The Abuses of Diplomatic Immunity

Basic Project 1 SIB

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Chapter 1: Project introduction

We choose to write our project because it came to our attention that if you break the law as a diplomat, you could easily get away with it because of the diplomatic immunity under the Vienna Convention. First it struck us why no one or no country has ever questioned this issue, and that was also what we at first wanted to examine, but we quickly realized that it is in everyone’s interest to protect your own representative of your country, in this case being the stationed diplomats. Since we quickly discovered the answer answer to our research question at the time, we decided to change our project into a case study, a project we will know explain.

In the year of 1961, the VCDR was signed by 190 countries who all agreed on the fact that we have to secure the rights for stationed diplomats and embassy staff as well, and they made it possible with the legislation on diplomatic immunity. Although the majority of diplomatic immunity holders are not abusing their immunity, we constantly encounter various incidents where abuse of immunity is a central part of the case. The main problem is that the chance of prosecuting the diplomats, who are breaking the law, seems unlikely since the hosting states have no rights in order to prosecute or trial those criminal, and the sending states have no interests in making them self look bad by getting their diplomats prosecuted. This creates a paradox in many democratic countries, especially in western countries. In democratic countries it is important to them that everybody is equal and everybody can be prosecuted equally, but when it comes to diplomats they tend to look the other way and avoid the potential conflict with another country. The same goes if their diplomats get in trouble with the law in other countries, in most cases they will do anything they can to help the diplomat get home, without being prosecuted and without the media putting too much attention to it. A diplomat deployed in another country is representing the state he was send from and for him to get into trouble will also make the state look bad and they want to avoid that at all cost, even if it means breaking some of the beliefs their government is built on.

This project will explain the general thoughts and history behind the VCDR, exactly why it seemed necessary at the time and what the specific legislations on diplomatic immunity states.

Furthermore, this project seeks to investigate what different kinds of immunity abuses have taken place and look at the seriousness of the offenses and how it has affected international relations. In addition to that, we will look into why the diplomats commits these offenses and at last what the governments has done to investigate and prosecute the abusers of diplomatic immunity or why they have not done anything at all. In order to do so we will examine three
specific cases where the agenda behind the criminal acts have been different, we will look at cases where the agenda behind the actions have been for personal benefits, cultural hierarchy relations and political reasons. We will also add a brief discussion to our three cases where we will discuss how these cases could have been different if for-an-example the sending and hosting states where more similar and in addition to that, we will also discuss what part the media can choose to play in such incidents and how it might affect the government’s actions. Finally, we will conclude the answer to our three case studies and also try to draw a more general conclusion based on our newfound knowledge on this issue.

1.1 Problem area

Since the Vienna Convention on Diplomatic Relations in 1961, the nations of the world have agreed on mutual laws concerning diplomacy. A characteristic part of diplomacy has been the ability for diplomatic agents to enjoy certain privileges and immunities sheltered by the international law. Unfortunately, this privileged status provided by diplomacy has been followed by conscious abusive behaviour.

The offences produced on grounds of diplomatic privileges can be considered as against all of the concrete fundamentals of diplomacy, since according to Southwick (1988) diplomacy’s primary target is to understand and assimilate the foreign policy of another country. By implementing the gained knowledge, a diplomatic agent should be able to improve and support the friendly relations between the two nations.

The characteristic reasons behind the abusive behaviour, which seemed to appear constantly during our research are the following: political, cultural and economical. These differing terms each have their typical characteristics whether benefitting economically or by increase of political status to reasons that can be found from sociocultural heritage of nations. These branches are also the ones, which our research will be focusing on.

Due to these different forms of abuses, the questioning of the current legislation of international diplomacy seems relevant. During modern times there have been more severe abusive incidents, hence, amendments have been implied for example the commercial activity exemption, which basically provides better working conditions for domestic workers, working in diplomatic premises, since defining that hiring a domestic worker cannot be considered as official diplomatic function. (Tai, 2007)
In addition, what seems relevant are the reactions of governments, when abuses of diplomatic status has occurred. In our research we are focusing on whether the governments actually have been supporting the abusive behaviour and the motives behind that. In various cases of abuse in the past, it has occurred that the governments have defended their diplomatic agents and taken counteractions against other countries, even though the misuse of status has occurred as self-evident. This behaviour has seemed quintessential within all three branches of government, since even the jurisdiction has enacted in favour of diplomatic agents (Mannathukkaren, 2014). In order to maintain an objective view, we are also emphasizing the legal procedures followed by the incidents.

Problems may also generate between nations after a diplomat has relied on his immunity. The receiving state may demand from the sending state the waiver of the immunity. (United Nations 1961) If the sending state is not willing to execute this procedure, it can cause reciprocal actions against the sending state. Sometimes these incidents will jeopardize the cooperation between the states and they will engage in a diplomatic feud with each other. The states fear of reciprocal procedures often causes that minor offences of the law are ignored. (Bergmar, 2014)

As part of the problem are the lack of sanctions the abusive diplomats have received from their home state. It seems that often the accused diplomats are cleared of their charges and without any consequences for their actions. Common action seems to be, that the abusive diplomat is simply transferred into a new mission. (Mannathukkaren 2014)

The media often has a significant role when abusive incidents occur. We find it interesting to find out how the media has reacted in these cases in different countries. Also the medias contrasting points of view are taken under examination by observing if the rhetoric have been different between the sending state compared to the receiving state. The media has in some occasions found it difficult to break the news in neutral form, taking defensive and nationalist standpoint. (Mannathukkaren 2014)

The concepts of diplomatic immunities and privileges are also examined in order to understand the relevance of them. Since appealing to the immunity is constantly used, it seems relevant to raise the question whether it has been justifiable or if it has only occurred as salvation from criminal consequences.
1.2 Research Questions
- What types of diplomatic immunity abuse have occurred?
- What reasons are behind the different forms of diplomatic abuse?
- How have governments handled the abuse of diplomatic immunity?

Chapter 2: Project design
In this chapter we will explain our project outline, how we have researched and why we chose to do so. Furthermore, this chapter seeks to give the reader an introduction to our chosen theories we will be using in our analysis and also explain our methods. The objective in this chapter is to show what our thoughts on answering our research question have been, and what we decided to use in the end.

2.1 Methodology
In this section we will explain the methodological process that was done in this project. It will give a brief introduction to why the cases were chosen. When we began our research for this project we used mainly news articles and also books on international legislation on national relations, hereunder the VCDR. We quickly noticed that the different immunity abuses have many different reasons behind them, and therefore we decided that in order to describe and examine this issue properly we needed to do a case study.

For this research project we then decided to do a multiple case study on three different cases of diplomatic immunity abuse and separate the case studies, because the abusers had different motives and agendas behind their actions. We did this in order to explain the reasons behind why diplomats who are representing their home country, are disobeying the law of the receiving state. By doing a qualitative case study we are also able to get a better understating of the abusers, than by doing a quantitative approach, to make it even more understandable we choose these three cases, which will be explained later, and placed each of them in a different category. In each of these different category’s we are using five different theories to explain the reasons behind the abuses. We are going to explain the theories in the theoretical chapter. The reason to separate the three cases is that through our research we saw different agendas behind the abuses and also when we separate the cases and analyze them one by one, we have the
opportunity to use different theories on the cases and therefore it is easier to explain the reasons for the diplomatic immunity abuse. Furthermore, it becomes clearer to discuss the governmental actions and the medias role as well when we separate the cases, because the media attention differs from case to case, and even though we separate the cases, we will draw a general conclusion in the end.

2.2 Literature Review

In the following section we will take a look at other literature done on this subject and how it helped us with our own project. We will also take a look at the literature we have used in the project.

During our research for the project we had to read through a lot of different literature. It quickly came to our attention that there were not done a lot of academic research on this subject. At first, the only writings on this subject we were able to find was newspaper articles, which indicated to us that researchers and the generally public had neglected this subject. When looking at the few academic papers done on this subject, it became clear to us that none of them had the same approach as we did. They had an approach to the diplomatic immunity, based on the functional necessity theory. The functional necessity theory talks about the justification for granting diplomats immunity. They need the immunity to function according to what the state who sends them need them to do. It is important to the diplomats that they can do their diplomatic job unhindered by the law, as the law might contradict with what the diplomat is trying to achieve. Another aspect to the theory is that at times the diplomats might have a busy schedule, and therefore not have time to deal with finding a legal parking spot or doing their taxes. The research papers we found, argues that diplomatic immunity is good as it is now and that the diplomats have all the rights to break the law in a minor or if necessary major way to complete their job.

When talking about diplomatic immunity it is important to talk about the English school on diplomatic relations. The English school says that diplomatic immunity should be seen and studied as a specific practice of human beings acting with each other in a historical construction. The English school looks at diplomacy with a sociological aspect as to why humans act as they do on an international level. Throughout time humans have always had a need for diplomatic relations, even back when Europa consisted of tribes. There was still a need
for the tribes to work together and help each other and therefore the English school argues that diplomatic relations should be studied as practice on its own. (Neumann, 2002)

Our project will take a different approach. We will look at three cases of abuse and analyze them, to look at if the diplomats should have been treated differently considering they committed serious crimes. Where the research papers we found, tried to argue why they should not be prosecuted.

Due to us doing a case study and the lack of academic sources, most of our sources will be second hand sources, such as newspaper articles. When using second hand sources and newspaper articles, it is very important to be critical of the writer and the newspaper. The newspaper and the writer needs to be non-partisan on the subject, when using it to describe a certain series of events as the events of a diplomat abusing his rights. That is why most of the articles we have chosen comes from newspapers, which are trustworthy and reliable.

2.3 Theoretical Framework

In this section we will give an introduction to the theories that we will use in our analysis in order to explain the reasons behind the different types of diplomatic immunity abuse. The theories we are going to use, we have chosen because of their ability to explain the different agendas individually. For the case of abuse due to a political agenda we will use two different theories because they are very similar, but have small but significant differences and by using both of them we hope to give a more insightful answer to our research question

2.3.1 Case of diplomatic abuse for private gain:

The rational choice theory

The rational choice theory (RCT) explains the reasons behind an offender committing a crime and is based on the idea of “expected utility”, meaning that individuals, in their decision making, balance certain risks with the possible outcome of gaining utility values (Newburn, 2013). RCT as being a theory widely used in criminology, this is understood as criminal offenders weighing benefits with risks, and thus deciding on the basis of a cost/benefit analysis whether the criminal act is profitable. If benefits outweighed possible risks, it is profitable for the individual to proceed the criminal act. The offender is thus seen as rational, strategic and capable of making rational choices, which are supposed to benefit the offender.
Clarke and Cornish are seen as the most influential characters in the thinking of RCT. They argue that rather than a simple rational choice, there are a series of choices that determine whether the individual will proceed with the criminal act. These choices are rational and based on social and psychological motivational factors to criminal acts (ibid. p. 287-288)

Clarke and Cornish formulated six hypotheses on their perspective of crime as a rational choice. They are as follows:

1. “Crimes are purposive acts, committed with the intention of benefitting the offender”
2. “Offenders try to make the best decisions they can, given the risks and uncertainty involved”
3. “Offender decision-making varies considerably with the nature of the crime”
4. “Decisions about becoming involved in particular kinds of crime (‘involvement’ decisions) are quite different from those relating to the commission of a specific criminal act (‘event’ decisions)”
5. “Involvement decisions comprise three stages - initiation, habituation and desistance. These must be separately studies because they are influenced by quite different sets of variables.”
6. “Even decisions involve a sequence of choices made at each stage of the criminal act - for example: preparation, target selection, commission of the act, escape and aftermath.” (Cornish and Clarke – cited in ibid.)

Crime is in this perspective always seen as a conscious choice of action with an interests of benefits. These benefits vary depending on the crime and the offender, but can for an example be material goods, excitement, power etc.

When looking at the involvement decisions they are not only affected by the three stages in the criminal career but also by different factors such as life circumstances, values and lifestyle. All something from the personal life, which affects the rational choice of committing crime. (ibid. p. 289).

**Bounded rationality:**
Cornish and Clarke argues for the rationality in the decisions of committing criminal acts and even in cases where a person may have acted as an irrational person, they still find some degree
of rationality. They argue that the rationality in these cases is bounded and therefore limited, meaning that there is a limitation on the offenders understanding of possibilities, potentials and consequences (ibid.). The bounded rationality explains how offenders act rational in their decision-making, but might be acting on the premises of wrong information and/or made a quick decision not thinking it thoroughly through.

Some of the conditions where offenders acted with a bounded rationality could be as follows,

- The offenders might have the wrong information about risks and uncertainty
- A crime might not be thoroughly planned and instead relying on historic events where the same crime has turned out successful for the offender
- Offenders tends to have a bigger focus on the reward instead of the risk, and this results in poor judgment.

(Cornish and Clarke 2006: 20-1 - cited in ibid.)

We find this theory relevant because it describes the mindset of the offender, and thus giving us an understanding of the reasons behind the abuse of diplomatic immunity.

2.3.2 Case of diplomatic abuse with a political agenda:

Social contract and psychological egoism theory

John Stoke and Thomas Hobbes are both inspired by Socrates’ thoughts on the social contract. In Socrates social contract he is explaining why it is important to have a set of rules in society, his most important arguments on why it is necessary to engage in a social contract is that: he only became the man that he did because of him following rules and obeying rules (Tuckness, A. 2005). Socrates arguments are also valid in an even more modern society, and is also very similar to how the liberal democracy takes place in practice today. In the following section we will explain the two philosopher’s modern theories on the matter.

Thomas Hobbes, psychological egoism theory:

Thomas Hobbes lived during the English civil war and saw the clash between the king, his supporters on one side and then parliamentarians on the other side. What he noticed was that some wanted to engage in a mutual agreement on how to rule a country and what laws there needed to obeyed, which best could be described as democracy.
His general point of view, and what later was to become his theory on psychological egoism was that people did not just want a mutual agreement but also needed one, in order to make people function both politically and in society. The reason for that was that in his opinion people in their state of nature will do whatever it takes to get what they desire, that being the desire to survive and what he’d also describes in other words, that the state of nature is a state of war, and equals the term “all against all” (Lloyd and Sreedhar, 2002). That would in his opinion be the case if we do not engage in a social contract on equal terms.

**John Locke, modern social contract theory:**
I contrast to Hobbes, John Locke view on people’s state of nature was not that it was a state of war, but that the state of nature was in fact equal to perfection. You could even say more specifically that it was perfect because humans naturally are completely free, and are not bound to a set of rules and are originally not meant to be either (LoLordo, 2012). Therefore, Locke’s view on the social contract was not that it is needed, but that a social contract is reachable as long as it is engaged on equal terms, and that can be reached because human have a set of capacities that makes them capable to do so, those capacities are “abstraction, reflection and suspension” (LoLordo, 2012). Those three major abilities make human beings unique and that is the main reason that we are different from other creatures can engage in a social contract.

**2.3.3 Case of diplomatic abuse based on cultural hierarchy relations:**

**Social dominance theory:**
In order to provide understanding concerning the inherited hierarchy relations within Indian culture, we have chosen to apply the Social Dominance theory (SDT) to explain the culture related abuse of diplomatic immunity. The theory was created by professors Jim Sadinius and Felicia Pratto. The core of the theory is to examine discrimination and hierarchy relations between different groups inside societies. Fundamental for social dominance theory is the concept of social dominance orientation (SDO), which can be used as a measure between different social groups. Pratto (1999) implies that when social dominance theory is associated with cultural or social terms it should always be connected with the quantity of SDO within the social groups examined in order to draw conclusions concerning equality or inequality.

According to social dominance theory, within multilateral societies it is possible to divide social groups into *hegemonic dominant groups* and into several *sub-ordinate* groups, which
relations can be described as caste-like hierarchies. (Sidanius et al. 1994) Characteristic for dominant groups is that they maintain a higher level of SDO compared to sub-ordinate groups, due to privileges gained from their status within the social hierarchy. (Sidanius et al. 2004)

In different cultures SDO formulates from different assumptions which varies from stereotypes to religious beliefs. For example, in some cultures it is believed that people of certain ethnicity doesn’t have the same morality or mentality to work their way up and therefore belong in to the lower levels of social hierarchy, whereas in some cultures the social hierarchy is simply explained as the will of god. (Pratto, 1999) In other words, which makes social dominance theory a method of understanding different cultures, is its agenda to understand social ideologies typical for certain cultures. These ideologies are often formulated by social practices, social belief systems and psychological processes.

According to Pratto (1999) the social practices exercised within dominant groups are the reason behind institutional discrimination. Therefore, it is possible to divide institutions into hierarchy-attenuating and hierarchy-enhancing ones. In many societies the different departments of criminal justice systems often make an example of a hierarchy-enhancing institutions hence, prosecutors and judge’s often targets their assets in a form where the people belonging to the same level of social hierarchy can benefit from. Hierarchy-attenuating institutions offers their assets for the benefit of subordinate groups. Therefore, many civil and human rights organizations as well as the public defender’s office can be considered as hierarchy-attenuating ones. (Sidanius et al. 2004)

Behavior of hierarchy-enhancing institutions can be explained by concept of differential reward, which portrays how the institutions are encouraging their staff to behave superior towards groups considered as subordinated. The behavior cannot be considered as the official policy of the institution and it shouldn’t be too obvious, but it is still encouraged to be executed. Also hierarchy-enhancing institutions may behave in terms of institutional-socialization, which means value based discrimination against subordinate groups. (Sidanius et al. 2004)

Chapter 3: Introduction to the VCDR and the cases
In the following chapter we will explain the basics of diplomatic immunity under the Vienna convention on diplomatic relations. The treaty is signed by 190 countries and it defines the international laws of diplomacy. The concept of abuse of diplomatic immunity will also be
designated. Furthermore, there will be an introduction to the three cases this project is focusing on by examining them under terms of diplomatic immunity and its abuses.

3.1 Explaining the The Vienna Convention on Diplomatic Relations

The Vienna Convention on Diplomatic Relations (VCDR) was established on the 18th of April 1961. The treaty consists international laws and rights concerning diplomacy and an individual diplomatic agent. The pure core of the treaty is to develop friendly relations between different states in terms of giving certain privileges and immunities for so called residential ambassadors (McClanahan, 1989) and other diplomatic personnel. Some of the other main objectives of the treaty is maintaining equality, peace and security among nations. (Bergmar, 2014)

The treaty defines diplomatic immunity as exemptions from different legal obligations and procedures. The most extensive form can offer a shield from criminal, civil and administrative jurisdiction. The immunity may offer exemptions from the receiving states dues and taxes, as well as exemption from social security provisions. Also any form of public service is not obligated from diplomatic personnel during their service in the diplomatic mission.

From our point of view, the focus is on VCDR’s articles 29 to 38, which are the ones defining diplomatic privileges and immunities, and the groups of diplomatic personnel who are able to enjoy them. Each group enjoy characteristic privileges for itself, while diplomatic agents are being the group enjoying the most encompassing features. Descending down to lower levels of privileges and immunity, the other group of personnel are known as administrative and technical staff, service staff and the servants of the higher level diplomatic personnel.

The articles mentioned above can also be considered as the most controversial, our project especially emphasizing the article 31, being the one explaining how the judicial system of receiving state can or cannot apply its laws on diplomatic agents. Article 9 is also under observation due to giving an explanation for reasons behind declaring a diplomat as “persona non grata”.

Article 37 of VCDR introduces different levels of immunity enjoyed by diplomatic personnel. The extent of the immunity is determined by the position and status held by the person inside a diplomatic mission. There can be found four different levels of diplomatic personnel and thus, four different levels of immunity can be enjoyed. (United Nations, 1961)
Diplomatic agents and their families is the group enjoying the most extensive form of immunity. What this basically means, is that diplomatic agents as well as their residence and property are all inviolable. (United Nations, 1961) The term diplomatic bag takes place under inviolability of diplomatic property. The bag is an object which shall not be investigated by the receiving state’s, or any third country’s officials. The bag originates from the necessity to be able to deliver important and sometimes secret documents between different countries. The shape or size of the bag has not been clarified and therefore it has offered possibilities for diplomats to smuggle different illegal objects out of their host country. (Zabyelina, 2013)

Diplomatic agents have immunity from the receiving states criminal, civil and administrative jurisdiction. They shall enjoy exemptions from dues and taxes and it is not necessary for them to take part in funding of the receiving states social service system. Diplomatic agents are also exempted from public service. The sending state has also a right to waive the immunity of a diplomatic agent if considered necessary. All privileges and immunities mentioned above, also includes the families of diplomatic agents. (United Nations, 1961)

The second group of diplomatic personnel are the administrative and technical staff. Along with their families they are able to enjoy all the same privileges as the diplomatic agents, exception being immunity from civil and administrative jurisdiction if a violation has been committed outside of their official duties. Therefore, this group of diplomatic personnel can be prosecuted if necessary. (United Nations, 1961)

The third group is called as the service staff. They may enjoy immunity only during their duties and they have only exemption from dues and taxes which concern their emoluments. Also these privileges apply only if the service staff member is not from the country the diplomatic mission is taking place. (United Nations, 1961)

The fourth group of diplomatic personnel are the servants for the higher level diplomatic agents. The immunities don’t apply on this group, however they are exempted from the dues and taxes concerning their emoluments as long as they are not the citizens or permanently staying in the country of residence. (United Nations, 1961)

Article 31 of VCDR addresses the jurisdiction against diplomatic agents. According to the article diplomatic agents are immune against the receiving states criminal, civil and administrative jurisdiction. However, the article includes three paragraphs illustrating different kind of exceptions. (United Nations, 1961)
(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.

Persona non grata, or in other words an unwanted person is a status the receiving state may lay upon a diplomatic agent. The status is usually a consequence for actions caused by a diplomatic agent, and which are not considered acceptable from the receiving states point of view. After declared as a persona non grata, the sending state is obligated to call back the diplomatic agent. This way of punishing a foreign state diplomat is very exceptional, since the states are in fear of reciprocity and often the punishment may hurt the relations between the two countries. (Bergmar, 2014)

3.1.1 Explaining The Vienna Convention on Consular Relations

The Vienna Convention on Consular Relations (VCCR) was released in 1963 and it amends the VCDR on behalf of consular officials. The pivotal content and difference compared to VCDR is how the consular official’s privileges and immunity should be interpreted. Unlike the VCDR, the Vienna Convention on Consular Relations only grants immunity for consular officials within their official functions. (Tai, 2007)

As described in the VCCR’s article 41 a consular officer should not be taken into custody unless there is a significant proof of aggravated criminal demeanour. Without heavy allegations regulated by competent judicial authority, it is strictly prohibited to commit consular officials into custody or in any other ways to restrain their inviolability and personal freedom. (United Nations, 1963)

If charges are pressed against consular officer it is required that the officer is present at the hearing. Although this procedure is demanded, it should be implemented in as subtle manners as possible so that it has the smallest possible affect on the consular functions. Therefore, the judicial proceedings must be executed as fast as possible. (United Nations, 1963)

Even though consular officers are significant part of diplomatic mission and they enjoy certain amount of diplomatic immunity, due to the differences in VCCR article 41, it is possible in
some occasions to prosecute consular officials from a violation a diplomatic agent enjoying the immunities of VCDR wouldn’t be prosecuted from. (Tai, 2007)

3.2 Abuses of diplomatic immunity

In the following section we will introduce the concept of abuse of diplomatic immunity. From our research we were able to strain off three different forms of diplomatic abuse, which can be identified as abuse based on personal benefits, abuse with a political agenda and abuse based on cultural hierarchy relations. These different classifications will be introduced more profoundly by examining three different incidents fulfilling the characteristics of each form of abuse of diplomatic immunity.

In order to understand better whether diplomatic behaviour has been abusive or non-abusive, it possible to formulate a fourfold table from the perspectives of receiving states governments’ permission on diplomatic activity and sending governments sanctions on diplomatic activity. By scrutinizing the table, it is possible to notice that behaviour is more likely to be condemned as abusive than as non-abusive.

The use of diplomatic immunity is considered always abusive if the sending states government condemns the diplomat. This result is irrespective whether the receiving states government permits the actions or not. The immunity can also be considered as abusive if the sending states government is giving sanctions for its diplomat and the receiving states government is not permitting the actions committed. This kind of procedure is usually appearing as waiver of the immunity, which is often first requested by the receiving state, and afterward implemented by the sending state.

Since diplomatic personnel are continuously appearing as representative of the sending state, the government of the sending state can affect on the result whether the actions are considered as abusive or non-abusive. By giving sanctions for the diplomatic agent under accusation for abusive behaviour, the sending state government can turn the situation into non-abusive. This also requires permission for the actions from the receiving states government. This way of proceeding is the only way diplomatic activity can be considered as non-abusive.

Table 1: Table of diplomatic abuse.
### 3.2.1 Case of diplomatic abuse for private gain:

The following case that is going to be explained will be on the descriptive level.

This form of abuse will be categorized as being a case that is beneficial for the individual. This form of abuse is chosen because of the benefits that the individual gains and this is seen as motives to why the individual chooses to commit an act.

In 2008 on the 2nd of May, an Albanian diplomat was arrested because of his possession of heroin. He was detained with the charges of drug smuggling and this was immediately notified to the the Ministry of Foreign Affairs in Albania. He was caught in Turkey and confirmed reports show that he was found with a total of 65kg of heroin in his car.

The diplomat being arrested for this act was of the name of Agim Haxhiu and was in the position as the second secretary of the Albanian embassy in Macedonia and even though he was arrested outside of the country where he was stationed, he is still titled diplomatic immunity via. Article 40 in the Vienna Convention. Although his immunity was waived, and thus making it possible for the state of Turkey to prosecute him according to Turkish laws and international conventions.

Also as a statement made by the Ministry of Foreign Affairs shows, “The Ministry of Foreign Affairs deems it necessary to stress that citizen Agim Haxhia does not enjoy any diplomatic privileges and immunity and will be prosecuted to Turkish laws and international conventions”. Ministry of Foreign Affairs, Albania. (Cited in TodaysZaman).
3.2.2 Case of diplomatic abuse with a political agenda:

In this section we will describe a case where diplomatic immunity is used to protect a murder, a murder based on a political agenda, formed by Libyan embassy staff. This specific case describes how a young English police officer is caught in the middle of an otherwise peaceful demonstration, but because of a heated political situation is killed in the streets of London.

In 1984 Libya was ruled by dictatorship, with the president Muammar Gaddafi in front. The regime was not tolerating any kind of the freedom to speak, nor free press was allowed either. In such circumstances, frustrated citizens are at some point bound to speak up, at tell the world about their frustrations and how the country could be constructed different politically.

Two Libyan students did exactly that, and were killed because of their statements towards the Libyan Gaddafi regime. Even though it was not officially the Gaddafi regime who had committed these murders, a frustration was growing among the civil population. Because of the political situation in Libya, no one could actually do anything inside the country, so therefore a lot of demonstration took place outside Libyan Embassies in foreign countries, usually established by Libyan students, studying abroad, including one in front of the Libyan embassy\(^1\) in London.

At the same time, a group of pro Gaddafi protesters were present nearby the embassy as well, to counter protest. Since the both protest groups had announced their demonstration the British police were present as well, and also because that beforehand, the Libyan embassy had already announced that any kind of demonstration would result in a countermove from the embassy, because critique of Gaddafi was unacceptable. Without out any warning, unidentified gunmen started shooting, from the embassy into the crowd of both protesters and police officers, 11 people were hit and injured, but only one were killed, the 25-year-old police officer Yvonne Fletcher.

The following days the English police could not enter the embassy because the embassy claimed diplomatic immunity, even though they had reasons enough to enter the embassy, in order to keep their own diplomats in Libya safe, they had to stay outside. The result was an 11

\(^1\) Known as “the Libyan People's Bureau”, at the time.
day standoff, which in the end lead to, that the employees of the Libyan embassy were escorted out of the country.

3.2.3 Case of diplomatic abuse based on cultural hierarchy relations:
In this section we will describe a case where the reason for committing the crime was based on cultural hierarchy relations. The case describes how an Indian consular official was caught paying below minimum wage and committing visa fraud.

In 2013 a deputy consul general Devyani Khobragade was arrested and filed charges against in New York, United States for committing visa frauds and paying less than minimum wage for her servant Sangreeta Richard and thus violating the US labour code. She was forced to work over the 40 hours which was implied in her working contract. In addition, the working conditions has been described as slavery-like. (Collins, 2014) Since both sides of the case were citizens of India, the incident evoked the attention of the Indian government and media. Instead of defending the oppressed side of the incident, the Indian government took the side of the diplomatic agent. (Mannathukkaren, 2014) Consequently after pressing charges against Khobragade a diplomatic confrontation between India and United States was breaking out. (Islam, 2014)

Rapidly after the arrest of Khobragade the state of India relocated her position under a United Nations mission, thus providing her the possibility to enjoy full diplomatic immunity from the jurisdiction of United States. Due to this procedure Khobragade was able to return to India and yield the charges filed against her. (Islam, 2014) Soon after the arrestment counter actions were made by India against the United States, such as removing the protective fences surrounding the American embassy in New Delhi. (Mannathukkaren, 2014)

The general opinion in India occurred to be more defending towards the arrested diplomat than the exploited servant. For instance, the former consul general Prabhu Dayal was defending Khobragade by claiming that the situation was difficult for an Indian diplomat because of the tendency for domestic maids to reach out for the American dream. (Mannathukkaren, 2014) Also Khobragades family’s background as a Dalit caste member was adduced, them belonging to the bottom of the traditional Indian caste hierarchy. Since possessing Dalit origins the media was emphasizing Khobragades abilities of being a gentle employer, even though at the time when the incidence occurred it was possible to consider her as part of the Indian elite. (Mannathukkaren, 2014)
Since being a top level diplomatic agent Khopragade was able to bypass the juridical system also in India. Due to the hierarchy rules originating from castes and colonization period, Richard wasn’t able to receive justice from the jurisdiction of her home country. Unless Khobragade hadn’t been able to flee in India, Richard would have had better chances of receiving justification in the US courts, where the working classes have a history of victories in the past. (Mannathukkaren, 2014)

Noteworthy for the case Khobragade versus Richard was that in India, Khobragade was considered as part of the country’s elite and consequently backed up by the Indian government and media, and therefore being able to tackle both the US and the Indian legal systems. Instead of helping the lower classes to gain equal rights and getting paid a fair wage, the incident was labelled by devious characteristics. The discussion of rights shifted from defending lower class rights to defending the immunities and privileges of diplomatic agents and thus overlooking the ability of Indian lower classes to defend their self from being utilized. (Mannathukkaren, 2014)

Chapter 4: Analysis
In the following chapter we will apply the theories presented in section 3.3 to explain the reasoning behind the diplomats abusing their immunity and try to understand their line of thoughts. The chapter will be divided into sections depending on the three different cases.

4.1 Case of diplomatic abuse for private gain:
In the following section we will try to get a deeper understanding of the case of Agim Haxhiu, and some of his reasons and motives, then the case will be put into context with the aforementioned rational choice theory and the perspective of Cornish and Clarke. We will then, by using the theory, shed light and explain the reasons why Agim Haxhiu chose to commit the crime of trafficking drugs over the boarders entering Turkey.

4.1.1 Rational choice theory:
With millions of users all around the world, heroin has turned into a drug that is very widespread, and with the majority of the production in the eastern parts of the world there is
also a big demand for illegal drug trafficking (The White House). Because of the enormous heroin industry, the profits of drug trafficking are remarkable and thus making a lot of people engaging in this type of crime, in order to increase their profits.

From the perspective of the RCT, it argues that Haxhiu first of all committed the criminal action of drug trafficking as a rational action. It was a rational decision made by him on the basis of expected utility, meaning that he strategically balanced the possible risks and uncertainty with the possibilities of gaining profits from it. The RCT doesn’t comment on the exact reasons as to why Haxhiu smuggled heroin, but gaining economically profit are quite obvious. Assuming that Haxhiu’s reasons for the heroin smuggling was because he wanted to gain economically profit, then in order to proceed with the criminal act it needed to outweigh the possible risks of getting sentenced. On the basis of the cost/benefit analysis and the RCT he proceeded with the crime with a rational decision on it was profitable. The possibilities of gaining profit outweighed the risks of being sentenced.

Continuing with the criminal act on the base of the cost/benefit analysis is relevant when looking at Cornish and Clarke’s first two hypotheses, and when looking at the sixth hypothesis you may also get a clearer view on the mindset of Haxhiu.

Referring to the perspective of the sixth hypothesis by Cornish and Clarke, Haxhiu did not make one rational choice whether or not to commit the crime on the premises of the benefits and risks involved, but he also made a series of rational choices at different stages of the crime. This means that not only was it a rational choice if Haxhiu would actually commit drug trafficking crime or not, but also considered the measures on how to do it. Because he was a diplomat, this status of immunity might also have had big influence on how he actually committed the crime. When looking from the perspective of the involvement decisions which is not only understood as the three stages in the ‘career’, but also include ‘current life circumstances’. This is indeed relevant when trying to understand if the diplomatic immunity had an influence on whether or not to commit the crime, because the immunity is a large variable when doing the cost/benefit analysis. The perspective explains how inter alia ‘current life circumstances’, as for an example the immunity gained because of your job position, influences the three stages of the criminal career. Thus this theoretical perspective explains that the consciousness of diplomatic immunity does affect the involvement decisions and therefore also affect the rational choice of committing the crime. We have shown that the rational choice to commit a crime is based on the cost/benefit analysis, and when immunity has an influence.
on this it outweighs a great deal of the risks involved. Even though Haxhiu did not enjoy these diplomatic rights to avoid prosecution, the perspective of Cornish and Clarke explain how this was influence able in the involvement of crime.

Now that we have understood that the immunity influenced whether or not he chose to commit the crime and that he actually ended up getting prosecuted, we can try to understand if Haxhiu’s consciousness of his diplomatic rights was bounded.

4.1.2 Bounded rationality:
Referring to the theoretical view on bounded rationality explained earlier in the project we will use this perspective to see how the consciousness of immunity might have been bounded rational. Through this perspective it is understandable that Haxhiu made the rational choice of committing the crime, as explained above, but his decision was limited. Meaning that the premises on which he made the cost/benefit analysis, ex. his diplomatic immunity, was badly understood as how it could benefit him. Referring to the paragraph which states that the offender might rely on a general criminal approach because this has worked before, this also explains how the understanding of immunity have affected his rationality. Diplomatic immunity has worked several times before as a shield for not getting prosecuted for a crime (ex. the case with the Libyan embassy in London), and thus this theoretical perspective explain how Haxhiu might have relied on this status as a decisive factor for committing the crime. But because he ended up getting his immunity waived and thus not enjoyed these diplomatic rights, the possible decision based on the immunity was bounded in the way that it not ended up as beneficial as he might have thought.

This perspective has shown that it is indeed possible that the immunity has been a decisive factor whether or not Haxhiu choose to commit the crime, and also how it was a bounded rational choose because he ended up getting prosecuted anyway.

It is important to remember that this way of understanding the criminal act committed by Agim Haxhiu is just one way to look at it through the field of criminology and other theories may be used to get another understanding of the act. We choose this theory because we wanted to look at the motives and thus wanted to explain the act as rational.
4.2 Case of diplomatic abuse with a political agenda:

In the following section we will examine why the shooters from the Libyan embassy acted in the drastic matter that was the case. More often than not, a criminal act committed by an official governmental agency is planned strategically to fulfill a political agenda. But some theorists have researched in the area and there seem to be certain patterns that can explain irrational actions, even perpetrated by official agencies and/or individuals with an official position.

To explain the reason of the diplomatic abuse in this case, we will use two theories based on Socrates’s social contract theory, more specific the two aforementioned theories are John Locke’s modern social contract theory and furthermore Thomas Hobbs’s psychological egoism theory. The two theories both explain how irrational behavior and drastic actions occur even though the person or agency are aware of what the effects might be.

4.2.2 John Locke:

As described previously, Locke’s general thoughts of human nature is that every human being is originally and naturally completely free, even though those thoughts are based on a very Christian society it can also be shown in a modern society. Therefore, we as humans are just as well not bound to be controlled by laws set by politicians and other official agencies. Instead we need to engage in a mutual understanding, also know as the social/political contract, that is very similar to the western liberal democracies and not very similar to e.g. the Libyan dictatorship that was the case in 1984. Every human being possesses the urge to be anarchistic and individual just like any other creature (LoLordo, 2012), and will therefore not accept suppression by another human. But, suppression can occur in states were the civil populations is simply forced by the government to live under inhuman conditions. However, human beings possess three unique morale capacities that gives us reasonable and rational sense and that makes it reachable to engage in a social contract with others, the three capacities are; “abstraction, reflection and suspension “(LoLordo, 2012). “We need to abstract ideas to grasp the content of natural law and to see that we have reason to obey it. We need reflection because the idea of the self that’s required for conceiving of oneself of oneself and hence for being a person is an idea of reflection. And we need ability to suspend because it’s required for freedom and because only beings who can suspend can be guided by the results of reasoning “(LoLordo, 2012).
As just described it is clear that human beings will seek to be free and individual according to Locke it is simply in our nature, however we will engage in social structures but only if we can agree on equal terms.

4.2.3 Humans act differently without a social contract:

In Libya in 1984 the Gaddafi regime ruled the country by dictatorship and therefore suppressing the people of Libya and the people hired by the regime including deployed personal such as ambassadors and embassy staff. As previously described a young police officer were shot and killed by embassy staff working on the Libyan embassy in London, this happened although the shooters were aware of both the probable media exploitations and therefore the opportunity of them putting Libya in a bad light internationally and the effect on the relation between Libya and England. To figure out why the gunman/gunmen acted in the drastic way that was the case, we will use Locke’s theory to shed light on the irrational behavior.

The embassy staff was acting irrational when it comes to the shooting, but it is interesting to look at where they come from. In the time of the incident Libya had been in numerous wars and international conflicts under the suppressing leadership and as we explained earlier the human being is constantly seeking individualism and freedom, in a somehow anarchistic way.

So according to Locke there was not any mutual agreement on the social and political construction, this means that the embassy staff was acting how they would in their home country being Libya. A country where there was not a mutual agreement regarding the political agenda, and where the executive power usually would strike down on critics, but the problem was that they acted in a country where there was in fact a social and political contract. Therefore, their actions were not only a criminal offence but also an abuse of their diplomatic immunity since they could not be arrested and where able to flee back to Libya without any prosecution. To sum up, the Libyan embassy staff according to Locke were in a position where they may have thought that they acted in the only way possible in order to influence or force the demonstrators in their desired direction, because that was how they were controlled in their home country. It therefore seems that the collision of the two political contracts or lack of the same, was inevitable.
4.2.4 Thomas Hobbes:

Hobbes’s thoughts on a persons’ self-interest is that naturally everything we do in our lives and the decisions we make are self-beneficial, it is simply unnatural for human beings to put others interests ahead of our own without it being for our own sake. Hobbes most important work in this areas is the psychological egoism theory, which we will use on our case in the upcoming text.

Just as Locke’s theory explain how humans are capable of engaging in a social contract where the terms are equal, even though the laws of nature play a large part as well in how humans interact, Hobbes thoughts more or less agrees. However, Hobbs view on this matter is that even though such a contract can be reached both socially and politically, the powers of human nature are stronger than e.g. a social/political contract (Kavka, 1986). Furthermore, in contrast to Locke, Hobbes theory on human nature is that we need a social contract in order to exist in a world where people live side by side, because as mentioned earlier the original state of nature, is similar to a state of war (Lloyd and Sreedhar, 2002). This meaning that we would act as our natural instincts would tell us to e.g. the urge to survive regardless of the consequences, especially under server circumstances, if we were not in a mutual depended contract (Kavka, 1986).

In the view of the Yvonne Fletcher case, we already established that the act of the embassy staff was or at least seemed irrational and drastic, but according to Hobbes it may have been a natural instinct that affected the behavior and forced the embassy to claim diplomatic immunity. Because, before the incident there had been no issues with the Libyan embassy in London what so ever (Barker, 2000), but they still acted drastically and against the law. In this specific case the embassy was “alone” in a foreign country, meaning that even though they were governed by the state of England, they faced the protesters alone. When a person or group is in a situation where there is no social contract (as the embassy might have felt in this situation), Hobbes would explain their behavior as they were just following the state of nature, and that is explained as follows; “Hobbes imagines a state of nature in which each person is free to decide for herself what she needs, what she's owed, what's respectful, right, pious, prudent, and also free to decide all of these questions for the behavior of everyone else as well, and to act on her judgments as she thinks best, enforcing her views where she can. In this situation where there is no common authority to resolve these many and serious disputes, we can easily imagine with Hobbes that the state of nature would become a state of war, even worse, a war of all against all “(Lloyd and Sreedhar, 2002).
Locke and Hobbes both explain the irrational behaviors of the embassy staff from a philosophical point of view and they both agree on the fact that there is a breach in the social/political contract, and that is the general reason for their behavior. They do not however agree on the reason behind the individuals’ act regarding the incident, but the two philosophers both have a theory that can explain such an irrational behavior in a modern civilized society.

4.3 Case of diplomatic abuse based on cultural hierarchy relations:
In the following section of the project we are first looking into the historical background of the culture of servitude in India. This helps us to get more objective view on the behaviour and motives of Devyani Khobragade. The historical point of view will be followed by the theory based analysis. By using the social dominance theory and its central concepts, it gives us the possibility to reflect and explain the happenings on a more profoundly level and help us to understand the incident on a sociocultural aspect.

4.3.1 Caste Hierarchy:
The reasons behind Devyani Khobragades behavior concerning the exploitation of Sangeeta Richard lies deep in the Indian cultural heritage and according to Mannathukkaren (2014) is a series of systematic procedures for high level officials in India. According to Qayum and Ray (2003) the culture of servitude is still practiced in India reflecting from the feudal past of the nation. The caste hierarchy is still existing strong in the Indian culture causing discrimination and oppression of the lower castes. According to Mannathukkaren (2014) the lower castes of Indian society lacks dignity and are therefore accepting discrimination and humiliation on a daily basis, often common feature for postcolonial countries.

During the colonial era, by showing loyalty and obedience towards the employer, many servants were able to achieve better life for their selves and their families. Due to the caste hierarchy, working as a servant was often not only a job but a way of life, and therefore even members of a low caste were able to achieve and maintain the basic requirements for life, like food and shelter. It wasn’t until the 20th century the relationship between employees and servants became ‘impersonal’, (Qayum and Ray, 2003) meaning more western style,
professionalized relationship, and ever since lacking the “part of family”-like mentality between the masters and servants.

Already before the 20th century, even though the servants were able to receive forms of privileges unusual for lower castes, the reality was often undeniably patriarchal and unequal. A feature characterized by Qayum and Ray (2003) as ‘feudal splendor’ was the fact that the masters were not only financially superior and therefore able to hire domestic workers but also having the possibility for inclusive availability of another human being constantly to be on duty for their causes.

Even though coming from a family with origins of a low Dalit caste, at her current status during the time of the incident, it can be argued that Khobragade was part of the Indian modern elite and therefore could be considered as member of hegemonic dominant group. According to Sidanius et al. (1994) hegemonic dominant groups possesses high degree of positive social value which includes factors like wealth, power and prestige. Not only through her post as a deputy consul general, Khobragade was able to maintain all these factors, but as well through her influential family members and contacts in the Indian government. All these factors raise up her social dominance orientation, as well as making it possible for her to climb higher within the social hierarchy. (Sidanius et al. 2004)

4.3.2 Institutional discrimination:
Devyani Khobragades father, even though already retired during the time of the incident, was a member of the Indian Administrative System (IAS), which can be considered as the most influential of the Indian civil services. (Mannathukkaren, 2014) Pratto has argued (1999) that SDO in form of social behavior is often transmitting through family patterns, which creates the possibility of exposing and assimilating various social ideologies, such as discrimination of servitude. Later on in life, by taking these ideologies and values into institutional context, it is possible to formulate them as consistent institutional discrimination.

The case Khobragade versus Richard, described by Mannathukkaren (2014) as “bleak in the Indian juridical system” is a good example of how people possessing high degrees of positive social value seldom suffers from the consequences typical for negative social value, such as prison sentences. (Sidanius et al. 1994) People who maintain high degree of positive social value and thus high level of SDO, often formulates hierarchy-enhancing institutions. Like in the Khobragade incident the judicial system of India was representing features extremely characteristic for hierarchy-enhancing institution, such as producing decisions sustaining
group-based hierarchy. (Sidanius et al. 1994) In this case they can be seen as the courts defending the side with more economical and political capacities, and furthermore initially making the Indian courts to take legal actions against Richard, (Mannathukkaren 2014) ending her battles of gaining justice in the Indian courts. Richard have been since represented in the United States by Safe Horizon, (Collins 2014) an agency established to support victims of various abuses and which in terms of SDT can be considered as hierarchy-attenuating institution.

As typical for institutional discrimination the Khobragade incident also fulfills the definitions of *differential reward* and *institutional socialization*. Revealing a conscious and deliberate habit within Indian officials, the Khobragade incident turned out to be just one amongst many, (Mannathukkaren 2014) concerning paying less than minimum wage. Differential reward can be considered as common procedure for institutions referred as hierarchy-enhancing. Since during the incident, the entire Indian public authority from government to jurisdiction were directing the judgments on behalf of Khobragade, the judges were able to gain institutional rewards from the government for favoring the person with more compatible social roles. (Sidanius et al. 2004)

Not only for gaining rewards from the government, the reasons behind the actions of the courts may be deriving from behavior called institutional socialization. As Sidanius et al. (2004) has argued, in institutional socialization individuals are not acting in order to receive rewards but instead, individuals have internalized the values of the institution. These values can be conducted directly into discriminative and hostile behavior towards subordinate social groups. (Sidanius et al. 2004) According to Mannathukkaren (2014) in India Devyani Khobragade became “India’s national pride” consequently her being able to exempt from the authority of United States and to overtake the charges filed against her by a servant. This was all due to India’s governments efforts to secure the inviolability of a member of elite.

**Chapter 5: Discussion**

In this chapter we will discuss our findings in the analyses and take a look at the outcome of the incidents. We will also take a look at how the governments reacted from both countries and discuss if it could have been handled differently. In this chapter we will also divide it into sections by each of the cases.
5.1 Case of diplomatic abuse for private gain:
In the following section we will look at the responses from the home government of the case with Agim Haxhiu and then discuss how it might have been different and try to shed light on what other things the Albanian government could do, besides waive his immunity. This opens up for a discussion where the possibilities of diplomatic rights might have ended with a different outcome than prosecution in Turkey. Also we will discuss the role that the media is playing.

5.1.1 Diplomatic immunity waived:
As described earlier in the project, the diplomatic immunity that Agim Haxhiu was entitled, got waived by his government meaning that he then was able to be prosecuted just like any other offender who gets caught in a country for committing crime. Referring to the VCDR, a diplomat enjoys diplomatic immunity as long as it is not waived by the sending state or other circumstances interfere in order to get the diplomat prosecuted. It is thus possible that an outcome where Haxhiu did not get prosecuted was likely to happen. In the case of Haxhiu it is thus possible that if his immunity did not get waived, he could have enjoyed diplomatic rights and avoiding prosecution in Turkey. We argue, on the basis of the possibility mentioned above, that it is then possible that the outcome of the case could have been different ex. if Albania refused to lift his immunity and demanded a retraction of their stationed diplomat.

Even though Haxhiu was not even stationed in Turkey as a diplomat, it is possible that Turkey and Albania could have collaborated through diplomatic relations on a solution where Haxhiu did not get prosecuted. Also in relation with Haxhius reflections on his cost/benefit analysis, the diplomatic immunity might have been in his favor as he might have hoped for in the beginning. When seeing the different outcomes possible for the case with Haxhiu, it is possible to discuss why the two governments handled the case as they did, because as shown above there are other ways of handling this. It’s arguable that governments handle cases in different ways, depending on how it would affect their own interests. Thus if Albania did not have any interest in not getting Haxhiu prosecuted, they might have used the diplomatic rights gained through VCDR to protect him and retract him back to Albania. One of the arguments could be that the sending nation is not interested in causing attention to themselves because of the criminal act that one of their diplomats have committed. Also possible that the Albanian
Government did not have interests in helping Haxhiu because the crime he committed was not beneficial for the Albanian government, and therefore did not have any interest in protecting him. It’s possible that because the crime of drug trafficking was only on the basis of personal benefits for Haxhiu, the Albanian state had no interest in protecting him under the diplomatic immunity.

On the other side it’s possible that it is damaging for the sending state if their diplomat commits crime, because of the media attention that it gathers. This media attention might not be favorable for the sending state which is trying to work out the situation the best way possible.

5.1.2 The impact of media:
The following argument will address that it will not be possible for the sending state to defend criminal behavior of diplomats, because of the impact the media will have in covering such cases. It argues that possibility that the media is playing a big role in determining the result of a case with diplomatic immunity. It would argue that media is putting a great deal of pressure on governments to handle cases righteously and democratically and not protect diplomats who have committed severe crime. Further on it argues that the media would bring attention of the case to the people and then the people would demand justice for diplomats. This might not be relevant with the case of Haxhiu because he did not enjoy any special diplomatic rights, but when referring to the killing of Yvonne Fletcher, the sending states interests in protecting diplomats are much more relevant. This is arguable because the motive is now of the interest of the state.

With regards to the case with Haxhiu, it is relevant with the argument that the Albanian government did not defend their diplomat, because they did not have interest in the crime that he committed. Meaning that the crime of drug trafficking is only beneficial for Haxhiu and not the Albanian government.

5.2 Case of diplomatic abuse with a political agenda:
In the following chapter we will look at and describe how the English government interfered in the incident and what actions they went to in order to prosecute the shooter of Yvonne Fletcher and also how the government of Libya cooperated with the English government, or if they even did so. Further more we will look at what influence the media played in order to
pressure the official agencies in England, since the case of diplomatic immunity abuse was as severe as the case shows.

5.2.1 The Libyan embassy claimed diplomatic immunity.
On the 17th of April 1984 immediately after the incident the Libyan embassy claimed diplomatic immunity, this meaning that officially the English authorities could not enter the Libyan embassy. The English police might have made an exception of the rules with such a serious offence, they where afraid of the safety of the English embassy in Tripoli\(^2\) and other English citizens resided in Libya (Christopher Hope, 2009). As a result, to the claim of diplomatic immunity and the urge to remain the safety of English citizens, there was an eleven-day stand off outside the Libyan embassy.

On the 27th of April, 30 Libyans where escorted from the Libyan embassy to Heathrow airport and from there back to Libya, with no prosecution. The days after the embassy staff was escorted home, the “English Police found seven handguns and 4,367 rounds of ammunition in the embassy, but not the gun used to shoot Fletcher. It is thought it was taken out in a diplomatic bag” (Rayner, 2011). The government of Libya did not want take responsibility of the incident and did not want to cooperate with the English government but also kept four English citizens from leaving Libya, even though the English government wanted to continue the investigation, this meaning that the political relation between the two countries had broken off, this was also in 1984.

In early 1985 the four aforementioned English citizens where released and send back to England, meaning that the contact between the two countries were reopened, however the official political relations was still non existent. In the following years Yvonne Fletchers family collected more that 500.000 signatures for a potation against diplomatic immunity in an attempt to reopen the investigation, and question the first attempt to prosecute the shooters. Even though the signatures caught the medias attention, no drastic actions regarding the incidents happened, and in 1988 the Lockerbie incident\(^3\) happened, and that did obviously not help the national relations between the two countries (Christopher Hope, 2009).

\(^2\) The capital of Libya
\(^3\) Libyan terrorists bomb explosion, brings down a Pan Am flight from London to New York, and kills a total of 270 civilians.
In 1994 Yvonne Fletchers mother, Queenie Fletcher meets with Muammar Gaddafi in Tripoli in an attempt to improve the relations between the two countries. This meeting was covered by an English broadcasting team to draw attention to the matter and in 1999, finally Libya “admits general responsibility” (Rayner, 2011), and paid 250.000£ in compensation to Queenie Fletcher and the relation between England and Libya was officially restored. Although the relationship and communication between the two countries did in fact improve in the following years, no actual breakthrough in the investigation happened. In 2014, three years after Muammar Gaddafi was executed, the English government reopened the investigation and in November 2015 the first arrest regarding the incident happened, when the alleged shooter and former Libyan embassy staff member from 1984 was arrested by English officials in his home in England. The investigation continues and no conviction or trial is finished nor begun (the Guardian, 2015).

5.2.2 Media’s attention and democratic countries makes a difference

When the English government led the Libyan embassy staff leave the country it wasn’t without critique from both the population of England and the English media who together played a big part in forcing the government to take action and draw attention to the matter.

Just after and the years after the incident, the English prime minister at the time, Margaret Thatcher quick to announce that the English authorities would like to investigate the case even though Libya claimed diplomatic immunity and the safety of English citizens in Libya had to be secured. However English press later revealed a conversation where Thatcher admits that they had to allow "a murderer to go free" (Bowcott, 2014).

To leak confidential information like that is both very critical against the government but is also very informative for the population of England and of course for the relatives of Yvonne Fletcher. This confidential report was first released in 2014, by the English newspaper The Guardian and indirectly tried to force the government to reopen the case and as we described earlier that came to be the case as well. Interesting enough this was not the only attempt from the media’s side, to draw attention to the incident, as we also described earlier Yvonne Fletchers mother Queenie Fletcher visited Gaddafi in Tripoli with a camera crew from the English broadcasting company Channel 4. This was a part of a documentary that Channel 4 made about the relatives of Yvonne Fletcher and how they felt betrayed by the English government – and as also pre mentioned, this led to the compensational payment and a renewed
national relation the two countries between in the year of 1999 (Rayner, 2011). Therefore, it feels safe to say that the media’s attention and critique is very useful as the media’s voice is more often than not the voice of the people, and it certainly in this case made both the civil population and politicians aware of the betrayal of justice (Bowcott, 2014).

We have seen how the media can play an important part in both national and international relations and investigations, but how would the situation look like if the sending state would have been equally liberal democratic as the English and not controlled with dictatorship as was the case?

If we look at the factors we have described in our analysis it seemed as the dictatorship in Libya felt the need to strike down on critics, just as the embassy did on the demonstrators in London. If the sending state of the diplomats would have been equally democratic as England, this case would not have developed into such a drastic matter. However, if it had happened despite of a mutual democratic understanding the investigation and prosecution would have looked different.

The typical liberal democracy is build upon equal rights and the fact that the population of the country chooses their government through an election, so under such circumstances it is hard to argue the decisions of the government, since they are elected to speak and act on behalf of at least the majority of the population. So if both nations where democratic, the two opposing states would also agree on simple facts as justice, freedom, fair trial and human rights etc. (Taylor, 2014). So the conclusion would be, that none of the states would be interested in not cooperating, so that the shooter/shooters would be prosecuted, but still with the reservation that the prosecution would happen in the home country of the diplomatic immunity holder since the legislation on diplomatic immunity still counts. But it is hard to argue that the investigation and result of an incident like this would be different if both of the involved states would have been equally democratic.

5.3 Case of diplomatic abuse based on cultural hierarchy relations:
In the following section we are attaching the incident into more objective frame, thus providing us more understanding on an international level. First we are comparing the incidents legal procedures performed by individuals and institutions to other nations way of functioning in similar occasions. We are also appraising the effects of social systems within societies
concerning equality inside different states. Secondly, we are looking into how the Indian media was reacting to the incident and what consequences it produced. Thirdly, we are reflecting the affect of similar incidents in the the past, and presenting their influence on the of international law of diplomacy.

The Khobragade case illustrates well how certain incidents are handled by states and how culture and social patterns characteristic for certain nations affects on the end result. This raises question how the incident would have been handled in different cultures. As demonstrated in the analysis the culture of servitude in India hasn’t evolved by the time and has remained the same since the colonial period, which means that the elite still holds most of the power. This is due to the will to maintain the hierarchy based society by the elite, so that they can continue to enjoy their privileges and inviolability. The poor part of the population is not even necessarily aware of their rights concerning the labour legislation or they don’t know whose side turn in seek of help. This tradition of oppression has occurred throughout the times in India and is therefore partly accepted. (Mannathukkaren 2014)

The hierarchy-based society is not only phenomenon amongst the postcolonial countries but it also exists among countries considered as fully developed. The social dominance theory (Sidanius et al. 1994) acknowledges the inequalities between races in front of the judicial system in the United States. This occurs as African Americans are constantly punished with harsher sentences than Caucasians, which according to SDT is due to African Americans higher maintenance of negative social value which can be coherently conducted to racist behaviour practised against sub-ordinated group. Also according to Mannathukkaren (2014) in the United States this hierarchy can be explained by economical wealth, which can be seen as the increasingly expanding gap between the poor and the rich.

5.3.1 Inequality in India:
The Nordic countries are often considered as the home of the welfare state state. The basic values of these states are the equalities between people in all sectors of life, regardless of their social status. The backbone of these nations is the extensive public sector and its social security systems while progressive taxation is there to reach the gap between the rich and poor. The labour unions status stands strong, having an impact on the amount of minimum wage as well as providing consultation in legal matters for working classes. Therefore, in welfare states the
working classes position in front of law is secured from discrimination. Also in India the culture of servitude is gradually crumbling particularly in the state of Kerala, known for its relatively advanced social system, and being the first state with Tamil Nadu (Mannathukkaren 2014) to legislate minimum wage in order to protect their working classes.

The reaction of Indian media made the Khobragade incident evolve vigorously. At first by completely bypassing the alleged accusations concerning the labour code violations and visa frauds, the media concentrated on the issue of Indian diplomatic agent being imprisoned and hence, the media managed to effect on the public opinion for Khobragades favour by gormandizing with statements including the allegations of being strip searched while taken into custody. (Islam 2014) Soon after, the strife between the two countries had evoked, making the Indian media to produce statements pointing out how the incident was a confrontation between a “third world nation” and the “imperialist Satan”. (Mannathukkaren 2014) At this point, it wasn’t stated by the media that Khobragade was given many privileges beyond usual arrestment, (Islam 2014) including several phone calls in order to take care of personal affairs.4

The incident urged forward the discussion about how the labour codes should be executed in diplomatic context. The legislation may appear unclear since usually inside the sending states premises is inevitably applied the sending states legislation. Exception in the legislation is due to the various cases of abuse of domestic workers in embassies and consulates. (Tai, 2007) Therefore, the current interpretation is not considering the hiring of a domestic worker as an official function necessary to execute the diplomatic mission. This makes it possible for the domestic workers to operate under the labour code of the receiving state and furthermore, if their contracts have been violated, they are able to file charges against their employers. Unfortunately, this is still often overlooked by the receiving state in fear of reciprocity towards their own diplomats and the will to not cause international conflicts.

**Conclusion**

In the following section we will make a conclusion answering our research questions and making it clear what we have found out in our project. This will be done on the basis of the

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4 At this point, Khobragade was still treated as consular officer and therefore, it was possible for her to be taken into custody. It wasn’t until thirteen months later she was accredited with the full diplomatic G-1 visa from the United Nations, giving her full diplomatic immunity and thus making it possible for her to return to India. (Islam 2014)
way we choose to structure the project, in three different cases and the following discussions. First of all, we will conclude on whether we see different types of abuse of the diplomatic immunity and on that basis we will give an answer on the understanding of these different types.

Furthermore, will also give a clear answer on why our specific structure in the three different cases was beneficial in trying to answer the research questions.

We will have three different partial conclusions relating to each analysis and discussion of the cases. These conclusions will be summed up in an overall conclusion of the whole project.

In the case of diplomatic abuse for private gain, we can conclude that the case with Agim Haxhiu is categorized as being beneficial for himself personally and that the reason of the crime was to gain economical profit. We conclude that the case is different from the other cases in relation to the type of diplomatic abuse and thus has to be analyzed in a specific way. Through the analysis we found out that through the theoretical perspective of RCT, Haxhiu committed the crime as a rational choice weighing both benefits and risks involved in the crime. Also we illustrate from the bounded rationality perspective in our analysis that the consciousness of having diplomatic immunity did influence his choice of committing the crime. Furthermore, we conclude from this case that it is likely that the result with the prosecution in Turkey might have been different, because it is the sending states choice whether or not to waive the immunity. Also it is understood that media plays a big role when pushing pressure on nations to act righteously.

In the case of Yvonne Fletcher, we can conclude that a political agenda was behind the incident where she was killed. Although this reason seems unlikely due to the irrational behavior, however the scare tactic used by the embassy staff was unarguable an act of an embassy trying to influence the protestors. So yes, the irrational behavior happened do to an unknown political agenda and we have tried to explain the behavior with two well known theories, therefore we can conclude that the incident happened due to a conflict with the social contract, and there could be two reasons behind the conflict as we already explained earlier in the project. Furthermore, we can conclude that in the Yvonne Fletcher case, the hosting government only stopped the investigation when the relations between the two countries was non-existent and actually reopened the case as soon as it was possible. The medias awareness to this incident forced the government to be consistent in order to prosecute the shooters of Yvonne Fletcher.
In the case of the cultural hierarchy relations, with Devyani Khobragadewa we can conclude that India’s elites discriminating and despising attitudes towards service staff can be conducted all the way from India’s feudal past which throughout the times has built up by the caste hierarchy and the colonial-era, and eventually formulating into culture of servitude. The patriarchal heritage can still be seen in the behavior of India’s modern public authority.

As illustrated through social dominance theory and its key concepts, it is possible to conclude that Devyani Khobragade managed to get through the incident without judicial consequences due to her status and influential contacts. The analysis points out that the Indian government and the legal system together constitutes a hegemonic dominant group sharing mutual social values, therefore willing to ignore equality in front of jurisdiction and advocate the person maintaining higher level of social dominance orientation. The motivations behind these actions were illustrated with the concepts of differential reward and institutional socialization. These concepts demonstrate how values, often internalized from early age and then brought into institutional context may have an affect on people sense of justice.

Instead of the incident turning into working class struggle against domination and thus improving the working conditions of servitude, the winners of the incident was patriarchal supporters of culture of servitude and the individual official supported by nationalist government more eager to defend and provide diplomatic privileges for its diplomatic agent instead of shielding the rights of abused servant.

Now we have shown that the three cases can give us three different conclusions individually, with that in mind we will now draw a more general conclusion based on the three examined cases and their individual conclusions.

First of all, we can conclude that we definitely see a pattern in different types of diplomatic immunity and that they should be seen as incoherent when trying to study them and look at the different reasons. This is necessary because the crimes have different motives and thus trying to explain them, it is not possible to have same explanation based on the same theory. We categorized these types into political, personal beneficial and cultural, based on the reasons that that was the fundament for the explanation of the criminal act. In the decision of structuring the paper in three different cases, we had to look at the three different reasons as to what reasons actually was behind the crime, and not only the type.

We can conclude that the different reasons behind the different types of abuse either happens because of the interests involved in the criminal act, or as an underlying reason. The reasons
with interests involved are the cases of Yvonne Fletcher and Agim Haxhiu. These cases are understood as having beneficial elements involved that is either political or economical. On the basis of those two cases we can conclude that the interests involved are the main reason to why the crime happened. Although we were able to explain that the reason as to why the crime happened was because of interests, we don’t conclude that it is the same interests underlying the reasons. The political interests underlying the political crime are very different from the personal economic interests, underlying the case with drug trafficking. As of the case with Khobragade, we can conclude that the reasons are the underlying cultural elements from India and because of a personal interest for her. The only common ground between the three cases are the interests in committing the crime, but the reasons are to be understood by three different theories.

In the three cases the governments are acting fairly similar, it is common that the hosting state of the diplomats are more likely to try to prosecute the stationed diplomats, while the sending state is more likely to protect their representative, that being their diplomat. We can therefore conclude that the governments are more worried about protecting their own reputation and not worrying about an actual fair prosecution, otherwise the cases would have ended differently. We can also conclude that when the hosting and sending state has different agendas when it comes to investigating and prosecuting the immunity abusers, there is a change that the outcome can be severe to the relation between the two countries. This was especially noticeable in the Yvonne Fletcher case, but of course that depends on how serious the abuse is.
Bibliography:


Appendices:

Project summary
This project report is a case study that includes a study of three different cases regarding the issue of diplomatic immunity abuse, the three case studies are done separately but with the same goal. In this project report we seek to describe different kinds of diplomatic immunity abuse, analyze the reasons behind the diplomatic immunity abuses, examine the governmental actions, after the diplomatic immunity abuses and discuss the media attentions influence on both governmental investigation and prosecution.

The three cases of diplomatic immunity abuse, that we are examining in this project report have different reasons behind them: the abuse with a political agenda, personal beneficial agenda and the reason of cultural hierarchy relations.

Study portfolio for 1st semester
This is your study portfolio for your 1st semester project. In the following you must as a group reflect on the process you have been through during the project work both regarding the academic content and the work process, you have gone through as a group. This you must do by relating to four overall themes regarding your work process.

- The academic content in your project work
- The group as an organisational unit
- The group as a production unit
- The group as working environment

For internal evaluation you must as a group have related to the first questions below each point.

The questions below 'learning outcome', you should not answer and reflect upon until the final assignment of the project.

For both internal evaluation and final assignment of the project this study portfolio must be a part of the material that is handed in. For the final assignment the study portfolio must be submitted as appendix to the project.

The study portfolio forms a part of the basis for the project examination in the form of reflections and evaluations of the group on the work process, you have gone through.

The academic content in the project work
In the following questions you must as a group reflect on, what you have been doing to meet the academic requirements for the project.

- **How is the theme of your house reflected in your project?**
  
  *Communication and media is addressed in our project in our analysis, we are looking into the media's attention to diplomatic immunity and how it might pressure governmental institutions. We will also be focusing on how the median can address certain governmental issues without having to worry about the outcome, compared to a government, who usually needs to consider their international relations before acting or commenting on those kind of issues.*

- **What have you done to meet the study regulation's requirements to the project?** Hint: You can find the study regulation here: [http://www.ruc.dk/?eID=push&docID=21390](http://www.ruc.dk/?eID=push&docID=21390).
  
  *We have made sure that our project fulfils the requirements and expectations, both in the case of project design and obviously in the content. In order to reach the requirements, we have made guidelines for the group members with a contract: it states expectations, goals, deadlines etc. all made in order for us to meet the study regulation's requirements.*

### Learning outcome

- **Which experiences will you bring along to meet the academic requirements in your next semester's project?**
  
  *The structuring of the project work seems to be important in order to both meet the requirements but also personal goals. To separate project work relations and social relations as well, and furthermore we have experienced that dividing the workload and trusting each other to do good, is very important. More experience with group work, is of course yet to come.*

- **What will you academically do differently in your next semester's project?**
  
  *Separating project work and basic course work, you might end up pressuring yourself a bit too much if you concentrate on both general lecture reading and a lot of project work readings at the same time. I addition to that, it is important to remember that you do have time to do your project after the lectures are done for the semester.*

### The group as an organisational unit

In the following questions you must as a group reflect on, how you as a group have structured and organised your project work.

- **How have your organised your project work?**
  
  *We have as a group been working very separately. The way we have done this in a collective way is that we have held a lot of meetings where we have arranged and distributed the work to each other. This has been very rewarding, because we know what each other are working on and we constantly revise each others work.*

- **How have you distributed the responsibility between you?**
As I mentioned above, we have distributed different things to do in the project. Also we have distributed which roles everyone of us have for the project (Editor, writer, reader etc.)

- **How have you evaluated your work process as your project has proceeded?**
  We actually haven’t had any major problems with our working process, so thus we have not evaluated how we have worked as a group. Although we probably will have to talk about the commitment and prioritization of the project when the writing intensifies.

**Learning outcome**

- **Which experiences will you bring along to succeed as an organizational unit in your next semester’s project?**
  How you should be able to give criticism directly to other people in the group, without group members taking it personally. This is probably the most important thing for us in order to get quickly through periods where you’re not satisfied with each other.

- **What will you as an organizational unit do differently for your next semester's project?**
  We would like to be more structured and spreading the roles even more, furthermore we would grant each other more knowledge on the different subjects. By this we mean that we would like to discuss our research more, thus giving more diverse points.

**The group as a production unit**

In the following questions you must reflect on, how you as a group have worked as a production unit.

- **How have you had the production of your project to proceed?**
  We divided our project up in several bits, this gave us a better overview of how to tackle it. Whenever we finished one part we had a meeting with our supervisor so that he was able to tell us if it was the right direction we were going.

- **What must be in place in order for you as group to produce at your best?**
  The things that was needed for the best production from with out group was as mentioned above how we divided the project, it was manageable. Furthermore, the fact that we all helped on the research gave each of us individually more playground.

- **How have you made use of each other's resources best possible?**
As mentioned above we helped each other on the larger part of the research, we gave each other different points and tried our best to implement as much research regarding the project.

- **Which conditions have been important in order for you as a group to work towards submission of the 'product' as a common goal?**
  Simply just that we are respecting each other and providing a quiet environment every time we’re working together. Also we have all made it very clear towards each other what we would like to see in our final project. We’re all agreeing on this.

**Learning outcome**

- **Which experiences will you bring along to succeed as a production unit in your next semester's project?**
  The obvious is that we were able to help each other through the project as a group and finished the project.

- **What will you as a production unit do differently in your next semester's project?**
  As a group we now know how the process of writing a project is, this knowledge is going to aid us very much in the future semesters.

**The group as working environment**

In the following questions you must reflect on, how you have perceived the working environment in your group.

- **What has characterised the working environment in your group?**
  A respectful behaviour towards on another, and that we are able to give critic without anyone taking it personal.

- **What have you been doing in order to create room for all group members in the way you work?**
  Respect each others opinions. Trying to implement each others ideas the best possible way.

- **How can you as a group best possible promote the working environment for all group members?**
  Making it clear in the beginning that this is how we should work, and it’s important to remember that nothing is meant personal.

- **How have you as group evaluated the working environment in your group?**
  We haven’t.
Learning outcome

- **Which experiences will you bring along to create the best possible working environment in your next semester's project?**
  The respect, we found it the most important thing. We had to respect people going to work and other things that may have occurred. Furthermore, we need to bring happiness to each other so a bit of fun while writing is important as well.

- **What will you do differently regarding the working environment in your next group semester's project?**
  I don’t think we would change that much, we had a good time writing it. We might want to be sitting with each other more when we are writing.