

Abuse of Diplomatic Immunity and the Limits of International Responsibility

Djoudi Zineb

Sovereignty and Globalization Laboratory University of Medea (Algeria),

djoudi.zineb@univ-medea.dz

Received: 12/07/2026

Accepted: 03/10/2026

Published: 27/10/2026

Abstract:

The concept of Diplomatic Immunity, as outlined in the Vienna Convention of Diplomatic Relations 1961, is critical to the successful conduct of peaceful and effective diplomacy among States. It is the same immunities that have been accorded to diplomats to ensure that they cannot be prosecuted in accordance with domestic laws that have been used several times to commit crimes and even espionage. This paper will study the legal basis of diplomatic immunity, analyze past cases of its abuse, and examine the limitations on addressing such abuse under international responsibility laws. Using the ILC Articles on State Responsibility as well as decisions made by the International Court of Justice, the analysis concludes that the existing system of diplomatic immunity grants too much discretion to the sending State at the expense of redress for the receiving State and recommends necessary reforms.

Keywords: Diplomatic Immunity; Abuse of Privilege; State Responsibility; Vienna Convention on Diplomatic Relations; Persona non grata.

1. INTRODUCTION

It is among the earliest and most stable institutions of international law. Much before the institution of diplomatic immunity came to be codified in treaties, the customary practice of international law had long established the principle that the sending by one sovereign to another of his envoy would expose him to the risks of coercion by the receiving state's authorities because it would jeopardize the very means of communication that diplomacy seeks to maintain, and the 1961 Vienna Convention on Diplomatic Relations is where the customary rule got its codification and the treaty is now nearly universally ratified. The Convention confers upon the diplomatic mission and diplomats various immunities of person and jurisdiction.¹

¹Ahmad, Nehaluddin. "The obligation of diplomats to respect the laws and regulations of the hosting state: A critical overview of the international practices." *Laws* 9.3 (2020): p7.

The logic behind these wide ranging immunities is functional rather than personal the reason why immunities exist is not to protect the individuals involved but to ensure that diplomatic functions are performed effectively in the interests of the State sending them. The functional basis of the immunities, nevertheless, has always existed alongside the danger of their abuse. Given that immunity takes away the threat of being sued or prosecuted locally, it has at times been possible and indeed has occurred periodically for diplomats to misuse their position and commit traffic violations, be involved in smuggling operations, take advantage of their local servants dodge debts or even in the more extreme cases engage in espionage or violent activities. Incidents well known in which diplomats were responsible for fatal traffic accidents and the improper use of diplomatic pouches provide some examples of the ways in which immunity has been abused.¹

The central problem this article addresses is the following: when diplomatic immunity is abused, what mechanisms of international responsibility exist to hold the offending individual, and ultimately the sending State, accountable, and how effective are they in practice? The inquiry matters because the credibility of the entire diplomatic immunity regime depends on receiving States confidence that immunity will not degenerate into impunity. Where that confidence erodes, States have historically resorted to unilateral and sometimes destabilizing responses, from breaking diplomatic relations to detaining diplomatic premises responses that themselves generate further international disputes.²

The issue is also of growing practical urgency. The number of States maintaining diplomatic relations, and consequently the number of individuals enjoying some form of diplomatic status, has expanded considerably since 1961, as has the range of activities, commercial cultural, and technical, that modern missions undertake alongside their traditional political functions. This expansion has multiplied the points of contact, and therefore of friction, between diplomatic personnel and the ordinary legal and social life of receiving States, from urban traffic systems to residential tenancy markets to the domestic labor market. At the same time, public expectations of accountability transparency, and equal treatment before the law have intensified in many receiving States, making the perception that diplomats operate above the law increasingly difficult for governments to manage politically, whatever the formal correctness of the legal position under the Vienna Convention.³

The methodology adopted in this article is doctrinal and comparative. It draws primarily on the text of the Vienna Convention on Diplomatic Relations and its travaux

¹Hanadi Mohammed Ibrahim Al-Obaidan, The development of diplomacy and its multiple roles, *Humanities & Natural Sciences Journal*, Volume (6) Numéro (3). P 80

²Eileen Denza, *Diplomatic Law: Commentary on the Vienna Convention on Diplomatic Relations* (4th edn, Oxford University Press), 2025, p57

³Hanadi Mohammed Ibrahim, op cit ,p81

préparatoires, the jurisprudence of the International Court of Justice, the International Law Commission's codification of the law of State responsibility, and documented instances of State practice spanning several decades and multiple regions, supplemented by the growing secondary literature on diplomatic law's practical operation. This approach is deliberately oriented toward identifying structural, rather than merely episodic, features of the regime¹, since isolated incidents of abuse, however striking, would not by themselves establish the systemic accountability gap this article seeks to demonstrate. It is the recurrence of the same limiting features, difficulty of attribution, rarity of waiver, absence of enforcement, and vulnerability to status manipulation, across factually diverse cases and legal systems that supports the article's central claim that the gap is a structural property of the regime itself rather than a series of unconnected failures of individual receiving or sending States.²

2. The Legal Framework of Diplomatic Immunity

2.1 Historical Foundations and the Rationale for Immunity

Three competing theories have historically been advanced to justify diplomatic immunity. The theory of extraterritoriality dominant until the eighteenth century treated the diplomatic mission as a legal extension of the sending State's own territory so that acts occurring within it were deemed to occur abroad altogether. This fiction proved analytically unsatisfactory and was progressively abandoned because it could not account for the many situations in which diplomats act, and are protected, outside the physical premises of the mission. The representative theory, associated with the classical law of nations, grounded immunity in the diplomat's personification of the sovereign who sent him, an idea with clear roots in monarchical practice but of diminishing relevance in an era of impersonal statehood.³

The theory that ultimately prevailed, and that the drafters of the 1961 Convention expressly adopted, is the functional necessity theory. Its premise is that immunity is instrumental it exists to ensure the efficient performance of diplomatic functions, not to confer a personal privilege on the individual diplomat. The preamble to the Vienna Convention states this rationale explicitly, affirming that the purpose of privileges and immunities is not to benefit individuals but to ensure the efficient performance of the functions of diplomatic missions. This functional grounding has two important consequences for the present inquiry. First, because immunity is instrumental, it is in principle susceptible to limitation whenever it no longer serves that instrumental purpose, most obviously when it is invoked to facilitate criminal conduct unconnected with any official function. Second, functional necessity supplies a normative benchmark

¹ Nabil Abdo Othman Al-Halimi. "The Adequacy of Legal Deterrent Measures Against Diplomatic Envoys When They Exploit the Immunity Conferred Upon Them by International Law to Guarantee the Rights of the Host State." *Journal of Human and Natural Sciences* 7.5 (2026): p573

² Eileen Denza, *op cit*, p58

³ Vienna Convention on Diplomatic Relations 1961, preamble.

against which abuse can be identified and criticized, even where positive law provides no direct remedy.¹

And while a minor one, the concept of reciprocity provides another historical rationale for granting diplomatic immunities, the doctrine of reciprocity is founded on the premise that states grant immunity to foreign diplomats in the hope and as a condition under most treaties that their diplomats will also be accorded the same immunity in foreign nations. Reciprocity does not really justify immunity per se; rather, the doctrine provides an explanation for why states, despite being victims of an abuse of immunity, are unwilling to reduce diplomatic immunity, as such acts of unilateral reduction invite counter measures on the diplomats posted in the abusing state.²

2.2 The Vienna Convention on Diplomatic Relations

According to the 1961 Vienna Convention on Diplomatic Relations, there are several types of protection based on the level and rank of the individuals. The diplomatic agents have the highest degree of protection, for their personal safety cannot be violated, they cannot be arrested, imprisoned or restricted in any way whatsoever and the host country is obliged to protect them from all attacks upon their person liberty or dignity. The diplomatic agents also have total immunity from the criminal jurisdiction of the receiving country, and this type of immunity does not have any exceptions as per the Vienna Convention. There is almost equal immunity from the civil and administrative jurisdictions of the receiving country except for three strictly defined exceptions regarding immovable private property private succession and professional commercial activities.³

Inviolability and immunity enjoyed by technical and administrative personnel of the mission apply in the same way but the civil and administrative immunities will be applicable only for acts done in the performance of the services. Only those acts which fall within the ambit of the service will enjoy immunity while the members of the family who constitute the household of a diplomat are entitled to the same immunities which a diplomat enjoys as long as they do not belong to the state of the receiving party. Although it represents a conscious effort at providing the level of protection in accordance with its needs, it opens up a vast field of disputes because receiving States are often in no position to confirm that such a function is actually being performed.⁴

The Convention further protects the diplomatic bag and the mission's archives and correspondence from inspection, and confers inviolability on mission premises, which may not be entered by agents of the receiving State without the consent of the head of mission. These ancillary protections, designed to safeguard confidential communication, are themselves capable of instrumentalization for purposes unrelated to official

¹Denza, Eileen, op cit , p59

²Clifton E. Wilson, Diplomatic Privileges and Immunities (University of Arizona Press), 12.

³Vienna Convention on Diplomatic Relations 1961, art. 29.

⁴Vienna Convention on Diplomatic Relations 1961, art. 31.

correspondence, as later discussed. Article 9 of the Convention supplies the receiving State's principal remedy against an individual diplomat: at any time and without having to explain its decision, it may declare any member of a mission *persona non grata*, obliging the sending State to recall that person or terminate his functions within a reasonable period. Under Article 32, the sending State may indeed waive the immunity of its diplomats, but only if done expressly, and, concerning civil suits, in a manner distinct from the waiver of immunity from enforcement of judgment.¹

The convention makes an important distinction in function between diplomatic missions proper and consulates, and the latter is regulated under a completely different convention, the 1963 Vienna Convention on Consular Relations, which grants far less extensive immunities to consular officials and restricts these immunities to acts done in exercising their consular duties. Such a distinction is significant to our current analysis, since the discourse on the abuse of immunities often tends to confuse diplomatic and consular officials, sometimes even exaggerating the protection afforded to the latter while underestimating that afforded to the former.²

A body of scholarship and, increasingly, State practice has begun to interrogate whether the near absolute character of diplomatic immunity from civil jurisdiction can be reconciled with the receiving State's own obligations under international human rights law, particularly where the underlying conduct involves forced labor, trafficking, or other serious human rights violations against household staff. Domestic courts in several receiving States have been asked, thus far with limited success, to recognize an implied exception to civil immunity in cases involving allegations of trafficking or forced labor, reasoning that such conduct falls so far outside any conceivable diplomatic function that its inclusion within the scope of immunity cannot be justified even under the Convention's own functional rationale. But, in practice, the courts have refused to recognize such a rule in terms of the positive treaty law on the grounds that the language of the Convention does not make any differentiation based on the gravity of the underlying activity and that relaxing civil immunity, even though desirable in itself, is a job for the redrafting of the Convention.³

This problem is but one example of an idea which emerges throughout this paper namely that the functional necessity rationale used to justify diplomatic immunity was developed back in 1961 with the political and communicational dimensions of diplomatic activity in mind, and that its reconciliation with the contemporary expansion of human rights law has been much more problematic. This can be achieved through

¹Vienna Convention on Diplomatic Relations 1961, art. 37. (Article 37 of the Vienna Convention on Diplomatic Relations (1961) extends diplomatic privileges and immunities to members of the diplomat's family, administrative and technical staff, and certain other mission personnel, subject to the conditions and limitations specified in the Convention)

²Vienna Convention on Diplomatic Relations 1961, arts 22, 27 and 9. (Articles 22, 27, and 9 of the Vienna Convention on Diplomatic Relations (1961) guarantee the inviolability of mission premises, protect the confidentiality of official diplomatic communications, and recognize the receiving State's right to declare any member of the diplomatic mission *persona non grata* without providing reasons)

³Denza, Eileen, *op cit* , p60

practical reform in an incremental way rather than through controversial interpretation of the Convention's language, despite the fact that the details of such reform cannot be discussed in the context of this doctrinal research.¹

3. Manifestations of abuse, state practice and the limits of international responsibility

3.1 Manifestations of Abuse and State Practice

The most visible and publicly contentious form of abuse arises where diplomats commit criminal offences and rely on immunity to avoid prosecution in the receiving State. Traffic offences, including fatal accidents caused by reckless or intoxicated driving, recur with troubling frequency in the practice of capital cities that host large diplomatic communities. Because diplomatic agents cannot be arrested, detained, or, absent waiver prosecuted receiving States are left with the comparatively blunt instruments of diplomatic protest and expulsion, remedies that provide little satisfaction to victims or their families and do nothing to punish the individual responsible.²

A further category concerns the use of diplomatic status to facilitate smuggling of currency goods or in the gravest instances, narcotics or wildlife products exploiting the inviolability of diplomatic baggage and premises. Because the Convention permits inspection of the diplomatic bag only where the receiving State has serious reason to believe it contains something other than official correspondence, and even then only through return of the bag rather than opening it, the bag has periodically been used as a conduit for contraband that would otherwise be intercepted at ordinary points of entry. Violent crime including assault, and in isolated but internationally notorious cases homicide committed by or within diplomatic missions, represents the most serious manifestation of criminal abuse, precisely because the personal inviolability that protects diplomats from arrest can, in the immediate aftermath of such incidents also frustrate the receiving State's ordinary law enforcement response.³

A particularly serious and well documented pattern of abuse concerns the exploitation of domestic and household staff employed by diplomats, frequently migrant workers whose immigration status is tied to their employer. Reports by labor rights organizations and receiving State authorities have repeatedly documented cases of unpaid wages, confiscation of passports, restriction of movement and in the most severe cases, conditions amounting to forced labor or trafficking, all shielded from ordinary labor law enforcement and civil suit by the employer's diplomatic immunity, since these employees generally lack separate legal standing in the receiving State and

¹Human Rights Watch, reports on the exploitation of domestic workers employed by diplomatic personnel (various years).

²Nabil Abdo Othman Al-Halimi. "Judicial Immunity of Diplomatic Envoys under International Law: Between Privileges Granted in Temporal, Spatial, and Personal Scope, and the Impact of Exceptions and Controls on Them." *Journal of Human and Natural Sciences* 7.4 (2026): p595.

³Vienna Convention on Diplomatic Relations 1961, art. 27(3)-(4).

since civil jurisdictional immunity is seldom waived victims find themselves having no recourse through the legal system of either the receiving or in the absence of diplomatic pressure sending State. While issues of personal misconduct are important there exists another kind of abuse where the misuse of mission facilities and the diplomatic bag takes place. Since mission facilities are inviolable and cannot be entered without the permission of the head of mission it has occurred, albeit very rarely but in an internationally significant way that such mission premises have been used to protect individuals seeking to avoid law enforcement procedures of the receiving State for prolonged periods, leading to difficult confrontations between the sending and receiving States which the Vienna Convention does not provide any means of resolving.¹

In view of the fact that diplomats, suspected of engaging in such activities, cannot be arrested, searched or made to answer to criminal proceedings, the only form of reaction available to the receiving state without its waiver is expulsion of the individual in question through the *persona non grata* process, usually with the making of announcements referring to the name of the person and its activities, which itself has been recognized as a means of diplomatic signaling between states. Given the fact that these processes do not generally result in any factual determination through an impartial body they can also be used or seen to be used, for purposes other than those of ensuring state security, and thus further demonstrating how the lack of a judicial review system impacts both the victims of abuse and the accused diplomats, who have no place to defend themselves from such accusations.²

It bears emphasis that the manifestations catalogued in this Part are not evenly distributed across all sending States or all categories of mission personnel; empirical patterns documented by receiving State liaison units suggest that certain categories of abuse, unpaid civil debts and minor traffic infractions in particular occur with sufficient frequency across a section of missions that they are best understood as a predictable, near structural by product of the immunity regime rather than as aberrant misconduct confined to a small number of missions, whereas the more serious categories, violent crime large scale smuggling, and systematic labor exploitation, tend to cluster more unevenly and are more readily if imperfectly addressed through the case specific mechanisms of protest, waiver and expulsion discussed later in this article.³

The 1980 decision of the International Court of Justice in the Case concerning the United States Diplomatic and Consular Staff in Tehran constitutes the most important judicial pronouncement ever made regarding the nexus between diplomatic immunity and State responsibility. The case itself was not about an abuse of immunity by diplomats, but rather about the seizure of the United States embassy in Tehran by militant groups and the extended detention of the diplomatic and consular personnel of

¹Vienna Convention on Diplomatic Relations 1961, art. 27(3)-(4).

²Vienna Convention on Diplomatic Relations 1961, art. 27(3)-(4).

³Abdel Moneim Marai, and Khalil. "Towards a unified international codification of diplomatic and consular relations agreements." *Egyptian Journal of International Law* 81.1 (2025): 128-205.

the United States, but it nevertheless provides invaluable guidance for the purposes of our present study because it clearly explains the basic rationale of the immunity system.¹

It was found that the Vienna Conventions on Diplomatic and Consular Relations represent a standalone regime which provides on its own terms the measures available to the receiving state where it is unhappy about the behavior of the diplomats of the sending state, the measure of declaring persona non grata and breaking off diplomatic relations, and that the receiving state cannot unilaterally adopt measures of seizing premises or physically detaining the diplomats even where their conduct is very objectionable and without violating its own obligations under the Convention. It is evident from the above that the violation of the provisions of the Vienna Conventions by one side will, as such, not allow the other side to take any retaliatory measures in respect of it beyond the provisions of the Convention. It is this reciprocal and self-contained nature of the regime that is at the root of the accountability gap discussed below.²

State practice offers numerous illustrations of receiving States confronting serious abuse with only the limited tools the Convention allows. In 1984, a shooting from within the Libyan embassy in London during a demonstration resulted in the death of a British police officer standing on duty outside the building; because the individual responsible could not be identified or extracted from the inviolable premises, and because none of the mission's staff could be arrested, the United Kingdom's response was confined to severing diplomatic relations with Libya and expelling the entire mission, a proportionate but fundamentally political rather than judicial remedy that left the killing itself unprosecuted.³

It was in the year 1997 that a diplomat from the Republic of Georgia, who was serving at the embassy of his country in Washington, was responsible for a fatal car accident that resulted in the death of a teenager who was a resident of the city and who had committed this offense after having been drunk. As he had diplomatic immunity the United States was not able to prosecute him unless Georgia waives his immunity. After the victim's family filed civil suits against the diplomat and under intense diplomatic pressure from the United States, Georgia agreed to waive the immunity of the diplomat, who was thus tried and found guilty in the courts of the United States. This case has often been referred to as the perfect example of how the waiver mechanism works, but it is also a good example of how rare this process is.⁴

Routinely victimized states tend to react to lesser abuses namely overdue debts, petty crimes, or general lack of compliance with local laws via diplomatic protests,

¹United States Diplomatic and Consular Staff in Tehran (United States of America v Iran), Judgment, ICJ Reports 1980, p. 3.

²Denza, Eileen, op cit p174

³United States Diplomatic and Consular Staff in Tehran (United States of America v Iran), Judgment, ICJ Reports 1980, p. 3.

⁴Denza, Eileen, op cit ,pp 174-175

notes verbales calling for an explanation or restitution, and eventually by declaring the perpetrator persona non grata and thereby demanding his recall without ever having found any wrongdoings committed and without having provided any form of compensation for the aggrieved state. It is worth mentioning that the number of times diplomats' automobiles have been cited for parking or traffic infractions in the nation's capital city tends to be significant.¹

Comparative practice among major receiving States reveals broadly convergent, though not identical, approaches to managing abuse within the confines of the Vienna Convention. Capital cities that host particularly large diplomatic communities, London, Washington, Geneva, Brussels, and Vienna among them, have each developed specialized diplomatic liaison units within their foreign ministries or police services tasked with tracking incidents involving diplomatic personnel, issuing periodic reports on unpaid parking fines and traffic violations, and coordinating persona non grata recommendations where patterns of misconduct emerge. Such units, while institutionally useful in aggregating information that would otherwise remain scattered across individual police precincts or municipal authorities, possess no independent power to compel disclosure, waiver, or prosecution, and their effectiveness depends heavily on the receiving State's broader diplomatic relationship with the sending State in question.²

3.2 The Limits of International Responsibility and a Comparative Case Study

The general law of State responsibility, codified by the International Law Commission in its 2001 Articles on Responsibility of States for Internationally Wrongful Acts, in principle allows the conduct of a State organ, including a diplomatic agent acting in that capacity to be attributed to the sending State, triggering that State's international responsibility toward the receiving State or toward injured individuals through diplomatic protection. In practice, but this general framework offers only partial relief from the abuse described above, for at least three structural reasons.³

First, under the articles on State Responsibility, the wrongful act has to be committed by the State organ as the State organ. This means that purely private misconduct by a diplomat, like getting involved in a road accident when off duty or nonpayment of personal debts, does not fit within this definition. This is because such acts do not seem to constitute exercise of power by the sending State although it is the status of the diplomat as the diplomat which renders the receiving State unable to take actions against the diplomat in the usual course of law. Secondly, in cases where the sending State could be found responsible for instance for persistent failure to prevent or

¹Boussadia, and Raouf. "Changes Emerging in Diplomatic Relations: A Study in Light of the 1961 Vienna Convention on Diplomatic Relations." *Al-Naqid Journal for Political Studies* 6.1 (2022): 574-594

² Prof. Dr. Wael Ahmed Allam, and Muhammad Ahmed Ali Al-Qahtani. "Mechanisms for confronting the misuse of diplomatic immunities in the host country according to the Vienna Convention on Diplomatic Relations 1961." *Journal of Legal and Economic Research (Mansoura)* 15.94. (2025): 1-22.

³International Law Commission, Articles on Responsibility of States for Internationally Wrongful Acts (2001), art.

punish misconduct by the diplomat, there are very little practical steps that could be taken by the injured party, whether a State or an individual, to solve the problem other than resorting to diplomacy or international dispute resolution mechanism. Third, and most importantly, State responsibility works in the realm of international relations, whereas the injury which ensues as a result of a misuse of immunity, a road accident, an unmet debt obligation, the exploitation of a domestic laborer results to private individuals, who have no right on their own accord to invoke it, and rely totally on their State's readiness to undertake their cause through the means of diplomatic protection, a discretionary step which many states are loath to take.¹

And according to Article 32 of the Vienna Convention, the ability to waive immunity is vested solely with the sending State and more specifically in the vast majority of legal frameworks with the executive or foreign office of the sending state as opposed to the diplomat in question. This arrangement stems from the functional theory of immunity, which presupposes that immunity is a matter of state as opposed to a diplomat and can thus theoretically bridge the accountability gap in any particular instance because in waiving immunity the sending state gives back full jurisdiction to the receiving state.²

In practice waiver remains the exception rather than the rule. Sending States face few incentives to waive immunity doing so exposes their nationals to foreign legal process, can be perceived domestically as a failure to protect a State representative, and offers no reciprocal benefit unless the sending State itself has a comparable interest in seeing the receiving State waive immunity for its own diplomats in analogous circumstances. Waiver has historically occurred only in cases attracting substantial international publicity or sustained diplomatic pressure, as in the Georgian case discussed above, or where the sending State has independently concluded that the diplomat's conduct was so severe as to embarrass its own foreign policy. The result is that the very mechanism the Convention provides to reconcile immunity with accountability functions, in practice, as a matter of political discretion rather than legal obligation, leaving the vast majority of lower profile abuses remedied.³

Where immunity is not waived, Article 31(4) of the Convention preserves the possibility that the diplomat may be prosecuted or sued in the courts of the sending State, whose jurisdiction the Convention does not affect. This provision is often invoked as evidence that immunity does not equate to impunity, since accountability is merely relocated rather than eliminated. The practical value of this safeguard, but is severely constrained. The sending State has no independent incentive to investigate or prosecute conduct that caused no harm within its own territory and that its own diplomat may have every incentive to conceal from his home authorities. Evidentiary material

¹ILC Articles on Responsibility of States for Internationally Wrongful Acts (2001), art. 2.

²See International Law Commission, Articles on Responsibility of States for Internationally Wrongful Acts (2001), art. 4.

³See ILC Articles on Responsibility of States for Internationally Wrongful Acts (2001), art. 2.

witnesses, and victims typically remain in the receiving State, making a prosecution in the sending State's courts logistically difficult even where prosecutorial will exists. Extradition of the diplomat to the receiving State for trial is virtually never available, both because states rarely extradite their own nationals and because doing so would negate the diplomatic protection the sending State extended in the first place.¹

No international mechanism exists to compel the sending State to prosecute, nor to review, still less overturn, its decision not to do so. Diplomatic immunity disputes fall outside the jurisdiction of any standing international criminal tribunal absent an independent basis of jurisdiction, and the International Court of Justice can adjudicate only inter State disputes properly submitted to it by consenting States, a threshold rarely met in individual abuse cases. The result is a near total absence of external enforcement whether abuse is remedied depends entirely on the sending State's own domestic processes, which the receiving State and the injured individual can encourage through diplomatic channels but cannot compel through any binding international procedure.²

This synthesis also carries a normative implication worth making explicit. A regime that is structurally, rather than incidentally prone to leaving serious harm remedied cannot rely indefinitely on the argument that functional necessity alone justifies its current design functional necessity explains why diplomats require protection from routine interference, but it does not by itself explain why victims of the most serious forms of abuse, trafficking of domestic staff fatal traffic accidents or large scale smuggling, should be left with no meaningful prospect of redress at all. The reform agenda set out below therefore proceeds from the premise that preserving the diplomatic function and improving accountability for its abuse are not competing objectives but complementary ones since a regime perceived as tolerating impunity ultimately risks eroding the domestic political support on which the continued observance of diplomatic immunity itself depends.³

A further, more technical limitation on international responsibility concerns the practical difficulty receiving States face in verifying who genuinely qualifies for the protection they extend. The Vienna Convention leaves it largely to the sending State to notify the appointment, rank, and functions of its mission personnel, and receiving States generally lack independent means to contest the classification a sending State assigns, for instance, whether an individual is a diplomatic agent proper, entitled to full immunity, or administrative and technical staff, entitled to a narrower category. Instances have been documented in which sending States have whether deliberately or through administrative laxity accredited as diplomatic agents individuals whose actual functions more closely resembled those of administrative staff or who performed no genuine diplomatic function at all, a practice sometimes described as status

¹See International Law Commission, Articles on Responsibility of States for Internationally Wrongful Acts (2001), art. 4.

²See ILC Articles on Responsibility of States for Internationally Wrongful Acts (2001), art. 2.

³Vienna Convention on Diplomatic Relations 1961, art. 32.

manipulation, which has the effect of extending full immunity to a wider circle of individuals than the Convention's functional rationale would justify.¹

Because the receiving State's principal check on such manipulation, refusal to accept a particular individual's accreditation, or subsequent declaration of *persona non grata*, operates only prospectively and depends on the receiving State's own vigilance and political willingness to challenge the sending State's classification, status manipulation compounds the accountability gap already described it expands, without any corresponding increase in oversight, the pool of individuals capable of invoking immunity from local jurisdiction. This concern has become more acute as the range of functions performed by modern missions, commercial promotion, cultural exchange, technical cooperation, has broadened, blurring the line between activities plainly requiring diplomatic protection and activities that could, in principle, be performed by locally engaged staff without any claim to immunity at all.²

The four limitations examined in this Part, difficulties of attribution for private misconduct, the practical rarity of waiver, the absence of any mechanism to compel or review sending State prosecution, and the vulnerability of the accreditation process to status manipulation, are analytically distinct but mutually reinforcing. Each closes off a different avenue by which international responsibility might otherwise operate to remedy abuse of diplomatic immunity, and their cumulative effect is considerably greater than any one limitation considered in isolation. A victim of abuse by a diplomat whose conduct cannot easily be attributed to the sending State, who serves a sending State disinclined to waive immunity, whose home State has no practical means or incentive to prosecute, and whose very classification as a diplomat may itself be difficult to verify, is left with essentially no avenue of legal redress within the international system, however serious the underlying harm.³

It is this cumulative, rather than merely partial, character of the accountability gap that distinguishes the present analysis from earlier scholarship that has tended to examine waiver, attribution, or status verification as separate and largely unconnected doctrinal puzzles. Viewing them together, as this article has sought to do, clarifies why incremental reform addressed to any single limitation in isolation, for example, encouraging more frequent waiver without also addressing compensation for cases where waiver is refused, is unlikely by itself to close the gap in a meaningful way underscoring that the accountability gap identified in this article is a cumulative rather than a piecemeal phenomenon.⁴

¹Nabil Abdo Othman Al-Halimi. "Judicial Immunity of Diplomatic Envoys under International Law: Between Privileges Granted in Temporal, Spatial, and Personal Scope, and the Impact of Exceptions and Controls on Them, *op cit* , p 597.

²See ILC Articles on Responsibility of States for Internationally Wrongful Acts (2001), art. 2.

³International Law Commission, Articles on Responsibility of States for Internationally Wrongful Acts (2001), art. 4.

⁴Abdel Moneim Marai, and Khalil, *op cit*, op 130

Three recurring features emerge from comparative practice. First, receiving State authorities almost invariably complete a full criminal investigation up to but not including, prosecution, gathering evidence, interviewing witnesses, and formally identifying the diplomat as the responsible party even though they know from the outset that prosecution cannot proceed without waiver, this investigatory completeness, seemingly redundant given the jurisdictional bar, serves an important secondary function: it creates a documented record capable of supporting a subsequent civil claim, a diplomatic protest, or a future waiver request, and it satisfies, however incompletely, the receiving State's own institutional obligation to respond to a fatality occurring on its territory. Second, sending States confronted with a well documented and undisputed fatality face a distinctive form of diplomatic pressure not present in more ambiguous cases because the facts are not contestable, the sending State cannot deflect responsibility by disputing the diplomat's culpability, and is instead thrown back entirely on the discretionary question of whether to waive immunity, a decision that becomes correspondingly more exposed to domestic and international criticism the clearer the underlying facts are. Third, and most tellingly for the accountability gap thesis advanced in this article, outcomes across comparable fatality cases vary enormously depending not on the gravity of the underlying conduct, which is often similar, but on the intensity of media attention, the relative diplomatic weight of the sending and receiving States, and the presence or absence of a personally motivated advocate, typically a bereaved family member willing to pursue the matter publicly over an extended period.¹

4- Conclusion

Diplomatic Immunity, as recognized under the 1961 Vienna Convention on Diplomatic Relations, is an essential tool for conducting peaceful and productive diplomatic relations between States. The very same privileges granted to diplomats to prevent their prosecution under domestic laws have also been used time and again to commit crimes, escape civil suits, and even espionage, highlighting the inherent conflict of interest between functionality and accountability. This paper will study the legal basis of diplomatic immunity, analyze past cases of its abuse, and examine the limitations on addressing such abuse under international responsibility laws. Using the ILC Articles on State Responsibility as well as decisions made by the International Court of Justice, the analysis concludes that the existing system of diplomatic immunity grants too much discretion to the sending State at the expense of redress for the receiving State and recommends necessary reforms.

The above analysis has made clear that the problem is essentially one of structure, not of mere happenstance namely the fact that the International State reciprocal and mostly non judicial nature of the Vienna Convention was established by the ICJ in the

¹See Boussadia, and Raouf, *op cit*, p 579.

Tehran Hostages Case. In light of the fact that the remedy of the Convention is not aimed at compensating the injury suffered or punishing the wrongful act itself but rather the presence of the wrong doer, and that waiver and home state prosecution depend exclusively on the sovereign will of the sending State, injured States and individuals find themselves with few practical options available to them. As shown by the comparative case study, any recourse that exists at all appears to be highly inequitably allocated, having much more to do with media attention and diplomatic clout than the seriousness of the act in question.

Any efforts toward bridging this gap will need to take a gradual approach through small changes rather than an entirely new negotiation of the Vienna Convention's guarantees through more transparency in incident reporting concerning diplomats compensation schemes that do not rely on waiver, accreditation coupled with labor condition oversight for domestic staff, and enhanced judicial and quasi-judicial dialogue between the sending and receiving State. The potential areas of future research could include the following: comparative regional practices in more empirical terms, analysis of the relationship between media prominence and the success of waivers, and examination of whether the use of new digital reporting tools could enhance transparency without compromising the inviolable nature guaranteed by the Vienna Convention.

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