

## **DIPLOMATIC LAW: PRIVILEGES AND IMMUNITIES**

**Diplomatic privileges and immunities usually receive attention only when exceptions or abuses are reported in the news.**

Starting with the evolution of diplomatic privileges and immunities and ending with the question of whether the Vienna Convention on Diplomatic Relations should be revisited in the Internet era, this course introduces participants to diplomatic law in general and diplomatic privileges and immunities in particular. Combining a theoretical introduction with practical exercises, participants will become familiar with current developments in the field of diplomatic privileges and immunities.

**By the end of the course, participants should be able to:**

- Explain the difference between the concepts of immunities, privileges and facilities, providing examples of each.
- Describe the legal basis of diplomatic privileges and immunities, including as it relates to individuals, states and representatives, diplomatic missions, and consular missions.
- Explain the theoretical justifications for privileges and immunities and how regulation has evolved.
- Describe the privileges and immunities of states and their representatives (including heads of states and governments, other ministers and officials, diplomatic missions and diplomatic agents).
- Compare and contrast the privileges and immunities of diplomatic missions and agents with those of consular missions and agents.
- Analyze cases of use and abuse of diplomatic privileges and immunities in the modern era, and taking these into account, argue in favour of, or against, revisions to the Vienna Convention on Diplomatic Relations.

### **Excerpt from course materials**

*...Illegal parking is a particular problem in the main centres of multilateral diplomacy such as New York City, Geneva, Vienna, Paris, and London. The magnitude of the problem can be illustrated by the fact that between November 1997 and the end of 2002, diplomats in the US accumulated 150,000 unpaid parking tickets – a total of US \$18 million of unpaid fines...The authorities of a receiving state may choose different strategies to enforce local parking regulations in spite of diplomatic privileges and immunities... In many diplomatic centres, the first step is to introduce proper evidence and reporting to the head of a diplomatic mission... The next step is to make those reports public. Publicity puts additional pressure on diplomats and diplomatic missions to observe local parking rules.*

## Course outline

1. **Principles and Concepts, Evolution and Instruments:** We look at the difference between the concepts of immunities, privileges, and facilities, and the historical evolution of privileges and immunities. We describe the main legal instruments that regulate privileges and immunities: mainly international conventions and treaties, and finally focus on the different theoretical justifications for privileges and immunities.
2. **Privileges and Immunities of States:** Starting by defining state immunity, we also examine the general source of legitimacy of privilege and immunity in customary law and conventions. We study how law and conventions form and condition absolute and qualified state immunity, closing with an examination of specific cases of immunity: heads of state and governments; immunities of ministers, state officials and parliamentarians; and ministers of foreign affairs.
3. **Immunities of Diplomatic Missions:** In order to represent their sending states, diplomatic missions need appropriate status so that they are not subject to the jurisdiction and power of receiving states. We discuss the types and functions of diplomatic missions and take a close look at the immunities accorded to diplomatic missions.
4. **Privileges and Facilities Accorded to Diplomats and Missions:** We further examine the facilities and privileges accorded to diplomatic missions and individual diplomatic agents, in particular inviolability of communication and freedom of movement. These privileges rest on the authority of the Vienna Convention on Diplomatic Relations, which we analyse carefully.
5. **Immunities of Diplomatic Agents:** The purpose of granting immunities and privileges to diplomats is to enable them to carry out their functions effectively. Although personal immunities and privileges of a diplomatic agent apply directly, in fact, they are awarded to the sending state and the individual diplomat enjoys them only in his or her capacity as an agent of the state.
6. **Consular Privileges and Immunities:** We consider the codification of consular law, then we examine the regulations that govern the establishment of consular relations. We also outline the regulations governing consular posts and consular functions, as well as the privileges, immunities, and facilities they are granted. Finally, we look at the privileges and immunities of consular officers.
7. **Special Missions and International Organisations:** We define privileges and immunities of international organisations and their legal and conceptual foundations, using the UN as our primary example. Following from the rights of organisations, international civil servants have certain privileges and immunities. The privileges and immunities of missions to international organisations are distinct from those of diplomatic missions.

8. **Abuse of Privileges and Immunities:** Should the Vienna Convention on Diplomatic Relations be revisited? Diplomatic privileges and immunities usually receive attention only when exceptions or abuses are reported in the news. We examine some of these issues, most notably traffic violations, the protection of public order, London's congestion charge, and abuse of the diplomatic bag. Finally, we examine whether a revision of the Vienna Convention is needed and wanted.

## **Methodology**

This course is conducted entirely online over a period of ten weeks. Reading materials and tools for online interaction are provided through an online classroom. Each week, participants read the provided lecture text, adding questions, comments and references in the form of hypertext entries. Lecturers and other participants read and respond to these entries, creating interaction based on the lecture text. During the week, participants complete additional online activities (e.g. further discussion via blogs or forums, quizzes, group tasks, simulations or short assignments). At the end of the week, participants and lecturers meet online in a chat room to discuss the week's topic. To complete the course successfully, participants must write several essay assignments. Courses are based on a collaborative approach to learning, involving a high level of interaction.

## **Lecturers**

### **Mr Alan Franklin**

Lecturer, Athabasca University and Royal Roads University

Alan Franklin obtained an LLB and JD from the University of Toronto and an LLM in international law from the London School of Economics. He is currently living in Vancouver, Canada, teaching courses on international legal business risk to MBA students at Athabasca University, international and constitutional law at Royal Roads University, as well as courses on international law for the University of London international LLM program. Alan created and chairs an association of former United Nations Ambassadors in the USA.

### **Dr Jovan Kurbalija**

Executive Director

Dr Jovan Kurbalija is the Executive Director of DiploFoundation and Head of the Geneva Internet Platform (GIP). He was a member of the UN Working Group on Internet Governance (2004–2005), special advisor to the Chairman of the UN Internet Governance Forum (2006–2010), and a member of the High Level Multistakeholder Committee for NETmundial (2013–2014). In 2018-2019, he served

as co-Executive Director of the Secretariat of the United Nations (UN) High-level Panel on Digital Cooperation.

A former diplomat, Jovan has a professional and academic background in international law, diplomacy, and information technology. He has been a pioneer in the field of cyber diplomacy since 1992 when he established the Unit for Information Technology and Diplomacy at the Mediterranean Academy of Diplomatic Studies in Malta, and later, DiploFoundation.

Since 1997, Jovan's research and articles on cyber diplomacy have shaped research and policy discussion on the impact of the Internet on diplomacy and international relations. His book, *An Introduction to Internet Governance*, has been translated into 9 languages and is used as a textbook for academic courses worldwide. He lectures on e-diplomacy and Internet governance in academic and training institutions in many countries, including Austria (Diplomatic Academy of Vienna), Belgium (College of Europe), Switzerland (University of St Gallen), Malta (University of Malta), and the United States (University of Southern California).

His publishes regular articles on DiploFoundation's blog, and the Huffington Post.