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# Privileges and immunities of international representatives in a receiving country: A favor or a burden?

A rational choice approach on the differences in use of privileges and immunities between diplomats and employees of international organization

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## Abstract

The conduct of diplomats and IO employees is currently high on the agenda in the Netherlands. While the media focus on their 'bad' conduct, unpaid traffic and parking fines, the Dutch government is expected to react to this media focus by developing new policies. However, an explanation of these officials' conduct is currently lacking. The data presented by the Dutch Ministry of Foreign Affairs shows that IO employees are more respectful of local laws than diplomats and usually pay their fines. The object of this research is this conspicuous difference in use and interpretation of privileges and immunities in the Netherlands, analyzed by the rational choice theory. Out of four perspectives that might explain this difference, the first, historical perspective that focuses on shifts and developments is found to be insignificant. The second, political perspective explains the difference in the relation a representative has with the host country. Third, the judicial perspective shows that the Vienna Convention leaves room for interpretation that creates differences in conduct. Fourth and finally, the public administration perspective suggests further guidance, for example a code of conduct could contribute to positive conduct. Even though several diplomats and international organizations were positive about their experiences in the Netherlands, some improvements can still be made on the administrative level. Further development of the administrative capability of the government might positively influence the use of privileges and immunities.

## Preface

After finishing my bachelor at Utrecht University, I started a new challenge in September 2013 with the master 'International Public Management and Policy' at the Erasmus University Rotterdam; a new university with new approaches and new topics. The courses, the lectures and the lecturers were very interesting and inspired me. Quite soon I chose the topic for my final research and I am very content that the Erasmus University made this research possible.

I was aware initially that writing a master thesis would be a long process, with positive and negative experiences. However, my experience has proved mainly positive. I would like to thank my supervisor, Koen Stapelbroek, who was always there to give advice or to reassure me that everything would be fine.

Writing a qualitative research with interviews as data means that part of the research depends on others. I would like to thank all my respondents for their enthusiastic response to my request for an interview and their willingness to help me with my thesis even after we spoke. Their opinions and the information they gave me are very valuable for my thesis.

Finally, I would like to say thanks to all my friends and my family who had to listen to the stories about my thesis and helped me with it.

I hope that you can enjoy reading this thesis as much as I did writing it.

Alied Sijpkens

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## Introduction

We live in an international community. However, collaboration on the international level creates challenges for national governments. National governments have to deal with their citizens in foreign countries, but also with foreign citizens in their country. While every state tries to optimize the situation for their citizens in foreign countries, the consequence is that other states want a reciprocal situation. Not only states, but also international or intergovernmental organizations prefer a stable and safe context for their employees to live and work in. An increasing number of people are today living in a foreign country to represent a government or an international organization. Conventions and seat, or headquarters agreements, in which immunities and privileges are described, establish a secure working environment for these representatives. Many diplomats or organizations in other countries are immune to local legislation, but have to respect the legislation of the receiving country. This immunity means a secure environment for employees abroad, but also gives relative freedom to foreign representatives.

Two types of personal immunity are identified. Absolute personal immunity provides full immunity to a person; on function related and private related activities. Functional immunity only provides immunity on only function related activities. The immunity of diplomats is based on the Vienna Convention on diplomatic relations of 1961. The immunity of international organization employees (from now on: IO employees) is stated in the headquarters agreement of that specific organization and the seat agreement with host countries (Brölmann, 2013). Above on that, in the Conventions on the privileges and immunities of the UN 1946 gives immunities to employees of all UN related organizations. In 2005, the Dutch government equalized all seat agreements to the Vienna Convention. This gives in general similar rights and freedoms to both diplomats and IO employees of a similar status. In both international organizations and embassies, the head of the organization has absolute immunity. It depends on the function, interpretation and (seat) agreement which status other employees have (Dutch Ministry of Foreign Affairs, 2014).

Currently, many representatives (from now on: 'representative' in this thesis means both diplomats and employees of international organizations) mention the importance of the (diplomatic) relations between states, the mutual interests in an international community and the benefits of immunity (Nollkaemper, 2011). However, some disadvantages are also receiving more attention. For example, it raises the question as to how national governments can deal with violation of the local laws in their country when the violators are immune to state

legislation. Immunity can also create confusion, especially the functional immunity can be complicated to interpret. With personal absolute immunity it is clear that every activity is covered. However, with functional immunity it is not always clear which actions are covered and which are not, it is hence ambiguous (Dutch Ministry of Foreign Affairs, 2014).

There are several recent examples demonstrating the complexity of immunity. Diplomatic immunity has been a hot topic in the Netherlands for the last few months. While at first hardly anybody was aware of diplomatic immunity *per se*, a few weeks later everybody spoke about it: the newspapers first published the fact that diplomats did not pay their traffic fines. According to an estimate, there are 700,000 euro worth of uncollected fines (NRC, consulted 17<sup>th</sup> November 2013). The next article was about a Russian diplomat who was arrested for abusing his children. His immunity was violated by this arrest, and the Dutch Minister of Foreign Affairs apologized for the incident. The police was not allowed to arrest the diplomat due to his immunity (NOS, consulted 17<sup>th</sup> November 2013). A third article dealt with the case of a Dutch diplomat in Russia who was violated (Elsevier, consulted 17<sup>th</sup> November 2013). This accumulation of negative aspects of immunity has made the Dutch Parliament debate about possible solutions.

Another example is the Nuclear Security Summit, which was held in The Hague in March 2014. All delegation members enjoyed some kind of immunity. Clearly not all members were eligible for absolute immunity, but all delegation members enjoyed partly functional immunity. Due to the size of this Summit, this led to a big challenge for the Netherlands and its police officers ([Openbaar Ministerie](#), consulted on 3th April 2014).

## **Problem definition**

Even though the importance of immunities is widely accepted, it also creates challenges for host countries. However, there seems to be room for improvement and this study will attempt to increase the knowledge about dilemmas relating to personal immunity and privileges. The Dutch government published a document with all registered violations by foreign privileged representatives from 2010 to 2013. These violations include traffic violations, domestic violence and shoplifting. Of the total 286 violations registered, 83.20% were committed by diplomats. Violations committed by IO employees amounted to (12.90%). However, only 25% of all privileged persons are related to an embassy whereas 75% are related to an international organization. The number of embassies and consulates in the Netherlands is around 180, while the Netherlands is host country to 34 international organizations. In total the Netherlands is host to 20,000 privileged citizens, who are the representatives of a state or organization, and their family members (WOB verzoek, 2013).

Thus, based on the document on violations in the Netherlands, it can be said that there is a difference in the use and interpretation of personal immunity and privileges between international organizations and permanent missions (embassies). How can it be explained that even though diplomats and IO employees have similar immunities and privileges, the use and interpretation of these privileges and immunities differ so widely? And why is there a large number of violations committed by diplomats, while the international organizations generally respect Dutch legislation?

These questions are examined in this study and related to how much room for interpretation of immunity there is for the different actors concerned. The positive or negative aspects are outlined. Furthermore this study investigates whether there is potential for national policies on immunity.

*How can the differences in interpretation and use of immunity and privileges by diplomats and IO employees respectively be explained?*

The rational choice theory will be used to answer this question. This theory explains conduct based on rational choices, influenced by preferences and constraints. However, due the complexity of this issue, several disciplines are part of this study. Both the historical development and the judicial basis of the treaties influence the current situation, together with the collaborations between states during the formation of new international organizations and the policies of the governments. Therefore, the disciplines examined in this study are the historical discipline, the judicial discipline, the political discipline and the public administration discipline. The disciplines are elaborated to find topics, which can then be examined by the rational choice theory. First the current system is elaborated and from there the topics can be examined in the second part of the study, namely the case study. The case of the Netherlands is studied to find answers to the differences in interpretation of the immunities and how the Dutch government can try to influence the use of immunities. The topics relating to the four disciplines will be discussed during interviews with different actors. The results of these interviews are used to explain interpretations of immunity and privileges. The actors of this study are the diplomats, the IO employees, and the Dutch government. To framework this, several sub questions are formulated:

First part of study: explaining the current system

- What is the historical basis for the use of immunity and privileges?
- What is the political basis for the use of immunity and privileges?
- What is the judicial basis for the use of immunity and privileges?

- What is the public administration basis for the use of immunity and privileges?

Second part of study: case study the Netherlands

- How does the historical perspective explain the differences in use of immunity and privileges between the diplomats and of international organizations?
- How does the political perspective explain the differences in use of immunity and privileges between the diplomats and of international organizations?
- How does the judicial perspective explain the differences in use of immunity and privileges between the diplomats and of international organizations?
- How does the public administration perspective explain the differences in use of immunity and privileges between the diplomats and of international organizations?
- How does the context of a host country influence the conduct of the diplomats or international organizations?

## Academic and societal relevance

This study aims to add knowledge to the academic study on immunities and privileges by using several disciplines. Most of the current studies on this topic are based on one specific discipline, which is then analyzed in more detail but misses the broader scope. Therefore, for new insights, this approach is chosen.

The same motivation applies to the comparison between immunity of diplomats and the immunity of IO employees. By comparing both, a better understanding of the current situation can be found. This comparison has so far not been made.

The search for possible improvement and the search for possible influence of legislation by the Dutch government will add societal relevance to this study. The use of a case study on how immunity is exerted in practice might provide new insights to Dutch society, which may help calm the storm around this topic.

## Reading guide

This thesis starts with elaborating the rational choice theory. Based in this theory, the topics of the four disciplines will be described while explaining the current system. Thereafter, the methodology of this research is described, to be followed by the presentation of the results in the chapter on empirical findings. Based on these findings, a conclusion is written and some recommendations are made.



## Rational Choice Theory

Many disciplines try to explain human conduct and create a model for analyzing and predicting conduct. Sociologists and political scientists have built theories around the idea that actions are fundamentally rational; human beings calculate the likely costs and benefits. People are aware of physical, economic and logical constraints before they decide whether or not to act. This approach is called 'rational choice theory' (Browning e.a., 2000). This rational choice approach can be seen as a set of theories explaining social phenomena as outcomes of individual actions, which can be construed as rational (Wittek e.a., 2013: 5). The rational choice theory is a rather normative theory, it tells what people ought to do in order to achieve the aims but it does not tell what the aims should be. Besides, it is a descriptive theory; the observed choice may fall in a pattern, which can predict actions, but it will never explain those actions (Elster, 1986). The fundament of the rational choice theory is the assumption that complex social phenomena can be explained by individual actions. This is called 'methodological individualism'. This theory is therefore suited for the study of representatives' conduct. The social phenomena of differences in use and interpretation of privileges and immunities are approached by individual choices and actions.

While in economics rational assumptions relate to production, distribution and consumption, rational choices in the social and political discipline are actions in which for example time, information, approval and prestige are involved (Browning e.a., 2000). In the rational choice theory, individuals are motivated by their preferences and behave according to these preferences, while they are limited by all constraints (Browning e.a., 2000). Opp (1999) describes the three core propositions of the rational choice theory. The first core assumption is the preference proposition, which is that individual preferences are a condition for conduct. The second core assumption is the constraints assumption, i.e. that anything that increases or decreases the possibility of an individual to act influences the conduct. The final core assumption is the utility maximization proposition, which explains that individuals try to satisfy their preferences to the greatest extent, while taking the constraints into account. Thus, it can be said that the basic explanatory variables of rational actions are the actor's preferences and the restrictions of choice (Wittek e.a. 2013). Therefore, this study will examine the preferences and the constraints of diplomats and the IO employees

### *Rational choice Institutionalism*

Within the rational choice theory, the rational choice institutionalism is a well-accepted approach to explain social phenomena. It analyzes how institutions emerge and how they affect

conduct and societal outcomes by acknowledging that a variety of formal and informal constraints and preferences shape individual decisions (Witteck e.a., 2013).

There are two ways of interpreting an institution within this approach of rational choice institutionalism. The first interpretation takes institutions as *exogenous constraints*; the 'the rules of the game'. An institution can be seen as an script that names the actors, their strategies, the sequence in which the actors choice from, the information they possess by making the selections and the outcome as a result of the choices of the actor (Shepsle, 2005). The second interpretation of institutions does *not* take institutions as a given exogenously. In this view the players themselves provide the rules of the game; institutions are the ways in which the players want to play (Shepsle, 2005). However, in practice, the first interpretation is more accepted and valid. Because in many contexts individuals or coalitions are not prepared to change the way business is conducted. These institutions are therefore *structured*, the stay roughly the same over time. Unstructured versions of institutions are more implicit rather than formalized, like for example norms. These informal unstructured institutions are often explained as 'the way things are done around here' (Shepsle, 2005).

The rational choice institutionalism explains structured institutions very clearly. It is particularly well suited for comparative research (Diermeier & Krehbiel, 2003). Due to the fact that this is a comparative study, this is a suitable approach. The crucial link between institutions (as contextual constraints) and the outcomes (consequences of choice) is conduct (Diermeier & Krehbiel, 2003). The rule of thumb question would be 'What are the consequences, if any, of the individual constraints and preferences on individual conduct and, in turn, collective choices?' Concluding, an institutional theory on rational choice would be a theory that seeks an understanding of the relationships between institutions, conduct and outcomes.

The level of compliance is an aspect of institutionalism. Measuring compliance is appears to be difficult (Simmons, 1998); also within international policy. Due to the fact that institutions are path depended and human artefacts, (international) institutions become more difficult to control (Young, 1982). Institutionalism acknowledges that institutions do matter and do influence rational conduct. In order to research rational conduct institutionalism will contribute explaining this.

For this research, two kinds of institutions have been studied. On one hand the institution of embassies and the diplomats with their contextual constraints and preferences, and on the other hand the international organizations and the representatives with their contextual constraints and preferences.

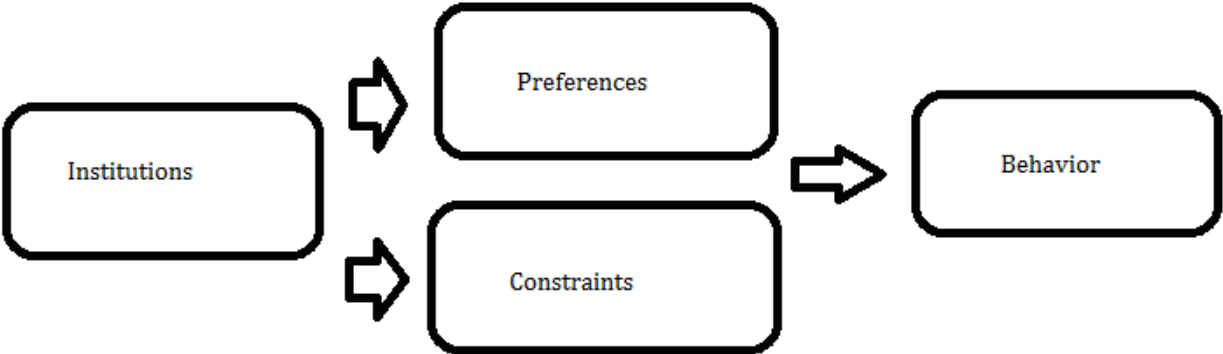
### *Preferences*

The first dimension of the rational choice approach is the *preference* assumption. Rational choice models are influenced by the preferences of the actor. Preferences can be distinguished by the degree of selfishness and materialism. On the scale of selfishness, four options are explained. The first option, opportunism, is an extreme form of egoism. It is egoism with guile. Breaking rules and cheating in order to increase personal benefits are examples of this opportunism. Another version of selfishness is pure egoism, in which the assumption is that everybody is egoistic and knows the rules of the game. An agreement that is disadvantageous for personal interests will not be accepted and if in general all actors will not accept disadvantageous agreements, all actors at the end will benefit from the agreement (Wittek, e.a. 2013: 8). The third possible option of selfishness is linked-utility. In this version, the assumption is that it might be in the best interest of an individual to take the wellbeing of others into account. Individuals may have moral and altruistic preferences (Wittek e.a. 2013: 8). The final version is solidarity, in which the assumption is that under some circumstances, humans may act on a solidarity base rather than for personal benefits. Fairness may play a big role in this assumption (Wittek, e.a. 2013: 6).

### *Constraints*

The other dimension of models of rational choice theory is the constraints. Two interpretations of constraints are possible. The first interpretation is to approach constraints as *exogenous constraints*, they are 'the rules of the game'. An institution can be seen as a script that names the actors, their strategies, the sequence from which the actors choose and the information they possess by making the choices and the outcome a result of those choices (Shepsle, 2005). The second interpretation does not take institutions as a given exogenous factor. In this view, the players themselves provide the rules of the game. Therefore they are *endogenous constraints*. Preferences are the ways in which the players want to play (Shepsle, 2005). However, in practice, the first interpretation is more accepted and valid. Because in many contexts individuals or coalitions are not prepared to change the way business is conducted. These rules are therefore *structured*; they stay roughly the same over time. Unstructured rules in institutions are more implicit rather than formalized. These informal unstructured rules are often explained as 'the way things are done around here' (Shepsle, 2005). Given the constraints on an actor's resources, like time, money or information, the possible actions of an individual are reduced to a smaller set of options. The individual therefore forms his preferences among the possible set of options.

Hence, the rational choice theory would help explaining the choices made by representatives and maybe even explain the difference in choice made by diplomats and IO employees. Embassies and international organizations are the two kinds of institutions in this study. They are the context of the representative. The constraints and preferences of the representatives lead to a certain conduct (whether or not respecting the local rules for example). The following scheme explains these relations:



The following paragraphs will first elaborate the current system of privileges and immunities per discipline. Following these elaborations, per perspective, several topics are described that will be analyzed in this research.

## Rational choice theory in historical perspective

### Current system

#### *Diplomats*

Vattel was the first authority who paid attention to the subject of protection of foreigners, their property interests and diplomatic protection in his work 'The Law of Nations or the Principles of Natural Law' (1758). Before, states as a whole, rather than individuals, were considered. His thinking shaped the institution of diplomacy and immunities. The colonization and the expansion of foreign trade resulted in more interest in international cooperation. Vattel (1758) predicted a homogeneous international community of European Christian States, including a common civilization and a common moral code (Amerasinghe, 2008).

The beginning of the 19<sup>th</sup> century gave rise to the development of an international law governing the treatment of foreigners and diplomatic protection. The primary incentive was the growth of communication systems and the introduction of mechanical technology and industrialization. This resulted in interests in foreign property within other states. The established international community of states of the 18<sup>th</sup> century was a European society, which expanded in the 19<sup>th</sup> century with the American continent (Amerasinghe, 2008). By the middle of the 19<sup>th</sup> century, governments were consistently asking questions about the legal protection of their nationals abroad, which resulted in the use of international law; the institution of diplomatic protection began. Throughout the late 19<sup>th</sup> century and the beginning of the 20<sup>th</sup> century, diplomatic protection had gained an important position in the international debate and the relation between states; especially between larger powers on one hand, and newer smaller states on the other hand (Amerasinghe, 2008). In the late 20<sup>th</sup> century, especially after the Second World War, the institution of diplomatic protection was settled as part of the international legal system. The nationalizations of foreign property after the Second World War resulted in many actions of Western states to protect their nationals. While there are some discussions around the protection and the position of the newer, smaller states that still require a solution, the right to diplomatic protection as such and the fact that an institution is governing this law is never questioned (Amerasinghe, 2008).

#### *International organizations*

Organizations dealing with public issues and the perspective on international organizations and the diplomatic system have developed over time. While in the 18<sup>th</sup> century, many public issues were only organized locally, an international focus emerged in the 19<sup>th</sup> and 20<sup>th</sup> century (Fisher, 2012). In the 19<sup>th</sup> century increased collaboration between states emerged and international

organizations was established (Stapelbroek, 2014: 5). International organizations were established to deal with problems that states could not solve themselves or to address potentially detrimental issues on a global level. This was an important change in the history of international public administration.

The privileges and immunities that were traditionally limited to diplomats were gradually extended to personnel of international organizations. This process was divided into four stages (Frey & Frey, 1999). The first phase began in 1804. At that time, the status of neutrality and the protection of inviolability extended to various river commissions. The second stage arose in 1899 when diplomatic privileges were granted to some judicial tribunals. After World War I, in the third stage, diplomatic privileges were granted to the International Court of Justice, the League of Nations and the International Labor Organization. Finally, the fourth stage arose after World War II, when certain supranational organizations like the UN were founded (Frey & Frey, 1999: 539). Over recent decades, the activities and number of international organizations have been expanding in various ways (Reinisch, 2013).

The importance of these organizations and their employees has also increased over time. Many IO employees work in another country than their home country. To be able to carry out their work properly, these employees enjoy privileges and immunity (Reinisch, 2013). The growth of international organizations after World War I created some problems both in theory and in practice. Therefore, the privileges and immunity shifted to functionalism (Frey & Frey, 1999: 540). The current basic concept is 'functional immunity' in which the immunity is necessary for the fulfillment of the purposes of the international organization (Reinisch, 2013). However, more and more states have started to question this immunity of international organizations and to restrict this absolute immunity for example by denying the use of immunity on commercial activities or only applying the immunity for functional needs (Reinisch, 2013).

### **Topics for this research**

The rational choice theory is used in a historical perspective to explain the developments over time. The strength of the rational choice theory in historical analysis is the capability to find causal explanations. It offers an explanation of historical actions that is both logically and empirically correct (Lichbach, M. & A. Zuckerman, 2002). This is exactly what will also be researched in this thesis. The development of both types of privileges and immunities, the absolute immunity and functional immunity, show the shifts that the privileges and immunities have made. Therefore, this thesis will investigate whether new shifts are taking place and influence conduct, or whether previous shifts have influenced the same conduct. Shifts will

provide constraints to the institutions and therefore also to the representatives. Shifts that have taken place are for example the shift from a national view to an international view, or the shift from a view on wealthier countries to a view on all countries. But shifts can also take place within the institutions themselves. For example, a shift in the distribution of privileges from granting these privileges only to the important officials, to a situation where all employees enjoy privileges. Nevertheless, for some employees, the immunity changed from absolute immunity to a more functional immunity. For this study, it is interesting to find out if the current system is still developing and if so, which developments these are. Are new shifts changing the system? Is the current system up to date? Shifts can also influence the constraints or the preferences of the actors. Therefore shifts will be the topic that will be studied for the historical perspective. Appendix V includes an overview of the types of shifts that will be studied.

## Rational choice theory in political perspective

### Current system

A political power struggle can be found within the area of privileges and immunities. This struggle, as well as the importance of national and personal interests of representatives, also influences the conduct and choice of representatives. Diplomatic protection and its legacy of European nations developed during a period of colonization, in the late 18<sup>th</sup> century and early 19<sup>th</sup> century. This has influenced the shape of the protection. In the 19<sup>th</sup> century, diplomatic protection was seen as a weapon used by wealthy nations against poorer and less developed countries. After the Second World War, diplomatic protection has been seen as more comprehensive; benefiting both types of nations (Amerasinghe, 2008). Most of the current member states of the international community were not members during the establishment of the diplomatic protection and therefore not part of its creation. Therefore, the treaties and agreements may not be fully adequate to reflect the interests of a more recent member state (Amerasinghe, 2008).

The situation of diplomats and the situation of representatives at international organizations differ. First of all, while the diplomat remains subject to the sending state, the IO employee remains exempt from one specific territorial power. Second, the privileges of the representatives stem directly from the immunity of the international organization. The principle of sovereignty of a state in diplomatic privileges does not apply to IO employees. Third, international privileges rest only in treaties. International representatives, unlike diplomats, do not possess special prerogatives unless these are specifically assigned to them (Frey & Frey, 1999).

Another difference is also important to note. Diplomats represent their country of origin and this representation is the same in the receiving countries, while an international organization often has a head office in one country but does not represent any specific country. The political power struggle of a country to receive the advent of relevant international organizations and to hold the attention of a relevant international organization is really high, while this power struggle is less present in the diplomatic scene. It is in the interest of a sending country to have an embassy or consulate in the receiving country. On the other hand, a diplomat has a stronger relation with the receiving country compared to an international organization (Frey & Frey, 1999).

In addition to this political aspect of the privileges for nations, there is also a personal political aspect. The symbolism of privileges, and the prestige derived from them, also influences the conduct of privileged people. It becomes a ritual, which can be defined as 'symbolic conduct that



is socially standardized' (Jönsson & Hall, 2005: 42). The reputation of a country, but also the personal prestige of a diplomat is at stake during the performance of his job. The venue and format of meetings for example also shape negotiations, by symbolizing prestige and power (Stone, 2002).

### Topics for this study

Especially in the political perspective, the rational choice theory is well implemented. Does a representative make choices on a rational basis or are other aspects influencing these choices? For the study on differences in the use of privileges and immunities, several aspects of this approach are relevant. Various types of relations influence the preferences and constraints of representatives. For example, the relation between an international organization and the host country is very different compared to the relation between the embassy and the host country. The relation between the IO employee and the Netherlands is also different from the relation between the diplomat, his or her embassy, and the Netherlands. These different types of relations will also result in other types of constraints to a representative. On the other hand, this perspective also covers the personal aspects of a representative. Personal interests of a representative, such as prestige, will provide preferences for specific options. Finally, the relation between several countries to welcome the establishment of an international organization, the power struggle, is also part of this research. To conclude, it can be stated that especially the types of relations shape the preferences and constraints of the representative. Therefore, these various relations will be studied in this thesis. Appendix V consists of an overview on all topics seen from this perspective.

## Rational choice theory in judicial perspective

### Current system

Diplomatic immunity, but also the immunities of international organizations, is based on International Public Law. It is more difficult to create an authority for international law than for national law. Treaties fulfill the function of legislation, but their implementation and control lacks one clear institution. It has been stated that the Security Council and international judges deal with the task of jurisdiction, while it has also been claimed that it is not the task of a higher institution. It should be the responsibility of the member states themselves that together form the international community. This international community has joint, but also individual interests. States are the most important subjects of international public law; the term 'international organizations' actually means 'intergovernmental organizations' (Nollkaemper, 2011). From a judicial perspective, these international organizations are independent entities, with their own responsibilities and rights. However, in reality these organizations are dependent on states (Nollkaemper, 2011). In addition there are the international non-governmental organizations, which are private organizations that act on an international level (Nollkaemper, 2011). This research will focus on intergovernmental organizations (from now on international organizations), which are located in the Netherlands because those organizations also have privileges and immunities.

### *Immunity*

The concept of immunity limits the jurisdiction of states. Immunity is the biggest exception to the principle of jurisdiction. Accepting the immunity of other states and their individuals is mandatory by international law. This means that the representatives of a state within a receiving state cannot be bound to the legislation of the receiving state. Even though all states and their individuals are obligated to comply with the legislation of the receiving state, the immunity limits the possibility to subject people to the national legislation. Several types of immunity exist:

The first type of immunity is *state immunity*. It is based on a principle of sovereign equality. 'Equals have no authority over one another' is the principle. This shows the importance of state sovereignty because without this immunity, states would not be equal. It is reciprocal. This principle shows the horizontal equality of states. Most of the laws on state immunity are stated in common law. The United Nations have translated this state immunity in the United Nations Convention on jurisdictional immunities of states and their property of 2004. This Convention states for example in art. 5 that one state cannot exercise jurisdiction over another state.

Two types of immunities within the state immunity can be distinguished; the immunity of the state itself and the immunity of the representatives of the state. This immunity is only applicable to sovereign/public proceedings. If a state acts as a private actor in, for example, trade negotiations, this immunity is not applicable. The individual immunity of representatives of the state has two versions as well and is the focus of this research. Personal absolute immunity is an absolute immunity in which all activities, within state interest and private interest, are covered. This immunity is enjoyed by the highest figures of state authority such as the heads of states, ministers and presidents. The other immunity for representatives is the functional immunity that applies to all persons acting on behalf of the state. This immunity covers all types of activities within the scope of their function as representatives of the state (Nollkaemper, 2011: 123). This study focus on the personal immunity.

*Immunity of diplomats and consular personnel* is based on the Vienna Convention on Diplomatic Relations 1961. The consular law is based on the Vienna Convention on Consular Relations. Most important terms are part of common law. The immunity of diplomats and consular personnel is the most detailed version of immunities (Denza, 2004).

Diplomatic relations and activities are based on a mutual agreement between the involved states and are in the mutual interest of both countries. The sending state chooses its diplomats. This group of representatives can be the ambassador or his/her deputy, diplomatic personnel, administrative and technical staff. Only the head of the mission needs to be approved by the receiving state (art 4.1) (Brölmann, 2013). However, the receiving state can always declare a member of the mission a 'persona non grata' (art. 9) (Brölmann, 2013), which leads to a return of that member to the sending state or to an end of the diplomatic relations between both states. This gives the receiving state some influence over the people residing in the country that enjoy diplomatic immunity. However, this influence is limited as a result of the interests of states in another country (Nollkaemper, 2011: 138). Diplomats have to comply with the national law of the receiving state, but the receiving state is not able to apply these laws. In order for the diplomats to fulfill their diplomatic tasks unhindered, international law offers privileges and immunities. Privileges are exemptions from national law, for example the exemption from paying the taxes of the receiving state. Immunities protect the diplomat from the judicial power and jurisdiction of the receiving state. The scope of these privileges and immunities differ according to the diplomatic hierarchy. The ambassador has absolute immunity while the staff has less immunity, which is part of the functional immunity. The level of immunity shows the status of the privileged representatives. Even though representatives may have immunity, this does not mean that they do not have to comply with the laws of the receiving country.

The immunity is best shown by the fact that diplomats are not liable to be sued. Unless it is part of three exceptions, in Article 31.1 (wetten.overheid.nl, consulted 17<sup>th</sup> November 2013): “A diplomatic agent enjoys immunity from criminal, civil and administrative jurisdiction in the receiving state, unless it is an action related to *private immovable property, succession or professional/commercial activities*, which are not on behalf of the sending state”. Diplomatic agents are entitled to “Immunity from jurisdiction, and inviolability, in respect of official acts performed in the exercise of (their) functions, except in so far as additional privileges may be granted by the receiving state” (Brown, 2008: 67). Who is ‘permanently resident’ is not explained in the Convention, the interpretation of this differs per country. The receiving state is obliged to treat diplomats with ‘due respect’ according to Article 29. However, the immunity and respect have room for interpretation. Due to the fact that both countries enjoy a good relationship, mutual respect of the laws is very important.

The fact that this type of immunity is the most detailed is demonstrated by the fact that the Convention for example also states that embassy premises, archives and mission documents are inviolable. As a consequence, the suitcase of a diplomat cannot be opened at an airport. Buildings occupied by the mission, such as offices but also the residences of diplomatic personnel are also inviolable (Denza, 2004).

Even though this immunity faces much criticism in the Netherlands, some people say that the benefits of the diplomatic relations are higher than the costs of diplomatic personnel who are not complying with national law. To simplify the Convention by, for example, excluding traffic violations would lead to deteriorating diplomatic relations. The ministry of Foreign Affairs of the receiving state has to be notified of the appointment or terminations of members of the mission (article 10). However, some receiving states demand more details about members of the mission than other states. This notification gives decision-making power to the receiving state. On the other hand, these immunities and privileges are ambiguous: every convention, law or rule has room for interpretation (Denza, 2004). This study examines how much room there is for interpretation, as this can influence the constraints of the representatives.

A third type of immunity is the *immunities and privileges of International organizations*. The base for these immunities is the principle that International organizations need this immunity to function and to protect their employees. So instead of a sovereign principle, this immunity is based on a functional principle. These immunities of international organizations are of much importance for the Netherlands because it hosts 34 international organizations. Within this immunity a division can be made between immunities of the organization and the immunities of the representatives of the organization (Nollkaemper. 2011).

The right to immunity for an organization is based in the formation treaties of the organization itself. A more detailed explanation of the immunities of these organizations are stated for example in the UN Convention on the Privileges and Immunities of the United Nations 1946 and the Convention on Privileges and Immunities of the Specialized Agencies 1947 (Brölmann, 2013). Besides this Convention, other multilateral and bilateral treaties, such as seat agreements deal with the immunities. This type of agreement settles the relation between the organization and the country in which the organization is settled. Most of these immunities are based on customary law. The buildings and properties of the organizations are immune. Authorities of the receiving state are not allowed to enter the building without permission. In addition, international organizations enjoy fiscal privileges.

The second part of the immunities and privileges of international organizations is the privileges and immunities for personnel of international organizations. For a limited group of employees, for example the Secretary General of the United Nations, absolute personal immunity applies. Functional immunity applies to the other representatives. They can still be brought to court for a non-work related traffic violation (Nollkaemper, 2011). Privileges are often not stated in a convention or a treaty, but are stated in the seat agreements to make it more interesting for international organizations to settle in a specific country (Nollkaemper, 2011).

In Appendix III and IV, an overview can be found of the several types of statuses and their immunities for diplomats and IO employees. In the following table, a summary is made (Dutch Ministry of Foreign Affairs, 2014):

	<b>Diplomats</b>	<b>IO employees</b>
<b>Absolute personal immunity</b>	<p><b>Status AD:</b> Head of mission. Ambassador and its resident family members</p> <p><b>Status BD:</b> Members of the technical and administrative staff and their resident family members</p>	<p><b>Status AO:</b> Employees equal to members of diplomatic personnel and their resident family members</p>
<b>Functional personal immunity</b>	<p><b>Status ED:</b> Members of the service staff (handyman, chauffeur, cook etc.) and their resident family members</p>	<p><b>Status BO:</b> Employees equal to members of the technical or administrative staff and their resident family members</p> <p><b>Status EO:</b> Members of the service staff (handyman, chauffeur, cook etc.) and their resident family members</p>
<b>No immunity</b>	<p><b>Status PD:</b> Private servants</p>	<p><b>Status PO:</b> Private servants employed by representatives with AO status</p>

This table shows that the biggest difference between embassies and international organizations on types of immunities is the difference of members of the technical and administrative staff. While at the embassies they have absolute personal immunity, at international organizations they are only facilitated with functional personal immunity.

The comparison between immunities of diplomats and of IO employees, shows similarities. However, the practical interpretations and use of these immunities may differ. This is depending on the interpretation of the country or international organization.

### Topics for this study

In the judicial perspective of the rational choice theory, individuals are seen as rational actors who make rational choices. The approach to deciding about judicial cases is not posited, but is derived from a judicial utility function. This is a model of rational responses that consists of preferences and aversions, which are not limited to legalism or to ideology (Epstein e.a., 2013: 29). This makes the rational choice theory a relevant theory for juridical research. Political scientists were the first social scientist who studied judicial conduct. Relating political conduct of judges to economic incentives and constraints may help explain the rational conduct of the judges (Epstein e.a., 2013: 31). The study of Epstein e.a. (2013) shows that ideology and commitment to legalism do not limit the judicial utility function. The preference of belonging to a group seems to have more impact on the judges than the ideology of judges or other workers. If people move on the hierarchical ladder, it does not influence the ideology of judges but it influences the utility function by making rational choices.

International rational institutionalism help analyzing rational conduct by acknowledging the importance of institutions, but also create room for interpretations of these institutions. The emergence of the institutions and the level of compliance can be explained by the institutional approach. Especially the level of compliance is of importance in the institutional research (Simmons, 1998). For the judicial approach on the conduct of representatives, rational institutionalism is therefore a relevant.

Even though the table in this chapter shows a difference in division on personal immunity between diplomats and IO employees, other aspects can also influence the conduct. This is difference taken into account but also new, other aspects may partly explain a difference in conduct. Therefore, this research will not only focus on these factual differences, but focuses on interpretational differences.

In this study, the judicial institutions are the treaties in which the personal privileges and immunities are stated: the Vienna Convention and the seat agreements. These institutions shape the conduct of the individuals, by limiting conduct on one side and leaving room for

interpretation on the other side. The room for interpretation of the treaties is an important aspect. Does everybody interpret them the same way? For example, are representatives aware of what they can be sued for and what not? Another aspect of the judicial perspective is the fact that there is no single controlling institution. The question is who has to control over an international organization: is this the international community, the receiving state, or the Security Council?

This study will focus on what the representatives think and know about the treaties and their personal immunity. Is there room for interpretation? And how does that influence the preferences of the representatives? On the other hand, rules can also give clear constraints to the conduct of the representatives. Appendix V will show some topics and related issues for this perspective that will be questioned during the interviews.

## Rational choice theory in public administration perspective

### Current system

A country or institution faces many challenges in order to successfully create and implement a policy. Several of these challenges can also influence the conduct of the diplomats or IO employees.

The beginning of a policy making process and an implementation process is always dependent on the received information. Choices of individuals can be divided into two main dimensions. Public administration distinguishes between *perfect and imperfect information* about the outcomes that follow from the alternative courses of action. People in choice situations with incomplete information face risks and uncertainty (Elster, 1986: 5-7). The type of information influences the opinion and conduct of people. Information can be incomplete, interpretive or strategically withheld. For example, the things that people know are the things that people believe to be true. However, this depends on what a source tells people and how this is presented (Stone, 2002). Within all the information that is offered, a selection is made on the basis of relevance and uncertainty. Communication forms an important aspect (Issing, 2005). The second dimension is the distinction between *parametric and strategic decisions*. In a parametric decision, the individual faces external constraints that are in some sense parametric or given. The individual has to assess the consequences as much as possible before making a decision. In case of a strategic situation, the interdependence of the decisions is crucial. Before making a decision, the individual will limit uncertainty by anticipating what others are likely to do. The game theory is part of such a strategic decision (Elster, 1986). Communication is an important aspect for making a strategic and well-informed decision.

Communication about the implementation or the job of a representative also faces challenges. Transparency and accountability are two important issues in the public domain. The degree of both aspects is always questionable (Issing, 2005). Accountability is a crucial aspect of the representation of diplomats and IO employees. However, a principal – agent dilemma does arise here. The sending state or international community gives a task and mandate to the representative, and the representative has to implement it. Sanctions can be a consequence if undesirable conduct occurs. Nevertheless, this conduct is difficult to control. And that is where the transparency and accountability faces its challenges (Jönsson & Hall, 2005). One of the main criticisms on immunity is the lack of accountability (Reinisch, 2013). Another challenge in this area is the fact that representatives cannot always be fully transparent. For the sake of their job, some discretion might be in place (Jönsson & Hall, 2005). Trust of the institution or the country of origin in its representative is a very important aspect of the job of a representative and a



strong pressure on the representative exists to present the country or international organization at its best. Within diplomacy and international organizations, trust and representation are one of the core functions. The principal agent theory is clearly reflected in these aspects as well (Jönsson & Hall, 2005). Therefore, the moral aspects of the tasks of representatives might influence their conduct and implementation of the mission. However, this morality can differ per country or culture. Besides that, the morality of the country and the moral incentives of the representative may differ as well (Jönsson & Hall, 2005). Moreover, the society and the social norms and values are very important for the morality. It can be expected that countries have therefore set up a code of conduct to specify the conduct of representatives.

Another aspect of the principal – agent dilemma in this case are the differences between the daily life as a representative, the issues he has to deal with, and the more abstract goals set by his institution. The actual practice and policy may differ from the rules previously stated. This dilemma is the discretionary space of the representative: the free space of the diplomat in the context of his work description. It is not possible to standardize all work of public service officers and international civil servants. Various work obstacles can pose challenges for the representative (Lipsky, 2010). The interpretation and the implementation of the tasks of the diplomat vary on an individual basis. The Vienna Convention for instance leaves room for interpretation. This leads to differences in interpretation between countries and diplomats and thus limits the accountability. Ambiguous information can have crucial consequences for the conduct of representatives and the implementation of policies.

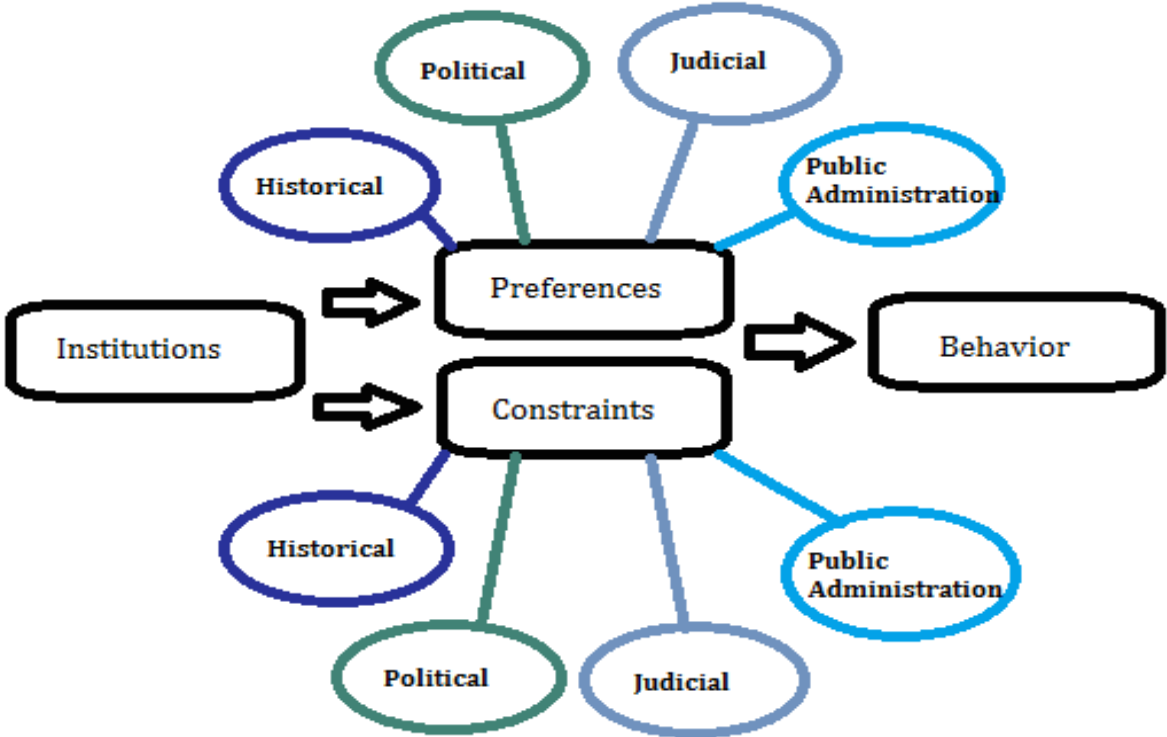
All aspects that influence the conduct of policy makers and the implementation of policies are also influenced by time. The pressure of a deadline, or the sudden extra space for work due to a delay, influence the choices that are being made. Delays for example, whether planned or unplanned, can also create opportunities. They can also influence priorities (Pressman & Wildavsky, 1984). Time almost always plays a role in decision-making: temporal benefits or costs, timing and externalities can influence the final choice (Elster, 1986: 11).

### **Topics for this study**

It is relevant for this thesis to see whether one of these policy aspects influences the conduct of the representatives. It can be concluded that the information aspect is the basis for almost all other issues. The type of information, the amount and the interpretation influence the possible preferences of a representative. Within this perspective, a difference can be made between the process aspect and the content implementation. In Appendix V an overview can be found.

## Recapitulation

Based on the previous chapters, the following scheme can be made:



Both institutions, the institution of the embassies and diplomats and the institution of the international organizations and their employees, are the context in which the representatives work. Such a scheme can therefore be made for each institution. These institutions shape the preferences and constraints of the representatives, which leads to specific conduct. In this study the conduct focuses on whether representatives respect the local legislation or not. However, within the context of the institution, the four disciplines also influence the preferences and constraints of the representatives. The preferences might change, based on specific issues relating to one of the disciplines. For the historical discipline, this can be a shift that is currently taking place. For the political discipline, the focus lies on influencing aspects on types of relations. The judicial discipline can be influenced through the type of treaty and the practice of that treaty. Finally, the public administration perspective focuses on information, which can also influence the preferences and constraints. For this study, all these topics will be examined. The main goal of this study is to see if one of these topics might explain the difference in the use of privileges and immunities.

To use the previously outlined information about the current system and the link to the rational choice theory, a table has been made to demonstrate which perspective focuses on which topics. This table can be found in Appendix V. Furthermore, more explicit questions have also been

prepared. These questions can be found in Appendix VI. The methodology chapter provides an explanation of the structure of these interviews as well as on their preparation.

## Immunity and Privileges in the Netherlands

As this thesis focuses on the Netherlands, this chapter provides more information about the immunity and privileges within this country.

The Netherlands hosts many embassies and international organizations. Currently, 34 international organizations are located in the Netherlands; the interests of the Dutch Ministry of Foreign Affairs focus especially on The Hague, as the 'Legal Capital of the World'. In 2013, 20,000 privileged persons in total lived in the Netherlands. As shown in the introduction, the immunities of diplomats are high on the agenda at the moment. Especially due to one television station (Powned), the conduct of diplomats has been illustrated for the Dutch society with a focus on the traffic violations by these diplomats. As a result, the government currently places a stronger focus on this policy issue (Dutch Ministry of Foreign Affairs, 2014).

To prevent a situation in which public service officers such as the police act incorrectly in dealing with privileged persons, a manual for police officers and other public servants was published in February 2014. The 'Handleiding voor de omgang met geprivilegeerden' [Manual for the treatment of privileged agents] issued by the Dutch Ministry of Foreign Affairs (Version of February 2014) explains what the immunities are, explains the layout of the identity cards of privileged persons and lists the different statuses of these persons. A similar manual exists for IO employees arriving in the Netherlands, the 'Protocol Guide for International organizations' by the Dutch Ministry of Foreign Affairs (Version of December 2012). On top of that, the Ministry of Foreign Affairs and the municipality of The Hague published several promotion brochures. These guides show that the Dutch government does realize the importance of having such organizations in the country and the need to deal with them correctly.

While at the beginning of the media attention on representatives and their conduct, the Dutch Ministry of Foreign Affairs was keeping some distance from the media on this issue, on the 23<sup>rd</sup> of April of 2014 the Dutch Minister of Foreign Affairs, Timmermans, informed the parliament about the privileged persons who were violating the law. The statistics presented by the Ministry of Foreign Affairs show that, both on traffic violations and criminal cases, the average number of privileged persons involved were lower than the average of the Dutch inhabitants (Ministry of Foreign Affairs DKP – 2014-189, 2014). However, responding to these violations by the police or the government is more difficult due to the privileges and immunities. The letter sent by the Minister of Foreign Affairs to the parliament describes that in general the Vienna Convention is not part of the discussion. The seat agreements of the international organizations

are linked to the Vienna Convention and therefore the Convention also applies to international organizations. In 2005, the Dutch Ministry of Foreign Affairs tried to equalize all seat agreements of the international organizations. In general this meant that almost every organization received more privileges to ensure an equal amount of immunities and privileges amongst all the organizations. However, most of the IO employees have functional immunity while the diplomats have absolute immunity. Only the board of an international organization has absolute immunity (Reinisch, 2013).

The ministry has been trying to influence the conduct of representatives without detracting from the Vienna Convention. To do so, the Dutch Ministry of Foreign Affairs has also tried to learn from other countries that face similar challenges. Several measures will be used to try to pressure representatives to act in accordance with Dutch law. In serious criminal cases, the Netherlands will now ask the sending state to waive the diplomatic immunity of a representative or by declaring that person 'persona non grata'. If the immunity is waived or limited, the Dutch police has more power to act on the violations. Or the person can be sent back to the sending country by declaring that person 'persona non grata'. However, in this case, the context of the relationship with the country will always be taken in account (Ministry of Foreign Affairs DKP – 2014-189, 2014).

In case of traffic violations, the ministry will continue to recall every outstanding fine from a representative every three months. If this is not effective, a warning will be given. If this is also not effective, the fuel card of that specific representative will be blocked. Experiences in Belgium show the effectiveness of this policy (Ministry of Foreign Affairs DKP – 2014-189, 2014). The representative has to cross many bureaucratic and administrative hurdles before he is able to use his fuel card again. The final measure is a yearly publication of violations and outstanding fines by representatives, following an example of the United Kingdom. Before the publication of all information, the organizations will be encouraged to finalize all fines and charges. A study is currently being conducted to see whether or not the license plates of cars can be cancelled. The United States have a system in which the license plates are not extended if not all charges and fines are paid (Ministry of Foreign Affairs DKP – 2014-189, 2014).

Interestingly, in 2010 the Dutch Parliament already asked questions about the possible room to influence the conduct of diplomats. The minister of Foreign Affairs at that time did not focus that much on common decency, but rather the implementation of the Vienna Convention. The minister promised to look scrupulously at the possibilities to enforce payment obligations. It states that there are no coercive measures of the government to influence the conduct of diplomats. Moreover, the minister mentioned that the Vienna Convention was up to date at that

time (Dekker & Hey, 2011). While the previous minister of Foreign Affairs mentioned the absence of possible coercive measures, the current minister of Foreign Affairs is implementing them. A different attitude towards diplomats can explain this. Above on that, the current pressure of the society and media will influence the conduct of the minister. However, the fact that already in 2010 this topic was debated by the parliament shows that it is a long lasting issue.

Within this study, representatives will be asked for their opinion on the current new measures by the Ministry of Foreign Affairs. What do they think of them, and are they effective? Furthermore, they will also be questioned about the more general tasks of the Ministry of Foreign Affairs. What do they think of the current system that the ministry is using? This information may help explain their conduct.

## Methodology

This study investigates the interpretation of privileges and personal immunities of diplomats and IO employees. By comparing these two, within a similar context, the differences in use and interpretation of immunities and privileges can be found. The Netherlands is examined as a case study to find out where there is possible room for influencing these international agreements and the related actions. This chapter elaborates upon the technical research aspects.

### Research perspective: Interpretative and Qualitative

A research perspective provides direction to research. Which 'glasses' are worn to find the results and to analyze the results? This study is conducted with an interpretive approach. Norms and values, meanings, processes, culture and symbols are important aspects of this approach (Deetz, 1996). The researcher interprets what is heard, seen, read, but accepts that this is not the only truth. The researcher is aware of the different truths and interpretations. The social reality and its contexts are created by the interaction of others and are subject to continuous transformation (Burrell & Morgan, 1979). The research objects are interpreted according to the literature about those research objects. Therefore, there are no good or bad answers. It is an interpretation.

For this study, the interpretative approach is the best suitable due to the fact that it focuses on differences in conduct and explanation of that conduct. These are not a set of facts, but interpretations are influenced by the context such as the social reality and personal beliefs. By creating room for these different interpretations, the most relevant data will be found and examined. For example, by focusing only on facts, this research will be too limited. As this research is about preferences and constraints, the interpretative approach is appropriate. These preferences and constraints are not a set of facts or stable aspects, but they are interpreted and shaped by the representatives. Especially the interpretation by the institutions and the information are relevant for this research. The interpretation may explain the addressed conduct. Therefore, this perspective has been chosen.

With an interpretative approach, a qualitative research is suitable. There are no single correct answers, but it is about interpretations. A quantitative approach will therefore limit the results by having a set of answers rather than no answers prepared at all. This research is therefore conducted with a qualitative approach. The respondents can answer the questions and afterwards explain those answers. The 'why' is important in this research (Van Thiel, 2010). What are representatives' opinions and experiences of privileges and immunities, and why? The

answers by the (limited) number of respondents will subsequently be generalized. Therefore, the inductive approach is applied, from a case to a more generalized perspective (Van Thiel, 2010). Focusing on one case helps to get as complete an image as possible, which may later be brought to a higher more generalized level. Starting at that generalized level would create incomplete answers, due to the fact that this topic is too specific and complicated.

## **Case study: The Netherlands**

The topic of this study is an international issue. However, it is not possible to achieve a complete picture of the complete worldwide context of immunities and privileges. Therefore this study has chosen a case study (Van Thiel, 2010). It attempts to examine the context of the Netherlands as completely as possible, by interviewing several respondents of international organizations and foreign embassies based in the country, as well as policy officers of the Dutch Foreign Ministry and the municipality of The Hague. The focus on the Netherlands provides a framework that helps to focus and deepen the study of this specific case. The world of immunities and privileges is a very complex system. The treaties and many other aspects that are part of this system require much focused study prior to making any conclusions. Having one case in which all aspects are covered is therefore the most suitable way of conducting this study and will therefore generate the most valuable answers.

## **Data collection: Interviews**

This study examines three institutions by way of interviews. First of all, the institution of international organizations is investigated. Therefore, seven representatives from five international organizations are interviewed. The international organizations that collaborated in this research are:

- EuroControl
- NATO AEW&C Programme Management Agency (NAPMA)
- The High Commissioner for National Minorities (HCNM)
- The Hague Conference on Private International Law (HCCH)
- International Criminal Tribunal of the former Yugoslavia (ICTY)

The selection of these organizations is based on a representation all international organizations in the Netherlands. Due to the many judicial organizations in the Netherlands, two out of five of the international organizations in this research have a judicial task. On top of that, the size of the organizations this has led to a more general representation of the international organizations in the Netherlands.



With two of these organizations, there were interviews with two representatives. The other three organizations were represented by one interview each.

Due to the fact that this study focuses on the Netherlands, IO employees in Netherlands were interviewed. Two organizations that participated in the study are located in the south of the province of Limburg, while the other organizations are located in The Hague. Four of the respondents were Dutch but have been working in the international community for a long time. The other three respondents were not Dutch; they all came from a native English speaking country. There might be a different interpretation of privileges and immunities by Dutch employees and foreign employees. The Dutch employees enjoy less privileges and immunities than foreign employees. However, the Dutch employees are more familiar with Dutch norms and values. Therefore, they could give a well-informed perspective on the Dutch case.

Second of all, embassy staff with diplomatic status was interviewed. For the reasons stated above, the respondents represented foreign embassies in the Netherlands. In total, five embassies participated in this study. Fortunately, this is the same number as the number of participating international organizations. Also, the types of functions of the respondents are similar. Due to the anonymity, the exact functions will not be stated here. However, all respondents from both embassies and international organizations enjoy a similar status as relates to privileges and immunities. Therefore both institutions were equally represented. The following embassies participated in this study:

- The embassy of France
- The embassy of Ireland
- The embassy of Bulgaria
- The embassy of Panama
- The embassy of Belgium

The selection of these countries is based on the willingness of embassies to cooperate in this research. All embassies located in the Netherlands have been approached for collaboration. However, only five have responded to the several approaches. The researcher was aware of the limitations of this type of selection for the research and of the fact that the respondents of the embassies might have given colored information during the interviews. Moreover, all the countries that are on the top of the list on violations did not respond to the possibility to cooperate. All embassies that have collaborated in this research are relatively “good” in paying traffic fines and respecting local law. Extra tasks existed for the researcher to filter the irrelevant issues out.

The third institution is the Dutch government. How is the country dealing with these international agreements? To get an impression of the mindset and current activities of the Dutch government, two policy advisors of the Dutch Ministry of Foreign Affairs. Both policy advisors deal with the embassies and international organizations in the Netherlands and the related policy issues.

During the data collection, one other institution seemed very relevant for this study, namely the international department of the municipality of The Hague. Most foreign embassies and international organizations are located in The Hague and therefore this municipality has influence on the specific treatment and interpretation of privileges and immunities. Therefore, one interview was held with an employee of the 'Bureau International Affairs' of the municipality of The Hague.

Finally, to increase the validity and reliability of this study, an expert on international public law was interviewed. The researcher is not familiar with all the judicial aspects of this issue, which makes it valuable to include an expert on that specific topic. Before interviewing all the respondents, this expert provided advice about the theoretical framework of the thesis and explained the basis of the Vienna Convention and the seat agreements. After completing all the interviews with at the embassies, international organizations and ministry, an interview was held with this expert to discuss the preliminary findings and give some final answers on judicial questions about this topic. This has prevented incorrect assumptions and added value to the study. The reliability and validity is therefore improved.

By interviewing all these 16 respondents it has been attempted to achieve as a complete image of the situation as possible. All interviews lasted for about one hour so that all questions could be answered. The interviews were semi-constructed interviews. This type of interview provides direction to the conversations and makes sure that all relevant aspects are discussed, without influencing the direction and opinion of the respondent (Van Thiel, 2010). Due to the focus on representatives' interpretation of privileges and immunities and their conduct, a simple closed answer will not meet the needs of this study. The topic list and possible research questions can be found in Appendix V and Appendix VI. The interpretative approach and the semi-structured interviews have added value to this study. It gives direction to make sure that all aspects are covered without influencing the answers of the respondents.

## Data collection: documents analysis

Next to the data collection in the interviews, this study also makes use of a document analysis (Van Thiel, 2010). An overview of all violations of the Dutch law by international representatives in 2013 was analyzed to examine whether there is a pattern or not. This document provided extra information about the kind of violations and which countries and organizations are violating the Dutch local laws. The municipality of The Hague has also published their 'black list' with a top 10 of countries violating the Dutch legislation. These were taken into joint account when identifying the current Dutch situation.

In London, such a list on the issue of traffic fines is published regularly. The Dutch list was compared to the list from the United Kingdom to see if any patterns found are matching with another country. This increased the generalization of the conclusions.

## Data analysis

After having interviewed all respondents, the interviews were transcribed. All transcriptions were as complete as possible to make sure that no interpretation was made during this phase. The transcriptions are literally what the respondent has said and therefore added validity to the research.

After finishing all transcriptions, the analysis schemes were filled in. The four perspectives and the Dutch case all have their own scheme in which all relevant topics discussed in the interviews are implemented (Van Thiel, 2010). Besides the topics found based on the literature, new topics which came up during the interviews were also added and topics that did not come up during the interviews were removed. When the overview of all schemes with topics and comments was complete, the analysis on those topics was done by reading those schemes and concluding according to those schemes.

The interviews were analyzed anonymously; the reader will not be able to find out which respondent works at which specific institution. Interviews 1 to 7 are from the respondents of international organizations. Interviews 8 to 12 are the interviews of diplomats and interviews 13 to 15 are interviews with policy advisors of the national or local government. Interview 16 is the expert who was consulted on the topic.

## Reliability

The reliability of research is defined as: 'the accuracy and consistency of measurements. An instrument is reliable if it still gives the same result with the same conditions' (Van Thiel, 2010: 189). To make this study as reliable as possible, several choices have been made. First of all, for both the diplomats and the representatives of the international organizations, it has been

attempted to interview similar types of respondents. All respondents have similar privileges and immunities and are therefore not influenced by their private situation. However, one aspect does influence the answers. That is the fact whether or not the respondent from an international organization was Dutch or not. However, this has only influenced the topic of private advantages or disadvantages, but not the general idea of the organization or of the Dutch case. On the other hand, the fact that the respondents of the embassies all have a similar status, and therefore similar privileges and immunities, and are all posted in the Netherlands for more or less a similar period helps.

Besides that, the topic list helps by asking similar questions to all respondents. With non-structured interviews, the reliability for this study would be limited. However, full generalization and finding one conclusion will not be possible, due to the fact that this research focuses on the conduct of people and their interpretation. However, every attempt has been made to increase the reliability.

## Validity

Validity is divided into internal and external validity. The internal validity is the question whether the measured objects are the objects that needed to be measured. In order to establish this, two orientation interviews were held prior to the commencement of the study to create an impression of the context; one with a current Dutch diplomat abroad and one with the previously mentioned expert. This served to point out possible obstacles or other aspects that might influence the internal validity. Besides that, the semi-structured interviews also helped by making sure that the correct aspects were questioned. To ensure that the correct objects are measured, the respondents were questioned about their respective functions in advance to determine whether they were relevant for the study.

The external validity can be linked to the possibility to induction the results. Is it correct to bring the conclusions to a more generalized level? After the completion of all interviews, an expert was questioned to discuss the results of all interviews. Are these results new, standard or are there any other aspects that might influence the results? This prevented the research to generalize incorrect conclusions. Besides that, all the numbers found in several documents about the Netherlands were checked at the Dutch Ministry of Foreign Affairs. The document analysis in which the Dutch situation is compared to the situation in the United Kingdom adds external validity to the study.

## Empirical findings

Two types of analyses were made. First, the documents of the Ministry of Foreign Affairs and the Municipality of The Hague about current violations were analyzed, by comparing this with violations in London. Is there a pattern or not? Subsequently, the interviews with the respondents were analyzed to provide insight into which topics explain the differences in use of privileges and personal immunities.

## Document analysis

Three documents were analyzed to see whether or not a pattern can be found in representatives of countries that violate the Dutch legislation and countries that do not. To this end, the results of the Netherlands were compared with list of violations in the United Kingdom. First, some general information is given and afterwards the document on violations within the Netherlands is analyzed.

Around 25% (5,000 persons) of the privileged persons currently living in the Netherlands are linked to an embassy, while 15,000 persons (75%) are related to an international organization (respondent 14). The number of privileged persons consists of the representatives themselves and their family members who enjoy similar privileges and immunities as the representative. At the embassies, 2,500 people have the highest status, AD. At the international organizations, 3,350 persons have the highest status AO (respondent 14). This is the first interesting finding. In comparison, a much larger number of people at embassies than at international organizations enjoy diplomatic status. This can partly be explained by the fact that only the most important employees of an organization receive this status. In total 180 embassies are located in the Netherlands who all have at least a Head of Mission who thus enjoys full diplomatic status. Only 34 international organizations are currently located in the Netherlands. The largest embassy has 200 employees, while the largest international organization has around 4,000 employees (respondent 15). These differences in numbers make it difficult to come up with one clear conclusion on whether or not there is a pattern of representatives from specific countries violating or respecting local laws.

The overview of all violations in the Netherlands in 2011-2013 by the Dutch Ministry of Foreign Affairs shows several aspects on the use of immunity and privileges (WOB verzoek, 2013). First of all, the numbers confirm that 83.20% of all violations of the law are committed by embassy personnel while 16.80% of the violations in the Netherlands are committed by IO employees. These numbers strengthen the value of the search for explanations of the difference in interpretation and use of Dutch legislation. Behavioral or cultural analysis cannot be made from

the document due to the fact that most of the offenses are listed as being committed by either 'embassy' or 'IO'. This level of anonymity makes it impossible to arrive at any further conclusions, therefore the interviews were held.

The top 10 list of countries that do not pay their fines in The Hague and London are:

	<b>The Hague</b>	<b>London</b>
1	Russia	United States of America
2	China	Russia
3	Azerbaijan	Japan
4	Egypt	Nigeria
5	Tunis	Poland
6	Belarus	Germany
7	Ukraine	India
8	Indonesia	Ghana
9	Bosnia -Herzegovina	Sudan
10	Kuwait	Kenya

(NL: Gemeente Den Haag, 2013)

(UK: Transport for London, 2013)

Based on these two top ten lists of non-paying countries on parking and traffic fines, hardly any conclusion can be made. Only Russia is mentioned twice, and both times at the top of the list. Further than that, no conclusions can be made. The other countries come from all over the world rather than a specific continent. This suggests that culture would not influence whether a representative decides to pay his fines or not. However, this is a small comparative study. A broader research might give more explanations.

Notably, no international organization is mentioned in the top ten, neither in London nor in The Hague. This confirms that in general, international organizations more often respect the host country's legislation.

However, as previously shown, in some cases the type of immunity of diplomatic personal is different than from personnel of international organizations. This can partly explain a difference too, because relatively less people have absolute personal immunity and cannot be forgotten in this research.

## Analysis Interviews

The four perspectives, explained in the literature of this study about privileges and immunities, are used in this chapter to gain insight into which topics explain the differences in use of privileges and immunities by diplomats or IO employees. The data from the Netherlands show that from all international representatives, the diplomatic staff from embassies commit 83,20% of all violations of the law. The four perspectives might explain the difference. The rational choice theory explains that constraints and preferences give direction to the conduct of representatives. The constraints and preferences related to the four perspectives are therefore analyzed in this chapter.

### *General information about respondents*

Most of the respondents at the embassies were the 'number 2' of the embassy. So in general that means the deputy head of mission (respondents 8, 9, 10 and 11). One respondent was the ambassador himself (respondent 12). All embassy respondents had AD status. At the international organizations, most of the respondents functions dealing with judicial matters (respondent 1, 3, 4, 5, 6 and 7) and had AO status. Respondent 2 was an employee of an international organization that worked at the department of operationalization of his organization.

All respondents mentioned that they always pay their fines as soon as they are aware of their tickets. They generally do think that people have to pay every fine.

### Historical perspective

The historical perspective as explained in the literature chapter shows the development of privileges and immunities over time. While the development of privileges and immunities of diplomats goes back to the 17<sup>th</sup> and 18<sup>th</sup> century, the development of an international community and international organizations started in the 19<sup>th</sup> and 20<sup>th</sup> century. A shift is found from a focus by institutions on absolute immunity to a focus on functional immunity. Other shifts are a shift from national to a more international focus, from only applying to wealthier countries to all countries, and from immunities and privileges only for the highest ranked person in the organization to them being granted to more employees. Questions about these shifts are asked during the interviews to see whether or not they are seen in the current practice. These shifts might influence the conduct of the representatives. For example, a shift might give constraints to the representative and that, according to the rational choice theory, influences the conduct of the representative. Several shifts will now elaborated upon.

### *Shift 1: The Dutch media*

The first shift mentioned in the interviews is a consequence of the current position of the Dutch media, but is not mentioned in the literature. Due to many media reports about diplomats and their conduct, as well as political pressure, the Dutch Ministry of Foreign Affairs had to set up several new policies to influence the conduct of diplomats and to limit violations of local laws. This shift was not mentioned in the elaborated literature. This consequence of the sudden focus on diplomats (by for instance the Dutch media broadcaster Powned) after the conflict between the Netherlands and Russia are noted by the respondents (respondent 5, 7, 10, 11, 13, 14). They see a different attitude of the Dutch society and of the Dutch government. The opinions of the respondents on these new policies of the Dutch government will be discussed later on in the chapter about the Netherlands. Respondents observe a shift from accepting the conduct by the Dutch government to trying to influence the conduct with new policies. This means that the Dutch government creates more constraints for the diplomats, which may lead to a stricter use of the privileges and immunities. However, these new policies of the Dutch government are just in the process of being implemented, so any real changes cannot be noticed yet. Due to the fact that respondents of both institutions notice this focus on their conduct, and due to the fact that it is just being implemented, this cannot explain any difference in conduct.

### *Shift 2: From absolute to functional immunity*

The second shift noted by the respondents is also mentioned in the literature. While previously diplomats quite easily received absolute immunity, a shift is made to more functional immunity. Both diplomats 5 and 6 have seen this shift. However, this shift can be discussed due to the fact that also two respondents have contradicted this shift (respondent 10 and 14). Both think that this shift does not exist and that the division in absolute and functional immunity has remained the same for many years. It is interesting that respondents of international organizations have noticed the shift, while the other two respondents are from embassies. This may show that the shift only takes place at the international organizations and that at embassies, the privileges and immunities remain the same.

### *Shift 3: Increasing importance of the Netherlands*

A third shift that has been observed, which is not described in the literature, is the increasing importance of the Netherlands, and of The Hague in particular. A shift in focus to the international community by the Dutch government and increasing importance of The Hague as the 'Legal Capital of the World' has increased the focus of the international community on The



Hague and the Netherlands (respondents 9, 13 and 15). The growing international importance of The Hague leads to more Respondent in The Hague and therefore more administrative work for the Dutch government. Some respondents feel that the Netherlands is blaming the representatives too much while the representatives actually really benefit the country. *"If you look at the amount of money that is generated in the economy here in The Hague by all these representatives and the prestige all the organizations give. I mean there is a certain amount of give and take, so now we are looking at parking tickets?"* (respondent 10). Some respondents have noticed an improvement of the professionalization of the administrative capabilities of the Dutch government (10, 13 and 15). However, other respondents still have complaints about the level of professionalization of the involved Dutch agencies (respondents 1, 5, 7 and 9). Even though the respondents notice the growing importance of the Netherlands within the international community, this shift will probably not influence the conduct of representatives. The increasing importance will neither provide new constraints nor give other preferences to the representatives; within the Netherlands, the context stays the same. This shift is too general to influence the individual conduct of representatives.

#### *Shift 4: Equalization of international organizations and embassies*

The respondents noted the described revision of the seat agreements of the international organizations made in 2005 (respondents 3, 7, 9, 11, and 14). Interestingly, it was not only noticed by respondents from international organizations, but also by respondents from embassies and the Dutch government. All international organizations received more privileges and immunities in 2005, when the Dutch government tried to equalize all seat agreements with the Vienna Convention. This resulted in fewer constraints for the IO employees. Nevertheless, IO employees still violate the local legislation less than diplomats. The assumption that seat agreements do not influence the conduct of representatives cannot be made because there are no available data from before and after the revision. This shift cannot explain any difference in conduct due to the limited data and lack of division between international organizations and embassies.

#### *Shift 5: Without privileges and immunities within the EU*

During the first orientation interview with the expert on international public law, a current academic debate about privileges and immunities was discussed. The subject of the debate was the possibility to remove all privileges and immunities within the member states of the European Union, because the sovereignty has already partly been abandoned by the membership in the European Union. The question was, when so many member states already act on trust in the European Union, why would a diplomat of one of those member states need

privileges and immunities in another member state of the European Union? This debate, which focuses more on the future and improvements of the treaties, is taken into account in this research. However 9 out of the 15 the respondents who were asked about this topic disagreed. Respondents 1, 8, 13 and 14 mentioned the importance of reciprocity and if countries within the European Union will touch the Vienna Convention, other countries outside the European Union will change it as well. To be able to function, the Vienna Convention needs to be multilateral with a basis on reciprocity. Respondents 5, 9 and 11 mentioned the disagreements between the member states of the European Union, like the issue of Gibraltar between Spain and the United Kingdom. Not being able to check the bags for instance is therefore also still important within the European Union. If relations within the European Union break down rapidly, there will be no time to discuss or revise the Vienna Convention again and then the representatives are very fragile. Apart from that, the national importance of the immunities and privileges for every country was also mentioned. *“The trust and solidarity within the EU does not cover the rights and obligations the EU member states have on international law”* (respondent 9). Respondent 10 sees limiting the privileges and immunities within the EU as a step backwards rather than forwards. However, respondent 5 does acknowledge the lesser need for immunities and privileges within the European Union. A focus on functional immunity may therefore be better placed. Respondent 8 does acknowledges the different roles a diplomat can have in member states of the European Union and outside of the European Union. The respondents’ country is a member state of the European Union. He therefore agrees with respondent 5 on a focus on functional immunity. Respondent 11 mentions the limitations of the European Union in its international relations. However, two respondents mention the current collaboration between their countries and the Netherlands (respondent 11 and 14). They share embassy buildings for instance. This is in their opinion a step forward concerning the further integration of foreign affairs of the European Union. However, they both think it might be too early to further integrate the European Union into foreign affairs.

Linking this information to the rational choice theory shows both positive and negative consequences of further integration of the member states of the European Union on foreign affairs. If it would mean that the representatives have to act and obey (local) laws, it would mean that there would be more constraints for the representatives. This would hopefully lead to more respectful conduct. However, if it would mean that the Vienna Convention would not be applicable anymore, something even less restrictive might come in its place. Fewer constraints might lead to less respectful conduct. Besides that, the preferences of the respondents are in favor of the current system. Changing the system within the EU influences their preferences and will therefore probably not positively change their conduct. However if the new system creates new constraints for the representatives, this might influence conduct.

## *Culture*

The cultural basis often explains the conduct of human beings. It gives norms and values. During the interviews, this seemed to be an important aspect considering the frequent conversations about this topic. However, in this study, culture was not included as a topic and the cultural approach is therefore not fully covered. Even though culture is not a specific shift, it does fit within the historical perspective because it develops over time. Therefore, the comments on culture are mentioned here. In the end, more research on this specific topic needs to be done in other studies due to the fact that not all respondents were interviewed about this topic.

Based on the interviews, a division can be made on the topic of culture. On the one hand, there is the culture of the countries of the representatives and on the other hand the culture of the Netherlands. The culture of their homeland differs per country. Where are they from? What are the social values in those countries? *“What you do miss here is the cultural factor. Because of course, if you look at the corps diplomatique, the Scandinavians see privileges and immunities very differently than the Arabic world. Or the African continent. Or the Asian world* (respondent 14). The homeland culture influences the conduct of representatives in the Netherlands (respondents 10, 14, 15, 16). For example in some countries, *“being a diplomat is a way of life until death”* (respondent 14). In the Netherlands you are only a diplomat as soon as you leave the Netherlands. When you arrive back in the country the diplomatic status no longer applies. When you are seen as a very important person your whole life in your homeland, being approached as equal to all Dutch citizens might be an insult for the representative (respondent 14).

On the other hand, there is the culture of the Netherlands. Eight respondents talked about the culture in the Netherlands to explain the differences in interpretation and use of the privileges and immunities by representatives. This shows the importance given to culture as a factor contributing to differences. The Netherlands is mentioned as the *“exception rather than the rules”* (respondent 14). In many other countries the society is more hierarchical, which leads to a different opinion on representatives. The Dutch society is not in favor of representatives receiving ‘special treatment’. In their eyes everybody is equal, everybody should pay their fines, everybody should be able to say what they want. Therefore, the immunities and privileges of representatives affect, rather than strengthen, the reputation of these representatives as perceived by Dutch society (respondents 3, 6, 7, 8, 11, 14, 15 and 16). Two respondents explicitly mentioned the fact that representatives in general respect local laws and that it is a misinterpretation to think that they are all arrogant and disrespect Dutch rules (respondents 1 and 9). Two others would like to make clear that the Netherlands actually gain a lot with the presence of representatives; economically as well as on the level of prestige. Therefore, we

should accept some unpleasant conduct of some of the representatives. In their eyes it is a difference in interpretation that we should accept (respondent 10 and 11).

Concluding, eight representatives from embassies and international organizations have mentioned cultural differences as an aspect of different interpretations of privileges and immunities. This is conflicting with the data presented by the document analysis. A cultural difference that explains the difference in use of privileges and immunities might be experienced, but this research did not focus on which cultural differences. The constraints given by their home country, or the fact that there are no constraints given, can explain the differences in use of immunities and privileges by different nationalities. The norms and values of countries also influence the preferences of a representative and therefore influence their choices. Due to the conflicting data, a more specified study on this topic is relevant.

#### *Are Vienna Convention and seat agreements up to date?*

Diplomats act on basis of the Vienna Convention. The seat agreements are the basis on which the representatives act. Since 2005, the seat agreements of the international organizations in the Netherlands are based on the Vienna Convention. All respondents were asked about what they think of the Vienna Convention or the respective seat agreement. Is it up to date, does it cover all relevant aspects and does it need improvement? Six respondents stated that the Vienna Convention, and indirectly the seat agreement, is up to date and that there is no need to revise it. Opening the discussion about the institutions would only harm the power of the Vienna Convention (respondent 1, 6, 8, 9, 14 and 16). *“First, nobody said that the Vienna Convention is outdated. Especially the Vienna Convention was a big step forward in the international law. Even though I think your question is very relevant, I do not think that there is need to update it”* (respondent 9). Two of them mentioned that there is always room for improvement. Since the establishment of the Vienna Convention, the world has changed, but the conventions did not change accordingly. However, both respondents thought that even although an update might be possible, the respondents do not feel like actually doing it. The international community does not feel the need for improvement, since there is no real pressure or urgency experienced. It would probably only harm the effectiveness of the Vienna Convention (respondent 7 and 9). The context of the establishment of the Vienna Convention during the Cold War created an overall need for improvement in almost every country. Therefore, all countries were willing to sign the Convention. Today, that pressure does not exist, which leads to a more passive attitude towards (re)writing such Conventions.

Three respondents did think that the Vienna Convention needs an update (respondent 10, 12 and 15). One reason is that current technological developments are not fully covered by the Convention (respondent 10). However, respondents 6 and 16 explain that technological issues

are hardly ever covered in an international convention. The judges do know how to deal with these issues without explicitly mentioning it in a convention. Another respondent mentions the importance of multinationals, NGOs and other institutions that act internationally. They are not covered in the Vienna Convention or in another convention, while they actually do influence the international community (respondent 15). Respondents 10 and 16 are more worried about human rights. Which international convention 'wins'? As an example the case of Borodin in the Netherlands is mentioned. Which convention is leading, the convention on child protection or the convention on diplomatic relations? This is a current debate without an answer, while an answer is necessary.

Due to the fact that there is no clear difference in opinion on this issue between international organizations and embassies, it cannot be concluded that the current status of the convention or seat agreement influences their use.

### *Recapitulation*

After analyzing the topics of the historical perspective to explain the differences in conduct, no clear answer was found. Therefore, the sub question of this perspective is difficult to answer: *How does the historical perspective explain the differences in use of immunity and privileges between diplomats and of international organizations?*

The historical perspective focuses on shifts. These shifts can influence the constraints, by providing more or less restrictions. On the other hand, due to changes in mindset and context, preferences of representatives may also change. However, as found in this paragraph, the shifts do not explain differences in the use of immunity and privileges between diplomats and IO employees. Almost all shifts influence the diplomats and the IO employees equally. Therefore there is no difference in their experiences, which means that there are no differences that can explain their conduct. The cultural aspect does seem to influence conduct, but due to conflicting results this needs further research before this can be concluded.

## Political perspective

The political perspective, as explained in the literature, focuses on the relations and the consequences of these relations. All types of relations that are described in the literature and mentioned in the interviews are analyzed here.

### *Relation 1: Between countries (competition to host an international organization)*

The first type of relation is the relationship between countries competing to attract international organizations to their country. Both employees of the Ministry of Foreign Affairs said that they put quite a lot of effort into convincing new international organizations to settle in the Netherlands. There even is an Ambassador for International organizations (AMIO), for whom this is the core task (respondents 13 and 14). The importance of hosting prestigious international organizations has been growing (respondent 13). Whilst lobbying to attract a specific organization to the Netherlands, the chapter of Privileges and Immunities also comes into play. This is interesting to note. While almost all privileges and immunities for diplomats are covered in the Vienna Convention, the privileges and immunities of international organizations are an instrument to 'win' the competition ahead of other countries (respondents, 1, 6, 8, 13, 14 and 15). Moreover, in 2005 all seat agreements of international organizations were equalized. However, with new organizations, would they have the same package as all other organizations since 2005? Or would they get more in order to win the competition?

The municipality of The Hague is working together with the Ministry of Foreign Affairs on this issue. The municipality cannot do this job by itself and is dependent on the efforts of the ministry. However, it can motivate and inform the ministry (respondent 15). This means that this relation and the competition to receive new international organizations is held at national level.

This competition between countries only exists for international organizations and will therefore not influence diplomatic missions. Countries themselves choose where they open an embassy. However, the type of international organizations located in a specific country does influence the decision of where to establish an embassy and thus its diplomats. The importance of an embassy partly depends on that. This context of specific organizations in the neighborhood also influences the preferences of IO employees. However, this context is similar to both institutions. Therefore, the international environment of embassies and international organizations cannot influence one institution more than another on a general level. An organization-specific preference can exist, but is too specific for the results in this study.

### *Relation 2: Representative – the Netherlands*

A big difference found in this study is the relation between the diplomats/the IO employees and the Netherlands. Diplomats have *“one leg in their own country and one leg in the Netherlands”*, while IO employees have *“both legs in the Netherlands”* (respondent 14). The diplomat is posted to the receiving country for a period of three to four years, to create or maintain a good relationship with the host country, i.e. to further bilateral relations (respondent 8, 9, 11, 12, 13, 14, 15, 16). The IO employee does not to represent a country, there is no sending state, but represents the international community. For a IO employee, the host country is more an instrument to achieve its organizational goals rather than a goal in itself (respondent 4, 7, 13, 14, 15 and 16). On average, IO employees have long-term contracts and remain with the organization for 10 years or longer. After 10 years, the privileges of representatives expire. So if a representative at an international organization works in the same country for longer than 10 years, he or she loses the privileges (respondent 2, 3, 4, 7, 14, 15 and 16). This changes the context in which the representative is working. Therefore IO employees realize that they are living in the Netherlands for a long period and that they have to act properly for the long term (respondent 13). They are going to be living in the Netherlands for such a long time that it will feel like home. This is not the case for diplomats. The difference in attitude towards the Netherlands therefore differs between diplomats and IO employees. Respondent 13 thinks that embassies have more to threaten the Netherlands with, due to the bilateral interests of both countries. The word ‘reciprocity’ is therefore very valuable in these cases, which is not the case of international organizations and explains differences in conduct (respondent 8, 10, 11, 12, 13 and 14). Respondent 8 approaches this difference a bit differently: *“For us diplomats, the source of law is the Vienna Convention and that is a multilateral convention. For international organizations, it is only the seat agreement between the Dutch government and those organizations. For diplomats, the Dutch government is law taker, while at international organizations they are law makers”* (respondent 8). The relation with the institution for both diplomats and IO employees is different than from an average job, due to the fact that the organization has to ask the representative to move. Therefore, it has a bigger ‘care’ factor; the organization has to make sure that everything is well organized for the representative in the host country (respondent 7).

This all leads to completely different relations with the Netherlands between diplomats and international organizations. If you are here just to do your task, you have a different relation with that country then when you are building up a life in that country. On the other hand, if you are here to create good bilateral relations with the host country, you act differently than when the host country is just an instrument to receive your goals. The preferences of a diplomat differ from the preferences of a representative. However, these results and differences are actually a

contradiction to the rational choice theory. If the diplomat's preferences are to maintain good relations with the Netherlands, why would he challenge that by not respecting local laws? One explanation for this according to the respondents is that some countries make a (political) statement by not paying fines. Therefore countries have political issues to threaten the Netherlands with and are doing that through their diplomats.

### *Relation 3: Working together*

Both the embassies and the international organizations, collaborate to discuss improvements in the Netherlands. There is no collaboration between the two institutions, only embassies discuss with each other and international organizations collaborate with each other. However, their way of collaboration differs. It is relevant to bear in mind that there are many more embassies than international organizations in the Netherlands. The ambassador who has been posted in the country for the longest period is the Dean. The Dean collects all positive and negative experiences, actions and policies of the Dutch Ministry of Foreign Affairs based on diplomats' reports and communicates these to the ministry (respondent 9 and 11). The international organizations have several systems in which they communicate the positive and negative experiences to the ministry. However, it seems to be not fully clear to representatives how this collaboration is executed. Some larger organizations have a 'Host Country Committee' that discusses the situation in the Netherlands with the ministry. Besides that, there are some platforms for debate. However, many respondents have named these platforms differently or did not even know their names (respondents, 1, 5, 7, 11). "Well, there are lots of different initiatives to talk about needs here" (respondent 5). On the other hand, some international organizations do contact each other if there is any news on specific topics, due to the fact that they think that the Dutch Ministry of Foreign Affairs fails to inform them (respondent 1, 7).

Both institutions collaborate within their institution to improve the implementation of privileges and immunities. The relation with each other and with the Ministry of Foreign Affairs is therefore similar. There is a spokesperson for both institutions, the Dean and the Ambassador for International organizations who discusses any improvements with the Ministry. Both institutions have other committees as well to elaborate on the situation in the Netherlands.

### *Relation: 4: Representatives – the Dutch society*

The relation between the diplomats/the IO employees and the Dutch society is a relation that is not described in the literature. However, some respondents mentioned this relation as being important. For example, one respondent has experienced some issues when employees of the tax services of a specific area had to deal with the privileges and immunities of some organizations. They are not familiar with privileges and immunities and therefore envy it. As a



result their tax applications were not dealt with properly; some friction existed between the tax officials and the representatives. Today, most of the international organizations have their tax services done in The Hague due to the fact that there they are familiar with the system of privileges and immunities (respondent 4).

Another respondent mentions the fact that the Dutch society is not really in favor of diplomats or IO employees. According to the respondents, Dutch society prefers not to give preferential treatment to the representatives (respondent 7 and 8). However, respondent 8 and 10 noticed that they could not think of a country where privileged persons are popular. This negative image grew over time with the Dutch television showing all the illegally parked cars with CD-plates (respondent 10, 12 and 15). The fact that the Netherlands is a country in which freedom of speech and human rights is important creates even more room for media attention on this topic (respondent 12). These experiences are similar, both for IO employees and embassies.

A difference comes up as a result of the fact that IO employees remain in the country for a long time and thus build up a life in the Netherlands. This leads to more contact with the Dutch society. International representatives of an international organization also have Dutch colleagues. For diplomats this is different. Most of the times there are no Dutch colleagues at embassies and the diplomats live within the international community rather than in the Dutch society. This difference in both institutions' position in the Dutch society explains the differences in the representatives' preferences.

### *Prestige*

Another aspect that influences the conduct of representatives in the political approach is the level of prestige that is felt by a diplomat or a representative. If somebody shows off with his privileges, he would have other preferences than somebody who prefers not to show any kind of difference in status. This can be influenced by cultural norms and values as well. Three respondents regard the symbolism of representing a state or international organization to be more important than prestige. The symbol of being a representative and therefore having some privileges and immunities is leading in their opinion (respondents 8, 9 and 10). It is interesting to note that these three representatives are all working for embassies. The symbolic aspect is therefore more of an issue at embassies than at international organizations and can therefore explain a difference in conduct. Symbolism can give other preferences to a respondent.

Opinions on prestige vary between showing off or, the other extreme, not wanting to be treated any differently. Nine respondents mentioned the prestige of a representative (respondents 2, 4, 5, 10, 12, 13, 14 and 15). On the other hand, five representatives approached it the other way around and think that not showing off is more applicable (respondents, 4, 5, 6, 8 and 12). *"I think it depends on the person whether or not prestige is an important aspect. I think that there are some*

*people really fond of it and really feel important. Others who really do not care, do not want to be dealt with differently or want it to be an issue”* (respondent 5). Quite a few respondents stated that prestige has an influence on the conduct, but also that they prefer not to show off with it. They all assumed that it depends on personal interpretation. Both respondents of international organizations and of embassies used these interpretations.

Something else that was mentioned about prestige is that it is not only about prestige of a representative, but also about the prestige of the Netherlands to have an international community in the country and about the prestige of the organization (respondents 1, 2, 6, 8, 9, 11, 12 and 15). This is of course very relevant and true. However, these types of prestige might give some constraints to the representative but will not influence their conduct much or explain the difference between both institutions. Concluding, prestige does influence the respondents' preferences. However this depends on the person itself and can therefore not explain a difference in conduct between two whole institutions.

#### *Recapitulation*

The political perspective does explain the differences in use of immunity and privileges. The sub question can therefore be answered: *How does the political perspective explain the differences in use of immunity and privileges between diplomats and of international organizations?*

The political perspective focuses on relations and how these relations can influence the preferences and constraints of representatives. One type of relation, which seems to explain the difference in preferences and constraints, is the relation between the diplomats and international organizations versus the host country. This differs between IO employees and diplomats, as they have a different connection with the Dutch society. Diplomats are in the Netherlands for a short period, to establish good bilateral relations with the host country, and mostly live within the international community. IO employees are here for a long period, therefore they have more connections with the Dutch society. This difference in connections with the host country can really explain a different set of preferences and constraints that can lead to a difference in the use of privileges and immunities. However, it seems to be a contradiction. The diplomats are here for good relations but are actually challenging these, while the IO employees are not explicitly here for good relations but do create them. An answer to this can be that the diplomats are more often making a political statement, while the IO employees do not need to do this.

## Judicial perspective

The judicial perspective in this study focuses on the Vienna Convention and the seat agreements. Do the representatives know about the content and is there any room for interpretation?

### *Fully understanding the treaty*

International organizations are generally familiar with their privileges and immunities. This is due to the fact that all seat agreements were revised in 2005 to equalize them. This was hence an unintentional reminder to those organizations (respondent 4). Quite a few of the respondents deal with judicial matters in their work. Therefore, most of the respondents from international organizations are aware of what their seat agreements comprise of (respondents 1, 3, 4, 5, 6, and 7).

However, three out of the five respondents from the embassies indicated that they are not fully informed about the Vienna Convention (respondent 8, 10, 12). Respondent 10 admits that he was uninformed when he arrived in the Netherlands. Respondent 12 did not even know what absolute immunity was. This is clearly an interesting result as this respondent is an ambassador. If the head of a mission does not even know about privileges and immunities, other employees of that embassy will not be informed either. Some respondents mentioned the fact that their colleagues probably do not fully understand their position according to the agreement or convention (respondent 3, 7, 8, 10, 12, 14). This is also an interesting result, due to the fact that all representatives, regardless of their function, enjoy privileges and immunities to some extent. The fact that several respondents from the embassies are not fully aware of the Vienna Convention gives them room for their own interpretation, which gives them fewer constraints and maybe also other preferences. Therefore this can partially explain the difference in the use of it as well. The respondents from the international organizations are actually quite well informed and are therefore aware of their own constraints. This leads to more respectful conduct towards the local laws.

### *Differences in interpretation*

Nine respondents mentioned the differences in interpretation of the Vienna Convention worldwide (respondent 3, 5, 6, 8, 10, 13, 14, 15, 16). These respondents are from international organizations, embassies and the government. This room for interpretation leads to differences in conduct. *“On privileges and immunities? Yeah that is an interesting question... I mean there are different views on this treaty. Some talk about functional privileges and immunities where this is limited to the function of people. But others states see this rather broadly”* (respondent 6). One example that is given quite often is a specific sentence of the Vienna Convention: ‘it is the duty of all persons enjoying such privileges and immunities to respect the laws and regulations of the

receiving state' (Denza, 2004: 373). However 'respecting laws' means something else than 'obeying laws'. The differences in the interpretation of 'respecting the laws' have been mentioned in five interviews (respondent 5, 8, 13, 14, 16).

Representatives themselves seem to be the key to success: *"The Vienna Convention is credible, only if diplomats make it credible. And besides, the Vienna Convention also says that the diplomats are to respect the law of the hosting country. So we have to do that."* (respondent 8). Respondent 10 also expressed this concisely: *"The immunity that you get is for the exercise of your function here. It is not to get you out of trouble."* This is similar to respondent 11, who called it a 'safety net'. Respondent 8 mentions how fragile the Convention actually is *"I can tell you I have been in situations where I really needed that protection. Oh yes! And I can tell you how fragile we felt that protection was and much we felt that the Vienna Convention is just a sheet of paper."* On the other hand, other respondents mentioned how valuable the Convention is: *"The Vienna Convention is an achievement. It has to be upheld by every state"* (respondent 9). This difference in appreciation of the Vienna Convention shows the difference in interpretation. Even though the Vienna Convention is an achievement, it is still not a perfect context to work in. These differences give other constraints to respondents in accordance with their interpretation. All these differences in interpretation are often explained by the Russian case in the Netherlands in which Russia and The Netherlands disagreed about the interpretation of the Vienna Convention. For example, it seems to be the policy of Russia to never pay any fines (respondent 5, 13, 14, 15).

Another room for interpretation is how the Dutch ministry of Foreign Affairs deals with the privileges and immunities. This depends on the Dutch policy officer (respondents 3 and 4). Respondents 5, 8 and 10 also notice differences in the interpretation and implementation of privileges and immunities per government. Other respondents mentioned the differences in interpretation of absolute immunity. Private activities like drunk driving should not be part of the absolute immunity according to them because it is part of the work related responsibility to act properly also when engaged in private activities (respondents 5, 6, 9, 10, 11, 12).

The room for interpretation can explain the difference in use of privileges and immunities: a representative has preferences for certain legislation or interpretation. The room for interpretation of the Vienna Convention/seat agreement could therefore explain the differences in its use, especially as a result of the fact that individuals base the success of the Convention on the use of it.

#### *Do you need the privileges and immunities?*

On the question whether or not the respondents need their privileges and immunities, interestingly enough nobody agreed completely by simply saying 'yes'. All respondents indicated

that they have their own conditions. Most of the respondents, six, explained that they do not need the privileges and immunities within the Netherlands. However, outside the Netherlands they do need them. The Netherlands is a relatively safe country in which everything is well organized. Therefore, the representatives do not have to fear any danger. However, in many other countries, there is less security (respondents, 1, 5, 8, 10, 11 and 12). *“The privileges are not necessary for executing my work here in The Netherlands. However, abroad this is needed and due to reciprocity we have it also here in the Netherlands”* (respondent 1). This statement was made by both representatives from international organizations and diplomats (respondents 1, 8, 11 and 15). A difference between immunities and privileges is also made. Two respondents mentioned that they do not need the privileges, but that the immunity is important for their job (respondent 4 and 7). Three respondents explicitly said that they do not need their privileges and immunities (respondents 2, 3, 6). *“I do not really need it. I mean there are still expats working here without any privileges”* (respondent 2). This is a serious result because if the privileges and immunities were to be annulled, many problems would be solved. Two of those three respondents indicate that the privileges and immunities are created to make the Netherlands more attractive for international organizations. *“Privileges and immunities, it does help to attract people to the organization, that is clear. But also, I mean it is nice to have if of course. But it also attracts some kind of jealousy”* (respondent 2). All these respondents are working for an international organization, which may explain their statement. Two others noted the debate whether or not the international organizations actually need the privileges and immunities but they do not have a clear opinion about it (respondent 14 and 15).

Concluding, the need for privileges and immunities is not as established as has been expected. The different opinions about the need for the privileges and immunities sometimes show the preferences of respondents. The respondents actually indicate that more constraints would not be a problem for the performance of their work. Respondents from all types of institutions indicated that they do not need privileges and immunities in the Netherlands. The respondents who questioned the privileges and immunities in the Netherlands are mostly people from the international organizations and the ministry of Foreign Affairs. The fact that they indicate that they do not need them might be because they actually do not use them. The assumption is then that diplomats are actually using their privileges and immunities, which may explain why they have more outstanding fines. The difference in constraints can explain this because the international organizations are acting according to Dutch local laws and have more constraints, while the diplomats act according to the immunities and therefore have fewer constraints.

*Who controls the convention/seat agreement?*

The question who controls an embassy was easy to answer: the embassy is controlled by the sending state and all the states together maintain the convention in place (respondent 14). However, the question as to who controls the international organizations creates more debate. Two respondents assume that the organization itself has to control the conduct of its employees and that the organization has to take the seat agreement into account (respondents 1 and 2). Two other respondents from international organizations see the member states as a controlling factor for an organization (respondent 5 and 7). *“Yes that depends, for some cases the member states have the controlling task. But for some cases, the organization itself is going to play for judge and decide what is the correct step”* (respondent 7). All in all it can be said that it is not clear who has the responsibility of controlling the conduct of international organizations’ personnel. It probably depends on the organization itself and how the establishment of the organization took place. This is an interesting result because the controlling factor should be known. That gives constraints to the representatives’ conduct.

Another aspect that is not clear and that came up three times, partly due to the case of Borodin in the Netherlands, is what if two international agreements are in conflict with each other? Which one wins? For example, if a diplomat abuses his children, is this covered by the international treaty on child protection or by the Vienna Convention? Nobody, not even the expert, could give an answer on this (respondents 7, 10, 14 and 16). This can be seen as a challenge for the future since not one clear answer could be given to this.

All in all, it can be said that it is interesting to notice that the controlling factor, which should give constraints to a representative, is less clear for the law abiding group of representatives, whereas the group who has a clear controlling factor and clear constraints respects the laws to a lesser extent. This is an interesting paradox that contradicts the rational choice theory. It can be concluded that this topic cannot explain the differences according the rational choice theory.

### *Recapitulation*

The judicial perspective can provide an explanation to some of the differences in the use of privileges and immunities. The sub question of this perspective is: *How does the judicial perspective explain the differences in use of immunity and privileges between diplomats and of international organizations?*

The first explanation is the fact that the embassies are less aware of the Vienna Convention than the international organizations are of their seat agreements. This difference in understanding also results in differences in usage. The constraints given by a convention are less clear to embassy personnel, which lead to different conduct.

The second explanation is that the respondents agreed about the fact that there was much room for interpretation at the Vienna Convention/seat agreement. This leads to different interpretations of constraints and preferences. Therefore, this is a very relevant conclusion. Apparently the room for interpretation creates different constraints and preferences amongst the representatives. This could implicate that the same Convention is adhered to differently and therefore different rules exist in one country. The room for interpretation can explain all this. However, this potential flexibility afforded by the Convention is difficult to define. A final explanation is that the need for privileges and immunities is not discussed among the embassies, while it is discussed at international organizations. If there is less need for immunities and privileges, would that mean that they are currently not using them either? The differences in interpretation and the need for privileges and immunities can therefore explain a difference in conduct.

## Public Administration perspective

The public administration perspective examines the level of information in particular. How much information is given to the representatives and how do they cope with this information?

### *Code of conduct*

Representatives' knowledge about the rules and systems within their organization is one of the most influential aspects that regulate their conduct. A code of conduct or briefings about the privileges and immunities help to constrain the possibilities within their work. Interestingly, all respondents from international organizations are aware of the code of conduct of their organization. Or at least they have received intense briefings on the subject (respondents 1, 3, 4, 5, 6 and 7). One respondent even mentions the importance of that information: *"We receive that much of information about that, which makes it almost difficult to keep up with"* (respondent 7). Another quote is: *"Individually they know what they are entitled to"* (respondent 6). However, only one diplomat is aware of a code of conduct in his embassy and only three respondents from embassies mentioned that they had some kind of briefing during their diplomatic training (respondents 8, 9, 10 and 11). Moreover, two of them mentioned that their level of information on the use of privileges and immunities was not sufficient when they arrived at their post (respondent 9 and 10). *"I suppose when I first came here, my understanding was very little vague and I suppose maybe a bit uninformed"* (respondent 10). Insufficient information creates uncertainty for representatives, which leads to different conduct.

The information published by the Dutch Ministry of Foreign Affairs is seen as effective, because the 'Protocol guide for international organizations' has been read by new arrivals at three international organizations and two embassies (respondent 1, 5, 7, 10 and 12). The respondent from the embassy who follows a code of conduct, the respondents from embassies who follow the Protocol guide and all the respondents from international organizations agree that you have to pay your fines when you receive them (respondent 1, 3, 4, 5, 6, 7, 8, 9, 10 and 12). Five of the respondents link this to morality (respondent 1, 5, 8, 12 and 15). Interestingly, the two embassies that do not have any rules and regulations did not address the payment of fines (respondent 9 and 11). This shows that paying fines and any internal policy about that is not high on the agenda. It also shows that informing employees about internal policy does influence conduct.

This topic is relevant for this study. The fact that all the international organizations have something like a code of conduct to tell their employees how they should behave, which limits the uncertainty, indicates that this is highly valued. Contrarily, only one respondent from an embassy actually knows about a code of conduct at that embassy. And two others received some



more general information in the course of their diplomatic training, but that was not specific to the country where they are currently posted. This could explain the difference in the use of privileges and immunities. If there are no rules within the organization, how will you know how to act? The constraints at embassies are less tight than at international organizations. That could affect the conduct of their personnel.

### *Transparency and accountability*

Transparency and accountability are interesting topics in this study. Even though they are familiar topics within the public service, the researcher had to explain the relation between privileges and immunities and transparency and accountability at all interviews. None of the respondents from embassies did really answer the question; they thought it was irrelevant or that it probably did not apply. However, three of the five international organization representatives mentioned that they tried to be as transparent as possible, most of the time by publishing documents online on their website. Two policy advisors from the Dutch government, one from the ministry and one from the municipality, noticed that the international organizations seem to be very transparent; the embassies on the other hand are not (respondent 13 and 15). This can be explained by a different attitude towards the activities of international organizations and embassies. The embassies might feel less need to prove themselves. Two respondents from international organizations mentioned that transparency and accountability are issues. *"We are trying to be as transparent and accountable as possible"* (respondent 6). *"I think we are quite successful in acting transparent"* (respondent 7). Another interesting aspect is that two respondents mentioned the list that is published by the Ministry of Foreign Affairs, and that this contributes to the transparency and accountability (respondent 1 and 11).

These results are very interesting seen in the context of the rational choice theory. While the international organizations do not have a sending state or any obvious authority that controls them, they still try to be as transparent and accountable as possible. On the other hand, the embassies that actually have a sending state to control them do not focus on transparency and accountability. The embassies, where diplomats work who have to act according to controlling aspects, which should provide constraints, are less transparent and accountable, and the diplomats act with less consideration to their conduct. This difference between international organizations and embassies may be explained by the fact that the transparency and accountability is coming from within the international organization, the employees want it themselves, and therefore they are also more committed to it. This commitment to transparency and accountability can lead to more appropriate conduct as well as a consequence of specific preferences and constraints.

### *Time pressure and financial pressure*

None of these topics were mentioned in this study and therefore they have not been analyzed.

### *Recapitulation*

The public administration perspective does explain some aspects of the differences in use of privileges and immunities. The sub question of this perspective is: *How does the public administration perspective explain the differences in use of immunity and privileges between diplomats and of international organizations?*

The public administration perspective first explains the differences in the use of immunity and privileges by noting a difference in the code of conduct. The level of information received by diplomats as to expected conduct is much more limited than at international organizations. The more information about the rules and regulations of an organization, the more clear constraints a representative has. Therefore this leads to different conduct than in cases where there is hardly any information.

The second explanation relates to the level of transparency and accountability. The international organizations try to be as transparent and accountable as possible. This also leads to increased transparent and accountable conduct. Therefore different preferences and constraints are present compared to embassies where transparency and accountability are not high on the agenda. This is another conclusion that explains the differences in use of privileges and immunities between diplomats and international organizations.

## The Netherlands

All respondents were also asked about their experiences in the Netherlands. What is currently going well and what needs improvement? All respondents were very willing to talk about this topic and several kept returning to this issue. Most of the issues described below are issues that came up during the interviews and were not described in the literature.

### *New policy of the Dutch Ministry of Foreign Affairs*

In April 2014, the Dutch Ministry of Foreign Affairs informed the Dutch parliament about new policies to influence the conduct of diplomats and the IO employees and to motivate them to respect the local laws. One of the instruments was to publish a list with outstanding fines every year. Before it is published, the embassies and international organizations receive a reminder to pay their outstanding fines. Ten of the sixteen respondents think this list is an effective instrument (respondent 1, 5, 6, 9, 11, 12, 13, 14, 15 and 16). So a clear majority of the respondents is positive about this instrument. However, six respondents indicated that there are mistakes on the list and they think this is unacceptable. If the ministry wants to apply 'naming and shaming', they need to have an accurate list. According to the respondents this list currently has too many mistakes to be published (respondent 3, 7, 10, 12, 13 and 15). Interestingly, one policy advisor from the Dutch Ministry of Foreign Affairs mentioned that it was not their problem that there were mistakes in it. Many agencies and institutions are involved during the administration and registration of diplomats' fines. Therefore, the ministry said that it was not their mistake entirely (respondent 13). However according to a different respondent, if the Netherlands wants to have a successful international community in their country, the Ministry of Foreign Affairs should try its utmost to improve this (respondent 7). Three respondents think that these policy instruments are purely a response to the media and Dutch society (respondent 1, 7 and 15). However, not all respondents are as positive about the list. Four respondents think it will harm the relation between the Netherlands and the embassies or international organizations (respondent 4, 7, 8 and 10). Some respondents do not appreciate the public blaming and feel therefore a less close relation with the Netherlands. Their preferences are influenced negatively.

Another policy instrument is the cancelling of fuel card. Two respondents mentioned that it might actually be against the convention or agreement to do so (respondents 5 and 10). Only one respondent thinks that cancelling the fuel card would be a good idea (respondent 7). This implies that this policy instrument is not as valued as the previous instrument; it seems to be more controversial. Moreover, not many respondents have mentioned this instrument. This could indicate that it is not seen as important.

All in all, it can be said that the new policy instrument to publish a list is in total positively received, if the list is accurate. The public naming and blaming is seen as an effective way to influence the preferences and constraints of the representatives. The fuel card withdrawal measure is received with more hesitation based on some judicial matters. This is an interesting result for this study, which tries to explain conduct in order to influence that conduct. These policies will also influence conduct and are generally accepted by the representatives.

#### *Dutch nationals at international organizations or embassies*

Another topic that came up during the interviews is the position of Dutch IO employees and to a lesser extent the position of employees at the embassies. Ten of the respondents were aware of the fact that Dutch employees have less privileges and immunities compared to the international employees (respondents 1, 2, 3, 4, 5, 7, 13, 14, 15 and 16). Seven of those respondents thought that this difference in implementation of privileges and immunities creates a gap between them (respondent, 1, 2, 3, 4, 5, 13 and 14). The Dutch employees perform the same job as their international colleagues but are disadvantaged by their nationality. *“I went last year with the secretary general to Russia. But he was Dutch so he did not have any immunity in its own country. So he had to go through customs and the metal detector and whatever, and here I am, his attaché not going to have to pass any detection at all just going straight to the plane. But he had to go through everything! He was a very lovely man and took everything as it was and that is how privileges and immunities should work. But it was funny for me, because he was my boss. But he was Dutch, so he was under Dutch law without immunity even though he was the secretary general for an IO”* (respondent 5).

Two of the Dutch respondents did not feel any resentment due to these disadvantages because they are aware of their good working environment (respondents 3 and 4). The policy advisors from the Dutch ministry of Foreign Affairs even thought that this is not a problem at all. In their opinion, there is no reason to give more privileges to Dutch personnel at international organizations as a result of their nationality (respondent 13 and 14). However, all policy advisors from the Dutch government indicated that Dutch employees complain about this because people always want the best working conditions (respondents 13, 14 and 15).

#### *Disadvantages of privileges and immunities*

Two respondents indicated that all diplomats or international organizations, whether they are Dutch or not, experience disadvantages due to the privileges and immunities they have (respondent 6 and 8). They face more bureaucratic hurdles before they can achieve something, like applying for a new drivers' license (respondent 6). Others face problems with social security. Due to the fact that they do not pay any taxes in the Netherlands, they are also not

eligible for social security. So if someone loses his job, there is no safety net for this employee (respondent 1, 4, 5, 6 and 7). All these respondents work at international organizations. Many respondents of international organizations also mentioned the disadvantages for their family members, because the rest of their family is also excluded from social security (respondent 1, 6 and 7). Again, all these respondents work at international organizations. For embassies, the sending country guarantees social security for their employees.

One of the biggest challenges for social security is the health insurance for IO employees. They are not covered by the Dutch health insurance system, but sometimes an international organization does not organize coverage either. This leads to a problem for that organization's staff to obtain health insurance cover (respondent 1, 5, 6 and 7). This seems to be organization specific (respondent 5 and 6), and is a serious problem for those employees. It seems necessary to create a clear policy that improves this situation. This influences the preferences of respondents, as they prefer a safe situation.

Having privileges and immunities does not only create positive advantages, but also creates disadvantages. This leads to other preferences and constraints. These context related issues like health insurance and social security however, will not improve the rational conduct on the appropriate use of privileges and immunities.

#### *Quality of work of Dutch Ministry of Foreign Affairs*

The quality of the work of the Dutch Ministry of Foreign Affairs in organizing a welcome environment for representatives is in general good, and representatives are positive about the ministry compared to many Ministries of Foreign Affairs in other countries (respondents 1, 3, 4, 5, 6 and 10). Three respondents mentioned that they are glad to be able to work in The Hague with the good public transportation and other facilities it has to offer (respondent 5, 10 and 11). However, there is still space for improvement: for example the systems to register a new representative in the Netherlands and the other administrative aspects for a non-Dutch citizen are quite difficult and need improvement (respondent 2, 7, 9, 14). That would also lead to fewer mistakes in the published list, due to better organization of the administration (respondent 7, 10 and 14). Two respondents mentioned that the approach to privileges and immunities in the Dutch Ministry of Foreign Affairs varies according to who deals with it. They thought the discretionary space of the policy advisors at the ministry is relatively large (respondent 3 and 7). This is a serious result of this study for the ministry. There should be no preferential treatment for some organizations and other treatment for other organizations. This would harm the overall prestige of the ministry. International organizations and/or embassies would thus develop a preference for that specific public servant who meets most of their needs.

### *Recapitulation*

The previous paragraphs focused on the context of the Netherlands as a host country. However, many interviews did not cover this topic. The respondents turned the conversation more to improvements that the Netherlands still has to implement. Nevertheless, some aspects are still covered. The sub question here was: *How does the context of a host country influence the conduct of diplomats or international organizations?*

Something that does influence the conduct of all representatives is the limited capability of the administration of the Dutch government. The representatives face too many obstacles during relatively simple activities. Moreover, mistakes in the overview of the fines of international representatives should not be made. The representatives then have the preference to solve the problem in their own way.

The policy of the Dutch Ministry of Foreign Affairs to publish a list with outstanding fines to influence conduct is received positively. This is a good thing, because it would mean that it does not harm bilateral relations. If the ministry implements these new policies, new constraints and preferences will come up for representatives and that will hopefully lead to a more respectful conduct by those representatives.

The context of the host country does influence the conduct of the representatives. Especially the conduct of the Dutch representatives is influenced by the fact that they do not enjoy as many privileges and immunities as others. They actually have to obey the Dutch laws. This leads to more constraints and therefore more appropriate conduct.

## Conclusions

This chapter will elaborate on the most relevant results of the study.

The rational choice theory does explain differences in use of privileges and immunities by diplomats and IO employees. IO employees act rationally, while some diplomats act irrationally. Rational conduct in this study means deliberated choices, influenced by the constraints and preferences. All four perspectives have contributed to the conclusions on the preferences and constraints of diplomats and IO employees. This study has shown that diplomats and IO employees have other preferences and constraints and this explains the differences in their (rational) conduct: diplomats behave less respectful to the local laws. These differences in preferences and constraints will be explained in order to create insights on the conduct of diplomats.

In a few points covered by this study, the preferences of diplomats differed from the preferences of IO employees. The preference of diplomats to challenge the relation with the host country for political pressure, and the preference of a diplomat for symbolism in his job, are preferences that explain a difference in attitude. The IO employees have other preferences in both cases, namely a more stable relation with the host country for the long term and less focus on symbolism. These differences in preferences do influence rational conduct. If the diplomats deliberately challenge the relation with the host country, this is still rational conduct.

The constraints of a respondent have emerged to influence rational conduct in a more significant way. Diplomats have been found to have fewer constraints than IO employees. The lack of a clear code of conduct results in a relatively free context for diplomats to behave in. Furthermore, the room for interpretation of the Vienna Convention provides even more uncertainty for diplomats. Moreover, the difference in division on absolute and functional personal immunity between both institutions already gives a strong example of the differences in constraints. The IO employees have constraints by a clear code of conduct and more knowledge about their seat agreement. Moreover, other smaller differences in the level of restrictions between the diplomats and IO employees, such as the higher level of transparency and the level of control for IO employees, contribute to this explanation. The IO employees have clearer constraints that lead to a more respectful conduct in a host country. For diplomats, these clear constraints are missing, which leads to more irrational conduct.

The lack of constraints leads to uncertainty for diplomats. This uncertainty leads to a failure to comply for diplomats. The rational institutionalism also focuses on compliance. The lack of

compliance of the diplomats can be explained by the lack of clear institutions: diplomats need more constraints. Diplomats act as they assume they have to act, but are not fully aware or sure if this is the correct conduct. This uncertainty leads to irrational conduct. They are a victim of their own freedom and are limited in their rational conduct. It actually might be a burden for the diplomats themselves. The lack of constraints leads to irrational behavior. The Vienna Convention makes the diplomats inviolable to constraints, while that has never been the goal of the Vienna Convention, and actually harms its effectiveness. Ironically, all diplomats appreciate their immunity and privileges because they are convinced that they need it during the practice of their work while in fact, as has been mentioned above, it limits them in their work. While they approach privileges and immunities as a favor of their job, in practice it might be a burden. The preferences of diplomats also differ from preferences of IO employees, but these derived actions from the preferences of diplomats are deliberate choices and therefore rational behavior. These results clarify that diplomats, or human beings in general, need directions to behave in a rational way.

More constraints are necessary to influence the conduct of diplomats in order to decrease the violations of local laws. More constraints will lead to more uniform rational conduct that also results in respecting local laws. These constraints can be created by the governments of the sending and receiving state and by the embassies. Increasing the level of information for the diplomats will already create more constraints for the diplomats. Especially the Dutch government has room for improvement in this case. Limiting the room for interpretation of rules, local laws and the Vienna Convention will also add constraints to the diplomats than can lead to more rational conduct.

Some choices made in this study have had consequences on the results. The use of the rational choice theory created a system to research an international topic on an individual level and therefore validated the study. However, the implications of the rational choice theory also created some limits. Studying conduct of individuals asks for a very personal approach, while this study focuses on an international dilemma. This resulted in the fact that some personal aspects, like culture, were not covered. The use of interviews of respondents from several organizations and institutions is seen to be the most suitable approach in order to achieve relevant information. Surveys or a literature study would not have been sufficient in a study on conduct. However, more data like more interviews or more case studies would have increased the significance of the study and the level of generalization.



In addition, new studies are required. Especially a study on the influence of culture for the preferences and constraints of representative is relevant. Another relevant approach is to study the consequences of the new policy instruments of the Dutch Ministry of Foreign Affairs.

To conclude this thesis, a short answer to the research question will be given:

*How can the differences in interpretation and use of immunity and privileges by diplomats and IO employees respectively be explained?*

The rational choice theory explains the differences in interpretation and use of immunity and privileges as a consequence of differences in preferences and constraints of the diplomats and IO employees. In particular the differences in constraints between representatives from international organizations and embassies lead to differences in rational conduct. More constraints for diplomats can lead to a more rational conduct that is similar to the conduct of representatives from international organizations.

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### **Personal communication**

All respondents in this research have given permission to use the name and information of the embassy or of the international organization in this research. The transcripts of the interviews are available on request.

## Appendix I: List of International organizations in The Netherlands

(<http://www.rijksoverheid.nl/onderwerpen/ambassades-consulaten-en-overige-vertegenwoordigingen/internationale-organisaties>, Consulted on 30<sup>th</sup> March 2014)

African Management Services Company (AMSCO)  
Benelux Office for Intellectual Property  
Common Fund for Commodities  
Dutch Language Union  
Eurocontrol  
Eurojust  
European Commission  
European Commission: Joint Research Centre  
European Parliament Information Office in The Netherlands  
European Patent Office  
European Police Office (Europol)  
European Space Agency  
Faculty of Geo-Information Science and Earth Observation (ITC-UNESCO)  
Hague Conference of Private International Law  
Institute for Water Education (IHE-UNESCO)  
International Criminal Court (ICC)  
International Court of Justice (ICJ)  
International Criminal Tribunal for Rwanda (ICTR)  
International Criminal Tribunal for the former Yugoslavia (ICTY)  
International Development Law Organization (ILDO)  
International Institute for Democracy and Electoral Assistance (IDEA)  
International organization for Migration (IOM)  
Iran – United States Claims Tribunal (IUSCT)  
NATO AEW&C Programme Management Agency (NAPMA)  
NATO Communications and Information Agency (NCI Agency)  
NATO Joint Force Command Headquarters (JFCBS)  
Organization for the Prohibition of Chemical Weapons (OPCW)  
Organization of Security and Cooperation in Europe (OSCE)  
Permanent Court of Arbitration (PCA)  
Residual Special Court for Sierra Leone  
Special Court for Sierra Leone (SCSL)  
Special Tribunal for Lebanon (STL)

Technical Centre for Agricultural and Rural Cooperation (CTA)

United Nations High Commissioner for Refugees (UNHCR)

United Nations Mechanism for International Criminal Tribunals (UNMICT)

United Nations University Maastricht Economic and Social Research and Training Centre on  
Innovation and Technology (UNU-MERIT)

## Appendix II: Types of status of privileges persons

The following table is established according the 'Handleiding voor de omgang met geprivilegieerden' of the Dutch Ministry of Foreign Affairs (Version of February 2014):

<b>Embassies</b>	
AD	Head of mission. Ambassador and its resident family members
BD	Members of the technical and administrative staff and their resident family members
ED	Members of the service staff (handyman, chauffeur, cook etc.) and their resident family members
PD	Private servants
ZF	No immunities (only residence and Schengen Visa)
<b>Consular Posts</b>	
AC	The consul-general, the consul, vice-consul, consular officer and their resident family members
BC	Members of the technical and administrative staff and their resident family members
EC	Members of the service staff (handyman, chauffeur, cook etc.) and their resident family members
PC	Private servants
ZF	No immunities (only residence and Schengen Visa)
<b>International organizations</b>	
AO	Employees equal to members of diplomatic personnel and their resident family members
BO	Employees equal to members of the technical or administrative staff and their resident family members
EO	Members of the service staff (handyman, chauffeur, cook etc.) and their resident family members
PO	Private servants employed by representatives with AO status
ZF	No immunities (only residence and Schengen Visa)
<b>Additional</b>	
DV	Foreigners who are permanent in the country
EM	Experts on Mission
NL	People with Dutch nationality



NP	Employees without any privileges, but with functional immunity
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### Appendix III: Table status and their immunity

The following table is established according the 'Handleiding voor de omgang met geprivilegieerden' of the Dutch Ministry of Foreign Affairs (Version of February 2014):

Name	Type	Function	Immunity of criminal matters	Immunity of civil matters	Personal immunity (no arrest, duress or search)	Immunity of the building
AD	Absolute Immunity	Representatives with this type of immunity are fully immune for all types of jurisdiction	Yes	yes, except in real estate business and succession issues and procedures resulting from professional or business performance	Yes	Yes
BD	Absolute Immunity	Representatives with this type of immunity are fully immune for all types of jurisdiction	Yes	Yes, except in real estate business and succession issues and procedures resulting from professional or business performance	Yes	Yes
AO	Absolute and functional immunity	Representatives with this type of immunity have sometimes				

		absolute and sometimes functional immunity				
AC	Functional Immunity	Representatives with this kind of immunity are immune for almost all conduct. Functional and Personal. Except for serious crimes.	Functional immunities	Functional immunities	Yes, except for serious crimes	No
BO	Functional Immunity	Representatives with this status have only functional immunity and no personal immunity				
BC	Functional Immunity	Representatives with this status have only functional immunity and no personal immunity	Functional immunities	Functional immunities	No	No
ED	Functional Immunity	Representatives with this status have only functional immunity and no personal immunity	Functional immunities	Functional immunities	No	No
EO	Functional	Representatives				

	Immunity	with this status have only functional immunity and no personal immunity				
EC	No immunity	Representatives with this states have no immunity at all	No	No	No	No
PD	No immunity	Representatives with this states have no immunity at all	No	No	No	No
PC	No immunity	Representatives with this states have no immunity at all	No	No	No	No
PO	No immunity	Representatives with this states have no immunity at all				
ZF	No Immunity	Representatives with this states have no immunity at all				
NL, DV, EM	/	These are no status, but can be an additional name to show that an possible immunity is not an absolute immunity but an functional				

		immunity				
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## Appendix IV: Table with interpretation factors (operationalization)

Perspectives	From the literature	Interpretation factors	Preferences and constraints	Conduct
<b>Historical perspective</b>	Shifts: National – International  Wealthier countries – all countries  Ambassadors – All employees	New Shifts  Future Shifts  Institutions up to date		
<b>Political perspective</b>	Relationships between institutions influence choices  Personal versus society	Relation institution – representative  Relation sending country/international community – representative  Relation receiving country - representative  Power Struggle  Equality  Symbolism  Prestige		

<p><b>Judicial perspective</b></p>	<p>Interpretation of Vienna Convention</p> <p>Interpretation of Seat Agreements</p> <p>Discussion about who controls immunities</p>	<p>Fully understanding of privileges and immunities</p> <p>Fully understanding of consequences by violation</p> <p>Control on conduct</p> <p>Knowledge of details</p>		
<p><b>Public Administration perspective</b></p>	<p>Perfect/imperfect information</p>	<p>Fully informed?</p> <p>Available information.</p> <p>Code of conduct?</p> <p>How to be transparent and accountable, but also be representing?</p> <p>Moral conduct</p> <p>Discretionary</p> <p>Implementing policy of state/international community</p> <p>Time pressure</p>		
<p><b>The Netherlands</b></p>	<p>Room to influence conduct of representatives</p>	<p>Sending reminders</p> <p>Fuel card</p> <p>Annul 'persona non</p>		

	Effectiveness	grata'		
	Other options	Publication information		
		Cancelling CD number plates		
		Experiences from other countries		



## Appendix V: Interview Questions

### *Personal perspective:*

- Personal details
- What is your current function?
- How long do you work here?

### General perspective:

- What is your opinion about the privileges and immunities?
- Do you think these privileges and immunities lead to rational actions?
- What are according to you, the differences between diplomats and IO employees except the differences in legal basis and job description?

### Historical perspective:

- Do you notice any shifts/ changes in the mindset and focus of the international community?
- Do you think that the current institutions are up to date with the current mindset?
- Does benefit every country as much of the privileges and immunities?
- Do you expect any changes in the future? Would you like these changes? And would it influence your (rational) conduct?

### Political perspective:

- Do you make your choices based on the acceptance of the society?
- Does personal interests influence your choices?
- Do you think prestige is an important aspect in your job?
- What do you think is the symbolism of privileges and immunities?
- Do you feel equal to other international organizations/embassies?
- To recognize any power struggle between institutions – representatives?
- How do you see the relationship with your receiving country and the organization? Do you notice differences between receiving countries?
- How is the relationship between the representatives and the sending country/international community?

### Judicial perspective:

- Do you fully understand the agreements on privileges and immunities?

- Do you fully understand the consequences of violation of these privileges and immunities?
- Are you aware of the aspects that you can be sued for and which you are not?
- Do you find any room for interpretation of these privileges and immunities?
- Who controls you? State? International community? Security Council?

Public Administration perspective:

- Are you fully informed? Can you find all needed information?
- What is your opinion on transparency in your job and conduct?
- What is your opinion on accountability in your job and conduct, due to the privileges and immunities?
- How do you feel with the trust of a state/international community that they gave you? And how do you deal with the representation of that state/international community?
- Do you face conflicts in your job? Trade offs?
- Do you think all representatives have the same morality?
- What is your moral for your job?
- Do you take financial motives in mind by implementing a policy?
- Do you sometimes face personal financial benefits by your job?
- Do you feel you are implementing the policy of the state/international community? Is there many room for discretionary?
- Is the information or policy description sometimes ambiguous?
- Do you deal with time pressure? Has time pressure changed your policy and conduct?

The case of Netherlands:

- Have you heard about the new measures of the Dutch Ministry of Foreign Affairs?
- Do you think they are effective?
- What do you think is effective to influence the conduct of representatives?
- Have you seen best practices?