

though they were quite normal, it is easy to see why some form of protection was needed for the persons carrying out diplomatic functions. Over time, the same privileges and immunities were also extended to the families of diplomats. Eventually, these principles were standardized throughout the world and given the force of law in the Vienna Convention on Diplomatic Relations which was concluded in Vienna on April 18, 1961. It was signed by Canada in February 1962 and entered into force in Canada on June 25, 1966.

Consular representatives were traditionally considered as quite different from diplomats. Historically, consular functions consisted of assisting in the resolution of problems involving the consul's own citizens present in the receiving State for business or other reasons, issuing travel documents etc. These were held to be activities not warranting special privileges or immunities. As consular functions became more complex, sending States came to realize that at least a limited degree of protection was necessary for their consuls. Beginning with bilateral agreements between countries, the privileges and immunities accorded to consular representatives were also eventually standardized throughout the world. The Vienna Convention on Consular Relations was concluded in Vienna on April 24, 1963 and signed by Canada on July 18, 1974. It entered into force for Canada on August 17, 1974.

Diplomatic Immunity: What Does It Mean?

Briefly, it means that you, as the diplomatic agent, and all members of your family who are with you in the receiving State have total immunity from criminal, civil, and administrative jurisdiction of the receiving State. You may not be detained or arrested or subject to body search, you may not be prosecuted and may not be required to give evidence as a witness. Furthermore, your private residence cannot be entered without your prior permission, and your car cannot be searched without your permission. However, your immunity does not mean that the authorities of the receiving State cannot stop you for a traffic violation, or to interrupt a criminal activity, (for example, apprehend a shoplifter, prevent an obviously drunk person from continuing to drive a car), nor does it mean that they may not ask you for identification to prove your diplomatic status. You are urged to remember at all times that as a person who enjoys immunity you have "... a special duty to respect the laws and regulations of the receiving State..." (Quote from the Vienna Convention on Diplomatic Relations, Article 41). Diplomatic agents also have comprehensive immunity from civil and administrative jurisdiction, with three exceptions: actions connected with real property in the receiving State; actions where the diplomat is an executor or beneficiary of an estate in the receiving State; and actions relating to professional or commercial activities engaged in outside the scope of official functions.

The Department has adopted a policy of seeking diplomatic accreditation at the rank of attaché in the receiving State for all members of the home-based administrative and technical staff. In the cases where the receiving State has agreed, they have diplomatic status. In the event a receiving State does not agree, members of the administrative and technical staff and their families enjoy immunity from criminal jurisdiction, but immunity from civil and administrative jurisdiction is limited to actions performed in the course of their official functions. Since dependants are not considered to have any "official functions" (at least as far as the drafters of the Vienna Convention were concerned) they do not enjoy any immunity from civil and administrative jurisdiction in the receiving State.

A receiving State which is faced with a criminal action committed by the person with diplomatic immunity has essentially two options: it may request the sending State to waive the offender's immunity so that he/she may be prosecuted under the law of the receiving State or, it may inform the sending State that the person concerned is no longer welcome in the receiving State and should leave as soon as possible ("persona non grata"). In most cases, the sending State when asked to waive a person's immunity for the purpose of criminal prosecution will repatriate the individual and his/her family immediately. Indeed, if the offence is serious — drug trafficking, for example — the individual concerned may well face criminal charges at home where, of course, his/her immunity does not apply.

Waiver of Diplomatic Immunity

It should be emphasized that an individual cannot waive his/her own immunity. Just as it is only the sending State who can seek accreditation for the individual, so it is only the sending State who can waive the immunity if requested to do so by the receiving State. However, in practice immunity is rarely waived. Most countries prefer to repatriate the individual voluntarily instead.