

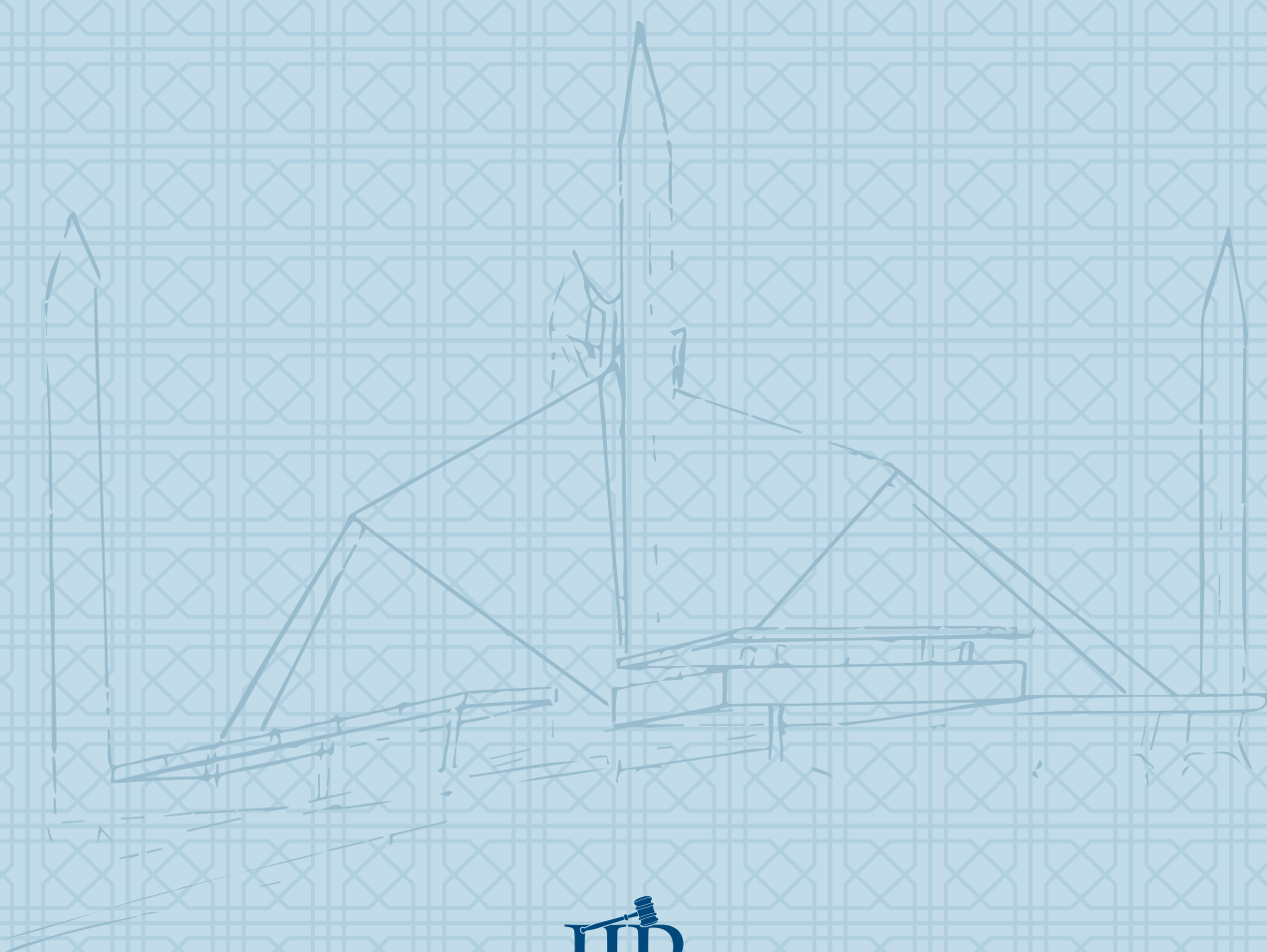


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RIGHTS OF DIPLOMATS: A COMPARISON OF ISLĀMIC LAW AND PUBLIC INTERNATIONAL LAW; THE VIENNA CONVENTION ON DIPLOMATIC RELATIONS 1961, FROM ISLĀMIC PERSPECTIVE

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Abstract

Religious laws dominated diplomatic relations long before the development and evolution of international law. Therefore, diplomatic and consular law is the outcome of civilizations and religions. Islām also recognized diplomatic rights in Arabia 1400 years ago. The Holy Prophet's (PBUH) dealings with representative and envoys from other nations and ethnicities show that Islām acknowledges the respect for representatives and ambassadors as a code of conduct. The Vienna convention on diplomatic relations 1961(VCDR) is an international treaty which provides framework for establishment and maintenance of diplomatic relations between independent states. This forms the basis of diplomatic immunities. Its articles are considered cornerstone of modern diplomatic relation. This paper aims to present a comparison between diplomatic rights in Islām and in VCDR 1961. It attempts to explore the origin and development of diplomatic immunities and privileges in Islām and as well as their sources. This work equally examines the compatibility of Islāmic diplomatic law and international diplomatic law. It concludes that the Qurān and the Sunnah, the two basic sources of Islāmic law and the consistent practice of Muslim heads of state, a secondary source, clearly establish the privileges and immunities of diplomats in Islāmic law and also in practice.

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Keywords: Rights of diplomats, diplomacy in Islām, Vienna convention, diplomatic immunities, diplomatic law

Introduction

The Vienna convention on diplomatic relations 1961 (VCDR) is an international legal treaty that codifies rules of international law with respect to diplomatic intercourse, privileges and immunities. It was adopted on 18 April 1961 by United Nations conference on diplomatic intercourse and immunities and came into force on 24 April 1961. It has been ratified by 190 states. This convention provides a complete framework for the establishment, maintenance and termination of diplomatic relation between independent sovereign states. It is one of the most important treaties in the field of diplomacy. VCDR consist a preamble and 53 articles along with two optional protocols. These articles are considered cornerstone in the modern international relations. This convention forms the legal basis for diplomatic immunity. Vienna convention is an instrument which covers almost all aspects of diplomatic relations among countries.

Briefly, the articles of the Vienna convention can be mapped into following several sections: Article 1 to 19 provides rules for the establishment of diplomatic missions, functions of diplomatic mission, the rights, appointment and submission of credentials heads of diplomatic missions; Article 20 to 28 provides immunity, privilege and exemption from various taxes for diplomatic missions; Article 29 to 36 sets of the immunities and privileges granted to diplomats and other staff; Article 37 to 47 regulates the immunity and privileges for family members of diplomatic agents and service staff who work on them; Article 48 to 53 regulates the signing, accession, ratification and entry into force of this Convention.

In this regard when we study Islāmic law, we find that the human dignity is one of Islāmic *Shariah* objectives. The holy *Qurān* states: *Surely we have granted dignity to the sons of Adam.*²⁴⁸ This dignity applies to all mankind who are the descendants of *Adam* irrespective of any religion or race. Islām did not only expand the scope of diplomatic relation, but it also granted full personal inviolability to the diplomatic personnel and their families. Islām guarantees the protection of life and property to the emissaries, their families and their staff. Undoubtedly, the Holy Prophet (PBUH) is the first man in the history who initiated the process of global diplomacy in the true sense of the term. In Islām the diplomatic privileges and immunities derive their authority, first, from the holy *Qurān* which is the prime source of the Islāmic jurisprudence. The Prophetic traditions, known as the *Sunnah*, also provide diplomatic immunities as indicated in several statements of Prophet Muhammad (PBUH). Likewise, the practices of the heads of Muslim states also confirm the legitimacy of diplomatic privileges and immunities.

Despite this wide picture of Islāmic diplomatic law, there are still some questions needed to be answered: Does Islām give importance to diplomacy? Does Islām provide immunities and privileges to the diplomatic envoy? To what extent the immunities and privileges accorded by Islāmic diplomatic law are compatible with public international law? The basic objective of this paper is to find out the answers of these questions.

Comparison between Islāmic diplomatic law and public international law; VCDR 1961

Few important points of comparison between Islāmic diplomatic law and public international law; the Vienna convention on diplomatic relations 1961, are given below;

²⁴⁸ Sūrah al-Isrā, 17:70

1- Assistance of Receiving State

Under VCDR

According to article 25, “*The receiving State shall accord full facilities for the performance of the functions of the mission.*”²⁴⁹

Under Islāmic law

Islāmic diplomatic law also provides this privilege to the diplomats. In this regard, *Al Shaybānī* (D. 189. H) Says, “*It is an obligation on Imam ul Muslimīn to cooperate with Musta'minin till the time they are in Muslim state and to provide justice if they are oppressed.*”²⁵⁰

2- Personal Inviolability

Under VCDR

VCDR provides personal inviolability to diplomats. According to Art.29 of VCDR, “*The person of a diplomatic agent shall be inviolable. He shall not be liable to any form of arrest or detention.*”²⁵¹

Under Islāmic law

We can derive the validity of personal inviolability of diplomats from the story of Prophet *Sulayman* and *Bilqīs* *bint sharahil*, the queen of *Saba*. The holy *Qurān* has described this story in *sūrah Namal*²⁵². In this story, we find the immunity and inviolability of emissary in the attitude of Prophet *Sulyman* towards envoys when the gifts sent by *Bilqīs* enraged him and he declined to accept those gifts which he considered a sort of bribery. Thus Prophet *Sulayman* restrained himself from visiting his anger on the emissaries, because

²⁴⁹ Art. 25 Vienna convention on diplomatic relations 1961, Copy right, United Nations, 2005

²⁵⁰ Al Sarkhasi (D. 483, H), *Sharah al Siyar al Kabīr*, (Al Shirka al Sharqiya lil ilanar, 1971), Vol. 1, p. 1853

²⁵¹ Art. 29, VCDR 1961

²⁵² *Sūrah al Namal*: 27:20-44

he knew the importance of their personal inviolability. He also considered the significance of ‘diplomatic communication between Muslim and non-Muslim heads of State.

Bassiouni says that before the emergence of the Holy Prophet (PBUH), the inviolability of emissaries was ill recognized in Arabian Peninsula.²⁵³ Personal inviolability demands that the diplomats are not to be killed, detained or maltreated. There are many instances in the life of the Holy Prophet (PBUH) where he strictly established this fundamental principle of inviolability. When *Musailmah kadhab* sent to the Holy Prophet (PBUH) two emissaries, named *Ibn Al-Nawwaaha* and *Ibn Aathaal*, to negotiate with him, he granted them this immunity regardless of their rude mannerism and said his historical words, “*By God, if it were not tradition that messengers could not be killed, I would have behead both of you.*”²⁵⁴

Likewise in 631 AD, the Holy Prophet (PBUH) generously received *Wahshi* as the emissary of the people of *Ta’if* regardless the fact that he had killed his beloved uncle *Hamza* in the battle of *Uhd*. This generous reception of the Holy Prophet (PBUH) impressed *Wahshi* and led him to the acceptance of Islām.²⁵⁵

The principle that an envoy must not be detained was expressly illustrated in the matter of *Abū Rafi’*, the Makkan ambassador who was sent to the Holy Prophet (PBUH) in *Madinah* after the battle of *Badr* in 624 AD. He became a Muslim and refused to return Makkah. The Prophet (PBUH) discouraged his refusal to go back to Makkah and said, “*I neither break a treaty nor detain envoys (you are an emissary), but return, and if you feel the same in your heart about Islām as you do just now, come back (as a Muslim).*”²⁵⁶ There

²⁵³ MC Bassiouni, ‘Protection of Diplomats Under Islāmic Law’ (1980), 74, No.3, AJIL, p.612

²⁵⁴ Ibn Hishām, *As-Seeratu-n-Nabawiyyah*, (Darul Gadd al-Jadeed, Al-Monsūrah, Egypt), Vol. IV, p.192

²⁵⁵ See *Abū al-Fidā’ al-Hafiiz Ibn Katheer*, *al-Bidāya wal-Nihāya*, (al-Maktabat alMa’arif, n.d., Beirut), Vol. 4, p. 17-19 See also *Abū Ja’far Muhammad Ibn Jareer al-Tabari*, *Tarikh al-Tabari: Tarikh al-Umam wal-Muluk*, (Mu’assasat ‘Izz al-Deen lil-Tibā’a wal-Nashr, Beirut, 1987), Vol. 1, p. 576

²⁵⁶ See *Abū dawod*, *Sunan Abi dawod*, kitAbūl jihad, (al- Maktaba Al Asriya, saida, Beirut), Vol.3, p. 82, hadith number. 2758

is another case of *‘Āmir bin Al Tufail*, who was one of the three envoys sent by *Bni ‘Āmir*. He wanted to kill the Holy Prophet (PBUH). But considering the inviolability of envoys, the Holy Prophet (PBUH) did take any action against him.²⁵⁷

The personal inviolability of an envoy was deemed so much important that its violation by way of detention, arrest or killing could result in a *casus belli*. In *Hudabiya*, when the rumors of the killing of *Uthman bin Affan* were spread, who was sent by the Holy Prophet (PBUH) to the *Quraish* of *Makkah* as an ambassador, it was deemed as *casus belli* and the Muslims fully prepared for war and they detained the envoy of Makkah who was sent to the Holy Prophet (PBUH).²⁵⁸ This incident is a vivid proof of the sanctity of diplomatic envoy in Islām. Therefore *Abdulla bin Masūd* (R.A), (D. 32, H) says, “*There had been a Sunnah that the messengers are not killed.*”²⁵⁹

Limitation on Personal Inviolability

There are following limitations in this regard in Islāmic law;

- 1- Observing the incident of *Hudaibya*, *Imam Tabari* says, “*Only under extraordinary circumstances diplomatic envoys may be detained and imprisoned and that would be in the form of specific reprisals in kind.*”²⁶⁰
- 2- Another limitation on diplomatic personal inviolability is that when according to military intelligence report an envoy is acting as a spy and he is inimical to the interest of Muslim army, he may be detained for investigation.²⁶¹

²⁵⁷ Salahudin al Munjad, *Al Nazm al Dibliomasia fil islām*, (Dar al kitab al Jadid, Beirut, 1982), p. 85

²⁵⁸ M Hamidullāh, *Muslim Conduct of State*, (Sh. Muhammad Ashraf Publishers, Lahore-Pakistan 1961), p.148

²⁵⁹ Ahmad bin Hanmbal, *Musnad Al Imām Amad*, (Dar ul Hadith Cairo, 1995), Vol. 4 p. 22, hadith number: 3761

²⁶⁰ Cited in MC Bassiouni, ‘*Protection of Diplomats Under Islāmic Law*’ p. 612

²⁶¹ A Rāshid, *Islām et droit des gens*, *Recueil des Cours*, (Librairie de Recueil Sirey, Paris, 1973), Vol. II, p. 498

- 3- If a diplomatic envoy is suspicious of the acts injurious to state such as buying weapons for *Dar ul harb*, he also may be detained.²⁶²

3- Respect for Diplomats

Under VCDR

Article 29 establishes that the receiving state will treat diplomats with due respect.²⁶³

Under Islāmic law

Diplomacy in the era of the Holy Prophet (PBUH) represents ideal level in the diplomatic history of mankind in general and in the history of Islām and the Muslims in particular. There is no doubt that the period of the Messenger of Allah (PBUH) is the greatest period in human diplomatic history. It is unimaginable that mankind will see any other period that will more perfect or better than the period of the Holy Prophet (PBUH).

The *Sunnah* of the Holy Prophet (PBUH) has expressly established the principle of respect and honor granted to envoys under Islāmic *Siyar*. The Holy Prophet (PBUH) sent various emissaries to various places for religious or political reasons. He received many delegations and embassies warmly in his holy mosque at a place designated as *Ustuwanat ul-Wufūd* (the pillar of delegations)²⁶⁴. We can understand the high esteem of his respect and honor granted to foreign envoys from a *hadith* in which it is reported that on his death bed he instructed his companions to grant gifts to envoys as he himself used to award during his lifetime²⁶⁵. Moreover, the emissaries are considered as guests in Islāmic state and the Holy Prophet (PBUH) generally cherished the

²⁶² See I Shihata, 'Islāmic Law and the World Community', (1962) 4 Harv. Int'l Club J., p. 109. See also Sarakhsi, *Sharh Al-Siyar Al-Kabīr*, Vo. 1, p. 66-67

²⁶³ Art. 29, VCDR 1961

²⁶⁴ Hilmi M. Zawati, *Is Jihād A Just War? War, Peace and Human Rights Under Islāmic and Public International Law*, (The Edwin Mellen Press, Wales 2001), p.77

²⁶⁵ M Hamidullah, *Muslim Conduct of State*, p.146

honoring of guests. He was reported as saying, “*Every person who believes in Allah and the Day of Judgment should be hospitable with his or her guests.*”²⁶⁶

When we go back to period of first four caliphs we find their many instruction, advices and orders for the immunities and privileges of envoys. I give only one example which was the clear instruction of first caliph Abū Bakr (632-634 AD) to Yazīd bin abī Sufyan that if emissary of the adversary come to you, deal them with hospitality.²⁶⁷

4- Protection

Under VCDR

According to article 29 of VCDR, “*The receiving state shall take all appropriate steps to prevent any attack on his person, freedom or dignity.*”²⁶⁸

Under Islāmic Law

Islām establishes the concept of *Aman* (safe conduct) for the protection of envoy’s life and property. The envoy is a beneficiary of *Aman*. It is the obligation of the state to protect *Musta’min* till his return to his territory. Allah Almighty says, “*If any person from polytheists demands your protection, grant him protection so that he may listen to the words of Allah. Then reach him to his safe place.*”²⁶⁹

Imam *Fakhar u deen Al Razi* (D. 606, H) says, “*If any person from their side enters Islāmic state as a messenger, he will have protection.*”²⁷⁰ This has been an established rule

²⁶⁶ Abūbakr Jabir Al-Jazā’iri, *Minhāj ul-Muslim*, (Maktabat ul-‘ilum wal-Hakam, Madinah, 1995), p. 112

²⁶⁷ Arjoun, Sādiq Ibrahim, Khalid Ibn al-Walid, (Al-Dar Alsaudioh, 1981), p. 244

²⁶⁸ Art. 29, VCDR 1961

²⁶⁹ Sūrah al Taubah, 9:6

²⁷⁰ Fakhar u Deen al Rāzi, *Mafatih ul Ghaib*, (Dar ul Kutub ul Ilmia. Beirūt, 2000), Vol. 15 .p. 183

throughout the caliphate that emissaries may enter in Islāmic state and they will have protection and diplomatic privileges from the state.²⁷¹

About the protection of *Musta'min*'s family and property, *Sarakhsi* (D. 483, H) says, "*His protection includes the protection of his family and his property.*"²⁷²

5- Immunity from court's Jurisdiction

Immunity under VCDR 1961

Article 31(1) of VCDR says; *A diplomatic agent shall enjoy immunity from the criminal jurisdiction of the receiving State. He shall also enjoy immunity from its civil and administrative jurisdiction, except in the case of: (a) A real action relating to private immovable property situated in the territory of the receiving State, unless he holds it on behalf of the sending State for the purposes of the mission; (b) An action relating to succession in which the diplomatic agent is involved as executor, administrator, heir or legatee as a private person and not on behalf of the sending State; (c) An action relating to any professional or commercial activity exercised by the diplomatic agent in the receiving State outside his official functions.*²⁷³

Immunity under Islāmic law

It is better to discuss this immunity under the basic classification of punishments in Islām; Qisas, Hudood and Tazirat.

²⁷¹ See I Shihata, 'Islāmic Law and the World Community', (1962) 4 Harv. Int'l Club J., p. 109. See also *Sarakhsi*, *Sharh Al-Siyar Al-Kabīr*, Vol. 1, p. 66-67

²⁷² *Al Sarakhasi*, *Sharah al Siyar al Kabīr*, Vol. 1, p. 453

²⁷³ Art. 31(1) VCDR 1961

Qisas

There is consensus of all Islāmic jurists that *Qisas* will be applicable to diplomats. No one Islāmic jurist has given immunity to the diplomats in *Qisas*.²⁷⁴ So there is no difference of opinions regarding *Qisas*.²⁷⁵ They say that the following verse of Holy *Qurān* does not exempt any one even emissary from its scope; *and We prescribed for them in it that life is for life, and eye for eye, and nose for nose....*²⁷⁶

Hudood

Imam Abū Hanifa (D. 150, H) divided hudood into two kinds i.e. *Haqoqulla* (rights of Allah) and *Haqoqul ibad* (rights of people). He is of the opinion that the punishments which are related to the rights of Allah, those are not applicable to *Musta'min* and the other punishments which are related to the rights of people those may be imposed upon *Musta'min*.²⁷⁷ *Imam Muhammad al Shaybānī* also has this opinion.²⁷⁸ In this regard, *Abū Hanifa* was asked about a *Musta'min* who commits *Zina* (unlawful sexual intercourse) or *Sariqa* (theft) he answered that hudood laws will not be imposed upon him.²⁷⁹ *Imam Shafi'i* has also the same opinion.²⁸⁰

According to *Imam Malik*, *Had u Zina*²⁸¹ and *Had Shurb ul Khamar* (drinking of liquor)²⁸² can be awarded to the *Musta'min*. *Abū Yousuf*²⁸³ (D. 182, H) from Hanafī School of law and *Al Awzai'i*²⁸⁴ (D. 157, H) from *Shafi'i* School of law have the opinion that *Had u Zina*

²⁷⁴ *Abū Zuhra*, *Al Ilaqat al Duwaliya fil islām*, (Dar ul Fikr al Arabiya, Cairo, 1995), P.77

²⁷⁵ *Ibn e Ābidīn*, *Raddul Mukhtar ala al Durul Mukhtar*, (Dar Ihya al Turas al Arabi, Bairūt, 2000), Vol. 3, p. 249, *Muhammad bin Arafah*, *Hāshiya Al Dasoqi ala Al Sharah al kabīr*, (Dar Ihya ul Kutub al Arabia, Bairūt), Vol. 4, p. 237

²⁷⁶ *Sūrah al Maida*, 5:45

²⁷⁷ *Al Sarakhasi*, *Sharah al Siyar al Kabīr*, Vol. 1, p. 306

²⁷⁸ *Ibid*

²⁷⁹ *Abū Yusuf*, *Al-Radd 'ala Siyar al-Awza'i*, (Dar ul Kutub Al Ilmiya, Bairūt), p. 94

²⁸⁰ *Muhammad bin Idrīs Al Shafi'i*, *Al Umm*, (Dar ul Marifah Bairūt, 1990), Vol. 8, p.378

²⁸¹ *Abū Abdullāh Muhammad bin Muhammad Al TrAbūlusi* (D.954.H), *Muwahib ul Jalil le Sharah al Mukhtasar al Khalil*, (Dar Ālim ul Kutub, 2003), Vol. 8, p. 387

²⁸² *Ibid*, p. 433

²⁸³ *Al Sarakhasi*, *Sharah al Siyar al Kabīr*, Vol. 1, p. 306

²⁸⁴ *Abū Yusuf*, *Al-Radd 'ala Siyar al- Awzai'i*, p.94

is applicable to *Musta'min*. According to *Hanabla*, if a *Musta'min* commits Zina with a Muslim woman, he will be sentenced to death and if he commits it with non Muslim woman, Had will not be awarded to him and likewise other Hudood also cannot be awarded to him.²⁸⁵

Tazirat

There is some space in Islāmic law regarding *Tazirat*. Under Islāmic diplomatic law, envoys have exemption from the jurisdiction of its courts in *Tazirat*. They are not answerable to the courts of their host for the offences they have committed in their ambassadorial capacity. In the above mentioned incident of *Musailmah kadhāb*, the two emissaries of *Musailmah* were exempted from their sentence by the Holy Prophet (PBUH) in spite of their direct contempt of Holy Prophet (PBUH). The Holy Prophet (PBUH) asked them, “*Do you say what he has said?*” they answered, “*We say what he has said.*”²⁸⁶ In this case, the Holy Prophet (PBUH) maintained the principle of immunity and personal inviolability of diplomatic envoys.

Under the Islāmic *Siyar* it is very clear that if a non-Muslim commits an offence and he claims to be an envoy, he will have diplomatic immunity automatically when he confirms his status by producing a genuine letter from his ruler.²⁸⁷

Abū Zuhra says, “*It is right to enter Tazirat under the immunities of diplomats.*”²⁸⁸ Dr. Hamidullah says that even if the emissary or any person of his company is a criminal of the receiving state, he must be treated as envoy not as a criminal.”²⁸⁹

The two secondary sources of Islāmic law; *Urf* (custom) and *Masalih al Mursalah* (welfare of the people) also support this opinion of modern jurists in granting immunity to

²⁸⁵ Mansor bin Younus al Bahoti, *Kashāf ul Qana an Matanil Iqnā*, (Dar ul Fikr, Beirūt, 1402.H), Vol. 5, p. 524

²⁸⁶ Ibn Hisham, *As-Seeratu-n-Nabawiyah*, P.192

²⁸⁷ MA Gazi (Tr.), *Kitab Al-Siyar Al-Kabir The Shorter Book on Muslim International Law*, (Adam Publishers & Distributors, New Delhi, 2004), p. 63, M Khaddūri (Tr.), *The Islāmic Law of Nations Shaybānī's Siyar*, (The Johns Hopkins Press, Maryland, 1966), p. 170

²⁸⁸ Abū Zuhra, *Al Ilaqat al Duwaliya fil islām*, P.77, Abū Zuhra, *Al Jarimah wal Aqobah fil fiqhil islāmi*, (Dar ul Fikr al Arabiya, Cairo), P.296

²⁸⁹ M Hamidullāh, *Muslim Conduct of State*, p. 291

diplomats in Tazirat because it is impossible for Islāmic states to remain and survive without diplomatic relations with other countries and for establishing diplomatic relations Islāmic states have to accord immunity to diplomats where there is a space in Islāmic law for doing so.

6- Exemption from taxation²⁹⁰

Under VCDR

Article 34(1) of VCDR describes that a diplomatic agent shall be exempt from all dues and taxes, personal or real, national, regional or municipal.²⁹¹

Under Islāmic law

Islām also exempts the diplomats from taxation. Abū Yousuf says, “*There is no ‘Āshūr (one tenth tax) on the commodities of messengers.*”²⁹² The principle is that if the Muslim envoys have been accorded exemption from taxation in foreign state, the envoys of that foreign state will also enjoy the same exemption in Muslim state by the way of reciprocity.²⁹³ Upon the base of reciprocity, Shaybānī mentioned many situations in which he says that we will treat *Musta’min* regarding the exemption from dues and taxes as the sending state treats our *Musta’min*.²⁹⁴ There is a famous principle (qaidah) of Islām in this regard; “*The dealing between us and them is based upon reciprocity (Mujazat).*”²⁹⁵ This is a treaty based matter in Islām. Abū Zuhra also wrote like this in his famous book.²⁹⁶

²⁹⁰ The discussion about the taxes that the diplomats have to pay under VCDR is ignored because it is not under the scope the article. Similarly their duties and obligations are not discussed here.

²⁹¹ Art. (34(1)), VCDR 1961

²⁹² Abū Yusuf, Kitab al-Kharaj, (Dar Al-Ma’a refah, Beirūt-Lebanon), p. 205

²⁹³ HM Zawati, Is Jihad A Just War? War, Peace and Human Rights Under Islāmic and Public International Law ,p. 80

²⁹⁴ Al Sarakhasi, Sharah al Siyar al Kabīr, Vol. 1, p. 2139

²⁹⁵ Ibid

²⁹⁶ Abū Zuhra, Al Ilaqat al Duwaliya fil islām , P.77

Commercial Purpose

It is important to mention that to qualify for tax exemption, the item must not be brought in Islāmic territory for commercial purpose. According to Abū Yousuf, *“If anything is brought in Islāmic state, one tenth tax will be paid after the sale of the thing.”*²⁹⁷

7- Commercial Activities

Under VCDR

VCDR does not allow diplomats to practice professional and commercial activities. Article 42 states: “A diplomatic agent shall not in the receiving State practice for personal profit any professional or commercial activity.”²⁹⁸

Under Islāmic Law

Islāmic law does not prohibits envoys from commercial activities. This is an additional privilege granted by Islām to the diplomats. But tax will be imposed on commercial things as Abū Yousuf said in kitab Al Kharaj.²⁹⁹

8- Other Privileges

I have mentioned some diplomatic privileges under this one heading because they derive their validity in Islām from same principles.

Under VCDR

VCDR provides following privileges to the diplomats; Inviolability of the premises of mission (Art.22 (1)); Inviolability of archives and documents of mission (Art.24); Freedom of

²⁹⁷ Abū Yusuf, Kitab al-Kharaj, p. 106

²⁹⁸ Art. 42, VCDR 1961

²⁹⁹ Abū Yusuf, Kitab al-Kharaj, p. 205

movement and travel subject to prohibited zones (Art.26); Protection of communication, inviolability of correspondence, inviolability of diplomatic bags (Art.27); Inviolability of private residence of diplomats (Art.30(1)).

Under Islāmic Law

Islām also guarantees all these diplomatic privileges. These privileges are based upon a fundamental principle of *Shariah*; “*Nothing is prohibited in Islām unless it is explicitly prohibited in Nasūs (Qurān and Sunnah)*.”³⁰⁰ It was narrated that the Holy Prophet (PBUH) said, “*Halal is that which Allah has made it Halal in His book and Haram is that which Allah has made it Haram in his book, and the things about which He remained silent, those are allowed for us.*”³⁰¹ These privileges may be covered by this hadith. The secondary source of Islāmic law, *Masalih Al Mursalah*, also validates all these privileges.

Muslim diplomats

In early Islāmic era, there was only one Muslim state and therefore it was impossible that a Muslim envoy would have come in Muslim state. If a Muslim came in Muslim state, he had the status of a Muslim. He was not considered as a *Musta'min* so there was no concept of Muslim diplomat in earlier days. But in modern age, Muslim diplomats are also living in Muslim states. So, the Muslim diplomats also enjoy same privileges, exemptions and immunities in Tazirat in Muslim states.

³⁰⁰ See Y al-Qaradawi, *The Lawful and the Prohibited in Islām (Al-Halal Wal-Haram Fil Islām)*, (Al-Falah Foundation, Cairo, 2001), p. 6

³⁰¹ Muhammad bin Iisa al Tirmazi, *Sunan al Tirmazi*, hadith number. 1726, (Dar ihya al turas al arabi, Bairūt), vol. 4, p. 220

Conclusion

In the light of all above discussion, it can be concluded that Islāmic diplomatic law is much compatible with international diplomatic law. Islām has contributed in the development of international diplomatic law. Islām has accorded privileges and immunities to the messengers fourteen centuries even before the emergence of Vienna convention on diplomatic relations. In his life time, the Holy Prophet (PBUH) received more than hundred emissaries and delegations but there is not even one incident when he has maltreated or dishonored any messenger. Islām gives much significance to diplomatic relations because all the Prophets (PBUT) are considered as the messengers of Allah to mankind.

The compatibility of Islāmic diplomatic law, regarding the rights of diplomats, with the Vienna convention on diplomatic relations 1961 can be seen in following table.

No.	Diplomatic rights	VCDR	Islāmic law	Compatibility
1	Assistance of Receiving State	√	√	compatible
2	Personal Inviolability	√	√	Compatible with some limitations
3	Respect	√	√	compatible
4	Protection	√	√	compatible
5	Immunity from court's Jurisdiction	√	Not absolute	incompatible
6	Exemption from Taxes	√	√	compatible
7	Commercial Activities	×	√	incompatible
8	Other Privileges	√	√	compatible



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