



*Globalizing Knowledge Series, UIUC*

# **Global Knowledge and Transnational Crime**

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Main Library, Room 106, 12-1pm

# Transnational Crime & Dilemmas of Legal Immunity

- How does a legal immunity provide an opportunity for serious misconduct to its holders?
- “serious misconduct” = TOC



# Part 1: TOC

# TOC: differences

## Organized crime

- ❖ continuous associations of individuals
- ❖ make a profit
- ❖ cater to the public demand for illicit goods and services (victimless?)
- ❖ monopoly control  
ethnicity/secretive  
communication/restrictive  
membership
- ❖ use a pattern of corruption and/or violence
- ❖ e.g.: extortion, loan sharking, gambling, bootlegging, prostitution, etc.

## International crime

- ❖ conduct commonly viewed as serious atrocities
- ❖ “the gravest of crimes that threaten peace, security and well-being of the international community” (Rome Statute 1998)
- ❖ context of armed violence
- ❖ e.g.: genocide, war crimes, crimes against humanity, crime of aggression

# The UN Convention against Transnational Organized Crime (UNCTOC) 2000 “Palermo Convention” (Giovanni Falcone)

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**Serious Crime** “conduct constituting an offence punishable by a  
(...) deprivation of liberty of **at least four years** or a more serious penalty”  
(Art. 2b)

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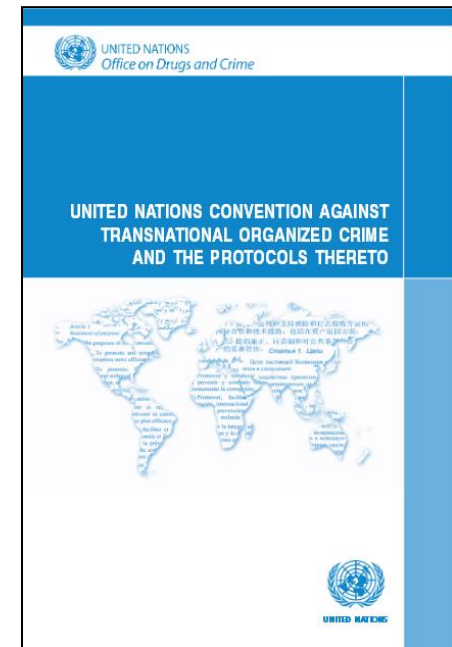
**Organized Criminal Group** “a structured group of **three** or  
more persons, existing for a **period of time** and **acting in concert**  
with the aim of committing one or more serious crimes or offences  
established in accordance with this Convention, in order to obtain,  
directly or indirectly, a **financial or other material benefit**” (Art. 2a)

+

**“Transnational”**

# UNCTOC: “Transnational” (Art. 3)

- ❖ committed in more than one state
- ❖ committed in one -- prepared in another
- ❖ involves a criminal group active in different states
- ❖ has substantial effects in another state



# TOC

## *Conventional forms of TOC*

- Drug trafficking
- Human trafficking
- Migrant smuggling
- Firearms trafficking
- + Money laundering
- + Bribery

→ Diverse players

## *“New and Emerging” forms of TOC*

- Natural resource trafficking
- Counterfeit goods trafficking (e.g., foods)
- Cultural property trafficking
- Cybercrime

→ “New” victims



# TOC evolution

## Diverse players

- terrorists
- rebels
- insurgents
- corporations
- state representatives

## New opportunities

- exploitation of transnational commerce and modern ICTs
- (partial) legalization of illegal enterprises

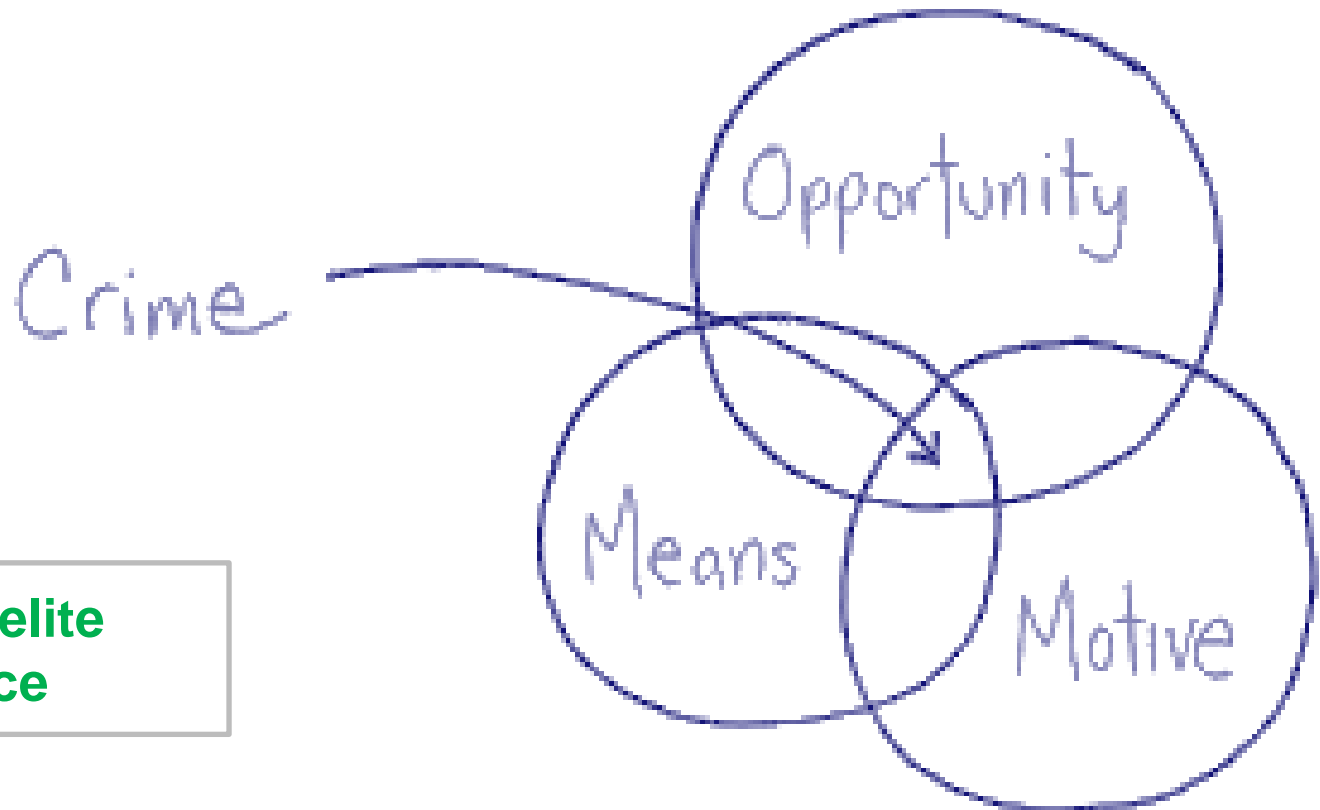
## “New” victims

- environment
- wildlife
- “public interest”
- “humankind”



# *Looking beyond causes of crime:* Opportunities

- Not why people commit crime but what makes them capable of committing it
- Ronald Clarke and Marcus Felson (1980-1990s)



**Explains elite  
deviance**



**IT IS  
GOOD  
TO BE  
THE  
KING**

**Part 2:  
Elite deviance**

# Literature on elite deviance

- Fragmented
- Corporate crime
- Corruption
- State crime (war crimes; genocide; etc.)
- Judicial ethics
  
- *International gov. organizations*
- *NGOs*
- *Investigative journalism*



TOC

# *Criminaloids*



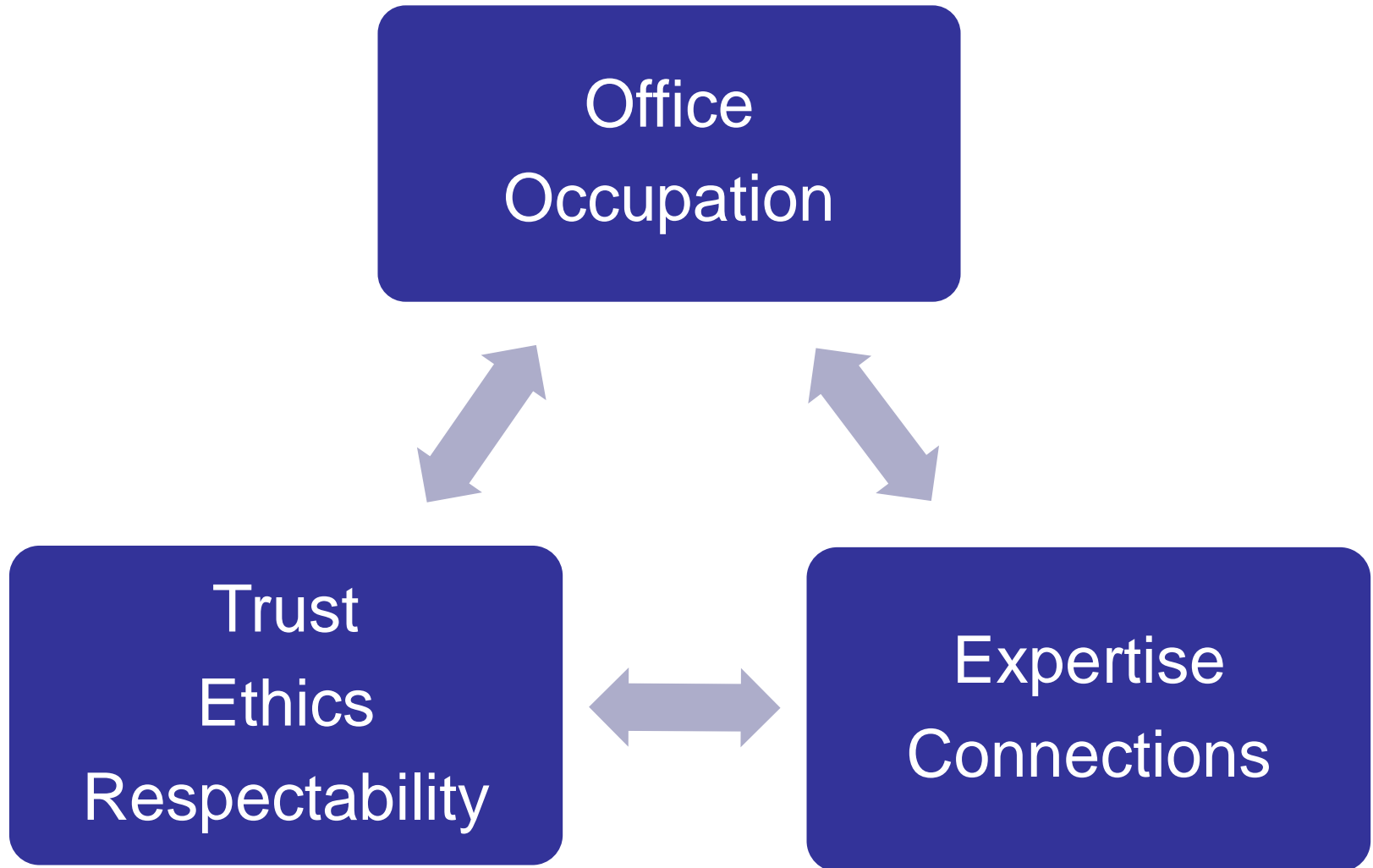
- Cesare Lombroso
  - *L'Uomo delinquente* (1876)
- project a respectable, upright facade, in an attempt to conceal a criminal personality
- enjoy the respect of society
- because they often establish connections with the government and the law, they are less likely to meet with opposition

# Edwin Sutherland

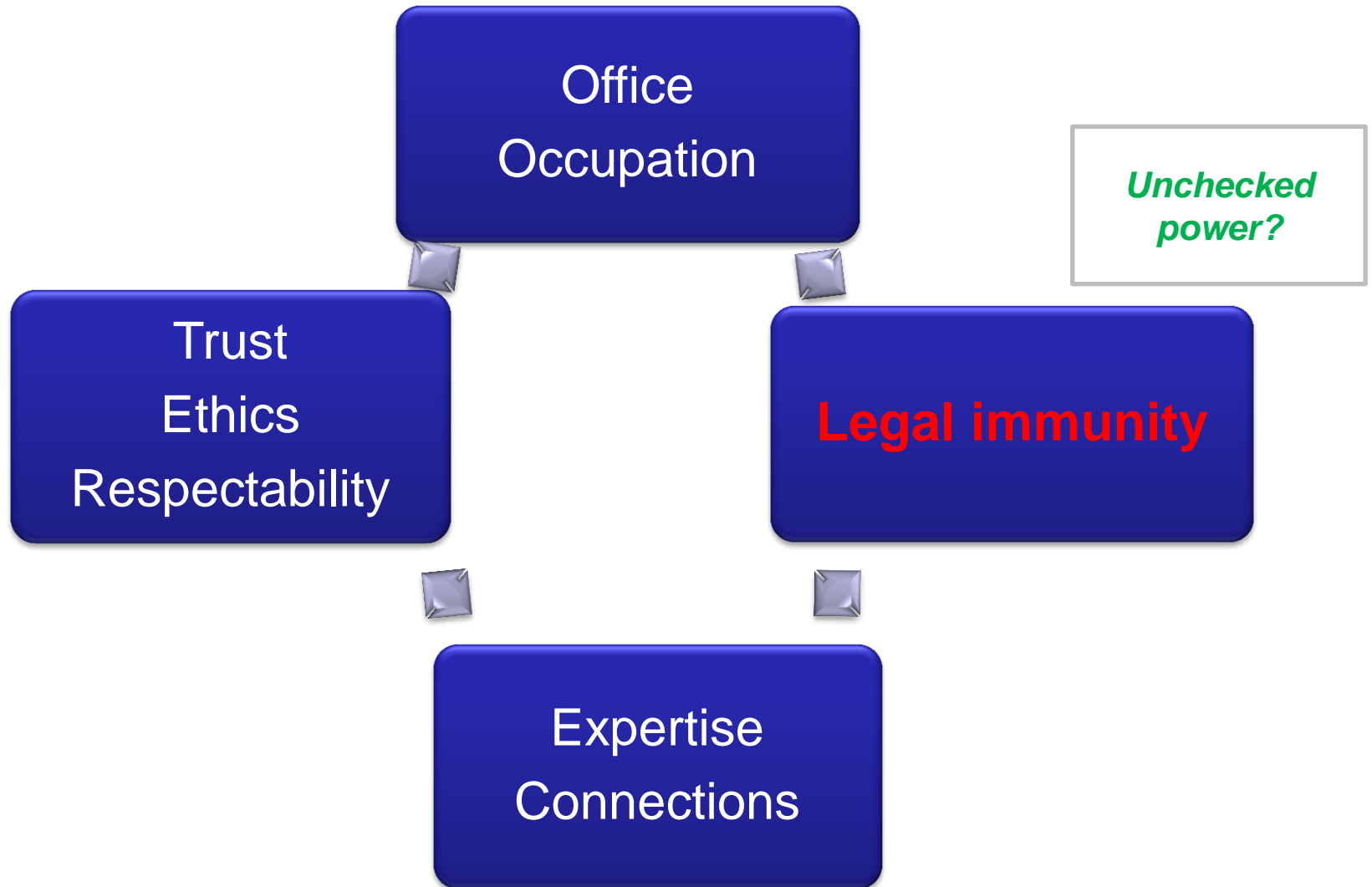


- Given credit for introducing the term **white-collar crime** (1939)
- Alluded to “crime in the upper or white-collar class, composed of respectable ... business and professional men”
- Have special influence on the formation of criminal laws and various means of **minimizing the chances of criminal convictions**

**Elite** = “powerful” and “superior” in terms of ability and/or qualities



# Elite deviance



# Legal immunity

- *De jure* <- granted by constitution, domestic law, international law (treaty or custom)
- Exemption from:
  - Search
  - Arrest
  - Civil/criminal prosecution
- Often includes privileges:
  - Exception from fiscal obligations



# “Immunized” categories

- Heads of State (part of sovereign immunity)
- Diplomatic corps (various ranks)
- International civil servants
- Peacekeepers
- MPs
- Judges

<b>Diplomatic corps</b>	<i>Diplomatic immunity</i>	Vienna Convention 1961
<b>International civil servants</b>	<i>Diplomatic immunity</i>	Convention on the Privileges and Immunities of the Specialized Agencies 1947
<b>Peacekeepers; relief &amp; medical personnel</b>	<i>Diplomatic immunity</i> <i>Humanitarian immunity</i>	By law (IHL) and treaty; status of forces agreement; soft law
<b>MPs</b>	<i>Parliamentary immunity</i>	Domestic laws; Constitution
<b>Judges</b>	<i>Judicial immunity</i>	Domestic laws

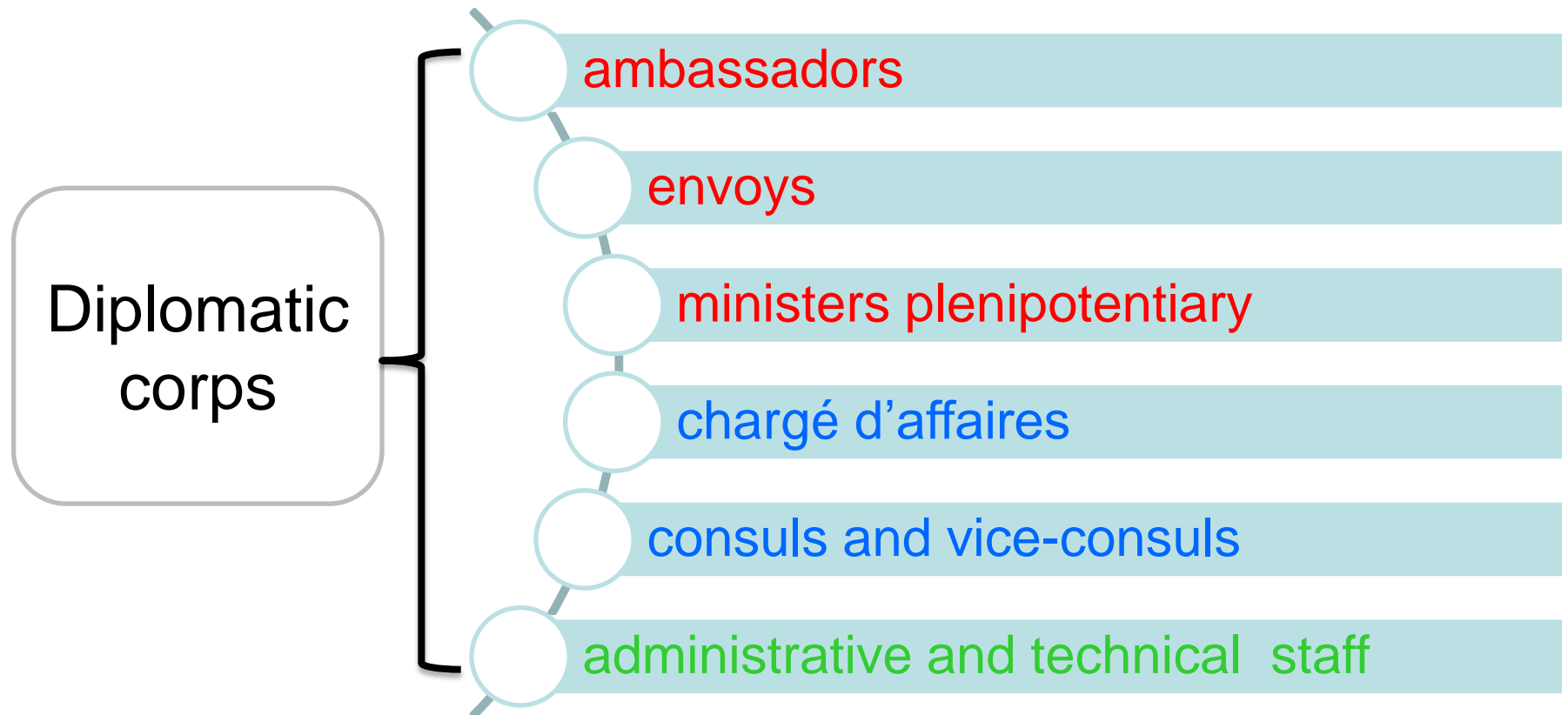
# Commonalities

- Immunities are not absolute
- “**Functional necessity**”:
  - immunities on performing acts in the official capacity (not for personal benefit)
- Immunity can be revoked -> alleged offender prosecuted

# Part 3: Deviance in the diplomatic corps

# Diplomatic agents

- a public official who acts as an intermediary between a foreign nation (the receiving State) and the nation which employed and accredited the diplomatic agent (the sending State)



# Immunities

- a diplomatic agent is inviolable (may not be detained or arrested; enjoy absolute immunity from criminal prosecution in the receiving State)

**Art. 29**

- the premises of the mission and its grounds are inviolable **Art. 22 & 30** (agents of the receiving State cannot enter/search ... without the consent of the head of the mission)

- the receiving State is required to permit and protect free communication between the diplomats of the mission and their home country **Art. 27** (banks, pouch, etc.)

# Privileges

- exemption from taxation  
(exempt from dues and taxes)

**Art. 34 & 36**

## The Vienna Convention on Diplomatic Relations (VCDR)

**signed: 13 April 1961**

**effective: 24 April 1964**

**Signatories : 60; Parties : 191**

cornerstone of modern  
diplomatic relations

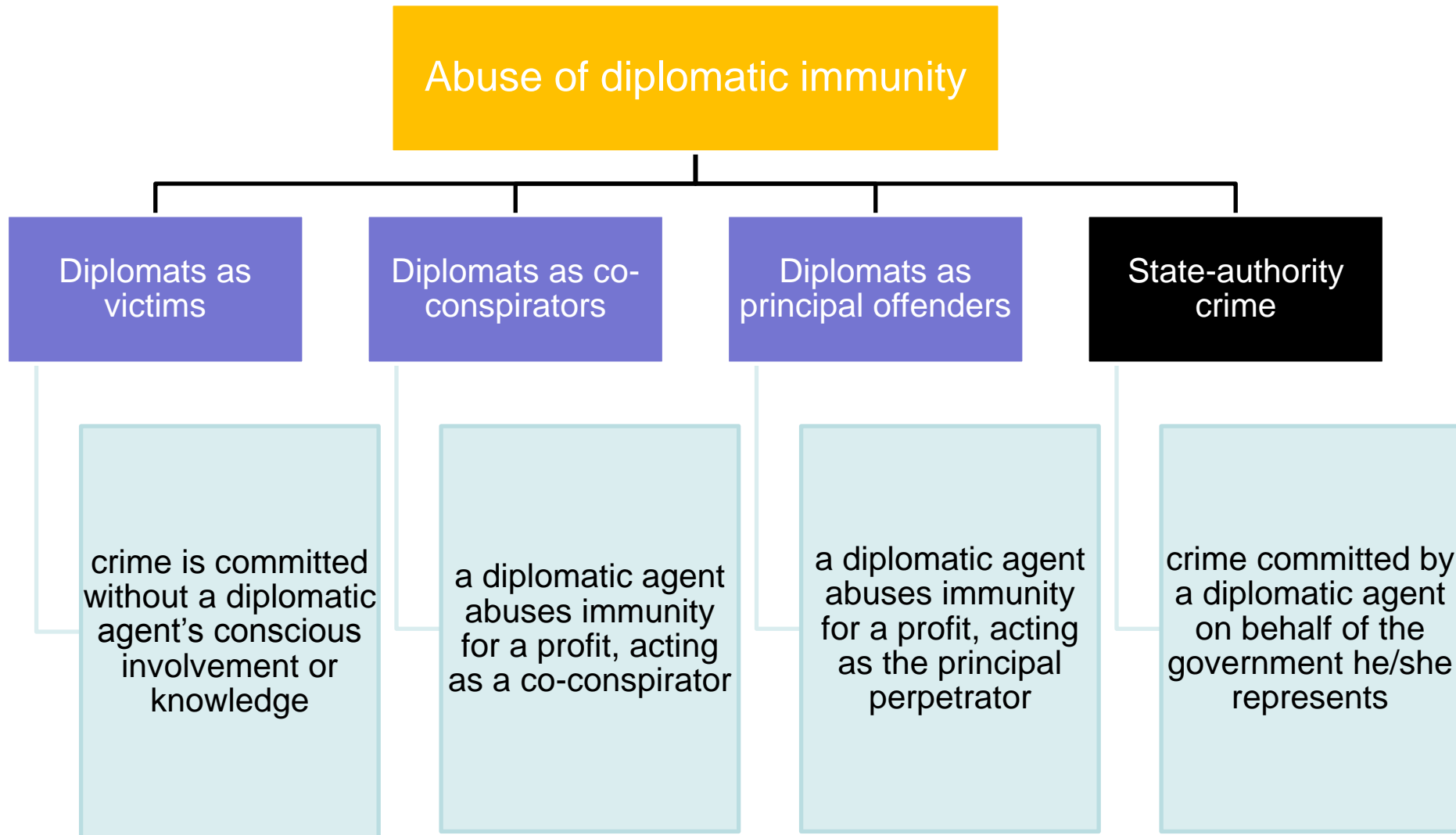
# Punishment



**VCDR: Art. 9, Par. 1, 2**

- diplomatic immunity is not absolute
- a diplomatic agent who committed any kind of criminal misconduct cannot be sued in courts unless his/her immunity is revoked by the sending state
- governments have demonstrated reluctance to acknowledge misbehavior by diplomats
- the only sanction permissible under the VCDR in the absence of revocation of immunity is **expulsion**

# Typology of offenses





# Conclusion

- Diplomatic immunities may be abused by diplomatic agents to aid the organization or for a personal gain
- Legal ambiguity -> legal nihilism
- No comprehensive global criminal justice system
  - Sovereignty
  - Political will (reciprocal toleration of misconduct)

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