



Diplomatic Immunity and Human Rights: A Critical Analysis

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ABSTRACT

Diplomatic immunity, a bedrock of international relations, assures the peaceful working of diplomatic objectives by providing security to ambassadors from prosecution in host countries. Anchored in the Vienna Convention on Diplomatic Relations (1916), it is important for protecting diplomatic undertakings, especially in times of political uproar and disputes. Nevertheless, this prerogative has stimulated significant dissents when it overlaps with human rights, especially in incidents where immunity is conjured to escape accountability for aggravated felonies. These involve accusations of modern slavery, molestation, and manipulation. Experts justify that the comprehensive security managed under diplomatic immunity can often erode the standards of civil liberties and justice sanctified in human rights frameworks. This article desperately analyzes the anxiety between diplomatic immunity and human rights, suggesting a apprehensible examination of cases from the past, legal structures and the ethical paradoxes included. To add more, it also explores the hurdles of balancing the requisite of diplomatic immunity with the obligation to defend human rights. By examining the vital case investigations, and suggesting effective amendments, this paper seeks to do a part to the continuous debate on how international legitimate frameworks can accommodate to assure accountability while protecting diplomatic associations. Finally, this review emphasizes the urgency for a more balanced framework that integrates the responsibility of international diplomacy with the preservation of fundamental human rights

INTRODUCTION

Diplomatic immunity is a primary tenet for international law, planned to safeguard diplomats from litigation under the administrative domain of the hosting nations. It permits negotiators to execute their professional obligations without the fear of aggression, assuring that communication and accommodation between states remain unrestrained.¹ This principle is mainly legislated in the Vienna Convention on Diplomatic Relations (1961), which has been sanctioned by most countries and assists as the core of diplomatic law.

At the same time, the current era has seen the surge of vigorous human rights paradigms, comprising the Universal Declaration of Human Rights (UDHR) and sequential conventions such as the International Covenant on Civil and Political Rights (ICCPR). These strategies illustrate the all-inclusiveness and irrevocability of human rights, soliciting accountability for transgressions irrespective of the transgressor's status.

The intrinsic dispute between these two principles emerges when diplomatic immunity is utilized as a bulwark against accusations of severe human rights transgressions. Well-publicized affairs, like those including accusations of illicit trade, harassment or even human trafficking, emphasize the latent exploitation of exemption to slip away from legitimacy.² These accidents have escorted the issue to the frontline of international legitimate and principles forum, inquiring questions about whether the latest structure of diplomatic immunity effectively confronts the emerging hurdles of the globalized world.

This article aims to critically scrutinize this intersection, answering the mentioned queries:

Research Questions:

1. How has diplomatic immunity evolved over time, and what are its intended purposes?
2. What are the key legal and ethical dilemmas posed by the tension between immunity and human rights?
3. How have specific cases illustrated the challenges of balancing these principles?
4. What reforms or solutions can be proposed to ensure accountability without undermining the essential functions of diplomacy?

In responding to these questions, this article will inspect the historical background of diplomatic immunity and human rights, probe into the authorized structures that administer these affairs, and represent in-depth analysis that demonstrate the controversies and hurdles. Ultimately, it will put forward innovations focused at designing a much fair and unbiased balance between preserving diplomatic prerogatives and safeguarding the human rights. In this manner, the article anticipates to collaborate to a more profound comprehension of this serious issue and motivate the international coalition to assess practical and efficient settlements.

Research Methodology:

This research will use qualitative research method to carry out its academic and scientific research works, the research paper will utilize published research articles, magazines, books, authentic websites, classified and

unclassified documents. It will further use other reliable sources to make this paper meet up its standard.

Historical Background

Origins of Diplomatic Immunity

Diplomatic immunity has its bases from centuries-old traditions, emerging over different times to protect ambassadors and assure fortified dialogues between nations. Ancient precedents involves security provided to envoys in ancient Greece and Rome, which afterwards inspired the formalization of these principles in times of Renaissance and the Peace of Westphalia (1649). The notion was more polished in the 19th and early 20th centuries with the organization of international traditional law practices.³ The Vienna Convention standardized these tenets in the current time, stressing collaborative honor and mutualism among states.

Emergence of Human Rights

The new paradigm of human rights evolved after World War II, fuelled by cruelties that emphasized the urgency for universal defense. Significant events like Universal Declaration of Human Rights (1948), the International Covenant on Civil and Political Rights (1966), and the International Covenant on Economic, Social and Cultural Rights (1966) built a vigorous structure for the safeguard of individual rights worldwide. With the passage of time, further treaties like the Convention against torture and the Convention on the Rights of the Child broaden this structure to confront different cases or affairs.

Intersection and Tensions

The intersection of diplomatic immunity and human rights have intensifying become obvious with incidents emphasizing the latent exploitation of immunity to escape accountability for sever aggression comprising illicit trade, sexual harassment and torment. These agitations emphasize the urgency for a more subtle access to balancing these rules. The lack of transparent techniques to confront these disputes has pushed to increasingly claims for authorized amendments and reinforced international assistance.

Legal Framework

Vienna Convention on Diplomatic Relations (1961)

The Vienna Convention specifies the extent of immunity, providing envoys safeguard from criminal and civil authority. The highlighted terms encompasses:

- Article 9: Host states may acknowledge diplomats "persona non grata," efficiently evicting them from the unlawful conduct. This stipulation, however, more frequently do not succeed to confront the legitimate consequences of sever transgressions.
- Article 32: Sending states can relinquish immunity, even this is often exotic and politically vulnerable. In implementation, sending states are hesitant to relinquish immunity, specifically for elite envoys.

This Convention also accepts aberration, like immunity not out-reaching personal affairs irrelevant to official responsibilities. Nevertheless, implementation of these aberrations remain capricious, directing to statutory

uncertainties and hurdles in confronting human rights transgressions.⁴

International Human Rights Instruments

Key conventions like the Universal Declaration of Human Rights (UDHR), the Convention Against Torture, and the Convention on the Elimination of All Forms of Discrimination Against Women oblige liabilities on states to defend human rights. These systems frequently dispute with the prerogatives provided under the Vienna Convention, especially when diplomatic immunity is evoked to defend grave offenses. Moreover, international bodies like the International Criminal Court (ICC) and local human rights courts present thoroughfare for accountability however confront constitutional constraints when tackling with diplomats.⁵

LITERATURE REVIEW

Conflict Between Immunity and Rights

Grace Mugabe Assault Case (2017)

Grace Mugabe, the spouse of Zimbabwe's then-President Robert Mugabe, was alleged of attacking a South African Model, Gabriella Engels, in a Johannesburg hotel. As per records, Mugabe smacked Engels with an electrical cord, inducing sever lesions. Engels procured justice through South Africa's authoritative system; but, Mugabe proclaimed diplomatic immunity, as her husband was joining a summit in the country. The South African Bureaucracy at first conferred this immunity, recognizing Mugabe's role as an ambassador's wife. The case drew extensive condemnation nationally and internationally, with human rights institutions criticizing the verdict as a misuse of diplomatic prerogatives.⁶ Regardless of appellations of accusations, Mugabe was permitted to depart from South Africa without confronting prosecution. The case emphasis the hurdles of balancing country's relations with the rights of victims.

Basfar V. Wong (2022)

Basfar v. Wong was a paradigm-shifting case in the UK Supreme Court that re-conceptualized the demarcations of diplomatic immunity. The case enlisted Wong, a domestic employee, who claimed she was put through organ trade and manipulation by Basfar, a Saudi diplomat in the UK. Wong affirmed she worked excessive hours without any wages and endured abusive treatment. The security proclaimed that Basfar's moves were shielded by diplomatic immunity under the Vienna Convention. Nevertheless, the Supreme Court dictated that modern slavery and enslavement incorporated personal affairs beyond the extent of official responsibilities, thereby presenting immunity ineffectiveness.⁷ This verdict delineated a notable measure in restricting the exploitation of immunity especially in cases encompassing outrageous human rights violence.

Abu Omar Kidnapping Case (2003)

The Abu Omar case enlisted the astonishing portrayal of Hassan Mustafa Osama Nasr (often recognized as Abu Omar), an Egyptian cleric abducted from the alleys of Milan, Italy, by CIA agents and moved to Egypt, where he was apparently agonized. Italian district attorney accused numerous U.S. diplomats and operatives, enlisting the then-Head of the CIA in Italy, acknowledging their inclusion in the mission. The U.S. Bureaucracy evoked diplomatic immunity to

safeguard the alleged ones. In spite of this, the Milan Court commenced investigations in absentia, incriminating 23 Americans.⁸ This case accentuated the boundaries of diplomatic immunity in safeguarding culprits of severe human rights transgressions, especially under the principles of universal authority.

Kazuko Shimokaji Case (1999)

In a notorious case in Vancouver, Canada, Kazuko Shimokoji, the spouse of a Japanese Consul-General, alleged her husband of Intimate Partner Violence (IPV). In spite of her claims being authenticated by proof, regional administrators were incompetent to accuse the diplomat due to his immunity status. The mass uproar triggered Japan to relinquish the diplomat's immunity, permitting him to encounter judicial proceedings. However, the Consul obtained only a sheer exemption and was re-positioned to another post upon his arrival in Japan.⁹ This case demonstrated the negligence of sending states to implement significant retributions on envoys, even when immunity is relinquished, thereby restricting the disincentive impact.

METHODOLOGY

Challenges in Balancing Immunity and Accountability Procedural Barriers to Justice

One of the most notable hurdles is the systemic hindrance designed by diplomatic immunity. Judiciaries in hosting states are obligated to terminate judicial proceedings once immunity is associated, despite of the nature or ferocity of the accused crime. This systematic protection more frequently dissociates victims without authentic choice, nurturing a feeling of discrimination and unaccountability.¹⁰ Moreover, the sophisticated and tedious procedure of appealing a relinquishment from the sending state frequently deters victims from prosecuting cases.

RESULT AND DISCUSSION

Reluctance of Sending States to Waive Immunity

The Vienna Convention permits sending states to relinquish immunity, however this infrequently manifests in effect. Abrogation is frequently impacted by political, economic, or meticulous considerations, with sending states prioritizing the safeguard of their envoys over accountability.¹¹ This negligence erodes the legitimacy of international authentic systems and departs victims without impunity.

Ethical and Humanitarian Concerns

The prioritization of diplomatic prerogatives over human rights elevates discerning moral challenges. Victims of harassment, illicit trade or transgressions committed by ambassadors more frequently encounter poignant and mental anguish exacerbated by the refusal of impartiality. The global society's inadequacy to discourse these cases effectively weakens mass confidence over both diplomatic organizations and human rights preservations.

Host State Limitations and Diplomatic Fallout

Host states are more frequently restricted by their dependability on sustaining unwavering diplomatic associations, the apprehension of retribution,

like the deportation of their own ambassadors or economic repercussions, disincentivizes host states from acquiring determinative measures against transgressing envoys.¹² This impediment generates a power imbalance that discriminatory influence victims and impedes the implementation of justice.

Lack of Consistent International Standards

The lack of standardized international instructions for coping human rights transgressions committed by envoys builds contradictions in how states have established more rigid policies, others persist to uphold strictly to the principles of immunity, directing to unequal implementation and accountability. This contradiction weakens global undertakings to preserve human rights.

Impunity and Public Perception

This exploitation of diplomatic immunity lends a hand for the cognition of unaccountability, where diplomats are witnessed as being "above the law." This cognition not only deteriorate the trustworthiness of diplomatic objectives but also undermines the mass's trust in international legitimacy and human rights organizations.¹³ Well-publicized cases of exploitation further increase these issues and outline the urgency for systemic overhaul.

Balancing Sovereignty and Individual Rights

Balancing the state sovereignty with human rights orients rudimentary hurdle. Diplomatic immunity is grounded in the principle of state sovereignty, which more frequently clashes with the panoramic nature of human rights.¹⁴ Perforating a balance between these opposing interests needs elegant arbitration and collaboration among countries along with resilient legal structures that prioritize impunity without weakening diplomatic associations.

Proposed Reforms

Revising Vienna Convention

Changes in to the Vienna Convention could enlist transparent aberration for sever human rights transgressions, like illicit trade, inhumanity and modern slavery. These aberrations would elucidate terms under which immunity may be systematically relinquished.¹⁵ In addition to this, an international commission under the United Nations could regularly inspect and counsel tweaks to the Convention to ponder upon parallel hurdles.

Establishing Binding Protocols for Waiver Requests

A normative international procedure for renouncing immunity in grave cases could be built. This would give transparent instructions and mitigate the political susceptibility encompassing renouncement. Procedures could enlist autonomous relinquishment in cases of grave felonies of decentralized analyzes by equitable international bodies.

Strengthening Accountability Mechanisms

Organizing professional international commission or council to tackle cases enlisting diplomats alleged of human rights violence could present an equitable and reliable framework for accountability these commissions would be authorized to examine, litigate and arbitrate accusations while protecting diplomatic workings.

Enhanced Training and Screening

Anticipatory steps, like stipulated human rights guidance for diplomats and more rigorous clearance procedure, could reduce un-professionalism. States

should assure that diplomats are comprehensibly trained regarding their objectives and the moral anticipations related with their jobs.¹⁶

Improved Victim Support

Organizing international funds or schemes to assist victims of diplomatic violence would discourse the power imbalance between diplomats and victims. These schemes could provide legal help, mentoring and techniques for seeking justice through variant means.

International Monitoring and Reporting Mechanisms

A universal administrating organization, tentatively under the United Nations, could scrutinize incidents of accused exploitation encompassing diplomatic immunity. This organization would release periodic records, emphasizing forms of abuse and suggesting right measures.

Public Accountability Measures

Fostering better clarity and mass liability can prevent abuse of immunity. High-profile cases of abuse and exposing accused diplomats can constrain states to execute diligently and stick to international norms.¹⁷

CONCLUSIONS AND RECOMMENDATIONS

Diplomatic immunity, while important for encouraging international relations and assuring the safeguard of diplomatic crew, encounter escalating investigation due to its latent abuse in bidding severe human rights violations.¹⁸ This examination emphasizes the obstacles of resolving the principles of immunity with requisite of human rights liability.

Attaining this balance acquired an intricate technique that involves legal changes, improved international collaboration, and actionable steps. Amending Vienna Convention to inaugurate exceptions for serious felonies, designing decentralized international courts, and practicing conventional relinquishment procedures are crucial steps. Uniformly significant are preventive moves, like educating diplomats on human rights responsibilities and assisting victims through vigorous helping schemes.

To add further, international institutions and gracious society should participate as an active role in supervising and discoursing violence, assuring that diplomatic prerogatives are not misused. Enhancing global perception and encouraging a tradition of accountability among countries will be vital in discoursing these dilemmas.¹⁹

Finally, the restoration of diplomatic immunity should not come at the cost of impunity for victims. By practicing these changes, the international society can advocate the principles of diplomacy while strengthening its devotion to preserving human integrity and assuring accountability for all. This emerging system will ruminate the complication of modern international relations and administer a fair balance between state sovereignty and human rights.

Discussion Results and Findings :

This study discovered the importance of immunity for envoys and diplomats working in foreign lands, as an instrumental of International law, which guides both human rights protection as well recognition and respect of each states in accordance with international laws, treaties, accords and pacts. This

immunity pave the way for any small or big states diplomats working abroad, it's a clear phenomenon that there is no concept of size in the context of any states whenever if the states all characteristics, such as: Government, Sovereignty, Population, and territory, therefore, the immunity applies to all states. Furthermore, the article discussed the importance of human rights as a pillar of relations between any independent states. The fundamental rights are always due to be observed and implemented in all cases. It further preserved the rights of choice, movement, life, education, property, equality, justice, and equity.

ADVANCED RESEARCH

Suggestions for Further Research:

This paper suggested for further research on this topic to provide more details about the implementation of an International laws between global south and global north, both ICC and ICJ should work hard to protect the rights of common people globally.

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