

ORIGIN AND DEVELOPMENT OF DIPLOMATIC IMMUNITIES IN ISLAM AND INTERNATIONAL LAWS

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ABSTRACT

Observation of the Origin and Development of Diplomatic Immunities in Islam and International Laws laid down for the methods and instruments of analysis and even some of its basic assumptions in the modern world; is a matter that is of paramount importance. There is a need to examine the emergence of diplomatic immunities, exploring its scope and attempting to outline of its theory. This paper attempts to deal with the origin and development of diplomat immunity in Islam and international law, as well as the sources and basis of Immunity in Islam and international law. It will outline the main methodological problem by addressing the question of whether the Origin and Development of Diplomatic Immunities in Islam and International Laws are built on Islamic principles of security for Muslims and non-Muslims alike, or are built on both mentioned aspects. It also aims at drawing the attention that the development of diplomatic immunity in Islam started earlier than the international laws on diplomatic immunity. The methodology adopted in this research is the library research through the consultation of relevant literature, which focuses on the thematic study of the subject matter. This is followed with analysis and discussion on the contents of the materials used. It is concluded that the source of the emergence of diplomatic immunities in Islamic law is derived from the Quran and the Sunnah. The paper also observed that the privileges and immunities of diplomats is one of the rules of customary international law. An important conclusion is that the crimes and acts that take place inside the embassy, is considered to have occurred in a foreign land. It also concluded that the period after the Vienna Conference in 1815 till the period of the world war is the period in which the contemporary diplomatic immunities is introduced.

Keywords: Islamic; Diplomatic; Immunities; Law; Embassy; Vienna Conference; Protection; Development.

1- INTRODUCTION

First of all, it is important to start this research by touching on the historical background of immunities. The word 'immunities' was associated in the beginning with the word 'diplomacy'. This makes it clear that the word may have arisen since the emergence of diplomacy.

Therefore, the immunity is associated with diplomacy in terms of its pronunciation, usage, and derivation. Thus, its emergence is with the emergence of diplomacy. Therefore, the emergence of diplomatic immunities is considered to be since the emergence of Islamic diplomacy. That is in the seventh century after the ascendancy of Prophet (S.A.W) in the leadership of the city of al-Madinah and the establishment of the fundamentals of his government. He thereafter created and entered into treaties between the al-Ansar (the people of al-Madinah) and al-Muhajirin (the immigrants from Makkah) and other residents of al-Madinah such as the Jews and etc. the diplomatic mission started with the invitation of the kings of Roman and Persian, as well as the kings, the princes and the tribal leaders of the Arabs, to embrace Islam, in an Advanced civilized manner, which indicates the depth of the Islamic renaissance and its ability to implement the principles and values of civilization.¹

Moreover, diplomacy in the era of the Prophet (SAW) represents ideal level in the diplomatic history of the human folk in general and the history of Islam and Muslims in particular. In fact, there is no doubt that the period of the Messenger of Allah (SAW) is the greatest periods in the history of human diplomacy. It is unimaginable that there will come upon mankind any other period that will more perfect or better than the stint era of the Messenger of Allah (SAW) of the Islamic propagation upon firm principles and fixed basis that will never change with the change of time, places and the occurrences of events. That is with the flexibility of keeping up with needs, and deriving its sources from the Qur'an and the Sunnah. This is what is missing in human legal theory that is derived from human laws sources.

The origin of the principle is the maxim which is actually word of the holy Prophet (SAW) that says (do no harm).² This is one of the greatest rules of jurisprudence amongst the Muslims.

¹ Fatalawi, Suhayl Husain. (2006) al-Diplomasiyah al-Islamiyah (*Dirasatan Muqaranah bi al-Qanun al-Daoli*), p11.

²An abi Sa'id Sa'ad Bin Sanan al-Khudri (RA).

Therefore, we can conclude from the above that immunities have emerged since the advent of Islam to the world. We can assert that the maxim as regard to the envoy that is sent on a mission should be given priorities of the application of the rule among the Muslims.

The exchange of envoys and embassies during the time of the holy Prophet (SAW) was not a coincidence; rather, it occurred as a result of legitimate divine revelation.

However, the periods of the traditional diplomacy was considered to have begun to appear during the modern era. That is, in the fifteenth century, approximately by 1453 AC.³ That is, the era of renaissance, in which there are changes and the work towards accelerating the new rules. Relationships and diplomatic practice started to become firm, especially at a time when work began to move toward the adoption of the principle of the permanent diplomatic representation.

On the other hand, the work moved toward the stability of diplomatic relationship and to the work toward the codification of the principles and rules that determine the rights and duties, and the immunities of diplomatic representatives, the first attempt of the work of the codification began with the Conference of Vienna in 1815 AC and Aix-la-Chapelle⁴. The work continued under the resolutions of the Vienna Convention, until the beginning of the twentieth century, especially at the end of the First World War. The first agreement in this regard was in 1946. It is known as the Convention on the Privileges and Immunities of the United Nations.⁵ It provides for the career standard of the immunities and the privileges that to be enjoyed by the diplomatic employees.

The sources of diplomatic immunities under Shariah law are the legitimate sources. That is from the most high in expertise and the most knowledgeable. What makes it a strong this is what makes the rules of immunities under Shariah law most formidable in compelling its rules and making it to attract penalty upon whoever violate the rules of immunities. This principle is known in this era in law, however, there is great difference between the principle in the positive law and the divine law.

2- Scope of the paper

The main objective of the present paper is to discuss in broad and general terms of Origin and Development of Diplomatic Immunities in Islam and international Laws, and to show major differences between the two aspects. It would also discuss some matters relating to sources and basis of Immunity in Islamic law.

3- Origin and Development of Diplomatic Immunities in Islam and International Laws

a) Origin and development of diplomat immunity in Islam

The emergence of diplomatic immunities is considered to be since the emergence of Islamic diplomacy. That is in the seventh century after the ascendancy of Prophet (S.A.W) in the leadership of the city of al-Madinah and the establishment of the fundamentals of his government. He thereafter created and entered into treaties between the al-Ansar (the people of al-Madinah) and al-Muhajirun (the immigrants from Makkah) and other residents of al-Madinah such as the Jews and etc. the diplomatic mission started with the invitation of the kings of Roman and Persian, as well as the kings, the princes and the tribal leaders of the Arabs, to embrace Islam, in an advanced civilized manner, which indicates the depth of the Islamic renaissance and its ability to implement the principles and values of civilization⁶.

Moreover, diplomacy in the era of the Prophet (SAW) represents ideal level in the diplomatic history of the human folk in general and the history of Islam and Muslims in particular. In fact, there is no doubt that the period of the Messenger of Allah (SAW) is the greatest periods in the history of human diplomacy. It is unimaginable that there will come upon mankind any other period that will more perfect or better than the stint era of the Messenger of Allah (SAW) of the Islamic propagation upon firm principles and fixed basis that will never change with the change of time, places and the occurrences of events. That is with the flexibility of keeping up with needs, and deriving its sources from the Qur'an and the Sunnah. This is what is missing in human legal theory, which is derived from human laws sources.

Furthermore, the advent of Islam in the Arabian Peninsula is considered as a major paradigm shift at all levels, especially at the political level as it is related to the external relations of the Islamic state. Although, the Arabic diplomacy in the pre-Islamic era was also associated with foreign relations more commercial interests, however, the Islamic diplomacy went beyond such boundaries of the pre-Islamic era, and fled to all directions in order to guard the religion and politics of the world, since it is all established on the foundations and principles of Islam.

It established the systems and laid down the curricula of life and the areas of its interactions in a unique applicable way. This is because the Legislator is Allah the Almighty, and the executor is such great personality. That is why the Muhammadiah diplomatic immunities is a realistic diplomacy that laid down a set of rules, principles and values that was derived from the sublime Shariah and the guidance of Prophet Mohammad (SAW). It is above all inadequacy and defect, and its effect is clear and crystal from the record of Islamic diplomacy of later ages."⁷

³Ibid, p 104.

⁴ Protocol Aix-la-Chapelle (1818).

⁵ It is reiterated here that the Institute of International Law adopted, the theory of the interest of the job in its session of 1929 and the abandoned its theory of expansion of the region, likewise, the Havana Convention of 1928, as well as adopted the theory of the interest of the functionality that stipulated the introduction of the Convention and enshrined it in its Article 15.

⁶ Fatalawi, Suhayl Husain. (2006) al-Diplomasiyah al-Islamiyah (*Dirasatan Muqaranah bi al-Qanun al-Daoli*), p11.

⁷ Ba Umar, Ahmad Salim. (1421 AH) al-Diplomasiyah *Bayna al-fiqh al-Islamiy wa al-Qanun al-Daoli*, p 70-73.

There are religious texts in the holy Qur'an and Sunnah that cares and encourages diplomatic immunities. The texts represent the greatest respect for the human dignities, and it provides him with everything that will preserve him the dignity, such as personal immunity, privileges, virtue and many examples that we shall see in dealing of the holy Prophet (SAW), which He (SAW) established and affirmed the fundamentals, and which was continued after him by the caliphs and become the Muslims' source in that era that exceeded the situation of the modern era. It was revealed in the Qur'an that:

ذٰلِكَ فَتَنَّا بَعْضَهُم بِبَعْضٍ لَّا يَأْتِي الصُّلٰتَ اِلَّا مِنْ وَّرَآءِ الْحِجَابِ

The principle of diplomatic immunity is rooted in these verses as represented in the glorious texts. That is that the verse (tall to him in a soft tones), here represent diplomacy and negotiation. Likewise, (do not be afraid. I am with both you) ⁸. It was at this juncture that holy Prophets Musa and Aaron enjoyed divine immunity, because immunity is about the safety from assault allow the diplomat to perform his task, and this is the greatest evidence from where diplomatic immunities draws its origin, and the privileges that are considered as additional type of immunity. It will be clear at the end of verses from the word of Allah:

لَا يَأْتِي الصُّلٰتَ اِلَّا مِنْ وَّرَآءِ الْحِجَابِ

Allah the Almighty granted Musa (AS) and the believers amongst his people and excellence, privilege, and virtue. That is why nobody came closer when he stroked the sea and walked in it. Thus, this privilege and additional virtue the immunity that they were granted by restraining the enemies to catch-up with them and victimized them, that is as we previously mentioned that the immunity is about protection and security from any inflicting damage on envoys the diplomats within the context of communication and the relationship of their mission. Therefore, it is asserted here that the greatest immunity in the provision of security is the relationship with Allah, Whose immunity will not allow anybody to afflict any detriment on His Messenger. This is clear from the words of His Messenger and Prophet Musa, that:

لَا يَأْتِي الصُّلٰتَ اِلَّا مِنْ وَّرَآءِ الْحِجَابِ

The verses on this are enormous and the Quran and presents this in various portions. In the antiquity the source of diplomatic immunities was the religious source.¹⁰ However, this has changed with the change of time, nevertheless, Islam still preserve this. Thus, the source of the emergence of diplomatic immunities in Islam is Islamic law which derived from the Quran and the Sunnah. Thus, the earlier and modern eras cannot achieve what is achieved by Islam. This is the only source that provides mankind with right of general immunity regardless of whether they are Muslims and infidels. That is that no harm should be inflict on them, which is the cornerstone of the modern immunity that is guaranteed for the general public let alone the people who are entrusted with such greater duty. They are more entitled.

The origin of the principle is the maxim which is actually word of the holy Prophet (SAW) that says (do no harm).¹¹ This is one of the greatest rules of jurisprudence amongst the Muslims. Therefore, we can conclude from the above that immunities have emerged since the advent of Islam to the world. We can assert that the maxim as regard to the envoy that is sent on a mission should be given priorities of the application of the rule among the Muslims. The exchange of envoys and embassies during the time of the holy Prophet (SAW) was not a coincidence; rather, it occurred as a result of legitimate divine revelation. It is noticed that the preparedness of the holy Prophet (SAW) to fight the infidels on the basis of the rumor of the murder of Uthman Bin 'Affan (RA) was for diplomat reason. That is the breach of diplomatic immunity of the envoy, despite that the fact that the trespass that occurred was the killing of Uthman (RA). The immunity that was established by the Prophet (SAW) is that an ambassador should not be killed. Instead, he must be allowed to return safely, whether the other party accept or reject the message that he brought. However, what is currently applicable in the theory of contemporary diplomacy is that "the diplomatic sanctity of an envoy must be preserved. Thus, he cannot be arrested or detained, and the host nation must treat him with respect and good manner."¹²

This is the same rule that was established by the holy Prophet (SAW) since more than fourteen century, that is when two envoys came from Musaylimah al-Kadhab to the Messenger of Allah (SAW), and he said to them after reading the letter of Musaylimah al-Kadhab, and what do you profess? They replied that they professed that which he professed. Then the Messenger of Allah (SAW) said if it is (not for the rule that envoys should not be killed, I would behead the both of them).¹³ According to Imam Ibn al-Qayyim while commenting on this subject, and the messengers/envoys of his enemies use to come to him despite being hostile to him and he never insult or kill them, based on the custom that messenger should not be killed.¹⁵¹⁴

⁸ Surah Taha, Verse 77-78. Ibn Kathir, Tafsir al-Qur'an al-Azim.

⁹ Surah al-Shu'ara', Verse 62.

¹⁰ Al- Shaami, Ali Husain. (1990) al-Diplomasiyyah, *Nash'atuha wa Tatawuruha wa Qawaiduha wa Nizam al-Hasanat wa al-Imtiyaziyyah al-Diplomasiyyah*, p 391.

¹¹ *An abi Sa'id Sa'ad Bin Sinan al-Khudri* (RA).

¹² Subject 29, from the Resolution of Viena 1961.

¹³ Narrated by Ahmad, 3/487, 488 from the hadith of Naim bin Masood al-Ashja'i and Abu Dawood (2761) in the jihad: the chapter of messenger, however, it is weak hadith, but it has valid witness.

¹⁴ *Salim Ba Omar*, Al-diplomasiyyah bayna Al-fiqh al-islam wa Al-qanon al-daoli:Ahmed, p 77.

¹⁵ Ibn al-Qayyim al-jaoziyah. (1421) *Zad Al-maad fi hadyi khairu al-ibad. Commentary (Tahkik) by shu'aib al-Arnaa'ut*. vol. 3, p 125.

b) Origin and Development of diplomat immunity in international law

Some scholars divided diplomatic law into various categories; one of such categories is that of immunities which an annexure of the diplomatic law is. In the period of time that follows the medieval period; ancient diplomacy was divided into two parts. The traditional diplomacy and the contemporary diplomacy. However, both the traditional and the contemporary diplomacy are considered as two stages of modern diplomacy (any of the biggest stages through which modern diplomacy) .¹⁶

The periods of the traditional diplomacy was considered to have begun to appear during the modern era. That is, in the fifteenth century, approximately by 1453 AC.¹⁷ That is, the era of renaissance, in which there are changes and the work towards accelerating the new rules. Relationships and diplomatic practice started to become firm, especially at a time when work began move toward the adoption of the principle of the permanent diplomatic representation. The work move toward the stability of diplomatic relationship and to the work toward the codification of the principles and rules that determine the rights and duties, and the immunities of diplomatic representatives, the first attempt of the work of the codification began with the Conference of Vienna in 1815 AC and Aix-la-Chapelle¹⁸. The work continued under the resolutions of Vienna Convention, until the beginning of the twentieth century, especially at the end of the First World War.

It can be said that traditional diplomacy has passed two main stages which are the level of preparing diplomacy as a career and level of its affirmation as profession. In the phase of preparation, the diplomatic representation is still linked to the personality of the ruler than its connection with the sovereignty of the state. At this preparatory stage the development of precise rules of law and diplomatic immunities, which until that time was vulnerable to violation, not was yet conclusive. However, as for the second stage, which begins with the Vienna Convention of 1815 AC and continued until the First World War, was more developed than the previous stage as regards the identification of some of the rules of diplomatic profession. It is characterized with some kind of autonomy and type of immunities and diplomatic privileges, especially at the end of nineteenth century¹⁹.

This phase of traditional diplomacy is characterized with some specification, which includes:
1. The rules of diplomacy was not clear, likewise, the diplomatic immunities that granted to the diplomats and their grades which is a subject of perpetual conflict. Any question of immunities that should be enjoyed by diplomats for the assurance of their safety and their mission. Legal scholars try to deliberately to search for the foundations that underpin these immunities and tried to defend and justify them.

Several principles and rules were put forward in the areas of immunities by the legal scholars. All the rules almost relied on the theoretical justifications that countries tried to adopted in their diplomatic dealings. These theories are the theory of expansion of their region, the theory of representativeness and the theory of interest or the necessities of occupation. We will discuss the theoretical fundamentals of immunities in this chapter (section four). Thus, from the fourteenth century until the eighteenth century, and especially in its middle there much dedication on the commitment for the introduction of the principle of diplomatic immunity among nations, hence, the development of the principle of diplomatic immunity for the diplomats and his exemption from the local judiciary jurisdiction and the criminalization of his arrest as a result of a crime or act of hostility of the host State.

2. A diplomat is considered as a representative of a king or a prince, more than the state.
3. The function of the diplomat is to observe or take notice of the new occurrence in the host state has adopted.²⁰

The contemporary diplomacy began towards with trend of parliamentary life, especially after the French Revolution in 1789. More so, since the nineteenth century, and especially since the Vienna Convention of 1815, the real center of administration began to move away from Royalties and influence of the kind... the delegation of personal diplomacy to representatives in parliament. Furthermore, the changes of positions of the interest of parliamentary life began to modify diplomatic methodology, and period of the First World War and the resulting events opened a new era for the development of diplomacy and it formed a base for advancement into a new diplomatic method that is based on certain democratic principles that are considered as modern as compared with practices of the preceding diplomacy, that is the traditional diplomatic practices, in another word, it begun to increase in departure from the former method.²¹

According to some scholars, the traditional diplomatic practices extends to the end of the World War,²² however, the researcher believes that the period after the Vienna Conference in 1815 till the period of the World War is the period in which the contemporary diplomatic immunities is introduced, and that the post-World War is the period of its development and growth and changes of the diplomatic immunities, until the time of the Vienna Conference in 1961, which is the departure time for the organization and development of rules and the establishment of diplomatic immunities and its codification. This is cleared through induction from many references and sources that divides modern diplomacy and its growth into two parts.

The Vienna Conference of 1961 is considered as the real beginning of the development of the rules of contemporary diplomatic immunities in which we live and it is practiced by the countries that signed the resolutions, and the other countries that did not join the

¹⁶ Al- Shaami, Ali Husain. (1990) *al-Diplomasyah, Nash'atuha wa Tatawuruha wa Qawaiduha wa Nizam al-Hasanat wa al-Imtiyaziyah al-Diplomasiyah*, p 91.

¹⁷ Ibid, p 104.

¹⁸ Protocol Aix-la-Chapelle (1818).

¹⁹ Al- Shaami, Ali Husain. (1990) *al-Diplomasiyah, Nash'atuha wa Tatawuruha*, p 92-93.

²⁰ Al- Abikan, Abdul Azeez Naasir. (2007) *Al-Hasanat wa al-Imtiyaziyat al-Diplomasiyah*, first edition, p 106.

²¹ Al- Shaami, Ali Husain. (1990) *al-Diplomasyah, Nash'atuha wa Tatawuruha*, p 91.

²² Al-shinkiti, Muhammad Abdullah bin Muhammad Al Amin. *Al-tanzim al-qanuni li-alhasanat Wal Imtiyazat Al diplomasiya*, p9.

established, or for the purpose in which immunity is granting.⁵³ This is the opinion of the researcher. Scholars such as has Dr. Ali Hussein al-Shami, Dr. Ahmad Abu al-Wafa Mohammed, Dr Ahmed Salim Mohammed Ba Omar, Dr Omar Kamal Tawfik and others also agree with the opinion.

It is therefore pertinent at this juncture to define the contract of Aman and to discuss the argument of the scholars about safety and its guarantee.

Thus, lexically, Al-Aman an arabic word for ‘security’ is the abstractive noun of ‘ista’amana ilayhi.’ That is, ‘he is secured under a protection. Other derivations are ‘amanahu, aamanahu, al-Ma’aman, Maodiu’ al-Amn and al-Amun. That is a person that seeks asylum for the protection of his life. Istamn he has been safe, fa huwa aamin ‘he is safe’ and ma’amanhu ‘his place of safety’ other than al-‘Amn ‘safety’ and al-Aman.⁵⁴

Al-‘amn and al-Amin are the opposite of fearless⁵⁵. However, Al-Maghribi defines it terminologically as ‘the prohibition of the shedding of the blood of an enemy, likewise, holding him hostage, or fighting him, or the imposing of fine on him despite his dwelling under a specific Islamic state.

Al-Maghribi also added that ‘al-isti’iman’ is the treaty of assurance that war will not be waged against us because the matter which may occur if such treaty is broken⁵⁶. Al-Jurjani defines it as: ‘al-Amnu ‘security’ the opposite of al-Khaof ‘fearness’. It is the expectation of the lack of occurrence evil in the coming period⁵⁷. Security treaty or pact is regarded as the theoretical basis for the establishing of diplomatic immunities based on the principle of shariah that defines the relationship between Islamic state and other states, and between Muslim and non-Muslim. The Islamic law recognized the principle of diplomatic immunity as a system that was developed and defined by al-‘Uruf ‘custom.’ That is by the treaty of security that is applicable to all persons that enters Dar al-Islam ‘Islamic state, and are non-Muslims. [Security/safety may be a life security, which is given to al-dhimmis ‘non-Muslims that live in the Islamic state. However, this is not the subject of the current studies]’⁵⁸.

Moreover, aman is regarded as the foundation of the concept of privacy that is individual immunity that is enjoyed by individual personalities of non-Muslims, especially diplomatic envoys. This principle and its origin is rooted in the words of Allah, the Almighty which says;

وَأَبْطَلَ بِذُنُوبِهِمْ مَدِينَهُمْ وَأَمْرَهُمْ هُنَا وَمَقْرَنُهُمْ هُنَا لِيَبْذُرَ اللَّهُ فِي الْكَافِرِينَ

And the word of Allah that says:

وَأَبْطَلَ بِذُنُوبِهِمْ مَدِينَهُمْ وَأَمْرَهُمْ هُنَا وَمَقْرَنُهُمْ هُنَا لِيَبْذُرَ اللَّهُ فِي الْكَافِرِينَ

This is the basis upon which the safety of non-Muslims is determined. It is types of the commitment toward the non-Muslims enter the Islamic country in order to protect them from the aggression of others.⁶¹ Thus, the Islamic state accommodates the ambassadors that come to it with safety and peace throughout their presence in the country, until they will return to their home countries safely, safety is guaranteed for the envoy that comes from his nation, or his state to Muslim countries, as soon as he entered Islamic state, and as soon he proved to be an envoy of his nation more so, he will not be requested to bring witness and forensic evidence because such request will lead to distress and embarrassment in his part and such things must be prevented from him. Thus, it is only sufficient to produce the document that he brought with him from the head of his country. So far he produced such document to show that he is sincere he will be accepted, based on the principle that says; the endorsement of the apparent is obligatory in matters that with cannot be ascertained.

6- The Sources of Immunities under the International Law

Since diplomatic law is a branch of the public international law, the sources from which it is derived is the same sources from where the public international law derived its rules and provisions.⁶² That is the known primary sources of international treaties. That is international custom. The secondary sources are the general principles of law, that is, the decisions of international organizations. The persuasive

⁵³ Dr Ali Hussein al-Shami addressed the issue of safety as a basis of diplomatic privileges and immunities of the Arab-Islamic states in the second section of his book *al-Diplomasiyah, Nasha'atuha wa tatawuruh*. Likewise, Dr Omar Kamal Tawfiq addressed the issue in his book *Islamic diplomacy and peaceful relations with the Crusaders*, stated that (this immunity is provided by the law on the basis of safety which is mentioned by the Shariah and applied by the Prophet (SAW). Thus, the safety has become norm after long practice among Muslims, in which must be adhered to by the officials of the Islamic State), p 126.

⁵⁴ Fairuz Abaadi, Muhammad bin Ya'aqub. (1424 AH) *Qamus al-Muhit. Second edition*, p 1084.

⁵⁵ *Qamus al-Muhit, ibid*, p 1084.

⁵⁶ Al-Maghribi, Muhammad bin Abdul-Rahman (1398 AH) *Mawahib al-Jalil, Dar – al Fikr. Second edition*, vol. 3, p 360.

⁵⁷ Al-Jurjani, Ali bin Mohammad bin Ali. (1403 AH) *Kitab al-tariefat. Tahqeeq by: al ibyaary. Dar Al-Rayyan. First edition*, p 55.

⁵⁸ Ahmed Salim Ba Omar, al-Fiqh al-Siyasi li-al-Hasanat al-Diplomasiyah, p, 82-83.

⁵⁹ Surah al-taobah, verse.(1)

⁶⁰ Surah al-taobah, verse.(6)

⁶¹ Ali hasan al-shami, al-diplomasiyah, nash'atuha wa tatawuriha, p 397.

⁶² Suhayl al-Fatawi, al-diplomasiyah al-Islamiyah, dirasatan muqaranah bi al-qanun al-daoli, p 18.

auxiliary sources are the court cases. That is, the views of scholars and the principles of justice and fairness. Some of these sources will be briefly explained as the time cannot afford more than that.⁶³

Primary Sources:

What are meant by primary sources are the legal rules that can stand on their own, and, which are resorted to by the people that designated for the settling of dispute directly and are given preference over other sources. The content of this definition is not different from the definition the previous definition of the primary source of diplomatic immunities under the shariah law. It is of the same content although the wording is different.

(i) The sources are of two types:

1st: international treaties

The Vienna Convention on the Law of Treaties of 23rd of May, 1969, is the general provisions for the Law of Treaties. The enforcement of the treaty started on 27th of January, 1980. The preamble of the Convention states the importance of the treaties and its essential role in the history of international relations as a source among other sources of international law.

The international treaties that are contained in Article 38 of the Statute of the International Court of Justice are not mere treaties; rather, it includes international conventions, Charter, Covenant, and Protocols and other documents of agreement between countries. The Vienna Convention on the Law of Treaties treaty is defined as "international agreement between the countries that is in written form and is governed by international law, that is, regardless of whether it embodied a single instrument or in two or more of related instruments and regardless of the particular nomenclature."⁶⁴ More so the international treaties can repeal or modify any source of international law, such as custom and the general principles of law. That is with the condition that it should not violate a peremptory norm of the general international law.

Types of Treaties:

Type of treaties varies according to the number of parties that join it. A treaty between two states is referred to as bilateral treaties. However, if it is between several countries is referred to the multilateral treaties:

1. Bilateral treaties: Are the treaties between two subjects of international law.
2. Multilateral treaties: are the Treaties between a numbers of international legal persons.⁶⁵

2nd International Custom, "The Second Source of the Primary Sources"

International custom is defined as: repetition of an action based on a certain rule in a period of time with the sense of commitment to it. However, although the international custom is the second source of international, next to the international treaties, nevertheless, it is the oldest sources of public international law. It rules are of general application. This is its uniqueness. It is of two components: that is the material component: that is the repetition of action based on a certain rule. The mental element: that is the presence of a psychological element.

Secondary/Abstractive Sources:

What is meant by Secondary/Abstractive Sources are the rules derived from other legal sources, and which gain their legal value from the source from which it was derived. That is that it cannot stand on its own, rather, it rely on the sources from where its strength is derives.

(ii) These Sources are of Two Types:

1st: General Principles of Law.

One of the sources that is identified by the Statute of the International Court of Justice is the general principles of law that is recognized by civilized nations.⁶⁶

The importance of the application of the general principles of law will become a necessity in the situation whereby the deriving of rules from treaties or international custom become impossible. This means that these principles take the third place in the sequence of the sources of international law to fill the shortfall in the international treaties and customary international law. The principles are of two types:

⁶³ Ibid, Hussain al azizi, p43. Hamid, A. G., & Sein, K. M. (2012). *Public international law: a practical approach*. Prentice Hall/Pearson Malaysia.

⁶⁴ The paragraph 1 of Article II of the Vienna Convention on the Law of Treaties of 1969, stated as follows: "That Treaty means an international agreement that is concluded between two or more states and it is subject to international law, whether it is in a single document, or more and whatever label it is referred to. "

⁶⁵ Abdul Azeez al-'Abikan, al-Hasanat wa al-Imtiyaziyat al-Diblomasiyah p106 & Suhayl al-Fatawi, al-diblomasiyah al-Islamiyah, dirasatan muqaranah bi al-qanun al-daoli, p 91 -93.

⁶⁶ The writers of international law disagree in it determining the status and nature of the general principles of law, such as the soviet doctrine, however, some of them are of the view that it is secondary sources of international law, while some believe that it is not a primary source. Others disagree with that.
Hamid, A. G., & Sein, K. M. (2012). *Public international law: a practical approach*. Prentice Hall/Pearson, Malaysia.

1. The general principles of international law
2. General principles of the Interior laws.

2nd: The Decisions of International Organizations:

The Article 38 of the Statute of the International Court of Justice does not state whether the decisions of international organizations are source of international law. However, with the increasing diversity of international organizations and its substantial role in the development of international relations, it has taken an active role in the issuing of decisions that have the status of legislation, and its implement is binding states. That is to say that, it derived its binding force from the agreement of the States on the establishment of the organization.⁶⁷

7- Conclusion

In conclusion we note that the emergence of diplomatic immunities is considered to be since the emergence of Islamic diplomacy. That was in the seventh century after the ascendancy of Prophet (saw) in the leadership of the city of al-Madinah and the establishment of the fundamentals of his government. The periods of the traditional diplomacy was considered to have begun to appear during the modern era. That is, in the fifteenth century approximately by 1453 AC. however, the researcher believes that the period after the Vienna Conference in 1815 till the period of the World War is the period in which the contemporary diplomatic immunities is introduced. Hence, the Vienna Conference of 1961 is considered as the real beginning of the development of the rules of contemporary diplomatic immunities in which we live and it is practiced by the countries. The traditional diplomacy has passed two main stages which are the level of preparing diplomacy as a career and level of its affirmation as profession...

An important conclusion, the sources of diplomatic immunities under Shariah law are the legitimate sources. Therefore, the primary sources are the Quran and the prophetic Sunnah. The secondary sources or dependency sources are those that are derived from the these two primary sources are [al-Ijma/consensus, al-'Urf/custom al-istihsan/equity, al-masalih al-mursalah/interest. However, the sources of diplomatic immunities under the international law are known as primary sources of international treaties and custom, as well as the secondary sources concerning general principles of law, which depends on the decisions of international organizations and the court cases.

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⁶⁷ Al-Fatlawiy Suhayl Husain. Mabadiu al-Qanun al-Daoli al-'Am, Ghalib 'Awad Hawamadah, p 140. & Abdul Azeez al-'Abikan. Al-Hasanat wa al-Imtiyaziyat al-Diplomasiyah, p 117.

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