

DIPLOMATIC PRIVILEGES BILL

**HANSARD'S
PARLIAMENTARY
DEBATES**

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PARLIAMENTARY DEBATES

HOUSE OF COMMONS
1ST JULY, 1964

EXTRACT FROM
VOL. 697

SECOND READING OF
DIPLOMATIC PRIVILEGES BILL (LORDS)

Prologue

HANSARD

*Hansard*¹ is an edited record of what was said in Parliament. It also includes votes, written ministerial statements and written answers to parliamentary questions. The report is published daily covering the preceding day, and is followed by weekly and final versions.

Transcribing and publishing

Members' words are recorded by *Hansard* reporters and then edited to remove repetitions and obvious mistakes but without taking away from the meaning. Reports of the latest proceedings are published online and updated during the day. The Commons and Lords have separate reports. The text of Daily Debates in the Commons and Lords are published online the following morning by 6am and is also available in hard copy. Weekly and bound final versions follow, proofread to eliminate any errors that may have occurred in the original.

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When the Commons and Lords are sitting, the reports of the latest proceedings are published about three hours after the live event and updated during the sitting. The following day this becomes the Official Report (*Hansard*).

Historic Hansard

Commons debates can be read back until November 1988 and Lords debates until 1995 – 96 on the Parliament website. *Hansard* debates from both the Commons and Lords from 1803 – 2005 can be read on the Historic Hansard website.

¹UK Parliament, www.parliament.uk (About Parliament—How Parliament works—Publications—Hansard)

THOMAS CURSON HANSARD

Thomas Curson Hansard (1776 – 1833)² was the son of the printer Luke Hansard.³ In 1803, he established a press of his own in Paternoster Row. In the same year, William Cobbett, a newspaperman, began to print the Parliamentary Debates. At first, these were not independent reports, but were taken from newspapers accounts of parliamentary debate. In 1809, Hansard started to print Cobbett's reports. Together, they also published a pamphlet describing an incident in which German mercenaries had flogged British soldiers for mutiny, and were imprisoned in King's Bench Prison for libel. In 1812, facing bankruptcy, Cobbett sold the publication to Hansard, who continued to publish it for the rest of his life.

²This article incorporates text from a publication now in the public domain: Chisholm, Hugh, ed. (1911). *Encyclopædia Britannica* (11th ed.). Cambridge University Press.

³Luke Hansard (July 5, 1752 – October 29, 1828), He was the son of a Norwich manufacturer. He was educated at Boston Grammar School in Boston, Lincolnshire, and was apprenticed to Stephen White, a Norwich printer. As soon as his apprenticeship had expired Hansard started for London with only a guinea in his pocket, and became a compositor in the office of John Hughs (1703 – 1771), printer to the British House of Commons. Among those whose friendship Hansard won in the exercise of his profession were Robert Orme, Burke and Dr Johnson; while Porson praised him as the most accurate printer of Greek. He printed the Journals of the House of Commons from 1774 till his death.

In 1829, he added his own name to the parliamentary proceedings, giving it the title Hansard that it bears to this day. The original business remained in the hands of his younger brothers, James and Luke Graves Hansard (1777 – 1851). The firm was prosecuted in 1837 by John Joseph Stockdale for printing by order of the House of Commons, in an official report of the inspector of prisons, statements regarded by the plaintiff as libellous. Hansard's sheltered itself on the ground of parliamentary privilege, but it was not until after much litigation that the security of the printers of government reports was guaranteed by statute in 1840. After 1889 the debates were published by the Hansard Publishing Union Limited.

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Members of the Debate

MR ROBERT MATHEW

The Under-Secretary of State for Foreign Affairs. Constituencies: *Honiton* May 26, 1955 – December 8, 1966. Offices: *Parliamentary Private Secretary* 1957 – 1959. *Under-Secretary* 1964 – 1964. *May 9, 1911 – †December 8, 1966

MR CHARLES LESLIE HALE

Oldham, West. Constituencies: *Oldham* July 5, 1945 – February 23, 1950. *Oldham West* February 23, 1950 – January 15, 1968. Titles in Lords: *Baron Hale* 1972 – May 9, 1985. *July 13, 1902 – †May 9, 1985

SIR FRANK SOSKICE

Newport. Constituencies: *Birkenhead East* July 5, 1945 – February 3, 1950. *Sheffield Neepsend* February 23, 1950 – May 6, 1955. *Newport* July 6, 1956 – March 10, 1966. *July 23, 1902 – †January 1, 1979

SIR ROBERT CARY

Manchester Withington. Constituencies: *Eccles* November 14, 1935 – July 5, 1945. *Manchester Withington*, October 25, 1951 – February 28, 1974. Offices: *Parliamentary Private Secretary* 1952 – 1955. *May 25, 1898 – †October 1, 1979

COMMANDER ANTHONY COURTNEY

Harrow, East. Constituencies: *Harrow East* March 19, 1959 – March 31, 1966. *May 16, 1908 – †January 24, 1988

DEPUTY-SPEAKER, SIR WILLIAM ANSTRUTHER-GRAY
Deputy-Speaker. Constituencies: *Lanarkshire Northern* October 27, 1931 – July 5, 1945. *Berwickshire and East Lothian* October 25, 1951 – March 31, 1966. Offices: *Parliamentary Private Secretary* 1931 – 1939. *Assistant Postmaster-General* 1945 – 1945. *Deputy Speaker* October 27, 1959 – January 29, 1962. *Chairman of Ways and Means* 1962 – 1964. *Deputy Speaker* January 29, 1962 – November 24, 1964. Titles in Lords: *Baron Kilmany* 1966 – August 6, 1985. *March 5, 1905 – †August 6, 1985

SIR HENRY LEGGE-BOURKE

Isle of Ely. Constituencies: *Isle of Ely* July 5, 1945 – May 21, 1973. *May 16, 1914 – †May 21, 1973

SIR RONALD BELL

Buckinghamshire, South. Constituencies: *Newport* May 17, 1945 – July 5, 1945. *Buckinghamshire South* February 23, 1950 – February 28, 1974. *Beaconsfield* February 28, 1974 – February 27, 1982. *April 14, 1914 – †February 27, 1982

SIR CHARLES MOTT-RADCLYFFE

Windsor. Constituencies: *Windsor* June 30, 1942 – June 18, 1970. Offices: *Parliamentary Private Secretary* 1944 – 1945. *Whip* 1945 – 1946. *Junior Lord of Treasury* 1945 – 1945. *December 25, 1911 – †November 25, 1992

MR EDWARD GARDNER

Billericay. Constituencies: *Billericay* October 8, 1959 – March 31, 1966. *South Fylde* June 18, 1970 – June 9, 1983. *Fylde* June 9, 1983 – June 11, 1987. Offices: *Parliamentary Private Secretary* 1962 – 1963. *May 10, 1912 – †August 22, 2001

MR JAMES HOY

Edinburgh, Leith. Constituencies: *Leith* July 5, 1945 – February 23, 1950. *Edinburgh Leith* February 23, 1950 – June 18, 1970. Offices: *Parliamentary Private Secretary* 1962 – 1963. *Parliamentary Secretary* 1964 – 1970. Titles in Lords: *Baron Hoy* 1970 – August 7, 1976 *January 21, 1909 – †August 7, 1976

Order for Second Reading

Wednesday
1st July 1964

3:42 p.m.

MATHEW⁴ I beg to move, That the Bill be now read a Second time. This Bill gives effect to those provisions of the Vienna Convention on Diplomatic Relations which relate to legal privileges and immunities. It will enable us to ratify that Convention, and will also, for the first time, provide a comprehensive code of diplomatic privileges and immunities in this country.

The main provisions of the Bill are in Clauses 1 and 2, which provide for the replacement of the existing law and the application of the relevant articles of the Vienna Convention. The other Clauses of the Bill make changes in our law that are, broadly speaking, consequential. The Bill provides a single statement of the relevant rules, and does this on the basis of the Vienna Convention. The rules to be applied will be the rules of the Convention itself. For the greater part, these rules will be the same as those now applying in our law or practice, but there will be some changes. But the tendency of the Bill is to reduce the extent of immunities from our jurisdiction, while making comparatively minor changes in privileges.

The Convention was the result of studies and proposals made by the International Law Commission of the United Nations. The Commission was established under a Resolution of the United Nations General Assembly of November, 1947, and chose as one of its first topics a study of the law of diplomatic relations. The Commission appointed a rapporteur, who made an exhaustive study of existing law and practice, and in 1958 the Commission adopted draft Articles for a Convention that were then submitted to Governments for their comment.

In 1961, a conference of 81 countries assembled in Vienna under

⁴MR ROBERT MATHEW, *The Under-Secretary of State for Foreign Affairs*. Constituencies: *Honiton* May 26, 1955 – December 8, 1966. Offices: *Parliamentary Private Secretary* 1957 – 1959. *Under-Secretary* 1964 – 1964. *May 9, 1911 – †December 8, 1966

the auspices of the United Nations, and considered the draft Articles and the comments and proposals of Governments. On 14th April, 1961, the conference adopted the Vienna Convention on Diplomatic Relations. That Convention came into force on 24th April of this year, and 28 States are now parties to it. It is worth stressing that this work was achieved through the United Nations.

International law governing diplomatic relations developed through many centuries of the practice of States. Out of this practice, rules of law developed, but on many matters there were significant differences of practice. In such cases, it was never easy to say with certainty what international law required. Numerous attempts to resolve these differences and reduce the mass of practice to coherent rules have been made.

That the rules of international law on diplomatic relations are now to be found in a concise formulation is thanks in large measure to the machinery for study and discussion within the United Nations, as well as to the spirit of co-operation and compromise which the United Nations can engender. There is now every prospect that the Convention will achieve universal acceptance by the nations of the world. Her Majesty's Government have consistently supported the work of the United Nations in the sphere of international law, and we are now glad to be able to welcome this Convention as one of its most valuable contributions to the development of the international rule of law.

As I have said, there were many points on which the Vienna Convention had to resolve differences of State practice. The decisions adopted by the conference were in some cases in favour of a practice and a view of international law that has not been that of the British Government. As a result, certain changes in our law will follow from the ratification of the Convention and the passing of the Bill.

The most significant changes are in relation to immunity from suit and legal process. The key to any consideration of the whole problem of diplomatic privileges and immunities is the need to strike the right balance between our interests as a receiving State and our interests as a sending State. As a receiving State, we clearly have an interest in reducing to a minimum the extent to which any persons physically present in our country enjoy exceptional treatment. But, as a sending State, we have an equally clear interest in ensuring that those to whom we entrust the task of representing the United Kingdom abroad have the status and the protection that will enable them to perform that task.

Under existing United Kingdom law, all members of a diplomatic mission, together with the private servants of the head of mission, enjoy complete immunity from every kind of suit and legal process both in respect of their official acts and in respect of their private acts. This means that a diplomat cannot be subject to legal proceedings in any circumstances unless his head of mission considers that there is a case for the waiver of the immunity.

Under the Convention and the Bill, this position will be changed, and significantly changed. For the first time, members of a mission will be divided into several categories, with differing privileges and immunities. Only the so-called “diplomatic agent”—the head of mission and the diplomatic staff—will continue to enjoy the full immunity which I have described, but even then the immunity will be subject to three exceptions under Article 31(1) of the Convention.

Members of the “administrative and technical staff”—such people as typists, wireless operators and archivists—will enjoy complete immunity only for their official acts. For their private acts they will have immunity only from criminal jurisdiction. Members of the “service staff”—the domestic staff of the mission

will have complete immunity only in relation to their official acts. For their non-official acts they will have no immunity from either civil or criminal jurisdiction. These are significant changes. The immunities of about 4,000 people will be affected.

I should like to mention Article 38 of the Convention in Schedule 1 to the Bill. At present, United Kingdom citizens on the staff of foreign diplomatic missions in the United Kingdom enjoy immunity from suit in respect of their official acts. This is a result of the Diplomatic Immunities Restriction Act, 1955. Under the Convention and the Bill, this will remain the position only in relation to heads of mission and members of the diplomatic staff. For all other ranks there will be no immunity at all under the Bill, unless such immunity be granted by Order in Council under Clause 2(6). In addition, for the first time, the same limitations will apply to permanent residents as well. Hitherto, there has been no discrimination against permanent residents.

These are important changes, but at once they lead us to ask the question: are they consistent with our needs as a sending State? Are we, in accepting them, jeopardising the position of our representatives abroad and hence the interests of Her Majesty's Government? The Convention contains a provision in Article 47(2, b) under which it is open to States to accord to each other on the basis of custom or agreement better treatment than that called for by the Convention.

Under this Article, it would be open for us, for example, to agree with another State to complete the immunity of the administrative and technical staff of our respective missions or to remove the exceptions to the immunity contained in Article 31. We have had to decide whether to make use of this provision and to include in the Bill a general power to make agreements going beyond the Convention.

The House will appreciate that this has not been an easy decision

to take. In the end, we have thought it right not to seek such a power and, with two exceptions, to accept the Convention as striking the right balance. These two exceptions are reflected in Clause 7. They are both cases where we have existing arrangements going beyond the Convention which we simply cannot terminate unilaterally even should we wish to do so.

The first relates to the immunity from jurisdiction of the subordinate staff. This is contained in Clause 7(1,a). When the power was conferred by the Diplomatic Immunities Restriction Act, 1955, to withdraw immunities from the representatives of foreign countries which were not according to our representatives the degree of immunity available under our law, we had to discover the countries in respect of which the power should be exercised. In doing so, we were able to come to arrangements with certain countries which also had a rule of reciprocity.

Under these arrangements one country assures the other that the subordinate staff of the mission will enjoy the full immunity from jurisdiction. These arrangements were made with about four countries where we were keenly concerned to have this kind of protection for our own staff. I am sure that the House will not expect me to elaborate on the security aspects of the immunity from jurisdiction of persons connected with our missions abroad.

I will merely say that it is quite clear that the threat of legal proceedings, in other words, blackmail, is a weapon which can be and is used to subvert members of diplomatic missions in some countries. The vital protection which we must have is to be able to assure every member of the staff of our mission in these countries that threats of legal proceedings can be ignored and that in no circumstances can such a threat be carried out without the consent of the head of mission.

Clause 7 will allow the full immunity to continue in relation to a very limited number of countries. Their names will

be published in connection with subsection (2) as soon as we have had time to consult the countries concerned. I stress that there is no question of concluding any further arrangements, indeed the Clause as drafted would not allow for new arrangements. It is merely a question of honouring those we already have.

Clause 7(1, b) would continue certain arrangements which we have already under which administrative and technical staff of the mission enjoy the same Customs exemption as the diplomatic staff. Under Article 27 of the Convention, in Schedule 1, administrative and technical staff will enjoy Customs exemption only in respect of articles imported at the time when they first take up their posts, whereas the diplomatic staff, under Article 36(1), enjoy Customs exemption throughout their tour of duty. We have arrangements with nine countries giving the more extensive exemption, and, here again, we cannot terminate them at will. We have to consult the countries concerned, particularly because the arrangements in some cases, at the request of other countries, have been confidential. In due course their names will be published in accordance with Clause 7(2).

I should now like to turn to a matter which has occupied a good deal of the attention of the House at various times in the past, namely, motoring offences by persons entitled to diplomatic immunity. The changes made by the Bill in the immunities of the subordinate staffs of missions will have an effect on the problem. Members of the administrative and technical staffs will become liable to civil proceedings in respect of claims arising out of off-duty accidents. Members of the service staff will be liable to both civil and criminal proceedings in respect of off-duty accidents or offences. This means, for example, that an Embassy chauffeur will not be able to plead any immunity when he is not acting in the course of his duties.

HALE⁵ Who decides this? Let us suppose that I am knocked down by a gentleman who is an assistant cook, or whose wife is an assistant cook, employed by the Ruritanian Embassy? How do I establish that he is off duty?

MATHEW Surely, if the hon. Member found himself in that position and the servant of the embassy pleaded immunity, this would be a matter for the head of mission. He knows whether the man was on duty at that time or was off duty. I am taking a case where there is no other evidence I suggest that in a number of these motoring cases it might well be perfectly obvious whether the servant was on or off duty at that moment.

HALE I agree, but suppose that the head of mission gives a certificate and says, "You were knocked down on the beach at Skegness by a gentleman driving a car off the road. He was on his way to cook a dinner for the Ambassador at Newcastle-on-Tyne and, therefore, was on duty"? This is not so far from some of the things that have occurred.

MATHEW The hon. Member has experience in the courts and knows that this is a matter of evidence. It must depend on all the circumstances and the evidence available at the time. Any prospective plaintiff, in bringing a case against a defendant, is in this position. He must have the evidence, and the onus is on the defence in this case to plead an immunity. It will have to be proved, and surely, in most cases, there will be a number of facts in the possession of the prospective plaintiff.

HALE This is important. We ought to get it clear. The question which I am asking is this: if a certificate is given by the head of a mission, is that binding on any tribunal in Britain or is the tribunal entitled to go behind the certificate and to question

⁵MR CHARLES LESLIE HALE, *Oldham, West*. Constituencies: *Oldham* July 5, 1945 – February 23, 1950. *Oldham West* February 23, 1950 – January 15, 1968. Titles in Lords: *Baron Hale* 1972 – May 9, 1985. * July 13, 1902 – † May 9, 1985

its accuracy, validity and honesty—and, if so, how?

MATHEW Is the case any different from any ordinary running down case? A policeman appears or is sent for, and it does not matter whether there is a C.D. plate on the car or not, because that has no legal validity. If the person concerned pleads immunity, then it is for the police to find out whether he is entitled to immunity. The test of immunity surely would be the same as before—either he was entitled to it or he was not. If he were on duty, then he was entitled to it; and, if not, then he was not entitled to it. Surely this is a matter in which it should not be beyond the wit of our legal machinery to discover the answer. If he held out improperly and wrongly and against the facts that he was entitled to immunity, I do not think that there would be much difficulty in refuting that case.

Members of the service staff will be liable to both civil and criminal proceedings in respect of off-duty accidents or offences. This means that an embassy chauffeur will not be able to plead any immunity when he is not acting in the course of his duties. This should help to remove a good deal of the room for irritation and misunderstandings which at present exist in this field. However, it is true that for on-duty offences and accidents there will still be cases in which diplomatic immunity can be and will be claimed.

In a recent Adjournment debate I told the House of the new procedures which the Foreign Office and the Commonwealth Relations Office have recently adopted to try to reduce the extent of this problem. The police are now forwarding to the Foreign Office weekly tables of traffic incidents involving persons claiming diplomatic immunity. It is the intention of the Foreign Office and the Commonwealth Relations Office to bring these to the attention of the missions concerned. In addition, I can say that the doyen of the Diplomatic Corps in London is taking a

personal interest in the problem and has brought to the attention of heads of missions the obligation which diplomats are under to obey the laws and regulations of the United Kingdom, whether or not they can be enforced against them.

Steps are being taken to ensure that missions have available to them adequate parking facilities so that the cause of some of the difficulties may be removed. I assure the House that we have this problem of diplomatic motoring offences and incidents under close and constant scrutiny and that we are not at all unhopeful that it will be solved by good sense and restraint on the part of all concerned.

I want to refer to one or two points of detail in the Bill. It may be useful if I say something about exemption from local rates. Embassies and certain members of their staffs have enjoyed for over 70 years a partial relief from local rates. The Treasury at present accepts liability for that part of the general rate which is of no direct benefit to the embassy or the diplomat concerned. The so-called beneficial portion of the rate is paid by the embassy or the diplomat. This relief is at present given in one of two ways. Either the Treasury pays the full rate to the local authority and then recovers the beneficial portion from the embassy, or from the diplomat or else the embassy or the diplomat pays the full rate and recovers the non-beneficial portion from the Treasury.

Under the Convention and the Bill, embassies and the official residences of diplomats will have a legal exemption from rates to much the same extent as the relief which they enjoy at present. Since it is a legal exemption, it is intended to adopt in all cases the first of the two procedures which I have described, and in future the Treasury will pay the full rate and will recover the beneficial portion from the embassy or the diplomat concerned. The Ministry of Housing and Local Government have been in touch with the representatives of local authorities, who have welcomed the considerable simplification in procedure which is proposed.

The only other provision which I will mention at this stage is Clause 3, which gives power to withdraw privileges and immunities from a mission when the sending State is failing to accord to our mission in its territory the privileges and immunities conferred by the Act. This power replaces the similar powers in the Diplomatic Immunities Restriction Act, 1955, in relation to foreign missions and the Diplomatic Immunities (Commonwealth Countries and Republic of Ireland) Act, 1952, in relation to Commonwealth missions.

This is a simple Bill. Its twin objects are to bring both certainty and uniformity into the law on diplomatic relations. I have attempted to explain the main provisions of the Bill. hon. Members may well wish to raise other points of detail and, if the House grants me permission, I shall be happy to deal later in the debate with such points. I submit that the Bill, by enabling the Government to ratify the Vienna Convention, is a real step forward towards the codification of an important branch of international law. For all the reasons which I have given, I commend the Bill to the House.

4:07 p.m.

SOSKICE⁶ With a great deal of what the Minister said when he was sketching the background to the Bill I think that hon. Members on both sides of the House will agree. It is a step forward in the codification and expression in clearish—I will not say clear—terms of certain basic and vital principles of international law. As far as we can understand it, we shall know that the privileges to be accorded to diplomatic envoys are those which are described in language, which is not pellucid in form but comparatively so, contained in the articles set out in the Schedule to the Bill. I think that the whole House would wish me to pay tribute to the International Law Commission and would welcome an effort, under the auspices of the United Nations, tending to the codification of international law, because this will tend to the improvement and maintenance of the stability of international relations between states as far as it goes.

Having said that and having expressed agreement with those sentiments which came from the Minister about the background to the Bill, I should like to begin to examine its content. The Bill deals with the result of discussions and agreements at the Vienna Convention. Under Clause 8, I notice that the Bill proceeds to go outside the limits of that Convention and to deal with a different topic. I refer to the State of Southern Rhodesia, as it is described in the Bill. The first point which I want to put to the Minister arises on Clause 8(2), which reads: “This Act shall be construed as if Southern Rhodesia were a State”. That provision was explained by Lord Carrington, when he was speaking on behalf of the Government in another place, as a provision which was necessary to prevent Southern Rhodesia from losing diplomatic privileges which her envoys at present enjoy under the provisions of the Diplomatic Immunities

⁶ SIR FRANK SOSKICE, *Newport*. Constituencies: *Birkenhead East* July 5, 1945 – February 3, 1950. *Sheffield Neepsend* February 23, 1950 – May 6, 1955. *Newport* July 6, 1956 – March 10, 1966. *July 23, 1902 – †January 1, 1979

(Commonwealth Countries and Republic of Ireland) Act, 1952. I can well understand it if the Government feel that it would be wrong to deprive Southern Rhodesia of existing privileges which are accorded to representatives from Southern Rhodesia. I cannot help feeling, however, that the language chosen is not particularly felicitous at present, when we read not infrequently in the Press of the possibility, indeed more than the possibility, of a unilateral declaration of independence by the Southern Rhodesian Government who are in power at the moment.

That being the situation it seems to me not altogether happy to choose language which is so expressed as to equate Southern Rhodesia in the fullest sense with a sovereign independent country such as Western Germany or France or any other sovereign country. If language is to be inserted into the Bill to preserve the rights of Southern Rhodesia, that is one thing, and I should not oppose it. But I put it to the Minister that it is quite unnecessary to make any reference to Southern Rhodesia at all.

The Bill does not as I read it, take any privileges away from Southern Rhodesia. The privileges which Southern Rhodesia at present enjoys are, so far as I understand it from the wording of the Bill, completely and wholly untouched. It seems to me, therefore, to be quite unnecessary to embark upon the use of the language in Clause 8, which, as I say, has an unfortunate connotation, particularly in present circumstances.

The scope of the Bill is defined in Clause 1 as being designed to substitute the provisions contained in it as to diplomatic immunity in the existing law with respect to the matters dealt with therein. "Therein" means, by the Bill, that is the diplomatic relations between States, as I understand it, which are parties or become parties to the machinery of the Vienna Convention, and those States are set out in the Schedule—there are 81 of them—and Southern Rhodesia is certainly not included as

a State; and as I read the provisions of the Bill it could have no effect on the existing status of Southern Rhodesia so far as diplomatic immunity is concerned.

I really would ask the Government to look closely at that matter. It is a subject on which one must naturally, speak with great restraint and care in view of the somewhat tense situation at the moment, and I say no more about it, but I do ask the Government to consider whether it is necessary to insert that language or any language of the sort.

Having made that general point I accept that what we are doing now is deciding whether or not we approve what the Government spokesman in another place described as a package deal. No doubt, our representatives in the course of the discussions in Vienna would have preferred some arrangements in some respects different from those which appear in the Convention, and in other respects, no doubt, felt well satisfied with what the Convention provides. We are asked to approve the package deal before the House. The question before the House is not whether we can alter the Convention, but whether we accept it or reject it as a whole, and that is what the Minister was inviting the House to do.

Speaking for myself, I hope that the House will certainly decide that it ought to be accepted. It ought to be accepted as a step forward in the endeavour to do what we must constantly apply ourselves to trying to do, as I said, to codify in practice by intelligible law the relations which should subsist between independent sovereign States. I think that this Convention, with its imperfections—I certainly think that it has imperfections—goes some way in codifying and cementing those relationships.

I think that, nevertheless, if we do register our vote in favour of approving this Convention, we should bear in mind what it is we are doing. Fundamentally, in this country we are, I think quite

rightly, very much against the idea of there being people here who are above the law. We do not like it. It goes against our instinct. We like to think of every person in this country as being amenable to the jurisdiction of our courts. It is a natural and, I think the House and people outside the House will agree, a proper instinct.

What we are doing is deciding to approve, if we do so decide, a Convention which nevertheless preserves extremely wide immunities from the law for members of the staffs of diplomatic missions of foreign sovereign States. They are really extremely wide. I accept from the Minister that they are, by the terms of the Convention, to some extent narrowed from what they were before. The pre-existing diplomatic immunities are of long standing in this country. I think that they began with the Diplomatic Privileges Act, 1708. Indeed, they were in a less coherent form long before that, centuries before. Since then there has been a mass of common law on the subject. As they existed before, or rather, as they exist at the moment, before the Bill is passed, they are extremely extensive. As I have said, they are to some extent reduced as operated by this Convention. Nevertheless, they are extremely wide.

What the Bill, or rather the Convention which is annexed to the Bill, or the relevant parts of it which are annexed to the Bill, does is to divide the members of the diplomatic staffs into three categories. They are now those who are described in the text of the Schedule as diplomatic agents; or they are members of the staff engaged, as the Minister said, in technical, administrative duties—typists, translators, telegraph operators, and so on. Thirdly, they are, in effect, domestic staff of the embassy concerned. I think we ought just to look and see what the Bill will preserve by way of privilege to be accorded to these three separate categories.

To start off which, I should have thought that we would have

had no quarrel with Article 22, which provides that the premises of the mission itself should be inviolate. We would accept that. Similarly, I should have thought that we would have accepted complete immunity preserved by Article 23 for the sending State and perhaps for the head of the mission himself.

While I do not say that we are cutting any new ground, still, when we look at the “diplomatic agent”, we are in an area which is uncharted in extent. If we look at the matter *de novo*, starting from the beginning, and consider the “diplomatic agent” we see that he is simply described in the Schedule as a person who is entitled to diplomatic privilege. In the Bill there is no definition of the diplomatic agent apart from this. So presumably he is the person who one supposes the head of the mission designates, and who is accepted by the British Government, as being of the status of a diplomatic agent. He enjoys complete immunity from criminal process and, apart from what are really minor, unimportant exceptions, has complete immunity from civil process.

Theoretically, whether on duty or off duty he can commit any crime he likes—

HALE His family.

SOSKICE I was just going on to say that I agree.

CARY⁷ And he can park his car where he likes.

SOSKICE Park his car where he likes? There are far worse things that he can do. I am not one of those who assume that *ex hypothesi* he will be a person who will lurk about the streets, looking for opportunities to commit crimes. I think that that is silly. However, theoretically—and although it is theoretical it

⁷SIR ROBERT CARY, *Manchester Withington*. Constituencies: *Eccles* November 14, 1935 – July 5, 1945. *Manchester Withington*, October 25, 1951 – February 28, 1974. Offices: *Parliamentary Private Secretary* 1952 – 1955. *May 25, 1898 – †October 1, 1979

can have practical application under operation of the law—he can commit any crime that he likes, when he likes, where he likes, against whom he likes. This really is going a long way.

Equally, he can commit any civil wrong. He can break a contract if he wants to, again, with these unimportant exceptions. He need not give any evidence in any court if he does not want to, and judgment can only be enforced against him, if it is obtained, in the event of his immunity being waived for that purpose. That is under Article 32. Suppose that the head of a mission waives for the diplomatic agent his immunity in respect of any particular civil process, suppose he commits a civil wrong—he slanders someone, or attacks or assaults someone.

Suppose that the head of the mission waives the immunity for process against him. If he loses, a judgment can only be enforced against him if there is an express and separate waiver—before anyone can enforce judgment against him. It really is a case of “Heads I win, tails you lose”. If he wins he could enforce an order for his costs against the unsuccessful plaintiff. But if he loses and there is an order for damages against him he can say to the successful plaintiff, “Try to get the money out of me. You will not.” Unless there is a separate and express waiver, judgment cannot be enforced against him. That is going a long way.

Then there is the same immunity, as my hon. Friend the Member for Oldham, West (Mr. Hale) reminded me, and as I was going on to say, for members of his family, what are called the members of his family, forming part of his household. So long as they can be said to be living with him and forming part of his household they can equally go round committing any crime—or doing any wrong—although I know perfectly well that in the vast majority of cases they will not.

Article 37 deals with the position of the administrative and technical staff. They and the members of their family forming

part of their household have the same immunity, subject only to this that in the case of civil jurisdiction, but not criminal jurisdiction, their immunity does not extend to acts which they do not do in the performance of their duty. In respect of criminal jurisdiction they also have the complete immunity available to diplomatic agents. Then one gets the service staff, who have criminal and civil immunity except in the case of acts outside the scope of their service. That is very wide.

We are accepting or rejecting the agreement as a whole. We must not get an unrealistic idea about the problem we are discussing. It would be exaggerating and absurd to suppose that this country is half-full of diplomatic envoys roaming the streets and buildings looking for opportunities to commit every sort of crime. That is nonsense. Nobody asks the House to consider the Bill on that footing. But in the matter particularly of motoring offences the effect of the immunity causes considerable irritation to the public, especially in regard to parking offences. I was glad to hear the procedure the Minister outlined as being that which would be applicable. It is to be hoped that the members of all the missions in this country, 81, will respond and co-operate when the matter is brought to their notice in accordance with the procedure which the Minister outlined.

I have ascertained the number of people whom we are considering. Quoting from Lord Carrington's speech in another place, the total number of staff of missions is now 5,039, and when the Bill becomes an Act the diplomatic agents with complete immunity will number 1,439; administrative and technical staff with almost complete immunity will number 2,794 and service staff with the more qualified immunity will number 552.

Obviously, in 1964 it would be ludicrous to say that we can do without this immunity. We have to afford in our country the same

sort of immunity to foreign envoys as we claim for our envoys in foreign countries. That is obvious. It is impossible for us to expect our envoys to work in a number of the places where they now work if they are potentially subject to what the Minister described in graphic language as blackmail, though I do not think that anyone would say that his language was over-coloured in that respect.

We cannot, as yet, always have the same confidence in the courts of all other countries as we should like to have. No doubt the time may come when no member of a staff or his family will be at risk in having to work in such countries, but that time is not yet. Therefore, we have to accept that we must give that immunity which we would expect in other countries.

I therefore hope that the House will agree to accept the Bill as it is. It gives effect to a Convention which has its weaknesses, but, nevertheless, provides for what is an absolute necessity at present if our representation through our missions is to be conducted effectively without fear of hindrance and without anxiety on the part of those persons whom we send abroad and their families lest they should be in any way made victims or subjected to unfair processes in foreign courts. On that understanding, and provided that it is clearly recognised that there are defects which we cannot help, and which we should perhaps be able to eradicate and would eradicate if we had a completely free hand, I hope that we shall agree to give the Bill a Second Reading.

4:25 p.m.

COURTNEY⁸ I have very great sympathy with the remarks of the right hon. and learned Member for Newport (Sir F. Soskice), almost in their entirety. But, like him, I would dwell for a moment on the defects in the Bill, which is, after all, giving the force of law in this country to an international Convention which was signed by this country's representatives three years ago.

The first question that I should like to ask is why it is that during these three years Her Majesty's Government have not seen fit to bring the Bill before the House. Only now, when 22 nations have ratified the Convention, when it, therefore, becomes law internationally, is it brought before the House. We are entitled to know why the delay has occurred.

As pointed out by the right hon. and learned Member, the reduction of diplomatic immunity and privilege which will result in this country from the Bill is evident and considerable. It highlights the lavishness of the diplomatic hospitality which we have afforded to foreign missions over the years. Now that 81 nations have got together and agreed on a certain scale of diplomatic privilege and immunity, we find that our own scale actually operating at the time is very much higher than that, and it will, therefore, be reduced considerably by the Bill.

I want to make a few remarks about the relationship of the Bill to the Convention of three years ago to which it gives the force of law. Schedule 1 contains Articles from the Convention which will themselves be given the force of law in this country. If we are accepting the Convention as a whole, why is it that 35 of the 53 Articles of the Convention are omitted from the Bill? It may seem a simple drafting point. Indeed, there are some Articles which do not apply because they are simply informative and there is no question of giving them force of law, but there are clear inconsistencies of detail.

⁸ COMMANDER ANTHONY COURTNEY, *Harrow, East*. Constituencies: *Harrow East* March 19, 1959 – March 31, 1966. *May 16, 1968 – †January 24, 1988

For example, the Schedule includes Article 27, which allows for the free communication of missions for all official purposes. On the other hand, it omits Article 26, which allows for freedom of movement and travel for members of diplomatic missions. I should have thought that the force of law would have been required for both Articles. I ask my hon. Friend to look at the list and perhaps include the whole outfit in the Schedule.

I draw attention to two particular aspects of the Convention. The first point I want to make is that the principle of diplomatic immunity which governs the thought behind the Convention is clearly breached in one interesting small domestic matter. Under Article 36 of the new rules it is possible for the personal luggage of a diplomatic agent to be searched if a Customs officer feels that the case which he has not declared contains, for example, more slivovitza than he could be expected to drink during his tour of duty. To put it simply, diplomats who smuggle and are bowled out can presumably be made *persona non grata*. The point I am making is that that breach of diplomatic immunity is enshrined in the provisions of the Convention, which is a rather interesting commentary on modern practice. Who knows?—perhaps it will be added to in another international diplomatic convention by something to do with the parking of cars.

My second point is about Article 47 of the Convention, which also does not find a place in Schedule I. Its object is to prevent discrimination. My hon. Friend has used the provisions of the Article to justify the taking of certain powers to increase privileges in respect of diplomatic immunity for four nations and customs immunities for nine nations, nations which are not at the moment specified. I suggest that he should look at that Article closely again, when, perhaps, on rereading it, he will appreciate my own feeling about that Article, which is that it is a negative one and that only by implication does it allow nations to extend to each other more favourable treatment than is required by the provisions of the present Convention.

It would seem that in Article 47 allowance is made implicitly by those who drafted the Convention for abuse or for double standards within the Convention. It makes allowance for certain action when the provisions of the Convention are applied restrictively by any particular nation. It seems difficult to imagine how a Convention can be observed internationally while, at the same time, allowance is made within that Convention for the application of its provisions restrictively. It implies a very curious double standard of international behaviour which we ought to consider rather closely in Committee.

Now to the Bill itself. In Committee in another place my noble Friend, Lord Carrington, made two statements which seemed to me to be a shade conflicting. The first was that the Convention contains no provisions permitting reservations; in other words, one accepts the whole thing or one does not. The second was that in two respects we cannot accept the Convention as it stands. We have heard from my hon. Friend the Under-Secretary today that he has inserted enabling Clauses which amend the provisions of the international Convention as it is transformed into the law of this country. I suggest that this is a shade inconsistent in our thinking and that we should look more deeply into the causes of this apparent inconsistency.

The result is the new Clause 7, which increases the immunities for four nations and the customs privileges for another nine. We have not been told who these four nations are, and this is by far the most important amending point. One might think that if we wished to increase privileges for certain countries they would obviously be allies and perhaps members of the North Atlantic Treaty Organisation, but, as was hinted by my hon. Friend, we would now say, "Oh no, that is not so." These four nations are in fact countries in which our own diplomatic representatives experience particular difficulty and, therefore, it is necessary for us to go outside the provisions of the international

Convention, which we are accepting in toto, to make special reciprocal arrangements with those four countries.

I feel—and I am sure my hon. Friend will agree with me when he looks carefully at Article 47—that this discriminatory Clause does not really permit him, within the terms of the Convention, to increase these privileges in respect of the four and nine countries respectively. But there is a third major amendment to this Convention which is being made in our own law, in Clause 3, which my hon. Friend has already mentioned and which gives the Government powers—absolutely rightly, as we would all agree—to withdraw privileges and immunities as a retaliatory act in the case of countries which have taken the initiative by doing something similar to our own representatives abroad. I mention these three amendments to the Convention because, in my view, they give a precedent for further amendment should this House consider it necessary, as it may well do on closer scrutiny of the Bill.

Today, my hon. Friend said, “I will not elaborate on the security aspect” and he was, of course, referring to blackmail and the difficulties which our emissaries experience in certain countries. But no one has yet mentioned the effect on our national security, as has been proved so sadly over the last few years, of any increased widening of diplomatic privilege to the representatives of certain nations which we know have abused those privileges. In another place Lord Killearn, who, I am sure the House will agree, has longer experience in these matters than most people in this country, said that in his opinion there had been over past years a serious abuse of diplomatic immunity. I feel that that has been proved without a shadow of doubt in recent times. We have heard quite a lot about car parking, but I should like to draw attention to published proof positive of this abuse extending to questions of national security.

I refer to the security cases of Vassall, Blake, and further back to Maclean and Burgess. We have not been given much information, but we have been given enough to establish that the revelations of these cases show the serious danger to national security which has occurred in the past and which may well continue to occur if we do nothing about it. I believe that this excellent Bill gives the House and the country the opportunity of saying quite clearly that we will not tolerate further abuses of this immunity such as have occurred in the past.

There is a precedent, as I have shown, for amendments to the law of this country in the Bill now before the House covering the provisions of the Convention, and I should like to turn for a moment, because this is a matter on which I feel somewhat strongly, to the three basic immunities of diplomatic agents which are misused in this country.

First, as the right hon. and learned Member for Newport mentioned, is inviolability of mission premises. Secondly, there is the sanctity of the mission's communications, in which is included the diplomatic bag. Thirdly, there is the immunity of the person of a diplomatic agent from arrest or detention, which presumably includes search. Those three immunities, in varying degrees, are those which have been abused for the purpose of espionage against this country, as is proved conclusively by the published reports of the last few years.

I believe that it should be the duty of this House to seek minimum powers to obtain the objective of deterring the further use of this type of espionage. We have in the Bill, and in the Convention which has been signed and which we hope will be accepted, a rather remarkable anomaly. Let us go back two years, to the case of Vassall handing documents to a diplomatic agent of a foreign Power in a public place. Had Vassall been observed—perhaps he was—by a security officer, the security officer would, under the

provisions of the Bill and the Convention, have been powerless to do anything to the diplomatic agent, arrest him, detain him, search him, or anything else.

This diplomatic agent, having accomplished his task, goes to his own country on leave. He flies back, and, on his arrival at London Airport, his baggage may be searched if he is suspected of having, as I said before, too much slivovitz. It is a remarkable commentary on our curious sense of proportion in this country and the way we have of sweeping unpleasant facts under the carpet even when national security is concerned.

I ask my hon. Friend to look again at Article 29 in conjunction with Article 3(1,d). Article 29 of the Convention, which becomes the law of this country, covers the immunity of the person of a diplomatic agent from arrest or detention. I suggest that the minimum requirement would be satisfied if we applied sanctions or restrictions, by Amendment to the Bill, to this one immunity only of the basic three which I have mentioned. The Government ought to take powers in some way to qualify Article 29 in the sense of Article 3(1,d), which refers to lawful means of acquiring information.

I am not a lawyer. I leave it to hon. and learned Members to work out how this could be done, but in my view it should be made watertight. A diplomatic agent of a foreign Power in this country should, in future, be clearly warned that he will be subject to arrest or detention if there are serious grounds for believing that he has engaged in espionage. Those are the precise words which we already apply to the duties of a Customs officer, allowing him to search the baggage of a similar diplomatic agent.

There will be strong objections to any suggestion of this kind, and I believe that they take two main lines. First—we all feel this, because we know of incidents which have occurred—there is the possibility of retaliation against our own diplomatic representatives abroad as a result of any amendments or

restrictions which we put on diplomatic agents serving in this country. Surely, there is sufficient evidence—those of us who travel in these countries know it very well—that there is already operating a double standard of conduct and behaviour towards diplomats which makes nonsense of any international Convention interpreted in the right spirit.

Is not this the precise reason why my hon. Friend has to accept four countries within the terms of amendments made by the Bill, increasing immunities and privileges so as to protect our own people in those countries? What is forgotten is that, in this way, we extend immunities and privileges to representatives of a hostile country within our own.

The second objection is a rather peculiar one, and for it I am obliged to the hon. Member for Manchester, Gorton (Mr. Zilliacus). I have warned the hon. Gentleman that I intended to raise this point, and he has apologised for his absence, saying that he is in his constituency and cannot be present today. Just over a year ago, in an Adjournment debate, the hon. Gentleman, speaking about the abuse of diplomatic privileges in the sense of breaches of national security, said: “Do not an equal number of those who are *personae non gratae* have to leave the respective countries in cases of espionage? Do these problems not apply to both sides and not just to one?”⁹ If the hon. Gentleman is right—he has as much right to study these matters as we all have—it must be clear by now that, if two sides are playing this kind of game, we are certainly having the worst end of the deal. Is it not time that we set aside all such possibilities and returned to base, so to speak? Ought we not to start with a clean sheet under the provisions of the international Convention as ratified by the Bill now before us?

In general, I support the Bill, but I say firmly that it is time that

⁹Official Report, 2nd August, 1963; Vol. 682, c. 843–4.

the House took the question of national security a good deal more seriously than, with respect, it has hitherto. We should look very carefully at the detail of possible Amendments to the Bill.

4:45 p.m.

HALE With respect to the Under-Secretary of State—I apologise to him personally, for I have an old affection for him, by greeting him with “Timeo Danaos et dona ferentes”—I think that what he said postulates the first problem that we face in dealing with the Bill. Even my right hon. and learned Friend the Member for Newport (Sir F. Soskice), who spoke so ably, and with whom, in the main, I was in complete agreement, talked about exceptions to the rule being provided in the Bill. The Minister told us that even some exceptions have been added. To me, the exceptions seem to be new privileges, and they are not designed to subject an ambassador to litigation but to make it possible for him to complete his duties in relation to executorships or the ownership of freehold property—that is all—because it is obviously necessary to give him such power.

There is one really quite monstrous provision which says that a diplomatic agent may waive his immunity to process, but, even if he does that, he has not waived his immunity to judgment. He may say that he will accept the arbitrament of law and contest an issue so long as he does not lose. If he is likely to lose, we cannot enforce the judgment against him, because the law specifically provides for immunity even after judgment unless he makes a second specific act of waiver.

No one will deny—my right hon. and learned Friend put it very ably and clearly—that there is a need to protect our diplomatic agents, ambassadors or people from this country fulfilling the functions of ambassador abroad. Although conditions may have altered somewhat, I am not sure that they have wholly improved. The rule of law is very curious today in many countries, even in some Commonwealth countries.

I have always taken the view that, on the whole, I prefer not to be tried at all, but I am quite certain that there are countries in the world today in which I would very much prefer not to face a trial. It is right to remember that exposure to the threat of process

under a law of increasing incertitude, a law sometimes dominated by the head of State who reserves the power to dismiss judges who do not record verdicts which he favours, can be a terrible thing, from which we ought to try to protect by every proper means those who represent us abroad.

The trouble with privileges is that they proliferate. There was a time when, in quite reasonable circumstances, Members of Parliament claimed immunity from arrest. Those who recall the picture of the five Members upstairs may well think that this was reasonable. This privilege became extended until, as Hatsell records, Members' servants were protected from arrest. I noted a case in the seventeenth century when, a Member's servant having been arrested, the culprits were brought to the Bar of the House at once and, after much discussion, were ordered to be paraded from Westminster to the Exchange back to back—and bare-back—on a horse with a notice calling attention to their crime. It was, I think, the horse which was bare-back, not the offenders—a matter which may be of interest at the moment to the authorities of Bexhill and Eastbourne. We know that the privilege was abused. John Selden, in his "Table Talk," complained that Members were incurring the just scorn of the people by proliferating these privileges.

DEPUTY-SPEAKER¹⁰ I hope the hon. Member will bear in mind that these are diplomatic privileges that we are debating.

HALE Yes, Mr. Deputy-Speaker. I am discussing diplomatic privileges on Second Reading. On Second Reading, I discuss the principles of the Bill. On Second Reading I have always

¹⁰SIR WILLIAM ANSTRUTHER-GRAY, Constituencies: *Lanarkshire Northern* October 27, 1931 – July 5, 1945. *Berwickshire and East Lothian* October 25, 1951 – March 31, 1966. Offices: *Parliamentary Private Secretary* 1931 – 1939. *Assistant Postmaster-General* 1945 – 1945. *Deputy Speaker* October 27, 1959 – January 29, 1962. *Chairman of Ways and Means* 1962 – 1964. *Deputy Speaker* January 29, 1962 – November 24, 1964. Titles in Lords: *Baron Kilmany* 1966 – August 6, 1985. *March 5, 1905 – †August 6, 1985

been traditionally entitled to call in evidence experience of comparative matters and comparative affairs in every reasonable and comparable form of life.

The question of the privilege of private Members is always relevant. When I was on a mission abroad as a member of Western European Union, the Foreign Office provided me with a lavish double bed. When I invited my wife to participate, I found that I had broken the rules. Apparently, I could have invited a mistress because that would have been in the course of duty, or entertainment, but, my wife being in Paris, I was told that I would be surcharged. These are matters which exercise hon. Members from time to time. I have preserved a cheque for 1s. 10d. endorsed by the Foreign Office which states: "Received 1s.10d. in repayment for two boiled eggs ordered by the Member for Oldham but not consumed because they were underdone, not chargeable to public funds, at café complet at such and such a hotel, Paris". This was ten years ago, but the Foreign Office is not generous in according privileges.

Another matter which I have raised from time to time in the House—and I venture to say at once that again I am taking an analogy from another Bill—is that we are faced with a very great deal of obscurantism. The noble Lord who introduced this Measure in another place and gave much the same explanation as the Minister has given today—the noble Lord has left the quarterdeck—looked at the Clauses and said that they did appear to mean what they seemed to mean. He said that he would go back to the Foreign Office after the Committee stage and would find out why they meant what they meant and would return on Report and explain to the noble Lords what they meant and why. The noble Lord said that he had listened with great attention and came to the conclusion that the Minister knew what the Bill meant but that he had not been able to explain it.

It is in these terms that the Bill passed to this House. When there is an allegation of obscurantism it is invariably received with pococurantism—*Id certum est quid certum reddi potest*. Ministers say, “If we cannot tell you now, there is always the court of appeal”.

Two days ago the Court of Appeal was called upon to consider the terms and meaning of recent Measures passed by this House. Lord Justice Harman, in an outspoken addition to English literature, said, after pointing out that learned counsel on both sides who were technically learned in the law had overlooked one very relevant provision, that to arrive at a conclusion involved the Court wading through a monstrous legislative morass, staggering from stone to stone, ignoring the marsh gas rising from it”. At one time his Lordship had regarded it as the slough of despond and thought that the court would never have dragged its heavy feet through it; but *quacunqve via*, getting from tuft to tuft as best he could. This picture of the Lord Justice laboriously tuft hunting in the interests of the nation is genuinely pathetic.

Lord Justice Diplock, who obviously agreed in a brief but admirably reported judgment, said that he preferred the classic to the peregrinic approach. To me that had a touch of temporary obscurantism. My mind went to falcons swooping from point to point. I even recalled the Peregrine, the philosopher from Parius, who was a devotee of all the schools of sophism before he became a cynic, finally won immortality by a demonstrative self-incineration.

But it was in the classic definition of an ambassador by Sir Henry Wootton that I found the clear explanation of Lord Justice Diplock’s phrase. He was clearly referring, with some disfavour, to Chesterton’s well-known statement that one could travel to Birmingham by way of Beachy Head and deplored enforced peregrination. Wootton said: “*Legatus est vir bonus peregre*

missus ad mentiendum reipublicae causa”, which I will translate as meaning that an ambassador is an honest man sent to lie abroad for the Commonwealth. The translator whom I quote said, “sent abroad to lie,” which is rather more discourteous.

We are entitled to ask whether anyone knows what this Bill means. I made an intervention which I thought was of some relevance. People are killed in motor accidents. We are not discussing Her Britannic Majesty’s Ambassador to the United States, whom most of us remember with affection, or the United States Ambassador to the Court of St. James, a man of great ability, distinction and charm, who, I am sorry to say, we may be losing in the interests of his country because he may be returning to higher duties, who is a gentleman by nature. Even they have to face the dilemma that gentlemen of their type are reluctant to claim privileges for themselves but are duty bound to preserve them inviolate for their successors. This is one of the dilemmas of privilege even in this House. One asserts one’s right to privilege sometimes because one feels that an individual is not justified in making a temporary sacrifice of a collective right or even be interpreted as purporting to do so.

LEGGÉ-BOURKE¹¹ Unless one wants to sit for Bristol, South-East.

HALE That point would take me rather a long time to develop. I had the great privilege as a Member of the House of Lords and House of Commons Joint Committee of expressing my views on that matter. Had they carried weight, we should not have had the present Prime Minister. I recall to the Minister a fascinating story penned by a very distinguished former public servant, Sir Lawrence Jones, who wrote the fanciful story of the Chancellor of the Exchequer accidentally and fatally shooting the Prime

¹¹SIR HENRY LEGGÉ-BOURKE, *Isle of Ely*. Constituencies: *Isle of Ely* July 5, 1945 – May 21, 1973. *May 16, 1914 – †May 21, 1973

Minister, whom he did not like, on a grouse moor. There was the harassing question of whether he should take the vacant post in view of the circumstances.

Had it been a distinguished ambassador who was grouse shooting the problem would have been even more acute, although the exception in the Bill seems to say that there could be litigation over the ownership of the moor but not over the corpse of the Prime Minister, and that it would not be possible to bring any criminal proceedings if there were any suspicion that the accident had been less fortuitous than was first apparent.

I do not doubt that there must be and should be protection. It is right that there should be protection. I do not doubt that it is reasonable to say that an ambassador could be more bitterly attacked through his wife or children and that a bold and courageous man might be more timid in the face of threats of arbitrary action against his family than he would be over his own reputation. These are reasonable matters. But how far do they go?

The courts have already interpreted “the family” as meaning the wife and children. They have not had to deal with the question of Mohammedan ambassadors to know how many wives and how many children. This is the essence of the matter. This is what we are dealing with. We are dealing with cases in which an ambassador may say, “I married this girl by a shake of the hand in the embassy yesterday. She is my 31st wife and I claim privilege against this criminal charge”. I should be the last to say anything which might be thought to be derogatory about some of my friends in other countries who have their own views on marriage, and who are entitled to have them.

What about a mother-in-law under this legislation? Is she a member of the family? [Laughter.] This is not being funny. As I understand the Clause, it extends to any relative who is

living with him and, strangely enough, not to a relative who is not living with him. A distinguished lady who, having married the ambassador, then falls out with him, loses her privilege the moment she has fallen out with him and leaves the embassy and establishes a state of separation. The provision seems not to have been fully considered.

We are told that there is a new definition which everybody will clearly understand and that a diplomatic agent means a member of the diplomatic staff. Every one of us knows that that will come to mean any diplomatic member of the staff. Anyone who has a certain amount of diplomacy could get himself listed under that heading—unless somebody is to decide. I asked the Minister who would decide. This is the point at which we have come into conflict. If my widow comes along and says that the vacancy for Oldham, West, not only involved a by-election but also involved certain financial loss for her, because I had come into contact with a motor car bearing the sign CD., which we believe to be *corps diplomatique* but which might mean civil defence, what is she to do about it? I think that we are entitled to a definite answer on this.

As I understand it, if the ambassador says, “In my view that car was being driven by a servant of the embassy on duty”, that is the end of it. If the ambassador says, “It was being driven by a diplomatic agent on or off duty, it does not matter which”—that is an end of it. If he says, “It was being driven by a member of the administrative staff on duty”, that is an end of it. If he says, “It was being driven by a servant of any of them on work of the embassy or in the course of duties being performed by the embassy”, that is an end of it.

One cannot even invoke insurance. Surely that is a wholly unnecessary and wholly unreasonable situation. There would be no difficulty at all, because of the existence of institutions such

as Lloyds which can be relied on in such matters to exercise a very high standard of probity and which could provide a form of protective insurance which would have to be of a special nature—because one cannot sue an insurance company direct under our law. It may be possible under some laws. It is held that one has not an interest; one has not a legal interest in the policy of the owner.

The insurance company is liable only if the ambassador or his staff are to blame. We have no means of establishing that, because we cannot even bring the matter to negotiation. We must simply accept somebody's decision. This puts an end to all action. The Bill means that somebody has an absolutely free hand to decide.

I am not greatly concerned about parking offences, but the Minister in one sentence made the most damaging remark about the Bill when he said that the police are providing weekly lists. They used to provide a list once a century. Is it not time that we seriously considered whether the whole of this protection is necessary for the ambassador, his wife, his children, for the person who takes the place of the ambassador, his wife and his children if they are living there, and for other members of the staff? We know that administrative staff include shorthand typists, and in fact anybody in this country not of British nationality but employed at an embassy. That seems to be the effective test. Any of these people can leave a parked car at the moment in the middle of Westminster Bridge and say, "Go to hell"—and report the police for dumb insolence if they make an inquiry. That is being done, and it is establishing a position.

LEGGÉ-BOURKE¹² I do not think the hon. Member is quite right in what he says. I think that if this is done the CD plate

¹²SIR HENRY LEGGÉ-BOURKE, *Isle of Ely*. Constituencies: *Isle of Ely* July 5, 1945 – May 21, 1973. *May 16, 1914 – †May 21, 1973

carries no privilege whatever with it. If that is done, the police are entitled to report that car, irrespective of whether it is carrying CD plates. It then goes through the machinery to find out whether the driver is privileged.

HALE I do not think that it would be usefully reported. There was a case reported abroad the other day of a man who was driving at 70 to 80 miles an hour and who issued a summons against the police for being hostile to him. Of course the police can report it, but what happens? As the well-informed Press tell us from time to time, traffic wardens are in this difficulty. After all, they are performing a duty entrusted to them by the House and trying to perform it with what courtesy they can. I do not say that I feel any great passion for them. I found a ticket on my car the other Christmas. I thought it was a present of soap from Lord Leverhulme, and I drove about with it for several days until I found that it was a ticket which would cost me £2.

Now we have two categories with whom the traffic wardens deal. They see a car carrying a CD plate and they say, "This means *corps diplomatique*"; and they save themselves a lot of trouble by saying, "It is no use reporting that one". Of course, it may be transferred, if they are diligent, to the list which will be supplied from Scotland Yard once a week—or it may not. Respect for the law nowadays is diminishing, and I understand that they claim that anybody who gets pinched, and who has not a CD plate, writes to say that a friend of his was driving the car who is no longer in the country, having returned to his original address in Outer Mongolia, and he regrets that he cannot now supply the present address of the driver owing to the delay in bringing the inquiries forward, which is usually a few weeks.

It is not a very happy state of affairs. My right hon. and learned Friend offered one defence—that we are ratifying an international convention. We are not. A lot of the international

convention is not in the Bill and much of it has been amended. Amendments were introduced in another place, and special provisions were added. There is no assurance that other people will ratify the international convention in the same form. There has been another convention since then about consuls. We have not heard about it, and I gather that even the Government are not yet ready for it.

We still have a very real dilemma. If the Minister is to seek the leave of the House to reply, I hope that he will do so, and that he will be given it, and that he will answer some questions. Will he tell us the number? Will he tell us who is to decide what is a member of the diplomatic staff? Will he tell us how one brings a matter to the court or whether one can bring a matter to the court in face of a certificate from the ambassador that the person was being employed in the course of his duties as a servant of the embassy? Will he tell us whether any provisions are being introduced to provide for effective insurance cover? I see no reason why this should not be done. Finally, will he answer one point which intrigues me very much: why are these people to be exempt from the law of contract? They pay no tax, they pay no rates and they pay no duties except on theatre tickets, in respect of which one cannot split the duty. If they buy a few cigarettes outside those which are imported free of duty by the embassy, they may pay duty on them. But they are exempt from almost everything. They are exempt from Income Tax and Purchase Tax if they import goods—and I believe that they can also get an export certificate to buy goods in this country free of duty. I do not know how it is done, but I believe that it is done. They are exempt from almost everything but a small part of their rates.

They can declare their bills and their papers inviolate in the embassy. Their papers are inviolate, their bags are inviolate—by which I mean their travelling bags—and they are free from almost any form of perquisition. They need only say, “We are

lodging a few papers at the home of one of the members of our staff”, and they become inviolate, too. Or one runs the risk of making a perquisition of an official document.

They are protected in their forms of transport and they are exempt from the laws of contract. Why should they be exempt from the laws of contract? This question arose in a case in which it was held by the British courts that an ambassador was not even compelled to pay a call upon his shares. He could buy the shares and take the chance of their going up or going down, but if the situation of the company becomes precarious he cannot be compelled to supply the money which is due under a contractual obligation specifically entered into.

The Minister will say, “Under the Bill we have cleared all that up”. This is one thing which he will say that he is clear about because he will say, “This would not be part of its commercial activities”. But might it not be? Would an investment in the Channel Tunnel—not, of course, in the first £1¼ million which we have heard about but later, when it is being developed—perhaps not fall within the ambit of the duties of an ambassador who was a servant of a continental country? I should have thought that it might be.

I say again that this House ought to make up its mind that it knows what it is doing or trying to do. It ought to make clear what the privileges are. It ought to have some method of being able to identify. The Lords of Appeal, two days ago, were talking not about the original maze of town and country planning but about a clarifying Act of 1959. Lord Justices of Appeal do not use language like that unless they are really concerned that the burden that Parliament is putting on the courts in leaving unresolved questions for their decision and referring to them matters which are outside the ambit of their control. Lord Justice Harman said “It would never have dragged its heavy feet through

it; but *quacunque via*". I was almost tempted to translate that as Chacun a son gout, but I hesitate to do so. But it is time that Parliament took these matters seriously and that we had a little less pococurantism and a little more explicit definition so that we knew at the end of this Bill what we were doing and what the effect of it was likely to be.

5:12 p.m.

BELL¹³ The hon. Member for Oldham, West (Mr. Hale) certainly succeeded in doing as he promised by proving to us that it is possible to go from London to Birmingham via Beachy Head, jumping one might say, from tuft to tuft on the way. However, if when he receives the missive which is undoubtedly on the way to him asking him to supply HANSARD with his quotations he finds it necessary to leave, I shall not take it amiss.

I should like to ask my hon. Friend the Minister what is the nature of this Vienna Convention, which this Bill is mainly about? Am I to understand that we have ratified it and are proposing to make it an international treaty which binds this country? If so, is it of the nature which these treaties usually are, that we have to accept it altogether or else not accept it, except that we can go further than the treaty goes? That is to say, is it the position that the provisions of the Vienna Convention represent the minimum diplomatic privilege which we mutually promise to operate in this country, and that if we operate less we cannot, in fact, ratify the Convention, but that we can give greater privilege, either generally or in particular cases, without being in any way in breach of the Convention? That is what I would expect the position to be, but I should like to know whether my expectations are correct.

I see that the missive has arrived and the hon. Member for Oldham, West has leave of absence from me at any rate to take his dictionaries of French, Latin and other languages with him.

If my assumption is correct, then, of course, there would be no difficulty about Clause 7, which provides that we can give wider diplomatic privilege to certain countries with which we have at the present time agreements which provide for wider privileges.

¹³SIR RONALD BELL, *Buckinghamshire, South*. Constituencies: *Newport* May 17, 1945 – July 5, 1945. *Buckinghamshire South* February 23, 1950 – February 28, 1974. *Beaconsfield* February 28, 1974 – February 27, 1982. *April 14, 1914 – †February 27, 1982

On the other hand, I should find it difficult to understand how we can ratify the Convention unless there is a provision in it for a restriction such as appears in Clause 3. In saying that, I do not wish to indicate that I am in any way opposed to the provisions of Clause 3, which seem to me to be eminently reasonable.

We have in fact taken retaliatory action on a number of occasions in the past, and I think it desirable that we should have the power to do so; but if, in fact, there are no reservations in the Convention, which I understand to be the position, how are we able to put Clause 3 into the Bill if we are proposing to ratify the Convention?

Secondly, I should like to ask him to assist me on this point. On the second page of the Explanatory Memorandum to the Bill it is stated: "As the result of the Bill heads of missions will no longer be able to claim relief from income tax on interest on all British Government and certain other securities". That is all right, but it goes on to state: "High Commissioners of Commonwealth countries who are citizens of the United Kingdom and Colonies or are permanently resident in the United Kingdom will lose their exemption from income tax. . . ." As I understand it, that arises from Article 38 of the Convention. I find that a rather disagreeable proposal. If all other diplomatic representatives, ambassadors and so on, and their diplomatic staffs are to enjoy exemption from United Kingdom Income Tax—if that is right, and that is provided in the Convention—and if the High Commissioners of any British Commonwealth country are to enjoy exemption from the United Kingdom Income Tax in general, why should not these particular ones among them who at the time of appointment have been permanently resident in the United Kingdom, although not citizens of the United Kingdom and Colonies, have equal privileges?

Let us take a straightforward case of a Canadian who is a British subject but not a citizen of the United Kingdom and Colonies because he has ordinary Canadian citizenship. That is to say, he is a British subject but a Canadian citizen but he has been for some years permanently resident in the United Kingdom—a distinguished Canadian who is over here. His Government appoint him high commissioner in the United Kingdom for Canada—the kind of thing that could easily happen. He then comes into this special disadvantaged category of being subject to United Kingdom Income Tax, although all other high commissioners, ambassadors, every humble diplomat on the staff of a foreign country or of a Commonwealth country is exempt from it. I do not understand why this should be so.

It would be an odd thing if that were the existing position and simply going on; but it is not the existing position. They are at present, as I understand it from the Explanatory Memorandum, enjoying the same exemption as other people, but by this Bill we shall be taking it away from them.

If I am right in thinking that to ratify the Convention we have only to regard it as the minimum of privileges and that we are fully at liberty to confer wider privileges, and if I am right in thinking that Article 38, which is printed as an annexe to the Bill and which begins with the words: “Except in so far as additional privileges and immunities may be granted by the receiving State...” means, as it surely must, that we can go further in this matter if we want to, I suggest that we should take advantage of the liberty which the Convention gives us to put Commonwealth high commissioners in the same position as ambassadors or, to be more particular, put high commissioners permanently resident in this country at the time of their appointment into the same position as high commissioners who have come to us from their own or some other country.

Equally, I see that this disadvantage attaches to high commissioners of Commonwealth countries who happen to be citizens of the United Kingdom and Colonies. The British Commonwealth has operated as a family and there are many people in Australia and Canada and other overseas British countries who are still citizens of the United Kingdom and Colonies. They were born in Britain, but went to those countries and have lived there for perhaps 20 or 30 years, naturally retaining their United Kingdom citizenship. After all, the status of British subject was split only in 1949. Until then, it was a unitary conception, and as only 15 years have passed since 1949, there must be many people in British overseas territories who in the ordinary way are Canadians or Australians, or whatever it is, who have United Kingdom passports and United Kingdom citizenship. If one of those is chosen in his own country as high commissioner to Britain and is sent to London, he will find when he arrives that he is in a specially disadvantageous category and subject to ordinary British Income Tax, although all other diplomats are exempt from it. This is a regrettable innovation and I hope that something can be done to correct it.

The right hon. and learned Member for Newport (Sir F. Soskice) cavilled at the reference to Southern Rhodesia in Clause 8. I must say that if it is necessary to refer to Southern Rhodesia in the Bill at all, I should have thought that Clause 8(2) was about the most innocuous way it could be done, because it says: "This Act shall be construed as if Southern Rhodesia were a State." The implication of that is that Southern Rhodesia is not a State, but is to be treated as though it were. I cannot understand why the right hon. and learned Gentleman should take umbrage at that form of words. Whether it is necessary to mention Southern Rhodesia at all depends on a more detailed study than I have made of the partial repeals listed in the third column of Schedule 2. No doubt we can attend to that in Committee, but I should be

very unhappy if in any way the existing diplomatic privileges of Southern Rhodesia were removed or reduced by the Bill.

Finally, I hope that my hon. Friend will tell us a little more about the many articles not included in Schedule 1. I imagine that they do not need statutory force. Am I right in thinking that the Bill, which schedules certain articles in the Convention and which repeals certain Acts and certain parts of Acts, nevertheless will leave unchanged any part of the common law relating to diplomatic privilege which is not expressly repealed by it? That is my understanding and it may be the reason why it is not necessary to put into the Schedule certain of the omitted articles in the Convention, but there are certain rules of common law relating to the immunity of ambassadors and I assume that these will continue even though this statutory code is being introduced.

With those remarks, I give my general support to the Bill.

5:24 p.m.

MOTT-RADCLYFFE¹⁴ The custom of diplomatic immunity is very old and very necessary. It has grown a great deal in recent years with the number of newly independent countries, and as it has grown and multiplied there is no doubt that abuses have multiplied. The Bill has many loopholes, but it is an attempt to regularise the whole principle of diplomatic immunity on an international basis. I am not so certain about how successful it will be in that objective.

The hon. Member for Oldham, West (Mr. Hale) put his finger on the crux of the problem when he said that there were a number of countries in which he would not like to stand trial.

BELL He made it clear that England was among them.

MOTT-RADCLYFFE I agree with the hon. Member for Oldham, West that this is the crux of the problem. We have missions in almost all those countries and on those missions are men and women of all ranks and grades performing all sorts of different functions necessary to the life of diplomatic missions. All hon. Members would wish to protect members of our missions in those countries from the grosser form of abuse—and we can think of areas where the most savage sentences might be awarded for quite trivial motoring and other offences—but it is here that we come to the trouble, because the whole basis of diplomatic immunity is reciprocal, a *quid pro quo*.

Therefore, if we are to achieve immunity for our own diplomatic missions abroad, who may be serving in countries where there are considerable difficulties, we have to give comparable immunity to diplomatic staffs of those countries serving in the United Kingdom, where the process of law and justice is very different and where the degree of immunity which has to be given seems to us here to be absurdly wide.

¹⁴SIR CHARLES MOTT-RADCLYFFE, *Windsor*. Constituencies: *Windsor* June 30, 1942 – June 18, 1970. Offices: *Parliamentary Private Secretary* 1944 – 1945. *Whip* 1945 – 1946. *Junior Lord of Treasury* 1945 – 1945. *December 25, 1911 – †November 25, 1992

Whether it be the inviolability of premises, the sanctity of communications by bag, the immunity of a member of a diplomatic mission from personal search, or liability to tax, the difficulty is that if we were to reduce the degree of immunity which diplomats in this country enjoy, our own diplomats overseas would be placed in still greater difficulty.

For instance, if we withheld a foreign diplomat's immunity from arrest on leaving London Airport to go home on leave, supposing it were thought that he had been engaged in suspicious contacts, no one in this country would imagine for a moment that our police would abuse their powers. But it is very doubtful that we would not thereby put our own diplomats in certain overseas posts in an impossible position, with the chance of their being arrested on leaving other airports on the most ridiculous trumped-up charges. Normal life in the diplomatic service might be brought virtually to a standstill.

It is this reciprocity on which the whole principle is based, and it is this which presents the House with the greatest difficulty, because, as has been said quite openly, there is in the whole concept of how we work and operate diplomatic immunity a completely double standard according to the country in which one lives, the degree of civilisation that one has acquired, and the experience which people in the different countries have had.

HALE The hon. Gentleman is speaking fairly and clearly, and he has not said a word from which I actively dissent, but when one considers what is, of course, an extremely important and serious matter, and when one applies it in the form of a blueprint, the reasoning is apt to get away from the subject when one is wondering whether the punishment of a cook at the Ruritanian Embassy for a breach of the parking laws in Britain would react on Her Majesty's Ambassador in Peking.

MOTT-RADCLYFFE One has to be very careful about

giving any specific examples. In any case, it is better to take hypothetical examples. If we were to restrict the diplomatic immunity given at the moment to the servant of an ambassador, or to any domestic employee in an embassy here, in the way that some hon. Members have suggested, I think that there would be a great danger that week in and week out the domestic staff of Her Majesty's Ambassador in Ruritania would be arrested on all sorts of completely trumped-up charges in all sorts of ridiculous circumstances, thus rendering the work of the British Ambassador in Ruritania almost intolerable. That is the difficulty as I see it.

COURTNEY There have been three instances in recent years of arrest or detention of Her Majesty's diplomatic representatives within the meaning of the Convention that we are discussing, which were flagrantly against the Convention.

MOTT-RADCLYFFE But when that happens we have the right of retaliation. That weapon has been used before now with varying degrees of effect. If my recollection is correct, when British diplomats serving behind the Iron Curtain were restricted in their movements to within 30 or 40 kilometres of the capital, we imposed similar restrictions on diplomats from Iron Curtain countries serving in London. We always have that weapon, and it is a weapon which ought to be used.

The point that I was making was that where there is a Convention signed by 80 nations at Vienna, we in this House ought to ensure that while we do not put more people than necessary above the law—which is a principle which no one wants—we do protect the interests, or if you like the physical security, of members of the British Diplomatic Service serving overseas in difficult circumstances, and sometimes in very difficult countries.

The Bill has been put together in a slightly haphazard form. It is strange that certain Articles of the Vienna Convention have been

included, while others have not. I have no doubt that my hon. Friend will explain this and other matters which hon. Members have raised. I hope that the House will give its blessing to the Bill, but in Committee we shall have to look at it very carefully and perhaps stop up a number of loopholes.

5:35 p.m.

LEGGÉ-BOURKE It is somewhat piquant to say that the Bill stems from the Vienna Convention, when we find that in Vienna our own embassy is being so curtailed in senior members that we are beginning to wonder what the embassy is going to be there for if the process continues. During the last Recess I was one of the Members appointed to go to Vienna on behalf of the House to take part in a conference of Parliamentarians and scientists. We had the privilege of being entertained at the embassy while we were there. To my astonishment I found that in the one country which one can say has come out of the Iron Curtain, and therefore the one country in which it is most important to make a real success of things, the former consul-general, the former head of chancery, and the former Minister are now jobs carried out by one man. There is not much privilege about that. It is a considerable load for any man to carry, and I think that when we call on members of our overseas missions to carry out rôles of this sort we should ensure that they enjoy all the privileges necessary for them to carry out such tasks.

An idea was put into my head by an old friend of mine who has served this country in many capacities, having been a Member of the House at one time, and has I think paid out the troops of Haile Sellassie in silver coinage of the late lamented Maria Theresa. There is in fact a law operating here. The law is that every social system produces a privileged class organically just as a muck heap produces maggots. If one looks at history, one finds that there has always been some form of privileged class, but this new diplomatic class which is emerging now—and in referring to diplomatic staffs I include the international staffs of the United Nations and other international organisations—is the first totally tax-free class since the pre-revolution French noblesse. It is the first class not subject to the civil law since pre-Reformation priesthood, but at least they could be hauled before the ecclesiastical courts.

The more necessary the world considers it to have these privileged classes created, the more important it is that we should watch them, because they breed like flies, and presumably in the years to come we shall have the sons and grandsons—and perhaps daughters, as well—getting jobs in this privileged section of the world community simply because they are the sons or grandsons of somebody who was appointed in our day to serve the United Nations. This creation of the privileged class is on the grow. Maybe it has to grow, but I still say that the House would be wise to keep a very close eye on it.

The chief security officer in a country in the Near East, which I had better not name, once said that if someone really wanted to find out where the illicit traffic in gold and drugs was most prevalent, he had better look in the diplomatic bags from Latin America and Mexico. I do not know whether this can be substantiated, but a chief security officer might well be a person who would have some grounds for saying such a thing. Some Arab States were included in his castigation.

It is worth noting that as recently as the turn of February and March the Mexican Ambassador to Bolivia and two other Latin American diplomats were arrested in Canada on charges of smuggling heroin to a value in excess of 20 million dollars. I do not know whether, from time to time, any steps are taken by the Foreign Office, in conjunction with our police and security forces, to discover whether there is any connection between the visits of certain foreign diplomats and a sudden outburst of drug trafficking in Britain. Certainly there should be.

I do not know whether that Mexican ambassador to Bolivia had been to Britain around that time. I do not know whether Soho is benefiting from it. But we should be cautious before we grant privileges to people whom we may or may not like, may or may not trust, and may or may not know.

Today, communications are so much better than they ever were

that sometimes the man on the spot is the one man who is never allowed to take a decision; every decision is taken previously in Whitehall, and the man on the spot is merely told what to do. In the great days of our overseas missions the man on the spot was trusted to do the job which he had undertaken without being subjected to too much interference. I sometimes wonder whether our improved communications do not have their disadvantages as well as their advantages.

One would have thought that because communications are so much better it would be less necessary rather than more necessary to grant these extra privileges. Yet we find that the opposite is happening. Privileges are being increased even now, although the Bill, and the Convention, to some extent, show that what this country has been providing by way of privileges was more than is now required as the basic minimum in the Convention. Perhaps it is a good thing that we are having to take away some of these privileges. Paragraph 4 of Article 27, and Article 36 of the Convention, dealing with Customs duties exemption, ought nevertheless still to retain to our authorities a sufficient right at least to open and inspect the diplomatic bag if they wish to when they are given information which may reasonably lead them to suppose that things are coming in which should not be coming in in it. Even if what comes in in the diplomatic bag may not have to pay duty, although it is dutiable, the bag can nevertheless be opened and inspected.

In these days, with the ever-growing problem of drugs being taken by juveniles and supplied by the most irresponsible citizens, acting as intermediaries of someone else, it is right that we should be able to keep a proper check on these matters, and if the diplomatic machinery is such as to allow the importation of these substances we must use fairly stringently every power which remains to the Government under these Articles, and not give the impression that we are in the least lax in the exercise of what rights we have.

I feel it is a great pity that one privilege is contained in the Convention, which we cannot amend. It is contained in paragraph 2 of Article 31, which says: "A diplomatic agent is not obliged to give evidence as a witness." In other words, he cannot be subpoenaed in British courts even if he has witnessed an accident or is himself involved in a case.

But in respect of the observations made by the hon. Member for Oldham, West (Mr. Hale) and others, about the abuse of our car parking laws and the exoneration of those who have committed offences under them, we ought all to be aware of the fact that the doyen of the *Corps Diplomatique* in Britain is held in very high esteem by all the missions in London; that he is well aware of what has been happening, and is doing his best to see that all the missions are made aware of the resentment which is caused in the public mind by what is taking place.

Hon. Members may recall that in February I put down some Questions concerning the incidence of these parking offences and other motoring offences. Eventually, in a letter from the Joint Under-Secretary for the Home Department, I was given some appalling figures. For the year commencing September, 1960, there were 165 offences; in 1961 there were 789; in 1962 there were 1,746, and in 1963 there were 2,078. They are appalling figures, and I asked my hon. Friend whether he would try to discover which missions were the worst offenders.

I entered into a bargain with my hon. Friend on this one: the doyen of the *Corps Diplomatique* in London made a specific request that he should be left to try to bring home to the offenders the need to rectify this appalling situation. On that understanding I undertook—and I do not intend to break my bond—not to disclose who were the worst offenders. But I want to make it clear, here and now, that if the figures continue on this scale I shall try to pin down in public which missions are the

worst offenders, because it is grossly unfair to the British public to allow this sort of thing to continue.

The misunderstanding about the significance of the C.D. plate on motor cars is one of the principle causes of public resentment. My hon. Friend the Member for Eastbourne (Sir C. Taylor) had a useful Adjournment debate on 10th April, to which my hon. Friend the Under-Secretary of State for Foreign Affairs replied. As the hon. Member for Oldham, West said, it is clear that the letters C.D. might just well stand for "Civil Defence", for all the privileges that they carry. They carry none. I could put C.D. plates on my car if I wanted to, but I even avoided joining the House of Commons Motor Club because I bitterly resent people taking unnecessary privileges. I am aware that the original object of that exercise was to help the police to identify cars whose drivers were determined not to miss voting in the next Division. Nevertheless, I have often felt that the red badge draws unnecessary attention to one's car.

I do not know whether any member of the Metropolitan Police get a thrill out of "running in" a Member of Parliament rather than an ordinary member of the public. I should not like to think that they do, but I feel that they would be only human if sometimes they did. Privilege ought to be exercised only when absolutely necessary. I am quite certain that a large number of C.D. plates which are exhibited on cars are unnecessary. Their use should be confined to the cars of heads of missions and perhaps their deputies and heads of chanceries. It is not necessary for every member of the embassy staff to have C.D. plates on his car in order to sustain his status.

During the war I had a short experience of serving in an embassy overseas and certainly there are privileges which it is essential one should have. There are also some which it is extremely enjoyable to exercise. In London, where the amount of traffic

is among the biggest of our problems members of all the missions, Commonwealth and foreign countries alike, would be well advised to take note of the indication conveyed by the figures which I have quoted and to comply with the request of the doyen of the *Corps Diplomatique* in every way possible. None of us wishes ill-will to be built up between foreign missions and our own people in London, and every time one misunderstanding occurs one can wager that it will spread into hundreds very quickly.

I hope that my hon. Friend will give the House an assurance that, so far as we are able because of the implementation of the Convention of Vienna by the provisions of this Bill we shall watch for and seize illicit matter being brought into this country through diplomatic channels; and that we shall use to the full all the facilities provided to that end. This is perhaps one of the most important changes which has taken place as a result of the Convention. Search will be made much easier, but it will still be virtually impossible to charge duty. I must admit that there is no section of the community that I despise more than the person who gets a thrill from or enjoys opening the personal luggage of others and rummaging through it on behalf of the State. I find that rather a despicable exercise. But where privilege has been abused the offenders ought to be subjected to that unpleasant operation. If they have the power to do so, I hope that those who like rummaging through the private luggage of other people will not hesitate to do it, if they have the remotest suspicion that through diplomatic channels things are being brought into this country which ought not to be brought here.

5.55 p.m.

GARDNER¹⁵ The emphasis which my hon. Friend the Member for the Isle of Ely (Sir H. Legge-Bourke) laid on the abuse of privilege is, I think, right. It is all too easy for those of us who are not diplomats to be annoyed by diplomats and some of the diplomatic facts of life. If the definition in Article 1 of Schedule 1 is applied and one identifies what is a diplomatic agent, one must face the fact that an agent is an exceedingly privileged person. It is, it has been, and it will always be all too easy for such a person to abuse his privileges. From the Articles contained in Schedule 1 it is clear that a diplomatic agent is inviolable. He is not liable to arrest or to be detained, and the receiving country must treat him with what is described as due respect. The receiving country must take appropriate steps to protect his person, his freedom, his liberty and his dignity. That is a pretty tall order for those of us whose freedom, person and dignity would suffer at the hands of the law if we were foolish enough to misbehave ourselves.

In this country there are about 3,500 people who could claim diplomatic immunity. In one year the London County Council issued nearly 2,000 Excise exempt licences. In one year there were nearly 50 traffic accidents in which people were injured but were unable to make a successful claim because the plea of diplomatic immunity was raised. In one year about 2,000 parking offences were committed by people who claimed immunity because of their diplomatic status. The only satisfaction that we who are not beneficiaries of this immunity are left with is the knowledge that our own diplomatic agents abroad have the same privileges.

However angry we may be about a diplomatic corps Rolls-Royce obstructing the traffic in Piccadilly, such an offence is clearly

¹⁵MR EDWARD GARDNER, *Billericay*. Constituencies: *Billericay* October 8, 1959 – March 31, 1966. *South Fylde* June 18, 1970 – June 9, 1983. *Fylde* June 9, 1983 – June 11, 1987. Offices: *Parliamentary Private Secretary* 1962 – 1963. *May 10, 1912 – †August 22, 2001

not one which harms this country, and I do not think we should allow our indignation over these smaller matters to blind us to the graver aspects of the misuse of diplomatic privilege. I am by no means certain, but I feel—as I think does my hon. and gallant Friend the Member for Harrow, East (Commander Courtney)—disturbed enough to raise the matter during this Second Reading debate. I am disturbed by the possibility that diplomatic privilege is being used by people engaged in espionage activities.

This Bill gives the force of law to the relevant provisions of the Vienna Convention of 1961 and so converts what has been called one of the oldest subjects in the field of international law into a modern code. The 22 States which became parties to the Convention made clear that in agreeing to the various rules they intended to make a contribution to peaceful international relations between those States which agreed to comply with the rules. I suggest that it must follow, conversely, that any use of these rules which govern diplomatic privileges and immunities which, instead of promoting peaceful co-operation between the countries concerned, in fact tends to destroy or disturb those peaceful relations must of its very nature and definition be an abuse of that privilege for which, as I read the provisions of the Bill, there are no remedies available at present in law.

Since 1961, when this Convention was agreed to by this country, much has happened in the international field. Possibly I speak for many in this House when I say that I am left with an uneasy feeling. A number of notorious spy cases since 1961 have given the impression—I hope it is the wrong impression, but certainly it is an impression I get—that diplomatic immunity has been used to conceal and make possible successful espionage. In 1961 the Convention recognised that not all diplomats are saints.

The hon. Member for Oldham, West (Mr. Hale) quoted that

maxim which he translated so aptly as meaning that an ambassador is an honest man sent abroad to lie. I think that is a little hard, but it was recognised in 1961 that a member of the diplomatic staff might involve himself or herself in an adventure of smuggling.

Article 36 of the Convention, in order to meet this contingency, exposed the personal baggage of a diplomatic agent to inspection by Customs officers if—I use the words of the Article there are serious grounds for presuming that the baggage contains prohibited articles or articles not intended for the personal use of the diplomatic agent or any official use of the mission. A diplomatic agent bringing to this country a load of vodka for illicit sale could be stopped and his contraband could be seized. I have no doubt that it is a great relief to all of us to know that the Customs can search and, if they find any, can confiscate contraband of this kind, but what about the diplomatic agent who uses his diplomatic privileges and diplomatic immunity to give protection, not for some sordid smuggling enterprise, but in order that he may be able to trade more safely and more successfully vital State secrets which could undermine the whole security of this country?

Under Article 29 of the Convention, as my hon. and gallant Friend the Member for Harrow, East was careful to point out, such a person acting in such a capacity still remains inviolable. He cannot be arrested, he cannot be detained, and no action—certainly under this Bill—can be taken against him. I feel some uncertainty and discomfort about this omission. Does my hon. Friend the Parliamentary Secretary think that we ought to have in this Bill some provision which would give the authorities power to deal with the diplomatic agent abusing his immunity by undertaking espionage activities? Could we introduce into the Bill a provision of the character which is contained in the Article dealing with customs offences? Does

my hon. Friend think that necessary? I should be delighted if he assured the House that such a provision is superfluous, but I invite him and the Government to consider it.

Have we here a grave lacuna in the Bill, or is one's feeling of unease based on insubstantial and quite worthless grounds? I know not, but it seems that if we are to give Customs officers power to deal with smuggling we ought to give the authorities, if necessary, power to deal with diplomatic agents who are in fact nothing more nor less than spies. If there are any Communist counterparts to such a person as the fictional James Bond, the Government ought to take steps and powers to deal with them. I see nothing in this Bill which gives any such powers. I should like very much, as I am sure the House would like, to know from the Under-Secretary of State whether the Government think that such powers are necessary.

6:07 p.m.

HOY¹⁶ I have one or two questions to ask arising from the speech of the hon. and learned Member for Billericay (Mr. Gardner). If the Government come across a case where an abuse of this kind has taken place by a member of a diplomatic corps from another country, have not the Government the right to ask for his recall? Has not this been done on numerous occasions? I think the Government have that power and I do not think it necessary to have inserted in this Bill power to deal with this problem. I should be surprised to find that the Government have not got that power.

This would also apply to espionage. If any country wished to indulge in espionage it would not want to send away the results of its espionage in the diplomatic bag. If it were very good at this job it would find other methods of sending all the information it had. There is a great resentment in this country about the use of motor cars with C.D. plates. A member in the other House said that he insisted on putting C.D. on his car to prove that he had a clean driving licence, which seems about as useful as putting the letters on to represent *Corps Diplomatique*.

If accidents take place there is no sanction of law against the driver of the offending car. I am told that other methods are adopted by which payments are made. That may be all right when the country concerned is prepared to honour the debt which results, but there may be smaller countries which will not enter the agreement. It seems quite easy for the Government to accord this diplomatic privilege to those countries when it is done at the expense of the citizen. It would be better if some reciprocal arrangement were made whereby the Government to which a diplomatic car involved in an accident belonged accepted responsibility, where appropriate, for damages. Certainly, this

¹⁶MR JAMES HOY, *Edinburgh, Leith*. Constituencies: *Leith* July 5, 1945 – February 23, 1950. *Edinburgh Leith* February 23, 1950 – June 18, 1970. Offices: *Parliamentary Private Secretary* 1962 – 1963. *Parliamentary Secretary* 1964 – 1970. Titles in Lords: *Baron Hoy* 1970 – August 7, 1976 *January 21, 1909 – †August 7, 1976

hardship should not be inflicted upon individual citizens injured in accidents involving diplomatic cars.

I want to say something in defence of those who examine bags. I was a little surprised by the harsh things said by the hon. Member for the Isle of Ely (Sir H. Legge-Bourke) about Customs officers. After all, these officers are employed to do a job for the country and it is not a very pleasant one. He admitted that there are abuses and that it was therefore essential for officers to examine bags in order to stop or prevent such abuses. Having gone that far, it was surely a little unfair of him to describe our Customs officers as doing a despicable task. That task was laid on them by the nation.

The hon. Gentleman instanced the case of dope being smuggled into this country and doing great harm to younger people. How is one to put a stop to that unless someone on our behalf has the right to examine the bags of those entering? I agree that we must always be very careful about extending the privileges of any person, even of a diplomat. But at least, when we ask some officers to do a certain job on behalf of the nation, we might have a little sympathy for them if that task is unpleasant.

6:12 p.m.

MATHEW By leave of the House, Mr. Deputy-Speaker, I will answer now some of the points raised in this debate.

In spite of some fairly hard things said about details of the Bill, and about the whole question of diplomatic immunity and privilege, and in spite of the rather colourful picture of a legislative morass and of marsh gas painted by the hon. Member for Oldham, West (Mr. Hale), the House has, by and large, given this useful Bill a welcome as a step forward towards the codification of this very important branch of international law. This law has grown up over many years and the initiative for codification originated in the United Nations. It is something that I commend to the House and which we should certainly welcome.

We have had a good discussion, but the essence of the matter is, as has been said, reciprocity. Quite rightly, hon. Members have discussed what happens here as a result of diplomatic immunity and privilege. But I remind them that at least as important is what happens in foreign countries where we have diplomatic representatives.

The right hon. and learned Member for Newport (Sir F. Soskice) welcomed the Bill and raised a number of queries, including one on Clause 8(2), where there is a reference to Southern Rhodesia. The answer is straight forward. It is there because Southern Rhodesia is not a State and not because it is a State. It is a matter of recognising the diplomatic status of representatives of Southern Rhodesia. That status was already recognised in 1952 by the Act to which the right hon. and learned Gentleman referred. It would be illogical, therefore, to leave Southern Rhodesia out. The right hon. and learned Gentleman referred to the language of the reference not being felicitous, but that is attributing to some African nations a sensitivity and delicacy which they have not got. I do not believe that these nations are

not able to see things as they are. Here is a country which already has diplomatic status under an Act passed by this House, and the Bill recognises the fact. I repeat that it would be illogical to leave Southern Rhodesia out.

The right hon. and learned Gentleman also raised questions about certain definitions, including that of “diplomatic agent”. I will deal with that in a moment.

My hon. and gallant Friend the Member for Harrow, East (Commander Courtney) asked me a series of questions. A number of them were really Committee points, but I will do my best to satisfy his curiosity now. He asked why there had been a three-year delay before this Bill came before the House. The reason is that after we signed the Convention it was necessary to have full and complicated examination of the Convention and to hold consultations not only with the appropriate authorities here but in Commonwealth countries as well. It would have been most imprudent and open to criticism in the House had we rushed into legislation without meticulous examination of an important Measure.

My hon. and gallant Friend also asked why only some of the Articles in the Convention appear in Schedule 1. Clauses 1 and 2 provide for the replacement of existing law, including the common law as it stands in this matter. The Articles appearing in Schedule 1 cover that ground with the alterations already indicated. To put it another way—the Articles omitted from Schedule 1 are those which would not require legislation in order to be enforced in this country.

My hon. and gallant Friend also asked me about Article 47. It seems to me that he was accepting, like some other hon. Members, that this Article extends exceptions. I made it clear that we have existing arrangements which we cannot abandon without consultation with the nations concerned. There is

no question of extending any and when my hon. and gallant Friend speaks of a double standard then that is a complete misdescription.

My hon. and gallant Friend also referred, as did other hon. Members, to the use of these privileges for blackmail, espionage and other such activities. Is he really suggesting that we should abandon the protection given to diplomats here and so expose our own people overseas, many of them in countries where the rule of law has not the long tradition that we know, to all the pressures and dangers of which we are extremely well aware in this House? If certain countries have from time to time made use of the diplomatic bag and its immunity for espionage, if that were closed to them they would find other means. I do not believe that the extent or even the efficacy of espionage would be affected one iota, because other methods would be found.

COURTNEY I share my hon. Friend's feelings about the possibilities of action against our diplomats abroad, but would he accept one proposition? With some countries, which need not be named, it can easily be a matter of policy to bring pressure to bear, not only on our diplomats abroad, but on their wives and families, for the very purpose of preserving or extending their privileges in this country, which is exactly what my hon. Friend is doing in this Bill.

MATHEW My hon. and gallant Friend will appreciate that by and large this is not an extension. I do not believe that the task of any Power that wishes to do that will be made any easier by the Bill. However, these are matters for consideration in detail. My hon. and gallant Friend has raised a technical matter and I can only express my opinion. I do not believe that the point has any great weight.

The hon. Member for Oldham, West in one of his typically eloquent speeches, in which he had the close attention of the

House, as he always does, raised a number of important points. He recalled, somewhat nostalgically, the past privileges of Members of Parliament, which over the years have become unnecessary and have been lost. He accused the Bill of obscurantism and used some very hard words. If he is right, these are matters which will have to be tackled in Committee. He asked who decides whether a servant is off duty or on duty. Ultimately, as the hon. Gentleman knows, being learned in the law, this is a matter which must be decided on the evidence submitted to the court.

HALE These people never get to court.

MATHEW The hon. Gentleman says that the offender will never get to court. The police must be satisfied that there is immunity. If there is any doubt about it, they can bring the person concerned to court, and then the court will decide, and there will be conflicting evidence in such cases.

HALE That is not the point. Incidentally, I am flattered at the suggestion that I have nostalgic memories of something which passed over in the reign of George III. Supposing the police have decided wrongly, how does my missus assert her claim over my bruised and battered corpse? The matter cannot come to court. I understood the Minister to say in opening that the certificate of the Minister that someone was a servant of an embassy was conclusive against a litigant.

MATHEW In the hon. Gentleman's case, if his wife should have this misfortune, I have no doubt that she would communicate with the nearest Member of Parliament and I have no doubt that it would be brought to court. If a citizen lays an information, this must be looked into by the court and proof must be produced that there is an absolute defence of immunity.

The hon. Gentleman also asked why contract should be covered by immunity. Contract has been there for many centuries.

Nobody is immune from the law of contract. Diplomats are under a duty to comply, and always were under a duty to comply, with the law of the country in which they find themselves. This is quite different from immunity from jurisdiction. I have stressed this afternoon on several occasions what the reason for that is. We should be in the very greatest difficulty if the observance of the law in the case of our overseas missions depended entirely on court proceedings. We must have this protection because of reciprocity. It would be quite illogical at this stage to take contract out. I do not believe there ever would have been a Convention had this been proposed. The Convention would not have been signed. We would have been alone in putting forward that point of view.

The hon. Gentleman asked who decides who is a diplomatic agent. A diplomatic agent is defined in Article 1 of the Convention. He is a member of the staff having the rank of attaché or above, appointed to that rank by his Government, and whose name is communicated to the receiving Government. In short, he is proposed in that status by the sending Government and is accepted as such by the receiving Government. This is clear from Clause 4. The hon. Gentleman asked a number of other detailed points and pointed to some ambiguities, which are primarily matters to be dealt with in Committee.

My hon. Friend the Member for Buckinghamshire, South (Mr. Ronald Bell) asked what is the nature of the Vienna Convention and why we have not ratified it. We signed the Convention in 1961. The Convention has come into effect. The purpose of the Bill is to bring our law into line and to obtain the consent of the House so that we can ratify it.

My hon. Friend then referred to Clause 7. This does not create a wider privilege. It maintains the exceptional arrangements we have in a very limited number of cases. The names of the

countries concerned will be published in due course, after we have had time to consult and inform those countries. My hon. Friend will realise that we were bound by existing agreements. We should not have been able to contract out in the Bill, even had we wished to.

BELL My point on Clauses 3 and 7 was that, as Clause 7 provides for wider diplomatic privileges, It is not in any way inconsistent with the Convention, whereas Clause 3, which appears to provide for some restriction not provided for in the Convention, seems to me possibly to raise a difficulty.

MATHEW Looking at the matter quickly, I do not see the inconsistency, but I will study this point. He also raised the question of Income Tax for citizens of the United Kingdom and Colonies who are Commonwealth representatives. It is intended to deal with that in due course by Order in Council.

My hon. Friend the Member for the Isle of Ely (Sir H. Legge-Bourke) raised a number of points, and I am grateful for what he said about the difficulties experienced by our missions overseas. He spoke about the diplomatic bag and drew a rather gruesome picture of large-scale smuggling taking place through it. I can assure him that Article 27 deals with the diplomatic bag while Article 36 deals with the personal baggage of diplomats. Under Article 27(3) the diplomatic bag cannot be opened, and this provision is included because it is essential for our own diplomats that there should be reciprocity in this matter.

LEGGÉ-BOURKE Accepting that, and realising the need for reciprocity here, will my hon. Friend say what he visualises would be done by the authorities in the event of it being brought to the attention of Her Majesty's Government, by the police or any other authority, that the use of the diplomatic bag was being abused?

MATHEW We would inform the head of mission at once.

Hon. Members should also not forget the ultimate sanction of withdrawing the immunity and declaring the diplomat *persona non grata*.

My hon. Friend the Member for the Isle of Ely then referred to certain organisations. This Bill does not deal with the international staffs to which he referred, but there is the International Organisations (Immunities and Privileges) Act, 1950, which lays down the extent of their privileges and immunities. However, this Bill does not deal with international staffs.

I thank my hon. Friend for the welcome he gave to the steps which Her Majesty's Government, the Foreign Office and the Commonwealth Relations Office are taking to try to bring some order into the difficult matter of motor and parking offences. As I said at the beginning of my remarks, I am not unhopeful that some progress will be made with the help of the distinguished Dean of the Diplomatic Corps, who has been energetic and helpful in this matter.

The hon. Member for Edinburgh, Leith (Mr. Hoy) asked about protection for people injured in motor accidents involving diplomats. The answer is that this is covered in the usual way by insurance or other arrangements so that citizens are not placed in financial difficulty. Apart from the question of the diplomat taking out insurance cover, the head of mission concerned would take all steps to see that such difficulties were not encountered.

My hon. and learned Friend the Member for Billericay (Mr. Gardner) drew a rather terrifying picture of increased espionage and crimes against the State. I would remind him that there exist records of cases concerning foreign envoys, many of them from states which have long since disappeared, who were engaged in activities near to high treason. Since my hon. and learned Friend is learned in the law, I need not elaborate on those cases.

Suffice to say that this is not a new business; that in the past there have been many cases, even dating back to the time when the Jacobites were given assistance under the cover of diplomatic privilege. We certainly cannot say that this is a new feature.

I appreciate the contributions and criticisms made of these provisions by hon. Members on both sides of the House and I hope that we will have an opportunity to consider these matters in more detail in Committee. In commending the Bill, I need only point out that this is a step forward in this important branch of international law, and is intended to bring certainty and uniformity into the law.

Question Put and
Agreed to

Question put and agreed to.

Bill accordingly read a Second time.

Bill committed to a Standing Committee, pursuant to Standing Order No. 40 (Committal of Bills).¹⁷

¹⁷Following the debate, the Diplomatic Privileges Act 1964 became law on 31 Jul 1964, giving effect to the Vienna Convention on Diplomatic Relations. The Diplomatic Privileges Act 1708 was repealed by section 8(4) of, and Schedule 2 to, the Diplomatic Privileges Act 1964.

Colophon

This Extract of *Hansard's Parliamentary Debate* was published by Holborn Project in October, 2012.

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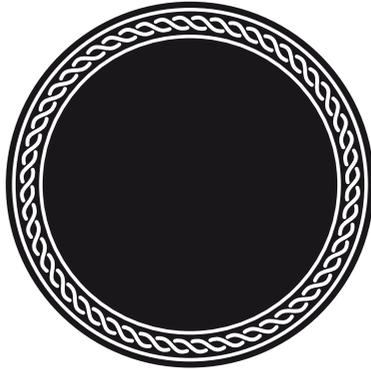
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