

Navigating Diplomatic Immunities in Family Law: Finding an Appropriate Forum for Families Covered by Diplomatic Immunity

by

Frances Goldsmith and Inès Amar¹

When individuals are sent abroad in a diplomatic capacity, they often do not realize the consequences this may have on their rights in the event of divorce or a dispute involving children. The diplomatic privilege of immunity, with which comes a certain stature, creates a void in terms of jurisdiction and solutions available to diplomatic families abroad in a time of crisis (breakdown of the marriage, custody fights, domestic violence, etc.). Having immunity in the jurisdiction where the family resides can deprive, under certain conditions examined below, a diplomatic agent from what can be considered the most appropriate forum to make custody determinations and/or special measures for the children and both spouses.²

Immunity can also deprive spouses of the sole jurisdiction that may rule on the use of the matrimonial home as well as on other practical measures related to it.³ Consequently, finding an available and appropriate forum for the separation becomes problematic with lasting consequences for the family. Thus, while immunity offers protection to its subject, immunity rules can sometimes become an obstacle to the enforcement of a child's rights, to the defense of a victim of domestic violence, and to alternatives for a woman who has been repudiated.

This article will detail below in which cases will immunity rules will predominate over certain fundamental rights and

¹ Me Frances Goldsmith, Paris, France – Me Inès Amar, Paris, France, with special thanks to Melissa Kucinski, who provided valuable assistance on the U.S. perspective of the article.

² See *infra* text at notes 22-51.

³ See *infra* text at notes 34-38.

analyze where immunity rules stand in the hierarchy of rights in the realm of family law.

This article examines the contours of diplomatic immunity and the consequences it may have on family related matters. When advising clients who may benefit from diplomatic immunity, it is necessary to first determine the issue addressed in Part I: who is covered by such immunity. The second central issue is analyzed in Part II: whether such immunity includes civil, jurisdictional and/or immunity to enforcement of a judgment.

I. Who Can Claim Immunity

The three main categories of people who can claim immunity are: (a) diplomats, (b) consular agents, and (c) members of international organizations. The main difference of treatment between the three categories is that, while both diplomats and consular agents enjoy immunity within the limit of their mission and functions, only diplomats benefit from civil immunity. Members of international organizations are in some cases granted diplomatic immunity.

A. Diplomats

The Vienna Convention on Diplomatic Relations of April 18, 1961 applies as regards diplomatic agents.⁴ It has been ratified by 193 countries and is considered as one of the most if not the most successful international convention, and it relies on mutual recognition of sovereign equality between States. It is therefore necessary and a cornerstone for reciprocal trust and interactions between sovereign States.⁵

Diplomatic agents enjoy inviolability of their person as per Article 29 of the Convention, and of their private residence, their papers, correspondence and, except as provided in paragraph 3 of article 31, their property under Article 30. It is usually inferred that this also extends to the furniture located within the private

⁴ Vienna Convention on Diplomatic Relations, Apr. 18, 1961, 23 U.S.T. 3227, 500 U.N.T.S. 95, entered into force with respect to the United States on Dec. 13, 1972.

⁵ Ragnhild Holmen Bjornsen, Julia Kohler-Olsen, Halvor Fauske, & Jan Fadnes, *Invisible Children, Untouchable Cases? States' Legal Obligation to Protect Diplomat Children*?, 34 CHILD & FAM. L.Q. 1 (2023), <https://oda.oslomet.no/oda-xmlui/handle/11250/3051880?locale-attribute=en>.

residence.⁶ Diplomatic agents also benefit from immunity from jurisdiction, under Article 31.1 of the Convention, which states that a diplomatic agent shall enjoy immunity from the criminal jurisdiction of the receiving State, as well as immunity from the civil and administrative jurisdiction except in some limited cases detailed below.

The inviolability and the jurisdictional and enforcement immunity set out by Articles 29 to 36 of the Convention cover “diplomatic agents.” A diplomatic agent is “the head of the mission or a member of the diplomatic staff of the mission.”⁷

Diplomatic immunity extends to members of the diplomat’s family. Article 37.1 provides: “The members of the family of a diplomatic agent forming part of his household shall, if they are not nationals of the receiving State, enjoy the privileges and immunities specified in articles 29 to 36.”⁸ Members of the family of the diplomatic agent therefore enjoy identical immunity to that of the diplomatic agent. Members of the family include the spouse and the children of the diplomat.⁹ The reasoning behind the members of the family also enjoying immunity stems from the fear that persecution against the family members could be used as a way of coercing a diplomatic agent indirectly.¹⁰

Consequently, the arrival, the departure, and the fact that a person becomes or ceases to be a member of the family of the diplomat must be notified to the Ministry for Foreign Affairs of the receiving state (or any other ministry as may be agreed) according to Article 10 of the Convention.¹¹

Diplomatic immunity extends to some members of staff who enjoy different degrees of immunity.

⁶ J.-B. Donnier, Fasc. 496: Immunités d’exécution – Droit international – JurisClasseur Voies d’exécution, July 12, 2016, at 67.

⁷ Vienna Convention on Diplomatic Relations, *supra* note 4, art. 1.

⁸ *Id.* art. 37(1).

⁹ Under French law, for the spouse see Cour d’appel [CA] Paris, Aug. 6, 1908, JDI 1909, at 150, for the children, see T. civ. Chinon, July 27, 1931, RDIP 1931, at 668, cited in Donnier, *supra* note 6, at 60.

¹⁰ See *Compte Rendu Analytique dela 403e Séance, Relations et Immunités Diplomatiques*, 1 EXTRAIT DE L’ANNUAIRE DE LA COMMISSION DU DROIT INTERNATIONAL, A/CN.4/SR.403 (1957); in addition there is confirmation of this principle in the ICJ *Arrest Warrent* decision (*Democratic Republic of Congo v Belgium*, Apr. 11, 2002).

¹¹ Vienna Convention on Diplomatic Relations, *supra* note 4, art. 1.

Members of the administrative and technical staff (“members of the staff of the mission employed in the administrative and technical service of the mission” under Article 1 of the Convention) enjoy immunity from criminal jurisdiction, but immunity from civil and administrative jurisdiction only as to acts performed within the course of their duties. The immunity extends to members of their family forming part of their household.

Members of the service staff (“the members of the staff of the mission in the domestic service of the mission” under Article 1) enjoy immunity only in respect to acts performed within the course of their duties.

Private servants (“a person who is in the domestic service of a member of the mission and who is not an employee of the sending State” under Article 1) enjoy “privileges and immunity only to the extent admitted by the receiving State,” and in practice receiving States will not admit many such exceptions. However, Article 37.4 specifies that “the receiving state must exercise its jurisdiction over those persons in such a manner as not to interfere unduly with the performance of the functions of the mission.”

The scope of the immunity – whether it was performed within or outside of the agent’s functions is not defined in the Convention and has to be determined by case law. For example, French courts have determined that personal acts such as refusing to pay rent for their personal housing¹² or acts performed after a mission had been over for a year¹³ are not performed within the course of the diplomat’s duties, while sharing the official position of the Turkish government that the Armenian genocide was performed within the functions of the consular agent, which gives rise to immunity.¹⁴

The length of the immunity – when the immunity begins and ends – depends on who is claiming it. For the diplomat, under Article 39.1 of the Convention, it begins from the moment the diplomat enjoying the immunity either enters the territory to take up the post, or, if already in the territory, when the appointment is notified to the Ministry for Foreign Affairs (or such other ministry as may be agreed).

¹² Court of Appeals of Paris, Jan. 30, 1963, *Hallberg c/ Pombo Argaze*: *Gaz. Pal.* 1963, 1, at 325, cited in fasc. 409-50 sur les immunités internationales.

¹³ Cour de Cassation, 3^e ch. civ., Mar. 23, 2011, 09-68.842.

¹⁴ Court of Appeals of Paris, 11^e ch. A, Nov. 8, 2006, 05/05619.

According to Article 39.2, the immunity ends when the diplomatic agent leaves the country, or on expiration of a reasonable period in which to do so, but subsists until that time, even in the case of armed conflict. Immunity relating to acts performed in the exercise of the functions will remain in effect.

Also, once a person becomes *persona non grata* as per Article 9 and without need for justification, they also lose the benefit of immunity in the receiving State, as they will either be recalled to the sending State or their functions (and immunity attached) will be terminated. The immunity may only cover acts and proceedings brought during the time for which the diplomat enjoyed immunity.

For the members of the diplomat's family, if the diplomat dies, family members will continue to enjoy the immunities to which they are entitled until the expiration of a reasonable period in which to leave the country.¹⁵

B. Consular Agents

The Vienna Convention on Consular Relations of April 24, 1963 applies as regards consular agents. It is almost as widely ratified as the Vienna Convention on Diplomatic Relations (with ten countries short).

While consular agents enjoy personal inviolability in criminal matters, their jurisdictional immunity is limited to acts performed in the exercise of their functions.¹⁶ Their immunity therefore does not cover their own family matters and does not extend to members of their family. That is the case even if consular agents are, on an exceptional basis, exercising diplomatic functions.¹⁷

Therefore, the issues relating to consular agents will not be examined in this article¹⁸ as they will normally not benefit from civil jurisdiction for family matters.

¹⁵ Vienna Convention on Diplomatic Relations, *supra* note 4, art. 39.3.

¹⁶ *Id.* art. 43.

¹⁷ *Id.* art. 17.1.

¹⁸ It is important to note however that consular agents (as well as diplomatic agents) benefit from "Personal inviolability" according to Article 41 of the Convention, which prevents them from being liable to arrest or detention pending trial. This has important implications for domestic violence cases. Consular agents do benefit from jurisdictional immunity for acts falling within their functions as a consular agent (under Article 43 of the Convention) – this excludes contracts entered into for personal purposes, such as leases. Both

C. *Members of International Organizations*

The immunity awarded to members of International Organizations is set out either by the Charter of the Organization or by the Headquarters Agreement between the organization and the State where the headquarters of the organization is held. Therefore, there is no general rule as to the immunity of the members of an international organization, since it must be assessed on a case-by-case basis, depending on the need of the organization and its member, and on the relationship between the State and the organization.

Under French law, since immunity of international organizations only finds its source in a charter or an agreement, it is only admitted by the French courts if France is linked to the organization either by an Accession Treaty or a Headquarters Agreement. The Court of Appeals of Paris reached this result in a 1993 case, denying immunity for the Economic Community of West African States due to the absence of a customary rule and of France not being a member of the organization.¹⁹

For example, the French Supreme Court, criminal section, held that the member of the international organization could not raise the immunity defense in a 2015 case where Protocol number 2 relating to the Agreement of Cotonou provided for immunity “to their beneficiaries only in the interest of their official functions and that the pursuit of personal interests could not be absorbed,” confirming the Court of Appeals judgment.²⁰

In some cases, these instruments will provide an immunity to some members of the international organization identical to that of a diplomatic agent, and it will also extend to the members of the family of the employee. For instance, in the case opposing His Highness Mohammed Bin Rashid Al Maktoum and Her

consular officers and consular employees enjoy the immunity set out by Article 43. A consular officer is defined by Article 1 of the Convention as “any person including the head of a consular post, entrusted in that capacity with the exercise of consular functions,” and a consular employee is “any person employed in the administrative or technical service of a consular post.” Since the immunity only covers acts performed in the exercise of consular functions, members of the family (spouse and children) are naturally excluded from the benefit of any immunity.

¹⁹ Cour d’appel [CA] Paris, Jan. 13, 1993, JurisData 1993-600294, JDI 1993, at 353.

²⁰ Cour de cassation [Cass.] Crim., Dec. 9, 2015, 15-82.300, JurisData 2015-027537.

Royal Highness Haya Bint Al Hussein, the Royal Court of Justice denied immunity for a Head of Government as it concerned civil proceedings not related to his official functions, while citing cases where the immunity of enforcement of civil and criminal proceedings were granted to Heads of Government.²¹ It is therefore of the utmost importance to decipher what is meant by a person holding immunity and to consult the charter or bilateral agreements for specific organizations.

II. What Types of Immunity May Be Invoked (Civil, Jurisdictional, Enforcement)

Civil immunity covers both jurisdictional immunity and enforcement immunity. Jurisdictional immunity allows a person not to become subject to the jurisdictions of the receiving State, while enforcement immunity allows a person not to be subject to measures of execution of the receiving State.

A. Jurisdictional Immunity

As mentioned above, Article 31.1 of the Vienna Convention on Diplomatic Relations of 1961 provides jurisdictional immunity before civil courts.

Under French law, this will prevent a party from filing a suit against a person enjoying jurisdictional immunity or prevent a party who benefits from jurisdictional immunity from petitioning to the courts of the hosting State without applying for the proper waivers beforehand. At a procedural hearing, the other party will have to raise the immunity argument as a “*fin de non-recevoir*,”²² an argument that aims to have the petition be declared inadmissible, rather than an argument on jurisdiction as is often seen in common law jurisdictions. If the petition is found inadmissible, it will end the proceedings before the judge has a chance to rule on the merits of the case. From its origin, the aim of jurisdictional immunity has been to prevent the actions of a diplomat from being appreciated by a court of the hosting State or the courts being utilized in an

²¹ [2021] EWCA Civ 890.

²² As opposed to an “exception d’incompétence,” *cf.* Cour de cassation [Cass.] Civ. 1, no. 238, Apr. 15, 1986, 84-13.422.

improper fashion by the hosting state to apply pressure on the emissaries of another State.

In the United States, family law is a matter of state law²³ and family law matters are considered civil actions.²⁴ These lawsuits are therefore addressed in local courts with personal and subject matter jurisdiction over the parties and issues according to the law of a specific U.S. state. A party who enjoys immunity from civil actions would, under the Vienna Convention on Diplomatic Relations of 1961, be immune from being sued in “civil and administrative jurisdiction,”²⁵ including in a family law matter in U.S. state courts. These matters are wide-ranging, and include divorce, support, division of financial assets, custody of children, Hague Abduction Convention suits, domestic violence restraining orders, and even child abuse and neglect cases.²⁶ There are only a few exclusions to this immunity.

If a civil family law matter is filed in U.S. state courts, it is incumbent upon the party who enjoys the immunity to seek dismissal of the suit for lack of jurisdiction, and, in doing so, this party bears the burden of providing evidence to prove their status as a diplomatic agent to the court.²⁷ The party could prove their status through a variety of documents, including a certificate from the receiving State (in the United States, through the U.S. Department of State), a diplomatic identification card (typically issued by the receiving State), or even official letterhead or correspondence that lists the party as a diplomatic agent.²⁸ Even if the diplomatic agent party delays in seeking dismissal of the suit, the court will be slow to find that the party has waived their immunity argument.²⁹ Assuming that the court finds that the diplomatic

²³ *Barber v. Barber ex rel. Cronkhite*, 62 U.S. 582, 584 (1858).

²⁴ *Fernandez v. Fernandez*, 545 A.2d 1036, 1040 (Conn. 1988).

²⁵ Vienna Convention on Diplomatic Relations, *supra* note 4, art. 31.

²⁶ Most domestic violence restraining orders are civil actions in the United States, although there may be companion criminal charges that could be sought based on the behaviors that warrant a restraining order. Indeed, they are sometimes known as “civil protection orders.” See ABA COMM’N ON DOMESTIC & SEXUAL VIOLENCE, DOMESTIC VIOLENCE CIVIL PROTECTION ORDERS (2020), https://www.americanbar.org/content/dam/aba/administrative/domestic_violence1/Resources/charts/cpo2020.pdf [<https://perma.cc/6QJ9-D2KK>].

²⁷ *F.G.O. v. B.G.*, 69 Misc. 3d 262, 265 (N.Y. Cnty. Ct. 2020).

²⁸ *Id.*; *In re Baiz*, 135 U.S. 403 (1890); *Carrera v. Carrera*, 174 F.2d 496 (D.C. Cir. 1949).

²⁹ *Baiz*, 135 U.S. 403.

agent has conclusively established, through evidence, that they are immune from civil process, then there are no exceptions, and U.S. state courts will dismiss the family law proceedings.³⁰ While this may seem like a harsh penalty, particularly in family law cases that involve requests that may be unavailable in the litigants' sending State, such as a restraining order for violent acts against one's spouse or abuse of one's child, U.S. state courts hearing family law matters will not examine the legal remedies available in the other country before dismissing the case.³¹ Of course, in these complex family law cases, this result may force the aggrieved party to seek legal recourse in the courts of the sending State, which may or may not have jurisdiction over certain actions outside of its borders.

The issue of immunity further presents a challenge when a court in the sending State issues an order, but when that order cannot then be enforced in the receiving State because of the diplomatic agent's immunity.

In addition to the above complications, immunity extends to the service of process in a lawsuit because the diplomatic agent's person and private residence is inviolable to such an action against them.³²

B. *Jurisdictional Immunity as Applied to Divorce Cases*

In 1957, the commission on international law of the United Nations issued a summary analysis of the 403rd session on diplomatic relations and immunities. In this summary, the position on the right to divorce and a diplomat's status is clearly stated: "The diplomatic agent conserves his immunity even for a divorce case, which in appearance has no link with the problem at hand, as a divorce action initiated in the local courts is incompatible with his dignity as a diplomat."³³ While it may be debatable whether undergoing divorce proceedings is incompatible with (or a violation of) someone's dignity, French courts have upheld the principle that jurisdictional immunity covers such inherently personal matters.

³⁰ 22 U.S.C. § 254d ("[a]ny action or proceeding brought against an individual who is entitled to immunity . . . under any . . . laws extending diplomatic privileges and immunities, shall be dismissed.").

³¹ *Id.*; In Matter of Terrence K. (Lydia K.), 135 A.D.2d 857 (N.Y. App. Div. 1987).

³² Vienna Convention on Diplomatic Relations, *supra* note 4, arts. 29, 31(1).

³³ *Compte Rendu Analytique dela 403e Séance, Relations et Immunités Diplomatiques*, *supra* note 10, § 74.

The Paris Court of Appeals confirmed in 1978 that diplomatic agents can invoke jurisdictional immunity in divorce cases.³⁴ More precisely, the court held that the divorce proceedings and thus a ruling on personal status could not take place against the diplomatic agent, given that the state of Cameroon had not waived the agent's immunity.

The same court confirmed this position more recently in a decision in 2004³⁵ in which a divorce petition issued against an ambassador of UNESCO was dismissed as inadmissible. The petitioner claimed that her husband could not invoke the benefit of jurisdictional immunity, granted by his ambassador status, for acts that were in the scope of his private interest, such as defending himself in divorce proceedings and which concerned the personal status of the spouses. The Court of Appeal did not follow this reasoning and confirmed that the husband's diplomatic status rendered any personal claims against him inadmissible. The impossibility to access the French courts for divorce was upheld even though the spouses had lived in Paris for eighteen years at the time of the decision.

What is also interesting to note in the 2004 Paris Court of Appeals case is that the husband had repudiated the wife in the Lebanese Shari'a courts two or three years prior to her filing for divorce in France. By upholding the husband's immunity, the wife was barred from seeking remedy to a form of divorce that is continuously considered by the French courts as a violation of fundamental human rights.³⁶ Furthermore, in France, jurisdictional immunity in divorce proceedings also covers all monetary claims, including those covered by public policy such as maintenance obligations. Consequently, the French Court of Appeal gave precedence to international relations and state sovereignty over what is consistently considered a basic human rights issue – equality of the sexes, as well as the right to maintenance obligations which is guaranteed by French public policy rules.

³⁴ Cour d'appel [CA] Paris, Mar. 17, 1978, JurisData 1978-615256, Rev. crit. DIP 1978, at 714, note P. Bourel, cited in Ioannis Prezas, Fasc. 409-50, IMMUNITÉS INTERNATIONALES, JURISCLASSEUR DROIT INTERNATIONAL (Oct. 1, 2022).

³⁵ Cour d'appel [CA] Paris (1ère chambre, section C), Nov. 9, 2004, Supple c/ Freiha.

³⁶ Cour de cassation [Cass.] 1 ère civ., Feb. 17, 2004, 01-11.549, at 256, 257, 258, 259, 260.

Another example of jurisdictional immunity in divorce proceedings is illustrated by a Montpellier Court of Appeal decision from 2006. This decision made the important distinction between the immunity enjoyed by diplomatic and consular agents and rejected the arguments of jurisdictional immunity invoked by the husband as he was a consular agent and therefore only benefited from jurisdictional immunity for acts accomplished within the scope of his mission.³⁷

Another consideration is how jurisdictional immunity applies to parental authority and habitual residence. A recent decision of the European Court of Justice (ECJ), from August of 2022 provides a welcome answer to the question whether diplomatic immunity, and the fact that missions are temporary, affect the habitual residence of a child.³⁸ In this case, two European Union (EU) nationals, one Spanish and the other Portuguese, were married, and both held diplomatic positions in Togo. They had two children, who were born in Spain, the mother having travelled there to give birth. The mother petitioned the Spanish courts to rule on the parental authority over the children claiming that Spain was their habitual residence, since the station in Togo was temporary.

The Advocate General found in his conclusions that:

Consequently, in the light of all of those elements, it should be considered, on the one hand, that the residence of the spouses in the territory of Togo is, in principle, continuous and stable and, on the other, that their interests concerning professional, private and family matters are focused on that State. Although I am inclined to consider that those elements suggest a priori that the habitual residence is not in Spain and that the centre of the spouses' life is in Togo, it is however for the referring court to verify whether all the factual circumstances specific to the present case actually make it possible to consider that the spouses do not have their place of habitual residence in Spain.³⁹

³⁷ Cour d'appel [CA] Montpellier, Nov. 14, 2006, 1ère chambre, section C, 05/4565. In this case, it is interesting to note that the husband and wife were divorced in Morocco in parallel to the French proceedings in which the wife received a "repudiation indemnity."

³⁸ C-501-20 (ECJ Aug. 1, 2022). This case is extremely important as it also gives a good overview of private international law rules in the European Union concerning family law proceedings, including whether certain restrictions as to jurisdiction in the Brussels II ter regulation concerning jurisdiction in the event of divorce can also be transposed to parental authority matters.

³⁹ *Id.*

The ECJ followed the Advocate General's arguments and determined that diplomatic status does not affect the determination of habitual residence as long as the children and the family have reached some level of stability in the place where they are stationed. The length of the term of residence is therefore taken into account by the ECJ.

The ECJ, however, did not rule on how immunity could affect the Togo court's jurisdiction and the possibility for the spouses to petition the courts of the habitual residence of the children. This is logical because it was up to the Togo court, as the court of the habitual residence of the children, to decide whether immunity precluded the courts from making a custody determination, and the parents had to seek a waiver from the competent authorities. The EU could not dictate policy on the Togo court regarding the admissibility of such claims when the parties have jurisdictional immunity. The court did specify, however, that for the parents to be able to use residual jurisdiction rules or *forum necessitatis* to petition to a European court, they had to demonstrate the impossibility of the Togo courts being able to rule on the case (the mother plead corruption and not immunity).

The above decision is welcomed in that decisions on children and immunity are very rare. An example reported out of England from 1998 demonstrates however that even though the children's habitual residence was in England and the mother typically could not leave England without the English court's authorization, the English judge held that the issue of diplomatic immunity prevented the High Court of England from having jurisdiction and thus set aside the mother's application.⁴⁰ In this case, the mother, a German national, had commenced divorce proceedings against the children's father, a senior American diplomat serving in the United Kingdom. She applied under section 8 of the Children Act 1989 for a residence order, a specific issue and prohibited steps order,⁴¹ as well as an order to leave to remove the children to Germany under section 13. The husband argued that by virtue of the diplomatic immunity that both he and the children enjoyed, the court did not have any jurisdiction to hear the case. The court followed

⁴⁰ *Re P (Children Act: Diplomatic Immunity)* [1998] 1 F.L.R. 624.

⁴¹ See *What Is a Specific Issue Order?*, STOWE FAMILY LAW, <https://www.stowefamilylaw.co.uk/children-law/what-is-a-specific-issue-order/> (last visited Nov. 17, 2023).

the husband's reasoning and the mother was left to petition to a foreign court for leave to remove the children from England.

C. *General Considerations on Jurisdictional Immunity and Child Related Matters*

A thorough study carried out by a team of Norwegian researchers examined the impact of jurisdictional immunity on domestic violence and the limited options offered to families due to jurisdictional immunity.⁴² One of the more notable cases in this study is *Re Terrence K*, a case heard by the New York courts in 1987, where the father was stationed in New York and both parents were accused by social services of abusing the three children of the family. The case was dismissed by the Appellate Division of the Supreme Court of New York because the parents benefited from jurisdictional immunity.⁴³

A recent case cited by the study was tried in the English courts and the central issue the English judge had to determine was whether the child of a diplomat had access to social services.

The court stated that the question gave rise to: “. . . a seemingly irreconcilable clash between two international treaties incorporated into our domestic law by statutes. These are the 1961 Vienna Convention on Diplomatic Relations, enacted by the Diplomatic Privileges Act of 1964, and the 1950 European Convention on Human Right, enacted by the Human Rights Act of 1998.” The Judge decided that by virtue of diplomatic immunity the case could not proceed and had to be stayed until the foreign government had decided whether to waiver [*sic*] the diplomatic immunity enjoyed by the family. If that waiver had been granted, the stay could have been lifted and the proceedings would have been revived.⁴⁴

Consequently, any recourse to social services or child protective measures is also covered by jurisdictional immunity, leaving families no options for protection until the sending State sends the diplomat home and protective measures can be carried out there (which is ultimately what happened in this case).

⁴² Bjornsen et al., *supra* note 5.

⁴³ *Terrence K*, 522 N.Y.S.2d 949; *In the Matter of Terrence K and Others, Children Alleged to Be Abused*, 524 N.Y.S.2d 996 (N.Y. Fam. Ct. 1988).

⁴⁴ *A Local Authority v. AG and Others* [2020] EWFC 18, [2020] Fam 311; *A Local Authority v. AG (No2)* [2020] EWHC 1346.

Because of the lack of access to social services, it may also be hard for a parent to prove domestic violence since in many jurisdictions social services play a role in detecting such violence, analyzing family dynamics, and offering solutions for the protection of the children. This lack of proof may have an effect in the event of a wrongful removal or retention and the possibility for a parent to claim a grave risk exception under Article 13b of the 1980 Hague Convention on Child Abduction.⁴⁵ There may be no record of any domestic violence because such proof sometimes needs to be collected over the years, and if families move every two years, as is common in the diplomatic community, abuse can go undetected. After a wrongful removal, the possibility of a court returning the child upon the condition of ameliorative measures in the diplomat's hosting State seems difficult to evaluate since, again, such services are not available due to immunity.

In the United States, the proper jurisdiction to resolve a particular family law issue, from a U.S. perspective, is not tied to a person's nationality. As a consequence, a custody lawsuit for instance in a diplomatic agent family is quite complex. In the United States, jurisdiction over a child's custody is premised on the child having certain tangible connections to a place for the courts of that place to issue orders related to that child's wellbeing. The jurisdiction with authority to issue a custody order is the child's "home state"⁴⁶ (where the child has resided with a parent for the six months prior to the lawsuit's filing, excluding any temporary absences from the home state) or, if no home state exists or the home state declines its authority, then jurisdiction is found where the child has the most significant connections.⁴⁷ A U.S. state's recognition of a foreign custody order is premised on that foreign country having assumed its jurisdiction over the child in "substantial conformity" with the United States' jurisdictional principles of the child having that tangible connection.⁴⁸ After

⁴⁵ Hague Convention on the Civil Aspects of International Child Abduction, Oct. 25, 1980, T.I.A.S. No. 11,670, 1343 U.N.T.S. 89 (entered into force for the United States July 1, 1988), art. 13(b).

⁴⁶ UNIF. CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT § 201 (UNIF. L. COMM'N 1997).

⁴⁷ *Id.* § 102(7) (definition of "home state").

⁴⁸ *Id.* § 105.

examining jurisdictional immunity in general and as applied to divorce and child-related cases, it is necessary to examine enforcement immunity, since, absent jurisdictional immunity, a person can still escape enforcement measures in the receiving State at a later stage in the proceedings.

D. *Enforcement Immunity*

Under the concept of enforcement immunity, which forms part of the broader notion of sovereign immunity, the authorities of one State are precluded from taking measures of constraint against the property of another State to “satisfy the demands of creditors under court decisions, arbitral awards and similar jurisdictional instruments.”⁴⁹ In other words, when one party is immune from enforcement proceedings, courts can neither recognize a foreign judgment or an arbitral award rendered against the party benefiting from the immunity, nor make and execute orders or injunctions against it.

As mentioned above, Article 31.3 of the Vienna Convention on Diplomatic Relations of 1961 provides enforcement immunity in civil and administrative cases. Under French law, the Code of civil enforcement proceedings sets out in article L.111-1 that “(f)orced enforcement and conservatory measures are not applicable to persons who benefit from enforcement immunity.”⁵⁰ “This will prevent a debtor enjoying enforcement immunity from seeing his assets be frozen or seized. Similarly, penalty payments cannot be ordered against the diplomat.”⁵¹ Therefore, the aim of the enforcement immunity is to protect the beneficiary from being constrained, and it is related to the person’s property as opposed to the person’s actions.

After examining which persons have the capacity to claim immunity, as well as the types of immunity they may invoke, the next section examines the ways to mitigate immunity when it applies.

⁴⁹ Nikita Kondrashov, *Sovereign Immunity from Execution (in Enforcement)*, JUS MUNDI (ed. Anastasiya Ugale, Sept. 20, 2022), <https://jusmundi.com/en/document/publication/en-sovereign-immunity-from-execution-in-enforcement>.

⁵⁰ French Code of Civil Enforcement Proceedings, art. L.111-1.

⁵¹ Cour d’appel [CA] Paris, Dec. 3, 2002, 2001/06538, Jurisdata 2002-198522.

III. Potential Solutions to Mitigate the Effects of Immunity in Family Matters

A. *Exceptions to Immunity from the Vienna Convention of 1963*

1. *Nationality*

A limitation common to the diplomatic agent, and individually to members of the family or members of the staff who enjoy diplomatic immunity is that they cannot enjoy diplomatic immunity if they are nationals of the receiving State. Members of the administrative and technical staff of the missions and their families and members of the service staff as well as private servants of members of the mission also cannot enjoy immunity if they are permanent residents in the receiving State.

This limitation is set out by Article 38 of the Vienna Convention.⁵²

2. *Other Exceptions*

Article 31.1 of the Vienna Convention on Diplomatic Relations of 1961⁵³ also provides the specific cases under which civil and administrative immunity shall not be enjoyed by diplomatic agents:

(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;*

⁵² Vienna Convention on Diplomatic Relations, *supra* note 4, art. 38:

1. Except in so far as additional privileges and immunities may be granted by the receiving State, a diplomatic agent who is a national or of permanently resident in that State shall enjoy only immunity from jurisdiction, and inviolability, in respect of official acts performed in the exercise of his functions.

2. Other members of the staff of the mission and private servants who are nationals of or permanently resident in the receiving State shall enjoy privileges and immunities only to the extent admitted by the receiving State. However, the receiving State must exercise its jurisdiction over those persons in such a manner as not to interfere unduly with the performance of the functions of the mission.

⁵³ Vienna Convention on Diplomatic Relations, *supra* note 4, art. 31.1.

(c) *An action relating to any professional or commercial activity exercised by the diplomatic agent in the receiving State outside his official functions.*

The same exceptions apply to enforcement immunity, as per Article 31.3 of the Convention.⁵⁴

While there is generally a void on the interpretation of this exclusion in the U.S. family law context, one court opinion does address it specifically. The Supreme Court of Connecticut concluded that this exclusion applies, regardless of whether it is brought in a civil family lawsuit, so long as real property is the object of the litigation, because the overarching purpose of immunity is to “ensure the efficient performance of the functions of the diplomatic missions”⁵⁵ and therefore, from a practical perspective, immunity should have some exclusions. In the Connecticut case, the real property was not the primary residence of the diplomatic agent husband, and his sending State already provided a limited waiver of immunity for the sole purpose of dissolving his marital status in the Connecticut state courts.⁵⁶ The Supreme Court of Connecticut therefore concluded that the trial court could proceed with the lawsuit related to the house in Connecticut, even though it was in a family lawsuit related to the parties’ divorce, despite the husband’s immunity.

It is important for family practitioners to notice that maintenance obligations, whether owed to a spouse or a child, are not included in the list of exceptions. Therefore, a diplomatic agent cannot be ordered to provide maintenance to a dependent child or spouse/ex-spouse absent a waiver, and in case of a jurisdiction waiver, cannot be forced to pay the sums absent a waiver of enforcement immunity.

3. *Enforcement Immunity*

On top of the exceptions mentioned above for jurisdictional immunity and which also apply in the case of enforcement immunity (Article 31.3), it is specified that, even in those cases (immovable property, succession, professional or commercial activity) where the diplomatic agent does not enjoy enforcement immunity, the measures can be taken only if it is “without infringing the inviolability of his person or his residence.”⁵⁷

⁵⁴ *Id.* art. 31.3.

⁵⁵ *Id.* preamble.

⁵⁶ *Fernandez*, 545 A.2d 1036.

⁵⁷ Vienna Convention on Diplomatic Relations, *supra* note 4, art. 31.3.

This condition is important to point out as, in actions relating to private immovable property in the context of a divorce for example, numerous remedies could only be imposed by infringing on the inviolability of the residence of the diplomatic agent. Therefore, this limitation constitutes an almost all-encompassing protection for the diplomatic agent, and in practice it will lead to the diplomatic agent enjoying immunity even when it relates to private immovable property and regardless of the exception set out in the text. For example, if a court orders that the diplomatic agent must let the other spouse and children enjoy the former family home for the duration of the proceedings, this will not be enforceable, leading to serious hardship for the family, since the parents could be “forced” into a difficult cohabitation as a result. Similarly, if a restraining order is implemented against a diplomatic agent as a result of a waiver, while they still live in the family home, there will be an important issue of enforcement since such a measure would necessarily infringe on his or her person and/or residence.

There is in addition no exception regarding the immunity enjoyed by the diplomatic agents from the criminal jurisdictions or the criminal courts.

B. *Waivers*

1. *Principle*

Article 32 of the Vienna Convention on Diplomatic Relations of 1961 sets out the principle under which immunity from jurisdiction of diplomatic agents and of persons enjoying immunity under Article 37 (members of the family and some members of staff) may be waived by the sending State. Only the sending State can waive immunity, which excludes the possibility of the agent waiving it himself (for example, by appearing in court, or by being the petitioner). However, it is interesting to note that Article 32.3 provides: “The initiation of proceedings by a diplomatic agent or by a person enjoying immunity from jurisdiction under Article 37 shall preclude him from invoking immunity from jurisdiction in respect of any counterclaim directly connected to the principal claim.”⁵⁸ No other provision implies that the diplomatic agent needs the waiver/authorization of the State before engaging in proceedings himself.

⁵⁸ Vienna Convention on Diplomatic Relations, *supra* note 4, art. 32.3.

2. *Form of the waiver*

The waiver must always be express, according to Article 32 of the Convention. Separate waivers must be issued in civil or administrative proceedings, since Article 32.4 specifies that simply because a jurisdiction has issued a waiver of immunity shall not imply that immunity from execution is also in place. In that scenario, a separate waiver will be required. Therefore, it must be noted that, while one could believe that after obtaining the jurisdiction waiver the diplomatic specificity has been overcome, it is still necessary to obtain the enforcement waiver as well, to avoid a situation where a judicial decision becomes a mere *lettre morte*.

3. *Process in France*

Under French law, and according to the laws of the sending State, the Ministry for Foreign Affairs is competent to waive immunity for the head of the mission, who can in turn waive it for the other members of the mission. Waiving immunity is a possibility as opposed to an obligation, and the court cannot control the use of the right to waive immunity.⁵⁹

The person enjoying the immunity cannot themselves waive it. That is because immunity is granted not to protect the person but to safeguard the independence of the sending State.⁶⁰ Therefore, for the diplomatic agent to waive immunity, this waiver must have been authorized expressly by the government of his sending State.⁶¹

However, provided that the diplomatic agent has expressly waived immunity from jurisdiction and execution in a transaction, the diplomat cannot refute such waiver at a later time, claiming he or she was not entitled to do so without the agreement of his or her government. This was the outcome of a 2007 case⁶² in which the court considered that the fact that the diplomatic agent had failed to request the necessary authorizations was not an argument that the diplomatic agent could use against the third party.

⁵⁹ Prezas, *supra* note 34, at 96.

⁶⁰ Cour de cassation [Cass.] Crim., Sept. 24, 1919, Gaz. Pal. 1912, at 353.

⁶¹ Cour d'appel [CA] Paris, ch. 1, Mar. 17, 1978, Dame Nzie c/ Vessah Jurisdata: 1978-615256.

⁶² Cour d'appel [CA] Paris, Oct. 19, 2007, 06/00943, M. Joseph Marciano c/ Société Générale: Jurisdata 2007-347796.

In the case of members of international organizations, immunity can be waived only with the authorization of the organization (usually the Secretary of General Director).⁶³ It is uncertain whether the organization has the right or the duty to waive immunity. However, the judge once again cannot control the decision of the organization to waive it or not, but the judge can rule on the conditions in which the decision to waive was taken.⁶⁴

It is interesting to note that, even if a waiver from jurisdictional immunity is obtained, it does not include a waiver from enforcement immunity, according to Article 32.4. Therefore, it is possible to obtain a judgment from a family court, which cannot be executed against the diplomat.

In a case from 2017,⁶⁵ the Paris Court of Appeals rejected the claimant's assertions on the basis that only an accrediting state can waive a diplomatic agent's immunity under very specific circumstances. In this case, the claimant was the condominium syndicate and its assertion was that the defendant, the ambassador of Tajikistan, had waived his diplomatic immunity by virtue of Article 32 of the Vienna Convention. The ambassador invoked jurisdictional immunity to avoid paying damages relating to the claims the syndicate brought on the apartment that he had rented.

In another case, this time ruled by the Versailles Court of Appeals,⁶⁶ a landlord was claiming overdue rent payments from a tenant that had diplomatic immunity due to being an ambassador. She claimed that the beneficiary of diplomatic immunity can waive their immunity even without consent of the accrediting state. The Court of Appeals of Versailles rejected the claim on the basis that she could not have deduced or implied from the attitude of the defendant that he had given up his diplomatic immunity.

In the 2017 case mentioned above, it seems that the court left behind the requirement of the waiver of the State being

⁶³ Convention on the Privileges and Immunities of the United Nations, 21 U.S.T. 1418 (1946), art. V, § 20. This says the Secretary General for the UN can and will have to waive immunity if, in his opinion, it would prevent justice from being done and if it can be waived without prejudice to the organization. Only the Security Council has power to waive immunity for the Secretary General of the UN.

⁶⁴ TAOIT, 2222/2003 (July 16, 2003, cited in Prezas, *supra* note 34, at 111.

⁶⁵ Cour d'appel [CA] Paris, Pôle 4, Chambre 2, Oct. 11, 2017, 15/17763.

⁶⁶ Cour d'appel [CA] Versailles, Sept. 24, 1998, <https://www.legifrance.gouv.fr/juri/id/JURITEXT000006934765>.

express, in order to obtain the “fair” result of punishing the diplomatic agent who was relying on the absence of an express waiver by the State in bad faith.

4. *Process in the United States*

The rules for requesting an immunity waiver to resolve family law related issues are set out in the Foreign Affairs Manual.⁶⁷ The Manual provides that immunities shall not be waived except with prior consent of the Department. The key factor for the Department to grant the waiver or refuse to do so, is whether the interests of the U.S government are likely to be injured as a result of the waiver, as well as whether the interests of the individual will be adversely affected. There is, however, a presumption in favor of granting a waiver for mission members, as well as for Department employees, except for the latter if the employee consents or if the waiver is “essential to protecting the interests of innocent third parties.”⁶⁸ In private domestic matters, including divorce, separation, maintenance, child custody, and child support, the Department will normally grant a waiver if both parties consent. If one party is in the United States and the other party is at post, a waiver of immunity will be authorized to allow service on the party at post absent that party’s consent “only if the waiver is necessary in order to prevent undue hardship on the party seeking service or family members, and if the action is to be pursued in the United States.”⁶⁹ Waiver of immunity will normally be granted to allow a domestic relations action to be pursued in the host country if both parties consent and if the prosecution of the action will not “adversely affect the interests of the U.S. Government.”⁷⁰

Consequently, in most cases, it is necessary for both parties to consent to the waiver to immunity, meaning that in highly litigious cases where a race for jurisdiction is in play, such a waiver is not likely to be granted. Needing the consent of both parties is a natural consequence of diplomatic immunity being extended to family members. Things could be different if the parents are not married,

⁶⁷ U.S. DEP’T OF STATE, 2 FOREIGN AFFAIRS MANUAL § 221.5 Waiver of Immunity (Dec. 6, 2021).

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Id.*

and immunity is not extended, although a literal interpretation of the rule cited above under which a waiver will normally be granted for domestic actions absent adverse effect on the U.S. government would lead to the agreement to a waiver from both parents being a prerequisite for the waiver. There may be other practical solutions in the absence of waiver.

5. *Workarounds*

a. *From a French perspective*

In practice, when a family conflict has arisen (especially in a context where there have been violent incidents, or in case of a potential child abduction), the State will not necessarily grant a waiver. However, in many cases, especially where there are accusations of domestic violence, the authors have observed that the State will encourage or order the diplomat to move back to the sending state, which will appease the conflict and/or allow the immunity to be levied and for the family matter to be adjudicated by the court.

This solution is often used in practice, as the reputation of the diplomat and the reputation of the State are closely linked, and States are often unwilling to let conflicts escalate for diplomatic families abroad. In case of a serious issue (e.g. violence) in the receiving state, the diplomat could be declared “*persona non grata*” according to Article 9 of the Convention and have the sending state recall the diplomat and/or terminate their functions.

Also, one can also explore the possibility of adjudicating the case in the sending state even if the diplomat enjoys immunity in the receiving state where they are habitually resident. Article 31.4 of the Vienna Convention on Diplomatic Relations of 1961 provides: “The immunity of a diplomatic agent from the jurisdiction of the receiving State does not exempt him from the jurisdiction of the sending State.”⁷¹ For example, under French law, there exists a privilege of jurisdiction which grants jurisdiction to the French courts over all French nationals, under Article 14 of the Civil Code.

Therefore, if a French diplomat has been sent to the United States and their spouse wants to file for divorce, the spouse can petition the French courts and mitigate the effects of immunity in the receiving state. However, if the diplomat and their family

⁷¹ Vienna Convention on Diplomatic Relations, *supra* note 4, art. 31.4.

maintain their habitual residence in the sending State, there could be an issue of enforcement in the receiving State, at two levels: first, the receiving State might not recognize jurisdiction of the foreign courts on the basis of citizenship only and could refuse to enforce such a ruling; and, second, the diplomat will still benefit in the receiving State from immunity from jurisdiction. Therefore, while a judgment will exist, it will be very difficult to enforce. However, the diplomat could receive pressure from the sending State to enforce it and be threatened from being sent back to the sending State in the absence of execution.

b. *From a U.S. perspective*

While immunity creates a complex situation for a diplomatic agent family, there are certainly workarounds. If, for instance, a diplomatic agent family is located in the United States and enjoys immunity from civil family lawsuits in the United States, and then has a child, born in the United States⁷² who has never stepped foot in the sending State from which their parents originate, that child may nonetheless be subject to the sending State's judicial system and laws when a court is deciding that child's custody. If a diplomatic agent family separates while in the United States, but both parents remain in the United States and pursue a custody order in their home country, there will then be a further issue with a U.S. court recognizing that foreign custody order. Even if one could argue that the child's home state (within the United States) declined to issue a custody order for lack of jurisdiction because of immunity, and the child's most significant connections are then with the sending State where their parents have connections, there remains a lack of enforcement of this order in the United States over the diplomatic agent parent.

If the diplomatic agent family is from the United States, and is sent overseas, and then has a child in the foreign country, then the child's home state would be that foreign country,⁷³ except for the

⁷² The child of a diplomatic officer accredited by the U.S. Department of State who is born in the United States does not acquire U.S. citizenship under the Fourteenth Amendment of the U.S. Constitution. These children can, however, choose to be considered lawful permanent residents from the time of birth. *See* U.S. CITIZENSHIP & IMMIGRATION SERVS., POLICY MANUAL, <https://www.uscis.gov/policy-manual/volume-7-part-o-chapter-3> (last accessed Oct. 2, 2023).

⁷³ UNIF. CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT § 105.

issue of immunity which complicates the jurisdictional analysis. Presumably, the parent wishing to initiate a custody lawsuit could return to the last U.S. state where the family resided, and attempt to avail themselves of those courts, and seek a custody order, arguing that the home state would, because of immunity, decline to issue a custody order, so the place with the most significant connections to the family is that U.S. state. For a child already born when the family moved overseas, there may be an argument that the child is just temporarily absent from their home state in the United States.⁷⁴ This becomes more complicated if the family does not intend to return to the U.S. state from where they came, or if they moved around within the United States, state to state, prior to moving overseas (for example, packing up and selling a house, staying with relatives in another state for a month before moving, etc.). In other words, the parent has a venue in which to seek a custody order, but their use of the U.S. courts remains complicated. They would be required to serve process of the U.S. lawsuit on the diplomatic agent parent, presumably in the foreign country, and that parent's immunity would present a block on service. Even a willing diplomatic agent cannot necessarily accept service while sitting in the receiving State. Assuming that parent is properly served, perhaps while traveling through a third country, and the U.S. custody lawsuit proceeds, the parent seeking that order may hit roadblocks in enforcing that order in the receiving State because of the other parent's immunity. Even more complicated is that, since the sending State – the United States – is an available venue for litigation for this family, if the parent seeking custody removes the child from the receiving State and returns to the United States with the child, they may be subject to litigation in the United States under the Hague Abduction Convention.⁷⁵ This will happen if

⁷⁴ Section 102(7) of the UCCJEA provides the definition of a "Home State" under the Act and adds that "A period of temporary absence of any of the mentioned persons is part of the period [taken into account to compute the 6 months of residence giving rise to jurisdiction of the courts of the State in question]." *Id.* § 102(7). One could argue that a child moved from his or her country of habitual residence for a parent's diplomatic assignment is "temporary absent" from the home state under the UCCJEA.

⁷⁵ Hague Convention on the Civil Aspects of International Child Abduction, *supra* note 45.

a U.S. judge is persuaded that the foreign country is the child's habitual residence and that the diplomatic agent parent had a right of custody under the law of that foreign country.⁷⁶ The U.S. Supreme Court clarified that "habitual residence" is a factual determination, and not based on jurisdiction.⁷⁷ In other words, even if the courts in the receiving State have no jurisdiction to resolve custody of the child, the U.S. court resolving the return petition may still conclude that the receiving State is the child's habitual residence, paving the way for the court to return the child.

Even if there are creative jurisdictional workarounds, they are not always obvious or easy to secure, and they may require physical relocation of the parties for the duration of the litigation or at least when in-person attendance is required by the court. Another option is, of course, to request a waiver of immunity from the immunity-holding government. The Foreign Affairs Manual of the U.S. Department of State outlines the U.S. government's guidance in private domestic relations matters (including divorce, separation, spousal support, child custody, and child support).⁷⁸ If both parties consent to the waiver, and the lawsuit is filed in the United States, the U.S. Department of State will normally grant any "necessary" waiver of immunity. If one party is in the United States, and the other is at post, then a waiver will be granted for the purpose of allowing service of process on the posted party if that posted party consents. If they do not consent, then a waiver of immunity will be authorized only if it is "necessary in order to prevent undue hardship on the party seeking service or family members, and if the action to be pursued is in the United States."⁷⁹ In other words, consent is a large component of immunity waivers when the U.S. government is the holder of the immunity.

⁷⁶ In *Pliego v. Hayes*, Civ. Action No. 5:15-CV-00146, 2015 WL 4464173 (W.D. Ky. July 21, 2015), a Spanish diplomat enjoying immunity in Turkey filed a return petition in a U.S. court seeking the return of his child using the Hague Abduction Convention after the mother abducted the child to the United States. At issue was his immunity and whether that immunity from certain civil and criminal lawsuits presented an intolerable situation, which the court concluded it did not. As a note, the Spanish government waived his immunity for purposes of a child custody lawsuit to proceed in one court case that had been filed in Turkey.

⁷⁷ *Monasky v. Taglieri*, 140 S. Ct. 719 (2020).

⁷⁸ U.S. DEP'T OF STATE, *supra* note 67, § 221.5 Waiver of Immunity.

⁷⁹ *Id.*

Separate from jurisdictional workarounds and seeking waivers of immunity, a diplomatic agent family has relatively few options.

Conclusion

While immunity should not be synonymous with impunity, that can often be the result when immunity is provided, even if that immunity is confronted with other fundamental personal rights. There is typically a workaround concerning the possibility to divorce or to obtain child support. However, when immunity rules clash with rules of public policy, such as equality of the sexes and children's rights, immunity appears to take precedence in the few decisions found. Refusal by the hosting country to hear questions concerning child abuse or remedying a shari'a law repudiation does not necessarily mean judicial recourse is denied, as the typical schema would be to have the intrafamily issue heard in the sending State. However, such recourse is not available when the repudiation took place in the sending State or the latter does not have the necessary infrastructure to prevent child abuse, creating therefore a gaping hole in the legal system to remedy the violation of these fundamental rights.

One could also ask whether diplomats and their spouses and family members of diplomats are aware of the rights they are waiving when serving their country, since diplomatic immunity is typically seen and presented as a benefit of the posting and not as a waiver of access to justice. The glitz and glam and intellectual pull of being a diplomat tend to outshine this often-neglected situation and while it is indeed an advantage for most individuals, immunity can create serious consequences that were far from expected by the diplomatic family.