Rehoming Diplomacy: Privilege and Possibility in the International Law of Diplomatic Relations

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REHOMING DIPLOMACY: PRIVILEGE AND POSSIBILITY IN THE INTERNATIONAL LAW OF DIPLOMATIC RELATIONS†

Inspired by Karen Knop's distinctive approach to international legal scholarship, and by her writings on gender and on diplomacy, this article explores the centrality of households and household hierarchies in the international law of diplomacy, and their significance for sustaining hierarchy and privilege in international law more broadly. This argument is developed by attention, especially, to the negotiation history and text of the 1961 Vienna Convention on Diplomatic Relations (the VCDR). Diplomatic premises have been organized around hierarchy in ways apparent in the text and travaux préparatoires *of the VCDR, the article shows, and the diplomatic premises so configured does work in international legal discourse beyond being expressly defined and protected by international law. It affords a model of how statehood should be performed, and how states should relate to one another, helping to normalize hierarchy within and between states, and to entrench gendered hierarchies (in combination with class and racial hierarchies) in diplomatic work. The article demonstrates how attention to the role of hierarchy "at home" in diplomatic work, in the hybrid, public-private space of the diplomatic household, can elucidate international law's deep investment in maintaining privilege. This it illustrates by examining a recent dispute between Equatorial Guinea and France before the International Court of Justice over the status of the Paris residence of one of Equatorial Guinea's senior diplomatic representatives, viewed against the backdrop of France's ongoing resistance to reparations claims for its practices of colonial pillage and enslavement. Yet its defence of privilege notwithstanding, diplomacy's typical residential, state-capital-based model is undergoing change, and has in fact long been a focus of strategic rearticulation through protest. The article concludes by querying whether diplomatic households could be regarded, counterintuitively, as legal spaces of possibility for the possible recomposition of relations on the international legal plane.*

Keywords: diplomacy, international law, inequality, hierarchy, gender, households, Vienna Convention on Diplomatic Relations

I *Introduction*

I never visited an embassy or diplomatic residence with Karen Knop. I wish that I had. She would have delighted, I think, in their weirdness: the odd combination of state property and personal effects; bizarre official gifts and family photos; high security and hospitality.[1] Karen was fascinated

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by these kinds of liminal spaces and the professional boundary riders who inhabit them. She had a seemingly endless store of amusing personal factoids about prominent figures of international law and politics. And the themes of my paper today—diplomacy, homing, and finding the new in the old and the old in the new—were themes that recurred throughout her writing. Whether in contemplating the figure of the terrorist "at home" in private international law in her piece on citizenship;[2] highlighting the salience of diplomatic technique for law in her writings with Annelise Riles and Monica Eppinger;[3] or indeed in her earlier work on self-determination and statehood,[4] Karen puzzled continually over "nonintuitive but promising ways of thinking" through "questions of inclusion and diversity".[5] In pursuit of these questions, she read with immense care and generosity as well as egalitarianism and openness to surprise—all qualities characteristic of her interactions with colleagues at every level. And she identified this promise in the unlikeliest corners of the international legal repertoire—a repertoire of which she had an indomitable mastery.

This article directs three recognizably Knopian questions towards the international law of diplomacy, especially its framing of and around the diplomatic household. First, it paraphrases a query that Karen Knop posed of the city: is the diplomatic household "doing work in international legal discourse beyond being a subject in itself and, if so, what work is it doing?"[6] Part II argues, primarily by reference to the Vienna Convention on Diplomatic Relations (hereafter the VCDR)[7] and some of its history, that indeed the diplomatic household is doing such work. It helps to confer a sense of durability and emplacement on international law. It also affords a model of how statehood should be performed, and how states should relate to one another, and thereby helps to set "the functional and allegorical parameters of international law".[8] Part III addresses a second

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Justice Staff Seminar series on October 3, 2023, and I am indebted to Marc De Leeuw for chairing, and to all those who participated in, that event.

[1] One former diplomat recalled the bafflement of Maltese architectural students tasked with designing an ideal embassy for a pan-European architectural competition when he explained diplomacy to them as "a profession that builds bridges between nations through engagement and dialogue". This was "counter-intuitive" to the young architects who thought of embassies as high-walled, heavily guarded spaces: Jovan Kurbalija, "Embassy buildings: fortresses or bazaars?", (16 September 2012), online: *Diplo* <https://www.diplomacy.edu/blog/embassy-buildings-fortresses-or-bazaars/>.

[2] Karen Knop, "Citizenship, public and private" (2008) 71:3 LCP 309–341.

[3] Monica E Eppinger, Karen Knop & Annelise Riles, "Diplomacy and Its Others: The Case of Comfort Women" (2014) 6:1 Ewha Journal of Gender and Law 1–28; Karen Knop & Annelise Riles, "Space, Time and Historical Injustice: A Feminist Conflict-of-Laws Approach to the 'Comfort Women' Agreement" (2017) 102 Cornell L Rev 853–927.

[4] Karen Knop, *Diversity and Self-Determination in International Law* (Cambridge, UK: Cambridge University Press, 2002). For an extended take on what is most distinctive and daring in Karen Knop's engagement with these questions, see Fleur Johns, "Review: Karen Knop, *Diversity and Self-Determination in International Law*" (2003) 16(3) LJIL 656–669.

[5] Knop, *supra* note 2 at 313.

[6] Karen Knop, "The hidden city in international legal thought" in Helmut Philipp Aust, Janne E Nijman & Miha Marcenko, eds, *Research Handbook on International Law and Cities* (Cheltenham, UK: Edward Elgar, 2021) 442 at 447.

[7] Vienna Convention on Diplomatic Relations (adopted 18 April 1961, entered into force 24 April 1964) 500 UNTS 95 (VCDR), art 1(i), 22. The VCDR had 193 states parties as of July 24, 2023: *United Nations Treaty Collection*, <https://treaties.un.org>, Chapter III, No. 3, Vienna Convention on Diplomatic Relations.

[8] Karen Knop, "Re/Statements: Feminism and State Sovereignty in International Law" (1993) 3 Transnat'l. L. & Contemp. Probs. 293–344 at 296.

question inspired by Karen's longstanding concern with gender: what work might the gendered configuration of diplomatic households do or have done in international law? It argues, again by reference to the VCDR, that international law's expression of gendered hierarchy within the diplomatic household, together with intersecting race and class hierarchies, has helped to entrench hierarchy as norm and necessity for the work that diplomats do. And that work is, in significant part, international legal work notwithstanding all the ways in which "diplomatic style" may be distinguished from "(public) law style".[9] Part IV argues that there is reason for feminist international lawyers to question the modelling of international legal and political relations on the diplomatic household regardless of the level of women's participation in diplomatic work, much as Karen Knop argued of state sovereignty.[10] Part IV highlights how skewed and straitened a version of the world this model offers, and what it makes harder for international lawyers to consider (illustrated by reference to a recent dispute between Equatorial Guinea and France before the International Court of Justice (the ICJ) concerning the diplomatic harbouring of "ill-gotten gains"). The concluding section, in Part V, wonders if the diplomatic household, that most protocol-bound, rarified of international spaces, could nonetheless present possibilities for speculatively recasting prevailing approaches to international legal relations, noting the extent to which states have already extended diplomatic assignments towards the non-human and the non-state. This final part posits the hierarchical diplomatic household less as a determinative backstage to be unveiled for international lawyers' edification than as "an ongoing methodological… resource" for international legal scholarship.[11] Diplomacy here encompasses politico-legal practices of conducting relations among "mutual[ly] estrange[d]" entities—primarily states—on the international plane, with the international law of diplomacy being that international law which authorizes, enables, and privileges agents conducting those relations, such as the VCDR.[12]

II *International law at home: The significance of the diplomatic household*

That the diplomatic premises or mission is pivotal to the conduct of international legal relations is a statement of the obvious. As every student of international law soon learns, the model of international relations entrenched in international law is premised on repeat interactions among states officials inhabiting locales invested with special legal status of which diplomatic and consular premises are exemplary. Those premises are recognizable to most, being typically set in affluent parts of capital cities, and often styled alike, albeit with nationalist flourishes.[13]

There is, of course, much ritualized interaction among states ongoing elsewhere with which international law is concerned: in military, naval, and aerial encounters; through mutual surveillance; and in the work of scientists in the Antarctic and in space for example. Nonetheless, diplomats gathering in official meeting rooms, signing documents, announcing collaborations,

[9] Eppinger et al, *supra* note 3.

[10] Knop, *supra* note 8.

[11] Knop, *supra* note 6 at 454.

[12] James Der Derian, *On Diplomacy: A Genealogy of Western Estrangement* (Oxford, UK: Basil Blackwell 1987) 110; Cf. Costas M. Constantinou et al., "Thinking with Diplomacy: Within and Beyond Practice Theory" (2021) 15:4 Int. Political. Sociol. 559 at 561 ("diplomacy is a *claim* to represent a group or entity to the outside world").

[13] Jane C. Loeffler, *The Architecture of Diplomacy: Building America's Embassies* (Princeton, US: Princeton Architectural Press, 2010); James Stourton, *British Embassies: Their Diplomatic and Architectural History* (London, UK: Frances Lincoln, 2017).

exchanging veiled pleasantries; this comprises, for many, one of the most recognizable public faces of international law at work. As sites at which statehood is continually performed, diplomatic premises offer assurance that something called international legal order exists, that we all inhabit it, and that it is keeping chaos and heterogeneity in check. It is worth noting that public international law is, perhaps, the only field in which the national law of any one state is referred to as "domestic" law.[14]

In their significance for public international law, diplomatic premises are notable also for their residential character and as such, for their status as households. This residential character is key to international law's claim to transtemporal durability.[15] The temporal and spatial emplacement of international legal work in diplomatic premises underpins the *thereness* of international law or the sense of it having discernible, lasting presence in the world. It becomes easier to believe that international law can "rise above and ward off history" if that law is understood to have governed and protected certain sites where officials have lived for extended periods of time; diplomatic premises are among the sites of which this can be said.[16] Likewise, the assertion of statehood and associated claims to jurisdiction under international law can seem spurious, even absurd, when advanced a long way away from the core vehicles of that statehood: that is, far from the parliament buildings, courts, and customhouses of the state in question. Diplomatic premises temper this preposterousness by affording states a tangible, recognizable presence beyond their borders. International law cannot sustain itself as abstract and global without continually crafting and tending to the tangible and local; diplomatic premises help satisfy this imperative.[17]

Precisely how and where diplomacy became residential is disputed. Many historians of diplomacy trace this residential characteristic to the practices of Renaissance Italian city states.[18] Others, suggest that this genealogy is "overly narrow", highlighting that the relative permanence of diplomatic delegations was a feature of medieval diplomacy in Europe as it was of diplomacy in early modern China, Mughal India, and among Muslim rulers.[19] Regardless of origins, it is a significant feature of modern diplomacy that some diplomats live where they work and work where they live, and that intimate partners, families, and domestic staff often live and (officially or unofficially) work with them. In the genealogy of the contemporary diplomatic system, James Der Derian has highlighted the significance of the archetypes of the cleric, the warrior, and the trader.[20] Just as important, however, is another archetype of diplomatic rulership: the head of household, often presumed also to be head of a family, presiding over a subordinate retinue.

The prominence of the head-of-household, head-of-family archetype in the international law of diplomacy – including, as we shall see, in the VCDR – recalls the significance of family, kinship, and marriage ties in diplomacy of East and West, at least until the nineteenth century, and the

[14] I am indebted to Nofar Sheffi for this observation.

[15] On international law's projection of transtemporality as a product of both its "philosophical presuppositions and… [its] quotidian microtransactions", *see* Natasha Wheatley, "Law and the Time of Angels: International Law's Method Wars and the Affective Life of Disciplines" (2021) 60:2 Hist. Theory. 311–330.

[16] *Ibid* at 326.

[17] Fleur E Johns, "Global Governance: An Heretical History Play" (2004) 4:2 Glob. Jurist. 3–85; Vasuki Nesiah, "Placing International Law: White Spaces on a Map" (2003) 16:1 LJIL 1–35.

[18] *See, e.g.,* Garrett Mattingly, *Renaissance Diplomacy* (Boston, US: Houghton Mifflin, 1955).

[19] Jeremy Black, *A History of Diplomacy* (London, UK: Reaktion Books, 2010) at 11, 38, 43.

[20] Der Derian, *supra* note 12 at 80.

importance of the household in those ties' organization and maintenance.[21] Not only did diplomacy throughout the pre-modern and early modern periods often entail the negotiation of international marriages and the forging and leveraging of household ties among prominent persons, it also depended on family lineages at other levels. For instance, "dragomans" (translator-interpreters) employed to support British and European diplomats in Constantinople in the nineteenth century were "often recruited from the same family from one generation to the next".[22]

The reliance of diplomatic law and practice on head-of-household, head-of-family archetypes reflects, too, the longstanding (and continuing) significance of household hospitality in the ceremonial and information-gathering aspects of diplomatic work.[23] In recognition of this domestic dimension, centuries' worth of diplomatic treatises and manuals have devoted attention to the status and conduct of a diplomat's family in public and private, and to the management of relations with household staff.[24] As Mark Netzloff has written, "the early modern embassy was above all a household, a domestic space of both business and residence, and its social dynamics complicated conventional divisions of public and private spheres".[25] In the seventeenth- and eighteenth-century writings of Grotius and Vattel too, no distinction was drawn between the official premises of a diplomatic mission and the residence of an ambassador.[26]

With the conclusion of the VCDR in 1961, this sense of diplomacy as a household endeavour, conducted in private and public space, often with family involved, was concretised in the inclusion of the residence of the head of the mission within the scope of diplomatic premises.[27] Up to that point, the international law of diplomacy—including those aspects of it concerned with the ordering and privileging of diplomatic households—was reliant to a significant degree on claims of commonality or universality contending versions of which had been traded among European, Ottoman, and Chinese diplomats for some time.[28] The drafting and adoption of the VCDR were animated by a sense that these imperial narratives of universalism could no longer be depended on amid the post-war political and cultural flux. More specifically, the VCDR's conclusion was inflected by concern among those representing colonial powers about "the arrival of large numbers of new, post-colonial states who had no experience of the essentially de facto rules operated by

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[21] Black *supra* note 18 at 19, 26.

[22] G.R. Berridge, 'Nation, Class, and Diplomacy: The Diminishing of the Dragomanate of the British Embassy in Constantinople, 1810-1914', in Markus Mösslang and Torsten Riotte, eds, *The Diplomats' World: A Cultural History of Diplomacy* (London, UK: Oxford University Press/German Historical Institute, 2008) 407 at 408. On the influence and ubiquity of Constantinople-based dragomans throughout the sixteenth and seventeenth centuries, see E. Nathalie Rothman, *The Dragoman Renaissance: Diplomatic Interpreters and the Routes of Orientalism* (Ithaca, US: Cornell University Press, 2021).

[23] Catherine Fletcher, ''Furnished with Gentlemen': The Ambassador's House in Sixteenth-Century Italy', 24 Renaissance Studies (2010) 518.

[24] See, e.g., the treatises quoted in Fletcher, *supra* note 23 at 519, 530–531.

[25] Mark Netzloff, 'The Ambassador's Household: Sir Henry Wotton, Domesticity, and Diplomatic Writing', in Robyn Adams and Rosanna Cox, eds, *Diplomacy and Early Modern Culture* (London, UK: Palgrave Macmillan, 2011) 155 at 162.

[26] Eileen Denza, *Diplomatic Law: Commentary on the Vienna Convention on Diplomatic Relations,* 4th ed (Oxford, UK: Oxford University Press, 2016) at 225.

[27] VCDR, *supra* note 7 at art 1(i).

[28] Onuma Yasuaki, "When Was the Law of International Society Born - An Inquiry of the History of International Law from an Intercivilizational Perspective", (2000) 2 J Hist. Int'l L. 1 at 21, 29, 33.

the older states system".[29] By encoding diplomatic conventions in treaty form, "older states" sought to ensure the continuity of their practices of "de facto rule[rship]" regardless of the formal admission of new actors into the international legal pantheon. In the absence of being able to predict or control how relations with former colonial dominions on the international plane might play out in practice, ex-colonial states sought to standardise international legal relations taking as a template for diplomacy a hierarchical configuration of household relations. This is apparent in the emphasis laid on the premises of the diplomatic mission, and in the relative status of those who work in it, in the VCDR. A sense of the entire diplomatic household operating in the service and at the direction of those who qualify as "diplomatic agents" suffuses the VCDR's attention to the status, movements, and personal effects of the "members of the family of a diplomatic agent forming part of his household", and to those of the various categories of diplomatic staff, including "[p]rivate servants of members of the mission".[30]

The privileges and immunities of those at the helm of these hierarchies are not absolute, and they are waivable by the state represented by those persons.[31] Moreover, there is no reason to anticipate or envision such household hierarchies translating isomorphically to international legal practice. Hierarchies tend to operate and get reproduced in ways more unruly than that. This article's argument is not that one form of hierarchy (household hierarchy) inevitably *caused* or *causes* the other (inter-state hierarchy). Nevertheless, international law's hierarchical arrangement of diplomatic households does open a window onto certain tendentious features of international law. For the remainder of this part, let me highlight three such features.

The model of household rulership embedded in the VCDR helps to entrench an expectation that inter-sovereign relations possess, in ideal form, a zero-sum quality (even if that is not in fact evident in diplomats' household rule or in inter-state relations). The household mastery that the international law of diplomacy presumptively attaches to the diplomat echoes the aspirations for exclusive jurisdiction that international law identifies with the sovereign state, expressing the "sovereign [s]tate, sovereign self" equation that Karen Knop so insistently called into question.[32] As regards a state, sovereignty in international law has famously been held to signify "in regard to a portion of the globe… the right to exercise therein, to the exclusion of any other [s]tate, the functions of a [s]tate".[33] In the same fashion, the VCDR anticipates that the diplomat will exercise

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[29] Keith A. Hamilton and Richard Langhorne, *The Practice of Diplomacy: Its Evolution, Theory and Administration*, 2nd ed (Abingdon, UK: Routledge, 2011) at 2.

[30] Regarding families, see VCDR, *supra* note 7, arts 10(1)(b), 36(1)(b), 37(1), 39(3) and (4), and 40(1). Regarding private servants, see VCDR *supra* note 7, arts 1(h), 10(1)(c) and (d), 33(2), 37(4) and 38(2). Concern with "members of [diplomats'] families residing with them" was apparent also in earlier, unsuccessful attempts, during the life of the League of Nations, to codify diplomatic privileges and immunities in international law: Richard Langhorne, "The Regulation of Diplomatic Practice: The Beginnings to the Vienna Convention on Diplomatic Relations, 1961", (1992) 18:1 RIS 3 at 10.

[31] VCDR, *supra* note 7 at art 31(1) (conferring upon a diplomatic agent immunity from the criminal jurisdiction of the receiving state, and qualified immunity from that state's civil and administrative jurisdiction, subject to exceptions) and art 32 (providing for sending state waiver of the immunity of diplomatic agents, their family members, and other staff of the mission). For recent judicial interpretation of the scope of immunity from civil and administrative jurisdiction, see Brendan Plant, "An Exception to Diplomatic Immunity for Claims Involving Modern Slavery" (2022) 81:3 Cam LJ 491–494.

[32] Knop, *supra* note 8 at 295.

[33] *Island of Palmas Case (or Miangas), United States v Netherlands*, Award, (1928) II RIAA 829 (PCA 1928) at 838.

supreme authority over their household to the exclusion of other contenders. Article 22(1) of the VCDR stipulates that agents of the receiving state shall not enter the premises of a diplomatic mission without securing prior consent from its head of the mission.[34] This imperious rulership is, moreover, cast as a microcosm of state rulership. Breaches of the inviolability guaranteed to diplomatic premises by Article 22, in defiance of the head of mission, are treated as injuries to the state.[35] It is the body of the state as much as that of the diplomat or the integrity of embassy buildings that is protected by the VCDR's guarantees, as reflected in the fact that only the state, not an individual diplomat, may waive diplomatic immunities under VCDR Article 32.[36] As presumptive ruler of the diplomatic household, the diplomat is cast by the VCDR as a proxy for the sovereign state. And in both respects, that rulership is invested with an all-or-nothing quality.

In broader ways too, the international legal privileging of the diplomatic household affords a model of how states and state representatives should relate to one another. Like the inhabitants of diplomatic households, states and state representatives are presumed to have (or at least to affect) familiarity with one another, merely by virtue of their being or representing states. This allows for phrases like the "family of nations" or "community of nations" to be bandied about within international law to this day, even as the racist lineage of such concepts is well known.[37] And it affords a basis for state leaders to greet one another publicly with handshakes and backslaps (sometimes "testosterone-laden death-grip handshakes"[38]) in a jocular style upon which feminist scholars of diplomacy have often remarked.[39] At the same time, international law demands that states continually affirm their separateness, and that other international legal actors defer to their distinctiveness, in line with the principle of sovereign equality.[40] This dynamic of legalised affiliation and disaffiliation echoes the rhythms of a family household and its rituals of distancing and intimacy, isolation and togetherness. And these rhythms are perhaps nowhere more in evidence than in diplomatic households, given their public-privateness.

International law's insistence on the diplomat being sole head-of-household, surrounded by subordinates, creates a template for hierarchical relation more generally on the international plane. It helps to affirm centralised hierarchy as the international legal norm *within* states as well as *between* states. The first (normalization of hierarchy within states) is expressed in the international law of state responsibility in its expectation that states interact through peak channels and persons, without regard to their intermingling at other scales or to informal, unofficial, and non-governmental contact among them. For example, Articles 4(2), 5 and 7 of the Articles on State

[34] VCDR, *supra* note 7 at art 22(1).

[35] E.g., *Concerning United States Diplomatic and Consular Staff in Tehran (US v Iran)*, [1980] ICJ Rep 3.

[36] VCDR, *supra* note 7 at art 32.

[37] Gerry Simpson, *Great Powers and Outlaw States: Unequal Sovereigns in the International Legal Order* (Cambridge, UK: Cambridge University Press, 2004) at 238–247; Karen Knop, "Lorimer's Private Citizens of the World" (2016) 27:2 EJIL 447 at 448–449.

[38] Kathryn C Statler, "Death-Grip Handshakes and Flattery Diplomacy: The Macron- Trump Connection and Its Larger Implications for Alliance Politics" in Robert Jervis et al, eds, *Chaos Reconsidered: The Liberal Order and the Future of International Politics* (New York, US: Columbia University Press, 2023) 248.

[39] Enzo Lenine & Naentrem Sanca, "Gender, Feminism and Diplomacy: Analysing the Institution through the Lenses of Feminist International Relations" (2022) 29:100 Organ. Soc. 98–122.

[40] On the relationship between sovereign equalities and "legalised hegemony", *see* Simpson, *supra* note 37. On deference, see Esmé Shirlow, *Judging at the interface: deference to state decision-making authority in international adjudication* (Cambridge, UK: Cambridge University Press, 2021).

Responsibility engender an expectation that authority to bind a state as a matter of international law will be vested in "*a* person or entity" and that such person's or entity's conduct will be imputed to the state even if they exceed domestic authority or contravene instructions.[41] This is carried through to the VCDR in the expectation, expressed in Articles 4, 5, and 6, that the head of mission will be a single, dominant person.[42] The second (affirmation of hierarchy between states) is evident in all the ways in which "[l]egalised hegemony…[has been] endorsed as a necessary part of the architecture of international legal order," with the primacy of the Security Council's five permanent members within the United Nations system being but one illustration.[43] In so fostering a sense of the inevitability and necessity of hierarchy within and between states, diplomatic households have both affirmed and leveraged gendered hierarchy as Part II will show.

III *Inside the diplomatic household: Gendered by law*

International legal configurations of the diplomatic household have not just naturalized hierarchy in general internationally; they have specifically normalized *gendered* hierarchies, intersecting with hierarchies of class and race. Or to express this in the inverse, the pervasiveness of gendered hierarchy helps to strengthen and sustain international legal relations hierarchically configured. As Vasuki Nesiah has written in another context, the "tropes and metaphors" of dominance and subordination in which international law routinely trades "have an uncanny accuracy in describing the gendered, racialized classed battles at home" including battles ongoing at home in diplomatic residences (about which more will be said at the end of this part).[44]

That the diplomatic households in which international law anchors itself have been juridically gendered is apparent in the controversies that surrounded the scope and composition of a diplomat's "family" during the mid-20th-century drafting of the VCDR. The delegations of Argentina and Spain, Ceylon, India, Italy, Sweden, the United States, among other states, proposed contending definitions, delimitations, or explanations of the "family" in this context. Unsurprisingly, given the makeup of the diplomatic profession in the early 1960s, these proposals almost all coded the diplomat as male and their spouse as female, and made no allowance for spouses' pursuing careers outside, or assuming professional roles within, the diplomatic premises.[45] Since then, the composition of diplomatic corps in many states has changed, although gendered hierarchies persist.[46] Also altered since that time are the laws of many nation states concerning the status and entitlements of LGBTQI+ partners, with associated change in the

[41] *Articles on Responsibility of States for Internationally Wrongful Acts*, 2001, Ch. IV.E.1 (emphasis added).

[42] VCDR, *supra* note 7.

[43] Simpson, *supra* note 37 at 93.

[44] Nesiah, *supra* note 17 at 4.

[45] The coding of diplomats as male in states' negotiating proposals was carried into the text of the VCDR in the use of masculine pronouns throughout. See VCDR *supra* note 7, arts 5(2), 9, 13(1), 16(2), 19(1), 20, 29, 30(2), 31(1)(c) and (3), 36(1)(b) and (2), 37(1), 38(1), 39(1), (2), (3) and (4), and 40(1). This is unsurprising given that '[w]omen were… prohibited from occupying official diplomatic positions in virtually all states until the early to mid-twentieth century': Ann E. Towns, "'Diplomacy Is a Feminine Art': Feminised Figurations of the Diplomat", (2020) 46 RIS 573 at 573–4.

[46] The proportion of women in the top echelons of the diplomatic corps remains small in many countries: Kishan S Rana, *The Contemporary Embassy: Paths to Diplomatic Excellence* (London, UK: Palgrave Macmillan UK, 2013) at 124; Lenine & Sanca, "Gender, Feminism and Diplomacy", *supra* note 39 at 99.

gendered make-up of the families of diplomatic agents accredited by states, albeit not everywhere.[47] Once again, though, hierarchies referable to gender and sexuality persist in this context, as do hierarchies premised on race, religion, and/or nationality.[48]

Beyond this primary gendered coding, there was considerable disagreement, at the time of the VCDR's drafting, about how far "family" should extend for purposes of conferring diplomatic privileges and immunities. Debate on this point made clear, nevertheless, that family members were presumptively dependent on the diplomat to which they were legally appended. It was also clear that family members were expected to remain dependent so for as long as they did not become a patriarch or submit to another patriarch through marriage. Ceylon's suggested amendment during the VCDR's drafting, for instance, anticipated that a diplomat would be accompanied by "his spouse, if any, [and] unmarried children" and potentially by "other immediate relatives of himself and his spouse, who are part of his household".[49] Argentina and Spain's joint proposal configured the diplomat's family more expansively and in further differentiated terms. In their version, the family comprised: "the spouse, minor sons, adult persons incapable of work, unmarried daughters, and ascendants in the first degree".[50] The proposal of the delegation of the United States gave the family an inflection that was at once more nuclear and more contractual. They suggested that "family" extend to: "the spouse of a member of the mission, any minor child or any other unmarried child who is a fulltime student, and such other members of the immediate family of a member of the mission residing with him as may be agreed upon between the receiving and the sending states."[51] In view of these contending proposals and related disagreements aired during drafting, the Committee of the Whole at the United Nations Conference on Diplomatic Intercourse and Immunities ultimately concluded that it was not advisable to define "family" at all in the VCDR.[52] Members of the diplomatic family were, it seemed, at once indispensable and indescribable for VCDR purposes.

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[47] Peter Rosputinský, "Current Diplomatic Practice on Partners of Homosexual Members of Diplomatic Missions and Wives of Polygamous Members of Diplomatic Missions" (2019) 22:4 Politické vedy 172 at 185-6 and 209 (reporting that some 25 or 26 states "tak[e] a view that the homosexual partner is not a member of the family of a member of the mission" and therefore not entitled to corresponding privileges and immunities, but observing an "emerging tendency of receiving States to take into account the sending States' definition of family (i. e. spouse or partner)" even where this extends to relationships unrecognized or even prohibited in receiving states' laws, remarking that this is "tak[ing] place on the basis of international courtesy and not of international law").

[48] On the persistence of hierarchies of ethnicity and race, and periodic efforts to counter these, in diplomatic corps, see Hanan Kholoussy, "The Private Affairs of Public Officials: Mixed Marriage and Diplomacy in Interwar and Post-Mubarak Egypt" (2014) 54:3–4 Welt. Islams. 483–503 (discussing Egyptian legislation barring the state's diplomats from marrying foreign spouses); Abou B Bamba, "An Unconventional Challenge to Apartheid: The Ivorian Dialogue Diplomacy with South Africa, 1960–1978" (2014) 47:1 IJHAS 77–99 at 79 (discussing the Ivory Coast's 1975 sending of a Black diplomatic representative accompanied by their White spouse to apartheid South Africa as an "attempt to subvert the South African racist ideology").

[49] United Nations Conference on Diplomatic Intercourse and Immunities, Official Records, Vol. II, 'Ceylon: Amendments to article 1' (8 March 1961) A/CONF.20/C.1/L.91

[50] United Nations Conference on Diplomatic Intercourse and Immunities, Official Records, Vol. II, 'Argentina and Spain: Joint amendment to article 1' (8 March 1961) A/CONF.20/C.1/L.105.

[51] United Nations Conference on Diplomatic Intercourse and Immunities, Official Records, Vol. II, 'United States of America: Amendments to article 1' (6 March 1961) A/CONF.20/C.1/L.17.

[52] United Nations Conference on Diplomatic Intercourse and Immunities, Official Records, Vol. I: Summary records of plenary meetings and of meetings of the Committee of the Whole, 'Thirty-Eighth Meeting' (4 April 1961) A/CONF.20/14 at 225-226.

Although the scope of the family was a matter of irresolvable disagreement among states negotiating the VCDR, the subordination of members of the diplomatic family to the diplomat was not at all controversial in this context. Conferral of derivative status on family members was apparent throughout the VCDR's drafting, and remained so in its later interpretations.[53] For instance, in submissions to a 1984 UK House of Commons Foreign Affairs Committee inquiry into 'The Abuse of Diplomatic Privileges and Immunities', the UK Diplomatic Service Wives Association (as it was then known) observed that "[f]amilies are regarded essentially as extensions of the persons of the diplomats", afforded privileges and immunities as a matter of law solely by way of insulating and supporting the diplomat "so that they can do the job they are sent to do, whatever the situation in the receiving State".[54] Although the English common law doctrine of coverture (that is, the legal absorption of a woman into the person of her husband) had largely been statutorily abolished by the mid-late nineteenth century,[55] the international law of diplomacy retained some version of it, encompassing not just women but all family members residing with a diplomat.[56] As a result, the VCDR extends virtually all the privileges and immunities conferred on a diplomatic agent to the members of that agent's family that form "part of his [*sic*] household" so long as they are not nationals of the receiving state.[57]

The VCDR similarly contemplated *non-familial* support structures being maintained around the diplomat at home, in the form of locally engaged staff and private servants. The class, racial, and gendered coding of these figures has never been uniform. Locally engaged staff working in embassies and consulates have not necessarily comprised a feminized, racialized workforce in all jurisdictions; indeed, they have often been drawn from local elites. Nonetheless, private servants in diplomatic residences generally reflect the demographics of domestic workers worldwide. And domestic work is an overwhelmingly female-dominated sector, with women domestic workers outnumbering men domestic workers in all regions except the Arab states.[58] This workforce also tends to be racialized; migrants and persons in racial or ethnic minorities bear disproportionate responsibility for domestic work.[59]

Among these non-family support staff surrounding a diplomat, the VCDR established a strict ranking. This need not have been the case. The draft treaty on diplomatic privileges and immunities initially prepared by the Rapporteur for the International Law Commission (the ILC), Emil Sandström, in 1955 proposed that all members of a diplomatic mission "from abroad" enjoy "the full protection accorded" to diplomatic agents. Indeed, Sandström proposed that the mission as a

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[53] Denza, *supra* note 26 at 319: it had "always [been] stressed that the privileges and immunities given to members of the family were derivative--his [*sic*] wife and children were regarded as extensions of the person of the diplomat".

[54] Quoted in Denza, *supra* note 26 at 320.

[55] Tim Stretton & Krista J. Kesselring, *Married Women and the Law: Coverture in England and the Common Law World* (Montreal, QC: McGill-Queen's University Press, 2013).

[56] On coverture's persistence, in kind, in other legal settings, see Allison Anna Tait, "The Return of Coverture" (2015) 114 Mich. L Rev. 99.

[57] VCDR, *supra* note 7 at arts 37(1), 40(1), 44.

[58] International Labour Organization, *Making decent work a reality for domestic workers: Progress and prospects ten years after the adoption of the Domestic Workers Convention, 2011 (No. 189)*, Report, by International Labour Organization, www.ilo.org, Report (2021) at 12.

[59] *Ibid* at 96.

whole be treated "as a unit" without "distinguish[ing] between the various categories of officials" working in it, at least in the case of "those members of the mission staff who are foreign subjects".[60] Regarding locally-engaged staff (nationals of the receiving state), including "administrative and service staff', Sandström was similarly inclined, arguing that they should enjoy "the full protection accorded to foreign staff" except that their exemption from receiving state taxes should be narrower, and they should not be immune to any exercise of civil jurisdiction against them.[61] Regarding private servants of "entitled persons" ("chauffeurs, for instance"), Sandström's approach to the extension of legal privileges remained inclusive and egalitarian, albeit more hesitantly so. He acknowledged that such persons' "services facilitate the task of the members of the mission" and that they would "often [have] been brought out with the mission" under the responsibility of its head, such that "[l]egal action against them [could] also have repercussions on their employer or the mission".[62] For these reasons, and because "[p]ractice… supports the idea that they should enjoy the privileges of their employers", he recommended that private servants that are foreign subjects enjoy the same privileges and immunities as "persons entitled in their own right" while "living under the same roof". As for, private servants that were receiving state nationals, Sandström proposed that they should only enjoy exemption from taxes on the "emoluments they receive by reason of their employment".[63]

Rejecting the general thrust of Sandström's approach, states participating in the VCDR drafting process decided instead, "by a rather narrow majority", to divide and stratify workers in diplomatic missions to a greater extent than the 1955 ILC report foreshadowed.[64] Expert administrative and technical staff—cipher clerks, for instance—were recognized as performing functions important enough to justify their being legally privileged.[65] In the final text of the VCDR, they enjoy almost all the international legal privileges and immunities enjoyed by diplomatic agents, so long as they are not nationals or permanent residents of the receiving state, except that their immunity from civil and administrative jurisdiction does not extend to acts performed outside the course of their duties and their personal baggage is not exempt from inspection. These privileges extend to members of their families "forming part of their respective households".[66] However, administrative and technical staff who are nationals or permanent residents of the receiving state only enjoy such privileges and immunities as are expressly "admitted by the receiving state".[67]

Non-familial workers in the diplomatic household with care-oriented, traditionally feminized forms of expertise—including "private servants"— were viewed with far greater ambivalence, even suspicion during the VCDR's drafting, although their services were also "considered…

[60] Alfred Emil Sandström, *Diplomatic intercourse and immunities*, Report of the Special Rapporteur of the International Law Commission UN Doc A/CN 4/91 (New York: United Nations, 1955) at 19.

[61] *Ibid* at 4-5, 6, 19.

[62] *Ibid* at 19-20.

[63] *Ibid* at 6.

[64] Denza, *supra* note 26 at 329.

[65] United Nations Conference on Diplomatic Intercourse and Immunities, Official Records, Vol. I: Summary records of plenary meetings and of meetings of the Committee of the Whole, 'Thirty-Second Meeting' (28 March 1961) A/CONF.20/14 at 197 (in the words of Mr. Glaser, representative of Romania).

[66] VCDR, *supra* note 7 at arts 37(2).

[67] *Ibid* at 38(2).

indispensable to the proper functioning of the [diplomatic] mission".[68] The delegate from Pakistan worried, for instance, that it "would be undesirable to extend diplomatic privileges too far", especially to the benefit of persons presumed to be of a lower social class. Pakistan's representative continued: "It would seem idealistic and even imprudent… to suggest that the standards and requirements of an ambassador and his doorman were identical, although in some cases that might well be true… It has in the past been normal to extend both privileges and immunities to recognized diplomats not only by reason of their functional capacity, but because it was presumed that they knew by education, experience, or training what their responsibilities were, not only to their own country, but also to the receiving [s]tate". Regarding persons not so educated, there "had been many cases in his own country", Pakistan's representative cautioned, "in which [diplomatic privileges and immunities] had been flagrantly abused".[69]

This circumspection towards non-family domestic workers or "private servants" in the diplomatic household was carried through to the final text of the VCDR in Articles 33(2), 37(4) and 38(2).[70] These afford private servants who are foreign nationals only limited guaranteed privileges, namely exemption from that state's taxes on wages and its social security contribution requirements. These are benefits that Eileen Denza suggests "should properly be regarded as privileges of their employer" rather than privileges afforded the staff themselves.[71] In the case of private servants who are locally engaged (i.e., nationals or permanent residents of the receiving state), they only enjoy such privileges and immunities as may be expressly "admitted by the receiving state", if any.[72] The VCDR also anticipates the receiving State exercising jurisdiction over private servants and other mission staff who are not diplomatic agents, so long as it does so "in such a manner as not to interfere unduly with the performance of the functions of the mission", almost as if these staff persons were part of the mission's furniture or equipment.[73] In these ways, assumptions about the relative value of different workers in the diplomatic household—often gendered, class-based and racialized assumptions—have been embedded in the international law of diplomacy via the VCDR.

This restriction of most diplomatic privileges and immunities to only the highest-status members of the diplomatic workforce and their families, and the attenuation of the legal privileges of those lower down the hierarchy, have typically been justified by "functional necessity".[74] That is to say, it is often claimed that a foreign cleaner or driver employed in a diplomatic household does not need immunity from receiving state law to perform their job. Against this characterization, such low or lower status work was recognized at the time of the VCDR's drafting as "indispensable

[68] United Nations Conference on Diplomatic Intercourse and Immunities, Official Records, Vol. I: Summary records of plenary meetings and of meetings of the Committee of the Whole, 'Thirty-Third Meeting' (28 March 1961) A/CONF.20/14 at 200 (in the words of Mr. Glasse, representative of the United Kingdom).

[69] United Nations Conference on Diplomatic Intercourse and Immunities, Official Records, Vol. I: Summary records of plenary meetings and of meetings of the Committee of the Whole, 'Thirty-Second Meeting' (28 March 1961) A/CONF.20/14 at 197 (in the words of Mr. Baig, representative of Pakistan).

[70] VCDR, *supra* note 7 at arts 33(2), 37(4) and 38(2).

[71] Denza, *supra* note 26 at 335.

[72] VCDR, *supra* note 7 at arts 38(2).

[73] *Ibid* at 37(4), 38(2).

[74] *Private Servant of Diplomat Case*, [1971] 71 ILR 546, discussed in Denza, *supra* note 26 at 336.

to… [an embassy's] proper functioning".[75] And the personal and legal risks to which domestic staff in diplomatic households may be exposed in some settings *because* of their work surely impedes their ability to function.[76]

Another factor weighing against the functional necessity of restricting most legal privileges and immunities to diplomatic agents *proper* is the rich historical record of those afforded auxiliary, derivative or subordinate status in fact doing vital diplomatic work, and of states relying upon such supposedly *lesser* diplomatic expertise. For instance, spouses (historically predominantly women) not occupying official posts are recognized as having done crucial diplomatic work from and in the diplomatic residence throughout the early modern period and beyond.[77] In 1685, for example, upon the sudden death of the French ambassador to the Ottoman Empire, Gabriel Joseph de Lavergne, comte de Guilleragues, his wife, Anne-Marie de Pontac, took over the embassy's affairs until 1686 with the acquiescence of Ottoman authorities.[78] In recent decades too, as women have performed senior diplomatic roles with increasing frequency and prominence in many states, spouses (still predominantly women) have continued to discharge diplomatic responsibilities while often cast in derivative roles as "wives" or "first ladies".[79] Similarly, servants, attachés, clerks, typists, and secretarial staff have been charged, in effect, with diplomatic responsibilities.[80] Interpreters are another category of personnel often effectively called to conduct diplomacy (through deft translation of tense communications for instance), but not recognised as doing so, as in the case of dragomans. And alongside them, historian Nathalie Rothman has further highlighted "the formative roles of dragomans' womenfolk in their kin's performance *qua* dragomans".[81] Yet notwithstanding the recognised importance of such subordinate or adjacent figures, the generic figure of the diplomat enshrined in the VCDR retains strong markers of gender, class, racial, and professional dominance underpinned by an hierarchical framing of diplomatic household relations. Despite many jurisdictions' efforts to diversify their diplomatic workforce, there has remained to this day a "lingering expectation that diplomats will… have the easy social

[75] United Nations Conference on Diplomatic Intercourse and Immunities, Official Records, Vol. I: Summary records of plenary meetings and of meetings of the Committee of the Whole, 'Thirty-Third Meeting' (28 March 1961) A/CONF.20/14 at 200 (in the words of Mr. Glasse, representative of the United Kingdom).

[76] See, e.g., Ben Doherty, "Taliban threaten Afghan security guards who work for Australian embassy in Kabul", *The Guardian* (29 May 2021), online: <https://www.theguardian.com/australia-news/2021/may/29/taliban-threaten-afghan-security-guards-who-work-for-australian-embassy-in-kabul>.

[77] Lucien Bély, "Women in Diplomacy: The Ambassadress Seen by Friedrich Carl von Moser" (2022) 44 Int. Hist. Rev. 990; David Do Paço, "Women in Diplomacy in Late Eighteenth-Century Istanbul", (2021) 65:3 Hist. J. 640; Molly M. Wood, "Wives, Clerks, and 'Lady Diplomats': The Gendered Politics of Diplomacy and Representation in the U.S. Foreign Service, 1900-1940" (2015) 10:1 Eur. J. Am. Stud., Document 1.6.

[78] Florian Kühnel, "The Ambassador is Dead – Long Live the Ambassadress: Gender, Rank and Proxy Representation in Early Modern Diplomacy" (2022) 44:5 Int. Hist. Rev. 1004–1020.

[79] Cynthia Enloe, 'Diplomatic and Undiplomatic Wives', in *Bananas, Beaches and Bases: Making Feminist Sense of International Politics,* 2nd ed (Berkeley, US: University of California Press, 2014) 174–210; Keith V. Erickson and Stephanie Thomson, "First Lady International Diplomacy: Performing Gendered Roles on the World Stage", (2012) 77 South Commun J 239.

[80] Edward Corp, "Sir David Nairne: Servant and Diplomat", (2014) 25 Diplomacy and Statecraft 3; Gaynor Johnson, "Women Clerks and Typists in the British Foreign Office, 1920-1960: A Prosopographic Study", (2020) 31 Dipl Statecraft 771.

[81] Rothman, *supra* note 22 at 17.

ways of th[ose who perceive themselves to be] naturally superior".[82] And, as this part has shown, such assumptions of superiority and dominance are not just expressions of primary socialisation *outside* the law, but also find support *in* international law in the legal ordering of diplomatic households and in the record of negotiations informing those arrangements.

Gendered hierarchies of diplomacy have not gone uncontested, however. They have been a matter of protest from within the diplomatic household for some time. Cynthia Enloe recalls feminist political organizing among "foreign-service wives" in the 1980s, including an unsuccessful effort in the United States in 1984 to legislate for diplomatic spouses to be paid for "diplomatic housework".[83] This built upon second wave feminist campaigns for "wages for housework".[84] More recently, the gendered makeup of diplomatic workforces, and the presence or absence of women at different levels of those workforces, has become something of a preoccupation among some governments and feminist scholars committed to liberal equality.[85] Scholars have documented at length how domestic and official workload allocations for women diplomats have changed over time, detailing gains and losses in Brazil, Indonesia, and elsewhere.[86] And most controversially (in view of prevailing critiques of feminist preoccupation with punishment, or so-called "carceral feminism"[87]), some feminists have sought standing waivers of diplomatic immunities to prosecute alleged perpetrators of gendered and racial violence on diplomatic premises.[88] Elsewhere, anti-human-trafficking advocates have worked to inform judicial interpretation of the scope of the commercial activities exception in the VCDR (which limits diplomats' immunity from civil and administrative jurisdiction to activities within their official functions) so that diplomats' treatment of foreign domestic workers amounting to modern slavery does not fall within the ambit of activities incidental to their official functions.[89] Meanwhile, feminist activists have routinely targeted embassies as sites of protest, regardless of who works in them, to object to the laws and policies of particular states, or to object to the state system wholesale.[90]

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[82] Iver B. Neumann, *At Home with the Diplomats: Inside a European Foreign Ministry* (Ithaca, US: Cornell University Press, 2012) at 11.

[83] Enloe, *supra* note 79 at 46.

[84] Louise Toupin, *Wages for housework: a history of an international feminist movement, 1972-77*, 1st ed (Vancouver; Toronto; London: UK, UBC Press & Pluto Press, 2018).

[85] Soumita Basu, "Introduction: Feminist Perspectives on Diplomacy" (2019) 21:1 Int Fem J Polit 4–8; Lenine & Sanca, "Gender, Feminism and Diplomacy", *supra* note 39.

[86] Wendy Andhika Prajuli, Richa Vidya Yustikaningrum & Dayu Nirma Amurwanti, "How gender socialization is improving women's representation in Indonesia's Foreign affairs: breaking the ceiling" (2021) 75:5 AJIA 527–545; Rogério de Souza Farias, "'Do You Wish Her to Marry?' Brazilian Women and Professional Diplomacy, 1918–1938" (2017) 28:1 Dip Statecraft 39–56.

[87] See, e.g., Elizabeth Bernstein, "Militarized Humanitarianism Meets Carceral Feminism: The Politics of Sex, Rights, and Freedom in Contemporary Antitrafficking Campaigns" (2010) 36:1 Signs 45–71.

[88] Martina E Vandenberg & Alexandra F Levy, "Human Trafficking and Diplomatic Immunity: Impunity No More Justice at the Door: Ending Domestic Servitude" (2012) 7 Intercultural Hum Rts L Rev 77–102.

[89] *Basfar v Wong*, [2022] UKSC 20; UN Human Rights Special Procedures, Mandate of the Special Rapporteur on trafficking in persons, especially women and children, *Statement by the Special Rapporteur, Siobhán Mullally, on United Kingdom Supreme Court judgment: Basfar v Wong and the law on diplomatic immunity* (Geneva, Office of the United Nations High Commissioner for Human Rights, 2022).

[90] See, e.g., Yana Hashamova, Beth Holmgren & Mark Lipovetsky, *Transgressive Women in Modern Russian and East European Cultures: From the Bad to the Blasphemous* (Milton Park, UK: Taylor & Francis, 2016).

What *has* gone largely uncontested in this pattern of recurrent protest in and around diplomatic premises is the basic, residential model of diplomacy on which international law insists, its presumptive enrolment of families and households, and the hierarchical template that they together comprise for international legal and political relations. It is to the limits of that model, and possibilities of moving beyond it, that I next turn.

IV *The household as method*

Much as Karen Knop proposed the city as "an ongoing methodological challenge and resource" for international legal scholarship, this article proposes the diplomatic household—that international law has both structured and modelled itself on—as an aperture through which to "think about international law in normative or critical as well as analytical ways".[91] This final section teases out some ways in which the residential orientation that international law confers upon diplomacy might warrant critique. It turns briefly to a dispute litigated in recent years between Equatorial Guinea and France before the ICJ over whether an opulent residence in Paris had acquired the status of a "premises of the mission".[92] A focus on this case suggests how international legal treatment of the diplomatic household might offer a novel way of grappling with international law's implication in the ongoing reproduction and maintenance of large-scale social, economic and racial inequities, including in their gendered dimensions.

Embedded in the model that diplomatic households afford international law, via the VCDR, are several claims about the world that are contentious. This model suggests that it is beyond question what are, to a given state and its constituents, the most important places on which to focus internationally. It indicates, too, that we know well in which settings and circles are decisions being made and ideas formed that are likely to bear significantly upon that state's, and the world's, near-term and long-term fate. It implies, above all, that the world is so uniform and univocal that one need only pay court to a relatively small number of eminent humans within it in order to be sure to have one's finger on its proverbial pulse and to be able to foresee and forestall as much peril, and realize as much collective benefit, as possible.

Such a model might have made sense when the world was imagined as turning on a European fulcrum, or a small number of mainly European fulcra.[93] It might have made sense when international travel was time-consuming, arduous, and costly and the preserve of relatively few (diplomats, merchants, missionaries, aristocrats, exiles, refugees, colonizers, and conquerors). But it is hard to reconcile with the fact of hundreds of millions of people living outside their countries of birth and many millions more engaged continually in temporary, multidirectional, or circular migrations.[94] It likewise does not square with a world in which the pivotal status of certain "global cities"—as well the epistemic priority afforded some states and languages over others—have been

[91] Knop, *supra* note 6 at 454, 443.

[92] *Immunities and Criminal Proceedings (Equatorial Guinea v France)*, 2020 ICJ Reports 300.

[93] Catherine Fletcher, *Diplomacy in Renaissance Rome: The Rise of the Resident Ambassador* (Cambridge, UK: Cambridge University Press, 2015).

[94] Yan Tan & Xuchun Liu, "Measuring diaspora populations and their socio-economic profiles: Australia's Chinese diaspora" (2022) 60:4 Geogr. Res. 589–609 at 589.

relentlessly called into question.[95] It does not reflect how determinative nonhuman forces now are, in the Anthropocene, of relative capacities and prospects on the international plane.[96]

Drawing on postcolonial scholarship and late-1990s literature on so-called "ordinary cities", Jennifer Robinson observed more than two decades ago that "[t]here are a large number of cities around the world which do not register on intellectual maps that chart the rise and fall of global and world cities";[97] the latter are the kinds of cities to which diplomats are most often posted. Robinson was critical of the unacknowledged economism, developmentalism, and hierarchism of scholars treating certain cities as pivotal for the world, and the resulting consignment of countless places and peoples to superfluity. Moreover, echoing Karen Knop's later work on cities, Robinson argued that "the stakes [of so doing] are considerably higher than analytical correctness or theoretical insight".[98] What is at stake, both Robinson and Knop showed in different ways, is how we might think from, through and with the international.

By the same token, what is at stake in revisiting the international legal common sense that diplomacy should entail shuttling between hierarchically ordered households located in some states' capital cities is far more than the functional efficacy of this arrangement. At stake is the politics of adherence to that architecture as a basis for international legal relation. Agents engaged in private diplomacy (that is, non-state, commercial, and cultural diplomacy) at the high-value end are routinely cocooned by wealth, property, and private security, employing privileges under private law in lieu of public law immunity.[99] The VCDR specifies that diplomats should not pursue "personal profit" in the state to which they are posted.[100] Nonetheless, as the VCDR frames it, diplomacy in the public service does not so much offer an alternative to relations characteristic of private elites abroad, as aspire to emulate them—for instance, by anticipating that diplomatic residences be styled after noble or wealthy private households as some negotiating the VCDR seemed to do.[101]

The difficulty of maintaining a defensible distance between the lifestyles of those enjoying ill-gotten privilege and the international legally privileged circumstances of diplomats (barred from

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[95] See, e.g., Michiel van Meeteren, Ben Derudder & David Bassens, "Can the straw man speak? An engagement with postcolonial critiques of 'global cities research'" (2016) 6:3 Dialogues Hum. Geogr. 247–267.

[96] *AR6 Synthesis Report: Climate Change 2023: Summary for Policymakers*, by Intergovernmental Panel on Climate Change (Geneva: Intergovernmental Panel on Climate Change, 2023).

[97] Jennifer Robinson, "Global and world cities: a view from off the map" (2002) 26:3 IJURR 531–554 at 531.

[98] *Ibid* at 533.

[99] On commercial agents under international law, see Robert Jennings & Arthur Watts, *Oppenheim's International Law: Volume 1 Peace*, 9th ed (Oxford, UK: Oxford University Press, 2008) at 1175–1176.

[100] VCDR, *supra* note 7 at art 42.

[101] Although the Mexican delegate speculated that "the offices of a mission [could be] situated in an apartment building" and the Czech, Hungarian and French delegates all contemplated that diplomatic premises may be rented, the delegates of Spain, the United Arab Republic, and Venezuela expressed far more entitled visions of diplomatic accommodation in their remarks, contemplating that a diplomatic mission would often necessarily extend to a summer residence: U.N. Conference on Diplomatic Intercourse and Immunities, *Summary Records of Plenary Meetings and of Meetings of the Committee of the Whole, Thirty-Second Meeting*, 142, 147, 148, 1985, 109-110, U.N. Doc. A/CONF.20/14 (Vol. I) (Mar. 20-21, 27, 15, 1961) (per Mr Rosenzweig Diaz, Mr Jezek, Mr Ustor, Mr de Vaucelles, Mr de Erice y O'Shea, Mr Nafeh Zade, and Mr Carmona, representatives of Mexico, Czechoslovakia, Hungary, France, Spain, the United Arab Republic, and Venezuela respectively).

engaging in activities for personal profit[102]) became apparent in the 2020 judgment of the ICJ in the *Immunities and Criminal Proceedings* Case, alluded to above.[103] The parties' dispute in that case arose from the initiation of criminal proceedings in French courts in 2008, initially at the behest of Transparency International and later as a judicial investigation, alleging misappropriation of public funds by President Teodoro Obiang Nguema (Africa's longest serving ruler, in power since 1979) and several other African state leaders. This followed an earlier complaint unsuccessfully filed in 2007 by two non-governmental organizations and an association representing the Congolese diaspora.[104] In connection with these suits, in 2011 and 2012, French investigators searched a palatial residence at 42 avenue Foch in Paris, removing luxury vehicles and other items, and an attachment order was issued against the property.[105] This 110-room mansion had been acquired in 2004 by President Obiang's son Teodoro Nguema Obiang Mangue (Minister of State at the time of the dispute's initiation and later the Second Vice-President of Equatorial Guinea), but sold in 2011 to the Republic of Equatorial Guinea. After a French court found the younger Mr. Obiang guilty of money laundering offences in 2017, the confiscation of the disputed assets was confirmed, which orders were upheld on appeal. The ICJ proceedings were initiated by Equatorial Guinea in 2016 alleging that France had, by attaching the building at 42 avenue Foch, breached its obligation to respect the sovereign equality of states, its duty of non-interference in the internal affairs of another state, and its obligations under the VCDR and another treaty as well as general international law. At the crux of the dispute was whether the building had acquired the status of "premises of the mission" of Equatorial Guinea within the meaning of the VCDR. The ICJ ultimately ruled, by nine votes to seven, that this status had never been acquired and, by twelve votes to four, that France had not breached its obligations under the VCDR.[106]

The arguments of both parties in this case relied, in different ways, on the VCDR's shaping of the diplomatic household around hierarchy. Equatorial Guinea relied on the model of exclusive, undivided household rulership embedded in the VCDR as a proxy for state sovereignty by arguing that the régime for the international legal protection of diplomatic premises was "declaratory", such that merely designating premises as such was "conclusive" and sufficient for them to be rendered inviolable. It emphasized that Mr. Obiang "had the authority to act on behalf of that [s]tate by virtue of his high rank" and was "entrusted with functions of crucial importance, which are closely linked to the protection of Equatorial Guinea's sovereignty".[107] To condition the assignment of the disputed building for diplomatic purposes on gaining prior consent from the receiving state (in the absence of any domestic legislative requirement or clearly established practice to that effect) would be incommensurate, Equatorial Guinea contended, with the "spirit" of the VCDR "rooted not in mistrust…, but in the need to create conditions that promote friendly relations between equal sovereign [s]tates".[108]

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[102] VCDR, *supra* note 7 at art 42.

[103] *Immunities and Criminal Proceedings (Equatorial Guinea v. France)*, *supra* note 92.

[104] Maïa de la Baume, "A French Shift on Africa Strips a Dictator's Son of His Treasures", *The New York Times* (23 August 2012), online: <https://www.nytimes.com/2012/08/24/world/europe/for-obiangs-son-high-life-in-paris-is-over.html>.

[105] *Immunities and Criminal Proceedings (Equatorial Guinea v. France)*, *supra* note 92 at 311–314.

[106] *Ibid* at 338–339.

[107] *Immunities and Criminal Proceedings (Equatorial Guinea v. France)*, Memorial of Equatorial Guinea, 3 January 2017 at 84.

[108] *Immunities and Criminal Proceedings (Equatorial Guinea v. France),* Reply of Equatorial Guinea, 8 May 2019 at 18.

France too relied on the VCDR's subordination of the diplomatic household to the service of the state by insisting that a building that was "not actually assigned" for the purposes of the mission, but was instead "reserved for… private use", could not be characterized as a diplomatic residence regardless of its primary resident's official role.[109] Accepting implicitly that diplomatic residences are dual-use spaces of privilege, France depicted the avenue Foch property instead as a single-use space, emphasising just how much of it was dedicated to private pleasure and self-care. Accordingly, France's submissions specified that the property housed "a gym, a hammam, a discotheque… a hair salon… and a home cinema" and that those who inspected it did not report having encountered any "offices, workspace, or meeting areas". [110]

What the property lacked, in France's contention, was an orderly network of human relations that would render it "an inanimate reflection of the necessary public privileges and immunities of the persons who embody the mission, and who constitute the embassy staff".[111] In an intriguing twist on the gendered hierarchies characteristic of diplomatic households, Equatorial Guinea did allege that another, less senior diplomat, Ms. Mariola Bindang Obiang (whose family relationship to Mr. Obiang, if any, was unspecified), had taken up residence in the premises from 2011 onwards, something suggestive of the workspace-cum-family-space characteristic of diplomatic residences, and their quotidian reliance on lower- and mid-tier staff.[112] However, this was refuted by French investigators' evidence that "there were neither diplomatic documents nor property or items belonging to a female resident found in the disputed building".[113] Instead, French submissions before the ICJ made much of French investigators' recovery from the property of "extravagant purchases" made by Mr. Obiang "in a personal capacity" including art "masterpieces", furnishings, luxury vehicles worth "some €7.5 million" and "men's clothing all in the same size, some of which was monogrammed", while "no official documents were discovered". All these details were advanced to attest to 42 avenue Foch having been reserved for Mr. Obiang's harboring of "ill-gotten gains" for his "private use".[114]

France's insistence that private and public privilege be distinguished in this way, and the ICJ's acceptance of that position, demanded a systematic forgetting of other forms of ill-gotten gains—those derived from colonialism—that accrued as much to public as to private coffers. These are discernible to this day in the opulence of France's own diplomatic residences around the world, including in impoverished former French colonies such as Haiti, as they are in the diplomatic property portfolios of many other former colonial powers, in Paris and elsewhere.[115] Equatorial

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[109] *Immunities and Criminal Proceedings (Equatorial Guinea v. France),* Counter-Memorial of France, 6 December 2018 at 48-49.
[110] *Ibid* at 6.
[111] *Ibid* at 37 quoting from the Supreme Restitution Court of Berlin, SRCB, 10 July 1959, *Tietz* v. *Bulgaria*, (ORG/A/1266), AJIL, Vol. 54, 1960, pp. 165-178, p. 177
[112] *Ibid* at 8.
[113] *Immunities and Criminal Proceedings (Equatorial Guinea v. France)*, *supra* note 91, 375 at para 15 (separate opinion of Judge Sebutinde).
[114] *Immunities and Criminal Proceedings (Equatorial Guinea v. France), supra* note 109 at 10, 47, 49; *Immunities and Criminal Proceedings (Equatorial Guinea v. France),* Rejoinder of France, 14 August 2019 at 24.
[115] Andrew Ayers, "New French Embassy Opens in Haiti Years After Devastating Earthquake" *Architectural Record* (20 November 2018), <https://www.architecturalrecord.com/articles/13756-new-french-embassy-opens-in-haiti-years-after-devastating-earthquake>; Alain Stella, *Historic Houses of Paris: Residences of the Ambassadors* (Paris: Flammarion S.A., 2010); Oliver Miles, "If we want our diplomats to charm the world, they need stylish residences", *The Guardian* (28 March 2019),

Guinea sought to draw this connection by recalling, in its initial memorial, the history of Equatorial Guinea's annexation by Portugal for slave trading purposes and, later, Spain's "complete subjugat[ion]" of the country's people, and exploitation of its equatorial forests, while enjoying the benefit of "recogni[tion]" from France.[116] The ICJ's recitation of the factual background to the case ignored this background entirely, however, commencing its story with the anticorruption efforts of Transparency International in France.[117]

Only by ignoring the VCDR-sanctioned imprint of hierarchy on diplomatic households generally, and disregarding the long history of gendered, racial, and class-based subordination in and around these households, could the ICJ maintain the outrage that France's submissions invited it to feel at Mr. Obiang's extravagant displays of misappropriated wealth. This is where approaching international law through the lens of the diplomatic household can afford "an ongoing methodological challenge and resource" for international legal work.[118] Homing in on the strange, stratified, public-private world of residential diplomacy at the center of this case aids the drawing of connections between hierarchies large and small, old and new. It helps bring into one frame the history of peoples of Equatorial Guinea being forced into service and slavery for European colonizers and more recent echoes of that history, including in Mr. Obiang's grotesque profiteering. Set against the background of its own histories of diplomatic householding, France's championing of anti-corruption in this context does not seem borne solely of concern for the impoverished peoples of West Africa. Might it not also be inflected by awareness of French complicity in the plight of West African peoples, and France's desire to project responsibility elsewhere?

French courts' and investigators' pursuit of accountability for "private" extractivism by African rulers, through their abuse of diplomatic immunity for instance, has proceeded alongside France's resistance to admitting any public liability to pay reparations for colonization or slavery—resistance endorsed by French courts on technical grounds centered on French tort law.[119] The logic of France refusing to admit material liability for its fleecing of African colonies while allowing legal action by or on behalf of African peoples against their contemporary rulers depends on the kind of rigid separation of public and private worlds that was in contention in the *Immunities and Criminal Proceedings* Case. That case showed, however, that any such separation is difficult to sustain in the context of a diplomatic household. Rather than decide for itself whether the avenue Foch property was, objectively, public or private space, the ICJ focused instead on surrounding procedure, namely how the parties had communicated on this question and whether, in the case of France, its "object[ion] to Equatorial Guinea's designation of the building as premises of its diplomatic

<https://www.theguardian.com/commentisfree/2019/mar/28/new-york-penthouse-new-york-trade-commissioner>.

[116] *Immunities and Criminal Proceedings (Equatorial Guinea v. France), supra* note 107 at 6-7.

[117] *Immunities and Criminal Proceedings (Equatorial Guinea v. France), supra* note 92 at 311.

[118] Knop, *supra* note 6 at 454.

[119] For the most recent ruling on this matter, in which the French Court of Cassation rejected claims for reparations made against the French state, see *Le Mouvement international pour les réparations Martinique (MIR) et al. v France*, Court of Cassation, Civil Chamber, 5 July 2023, No. H 22-13.457. For background and context, see generally Itay Lotem, "Between Resistance and the State: Caribbean Activism and the Invention of a National Memory of Slavery in France" (2018) 36:2 Fr. Politics Cult. Soc. 126–148; Ariela J Gross & Chantal Thomas, "The New Abolitionism, International Law, and the Memory of Slavery" (2017) 35:1 Law Hist. Rev. 99–118 at 106–110; Julien Vincent, "Slavery money: Understanding the debate on a historical compensation", Le Monde.fr (24 July 2023), <https://www.lemonde.fr/en/france/article/2023/07/24/slavery-money-understanding-the-debate-on-a-historical-compensation_6064784_7.html>.

mission" was "timely" and "neither arbitrary nor discriminatory in character".[120] In so doing, the ICJ effectively admitted the inescapable negotiability of any delimitation of public from private space in the context of diplomatic householding. Against this backdrop, it is hard to regard French courts' handling of public (state) and private (individual) liability for "ill-gotten gains" in colonial and post-colonial contexts as untangled. Viewed through the optic of a diplomatic household, where public and private ordering and work are often hard to prize apart, the French state's position—that it should be shielded from liability to make reparation for its own colonial profiteering while lambasting efforts (in the ICJ and elsewhere) by current leaders of former colonies to render themselves immune from charges of extortionate rule—seems fragile and tendentious.

V *Conclusion: Unhoming diplomacy?*

Drawing inspiration from the distinctive and vivid slant that Karen Knop's work offered on inequalities sustained in and by international law, this article has proposed the legal ordering of diplomatic households as a window through which to reflect once more on the intersecting hierarchies, including gendered hierarchies, embedded in international legal order. It has demonstrated the insights that one might gain from this vantage point by revisiting the 2020 judgment of the ICJ in the *Immunities and Criminal Proceedings* Case through a focus on the residence in contention in that case.

Nonetheless, the modelling of diplomatic and other modes of international legal work on an armature of hierarchically ordered human households, as documented in this article, has not remained static. And change in this quotidian mode of ordering could perhaps inspire thinking about prospects for transformation at other sites and scales. States with resources to do so have already extended the portfolios of their diplomatic personnel, and diversified the locations of their diplomatic premises, beyond the interstate to-and-fro anticipated by the VCDR. For instance, Australia, Denmark, Estonia, France, Japan, the Netherlands, the United Kingdom, and the US have all appointed "tech ambassadors" by one name or another in recent years.[121] Australia, Brazil and other states are represented by Ambassadors for Climate Change.[122] The European Union has opened an office in California's Silicon Valley that some commentary has denoted an "embassy",

[120] *Immunities and Criminal Proceedings (Equatorial Guinea v. France)*, *supra* note 92 at 337. A conversation with Yoshiyuki Lee-Iwamoto about the ICJ's proceduralism in this case was invaluable on this point.

[121] Australian Government, *Ambassador for Cyber Affairs and Critical Technology*, Minister for Foreign Affairs (May 25 2023), <https://www.foreignminister.gov.au/minister/penny-wong/media-release/ambassador-cyber-affairs-and-critical-technology>; Laurie Clarke, *Tech Ambassadors Are Redefining Diplomacy for the Digital Era*, Tech Monitor (February 16 2021), <https://techmonitor.ai/leadership/innovation/tech-ambassadors> (last visited July 25, 2023); US Government, *Nathaniel C. Fick Ambassador-at-Large Bureau of Cyberspace and Digital Policy*, Department of State (September 21 2022) <https://www.state.gov/biographies/nathaniel-c-fick/>.

[122] Australian Government, *New Ambassador for Climate Change*, Department of Climate Change, Energy, the Environment and Water (November 9 2022), <https://www.dcceew.gov.au/about/news/new-ambassador-for-climate-change>; Government of Brazil, *Ambassador Extraordinary for Climate Change*, Ministério das Relações Exteriores (February 17 2023), <https://www.gov.br/mre/en/contact-us/press-area/press-releases/ambassador-extraordinary-for-climate-change>.

even as it clearly diverges from the received model.[123] The Convention on Migratory Species has, since 2006, been supported by an honorary Ambassador Program that charges prominent individuals with advocating for the interests of migratory species, as if they were diplomats acting on those species' behalf.[124] Alongside and against these state-led transformations, there is a long tradition of activists and protestors provocatively reimagining the place of the diplomatic embassy through engagement as much with the "low law" of policing, municipal law and private property as with the "high law" of the VCDR; these are matters on which Karen Knop was working in the months prior to her death, and on which Karen Engle's contribution to this special issue is illuminating.[125] It is perhaps not a bridge too far from these various developments to imagine diplomats being given labile responsibilities along diverse pathways of human and non-human relation, rather than continually taking up residence in, and moving bilaterally between, hierarchical households in a select few state capitals.

Putting ambassadors in motion with fancy new titles or sending them to Silicon Valley does not, of course, do anything to confront the hierarchical armature that the diplomatic household embeds in international law, nor engage its differential valuation of people and places involved in diplomacy. Even so, the point of illuminating this armature and showing it to be undergoing transformation is to tap its potential as "an ongoing methodological challenge and resource" for international law, much as Karen Knop sought to do with international law's "metrocentricity".[126] To think of the placement, configuration, staffing, and running of diplomatic households as a matter of making and remaking international legal order writ large offers a different take on international law and diplomacy, who has a stake in those, and how and where they might be recomposed. This brackets, too, accounts of diplomacy as that most hide-bound and acquiescent of endeavours, holding little or no strategic interest or potential for anti-hierarchical work.[127] To recast the diplomatic household and instruments of diplomatic law like the VCDR as keystones of legalised hierarchy on the international plane that are ripe for organizing and reorganizing is to

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[123] Spencer Feingold, *Why the European Union Is Opening a Silicon Valley 'Embassy'*, World Economic Forum (August 16 2022), <https://www.weforum.org/agenda/2022/08/why-the-european-union-is-opening-a-silicon-valley-embassy/> (last visited July 25 2023).

[124] *Migratory Species Ambassador Programme*, Convention on the Conservation of Migratory Species of Wild Animals, <https://www.cms.int/en/about/migratory-species-ambassador-programme>.

[125] I am indebted to David Dyzenhaus for sharing notes and slides from a talk that Karen Knop gave in the ILA Seminar Series hosted by the University of Nottingham on March 23, 2022, entitled "States of Protest: International Law and the Distribution of Democracy" (on file with the author). The references above to "high law" and "low law" are Karen's, borrowed from those notes. For a noteworthy example of activist appropriation of the modality of a diplomatic mission, and its rearticulation as a space at once precarious and enduring (and one on which Karen remarked in her talk), see Gary Foley, Andrew Schaap, and Edwina Howell, eds, *The Aboriginal Tent Embassy: Sovereignty, Black Power, Land Rights and the State* (Abingdon, Oxfordshire, UK: Routledge, 2013) (writing on the Aboriginal Tent Embassy, made up of an assortment of tents and signs, that has been maintained on lawns near Australia's Federal Parliament in Canberra since 1972).

[126] Knop, *supra* note 6.

[127] See, e.g., Antonio Gramsci, *Selections from the Prison Notebooks of Antonio Gramsci*, Quintin Hoare & Geoffrey Nowell-Smith, eds (London, UK: Lawrence & Wishart, 1971) at 172 (arguing that "[t]he diplomat inevitably will move only within the bounds of effective reality, since [their] specific activity is not the creation of some new equilibrium, but the maintenance of an existing equilibrium within a certain juridical framework".) More pointedly, Chelsea Watego, a Munanjahli and South Sea Islander scholar of race, has argued that "[t]here is no way of dealing with race through diplomacy": Chelsea Watego, "Always Bet on Black (Power): The Fight against Race" (2021) 80:3 Meanjin 22–23.

make of them the kind of spaces for which Karen Knop was forever on the hunt, namely "legal space[s] of possibility" in the most unlikely of locales that might suggest ways of "turn[ing]… anxieties about international law into opportunities".[128]

[128] Karen Knop, "Foreign Relations Law: Comparison as Invention" in Curtis A Bradley, ed, *The Oxford Handbook of Comparative Foreign Relations Law* (Oxford, UK: Oxford University Press, 2019) 45 at 61.