

RECIPROCATION AS A MEANS OF CURTAILING DIPLOMATIC IMMUNITY ABUSE IN THE UNITED STATES: THE UNITED STATES NEEDS TO PLAY HARD BALL

I. INTRODUCTION

The 1961 Vienna Convention on Diplomatic Relations (Vienna Convention) codified existing customary international laws dealing with the privileges and immunities of diplomats and their personnel.¹ Diplomatic privileges and immunities exempt foreign envoys from the host country's laws and jurisdiction.² Besides codifying international laws, the Vienna Convention sought to maintain international peace and develop friendly relations among nations, irrespective of their differing constitutional and social systems.³ The threat of excessive reciprocation by foreign legal systems sustains the Vienna Convention's diplomatic immunity system.⁴ A growing population of diplomats in the United States has resulted in numerous violations of U.S. laws.⁵

However, since diplomatic personnel and their families enjoy immunity in varying degrees, the majority of these injustices go unpunished. Outraged, the American public—victims of abused diplomatic privileges—has emphatically called for reform.⁶ Though the desire for system reform is understandable, the American public must not overlook the

1. Vienna Convention on Diplomatic Relations, Apr. 18, 1961, 23 U.S.T. 3227, 500 U.N.T.S. 95 [hereinafter Vienna Convention]. "Recalling that peoples of all nations from ancient times have recognized the status of diplomatic agents," the Convention's preamble alludes to the customary nature of the international laws. *Id.* at 3230.

2. See Griffin, *Diplomatic Immunity Reexamined*, L.A. Daily J., Nov. 21, 1984, at 4, col. 1.

3. Vienna Convention, *supra* note 1, at 3230 (preamble). The preamble to the Convention recognizes, "the purposes and 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." *Id.*

4. "Without such safeguards [provided by the immunity system] it would be virtually impossible to carry out the diplomatic process. . . . In some countries it would be easy to trump up charges against a diplomat or his family. That could lead to retaliation and that would get out of hand." Minzesheimer, *Exceptions to the Rules*, Wash. Post, Feb. 20, 1983, at 11, col. 4 (quoting David Newsome, director of the Institute for the Study of Diplomacy at Georgetown University).

5. In the United States, there are now approximately 2,500 diplomatic agents at 142 embassies and other foreign government offices and about 32,000 diplomatic personnel at 158 permanent missions to the United Nations. See Griffin, *supra* note 2, at 4, col. 3.

6. See generally Griffin, *supra* note 2, at 4, col. 3.

significance of the diplomatic immunity system. The public should realize that diplomatic immunity is necessary to protect our diplomats in foreign receiving states.⁷ Instead, it appears that the American public is only concerned with the privileges and immunities that the Vienna Convention affords sending states' diplomats.

This comment addresses the growing concern of diplomatic immunity abuse, particularly abuse occurring within the United States. The immunity system is necessary to protect our diplomats abroad and therefore must remain in its current form. Instead of calling for reform, Americans should compel the U.S. government to compensate abuse victims from a limited compensation fund. The U.S. government should threaten and carry out retaliation against foreign states if they do not curtail diplomatic abuse.

The first section of this comment briefly traces the history of diplomatic immunity, updates the current status of immunity laws in the United States, and explores underlying theories which support diplomatic immunity. The functional necessity theory, a popular theory for justifying diplomatic immunity, is discussed in depth. The second section addresses recent diplomatic immunity abuses, including automobile-related offenses and serious crimes. Next, the comment discusses methods presently available under the Vienna Convention for punishing errant diplomats. The third section scrutinizes previous solutions for curtailing diplomatic immunity abuse. Finally, section four explains the limited compensation fund proposal. The proposal suggests that limited victim compensation paid by the U.S. government, coupled with bold retaliatory action against foreign states, presents the best solution for curtailing diplomatic immunity abuse.

7. In 1984, a Libyan national holed up inside of the Libyan People's Bureau fired at a crowd of demonstrators. British policewoman Yvonne Fletcher was killed in the flurry of gunfire. The gunman claimed that he was immune from prosecution because he had diplomatic immunity. British authorities agreed and escorted him out of the country. *See generally* The Times (London), Apr. 18, 1984, at 1, col. 1-2. The British government responded slowly to this incident. The government did not hastily expel the entire Libyan mission, *because Britain feared that Libya would excessively retaliate against its diplomats and citizens still in Libya*. At the time, twenty British diplomats and approximately 8,500 British citizens resided in Libya. The Libyan press had already threatened that any "humiliation" of Libyan or Arab citizens in Britain would be met with "tenfold humiliation for Britons staying in Libya and the rest of the Arab homeland." *See An Undiplomatic Outrage*, The Times (London), Apr. 18, 1984, at 13, col. 1-3.

II. UNITED STATES DIPLOMATIC IMMUNITY LAWS AND THE FUNCTIONAL NECESSITY THEORY

A. *Brief History*

The principle and practice of diplomatic immunity is as old as history itself.⁸ In 1625, Dutch statesman Hugo Grotius, the "father of international law," wrote, "There are two maxims in the law of nations which are generally accepted as established rules: the first that ambassadors must be received and second that they must suffer no harm."⁹

The permanent exchange of diplomats between states did not become an accepted practice until the mid-sixteenth century.¹⁰ Before this time, countries favored temporary diplomatic missions which terminated as soon as the missions fulfilled their particular purpose.¹¹ By the eighteenth century, European states had broadly outlined the customary international law regarding diplomats' privileges and immunities.¹²

On April 30, 1790, the United States passed its first statute codifying diplomatic immunity.¹³ Consistent with customary international law, this statute granted complete immunity from both criminal and civil jurisdiction to diplomatic agents, their families, and to members of the administrative and technical staff.¹⁴ The 1790 statute remained in effect for nearly two hundred years until Congress passed the 1978 Diplomatic Relations Act (DRA), which repealed the 1790 Act and adopted the Vienna Convention's laws pertaining to privileges and immunities.¹⁵

B. *Theories Justifying Diplomatic Immunity—Functional Necessity Theory*

Theories often advanced to justify diplomatic immunity include ex-territoriality, sovereign representative, and functional necessity. While the popularity of these theories has varied, the functional necessity theory is the most widely accepted theory today.¹⁶

8. See B. SEN, A DIPLOMAT'S HANDBOOK OF INTERNATIONAL LAW AND PRACTICE 1 (2d ed. 1979) (history of diplomatic privileges and immunities); see also Griffin, *supra* note 2, at 4, col. 1.

9. Griffin, *supra* note 2, at 4, col. 1.

10. See B. SEN, *supra* note 8, at 6.

11. *Id.* at 5.

12. See E. SATOW, SATOW'S GUIDE TO DIPLOMATIC PRACTICE 106 (Lord Gore-Booth 5th ed. 1979).

13. See generally Note, *Diplomatic Privileges—The Diplomatic Relations Act of 1978: A Congressional Response to a Vexing Problem*, 22 HOW. L.J. 119, 120-21 (1979) (provides background for adoption of the 1790 Act).

14. Recent Developments, 10 CASE W. RES. J. INT'L L. 827, 828 (1978).

15. See, e.g., Recent Developments, 19 HARV. INT'L L.J. 1019, 1019-20 (1978).

16. Sen acknowledged the modern tendency, which is to allow immunities and privileges on the basis of functional necessity. See B. SEN, *supra* note 8, at 82.

1. Exterritoriality and Sovereign Representative Theories

Although extrterritoriality is the oldest of the theories, it has recently been criticized.¹⁷ The extrterritoriality approach to diplomatic immunity adopts the legal fiction that diplomats always remain on their native country's soil, though they may travel elsewhere.¹⁸ As such, the diplomats are immune from the receiving states' laws and jurisdiction.¹⁹

The sovereign representative theory adopts the legal fiction that diplomats personify their sending state when they represent their country abroad.²⁰ Consequently, the diplomats should enjoy the sending state's sovereign immunity.²¹ This theory equates an insult to the diplomat with an insult to the sovereign's personal dignity. Thus, receiving states are compelled to treat diplomats in a manner consistent with their representative character.²²

2. Functional Necessity Theory

The functional necessity theory justifies immunity on the basis that diplomats cannot efficiently perform official functions unless they are shielded from the receiving state's laws and jurisdiction.²³ A diplomat's status as the country's international spokesperson could be radically altered if subjected to ordinary legal and political interference from the receiving state or its citizens.²⁴

For instance, in order to coerce a sending state into altering its position on a specific international issue, the receiving state would not afford immunity to the diplomats of the sending state.²⁵ This action, however, is unwise because it demonstrates that the receiving state never intended

17. Critics assert that the extent of immunity which would flow from this doctrine has never been accepted in practice. At times, they claim, both the premises of the mission and the diplomatic agent come within the jurisdiction of the receiving state. *Id.* at 80-81.

18. See Comment, *A New Regime of Diplomatic Immunity: The Diplomatic Relations Act of 1978*, 54 TUL. L. REV. 661, 664-72 (1980) (discussing proper implementation of the functional necessity theory of diplomatic immunity).

19. *Id.* at 664.

20. *Id.*

21. *Id.*

22. See B. SEN, *supra* note 8, at 80-81.

23. See Comment, *Insuring Against Abuse of Diplomatic Immunity*, 38 STAN. L. REV. 1517, 1521 (1986).

24. See Comment, *supra* note 18, at 667-68.

25. If diplomats were liable to ordinary legal and political interference from the receiving state or its citizens, they would be dependent on the receiving state's good will. This would enable the United States, for example, to refuse to honor a South African diplomat's immunity claim in order to influence South Africa's stance on apartheid. The functional necessity theory prevents this series of events from occurring. Once a South African envoy is entitled to the status of a diplomat, he is no longer subjected to the receiving state's laws or jurisdiction. *Id.* at 668-69.

to deal in good faith with the sending states' representatives.²⁶ The sending state is likely to reciprocate to avenge the prejudicial treatment of its diplomatic personnel.²⁷ These retaliatory measures would damage communication between the states and undermine international relations.²⁸ In prohibiting harassment by the receiving state, diplomatic immunity decreases the threat of reciprocity. Thus, the lines of international communication remain open.²⁹

Several proposals have redefined the functional necessity theory. One proposal maintains that immunity permits the *diplomatic process*, rather than the *diplomat*, to function efficiently.³⁰ This proposal contends that situations arise in which diplomats have no immunity, yet international relations remain undisrupted.³¹ For example, the private suit brought by a citizen, rather than the receiving state, will not impede diplomacy.³² Private plaintiffs have no personal stake in the outcome of the official course of conduct pursued by the diplomat.³³ Therefore, private citizens would not bring suit in order to affect such conduct.³⁴ Furthermore, a citizen's private suit is unlikely to result in reciprocal measures by the sending state, because harassment cannot fairly be implied when a suit is initiated by a person unrelated to the receiving state.³⁵

C. *Vienna Convention Provisions and The Diplomatic Relations Act of 1978*

1. 1961 Vienna Convention on Diplomatic Relations

The United Nations-sponsored Vienna Convention on Diplomatic Relations codified immunity provisions which conflicted with the immunity provisions of the 1790 statute.³⁶ The 1790 statute did not reflect a

26. *Id.*

27. *Id.*

28. *Id.*

29. *Id.*

30. *Id.* at 669-71.

31. Countries such as the United States and the United Kingdom believe that diplomats should have absolute immunity in respect to all of their acts as long as the diplomats remain accredited to their government. Countries such as Italy and the Soviet Union, however, seek to draw a distinction between acts which the envoy performs in his official capacity as a diplomat and other acts which the envoy performs of a private nature. *See* B. SEN, *supra* note 8, at 82-83.

32. *See* Comment, *supra* note 18, at 671.

33. *Id.*

34. *Id.*

35. *Id.*

36. *See* Note, *The Diplomatic Relations Act of 1978 and Its Consequences*, 19 VA. J. INT'L L. 131, 137 (1978) [hereinafter *Diplomatic Relations Act*]; the United States plus 74 other countries signed the Vienna Convention in 1961. *See* Comment, *supra* note 18, at 669-70. One hundred forty-one countries have ratified the Vienna Convention since its original signing. *See* Griffin, *supra* note 2, at 4, col. 3.

distinction between private and official acts; yet under the Convention, high-ranking diplomats can incur civil liability for certain private conduct.³⁷ Although the old law failed to distinguish among different classes of diplomatic staff for purposes of granting absolute immunity, the Convention does make this distinction.³⁸ Diplomatic agents receive absolute immunity with few exceptions, while personal servants of diplomatic agents receive virtually no immunity. The Act of 1790 provided immunity for a diplomat's family regardless of the family members' citizenship. Under the Convention, however, family members who are citizens of the receiving state receive no immunity.

Article 37 of the Convention divides the personnel of a diplomatic mission into four categories and grants decreasing immunity to each division: (1) diplomatic agents, (2) administrative and technical staff, (3) service staff, and (4) personal servants of diplomats. Article 31 grants immunity to its fullest extent to diplomatic agents. These agents receive complete immunity from criminal jurisdiction in all cases and immunity from civil jurisdiction, except when the diplomat acts in a purely private capacity.³⁹

37. Griffin, *supra* note 2, at 4, col. 3; *Diplomatic Relations Act*, *supra* note 36, at 139-40.

Comparisons of Provisions

Categories of diplomatic personnel*	Vienna Convention on Diplomatic Relations	U.S. Statute of 1790
1) Administrative and technical staff:		
a) criminal:	full immunity	full immunity
b) civil:	immunity only for official acts	full immunity
2) Family members of the above staff:		
a) criminal:	full immunity	no immunity
b) civil:	no immunity	no immunity
3) Service staff:		
a) criminal:	immunity only for official acts	full immunity
b) civil:	immunity only for official acts	full immunity
4) Family members of service staff:		
a) criminal:	no immunity	no immunity
b) civil:	no immunity	no immunity
5) Private servants of members of missions:		
a) criminal:	no immunity	full immunity
b) civil:	no immunity	full immunity

* Not including permanent resident aliens.

38. *Diplomatic Relations Act*, *supra* note 36, at 139.

39. A diplomatic agent shall enjoy immunity from the receiving state's criminal, civil, and administrative jurisdiction, except in the case of: a) real actions relating to private immovable property situated in the territory of the receiving state; b) an action relating to succession in which the diplomatic agent is involved as executor, administrator, heir or legatee as a private

Members of a mission's administrative and technical staff, including typists, translators, and communications operators, receive full immunity from criminal jurisdiction.⁴⁰ They are immune from civil jurisdiction, however, only for their official acts.⁴¹ Members of the service staff, such as chauffeurs, cooks, and janitors, enjoy civil and criminal immunity only for their official acts.⁴² Private servants of diplomats receive no immunity under the Convention, except for an exemption concerning taxes on wages earned.⁴³

The Convention also provides varying immunity for the immediate family members of the first two categories of diplomats.⁴⁴ Families of diplomatic agents enjoy the same immunity as the agents, while families of the administrative and technical staff are shielded to the same extent as the staff members.⁴⁵ If a family member of a diplomatic agent or a technical and administrative staff member is a citizen of the receiving state, however, that person receives no immunity under the Convention.⁴⁶

2. The Diplomatic Relations Act of 1978

Congress passed the Diplomatic Relations Act after realizing that

person and not on behalf of the sending state; and c) an action relating to any professional or commercial activity exercised by the diplomatic agent in the receiving state outside his official functions. Vienna Convention, *supra* note 1, art. 31, para. 1.

40. Members of the administrative and technical staff of the mission, together with members of their families forming part of their respective households, shall, if they are not nationals of or permanent residents in the receiving State, enjoy the privileges and immunities specified in articles 29 and 35, except that the immunity from civil and administrative jurisdiction of the receiving State specified in paragraph 1 of article 31 shall not extend to acts performed outside the course of their duties.

Id. art. 37(2).

41. *Id.*

42. "Members of the service staff of the mission who are not nationals of or permanently resident in the receiving State shall enjoy immunity in respect of acts performed in the course of their duties." *Id.* art. 37(3).

43. Private servants of members of the mission shall, if they are not nationals of or permanently resident in the receiving State, be exempt from dues and taxes on the emoluments they receive by reason of their employment. In other respects, they may enjoy privileges and immunities only to the extent admitted by the receiving State. However, the receiving State must exercise its jurisdiction over those persons in such a manner as not to interfere unduly with the performance of the functions of the mission.

Id. art. 37(4).

44. Vienna Convention, *supra* note 1, at art. 37, para. 1.

45. "The members of the family of a diplomatic agent forming part of his household shall, if they are not nationals of the receiving State, enjoy the privileges and immunities specified in articles 29 to 36." *Id.*

46. Other provisions in the Convention extend immunities to diplomats in accordance with earlier custom. Article 31 states that a diplomatic agent is not obliged to give evidence as a witness in court. Article 34 exempts diplomats from all taxes except indirect taxes, property taxes on investments or commercial undertakings in the receiving state. Vienna Convention, *supra* note 1, art. 31, 34.

the United States granted total immunity to foreign diplomats, while the United States did not receive reciprocal immunities for her diplomats abroad.⁴⁷ The Act's principal purpose was to replace the 1790 statute with legislation consistent with the Vienna Convention's international code.⁴⁸ Existing provisions of the 1790 Act were plainly inconsistent with the immunity provisions of the Vienna Convention.⁴⁹ The 1790 statute granted diplomats and their families absolute criminal and civil immunity, while the Vienna Convention narrowed the number of individuals eligible for absolute diplomatic immunity from prosecution.

The Diplomatic Relations Act adopted most of the Vienna Convention's articles, as well as several new provisions. The Act extended Convention treatment to a sending state's diplomatic personnel and their families, even if the sending state had not ratified the Vienna Convention.⁵⁰ On a reciprocal basis, the Act also authorized the President to extend more or less favorable treatment than the treatment available under the Vienna Convention.⁵¹

Furthermore, Congress required diplomatic personnel and their families to carry automobile liability insurance to offset operation risks.⁵² This action was a response to the requirement in many foreign countries that visiting U.S. diplomats carry liability insurance.⁵³ Citing loose compliance with the mandatory automobile insurance provision, Congress passed a 1983 amendment holding embassies responsible for full liability insurance coverage of their diplomats.⁵⁴ To ensure that automobile accident victims are adequately compensated, the amendment provides a federal right of direct action.⁵⁵ Direct action allows victims to initiate

47. Diplomatic Relations Act, §§ 1-6 (codified at 22 U.S.C. § 254(a)-(e)), Pub. L. No. 95-393, 92 Stat. 808 (1978) [hereinafter DRA].

48. See Griffin, *supra* note 2, at 4, col. 3.

49. See *Diplomatic Relations Act*, *supra* note 36, at 134-35.

50. DRA, *supra* note 47, § 3(b).

51. In 1962, town officials in Glen Cove, Long Island, heard a rumor that a 36-acre estate in town, being rented by Soviet representatives to the United Nations, was completely wired with intelligence gathering equipment. The estate was exempt from property taxes, a privilege that the United States granted to many countries. Angry Glen Cove officials reasoned that because the Soviets paid no property taxes, they should not be allowed to use town, beach, golf and tennis facilities without paying a large fee. The Soviets refused to pay the fee, and took reciprocal action against the American mission in Moscow by rescinding the embassy's beach privileges. DRA, *supra* note 47, at § 4; N.Y. Times, July 28, 1982, at 1, col. 4.

52. DRA, *supra* note 47, § 6(b).

53. See Griffin, *supra* note 2, at 4.

54. Enforcement problems have plagued the mandatory insurance provision. The State Department withholds special diplomatic license plates and waivers of automobile registration fees until diplomats prove that liability insurance is in effect. However, once special license plates are obtained and registration fees are waived, nothing prevents diplomatic personnel from allowing their insurance to lapse or cancelling their policies. Many diplomats circumvented the mandatory insurance provision by obtaining license plates and paying automobile registration fees in their own names. *Id.* at col. 5.

55. *Id.*

judicial proceedings directly against the diplomats' insurer.⁵⁶

The Diplomatic Relations Act and its 1983 amendment guarantee that American citizens involved in automobile accidents with diplomats will be sufficiently compensated.⁵⁷ The compensation fund proposal in this comment guarantees a remedy to all private American citizens injured by the wrongful conduct of diplomats.

III. RECENT DIPLOMATIC IMMUNITY ABUSES

Crimes committed by people with diplomatic immunity are disconcerting. Alleged criminals cannot be prosecuted because of their immunity. The actions presently available under the Vienna Convention to punish these criminals are inadequate. The U.S. government must actively discourage diplomatic immunity abuse so that the increase in minor offenses, such as unpaid traffic tickets, will cease. More urgently, the government needs to control immunity abuse so that diplomats will not commit more serious crimes, such as murder and rape.

A. Actions Presently Available Under the Vienna Convention

The Vienna Convention entitles a state to take one of three actions against an errant diplomat. The receiving state can (1) take no action, (2) declare the wrongdoer *persona non grata* and force the diplomat to leave the country, or (3) negotiate with the sending state to waive the diplomat's immunity.

Receiving states that take no action in response to diplomatic immunity abuse subject themselves to harsh criticism. The state's government would be criticized by its citizens, especially those citizens who were the victims of those crimes. This criticism is unfair only in the situation when the diplomat-suspect is unknown and the sending state refuses to cooperate in an effort to determine the suspect's identity.⁵⁸ In this situation, the receiving state must choose to either break off diplomatic relations or take no action at all.⁵⁹ Unfortunately, the receiving state often feels compelled to choose the latter.⁶⁰

If the receiving state declares diplomatic personnel *persona non grata*, notification to the sending state can be made at any time and the

56. See 28 U.S.C. § 1364 (1978).

57. See generally Griffin, *supra* note 2, at 4.

58. As discussed above, *supra* note 7, the gunfire came from within the Libyan Embassy, but it was not known who pulled the trigger. The Libyan government was uncooperative in determining the gunman's identity.

59. See Comment, *supra* note 23, at 1527.

60. *Id.*

receiving state does not have to explain its decision.⁶¹ After a diplomat is declared *persona non grata*, the sending state can choose to terminate the diplomat's ties with the mission; however, sending states rarely take this action.⁶² Consequently, the receiving state can force the sending state to recall the diplomat once the sending state refuses to strip the diplomat's status.⁶³ Unfortunately, declaring a diplomat *persona non grata* and forcing him to leave the United States is an inappropriate response to an immunity abuse incident.⁶⁴ Such action leaves a victim of the diplomat's wrongful conduct without a remedy. In addition, remaining diplomats are not sufficiently deterred by this response because they know that expulsion is the worst punishment they can receive.

The most desirable action would require the receiving state to negotiate for the waiver of the diplomat's immunity.⁶⁵ This action follows both the letter and the spirit of the Vienna Convention. Once the sending state waives its diplomat's immunity, the receiving state can take action against the errant diplomat without fear of violating the Convention's safeguards.⁶⁶ The receiving state's ability to punish the errant diplomat is significant not only because it deters diplomats from erring in the future but also because victims of crimes committed by diplomats will no longer be without a remedy.

Although negotiating with a sending state to waive its diplomat's immunity is excellent in theory, it rarely works in practice.⁶⁷ The Vienna Convention does not require a sending state to waive its diplomat's immunity, and no enforcement mechanism exists to compel this waiver.⁶⁸

61. "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 mission is *persona non grata*. . . ." Vienna Convention, *supra* note 1, art. 9, para. 1.

62. "[T]he sending State shall, as appropriate, either recall the person concerned or terminate his functions with the mission." *Id.*

63. *Id.*

64. *See generally* Comment, *supra* note 23, at 1527.

65. *See* Griffin, *supra* note 2, at 4, col. 4 (regarding a discussion of an incident where the United States successfully negotiated with the sending state to waive its erring diplomat's immunity. While on a fishing trip in New York in 1982, a junior officer, at North Korea's observers' mission to the United Nations, assaulted a middle-aged woman. The woman had been walking in the park when the officer grabbed her by her breasts and threw her to the ground. The woman identified the assailant from photographs. Fearing arrest, the officer took sanctuary in his country's mission for ten months. The North Koreans insisted that the officer was entitled to full diplomatic immunity. However, the North Koreans *waived* the officer's immunity after the State Department threatened to expel a ranking North Korean diplomat for sheltering the offender.).

66. *See* Comment, *supra* note 23, at 1526.

67. "There is one situation, however, in which the diplomat's immunity is automatically waived. A diplomat effectuates a limited waiver when he initiates a civil suit in the United States. Consequently, the diplomat is precluded from invoking immunity from any resulting counterclaim directly connected with the principal claim." *See Diplomatic Relations Act, supra* note 36, at 1526.

68. "The immunity from jurisdiction of diplomatic agents of persons enjoying immunity

Consequently, foreign governments frequently refuse to waive their diplomat's immunity even though the diplomat has obviously committed a crime.⁶⁹

The three actions under the Vienna Convention that a State can take against an erring diplomat are inadequate in varying degrees. These ineffective responses permit diplomats to implement Convention immunities, thereby avoiding prosecution for crimes ranging from local parking law violations to rape and murder.

B. *Unpaid Parking Tickets*

Unpaid parking tickets appear to be a paltry offense for diplomats to defeat with their immunity. However, diplomats and their families accumulate millions of dollars in unpaid fines each year in New York and Washington, D.C., alone.⁷⁰ Two thousand U.N. diplomats and their families accumulated more than 70,000 parking tickets in 1985, leaving the City of New York with approximately \$2,000,000 in unpaid fines.⁷¹ Between July 1981 and October 1982, Washington, D.C., diplomats received over 21,000 parking violations.⁷² Since eighty-six percent of the tickets went unpaid, the District of Columbia was unable to collect almost \$500,000 in fines and penalties.⁷³ The U.S. government does not actively discourage foreign envoys from using diplomatic immunity to escape paying parking tickets. In fact, the U.S. government apparently condones this form of immunity abuse.⁷⁴ The State Department repeatedly enters into agreements with foreign embassies to excuse the foreign envoy's obligation to pay outstanding parking tickets.⁷⁵ In exchange,

under article 37 may be waived by the sending State." Vienna Convention, *supra* note 1, art. 32, para. 1.

69. The fifth section of the text discusses the United States' refusal to waive the immunity of one of its diplomats even though the diplomat was accused of sexually assaulting a six-year-old girl.

70. The United States is not the only country with a problem of unpaid parking tickets. Ten diplomatic missions in London accounted for 38% of the 10,096 unpaid parking fines in the first six months of 1987. *The Times* (London), Oct. 22, 1987, at 2, col. 2. However, the British government significantly reduced the number of parking offenses by threatening to crack down against persistent offenders. The government warned persistent offenders that they would face having their diplomatic status withdrawn if they did not pay their traffic fines. *The Times* (London), June 28, 1986, at 3, col. 1.

71. *N.Y. Times*, July 17, 1987, at B12, col. 6.

72. *See, e.g.,* Minzesheimer, *supra* note 4, at 11, col. 2.

73. *Id.*

74. The U.S. government's action of condoning immunity abuse is disturbing because uncollected fines and penalties cause cities to lose revenue. Also, time wasted when a city's police force must document useless parking tickets causes cities to lose revenue. *Id.* (District of Columbia officials discussing the situation where diplomats are above the law).

75. *Id.*

U.S. diplomats are allowed to ignore parking restrictions near our embassy in the foreign country.⁷⁶

C. Violent Crimes

The United States government opposes the abuse of diplomatic immunity when such abuse allows diplomats to escape punishment for serious crimes.⁷⁷ Until the government sufficiently discourages this abuse, however, errant diplomats may continue to commit violent crimes, such as murder, rape, child abuse, and assault and battery, knowing that they cannot be prosecuted.⁷⁸

Perhaps the best-known case of immunity abuse is the 1982 shooting of a Washington, D.C., barroom bouncer by the grandson of the Brazilian ambassador.⁷⁹ Eighteen year-old Francisco Azeredo da Silveira, Jr., the grandson and adopted son of the ambassador, got into a barroom argument over a pack of cigarettes.⁸⁰ After Silveira was told to leave, he pulled out two handguns and yelled, "I'm from the Mafia, and I'm going to kill you."⁸¹ One gun misfired, and Silveira ran outside, chased by bouncer, Kenneth Skeen.⁸² Silveira allegedly fired five times; Skeen was hit three times.⁸³

An equally disturbing incident involved the rape of a Washington woman by a telex operator at the Egyptian Embassy.⁸⁴ Early one August morning in 1984, a woman accepted an escort home from a man she had met only once before.⁸⁵ When they arrived at her apartment, the man refused to leave.⁸⁶ The man attacked her and raped her.⁸⁷

76. "Soviet spokesman Vladimir Mikoyan said his embassy has no obligation to pay for tickets because of an *agreement* with the State Department that allows U.S. diplomats to ignore parking restrictions near the U.S. Embassy in Moscow and allows Soviet diplomats to park in the congested area near their embassy in the United States." *Id.*

77. *See generally* Minzesheimer, *supra* note 4.

78. A high-ranking Afghan diplomat on his way to buy an air-conditioner at a Queens appliance store rammed his car into a woman in a dispute over a parking space. The woman was standing by the curb holding a parking space for her boyfriend, who was backing into the spot. After identifying himself as an Afghan envoy, the diplomat insisted that the woman give him the space. He then insulted her and drove his car into her. *See* N.Y. Times, July 17, 1987, at B1, col. 4.

79. *See generally* Minzesheimer, *supra* note 4.

80. *Id.*

81. *Id.*

82. *Id.*

83. *Id.*

84. *Crime and Diplomatic Immunity*, Wash. Post, Jan. 9, 1984, at A1, col. 2. The attacker was a Saudi Arabian diplomat's son, accused of raping a 16-year-old student. The State Department presented evidence of the rape directly to the Saudi Arabian embassy which made "no denial" of the allegation. "Within 24 hours the diplomat's son was expelled from the country." *Id.* at A16, col. 1.

85. *Id.* at A1, col. 1.

86. *Id.*

87. *Id.*

The suspects in both cases received full immunity from criminal prosecution. Silveira gained diplomatic status as soon as he identified himself as the son of a foreign diplomat.⁸⁸ The rapist's position as a member of his mission's technical staff earned him full immunity from prosecution.⁸⁹ The State Department took the strongest action it could against these suspects who were protected by diplomatic immunity—it expelled both criminals.⁹⁰

Expelling errant diplomats guarantees that members of the American public will not be victimized by the same diplomats in the future. However, expulsion does not prevent diplomats from continuing their violent behavior once they return to the host country.⁹¹ In a startling child abuse case, a Zimbabwean diplomat "bloodied and badly bruised" his nine year-old son.⁹² The U.S. government expelled the diplomat after declaring him *persona non grata*. The boy, however, remained in the United States.⁹³ Controversy arose when the State Department insisted that the boy be returned to Zimbabwe even though the child was afraid to go home.⁹⁴ Ultimately, the boy was returned home, but he was not sent to Zimbabwe until the White House received assurances that the boy would be handed over to the protection of a social welfare organization.⁹⁵

The serious nature of these crimes indicates the urgent need for a viable solution to the diplomatic immunity abuse problem. Until a solution is reached, diplomats committing serious crimes will continue to escape punishment and the victims of these crimes will continue to be outraged. The next section examines previous responses to diplomatic immunity abuse.

IV. PROPOSED SOLUTIONS TO THE IMMUNITY ABUSE DILEMMA

Several solutions have been proposed to control the diplomatic immunity abuse problem. Solutions that enjoy the advantage of not altering existing international law include allowing the plaintiff to bring suit

88. See Minzesheimer, *supra* note 4, at 11, col. 1.

89. See *Crime and Diplomatic Immunity*, *supra* note 84, at A1, col. 1.

90. *Id.* at A16, col. 1.

91. After two expelled diplomats were thought to have slipped back into the country, the U.S. Immigration and Naturalization Service took measures to prevent others from reentering the country. "This is serious business, to be expelled, and I have been rather stern about that," said Selwa Roosevelt, State Dept. Chief Protocol Official. *Id.*

92. The child reported that he was hung upside down by his heels and beaten. N.Y. Times, Dec. 17, 1987, at B4, col. 3. Unfortunately, the investigation was hampered when the diplomat claimed that mission inviolability extended to his apartment. Consequently, officials were not allowed to enter his apartment. Article 22 of the Vienna Convention provides that "the premises of the mission shall be inviolable . . . except with the consent of the head of the mission." Vienna Convention, *supra* note 1, art. 22, para. 1.

93. See N.Y. Times, Jan. 10, 1988, at D36, col. 1.

94. *Id.*

95. See N.Y. Times, Jan. 13, 1988, at B4, col. 6.

against the errant diplomat in the sending state and restricting diplomatic immunity via strict Vienna Convention interpretation.⁹⁶ More radical proposals suggest amending the Vienna Convention.⁹⁷ Ideally, each proposal attempts to compensate victims and deter violence, while balancing the policies underlying diplomatic immunity.

A. *Bring Suit in the Sending State*

Plaintiffs can elect to bring suit against the diplomat in the sending state for injuries committed by the diplomat in the receiving state. This action is possible because diplomats are not immune to trial in the *sending state*; they are only immune to prosecution in the *receiving state*.⁹⁸ Assuming that the plaintiff prevails in his suit in the sending state, this action is advantageous for a number of reasons: bringing suit in the sending state is consistent with the Vienna Convention's language, the plaintiff will be compensated for his injuries, and the diplomat will be deterred from causing future harm.⁹⁹

As a practical matter, however, bringing suit in the sending state is not a feasible solution.¹⁰⁰ Personal debt created by large medical bills frequently nullifies the plaintiff's hope of instigating suit in the sending state.¹⁰¹ Even if the plaintiff is able to bring legal action in the sending state, the obligation to pay these bills at home will usually preclude a successful outcome.¹⁰² For instance, in 1974, a Panamanian diplomat with no insurance ran a red light and hit the car of Dr. Halla Brown, a prominent George Washington University professor.¹⁰³ Rendered a paraplegic by the accident, Dr. Brown incurred medical bills in excess of \$300,000.¹⁰⁴ Dr. Brown lacked the finances necessary to pursue a prolonged, expensive, and possibly unsuccessful trial in Panama.¹⁰⁵

96. See Comment, *supra* note 23, at 1528.

97. *Id.*

98. See *Diplomatic Privileges and Immunities: Hearings Before the Subcomm. on International Operation of the House Comm. on International Relations*, 95th Cong., 1st Sess. 125 (1977) (testimony of Bruno Ristau, Chief of the Foreign Litigation Unit, Civil Division of the Department of Justice) [hereinafter *1977 Hearings*].

99. See Comment, *supra* note 23, at 1532-33.

100. See *1977 Hearings*, *supra* note 98, at 127.

101. See Comment, *supra* note 23, at 1532-33.

102. *Id.*

103. See *1977 Hearings*, *supra* note 98, at 81; see also Griffin, *supra* note 2, at 4, col. 5.

104. Griffin, *supra* note 2, at 4, col. 5.

105. Under enormous pressure and the possibility of a cutoff of foreign aid, the Panamanian government made an *ex gratia* payment to Dr. Brown of \$10,000. *Ex gratia* payments are those made as a gesture of goodwill by the sending state. In making them, the State recognizes no legal liability on its own part or on the part of its representatives. *Claims Against Persons Entitled to Diplomatic Immunity: Hearing Before the Subcomm. on Administrative Law and Governmental Relations of the House Comm. on the Judiciary*, 95th Cong., 1st Sess. 11 (1977) [hereinafter *Administrative Law Hearing*] (statement of Sen. Mathias) (*ex gratia* payments serve to provide restitution "as a matter of grace and favor" for a diplomat's destructive acts).

B. *Strictly Interpret the Vienna Convention*

Forming a more restrictive interpretation of the Vienna Convention to address the immunity abuse dilemma has the merit of working within the existing framework of international law. Unfortunately, most of the Vienna Convention articles are strictly worded, so that reinterpretation is difficult, if not impossible.¹⁰⁶ For instance, article 32 of the Vienna Convention allows a sending state to waive an erring diplomat's immunity.¹⁰⁷ As previously noted, once the sending state waives its diplomat's immunity, the receiving state can take actions against the errant diplomat without fear of violating the Vienna Convention's safeguards.¹⁰⁸

Former Supreme Court Justice Arthur Goldberg reinterpreted the Convention, arguing that diplomats automatically waived their status whenever they committed a serious crime.¹⁰⁹ Therefore, a diplomat could be prosecuted even though the sending state did not waive the diplomat's immunity.¹¹⁰ This interpretation falters, however, after one recognizes that the Vienna Convention requires the sending state to expressly waive the diplomat's status.¹¹¹ Similar to the language in article 32, most of the Vienna Convention's provisions are unequivocal.¹¹² Since a more restrictive interpretation of the Vienna Convention is impractical, more radical proposals such as amending the Vienna Convention must be considered.

C. *Amend the Vienna Convention*

Proposals to amend the Vienna Convention are an ineffective solution to the immunity abuse problem. The Vienna Convention does not

106. For example, article 27 governs the treatment of the diplomatic bag. Subsection 3 succinctly and unambiguously states that "[t]he diplomatic bag shall not be opened or detained." Vienna Convention, *supra* note 1, at art. 27, para. 3. However, some states argue that this article excludes the electronic scanning of a bag as a form of constructive opening. These states argue that routine methods of external examination might be used to detect the presence of guns or drugs. Such inspections, they argue, have the advantage of keeping the contents of classified documents secret while revealing illicit goods. See Comment, *supra* note 23, at 1537-47 (proposing a private insurance scheme as a solution to the immunity abuse problem). In fact, Italy, a country hard hit by terrorism, announced a new policy: from now on, all incoming diplomatic bags would be screened by metal detectors. See *What's in the Bag?*, TIME, Sept. 22, 1986, at 57.

107. See Vienna Convention, *supra* note 1 (discussing the Convention provision giving sending states the choice of waiving their diplomat's immunity); Comment, *supra* note 23, at 1526.

108. See Comment, *supra* note 23, at 1526-27.

109. See Griffin, *supra* note 2, at 4, col. 5.

110. *Id.*

111. Waiver must always be express. Vienna Convention, *supra* note 1, art. 32, para. 2.

112. See generally Comment, *supra* note 23, at 1533-34, for support of a more restrictive diplomatic immunity.

include a formal procedure to amend its provisions.¹¹³ Furthermore, even if such a procedure existed, the complexity of reaching an agreement among one hundred forty-one countries would ultimately prevent such a solution.¹¹⁴

A member of the U.S. Congress recently proposed two laws designed to reduce the more insolent abuses of diplomatic immunity.¹¹⁵ These bills died in committee. Even if the bills had passed, however, the Vienna Convention would have failed to recognize the bills for lack of a formal amendment process. Daniel W. McGovern, acting legal adviser to the State Department, recognized the difficulty of securing an international agreement for such amendments.¹¹⁶ While warning the legislators about undertaking such an endeavor, he stated, "We should not enter into the process of amending the Vienna Convention unless we conclude—after a tough-minded assessment of the matter in light of the realities of the international political system today—that the result is very likely to be a net gain from our point of view."¹¹⁷

While each of these proposals merits consideration, they all have significant drawbacks. No plan satisfactorily compensates victims and deters violence while concurrently balancing the policies underlying diplomatic immunity. The next section proposes a new solution to the immunity abuse problem that would simultaneously honor the Vienna Convention's diplomatic immunity laws, deter future violence, and adequately compensate U.S. citizens who are victims of crimes committed by diplomats. The solution suggests that the U.S. government establish a limited fund to compensate victims of crimes committed by diplomats. Besides establishing a compensation fund, this comment maintains that the government must additionally threaten and use harsh retaliatory action against foreign states which fail to control their diplomats' abuse of the immunity system during the diplomats' residence in the United States.

113. *Id.* at 1536-37 (discussing amending the Vienna Convention as a means of curtailing immunity abuse).

114. *Id.*; see also Griffin, *supra* note 2, at 4, col. 3 (141 countries have ratified the Vienna Convention since its original signing).

115. In 1983, Senator Arlen Specter proposed two congressional bills that provided for federal prosecution of a foreign diplomat who used a gun to commit a felony and asked the president to renegotiate article 31 of the Vienna Convention to eliminate immunity for diplomats guilty of murder or other armed offenses. See Griffin, *supra* note 2, at 4, col. 5. Great Britain's legislators, such as Sir Geoffrey Howe, have also called for amendments. Howe called for an amendment to the Vienna Convention concerning the diplomatic pouch. When there is evidence of improper contents, he told a House of Commons select committee, the sending government should be asked to allow the bag to be opened in the presence of the country's officials. If the sending country refuses, the bag should be returned. *Id.*

116. See *id.* at 4, col. 5.

117. *Id.*

V. A SOLUTION TO THE IMMUNITY ABUSE PROBLEM: LIMITED
COMPENSATION FUND COUPLED WITH HARSH
RETALIATORY ACTION

The United States has a strong interest in protecting the rights of its citizens. However, citizens' rights will continue to remain unprotected until the U.S. government adopts a solution that curtails existing immunity abuse. For as long as diplomats continue to avoid prosecution, victims injured by the diplomat's wrongful conduct will continue to suffer.

Proposed solutions should deter diplomats from committing crimes in the future and provide adequate victim compensation. The solution should be easy to implement and should not raise any doubt concerning its enforceability. Proposals should not attempt to reform the Vienna Convention's current immunity system, however, because this system provides protection for American diplomats abroad. Adoption of a limited compensation fund, coupled with bold retaliatory action against foreign states, would accomplish these objectives.

A. *Limited Compensation Fund*

1. Full Victim Compensation Fund Previously Considered

During hearings on the proposed Diplomatic Relations Act (DRA), many congressmen expressed concern that the DRA would fail to provide victim compensation in numerous instances.¹¹⁸ Concerned legislators introduced several bills which would have provided victims with a measure of relief in situations in which immunity prevented the victim from receiving compensation.¹¹⁹ These proposed bills sought to establish compensation funds financed by the U.S. government.¹²⁰ The funds would compensate injured private citizens who could not otherwise bring a successful action under the DRA.¹²¹ For one reason or another, these bills were not embodied in the DRA.

Stephen Solarz, New York representative, proposed a bill which attempted to fill the gaps in the DRA's coverage.¹²² The scope of the Solarz bill was not limited to situations in which American citizens were involved in automobile accidents with diplomats. Instead, the bill would

118. Present terms of the DRA provide a remedy for personal injuries resulting from a diplomat's negligent use of a motor vehicle. However, private citizens in the United States are currently unable to obtain compensation for injuries caused by a diplomat's wrongful conduct besides those injuries resulting from a diplomat's negligent use of a motor vehicle. Note, *Compensation for "Victims" of Diplomatic Immunity in the United States: A Claims Fund Proposal*, 4 FORDHAM INT'L L.J. 135, 149 (1980).

119. *Id.*

120. *Id.*

121. *Id.*

122. *Id.* at 150-51.

have provided a remedy for private citizens injured by *any* wrongful acts of a diplomat. The Solarz proposal would have established a government-financed claims fund for awarding *full* compensation to persons injured by foreign diplomats.¹²³ Also, the claims fund would have reimbursed local municipalities for revenues lost because of their inability to collect parking fines from foreign diplomats.¹²⁴ Solarz later commented, "I don't think that it is appropriate . . . to have a protected class of individuals who are free to do whatever damage they want without giving the American people who might suffer from their negligent activities the right to collect."¹²⁵ Senator William Hathaway, from Maine, proposed similar legislation.¹²⁶ Senator Hathaway's bill called for the State Department to compensate private citizens injured by persons protected by diplomatic immunity.¹²⁷ Both the Solarz bill and the Hathaway bill died in committee and were not included in the DRA.

The Solarz bill failed because it attempted to compensate fully all injured parties.¹²⁸ Requiring the government to compensate private citizens injured as a result of a diplomat's misconduct is sensible, but requiring *full* compensation in all circumstances is unreasonable.¹²⁹ Also, many congressmen complained that the cost of implementing a claims fund completely financed by the United States government was too high. The State Department successfully opposed Senator Hathaway's proposal. Richard Gookin, associate chief of protocol at the State Department, told Congress that implementing Hathaway's proposal would encourage "diplomats and their governments not to assume their responsibilities in the expected manner."¹³⁰ The following is an alternative proposal for a compensation fund.

2. Solution—Limited Victim Compensation Fund

Claims fund proposals should be reconsidered, since the DRA does not adequately compensate private citizens who are injured by the wrongful conduct of diplomats. However, a proposal such as the Solarz bill, which attempted to fully compensate all injured parties, should not

123. *Id.* at 150.

124. *Id.* at 151 n.91.

125. *Id.* at 149 n.80 (citing *Diplomatic Privileges and Immunities, Hearings and Markup Before the Subcomm. on Int'l Operations of the House Comm. on Int'l Relations*, 95th Cong., 1st Sess. 16, 43-46, 87-88 (1977)).

126. See Minzesheimer, *supra* note 4, at 30, col. 1.

127. *Id.*

128. See Note, *supra* note 118, at 151 n.91.

129. A private citizen should not receive *full* compensation if his conduct contributed to the incident's occurrence. Also, requiring the government to reimburse local municipalities for revenues lost due to unpaid parking and traffic tickets might be unreasonable because such a system would no doubt be difficult for the government to administer and monitor. *Id.*

130. See Minzesheimer, *supra* note 4, at 30, col. 1-2.

be reexamined because such a proposal will likely fail again. To overcome any objections, only a *limited* victim compensation fund should be proposed.

An agency should be established within the State Department which is responsible for administering compensation to victims.¹³¹ The agency should initially determine whether the private citizen's injury was caused by the wrongful conduct of a diplomat entitled to immunity for that act.¹³² Once this question is affirmatively answered, a board of State Department representatives will award the injured citizen an amount of compensation to which it finds the applicant is entitled.

The government owes a duty to its citizens to establish such a fund. The government and U.S. diplomats abroad reap the prime benefits of diplomatic immunity—not the average citizen.¹³³ Therefore, argued Senator Hathaway, “the burden of diplomatic immunity. . . ‘should not be borne by people who are really just innocent third parties.’”¹³⁴ The State Department is also in a better position than the private citizen to compel reimbursement from the offending diplomat's country.¹³⁵ Finally, as long as the government continues to downplay incidents of immunity abuse, it should be held responsible for compensating the victims of this abuse.¹³⁶

B. *Enforcing the Proposal Through Retaliation*

After victims are compensated from the limited claims fund, the U.S. government must take actions to compel foreign missions to reimburse the fund. These actions should also deter diplomats from committing crimes in the future. Suggesting that “[i]t is the duty of all persons [diplomats] enjoying privileges and immunities [from U.S. laws] to respect the laws and regulations of the receiving State,”¹³⁷ the U.S. government will make a friendly appeal¹³⁸ to the foreign states to repay the claims fund. This appeal for reimbursement is equitable, since the United

131. See Note, *supra* note 118, at 151-52.

132. *Id.*

133. See Minzesheimer, *supra* note 4, at 30, col. 1.

134. *Id.*

135. See Note, *supra* note 118, at 155-56.

136. “The State Department's practice is to ‘handle’ these incidents quietly with the embassy, diplomatic considerations rather than the protection of society foremost in mind.” See *Crime and Diplomatic Immunity*, *supra* note 84, at A16, col. 1.

137. “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. They also have a duty not to interfere in the internal affairs of that State.” Vienna Convention, *supra* note 1, art. 41, para. 1.

138. The State Department uses our “good offices” to settle disputes between an American and someone with diplomatic immunity. See Minzesheimer, *supra* note 4, at 30, col. 2 (quoting Richard Gookin, Associate Chief of Protocol at the State Department).

States compensated the victims of crimes committed by the foreign state's diplomats. The friendly appeal should also encourage the foreign states to curtail their diplomats' abuse of the immunity system.

Custom dictates that the United States must threaten retaliation if this friendly appeal does not succeed.¹³⁹ This retaliation can be carried out in one of three ways: the State Department can expel foreign diplomats more readily; the United States can refuse to waive diplomatic immunity more often; or U.S. diplomats can abuse foreign states' immunity systems more often. While the United States should not encourage its diplomats to commit crimes, the State Department might stop discouraging its diplomats from refraining from immunity abuse in foreign states. For example, the State Department should not discipline its diplomats if they accumulate a large amount of unpaid parking fines. Once the foreign states are made aware of the rising amount of unpaid parking tickets, the foreign states will order their diplomats to stop abusing diplomatic immunity in the United States.

Unless foreign states take these threats of retaliation seriously, however, the threats will not effectively deter future wrongful conduct and will not compel foreign states to repay the United States. Recent incidents have shown the United States' determination to make foreign states take the threats seriously. In one situation, the United States refused to waive diplomatic immunity in the case of a lay preacher accused of committing a serious sexual offense against a six year-old girl.¹⁴⁰ The underlying motive for the United States' action appears clear: The United States sent a message to all foreign states that it will no longer tolerate diplomatic abuse in the United States while American diplomats continue to obey the foreign states' laws.

Only through such "hard ball" will the United States bring about reduced diplomatic immunity abuse. In order to return to the status quo, foreign states will reimburse the United States for the cost of injuries caused by their diplomats. Foreign states will also order their diplomats to stop abusing the diplomatic immunity system to escape liability for their wrongful conduct.

139. "We'll protect your diplomats if you protect ours." See generally Minzesheimer, *supra* note 4, at 11, col. 3 (implying that a sending state will retaliate if a receiving state does not protect its diplomats). For example, the State Department ordered the expulsion of Nicaragua's ambassador and seven aides in retaliation for the ousting of eight U.S. diplomats from Nicaragua. See, e.g., *Nicaraguan Ambassador Leaves U.S. Vowing to Fight Expulsion*, Houston Chron., July 13, 1988, at 1, col. 1.

140. See, e.g., *Year-Old Sex Case in Britain Stirs Concern Over U.S. Ties*, N.Y. Times, Jan. 23, 1987, at B4, col. 1.

VI. CONCLUSION

The growing number of diplomats in the United States has resulted in more diplomatic immunity abuse. The U.S. government must act to curtail this abuse. Otherwise, diplomats will continue to cause harm, and their victims will continue to suffer without recourse. The fund proposal in this comment attempts to meet this goal.

The limited compensation fund would protect the rights of U.S. citizens without interfering with the diplomat's ability to carry out his duties as representative of the sending state. Threats and retaliation would deter diplomats from committing crimes in the future. Together, these solutions will provide more equitable remedies for victims of diplomatic abuse and more effective constraints on diplomatic conduct in the United States.

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