**Vienna Convention on Diplomatic Relations, purpose and principles as it relates to State Protocol.**

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**1.0 Introduction**

With regards to the universal participation of independent states international affairs, the amount and degree of compliance among State parties and the impact on diplomatic influence has had on the global legal order, the Vienna Convention on Diplomatic Relations (VCDR) stands out to be one of the most outstanding treaties, enabling the United Nations to organise and have a progressive and improved international law. The Convention’s success results not only by remarkable nature of prior work by the negotiating skills of State representatives at international conferences, but also to the strong and stable ‘simple rules’ of diplomatic law that emphasis mutual benefits derived from adherence.

**1.1 Background of the convention**

Following the agreement in 1961, the VCDR, went into force on 24 April 1964 in accordance with Article 51 (1) of the Convention. It sets out how independent countries can establish, uphold and, where necessary, terminate diplomatic relations. The convention defines who a diplomat is and his/her entitlement to special privileges and immunities. These include immunity from civil and criminal prosecution in the host state and exemption from all dues and taxes. As is stated in the preamble of the Convention, the rules are intended to facilitate the development of friendly relations among nations, irrespective of their differing constitutional and social systems. The purpose of such privileges and immunities is not to benefit individuals but to ensure the efficient performance of the functions of diplomatic missions (United Nations, 1961).

Veljić (2012) stated that the Convention required diplomats to obey local laws, however, the only sanction permissible under the Convention, in the absence of a waiver of immunity, was expulsion. This prevented the potential abuse by local authorities of the power of a state's law enforcement system. Reciprocity also formed an effective sanction for the observance of the rules of the Convention.

**1.3 Vienna Convention on Diplomatic Relations**

The 1961 VCDR outlines the rules of diplomatic law, ratified by Zambia on 16th June 1975 and implemented by the Diplomatic Immunities and Privileges Act of 1965. The Convention codifies the rules for the exchange and treatment of envoys between states, which have been firmly established in customary law for hundreds of years (United Nations, 1961).

It is an international treaty that defines a framework for diplomatic relations between sovereign states. It categorically states the privileges of a diplomatic mission that enable diplomats to perform their function without fear of intimidation or harassment by the host country. This exclusively holds the legal foundation for diplomatic immunity. Its articles are regarded as a footing of modern international relations. As at 19th November 2019, the VCDR had 60 signatories and 192 state parties.

Boulgaris, Hecht, and Jazairy (2015) stated that VCDR emphasizes it is important that foreign relations personnel can carry out their duties without intimidation by the host government. In particular, the Convention establishes rules for the appointment of foreign representatives, the inviolability of mission premises, protection for the diplomat and his/her or her family from any form of arrest or detention, protection of all forms of diplomatic communication, and the basic principle of exemption from taxation. There is also immunity from civil and administrative jurisdiction with limited exceptions, and need for diplomats to respect the laws of the host state, and guidance on policy on impaired driving.

The fundamentals of diplomatic protocol are rooted in the system of privileges and immunities. This system allows diplomats to exercise their duties in a foreign country in full security of their person, the members of their household, their workplace (embassy or mission), their private residence, their documents, and the like. When the United Nations was established, the privileges and immunities of its officials and of the member states representatives needed to be defined. The current legal system is based on a series of international agreements starting with the United Nations Charter up to the VCDR (ibid).

Protocol is defined in the Oxford Dictionary as the official procedure or system of rules governing affairs of State or diplomatic occasions. The term protocol is derived from the Greek word protokollen, a fusion of the words protos (first) and kola (glue). It referred to a sheet of paper glued to the front of a document to provide it with a seal of authenticity, a practice that serves as a reminder of today’s Letters of Credentials (Oxford University Press, 2019).

Barker (2006) indicates that the Vienna Convention on Diplomatic Relations holds a complete framework for the institutionalisation, preservation and termination of diplomatic relations on a basis of consent between sovereign countries. It specifies the functions of diplomatic missions, the formal rules regulating appointments, declarations of persona non grata of a diplomat who has in some way given offence, and precedence among heads of mission. It further sets out exclusive rules, privileges and immunities to enable diplomatic missions act without fear of coercion or harassment through enforcement of local laws and to communicate securely with their sending Governments.

In its preamble, the Vienna Convention enumerates these conditions by clearly stating “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” (United Nations, 1961. p.1).

The Convention provides for withdrawal of a mission where economic status and security in the receiving state is not guaranteed and if for some reasons breach of diplomatic relations which may happen as a result of abuse of immunity or severe deterioration in relations between sending and receiving States.

In cases where a diplomat acts against the host state by breaching the diplomatic code of behaviour through words or actions, the host nation can within the powers as provided by the Vienna Convention, expel the erring diplomat.

A clear example in relation to this provision is the expulsion of Cuban Ambassador accredited to Zambia, Nelson Pages, in 2018. This followed the ambassador’s decision to attend a launch of political party whose values and principles are rooted in Cuba. Before his expulsion, then Cuban Ambassador to Zambia Nelson Pages Vilas, had graced the launch of the Socialist Party in Zambia where he said the Cuban government wished the newly established opposition Socialist Party in Zambia, ‘all the best’. This prompted the government to expel Ambassador Pages-Vilas on grounds that his actions were partisan and a breach of diplomatic ethics, practice and standards (Lusakatimes.com, 2018).

The government acted in order based on the 1961 Vienna Convention which stresses that missions must respect local laws and not interfere in the host nation's internal affairs.

The action was also in accordance with Article 9 of the convention which gives powers to the receiving state to without having to explain its decision, notify the sending State that the head of the mission or any member of the diplomatic staff of the mission is not appreciated or wanted and can no longer be allowed to stay in that particular state (persona non grata). In any such case, the sending State shall, as appropriate, either recall the person concerned or terminate his functions with the mission.

And it so happened that the Cuban Government appointed another diplomat to Zambia, Angel Villa, as acting charge d’affaires at its embassy in Zambia (Zambia Daily Mail, 2018).

The standoff between Britain and Ecuador in 2012 raised the prospect of a major diplomatic incident if British police forced an entry into the embassy. Ecuadorian officials stated that any such decision would be an outrageous breach of international law. British officials insisted that if they did so, it would be within British law (The Guardian, 2012).

Under international law as well as within the confines of the VCDR, security forces globally are not permitted to cross the gates of an embassy unless with express consent of the ambassador despite the embassy being in the territory of the host nation. The VCDR codified the rule of inviolability, which all state parties must observe because their own diplomatic missions may otherwise be at risk elsewhere. Article 22 of the VCDR endorses the inviolability of mission premises the premises of the mission shall be inviolable. The agents of the receiving State may not enter them, except with the consent of the head of the mission. This implies barring any right of entry by law enforcement officers of the receiving State and imposing on the receiving State a special duty to protect the premises against intrusion, damage, disturbance of the peace or infringement of dignity. Even in cases of response to abuse of this provision or emergency, the premises may not be entered without the consent of the head of mission (United Nations, 1961).

Ture (2019) noted that the principle of inviolability of diplomatic premises had long been a contested issue. For instance, in 1991, two Turkish citizens were killed outside the Iraqi mission in Istanbul by the Iraqi security personnel firing from inside the building. Turkish police, after obtaining a court warrant, entered the building and apprehended the shooter. The police were obliged by the VDCR to keep out of the archive room and offices and they did.

This was done in accordance with article 24, of the VCDR ensured the inviolability of mission archives and documents within and even outside mission premises. This was to stop the hosting state from seizing or inspecting the documents or having permission to the documents in court cases. Article 27 guaranteed free communication between a mission and its sending State by all appropriate means, and ensured that the diplomatic bag carrying such communications were not opened or detained even on suspicion of abuse. Given the purposes of diplomatic missions, secured communication for information and instructions was probably the most essential of all immunities (United Nations, 1961).

Further, Article 29 provided inviolability for the person of diplomats and article 31 established their immunity from civil and criminal jurisdiction. This was with precise exceptions to immunity from civil jurisdiction where previous State practice had varied. Immunity from jurisdiction like other immunities and privileges may be waived by the sending State, and article 32 specifies the rules on waiver (Ture, 2019).

These three provisions in most countries significantly reduced the numbers of those people who were more likely to bring into disrepute the system of privileges and immunities and were fully in accordance with the basic justification applicable throughout the Convention of limiting immunities to what was essential to ensure the efficient performance of the functions of diplomatic missions as representing States.

However, Denza (2016) noted that host states seemed not to be desperate against diplomats who had committed crime. The host countries usually asked the sending state for the removal of its diplomat’s immunity in case of misconduct. If it the request was turned down or ignored, the criminal diplomat may be expelled from the country by being declared persona-non grata. The phrase is the diplomatic expression that the host country no longer acknowledges the person as the legitimate representative of the sending state.

This came during the 1980s from those alarmed at the opportunities it provided for abuse as demonstrated in particular when following the murder of a policewoman by shooting from the premises of the Libyan diplomatic mission in London the United Kingdom broke diplomatic relations and all those within the mission left England under the shield of immunity. More recently attacks have been discussed by scholars concerned with the conflict between immunity and the human right of access to justice, or at immunity for violators of international criminal law and in particular torturers. But in practice there has been remarkably little erosion of the immunities of diplomats as it has been widely accepted that the VCDR limit immunities to what is essential for the functioning of diplomacy.

The focus of public concern has instead shifted to the vulnerability of diplomats to terrorist attacks. These might take the form of kidnapping diplomats with demands for ransom or release of prisoners – a serious problem in the 1970s until brought somewhat under control by collective determination by Governments that taking “all appropriate measures” to protect diplomats did not mean capitulating to blackmail. Alternatively terrorism might involve besieging or bombing embassies – most horrifically the United States Embassies in Kenya and Tanzania in 1998 (Wikipedia Foundation Inc, 2019).

For the most part, parties to the Convention are in no way complicit in these attacks and have done their best to provide protection – sometimes helped by wealthier sending States. The striking exception was the detention for over a year of the hostages in the United States Embassy in Tehran with the acquiescence of the relatively new revolutionary Government of Iran. The United States brought proceedings against Iran before the International Court of Justice basing itself mostly on the Vienna Convention on Diplomatic Relations including the Optional Protocol on the Settlement of Disputes to which both States were parties. Iran did not make serious efforts to justify its conduct in legal terms before the Court and the Court’s Judgment in the United States Diplomatic and Consular Staff in Tehran case (International Court of Justice, 1980) contains important analysis of many of the principles in the Convention and greatly assisted the United States in retaining the support of the international community and securing eventual release – brokered by Algeria – of the hostages. More recently, the International Court of Justice in 2005 upheld a counter-claim by Uganda in the Case concerning Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda) that Congolese soldiers had occupied the Ugandan diplomatic mission in Kinshasa and violated article 29 of the Convention by threatening and maltreating staff on the premises.

In national courts there have been hundreds of cases where the Vienna Convention has been applied, since many of its most frequently invoked provisions concern whether a national court may assume jurisdiction over civil or criminal proceedings and what evidence may be admissible in national proceedings. Most of these cases concern ambiguities in the text on such questions as the true meaning of the exceptions to immunity from civil jurisdiction, the construction of the term “permanent resident”, the protection of an embassy’s bank account from enforcement proceedings, or the balance to be struck between protecting the dignity of embassy premises and permitting effective exercise of human rights to demonstrate and to speak freely. Unlike the cases described in the previous paragraph, they did not involve fundamental breaches of the Convention.

The Convention has also been extensively drawn on by later treaties regulating immunities and privileges. Its provisions were used as a starting point in drawing up the 1963 Vienna Convention on Consular Relations (VCCR) and the 1969 New York Convention on Special Missions – in the latter case with unfortunate results in that insufficient account was taken of the differences between permanent missions and most special missions so that the Convention has attracted only limited support. It is used as a point of reference for determining the treatment to be accorded to the premises, archives and senior officers of a substantial number of international organizations. Sometimes it is used on a similar basis for agreements with the host State regulating the status of military forces or civilian missions despatched either by international organizations or by States providing military or civilian assistance. The 2004 United Nations Convention on Jurisdictional Immunities of States and Their Property contains references to its provisions, since in the nature of things the rules on state immunity and on diplomatic immunity, though different in their origins and justification, are closely intertwined. As for the treatment given to heads of State, heads of Government and foreign ministers in their personal capacity – though practice is somewhat varied – it is accepted that the rules in the VCDR form a guide and perhaps a minimum standard (Denza, 2009).

The first international instrument to codify any aspect of diplomatic law was the Regulation adopted by the Congress of Vienna in 1815 which simplified the complex rules on the classes of heads of diplomatic missions and laid down that precedence among heads of missions should be determined by date of arrival at post. Until then precedence – which guaranteed direct access to the receiving sovereign as well as ceremonial honours – had caused numerous and bitter disputes. Codification among States of immunities and privileges of diplomatic agents did not begin until the Havana Convention of 1928 drawn up among the States of the Pan-American Union – but this did not well reflect current practice either in its terminology or its rules. More influential was the Draft Convention drawn up in 1932 by the Harvard Research in International Law (ibid).

The establishment within the United Nations framework of the International Law Commission opened the way to comprehensive codification to confirm what were accepted as well-established – if not universally respected – rules of international law. There remained areas on which State practice was divergent – in particular the privileges and immunities of junior staff, the position of a diplomat who was a national of the host State and the extent of exceptions to the immunity from jurisdiction of a diplomat – so that any convention would contain an element of “progressive development” as well as codification of the law.

In a communication received on 16 October 1985, the Government of Zambia specified that upon succession, it had not wished to maintain the objections made by the United Kingdom of Great Britain and Northern Ireland with respect to articles 11 (1), 27 (3) and 37 (2).

**Conclusion**

According to Ratner (2018), the VCDR has established itself as a cornerstone of modern international relations. This is despite the need for implementing national legislation in a number of State parties, it came into force following 22 ratifications only three years from its adoption and almost all States in the world are now parties. The regime it sets out for the conduct of diplomatic relations has become remarkably uniform as reservations made by ratifying States on a few points which had been controversial during the negotiations have in many cases been withdrawn or simply never applied. The Convention has proved resilient to attack on its fundamental principles.

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