

THE ESTABLISHMENT OF A VIRTUAL EMBASSY ACCORDING TO THE 1961 VIENNA CONVENTION ON DIPLOMATIC RELATIONS: THE CASE OF BARBADOS' METAVERSE EMBASSY

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ABSTRACT

Through years of practice, embassies are considered the pillar of the diplomatic system, which faced developments of methods recently heavily influenced by internet optimization. It is reflected in the growing practices of non-physical embassies that raised the issue of whether or not those practices are consistent with the embassy's function under diplomatic law. By using method of normative legal research, qualitative methodology, and descriptive and comparative methods, this paper argues the difficulties of the performance of diplomatic mission function by non-physical embassies through the dimensions of efficiency laid down under the object and purpose of the Vienna Convention on Diplomatic Relations 1961. It stands to prove the cumulativeness of the functions prescribed under Article 3 (1) of VCDR, arguing that the functions' performance is inefficient by only operating one or several functions. By this way of interpretation, the sole establishment of non-physical embassies, such as virtual embassies and especially metaverse embassies, is impractical due to their inability to perform several key functions of the diplomatic mission. It then clearly established that States cannot rely solely on establishing non-physical embassies and must seek alternative methods.

Keywords: diplomatic law; embassies; functions of diplomatic mission.

INTRODUCTION

The Covid-19 Pandemic, in a certain way, impacts States' awareness of the borderless infectious disease that did set up a border.¹ To adapt to this new 'condition', society brings out the optimization of technology development.² With this development, States rely heavily on the online world in their diplomatic mission: online visits and conferences.³ Arising from this awareness, it is known that prior to the Covid-19 pandemic phenomenon, States have always adapted their diplomatic system to the evolution of technology; this was no exception for States' embassies.⁴

In the early era of diplomacy, accreditation of diplomacy was executed through temporary envoys.⁵ During the years of practicing this method, States found it ineffective for several reasons, among others being the high cost and the significant risks of safety on the road.⁶ As an act of adjustment, from the 16th to the 20th centuries,⁷ States started to accredit their diplomatic mission

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¹ Kawthar Mohamed (*et.al*), "Borderless Collaboration is Needed for COVID-19—A Disease that Knows No Borders", *Infection Control & Hospital Epidemiology*, Vol. 41, No. 10, 2020, p. 1245.

² Nishant Renu, "Technological Advancement in the Era of COVID-19, *Sage Open Medicine*, Vol. 9: 1-4, 2021, p. 4.

³ Muzaffar S. Abduazimov, "Inside Diplomacy during the Pandemic: Change in the Means and Ways of Practice", *The Indonesian Quarterly*, Vol. 49, No. 1, 2021, p. 52.

⁴ Kishan S. Rana, *The Contemporary Embassy: Paths to Diplomatic Excellence*, Palgrave Macmillan, London: 2013, p. 44.

⁵ Geoff Berridge, *Diplomacy: Theory and Practice*, Palgrave Macmillan, London: 2022, p. 101.

⁶ *Ibid*.

⁷ Kishan S. Rana, "Embassies, Permanent Missions and Special Missions", in: Costas M. Constantinou (eds.), *The SAGE Handbook of Diplomacy*, SAGE Publications, London: 2016, p. 150.

through resident missions called embassies.⁸ Throughout history, the embassy has always played a significant part in the performance of diplomatic missions.⁹ Embassies have become the pillars of the diplomatic system as it represents the sending State government system and plays a pivotal role in performing diplomatic mission functions.¹⁰ Its ground of regulation was embedded under diplomatic law's legal core, the Vienna Convention on Diplomatic Relations 1961 ("VCDR").

As a codification of customary international law ("CIL"), the VCDR regulates bilateral diplomatic relations between States.¹¹ The journey of crystallization of diplomatic customs started in 1814 through the Congress of Vienna and was then jotted down in the 1815 *Vienna Regulation*.¹² The concept of diplomatic law was further concretized under several legal instruments, including the 1928 *Havana Convention on Diplomatic Offers*,¹³ *The Convention on the Privileges and Immunities of the United Nations* of 1946,¹⁴ and until the well-established VCDR. The convention covers three main areas: (1) diplomatic relations and missions' establishment, (2) diplomatic immunities, privileges, and facilities, and (3) the performance of diplomatic mission functions. Until today, Diplomatic law kept developing gradually due to the emerging practices and the creation of customary rules.¹⁵

The establishment of embassies by States has always been a dynamic process that has continued into the internet era, coinciding with the conceptual shift towards "new" public diplomacy.¹⁶ This dynamic nature of practices has been extensively examined by legal practitioners, policymakers, and academics in the Tallinn Manual 2.0, which provides a comprehensive guide on how international law applies to cyber operations.¹⁷ Parallel to the conceptual shift, States commenced to optimize the use of the Internet in several forms they found best to maximize the effectiveness of their embassies.¹⁸ This optimization can be seen in practices such as establishing non-physical embassies, including virtual embassies, and its most recent form of development, the metaverse embassy by Barbados.

⁸ Geoff Berridge, *Op. Cit.*, p. 102.

⁹ Geoff Berridge (et.al), *Diplomatic Theory from Machiavelli to Kissinger*, Palgrave Macmillan, London: 2001, p. 58.

¹⁰ Kishan S. Rana, *The Contemporary Embassy: Paths to Diplomatic Excellence*, *Op. Cit.*, p. 12.

¹¹ Jan Wouters (et.al), "The Vienna Conventions on Diplomatic and Consular Relations", in: Andrew Cooper (eds.), *Oxford Handbooks of Modern Diplomacy*, Oxford University Press, Oxford: 2013, p. 1.

¹² Randall Lesaffer, "Vienna and the Codification of Diplomatic Law", (without year), <<https://opil.ouplaw.com/page/514>>, [accessed 11/02/2023].

¹³ *Convention regarding Diplomatic Officers*, adopted by the Sixth International American Conference, 1928.

¹⁴ *Convention on the Privileges and Immunities of the United Nations*, 1 UNTS, 15.

¹⁵ Jovan Kurbalija, "E-diplomacy and Diplomatic Law in the Internet Era", in: Katharina Ziolkowski (ed.), *Peacetime Regime for State Activities in Cyberspace: International Law, International Relations and Diplomacy*, NATO CCD COE Publication, Tallinn: 2013, ("E-Diplomacy and Diplomatic Law in the Internet Era"), p. 399.

¹⁶ Jan Melissen, *The New Public Diplomacy: Soft Power in International Relations*, Palgrave Macmillan, London: 2005, p. 3-6.

¹⁷ Michael N. Schmitt, *Tallinn Manual 2.0 on the International Law Applicable to Cyber Operations*, Cambridge University Press, Cambridge: 2017 ("Tallinn Manual 2.0"), p. 209.

¹⁸ Kishan S. Rana, *The Contemporary Embassy: Paths to Diplomatic Excellence*, *Op. Cit.*, p. 21.

The term 'Virtual Embassy' used in this article points to diplomatic representation of the embassy, without establishing physical premises.¹⁹ This is being conducted via electronic information and communications technologies without face-to-face contact in an online virtual world.²⁰ On the other hand, the term 'Metaverse Embassy' is delineated as akin to the concept of a 'Virtual Embassy', yet incorporating more sophisticated technology, such as platforms and tools, within the operating system.²¹ Overall, it is the aspiration of States that this practice will eventually perform the functions of a diplomatic mission.²²

The emergence of a new field of diplomatic law posed by the passive nature of the VCDR has resulted in the divergence of opinions regarding its legal implications.²³ Two distinct groups of viewpoints appear on this matter. The first group comprises optimists who perceive the potential for the performance of functions through these non-virtual embassies to be equal to the traditional embassies.²⁴ Conversely, the second group consists of skeptics who consider the emergence of such embassies as merely a misnomer.²⁵ Due to the ongoing discussion of these two groups, this article confines itself by focusing on examining and, even more, challenging the performance of the functions of a diplomatic mission by a non-physical embassy, according to the VCDR.

The first section analyzes the determination of whether or not the functions of diplomatic missions must be performed cumulatively. Furthermore, the second section then assesses the role of an embassy as a form of representation of diplomatic mission, arguing the imperativeness of its establishment and the potential for expansion of such state. In the subsequent section of this article, an analysis is conducted to distinguish between a Virtual Embassy and a Metaverse Embassy. Having established the sections above, this article discussed the challenges and opportunities of creating a non-physical embassy. Of particular concern are issues related to the execution of the functions of a diplomatic mission, as well as the relevance of immunity and inviolability for such an embassy.

METHODS

This article uses the research methodology of normative legal research, qualitative methodology, and descriptive and comparative methods. The article utilizes international regulations and cases as its primary legal materials. This research is related to the recent development of diplomatic law, specifically the possibility of performing functions of a diplomatic mission through a non-physical embassy.

¹⁹ Jovan Kurbalija, "E-Diplomacy and the Challenge for Ministries of Foreign Affairs", in: Jovan Kurbalija (eds.), *Foreign Ministries: Managing Diplomatic Networks and Optimizing Value*, DiploFoundation, Switzerland: 2007 ("**E-Diplomacy and the Challenge**"), p. 329.

²⁰ E-Diplomacy and Diplomatic Law in the Internet Era, p. 401; Geoff Berridge and Alan James, *A Dictionary of Diplomacy*, Second Edition, Palgrave Macmillan, New York: 2003, p. 273.

²¹ Abhinav Gupta, "Metaverse: Challenger and Opportunities for Diplomacy and International Relations", *International Law and Politics*, Vol. 55, No. 1, 2023, pp. 3-4.

²² Shaghayegh Naeimabadi (et.al), "The Digital Age Diplomatic Affairs & Virtual Embassies, The Case Studies: Virtual Embassies of Sweden and Maldives", *International Conference on Architecture, Urbanism, Civil Engineering, Art, Environment: Future Horizons & Retrospect*, 2015, p. 7; E-Diplomacy and Diplomatic Law in the Internet Era, p. 402.

²³ Paul Behrens, *Diplomatic Law in a New Millennium*, Oxford University Press, Oxford: 2017, p. 4.

²⁴ Shaghayegh Naeimabadi (et.al), *Op.Cit.*

²⁵ Tallinn Manual 2.0, *Op. Cit.*, p. 216; Geoff Berridge and Alan James, *Op. Cit.*, p. 273.

DISCUSSION

Functions of Diplomatic Mission According to Vienna Convention on Diplomatic Relations 1961: Optional or Cumulative?

Article 3(1) of VCDR stipulates the classic functions of a diplomatic mission;²⁶ it provides that 'The functions of a diplomatic mission consist, *inter alia*, representing [...], protecting [...], negotiating [...] ascertaining and reporting [...], and promoting relations with the receiving State [...]'.²⁷ It was stated that the functions laid out in this article characterize the whole mission activity.²⁸ However, the existence of the word '*inter alia*' in this article issues two interpretations of the performance of the function: optional or cumulative. This interpretation plays a significant role in the argument on whether or not a State may perform *only* one of the functions of a diplomatic mission.

Under the general rule of interpretation of a treaty laid out under Article 31 of the Vienna Convention on the Law of the Treaties ("**VCLT**"), there are three elements of interpretation; context, object, and purpose, as well as good faith.²⁹ This being said, aside from the conventional literal translation of the text '*inter alia*' being 'among other',³⁰ to analyze the whole context of this Article, one shall take a view of the object and purpose of the treaty, which can be sought through its preamble of the treaty.³¹

As demonstrated under the Judgement of *Immunities and Criminal Proceedings* Case, the preamble of VCDR reflects the object and purpose to "contribute to the development of friendly relations among nations"³² and, accordingly, confers privileges and immunities upon missions to "ensure the effective performance of the functions of diplomatic missions".³³ This preamble was consistent with the *travaux préparatoire* of VCDR, where since the early day of its drafting, the drafters had considered the *efficient performance* of the functions of diplomatic missions.³⁴

Building upon the preceding statements and considering the States' desire for economic efficiency through the employment of alternative methods,³⁵ one pivot of thinking was established:

²⁶International Law Commission ("**ILC**"), "Draft Articles on Diplomatic Intercourse and Immunities with Commentaries 1958", *Yearbook of the International Law Commission*, 1958, Vol. II, p. 90.

²⁷Vienna convention on diplomatic relations and optional protocol on disputes, done at Vienna, April 18, 1961. (1973) ("**VCDR**"), art. 3.

²⁸ILC Yearbook 1957 Vol. I, pp. 2, 50, 200, Vol II, p. 133; 1958, Vol II, p.90.

²⁹United Nations, *Vienna Convention on the Law of Treaties*, 23 May 1969, United Nations, Treaty Series, Vol. 1155, p. 33 ("**VCLT**"), Art. 31(1); Alexander Orakhelashvili, *The Interpretation of Acts and Rules in Public International Law*, Oxford University Press, New York: 2008, p. 310.

³⁰Oxford Reference, "Inter alia", (without year), <<https://www.oxfordreference.com/view/10.1093/oi/authority.20110803100006410>>, [accessed 21/02/2023].

³¹VCLT, Art. 31(1); Mark E. Villiger, *Commentary on the 1969 Vienna Convention on the Law of the Treaties*, Martinus Nijhoff Publisher, Leiden: 2009, p. 428, para 13.

³²VCDR, Preamble; Immunities and Criminal Proceedings (*Equatorial Guinea v. France*), Judgement, I.C.J. Reports 2020, para. 66.

³³VCDR, Preamble; Dissenting Opinion of Judge *Ad Hoc* Kateka on Immunities and Criminal Proceedings (*Equatorial Guinea v. France*), p. 147, para. 3.

³⁴Dissenting opinion of Judge Bhandari on Immunities and Criminal Proceedings (*Equatorial Guinea v. France*) para. 14.

³⁵Jim Wyss, "Barbados Is Opening a Diplomatic Embassy in the Metaverse", 2021, <<https://www.bloomberg.com/news/articles/2021-12-14/barbados-tries-digital-diplomacy-with-planned-metaverse-embassy?leadSource=uverify%20wall>>, [accessed 06/09/2022].

the importance of efficiency in performing diplomatic mission functions. However, as the VCDR did not establish the threshold of efficiency of diplomatic mission performance, the challenge of this section now turns into what could be considered efficient and inefficient under this matter. This would include whether or not the performance of *only one* 'singular' function of the diplomatic mission would be regarded as 'efficient'.

The word 'efficient' is defined as the quality of doing something well without wasting time or money.³⁶ The relationship between the outputs and inputs might determine it.³⁷ This may include the consumption of time, money, or energy.³⁸ Although facing difficulties in measuring efficiency in the public sector due to the inability to quantify the accurate effects of public functions performance, the assessment of efficiency may still be conducted by taking into account the obtained result in relation to the resources used and by seeing whether the given resource has achieved the maximum results.³⁹ In other words, to achieve efficiency is to achieve maximum results with the minimum resource.

Generally, States spend not-so-little expenditures in the performance of their diplomatic mission, causing almost all States to face constraints on their overseas expenditures.⁴⁰ This would naturally drive States to conduct their diplomatic mission functions efficiently. Coherently, States would avoid the performance of *only one* function on their diplomatic mission as it will use a lot of time, money, or energy that would then be considered inefficient. An alternative perspective posits that each function delineated in Article 3 of the VCDR is closely interrelated,⁴¹ meaning that inadequate execution of one function may adversely impact the performance of other functions.

This interpretation answers that the 'classic' functions stipulated under Article 3(1) of VCDR are meant to be cumulative since performing *one* or *two* function would only do inefficiency and eventually contradicts the object and purposes of the VCDR. Thus, the term '*inter alia*' under Article 3(1) of VCDR means that the list set out is not final and exhaustive, so states may expand their radius action for service purposes.⁴² However, it did not mean that State may exclude the fundamental function explicitly penned under this Article.

Assessing The Role of the Embassy in Performing Functions of Diplomatic Missions as Premises of The Mission

A clear definition of the mission's premises was provided under Article 1(i) of the VCDR, which defines it as 'buildings or parts of buildings [...] used for the mission'.⁴³ It is understood that embassies

³⁶ Oxford Learner's Dictionary, "Efficiency", (without year), <https://www.oxfordlearnersdictionaries.com/definition/american_english/efficiency>, [accessed 15/02/2023].

³⁷ Diana Marieta Mihaiu (et.al), "Efficiency, Effectiveness and Performance of the Public Sector", *Romanian Journal of Economic Forecasting*, Vol. 13, No. 4, 2010, p. 133.

³⁸ *Ibid.*

³⁹ *Ibid.*, p. 138.

⁴⁰ Eileen Denza, "Diplomatic and Consular Immunities – Trends and Challenges" in Tom Ruys (eds.), *The Cambridge Handbook of Immunities and International Law*, Cambridge University Press, Cambridge: 2019 ("**Diplomatic and Consular Immunities**"), p. 436.

⁴¹ Ikedinma H. A, *INR 212: International Law and Diplomacy in the 20th Century*, National Open University of Nigeria, Nigeria: 2008, p. 9.

⁴² Niklas Wagner (et.al), *Vienna Convention on Diplomatic Relations of 18 April 1961: Commentaries on Practical Application*, Berliner wissenschafts-verlag, Berlin: 2018, p. 60.

⁴³ VCDR, Article 1(i).

fall within this article's definition as it is used for mission purposes.⁴⁴ More significantly, for the purpose of this paper, it is relevant to examine the performance of functions of a diplomatic mission through an embassy.

- a. Is the need to establish an embassy as the premises of the mission compulsory?

Referring back to the fundamental legal ground of diplomatic law, notably, VCDR did not explicitly require sending States to establish an embassy in each of its receiving State.⁴⁵ This unspecified rule leads to questions concerning the compulsoriness of establishing an embassy. Embassies' establishment is not only limited to a symbol of representing bilateral relations between the two countries. Instead, it includes several functions, from establishing political relations to showing goodwill.⁴⁶ Here, it will hold an imperative weight to determine the "compulsoriness" of embassies' establishment by examining the importance of its role in the performance of diplomatic mission functions as established under Article 3 of VCDR:⁴⁷

- 1) The function of Representation: The presence of an embassy highlights the representations of sending States' culture, language, and ways of life; it also stands as a recognition of the sending State of the existence of the receiving State, which would include the acknowledgment of each other's sovereignty.⁴⁸
- 2) The function of Negotiation and Protection: Embassies play a crucial role in a conflict or issue, especially in the pre-negotiation phase and follow-up stages.⁴⁹ This conflict or issue may include, but is not limited to, the kidnapping or/and murder of its nationals and loan repayments.
- 3) The function of Ascertaining and Reporting: Immense quantities of real-time information on the receiving States' daily condition are needed to be obtained by Embassies, especially in a situation of crisis where the embassies become the crucial place of diplomatic analysis for the decision-makers at home.⁵⁰
- 4) The function of Promoting Friendly Relations: The establishment of embassies seeks to make the sending State as networked as possible, making it less difficult to gain influence and handle crises.⁵¹

As far as the VCDR did not imply the obligation for States to establish an embassy, arising from the analysis of theories, there exist some level of compulsoriness for States to establish

⁴⁴ Niklas Wagner (*et.al*), *Op. Cit*, p. 53.

⁴⁵ Jean d'Aspremont, "Diplomatic Premises in International Law", *Max Planck Encyclopedia of International Law*, 2009, p. 2.

⁴⁶ David M. Malone, "The Modern Diplomatic Mission", in: Andrew Cooper (eds.), *Oxford Handbooks of Modern Diplomacy*, Oxford University Press, Oxford: 2013, p. 85.

⁴⁷ G. R. Berridge, *Diplomacy: Theory and Practice*, *Op. Cit*.

⁴⁸ *Ibid*, p. 110; Kishan S. Rana, "Embassies, Permanent Missions and Special Missions", *Op. Cit*, p. 149.

⁴⁹ G. R. Berridge, *Op. Cit.*, p. 111.

⁵⁰ Jérémie Cornut, "To be a Diplomat Abroad: Diplomatic Practice at Embassies", *Cooperation and Conflict*, Vol. 50, No. 3, 2015, p. 390.; Costantinos Berhutesfa Costantinos, "Public Policy, Diplomacy & Nation Branding in a Digital Epoch: The 'Delinked Diplomat'", *Republica Literaria*, MMVI Vol XI No XXI, p. 11.

⁵¹ G. R. Berridge, *Op. Cit*.

their embassies as it would optimize the sending State in performing its function of the diplomatic mission.

b. Unveiling alternative approach to the establishment of embassies

Apart from the theoretical analysis, by practice, some States did not 'legitimately' establish their embassies in other States. These are deemed normatively valid due to the absence of restrictions on States' freedom to choose whether or not to establish their embassies in certain locations.⁵² Due to this, States had started to employ their diplomatic mission through dual or multiple accreditation methods. This method is grounded by Articles 5 and 6 of the VCDR, which specify that States may concurrent their mission to the embassies in the other receiving State (*multiple or concurrent or dual accreditations*).⁵³

This method is frequently practiced by smaller States to prevent difficulties arising from the limited staff and/or material resources.⁵⁴ As a matter of procedural requirements, it would be necessary to first precede notification to the Receiving State subject to the multiple accreditations. The notification would normally be conveyed via an official communication that carries legal significance in accordance with international law.⁵⁵ By applying this method, a head of the mission would be accredited for two or more States and recognized as a non-resident ambassador to the state where they are not physically located.⁵⁶

Several States have succeeded in applying this method, such as United States embassy for the Maldives, accredited to Sri Lanka,⁵⁷ the Indonesia embassy for Vanuatu, accredited to Australia,⁵⁸ and Singapore which also exercised this method on its mission ambassador to Denmark and Colombia.⁵⁹ The method of multiple accreditations, in either case, highlights the possibility and provides a solution for small States to forgo establishing embassies in each receiving State while still fulfilling their diplomatic mission functions through non-resident ambassadors.

c. The term "embassy" under VCDR and its equivocal attachment to the physical form of existence

As well established by Article 1(i) of the VCDR, the premises of the mission refers to the buildings and land of the mission.⁶⁰ The definition under VCDR strongly rests upon a physical

⁵² E-Diplomacy and Diplomatic Law in the Internet Era, *Op. Cit.*, p. 400.

⁵³ Niklas Wagner (*et.al*), *Op. Cit.*, p. 78; Eileen Denza, *Diplomatic Law (4th Edition): Commentary on the Vienna Convention on Diplomatic Relations*, Oxford University Press, Oxford: 2016, ("**VCDR Commentary**"), p. 46 - 48.

⁵⁴ Niklas Wagner (*et.al*), *Ibid.*

⁵⁵ *Ibid.*

⁵⁶ *Ibid.*

⁵⁷ United States Department of States, "U.S. Relations With Maldives", 2022, <<https://www.state.gov/u-s-relations-with-maldives/>>, [accessed 25/01/2023].

⁵⁸ Sekretariat Presiden Republik Indonesia, "Presiden Jokowi Lantik 17 Duta Besar RI untuk Negara Sahabat", 2021, <<https://www.presidentri.go.id/siaran-pers/presiden-jokowi-lantik-17-duta-besar-ri-untuk-negara-sahabat/>>, [accessed 20/12/2022].

⁵⁹ Ministry of Foreign Affairs Singapore, "Appointment of Non-Resident Ambassador to the Republic of Colombia, Non-Resident Ambassador to the Kingdom of Denmark, and Non-Resident High Commissioner to the Republic of Mauritius", 2022, <<https://www.mfa.gov.sg/Newsroom/Press-Statements-Transcripts-and-Photos/2022/01/20221101-appointment-of-NRAs>> [accessed 25/01/2023]; Ministry of Foreign Affairs Singapore, "Honorary Consulate-General of the Republic of Singapore in Copenhagen", (without year), <<https://www.mfa.gov.sg/copenhagen>>, [accessed 25/01/2023]; Embassies, "Singapore Embassies and Consulates Near Colombia", (without year), <<https://sg.embassies.net/colombia>> [accessed 25/01/2023].

⁶⁰ VCDR, Art. 1 (i).

conceptualization of a diplomatic mission.⁶¹ This was further elaborated in the Tallinn Manual 2.0, where experts uphold the robust approach of how the traditional concept of diplomatic mission implies physical presence.⁶² However, it is imperative to recognize that many factors, including technological development influence the development of practices of the diplomatic mission.

Codified by the International Law Commission, the VCDR comprises well-practiced rules of CIL.⁶³ Two crucial elements form CIL; *opinio juris* and state practices.⁶⁴ In the *Fisheries Case* and further ascertained in the *Continental Shelf* Judgement, the ICJ established that the element of State practice is a prerequisite to be extensive and virtually uniform.⁶⁵ Thus, the core form of the VCDR itself would be State Practices. The focus now turns to the evolving development of State Practices these days. Does the interpretation of VCDR's content also evolve due to these Practices? Is there any possibility of the extension of the term 'embassy' into a form that is not physical?

In plain sight, it seems like there is a degree of flexibility and adaptability of CIL since it has an unwritten nature.⁶⁶ However, CIL rules are known to be universal, creating a 'common ground of understanding' that may apply to all States.⁶⁷ This was reflected in a long list of aforementioned ICJ's judgments and the International Law Commission's ("ILC") most recent product, the *Draft Conclusion of Customary International Law* ("**Draft Conclusion**"). It is firmly established under Conclusion 8 of the Draft Conclusion that the practice *must be general*.⁶⁸ When there exists some inconsistency against the general practice, as demonstrated in the *Nicaragua case*, it could merely be considered a practice that deviates from the general one, which is not recognized as a new rule.⁶⁹ Therefore it does not equate to a failure in the finding of the general practice.⁷⁰ Yet, if the deviating practice reaches a critical mass number that

⁶¹ Stefano Dominelli, "Internet and eDiplomacy: 'Traditional' Diplomatic Law in the Digital Era", *ZaöRV*, Vol. 81, 2021, p. 741.

⁶² Tallinn Manual 2.0, *Op. Cit.*, pp. 216-217, para. 15.

⁶³ E-Diplomacy and Diplomatic Law in the Internet Era, *Op. Cit.*, p. 399.

⁶⁴ *Continental Shelf* (Libyan Arab Jamahiriya v. Malta), Judgement, I.C.J. Reports 1985, p. 13, para. 27; ILC, "Draft Conclusions of Identification of Customary International Law", *Yearbook of the International Law Commission, Vol II, Part Two*, 2018, ("**Draft Conclusion of Identification**"), Conclusion 2; Malcolm N. Shaw, *International Law*, Eight Edition, Cambridge University Press, Cambridge: 2017, p. 55.

⁶⁵ *Fisheries Case*, (United Kingdom v. Norway), Judgement, 1961, I.C.J. Reports 1951, p. 116; *North Sea Continental Shelf* (Germany v. Denmark), Judgement, I.C.J. Reports 1969, p. 3, para. 74; Malcolm Shaw, *Ibid*, p. 57; ILC, "Draft Conclusion on Identification of Customary International Law with Commentaries", 2018, A/73/10, Conclusion 8, para. 2, p. 136.

⁶⁶ Agata Klexzkowska, "Changing Customary Law", *International Community Law Review*, No. 21, 2019, p. 369; Anthea Elizabeth Roberts, "Traditional and Modern Approaches to Customary International Law: A Reconciliation", *The American Journal of International Law*, Vol. 95, 2001, pp. 757-791.

⁶⁷ Pierre-Hugues Verdier and Erik Voeten, "Precedent, Compliance, and Change in Customary International Law: An Explanatory Theory", *The American Journal of International Law*, Vol. 108, No. 3, 2014, pp. 389-434, p. 390.

⁶⁸ ILC, "Draft Conclusion on Identification of Customary International Law, with Commentaries", *Yearbook of the International Law Commission*, 2018, Vol. II, Part Two, ("**Draft Conclusion**") Conclusion 8, p. 137, para. 7.

⁶⁹ *Ibid*, para. 8; *Military and Paramilitary Activities in and against Nicaragua* (Nicaragua v. United States of America), Merits, Judgement, I.C.J Reports 1986, p. 14, para. 186.

⁷⁰ *Draft Conclusion*, Conclusion 8, para. 7.

reaches the *tipping point*, it may be considered a leading charge toward forming the new rule.⁷¹ The key point of determination would still be the generality of the practice.

The development of technology indeed brings new practices from States, including in the realm of diplomatic relations,⁷² especially in this case, the development of the form of embassies. It is reflected that these developments of subsequent practices are not yet unified.⁷³ This gives a limited possibility that a settled customary law rule extending the definition of the term 'embassies' is met.⁷⁴ Consequently, it may be difficult to recognize the term "embassies" beyond the scope of a physical one, including its form of non-physical.

Exploring the Two Methods of a Non-Physical Embassy: Virtual Embassy and Metaverse Embassy

Regardless of the difficulty of extending the term 'embassies' into a non-physical form, States do have a unique approach to establishing what they thought was the best way to perform their diplomatic mission that will be handled electronically.⁷⁵ This section will elucidate how distinct States' practices objectify this idea of a non-physical embassy; this includes the most recent practice innovated by Barbados called metaverse embassy.

a. An Overview of the Operational Practices of Virtual Embassy

A virtual embassy is a form of diplomatic mission where the sending State does not have a permanent mission in the receiving State.⁷⁶ It is claimed that virtual embassies would still have an ambassador that stays in their home country and would communicate electronically.⁷⁷ States viewed that it could play the role of an official diplomatic mission abroad.⁷⁸ Two main rationales underlying the practice of virtual embassies would be. First, it gives a substantial expenditure cut for the sending States. Second, it could be seen as a form of diplomatic representation in receiving States where physical representation may not yet exist.⁷⁹ However, in the previous chapter, it was evident that the definition of 'embassies' under Article 1(i) of VCDR would be hard to be extended to a form of non-physical due to the ununified practices of States, not excluding virtual embassies. To support this assertion, it is necessary to examine the practices of those States that have adopted this approach.

As an initial illustration, the case of Sweden's creation of a virtual embassy known as 'the Second House of Sweden' can be analyzed.⁸⁰ This embassy was constructed within a webpage

⁷¹ Pierre-Hugues Verdier and Erik Voeten, *Op. Cit.*, p. 405; Brian D. Lepard, "Customary International Law as a Dynamic Process", in: Curtis A. Bradley (ed.), *Custom's Future: International Law in a Changing World*, Cambridge University Press, Cambridge: 2016, pp. 62-94.

⁷² Beata Surmacz, "New Technologies in Diplomacy", in: Monika Szarrlat (eds.), *New Technologies as a Factor of International Relations*, Cambridge Scholars Publishing, Newcastle: 2016, p. 72.

⁷³ Stefano Dominelli, *Op. Cit.*, p. 724.

⁷⁴ *Ibid.*

⁷⁵ David M. Malone, "The Evolving Nature and Role of the Diplomatic Mission", *Canadian Foreign Policy Journal*, Vol. 18, No. 2, 2012, p. 237.

⁷⁶ VCDR Commentary, p. 28.

⁷⁷ E-Diplomacy and Diplomatic Law in the Internet Era, *Op. Cit.*, p. 401.

⁷⁸ Nataliya Pipchenko, "Digital Diplomacy: How International Actors Transform Their Foreign Policy Activity", *UA: Ukraine Analytica Diplomacy*, Issue 2 (20), 2020, p. 22.

⁷⁹ Diplomatic and Consular Immunities, *Op. Cit.*, p. 436.

⁸⁰ Stina Bengtsson, "Virtual Nation Branding: The Swedish Embassy in Second Life", *Journal of Virtual Worlds Research*, Vol. 4, No. 1, 2011, p. 3.

hosted on *secondlife.com*.⁸¹ The embassy has run since 2007 and was closed down in 2012.⁸² During the initial stages of its operation, the embassy was observed to be fully functional, though, with time, the number of staff present has gradually decreased.⁸³ Subsequently, the embassy was utilized by members of the Swedish Community in Second Life for organizing specific events, including the commemoration of national festivals and holidays.⁸⁴ The official website of the Swedish Institute, a government agency organizing the embassy's development, did not stipulate the reason for the shutdown of the embassy.⁸⁵ Rather, the Swedish Institute only declared that the project 'was a success'.⁸⁶

The second State which will serve as an example would be the Maldives.⁸⁷ In 2007, Maldives built a virtual embassy as a 'gate for new relations of the international atmosphere'.⁸⁸ In a manner akin to Sweden, Maldives 'built' its virtual embassies on *secondlife.com*, which facilitate the creation of realistic virtual replicas of actual structures and permit users to engage with cyber diplomats.⁸⁹ The Maldivian government accounts that the virtual embassy presents opportunities for diplomatic representation and negotiation, particularly for smaller and less developed nations with limited avenues for traditional diplomatic engagement.⁹⁰ However, this embassy is unable to expand due to the limitations of the second life platform, which is the same presumably true for Sweden.⁹¹

Another example is the United States, which established a virtual embassy in 2011 by using governmental tools, which are other states' official web pages.⁹² It is found that the US has been establishing its virtual representation from 2003 to 2011, where approximately 40 virtual US representations were established.⁹³ However, unlike Sweden and Maldives, the Department of United States' site made it clear that the virtual embassy is neither official nor an embassy. Instead, it is intended to serve as a bridge between the Americans and the

⁸¹ Stefano Dominelli, *Op. Cit.*, 741.

⁸² Karl Peterson, "A Farwell", 2013, <<https://secondhouseofsweden.wordpress.com/>>, [accessed 31/01/2023]; Ilan Manor and Marcus Holmes, "Palestine in Hebrew: Overcoming the Limitations of Traditional Diplomacy", *Revista Mexicana de Política Exterior*, No. 113, 2018, p. 3.

⁸³ Stina Bengtsson, *Op. Cit.*, p. 4.

⁸⁴ *Ibid.*

⁸⁵ Karl Peterson, *Op. Cit.*

⁸⁶ *Ibid.*

⁸⁷ Government of Maldives, "Maldives Unveils World's First Virtual Embassy", 2007, <<http://archive1.diplomacy.edu/pool/fileInline.php?idpool=463>> [accessed 31/01/2023].

⁸⁸ Shaghayegh Naeimabadi (*et.al*), *Op. Cit.*, p. 7.

⁸⁹ Stefano Dominelli, *Op. Cit.*, p. 741; E-Diplomacy and Diplomatic Law in the Internet Era, p. 401.

⁹⁰ Government of Maldives, *Op. Cit.*

⁹¹ E-Diplomacy and Diplomatic Law in the Internet Era, *Op. Cit.*

⁹² Stefano Dominelli, *Op. Cit.*

⁹³ Nataliya Pipchenko, *Op. Cit.*, p. 23.

nationals of receiving State.⁹⁴ Yet, after analyzing their activity in 2011, it was decided to discontinue such websites because they are unpopular.⁹⁵

As reflected and illustrated by the practices mentioned above, there is a limitation to the successfulness of virtual embassies, which several factors affect.⁹⁶ Regardless of the States' distinct way of establishing their virtual embassies, one common similarity was found: these States still possess a physical embassy that stands tall in each prospective receiving State.⁹⁷

b. The Emergence of Metaverse Embassy as a Diplomatic Relation Practice by Barbados

Despite the difficulties of establishing a virtual embassy, Barbados has innovated another form of this establishment called the metaverse embassy. The term 'metaverse embassy' does not yet have a concrete definition. However, deriving from the word 'meta' and 'universe',⁹⁸ 'metaverse' can be interpreted as a mass virtual environment parallel to the physical world, where the users can interact through digital avatars.⁹⁹ Barbados sees this establishment as a way to expand its diplomatic mission as they are 'unable to support 190+ diplomatic missions around the world' due to limited resources and finances,¹⁰⁰ a common issue for the Micro States, including Barbados.¹⁰¹

Barbados indicated that it would only open *one* diplomatic complex in the metaverse, which would be used to perform official diplomatic relations with all of the receiving States.¹⁰² Described by Barbados' motivation, it is viewed that there is a vision for Barbados to establish a metaverse embassy *independently*, not followed by a traditional physical embassy. This suggests as an analogy that there is a single door through which multiple foreign states, with whom Barbados has diplomatic relations, may enter. Much as Barbados believes' of the conformity of metaverse embassy establishment with the VCDR,¹⁰³ legal issues arise from this thinking. The following section discusses further the applicability of the concept of reciprocity on Barbados "one for all" metaverse embassy.

⁹⁴ Emily T. Metzgar, "Is It the Medium or the Message? Social Media, American Republic Diplomacy & Iran", *Global Media Journal Fall*, 2012, p. 8.

⁹⁵ *Ibid.*

⁹⁶ Eytan Gilboa, "Digital Diplomacy", in: Costas M. Constantinou (eds.), *The SAGE Handbook of Diplomacy*, SAGE Publications, London: 2016, p. 544.

⁹⁷ Government Office of Sweden, "Stockholm Diplomatic List", (without year) <<https://www.swedenabroad.se/en/embassies/>>, [accessed 31/01/2023]; Government of Maldives, "Maldives Overseas Mission", (without year), <<https://www.gov.mv/en/organisations/ministry-of-foreign-affairs/embassylist>>, [accessed 31/01/2023]; Government of United States, "Official List of Embassies from the U.S. Department of State", (without year), <<https://www.usembassy.gov>>, [accessed 31/01/2023].

⁹⁸ Muhammad Reza Syarifudin Zaki (*et.al*), "International Labour Law Perspectives on the Metaverse", *Proceedings of the 3rd International Conference on Industrial Engineering and Operations Management Malaysia*, 2022, p. 1626.

⁹⁹ Lik-Hang LEE (*et.al*), "All One Needs to Know about Metaverse: A Complete Survey on Technological Singularity, Virtual ecosystem, and Research Agenda", *Journal of Latex Class Files*, Vol. 14, No. 8, 2021, p. 1.

¹⁰⁰ Jim Wyss, *Op. Cit.*

¹⁰¹ Ali Naseer Mohamed, "The Diplomacy of Micro-states", *Discussion Papers in Diplomacy*, Netherlands Institute of International Relations 'Clingendael', Netherlands: 2002, p. 19.

¹⁰² Jim Wyss, *Op. Cit.*

¹⁰³ Andrew Thurman, "Barbados to Become First Sovereign Nation With an Embassy in the Metaverse", 2021, <<https://www.coindesk.com/business/2021/11/15/barbados-to-become-first-sovereign-nation-with-an-embassy-in-the-metaverse/>> [accessed 05/09/2022].

The principle of reciprocity is the core of diplomacy, a key success of the VCDR.¹⁰⁴ Reciprocity could be defined as a situation where two States provide the same advantages to each other.¹⁰⁵ As how ILC recognizes, when one State benefits from a right, others must share the same rights.¹⁰⁶ However, this principle can be positive or negative.¹⁰⁷ The latter involves a negative response to an adverse action.¹⁰⁸ In a sense, it will appear as an eye for an eye and a tooth for a tooth.¹⁰⁹ The same concept applies to the establishment of embassies.

As States establish diplomatic relations, the mutual exchange of physical embassies naturally follows.¹¹⁰ These are based on the reciprocity principle, where States usually will not maintain an embassy in a foreign State if the foreign State does not reciprocate.¹¹¹ The query then became what would happen if there was a situation of unwillingness or inability to reciprocate. Would then the establishment of the embassy become a dead end? The answer will depend on how much one needs to be represented and the given consent of the other State.¹¹² In the end, there is a similarity with the concept of multiple accreditations where there is a condition of an absence of physical presence in the other State or by establishing joint embassies. Initial appearances suggest that the possible key determining factor for this method would be the consent of the receiving State as stipulated under Articles 5 and 6 of VCDR.¹¹³

To facilitate clarity in this context, an illustration of a hypothetical State A is provided, which seeks to establish a physical embassy in State B. Yet, State B cannot reciprocate the same action to establish a physical embassy in State A. Theoretically, as long as there exists consent between both States and due to the high essentials for State A to establish an embassy in State B, State A can nevertheless establish an embassy. The form of representation of State B in State A can then be alternated to another condition, such as multiple accreditation or joint accreditation. Canada and UK have explored the method of joint embassies themselves by sharing embassy premises and services.¹¹⁴

¹⁰⁴Suwaibah Qadri and Shahla Tehseen, "The Role of International Law in Contemporary Diplomacy", *Global Scientific Journal*, Vol. 7, Issue 12, 2019, p. 1106; Kishan S. Rana, *The Contemporary Embassy: Paths to Diplomatic Excellence*, Op. Cit., p. 110.

¹⁰⁵Sally Wehmeier (eds.), *Oxford Advanced Learner's Dictionary*, Oxford University Press, Oxford: 2006, p. 1215; Muhammad Reza Syariffudin Zaki, *Pengantar Ilmu Hukum dan Aspek Hukum dalam Ekonomi*, Kencana, Jakarta: 2022, p. 32.

¹⁰⁶*Yearbook of the International Law Commission*, 1976, Vol. II, Part Two, Report of the Commission to the General Assembly on the Work of Its Twenty-Eighth Session, A/CN.4/SER.A/1976/ Add.I (Part 2), p. 12.

¹⁰⁷Shahrad Nasrolahi Fard, *Reciprocity in International Law: Its Impact and Function*, Routledge, London and New York: 2016, p. 5.

¹⁰⁸*Ibid.*

¹⁰⁹Kishan S. Rana, *The Contemporary Embassy: Paths to Diplomatic Excellence*, Op. Cit.

¹¹⁰Alan James, "Diplomatic Relations and Contacts", *The British Year Book of International Law*, Vol. 62, Issue 1, 1991, pp. 347-387, p. 348.

¹¹¹Kishan S. Rana, *The Contemporary Embassy: Paths to Diplomatic Excellence*, Op. Cit., p. 111.

¹¹²*Ibid.*

¹¹³Article 5 and 6 VCDR 1961.

¹¹⁴Kishan S. Rana, *The Contemporary Embassy: Paths to Diplomatic Excellence*, Op. Cit., p. 110.

From a particular perspective, the concepts that arise from the abovementioned practices are comparable to metaverse embassy for two reasons: the absence of physical presence in the foreign State and the utilization of an embassy by more than one State. The practice of Joint Embassies seemingly offers a prospect for Barbados to operate their “one for all” metaverse embassy, where multiple foreign states can collectively utilize it for diplomatic relations. At sight, the crucial elements that must be fulfilled to perform this method of the metaverse embassy would only be the settlement of agreement or consent of the foreign States with Barbados. However, in implementing this custom within Barbados' metaverse embassy, careful consideration must be given to its practical feasibility within the real world, as it should be constructed and shaped based on how states will perform their practices.¹¹⁵

Driven by the impracticality of establishing around 190+ physical diplomatic missions worldwide, Barbados established a single metaverse embassy to conduct its diplomatic affairs. However, a pressing concern arises regarding how Barbados will seek consent from individual states to establish these embassies. The practicality of this procedural requirement becomes a paramount consideration for Barbados, as it has significant implications for the efficiency initially envisioned by the country.

c. A Comparative Analysis of the Two Non-Physical Embassy Models

As a preliminary, the nature of the metaverse embassy originates from the virtual embassy where both operate based on the internet, making them have a similar concept. Table 1 stands as a reason to exemplify the distinction between traditional, virtual, and metaverse embassies.

Table 1. The Comparison of Traditional, Virtual,¹¹⁶ and Metaverse Embassy' Technicalities

Aspect	Traditional Embassy	Virtual Embassy	Metaverse Embassy*
Diplomats	Exist and situated in the receiving State.	Exist and situated in the sending State (home State).	Exist and situated in the sending State (home State).
Form of existence	Physical	Virtual	Virtual with the adaptation of Virtual Reality (VR) on its technicality. ¹¹⁷
Tools	Physical building	Websites	Meta Quest 2, HTC Vive. ¹¹⁸
Interaction	Direct conversation	Through chat box	Direct conversation
Embassies' Role	Plays pivotal role in direct communication with receiving State.	Stands as complementary.	<i>Assumed to have the same role as virtual embassy.</i>

Source: Stefano Dominelli, 2021; Daniel Pimentel, 2022.

¹¹⁵ Malcolm Shaw, *Op.Cit.*, p. 55.

¹¹⁶ Shaghayegh Naeimabadi (*et.al*), *Op.Cit.*, p. 5.

¹¹⁷ Daniel Pimentel (*et.al*), *An Introduction to Learning in the Metaverse*, Meridian Treehouse, Washington: 2022, p.3.

¹¹⁸ *Ibid.*

(*) *The analysis of the metaverse embassy is based on the indication that Barbados is to implement the technical method used commonly by metaverse platform*

Metaverse is visioned to generate the users' experiences as they could sense the presence of other users by the ability to feel them realistically through their facial expressions and gestures.¹¹⁹ Not only that, the essential characteristic is that the metaverse would have a symmetric relationship between physical and virtual space.¹²⁰

The Performance of Diplomatic Mission by Non-Physical Embassy: Problems and Prospects

a. The performance of functions of a diplomatic mission by a non-physical embassy

In addition to technical considerations of the metaverse embassy, the next major hurdles are the issue of the performance of the diplomatic mission's function. While recalling the difficulties of the efficient performance of diplomatic functions in the virtual embassy, taking into account the differences and similarities between virtual and metaverse embassies, it is to be analyzed what functions could probably be performed in both of its embassies alongside its efficiency.

Table 2. The Comparison of the Performance of Functions of Diplomatic Mission by Virtual and Metaverse Embassy.

Diplomatic Functions	Virtual Embassy	Metaverse Embassy
Representation	- Virtual embassies are the minimum form of performance of representation.¹²¹ - The role of a traditional mission as a spokesperson for the sending State to present their political position can be fulfilled by these embassies.¹²² - Has been exemplified by the Maldives expressing their concern on global climate issues through their virtual embassy.¹²³ <i>Possible performance by Virtual Embassy and Metaverse Embassy.</i>	
Protection	- Diplomatic missions have the responsibility of safeguarding their home country's interests through various means.¹²⁴ - Sending State shall provide forms of protection, including giving advice and guidance about conditions and opportunities in the host State,¹²⁵ maintaining cordial relations between the two countries by taking necessary precautions and resolving any uncomfortable situations that may arise,¹²⁶ and even in times of crises by evacuating families and non-essential staff from the receiving State.¹²⁷	

¹¹⁹Ljubisa Bojic, "Metaverse Through the Prism of Power and Addiction: What Will Happen When the Virtual World Becomes More Than Reality?", *European Journal of Futures Research*, Vol 10, No. 22, 2022, p. 2.

¹²⁰*Ibid*, p.3.

¹²¹VCDR Commentary, p. 28.

¹²²Niklas Wagner (*et.al*), *Op. Cit.*, p. 61.

¹²³Government of Maldives, *Op. Cit.*, p. 2.

¹²⁴Olesya M Grech, "Virtual Diplomacy: Diplomacy of the Digital Age", *University of Malta*, Master's Dissertation, 2006, p. 16.

¹²⁵VCDR Commentary, *Op.Cit.*, p. 36.

¹²⁶*Ibid*.

¹²⁷Jérémie Cornut, *Op. Cit.*, p. 390.

	• The Aforementioned actions shall be achieved through a high level of cooperation to prevent the conflicting interests of the two states.¹²⁸ • Embassies require vast amounts of real-time information on the current conditions of the host state, particularly during times of crisis and conflict when embassies become the pivotal location for diplomatic analysis used by decision-makers in the home country.¹²⁹ • <i>Limited performance of Function of protection by Virtual and Metaverse Embassy.</i>	
Negotiation	• The feasibility of executing the functions of negotiation, safeguarding, and gathering and disseminating information via a virtual embassy should be contingent upon the significance of in-person, real-time interaction to execute the negotiation. • By its very nature, an virtual embassy lacks a physical presence, which constitutes a considerable hindrance to the effective execution of its functions, thereby undermining its importance.¹³⁰ • <i>Limited visibility of performance of Function of Negotiation by Virtual Embassy.</i>	• The fulfillment of the Function of Negotiation is quite foreseeable due to Metaverse's great opportunity of incorporating VR technology in dispute resolution plays a significant part in people's behavior.¹³¹ • This technology has the potential to stimulate implicit and subconscious empathy, which could impact the negotiation process positively.¹³² • However, by realistically taking into account the possible dynamic condition of conflict that requires negotiation between States the efficiency of metaverse technology is then to be put into skepticism. This significantly impacted the fulfillment of the Function of Protection where the direct response from the Sending State is crucial to existing. • <i>Limited visibility of performance of Function of Negotiation by Metaverse Embassy</i>
Ascertaining and Reporting	• In line with the prevailing era of abundant electronic information production, gathering information has become significantly more accessible.¹³³ Evidence demonstrates that the internet's influence has rendered diplomatic reporting more efficient, prompt, cost-effective, less formal, and imbued with greater urgency.¹³⁴ • <i>The performance of this function would be possible by virtual and metaverse embassy.</i>	
Promoting Friendly Relations and the Development of	• The function of promoting friendly relations within a diplomatic mission can be effectively realized through various initiatives, such as	• This function are seen to have the possibility to be well performed by the Metaverse embassy. This is due to the fact

¹²⁸Juergen Kleiner, "The Inertia of Diplomacy", *Diplomacy and Statecraft*, Vol. 19, No. 2, 2008, p. 323.

¹²⁹Jérémie Cornut, *Op. Cit.*

¹³⁰Jérémie Cornut, *Op. Cit.*, p. 390; Tallinn Manual, p. 2016.

¹³¹Mayu Watanabe and Colin Rule, "ODR in Metaverse", *International Journal on Online Dispute Resolution*, Vol. 9, Issue 1, 2022, p. 29.

¹³²*Ibid.*

¹³³Jovan Kurbalija, "E-Diplomacy and Diplomatic Law in the Internet Era", *Op. Cit.*, p. 408.

¹³⁴*Ibid*, p. 411.; Mary Murphy, 'How Has the Internet Affected Diplomatic Reporting', 2013, <<https://www.diplomacy.edu/resource/the-impact-of-the-internet-on-diplomatic-reporting-how-diplomacy-training-needs-to-be-adjusted-to-keep-pace/>> [accessed 10/05/2023].

Economic and Cultural Relations	organizing cultural events, art exhibitions, and language courses.¹³⁵ - As both Sweden and Maldives have performed these actions through their virtual embassy,¹³⁶ undoubtedly, virtual embassies can effectively perform this function. <i>Limited visibility of performance of Function of Negotiation by Virtual Embassy.</i>	that the metaverse provides a high degree of synchronization and intercommunication.¹³⁷ - Further wise, the metaverse market is predicted to reach €597.3 billion by 2030.¹³⁸ Economically, this creates significant opportunities for States to optimize their development of metaverse technology. <i>Limited visibility of performance of Function of Negotiation by Metaverse Embassy</i>
Efficiency	Not fulfilled	Not fulfilled

Source: Stefano Dominelli, 2021; Jovan Kurbalija, 2013

The advanced decision made by States to stop developing their virtual embassies screams an undeniable fact of their doubts about the performance of virtual embassies. As reflected by the performance of diplomatic mission functions by virtual and metaverse embassy, it is illustrated that one of the most crucial functions of the embassy could not yet be performed efficiently.

By only performing one function stipulated under Article 3 of VCDR, the efficiency of a virtual and metaverse embassy was put into doubt and would eventually not go hand in hand with the object and purpose of the VCDR. The diplomatic mission functions outlined in Article 3 cannot be efficiently carried out in this context. This raised an ultimate concluding remark: non-physical embassy could not exist independently or fully replace a physical embassy as defined under Article 1(i) of VCDR. Rather, it should be used as a supplementary extension of a physical embassy. Given the practical imitation observed in this non-physical embassy, States such as Barbados may utilize the aforementioned multiple accreditation method,¹³⁹ rather than depend solely on Virtual Embassy or Metaverse Embassy.

b. Relevancy of immunity and inviolability for a non-physical embassy

The next hurdles of the practice of a non-physical embassy on the concept of diplomatic law are the relevancy of immunity and inviolability of the embassy. Though the concept of inviolability of digital diplomatic archives and correspondence has been a common debate and understood as inviolable,¹⁴⁰ the application of immunity and inviolability to digital premises

¹³⁵Niklas Wagner (*et.al*), *Op. Cit*, p. 68.

¹³⁶Stina Bengtsson, *Op. Cit*, p. 4; Government of Maldives, *Op. Cit*.

¹³⁷Ziying Song, "Interpersonal Communication Research in Metaverse", *Advances in Social Science Education and Humanities Research*, Vol. 664, 2022, p. 2377.

¹³⁸European Parliament, "Metaverse: Opportunities, Risks and Policy Implications", *Briefing*, June 2022, p. 3.

¹³⁹*Infra*, Sec. Assessing the Role of the Embassy in Performing Functions of Diplomatic Missions as Premises of The Mission.

¹⁴⁰*R (Bancoult) v Foreign & Commonwealth Office (No 3)* [2013] EWHC 1502.

presents a more complex challenge. Are the diplomats there entitled to immunity, and is the premises inviolable?

Article 39 of the VCDR stipulates that the privileges and immunities shall be enjoyed when the person entitled to "...enters the territory of the receiving State".¹⁴¹ The concept of virtual space does not fall under the territory of any nation State.¹⁴² Thus, it appears highly improbable that immunity and privileges will be extended in the manner proposed. Conversely, regarding the concept of inviolability of a non-physical embassy, it may be informative to consider the example of Estonia's data embassy in Luxembourg. Prior to establishing the embassy, both States made an approval on the inviolability. As a result, the embassy is granted immunity from searches, requisitions, and other comparable actions that are typically applicable to diplomatic premises.¹⁴³ It is conceivable that States which have adopted/will adopt the practice of non-physical embassies could have previously reached an agreement regarding the implementation of inviolability.

CLOSING

The evolution of diplomatic law, influenced by both customary practices and the VCDR, confronts a transformative juncture with the pervasive impact of information and communications technology ("ICT"), notably the Internet. The emergence of non-physical embassies, exemplified by virtual and Metaverse embassy, introduces a shift that challenges the traditional understanding of diplomatic functions and raises concerns about the compatibility with established legal frameworks. This analysis contends that, despite the potential afforded by ICT in certain diplomatic aspects, the non-physical embassies currently lack the customary international status and operational capacity to fully substitute for their physical counterparts, potentially leading to inefficiencies and incongruities with the objectives of the VCDR. Non-physical embassies may cause inefficiency in diplomatic function's performance and become the basis of non-conformity with the provision of VCDR 1961.

Looking forward, addressing the challenges posed by non-physical embassies necessitates a nuanced approach. As previously proposed in this study, the usage of metaverse embassy might become a complimentary mission which stands alongside the physical embassy. This non-physical embassy would further provide diplomatic assistance. By adopting such a approach, the international community can strike a balance between embracing technological progress and ensuring the continued efficacy and relevance and legality of diplomatic law.

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¹⁴¹Art. 39 VCDR 1961.

¹⁴²Abhinav Gupta, *Op. Cit.*, p. 8.

¹⁴³Bartłomiej Sierzputowski, "The Data Embassy Under Public International Law", *ICLQ*, Vol. 68, Issue 1, 2019, pp. 225-242, p. 235.

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