



# International And National Approaches to Diplomatic Immunity and Criminal Accountability

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## ABSTRACT

It is trite that diplomatic immunity is a fundamentally established principal of international law and it is advanced heavily by the Vienna Convention on Diplomatic Relations of 1961 with the sole aim of protecting diplomatic agent from the whims and caprices of the political authority and legal jurisdiction of the host states for the purpose of affording smooth diplomatic relations and safe conduct of diplomatic duties. Sadly this immunity is grossly abused as it is used as shield by diplomat to commit human right abuses and crimes against humanity without any credible means of accountability, justice and fairness. These abuses arising from diplomatic immunity had watered down the efficacy of international legal framework as well as the enforcement of human right across board; hence it is pertinent to create a balance between the tension of safeguarding diplomatic functions and preventing impunity of abuses that flows from the protection of privileges and immunity. Therefore both international and various national mechanisms have explored means of curbing such menace but can only be adequate achieved as a United front when specific proposals are put in place to address the challenges of abuse of immunity.

## I. International Approaches to the Implementation of Diplomatic Immunity

The development of diplomatic immunity over the years led the Vienna Convention<sup>1</sup> to become a universal convention with clear provisions marking the progression of custom into settled law and resolved areas of contention.<sup>2</sup> The Vienna

Convention seeks to maintain a standard on the practices of diplomatic officers and the missions in the receiving states and empowered diplomatic immunity as strictly absolute with respect to criminal jurisdiction and also restrictive to functional immunity.<sup>3</sup>

The implementation of diplomatic immunity has its legal basis in the preamble of the Vienna Convention explains that “the purpose of such privileges and immunities is not to benefit individuals but to ensure the efficient performance of the functions of diplomatic missions as representing states”.<sup>4</sup> This is to protect the diplomats from incessant legal proceeding that may serve as a distraction to the effective performance of his diplomatic functions.

The learned Judge in the case of *Empson v. Smith* held that ‘it is elementary law that diplomatic immunity is not immunity from legal liability, but immunity from suit’,<sup>5</sup> in other words, diplomats are not necessarily above the law because they are under an obligation ‘to respect the laws and obligations of the receiving states’.<sup>6</sup> Although, where laws are breached, diplomatic agents cannot be sued in the receiving state except a voluntary submission is made to such jurisdiction, largely due to the personal inviolability they enjoy, which is only a physical privilege and a form of shield to them, so as to ensure they carry out their functions

<sup>1</sup> United Nations General Assembly, Vienna Conventions on Diplomatic Relations, 18 April 1961, 500 UNTS 95. <<http://www.legal.un.org/ilc>> accessed 9 May 2023.

<sup>2</sup> LS Frey and M Frey, *A Diplomatic Analogy: International Functionaries and Their Privileges* (1<sup>st</sup> edn University Press, Ohio (1998)

<<http://www.diplomacy.edu>> accessed 20 September 2022.

<sup>3</sup> M Shaw, *International Law* (Cambridge University Press, London, 8<sup>th</sup> Ed, 2017) 578.

<sup>4</sup> United Nations General Assembly, (n1) Preamble.

<sup>5</sup> R Adams, Case Report, (1970)41 *International Law Reports*, p 410 <[www.cambridge.org](http://www.cambridge.org)>; <[www.lawjournals.co.uk](http://www.lawjournals.co.uk)> accessed 12 November, 2023.

<sup>6</sup> United Nations General Assembly, (n1) art. 9.



without being under duress or manipulations of any kind.<sup>7</sup>

In the light of the persuasive nature of international law that has no force of law, to successfully implement the law of diplomatic relations and advanced diplomatic immunity as envisaged by the United Nations Vienna Convention, the followings are the various international approaches adopted for the implementation of the diplomatic immunity<sup>8</sup>:

1. The international customary rule of personal inviolability established the diplomat's entitlement to diplomatic immunity, since personal inviolability is as old as civilization itself and has survived decades of evolutions, thereby forming a fundamental principle of international and diplomatic law and its subsequent codification into the Vienna Convention. This protects a diplomat from arrest, detention of any kind and generally from the criminal jurisdiction of the host country; the diplomat is also exempted from payment of taxes.<sup>9</sup>

2. Bilateral agreements and the principle of reciprocity encourages the implementation of diplomatic immunity through the advancement of the common interests of states that can guarantee the efficient application of diplomatic law and also aid general obedience. The bilateral agreement existing among states is with an underlying understanding that various state envoys/diplomat from the receiving states are likely to be accorded same treatments and respect as accorded to those from the sending states.

3. Where there seems to be any form of dispute on the implementation and the achievement diplomatic relations or its antecedent abuses, the United Nations through the International Court of Justice can resolve them amicably in light of the Vienna Conventions.

## II. Differences in National Laws /Regulations on the Implementation of Diplomatic immunity

<sup>7</sup> A Abass, Complete International Law: Text, Cases, and Materials (2<sup>nd</sup> edn, USA Oxford University Press, 2014) p. 409.

<sup>8</sup> R Vark, Personal Inviolability & Diplomatic Immunity in Respect to Serious Crimes (2003) 8 *Juridica International* <<http://www.cambridge.org.juridicainternational.eu>> accessed 15 November 2024.

<sup>9</sup> Shaw, (n3); United Nations General Assembly, (n1).

This segment has to do with the examinations of the various mechanisms and manners (if any) in which different countries acknowledge, encourage and enforce diplomatic immunity and their attempt to curb its antecedence excesses (abuse) that violates the host citizens' fundamental right within its domain.

It is trite that major countries of the world has assented and signed the United Nations' International Law of diplomatic relations called the Vienna Convention on Diplomatic Relations of 1961 and the Vienna Convention on Consular Relations, 1963, and had variously taken steps to domesticate both in the laws of each countries. The basis for this is solidly on ground of reciprocity, which has a long means of controlling to a large extent how diplomats are treated and protected in the host county as stipulated there from.<sup>10</sup>

Different Countries of the world are frantically looking for good grounds and avenue to reduce this wide range of immunities and privileges this law (VCDR) accorded diplomatic agents without necessarily exposing their own agents in foreign states to unwholesome treatments, thus there are various national legal reforms being put in place as Diplomatic relations laws and regulations by different countries of the world, giving room for negotiation for waivers of immunity, a clearer definition of legitimate and non-legitimate diplomatic activities, more certainty on persons enjoying immunities and possible judicial limitations on immunity where civil human right abuses are concerned.<sup>11</sup>

Nigeria enacted a national law called Nigerian Diplomatic Immunity and Privileges Act<sup>12</sup> which allows diplomats with the consent of their government to waive their immunity or that of their subordinate.<sup>13</sup> The implication of this waiver of immunity is to allow the initiation of legal process against the erring diplomat. In the case of African Reinsurance Corporation V. Fantaye<sup>14</sup> the Court held that 'the person in whose favors the privileges

<sup>10</sup> United Nations' General Assembly, (n1) Art. 29.

<sup>11</sup> OE Ochoga, The Abuse of Diplomatic Immunities Among States: Issues and Challenges (2023)(7)1 *Wukari International Studies Journal* 280 <[www.wissjournals.com](http://www.wissjournals.com)> accessed 20 July, 2025

<sup>12</sup> Diplomatic Immunities and Privileges Act (DIPA), Cap D9 Laws of the Federation of Nigeria (LFN), 2004.

<sup>13</sup> *ibid*, s. 2.

<sup>14</sup> (1986)LLJR-SC <[www.cambridge.org](http://www.cambridge.org)> accessed 20 July, 2024.



and immunity is presumed must be shown to have waived it knowingly fully what he or she is doing<sup>7</sup>. In the same vein, the Act expressly canvassed the condition for enjoyment of immunity and privilege is dependent on a formal application by the sending government to the Minister of Foreign Affairs of the receiving state, stating clearly the portfolios of those entitled to the privileges, specific functions and duration of service; then the order of the Minister must be obtained and gazette accordingly.<sup>15</sup>

Waiver of immunity does not seem like a good solution for curbing abuses as it is flawed by political interest. In the real sense, states are always very reluctant to waive the immunity of their envoy; at most they recall such diplomat back home. Even when they agree to such waiver after being recalled back home; it is usually a near impossibility for such sending government to agree to extradite the erring diplomat back to the receiving state for prosecution.<sup>16</sup>

The United States of America has also domesticated the entire spirit of the Vienna Convention on Diplomatic Relations in her national law known as 'The Diplomatic Relations Act of 1978', with the main priority to reduce the degree of immunity and privileges enjoyed by several persons at the diplomatic mission.<sup>17</sup> Here, although the diplomat's family members may enjoy same immunity as him, yet they do not enjoy civil immunity which is attached to performance of official duties.

In other words, Categories of Service Staffs enjoy only limited immunity without extending same to their family members, the diplomatic private/domestic servants are in no way entitled to any form of inviolability. In 2008, the US government further embarked on some legislative reforms in attempt to curb diplomatic abuses and for the safety of its citizens, requiring diplomats to sign employment contracts specifying the work conditions of their workers.<sup>18</sup>

To a reasonable extent, this action is capable of curbing abuses from the diplomatic mission that

may be carried out by persons who may necessarily not be entitled to the functional immunity flowing from official duties as exclusively enjoyed by diplomatic agents and their immediate family members.

In as much as the government of the United Kingdom has fully domesticated all the provisions of the VCDR into her constitution, in a very proactive attempt to preserve the sanctity of its nation and people from the abuses that comes with diplomatic immunity, the United Kingdom (UK) government enacted a law<sup>19</sup> meant to combat organized crimes perpetuated by foreigners like diplomatic agents, which may result in major human rights abuses like slavery, forced labour, child labour and human trafficking.<sup>20</sup> This Act tackles this menace and provides support for the victims. This has helped to tightened the scope of immunity and explicitly exclude certain abuses in the UK.

The South African Constitution having incorporated the customary international law into its domestic law has broaden its local jurisdiction to investigate and prosecute international crimes against humanity committed either by a foreign envoy within the state or by its own nationals abroad<sup>21</sup> without taking cognizance to any territorial limitations or political considerations.<sup>22</sup> In other words, the ICC Act<sup>23</sup> first of all established international crime against humanity as offense<sup>24</sup> then it empowered the Criminal jurisdiction of the South African Court to investigate and prosecute any crime against humanity by clearly stating that anyone (citizen or foreigner) who committed a crime against humanity within the territory of the

<sup>15</sup> Cap D9 (n12), s. 11, 12, 18.

<sup>16</sup> Ochoga, (n11).

<sup>17</sup> Diplomatic and Consular Immunity: Guidance for Law Enforcement and Judicial Authorities. <<http://www.state.gov.com>> accessed 29 October, 2023.

<sup>18</sup> JB Bellinger III, Diplomatic Immunity Is Vital for Americans Abroad (2013) *The Opinion Pages, Room for Debates* <<http://www.nytimes.com>> accessed 15 November 2023.

<sup>19</sup> The UK Modern Slavery Act, 2015 <<https://www.kentexpress.co.uk>> accessed 13 March, 2025.

<sup>20</sup> Pinsent Masons, Modern Slavery Law in the UK (2024) *OUT-LAW GUIDE*; JS Butt, The Abuse of Diplomatic immunity: Examining Cases and Implications for International Relations (2024)(17)2 *Acta Universitatis Danubius*. <<https://dj.univ-danubius.ro>> accessed 29 July, 2025.

<sup>21</sup> The Implementation of the Rome Statute of the International Criminal Court Act, 2002, Act. No.2 <<https://www.ihl-databases.icrc.org>> accessed 22 August, 2025.),

<sup>22</sup> Constitution of the Republic of South Africa (CRSA), Act 108 of 1996, s.232 <<https://www.lawlibrary.org.za>> accessed 5 August, 2025.

<sup>23</sup> Rome Statute (n21).

<sup>24</sup> CRSA (n22), s. 4(1).



Republic or outside the Republic, either its own citizen commits such crime outside the republic, a foreigner who commits such crime outside its jurisdiction but ordinarily resides in the Republic or where a foreigner commits such crime against a South African citizen or persons residing in South Africa<sup>25</sup>

### III. National Jurisprudence on Diplomatic Immunity and Criminal Accountability

Although, every member states who have assented to the Vienna Conventions and are bound by the provisions of the treaty, to respect and do everything in their power to protect the person of the diplomat from any form of harassment that may affect the effective functionality of their diplomatic duties,<sup>26</sup> yet different states have carved an inch for themselves in the understanding of what and the extent of immunity that can be accorded to diplomatic agents especially where grievous crimes against humanity is in question.

It is trite that the intention of the VCDR<sup>27</sup> is clearly the suspension of any form of legal proceedings at the point of the establishment of diplomatic immunity for diplomatic agents, yet it does not mean that such legal proceeding is null and void, rather it means that the defaulting diplomat can still be held responsible and accountable to his crime(s) and susceptible to a reasonable extent to the criminal jurisdiction of the local laws as soon as his diplomatic status is removed either by the expiration of his tenure or by the stripped of his status. This principle is emphasized by the United Kingdom Supreme court in the case of *Reyes v. Al-Maliki & Anor*,<sup>28</sup> where the Court held that a former member of the diplomatic staff in London and his wife were not entitled to diplomatic immunity from the claim brought against them by the appellant (their domestic servant), since the employment and mistreatment of the appellant was not an act in the exercise of his diplomatic functions of the mission<sup>29</sup>

<sup>25</sup> *ibid*, S. 4(3).

<sup>26</sup> SEVENTY-SEVEN SESSION, 17<sup>TH</sup> MEETING (AM), Diplomatic Protections to Function, Sixth Committee Speakers stress, Detailing National Efforts, Inadequate Responses (2022) GA/L/3665 Meetings Coverage, General Assembly/ Sixth Committee <<http://press.un.org>> accessed 18 November, 2024.

<sup>27</sup> United Nation's General Assembly, (n1).

<sup>28</sup> (2017)UKSC 61.

<sup>29</sup> United Nations General Assembly, (n1) art. 39(2).

Diplomatic immunity is a procedural obstacle that provides an unqualified shield and an absolute restriction from the criminal jurisdiction of the receiving state, legally this immunity is only procedural in character; the diplomat will still be liable substantially. In the case of *Empson v. Smith*,<sup>30</sup> the court clearly stated that the termination of diplomatic status for whatever reason can revive any subsisting action that had to be stayed on the ground of diplomatic immunity and the trial of a diplomatic agent after the loss of his immunity does not violate the prohibition of retroactive application of criminal laws. In other words, the loss of immunity automatically removes the procedural obstacle to the prosecution of alleged crimes committed as constituted and established according to the local laws. This is the general belief of diplomatic immunity and some possible reactions to its abuses wherein the receiving state can hold a diplomat accountable at the occurrence of crimes, which may emphasize the governmental power to protect and preserve the dignity of its citizens as much as possible.

3.1 In the case of the accidental killing of the 19 year old Harry Dunn in **Britain** via a traffic offence by Mrs Anne Sacoola the wife of an American diplomat, whom the American government quickly conferred an administrative diplomatic status and secretly flown out of Britain. **The British Government** initiated a criminal prosecution against her based on her initial confession to the crime of murder and requested for a waiver of the imputed immunity with her consequential extradition, which was refused by the American government. The prosecution went through with the accused in attendance through a video appearance and was eventually sentenced to 8 months jail term, 12 months disqualification as a diplomat and a 12 months suspension only.<sup>31</sup> This act though not enough but the parent of the deceased young man were to some extent assuaged of their pain seeing the accused to have a criminal record.

In the above illustration, the **British government** showed by the act of further probing, request, prosecution and the eventual conviction of the accused diplomat, that it is the responsibility of the government to protect the interest of its citizens.

<sup>30</sup> (1966) 1QB 426 <[www.lawjournals.co.uk](http://www.lawjournals.co.uk)> accessed 14 August, 2024.

<sup>31</sup> M Busby, 'Nineteen-year-old died after collision involving Anne Sacoolas, wife of a US diplomat'. *The Guardian* (UK, 3 December, 2019) <[www.amp.theguardian.com](http://www.amp.theguardian.com)> accessed 23 May, 2023.



3.2 The case of the Ms Naela Chohan, a Pakistani High Commissioner in **Australia**, who enslaved Shahid Mahmood a young domestic worker who works round the clock in a deplorable environment without any means of escape and with threat of death at any thought of escape. When discovered, the **Australian government** could not do anything to the diplomat simply because of the immunity, no charges could be brought against her. All that was done was to provide the victim with a permanent citizenship in Australia, for the purpose of protecting him from further victimization from the diplomat who is powerful and influential elite in the victim's country.<sup>32</sup> This shows how the Australian government would have reacted if the victim was an Australian too, since the Australian law adhere strictly to the provisions of the Vienna Convention of 1961.

3.3 In the case of Mohammed Rizalman Bin Ismail, a Malaysia's diplomat in New Zealand, who invoked diplomatic immunity when faced with charges of assault with intent to rape and charges of burglary after following a 21-year-old woman to her home and forcefully broke into her bedroom naked. The New Zealand authority allowed him to secretly fly out of the country through a private jet, but later requested for his extradition from his home country back to New Zealand for his prosecution and his subsequent punishment in accordance to the local law of New Zealand. This request was granted and the defaulted ex-diplomat was sent back to the receiving state after his diplomatic entitlement has been stripped off him. Mohammed Rizalman Bin Ismail was prosecuted, though only pleaded guilty to the charge of indecent assault and denied the charges of attempted rape and burglary, he was sentenced to a 9-month term imprisonment and served his prison term in New Zealand.<sup>33</sup>

#### IV. Criminal Responsibility on Breaches of Diplomatic Relations and its antecedent Immunity

<sup>32</sup> L Miligan, "Exploited Foreign workers falling into 'black hole' of diplomatic immunity" *ABC NEWS* (Australia, 2018) <<http://www.amp.abc.net.au>> accessed 17 April, 2024.

<sup>33</sup> Davison, 'The Malaysian Diplomat indecent assault case' (New Zealand, July 14, 2014) *BBC NEWS* <<http://www.bbc.com>> accessed 17 February, 2024.

A Crime is actually so when there is a proclamation of the law proscribing certain acts as crime. In other words, an act can only be criminalized or declared offensive by the pronouncement of a law in operation in the state.<sup>34</sup> In the same vein, an offender of a crime can only be held responsible and accountable to face the consequences of his actions only where he knows and fully aware of his actions to be offensive and criminal in nature.<sup>35</sup>

Criminal Responsibility means that one can be held legally accountable for any crime committed and to face the consequences of such actions punishable by the law stipulating the crime.<sup>36</sup> One is deemed to be criminally responsible where his conduct is not in conformity with the requirement of the law of the land or law defining such act.<sup>37</sup> In other words, liability is an imposition of the law. No one can be held liable and responsible for the commission of an offence unless a law has been enacted to impose such liability.<sup>38</sup>

The determination of criminal guilt and criminal responsibility is based on 2 key elements of prohibited conduct (actus reus) and an accompanying mental knowledge (mens rea).<sup>39</sup> Prohibited conducts are external acts that are prohibited by law<sup>40</sup> and this includes various anti-social acts, ranging from petty theft to murder. The mental act (mens rea) is an internal act that is called guilty mind is an element of fault, connecting the

<sup>34</sup> Aoko v. Fagbemi (1961) 1 NLR 400.

<sup>35</sup> ES Binavince, The Ethical Foundation of Criminal Liability (1964) *Fordham Law Review* <[www.ir.lawnet.fordham.edu](http://www.ir.lawnet.fordham.edu)> accessed 6 February, 2023.

<sup>36</sup> S Solanki, What is Criminal Liability?- Legal glossary (2024) *Thomas Reuters Law Books* <<http://www.al.thomasreuters.com>> accessed 9 September, 2024.

<sup>37</sup> DA Thomas and TJ Bernard, General Principles of Criminal Law (2024) *Encyclopaedia Britannica* <<http://www.britania.com>> accessed 9 September, 2024.

<sup>38</sup> DA Harner, 'Factual Causation' and 'Scope of Liability',- What is the Difference? (2014) 77 (2) *The Modern Law Review* 155 <<http://www.papers.ssrn.com>> accessed on 1 November, 2021.

<sup>39</sup> NS Swami, An Analysis of the Elements of Criminal Liability (2021) *International Law Journal* <[www.researchgate.net](http://www.researchgate.net)> accessed 10 November, 2022.

<sup>40</sup> Aoko v. Fagbemi (n34).



offender to the prohibited deed committed or omitted.<sup>41</sup> These 2 elements of criminal liability are traditionally summed up by the latin maxim: ‘actus reus non facit reum nisi mens sit rea’, which means “an act cannot be criminalized in the absence of a guilty mind”<sup>42</sup>

Applying this to diplomatic immunity empowered by the United Nations’ Vienna Convention on diplomatic relations, 1961 and enjoyed by all foreign envoys, shielding them absolutely from the wrath of the law of their host state in respect to the commission of any crime ranging from misdemeanor (traffic offenses, theft) to capital offenses (murder, terrorism etc.). This international law of diplomatic relations having being domesticated into various domestic laws, has consciously and intentionally excluded and exempted diplomatic agents from being held responsible to any crime (even if its against humanity), by implication, affirming and maintaining that there is no crime in any conducts and acts of the diplomat, just as the adage says ‘where there is no law, there is no sin’. In other words, to determine the criminal liability that should make foreign envoys criminally responsible and accountable for any criminal act(s) involved in, it is pertinent to examine closely according to the elements of crime and criminal liability, if on the international plane of diplomacy, has there been any enactment of law(s) criminalizing any acts of the diplomats or does the diplomats themselves have any inclination of any conducts/acts involved in, in the course of their official duties that could amount to crime? Can we say their actus reus is in tandem with their mens rea? No, on the contrary, since there is presently no international law enacted to hold diplomatic officials liable to any offence whatsoever committed or omitted in the course of their official acts, which enables them focus more on the purpose of their mission.<sup>43</sup>

It is therefore right to hold that in the absence of such law that clearly state and proclaim an act or conduct as crime and state their corresponding consequences in relation to diplomacy and diplomatic relations, diplomats having implied to be ‘gods unto themselves’ in the territory of their hosts, whatever act of crime

engaged into during the course of exercising their diplomatic function, will always be seen and regarded as ‘good and perfect’, without any form of mental knowledge or guilty mind of such criminal act. This emphasize that no one can truly be held accountable for acts they cannot be held responsible and liable.<sup>44</sup>

Procedurally, diplomatic immunity enjoys an absolute restriction from being held criminally responsible by the law of the host country, rather the diplomat’s accountability lies largely to the sending state,<sup>45</sup> who may either decide to look the other way or sanction the erring diplomat in accordance to the law of its sending state. In other words, where diplomatic agents break the law of the receiving state, responsibility lies in the first place with the sending state as the erring diplomat can no longer be held responsible as it was before the codification of the Vienna Conventions.

The above facts have been repeatedly demonstrated in how diplomats have consistently violated innocent citizens of their host countries, with so much impunity, rendering their host government completely powerless in defending its citizens for which it is existing.

## V. Challenges in the Prevention of Abuse of Diplomatic Immunity

1. The principle of reciprocity may prevent any future desirable changes and innovation as far as diplomatic immunity and criminal jurisdiction is concerned. States may not be able to adopt and advance the emergence of a new customary international law, in dealing with the dynamics of law for new development.

2. Diplomatic immunity makes it a near impossibility for local authority to exercise its sovereign power over duly appointed diplomats, thus breeding many social problems, one of which can be an emboldening and breeding of terrorism that can cause a state of serious unrest and thus undermining the very essence of its host’s sovereignty.<sup>46</sup>

<sup>41</sup> M Moore, ‘Causation and Responsibility: An Essay of Law, Morals and Metaphysics’ (Oxford University Press, oxford, 2010).

<sup>42</sup> W Wilson, ‘Criminal Law’(6<sup>th</sup> edn., Harlow, Pearson Education) 67.

<sup>43</sup> Nwode v. State (2019) 6NWLR(P.T.1697) 32.

<sup>44</sup> Criminal Code Act, Cap....., Laws of the Federation of Nigeria (LFN), s. 27.

<sup>45</sup> Ministry of Foreign Affairs, Diplomatic immunity: not Carte blanche for misconduct (Government of the Netherland Keynote Address on 12 April, 2010) <www.government.nl> accessed 14 August, 2025.

<sup>46</sup> MA Summers, Diplomatic Immunity Ratione Personae (2007) 16 *Michigan State Journal of*



3. A situation where human rights compliance is dependence on voluntary mutual accountability between states as a result of the institutions of multilateral system, an erring/defaulting diplomat and its sending state can in no way be held responsible for any crime committed in the course of his diplomatic mission, except the sending state voluntarily submit to it, which is rarely the case.<sup>47</sup>

4. The desire, appetite and longings of the citizens of the receiving state to ensure the dominance and rule of law over the whims and caprices of any power driven diplomat have not been matched and supported by the political will of their leaders. In other words, the cry and effort by the various human rights movement across the globe, to safeguard and uphold the concept of human rights in the face of diplomatic brutality being protected by its antecedent immunity, is being watered down by the passivity of their government, thereby prioritizing the rule of diplomacy far above the rule of law.<sup>48</sup> There is the precedence of collective rights over individual rights. This implies a situation whereby the general benefit of the populace takes predominance over the individual right of a citizen. In other words, states would rather abide by the international laws guiding international relations so as to benefit from the development offered by the sending country over the justice & protection of the right of an individual citizen who is a victim of an erring foreign envoy. In 1999, Koffi Annan during one of his speeches observed that the spirit behind the establishment of the United Nation's Charter was the full consciousness to protect individual human rights and not to protect those who abuse them<sup>49</sup>, but regrettably now the international standards are only applicable to issues of racism, colonialism and gross violations caused by foreign occupation and aggression, giving full

credence to the principle of non-interference in all circumstances except for genocide or apartheid.<sup>50</sup>

5. Challenge of Accountability: The United Nation's mechanisms have not been able to call defaulting individuals, institutions or state on human rights violation to order by making them accountable for the violations caused, rather different strong institutions and mechanisms have been put in place for the diplomatic protection of human right of every diplomatic agents, protecting their basic individual rights accruing to them by reason of their humanity, which right cannot be derogated from even in the times of national emergencies.<sup>51</sup> It is sad to know that these same rights diplomatic agents are entitled to enjoy as fundamental to them as humans are the same rights they flagrantly violate in relation to the innocent citizens of their host countries.

Diplomatic agents use their status accorded their position, exercising their privileges to discriminate, torture, inflict inhuman treatment and punishment on innocent citizens, without being held accountable in any way. In other words, there are legal rules that ensures diplomatic universal enjoyment of human rights and fundamental freedom,<sup>52</sup> while the rules of obligations for the fulfillment of certain duties that entitles the enjoyment of such rights in respect to others, seems not to be applicable to diplomatic agents.<sup>53</sup> The immunity of their office absolutely empowered them to flout and violate (in respect to others) the very law they enjoy, without being made to face the consequence of their violation. The United Nations even adopted conventions that discourage all forms of attacks on the person of a diplomat.<sup>54</sup>

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*international Law*, 459  
<[www.lawpublications.barry.edu](http://www.lawpublications.barry.edu)> accessed 29 August, 2025.

<sup>47</sup> M Matelski, R Dijkstra, L McGonigle), 'Multi-Layered Civil Society Documentation of Human Rights Violations in Myanmar: The Potential Accountability and Truth-Telling' (2022) *Journal of Human Rights Practice* <<http://www.chathamhouse.org>> accessed 21 May, 2024.

<sup>48</sup> *ibid.*

<sup>49</sup> R Foot, *China, the UN and Human Protection: Beliefs, Power, Image* (New York, 2020, Oxford University Press) p 4

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<sup>50</sup> Speech by Tian Jim- member of the United Nation's sun-commission on Prevention of Discrimination and Protection of Minorities (1990) <[www.humanrights.com](http://www.humanrights.com)> accessed 20 June 2025.

<sup>51</sup> C Tiburcio, *The Human Rights of Aliens under International and Comparative Law* (2001) Tilbury Law Review <<https://www.unesdocs.unesco.org>> accessed 14 July, 2025.

<sup>52</sup> G Amador, LB Sohn, RR Baxter, "*Recent Codification of the Law of State Responsibility for Injuries to Alien*" (Mantinus Nijhoff Publishers, 14<sup>th</sup> Oct., 1974).

<sup>53</sup> United Nations General Assembly, International Covenant on Civil and Political Rights 999 UNTS and 1057 UNTS 407 [1980] ATS 23/6 ILM 368, 1967. art. 26.

<sup>54</sup> United Nations General Assembly, Convention on the Prevention and Punishment of Crimes Against



6. Non-enforceability of International Law: Although the Vienna Convention directed the diplomatic agents to respect the laws of their host states,<sup>55</sup> such direction is given as advice that can either be taken or dropped at will without being held accountable whatsoever. It is persuasive in nature and cannot be enforced for implementation. The only possible basis for the enforcement of this international law hangs on the doctrine of reciprocity, which makes states actors very sensitive and rather careful in their dealings and treatment of foreign envoys within their territory, so as to prevent a future mistreatment of their own envoys in foreign countries. This is a serious challenge as no erring diplomat can truly be held responsible and accountable to the crimes committed during the course of their mission in the receiving states.

## VI. Diplomatic Accountability Measures Against diplomatic abuse

It is a true saying that 'Power corrupts and absolute power corrupts absolutely'. It is the opinion of the researcher that 'accountability is the mother of responsibility'. For the purpose of preventing the continuous abuse of their privileges and immunity, diplomats have been held accountable for their actions in the following ways:

1. Waiver of immunity: in the case of serious crimes, the host country can ask the sending government for a waiver of immunity so as to make the erring diplomat susceptible to the consequences of the local law that is being violated. This is healthy in the face of equity and important to the spirit of fairness and transparency.
2. It is only the government of the sending state that has the authority to waive such immunity of a diplomat, which then allows the prosecution of such diplomat by the receiving state. Where the sending state has not yet given an express waiver of immunity of the erring diplomat, the receiving state may either go on with its investigations and gathering of evidence pending the waiver approval of the sending government as no prosecution can be initiated against any diplomat without an express waiver from its government. For instance, a waiver granted by the sending state was illustrated in the

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Internationally Protected Persons including Diplomatic Agents, December 14, 1973, 28 UST 1974, 13 I.L.M 43, DOC. A/Res/3166(XVIII) (hereinafter) referred to as Prevention and Punishment Convention.

<sup>55</sup> United Nations General Assembly, (n1) art. 41 (1) and (2).

case of a Venezuela diplomat Mr Sagaray, who was then the first secretary of the mission and acting head of mission to Kenya, filling the vacant position before a new head of mission was sent from North America in the person of Ms Olga Fonseca. In order to maintain his temporary office as the head of mission, Mr Sagaray conspired with some workers that had threatened dismissal by the new head of mission, and subsequently murdered her in the mission house. The government of Venezuela waived his immunity and he was subjected to the jurisdiction of the national law of Kenya, later found guilty of murder over power tussle and sentenced to 20 years imprisonment in Kenya<sup>56</sup>

3. Where serious crime is occasioned from the abuse of his privileges /immunity, the diplomat can be brought before the international court of Justice for proper pronouncement that must be binding on states parties.

4. Personam non-grata: By the provisions of VCDR,<sup>57</sup> 'the receiving state may at any time and without having to explain its decision, notify the sending state that the head of mission or any member of the mission is not acceptable, in any such case, the sending state shall, as appropriate, either recall the person concerned or terminate his functions with the mission'. This is the primary measure provided by the Vienna Convention for the address of any abuse of privileges by diplomatic agents in the violation of the law of their host country. The host country has the right to notify the sending country of her decision to either reject a potential diplomat from entering its state or a serving one from further recognition as such, without necessarily explaining its reason for such rejection. The diplomatic agent is declared "Personam non grata", meaning the diplomat is an unaccepted and unfit to be recognized as a diplomat. Then gives the receiving state gives the sending state a reasonable time frame to recall its agent already in its diplomatic mission of the receiving state, failing which the receiving state can expel the defaulting diplomat and refuse to acknowledge him as a diplomat. This may open up avenue for the prosecution of such expelled diplomat, but sending states usually will not wait for the sending state to initiate legal proceeding against their agent before recalling him back home.

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<sup>56</sup> News Agencies, Venezuela Diplomat jailed in Kenya for 20 years for envoy's murder (Nairobi, 14 July, 2023) *REUTERS* <<http://www.reuters.com>> accessed 13 February 2024.

<sup>57</sup> United Nations General Assembly, (n1) art. 9.



5. Although the diplomatic agent is said to be immune against and exempted from all forms of legal actions (civil, criminal and administrative jurisdiction) in the receiving state which so far we have discussed as a procedural obstacle, yet he is still liable substantially to face the consequences of his actions, howbeit in his home country, he can be held fully accountable and liable for whatever crime committed in the receiving state during the course of his official duty.

#### VII. SUMMARY AND FINDINGS

It is a known fact that immunity to a diplomat is synonymous to the efficient performance of his diplomatic functions without fear of harassment or any interference whatsoever. It is a sure channel for breeding and accessing world peace, harmony and information sharing that enables common global development. Such immunity is necessitated for the maintenance of these open channels by the protection of state sovereignty, taking the diplomatic agents out of the legal, administrative and criminal jurisdiction of the host country, for the effective representation of their sending country as if they were in their home country. On the other hand, this diplomatic immunity that accords absolute shield against the wrath of the law of host state and easily be abused through involvement in serious crimes against humanity and the host country, thereby undermining the rule of law and justice, straining diplomatic relations among nations and destroying public trust in diplomatic institutions.

In as much as many scholars have navigated largely on the evolving nature of diplomatic relations, diplomatic immunity and its implications on global diplomacy, the researcher found that there still exists an insurmountable gap of specific mechanisms for its legal reforms and practical implementation of accountability measures. States are often caught in between the tension of respecting diplomatic privileges and ensuring justice in the event of misconduct of diplomatic agents.<sup>58</sup>

The researcher further discovered the helplessness of law that cannot be enforced in international law of which Vienna Convention on Diplomatic Relations, 1961 is one, whose rules and regulations only exist in paper, in form of an advice

that cannot be enforced against the person of the diplomat. Diplomatic agents know that breaking this kind of law does not lead to being penalized and will not have to face the consequence of any of its violation, hence the effectiveness of the United Nations' Vienna Convention on Diplomatic Relations is questionable.

Finally, the research unraveled the inconclusive legal basis of privileges and immunities advanced by the Vienna Conventions as absolute and constant over decades, despite several years of developmental changes in human relationships and interactions, the dynamism and changing natures of laws in accordance with the evolutions heralding human existence, the only law supposedly meant to unite the global existence remained unchanged, undeveloped, unadvanced and obsolete, gathering momentum to walk right into extinction. In other words, every living thing must grow, and when growth is nowhere in sight, death is inevitable.

#### VIII. CONCLUSION

Although the Vienna Convention had obligated the diplomats to respect laws and regulations of their receiving state, without any corresponding enforcement provision. It is therefore unreasonable to ask one who is immune and protected against the legal consequences of violating laws expected to obey to actually obey such laws. The United Nations' Vienna Convention, in the opinion of the researcher is a scam that belongs in the waste bin and does not deserve any consideration whatsoever from a reasonable man. The United Nation has been seen to approbate and reprobate in enacting the Universal Declaration of Human Rights on one breathe, and also the Vienna Convention on another breathe, thereby placing these two opposing laws side by side without recourse to its outcome. In other words, the United Nations' Universal Declaration on human rights was enacted to bring hope to humanity as a whole and as foundation of every other law there is, emphasizing the importance of upholding rights of every man as fundamental and non-negotiable simply by their humanity. Then on another breathe brings up another law (Vienna Conventions) to favor a particular set of people, whose status is made superior and may override the benefits of the first law in relation to others, indirectly upholding the supremacy of the sectional law of diplomacy far above the general law of human rights which is even enjoyed by the sect.

Any law made in the interest of a sect should not take preeminence over a law meant to

<sup>58</sup> JS Butt, The Abuse of Diplomatic Immunity: Examining cases and Implication for International Relations (2024) 17 (2) *Acta Universitatis Danubius Relationes Internationales*, 45 <[www.dj-danubius.ro](http://www.dj-danubius.ro)> accessed 13 August, 2025.



control the general interest of a whole (including the sect), rather the whole should control the sect, in the interest of justice and good conscience, not upholding the tyranny of the few. This is the underlying principle anticipated for the establishment of the United Nation. Law is law because of its ability to command respect through its enforceability.