

# International Responsibility in the Context of the Abuse of Diplomatic Immunity

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## **Abstract**

It is a well-established principle of international law that every wrongful act attributable to an international legal person through the breach of an international obligation entails international responsibility. This legal study examines the doctrine and application of international state responsibility arising from violations of national security caused by the abuse of diplomatic immunities and privileges. Relying on the International Law Commission's (ILC) Draft Articles on Responsibility of States for Internationally Wrongful Acts (2001) and the Vienna Convention on Diplomatic Relations (1961), the paper explores the foundational concepts of state responsibility, the legal grounds and procedures for invoking responsibility, the attribution of acts committed by diplomatic agents, and the modalities of reparation—including restitution in kind, monetary compensation, and satisfaction. The study highlights that while adequate legal frameworks exist, subjective state interests and political hesitations frequently hinder the effective enforcement of international responsibility.

**Keywords:** International Responsibility, Diplomatic Immunity, Abuse of Immunity, National Security, State Responsibility, Reparation, International Law Commission.

# La responsabilidad internacional en el contexto del abuso de la inmunidad diplomática

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## **Resumen**

Constituye un principio consolidado del derecho internacional que todo hecho internacionalmente ilícito atribuible a un sujeto de derecho internacional, derivado del incumplimiento de una obligación internacional, genera responsabilidad internacional. Este estudio jurídico examina la doctrina y la aplicación de la responsabilidad internacional del Estado por vulneraciones de la seguridad nacional ocasionadas por el abuso de las inmunidades y los privilegios diplomáticos. Sobre la base del Proyecto de artículos sobre la responsabilidad del Estado por hechos internacionalmente ilícitos de la Comisión de Derecho Internacional (CDI, 2001) y de la Convención de Viena sobre Relaciones Diplomáticas (1961), el artículo analiza los conceptos fundamentales de la responsabilidad del Estado, los fundamentos jurídicos y los procedimientos para invocarla, la atribución al Estado de los actos cometidos por agentes diplomáticos y las modalidades de reparación, incluidas la restitución en especie, la indemnización y la satisfacción. El estudio destaca que, si bien existen marcos jurídicos adecuados, los intereses particulares de los Estados y las reticencias políticas obstaculizan con frecuencia la exigencia efectiva de responsabilidad internacional.

**Palabras clave:** responsabilidad internacional, inmunidad diplomática, abuso de inmunidad, seguridad nacional, responsabilidad del Estado, reparación, Comisión de Derecho Internacional

## 1. Introduction

### 1.1. Background and Conceptual Foundations

It is an established principle and enduring rule of public international law that any wrongful act attributed to an international legal person arising from the failure to observe an international obligation generates a legal obligation to bear the responsibility for that wrongful act (International Law Commission [ILC], 2001). International responsibility represents the formal legal effect that international law attaches to the non-compliance of an international person with the binding obligations imposed upon it in its legal capacity.

### 1.2. Linguistic and Terminological Scope of Responsibility

Linguistically, the term "responsibility" denotes an obligation resulting from an act and bearing its consequences, derived from the root meaning "to be questioned" or "held accountable." Terminologically, responsibility constitutes the bedrock and operative strength of legal systems, elevating abstract normative rules into enforceable legal obligations. In broad jurisprudential terms, responsibility mandates that legal persons bear the consequences of failing to abide by the provisions of the law. The efficacy of any legal regime depends directly on the clarity and enforceability of its rules governing responsibility. A breach of a binding legal obligation subjects the defaulting party to civil or criminal responsibility; conversely, the violation of rules of international comity (*courtoisie internationale*) does not generate international responsibility in the strict legal sense, as comity rules lack binding legal force and their breach constitutes merely an unfriendly act (*acte inamical*).

### 1.3. Doctrinal Perspectives on International Responsibility

International legal scholarship reflects varied definitions regarding the legal nature and foundation of state responsibility:

1. **1.3.1. Charles Rousseau:** Defined it as a legal situation whereby a state to which an internationally wrongful act is attributed is bound to make reparation to the state against which the act was committed. While Rousseau's classical formulation was confined to states, contemporary international law extends legal personality to international organizations and individuals.
2. **1.3.2. Clyde Eagleton:** Characterized it as the foundational principle that obligates a state that has violated international law to compensate for the damage resulting from that violation.
3. **1.3.3. Max Huber:** Emphasized that responsibility is the necessary corollary of a right, asserting that the rights created by the international legal order inevitably generate international responsibility as a direct legal consequence.
4. **1.3.4. Arab Legal Scholarship:** Dr. Hafez Ibrahim articulated it as the state of affairs arising when a state or another subject of international law commits an act warranting accountability under international legal principles. Dr. Mohamed Talaat Al-Ghunaimi defined it as the obligation imposed by international law upon an entity to repair the injury sustained by a victim of an act or omission, or to incur the appropriate punitive sanction. Similarly, Dr. Saeed Al-Daqqaq described it as the legal regime designed to compensate one or more subjects of international law for damages suffered as a result of activities conducted by another subject.

A comprehensive synthesis defines international responsibility as the attribution of an act or omission to a subject of international law—whether prohibited or entailing strict liability for harmful consequences—resulting in damage to another international legal person and requiring a designated international sanction, whether punitive or non-punitive.

### 1.4. Conceptual Evolution in the International Law Commission (ILC)

The International Law Commission has addressed international responsibility through two evolutionary phases:

1. **1.4.1. The Traditional Approach:** Reflected in Article 19 of the earlier draft articles, which equated an internationally wrongful act with an international crime whenever a state violated an international obligation essential for safeguarding fundamental interests of the international community, alongside traditional civil-

style obligations concerning the rights of injured states.

2. **1.4.2. The Contemporary Approach:** Formally codified in Article 1 of the 2001 ILC *Articles on Responsibility of States for Internationally Wrongful Acts*, providing that "Every internationally wrongful act of a State entails the international responsibility of that State" (ILC, 2001). Such an act may consist of one or more actions or omissions, contingent upon the existence of an international breach attributable to the state in the absence of valid circumstances precluding wrongfulness.

## 2. Methodology

This study adopts a doctrinal and analytical legal methodology. It examines primary international legal instruments—specifically the Vienna Convention on Diplomatic Relations (United Nations, 1961), the Vienna Convention on the Law of Treaties (United Nations, 1969), and the ILC Draft Articles on Responsibility of States for Internationally Wrongful Acts (ILC, 2001). Furthermore, the research analyzes landmark jurisprudence of the Permanent Court of International Justice (PCIJ), the International Court of Justice (ICJ), and international arbitral tribunals to evaluate how international responsibility is triggered, attributed, and remedied when diplomatic immunities are abused to undermine national security.

## 3. Results: Legal Application and Attribution of State Responsibility

### 3.1. Legal Basis for Invoking International Responsibility

The implementation of state responsibility concerning violations of national security caused by the abuse of diplomatic immunity requires the fulfillment of obligations arising from a wrongful act, primarily aimed at achieving full reparation. Under Article 42 of the ILC Articles (ILC, 2001), an injured state is entitled to invoke the responsibility of another state if the obligation breached is owed to it individually, to a group of states including that state, or to the international community as a whole (*erga omnes*).

Where a diplomatic envoy commits an unlawful act compromising the national security of the receiving state, the latter is entitled to invoke the sending state's international responsibility for infringements upon its sovereign rights under the Vienna Convention on Diplomatic Relations (United Nations, 1961). Invoking responsibility under Article 42 transcends mere verbal criticism, diplomatic protest, or the reservation of rights; it encompasses formal legal claims, notably the demand for reparation.

Furthermore, while the breach typically arises within a bilateral framework, abusive acts that threaten national security—such as clandestine interference to sponsor coups d'état or incite internal armed conflict—may undermine regional or international peace and security. Under Article 46 of the ILC Articles (ILC, 2001), where several states are injured by the same internationally wrongful act, each injured state may separately invoke the responsibility of the state that has committed the wrongful act.

### 3.2. Procedural Modalities for Invoking Responsibility

Pursuant to Article 43 of the ILC Articles (ILC, 2001)—which parallels Article 65 of the Vienna Convention on the Law of Treaties (United Nations, 1969)—an injured state must give notice of its claim to the responsible state, specifying the conduct required to cease the wrongful act and the form of reparation sought. While formal written notice via diplomatic channels is customary, notice need not be in writing; it suffices that the responsible state is made aware of the claim through official statements, correspondence, or public communiqués. This procedural flexibility was affirmed by the International Court of Justice in *Certain Phosphate Lands in Nauru* (1992), where the Court noted that claims raised in Independence Day speeches and subsequent ministerial correspondence satisfied the requirement of timely notification.

### 3.3. Loss of the Right to Invoke Responsibility

Under Article 45 of the ILC Articles (ILC, 2001), the responsibility of a state may not be invoked under two primary conditions:

1. **3.3.1. Valid Waiver:** Where the injured state has validly waived the claim; or
2. **3.3.2. Valid Acquiescence:** Where the injured state is to be considered as having, by reason of its conduct, validly acquiesced in the lapse of the claim.

A waiver must be unequivocal and legally valid, free from coercion or misrepresentation, particularly when

peremptory norms (*jus cogens*) are implicated. In the *Russian Indemnity* case (1912), repeated demands by the Russian Embassy from Turkey for the principal loan amount without reserving rights to interest or damages for delay led the tribunal to hold that Russia's acceptance of the principal sum constituted an implied waiver of any further claims arising from the loan.

### **3.4. Attribution of Wrongful Acts of Diplomatic Representatives**

A central legal question is the attribution of unlawful acts committed by diplomatic envoys that violate the national security and sovereignty of the receiving state. As affirmed by Oppenheim, international law establishes state responsibility for wrongful acts of diplomatic envoys that cause injury to the receiving state or its nationals:

#### **3.4.1. Wrongful Acts Committed in an Official Capacity**

When a diplomatic envoy commits an unlawful act during the performance of official functions or with the authorization of the sending state, international legal scholarship and judicial precedent overwhelmingly hold the sending state internationally responsible, as the state is legally accountable for the acts of its organs and officials.

#### **3.4.2. Wrongful Acts Committed Outside the Scope of Official Functions**

When a diplomatic envoy commits an unlawful act in a purely personal capacity outside official hours and duties, such conduct is generally classified as the act of a private individual, which does not directly engage state responsibility. However, an established exception applies where the sending state incurs international responsibility due to its failure to exercise due diligence (*due diligence* obligation) in supervising and preventing its diplomatic agents from abusing their privileges to harm the receiving state.

### **4. Discussion: Legal Consequences and Modalities of Reparation**

Once international responsibility is established, the responsible state is under an obligation to make full reparation for the injury caused by the internationally wrongful act. Reparation takes three principal forms under international law:

#### **4.1. Restitution in Kind (*Restitutio in Integrum*)**

Restitution in kind entails re-establishing the situation that existed before the wrongful act was committed, such as returning seized property or rebuilding destroyed structures. In the landmark *Factory at Chorzów* case (PCIJ, 1928), the Permanent Court of International Justice held that the essential principle of reparation is to wipe out all consequences of the illegal act and re-establish the situation which would, in all probability, have existed if that act had not been committed.

##### **4.1.1. Material Restitution**

Following the 1991 liberation of Kuwait, the UN Security Council mandated that Iraq return all stolen property and gold bullion looted during the occupation. Similarly, if a diplomatic agent steals and smuggles cultural antiquities using the diplomatic bag in violation of the receiving state's cultural security, restitution under Article 35 of the ILC Articles (ILC, 2001) requires returning the artifact to the state of origin, provided restitution is not materially impossible or disproportionately burdensome. In *United States Diplomatic and Consular Staff in Tehran* (ICJ, 1980), the Court ordered Iran to restore the US Embassy premises damaged in 1979.

##### **4.1.2. Juridical Restitution**

Where the wrongful act consists of a domestic legislative or judicial measure, restitution requires annulling or repealing the measure, as demonstrated in the *Free Zones of Upper Savoy and the District of Gex* case (PCIJ, 1932), where French legislation abolishing free zones established under the 1814–1816 treaties with Switzerland was declared invalid under international law.

### **4.2. Monetary Compensation**

When restitution in kind is materially impossible (e.g., the destruction of a unique work of art) or insufficient to repair the injury, the responsible state is obligated to pay monetary compensation. Recognized as a fundamental principle in *Factory at Chorzów* (PCIJ, 1928) and codified in Article 44 of the 1996 ILC Draft and Article 36 of the 2001 ILC Articles (ILC, 2001), compensation is the most common modality of reparation in

international practice.

As confirmed by the ICJ in the *Gabčíkovo-Nagymaros Project* case (ICJ, 1997), an injured state is entitled to obtain compensation from the state that committed an internationally wrongful act for the damage caused by it. Compensation under Article 36 is purely compensatory rather than punitive, designed to cover any financially assessable damage sustained by the state or its nationals without resulting in unjust enrichment or under-compensation.

#### **4.2.1. Direct vs. Indirect Damages**

International jurisprudence generally restricts compensation to direct damages linked to the wrongful act by an unbroken causal chain, as reflected in the *Alabama Claims* arbitration (1872). However, in the *Naulilaa* arbitration (1928), the German-Portuguese arbitral tribunal adopted a more equitable approach, holding that compensation extends to indirect damages if the perpetrator foresaw or ought to have foreseen the indirect consequences of the unlawful act.

#### **4.2.2. Valuation Principles**

When states refer quantum disputes to international arbitration or the ICJ, compensation is assessed based on three governing principles:

1. The application of public international law governing interstate relations rather than municipal law;
2. The assessment of the quantum of damage at the time the injury occurred rather than at the time of judgment; and
3. Full and equitable coverage of all components of damage, encompassing both actual loss suffered (*damnum emergens*) and lost profits (*lucrum cessans*).

#### **4.3. Satisfaction**

Satisfaction represents the appropriate legal remedy for moral, non-material injury affecting the dignity, honor, or sovereign prestige of a state where no financially assessable material damage has occurred—such as violations of national airspace or unlawful interference in domestic affairs. Whenever a state's honor or sovereignty is affronted, the injured state is entitled to demand satisfaction, such as an official apology, formal acknowledgment of the breach, or disciplinary action against the offending diplomatic personnel.

#### **5. Conclusion**

An examination of international responsibility arising from the abuse of diplomatic immunities demonstrates that public international law possesses comprehensive normative frameworks, codified principles, and judicial mechanisms capable of addressing diplomatic misconduct and enforcing reparation. These legal rules are essential to curbing unlawful deviations committed under the shield of diplomatic immunity. Nevertheless, the practical efficacy of international responsibility remains constrained by state subjectivity, sovereign reluctance, and the absence of genuine international political will to consistently enforce accountability across the international legal order.

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