
XX K.K LUTHRA MEMORIAL MOOT COURT COMPETITION, 2024

before

THE SUPERIOR COURT OF KRET

H. E. Mr. Kamrun Hadwan and Anr..... *APPLICANT*

v.

State of Kret and Anr..... *RESPONDENT*

MEMORIAL *on behalf of* **APPLICANT**

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LIST OF ABBREVIATIONS

<i>Abbreviations</i>	<i>Expansions</i>
AIR	All India Reporter
ANR.	Another
ART.	Article
CLA	Civil Liberties Australia (ACT)
CLR	Common Wealth Law Report
D.I.	Detective Inspector
FRE	Federal Rules of Evidence
HON'BLE	Honorable
ICJ	International Court of Justice
JAS	Journal of Asian Studies
MLJ	Malayan Law Journal
MLR	The Modern Law Review
ORS.	Others
SC	Supreme Court
SCC	Supreme Court Cases
SCR	Supreme Court Reports
UOI	Union of India
V.	Versus
VCCR	Vienna Convention on Consular Relations 1963
VCDR	Vienna Convention on Diplomatic Relations 1961
WLR	Weekly Law Report

INDEX OF AUTHORITIES

I. STATUTES REFERRED:

1. The Treaty on European Union

2. Vienna Convention on Diplomatic Relations, 1961

3. Vienna Convention on Consular Relations, 1963

4. Fourth Amendment of the U.S. Constitution, 1791

5. UK Police and Criminal Evidence Act, 1984

6. Federal Rules of Evidence, 2019

7. Australian Evidence Act, 2011

8. The Code of Criminal Procedure, 1973

9. Kret Penal Code

10. Law of Evidence of Poland

11. Diplomatic and Consular Premises Act, 1987

12. The Diplomatic Relations (Vienna Convention) Act, 1972

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2. 4 MOORE, J. B.: DIGEST OF INTERNATIONAL LAW, 648 (1906).

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4. 74 SABINE GLESS, THOMAS RICHTER, DO EXCLUSIONARY RULES ENSURE A FAIR TRIAL? A COMPARATIVE PERSPECTIVE ON EVIDENTIARY RULES 191,291 (Springer Open 2019).

5. ADRIAN KEANE , THE MODERN LAW OF EVIDENCE 54 (Oxford University Press).

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2. Ali M. Farahman, *Diplomatic Immunity And Diplomatic Crime: A Legislative Proposal To Curtail Abuses*,16 J.L 89, 90 (1989).

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5. Christopher Lau, Berkeley Law, *Diplomatic & Consular Law: Research Guide* (1st Ed, Legal Research Series, 2015).

6. Haezreena Begum Bt Abdul Hamid, *The Principle of Inviolability of Diplomatic Agents in Diplomatic Law*, 1 MLJ 219, 228 (2023).

7. James S. Parkhill, *Diplomacy in the Modern World: A Reconsideration of the Bases for Diplomatic Immunity in the Era of High-Tech Communications*, 21 HASTINGS INT'L & COMP. L. REV. 565, 568 (1998).

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9. Paras Marya, *A Relook at the Admissibility of Illegally or Improperly Obtained Evidence*, 8 NLIU LAW REVIEW 297, 306 (2019).

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12. Philemon Y. Yang, *The inviolability of Diplomatic and Consular Premises in International Law*, Theses, 26 (1910 – 2010).

13. Sherzod Toshpulatov, Nigina Khudayberganova, *Diplomatic Immunity under International Law: Legal Regulation and Current Challenges*,1,14.

14. John Mahoney, *Protection Of Diplomatic Personnel And Premises The Practical Aspects Of Protection*,320,328.

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1.	Boos v. Barry	485 U.S. 312 (1988).
2.	Brewer v. Williams	97 S.Ct. 1232 (1977)
3.	Brzak v. The United Nations	597 F.3d 107 (2010)
4.	Bunning v Cross	(1978) 141 CLR 54.
5.	Caratube v. Kazakhstan	ICSID Case No ARB/08/12.
6.	Certain Expenses of the United Nations	ICJ Rep 151, ICGJ 221.
7.	Common v. One 1955 Buick Sedan	198 Pa. Super. 133 (1962).
8.	Davis v. United States	131 SCt 2419 (2011).
9.	Democratic Republic of the Congo v. Belgium	2002 I.C.J. Rep. 3.
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11.	Herring v. United States	555 U.S. 135 (2009)
12.	Kalyani Baskar (Mrs.) v. M.S. Sampooram (Mrs.)	(2007) 2 SCC 258.
13.	Ker v. California	374 U.S. 23 (1963).
14.	Mapp v. Ohio	367 U.S. 643, 654–5 (1961).
15.	Nardone v. United States	308 U.S. 338 (1939)
16.	Olmstead v. United States	277 U.S. 438, 485 (1928)
17.	R v. Sang	[1980] AC 402.
18.	Reg. v. Madan	(1961) 2 W.L.R. 231
19.	Tabion v. Muftil	73 F.3d 535 (4th Cir. 1996).
20.	UK v Albania (Corfu Channel Case)	(1949) ICJ Rep 4.
21.	United States v. Iran	Order, 12 V 81
22.	Weeks v. United States	1914 SCC OnLine SC 61: 232 US 383(1914)
23.	Wolf v. Colorado	338 U.S. 25 (1949).
24.	Yakub Abdul Razak Memon v. State of Maharashtra and Anr.	CDJ 2013 SC 230
25.	Zahira Habibullah Sheikh and ors v. State of Gujarat and ors.	(2006) 3 SCC 374 at 395

STATEMENT OF FACTS

I. THE CHRONICLE OF KRET

1. Kret, a European nation with 50 million residents, is known for its natural beauty, folk music, and economy. Located in the Austro-Hungarian Empire, it was reformed after WWII with a Westminster-style parliamentary government. With a diverse population, Kret follows a common law system.
2. January 3rd marks Establishment Day, celebrated with a grand parade. Kretan is the main language, with English as an official and widely taught second language.
3. Detective Inspector P.V. Bain has recently moved to the largest police station in Emerald City's Diplomatic Enclave from the Railway Police Station.
4. His transfer follows complaints from vendors and railway employees about harassment and bribe demands under threat of false charges.
5. Newspaper articles highlighted cases where those who did not comply faced false accusations, but no action was taken against Detective Inspector Bain.

II. THE CHRONICLE OF FERRWA

6. Ferrwa, a 12 million-people African nation, is a blend of Berber, Arab, and African cultures. Despite facing challenges from Libyan militias, its cultural fusion is evident in its cuisine, music, and architecture, and its economy relies on agriculture and mining.
7. Governed as a constitutional monarchy with King Hassan as the ruler, Ferrwa's prime minister oversees the government. King Hassan is an esteemed guest at Kret's Day of Establishment parade.
8. In preparation for King Hassan's visit to Kret, the Ferrwan embassy collaborates with local police on security measures.
9. The embassy oversees the King's schedule, including his stay, meetings with Kretan officials, and historical site visits during his three-day trip. Mrs. Penny Wats, a Kretan national working as the Secretary to the Ferrwan Ambassador, manages King Hassan's itinerary.
10. Both countries, Ferrwa and Kret, are UN founding members and adhere to treaties and conventions including the Vienna Convention on Diplomatic Relations of 1961 and the Vienna Convention on Consular Relations of 1963.

III. THE CONUNDRUM

11. On 24.12.2023, Mr. Sean Wats reports his wife missing to the local police, suspecting her kidnapping after she did not return from work at the Ferrwan Embassy. Her phone is unreachable, and her car is at the embassy.
12. A Crime Report is filed under Section 265 Kretan Penal Code, and Detective Inspector P.V. Bain takes charge.
 - 12.1. The investigation by the Detective Inspector (D.I.) revealed that Mrs. Penny Wats, the secretary to the Ferrwan Ambassador, had access to classified information about King Hassan's travel itinerary. The email id belongs to an extremist group from Libya. The D.I. gained access to Mrs. Wats's email after operating her I-Pad, which was seized and sent for forensic analysis at a Kretan Government facility.
 - 12.2. On 23.12.2023, investigative journalist Prich Voshra received information about the proposed Libyan attack and contacted H.E. Mr. Kamrun Hadwan for a comment.
 - 12.3. The ambassador was shocked by the information and summoned Mrs. Wats to the Embassy. She was overpowered and strangled with a rope by the Ambassador's personal bodyguard, Mr. J. J. Crook. Her body was wrapped in plastic and removed from the Embassy at night.
 - 12.4. The D.I. then investigated the Embassy premises on 24.12.2023, but was denied entry.
 - 12.5. The D.I. arranged to gain entry into the Embassy and collect CCTV footage, including footage of the crime.
 - 12.6. The Ambassador's bodyguard used a wet wipe to clean the furniture in the room, and the D.I. found the bodyguard's face white with fear and put it in his pocket.
 - 12.7. The D.I. and Kretan national Mr. J. J. Crook were interrogated at the Diplomatic Enclave Police Station. After using AI-driven brain mapping, Crook admitted his guilt and disclosed the location of the burning of his body.
 - 12.8. He was arrested and forensically analyzed. The investigation team on 25.12.2023 found burnt remains of a human body, charred areas, and half a skull and teeth. Crook was granted 15 days of custody and the D.I. seeks leave to file a supplementary Police Investigation Report.
 - 12.9. Both Mr. Kamrun Hadwan and Mr. Crook are guilty of causing the death of Mrs. Penny Wats.

IV. THE PROCEEDINGS

13. Detective Inspector P.V. Bain requests police custody of Mr. J. J. Crook for 15 days, which is granted despite legal objections.
14. Bain investigates the case, concluding the investigation against Mr. Crook and filing a police investigation report.
15. The magistrate determines that offences under S. 202, 103, and 88 KPC are established, and the case proceeds, with Mr. Crook remaining in police custody.

V. MATTER PRESENTED FOR ADJUDICATION IN THE SUPERIOR COURT

16. Mr. J.J. Crook has filed Writ Petition Criminal No. 4/2024 in the Superior Court of Kret. In the petition, he requests his immediate release and contests the ongoing proceedings against him.
17. This includes challenging the crime report, police investigation report, and the court order dated 25.12.2023 issued by the Ld. Metropolitan Magistrate at Emerald City Court Complex. The case is scheduled for a hearing before the Superior Court in January 2024.

STATEMENT OF ISSUES

ISSUE I: Is Mr. J. J. Crook entitled to diplomatic immunity?

ISSUE II: Could the D.I. have conducted an investigation into the offences committed inside the premises of the Ferrwan Embassy without the prior consent of the Ferrwan authorities?

ISSUE III: Was the evidence collected by the D.I. from the Embassy including CCTV footage to be excluded from consideration by the Magistrate, being illegally obtained?

ISSUE IV: Were the further recoveries made including of remains of Mrs. Wats liable to be rejected and excluded from reliance by police on account of objections as to the illegal search at the Embassy and the arrest of Mr. J. J. Crook?

SUMMARY OF ARGUMENTS

ISSUE I: It is humbly submitted before the Hon'ble Court that the crux of the matter is Mr. J. J. Crook's entitlement to diplomatic immunity, rooted in international law and the Vienna Convention. He qualifies as a diplomatic mission member and benefits from functional immunity due to his role in ensuring the safety of the Ambassador. Lacking a waiver from Ferrwa, stripping him of immunity would defy international norms and jeopardize diplomatic relations.

ISSUE II: It is humbly submitted before the Hon'ble Court that the Detective Inspector's investigation within the Ferrwan Embassy, conducted without Ferrwan authorities prior consent, is unlawful due to the inviolable nature of diplomatic premises under international law. This intrusion not only infringes upon Ferrwa's sovereignty but also violates established international norms, potentially jeopardizing Kret's diplomatic relations.

ISSUE III: It is humbly submitted before the Hon'ble Court that evidence collected within the Ferrwan Embassy, including CCTV footage, is inadmissible due to its illegitimate procurement. They invoke exclusionary rules from various legal systems and highlight the violation of the Vienna Convention on Diplomatic Relations, emphasizing the need to preserve the proceedings integrity and uphold principles of justice and diplomacy.

ISSUE IV: It is humbly submitted before the Hon'ble Court that further recoveries made including of remains of Mrs. Wats are inadmissible in the Court of law. As upholding international norms, like the inviolability of diplomatic premises, should guide evidence consideration. Furthermore, it highlights that admitting such evidence could infringe on Mr. J. J. Crook's right to a fair trial and erode essential principles of justice.

WRITTEN PLEADINGS

ISSUE I: IS MR. J. J. CROOK ENTITLED TO DIPLOMATIC IMMUNITY?

It is humbly submitted before the Hon’ble Superior Court of Kret, the issue of Mr. J.J. Crook’s entitlement to diplomatic immunity hinges on three critical arguments. Firstly, his role as a diplomatic agent under the inviolable principle of diplomatic immunity. Secondly, his status as a member of the diplomatic mission, his official appointment by the Ferrwan Embassy supports his claim. Thirdly, his role in ensuring the safety of the Ambassador and embassy staff aligns with the Vienna Convention’s principles. Without a waiver from the Ferrwan government, Mr. Crook’s immunity is clear, preserving international diplomatic norms.

Diplomatic immunity, a fundamental principle of international law, shields members of a diplomatic mission and their families and servants from a state’s legal process. This shield consists of the freedom from local jurisdiction as accorded under international law.¹

The Preamble of the Vienna Convention states *Recalling that people of all nations from ancient times have recognized the status of diplomatic agents...* Building on this statement diplomatic immunity has been a facet of diplomatic relations for countless years.²

The Kret and Ferrwa are signatories to the Vienna Convention on Diplomatic Relations of 1961 and the Vienna Convention on Consular Relations of 1963.³ It codifies the principles of customary international law.⁴ Therefore, it is binding on Kret and Ferrwa.

I.1. Status as a Diplomatic Agent

Diplomatic immunity is a well-established principle of international law that extends certain legal privileges and immunities to diplomatic agents⁵, such as ambassadors and their immediate staff. Mr. J.J. Crook, as the personal bodyguard of the Ferrwan Ambassador, can be considered a member of the ambassador’s immediate staff. The “Instructions to Diplomatic

¹ Ali M. Farahman, *Diplomatic Immunity And Diplomatic Crime: A Legislative Proposal To Curtail Abuses*, 16 J.L 89, 90 (1989).

² James S. Parkhill, *Diplomacy in the Modern World: A Reconsideration of the Bases for Diplomatic Immunity in the Era of High-Tech Communications*, 21 HASTINGS INT’L & COMP. L. REV. 565, 568 (1998).

³ Fact number 10 of Moot proposition can be found on page number 3.

⁴ Christopher Lau, Berkeley Law, *Diplomatic & Consular Law: Research Guide* (1st Ed, Legal Research Series, 2015).

⁵ **Article 1(e)**: a “diplomatic agent” is the head of the mission or a member of the diplomatic staff of the mission

Officers” for 1897 declare that the personal immunity of a diplomatic agent extends to his household and especially to his secretaries.⁶

When a diplomatic agent commits a serious criminal breach of law, she/he may be declared *persona non grata*, but can never be prosecuted by the host State.⁷

Article 29 of the VCDR⁸ explicitly states that the person of a diplomatic agent shall be inviolable. This provision leaves no room for ambiguity—it is a sacrosanct shield protecting Mr. Crook from any legal action taken within the host country’s jurisdiction.

In the *Tehran Case*⁹, the International Court of Justice (ICJ) ruled that Iran’s seizure of the U.S. Embassy and the detention of American diplomats violated Article 29 of the VCDR. The ICJ affirmed that diplomatic agents are inviolable, not liable to arrest or detention. This precedent underscores the significance of Article 29 in protecting diplomats from arrest within the host country. In the present case, Mr. J.J. Crook, as a personal bodyguard to the Ambassador, falls under the purview of diplomatic immunity, and the principles established in the Tehran Case support his entitlement to such immunity.

I.2. Status as a member of diplomatic mission

Status as a “Member of Diplomatic Mission”¹⁰ refers to an individual’s official role within a diplomatic delegation representing one country in another. It includes diplomats, support staff, and specialized personnel, and often entails diplomatic immunity to safeguard their functions and protect diplomatic independence.

The interesting feature of *Reg. v. Madan*¹¹ is that it constitutes the first English decision clearly recognising the immunity of a junior member of a diplomatic mission when charged with criminal offence.

⁶ 4 MOORE, J. B.: DIGEST OF INTERNATIONAL LAW, 648.

⁷ Ahmad, Lilienthal, & Asmad, *Abuse of Diplomatic Immunities and Its Consequences Under the Vienna Convention: A Critical Study*, 30 165,176.

⁸ **Article 29:** The person of a diplomatic agent shall be inviolable. He shall not be liable to any form of arrest or detention. The receiving State shall treat him with due respect and shall take all appropriate steps to prevent any attack on his person, freedom or dignity.

⁹ *Case Concerning United States Diplomatic and Consular Staff in Tehran (United States of America v. Iran); Order*, 12 V 81, International Court of Justice (ICJ), 12 May 1981, available at: <https://www.refworld.org/cases/ICJ,4023aaf77.html> (last visited Sep. 6, 2023).

¹⁰ **Article 1(c):** the “members of the staff of the mission” are the members of the diplomatic staff, of the administrative and technical staff and of the service staff of the mission.

¹¹ (1961) 2 W.L.R. 231; *Brzak v. The United Nations* 597 F.3d 107 (2010); *Tabion v. Muftil* 73 F.3d 535 (4th Cir. 1996).

In the present case, Mr. J.J. Crook was officially appointed and employed by the Ferrwan Embassy as the personal bodyguard of the Ferrwan Ambassador. His appointment was made by the sending state (Ferrwa) to fulfill a specific role as a member of diplomatic mission.

I.3. Functional Immunity

Diplomatic immunity is not limited solely to the ambassador but also extends to individuals who perform functions related to the diplomatic mission.

The Vienna Convention emphasises the functional necessity of diplomatic privileges and immunities for the efficient conduct as enunciated in *Boos v. Barry*¹² that, the need to protect diplomats is grounded in our nation's important interest in international relations Diplomatic personnel are essential to conduct the international affairs so crucial to the well-being of this nation.

In the present case, Mr. Crook was performing his duties as a personal bodyguard¹³, ensuring the safety and security of the Ambassador and the embassy's staff. His actions were directly related to the functions of the diplomatic mission.

I.4. Immunity from Criminal Jurisdiction

Diplomatic immunity, as outlined in the Vienna Convention on Diplomatic Relations of 1961, grants immunity from the criminal jurisdiction of the host country. This means that a diplomatic agent or a member of the diplomatic staff cannot be subject to the criminal laws of the host country for actions taken in the course of their official duties.

Article 31(1)¹⁴ goes a step further by specifically addressing immunity from the criminal jurisdiction of the host country. It states that diplomatic agents and members of their staff are not liable to any form of arrest or detention.

In the present case, Mr. Crook's arrest and detention within the host country's legal system contravene this article.

¹² 485 U.S. 312 (1988).

¹³ According to John Mahoney, "This can be an officer or officers from the AFP assigned to protect the person of a Diplomatic Agent, normally the Head of Mission, where there is a particular threat against him/her."

¹⁴ **Article 31(1)**: A diplomatic agent shall enjoy immunity from the criminal jurisdiction of the receiving State. He shall also enjoy immunity from its civil and administrative jurisdiction.

I.5. The Absence of a Waiver and the Presumption of Immunity

It is a fundamental tenet of diplomatic law that immunity can only be waived explicitly by the sending state. In the absence of such a waiver¹⁵ from the Ferrwan government, the presumption of Mr. Crook's immunity remains unwavering, in line with the *Certain Expenses of the United Nations*¹⁶ case, *The ICJ held that international organizations, like states, enjoy a presumption of immunity from the jurisdiction of national courts unless they expressly waive that immunity.*

Hence, the counsels submits that Mr. Crook's immunity is unequivocal under the Vienna Convention, and this Hon'ble Court should confirm it to preserve international norms and diplomatic relations. Stripping his immunity would deviate from established standards and undermine trust between nations. Furthermore, we raise significant concerns regarding the actions taken by the authorities, investigating agencies, and the Metropolitan court, questioning the legality and credibility of all proceedings against him. As a criminal writ petition has been initiated against him, vigorously challenge this course of action.

¹⁵According to Sherzod Toshpulatov, Nigina Khudayberganova

It is possible for the sending State to waive the diplomat's immunity as per Article 32:

1. *The immunity from jurisdiction of diplomatic agents and of persons enjoying immunity under Article 37 may be waived by the sending State.*

2. *Waiver must always be express.*

¹⁶ ICJ Rep 151, ICGJ 221.

ISSUE II: COULD THE D.I. HAVE CONDUCTED AN INVESTIGATION INTO THE OFFENCES COMMITTED INSIDE THE PREMISES OF THE FERRWAN EMBASSY WITHOUT THE PRIOR CONSENT OF THE FERRWAN AUTHORITIES?

It is humbly submitted before the Hon'ble Superior Court of Kret that the D.I. could not have investigated the alleged offences committed inside the premises of the Ferrwan Embassy without the prior consent of the Ferrwan authorities.

This argument is premised on the pedestal of inviolability clause which has been strenuously advocated by jurists, authors and commentators in laudable authorities.

Embassy premises are the physical embodiment of diplomatic relations, inviolable and sacrosanct. This timeless observation underscores the centrality of embassy premises in maintaining the delicate equilibrium of international diplomacy.¹⁷

II.1. Inviolability of Premises

The cornerstone of diplomatic immunity, as enshrined in VCDR Article 22(1)¹⁸ and Section 1(1)¹⁹ of Diplomatic and Consular Premises Act, 1987 unequivocally underscores the inviolability of diplomatic mission premises. These provisions are the linchpin of diplomatic relations and aims to shield embassies from any form of interference by the host state. Absolute inviolability attains the most complete degree of inviolability. Article 22 of the Diplomatic Convention (1961) grants absolute inviolability to the premises of the mission, and to the residence of the head of mission.²⁰

The seminal case of *United States v. Iran*²¹ underscores the near-absolute nature of this inviolability, emphasizing the need for the highest level of respect. The ICJ also stated that the inaction of the Iranian authorities towards the militant's continued occupation of the United

¹⁷Chalmers Johnson, *The John Doe Associates: Backdoor Diplomacy for Peace, 1941*, 35 JAS 334, 334-337 (1976).

¹⁸ **Article 22(1)**: 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.

¹⁹ **Section 1(1)- Acquisition and loss by land of diplomatic or consular status**: Subject to subsection (2) below, where a State desires that land shall be diplomatic or premises, it shall apply to the Secretary of State for his consent to the land being such premises.

²⁰ Philemon Y. Yang, *The inviolability of Diplomatic and Consular Premises in International Law*, Theses, 26 (1910 – 2010).

²¹ *supra note 9*.

States diplomatic premises and hostages gave rise to repeated and multiple breach of the applicable provisions of the (Vienna) Convention.²²

II.2. Sovereignty Preservation

The sacrosanct principle of state sovereignty, enshrined in international law, stands as an immutable pillar upon which diplomatic relations rest. The sovereignty of each state, including Ferrwa, is inviolable and non-negotiable. In alignment with the esteemed precedents set forth in *Democratic Republic of the Congo v. Belgium*²³ (2002) and *United States Diplomatic and Consular Staff in Tehran*²⁴ case, the paramount duty of a receiving state, such as Kret, is to safeguard and respect the territorial sovereignty of foreign diplomatic missions within its jurisdiction.

II.3. Consent as a Cornerstone

Consent may not be implied, even where there is an emergency on the premises.²⁵ Implied consent, even in emergencies, is insufficient when it comes to diplomatic premises. The cornerstone for any deviation from their inviolability is the explicit consent of the sending state, as exemplified in the *Democratic Republic of the Congo v. Belgium*²⁶, The DI's entry into the Ferrwan Embassy without prior Ferrwan consent not only violates the sanctity of diplomatic missions Article 22(2) of the VCDR²⁷, but also infringes upon Ferrwa's sovereign right to manage its diplomatic affairs on its own terms.

²² Haezreena Begum Bt Abdul Hamid, *The Principle of Inviolability of Diplomatic Agents in Diplomatic Law*, 1 MLJ 219, 228 (2023).

²³ 2002 I.C.J. Rep. 3.

²⁴ *supra* note 9.

²⁵ Carl Islam, *The inviolability of diplomatic and consular premises* 1,4 (2012).

²⁶ *supra* note 23.

²⁷ **Article 22(2)**: The receiving State is under a special duty to take all appropriate steps to protect the premises of the mission against any intrusion or damage and to prevent any disturbance of the peace of the mission or impairment of its dignity.

II.4. Adherence to International Norms

The Detective Inspector's actions within the Ferrwan Embassy flagrantly disregard established international norms enshrined in Articles 22(1)²⁸ and (2)²⁹, 41(1)³⁰ and (3)³¹ of VCCR, as well as customary international law.

These norms are legally binding and supported by the precedent in the *Democratic Republic of the Congo v. Belgium*³², Upholding them is both a legal obligation and a moral duty, essential for Kret's commitment to international law and diplomatic principles. Neglecting these norms could harm Kret's diplomatic relations and global standing, inviting adverse consequences and undermining global peace and cooperation.

To use a regularly cited quote, there is, in fact, reason enough to be at unease with the idea that *the criminal goes free because the constable has blundered*.³³ Where serious crimes are concerned, it seems particularly disproportionate to exclude reliable evidence and possibly even to prevent a conviction because investigators have not followed the correct procedures.³⁴

Many legal systems impose clear restrictions on local officials and police from entering diplomatic premises to gather evidence. One such example is Section 8³⁵ of The Diplomatic Relations (Vienna Convention) Act, 1972, which prohibits their entry for legal processes or investigations.

Hence the counsels submits that the D.I. could not have investigated the alleged offences committed inside the premises of the Ferrwan Embassy without the prior consent of the Ferrwan authorities.

²⁸ *supra* note 18.

²⁹ *supra* note 27.

³⁰ **Article 41(1):** 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. They also have a duty not to interfere in the internal affairs of that State.

³¹ **Article 41(3):** The premises of the mission must not be used in any manner incompatible with the functions of the mission as laid down in the present Convention or by other rules of general international law or by any special agreements in force between the sending and the receiving State.

³² *supra* note 23.

³³ See *People v. Defore*, Court of Appeals of New York, decision of 15 May 1926, Opinion Judge Cordozo.

³⁴ 4 PETRA VIEBIG, *ILLICITLY OBTAINED EVIDENCE AT THE INTERNATIONAL CRIMINAL COURT 2* (T.M.C. Asser Press, Springer).

³⁵ **Section 8. Restrictions on entry into diplomatic premises.**—No public servant or agent of the Central Government, a State Government or any public authority shall enter the premises of a diplomatic mission for the purpose of serving legal process, except with the consent of the head of the mission. Such consent may be obtained through the Ministry of External Affairs of the Government of India.

ISSUE III: WAS THE EVIDENCE COLLECTED BY THE D.I. FROM THE EMBASSY INCLUDING CCTV FOOTAGE TO BE EXCLUDED FROM CONSIDERATION BY THE MAGISTRATE, BEING ILLEGALLY OBTAINED?

It is humbly submitted to the Hon'ble Superior Court of Kret that the evidence procured by the D.I. in conjunction with a contingent of embassy officials, including CCTV recordings, ought to be deemed ineligible for consideration by the Magistrate, given its illegitimate procurement the evidence in question stands as a glaring affront to the integrity³⁶ of this judicial process, casting a shadow over the very foundation of justice.

Majority of the members of the committee of nations disallow admission of an illegally procured evidence in a court of law for the obvious reason that a fraud taints everything and more in pursuance of justice a court of law cannot and should never allow to upkeep law through illegality. Jurisdictions like Poland³⁷, U.S.³⁸, U.K.³⁹, India⁴⁰ and Australia⁴¹ condemn and prohibit within their legal systems admission of an improperly obtained evidence. Additionally, it is asserted that the breach of the VCDR within the Ferrwan Embassy renders evidence inadmissible under international law. It is strenuously argued that admitting such evidence not only undermines this court's credibility but also jeopardizes the principles of international diplomacy.

III.1. Exclusion on the basis of Rules of Evidence

I. Exclusionary rule in the Poland:

Consequently, while evidence obtained as a result of a criminal offence should, in principle, be disregarded as inadmissible, that does not necessarily apply to evidence obtained through minor infringements of the law (e. g. infringement of personal interest in the form of the right to privacy), especially where there is an important public interest in the acceptance of

³⁶The exclusionary principle must be adopted in India in consonance with existing provisions and to protect existing recognised rights. Exclusion of unlawfully procured evidence would protect the integrity of the courts, as the courts would have the power and duty to refuse toleration of unlawful actions.

³⁷ Law of Evidence of Poland.

³⁸ Fourth Amendment of the U.S. Constitution, 1791; Federal Rules of Evidence, 2019.

³⁹ UK Police and Criminal Evidence Act, 1984.

⁴⁰ Courts now have the discretionary power to exclude evidence under Section 5 of the Evidence Act by weighing it against Article 21 (Right to Privacy) and Article 20(3) (Right against self-incrimination) of the Constitution. This creates a position similar to that in America, where unlawfully obtained evidence is effectively excluded, based on the principles of judicial integrity, discipline, protection, and reliability.

⁴¹ Australian Evidence Act 2011.

evidence.⁴² In the present case, Kret which resembles Poland as it is located in the heart of Europe. It shares its northern border with Germany, its southern border with Austria, and its eastern border with the Czech Republic.

II. Exclusionary rule in the US, UK and Australia:

The Exclusionary Rule, originating from the landmark case of *Fermont Weeks v. United States*⁴³, establishes that evidence obtained through warrantless searches and seizures, in violation of the Fourth Amendment to the U.S. Constitution,⁴⁴ is inadmissible in court. This principle serves as a judicial tool to curb police misconduct during evidence collection and gave rise to the “fruits of the poisonous tree” doctrine.

Moreover, *Rule 103(d) of the Federal Rules of Evidence*⁴⁵ bolsters this argument, highlighting the court’s authority to exclude evidence when its probative value is significantly outweighed by the risk of unfair prejudice, confusion, or misguidance of the jury.

In the UK, Section 78 of the Police and Criminal Evidence Act⁴⁶ plays a pivotal role in safeguarding human rights, deterring police misconduct, and maintaining public trust in the justice system. This discretionary provision prevents the admission of improperly obtained evidence, upholding trial fairness, the rule of law, and international human rights standards. The court can exclude evidence it feels will have such an adverse effect on the fairness of the proceedings it cannot be admitted.⁴⁷ This applies to all forms of evidence, not just confession.⁴⁸

⁴² European Justice, *Taking of Evidence Poland*, 3, available at https://e-justice.europa.eu/76/EN/taking_of_evidence?POLAND&member=1 (last visited Sep.8, 2023).

⁴³1914 SCC OnLine SC 61: 232 US 383 (1914), *Brewer v. Williams* 97 S.Ct. 1232 (1977), *Nardone v. United States* 308 U.S. 338 (1939), *Caratube v. Kazakhstan* ICSID Case No ARB/08/12.

⁴⁴**Amendment IV:** The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

⁴⁵**Rule 103. Rulings on Evidence:** (d)PREVENTING THE JURY FROM HEARING INADMISSIBLE EVIDENCE. To the extent practicable, the court must conduct a jury trial so that inadmissible evidence is not suggested to the jury by any means.

⁴⁶**Section 78. Exclusion of unfair evidence:** (1) In any proceedings the court may refuse to allow evidence on which the prosecution proposes to rely to be given if it appears to the court that, having regard to all the circumstances, including the circumstances in which the evidence was obtained, the admission of the evidence would have such an adverse effect on the fairness of the proceedings that the court ought not to admit it. (2) Nothing in this section shall prejudice any rule of law requiring a court to exclude evidence.

⁴⁷ Also see RICHARD GLOVER, *MURPHY ON EVIDENCE* 54 (Oxford University Press 2013).

“Efforts to include in the Police and Criminal Evidence Act 1984 a provision that illegally or unfairly obtained evidence should be inadmissible or excludable as a matter of discretion failed, but by virtue of section 78 of the Act, the manner in which prosecution evidence is obtained is one matter which the court may take into account in deciding in the exercise of its discretion whether that evidence should be excluded pursuant to the section.”

⁴⁸ GOV.UK, *Evidence in criminal investigations*, 28, available at <https://www.gov.uk/government/publications/evidence-in-criminal-investigations> (last visited Sep.8, 2023).

In *Corfu Channel*⁴⁹ case, The court also found that the later minesweeping by the UK had violated Albanian sovereignty and although that violation of territorial waters had enabled evidence to be collected, the evidence had been admitted. The declaration of violation was considered sufficient sanction for the violation of territorial waters and hence the obtaining of evidence illegally. The court ordered Albania to pay the UK compensation.⁵⁰

In **Australia** section 138(1)⁵¹ provides that, in civil and criminal proceedings, evidence that was obtained improperly or illegally ‘is not to be admitted unless the desirability of admitting the evidence outweighs the undesirability of admitting evidence’ given the manner in which it was obtained.⁵² The exclusion contained in section 138 derives from the *Bunning v Cross*⁵³ discretion at common law, but differs from the latter in the following respects: the *Bunning v Cross* discretion places the onus on the accused to prove misconduct and justify the exclusion. In contrast, section 138 requires the party seeking exclusion to establish that the evidence was improperly or illegally obtained.⁵⁴

Additionally, CLA⁵⁵ considers that there should be mandatory exclusion of illegally obtained evidence where the laws infringed were intended to protect individual liberty, freedom and privacy. It states: It is recommended that section 138(1) be amended such that a judge may rule evidence admissible only if there are strong and compelling reasons why the illegally obtained evidence should be admitted, and the reasons for the admission must be set out in writing.⁵⁶ Exclusionary rules should be applied broadly to all cases where there is a causal relationship between the conduct of illegal collection and the evidence.⁵⁷

III.2. Violation of Vienna Convention on Diplomatic Relations (VCDR)

The actions of the D.I. within the Ferrwan Embassy premises directly contravene the VCDR, particularly Article 22(1)⁵⁸, which upholds the inviolability of diplomatic missions. The D.I.’s

⁴⁹ *UK v Albania* (1949) ICJ Rep 4.

⁵⁰ Peter Ashford, *The Admissibility of Illegally Obtained Evidence*, 85 Issue 4 ARBITRATION 377, 384 (2019).

⁵¹ **Section 138(1): Exclusion of improperly or illegally obtained evidence**

Evidence that was obtained— (a) improperly or in contravention of an Australian law; or (b) in consequence of an impropriety or of a contravention of an Australian law; must not be admitted unless the desirability of admitting the evidence outweighs the undesirability of admitting evidence that has been obtained in the way in which the evidence was obtained.

⁵² Australian Law Reform Commission, *Uniform Evidence Law*, Page No.574.

⁵³ (1978) 141 CLR 54.

⁵⁴ Australian Law Reform Commission, *Uniform Evidence Law*, Page No.575.

⁵⁵ Civil Liberties Australia (ACT).

⁵⁶ Australian Law Reform Commission, *Uniform Evidence Law*, Page No.577.

⁵⁷ 74 SABINE GLESS, THOMAS RICHTER, DO EXCLUSIONARY RULES ENSURE A FAIR TRIAL? A COMPARATIVE PERSPECTIVE ON EVIDENTIARY RULES 191 (Springer Open 2019).

⁵⁸ *supra* note 18.

unauthorized entry into the Embassy constitutes a violation of the Article 22(3) of VCDR⁵⁹, making any evidence gathered therein inadmissible under international law. Even though J. J. Crook shouted at investigation team to cease their entry into the Embassy office but D.I Bain caught hold of him so that he could not escape.

The case *United States v. Iran*⁶⁰ highlights the inviolability of diplomatic premises as enshrined in the VCDR. The Iranian seizure of the U.S. Embassy in Tehran resulted in a violation of international law, emphasizing the importance of respecting diplomatic premises.

The brain mapping test conducted on Mr. JJ Crook to establish his guilt was deemed inadmissible in court due to its experimental nature and potential for inaccuracy, as this technology was still in the developmental stage.

May it please the Court, in accordance with the respectfully submitted contentions, the counsels beseech this Hon'ble Bench to exercise its discretion judiciously by expunging the evidence proffered by the D.I. and the consortium of embassy officers, encompassing the contentious CCTV footage, from the purview of the Magistrate's deliberations. This imperative action is solicited based on its tainted provenance, to preserve the sanctity of these proceedings and uphold the bedrock principles of equity and justice that this august tribunal venerates.

⁵⁹*Article 22(3)*: The premises of the mission, their furnishings and other property thereon and the means of transport of the mission shall be immune from search, requisition, attachment or execution.

⁶⁰ *supra* note 9.

ISSUE IV: WERE THE FURTHER RECOVERIES MADE INCLUDING OF REMAINS OF MRS. WATS LIABLE TO BE REJECTED AND EXCLUDED FROM RELIANCE BY POLICE ON ACCOUNT OF OBJECTIONS AS TO THE ILLEGAL SEARCH AT THE EMBASSY AND THE ARREST OF MR. J. J. CROOK?

It is humbly submitted before the Hon'ble Superior Court of Kret for the inadmissibility of evidence, particularly the remains of Mrs. Wats, as staunchly safeguard the rights of Mr. J. J. Crook. This matter is emblematic of unwavering commitment to uphold international norms and the principles of justice. The core contention revolves around the imperative that evidence tainted by diplomatic breaches must unequivocally be declared inadmissible.

As dredge into this issue, the counsels implore the court to scrutinize the profound consequences of admitting such evidence, asserting that justice necessitates its exclusion.

IV.1. Preserving Inviolability of Diplomatic Premises under Article 22

The admissibility of further recoveries, particularly the remains of Mrs. Wats, must be evaluated within the framework of Article 22 of the VCDR, which unequivocally upholds the inviolability of diplomatic premises. This provision establishes a foundational principle that diplomatic premises are immune from interference by the host state. Any evidence collected in violation of this inviolability should be categorically excluded, aligning with the spirit and letter of VCDR Article 31. *United States Diplomatic and Consular Staff in Tehran*⁶¹, This case serves as a precedent, affirming the inviolability of diplomatic premises and establishing the principle that evidence obtained through violations of this inviolability should be categorically excluded.

In essence, the preservation of diplomatic premises inviolability is not only a matter of international law but also serves as the bedrock upon which diplomatic relations are built. Upholding this principle, as evidenced in VCDR Article 22, requires the exclusion of any evidence tainted by illegality, such as the remains of Mrs. Wats, to safeguard diplomatic norms and the integrity of the legal process.

⁶¹ *supra* note 9.

IV.2. Chain of Custody and Legal Taint

It is imperative to consider the chain of custody and legal taint surrounding the further recoveries. Even it is argued that these items were discovered after Mr. J. J. Crook's arrest, their admissibility remains questionable due to the initial illegality surrounding the arrest (Article 29 of VCDR)⁶² and breach of diplomatic immunity. This principle aligns with established international law, as exemplified in *Herring v. United States*⁶³ where the Court emphasized the significance of lawful conduct in the entire process of evidence collection. The use of illegal evidence is *denied in order to maintain respect of law; in order to promote confidence in administration of justice; in order to preserve the judicial process from contamination*.⁶⁴ Therefore, evidence obtained by illegal means which risks the conviction of the innocent should be rejected.

IV.3. Preservation of the Right to a Fair Trial

The admission of evidence tainted by illegality would infringe upon Mr. J. J. Crook's right to a fair trial, which is a core principle enshrined in the VCDR. The use of unlawfully obtained evidence compromises the integrity of the judicial process and violates Mr. Crook's due process rights, as delineated in landmark cases such as *Mapp v. Ohio*⁶⁵ and *Weeks v. United States*⁶⁶. The Court landmark decision in *Mapp v. Ohio* reversed *Wolf*⁶⁷ and required all states to exclude evidence procured by means of an illegal search and seizure from criminal proceedings through the due process clause of the Fourteenth Amendment.⁶⁸ *Mapp* closed *the only courtroom door remaining open to evidence secured by official lawlessness*⁶⁹ in violation of the constitutional guarantee against unreasonable illegal searches and seizures.

⁶² *supra* note 8.

⁶³ 555 U.S. 135 (2009); *Davis v. United States*, 131 S Ct 2419 (2011).

⁶⁴ *Olmstead v. United States*, 277 U.S. 438, 485 (1928) (Brandeis, J, dissenting). Also see ADRIAN KEANE, THE MODERN LAW OF EVIDENCE 54 (Oxford University Press). "The view at the other extreme would be that illegally or improperly obtained evidence should always be excluded; to admit it might encourage the obtaining of evidence by such means or at any rate bring the administration of justice into disrepute."

⁶⁵ 367 U.S. 643 (1961).

⁶⁶ *supra* note 43.

⁶⁷ *Wolf v. Colorado*, 338 U.S. 25 (1949).

⁶⁸ KUO-HSING HSIEH, THE EXCLUSIONARY RULE OF EVIDENCE 99 (Ashgate Publishing Limited 2014).

⁶⁹ *Mapp v. Ohio*, 367 U.S. 643, 654-5 (1961).

Ervin, J. of the Superior Court of Pennsylvania compared the *Mapp* case to a “hurricane” which “swept over our fair land.”⁷⁰ However, in 1979, the scope of the common law discretion to exclude wrongfully gathered evidence was curtailed by the House of Lords in *R v. Sang*^{71, 72}. To maintain the sanctity of the legal system and uphold the principles of justice, it is imperative to exclude any evidence that has been marred by illegality.

A country like India which is in South Asia also has this Right to Fair Trial. Under this Constitution as also the international treaties and conventions, the right to get a fair trial is a fundamental/human right. He has a right to defend himself as a part of his human as also fundamental right as enshrined under Article 21 of the Constitution of India⁷³. The right to defend oneself and for that purpose to adduce evidence is recognized by the Parliament in terms of sub-section (2) of Section 243 of the Code of Criminal Procedure, 1973. In a criminal case, denial of that right means denial of fair trial. This issue now stands concluded by decision of Hon’ble Apex Court in *Kalyani Baskar (Mrs.) v. M.S. Sampooram (Mrs.)*⁷⁴. In *Zahira Habibullah Sheikh and ors v. State of Gujarat and ors.*⁷⁵ The Supreme Court of India observed “each one has an inbuilt right to be dealt with fairly in a criminal trial. Denial of a fair trial is as much injustice to the accused as it is to the victim and to society.

IV.4. Unlawful Arrest

U.S. law regarding diplomatic immunity has its roots in England. In 1708, the British Parliament formally recognized diplomatic immunity and banned the arrest of foreign envoys.⁷⁶ In *Ker v. California*⁷⁷ case which raised the question whether unannounced entry of a suspect’s home by California police made the following arrest, and also a search made as an incident to such an arrest, unlawful.⁷⁸ In summary, international law, case precedents, and principles of justice necessitate excluding additional evidence, like Mrs. Wats remains. Admitting such evidence would breach diplomatic norms, impede Mr. Crook’s right to a fair trial, and undermine core principles of justice and public policy in our legal system.

⁷⁰ *Common v. One 1955 Buick Sedan*, 198 Pa. Super. 133 (1962).

⁷¹ [1980] AC 402.

⁷² 74 SABINE GLESS, THOMAS RICHTER, *supra* note 57, at 291.

⁷³ **Article 21: Protection of life and personal liberty.** —No person shall be deprived of his life or personal liberty except according to procedure established by law.

⁷⁴ (2007) 2 SCC 258, *Yakub Abdul Razak Memon v. State of Maharashtra and Anr.* CDJ 2013 SC 230.

⁷⁵ (2006) 3 SCC 374 at 395.

⁷⁶ 10524, DIPLOMATIC AND CONSULAR IMMUNITY: GUIDANCE FOR LAW ENFORCEMENT AND JUDICIAL AUTHORITIES, 5 (U.S. Department of State, 1998).

⁷⁷ 374 U.S. 23 (1963).

⁷⁸ Paul Hartman, *Admissibility of Evidence Obtained By Illegal Search and Seizure Under The United States Constitution*, 28 MLR 298, 311(1965).

Mr. J.J. Crook's arrest, despite the involvement of multiple individuals, contradicts Section 88 of the KPC⁷⁹, which assigns equal liability in cases of common intention. This raises doubts about the legality of his arrest. The counsels stress the importance of safeguarding Mr. Crook's rights within international law, reflecting their commitment to justice and diplomatic norms rooted in international principles. Their resolution underscores the need for careful examination and adherence to principles of justice and the rule of law.

PRAYER

WHEREFORE IN THE LIGHT OF THE ISSUES RAISED, ARGUMENTS ADVANCED AND AUTHORITIES CITED, IT IS HUMBLY PRAYED THAT THIS HON'BLE COURT MAY BE PLEASED,

1. To the affirmation of Mr. J.J. Crook's diplomatic immunity.
2. To rule that the investigation inside the embassy without consent was inadmissible.
3. To exclude the evidence, including the CCTV footage, due to illegal procurement.
4. To declare that further recoveries, such as Mrs. Wats remains, inadmissible due to diplomatic breaches and violations of international law.

AND/OR

AND PASS ANY OTHER ORDER, DIRECTION, OR RELIEF THAT IT MAY DEEM FIT IN THE INTEREST OF JUSTICE, FAIRNESS, EQUITY AND GOOD CONSCIENCE

FOR THIS ACT OF KINDNESS, THE APPLICANT AS IN DUTY BOUND SHALL FOREVER PRAY.

All of which is humbly prayed,

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Counsels for the Applicant

⁷⁹ **Section 88 KPC: Acts done by several persons in furtherance of common intention.**—When a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone.