

**ANALYSIS OF DIPLOMATIC IMMUNITY AND CRIMES COMMITTED
BY DIPLOMATS**

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**A RESEARCH REPORT SUBMITTED TO THE SCHOOL OF LAW IN PARTIAL
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DECLARATION

I MUNAABA JOHN APUULI declare that this research report is my original work and has not been submitted for any other award of a degree and published at any institution of higher learning.



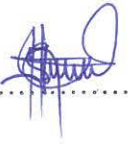
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APPROVAL

I certify that this work has been carefully supervised as having met the requirements for the award of bachelor in laws and is ready for submission.

PP 
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Signed

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Mr. Nenger Jerome
(Supervisor)

DEDICATION

This work is dedicated to my late mother, Kobusingye Beatrice Adyeeri Munaaba for your wonderful moral and social support, love, encouragement and financial support. I also wish to dedicate this research report to my dear father, Mr. John Munaaba Tibazimanya and Aunt, Beth MuhangaAtwooki, for their greater love and support they gave me when I needed them. May you all live for eternity, till that great day.

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Lastly, I owe the Almighty God, for the precious gift of life he has given me and the ability to overcome obstacles in compiling this work. All the glory and honor goes back to Him.

LIST OF ABBREVIATIONS OR ACROYNMNS

AU	African Union
EU	European Union
ICC	International Criminal Court
ICT	Information and Communications Technology
IGO	Intergovernmental Organizations
ICJ	International Court of Justice
ILC	International Law Commission
MNC	Multinational Corporations
NATO	North Atlantic Treaty Organization
UN	United Nations
USSR	Union of Soviet Socialist Republics
VCDR	Vienna Convention on Diplomatic Relations

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ABSTRACT

Diplomatic immunity from civil and criminal proceedings established itself as a fundamental of customary diplomatic law. It traced its origin from the Greeks and Romans.

The purpose of this research is that it thought to analyze the principle of diplomatic immunity in relation to the crimes committed by diplomats and suggested possible recommendations for improvements in the area of diplomatic immunity.

The research method that was employed in the research report was the standard desktop method including the historical over view on diplomacy and analysis on the existing international laws and historical background that contextualized the topic and formulate an argument.

The findings of this research were fact that a person (diplomat) who commits crimes and high misdemeanors may enjoy the privileges of immunity while others may not which was a significant difference and one could question if the concept of diplomatic immunity is compatible with the principle that “ all people are equal before the law”

CHAPTER ONE

GENERAL INTRODUCTION

1.0 Introduction

This chapter covered the background of the study, statement of the problem, purpose of the study, objectives of the study, research questions, scope of the study, significance of the study, research methodology and literature review.

1.1 Background of the Study

The concept of diplomatic immunity from civil and criminal proceedings has established itself as a fundamental of customary diplomatic law. It is one of international law's most successful and enduring rules, with 185 states currently recognizing the rules of diplomacy as stated in the Vienna Convention of 1961¹. According to some scholars, the doctrine of diplomatic immunity traces its origin from the Greeks and Romans. This emerged as a well-established exception to the general international law principle of territorial jurisdiction which bestowed on the state exclusive reign within its boundaries. This exception developed from the concept of sovereign immunity, the concept of independence and equality of states and existence of specific rule of international law.

Scholars like Christian Sys, Jovan Kurbalija and Dietrich Kappeler have pointed out that the first privileges and immunities to the early days of human communication and attempts to solve conflicts in non-violent ways. The very beginning of diplomacy is usually associated with the granting of diplomatic privileges and immunities.

These scholars go ahead and give an existing background and history of diplomatic immunity in ancient times specifically among the Australian aborigines as well as the institute of Manu ancient India, ancient Greece. The institute of Manu are archaic Hindu codes dating from 1500 BCE, according to which an arriving guest receive a place to sit, water to drink and some

¹Kim Moloney, James S Bowman and Jonathan P West, 'Challenges Confronting Whistleblowing and the International Civil Servant' [2018] Review of Public Personnel Administration 0734371X18767247.

properly seasoned food among others². The guest coming after the sunset may not be expelled by the master of the house. Should he come at a wrong time, may he not stay untied. Guests should be given a place to sit, premises, bed, attention and respect; higher to be higher, lower to be lower, equal to be equal. In ancient India, rulers did not have permanent ambassadors, instead they relied on envoys who delivered messages and on negotiators authorized to work out or modify agreements of their masters.

Diplomacy is the art and practice of conducting negotiations between foreign governments for the attainment of mutually satisfactory political relation, negotiation or intercourse between nations through their representatives and the rules, customs and privileges of representatives' in foreign countries.³ Diplomatic immunity are the special rights that diplomats have while working in a country that is not of their own such as freedom from legal action.⁴ Diplomatic immunity is defined as the immunity given to certain members of foreign embassies such as ambassadors for the crimes they may have committed.⁵

Diplomatic immunity and privileges are effective tools in facilitating relations among states and the employees of certain foreign countries may enjoy higher privileges and immunities on the basis of special bilateral agreements. A small number of officers are entitled to be treated equally to diplomatic agents. Top diplomatic officers enjoy full immunity and their deputies too plus their families. The British Embassy in the 17th century exempted the employees in embassies from taxes though in France the position of diplomats and the privileges enjoyed declined by the 20th century.

The codification of diplomatic immunity laws to guide the interaction between states was meant to facilitate the smooth conduct as states sought global economic and geopolitical allies. Diplomatic relations between countries is now a central element in international relations and diplomatic agents of international relations. Acting in favor of their states' interests is a fundamental brick in building a peaceful internationalized world. Diplomatic immunity

²S. R. Subramanian, 'Abuse of Diplomatic Privileges and the Balance between Immunities and the Duty to Respect the Local Laws and Regulations under the Vienna Conventions: The Recent Indian Experience' (2017) 3 The Chinese Journal of Global Governance 182.

³*Black's Law Dictionary 6th Edition* (6th edn, Black Henry Campbell 1990).

⁴*Cambridge Dictionary* (Cambridge University Press 2018) <<http://dictionary.cambridge.org>>.

⁵*Black's Law Dictionary 6th Edition* (n 3).

subsequently emerged as a well-established exception to that general international law principle of territorial jurisdiction which bestowed on a state exclusive reign within its boundaries⁶. That exception developed from the concepts of sovereign immunity, the concepts of independence and equality of states, and the existence of a specific rule of international law. It is one of the oldest and most accepted rules of international law dating many centuries back.⁷

Diplomatic immunity in international law is the freedom from a country's jurisdiction or coercive power granted to certain persons due to customary international law and/or through treaties. Diplomatic personnel have immunity for official actions taken during and after service, while consular staff only have the former.⁸ Different degrees of immunity also apply to other categories, such as officials of international organizations. The regime of privileges and immunities is founded chiefly on practical necessity, that is, the rules are perceived by states as necessary for the performance of the diplomatic functions⁹. The Vienna Convention on Diplomatic Relations 1961¹⁰ was adopted at the United Nations Conference on Diplomatic Intercourse and Immunities in Vienna in 1961 and it has subsequently become the focal point in defining and domesticating diplomatic immunity the world over. Under the Convention, diplomats are not subject to arrest or detainment (Article 29)¹¹; they are immune from the criminal jurisdiction of the receiving state (Article 31); and immune from civil jurisdiction for acts committed within their official capacity (Article 31). The family of the diplomatic agent enjoys the same immunity status (Article 37). Mission staff also enjoy variable levels of immunity (Article 37). Diplomatic immunity as a principle is derived from both legal and international instruments.¹² Diplomatic immunity are simply the privileges and immunities that are enjoyed by the diplomats while in the host state. These include exemptions taxation, criminal prosecution, arrests, searches among others and they enjoy these together with their dependents and families while in the host state. Diplomatic immunity helps in protecting diplomats from

⁶Case Concerning *US Diplomatic and Consular Staff in Teheran* [1980] International Court of Justice I.L.R 504, 530.

⁷UN, 'Preamble to the Vienna Convention on Diplomatic Relations.

⁸I Brownlie, *Principles of Public International Law* (5th edn, Oxford University Press 1998).

⁹Moloney, Bowman and West (n 1).

¹⁰DJ Harris, *Cases and Materials on International Law* (6th edn, Sweet and Maxwell Limited 2004).

¹¹UN, 'Vienna Convention on Diplomatic Immunity (1961) and the Diplomatic Privileges Act Cap 201'.

¹²ibid.

political or legal harassments while in the host state. This also helps in controlling the diplomats themselves from participating directly or indirectly in the politics of the host states.¹³

1.2 Statement of the Problem

Whereas diplomats are inviolable when carrying out their functions, their behavior should benefit their status as good ambassadors of their states, careful to portray a positive image that enhances the stature of their country¹⁴. To that end, they are required to act responsibly, respecting the laws and regulations of the host government and be mindful of the cultural differences.

However, in recent decades evidence has mounted of abuse by diplomats of their immunities. For the most part abuse is minor, such as diplomats notoriously failing to pay motoring fines and parking tickets¹⁵. Nonetheless, from time to time diplomats, their families and their staff, are implicated in extremely serious offences, including murder, rape, child abuse, and money extortion¹⁶. For instance, in 2013, an Indian consular official Devyani Khobragade was accused of allegations regarding non-payment of U.S. minimum wages and for fraudulently lying about the wages to be paid on a visa application for her domestic worker.¹⁷ Thorough investigation started against her and she was detained, strip-searched and held in a prison in New York. India registered a strong protest against this investigation process and initiated a review of privileges provided to American consular officials in India as a result.

All of these offences can be said to violate international human rights laws and conventions, the recognition of which transcends national boundaries. This research report argues that complete immunity from legal proceedings for diplomats is incompatible with international human rights law and stands in the way of justice for victims. In instances where a conflict arises, human rights must take supremacy over diplomatic immunity. In addition, one should note that

¹³ibid.

¹⁴Leslie Shirin Farhangi, Insuring Against Abuse of Diplomatic Immunity, 38 Stan. L.RVol. 6 (1986).

¹⁵Eileen Denza, *Diplomatic Law: Commentary on the Vienna Convention on Diplomatic Relations* (Oxford University Press 2008); Ralph Beddard, 'Diplomatic Law: A Commentary on the Vienna Convention on Diplomatic Relations. By Eileen Denza . 2nd Edition. Oxford: Clarendon Press, 1998. 451 Pp, (Including Table of Cases, Appendices and Index). £95' (2000) 70 British Yearbook of International Law 250.

¹⁶S. R. Subramanian (n 2).

¹⁷'India's Foreign Minister: Drop Charges against Diplomat' <<http://edition.cnn.com/2013/12/20/politics/india-us-diplomat/>>.

diplomatic immunity perpetuates crime. This is because if a diplomat commits a serious crime in the host country, he is supposed to be declared persona non grata or unwanted person and can be tried in his or her home country which leaves the aggrieved party in the host state without a remedy.

The fact that a person (diplomat) who commits crimes and high misdemeanors may enjoy the privileges of immunity while others may not is a significant difference and one can question if the concept of diplomatic immunity is compatible with the principle 'all peoples are equal before the law.'¹⁸ The purpose of this research was therefore to analyse the principle of diplomatic immunity in relation to crimes committed by diplomats and suggest possible recommendations.

1.3 Purpose of the Study

The study sought to analyse the principle of diplomatic immunity in relation to the crimes committed by diplomats and suggest possible recommendations.

1.4 Objectives of the Study

1.4.1. General objectives of the study.

The general objectives of the study is to analyze the principle of diplomatic immunity and crimes committed by diplomats and suggest possible recommendations for improvement.

1.4.2. Specific objectives.

- i. To analyze the principles of diplomatic immunity viz-a-viz crimes committed by diplomats.
- ii. To examine the relevance of the laws on diplomatic immunity and privileges and the challenges faced in the implementation of these laws.
- iii. To examine the extent of abuse of diplomatic immunity and privileges.
- iv. To make possible recommendations to overcome the challenges faced in the implementation of laws on diplomatic immunity.

¹⁸S. R. Subramanian (n 2).

1.5 Research Questions

- i. To what extent can the principle of diplomatic immunity be analyzed viz-a-viz crimes committed by diplomats?
- ii. To what extent is the abuse of diplomatic immunity and privileges?
- iii. What is the relevance of the laws on diplomatic immunities and privileges?
- iv. What are the challenges faced in the implementation of international instruments on diplomatic immunity?

1.6 Significance of the Study

The study findings may be of importance;

In contributing significantly to the improvement of concepts surrounding diplomatic immunity; identifying the challenges of the laws related to the concept and provide commendable knowledge to the government agencies involved.

The study will contribute to the modification of various laws governing diplomatic relations between countries which will contribute appropriately in recognition the work of diplomats to the citizens of the host states.

In adding to the existing knowledge and literature on diplomatic immunity and international laws. Indeed it will provide a base for further research which will help to bridge fundamental gaps on the subject.

It is therefore expected that, the recommendations made will contribute to the possible improvements of the concepts of diplomatic immunity and related laws. This will also help in educating diplomats and their hosts on their rights and duties while recognizing the relevance of those they associate with.

This study is also part and partial of the requirements for the award of the bachelors of law degree to the researcher.

1.7 Scope of the Study

The study will cover right away from 1961 April 14th when the Vienna convention on diplomatic relations was enacted not forgetting when it was entered into force on 18th April 1961 as an international instrument up to date. This will help in analysing some of the challenges that have

been faced by VCDR in relation to diplomatic immunity and crimes committed by diplomats and give possible recommendations.

The study is aiming at covering the principle of diplomatic immunity and understanding the privileges rights and duties also protection of diplomats. It will look at the current regime of diplomatic immunity, abuse, crimes and protection of diplomats.

The study will be based from the 192 member states of the VCDR which include Uganda Kenya USA UK France Germany among others. Here the researcher will pick out any state where diplomats do exist and also where the abuse of diplomatic privileges and immunities have been witnessed. This will help in exposing a wide range of diplomatic and the abuse of diplomatic privileges and immunities hence enabling the researcher give possible recommendations that may be applied in case of similar scenarios.

1.8 Research Methodology

The research method employed in this research report is the standard desktop method, including a historical overview on diplomacy and an analysis of the existing International laws. This type of research seeks facts, general information and the historical background to contextualize a topic and formulate an argument. Primary sources such as international conventions and instruments are used as well as domestic legislation. In addition, further desktop research has been undertaken as secondary sources are also used, and involves the accessing of information from published resources and non-published sources. These include newspaper archives, government, university and journal articles that are used in the search for information on the topic at hand. This method is efficient and necessary for this study as there is limited academic research literature on the topic.

1.9 Literature Review

1.9.1 Definition of Diplomatic Immunity

Diplomatic immunity is a principle of international law by which certain foreign government officials are not subject to the jurisdiction of local courts and other authorities for both their

official and, to a large extent, their personal activities.¹⁹ As earlier stated, diplomacy is the art and practice of conducting negotiations between foreign governments for the attainment of mutually satisfactory political relations as per.²⁰ Diplomacy can be defined as the official activity of a given state's external relations in pursuing, through peaceful means, the objective and task of its foreign policy in protecting its rights and interests as well as those of its citizens abroad.²¹ Wilson defines diplomatic immunity as a situation where members of diplomatic missions are shielded from legal processes.²² To him, this "shield"-diplomatic immunity-is broadly defined as "the freedom from local jurisdiction accorded under international law by the receiving state to foreign diplomats and to the families and servants of such officers." Privileges usually refer to the exemption from taxation and ordinary processes of law accorded to diplomatic personnel in a foreign country.²³

In international law, the law on diplomatic immunities is to be found in the Vienna Convention on Diplomatic Relations of 1961. The Convention was the outcome of a UN Conference on Diplomatic Intercourse and Immunities 1961 and was based on a series of Draft Articles prepared by the International Law Commission (ILC). Accession to the Convention by states is almost universal with more than 191 states now party to the treaty.²⁴ A great part of the Convention now reflects customary international law and it is clear that virtually all the disputes over diplomatic law can be resolved by reference to this treaty or the obligation contained therein.²⁵

Immunities can be divided into functional immunity (also known as immunity *ratione materiae* or subject-matter immunity) and personal immunity (also known as immunity *ratione personae* or procedural immunity). Immunity *ratione materiae* relate to conduct carried out on behalf of a

¹⁹Yale, '311A Diplomatic Immunity'.

²⁰*Black's Law Dictionary 6th Edition* (n 3).

²¹Peter Malanczuk, *Modern Introduction to International Law* (7th edn, Routledge 1997).

²²R Wilson, 'Diplomatic Immunity from Criminal Jurisdiction: Essential to Effective International Relations' (1984) 7 <<http://digitalcommons.lmu.edu/ilr/vol7/iss1/5>>.

²³J Bayliss, *The Globalization of World Politics: An Introduction to International Relations* (Oxford University Press).

²⁴Mitchell S Ross, 'Rethinking Diplomatic Immunity: A Review of Remedial Approaches to Address the Abuses of Diplomatic Privileges and Immunities' (1989) 4 *American University International Law Review* 173.

²⁵R Cryer, *An Introduction to International Criminal Law and Procedure* (Cambridge University Press 2007).

state. This form of immunity is based on the notion that "a state may not sit in judgment on the policies and actions of another state, since they are both sovereign and equal."²⁶²⁷ For this reason, functional immunity does not attach to all conduct performed by state officials, rather it only applies to conduct carried out within the official capacity. However, immunity in respect of such conduct is permanent and cannot be waived by the state concerned, as it is the conduct itself and not the office bearer that forms the basis of that immunity. This form of immunity is more commonly raised in civil matters.

In earlier literature, the immunity of diplomats from criminal jurisdiction of the receiving state was regarded as indistinguishable from his personal inviolability. At the time when the principle of personal inviolability was first introduced, it was unusual for criminal proceedings to take place without prior arrest and detention of the accused though later this detention of the accused was not essential and diplomatic immunity from criminal jurisdiction emerged as a separate principle of diplomatic law.

There is a wide range of literature ranging from journals, books, articles, publications from various writers over principles surrounding diplomatic immunity and their crime though the subject leaves room for research. Accordingly Ross discussed extensively on the subject of diplomatic immunity and their crimes where he pointed out that diplomatic immunity as a principle of international law was fundamental and originated to protect representatives of foreign governments based abroad from retaliation in time of international conflict and promote civilized international relations.²⁸ Ross further discusses that the Vienna convention on diplomatic relations and points out that it largely a reaction to unlimited immunity historically granted to diplomats. The establishment of an international convention on diplomatic immunity sought to standardize the practice of receiving diplomatic officials and establishing diplomatic missions and to codify the customary international law of diplomatic immunity.

²⁶ibid.

²⁷Ross (n 24).

²⁸ibid.

1.9.2 Theoretical Bases for Diplomatic Immunity

Various theories have been advanced to explain the concept of diplomatic immunity. Two theories seek to justify diplomatic immunity in this study. As illustrated, the theoretical justification for diplomatic immunity does not survive careful scrutiny. The two theories are personal representation and the theory of functional necessity. The theory of personal representation was the first justification propagated to justify diplomatic immunity.²⁹ Under the theory of personal representation, diplomats acting on behalf of a sovereign state embody the ruler of that state. An affront to the representative of a sovereign state under this theory constitutes an affront to the foreign state itself. Analysis discredits this theory on three grounds. First, the foreign envoy cannot have the same degree of immunity as the sending state, because this principle places the individual diplomat above the law of the host state. Second, the decline of the powerful monarch and the evolution of popular rule makes it unclear exactly whom the diplomat represents. Third, the theory extends no basis for protecting diplomats from the consequences of their private actions.

The second theory, is the most widely accepted current justification of diplomatic immunity, is the theory of functional necessity.³⁰ This theory provides that the diplomat is not subject to the jurisdiction of local courts, because this would hamper the functions of diplomatic relations. The functional necessity theory justifies immunity for the purpose of allowing diplomats to conduct their business. Accordingly, diplomatic immunity protects the diplomat's ability to carry out that work efficiently.³¹ The privilege does not, however, afford protection and benefits to the diplomat as a person. If a diplomat acts outside of the normal sphere of conducting international relations, a question arises as to whether immunity still applies. Current administrative and judicial construction of diplomatic immunity illustrate that diplomats themselves are immune from prosecution even when committing criminal or tortuous acts outside of their prescribed

²⁹C Wilson, 'DIPLOMATIC PRIVILEGES AND LINIONI' (Discussing in Detail the Theory of Personal Representation); B. SEN, *Supra* Note 5, at 80-83 (Reviewing the Different Theoretical Bases of Diplomatic Immunities).'

³⁰Beddard (n 15).

³¹US, Diplomatic Crimes Legislation 1987.

functions.³² A critique of this construction of the functional necessity theory distinguishes the treatment of the individual diplomat from that of the diplomatic process.³³

In theory, diplomatic immunity originated to protect the process of furthering relations between nation states.³⁴ The current focus of immunity on the individual diplomat is therefore unsound. The assertion that the diplomat cannot function efficiently without immunity implies that the diplomat must break the law of the receiving state in order to conduct international relations. Therefore, the current construction, providing diplomatic immunity to the individual, is inconsistent with the theoretical basis that accords protection only to the diplomatic process.³⁵

1.9.3 Abuse of Diplomatic Immunity and Privileges

The successful adoption of the Vienna Convention on Diplomatic Relations is hailed as the 'landmark of the highest significance in the codification of international law'.³⁶ It represented the first significant codification of any international instrument since the United Nations was established. However, despite the codification of the above rules, which is largely based on the pre-existing customary international law, the scope of diplomatic protection was not free from issues and controversies. In recent times, unfortunately, there is a growing tendency amongst the diplomats to abuse their diplomatic status to commit acts prohibited by law and still claim immunity from legal process.

1.9.3.1 Abuses in case of civil liability

Diplomatic immunity also allows the diplomats to escape from civil liability in cases of personal injury. The diplomatic immunity has now evolved more into a loophole to prevent diplomats from paying damages and fines, which they would have to pay in its absence. Diplomats and the offices in which they work are collectively referred to as a diplomatic mission. Creditors do not have the right to sue missions individually to get back money they owe. Thus, a person is left

³²Beddard (n 15).

³³Denza (n 15).

³⁴Charity Wanyela S, 'Diplomatic Privileges and Immunities: A Critical Analysis of the Vienna Convention on Diplomatic Relations (1961)' (University of Nairobi 2014).

³⁵Moloney, Bowman and West (n 1).

³⁶S. R. Subramanian (n 2).

right less in case a diplomat refuses to pay the rent or any kind of debt back to the creditor. For this reason, it has been observed that the financial institutions do not extend any kinds of credit to diplomats, as they have no legal means to ensure the recovery. Diplomats are also exempted from import duty for items for their personal use. This has, in some countries, led to charges that diplomatic agents are profiting personally by reselling the "tax free" goods. Another problem with diplomats is the difficulty in enforcing of ordinary laws such as prohibitions on double parking. Thus, it has been observed that the diplomats do not pay parking fines, debts, and other forms of taxes and they cannot be sued for the same.

1.9.3.2 Abuses through criminal act

Abuses of diplomatic immunities relating to criminal liabilities can mainly be divided into two main categories.³⁷ The first category relates to using diplomatic bag to smuggle goods either into or out of the receiving state and the second category related to the crimes that have been committed by the diplomats themselves.

It was in year 2011, when two Polish embassy's employees were found with a contraband cargo while attempting to cross the Belarus-Polish border. The cargo contained around 100,000 cigarettes and was hidden in a car having a diplomatic plate. It has been alleged that the smugglers were aiming to make profit due to difference in rates of cigarette in Russia and EU.³⁸

A Venezuelan general was arrested on charges of smuggling drugs in Aruba, but was released soon when the Venezuelan government protested against this act. The Venezuelan government raised the issue of his diplomatic immunity and threatened sanctions in case Aruba did not release him.³⁹ Diplomats and officials who are involved in drug smuggling have thus been benefited from diplomatic immunity. Such instances are common and can be found in almost every country. Use of diplomatic boxes, cars and other official objects for smuggling has become

³⁷Leslie Shirin Farhangi, *Insuring Against Abuse of Diplomatic Immunity*, 38 Stan. L.R Vol. 6 (1986).

³⁸Yuliya G. Zabyelina, *The Untouchables: Transnational Organized Crime Behind Diplomatic Intercourse And Immunities*, [Http://Www.Ecpr.Eu/Filestore/PaperProposal/De38d92a-0ee5-4eed-89fb-32dd7...](http://Www.Ecpr.Eu/Filestore/PaperProposal/De38d92a-0ee5-4eed-89fb-32dd7...) (Last Visited 06/02/2015).

³⁹Netherlands Says Venezuelan Detained in Aruba Has Immunity, ., <Http://Www.Wsj.Com/Articles/Netherlands-Rules-Venezuelan-Detained-in-Aru...>

really common. Also, in most of the cases, the diplomats are not punished for the same by the receiving state, due to international laws, and by the sending state, because they do not want to.

It has been observed that the diplomatic agents, on many occasions, have acted as principal perpetrators. There are no statistics to support the claim and no comprehensive study has been done to determine the sheer number of crimes that have been committed by those who are protected by diplomatic immunity. However, several cases have come up recently which support the claim that the crimes committed in such a case are unprecedented. The following are a few instances from the same.

*United States Brazilian Gunfire Incident.*⁴⁰In 1982, Brazilian Ambassador's grandson shot an American citizen outside a local club. The victim filed the suit against the ambassador and the country. These charges were dismissed on the grounds of public immunity.

*US India Incident.*⁴¹In 2013, an Indian consular official Devyani Khobragade was accused of allegations regarding non-payment of U.S. minimum wages and for fraudulently lying about the wages to be paid on a visa application for her domestic worker. Thorough investigation started against her and she was detained, strip-searched and held in a prison in New York. India registered a strong protest against this investigation process and initiated a review of privileges provided to American consular officials in India as a result.

The abuse of diplomatic immunity was discussed⁴². She points out that despite the duties diplomats have on following the law of receiving nations as provided in the Vienna convention, the convention contains no enforcement provisions to compel diplomats to comply. That law without any means of compulsion is meaningless. Eirwen emphasizes this point by citing apparent examples of diplomats breaking the law. She cites the example of the well published incident of diplomatic complicity in serious crime where a London police woman was murdered through a bullet fired from the Libyan people's bureau.

⁴⁰Veronica L. Maginnis, *Limiting Diplomatic Immunity: Lessons Learned From The 1946 Convention On The Privileges And Immunities Of The United Nations*, 28 *Brook. J. Int'l L.* 989'.

⁴¹'India's Foreign Minister: Drop Charges against Diplomat' (n 17).

⁴²Eirwen-Jane Pierrot in her paper "Escaping Diplomatic Immunity"

Eirwen continues to argue that from time to time diplomats, their families and staff are implicated in extremely serious offences including murder, rape, and child abuse among others which violate international human rights law. She argues that complete immunity from legal proceedings for diplomats is incompatible with international human rights law and stands in the way of justice for victims. She therefore suggests that where a conflict arises, human rights should take supremacy over diplomatic immunity.

Ali M Farahmand has also extensively written on diplomatic immunity and crimes committed by diplomats in his Article⁴³, he pointed out that the time had come to take a strong moral stand and put an end to the era of fragrant abuse of diplomatic immunity. For example he gave a scenario in Washington DC on February 13th 1987 where a car driven by the ambassador from Papua New Guinea who was drunk crashed into four cars parked and seriously injured Stephen Hagan. The police and state department officials stated that the city couldn't prosecute the ambassador because he had diplomatic immunity.

Mark S.Zaid in his book⁴⁴ also discusses the question of diplomatic immunity and crimes committed by diplomats, he states that the question of whether diplomats should be fully immune from criminal prosecution no matter what the alleged crime, is one that is neither new nor free from dispute. As a matter of international law and United States domestic law, the source of immunity and the extent to which it extends is quite clear. But with each new offence or tragedy, far and apart as they may be, the public debate over diplomatic immunity rears its ugly head once again. He continues to say that much is true; diplomatic immunity is a necessary evil, though evil it truly rarely is. However despite the concession, there are improvements that can be implemented that would serve to possibly prevent future offences or tragedies from occurring and the public perception of diplomatic immunity may become more positive.

1.10 Structure of the Research Report

This research report consists of five chapters.

⁴³“Diplomatic Immunity and Diplomatic Crime”

⁴⁴ “Diplomatic immunity”

Chapter one examines the nature of diplomatic immunity. Indeed, it examined the principles of diplomatic immunity by giving its definitions types and its relation to the law governing immunity and crimes committed by diplomats. It therefore laid the background to the study, statement of the problem, purpose, objectives, research questions justification of the study, the study methodology and literature review.

Chapter two analyses the growth of this practice-diplomatic immunity through the ages in order to fully grasp the challenges in its usage in the modern era. The history of diplomatic relations and the personal inviolability of diplomatic envoys can be traced back to several ancient civilizations. For an understanding of the current status of diplomatic immunity, a closer attention has to be paid to the events and arguments leading to the establishment of this practice.

Chapter three is a critical review and analysis on the legal frameworks that provide the basis for diplomatic immunity. It seeks to assess its relevance to modern practice.

Chapter four is a critical review and analysis on the challenges faced in the implementation of the legal frameworks that provide the basis for diplomatic immunity.

Chapter five consists of conclusions and recommendations of the study.

CHAPTER TWO

DIPLOMATIC IMMUNITY VIZ-VIZ CRIMES COMMITTED BY DIPLOMATS

2.0 Introduction

The history of diplomatic relations and the personal inviolability of diplomatic envoys can be traced back to several ancient civilizations.⁴⁵ Ancient civilized states developed the concept and engaged in the practice of diplomatic immunity.⁴⁶ Histories of the ancient Greeks, Romans, Jews, Chinese, Indians, and Europeans provide clear evidence that these states practiced diplomatic immunity.⁴⁷ Recognizing that the parties, these states provided immunity for each other's ambassadors regardless of the gravity of the foreign envoy's acts. This chapter examines the growth of this practice through the ages in order to fully grasp the challenges in its usage in the modern era.

2.1. Evolution of the Principle of Diplomatic Immunity

The term '*diplomat*' is derived from the French term '*diplomate*', which indicates a person whose task is to negotiate on behalf of the state. Diplomats enjoy a special status both at home as well as abroad.⁴⁸ It is said that the concept of diplomatic immunity has long-standing roots in international practice, and that the customary rules of diplomatic immunity are as old as diplomacy.⁴⁹ Early historians trace the origins of diplomacy from the regions of the Mediterranean, the Middle East, China and India.⁵⁰ In this connection, it is useful to provide an overview of the historical evolution of the concept of diplomatic immunity, both in Asia, Europe, America, Africa and in other legal systems, using countries from each as clear cut examples.

⁴⁵J. Craig Barker (n 2) 29; Also See, Sally Marks, "History of Diplomacy", Britannica Encyclopaedia Online (2013) <<http://www.britannica.com/EBchecked/Topic/164602/Diplomacy>> Accessed on 5th April 2019.'

⁴⁶E. Satow, *Satow's Guide to Diplomatic Practice* 106 (Lord Gore-Booth 5th Ed. 1979). Hugo Grotius Wrote That There Were Two Inherent Rights of Ambassadors Abroad: The Right of Admission into the Host Country, and the Right of Freedom from Violence. 2 H. GROTIUS, DE JURE BELLI AC PACIS LIBRI TRES (Book 1) 440 (F. Kelsey Trans. 1925); See Also Wesson, 300 Years of Diplomatic Immunity, Christian Sci. Monitor, Jan. 3, 1980, at 23 (Tracing the History of the Privilege).'

⁴⁷ibid.

⁴⁸Rudiger Wolfrum, "Diplomacy", *Max Planck Encyclopaedia of Public International Law* (Vol. 3, 2013) 97;

⁴⁹Denza (n 15).

⁵⁰Walter Carlsnaes, Thomas Risse-Kappen and Beth A Simmons, *Handbook of International Relations* (1st Edn, SAGE 2002) 214'.

2.1.1 Diplomatic Relations in India

The history of diplomatic relations and the personal inviolability of diplomatic envoys can be traced back to several ancient civilizations.⁵¹ India is a home to one of the oldest diplomatic traditions in the world, whose origin may be traced back to the 4th Century BC. Arthashastra, meaning 'science of politics', written by the great Sanskrit scholar Kautilya who lived during the Mauryan dynasty, is an important source in our understanding of early Indian diplomatic history. It is a practical manual of instructions for kings structured in a complex work of 15 volumes, known as Adhikarans. In particular, Volumes 6 to 13 extensively cover foreign affairs and defence.¹⁶ Kautilya's rule relating to diplomatic relations was based on the doctrine of Samadana-bheda-danda (persuasion, gifts, division and threat of force). In fact, these four principles were considered the 'cardinal points of the ancient Indian diplomatic system'.

According to this doctrine, while dealing with foreign powers, the ruler or diplomat should first exploit the methodology of persuasion or negotiation and where it fails, he may try with the methods of gifts or bribery. If despite the use of these two methods, the desired results are not achieved, then he may try to create dissension among the enemies. When all these options fail, then finally, as a matter of last resort, he may use the weapon of threat of war or force. However, it is not necessary that the ruler or diplomat should try only one method at a time. It is provided that depending on the personal attributes of the foreign ruler or enemy, these principles may either be applied jointly or severally. Also, Kautilya justifies the latter controversial and violent methods of bheda and danda by recourse to Matsyapurana, which recommends that one and the same policy cannot be followed all the time and against all persons, for the world comprises of both righteous and evil-minded persons.

2.1.2 Italy and the Netherlands

The establishment of permanent mission was found only in the 15th century in Europe and is a relatively new concept in world history. Before that time all over the world not only in Europe, but places in South East Asia, the Islamic countries of West Asia, missions were set on a

⁵¹ J. Craig Barker (n 2) 29; Also See, Sally Marks, "History of Diplomacy", Britannica Encyclopaedia Online (2013) <<http://www.Britannica.Com/EBchecked/Topic/164602/ Diplomacy>> Accessed on 5th April 2019.' (n 45).

temporary basis and the mission would leave as soon as the purpose was fulfilled irrespective of whether it was of an economic, political or cultural matter. The Italians were the first to recognize the advantage of having a permanent mission in the neighboring capital's and Venice sent its first permanent representatives out to represent their interest. The first recorded permanent mission was established at Genoa in 1455 by Francesco Sforza, Duke of Milan. Five years later the Duke of Savoy sent Eusebio Margaria, archdeacon of Vercelli, to be his permanent representative in Rome. In 1496 Venice appointed two merchants then resident in London as "subambasciatori" on the ground that "the way to the British Isles is very long and very dangerous". This proved to be a strategic move and Italy became exceptionally influential and soon an ethic developed on how the diplomats were to behave themselves in the foreign countries.

It can therefore be said that there are two obvious stages of diplomacy, the first stage being the time where all embassies were of a non-permanent basis that ranged from the early times in history and coming to a stop in the 15th century. The second stage developed when permanent missions were established, starting from the 15th century and lasting till today and most probably will endure. Europe at the time experienced a number of civil wars and political instability. Italy, however, was not the only country that provided unique qualities and shaped the development of diplomacy. The end of the French Revolution in 1799, and the further expansion in industrial development, called for universal binding rules to regulate the laws regarding diplomats, as the European countries no longer were isolated from trade and commerce.

2.1.3 America and Diplomatic Immunity

The special privileges and immunities accorded foreign diplomatic and consular representatives assigned to the United States reflect rules developed among the nations of the world regarding the manner in which civilized international relations must be conducted.⁵² The underlying concept is that foreign representatives can carry out their duties effectively only if they are

⁵²Yale (n 19).

accorded a certain degree of insulation from the application of standard law enforcement practices of the host country.⁵³

Frequently (and erroneously), immunity is understood to mean pardon, total exoneration, or total release from the responsibility to comply with the law. In actuality, immunity is simply a legal barrier which precludes U.S. courts from exercising jurisdiction over cases against persons who enjoy it and in no way releases such persons from the duty, embodied in international law, to respect the laws and regulations of the United States.⁵⁴

It is the policy of the U.S. Department of State, with respect to alleged criminal violations by persons with immunity from criminal jurisdiction, to encourage law enforcement authorities to pursue investigations vigorously, to prepare cases carefully and completely, and to document properly each incident so that charges may be pursued as far as possible in the U.S. judicial system.

The vast majority of persons entitled to privileges and immunities in the United States are judicious in their actions and keenly aware of the significance attached to their actions as representatives of their sending country. On occasion, however, one of them may become involved in criminal misconduct. The more common violations are traffic (illegal parking, speeding, reckless driving, and DWI), shoplifting, and assault.

2.1.4 Africa and Diplomatic Immunity

In Kenya, the Privileges and Immunities Act (Cap 179)⁵⁵ gives the force of the Kenyan Law to the relevant provisions within the Conventions. This applies to all foreign diplomatic and consular missions, whether or not the state represented by the mission is a party to the Conventions, and International Organizations gazetted under the Act. Nevertheless, there is an exemption whereby immunities and privileges are contained in specific agreements between individual organizations and the Government. For instance, Shelter Afrique enjoys several

⁵³J. Craig Barker (n 2) 29; Also See, Sally Marks, "History of Diplomacy", Britannica Encyclopaedia Online (2013) <<http://Www.Britannica.Com/EBchecked/Topic/164602/ Diplomacy>> Accessed on 5th April 2019.' (n 45).

⁵⁴Yuliya G. Zabyelina, The Untouchables: Transnational Organized Crime Behind Diplomatic Intercourse And Immunities, .. <Http://Www.Ecpr.Eu/Filestore/PaperProposal/De38d92a-0ee5-4eed-89fb-32dd7...> (Last Visited 06/02/2015)' (n 38).

⁵⁵'Kenya Law Reports, Cap 179 Privileges and Immunities Act.'

privileges under such arrangements.⁵⁶ International bodies like the United Nations (UN) just like other entities such as the International Criminal Court (ICC), negotiate diplomatic rights for their staff under special arrangements. It should however be noted that Ambassadors and High Commissioners enjoy higher level of diplomatic immunity compared to other consular staff.⁵⁷

From a South African perspective, the influences of Dutch writers are of particular historical significance, especially Grotius. He has been described as one of the most influential legal scholars of the sixteenth and seventeenth centuries.⁵⁸ Grotius already argued for complete immunity as a general principle in the 1620s. He advocated that the security of ambassadors was fundamental to the diplomatic system that could only be accomplished by making diplomats accountable to their own sending sovereign. Grotius's theory of complete immunity was debated heavily during the seventeenth century and did not become widespread until the eighteenth century.

2.2 Modern Diplomatic Immunity

Fox notes that the process towards a universal law on diplomatic immunity gathered momentum with the production of the Harvard Convention in 1932.⁵⁹ In 1957, following the United Nations General Assembly Resolution 685, the International Law Commission (ILC) accepted the task of preparing a draft Convention on Diplomatic Relations. The ILC later requested information and comments from all governments in order to receive input and draft an efficient document. The ILC draft was eventually prepared and presented at the United Nations General Assembly Conference which deliberated and approved this draft in 1961 held in Vienna, Austria.

The Vienna Convention was considered to be a success in that by 1985, 145 member states had acceded to it; ten years thereafter this number had increased to 174 member states. The formulation of the Vienna Convention was a reaction to the absolute immunity granted to diplomats throughout the ages.⁶⁰ Further, it sought to standardize the practice of diplomatic officers and missions in the receiving state. In addition, the preamble of the Vienna Convention

⁵⁶ *ibid.*

⁵⁷ Aluanga-D., "Diplomatic Immunity or Diplomatic Impunity?", *Standard Newspaper*, 14th August 2012'.

⁵⁸ Hamilton & Langhorne 45; Parkhill 570; Griffin 20.'

⁵⁹ Fox, H., 2nd Ed., (2008) *The Law of State Immunity*, Oxford, p.701'.

⁶⁰ J Hoffman, 'Reconstructing Diplomacy' (2003) 5 *British Journal of Politics and International Relations* 495.

states that one of the purposes of immunities and privileges is “*not to benefit the individuals but to ensure the efficient performance of the functions of diplomatic missions as representing states*”. Furthermore, the preamble recognizes the theory of functional necessity as the dominant theory.

2.3 Summary and Conclusions

In this chapter the evolution of diplomacy in Europe developed from simple envoys in ancient Greece and Rome, to permanent missions. Since the 15th century the exchange of diplomatic missions and agents has reached a new stage in that through the institution of diplomacy, states have the power to conduct their foreign affairs on a more permanent basis. The impact of the French system on the method and practice of European diplomacy was so profound that French gradually replaced Latin as the language of diplomacy during these two centuries. While French diplomats used French on their treaties in the 17th century, it was at the negotiations leading to the Treaty of Utrecht in 1714 following the war of the Spanish succession that the imperial diplomats first employed French in the agreements which they concluded with France.⁶¹

These privileges of the representatives have increased gradually and as a result of state practice it was a well-established concept by the time of the Congress of Vienna in 1815. This congress foregrounded the first step towards the codification of diplomatic immunity which would be firmly established in the Vienna Convention of 1961, a landmark in diplomatic immunity and the topic of the next chapter.

⁶¹Hamilton & Langhorne 45; Parkhill 570; Griffin 20.’ (n 58).

CHAPTER THREE

THE RELEVANCE OF THE LAWS ON DIPLOMATIC IMMUNITY AND PREVILEGES

3.1 Introduction

The principle of diplomatic immunity is a long established component of international law that bestows upon the diplomat and his immediate family exemption from the jurisdiction of local courts and other government systems on their actions as carried out on behalf of their home governments. The formulation of diplomatic immunity laws under the VCDR was a vindication of the importance of facilitating peaceful reciprocal relations between states that is essential for the conduct of political economic and social interactions between states. While these laws on diplomatic immunity have been widely accepted as necessary for the conduct of diplomacy, the apparent abuse of this immunity through crimes by rogue diplomats and the seemingly lack of countermeasures in this law and other acts adopted by states has fostered a growing debate as to the challenges faced in the implementation of international Instruments on diplomatic immunity. This chapter analyses the challenges that are being faced in the enforcement of diplomatic laws.

3.2. Relevance of the law on diplomatic immunity

Diplomatic immunity as earlier stated is essentially a lawful exemption given to the diplomats to secure a free and impervious accessibility of the diplomats ascertain insusceptibility against any litigation or impeachment under the purview of the legal system of the host country although the diplomats remain subject to deportation.

As agreed under the VCDR, diplomatic immunity assumes a special significance in maintaining international relationship between sovereign nations especially under circumstances when such relations are under stress or even when the said nations are involved in the war.

Laws on diplomatic immunity help to prohibit a search of diplomatic premise by the legal authority of the host country and also from prosecution for petty crimes such as breaking a speed limit or as per the norms of the Vienna Convention. This is to enable the diplomats to carry on with their duties smoothly.

Diplomacy laws are essential to maintain international relations between two nations and for the diplomats play an indispensable role. It is also necessary for the smooth delivery of the duties of

diplomats and to grant them impunity from coercion, and just pressurization and marginalization by the host state.

In conclusion, the laws on diplomatic immunity are relevant as they ensure the safety and protection of the diplomats and also promote a good relationship between the sending state and the host state hence promoting peace and stability in the world.

3.3 Challenges Faced In the Implementation of Diplomatic Immunity

It is worthy to note that the mission of the Convention was to create a uniform law acceptable to all nations and ensure diplomats are not hindered in state transactions on behalf of their states. As a result of civil and criminal violations of various provisions of the Convention and a general shift in the international criminal and human rights law, certain provisions of the instrument and the presenting challenges have appeared inadequate to address these concerns.

3.3.1 Enforceability of the Legal Frameworks

According to Article 31(1) of the Vienna Convention and The Diplomatic Privileges Act Chapter 201 of Uganda, diplomatic agents enjoy complete immunity from the legal process of the receiving state although there is no immunity from the jurisdiction of the sending state. Article 41(1) on the other hand provides for a diplomat violating the immunity laws to be sent back home or a waiver of immunity can be done (Article 32) in case of grave violations. These provisions are the two extremes in the regime of immunities. Charney notes that the main weakness of the Vienna Convention is its failure to provide an adequate deterrent against violent conduct, as a result of the wide scope of immunity given to diplomats and the erroneous application of the functional necessity theory.⁶² The laws make no attempt to distinguish crimes according to their gravity and there is also no unified definition of different degrees of crimes. Because of this, Charney notes, it is up to national laws of individual states to divide crimes according to their gravity which is also disputable as there is no uniform measure of the gravity of crimes. The failure of a minimum national standard or an international minimum standard point to the vagueness of the laws as an effective tool for facilitating diplomacy. Furthermore,

⁶²J Charney I, 'The Impact of the International Legal System of the Growth of International Courts and Tribunals:1998-1999' 31 New York University Journal of International Law & Politics 697.

although the Vienna Convention can be considered a good source of international law it is evident that there are still practical difficulties in implementing it. For instance, the embassy is protected against entry by the receiving State and is the perfect instrument to harbor terrorists and criminal offenders.

Personal inviolability of diplomats has two aspects, one in that they cannot be detained or arrested; and the other that they cannot be prosecuted in a court of law. With this type of immunity, diplomats, staff and families can commit all manner of crimes and in most cases not be punished at all, leaving the victim or the victim's family with no sense of justice. It seems that the Vienna Convention allows for unrestrained license for diplomats, staff and their families to do what they want without consequences. Some diplomats and their family members have always been quick to cite diplomatic immunity as a reason for them not to be arrested or prosecuted when suspected of such crimes. The inadequacies in the laws have thus sparked debate as to the possibility of amending the weak provisions and introducing stringent measures against such violations.⁶³

3.3.2 Diplomatic Immunity and Human Rights

The law renders the diplomat's person inviolable, and this was recognized as necessary for functional purposes. Article 39 of the VCDR lays down that personal privileges and immunities begin when the person entitled enters the receiving state on his way to take up his post. This conception of functional immunity bestows on the diplomat some freedoms upon his appointment. If the diplomat is in the territory when he is appointed, the said privileges and immunities begin when his appointment is notified to the Ministry of Foreign Affairs. Privileges and immunities attached to diplomatic status continue during the entire period for which the status is recognized by the receiving state. Brownlie criticizes the Convention for being vague on 'official acts' performed by the diplomat who suggests that it would have been possible and prudent that a distinction be made between official acts which are open to the local law and those which cannot be prosecuted. The former category would deal with dangerous driving in an official car, having an accident while on official business, while an example of the latter would

⁶³S. R. Subramanian (n 2).

be a contractual promise made in negotiations for a concession with a legal person in private law.⁶⁴

3.3.3. Contradictions with the Fundamental Principles of Justice

It is worth noting that diplomatic immunity often contradicts fundamental principles of justice in civilized countries. Defenders of diplomatic immunity maintain that the trade-off between preserving harmonious international relations and protecting diplomats abroad while allowing those who have engaged in wrongdoing to escape sanction is acceptable. The consequences of the trade-off are justification for the international community to reevaluate the principle of diplomatic immunity. However, although diplomats are granted immunity from jurisdiction of the receiving state, Article 41 of the Convention makes it clear that they are obliged to respect its laws and regulations⁶⁵. Should the receiving state wish to subject the diplomat to criminal or civil action, the receiving state may request that the sending state waive the diplomat's right to jurisdictional immunity. Alternatively the receiving state could make representations to the sending state to initiate proceedings; or in extreme circumstances they may declare the individual involved persona non grata. In reality such measures are rarely taken.

3.4. Summary and Conclusion

This chapter has analyzed the challenges faced in the implementation of the international instrument particularly the Vienna Convention on Diplomatic Relations of 1961 and specifically its provisions relating to diplomatic immunity and privileges. In addition it has been analysed that the Uganda act on diplomatic immunity. The VCDR was a timely treaty that provided the framework for the conduct of diplomacy. In analyzing the challenges, this chapter has found out that although the laws provide the basis for immunities, the diplomats inviolability has been misused by some diplomats to commit crimes and escape justice by claiming diplomatic immunity. The study has also found out that the principles of personal inviolability, jurisdiction and reciprocity though essential to diplomatic practice have to some extent not been sufficient to deter crime.

⁶⁴Brownlie (n 8).

⁶⁵Vienna Convention On Diplomatic Relations, Supra Note 7, Art. 41, Para. i.' (n 68).

CHAPTER FOUR

ABUSE OF DIPLOMATIC IMMUNITY AND PRIVILEGES

4.0 Introduction

The rules of diplomatic law enshrined in the Vienna Convention have been described as ‘the cornerstone of the modern international legal order.’⁶⁶ But the principle of diplomatic immunity dates back far further than 1961. It is one of the oldest rules of international law. Diplomatic immunity was well-established by the end of the seventeenth century, evolving out of the principles of equality of states and immunity of the sovereign, who was said to embody the state. As Satow put it, ‘immunity ... is not a personal immunity but in reality the immunity of the sending state’.⁶⁷ This chapter discusses the legal frameworks behind diplomatic immunity.

4.1 A Review of the Vienna Convention on Diplomatic Relations

The Vienna Convention on Diplomatic Relations of 1961 could be said to be a watershed moment in the evolution of the laws on diplomatic conduct. This Convention was a global effort at instituting laws on diplomatic conduct that would be applicable not just in Europe but to all countries, whose number was steadily growing as a result of decolonization. There had been no clear law on diplomatic law with the existing laws a result of customs and traditions that grew out of centuries of interaction among European countries. The formulation of the Vienna Convention on Diplomatic Relations (Vienna Convention) was largely a reaction to the unlimited immunity historically granted to diplomats.⁶⁸

The Vienna Convention establishes four categories of diplomatic personnel, with different levels of immunity allotted to each. The diplomatic agent is the head of the mission or a member of the

⁶⁶Foreign Affairs Committee, “The Abuse of Diplomatic Immunities and Privileges” (London: House of Commons, 1984), 1984/85 HC 127, p. Vi.’

⁶⁷E. Satow, *Satow’s Guide To Diplomatic Practice* 106 (Lord Gore-Booth 5th Ed. 1979). Hugo Grotius Wrote That There Were Two Inherent Rights of Ambassadors Abroad: The Right of Admission into the Host Country, and the Right of Freedom from Violence. 2 H. GROTIUS, *DE JURE BELLI AC PACIS LIBRI TRES* (Book 1) 440 (F. Kelsey Trans. 1925); See Also Wesson, 300 Years of Diplomatic Immunity, *Christian Sci. Monitor*, Jan. 3, 1980, at 23 (Tracing the History of the Privilege).’ (n 46).

⁶⁸Fox, H., 2nd Ed., (2008) *The Law of State Immunity*, Oxford, p.701’ (n 59).

diplomatic staff of the mission. Diplomatic agents are not subject to arrest or detainment.⁶⁹ They are completely immune from the criminal jurisdiction of the receiving state, as well as from civil jurisdiction for acts committed within their official capacity. They are, however, subject to local jurisdiction for certain private acts. The family of the diplomatic agent enjoys the same immunity status as the agent. The administrative and technical personnel employed by the mission possess the same immunity as the diplomatic agents with respect to criminal jurisdiction.⁷⁰ The Vienna Convention limits the immunity of administrative and technical personnel with respect to civil jurisdiction, however, to acts performed within the course of their duties⁷¹.

In addition to the immunities provided for in the Vienna Convention, article 41 imposes a duty, although it is without prejudice to the diplomatic immunity conferred in article 31, on the persons who benefit from such privileges and immunities to obey the laws and regulations of the receiving state.⁷² This paradoxical provision is superfluous, because a diplomat who does not respect the laws and regulations of the receiving state is immune from any legal recourse due to a lack of any enforcement provision in the Vienna Convention.⁷³ Therefore, a provision requiring those with immunity to obey the laws of the receiving state without an enforcement mechanism is meaningless. Should the receiving state wish to subject the diplomat to criminal or civil action, the receiving state may request that the sending state waive the diplomat's right to jurisdictional immunity.⁷⁴ Alternatively the receiving state could make representations to the sending state to initiate proceedings; or in extreme circumstances they may declare the individual involved *persona non grata*.

4.1.1 Purpose of the Vienna Convention

The purpose of the Convention is to provide immunity to diplomats.⁷⁵ In this regard the Vienna Convention provides protection to each diplomat from the sending state as they fulfill their daily

⁶⁹UN (n 11).

⁷⁰Ross (n 24).

⁷¹'Veronica L. Maginnis, Limiting Diplomatic Immunity: Lessons Learned From The 1946 Convention On The Privileges And Immunities Of The United Nations, 28 Brook. J. Int'l L. 989' (n 40).

⁷²'Vienna Convention On Diplomatic Relations, Supra Note 7, Art. 41, Para. i.'

⁷³Wanyela (n 34).

⁷⁴Jane Pierrot Eirwen, 'Escaping Diplomatic Impunity: The Case for Diplomatic Law Reform' (October 2010).

⁷⁵'Preamble of Vienna Convention; Ross 181'; UN (n 7).

tasks in the receiving state, which may be in a country that has a different political background and set of local laws.⁷⁶ The Convention allows the diplomat to perform his duties and provide information on political, social and humanitarian conditions in the receiving state.⁷⁷ The Vienna Convention is the ultimate multilateral treaty agreement in the field of international law, giving all states that are signatory to it surety and clarity in regards to diplomats.⁷⁸ The practicality of the Convention provides safety and continuous diplomatic relations between foreign states and their respective missions.⁷⁹ The missions work runs smoothly due to the Vienna Convention and in the seldom case of an abuse of the diplomatic privileges, a false picture is portrayed about the regulations when in fact its operation runs efficiently on a permanent level.⁸⁰

The Preamble of the Vienna Convention of 1961 has five distinct points that highlight the clear intention of the diplomatic immunities and privileges the delegates had in mind at the time:

- Recalling that people of all nations from ancient times have recognized the status of diplomatic agents.
- Having in mind the purpose and principle of the Charter of United Nations concerning the sovereign equality of States, the maintenance of international peace and security, and the promotion of friendly relations among nations.
- Believing that an international convention on diplomatic intercourse privileges and immunities would contribute to the development of friendly relations among nations, irrespective of their differing constitutional and social systems.
- Realizing that the purpose of such privileges and immunities is not to benefit individuals but to ensure the efficient performance of the functions of diplomatic missions as representing States.
- Affirming that the rules of customary international law should continue to govern questions not expressly regulated by the provisions of the present Convention⁸¹

The Preamble to the Convention highlights that the main intention of the diplomatic immunities is to promote friendly relations among States and to ensure that the immunities and privileges

⁷⁶UN (n 7).

⁷⁷Preamble of Vienna Convention; Ross 181' (n 71).

⁷⁸ibid.

⁷⁹ibid.

⁸⁰ibid.

⁸¹UN (n 7).

granted to the diplomat is for the purpose to carry out the functions and instructions of the diplomatic mission in the receiving State and not for their own personal profit and agenda.⁸²

The Preamble to the Convention highlights that the main intention of the diplomatic immunities is to promote friendly relations among States and to ensure that the immunities and privileges granted to the diplomat is for the purpose to carry out the functions and instructions of the diplomatic mission in the receiving State and not for their own personal profit and agenda.⁸³

4.1.2 Inviolability

Historically, personal inviolability of the diplomatic agent has been viewed as the fundamental principle from which has been derived all diplomatic privileges and immunities. Satow had theorized that personal inviolability refers to that elevated level of immunity accorded to a diplomat that to a private citizen due to his function and therefore it is the duty of the government to which diplomatic agents are accredited to take all necessary measures to safeguard the inviolability of diplomatic agents and to protect them from any act of violence or insult.⁸⁴ This opinion was generally agreed upon and as Kunz observes the receiving states are under an international obligation to grant special and extraordinary protection to diplomatic agents. This principle was codified in article 29 of the 1961 Vienna Convention on Diplomatic Relations thus:

"The person of a diplomatic agent shall be inviolable. He shall not be liable to any form of arrest or detention. The receiving State shall treat him with due respect and shall take all appropriate steps to prevent any attack on his person, freedom or dignity."

The Vienna Convention Articles 20 to 41 of the Vienna Convention on Diplomatic Relations provides certain rights, privileges and immunities to diplomats with the primary objective to ensure the efficient performance of the functions of the diplomatic mission.⁸⁵ Perhaps the most important and oldest rule of diplomatic immunity is enshrined within the Vienna Convention in

⁸²Denza (n 15).

⁸³ibid.

⁸⁴E. Satow, Satow's Guide To Diplomatic Practice 106 (Lord Gore-Booth 5th Ed. 1979). Hugo Grotius Wrote That There Were Two Inherent Rights of Ambassadors Abroad: The Right of Admission into the Host Country, and the Right of Freedom from Violence. 2 H. GROTIUS, DE JURE BELLI AC PACIS LIBRI TRES (Book 1) 440 (F. Kelsey Trans. 1925); See Also Wesson, 300 Years of Diplomatic Immunity, Christian Sci. Monitor, Jan. 3, 1980, at 23 ('Tracing the History of the Privilege).'(n 46).

⁸⁵Vienna Convention *supra* note 1, see preamble.

Article 29. This particular article deals with the rule of inviolability, which is the basic premise above which any other immunity is built.⁸⁶ The concept of immunity and inviolability do not simply mean that a court for the offences they allegedly commit cannot convict diplomatic agents. They are also immune from the law enforcement activities of the agents of the state itself.⁸⁷

4.2 The Diplomatic Privileges Act Chapter 201 of Uganda

All Diplomatic agents, Foreign Consular Officers and members of Administrative and Technical Staff serving with Foreign Missions in Uganda are granted Privileges and Immunities in accordance with the Vienna Convention on Diplomatic Relations (1961) and the Diplomatic Privileges Act Chapter 201 of the Laws⁸⁸ of Uganda which domesticates the afore-mentioned Convention. Accordingly, the application of the immunities and privileges is based on the principle of reciprocity. The Government of Uganda accords Immunities and Privileges to foreign officials and their family members similar to those accorded to Ugandan diplomats in the respective countries of accreditation.⁸⁹ According to the Act, Article 31.

1. A diplomatic agent shall enjoy immunity from the criminal jurisdiction of the receiving State. He shall also enjoy immunity from its civil and administrative jurisdiction, except in the case of:
 - a) a real action relating to private immovable property situated in the territory of the receiving State, unless he holds it on behalf of the sending State for the purposes of the mission;
 - b) an action relating to succession in which the diplomatic agent is involved as executor, administrator, heir or legatee as a private person and not on behalf of the sending State;
 - c) an action relating to any professional or commercial activity exercised by the diplomatic agent in the receiving State outside his official functions.
2. A diplomatic agent is not obliged to give evidence as a witness.

⁸⁶Vienna Convention *supra* note 1, see art 29.

⁸⁷ibid.

⁸⁸'Republic of Uganda, Diplomatic Privileges Act (1965) Chapter 201'.

⁸⁹GoU, 'Privileges and Immunities for the Diplomatic Corps & International/Regional Organizations In Uganda.'

3. No measures of execution may be taken in respect of diplomatic agent except in the cases coming under sub-paragraphs (a), (b) and (c) of paragraph 1 of this Article, and provided that the measures concerned can be taken without infringing the inviolability of his person or of his residence.
4. The immunity of a diplomatic agent from the jurisdiction of the receiving State does not exempt him from the jurisdiction of the sending State.

According to Article 32: The immunity from jurisdiction of diplomatic agents and of persons enjoying immunity under Article 37 may be waived by the sending State. The initiation of proceedings by a diplomatic agent or by a person enjoying the immunity from jurisdiction under Article 37 shall preclude him from invoking immunity from jurisdiction in respect of any counter-claim directly connected with the principal claim. Waiver of immunity from jurisdiction in respect of civil or administrative proceedings shall not be held to imply waiver of immunity in respect of the execution of the judgment, for which a separate waiver shall be necessary.⁹⁰

It is the policy of the Ugandan penal code with respect to alleged criminal violations by persons with immunity from criminal jurisdiction, to encourage law enforcement authorities to pursue investigations vigorously, to prepare cases carefully and completely, and to document properly each incident so that charges may be pursued as far as possible in the Ugandan judicial system.

Whatever the offense or circumstances of contact, law enforcement officers should keep in mind that such persons are official representatives of foreign governments who are to be accorded the maximum degree of respect possible under the circumstances. It is not an exaggeration to say that police handling of incidents in this country of Uganda may have a direct effect on the treatment of Ugandan diplomatic or consular personnel abroad. Due to the nature of the laws in Uganda, law enforcement officers may encounter persons who possess or claim diplomatic immunity. Since these laws and regulations are generally not well understood, law enforcement officers may misapply them.

Police officers are trapped between the international obligations of Uganda to excuse offenses committed by diplomats, and their oath to uphold the law. Problems exist when police officers

⁹⁰Republic of Uganda, Diplomatic Privileges Act (1965) Chapter 201' (n 84).

fail to investigate crimes after the offender claims diplomatic immunity. In some cases, the offender may not have diplomatic immunity for the act committed.

4.3.0 The extent of abuse of diplomatic immunities

4.3.1 Abuse of Diplomatic Privileges and Immunities

As discussed from the commencement of this report, diplomatic immunity is a fundamental principle of the international law and it was established to promote international relations by protecting diplomats 'from retaliation in time of international conflicts'.⁹¹⁹²⁹³ However, there have been an increasing number of challenges to the object and purpose of the Vienna conventions, as diplomats, their family, and consular officials have increasingly paid scant respect for laws and regulations of the receiving states and have frequently abused their immunities and privileges, necessitating the invocation of local jurisdiction by the receiving state.⁹⁴ It is hereby submitted that the abuse of privileges and immunities by diplomats, as well as by the states that receive them, constitute one of the major challenges to the continued success of the Vienna Conventions and other established acts.

It may be noted that out of all the abuses of diplomatic immunity, abuses of criminal nature merits special scrutiny.⁹⁵ The crimes committed by them range broadly from drunk driving, assault, child abuse, possession of deadly weapons, bribery, slavery, money laundering, rape and even murder.⁹⁶ Leading international cities, such as New York, Geneva, London and Washington have been prone to the occurrence of 'diplomatic crimes', given the relatively high number of foreign embassies and international organizations in these places.

⁹¹Wanyela (n 34).

⁹²Wilson (n 29).

⁹³Beddard (n 15).

⁹⁴'The Subject of Abuse of Diplomatic Immunities and Privileges Has Attracted a Large Amount of Scholarship, Especially in the Recent Times. To Illustrate, See Rosalyn Higgins (n 4); Amanda M. Castro, "Abuse of Diplomatic Immunity in Family Courts: There Is Nothing Diplomatic about Domestic Immunity" (2014) 47 Suffolk University Law Review 353; Emily F. Siedell, "Swarna and Baoanam: Unravelling the Diplomatic Immunity Defense to Domestic Worker Abuse" (2011) 26 Maryland Journal of International Law 173; Nina Maja Bergmar (n 58).'

⁹⁵William G Morris, 'Constitutional Solutions to the Problem of Diplomatic Crime and Immunity' (2007) 36 Hofstra Law Review 601.

⁹⁶Kitty Donaldson, "Murder, Rape, Assault: The Secret Crimes of London's Diplomats" The Independent (London, 16 July 2006) <<http://www.independent.co.uk/news/uk/crime/murder-rape-assault-the-secret-crimes-of-londons-diplomats-408170.html>> Accessed on 5th April 2019.'

Abuse of diplomatic immunities puts a threat to the principles of immunity and inviolability regarding the Vienna Convention on Diplomatic Relations.⁹⁷ Abuses occur in various forms. Diplomatic abuse can be observed when a diplomat smuggles illegal items in diplomatic bags, commits driving offences or works under the cover of a spy. In other cases, diplomatic personnel can be the target for organised terrorism, such as it was the case of the kidnapping and murder of US Ambassador Dubs on February 14, 1979 in Kabul.⁹⁸ The actual victim of diplomatic abuse is not only the ambassador, but with respect to the Vienna Convention, it is rather the sending State or the international community of states. This is because, as the diplomat performs its functions as a representative on behalf of the sending State, the state behind is the object of abuse.⁹⁹ Abuse of diplomatic immunity is also in the concern of the international community of states because any abuse influences the universal, world-wide accepted validity of diplomatic immunities and privileges formed by the long-practiced rules of custom.¹⁰⁰ The Vienna Convention puts a balance between the interests of the sending State and the receiving State. The sending State aims to pursue its "foreign policy interests"¹⁰¹ through its representatives within the territory and under the consent of the receiving State.¹⁰² The system of immunity established in different norms of the Vienna Convention provides a sound framework to protect the performance of diplomatic functions "in security and confidentiality".¹⁰³ States have already taken appropriate countermeasures to gain control over abuse of diplomatic immunities, either by using countermeasures set forth in the Vienna Convention or by establishing international regulations or national provisions. Defining diplomatic abuse remains difficult, but the term can be described as any temporary conduct or effort of a person or political group to exercise functions for its own purposes that penetrates diplomatic immunities under the Vienna Convention.

⁹⁷ Vienna Convention on Diplomatic Relations, done at Vienna on April 18, 1961, and entered into force on April 24, 1964, published in: UNTS, vol. 500, pp. 95ff. [hereinafter: Vienna Convention].

⁹⁸ For further details, see Taylor, in: Sullivan (1995), pp. 55-69.

⁹⁹ Stohl, in: Kegley (1990), p. 83, wants to distinguish between the "victim of the violent act from the targets (the audience of that violence)".

¹⁰⁰ See McClanahan (1989), p. 44 and Brownlie (1990), pp. 346-347.

¹⁰¹ See Higgins (1985), p. 641.

¹⁰² Compare, e.g., Art. 2 of the Vienna Convention; see also Brownlie (1990), p. 322.

¹⁰³ Higgins (1985), p. 641; McClanahan (1989), p. 184.

4.3.2. Forms of abuse of diplomatic immunity

Diplomatic immunity is abused in many forms. While analyzing this I will use three examples which will give the answer how immunities of diplomats are abused.

The first incident took place in London on February 24, 1985, where British police arrested a man because he was suspected of having heroin in possession. The police began to search his apartment for drugs. After the suspected had claimed to be a diplomat of the Zambian mission enjoying full immunity, the police stopped the measure when they found his diplomatic identity as being correct. In this case, the diplomat, a third secretary of the Zambian embassy, used his diplomatic immunity to smuggle and/or consume drugs. His immunity from criminal jurisdiction pursuant to Art. 31(1) of the Vienna Convention protected him from further criminal prosecution and punishment in the host state. But the diplomatic envoy abused his diplomatic privileges because he broke his obligation set forth in Art. 41(1) of the Vienna Convention that establishes "the duty" of all diplomatic persons "to respect the laws and regulations of the receiving State". The scope of this provision describes that the diplomat shall respect the national laws of the host state.

The second example which occurred in Peking refers to espionage. The incident occurred on August 2, 1995, where two US Air Force officers were expelled from China. The Chinese Foreign Ministry justified the expulsion because the officers had visited the American embassy in Peking to spy upon Chinese military facilities and "acquired military intelligence by photographing and videotaping". Afterwards, the Chinese Foreign Minister and the Department of State established talks in order "to rescue the relationship".¹⁰⁴ In this case, the officers operated under the cover of a diplomat and for that reason, they enjoyed diplomatic immunity from criminal authority in the accredited state. Because of the discovery of the espionage activities, the Chinese government expelled the military officers. In this example, the abuse of immunity is taken because the intelligence agents interfered in Chinese restricted military areas.

¹⁰⁴ Example and quotations taken from Fletcher's article in: The Times on Aug. 3, 1995, p. 11.

However, the interference in internal matters violates the principle of non-interference expressed in Art. 41 (1)(2) of the Vienna Convention because it is the diplomat's duty "not to interfere" in internal matters of the host state.

The other incident occurred on November 4, 1979, where armed students entered the premises of the US embassy in Tehran and captured the whole diplomatic staff as hostages. The students sought to coerce the US government to extradite the Iranian Shah and to "apologize for its involvement in internal Iranian political affairs for the previous decades". The US government responded that it would not fulfill their demands.¹⁰⁵ The Iranian government did not intervene in the conflict to protect the US embassy and diplomatic envoy. This case differs in so far from the other examples given as the target of abuse had been the US embassy and its ambassadors by the armed occupation of students. When they entered the embassy, and kept the diplomats as hostages, they infringed the principle of inviolability of diplomatic staff and diplomatic premises protected under Art. 29(1) and 22(1) (1) of the Vienna Convention. The principle of inviolability established in several provisions serves to enable and protect diplomatic functions set forth in Art. 3 of the Vienna Convention. Representing the sending State, negotiating with the government of the host state, and promoting their interests by diplomats can only be granted, if diplomatic tasks are protected against any interference. Therefore, the principle of inviolability establishes a basic framework for diplomatic communication in independence and freedom. The interaction between diplomatic immunity and diplomatic functions is considerably damaged in the latter one because the Iranian students used violence against the diplomatic staff to enforce their own political demands.

McClanahan observes an increasing spread of abuse by state-sponsored terrorism¹⁰⁶ that particularly threatens ambassadors in the Middle-East.¹⁰⁷ The fact that the Iranian government did nothing against the seizure of the US embassy in Tehran, which was against its obligation under Art. 44 of the Vienna Convention to protect diplomats and their premises, supports the assumption that the Iranian government was involved to a certain degree in the terrorists' action.

¹⁰⁶ Sick, in: Kegley (1990), p. 53, defines terrorism as "the deliberate and systematic use or threat of violence to coerce changes in political behavior".

¹⁰⁷ See McClanahan (1989), pp. 159-161.

What have these three examples in common? The abuse of diplomatic immunities often takes place where the diplomat or other persons without having a diplomatic status intend to pursue certain purposes that are not covered by the Vienna Convention, seeking to change political circumstances by committing crimes and using violence. This is because the purposes and function performed by those people are beyond the diplomatic function. Purposes can base upon selfish, political, or religious interests.¹⁰⁸ However, these individual purposes are incompatible with the purpose established in the preamble of the Vienna Convention, seeking "not to benefit individuals", but to "ensure the efficient performance of the (diplomatic) functions".

4.4 Summary and Conclusion

This chapter set out to analyze the history and how the Vienna Convention was established and for what purpose. The purpose of the Vienna Convention is to provide immunity to diplomats. The Diplomatic Privileges Act Chapter 201 of Uganda was also analyzed. It is submitted that consensus remains important although the sending state has a free choice who to send and the receiving state has a veto to deny certain persons access into their country without giving reasons. It is further noted that the Vienna Convention provides general guidelines with regards to privileges and immunities. Nevertheless, when a diplomatic agent enjoys immunity from the criminal jurisdiction of the receiving State, still presents a challenge. It is because of these challenges and the objective of the immunities granted that one needs to understand the convention better by delving deeper. This chapter has also gone ahead to describe the extent at which diplomatic immunities have been abused.

¹⁰⁸ See also Art. 42 of the Vienna Convention that seeks to exclude any diplomatic practice in the receiving State "for personal profit".

CHAPTER FIVE

SUMMARY OF FINDINGS, CONCLUSIONS AND RECOMMENDATIONS

5.0 Introduction

This chapter covered the summary of findings from the preceding chapters according to the objectives of the study, gave a conclusion and recommended according to the findings.

5.1 Summary of the Findings

The fact that a person (diplomat) who commits crimes and high misdemeanors may enjoy the privileges of immunity while others may not is a significant difference and one can question if the concept of diplomatic immunity is compatible with the principle 'all peoples are equal before the law.'

In its statement of the problem, the study articulates that whereas diplomats are inviolable when carrying out their functions, their behavior should benefit their status as good ambassadors of their states, careful to portray a positive image that enhances the stature of their country. To that end, they are required to act responsibly, respecting the laws and regulations of the host government and be mindful of the cultural differences.

This research report argues that complete immunity from legal proceedings for diplomats is incompatible with international human rights law and stands in the way of justice for victims. In instances where a conflict arises, human rights must take supremacy over diplomatic immunity. As such, the purpose of this research was to analyse the principle of diplomatic immunity in relation to crimes committed by diplomats and suggest possible recommendations. It was guided by three objectives; to analyze the principles of diplomatic immunity viz-a-viz crimes committed by diplomats; to examine the relevance of the laws on diplomatic immunity and privileges; and to analyze the challenges faced in the implementation of international instruments on diplomatic immunity and make possible recommendations. After examining the current literature on the subject, and the legal frameworks, the study concluded that there is indeed a gap in the literature on the subject and therefore for a better understanding of the subject and to contribute to the scanty literature on the subject the study sought to proceed on the premise established in the laws that govern diplomatic immunity.

The study has relied on secondary data and has qualitatively analyzed the data and will therefore summarize the principal findings and give conclusions and recommendations. The study examined the definition of diplomacy and diplomatic immunities and privileges and noted that the former has been around since humans were able to form a society while the latter has evolved gradually in tandem with the concept of diplomacy. Only very recently did the Italians come up with the idea that a more permanent establishment inside the neighboring country is advisable and advantageous, initiating the practice of sending resident envoys to other countries. Since the 15th century the exchange of diplomatic missions and agents has reached a new stage in that through the institution of diplomacy, states have the power to conduct their foreign affairs on a more permanent basis. The impact of the French system on the method and practice of European diplomacy was so profound that French gradually replaced Latin as the language of diplomacy during these two centuries. While French diplomats used French on their treaties in the 17th century, it was at the negotiations leading to the Treaty of Utrecht in 1714 following the war of the Spanish succession that the imperial diplomats first employed French in the agreements which they concluded with France.

The Vienna Convention is the ultimate multilateral treaty agreement in the field of international law, giving all states that are signatory to it surety and clarity in regards to diplomats. The Convention delineates two types of immunities necessary for this inter-state interaction by limiting immunities accorded to the diplomat for the functioning of the mission; firstly, the diplomat's official duties are exempt from interference by the host state and he is therefore deemed inviolable for his official acts.

5.3 Conclusions

The concept of Diplomacy has been around since humans were able to form a society. Neighboring tribes or clans had to develop means in order to communicate with one another, in order to trade, exchange gifts, establish boundaries, and declare war or to reconcile and bring peace. This concept developed and flourished.

The Vienna Convention of 1961 is a true landmark in the long history of diplomacy. It has unified the majority of all states and nations all over the world to accept the same laws,

principles and regulation of diplomats today. The Convention has been able to unite different nations, with different backgrounds, cultures and languages, religious beliefs and history to agree and implement the regulations that were set out. Every country that is signatory to the Convention has obligated themselves to respect and make provisions in their own national legislation to incorporate the laws of the Vienna Convention.

The study has established that there is a substantial record of the abuse of diplomatic privileges and immunities with the errant officers and family members citing diplomatic immunity when found on the wrong side of the law of the receiving state. The study has also evaluated the relevance of the laws on diplomatic privileges and immunity to diplomatic conduct and established that to a large extent they are relevant though there is need for more legislation on vague areas. The principle of personal inviolability also has to give way to a new interpretation due to human rights concerns and its blatant abuse. The laws on Diplomatic immunity have been fluctuating over the years, with no definite internationally accepted codified law in place. While the Vienna Convention has largely identified and brought the importance of diplomats to the international for a, it is insufficient in scope and practice, as it does not involve crimes committed by insurgents or actors within the receiving state but are not in control of the receiving state.

Although the laws provide the basis for immunities, the diplomat's inviolability has been misused by some diplomats to commit crimes and escape justice by claiming diplomatic immunity. The study has also found out that the principles of personal inviolability, jurisdiction and reciprocity though essential to diplomatic practice have to some extent not been sufficient to deter crime. In the absence of any textual provision as to what constitutes 'grave crimes', it is necessary to maintain a fine balance between the power of the receiving states to make arrest in such cases and the interests of the sending states in ensuring that consular services are available without undue interruption. Also, in view of the escalations of diplomatic crimes, it is estimated that the true scope of this exception is going to be a major issue in the coming years.

5.4 Recommendations

This study makes the following recommendations;

It is submitted that changes need to be made to ensure such abuse do not take place. This involves the relationship between states and individuals to grow and prosper so as to maintain peaceful relationships and successful missions, without injustice being done to civilians.

That there should be a re-examination of this Convention with a view to making constructive changes to its troublesome provisions. The most drastic change should be that the diplomat should not be able to claim diplomatic immunity in cases of basic human rights violations. In cases where there is suspicion of torture, enslavement, murder and rape the receiving state needs to have the jurisdiction to detain and question the diplomat about these allegations.

The sending state needs to be informed of the allegations being brought against their diplomat, and that a court of law in the receiving state needs to determine whether enough evidence has been brought forward to prosecute the offending diplomat. If the court determines there is sufficient evidence to prosecute then the diplomat is to immediately lose all diplomatic privileges and immunities and be tried.

With serious offences, as demonstrated above, immunity is much harder to justify. But the problem between simply drawing a line between 'major' and 'minor' offences is that certain offences may be minor in one state, completely legal in another, and a serious offence elsewhere. It would therefore not be advisable to reform international law to enable diplomats to be punished by local courts for committing any crime whatsoever.

In international law, as in any other legal system, respect and protection of human rights can be guaranteed only by the availability of effective judicial remedies. If a right is violated, access to justice is of paramount importance for the victim and is an essential component of the rule of law. Governments around the world should be unafraid to protect and enhance human rights through the restatement of existing rules and the formulation of new ones, in order to ensure equal protection under the law and access to justice for all. Where a gap in the availability of

judicial remedy is found it should be closed, even if that means rethinking a seemingly timeless legal principle: that of the immunity afforded to diplomats.

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