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The Means of Limitating The Impunity of Diplomatic Agents

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A diplomatic agent is granted different inviolabilities and privileges, as well as immunity, from the jurisdiction of the receiving State. They enjoy the privilege of exercising their official functions independently and effectively, and of avoiding any interference by the receiving State. However, sometimes they misuse such a privilege. Investigations have revealed that between 1988 and 2021, at least 208 migrant domestic workers reported exploitation by 160 diplomats and international organization employees. In 2014, the Philippine National Bureau of Investigation (NBI) arrested a Saudi attaché for alleged involvement in human trafficking. The Secretary of Justice at that time, Leila De Lima, stated that the Saudi attaché cannot be prosecuted in the Philippines even for a heinous crime such as human trafficking, since the Department of Foreign Affairs (DFA) has already issued a certification confirming the diplomatic immunity of the Saudi national. These cases highlight the limitations imposed by diplomatic immunity in ensuring accountability for actions that jeopardize public safety and people's rights. Yet immunity is not impunity: it is a procedural bar that relocates jurisdiction rather than a license to escape it. This piece asks not whether immunity should be abolished, but how international law narrows the accountability gap it leaves behind, mapping three routes, the Vienna Convention on Diplomatic Relations (VCDR) itself, international criminal courts, and foreign national courts, and showing that the gap persists most acutely where a diplomat's sending State is powerful or shielded from international jurisdiction.

Vienna Convention on Limiting Impunity

The Vienna Convention on Diplomatic Relations, 1961 (VCDR), governs the treatment of diplomats and protects their immunities and privileges. Article 31 sets out the general rule that a diplomatic agent enjoys immunity from the receiving State's criminal jurisdiction and, subject to limited exceptions, from its civil and administrative jurisdiction as well. Critically, Article 31(4) provides that this immunity does not exempt the diplomat from the jurisdiction of the sending State. Rather, it relocates jurisdiction. Two mechanisms operate within this

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framework to convert that relocated jurisdiction into actual accountability. First, the receiving State may declare the diplomat *persona non grata* under Article 9, compelling the sending State to recall the diplomat or terminate their function, failing which the receiving State may simply refuse to recognize them as a member of the mission. This mechanism addresses inappropriate conduct, but because Article 31(4) does not itself impose an obligation on the sending State to prosecute, a diplomat declared *persona non grata* is usually not prosecuted in his home state, leaving the aggrieved party without a direct remedy. Second, the sending State may waive immunity under Article 32, subjecting the diplomat to the receiving State's own courts and thereby supplying an actual remedy. In practice, however, waivers remain exceptional; notable instances include cases involving diplomats from the USA and the UK..

The ICC on Limiting Impunity

Beyond the VCDR framework, international criminal courts remove immunity as a bar to prosecution altogether. Article 27 of the Rome Statute removes the relevance of official capacity before the International Criminal Court (ICC). It is a rule that the International Criminal Tribunal for the former Yugoslavia, the Special Court for Sierra Leone, and the ICC itself have each applied against a sitting or former head of State: indicting Milošević, issuing an arrest warrant for Charles Taylor, and prosecuting Laurent Gbagbo, respectively. These cases concern heads of State before international tribunals rather than diplomatic agents under the VCDR. However, they establish, by analogy, that official capacity is no longer an absolute shield once a competent tribunal has jurisdiction. That jurisdiction, however, is not self-executing. Article 98 of the Rome Statute addresses a separate, practical problem. It bars the ICC from requesting a State to surrender a person where doing so would require that State to act inconsistently with obligations it owes a third State under international law, including diplomatic immunity. Article 27, therefore, removes immunity as a bar within the Court, while Article 98 can still leave a diplomat physically unreachable unless the sending State cooperates or waives immunity, reintroducing the same accountability gap at the enforcement stage. This gap may be particularly significant where the sending State is not a party to the Rome Statute, although non-party nationality does not itself exclude ICC jurisdiction where another jurisdictional basis exists, including territorial jurisdiction, an Article 12(3) declaration, or a Security Council referral. It is compounded by a non-party State using sanctions against ICC officials to obstruct the Court's operations, as the United States did in 2025, and by the Court's own dependence on States to effect any arrest, since the ICC has no police force of its own.

The Foreign National Courts on Limiting Impunity

A third route runs through foreign national courts, though the case law behind it requires careful consideration. The leading authorities largely concern heads of State, senior officials, or state immunity generally, rather than diplomatic agents under the VCDR. As such, they are therefore persuasive by analogy rather than binding on point. In the *Pinochet Case*, the House of Lords held that the former Chilean head of State could not claim immunity from arrest in the United Kingdom for acts of torture, a *jus cogens* violation. Although his immunity ratione personae had ended when he left office, the House of Lords also considered whether *immunity ratione materiae* continued to protect his official acts and held that it did not bar the relevant torture charges. That result is harder to replicate against a sitting official. The International Court of Justice's *Arrest Warrant* judgment held that Belgium violated the immunity of an incumbent Congolese Foreign Minister by issuing a warrant against him, while recognizing that the comprehensive immunity attached to the office does not continue once the official leaves office, although immunity may remain in respect of certain official acts. Belgium's own Court of Cassation applied the same logic a year later, declining to proceed against the sitting Israeli Prime Minister, Ariel Sharon, while allowing the case against a co-accused former minister to continue. Domestic legislation offers a more targeted route: the Penal Code of Niger criminalizes genocide, crimes against humanity, and war crimes in a dedicated chapter with its own immunity-removing clause, and section 23 of the UK International Criminal Court Act 2001 similarly limits the operation of State or diplomatic immunity in proceedings connected with arrest and surrender to the ICC. No comparable body of case law yet exists specifically for diplomatic agents, which is precisely the gap this piece identifies. Extending an exception tested against heads of State and senior officials to diplomatic agents, who individually hold far less political weight, would supply a more consistent remedy than the VCDR and ICC routes can guarantee on their own.

Conclusion

None of these three routes, the VCDR's own mechanisms, international criminal courts, or foreign national courts, closes the accountability gap on its own. They each fail at a different point: *persona non grata* and waiver depend on the sending State's cooperation; the ICC depends on membership and enforcement; national courts depend on precedent that does not yet exist. Read together, they show that immunity was never meant to be impunity, and that the remaining task is less about finding new legal routes than about making the ones that already exist, especially the sending State's residual jurisdiction under Article 31(4), actually work in practice.