

**ANALYSIS OF DIPLOMATIC IMMUNITY IN RELATION TO CRIMES
COMMITTED BY DIPLOMATIC OFFICIALS**

BY

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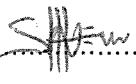
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DECLARATION

I **MUSIIMIRE SUSAN** I do hereby declare that this dissertation has been done by myself and no portion of the work contained in this report have been submitted to any higher institution of learning for an academic award.

Sign...  Date ... 19. Sept. 2018 ...


(Student)

APPROVAL

I certify that the work submitted by the candidate was under my supervision and is ready to be evaluated for the award of Bachelors in law of Kampala International University.

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DATE.....19-09-18.....

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DEDICATION

I dedicate this booklet to my beloved parents **Mr Twinomugisha Peter and Mrs Tumuhimbise Diana** for the support and encouragement they have rendered to me in the course of my studies.

LIST OF ABBREVIATIONS

VCDR: Vienna Convention on Diplomatic Relations

OAS: Organization of American States

ICC: International Criminal Court

ILC: International Law Commission

UN: United Nations

UK: united Kingdom

USA: United States of America

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ABSTRACT

The study focused on "Analysis of diplomatic immunity in relation to crimes committed by diplomatic officials". There has been a general acceptance over time that diplomats should be immune from both civil and criminal action for work done in the course of their duties.

The purpose of the study is to pinpoint the inadequacies of the principle of diplomatic immunity a critical look at the law on diplomatic immunity principle and whether this principle in the modern age and era of human rights can be sustained.

The study is intended to add on the literature over the subject and suggest plausible alternatives and adulations that can be incorporated in the law to make it more effective while reducing its vulnerability to being used as a tool for committing diplomatic crimes.

CHAPTER ONE

GENERAL INTRODUCTION OF THE STUDY

1.1 Background to the study

The topic under study is the “analysis of diplomatic immunity in relation to crimes committed by diplomatic officials” and covers the background of the study, Statement of the problem, purpose of the study, objectives of the study, scope of the study, methodology and the significance of the study.

The Black’s Law Dictionary sixth Edition defines diplomacy as the art and practice of conducting negotiations between foreign governments for the attainment of mutually satisfactory political relation, negotiations or intercourse between nations through their representatives and the rules, customs and privileges of representatives at foreign countries¹

The Cambridge Dictionary defines Diplomatic immunity as the special rights that diplomats have while working in a country that is not their own such as freedom from legal action².

The doctrine of diplomatic immunity according to some scholars traces its origin from the Greeks and Romans. Subsequently, it emerged as a well-established exception to the general international law principle of the territorial jurisdiction which bestowed on the state exclusive reign within its boundaries³. 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.

Jovan Kurbalija, Dietrich Kappeler and Christian Sys have pointed out that we can the first privileges and immunities to the early days of human communication and attempts

¹ The black’s law dictionary, 6th ed, page459:Black Henry Campbell (1990) Hardcover on Amazon.com

²<http://dictionary.cambridge.org>>diplomaticimmunity meaning in Cambridge English Dictionary> accessed10 August 2018

³Ibid

to solve conflict in non-violent ways⁴. The very beginning of diplomacy is usually associated with the granting of diplomatic privileges and immunities.

The above mentioned 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 Greece⁵. 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 properly seasoned food..." The guest coming after the sunset may not be expelled by the master of the house. Should he come at wrong time, may he not stay united 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.⁶

In ancient India, rulers did not have permanent ambassadors, instead they relied on envoys who delivered messages and on negotiators (in European system they were called plenipotentiaries) authorized to work out or modify agreements of their masters.

Diplomatic immunity and privileges are effective tools in the 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 senior officers are entitled to be treated equally to diplomatic agents.

Top diplomatic officers have full immunity and same applies to their deputies and families. The British Embassy in the 17th century exempted the employees of embassies from taxes however in France the position of diplomats and privileges enjoyed by 20th century declined.

⁴ <https://www.diplomacy.edu>>Evolution of diplomatic privileges and immunities>accessed 10 August 2018

⁵ Ibid

⁶ Ibid

1.2 Statement of the Study Problem

The principle of Diplomatic immunity is derived from various legal instruments both domestic and international such as Vienna Convention on Diplomatic Relations (1961) and Diplomatic Privileges Act cap 201. It is important to note that diplomatic immunity can perpetuate crime. If a diplomat commits a serious crime while in a host country, he may be declared persona non grata that is to say unwanted person and can be tried in his or her home country .But leaves the aggrieved party in the hosting state without remedy. It is for such purpose that the researcher examines the principle of diplomatic immunity in relation to crime in order to provide possible alternative remedies that can be considered in diplomatic cycles behalf. Normally filled by Brahmins (person of the highest caste) the position enjoyed a degree of immunity in addition to the protection the individuals enjoyed as envoys or heralds.⁷

In ancient Greece the oldest form of international relations rested on the concept of hospitality⁸. This was a kind of permanent representation, consular and informational rather than diplomatic. Proxeno represented another city state, clan, tribe or state within their own. The poxenos of certain city enjoyed within its certain rights and privileges concerning trade, taxation and the law, as well as a variety of other honorary benefits. The institution of proxeno became the basis of future international relationships in the ancient world and the English word proxy derives from the word an office⁹

Like other states of the ancient world, Rome did not process permanent diplomatic system with permanent diplomatic missions and permanent diplomatic representatives akin to today's envoys and convoys. Legations played a major part in diplomatic life. They enjoyed special privileges and the positions of envoy were considered sacred. Murdering or insulting an envoy often served as a motive for war.¹⁰

⁷Ibid

⁸Ibid

⁹Ibid

¹⁰Ibid

A roman envoy was urinated on as he was leaving the city of Terenbim. He made a vow that "this stain will be washed by blood" and this was fulfilled during the second Punic war.¹¹

1.3 Literature Review

As earlier mentioned, diplomatic immunity is defined by the black's law dictionary¹² as the art and practice of conducting negotiations between foreign governments for the attainment of mutually satisfactory political relations.

Diplomacy has been defined as official activity of a given states 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 abroad¹³. Due to increased interconnectedness of states as a result of advances in ICT, It's vital for states to foster peaceful interactions. This is done through diplomacy. In this interaction between states for economic political and even cultural reasons, rules of engagement are requisite.

This study shall examine the topic of diplomatic immunity and privileges accorded to diplomats and the likelihood of this immunity being subject to abuse and prone to be taken advantage of by criminals. It attempts a critical analysis of the principle of diplomatic immunity, the law and plausible suggestions to avoid the exploitation of diplomatic immunity to commit crime under the "umbrella" of diplomatic immunity.

There is confusion regarding the interpretation and meaning of many of the different notions as well as the scope and contents of the diplomatic and consular immunities for different categories of staff and their family members which necessitates an explanation of the applicable set of international laws on the subject.

Of the various sources of information and literature used in the study, the importance of internet resources cannot be underestimated.

¹¹ Church man David (2013) "why we fight"; The Origins, Nature and Management of Human Conflicts (2nd ed)

¹² Blacks law dictionary sixth edition: Black Henry Campbell (1990) Hardcover on Amazon.com

¹³ Malanczuk peter 7th edition(1997)modern introduction to international law

In international law, the most important literature on the law on diplomatic immunity is 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.¹⁴ A great part of the convention now reflects customary international law and it's clear that virtually all disputes over diplomatic law can be resolved by reference to this treaty or the obligations contained therein.

In earlier literature, the immunity of a diplomatic representative 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 established, it was unusual for criminal proceedings to take place without prior arrest and detention of the accused. But as time passed and the arrest and detention of the accused was not essential for criminal proceedings, diplomatic immunity from criminal jurisdiction emerged as a separate principle of diplomatic law.¹⁵

There is a wide range of literature ranging from journals, books articles publications by various writers over the principles surrounding diplomatic immunity and crime but the subject lives room for more research.

Mitchel Ross writing in the American university law review in his Article "Re thinking diplomatic immunity",¹⁶ discussed extensively on the subject of diplomatic immunity and crime. 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.

¹⁴Ibid

¹⁵ Personal inviolability and diplomatic immunity in respect of serious crimes.www.juridicainternational.eu

¹⁶ American university international law review vol. 4 issue 1,1989,Rethinking diplomatic law

Ross further discusses the Vienna convention on diplomatic relations and points out that it was 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.

Eirwen-Jane Pierrot in his paper titled "Escaping diplomatic immunity "discusses abuse of diplomatic immunity. He points out that despite the duties diplomats have on following the law of the receiving nation, 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. Jane emphasizes this point by citing apparent examples of diplomats breaking the law. She cites the example of the well-publicized incident of diplomatic complicity in serious crime where a London police woman was murdered through a bullet fired from the Libyan people's bureau.

Jane gives another glaring example of abuse of diplomatic immunity by pointing out the concern over seriousness and prevalence of a new form of enslavement which sadly has implicated a number of diplomatic agents. That thousands of people have found themselves victims of domestic slavery. Forced to work without financial reward in violation of their Human rights and dignity.

Ali M.Farahmand has also written extensively on diplomatic immunity and crime. In the article "Diplomatic immunity and diplomatic crime" he pointed out that this is an area that is in desperate need of reform as early as 1990.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.¹⁷

Mark S.Zaid in his book "diplomatic immunity: to have or not to have, that is the question also discusses the subject of diplomatic immunity and crime. Its pointed out that the question of whether diplomats should be fully immune from criminal

¹⁷ Diplomatic immunity and diplomatic crime: a legislative proposal to curtail Abuses; note.AliM.Farahmand,journal of legislation. Volume 16 issue 1

prosecution, no matter what the alleged crime, is one that is neither new nor free from dispute. That as a matter of international law, the source of immunity and extent and the extent to which it extends is quite clear.¹⁸ 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.

All in all, this much is true; Diplomatic immunity is a necessary evil, though evil it truly rarely is. There are improvements that can be implemented that would serve to possibly prevent future offenses or tragedies from occurring.

1.4 Objectives of the Study

The general objective of the study is to examine the principle of Diplomatic immunity in relation to crimes and suggest possible modifications and areas of improvement. It covers how the current regime of diplomatic privileges and immunities facilitate diplomatic intercourse. The study has the following specific objectives:

1. To analyze the concept of diplomatic immunity.
2. To examine the extent of the abuse of diplomatic privileges and immunities.
3. To evaluate the relevance of the laws on diplomatic privileges and immunity of diplomatic conducts.
4. To investigate the efficacy of the Vienna Convention and examine the challenges facing its implementation.

1.5 Research Question

The study seeks to test the following objectives:

1. To what extent is the established regime of diplomatic immunities and privileges effective in preventing diplomatic crimes?
2. To what extent is the abuse of diplomatic immunity a result of the weakness of the VCDR?
3. To what extent has the lack of an enforcement mechanism internationally incapacitated the VCDR?

¹⁸ Diplomatic immunity: to have or not to have, that is the question by mark S Zaid.

1.6 Methodology

The research being of legal nature qualitative method is applied mainly involving desk review. Where there is basically use of a text book, various journals, articles and reports and decided cases, pamphlets and magazines.

1.7 Purpose of the Study.

This paper attempts to address the inadequacies in the principle of diplomatic immunity in relation to crimes committed by diplomatic officials.

Diplomatic immunity is a form of legal immunity that ensures diplomats are given a safe passage and are considered exemptible to law suits or prosecution under host country's laws. This is paper intended to find out whether the principle of diplomatic immunity perpetuates crimes or not look at the laws that relate to the principle in order to suggest plausible alternatives that can be adopted in diplomatic cycles which are more effective.

1.8 Significance of the Study.

It is believed that when this study is carried out, it will contribute significantly to the modification of the principles surrounding Diplomatic immunity identifying the weaknesses of the laws related to the principle, provide commendable knowledge and government agencies.

The study is also assumed if accomplished to contribute to improvements of various laws governing diplomatic immunity. This will contribute to appropriate recognition of sanctity of diplomats as well as to the citizens of their host states.

The study is also expected to provide a base for further research which will help to bridge fundamental gaps on the subject. It is therefore expected that since the study is carried out, the recommendations made will contribute to all possible modifications of the principle of diplomatic immunity and related laws. Further the study can contribute to educate the diplomats and their hosts on exercise of their various rights and duties while recognizing importance of others with whom they associate.

The study is part and partial of the requirement to fulfill for the award of bachelors of law to the researcher.

1.9 Scope of the Study

The study aims at covering the concept of Diplomatic immunity aiming at understanding the rights, privileges and protection enjoyed by diplomats and extent at which they are enjoyed. The study will look at current regime of diplomatic immunity, abuse, crimes, protection of diplomats.

1.10 Synopsis of the Study.

The study is divided into five chapters, Chapter One covers the background of the study, statement of problem, literature review, objectives of the study, research question, methodology, purpose of the study, significance of the study, scope of the study and chapterisation.

Chapter Two focuses and provides an over view of the principles governing diplomatic immunity in relation to crimes committed by diplomatic officials and the legal frame work that governs diplomacy both at international and local levels and crimes that can be committed by and against diplomats.

Chapter Three gives critical and over view of the discussion in chapter two.

Chapter Four covers the research findings on issues pertaining diplomatic immunity in relation crimes as will be viewed from primary and secondary sources, the desired modifications.

Chapter Five draws conclusions and marks recommendations in view of study findings.

1.11. Conclusions

A diplomatic mission has a function of representing the sending state in the receiving state, negotiating with the government of receiving state and ascertaining by all lawful means conditions and developments in the receiving State. The Immunity from jurisdiction of diplomatic agents and of persons enjoying immunity may be waived by sending state. Diplomatic immunity is a principle of international law traced back to antiquity and it has developed due to the relations between countries. Diplomatic immunity will be granted to protect functions of the diplomats without interference.

CHAPTER TWO

THE HISTORICAL BACKGROUND OF DIPLOMATIC IMMUNITY.

2.0. Introduction

As earlier pointed out the black's law dictionary six edition defines diplomacy as the art and practice of conducting negotiations between foreign governments to the attainment of mutually satisfactory political relations, negotiations or intercourse between nations through their representatives¹⁹.

Diplomatic immunity is defined as an international law that gives foreign diplomatic special rights in the country where they are working²⁰. diplomatic immunity is a form of legal immunity that ensures diplomats are given safe passage and are considered not susceptible to law suit or prosecution under the host country laws.²¹

2.1. Evolution of Diplomatic Immunity.

Sales Cameon said "the diplomat is not the spoilt child of historians". The art of diplomacy is as old as man that the first diplomats may have been the angles who served as messengers between the heaven and earth. Diplomatic immunity has been a facet of diplomatic relations for countless years, and is regarded as one of the oldest branches of international law. The preamble to the Vienna convention recognizes this and states... recalling that people of all nations from ancient times have recognized the status of diplomatic agents..."

With the concentration of states in geographical area, interaction between states was inevitable especially with the existence of common language, culture or religion²². Envoys have since time immemorial been specifically chosen and sent in order to deliver messages, receive replies and report on any news from foreign states. These

¹⁹Black's law dictionary 6th edition:Black Henry Campbell (1990) Hardcover on Amazon.com

²⁰ [https://www.britannica.com>Diplomatic immunity/international law/Britannica.com](https://www.britannica.com>Diplomatic%20immunity/international%20law/Britannica.com)>accessed 11 August 2018

²¹Ibid

²²Parkhill "diplomacy in the modern world: a reconsideration of the bases for diplomatic immunity

functions ensured the development of special customs on the treatment of ambassador and other special representatives of other states. Necessity forced most states to provide envoys with basic protection both within the state of final destination and in states of transit.²³

The special immunities and privileges related to diplomatic personnel developed in part as a consequence of sovereign immunity and the independence and equality of states.²⁴ With the establishment of permanent missions, sovereign's acknowledged the importance of ambassadors stationed in foreign states in order to negotiate and gather information. As the nature and functions of diplomats changed from messenger to negotiator and in some instances to spy, so the legal basis of justifying diplomatic immunity changed.²⁵

Ambassador William Macomber once described diplomacy as "the angels game". Ambrose Bierce defined diplomacy in his Devils dictionary as he patriotic is of laying for ones' country²⁶. Diplomacy is very ancient profession and its origin can be traced back to the dawn of history. The beginning of organized diplomacy can be traced to the times of the city states of ancient Greece, although prior to that too a rudimentary type of diplomacy existed.

Harold Micholson entertains the idea that tribes of cave dwelling anthropoid apes would probably have had dealings with one another in such matters as drawing the limits of their relevant hunting grounds and bringing to an end a day's battle²⁷

Although his speculation cannot be proven, Barker believes it is not an unreasonable thought. It is an interesting theory and possibly the genesis of social interaction between tribes.

²³ Ibid

²⁴ Ibid

²⁵ Ibid

²⁶ Journal of the history of international law, 2000, pp 73

²⁷ Barker JC Barker. The abuse of Diplomatic privileges immunities: a necessary evil? (1996) p.14

Harold Micholson observes that²⁸ there came a stage when the anthropoid apes inhabiting one group of causes realized that it might be profitable to reach some understanding with the neighboring groups regarding the limits of the respective hunting territories. It must have been that no negotiation could be lead to a satisfactory conclusion if the emissaries of either party were murdered on arrival. Thus the first principle to become firmly established was that of diplomatic immunity. It is found among the Australian aborigines, in the institute of man is and as an accepted principle in the Homeric poems.

Man is a social being, led from the very beginning by his community instincts. It is true that the attitude of savages towards strangers and foreign tribes in characterized by suspicion, but even among the most punitive people, there appear certain complexes of mutual interests which are condition of contract. Our ancient thinkers always devoted their time and attention to the development and growth of these relations and tried to put these on sound footing. In the ancient past, Kutilaya, Plato as well as Aristotle discussed about diplomacy in considerable details. They haven't only discussed the objective of diplomacy but also duties and responsible of diplomats.

2.2 Evolution of Diplomacy in Europe

The ability to practice diplomacy is one of the defining elements of a state, and diplomacy has been practiced since the formation of the first city states. Originally diplomats were sent only for specific negotiations, and would return immediately after their mission concluded diplomats were usually relatives of the ruling family or very high rank in order to give them legitimacy when they sought to negotiate with the other state.²⁹

Modern diplomacy origins are often traced to the states of northern Italy in the early renaissance, with the first embassies being established in the thirteenth century Milan

²⁸ Uyneni.32 international relations organisations (reprint, New Delhi) 2006 pg 65

²⁹ A brief history of diplomacy<www.diplomat.com>accessed 11 August 2018

(Italy) played a leading role, especially under Francesco Sforza who established permanent embassies to the other cities states of northern Italy. It was in Italy that many of the traditions of modern diplomacy began. Such as the presentation of an ambassador`s credentials to the head of state³⁰.The practice spread from Italy to the other European powers, Milan was the first to send a representative to the court of France in 1455.

Milan however, refused to host French representatives fearing espionage and possible intervention in internal affairs. As foreign powers such as France and Spain became increasingly involved in Italian politics, the need to accept emissaries was recognized.³¹ Soon all the major European powers were exchanging representatives. Spain was the first to send permanent representatives when it appointed an ambassador to the court of England in 1487. By late 16th century permanent missions became the standard.

Many of the conventions of modern diplomacy developed during this period. The top rank of representatives was an ambassador. An ambassador at this time was always a noble man. The rank of the noble vanned with the prestige of the country he was posted to. Defining standards emerged for ambassadors, requiring that they have large residences, host lavish parties, and play an important role in the court life of the host nation.

In Rome, the most important post for catholic ambassadors, the French and Spanish representatives sometimes maintained a retinue of up to a hundred people. Even in smaller posts, ambassadors could be very expensive. Smaller states would send and receive envoys that were one level below an ambassador.³²

Ambassadors at the time were nobles with little foreign or diplomatic experience and needed to be supported by a large embassy staff³³. These professionals were sent on

³⁰Ibid

³¹Ibid

³²Ibid

³³Ibid

longer assignments and were far more knowledgeable about the host country. Embassy-staff consisted of a wide range of employees, including some dedicated to espionage, the need for skilled individuals to staff embassies was met by the graduates of universities, and this led to an increase in the study of international law modern languages and history at universities through Europe³⁴.

At the same time, permanent foreign ministries were established in almost all European states to co-ordinate embassies and their staffs. These ministries were still far from their modern form. Many had extraneous internal responsibilities. Britain had two departments with frequently overlapping powers until 1782. These early foreign ministries were also much smaller. France, which boasted the largest foreign affairs department, had only a full time employees in 1780s³⁵.

The elements of modern diplomacy slowly spread to Eastern Europe and arrived in Russia by the early eighteenth century. The entire system was greatly disrupted by the French revolution and the subsequent years of warfare. The revolution would see commissioners take over the diplomacy of the French state, and of those conquered by revolutionary armies. Ranks of precedence were abolished. Napoleon also refused to acknowledge diplomatic immunity, imprisoning several British diplomats accused of scheming against France. He had no patience for the often slow moving process of formal diplomacy.³⁶

After the fall of Napoleon, the congress of Vienna of 1815 established an international system of diplomatic rank. Disputes on precedence among nations (and the appropriate diplomatic ranks used) persisted for over a century until after World War II, when the rank of ambassador became the norm³⁷.

³⁴ Ibid

³⁵ Supra with material from Wikipedia article "Diplomacy"

³⁶ Ibid

³⁷ Ibid

2.3. Evolution of Diplomacy in Pre-Colonial Africa.

In Africa during the pre-colonial period several groups of states maintained relationships with one another in time of peace at an official level and on a more or less regular basis³⁸. Sometimes the member states of these groups had once belonged to the same empire as was the case in parts of the upper Niger. In Senegambia, and in the interlacustine region of East Africa. Sometimes their relationship was based on nearly at a distance, as with Dahomey and Asante, sometimes, on common ancestry and traditions, as with the Yoruba and Fanle states, or the kingdoms of the Mossi-Dagomba complex, or the LubaLunda states³⁹. However, their mutual relationship originated official contact between these states, seems to have been maintained by methods and procedures which historians of the non-African world describes as diplomatic. According to one well known definition diplomacy is the conduct of business between states by peaceful means". If so, then pre-colonial Africa was no stranger to diplomacy or the diplomatic arts⁴⁰.

In Africa before the imperial period, moreover the subject of international relations. What was discussed and decided seems to have been much the same as in other areas of the world. Treaties were negotiated, frontiers of trade and authority more often than of territory were delimited past disputes were settled, and potential crises argued away. The means employed to achieve these results includes the sending of embassies both adhoc and permanent.⁴¹ Present giving and receiving and the use regular courier services⁴²

³⁸ The international journal of African historical studies pg 81

³⁹ Ibid

⁴⁰ Ibid

⁴¹ Ibid

⁴² Ibid

2.4. Diplomatic Immunity and Crime.

It has frequently been observed that there is generally good compliance with the law of diplomatic immunity because here, almost as in other area of international law, the reciprocal benefits of compliance are visible and manifest.⁴³ Virtually every state that is host to a foreign diplomatic mission will have its own embassy in the territory of the sending state. Every state wants its own diplomats operating a broad, and its own diplomatic bags embassies and archives, to receive those protections that are provided by international law⁴⁴. Throwing those game obligations vis-à-vis the diplomatic community in one`s own country is widely perceived as a major factor in ensuring that there is no erosion of the international law requirements on diplomatic privileges and immunities. The purpose of diplomatic law is to facilitate international diplomacy, balancing the power of the foreign policy interests of the sending state with respect for the territorial sovereignty of the receiving states. However, immunity does not entitle diplomats to those local laws.⁴⁵

2.5. Can Diplomatic Immunity Perpetuate Crime?

A hilarious story was told back in April 2016 by Christopher Beam of a Qatar, diplomat Mohammed Al-Madad, who causes a scare on board a flight from Washington D.C to Denver by smoking in the bathroom. When confronted by U.S marshals, he reportedly made a crack about lighting a bomb in his shoes and said he had diplomatic immunity⁴⁶.this sounds a joke but it has a deeper meaning. One can get away with any crime if they have diplomatic immunity pretty much unless one`s own government gives you up.

In February 15 2011, the U.S government launched a high profile effort to secure the release of Raymond Davis, a state member at the U.S embassy in Islamabad, who was

⁴³ The abuse of diplomatic privileged immunities<www.slate.com>accessed 11 August 2018

⁴⁴ Ibid

⁴⁵ Ibid

⁴⁶ Slate how far does diplomatic immunity go?www.slate.com

arrested in late January for the fatal shooting of two, Pakistani men in Lahore⁴⁷. Davis job at the embassy and why he was carrying a gun is still unclear.

Demonstrations were held demanding Davis prosecution but he claimed he was acting in self defence after one of the men, brandishing a weapon, approached his car on a motorcycle.⁴⁸ According to the United States. Davis as a member of the embassy state enjoys diplomatic immunity from prosecution⁴⁹

Most likely Davis enjoyed this immunity. The rules concerning diplomatic immunity are set forth in the 1961, Vienna convention on Diplomatic relations, which has been agreed upon by 187 countries which included United States and Pakistan. The treaty states clearly that diplomatic agents including the members of the diplomatic staff, and of the administrative and technical staff and of the service staff of the mission enjoy "immunity from the criminal jurisdiction of the receiving state" they, also enjoy immunity from civil proceedings unless the case involves property or business interests unrelated to their diplomatic duties.⁵⁰

For about 15 years it was fairly generally tell that the provisions of the Vienna convention did indeed provide a fair balance between the interests of the sending and receiving states. But in many of the major capitals of the world, it came to be felt that diplomats were abusing the privileged status given to their vehicle and in particular parking illegally. Causing obstructions and failing to pay traffic fines. This feeling was of course, compounded in a country such as the United States, which was also host in New York to the United Nations and important specialized agencies. By contrast, there was much less public awareness of traffic violations by the diplomatic community in London⁵¹ on the other hand London has seemed an attractive venue for shoplifting and

⁴⁷ Ibid

⁴⁸ Ibid

⁴⁹ Can you get away with any crime if you have diplomatic immunity .Article by Joshua E.KEATING foreign policy.com.

⁵⁰ Ibid

⁵¹ Rosalyn Higgins Dbeqc the abuse of diplomatic privileged and immunities; recent UK experience :www.oxford scholarship.com

other offenses. In the period 1974-mid 1984, there were 546 occasions on which persons avoided arrest or prosecution for alleged serious offenses because of diplomatic immunity.⁵²

In the mid 1970`s, more worrying problems developed it became clear that certain diplomatic missions were holding fire arms contrary to the provisions of local law. Further, it seemed that these fire arms were often being imported through diplomatic bag.⁵³ In recent years in various western countries there have also been terrorist incidents, in which it was believed that the weapons used were provided from diplomatic sources. It was widely thought that certain foreign government was promoting state terrorism against dissident exiles, through the involvement of their embassies in the country concerned.⁵⁴ normal diplomatic communications with the Libyan embassy in London were at one time strainer when the so called revolutionary committees had taken over the embassy Named the embassy the Libyan people`s Bureaus and refused to designate a person in charge of the mission.⁵⁵

Another example showing how diplomatic immunity can easily be corrupted is the incident involving life to former Zimbabwe president Grace Mugabe. The wife of the former Zimbabwe strong man was accused of assaulting a young woman while on a visit to South Africa. A week after the incident, in a hotel in sandton, Johannesburg`s upper market central business district, a south Africa.

Government minister announced that she had been granted diplomatic immunity. She subsequently returned to Zimbabwe without any attempt by the South African police service to arrest her.⁵⁶ The incident sparked a famous debate about whether she should have been granted immunity, and what this means for the victim of the alleged assault.

⁵² Ibid

⁵³ Ibid

⁵⁴ Ibid

⁵⁵ Grace Mugabe`s south Africa spot shows easily diplomatic immunity .com

⁵⁶ Be corrupted Article by Gerhard Kemp(quartz) August 22,2017

At the time of the alleged assault, Grace Mugabe was on a private, not official visit to South Africa. She was not granted immunity before her visit and it's not clear on what basis she was now being granted⁵⁷ normally diplomatic immunity is granted to an individual envoy by prior agreement or by the minister of international relations if it is in the interest of a country.⁵⁸ Grace Mugabe was neither a visiting head of state or government, nor a diplomat representing her country both of which would have qualified her for diplomatic immunity. There was clearly no basis in customary conventional international law or domestic law for the spouse of a head of state to claim as a right or entitlement to some form of immunity when visiting a foreign state.⁵⁹

As such diplomats are representatives of their governments and are protected by diplomatic immunity. Meaning that they usually can't be prosecuted for crimes they may commit while stationed abroad. This is a reciprocal arrangement which serves to protect civil servants in foreign postings, but like any privilege, it can be abused in some particularly egregious cases, even diplomatic immunity has its limits.

An example can be given in 1967, Sao Boonwaal was the ambassador for Burma in Ceylon (Sri Lanka) previously served in an official capacity in the UK, Germany, the Netherlands and France, and he represented Burma in international atomic energy agency conference in Geneva, Switzerland. Boonwaal caused international headlines when he shot and killed his wife, Shirley, over an alleged affair with popular night club singer Rex de Silva. Shirley Boonwaal had been active in Colombia high society and charity events but allegedly had a history of infidelity. He hid behind diplomatic immunity.

⁵⁷ supra

⁵⁸ Supra (n.56)

⁵⁹ Supra (n.56)

2.6. Conclusion.

A brief historical survey shows the evolution of privileges and immunities up-to modern times as well, diplomats were not allowed to possess any property in the host country. The history of diplomatic immunity interest not only to diplomatic lawyers but to theorists of diplomacy and historians of international relations. International law, diplomatic immunity was primarily based on providing absolute immunity for diplomats and their families. In the early period of history, messengers were protected with the taboos. The diplomatic privileges and immunities should allow diplomats to perform their functions without interference.

CHAPTER THREE

OVERVIEW OF THE PRINCIPLE OF THE DIPLOMATIC IMMUNITY IN THE WORLD.

3.0. Introduction

For most of history, diplomatic and consular practice was governed by customary international law. States wanted to ensure that their envoys were protected abroad while on official missions, leading to the progressive establishment of norms governing diplomatic practice without such norms, significant transactions costs would incur whenever states interacted with each other.⁶⁰ Although the fundamental rules such as the safe passage of diplomats were recognized by ancient civilizations, the rise of modern nation state following the 1648 treaty of Westphalia coincided with the practice of establishing permanent scholars recorded remerging customary rules of diplomatic practice, the first attempt to codify diplomatic law was in 1815 at the congress of Vienna⁶¹.

In the aftermath of Napoleonic wars. Later, in 1928, the Pan-American union (the predecessor of the organization of American states) codified rules regarding privileges and immunities.⁶² However, the rules did not accurately reflect state practice and only exerted a regional influence confined to Latin America. Successful attempts at the codification of diplomatic and consular law on an international scale occurred only after the international law commission of the United Nations took up looks in the middle of the 20th century.

⁶⁰ Diplomatic consular law research guide Christopher law

⁶¹ *ibid*

⁶² *ibid*

3.1. Events that have influenced development of international diplomatic law with an element of criminality.

Every rule of positive international law presents two essential aspects for critical examination on different planes; the degree in which its content corresponds to social needs and the accuracy of its formal expression compared with the practice of states.⁶³ The rule of international law retains its full force in application and consequently its positiveness, only in so far as it satisfies this double requirement.⁶⁴ This is a fact of experience particularly well illustrated in treaty regulation.

Professor of law Duke University, North Carolina once pointed out that certainly the authority of the Vienna convention on diplomatic relations is affected by the atmosphere of tension evident in various countries of Africa and Asia.⁶⁵

Burning of embassies and of diplomatic missions, murders of ambassadors and diplomatic agents (Sudan, Afghanistan, Cyprus, Lebanon, Egypt and Pakistan) through not directly due to official government action, is frequently the result of revolutionary conditions induced by the regimes of the host countries.

At the peak of soviet Chinese tensions, reciprocal treatment of diplomats of the two countries left a good deal to be desired. While outside the scope of the present inquiring, these events have a bearing on it⁶⁶.

As such any study of the action of power on international law demands knowledge of all the social realities that determine this action as well as knowledge of all the social realities that determine this action as well as knowledge of the processes of formal elaboration by which it takes effect.

⁶³ The regime of diplomacy and the Tehran hostages by Kazimierz Grzybowokipg 42

⁶⁴ Ibid

⁶⁵ Ibid

⁶⁶ Ibid

The following is a sample of events that have impacted consular law in modern times⁶⁷ with element of criminality.

Takeover of the US embassy in Tehran 1979-1981.

The incident where the Burmese ambassador to Sri Lanka murdered his wife and burned her body on a pyre of wood within embassy premises in 1979.

Shooting of a British law enforcement officer from inside the Libyan embassy in London, 1984.

Kidnapping and attempted smuggling of a former Nigerian prime minister in a diplomatic bag from London areas airport 1984. The waiver of diplomatic immunity for high ranking Georgian diplomat after riling a teenager in Maryland 1997.

The unauthorized leak and publication of US state department cables, 2010. The granting of diplomatic asylum to Julian Assange editor in chief of "wikileaks" at the Ecuadorian embassy in London 2012.

The arrest of deputy counsel to general of the Indian consulate in New York city for allegedly committing visa fraud on behalf of her domestic worker 2013.

3.2.1 The takeover of the US embassy in Tehran

The case of the American hostages in Iran brings the discussion of diplomatic regime to the present time. At about 10:30 Tehran time, on November 4 1979, a mob of demonstrators attacked the American embassy in Iran and after a two hours siege obtained control of the building and seized the personnel present in the embassy offices.⁶⁸

According to a statement by the U.S government, the Iranian government security personnel on duty at the embassy compound made no effort to deter or discourage the

⁶⁷ Ibid

⁶⁸ Ibid

demonstrators from the takeover.⁶⁹ Furthermore, during the two hours attack no Iranian security forces were sent to relieve the situation despite repeated calls for help from the embassy to the Iranian foreign ministry⁷⁰ and despite the efforts of the united states charge d`affaires, who made contact with the prime minister's office and foreign ministry officials, at the time of the attack, No attempt was made by the government of Iran to clear the embassy's premises, to rescue the personnel held hostage nor did the government of Iran take any action when shortly after the embassy seizure, the united states consulates in Tabriz and Shiraz were also seized⁷¹.

Since the time of the takeover, the embassy personnel have been held hostage in the compound under threatening and inhumane conditions. They were paraded in front of the Crowd of demonstrators, blind folded, and bound forced to remain silent, without communication with their government and families⁷². The united states government asked the court of international justice to order that interim measures of protection to be provided for the release of the hostages, for the premises of the united states embassy in Tehran to be cleared and for united states diplomats and consular staff to be assured full freedom in the embassy and chancery premises and freedom of movement in Iran necessary premises and freedom of movement in Iran necessary to carry out their diplomatic and consular functions.⁷³ While these legal steps were being taken, the United States government pursued negotiations, through various channels, including the good offices of friendly governments, and through the secretary general of the United Nations. As a result of gentleman's agreement between the secretary general and the Iranian government. It stipulated that the crimes committed by the ousted regime in Iran be investigated by an international commission of inquiry.⁷⁴ On march 9, 1980, the commission after spending two weeks in Tehran, returned with it's

⁶⁹ ibid

⁷⁰ ibid

⁷¹ The regime of diplomacy and the hostage by Kazimier Grzybowoki pg 42-45

⁷² ibid

⁷³ supra(n.71)

⁷⁴ Ibid

mission unaccomplished, while the condition of the hostages and the occupation of the embassy remain unchanged⁷⁵.

The conclusion which comes to mind in the light of such confrontation of the conventions with the practices of states is that reciprocity in the regime of diplomacy plays a much larger role than is accorded to it in formal law. The inability to answer in kind exposes the diplomats of countries with stricter standards of conduct in international relations to dangers and humiliations. The treatment of American diplomats in Tehran confirms this conclusion.

3.2.2. The shooting of British law enforcement officer from inside the Libyan embassy in London, 1984.

States establish diplomatic missions and send both diplomatic and non-diplomatic staff abroad in order to represent and protect their interests and those of their nationals. The international law on diplomatic privileges gives missions and personnel are granted different privileges and immunities in the receiving states so that they can perform their functions as independently and efficiently as possible these guarantees are supposed to prevent attacks by diplomatic missions and their staff by both public officials and private persons.

In reality there is no often need for such a protection states refrain from interfering, as they are interested in mutually friendly relations and wish their own diplomatic missions and their staff to have the widest possible freedom to operate in the respective receiving states.

The principle of reciprocity is the most effective means against breaches of diplomatic law nevertheless, there are occasions in which privileges and immunities provided become indispensable to ensuring the normal functioning of a diplomatic mission and the physical safety of its staff. The danger may originate from local authorities as well as from private groups.

⁷⁵Ibid

The most drastic example concerns the April 1984 shooting incident surrounding the Libyan peoples Bureau (Libya`s preferred term for an embassy)⁷⁶ the opponents of colonel Qaddaf`s regime had for some time already been holding regular protests in front of the Libyan mission. The day before a planned demonstration Libyan diplomat requested the British authorities to prevent the demonstrations and also warned that they would otherwise not be responsible for the consequences.⁷⁷ On the day of the demonstration 17th April, someone opened fire on the protestors from the premises of the mission. As a consequence several of them were seriously insured and a female constable protecting the mission was killed the police did not return fire but the Libyan authorities in Tripoli were immediately asked to instruct those inside the mission to leave the building and to allow the premises to be searched by the police for weapons and explosives.⁷⁸

Unsurprisingly the request was refused. Instead British nationals were unjustifiably arrested.⁷⁹ The United Kingdom did not breach the inviolability of the mission although such a possibility was considered. However, it was concluded that according to the meaning and truant preparations of Article 22 Vienna convention, the premises of the mission do not lose inviolability in the event of inappropriate use of the premises and therefore it was necessary to utilize other means⁸⁰.

As the parties were not able to settle their dispute, the United Kingdom (after some further violent acts) terminated diplomatic relations and ordered all members of the Libyan peoples Bureau to leave by the end of April⁸¹. The British authorities then

⁷⁶ The siege of the Estonian embassy in moscas: protection of Diplomatic mission and stand in the relieving state. www.jundoca-international.eu/index.php

⁷⁷ Ibid

⁷⁸ Supra(n.76)

⁷⁹ Ibid

⁸⁰ Ibid

⁸¹ Ibid

entered the premises. In the presence of a representative of the Saudi Arabian embassy, and found weapons and relevant forensic evidence⁸².

When the incident at the Libyan peoples Bureau was analyzed. Later in the British parliament, it was noted that a few shots fired from a mission even if they caused an injury or death, would not warrant entry to the premises of the mission under self defence⁸³. However, this does not mean that self defence is completely out of question. It must first be demonstrated that there is a necessity of self defence. Instant over whelming, leaving no choice of means and no moment for deliberation⁸⁴.

3.2.3. The kidnapping and attempted smuggling of a former Nigerian prime minister in a diplomatic bag from London area airport 1984.

On 31 December 1983, the elected government of Nigeria was overthrown in a military coup by the country's army⁸⁵. The new military government jailed several government ministers for corruption and embezzlement while in office. However, the powerful former transport minister, Umaru Dikko, fled to London. The military claimed that Dikko used his position as minister to enrich himself in a series of racketeering scandals. It regarded Dikko as its most wanted fugitive from justice and wanted to bring him back to Nigeria to face that.⁸⁶

To bring this about, they hatched a plot to kidnap him off the streets of London. Nigeria intelligence services and undercover agents (with the help of several Israel`s who were alleged to be members of Israel's intelligence agency, Mossad) tracked Dikko to a house in west London. After placing the house under surveillance, the agents decided to strike on July 5, 1984.⁸⁷

⁸²R.Higgins. the abuse of diplomatic privileges and immunities ; recent Or experience- American journal of international law 1985(79) pp 643-644

⁸³ J.S Beaumont (Note 14) p.394

⁸⁴ British foreign and state papers 1840-1841(29) p.1138

⁸⁵ Ibid

⁸⁶ Ibid

⁸⁷ Ibid

Moments after Dikko emerged from the house two men burst out from a van parked outside the house. They grabbed Dikko and bundled him into the back of a van. The team inside the van included a doctor who injected Dikko to render him unconscious⁸⁸.

Dikko's kidnappers locked him in a large crate labeled diplomatic baggage and addressed to the Nigerian ministry of external affairs in the then capital city, Lagos. They claimed diplomatic immunity for the crate contents and drove him to Stansted airport to place him on a waiting Nigerian cargo plane.⁸⁹

Unbeknown to the kidnappers, Dikko's secretary had glanced out of her window just in time to see her boss being bundled into the van outside his house and she dialed 999. The kidnapper was initially thought to be the work of criminals and was referred to Scotland Yard's anti-terrorist squad. The Prime Minister Margaret Thatcher was informed⁹⁰.

The British government ordered customs officials at airports, ports and border crossing to be vigilant when inspecting Nigeria bound vessels although the Nigerian cargo plane was minutes from taking off with Dikko on board, a customs officer at Stansted airport ordered the crate to be opened. Nigeria intelligence officials and diplomatic staff protested that the crate could not be opened as it was protected by diplomatic immunity.⁹¹

The customs officer called anti-terrorist police they cordoned off the area and evacuated airport staff. Customs then opened the crate they found Dikko unconscious next to the doctor who had injected him. The doctor had accompanied Dikko in the box to top up his anesthetics and ensure he did not die during transit.⁹²

⁸⁸ Ibid

⁸⁹ Ibid

⁹⁰ The Independent newspaper Monday 20 August 2012 Umaru Dikko the man who was nearly spirited away in a diplomatic bag

⁹¹ Ibid

⁹² Ibid

The cargo plane crew was arrested together with the Nigerian officials and Israel is who drove the crate to stansted. The Nigeria and Israel government denied any involvement in the affair. Foreign intelligence involvement became apparent only when the sophistication and daring of Dikkos kidnap was revealed. The kidnap caused one of the worst ever diplomatic crises between Britain and Nigeria. The Nigeria high commissioner was not declared personal nor grant in London, and the head of Nigeria airways narrowly escaped being arrested by British police. Diplomatic relations between Nigeria and Britain were suspended for two years⁹³.

Four men were convicted of kidnapping Dikko (three Israels and a Nigerian). All were released and returned to their countries after serving their sentences.⁹⁴

3.2.4. The granting of diplomatic asylum to Julian Assange.

On June 19th 2012, Julian Assange, the founder of wiki leaks, walked into Ecuadorian embassy in London and requested diplomatic asylum from Ecuadorian government⁹⁵. Assange aim was seeking asylum to prevent the U.K from extraditing him to Sweden, where he is wanted by the prosecution authority for questioning in relation to allegations of sexual molestation and rape. While Assanges immediate concern was to prevent extradition to Sweden. It was reported his underlying fear was extradition from Sweden to the United States on charges relating to the activities of wiki-leaks.⁹⁶

The issue of diplomatic asylum was deliberately not dealt with in the Vienna convention on Diplomatic relations.⁹⁷ Consequently the U.K was under no obligation to recognize Ecuador's grant of asylum to assange of facilitate Assanges. Passage out of the embassy to Ecuador. While Assange remains in the embassy, he is protected from arrest by U.K Police. Article 22 of the Vienna convention on diplomatic relations provides that the premises of the mission shall be inviolable.

⁹³ Ibid

⁹⁴ Ibid

⁹⁵ Assange the law of diplomatic relations volume 16 issue:32 by Alison Duxbury, October 11, 2012.

⁹⁶ Ibid

⁹⁷ Ibid

3.3. The Vienna Convention On Diplomatic Relations

The Vienna convention on diplomatic relations of 1961 is an international treaty that defines a framework for diplomatic relations between independent countries.⁹⁸ It specifies the privileges of a diplomatic mission to enable diplomats to perform their functions without fear coercion or harassment by the host country. This forms the legal basis for diplomatic immunity. Its articles are considered a cornerstone of modern international relations. As of February 2017, it had been ratified by 191 states.⁹⁹ The Vienna convention has subsequently become the focal point in defining and domesticating diplomatic immunity.

Chapter II of the convention provides for the facilities, privileges and immunities relating to consular posts, career consular officers and other members of a consular post.

Article 31 of the Vienna convention provides for inviolability of the consular premises. Consular premises under the article are inviolable to the extent provided by the article. Article 31(2) provides that authorities of the receiving state shall not enter that part of the consular premises which is used exclusively for the purpose of the work of the consular post except with the consent of the head of the consular post or of his designs or of the head of the diplomatic mission of the sending state. The consent of the head of the consular post may however be assumed in case of fire or other disaster requiring prompt protective action. The receiving state under article 31 is under special duty to take all appropriate steps to protect the consular premises against any intrusion or damage and to prevent any disturbance of the peace of the consular post or impairment of its dignity.

Article 41 of the Vienna convention provides for personal inviolability of consular officers. The Article provides that consular officers shall not be liable to arrest or detention pending that, except in the case of a grave crime and pursuant to a decision by the

⁹⁸ Vienna convention on diplomatic relations –en-in Wikipedia.org

⁹⁹ ibid

competent judicial authority the Article further provides that except in the cases specified in paragraph, (grave crime). Consular officers shall not be committed to prison or liable to any other form of restriction on their personal freedom saves in execution of a judicial decision of final effect.

Article 43(1) provides that consular employees shall not be amenable to the jurisdiction of the judicial or administrative authorities of the receiving state in respect of acts performed in the exercise of consular functions. The article further provides that the provisions of paragraph one shall not apply in respect of civil action either arising out of a contract concluded by a consular officer or consular employee in which he did not contract expressly or impliedly as an agent of the sending state.

Article 53 provides that every member of the consular post shall enjoy the privileges and immunities provided in the present convention from the moment he enters the territory of the receiving state on proceeding to take-up his post or if already in its territory, from the moment when he enters on his duties with the consular post. These privileges and immunities extend to family members as provided under the article.

3.4. Law on diplomatic immunity in Uganda

Diplomatic immunity in Uganda is uphold under the diplomatic privileges Act. The Act provides for realization that the purpose of diplomatic privileges and immunities is not to benefit individuals but to ensure the efficient performance of the functions of diplomatic missions as representing states. It basically upholds the Vienna convention.

3.5. Conclusion

The 1961 Vienna convention on diplomatic relations is a treaty between countries which generally grants to the official representative of a country certain privileges by the receiving country on the presumption of reciprocity e.g. we will grant immunity from prosecution to your official diplomats in our country. Criminal immunity and inviolability in UK is conferred on all diplomatic agents. The Vienna Convention and Rome Statute should therefore be amended to allow legal proceedings to be taken against diplomats at International Criminal Court (ICC) in order to ensure that diplomatic immunity doesn't amount to diplomatic impunity. Diplomatic immunity puts officials above and from petty thieves and fine-dodgers to drunk-drivers and outright murderers. Diplomatic bags are one of the main areas of abuse since there is nothing in the Vienna Convention to regulate the use of diplomatic bags and the diplomats smuggle anything from drugs to people in the diplomatic bag.

CHAPTER FOUR

THE LEGAL FRAMEWORK GOVERNING DIPLOMATIC IMMUNITY.

4.1. Introduction

This chapter presents and discusses the overall nature of the legal frame work that governs diplomatic immunity in ensuring immunity to diplomats but on the other hand which is prone to be used as a tool to perpetuate crime. The information is obtained generally through desk review and analysis made on the law governing diplomatic immunity in relation to instances of criminality that can arise as shown in previous chapters.

4.2. Effectiveness of the law on diplomatic immunity in relation to prevention of diplomatic crimes

No one is above the law. This principle has been a driving force through the great ideological experiment known as democracy¹⁰⁰. From childhood we are told that people who commit crimes must answer for them. However, the simplistic nature of this notion fails to capture the whole truth of the nuanced system of international law. International law permits certain individuals to escape accountability for their crimes. For centuries the principle of diplomatic immunity has enable foreign diplomats to avoid prosecution for violations of the host country`s laws.¹⁰¹

The Vienna convention grants diplomats their families and diplomatic property numerous protections. However of all the protections granted by the Vienna convention none has caused more of a stir than Article 31. The article provides that diplomats "shall enjoy immunity from the criminal jurisdiction of the receiving state"¹⁰². There is little doubt that these core protections have existed for centuries. However, many argue

¹⁰⁰ Constitutional solution to the problem of diplomatic crime and immunity by William G Morris Vol 36 issue 2

¹⁰¹ Ibid

¹⁰² Ibid

that there is need for wholesale changes to the law of diplomatic immunity to ensure justice if obtained for the victims of diplomatic crimes

A story was told in the Washington post of January 9, 1984. That in the early morning of August 27, a Washington woman accepted an escort home from a man she had met only once before. When they arrived at her apartment on Massachusetts Avenue NW, the man refused to leave the overpowered her, clamped his hand over her mouth and raped her¹⁰³.

"As soon I could get away from him, she narrated, Iran and locked myself in the bathroom. I told him in calling the police. I'm going to prosecute you're not going to get away with this!"¹⁰⁴

But the man did get away with it. The prime suspect was never charged because he was atelse operator at the Egyptian embassy, one of 21,000 representatives of foreign countries stations in the Washington area at the time who were protected by diplomatic immunity¹⁰⁵.

Joseph Digenova, the US attorney for the district of Columbia, whose office was precluded from prosecuting the Egyptian rape suspect pointed out that "diplomatic immunity is a troublesome concept for us to deal with" it`s part of the burden of being the nation`s capital but we don't have tolerate every aspect of it"¹⁰⁶.

In January 2017, a Sudanese diplomat avoided charges alleged sexual abuse in the US by claiming diplomatic immunity. Some things that has helped many officials facing allegations of wrong doing while serving abroad¹⁰⁷.

Mohammad Abdalla Ali 49, had been charged with forcible touching, after allegedly rubbing himself against a woman on New York city`s subway, police say but the

¹⁰³ Ibid

¹⁰⁴ Ibid

¹⁰⁵ Ibid

¹⁰⁶ Ibid

¹⁰⁷ BBC News sudan diplomat in New york and other cases of diplomatic immunity. www.bbc.com

charges were dropped. The Sudanese mission to the UN has yet to comment on the accusations¹⁰⁸.

He was protected by the Vienna convention on diplomatic relations which is intended to guarantee that no diplomat is harassed in the normal course of his or her mission¹⁰⁹.

The above given examples can attributed to the weak provisions of the convention currency conventional which provides room for rogue diplomats to engage in criminal activities.

4.3. Diplomatic Agents as Victims of Organized Crime.

One should not generalize the involvement of diplomatic agents in criminal activities. Diplomatic immunities and privileges may be exploited by criminal groups without the diplomatic agent involved knowing about the offence¹¹⁰ for instance, criminal actors may use counterfeit diplomatic bags to smuggle illegal goods across jurisdiction. If law enforcement officers cannot differentiate the authentic diplomatic pouch from counterfeit they do not have the authority to open the shipment¹¹¹.

In a rather ingenious methods of transnational drug smuggling, two diplomatic bags with 35 pounds of cocaine worth USD2million were shipped from Mexico to the UN headquarters in New York protected by the international law, the counterfeit "diplomatic" correspondence was meant to escape inspection at the border and reach New York through Cincinnati.¹¹² Where it would be picked up by local dealers. According to the investigation the officials working with UN correspondence became suspicious of the bags because of the "poorly concocted version of the UN logo on them"¹¹³. There was no wording no address, no manifest no airway bill. When the bags were opened

¹⁰⁸ Ibid

¹⁰⁹ Ibid

¹¹⁰ The utouchabes; transnational organized crimes behind diplomatic intercourses immunities.YuliyaG.Zabyelina

¹¹¹ Ibid

¹¹² Ibid

¹¹³ Ibid

the contents revealed 14 note books. Wrapped in cellphone. Each of the note books camouflaged 2.2 pounds of cocaine¹¹⁴.

In a similar case, the Garda and the Irish customs services smashed a Nigerian drug trafficking organization using counterfeit diplomatic bags to smuggle cocaine into Ireland in 2011. The law enforcement officers became suspicious of the privileged Venezuelan diplomatic pouch to address to a provincial area in athy, co Kildare having delivered the pouch to its address under surveillance; 20 kilograms of cocaine worth EUR 1.5million were seized in underground parking area of an apartment complex.¹¹⁵

Since the members of a diplomatic agents family are also bearers of diplomatic privileges and immunities they have featured as perpetrators¹¹⁶. In 1994, Brian and Daren Bernal, sons of Richard Bernal, Jamaica`s ambassador to the united states and the organization of American states (OAS), were arrested at the Norman Manley international airport in Jamaica before they could board a flight to Washington D.C they were charged with trafficking 46 kilograms of compressed marijuana packed in Caro of pineapple juice¹¹⁷.

Theft and forgery of diplomatic identification has been central to some criminal activities. Criminals who obtain fraudulent diplomatic identification document may use it to commit other crimes, including terrorism, financial fraud, narcotics trafficking and alien smuggling fugitives often seek to change their identities and travel internationally as part of their criminal activities. "Smuggling organizations show a high level of sophistication and have a variety of ways in which they obtain or produce the necessary documents, such as photo substitution, visa transposition and forgery of visas, residence permits and passports.¹¹⁸

¹¹⁴Ibid

¹¹⁵Ibid

¹¹⁶Ibid

¹¹⁷Ibid

¹¹⁸CNN News 2001

In 2001, one of the people smuggling schemes, in which forged diplomatic passports were involved was disrupted. Chinese citizens used take Chinese diplomatic identification documents to tunnel Chinese nationals through central Asia to Europe.

More than two dozens of illegal Chinese migrants were seized by the Pakistan police in Karachi.

According to the investigation, the detainees were convinced they were seeking domestic service jobs and would reach the destination with fake passports solicited for USD 5000 each¹¹⁹.

The stunning lack of oversight and accountability still pervades the visa culture of some nation's foreign missions visa malfeasance including the fraudulent issuance, procurement, counterfeit and forgery of visas has been committed by diplomatic agents. Visas for smuggling migrants may be obtained on fraudulent grounds by the connection that smuggles have at consulate services.

4.4. Human Rights and Diplomatic Immunity Law.

In recent decades international recognition of the importance of human rights has grown and with it persuasive arguments have emerged suggesting that human rights should prevail over diplomatic immunity should a conflict arise.¹²⁰

In 1998, the House of Lords famously refused to grant general pouched head of state immunity from adjudication in the context of gross violations of human rights. It was held that such abuses could not be held a public function of ahead of state and therefore could not be subject to immunity.¹²¹

Lord Steyn's opinion illustrated the point well "if atlead of state kills his gardener in a fit of rage, that could by no stretch of the imagination be described as an act performed in

¹¹⁹Ibid

¹²⁰Escaping diplomatic impunity- the case for diplomatic law reforms Eirwen Jane Pierrot October 2010

¹²¹Ibid

the exercise of his functions as head of state if ahead of state orders victims to be tortured in his presence for the sole purpose of enjoying the spectacle of the pitiful twitching of victims dying in agony that could not be described as (an act) undertaken by him in the exercise of his functions as ahead of state¹²².

The same could be said of house holding diplomatic immunity. The problem of course lies in that head of state immunity is given only *ratione material* whilst diplomatic immunity is given both *ratione material* and *ration personae* that said in his judgment on the same case, lord Nicholls stated that international law has made plain that certain types of conduct including torture and hostage taking are not acceptable conduct on the part of anyone this applies as much to heads of state or even more so, as it does to everyone else. The contrary view would make a mockery of international law¹²³.

In an important case of *USA V Iran* held before the international court of justice in 1980 there was further suggestion that laws relating to serious crimes against individuals must take precedent over other treaty law. The judgment stated that the diplomatic privilege of inviolability of the person as stated in Article 29 of the Vienna convention could not mean that a diplomatic agent caught in the act of committing an assault or other offence may not on occasion, be briefly arrested by the police of the receiving state in order to prevent the commission of the particular crime¹²⁴.

The key issue being reflected in these judgments if we accept that diplomatic immunity stems from functional necessity, that the privileges of immunity and inviolability are granted in order to protect the diplomats ability to carry out their work effectively and not as a personal benefit. The drafters did not design the convention with a mind to helping an individual escape prosecution for wrongs committed.

In the case of *Epson V smith* the judge said it is elementary law that diplomatic immunity is not immunity from legal liability, but immunity from suit. Diplomatic

¹²²Ibid

¹²³EIRWEN JANE PIERROT.Escaping diplomatic impunity. The case for diplomatic reform

¹²⁴Ibid

immunity is little more than a procedural barrier, a hand tool to enable diplomats to carry out their duties without hindrance with this in mind, it is very difficult to justify immunity taking supremacy in the hierarchy of laws over human rights. Human rights have frequently been written about as *Jus Cogens* not to be derogated from they are enshrined in an ever increasing number of regional and international treaties covenants and declarations. They cannot take supremacy over what is essentially little more than a very useful compromise¹²⁵.

4.5. Personal Inviolability of Diplomatic Agents and Crime.

Article 31 paragraph 1 of the Vienna convention states that A diplomatic agent shall enjoy immunity from the criminal jurisdiction of the receiving state the also enjoys immunity from civil and administrative jurisdiction except in the case of 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 purpose of the mission¹²⁶.

Denza comments that article 31 establishes diplomats immunity from civil and criminal jurisdiction. With precise exceptions to immunity from civil jurisdiction where previous state practice had varied immunity from jurisdiction like other immunities and privileges. There was general agreement that the diplomat needs some leeway to perform his duties without fear of his person and therefore these provisions were appropriate.

The diplomat is therefore functionally equipped with immunity *ratione materiae* which relate to conduct carried out on behalf of a state and which cannot be arbitrarily waived but rather is permanent so long as that diplomat is legally sanctioned to carry out diplomatic functions on behalf of the home government¹²⁷.

Under the Vienna convention the diplomat is immune from arrest and detention he together with his household is immune from criminal jurisdiction though with

¹²⁵ Ibid

¹²⁶ Research : diplomatic privileges and immunities. A critical analyse of the Vienna convention in diplomatic relations charity Simuliwanyela university.

¹²⁷ Ibid

exceptions. They are also immune from civil and administrative jurisdiction but this immunity can be waived if they initiate the legal process themselves. A diplomat and members of his family forming part of his household are not obliged to give evidence as witness. This is to ensure diplomats do not misuse their immunities¹²⁸.

Immunity from criminal jurisdiction therefore implies that diplomats are exempt from any form of punishment or legal consequences, the only remedy that the state does have however is to declare the diplomatic agent a *persona non grata*. Rudd observes that diplomats enjoy full diplomatic immunity may not be arrested detained and searched or their property entered without their express consent¹²⁹

The police nonetheless may still stop offending officials even if they are entitled to full immunity in case of issuing traffic citations, or attempting to interview or obtain consent to search. It needs to be kept in mind that although it is possible to institute criminal proceedings against a diplomat once the individual is no longer a diplomatic agent.

It is difficult to succeed with these proceedings in the sending state. The difficulty alone with trying to get witnesses to appear in court from another country is almost an impossibility nor would those witnesses be forced to appear in court for they can hardly be considered to be in contempt.¹³⁰

¹²⁸ Ibid

¹²⁹ Ibid

¹³⁰ Ibid.

CHAPTER FIVE

CONCLUSIONS AND RECOMMENDATIONS

5.1. Summary of the Study

The chapter presents the summary conclusions and recommendations of the study carried out on the "analysis of diplomatic immunity in relation to crimes committed by diplomatic officials."

The study involved examination of the principle of diplomatic immunity, the law that governs diplomatic immunity. The study looked at situations the law on diplomats and those around them to commit crime and covered instances where diplomats can as well fall victims to criminality under the guise of diplomatic immunity.

After an extensive examination of existing literature on the subject, the study concludes that there is need for further research to fill the gap in the literature as there is inadequate pool of knowledge on the area under study.

The study recognized the fact that the Vienna convention is a key document in the conduct of diplomacy and its value is a vested to its universal acceptance and subsequent domestication in most countries.

It was discovered also within the course of the study that diplomatic immunity originated to protect the process of furthering relations between nations that diplomatic immunity as a principle of international law provides foreign diplomats with a degree of protection from criminal or civil prosecution under the laws of the countries hosting them.

The study found out that there are instances where diplomatic immunity is a abused resulting into crimes ranging from non-payment of traffic fines to serious felonies like rape, domestic abuse and even murder.

It was further appreciated that diplomatic immunity is never absolute and is generally restricted to acts committed in the exercise of official functions during the time the person holds that official position.

It is important to note that while the principle of immunity today is said not to extend to the most serious crimes, crimes against the peace war crimes, crimes against humanity and acts of genocide the Vienna convention does not support this stand and provides that immunity is general.

It was also appreciated that the first privileges and immunities can be traced to the early days of human communication and attempts to solve conflicts in non-violent ways.

5.2. Recommendations

5.2.1. Establishment of a claims fund

Theorists have proposed the establishment of a claims fund to compensate those injured by diplomats. Under this proposal, victims who could not successfully bring actions under the diplomatic relations law could draw compensation from these government funded pools.

5.2.2. Mandatory Insurance Scheme.

Some commenters have advocates for the implementation of a mandatory insurance scheme to solve the problem of diplomatic immunity abuse. The proposed scheme to solve the problem scheme would require embassies to obtain insurance for their diplomats and staff as a pre requisite to maintain diplomatic relations with other countries. The legislation to be enforceable would require a right of direct action against the insurer.

5.2.3 Creation of an International Diplomatic Criminal Court.

Some commentators have proposed the establishment of a permanent international diplomatic criminal court with mandatory jurisdiction over diplomats accused of

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