

Committee: Legal Committee (GA6)

Topic: Reconsidering the limitations to immunities of political leaders and diplomats

Student Officer: Vasiliki Stratogianni

Position: Co-Chair

Personal Introduction

Dear delegates,

My name is Vasiliki (Valia) Stratogianni, I am 17 years old and I'm a 12th Grade student attending Leonteios School of Athens. I am incredibly honoured and excited to be serving as the Co-chair of the Legal Committee in this year's CSMUN session.

This will be my third time as a Student Officer, and I find this conference the perfect opportunity to enrich my MUN career and develop as a member of the community. I have been attending conferences since the age of 14 and this will be my 19th conference in total. I sincerely hope all the participants attending will make unforgettable memories and have an overall great experience. We will try our hardest to make sure that everyone has an amazing time! I'm looking forward to meeting and working with all of you!

Through this study guide my goal is to introduce you to the second topic of GA6 and present you with all the necessary details in order for you to fully understand it and be able to draft resolutions and debate on it. However, I would heavily advise you to conduct your own research as it will be both necessary and crucial. Should you have any questions, don't hesitate to contact me any time!

Yours truly,

Vasiliki Stratogianni

vstratogianni2@gmail.com



Topic Introduction

Given the tendency of international politics to become contentious, it is vital that diplomats and members of the parliament or legislature are protected from any possible repercussions in order to take care of international and diplomatic relations between states, even in times of tension or conflict. If states had the chance to arbitrarily harass, issue arrest warrants or imprison diplomats, parliamentarians or legislators, international relations would meet their downfall. In response to this need, the international community began to institute and trial multiple proceedings to ensure government officials were immune from arbitrary arrest, harassment or interference in the execution of their work. This meant an exception from the laws of the states in which they worked while on assignment as a representative of their home government.

That's when immunity as a concept was established in the legal world. By and large, immunity consists of an exception from legal obligations, retaliation and convictions provided by law or a higher state authority. Legal immunity can be divided into various types.

When it comes to parliamentary immunity (also known as legislative immunity), there are two main forms: non- accountability and inviolability. Non-accountability (also known as "parliamentary freedom of speech") is usually an absolute immunity that protects members of parliament from all legal actions related to the exercise of parliamentary authorization and voting. In most systems, parliamentary non-accountability applies permanently and cannot be waived. On the other hand, inviolability is a form of immunity which according to a specific system can protect parliamentarians from legal proceedings, sometimes including arrests, prosecutions, and investigations, because these actions and speeches are beyond the scope non-accountability and thus outside the exercise of the parliamentary mandate.

Diplomatic immunity from any form legal proceedings and intervention is established on the principle of extraterritoriality, the international law doctrine which exempts the representatives of sovereign states from being persecuted by domestic



laws of the state they working in. This ensures they can go do their work without interference or intimidation.

Based on the principle of legal reciprocity, states agree to respect the rights of diplomats from other countries, on the assumption that their own diplomats will be treated equally well. Diplomats should not be in fear of prosecution or obtrusion during their time working abroad. The aforementioned principle is the basis of international relations and modern diplomacy. However as clarified by the Vienna Convention “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”¹. Therefore, legal immunity does not benefit the individual, but the relations of the state they are representing. So, this begs the question of how far immunities can go.

Definition of key terms

Diplomatic Immunity

A piece of international law “that gives foreign diplomats special rights in the country where they are working”². Under diplomatic immunity, diplomats cannot be arrested and do not have to pay taxes while working in other countries.

Extraterritoriality

“Exemption from the application or jurisdiction of local law or tribunals”³

¹ United Nations, *ViennaConventiononConsularRelations*, 24 April 1963, available at: <https://www.refworld.org/docid/3ae6b3648.html> Accessed 16 July 2021

² “Diplomatic immunity.” *Merriam-Webster.com Dictionary*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/diplomatic%20immunity> Accessed 15 Jul. 2021.

³ “Extraterritoriality.” *Merriam-Webster.com Dictionary*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/extraterritoriality> Accessed 15 Jul. 2021.



Reciprocity

“A mutual exchange of privileges; Specifically, recognition by one of two countries or institutions of the validity of licenses or privileges granted by the other”⁴

Sovereignty

“Supreme power especially over a body politic, freedom from external control, autonomy.”⁵

Prosecution

“The institution and continuance of a criminal suit involving the process of pursuing formal charges against an offender to final judgment”.⁶

Persecution

Persecution is “the act or practice of persecuting especially those who differ in origin, religion, or social outlook”⁷

Sovereign Immunity

“Sovereign Immunity prevents a sovereign state or person from being subjected to suit without its consent”⁸

⁴“Reciprocity.” Merriam-Webster.com Dictionary, Merriam-Webster, <https://www.merriam-webster.com/dictionary/reciprocity> Accessed 15 Jul. 2021.

⁵“Sovereignty.” Merriam-Webster.com Dictionary, Merriam-Webster, <https://www.merriam-webster.com/dictionary/sovereignty> Accessed 15 Jul. 2021.

⁶“Prosecution.” Merriam-Webster.com Dictionary, Merriam-Webster, <https://www.merriam-webster.com/dictionary/prosecution> Accessed 15 Jul. 2021.

⁷“Persecution.” Merriam-Webster.com Dictionary, Merriam-Webster, <https://www.merriam-webster.com/dictionary/persecution> Accessed 15 Jul. 2021.

⁸“Sovereign Immunity”. West’s Encyclopedia of American Law, edition 2. 2008. The Gale Group 16 Jul. 2021 <https://legal-dictionary.thefreedictionary.com/Sovereign+Immunity>



Parliamentary Immunity

“Parliamentary immunity is a legal instrument, which temporarily or permanently inhibits legal action, measures of investigation, and/or measures of law enforcement in criminal and/or civil matters against members of parliament.”⁹

In flagrante delicto

“In the very act of committing a misdeed”¹⁰

League of Nations

An organization and predecessor of the United Nations for international cooperation. Established on January 10, 1920, at the initiative of the victorious Allied powers at the end of World War I.¹¹

Background Information

Historical Background

Diplomatic Immunity

As a concept, diplomatic immunity dates back to ancient times, though it later suffered a complex series of difficulties and complications. During the late Renaissance, when sovereign states were emerging as the dominant actors of international politics, the system of immunity was very dominant. With more and more sovereign states being created, the risk of conflict and war was overwhelming and therefore the need for diplomacy was immense. States needed permanent diplomatic representation, like embassies, so as to maintain interstate communication.

⁹ Hardt, Sascha. “Policy Department C: Citizens' Rights and Constitutional Affairs: Parliamentary Immunity in a European Context.” European Parliament, 2015. [https://www.europarl.europa.eu/RegData/etudes/IDAN/2015/536461/IPOL_IDA\(2015\)536461_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/IDAN/2015/536461/IPOL_IDA(2015)536461_EN.pdf)

¹⁰ “In flagrante delicto.” Merriam-Webster.com Dictionary, Merriam-Webster, <https://www.merriam-webster.com/dictionary/in%20flagrante%20delicto>

¹¹ Britannica, The Editors of Encyclopaedia. “League of Nations”. Encyclopedia Britannica, 3 Mar. 2020, <https://www.britannica.com/topic/League-of-Nations> Accessed 14 August 2021.



Diplomatic immunity as the contemporary widely known concept it is today, was first entertained in the Concert of Vienna in the first decade of the 19th Century, before being fully recognized by the League of Nations –the predecessor United Nations– through the Vienna Convention on Diplomatic Relations of 1961. Prior to the establishment of the League of Nations, diplomatic protections were considered to be a norm with specific regulations set, varied across the globe. However, with the establishment of the League of Nations, various provisions for the immunities followed that were provided to diplomats. The aforementioned provisions of diplomatic protections were then universalized to other states with membership within the League itself, shielding diplomats from prosecution under law internationally.

This system would eventually evolve into the concept of diplomatic immunity acknowledged within the Vienna Convention on Diplomatic Relations. While differing from the original League of Nations’ establishment of diplomatic protections, the UN exemptions for diplomats as outlined in the Vienna Convention goes further in describing the protections of diplomats, stating that they are excluded from the jurisdiction of the state in which their work is located. The UN provisions of diplomatic immunity are detailed and clarified as far as where the jurisdiction for the enforcement of law lies for diplomats and therefore compels the sending state to deprive the diplomat of any form of immunity for other states to prosecute. Thus, the UN is able to balance state power while creating a universal framework for immunity to foster stable diplomatic relations.

Parliamentary Immunity

The roots of parliamentary immunity date back to an English Parliament session in 1397, around the time the House of Commons¹² voted on a bill condemning the malicious practices of Richard II of England and his court and the excessive financial burdens that followed such actions. Thomas Haxey, a member of the House, who originally made this report against the king was later put on trial and sentenced to

¹² “The House of Commons is the democratically elected house of the UK Parliament, responsible for making laws and checking the work of Government.” <https://www.parliament.uk/business/commons/>



death for treason. Following pressure applied by the Commons, however, the sentence was not carried out by on account of a royal pardon. This event gave rise within the House of Commons to the question of the right of Members of Parliament to discuss and debate in complete autonomy and freedom, without interference from the Crown.

Furthermore, parliamentary immunity may also be traced in France after the 1789 Revolution. More specifically, it was established by the famous decree of 23 June 1789, approved on a proposal by Mirabeau, which was followed by the announcement, in a decree dated 26 June 1790, of the privilege preventing the incrimination of members of the Assembly without its authorization. This second form of immunity was gradually made precise and clarified via consecutive texts, in the sense that the privilege is primarily directed at criminal court action and applies to any accusation, including those unrelated to the member's obligations. The Constitution of 1791, which established the first constitutional rule governing this immunity, already contains the essential nucleus of its system: Representatives of the Nation may be arrested in flagrante delicto or by virtue of a warrant of arrest for criminal acts; however, the legislative body will be notified without delay, and proceedings will not be continued until the legislative body has been notified. In the meantime, parliamentary immunity was becoming more widely acknowledged, particularly in continental Europe, where the French model, with its dual features of non-liability and inviolability, appeared to have dominated.

Structural Problems pertaining to immunities

Providing officials with the ability to behave in any manner they see fit can negatively impact the function of states or the relationships between states when inappropriate or illegal behaviour can stay unpunished. Public criminal activities from high-ranking officials have long been subject to criticism and occur all over the world, with those officials often being protected under legislative immunity.

Initially, the state is majorly burdened by having to manage the potential abuses of the officials on their citizens and the breaking of domestic laws. High profile legislators and diplomats tend to engage in behaviour which has ranged from minor



misdemeanours like traffic violations to more violent and serious crimes like physical abuse or murder to any degree, without fearing for any repercussions that would normally follow, should an average citizen commit anything remotely similar.

In an average situation, a state would have had the ability to request for the arrest of the offender and receive compensation. Nevertheless, when immunity is applied, the only way to receive even the slightest form of justice is to either appeal the state to strip the perpetrator of their privileges, or to prove in a court that such immunity does not apply for the crime that has been committed in this specific case.

Most of those efforts fail to hold up in court and lead to the perpetrators of crimes to continuing fulfilling their duties, leaving media coverage of the event and public protests being the sole repercussions which have little to no value in actually achieving anything meaningful. These abuses occur all over the world from varieties of representatives, ranging from ambassadors, parliamentarians, government officials and potentially their relatives to lower-level appointees. Provided that the types of offenders vary, being held responsible is rare and the state almost loses every case.

In the case of diplomatic immunity, such problems mostly negatively burden the relations between the states involved, since publicly and openly arguing about high level officials can lead to draining repercussions. In states with freedom of press particularly, the wide and speed of the disagreements concerning a possible exploitation of immunity can easily threaten the relationships with the allies and loss of trust and despair from those states' officials. While stripping officials accused of heinous crimes of their immunities could potentially offer a viable solution to the issue in hand, states must balance the need regain favourable standing on an international and domestic status while also handling their own diplomatic body.

The Role of the United Nations

As far as the UN itself is concerned all employees enjoy some form of protection. However, the high-profile UN officials are provided with more diplomatic privileges and immunities than the remaining UN staff who is only endowed with functional immunity, selective immunity from any legal action related to any and all words written, spoken and actions carried out by them in their official capacity.



While the United Nations inherited much of the initial ideas that went into diplomatic immunity during its establishment in the League of Nations, today it is responsible for supporting the Vienna Convention on Diplomatic Relations which makes up the core of the international diplomatic immunity framework. Specifically, the International Law Commission played a major role in developing the Vienna Convention on Diplomatic Relations and the International Court of Justice serves as a major arbiter concerning cases of diplomatic immunity. Thus, the UN does have specific areas to engage in concerning diplomatic protections and the potential abuse that can be carried out by perpetrators who would hide behind such protections.

Should abuse of immunity be carried out by diplomats assigned to the United Nations in New York City and in Geneva, in addition to UN staff possessing similar protections, the UN is in a position to enact, debate, or otherwise reform aspects of diplomatic immunity in order to make it easier to hold abusers of diplomatic immunity accountable. In parallel, the UN also has the responsibility to act as a mediator between two parties involved in cases concerning issues connected to diplomatic immunity, by acting through the International Court of Justice (ICJ)

Major countries and organizations involved

Canada

Canada has an interesting recent history with the abuse of diplomatic immunity. Recent decisions from the Canadian Supreme Court over the ability of diplomatic immunity to extend to the payments of rent for American diplomats staying in Ottawa has empowered domestic officials in removing diplomatic immunity in cases of rent non-payment. However, Canada does not shy away from diplomatic immunity on the international stage, as Prime Minister Trudeau argued that China violated the diplomatic immunity of Michael Kovrig in 2019. Thus, Canada has a diverse assortment on issues pertaining to diplomatic immunity's abuse.

China

China's standing and policy on diplomatic immunity may vary, depending on the specific case in hand. The most recent case involving Chinese policy on the legal



protections of diplomats consists of the case of Michael Kovrig, a Canadian diplomat, and whether he is still protected by diplomatic immunity. China remains loyal to their point that such protections do not exist for Mr. Kovrig and may therefore be prosecuted international law in China. However, Chinese actions abroad are more ambivalent when it comes to their own use of diplomatic immunity. Specifically, the state's actions in Belfast involved the establishment of new security measures and a physical fight between Chinese and Taiwanese officials in Fiji.

France

Members of the French Parliament have partial inviolability — that is, severe constraints on the police or justice's ability to arrest or imprison them – as well as culpability for what they performed as lawmakers. Article 26 of the French Constitution forbids both irresponsibility and inviolability.

Germany

“A Member may not be subjected to court proceedings, disciplinary action, or otherwise called to account outside the Bundestag (German Parliament) or a vote cast or for any speech or debate in the Bundestag or in any of its committees.”¹³ The Bundestag has the power to lift immunity for certain members and to authorise prosecution in circumstances of alleged criminal behaviour. The Bundestag can also order the suspension of a member's detention or prosecution. Germany's states follow comparable methods for their legislative bodies.

Italy

The Constituent Assembly reinstated parliamentary immunity in Italy in 1948 to prevent cases like Francesco Saverio Nitti's residence being raided and plundered by fascist police in the fall of 1923; and in Cannes in April 1926. Although immunity was curtailed in 1993, it is still being abused by withholding authorizations for specific

¹³*Basic Law for the Federal Republic of Germany*. wArticle 46, Bundestag, 1949, www.btg-bestellservice.de/pdf/80201000.pdf.



judicial acts, such as wiretapping. As a result, the Constitutional Court frequently overturns decisions made by Parliament to protect its members, authorizing the judiciary's activities.

Spain

In Spain, members of the national Congress of Deputies and Senators, as well as lawmakers serving in regional administrations and members of the Spanish Royal Family, are given immunity, allowing them to enjoy privileges granted by the Spanish Constitution. The membership privileges of these self-regulatory organizations are mirrored in the following parliamentary prerogatives:

- Inviolability: Legislators are immune from judicial prosecution for opinions stated or votes made while performing their official duties (Article 71.1 of the Spanish Constitution of 1978).
- Immunity: Legislators can only be imprisoned for flagrante delicto¹⁴, therefore plaintiffs and prosecutors must first request permission from the assembly in which the accused was elected before proceeding with any legal action (Article 71.2 of the Spanish Constitution of 1978). Despite the fact that the Supreme Court of Spain has final jurisdiction.
- Specific Jurisdiction: Parliamentarians can only be tried by the Supreme Court in the first stage of a proceeding, a system that has been censured as possibly undercutting any right of appeal to a higher court.

In Spain, 10,000 individuals have parliamentary immunity, yet only around a fifth of them are lawmakers. This underlines the importance of reconsidering the extent of immunities, as this can lead to impunity of people who deserve to be held accountable for their actions.

¹⁴“in the very act of committing a misdeed”

“In flagrante delicto.” *Merriam-Webster.com Dictionary*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/in%20flagrante%20delicto> Accessed 16 Jul. 2021.



Turkey

Turkish prosecutors filed 2,713 requests to suspend the immunity of 1,151 parliamentarians between October 26, 1961 and March 12, 1998. Only 29 of the requests were approved. Parliament ratified an amendment to the Constitution on May 20, 2016, abolishing legislative immunity. The amendment was able to pass without a constitutional referendum since it exceeded the two-thirds majority criterion. This led to nine members of parliament from the pro-Kurdish Peoples Democratic Party being arrested in November of the same year.

United Kingdom

Parliamentary immunity protects legislators in nations that employ the Westminster system, such as the United Kingdom, from civil action for defamation and libel while they are in the House. The privileges granted to the Houses of Parliament under the Common Law include this protection (parliamentary privilege). Members of Parliament, on the other hand, do not have parliamentary immunity from criminal prosecution under the Westminster system. This absence of criminal immunity stems from the British Constitution principle's central premise that everyone is equal before the law.

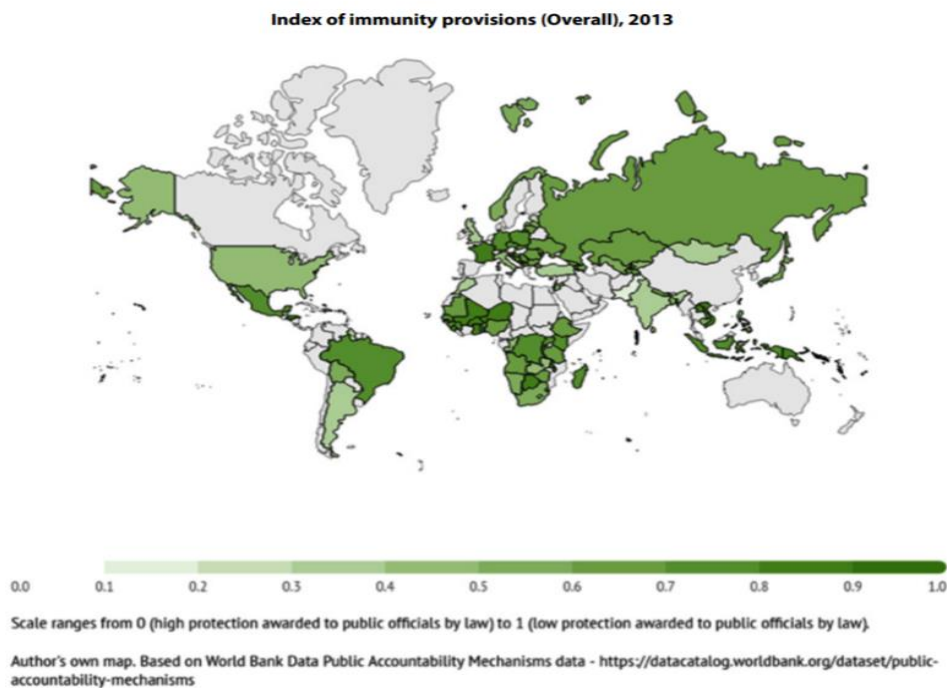
United States of America

The US favours the strongest forms of diplomatic immunity to protect its diplomats, although in practice the officials of other countries are expected to be surrendered after being accused of a crime on US grounds. The US currently maintains a record of involvement over cases heard in the International Court of Justice regarding issues related to diplomatic immunity, and continues to support this practice despite longstanding criticisms of it from domestic sources due to the actions of State Department officials and foreign diplomats. It is reported, that numerous of the difficulties associated with US embassies around the world, as well as, court cases, where immunity is used as a defence, appear to be related to recurring offenses by individuals rather than a broad sweep of US embassy workers.



European Union

The EU emphasizes the rule of law above all, including strengthening existing treaties and international obligations. EU Member States emphasize on the necessity of improving legal protection for diplomats, their families, as well as vulnerable support staff hired from each host state. EU Member States are not opposed to reforms that would allow diplomats to be prosecuted for crimes but expect these to be administered with caution and scrutiny by international institutions. However, the most recent issue has been the diplomatic row with the United Kingdom over the status of the bloc's ambassador in London.



Timeline of events

<u>September 22nd, 1949</u>	Convention on the Privileges and Immunities of the United Nations
<u>April 18th, 1961</u>	Vienna Convention on Diplomatic Relations
<u>April 24th, 1963</u>	Vienna Convention on Consular Relations
<u>1970 – Present Day</u>	Occurrences of Diplomatic Immunity Abuse
<u>December 2nd, 2004</u>	United Nations Convention on Jurisdictional Immunities of States and Their Property
<u>2010 – Present Day</u>	Petitions to abolish diplomatic immunity altogether globally
<u>October 20th, 2017</u>	Report of the Committee on relations with the host country. This recognizes once again that the question of Diplomatic Immunity needs to be discussed again.

Previous attempts to solve the issue

Non-Aligned Movement (NAM)

The bloc of 120 Member States primarily from Africa, Latin America, South and Southeast Asia, is highly defensive of diplomatic immunity, in spite of recommending alterations, as well. More specifically, pursuing accountability for criminal acts is important on both the national and international level, to ensure the perpetrators of criminal activity are not able to escape from justice. The variety of states within the Non-Aligned Movement implies a variety of perspectives on how to balance the protection of their own diplomats while holding other diplomats accountable.

Relevant UN Resolutions, Events, Treaties and Legislation

The Vienna Convention on Diplomatic Relations of 1961

This Convention is still the most essential piece of legislation to evaluate when it comes to diplomatic immunity abuses and prospective revisions. While most of the Convention is worth considering, key portions deal with governments' power to waive diplomatic immunity, the scope of that immunity's protections, and the eligibility of diplomatic employees for such protections. These specific areas of consideration outline much of the protections offered by diplomatic immunity and serve as a foundation capable of abuse.

The Convention on the Privileges and Immunities of the United Nations

This outlines the specific protections of United Nations personnel and the extent of those protections. While this enables the UN to be insulated from the laws of states, the UN operates within. Hence, there remain significant provisions regarding the settlement of disputes which could arise from UN action which most often takes the form of settlement arbitration. Importantly though, these UN protections can extend to a variety of representatives acting under UN mandates including representatives from the WHO, the IMF, UN Peacekeeping Forces, and other UN organizations. This means that UN functional immunity can cast a wide net.

The Vienna Convention's Optional Protocol concerning the Compulsory Settlement of Disputes

This lays the framework for settling diplomatic immunity disagreements. The most important facet of this specific document lies in the provision of the International Court of Justice as an arbiter for disputes regarding diplomatic immunity disputes. While the protocol favours bilateral conciliation and negotiation, the option to pursue third party mediation through the International Court of Justice on diplomatic immunity disputes has occurred several times involving a variety of states. Notable cases regarding diplomatic immunity include: United States of America v. Iran, Equatorial Guinea v.



France, Timor-Leste v. Australia, Commonwealth of Dominica v. Switzerland, and Paraguay v. United States of America.

Possible solutions

Strengthening guarantees of diplomatic immunity

The General Assembly may strengthen the level of protection for high-ranking officials to ensure that their legal rights are respected globally and that they are protected from legal persecution or harassment, even if this means exempting officials from legal responsibility for misdemeanours (minor crimes) or establishes very high standards for their prosecution for felonies and other more serious crimes.

Reforming the principle of immunity in the international law

Legal immunity can have such an extent where it can also shield the relatives of the government officials, from legal prosecution. Therefore, by reforming the terms of such immunities, it is ensured that the true purpose of immunity is served. This is because the aim of the immunity is solely to protect politicians and diplomats whose work cannot be interrupted by persecution and not members of their families as this leads to impunity.

Prosecuting serious crimes

Taking measures so as not to apply immunity when it comes to serious crimes ranging from fraudulent activities to murder or even genocide. In this way, political leaders and diplomats will be held accountable for serious crimes and will not be able to commit any arbitrary actions or crimes without facing the consequences of the law.

Creating specialized committee

Creating a specialized committee guided by the Convention on the Privileges and Immunities of the United Nations which will overlook the domestic immunities provided by each state while also revisiting several conventions protecting the right of officials in order to reform should it come to it.



Establishing specialized national body

Each state could create a specialized body in their government respectively, which will supervise the work of the government officials who enjoy immunity and check if they are engaged in any illicit activity, this way ensuring that it is not abused.

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