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The Editor
The Journal of International and Comparative Law
Department of Jurisprudence and International Law,
Faculty of Law,
University of Ilorin
P.M.B. 1515, Ilorin,
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THE LEGAL PERSPECTIVE OF THE UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT

KAYODE OLATOKE*

INTRODUCTION

In December, 1964, the General Assembly of the United Nations established the United Nations Conferences on Trade and Development (UNCTAD) as an organ of the General Assembly for the consideration of the Trade and Development problems of the less developed Countries. In doing so, it gave effect to a compromise which had been worked out in the course of intense negotiations between representatives of the developed and of the developing Countries in the last phase of a Mammoth Conference – the first UNCTAD which was held in Geneva from 23rd March – 16th June 1964. Essentially the compromise consisted in agreement of continuing machinery in the form of a conference to meet periodically, a standing Board and subsidiary committees, and a Secretariat headed by the Secretary-General of the Conference, and at the same time the adoption of a conciliation procedure to precede voting if requested by a specified number of members. The result therefore was the creation of an institution which constitutes a permanent forum for the continuing discussion of the trade and development problems of the third world countries, and for bringing pressure to bear in influencing the trade and aid policies of the developed Countries.

THE BIRTH OF UNCTAD

It was evident to all UN members that the transformation of voting patterns in the UN at the beginning of the 1960s, which resulted from the admission of many new members, predominantly from developing countries, would make the eventual creation of UN body specifically devoted to their trade and development problems a virtual certainty once they had decided on securing its establishment. However, their determination to achieve this result rather than to work through existing

* LL. B (Hons), LL. M (Ifè), B.L., Lecturer, Department of International Law, Ilorin.

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institutions, requires explanation. Essentially it can be said that it was a reflection of the view widespread among developing country representatives that the existing bodies were either unrepresentative in character or only marginally concerned with their pre-occupations, and that only a body specially devoted to their trade and development problems in which full effect could be given to their voting power would be able to have a significant impact on the improvement of their position in international trade.

Under U.N. Charter, the ECOSOC had been created as a principal organ with responsibility in the field of economic affairs, it was envisaged as the pivot of the economic and social organisation under U.N. auspices. But in view of the wide competence in economic and social matters of the specialised agencies, the role of ECOSOC itself has been largely one of co-ordination of their work. Moreover, ECOSOC suffered from the fatal defect in the eyes of many developing country representatives that its membership was limited to 18 (only in 1963 was thus increased to 27) and that the five permanent members of the Security Council were always in fact elected to it, so that it was impossible for the preponderant voting power of the developing countries to be exercised through it. Accordingly, the attitude expressed by many developing country representatives was that it was unsatisfactory to entrust such a body with direct responsibility in the field of trade and development.

A more serious question was posed by the existence of the GATT. It was immediately obvious to the developed marked economy countries that the establishment of another international body with competence in the field of trade could involve the risk of diminution of the role of the GATT, and it became, and has remained, a preoccupation of the countries to see that the jurisdiction of GATT is preserved.

For, despite the criticisms that have been and continue to be leveled at the GATT, it has been an instrument of incalculable value in introducing order into international commercial relations, and above all by great rounds of trade negotiation which have been conducted under its auspices, it has contributed significantly to a reduction of trade barriers. However, the attitude of many developing countries towards the GATT has been far

from warm. They have tended, at least in their public statements, to regard it as concerned predominantly with the trading interests of the developed Western Countries, and they have emphasised that they have no bargaining power so as to extract trade concessions from the developed countries in the extract trade concessions from the developed countries in the course of trade negotiations. Both of these criticisms are subject to question. It is true that the original GATT articles contained only one rule (Art. XVIII) directed towards the economic development of the less developed countries, which was designed to facilitate their use of import restrictions. But it has been pointed out that "this omission was due in important measure to the pre-occupation of the less developed countries themselves with import substitution rather than export expansion as the true road to economic development"¹ It was only towards the end of the 1950s that the emphasis of developing countries themselves shifted from import substitution to reliance on export expansion so as to finance the imports necessary for their development.²

We have seen that the GATT proved responsive to this change by the adoption in 1961 of an "action programme" designed to reduce barriers to trade in products of export interest to less developed countries, and in 1964 by the adoption of a new chapter devoted to the trade and development problems of the developing countries. In addition, the lack of bargaining power of the developing countries has been at least partially compensated by the willingness of some developed countries not to insist on strict reciprocity in trade negotiations, and by the "fall-out" benefits they receive from the operation of the MFN principle. It is beyond question that some at least of the developing countries are continuing to use the GATT forum and are trying (with much success to get in to focus more on their specific problems; but the dissatisfaction with GATT among developing countries and the fact that some of them are not members of it, made it impossible to divert them from the determination to create a new inter-national institution which would be primarily concerned with their trade and development needs.

¹ Gos Vic, *UNCTAD: Conflict and Compromise* (Leiden, 1972) p. 198.

² *Ibid.* p. 198.

In December 1961 the change in thinking by developing countries on the development problem was reflected in a General Assembly resolution on "International Trade as the Primary Instrument for Economic Development". The urgent need to accelerate the rate of development of the less developed countries had been fully recognised since the end of the Second World War, but measures by developed Countries to assist this had concentrated almost exclusively on economic aid and technical assistance, while the developing countries themselves had emphasised import substitution rather than an expansion of exports. Towards the end of the 1950s there came a growing realization of the importance for development of measures designed to expand exports and to stabilize export prices. The stage was thus set for the adoption of an ECOSOC resolution in August 1962, calling a Conference on Trade and Development. It was this resolution which led to the holding of the first UNCTAD in Geneva in 1964.

The birth of the United Nations Conference on Trade and Development (UNCTAD) could be attributed largely to the feelings of frustration which the developing countries had experienced with GATT as a forum for the solution of their basic problems. We shall examine below how UNCTAD also has not measured up to expectations of the developing countries, but the point which requires to be stressed here is that the developed countries continue to regard GATT as an old institution, whose serviceability to them has been well-tested, while UNCTAD has been to them an organisation "unpredictable, ideologically repugnant, its key positions mainly staffed by subversive international civil servants and not easily controllable."³ According to the developed countries UNCTAD could be the policy forum for intensive, comprehensive and wide-ranging discussions on trade and development, while GATT could undertake more concrete tasks of sponsoring trade negotiations and administration of agreements resulting from the negotiations as well as other operational activities. The UNCTAD' role in their view, should be confined to launching ideas but should not extend to the specialised tasks being

³ For detailed presentation of the viewpoint of the developed countries see: "Whither GATT", Press release *GATT/1066* (19 October 1967) and "Reforming the International Machinery of the World Trade", *GATT DPC. Spec 16.3 204*, 14 Oct. 1963.

performed by other bodies.⁴ The developing countries on the other hand, feel that UNCTAD's activities should not be confined to mere passing of recommendations but should cover negotiating and implementing functions as well.

THE ROLE OF UNCTAD

From the foregoing the General Assembly resolution 1995 (XIX)⁵ provides that the Trade and Development Board "shall keep under review and take the appropriate action within its competence for the implementation of the recommendations, declarations, resolutions and other decisions of the conference..." Soon after the Board started functioning a controversy arose between the developed and the developing countries about the scope of implementation of Final Act of the first UNCTAD in pursuance of this provision. The developing countries argued that the passing of the recommendations contained in the Final Act ipso facto signified the acceptance of corresponding commitment by countries to implement them, particularly where the recommendations had been unanimously adopted. However, there was this handicap for them that very few provisions of the Final Act had been adopted without dissent; and only two of 15 general principles were adopted without dissent; and only two of 13 special principles were adopted unanimously, of the 57 substantive recommendations, 29 were adopted unanimously and the rest were passed after voting had been taken. Further, some of the recommendations contained qualifying expressions such as 'to the extent possible', which detracted considerably from the commitment to act. The developed countries, accordingly, questioned the binding nature of the recommendations contained in the

⁴ The resolution accorded to UNCTAD, the status of an organ of the general Assembly. This means that no resolution of the UNCTAD must be followed, even by those who voted for it or even introduced it. However, one should also note that increasing moral obligation brought by the declarations of intent and agreement to resolutions cannot be ignored.

⁵ As the representative of a developing country stated at the 13th Session of the board: "It had never been the objective of the developing countries simply to have an ad hoc conference just to voice a few complaints".

Final Act.⁶ To them, the provisions of the Final Act, unlike multilateral contractual instruments, created only a moral or political obligation, as oppose to legal obligation.⁷ In the discussions which followed in the Board on the question, the developing countries wanted to establish an effective machinery and procedure for reviewing the implementation of the final Act, with power granted to the Board for holding individual countries responsible for their failure of implementation.⁸

The developed countries, however, stoutly opposed this and argued that the Board should not be converted into "an inquisitorial body to carry out a detailed country by country examination of the extent to which recommendations adopted by the conference have been implemented or were being complied with".⁹ To them, GATT alone represented the right forum to review the implementation of trade measures.

The resolution finally adopted by the Board at its second session reflected a compromise between the two positions. The resolution required the secretary General of UNCTAD to prepare an annual report on international trade and economic development the progress made in the economic development of developing countries, as well as their trade and development needs.¹⁰ The equivocal wording of the resolution left the

⁶ See the comments by the United Kingdom, TD/B/L.63, Add. 4 (October 11, 1965) p. 14.

⁷ Board Resolution 19 (11), TD/B/71.

⁸ The Annual Report consists of two parts, one on trends in trade and development, and the other on trade policy development. While the former analyses the data received by the secretariat, the latter is mostly a factual one, without any "teeth" in it.

⁹ An extreme stand was taken by the representative of Switzerland on the first implementation report, to the effect that member countries of UNCTAD were not expected to say what practical steps they had taken in order to carry out the policies defined by UNCTAD, since this remained within the domain of their autonomous action: See TD/b/sr. 33. P. 49

¹⁰ The legal inadequacy of this provision was stressed by the representative of a developing country at the Thirteenth Session of the UNCTAD's Trade and Development board when he stated that "ever since its establishment in 1964, UNCTAD had been urged to achieve concrete results but had been hampered in the performance of its task by limitations imposed by the General Assembly resolution 1995 (XII) and the lack of competence to adopt binding decision", TD/B/474 p. 121.

scope of the implementation still in doubt. The developed countries interpreted the resolution to mean that there could be only a general debate and not a case-by-case examination of the policy measures taken by individual countries. The resolution required that the annual report of the secretary General should be based, inter alia, on the information furnished by member-States and the developed countries took the stand that individual Government had the latitude to decide on the nature, proceeded to supply data of a general nature, which could only be used by the UNCTAD Secretariat to produce an over-all survey of trends and patterns of international trade and development, instead of an evaluation report, which would have indicated individual Governments for their lapse in implementation.¹¹ The developed countries have characterised the reports as not adequately reflecting the progress actually made while the developing countries and their platitudinous statements.¹² The annual implementation reports have thus tended to be very much watered down and far removed from the purpose which the developing countries had originally in view.

C. THE NEGOTIATIVE AND LEGISLATIVE ROLE OF UNCTAD

There is a provision in General Assembly resolution 1995 (XIX) that UNCTAD will "initiate action, where appropriate, in cooperation with the competent organs of the UN for the negotiation and adopting of the multilateral legal instruments in the field of trade, with due regard to the adequacy of existing organs of negotiation and without duplicating their

¹¹ So far, the only multilateral legal instrument outside the commodities agreements negotiated under UNCTAD's auspices has been the Convention on Transit Trade of Land Locked Countries. On the basis of the Final Act, an hoc negotiating conference was convened in the summer of 1965. It adopted the Convention, which received the required number of ratification, entered into force in June 1967.

¹² Walter M. Kotsching, "The United Nations as an Instrument of Economic and Social Development" in Richard N. Gardiner and Max F. Millikan, (eds.), *The Global Partnership*, (Calcutta, 1969) pp. 29 – 30.

activities.¹³ Thus, legally, UNCTAD does have the authority for engaging itself in negotiations leading to the adoption of multilateral legal instruments on trade.¹⁴ But this provision, again, has been subject to differing interpretations by the developing and the developed countries.

D. THE FIRST UNCTAD

The developing countries insisted at the first UNCTAD that a framework for the negotiations of legal instruments should be set up within the permanent machinery of UNCTAD: the developed countries, on the other hand, argued the UNCTAD was only a body for collective thinking, while actual negotiations leading to adopting of concrete measures should be the function of other competent organisations. At best according to the developed countries of the West, negotiations in UNCTAD could not go beyond deliberations leading to non-committal resolutions. These countries criticized the attempt on the part of the developing countries to "legislate" actions through the establishment of new, binding, principles. This attitude has been typically stated by Walter M. Kotsching thus:

"Attempts are made, by way of resolution to legislate action on the part of member governments, to prescribe new approaches and attitudes, to establish new binding 'principle' or rules and regulations of international behaviour. The wording of resolutions is fought over as if a new constitution were being written. Or, what is more serious, by automatic majorities the LDC'S vote texts which, in their view, place 'obligation' upon important minorities which have made it clear by their negative vote that they are not able or willing to accept them. The "majority" seems to care little that such "obligations" often relate to matters within the domestic jurisdiction of all members.

As a prize example of such an ill-considered attempt to "legislate", he cites the persistence with which the developing countries insist on the binding nature of various "principles" are recommendation in the

¹³ Richard N. Gardiner, "The United Nations Conference on Trade and Development", in Richard N. Gardiner and Max F. Millikan (eds.), *op cit.*, pp. 123 – 124.

¹⁴ Held in New Delhi, 1 February – 29 March 1968.

Final Act of UNCTAD. These, in their view, put an "obligation", both in terms of domestic legislation and international action, on the very developed countries which opposed and voted against them both in the first UN Conference on Trade and Development and in the subsequent meetings of such bodies as the General Assembly and ECOSOC.¹⁵

Referring to the provisions in General Assembly resolution 1995 (XIX) laying down the relative responsibilities of UNCTAD, the General Assembly and the ECOSOC for ordinating trade and development matters, Richard N. Gardner says;

"All of these provisions, written in at the Geneva Conference at the behest of the developed countries, have done just about what they have wanted to do and have occasionally ignored or even sought to displace the coordinating responsibilities of ECOSOC and the General Assembly. This confirms a truism about the UN system which has been underlined in recent years – that Constitutional provisions have about as much vitality as the majority's wish to abide by them"¹⁶

E. THE SECOND UNCTAD

The question of interpreting the term 'negotiation' in the General Assembly resolution 1995 (XIX) came up for discussion at the second UNCTAD.¹⁷ The developed countries interpreted the term as meaning "the sum total of talks and contacts" leading to the formulation of recommendations. Their view was that the conference was a deliberative meeting where members could engage themselves in a general discussion. The group of 77 on the other hand, had expected that the Conference would be legislative in character and would take decision committing the

¹⁵ The Charter for instance had called for the urgent adoption of a global strategy of development, but the Conference did not succeed in this.

¹⁶ For a short write-up on the achievements and failures of the Conference, see: P P Kanthan, "UNCTAD – Retrospect and Prospect", *The Journal of Industry and Trade*, November 1971, pp. 60 – 63.

¹⁷ Manuel Perez – Guerrero, "UNCTAD III – Elements for an Appraisal", *Foreign Trade Review*, Vol. II No. 3, pp. 212 – 213.

developed countries to specific policy measures. The actual resolutions of the Conference believed much of the expectation of the developing countries as contained in the Charter of Algiers.¹⁸

A typical assessment of the Conference declared that 'after four weeks of lengthy, but largely empty, oratory and futile debate much of it over irrelevant issues the conference has closed with next to nothing to show for its efforts.'¹⁹

F. THE THIRD UNCTAD

The third UNCTAD held at Santiago in April – May 1972 also left much to be desired from the point of view of the developing countries. Referring to inadequate outcome of the Conference, Mr. Manuel Pere Guerrero, Secretary-General of the UNCTAD, stated:

"The responsibility of this is shared to a degree by all participants, yet the major responsibility cannot but fail on those countries which are dominant in World production, trade and finance. While these countries have serious concerns and problems of their own which cannot be ignored, the question arises as to whether they were really unable in Santiago to give support, to new trade and aid measures that could have been of great benefit to the third World and which would have only a marginal effect on their own economies."²⁰

In assessment by Gustavo Magarinos ran thus;

If we look upon UNCTAD as an instrument to solve the problems faced by the poor nations to obtain greater benefits from international trade and promote their economic development, it has undoubtedly been a great failure. Its three conferences have produced very few significant solutions; in particular, the last meeting held this year at Santiago clearly proved that the distance between the conceptual approached of

¹⁸ Gustavo Magarinos, "UNCTAD – III No Change at All", *Foreign Trade Review*, Vol. III No. 3, p. 227.

¹⁹ Ibid.

²⁰ Undocumented A/C.2/L 908, November 30, pp. 14 – 15.

the industrialised countries and the underdeveloped ones concerning world problems is as large as the so-called development gap.

Giving the reason for this failure, he added:

It is the will of the former to really help the latter which is missing whenever cooperation implies sacrifice of their self-interests no matter how minor these may be in comparison with the problems that are increasingly strangling the Third World.²¹

The author referred to the continued usefulness of UNCTAD to the service of developing countries and commented:

The risk lies in the possibility that frustration and fatigue resulting from these fruitless verbal marathons override good will and bury determination under unaccountable strata of working papers.²²

PROLIFERATION OF UNCTAD MEETINGS

Dr. Prebisch, the first Secretary-General of UNCTAD had occasion to refer to the multiplicity of the meetings and deliberations under the aegis of UNCTAD when he stated that 60 per cent of UNCTAD's budget was spent on meetings much of which might better have been used for studies in depth and for small expert sessions or seminars. He warned that:

We are on a very dangerous slope... We cannot ignore the fact that in UNCTAD – and I think this applies not only to UNCTAD but also to their UNITED NATIONS activities – the proliferation of meetings has become so extreme that whenever I talk to representatives of governments concerned.²³

²¹ Board Resolution 45 (VII, A. 7214), p. 93.

²² UNCTAD II Resolution 80 (III). The United Nations conference on Trade and development... reiterates that the task of negotiation, including exploration, consultation and agreement on solutions, is a single process and, in the context of such a process that achievement of solutions as emphasized in Board decision 45 (VII) is and remains the primary objective to UNCTAD, which should be vigorously pursued.

²³ UNCTAD Document TD/B/455.

The Declaration and Programme were adopted following a series of major economic upheavals which marked the early nineteen seventies, the monetary crisis which was most dramatically signaled by the devaluation of the United States dollar; the phenomenon of "stagflation" in the developed countries, and above all the sharp increase in oil prices and in the prices of other essential goods, including food, which greatly affected the capacity of many developing countries to finance their imports and development needs. The immediate purpose of the special session was to launch a special programme to provide emergency relief and development assistance to the developing countries most seriously affected by the price rises. But in accordance with the view that emergency assistance provides only a temporary solution to economic difficulties, and that to be of lasting benefit it must be reinforced by fundamental changes in the structure of international trade and benefits, the occasion was taken to formulate a Declaration and programme of Action. The Declaration set out a large number of principles which were to form the basis for the new international economic to be taken by the international community to assist the developing countries.

The adoption of the Declaration, of the Programme, and of the charter were all controversial measures which provoked considerable opposition from the developed market economy countries. In the case of the Charter for example, although it was adopted by 120 votes to 6, three major trading countries – the United Kingdom, the United States and West Germany – voted against it, while Canada France and Japan abstained, and several others, including Australia, which voted in favour of the Charter as a whole, expressed reservations on particular provisions contained in it. The major sources of difficulty were the clause relating to the nationalization of foreign investments and one which might be understood to sanction the establishment by producers of commodity cartels.

In the remaining sections of this Chapter and in the sections in Chapter 8 on multinational corporations and on the control of investments, reference will be made to a number of specific provisions in the Declaration, the Programme of Action, and the Charter. But a considerable number of the

provisions go beyond the formulation of principles and programmes for the conduct of specific kinds and form of trading, and relate rather to the political conditions under which they affirm is that there is a duty on the developed countries to co-operate with the developing countries, but that they must not intervene politically or infringe the national sovereignty of the developing countries. The idea is expressed most clearly in Article 17 of the Charter.

"International co-operation for development is the shared goal and common duty of all States. Every State should co-operate with the efforts of developing countries to accelerate their economic and social development by providing favourable external conditions and by extending active assistance to them, consistent with their development needs and objectives, with strict respect for the sovereign equality of States and free of any condition derogation from their sovereignty."

The duty not to interfere is expressed unequivocally in Article 1 which states that:

"Every States has the sovereign and inalienable right to choose its economic system as well as its political, social and cultural systems in accordance with the will of its people, without outside interference, coercion or threat in any form whatsoever"

This is buttressed by Article 4 which provides that:

"Every State has the right to engage in international trade and other forms of economic co-operation irrespective of any differences in political, economic and social systems. No State shall be subjected to discrimination of any kind based solely on such differences.

Similarly, the obligation to co-operation in various ways is expressed in a number of articles.

Another central idea of the Charter is that of the right of all countries to full participation on the basis of equality in solving world economic problems. It is expressed in Article 19:

"All States are juridically equal and, as equal members of the international community, have the right to participate fully and effectively in the international decision-making process in the solution of world economic, financial and monetary problems, inter alia, through the appropriate international organizations in accordance with their existing and evolving rules, and to share equitably in the benefits resulting therefrom."

II GATT AND UNCTAD

A. BASIC DIFFERENCES BETWEEN GATT AND UNCTAD

GATT and UNCTAD are two Organisation which differ in their membership, policy approach, coverage, and the nature of their decisions. While UNCTAD has a near universality of membership the membership of GATT is limited. While the GATT rules are based essentially on the implicit assumption that the play of market force, operating within the framework of the appropriate Government policies, will tend to result in dynamic and stable world economy, the policy approach of UNCTAD is that the operation of market force cannot ensure adequate economic and social progress of the developing countries and that the developed countries should intervene by taking positive measures in favour o the former. While GATT is concerned primarily with the operation of a set of rules governing trade among developed marked economy countries, UNCTAD is primarily concerned with trade between the developing and the developed countries, and to some extend, trade among developing countries. UNCTAD, further, has a wider range of activities, which over negotiations of commodity agreements, financing and invisible, shipping and transfer of technology which do not figure in the activities of the GATT.²⁴

CONCLUSION

The United Nations conference on Trade and Development (UNCTAD) was established as an organ of the General Assembly of the United Nations in 1964. The permanent organ of the Conference, the Trade and

²⁴ C/f: R.C. Jackson. *A Study of the Capacity of the UN Development System*. UN Doc. DP/B/455.

Development Board, consists of 55 members elected by the conference from among its members. The principal functions of the Conference are to promote international trade, with a view to accelerating economic development between developed and developing countries, and to formulate principles and policies on international Trade and related problems of economic development. Specifically, the Conference was to improve access of Primary commodities in the developed countries. Limited positive results have been achieved in this effort. According to the Secretary-General of the Conference,²⁵ the fundamental explanation for this lack of success has not been due to prevailing circumstances. Intellectual advances have been achieved in understanding the problems, but they have never been followed by the recognition of the need for action. When circumstances were favourable a few years ago, no significant trade measures were taken to transfer resources to the developing countries. In the Secretary-General's words. "It seems that prosperity, in people as well as nations, tends to form an attitude of detachment if not indifference to the well-being of others. However, it is confronting to see a growing sense of moral solidarity with developing countries in some Sectors of developed countries and a far-sighted view of the serious economic and Political consequences of allowing the Third World to continue to drift."²⁶ It is also necessary to mention that UNCTAD from its inception had breached the gap between the bilateral approach of the industrialized nations and the demands of developing Countries of economic equity and freedom. The difference was well illustrated by the observation of a U.S. delegate who characterized GATT as a trade agreement with precise articulation of rights and obligations, as contrasted to UNCTAD being "long on philosophy and doctrine, and short on procedure."²⁷

²⁵ Paul Previsch (Argentina) resigned.

²⁶ The Significance of the Second Session of the United Nations Conference on Trade and development, TD/96/Rev/I, p. 1.

²⁷ Statement by Greewald (US Assistant Secretary of State for Economic Affairs). 1967 *Am. Soc. of Int. Law*, p. 156.

basis of mutual reciprocity - i.e. the representatives of a receiving state in other states would also be accorded the same immunities and privileges.² This principle of reciprocity which was essentially governed by customary courtesy in the early times, has been standardized over the years and presently accepted, almost wholly, by the comity of nations. This could be seen in the preamble of the Vienna Convention on Diplomatic Relations of 1961 which states that "... peoples of all nations from ancient times have recognised the status of diplomatic agents".³ The VCDR of 1961 was a significant step by the international community to codify as a legal document universal rules regulating diplomatic relations between nations of the world.

The VCDR recognised certain immunities and privileges granted diplomatic agents amongst other rules. Although these immunities and privileges were to be granted with the objective of allowing the diplomatist perform his/her official duties without hinderance, abuse of these immunities may result in a waiver.

The objective of this paper is to examine the principle of the Waiver of Immunity by diplomatic agents. Before going ahead, it is pertinent to explain the key terms of this paper - Waiver of Immunity and diplomatic agents. Next, it will be necessary to state what these immunities are, the rationale or theory behind these immunities, how and why immunities can and should be waived, before finally concluding and making recommendation(s).

DEFINITION OF TERMS

To waive, according to Curzon is "To relinquish a right freely".⁴ Giving a more elaborate meaning to the term waive. The *Oxford English Dictionary* (1970) described it thus:

² Hurst, Sir Cecil J.B. - "Diplomatic Immunities - Modern Developments" in *The British Yearbook of International Law* Index 10 (London: Oxford University Press, 1929) pp. 3-5.

³ Vienna Convention on Diplomatic Relations of 1961.

⁴ Curzon, L.B. - *A Dictionary of Law*, 2nd Edition (London: Pitman Publishing Ltd., 1986) p. 387.