future career.

4.1.2.2 Lose of Reputation

When the sending state recalls its diplomat back home, diplomat will face a lot of challenges when he comes back since he might be looked down and lose the loyalty from the other state or the head of mission especially the loyalty from own state government. Even

though diplomat was expelled to home country, but he can still be a diplomat again in other country. Anyways, if that country found out that he had been declared the principle of Persona Non Grata, so that country might put the principle of PNG on him again because a country might not believe on his ability and the loyalty anymore.

The loyalty on diplomat by the head of state is really important. The sending state sends theirs diplomat to the receiving state to keep the bilateral relation, and report about the political situation of receiving state. However, the diplomat is coming back with principle of Persona non Grata, and the sending state might feel miserable and disloyal to theirs diplomat. Diplomat can be rejected from being appointed as a diplomat again and hold the diplomatic immunity in other countries anymore because the sending state might think that if he is going to be a diplomat in other country, they will have a doubt whether he is going to perform his diplomatic functions well, or might cause another accidents.

4.1.2.3 Diplomat's Mental Concerns

This part concerns about the feeling rather than referring to the reputation, future work, and faith of diplomats from the various part. This declaration is a very extreme measure, and it does not only affect the country relationship, or the work of diplomats, but it also hits hard on diplomat's emotion. This sanction affects their work as a diplomat in the future, and this can hurt the diplomat's mental feeling if they receive a wrong accused from receiving state because of political issue among state, and were declared by the persona non grata. The lead of PNG declaration by political issue among state always happens in this diplomatic stage.

As the real current situation in Venezuela case, the Venezuela government has expelled many diplomats from various countries since the leader of diplomat's countries do not support the act of Venezuela government who violates the rights of opposition parties. Diplomats from different countries were accused with different reasons such as Canada charge d'affaires

were accused as a rude, and persistent person by interfering into the internal affairs of Venezuela.¹⁰⁹ It does not only happen on Canada charge d'affaires, but it also happened on the United States' diplomats. They were told to leave the Venezuela within 72 hours because the United State President, Donald Trump, recognized Venezuela opposition party leader, Juan Guaido, as Venezuela's interim president. Due to the United States act, Venezuela decides to break the diplomatic ties with the United States, and expel many US diplomats by Persona non Grata.¹¹⁰

As it was describe above about the Persona non Grata cases which was happened due to the political issues among the leaders of states, diplomats were expelled indirectly. This mentally causes distress to diplomats especially for new appointed diplomats. They were easily got the mental attack since this will affect their future as diplomats.

¹⁰⁹ "CBC News," *Canadian government retaliates by expelling Venezuela diplomat*, December 25, 2017, Accessed July 08, 2019, <https://www.cbc.ca/news/politics/canada-venezuela-diplomat-expelled-1.4464507>.

¹¹⁰ "VOA News," *US supports opposition leader, Venezuela expels diplomats*, January 23, 2019, Accessed 08 July, 2019, <https://learningenglish.voanews.com/a/us-supports-opposition-leader-venezuela-expels-diplomats/4756063.html>.

RECOMMENDATION

As we are the researchers for this thesis topic, we found out some recommendations to make the actual practice of the principle of Persona Non Grata become better and more acceptable. In order to limit the scope of principle PNG not to be so broad in international stage, some recommendations have been figured out through the analysis in the previous case studies. We divided the recommendations into two points, the first one is personal aspect, and the second one is political aspect that we based on the real situation of case studies. However, all cases are not the same, since some cases are serious and some are not. For the recommendation below, we have split between serious and not serious cases in order to make it more convenient to understand.

- **Personal Aspect**

This situation refers to the action of diplomat itself. Before declaring PNG to diplomat, the receiving state should consider whether the case is serious or not, but if the case is not a serious one, the state shall not declare persona non grata. They should consider the other methods such as having negotiation, providing the second chance for diplomat. However, if it is the serious cases, the receiving state should call them for warning instead of declaring Persona Non Grata, and have an investigation on the case.

- 1. Negotiation**

In case, diplomat does not commit any serious activities such as giving a speech unintentionally about the culture in wrong way or just said something without overthinking for the first time, the receiving state shall not declare PNG. If diplomat commits a crime without intention, the receiving state should let them compensate for the victim. For example, when diplomat drive a car and unintentionally hit someone die, the receiving state should ask them for compensation instead of declaring PNG.

Initially, they better call the diplomat and just talk to them in term of negotiation because sometimes diplomat does not have an intention to say or do something to affect the receiving state. However, it can be happened when the diplomat does not know well about the law or culture of the receiving state. The receiving state should understand and give them a chance to negotiate since it is better than declaring PNG.

2. Providing the Second Chance for Diplomat

The receiving state should pardon on diplomatic first mistake since they should have kind heart by being tolerant with a small or forgivable mistake of diplomats. This sanction is an extreme measure for both sides, and it will have grave influence such as leading to the broken of diplomatic ties. Some receiving states seem to be easy in using this principle, so they should give some time for sending state investigate on diplomats. The receiving state shall take time to think and conduct a right decision. This principle should not be implemented just because the host state does not favor the diplomats. The appointment should be arranged, and both sides need to negotiate first before implementing this principle. If the evidence is found out that the diplomats are wrong, they can be dismissed from the receiving state. Anyways, if the receiving state cannot negotiate with diplomat, a state can just send the letter to the sending state to recall him back instead of declare PNG.

3. Warning Instead of Persona Non Grata Declaration

In case diplomat commits a serious activity in the receiving state, the receiving state can refuse negotiation, but a state can call them for warning instead of negotiating. If the diplomat performs a serious action, they will be alerted by receiving state. The receiving state should warn the diplomat of their wrong doing instead of declaring Persona non Grata. The state shall keep monitoring him for the daily activities in order to make sure that he still acts as before or not. If he still continues his wrong doing, the receiving state does not have to

recognize him as a diplomat anymore, and send the letter to the sending state to take the diplomat back. This is the peaceful solutions without interrupting their friendship and cooperation.

4. Investigation

Both receiving state and sending state shall conduct the proper investigation about the problem that diplomat has caused. This investigate should be the cooperation between two states, and it should not be from only one side, the receiving state.¹¹¹ The purpose of having the investigation is to find enough evidence of the problem or crime that diplomats commit. It is not wrong to expel diplomats, who commit something wrong; however, the receiving state usually uses the excuse of interference in the internal affairs to declare diplomats PNG.

- **Political Aspect**

This situation refers to the diplomat activities related to the political issue. The receiving state should look at the real situation and analyze those activities which are an intended act and an unintended act. The below recommendations are for receiving when diplomat involves in political issues. We have divided between serious and not serious crimes. When situation is the serious case, the receiving state should think about changing diplomat better than expulsion. In case diplomat commits any serious actions by intention, the receiving state should give diplomats sufficient times to prepare and to be ready to leave the country.

1. Changing Diplomat Better Than Expulsion

This method is very useful in avoiding using principle PNG when the receiving states do not favor the diplomats' bad behavior. It was found out that in some cases the receiving states declare PNG because diplomats are impolite or do not have passion to work.

¹¹¹ "The New Yorker," *Why Trump's Expulsion of Diplomats Does (and Doesn't) Unnerve Moscow*, March 26, 2018, Accessed July 09, 2019, <https://www.newyorker.com/news/news-desk/trump-expulsion-diplomats-does-and-doesnt-unnerve-moscow>.

This causes the difficulty in processing the work with receiving states' government official. This situation can be negotiated between states since when the sending states have known their diplomats' mistakes, they will agree in changing diplomats better than receiving the declaration of PNG. This method is used in order to prevent the loss of bilateral relations, and restrain another problem that is due to being disappointed with each other.

a. In Case of Spy and Conspiracy

The conspiracy is exactly the serious case, and it is the diplomats' responsibility; however, the receiving state shall ask the sending state to recall him back home, and change a new diplomat. Initially, this method is suggested since it is the best way to maintain the relationships between states. Diplomat can have a chance to perform better as a diplomat in other countries. If diplomat is declared PNG by receiving state, their background will be noted when they are being a diplomat in other states. If the sending state argues not to recall him back, the receiving state can implement the principle PNG after trying peaceful method.

2. Holding the Authority of Diplomats

In the case of having conflict between states' leader without diplomat's conscious, it is suggested that the authority of diplomats should be suspended until the dispute ends. The most recent case studies that have been analyze in the above chapter, is about the conflicts between states which lead to the declaration of PNG on diplomats on each states. When one side declare the principle, another side will use the principle reciprocal by expel their diplomats back. The most popular topic in contemporary international relations is about Venezuela expelling many diplomats. This causes the damage of diplomats when they are not directly involved in the conflicts of leaders. When this situation occurs, the mission of diplomats should be hold for a while until the dispute between states' leader becomes better.

3. Offering the Sufficient Time for Diplomats

In case the receiving state decides to expel diplomat by using the principle of *Persona non Grata*, the state should give them the sufficient times. The duration that the receiving states have given the diplomats to leave, is usually within 24 hours or 72 hours.¹¹² It is acceptable to expel diplomats who create serious problems; however, they should be given enough time to prepare their work for other worker in embassy to continue, and pack their belonging well. Diplomats are usually told to leave between these periods of time, and their stuff are always packed by embassy staff and sent it back to them to home country.¹¹³ In fact, they do not have enough time to even prepare the flight ticket, so the receiving state shall set enough time for them.

¹¹² "FP Explainer News," *So, How do you expel an ambassador, Anyway?*, May 29, 2012, Accessed July 09, 2019, <https://foreignpolicy.com/2012/05/29/so-how-do-you-expel-an-ambassador-anyway/>.

¹¹³ "Diplomat News," *Persona non Grata*, May 16, 2018, Accessed July 08, 2019, <https://diplomatmagazine.com/persona-non-grata/>.

CONCLUSION

As it has been discussed so far, the definition of the principle of Persona Non Grata means unacceptable or unwelcome person. Persona Non Grata is the principle of expelling diplomat from the sending state, and it is declared by the receiving state. This principle applies for three conditions which are the political issues among states, individual acts of diplomats, and economic issues. According to the Article 9 of VCDR, the declaration of principle PNG does not obliged to give reasons, and diplomat has to leave the country within a period of time that receiving state arranges, especially within 24 or 72 hours. After the declaration of persona non grata, diplomats are recalled back to the home country, and do not allow returning again as a diplomat until the receiving state withdraws PNG.

Diplomat is a representative person from the sending state to promote the state's interest, maintain good relations between states on politics, economics, commercial and trade activities, culture, as well as tourism. The relations between states are really important, and diplomat is the one who connects all those important relations. There are five obligations of diplomat such as diplomat has the obligation to respect the laws and regulation of the receiving states, the obligation not to interfere in the international affairs of the receiving state, the obligation to obtain from professional and commercial activities, the obligation relating to how the mission conducts official business and the obligation relating to the use of the premises of the mission.

However, diplomat is protected from their diplomatic immunities and privileges. Diplomatic immunities and privileges are granted to diplomats during their mission in the receiving state. It allows diplomats to work freely without feeling scare or unsecure, and nobody can abuse the right to protect diplomat from arresting, and getting away from domestic jurisdiction, custom duties, and taxation. Anyways, diplomatic immunity of

diplomat can be waived by the head of mission or when the PNG is declared. The waiver of immunities and Privileges can be express and imply.

As it was explained in the above chapter about the case studies in various countries in declaration of principle PNG, there are many different reasons that the host states use against the sending states. The most common reasons that have been used since the war world period are the conspiracy, and the interference in internal affairs of receiving states. These two reasons are the most popular one in the declaration of PNG. Also, the declaration can be happened due to the improper acts of diplomats such as the illegal trafficking, the violation of human rights, and the sexual insult, the violation of domestic law, the criminal crime, and the bad behavior of diplomats.

The declaration of principle PNG impacts diplomatic ties which mean that the relations between both countries might be interrupted and can lead to a war. The Principle Persona non Grata is also declared when there was a conflict between states especially about the political situation. It does not only happen because of diplomats' individual acts. This indicates that diplomats can be affect due of their states conflict with hosting states. This has a very bad influence on their future career as a diplomat. For some diplomats, they will be mentally attacked due to the unreasonable principle PNG declaration.

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Done at Vienna on 18 April 1961. Entered into force on 24 April 1964.
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2005

Vienna Convention on Diplomatic Relations
Done at Vienna on 18 April 1961

The States Parties to the present Convention,

Recalling that peoples of all nations from ancient times have recognized the status of diplomatic agents,

Having in mind the purposes and principles of the Charter of the United Nations concerning the sovereign equality of States, the maintenance of international peace and security, and the promotion of friendly relations among nations,

Believing that an international convention on diplomatic intercourse, privileges and immunities would contribute to the development of friendly relations among nations, irrespective of their differing constitutional and social systems,

Realizing that the purpose of such privileges and immunities is not to benefit individuals but to ensure the efficient performance of the functions of diplomatic missions as representing States,

Affirming that the rules of customary international law should continue to govern questions not expressly regulated by the provisions of the present Convention,

Have agreed as follows:

Article 1

For the purpose of the present Convention, the following expressions shall have the meanings hereunder assigned to them:

- (a) The “head of the mission” is the person charged by the sending State with the duty of acting in that capacity;
- (b) The “members of the mission” are the head of the mission and the members of the staff of the mission;
- (c) The “members of the staff of the mission” are the members of the diplomatic staff, of the administrative and technical staff and of the service staff of the mission;
- (d) The “members of the diplomatic staff” are the members of the staff of the mission having diplomatic rank;

- (e) A “diplomatic agent” is the head of the mission or a member of the diplomatic staff of the mission;
- (f) The “members of the service staff” are the members of the staff of the mission in the domestic service of the mission;
- (g) A “private servant” is a person who is in the domestic service of a member of the mission and who is not an employee of the sending State;
- (h) The “premises of the mission” are the buildings or parts of buildings and the land ancillary thereto, irrespective of ownership, used for the purposes of the mission including the residence of the head of the mission.

Article 2

The establishment of diplomatic relations between States, and of permanent diplomatic missions, takes place by mutual consent.

Article 3

1. The functions of a diplomatic mission consist, inter alia, in:

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

2. Nothing in the present Convention shall be construed as preventing the performance of consular functions by a diplomatic mission.

Article 4

1. The sending State must make certain that the *agrément* of the receiving State has been given for the person it proposes to accredit as head of the mission to that State.

2. The receiving State is not obliged to give reasons to the sending State for a refusal of *agrément*.

Article 5

1. The sending State may, after it has given due notification to the receiving States concerned, accredit a head of mission or assign any member of the diplomatic staff, as the case may be, to more than one State, unless there is express objection by any of the receiving States.

2. If the sending State accredits a head of mission to one or more other States it may establish a diplomatic mission headed by a chargé d'affaires ad interim in each State where the head of mission has not his permanent seat.

3. A head of mission or any member of the diplomatic staff of the mission may act as representative of the sending State to any international organization.

Article 6

Two or more States may accredit the same person as head of mission to another State, unless objection is offered by the receiving State.

Article 7

Subject to the provisions of articles 5, 8, 9 and 11, the sending State may freely appoint the members of the staff of the mission. In the case of military, naval or air attachés, the receiving State may require their names to be submitted beforehand, for its approval.

Article 8

1. Members of the diplomatic staff of the mission should in principle be of the nationality of the sending State.

2. Members of the diplomatic staff of the mission may not be appointed from among persons having the nationality of the receiving State, except with the consent of that State which may be withdrawn at any time.

3. The receiving State may reserve the same right with regard to nationals of a third State who are not also nationals of the sending State.

Article 9

1. The receiving State may at any time and without having to explain its decision, notify the sending State that the head of the mission or any member of the diplomatic staff of the mission is *persona non grata* or that any other member of the staff of the mission is not acceptable. In any such case, the sending State shall, as appropriate, either recall the person concerned or terminate his functions with the mission. A person may be declared *non grata* or not acceptable before arriving in the territory of the receiving State.

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

Article 10

1. The Ministry for Foreign Affairs of the receiving State, or such other ministry as may be agreed, shall be notified of:

- (a) The appointment of members of the mission, their arrival and their final departure or the termination of their functions with the mission;
- (b) The arrival and final departure of a person belonging to the family of a member of the mission and, where appropriate, the fact that a person becomes or ceases to be a member of the family of a member of the mission;
- (c) The arrival and final departure of private servants in the employ of persons referred to in subparagraph (a) of this paragraph and, where appropriate, the fact that they are leaving the employ of such persons;
- (d) The engagement and discharge of persons resident in the receiving State as members of the mission or private servants entitled to privileges and immunities.

2. Where possible, prior notification of arrival and final departure shall also be given.

Article 11

1. In the absence of specific agreement as to the size of the mission, the receiving State may require that the size of a mission be kept within limits considered

by it to be reasonable and normal, having regard to circumstances and conditions in the receiving State and to the needs of the particular mission.

2. The receiving State may equally, within similar bounds and on a non-discriminatory basis, refuse to accept officials of a particular category.

Article 12

The sending State may not, without the prior express consent of the receiving State, establish offices forming part of the mission in localities other than those in which the mission itself is established.

Article 13

1. The head of the mission is considered as having taken up his functions in the receiving State either when he has presented his credentials or when he has notified his arrival and a true copy of his credentials has been presented to the Ministry for Foreign Affairs of the receiving State, or such other ministry as may be agreed, in accordance with the practice prevailing in the receiving State which shall be applied in a uniform manner.

2. The order of presentation of credentials or of a true copy thereof will be determined by the date and time of the arrival of the head of the mission.

Article 14

1. Heads of mission are divided into three classes, namely:

- (a) That of ambassadors or nuncios accredited to Heads of State, and other heads of mission of equivalent rank;
- (b) That of envoys, ministers and internuncios accredited to Heads of State;
- (c) That of chargés d'affaires accredited to Ministers for Foreign Affairs.

2. Except as concerns precedence and etiquette, there shall be no differentiation between heads of mission by reason of their class.

Article 15

The class to which the heads of their missions are to be assigned shall be agreed between States.

Article 16

1. Heads of mission shall take precedence in their respective classes in the order of the date and time of taking up their functions in accordance with article 13.

2. Alterations in the credentials of a head of mission not involving any change of class shall not affect his precedence.

3. This article is without prejudice to any practice accepted by the receiving State regarding the precedence of the representative of the Holy See.

Article 17

The precedence of the members of the diplomatic staff of the mission shall be notified by the head of the mission to the Ministry for Foreign Affairs or such other ministry as may be agreed.

Article 18

The procedure to be observed in each State for the reception of heads of mission shall be uniform in respect of each class.

Article 19

1. If the post of head of the mission is vacant, or if the head of the mission is unable to perform his functions a chargé d'affaires ad interim shall act provisionally as head of the mission. The name of the chargé d'affaires ad interim shall be notified, either by the head of the mission or, in case he is unable to do so, by the Ministry for Foreign Affairs of the sending State to the Ministry for Foreign Affairs of the receiving State or such other ministry as may be agreed.

2. In cases where no member of the diplomatic staff of the mission is present in the receiving State, a member of the administrative and technical staff may, with the consent of the receiving State, be designated by the sending State to be in charge of the current administrative affairs of the mission.

Article 20

The mission and its head shall have the right to use the flag and emblem of the sending State on the premises of the mission, including the residence of the

head of the mission, and on his means of transport.

Article 21

1. The receiving State shall either facilitate the acquisition on its territory, in accordance with its laws, by the sending State of premises necessary for its mission or assist the latter in obtaining accommodation in some other way.

2. It shall also, where necessary, assist missions in obtaining suitable accommodation for their members.

Article 22

1. The premises of the mission shall be inviolable. The agents of the receiving State may not enter them, except with the consent of the head of the mission.

2. The receiving State is under a special duty to take all appropriate steps to protect the premises of the mission against any intrusion or damage and to prevent any disturbance of the peace of the mission or impairment of its dignity.

3. The premises of the mission, their furnishings and other property thereon and the means of transport of the mission shall be immune from search, requisition, attachment or execution.

Article 23

1. The sending State and the head of the mission shall be exempt from all national, regional or municipal dues and taxes in respect of the premises of the mission, whether owned or leased, other than such as represent payment for specific services rendered.

2. The exemption from taxation referred to in this article shall not apply to such dues and taxes payable under the law of the receiving State by persons contracting with the sending State or the head of the mission.

Article 24

The archives and documents of the mission shall be inviolable at any time and wherever they may be.

Article 25

The receiving State shall accord full facilities for the performance of the functions of the mission.

Article 26

Subject to its laws and regulations concerning zones entry into which is prohibited or regulated for reasons of national security, the receiving State shall ensure to all members of the mission freedom of movement and travel in its territory.

Article 27

1. The receiving State shall permit and protect free communication on the part of the mission for all official purposes. In communicating with the Government and the other missions and consulates of the sending State, wherever situated, the mission may employ all appropriate means, including diplomatic couriers and messages in code or cipher. However, the mission may install and use a wireless transmitter only with the consent of the receiving State.

2. The official correspondence of the mission shall be inviolable. Official correspondence means all correspondence relating to the mission and its functions.

3. The diplomatic bag shall not be opened or detained.

4. The packages constituting the diplomatic bag must bear visible external marks of their character and may contain only diplomatic documents or articles intended for official use.

5. The diplomatic courier, who shall be provided with an official document indicating his status and the number of packages constituting the diplomatic bag, shall be protected by the receiving State in the performance of his functions. He shall enjoy person inviolability and shall not be liable to any form of arrest or detention.

6. The sending State or the mission may designate diplomatic couriers ad hoc. In such cases the provisions of paragraph 5 of this article shall also apply, except that the immunities therein mentioned shall cease to apply when such a courier has delivered to the consignee the diplomatic bag in his charge.

7. A diplomatic bag may be entrusted to the captain of a commercial aircraft

scheduled to land at an authorized port of entry. He shall be provided with an official document indicating the number of packages constituting the bag but he shall not be considered to be a diplomatic courier. The mission may send one of its members to take possession of the diplomatic bag directly and freely from the captain of the aircraft.

Article 28

The fees and charges levied by the mission in the course of its official duties shall be exempt from all dues and taxes.

Article 29

The person of a diplomatic agent shall be inviolable. He shall not be liable to any form of arrest or detention. The receiving State shall treat him with due respect and shall take all appropriate steps to prevent any attack on his person, freedom or dignity.

Article 30

1. The private residence of a diplomatic agent shall enjoy the same inviolability and protection as the premises of the mission.

2. His papers, correspondence and, except as provided in paragraph 3 of article 31, his property, shall likewise enjoy inviolability.

Article 31

1. A diplomatic agent shall enjoy immunity from the criminal jurisdiction of the receiving State. He shall also enjoy immunity from its civil and administrative jurisdiction, except in the case of:

- (a) A real action relating to private immovable property situated in the territory of the receiving State, unless he holds it on behalf of the sending State for the purposes of the mission;
- (b) An action relating to succession in which the diplomatic agent is involved as executor, administrator, heir or legatee as a private person and not on behalf of the sending State;

(c) An action relating to any professional or commercial activity exercised by the diplomatic agent in the receiving State outside his official functions.

2. A diplomatic agent is not obliged to give evidence as a witness.

3. No measures of execution may be taken in respect of a diplomatic agent except in the cases coming under subparagraphs (a), (b) and (c) of paragraph 1 of this article, and provided that the measures concerned can be taken without infringing the inviolability of his person or of his residence.

The immunity of a diplomatic agent from the jurisdiction of the receiving State does not exempt him from the jurisdiction of the sending State.

Article 32

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 judgment, for which a separate waiver shall be necessary.

Article 33

1. Subject to the provisions of paragraph 3 of this article, a diplomatic agent shall with respect to services rendered for the sending State be exempt from social security provisions which may be in force in the receiving State.

2. The exemption provided for in paragraph 1 of this article shall also apply to private servants who are in the sole employ of a diplomatic agent, on condition:

(a) That they are not nationals of or permanently resident in the receiving State; and

(b) That they are covered by the social security provisions which may be in force in the sending State or a third State.

3. A diplomatic agent who employs persons to whom the exemption provided for in paragraph 2 of this article does not apply shall observe the obligations which the social security provisions of the receiving State impose upon employers.

4. The exemption provided for in paragraphs 1 and 2 of this article shall not preclude voluntary participation in the social security system of the receiving State provided that such participation is permitted by that State.

5. The provisions of this article shall not affect bilateral or multilateral agreements concerning social security concluded previously and shall not prevent the conclusion of such agreements in the future.

Article 34

A diplomatic agent shall be exempt from all dues and taxes, personal or real, national, regional or municipal, except:

- (a) Indirect taxes of a kind which are normally incorporated in the price of goods or services;
- (b) Dues and taxes on private immovable property situated in the territory of the receiving State, unless he holds it on behalf of the sending State for the purposes of the mission;
- (c) Estate, succession or inheritance duties levied by the receiving State, subject to the provisions of paragraph 4 of article 39;
- (d) Dues and taxes on private income having its source in the receiving State and capital taxes on investments made in commercial undertakings in the receiving State;
- (e) Charges levied for specific services rendered;
- (f) Registration, court or record fees, mortgage dues and stamp duty, with respect to immovable property, subject to the provisions of article 23.

Article 35

The receiving State shall exempt diplomatic agents from all personal services,

from all public service of any kind whatsoever, and from military obligations such as those connected with requisitioning, military contributions and billeting.

Article 36

1. The receiving State shall, in accordance with such laws and regulations as it may adopt, permit entry of and grant exemption from all customs duties, taxes, and related charges other than charges for storage, cartage and similar services, on:

- (a) Articles for the official use of the mission;
- (b) Articles for the personal use of a diplomatic agent or members of his family forming part of his household, including articles intended for his establishment.

2. The personal baggage of a diplomatic agent shall be exempt from inspection, unless there are serious grounds for presuming that it contains articles not covered by the exemptions mentioned in paragraph 1 of this article, or articles the import or export of which is prohibited by the law or controlled by the quarantine regulations of the receiving State. Such inspection shall be conducted only in the presence of the diplomatic agent or of his authorized representative.

Article 37

1. The members of the family of a diplomatic agent forming part of his household shall, if they are not nationals of the receiving State, enjoy the privileges and immunities specified in articles 29 to 36.

2. Members of the administrative and technical staff of the mission, together with members of their families forming part of their respective households, shall, if they are not nationals of or permanently resident in the receiving State, enjoy the privileges and immunities specified in articles 29 to 35, except that the immunity from civil and administrative jurisdiction of the receiving State specified in paragraph 1 of article 31 shall not extend to acts performed outside the course of their duties. They shall also enjoy the privileges specified in article 36, paragraph 1, in respect of articles imported at the time of first installation.

3. Members of the service staff of the mission who are not nationals of or permanently resident in the receiving State shall enjoy immunity in respect of acts

performed in the course of their duties, exemption from dues and taxes on the emoluments they receive by reason of their employment and the exemption contained in article 33.

4. Private servants of members of the mission shall, if they are not nationals of or permanently resident in the receiving State, be exempt from dues and taxes on the emoluments they receive by reason of their employment. In other respects, they may enjoy privileges and immunities only to the extent admitted by the receiving State. However, the receiving State must exercise its jurisdiction over those persons in such a manner as not to interfere unduly with the performance of the functions of the mission.

Article 38

1. Except insofar as additional privileges and immunities may be granted by the receiving State, a diplomatic agent who is a national of or permanently resident in that State shall enjoy only immunity from jurisdiction, and inviolability, in respect of official acts performed in the exercise of his functions.

2. Other members of the staff of the mission and private servants who are nationals of or permanently resident in the receiving State shall enjoy privileges and immunities only to the extent admitted by the receiving State. However, the receiving State must exercise its jurisdiction over those persons in such a manner as not to interfere unduly with the performance of the functions of the mission.

Article 39

1. Every person entitled to privileges and immunities shall enjoy them from the moment he enters the territory of the receiving State on proceeding to take up his post or, if already in its territory, from the moment when his appointment is notified to the Ministry for Foreign Affairs or such other ministry as may be agreed.

2. When the functions of a person enjoying privileges and immunities have come to an end, such privileges and immunities shall normally cease at the moment when he leaves the country, or on expiry of a reasonable period in which to do so, but shall subsist until that time, even in case of armed conflict. However, with respect to acts performed by such a person in the exercise of his functions as a member of the

mission, immunity shall continue to subsist.

3. In case of the death of a member of the mission, the members of his family shall continue to enjoy the privileges and immunities to which they are entitled until the expiry of a reasonable period in which to leave the country.

4. In the event of the death of a member of the mission not a national of or permanently resident in the receiving State or a member of his family forming part of his household, the receiving State shall permit the withdrawal of the movable property of the deceased, with the exception of any property acquired in the country the export of which was prohibited at the time of his death. Estate, succession and inheritance duties shall not be levied on movable property the presence of which in the receiving State was due solely to the presence there of the deceased as a member of the mission or as a member of the family of a member of the mission.

Article 40

1. If a diplomatic agent passes through or is in the territory of a third State, which has granted him a passport visa if such visa was necessary, while proceeding to take up or to return to his post, or when returning to his own country, the third State shall accord him inviolability and such other immunities as may be required to ensure his transit or return. The same shall apply in the case of any members of his family enjoying privileges or immunities who are accompanying the diplomatic agent, or travelling separately to join him or to return to their country.

2. In circumstances similar to those specified in paragraph 1 of this article, third States shall not hinder the passage of members of the administrative and technical or service staff of a mission, and of members of their families, through their territories.

3. Third States shall accord to official correspondence and other official communications in transit, including messages in code or cipher, the same freedom and protection as is accorded by the receiving State. They shall accord to diplomatic couriers, who have been granted a passport visa if such visa was necessary and diplomatic bags in transit, the same inviolability and protection as the receiving State is bound to accord.

4. The obligations of third States under paragraphs 1, 2 and 3 of this article shall

also apply to the persons mentioned respectively in those paragraphs, and to official communications and diplomatic bags, whose presence in the territory of the third State is due to force majeure.

Article 41

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 State. They also have a duty not to interfere in the internal affairs of that State.

2. All official business with the receiving State entrusted to the mission by the sending State shall be conducted with or through the Ministry for Foreign Affairs of the receiving State or such other ministry as may be agreed.

3. The premises of the mission must not be used in any manner incompatible with the functions of the mission as laid down in the present Convention or by other rules of general international law or by any special agreements in force between the sending and the receiving State.

Article 42

A diplomatic agent shall not in the receiving State practice for personal profit any professional or commercial activity.

Article 43

The function of a diplomatic agent comes to an end, inter alia:

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

Article 44

The receiving State must, even in case of armed conflict, grant facilities in order to enable persons enjoying privileges and immunities, other than nationals of

the receiving State, and members of the families of such persons irrespective of their nationality, to leave at the earliest possible moment. It must, in particular, in case of need, place at their disposal the necessary means of transport for themselves and their property.

Article 45

If diplomatic relations are broken off between two States, or if a mission is permanently or temporarily recalled:

- (a) The receiving State must, even in case of armed conflict, respect and protect the premises of the mission, together with its property and archives;
- (b) The sending State may entrust the custody of the premises of the mission, together with its property and archives, to a third State acceptable to the receiving State;
- (c) The sending State may entrust the protection of its interests and those of its nationals to a third State acceptable to the receiving State.

Article 46

A sending State may with the prior consent of a receiving State, and at the request of a third State not represented in the receiving State, undertake the temporary protection of the interests of the third State and of its nationals.

Article 47

1. In the application of the provisions of the present Convention, the receiving State shall not discriminate as between States.

2. However, discrimination shall not be regarded as taking place:

- (a) Where the receiving State applies any of the provisions of the present Convention restrictively because of a restrictive application of that provision to its mission in the sending State;
- (b) Where by custom or agreement States extend to each other more favorable treatment than is required by the provisions of the present Convention.

Article 48

The present Convention shall be open for signature by all States Members of the United Nations or of any of the specialized agencies Parties to the Statute of the International Court of Justice, and by any other State invited by the General Assembly of the United Nations to become a Party to the Convention, as follows: until 31 October 1961 at the Federal Ministry for Foreign Affairs of Austria and subsequently, until 31 March 1962, at the United Nations Headquarters in New York.

Article 49

The present Convention is subject to ratification. The instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article 50

The present Convention shall remain open for accession by any State belonging to any of the four categories mentioned in article 48. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 51

1. The present Convention shall enter into force on the thirtieth day following the date of deposit of the twenty-second instrument of ratification or accession with the Secretary-General of the United Nations.

2. For each State ratifying or acceding to the Convention after the deposit of the twenty-second instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification or accession.

Article 52

The Secretary-General of the United Nations shall inform all States belonging to any of the four categories mentioned in article 48:

(a) Of signatures to the present Convention and of the deposit of instruments of ratification or accession, in accordance with articles 48, 49 and 50;

(b) Of the date on which the present Convention will enter into force, in accordance with article 51.

Article 53

The original of the present Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations, who shall send certified copies thereof to all States belonging to any of the four categories mentioned in article 48.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, being duly authorized thereto by their respective Governments, have signed the present Convention.

DONE at Vienna this eighteenth day of April one thousand nine hundred and sixty-one.