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## Diplomatic Impunity: Time for a Change?

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# DIPLOMATIC IMPUNITY: TIME FOR A CHANGE?

## 1. INTRODUCTION

New York City is home to the United Nations, an international parliamentary body representing 185 nations.<sup>1</sup> To assist the United Nations in its endeavors, representatives of the member States are given special privileges and immunities to carry out their functions.<sup>2</sup> In New York City, thousands of delegates represent their sovereigns in the United Nations and enjoy special immunities, including immunity from arrest or detention. These delegates also enjoy "such other privileges and immunities, and facilities not inconsistent [with] the foregoing as diplomatic envoys enjoy."<sup>3</sup> The United States recognizes the privileges afforded foreign diplomats in the U.S. with the understanding that the same privileges will be afforded to American diplomats

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<sup>1</sup> See Marjorie Ann Brown, *Effectiveness of the United Nations*, 77 AM. SOC'Y INT'L L. PROC. 191 (1985) The United Nations legislates

multilateral treaty law . . . cover [ing] such diverse fields as disarmament and arms control, pacific settlement of international disputes, commercial arbitration, law of treaties, privileges and immunities, diplomatic and consular relations, human rights-- including status of women, refugees and stateless persons and white slavery, narcotic drugs and psychotropic substances, public health, international trade and development, transportation and communication, navigation, economic statistics, commodities, freedom of information, the sea, outer space, telecommunications, and environmental matters.

*Id.* See also *About the United Nations*, (visited August 18, 1998) <<http://www.un.org/aboutun.org>>.

<sup>2</sup> See The Agreement Between the United States and the United Nations, June 26- November 21, 1947, 61 Stat. 754 (1947). Art. V (4) provides, in pertinent part, "[r]epresentatives of member States shall, whether residing inside or outside the headquarters district, be entitled in the territory of the United States, to the same privileges and immunities . . . as it accords to diplomatic envoys accredited to it." *Id.*

<sup>3</sup> Convention on the Privileges and Immunities of the United Nations, 21 U.S.T. 1418, art. IV.

abroad.<sup>4</sup> It is the ultimate concern of the United States that its diplomats and nationals abroad are safe and are able to carry out their duties without fear of harassment.

While this theorem has credibility, many diplomats in the United Nations have grossly abused these privileges in blatant disregard to local laws, customs and citizens.<sup>5</sup> Because New York City is home to an inordinate number of diplomats, it has been greatly impacted by the non-observance of parking and traffic ordinances.<sup>6</sup> In addition to the inconvenience of illegal parking, there are safety issues involved. Diplomats' illegally

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<sup>4</sup> See 767 Third Avenue Associates v. Permanent Mission of the Republic of Zaire, 988 F.2d 295 (2d Cir. 1993). Plaintiff entered into a lease agreement with the defendant. *Id.* at 296. Defendant "repeatedly fell into arrears on its rent." *Id.* Plaintiff sued, and defendant's defense was diplomatic immunity. *Id.* The district court was not persuaded and granted summary judgment to plaintiff. *Id.* The Court of Appeals reversed, finding that the Vienna Convention was controlling. *Id.* at 301. Further, the court opined "[r]eforming the Vienna Convention may well be a valid objective. But federal courts are an inappropriate forum to accomplish the amendment of a multilateral treaty to which the United States is a party." *Id.* at 302.

<sup>5</sup> Often, reports are not filed by police officers for acts of diplomats because of the futility of making a charge against a diplomat when the diplomat may avail himself to diplomatic immunity. See Robert Ferrigno, *There's Also a Short Arm of the Law*, CHI. TRIB. September 27, 1987, at 1. Many other instances of diplomatic impropriety are handled quietly by the State Department. This is done to avoid publicizing the incidents, which would lead to further strain on relations with the represented State. *Id.* In 1995, the wife of a Nigerian diplomat allegedly slashed and stabbed her two daughters in Maryland. Local authorities were forced to release her upon her claim of diplomatic immunity. See Michael B. McDonough, *Privileged Outlaws: Diplomats, Crime and Immunity*, 20 SUFFOLK TRANSNAT'L L. REV. 475 (1997). See also, e.g., United States v. Guinand, 688 F. Supp. 774 (D.D.C. 1988). In *Guinand*, defendant was a member of the diplomatic staff of the Embassy of Peru, and, as such, was entitled to diplomatic immunity. *Id.* at 774. Defendant allegedly entered into a narcotics transaction with an undercover agent and was arrested and convicted. *Id.* On appeal, the court held that defendant was not entitled to diplomatic immunity because he had failed to depart from the United States in a reasonable time, and thus, held the status of permanent resident alien. *Id.* at 777.

<sup>6</sup> A total of 134,281 tickets were issued to and ignored by diplomats in New York City in 1996. See Larry McShane, *No Détente in NYC's War on U.N. Scofflaws*, TIMES UNION, April 12, 1997, at B2.

parked cars create congestion and block fire hydrants. As a result of these infractions, millions of dollars in unpaid parking fines are owed to the City of New York.<sup>7</sup> This comment will place the historical perspective in the treatment of diplomats and discuss the remedies and obstacles the City of New York can expect to encounter in attempting to gain the cooperation of the diplomatic community in recognizing and respecting New York City parking laws.

## BACKGROUND

Man has recognized since the beginning of societal relations that in the name of diplomacy, those who act in the name of the sovereign need to be afforded generous treatment and protection so that actions between peoples can commence. Primitive societies developed procedures entitling intercommunity messengers free movement and personal immunity while discussing war, peace and trade.<sup>8</sup> As noted by Abban Eban,

[t]here is a great deal of political and military diplomacy in the biblical narrative . . . the kings, queens, generals and other dignitaries are portrayed as sending messengers to adversaries in the region, usually with such unwelcome tidings that they would need every ounce of immunity that they could get.<sup>9</sup>

Throughout the years of Antiquity, the Middle Ages and the Renaissance in Europe, diplomatic customs evolved. In Britain, in 1708, the Russian Ambassador of Peter the Great was arrested in the streets of London for failing to pay a debt.<sup>10</sup> When Peter

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<sup>7</sup> *Id.* In 1996, the amount owed to the City of New York as a result of unpaid parking tickets from diplomats was in excess of \$6 million. *Id.*

<sup>8</sup> RAGNAR NUMELIN, *THE BEGINNING OF DIPLOMACY: A SOCIOLOGICAL STUDY OF INTERTRIBAL AND INTERNATIONAL RELATIONS* 296-97 (1950).

<sup>9</sup> ABBA EBAN, *THE NEW DIPLOMACY: INTERNATIONAL AFFAIRS IN THE MODERN AGE* 335 (1983).

<sup>10</sup> GRANT V. MCCLANAHAN, *DIPLOMATIC IMMUNITY: PRINCIPLES, PRACTICES, PROBLEMS* 34 (1989). Prior to 1708, Britain had no formal legislation in place concerning diplomatic immunity. *Id.* After the Ambassador was released on bail, Queen Anne expressed her regrets through

the Great learned of this incident, he forced Lord Whitworth, the British Ambassador, to convey to the Czar, at a public audience, Queen Anne's regret for the insult to the Ambassador.<sup>11</sup> In an attempt to quell the Czar's anger, the Act of Anne of 1708<sup>12</sup> was enacted, stating that all writs and processes to arrest or imprison ambassadors or their servants were null and void.<sup>13</sup> This Act was controlling until 1964, when Britain's Diplomatic Privileges Act,<sup>14</sup> the British adaptation of the Vienna Convention on Diplomatic Relations of 1961 [hereinafter "Vienna Convention"], was adopted.

The American Colonies adopted the Act of Anne<sup>15</sup> until Congress passed a law in 1790 that was more comprehensive than the Act of Anne.<sup>16</sup> This law made it an offense to arrest an

the Secretary of State. *Id.* The Ambassador was not impressed, threatened all who committed the offense to arrest and left Britain. *Id.*

<sup>11</sup> *Id.* When Peter the Great learned of the offense, he demanded to Lord Whitworth that those involved be executed. *Id.*

Queen Anne commissioned Lord Whitworth to convey her regrets to Peter the Great at a public audience. *Id.*

<sup>12</sup> *Id.* In a further effort to quell the anger of Peter the Great, the Act of Anne was enacted in 1708. *Id.* This Act was later "interpreted as declaratory of the common law." *Id.* See also Diplomatic Privileges Act, 7 Anne, ch. XII (1708).

<sup>13</sup> GRANT V. MCCLANAHAN, DIPLOMATIC IMMUNITY: PRINCIPLES, PRACTICES, PROBLEMS, 34 (1989).

<sup>14</sup> Diplomatic Privileges Act of 1964, 12 & 13, Eliz. 2, ch. 81. This Act incorporates the relevant provisions of the Vienna Convention into English law. The United Kingdom was a signator to the Vienna Convention on December 11, 1961. The United Kingdom ratified the Vienna Convention on September 1, 1964. See also Vienna Convention on Diplomatic Relations, Apr. 18, 1961, 23 U.S.T. 3227, 500 U.T.S. 95.

<sup>15</sup> Diplomatic Privileges Act, 7 Anne, ch. XII (1708).

<sup>16</sup> See Act of April 30, 1790, ch. 9, § 25, 1 Stat. 117 (1790). This Act provides in pertinent part:

[I]f any writ or process shall at any time hereafter be sued forth or prosecuted by any person or persons, in any of the courts of the United States, or . . . of a particular state . . . such writ or process shall be deemed or adjudged to be utterly null and void to all intents, construction and purpose whatsoever.

*Id.* This Act was formally codified as 22 U.S.C. § 252.

ambassador or to seize his goods.<sup>17</sup> Any person who issued or executed an order to do so was subject to penalty.<sup>18</sup> This statute was in force until December 13, 1972, when the Vienna Convention was entered into force in the United States.<sup>19</sup> It is still controlling today.

The Vienna Convention<sup>20</sup> is the seminal text on modern diplomatic relations and begins by “[r]ecalling that peoples of all nations from ancient times have recognized the status of diplomatic agents.”<sup>21</sup> The Vienna Convention carries forth into

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<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> GRANT V. MCCLANAHAN, *DIPLOMATIC IMMUNITY: PRINCIPLES, PRACTICES, PROBLEMS* 35 (1989). The Vienna Convention was entered into force by the Presidential Proclamation of Richard M. Nixon. See Presidential Proclamation of 24 November 1972, Dept. of State, *United States Treaties and Other International Agreements*, vol. 23, pp. 3227-28. The Senate had advised ratification for the resolution on September 14, 1965

<sup>20</sup> Vienna Convention on Diplomatic Relations, Apr. 18, 1961, 23 U.S.T. 3227, 500 U.T.S. 95.

<sup>21</sup> *Id.* The Preamble of the Vienna Convention provides:

[t]he State Parties to the present Convention,  
 Recalling that peoples of all nations from ancient times have recognized the status of diplomatic agents,  
 Having in mind the purposes and the principles of the Charter of the United Nations concerning the sovereign equality of States, the maintenance of international peace and security, and the promotion of friendly relations among nations,  
 Believing that an international convention on diplomatic intercourse, privileges and immunities would contribute to the development of friendly relations among nations, irrespective of their differing constitutional and social systems,  
 Realizing that the purpose of such privileges and immunities is not to benefit individuals but to ensure the efficient performance of the functions of diplomatic missions as representing States,  
 Affirming that the rules of customary international law should continue to govern questions not expressly regulated by the provisions of the present Convention,  
 Have agreed as follows:

*Id.*

the modern era the policies and concepts developed throughout history.

## REMEDIES

### I. Executive Remedies

The Executive branch of the United States Federal Government has the authority to not recognize foreign governments and to take sanctions when necessary.<sup>22</sup> While no one would expect the President to withdraw recognition due to unpaid parking tickets, sanctions are a possibility. Diplomats are not exempt from the laws of the host nation.<sup>23</sup> The diplomats who have abused their privileges have been notified of their indiscretions via the receipt of parking and traffic summonses and have the opportunity to be heard in the American judicial system to plead their defenses. Still, though, these many summonses have been ignored.<sup>24</sup>

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<sup>22</sup> U.S. CONST., art. II, § 3. This section provides:

[the president] shall from time to time give to the Congress Information of the State of the Union, and recommend to their Consideration such measures as he shall judge necessary and expedient; he may, on extraordinary Occasions, convene both Houses, or either of them, and in Cases of Disagreement between them, with Respect to the Time of Adjournment, he may adjourn them to such Time as he shall think proper; he shall receive Ambassadors and other public Ministers; he shall take Care that the Laws be faithfully executed, and shall Commission all the Officers of the United States.

*Id.*

<sup>23</sup> See Vienna Convention on Diplomatic Relations, Apr. 18, 1961, art XLI, 23 U.S.T. 3227, 500 U.N.T.S. 95. Art. XLI provides in relevant part, "without prejudice to their privileges and immunities, it is the duty of all persons enjoying such privileges and immunities to respect the laws and regulations of the receiving State." *Id.*

<sup>24</sup> In 1996, diplomats ignored 134,281 tickets in the City of New York. See Larry McShane, *No Détente in NYC's War on UNITED NATIONS Scofflaws*, TIMES UNION, April 12, 1997, at B2.

While the Vienna Convention does provide diplomats with immunity from prosecution,<sup>25</sup> the spirit of the agreement was to prevent compromising the inviolability of the missions and their diplomats, and to ensure a safe working environment for foreign diplomats in the United States as well as Americans in other nations, not for the hauteur of the diplomats in New York City in their observance of parking and traffic laws.<sup>26</sup> In addition, driving is a privilege, not a right, reserved for those of the requisite age, competence and responsibility necessary to properly perform the complex skills and duties involved with the operation of a motor vehicle.<sup>27</sup> Diplomats are expected to obey the local traffic laws and regulations, and pay fines incurred

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<sup>25</sup> See Vienna Convention on Diplomatic Relations, Apr. 18, 1961, art. XXXI, 23 U.S.T. 3227, 500 U.N.T.S. 95. Art. XXXI provides in relevant part, "[a] diplomatic agent shall enjoy immunity from the criminal jurisdiction of the receiving State. He shall also enjoy immunity from its civil and administrative jurisdiction." *Id.*

<sup>26</sup> See *id.* art. XXII. Art. XXII provides in relevant part:

[t]he premises of the mission shall be inviolable. The agents of the receiving State may not enter them, except with the consent of the head of the mission . . . The premises of the mission, their furnishings and other property thereon and the means of transportation of the mission shall be immune from search, requisition, attachment or execution.

*Id.* See also Art. XXIX, which provides "[t]he person of a diplomatic agent shall be inviolable. He shall not be liable to any form of arrest or detention. The receiving State shall treat him with due respect and shall take all appropriate steps to prevent any attack on his person, freedom or dignity." *Id.* See also Preamble, which states "[r]ealizing that the purpose of such privileges and immunities is not to benefit individuals but to ensure the efficient performance of functions by consular functions on behalf of their respective States . . ." *Id.*

<sup>27</sup> See NEW YORK VEH. & TRAF. LAW, § 502 (McKinney 1996/1997). The requirements for licensing for use of motor vehicles in New York is governed by New York State Vehicle and Traffic Law § 502, requiring an application, fee, proof of identity, age and fitness and written and road tests. *Id.*



through the violation of these ordinances.<sup>28</sup> Failure to comply may result in the loss of driving privileges.<sup>29</sup>

In a circular note to the Chiefs of Missions at Washington, former Secretary of State George P. Shultz stated that the Department of State would no longer request cancellation of traffic citations on behalf of diplomatic missions.<sup>30</sup> The Department of State also requested the cooperation of the Chiefs of Missions in resolving the parking problem as well as the unpaid fine situation, which had been hindering the Department's efforts to uphold "community understanding and acceptance of diplomatic privileges and immunities."<sup>31</sup> In another correspondence, former Secretary Shultz stated that while diplomats have immunity from jurisdiction, states do not have to grant the privilege of driving to diplomats if that privilege is abused.<sup>32</sup> Through the expectation of reciprocity, the Department of State, in keeping a policy that its representatives pay its fines for traffic violations expects foreign sovereigns to adopt the same policy.<sup>33</sup> The Department of State requests local jurisdictions to maintain records concerning these indiscretions and to communicate them directly to the Department. Thereafter, the Office of Foreign Missions reviews the nature and extent of these

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<sup>28</sup> See Marian Nash (Leich), *Motor Vehicles: Traffic Citations and Fines*, 88 AM. J. INT'L. L. (1994).

<sup>29</sup> *Id.* See also NEW YORK VEH & TRAF. LAW, § 511-d(2) (McKinney 1996). This statute governs the suspension of driving privileges in the State of New York and provides in relevant part:

A person may be prosecuted for a violation of this section in any court of competent jurisdiction in any county: (a) in which more than ten tickets which resulted in suspension for failure to answer, appear or pay fines issued, or (b) in which the twentieth or any subsequent ticket which resulted in a suspension for failure to answer, appear or pay a fine was issued.

*Id.*

<sup>30</sup> See Circular Note from George P. Schultz, Secretary of State, to Chiefs of Missions, File No. P84 0091-0626 (July 2, 1984).

<sup>31</sup> *Id.*

<sup>32</sup> See Circular Note from George P. Schultz, Secretary of State, to Chiefs of Missions, File No. P85 0001-0980 (December 17, 1984).

<sup>33</sup> *Id.*

violations.<sup>34</sup> The Department then makes a judgment whether such violations indicate a flagrant disregard for the laws of the United States, and whether the individual shall be permitted to continue to operate a motor vehicle in this country.<sup>35</sup>

In 1993, another circular from the Department stated:

Persons enjoying privileges and immunities in the United States are nevertheless obliged to respect United States laws and regulations . . . The operation of a motor vehicle in the United States by such a person is not a right but a privilege that may be withdrawn in cases of abuse . . . The Department will withhold registration renewals of vehicles with unpaid or unadjudicated parking tickets issued on or after [January 1, 1994] that are more than one year old.<sup>36</sup>

This policy permits the towing of a diplomat's vehicle if the vehicle is deemed to create a safety hazard.<sup>37</sup> Should an inviolable vehicle of a mission or mission member be towed, the Department of State will have the vehicle promptly released.<sup>38</sup>

While this policy may be an adequate deterrence, it may not be enough. The Department may still act, though, by having the most egregious diplomats deemed *persona non grata* and have his function terminated.<sup>39</sup> This remedy should be used wisely to avoid a punitive response by the affected country.

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<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> See Circular Note from the Department of State to Chiefs of Missions, P94 0003-0388 (December 22, 1993).

<sup>37</sup> See Marian Nash (Leich), *Motor Vehicles: Traffic Citations and Fines*, 88 AM. J. INT'L. L. 312 (1994).

Safety hazards are deemed to be in a no parking zone during a morning or afternoon rush hour; in a loading zone; in an emergency no parking zone; in front of a fire hydrant; on a sidewalk; in a bus zone; in a handicapped zone; obstructing an intersection; or blocking a crosswalk.

*Id.*

<sup>38</sup> See Circular Note from the Department of State to Chiefs of Missions, P94 0003-0388 (December 22, 1993).

<sup>39</sup> See Vienna Convention on Diplomatic Relations, Apr. 18, 1961, art. IX, 23 U.S.T. 3227, 500 U.N.T.S. 95. Art. IX provides:

New York City can take advantage of these processes by maintaining records of the violations and corresponding with the Office of Foreign Missions. With millions of dollars in unpaid tickets,<sup>40</sup> including some individual countries owing hundreds of thousands of dollars,<sup>41</sup> the "nature and extent" of these violations should be enough to spur the Department of State into action to revoke driving privileges. The threat alone may make compliance of the traffic and parking laws more attainable.

The City of New York has taken steps, through an alliance with the State Department, to hold diplomatic violators who fail to pay valid parking tickets responsible as scofflaws by the State Department.<sup>42</sup> Diplomats will be deemed scofflaws if they have not paid a valid parking ticket within one year.<sup>43</sup> The State Department's Office of Foreign Missions would notify the diplomat that the "diplomatic vehicle cannot be legally operated until the violation is properly adjudicated with the City."<sup>44</sup> The Consulate of Mission would then be asked by the State Department to turn in the "diplomatic plates in question until the scofflaw status is removed."<sup>45</sup> A scofflaw's diplomatic vehicle

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

*Id.*

<sup>40</sup> In 1996, diplomats accrued over \$6 million in unpaid parking tickets. See Larry McShane, *No Détente in NYC's War on U.N. Scofflaws*, TIMES MIRROR, April 12, 1997, at B2.

<sup>41</sup> In the first three months of 1997 alone, Russia accrued \$528,000, Ukraine, \$47,000, Bulgaria, \$89,000, and Indonesia, \$83,000 in fines. See *New York Delays Crackdown on Parking-Scofflaw Diplomats*, ORLANDO SENTINEL, April 19, 1997, at A8.

<sup>42</sup> Press Release from Office of the Mayor, City of New York, *Mayor Giuliani Announces Agreement Between City and State Department on Stricter Diplomatic Parking Rules*, Release # 124-97, March 10, 1997.

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

may be towed and the diplomatic plates will be forwarded to the Regional Office of the State Department Office of Foreign Missions.<sup>46</sup> While this policy is proactive, no penalty is enumerated.<sup>47</sup> In fact, no penalty would be enforceable under Article XXXI of the Vienna Convention.<sup>48</sup> The towing of a diplomat's vehicle would likewise violate Article XXII(3) of the Vienna Convention, which protects the inviolability of the mission's means of transport.<sup>49</sup>

The State Department realized this quandary and rescinded the policy on April 18, 1997.<sup>50</sup> Diplomats claimed that the policy violated their diplomatic immunity, and thus, violated international law.<sup>51</sup> A compromise plan was in negotiation, whereby United Nations missions with scofflaw diplomats would be refused additional license plates and vehicle renewal.<sup>52</sup> Mayor Guiliani reclaimed, for public use, additional diplomatic parking spaces that had been set aside as agreed in the April 1, 1997 pact.<sup>53</sup> Since then, Mayor Guiliani has dared the United Nations to relocate, threatening to use the site for housing and development.<sup>54</sup>

It is clear from the prior attempts to rectify this situation, the Department of State recognizes how tenuous this situation is.

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<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> Vienna Convention on Diplomatic Relations, Apr. 18, 1961, art. XXXI, 23 U.S.T. 3227, 500 U.N.T.S. 95. Art. XXXI provides in relevant part "[a] diplomatic agent shall enjoy immunity from criminal jurisdiction of the receiving State. He shall also enjoy immunity from its civil and administrative jurisdiction." *Id.*

<sup>49</sup> *See id.* art. XXII (1) which provides in relevant part, "[t]he premises of the mission, their furnishings and other property thereon and the means of transport of the mission shall be immune from search, requisition, attachment or execution." *Id.*

<sup>50</sup> *See Diplomatic Parking Crackdown Ended*, ORLANDO SENTINEL, April 19, 1997, at B2.

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

With further diplomacy, though, strides can be made to foster cooperation by the United Nations member states.

## II. Legislative Remedies

The Constitution gives Congress the power to remedy the problem created by the diplomats' insolence. "Congress has the power to enact statutes abrogating prior treaties or international obligations entered into by the United States."<sup>55</sup> In fact, the courts have specifically passed on ruling on such issues, instead deferring to the legislature. "Congress is the branch of government best suited to address the array of concerns involving altering the Vienna Convention."<sup>56</sup> The Diplomatic Relations Act of 1978<sup>57</sup> was enacted to deal with more flagrant abuses of diplomatic privileges.<sup>58</sup> The 1978 Act gives Congress and the President the power to limit the inviolability of the mission. Nevertheless, neither Congress nor the President has exercised this power.<sup>59</sup> The author believes that this situation calls for action now, before diplomatic indiscretions become more abundant and severe.

New York's Congressional Representatives can introduce a bill that would enforce the fines imposed upon the missions due to parking and traffic infractions. The bill could submit diplomatic scofflaws to arrest<sup>60</sup> or garnishment.<sup>61</sup> While the United States'

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<sup>55</sup> *United States v. Palestine Liberation Organization*, 695 F. Supp. 1456, 1465 (S.D.N.Y. 1988).

<sup>56</sup> *767 Third Avenue Associates v. Permanent Mission of the Republic of Zaire*, 988 F.2d 295, 302 (2d Cir. 1993).

<sup>57</sup> 22 U.S.C. § 254 (a)-(e) (1988). The Diplomatic Relations Act of 1978 gives the President, on the basis of reciprocity, the power to establish privileges and immunities for missions and their members. This results in more favorable or less favorable treatment than is provided under the Vienna Convention.

<sup>58</sup> *Id.*

<sup>59</sup> *767 Third Avenue Associates v. Permanent Mission of the Republic of Zaire*, 988 F.2d 295, 302 (2d Cir. 1993).

<sup>60</sup> This action would override the operation of Article XXIX of the Vienna Convention, which states "[t]he person of a diplomatic agent shall be inviolable. He shall not be liable to any form of arrest or detention. The

primary concern regarding diplomatic immunity is to ensure the protection of its dignitaries abroad, a policy of reciprocity would keep all nations on an even plane, as the United States would guarantee the payment of traffic and parking fines of its representatives in host nations.

Another alternative would be for New York City to seek a remedy similar to that available in the District of Columbia. In the District of Columbia, another area experiencing diplomatic arrogation, § 574 of the Foreign Operators, Export Financing and Related Programs Appropriation Act<sup>62</sup> was enacted, whereby one hundred ten percent (110%) of the amount of unpaid fines owed would be withheld from that country's foreign aid. This would ensure that the City of New York would receive the monies owed prior to that nation receiving any aid from Congress. The policy has been quite successful to date, with "97% of parking tickets get[ting] paid" in the District of Columbia, Maryland and Virginia.<sup>63</sup>

In fact, the House International Relations Committee approved a bill, sponsored by New York Republican Representative Peter T. King, very similar to the aforementioned Act, whereby aid would be withheld from those states with unpaid parking violations.<sup>64</sup>

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receiving State shall treat him with due respect and shall take all appropriate steps to prevent any attack on his person, freedom or dignity" as well as Article XXXI (1), which states "[a] diplomatic agent shall enjoy immunity from criminal jurisdiction of the receiving State. He shall also enjoy immunity from its civil and administrative jurisdiction." See Vienna Convention on Diplomatic Relations, Apr. 18, 1961, 23 U.S.T. 3227, 500 U.N.T.S. 95, art. XXXI (1).

<sup>61</sup> Again, this would contradict Article XXII (3) of the Vienna Convention, which states "[t]he premises of the mission, their furnishing thereon and the means of transportation of the mission shall be immune from search, requisition, attachment or execution." See Vienna Convention on Diplomatic Relations, Apr. 18, 1961, 23 U.S.T. 3227, 500 U.N.T.S. 95, art. XXII (3).

<sup>62</sup> Pub. L. No. 103-87, 107 Stat. 931 (approved September 30 1993). This Act provides that the Secretary of State must certify to Congress that all such fines and penalties owed as of September 30, 1993, have been fully paid before amounts withheld can be released. *Id.*

<sup>63</sup> Susan Ferrechio, *Congress May Help N.Y. Fine Diplomats*, THE WASHINGTON TIMES, May 11, 1997, at A4.

<sup>64</sup> *Id.*

Further, "foreign missions and consulates in New York would lose one registration for every car with tickets left unpaid for a year."<sup>65</sup> This bill was not passed, however, because the "Republican majority could not muster the votes needed for passage" as to the amount of foreign aid funding.<sup>66</sup> It is encouraging to note that diplomatic indiscretion is deemed serious enough to be considered on the floor of Congress.

### III. Judicial Remedies

Congress has given the judiciary power to act upon foreign sovereigns in the enacting of The Foreign Sovereign Immunities Act [hereinafter "FSIA"],<sup>67</sup> establishing when states or federal courts may exercise jurisdiction over foreign sovereigns.<sup>68</sup> This Act, however, is "subject to existing international agreements to which the United States is a party at the time of the enactment of this Act."<sup>69</sup> Thus, Congress did not intend the FSIA to affect the

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<sup>65</sup> *Id.*

<sup>66</sup> Tom Carter, *Republican Split Destroyed Deal on Bill for Foreign Aid*, THE WASHINGTON TIMES, June 6, 1997, at A17.

<sup>67</sup> 28 U.S.C. § 1602 (1976). § 1602 provides in relevant part:

[t]he Congress finds that the determination by United States courts of the claims of foreign states to immunity from the jurisdiction of such courts would serve the interests of justice and would protect the rights of both foreign states and litigants in the United States courts. Under international law, states are not immune from the jurisdiction of foreign courts insofar as their commercial activities are concerned, and their commercial property may be levied upon for the satisfaction of judgments rendered against them in connection with their commercial activities. Claims of foreign states to immunity should henceforth be decided by the courts of the United States and of the States in conformity with the principles set forth in this chapter.

*Id.*

<sup>68</sup> *Tabion v. Mufti*, 73 F.3d 535 (4th Cir. 1996).

<sup>69</sup> 28 U.S.C. § 1609 (1976). § 1609 provides in relevant part.

Subject to existing international agreements to which the United States is a party at the time of enactment of this Act, the property in the United States of a foreign state shall be

Vienna Convention.<sup>70</sup> When confronted with the interpretation of this Act, courts have reasoned that “[t]he primary purpose of this chapter was to depoliticize sovereign immunity decisions by transferring them from the Executive to the Judicial branch of the government, thereby assuring litigants that such decisions would be made on legal rather than political grounds.”<sup>71</sup> In addition, scholarly commentary has surmised that “the courts are not bound to accept the State Department’s conclusions of law concerning statutory interpretation and constitutionality.”<sup>72</sup> Thus, courts are free to interpret statutes and treaties when confronted with actions concerning diplomats. There have been decisions by the courts that have limited diplomatic immunity. The court in *Tabion v. Mufti*<sup>73</sup> noted that “[d]iplomatic immunity does not provide an unconstrained license to violate contracts and United States laws.”<sup>74</sup> While the court ultimately found for the diplomat on a “commercial activity” theory,<sup>75</sup> the opinion as to the

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immune from attachment, arrest and execution except as provided in §§ 1610 and 1611 of this chapter.

*Id.*

<sup>70</sup> H.R. REP. NO. 94-1487, pt. 12 (1976).

<sup>71</sup> *National Airmotive Corp. v. Government and State of Iran*, 499 F. Supp. 401 (D.D.C. 1980).

<sup>72</sup> 4 AM. JUR. 2D *Ambassadors, Diplomats and Consular Officials*, § 7 (1995).

<sup>73</sup> 73 F.3d 535 (4th Cir. 1996). Appellant, a domestic from the Philippines, was employed by appellees for two years. *Id.* at 536. Appellee, Faris Mufti held the position of First Secretary, and later Counselor, of the Jordanian Embassy in Washington, D.C. *Id.* Appellant brought suit in federal district court against her employers, the appellees, alleging breach of contract, intentional misrepresentation in employment, false imprisonment, violations of 42 U.S.C. §§ 1981 and 1985 (3) and Fair Labor Standards Act (FLSA), 29 U.S.C. § 201 *et seq.*, violations. *Id.* Appellant sought compensatory and punitive damages as well as attorney’s fees and costs. *Id.* The district court found that the case was barred by the Vienna Convention, which protected appellees via diplomatic immunity and thus, quashed the service of process. *Id.* Appellant appealed. *Id.* Finding that the “apparent inequity to a private individual is outweighed by the great injury to the public that would arise from permitting suit against [a sovereign] or its agents,” the court affirmed the lower court’s ruling, thus dismissing the appellants suit. *Id.* at 539.

<sup>74</sup> *Id.*



obligations of a diplomat was well reasoned, finding that diplomats do, in fact, have an obligation to abide by local laws.<sup>76</sup> While the court in *Liberia Eastern Timber Corp. v. The Government of the Republic of Liberia*<sup>77</sup> found that embassy bank accounts were immune from attachment under the Vienna Convention, with no exception enumerated under FSIA,<sup>78</sup> the

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<sup>75</sup> See Vienna Convention on Diplomatic Relations, Apr. 18, 1961, art. XXXI, 23 U.S.T. 3227, 500 U.N.T.S. 95, which provides "three exceptions to a diplomat's civil immunity." *Tabion*, 73 F.3d at 537. Specifically at issue in *Tabion* is Article XXXI, (1)(c), which excludes immunity for actions "relating to any professional or commercial activity exercised by the diplomatic agent in the receiving State outside his official functions." *Id.* (quoting 23 U.S.T. at 3241). Further, Article XLI of the Vienna Convention provides, in relevant part, "[a] diplomatic agent shall not in the receiving State practice for personal profit any professional or commercial activity." *Id.* (quoting 23 U.S.T. at 3247). But nowhere in the Vienna Convention is "commercial activity" defined. *Id.* Struggling with the black letter of the Treaty, the intent of the drafters and historical relevance, the court concluded that "commercial activity" did "not encompass contractual relationships for goods and services incidental to the daily life of the diplomat and family in the receiving State." *Id.* at 538.

<sup>76</sup> *Id.* The *Tabion* court encountered many obstacles in reaching its decision and did not turn a blind eye to the inherent unfairness to the individual in such a scheme. The court, however, reasoned through all the obstacles, including the black letter of the treaty, the intent of the framers, the historical perspective, the commercial activity theory as well as other treaties and statutes that were enacted in conjunction with and subsequent to the proclamation of the Vienna Convention before reaching its decision.

<sup>77</sup> 659 F. Supp. 606 (D.D.C. 1987).

<sup>78</sup> *Id.* Plaintiff obtained an ex parte order in the United States District Court, Southern District of New York, directing the entry of a judgment obtained in arbitration against defendant, The Government of the Republic of Liberia [hereinafter "Liberia"]. *Id.* at 607. Liberia sought to enjoin plaintiff from executing the judgment in the aforementioned Court. *Id.* That Court held that plaintiff was to "be enjoined from issuing executions against certain government property, but also ruled that [plaintiff] 'is not enjoined from issuing executions with respect to any properties which are also used for commercial activities and that may fall within one of the exceptions delineated in [28 U.S.C.] § 1610.'" *Id.* Plaintiff recorded their judgment in the United States District Court, District of Columbia, and that Court issued writs of attachment, notifying banks that the writs seized any credits other than wages, salary, commissions or pensions of the defendant, The Government of the Republic of Liberia, The Republic of Liberia, or The Embassy of the

court in *Birch Shipping v. Embassy of the Republic of Tanzania*<sup>79</sup> held otherwise, opining that bank accounts of diplomats were not unconditionally immune from attachment to satisfy civil judgments.<sup>80</sup>

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Republic . . . of Liberia or any of their agencies, that are used for commercial activities as such activities are defined in *Birch Shipping Corp. v. Embassy of the Republic of Tanzania* (sic), 507 F. Supp. 332 (sic) (D.D.C. 1980), sufficient to satisfy the judgment against Liberia. *Id.* Two bank accounts used for the function of the Liberian Embassy were seized as a result of the writs. *Id.* at 607-08. The Court held that "the bank accounts of the Liberian Embassy are immune from attachment both because they enjoy diplomatic immunity under the Vienna Convention and because no exception of the FSIA applies to deprive the bank accounts of their grant of sovereign immunity." *Id.* at 611. See Foreign Sovereign Immunities Act, 28 U.S.C. §§ 1062-1611 (1976). The Court held that "Congress did not intend the FSIA to affect diplomatic immunity under the Vienna Convention." See also H. R. REP. NO. 94-1487, at 12 (1976), reprinted at 1976 U.S.C.C.A. 6604.

<sup>79</sup> 507 F. Supp. 311 (D.D.C. 1980).

<sup>80</sup> *Id.* The Embassy of the Republic of Tanzania, entered into a contract with Birch Shipping for the shipment of corn. *Id.* at 311. The agreement required the parties to submit to arbitration and agree that a judgment may be entered. *Id.* A dispute arose and was thereafter arbitrated in New York, resulting in the plaintiff obtaining a money judgment. *Id.* Pursuant to the United States Arbitration Act, 9 U.S.C. § 9, plaintiff petitioned the United States District Court, Southern District of New York to confirm said award and enter judgment. *Id.* Defendant did not appear, and plaintiff's petition was granted. *Id.* A judgment was registered in the United States District Court, District of Columbia, pursuant to 28 U.S.C. § 1963. *Id.* A writ of garnishment was obtained, and served upon defendant's bank. *Id.* Defendant moved to quash the writ, claiming that under the Foreign Sovereign Immunities Act, 28 U.S.C. §§ 1602-1611 (1976), its property was immune from attachment and not within the exceptions enumerated in § 1610. *Id.* The court held that by agreeing to arbitration, defendant implicitly waived its immunity, and thus, could not be unilaterally withdrawn. *Id.* at 312. The court denied defendants motion to quash the writ. *Id.* at 313. See also 28 U.S.C. § 1610. § 1610 provides:

[t]he property in the United States of a foreign state, as defined in § 1603 (a) of this chapter, used for commercial activity in the United States, shall not be immune to attachment in aid of execution, or from execution, upon a judgment entered by a court of the United States or of a State after the effective date of this Act, if

There are many judicial remedies available to the City of New York to enforce and collect the outstanding fines. Article 41 of the Vienna Convention states that all diplomats have a duty to respect all of the laws of the receiving state.<sup>81</sup> The Vienna Convention "is agreed to be largely confirmatory of existing customary law."<sup>82</sup> Enforcement, however, is easier said than done.

Did the "existing customary law" contemplate diplomats parking and driving illegally, causing safety hazards and traffic nightmares and running up huge unpaid fines? And if this was, in fact, contemplated, must New York City suffer interminably because a thirty-seven year old treaty did not appropriately contend with this growing dilemma? Our judiciary exercises its intuitive judgment consistently in interpreting statutes, creating new law based on public policy and overturning prior decisions that no longer make sense. The City of New York should bring this issue before the courts, and ask the judiciary to interpret these statutes, consider public policy and overturn prior decisions that no longer make sense. While the courts have thus far been reluctant to limit diplomatic immunity, it is clear that the court is not comfortable with the intemperance currently enjoyed by diplomats.

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the foreign state has waived its immunity from attachment in aid of execution or from execution either explicitly or by implication, notwithstanding any withdrawal of the waiver the foreign state may purport to effect except in accordance with the terms of the waiver.

*Id.*

<sup>81</sup> Vienna Convention on Diplomatic Relations, Apr. 18, 1961, art. XLI, 23 U.S.T. 3227, 500 U.N.T.S. 95. This Article states "[w]ithout prejudice to their privileges and immunities, it is the duty of all persons enjoying such privileges and immunities to respect the laws and regulations of the receiving State." *Id.*

<sup>82</sup> See Memorandum from the Secretariat, *Diplomatic Intercourse and Immunities*, U.N. Doc. A/C.N. 4/98 (1956).

## CONCLUSION

New York City has the three branches of the Federal Government at its disposal in seeking a remedy to receive the millions of dollars now owed, due to unpaid parking and traffic tickets of diplomats. The President has the power to sanction.<sup>83</sup> The Department of State has policies in place to coerce these nations to pay their outstanding fines by withholding foreign aid and preventing negligent diplomats from operating a motor vehicle.<sup>84</sup> Congress can enact legislation to allow jurisdiction to enforce these outstanding fines. The courts have the power to interpret the statutes now in place, make decisions based upon public policy and overturn prior decisions that just do not make sense anymore.

The battle is difficult, however, as the concerns for the safety and well being of our American brothers and sisters overseas is very profound. As with all acts of diplomacy, there is a fine line that one must balance upon. Millions of dollars in the coffers of New York City could be a very shortsighted proposition. Sensitive alliances may be lost. New adversaries may be created. American lives could be lost. And, as far as economics are concerned, too much pressure applied to the United Nations and its members could break a tenuous relationship that now exists between the United Nations, the United States and the City of New York. How many millions would be lost to the City of New York should the United Nations relocate?<sup>85</sup>

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<sup>83</sup> See U.S. CONST. art. II, § 3, *supra*, note 22.

<sup>84</sup> See Department of State Circular Notes, *supra*, notes 30, 32 and 36.

<sup>85</sup> The contribution from the United Nations, its agencies, diplomats and consular corps into the economy of New York City (as of 1997) amounts to \$3.2 billion per year. Further, 30,600 jobs have been generated from the United Nations in New York City, yielding \$1.2 billion in annual earnings (as of 1997). See *About the United Nations*, (visited August 18, 1998) <<http://www.un.org/aboutun.org>>. Further, "New York City experiences an annual net gain of \$830.7 million due to the presence of the United Nations, despite incurring additional costs due to real property tax exemptions, uncollected parking fines and expenditures on extraordinary police protection." See G.M. Sorenson, *On Diplomats*, N.Y. TIMES, Dec. 3, 1989, at 53, col. 1.

But there does come a time when infidelity can no longer be tolerated. American diplomats abroad are expected to act in accordance with local laws and customs. Diplomacy relies on *quid pro quo*. The fragile structure of international relations can be eviscerated over a parking ticket. The stakes are that high. If the United Nations, the world's police force, is expected to maintain world peace and quell international discourse, the least it should be able to do is police its diplomatic force.

Phil Felice\*

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