ORIGIN AND DEVELOPMENT OF DIPLOMATIC IMMUNITIES IN ISLAM AND INTERNATIONAL LAWS

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ABSTRACT

Observation of the Origin and Development of Diplomatic Immunities in Islam and International Laws laid down for the methods and instruments of analysis and even some of its basic assumptions in the modern world; is a matter that is of paramount importance. There is a need to examine the emergence of diplomatic immunities, exploring its scope and attempting to outline of its theory. This paper attempts to deal with the origin and development of diplomat immunity in Islam and international law, as well as the sources and basis of Immunity in Islam and international law. It will outline the main methodological problem by addressing the question of whether the Origin and Development of Diplomatic Immunities in Islam and International Laws are built on Islamic principles of security for Muslims and non-Muslims alike, or are built on both mentioned aspects. It also aims at drawing the attention that the development of diplomatic immunity in Islam started earlier than the international laws on diplomatic immunity. The methodology adopted in this research is the library research through the consultation of relevant literature, which focuses on the thematic study of the subject matter. This is followed with analysis and discussion on the contents of the materials used. It is concluded that the source of the emergence of diplomatic immunities in Islamic law is derived from the Quran and the Sunnah. The paper also observed that the privileges and immunities of diplomats is one of the rules of customary international law. An important conclusion is that the crimes and acts that take place inside the embassy, is considered to have occurred in a foreign land. It also concluded that the period after the Vienna Conference in 1815 till the period of the world war is the period in which the contemporary diplomatic immunities is introduced.

Keywords: Islamic; Diplomatic; Immunities; Law; Embassy; Vienna Conference; Protection; Development.

1- INTRODUCTION

First of all, it is important to start this research by touching on the historical background of immunities. The word 'immunities' was associated in the beginning with the word 'diplomacy'. This makes it clear that the word may have arisen since the emergence of diplomacy.

Therefore, the immunity is associated with diplomacy in terms of its pronunciation, usage, and derivation. Thus, its emergence is with the emergence of diplomacy. Therefore, the emergence of diplomatic immunities is considered to be since the emergence of Islamic diplomacy. That is in the seventh century after the ascendancy of Prophet (S.A.W) in the leadership of the city of al-Madinah and the establishment of the fundamentals of his government. He thereafter created and entered into treaties between the al-Ansar (the people of al-Madinah) and al-Muhajirin (the immigrants from Makkah) and other residents of al-Madinah such as the Jews and etc. the diplomatic mission started with the invitation of the kings of Roman and Persian, as well as the kings, the princes and the tribal leaders of the Arabs, to embrace Islam, in an Advanced civilized manner, which indicates the depth of the Islamic renascence and its ability to implement the principles and values of civilization.¹

Moreover, diplomacy in the era of the Prophet (SAW) represents ideal level in the diplomatic history of the human folk in general and the history of Islam and Muslims in particular. In fact, there is no doubt that the period of the Messenger of Allah (SAW) is the greatest periods in the history of human diplomacy. It is unimaginable that there will come upon mankind any other period that will more perfect or better than the stint era of the Messenger of Allah (SAW) of the Islamic propagation upon firm principles and fixed basis that will never change with the change of time, places and the occurrences of events. That is with the flexibility of keeping up with needs, and deriving its sources from the Qur'an and the Sunnah. This is what is missing in human legal theory that is derived from human laws sources.

The origin of the principle is the maxim which is actually word of the holy Prophet (SAW) that says (do no harm).² This is one of the greatest rules of jurisprudence amongst the Muslims.

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¹ Fatalawi, Suhayl Husain. (2006) al-Diplomasiyah al-Islamiyah (*Dirasatan Muqaranah bi al-Qanun al-Daoli*), p11.

²An abi Sa'id Sa'ad Bin Sanan al-Khudri (RA).

Therefore, we can conclude from the above that immunities have emerged since the advent of Islam to the world. We can assert that the maxim as regard to the envoy that is sent on a mission should be given priorities of the application of the rule among the Muslims.

The exchange of envoys and embassies during the time of the holy Prophet (SAW) was not a coincidence; rather, it occurred as a result of legitimate divine revelation.

However, the periods of the traditional diplomacy was considered to have begun to appear during the modern era. That is, in the fifteenth century, approximately by 1453 AC.³ That is, the era of renaissance, in which there are changes and the work towards accelerating the new rules. Relationships and diplomatic practice started to become firm, especially at a time when work began move toward the adoption of the principle of the permanent diplomatic representation.

On the other hand, The work move toward the stability of diplomatic relationship and to the work toward the codification of the principles and rules that determine the rights and duties, and the immunities of diplomatic representatives, the first attempt of the work of the codification began with the Conference of Vienna in 1815 AC and Aix-la-Chapelle⁴. The work continued under the resolutions of Vienna Convention, until the beginning of the twentieth century, especially at the end of the First World War. The first agreement in this regard was in 1946. It is known as the Convention on the Privileges and Immunities of the United Nations.⁵ It provides for the career standard of the immunities and the privileges that to be enjoyed by the diplomatic employees.

The sources of diplomatic immunities under Shariah law are the legitimate sources. That is from the most high in expertise and the most knowledgeable. What makes it a strong this is what makes the rules of immunities under Shariah law most formidable in compelling its rules and making it to attract penalty upon whoever violate the rules of immunities. This principle is known in this era in law, however, there is great difference between the principle in the positive law and the divine law.

2- Scope of the paper

The main objective of the present paper is to discuss in broad and general terms of Origin and Development of Diplomatic Immunities in Islam and international Laws, and to show major differences between the two aspects. It would also discuss some matters relating to sources and basis of Immunity in Islamic law.

3- Origin and Development of Diplomatic Immunities in Islam and International Laws

a) Origin and development of diplomat immunity in Islam

The emergence of diplomatic immunities is considered to be since the emergence of Islamic diplomacy. That is in the seventh century after the ascendancy of Prophet (S.A.W) in the leadership of the city of al-Madinah and the establishment of the fundamentals of his government. He thereafter created and entered into treaties between the al-Ansar (the preople of al-Madinah) and al-Muhajirun (the immigrants from Makkah) and other residents of al-Madinah such as the Jews and etc. the diplomatic mission started with the invitation of the kings of Roman and Persian, as well as the kings, the princes and the tribal leaders of the Arabs, to embrace Islam, in an Advanced civilized manner, which indicates the depth of the Islamic renascence and its ability to implement the principles and values of civilization.

Moreover, diplomacy in the era of the Prophet (SAW) represents ideal level in the diplomatic history of the human folk in general and the history of Islam and Muslims in particular. In fact, there is no doubt that the period of the Messenger of Allah (SAW) is the greatest periods in the history of human diplomacy. It is unimaginable that there will come upon mankind any other period that will more perfect or better than the stint era of the Messenger of Allah (SAW) of the Islamic propagation upon firm principles and fixed basis that will never change with the change of time, places and the occurrences of events. That is with the flexibility of keeping up with needs, and deriving its sources from the Qur'an and the Sunnah. This is what is missing in human legal theory, which is derived from human laws sources.

Furthermore, the advent of Islam in the Arabian Peninsula is considered as a major paradigm shift at all levels, especially at the political level as it is related to the external relations of the Islamic state. Although, the Arabic diplomacy in the pre-Islamic era was also associated with foreign relations more commercial interests, however, the Islamic diplomacy went beyond such boundaries of the pre-Islamic era, and flied to all directions in order to guard the religion and politics of the world, since it is all established on the foundations and principles of Islam.

It established the systems and laydown the curricula of life and the areas of its interactions in a unique applicable way. This is because the Legislator is Allah the Almighty, and the executor is such great personality. That is why the Muhammadih diplomatic immunities is a realistic diplomacy that laid down a set of rules, principles and values that was derived from the sublime Shariah and the guidance of Prophet Mohammad (SAW). It is above all inadequacy and defect, and its effect is clear and crystal from the record of Islamic diplomacy of later ages."

³Ibid, p 104.

⁴ Protocol Aix-la-Chapelle (1818).

⁵ It is reiterated here that the Institute of International Law adopted, the theory of the interest of the job in its session of 1929 and the abandoned its theory of expansion of the region, likewise, the Havana Convention of 1928, as well as adopted the theory of the interest of the functionality that stipulated the introduction of the Convention and enshrined it in its Article 15.

⁶ Fatalawi, Suhayl Husain. (2006) al-Diplomasiyah al-Islamiyah (*Dirasatan Muqaranah bi al-Qanun al-Daoli*), p11.

⁷ Ba Umar, Ahmad Salim. (1421 AH) al-Diblomasiyah *Bayna al-fiqh al-Islamiy wa al-Qanun al-Daoli*, p 70-73.

There are religious texts in the holy Our'an and Sunnah that cares and encourages diplomatic immunities. The texts represent the greatest respect for the human dignities, and it provides him with everything that will preserve him the dignity, such as personal immunity, privileges, virtue and many examples that we shall see in dealing of the holy Prophet (SAW), which He (SAW) established and affirmed the fundamentals, and which was continued after him by the caliphs and become the Muslims' source in that era that exceeded the situation of the modern era. It was revealed in the Qur'an that:

رُتُتُ فَهُ هَ مِبِهِ هَهُ هَهِ ﴾ حے ئے آت آت کُکُو وُ وَ يَ يَ رُ

The principle of diplomatic immunity is rooted in these verses as represented in the glorious texts. That is that the verse (tall to him in a soft tones), here represent diplomacy and negotiation. Likewise, (do not be afraid. I am with both you) 8. It was at this juncture that holy Prophets Musa and Aaron enjoyed divine immunity, because immunity is about the safety from assault allow the diplomat to perform his task, and this is the greatest evidence from where diplomatic immunities draws its origin, and the privileges that are considered as additional type of immunity. It will be clear at the end of verses from the word of Allah:

Allah the Almighty granted Musa (AS) and the believers amongst his people and excellence, privilege, and virtue. That is why nobody came closer when he stroked the sea and walked in it. Thus, this privilege and additional virtue the immunity that they were granted by restraining the enemies to catch-up with them and victimized them, that is as we previously mentioned that the immunity is about protection and security from any inflicting damage on envoys the diplomats within the context of communication and the relationship of their mission. Therefore, it is asserted here that the greatest immunity in the provision of security is the relationship with Allah, Whose immunity will not allow anybody to afflict any detriment on His Messenger. This is clear from the words of His Messenger and Prophet Musa, that:

ر پ پڀ ڀڀ ٺ ٺ ٺ ٺ ڏ ڙ 9 . Quran and presents this in various portions. The verses on this are enormous and the In the antiquity the source of diplomatic immunities was the religious source. 10 However, this has changed with the change of time, nevertheless, Islam still preserve this. Thus, the source of the emergence of diplomatic immunities in Islam is Islamic law which derived from the Ouran and the Sunnah. Thus, the earlier and modern eras cannot achieve what is achieved by Islam. This is the only source that provides mankind with right of general immunity regardless of whether they are Muslims and infidels. That is that no harm should be inflict on them, which is the cornerstone of the modern immunity that is guaranteed for the general public let alone the people who are entrusted with such greater duty. They are more entitled.

The origin of the principle is the maxim which is actually word of the holy Prophet (SAW) that says (do no harm). 11 This is one of the greatest rules of jurisprudence amongst the Muslims.

Therefore, we can conclude from the above that immunities have emerged since the advent of Islam to the world. We can assert that the maxim as regard to the envoy that is sent on a mission should be given priorities of the application of the rule among the Muslims. The exchange of envoys and embassies during the time of the holy Prophet (SAW) was not a coincidence; rather, it occurred as a result of legitimate divine revelation. It is noticed that the preparedness of the holy Prophet (SAW) to fight the infidels on the basis of the rumor of the murder of Uthman Bin 'Affan (RA) was for diplomat reason. That is the breach of diplomatic immunity of the envoy, despite that the fact that the trespass that occurred was the killing of Uthman (RA). The immunity that was established by the Prophet (SAW) is that an ambassador should not be killed. Instead, he must be allowed to return safely, whether the other party accept or reject the message that he brought. However, what is currently applicable in the theory of contemporary diplomacy is that "the diplomatic sanctity of an envoy must be preserved. Thus, he cannot be arrested or detained, and the host nation must treat him with respect and good manner. 12

This is the same rule that was established by the holy Prophet (SAW) since more than fourteen century, that is when two envoys came from Musaylimah al-Kadhab to the Messenger of Allah (SAW), and he said to them after reading the letter of Musaylimah al-Kadhab, and what do you profess? They replied that they professed that which he professed. Then the Messenger of Allah (SAW) said if it is (not for the rule that envoys should not be killed, I would behead the both of them). 13 According to Imam Ibn al-Qayyim while commenting on this subject, and the messengers/envoys of his enemies use to come to him despite being hostile to him and he never insult or kill them, based on the custom that messenger should not be killed. 1514

¹⁰ Al- Shaami, Ali Husain. (1990) al-Diblomasiyyah, Nash'atuha wa Tatawuruha wa Qawaiduha wa Nizam al-Hasanat wa al-*Imtiyaziyah al-Diplomasiyah*, p 391.

⁸ Surah Taha, Verse 77-78. Ibn Kathir, Tafsir al-Qur'an al-Azim.

⁹ Surah al-Shu'ara', Verse 62.

¹¹ An abi Sa'id Sa'ad Bin Sinan al-Khudri (RA).

¹² Subject 29, from the Resolution of Viena 1961.

¹³ Narrated by Ahmad, 3/487, 488 from the hadith of Naim bin Masood al-Ashia'i and Abu Dawood (2761) in the jihad: the chapter of messenger, however, it is weak hadith, but it has valid witness.

¹⁴ Salim Ba Omar, Al-diblomasiyah bayna Al-fiqh al-isalam wa Al-qanon al-daoli:Ahmed, p 77.

¹⁵ Ibn al-Qayyim al-jaoziyah. (1421) Zad Al-maad fi hadyi khairu al-ibad. Commentary (Tahkik) by shu'aib al-Arnaa'ut. vol. 3, p 125.

b) Origin and Development of diplomat immunity in international law

Some scholars divided diplomatic law into various categories; one of such categories is that of immunities which an annexure of the diplomatic law is. In the period of time that follows the medieval period; ancient diplomacy was divided into two parts. The traditional diplomacy and the contemporary diplomacy. However, both the traditional and the contemporary diplomacy are considered as two stages of modern diplomacy (any of the biggest stages through which modern diplomacy)."¹⁶

The periods of the traditional diplomacy was considered to have begun to appear during the modern era. That is, in the fifteenth century, approximately by 1453 AC.¹⁷ That is, the era of renaissance, in which there are changes and the work towards accelerating the new rules. Relationships and diplomatic practice started to become firm, especially at a time when work began move toward the adoption of the principle of the permanent diplomatic representation. The work move toward the stability of diplomatic relationship and to the work toward the codification of the principles and rules that determine the rights and duties, and the immunities of diplomatic representatives, the first attempt of the work of the codification began with the Conference of Vienna in 1815 AC and Aix-la-Chapelle¹⁸. The work continued under the resolutions of Vienna Convention, until the beginning of the twentieth century, especially at the end of the First World War.

It can be said that traditional diplomacy has passed two main stages which are the level of preparing diplomacy as a career and level of its affirmation as profession. In the phase of preparation, the diplomatic representation is still linked to the personality of the ruler than its connection with the sovereignty of the state. At this preparatory stage the development of precise rules of law and diplomatic immunities, which until that time was vulnerable to violation, not was yet conclusive. However, as for the second stage, which begins with the Vienna Convention of 1815 AC and continued until the First World War, was more developed than the previous stage as regards the identification of some of the rules of diplomatic profession. It is characterized with some kind of autonomy and type of immunities and diplomatic privileges, especially at the end of nineteenth century¹⁹.

This phase of traditional diplomacy is characterized with some specification, which includes: 1. The rules of diplomacy was not clear, likewise, the diplomatic immunities that granted to the diplomats and their grades which is a subject of perpetual conflict. Any question of immunities that should be enjoyed by diplomats for the assurance of their safety and their mission. Legal scholars try to deliberately to search for the foundations that underpin these immunities and tried to defend and justify them.

Several principles and rules were put forward in the areas of immunities by the legal scholars. All the rules almost relied on the theoretical justifications that countries tried to adopted in their diplomatic dealings. These theories are the theory of expansion of their region, the theory of representativeness and the theory of interest or the necessities of occupation. We will discuss the theoretical fundamentals of immunities in this chapter (section four). Thus, from the fourteenth century until the eighteenth century, and especially in its middle there much dedication on the commitment for the introduction of the principle of diplomatic immunity among nations, hence, the development of the principle of diplomatic immunity for the diplomats and his exemption from the local judiciary jurisdiction and the criminalization of his arrest as a result of a crime or act of hostility of the host State.

A diplomat is considered as a representative of a king or a prince, more than the state.
 The function of the diplomat is to observe or take notice of the new occurrence in the host state has adopted. ²⁰

The contemporary diplomacy began towards with trend of parliamentary life, especially after the French Revolution in 1789. More so, since the nineteenth century, and especially since the Vienna Convention of 1815, the real center of administration began to move away from Royalties and influence of the kind... the delegation of personal diplomacy to representatives in parliament. Furthermore, the changes of positions of the interest of parliamentary life began to modify diplomatic methodology, and period of the First World War and the resulting events opened a new era for the development of diplomacy and it formed a base for advancement into a new diplomatic method that is based on certain democratic principles that are considered as modern as compared with practices of the preceding diplomacy, that is the traditional diplomatic practices, in another word, it begun to increase in departure from the former method.²¹

According to some scholars, the traditional diplomatic practices extends to the end of the World War,²² however, the researcher believes that the period after the Vienna Conference in 1815 till the period of the World War is the period in which the contemporary diplomatic immunities is introduced, and that the post-World War is the period of its development and growth and changes of the diplomatic immunities, until the time of the Vienna Conference in 1961, which is the departure time for the organization and development of rules and the establishment of diplomatic immunities and its codification. This is cleared through induction from many references and sources that divides modern diplomacy and its growth into two parts.

The Vienna Conference of 1961 is considered as the real beginning of the development of the rules of contemporary diplomatic immunities in which we live and it is practiced by the countries that signed the resolutions, and the other countries that did not join the

¹⁸ Protocol Aix-la-Chapelle (1818).

Al- Shaami, Ali Husain. (1990) al-Diblomasyah, Nash'atuha wa Tatawuruha wa Qawaiduha wa Nizam al-Hasanat wa al-Imtiyaziyah al-Diplomasiyah, p 91.

¹⁷Ibid, p 104.

¹⁹Al- Shaami, Ali Husain. (1990) al-Diblomasiyah, *Nash'atuha wa Tatawuruha*, p 92-93.

²⁰ Al-'Abikan, Abdul Azeez Naasir. (2007) Al-Hasanat wa al-Imtiyaziyat al-Diblomasiayh, first edition, p 106.

^{.&}lt;sup>21</sup> Al- Shaami, Ali Husain. (1990) al-Diblomasyah, Nash'atuha wa Tatawuruha, p 91.

²² Al-shinkiti, Muhammad Abdullah bin Muhammad Al Amin. Al-tanzim al-qanuni li-alhasanat Wal Imtiyazat Al diblomasiya, p9.

conference. This, especially was after States unanimously agreed to entrust the United Nations with the duty of organizing and codifying the rules of diplomacy. The effort of the UN culminated in success. That is by the issuance of the Relations of Vienna Convention on Diploma 1961.²³ Our concerns here on the study are what is that which revolved around diplomatic immunities and that Article 22 of the Convention to Article 32.

4- The Sources and basis of immunities under the Islamic law and international law

Sources and basis of Immunity in Islamic law

The sources of diplomatic immunities under Shariah law are the legitimate sources. That is, from the Most High in Expertise and the most knowledgeable. What makes it a strong this is what makes the rules of immunities under Shariah law most formidable in compelling its rules and making it to attract penalty upon whoever violate the rules of immunities. This principle is known in this era in law, however, there is great difference between the principle in the positive law and the divine law.

Thus, under Shariah law, it is either the sources are primary sources or secondary sources. The primary sources are the Quran and the prophetic Sunnah. The secondary sources or dependency sources are those that are derived from these two primary sources are [al-Ijma/consensus, al-'Urf/custom al-istihsan/equity, al-masalih al-mursalah/interest upon which the primary sources are silent and etc...].

Moreover, what it is meant by primary sources are those sources that govern other sources, in which the secondary sources refer to. Thus, it constitutes the highest source of rules and system of diplomatic immunities and privileges. The Islamic diplomatic law is unique for the fact that it cannot possibly violated.

The First source Holy Qur'an:

The holy Qur'an has been concerned diplomacy and immunity since it was revealed to the holy Prophet Muhammad (SAW) to extent that it becomes one of the features of the Islamic religion and the good interaction and the granting of security to those that are sent, as envoys. The holy Prophet (SAW) also sent emissaries for the advocating of the religion ad to convey or deliver a message. He (SAW) took his religious protection into account has stated in the holy Qur'an in various portions. However, because the time is not in our side, we will only be able to confine ourselves to some little.

It was stated in the word of Allah (SWT) that:

رُبِدِ د د نا نا ئه ئه نو نو نؤ نؤ نؤنو نو نو ني ني نب ني رُ 24.

The application of this terminology is general, as regards to the right envoys and diplomats. They are entitled to it and this will become clear from the discussion. This is the manner in which Ibn Kathir interpreted this verse.

Allah (SWT) says to His Prophet (SAW): (if one of the idolaters) whom I ordered you to fight and legalized for you the seizure of them and their property a war booty (seeks asylum in you) that is he sought for your protection and security, (Many legal scholars and teachers interpreted the 'Al-aman' as 'immunity,' as it known in the current time) grant him his request in order that he will heard the Word of Allah, that is the holy Qur'an that will be recited to him and he will be thought a bit of a matter of religion which may constitute proof of Allah (SAW) upon him (and then lead him to his place of safety). That is, he must remain safe and the safety must be continual until he returns to his country and his home and to place where he is secured (this is because they do not know). That is to say that we legislate the safety of these type of people to teach them the religion of Allah and spread Allah's invitations amongst His savants.

According to Ibn Abi Nujaih as narrated by Mujahid in his Tafsir 'exegesis' while interpreting this verse. He argued that it means: anybody comes to you to listen to your sayings and the revelation of Allah (SAW) to you, such person must be safe and be allowed come to you to listen to the word of Allah (SAW) and he must be protected until he reaches secured place that he came from. It was on this basis that the Messenger of Allah (SAW) used to give security to those who came to him (SAW) for guidance or for a message. There was a group of the messengers of the Quraish came to him (SAW) on the day of the treaty of al-Hudaybiyah. Amongst such messengers are Urwa Ibn Mas'ud, Makriz bin Hafs, Suhail bin Amr and others. They came one after another, shuttling and intermediating on a matter between him (SAW) and the polytheists. Thus, they saw the high manner where the Muslims respect the Messenger of Allah (SAW), in which neither amazed- Marveled nor any king and nor Caesar have ever received such respect. Then, they returned to their people and informed them about it. It was this occurrence and other tangible reasons that culminated in the guidance of most of them to the embracing of Islam. Likewise, the Messenger Musaylimah al-Kadhab came to him (SAW), he (SAW) said to him 'do you testify that Musaylimah is a Messenger of Allah? He said yes, the Messenger of Allah (SAW) says: (but for the fact that messenger/envoys should not be kill, I would have behead you).

The purpose of this is that anybody that come from an enemy country 'Dar al-Harb' to an Islamic country 'Dar al-Islam' to deliver a message or for the purpose of trade or to request for reconciliation or a truce or to pay al-Jizyah 'tribute/royalty' or other similar reasons, and therefore requested from the Imam 'Muslim leader' or his deputy for safety he shall be granted such safety so far he shuttles within the Islamic country 'Dar al-Islam, until he returns to his place of safety and his homeland. ²⁵

However, some legal may argue that the verse of the holy Qur'an that is been cited cannot accepted as evidence on immunity under Islamic law. Thus, it is hereby clearly explained that the verse is explicit evidence on safety, which is generally referred to as 'immunity'.

²³ Al- Shaami, Ali Husain. (1990) al-Diblomasyah, Nash'atuha wa Tatawuruha wa Qawaiduha, p .107

²⁴ Ibn Kathir, *Tafsir al-Qur'an al-Azim* (1420) Surah al-Taobah, Verse.(6)

²⁵ Ibn Kathir, *Tafsir al-Qur'an al-Azim* (1420), vol.2, p337.

Therefore, what is meant by safety here is the same as 'immunity' as it referred to in the current era. The immunity is granted for the purpose of the personal safety benefit of the asylum seeker. Thus, it is a personal immunity and it is obligatory on Muslims to provide it for the purpose of their own interest or for a prioritized common interest. In other words, since it is permissible/required to grant a person the right of security/asylum for his personal safety benefit, such right will be a priority in case of a society as compared to an individual personality. This is also the case with the case of an envoy/diplomat who is agent that represents his community and his country for the general interest of the public he deserves to be protected. 26 More so, States/countries that sent their envoys to the Prophet (SAW) and to his guided successors would not have done so, should the safety of their representative is not guaranteed. However, the shariah law guarantees this immunity right for them. This is why the texts of shariah is very concerned about them when it says:

Interestingly, the revelation of this verse was in case of the envoys that were sent by Negus the king of Ethiopia to the Messenger of Allah (S.A.W). The envoys were twelve in number. However, it was argued by other sources that they are twelve in number or more than that.²⁸This is the evidence that states were in contentment to send their envoys to the Messenger of Allah (SAW) only because of the availability of safety, protection and immunity in shariah law. This can be perceived by anybody that thinks with moderation, rationality and non-alignment against Islam that it is a religion that is complete that addresses all aspects of life. Allah the Almighty (SWT) says: رُدُ لَا لَٰ اللهُ عَلَىٰ عَلَىٰ عَلَىٰ اللهُ عَلَىٰ اللهُ عَلَىٰ عَلَىٰ عَلَىٰ عَلَىٰ اللهُ عَلَىٰ عَ

Moreover, the concern of Shariah law about immunity and the manner in which it granted it is clear from the context of the verses. This verse is put forward as proof on the legality of immunity, and that the holy Qur'an is the source of this immunity even though there no any disagreement to the notion that the prophets of Allah, the Almighty are under special divine care and protection.

It is worthy of mentioning at his juncture that the holy Qur'an obviously, did not refer to all the matters on diplomatic relationship of the Islamic state. However it provides the applicable general rules, leaving the explanatory aspect of it to other sources of the Shariah law. This is one of the unique characteristic of the holy Qur'an. That is, it gives the general rules and leaves the explanatory of it to other sources of the Shariah. This is what we are searching in this regard.³⁰

The Second Source (The Prophetic Tradition /al-Sunnah)

The Prophetic tradition/ al-Sunnah is considered as a source of legislation, regardless of whether it is his (SAW) speeches, actions or approvals, without any disagreement amongst scholars, is considered a legitimate source of law within the framework of Shariah law in general and that of the Islamic law of international relations and Islamic international diplomatic law in particular. This is inclusive of the diplomatic immunities. The holy Prophet (SAW) actually influenced and effected the composition and application of the law of diplomatic relationships. Thus, the said diplomatic relationship is inclusive of immunities that are granted to the diplomatic envoys. This will be manifest through this study, despite this involves both the terms of the reception of the diplomatic envoys and their security through various immunities that are granted to them etc.

Thus, it is a custom that diplomats and envoys of foreign countries cannot be killed, even if they make verbally abusive and punishable utterances which can attract punishment for an ordinary person.

According to Ibn al-Qayyim al-Jaoziyah:

"The envoys /messengers of his enemies used to come to him (SAW). Despite that they still remain hostility to him he will not attack them or kill them. Thus, it is his (SAW) tradition that envoys/emissaries/ messenger should not be killed."31

It was also written in Hashiyah alSharqawi that:

"Every infidel may be fought pursuant to the word of Allah (SWT):

Except the envoys due to the tradition that they should not be fought.³³

The holy Prophet (SAW) laid down the finest examples in the diplomatic immunities. This is evident in his actions (SAW). His diplomatic practices are more sophisticated than that of the succeeding eras in various areas of diplomacy. The examples on this are as follow:

²⁶ This view supported by both Ambassador Mohamed Tabi in his book *Diplomacy in Islam*, and Dr. Ahmad Abu al-Wafa in his book Islamic diplomatic law. Dar Arab, 1413, & Dar Jamiah publications, Alexandria 1993, p 637.

²⁷Ibn Kathir, Tafsir al-Qur'an al-Azim, Surah al-Ma'idah, verse (83)

²⁸ Ibn Kathir, Tafsir al-Qur'an al-Azim, p19.

²⁹Ibn Kathir, Tafsir al-Qur'an al-Azim, Surah Taha, Verse 43-46.

³⁰Abu al-Wafa, Ahmad Muhammad. (1421) al-I'ilam bi-qawaid al-qanun al-daoli wa al-'Alaqat al-daoliyah fi al-shariah al-islamiyah. Dar al-nahadah. vol. 4, p.21

³¹ Ibn al-Qayyim al-jaoziyah. Zad Al-maad fi hadyi khairu al-ibad, vol. 3, p 125.

³²Abu al-Wafa, Ahmad Muhammad. Al-I'ilam bi-qawaid al-qanun al-daoli wa al-'Alaqat al-daoliyah fi al-shariah al-islamiyah, vol. 4, p 21-22.

³³ Al-Ansari, Zakariyah. (1941-1360) Hashiyah Al-Shaqrawi ala tuhfah al-tulab. bi sharhi tahrir al-tanqih al-lubab. Al-halabi Publication, Cairo, vol. 2, p 407.

Musaylimah al-Kadhab wrote a letter to the Messenger of Allah (SAW) as follows:

"From Musaylimah, a Messenger of Allah to Muhammad a Messenger of Allah: Peace be on you. Having said this, (I want to inform you that) I have divinely appointed to be involved in (this course divinity) with you. Thus, the half of the earth-land belongs to us, while the remaining half of the earth-land belongs to the Quraish (the tribe of the holy Prophet Muhammad SAW). However, the Quraish has trespassed."

Thus, when the messengers of Musaylimah al-Kadabh brought this message/letter to him (SAW) and their names are Abdullah bin alnuwah and Ibn Athaal, the holy Prophet (SAW) said to them; 'and what you profess?', they replied that; 'we profess what he preaches'. The Messenger of Allah (SAW) then then said; 'if it not for the rule/custom that envoys/emissaries/messenger should not be killed, I would have behead them.'³⁴

More so, there are some narrations by Ibn Mas'ud (RA) which account was that the holy Prophet (SAW) said: 'I believe in Allah and His messengers. If would kill envoys/messenger, I would have kill you. Ibn Mas'ud said that the prophetic tradition that envoys/messengers should not be killed³⁵'. In another narration, the holy Prophet (SAW) said: 'I believe in Allah and His messengers, if were to kill a delegation I would have kill you³⁶'. Imam al-Khatabi commented on this that: 'however, as for his saying (SAW) that; 'if it is for the fact that you are an envoy/messenger I would have beheaded you.' that it means that his blood must be protected pursuant to the word of Allah in the holy Qur'an which says;

رْببدى دائا ئائە ئە ئو ئو ئۇ ئۇ ئۆئۆ ئۈ ئۈ ئى ئى ئب ئى رْ 37.

This is why the holy Prophet (SAW) preserved his blood so that he will return to his home safely to deliver the message (reply) so that such message will be evident on the person that sent him.³⁸

In response, the holy Prophet (SAW) wrote a letter to Musaylimah al-Kadabh as follows: "In the name of Allah the Merciful, the Beneficent, from Muhammad, the Messenger of Allah (SAW) to Musaylimah al-Kadhab (the impostor/liar): May peace be upon those who follow the true guidance. Having said this, (let me educate you that) the earth-land belongs to Allah (SWT), and He (SWT) wills it to whomever He likes among His slaves. The ends belong to the righteous." 39

According to Nafi'u (RA) who said, the Messenger of Allah (SAW) says, "I do not break Covenant nor do I arrest emissaries/envoys" ⁴⁰. The hadith is evidence on the compulsion of the 'preservation of covenant and its fulfilment, even if such covenant is made with unbeliever, and that emissary/envoy should not be arrested or locked up, but instead, he may be rejected." ⁴¹

Some scholars also commented on the hadith as follows:

"Based on the so-called principle of diplomatic immunity ... even if an ambassador requested from an Islamic State to allow him to leave/renounce the mission of his country and settle to live in the Muslim country, or requested for political asylum by abandoning his home, such request will not be accepted, even if he embrace Islam. This is because such thing is contrary to the fulfilment of the covenant with the state that sent the ambassador. 42

Secondary or Abstractive Sources

Besides the holy Qur'an and Prophetic Tradition / Sunnah there are many other sources of law that are available to Muslims with the nature of diverse opinions on their acceptability amongst the scholars. Some of such sources of law are; al-Ijma' 'consensus,' al-Qiyas 'anology,' al-Ihstihsan 'equity/ approbation,' al-istsahab 'presumption,' al-'Urf 'custom,' and Qaol al-Sahabiy 'the opinion of the companions ... etc. . There is no doubt that we cannot present all of the secondary and dependency source. Therefore, we will limit ourselves to two sources. That is, al-Ijma' 'the consensus' and al-'Urf 'custom.'

Al-Ijma' 'Consensus':

³⁴ Narrated by *Abu Dawood* (2761) in *al-jihad:* the chapter of messenger, it is weak, but has witness by valid hadith. And narrated by Ahmad 3/487, 488 in hadith of Naim bin Masood al-Ashja'i.

³⁵ Mansour bin Aoun Sharif: Narrations of Ibn Masood, vol. 2, p 267.

³⁶ Ibid, p267.

³⁷Surah al-Taobah, verse.(6)

³⁸ Al Basti, Abu Suleiman Hamad bin Mohammed Al-Hattabi. (1932–1351) *Ma'alim Al- Sunan. Edited by Mohamed Ragheb Tabbakh. First Edition*, vol. 2, p 319.

³⁹ Al Tamimi, Muhammad bin Abdul Wahab bin Sulaiman. (1420 AH) *Mukhtasar Sirah al-Rasul, Tahqeeq: Mohamed Hamed Al Fiqqee. Fourteenth edition*, p113-207.

⁴⁰ Narrated by Abu Dawood (2758), al-Nasa'i and Ibn Hibbaan (4877).

⁴¹ San'aani, Muhammad bin Isma'il. (1418) *Subul al-Salam ila bulugh al-maram*. Tahqeeq Mohamed Sobhi Hassan Hallaq. Dar Ibn al – jaozi, volume IV, Part VII, p. 255-256.

⁴² Ahmad Abu al-Wafa, Ibid, vol. 4, p 24.

Prior to the detail discussion on al-Ijma' 'consensus,' it is important to first explain what al-Ijma' 'consensus' actually meant. Al-Ijma 'consensus' is defined as agreement of the authoritative Islamic legal scholars or jurists on an interpretation or nation in an era and on a shariah ruling or judgment. Some scholars added that such agreement must be after the demise of the holy Prophet (SAW).⁴³

Thus, it will be increasingly clear now that the granting of safety (aman) and immunity is actually from a legitimate and authentic source of shariah law. We will elaborate on this type of sources while discussing the basis of immunity under shariah law. Al-Ijma' 'consensus' represents one of the sources of Shariah law. The diplomatic law is confine within this limit. This is because there are numerous matters that are exclusive to the activities of the diplomats/envoys and emissaries/messengers of heads of states in which Muslim jurists unanimously agreed on the sacredness and the immunity of a diplomatic Envoy.⁴⁴

Thus, it was also stated in al-Majmu' Sharh al-Muhadhab that; 'it is a customary that envoys should not be killed. This is undoubtly, a unanimously agreed upon opinion. ⁴⁵

We will note that in this current era, countries have adopt the custom of unanimous decisions making in some international resolutions that are issued by some of the world conference. The examples of this abounds. It is proper for us as Muslims to be proud that this principle was long rooted in the Islamic law, and that the world today is indirectly adopting some of the principles of Shariah law without openly declaring the source.

Al-'Urf 'Custom':

Al-Urf 'custom is that which a people habitually practiced in their speeches and actions. Shariah jurists refer to it as 'al-'Adah 'tradition.' However, the characteristic of al-'Urf 'custom is that the act must be a common acceptable act, such as if the word 'doctor' that is generally used to refer to a medical practitioner, likewise, the various titles that used for different practitioners such as producers, jurists, engineers and pharmacists. The custom of political diplomats as regards to immunities and privileges is of this category. Thus, their tradition is the terminologies that are specific to their knowledge or occupations that are commonly known amongst them. That is that which they use among themselves, in their speeches and actions, to denote a notion.⁴⁶ It is a common knowledge that, that which is known to the people as their a common practical tradition can be accepted as a source of law under shariah law so far it does not contradict the fundamental rules, guidelines and principles of the shariah law.⁴⁷

This is the essence of the principle of jurisprudence that says 'al-Ma'ruf 'Urfan ka al-Mashrut Shartan,' meaning 'that which is commonly acceptable in custom is like that which is stipulated as a condition,' and another principle that says 'al-thabit bi al-'Urf ka-al-Tahbit bi-al-Nas,' meaning 'that which is affirmed/approved by the custom is like that which is affirmed/approved by the divine text', likewise the principle that says 'al-'Adah Muhakamah, meaning 'tradition is a source of law'⁴⁸. It is on this note that scholars argued al-'Urf 'custom' is an acceptable source of law, since there is a rule that it might be adopted based on Islamic law (Shariah). One of the customary and tradition principles that is accepted by Islam and makes it binding is the traditional or customary principle of the sacredness of ambassadors, emissaries/messengers and diplomatic envoys. The sacredness of emissaries/messengers and envoys has been established before the advent of Islam, without actually taking it to practice and breaking it, however, with the advent of Islam, it accepted the principle and compels its applicable.

The holy Prophet (SAW) says; 'if it is not for the fact that messengers/ emissaries should not be killed, I would have kill the both of you.'⁴⁹ This is a proof that the rule is of general application (amongst various laws and countries). Thus, when Islamic came it accepted it and it exposed it because it does not contradict its rules. Therefore, the al-'Urf/custom here is not in conflict with the Shariah law. Allah (SWT) says:

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ر بې بېدىئا ئا ئە ئە ئو ئوئۇ ئۇ ئۇ ئو ئو 50^{-50}. The Almighty also says:
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ِاُ ٻٻٻٻٻپ پ<u>پ</u>ڀڀڀڀ ٺٺڙ⁵¹.

These two verses imply that Islamic law (Shariah) permits whatever is good without any rejection if it does not contradict with the fundamental rules of Islamic law (Shariah). It considered as Allah's blessing upon the Muslims, that is because the religion of Islam is an easy and flexible religion⁵²

5- The basis of diplomatic Immunities under the Shariah (Islamic Law) Having discussed the sources of diplomatic immunities under the Islamic law and its explanation, it is proper to know the basis on which immunity was established under Islamic law.

However, some scholars and the contemporary legal researchers argued that the Aman (which is given immunity to emissaries) is similar to the diplomatic immunity in international law. We have explained that Al-aman is the foundation upon which immunities are

⁴³ Ivad al-Sami, Usul al-Fiqh, p 124.

⁴⁴ Ahmad Abu al-Wafa, al-Î'ilam bi-qawaid al-qanun al-daoli, vol. 4, p 27.

⁴⁵ Al-Nawawi, Yahya bin Sharaf. Al-Majmu' sharh al-Muhadhab. Tahqeeq: Mohamed Najib Moti'ey, Maktabah al-Irshad - Jeddah, p 84.

⁴⁶ Al-Juday', Abdullah ibn Yusuf (1420 AH) Taysir Ilm Usul al-Fiqh. Second edition, p211.

⁴⁷ Ahmad Abu al-Wafa, al-I'ilam bi-qawaid al-qanun al-daoli, vol. 4, p 28.

⁴⁸ Abdullah ibn Yusuf al-Khadij, *TaysirIlmUsul al-Fiqh*, p213.

⁴⁹ Ibid, Sunan abi Daud.

⁵⁰ Surah al-Nisa', Verse.(26):

⁵¹ Surah al-Taha.(99):

⁵² Ibid, Hussain Alazizi, p 38.

established, or for the purpose in which immunity is granting.⁵³ This is the opinion of the researcher. Scholars such as has Dr. Ali Hussein al-Shami, Dr. Ahmad Abu al-Wafa Mohammed, Dr Ahmed Salim Mohammed Ba Omar, Dr Omar Kamal Tawfik and others also agree with the opinion.

It is therefore pertinent at this juncture to define the contract of Aman and to discuss the argument of the scholars about safety and its guarantee.

Thus, lexically, Al-Aman an arabic word for 'security 'is the abstractive noun of 'ista' amana ilayhi.' That is, 'he is secured under a protection. Other derivations are 'amanahu, aamanahu, al-Ma' aman, Maodiu' al-Amn and al-Amun. That is a person that seeks asylum for the protection of his life. Istamn he has been safe, fa huwa aamin 'he is safe' and ma' amanhu 'his place of safety' other than al-'Amn 'safety' and al-Aman.⁵⁴

Al-'amn and al-Amin are the opposite of fearless⁵⁵. However, Al-Maghribi defines it terminologically as 'the prohibition of the shedding of the blood of an enemy, likewise, holding him hostage, or fighting him, or the imposing of fine on him despite his dwelling under a specific Islamic state.

Al-Maghribi also added that 'al-isti'iman' is the treaty of assurance that war will not be waged against us because the matter which may occur if such treaty is broken' 56. Al-Jurjani defines it as: "al-Amnu 'security' the opposite of al-Khaof 'fearness'. It is the expectation of the lack of occurrence evil in the coming period⁵⁷. Security treaty or pact is regarded as the theoretical basis for the establishing of diplomatic immunities based on the principle of shariah that defines the relationship between Islamic state and other states, and between Muslim and non-Muslim. The Islamic law recognized the principle of diplomatic immunity as a system that was developed and defined by al-'Uruf 'custom.' That is by the treaty of security that is applicable to all persons that enters Dar al-Islam 'Islamic state, and are non-Muslims. [Security/safety may be a life security, which is given to al-dhimmis 'non-Muslims that live in the Islamic state. However, this is not the subject of the current studies] ⁵⁸.

Moreover, aman is regarded as the foundation of the concept of privacy that is individual immunity that is enjoyed by individual personalities of non-Muslims, especially diplomatic envoys. This principle and its origin is rooted in the words of Allah, the Almighty which says;

ژاً ٻ ٻ ٻ ٻ پ پ پ پ ڀڙ ⁵⁹.

And the word of Allah that says:

رْبِبِ د د ئا ئا ئه ئه ئو ئو ئۇ ئۇ ئۆنۆ ئۈ ئۈ ئى ئى ئې ئى ر 60.

This is the basis upon which the safety of non-Muslims is determined. It is types of the commitment toward the non-Muslims enter the Islamic country in order to protect them from the aggression of others. ⁶¹ Thus, the Islamic state accommodates the ambassadors that come to it with safety and peace throughout their presence in the country, until they will return to their home countries safely, safety is guaranteed for the envoy that comes from his nation, or his state to Muslim countries, as soon as he entered Islamic state, and as soon he proved to be an envoy of his nation more so, he will not be requested to bring witness and forensic evidence because such request will lead to distress and embarrassment in his part and such things must be prevented from him. Thus, it is only sufficient to produce the document that he brought with him from the head of his country. So far he produced such document to show that he is sincere he will be accepted, based on the principle that says; the endorsement of the apparent is obligatory in matters that with cannot be ascertained.

6- The Sources of Immunities under the International Law

Since diplomatic law is a branch of the public international law, the sources from which it is derived is the same sources from where the public international law derived its rules and provisions.⁶² That is the known primary sources of international treaties. That is international custom. The secondary sources are the general principles of law, that is, the decisions of international organizations. The persuasive

⁵³ Dr Ali Hussein al-Shami addressed the issue of safety as a basis of diplomatic privileges and immunities of the Arab-Islamic states in the second section of his book *al-Diblomasiyah*, *Nasha'atuah wa tatawuruh*. Likewise, Dr Omar Kamal Tawfiq addressed the issue in his book *Islamic diplomacy and peaceful relations with the Crusaders*, stated that (this immunity is provided by the law on the basis of safety which is mentioned by the Shariah and applied by the Prophet (SAW). Thus, the safety has become norm after long practice among Muslims, in which must be adhered to by the officials of the Islamic State), p 126.

⁵⁴ Fairuz Abaadi, Muhammad bin Ya'aqub. (1424 AH) *Qamus al-Muhit. Second edition*, p 1084.

⁵⁵ Oamus al-Muhit, ibid, p 1084.

⁵⁶ Al-Maghribi, Muhammad bin Abdul-Rahman (1398 AH) *Mawahib al-Jalil, Dar – al Fikr. Second edition*, vol. 3, p 360.

⁵⁷ Al-Jurjani, Ali bin Mohammad bin Ali. (1403 AH) Kitab al-tariefat. Tahqeeq by: al ibyaary. Dar Al-Rayyan. First edition, p 55.

⁵⁸ Ahmed Salim Ba Omar, al-Fiqh al-Siyasi li-al-Hasanat al-Diblomasiayh, p, 82-83.

⁵⁹ Surah al-taobah, verse.(1)

⁶⁰ Surah al-taobah, verse.(6)

⁶¹ Ali hasan al-shami, al-diblomasiyah, nash'atuha wa tatawuriha, p 397.

⁶² Suhayl al-Fatawi, al-diblomasiayh al-Islamiyah, dirasatan muqaranah bi al-qanun al-daoli, p 18.

auxiliary sources are the court cases. That is, the views of scholars and the principles of justice and fairness. Some of these sources will be briefly explained as the time cannot afford more than that.⁶³

Primary Sources:

What are meant by primary sources are the legal rules that can stand on their own, and, which are resorted to by the people that designated for the settling of dispute directly and are given preference over other sources. The content of this definition is not different from the definition the previous definition of the primary source of diplomatic immunities under the shariah law. It is of the same content although the wording is different.

(i) The sources are of two types:

1st: international treaties

The Vienna Convention on the Law of Treaties of 23rd of May, 1969, is the general provisions for the Law of Treaties. The enforcement of the treaty started on 27th of January, 1980. The preamble of the Convention states the importance of the treaties and its essential role in the history of international relations as a source among other sources of international law.

The international treaties that are contained in Article 38 of the Statute of the International Court of Justice are not mere treaties; rather, it includes international conventions, Charter, Covenant, and Protocols and other documents of agreement between countries. The Vienna Convention on the Law of Treaties treaty is defined as "international agreement between the countries that is in written form and is governed by international law, that is, regardless of whether it embodied a single instrument or in two or more of related instruments and regardless of the particular nomenclature. More so the international treaties can repeal or modify any source of international law, such as custom and the general principles of law. That is with the condition that it should not violate a peremptory norm of the general international law.

Types of Treaties:

Type of treaties varies according to the number of parties that join it. A treaty between two states is referred to as bilateral treaties. However, if it is between several countries is referred to the multilateral treaties:

- 1. Bilateral treaties: Are the treaties between two subjects of international law.
- 2. Multilateral treaties: are the Treaties between a numbers of international legal persons. 65

2nd International Custom, "The Second Source of the Primary Sources"

International custom is defined as: repetition of an action based on a certain rule in a period of time with the sense of commitment to it. However, although the international custom is the second source of international, next to the international treaties, nevertheless, it is the oldest sources of public international law. It rules are of general application. This is its uniqueness.

It is of two components: that is the material component: that is the presence of a psychological element.

Secondary/Abstractive Sources:

What is meant by Secondary/Abstractive Sources are the rules derived from other legal sources, and which gain their legal value from the source from which it was derived. That is that it cannot stand on its own, rather, it rely on the sources from where its strength is derives.

(ii) These Sources are of Two Types:

1st: General Principles of Law.

One of the sources that is identified by the Statute of the International Court of Justice is the general principles of law that is recognized by civilized nations.⁶⁶

The importance of the application of the general principles of law will become a necessity in the situation whereby the deriving of rules from treaties or international custom become impossible. This means that these principles take the third place in the sequence of the sources of international law to fill the shortfall in the international treaties and customary international law. The principles are of two types:

⁶³ Ibid, Hussain al azizi, p43. Hamid, A. G., & Sein, K. M. (2012). Public international law: a practical approach. Prentice Hall/Pearson Malaysia.

⁶⁴ The paragraph 1 of Article II of the Vienna Convention on the Law of Treaties of 1969, stated as follows: "That Treaty means an international agreement that is concluded between two or more states and it is subject to international law, whether it is in a single document, or more and whatever label it is referred to."

Abdul Azeez al-'Abikan, al-Hasanat wa al-Imtiyaziyat al-Diblomasiayh p106 & Suhayl al-Fatawi, al-diblomasiayh al-Islamiyah, dirasatan muqaranah bi al-qanun al-daoli, p 91 -93.

The writers of international law disagree in it determining the status and nature of the general principles of law, such as the soviet doctrine, however, some of them are of the view that it is secondary sources of international law, while some believe that it is not a primary source. Others disagree with that.

Hamid, A. G., & Sein, K. M. (2012). Public international law: a practical approach. Prentice Hall/Pearson, Malaysia.

- 1. The general principles of international law
- 2. General principles of the Interior laws.

2nd: The Decisions of International Organizations:

The Article 38 of the Statute of the International Court of Justice does not state whether the decisions of international organizations are source of international law. However, with the increasing diversity of international organizations and its substantial role in the development of international relations, it has taken an active role in the issuing of decisions that have the status of legislation, and its implement is binding states. That is to say that, it derived its binding force from the agreement of the States on the establishment of the organization.⁶⁷

7- Conclusion

In conclusion we note that the emergence of diplomatic immunities is considered to be since the emergence of Islamic diplomacy. That was in the seventh century after the ascendancy of Prophet (saw) in the leadership of the city of al-Madinah and the establishment of the fundamentals of his government. The periods of the traditional diplomacy was considered to have begun to appear during the modern era. That is, in the fifteenth century approximately by 1453 AC. however, the researcher believes that the period after the Vienna Conference in 1815 till the period of the World War is the period in which the contemporary diplomatic immunities is introduced. Hence, the Vienna Conference of 1961 is considered as the real beginning of the development of the rules of contemporary diplomatic immunities in which we live and it is practiced by the countries. The traditional diplomacy has passed two main stages which are the level of preparing diplomacy as a career and level of its affirmation as profession...

An important conclusion, the sources of diplomatic immunities under Shariah law are the legitimate sources. Therefore, the primary sources are the Quran and the prophetic Sunnah. The secondary sources or dependency sources are those that are derived from the these two primary sources are [al-Ijma/consensus, al-'Urf/custom al-istihsan/equity, al-masalih al-mursalah/interest. However, the sources of diplomatic immunities under the international law are known as primary sources of international treaties and custom, as well as the secondary sources concerning general principles of law, which depends on the decisions of international organizations and the court cases.

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⁶⁷ Al-Fatlawiy Suhayl Husain. Mabadiu al-Qanun al-Daoli al-'Am, Ghalib 'Awad Hawamadah, p 140. & Abdul Azeez al-'Abikan. Al-Hasanat wa al-Imtiyaziyat al-Diblomasiayh, p 117.

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