

An Appraisal of the Concept and Nature of Diplomatic Immunity Under International Law

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Abstract

This article focuses on the concept and juridical contours of diplomatic immunity as enshrined within the corpus of international law. It interrogates the doctrinal underpinnings, normative justifications, and evolving interpretive paradigms governing the immunities and privileges accorded to diplomatic agents, particularly within the framework of the 1961 Vienna Convention on Diplomatic Relations. Rooted in the principles of functional necessity and sovereign equality, diplomatic immunity is here appraised not merely as a pragmatic tool of diplomatic intercourse, but as a *sui generis* manifestation of international legal personality and intersubjective state comity. The paper analytically deconstructs the bifurcation between *ratione personae* and *ratione materiae* immunities, while critically evaluating the tension between the inviolability of diplomatic personnel and the imperatives of host state jurisdiction, accountability, and human rights obligations. Furthermore, the article explores emergent state practices and judicial pronouncements that challenge or reinforce the orthodoxy of absolute immunity, thereby revealing the dialectical nexus between customary international law, treaty law, and the shifting matrix of geopolitical realities. The inquiry contends that while diplomatic immunity remains an indispensable tenet of international diplomatic relations, its contours demand recalibration to reconcile the foundational objective of sovereign representation with the imperatives of justice, legal certainty, and international accountability.

Keywords: appraisal, concept, nature, diplomatic immunity and international law

1. Background

Diplomatic immunity is a cornerstone of modern international relations, tied to the fabric of state sovereignty, international cooperation, and legal reciprocity. Rooted in ancient customs and later codified in international treaties, the concept refers to the legal protections afforded to diplomats¹ and diplomatic missions from the jurisdiction of host states. These protections are not personal privileges but functional necessities aimed at ensuring the unimpeded performance of diplomatic duties. The essence of diplomatic immunity lies not in conferring personal advantage but in safeguarding the principle of sovereign equality and the orderly conduct of international affairs.²

Historically, diplomatic immunity traces its lineage to ancient civilizations such as Mesopotamia, Greece, and Rome, where envoys were granted inviolability as sacred intermediaries. These early practices were later

¹ A diplomat is a person who officially represents their nation's interests in another (host) country. See Diplomatic Status Individuals Policy, October 2008, p. 2, available at <https://www.thamesvalley.police.uk/SysSiteAssets/foi-media/thames-valley-police/policies/policy---diplomatic-status-individuals.pdf>, visited, 20/007/2025

² Dvornyicenko, N., (2017). The Specific Aspects of Privileges and Immunities of Diplomatic Agents in International Law: Theory and Practice. Pázmány Péter Catholic University.

systematized by European powers and culminated in the landmark Vienna Convention on Diplomatic Relations (1961), which serves today as the foundational legal instrument governing diplomatic privileges and immunities.¹ Article 29 of the Convention, for instance, affirms the inviolability of diplomats by stating that “the person of a diplomatic agent shall be inviolable” and must not be liable to any form of arrest or detention.

The nature of diplomatic immunity is both legal and functional. According to Nnamdi Akani, diplomatic immunity derives its legitimacy from the need to allow foreign representatives to operate without coercion or interference by the receiving state.² Immunity, in this context, is not absolute, it is tethered to the diplomat’s official functions. This functional necessity theory has replaced the earlier personal inviolability theory, which was based on the person of the sovereign being reflected in their envoy.³ As such, the modern international legal order treats immunity not as an individual right but as an extension of the sending state’s sovereignty. Scholars such as Nehaluddin Ahmad emphasize that diplomatic immunity serves the “functional necessity” of ensuring that states can maintain international relations without undue interference.⁴ This perspective reinforces that the inviolability of the person, premises, and correspondence of diplomats is crucial for maintaining international peace and mutual respect. However, critics argue that the doctrine can lead to abuse when diplomats engage in criminal or unlawful behavior and invoke immunity to evade accountability, a dilemma that has sparked debates on reforming the doctrine, particularly in cases involving serious crimes.⁵

Modern jurisprudence reflects the dualistic nature of diplomatic immunity: a safeguard for state functions on one hand and a potential shield for individual misconduct on the other. Cases such as *Democratic Republic of the Congo v. Belgium* (Arrest Warrant Case) at the International Court of Justice (2002) depicts the tension between immunity and the quest for justice, particularly in matters involving allegations of international crimes.⁶ The ICJ held that incumbent ministers for foreign affairs enjoy full immunity from criminal jurisdiction and inviolability even when suspected of war crimes, reaffirming the doctrine’s evincing strength but also highlighting its controversial implications. As international law evolves, diplomatic immunity remains a symbol of state dignity and a practical tool for diplomacy. Yet, its continued legitimacy depends on a balance between respect for state sovereignty and accountability to international norms. The challenge for the 21st century lies not in dismantling this doctrine but in refining its contours to ensure that it remains a just and functional component of global legal order. This paper therefore explores the depth and width of the concept and its relevance in contemporary times.

2. Conceptualising Diplomatic Immunity

Diplomatic immunity pertains to the juridical safeguards and privileges conferred upon diplomatic agents of a sending State while stationed within the territorial jurisdiction of a receiving State, by virtue of their official status under the corpus of international law. The legal personality and inviolable character of such diplomatic functionaries, together with the immunities and exemptions attendant to their office, are governed primarily by codified and customary principles of international diplomatic law. This section undertakes a comprehensive exposition of the doctrinal underpinnings of diplomatic immunity, elucidating its conceptual foundations and rationale within the framework of inter-State relations and sovereign equality.

2.1 Meaning of Diplomatic Immunity

Diplomatic immunity refers to a set of legal protections and privileges afforded to diplomats and their families, enabling them to perform their duties without fear of coercion, harassment, or legal action by the host country. These protections are rooted in the principle of sovereign equality and the necessity for smooth international relations. Diplomatic immunity allows envoys to operate without interference, ensuring that their home state’s interests can be effectively represented abroad. This concept is neither a modern invention nor a privilege of convenience.

Diplomatic immunity is a rule of international law that shields diplomatic agents of the sending State from (most

¹ United Nations, (1961). *Vienna Convention on Diplomatic Relations*.

² Akani, N., (2024). A Critical Analysis of Diplomatic Immunity in International Relations: Myth or Reality. *Journal of International Trade Law & Policy*.

³ Frey, L., & Frey, M. L., (2020). Diplomatic Immunity. In *The SAGE Handbook of Diplomacy*, 236–251.

⁴ Ahmad, N., Lilienthal, G. I., & Ali, S. I., (2023). Diplomatic Immunity under Islamic Tradition and Practices.

⁵ Wanyela, C. S., (2014). Diplomatic Privileges and Immunities: A Critical Analysis of the Vienna Convention on Diplomatic Relations (1961).

⁶ International Court of Justice, (2002). Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v. Belgium). ICJ Reports 2002, p. 3.

of) the jurisdiction of the foreign State in which they perform their functions.¹ The purpose of diplomatic privileges and immunities is ‘not to benefit the individuals but to ensure the efficient performance of the functions of diplomatic missions as representing States.’² As the International Court of Justice (ICJ) put it:

There is no more fundamental prerequisite for the conduct of relations between States [...] than the inviolability of diplomatic envoys and embassies, so that throughout history nations of all creeds and cultures have observed reciprocal obligations for that purpose [...]. The institution of diplomacy, has proved to be “an instrument essential for effective cooperation in the international community, and for enabling States, irrespective of their differing constitutional and social systems, to achieve mutual understanding and to resolve their differences by peaceful means.”³

There exist two categories of immunities that may, in principle, come into play and be relied upon.⁴ There are those immunities accruing under international law. These may relate to the conduct of a state agent acting in their official duty and are entitled functional immunities (*ratione materiae*) or they may be constructed to protect the private life of the state official, so-called personal immunities (*ratione personae*).⁵ The functional immunities, on the strength of the so-called “Act of State Doctrine”, to all states discharging their official duties and only the state may be held responsible at the international level and, in principle, individual performing acts on behalf of a sovereign state may not be called to account for any violations of international law he or she may have committed while acting in an official function.⁶

Personal immunities are instead granted by international customary or treaty rules to some categories of individuals on account on their functions and are intended to protect both their private and their public life. The individuals of whom these privileges comprise are Head of State, prime ministers or foreign ministers, diplomatic agents and other high-ranking agents of various international organizations.⁷

Functional immunity focuses primarily on the ‘what’, rather than the ‘who’.⁸ Draft article 2(e)⁹ adopts a functional definition of ‘State official’ to mean ‘any individual who represents the State or who exercises State functions.’ However, the commentary to draft article 2(e) emphasizes that ‘the definition of ‘State official’ has no bearing on the type of acts covered by immunity. Consequently, the terms ‘represent’ and ‘exercise State functions’ may not be interpreted as defining in any way the substantive scope of immunity.’¹⁰

Similarly, draft article 5 on ‘persons are enjoying immunity *ratione materiae*’ delineates the ‘who’, not the ‘what’, of functional immunity. Draft article 5 provides that: ‘State officials acting as such enjoy immunity *ratione materiae* from the exercise of foreign criminal jurisdiction.’ The commentary states that draft article 5 is ‘intended to define the subjective scope of this category of immunity’ that is, the ‘who’.¹¹ Thus, in order to enjoy functional immunity for a given act, an individual must be a State official who was acting ‘as such’. According to the commentary, this phrase ‘says nothing about the acts that might be covered by such immunity, which are to be covered in a separate draft article.’¹²

Diplomatic immunity has a nexus with the equality of states in international law. The principle of equality of states was recognised in the 1970 Declaration on Principles of International Law. This provides that: All states enjoy sovereign equality. They have equal rights and duties and are equal members of the international

¹ M., Gogna, *et al.*, (n.d.). Diplomatic and State Immunity in Respect of Claims of Embassy Employees and Domestic Workers: Mapping the Problems and Devising Solutions, Report, available at https://www.epsu.org/sites/default/files/article/files/Final_reportAmsterdamlawclinic.pdf, visited, 30/07/2025.

² *Ibid.*

³ *United States and Diplomatic and Consular Staff in Teheran (US v Iran)* [Judgment of 24 May 1980] [91].

⁴ E., Munoz, (2012). Diplomatic Immunity: A Functional Concept in the Society of Today. Human Rights Studies Lund University, p. 18.

⁵ *Ibid.*

⁶ *Ibid.*

⁷ *Ibid.*

⁸ C., Keitner, (2015). Functional Immunity of State Officials Before the International Law Commission: The ‘Who’ and the ‘What’. *QIL*, 17, pp. 51-57:52.

⁹ ILC, (2014). ‘Report of the International Law Commission on the Work of its 66th Session’ (5 May–6 June and 7 July–8 August 2014) UN Doc A/69/10 231.

¹⁰ *Ibid.*

¹¹ *Ibid.* para.236, para 1.

¹² *Ibid.*

community, notwithstanding differences of an economic, social, political or other nature. In particular, sovereign equality includes the following elements: (a) States are juridically equal; (b) Each state enjoys the rights inherent in full sovereignty; (c) Each state has the duty to respect the personality of other states; (d) The territorial integrity and political independence of the state are inviolable; (e) Each state has the right freely to choose and develop its political, social, economic and cultural systems; (f) Each state has the duty to comply fully and in good faith with its international obligations and to live in peace with other states.

2.2 The Rationales for Diplomatic Immunity

Diplomatic immunity is a cornerstone of international relations, rooted in the necessity of ensuring the effective functioning of diplomatic missions between sovereign states. Its rationale is myriad drawing from legal tradition, functional necessity, customary international law, and the need for reciprocity and mutual respect among nations.

2.2.1 The Functional Necessity Argument

The primary rationale is the functional necessity doctrine, which posits that diplomats must be free from the jurisdiction of the host state to carry out their duties effectively and without interference. This was codified in the 1961 Vienna Convention on Diplomatic Relations, which emphasized that such immunities are “not for the benefit of the individual but to ensure the efficient performance of the functions of diplomatic missions”.¹ Without this protection, diplomats may face legal harassment or coercion, undermining their state’s ability to maintain international relations.

At its core, the functional necessity doctrine holds that diplomatic agents represent their sovereign states and must operate independently of the host country’s legal or political interference. If diplomats were subject to local jurisdiction, there would be the risk of harassment, coercion, or prosecution based on politically motivated charges. Such vulnerability would undermine the diplomat’s ability to negotiate, report accurately, and represent the sending state without fear of reprisal.² In this way, immunity serves as a protective shield that preserves the integrity of diplomatic communication and negotiation channels.

Importantly, the doctrine applies not just to criminal jurisdiction, but also to civil and administrative jurisdictions of the host state. This broad scope reflects the necessity of creating an atmosphere where diplomats are not entangled in local legal disputes that could impair their mission. For instance, a diplomat preoccupied with court appearances or legal defense would not be in a position to fulfill diplomatic responsibilities effectively.³

Despite its foundational status, the functional necessity principle has faced contemporary challenges, particularly in cases involving serious crimes committed by diplomats. Critics argue that the doctrine is sometimes exploited for impunity rather than necessity. In response, some scholars and policymakers advocate for a more restrictive interpretation of immunity limiting its scope to acts performed in an official capacity, or encouraging the waiver of immunity in cases involving criminal offenses.⁴ Nevertheless, the principle remains central to international diplomatic practice, offering a stable and universally accepted legal foundation. States continue to view it as an essential mechanism to protect the delicate fabric of diplomacy, especially in politically volatile regions where trust and cooperation are fragile.

The argument has gained acceptance since the 16th century to modern practice.⁵ Diplomats need to be able to move freely and not be obstructed by the receiving State. They must be able to observe and report with confidence in the receiving State without the fear of being reprimanded.⁶ The argument finds support in the case of *Empson v. Smith*,⁷ wherein it was stated that diplomatic immunity is not immunity from legal liability rather immunity from suit, and diplomatic agents are not above the law and are obligated to respect the laws and regulations of the receiving state. In the United Kingdom, the House of Commons Foreign Affairs Committee has put the case this way:

For the application of the functional necessity argument, a determinative issue is the distinction between official and private acts which lies on the premise of whether the alleged illegality stems from the official function or

¹ Vienna Convention on Diplomatic Relations, Article 29-31. Available at: https://legal.un.org/ilc/texts/instruments/english/conventions/9_1_1961 (visited on the 20/07/2025)

² Tunks, M. A., (2002). Diplomats or Defendants: Defining the Future of Head-of-State Immunity. *Duke Law Journal*, 52(3), 651-682.

³ Wilson, R. A., (1984). Diplomatic Immunity from Criminal Jurisdiction: Essential to Effective International Relations. *Loyola of Los Angeles International and Comparative Law Review*, 7(1), 77-90.

⁴ Aphael, A., (2019). Retroactive Diplomatic Immunity. *Duke Law Journal*, 69, 1375-1416.

⁵ M., Moutzouris, *op cit.*, p. 24.

⁶ *Ibid.*

⁷ *Empson v. Smith* [1966] 1 QB 426.

private activity of the concerned diplomat. For example, a diplomat cannot be sued for rejecting a visa as the act falls within the ambit of official functions. However, if the applicant is verbally attacked or abused by the diplomat during the assessment of the visa application, the question that would remain is whether the attack is inclusive of the performance of the official functions being essentially a private act of the diplomat.¹ If yes, then the private act would be protected by diplomatic immunity, and if no, then the act shall fall under the unprotected private act category.

In the 1977 case of *Ministère Public and Republic of Mali v Keita*,² the Court had to decide whether the murder of the Ambassador of Mali by a chauffeur came within the ambit of official duties or acts or functions. The Court observed that even though the act was performed during work hours on Embassy grounds, the act was done in connection with a personal dispute between the Ambassador and the chauffeur. The Court, therefore, held that murder by the chauffeur was not a natural consequence of or connected to the performance of or exercise of official duties as diplomatic immunity is granted extends only to the abovementioned instances.

2.2.2 Sovereignty and Equality Reinforcing the Independence, Equality and Sovereignty of States

The principle of state sovereignty and the corollary notion of sovereign equality constitute foundational pillars of the international legal system and operate as core rationales for the doctrine of diplomatic immunity. Modern international law has its roots in the monarchies of pre-French Revolution Europe, and it is from the archaic identification of the sovereign with his state that the modern law of immunity has developed.³ The first justification for immunity stems from this time, when the sovereign was the embodiment of the state. The sovereign and the state were perceived as one and the same thing. The state, that is the territory and the persons on that territory, were the property of the sovereign, and the attributes of the sovereign were that of the state. A sovereign personified the state; his dignity was that of the state; an affront to the state was also an affront to the sovereign, and likewise an action which offended a sovereign caused offence to the state.⁴

Immunity later developed as a matter of privilege and finds support in earlier caselaw and the writings of jurists. In the classic case on state immunity, the *Schooner Exchange v. McFaddon*,⁵ decided in 1812, the United States Supreme Court found that, “One sovereign being in no respect amenable to another; and being bound by obligations of the highest character not to degrade the dignity of his nation, by placing himself or its sovereign rights within the jurisdiction of another, can be supposed to enter a foreign territory only under an express license, or in the confidence that the immunities belonging to his independent sovereign station, though not expressly stipulated, are reserved by implication, and will be extended to him.” The principle of sovereign equality, enshrined in Article 2(1) of the United Nations Charter, mandates that all states irrespective of size, power, or political structure are equal in legal status and enjoy equivalent rights and duties under international law.⁶

In this regard, immunity becomes an instrument of reciprocity, allowing states to engage in diplomacy without fearing that their envoys will be prosecuted or otherwise constrained by the legal systems of the receiving state.⁷ The concept also reinforces mutual respect for sovereign functions, as immunity shields not merely the person of the diplomat, but the dignity and inviolability of the state they represent. This doctrine was strongly reaffirmed in the International Court of Justice (ICJ) decision in the *Tehran Hostage Case*⁸, where the Court held that the “rules of diplomatic law... are firmly established and widely recognized as indispensable to the maintenance of normal international relations”. In other words, the immunity afforded to diplomats is an affirmation of the respect due to the sovereign equality of the sending state.

3. Approaches to Diplomatic Immunity

The evolution of immunity in international law has historically oscillated between two doctrinal poles: the

¹ A. Chowdhury, (2021). Applying the Functional Necessity Test to the Immunity of Diplomats’ Family Members: Dunn-Sacoolas Incident between the UK and USA. *SCLS Law Review*, 4(3), pp. 8-21:17.

² *Ministère Public and Republic of Mali v Keita* (1977) *Journal des Tribunaux* 678; 77 ILR 410.

³ E., Franey, (2009). Immunity, Individuals and International Law. Which Individuals are Immune from the Jurisdiction of National Courts under International Law?, PhD Thesis, London School of Economics, p. 55.

⁴ *Ibid.*

⁵ *The Schooner Exchange v. McFaddon*, 11 US 116; 7 Cranch. 116 (1812) at 137.

⁶ *Charter of the United Nations*, 1945, Article 2(1). <https://www.un.org/en/about-us/un-charter> (visited on the 29/07/2025)

⁷ Ahmad, N., Asmad, A. H., & Zulkiffle, N. B., (2022). Evolution and Practices of Diplomatic Immunity under Islamic Traditions and International Law. *J. Int’l L. Islamic L.*, 18.

⁸ *United States Diplomatic v. Consular Staff in Tehran* (U.S. v. Iran), ICJ Reports 1980, p. 3.

absolute and restrictive approaches. These paradigms are especially salient in the discourse on state immunity and have informed debates surrounding diplomatic immunity, particularly in contexts where immunity is invoked to shield acts that allegedly contravene *jus cogens* norms or domestic criminal statutes. These approaches will be treated in turn.

3.1 Absolute Approach

The absolute theory of immunity posits that a foreign state and its agents are entirely immune from the jurisdiction of the courts of another state, irrespective of the nature or context of their actions. Rooted in the maxim *par in parem non habet imperium* (an equal has no power over an equal), this approach perceives immunity as an essential derivative of sovereign equality and non-intervention, meaning that any attempt by one state to subject another or its agents to its domestic legal processes is inherently unlawful.¹ This view predominated during the 19th and early 20th centuries, a period when states operated primarily as public entities with limited commercial involvement. The U.S. Supreme Court case of *The Schooner Exchange v. McFaddon* (1812) remains a landmark articulation of the absolute doctrine, wherein Chief Justice Marshall held that foreign sovereigns and their instrumentalities were not subject to U.S. jurisdiction.² The same immunity applies to “members of the family of a diplomatic agent forming part of his household” (Article 37(1) VCDR).³ When a diplomatic agent’s function ends, his or her personal immunity ends as well. However, immunity for acts performed in an official capacity subsists even after function (immunity *ratione materiae* or functional immunity).⁴

The immunity from the criminal jurisdiction of the receiving State has an absolute character: there are no exceptions.⁵ This absolute immunity concerns all possible minor offences as well as grave crimes, such as the crimes against humanity. In the *Arrest Warrant case*⁶ the ICJ ruled that there is no exception for international crimes. Although, in this case the ICJ was dealing with the immunity of a minister of foreign affairs, the outcome has direct consequence for diplomatic immunity as the protection of the functioning of the office is a prime reason for granting both immunities.

3.2 Restrictive Approach

The restrictive theory of immunity emerged as a response to the increasing participation of states in commercial and private transactions (*acta jure gestionis*) alongside their traditional sovereign activities (*acta jure imperii*). Under the restrictive doctrine, immunity is confined to acts performed by a state in its sovereign capacity, whereas immunity does not extend to acts of a private or commercial nature. This theory reflects a more functional application of immunity, aiming to prevent states from evading liability for activities that are not inherently governmental.⁷ The European Convention on State Immunity (1972) and national laws such as the UK State Immunity Act (1978) and US Foreign Sovereign Immunities Act (1976) formally codified this doctrine, marking a shift toward greater accountability in international relations. A central argument for proponents of the restrictive view is that Article 39(2) of the VCDR, which uses the formula of “in the exercise of functions”, is the practical equivalent of Article 38(1) of the VCDR, which protects a serving diplomat with the nationality or permanent residency of the receiving State for “official acts performed in the exercise of his functions”.⁸

Thus, by the restrictive approach, immunity from civil and administrative jurisdiction is near absolute, yet subject to three exceptions as provided in Article 31(1) VCDR:

(a) A real action relating to private immovable property situated in the territory of the receiving State, unless he holds it on behalf of the sending State for the purposes of the mission; (b) An action relating to succession in which the diplomatic agent is involved as executor, administrator, heir or legatee as a private person and not on behalf of the sending State; (c) An action relating to any professional or commercial activity exercised by the diplomatic agent in the receiving State outside his official functions.

¹ Denza, E., (2016). *Diplomatic Law: Commentary on the Vienna Convention on Diplomatic Relations*, 4th ed., Oxford University Press.

² *The Schooner Exchange v. McFaddon*, 11 U.S. (7 Cranch) 116 (1812).

³ 37(1) VCDR.

⁴ Article 39 (2) VCDR.

⁵ Article 31(1) VCDR.

⁶ Arrest Warrant of 11 April 2000 (Democratic Republic of Congo v Belgium) ICJ, 41 ILM 536.

⁷ Fox, H. & Webb, P., (2015). *The Law of State Immunity*, 3rd ed., Oxford University Press, pp. 40–45.

⁸ S., Xinxiang, (2019). Official Acts and Beyond: Towards an Accurate Interpretation of Diplomatic Immunity *Ratione Materiae* under the Vienna Convention on Diplomatic Relations. *Chinese JIL*, p. 5.

Similarly, in the *Paredes v. Vila*¹ case claims of Paraguayan domestic worker brought against an Argentinean diplomat and his wife for breach of contract and unjust enrichment were dismissed by the United States District Court on the ground that:

When diplomats enter into contractual relationships for personal goods or services incidental to residing in the host country, including the employment of domestic workers, they are not engaging in ‘commercial activity’ as that term is used in the Diplomatic Relations Convention. Thus, contracts for goods and services incidental for daily life concluded in the receiving State are outside of the exception and are covered by the immunity. The exception sees to remunerated services by diplomats or members of their family, or an employment outside of the mission.²

4. Categories of Objects Subjected to Diplomatic Protection

Diplomatic immunity is not an abstraction. It applies to specific objects which are the subject of immunity. They include: diplomatic personnel, diplomatic bag and the diplomatic premises. These objects will be treated in turn.

4.1 Diplomatic Personnel

Article 1(e) of the Vienna Convention on Diplomatic Relations 1961 defined a diplomatic agent as: “...the head of the mission or a member of the diplomatic staff of the mission”. According to Munoz³ “...diplomatic agents are those persons so designated by the sending State and the receiving State simply receives”. In the context of this research, a diplomatic personnel is a person designated by a state to represent the state in another country. The diplomatic personnel make up the diplomatic mission. It thus incumbent upon the research to elaborate on the diplomatic mission.

The diplomatic agents are part of the diplomatic mission⁴. It therefore becomes important to elaborate on the diplomatic mission. The diplomatic mission consists of a diplomatic representative duly nominated by one state and accepted by another, together with his staff and established in the diplomatic capital of the state. As far as the receiving state is concerned there is only one person who may represent another state, and he is head (or acting head) of that mission who, as such, is entirely responsible for its activities; his staff, strictly speaking, have no direct representative function and merely assist their head.

The 1961 Vienna Convention on Diplomatic Relations (article 1) usefully defined the staff of a diplomatic mission (with the French expression in brackets) as follows: (a) The ‘head of the mission’ (chef de mission) is the person charged by the sending state with the duty of acting in that capacity; (b) The ‘members of the mission’ (membres de la mission) are the head of the mission and the members of the staff of the mission; (c) The ‘members of the staff of the mission’ (membres du personnel de la mission) are the members of the diplomatic staff, of the administrative and technical staff and of the service staff of the mission; (d) The ‘members of the diplomatic staff’ (membres du personnel diplomatique) are the members of the staff of the mission having diplomatic rank; (e) A ‘diplomatic agent’ (agent diplomatique) is the head of the mission or a member of the diplomatic staff of the mission;⁵ (f) A ‘member of the administrative and technical staff’ (membre du personnel administratif et technique) is a member of the staff of the mission employed in the administrative or technical service of the mission; (g) A ‘member of the service staff’ (membre du personnel de service) is a member of the

¹ *Gonzales Paredes v Vila* [2007] 479 F.Supp.2d 187 [2007].

² M., Gogna *et al.*, (n.d.). Diplomatic and State Immunity in Respect of Claims of Embassy Employees and Domestic Workers: Mapping the Problems and Devising Solutions, Amsterdam International Law Clinic Report, p. 7, available at https://www.epso.org/sites/default/files/article/files/Final_reportAmsterdamlawclinic.pdf, visited 27/07/2025.

³ E., Munoz, (2012). Diplomatic Immunity: A Functioning Concept of the Society Today, Human Rights Studies Lund University, p. 21, available at <https://lup.lub.lu.se/luur/download?func=downloadFile&recordId=21/05/2025>.

⁴ The Vienna Convention on Consular Relations provides for members of the consular posts. Members of Consular Posts (Normal and Special Bilateral) Consular personnel perform a variety of functions of principal interest to their respective sending countries (for example, issuance of travel documents, attending to the difficulties of their own nationals who are in the host country, and generally promoting the commerce of the sending country). Countries have long recognized the importance of consular functions to their overall relations, but consular personnel generally do not have the principal role of providing communication between the two countries that function is performed by diplomatic agents at embassies in capitals. The 1963 Vienna Convention on Consular Relations grants a very limited level of privileges and immunities to consular personnel assigned to consulates that are located outside of capitals. Diplomatic and Consular Immunity: Guidance for Law Enforcement and Judicial Authorities, United States Department of State Office of Foreign Missions, available at https://www.state.gov/wp-content/uploads/2019/07/2018-DipConImm_v5_Web.pdf, visited, 09/07/2025.

⁵ The term ‘diplomatic agent’, which formerly referred only to the head of a mission, now includes the members of the diplomatic staff of the mission; and ‘the members of the diplomatic staff’ are not only members of a diplomatic service, but also attachés, advisers and members of other ministries, provided that they hold diplomatic rank. G., Feltham, *op cit.* p. 13.

staff of the mission in the domestic service of the mission; (h) A 'private servant' (domestique privé) is a person who is in the domestic service of a member of the mission and who is not an employee of the sending state.

Pursuant to article 14(1) of the VCDR 1961, Heads of mission are divided into three classes, namely: (a) That of ambassadors or nuncios accredited to Heads of State, and other heads of mission of equivalent rank; (b) That of envoys, ministers and internuncios accredited to Heads of State; (c) That of chargés d'affaires accredited to Ministers for Foreign Affairs.¹

Once accepted as a head of mission, the diplomat must present his credentials to the receiving state and from the date and hour of this credentials ceremony, his or her status as head of mission begins.² The VCDR states: "the head of the mission is considered as having taken up his functions in the receiving state either when he has presented his credentials or when he has notified his arrival. But the privileges will normally begin on arrival; in some cases the presentation of credentials will not be arranged for several days or weeks."³

Generally, the VCDR does not discriminate between a head of a mission and other diplomatic staff.⁴ All are treated the same. Some reduced level of immunities and privileges may be accorded to administrative and technical staff and service staff. All are treated the same. Some reduced level of immunities and privileges may be accorded to administrative and technical staff and service staff who are not nationals of the receiving state. The VCDR is specific that the immunities and privileges shall not apply to acts of such staff performed in their official duties.⁵

The person of a diplomatic agent is inviolable under article 29 of the Vienna Convention and he may not be detained or arrested.⁶ This principle is the most fundamental rule of diplomatic law and is the oldest established rule of diplomatic law.⁷ In resolution 53/97 of January 1999, for example, the UN General Assembly strongly condemned acts of violence against diplomatic and consular missions and representatives, while the Security Council issued a presidential statement, condemning the murder of nine Iranian diplomats in Afghanistan.⁸ States recognize that the protection of diplomats is a mutual interest founded on functional requirements and reciprocity.⁹ The receiving state is under an obligation to 'take all appropriate steps' to prevent any attack on the person, freedom or dignity of diplomatic agents.¹⁰

Article 30(1) provides for the inviolability of the private residence of a diplomatic agent, while article 30(2) provides that his papers, correspondence and property are inviolable. Concerning criminal jurisdiction, diplomatic agents enjoy complete immunity from the legal system of the receiving state, although there is no immunity from the jurisdiction of the sending state. This provision noted in article 31(1) reflects the accepted

¹ Article 14(2) however states: "except as concerns precedence and etiquette, there shall be no differentiation between heads of mission by reason of their class". Article 15 states that the class to which the heads of their missions are to be assigned shall be agreed between States.

² Who are the Diplomats and How do they Operate?, available at https://uk.sagepub.com/sites/default/files/upm-assets/71510_book_item_71510.pdf, visited, 05/07/2025.

³ *Ibid.*

⁴ *Ibid.*

⁵ *Ibid.* The head of mission is responsible for all matters connected with his mission. He may, and does, delegate various functions to his staff, but he alone is responsible both to his own government and to the government to which he is accredited for the conduct of the mission. Irrespective of the size of his staff there are certain basic priorities to which a head of mission normally devotes his personal attention: (a) the formulation of diplomatic policy; (b) transmitting to the host government the views of his own government on important matters of common interest and common policy, and acting as the channel of communication between the two in such matters; (c) reporting to his Ministry on events of political or economic significance, whether they are of direct significance (for example, the national budget or ministerial changes) or of indirect significance (for example, changes and trends in social or economic conditions), and commenting on the views of third parties in the country (for example, articles from the local press, opinions of other diplomats); (d) being aware of the people of influence and the sources of national power in the state in which he is serving; (e) conducting himself in his official and personal behaviour in such a way as to bring credit to his country; (f) cultivating as wide and as varied a circle of friends as is possible in order to be able to fulfil (a), (c), (d) and (e) above. G., Feltham, *op cit.*, p.14.

⁶ It should be noted that by article 26 the receiving state is to ensure to all members of the mission freedom of movement and travel in its territory, subject to laws and regulations concerning prohibited zones or zones regulated for reasons of national security.

⁷ M., Shaw, (2008). *International Law*. Cambridge University Press, 6th edition, p. 764.

⁸ *Ibid.*

⁹ See for example, the US Supreme Court in *Boos v. Barry* 99 L Ed 2d 333, 346 (1988); 121 ILR, pp. 499, 556.

¹⁰ M., Shaw, *op cit.*, p. 764.

position under customary law.

Article 31(1) VCDR 1961 also specifies that diplomats are immune from the civil and administrative jurisdiction of the state in which they are serving, except in three cases: first, where the action relates to private immovable property situated within the host state (unless held for mission purposes); secondly, in litigation relating to succession matters in which the diplomat is involved as a private person (for example as an executor or heir); and, finally, with respect to unofficial professional or commercial activity engaged in by the agent.¹

A typical case where the inviolability of the diplomatic personnel was not respected is the *The Occupation of the U.S. Embassy in Tehran*.² This case concerns the occupation of the U.S Embassy in Tehran by Iranian students in 1979, during the year of the Iranian Revolution. They held staff hostage and demanded the handing over of Mohammad Reza Pahlavi, the former Shah of Iran. The United States filed a case with the ICJ. It requested the court to oblige Iran to release the hostages. In light of events following the occupation, the court ruled in 1980 that the Iranian state bore responsibility for the actions of those who had seized the complex. It also ordered the release of the hostages. Iran refused, and it took Algerian mediation before all 52 hostages were released, in 1981, after 444 days in captivity.³

4.2 Diplomatic Premises

According to Article 1 of the Vienna Convention on Diplomatic Relations 1961 the “premises of the mission” are the buildings or parts of buildings and the land ancillary thereto, irrespective of ownership, used for the purposes of the mission including the residence of the head of the mission. Article 30 provides that “the private residence of a diplomatic agent shall enjoy the same inviolability and protection as the premises of the mission” and that “his papers, correspondence and, except as provided in paragraph 3 of Article 31, his property, shall likewise enjoy inviolability”.

Article 22 of the Vienna Convention on Diplomatic Relations 1961 confirms the inviolability of mission premises barring any right of entry by law enforcement officers of the receiving State and imposing on the receiving State a special duty to protect the premises against intrusion, damage, disturbance of the peace or infringement of dignity. Even in response to abuse of this inviolability or emergency, the premises may not be entered without the consent of the head of mission. Article 24 of the Vienna Convention on Diplomatic Relations 1961 ensures the inviolability of mission archives and documents even outside mission premises so that the receiving State may not seize or inspect them or permit their use in legal proceedings.

By article 23, a general exception from taxation in respect of the mission premises is posited. The Court in the Philippine Embassy case explained that, in the light of customary and treaty law, ‘property used by the sending state for the performance of its diplomatic functions in any event enjoys immunity even if it does not fall within the material or spatial scope’ of article 22.⁴ It should also be noted that the House of Lords in *Alcom Ltd v. Republic of Colombia*⁵ held that under the State Immunity Act 1978 a current account at a commercial bank in the name of a diplomatic mission would be immune unless the plaintiff could show that it had been earmarked by the foreign state solely for the settlement of liabilities incurred in commercial transactions.⁶

With regard to the duration of the protection of the diplomatic premises, while the 1961 Vienna Convention contains a host of elaborate provisions for determining person’s entitlement to immunities and privileges and the time when said entitlement begins; this convention fails to provide any analogous provisions as regards the premises of the diplomatic mission.⁷ It seems reasonable to suggest that if the sending State has notified the receiving State of the location of its premises and the date when the building shall commence usage, it must be deemed inviolable from that moment onwards even during the time they are being prepared for that use.⁸

4.3 Diplomatic Bag

¹ M., Shaw, *op cit.*, p. 766.

² *United States v. Iran* [1980] ICJ Rep.

³ *Ibid.*

⁴ *Ibid.*, p. 762.

⁵ [1984] 2 All ER 6; 74 ILR, p. 180.

⁶ *Ibid.*

⁷ J., d’Aspremont, *Diplomatic Premises*, R. Wolfrum (ed.), (2009). *Max Planck Encyclopedia of International Law* (OUP, 2009) p. 3.

⁸ *Ibid.*

For centuries, governments and their envoys stationed abroad have used diplomatic bags.¹ The diplomatic bag, which is usually a canvas sack, is intended for the confidential conveyance of documents between a government and its missions abroad.² Eventually, diplomats used the bag to convey articles as well as documents; thus, the bag became the smuggling diplomat's perfect means by which to transport contraband as valuable as jewels and as lethal as machine guns across international borders. At first glance, subjecting the bag to metal detectors, electronic scanning, or canine sniffing without opening or detaining the bag would appear to be a simple solution to the worldwide problem of abuses of the diplomatic bag.³

The regime that is devised by the Vienna Conventions does away with all exceptions enshrined in customary international and strengthened the protection of the diplomatic bag. Under the 1961 Vienna Convention on Diplomatic Relations⁴ as well as the 1969 Convention on Special Missions⁵ and the 1975 Vienna Convention on the Representation of States in Their Relations with International Organizations of a Universal Character,⁶ the bag shall not be opened nor detained by the receiving State, with no exception whatsoever. Inviolability requires further positive measures to prevent interference by individuals.

Article 27 of the VCDR 1961 provides that the receiving state shall permit and protect free communication on behalf of the mission for all official purposes. Such official communication is inviolable and may include the use of diplomatic couriers and messages in code and in cipher, although the consent of the receiving state is required for a wireless transmitter. Article 27(3) and (4) of the VCDR 1961 deals with the diplomatic bag,⁷ and provides that it shall not be opened or detained 338 and that the packages constituting the diplomatic bag 'must bear visible external marks of their character and may contain only diplomatic documents or articles intended for official use'.⁸

5. Exclusion from Diplomatic Immunity

It has already been noted that diplomatic immunity is not indefinite. There are instances of exclusion of diplomatic immunity. These exclusions comprise waiver of diplomatic immunity, persona non grata, after function and commencement of lawsuit by a diplomatic agent.

5.1 Waiver of Diplomatic Protection

While the Vienna Convention does allow the sending state to waive the immunity of its diplomats, this seldom happens.⁹ The Vienna Convention's reliance on the sending state to waive the immunity of its own diplomat creates an inherent conflict of interest. The situations in which a diplomat's immunity may be waived are usually politically charged, and therefore are not available for average offenses which harm others.¹⁰

Pursuant to article 32 VCDR, the receiving State could request the sending State to waive the immunity of the offending diplomat so that the latter could be tried in court for the offences committed by foreign diplomatic agents where admonition is not considered a satisfactory punishment. This would possibly strain the political relations between the two States less than when the receiving State would declare the diplomatic agent persona non grata under article 9(1) VCDR.¹¹ Waiver has to be express and the possibility to revoke a waiver once it has

¹ C., Nelson, (1998). "Opening" Pandora's Box: The Status of the Diplomatic Bag in International Relations. *Fordham International Law Journal*, 12(3), pp. 494-519:494.

² *Ibid.*

³ *Ibid.*

⁴ Article 27.

⁵ Article 28.

⁶ Article 27.

⁷ Defined in article 3(2) of the Draft Articles on the Diplomatic Courier and the Diplomatic Bag adopted by the International Law Commission in 1989 as 'the packages containing official correspondence, and documents or articles intended exclusively for official use, whether accompanied by diplomatic courier or not, which are used for the official communication referred to in article 1 and which bear visible external marks of their character' as a diplomatic bag: see *Yearbook of the ILC*, 1989, vol. II, part 2, p. 15.

⁸ Article 27(4).

⁹ V., Maginnis, (2003). Limiting Diplomatic Immunity: Lessons Learned from the 1946 Convention on the Privileges and Immunities of the United Nations. *Brook. J. Int'l L.*, 28, pp. 989-1023:1021.

¹⁰ *Ibid.*

¹¹ M., Gogna, *et al.*, (n.d.). Diplomatic and State Immunity in Respect of Claims of Embassy Employees and Domestic Workers: Mapping the Problems and Devising Solutions, p. 16, available at https://www.epsu.org/sites/default/files/article/files/Final_reportAmsterdamlawclinic.pdf, visited 10/07/2025.

been given does not exist. Immunity can only be waived by the sending State, not by the diplomatic agent himself.¹

In general, waiver of immunity has been unusual, especially in criminal cases.² In a memorandum entitled Department of State Guidance for Law Enforcement Officers With Regard to Personal Rights and Immunities of Foreign Diplomatic and Consular Personnel the point is made that waiver of immunity does not 'belong' to the individual concerned, but is for the benefit of the sending state.³ While waiver of immunity in the face of criminal charges is not common, 'it is routinely sought and occasionally granted'. However, Zambia speedily waived the immunity of an official at its London embassy suspected of drugs offences in 1985.⁴

In *Fayed v. Al-Tajir*,⁵ the Court of Appeal referred to an apparent waiver of immunity by an ambassador made in pleadings by way of defence. Kerr LJ correctly noted that both under international and English law, immunity was the right of the sending state and that therefore 'only the sovereign can waive the immunity of its diplomatic representatives.'

5.2 Personal Non Grata

When a diplomatic agent commits a serious criminal breach of law, she/he may be declared persona non grata, but can never be prosecuted by the host State.⁶ According to article 9 VCDR, the receiving State may at any time and without having to explain its decision, notify the sending State that the head of the mission or any member of the diplomatic staff of the mission is persona non grata or that any other member of the staff of the mission is not acceptable.⁷ Once a declaration of persona non grata has been made, the sending State should either recall the diplomat or terminate his or her function with the mission in the receiving State. If the sending State refuses to do so, the receiving State may refuse to recognize the diplomat as a member of the diplomatic mission.⁸

Persona non grata means an unacceptable or unwelcome person. A diplomat who is no longer welcome to the government to which he is accredited.⁹ Diplomats have been declared *persona non grata* for making disparaging remarks against the host government, violating its laws, interfering with its politics, meddling with its domestic affairs, using offensive language and criticizing its head of state. "Usually the appended host government requests for sending diplomats to recall the offending diplomat. This request is normally complied with."¹⁰

In their International Law Dictionary, Bledsoe and Boleslaw define the term as follows: "The term *persona non grata* indicating that a diplomatic agent of a state is unacceptable to the receiving state. This can take place either before the individual is accredited, indicating that the proposed appointee is unacceptable to the host state and will not be received, or after the accreditation process in response to some real or alleged impropriety by the diplomatic agent".¹¹

The above definition reflects article 9 of the VCDR which provides that the receiving state may at any time declare any member of the diplomatic mission persona non grata without having to explain its decision, and thus obtain the removal of that person.

5.3 After Function

The immunity from jurisdiction of diplomatic agents as provided in Article 31(1) VCDR applies as long as

¹ *Ibid.*

² M., Shaw, *op cit.*, p. 771.

³ *Ibid.*

⁴ *Ibid.*

⁵ [1987] 2 All ER 396.

⁶ Robert Longley, (2019). How Far Does Diplomatic Immunity Go? THOUGHT CO (Sept. 2, 2019), available at <https://www.thoughtco.com/diplomatic-immunity-definition>, visited, 29/07/2025.

⁷ M., Gogna, *et al op cit.*

⁸ *Ibid.*

⁹ N., Ahmad and G., Lilienthal, (2021). Abuse of Diplomatic Immunities and Its Consequences Under the Vienna Convention: A Critical Study. *Transnational Law & Contemporary Problems*, 30, pp. 166-190:165:169.

¹⁰ R., Higgins, (1985). The Abuse of Diplomatic Privileges and Immunities: Recent United Kingdom Experience., *AM. J. INT'L L.*, 79, 645, p. 645.

¹¹ N., Ahmad and G., Lilienthal, *op cit.*, p. 169.

diplomatic agents exercise their official function and ends when their function ends.¹ After function their immunity in the receiving State is limited to that set forth in Article 39(2) VCDR. When the functions of a person enjoying privileges and immunities have come to an end, such privileges and immunities shall normally cease at the moment when he leaves the country, or on expiry of a reasonable period in which to do so, but shall subsist until that time, even in case of armed conflict.

However, with respect to acts performed by such a person in the exercise of his functions as a member of the mission, immunity shall continue to subsist.² This so-called residual immunity is limited to official acts performed by the diplomatic agents within their official capacity because such acts are the acts of the sending State.³ Therefore, ex-diplomats can only rely on the functional immunity for protection covering official acts performed during his or her time in office. The rationale behind this is to prevent that an official in the receiving State is held responsible for acts that are those of the sending State.⁴ The residual immunity is therefore not intended to shield the diplomats, but rather the State that they represent in their official capacity.⁵

As far as functional immunity of former diplomats is concerned, tort claims concerning abuse of human and labour rights of domestic workers are normally unrelated to the function,⁶ as illustrated by the *Swarna v Al-Awadi* case.⁷ Vishranthamma Swarna, an Indian national, had come to work for Al-Awadi, Third Secretary to the Permanent Mission of the State of Kuwait to the United States, in New York City. Swarna was sequestered in the diplomat's house, denied access to the outside world, forced to work long hours with no privacy and little food, beaten and raped. After her escape, she managed to bring a default judgement in the United States against the diplomat after he had left to take up a posting in France. When Al-Awadi responded to the case, he argued that he enjoyed jurisdictional immunity as a result of his diplomatic function. However, the District Court rejected this argument by pointing out that diplomats lose much of their immunity upon leaving their post, but where residual immunity did persist, it related only, in the words of the Vienna Convention, to 'acts performed [...] in the exercise of this function as a member of the mission.' As far as the notion of 'official act' is concerned, the Court explained that it encompasses the functions of the diplomatic mission as given in Article 3(1) VCDR.⁸ However, if an act is 'entirely peripheral to the diplomat's official duties.'⁹

5.4 Other Grounds for Waiver of Diplomatic Immunity

Article 31(1) provides that a diplomatic agent shall enjoy immunity from civil jurisdiction of the receiving State, except in the case of: (a) a real action relating to private immovable property situated in the territory of the receiving State, unless he holds it on behalf of the sending State for the purposes of the mission; (b) an action relating to succession in which the diplomatic agent is involved as an executor, administrator, heir or legatee as a private person and not on behalf of the sending State; (c) an action relating to any professional or commercial activity exercised by the diplomatic agent in the receiving State outside his official functions. These exceptions do not, indeed, reflect established customary international law, but they are necessary or reasonable, at least, for three reasons.¹⁰ Firstly, if the receiving State did not have jurisdiction over such cases, the latter would probably remain unexamined as it would be virtually impossible for any court elsewhere to examine the cases. Secondly, such cases are not connected with the official duties of a diplomatic agent, but are purely private in nature. Thirdly, such cases do not usually involve the possibility of criminal proceedings or imprisonment, which can hinder the performance of official duties.¹¹

There is also an indirect exception to immunity from civil jurisdiction of the receiving State. If a diplomatic agent initiates proceedings in a court of the receiving State, that is, invokes himself the jurisdiction of the latter, he precludes himself from the possibility to invoke immunity in respect of any counter-claim directly connected

¹ *Ibid.*

² Article 39(2) VCDR.

³ *Ibid.*

⁴ M. Gogna *et al.*, *op cit.*, p. 11.

⁵ *Ibid.*

⁶ M., Gogna *et al.*, *op cit.*, p. 12.

⁷ *Swarna v. Al-Awadi* 607 F.Supp.2d 509 – Dist. Court, SD New York (2009).

⁸ *Ibid.*

⁹ *Ibid.*, 518.

¹⁰ *Ibid.* p. 30.

¹¹ *Ibid.*

with the principal claim.¹

Article 32(3) of the VCDR contains another exception to immunity in civil jurisdictions. It states: “The initiation of proceedings by a diplomatic agent or by a person enjoying immunity from jurisdiction under article 37 shall preclude him from invoking immunity from jurisdiction in respect of any counter-claim directly concerned with the principal claim”. It follows that the diplomatic agent has to take into account that the defendant must also have the same rights in defending his interest and such defence may include the submission of a counter-claim. In the case of *High Commissioner for India v. Ghosh*² where the High Commissioner for India, the Union of India and the Government of West Bengal sued Dr. Satya Ranjan Ghosh for money lent. In this situation, the High Commissioner cannot rely on immunity for a counter claim on a civil matter. On this case the defendant brought a counter claim against the High Commissioner for defamation. An English court held that when the diplomatic agent claimed for money or damages from the defendant, he did not submit himself to a counter-claim for defamation (especially because the latter was a criminal offence).³

6. Conclusion and Recommendations

This research has elucidated the concept and enduring significance of diplomatic immunity as a cornerstone of the international legal order. As evidenced through doctrinal analysis and comparative jurisprudential perspectives, the concept of diplomatic immunity is neither an arbitrary vestige of antiquity nor a gratuitous indulgence afforded to state agents, but rather a meticulously crafted mechanism grounded in the principles of functional necessity, reciprocity, and sovereign equality. The 1961 Vienna Convention on Diplomatic Relations as the cardinal legal instrument codifying these immunities, embodies an equilibrium between the inviolability of diplomatic agents and the sovereign interests of receiving states.

However, the absolute nature of certain immunities particularly those *ratione personae* has engendered legitimate normative disquiet, especially when invoked to shield manifestly egregious conduct, including infractions against the criminal laws of host states or violations of fundamental human rights norms. The jurisprudence of international and domestic tribunals reveals a nascent but discernible trend toward recalibrating the contours of immunity in line with the imperatives of accountability, proportionality, and *jus cogens* norms.

There is therefore a pressing need for a progressive development and possible supplementary protocol to the Vienna Convention that provides clearer demarcations between acts performed in an official capacity (*acta jure imperii*) and those of a private or egregiously unlawful nature (*acta jure gestionis*), thereby enabling a more principled invocation of *ratione materiae* immunity. We further recommend that the international community, under the auspices of the United Nations International Law Commission or the International Court of Justice explores the establishment of a *sui generis* tribunal or oversight mechanism to adjudicate disputes and allegations involving diplomatic abuse, particularly in cases where the sending state declines to waive immunity or fails to prosecute.

In all, while diplomatic immunity remains indispensable to the unimpeded conduct of international relations, its application must evolve to reflect the contemporary imperatives of legality, justice, and mutual accountability. Immunity must not metamorphose into impunity. A calibrated, principled approach, anchored in both legal realism and juridical integrity, is necessary to preserve the legitimacy of this foundational doctrine under the ever-shifting paradigm of global diplomacy.

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¹ Article 32(3) VCDR 1961.

² (English Court of Appeal), 1 QB 134 (1960).

³ *Ibid.*

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