HARMONISATION IN COMPARATIVE LAW: LESSONS IN DIPLOMATIC IMMUNITIES

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Harmonisation of municipal law is an oft-quoted goal of comparative law. Scholars and practitioners alike will be aware, however, that this is not an easy goal. True harmonisation requires a law to be applied in the same way around the globe, irrespective of local variation in legal culture. This is very rare. One area that can offer an insight is the law on diplomatic immunities. Here, an international framework has been implemented with extraordinary uniformity in countries that are quite different. The answer lies in its framework-like nature. International law which provides a framework for development of further law or cooperation, and which enjoys widespread reciprocity, is more likely to be implemented widely. Diplomacy is an indispensable feature of international relations because most official interaction between States is conducted through diplomatic channels. That diplomatic immunities serve as a framework for international engagement renders the field easier to harmonise. However, the further the immunities stray beyond being a framework for further cooperation, the more likely that States will differ in opinion on its implementation. Additionally, if reciprocity is not an element at play, then harmonisation will be difficult irrespective of whether a law provides a framework or not. The two criteria of a framework-like nature and reciprocity are keys to harmonisation of international law in similar contexts to diplomacy.

I Introduction

International law and relations revolve around diplomacy, a field often shrouded in mists of secrecy. Fundamentally, it is the notion of managing and developing relationships between States.[1] This is no easy task because countries are different, often radically so. While harmonisation is difficult to achieve, it is not impossible. This paper offers some lessons for the harmonisation of domestic implementation of international law. It argues that harmonisation is most promising when a law provides a basic framework within which other more substantive rules operate, and when the field in question experiences widespread reciprocity. The law on diplomatic immunities satisfies both these criteria and has achieved near complete harmonisation despite the differences between the States analysed in this paper: the United Kingdom (**UK**), France and Singapore. The paper examines how different aspects of diplomatic immunities are applied in each of these States and considers the historical and policy context which drives national interpretation of international law. It concludes that the importance of diplomacy as a means

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[1] For more depth, see Ivor Roberts (ed), *Satow's Diplomatic Practice* (Oxford University Press, 6th ed, 2011) 3-4.

of participating in the international community, coupled with the fundamental framework nature of diplomatic immunities and the enduring principle of reciprocity, ensures that domestic laws are effectively harmonised in diverse States. While there may be other reasons for successful harmonisation in other legal contexts, these two criteria are a strong indication of success for areas which bear similarity to diplomatic immunities.

A *Background*

Diplomatic law evolved from the customs of States in dealing with each other's 'diplomatic agents'.[2] Evidence of such dealings dates back to 2500 BC.[3] Eventually, it was recognised that a codification of this customary international law was needed. The result was the 1961 *Vienna Convention on Diplomatic Relations* (**VCDR**),[4] which has been the bedrock of diplomatic law ever since and been ratified by 190 States.[5] Its implementation in the UK,[6] France,[7] and Singapore,[8] is essentially verbatim, although the UK and Singapore have opted out of legal force for some minor articles directed mainly at the State *versus* society-at-large.

However, as with any area of international law, the best measure of success is in its application. For this, the law on diplomatic immunities is an ideal place to search because immunity is at the heart of diplomatic operations. It places diplomatic agents beyond the law of the State to which they are sent, which allows them to fully perform their duties to their home State. The receiving State allows this because its own diplomats enjoy the same protection abroad. Comparative law scholars would be quick to point out that any area of law could look uniform on the surface, but be more complex as one drills deeper.[9] Yet this paper will reveal that most diplomatic immunities operate on a different level because they are a fundamental framework for the world of international relations.

[2] A technical term now understood as someone holding accredited diplomatic rank. See Eileen Denza, *Diplomatic Law* (Oxford University Press, 4th ed, 2016) 14-16; Jonathan Brown, 'Diplomatic Immunity: State Practice under the Vienna Convention on Diplomatic Relations' (1988) 37(1) *The International and Comparative Law Quarterly* 53, 54-9.

[3] Roberts (ed), above n 1, 6.

[4] Opened for signature 18 April 1961, [1968] ATS 3 (entered into force 24 April 1964). For the historical journey to the treaty, see Richard Langhorne, 'The Regulation of Diplomatic Practice: The Beginnings to the Vienna Convention on Diplomatic Relations, 1961' (1992) 18(1) *Review of International Studies* 3.

[5] United Nations, *3. Vienna Convention on Diplomatic Relations*, United Nations Treaty Collection <https://treaties.un.org/doc/Publication/MTDSG/Volume%20I/Chapter%20III/III-3.en.pdf>.

[6] *Diplomatic Privileges Act 1964* (UK).

[7] *Décret n° 71-284 du 29 mars 1971* [Decree No 71-284 of 29 March 1971] (France) JO, 17 April 1971, 3695.

[8] *Diplomatic and Consular Relations Act 2006* (Singapore).

[9] See, in a different context, Wygene Chong, 'Arbitrating in Harmony: The Effect of the Model Law on the Choice of Seat of Arbitration' (2016) 1 *Perth International Law Journal* 82.

B *Method*

This paper conducts a contextual functional analysis of the law on diplomatic immunities in the UK, France and Singapore. The analysis is functional in that it looks at separate functions of diplomatic immunities, including a degree of abstract relativism.[10] This is to overcome the issue of different terms used to describe concepts in the scholarly literature. The paper defines 'immunity' as preferential treatment for a diplomatic agent vis-à-vis other persons within a receiving State, so as to allow the agent to properly perform their duties to their sending State. This is because duties to a sending State may clash with the interests of the receiving State. The concept of harmonisation is defined as a situation when municipal laws are equal, not only in construction but also in application.

The paper first considers inviolability, which is often seen as the most fundamental immunity as it protects the diplomatic process from direct violation. Secondly, the paper looks to legal immunities, which exempt diplomats from procedural laws. Thirdly, privileges, which are effectively exemptions from substantive law, will be discussed. Finally, the paper looks to methods of removing immunities, such as 'waiver' and 'persona non grata'. While the use of these terms may not correspond perfectly to dominant scholarly thinking, they are useful in conducting this comparative analysis across jurisdictions.

The three featured jurisdictions each represent a different category of State. The UK played a leading role in the drafting of the VCDR and brought a perspective coloured by its current and former colonies. France did not play any such leading role, despite being a major diplomatic heavyweight. At the other end of the spectrum, Singapore played no part in the drafting of the Convention, as its interests were represented by the UK. Despite these differences, all of these countries apply many elements of the VCDR identically. The context to the functional analysis explains this similarity. The paper will look to the proceedings of the Vienna Conference in which the treaty was drafted,[11] the mass media, domestic laws, textbooks and scholarly articles to elicit an understanding of why the application of diplomatic law is so similar in the face of so much diversity. The usefulness of this analysis to harmonisation in comparative law more generally will depend on the area of law being analysed. If it shares the background, purpose and features of diplomatic immunities, then the conclusions of this paper are more likely to be useful to consider the effectiveness of harmonising that law.

[10] A concept embedded in, for example, Vernon Palmer, 'From Lerotholi to Lando: Some Examples of Comparative Law Methodology' (2004) 4(2) *Global Jurist Frontiers* 1; Geoffrey Samuel, 'Taking Methods Seriously (Part Two)' (2007) 2 *Journal of Comparative Law* 210, 232-7.

[11] *United Nations Conference on Diplomatic Intercourse and Immunities: Official Records*, UN GAOR, UN Docs A.CONF.20/14 and Add.1 (2 March 1961 – 14 April 1961).

II The Immunities

A *Inviolability*

If immunities are at the heart of diplomatic law, inviolability lies at the heart of immunities.[12] A diplomatic agent,[13] his/her official residence,[14] the chancery[15] (i.e. embassy building) and mission archives and documents[16] are expressly protected from all forms of 'violation.' Most obviously, one cannot arrest or detain a diplomatic agent,[17] or enter a diplomatic residence or chancery without the permission of the head of mission.[18] Inviolability allows diplomats to go about their work without fear of direct interference from anyone in the receiving State. Put differently, without inviolability, diplomats would not risk performing duties for their sending State such as gathering information, speaking publicly on controversial issues or even being present in a time of war. It is not surprising then that there was virtually no debate on these provisions at the Vienna Conference.[19]

The UK experienced one of the world's most dramatic challenges to personal inviolability in 1984:

> A policewoman is shot and killed during a protest demonstration outside the Libyan embassy in London. The gunman, a Libyan national holed up in the embassy, leaves the country, with the consent of British authorities. His protection? Diplomatic immunity.[20]

In the immediate aftermath of the shooting, British police surrounded the embassy and looked set to breach article 29 on personal inviolability by arresting or detaining diplomatic agents. Indeed, Libya treated this act as tantamount to a siege, and promptly surrounded the British embassy in Tripoli.[21] This is one of the clearest examples of the reciprocal nature of diplomatic law, for when one State teeters on the brink of breaching the law, another State will quickly demonstrate the potential consequences of the breach by reciprocating; in this case, detaining British diplomats in Libya. The UK eventually allowed the Libyan diplomats to depart with all the evidence due to the inviolability of

[12] René Värk, 'Personal Inviolability and Diplomatic Immunity in Respect of Serious Crimes' (2003) VII *Juridica International* 110, 111.
[13] *Vienna Convention on Diplomatic Relations,* opened for signature 18 April 1961, [1968] ATS 3 (entered into force 24 April 1964) art 29.
[14] Ibid art 30.
[15] Ibid art 22.
[16] Ibid art 24.
[17] Ibid art 29.
[18] Ibid art 22.
[19] *United Nations Conference on Diplomatic Intercourse and Immunities: Official Records*, UN GAOR, UN Doc A.CONF.20/14 (2 March 1961 – 14 April 1961) 15-16, 18.
[20] Moira Griffin, 'Diplomatic Immunity' (1984-5) 13 *Student Law* 18.
[21] BBC News, *1984: Libyan Embassy Shots Kill Policewoman* (17 April 1984) <http://news.bbc.co.uk/onthisday/hi/dates/stories/april/17/newsid_2488000/2488369.stm>.

premises.[22] The UK then broke relations with Libya, arguably the most serious retaliation available under diplomatic law.[23] Despite its contemptuous disregard of British interests in this instance, the rule of personal inviolability prevailed in the end.

One of the most high profile inviolability of chancery cases in recent years has been that of Julian Assange. The founder of an organisation known as 'Wikileaks' has been residing in the Ecuadorian embassy in London since mid-2012 while being wanted for questioning in Sweden on charges of sexual assault.[24] The UK has upheld the building's inviolability despite the prohibitive cost of maintaining continuous surveillance to prevent Mr Assange from escaping.[25] Again, there is a need to maintain friendly relations with Ecuador (the UK maintains an embassy in Ecuador),[26] and to uphold the UK's reputation as respecting a fundamental rule of international law.[27] Interestingly, Ecuador recently restricted internet access to Mr Assange because of suspected interference in the 2016 United States' election,[28] a sign of diplomatic reciprocity which could lead to a lessening of bilateral tensions.

France and Singapore have suffered less dramatic tests to their application of diplomatic inviolability. Most cases involve honorary consuls who do not have inviolability as they are not diplomatic agents,[29] or voluntary recalls.[30] The reason for the lack of difficult cases is hard to discern. One possible reason could be that the UK is perceived as the most high profile target State among the three; London is the largest city in the European Union by population, and one of the most influential cities in the world.[31] The UK is a permanent member of the United Nations Security Council (**P5 member**) and has one

[22] Denza, above n 2, 121.

[23] Yehudit Ronen, 'Libya's Conflict with Britain: Analysis of a Diplomatic Rupture' (2006) 42(2) *Middle Eastern Studies* 271, 274-5.

[24] For the possible reason behind Ecuador as host, see Angela Rossitto, 'Diplomatic Asylum in the United States and Latin America: A Comparative Analysis' (1987) 13 *Brooklyn Journal of International Law* 111.

[25] Denza, above n 2, 115-116.

[26] British Embassy Quito, <https://www.gov.uk/government/world/organisations/british-embassy-in-ecuador>.

[27] See further discussion in Paul Webster Hare, 'Julian Assange and WikiLeaks are Harming Diplomacy more than the Clinton Campaign' (2016) *The Conversation* (blog) <http://theconversation.com/julian-assange-and-wikileaks-are-harming-diplomacy-more-than-the-clinton-campaign-67625>.

[28] Ryan Dube and Damian Paletta, 'Ecuador Restricts WikiLeaks Founder Julian Assange's Communications', *The Wall Street Journal* (online), 19 October 2016 <http://www.wsj.com/articles/ecuador-restricts-wikileaks-founder-julian-assanges-communications-1476834096>. See also Paul Webster Hare, 'Julian Assange and WikiLeaks are Harming Diplomacy more than the Clinton Campaign' (2016) *The Conversation* (blog) <http://theconversation.com/julian-assange-and-wikileaks-are-harming-diplomacy-more-than-the-clinton-campaign-67625>.

[29] See, for example, The Star, *Consulate used as Casino: Senegal's Premises Double as Gambling Den by Night* (5 November 2006) <http://www.thestar.com.my/news/regional/2006/11/05/consulate-used-as-casino-senegals-premises-double-as-gambling-den-by-night/>.

[30] See, for example, Chris Hastings, 'Police Losing Battle Over Diplomatic Immunity', *The Telegraph* (online), 25 February 2007 <http://www.telegraph.co.uk/news/uknews/1543763/Police-losing-battle-over-diplomatic-immunity.html>.

[31] See, for example, Institute for Urban Strategies: The Mori Memorial Foundation, 'Global Power City Index 2016: Summary' (2016) <http://www.mori-m-foundation.or.jp/pdf/GPCI2016_en.pdf>.

of the world's largest military budgets.[32] However, Paris is home to a larger number of foreign embassies than London,[33] and France too is a member of the P5. There are likely to be many more sophisticated arguments for either side of this debate.

However, the exact reasons for the differences between France, Singapore and the UK on this issue are irrelevant for present purposes. What matters is that whether the test to inviolability is dramatic or not makes no difference to whether a State will respect the principle. This exemplifies harmonisation of law as these States are being tested in different ways but they continue to apply the law equally. Directly challenging a State's government with criminal breaches of the law and violence is even more powerful than a difference of culture or tradition between these States. Despite that, these States continue to respect the inviolability of diplomats and diplomatic property.

B *Legal Immunities*

Legal immunity refers to a diplomatic exemption from procedural laws.[34] Diplomats are immune from the jurisdiction of the receiving State,[35] from giving evidence in court,[36] and from execution of judgments.[37] These provisions received some debate at the Vienna Conference, although amendments were generally rejected.[38] The UK was against unnecessary complications to legal immunities, preferring a broad immunity with few exceptions. This influential view from a P5 member was followed, as seen in the voting records.[39]

Despite not speaking on the issue at the Vienna Conference, France and Singapore also follow these basic rules. In 2009 when a Romanian diplomat ran over three people while intoxicated in Singapore, local authorities respected his potential immunity from criminal jurisdiction and allowed him to return home.[40] Interestingly, it turned out that the diplomat had not been entitled to legal immunity because his diplomatic appointment had lapsed.[41] Nonetheless, in another display of reciprocity, he was charged in

[32] Sam Perlo-Freeman et al., *Trends in World Military Expenditure, 2015* (Stockholm International Peace Research Institute, 2016).
[33] Lowy Institute for International Policy, 'Global Diplomacy Index 2016' (2016) <https://www.lowyinstitute.org/global-diplomacy-index/>.
[34] *Empson v Smith* [1966] 1 QB 426, 438 per Diplock LJ.
[35] *Vienna Convention on Diplomatic Relations,* opened for signature 18 April 1961, [1968] ATS 3 (entered into force 24 April 1964) art 31(1).
[36] Ibid art 31(2).
[37] Ibid art 31(3).
[38] *United Nations Conference on Diplomatic Intercourse and Immunities: Official Records*, UN GAOR, UN Doc A.CONF.20/14 (2 March 1961 – 14 April 1961) 18-21. See also, Denza, above n 2, 239.
[39] *United Nations Conference on Diplomatic Intercourse and Immunities: Official Records*, UN GAOR, UN Doc A.CONF.20/14 (2 March 1961 – 14 April 1961) 20.
[40] AsiaOne, *MFA's Statement Regarding Diplomatic Immunity* (15 April 2010) <http://news.asiaone.com/News/AsiaOne+News/Singapore/Story/A1Story20100415-210576.html>.
[41] Ibid. See also, *Vienna Convention on Diplomatic Relations,* opened for signature 18 April 1961, [1968] ATS 3 (entered into force 24 April 1964) art 39(2); *Diplomatic and Consular Relations Act 2006* (Singapore) 3(1).

Romania for his actions and sentenced to six years' imprisonment, a result welcomed by Singapore.[42] A similar situation of intoxicated assault, albeit with no physical harm, occurred in France in 2016.[43] Again, diplomatic immunity was respected.

On the other hand, France has been accused of ignoring legal immunities. The International Court of Justice is currently hearing a case on whether an Equatorial Guinean politician should be accorded legal immunity in France.[44] However, on a closer reading, the case does not primarily concern immunity arising out of diplomatic agent's rights, but out of the doctrine of State immunity. Even though there are references to the VCDR,[45] the case is likely to be stronger on the latter doctrine, which refers to the immunity of a Head of State, Head of Government, Foreign Minister and the State itself in its conduct abroad.[46] France appears to be respecting diplomatic legal immunities, even if it treats State immunity differently. This is understandable because the doctrine of State immunity is by no means settled law.[47] It lacks the framework-like nature of diplomatic immunity because it intrudes into exemptions from substantive law. The use of the same terminology across different areas of law compounds this problem, which will arise again later in the context of waiver of immunity.

C *Privileges*

In this paper, privileges refer to exemptions from substantive laws of the receiving State.[48] The clearest example of a privilege is the general right to not pay tax.[49] Obviously, there is no debate over payment of common taxes, such as on income. The issue is with more innovative taxes which are specific to a State, because one can dispute whether they are taxes, or whether they fall into one of the six exemptions in article 34, some of which have a 'tortuous history'.[50] Since 2005, London's 'congestion charge' has been the target of significant diplomatic unrest. The charge is levied on all vehicles entering a zone in central London, whatever the length of time they spend within the zone. UK authorities argue it is a charge for specific services rendered, an exception under the

[42] AsiaOne, *MFA's Statement Regarding Diplomatic Immunity* (15 April 2010) <http://news.asiaone.com/News/AsiaOne+News/Singapore/Story/A1Story20100415-210576.html>.
[43] Info Yvelines, *Yvelines: Le Conducteur Marocain Ivre et Armé Bénéficiait de L'immunité Diplomatique* (24-5 October 2016) <http://www.infonormandie.com/Yvelines-le-conducteur-marocain-ivre-et-arme-beneficiait-de-l-immunite-diplomatique_a14566.html>.
[44] Carmelo Nvono Nca, 'Requête Introductive d'Instance' (Application to the International Court of Justice, 13 June 2016, The Hague).
[45] Ibid 1, 10.
[46] See, generally, Huikan Huang, 'On Immunity of State Officials from Foreign Criminal Jurisdiction' (2014) 13 *Chinese Journal of International Law* 1. For more, see Hazel Fox, *The Law of State Immunity* (Oxford University Press, 2nd ed, 2008); Roberts, above n 1, 22-6.
[47] Contrast *La Générale des Carrières et des Mines v FG Hemisphere Associates LLC* [2012] UKPC 27 with *Democratic Republic of the Congo v FG Hemisphere Associates LLC (No 2)* (2011) 14 HKCFAR 395.
[48] Adopting Roberts, above n 1, 141-50.
[49] Roberts, above n 1, 142-5; *Vienna Convention on Diplomatic Relations,* opened for signature 18 April 1961, [1968] ATS 3 (entered into force 24 April 1964) arts 23, 34, 36.
[50] Denza, above n 2, 301.

VCDR;[51] the services rendered being improved public transport or a quicker journey in the zone by private vehicle.[52] On the other hand, a similar scheme running in Singapore has not been challenged by diplomats because it is more akin to a road toll, for which there is a specific service rendered: the maintenance of that road.[53]

The basis for these differences is in the nature of a diplomatic privilege. Being substantive and not central to the proper performance of diplomacy increases the probability that these privileges are challenged. The term 'privilege' as opposed to 'immunity' or 'inviolability' indicates that the 'privilege' is not an indispensable right. It is an extra honour accorded to diplomats, but that can be modified or removed on a whim. Once the receiving State has decided so, it need only make an argument based on the slightly ambiguous language of the Vienna Convention in this regard. As privileges are not fundamental to diplomatic operations, there is no need for reciprocity; indeed reciprocity may be hard to achieve if, for example, both countries need to implement an identical tax. This is different to inviolability and legal immunities, which do enjoy reciprocity because they only provide a structure for more substantive diplomatic and legal interaction.

D *Waiver*

There are two types of waiver of immunity considered in this paper: waiver by the sending State and a declaration of *persona non grata* by the receiving State. The first refers to a loss of immunity, while the second is a power of the receiving State to effect a change of diplomatic agent (not technically a revocation of immunity). Despite the potential for abuse, both are applied relatively uniformly across jurisdictions. Divergence in this area tends to manifest in court judgments, where national courts grapple with the confusing network of State immunity, diplomatic immunity, customary international law and older national precedents. While this paper is concerned with diplomatic immunity, it is inevitable that other laws will come into play when waiver is involved, because it is a common concept to both national and international laws outside the diplomatic sphere.

One area where States differ is how specific the waiver must be to be effective. In the UK, a waiver must be express and specific,[54] not simply express, following years of case law dating back to before the Vienna Convention. The same position was held in France ('de manière express et spéciale'),[55] albeit with some degree of confusion,[56] until

[51] *Vienna Convention on Diplomatic Relations,* opened for signature 18 April 1961, [1968] ATS 3 (entered into force 24 April 1964) art 34(e).
[52] Denza, above n 2, 303-6.
[53] Ibid 305.
[54] Roberts, above n 1, 136 citing *Empson v Smith* [1966] 1 QB 426.
[55] See, for example, Cour de cassation [French Court of Cassation], 11-13.323, 28 March 2013.
[56] Nathalie Meyer Fabre, 'Waivers of Immunity From Execution: A New Turn by the French Court of Cassation' (2015) *Mealey's International Arbitration* (blog) <http://www.lexislegalnews.com/articles/1762/commentary-waivers-of-immunity-from-execution-a-new-turn-by-the-french-court-of-cassation>.

the 2015 decision in the Commisimpex case.[57] There, the Court of Cassation dropped the requirement for specific waiver, declaring that the Vienna Convention only requires express waiver.[58] This is a simplification of waiver in France and means that if, for example, a State enters into a contract with a general clause waiving their immunity from jurisdiction, this waiver will be effective even if it produces undesirable specific consequences later. It remains to be seen if the UK will follow France in dropping the requirement for specific waiver. Presently, it appears the only reason that the UK has not modified its understanding of the law is because a case has not arisen. As one author has acknowledged:

> National courts have an important role to play in the application, and therefore also the development, of customary international law, especially regarding the law of immunities, where the issues to be resolved arise precisely in the context of judicial or enforcement proceedings...[59]

A waiver is not always required because if a diplomat is recalled to his/her home country, that is effectively a waiver by the sending State. The difference is that the receiving State loses the chance to pursue the diplomat in their local judicial system, because the diplomat has now returned home. The case of the Romanian in Singapore being recalled to Romania to face trial is one such example.[60] However, reciprocity ensured that he was convicted in Romania, so Singapore did not completely fail to effect punishment over the diplomat's actions. This idea of recall is very similar to *persona non grata*.

The important power of *persona non grata* is a mechanism by which the receiving State can request a termination of a diplomat's appointment.[61] A failure to react to a *persona non grata* declaration within a reasonable time will result in non-recognition of diplomatic status, which is effectively a loss of immunity.[62] Although this power is also open to abuse or misinterpretation, like waiver, it is treated carefully and as a last resort. Furthermore, unlike waiver, there is no equivalent in the doctrine of State immunity or in other areas of international law. *Persona non grata* is unique to diplomatic law and stems out of historical usage, most famously when Queen Elizabeth I of England declared a Spanish Ambassador *persona non grata* for his plotting for Mary of Scots to take the throne, and when Henri IV of France did the same to two Spanish diplomats for

[57] Cour de cassation [French Court of Cassation], 13-17751, 13 May 2015.
[58] *Vienna Convention on Diplomatic Relations,* opened for signature 18 April 1961, [1968] ATS 3 (entered into force 24 April 1964) art 32(2).
[59] Nathalie Meyer Fabre, 'Waivers of Immunity From Execution: A New Turn by the French Court of Cassation' (2015) *Mealey's International Arbitration* (blog) <http://www.lexislegalnews.com/articles/1762/commentary-waivers-of-immunity-from-execution-a-new-turn-by-the-french-court-of-cassation>.
[60] AsiaOne, *MFA's Statement Regarding Diplomatic Immunity* (15 April 2010) <http://news.asiaone.com/News/AsiaOne+News/Singapore/Story/A1Story20100415-210576.html>.
[61] *Vienna Convention on Diplomatic Relations,* opened for signature 18 April 1961, [1968] ATS 3 (entered into force 24 April 1964) art 9(1).
[62] Ibid art 9(2).

'conspiracy against the French Regent.'[63] In modern usage, *persona non grata* is applied primarily in cases of espionage, terrorism or undue interference in domestic affairs, as exemplified in the 1988 declaration on a United States diplomat in Singapore for 'persuading lawyers opposed to the Government [of Singapore] to stand in forthcoming elections.'[64] Interestingly, the UK has also used *persona non grata* on repeat offenders for parking fines, which was acknowledged by resident diplomats as an acceptable but unprecedented use of the power.[65] Above all, it is a personal rejection of an individual diplomat, not a rejection of relations between two States, and enjoys status as a structural principle of diplomatic immunities. Crucially, *persona non grata* has no equivalent in other international laws, which provides clarity for uniform application. Contrast this with the confusion over the meaning of waiver in the UK and France, where doctrines from other laws are clouding the interpretation of waiver of diplomatic immunity.

III Conclusion

As stated by Roberts, 'Diplomacy is… the best means devised by civilisation for preventing international relations from being governed by force alone.'[66] It is a wide field and more important than ever, despite the growth of 'political diplomacy' where political leaders meet face-to-face thanks to technological development. The world needs a sophisticated diplomatic framework to support political leaders in their decision-making.

The law on diplomatic immunities provides that framework. Without it, diplomats would work in constant fear of prosecution, intervention or even death. From personal inviolability to immunity from jurisdiction, diplomatic immunities give diplomatic agents the freedom to develop relations between their sending and receiving States. It is the twin ideas of 'reciprocity' and 'fundamental legal framework' that make the law so uniform across so many jurisdictions.

However, when immunity morphs into privilege, gaps in uniform application appear. Privileges are bonus rights for diplomats and not fundamental to their work. Nor are they necessarily reciprocal, especially when one considers unique tax regimes. When the law becomes a substantive interference in the affairs of an individual State, it will be more difficult to harmonise globally. The same can be said of laws that have multiple conflicting meanings across jurisdictions, such as the law on waiver, which has cousins in State immunity, customary international law and domestic laws.

The lesson in diplomatic immunities is therefore clear: an almost 'constitutional' framework of procedural laws, which sets the boundaries within which more specific

[63] Denza, above n 2, 61.
[64] Ibid 68. For more on interference, see Paul Behrens, 'Diplomatic Interference and Competing Interests in International Law' (2012) 82(1) *The British Yearbook of International Law* 178.
[65] Denza, above n 2, 71-2.
[66] Roberts, above n 1, 5.

substantive laws operate, will be easier to harmonise worldwide. When combined with a requirement for reciprocity, it can produce well-harmonised regime around the globe. These criteria will be useful for any other similar framework which is sought to be harmonised. Similarity will generally manifest in the background, purpose and features of that framework; the *Vienna Convention on Consular Relations* is a good example.[67] It is no accident, however, that diplomacy holds lessons for comparative law:

> A good diplomat will always try to put himself in the position with whom he is negotiating, to understand his objectives and needs, and try to imagine what he would wish, do and say, under those circumstances.[68]

[67] *Vienna Convention on Consular Relations*, opened for signature 24 April 1963, [1973] ATS 7 (entered into force 19 March 1967).
[68] Roberts, above n 1, 620.