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REPORT ON THE NEED AND FEASIBILITY OF A  
COMPENSATION PROGRAM FOR VICTIMS OF DIPLOMATIC CRIMES

I. INTRODUCTION

Governments have long recognized that diplomatic immunity is essential to the conduct of meaningful foreign relations. The fundamental rules of diplomatic law, such as the personal inviolability of the ambassador and the special status of diplomatic communications, have existed among civilized states for centuries. 1/ Immunity from a nation's civil and criminal jurisdiction allows members of foreign missions to protect sensitive national security information and to perform their functions without excessive interference from hostile receiving governments. In 1790, the United States enacted into law an unqualified grant of diplomatic immunity. 2/ Other nations enacted similar laws and the principle became an important feature of customary international law.

The Vienna Convention on Diplomatic Relations ("Vienna Convention"), signed in 1961 and subsequently adopted by a total of 153 nations, unified the practice of diplomatic immunity and narrowed the extremely broad grants previously existing in many countries. 3/ In contrast to the relatively complete immunity formerly enjoyed by diplomats and their assistants, the Vienna Convention established different levels of immunity for different classes of diplomatic personnel. Diplomatic agents retain broad criminal and civil immunities.

Administrative and technical staff personnel also have complete criminal immunity, but enjoy immunity from civil jurisdiction only with respect to "official acts." Service staff personnel enjoy only "official acts" immunity with respect to both civil and criminal proceedings. 4/ Thus, support staff at missions are subject to suit under a much broader range of circumstances than was previously the case. In addition, the Diplomatic Relations Act of 1978, which repealed the 1790 Act, requires diplomatic missions and their members to comply with regulations establishing automobile liability insurance requirements and allows private parties to sue the insurers directly. 5/

Although the Vienna Convention restricts diplomatic immunity as indicated above, its provisions still leave room for abuse. Article 41 requires all persons entitled to immunity to respect the laws and regulations of the receiving state, but at the same time the Convention provides for inviolability and criminal immunity for diplomats, administrative and technical staff and their families.

Certain remedies do exist if a diplomat commits a crime. The receiving state may request the sending state to waive the offender's diplomatic immunity. In recent years, the U.S. has vigorously pursued this option, requesting waiver in every instance where there is probable cause to believe that a person entitled to immunity has committed a crime, and has obtained results. (Regulations to be adopted by the Department will formally require a request for waiver in every case.) If the sending state declines to waive immunity, or for other reasons, the receiving state may declare the offending diplomat (or other mission members) *persona non grata* ("PNG"). If the diplomat fails to leave, he or she will be stripped of diplomatic immunity. The receiving state may also request the sending state to prosecute the offending diplomat under the sending state's own laws. While these remedies may prevent or deter future abuses by the particular offending diplomat, they do not address the losses sometimes incurred by the victims of diplomatic crime.

Such victims may be able to receive compensation through other means. 6/ For example, in some instances the sending state may be willing to waive immunity from civil jurisdiction as well as inviolability (to permit execution). In other instances, as noted above, an individual with criminal immunity may nevertheless be subject to civil jurisdiction (although again a waiver of inviolability would be necessary to permit execution). This would be the case, for example, with a member

of the administrative and technical staff of a mission who commits a crime outside the course of his official duties. In certain other cases, the Foreign Sovereign Immunities Act of 1976 might provide the victim with an avenue for relief. 7/ Where an action is not only criminal but also tortious in nature, recovery might be possible through a suit against the foreign government concerned, if it could be shown that the individual who committed the offense was acting within the scope of his office or employment. Finally, where relief is not otherwise obtainable, the Department may seek an ex gratia payment from the foreign government. 8/

As a general matter, except in instances of vehicular negligence or cases where the sending government agrees to an ex gratia payment, victims of crimes by diplomats and their families have received no financial compensation for their losses. This fact has understandably aroused indignation on the part of many Americans. At the same time, however, the records available to the Department of State indicate that the number of actual cases involving alleged criminal offenses in which diplomatic immunity would likely have precluded recovery of physical and financial losses suffered by U.S. citizens or permanent residents is comparatively small. The Department is aware of only a few such cases arising in the first six months of 1990, and a handful of such cases arising in 1989. Of these, none involved serious injuries, and in one case compensation was in fact received. 9/

The concept of compensation for victims of crimes has gained increasing popular support in recent years. This report examines approaches under which compensation could be made available to victims of crimes by diplomats and concludes that the best course is to ensure that state compensation schemes receiving federal funds provide coverage for victims of diplomatic crime.

## II. ALTERNATIVE APPROACHES TO A SOLUTION

Several options have been proposed to alleviate financial losses experienced by victims of diplomatic crime. The most widely discussed are:

- restriction of the immunity granted to diplomatic officials under the Vienna Convention;
- institution of a mandatory insurance scheme which would

cover injuries caused by the criminal actions of diplomats;  
and

-- creation of a program to compensate victims of  
diplomatic crime. 10/

A. Further Restrictions on the Scope of Immunity

Some commentators have suggested the removal of immunity from diplomatic personnel and their families or, alternatively, only from lower ranking diplomatic personnel, such as administrative or technical staff. In 1987, Congress considered a bill, S.1437, "to make certain members of foreign diplomatic missions and consular posts in the United States subject to the criminal jurisdiction of the United States with respect to crimes of violence." 11/

The Department of State remains opposed to this and similar efforts because of the threat they pose to U.S. personnel abroad. Due to the reciprocal nature of diplomatic immunity among nations, any limitations imposed upon foreign diplomats in the United States would almost certainly be imposed on their U.S. diplomatic counterparts, threatening their ability to function effectively abroad. As one noted commentator has observed:

[A]t all times the real sanction of diplomatic law is reciprocity. Every State is both a sending and a receiving State. Its own representatives abroad are hostages and even on minor matters their treatment will depend on what the sending State itself accords. 12/

Thus, if the United States dispensed with diplomatic immunity, U.S. diplomats abroad might be forced to stand trial in foreign countries on fabricated charges or before courts which do not adhere to American due process standards.

In addition to placing U.S. diplomats at risk of speculative charges before hostile foreign courts with potentially inadequate legal protections, proposals to remove diplomatic immunity also present other significant problems. A unilateral removal of immunity would place the United States in violation of its treaty obligations, create tensions in the international community and undermine friendly foreign relations. The risk of exposure to sanctions in a foreign country might also deter some individuals from joining the

foreign service, or prompt others to resist serving in countries with undeveloped or hostile legal systems where effective diplomatic relations may be particularly necessary.

#### B. Mandatory Insurance Requirements for Foreign Missions

Another proposed solution to the problem of compensating victims of diplomatic crime would involve expanding existing insurance requirements for diplomatic missions to include coverage for criminal activity. Sending states would be responsible for obtaining and maintaining such policies. In the event of noncompliance (e.g., failure to renew the mission's policy in a timely manner), the United States could "PNG" diplomats or pursue other sanctions. As is already the case with automobile insurance, a right of direct action by the injured parties against the insurance company could be provided.

This proposal has certain attractions from a theoretical perspective, but faces various practical obstacles. First, it would likely be difficult to find insurance companies willing to furnish this kind of insurance. The commercial insurance market does not generally provide insurance against criminal activity. There are liability plans that could insure an Embassy for the negligent acts of its employees. However, most crimes are intentional, rather than negligent, acts. Moreover, the insurance may be limited to official conduct. 13/ Second, even if insurance companies were willing to offer insurance against criminal activity, they might only be willing to do so for countries whose diplomats had a good history of complying with U.S. law. In the case of nations with poor diplomatic crime records, insurance companies might not be willing to shoulder the additional risk. Finally, if there were insurance companies willing to provide this form of insurance, their rates would undoubtedly be very high and burdensome for the less developed nations which, as a consequence, might not be able to maintain their missions in the United States or might impose similar requirements on the United States.

#### C. Creation of a Program to Compensate Victims of Diplomatic Crimes

Congress considered creating a fund to compensate diplomatic crime victims in the United States in connection with the passage of the Diplomatic Relations Act of 1978.

Concerns with the cost and other aspects of a compensation fund became evident in the course of hearings before a Senate Judiciary subcommittee. <sup>14/</sup> The Department of State opposed the concept of a compensation scheme (proposed in S.478) "which would impose financial responsibility on the public for claims frustrated by claims of diplomatic immunity." The Department foresaw "serious problems in establishing a quasi-judicial machinery within the Department of State, such as the proposed Bureau of Claims Against Foreign Ministers and Diplomats which would possess the means for administering a fair judgment in cases stemming from claims filed unilaterally by persons making claims against persons with diplomatic immunity." <sup>15/</sup>

Congress dropped further serious investigation of a compensation scheme for a number of years. More recently, however, Congressional interest in establishing such a scheme has reemerged, perhaps as a result of developments in the area of victim compensation. Since 1978, victim compensation programs, both in the United States and abroad, have increased in number and public acceptance. The proliferation of state-level machinery for compensating crime victims, in particular, may provide a convenient, established vehicle through which funds may be channeled to diplomatic crime victims, or may serve as a model for a separate federal diplomatic crime compensation system.

The following sections of this report discuss relevant precedents in the United States and abroad as well as considerations pertinent to the possible creation of a program to compensate victims of diplomatic crime.

### III. PRECEDENTS IN THE UNITED STATES AND ABROAD

#### A. The Uniform Crime Victims Reparations Act and Existing State Statutes

At present, 48 states and the District of Columbia have enacted some form of victim's compensation program. <sup>16/</sup> Six of those states have substantially adopted the Uniform Crime Victims Reparations Act. <sup>17/</sup> The remaining states addressing the issue have not explicitly adopted the Uniform Crime Victims Reparations Act, but the provisions of their victim compensation statutes function in a similar manner, with many of the same restrictions and requirements. <sup>18/</sup> A review of the Act's provisions is useful to indicate the general features of

state crime victim reparation schemes, which could possibly serve as a model for a diplomatic crime compensation program.

The Uniform Crime Victims Reparations Act establishes a Reparations Board with the authority to review applications for compensation. <sup>19/</sup> Compensation may be claimed not only by the victim, but by certain other persons as well, including a dependent of a deceased victim and an authorized person acting on behalf of these individuals.

The Act authorizes the Board to award compensation for "economic loss" arising from "criminally injurious conduct" if the Board is satisfied by a preponderance of the evidence that the requirements for compensation have been met. Section 1(e) of the Act defines "criminally injurious conduct" generally to mean conduct that occurs or is attempted in the state, poses a substantial threat of personal injury or death, and is punishable by fine, imprisonment or death. "Economic loss" is defined in § 1(g) to mean "economic detriment consisting only of allowable expense, work loss, replacement services loss, and, if injury causes death, dependent's economic loss and dependent's replacement services loss." The Act does not provide compensation for pain and suffering as such or property loss. The Act contains various possible limitations on "economic loss" recovery, including maximum and minimum recovery thresholds. <sup>20/</sup> The Act also contains a collateral source rule to prevent double recovery, a presumption against recovery if the victim is related to the perpetrator, and potential disqualification or reduction in award for contributory misconduct.

In the event of a contested case, the Act provides a trial-type hearing for interested parties complete with notice, opportunity to present evidence and examine witnesses, a written record of the proceedings and a written decision based exclusively on the evidence in the record. A conviction is conclusive evidence of criminal action, but is not a prerequisite to recovery. An award may be denied or limited if the victim has failed to report the criminal incident within 72 hours after occurrence or to cooperate fully with the police in their investigations. Even after a hearing, the Board may at any time reconsider a case where compensation was initially denied, or in the case of installment payments, consider whether continued payments are necessary. In addition, final Board decisions are subject to judicial review on appeal by the claimant, the offender, or the Attorney General in the same manner and to the same extent as the decision of a state trial court of general jurisdiction. <sup>21/</sup>

## B. Crime Victim Compensation Programs in Other Nations

Like the United States, a number of foreign governments have instituted domestic programs to compensate victims of crime. Compensation may be provided under such programs for victims of diplomatic crimes in the same manner as for victims of other crimes. In Austria, for example, the Austrian Parliament passed a law in 1972 concerning the compensation of victims of crimes. In addition to covering cases in which the criminals are subject to Austrian criminal jurisdiction, the statute provides for compensation in cases where the perpetrator cannot be brought before an Austrian court because of personal immunity. Only Austrian citizens may recover, however, and compensation is further limited to injuries incurred as a result of "serious crime" (defined as a crime punishable by more than six months imprisonment). 22/ Likewise, in Great Britain, no specific scheme for compensating diplomatic crimes exists, but a reference is made to holders of diplomatic immunity in the country's Criminal Injuries Compensation Scheme (1990 revision). Paragraph 4, which details the scope of the scheme, states that "[i]n considering for the purposes of this paragraph whether any act is a criminal act a person's conduct will be treated as constituting an offence notwithstanding that he may not be convicted of the offence by reason of age, insanity or diplomatic immunity."23/ In Canada, all provinces maintain and administer criminal injuries compensation programs designed to compensate for injury or death as a result of specified crimes. Costs are shared between the provincial and federal governments, with the province or territory receiving reimbursement upon submission of an annual claim to the Canadian Department of Justice. The Department of State understands that these programs are available to victims of diplomatic crime. 24/

Thus far, however, the Department is not aware of any country that has established a fund or program specifically to compensate victims of diplomatic crime. It appears that in many countries the only compensation that may be available to victims of diplomatic crimes is any ex gratia payment that the receiving government can obtain from the sending government by utilizing informal pressure and moral persuasion. Otherwise, the receiving government may pursue other traditional diplomatic remedies which do not typically provide financial assistance to the injured. 25/



#### IV. CREATION OF A COMPENSATION PROGRAM

##### A. Utilization of State Mechanisms

The existence and acceptance of victim compensation programs in 48 U.S. states and in other nations suggests two possible approaches to compensating victims of diplomatic crimes. One option would utilize the state mechanisms already in place. Indeed, in principle there does not appear to be any reason why individuals in states with compensation programs could not already recover under those programs for injuries caused by diplomatic crimes.

If Congress wished to underscore its concern for victims of diplomatic crime and to ensure that these state compensation programs include victims of diplomatic crime in their compensation schemes, it could seek to do so through an appropriate amendment to the Victims of Crime Act of 1984. 26/ The Act, as amended in 1988, provides for grants to eligible crime victim compensation programs at the rate of 40 percent of the amounts awarded during the preceding fiscal year, other than amounts awarded for property damage. A program is eligible to receive such funds if it is operated by a state and offers compensation to victims and survivors of victims of criminal violence, including drunk driving and domestic violence. Beyond this basic requirement, the program must also satisfy several other criteria. In general terms, it must:

- promote victim cooperation with law enforcement authorities;

- not use grants to supplant state funds otherwise available to provide crime victim compensation;

- not differentiate between residents and non-residents of the state as to compensable crimes occurring within the state;

- provide compensation to victims of federal crimes occurring within the state on the same basis as state crimes;

- provide compensation to state residents who are victims of crimes occurring outside the state, if the crimes would be compensable had they occurred within the state and if the places where the crimes occurred are states not having eligible programs;

- not deny compensation to any victim because of the victim's relationship to the offender, except pursuant to rules

to prevent unjust enrichment of the offender; and

-- provide the Department of Justice with information and assurances related to the purposes of the Act. 27/

Congress could add to this list a diplomatic crime victim provision as an additional requirement of eligibility. H.R. 3036, introduced in the 100th Congress, 1st Session, provided one formulation to achieve this objective. 28/

This approach avoids much of the expense involved in establishing a separate fund for diplomatic crime victims and maintains a uniform approach to compensation for victims of crime in a locality, regardless of the status of the perpetrator. Funding for a state program covering victims of diplomatic and other crimes would continue, as at present, to be provided by the federal and state governments in partnership. The administration and procedure of the program, including standards for compensation and payment of awards and rights of appeal, would remain the same as the state currently applies in managing its program.

While the handling of some cases might conceivably present issues of sensitivity from a foreign relations perspective, it is to be noted that decisions in commercial, tort and certain other kinds of cases that are brought directly against foreign states under the Foreign Sovereign Immunities Act are also made outside the Executive Branch. Further, there might be some instances in which full compensation could not be granted because of statutory limits on recovery. 29/ However, this circumstance would not be unique to victims of diplomatic crime, since the limits on recovery are also applicable to victims of other crimes who seek compensation under these programs. Moreover, for victims of diplomatic crime the other possible remedies discussed earlier would remain, including waiver and *ex gratia* payment. The utilization of state mechanisms does not represent, at present, a perfectly complete solution inasmuch as two states still do not have any victim compensation programs. From a practical standpoint, however, this would probably not present a serious problem, since those states do not have a large diplomatic population, and of course they could adopt victim compensation programs should they find it advantageous to do so.

#### B. Establishment of a Federally Administered Program

As an alternative, Congress could create a separate compensation fund for diplomatic crime victims using the

Uniform Crime Victims Reparations Act or other detailed state statutes (such as that in New York) as models. This would involve the creation of a Board under the Executive Branch to control the fund and to administer a program under which claims for compensation would be submitted, adjudicated and paid. 30/ The administration, procedures and standards could be patterned in substance after the state victim compensation programs selected as models.

The comparatively small number of diplomatic crimes does not appear to justify establishing a separate federal structure. Moreover, a separate federal structure would face a number of practical problems. Any such program would have to take into account certain evidentiary difficulties arising from the diplomatic context. Foreign diplomatic officials could not be compelled to assist a compensation board in its investigation, and therefore there could be cases in which it would be very difficult for the board to determine whether a victim's allegations were true, especially where there were no witnesses. This could be a problem since the board's authority to make payments would presumably depend upon a finding not only that the loss was caused by a criminal act but also that the perpetrator was a diplomat. Further, establishment of a separate bureaucratic structure for a limited number of cases could be inefficient and costly. Centralized consideration of criminal acts could also cause victims to incur greater expense and inconvenience in presenting their cases.

A federally administered compensation program would require additional funding. As indicated, the Department is aware of no examples of compensation schemes specifically for victims of diplomatic crimes in other countries that could provide guidance as to the administration and cost of such a program. There is no funding for a compensation program for victims of diplomatic crimes in the Department of State's or Department of Justice's fiscal year 1990 appropriations. Nor has such funding been included in the Administration's request for fiscal year 1991, which was submitted before P.L. 101-246 was enacted.

C. General Considerations: Restitution and Ex Gratia Payments

In some situations, where a criminal is subject to the jurisdiction of the state whose law he has violated, restitution may be a feasible alternative to a

government-funded compensation scheme. Indeed, making the criminal pay for the consequences of his illegal actions seems more appropriate than requiring innocent citizens to provide the needed money through tax revenues. It may also serve as a deterrent to future violations. It must be noted, however, that in the diplomatic immunity context restitution is not a viable option, because the U.S. government cannot directly compel a diplomat to disgorge any of his personal funds. If the U.S. government succeeded in convincing the diplomat's sending government to grant an appropriate waiver, then presumably the official could be subject to a restitution measure to the extent this was prescribed in the law. Inasmuch as the government would not be likely to obtain such a waiver in all instances, however, restitution is not currently a reliable or comprehensive approach to the problem of compensating diplomatic crime victims.

Since the cost of diplomatic crime should ideally be borne by the sending state if not the offending diplomat, any victim compensation scheme should preserve the possibility of obtaining an ex gratia or other form of payment through diplomatic channels. This might be accomplished with (1) a requirement that the government pursue other remedies for a given period of time before an injured individual may apply for compensation; and (2) a collateral source rule which will prevent the claimant from recovering twice for the same injury. That is, if the U.S. government receives an ex gratia payment for an individual who has already received compensation, the government should be entitled to keep that portion of the payment corresponding to the amount already dispensed to the injured individual (perhaps placing the sum back into the fund to be given to another victim).

#### CONCLUSION

The utilization of state victim compensation programs would appear to offer the most practical approach to providing compensation for victims of diplomatic crime. While those programs could serve as a model for the establishment of a federally administered program to provide such compensation, as noted above, the administrative and financial burdens associated with such a federal program are uncertain but potentially significant. The Department of State does not believe that the dimensions of this problem are so substantial as to justify the creation of a separate system at the federal level for adjudicating claims arising out of diplomatic crimes.

The need for compensatory adjudications by federal officials is still less compelling when viewed in light of the fact that these victim compensation programs are in place in almost all states, including those in which diplomatic personnel are most heavily concentrated. Legislation to ensure coverage in these programs for victims of diplomatic crime, which would underscore Congress's concern for such victims, would appear to be achievable through relatively simple means. The Department of State would be prepared to support legislative action to that end.

FOOTNOTES

1/ See E. Satow, Satow's Guide to Diplomatic Practice 106 (5th ed. 1979); B. Sen, A Diplomat's Handbook of International Law and Practice 3-7 (3d ed. 1988).

2/ Act of Apr. 30, 1790, Ch. 9, 1 Stat. 112 (1790) (codified at 22 U.S.C. §§ 252-54), repealed, Diplomatic Relations Act of 1978, cited infra note 5.

3/ Vienna Convention on Diplomatic Relations, Apr. 18, 1961, 23 U.S.T. 3227, T.I.A.S. No. 7502, 500 U.N.T.S. 95.

4/ Diplomatic agents and their families continue to receive inviolability and complete immunity from the criminal jurisdiction of the receiving state (Arts. 29-31 and 37(1)). They also receive civil immunity subject to four exceptions: (i) cases involving real property located in the receiving state; (ii) cases involving inheritance in the receiving state; (iii) cases involving a diplomat's professional or commercial activities in the receiving state; and (iv) cases involving counterclaims directly connected with principal claims in proceedings initiated by diplomatic officials (Arts. 31(1) and 32(3)). Administrative and technical staff receive full inviolability and criminal immunity, but are protected against civil liability only for acts performed in the course of their official duties (Art. 37(2)). The service staff receive no inviolability and criminal and civil immunity only for actions performed in the course of their official duties (Art. 37(3)). Household servants employed by mission officials (not by the sending state) have neither criminal nor civil immunity for any of their actions. (Art. 37(4)).

5/ Diplomatic Relations Act of 1978, 22 U.S.C. §§ 254(a)-(e) (Supp. 1990); 28 U.S.C. § 1364 (Supp. 1990). In addition, it should be noted that the Foreign Missions Act requires the Director of the Office of Foreign Missions in the Department of State to impose a surcharge on a foreign mission whenever a member of that mission causes injury, death or property damage through operation of a motor vehicle, is not covered by liability insurance and fails to satisfy a court-rendered judgment or is not legally liable. The surcharge is available only for compensation of the victim. See 22 U.S.C. 4304a(b).

6/ See Study and Report Concerning the Status of Individuals with Diplomatic Immunity in the United States 57-58

(United States Department of State, March 18, 1988). The report was prepared pursuant to Public Law 100-204, Foreign Relations Authorization Act, Fiscal Years 1988 and 1989, section 137.

7/ Foreign Sovereign Immunities Act of 1976, 28 U.S.C. § 1330, § 1602 *et seq.* (Supp. 1990). Section 1605(a)(5) of this Act provides that a foreign state shall not be immune in any case in which money damages are sought "for personal injury or death, or damage to or loss of property, occurring in the United States and caused by the tortious act or omission of that foreign state or of any official or employee of that foreign state while acting within the scope of his office or employment. . . ." The section sets forth a number of exceptions to this general provision.

8/ *Ex gratia* payments have been received from a number of governments, including Panama, Swaziland, Mexico and Nigeria. In many such cases, the payments were made in connection with automobile accidents.

9/ The figures presented in this report do not include cases involving contractual breaches (such as unpaid debts) or noncriminal torts. Consistent with the scope of the statutory provision calling for the report, the report focuses only on losses arising from criminal activity. For additional statistics, see Part C of the report cited *supra* note 6.

The records of the Department of State indicate, for the first half of 1990, a total of 35 alleged criminal offenses involving diplomatic, consular and U.N.-assigned personnel and family members (excluding automobile incidents); the corresponding figure for all of 1989 was 59. However, for a number of reasons most of those offenses created no unrecoverable losses for victims who were U.S. citizens or permanent residents. Some cases involved only members of the diplomat's own household or mission; some cases involved consular officials who would have no civil or criminal immunity for actions outside the scope of their duties; still other cases involved losses that were later recovered.

It should be noted, in particular, that among the 59 alleged offenses for 1989 were two shooting deaths committed in Florida by a Belgian embassy staff member. For purposes of this report it has been assumed that the Belgian government would have waived the defendant's civil immunity had the issue arisen, since it did waive his criminal immunity. These offenses have not, therefore, been included among those in which diplomatic immunity would likely have precluded recovery.

For various perspectives on the issue of diplomatic crime, see Farhangi, Insuring Against Abuse of Diplomatic Immunity, 38 Stan. L. Rev. 1517. (1986); Gookin, Attacks on Immunity, Foreign Service J. 18 (1988); Hickey & Fisch, The Case to Preserve Criminal Jurisdiction Immunity Accorded Foreign Diplomatic and Consular Personnel in the United States, 41 Hastings L.J. 351, 353-54 (1990).

10/ There have been various other proposals for curbing the incidence of diplomatic crime, but these generally do not focus on the issue of victim compensation. For example, following the termination of its diplomatic relations with Libya in 1984, Great Britain proposed that the international community isolate sending states which do not comply with the laws of receiving states. See Farhangi, supra note 9, at 1529-30. In the United States, Senator Helms introduced a bill designed, in part, to educate law enforcement officials as to the limits of diplomatic immunity so that a greater number of crimes by non-immune officials would be prosecuted. The bill would also have required the Department of State to request a waiver of immunity in every instance of a serious criminal offense. See Diplomatic Immunity Abuse Prevention Act, reprinted in 133 Cong. Rec. S13795-97 (daily ed. Oct. 8, 1987). Other proposals which do consider the victim's financial loss appear highly impractical. These include creation of a permanent international diplomatic court to adjudicate the claims of those injured by diplomatic activities and encouragement of the injured individual to seek compensation in the courts of the sending state.

11/ Senate Bill No. S.1437 was introduced by Senator Helms on June 26, 1987, 100th Cong., 1st Sess., 133 Cong. Rec. S8876-77 (daily ed. June 26, 1987).

12/ E. Denza, Diplomatic Law 2 (1976).

13/ The report cited supra note 6 included, in Part A, a study of the minimum liability insurance requirements for those entities afforded diplomatic immunity in the United States. The experts who prepared that study noted that the only major type of insurance currently pertaining to criminal activity relates to the handling of money or securities, and that this is first-party coverage which does not extend to third party victims and which is underwritten under strict guidelines. See Study and Report, supra note 6, Part A at 30.

14/ See Diplomatic Immunity: Hearing Before the Subcomm. on Citizens and Shareholders Rights and Remedies of the Senate



Comm. on the Judiciary, 95th Cong., 2d Sess. 4-5, 51-52 (1978).

15/ *Id.* at 4-5 (testimony of Evan S. Dobbelle, Chief of Protocol of the United States).

16/ Ala. Code §§ 15-23-1 to -23 (Supp. 1988) (Crime Victims Compensation); Alaska Stat. §§ 1867.010-1867.180 (1986 & 1989 Adv. Legis. Serv.) (Violent Crimes Compensation Board); Ariz. Rev. Stat. Ann. §§ 41-2407 (Supp. 1989) (Victim Compensation Fund); Ark. Stat. Ann. §§ 16-90-701 to -718 (Supp. 1987) (Crime Victims Reparation); Cal. Gov't Code §§ 13959-13969.2 (West & Supp. 1990) (Indemnification of Private Citizens; Victims of Crime); Colo. Rev. Stat. §§ 24-4.1-100.1 to -124 (Supp. 1989) (Colorado Crime Victim Compensation Act); Conn. Gen. Stat. Ann. §§ 54-201 to -218 (1985 & West Supp. 1990) (Crime Victims Compensation); Del. Code Ann. tit. 11, §§ 9001-9018 (1987 & Supp. 1988) (Compensation for Innocent Victims of Crime); D.C. Code Ann. §§ 3-401 to -415 (1981 & Supp. 1990) (Compensation of Victims of Violent Crime); Fla. Stat. Ann. §§ 960.001-960.28 (1985 and West Supp. 1990) (Victims of Crimes); Ga. Code Ann. §§ 17-15-1 to -13 (Supp. 1988) (Victim Compensation); Hawaii Rev. Stat. §§ 351-1 to -70 (1985 & Supp. 1989) (Criminal Injuries Compensation); Idaho Code §§ 72-1002 to -1026 (repealed effective June 30, 1991) (Crime Victims Compensation); Ill. Ann. Stat. ch.70 §§ 71-90 (Smith-Hurd 1989 & Supp. 1990) (Crime Victims Compensation Act); Ind. Code Ann. §§ 16-7-3.6-1 to -3.6-20 (West 1984 & Supp. 1990-91) (Compensation for Victims of Violent Crimes); Iowa Code Ann. §§ 912.1-912.13 (West Supp. 1990) (Crime Victim Reparation Program); Kan. Stat. Ann. §§ 74-7301 to -7321 (1985 & Supp. 1989) (Crime Victims Reparation Board); Ky. Rev. Stat. §§ 346.010-346.190 (1986 & Supp 1990) (Compensation of Crime Victims); La. Rev. Stat. Ann. §§ 46:1801-46:1823 (West 1982 & Supp. 1990) (Crime Victims Reparations Act); Md. Ann. Code art. 26A, §§ 1-17 (1987 & Supp. 1989) (Criminal Injuries Compensation Act); Mass. Gen. Laws Ann. ch. 258A, §§ 1-9 (West Supp. 1990) (Compensation of Victims of Violent Crimes); Mich. Stat. Ann. §§ 3.372(1)-3.372(18) (Callaghan 1985 & Supp. 1990-91) (Compensation of Crime Victims); Mi. §§ 611A.52-611A.68 (West 1987 & Supp. 1990) (Crime Victims Reparation); (Miss. statute not yet available); Mo. Ann. Stat. §§ 595.010-595.070 (Vernon Supp. 1990) (Victims of Crimes, Compensation and Services); Mont. Code Ann. §§ 53-9-101 to -133 (1989) (The Crime Victims Compensation Act of Montana); Neb. Rev. Stat. §§ 81-1801 to -1848 (1987) (Crime Victims and Witnesses); Nev. Rev. Stat. §§ 217.010 to .270 (1986 & Supp. 1989) (Compensation for Certain Victims of Criminal Acts);

(N.H. statute not yet available); N.J. Stat. Ann. §§ 52:4B-1 to :4B-33 (1986 & West Supp. 1990-91 (Criminal Injuries Compensation Act of 1971); N.M. Stat. Ann. §§ 31-22-1 to 31-22-21 (Supp. 1990) (Crime Victims Reparation Act); N.Y. Exec. Law §§ 621-635 (McKinney 1982 & Supp. 1990) (Crime-Victims Board); N.C. Gen. Stat. §§ 15-B-1 to B-22 (1987 & Supp. 1989) (Crime Victims Compensation Act); N.D. Cent. Code §§ 65-13-01 to 65-13-20 (1985 & Supp. 1989) (Uniform Crime Victims Reparations Act); Ohio Rev. Code Ann. §§ 2743.51 to .72 (1981 & Supp 1989) (Reparation Awards to Victims of Crimes); Okla. Stat. Ann. tit. 21 §§ 142.1 to .20 (West 1983 & Supp 1989-90) (Crime Victims Compensation Act); Or. Rev. Stat. vol. 3, tit. 14 §§ 147.005-147.365 (1989) (Compensation of Crime Victims); Pa. Stat. Ann. tit. 71 §§ 180-7 to -7.18 (Purdon Supp. 1990-91) (Crime Victims Compensation Board); R.I. Gen. Laws §§ 12-25-1 to -25-14 (1981 & Supp. 1989) (Criminal Injuries Compensation Act of 1972); S.C. Code Ann. §§ 16-3-1110 to -1340 (Law Coop 1985 & Supp. 1989) (Compensation of Victims of Crime); Tenn Code Ann. §§ 29-13-101 to -208 (1980 & Supp. 1990) (Criminal Injuries Compensation Act of 1976); Tex. Rev. Civ. Stat. Ann. art. 8309-1 (Vernon Supp. 1990) (Crime Victims Compensation Act); Utah Code Ann. §§ 63-63-1 to -63-63a-4 (Supp. 1989) (Crime Victims' Reparation Act); (Vt. statute not yet available); Va. Code §§ 19.2-368.1 to -368.18 (1990) (Compensating Victims of Crime); Wash. Rev. Code Ann. §§ 7.68.010 to .915 (Supp. 1989-1990) (Victims of Crimes - Compensation, Assistance); W. Va. Code §§ 14-2A-1 to -18 (1985 & Supp. 1990) (W.V. Crime Reparation Act of 1981); Wis. Stat. Ann. §§ 949.001-949.18 (West 1982 & Supp., 1989-90) (Awards for the Victims of Crimes); Wyo. Stat. Ann. §§ 1-40-102 to -118 (Supp. 1989) (Crime Victims Compensation).

The states which do not have crime victim compensation programs are Maine and South Dakota. Those two states are expected to introduce legislation in 1991 to authorize the establishment of programs.

17/ See 11 U.L.A. 35-49 (1974 & Supp. 1990). The states which have thus far adopted the Uniform Crime Victims Reparations Act are Kansas, Louisiana, Montana, North Dakota, Ohio and Texas. For the relevant state code provisions, see the citations provided supra note 16.

18/ For a broad review of state compensation statutes and their most important features, see Smith, Victim Compensation: Hard Questions and Suggested Remedies, 17 Rutgers L.J. 52-57 (1985).

19/ See Uniform Crime Victims Reparations Act § 4, 11 U.L.A. 39 (1974). The Board is made up of three members, at

least one of whom must be a lawyer admitted to the bar of the state and who can serve as the Chairman. The members of the board serve for limited terms and may receive a fixed salary plus reimbursement for expenses incurred in the course of their Board duties. The Act gives the Board a broad scope of authority including, but not limited to, the power and duty to (i) establish and maintain an office and prescribe the duties and compensation of its employees (§ 4(b)); (ii) adopt rules for the implementation of the Act (§ 4(d)); (iii) prescribe the form of applications for compensation (§ 4(e)); and (iv) hear and determine all matters relating to claims for compensation, and reinvestigate or reopen claims if necessary (§ 4(f)).

20/ Bracketed §§ 5(g)-(j) of the Act include a number of such limitations. Under § 5(g)(1), the Board must determine that the claimant will suffer financial stress if he or she is not given compensation. In addition, the Board may not make an award if the claimant's economic loss does not exceed ten percent of his net financial resources. *Id.* at § 5(g)(2). The Board may, however, make exceptions to this requirement if warranted by the claimant's age, life expectancy, earnings expectancy, and physical or mental condition, or the Board may deny an award subject to later reopening if exhaustion of the claimant's financial resources appears probable. *Id.* at § 5(g)(3). Finally, the loss must exceed \$100 and the maximum award is \$50,000. *Id.* at §§ 5(h)-(j).

21/ Provisions for judicial review in state statutes on crime victim compensation vary in complexity and often incorporate procedures defined elsewhere. For example, in the District of Columbia the statute provides simply that "[a] final determination by the Mayor under this chapter may be appealed to the District of Columbia Court of Appeals in accordance with § 1-1510," with the latter section setting forth detailed rules. D.C. Code Ann. § 3-412 (1981 & Supp. 1990). The New York statute provides explicitly for challenges to board decisions by the comptroller if he regards an award as "illegal or excessive"; such an action is to be heard in the appellate division of the supreme court in a summary manner, taking precedence over all other civil cases. A claimant aggrieved by a final board decision "may commence a proceeding to review that decision pursuant to article seventy-eight of the civil practice law and rules." N.Y. Exec. Law § 629 (McKinney 1982 & Supp. 1990).

22/ See "Verbrechensopfergesetz"; Federal Law Gazette No. 288/1972, as last amended by law No. 648/1988.

23/ See "Criminal Injuries Compensation Scheme, 1990 Scheme" and "Victims of Crimes of Violence: A Guide to the Criminal Injuries Compensation Scheme," both published by the Criminal Injuries Compensation Board, Blythswood House, 200 West Regent Street, Glasgow, G2 4SW.

24/ See "Criminal Injuries Compensation in Canada: 1986," issued by the Department of Justice Canada, Policy, Programs and Research Branch, Research Section (March 1988).

25/ In response to a Department inquiry about whether other states have set up compensation schemes for victims of diplomatic crime, the following information was obtained from various foreign posts. Switzerland -- ("Switzerland has no such system. The only remedies are the traditional diplomatic ones. In significant cases the DFA would ask the foreign government to lift the diplomatic immunity of the offender, but of course the choice then lay with the foreign government."); Belgium -- ("Belgium does not know of any procedures concerning compensation to victims of crimes or illegal acts committed by diplomats. Those victims do not have any other defense rights but those foreseen by the rules of common law, nevertheless abiding by the Vienna Convention articles on diplomatic relations."); West Germany -- ("[T]he host government does not provide compensation of any kind to citizens that have been injured by persons with diplomatic immunity. Assistance provided by the foreign office . . . is limited to the provisions of the Vienna Convention on Diplomatic Relations."); Australia -- ("Australia does not have [a compensation scheme for Australian citizens injured in Australia by persons with diplomatic immunity]."); Spain -- ("[T]he Spanish government has no provision in law for compensation to its citizens who have been injured by persons with diplomatic immunity."); France -- ("In France no existing text makes provision for such compensation by the government. Therefore, in case of need, the latter intervenes as a courtesy. On the whole, these cases are extremely rare."); Japan -- ("GOJ does not provide any compensation to citizens injured by persons with diplomatic immunity. Compensation, if any, would come either from the diplomat or insurance carried by the diplomat.") With respect to European crime victim compensation programs generally, see European Convention on the Compensation of Victims of Violent Crimes, 22 I.L.M. 1021 (1983).

26/ 42 U.S.C. § 10601 et seq. Certain provisions of this statute, as described in the text, do not apply to a state compensation program that was an eligible program on the date of enactment of P.L. 100-690 until October 1, 1990.

27/ Id. at § 10602(b).

28/ H.R. 3036 would have added the following eligibility requirement: "such program, as to compensable crimes occurring within the State, makes compensation awards to victims of such crimes reasonably believed to have been committed by individuals with immunity from criminal jurisdiction under the Vienna Convention on Diplomatic Relations . . . on the same basis as crimes committed by other individuals. . . ."

29/ As indicated supra note 20, the Uniform Crime Victims Reparations Act suggests a maximum award of \$50,000. The limit in the District of Columbia is \$25,000. D.C. Code Ann. § 3-403(b) (1981 & Supp. 1990). New York limits recovery for the loss of earnings or support element of an award to an aggregate of \$30,000. N.Y. Exec. Law § 631(3) (McKinney 1982 & Supp. 1990). The limit in Maryland is \$45,000. Md. Ann. Code art. 26A, § 12 (1987 and Supp. 1989).

30/ See also New York State Bar Association, Commercial and Federal Litigation Section, Report on Civil Redress for Wrongful Acts of Persons with Diplomatic Immunity (December 12, 1989), recommending the appropriation of funds to the Secretary of State to compensate injured persons through adjudication of claims by an administrative tribunal appointed by the Secretary of State and the Attorney General.