



HUMAN RIGHTS V DIPLOMATIC IMMUNITY: THE KHASHOGGI MURDER CASE

DIREITOS HUMANOS V IMUNIDADE DIPLOMÁTICA: O CASO DO ASSASSINATO KHASHOGGI

YORDAN GUNAWAN

Senior Lecturer

Faculty of Law, Universitas Muhammadiyah Yogyakarta – Indonesia
PhD Student at the Facultat de Dret, Universitat Pompeu Fabra - Spain

yordangunawan@umy.ac.id

<https://orcid.org/0000-0001-8402-4656>

MOHAMMAD HARIS AULAWI

Senior Lecturer

Faculty of Law, Universitas Muhammadiyah Yogyakarta – Indonesia
harisaulawi@umy.ac.id

MOHAMMAD BIMA AORON HAFIZ

Researcher

Faculty of Law, Universitas Muhammadiyah Yogyakarta – Indonesia
bimaaaron@umy.ac.id

ANDI AGUS SALIM

Researcher

Faculty of Law, Universitas Muhammadiyah Yogyakarta – Indonesia
andi.agus@umy.ac.id

<https://orcid.org/0000-0001-5638-817X>

ABSTRACT

Objectives: This article examines how international law works (or does not work) when applied to the Khashoggi case, especially when diplomatic immunity comes into contact with human rights. It is axiomatic that human rights cannot be separated from human beings, and *vice versa* with the right of immunity which is regulated in the Vienna Convention on Diplomatic Relations 1961 and the Vienna Convention on Consular Relations 1963, which can be revoked. The murder of Jamal Khashoggi shocked the world. It is not only because of the grisly details of his death but also because of where it took place: inside a consulate, which enjoys special protection under international law.

Methods: The study is normative legal research informed by two approaches: (a) statute and (b) case. By using a qualitative descriptive method, this study will focus on how human rights prevail relative to claims of diplomatic immunity in the context of the protection of human dignity and life.





Result: The result shows that in the name of human rights, the Turkish authority has a right to intervene and do its investigations in the location of the murder, the Consulate of Saudi Arabia in Istanbul, without claimed diplomatic immunity being an insurmountable obstacle.

Keywords: diplomatic immunity, human rights, khashoggi.

RESUMO

Objetivos: Este artigo examina como funciona (ou não funciona) o direito internacional quando aplicado ao caso Khashoggi, especialmente quando a imunidade diplomática entra em contato com os direitos humanos. É axiomático que os direitos humanos não podem ser separados dos seres humanos, e vice-versa com o direito de imunidade que é regulado na Convenção de Viena sobre Relações Diplomáticas de 1961 e na Convenção de Viena sobre Relações Consulares de 1963, que pode ser revogada. O assassinato de Jamal Khashoggi chocou o mundo. Não é apenas por causa dos detalhes macabros de sua morte, mas também por causa de onde ela ocorreu: dentro de um consulado, que goza de proteção especial sob o direito internacional.

Métodos: O estudo é uma pesquisa jurídica normativa informada por duas abordagens: (a) estatuto e (b) caso. Utilizando um método descritivo qualitativo, este estudo se concentrará em como os direitos humanos prevalecem em relação às reivindicações de imunidade diplomática no contexto da proteção da dignidade humana e da vida.

Resultados: O resultado mostra que em nome dos direitos humanos, a autoridade turca tem o direito de intervir e fazer suas investigações no local do assassinato, o Consulado da Arábia Saudita em Istambul, sem que a alegada imunidade diplomática seja um obstáculo intransponível.

Palavras-chave: imunidade diplomática, direitos humanos, khashoggi.

1 INTRODUCTION

The murder of Jamal Khashoggi shocked the world. It is not only because of the grisly details of his death but also because of where it took place: inside a consulate, which enjoys special protections under international law. The case has raised questions about the immunity offered to diplomats and diplomatic premises, and the risk of abusing the diplomatic immunity system for unlawful activities and obstructing criminal investigations. (RITTER, 2018)

The Vienna Convention on Consular Relations 1963 correspondingly clarifies the kinds of actions that can occur inside a consulate and embassy. Article 55 of the Convention





stated such entities: “*shall not be used in any manner incompatible with the exercise of consular functions*”. (Anne, 2011)

Diplomatic immunity is a privilege given to diplomats and consular representatives in international law. They include protection against criminal prosecution and being exempt from paying taxes in the host nation.(Singh, 2017) This immunity is regulated by two treaties: (1) the 1961 Vienna Convention on Diplomatic Relations and (2) the 1963 Vienna Convention on Consular Relations. (McConnell, 2018)

Jamal Khashoggi was a strong critic of the foreign policy and the guarantees of freedom of expression in Saudi Arabia. Khashoggi made several harsh and profound criticisms of the government and the behavior of the family of the King of Saudi. Furthermore, Khashoggi had criticized the reform carried out by Crown Prince Mohammed bin Salman, which he believed were not serious and were full of controversy. (DEEB, 2018)

Saudi Arabia has declared Jamal Khashoggi was killed inside their consulate in Istanbul, Turkey. Khashoggi was a writer. He was a United States resident and possessed a US passport. Jamal Khashoggi entered the consulate in October 2018 to obtain documentation certifying he had divorced his ex-wife so he could remarry. (Al Jazeera, 2019)

The death of Jamal Khashoggi, an opposition journalist who was highly critical of the Saudi Arabian government, is of international concern. Criticism from many parties immediately emerged and caused the position of King Salman's Government in Saudi Arabia to be politically cornered internationally. The death of Khashoggi also focused the world's attention on the issue of press freedom, as well as journalists' safety. International pressure and evidence provided by the Turkish government regarding the death of Khashoggi caused the Government of Saudi Arabia to be cornered and finally to admit the murder. (Milanovic, 2020)

A recent report by the United Nations Agency for Education, Science and Culture (UNESCO) said that a journalist was killed every 4.5 days worldwide. UNESCO Director General's report stated that over the last decade a total of 827 journalists have been killed while on duty. (ARAB NEWS, 2016) Based on the report entitled ‘Journalists and the Danger of Impunity’, the most dangerous areas are Arab countries, including Syria, Yemen and





Libya. Latin America is the second most dangerous continent for journalists trying to do their work.

A report in 2006-2020 suggested 59 percent of the deaths of journalists occurred in conflict areas. During that period, 78 (36.5 percent) of 213 reporters were killed in Arab countries. Most worrying is the increase in journalists' deaths in Western Europe and North America, from zero in 2014 to eleven last year.

Violence against journalism has appeared as a global human rights issue as the number of those killed in the profession has steadily risen over the last ten years. (Relly & González de Bustamante, 2017) The threats to journalists have expanded to all parts of the world and in some cases, it has been difficult to identify the actors who are targeting them. (Tumber, 2006) However, there has been a global growth of those individuals or entities who would wish to avoid any sort of publicity, including: (1) oppressive governments, (2) terror networks, (3) militias, (4) organized crime groups, (5) gangs, (6) drug cartels, and others that dominate regions of countries or indeed entire nations that are in crisis. (Cooper & Johnson, 2009) In order to achieve fair, balanced and objective journalistic work, a competent press is needed; one that is clear in the way it carries legal responsibility for its journalists' work. The growth and development of the media industry and the press also requires a strong press that has been built on idealism, commercialism, and professionalism. (Deuze, 2005)

According to Steve Schifferes, freedom given to the press is indeed a manifestation of Human Rights, namely the freedom to express opinions in writing, (Schifferes et al., 2014) In the Declaration of Human Rights issued by the United Nations (UN) on 10 December 1948, it is stated: "*Every person has the right to the freedom to have and issue opinions; in this right is included the freedom to hold opinions without interference and to seek, receive and convey information and ideas through any media and by not looking at boundaries (territories)*". (Universal Declaration of Human Rights, 1948) Based on the convention, it is clear that everyone has the right to seek and gather information, and should be free to share that information if they wish.

Article 19 of the ICCPR (International Covenant on Civil and Political Rights) states that:





1. Everyone has the right to argue without being subjected to interference.
2. Freedom of expression; this right must include the freedom to receive and provide information and all kinds of verbal, written or printed thoughts, without restriction.

2 MATERIALS AND METHODS

The researchers have adopted a normative legal model in order to answer the problem statement, which means that the research will show how the law regulates such conditions, as well as provide details of the application of the law itself. (ANDERSEN & HARSELL, 2005) Normative legal research is used to find the truth of coherence, namely discovering: (a) whether the existing law is in conformity with the rule of law, (b) whether the norms in the form of a command or prohibition are in line with the principles of law and (c) whether one's actions are in accordance with the norms of law or legal principles. (Foster & Gunn, 2017)

The data used in the research is classified as secondary. Secondary data consists of: (1) primary legal material, (2) secondary legal material, and (3) tertiary legal material. These classifications are explained as follows: (Deakin, 2018)

1. Primary legal material consists of regulations as follows: Convention on for the Protection of Human Rights; International Covenant on Civil and Political Rights; United Nation Charter, 1945; Universal Declaration of Human Rights; Vienna Convention on Diplomatic Relations, 1961; Vienna Convention on Consular Relations, 1963.

2. Secondary legal material consists of several documents that relate to the primary legal materials as follows: books, research reports, scientific journals, trusted internet, other legal documents related to the issue, other non-legal documents related to the issue.

3. Tertiary legal material is material which supports the research. It covers the legal materials that provide instructions or explanations of primary and secondary legal materials from outside the field of law, e.g., the field of politics, sociology, language as supporting or complementary material.





The method of collecting data in this research was done through library research by literature learning. This method collects the data from reading, writing, analysis, and information gathering related to the topic of this article. After gathering information from the documents such as: (a) international and national legal instruments, (b) books, (c) journals, and other sources related to the main focus of this research, the authors ultimately try to create the conclusion.

The data will be analyzed systematically through a descriptive qualitative filter. Systematically means the research will employ analysis based on international law, focusing on 'How international law works for, and applies to, Human Rights v Diplomatic Immunity as exemplified in the Khashoggi Murder Case. The descriptive qualitative began by classifying the data and the same information by subject and subsequently made an interpretation to give meaning to each subject and their relationship to one another. Then, the authors conducted the analysis or interpretation of all aspects that would be connected with the principles of law, conventions, and other related regulations.

3 RESULT

3.1 JAMAL KHASHOGGI: WHY WAS HE A TARGET?

The murder of Jamal Khashoggi was one of the most shocking cases yet seen in the world of modern journalism. He worked the Washington Post as a journalist because of his sharp critical writing about the Saudi Government. He argued that Saudi Arabia should become a much more democratic country if it wanted a better life for its citizens. Khashoggi murdered on 2 October 2018 the consular office of Saudi Arabia located in Istanbul, Turkey. (CNN INDONESIA, 2018b) The Turkish authorities suspected that the murder of Khashoggi was carried out by, or upon the instructions of, the Saudi government. However, this suspicion may not be valid. The Saudi authorities have admitted that the perpetrators came from Saudi Arabia, and that the murder took place in their consular building. However, they strongly deny the killing was organized by the





government of Saudi Arabia and have suggested 'the event', while occurring in their Istanbul consulate, was somehow out of their control. (CNN INDONESIA, 2018a)

Saudi Arabia is allegedly involved in this case because Jamal Khashoggi often criticized many of Saudi Arabia's policies in his articles, which makes everyone suspicious about what was the reason behind his murder and who actually carried out. This lack of clarity complements the image of Saudi Arabia as a country that does not fully support the freedom of the press; a country that does not take criticism lightly!. (Fernandez, 2018)

Since there is no evidence that can prove or confirm the reasons behind this murder, the Turkish government urged Saudi authorities to deal with the suspect as soon as possible so they could be prosecuted in a Turkish Court in order to try to get at the truth behind this murder. The Turkish authorities said that Jamal Khashoggi was killed in just a few minutes. This information was revealed by the source who had listened to the voice recording that were made inside the consulate; details which lay out what happened to Jamal after he entered. One person with knowledge of the recording, speaking on the condition of anonymity to the Washington Post reported: "You can hear his voice and the voices of men speaking Arabic. " The informant then went on to say: "You can hear how he was interrogated, tortured and then murdered." The recording was obtained from Khashoggi's Apple Watch, but there are many parties who have questions about the validity of that recording. (ABC News, 2018)

The Saudi government has said that Khashoggi died as a result of bare fist fighting with one of the killers. However, after this recording was found and played, it is clear that Khashoggi did not die for the reason offered. As far as can be judged he was dragged from the consulate's main office to a work bench. Even the witness said they could hear his screams until the attackers injected an unknown liquid into his body. Some sources said that before Khashoggi died, he was beaten, tortured, and mutilated. (Radfar et al., 2020)

Journalist protection has, during the last decade, become a global concern because there has been a significant increase regarding violent acts towards journalists that have resulted in serious injuries and even fatalities. (Johnston & Wallace, 2017) Recognizing the importance of journalists safety and journalistic freedom of expression, the General Assembly of the United Nations on 29 January 2018 adopted Resolution No.





A/RES/72/175 which focused on the protection of journalists. This resolution is the legal basis for all journalists to get protection when they perform their duties. This resolution is imposed by referring the UDHR, ICCPR, and ICPPED. (United Nations General Assembly, n.d.)

3.2 LAWS AND REGULATIONS RELATED IN KHASHOGGI ASSASSINATION CASE

3.2.1 Protection of Journalists in International Law

Violence against journalists has emerged as a global human rights issue as the number of those in the profession who have been killed has steadily risen in the new millennium. (Knight et al., 2008) The right to freedom of expression is written into Article 19 Universal Declaration of Human Rights (UDHR), stating: “*Everyone has the right to freedom of opinion and expression, this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.*” It can be concluded from that article that freedom of expression is fundamental for every human being.

There is a risk for journalists while they do their work because sometimes the criticized authority gets upset and threatens the journalist(s) indirectly. That was the main reason why working journalists’ freedom of opinion and expression needed to be protected internationally. It should also be noted that most countries’ national laws have recognized the freedom of the press as an exclusive provision. (Oliphant, 2014)

In the Khashoggi case, his freedom of expression was not assured at all. The main presumption regarding the reason for his murder was his potency and potential to lead a politically focused opposition group in Saudi Arabia and his very public critical comments directed towards the Saudi government. If that presumption is correct, that means the Saudi government has violated Khashoggi’s right to express his opinion according to Article 19 of the Universal Declaration of Human Rights. Based on Article 19 of the UDHR “*the right to freedom of opinion and expression includes the freedom to hold opinions without interference and to seek, receive and impart information and ideas through any*





media and regardless of frontiers.” Of course, it needs to be stated that his right to life was also violated.

Article 19 (2) International Covenant on Civil and Political Rights (ICCPR), which aims to ensure everyone has the right of expression, stated: *“Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice”*. (International Covenant on Civil and Political Rights, 1976)

Related to the Khashoggi case, the suspect has violated Articles 1 and 10 from this resolution. Article 1: *“Condemns unequivocally all attacks and violence against journalists and media workers, such as torture, extrajudicial killings, enforced disappearances, arbitrary arrest and arbitrary detention, as well as intimidation, threats and harassment, including through attacks on, or the forced closure of, their offices and media outlets, in both conflict and non-conflict situations.”* The Turkish government has been urged to initiate an international investigation into this case if the level of cooperation with Saudi Arabia regarding the murder investigation reaches a deadlock.

Freedom of expression carries responsibilities and, as a non-absolute right, it may be limited. Article 29 paragraph 2 of the UDHR states that: *“In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.”*

3.2.2 The Universal Declaration of Human Rights

The UN General Assembly adopted the Universal Declaration of Human Rights (UDHR) on 10 December 1948. It defines the fundamental freedoms and human rights that the charter was established to foster. The UDHR, like the UN, is the result of the experience of the Second World War. World leaders decided to complement the UN Charter with a ‘road map’ to guarantee human rights. The declaration sets down the basic principles at the very heart of the human rights movement. The preamble states:





“The General Assembly proclaims this Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction”. (Universal Declaration of Human Rights, 1948)

The right of freedom of expression is the right of each individual, independent from his or her race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status in society, to tell others about his or her thoughts and ideas in private, in public and via the media. (Heyns & Srinivasan, 2013)

The right of freedom of expression not only entitles every person to express any kind of information, facts and opinions that can be communicated to others (subject to limitations provided by law) but also entitles every person to access any kind of information, facts and opinions that are publicly available. The right is not bound to any national boundaries. Therefore, Article 19 of the Universal Declaration of Human Rights also includes the right to seek, receive and impart information and ideas from all parts of the world.

3.2.3 The International Covenant on Civil and Political Rights

The International Covenant on Civil and Political Rights (ICCPR) was adopted on 16 December 1966 and entered into force on 23 March 1976. While the UDHR sets forth general principles of human rights, the ICCPR is a multilateral binding treaty. It stands alongside the International Covenant on Economic, Social, and Cultural Rights (ICESCR).

Everyone has the right to hold opinions freely. (*International Covenant on Civil and Political Rights*, 1976) Based on Article 19, paragraph 2 of the Covenant “everyone shall have the right to freedom of expression. This right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or print, in the form of art, or through any other media of his or her choice.”





Regarding the scope of freedom of expression and the media, the Human Rights Committee also stated that: “A free, uncensored and unhindered press or other media is essential in any society to ensure freedom of opinion and expression and the enjoyment of other Covenant rights.” Based on Article 25 of the ICCPR “every citizen shall have the right and the opportunity to take part in the conduct of public affairs, directly or through freely chosen representatives.” According to the Human Rights Committee, a free press is not only a condition to ensure freedom of expression, but also a condition to ensure other political rights guaranteed by the Covenant.

The right to express thoughts and ideas in public, which is also protected by the right of freedom of expression, is further protected by Article 21 of the Covenant which entitles everyone to assemble with others peaceably. Article 22, paragraph 1 of the Covenant “Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests”.

Based on Article 19 paragraph 3 of the ICCPR “the exercise of the right to freedom of expression carries with its special duties and responsibilities and may, therefore, be subject to certain restrictions. Such restrictions must be provided by law and be necessary for respect of the rights or reputations of others or the protection of national security or of public order or public health or morals.”

The ICCPR is binding, subject to valid reservations, understandings and declarations. Nowadays, 113 states are parties to the Covenant. seven states have signed the Covenant but are yet to ratify it. Several state parties to the Covenant have made reservations and interpretative declarations to their application of the Covenant.

All state parties that have ratified the ICCPR have agreed to ensure that the right to freedom of expression can be effectively enforced. Each signatory is obliged to protect the right to freedom of expression by implementing an enforcement mechanism that fits into their respective legal system. Therefore the scope of the Covenant is also defined by decisions of international and domestic courts. (Fenwick et al., 2020)

3.2.4 The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment





The prohibition against torture and other forms of ill-treatment is well established as one of the few absolute human rights which must be respected without any restriction or derogation (under international law, this is known as a *jus cogens norm*). The purpose of the Convention is to prevent and eradicate the use of torture and other cruel, inhuman or degrading treatments or punishments, as well as ensuring accountability for acts of torture. There are currently 165 state parties to the Convention.

The prohibition against torture and other forms of ill-treatment is embodied in several international human rights treaties and declarations, including:

The Universal Declaration of Human Rights (UDHR) (1948), Article 5: “*No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.*”;

The International Covenant on Civil and Political Rights (ICCPR) (1976), Article 7: “*No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.*”;

The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT and hereafter the Convention) (1987).

Based on Article 1 of the 1987 Convention, torture is defined as: “*any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind*”. (Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1987)

Prevention of torture: a state party has an obligation to take effective measures to prevent acts of torture in any territory under its jurisdiction, including legislative, administrative, judicial or other measures. Article 2(2) states that “*no exceptional circumstances whatsoever*” may be invoked in justification of torture.

3.3. VIENNA CONVENTION ON DIPLOMATIC & CONSULAR RELATIONS V HUMAN RIGHTS





Domestic jurisdiction is a manifestation of state sovereignty, the principles of equality of states and non-interference in domestic affairs. In essence, jurisdiction concerns the power of the state to affect people, property and circumstances. Domestic jurisdiction, the guarding certain state activities from outside intervention, is widely believed to be based on the territorial principle. That principle means, *inter alia*, that the courts of every country should be able to try offenses committed within its territory. (Hevener & Sisco, 2019)

The Vienna Convention on Diplomatic Relations and the Vienna Convention on Consular Relations serve as the foundations of modern international diplomatic law. However, the freedoms granted to diplomats can be costly, such as when immunity is used to commit or cover up illegal acts. The more frequently diplomatic or consular immunity is abused, the more it is scrutinized.

Diplomatic and consular immunity are regarded as critical to the international diplomatic regime's long-term viability and efficiency. But what if the misuse of these powers becomes so severe that human rights and respect for the sovereignty of other states are risked?

The Khashoggi case provides an excellent opportunity to discuss this. If he was killed inside the Saudi consulate and evidence was cleared out in the two weeks leading up to the Turkish police raid, the "sacred" nature of the consular building would have effectively obstructed justice.

Diplomatic immunity is a well-established exception to that general international law principle of territorial jurisdiction. (Frey & Frey, 2018) That exception was developed from the concepts of sovereign immunity, the concepts of independence and equality of states, and the existence of a specific rule of international law. (Bassiouni, 2006) It is one of the oldest and most accepted rules of international law, dating back many centuries.

On the other hand, if the Khashoggi case does not prompt a thorough examination of how consular immunity may have been used to facilitate a crime and obstruct justice, it may encourage other rogue regimes around the world to engage in similarly reckless behavior. Although the global outrage over Khashoggi's disappearance is encouraging, there needs to be a broader discussion about the international legal implications.





This is where the Vienna Conventions may come into play. Their ambiguous and superficial language regarding abuses of diplomatic and consular immunities effectively limits the possibility of challenging the sanctity of these entities.

Despite the fact that the Conventions clearly state that all persons enjoying diplomatic or consular immunities must respect the laws and regulations of the receiving State, and that diplomatic or consular premises must not be used in any way that is incompatible with the exercise of diplomatic functions, the relevant provisions do not include any clear sanction for misuse of diplomatic or consular buildings.

I believe it is critical for the parties to the Vienna Conventions to update and elaborate these provisions, as well as impose clear sanctions, such as temporarily removing the immunity of diplomatic or consular buildings and bags if there is reasonable doubt that a grave crime was committed in those buildings and there is a risk of evidence spoliation. It remains to be seen whether Khashoggi's case results in a substantive change in this area, but international scrutiny of his case has opened the door to consider possible solutions for abuses of diplomatic immunity.

Article 55 of the 1963 Vienna Convention stated: *“the consular premises shall not be used in any manner incompatible with the exercise of consular functions.”*. In direct contravention of this principle Khashoggi was killed inside Saudi Arabia's consulate in Istanbul. Obviously, Saudi Arabia has violated Vienna Convention, so the immunity of the consulate could have been revoked as a result.

In the Khashoggi murder case, human rights must be firmly enforced. All human beings are born free and equal in dignity and rights. Human rights cannot be separated from human beings. It is different from the right of immunity which is regulated in the Vienna Convention on Diplomatic Relations (1961) and the Vienna Convention on Consular Relations (1963), which have limitations so that the rights of immunity granted to diplomats can be revoked.

The most relevant way to find a solution when dealing with an issue between human rights and diplomatic immunity is by determining which should prevail in a hierarchy perspective. In international matters, it is not easy to determine which one should be in a higher position. (Murphy, 2004) However, the previous analysis stated that, based on the normative analysis of hierarchy, human rights should prevail to the extent





that the general trend in international law can be detected since human rights are "in" and immunities (diplomatic or other) are "out."

The analysis that human rights prevail gives a necessary condition in evaluating a hierarchy solution to deal with issues regarding dilemmas around the reciprocity factor. The evaluation shows that a legal hierarchy approach cannot solve such an issue. First, immunity is of great importance when conducting diplomacy and second, the nature of reciprocity in diplomatic immunity shows that a justification informed by the principle of strict obedience to diplomatic immunity rules seems likely to continue.

We need to go to the reason why Diplomatic Immunity is given to the Diplomatic Building and Diplomatic Agent. The aim of diplomatic immunity is for a representative of the country to do their job free from any pressure, intervention from the host country. Diplomatic Immunity given for their job, they cannot misuse the diplomatic immunity given by them moreover they commit murder and injure human rights. So, in this case the diplomatic immunity cannot be used for their crimes.

A recent example of this conflict of priorities is seen in the case of WikiLeaks founder Julian Assange, who took refuge in Ecuador's embassy in London. The British government instructed police to force an entry into the building to seize him. An arrest warrant had been issued since the British Foreign office argued that they had the right to annul the diplomatic status of the Embassy based on the state's Diplomatic and Consular Premises Act 1987. (Binder & Hofbauer, 2017)

In the case of Khashoggi, since Human Rights prevail over diplomatic immunity regarding the protection of human dignity, the Turkish authority has a right to interfere and do the investigations in the location of the murder - the consulate of Saudi Arabia in Istanbul.

4 CONCLUSION

Turkey is not allowed to investigate the case because the state needs to have permission from Saudi Arabia to enter the consulate; a limitation stemming from international laws governing how host countries have to treat state representatives or





other diplomatic missions. Undoubtedly, embassies and consulates stand on land belonging to their host nations; however, international law lays out firm rules for the behavior of a host country. It is crystal clear, under international law, that a host state's police and security officials cannot enter an embassy without the permission of the head of that embassy or consulate. In 2012, Julian Assange entered the Ecuadorean Embassy in London to escape an extradition request from Sweden, where he faced rape accusations. Julian Assange spent seven years in the embassy. However, as explained above, Assange was arrested by the British police in 2019, and was later sentenced to 50 weeks in prison for skipping bail when he sought protection in the Ecuadorean embassy.

It is reasonable to conclude that international law does not seem to provide a firm statement as to the question of priority between human rights and diplomatic immunity. However, because human rights are naturally peremptory (*jus cogens*), the Convention of Diplomatic Immunity 1961 that provides immunity for every single diplomatic mission should be reviewed when it is placed *vis a vis* with a case of human rights.

In the case of Jamal Khashoggi's murder, human rights must be firmly enforced. Unlike human rights that cannot be annulled by anyone, diplomatic immunity's status is different, since it can be revoked. The Turkish government has a right to interfere and do its investigating in the location of the murder, the Saudi Arabian consulate in Istanbul.

REFERENCES

ABC News. (2018). *Jamal Khashoggi: Saudi journalist may have recorded his own murder on Apple Watch*. ABC News. <https://www.abc.net.au/news/2018-10-13/jamal-khashoggi-may-have-recorded-his-own-death-on-apple-watch/10373398>

Al Jazeera. (2019). *Jamal Khashoggi case: All the latest updates*. <https://www.aljazeera.com/news/2019/10/2/jamal-khashoggi-case-all-the-latest-updates-2>

ANDERSEN, K., & HARSELL, D. M. (2005). Assessing the Impact of a Quantitative Skills Course for Undergraduates. *Journal of Political Science Education*, 1(1), 17–27. <https://doi.org/10.1080/15512160490921824>

Anne, D. (2011). Vienna Convention on Consular Relations (1963). In *Max Planck Encyclopedia of Public International Law* (Issue April 1963, pp. 1–29). Oxford University





Press. <https://doi.org/10.1093/law:epil/9780199231690/e1003>

ARAB NEWS. (2016). *Journalist killed every 4.5 days, says UNESCO*. <https://www.arabnews.com/node/1005696/world>

Bassiouni, M. C. (2006). International Recognition of Victims' Rights. *Human Rights Law Review*, 6(2), 203–279.

Binder, C., & Hofbauer, J. A. (2017). Teaching International Human Rights Law: A Textbook Review. *European Journal of International Law*, 28(4), 1397–1414.

CNN INDONESIA. (2018a). *Klaim Saudi dan Upaya Jauhkan Pangeran dari Kasus Khashoggi*. CNN Indonesia. <https://www.cnnindonesia.com/internasional/20181020220049-120-340106/klaim-saudi-dan-upaya-jauhkan-pangeran-dari-kasus-khashoggi>

CNN INDONESIA. (2018b). *Kronologi kisruh Jamal Khashoggi, wartawan pengkritik Saudi*. CNN Indonesia. <https://www.cnnindonesia.com/internasional/20181019100032-120-339720/kronologi-kisruh-jamal-khashoggi-wartawan-pengkritik-saudi>

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, (1987).

Cooper, C. A., & Johnson, M. (2009). Representative Reporters? Examining Journalists' Ideology in Context. *Social Science Quarterly*, 90(2), 387–406. <https://doi.org/10.1111/j.1540-6237.2009.00623.x>

Deakin, S. (2018). The Use of Quantitative Methods in Labour Law Research. *Social & Legal Studies*, 27(4), 456–474. <https://doi.org/10.1177/0964663918760385>

DEEB, S. EL. (2018). *Missing Saudi journalist once a voice of reform in kingdom*. <https://apnews.com/article/journalists-turkey-international-news-istanbul-newspapers-9c674ba093b84b95b6086e898230c850>

Deuze, M. (2005). What is journalism? *Journalism*, 6(4), 442–464. <https://doi.org/10.1177/1464884905056815>

Fenwick, H., Phillipson, G., & Williams, A. (2020). *Text, Cases and Materials on Public Law and Human Rights*. Routledge. <https://doi.org/10.4324/9780203593950>

Fernandez, J. M. (2018). The Qatar-Gulf crisis: The attack on media freedom and the West's loss of moral authority. *Pacific Journalism Review*, 24(2), 158–164. <https://search.informit.org/doi/10.3316/informit.027284374738591>

Foster, L., & Gunn, A. (2017). Special issue on social science research methods education. *Teaching Public Administration*, 35(3), 237–240. <https://doi.org/10.1177/0144739417708839>





Frey, L. S., & Frey, M. L. (2018). Diplomatic Immunity/Privilege. In *The Encyclopedia of Diplomacy* (pp. 1–10). John Wiley & Sons, Ltd. <https://doi.org/10.1002/9781118885154.dipl0410>

Hevener, N. K., & Sisco, J. J. (2019). Convention on Diplomatic Immunity. In *Diplomacy in a Dangerous World* (pp. 155–179). Routledge.

Heyns, C., & Srinivasan, S. (2013). Protecting the right to life of journalists: The need for a higher level of engagement. *Hum. Rts. Q.*, 35, 304.

International Covenant on Civil and Political Rights. (1976). <https://www.ohchr.org/sites/default/files/Documents/ProfessionalInterest/ccpr.pdf>

Johnston, J., & Wallace, A. (2017). Who is a Journalist? *Digital Journalism*, 5(7), 850–867. <https://doi.org/10.1080/21670811.2016.1196592>

Knight, A., Geuze, C., & Gerlis, A. (2008). WHO IS A JOURNALIST? *Journalism Studies*, 9(1), 117–131. <https://doi.org/10.1080/14616700701768204>

McConnell, F. (2018). Performing Diplomatic Decorum: Repertoires of “Appropriate” Behavior in the Margins of International Diplomacy. *International Political Sociology*, 12(4), 362.

Milanovic, M. (2020). The Murder of Jamal Khashoggi: Immunities, Inviolability and the Human Right to Life. *Human Rights Law Review*, 20(1), 1–49. <https://doi.org/10.1093/hrlr/ngaa007>

Murphy, P. (2004). *The Criminal Responsibility of Individuals for Violations of International Humanitarian Law*. Oxford University Press.

Olyphant, B. (2014). Freedom of the Press as a Discrete Constitutional Guarantee. *McGill Law Journal*, 59(2), 283–336. <https://doi.org/10.7202/1022310ar>

Radfar, Z. H., Sudana, D., & Gunawan, W. (2020). Gricean Maxim Violation(s) in the Murder Case of Jamal Khashoggi. *NOBEL: Journal of Literature and Language Teaching*, 11(2), 162–177. <https://doi.org/10.15642/NOBEL.2020.11.2.162-177>

Relly, J. E., & González de Bustamante, C. (2017). Global and Domestic Networks Advancing Prospects for Institutional and Social Change: The Collective Action Response to Violence Against Journalists. *Journalism & Communication Monographs*, 19(2), 84–152. <https://doi.org/10.1177/1522637917702618>

RITTER, K. (2018). *AP Explains: Diplomatic immunity and the Khashoggi case.* <https://apnews.com/article/ee1655f119f14228b0e8b6fbeat01866>

Schifferes, S., Newman, N., Thurman, N., Corney, D., Göker, A., & Martin, C. (2014). Identifying and Verifying News through Social Media. *Digital Journalism*, 2(3), 406–418. <https://doi.org/10.1080/21670811.2014.892747>





Singh, P. (2017). Anne Orford and Florian Hoffmann (eds), with Martin Clark. the oxford handbook of the theory of international law. *European Journal of International Law*, 28(1), 329–338.

Tumber, H. (2006). The Fear of Living Dangerously: Journalists who Report on Conflict. *International Relations*, 20(4), 439–451. <https://doi.org/10.1177/0047117806069405>

United Nations General Assembly. (n.d.). *United Nations General Assembly A/RES/72/175*. <http://undocs.org/A/RES/72/175>

Universal Declaration of Human Rights. (1948). <https://www.un.org/en/about-us/universal-declaration-of-human-rights>

