Diplomatic & Consular Law: Research Guide

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Diplomatic and Consular Law

Part I: Introduction

A. Opening Remarks

Welcome! This is a guide to diplomatic and consular law, a fascinating area of the law. In a strict conceptual sense, diplomatic law is concerned with state-to-state political relations, whereas consular law deals with the relationship between individuals of sending and receiving states. Embassies and ambassadors establish high-level diplomatic relations, whereas consulates and consuls deal with the bureaucratic tasks of fostering trade, friendship, and understanding on an individual level. Diplomatic missions to a foreign state consist of establishing one embassy in the foreign state’s capital city and consulates in other major cities. For example, the U.S. Diplomatic Mission to Germany consists of the U.S. Embassy in Berlin and consulates in the major cities of Düsseldorf, Frankfurt, Hamburg, Leipzig, and Munich. Given the inter-related nature of the two branches of law, both diplomatic law and consular law are addressed together in this guide.

B. Background Information

For most of history, diplomatic and consular practice was governed by customary international law. States wanted to ensure that their envoys were protected abroad while on official missions, leading to the progressive establishment of norms governing diplomatic practice. Without such norms, significant transactions costs would incur whenever states interacted with each other. Although the fundamental rules such as the safe passage of diplomats were recognized by ancient civilizations, the rise of the modern nation-state following the 1648 Treaty of Westphalia coincided with the practice of establishing permanent missions in foreign countries. Although prominent scholars recorded emerging customary rules of diplomatic practice, the first attempt to codify diplomatic law was in 1815 at the Congress of Vienna in the aftermath of the Napoleonic wars. Later, in 1928, the Pan-American Union (the predecessor of the Organization of American States) codified rules regarding privileges and immunities. However, the rules did not accurately reflect state practice and only exerted a regional influence confined to Latin America. Successful attempts at the codification of diplomatic and consular law on an international scale occurred only after the International Law Commission of the United Nations took up the issue in the middle of the 20th century.

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1 See generally, the works of Hugo Grotius, Cornelius van Bynkershoek, and Emer de Vattel.
The following is a sampling of events that have implicated diplomatic and consular law in modern times:

- The incident where the Burmese ambassador to Sri Lanka murdered his wife and burned her body on a pyre of wood within embassy premises, 1979
- Shooting of a British law enforcement officer from inside the Libyan Embassy in London, 1984
- Kidnapping and attempted smuggling of a former Nigerian prime minister in a “diplomatic bag” from a London-area airport, 1984
- The waiver of diplomatic immunity for a high-ranking Georgian diplomat after killing a teenager in Maryland, 1997
- The unauthorized leak and publication of U.S. State Department cables, 2010
- The arrest of Deputy Counsel to General of the Indian Consulate in New York City, for allegedly committing visa fraud on behalf of her domestic worker, 2013

As you can see, much of the law in this field deals with the privileges and immunities accorded to diplomatic premises and diplomatic personnel. Privileges consist of “substantive exemptions from laws and regulations” (e.g. tax exemptions), whereas immunities “[do] not imply any exemption from substantive law but confer a procedural protection from the enforcement processes in the receiving state.”

In general, diplomats enjoy status-based (ratione personae) absolute immunity from civil and criminal prosecution, whereas consuls only enjoy functional immunity (ratione materiae) for conduct carried out in pursuance of official functions.

This guide primarily covers the international dimensions of diplomatic and consular law, but will also explore the state practice of the United States and that of selected other countries. The vast majority of sources described are in English. This guide, however, will not cover the privileges and immunities of international organizations such as the United Nations, which are often regulated by special agreements between the organization itself and its host state. Head of state immunities and privileges will also not be covered.

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6 For example, the 1946 Convention on the Privileges and Immunities of the United Nations (CPIUN) and the 1947 Headquarters Agreement form the legal basis for laws relating to the United Nations. Sometimes, the scope of diplomatic privileges and immunities are prescribed in the organization’s founding charter or articles of agreement (e.g. Article IX of the International Monetary Fund Articles of Agreement and Article 19 of the International Court of Justice Charter). The International Organization Immunities Act (IOIA) in the United States governs these entities.
7 Laws applicable to heads of state and foreign ministers are governed by customary international law. Decisions of the ICJ help interpret this body of law. See e.g., *Arrest Warrant of 11 April 2000 (Democratic Republic of Congo v. Belgium)*, *Judgment*, *I.C.J. Reports* 2002, p. 3.
C. Audience

This guide is intended to be broadly accessible to anyone interested in the field of diplomatic and consular law, including academics in the fields of law, international relations, political science, and history. However, special emphasis is given on practical applications of the law within the United States and in U.S. missions abroad. Therefore, this guide can be of particular interest to U.S. law enforcement officers, legal practitioners, Foreign Service officers, and other diplomatic personnel. Individuals from the private sector who regularly encounter and interact with diplomats and international guests may also find this guide to be enlightening.

Part II: Research Strategy

Suggested Research Strategy

The recommended steps for conducting research on a topic relating to diplomatic and consular law are: 1) Reading secondary sources, 2) Engaging with the text of multilateral treaties and of ICJ decisions, and 3) Researching state practice and the domestic implementation of international law. Each of these steps is elaborated as follows:

STEP 1: Reading Secondary Sources

Secondary sources can be particularly helpful in becoming acquainted with the topic. One good source is the Max Planck Encyclopedia of Public International Law (MPEPIL), an encyclopedia affiliated with the Max Planck Institute for Comparative Public Law and International Law based in Heidelberg, Germany. Published by the Oxford University Press, the encyclopedia is available in print, but the online version is more frequently updated. The encyclopedia\(^8\) contains background articles on various topics in diplomatic and consular law. Written by distinguished experts around the world, these articles offer a comprehensive and balanced discussion of topics such as “Diplomatic Immunity,” “Premises of Diplomatic Missions,” “Forms of Diplomatic Communications,” “Diplomatic Courier and Bag,” and “Diplomatic Protocol.” Articles can be located using the advanced search by subject and keywords, and often contain bibliographic entries,\(^9\) relevant laws, and cases. Users of this guide should first try and see if the topic they are researching is covered by one of these articles.

Another good source to use during the early stages of the research process is Oxford Bibliographies, which can best be described as a hybrid between an encyclopedia and an annotated bibliography. This source provides a narrative path towards finding sources already vetted by authorities in the field. The resources listed also include a myriad of foreign publications written in

\(^{8}\) [http://opil.ouplaw.com/home/EPIL](http://opil.ouplaw.com/home/EPIL). A subscription resource, access is provided through Berkeley Law.

\(^{9}\) Many of these entries are accompanied by University of California e-Links, which directs the user to the location of the sources.
foreign languages. The sheer breadth of sub-topics covered for each article is amazing, and each sub-topic includes citations to the most important international and national primary and secondary sources. Oxford Bibliographies can be accessed online through affiliation with an academic institution.\(^\text{10}\) Using the online platform, filter results by subject (“International Law”) and then refine the search using advanced search functions.

Finally, researchers should consult scholarly treatises and books on the topic, which are mostly available only in print. The four major books that focus exclusively on diplomatic and consular law are: 1) Eileen Denza’s *Diplomatic Law: Commentary on the Vienna Convention on Diplomatic Relations*,\(^\text{11}\) 2) Grant V. McClanahan’s *Diplomatic Immunity: Principles, Practices, and Problems*,\(^\text{12}\) 3) Luke T. Lee and John Quigley’s *Consular Law and Practice*,\(^\text{13}\) and 4) Ivor Roberts’ *Satow’s Diplomatic Practice*.\(^\text{14}\) There are also general treatises on international law with particular sections on diplomatic and consular law. Among the most highly acclaimed are: Oppenheim’s *International Law*\(^\text{15}\) (see Chapter 11, “Diplomatic Envoys” and Chapter 12, “Consuls”), Brownlie’s *Principles of Public International Law*\(^\text{16}\) (see Chapter 17, “Diplomatic and Consular Relations”), and *International Law Frameworks*\(^\text{17}\) (see Chapter 17, part C “Diplomatic, Consular, and Organizational Immunity”).

**STEP 2: Engaging with the Text of Multilateral Treaties and of ICJ Decisions**

The next step is to read the text of relevant United Nations multilateral treaties, the most important of which are the 1961 Vienna Convention on Diplomatic Relations (“VCDR”) and the 1963 Vienna Convention on Consular Relations (“VCCR”). Drafted only two years apart, these sister conventions form the bedrock of diplomatic and consular law.

The United Nations Audiovisual Library of International Law is an excellent resource to help make sense of text of the treaties.\(^\text{18}\) Under “Historical Archives,” click on “Diplomatic and Consular Relations” on the left-side bar to find three excellent entries on the VCDR, VCCR, and the Convention on Special Missions. Written by eminent scholars and practitioners such as Eileen Denza (author of the leading treatise on the VCDR), each entry contains an introductory note summarizing the historical context, negotiating history, key provisions, and influence of the treaty on subsequent treaties or on shaping subsequent law. The end of each introductory note contains lists of key primary and secondary source documents. Another tab on the page provides the procedural history of the treaty being examined. The entry also provides a direct link to the text of the treaty, a

\(^\text{10}\) [http://www.oxfordbibliographies.com/](http://www.oxfordbibliographies.com/).


list of select preparatory documents, status information, and even black-and-white photos of diplomats hard at work in the negotiation of the treaty. Lastly, the site offers video lectures relating to diplomacy, found under the “Lecture Series” section.

Finally, a researcher should consult important ICJ cases interpreting provisions of the multilateral treaties, such as the seminal case United States and Consular Staff in Tehran19 concerning the 1979 US Embassy Hostage Crisis in Tehran.

**STEP 3: Researching State Practice & Domestic Implementation of International Law**

The last step is to examine how a multilateral treaty is implemented and enforced within individual nation-states. A non-self-executing treaty requires domestic implementing legislation be passed before the treaty’s provisions can take effect within a country, in contrast with a self-executing treaty.20 For domestic legislation, Foreign Law Guide21 can provide the names and citations of the most important laws.

Another important source of primary law is customary international law (“CIL”). Although the VCDR and VCCR codified much of what had previously been customary international law, the latter still exists as a separate body of law. To establish a legally binding custom through CIL, two elements must be established. The first is state practice, which refers to the objective reality of what states actually do on the ground in their countries.22 State practice must be nearly universally accepted by all countries in the world in order to rise to the level of CIL. The second prong of CIL is opinio juris, which refers to the subjective sense of legal obligation that binds a country to a certain law.23

To research state practice and opinio juris, the primary go-to resource is Sources of State Practice in International Law.24 The chapters are organized by country and contain information about how treaties are ratified and implemented in that country. Each chapter also provides an annotated bibliography of print and electronic sources.

Yearbooks and publications by professional legal organizations (such as the Restatement Third of Foreign Relations Law of the United States) are helpful to understand the domestic implementation of international treaties. In addition to providing analysis, these resources contain citations to illustrative and/or important cases, statutes, and other regulations. The governments of

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19 United States and Consular Staff in Tehran, Judgment, I.C.J. Reports 1980, p. 3.
20 To determine whether a treaty is self-executing, US courts consider the text of the treaty itself and statements made by the executive and legislative branches during the treaty ratification process.
21 Foreign Law Guide is accessible through academic institutions such as Berkeley Law (Direct link: http://referenceworks.brillonline.com/browse/foreign-law-guide). Choose the country of interest, and then click on “Diplomatic Privileges and Immunities” under “Laws by Subject.” Some countries have more complete and up-to-date entries than others.
23 Id.
many countries also have documents relating to the implementation of diplomatic and consular law freely available on their websites. For example, the U.S. State Department publishes useful practice guides for law enforcement and judicial authorities on topics such as the consular access and notification.

**General Research Advice**

Following the three steps outlined above is the most logical way to approach a particular research endeavor. The field of diplomatic and consular law is rather small compared with other topics in public international law, so certain names of renowned publicists (e.g. Eileen Denza) will keep re-appearing during the research process. These individuals are prolific writers who produce high-quality articles and publications.

Also, keep in mind that diplomatic law and consular law (and their associated doctrines) is related to, but distinct from, other fields of law. Unless it is relevant, do not go down the wrong path and waste time researching concepts such as “sovereign state immunity,” “head of state immunity,” or “state responsibility.” These three legal doctrines may overlap with diplomatic and consular law, but are not strictly on point because they do not per se deal with diplomats and consuls. Keep in mind that the phrase “diplomatic immunity” is used sometimes in a misleading way to refer to “sovereign state immunity,” even though the former applies to individuals and the latter to states.

That being said, there are certain topics within diplomatic and consular law where looking in resources in other fields of law is helpful. For example, when researching consular notification and access under the VCCR, it may be useful to look at criminal law resources given that criminal law is often implicated when a foreign national is accused of or arrested for a crime.

Reliable Key words to use:
Diplomatic/Consular law, Privileges and Immunities of Diplomats, Vienna Convention on Diplomatic Relations, Vienna Convention on Consular Relations, Diplomatic Missions, Diplomatic/Consular Premises, Diplomatic History, Diplomatic/Extraterritorial asylum

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25 (Sovereign) state immunity is the immunity nations enjoy in the domestic courts of other nations. States receive immunity for acts *jure imperii* (public acts), but not for acts *jure gestionis* (commercial acts engaged by private actors).

26 Head of state immunity under customary international law pertains to the immunity accorded to the heads of states and foreign ministers.

27 State responsibility refers to the law pertaining to breaches (and consequences of such breaches) of international law committed by or attributed to states. Although the law of state responsibility is unsettled, the International Law Commission of the United Nations has published Draft Articles governing this area of law.

28 For example, the International Justice Project has a guide entitled, “Bridging the Gap: Effective Representation of Foreign Nationals in U.S. Criminal Cases: An Introductory Guide for Attorneys,” 2007, accessible as a pdf: http://www.internationaljusticeproject.org/pdfs/BtG_combined_print_April_16.pdf. The guide gives criminal defense attorneys pointers on how to successfully interact with a foreign national and his/her consulate, as well as how to raise claims about a failure of consular notification and access.
Part III: Primary Sources

A. United Nations Vienna Conventions

Diplomatic and consular law is governed by two major United Nations multilateral treaties, the Vienna Convention on Diplomatic Relations and the Vienna Convention on Consular Relations. Other multilateral treaties can be found using treaty indexes. For UN multilateral treaties, go to the Multilateral Treaties Deposited with the Secretary General (MTDSG). Chapter III of this resource deals specifically with “Privileges and Immunities, Diplomatic and Consular Relations, etc.” However, be forewarned that many of the treaties listed in the index pertain to immunities pertaining to organizations, which as discussed earlier, do not fall squarely in the ambit of diplomatic and consular law. Another resource is the FLARE Index to Treaties. FLARE includes historical and lesser-known regional treaties, such as the Convention on Diplomatic Asylum among members of the Organization of American States. FLARE contains information on keywords, date concluded, place concluded, authentic texts, depository, and a direct online link to the text of the treaty.

1. **Vienna Convention on Diplomatic Relations (VCDR)** 500 UNTS 95
   Direct link (along with optional protocols): [http://tinyurl.com/me8tvht](http://tinyurl.com/me8tvht)

The VCDR, one of the most successful multilateral treaties to date, codified most of the major rules regarding diplomatic law that were already established as customary international law. As of March 2015, 190 states are parties to the convention. The VCDR was the brainchild of the International Law Commission, which appointed Mr. Sandström of Sweden as Special Rapporteur to work on the issue. The VCDR came into force on April 24, 1964, only three years after its adoption at the United Nations Conference on Diplomatic Intercourse and Immunities in Vienna. The treaty lays out a comprehensive framework focusing on the functions of diplomatic missions, the inviolability of diplomatic premises and communications, and the privileges and immunities of diplomats (and of their families).

### Key Provisions of the Vienna Convention on Diplomatic Relations (VCDR)

**Art. 9:** A state can, at any time and without an explanation, designate a diplomatic agent as *persona non grata.* Sending state must recall the person concerned

**Art. 22:** Inviolability of mission premises. Law enforcement officers of the receiving State cannot enter premises, and the receiving state has a duty to protect the sending state’s diplomatic premises

**Art. 24:** Inviolability of diplomatic archives and documents, even outside the territorial premises of a diplomatic mission

**Art. 27:** Free communication between a diplomatic mission and the sending State. A diplomatic bag cannot be opened or detained, and diplomatic couriers may not be detained or arrested

**Art. 31:** Immunity for diplomats for criminal and civil proceedings, subject to certain limitations

**Art. 32:** Sending states’ waiver of immunity for diplomats

**Art. 34:** Tax exemptions for diplomats
The VCDR has been highly influential in the formulation of subsequent treaties. For example, VCDR provisions were used to help draft the 1963 Vienna Convention on Consular Relations (VCCR) and the 1969 New York Convention on Special Missions. VCDR provisions are referenced in the 2004 United Nations Convention on Jurisdictional Immunities of States and Their Property, and occasionally in Status of Forces Agreements (SOFAs) negotiated between international organizations and countries hosting military/civilian missions.

The VCDR can be accessed using the United Nations Treaty Collection Database. It can be found on page 95 in Volume 500 of the UN Treaty Series, which provides official translations in English, French, Chinese, Spanish, and Russian.

The VCDR has two optional protocols. The first is the protocol concerning the acquisition of nationality, which stands for the proposition that diplomatic agents of the sending state shall not acquire the nationality of the receiving state. The second protocol binds parties to bring grievances arising from the treaty before the International Court of Justice. The optional protocols entered into force on the same date as the convention. As of March 2015, seventy parties (including the United States) have consented to binding arbitration for disputes arising from the interpretation of the treaty before the International Court of Justice.

Cases implicating the VCDR in domestic courts often relate to the privileges and immunities enjoyed by diplomatic missions and by their staff. National courts have tried to strike a balance between preserving the inviolability of embassy premises while balancing human rights concerns. Litigation about the exceptions to immunity from civil litigation is also common.

The United States ratified the VCDR in 1972. In 1978, the Diplomatic Relations Act (22 U.S.C. 254) was enacted, bringing U.S. law in line with the VCDR’s principles of diplomatic immunity.

2. **Vienna Convention on Consular Relations (VCCR)** 596 UNTS 261
   Direct link (along with optional protocols): [http://tinyurl.com/nynp6fp](http://tinyurl.com/nynp6fp)

   The VCCR, drafted by the United Nations’ International Law Commission under the aegis of Special Rapporteur Jaroslav Zourek, formally codified rules relating to consular law. Prior to the VCCR, consular law existed as practices that arose out of bilateral agreements between states.

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31 [https://treaties.un.org/](https://treaties.un.org/)
32 Art. 53 of the VCDR states that the Chinese, English, French, Russian, and Spanish texts are equally authentic.
Compared with diplomatic law, the state of customary international law as it pertained to consular matters was more fragmented prior to codification. The VCCR, along with its two optional protocols, came into force on March 19, 1967. The VCCR describes the establishment, operation, and termination of consular missions as well as the functions, privileges, and immunities pertaining to consular officials and other individuals at a consular post. There are 177 state parties as of March 2015.

The VCCR codifies key principles and practices that are now widely accepted such as *persona non grata* (Art. 23), the inviolability of consular premises (Art. 31), and the inviolability of diplomatic communications and of the diplomatic bag (Art. 35). However, there is ongoing controversy over the interpretation of Article 36, which describes the right of consular notification and access for individuals arrested, detained, or imprisoned in a foreign state. For example, the United States takes the position that when a foreign national is not advised about the right to consular access, the rights of the sending state, not that of the individual, are violated. Under this interpretation, an individual will be denied a remedy in U.S. courts. In contrast, the ICJ has held that Article 36 gives individuals the right to be advised on consular access and that violations of this right must be subject to judicial review in the receiving state’s courts. Institutions such as the Inter-American Court of Human Rights also agree with the ICJ with respect to this matter.

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34 See LaGrand Case (F.R.G. v. U.S.), 2001 I.C.J. 466 (Judgment of June 27); Case Concerning Avena and Other Mexican Nationals (Mex. v. U.S.), 2004 I.C.J. 12 (Judgment of Mar. 31) (stating “violations of the rights of the individual under article 36 may entail a violation of the rights of the sending State, and that violations of the rights of the latter may entail a violation of the rights of the individual”).

35 See *Advisory Opinion of the Inter-American Court of Human Rights: Due Process of Law is a Fundamental Right* (OC-16/99), para. 88 (noting that Article 36 creates individual rights).
The VCCR can also be accessed using the United Nations Treaty Collection Database. Official translations\textsuperscript{36} in English, French, Chinese, Russian, and Spanish can be found starting on page 261 in Volume 596 of the UN Treaty Series. It is important to keep in mind that the United States has bilateral treaties with certain countries dealing with consular relations which may supplant or add to the obligations contained in the VCCR. The Office of Treaty Affairs at the U.S State Department provides an annual publication, “Treaties in Force,” where this information can be obtained online.\textsuperscript{37} Alternatively, the State Department’s manual \textit{Consular Notification and Access} contains citations to bilateral treaties and agreements.\textsuperscript{38}

Like its sister convention, the VCCR has two optional protocols. The first concerns the compulsory settlement of disputes. 596 UNTS 487. As of March 2015, there are 51 parties to this optional protocol. This protocol brings state parties to the VCCR under the compulsory jurisdiction of the International Court of Justice (ICJ) for matters relating to consular law. States that are parties to the protocol are provided a jurisdictional basis on which they can sue other state parties for consular law violations. In 2005, in the wake of a series of unfavorable rulings against the United States by the ICJ regarding the interpretation of Article 36 of the VCCR, the United States withdrew from the Optional Protocol.\textsuperscript{39} The second protocol concerns the acquisition of nationality. 596 UNTS 469.

B. Other Relevant United Nations Treaties

1. \textbf{New York Convention on Special Missions}\textsuperscript{40} 1400 UNTS 231

Direct link: \url{http://tinyurl.com/mcnekgb}

The Vienna Conventions govern the law pertaining to permanent missions, not ad-hoc or “special” diplomatic missions. In 1969, the General Assembly adopted the New York Convention on Special Missions, 1400 UNTS 231, along with an optional protocol concerning compulsory arbitration of disputes. The convention defined a “special mission” as “a temporary mission, representing the State, which is sent by one State to another State with the consent of the latter for the purpose of dealing with it on specific questions or of performing in relation to it a specific task.”\textsuperscript{40} The convention entered into force in 1985, and as of March 2015 there are 38 parties (not including the United States). For states that are not parties to the New York Convention, the rules governing interactions involving special missions are found in customary international law.

\textsuperscript{36} Art. 79 of VCCR states that “the Chinese, English, French, Russian, and Spanish texts are equally authentic.”
\textsuperscript{37} \url{http://www.state.gov/s/l/treaty/tif/index.htm}.
\textsuperscript{38} \url{http://travel.state.gov/content/dam/travel/CNAtrainingresources/CNAManual_Feb2014.pdf} (See the section on “Legal Materials.” For an explanation of the citations, refer to p. 42.
\textsuperscript{39} See \textit{The United States' Withdrawal from International Court of Justice Jurisdiction in Consular Cases: Reasons and Consequences}, John Quigley.
\textsuperscript{40} Art. 1(a).
Unlike the Vienna Conventions, the New York Convention on Special Missions does not delineate the functions of special missions. Instead, the convention emphasizes the importance of mutual consent on the part of both the sending and receiving states. States can send a special mission to work on a question of common interest,\(^{41}\) but the receiving state can object to the size of the delegation or to particular individuals in the delegation.\(^ {42}\) In terms of immunities and privileges, the New York Convention also codifies the inviolability of the person\(^ {43}\) and individual immunity from criminal prosecution.\(^ {44}\) Members of special missions are also immune to civil prosecution, subject to much of the same limitations found in the Vienna Conventions.\(^ {45}\) However, there are some important differences from the Vienna Conventions. For example, members of special missions cannot claim immunity from civil charges arising “out of an accident caused by a vehicle used outside the official functions of the person concerned.”\(^ {46}\)

2. **Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons** 1035 UNTS 167
   Direct link: [http://tinyurl.com/k5bmg84](http://tinyurl.com/k5bmg84)

   Adopted in 1973 in the aftermath of high-profile murders of diplomatic personnel around the world, parties to the convention agreed to criminalize and prosecute murder, kidnapping, and other violent attacks against “internationally protected persons.” This legal term of art included ambassadors, official diplomats, heads of state, and members of their family. The convention relies on the international law principle of *aut dedere aut judicare*, which requires states to either domestically prosecute an alleged perpetrator of attacks against “internationally protected persons,” or to extradite the person to another state for prosecution. The convention came into force on February 20, 1977 and has 178 parties as of March 2015.

   In the United States, this convention has been implemented by 18 U.S.C. §§11, 112, 970, 1116, and 1201 as well as C.F.R. 13.1-13.8. The United States has jurisdiction to prosecute any offender on its territory, irrespective of the nationality of the defendant or victim, as well as the location of the offense.\(^ {47}\)

C. **Regional Conventions**

1. **The European Convention on Consular Functions**, CETS 61
   Link to convention homepage: [http://tinyurl.com/qeqaez](http://tinyurl.com/qeqaez)

   The European Convention on Consular Functions deals only with consular functions, given that issues relating to consular relations, privileges, and immunities are already addressed in the

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\(^ {41}\) Art. 6.  
\(^ {42}\) Art.10.  
\(^ {43}\) Art. 29.  
\(^ {44}\) Art. 31.  
\(^ {45}\) Id.  
\(^ {46}\) Id.  
VCCR. The Council of Europe treaty entered into force relatively recently on September 6, 2011. Because the treaty does not differ significantly from the VCCR, the majority of European countries have not deemed it important enough to ratify. In fact, as of March 2015, only five countries have ratified: Georgia, Greece, Norway, Portugal, and Spain. Four countries signed, but did not subsequently ratify. Per Council of Europe rules, the authoritative texts are in English and French. Information on the convention, including a summary and explanatory report, can be found on the convention’s homepage within the Treaty Office at the Council of Europe.

In general, Council of Europe multilateral treaties can be found through the Council’s Treaty Office website in English, French, German, Italian, and Russian. Agreements that opened for signature between 1949 and 2003 are published in the European Treaty Series (ETS), whereas from 2004 onwards agreements are published in the Council of Europe Treaty Series (CETS). Treaties can be found through a full list (use the search function on a web browser such as ctrl+F), or by subject matter. There is no subject heading for “diplomatic” or “consular” law; instead, the European Convention on Consular Functions can be found under “General International Law.”

2. **Organization of American States Convention on Diplomatic Asylum**, OASTS 18

Link to convention homepage: [http://tinyurl.com/ccs5ynt](http://tinyurl.com/ccs5ynt)

Diplomatic asylum, otherwise known as extraterritorial asylum, is the practice of granting asylum on diplomatic premises. Outside of Latin America, this practice is not legally recognized by the ICJ or by customary international law. In fact, it was explicitly rejected as an international norm to be codified during negotiations of the VCDR. Adopted in Caracas, Venezuela in March 1954, the convention entered into force in December of that year. Deposited with the Secretariat of the OAS, the convention has been ratified by fourteen countries, including regional powers Mexico, Brazil, and Argentina. In addition to signatory and ratification information, the convention’s homepage provides information on state reservations as well as the text of the treaty in Spanish.

The OAS allows for online searching of multilateral treaties and bilateral agreements in English and Spanish. From the OAS homepage, go to the tab “Documents,” and click on “Treaties and Agreements.” Bilateral treaties are organized by alphabetical order and by year, whereas multilateral treaties are organized by year and by subject. There is no subject heading for “Consular

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48 Please note that the Council of Europe is not the same entity as the European Union.
52 The ICJ refused to recognize the practice as an international norm in *The Asylum Case* (*Colombia v. Peru*), Judgment of November 20th, 1950, *I.C.J. Reports* 1959, p. 266.
53 The VCDR does not mention the practice of diplomatic asylum, but there is a carve-out that allows Latin American states to engage in the practice. See Art. 41, para. 3 of the VCDR.
Law,” but there is an entry for “Diplomatic Relations.” This, in turn, refers to the section on “Asylum,” under which the Convention on Diplomatic Asylum can be found.

D. **Customary International Law (“CIL”)**

1. **Notes on Customary International Law**

   Although the VCDR and VCCR codified much of customary international law, CIL still exists as an equally authoritative source of law. As mentioned earlier in Step 3 of the research process, CIL consists of two elements: *opinion juris* and state practice. Many of provisions of the VCDR and VCCR are now considered customary international law, which means that they are applicable even to non-party states to the conventions. For example, it is the United States’ position that CIL covers consular notification and access for its citizens abroad, even for a country without a bilateral agreement with the United States and for a country that is not a party to the VCCR.55

2. **International Court of Justice**

   ICJ advisory opinions and decisions are highly indicative of customary international law.56 The International Court of Justice (ICJ) is the judicial organ of the United Nations. Headquartered at The Hague, Netherlands, the ICJ is a court of limited jurisdiction whose main purpose is to settle disputes between states. In addition to orders and judgments, the ICJ can also issue advisory opinions on legal questions at the request external institutions such as the UN General Assembly. States that are parties to the optional protocols concerning the compulsory settlement of disputes associated with the VCDR and VCCR must present their grievances before the ICJ in disputes with other state parties.

   Reports of Judgments, Orders, and Advisory opinions can be found in *ICJ Reports*, which compiles court documents in chronological order for a given year. It is published and indexed in both French and English. These documents can be accessed online directly from the ICJ’s homepage.57 On the left hand bar, click on “Cases” → “Judgments, Advisory opinions, and Orders by chronological order.” The cases and documents are searchable by year (1947-present).58

   Although the ICJ website is relatively user-friendly, another way to access ICJ decisions and transcripts is through the World Legal Information Institute (WorldLII).59 This is a free, reliable resource. Under “Libraries and Projects,” click on “International Decisions.” Limit the scope of your search by first clicking on “All International Courts & Tribunal Databases.” Under (2), click “Clear All” and then check off “ICJ Decisions” and/or “ICJ Transcript.” Search by title or by full

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56 Note, however, that ICJ decisions do not *per se* promulgate customary international law.
58 Tip: Always Use ctrl+F or a search function built into your browser to locate a document quicker.
One benefit of using WorldLII for ICJ research is that each article result is accompanied by a LawCite feature, which provides information about the legislation, cases, and articles cited in the court document.

Finally, ICJ cases can be accessed through WestLawNext, a subscription service. In the browsing box on the homepage, click on “International Materials” under the All Content tab → “Administrative Materials” under Content Types → “Multinational” → “International Court of Justice.” Search for a specific case by name, date, or cite in the search box.

Selected ICJ Cases regarding interpretations of the VCDR and VCCR:

- United States and Consular Staff in Tehran, Judgment, I.C.J. Reports 1980, p. 3
- LaGrand (Germany v. United States of America), Judgment, I.C.J. Reports 2001, p. 466

Digests for locating ICJ cases

In addition to the ICJ Reports, digests can be helpful in locating and researching relevant ICJ cases. Keep in mind that given the relatively small size of the ICJ docket, there have been very few cases related to diplomatic and consular law so far in addition to the ones listed above. The World Court Digest at the Max Planck Institute for Comparative Public Law and International Law, available in print and online, consists of four volumes so far, each covering four years (starting from 1986). Within each volume, ICJ cases are organized by topic. For example, in Volume 4 (2001-2005), Substantive International Law-Second Part, sub-section 12 “Diplomacy and Consular Matters,” the digest includes excerpts from the VCCR cases LaGrand (Germany v. United States) and Case concerning Avena and other Mexican Nationals (Mexico v. United States). Another digest is the World Court Reference Guide and Case-Law Digest, but this digest is only useful for looking up a quick summary of a case (procedural history, information about representation of parties, etc.). Unlike the World Court Digest, this digest does not organize its cases by topic and is therefore most useful if the researcher already knows the name of a particular case.

E. National Law

This section provides a brief overview of the most important laws governing diplomatic and consular law in selected countries. In general, national laws come in the form of statutes, regulations,

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and court decisions. Civil law countries, as opposed to common law countries, rely almost exclusively on statutes and regulations.

1. National Statutes and Regulations

For statutes and regulations, the first place to go to is Foreign Law Guide, which provides citations to the most important statutes and regulations in a particular country. Secondary sources, especially those contained in journal articles, often also mention the most important primary sources. The next step is to go the country’s main portals for statutes and legislation. For example, Australia’s ComLaw portal provides an up-to-date collection of Australia’s legislation and notices from its official Gazette. For searches on these websites, type in general words such as “diplomatic” and “consular” in order to retrieve the most search results. Narrow searches, such as “diplomatic pouches” will not retrieve any results since legislatures generally do not pass laws on minutiae. Simple Google searches that consist of [name of the country] followed by “diplomatic law”/”consular law” will often lead back to these official portals. It is also worthwhile to conduct searches using foreign languages and the foreign portals of search engines.

2. National Cases

Locating cases in domestic jurisdictions can be difficult. To begin with, the researcher should first have a basic understanding of the country’s legal system. Many countries are civil law jurisdictions, which places a much greater emphasis on statutes rather than on cases. Because diplomatic and consular law implicates matters that may (depending on the particular issue) be buried in the national records of administrative, criminal, labor, or constitutional courts, the most efficient way to find cases is to use secondary sources.

Oxford Bibliographies, mentioned above, is a great place to start because its coverage includes citations to cases in foreign jurisdictions. For example, there is a section on Germany in the Oxford Bibliographies entry on “Consular Relations” that discusses German criminal cases that implicate the right to consular notification under the VCCR.

International Law Reports (ILR), published by Cambridge University Press, systematically reports on the decisions of national courts (as well as international courts) around the world in English. ILR focuses on cases issued by the country’s highest court, and is available in print and

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64 Direct link: [http://referencworks.brillonline.com/browse/foreign-law-guide](http://referencworks.brillonline.com/browse/foreign-law-guide). Choose the country of interest, then click on “Diplomatic Privileges and Immunities” under “Laws by Subject.” Certain countries have more complete and up-to-date entries than others.


66 The guide also helps identify relevant foreign publications. For example, in the case of Germany, it identifies *Juristische Rundschau* as an important legal publication that includes commentary on cases decided by the Bundesgerichtshof (the Supreme Court in all matters of criminal and private law in Germany).
In Justis, the full text of each court case is available for download. The left panel provides useful information such as Cases Considered, Subsequent Cases, Legislation Considered, and even information about the lawyers involved in the case. Because of these features, the layout online resembles that of WestLaw or Lexis and makes for a pleasant (or at least familiar) research experience.

Likewise, the Oxford Reports on International Law in Domestic Courts (ILDC) is another invaluable resource for finding domestic cases in foreign jurisdictions. It covers around 70 countries, and focuses on the most important cases from 2000 to the present. Older cases are also covered, but only if they were instrumental in the development of the law or illustrative of a state’s singular interpretation and application of international law. ILDC is accessible online through the Oxford Reports on International Law main homepage. Results can be narrowed by jurisdiction, geographic region, and subject.

a. The United States of America

*Diplomatic Relations Act* (22 U.S.C. 254 et seq.)

The 1978 Diplomatic Relations Act governs diplomatic immunity and privileges in the United States of America in accordance with the VCDR. The statute can be found in the United States Code, in Title 22 (Foreign Relations and Intercourse), Chapter 6 (Foreign Diplomatic and

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67 To access International Law Reports through Justis (http://www.justis.com/), click on “Cases,” choose the “Data Sources” tab in the right window, expand “All Cases,” and check off “International Law Reports.” This database is available through Berkeley Law.

68 http://opil.ouplaw.com/home/ORIL. This database is available through the Berkeley Law Library.

Consular Officers). The Act repealed previous provisions, narrowing the categories of individuals entitled to privileges and immunities while adding new provisions such as those relating to insurance liability.

The Foreign Missions Act (22 U.S.C. 4301-4316)\textsuperscript{70}

This Act led to the establishment of the Office of Foreign Missions (OFM) with the objective of ensuring the secure operation of foreign missions on U.S. territory, as well as of U.S. missions abroad. In addition to advocating for the fair treatment of American diplomats abroad, OFM works with local, state, and federal entities to ensure that foreign diplomats’ privileges and immunities are respected. OFM is also charged with monitoring abuses of diplomatic privileges and immunities by foreign diplomats and to provide services and assistance to foreign diplomats living in the United States.

Statutes on Consular Access and Notification

There is no single federal statute codifying the right to consular access and notification under the VCCR, given that the VCCR is a self-executing treaty that does not need domestic implementing legislation.\textsuperscript{71} However, the federal government and some states have nonetheless issued clarifying regulations. Regulations have also been promulgated in local police manuals.

Examples:

<table>
<thead>
<tr>
<th>State/Department</th>
<th>Statute/Code</th>
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<tbody>
<tr>
<td>California</td>
<td>California Penal Code §843(c) (1999)</td>
</tr>
<tr>
<td>Oregon</td>
<td>Oregon Revised Statue § 181.642(2), 426.228(9)(a) (2007)</td>
</tr>
<tr>
<td>Department of Justice</td>
<td>28 C.F.R. § 50.5</td>
</tr>
<tr>
<td>Department of Homeland Security</td>
<td>8 C.F.R. § 236.1(e)</td>
</tr>
</tbody>
</table>

b. United Kingdom

Diplomatic Privileges Act of 1964

This Act implements the immunities and privileges provisions of the VCDR into the national law of the United Kingdom, repealing the country’s Diplomatic Privileges Act of 1708. The Act can be found on the UK’s www.legislation.gov.uk website,\textsuperscript{72} which provides the original print of the legislation in a pdf file (under “More Resources”).

Consular Relations Act of 1968

\textsuperscript{70} The State Department has a comprehensive guide about the Foreign Missions Act and the Office of Foreign Missions: http://www.state.gov/documents/organization/17842.pdf.

\textsuperscript{71} The Supremacy Clause (Article VI) of the US Constitution incorporates treaties into the “supreme law of the land,” which is binding on federal and state governments.

\textsuperscript{72} http://www.legislation.gov.uk/ukpga/1964/81/contents.
This Act implements the VCCR into the national law of the United Kingdom. The Act can be found on the UK’s www.legislation.uk website,\(^73\) which provides the original print of the legislation in a pdf file (under “More Resources).

**Diplomatic and Consular Premises Act of 1987** (revoking status of diplomatic missions)

This Act allows the government of the United Kingdom to withdraw recognition that a parcel of land is a diplomatic or consular premise. This Act was passed in response to a 1984 incident in which a British police officer was shot and killed from bullets originating from inside the Libyan embassy in London. The law was used to evict squatters from the abandoned Cambodian embassy in London in 1988,\(^74\) and was considered as a mechanism to revoke the diplomatic status of the Ecuadorian embassy in London in order to arrest Wikileaks leader Julian Assange.\(^75\) The Act can be found on the government’s www.legislation.gov.uk website.\(^76\)

c. Canada

**Foreign Missions and International Organizations Act**

Canada implements the VCDR and VCCR, as well as the law relating to the privileges and immunities of international organizations in one single piece of legislation. Aside from minor administrative details, Canada simply gives domestic legal force to the texts of the two Vienna Conventions. The full text of the consolidated act can be found on the government’s Justice Laws Website, in both English and French.\(^77\)

d. Australia

**Diplomatic Privileges and Immunities Act of 1967**

This Act implements provisions of the VCDR into Australian national law, repealing the Diplomatic Immunities Act of 1952 and Diplomatic Immunities Act of 1958. The latest compiled act, in force as of June 29, 2013, can be found on the Australian government’s ComLaw portal.\(^78\) ComLaw provides up-to-date online information on Australian legislation.

**Consular Privileges and Immunities Act of 1972**

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This Act implements provisions of the VCCR into Australian national law. The latest compiled Act, in force as of June 29, 2013, can be found on the government’s ComLaw portal.  

*Diplomatic and Consular Missions Act of 1978*

This Act, the text of which can also be accessed using ComLaw, is intended to “prevent the improper use of diplomatic and consular signs and titles and to prevent the improper use of signs and titles of designated overseas missions.”

**Part IV: Travaux Préparatoires of the Vienna Conventions**

Travaux préparatoires is French for “preparatory works.” In the context of treaties, it refers to records of negotiations. These records can be helpful for interpreting the meaning and scope of treaty provisions if the plain meaning of the text is not apparent.

**A. Researching United Nations Documents**

Each UN document has a unique identifier, consisting of a combination of letters and numbers. It is important to note that the combination of these letters and numbers will not shed light on the subject matter of the document. An explanation of document symbols can be found using the UN’s own Research Guide (click on “Document Symbols” on the homepage of the research guide).

<table>
<thead>
<tr>
<th>Most common UN Document Symbols for Diplomatic and Consular Law</th>
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<tbody>
<tr>
<td>A/-</td>
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<td>-/CN. .../ -</td>
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<td>-/Rev....</td>
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81 [http://research.un.org/en/docs](http://research.un.org/en/docs). This is a great resource to just look through before attempting to navigate the byzantine world of UN documentation.
UN Documents can be accessed by symbol using the United Nations Bibliographic Information System (UNBISNET)\(^2\) or the Official Document System of the United Nations (ODS).\(^3\) UNBISNET is easier to use. Keep in mind that some documents are simply not available in electronic format. To search by symbol using UNBISNET, click on “New Browse List Search” under “Bibliographic Records,” and then search using “UN Document Symbol.”

UNBISNET is comprised of three sections: bibliographic records, voting records, and index to speeches (General Assembly speeches starting from 1983). Searches can be made by topic, document symbol, publication type, language, and issuing body.

ODS also covers official UN documentation, but only those created since 1993 (though older documents are being added to the system). Resolutions of the General Assembly, however, are available from 1946 onwards.

**B. International Law Commission Reports**

The International Law Commission (ILC) is a body that works under the direction of the General Assembly at the United Nations. Its main purpose is to systematically develop and codify international law. The commission releases an annual report that keeps the General Assembly informed about its ongoing work, and has worked extensively on issues relating to diplomatic and consular law.

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**Topics Examined by the International Law Commission**

- Diplomatic intercourse and immunities (culminating in the VCDR)
- Consular intercourse and immunities (culminating in the VCCR)
- Special missions (culminating in the Convention on Special Missions)
- Question of the protection and inviolability of diplomatic agents and other persons entitled to special protection under international law (culminating in the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents)
- Status of the diplomatic courier and the diplomatic bag not accompanied by the diplomatic courier (culminating in Draft Articles, but not a convention yet, on the topic)

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To research UN negotiating history, the ILC’s Analytical Guide is an unparalleled resource. The topics listed in the box above correspond to topics 9.1-9.5, which can be found on the ILC analytical guide homepage. There are three components associated with each topic: 1) the summary 2) the analytical guide, and 3) the text & instruments.

Read the summary, which presents an overview of the work done on the topic in narrative form. For example, the summary for the topic “Diplomatic Intercourse and Immunities” begins with an explanation of how the ILC selected this topic in 1949 as a topic ripe for codification, and then goes through, in chronological order, the negotiations in the Sixth Assembly and General Assembly that culminated in the adoption of the VCDR.

The analytical guide is organized into different sections, beginning with “Mandate” and ending with “Final Outcome.” The guide goes through step-by-step the work that was done, alongside with the documents that were produced at the end of each step.

Example from VCCR negotiations:

H. Reports of the International Law Commission

1. Report of the International Law Commission on the work of its seventh session, May to 8 July 1955
   - The Commission appointed Mr. Jaroslav Žourek as Special Rapporteur on “consular intercourse and immunities”.
   - Discussion in plenary: 327th and 330th mtgs (5 and 8 July 1955)

*Clicking on the hyperlinks will lead the user directly to the file*

TIP: To quickly access a UN document, type http://undocs.org/ into a web browser. Then add the document symbols after the last slash. If this doesn’t work, locate the document using UNBISNET

C. Special Rapporteur Reports

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A UN Special Rapporteur is an individual (usually an academic) who investigates a certain topic and reports back to a deliberative body. For example, Special Rapporteur A.E.F. Sandström of Sweden was appointed by the ILC to work on the topics of “Diplomatic Intercourse and Immunities” and “Special Missions,” and Special Rapporteur Jaroslav Zourek of Czechoslovakia was appointed by the same body to work on the topic of “Consular Intercourse and Immunities.” The reports prepared by the Special Rapporteur often include commentary in addition to the text of draft articles. Special Rapporteur reports cannot be identified by relying on its document number; their identities are verified only upon locating the document.

For both the VCDR and VCCR, the ILC took into account reports of the Special Rapporteur before adopting final draft articles submitted to General Assembly organs for further review.

Example from the VCDR:
Report on Diplomatic Intercourse and Immunities by Mr. A.E.F. Sandström, Special Rapporteur (A/CN.4/91, 21 April 1955)

D. Sixth Committee of the General Assembly Reports

The Sixth Committee is the legal forum where legal questions are considered in the General Assembly. The Committee is comprised of all member states of the United Nations as well as non-member states with observer status. The General Assembly often asks the Sixth Committee to look over ILC reports and to make recommendations. Recommendations by the committee are then usually sent to the General Assembly for final adoption. Sixth Committee reports can therefore serve as drafts of full General Assembly resolutions. The Sixth Committee has its own website, where work products from 1999-2014 can be accessed.85

Working documents are labeled as: A/C.6/session/-, summary records as A/C.6/session/SR-., and press releases as GA/L/-. Reports and decision sent to the full General Assembly for final decision-making are denoted as A/session/-.

Example from the VCDR:
Report of the Sixth Committee to the General Assembly, “Diplomatic intercourse and immunities” (A/4305, 1959), draft of A/RES/1450(XIV)

86 For more information, see the UN’s own research guide on documentation of committees: http://research.un.org/en/docs/ga-committees.
E. General Assembly Proceedings

1450 (XIV). International conference of plenipotentiaries on diplomatic intercourse and immunities

The General Assembly,

Recalling that, by its resolution 1288 (XIII) of 5 December 1958, it decided to include in the provisional agenda of its fourteenth session the question entitled “Diplomatic intercourse and immunities” with a view to the early conclusion of a convention on diplomatic intercourse and immunities,

A principal organ of the United Nations, the General Assembly (GA) consists of member states of the United Nations and operates under a “one state, one vote” scheme. The GA has the power to pass resolutions that are not legally binding but nonetheless a form of “soft law.” After considering ILC and Sixth Committee reports and recommendations, the GA can issue resolutions. In the case of diplomatic and consular law, the GA decided to convene international conferences of plenipotentiaries (diplomats with the power to sign treaties) that led to the UN Conference on Diplomatic Intercourse and Immunities and the UN Conference on Consular Relations. From 1946 until 1975, General Assembly meetings and documents were consecutively numbered. After that, symbols also included the session number. GA resolutions can be identified by the inclusion of /RES/ in the document symbol.

Example from the VCDR:
A/RES/1450(XIV) (International conference of plenipotentiaries on diplomatic intercourse and immunities)

F. Proceedings of United Nations Conferences

The proceedings of the United Nations Conference on Diplomatic Intercourse and Immunities can be found in the Official Records of the United Nations Conference on Diplomatic Intercourse and Immunities (A.CONF.20/14 and A/CONF.20/14/Add.1). The first volume consists of the summary records of the plenary meetings, including remarks made by state representatives on specific issues. The second volume consists of the text of the final convention, protocols, resolutions, and documents relevant to the proceeding. Similarly, the proceedings of the UN Conference on Consular Relations can be found.

Article 25 (Freedom of communication)

52. The CHAIRMAN invited debate on article 25 and the amendments thereto. The large number of amendments originally submitted had been reduced by the withdrawal of those of Argentina, the United Arab Republic (L.140 only), Indonesia and India; instead, the delegations in question sponsored a joint amendment (L.264).

53. Mr. OJEDA (Mexico) withdrew the first part of his delegation’s amendment (L.131) and said that, after consultation with the sponsors of the joint amendment, his delegation had agreed to become a co-sponsor of that amendment. He wished, however, to propose a sub-amendment replacing the words “making proper arrangements” by the words “obtaining authorization”.

54. Mr. MITRA (India), Mr. NAJEH ZADE (United Arab Republic), Mr. BOLINH SHAW (Argentina) and Mr. WILSON (United States of America) voted in favour of the proposal.

Negotiation in action at the UN Conference on Diplomatic Intercourse and Immunities

in the Official Records of the United Nations Conference on Consular Relations (A/CONF.25/16 and A/CONF.25/16/Add.1). Now out of print, these comprehensive documents are available for free on the United Nations Diplomatic Conferences website. 88

**Part V: Secondary Sources**

Secondary sources provide background information or an in-depth analysis of a certain topic in diplomatic and consular law. They are particularly useful because they identify relevant law, cite to other sources, and define particular legal terms of art.

A. **Research Guides**

Research guides prepared by institutions and librarians can save a lot of time and stress while researching a particular topic. Unfortunately, there are not many research guides that focus squarely on diplomatic law or consular law. Here are two exceptions:

- **The Peace Palace Library**, associated with the International Court of Justice, Court of Permanent Arbitration, and the Hague Academy of International Law, offers a short research guide on diplomacy. 89 The guide is most helpful for its list of other resources.

- **New York University Law School** also has a research guide on the VCCR notification requirements. Although the guide is tailored to the law of consular notification and access, the guide is helpful for general research on the domestic implementation of the VCCR in the United States. The guide explains how to find U.S. federal regulations, cases, state statutes pertaining to consular law, and secondary sources. 90

Entire research guides centered on niche topics such as diplomatic asylum do not really exist, so consider typing in more general search terms such as “research guide diplomatic law” into the search engine. However, research guides on related matters, such as how to research customary international law, state practice, and preparatory history can be easily found by typing in “research guide” followed by the name of the topic into an internet search engine such as Google or Yahoo. Click on results that are affiliated with the library of a reputable educational institution. For example, New York University has a research guide on how to research “customary international law, state practice, and the pronouncement of states regarding international law” that can come in handy in Step 3 of the research process. 91 For help on researching public international law in general, check


90 [http://www.nyulawglobal.org/globalex/Vienna_Convention_Consular_Relations1.htm](http://www.nyulawglobal.org/globalex/Vienna_Convention_Consular_Relations1.htm).

91 [http://www.nyulawglobal.org/globalex/Customary_International_Law.htm](http://www.nyulawglobal.org/globalex/Customary_International_Law.htm). Similar research guides at other institutions abound.
out Columbia University’s “Researching Public International Law”\(^\text{92}\) and Duke University’s “International Law”\(^\text{93}\) research guides.

B. **Encyclopedias**

**Collected Courses of the Hague Academy of International Law** (Recueil des Cours)


The Hague Academy of International Law, located at the Peace Palace in the Netherlands, invites the world’s most distinguished academics and practitioners of international law to deliver courses on their areas of expertise. These courses are published in the Collected Courses, an encyclopedia that now span over 370 volumes (organized by year). The Collected Courses are available in print at Berkeley Law, but can also be accessed through HeinOnline. When using HeinOnline, the easiest way to search for the most relevant entries is to browse the collected sources by subject. Examples of subjects include: consular law, consuls and consular jurisdiction, diplomatic agents, and diplomatic and consular immunities. Entries can also be searched by the name of the prominent author. Note that the entries are published in either English or French.

**Max Planck Encyclopedia of International Law**

Online link (Berkeley Law access): [http://opil.ouplaw.com/home/EPIL](http://opil.ouplaw.com/home/EPIL)

Max Planck Encyclopedia of Public International Law (MPEPIL) is an encyclopedia affiliated with the Max Planck Institute for Comparative Public Law and International Law based in Heidelberg, Germany. Published by Oxford University Press, the encyclopedia is accessible online and contains helpful background articles. Written by distinguished experts around the world, these articles offer a comprehensive and balanced discussion of specific topics. Articles can be located using the advanced search by subject and keywords, and often contain bibliographic entries\(^\text{94}\) and lists of select documents of relevant laws and cases.

**Example:**


The article provides a useful overview of the law regulating diplomatic couriers and bags as codified by international instruments such as the VCDR and VCCR. The article also documents examples of abuse of the absolute inviolability of the diplomatic bag, and the disputes among United Nations member states on whether to reconsider the principle in light of state concerns about terrorism. There is also a bibliography on sources that directly relate to diplomatic couriers and diplomatic bags.

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\(^{93}\) [https://law.duke.edu/lib/researchguides/internationallaw/](https://law.duke.edu/lib/researchguides/internationallaw/).

\(^{94}\) Many of these entries are accompanied by University of California e-Links, which informs the user how to locate the sources.
Jean D’Asprement, a law professor at the University of Amsterdam, writes extensively on diplomatic and consular law. He is also the author of other useful articles, including “Diplomatic Premises in International Law” and “Declarations Persona Non Grata in International Law.” Republished in the *Max Planck Encyclopedia of International Law*, his articles should be among the first secondary sources consulted when researching a particular sub-field of diplomatic and consular law.

C. **Indexes, Databases, & Journal Articles**

One of the most efficient ways to find articles on specific sub-topics in diplomatic and consular law is to make use of indexes and databases. Full-text articles are available at Lexis Advance (LX), WestLawNext (WL), and HeinOnline (HOL).\(^95\) Please be advised that Lexis Advance and WestLawNext provide only limited coverage, both geographically and temporally.

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<tr>
<th>How to Find Articles</th>
<th>Lexis Advance</th>
<th>WestLawNext</th>
<th>HeinOnline</th>
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<tbody>
<tr>
<td>Under “Filter,” go to “Category” and click on “Secondary Materials.” For Boolean connectors, use the Advanced Search</td>
<td>Under “All Content,” go to “Secondary Sources.” Under “By Type,” click on “Law Reviews &amp; Journals.” Choose “National” and/or “International”</td>
<td>To narrow results, use the “Advanced Search” feature and/or narrow results to specific collections, document type, and dates. Read through descriptions of each collection under “Browse Collections”</td>
<td></td>
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</tbody>
</table>

\(^{95}\) These are all subscription, fee-based services.
<table>
<thead>
<tr>
<th>Geographic Coverage</th>
<th>Mainly United States, Europe</th>
<th>Mainly United States, Europe, Australia, Some Asia</th>
<th>Worldwide</th>
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</thead>
<tbody>
<tr>
<td>Examples of Sources&lt;sup&gt;96&lt;/sup&gt;</td>
<td>- American Journal of International Law</td>
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<td>- European Journal of International Law</td>
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<td>- Prominent Yearbooks from around the world</td>
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<td>- International and Comparative Law Quarterly</td>
<td>- United Nations Law Collection (including UN Treaty Series)</td>
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<td>- American Jurisprudence Encyclopedia</td>
<td>- Various other Journals and Law Reviews</td>
<td>- Various other Journals, Law Reviews, and special collections</td>
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</tbody>
</table>

<sup>96</sup> See the US State Practice section of this research guide for more information about the American Journal of International Law, International Legal Materials, American Law Reports, and Restatement 3d of Foreign Relations Law, and Foreign Relations of the United States.
Journal indexes such as the ones highlighted immediately below (e.g. LJI, ILP, IFLP) are useful because they easily guide researchers to the citations of relevant articles, which can then be used to locate the full text of such articles using the full text collections highlighted in the chart above (Lexis Advance, WestLawNext, and HeinOnline). Journal indexes in print are generally organized by year, whereas online indexes allow for searches that span across years.

**Legal Journals Index (LJI)**

Available through WestLaw, Legal Journals Index indexes over 800 legal journals published in Europe and the United States. In addition to international law journals such as the International and Comparative Law Quarterly, the index includes journals in the fields of criminal, tax, employment, and family law. This makes it a useful resource to search for articles relating to issues that substantially overlap with other fields of law. Each search result contains information about subject headings, keywords, an abstract, and citations to important legislation and cases. Unfortunately, the full text of articles is usually not available through LJI.

Example using “diplomatic asylum” as search terms:

**Index to Legal Periodicals (ILP)**

97 Type in “Legal Journals Index” in the search box in WestLaw Next to access the index.
ILP indexes articles published primarily in Western countries, such as the United States, Canada, Great Britain, Australia, and New Zealand. In addition to the Index to Legal Periodicals and Books, there is also an Index to Legal Periodicals Retrospective: 1908-1981. Both are accessible through EBSCO Host, an online research database accessible through the Berkeley Law Library. ILP offers advanced search functions, including Boolean capabilities and SmartText Searching. The latter allows the user to copy and paste chunks of text which is then analyzed to produce search terms. Searches can be limited by publication, publication type, document type, ISSN number, and published date. Users also have the option to view only results with links to full text (often provided through HeinOnline) and/or results associated with peer-reviewed articles. That being said, law review articles and notes found through this index often provide the most interesting insights on recent events.

Example from searching “diplomatic asylum:”


Countries that practice diplomatic asylum grant asylum to individuals who seek refuge in their embassies. This practice is not recognized in international law, but countries have nonetheless engaged in the practice for high-profile individuals. For example, the United States allowed the Chinese political dissident Chen Guangcheng to stay in its embassy in Beijing, and Ecuador granted diplomatic asylum to WikiLeaks leader Julian Assange at its London embassy. The article argues that elements of diplomatic asylum are actually more generally accepted than conventionally thought, and that the norm should be recognized more on the international stage.

**Index to Foreign Legal Periodicals (IFLP)**

This index encompasses articles from journals all around the world, including those written in foreign languages. IFLP also covers the majority of country yearbooks, useful for state practice research. Produced at Berkeley Law for the American Association of Law Libraries, IFLP indexes over 500 legal periodicals published worldwide and is available in both electronic and print formats. The online database covers articles from 1985 to the present, whereas records from 1960-1984 can be assessed using the print edition. Users can search for articles using keywords, author, article title, journal title, publication year, country of publication, subject/country heading, and language of article or review. Also useful is browsing for articles by suggested subjects, such as “diplomatic privileges and immunities.” Researchers can also search using a foreign language, and find articles written in that language. Some of the articles are available via HeinOnline, which is a subscription.

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98 See the Help Button for “Search Modes” for more information.
Entries of those that are not, however, provide enough information to find the articles using another resource such as a library database.

Example:


The article, written by a law professor at the Ewha Womans University in South Korea, explores how communication technologies affect diplomatic and consular law from both an empirical and normative standpoint. The author argues that traditional rules such as the inviolability of documents and archives, freedom of official correspondence, and immunity from judicial jurisdiction may need to be revamped in light of technological realities, and that a new rule of inviolability should be considered for a “cyber diplomatic or consular bag.” Much of the article discusses how “cyber crimes” and “cyber disasters” should be dealt with under the VCDR and VCCR, and includes a table summarizing this analysis.

**Social Science Research Network (SSRN)/Legal Scholarship Network (LSN):**

Link to eLibrary Database Search: [http://tinyurl.com/6zy6](http://tinyurl.com/6zy6)

A vehicle for scholars to disseminate their cutting-edge research, the Social Science Research Network (SSRN) is a great resource for locating articles pertaining to recent events and developments. Articles submitted to SSRN are open for online public viewing and commenting prior to publication in an academic journal. This allows authors to consider comments and incorporate suggestions before finalizing their scholarly works. In addition to working papers, preprints that have not yet undergone peer review and chapters excerpted from books are also available. In general, SSRN materials are often available as PDF files for free downloading.

The Legal Scholarship Network (LSN) is one of SSN’s many research networks. LSN publishes articles written by law professors from all around the world, allowing access to refreshing perspectives on how international law is regarded and implemented in different countries.

Using the SSRN eLibrary Database Search, researchers can limit results by title only or by title, abstract, abstract ID & Keywords. Articles can also be limited by the date. SSRN/LSN provides information for each article, including an abstract, number of pages, suggested keywords, suggested citation, suggested other articles, and contact information for the author(s). This resource provides free downloadable full-text articles, provided that one’s IP address is affiliated with an academic institution. Useful information such as author contact information, page number, and suggested citation are also provided.

Example: 

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The author is an advocate before the Supreme Court of Pakistan, and received his S.J.D. and L.L.M. from Harvard Law School. This article explores immunities for criminal offenses in the context of the Raymond Davis incident, a CIA contractor who killed two armed men in Pakistan, allegedly in self-defense. To the great displeasure of Pakistani officials, the United States argued that Davis was a “diplomat” and was therefore entitled to diplomatic immunity from prosecution given his role as an “administrative and technical official” at the consulate in Lahore. While the diplomatic scuffle ended through a private settlement under Sharia law, the author argues that the United States should have reacted differently by either waiving Davis’ immunity or by agreeing to prosecute him in the United States. This article analyzes who should be considered a “diplomat” and provides a comparative analysis of how the VCDR and VCCR are applied domestically in Pakistan and the United States.

**JSTOR**

Direct link (access provided through Berkeley Law): [http://www.jstor.org/](http://www.jstor.org/)

JSTOR is a digital library that is primarily licensed to academic institutions and libraries. In addition to journal articles, it now stores books and primary sources. Over 1900 journals spanning across academic disciplines are searchable through JSTOR. Given that diplomatic and consular law overlaps with other disciplines, JSTOR is a great source for interdisciplinary research. Using the Advanced Search, narrow results by checking off relevant disciplines, such as “Political Science,” “Peace and Conflict Studies,” “International Relations,” “History,” and “Law.” The search can also limit results by item type (article, book, pamphlet, reviews, miscellaneous), date, language, publication title, and ISBN number.

**Columbia International Affairs Online (CIAO)**

Direct link (access provided through UC Berkeley): [http://www.ciaonet.org/](http://www.ciaonet.org/)

CIAO is a comprehensive index accessible through UC Berkeley’s main library portal. It contains a wealth of information relating to international affairs including policy briefs, working papers, journals, books, videos, internet sources, papers from research institutes, videos, and proceedings from conferences. The index covers materials from 1991 to the present. CIAO’s collection covers articles from all around the world, including hard-to-find journal sources such as American Diplomacy, Ambassador's Review, The Diplomatic Courier Turkish Review, and the Iranian Review of Foreign Affairs. Descriptions of each source can be easily found on the CIAO webpage under “Journals.” For some sources, only the abstract (not full text) is available. Material

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100 Go to UC Berkeley’s main library portal: [http://www.lib.berkeley.edu/node](http://www.lib.berkeley.edu/node). From here, click on “Databases,” and click on “Databases by Subject.” Click on “Political Science Databases,” which will list this resource as a hyperlink.
can be easily located using the Advanced Search, which filters results by subject, author, institution, type, region, and publication date.

**Public Affairs Information Service (PAIS)**

Direct link (access provided through UC Berkeley): [http://tinyurl.com/pogkdxk](http://tinyurl.com/pogkdxk)

PAIS is another index accessible through UC Berkeley's main library portal. The index contains records for over half a million journal articles, books, government documents, conference reports, and other sources relating to economics, politics, international relations, world politics, and public policy. The publications of over 120 countries are represented, including materials in many foreign languages. Using the advanced search, results can be limited by publication date, language, document type, source type, and peer-review status.

**D. Books & Practice Guides**

There are four books that are highly recommended because they squarely address diplomatic and consular law:


This book, which can be accessed in the stacks at Berkeley Law and online through the Oxford Public International Law’s website, is written by a professor and former legal counselor at the Foreign and Commonwealth Office of Great Britain. It is written with practitioners in mind, and discusses state practice implementing the articles of the Vienna Convention on Diplomatic Relations. Given the author’s background, there is particular emphasis on Great Britain, although the latest edition includes more analysis of state practice from countries such as the United States, France, Germany. The articles of the VCDR are grouped together thematically, with topics ranging from “Nationality of Diplomatic Staff” to “Settlement of Disputes.” The book contains an index as well as an extensive bibliography with sources in English, French, German, and Spanish.


This book is written for diplomats and international lawyers, and focuses on the Vienna Convention on Consular Relations and the bilateral consular treaties that supplemented the convention. After first charting the historical evolution of consular law, the book covers almost every aspect of the field. Major topics include consular functions (e.g. notarial and registration services), privileges and immunities (e.g. immunity from local jurisdiction), and honorary consuls. The book also discusses cases from the International Court of Justice relating to the right to consular protection, and provides a useful concluding chapter on how the VCCR relates to other

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101 Id.
treaties and how disputes are settled. In addition to bibliographic references and an index, there is an appendix offering the text of major treaties, including the VCCR and the European Convention on Consular Functions. Luke T. Lee is an international consultant on consular law and human rights with experience in the U.S. State Department and in various international organizations. John Quigley is a law professor at Ohio State University.


Commissioned by the Institute for the Study of Diplomacy at Georgetown University, this book focuses only on the privileges and immunities of diplomats. The book contains chapters on the historical evolution, coverage and scope, administration and adjudication, and limits on diplomatic immunity. Chapter six focuses on recent trends and problems, including diplomats’ increased need for protection in an era of global terrorism. The last chapter focuses on future prospects of the regime set up by the Vienna Conventions. The book contains appendixes of the VCDR and VCCR, ICJ judgments, excerpts from U.S. State Department of State's *Guidance for Law Enforcement Officers*, and other memoranda from government agencies. There is also a table of the alleged criminal cases dealing with missions in Washington, D.C. from 1982-88. Lastly, there is an index and an annotated bibliography organized by topical categories.


Referred to as the “bible” among practitioners in the field, this book covers all areas of diplomatic practice, including in-depth chapters on diplomatic relations, diplomatic privileges and immunities, diplomatic missions, and consular matters. Other chapters cover topics not covered in this guide, such as the practices relating to international organizations. The book is easy to navigate because every topic and sub-topic is numbered and linked back to the table of contents. The beginning of the book contains a use of useful abbreviations, tables of major cases from courts and tribunals, both national and international, a table of international treaties, conventions, and other international instruments, and a table of legislation. At the end of the book, there is a section that gives practical advice to diplomats. The appendixes include a glossary of specialized terms and expressions used in the field, a section on important conferences, as well as the full text of the VCDR, VCCR, and the Vienna Convention on the Law of Treaties. The book ends with a comprehensive bibliography and index.

**Other Suggested books**

To find books, simple search terms such as “diplomatic law” and “diplomatic immunity” will retrieve relevant results. Some books, however, also have the name of the treaty in its title, so searches such as “Vienna Convention on Consular Relations” are useful. Finally, aspects of diplomatic and

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**Diplomatic Protocol**

consular law are often contained in books relating generally to “diplomacy.”

### Contemporary Perspectives on Diplomacy


### Historical Perspectives on Diplomacy


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E. **Blogs & Other Electronic Sources**

Blogs offer insights into the minds of practitioners, law professors, and other academics with regards to their views on current events implicating international law. The writing is often easier to understand than dense scholarly publications, and authors are arguably more straightforward and refreshingly honest in their views (since their posts are not peer-reviewed scholarly works). That being said, credibility can be an issue since anybody can create a blog. Always verify a blog (and its constituent individual posts) by doing some background research on the publisher, author, contact information, etc. Take a look at the site itself; the presence of dead links, for example, is an indication that the blog is not up-to-date. Blogs that end in “.com” should generally be avoided, since they tend to be commercial in nature. That being said, here are three reputable blogs:
Opinio Juris

*Opinio Juris* is a blog on international law and international relations whose contributors are law professors, legal practitioners, and other academics.\(^{102}\) Posts are free to access and are searchable by keyword. The posts consist of well-written, analytical pieces on current events and provide rich intellectual fodder for further independent research and investigation. Posts often provide a clear and concise overview of the topic, including citations to relevant international and national cases. Depending on the author, the most important provisions of these laws are also excerpted and accompanied by unique independent analysis. The responses offered by other law professors and practitioners appended at the end of each blog post are also worth reading. For those researching high-profile recent events relating to diplomatic and consular law, chances are there is a blog post on point.

EJIL: Talk!

*EJIL: Talk!* is the blog of the European Journal of International Law, whose editors are all British professors associated with prestigious British institutions.\(^{103}\) This blog specializes in international law, but posts deal primarily on European institutions such as the European Court of Human Rights. Like *Opinio Juris*, posts are free to access and are searchable by keyword. Posts on current events are provided historical and legal background, and contain citations and excerpts to relevant international and national cases. As with *Opinio Juris*, each post is accompanied by comments.


**LawFare**

*LawFare* is a blog associated with the Brookings Institution\(^{104}\) that analyses foreign policy and international issues through the lens of the law. The blog is overseen by a board of distinguished individuals with backgrounds in government, private practice, and academia. Posts are searchable by keyword, but be aware that searches such as “diplomatic immunity” often lead to posts that actually implicate other doctrines such as foreign state immunity (which deals with states, not individuals). *LawFare* posts are similar to those found on *Opinio Juris*, but do not have a comment section at the end.

### 2010 State Department Cables (“Cablegate”)

In November 2010, the organization *Wikileaks* began the unauthorized release of over 250,000 U.S. State Department Cables transmitted by U.S. diplomatic missions around the world primarily from 2003 to 2010. The release of the cables was highly controversial. Although none of the cables were classified as “top secret,” there were concerns that the information contained in the cables would jeopardize U.S. interest abroad and put at risk the lives of U.S. agents working abroad.

From a research perspective, however, the cables are an unprecedented source of raw data that has not yet been fully studied. The U.S. State Department has not challenged the authenticity of the cables, which suggests that the released cables are authentic. Given the manner in which they were obtained, the cables do not come from a verifiable source. It is also unclear how one should cite the cables. By accessing and using the data, make sure that you are not inadvertently breaking rules pertaining to professional and academic conduct. For example, those wishing to pursue a

\(^{104}\) The Brooking Institute is an influential think tank with a generally centrist point of view. Of course, as with all blog posts, it is always a good idea to also investigate the background of the individual authors.
future career with the U.S. State Department should think twice before citing the cables in a published academic paper.

As of 2015, the “Cablegate” documents have all been released by Wikileaks and are available for online access. For now, the cables can be accessed through The Wikileaks Library of US Diplomacy.¹⁰⁵ There is no guarantee that the website will continue to function in the future. The website contains a comprehensive search function that allows the user to search by keyword, subject, a pre-defined list of concepts, location of the sender/receiver of the cable, the State Department office that sent/received the cable, the level of classification, and handling restrictions. For those interested in diplomatic cables prior to 2003, there is the option to search for the “Kissinger Cables” (documents from 1973 to 1976) and the Carter Cables (documents from 1977).

For those concerned about the reliability, legality, or citable nature of the cables on the Wikileaks Library of US Diplomacy, they can turn to major newspapers that published some of the cables in redacted form. Having vetted the information themselves, these newspapers may add a layer of credibility to the released cables. The following newspapers have dedicated an entire section (background information, articles, etc.) on Wikileaks and “Cablegate”:

2. Der Spiegel (Germany)- http://www.spiegel.de/international/topic/wikileaks_diplomatic_cables/
4. Le Monde (France, only in French)- http://www.lemonde.fr/documents-wikileaks/
5. El País (Spain, only in Spanish)- http://elpais.com/tag/c/91871e200f2c2bf8987c3cdeb09d178a

**Part VI: Researching State Practice**

**A. Government Websites and Yearbooks**

Government websites and yearbooks are among the best resources for researching state practice. The governments of many countries publish resources or have pages discussing aspects of diplomatic and consular law online. For example, typing in “diplomatic immunity” in the search box on the Australian Department of Foreign Affairs and Trade’s home page leads to a publication entitled “Privileges and Immunities” that covers practical information for diplomats, consuls, and their families posted in Australia.¹⁰⁶ These resources can often be found within the Ministry of Foreign Affairs (see chart at the end of this sub-section A for the name of the ministry for a particular country). It is useful to explore government websites in both English and the vernacular language, given that the English version may not be updated as frequently. Keep in mind that official

¹⁰⁵ https://www.wikileaks.org/plusd/about/
or authoritative documents may only be in the vernacular. Non-speakers of the vernacular may want to specialized dictionaries with language forums such as WordReference\textsuperscript{107} (Spanish, French, Portuguese, Arabic, Korean, Turkish, Japanese, Greek, Czech, Romanian, Polish, Russian, Italian), Dict.cc\textsuperscript{108} (German), and MDBG.net\textsuperscript{109} (Simplified/Traditional Chinese) instead of relying on generic translators such as Google Translate.

Additionally, many states also publish a yearbook that focuses on international law. Examples of prominent yearbooks include the Canadian Yearbook of International Law/Annuaire Canadien de Droit International, Polish Yearbook of International Law, and the Chinese Yearbook of International Law and Affairs. These invaluable sources of state practice often provide citations to primary sources. In some cases, the actual text of the most important documents is directly reprinted. Increasingly, yearbooks are being published in English in order to increase their worldwide accessibility. Prominent yearbooks from countries around the world can be accessed through HeinOnline’s Foreign and International Law Resources Database (FLRD). Yearbooks are also indexed in the Index to Foreign Legal Periodicals (see above for more about IFLP). Westlaw also provides full text access to a limited number of yearbooks. To locate yearbooks in a library catalog, search “international law yearbook” as a subject search. Berkeley Law’s Foreign & International Law Resources Database, accessible online, also provides access to a wide range of international yearbooks.\textsuperscript{110}

[see chart on next page]

\textsuperscript{107} www.wordreference.com.
\textsuperscript{108} www.dict.cc.
\textsuperscript{109} http://www.mdbg.net/chindict/chindict.php.
\textsuperscript{110} http://heinonline.org/HOL/Index?collection=intyb.
<table>
<thead>
<tr>
<th>Country</th>
<th>Name of Foreign Ministry</th>
<th>Website Language(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Australia</td>
<td>Department of Foreign Affairs and Trade</td>
<td>English</td>
</tr>
<tr>
<td>Brazil</td>
<td>Ministry of External Relations, Ministério das Relações Exteriores</td>
<td>Portuguese</td>
</tr>
<tr>
<td>Canada</td>
<td>Department of Foreign Affairs, Trade, and Development, Ministère des Affaires étrangères, Commerce et Développement</td>
<td>English, French</td>
</tr>
<tr>
<td>China</td>
<td>Ministry of Foreign Affairs of the People’s Republic of China, 中华人民共和国外交部</td>
<td>English, Chinese (traditional &amp; simplified), French, Russian, Spanish, Arabic</td>
</tr>
<tr>
<td>France</td>
<td>Ministry of Foreign Affairs and International Development, Ministre des Affaires étrangères et du Développement international</td>
<td>English, French, German, Spanish, Arabic, Chinese</td>
</tr>
<tr>
<td>Germany</td>
<td>Federal Foreign Office, Auswärtiges Amt</td>
<td>English, German, French, Spanish, Portuguese, Arabic, Chinese</td>
</tr>
<tr>
<td>India</td>
<td>Ministry of External Affairs</td>
<td>English, Hindi, Arabic, Spanish</td>
</tr>
<tr>
<td>Japan</td>
<td>Ministry of Foreign Affairs</td>
<td>English, Japanese, other languages available through</td>
</tr>
</tbody>
</table>
A. State Practice of the United States

1. Useful Resources

**American Law Institute Restatement of Foreign Relations of the United States**

The American Law Institute (ALI) is an independent organization comprised of renowned lawyers, judges, and law professors. One of its main purposes is to clarify and simplify common law as it exists in the United States. To this end, the ALI issues restatements of the law on various topics, including Foreign Relations. Restatements are not official, but are extremely persuasive and influential. For the most part, they are also well-organized and easy to read.

Adopted in 1987, the 3rd Restatement of Foreign Relations is the latest edition, though an updated 4th Restatement is currently underway. Volume I, chapter 6, subchapter A deals directly with Diplomatic and Consular Immunities. This section is further broken down into sections on the immunity of diplomatic agents, the immunity of consular personnel, and the immunity of diplomatic and consular premises, archives, documents, and communications. Principles derived from the VCDR and VCCR are summarized and accompanied by many comments. The Reporter’s copious notes also provide citations to important U.S. cases, bilateral treaties with other countries, and other primary sources.

The third edition (along with commentaries) and drafts of the fourth edition are available at Berkeley Law. The full text of the restatement is also available on HeinOnline, WestLaw, and LexisAdvance.
American Society of International Law

The American Society of International Law is a professional organization whose members are attorneys, scholars, judges, and students of international law. The organization offers a wealth of resources, and is a great place to look for articles on recent developments of the law.

One of the organization’s publications is the American Journal of International Law (AJIL), a peer-reviewed journal that focuses on international law and international relations. According to Google Scholar, it is the most-cited international law journal. This is a great resource to find summaries and analyses of cases. AJIL publications also contain a section entitled “Contemporary Practice of the United States Relating to International Law” that offers expert analyses on major recent events. The full text of journal articles can be accessed through LexisAdvance, HeinOnline, and WestLaw.

Another useful resource is ASIL Highlights, which provides brief but insightful analyses of the latest world events. They are written by well-respected law professors and practitioners, and select articles are offered online. Unfortunately, the search function on the ASIL Highlights home page is restricted to members of the American Society of International Law.

Lastly, the organization also publishes International Legal Materials (ILM), which reproduces primary legal documents relating to international law. Such documents include full texts of the most significant international treaties and national cases. ILM has been published bimonthly since 1962, and is available through LexisAdvance, WestLaw, JSTOR, and HeinOnline.

American Law Reports

American Law Reports are a resource used primarily by practicing lawyers. Published by West, each ALR entry is helpful because it summarizes a particular legal topic in a methodical and chronological manner. Most important, this secondary source helps guide users to important laws, regulations, and cases. ALR can be accessed through WestLawNext online. One entry, entitled “Applicability of Diplomatic Immunity under the Vienna Convention and Diplomatic Relations Act” (1 A.L.R. Fed. 2d 351) discusses the important US federal and state cases concerning the implementation of the VCDR in the United States.

2. State Department Materials

Digest of United States Practice in International Law (DUSPIL)

Published by the Office of the Legal Advisor at the State Department in conjunction with Oxford University Press and the International Law Institute, this annual publication provides insights into the United States’ views and implementation of international law. Each publication highlights the year’s most important documents, including court briefs, official US communications to international organizations, inter-agency and intra-agency memos, speeches, and letters from politicians and envoys. There is a volume covering 1989-90, a two-volume set covering 1991-1999, and annual volumes from 2000-2010. Hard copy volumes can be purchased through Oxford University Press or the International Law Institute, depending on the year. Most convenient, pdf files of the digest (along with individual chapters) are available online through the State Department.

Chapter 2 of the Digest deals with Consular and Judicial Assistance, which is helpful for researching the latest developments on the implementation of the Article 36 of the VCCR. Chapter 9 deals with Diplomatic Relations, and can be useful for research relating to the establishment of embassies and consulates abroad. Finally, Chapter 10 (Privileges and Immunities) has a sub-section that deals specifically with Diplomatic and Consular Privileges and Immunities.

Foreign Relations of the United States

Direct link: https://history.state.gov/historicaldocuments

This series, published by the Office of the Historian at the State Department, is the official documentary record of US foreign policy and diplomatic activity. Published since 1861, there are now over 450 volumes. Since 1952, volumes are arranged in order by presidential administration, with geographic and topical subdivisions. With publication far behind schedule, the latest volume pertains to the Carter Administration. The volumes contain declassified documents and material from entities such as the Central Intelligence Agency, Agency for International Development, Department of State, Department of Defense, and the National Security Council.

Documents can be accessed for free online through the State Department’s website, searchable by presidential administration or by volume. 133 volumes are also fully reproduced as free downloadable e-books (viewable through Adobe software), which allows for convenient note-taking, bookmarking, hyperlink shortcuts, and full-text searches. The e-book can be accessed without internet connectivity. Check out the right-hand panel on the homepage of the website for other electronic sources for U.S. Foreign Relations, tips for searching the Foreign Relations Series, and guidance on how to cite documents. The Foreign Relations Series is also available in print at Berkeley Law as well as through HeinOnline.
Diplomatic and Consular Immunity: Guidance for Law Enforcement and Judicial Authorities

Publisher: Bureau of Diplomatic Security
Direct link: http://www.state.gov/documents/organization/150546.pdf
Last revised: July 2011

Available online, this State Department guide explains the immunities and privileges that foreign personnel in the United States are entitled to. The guide provides an easy-to-read overview of the topic, and is geared primarily for use by law enforcement and judicial officials. Topics include an overview of the categories of persons entitled to privileges and immunities, which types of identification are acceptable for purposes of asserting immunity, how immunity can be waived or terminated, and practical advice on how to handle incidents in a professional manner. The appendix in Section VIII contains examples of identifying documents.

Example of guidance on how to interpret an ID card:

Consular Notification and Access

Publisher: US Department of State, Office of the Legal Advisor and Bureau of Consular Affairs
Last revised: March 2014

This manual is written for local, state, and federal law enforcement and government officials with the goal of ensuring that foreigners in the United States are able to exercise their right to consular notification and access. The instructions and guidance in the manual “must be followed … whether law enforcement, judicial, or other, insofar as they pertain to foreign nationals subject to officials’ authority or to matters within the official's competence.” The guide is organized into five parts: 1) Basic instructions, 2) Detailed Instructions on the Treatment of Foreign Nationals, 3) Frequently Asked Questions, 4) Legal Overview, and 5) Suggested Statements to Detained Foreign Nationals, Notification Sheets, and Consular Identification Cards.
In terms of bilateral consular treaties, Table A lists countries\textsuperscript{112} whose nationals \textit{must} be notified about their consular rights, while Table B lists countries whose nationals are to be notified “upon request.” Knowing which country falls into which category is important because the default under the VCCR is notification “upon request.” Table C, on page 55, includes a list of countries with which the United States has signed memoranda of understanding or agreements relating to consular matters.

<table>
<thead>
<tr>
<th>COUNTRY/JURISDICTION</th>
<th>TRIGGERING EVENT</th>
<th>TIME LIMIT</th>
</tr>
</thead>
<tbody>
<tr>
<td>Belgium\textsuperscript{8}</td>
<td>Taken into custody</td>
<td>Immediately</td>
</tr>
<tr>
<td>Denmark\textsuperscript{9}</td>
<td>Accused of a crime and taken into custody</td>
<td>Immediately</td>
</tr>
<tr>
<td>Eritrea\textsuperscript{11}</td>
<td>In custody</td>
<td>Immediately</td>
</tr>
<tr>
<td>Ethiopia\textsuperscript{11}</td>
<td>In custody</td>
<td>Immediately</td>
</tr>
<tr>
<td>France\textsuperscript{12}</td>
<td>Arrest and detention</td>
<td>Immediately</td>
</tr>
<tr>
<td>Germany\textsuperscript{12}</td>
<td>Taken into custody</td>
<td>Immediately</td>
</tr>
<tr>
<td>Iran\textsuperscript{14}</td>
<td>In custody</td>
<td>Without unnecessary delay</td>
</tr>
<tr>
<td>Ireland\textsuperscript{15}</td>
<td>Confined in prison, awaiting trial, or otherwise detained in custody</td>
<td>Immediately</td>
</tr>
</tbody>
</table>

\textbf{Protocol for the Modern Diplomat}

Publisher: Foreign Service Institute
Direct link: http://www.state.gov/documents/organization/176174.pdf
Last revised: January 2001

Issued by the Foreign Service Institute,\textsuperscript{113} this publication attempts to assuage the concerns of U.S. Foreign Service Officers about to embark on their missions abroad. It provides practical information every diplomat needs to know, from how to format a business card to how to organize seating arrangements at a formal dinner party without offending guests. There is also a glossary of diplomatic terms, defining terms of the trade such as “demarche” (a request with a foreign official) and acronyms such as \textit{p.r.} used in official correspondence (to express thanks, from the French \textit{pour remercier}).

\textsuperscript{112} Also known as “mandatory notification,” or more precisely, “automatic notification” countries.
\textsuperscript{113} The Foreign Service Institute (FSI) is organized like a university, but is run by the government to teach diplomatic agents foreign language, management, and other skills necessary for their jobs.
Legal Aspects of Diplomatic Immunity and Privileges

Publisher: Bureau of Diplomatic Security
Direct link: http://www.state.gov/m/ds/c9127.htm

<table>
<thead>
<tr>
<th>Category</th>
<th>May Be Arrested or Detained</th>
<th>Residence May be Entered Subject to Ordinary Procedures</th>
<th>May Be Issued Traffic Citation</th>
<th>May Be Subpoenaed as Witness</th>
<th>May Be Prosecuted</th>
<th>Recognized Family Member</th>
</tr>
</thead>
<tbody>
<tr>
<td>Diplomatic</td>
<td>No¹</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>Same as sponsor (full immunity and inviolability).</td>
</tr>
<tr>
<td>Member of Administrative and Technical Staff</td>
<td>No¹</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>Same as sponsor (full immunity and inviolability).</td>
</tr>
<tr>
<td>Service Staff</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>No immunity or inviolability.²</td>
</tr>
</tbody>
</table>

There are three charts online that lay out the immunities granted to diplomatic personnel living in the United States. The charts pertain to individuals associated with diplomatic missions, consular missions, and international organizations. This handy resource is particularly useful for U.S. law enforcement and judicial officials. Note that because the United States has bilateral agreements with certain countries, the information may not apply to personnel from those countries.

Diplomatic Pouches

Publisher: Officer of Foreign Missions
Direct link: http://www.state.gov/ofm/customs/c37011.htm

The State Department defines what the United States considers a “diplomatic pouch,” a term that refers to a diplomatic bag. The website explains the requirements for identification of a “diplomatic pouch,” implementing §27.4 of the 1961 Vienna Convention on Diplomatic Conventions (“The packages constituting the diplomatic bag must bear visible external marks of their character …”). There are links to State Department notes that explain the information in greater detail. For even more detailed information about diplomatic pouches, there is an unclassified State Department Foreign Affairs Manual directly on point.¹¹⁴

B. Examples of State Practice Resources in Other Countries

United Kingdom

Diplomatic Immunity and Diplomatic Premises
Publisher: Crown Protection Service
Direct link: http://www.cps.gov.uk/legal/d_to_g/diplomatic_immunity_and_diplomatic_premises/

The Crown Protection Service, the prosecuting agency of England and Wales that provides advice to police agencies during criminal investigations, has a legal guide intended for prosecutors to help them execute their prosecutorial (and discretionary) obligations. The legal guide, entitled “Diplomatic Immunity and Diplomatic Premises,” explains the general principles, guidance status, and procedure to be followed in cases implicating diplomatic immunity and diplomatic premises.

**Germany**


For users who read German, this book is an invaluable resource for understanding the *WÜD* (VCDR) and *WÜK* (VCCR) from a German perspective. In fact, this is the first authoritative commentary about the VCDR and VCCR in the German-speaking world. The articles of the conventions are organized into chapters, which have the subsections *Entstehungsgeschichte* (background history), *Kommentierung* (commentary), *Deutsche Praxis* (German practice), and *Praxis anderer Staaten* (practice of other countries). The *Deutsche Praxis* subsection provides important information on how the Auswärtiges Amt (German Foreign Ministry) interprets and implements the Vienna Conventions. This book is available at the Berkeley Law library.

**German Yearbook on International Law (Jarhbuch für Internationales Recht)**

This annual publication, based at the University of Kiel in Germany, the yearbook provides commentary on German state practice and domestic court decisions relating to international and European Union Law. To expand its international reach, Yearbook articles are now increasingly published in English as well as in German. The online archive contains the table of contents of yearbooks starting from 2008, and abstracts starting from 2010. This information can be used to locate the yearbook in hard copy in library databases.

**Part VII: Conclusion**

Diplomatic and consular law is a fascinating area of the law that addresses the fundamental problem faced by nation-states: how to structure state-to-state interactions in an organized, reasonable way in order to minimize disputes that might ultimately escalate into armed conflict. The implementation of doctrines such as *persona non grata* and the inviolability of the diplomatic bag have been widely accepted in both customary international law and treaty law as being instrumental in facilitating structured state-to-state interactions. While diplomatic and consular law has a long venerable tradition, like other areas of the law it is not immune to change. The law changes quickly and often tracks developments in international politics, technology, etc. Therefore, while researching this area of the law, it is important to consider both print-based sources and web-based sources, the

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latter of which may offer information that is more up-to-date and relevant for matters relating to current events.

The three-step strategy for researching diplomatic and consular law is as follows: 1) Reading Secondary Sources, 2) Engaging with the Text of Multilateral Treaties and of International Court of Justice Decisions, and 3) Researching State Practice & Domestic Implementation of International Law. This research strategy is highly recommended because at its core, diplomatic and consular law is a branch of international law. Its implementation by individual states cannot be fully understood without first considering the elaborate international framework that governs this body of law.

In general, the secondary sources in this area of law are both top-notch and easily accessible. Resources such as Oxford Bibliographies, the Max Planck Encyclopedia of Public International Law, LawFare (blog), and Eileen Denza’s *Diplomatic Law: Commentary on the Vienna Convention on Diplomatic Relations* are highly recommended. In addition to purely legal indexes such as Legal Journals Index and Index to Foreign Legal Periodicals, be sure to consider sources such as Columbia International Affairs Online and JSTOR in order to find relevant journal articles. For research on state practice in the United States, be sure to consider American Journal of International Law and State Department materials.

In terms of primary sources, the text of and information about multilateral treaties are relatively easy to find using United Nations and International Court of Justice resources. Consider perusing the United Nations Audiovisual Library in connection with the examination of any multilateral United Nations treaty. For any treaty not covered in this guide, the FLARE index mentioned above can point the researcher in the right direction. The most difficult primary sources to locate are those pertaining to national law. To streamline searches, always look first to resources such as Foreign Law Guide, International Law Reports, yearbooks, and government legislation portals when searching for national law. For Travaux Préparatoires research on United Nations treaties, the International Law Commission’s Analytic Guide is your friend.

Despite the wealth of resources, there are some gaps in the coverage of material that may frustrate some researchers. For example, there is much more work to be done about how privileges and immunities accorded to diplomats clash with the human rights of individuals who are adversely affected (e.g. the mistreatment of domestic workers in diplomatic residences). In addition, because diplomatic and consular law as codified in the Vienna Conventions was largely spearheaded by Western countries such as Great Britain, most of the resources that are easily available present a Western perspective. This bias can be overcome by making a conscientious effort to locate non-Western resources whenever possible. This can be done by searching using a foreign language in resources such as the Index to Foreign Legal Periodicals, Public Affairs Information Service, and the websites of foreign ministries.

**Good luck on your research! Stay organized, be creative, and have fun!**