CHAPTER 1:
INTRODUCTION

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CHAPTER 1

INTRODUCTION

1.1 INTRODUCTION

Diplomacy is derived from the Latin word ‘diploma’. Diplomacy means the art method and form of supervising arbitration between delegates of states. The management of international relations is generally associated with the international relations diplomacy.\(^1\) Through the interceding or reconciling by professional diplomats in relation to the issues of maintenance of peace, exchange of cultures, trade and commerce, safeguarding human rights and protection of environment. It is before the sanction given by national leaders; the international treaties are discussed by the diplomats. Diplomacy is deploying a strategy or a plan of action designed to achieve a specific goal, strategic advantage or coming up with mutually acceptable solutions to a common problem usually in a non-abrasive i.e. a polite manner. Diplomacy is the aptitude and practice of managing compromise among the countries, skill in manipulating affairs without stimulating hostility.\(^2\)

Diplomacy is the means by which States throughout the world conduct their affairs in ways to ensure peaceful relations. The main task of individual diplomatic services is to safeguard the interests of their respective States abroad. This concerns as much the promotion of political, economic, cultural or scientific relations as it does international commitment to defend human rights or the peaceful settlement of disputes.

It is a system of official State to State communication and also determines a State’s power i.e. a State's power is a function of the quality of its diplomacy. It is the quality of diplomacy that gives weight and direction to the other elements of power. The quality of diplomacy is the control centre of a State's power and determines how successful a state will be in bringing about the maximum effect possible from the

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1Ronald Peter Barston, Modern diplomacy, Pearson Education, 2006, p. 1
potential of the individual raw material elements to achieve what is in the state's best interests.\textsuperscript{3}

Diplomacy is a means of foreign policy in the creation and evolution of peaceful relations amongst the countries with the help of intermediaries mutually recognized by the respective parties.\textsuperscript{4} Relations between States are based on the policy orientation of each State toward the other.

The international state system which exists today evolved from the Treaty of Westphalia in 1615. This system is structured so that:

(1) Each sovereign State is equal in stature and standing to every other sovereign state in the system; and

(2) There is no entity superior to the States which can impose order on the system.

As a result, each State has been and remains concerned with assuring its well-being and survival and in doing so must rely first and foremost upon its own efforts. Consequently, throughout history, States have mobilized their resources to increase their power vis-a-vis other States. Within this setting in today's world, diplomats have a key role to play for it is they who are singularly representative of the most important element of a state's power.

It was observed over many centuries that the fundamental practices of international diplomacy were followed and the status has not changed. The emergence of non-western countries with different legal system, religions and values, it was questioned that for how long the existing system would survive.\textsuperscript{5}

Diplomacy and Foreign Policy are central to the understanding of international politics. The structure of the international system induces a constant need for political dialogue and negotiations. Besides war, diplomacy is the common language states are using to interact on the world stage. Diplomacy has existed since the time when

\textsuperscript{3}Pernilla M. Neal, Diplomacy and Power: In Transition From "High" To "Low" Politics, thesis submitted to the Faculty of the Graduate School of the University of Colorado for the degree of Doctor of Philosophy Department of Political Science 1993
\textsuperscript{4}Ibid
\textsuperscript{5}Supra Notes
States, empires or other centers of power dealt with each other on an official basis. During the 13th century, several diplomatic archives were found in Egypt. In the 15th century, during the phase of Renaissance period, permanent diplomatic missions, which mean representatives, were sent from one state to other states.

There are different kinds of diplomacy, for example: multilateral diplomacy, economic diplomacy, pipeline diplomacy, summit diplomacy, etc.

It was the ministry of Foreign Affairs which used to manage the relations among the countries and the international organizations. During the 1980s, due to the various disputed decisions taken by Saddam Hussein in foreign policy, the relations of Iraq with foreign countries were affected and especially with the few western countries like France and Germany from whom unconventional ammunition was supplied to Iraq. Iraq had developed strained relations even with the United States which assisted Iraq in its war with Iran. After the invasion of Iraq over Kuwait, the relations of Iraq with Arab countries and western countries were badly affected. Kuwait was supported by the countries like Syria, Saudi Arabia, Egypt and few others in the UN. In 2003, after the end of Saddam Hussein’s rule, democratic government was created and the newly established government tried to establish relations with the world countries. Since past, mutual and co-operative relations exist between India and Iraq. There was an exchange of trade and culture between Ancient India and Mesopotamia since 1800 BC. When India and Iraq signed a Treaty of Friendship in 1952, it helped in establishing and promoting cordial relations. During the 1970’s, Iraq and India have developed very close relations.

During the times of crisis, e.g. in 1991 Gulf War, Iraq-Iran War and the US invasion in 2003, the relations between Iraq and India were disturbed. Iraq adopted the democratic pattern of government and then it led to the regulation of mutual relations between both the countries. Immediately after the independence, India had established diplomatic relations with Iraq and it was one of the few states where India had

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8Jump up to:US-Iraq War: India's Middle East policy
established its embassy in the Middle East. In 1952 "Treaty of Perpetual Peace and Friendship" and in 1954 an agreement for co-operation on cultural affairs was also signed by India and Iraq.\(^9\) When there was a formation of government in Iraq by the Baath Party, it was India which first gave recognition to Iraq. In 1965 India-Pakistan War, Iraq adopted the nuclear policy. Even in 1971 war between India and Pakistan, the countries of the Gulf, other than Iraq, supported Pakistan and, as a result, Bangladesh was created as an independent country. Yet substantial economic and military contacts between Iraq and India endured. It was in the 1980s, the Indian Air Force trained more than 120 MiG-21 pilots of Iraq.\(^10\) In the year 1975, security relations were boosted because of the following two factors;

- Training teams were sent to Iraq by the Indian Army; and

- A naval academy in Basra was established by the Indian Navy.

According to one of the accounts, in Hussein’s 1975 offensive against Kurdish separatists, Indian pilots flew support missions to Air Force of Iraq. During the war between Iraq and Iran, India endured to cater substantial armed support to Iraq. Through a complicated tripartite arrangement with the help of France, apart from training, India also provided technical assistance to the Air Force of Iraq.\(^11\)

Because of the Iraq –Iran War which lasted eight years, Iraq and India’s trade and commerce was affected. When there was Persian Gulf War in 1991, India was not in favor of using force against Iraq. In the second week of a war in 1991, India stopped the refueling of military planes. Before the 1991 gulf war, Iraq was one of the largest export markets for India. UN promulgated endorsement against Iraq which was not supported by India, however the separation of Iraq and the duration of war further blocked commercial and diplomatic relations of India. Sound relations were built between India and Iraq from 1999 onwards. India conducted her second nuclear test of five weapons on 11\(^{th}\) May, 1998, at Pokhran and India’s right to conduct nuclear tests was encouraged by Iraq. The exchange of visits between the leaders of both the

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\(^10\) David Brewster. "India’s Ocean: the Story of India’s Bid for Regional Leadership. Retrieved 13 August 2014”.

\(^11\) India, Iraq Agree on Co-operation
countries have given full assurance to support India over the Kashmir dispute with Pakistan. For the encouragement of bilateral cooperation, both the countries had created joint ministerial committees and trade delegations. India preserved its neutrality by criticizing US invasion on Iraq in 2003 as UN failure and it also gave assurance to Iraq that it would accord to send troops after the end of war to help in peace and security if most of the countries vote for the presence of the alliance and mission in Iraq in the UN Security Council. But this was ruled out because there were protests against it by the political parties and the citizens. After the creation of democratically elected government in Iraq in 2005, the relations between India and Iraq were revived so as to recapitulate trade and co-operation. For the construction projects in Iraq, there are Indian businessmen who have applied to the government of Iraq for contracts and recently there is a growth in business done by Iraqi in India.

1.1.1 DEFINITIONS OF DIPLOMACY

Diplomacy is commonly regarded as the mainstay or the core of international relations. It is mainly through diplomacy that a nation communicates its wishes, desires, objectives and goals to other nations and again it is through diplomatic negotiations that it attempts to secure these objectives. In fact, establishment of diplomatic relations forms the first major step towards the establishment of relations between two nations and Diplomacy forms the major link in the process of bilateral and multilateral relations. There is no exaggeration in observing that diplomacy is a factor of national power, national interest and foreign policy. Morgenthau describes diplomacy as the best means for promoting international peace in the best way –peace through accommodation.

1. Padelford and Lincoln define Diplomacy as “The process of representation and negotiation by which states customarily deal with one another in times of peace.”

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Jump up^ Iraq prizes ties with India: Saddam
Jump up to: Iraq Economic and Commercial Relations
Jump up^ India's Foreign Minister Fired
Jump up^ India will consider sending troops
2. Sir Ernest Satow defines Diplomacy as “The application of intelligence and tact to the conduct of official relations between governments of independent states.”

3. The Oxford Dictionary of English defines Diplomacy as “The method by which international relations are adjusted and managed.”


5. Quincy Wright defines diplomacy in two different ways: in the popular sense and in the special sense. In the popular sense diplomacy means “the employment of tact, shrewdness and skill in any negotiation or transaction.” And in the special sense it means “the art of negotiation, in order to achieve the maximum of group objectives, with a minimum of costs, within a system of politics in which war is a possibility.”

1.2 LAWS RELATING TO DIPLOMACY

It is the diplomatic law which administers the regulation of relations between the delegates of a state. The logic behind that is to encourage diplomacy internationally, securing the national interests of the sending state is directly related with the foreign policy with consideration for the territorial sovereignty of the receiving state. Diplomacy operates at the boundaries between politics and law, and between the internal needs or interests of the state and their explanation in an external ‘language.’ It translates state policies and needs into the language of international law. It is, therefore, deeply bound to the idea of rule-following, and the practice of diplomacy is constituted by the political appeal invested in the idea of ‘compliance.’ Diplomacy means providing rule-following explanations for the choices of the state.¹⁶ One could imagine other moral schedules for diplomacy at other times and places, where the primary value involved reconciling state needs to, say, justice or natural law or sustainability or some other good. Rule-following is the defining feature of modern diplomacy.

The inviolability of diplomatic missions, including personnel and communications, was one of the least controversial precepts in international law. Early attempts to formalize this norm include the Congress of Vienna (1815) and the Convention regarding Diplomatic Officers (Havana, 1928). It was the Vienna Convention of 1961 on diplomatic relations which was ratified by 187 countries and it is considered to be a modern statement. Articles 22, 27, and 29 are unequivocal:

**Article 22**

1. Till the agent of the receiving state secures the permission of the head of the mission, premises shall be *inviolable* and the agent is not entitled to enter the permission premises.

2. It is the receiving State’s responsibility to make all possible efforts for the protection of the mission premises to avoid any hurdle in securing the objective of the mission or its importance.

3. The equipment and other property of the mission premises and the ways of transportation of the mission shall be free and cannot be searched and exempted from requisition, relation or implementation.

Since past, the purpose of such protection is reflective of the international state system itself. Diplomats are the means, the agents, for the proverbial ‘relations’ between States.

For an effective cooperation amongst the world countries, to acquire mutual understanding and to resolve disputes by peaceful means, diplomacy is the best institution and it has proved to be an essential method with its complementary entitlement and protection. In spite of different constitutional and social systems, diplomacy helps to maintain mutual relations among the countries. Diplomatic law is international law that governs permanent and temporary diplomatic missions. Some of the main elements are the immunity of diplomatic staff, the diplomatic mission and its grounds should be secure from assault or trespass i.e. inviolability of the mission/embassy, and the security of diplomatic correspondence and diplomatic bags. It is a source of conventional international law. Because of its practicality, it is recognized between States and is followed by nation States as it is based/works on reciprocity.
A diplomatic agent is inviolable is a fundamental rule of diplomatic law i.e. the agents enjoy diplomatic immunity which is an omission to the universal rule of territorial jurisdiction. They perform their duties within the structure of required safeguard and secrecy. However, this does not mean that diplomats should or can flout local laws; they still have to adhere to the local laws of the hosting State, hence contributing to the balancing of interests. Diplomats should not be detained or arrested and, in the receiving state, they enjoy complete freedom from criminal prosecution, although there is no immunity from the sending state. If a diplomat commits an offence, the host State can declare him or her as ‘persona non grata’ and has, therefore, to leave the host State. The sending state needs to call back this person within acceptable period of time or, on the other hand, the diplomatic immunity is given up by the concerned diplomat.

Generally though, the law of diplomatic immunity is normally adhered to because it is visible and is based on the principle of reciprocity which, if not followed, there will be no reciprocity. That is, if the diplomat does not follow the local law, he / she can be expelled and the same will be reciprocated by the expulsion of the diplomat of the host State in the sending State.

Each State that hosts a diplomatic service has its own embassy in the area of the sending State. Each State expects its diplomats based in a foreign country, diplomatic bags, embassies and archives, to receive protection provided by international law vis-à-vis the host country, expects the same from the sending State. The diplomatic community in one's own country is widely perceived as a major factor in ensuring that there is no erosion of the international law requirements on diplomatic privileges and immunities. Diplomatic Immunity privileges extend directly from the 1961 Vienna Convention on Diplomatic Relations. The Convention deals with exemptions from criminal as well as civil laws of a host nation in most circumstances. Generally, embassy territory and communications, as well as a diplomatic agent’s person and personal property, are considered inviolable under the Convention. Article 31 of the Convention exempts diplomatic agents from the civil and criminal jurisdictions of host states, except for cases in which a diplomatic agent (1) is involved in a dispute over personal real property, (2) has an action involving private estate matters or (3) is

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17 Article 29, The 1961 UN Vienna Convention on Diplomatic Relations
in a dispute arising from commercial or professional business outside the scope of official functions.

1.2.1 EVOLUTION OF DIPLOMATIC LAW

Diplomacy has been the traditional means of conducting negotiations. It is one of the world’s most ancient arts. It stands recorded in the Greek and Roman history. Initially, the diplomatic practices involved primarily the delivery of messages and warnings, the pleading of causes, and the transfer of gifts or tributes. These rudimentary diplomatic activities were considerably refined and institutionalized. But no system of permanent embassies was established during this era. In the middle ages, the systematic use of envoys further declined and it was not until the 14th century that resident embassies emerged on the scene. The emergence of city-states in Italy helped this process. Since that time, diplomatic activity has been developing as a key activity in relations among nations. In the 15th, 16th and 17th centuries, diplomacy was governed exclusively by the dictates of national policy and ruthlessly employed cunning, deceit and duplicity, as realistically described by Machiavelli in ‘The Prince’. By the end of 17th century, there developed, an extremely complex and disjointed code of diplomatic procedures, a code that resulted in confusion with respect to precedence and protocol. It was in the 18th century that the common interest of the maintenance of international equilibrium led to the attempts aimed at institutionalization of diplomatic procedure and precedence. The real success, however, came in the second decade of the 19th century. In the Congress of Vienna (1815) and Aix-la-Chapelle (1818), serious efforts were made to simplify the classification of diplomatic agents and formalize their functions. The ground rules were set by the Congress of Vienna in 1815 for the comportment and treatment of diplomats while they served as their State's representatives abroad. The core practices and protocols it developed and instituted have been little changed over the centuries. The Congress of Vienna was seen as the first of a series of Congresses which have been labelled as the ‘Congress System’ although it was never a system. Diplomats felt that they should 'stick together' in peacetime to preserve the peace. It was a ‘gentlemen's agreement’ - verbal, and there was no constitution; it was decided that when and where conflict could lead to international war, a congress would meet to talk it out first.
• 1815 Congress of Vienna
• 1818 Congress of Aix-la-Chapelle
• 1820 Congress of Troppau
• 1821 Congress of Laibach
• 1822 Congress of Verona

Above mentioned conferences or treaties were the introduction for the co-operation among the world countries.  

It was in the 19th century that diplomacy was adopted both as major instrument of state policy as well as a major agency operating on behalf of the international relations and diplomacy emerged as the most major diplomacy passed away together with the Balance of Power system while following the fundamental change in the international system during 1914-1945, and it entered into the era of what is popularly called New diplomacy. The Change in international system led to big changes in the nature, scope and styles of diplomacy. This made it imperative, once again, to admit these changes. It was at the Vienna Conference on Diplomatic Intercourse and Immunities (1961) that a comprehensive agreement covering nearly all aspects of diplomatic activity was signed. Thus, today, diplomacy stands universally accepted as a mechanism of policy for the nation and as a means of international intercourse.

Right from the establishment of the city states, diplomacy is regarded as one of the defining element of a state. Diplomats were sent to the states only for a particular negotiation and they used to return as the purpose for which they had been sent was attained. Normally, diplomats are appointed either from amongst the relatives of the royal family or from the upper strata of the society because the duty of a diplomat is to compromise with other state in order to give them legitimacy.

It can be said that the conference outcome, and mainly of the Vienna Convention on Diplomatic Relations, had a major impact on modern State intercourse. Although the Convention had not mentioned any new ground-breaking laws, it just made clear the mist of diplomatic customary law and brought a legal framework to the field of

diplomatic relations.\textsuperscript{19} The Articles of the Vienna Convention helped to stabilise the international community at a highly critical moment of the Cold War. States could finally count on clear and indisputable rules on diplomatic immunities and privileges which was especially useful in moments of tension. Furthermore, the success of the Vienna Conference and its Convention led to an enhanced reputation of the International Law Commission which, in following years, was asked to prepare the legal basis for other multilateral conferences establishing international law. Moreover, the convention not only guided new states and their diplomats about the practice of diplomacy but it also provided a measure for assuring equality among all the states of the world. This makes it very clear that those States and their diplomats were granted the same privileges and immunities as those countries that were considered powerful in the international politics and thus equality was the main goal behind this convention.

Till the 1950s, it was the customary laws which used to govern the laws of the mission. In 1961, confirmation on the existing customary laws and ratification by the great powers was also been given after the conclusion of the Vienna Convention on Diplomatic Relations.\textsuperscript{20} The agreement on generally accepted diplomatic practices were related to the 1961 Vienna Convention on Diplomatic Relations. The basic concept of bilateral diplomatic relations of the system has remained virtually unchanged. However, there have been dramatic changes in the size and composition of the international community of States, as well as in the actual practice of other, non-bilateral forms of international diplomacy.

Inviolability of the premises of an embassy- "the premises of the mission shall be inviolable. The agents of the receiving state may not enter them, except with the consent of the head of the mission." "[t]he premises of the mission . . . shall be immune from search, requisition, attachment or execution."\textsuperscript{21} It is clear, notwithstanding popular and ill-informed views to the contrary, that inviolability of premises is not lost by the perpetration from them of unlawful acts. Both the

\textsuperscript{19}This is especially the case for the declaration of a \textit{persona non grata}, the immunities enjoyed by non-diplomatic agents and the freedom of communication.


\textsuperscript{21}Article 22(3) The 1961 UN Vienna Convention on Diplomatic Relations
International Law Commission in its preparatory work and the conference at which the Vienna Convention was drafted deliberately rejected the idea of specified exceptions in the face of manifest abuse. Inviolability had to be absolute if the door was not to be opened to possible abuse by the receiving state.

Diplomatic relations are themselves the object of a series of international conventions. At the Vienna Congress in 1815, the first attempt was made to codify diplomatic law at the international level. The rules which today apply throughout the world for the conduct of diplomatic affairs between states were expanded in the 1961 Vienna Convention on Diplomatic Relations. The international community also agreed, at a conference in Vienna in 1963, to a set of common rules on the conduct of consular relations. This body of law governs in particular the protection of individual States’ citizens abroad. In addition to legal standards, many unwritten rules, customs and conventions exist that date back to the very early days of diplomacy. Their purpose is not to perpetuate traditions and formalities for their own sake but rather to ensure the smoothest possible communication between States.

1.2.2 (A) NATURE /CHARACTERISTICS OF DIPLOMACY

In general Diplomacy means the promotion of national interest in international relations by means of negotiations and conduct of relations with other nations. According to Palmer and Perkins, the following are the characteristics of diplomacy:

1. Diplomacy is not immoral: Diplomacy is neither the art of deceit or propaganda nor does it involve something immoral.

2. Diplomacy is an instrument of International Relations: It is a normal means of conducting international relations. It consists of techniques and procedure for conducting relations among nations.

3. Diplomacy is machinery for action in international relations: The concept of diplomacy could not be either considered as moral or immoral. The concept of diplomacy lies on the skill and the intentions of the diplomats.

4. Diplomacy acts through organized networks and set procedures: Diplomacy runs with the help of Foreign Service departments of the state and its embassies all over the world.
5. **Bilateral as well as multilateral in form** - Diplomacy is bilateral in nature but due to the increasing value of international organizations, conferences on international relations, regional alliances, and cooperative efforts of the states for collective compromise or collective negotiations, its multilateral aspects have, in the recent times, become increasingly significant.

6. **Diplomacy handles all types of matters** - Diplomacy handles the issues of war and peace among the states.

7. **Breakdown of Diplomacy always leads to crisis** - the failure of diplomacy leads to the emergence of war or conflicts among the states.

8. **Diplomacy operates both in times of peace as well as war** - Some writers hold that diplomacy operates only in times of peace and when war breaks out, diplomacy comes to an end. However, this is not a correct view. Diplomacy continues to operate even when war breaks out. Of course, its nature undergoes a big change; from peace diplomacy it takes the form of war diplomacy.

9. **Diplomacy works in an environment in which both conflict and cooperation are simultaneously present** - Diplomacy works in a situation involving both co-operation and conflict. A certain degree of co-operation among nations is essential for the working of diplomacy because in the absence of co-operation, diplomatic relations cannot be maintained. Similarly, when there is no conflict, then diplomacy is rendered quite superfluous because, in such a case, the need for negotiations does not remain. Diplomacy becomes irrelevant when there are all agreements; likewise it becomes ineffective when there are all disagreements. Thus, existence of co-operation as well as conflict is essential for the working of diplomacy.

10. **Diplomacy always works for securing the national interests of the nation it represents** - The purpose of diplomacy is to secure the goals of national interest as defined and specified by the foreign policy. Diplomacy is always limited by the policies of the government it represents.

11. **Diplomacy is compatible with International Law** - Sometimes it is held that Diplomacy and International laws are opposed to each other because, the former seeks to uphold national interest, and the latter seeks to secure international objectives of peace and security. It indeed an erroneous view. Diplomacy works on the basis of International Law and diplomatic practices
have been one of the richest sources of International Law. Moreover, peace and security are the objectives of national interest of each nation as well as of the international society. Hence Diplomacy and International Law both work, and ideally should always work, together for promoting peace and security in international Politics.

12. **Diplomacy is backed by national power**- Diplomacy is backed by national power. However, diplomacy uses persuasion and influence as the means for exercising power in international relations. It cannot use force and violence. It can issue warnings, give ultimatums, promise rewards and threaten punishment, but beyond this is cannot directly exercise force. “Diplomacy is the promotion of national interest of other nations.”

13. Success in Diplomacy is measured in terms of the amount of success achieved towards the fulfillment of the goals of national interest over and above the national interests of other nations.

1.2.2 (B) **OBJECTIVES OF FOREIGN POLICY**

Diplomacy is an instrument of national interest. It is always guided by the objectives of securing the goals of national interest as defined by foreign policy. It is an element of both the foreign policy and the national power. It is an instrument of peace. Preservation of peace is a part of the general objectives of diplomacy. It is implied in its role as an instrument for the promotion of national interest by peaceful means.

Broadly speaking, diplomacy seeks to secure two types of primary objectives for the nation it represents. These are:

(i) Political objectives
(ii) Non-political objectives.

For securing these primary objectives, diplomacy has to undertake, as Morgenthau puts it, four tasks which are in them the objectives of diplomacy.

(i) **Relating power with objectives:** Diplomacy must determine its objectives in the light of the power actually and potentially available for the pursuit of these objectives. A nation that pursues goals, which are not backed by adequate and essential national power, can face the risk of war in international relations. By overindulgence, it can invite the risk of war. Hence, diplomacy must weigh the objectives against the available power,
both actual and potential, before committing itself for securing these objectives.

(ii) Assessment of objectives with other countries: Diplomacy must determine as to what extent the different objectives are compatible with each other. A nation that seeks to pursue an intelligent and peaceful foreign policy cannot cease comparing its own objectives and the objectives of other nations in the light of their compatibility. In case the interests are incompatible, diplomacy has to act actively and effectively for securing the national interest.

(iii) Relating means with objectives: Diplomacy must employ the means suited to the pursuit of its objectives. Out of the three available means—persuasion, compromise and threat of force, it is the diplomacy which decides as to which means are to be used, at what time and in relation to which nation. “The art of diplomacy.” writes Morgenthau, consists in putting the right embassies at any particular moment on each of these three means at its disposal.

Diplomacy plays a key role in international relations. It is mostly through diplomatic negotiations that nations try to resolve their disputes or arrive at consensus regarding various international issues and problems. It is an instrument of conflict-management in international relations. It is one of the key instruments of national interest that nations are always committed to use for conducting their foreign relations.

1.2.3 CRIMINAL OFFENSES AND PERSONAL IMMUNITIES

The diplomatic agent is sacrosanct and he may not be arrested or detained.\textsuperscript{22} In a few specific cases, jurisdiction of the receiving state on the criminal, civil and administrative side is not applicable to a diplomatic agent.\textsuperscript{23} He is further exempt from local taxes. Even today, in modern diplomatic laws, the most problematic issues are still personal inviolability and freedom to diplomat from criminal jurisdiction. Since olden times, these privileges have assisted the representative of diplomatic mission and other officials of Foreign Service in securing independence from penal

\textsuperscript{22} Article 39, The 1961 UN Vienna Convention on Diplomatic Relations

\textsuperscript{23} Article 34, The 1961 UN Vienna Convention on Diplomatic Relations
proceedings, the reason behind that was that the diplomats were free to act and their interests were not affected in the name of penal proceedings.

Thus it is observed that day-to-day practice among the states and the diplomats still does have difficulties in understanding the relevant provisions of the Vienna Convention on Diplomatic Immunity. Diplomats may misinterpret their privileges and the jurisdiction of their posts and sometimes they are unable to adopt a strategy and here they fail the diplomatic immunity. If the case involved is a minor offence or crime for the sake of smooth performance of diplomatic functions, some of the aspects of such abuses are accepted by the receiving state. But in matter of severe offence like murder, conspiracy, war crimes and crimes against humanity, would the International community or the concerned state accept personal inviolability and diplomatic immunity?

In the ancient times, the importance of foreign representative was recognized and thus, since the first civilization, personal inviolability of diplomacy is the fundamental principle of such representatives. There is a continuous development of diplomatic laws and the important principles were the safeguards of that evolution. In contemporary times, diplomatic laws are recognized as a unique part of public international law in various aspects. As diplomatic relations are maintained amongst the various countries of the world, these rules are applied in the maintenance of relations. Looking at the present scenario in the International system, it is very surprising to know that these are the states which are obedient towards these diplomatic laws applied amongst the countries. This raises a question why is it so?

There are a number of reasons:

- The diplomatic laws are continuous, stable and they were codified before the Vienna Convention.
- The principle of reciprocity is considered to be an escort against the violation of diplomatic laws by the nations.

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The principle of reciprocity is based on the common interests of state ensures sound implementation of diplomatic laws and obedience. But this principle also puts limits on the needed modifications and additions, in connection with diplomatic freedom from criminal jurisdiction. States are unable to introduce new customary international laws to assist in new developments. Diplomats generally do not violate diplomatic rules and regulations of the concerned states under any circumstances and diplomats are bound by the laws of diplomacy. However, these are some instances where the privileged status of diplomats brought to public interest, for example: the case pertaining to drunk-driving or car accident. Such cases led to negative attitude towards the diplomatic immunity and inviolability on the part of the public. Thus, without taking into consideration the severity of the case, the concerned states need to take required measures due to several reasons.

States maintain diplomats in foreign countries and states do not intend to create problems for their diplomats in different and not always safe states. There are chances that there are a number of expatriates from the receiving states in the sending states and that is why the receiving states need to avail the possibilities for response to abuse of diplomatic status based on the element that the refugees are understood to be at risk. For example, Britain did not go for any harsh action against Libya in case of Libyan People’s Bureau because Britain wanted to secure the security and wellbeing of her 8,000 residents in Libya.

In traditional times also, personal inviolability and diplomatic immunity were not extended to the heads of states as well as to members of government. Those were the people who have committed serious crimes as leaders of their states than diplomatic agent.

**Personal Inviolability**

Before discussing diplomatic immunity, we need to understand the principle of personal inviolability which is considered to be one of the oldest and permanent rule of diplomatic law related to the freedom of a diplomat. It is observed even today that the basis of diplomatic law is the principle of inviolability of the person of a diplomatic representative.

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26 Hereinafter the Vienna Convention on Diplomatic Relations is referred to as the Vienna Convention.
The personal inviolability of a diplomat has been supreme and is granted immunity from any harsh treatment by the concerned state. The development of the concept proved that the area of personal inviolability became absolute even after severe crimes were committed by the diplomats.

However, before the Vienna Convention on Diplomacy was adopted at the Vienna Conference, it was the International Law Commission which had already mentioned that either self-defense or, in exceptional situations, other means to prevent a diplomat from committing a crime or an offence, is not ignored by the personal inviolability. In the Vienna Conference, due attention was not paid towards personal inviolability and Article 29 provides the measures to the diplomats for their freedom and dignity.

As mentioned in the article, it does not put emphasis on the concept or the extent of inviolability. The articles do not mention two necessary aspects of this principle. The diplomatic agents cannot be arrested or detained by any authority of the receiving state and it is the receiving state which should protect the diplomat. Personal inviolability is a phenomenal authority of a diplomat. In cases of emergency, there is no withholding of action in case of the inviolability of mission premises. Eg. In a public place, a drunk diplomat is with a loaded gun.

Since olden times, peoples have accepted the importance of foreign representatives in advance and personal inviolability is one of the basic rules which is considered to be as old as the first civilization.

In contemporary times, laws on diplomacy have become one of the core elements of public international law. In order to maintain international relations, states do apply their diplomatic policy towards the maintenance of their relations with other countries. It is observed that when states apply diplomatic laws towards the maintenance of relations with other state, they are bound by the international laws or accepted laws in the international system. This also creates a question why is that?
Following are the reasons for that:

- Prior to the Vienna Convention, the rules of diplomatic law had long been stable and established.\textsuperscript{29}

- The laws were turned into a convention which represents that it is one of the efficient safeguards against the violation of laws on diplomacy by the countries. All the states which maintain diplomatic relations with one another adopt or take action against the offending diplomat.

Therefore, the principle of mutual cooperation amongst the states provides the implementation and conformity with the diplomatic laws. On the other hand, this principle would prove to be a hurdle or may not help to develop required developments and modifications related with the protection of diplomats from criminal jurisdiction, as states could not take a step to adopt a new law so as to tackle any new developments. As the diplomatic immunity does not allow and it is not possible to exercise power on diplomat by any local authority, this had created a lot of problems socially. There is a general belief that the diplomats, due to their status, should not violate rules and regulations of the state where they are appointed and they have to abide and are bound by the diplomatic laws.\textsuperscript{27} Thus, occasional abuses like drunk and drive or causing a car accident harm their esteemed status which could be criticized by the public. There is a negative attitude towards the person with special status. However states have, many times, avoided taking severe action against such crimes committed under the protection of diplomatic immunity for many reasons. Firstly, states do not want their diplomats in other states facing similar and threatening circumstances and particularly with those states considered safe. Secondly, it may so happen that there would be some refuge in the receiving state from the sending state that the diplomatic status of the agent of sending state in receiving state depends upon the recognition of the community of refuge in receiving state.

\textsuperscript{27} Article 41, paragraph 1 of the Vienna Convention, states that “without prejudice to their privileges and immunities, it is the duty of all persons enjoying such privileges and immunities to respect the laws and regulations of the receiving State”.

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United Kingdom did not take any strict measures because it was more concerned with the security and well-being of its 8000 citizens living in Libya in the serious Libyan People’s Bureau incident.

By tradition, the members of government and heads of state are granted personal inviolability and diplomatic immunity. Due to the immunities extended to them, they have committed severe crimes.

1.3 DIPLOMATIC IMMUNITY FROM CRIMINAL JURISDICTION

1.3.1. CONCEPT OF DIPLOMATIC IMMUNITY

In the traditional times, it was regarded that the personal inviolability and freedom of a diplomat were indistinguishable. But in course of time, there was an introduction of a different principle of diplomatic law in the form of diplomatic immunity from criminal jurisdiction, previously arrest and detention were not considered to be important.

Diplomatic immunity, which is one of the core elements of international law and because of that, a few officers who serve in foreign affairs department were exempted from the jurisdiction of local courts or any other authority. The ancient tribes were responsible for the evolution of the notion ‘immunity’. The messengers used to travel from one tribe to another for the smooth transmission of information without any despair and fear. Even if they have bad news, they were protected. Today for the smooth functioning of diplomacy, the immunity gives the diplomats the freedom and protects them from local jurisdiction for the smooth functioning of their responsibilities.

Diplomatic immunity has been created to make sure that foreign officials will be able to discharge their functions effectively. The diplomatic immunity does grant personal profits to the diplomat. Because of the principle of reciprocity, diplomats enjoy diplomatic immunity anywhere in the world.

There are good numbers who believe in such need and they do not take into account any ground and there are a few who oppose these immunities or permit some cases.
There is a number of other theories which give the legal basis of diplomatic immunity.

- This is one of the old theories which is known as the ‘theory of extraterritoriality’. A legal fiction was considered that the territory of the receiving state used by the diplomatic mission or the diplomat should be considered territory of the sending state.

- The ‘theory of representative’; it was also referred to in the Vienna Convention on Diplomatic Relations of 1961 and it considers that the diplomatic mission or a diplomat represents the sending state and they should be granted liberty and freedom to discharge their responsibility as per the agreement signed with the sending state.

- The ‘theory of functional necessity’ which is based on the concepts and even it is the conceptual basis of Vienna Convention. This theory says that the sanctioning of immunities to a diplomat should be based on the smooth functioning of a diplomat and diplomatic missions. The preamble of Vienna Convention reflects the legal basis of immunities which explains that “the purpose of such privileges and immunities is not to benefit individuals but to ensure the efficient performance of the functions of diplomatic missions as representing states.”

This theory which is influenced by the necessities of the functions of diplomats confers certain basic immunities for the functioning of diplomacy without any barrier.

This leads to provide a ground to sanction freedom and practicing diplomatic responsibilities and helping in keeping a watch where they fail to perform. As a result, diplomatic immunity safeguards a diplomat from the receiving state, which for a number of reasons may create a situation difficult for a diplomatic agent to function e.g. by commencing unfounded penal proceeding.

28Rosalyn Higgins, The Abuse Of Diplomatic Privileges And Immunities: Recent United Kingdom Experience,
29Am. J. Int'l L. 641, July, 1985
30Article 22(1) The 1961 UN Vienna Convention on Diplomatic Relations
What exactly does immunity mean? The judge stated in the standard case of Smith vs. Empson that it is a fundamental law that freedom and privileges granted to the diplomats is not the freedom from legal obligations but is the freedom from suit. By that it is meant that in the international relations, the individuals are not considered above the laws of the country but it is an obligation on their part to abide by and respect the laws of one’s own state, and they themselves are responsible for committing anything against the laws of the country but they are not kept under the supervision of police or any detention in their own country. Hence this had provided diplomats with the freedom and have created a problem for the receiving state.

As discussed in Article 31, paragraph 1, the diplomat is exempted from the criminal jurisdiction of the receiving state and he should enjoy diplomatic immunity. The court has to be certain on the issue of immunity based on the facts that on the date when this issue has occurred prior whether at the time when an event gave rise to the allegation of their freedom or at the beginning of procedure. This means that if in court, the diplomat is entitled to his freedom then he could use it as a tool against the proceedings of his acts (which had happened before his appointment as a diplomat and may claim for freedom) or the proceedings which would be against him presently. The diplomat is free from any act of punishment and he could hold his freedom from punishment to stop implementation of a decision or conviction pending against him. Yet when a person is appointed as a diplomat, all proceedings against him come to a standstill during his diplomatic mission. The court has clearly stated that discontinuation of diplomatic status for any purpose, any concrete measure could be revived depending upon the immunity of the defendant and this decision was given by court in case of Epson vs. Smith. This measure can be taken even though the diplomat was entitled to immunity when the concerned incident had occurred and the proceedings started.

At the same time, after the removal of a diplomat from his office or when he loses his freedom, there is no violation of the restriction of the application of criminal laws.
1.3.2. RE-EVALUATION OF THE CONCEPT

1.3.2.1. EXCLUDING IMMUNITY IN CASE OF GRAVE CRIMES

Although the Vienna Convention does not make any effort to categorize offences as per seriousness but there is a need to classify offences according to seriousness and to explain the reacting measures against immunity. The breach of law or committing a crime is something which is associated with a diplomat and discussing crimes of a diplomat against humanity and war is very complex. In fact, it is argued that when a diplomat acts as a war criminal, he no more functions as a diplomat and is unable to enjoy the immunities and privileges of a diplomat. Rome Statute of the International Criminal Court (ICC) and is referred to which gather wide range of support among states and can be seen as evidence of customary international law. States have different criminal laws and defined crimes depending upon the situation and there are international instruments accepted by the states which contain a list of possible serious international crimes. So, it can be said that states have a list of commonly agreed severe offences from which the diplomats should not be exempted. There are incidents and it is observed that as war criminals, even diplomats were sentenced to death. In 1948, during the Second World War, for crimes committed in war, General Oshima, as a Japanese ambassador to Belgium was sentenced by a military tribunal.

The crimes like manslaughter, murder or conspiracy are considered to be consistent with the office of a diplomat. As a result, the sending state does have authority over its diplomatic agents and there would be a demand from all other states to prosecute the concerned diplomat who has committed serious crimes. But generally, it was found that sending states do not easily accept the crimes committed by their diplomats in other states. There are states that do not have jurisdiction over offences committed in other states; this is again a problem with some states. There are problems like the number of procedures e.g. producing proof in other states, which is not possible for the sending state to easily protect its diplomat in other states. But it never means that the sending state does not punish or consider the crime committed by the diplomat when he comes back to his country. For example, a diplomat from France was put for trial when, during his visit to another state, he killed one of his group members at Angola in the course of a brutal argument. Similarly, the United States launched
criminal proceedings against a chargé d’aaffaires for homicide of a colleague in Equatorial Guinea.

1.3.2.2. LIMITING IMMUNITY TO OFFICIAL ACTS

It was suggested that a diplomatic agent should be entrusted with the immunity and privileges when he holds office. That is why any illegal acts considered to be private activities or committed in relation with private activities comes under the jurisdiction of the receiving state and the latter could decide about the concerned diplomat. But it would be difficult to decide as to whether the act committed is a private act or an official task as given in the article 3. It was believed by the court of Portugal that Article 3 lays down the structure for the functioning of diplomacy and that also includes all other incidental actions that should be taken, which cannot be separated for the functioning of diplomacy enumerated in that Article. The International Court of Justice was satisfied with the Portuguese Court and held that there is no difference between acts committed in public life and those committed in private life. The measures on the part of a diplomat can be known as an act beyond the official status when he goes beyond the instructions given by the sending state. But it will also lead to a dispute between the diplomatic agent and the sending state whether the crime was committed by the agent while performing his official duties or otherwise. Serious offences like murder, rape, assault and battering, but not self-defense, could be considered as all forms of violence against a person.

But the scope of official functions becomes relevant. Thus the diplomatic agent cannot be immune to the jurisdiction of receiving state forever for all acts performed by him. As soon as the responsibilities of the diplomat are over, he is not entitled to his immunity and, except for his official functions; he could be sued for all his actions. It is obvious that the diplomatic agent is provided with sufficient time to leave the receiving state but whenever he comes back to the same country, he has to go through the criminal procedure. It was argued that the receiving state could put on trial crimes like murder, rape, violent act, assault and violation of human rights which are not considered to be a part of his official functions. The receiving state could also seek for extraction from the sending state or other states of the former diplomat concerned which exercise territorial jurisdiction over him. But in such cases, there is
no possibility of extradition happening, because the sending state would not extradite its own diplomat.

1.4 IMPORTANCE OF DIPLOMATS

Diplomacy is used by the states for resolving conflicts, forming of alliances or organization, negotiating, compromising, exchange of military, for improving cultural or economic relations etc.\textsuperscript{31} It is diplomacy which helps in the arrangement of shifting rules, etiquettes, goals, procedures and agreements. Diplomats do a very important job for their States. Almost every country in existence has at least a few diplomats who are sent out to various other States for the purpose of negotiating and mediating relations between the two governments. Due to the difference in size, culture, beliefs, etc., of the world comity, there can be differing interpretations to situations or circumstances, which bring to the fore the importance of diplomats to smoothen out the relations between States to avoid hostility and in worst case scenarios, avoidance of war.

The ability to cast possible solutions to problems in terms which allow for all interested parties to better their situation indicates a keen ability on a diplomat's part not only to disseminate information but also to receive and interpret it.

In effect, recognition by policymakers of the key role diplomats can play in an attempt to control or influence the behavior of other States, reinforces the raison d'etre of diplomats in a changing world where peaceful resolution of disputes is prized.

Following are the basic functions of a diplomatic mission:

- Representing the home country in the receiving country,
- Promoting the interests of the home country and its citizens in the receiving country,
- Compromising with the government of the receiving country,
- Supervising and reporting on conditions and developments of cultural, scientific, trade and commerce relations of the receiving country,

\textsuperscript{31}Article 41. The 1961 UN Vienna Convention on Diplomatic Relations
• Protecting friendly relations.

• Sanctioning of passports, travel documents, and visas

The provisions of the Vienna Convention did indeed provide a fair balance between the interests of both the states, i.e. the sending and receiving states. But in many of the major capitals of the world, it came to be felt that diplomats were abusing the privileged status. ³²Diplomacy is not an easy task; there have been instances where the international law has not been adhered to, for example- the overrunning of the U.S. Embassy in Tehran in 1979 by Iranians and the subsequent holding of diplomatic personnel as hostages. The taking of the hostages represented a complete disregard of customary international diplomatic practice on the part of the Iranians.³³

1.5 HURDLES IN DIPLOMATIC RELATIONS

It was observed in the middle of 1970s that certain diplomatic missions are holding weapons against the provisions of local law. It was believed that the weapons used were provided from diplomatic sources in the terrorist incidents in various Western Countries in recent years. It was believed that there are a few countries which are encouraging state terrorism against sectarian exiles, through the involvement of their embassies in the concerned countries. Because of the fact that (as in other Western capitals) the so-called revolutionary committees had taken over the embassy, renamed the embassy the Libyan People’s Bureau and refused to designate a person in charge of the mission led to complex diplomatic communications with the Libyan Embassy in London. In February 1980, further internal upheavals occurred in London at Libyan People's Bureau, which further increased the problems of the diplomats. The citizens and the law-makers were deeply annoyed because of the fact that the Bureau could not be entered and those responsible could not be detained as it was governed by the international law of diplomatic immunity. It was suggested that some way should be found of searching diplomatic bags that were suspected of containing either drugs or weapons. And there was a widespread sentiment that premises which were a base for unlawful acts should not be accorded inviolability. It was argued variously that an accurate analysis of the Vienna Convention would promote the idea

³²Supra Notes 10

³³Supra Notes 3
that immunity and inviolability fell distant when diplomats and missions abused their positions; but that if the Vienna Convention made this required conclusion impossible, then the Convention should be changed or accused.\textsuperscript{34}

1.6 STATEMENT OF AIMS AND OBJECTIVES

The objective of the study is to analyze if there are any diplomatic laws between the States.

- The study will highlight the bases and factors responsible for the maintenance of diplomatic relations between both the States.
- The study will ascertain the present status of business between the States.
- The study will show if there is any trade imbalance and how should the imbalance be rectified.
- The study will also be helpful to understand the role of various treaties and agreements contributing towards the maintenance of diplomatic relations between both the States.
- The study will highlight the performance of political leaders from both the States in promoting relations between the two states.
- The study will highlight the role played by the international agencies in the promotion of diplomatic relations between India and Iraq.
- The study will discuss role of OPEC for the furtherance of diplomatic relations between both the States.
- The study will analyze success or failure of the diplomatic relations between India and Iraq.
- The study will give a critical evaluation of the diplomatic relations between both the States.

\textsuperscript{34}Marie Lall, \textit{Indo-Myanmar Relations in the Era of Pipeline Diplomacy}, Contemporary Southeast Asia Vol. 28, No. 3 (2006), pp. 424–46
1.7 STATEMENT OF PROBLEM

- By giving importance to economy as the center in the formulation of foreign policy, India had revised its position globally and regionally.

- In South Asia, particularly in India, a major role is played by energy security and the geo-politics of energy resources.

- There is an increase in the demand of energy needs of India and accordingly India’s interest in maintaining relations with the countries that are oil and gas rich are also changing.

- India’s dream of becoming a universal power and to lead world in a multi-polar system has remained unchanged during the times of Nehru.

- There is a need to consider India’s official recognition as a nuclear power and its plan to join the Security Council.

1.8 REVIEW OF LITERATURE


This book contains the history of diplomacy which includes stores of former Secretary of States and maintenance of International relations with foreign countries. This volume is a basic reading for any scholar related with diplomacy and foreign policy. Diplomacy is regarded as the study of history of relations among the states for power which goes back to Richelieu, then Gorbachev, till Bill Clinton.

It is difficult not to admire the elevated scope that Kissinger throws across the great depth between the leaders of the world. Many diplomats and statesmen have published memoirs, from Bismarck to De Gaulle and Churchill. But Kissinger left the library to jump in so deep into the ocean of international struggle, and then returned to write so elaborate a history.

To compress more than 800 pages into a few sentences, Kissinger argues that after the Thirty Years War destroyed any possibility of a single European state; the peace of Europe was kept, and, when breached, restored by the craft of diplomacy. Statesmen
accepted and defeated the interests of nations by a number of techniques, primarily with the application of the balance of power. To handle the menace of these transactions they developed a technique of analysis which ruthlessly excluded ethical or moral considerations.

The book discusses that the United States, with the help of security pacts and economic alliances, should rely on balance of power and it cannot dictate her terms in the new merging international system. The writer had narrated the global ambition of Hitler for craving war to meet his objective, discusses about Stalin who was regarded as “a supreme realist” in the affairs of international relations and about Franklin Roosevelt. The writer of this book, Kissinger, gives credit for the collapse of USSR to Reagan and also considered that refusal to abdicate America's global role as Nixon's achievement. Kissinger was of the idea that the U.S. should simultaneously bolster barriers to Russian imperialism, when urging support for Russian liberalism, which was neither done by Bush nor Clinton.


The book highlights the difficulties for diplomacy after the end of cold war. The writer of this book has served as ambassador to United States and United Nations from Iraq and also as the foreign minister of Israel government. On the basis of his experience, observation and knowledge, he includes an outlook of diplomacy which is practiced in the present world.

The writer related his personal anecdotes to the historical facts, he also revisited the cold-war and how it came to an end in 1989 by appreciating the diplomatic restraint in the years that have followed; the book also emphasizes upon the ethical confrontation between power and principles with the help of international decisions and actions; and points out the difficulty adjusting the promotion of universal human rights with respect for the independence. The writer highlights the secrecy over the international system and deplores the lack of privacy in international negotiations that is the result of an increasingly intrusive media, shows that nuclear warfare is not a frequent military option, and warns against inflated views of what can be expected from the United Nations. He concludes with thoughts about the quest for peace in the Middle East.
Diplomatic history vividly demonstrates that the wisdom of the past can be immensely valuable as we seek to negotiate and maintain peace in the future.

**Deterrence by Diplomacy by Anne E. Sartori, Princeton University Press, 2005.**

This book is about deterrence and diplomacy. An attempt at deterrence is a counter-threat. It is a threat by one state to use military force if another state does not refrain from some undesired, threatened action. For example, a state may threaten to invade another state or to subject it to an economic blockade. The threatened state may attempt deterrence by counter-threatening to start a war if the first state goes through with the invasion or blockade. At a casual glance, it is not clear that deterrent threats should ever succeed, because states that do not intend to fight have strong incentives to bluff. In the early 1990s, prior to NATO military intervention in the Yugoslav War, the Bush and Clinton administrations, the European Community and the United Nations threatened to impose sanctions and then to use force to influence the behaviour of Serb president, Slobodan Milosevic. If the threats had worked as intended, they would have prevented the slaughter of many civilians and perhaps made NATO participation in the war unnecessary (Kissinger’s Contemporary Archives 1992, 1993; Silber and Little 1997). The United States and others had an incentive to claim a willingness to take actions that they were, in fact, proven unwilling to take, at least in the short run. Similarly, when Turkey threatened to invade Cyprus in June 1964, President Johnson sent a “brutal note” to deter this attack. This time, deterrence worked. But Johnson, too, had an incentive to bluff if he did not intend to take action; a successful bluff would have changed Turkey’s behaviour in exactly the same way as a genuine threat. I think, in this book, deterrence is described as a form of diplomacy. Diplomacy is the use of language and other signals by one state in an attempt to convey information to another. It is a kind of communication—the use of language by representatives of one state, aimed at influencing the actions of one or more others. Deterrence is the use of a particular subset of language—deterrent threats—to attempt to convey the information that a state is willing to fight over a disputed issue or issues. Thus, deterrent threats are a form of diplomacy.

The book describes the failure of America towards Iraq. The United States’ intention to invade Iraq was to establish a democratic form of government and then to bring about a change in the Middle East. Therefore, Iraq would stand divided into the following three constituents:

1. North Kurdistan was in favor of western Kurdistan,
2. In south, there was dominance of Iran for Shiite entity,
3. And in the center of the region, there was total chaos among Sunni Arabs.

The country is plagued by insurgency and is in the opening phases of a potentially catastrophic civil war.

In 2003, George W. Bush invaded Iraq. The war in Iraq not only helped United States to throw out Saddam Hussein regime form the country but it was also successful in curbing the institutions of Sunni Arab minority which used to dictate terms in the country in the form of its security services and the political party. The demolishing of these institutions made Iraq to lose its identity and it disappeared.

The book not only gives an account of the blunders of the invasion of Iraq by America but also discusses the US failure to interpret the strategic consequences of war. The US was unable to interpret severity of religious and ethnic conflicts in Iraq. To overcome the ill effects of invasion in Iraq, a number of incoherent and inconsistent strategies for governing were taken up by the US. For reconstruction, the US was unable to bear the expenses financially. It also failed in the creation of the national army and police, and then moving country's management to Republican political loyalists rather than qualified professionals.

The United States needs to put emphasis on the existence and spread of civil war rather than in making effort for a unified Iraq. U.S needs to understand the diversity of Iraq and should make efforts to work with Iraq's Shiites, Kurds, and Sunni Arabs in strengthening already divided units of the region. There would not be practice of democracy but the region would be united which would be helpful in the security of the region.
It was not easy for U.S to leave Iraq under such circumstances. In ‘The End of Iraq’, the author discusses the first hand experiences of the leaders of Iraq who are now ruling in the country. The author has distinguished between the emergence of the situation in Iraq and what would happen in future based on the twenty years’ involvement in Iraq policy working for the U.S. government. ‘The End of Iraq’ is the detailed account of the war and its impacts.


Republic of Fear is the only book that explains the motives of the Saddam Hussein regime in invading and annexing Kuwait. This edition has a substantial introduction focusing on the changes in Hussein's regime since the Gulf War.

In 1968, a coup d'état brought into power an extraordinary regime in Iraq, one that stood apart from other regimes in the Middle East. Between 1968 and 1980, this new regime, headed by the Arab Ba'th Socialist party, used malevolent control and rigorous organization to transform the way Iraqis think and react to political questions. In just twelve years, a party of a few thousand people grew to include nearly ten percent of the Iraqi population.

This book describes the experience of Ba'thism from 1968 to 1980 and analyses the kind of political authority it induced, culminating in the personality cult around Saddam Hussein. Examining Iraqi history in a search for clues to understanding contemporary political affairs, the author illustrates how the quality of Ba'thi pan-Arabism as an ideology, the centrality of the first experience of pan-Arabism in Iraq, and the interaction between the Ba'th and communist parties in Iraq from 1958 to 1968 were crucial in shaping the current regime.

Saddam Hussein's decision to launch an all-out war against Iran in September 1980 marks the end of the first phase of this re-shaping of modern Iraqi politics. The Iraq-Iran war is a momentous event in its own right, but for Iraq, the author argues, the war diverts dissent against the Ba'thi regime by focusing attention on the spectra of an enemy beyond Iraq's borders, thus making a hidden potential for even greater violence inside Iraq.
India’s Current Energy Needs

The energy policy of India is largely defined by the country's burgeoning energy deficit and increased focus on developing alternative sources of energy, particularly nuclear, solar and wind energy. Due to rapid economic expansion, India has one of the world's fastest growing energy markets and is expected to be the second-largest contributor to the increase in global energy demand by 2035, accounting for 18% of the rise in global energy consumption. Given India's growing energy demands and limited domestic fossil fuel reserves, the country has ambitious plans to expand its renewable and nuclear power industries. India has the world’s fifth largest wind power market. India needs to look for new resources of energy to keep up with the economic growth and in future to play an important role in the international system. Due to the modified policy, India came closer to Southeast Asia; however, the same cannot be stated in relation to Iraq.35

Iraq has one of the world’s highest proven oil and gas resources. With the toppling of Saddam Hussein, the former President of Iraq, and with the implementation of the new Iraqi constitution, the exact diplomacy policy Iraq is following is not known. With most of the Iraqi oil and gas deposits lying in Kurdistan which has its own government, it is unclear whether it follows the previous commitments which Iraq made in its diplomacy.

Hence there is a need to study the Iraqi position on diplomacy with India and whether it promotes trade and cultural relations between the two States. India has enjoyed close cultural ties with Iraq, especially in education with the proliferation of Iraq students frequenting India’s educational institutions, in particular those of higher learning.

There is a need to study the laws and policy governing both the States especially the diplomatic relations to understand what more needs to be done to improve the bilateral diplomatic relations between the two States.

35Supra Notes 20
1.9 HYPOTHESIS

1. Laws govern the diplomatic relations between both the states. There is need to amend or improve the diplomatic laws.
2. The importance of maintaining close relations between the two States and with India’s foreign policy tilting towards its economic interests, serve the mutual benefits of both States to engage in trade keeping in mind India’s energy requirements in the future.
3. With the change in Iraqi government there have been changes in trade and cultural ties between both the States.

Keeping this hypothesis in mind the researcher has conducted the research.

1.10 RESEARCH METHODOLOGY

This research work is doctrinal research. It keeps a record of secondary data, published and unpublished journals, newspapers, and research articles and books and booklets materials relating to the study. The present investigation was undertaken on “Legal regulations governing international and diplomatic relationship between India and Iraq-A critical study”.

- **Sources of Data Collection**

The secondary data was collected after reviewing related literature from journals, articles, reports, books, dissertations and thesis.

1.11 RATIONALE AND SIGNIFICANCE (IMPORTANCE RELEVANCY PRESENT SCENARIO) OF THE STUDY

With India’s rapid population growth and need for more energy resources to maintain a high economic growth, it is of the essence to source oil and gas from different States of the world. With Iraq having proven high deposits of oil and gas, It is necessary to know as to what is the present status of diplomatic relations between Iraq and India and as to what law governs the same.

There were number of factors responsible for the shift in policy. Economy was the foremost in importance in the new policy; there was a change in the foreign policy priorities of India which are now heavily based on economic decisions.
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Hence there is a need to study the Iraqi position on diplomacy with India and whether it promotes trade and cultural relations between the two States. India has enjoyed close cultural ties with Iraq, especially in the field of education with the proliferation of Iraqi students frequenting India’s educational institutions, in particular those of higher learning.

There is a need to study the laws and policy governing both the States, especially the diplomatic relations to understand what more needs to be done to improve the bilateral diplomatic relations between the two States.

1.12 SCOPE OF THE RESEARCH

Diplomacy is becoming increasingly important part of international relations. The scope of the study will be to study diplomatic relations between India and Iraq that governs the same. Increased knowledge of whole diplomatic process, i.e. the implementation of foreign policy in all the fields of acts that are part of diplomacy; the purpose of the institute is to bring together all the political, economic, military factors together with the process of actual negotiations, in order to render a true and realistic picture of why things happened the way they do, and what could be learned with the hope of doing better in the future.
1.13 LIMITATIONS OF THE STUDY

The study will have the following limitations;

1. Money-there is the limitation of money as the researcher is not earning or employed. Due to limited financial resources, the researcher faces the limitation of money.

2. Time-time is also a limiting factor. This is mainly because the researcher is expected to complete the said research in a limited span of time i.e. maximum five years. Hence there is the limitation of time on the researcher.

3. Access to resources-the study being one that deals with the diplomatic relations, some of the diplomatic resources maybe classified and not easily accessible as they are not for public access. This is a limitation as not being able to access the confidential material, the researcher may not be in a position to know some of the policy decisions and why they were taken in a particular manner.

The above mentioned are the main limitations of the study.

1.14 CHAPTERIZATION

Chapter 1 discusses about the meaning, definition and evolution of diplomacy in detail. It also includes the basic immunities and privileges granted to the diplomats. The functions, objectives, nature and characteristic of diplomacy are thoroughly discussed. It also explains the barriers in the practice of diplomacy. Chapter 1 describes the aims and objectives of the research, the hypothesis, review of literature of the research, research methodology, and significance of the research and the limitations of the present literature. It also discusses the further chapter of the thesis.

Chapter 2-discusses the conceptual analysis of diplomacy and international relations. It gives idea about the evolution of diplomacy. Component elements that are important for the conception of diplomacy are discussed. Chapter 2 explains the importance of international relations and the merits and demerits of international relations.
Chapter 3 discusses the international laws of diplomacy. In this chapter the history for the evolution of diplomacy is discussed in detail. The historical alliances for the convention on diplomacy are discussed. In this chapter Vienna Convention on Diplomatic Relations is discussed in detail. This chapter also describes the appraisal and criticism on the Vienna convention.

Chapter 4 discusses on the laws of Iraq related to international diplomacy and importance of diplomatic law. This chapter also discusses Iraq’s diplomatic policy with India. This chapter also discusses the influences and criticism of policy and laws relating to India vis-a-vis Iraq international diplomatic relations.

Chapter 5 discusses Indian laws relating to international diplomacy and India’s diplomatic policy towards Iraq. Chapter 5 also discusses the influences and criticism of policy and law relating to India vis-a-vis Iraq’s international diplomatic relations.

Chapter 6 discusses comparative analysis of diplomatic policy between Iraq and India. It explains about diplomatic relations and laws between both the countries. It also includes the diplomatic relations between both the countries affected after 2003 US invasion in Iraq. The chapter also talks about the solutions to improve bilateral diplomatic relations between Iraq and India.

- Chapter 7 discusses about the conclusion and suggestions to regulate diplomatic relations between India and Iraq.