

*Al-Juffali v. Estrada*: Battle Royale: A Fight for Alimony

I. OVERVIEW ..... 459  
II. BACKGROUND ..... 460  
    A. *Statutory Framework*..... 460  
    B. *Establish as a Permanent Representative* ..... 462  
    C. *Judicial Examination of Immunity*..... 463  
    D. *Statutory Exemptions from Immunity*..... 465  
III. COURT’S DECISION..... 467  
IV. ANALYSIS ..... 470  
V. CONCLUSION ..... 472

I. OVERVIEW

Diplomatic immunity may not always protect a divorcee from alimony,<sup>1</sup> so diplomats and Permanent Representatives should exercise caution when getting married.<sup>2</sup> In 2001, Walid Ahmed Al-Juffali, a Saudi Arabian businessman, married his now ex-wife and former supermodel, Christina Estrada, and, in 2002, the couple’s only daughter was born.<sup>3</sup> The couple married in Saudi Arabia and lived a “cosmopolitan life” in the United Kingdom throughout their eleven-year marriage.<sup>4</sup> In 2012, the marriage deteriorated, and Al-Juffali entered into a new marriage with a different woman, legal under Saudi Arabian law.<sup>5</sup> In 2014, Estrada filed for divorce and financial relief under part III of the Matrimonial and Family Proceedings Act of 1984.<sup>6</sup> Al-Juffali, following his appointment as a Permanent Representative of St. Lucia to the International Maritime Organization (IMO), applied for a dismissal of the claim on the grounds that he is immune from such a claim, as a Permanent Representative.<sup>7</sup>

The IMO is an “organi[z]ation established by treaty and a speciali[z]ed agency of the United Nations.”<sup>8</sup> The IMO’s status, as a specialized agency of the United Nations (U.N.), allows the organization

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1. See *Al-Juffali v. Estrada* [2016] EWCA (Civ) 176 [92] (Eng.).  
2. *Id.* at [2].  
3. *Id.*  
4. *Id.*  
5. *Id.*  
6. *Id.* at [1].  
7. *Id.* at [2].  
8. *Id.* at [3].

to appoint a Permanent Representative for each of its Member States.<sup>9</sup> On April 1, 2014, the IMO appointed Al-Juffali as the Permanent Representative of St. Lucia to the United Kingdom, which took effect two weeks later.<sup>10</sup> Al-Juffali's name appeared on the official diplomatic list produced by the Foreign and Commonwealth Office of the United Kingdom.<sup>11</sup> Al-Juffali's status as a Permanent Representative afforded him diplomatic immunity within the receiving country under the U.N. Convention on the Privileges and Immunities of Specialized Agencies and the Headquarters Agreement between the United Kingdom and the IMO.<sup>12</sup>

The High Court of Justice (Family Division) held that Al-Juffali could not strike his ex-wife's claim for financial relief because Al-Juffali "had not discharged any functions as a Permanent Representative."<sup>13</sup> The lower court opined that Al-Juffali's appointment as Permanent Representative was to escape the jurisdiction of the U.K. courts and avoid liability for alimony.<sup>14</sup> Justice Hayden of the High Court of Justice (Family Division) held the appointment was feigned and, therefore, would not afford Al-Juffali Permanent Representative immunities.<sup>15</sup> The justice further held that immunity could not protect Al-Juffali due to his status as a permanent resident of the United Kingdom.<sup>16</sup> The Court of Appeal (Civil Division) of the Royal Courts of Justice *held* that the lower court lacked the power to conduct an inquiry to determine if a Permanent Representative has discharged its duties, yet affirmed the lower court's decision that Al-Juffali was not entitled to diplomatic immunity because he was a permanent resident of the United Kingdom. *Estrada v. Al-Juffali* [2016] EWCA (Civ) 176 [92] (Eng.).

## II. BACKGROUND

### A. *Statutory Framework*

The United Kingdom of Great Britain and Northern Ireland ratified the Vienna Convention on Diplomatic Relations (VCDR) on September 1, 1964.<sup>17</sup> Less than twenty years prior, the United Kingdom and the

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9. *Id.*

10. *Id.* at [16].

11. *Id.*

12. *Id.* at [3].

13. *Id.* at [1].

14. *Id.*

15. *Id.*

16. *Id.*

17. Vienna Convention on Diplomatic Relations, Apr. 18, 1961, 500 U.N.T.S. 95 [hereinafter VCDR].

General Assembly of the U.N. adopted the U.N. Convention on the Privileges and Immunities of the Specialized Agencies (Specialized Agencies Convention).<sup>18</sup> The VCDR does not control the privileges or immunities of Permanent Representatives; however, courts have applied the VCDR to Permanent Representatives for purposes of determining immunity; thus, it is relevant as a point of reference.<sup>19</sup>

The U.N. Charter establishes the procedure for creating specialized agencies.<sup>20</sup> Specialized agencies are intergovernmental agencies, which operate internationally in areas involving economics, social issues and policy, cultural issues and policy, education, and health.<sup>21</sup> The U.N. Economic and Social Council is the U.N. body authorized to enter into agreements with intergovernmental organizations, establishing an organization as a specialized agency of the U.N.<sup>22</sup>

The Specialized Agencies Convention establishes the privileges and immunities enjoyed by representatives of specialized agencies established by the U.N.<sup>23</sup> Representatives receive immunity from any legal process, not only during their time as a representative but also during the time they travel to and from the receiving country.<sup>24</sup> The statute explains the immunity from legal process ensures the representatives' freedom of speech and the ability to fulfill their duties in the receiving country.<sup>25</sup> The convention justifies such immunity by stating the immunity is "to safeguard the independent exercise of their function in connection with the specialized agencies," yet the immunity applies even if the representative is no longer engaged in such duties.<sup>26</sup>

The United Kingdom and the IMO have an additional agreement establishing London as the headquarters of the IMO.<sup>27</sup> The document established full privileges and immunities to Permanent Representatives and five Divisional Directors of the headquarters stationed in the United Kingdom.<sup>28</sup> The Parliament of the United Kingdom periodically adopts

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18. Convention on the Privileges and Immunities of the Specialized Agencies, Nov. 21, 1947, 33 U.N.T.S. 261 [hereinafter Specialized Agencies Convention].

19. See Estrada v. Al-Juffali [2016] EWCH (Fam) 213 [9] (Eng.).

20. U.N. Charter arts. 57, 63.

21. *Id.* art. 57.

22. *Id.* art. 63.

23. Specialized Agencies Convention, *supra* note 18, art. 1, § 2.

24. *Id.* art. 5, § 13.

25. *Id.* art. 5, § 14.

26. *Id.* art. 5, §§ 14, 16.

27. International Maritime Res. A.908(22), Agreement with the Host State Regarding the Extension of Privileges and Immunities to Permanent Representatives and Divisional Directors ¶ 2 (Nov. 22, 2001) [hereinafter Headquarters Agreement].

28. *Id.*

and legitimizes the treaty between the IMO and the United Kingdom.<sup>29</sup> The headquarters agreement between the United Kingdom and the IMO established the “permanent resident” exception to the privileges and immunities of Permanent Representatives.<sup>30</sup> The Headquarters Agreement, the Specialized Agencies Convention, and the VCDR, when necessary,<sup>31</sup> govern the privileges and immunities of Permanent Representatives of the IMO within the United Kingdom.<sup>32</sup>

*B. Establish as a Permanent Representative*

Member States of the IMO may appoint Permanent Representatives in the United Kingdom in accordance with the procedures outlined in the Headquarters agreement.<sup>33</sup> Member Governments must write to the Secretary-General of the United Kingdom regarding the appointment of a Permanent Representative, including the name and rank of the representative, and the effective date of the appointment.<sup>34</sup> The Secretary-General then informs the U.K. Government, which may then approve or deny the appointment, and once approved, the appointment is effective.<sup>35</sup> The VCDR, while not wholly controlling for Permanent Representatives, does state that members of the diplomatic mission “should in principle be of the nationality of the sending State.”<sup>36</sup> Courts should interpret international instruments as compatible, implying the nationality of a Permanent Representative may be a relevant factor for accepting an appointment.<sup>37</sup>

Upon appointment to a position, like a diplomat or a Permanent Representative who enjoys privilege and immunity from the laws of a receiving government, the applicable treaties, conventions, and domestic laws provide insight as to when such privileges and immunities begin.<sup>38</sup> The Specialized Agencies Convention states Permanent Representatives

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29. International Maritime Organisation (Immunities and Privileges) 2002, No. 1826, art. 15 [hereinafter IMO Order].

30. *Id.*; Headquarters Agreement, *supra* note 27, ¶ 15.

31. *See* Headquarters Agreement, *supra* note 27, ¶ 13 (stating Permanent Representatives, along with their families, enjoy immunities given to diplomats “in accordance with international law”); *see also* IMO Order, *supra* note 29, arts. 14-15.

32. *See* Headquarters Agreement, *supra* note 27, ¶ 13; IMO Order, *supra* note 29, arts. 14-15; Specialized Agencies Convention, *supra* note 18; *see also* VCDR, *supra* note 17.

33. Headquarters Agreement, *supra* note 27, ¶ 13.

34. *Id.*

35. *Id.*

36. VCDR, *supra* note 17, art. 8.

37. *Al-Adsani v. United Kingdom*, App. No. 35763/97, Eur. Ct. H.R. para. 61 (2001).

38. *See* VCDR, *supra* note 17, art. 31; Headquarters Agreement, *supra* note 27, ¶ 13; Specialized Agencies Convention, *supra* note 18, art. 5, § 13; *see also* IMO Order, *supra* note 29, art. 14.

have specific privileges and immunities, “while exercising their functions and during their journeys to and from the place of the meeting.”<sup>39</sup> The time at which immunity vests is distinguishable in the VCDR, which states immunity is enjoyed immediately upon entering the receiving state or when the receiving state is notified of the appointment.<sup>40</sup> The Headquarters Agreement between the IMO and the United Kingdom is vague in regards to the timing of immunity, stating that Permanent Representatives enjoy immunity “for the term of their business with the Organization.”<sup>41</sup>

Questions regarding when diplomatic immunity applies are often less of a temporal question and more a question of whether the representative performed the diplomatic functions, or if the cause of action relates to the performance of such functions.<sup>42</sup> Precedent in the United Kingdom defers to the government for the conferral of diplomatic immunity; the courts rely on the information received from the appropriate department.<sup>43</sup> A statement from the government affirming the status of an individual is not seen as mere evidence, but as dispositive, requiring no more judicial inquiry into the matter.<sup>44</sup>

### C. *Judicial Examination of Immunity*

The Specialized Agencies Convention establishes diplomatic immunity as a functional immunity so the protected representatives may perform the duties required as a Permanent Representative.<sup>45</sup> The European Court of Human Rights (ECtHR) and the U.K. Court of Appeal have both explored the policy reasons for establishing immunity as functional.<sup>46</sup> The U.K. Court of Appeal recently noted the similarities between sovereign immunity and diplomatic immunity.<sup>47</sup> Specifically, the court noted the ruling by the ECtHR mentioned below and the similarities in the policy reasons for such immunities.<sup>48</sup> The opinion of the ECtHR developed the concept of proportionality with immunity.<sup>49</sup>

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39. Specialized Agencies Convention, *supra* note 18, art. 5, § 13.

40. VCDR, *supra* note 17, art. 39.

41. Headquarters Agreement, *supra* note 27, ¶ 13; IMO Order, *supra* note 29, art. 14.

42. *See Al-Malki v. Reyes* [2015] EWCA (Civ) 32 [5] (Eng.); *see also Engelke v. Musmann* [1928] AC 433 [436] (Eng.).

43. *Engelke*, AC 433 at [436].

44. *Id.*

45. Specialized Agencies Convention, *supra* note 18, art. 5, § 14.

46. *See Al-Malki*, EWCA (Civ) 32 at [74]-[75]; *see also Fogarty v. United Kingdom* (2001) 12 BHRC 132, 10 (concurring opinion).

47. *See Al-Malki*, EWCA (Civ) at [70].

48. *Id.*

49. *See Fogarty*, 12 BHRS 132 at 9.

The ECtHR embarked on a mission to determine if asserting sovereign immunity to bar a plaintiff's claim had a "legitimate aim," and if so, the court must then determine if the "restriction [on the plaintiff's claim] was proportionate to the aim pursued."<sup>50</sup> The ECtHR, ultimately, determined the restriction on the plaintiff bringing suit was warranted because the claim regarded the hiring practices of a U.S. Embassy in the United Kingdom.<sup>51</sup> The court decided protecting the hiring practices of an embassy was a legitimate use of sovereign immunity and did not violate the European Convention on Human Rights.<sup>52</sup> However, in dicta, the court mentioned that perhaps, if the claim regarded an employment contract, the inquiry could have produced different results given the movement at the time to remove sovereign immunity regarding employment claims.<sup>53</sup>

Another case from the ECtHR discussed the importance of proportionality in determining sovereign immunity.<sup>54</sup> The court noted a plaintiff's ability to be made whole through means other than the judicial process is relevant to the determination of proportionality.<sup>55</sup> The court used the example of Saudi Arabia because there is not an appropriate remedy for allegations of torture because the country did not have a law establishing torture as a crime.<sup>56</sup> The ECtHR examined the Government of Saudi Arabia to determine if sovereign immunity could rightfully and proportionately apply to the claims.<sup>57</sup> The ECtHR, ultimately, held that the Government of Saudi Arabia could use the cloak of sovereign immunity to protect itself from claims of torture.<sup>58</sup> However, the court mentioned the possibility of balancing the claim brought, the harm caused by barring access to judicial examination of a dispute, and judicial determination of the appropriateness of using immunity.<sup>59</sup>

The U.K. Court of Appeal recently emphasized the importance of proportionality when applying immunity to ensure the restrictions on plaintiffs filing claims against those who may have immunity do not outweigh the underlying functionality justifications for diplomatic

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50. *Id.*

51. *Id.* at 10.

52. *Id.* at 9.

53. *Id.*

54. *Jones v. United Kingdom*, App. Nos. 34356/06 & 40528/06, Eur. Ct. H.R. (2014).

55. *Id.* para. 41.

56. *Id.* para. 17.

57. *Id.* para. 2.

58. *Id.* para. 59.

59. *Id.* para. 41.

immunity, as articulated in the Specialized Agencies Convention.<sup>60</sup> Moreover, it is well established that all rules of international law should be read together as a body of law “accepted by the community of nations.”<sup>61</sup> The above cases seem to allow for a court to perform a functional inquiry into the duties of a party seeking immunity.<sup>62</sup> A functional inquiry could prevent an abuse of immunity and ensure proper proportionality between immunity and the prevention of a plaintiff from bringing suit.<sup>63</sup>

#### D. Statutory Exemptions from Immunity

The VCDR, the Convention on the Privileges and Immunities of Specialized Agencies, and the Headquarters Agreement between the IMO and the United Kingdom all enumerate specific exceptions to the application of diplomatic immunity; each will be reviewed in turn.<sup>64</sup>

The VCDR enumerates three instances in which a diplomat will not enjoy immunity from the receiving states’ jurisdiction.<sup>65</sup> Those exceptions are actions involving real property held privately by the diplomat in the receiving state; actions involving successions in which the diplomat is involved privately and not as part of the diplomatic mission; and any action involving the commercial activity of the diplomat while not involved with official functions.<sup>66</sup> Given the exceptions to diplomatic immunity provided by the VCDR, courts are still reluctant to use the exceptions and undermine diplomatic immunity.<sup>67</sup> A narrow interpretation of these exceptions reflects the unwillingness of

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60. See *Al-Malki v. Reyes* [2015] EWCA (Civ) 32 [70] (Eng.); Specialized Agencies Convention, *supra* note 18, art. 5, § 14.

61. *Jones*, App. Nos. 34356/06 & 40528/06, para. 14; *Al-Adsani v. United Kingdom*, App. No. 35763/97, Eur. Ct. H.R. para. 56 (2001); *Fogarty v. United Kingdom* (2001) 12 BHRC 132, 9.

62. See *Jones*, App. Nos. 34356/06 & 40528/06; *Al-Adsani*, App. No. 35763/97, para. 56; *Fogarty*, 12 BHRS 132 at 9; see also *Al-Malki*, EWCA (Civ) 32 at [70].

63. See *Jones*, App. Nos. 34356/06 & 40528/06; *Al-Adsani*, App. No. 35763/97, paras. 48-51; *Fogarty*, 12 BHRS 132 at 9; see also *Al-Malki*, EWCA (Civ) 32 at [70].

64. VCDR, *supra* note 17, art. 31, § 1; Specialized Agencies Convention, *supra* note 18, art. 5, § 17; Headquarters Agreement, *supra* note 27, ¶ 13.

65. VCDR, *supra* note 17, art. 31, § 1.

66. *Id.*

67. See *Al-Malki*, EWCA (Civ) 32 at [13]-[14] (holding that employing domestic workers did not fall under the exception of commercial activity so diplomatic immunity shielded the defendant in regards to the plaintiffs’ claims of human trafficking violating the European Convention on Human Rights.); see also *Sabbithi v. Al Saleh*, 605 F. Supp. 2d 122, 127 (D.D.C. 2009) (holding commercial activity, such as hiring domestic workers, incidental to one’s daily life is not a commercial activity that rises to the level of commercial activity contemplated by the VCDR.).

courts to perform any serious inquiry into the status of diplomatic immunity.<sup>68</sup>

The Specialized Agencies Convention and the Headquarters Agreement both remove immunity if the Permanent Representative in question is a permanent resident of the receiving state.<sup>69</sup> The Specialized Agencies Convention states the provisions providing immunity “are not applicable in relation to the authorities of a state which the person is a national.”<sup>70</sup> This exception conforms with the overall justification for immunity, allowing the representative to perform the duties required of the position easily, but if the representative is a national of the receiving state, he or she should be subject to the jurisdiction of that state.<sup>71</sup>

The Headquarters Agreement between the IMO and the United Kingdom further clarifies the exception established in the Specialized Agencies Convention, as it specifically applies to Permanent Representatives of the IMO in the United Kingdom.<sup>72</sup> The Agreement removes immunity from the jurisdiction of the United Kingdom in cases involving a Permanent Representative who is a permanent resident of the United Kingdom and the actions committed by the Permanent Representative are not in direct connection with official duties.<sup>73</sup> In 1969, the Foreign and Commonwealth Office (FCO) of the United Kingdom distributed a circular to the local diplomatic missions to explain the application of the VCDR and specific rules regarding permanent residency.<sup>74</sup> The circular distributed by the FCO established a “but for” test for determining if a Permanent Representative is a permanent resident of the United Kingdom.<sup>75</sup> The courts must ask “whether or not [the Permanent Representative] would be in the United Kingdom but for the requirements of the sending State,” as well as consider the Permanent Representative’s intentions, this individual’s involvement in the local community, whether or not the Permanent Representative is married, the

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68. See *Al-Malki*, EWCA (Civ) 32 at [13]-[14]; see also *Sabbithi*, 605 F. Supp. 2d at 127.

69. Specialized Agencies Convention, *supra* note 18, art. 5, § 17; Headquarters Agreement, *supra* note 27, ¶ 13.

70. Specialized Agencies Convention, *supra* note 18, art. 5, § 17.

71. See *id.* art. 5, §§ 16-17.

72. See Headquarters Agreement, *supra* note 27, ¶ 13.

73. *Id.*

74. I was unable to verify the language of the United Kingdom Foreign Commonwealth Office circular. However, I trust that the citing court accurately quoted from it. I checked other sources cited throughout the opinion, and they were accurate. Application of Consular Relations Act 1968, FCO 47/377 (UK); APPLICATION OF VIENNA CONVENTIONS ON DIPLOMATIC AND CONSULAR RELATIONS TO COMMONWEALTH AND FOREIGN PERSONNEL IN UK, FCO 47/333 (UK) [hereinafter VCDR CIRCULAR].

75. VCDR CIRCULAR, *supra* note 74.



length of time the Permanent Representative has been in the United Kingdom, and how much longer he or she is expected to stay.<sup>76</sup>

The determination of diplomatic immunity, on its face, is simple because of the accepted presumption of immunity to diplomats and representatives.<sup>77</sup> Several different courts, however, have expressed the possibility of conducting an actual inquiry in order to establish immunity.<sup>78</sup> Even so, when statutory exceptions are available, courts are reluctant to become involved with international relations and undermine the immunity of diplomats and Permanent Representatives.<sup>79</sup>

### III. COURT'S DECISION

In the noted case, the Court of Appeal (Civil Division) of the Royal Courts of Justice examined the extent to which a Permanent Representative is immune from a receiving country's laws governing divorce.<sup>80</sup> The court held that, in principle, Al-Juffali was entitled to immunity as a Permanent Representative of the IMO.<sup>81</sup> Al-Juffali's entitlement to such immunity barred the High Court of Justice (Family Division) from embarking on an inquiry into the nature of his appointment as Permanent Representative.<sup>82</sup> The appellate court, in the noted case, upheld the lower court's determination that Al-Juffali was a permanent resident of the United Kingdom and, therefore, not entitled to immunity from cases not arising from actions taken in his official capacity as a Permanent Representative of the IMO.<sup>83</sup> Ultimately, Al-Juffali was unable to escape paying his ex-wife, Estrada, financial relief under the Matrimonial and Family Proceedings Act of 1984.<sup>84</sup>

In the noted case, the court expressly denied the authority of a U.K. court to embark on a fact-finding mission to determine whether a Permanent Representative has performed any specific duties of his or her position.<sup>85</sup> The lower court held Al-Juffali was not entitled to diplomatic

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76. *Id.*

77. *Engelke v. Musmann* [1928] AC 433 [436] (Eng.).

78. *Al-Adsani v. United Kingdom*, App. No. 35763/97, Eur. Ct. H.R. paras. 35-54 (2001); *see also Jones v. United Kingdom*, App. Nos. 34356/06 & 40528/06, Eur. Ct. H.R. para. 188 (2014).

79. *See Al-Malki v. Reyes* [2015] EWCA (Civ) 32 [13]-[14] (Eng.); *Sabbithi v. Al Saleh*, 605 F. Supp. 2d 122, 127 (D.D.C. 2009); *see also Specialized Agencies Convention*, *supra* note 18, art. 5, § 17.

80. *Al-Juffali v. Estrada*, [2016] EWCA (Civ) 176 [1]-[2] (Eng.).

81. *Id.* at [57].

82. *Id.*; *see Estrada v. Al-Juffali* [2016] EWCH (Fam) 213 [36]-[39] (Eng.).

83. *Al-Juffali*, EWCA (Civ) 176 at [91].

84. *Id.* at [92].

85. *Id.* at [25].

immunity because the appointment as Permanent Representative of the IMO for St. Lucia in the United Kingdom was feigned to escape liability.<sup>86</sup> The court believed the appointment was solely to avoid paying his ex-wife after the divorce because the appointment did not happen until after the couple divorced and right before Estrada filed her claim for financial relief.<sup>87</sup> The lower court justified its belief further because Al-Juffali “ha[d] not undertaken any duties of any kind in the pursuit of the functions of office.”<sup>88</sup>

The lower court relied on cases from the ECtHR dealing with sovereign immunity as well as immunity cases originating in U.K. courts to justify its functional inquiry of Al-Juffali’s position.<sup>89</sup> The lower court was willing to rely on dicta from other courts to justify an examination of what actions Al-Juffali had taken in an official capacity.<sup>90</sup> The appellate court, in the noted case, refused to agree with the lower court’s analysis of the actions of Al-Juffali.<sup>91</sup>

The appellate court relied on the various treaties and agreements that apply to the immunity of Permanent Representatives.<sup>92</sup> Specifically, the court followed the letter of the Specialized Agencies Convention.<sup>93</sup> If the sending state does not waive the immunity of a Permanent Representative, “the courts of the receiving state are required to grant immunity.”<sup>94</sup> The court relied on the VCDR to rebut the lower court’s determination regarding the timing of the performance of official duties because the VCDR expressly states that immunity will begin upon the diplomat traveling to the post.<sup>95</sup> Al-Juffali’s appointment as Permanent Representative followed all of the required procedures, was in conformity with international law, and was appropriately accepted by the FCO, and, thus, he was entitled to immunity in principle.<sup>96</sup>

The court, in the noted case, ultimately found that Al-Juffali would be liable to his ex-wife for financial relief because he was a permanent resident of the United Kingdom and not immune from its jurisdiction for actions not in connection with official acts as a Permanent

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86. *Estrada*, EWCH (Fam) 213 at [36]-[39].

87. *Id.*

88. *Id.* at [35] (emphasis omitted).

89. *Id.* at [27]-[30]; see *Fogarty v. United Kingdom* (2001) 12 BHRS 132, 9; see also *Al-Malki v. Reyes* [2015] EWCA (Civ) 32 [13]-[14] (Eng.).

90. *Estrada*, EWCH (Fam) 213 at [27]-[33].

91. *Al-Juffali v. Estrada* [2016] EWCA (Civ) 176 [25] (Eng.).

92. *Id.*

93. *Id.*

94. *Id.* at [26]; Specialized Agencies Convention, *supra* note 18, art. 5, § 16.

95. *Al-Juffali*, EWCA (Civ) 176 at [27]; VCDR, *supra* note 17, art. 39.

96. *Al-Juffali*, EWCA (Civ) 176 at [16]-[19], [55]-[57].

Representative.<sup>97</sup> The appellate court accepted the fact-finding conducted by the lower court and the conclusions drawn therefrom.<sup>98</sup> The court relied on the circular distributed by the FCO in 1969 to conduct its evaluation of whether Al-Juffali was a permanent resident of the United Kingdom.<sup>99</sup>

Al-Juffali is a Saudi Arabian national and comes from a family of “immeasurable wealth,” which has maintained a close connection with the United Kingdom.<sup>100</sup> The children from Al-Juffali’s first marriage were born in London, as was the daughter from his marriage with Estrada; and all his children have been raised and educated in the United Kingdom.<sup>101</sup> When Estrada met Al-Juffali, he was living in the United Kingdom with his first ex-wife, where they had lived throughout the marriage.<sup>102</sup> Even after the separation of Al-Juffali and Estrada, he continued to live in the United Kingdom with his third wife and their child.<sup>103</sup> The lower court and the appellate court found the evidence of where Al-Juffali, along with his wives and children, lived to be the most compelling evidence establishing permanent residence because of the choice involved.<sup>104</sup>

The court concluded Al-Juffali could not hide behind diplomatic immunity to avoid liability for financial relief under U.K. law.<sup>105</sup> The permanent resident exemption to immunity for Permanent Representatives under the Specialized Agencies Convention removes immunity for all causes of action, civil or criminal, which does not relate to official acts as a Permanent Representative.<sup>106</sup> The marriage of Al-Juffali was not an official act relating to his appointment as Permanent Representative; therefore, Estrada is entitled to alimony.<sup>107</sup>

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97. *Id.* at [91]-[92].

98. *Id.* at [86].

99. *Id.* at [61]; VCDR CIRCULAR, *supra* note 74.

100. *Al-Juffali*, EWCA (Civ) 176 at [70].

101. *Id.* at [72]-[73].

102. *Id.* at [75].

103. *Id.* at [82].

104. *Id.* at [86]-[88].

105. *Id.* at [91]-[92].

106. *Id.* at [92]; Specialized Agencies Convention, *supra* note 18, art. 5, § 16.

107. *Al-Juffali*, EWCA (Civ) 176 at [92]. Christina Estrada won 53 million pounds in the divorce settlement, which took place after the noted case was decided. See *Christina Estrada: Former Supermodel Wins £53mil. Divorce Settlement*, BBC NEWS (July 8, 2016), <http://www.bbc.com/news/uk-36749444>.

## IV. ANALYSIS

The court, in the noted case, took a conservative approach when analyzing the existence of diplomatic immunity, while the lower court took a more liberal approach to the analysis.<sup>108</sup> The court, in the noted case, deferred heavily to the governments involved in establishing Al-Juffali as a Permanent Representative.<sup>109</sup> The High Court of Justice (Family Division) was unsatisfied with such an approach because the court believed the appointment was a pretense to avoid the jurisdiction of the United Kingdom; thus, the lower court took it upon itself to determine whether immunity was appropriate or not.<sup>110</sup>

The appellate court is not alone in its unwillingness to perform functional reviews of diplomatic immunity.<sup>111</sup> Some courts have mentioned, in dicta, different methods that may be important or that could be used to review immunity, but the courts have not applied these methods.<sup>112</sup> Courts are aware that a person or entity asserting diplomatic immunity is presumed to have diplomatic immunity, as long as the proper procedures were followed.<sup>113</sup> It is also a well-established principle of international law that diplomats and Permanent Representatives are afforded immunity so each can more easily perform its functions without interference or fear of prosecution because of their duties.<sup>114</sup>

The lower court performed a functional review of the duties and actions of Al-Juffali because it felt the appointment was disingenuous.<sup>115</sup> The lower court found the appointment was artificial because Al-Juffali had not divorced Estrada before he was married again, and he was not appointed to be a Permanent Representative of the IMO until after the divorce.<sup>116</sup> Furthermore, the lower court could not find any connection between Al-Juffali and the country of St. Lucia; the court noted that no

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108. See *Al-Juffali*, EWCA (Civ) 176 at [57], [92]; see also *Estrada v. Al-Juffali* [2016] EWCH (Fam) 213 [36]-[40] (Eng.).

109. See *Al-Juffali*, EWCA (Civ) 176 at [26].

110. See *Estrada*, EWCH (Fam) 213 at [36]-[40].

111. *Al-Adsani v. United Kingdom*, App. No. 35763/97, Eur. Ct. H.R. paras. 35-54 (2001); see also *Engelke v. Musmann* [1928] AC 433 [436]-[37] (Eng.).

112. See *Al-Malki v. Reyes* [2015] EWCA (Civ) 32 [74]-[75] (Eng.); see also *Fogarty v. United Kingdom* (2001) 12 BHRS 132, 9.

113. See *Engelke*, AC 433 at [436]; see also *Specialized Agencies Convention*, *supra* note 18, art. 5, § 16.

114. See *Specialized Agencies Convention*, *supra* note 18, art. 5, § 16; see also *VCDR*, *supra* note 17, pmb1.

115. *Estrada*, EWCH (Fam) 213 at [36]-[40].

116. *Id.* at [77]-[83].

one in his family had a connection with the country, making the entire appointment seem even more like an abuse of immunity.<sup>117</sup>

Several courts have discussed a proportionality review to reduce abuse of immunity, especially when a plaintiff would have no other source of redress.<sup>118</sup> The High Court of Justice witnessed an abuse of immunity that judicial reviews could help avoid.<sup>119</sup>

While the determination of Al-Juffali as a permanent resident of the United Kingdom resolved the possible abuse of immunity, the dispute between the lower court and the appellate court highlights a larger issue.<sup>120</sup> If Al-Juffali was not a permanent resident of the United Kingdom, he would have avoided paying financial relief, in the form of alimony, to his ex-wife because he was appointed as a Permanent Representative of a specialized agency of the U.N.<sup>121</sup> Both courts determined Al-Juffali had no connection to the IMO nor the country of St. Lucia, which appointed him as a Permanent Representative of an organization that dealt with a subject matter with which he was not familiar.<sup>122</sup>

The appellate court's decision, in the noted case, highlights an issue of too much deference to international policy.<sup>123</sup> The lower court, when conducting its fact-finding, gathered a disturbingly large amount of information that made the appointment of one divorcee to a position receiving immunity appear feigned to avoid alimony.<sup>124</sup> Despite this evidence, the appellate court deferred to the judgment of the governments of St. Lucia and the United Kingdom to ensure the appointment was genuine.<sup>125</sup> Several other courts have discussed the need to prevent abuse of immunity, yet a more thorough review has not been established.<sup>126</sup> While there is a clear need for courts to stay out of international relations, it is unclear that courts should not have

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117. *Id.* at [36]-[40]; Al-Juffali v. Estrada [2016] EWCA (Civ) 176 [83] (Eng.).

118. *See* Fogarty v. United Kingdom (2001) 12 BHRS 132, 9-10; *see also* Jones v. United Kingdom, App. Nos. 43456/06 & 40528/06, Eur. Ct. H.R. para. 167 (2014).

119. *Estrada*, EWCH (Fam) 213 at [36]-[40]; *see* Al-Malki v. Reyes [2015] EWCA (Civ) 32 [70] (Eng.).

120. *Estrada*, EWCH (Fam) 213 at [36]-[40]; *Al-Juffali*, EWCA (Civ) 176 at [83]-[92].

121. *See Al-Juffali*, EWCA (Civ) 176 at [57].

122. *See Estrada*, EWCH (Fam) 213 at [35]; *see also Al-Juffali*, EWCA (Civ) 176 at [83].

123. *See Al-Juffali*, EWCA (Civ) 176 at [83].

124. *See Estrada*, EWCH (Fam) 213 at [35]-[38].

125. *See Al-Juffali*, EWCA (Civ) 176 at [26].

126. *See* Al-Malki v. Reyes [2015] EWCA (Civ) 32 [74]-[75] (Eng.); *see also* Fogarty v. United Kingdom (2001) 12 BHRS 132, 9; *see also* Jones v. United Kingdom, App. Nos. 43456/06 & 40528/06, Eur. Ct. H.R. paras. 188, 215 (2014); Al-Adsani v. United Kingdom, App. No. 35763/97, Eur. Ct. H.R. paras. 35-54 (2001).

jurisdiction over a person when the immunity asserted is a farce, at best.<sup>127</sup>

## V. CONCLUSION

The noted case demonstrates how diplomatic immunity and immunity for Permanent Representatives can be dysfunctional.<sup>128</sup> The sensitive nature of diplomatic relations lends itself to be a political issue best handled by governments of nations, not individual courts.<sup>129</sup> However, when a country accepts a diplomat or Permanent Representative and grants an individual immunity from its jurisdiction, the inability of a court of that country to review the legitimacy of such an appointment may not always produce the best result.<sup>130</sup> A balance between deference to a detriment and disrupting the peaceful relations between nations can exist.<sup>131</sup> An actual application of the proportionality principle mentioned by several courts would allow for a review by courts without a true disruption of all international peace.<sup>132</sup>

Margaret Scharle\*

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127. *Societe Nationale Industrielle Aerospatiale v. U.S. Dist. Ct. for S. Dist.*, 482 U.S. 522, 533 (1987); see *Estrada*, EWCH (Fam) 213 at [37]-[40].

128. *Estrada*, EWCH (Fam) 213 at [37]-[40]; see *Al-Juffali*, EWCA (Civ) 176 at [55]-[57].

129. See Edward Gordon, *Trends—American Courts, International Law and Political Questions Which Touch Foreign Relations*, 14 INT'L L. 297, 313 (1980); see also *Estrada*, EWCH (Fam) 213 at [37]-[40].

130. See *Estrada*, EWCH (Fam) 213 at [37]-[40]; see also Nathaniel P. Ward, *Espionage and the Forfeiture of Diplomatic Immunity*, 11 INT'L L. 657, 657-59 (1977); Jon Kelly, *Should Diplomats Still Have Immunity?*, BBC NEWS MAG. (Mar. 29, 2016), <http://www.bbc.com/news/magazine-35882967>.

131. See *Al-Malki*, EWCA (Civ) 32 at [70]; *Fogarty*, 12 BHRS 132 at 9-10; *Al-Adsani*, App. No. 35763/97, paras. 35-54; see also *Estrada*, EWCH (Fam) 213 at [38]-[40].

132. See *Al-Malki*, EWCA (Civ) 32 at [70]; *Fogarty*, 12 BHRS 132 at 9-10; *Al-Adsani*, App. No. 35763/97, paras. 35-54; *Jones v. United Kingdom*, App. Nos. 34356/06 & 40528/06, Eur. Ct. H.R. para. 188 (2014).

\* © 2018 Margaret Scharle. J.D. candidate 2020, Tulane University Law School; M.B.A. candidate 2020, A.B. Freeman School of Business; B.A. 2015, Georgia State University. I would like to thank my family, my friends, Hannan, and the members of the *Tulane Journal of International and Comparative Law* for their guidance and encouragement.