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THE SPECIFIC ASPECTS OF PRIVILEGES AND IMMUNITIES OF DIPLOMATIC AGENTS IN INTERNATIONAL LAW: THEORY AND PRACTICE

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Doctoral Dissertation

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Dedication

to my beloved parents with profound gratitude.
Acknowledgements

The present dissertation is a result of my enduring interest in diplomacy – including its history, advancement and legal specifics. This interest has grown out of my professional experience in the field of diplomacy and international relations.

No research achievement is independent from the research environment, mentors and advisers, of course. First of all, I wish to thank my supervisor Professor Péter Kovács for the invaluable counsel and for sharing his expertise, also support all the way, who has been guiding me for the second time already, after my Master thesis on the topic of contemporary diplomacy.

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Above all, I would like to thank my parents for their endless support throughout this project. My father, Professor Vadim Viktorovich Dvornichenko, is a constant source of inspiration and motivation, due to his scientific path and academic results.
Disclaimer

Diplomatic relations are official relations, carried out between the states through qualified state agents – permanent representatives or so called career diplomats, who perform the greater part of diplomatic activity, serving as a medium for the conduct of international relations. State agents may be heads of state, heads of government, ministers of foreign affairs, special representatives, representatives of international organizations and third parties.

Seeing that the range of topics for a dissertation on privileges and immunities of diplomatic agents may be extremely diverse, it is necessary to provide a precise scope of the research work. For that reason, in the present thesis diplomacy law is taken in narrow sense, applied to career or professional diplomats – public servants with a continuous professional connection to the state’s ministry of foreign affairs, members of permanent diplomatic missions, within the meaning of the Vienna Convention on Diplomatic Relations, done at Vienna on 18 April, 1961.

In view of that, the sources of international and diplomacy law considered in the present work are those, related exclusively to career diplomats. Correspondingly, „diplomatic privileges and immunities”, examined at this juncture are those, attributed to career diplomats only and they are used, with respect to the present dissertation, specifically in this interpretation. Diplomatic privileges of other state officials are, accordingly, beyond the scope of this study.
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Introduction

The main objective of modern international law is maintenance of peaceful relations between states, and despite of the fact that the prohibition of any violence is a basic rule of the settlement of international disputes, regrettably, armed conflicts still occur today. The unfolding process of globalization or as it is called in the Francophone countries – mondialization is a multi-planar and multi-stakeholder progression that rearranges the social, economic, political and cultural circumstances of our lives. Regarding the role of individuals, as a consequence of the globalization, we experience an increase in the permeability of national borders, thereby the increasing openness, which brings good results. In this fashion, among other factors, the intensification of mass international tourism impacted directly the embassies, by increasing and changing the nature of their work. At the same time, we experience some downsides of this course – the challenges to society increasingly transcend state borders, therefore new sources of danger, conflicts and multiple tensions arise in the world, which can lead to wars.

In addition, we are facing the crisis of sovereignty and identity that affects the European Union. Above and beyond, „The world order changes quite quickly – like the types of iPhones.” This is where diplomacy steps in, as the international science and practice of peaceful settlement of disputes, regarding issues both on the earth and in the outer space

1 V. V. Dvornichenko (co-author): Istoriia mezhdunarodnogo i natsional’nogo turizma. (The history of international and national tourism.) MESIS. Moskva, 2001, 140-141.
4 Mass tourism has also increased the public awareness of the world. Bazouni op. cit. 59.
9 In opinion of Hart, „sovereign” in international law means no more, than „independent”, yet, with respect to the notion of sovereignty, the rules of international law are vague and conflicting on many points. H. L. A. Hart: The Concept of Law. Oxford University Press. Oxford, 1961, 216.
12 However, there is no peace, today, either formal or real. William Henry Chamberlin: America’s Second Crusade. Liberty Fund, Inc. Indianapolis, 2008, vii.
where the complexity and globality of tasks call for international cooperation – by means of space diplomacy – since conflict resolution necessitates negotiating international conflicts via diplomatic ways.

There is a number of people, still thinking that high-ranking diplomats, viewed by some, as an elite group with a common culture, bear mainly a representational role, questioning the need for diplomacy, by stating that the traditional representational function of ambassadors is outdated, so the representative role would be better performed by visiting ministers or national celebrities.

Besides, there are serious doubts regarding the necessity of diplomats’ freedom of movement, and the role of diplomatic institutions in tolerant conflict management, which work on securing the subsistence of the international community. Some, including certain professional diplomats, criticize the system of permanent missions.

The twentieth century had been marked with “diplomatic inflation”, together with the role of diplomats, which modified the role of the professional generalist, since the pace of technological change, the speed of modern communications caused involvement of domestic ministries and subject specialists into inter-governmental dialogue. The new actors of the system of international relations were dealing directly with each other, without the assistance of professional diplomats.

Many countries have perceived a relative decline in the prestige of their diplomatic services, considering that an optimization of the diplomatic process was...
needed. Then some have argued of late that there is no real need for diplomats anymore. Accordingly to a more radical opinion, the world of diplomacy needs ventilation badly or it may risk extinction, and that the veil of diplomatic privileges should be lifted, along with avoiding the narrowing and outdated structures of traditional diplomacy.

The supporters of diplomacy, on the contrary, deem that the diplomatic career is far from being out of date, simply the requirements towards diplomats increased and that the diplomatic agents have to work under much harder circumstances, while the Foreign Office struggles to keep up with the growing demands. In serious situations, when something difficult needs to be accomplished, or when a settlement of an issue or general improvement in international relations is in prospect, more and better diplomacy is often called for, so diplomacy and diplomats are regarded, as important. By practicing the art of negotiation, diplomats are able to end or avoid international conflicts, since security issues, human rights, environmental concerns, water rights, trade agreements, the birth of international organizations, efforts at peacekeeping, arms control and indeed, every aspect of foreign relations involves

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27 „If it is accepted that cross-cultural communication and respect for civilizational plurality are defining features of the contemporary era, it follows that diplomacy not only survives globalization, but indeed is more important than ever; both in bilateral and multilateral contexts.” Jan Melissen (ed.): Innovation in Diplomatic Practice. Macmillan Press Ltd. London, 1999, 16.
28 The organizational changes in the global community, with the emergence of new international actors and the growth of multilateral diplomacy led to the necessity to develop a new diplomatic strategy and to improve the functioning of diplomatic service, which is essential for the regulation of complex contemporary international relations, and management of the existing international system in terms of our open and interconnected world that became interdependent, in ways, unimagined before. Alberts Sarkanis: The strength of the EU lies in its unity and diversity. Macedonian Diplomatic Bulletin – Diplomatic News. MBD No. 103. February 2016, 13.
31 Sharp: Diplomatic… 1.
33 Ibid.
34 Martens believed that while performing his functions, a diplomat has to respect the forms, without becoming a formalist. Charles de Martens: Le Guide Diplomatique. (The Diplomatic Guide.) F. A. Brockhaus. Leipzig, 1866, 158.
37 Traditionally, the histories of arms control began in the sixth century B. C., when two bands of Chinese river pirates started to settle the matter of conflict by conference, instead of fighting. The modern disarmament started
negotiation, which in the end is about strategic interaction. Subsequently, the institution of diplomacy is viewed, as an indispensable element of international relations of the newest era, too, being an essential element of state power. The importance of diplomatic activity is acknowledged by the representatives of ecclesiastical, namely papal diplomacy, as well, viewing diplomacy, as the most serious and urgent expression of the needs of the present age – "the art of getting peace". It is noted even by the supporters of diplomacy, however that it might be required to re-evaluate our images of diplomacy, as an activity.

All the same, one of the main sources of arguments over diplomacy is the topic of diplomats, more precisely, their conduct abroad in connection to the subject of diplomatic privileges and immunities, which is among the most ancient examples of international law. The inviolability and exemptions, granted to diplomatic agents, has given power to abuse and the debates on freedoms, granted to diplomats still do not seem to quiet down. The discussion might subside through arrival at a solution that could be acceptable to all – the entire international community. For that reason, the international legal discourse is still ongoing and the opinions are divided. Consequently, we can not call the current situation in the field of traditional diplomacy, simple. Howbeit, a number of academics believe that it is inevitable to develop a new model of diplomatic service, along with reconsideration and revisal of its legal basis, in particular, the provisions of diplomatic immunities and privileges, the ancient institution of which is based on the immunity of ambassadors.


"Diplomacy remains significant because its essence lies in the institution and not in the machinery..." Melissen op. cit. 37.

The Catholic Church is the only one religious structure, which possesses its own professional diplomatic service. In: T. V. Zonova (ed.): Diplomatiia inostrannyh gosudarstv. (Diplomacy of foreign states.) ROSSPEN. Moskva, 2004, 276.


Kirecci op. cit. 25.


Whether the problem of law for new and old states is a boundary dispute, a claim based on various issues, for example, the treatment of an alien or diplomatic immunity, the techniques, the traditions of international lawyership are really everywhere the same. The search by all states of good will and their legal advisers is for evidence of a consensus, for a rule that is "reasonable", and for that "minimum order" to protect the interests of all. H. C. L. Merillat (ed.): Legal Advisers and Foreign Affairs. Oceana Publications, Inc. New York, 1964, 48.
I. Background of the study

I. 1. Statement of the problem

The presented doctoral thesis is devoted to the topic of the specifics of diplomatic privileges and immunities in international law, including the related theory and practice. The paper deals with relevant and current diplomatic issues of our days, which occur in the course of the diplomatic practice, as contemporary diplomacy became more complex, owing to the new emerging tools, and diplomatic agents bear a much higher degree of responsibility for their acts. From the point of view of law, diplomacy belongs to the scope of international law and being state-oriented, regulates the contacts of international entities.

However, the establishment of diplomatic relations and diplomacy itself, producing legal resources, which help to understand, justify and argue over future state behavior, is a more ancient institution, than international law. The sovereign states, as subjects of

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48 Jönsson points to the absence of a consensual definition of diplomacy. Jönsson op. cit. 25.


50 International law is present even in acts, which are not perceived at first glance, as application of legal norms. The same situation applies for the conduct of foreign policy, for example through sustainable diplomacy, official visits, immunities, the exchange of correspondence by diplomatic bag, the rules, governing any negotiation, etc. This juridical dimension of all such acts (although subordinated to their main motivation), is every so often overlooked, because it is not apparent. Robert Kolb: Réflexions sur les politiques juridiques extérieures. (Reflections on external legal policies.) Editions A. Pedone. Paris, 2015, 100.

51 The establishment of diplomatic relations by states follows the establishment of relations in political sphere.

52 Despite of the large volume of literature on diplomacy, experts note that its concept had not been deeply examined: „the study of diplomacy remain marginal to and almost disconnected from the rest of the field.” Paul Sharp: For Diplomacy: Representation and the Study of International Relations. International Studies Review. Vol. 1, No 1, 1999, 34.


56 Scholars argue that states and their governments are no longer to be considered as the primary elements of international society. In these circumstances, there have been calls for a new conception of international law that would accord with the current realities of an international society, in which states can not be regarded as possessing primacy of position anymore, or possessing the rights and privileges of sovereignty, as it has been traditionally conceived. Charles Covell: Kant and the Law of Peace. Palgrave. New York, 1998, 177.
international law, require representation, to obtain legal capacity. The representation of states is achieved via physical persons. Moreover, diplomacy provides the international system with legal resources, especially due to the fact that diplomatic activity has to be carried out in concordance with diplomacy law, and this branch of law plays a significant role in establishing, nurturing and maintaining of diplomatic interactions between nations, which are always multidimensional.

In this course, the prominence of diplomatic relations in international law cannot be overstated. The role of diplomatic officers, as representatives of their states, is critical to the functioning of international law and relations, whether between friendly or hostile states, in times of peace and in armed conflict, therefore, diplomatic immunities, necessary to ensure the integrity of the foreign state's agents and property, were safeguarded at state level.

Even in the modern age of direct and instantaneous communications, nothing can rival the personal and confidential liaison between a diplomat and a government of the receiving state.

The diplomatic service is a system of work, performed by the diplomatic agents in the central apparatus and abroad, aimed at fulfillment of diplomatic tasks of their state. Subsequently, strategic behavior of states on the international arena is regulated by the legal environment and diplomacy can be a cause of change, with respect to international law. The main method of diplomacy is communication of all forms, including permanent contacts of a political nature between the agents of states. Along these lines, the major responsibilities of a

57 “There is no super-State, but a coexistence of sovereign States. The San Francisco Charter itself has only confirmed and maintained this state of affairs. From these basic facts have resulted such fundamental principles as good faith, sovereignty of the State, and admission of the State to International Law.”


60 According to Hurd, nation states are incompetent, for they can not adequately provide for the needs of their citizens, the only solution is to effective cooperation between states. Douglas Hurd: The Search for Peace. Warner Books. London, 1997, 6.

61 Classical diplomacy is usually paired with international contacts, but there is also internal diplomacy, which plays just as important role in life of a state.


67 Polsby and Wildavsky regard that all political strategies are worked out within a framework of circumstances, which are, partly, subject to manipulation. Nelson W. Polsby–Aaron B. Wildavsky: Presidential Elections. Charles Scribner's Sons. New York, 1964, 7.

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diplomatic representative include representation of the sending state, with information of their government, while not intervening in the internal affairs and foreign policy of the accredited state. To perform these tasks, a diplomat must have a certain degree of independence.

In fact, diplomats enjoy a high degree of freedom of movement during their work, unfortunately, sometimes misusing that. It had not been a question that diplomats needed certain exceptions and invulnerability to be engaged in diplomatic activity, but it was a frequent question in history, when an official was considered a real diplomat and what his privileges and immunities actually were. Consequently, the law on diplomatic immunities is one of the most important areas of international law.68

To avoid the cases of misuse and abuse of diplomatic advantages, also their prevention is a serious challenge today. Improvement of the „diplomatic apparatus”69 along with the selection and training of the diplomatic staff, also study and implementation of best practices in the field of diplomacy and finally, the development and advancement of the scientific basis of diplomacy is an important task of any state,70 whose interest lies in having a diplomacy that finds peaceful solutions to national issues and functioning in the system of international relations with matters of „war and peace”, as priority question,71 serves the policy of the consolidation of peace72 and peaceful coexistence73 of peoples.74 However, as noted by Sen back in 1965, „The military pacts, coups d’état, threats of intervention by certain states in the affairs of others, and the various restrictions that are from time to time placed by some states even on the freedoms and immunities of diplomatic officers make a diplomat’s task no easier.”75

In contradiction, almost everywhere in the world, diplomacy faces the paradox of being considered the privileged „elite” of public administration, and also being distrusted by ordinary

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68 Dixon op. cit. 209.
69 Goldsmith–Posner op. cit. 9.
70 In opinion of Hampton, the claim that the state is desirable to all is a constant element of consent theories. Jean Hampton: Political philosophy. Westview Press Inc. Oxford, 1998, 71.
people – this is the "double standard" assessment of diplomacy.

Diplomatic personnel is often regarded by members of the public with suspicion and on occasion, outright hostility. It is rare for ordinary citizens in receiving states to encounter diplomats on a regular basis, the work of embassies is often conducted behind closed doors, many of which are heavily guarded. Accordingly, the little knowledge a local population has of the work of embassies and their staff, is colored by media-led portrayals of opulence and abuse, leading many to regard diplomats, as being above the law.

The subject of diplomatic privileges and immunities is regulated by the Vienna Convention on Diplomatic Relations, which is a big achievement of the twentieth century, followed by so much misunderstanding, though.

The Vienna Convention, inter alia, imposed the duty upon diplomats to respect the laws and regulations of the receiving state. Our time shows an unfortunate tendency on the part of diplomats to disregard the laws of the receiving state and invoke their diplomatic immunity to escape liability for the misuse of exemptions of such kind. It has been a growing concern of the international community over the increasing number of abuse of diplomatic immunity, that "All diplomatic privileges are subject to abuse", especially due to the dramatic incidents, caused by terrorist-diplomats.

The diplomatic invulnerability often became a convenient tool for abuse, when some diplomats happened to consider themselves to exist outside of the laws of the host state. The abuse of diplomatic immunity, sometimes, led to violation of human rights. Even that in theory, human rights are placed hierarchically above diplomatic immunity, it is not easy to apply punishment in case of diplomatic agents, no matter whether the committed abuse...
is of civil or criminal nature, since in foreign relations every country is in a position of a sending and receiving state, simultaneously. In the history, abuse applied to the functioning of diplomatic premises, either. Therefore, in the light of these occasions, some academics believe today that legal immunity should not be absolute.\(^86\)

At the same time, it is a wretched feature of our days that there is an increasing risk to diplomatic agents in the host countries from violence, kidnapping, together with attacks on embassies and diplomatic residences, which make the protection of diplomats even more indispensable.\(^87\) Unrelatedly of the developing legislation, the area of diplomatic immunities and privileges remained problematic, partly owing to the increasing number of diplomats, and to some extent to the fact that such exemptions became applicable to diplomatic personnel and representatives of international organizations, either (for instance, the United Nations). This state of affairs revived the debates on the need of limiting the diplomatic prerogatives, due to the rising cases of their abuse, which dejected state of diplomatic affairs can not remain unaddressed on the long run.

The advocates for keeping the wide scope of diplomatic privileges and immunities argue with the requirement of functional necessity, which is, certainly, a valid argument. Thus, the problem of diplomatic privileges and immunities has a centuries-old history and is still very actual today.\(^88\) For all that, a practical solution to this continuing problem is needed. Diplomacy law is an instrument that can be both permitting and limiting for its users, but diplomatic privileges and immunities had never authorized wrongdoings, and generally, diplomats respect the laws of the host countries.

### I. 2. Relevance and aims of the research

In recent times, the interest towards the status of diplomatic agents, together with the matter of privileges and immunities provided to them, has significantly grown, in connection with the question of faithful execution of diplomats’ official functions, due to the cases of abuse of their position. In the present dissertation, according to author’s professional experience and scope of interests, the current state of affairs, concerning diplomatic work, has been analyzed, concentrating on and presenting the actual issues, with regard to the activity of diplomatic

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\(^88\) V. V. Petrik: Konsul’sko-diplomaticheskaia sluzhba Rossi. (Consular-diplomatic service of Russia.) Izdatel’stvo Tomskogo Politekhnicheskogo Universiteta. Tomsk, 2010, 44.
agents, namely, their relation to privileges and immunities, which remains one of the most problematic matters of diplomacy law.

The principal question is whether the present scope of personal privileges and immunities that modern diplomats enjoy are necessary for the efficient performance of their duties in the system of foreign relations. Subsequently, the thesis is aimed at exploration and better understanding of the characteristics and the specifics of personal privileges and immunities of diplomatic agents through examination of the theoretical basis and practice of diplomacy. The work also intends to look at the extent, to which these privileges and immunities could be invoked, highlighting the new challenges in this area that diplomats have to handle in the twenty-first century.

Consideration of issues, related to this subject has both theoretical and practical significance. The suggestions and results, obtained in the course of research, could be used in the further improvement of the various issues and problems, concerning personal privileges and immunities of diplomatic agents. The present study may be of interest for subsequent researchers in the field of diplomacy, as well as for current diplomatic servants. Combination of the theoretical (including historical) introduction with concrete examples, presents the development in the field of diplomatic privileges and immunities. The specific objectives of the study, in accordance with the indicated goal, are to:

- consider the sources and the subjects of diplomacy law, along with the conventions that govern the status of diplomatic agents, and define their scope of activity (authority);
- inquire into the concept of privileges and immunities of diplomatic agents;
- elaborate on the notion and the legal status of the diplomat itself, also categories of diplomatic privileges and immunities;
- investigate the genesis, also the main stages of history and advancement of the subject of diplomatic privileges and immunities;
- observe the problems, concerning privileges and immunities of diplomatic agents, through the related legal cases;
- review the instruments of enforcement of diplomatic privileges and immunities;
- regard the means of international protection of diplomatic agents;
- revise the changes in development of international law to identify the existing gaps, regarding the subject of personal privileges and immunities of diplomatic agents, for their further improvement; identify and analyze the prospects for advancement, which are required to be addressed via legal steps.

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I. 3. Summary of the thesis

The organization of the present dissertation is defined by the tasks and objectives of the study. The work consists of an introduction, six chapters and bibliography. In the introduction is justified the relevance of the chosen subject.

Chapter I presents the background of the study, the structure of the thesis and the description of the research area investigated. The theoretical parts of the present work are supported by bibliography on international and diplomacy law, necessarily completed, in some cases, with literature on theory and practice of international relations.

Chapter II provides a review of the sources and subjects of diplomacy law. Diplomacy law consists of customs, principles and standards, also conventions, being established in the way of agreements, expressing the will of subjects of international law, involved in international communication.

Chapter III introduces the theoretical basis of the institution of diplomatic privileges and immunities. To grasp the concept of diplomatic privileges and immunities, it is advantageous to concisely survey its historical evolution, together with the emergence of the notion and the line of work of a diplomat.

Chapter IV describes the main categories of diplomatic immunity, researching some of the most significant cases and practical examples, related to the abuse of diplomatic privileges and immunities. There are states, where several levels of immunity are granted – the higher the diplomatic rank, the greater the immunity. In line with this practice, diplomatic agents have the most protection, and they are immune from criminal prosecution and civil lawsuits.

Chapter V discusses the special matters of diplomatic privileges and immunities, observing the related specific problems. Correspondingly, there were analyzed some issues, ascending in the field of diplomatic privileges and immunities, enforcement instruments in this area, along with the means of international protection of diplomatic agents.

Chapter VI contains the conclusions on the present thesis, together with the outcome of the research conducted, including the perspectives, related to the field of diplomatic privileges and immunities.

I. 4. Methodology and sources

A comparative study of the concept of diplomatic privileges and immunities is presented, with regard to the legal literature and the corresponding international legislation. The
works of Hungarian and foreign academics in the field of international law, with special regard to diplomacy law were used, as theoretical basis of the paper. To reach the study's objectives, to define the consequences and make conclusions, the author strived for a broad use of the available legal literature. Therefore, the exploration of legal ideas and notions, with application of methods, developed in legal theory, had been extended to foreign writings of legal scholars, representatives of both continental and common law. In this way, the answer, given to the main question of the thesis on necessity of the present scale of diplomatic privileges and immunities, together with addressing the accompanying specific goals, also formulation of final thoughts and conclusions, had been supported by a wide-ranging spectrum of bibliography.

The main research method, applied during the preparation of the thesis was literature review, document processing and analysis, using methodical tools, such as historical, logical, systematic and comparative legal method of scientific analysis and synthesis, taking into consideration the conceptual provisions of international law and the theory of diplomacy. The complexity of the researched topic necessitated to revise, along with works on law, literature on history of international law, diplomacy, also theory and practice of foreign relations, which elaborated on certain aspects of the investigated matters.

The materials examined include theoretical writings, historical resources, also various legal sources, official documents, academic journals and relevant academic publications, policy statements, scholarly articles, website materials, internet publications, media releases, originally issued in English, Hungarian, Russian, Ukrainian, Belorussian, French and German. In concordance with the author's background, language skills and scientific conceptions, it was considered particularly important to proportionally reflect in the research views and cases of Russian and Ukrainian international jurisprudence, and those, represented in Russian. The legal cases, referred to with the purpose of illustration of certain issues in the field of diplomatic privileges and immunities, were mainly found in decisions of national courts and international tribunals, at times, in sources of legal theory.

The widespread foreign legal literature examined and referring to works of legal experts with different backgrounds, enriched with the selected legal cases, permitted to bring together cross-the-board ideas, which occasionally led to collision of viewpoints. The existence of various standpoints discloses the fact that the foreign literature on diplomatic privileges and immunities is somewhat contentious. In this way, the examination of foreign literature showed that foreign legal studies are characterized not only by well-established classical views on diplomacy and the practice of diplomatic service, but also reflect on the new approaches to the study of diplomacy law, and include new related historiographical materials, along with critical DOI: 10.15774/PPKE.JAK.2017.003
analysis of some well-established scientific provisions. The works of foreign authors are rich in diversity of opinions and methods, comparative analysis of the origination and advancement of diplomacy in the world, which is an instrumental contribution to the history of diplomacy and the development of the modern diplomatic practice.

The arrangement of the paper is based on the applied research method, when a historical overview of the examined topic is followed by the examination of the current state of affairs, regarding diplomatic privileges and immunities, encompassing the sources of diplomacy law, essential relevant concepts, instruments of enforcement of diplomatic privileges and immunities, along with means of protection of diplomats.

The central part of the thesis also demonstrates the challenges, which the institution of diplomatic privileges and immunities has to face in everyday practice, inter alia, owing to development of international law. As a logical close, the paper is completed with final thoughts and deductions, including the question whether the Vienna Convention should be revised now. Thus, the investigation combines a theoretical approach with a practice-oriented attitude, supplemented with analysis of certain legal cases.

The fundamental basis of diplomacy law had been formulated in the works of Ch. de Martens (1854), I. Kiss (1876), R. Monnet (1910), L. Búza (1935), L. Oppenheim (1948), D. B. Levin (1949), E. Flachbarth, H. Nicolson (1963), E. Ustor (1965), G. I. Tunkin (1970), F. Faluhelyi, just to name a few. (It should be added here, that except of the mentioned Hungarian authors, other Hungarian legal scholars have also paid significant

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90 Kiss wrote the first textbook in Hungary that systematized international law. István Kiss: Európai nemzetközi jog. (European international law.) Érsek-Lyceumi Kő- és Könyvnyomda. Eger, 1876.
94 D. B. Levin: Diplomaticeschii immunitet. (Diplomatic immunity.) Izdatel'stvo Akademii Nauk SSSR. Moskva, 1949. [Hereinafter: Levin: Diplomaticeschii…]
99 Ferenc Faluhelyi: Államközi jog. (Interstate law.) Dr. Karl Könyvesbolt kiadása. Pécs, 1936. [Hereinafter: Faluhelyi: Államközi…]
100 István Ápathy: Tételes európai nemzetközi jog. (The itemized European international law.) Franklin-Társulat Magyar Irodalmi Intézet és Könyvnyomda, Budapest, 1888; János Czarada: A tételes nemzetközi jog rendszere. (The system of itemized international law.) Politzer Zsigmond és fia kiadása. Budapest, 1901; László Vincze
attention to diplomacy law, including the matter of privileges and immunities, in their writings on international law.) In addition to the mentioned authors, many other legal scholars contributed into the further exploration of the theory of diplomatic privileges and immunities, together with the development of its provisions, including, but not limited to R. P. Barston (1988), I. P. Blishchenko (1990), J. Hargitai (2005), E. Denza (2008), Y. G. Demin (2010), G. R. Berridge (2010).

The regulatory framework of the present study consists of several groups of legal sources, such as international conventions governing the status of diplomatic agents, bilateral agreements, as well as regulations of the legislation of certain states, and international customs. The main document on the subject of diplomatic privileges and immunities is the Vienna Convention, being ratified by most of states, which consolidated the basic rules of diplomacy law.

Diplomacy law used to consist of customary rules before the adoption of the Vienna Convention. The adoption of the Convention contributed into the protection of diplomatic agents, since the number of occasions, related to their assassination and kidnapping, along with attacks on diplomatic missions, had been progressively increasing. The Convention provided the possibility to conclude further international (multilateral) agreements on the status and protection of diplomatic agents. The majority of provisions of the Convention attempt to codify customary law, so they could be used as evidence of customary law, even against those states, which have not joined the Convention.

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103 József Hargitai: A diplomáciai és konzuli kapcsolatok joga. (The law of diplomatic and consular relations.) Budapest, 2005.
The cases, presented in the present thesis in order to illustrate the development, theory and practice, also issues, regarding diplomatic privileges and immunities, have been chosen among the most representative ones. The selected cases had established a precedent or exemplify tendencies in diplomacy and international law.
II. Sources and subjects of diploma law, with regard to diplomatic privileges and immunities

II. 1. Formal sources of diplomacy law, originating from international law

The present subsection provides the review of formal sources and subjects of diplomacy law. The birth of states was accompanied with development of certain customs, expressed later in treaties, governing the formal relations between states. These customs determined the status and functions of ambassadors, as temporary representatives of their sovereigns. In this fashion, diplomacy law consists of customs, principles and standards, also conventions, being established in the way of agreements, expressing the will of subjects of international law, involved in international communication. The mentioned sources of diplomacy law regulate the activities of subjects of international law in order to maintain and strengthen peace and peaceful coexistence of nations.

In the earliest period of history, under the emergence of international law, there developed two branches of diplomacy law – ambassadorial law and the law of war (Jus ad bellum). Accordingly, diploma cy law emerged and developed primarily, as ambassadorial law, i.e. as a set of rules, defining the position of the ambassador. Ambassadorial law, in a broad sense, was the right of a state to establish diplomatic missions with other states – Jus legationum – active ambassadorial law, and to receive diplomatic representatives of foreign states – Jus legationis – passive right of representation.

Ambassadorial law was gradually transformed into diplomacy law, governing all formal relations between states, by the beginning of the twentieth century.

109 International law has been called a primitive legal system, and Bederman claims that the very sources of legal obligation can be called “primitive”, since international law begins with custom. But to call international law “primitive”, because of its sources of obligation are rooted in custom, it is not an insult. The customary character of international law is actually one of its signal strengths. David. J. Bederman: Religion and the Sources of International Law in Antiquity. In: Mark W. Janis (ed.): The Influence of Religion on the Development of International Law. Martinus Nijhoff Publishers. Dordrecht, 1991, 3. [Hereinafter: Janis: The Influence…]


111 Ustor op. cit. 82.

international legal norms, governing the status of a diplomatic mission”,

Diplomacy law, similarly to domestic law, has a wide range of sources, being mainly governed by international conventions, instead of international customs, as in the past. One of the main functions of modern diplomacy is the creation and amendment of a wide range of international rules of a normative and regulatory kind that provide structure in the international system. The process of formation of conventional rules of diplomatic relations began in the nineteenth century and was completed by the second half of the twentieth century, thus establishing the system of legal rules, which is currently in force.

In recent years, in the scientific literature in addition to the term „diplomacy law” appeared the term „law of external relations” (with international treaties and customs, as major sources), in particular, reference can be made to works of Sandrovskii. The concept of „law of external relations” was supported by a number of scholars, for example, Lukashuk, Tunkin, Abashidze and Fedorov. However, this term does not fully reflect the content of the subject of regulation in this area, as in this case, we are speaking not about foreign relations in general, rather about international relations of official subjects of international law.

The rules of contemporary diplomacy law direct the status, functions and the actual diplomatic activities of organs of foreign relations of states, as subjects of international law. These rules encompass the norms regarding diplomatic representations and their personnel, also the norms of privileges and immunities of foreign officials and staffs. Currently, the main treaty in the field of diplomacy law is the Vienna Convention, which bears a universal character. The Vienna Convention is one of the most significant international conventions, regulating the establishment of diplomatic relations between states, the main functions of a diplomatic mission, the procedure for appointing heads of representation and members of the diplomatic staff, the number of staff of diplomatic mission and its category, as well as privileges and immunities of each category and of the diplomatic mission itself, and a number of other issues.

113 Demin op. cit. 8.
115 Barston op. cit. 3.
116 Science is the study of those judgements, concerning which universal agreement can be obtained. Norman Campbell op. cit. 27.
118 Sandrovskii op. cit. 264.
119 Questions regarding whether international law is law were arising even in the twentieth century. Glanville Williams: International Law and the Controversy concerning the word 'Law'. British Year Book of International Law. 1945, 148.
II. 1. 1. International custom

As it had been discussed above, diploma cy law is a set of principles and norms that creates a legal framework for relations, which involve states and other subjects of international law, regulating the legal status, also the activities of bodies of external relations of states and their staff. Diplomacy, as a deep-rooted activity, is full of tradition and symbolism, and according to Farkas, belongs to those human activities that were first practiced, then named. This is less true in recent years, than previously. Diplomatic activity today is regulated by the norms of international law, which originally were general rules of law, being recognized as norms of binding nature that later became international legal norms on the basis of the process of codification of existing practices. Besides, the custom, an other important notion of international law, related to the topic of the present thesis, is opinio juris – the belief, that a norm is accepted, as law, according to which, a legal entity, for example, a state deeds under its belief that it is legally obligatory to act in a certain way. Diplomatic agents are well familiar with this notion, coming across different customs during their everyday work. Wolfrum believes that opinio juris is based on a value judgment. In this course, opinio juris is a conviction of subjects of international law in the usefulness of the legal norm. In practice, this means recognition of a specific rule by a state, as a norm of international law. In opinion of Troianovskii, opinio juris, or recognition, as a norm of law, gives legitimacy to a usual rule, endowing it with authority and legal force. Without this regulatory aspect, practice is no more, than a usually established order or a simple habit, but not law.

120 "Everywhere the basis of [legal] principle is tradition." Holmes op. cit. 457, 472.
124 As concluded by Higgins, "Until the end of the 1950s, the sources of law, governing the missions were largely customary (along with some early attempts at codifying in 1815 by the Congress of Vienna)." Rosalyn Higgins: The Abuse of Diplomatic Privileges and Immunities: Recent United Kingdom Experience. Editorial Comments. The American Journal of International Law. Vol. 79, No 1, 1985, 641. [Hereinafter: Higgins: The Abuse…]
127 There is some disagreement as to how strictly the requirements of opinio juris should be interpreted. In practice, the requirements of constant and uniform usage and opinio juris stand together. Merrills op. cit. 5.
129 Along with explicit recognition of a legal norm, a state may express its direct objection against an emerging norm, for example, in the form of a protest. Both explicit recognition and objection allows to accurately determine.
There used to be two axioms in international law, concerning ambassadors, namely that the emissary must be received and that he must suffer no harm in the host country. Nicolson, giving emphasis to the significance of diplomatic privileges and immunities, expressed that “It must soon have been realized that no negotiation could reach a satisfactory conclusion if the emissaries of either party were murdered on arrival. Thus, the first principle to become firmly established was that of diplomatic immunity.”

Although, the origins of the custom of diplomatic immunities are still in dispute, namely, whether this practice developed in Greek city-states or began earlier, in China, India and Egypt.

According to Mingst, whether a hegemon or a group of states resolves a problem in a certain way, these customs become permanent when more states follow them, and with time, these customs get codified into law. However, the law, based on customary law, is limited. On the one hand, these limits occur due to the fact that customary law develops rather slowly. Besides, the customs become occasionally obsolete. In addition, not all states participate in the development of laws, based on common law, not to mention their consent regarding those customs, which became laws, actually, owing to practice, typical for central Europe. The fact that laws based on customs had not been codified in the beginning, could lead to their ambiguous interpretation.

The Statute of the International Court of Justice (ICJ), by and large regarded, as a complete statement of the sources of international law, formulates the two criteria for definition of custom in international law – general practice, and the acceptance of this practice,
Subsequently, an international custom could be determined by the way states usually think and behave, regarding a certain matter. Hence, customary international law is grounded on following the existing practice of states.

There is no universally accepted definition of "customary law", according to Abass. International custom is an act, done or omitted to be done by states, under circumstances, in which such an act or omission is regarded as having legal effects on the states that recognize it. Consequently, an international custom is more than a mere habit or usage, because unlike usages, it involves legal obligations. Violation of an international custom, therefore, could attract sanctions. For example, it is an international custom that generally, a state will not prosecute foreign diplomats under its own laws. An offending diplomat, customarily, would be sent back to his home country by the receiving state. Abass affirms that there is no custom in international law, if a usage does not create legal obligations.

The possibility to use international legal custom, as a source of diplomacy law, stems, in particular, from the Preamble of the Vienna Convention, which contains a provision confirming that the rules of customary international law continue to govern the questions, not explicitly regulated by the provisions of the Convention. (The Preamble of the Vienna Convention on Consular Relations encloses almost an identical provision.)

The relevance of international customary law, since the conclusion of the Vienna Convention, among the sources of law of diplomatic relations, undoubtedly, had been set aside, but the significance of – as the Preamble points this out – has not lost, and it still remains a powerful instrument of the development, refinement of law and its alignment to realities of

Kolb states that the general perception of international law is that it is still weak, and having little regulatory force, determines the conduct of states or other subjects of law, just marginally. Kolb op. cit. 99.

As a matter of fact, custom exists both in internal and international law. Initially, before the birth of the modern state, or an organized power, custom was the only source of law. Custom has always had a subsidiary role, or at least relatively marginal, since the modern times, and it has certainly a greater importance in common law, than in continental law. Dominique Carreau– Fabrizio Marrella: Droit International. (International Law.) Editions A. Pedone. Paris, 2012, 302-303.

Article 38(1)(b) of the Statute of the International Court of Justice accepts "international custom", as a source of law, but only where this custom is "evidence of a general practice", and "accepted as law", i.e. it is the opinio juris. United Nations, Statute of the International Court of Justice. 18 April, 1946.

Schwarzenberger notes that since the rules of international customary law are mainly prohibitory rules, in this way, any apparent duty of any subject of international law to do something is, in reality, a reflection of the primary duty not to interfere with protected spheres of jurisdiction of other subjects of international law. Georg Schwarzenberger: International Law and Order. Stevens&Sons. London, 1971, 33.


Abass op. cit. 35.

Vienna Convention. Preamble.

international life. The provision to respect the laws of the host country, viewed by Denza as the most important of the four general obligations of the diplomatic agent, under the Vienna Convention, requires demonstration of special circumspection in their actions and in everyday behavior, also tact and thoughtfulness in conversations and in giving public statements.

The theory of exterritoriality has outdated, also because it is generally recognized that diplomatic representations and diplomatic agents have to respect the laws of the receiving country. In this line, enjoying the variety of special protections and privileges in a host state, the diplomatic representative must adhere to certain customary rules. For example, they are expected to stay out of the politics of the host state, i.e. to criticize the legislation, personnel, or policies of the host state is not allowed. The words (speeches, announcements), conveyed by diplomatic agents, either in oral or written form, could be examined in detail, concerning the content, which sometimes might be of legal nature.

The importance of additional sources, as diplomatic notes, which had evidenced the practice of states, issued by governments on different issues, along with the policy statements, made by the Foreign Offices on such matters, is increasing, because these materials are often treated, as precedents. The diplomatic notes, addressed by one government to another, conventionally, contain references of past practice and it is reasonable to give due weight to precedents in international law, which, by its nature should depend on usage and practice of nations.

At the same time, the authorities of the host country are required to provide proper conditions for the activity of the diplomatic mission. The authorities should provide assistance to the foreign representation in finding the appropriate premises, but do not have to pay the rent fee. This point sometimes gets essential, like at the beginning of the two thousandth years, for economic reasons, in Moscow there were closed the embassies of Uganda, Niger, Rwanda, Togo and Burkina Faso. A number of countries was the debtor of The Main Production and Commercial Administration for Services to the Diplomatic Corps under the Ministry of Foreign Affairs.

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146 Ustor op. cit. 58.
147 Vienna Convention. Article 41(1).
148 Denza op. cit. 373.
150 Petrik op. cit. 45.
152 Sen: A Diplomat’s... XIII.
Affairs of the Russian Federation (GlavUpDK), including Afghanistan, Congo and Chad. There are cases, when the host country agrees to pay the expenses of a foreign representation.

The rules of customary international law, regarding diplomatic privileges and immunities, developed with reference, primarily, to the position of the ambassador himself. The official staff and others, forming part of diplomat’s entourage derived their privileges from him, and without a doubt, most aspects of the mission’s status and existence derived from the ambassador, personally.

Conversely, in this day and age, the position in international law of diplomatic missions and their staffs derives less from the position of the head of the mission personally, and became more a matter, dependent upon the position of the diplomatic mission, as an institution. While ambassadors still enjoy pre-eminence in matters of protocol, dignity, rank and ceremony, their legal position, with respect to entitlement to privileges and immunities is now accepted to be the same, as that of members of the staff, having diplomatic rank. These members of the staff, along with the ambassador are referred to, as “diplomatic agents”, and their privileges and immunities may be considered together.

In most of the peaceful states, where there is rule of law, privileges and immunities, granted to diplomats, might be viewed, as senseless and unnecessary to the extent that they can cause resentment of the citizens of the host country. Under exceptional circumstances and in some countries, only official recognition of mutually applicable privileges and immunities provides an opportunity to maintain diplomatic relations.


155 Ibid.

156 Popov op. cit. 4.
II. 1. 2. International conventions

With the establishment of relations between subjects of international law, there appeared the need for their regulation by legal norms and rules of international procedure. International law provides a system of rules, governing the conduct of inter-state relations. In view of that, diplomatic intercourse between states is greatly facilitated by legal principles, concerning the inviolability of embassy premises and of communications with the home state and the immunity from legal process of foreign diplomatic representatives in the courts of the receiving state. International law can also offer an answer to the majority of international disputes, though, in some cases the dispute may not be susceptible of settlement by the application of legal rules. Therefore, international law can not exist in isolation from the political factors, operating in the sphere of international relations, in particular, in the sphere of diplomacy.

The rules on diplomatic relations, as the earliest norms of international law, developed by way of certain habits in relations between the countries that required certain ways of treatment of delegates and envoys, for example, their inviolability, which is the most basic rule of diplomacy law. Thus, the predispositions of standardization and codification of the

157 „The greatest single factor in determining a state’s attitude towards international law is its view of where its interests lie.” Merrills op. cit. 9.
158 Scholars note that there is an increasing demand for more empirical legal research, to know how legal decision-making, legal enforcement, also law in general really works outside the statute. Dame Hazel Genn–Martin Partington–Sally Wheeler: Law in the real world: improving our understanding of how law works. The Nuffield Foundation. London, 2006, iii.
159 The different sources of international law are not arranged in a fixed hierarchical order, however. In practice, supplementing each other, they are applied side by side. In case of a clear conflict, treaties prevail over custom and custom prevails over general principles of law and the subsidiary sources. Peter Malančzk: Akehurst’s Modern Introduction to International Law. Routledge. London, 1997, 57.
160 Boyle and Chinkin, speaking of reform of international law-making, note that the international legal system moved far beyond the traditional categorization of the sources of international law in the Statute of the International Court of Justice and engendered flexibility in this regard. The new instruments include such techniques, as opting into (or out) treaty amendments that allow for technical changes, or extension to the scope of existing treaties, without the need for adoption of formal processes, such as diplomatic conferences. A future question that arises is who determines an instrument to be law-making, since it is no longer the case that such decisions are made by heads of governments or Ministers of Foreign Affairs. Boyle–Chinkin op. cit. 35.
rules of diploma cy law led to the emergence of a set of international norms, binding on states. All eras of diplomacy have a particular normative basis that describes or underpins legitimate diplomatic practice. The legalization of diplomacy can be seen in the institutional developments of international politics between The Hague Conferences of 1899 and 1907, and the present day.

In international law, there is no right, as such, to diplomatic relations—they are established by mutual consent. The Vienna Convention does not define the diplomatic relations as such, but lists the main functions of a diplomatic mission. Agreements are among the fundamental sources of diplomacy law. Treaties and custom are of equal authority, although the later in time prevails, which conforms to the general maxim of *lex posterior derogate priori*—a later law repeats an earlier law.

Like the process of customary law, treaties are a kind of regime or institution. As it was already brought up in Chapter I of the present thesis on the statement of the investigated problem, the activity of diplomats also contributes to the development of international law, for they are often involved in negotiating processes of bi- and multilateral agreements, in this way creating diplomatic, and broader—international law, almost every day.

The principles, forms, methods and legal framework of ambassadorial law and the bases of contemporary diplomatic activity were laid down by the Congress of Vienna in 1815. The first multilateral treaty in the field of diploma law, which was attended by eight European...
countries,\textsuperscript{175} is the Vienna Protocol as of 7 March, 1815 on the ranks of diplomatic representatives, completed by the Aachen Protocol in 1818, concluded by Britain, France, Russia, Austria and Prussia,\textsuperscript{176} the so-called Concert of Europe.\textsuperscript{177}

The other endeavor of codification of diplomacy law was made by the League of Nations of Great Britain in the 1920s.\textsuperscript{178} Partial official codification of diplomacy law was first made on a regional scale in Latin America by the Convention regarding Diplomatic Officers in 1928.\textsuperscript{179} Presently, diplomacy law is generally codified. Before the creation of the Vienna Convention, the two most important documents were the Havana Convention\textsuperscript{180} and the Harvard Research Draft Convention on Diplomatic Privileges and Immunities.\textsuperscript{181} The Research in International Law, organized by the Harvard Law School, had prepared this draft, along with some others, in anticipation of the first Conference for the Codification of International Law that took place in The Hague in March 1930. The drafts, as a rule, were intended not to be limited to the statement of existing international law,\textsuperscript{182} but to contain certain provisions,\textsuperscript{183} which would formulate new law.\textsuperscript{184}

The modern stage of codification of diplomacy law refers to 1949, when the United Nations Commission on International Law called the matter of diplomatic and consular relations between States among the first issues to be codified. In 1954, writing on the future systematization of the law of diplomatic immunity, Lauterpacht stressed that the codification

\textsuperscript{175} The monarchial Europe only appeared to be homogenous, having political, social, economic and intellectual differences, in fact. What they had in common was royal despotism, aristocratic privilege and bureaucracy. François Fejtö (ed.): The opening of an era: 1848. Allan Wingate. London, 1948, 3.
\textsuperscript{177} Haraszti–Herczegh–Nagy op. cit. 47.
\textsuperscript{178} Report of the Committee of Experts for the Progressive Codification of International Law. pub.C.196.M.70.1927.V.
\textsuperscript{179} Convention regarding Diplomatic Officers, ratified by Act No. 72 of 19 December, 1928. Signed in Havana on 20 February, 1928. [Hereinafter: Havana Convention.]
\textsuperscript{180} Simbeye notes that the Havana Convention did not differentiate between criminal and civil jurisdiction and thus seemed to take the absolute stance. Simbeye op. cit. 99.
\textsuperscript{182} International law, in its turn, can not be defined only as a set of legal rules, applicable in the international society. By its generality and neutrality, this branch of law takes into account the changes of international realities and therefore, the evolution of the matter, i. e. the historical development. Ferhat Horchani: Les sources du Droit International Public. (Sources of International Public Law.) L. G. D. J–C. P. U–DELTA. Paris–el Manar–Beyrouth, 2008, 18.
\textsuperscript{183} Sandström, Special rapporteur suggested some additional articles into the draft of the Vienna Convention: „If a State applies a rule of the draft narrowly, the other States shall not be bound, vis-à-vis that State, to apply it more liberally.” and „Two more States may agree to extend the privileges and immunities referred to in the draft and the classes of persons for the benefit thereof.” Draft articles concerning diplomatic intercourse and immunities. Yearbook of the International Law Commission. Documents of the tenth session including the report of the Commission to the General Assembly. Doc. A/CN.4/116/Add.2. Vol. II. 1958, 19.
of diplomatic immunity had to recognize both in general practice and in treaties the principle, according to which, immunity was conferred not for the private benefit of privileged persons, but in the interest of the unimpeded fulfillment of the mission, he was entrusted with.

In 1958, the Commission drafted the articles of the Convention on diplomatic intercourse and immunities, which formed the basis of the Vienna Convention. By the adoption of the Vienna Convention the international community continued diplomatic activity, applying the international treaties already in force. From then on, the rules of customary international law could be applied only on those issues that were not specifically covered by the codification agreements, according to the Martens clause. This passage is also aimed at offering some protection to individuals in armed conflicts, even in situations when there is no specific rule of humanitarian law that could be referred to.

The Vienna Convention rationalized components of diplomatic relations, considering the diplomatic mission, as the main core of diplomacy law, thus extending the application of immunities and privileges for a new category of persons – members of diplomatic missions. The staff members of diplomatic missions until then had enjoyed a privileged position only because of their affiliation to the environment of the ambassador or head of mission. In this context, diplomatic mission personnel also received important privileges and immunities, and to a certain extent, the use of privileges and immunities have been extended to the administrative and technical staff of a diplomatic mission.

The Vienna Convention solved the problem of equality of interests between the sending and the receiving state. The receiving state was provided with a number of special prerogatives, assisting in limiting of excessive increase in the number of foreign diplomatic missions, if needed. It is significant that the Convention converted into law the rules of international comity, concerning the procedure of the request of the agrément, exemption from customs duties, etc.

The rules of diplomacy law, laid down by the Vienna Convention, were defined by Denza as "the cornerstone of the modern international law". There are no


The original text of the Martens clause in the preamble to the Hague Convention II on the Laws and Customs of War on Land, as of 29 July 1899, at the Hague, formulated by Fedor Fedorovich Martens, as follows: "Until a more complete code of the laws of war is issued, the High Contracting Parties think it right to declare that in cases not included in the Regulations adopted by them. Populations and belligerents remain under the protection and empire of the principles of international law, as they result from the usages established between civilized nations, from the laws of humanity and the requirements of the public conscience."

The Vienna Convention highlighted the diplomatic mission, as a multifaceted organ that performs certain functions and enjoys certain immunities.

Teosa – Vasilesku – Chobu op. cit. 33-35.

Denza op. cit. 1.
provisions in the Convention, which would limit its parties in settling questions of diplomatic relations, entering into agreements with other parties or with each other.\textsuperscript{190}

The International Law Commission, working on the draft of the Vienna Convention, took into consideration both the theory of functionality and the idea of representative character of the head of mission, which was finally conveyed in the introduction part: \textit{... the purpose of such privileges and immunities... to ensure the efficient performance of the functions of diplomatic missions as representing States.} \textsuperscript{191} The diplomatic privileges and immunities, were established by the Vienna Convention in large part, being granted to foreign representatives, depending on their rank and also, contingent to the amount of immunity they need to efficiently perform their official duties. The international community strived for development of a commonly acknowledged set of norms that would govern the conduct and privileges of foreign diplomats. These rules and guidelines were intended to endorse and preserve diplomacy. (However, experts note that there is an unresolved ambiguity in the Vienna Convention whether the granted immunities are those of the sending state, the diplomatic mission or individually, of the diplomatic agent.)\textsuperscript{192}

Furthermore, the International Court decided in 1980 that \textit{the rules of diplomacy law, in short, constitute a self-contained regime, which on the one hand, lays down the receiving state’s obligations regarding the facilities, privileges and immunities to be accorded to diplomatic missions and, on the other, foresees their possible abuse by members of the mission and specifies the means at the disposal of the receiving state to counter any such abuse.} \textsuperscript{193}

Additional international legal sources of diplomacy law, regarding diplomatic privileges and immunities, besides the Vienna and the Havana Conventions are the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents (considered with more attention in Chapter V. 4. on international protection of diplomatic agents). Diplomacy law had been also developed and codified by certain authorities. Among these bodies, we find the International Law Committee of the United Nations, which codified a good number of conventions, based on customary law. These conventions include besides the Vienna Convention on Diplomatic Relations and the Vienna

\textsuperscript{190} Ustor op. cit. 57.
\textsuperscript{191} Vienna Convention. Preamble.
\textsuperscript{192} Fox op. cit. 455.
\textsuperscript{193} The American Hostages Case op. cit. 3.
Notwithstanding, scholars note that both state and diplomatic agents still have problems with interpretation of the provisions on diplomatic privileges and immunities. The diplomats tend to misinterpret the extent of their privileges and thus abuse their inviolability and immunity.

In addition, Värk points out that the amendment of the Vienna Convention would be required to introduce new, effective remedies to the abuses of diplomatic status, hitherto, this development is not likely, because states are not enthusiastic about such changes, and put to risk a stable, more or less satisfactory and operable system. To deal with cases of abuse, we can only hope for greater readiness of sending states, in cooperation with receiving states to ensure prosecution of serious criminals.

The improvements of the Vienna Convention, nonetheless, are not binding on states that had stayed out of the Convention. It might happen, though that some of the new provisions of the Convention could be taken into the practice of the states that had stayed out of the Convention, at regional level or generally. As a result of such practice, these new regulations can become regional or universal provisions of customary law.

On the subject of the hierarchy of sources, in terms of the order of application of their rules, the Statute of the International Court of Justice lists the sources of international law, but does not indicate specifically, whether this order also indicates the imperative, in which
they should be applied. In cases of collisions with *jus cogens* norms, the *jus cogens* rules override the related provisions of the treaty. The International Law Commission pointed out a generally accepted principle that when several norms stand on one issue, they should to the possible extent be interpreted, so as to give rise to a single set of attuned obligations, also that there is not necessary that a conflict of norms would take place, it may occur that one of the rules assists in the interpretation of the other rule.

It seems that the world has not changed so drastically yet, as in recent decades. International law contains among its principles and concepts, the content of world-shaking movements. Law of our days must face some serious challenges, generated by the appearance of globalization, internet, environmental problems and above all, the high-level specialization in almost every field of life. Globalization is transforming the world and we are along the road, on which the international society of states is becoming a world society. A peacefully international society is only possible, when it is based upon the law, and such a basis must be established in conformity with factual reality. Therefore, if international law failed to influence and to regulate adequately the course of internationalal relations, it would lose its value.

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203 Thirlway op. cit. 133.
204 Lukashuk believed that imperative norms existed in international law in the remote past already, for without them any kind of law and order would be doubtful. I. I. Lukashuk: Mekhanizm mezhdunarodno-pravovogo regulirovaniia. (Mechanism of international-legal regulation.) Vyshcha shkola. Kiev, 1980, 47.
II. 2. Supplementary sources of diplomacy law, originating from judicial decisions and national legislation

II. 2. 1. Judicial decisions at international level

Judicial decisions are considered to be auxiliary means of interpretation of international law in continental law, in comparison with treaties, custom and general principles. The courts fall into the category of primary sources of diplomacy law in common law. It should be added here that the speedy transformations of both our life and the systems and institutions that form us are “game changers for the grammar of modern law.”

In our time, the power of a court to do justice depends rather on the persuasiveness of the judges’ discourse, persuasive in the sense that it reflects not their own, but society’s value preferences.

The International Court of Justice in The Hague is responsible for many relevant important decisions.

In addition, the European Court of Justice of the European Union can be considered as a quasi source of European law. Mann finds that granting from the legal point of view, foreign affairs are “mere facts”, they may bring certain legal rules into operation, for example declaration of war means that trading rules with the enemy become applicable, the recognition of a person as a diplomat will confer immunity from legal process upon him, or

In ancient times, judges were loyal servants of the state, in contrast, today’s judges are independent actors in complex and critical relationship with the government and the public. Judith Resnik: Reinventing Courts as Democratic Institutions. Dædalus. Vol. 143, No 3. Summer 2014, 9

Lauterpacht notes that the traditional doctrine of separation of powers is no longer an axiomatic principle: courts perform administrative functions and by judicial law-making intrude on the domain of the legislative power. At the same time, administrative organs are being entrusted with judicial functions, having assumed in practice legislative powers. H. Lauterpacht: The Function of Law in the International Community. Archon Books. Hamden, 1966, 389.


The tradition of The Hague as “judicial capital” goes back to the peace conferences.

The judicial machinery could be used for settling any international dispute without force, but states can not be brought before a court against their will, nor made to abide by its judgement. Karl W. Deutsch (co-author): From Political Community and the North Atlantic Area. Princeton University Press. Princeton, 1957, 5.

With respect to law, the aim of harmonization aspirations of the European Union in this area is to ensure equal and real access to justice, with its equal quality in all state members. Ioan Leş: Rapport de Synthèse. (Summary Report.) Romanian Journal of Comparative Law. Vol. 1, No 1, 2010, 269.


War is the continuation of politics by other instruments, with application of means of violence. Once theannoncs start to speak, the war will gain priority among all other assets. Diószegi op. cit. 385-386.

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the termination of an extradition treaty may result in an accused person avoiding prosecution abroad.\textsuperscript{223} States have always had to take into account the requirements of membership of the international society. The principles of sovereignty, inviolability and non-interference in the domestic affairs of other countries are the foundations upon which the international state system is built. In this course, the wider duties of states include cooperation with other states, whenever it is possible, obedience to international law.\textsuperscript{224} For rules of law to exist, it is enough for states to appeal to doctrines of \textit{pacta sunt servanda} and \textit{rebus sic stantibus},\textsuperscript{225} and abstention from (forcible) intervention in the affairs of others.\textsuperscript{226} (Modern international law forbids war, as a means of settlement of international disputes, which conflicts should be resolved by peaceful instruments only, for example, diplomatic negotiations.)\textsuperscript{227}

Nevertheless, the proposition that states may be held accountable under international law by arbitral tribunals, created by treaty is neither new, nor radical. There were hundreds of such cases in the nineteenth century and the defendant states were of all types: rich and powerful, European or ex-colonial. Therefore, such a mechanism of holding states answerable\textsuperscript{228} is not an invention.\textsuperscript{229} Contemporary international law codified principles or formalized concepts, the existence of which dates back to the first organized human communities, such as the inviolability of ambassadors, \textit{pacta sunt servanda}, the concept of just war and the protection of human rights ("you shall not murder"), and others.\textsuperscript{230}

There are instances, when an ambassador, who finds himself aggrieved over a promotion or other matters, takes remedy to judicial appeal, in consonance with the procedures of the related state. For example, most of such cases in India go at first to a Civil Administrative

\textsuperscript{224} The growing necessity of peaceful cooperation between all nations nowadays has pushed to some extend to the background the endless doctrinal disputes concerning the basis of international law. Karol Wolfke: Custom in Present International Law. Martinus Nijhoff Publishers. Dordrecht, 1993, 172-173.
\textsuperscript{226} Smith–Light op. cit. 3-6.
\textsuperscript{227} Jellinek considers war, as the first and the oldest form of international legal coexistence of peoples. Cited by Cherkes in: M. E. Cherkes: Mezhdunarodnoe gumantitarnoe pravo. (International humanitarian law.) In: S. V. Kivalov (ch. ed.): Al’manakh mezhdunarodnogo prava. Vypusk 1. „Feniks”. Odessa, 2009, 104.
\textsuperscript{228} But the truth is that international tribunals tend to irritate responsible states – whether they rich or poor – in individual cases. Hitherto, the decisions of international tribunals should be respected by states, in order to achieve the long-term benefits of the rule of law: „Respect for settled and legitimate expectations is a precondition for healthy international relations.” Jan Paulsson: Denial of Justice in International Law. Cambridge University Press. Cambridge, 2005, 261-263.
\textsuperscript{229} Under international law, the general notion of denial of justice generates liability, whenever an uncorrected national judgement is vitiated by fundamental unfairness. Thus it must be, as long as international law does not impose specific supranational procedural rules in the form of treaties. Paulsson op. cit. 5.
\textsuperscript{230} Horchani op. cit. 20-21.
Subsequent appeal is possible to high courts and the Supreme Court. The foreign ministries are customarily exert their utmost to keep personnel cases out of the public domain, habitually pursuing a compromise to avoid legal disputes.

Watts notes that the most of the is customary international law, based on general practice of states, which is a phenomenon, being imprecise, as source of law, and in addition, slow in alteration, therefore the processes of transformation in international law are imperfect. Judicial decisions can barely serve, as a proper way for ensuring the methodical change, despite of the fact that when applying the law, courts, occasionally, are able to change it. The judicial involvement in this respect is unstable, completely depending on the matters states choose to put forward for judicial settlement. (Even treaties, as part of the growth of new customary law are only able to generate changes slowly.)

Accordingly, the international legal system has no process that would be able to produce instant and general change in law.

The International Court of Justice held that a diplomatic agent, caught in the act of committing an assault or other offence could, on occasion, be briefly arrested by the police of the receiving state, to prevent the commission of the particular crime.

The ultimate sanction, in opinion of the Court would be a "radical remedy" that every receiving state has at its own discretion – interruption of diplomatic relations with the sending state and calling for the immediate closure of the offending mission.

Thus, the Court considered that severance of diplomatic relations and cancelling of advantages of diplomatic status would be the punishment for the abuse.

All the same, as observed by Ustor, the practice of international courts (also works on international law) are not sources of diplomatic relations, but only assistive devices. They could serve, as guidelines, especially in interpretation and explanation of customary international law, and may indirectly influence the development of international law.
Over the past years, the role of judges has been expanding worldwide, even on constitutional and political issues. Judicialization is also the main consequence of a new cosmopolitan legalism. The judges have a dominant role in setting policy and taking part in all major institutional and social issues. Joyner asserts that it is important, on the other hand, not to overrate judicial decisions and arbitral awards, as sources of international law, for each case is decided on its own merits and the decision affects only the states, involved in each particular case. (Henry Kissinger, himself the subject of judicial and activist interest for his actions while in office, was among those diplomats, who, in one of his works, warned of the risks of judicial tyranny and the use of the principle of universal jurisdiction, as means of settling political scores.)

In addition, analytical deductions can not obligate national governments and create or codify international legal rules. Governments may adopt these interpretations and suggestions on the application of international legal rules to foreign policy. Akehurst points out that many of the rules of international law on topics, such as diplomatic immunity, have been developed by judgments of national courts and such judgments should be used with caution. The judges may look, as if they applied international law, when, in fact, they applied some peculiar rule of their own national law. In this way, the nature and extent of the inviolability, granted to a diplomatic agent in transit, often defined by the courts of these countries.

International law provides standards, by which national systems can be judged from outside. Sources of contemporary diplomacy law in general, besides international norms, found in customs and international agreements, also encompass regulations and decisions of international conferences and organizations governing relations of a diplomatic nature.

238 Law is an attempt to speak right to might, or truth to power, and the lawyer’s role is to facilitate this with ever greater facility. Jason A. Beckett: Faith and resignation. A journey through international law. Matthew Stone–Illan rua Wall–Costas Douzinas op. cit. 145.
240 Joyner shares the point of view, according to which this source, besides judicial decisions of national and international courts, also includes teachings and writings of the most highly qualified jurists and publicists. Christopher C. Joyner: International Law in the 21st Century. Rowman&Littlefield Publishers, Inc. Lanham, 2005, 14.
241 Malanczuk op. cit. 51.
242 The decisions of courts may not always be welcome, for example, when an accused is released from the jurisdiction, however, the courts have the opportunity, occasionally, to develop clear rules. Jonathan Brown: Diplomatic Immunity: State Practice under the Vienna Convention on Diplomatic Relations. The International and Comparative Law Quarterly. Vol. 37, No. 1. January, 1988, 59. [Hereinafter: Brown: Diplomatic …]
243 "The source of international law is a way of confirmation of legal rulings." Vasil’eva–Bakinovskaia op. cit. 43.
Ever since national courts are the instrumentalities of the state, the state may be judged for the acts or omissions if its courts, with respect to aliens. Internationally, the state is a single entity and the rule of law does not allow the very party, whose compliance is in question, to determine, whether it is a transgressor.

II. 2. 2. National legislation

The norms, being developed during the settlement of relations between the subjects of national law of different states – natural or legal persons have great influence on international law. In this case, national regulations and decisions of national courts act, as means for establishment of norms of international law.

According to the legal experience of states, with the society's development and expanding of various links between countries, the process of mutual influence of international law and national law and vice versa develops and intensifies even more. Among other things, it shows the growing role and importance of the tendency of consistent expanding and strengthening of the relationship and interaction between international and national law,

A great number of bilateral international treaties and agreements on establishment of diplomatic relations, also diplomatic missions, treatment of diplomatic agents, change of rank of diplomatic missions, etc. were adopted by certain states to provide more favorable conditions to each other in order to promote their international diplomatic relations. These bilateral accords are, certainly, have binding effect on the involved parties, solely. National legislation regulates the way how provisions of diplomacy law should be applied and implemented in a particular state and specify the issues, not addressed by the existing diplomacy laws or international law. Along with foreign policy principles and general principles of law, norms of national law reinforce specific forms of implementation of foreign policy functions, thus, having a significant impact on international law. These norms are reflected in diplomacy law, as well.

Working on the creation of the Vienna Convention, the International Law Commission requested information about the norms of national legislation on the questions of legal status of foreign diplomatic missions and diplomats on the territory of states, as the norms, governing

244 Paulsson op. cit. 4-5.
245 Besides the sources of international law, there are evidences of state practice – of attitude of states, such as decisions of courts, statements by government officials, legislation of national parliaments, deliberations or solutions of global conferences and international organizations. Greig op. cit. 49.
246 M. N. Marchenko: Tendentsii razvitiia prava v sovremennom mire. (Tendencies of development of law in the modern world.) Izdatel'stvo "Prospekt". Moskva, 2015, 46.
these issues, initially emerged in the national law, and then came to international law, as customary norms.\footnote{Marchenko op. cit. 47.}

In this way, national legislation, together with judicial precedents and diplomatic practice, certainly plays an essential role in the establishment of norms of international law, without being formal sources of international law.\footnote{Tunkin op. cit. 209-211.} Furthermore, international law is observed, studies show, to approximately the same degree, as domestic law. In fact, law is about as essential in providing order and predictability to international relations, as it is for domestic relations.\footnote{Roskin–Berry op. cit. 301.}

States, handling contentious issues in a similar way, create a so-called parallel legislation, which would subsequently get enshrined in international law first in the form of international customs, and then, after their general admission, as ordinary or conventional standards, they will become norms of international law. These are national norms, the most appropriate in terms of practice, the example for which is the legislation of an other state. Such norms function, as the generally accepted international rules that govern the norms of diplomacy law (also the movement in the air space,\footnote{The law of international spaces requires the establishment of uniform international legislation, administration and adjudication. The maintenance of the balance of power in international spaces constitutes the main objectives of the common legal regime of international spaces. John Kish: The Law of International Spaces. A. W. Sijthoff. Leiden, 1973, 1-3.} navigation rules, and maritime law).

A special feature of the system of sources of diplomacy law is that it includes, along with sources, such as international order and international agreement, acts of national legislation. The part of legal sources, related to domestic law, is linked to branches of law, like constitutional law, administrative law, public service and others.\footnote{Martonyi affirms that the traditional dividing line between the international and national regulations is increasingly blurred. The universal principles, theorems, practices and international norms, also regulations, which express them, are being enforced in a unity that is difficult to separate, along with the national regulations and with the regulations under and outside the state. Martonyi op. cit. 87.}

Initially, according to Zoller, it was national law that contributed to the customary formation of the diplomatic status. Two texts in this regard deserve to be recalled. One is the Dutch proclamation as of 29 March, 1651\footnote{The Act of Abjuration was the declaration of independence by many of the provinces of the Netherlands from Spain in 1581, during the Dutch Revolt, signed on 26 July, 1581 in The Hague. Stephen E. Lucas: The „Plakkaat van Verlatinge“: A Neglected Model for the American Declaration of Independence. Rosemarijn Hofte–Johanna In: C. Kardux (eds.): Connecting Cultures: The Netherlands in Five Centuries of Transatlantic Exchange. Paperback. Amsterdam, 1994, 189–207.} that forbade the arrest of diplomats and their servants, also the seizure of their property. The other document is the aforementioned famous Diplomatic Privileges Act of 1708, affirming the „sacred and inviolable“ character of rights and

\textsuperscript{247} Marchenko op. cit. 47.  
\textsuperscript{248} Tunkin op. cit. 209-211.  
\textsuperscript{249} Roskin–Berry op. cit. 301.  
\textsuperscript{251} Martonyi affirms that the traditional dividing line between the international and national regulations is increasingly blurred. The universal principles, theorems, practices and international norms, also regulations, which express them, are being enforced in a unity that is difficult to separate, along with the national regulations and with the regulations under and outside the state. Martonyi op. cit. 87.  
privileges, attached to the person of ambassadors.

As a result, diplomacy law – a set of treaty and customary law, as well as national legislation, governing the status, functions and procedures of state bodies of external relations.

Consequently, as it can be viewed by now, the sources of diplomacy law are constituted of two parts: international law and domestic law. Domestic sources of diplomacy law are laws and regulations that establish the competence and powers of state bodies in the sphere of foreign policy. In particular, they might include the Constitution, legislation on the head of state of the government of the related Foreign Ministry, Embassy and Consular Charter, decrees, orders and regulations, governing the functioning of external relations. Certain acts of domestic legislation belong to the sources of diplomacy law, as well.

There is a number of national sources of diplomacy law, adopted by states within the framework of national law. For example, the Diplomatic Relations Act is also a key part of the doctrine of diplomatic immunity of the United States, encompassing options for more or less favorable treatment, than granted by the Vienna Convention.

The language of the Vienna Convention influenced the U. S. Congress to pass this law to repeal a 1790 statute that gave diplomats much more protection, than it would be provided by the Convention. Above and beyond, the Diplomatic Relations Act provides foreign diplomats with more advantageous treatment, than the Vienna Convention, in case the sending states would reciprocate in return.

In the regulation of the activities of diplomats, instruments of departments of Foreign Affairs of sending states are playing a significant role, sometimes explicitly limiting the universal human rights. For example, during the Cold War, the U. S. State Department forbade the service personnel of its representation in the USSR to engage into "intimate and romantic relationships" with Russians. This ban was lifted only in 1995, with an exception, regarding the personnel, associated with state secrets of high importance and protection of embassies. The Ministry of Foreign Affairs of the USSR did not issue such orders, but until the early 1990s, it applied stringent measures to those, who were engaged into close relationships with citizens of


In the Diplomatic Relations Act it was also explicated that the Vienna Convention was the "essential United States law on the subject". Jimmy Carter: Diplomatic Relations Act Statement on Signing H. R. 7819 Into Law. 2 October, 1978. The American Presidency Project. (Accessed on 9 March, 2016.)

http://www.presidency.ucsb.edu/ws/?pid=29902.

In the past, American diplomats used to enjoy absolute criminal and civil immunity and any person, who attempted to sue a diplomat with immunity, would be punished by fine and imprisonment.
the host country. In the late 1990s, this unofficial ban was eventually unofficially canceled. Since then, the restrictions applied only to those persons, who had access to state secrets.\textsuperscript{258}

With reference to sources and subjects of diplomacy law, regarding privileges and immunities of diplomatic agents, relevant national regulations are important, as well, which could provide supplementary benefits to envoys, also additional means of their protection. Under the current state of world affairs, diplomats needed to be protected well, due to their very delicate status. In addition to international treaties, as the leading sources of diplomacy law, national legislation of states reproduces the main provisions of diplomacy law and in some cases establishes their more detailed regulation, as well as manages the issues that do not get a solution in public international law.

Ustor agrees that although diplomacy law is part of international law, the latter does not regulate exhaustively all aspects of diplomacy law. There are individual areas, such as customs and tax provisions, where there is no uniformed practice yet, and the provisions of international law and the Vienna Convention do not solve all the questions. Especially in these areas, internal state regulations could influence the development of international law, provided these regulations might originate customary international law by development of a uniformed practice. In this sense, the jurisprudence of national courts could also have an indirect effect on diplomacy law.\textsuperscript{259}

Thus, the bilateral agreements on establishment of diplomatic relations,\textsuperscript{260} also belong to additional international legal sources of diplomacy law, regarding diplomatic privileges and immunities. (The national legal sources might also include a number of regulations of subordinate character.) The particularities of the diplomatic service of state are stipulated, for example in Russia, by the Resolution of the President of the Russian Federation No 272, No 271 as of March 14, 1995 that approves the Regulation on the Ministry of Foreign Affairs of the Russian Federation; Presidential Resolution 1996 „On the coordinating role of the Ministry of Foreign Affairs of the Russian Federation in implementation of unified foreign policy of the Russian Federation” No 375 as of 12 March; Resolution of the President of the Russian Federation „On the procedure of assigning and maintaining of diplomatic ranks” No 1371 as of 15 October, 1999 and other regulations, along with the Vienna Convention.

\textsuperscript{258} Lukashuk: Mezhdunarodnoe… 89.
\textsuperscript{259} Ustor op. cit. 59.
\textsuperscript{260} For example, bilateral agreements on diplomatic relations between Russia and Azerbaijan, Armenia, Denmark, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Tajikistan, Turkmenistan, Uzbekistan, Ukraine, and other states.
In Ukraine, the legal basis and the procedure of organization of the activities, related to the diplomatic service is regulated by the Decree of the President of Ukraine on approval of the “Regulation of Diplomatic Mission of Ukraine Abroad” No 166/92-rp as of 22 October, 1992; Resolution of the President of Ukraine “On regulation of diplomatic service in Ukraine” No 267/93 as of 16 July, 1993; Constitution of Ukraine No 254/96-VR as of 28 June, 1996; Act of Ukraine “On the diplomatic service” No 2728-III as of 20 September, 2001; Act of Ukraine “On the diplomatic ranks of Ukraine” No 253-IV as of 28 November, 2002; Resolution of the President of Ukraine “On the Regulation of the Ministry of Foreign Affairs of Ukraine” No 381/2011 as of 6 April, 2011 and some other codes of practice, including the Vienna Convention.

With respect to the guidelines on diplomatic activity and matters of foreign affairs in Russia and Ukraine, it could be said that the legal framework consists of both international and national laws, and the high level of rules shows the prevalence of centralized regulation.

Regarding the regulatory framework of Ukraine, Iasunik not ices the minor role of administrative contracts, also widespread use of subordinate legislation and departmental regulations, which, despite of some inconsistency and fragmentation, predetermines a rather high level of legal support of foreign policy management of the state.

In addition to the aforementioned Presidential Resolutions, Russia takes decisions in order to additionally strengthen the capacity of the Russian foreign service, building conditions for further effectiveness of the work of diplomats.

There is a number of other states, which regulate at the national level the questions of status, official duties, rights, etc. L. I. Iasunik: Osobennosti administrativno-pravovyh osnov upravleniia inostrannymi delami v Ukraine. (The particularities of administrative-legal bases of the management of foreign affairs in Ukraine.) Pravo.ua. No 1, 2014, 112.

After the 2014 Decree of the President of the Russian Federation on the improvement of the remuneration system of diplomatic workers, the level of their financial security has significantly increased, including pension security. Ukaz Prezidenta Rossiiskoi Federatsii O soversenstvovanii oplaty truda federal'nykh gost'udarstvennykh sluzhaschikh tsentral'nogo apparata Ministerstva Inostrannykh Del Rossiiskoi Federatsii, diplomaticheskikh predtavitel'stv i konsul'skikh uchrezhdenii Rossiiskoi Federatsii, territoridal'nykh organov – predstavitel'stv Ministerstva Inostrannykh Del Rossiiskoi Federatsii na territorii Rossiiskoi Federatsii ot 12.03.2015, N 129.

The country's leadership is considering and implementing proposals for improvement of the personnel resource of the diplomatic service, social security of its employees and their family members. Ibid.

Vystuplenie Prezidenta Rossiiskoi Federatsii V. V. Putina na vos'mom Soveshchanii poslov i postoiannykh predstavitei Rossiiskoi Federatsii. (Speech by President of the Russian Federation at the eighth Meeting of ambassadors and permanent representatives of the Russian Federation.) Moskva, MID, 30 June, 2016.

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obligations, privileges, allowance and compensation system, also labor achievements, incentives and awards of diplomatic representatives, for example: Argentina, Armenia, Estonia, Germany, Great Britain, Kazakhstan, Kyrgyzstan, Moldova, Tajikistan, Turkmenistan, and the United States.

In Canada, the Foreign Missions and International Organizations Act, implementing the Vienna Convention, also provides qualified immunity to foreign diplomatic members of the administrative and technical staff, and members of the service staff. (The Vienna Convention does not apply to foreign sovereigns themselves or their property.)

In Hungary, the new law on foreign representations and long-term foreign service, is aimed at regulation of the work of foreign representations, creating the conditions of a single administration for foreign affairs, which encompasses foreign economy, also cultural and science diplomacy. This law introduces a uniform regulation, expanding tasks and instruments of the foreign policy of Hungary. The tasks, while aimed at representation and protection of the effective representation of Hungary abroad, comprise the consecutive representation of Hungarian stand and interests abroad.

Notwithstanding, the questions of diplomatic protocol and ceremonial are still regulated by customary law. In opinion of Ustor, internal legislation of certain states is not a source of diplomacy law. There is no doubt, however, that in many respects diplomacy law is realized in

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265 Compensation used to describe reparation in the narrow sense of the payment of money, as a „valuation” of the wrong done. Brownlie: State... 199.
266 The law of Argentina „On the foreign service” No. 20957 as of 22 May, 1975.
270 „An Act to amend the law on diplomatic privileges and immunities by giving effect to the Vienna Convention on Diplomatic Relations; and for purposes connected therewith.” Diplomatic Privileges Act of Great Britain as of 31 July, 1964.
272 Act of the Kyrgyz Republic „On diplomatic service” as of 28 June, 2002.
280 The new act, focusing on the creation of a transparent, uniform and stable long-term foreign service system, considers among its key objectives also the reduction of bureaucracy, at the same time increasing the effectiveness of the control of foreign representations of Hungary. Ibid.
Therefore, those state regulations, which transpose international law into national law, are important.

II. 2. 3. Judicial decisions at national level

The judicial decisions help to fill in the gaps of possibly too vague or equivocal regulations, clarifying the perplexing points. Whereas agreements are the essential sources of contemporary diplomacy law, at the same time, there are principles and rules of international law, enshrined in the domestic legislation of states that are present in the local customs, which also influence or regulate international relations of states.

It has to be specified here that judicial decisions are considered to be formal sources of diplomacy law in common law systems, not in those of continental law.

Furthermore, as noted by Merrills, the difficulty of bringing cases before international courts, "throws into prominence" the role of municipal courts, played in application of international law. Municipal courts lack the authority and prestige of international courts, yet, they decide questions of international law much more frequently, than is generally realized. For example, questions of diplomatic immunity are decided almost exclusively by municipal courts, especially in Great Britain.

On the other hand, the conduct of foreign affairs can not generally serve, as the foundation of a legal rule or contribute to the formation of public policy. In the twentieth century, there were very few cases of recognition of states, since many of decisions related to recognition of governments. A large number of cases of that era, decided by the courts, involved the question whether a particular body of persons constituted the government of a recognized state. Additionally, all the numerous decisions in the Western world, related to the Russian revolution, were concerned with this question.

The case of Bakhmeteff in 1917, is a historical example, which illustrates how a revolutionary change in the form of government that results in the termination or suspension

281 Ustor op. cit. 59.

282 Compliance with the political and legal framework of the diplomatic service is crucial for the establishment of diplomatic missions, and for the establishment and development of diplomatic relations.


285 Mann: Foreign… 8
of a diplomatic mission, turns to be a perplexing situation, relating to a diplomat’s status in the receiving state. The presented case was addressed according to standards of customary international law. Boris Bakhmeteff was an Ambassador, representing the Russian Government in Washington, namely the Kerensky régime, which existed for a few months only, until it was overthrown in October 1917. This revolutionary event was followed by a period of uncertainty in Washington. The United States had found themselves in an awkward position regarding Bakhmeteff’s status. Nevertheless, the American authorities did not suspend the official intercourse with the Ambassador. The situation cleared with the establishment of the Russian Soviet Republic in November 1917. By Hershey, who found this case with Bakhmeteff “strange”, as long as the American Government continued to recognize the Ambassador, he was entitled to diplomatic privileges and immunities, at least by custom and courtesy.

Sometime later, the perplexing situation over the change in the Russian Government and recognition of the successor of the Provisional Government of Russia, resulted in a suit at law, where the main question was over recovery of the private deposit of the Russian Government with the New York bank, due to the occurrence of the new assignment, made by the Russian Soviet Government to the United States of the right of the new Russian Government to the bank account. The bank account in question was opened in 1916 by the Imperial Russian Government and despite of the fact that the Soviet Government dismissed Bakhmeteff, as Ambassador in 1917, the United States continued to recognize him, as Ambassador until 1922.

From 1917 to 1933, the United States declined to recognize the Soviet Government or to receive its accredited representative and so, certified in litigations pending in the federal courts. In 1933, the United States recognized the Soviet Government and took from it an assignment of all amounts admitted to be due that may be found to be due, as the successor of prior Governments of Russia, or otherwise, from American nationals, including corporations.

In this situation, the case was remanded to the Court of Appeals for further proceedings.

287 Hershey op. cit. 426-428.
288 After the retirement of Bakhmeteff as Ambassador, the United States continued to recognize him, as custodian of Russian property in the United States.
289 The Court found that „What government is to be regarded here as representative of a foreign sovereign state is a political rather than a judicial question, and is to be determined by the political department of the government, “, having concluded that „... the recognition of the Soviet Government left unaffected those legal consequences of the previous recognition of the Provisional Government and its representatives, which attached to action taken here prior to the later recognition." Guaranty Trust Co. of New York v. United States. 304 U. S. 126 (58 S.Ct. 785, 82 L.Ed. 1224).
In Fenton Textile Association v. Krassin in 1921, the Court of Appeal held that Leonid Krassin, the official agent of the Soviet Union, under the Anglo-Soviet Trade Agreement of 16 March 1921, was not entitled to immunity from civil process. Lord Curzon, the Foreign Secretary of Great Britain certified in this case that from the legal point of view, Krassin was not a diplomat. Due to the fact that the Soviet Government had not been recognized de jure as a state at that time, no representative of the Soviet Government would be received by His Majesty's Government. Consequently, in this case it was maintained that the representative of a country, which was recognized as only de facto by the country, in which he is accredited, is not entitled to immunities.

In De Fallois v. Piatakoff, et al., and Commercial Delegation of the U.S.S.R. in France in 1935, the French Court of Appeal (Cour de Cassation) declared itself incompetent to recognize of a proceeding for swindling, in connection to the defendants – Piatakoff, Breslau and Lamosky, respectively chief and chief assistants at the Soviet Commercial Delegation in France. The Commercial Delegation existed first, as a commercial institution (not being able to share the sovereignty of the Soviet State), but after the Franco-Soviet agreement as of 11 January, 1934, these three persons became members of the Soviet Embassy in France, enjoying diplomatic immunity from that point.

A similar case of correlation of state succession and diplomatic immunity occurred in 1994, in the case of Former Syrian Ambassador to the German Democratic Republic, when S., the former Ambassador of Syria to the German Democratic Republic was charged of having assisted in the commission of murder and the bringing about a bomb explosion in West Berlin, the territory of the Federal Republic of Germany in 1983. The German Federal Constitutional Court found that S. rightfully had been denied diplomatic immunity by the Berlin courts – only the German Democratic Republic, as the receiving state, and not the Federal Republic of Germany, as a "third state", was obliged to respect the existing immunity of a diplomat, regarding to acts, performed in the exercise of his official functions.

The Vienna Convention prescribes that diplomatic immunity for official acts continues to exist after the termination of the diplomat's assignment. Consequently, the official acts of
diplomats are attributable to the sending state. Thus, the judicial proceedings against diplomats or former diplomats come, in their effects, close to proceeding against the sending state – continuing diplomatic immunity for official acts serves to protect the sending state itself, as concluded by O’Keefe. In a sum, the complainant acted in the exercise of his official functions as a member of the diplomatic mission, within the scope of the Vienna Convention,295 because he had been charged with an omission that was within the scope of his responsibility, as Ambassador, and which is to that extent was attributable to the sending state.296

In 1980, two Iraqi diplomats, accredited to the Government of German Democratic Republic in East Berlin, were arrested by the police of West Berlin for delivery of explosives to a person, who planned a bomb attack in West Berlin. The case was decided by the Senate of West Berlin, as a result of which, the two diplomats were expelled.297 The deportation of the Iraqi diplomats in September 1980 was attributed to reasons of security298 and foreign policy.299

On the topic of controversies, related to purchase or rent of property to foreign embassies, in Agbor v. Metropolitan Police Commissioner,300 the Metropolitan Police acted, following the norms of diplomatic privileges, regarding the provisions of the Vienna Convention, relying on which proved to be a mistake in this case. Mrs. Agbor, together with her family moved into the flat, previously occupied by a diplomatic attaché of the Nigerian Federal Government in London. The Nigerian High Commissioner refused to test in the courts the right of Mrs. Agbor to occupy the flat and invoked the assistance of H. M. Government, referring to the provisions of the Vienna Convention,301 resulted in the eviction of Mrs. Agbor and her family. Eventually, the Court of Appeal finally ordered the defendant to restore Mrs. Agbor’s possession of the flat, on the ground that the High Commissioner was not entitled to invoke the Vienna Convention in that case. The flat in question was not the „private residence of a diplomatic agent”, since the attaché had finally left the premises. Consequently, neither the High Commissioner, nor the Metropolitan Police had the right to cite the Vienna Convention.

In 1997, the Israeli President held that a rental agreement was a contract subject to
application of private law, so not only a state, but a person might engage in such a contract, considering that there was no difference between a contract for a purchase of property for use by an embassy and a contract for purchase of food for use by an ambassador.

The President's statement referred to the case, heard by the Israeli courts in Her Majesty the Queen in Right of Canada v. Sheldon Edelson, when the Canadian Ambassador refused to free his rented home, stating that he had an option to extend his lease. When the Ambassador was sued, he claimed diplomatic and sovereign immunity. The Magistrates Court, the District Court and the Supreme Court disagreed with the claim and ordered the Ambassador's eviction. The courts found that real estate transactions were of commercial character, therefore could not enjoy sovereign immunity. Besides, the building was used for the Ambassador's home and not as premises of the Canadian Embassy, so the diplomatic immunity could not be raised, in this regard, too.

By 2010 the "legal battle" between the Embassy of Austria and the legal heirs of Agha Shahi over property issues had been ongoing for some years already. Legal experts claimed, the Government of Austria was in illegal custody of a house–property of a Pakistani national, while the Embassy's lease, started on 25 May, 2006 ended on 4 August, 2009. (The lawyers referred to the precedent regarding tenancy laws in the judgment of the Supreme Court of 1981 in the Qureshi case, when A. M. Qureshi, a Pakistan citizen, after entering into a contract with the U. S. S. R. and its Trade Representation, for supply of goods to Pakistan Government, claimed breach of the contract on the part of the Soviet Union, and claimed damages.)

The Pakistani side found in the case with Agha Shahi that the Austrian Embassy's conduct was unheard of, speaking of the violation of the European Human Rights Convention by the Austrians, by denying an EU citizen–which two of the heirs were–of the right to live in his own home, actually, illegally occupying the premises without paying rent since July 2008. The Pakistani court ordered Austria to vacate the premises. The Austrian Ambassador claimed diplomatic immunity and there were voices to declare him persona non grata, according to press. Warrants of eviction had been issued twice and after bailiffs visited to the premises, the Austrian side accused the civil judge of bias. Finally, the Pakistani court denied the Embassy's immunity on 17 March, 2010, adhering to the fact that the Embassy of Austria became illegal occupant of the demised premises.


Her Majesty the Queen in Right of Canada v. Sheldon Edelson et al., 51 PD 625 (1997).


III. Theoretical basis of the institution of diplomatic privileges and immunities

III. 1. The origin of the métier of the diplomat and the institution of diplomatic privileges and immunities

III. 1. 1. The basic concepts and terms of diplomacy, with regard to diplomatic privileges and immunities

To begin the examination of the matter of diplomatic privileges and immunities, it is necessary to have a deeper insight into this domain of international law and consider the legal origins of the subject, along with its historical evolution, mentioning the main stages, paying some attention to the emergence of the métier of the diplomat, itself. Further, the historiographical outline of the subject will be presented. However, due to the limits of volume, a detailed description of the history of development of this institution is not feasible on the pages of the present work, only the most relevant stages are given prominence to. The general development of diplomatic privileges and immunities will be reviewed, highlighting some related notable historical moments, fragments and cases, worth elaborating on.

Investigating the question of international legal regulation of diplomatic privileges and immunities, the exploration will start with elaboration on the concept of the diplomat, along with certain corresponding terms, before moving next to the particular aspects of the researched topic of diplomatic privileges and immunities. Accordingly, this section is also devoted to the transformation of the notion of the diplomat, presenting how it was perceived then and now. In the present thesis, the words „envoy”, „mercury”, „emissary”, „legate”, „ambassador”, „foreign representative”, „delegate”, „diplomatic agent”, „diplomatic servant”, „foreign officer”, „official” are used interchangeably with the word „diplomat”, referring to career diplomats – state officials, who represent their country abroad, as members of Diplomatic Corps.

306 According to the belief of the author, to be a real „diplomat” is not a mere profession, rather a true métier, i. e. both an occupation and a vocation.
By the generally excepted notion, diplomacy is regulation of international relations between states by peaceful means. Diplomatic relations—the links between states that enable the conduct of international relations by means of diplomacy, commonly thought, as bilateral, but there are increasingly mechanisms for relations to be conducted between groups of states on a multilateral basis.

Official diplomacy is transmitted by governments to other governments, and apart from occasional leaks, is opaque, with narrowly confined dissemination. "Diplomatic agent"—a general term, denoting the person, who carries on the political relations of the state he represents with the government of the country, where he is appointed to reside.

The concept of the legal position of diplomats was worked out by Grotius, who considered that diplomats should be treated, as if they had not entered the territory of the receiving state. As it is formulated by Nicolson, "the business of a diplomatist" is to represent his own government in a foreign country, so to be a diplomat is a transnational profession, and diplomacy could be, to some, a professional fraternity.


Power, which acts directly and immediately on others, is violence. What defines diplomatic power and distinguishes it from other forms of authority, is that this kind of power is indirect and mediated by actions of others. James Der Derian: On Diplomacy. A Genealogy of Western Estrangement. Basil Blackwell Ltd. Oxford, 1987, 128.


Diplomacy is still viewed nowadays, as "mystery" by acquiring the character of a "magical balm-like 'political will'", which, when called for and applied to a problem in sufficient quantities, will, in some mysterious way, get things moving and make things right. Hence, diplomats should have a "talismanic quality", for there must be some reason why people think them powerful, according to Sharp. Sharp: Diplomatic… 2.
agents. Every state may well create its own rules.\textsuperscript{319} Obviously, even the most skillful diplomat can not reverse the general course of history. Yet, if a diplomat is smart, flexible, energetic, courageous, well understands his opponent’s psychology, enjoys trust of his environment and respect of his adversaries, he often capable to achieve a positive outcome, or at least an acceptable compromise, where a diplomat, lacking these qualities would fail.\textsuperscript{320} In this fashion, Callièrè, claims that diplomacy should be a separate profession.\textsuperscript{321}

The title of ambassador\textsuperscript{322} is the title, traditionally given to a diplomatic agent of the highest class in inter-state relations. The Vienna Convention avoids application of this term, speaking only about the head of the mission.\textsuperscript{323} In the face of the fact that heads of most diplomatic missions continued to be styled ambassadors, this title is occasionally conferred, as it had been in the past, on persons rather of special, than permanent missions or „at large”, and is employed also simply to designate a domestic rank in the diplomatic services of some states.\textsuperscript{324} An ambassador\textsuperscript{325} is a diplomatic agent of the highest rank,\textsuperscript{326} viewed by Wotton, as „one official the state cannot do without”.\textsuperscript{327} The difference between the ranks of envoys has been established due to diplomatic protocol\textsuperscript{328} and not due to law.\textsuperscript{329}

The head of mission is the person, who has been entrusted by the sending state to pursue an activity in that capacity. The head of mission may have different titles, for example, Ambassador, Envoy Extraordinary, Minister Plenipotentiary, chargé d’affaires or permanent representative. Members of the mission, according to the Vienna Convention, are the head of mission and the staff members of the diplomatic representation.\textsuperscript{330}

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{319} Jennings–Watts op. cit. 1054.
\item \textsuperscript{321} „... seeing the qualifications and learning that are necessary for the forming of good ministers are of a very large extent, they are sufficient of themselves to take up a man’s whole time, and their functions are of importance enough to make a profession by itself; so that those that set themselves apart for that service ought not to be distracted by other employments which have no manner of affinity with such sort of business.” François de Callières: The Art of Negotiating with Sovereign Princes. Berridge: Diplomatic Classics... 140-141.
\item \textsuperscript{322} The term is less commonly used for the designation of delegates to organs of international organizations, and never for representatives of such organizations. John P. Grant–J. Craig Barker (eds.): Parry&Grant Encyclopaedic Dictionary of International Law. Oxford University Press Inc. New York, 2009, 26.
\item \textsuperscript{323} Vienna Convention. Article 1(a).
\item \textsuperscript{324} Grant–Barker op. cit. 26.
\item \textsuperscript{325} Berridge (ed.): Diplomatic Classics... 5.
\item \textsuperscript{326} International practice shows that accreditation of a citizen of the host country as an ambassador, is not applied. I. A. Melikhov: Lichnoszt’ v diplomati. Na istoricheskikh paralleliakh. \textit{(The individual in diplomacy. On historical parallels.)} Vostok-Zapad. Moskva, 2011, 21.
\item \textsuperscript{327} Freeman: The Diplomat’s... 9.
\item \textsuperscript{328} The norms of international courtesy and rules of protocol constitute the foundation of the whole system of diplomatic privileges and immunities, however, the matter of grounds for binding force of international courtesy and protocol is an other complex theoretical and practical question.
\item \textsuperscript{330} Vienna Convention. Article 1(b).
\end{itemize}
\end{footnotesize}
Diplomatic status is the legal position of the diplomatic agent, i.e. the scope of his rights, privileges, immunities and obligations, with respect to the sending state.

Diplomats, being members of the Corps Diplomatique (CD), are servants of the state, who present the interests of their home countries to the international audience, thus place state conduct within the framework, provided by international law, which plays a regulatory role in international relations.

Corps Diplomatique or Diplomatic Corps is a collective body of foreign diplomats in a capital (also, called by diplomatic guru Harold Nicolson, a "professional freemasonry").

In a narrowly empirical sense, the diplomatic and foreign policy elite are the real agents of international society. This is the original sense, in which the term "international society" came into existence in the eighteenth century. In 1736, Antoine Pecquet argued that the corps of ministers formed an "independent society", bound by a "community of privileges".

Looking for the real agents of international society, they could be found in the diplomatic culture, that realm of ideas and beliefs, shared by representatives of states.

The expressions "home country", "sending state" or "accrediting state" are used interchangeably in the present thesis and refer to the diplomat's country of nationality, which he represents in a foreign state, as a member of the diplomatic mission, accredited in the host country. Correspondently, the terms "receiving state", "receiving country", "host state" or "host country" are also used interchangeably here, denoting the state that has on its territory diplomatic missions or representations of the sending state.

Diplomatic mission is a permanent diplomatic mission within the meaning of the Vienna Convention. Diplomatic representation is an external body of foreign relations of a state, established on territory of a foreign state upon the principle of reciprocity, on a basis of a special agreement between states. The agreement stipulates the level of diplomatic relations, which, accordingly, defines the rank of the head of diplomatic representation (for instance, embassy, trade mission, other).

The matter of the size of the diplomatic personnel of a diplomatic representation is decided upon agreement, as well.

The members of the mission are the head of the mission...
and the members of the staff of the mission. The latter include the members of the diplomatic staff and of the (domestic) service staff.\(^{338}\)

It has to be emphasized here that from the point of view of diplomatic privileges and immunities, there is no difference between diplomats in terms of their rank. The offered cases and examples of the present dissertation involve both heads of mission\(^{339}\) (ambassadors) and diplomatic agents – members of diplomatic staff,\(^{340}\) illustrating the state of affairs that diplomatic class rank has no significance from the point of view of diplomatic privileges and immunities. The selected illustrations are presented in chronological order, which seemed to be the most logical organization, in terms of structure, narration and traceability of this work, exemplifying the advancement of diplomatic privileges and immunities, attributed to career diplomats. Accordingly, the cases, involved heads of missions will alternate with cases, linked to members of diplomatic staff.

Military attaché is a member of staff of a diplomatic mission, who represents the armed forces of his country.\(^{341}\) To appoint an individual person, as a military naval or air attaché, the sending state, customarily, requests the agreement of the relevant organs of the receiving state. The military attaché is officially assumed his functions, from the moment he paid a visit to the head of foreign relations division of the military department. The military attaché has a staff of his assistants, technical and operating personnel, altogether enjoying diplomatic privileges and immunities.\(^{342}\) The corps of military attachés, in a narrow sense, encompasses all military attachés of diplomatic representations in the receiving state.\(^{343}\)

It had long been practice in most states to maintain a list or register of the personnel of foreign diplomatic missions\(^{344}\) – the so-called „diplomatic list”. The obligation on notification on personnel appointments and movements contained in the Vienna Convention,\(^{345}\) gave the diplomatic list more significance, not least in indicating those entitled to diplomatic privileges and immunities.\(^{346}\)

\(^{338}\) Greig op. cit. 135.

\(^{339}\) Vienna Convention. Article 1(a).

\(^{340}\) Doc. cit. Article 1(d).

\(^{341}\) The military attaché consults the head of diplomatic representation on military related issues and officially gathers open information about the military forces of the receiving state, for example, studies periodic press and open print media, listening to radio emissions, watching television programs, non-secret documentaries, attending parades, exhibitions, public lectures. Nikitchenko op. cit. 56.

\(^{342}\) Ibid.

\(^{343}\) Nikitchenko op. cit. 144.


\(^{345}\) Vienna Convention. Article 10.

\(^{346}\) Grant–Barker op. cit. 155; Denza op. cit. 88-90.
III. 1. 2. The evolution of the institution of diplomatic privileges and immunities from ancient times until the eighteenth century

The inviolability of ancient legates followed from their equation to angels of heaven – messengers of God and apostles of Christ, therefore the concept of diplomatic privileges and immunities originates from prehistoric times. The first envoys – the heralds, who were the precursors of diplomats of the present day, were allowed to travel to other tribes, in order to deliver news or swap information, being safe and protected, even when they brought bad news. The intertribal relations were maintained by the use of such couriers and delegates, accordingly, the practice of diplomacy is as old, as the history itself.

The primitive tribes selected their Mercurys with great discernment. The chosen people were from the leading men and women of the tribe. The female envoys habitually received a more favorable treatment, therefore tribes often decided to send them instead of male delegates in especially difficult situations. The inviolability of messengers was not always admitted, that is why, occasionally, in dangerous endeavors, women were sent on the reason of getting special treatment, even in times of war. These first diplomats, as a rule, enjoyed personal immunity, since they were believed to own some sacredness, so, inviolability (inviolabilité, Unverletzlichkeit), as the most ancient privilege of envoys, was supported by religious prohibitions. Those, who abused the envoys, broke the religious commandments. The peoples of antiquity are generally viewed strangers, as

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350 Kincses op. cit. 24.
351 It has to be specified here that diplomatic practice involved and continues to involve both male and female envoys, but for reasons of convenience, hereinafter the “diplomat” will be referred to in the masculine gender.
352 Not that long ago, at the beginning of the last century, as we can see in some works, it was acceptable by the doctrine of diplomacy law to refuse the accreditation of female ambassadors. László Vincze Weninger op. cit. 160.
353 “The reasons for the ‘diplomatic’ treatment of messengers and envoys is possibly to be sought in the same idea which determines the attitude of savages towards hospitality and the treatment of strangers on special occasions: messengers and heralds are believed to be in possession, not only of a protecting taboo, but perhaps also of a supernatural power which it would be fatal to violate. The sanctity of the privileges of the primitive envoy is also to be attributed to the characteristics of his mission.” Magalhaes op. cit. 16.
355 Cahier: Le Droit… 8.

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enemies, who could not claim the protection of the law, at all. The envoys without the requirement of their inviolability, would have no legal protection and would be left completely to the disposal of arbitrariness of public authorities and private persons.357

The messengers could pass freely through the hostile territories. The delivery of the messages and the reception of such envoys were carried out in accordance to a certain ceremonial.358 Therefore, the tradition of considering envoys, as holy and harming them, as a sinful act might also start the custom of taking priests into delegates’ service. Different peoples relied on pastors, as envoys of peace. Envoys, habitually, used to carry requests or formal messages.359 For that reason, whatever was the particular custom of the inviolability of ambassadors in various countries, this practice had been widely accepted far and wide at the very first stages of formation of medieval states.360

When Attila the Hun was informed that one of the envoys of the Eastern Roman Emperor Theodosius II, who arrived to him was preparing a conspiracy against him, he said to the representative that he should be impaled and thrown to birds to be pecked to death, if that would not violate the rights of the embassy. Nevertheless, in spite of the intense anger, Attila did not dare to execute the envoy.361

With respect to the period of Oriental antiquity, there are segmental data regarding the employment of intermediaries among the peoples of Egypt, Assyria, Babylon, Israel, China and India. As to India, Arthashastra, the ancient treatise on statesmanship, written by Kautilya in the fourth century B. C., contained observations and advice concerning the conduct of diplomacy.363 In addition, the early states of India recognized the inviolability of ancient embassies.364 The historical books of the Old Testament contain probably the most momentous references about the use of such ancient mediators in situations of negotiations, especially the

357 Jónás–Szondy op. cit. 829.
358 The covenants to be concluded were learnt by heart by the elders of tribes before the invention of writing. The conclusion of an ancient treaty was sealed with an oath by both parties, in the presence of priests. D. B. Levin: Istoria mezhdunarodnogo prava. (The history of international law.) Izdatel’stvo Instituta mezhdunarodnykh otношений. Moskva, 1962, 3-4. [Hereinafter: Levin: Istoria…]
359 The immunity of ambassadors can be traced back to pre-history, to the time, when it was assumed that primitive societies decided, it was more important hearing the message, than eating the bearer of the message. Hamilton–Langhorne op. cit. 7.
360 Levin: Diplomaticheskii… 27.
361 Ibid.
362 The world’s first state was born in Egypt and around 3000 B.C. in the Nile valley, the state already existed. J. P. Francev (ed.): Világtörténet. I. Kötet. (World History. Volume 1.) Kossuth Könyvkiadó. Budapest, 1962, 139.
363 Jónsson op. cit. 16.
books of Judges, Samuel I and II, Kings I and II, Maccabeus (in the Apocrypha), encompassing the period between the thirteenth century and the third century B.C. Envoys, as intermediaries between the different political units, were widely used in the time of classical antiquity, either. Throughout the ancient world, the diplomatic practice essentially had not evolved. The Greek did not even have a technical term for envoy, usually using presbeis (elder) or angelos (angel). The presbeis belonged to the higher social circles and as a rule, were of advanced age. They were associated with the idea of ancientness, therefore, also with certain attached privileges. Hitherto, there had not developed a common legal system in Greece. The strong culture of the Greeks did not have a word for the rule of law or substantive law, itself. The Greeks clearly distinguished strangers from citizens. The residential circle of strangers was denoted by the word xenos, typically also referred in Greek to enemies, as well. Notwithstanding, the advance that was made in the great Age of Greece was enormous, it has largely determined all subsequent European thought. The formal sending of envoys, as representatives of nation states, may be traced back to the practice of the Greek cities, according to Eileen Young. The ambassadors, sent between the members of the Amphictyonic League, were not professional diplomats and their missions were invariably ad hoc, but their choice for the task was regarded, as a high honor and the appointed were selected for their ability to present a case effectively, being by profession, usually, orators or actors. Both heralds, the earliest kind of envoy, and ambassadors of all varieties, were universally regarded, as inviolable. Repets'kii, elaborating on the ancient history of Greece, rich in examples of the extensive use of intermediaries, précises that generally, one person was selected, as an envoy, but more often it was a board of several persons, who had been commuting between cities to...
handle the interests of their lands.\textsuperscript{371} (The recompense of envoys for the work done was often of symbolic character, for example, in Athens, embassy members received a daily reimbursement, close in value to the payment of a lightly armed warrior.)\textsuperscript{372} Since the Greek held that they were in a permanent state of war with all barbarians, foreign ambassadors were not allowed to enter Greek territory, unless they were escorted by heralds.\textsuperscript{373}

The envoys were issued a permit to conduct negotiations in a form of paired waxed plates, called \textit{diploma} – this is where the word \textit{diplomacy} originates from.\textsuperscript{374} The term \textit{diploma} had been extended then to other certificates,\textsuperscript{375} intended to grant immunities to foreign communities or tribes in forms of pacts.\textsuperscript{376} The instances of breach of the rule of the inviolability of envoys were rare and seem always to have been followed by terrible reprisals.

For instance, for the outrage, committed as Athens and Sparta on the Persian envoys of Darius, two Spartan nobles offered their lives in expiation to Xerxes. But he replied that as he blamed them for breaking the laws of all mankind, he would not break them himself, i. e. the basis for this inviolability was purely religious. The reprisals took place not because any legal right of the envoy or of his sending country was believed to have been violated, rather because the act constituted a sacrilege to be avenged.\textsuperscript{377}

From the middle of the 2nd century B. C., Rome became first the determinative city, then the influential power of the Mediterranean basin. In the early days, the Romans’ daily life was permeated with religious rules, and this was true also in regard to international relations. The sacred sphere was overshadowed in times of crisis of the republic, but until then the international relations belonged to the exclusive competence of a specialized clerical body – the fetialis,\textsuperscript{378} the twenty members of which were chosen from the most distinguished families.\textsuperscript{379}

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\textsuperscript{374} Gajzágó op. cit. 12-13.
\textsuperscript{375} V. A. Zorin: Osnovy diplomaticheskoi služby. (\textit{The foundation of diplomatic service.}) Institut Mezhdunarodnykh Otnoshenii. Moskva, 1964, 12.
\textsuperscript{376} The professional activity, related to handling of such official documents was later named „res diplomatica”. Kincses op. cit. 21.
\textsuperscript{377} Eileen Young. Ibid.
\textsuperscript{378} János Sárcinger: A diplomáciai rangok eredete és használata a középkortól napjainkig. (\textit{The origin and use of diplomatic ranks from the Middle Ages to the present day.}) Külvügyi Szemle. XV/2016/1, 3.
\textsuperscript{379} Búza–Hajdú op. cit. 31.
\end{flushleft}
In the Roman Republic, the collegium fetialium, arranged under the authority of the Senate, dealt with international treaties, including the conclusion of peace, also with the formalities, inherent to the declaration of war. The rules, governing the international relations, were not processed by the Roman jurisprudence. Ius gentium was not international law, but part of the Roman private law, applied to the aliens, as well as to legal relations between Roman citizens and aliens, and finally, to legal relations between Roman citizens. There is no doubt, however, that ius gentium contained certain elements of international law. As a consequence, the inviolability of envoys was also based on ius gentium.

Accordingly, at first, the status of envoys in Rome was based on sacral basis, too and the contacts with foreign nations were regulated by ius fetiale. Sending and receiving of envoys, also the assurance of their inviolability was the responsibility of the priestly body, named "fetiales" that knew well the ceremonial rules, which had to be observed in international contacts. With the codification of Roman law, the item on the inviolability of envoys was also included in secular law.

The ambassadors were called legati and were chosen by the ruler, and following upon the Greek model, the embassies – legationi, were collective, amid ten to twelve ambassadors and one president – princeps legationis. The Romans received delegates merely from states to which they recognized the jus legations.

In the time of Caesar Marcus Aurelius Antonius, the Consulate, previously belonged to the Roman aristocracy, became occupied with rhetoricians and philosophers, as the former mentors of Caesar came to be statesmen, filling the posts of consuls and proconsuls.

Regarding the treatment of envoys, Julius Caesar held that "The inviolability of ambassadors is sacred and acknowledged as such by all civilized peoples." The Romans considered the relevant rules were comprised by the sacred unwritten ius fetiale, which was part of domestic law, not of international law of the Roman state. Flachbarth op. cit. 19.

Flachbarth op. cit. 20.

Jónás–Szondy op. cit. 828; Korovin op. cit. 11.

There were also municipal or provincial legati, who were sent to the Roman Senate, as deputies of the cities or of a provincial consilium that is representatives of internal diplomacy. Ordinary messengers or message carriers were called nuntii.


Freeman: The Diplomat's... 182.

Notwithstanding the fact that the Romans created jus legatorum – the rights of ambassadors, Nicolson asserted that they were more interested in the art of war, than in the art of parley or mediation, that is diplomacy. "The Roman contribution to diplomacy is to be sought for, not in the area of negotiation, but in the area of international law," he said, considering that these inputs were rather to the theory, than to the practice of diplomacy. Nicolson: Diplomacy... 9.

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the inviolability of envoys a fundamental principle and its violation – an exceptional crime,\(^{387}\) even among barbarians.\(^{388}\)

After the fall of the Roman Empire, with emergence of the new political situation in Western Europe, heavily dependent on the emperor and the pope, the exercise of diplomacy declined. Nonetheless, the Byzantine Empire intensively applied diplomacy, preferring it to war. The Church of Rome became to use the system of representatives, previously used by the secular authorities, calling its officials *apocrisaires*, also *nuntius* (*nuntius sedis apocrisale*). The European monarchs kept the Roman designations *legatus* and *nuntius*, together with application of titles *orator*,\(^{389}\) *ambaxator* and *procurator*. The *nuntius* and *legatus* were provided with an exclusive mandate – *plena potesta*, entitling them to conclude negotiations. All these titles were afterward overtaken by the term *ambassador*, which began to spread over in the Dark Ages.\(^{390}\)

In ancient times, sovereigns sent envoys to other sovereigns, who received them with due respect, affording the same broad privileges, as if they were granted to the sovereigns themselves, since showing signs of disrespect to envoys of sovereigns could lead to a complication in mutual relations.\(^{391}\) „*A RESPECT due to sovereigns should reflect upon their representatives, and chiefly on their ambassadors, as representing his master’s person in the first degree.*”\(^{392}\) The existence of messengers at all times was justified not only by the aspiration to maintain relations between sovereigns, but a necessity in times of trouble to express the will of the sovereign on the territory of other states.

As a matter of fact, in ancient and medieval times, the principal was even less secured, than its representative was, therefore a diplomat’s immunity could not originate from the personification of the principal. Consequently, the immunity of the ambassadors took precedence of the theory of the sovereign. The exclusive right to send envoys by states was established by the end of the medieval period.\(^{393}\) At those times, ambassadorial law was

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\(^{387}\) According to the general perception, in Rome there was no prison sentence in today’s terms. Imre Molnár: *Ius criminale Romanum. Tanulmányok a római jog korából.* (*Ius criminale Romanum. Studies from the era of Roman law.*) Pólay Elemér Alapítvány. Szeged, 2013, 77.

\(^{388}\) Magalhaes op. cit. 16-26.


\(^{390}\) Magalhaes op. cit. 27-39.


\(^{393}\) Frey–Frey op. cit. 84-85.
enhanced in the international practice of Western Europe. The recompense for offending an envoy was higher than for hurting a civil person and under canon law the violator could be excommunicated by the church.

In the Middle Ages, the most developed urban centers of Italy began to regulate the main range of issues of local administrative control of the judiciary and judicial proceedings, regardless of the imperial government. Also, there was established and acquired the public character of the government system, carried out through the activities of consuls—senior officials of the city community. Consuls were nominally considered to have received the imperial investiture on the exercise of the powers for five years. Later, the consular department was confirmed in perpetuum.

(On the territory of the Papal region, authorized legates were entrusted with the private aspects of the relationship with the communities.)

The epoch of the Middle Ages had been marked with an other important event in diplomatic practice—the origination of the institution of permanent diplomatic missions. The Republic of Venice, already in the thirteenth century, had sent envoys to other countries, not occasionally, but for a longer time, who were dispatching home regular reports about their experiences. The first permanent embassy was established and officially accredited in 1450 by the Duke of Milan in Florence, at the court of Cosimo de Medici.

The Sforzas of Milan had organized a permanent embassy in Genova in 1465.

The custom to maintain permanent missions emerged among the Western European states at the end of the fifteenth century, which institution was established between neighboring states that have been linked by political interests. These were primarily relations between France and England, Spain and France and other countries. At the same time, the systematization of functions of diplomatic representatives had also occurred, which later became the basis for classic diplomacy law. Envoys were getting instructions to listen to all and inform about everything that concerned their sending states,
attention. Thus, the transformation of diplomatic missions into a permanent institution, entailed the formation of special departments of foreign affairs (external relations) and formalization of rights and privileges of diplomats.

With respect to the Eastern part of Europe, when, at the beginning of ninth century, the eastern Slavic state „Russkaia zemlia“ (Russian land) was formed, its diplomats had already been visiting the courts of Byzantine and Frankish Emperors. The foreign envoys were received in the ceremonial halls of the City Councils. In ancient Russia, the diplomatic relations were so extensive that this fostered the creation of the special diplomatic institution – „Posol’skii prikaz”, based on customs and precedents, which dealt with foreign affairs, and established the diplomatic ranks, such ambassador, envoy and courier. The inviolability of ambassadors had been confirmed in agreements and was stringently obeyed, even the delegates of hostile countries received special, protecting credentials, enabling them to exit and leave the host state without obstructions.

At the end of the twelfth century, the treaty charter of Novgorod with the Nordic countries on peace, ambassadorial and trade relations, also on judicature, contained early immunity rules of ambassadorial law, which provided by application of fines and mutual economic reprisals, the personal safety of ambassadors, merchants, hostages, priests,

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401 Korovin op. cit. 17.
403 B. D. Suris (ed.): Novgorod. 1100 let. (Novgorod. 1100 Years of the City.) „Khudozhnik RSFSR”. Leningrad, 1959, 9.
404 In commemoration of the 200th anniversary of the Ministry of Foreign Affairs of the Russian Federation, there was established the Diplomatic Worker’s Day by the Decree of President Vladimir Putin No. 1279 as of 31 October, 2002. This professional holiday is celebrated on 10 February, a date, which conventionally, considered in the national historiography to be the day of formation of the Posol’skii prikaz – the first Russian Foreign Ministry.
406 Starting from the sixteenth century, in the ancient Russian documents there could be find six diplomatic ranks: two ambassadors – „velikii posol” and „legkii posol”, two delegates – „poslanniki” and „poslannye”, and two couriers – „poslantsy” and „gontsy”. Petrik op. cit. 8.
407 Petrik op. cit. 29.
408 Petrik op. cit. 41.
409 Until the twelfth century, there were not written laws in Russia, and the legal codes were living in verbal form. Such law scientists call the custom, as the guilty were judged, according to the custom. M. F. Kotliar: Iz istorii mis’kogo samovriaduvannia na Rusi. (From the history of municipal government in Russia.) Ukrayins’kii Istorichnyi Zhurnal. No 1 (526), January-February, 2016, 12.
410 Levin: Istoriia… 28-33.
411 It should be added that the agreements of that time did not include all the rules that guided the involved parties – usually every new treaty emphasized the actual questions and the provisions of previous contracts were included in the concept of the „old world”, remaining in force, if cancellation of an article was not specified. V. T. Pashuto: Dreveishie gosudarstva na territorii SSSR. Materialy i issledovaniia. (The oldest states on the territory of the USSR. Materials and researches.) Izdatel’stvo „Nauka”. Moskva, 1984, 17-18.
412 The economic reprisals were, for instance, trade gaps, the arrest of merchants, closing trade courts, and others.
protecting them from murder, attacks, debtors' prison, and to a lesser extent, providing them with property security.

The foreign ambassadors, upon arrival to the country, received "otvetnye gramoty" – an analogy of the agrément. The "nakazy" consisted of articles, explaining the status, goals and tasks of embassies, prescribed the collection of necessary information.

In diplomatic practice of Moscow, for example, there were also decided such complex matters of diplomacy law, as transit of diplomats through Russia, accredited in foreign countries.

In the face of the existence of the protecting credentials and respect towards the inviolability of foreign envoys, Russian diplomats in the Crimea were subjected to all kinds of abuse and insults: they were put under lock and key, got beaten, threatened to torture, kept starved and thirsty, their horses were taken away, they were forcibly demanded gifts, and their property was plundered. In order to guarantee them at least some security, in Russian-Crimean diplomatic practice there was adopted the "exchange" of ambassadors. The exchange took place on the Southern border: at the same time, a Russian ambassador went from Putyvl to the Crimea and an envoy of the Khan – to Moscow, and each of diplomats served as kind of a hostage to the security of the other.

However, even such exchange of ambassadors, as precaution, did not always save the Russian diplomats from insults and abuse, sometimes subtly cruel. Sahib Giray, the Khan of Kazan, who had been complaining about the violation of the rights of ambassadorial inviolability in Moscow, in 1546 physically humiliated envoy Lyapunov, who was sewed his nose and ears, then led bare around the market place. Russian diplomats were subjected to violence also in Nogai Horde, but most often in the Crimea, where "the specter of Horde domination over Russia had been tried to revive," when messengers of Russian princes to the rulers of the Golden and the Great Horde became victims of the Khan's mockery.

It is worth mentioning at this point the tragic death of the Russian ambassadorial delegation, sent in 1624 to the Turkish Sultan. The envoys had been waiting for the vessels to
go to Istanbul, were attacked by the Crimean prince Shahin Giray and his squad. Part of the delegation was killed, including I. Begichev, the Russian Ambassador, and those, who stayed alive, were sold into slavery.\footnote{The Khan perpetrated this violence together with his son, suspecting that the Russian Government was going to influence the Crimea through Turkey. Ibid.}

The special privileges of envoys corresponded to special responsibility. The accountability of the delegates was prescribed by both custom and law: they were protected by and at the same time were subject to civil law, being answerable for the wrongs, committed during their mission. In the Renaissance era, attacking an ambassador fell into the category of \textit{lèse-majesté} – the crime of violating majesty, an offence against a sovereign. The law judged the violator and could confiscate his goods. The principal often demanded compensation. Thus, in 1510, the Turkish ambassador to Hungary\footnote{The Hungarian state was created, as a result of St. Stephen's organizer and founder activity. János Zlinszky: A magyar jogalkotás kezdetei. Szent István, államalapító és törvényhozó. (The beginnings of Hungarian legislation. Saint Stephen, the founder of state and lawmaker.) In: János Bollók–Gyula Kristó (trans.): Szent István király Intelmei és Törvényei. (Saint Stephen’s Exhortations and Laws.) Szent István Társulat. Budapest, 2002, 5.} was attacked near Belgrade\footnote{Belgrade was called at that time Nádor Fehérvár, which was the main border town.} and he managed to escape, but the rest of his suite was slaughtered. The Turks arrested the Hungarian tradesmen and confiscated their goods, as sanction. However, not only harming, even offending an ambassador could lead to war.\footnote{Frey–Frey op. cit. 107-139.} In this way, the diplomats were increasing immune from the repercussion of their deeds.

It could be seen so far, that the immunity of diplomatic envoys, as core principal of diplomacy, and diplomacy as a system of international relations and a discipline developed gradually in history. A legal system in Western Europe was formed only by the end of the eleventh century. Until that epoch, tribal, local and feudal customs were applicable.\footnote{Frey–Frey op. cit. 92.} The science of diplomacy itself had evolved in Europe, in virtue of the Spanish school of international law, represented mainly by clergymen and monastics, namely Francisco de Vitoria (1483-1546), Francisco Suarez (1548-1617), Bartolomé Las Casas (1477-1566), Alberico Gentili (1552-1608) and finally, by the jurist Hugo Grotius (1583-1642), who was a diplomat himself,\footnote{J. G. Starke: Introduction to International Law. Butterworth&Co. Publishers Ltd. London, 1984, 11.} being the most known author of that period,\footnote{Károly Nagy: A nemzetközi jog, valamint Magyarország külükapcsolatainak története. (The history of international law and the foreign relations of Hungary.) Antológia Kiadó és Nyomda. Lakitelek, 1995, 89-90.} sometimes (not quite correctly) labeled, as the „father of international law”.\footnote{W. E. Butler: William Whewell translator of Hugo Grotius. In: S. V. Kivalov (ch. ed.): Al’manakh mezhdunarodnogo prava. Vypusk 2. „Feniks“: Odessa, 2011, 122.}
It has to be added that there were some historically formed types of European diplomacy, although their differentiation is rather subjective. It is more significant that there existed a certain diplomatic tradition, to which all European (and not only European) states adhered. The other important fact is that the reciprocally accepted norms of diplomacy, following this tradition, first had been recorded in Europe via legally binding international treaties.

Violence against an ambassador not only did an injury to the sovereign, whom he represented, but the violator attacked the common safety and welfare of all nations and rendered himself guilty of a grievous crime against all nations. It is particularly the duty of the sovereign to whom a minister is sent to afford security to the person of the minister.

The sovereign had to provide an ambassador with the most particular protection and to make sure that he enjoys all possible safety. Without such security, an envoy might be troubled, harassed, and maltreated upon a number of false pretexts, and he should have had nothing to fear from the sovereign, to whom he was sent.

From the demonstration of necessity and the right of maintaining embassies, it follows that ambassadors (and other diplomatic representatives) had to be placed in a position of perfect safety and inviolability, for if their person was not protected from violence of every kind, the right to maintain embassies became of doubtful value and could hardly be exercised with success. The term “inviolability” was sometimes used, as a synonym to immunity, and at other times – in a more restrictive sense of diplomatic dignity, assuming that the receiving state was responsible to the sending state for ensuring the proper protection of the diplomat and of diplomatic premises from violence or insult.

The proper protection in case of a diplomatic agent meant that the receiving state had to take legal action against any person, who would insult or harm an envoy.

In this way, according to the legal literature of the fifteenth century, written by the aforementioned authors, all experts of civil and canon law were familiar with the rules and the principles regulating the treatment of ambassadors. Legates were immune in their person, property and for the period of their embassy, both from actions in courts of law and from all...

429 Kincses op. cit. 29-30.
431 In this course, “He who offends and insults a public minister commits a crime all the more worthy of severe punishment, in that he may be the means of involving the sovereign and his country in serious difficulties. It is just that he should be duly punished, and that the state should make, at his expense, full satisfaction to the sovereign who has been offended in the person of his minister.” Emer de Vattel: The Law of Nations. In: Berridge: Diplomatic Classics… 182.
432 Vienna Convention. Article 29.
other forms of intervention. Furthermore, they were granted complete freedom in access, transit and exit, also safety from whatsoever impediment or violence. The listed privileges were put down in civil and canon law, with sanctions by universal custom and enforced by authorities of states.

The offenders of ambassadors would be seen, as enemies of mankind, deserving universal aversion, since it was considered that anyone, who would interfere with such delegate, wronged the peace and calmness of all people. The reprehensible action could be imprisoning or robbing an emissary, or obstruction of his route. What is more, the death penalty would be imposed for beating or harming an ambassador, or restraining his freedom.

An ambassador could not be sued in a court, no writ could lie against him for a committed act or debt contracted after the commencement of his embassy; he could not be made subject to punishment or sentence for the deeds or debts of his nationals; he was exempt from all kinds of taxes, charges and customs on goods or property, needed for his mission. For example, in Hungary, since the reign of King Matthias I (the Renaissance King), who conducted a lively diplomatic activity, envoys could apply for a lawsuit delay, if it was necessary. (The Hungarian diplomacy in the era of King Matthias was characterized by diverse foreign relations. The Hungarian court maintained intense diplomatic activity. The recognition of the King and the country by the Turkish court was illustrated by the fact that when in 1487 the Hungarian envoy, sent to the Turkish court was killed on his way to the point of destination in the Balkans that were under Ottoman authority, the responsible base was executed, at Matthias’s appeal for satisfaction.)

An ambassador was entitled to support from the public treasury, regardless of actual residence and all authorities of a country – secular and clerical – were obliged to provide him

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433 If custom is what one is in the habit of doing, practice can be anything within the scope of a state’s jurisdiction. Maarten Bos: A Methodology of International Law. Elsevier Science Publishers B. V. (North-Holland). Amsterdam, 1984, 229.

434 As a result of the military settlement in the middle of the fifteenth century, a Hungarian island was formed, the center of which was Csöbörcsök, at the lower reaches of the Dniester River, in South Bessarabia. Csaba Gy. Kiss (ed.): Magyarságkutatás. (Hungarian research.) A Magyarságkutató Csoport. Budapest, 1987, 27.


436 Miklós Lindvai Bánfi, the head sommelier master was the most famous Hungarian aristocratic envoy. Vilmos Fraknói: Mátyás király magyar diplomatai. (The Hungarian diplomats of king Matthias.) Századok. Vol. XXXIII, Booklet I, 1.


439 Braun op. cit. 5.
with full protection and support. The above listed privileges and immunities were granted to such a delegate of a foreign state from the day he took up his mission until the day he laid it down (including periods of transit through the territories of states, not specified in his credentials). In addition to this, the mentioned immunities of an ambassador applied to all regular members of his suite.

In 1569, the Queen Elizabeth had arrested and sent back to Flanders the emissary of the Duke of Alva on the formal ground that the Duke, not being a ruling prince, had no right of legation. She was detaining money, intended for the payment of the Spanish Ambassador, Don Guerau de Spes, confined to his house for six month because he had complained of this freezing of Spanish assets and had advised retaliatory measures. When, three years later, his attempts to raise a Catholic rebellion under the Duke of Norfolk and to place Mary Queen of Scots on the throne were checkmated, Elizabeth ordered him home.

However an ambassador might behave himself, the ultimate resource was to send him home to be dealt with, as his master saw fit.

The doctrine of diplomatic privileges and immunities incorporated some exceptions, as well. For instance, notionally, an ambassador enjoyed no immunity from being sentenced for committed crimes and violence, particularly, political crimes, such as espionage, conspiracy, treason, by the prince, to whom he was accredited, along with other subjects. All the same, there occurred exceptions from this practice.

In 1584, Mendoza, the Spanish Ambassador in London, conspired against the Queen Elizabeth in 1584, and the Secret Council sought expert advice from Gentili.

Some of the Queens Council would have imprisoned Mendoza or even beheaded him. Gentili was of the opinion that Mendoza's guilt was undisputable, therefore the Ambassador could actually be brought to justice, however, he advised to be content with the ambassador's expulsion. Gentili advised that mere expulsion would be more consistent with jus gentium, which gave special status and protection to diplomatic envoys. The advice was accepted.

(A year later, Gentili published a thin little volume under the title "De Legationibus, libri tres").


"Espionage is the sixth sense of the state." Freeman: The Diplomat's… 75.

Gentili became one of the most notable predecessors of Grotius, as a result of his consultation in connection with Mendoza case.


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with Mendoza, in similar cases, a legal opinion is not asked for, and the envoy is recalled or expelled from the host state.\textsuperscript{446}

This infamous case (also the incident with the envoys of Theodosius II, who conspired against Attila the Hun in Chapter II), illustrates the phenomenon that the diplomat’s immunity could spread in the past, despite of a failed confederacy, even to blatant cases of lese-majesty and conspiracy. The perplexity of this state of affairs, however, made afterward scholars to call the notion of diplomatic immunity and privileges of late medieval jurisprudence „chaotic” and „absurd” and that „before the middle of the seventeenth century there was, properly speaking, no international law of diplomacy at all.”\textsuperscript{447}

Provided that in the early Middle Ages, it was considered acceptable to deprive a foreign ambassador of his immunity in the case of commission of a serious crime against the local government,\textsuperscript{448} then in the sixteenth century, the personal inviolability of the ambassador, and his judicial immunity, had been gaining general acceptance. The diplomatic immunity also extended to the embassy building.\textsuperscript{449} With respect to ambassadors, there was also recognized the „right to the chapel” (to practice their religion), and a number of other distinguished privileges (advantages). Questions of the diplomatic service were regulated in great detail, especially in the Venetian practice.\textsuperscript{450}

Modern diplomacy with the institution of permanent representations was one of the creations of the Italian Renaissance, being the functional expression of a new type of state – „the state as a work of art” and the new kind of diplomatic officers – the resident ambassadors, viewed as agents for the preservation and aggrandizement of that state.\textsuperscript{451} In this way, with the development of a system of permanent embassies, the leading states of Italy, became interconnected diplomatically. Gradually, the system has expanded, with Italians at the center.\textsuperscript{452} The establishment of permanent embassies fostered the growth of diplomatic archives.\textsuperscript{453} Correspondingly, the diplomatic documents, deposited in the archives, assisted in creation of a normative pattern.\textsuperscript{454} (There were numerous problems in the interpretation of

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\textsuperscript{446} Rubin op. cit. 82.
\textsuperscript{448} The serious crime was considered to be treason, treachery, or adultery. Korovin op. cit. 18.
\textsuperscript{449} The arrest of Venetian citizens produced by Venice authorities in the premises of the French Embassy at that epoch, led to a break in diplomatic relations between France and Venice. Ibid.
\textsuperscript{450} Ibid.
\textsuperscript{451} Mattingly op. cit. 47-55.
\textsuperscript{452} Jeremy Black: Diplomatic history: a new appraisal. McKercher op. cit. 4.
\textsuperscript{454} Black op. cit. 4.
\end{flushright}
diplomatic missives of those times. For example, since ambassadors were aware of the importance of their mission, they tried to portray themselves and their work in the best possible light. The letters of envoys, however, an important source of information.

The matter of diplomatic privileges and immunities had strengthened by that time, yet, there was one vulnerable point, regarding the rules of immunity, related to ambassador's transit travel. The delegate was, theoretically, guaranteed all privileges and immunities while traveling, as well, together with every courtesy and aid, being only obliged to notify the governments of states at war, whose territory he traversed, about his status and itinerary. In practice, things turned out to be different, often dramatic, however.

The most well-known violation of diplomatic immunity in transit had happened near Pavia, Italy, on 3 July, 1541, when Antonio Rinconó, the French envoy to the Sublime Porte and Cesare Fregoso, accredited to Venice, were entrapped and killed by Imperial soldiers at a relatively peaceful time. (According to some sources, Rinconó was a French agent in Poland, and the assassination was committed by Habsburg agents.)

The imperial governor of Milan shortly ordered the deed. France made the incident a cause of war. The truth was that the two ambassadors were trying to transit the emperor's land, hiding their identities and mandates, therefore the regrettable situation hardly justified the slaughter.

The assassination of diplomats quickly became a Renaissance cause célèbre. The case dominated just about all juristic treatments of diplomatic immunity for the next century and a half, being often the singular "contemporary" illustration of violated diplomatic immunity in discourses on diplomacy in the sixteenth and seventeenth centuries.

The Rinconó-Fregoso affair was cited and studied every so often that Mattingly called it the most famous violation of diplomatic immunity in transit, in history.

In the face of the contradictions between the medieval theory and modern practice, by the sixteenth century, it was almost generally accepted that the ambassadorial immunity was
based on the legal fiction of exterritoriality, that is the ambassador and the vicinity of his embassy was situated on the soil of his homeland, subject to its laws, only. Hugo Grotius rationalized the immunity from civil jurisdiction which residents needed by the fiction of exterritoriality, proposing that their status in civil suits would remain the same, as if they did not leave their country.

The problematic questions were connected not to the immunity from civil, rather from criminal jurisdiction. In addition, the crimes, resident ambassadors were likely to be charged with were mainly of political nature, where the existing medieval theory was difficult to apply. In opinion of Grotius, regardless justice and equity that required equal punishment for equal crimes, *jure gentium*, the law of nations treated ambassadors exceptionally, for their security as a class, was more important to the public welfare, than the penalty of envoys, as individuals. Consequently, the only one resolution of this difficulty was to view ambassadors, as persons, not bound by the laws of the country where they resided. Grotius expressed a modern vision of ambassadorial immunity, with the implication of complete diplomatic exterritoriality, and it eventually got ingrained in international law.

It should be précised here that in spite of the fact that Grotius is considered to be the „father” of international law, the title „international law” comes from Richard Zuchaeus (Zouch), Professor of Oxford, also called „the living Pandect of the law”, who used it in his main work, published in 1650, instead of *jus inter gentes* (law of nations, *droit les gens*,

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462 Most international law and international relations scholars will argue that international law, as a project, has little to do with global justice. Order, stability and power are far more popular notions, when seeking to explain, why international law, as a project, has succeeded, and whether and how it works. Stephen Rattner: The Thin Justice of International Law: a Moral Reckoning of the Law of Nations. The Modern Law Review. Vol. 79. No 5, September 2016, 919.


464 Frey–Frey op. cit. 236-244.

465 The fiction of exterritoriality was addressed by Grotius in his work *De Jure Belli ac Pacis (The Law of War and Peace)*, book II, chapter XVIII, 1625.


The largest growth of the diplomatic immunities falls on the period between 1648 and the French Revolution of 1789. This period started with the Treaty of Westphalia that brought the long-awaited peace to Europe in 1648. A key development, emerging from Westphalia was a substantial reduction in the role, played by religion in the international system, through the decline of the presence of the church, as a pole of authority. Thus, the Westphalian Treaty became the basis of the diplomatic intercourse in Europe, by recognizing the sovereignty and exclusive jurisdiction of states, and by promoting their political and economic relations. By 1650, inter-state diplomacy had fully-fledged – a proper corps diplomatique have launched itself. Diplomacy came to be the helper of an aristocratic elite, enjoying distinct privileges, agreeing on conventions and etiquette. Embassies stood as prestigious centers that rivalled in generosity and benefaction towards the arts.

After the Peace of Westphalia, sending and receiving envoys on a permanent basis became a common practice. The medieval politics were moved also by constant rivalry among the monarchs. In fairness, it should be said that the rivalry of crowned heads took place in other parts of the globe, as well, for example, in the Far East, where the reception of foreign ambassadors at the court of the Chinese rulers had to show evidence of "vassal" dependence of all lands and peoples from the Chinese Emperor, who considered himself to be the master of the whole world, being above all other rulers.

The scholar's aim was to distinct the nature of interstate law, to show that it differs from jus gentium, which was originally understood as "natural" law, also the law of the Roman Empire. Betham then transferred this title into English literature (law international), and later the title has been established in French and German literature (droit international, internationales Recht), as well.
The Chinese officials were looking down at European Powers, refusing to treat them on a footing of equality and international law. The so called „kou gou” ceremony – „three kneelings and nine times to make prostration (that is, kneeling and bowing so low as to have one’s head touching the ground)”, was the main part of the diplomatic protocol. Those foreign representatives, who refused to comply with these procedures, were not accepted in the court and their diplomatic mission in China, as a rule, was unsuccessful. Consequently, the first official mission of the Embassy of Russia in China under the leadership of Fedor Baykov in 1656, ended in failure exactly for the reason that the envoy refused to give the certificate and gifts, sent by Tsar Alexei Mikhailovich to anyone other, than the emperor, and to perform the rite kou gou.

In those years, the envoys sent by the monarchs, found their first duty in seeing that every respect, due to their sovereign be shown to them, too. With the growth of international intercourse, other ministers and plenipotentiaries were sent, in addition to the resident ambassadors. Despite of the fact that these representatives were charged with temporarily missions, for example with negotiation of a specific treaty, they claimed a place in the diplomatic corps and enjoyed or pretended to enjoy all diplomatic privileges. (The diplomatic representatives of the ad hoc diplomatic missions were the successors of the ancient messengers.) The rise with respect to the development of diplomatic immunities at this time

480 This was the act of deep respect – the highest sign of reverence in the Asian culture. Those who performed the bowing and other procedures, thereby recognized themselves and their own state as tributaries of the Chinese monarch.
482 The subsequent envoys from other countries had a similar experience and result, as Baykov, thus, during the following decades, the Chinese „had scored victories” over the Arabs, Dutch, Portuguese, British and Americans. Eventually, the new Chinese Emperor in 1873 allowed the envoys to place the letters of credence at a table, close to him, and to stay standing. Since that time, the ritual of prostration before the Chinese Emperor had been dispensed. William Woodville Rockhill: Diplomatic Missions to the Court of China: The Kotow Question I. The American Historical Review. Vol. 2, No. 4, July 1897, 639-624.
483 At that time Russia belonged to those countries, who had a serious impact on the historical destiny of Eastern Europe. L. E. Semenova–B. N. Fioria–I. Shvarts (eds.): Russkaia i ukrainskia diplomatia v Evrazii: 50-e gody XVII veka. (Russian and Ukrainian diplomacy in Eurasia: 50s of the XVIIth century.) SP ZAO „Kontakt RL”. Moskva, 2000, 11.
484 Zonova: Diplomatiaia… 184.
485 In those times, the courts were filled with reports of controversies among the diplomatic agents of various states, who claimed precedence over each other at receptions and on other occasions, such as at a dinner or in church. Francis Deák: Classification, Immunities and Privileges of Diplomatic Agents. Southern California Law Review. Vol. I, No. 3. 1928, 215-216.
486 Consequently, the ad hoc diplomacy is the oldest form of diplomacy.
487 Frey–Frey op. cit. 158.
was followed by a decline, however, marked with restrictions and even eliminations, for example, as it happened with the territorial privileges, affecting the right of asylum.

In this way, one of the most spectacular legal cases, related to the immunity of diplomats from civil proceedings is the Mattueof’s case, when Count A. A. Mattueof (Matveev), the Russian Ambassador to the Court of St. James, was arrested in London in 1708 for having debts. (Mattueof had been recalled already, but he did not have a chance to present his letter of recall and obtain his passport, due to this obstruction.) The Russian diplomat was forced out of his carriage and taken to a public house, called Black Reever, then placed in charge of an officer of justice. Mattueof spent only a few hours in prison, but when he was finally released, the heads of almost all foreign missions in London accompanied him to his house in a demonstration of solidarity, showing their support. Furthermore, a special mission was later sent to Moscow to apologize to Peter the Great, the Czar of Russia (a skillful diplomat himself) for the embarrassment, caused to the Russian envoy, who had been subjected to verbal and physical abuse.

At those times, the Russian Government has paid great attention to matters of legal status of Russian diplomatic representatives abroad and foreign envoys in Russia. The incident with Mattueoff served, as a cause to specify in international law the scope of diplomatic privileges and creation for it a solid legal base. The case with the Russian envoy in London has resulted in issuance of a decree as of 14 September, 1708 on prohibition of abuse of the person of diplomat. In case, an envoy “committed something bad”, he could not be punished, according to the new provision, but escorted to Posol’skii prikaz (the Foreign Department). The violation of this rule was considered to be against “public law”, therefore “could lead to state conflicts”.

488 Frey–Frey op. cit. 9.
489 Mattueof’s Case 10 Mod. 4, 5, 88 Eng. Rep. 598, 598 (Q.B. 1709).
490 Recall of an ambassador is a step short of severance of diplomatic relations, involving the temporary suspension of representation at the ambassadorial level in a foreign capital, to signal serious concern about the policies, practices or public pronouncements of the receiving state’s government. Freeman: The Diplomat’s… 194.
491 The “letter of recall” is the official document, presented by a new ambassador to a chief of state, along with his credentials, which act formally terminates the appointment of his predecessor and recalls him. Ibid.
493 The Swedish head of mission abstained from this action, due to the reason that Sweden was currently at war with Russia.
495 Corbett op. cit. 83.
496 The Decree was amended on 9 August, 1722. Korovin op. cit. 90.
497 Ibid.
In England, the case with Matteoff has resulted in passing by the Parliament of England a similar, special legislation, aimed at protection foreign diplomats against criminal and civil proceedings. This was the clearest act of such kind, adopted by a state in the meanwhile. The awkward situation of the government appeared because of the fact that the merchants committed no crime, yet, had to be arrested and investigated in front of the Privy Council. Theorists and judges claimed that the tradesmen violated neither any statute nor none of the common law principles, so the men were finally found not guilty. The government passed the Act of Anne after that incident to make sure that such occurrences would not happen in the future. This statute extended the civil immunity to the ambassador’s suite, as well, in certain cases, but did not address diplomatic immunity with regard to criminal prosecution.

By following the model of the Act of Anne, the civil immunity had been later extended to criminal immunity, as well, for example, by means of the Act of 1790, which codified the diplomatic immunity in the United States upon the existing common law. The Act of 1790 embraced the rule of Respublica v. De Longchamps, which stated that diplomatic immunity was virtually absolute. De Longchamps was the prima facie case of diplomatic immunity in the United States, therefore worth mentioning here. De Longchamps, a French national, was charged with violation of international law that protected diplomats, under Pennsylvania law, by insulting and assaulting the French Consul-general in his residence. The jury found de Longchamps guilty and the court determined that the defendant had committed an atrocious violation of the law of nations, when he threatened and menaced bodily harm and violence to the person of the Secretary of the French Legation, because the person of a public minister was sacred and inviolable.

The freedom of the modern diplomats from legal action in both civil and criminal cases is a result of a rugged process. The immunity of ambassadors, regarding their person and personal goods, had been recognized by the end of the middle ages – not universally, though. The exact nature and concrete limits of this type of immunity had been a source of disagreement, with a great variety, depending on a state, often settled on an ad hoc or political basis (some feeble monarchs might grant wider immunities to envoys of stronger royals). The

499 7 Anne c. XII (1708).
500 Frey–Frey op. cit. 228-229.
501 American Act of April 30, 1790, passed by the First Congress.
exemption from taxes and custom duties, enjoyed by diplomats, was not granted unanimously, neither. The principle of complete immunity from legal proceedings regarding wrongs committed against a private individual developed slowly, as well, being another reason for dispute until about the middle of the eighteenth century.

Consequently, the subject of diplomatic immunities had been a regular source of dispute before national courts in history. Immunity from criminal jurisdiction has been established by the end of the seventeenth century and immunity from civil jurisdiction – by the commencement of the eighteenth century.

The emergence of diplomatic corps, when the ambassadors, accredited at a royal court, made up a special corporation, could be dated to the eighteenth century, as well, at the age of Enlightenment. In addition, the eighteenth century had known a number of excellent diplomats. It was the era of Cabinet policy personal diplomacy, when international changes were regulated by governments' petty interests and skills of diplomats.

III. 1. 3. The advancement of the institution of diplomatic privileges and immunities from the nineteenth century until the contemporary period

At the beginning of the modern age, diplomacy, as an institution, had been entirely installed in international law, and was governed by universal principles, based on international custom and doctrine. With respect to diplomatic ranks, at first there was one and only one rank, the rank of ambassador. Only with the passage of time did we observe the differentiation of ranks.

Elekes claims that we can talk about the independent development of history of diplomacy from the nineteenth century. Elekes op. cit. 57.


The European states started to differentiate the class of ambassadors only since the end of the fifteenth century. Apáthy op. cit. 341-355.

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class of envoys – the ambassadors.\textsuperscript{516} The inviolability was attributed to all ranks of ambassadors, also to their suit, and other things, connected to the person and dignity of the ambassador, and his residence with the relevant equipment.\textsuperscript{517} Each European country had its own system of diplomatic ranks until the beginning of the nineteenth century.\textsuperscript{518} (For example, by the end of the eighteenth century, in Great Britain there were already seven diplomatic ranks.\textsuperscript{519} In France, there were also seven levels of seniority of employees of the diplomatic service, initiated by Charles Maurice de Talleyrand.)\textsuperscript{520}

To cease the disagreements over the ranking of diplomats, the international community took a decision to settle this question. The real aspiration of the signatory Powers at Vienna was not so much to prevent the disputes over the precedence as to ensure an exclusive rank for the representatives of the Great Powers.\textsuperscript{521} Since the Powers failed in establishing a classification of states, they settled for the sorting of diplomatic agents by their individual right.\textsuperscript{522} The multilateral Congress of Vienna in 1815, with its chaotic procedures, which were still too much a political issue, proved to be one of the most successful diplomatic events in history.\textsuperscript{523}

The Congress of Vienna, belonging to the events of greatest importance in European politics,\textsuperscript{524} contributed into the establishment of the first conventional norms with reference to the hierarchy of diplomatic agents and their particular precedence. The following international system of diplomatic ranks was formally established:

1. Ambassador Extraordinary and Plenipotentiary: an Ambassador is a head of mission, representing the head of state, with plenipotentiary powers, i. e. full authority to represent the government of the sending state.

\textsuperscript{516} Teghze op. cit. 275.
\textsuperscript{517} Later some other titles emerged, as chargés d’affaires, agents chargés d’affaires, residents, etc., nonetheless their legal status and scope of authority was identical to the status of the ambassador. Zonova op. cit. 24-32.
\textsuperscript{518} Thus, the diplomatic ranks have developed in Europe, and starting from the eighteenth century, gradually spread around the world. János Sáringer: A diplomáciai rangok eredete és használata a középkortól napjainkig. (The origin and use of diplomatic ranks from the Middle Ages to the present day.) Külügyi Szemle. XV/2016/1, 29.
\textsuperscript{519} There are nine diplomatic ranks today. Zonova op. cit. 32.
\textsuperscript{520} The levels of seniority survived to the present day. Zonova op. cit. 47.
2. **Envoy Extraordinary and Minister Plenipotentiary:** An Envoy is a head of mission, with plenipotentiary powers, who is not considered a representative of the head of state, though.

3. **Minister Resident or Resident Minister:** The lowest rank of full head of mission, above only chargé d'affaires (the rank had been introduced by the Congress of Aix-la-Chapelle in 1818, adding it to the classification of diplomatic agents, laid down at the Congress of Vienna.

4. **Chargé d'affaires:** is in charge of the affairs of a diplomatic mission in the temporary absence of a more senior diplomat. Chargé d'affaires ad interim generally serves as chief of mission during the temporary absence of the head of mission, while the chargé d'affaires upholds the same functions and duties as an ambassador.

5. At the Congress of Vienna, there was clarified and codified the customary law regarding diplomatic agents. The diplomats, gathered together at the Congress, were inspired by the desire to rebuild Europe on a fairer foundation. The great powers, which signed the Vienna regulations on 19 March, 1815, certainly, maintained the diplomatic relations between each other only at ambassadorial level. The provisions on diplomatic rank proved to be the most timeless creation of the Congress of Vienna. The Vienna regulations were modified in certain aspects over the years, but the basic provisions remained in place to this day.

6. The principle of sovereign equality of states is one of the generally recognized principles of international law. The norm of state immunity from foreign jurisdiction is based on this principle: state immunity applies to both the state itself and its property, also to public bodies.

7. The legal status of diplomatic agents is governed by international law, united under the name of "diplomacy law," the position of which within public international law, despite of its
governing all official relations between states, by the beginning of the twentieth century. It is should be noted here that even the system of norms of diplomacy law used to be attached to the ambassadorial law in the past, still, some experts kept this association.

In the twentieth century, the eminent role of the great power was reflected in diplomatic custom, as well. For instance, the highest rank in the diplomatic profession – the ambassador, applied only to diplomats of great powers, who served at the court of an other great power. The crisis of 1914 affected the status of diplomats and diminished their freedom of action by change in the nature of the military organization. In this course, a gap had developed between the customs and traditions of diplomats.

What is more, in 1918, after the Bolsheviks gradually took over the power in the country, the Soviet Russia eliminated the previously used diplomatic ranks, and uniformly, had sent a Plenipotentiary Representative to each country. The credentials of the Soviet Plenipotentiary Representative precised his diplomatic rank – ambassador or envoy, so that the Representative could take its rightful place among the diplomatic representatives of other states in the country of residence. Nonetheless, this diplomatic rank was not recognized by the host states and the Representatives were ranked behind the chargé d’affaires.

In olden times, various further factors served, as reasons for refusal of the agrément, except for political behavior, such as personality, manners, and even gender. In diplomacy,

534 Blishchenko–Durdenevskii op. cit. 328.
536 The diplomats of the early twentieth century adhered to the ideas, which had dominated diplomatic thinking during the previous two centuries: balance of power and raison d’état.
537 The majority of diplomats, who advanced to high positions in the period before the World War I, had received their training under the great masters of nineteenth-century diplomacy: Bismarck in Germany, Gorchakov in Russia, Disraeli in Great Britain, Cavour in Italy and Andrássy in Austria-Hungary.
538 This custom had been formed during the previous centuries and continued to be maintained.
539 In some years later, in 1918, by the end of the World War I, Europe ceased to be the center of the world and a new balance of power was to be achieved. A. J. P. Taylor: The Struggle For Mastery in Europe, 1848-1918. Clarendon Press. Oxford, 1954, 568.
541 The diplomatic rank had been used until 1941, when there had been introduced the ranks of diplomatic representatives of the USSR. V. P. Abarenkov (ed.): Kratkii politicheskii slovar’. (Concise political dictionary.) Politizdat. Moskva, 1988, 331.
542 János Sáringer: A diplomáciai rangok eredete és használata a középkortól napjainkig. (The origin and use of diplomatic ranks from the Middle Ages to the present day.) Külsőg Szemle. XV/2016/1, 26.
543 Flachbarth op. cit. 101.
at first, only men were entrusted with the heading of diplomatic missions for a long time.

The following example demonstrates a case, when all these causes were presented at the same time. The representative of the Soviet Union, Alexandra Kollontai was the first Russian woman ambassador. With the permission of Stalin, it was initially planned to send her to Canada and the People's Commissariat of Foreign Affairs asked the Canadian government for the *agrément*. Canada denied the request, for the reason that it still remembered well Kollontai's revolutionary tour in the United States, when she prophesied the coming world revolution. Spain did not want to see Kollontai, either, and eventually the *agrément* was received from Norway in 1924, which was the tenth state that recognized the Soviet Union. In those years, the appointment of women to such posts looked more, than unusual, and the word "ambassador" had no feminine form in no language of the world. (With the new evolving foreign policy practice, by 1939, women were not excluded from diplomatic service anymore.)

On the subject of codification of norms of diplomatic activity at that time, the League of Nations tried to make some progress, by presenting reports on diplomatic prerogatives and immunities, having recognized in 1924 that diplomatic privileges and immunities required codification at international level. However, the work of its Commission of Experts for the Codification of International Law did not have a practical follow-up and no comprehensive resolution was adopted.

With respect to the position of the ambassador in modern times, Rana asserts that it is easy to see the importance of the institution of the ambassador in bilateral and multilateral roles, as central element of the entire diplomatic system. The ambassador is like a captain that leads the ship, i.e. the embassy, to a shared purpose.

Ibid.


The ambassador of our days has the capacity to deliver real value for both the sending and the receiving country, while diplomacy is in the continual search for an external matrix that optimizes the advantage for a state. Rana: The 21st Century Ambassador… 7-9.

The ambassador of our days has the capacity to deliver real value for both the sending and the receiving country, while diplomacy is in the continual search for an external matrix that optimizes the advantage for a state. Rana: The 21st Century Ambassador... 4.

"Embassy is an insular, inward-oriented community, with a distinct ethos—a home outpost implanted in a foreign land." Rana: The 21st Century Ambassador... 144-145.
responsible for the wellbeing of all his staff. Additionally, most countries developed a formal or informal internal system of ranking of their own ambassadors, in grades or categories.\textsuperscript{552}

Every diplomatic service had its envoy exemplars, for example in case of the Soviet Union, Anatoly Dobrynin was one of them, who served for twenty-four years, as the Ambassador in Washington D. C.\textsuperscript{553} In case of the United States, it was George F. Kennan,\textsuperscript{554} accredited in Moscow, in the first years of the Cold War, widely acknowledged, as a giant figure in policy shaping. Kennan, a leading figure in the diplomacy of Soviet-American relations since World War II and an important foreign policy theorist, was appointed Ambassador to Russia\textsuperscript{555} in 1952,\textsuperscript{556} but served only a short term, being declared \textit{persona non grata} by the Soviets for some unflattering remarks, made about Soviet treatment of Western diplomats while on a visit to Berlin.\textsuperscript{557} The United States justified the speech of the diplomat, but recalled him.\textsuperscript{558}

The highlight of the twentieth century, in terms of diplomatic privileges and immunities, was the adoption of the Vienna Convention in 1961,\textsuperscript{559} a true international statute of the diplomatic agent.\textsuperscript{560} Prior to this treaty, the diplomatic privileges and immunities have not been divided into privileges and immunities of the diplomatic mission and personal privileges and immunities of the diplomatic personnel, but derived by leading jurists from privileges and immunities of heads of state, being considered, as continuation of their immunities.\textsuperscript{561}

\textsuperscript{552} For instance, the United States, Germany and India have three effective grades, and only a few states, such as Kenya, Thailand and Turkey appoint ambassadors in a single grade. Besides, there are countries like Germany and China, which attach ranks to capitals. Rana: The 21st Century Ambassador… 25-26.
\textsuperscript{553} The Ambassador even had a special parking spot in the State Department garage, for some time. This was a privilege that allowed him to avoid the main entrance, and unexpected meetings with the press. Vajda op. cit. 74.
\textsuperscript{554} Speaking of professionalism in the conduct of foreign policy, Kennan emphasizes that by developing a corps of professional officers superior anything that exists or ever existed in this field, and by treating them with respect, drawing on their insight and experience, it would be a considerable help in conduct of diplomatic practice. The Ambassador added that this have run counter to strong prejudices and preconceptions in sections of public mind. George F. Kennan: Diplomacy in the Modern World. In: George F. Kennan: American Diplomacy. University of Chicago Press. Chicago, 1984, 93.
\textsuperscript{555} Kennan had been previously appointed to Russia as diplomat several times already by that time. David Shavit: United States Relations With Russia and the Soviet Union. A Historical Dictionary. Greenwood Press. Westport, 1993, 104.
\textsuperscript{557} Findling op. cit. 259.
\textsuperscript{558} Murty op. cit. 416.
\textsuperscript{559} For the most part, the Convention represented restatement of principles, normally observed by governments and therefore, it closely approximated existing international law and practice. In areas, in which the practice was not uniform, or where it appeared to the assembled plenipotentiaries of eighty-one states that existing practice should be changed, the Conference established new rules. Leo T. Harris: Diplomatic Privileges and Immunities: A New Regime is Soon to be Adopted by the United States. The American Journal of International Law. Vol. 62, No 1, January, 1968, 98-99.
\textsuperscript{560} Magalhaes op. cit. 40-48.
\textsuperscript{561} I. S. Iskevitch–A. V. Podolyskii: Diplomaticheskoe i konsul’skoe pravo. (Diplomatic and consular law.) Izdatel’stvo FGBOU VPO „TGTU”. Tambov, 2014, 44.
The Vienna Convention rejected the fiction of extraterritoriality, keeping the principle of reciprocity, but extended the immunities to diplomats, their family members and diplomatic staff. The principle of functional necessity was stressed as justification for diplomatic privileges. The accent shifted as of then from the customary to treaty law.

The treaty ultimately defined the terms, related to diplomatic activity.

The Vienna Convention, providing different notions of agents in possession of different levels of diplomatic immunity, such as "head of the mission", "members of the mission", "members of the staff of the mission", "members of the diplomatic staff", "members of the administrative and technical staff", "members of the service staff", define the concept of the "diplomatic agent", as head of the mission or member of the diplomatic staff of the mission.

In this way, the general rule was that a diplomatic agent was a person, who was designated by the sending state and accredited in the receiving state. The sending state had to appoint a diplomatic agent, pursuant to its right to freely appoint the members of the staff of the mission.

Diplomatic agents have to be of the nationality of the sending state, while the receiving state might declare a member of the diplomatic staff unacceptable. The receiving state often has certain preferences, concerning the person of the diplomatic agent, who should be representative of the sending state, performing diplomatic functions, and this person shall not be practicing in the receiving state for personal profit or commercial activity, prohibited by the Vienna Convention.

In contemporary diplomatic practice, some states require a great number of details to be submitted as part of the notification process and their Foreign Ministries shall determine whether the person, properly notified would be eligible for the classification, given based on these details. Diplomatic agents obtain diplomatic status by accreditation in the receiving state:

the sending state proposes the status of the diplomatic agent and the answer of the
receiving state confirms it. In practice, being registered by the Ministry of Foreign Affairs of the receiving state, means accreditation in the host country. However, not every diplomat gets accredited, since the receiving state has the right to review the requested diplomatic status, in case the diplomatic agent performs work that does cover the actual scope of his activity.

By virtue of the Vienna Convention, immunity protects the channels of diplomatic communication by exempting diplomats from local jurisdiction, so that they would be able to perform their duties in a free, independent and secure way. (It is essential to stress, that in history, diplomatic immunity was not meant to advantage individuals, either, but it was destined to facilitate foreign envoys in executing their work.) The diplomatic immunity not only undergrids the system of international relations, but exemplifies the development of international law. The fundamental basis of immunity transformed from religious to legal. Courtesy – ceremonials, routine, procedures and other modus operandi evolved into precedents and finally rights and the matter of granting the immunity hardened from an uncertain subject into a legal one, such as national laws and international treaties.572

With respect to the future of ambassador’s position, in the face of the fact that „Diplomats are often misunderstood and unappreciated.“ 573 Rana affirms that no state has seriously considered replacing ambassadors as the prime, permanent channels of contact and relationship promotion with foreign countries and that this institution still remains the first instrument for advancing external interests. Consequently, we should focus on evolution, rather than build artificial scenario of extinction, because in today’s prolific community of states and their pluri-issue multiple-level international dialogue, the institution of the ambassador has undergone a continuous adaptation.574 Freeman is convinced that diplomacy-free foreign policy would work no better, than strategy-free warfare.575 Finally, by the expectant opinion of Sharp, „Not only are diplomacy and diplomats important, however, after the best part of a century of apparent decline, the demand for both of them is currently on the rise. “576

The modern professional diplomats can take on an aura of celebrity, as their work is scrutinized in the public eye.577 Ross, as a supporter of significant reforms, regarding the

572 Frey–Frey op. cit. 3.  
574 Further, a „better recognition of the diplomatist as a professional is worthwhile“ , while the diplomatic system is facing the challenge to build excellence into its genetic code, for at stake is the enlargement of the international power and influence of one’s nation. Rana: The 21st Century Ambassador… 190-202.  
575 Freeman: The Diplomat’s… 84  
576 Sharp: Diplomatic… 1.  
problems, connected with the abuses of diplomatic immunity, states that the current interpretation of diplomatic immunity requires fundamental change, for there is no justification in international law (or any other branch of law) for crimes, left unpunished.

Diplomatic negotiation had been the prerogative of professional diplomats, however, Kennan believes that the future trend is "diplomacy without diplomats," when diplomats would be replaced by issue experts, when conducting talks is needed.

At the same time, currently the way, in which we handle international relations, has to be changed to reflect a new world. For example, the Paper on Professional Education for a Professional Foreign Service emphasizes that "Among the world's diplomatic services, the Foreign Service of the United States is unique in terms of its minimal investment in its most important resource: human capital." so many of foreign service officers "lack a foundation in the theory, history, and practice of diplomacy." In view of that, the Paper stresses that the American diplomats should receive career-long formal professional education to learn about the institution of diplomacy: the Vienna Convention, other conventions, treaties, agreements, negotiations, including national negotiating styles, and diplomacy itself.

On the other hand, in the literature on foreign relations still occurs the paraphrase of Zbigniew Brzezinski, President Carter's national security adviser that "If the Department of State would not exist, it should not be invented," who also called diplomats an...
anachronism.\(^{589}\) Some experts began to talk about decadence – the decline of traditional diplomacy back in the twentieth century.\(^{590}\) Others stated it was going through a crisis, at least, claiming that the technological progress made the contemporary communication cheap and secure, therefore they were hesitating about a real need for professional diplomats.\(^{591}\) There were designs to replace the functions of permanent diplomatic representations\(^{592}\) with a small body of “superambassadors”, who would coordinate the international relations of their governments with other countries within a more or less large geographical region.\(^{593}\)

International law is not a legal system, designed for long-term action, which would remain virtually unchanged, despite of the passage of time:\(^{594}\) in this field of law, we continue to witness occurrence of very significant changes,\(^{595}\) related to diplomatic activity, as well. The practical and legal relation between diplomacy and diplomatic representatives is currently still being formed.\(^{596}\) Certainly, these fluctuations touched the domain of diplomatic privileges and immunities, as well. In view of that, the beginning of the modern period featured the development of the traditional theories, which justify diplomatic privileges and immunities. These ideas were personal representation, extraterritoriality and functional necessity, growing into imperative norms, defining the diplomatic privileges and immunities, owing to the rising social role of the envoys.\(^{597}\)

The volume of the present thesis – with its main focus on interrelation of contemporary diplomacy and international law – permits drawing only a sketchy picture of the evolvement and strengthening of diplomatic privileges and immunities,\(^{598}\) without considering the treatment of envoys on all continents in more detail.\(^{599}\) Obviously, all international systems developed their own – specific customs and rules, depending on their national mentality – international

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\(^{592}\) In addition, certain authors believe that some ambassadors “do little of substance, and some embassies work perfectly well without them – maybe better”. Roskin–Berry op. cit. 288.


\(^{594}\) Vylezhanin notes that international law is a relatively stable, at the same time, dynamic system, developing together with the advancement of international relations. A. N. Vylezhanin (ed.): Mezhdunarodnoe pravo. (International law.) Vysshue obrazovanie–Iurait Izdat. Moskva, 2009, 43.


\(^{596}\) Säringer op. cit. 29.

\(^{597}\) Frey–Frey op. cit. 9.

\(^{598}\) In addition, historians still disagree as to what were the characteristics of a particular diplomatic era, also, which of those features should be regarded as essential or what were the processes of change and transition. Laurence W. Martin: Diplomacy in modern European history. The MacMillan Company. New York, 1966, 1-2.

\(^{599}\) See more on historical bases of diplomatic immunity in: Ogdon op. cit. 8-30.
morality and generally, culture. Experts note that what distinguished the European system of foreign relations from the rest of the world is that it accented the equality and sovereignty of states within this structure and occasionally, beyond its borders, as well.
III. 2. The conceptional clarification of the notion of diplomatic privileges and immunities

The central research concept, explored in the present work, is that of diplomatic privileges and immunities. The present subsection discusses the content of diplomatic privileges, along with diplomatic immunities, with a brief reference to the various theory bases, suggested in the past, which helps to better understand the core of the discussed concepts. Further in this paragraph, the concept of diplomatic privileges and immunities will be divided, to investigate the privileges and immunities of diplomatic agents separately, with the purpose of getting a deeper insight into these notions.

In consequence, the examination would start with the concept of diplomatic immunities. As it could be perceived from the presented excurse above into the history of diplomatic privileges and immunities, the law of immunity is one of the classic branches of international law and the institution of diplomatic immunity (inviolability), being one of the oldest and most accepted rules of international law, is of the same age, as history of the human race.

According to dictionaries, juridical immunity [from Latin *immunitas*] stands for freedom from service, also from any burden, duty, tax or penalty and exemption from jurisdiction.

Historically, general changes in immunities, enjoyed by sovereigns, have been forced by the necessity of trade. Whereas the absolute approach to sovereign immunities required the primacy of sovereignty, the growth of state interest and capacity in commercial interests. The need for subjects to have the same confidence in transactions with state commercial entities, led to the abandonment of absolute sovereign immunity, permitting subject and sovereign to engage, while enjoying confidence in equal legal protection, in their private or commercial capacities. This shift became necessary to protect the rights and interests of subjects from the vast asymmetry of state power.

The widest application of the modern idea of immunity is in the area of international law, where immunity can be subsumed under three headings: sovereign immunity, diplomatic

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601 The concept of *immunitas* had been used by the ancient Romans to describe the exemption of an individual from service or duty to the state. A. M. Silverstein: The History of Immunology. W. E. Paul (ed.): Fundamental Immunology. Lippincott-Raven Publishers. Philadelphia, 1999, 19.
602 Hohfeld defines legal immunity as exemption from legal power. Walter Wheeler Cook (ed.): Fundamental legal conceptions. As applied in judicial reasoning by Wesley Newcomb Hohfeld. Yale University Press. New Haven, 1919, 8.
605 Boas op. cit. 278-279.
Diplomatic immunity is a principle of international law, by which certain foreign government officials are not subject to the jurisdiction of local courts and other authorities. In international law, diplomatic immunity, in the beginning, was presented as part of state immunity, developed at those times, when the envoy of the sovereign was considered to be his personal representative, therefore, eligible for some of the characteristics of the sovereign, including immunity and inviolability.

The value and significance of diplomatic immunity is emphasized by the state of affairs that with the establishment of international agencies, various legal, functional, and procedural matters, relating to the effective operation of emergent types of diplomacy and international administration, needed rethinking and reform. The existing practice became the accepted way of life – the de facto situation crystalized, as de jure behavior. In this fashion, this was the application of traditional diplomatic privileges and immunities to the officials, agents and staff members of international organizations. More precisely, issues of status, privileges and immunities of officers and personnel of international agencies were dealt with, guided by rules, borrowed from the pre-existing body of precepts, pertaining to the treatment of diplomatic (and consular) agents of national governments.

Accordingly, the legal position of ambassadors and other diplomatic agents or staff is often used, as the standard of reference for non-diplomatic personnel, such as officials of international organizations. In these cases, the extent, to which they are accorded "diplomatic" privileges and immunities, reflects the view, taken as to the entitlement of diplomatic personnel.

The principle of diplomatic immunity, as a timeless feature of diplomacy (together with ceremonial and protocol), originated from the fact that the theory of diplomatic immunity...
represents the practice of holding individuals responsible for their wrongful acts. Hugo Grotius\(^{613}\) was the first, who presented a theory based on the sacredness of ambassadors,\(^{614}\) believing that both divine and human law protected the ambassadors as sacred persons, so violating this law would be not only impermissible, but also irreligious.

As remarked by Corbett, it was only with Grotius\(^{615}\) that the thesis of broad civil and criminal immunity became dominant in the literature. Grotius attributed civilian arguments restricting diplomatic privilege to a misinterpretation of the Roman-law texts, due to confusing the *legati*, who represented Roman provinces with those representing independent peoples. It was the latter, who had the chief claim to immunity.\(^{616}\) Before the adoption of the Vienna Convention, diplomatic privileges were “... in reality a little more than the agreed consequences of the mutually accepted obligation incumbent upon States to treat such foreign diplomatic representatives as exempt from their jurisdiction. Herein lies the juridical basis of these immunities.”\(^{617}\)

The concept of diplomatic immunity at early times was, traditionally, based on two principles. The first principle, which is the oldest one, was personal inviolability. According to this concept, diplomats were untouchable and normally host states respected this rule. The second principle was a more recent one, being born at the beginning of the Renaissance era – the principle of reciprocity. The attitude of mutual benefits towards diplomats has been also acknowledged by the receiving states and there were times in European history, when it would have been a larger crime to kill an envoy, than to kill a king.

The inviolability is one of the most important prerogatives, conferred to diplomats, and this conveyance of formerly called „sacredness” is based on necessity (without implication of total impunity).\(^{618}\) The doctrine of diplomatic immunity accepts the dual principle of protecting the personal inviolability of diplomats and prohibiting them from being subject to administrative, civil or criminal jurisdiction of the host state.

The theoretical rationale for the provision of diplomatic privileges and immunities has been one of the most complex issues, related to this institution of diplomacy law, and it is still actual today. The need for a unifying principle, which would serve, as a basis for all diplomatic privileges, arose a long time ago. In ancient and medieval times, when diplomatic privileges


\(^{614}\) The ambassadorial duties were formulated by Hugo Brierly, such as *protectio*, *negotiatio* and *informatio*.

\(^{615}\) Grotius op. cit. ch. XVIII, sec. x.

\(^{616}\) Corbett op. cit. 23.

\(^{617}\) Hurst op. cit. 195.

\(^{618}\) Martens: Le guide diplomatique, 1854... 83.
were limited mainly to the personal inviolability of ambassadors, this need was largely satisfied by the religious ideas of the sanctity of ambassadors. Along with this, there were developing other – secular ideas.

With time, when a need emerged for codification of norms of diplomacy law, related to privileges and immunities, it had to be justified by a relevant theory. The theory was also necessary for interpretation of the already existing privileges and immunities in situations of resolution of disputes, if there was no contractual settlement of the argued question and it was necessary to define the existence and the specify the extent of a particular immunity. The theoretical justification significantly affects the legal status and the implementation of privileges and immunities.

In this way, at this point it is necessary to consider the main theories on the basis of provision of diplomatic privileges and immunities. At the end of the sixteenth century, the legal force of immunity had been explained by three ideas: exterritoriality, theory of representational character of the ambassador and the theory of functionality. The first and the earliest concept was the theory of extraterritoriality, in vague outlines put forward by Eyraud already and quite clearly developed by Grotius, soon became widespread in the legal literature and state practice. The term extraterritoriality, as such, occurs first at Christian Wolff, but the idea could be already found at Grotius, as fiction, when he elaborates on the status of the envoy:

"…ita et iam fictione similiter constituerentur quasi extra territorium, unde et civile jure populi apud quem vivunt non tenentur."

The essence of this theory was that the ambassador, being physically in the territory of a foreign state, in legal sense remained on the territory of his sovereign, thus, as if he was outside the territory (extraterritorium) of the host state. The same applies to the territory of the embassy or mission. In consequence, according to this theory, the premises of missions and diplomatic agencies operate according to the national law of the sending state. In view of that, the diplomat was not considered subject to the local law, since he was not an individual for whom the legislature could pass enactments. The juridical basis for such immunities was non-subjection to the local law, described, as extraterritoriality. The fiction of extraterritoriality was expedient at early times to safeguard the diplomatic immunities, but it could become deceptive and even dangerous, for example, applying it to the immunities of an
embassy house or official residence of a diplomatic representative, regarded as part of the territory of the host state and being inviolable.

The judicial interpretation of the theory of exterritoriality appeared in *Wilson v. Blanco*, where the Supreme Court of New York stated in 1889 that the rule of international law „derives support from the legal fiction that an ambassador is not an inhabitant of the country to which he is accredited, but of the country of his origin, and whose sovereign he represents, and within whose territory he, in contemplation of law, always abides”.623

The numerous related legal cases, followed by judicial decisions624 assisted in developing a common attitude towards the principle of extraterritoriality: the foreign diplomat, who enjoys the immunities and privileges is not regarded, as remaining in the sending state, rather then he is not subject to the jurisdiction and legislation of the receiving state.625

Bynkershoek’s „ne impediatur legatio” is the leading principle that runs through the international legal norms, governing the privileges and immunities of envoys, and in light of which certain privileges and immunities should be explained.626 (Before the Vienna Convention, international law guaranteed the inviolability of extraterritorial persons only conditionally, principally if they did not provoke attacks on their person by their behavior. The legitimate self-defense was permitted against extraterritorial persons, as well.)627

During the subsequent development of law, inviolability has sharply separated from exemption, related to the power of the local authorities (immunity). In the new stage of development, Grotius, with the fiction of extraterritoriality, made the exemption of envoys from the power of local authorities even more observable. Thus, extraterritoriality has developed from the legal institution of inviolability, and also overshadowed it to some extent.628

The theory of exterritoriality has been widely criticized, because of having many different meanings,629 for not providing proper guidelines regarding the determination of rights

623 Ibid.
624 Analogous judicial interpretations of the theory of exterritoriality are found in the following several cases. In *The King v. Guerchy*, 1 Black. W. 545, 96 Eng. Rep. 315 (1765) the court decided that an ambassador is not subject to the courts of the receiving state, and he is believed by legal fiction, to still be a resident of the sending state. In *Taylor v. Best*, 14 C. B. 487, 517, 139 Eng. Rep. 201, 213 (1854), it was held that the foundation of the privilege of exemption from the jurisdiction of the English courts was that the ambassador was supposed to be in the country of his master. In *Attorney General v. Kent*, 1 H.&C. 12, 23, 158 Eng. Rep. 782, 786 (1862), it was decided that diplomatic immunity was based on the principle: „an ambassador is deemed to be resident in the country by which he is accredited”.
625 Hurst op. cit. 196-203.
626 Flachbarth op. cit. 102.
627 Jónás–Szondy op. cit. 830.
628 Jónás–Szondy op. cit. 829.
629 The various meanings of extraterritoriality were analyzed by Wilson. Clifton Wilson
and duties of diplomats,

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and for the concept that diplomatic immunity was based on the absolute independence of nations, when, actually, the question of immunity arose, because nations were interdependent in the area of international relations.

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Despite of the fact that the concept of exterritoriality, in all historical periods, to varying degrees, was a legal fiction, it left in the theory and practice of diplomacy law a noticeable mark. Up to now, there is still a perception, often supported by the media, too that the embassy premises and the land on which it is located, are part of the territory of the sending state, although, in reality, we can talk only about the inviolability of the land, occupied by the representation, which place remains, in fact, the territory of another state, and that state, if necessary, may request the transfer of the embassy to a different location, with the provision of a new site.

Expansion of the original meaning of the theory of extraterritoriality was connected to the same circumstance, which contributed to the emergence and rapid recognition of this concept – with a tendency towards a lasting consolidation of the broad diplomatic privileges. Even after the excessive privileges became a thing of the past, the theory of extraterritoriality, having won enormous prestige both in doctrine and in the diplomatic and judicial practice, still continued to be used for a long time in the aforementioned broad sense, constituting the basis for claims, which would go far beyond diplomatic privileges that were sanctioned at that time by the existing custom.

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However, since the second half of the nineteenth century, when the trend towards the growth of diplomatic privileges turned into the opposite tendency – their reduction and in the science of international law the positive direction prevailed, the theory of extraterritoriality began to lose its former prestige and increasingly revealed its inconsistency in practice. The courts continued to apply the concept of extraterritoriality, but in the vast majority of cases they rejected the conclusions that followed logically from the literal sense of the term and were in irreconcilable conflict with the provisions of lawful force.

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In view of that, the concept of extraterritoriality has not been considered anymore by the courts, as a presumption, which in its literal sense, served as the direct basis of diplomatic privileges. This concept has been reduced in practice to the symbolic representation of the whole privileged position of diplomatic representatives or to a conditional term, denoting

630 Ogdon op. cit. 102-103.

631 Michaels op. cit. 198.

632 Levin op. cit. 231-232.

633 Ibid.
certain diplomatic privileges, mostly immunity of diplomatic residence or immunity of diplomatic agents from local jurisdiction, and the majority of international lawyers abandoned the theory of extraterritoriality. The theory of exterritoriality had the following weak points:

- it is a fiction, and a fiction can not be the basis of existing law;
- this theory is only a symbol of well-known legal provision, but it can not serve, as its basis, for it needs itself a basis, on which this legal status is given;
- it provides a basis for claiming disproportionately wide privileges, far beyond the recognized practice of diplomatic immunity, and serves as a justification for the abuse of immunity by the diplomatic representative against the state in which he is accredited.

The theory of extraterritoriality had some reasonable grounds in the past, but it outlived its time, and is in contradiction with the principles of modern law, so in practice, it leads to erroneous conclusions, and creates misunderstandings.634

The second concept – the representative theory, which, along with the theory of extraterritoriality enjoyed unquestioned authority and was widely used in practice. Genetically, this theory preceded the theory of extraterritoriality, and spread over during the period of Rome and the Middle Ages. According to this theory, the ambassador was a representative – kind of embodiment of the monarch on the territory of a foreign country. Violation of ambassador’s inviolability was considered an insult to his sovereign, and that was the direct rationale for the necessity of immunity.

According to the theory of personal representation, the diplomat was the personification of the ruler of the sending state – his „alter ego‟, therefore must enjoy privileges identical to those, which would be granted to his master. The theory of functional necessity refers to the concept of residence or territory. According to the concept of residence, the diplomat is not subject to local law, meant for he does not reside in the host state. The concept of territory means that the local authorities consider the diplomatic premises as foreign territory.635

The theory of functional necessity or functionalism, in other names, provides the diplomat with freedom of movements, along with immunity from local jurisdiction. The aim of such generous privileges is insurance of the unhindered intercourse of nations. States, possessing sovereignty (sovereign rights and responsibilities) in foreign relations, as a rule636 are at the

634 Levin op. cit. 232-241.
and need mutual freedom, along with noninterference in their relations.

Later, in modern times, the concept prevailed that a diplomatic agent was representing not only the monarch, but also the state, as a whole. The contemporary proponents of the representative theory consider diplomatic immunity not as a consequence of the fact that the ambassador is the alter ego of a sovereign monarch, but as a right, inherent in the sovereignty of the state. What is more, the representative theory is opposing the current practice, because it provides a justification for the privileges and immunities of a head of a diplomatic mission solely. The rest of the diplomatic and non-diplomatic personnel (as well, as family members of diplomatic agents), on the basis of this theory should not enjoy immunities. In addition, according to this theory, immunities apply only to the official actions of the diplomatic representative, while the immunities in respect of his private actions are not consistent with this theory. This is a very important everyday question, because in practice, the most controversial issues are associated with application of immunity to unofficial actions. As a result of all the above, some supporters of the representative theory tend to fill in the gaps of this theory using the model of diplomatic functions.

The third and the most modern concept is the theory of functional necessity or theory of diplomatic functions, which dates back to those arguments about the need for diplomatic privileges for the success of the embassy and the maintenance of peace between the princes, which are found in the writings of Eyraud and Grotius, where they are presented, as related arguments in favor of diplomatic privileges, based on the representative character of the ambassador and the fiction of extraterritoriality. This theory gets a more clearer outline at Bynkershoek, who makes the formula ne impediatur legatio the second base of diplomatic privileges, a base, constituting at the same time the limit of application of the principle of extraterritoriality. The theory of functional necessity gets its final shape at Vattel, who examines the need to perform diplomatic functions, as the main basis of the independence that, under international law, enjoys the ambassador, as representative of his sovereign. In times of Bynkershoek and Vattel, appeared the tendency to restrict unreasonably increased diplomatic privileges, and the theory of diplomatic functions, certainly reflected this trend. The theory of diplomatic functions reached its peak in the second half of the nineteenth century, when the science of international law, embarked on the path of systematization of positive legal material, rejected rationalistic...
constructions of the past and strived to provide a realistic justification of international legal institutions, in particular, diplomatic immunity, as well.\(^{639}\)

On the other hand, the flourishing of the theory of diplomatic functions was supported by the reaction, which by the middle of the nineteenth century began to appear against the broad diplomatic privileges, being established in the period of absolutism that seemed then not only unjustified in view of the legal regulation of personal and property rights of local citizens and foreigners, but even dangerous for internal law and order. Thus, despite of the popularity of other, fore-mentioned ideas, eventually, in the legislative acts, the theory of functionality prevailed.\(^{640}\)

The theory of functional necessity had to face criticism and attacks, as well. The mere fact that diplomatic agents required immunity to function effectively, implied that diplomats engaged in activities that were injurious or illegal on regular basis.\(^ {641}\) This theory, considered too vague, generated some unanswered questions, such as where was the necessary limit of diplomatic privileges and immunities.\(^ {642}\) On the positive side, the two other concepts, the extraterritoriality and the personal representation theories, extended blanket immunity to the individual diplomat without any regard to the activities, he was to perform within the diplomatic mission.

The functional necessity theory, on the other hand, moved the emphasis from the individual and focused on the functions of the diplomat, instead. The functional necessity approach is believed to dictate a more restrictive scope of diplomatic immunity that gives due force to the exceptions, explicitly provided for in the Vienna Convention.\(^ {643}\) Such a restrictive scope to diplomatic immunity not only comports with the text, spirit and purpose of the Vienna Convention itself, but also solves the issues of accountability.\(^ {644}\)

Wilson remarked that it was a realistic effort to extend only the immunity, necessary to perform the diplomatic mission.\(^ {645}\) Ustor, elaborating on the theory of functional necessity,

\(^{639}\) Blishchenko–Durdenevskii op. cit. 335-339.
\(^{640}\) Blishchenko–Durdenevskii op. cit. 340-343.
\(^{641}\) O’Neill op. cit. 361.
\(^{642}\) Ustor op. cit. 235.
\(^{643}\) The concepts of functional immunity and state responsibility are closely connected. State responsibility arises, when the claim for functional immunity succeeds. In accordance, the criteria for imposing state responsibility may also determine, whether an act is „official”. Brian Man-Ho Chok: Let the Responsible be Responsible: Judicial Oversight and Over-Optimism in the Arrest Warrant Case and the Fall of the Head of State Immunity Doctrine in International And Domestic Courts. American University International Law Review. Vol. 30, Issue 3, 2015, 499.
\(^{645}\) Robert Wilson op. cit. 118.
notes that it justifies diplomatic privileges and immunities in a way that they are absolutely necessary for the performance of the functions of diplomatic missions. This theory provides an adequate explanation why premises of diplomatic missions and diplomatic agents need inviolability, and immunity from jurisdiction. The Vienna Convention decided the subject of theories. The adoption of the Vienna Convention has placed the theory of functional necessity at the forefront of international legal literature. In a sum, the fiction of extraterritoriality proved to be unsatisfactory in explaining the granted privileges and immunities, so international law abandoned it in favor of the functional doctrine – ne impediatur legatio – the famous thesis of Bynkershoek. The reason for rejection of the principle of exterritoriality was that it grounded on a juridical fiction and could serve as justification for the unlimited extension of diplomatic privileges and immunities. According to this new basis of extensive privileges and immunities, the immunity is given:

(i) as recognition of the sovereign independent status of the sending State and of the public nature of the acts which render them not subject to the jurisdiction of the receiving State;
(ii) as protection to the diplomatic mission and staff to ensure their efficient performance of functions free from interference from the receiving State.

The theory of functional necessity, being regarded, as a universal remedy against the abuse of immunity, gains more and more recognition, becoming dominant in the science of international law. Most modern authors are of opinion that the legal basis of diplomatic immunity is the necessity to provide diplomatic representatives with privileges and immunities, in order they could perform their functions. All shortcomings of the theory of diplomatic functions could be summed up in the fact that this theory provides the explanation and not the legal basis of diplomatic immunity, as resumed by Levin.
positive norms of ambassadorial law, which govern the status of diplomatic representatives abroad.\textsuperscript{651}

Successively, the theory of diplomatic functions could serve not as an optimal basis, but rather an additional principle for determination of the limits of authority of diplomatic immunity, since it lacks the solid legal norm, in absence of which this concept can not function, as the legal basis of diplomatic privileges and immunities. At present, there is a widespread opinion in the doctrine of international law that the theory of functional necessity and the representative theory should be applied together, as a combined theory. The Draft Convention on Diplomatic Relations of 1961 originally referred to the theory of functional necessity, applied by that time by the majority of states, and the Soviet delegation\textsuperscript{652} proposed to introduce into the text of the Convention also the representative theory, and that diplomatic missions are representative bodies of states.\textsuperscript{653} Authors note that the use of both theories at the same time does not eliminate the disadvantages of each.\textsuperscript{654}

Neither the theory of functional necessity, nor the representative theory, does not give a proper explanation for provision of a number of immunities to diplomats, for example, tax and customs immunities. In spite of the fact that the Vienna Convention assisted in establishment of privileges and immunities of the diplomatic mission, as an independent institution, the doctrinal foundation of diplomatic privileges and immunities is still oriented only at privileges and immunities of diplomatic staff. As a result, the somewhat incomplete theory of functional necessity and the representative theory demand a new doctrinal justification in relation to the need to provide privileges and immunities to the diplomatic mission and to diplomatic representatives.

In the history of diplomatic relations, from earliest times to the present day, cases of real or perceived abuse of diplomatic immunities were high. By Hargitai, the practical problems, arising from immunities can be traced back to the fact that theoretical foundations of customary law, emerging under international courtesy, were also controversial for a long time. In the XIX century, the extraterritoriality theory was the most common, but this theory’s fault was that it could not be the basis for explanation of exemptions, provided to diplomats.\textsuperscript{655}

\textsuperscript{651} Levin op. cit. 260-265.
\textsuperscript{653} Vienna Convention. Preamble.
\textsuperscript{654} Levin op. cit. 265-267; Demin op. cit. 27-28.
\textsuperscript{655} Hargitai: Viszonosság… 423.
Pradier-Foderé, the French international jurist, was the first who turned against this theory, who was also considered to be the creator of functional theory. The theory of extraterritoriality was not able to serve as the base of tax and customs exemptions, which existed for a long time in the sphere of international comity and bilateral agreements only. It is noteworthy that the theory of extraterritoriality is still persists in our everyday thinking.

In this way, the key justification for the protection of the diplomat when representing his sending state abroad is ne impediatur legatus – the foundation of diplomacy law. The diplomat would be unable to perform his official duties if he was subject to arrest, his premises subject to search or he was subject to civil or criminal proceedings in the host state.

On the other hand, the norms of customary international law, concerning the functional (or ratione materiae) immunity of State officials from foreign (criminal, civil and administrative) jurisdiction are somewhat dated, but even so, remain controversial.

Contemporary international law scholars still disagree about the scope of their application and content. This state of affairs arises from different conceptual premises of international scholars, as well as lack of uniformity and consistency in practice, also in case-law.

The International Law Commission is currently being engaged in the study on functional and personal immunity of state officials from foreign criminal jurisdiction.

The International Law Commission has recently undertaken a study on a key aspect of this topic, however, Mazzeschi considers that these works have not yet clarified the most controversial legal issues, and furthermore, have not produced convincing results up till now. By way of both, the Special Rapporteurs of the Commission have dogmatically accepted, without any form of critical review, the old "Kelsenian theory," according to which all state officials have the right, in principle, to functional immunity from foreign jurisdiction regarding their "official" acts, namely, when acting in their official capacity.

This basic theory, which will have a strong impact on the future work of the Commission, is not convincing. In consequence, the issue is worth reviewing, especially in light of the most recent developments in practice and in collected works.

Ibid.

Fox op. cit. 455.


In due course, whether an act is to be considered, as "an act, performed in an official capacity," depends on the circumstances of each case.

Mazzeschi op. cit. 4.
Today we speak of diplomatic privileges and immunities, instead of extraterritoriality.\textsuperscript{662} The privilege means further rights and the immunity is exemption from a certain rule.\textsuperscript{663} As it had been reviewed earlier in the present thesis, the work diplomatic agents is greatly helped, if they are assured that they will not be subject of distractions, such as threat of arrest or being sued in respect of some wrong that was allegedly committed by the sending state. The inviolability of ambassadors, as a rule of customary international law, was firmly established by the end of the sixteenth century.\textsuperscript{664}

Lowe states that the advantages of such immunity are generally thought to outweigh the disadvantages of closing off that particular means of challenging the conduct of foreign states before courts of law. Therefore, international law provides for the immunity of diplomats.\textsuperscript{665} In this way, the rationale behind the immunity, accorded to a diplomat is that immunity from a state’s jurisdiction is necessary to preclude the harassments of diplomats, preventing the discharge of their official duties and the conduct of international relations.

Diplomatic privileges are separated to principal and secondary ones. Principal are the inviolability of diplomatic missions and secondary are practices of politeness. The immunity is coming out of the inviolability and consists in the exemption from jurisdiction of judicial and administrative authorities of the accredited diplomatic agents of another country.\textsuperscript{666} The privilege of inviolability of diplomatic envoys is related to, but different from the privilege of extraterritoriality or immunity from jurisdiction. The latter has a negative, the former – a positive character.\textsuperscript{667} The Court of Appeal in Darmstadt in his resolution in 1926, remarks that the immunity is in force not on behalf of the personal service of the member of the mission, but on behalf of the state, represented by him (\textit{ne impediatur legatio}).\textsuperscript{668}

Lazarev believes that immunity is an indispensable guarantee of the normal exercise of diplomatic functions and of the implementation of his rights and obligations. Diplomatic benefits and privileges, conversely, do not serve as such a guarantee, therefore they are not of crucial importance, regarding the normal exercise of a diplomat’s official functions. A diplomat could exercise his activities solely on the basis of diplomatic immunity. However, diplomatic

\textsuperscript{662} All the same, the term extraterritoriality is still used in literature to denote inviolability of premises and immunity from jurisdiction, but in this sense it is more correct to use the term „dipломatic immunity”. Nikitchenko op. cit. 365-366.


\textsuperscript{664} Denza op. cit. 210.


\textsuperscript{666} Alkis-Basil N. Papakostas: The immunity from Jurisdiction of diplomatic agents. Athens, 1967, 7.


benefits and privileges (exemption from duties and various fees, the right to the flag, the right to wear a uniform, right to seniority, etc.) greatly facilitate and support the diplomat's work.

Regardless of the tradition of inviolability of diplomats and embassies, there were many cases of grave violation of this principle in the history: envoys were imprisoned in fortresses, arrested and tortured, foreign missions were seized and everyone got massacred, who happened to be there.

In December 1520, Suleiman, the new Sultan, sent an envoy from Istanbul to Hungary. Envoy Behram came to Buda not only to announce a change to the throne, but also to renew the truce, concluded in 1519 by Selim I, the previous Sultan.

The Hungarian Government did not extend the truce, delaying the response, in the mistaken belief that the throne change in the Ottoman Empire would bring internal disturbances. Due to internal fights between the parties, the incapacitated Hungarian Government has missed to settle the Turkish-Hungarian diplomatic relations, and detained the Turkish envoy for several years.

Behram was held under guard in a small house and could not go anywhere. According to some sources, the envoy was detained, because the deadline of his stay has expired and he was not willing to stay in Hungary.

Concerning the reason for detainment of the Turkish envoy, certain authors refer to past precedents. For example, Selim I did not allow envoy Barnabás Bélay to return home for many years, therefore, the case with Behram was a retaliation. Tubero (1455-1527), a humanist from Ragusa, wrote about the incident that Hungarians, being unable to choose between war and peace, held back Suleiman's envoy contra jus gentium.

In spring 1526, Behram still was in captivity. The Hungarians offered Behram to regain his freedom, in return for writing a letter to the Sultan that the King of Hungary would like to conclude the truce, and that he is expecting.
a response to such a proposal within three weeks. Without this proposal, the Court of Buda did not dare to send a Hungarian envoy to Turkey. We do not know exactly how the Turkish envoy reacted to this proposal, but the Hungarians received no reply from the Sultan, if not to consider the battle of Mohács, as a response.

In the sixteenth century the king was the highest authority in the kingdom. This was the accepted wisdom at the time, when sovereignty was coined in 1576. The immunity of kings was expressed in the maxim *par in parem non habet imperium*, that is equals do not exercise authority over each other. State immunity grew from this personal immunity of the sovereign. While the sovereign had absolute immunity outside his state under both civil and criminal jurisdictions his diplomats during the nineteenth century also had immunity, but only in their receiving states. The strength of sovereignty reinforced the absoluteness of immunities. Envoys played a great role in representing their monarchs and leaders in foreign states and were initially inviolable and immune from the criminal jurisdiction of their receiving states on the basis of their representative status.

In the beginning of the twentieth century, the concept of exterritoriality still has been used, as a basis for extending privileges and immunities. Thus, in the following related case, concerning diplomatic privileges and immunities, *In re Zoltán Sz.*, the suspect, using deceitful information and a false document, participated in persuading the authorities at the Hungarian Legation in Vienna to issue a passport. In this case, the key question was where the felony had been committed. The Supreme Court of Hungary found that the offence was committed not abroad, but on the territory of the Hungarian state, for the premises of the Royal Hungarian Legation (with the privilege of exterritoriality) had to be regarded, as Hungarian territory.

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678 The Battle of Mohács is an integral part of the Hungarian national public awareness, and its causes and effects are still being researched by the scientists, taking into account the political and diplomatic factors, relevant to that age. Zoltán Bagi: „Nekünk Mohács kell.” („Mohács is what we need.”) In: Sándor Papp (ed.): *AETAS-Történettudományi folyóirat*. Vol. 23, No. 4, 2008, 223.

679 Kosáry op. cit. 157-158.

680 The term „sovereignty” was coined by Bodin in „Les six livres de la République.” (The six books of the Republic.) in 1576.


683 Simbeye op. cit. 96-100.

684 The principal applications of exterritoriality are: (1) Sovereigns, whilst travelling or resident in foreign countries. (2) Ambassadors and other diplomatic agents while in the country to which they are accredited. (3) Public vessels whilst in foreign ports of territorial waters. (4) The armed forces of a state when passing through foreign territory.” Mick Woodley: Osborn’s Law Dictionary. Sweet&Maxwell. Andover, 2009, 21.
Consequently, all deeds committed there had to be judged in line with the rules of criminal law of Hungary.

As Fox describes in her authoritative text on state immunity,

diplomatic immunity is given as recognition of the sovereign independent status of the sending state and of the public nature of the acts which render them not subject to the jurisdiction of the receiving state; and as protection to the diplomatic mission and staff to ensure their efficient performance of functions free from interference from the receiving state.

Equally, diplomatic and state immunity safeguard the independence and equality of states, but diplomatic immunity provides a stronger protection to the foreign representative, although this fortification is constrained limited in time and place.

(Contemporary international law usually does not establish legal differences between the different classes of diplomatic agents and confers them with equal immunities.)

States consider reasons of their own security and welfare, when and if determining limits, to be placed at foreign diplomats, who, unquestionably, cannot invoke their immunity to participate in unlawful deeds, such as unregulated commercial activities or espionage.

The accredited diplomats enjoy immunity

ratione personae

and

materiae,

and their immunity is not restricted by public acts de

jure imperii, no matter whether they perform commercial or public acts on the state's behalf. It is important to stress here that diplomatic immunity does not mean exemption from liability, but immunity from suit.

Privilege [from Latin privilegium] is freedom from some burden which others have to bear, special advantage or benefit, exempt, also belonging to class or office.

Privilege has a positive meaning and indicates in each case a surplus right, in comparison to the existing...
prevailing rules of the host country, while immunity – which has a negative meaning – stands for an exception from some legal requirement.  

The difference between a diplomatic privilege and a diplomatic immunity, according to Levi, very conditionally, is that the former is grounded on international courtesy and the latter – on public international law. In effect, the common ground for diplomatic privileges is international public law, expressed in contractual law by the Convention of Havana, Convention on privileges and immunities of the United Nations and the Vienna Convention. 

Even if the international agreements do not differentiate the privileges and immunities in a formal way, this differentiation is still strictly obeyed with respect to the content of these principles. The absence of formal differentiation illustrates the pursuit of states to emphasize the equal binding force of the privileges and immunities in contractual practice. (Depending on who enjoys the invulnerability, it could be immunity of heads of state or government, also immunity of diplomatic representatives, international officials and armed forces.)  

There are no strict rules in international law to be applied when it is necessary to decide which members of the diplomatic staff should enjoy immunity. In practice, it is widespread that members of the diplomatic staff are granted the same privileges and immunities, as heads of mission. Some states include into the circle of receivers members of the technical and service staff, as well, believing that due to the fact that these persons have access to sensitive data, related to diplomats and functioning of the mission, they also need diplomatic protection against a possible pressure of the host country.  

Diplomatic privileges and immunities altogether refer to various benefits and rights that are granted to members of diplomatic missions. However, the categories of privileges could be clearly differentiated from the categories of immunities. Privileges always grant pre-defined rights, more protection and more favorable treatment in comparison to those privileges, which nationals of the host country would be entitled to. In contrast to this, immunities are usually stand for exception from the existing obligations, regarding the population of the host country.  

The accredited diplomatic agents get diplomatic license plates, but still have to pay parking and traffic tickets. This is one of the areas, where reciprocity tends to be self-enforcing.
and contagious. Traditionally, cars with diplomatic license plates had been exempt from parking tickets, which is an extension of diplomatic immunity.

Personal immunity, according to Mazzeschi, is based on the concept that an official's acts are attributed to the individual agent, and that such immunity has the procedural nature of an exemption from legal proceedings, but then again, not from the law. Likewise, there is a general consensus on the fact that personal immunity is only available to a limited number of state officials, such as diplomatic agents, heads of state and government, ministers of foreign affairs and members of special missions, all of whom perform duties, connected to their state's international relations.

The ground for privileges is respect towards the members of diplomatic missions, while immunities are grounded on the requirement that privileged persons could perform their tasks without obstructions. Experts emphasize that immunities do not mean an exemption from the provisions of substantive law, but procedural immunity, i.e. diplomats are subject to criminal law of the receiving state, but if they violate these rules, they can not be held liable in the receiving state. It is should be noted that there are some immunities, which could not be granted to diplomatic representatives—nationals of the receiving state.

The diplomatic privilege is not a personal honor, provided to a diplomatic agent, but a result of the office he holds, i.e. matter of public law.

The situation is the same with diplomatic immunity—it is not a personal immunity of the diplomatic agent, but immunity of the sending state.

Diplomatic agents can not be held liable in the receiving state in case of violation of traffic rules, as well. Diplomats tended to break traffic regulations "ever since Daimler and Benz put a combustion-engine in a car," and the members of diplomatic corps in Norway at the beginning of the last century were no exception to this rule. In 1915, there was even created a separate dossier for traffic incidents, containing hundreds of specific cases before the World War II. The complaints and charges were made on irregular driving, speeding, hazardous overtaking and a number of parking violations. When it was needed, the Ministry of Foreign affairs would standardly respond by a verbal note. If the legations would reply, they sent some reassuring comments and promises to notify the driver.

Roskin–Berry op. cit. 267.

Mazzeschi op. cit. 5.

Frank–Sulyok op. cit. 34.

Hurst op. cit. 245.

Fox op. cit. 452.

Sharp–Wiseman op. cit. 88.
In Budapest it is an old problem, as well that diplomats do not respect the traffic rules, frequently blocking the paths, intended for bikes or pedestrians. Even if a diplomat parks his car in a forbidden place, the local authorities can not transport the vehicle away or do anything that would impede the functioning of the relevant embassy.\textsuperscript{708}

The Vienna Convention defines three groups of diplomatic privileges and immunities: I and II are privileges and immunities of the diplomatic mission, III – personal privileges and immunities. The Convention also recognizes various facilities, for example, the receiving state provides all facilities for the realization of functions of a diplomatic mission.\textsuperscript{709} Some authors believe that an ambassador – citizen of the receiving state has to enjoy full immunity and privileges, since it is not in contradiction with any prescriptions stipulation of the receiving state at the time of issuance of the \textit{agrément}, others, think that such a diplomat should only be entitled to the privileges and immunities, granted by the receiving state.\textsuperscript{710}

According to some legal experts, diplomatic privileges and immunities are considered, as part of the group of benefits, privileges and immunities in law, examined further in Chapter IV of the present work. The most important stimulants in information-psychological mechanism of legal impacts are the exemptions, privileges and immunities, which play an increasingly prominent role in contemporary legal life. Exemption from certain duties regarding foreigners is dictated by considerations of political nature (security of state, etc.). Furthermore, legal exemptions represent an exception to the general rule, deflection from the standard requirements of normative character, serving as a tool of legal differentiation. The better the law, the more differentially it regulates the specific questions of social life.\textsuperscript{711}

In opinion of Rana, privileges and immunities remain one of the pillars of the diplomatic system. They are taken for granted in times of normalcy, but function as a safety net for diplomats and embassy, when relations between countries deteriorate or when a crisis erupts.\textsuperscript{712}

In the absence of legal regulation in a particular area, governments are forced, given the particular circumstances, to make exceptions for certain persons, which leads to a large variety in practice and opens a loophole for subjectivity and even abuse.

Exemptions are primarily an element of the special legal status of a person, also a mechanism to supplement the basic rights and liberties of a subject by specific features of legal

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\textsuperscript{708} Megbélyegzik a szabálytalankodó diplomata autókat. (The violating diplomatic cars will be stamped.)


\textsuperscript{709} Vienna Convention. Article 25.

\textsuperscript{710} Blishchenko–Durdenevskii op. cit. 374.

\textsuperscript{711} Matuzov–Mal’ko op. cit. 233.

\textsuperscript{712} Rana: The 21st Century Ambassador… 57.
Subsequently, the legal benefits are legitimate exceptions (legal exceptions), established by the competent authorities in relevant regulations, in accordance with democratic procedures of legislation. Benefits are usually recorded by regulations and not by law enforcement acts. Provision of benefits in an individual way is prohibited by law to minimize mercenary considerations, which can manifest itself during this process. The category of "exemption" should be distinguished from the category of "guarantee," which is broader in scope, for the reason that it includes apart from exemptions, other legal means, such as incentives, penalties, duties, prohibitions, etc.

The main purpose of legal exemptions is harmonization of interests of individuals, social groups and the state. The exemptions connect and balance these various interests, allowing to meet them, distributing social benefits and thus contributing into the normal development of both the individual citizen and society, as a whole. Exemptions are designed to implement the ideas of justice and equality under the rule of law, being a specific criteria of the essential principles of law and its fundamental principles. (It has to be noted here that the notion of the rule of law, the term that developed under the conditions of national law, might have more than one interpretation in national legislations. In this case, these interpretations could collide under different historical circumstances.)

In addition, the lack of a defined international rule of law is often used, as a means to undermine the existence of a legitimate international legal system. A specific kind of legal exemptions is formed by privileges, which refers to special (largely exclusive, monopoly) benefits for certain subjects, primarily for government agencies and officials, necessary for the more complete and quality performance of their specific duties. Particular qualities of exemptions, which differentiate them from privileges are, as follows:

Matuzov – Mal’ko op. cit. 233.


The idea, how to apply the rule of law at the level of international law, developed later on. Ján Klučka–L’udmila Elbert: Regionalism and its contribution to general international law. UPJŠ in Košice. Košice, 2015, 117.

For example, in Hungary, the idea of the rule of law has two interpretations in the legal literature: the so called "formal" rule of law, which means the enforcement of the requirements of legal certainty, and the "material" rule of law, which also requires the enforcement of justice. Ferenc Sántha–Erika Várad i-Csema–Andrea Jánosi: Foundations of (European) Criminal Law-National Perspectives-Hungary. In: Norel Neagu (ed.): Foundations of European Criminal Law. Editura C. H. Beck. Bucureşti, 2014, 44.

In Hungary, the principles of the "material" rule of law get priority in the legislation of criminal law. Fundamental Law of Hungary. Article XXVIII.

1. If the exemptions are intended to facilitate the position of various subjects, then the privileges are mainly oriented to the political elite, the power authorities and officials. However, the privileges are established not only with relation to persons, in whom authority is vested. As monopoly, exclusive rights, they may be granted in certain cases to citizens, enterprises, institutions, organizations and other entities.

2. While exemptions apply to a larger circle of persons and have a broader scope of use, privileges are specific exemptions – exceptions to exceptions. Their number can not be large, otherwise the privileges would collide with the fundamental principles of law – justice, equality, etc.

3. Exemptions are mainly characterize the special legal status of subjects, being essentially provided to the respective groups and segments of the population (disabled, pensioners, students, single mothers, and others). The privileges could be established in special status (diplomats, deputys, ministers, etc.) and individual status (president), because they rather confirm the exclusiveness of legal capacity of persons of high rank.

4. Privileges, being exclusive rights, act in fact, as more detailed and personalized legal means. Privileges are exemptions from both general and special norms of law. Therefore, in principle, exemptions and privileges can relate to each other as categories of „special” (exemptions) and „individual” (privilege). Furthermore, due to the different social roles of different actors in social life, law, on the one hand, attempts to align their actual inequality with the help of exemptions, and on the other hand, law through privileges highlights those, who need this for the full implementation of their specific duties.719

Diplomatic immunity is a notion of international law by which certain foreign government officials are not subject to the jurisdiction of local courts and other authorities. In the history of development of diplomacy law, there were at least fifteen diplomatic immunity theories, put forward by different lawyers.720 In modern legal literature there are being discussed three theories: extraterritoriality, functional necessity and representative theory.721

Peters declares that „Immunities are a messy affair. They oscillate between law, politics and comity.”722 Damrosch points out that throughout history, immunities have often been

719 Matuzov–Mal’ko op. cit. 233-234.
721 Demin op. cit. 23.
Concerning legal immunity, it is viewed as a special group of exemptions and privileges, generally related to the exemption of persons (specified in the Constitution, also in rules of international law and certain statutes), from definite duties and responsibilities. Legal immunity is designed to ensure that these individuals would comply with their respective functions. Immunities, being a particular kind of exemptions, and privileges, certainly, have common features, by:

- creating a special legal regime that allows facilitating the position of respective subjects and enhancing the opportunities to address certain interests. (Actually, this is what exemptions, privileges and immunities are intended for.) In particular, diplomatic and parliamentary immunity also serves for this purpose. In addition, exemptions, privileges and immunities denote positive legal motivation;
- functioning as guarantees of socially useful activities and contributing into the implementation of specified obligations;
- acting as peculiar exclusions, legal exceptions for certain persons, established in special legal norms;
- serving, as forms of differentiation of legal ordering of social relations.

At the same time, immunities have their own very specific features, and this allows to distinct them from exemptions and privileges, also proves their independent legal nature. Given that privileges are in the main embodied in advantages – in so-called positive exemptions, the immunities, on the contrary, are a form of negative exemptions (freedom from certain obligations, such as paying taxes, fees, witness immunity, etc., release of liability). The "negativity" of immunity is its specific feature, which allows to achieve goals in a certain way. Respectively, the purpose of immunity is to ensure the implementation of international, governmental and public functions, official duties.
international law, the Constitution and domestic law. (Diplomatic corps is not considered to be a juridical person, based on a norm of diplomacy law. All the same, diplomatic corps is accepted as a public institution with limited functions, in accordance with international traditions and customs.)

In consequence, on the basis of the above said, the following conclusions could be made: immunities are a general legal category, for they are established according to the rules of international, constitutional, criminal, and civil procedure. Experts admit, though, that the previously mentioned features of legal immunities are rather conventional, since privileges and immunities are very closely related concepts, in many ways.

As noted by Demin, the position of certain scholars, such as Bogdanov, Hardy, Jecny, Ganiushkin, Nikolaev, Nikiforov, Borunkov, Sandrovskii, Movchan, Ushakov, Levi, Levin suggest the emergence of a new approach to the institution of diplomatic immunities and privileges, which has not received yet a proper development in the doctrine of international law.

At the same time, some authors do not share this opinion, such as Denza, considering that the justifications for diplomatic immunities of states are different, as evidenced by the growing volume of detailed rules and exceptions in the areas of both immunities. There is no coherent theory yet of this new approach to the institution of diplomatic privileges and immunities, and there are only scattered utterances of individual jurists, which can be

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729 The diplomatic corps is not mentioned in the Vienna Convention, and according to Sharp and Wiseman, its role was not considered to be of sufficient importance. Sharp–Wiseman op. cit. 32.
731 Matuzov-Mal’ko op. cit. 232-235.
732 O. V. Bogdanov: Pravovye voprosy prebyvaniia OON v SSHA. Privilegii i immunitety OON. (Legal questions of the UN in the USA. Privileges and immunities of the UN.) Izdatel’stvo IMO. Moskva, 1962, 49.
733 Hardy op. cit. 43.
735 B. V. Ganiushkin: Diplomaticheskoe pravo mezhdunarodnykh organizatsii. (Diplomacy law of international organizations.) Mezhdunarodnye otnosheniia. Moskva, 1972, 169.
736 A. Nikolaev: Diplomaticheskie immuniteti i privilegii. (Diplomatic immunities and privileges.) Mezhdunarodnaia zhizn’. No 8, 1983, 152.
739 A. P. Movchan–N. A. Ushakov: Kodifikatsiia i progressivnoe razvitie mezhdunarodnogo prava na sovremennom etape. (The codification and progressive development of international law at the present stage.) MGIMO. Moskva, 1975, 118.
740 Ibid.
742 Levin op. cit. 270.
743 Denza op. cit. 284.
The privileges and immunities are based on the principle of the sovereign equality of states, and according to this principle, the diplomatic representation, as a state body is released from the jurisdiction of the receiving state.

This emerging theory could be conventionally called the "theory of sovereign immunity of states". One of the universally recognized principles of international law is the principle of sovereign equality of states, which is the base for state immunity from foreign jurisdiction.

The diplomatic mission is a public body of the sending state and owing to state immunity, is exempt from the jurisdiction of the receiving state.

In this way, the immunity of the sending state explains the need to provide privileges and immunities to its diplomatic missions. This common justification suggests an equal volume of immunity of all foreign bodies of external relations, which state of affairs is mainly reflects the existing practice. The proposed theoretical basis explains the need for privileges and immunities of diplomatic agents, who should be considered as employees of public institutions, therefore to be exempt from the jurisdiction of a foreign state. In point of fact, diplomatic immunities are provided not to members of diplomatic missions, but to the sending state in respect of its employees abroad. (In theory, this concept assumes provision of equal status for all employees of the diplomatic mission, in practice, though, the different categories of personnel enjoy different scope of privileges and immunities. Experts believe that this is a temporary ambiguity, as evidenced by the trends in the development of practice in the field of privileges and immunities.)

The existing vagueness between the theory and practice of diplomatic privileges and immunities, indicates the new trends, developing in this area of diplomacy law. One of the trends is the steady expansion of the circle of persons, who enjoy privileges and immunities, and the other one is erasing of differences in the status of various categories of diplomatic staff.

These tendencies presume that the diplomatic status, except, perhaps only the honorable privileges, will gradually be extended to all categories of diplomatic staff, although this process is repressed by certain factors, such as differences between states in terms of politics, population, geographical location, the nature of relations in the international arena, as well as by the strengthening of the current trend towards limiting diplomatic privileges and immunities.

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744 Charter of the United Nations. Article 2(1): "The Organization is based on the principle of the sovereign equality of all its Members."

745 Demin op. cit. 29-32.

746 Demin op. cit. 32-34.
III. 3. The commencement and the termination of diplomatic privileges and immunities

III. 3. 1. The theoretical and practical aspects of the commencement of diplomatic privileges and immunities

Regarding the duration of diplomatic privileges and immunities, conventionally, the foreign representative is allowed to enjoy them during his stay in the receiving state, to realize his scope of duties. In case of heads of mission, this period activates with the instant when the government, they are accredited to, provided the official approval, the agrément. The issuance of the agrément means that the administration of the host state expresses its inclination to receive a state official, as the representative of his country. The appointment of foreign officials is completely an internal affair of a state, but the reception of such officials has an international aspect.

Correspondingly, the receiving state has to provide the diplomatic mission of the sending state with the facilities, needed for its functioning, along with provision of a comprehensive facilitation, to protect the diplomatic premises, which includes immunity from the search of premises or means of transport and protection of archives, documents, official correspondence, personal correspondence and property of officials, also the diplomatic bag can not be opened or detained.

Above and beyond, diplomatic agents are released from the obligation of any personal and public services. The exemption of diplomatic agents from all personal services, natural

747 The embassy premises and accommodations for embassy personnel are chosen, being guided by the principles of reciprocity and equitable cost. The terms and conditions of possible constructions are established in separate agreements between the sending and the receiving states. Marian Nash Leich: Contemporary practice of the United States relating to international law. The American Journal of International Law. Vol. 81, 1987, 651-642.
748 Vienna Convention. Article 21(1).
749 Doc. cit. Article 25.
750 Doc. cit. Article 30.
751 Doc. cit. Article 22.
753 Doc. cit. Article 27(2).
754 Doc. cit. Article 30.
755 Doc. cit. Article 27(3).
756 Doc. cit. Article 35.
and fiscal duties is also included in national laws of some states. The host country releases the diplomatic agent from custom duties and taxes (besides, some related charges). The exemption of diplomatic missions from taxes on export and import goods is a normal avowed international practice in the legal system of many states. (Further aspects of diplomatic exemptions would be discussed in Chapter IV of the present work, which is devoted to the kinds of diplomatic immunity.)

If the sovereignty of a state is limited because of its membership in a unity of state, its right to send and receive diplomatic agents depends on the nature of the association and the existing constitutional and treaty norms. In a federal state, this right usually belongs to the federal authorities, for example USA, Switzerland, Mexico and Brazil, but in this case there is a number of discrepancies. According to the German Constitution of 1871, states, entered in the empire, had the right of appointment and acceptance of diplomatic agents, along with the emperor, although this right was actually used only by a few of them, such as Bavaria and Württemberg.

There is no duty, however, in diplomacy law, to receive diplomatic envoys. A state neither is bound to receive permanent envoys, nor to send them abroad. In practice, though, every full sovereign state, which desires its voice to be heard in other states, receives and sends permanent envoys, as unless it did so without be unable to exercise its full influence in international affairs.

On obtaining the approval, the diplomat is provided with the letter of credence – lettre de créance, which is handed over at the reception to the head of the foreign.
In the past, the event of death of the sovereign, new authorizations were required, but this accidental state of affairs did not affect the privileges and immunities of the diplomat – they continued to be present for the period until the new permissions would arrive. 

766 The establishment of diplomatic missions and diplomatic relations are governed, according to the Vienna Convention by the consent of two states. The Convention does not try to specify manage the time when the consent is given or rejected.


769 Recognition is important to become a member of the community of states and a subject of its law – this is how states achieve membership and personality. By becoming a member of the community, states become subject of its rights and duties. Corbett op. cit. 67-68.

770 Jennings–Watts op. cit. 1064-1065.

771 Despite of the lack of official acknowledgement, Dana worked in Russia, as a private citizen, to build support for the American cause.

772 This decision was conveyed by Russian Special Envoy Maksim Alopeus to William Pinkney, American Minister-Designate in London.
and Russia appointed their first minister-level representatives. Andrei Dashkov, chargé d'affaires, formally presented his credentials to President James Madison, while John Quincy Adams presented his credentials to Tsar Alexander in St. Petersburg.

It should be added here that a state possess immunity, even if its government has not been recognized.

The immunity relates not to the recognition of a state or a government, but to the fact of existence of a sovereign state. Moreover, possession of immunity does not depend on whether a foreign state maintains diplomatic relations with an other state in the court of which the question of immunity arises.

However, states are not always observe international norms, and appoint their diplomats, sometimes, without obtaining the preliminary permission of the host country. (It is worth mentioning at this point that in certain cases, however, the request of the agrément depends not only on the subtleties of protocol, but on circumstances of current political situation.) In 1959, the United States Department of State recalled the American Ambassador in Indonesia. Howard P. Jones was appointed instead of John Moore Allison, without receiving the agrément from Indonesian Government, prior to the appointment. Subandrio, the Minister for Foreign Affairs of Indonesia at that time, declared that the appointment of the new American Ambassador by the United States without preliminary consultations with the government of Indonesia was violation of the existing international rules.

Arguments between states over diplomats could even lead to the rupture of diplomatic relations, as it is illustrated by the "Petrov Affair". In 1954, V. M. Petrov, the Third Secretary of the Soviet Embassy in Canberra, quit his diplomatic service, supposedly, taking some documents with him, sought for the protection of the Australian Government. The Russian diplomat was soon granted political asylum. The Soviet Embassy stated that Petrov, allegedly, absconded with Embassy funds and as a common law criminal, had to be delivered back to the Soviet Embassy. The Soviet Government soon made certain allegations and charges against


A distinction should be made between the recognition of a state and the recognition of a government, however. If the government of a state has changed, it does not require any special recognition, but if the change of government occur through violent and not constitutional means, under the guise or the fact of regime change, then the new government normally requests a special recognition from the interested foreign powers. While this recognition has not taken place, diplomatic connections with a state, led by such government are generally interrupted. Flachbarth op. cit. 74-75.


And one powerful reason why states do and always complied with international law is that they make rules to serve their interests. Lowe op. cit. 19.

Australia in a Note Diplomatique and eventually broke off diplomatic relations with the receiving state. The Russian Embassy Staff had to leave the country. The Soviet interests in Australia were entrusted to the Swedish chargé d’affaires.\textsuperscript{776}

It should be specified here that no one can impose on a state the obligation of establishment (or re-establishment) of diplomatic relations with an other state, if a state does not want this act. At the beginning of the last century, it was of particular importance to normalize the Soviet-American relations. On 16 November, 1933, there was concluded the agreement on restoration of the Soviet-American diplomatic relations.\textsuperscript{777} Thereafter, Czechoslovakia, Romania, Hungary, Bulgaria, Albania, Belgium, Luxemburg and Columbia had also established diplomatic ties with the Soviet Union.\textsuperscript{778}

The other case in point for the decision of recognition of a state is when the Communist China was free to refuse to recognize the government of Taiwan at times of the Cold War.\textsuperscript{779} (The legal effects, following from the recognition, have made it to be regarded, as one of the most important unilateral acts of states. Consequently, recognition is the acceptance by a state of a new state of affairs, which may have legal consequences.)\textsuperscript{780} Further, non-existence of diplomatic relations must be distinguished from non-recognition, although the existence of diplomatic relations, necessarily implies mutual recognition.\textsuperscript{781}

Subsequently, owing to the fact that no state is legally obliged to establish diplomatic relations with an other one, no state is obliged to receive any designated individual, as an envoy of a foreign state, as well, as it had been stated above. In the following cases, the receiving states have declined in the past to accept the nominated diplomats: Sénonville, sent by France to Sardinia (1792); Pinckney, sent by the United States to France (1796); Marshall, sent by the United States to France (1797); de Rehansen, sent by Sweden to France (1797); Oñis, sent by Spain to the United States (1811); von Martens, sent by Prussia to Sardinia (1820); Sir Stratford Canning, sent by Great Britain to Russia (1832); Count of Westphalia, sent by Prussia to

\textsuperscript{776} Glichitch op. cit. 20.
\textsuperscript{777} In the course of diplomatic negotiations, the parties had to overcome many difficulties, for the Americans insisted on debt assumption of the Russian Provisional Government and the compensation of the American industrialists, but eventually, they had to withdraw from these claims. Géza Herczegh: A diplomáciai kapcsolatok története. II. rész. 1933-1945. (The history of diplomatic relations. Vol. II. 1933-1945.) Tankönyvkiadó. Budapest, 1966, 19.
\textsuperscript{778} Herczegh op. cit. 20.
\textsuperscript{779} Philippe Blanchèr: Droit des relations internationales. (Law of international relations.) LexisNexis SA. Durban, 2015, 121.
\textsuperscript{781} Grant–Barker op. cit. 157.
The legal status of the diplomatic agent is categorized by accreditation, representative character and immunities. The representative character of the diplomatic agent means his ability to act on behalf of the sending state, and also that once accredited, he does not need further authorizations for his activity in the receiving state. On condition, this activity of the diplomatic agent confronts the politics or interests of the sending state, its government can disavow the representative, announcing that it does not approve his deeds or statements. In particularly serious cases, the sending state might recall the diplomat.

The recall of persona non grata ambassadors, if not executed at the request of the receiving state, usually happens upon the letter sent by head of the sending state to the head of the receiving state. The letter of recall – lettre de rappel – as well as the letter of credence is usually handed over by the diplomatic representative to the head of state in a solemn audience. The chargé d'affaires hands in the letter of recall of his Ministry of Foreign Affairs to the foreign minister of the receiving state.

In this mode, under the former practice, the inviolability of a diplomat commenced from the moment when he arrived to the territory of the host state, and ended when he left this country (crossed the border).

The Vienna Convention encompasses this rule, specifying that if the diplomat is on the territory of the host state already, diplomatic privileges and immunities start from the time, when the Ministry of Foreign Affairs (or an other ministry, agreed upon) was notified on diplomat's appointment.

The United States did not recognize for a long time the international existence of the principle, according to which, the host state was not obliged to accept an appointed head of mission without the agrément. The United States officially insisted on this practice until 1950s, but during the preparation of the Vienna Convention, it had not argued the established practice anymore. Kovács: International… 393.


Lukashuk: Mezhdunarodnoe… 244-245.

"Persona non grata" is a declaration that a specifically named individual diplomat is no longer welcome on the territory of his host state and must leave or may not return. Freeman: The Diplomat's… 165.

It often happens, though that the letter of recall is submitted by successor of the recalled diplomatic representative, at the occasion of handing in his own letter of credence.


Levin – Kaliuzhnaia op. cit. 203.

Vienna Convention. Article 39(1). DOI: 10.15774/PPKE.JAK.2017.003
The functional immunity for official acts\textsuperscript{789} of the diplomatic agent\textsuperscript{790} continues, according to the provisions of the Vienna Convention, when privileges and immunities are extinguished in the following specified cases: when the diplomat’s appointment is over; he leaves the host country; the provided reasonable period has expired.\textsuperscript{791} (The interpretation of the concept of „official acts” is subject of different opinions, however.)\textsuperscript{792} The listed privileges and immunities are valid for the indicated time even in situations of armed conflicts\textsuperscript{793} and this applies to the premises of the diplomatic mission, as well.\textsuperscript{794}

Regarding the commencement of privileges and immunities, the Vienna Convention differentiates the persons outside, from those inside of the host state at the time of diplomat’s official appointment.\textsuperscript{795} In the first case, the privileges and immunities are valid from the moment the diplomat „...enters the territory of the receiving State on proceeding to take up his post...”, and in the second case – when he is already in the receiving state – privileges and immunities begin from the moment when his appointment is notified to the Ministry of Foreign Affairs or other, appropriate ministry.\textsuperscript{796}

Consequently, the moment of validity of diplomatic privileges and immunities is differentiated (independent) from the approval of diplomat’s appointment by the receiving state. (The host state can not revoke the selected candidatures, made by the sending state, thus being obliged to attribute any person with diplomatic privileges and immunities, except for the head of mission, service attachés and his own citizens.)\textsuperscript{797} There is a provision of notification of the Ministry of Foreign Affairs about the arrival and final departure of the persons, eligible for diplomatic immunities and privileges, which should be preferably made in advance.\textsuperscript{798}

In \textit{R. v. Madan}\textsuperscript{799} it would seem that only the head of mission can waive diplomatic immunity in respect of those, who are otherwise entitled to it and only the sending state can do so in respect of the head of mission. In \textit{R. v. Palacios}\textsuperscript{800} it was held that a diplomat does not

\textsuperscript{789} In opinion of Brownlie, the definition of official acts is not self-evident, the concept presumably extends to matters, which are essentially in the course of official duties. Brownlie: Principles... 361.

\textsuperscript{790} The persons, connected to the diplomat, such as family members and private servants are also entitled to diplomatic privileges and immunities, for the length of the relationship. Vienna Convention. Article 37.

\textsuperscript{791} Doc. cit. Article 39(2).

\textsuperscript{792} Mazzeschi op. cit. 5.

\textsuperscript{793} Vienna Convention. Articles 39(2), 44.

\textsuperscript{794} Doc. cit. Article 45(a).

\textsuperscript{795} Doc. cit. Article 39(1).

\textsuperscript{796} In case of family members and personal servants, the information of the appropriate ministry should be made, as well. Doc. cit. Article 39(1).

\textsuperscript{797} Doc. cit. Article 10(1) (b), (c), (d).

\textsuperscript{798} Doc. cit. Article 10(2).

\textsuperscript{799} \textit{R. v. Madan}. 1 All E. R. 588 at 591 (CA) [1961].

\textsuperscript{800} \textit{R. v. Palacios}. O. J. No 3104, 7 D.L.R. (4th) 112 (Ont. C. A.) [1962].
lose his immunity by temporary departure from the receiving state after his duties are terminated. The immunity lasts until he permanently departs from the receiving state. Immunity for actions, done by diplomats in their official capacity, continues after they have ceased to be a diplomat.

The case of Empson v. Smith illustrates the question of timing. Smith, an administrative officer, employed at the Canadian High Commission in London, in 1963, successfully appealed for diplomatic immunity and obtained a stay of proceedings, brought against him for breach of a tenancy agreement. During the time, when the decision was in the course of appeal, the Diplomatic Privileges Act was adopted in the United Kingdom in 1964, the provisions of which limits immunity from civil proceedings of members of administrative and technical staff, in relation to acts, performed in the course of their functions.

The Court of Appeal accepted the appeal, because the initial action of Smith was voidable and the Act had to be applied retrospectively in that case.

A year later after the verdict of the court, in Ghosh v. D’Rosario, on the contrary, an action have started against a person, who did not have diplomatic immunity. The action had to be refused then, as soon as the immunity had been granted. In all cases the immunity is only from jurisdiction in the receiving state and not from liability, that is “It is elementary law that diplomatic immunity is not immunity from legal liability but immunity from suit.”

III. 3. 2. The theoretical and practical aspects of the termination of diplomatic privileges and immunities

As regards the “moment”, when diplomatic privileges and immunities end, usually it is effected, when the official functions of a diplomatic agent expire and he leaves the host state. Principally, an assignment of diplomatic agent ends in cases, when the sending state recalls him; a war breaks out between the two states (which always reconstructs the international law).
relations between states in war);\textsuperscript{809} the diplomatic relations are interrupted; the sending or the receiving state ceases; the diplomatic representative dies; there are personal changes regarding the head of the sending or the receiving state (except for the functions of head of state shall be provided by a corporate body); there is a change in the form of government of the sending or the receiving state.

The request of the receiving state for recall of a member of a diplomatic mission of the sending state may involve any member of a mission, before or after he has been formally received. There have been numerous cases of such evokes in history of diplomacy law. Some examples from past American experience in case of chiefs of missions are, as follows: case of Genêt by the United States in France (1972); Morris by France of the United States (1793); Pinckney by Spain of the United States (1804); Poinsett by Mexico of the United States (1829); Jewett by Peru of the United States (1846); Wise by Brazil of the United States (1847); Marcoletta in the United States of Nicaragua (1852); Segur by the United States of Salvador (1863); Catacazy by the United States of Russia (1871); Thurston by the United States of Hawaii (1895); Dupuy de Lôme by the United States of Spain (1898); Dumba by the United States of Austria-Hungary (1915).\textsuperscript{810}

The requests for the recall of members of the official personnel were, for example, cases of Boy-Ed and Von Papen, both military attachés of the German Embassy at Washington (1915) or Von Krohn, the German naval attaché at Madrid (1918). In each of the listed cases, the request for the recall was complied with by the sending state.\textsuperscript{811} It should be added here that by virtue of the Vienna Convention, in the case of military, naval and air attachés, the receiving state might require their names for approval, beforehand.\textsuperscript{812} In practice, sending states announce the names of such diplomats without prior inquiry of approval.\textsuperscript{813}

Róza Bedy-Schwimmer\textsuperscript{814} was Hungary's first female ambassador, appointed on 19 November, 1918, to represent the first democratic Hungarian Government in Switzerland, by virtue of her excellent political relations. In January 1919, she was recalled, however, due to

\begin{flushright}
\textsuperscript{810}Reves op. cit. 77.
\textsuperscript{811}Reves op. cit. 78.
\textsuperscript{812}Vienna Convention. Article 7.
\textsuperscript{813}Petrik op. cit. 61.
\textsuperscript{814}Bedy-Schwimmer was best known abroad, as Rosika Schwimmer.
\end{flushright}
lack of success and resigned in the same year. (Political attacks on her and the Hungarian Government were owing to the fact that Bedy-Schwimmer was a woman.) Szemesi notes that the reason of termination of diplomatic status is related to the diplomat’s person, in case of a final recall, too, when it takes place at the request of the receiving state. In 1991, Péter Zwack, the Hungarian Ambassador to Washington, was recalled by the Hungarian Government, after he called on through the press Géza Jeszenszky, the current Foreign Minister of Hungary, to resign.

The authority of the host state to require the sending state to remove the diplomatic agent(s) in question reflects the fact that there is no right of legation and all diplomatic relations are based on consent.

In case, the sending state does not remove its diplomatic representative within a reasonable time, the host state may cease to recognize the diplomat, as part of the mission, and act, as though diplomatic immunity has lapsed.

The offence towards the designated ambassador before the time, when the host state would accept the agrément, was not considered, as an international delinquency. The inviolability could not be extended to causes when the ambassador committed a crime against the public security, thus provocation defensive measures from the part of authorities of the receiving state or when he was hurt in a situation, not directly connected to his international status, also when the lawbreaker was not aware of offending an ambassador. When being hurt by a civil person, the ambassador could ask for recompense only under the law of the receiving state.

Traditionally, the termination of diplomatic privileges and immunities was not effective right from the moment of expiry of diplomatic functions and still lasted after the diplomat’s official functions were concluded, for a period, sufficient to finish his affairs and return home. The duration of this period had to be defined by the government, to which the diplomat was accredited, but normally it was long enough, to allow the diplomat to leave the host country without unsettling of his affairs.

The Dupont v. Pichon was one of the earliest cases, associated with the question of duration of diplomatic privileges and immunities.

Pichon was


Szemesi op. cit. 143.


Boas op. cit. 277.

Hurst op. cit. 294.

a French chargé d’affaires in the United States, who had to return home after a new minister
plenipotentiary had to arrive in the United States from France in November 1804. In March
1805, a suit was started against the diplomat, while he still resided in the United States. Pichon
explained the delay in his departure by the necessity of completing his affairs, in the position
of chargé d’affaires. The diplomat also claimed that his papers had not arrived yet and that he
had difficulties getting a passage for Europe. Eventually, Pichon applied to the court of law
with a request of annulment of the proceedings. The American court accepted the explanation
and the proceedings were negated.

An action might be brought against the diplomat, only when he did not leave the host
country prior to the expiration of the provided reasonable period, but the measurement of this
period of time is influenced by the given circumstances, for example in case of an armed
conflict, it would be an estimated period of time. Customarily, the receiving and the sending
states would come to an agreement, as to the duration of the reasonable time needed and did
not turn for fairness to the court. There are exceptions from this practice, when the sending state
may assist the exercise of local jurisdiction by termination the diplomat’s functions and waive
his immunity.

In January 1989, Rudy Van den Borre, a Belgian soldier, member of the administrative
and technical staff of the Belgian Embassy in Washington, was arrested in Florida, after
confessing to two homicides, while being on vacation in that state. Since the staff member
was entitled to complete criminal immunity and freedom from arrest or detention under the
Vienna Convention, the Foreign Department immediately asked Belgium to waive his
immunity. The Belgian officials waived diplomatic immunity for Van den Borre, in exchange
for assurances that the Broward State Attorney’s Office would not see a death penalty for the
accused, if he was convicted, thus allowing the American officials to begin the steps toward
criminal prosecution. First, Belgium waived the immunity for the limited purpose only, until
the time of careful review of the situation. The immunity had been waived then completely, to
let the arrested be tried. The defendant was convicted of two murders of first degree by a U. S.
court to life imprisonment and incarcerated in Florida.

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821 The murder was committed by a gun from the Belgian Embassy, being an act of revenge against a male lover,

as a Broward Circuit Court jury was told, according to the press. Larry Keller: Belgian Soldier’s Trial in Beach

20 January, 2016.) https://www.washingtonpost.com/archive/politics/1989/01/13/embassy-driver-held-in-fla-
slayings/712bc04b-b9a9-4fd6-8e6e-b14d01efc0d0/

The assignment of a diplomat with definite mission or definite period of time ceases in cases, when the mandate was fulfilled or the performance of that became impossible; when the fixed period has elapsed; there is a change in ambassador's rank; the diplomat's mission was suspended.

The commencement of diplomatic privileges and immunities in effect, certainly, did not start solely with the presentation of credentials, otherwise the diplomat, theoretically, might never get in a position to reach his destination place. The diplomat was able to enjoy privileges and immunities when he was already resident of the host country, upon the government to which he was accredited to, was informed of his appointment.

As a matter of course, privileges and immunities used to be granted to the diplomat from the moment, he entered the jurisdiction of the receiving state and ended, when he left it.

The other important factor, concerning the termination of diplomatic privileges and immunities related to acts, performed by a diplomat, exercising his official functions – in which case the immunity continues to exist in recognition of the fact that the acts, performed by the diplomat represent the sending state and they were not performed in the diplomat's personal capacity.

Omission of observance of the standards of respect and esteem towards the government, and laws of the receiving state, expected from the accredited diplomatic personnel of the sending state, could result in recall or removal of the disrespectful diplomat from office. In the unfortunate case of diplomat's death, the members of his family continue to enjoy the privileges and immunities.

A diplomatic mission could be terminated, among others, when the sending state informs the receiving state that the diplomatic representative's official functions are expired, the receiving state notifies the sending state that in pursuant with the provisions of the Vienna Convention, it is not willing to accept the diplomat, as a member of diplomatic representation.


The movable possessions of the deceased may be removed, except for items, the export of which is prohibited in the host country. The transportation of the belongings of a deceased are allowed in case of death of a member of the diplomat's household, as we'll. Vienna Convention. Article 39(4).

The relatives of the diplomat are entitled to these advantages until the expiration of the reasonable period, needed to leave the host country. Doc. cit. Article 39(3).

Doc. cit. Article 43(a).

The sending state denies or fails to recall its diplomatic agent, announced persona non grata by the host country or fails to terminate his diplomatic functions, within reasonable period of time. In this case the host country is authorized to deny the acknowledgement of the diplomat in question as member of diplomatic representation. Doc. cit. Article 9(2).
Further reasons for termination of a diplomatic mission are the diplomat’s recall from the host state or extinction of the host country, and outbreak of war between the receiving and the sending state.

The outbreak of war causes at once the breaking off any continuing diplomatic relations between the belligerents. The diplomats of both sides are recalled and leave for home, as soon as the necessary arrangements for their safe return can be made. In case, the conditions appear to make it desirable, enemy diplomatic personnel may be safeguarded in some particular location, to ensure observance of its immunity and safety, as it happened with the Japanese diplomats in the United States in December 1941. In rare cases, a member of the diplomatic mission can be left behind, in charge of both the building and archives, but certainly, this can be done with the permission of the host government.

The fact that an outbreak of hostilities between the sending and the receiving state would not affect diplomatic privileges and immunities is confirmed by the Vienna Convention, completed with a prescription that the receiving country has to allow the official (if he is not citizen of the receiving state), together with members of his family (no matter of their citizenship) to leave the territory at the earliest possible time. The host country might be asked for providing the necessary means of transportation of the departing persons, and their property, if requested. And finally, in case of breach of diplomatic relations the receiving state has to respect and protect the premises of the diplomatic mission, along with the related property and archives. The protection in this case is provided independently from the reason of the breach of diplomatic relations.

To be noted here that the rupture of diplomatic relations does not necessarily mean outbreak of war between the parties. The sending state is allowed to delegate the guarding of diplomatic premises, together with the related assets and archives to a third country, acceptable
III. 3. 3. Diplomatic relations with authorities in exile

It is important to mention here that states do not maintain formal diplomatic relations with authorities in exile, if they do not recognize the related governments. (In case, states recognize the governments in exile, they would establish and maintain diplomatic relations with them.) In the same fashion, as a state can not recognize at the same time both an authority in situ and an authority in exile, as a government of a state, it can not maintain formal diplomatic relations at the same time with two authorities, one in exile and one in situ, both claiming to be the government of the same state. This matter is closely connected with the question for recognition, because the presentation or acceptance of letters of credence implies recognition of the government in question. Even so, states may maintain formal diplomatic relations with one authority and official, but informal relations with the other one, or they may maintain informal relations with both authorities.

In case of authorities in exile, the governments of which states do not recognize, states do not exchange ambassadors or ministers with such authorities, but representatives with some diplomatic-sounding title, such as "representative with the personal rank of ambassador", "representative with ambassadorial status", "plenipotentiary representative", "chef de mission", "representative", "delegate" or "gérant des affaires". Similarly, the offices of such authorities are not referred to as Embassies, Legations or Consulates, but as "Delegations", "Commissions" or "Bureaux Consulaires".

The absence of formal diplomatic relations has not precluded states form granting in individual cases and as a matter of courtesy (and not of right) such representatives, delegates, etc., and their respective offices diplomatic status or certain diplomatic privileges and immunities. (In states, which do not recognize an authority in exile, as a government and which are not prepared to grant its representatives certain diplomatic privileges and immunities, as a matter of courtesy, representatives of an unrecognized authority in exile, still may benefit from...
so-called „borrowed diplomatic status”, i. e. they may enjoy diplomatic status, as members of diplomatic missions of other states.\textsuperscript{844}

In view of the right of the receiving state to declare any member of a diplomatic mission \textit{persona non grata},\textsuperscript{845} the enjoyment of borrowed diplomatic status requires, at least, the connivance of the receiving state. When a government is forced into exile by belligerent occupation, the question arises whether foreign diplomatic and consular missions may remain in the occupied territory or whether they must follow the government into exile or return to their own country. In majority of such cases, the sending states either instructed their diplomatic agents to follow the government into exile or were requested to recall them by the belligerent occupant.\textsuperscript{846}

With respect to the provisions of the Vienna Convention, the diplomatic status of the government in exile, along with its diplomatic representatives in the host state, is not explicitly addressed by the Convention, however. The Convention applies to the diplomatic agents, accredited to the host government only.

### III. 4. The factors of reciprocity and non-discrimination, with regard to diplomatic privileges and immunities

#### III. 4. 1. The conceptual clarification of the notion of reciprocity

Diplomatic relations, traditionally, take place by mutual consent of states,\textsuperscript{847} accordingly, reciprocity is a „\textit{cardinal feature of the tradition}”.\textsuperscript{848} In the past, it was an important requirement regarding the envoys, to treat them by receiving states, according to certain customs – rituals and ceremonies that were built on habitual standards of hospitality. Some societies attached great importance to the principle of reciprocity,\textsuperscript{849} when dealing with messengers, and disrespecting or injuring a delegate could be used, as \textit{casus belli} – an alleged reason for war.

\textsuperscript{844} Talmon op. cit. 156-157.
\textsuperscript{845} Vienna Convention. Article 9(1).
\textsuperscript{846} Talmon op. cit. 159.
\textsuperscript{847} In diplomatic practice, the mutual consent of states may also be expressed quite informally. Brownlie: Principles... 350.
\textsuperscript{848} Eyefinger: Diplomacy ... 837.
\textsuperscript{849} Pfeffer asserts that states can always find opportunities to help those whose support they want. Although the \textit{quid pro quo} rarely needs to be explicit, helping people out revokes reciprocity – the almost universal principle that favors must be repaid. Jeffrey Pfeffer: Power Play. Harvard Business Review. July-August, 88/2010, 87.
Then, with the establishment of permanent embassies by the end of the Middle Ages, the requirement of treating ambassadors with proper esteem, the emphasis on following the rules of hospitality, even increased. The theories of functionality and reciprocity in diplomatic practice, continued to be central and this state of affairs remained unaffected until the nineteenth century, when the Congress of Vienna accentuated the functional approach over the personal approach to diplomatic immunities. In spite of improvement of diplomacy, along with the advancement of diplomacy law, it was not free of the power of customs after the period of the Middle Ages, as well.

With regard to the term "reciprocity", it has several meanings, applied in law, since private international law and national regulations borrowed this concept from international law. The ancient principle of reciprocity, practically, means mutual benefits, being a key notion of diplomatic relations, and was so generally observed, due to being consonant with practical needs. Those countries, which respected the envoys and facilitated the discharge of their mutually helpful mission, in the course of national survival had a distinctive advantage over the societies that did not provide the legates with adequate protection and immunity, in order to enable them to realize their functions.

According to the principle of reciprocity (or mutuality), states have to build relationships with each other on a mutually beneficial and equitable basis, taking into account the legitimate interests of the other party, par excellence in matters of ensuring...
international peace\textsuperscript{858} and security.\textsuperscript{859} Moreover, Southwick believes that \textit{"Reciprocity stands as the keystone in the construction of diplomatic privilege."}\textsuperscript{860} Russel defines reciprocity, as a \textit{"state of affairs existing between two countries and relating to one particular branch of law"}, dividing the notion into internal reciprocity, related to domestic matters and external reciprocity, connected to the cases with involvement of courts of foreign countries.\textsuperscript{861}

The principle of reciprocity is the advancement of a more general and more ancient principle – comity\textsuperscript{862} (\textit{comitas gentium}) that requires states to treat the foreign rule of law with polity and consideration, hence, comity demands to respect foreign law.\textsuperscript{863} Mann believes that comity – \textit{courtoisie internationale},\textsuperscript{864} is one of the most ambiguous and multifaceted conceptions in law, particularly in the sphere of international affairs,\textsuperscript{865} and it is hard not to agree with him, since the concept has broadened by now, being applied, as synonym for a rule of public international law, a moral obligation, expediency, courtesy, reciprocity, utility, custom, private international law and others.\textsuperscript{866}

Reports on international events occasionally refer to \textit{"rules of comity"} (\textit{courtoisie}).\textsuperscript{867} An example is the practice of a sending state to refrain from publishing the text of a diplomatic note prior to its receipt by the receiving state. Comity represents modes of state behavior that do not involve binding or legal obligation. If such an obligation existed, the rule in question

\textsuperscript{858} In words of Brzezinski, \textit{"... a gradually emerging community of the developed nations will be in a better position to pursue true détente, the aim of which is not an artificially compartmentalized globe, fundamentally in conflict with basic global dynamics, but a world in which spheres of exclusive predominance fade."} Zbigniew Brzezinski: U. S. Foreign Policy: The Search For Focus. Foreign Affairs. An American Quarterly Review. Vol. 51, No. 4. Council on Foreign Relations, Inc. July 1973, 727.


\textsuperscript{861} M. J. Russel: Fluctuations in Reciprocity. The International and Comparative Law Quarterly. Vol. 1, No 2, April, 1952, 181.

\textsuperscript{862} The term \textit{"comity"} was first used by the Netherlands writers on private international law, Paul Voet (1619-1677), John Voet (1647-1714) and Ulric Huber (1636-1694). The Voets used it to mean \textit{"courtesy"}. Huber, on the other side, seemed to have regarded comity, as being part of \textit{"ius gentium"}, sometimes. Michael Akehurst: Jurisdiction in International Law. British Yearbook of International Law. No. 46. 1972-1973, 215.

\textsuperscript{863} Janis, elaborating on the doctrine of international comity, states that courts, according to this doctrine, should apply foreign law or limit domestic jurisdiction out of respect for foreign sovereignty. Mark W. Janis: An Introduction to International Law. Aspen Publishers. New York, 2003, 327.


\textsuperscript{865} Mann: Foreign... 134.


\textsuperscript{867} By Ustor, international comity is not a source of law. The rules on the ritual order, titles, the etiquette, the various dogmas, regarding the way of showing respect towards diplomats, do not have any binding legal force and their violation could be revenged, maximum, by practicing reciprocity. Ustor op. cit. 59.
would be one not of comity, but of either customary or conventional law. A violation of a rule of comity can be viewed at most, as an unfriendly act, with no claims to reparation attached, in contrast with a violation of a rule of customary or conventional law. In the latter case, an apology or reparation of some sort will be demanded for the international offense incurred, at minimum.

Nikoliukin considers that the consistent implementation of reciprocity allows, on one hand, to safeguard stable relations between states, while, on the other hand, this standard provides individuals and legal entities of other national ethnicity with opportunities to exercise their rights on the territory of a state, which is based on the principle of reciprocity.

However, the principle of reciprocity should not be considered, as a generally accepted legally binding principle or norm of international public law, in relation to the fact that in international relations, another country is not obliged to act in accordance with the mentioned standard.

Lebedev and Kabatova, conversely, assert that states prefer to act in a similar way regarding other countries for reasons of expediency, benefit or for some other particular purpose, which is not related to obligatoriness. Accordingly, the principle of reciprocity, as such, is not part of cogent principles of international law.

Vel'iaminov states that the establishment of such cogent principle in international law in place of a general legal norm would be hardly justified, for in practice, there are too many international relations, which do not meet the criteria of reciprocity. But then again, no one is forbidden to provide benefits and other assistances to another state in a unilateral way.

In conjoint relations, diplomats claim and are customarily granted certain privileges and immunities. The system of privileges and immunities is founded predominantly on considerations of practical necessity. Since every state is normally simultaneously a sending and a receiving state, this fact creates reciprocal interests. In our time, diplomats benefit equally from diplomatic immunities, independently from the destination of their assignment, under this

On the other hand, a rule of comity may by treaty become a part of conventional law or may evolve into a component of customary law. The essential determinant in all cases is the existence or the absence of a legally binding obligation. Glahn op. cit. 25.

Ibid.

Historical evolution evidences that various social groups in their cooperation on the international arena were interested in the state of affairs, when economic and cultural relations between countries and citizens, political and social processes that go beyond a state, collaborations, conflicts and even wars, would be carried out in accordance with certain rules, which would govern the issues in this field. S. V. Nikoliukin: Vzaimnost' v mezhdunarodnom chastnom prave. (Reciprocity in international private law.) Novii Iuridicheskii Zhurnal. No 2, 2012, 88.

Ibid.


DOI: 10.15774/PPKE.JAK.2017.003
concept of mutuality: "Rooted in necessity, immunity was buttresses by religion, sanctioned by custom, and fortified by reciprocity." 874

In diplomatic activity, under reciprocity, a state also might take on a certain behavior or measure (for example, courtesies, benefits, or restrictions and penalties), equal in response to that conduct, taken on by an other state, "to help each other and give each other advantages", 875 by engaging in international relations. 876 The application of the principle of reciprocity in diplomatic relations helps to reduce differences in the legal regulation of the status of diplomatic missions and their personnel, which leads to foundation of standard and contractual forms of diplomacy law, according to Demin. 877

Furthermore, reciprocity is core to all treaties, the parties accepting vis-à-vis each other reciprocal, though not necessarily identical, and obligations. 878 Apropos of inter-state agreements, the principle of the good faith is incorporated in the Charter of the United Nations, 879 assumes that the relations between the member-states have to be based on loyalty, integrity and mutual trust, avoiding any acts of dishonesty. 880

According to the principle of good faith, enshrined in the Charter of the United Nations, all member states should fulfill in good faith the obligations, undertaken in the Charter. The provision excludes the possibility, when in international life states, creating regulations, at their interpretation and application would consciously, bearing their own unilateral interests in mind, act in detriment of other states. In the course of the creation of regulations, their formulation in a way that would allow a particular state to place its own unilateral benefits against interests of their contractual parties. It is often a lack of good faith that evokes the debates and disagreements in the application of regulations, which lead to disruption of peace between states. 881 As pointed out by Hargitai, some authors 882 share the opinion that reciprocity is the second, pragmatic column along with bona fides, international law is based on. 883

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874 Frey–Frey op. cit. 3.
877 Demin op. cit. 21.
878 Grant–Barker op. cit. 502.
880 “All Members, in order to ensure to all of them the rights and benefits resulting from membership, shall fulfill in good faith the obligations assumed by them in accordance with the present Charter.” Ibid.
881 Hajdu–Sík op. cit. 395.
883 Reciprocity has law enforcement and warranty significance in the system of international law. Further, reciprocity, characteristically, has a dual role, for it contributes into the formation of the norms of international law, and compliance with existing standards. Hargitai: Viszonosság… 418.
The principle of reciprocity in international law and in diplomacy law, in particular, endorses the principle of functional necessity. This follows from the fact that the deficiency of protection of diplomatic agents in the host country might be retaliated against its diplomats in foreign countries. The application of principle of reciprocity for retaliatory cause has increased in diplomatic practice, especially at the beginning of the twentieth century. For that reason, the Vienna Convention adopted provisions to regulate this area of diplomacy, as well, expressing that discrimination is forbidden in diplomatic relations, striving to restrain the unfair (or prejudicial) treatment of diplomatic agents in receiving states.

Last but not least, according to some legal theorists, "Fairness… demands reciprocity in immunities, as between states and nation. It does not, however, follow that such fairness must have a constitutional foundation." The interest of the sending state and those of the receiving state require proper accommodation. Practically, all bilateral agreements, regulating certain questions, related to the status of diplomatic missions and their personal, contain a reference to the principle of reciprocity.

III. 4. 2. The practical examples of application of the principle of reciprocity

States, like people, feel obliged to return favors, offered to them. On international scale, this standard in practice, could be illustrated by the example of Ethiopia and Mexico. Ethiopia had conveyed thousands of dollars in humanitarian aid to Mexico, right after the 1985 earthquake. The country provided support to an other state, even suffering from a crippling famine and civil war at that time. Ethiopia had been reciprocating for the diplomatic support that Mexico provided, when Italy invaded Ethiopia in 1935.

Once diplomatic relations are established, with official elite-to-elite communications, and exchange of diplomatic missions, it is in the common interest that such relations be kept harmonious and effective. Essential to maintaining such effective and harmonious diplomatic relations is the reciprocal bestowal of diplomatic (and consular) privileges and immunities. For


885 Lung-chu Chen op. cit. 302.

886 The trait of returning favors – reciprocity, is embodied in all human cultures, and is one of the human characteristics that allow us to live in a society. Ibid.

887 Hargitai: Viszonosság… 417.
diplomats to perform effectively in the host country, it is vital that they enjoy protection from interference, so that they may operate an environment of security and confidentiality.\textsuperscript{888}

The required formal prerequisite for reciprocity, in case of a member of a diplomatic mission, is acceptance by the receiving state, obtaining the \textit{agrément} and being accredited in the host country.

Norms, corresponding to both positive and negative reciprocity can be found under the Vienna Convention. The relevant provisions of the Convention\textsuperscript{889} that make it possible to exercise positive reciprocity, are realized by allowing states, on the basis of custom or agreement, the provision of more favorable treatment to each other, than it is provided by the Convention. For example, in connection to diplomatic privileges and immunities – it is granting of mutual exemption from value added tax.

Furthermore, certain national legislations contain provisions, regarding the general rules of customs courtesies, for example, in Great Britain, Russia and the United States. Despite of the fact that these arrangements of reciprocity are decreasing, still, there is a large diversity in state practice, regarding the classes of diplomats to whom customs privileges are granted, together with the type and value of articles included, and methods, by which the customs formalities are amended.\textsuperscript{890}

In some states, diplomatic privileges are divided into non-conditional privileges, applicable in all states (inviolability, exemption from local jurisdiction), and conditional privileges, granted on the base of reciprocity (for example, fiscal and tax exemptions). The first category of diplomatic privileges is grounded on the universal norms of international public law, respected by all states, so reciprocity in this case is already expected. Reciprocity converges the recognition of the norms of international law by each individual state into a universal consent, thus \textit{par implicite} turning into a silent acquiescence, and as a result, being effected even without a special confirmation.\textsuperscript{891}

Diplomatic privileges of the second category, ensue from particular norms of international law or more often – from rules of international courtesy, therefore being respected only on the base of reciprocity. If the universal regular legal norms of diplomatic immunity are being established, as a result of their common application by a certain mode of conduct in

\textsuperscript{889} Vienna Convention. Article 47(2)(b).
\textsuperscript{890} Clifton E. Wilson op. cit. 130-132.
\textsuperscript{891} Levin: Diplomaticheskii… 295-297.
treatment of diplomatic representatives in all or a large number of states, then after their establishment, the norms become part of international law, being obligatory for each state.

Virtually, states have always accorded certain privileges and immunities to foreign diplomatic and consular missions, accredited to them, some caused by the need to ensure the efficient performance of the functions of these missions, and the other were provided on grounds of international comity.

In the substantive legal sense, the principle of reciprocity means that foreign law has to be applied for the mutual development of cooperation between states. Consequently, if one state refuses to apply the legal norms of an other state, in a relevant situation, then the other state also refuses to apply the norms of the first state on its territory. Besides, this statement is often applied to the recognition and/or the enforcement of decisions of foreign courts. Experts claim that states are constantly fighting, having continuous eliminative and subordinate battles with each other, so they need a framework of cooperation, in order to govern the matters by principles of diplomacy law (and treaty law).

With regard to negative reciprocity, in international law, the infringer must reckon that in case of violation of a legal norm, it will be treated in a same, disadvantageous way. Negative reciprocity is classified, as avoidable in international law, presuming from practical experience that it could escalate deterioration of relations.

In contrary to retaliation, accepted by contemporary international law, as well, reprisals and similar criminal actions, were the traditional instruments of foreign policy of the seventeenth century. Negative reciprocity and infringement of diplomacy law, reciprocity is an instrument of diplomacy, as well and within international law, mutuality bears the most important role in diplomacy law. According to the Vienna Convention, the introduction of negative reciprocity, i. e. a retaliation measure, based on a restrictive interpretation of the Vienna Convention.

892 Levin: Diplomaticheskii... 298-299.
894 Gajzágó op. cit. 6.
895 Lowe op. cit. 2.
897 József Hargitai: A viszonosság a nemzetközi jogban és a belső jogban. (Reciprocity in international law and in domestic law.) Jogtudományi Közlöny. LVII. évfolyam, No 10, október 2002, 417. [Hereinafter: Hargitai: Viszonosság...]
898 Vienna Convention. Article 47(2). DOI: 10.15774/PPKE.JAK.2017.003
Convention, the state, which applies this measure, does not violate the provisions of the Vienna Convention.

The example of negative reciprocity in the treaty,\(^{899}\) is the question of the exemption from the provisions on free movement of diplomatic agents. In this way, the receiving state, referring to interests of state security, can prohibit entry to certain zones. In the course of the Cold War, the matters of issuance of announcement of travel and its permission, also issuance of travel permits or confirmation of announcement of travel and its duration, virtually, led to a diplomatic war.\(^{900}\) (The practical examples of reprisals will be subject of the Chapter III. 5. of the present work.)

The receiving state also has the right to require the diplomat's family members, who showed disrespect towards its laws, to leave the country. In 1954, the wife of Second Secretary of the U. S. Embassy, together with the wife of an other diplomat, tried to take pictures of Russian children in Moscow on the background of constructions waste. The father of one of the girls spoke out against such photos, and the wife of the American diplomat, as a reaction, caused bodily injury to nearby workers of the ongoing construction.\(^{901}\) On 26 October, 1954 the Ministry of Foreign Affairs of the Soviet Union announced to the U. S. Embassy that the stay of the diplomat’s wife (who tried to make photos) was undesirable in Russia, in connection with her unworthy act.\(^{902}\)

Similarly to the incident with the wives of diplomatic agents in Moscow, there was an other case, when an Italian Minister had to leave Peking, because his wife was involved in attacking an other Italian lady. Consequently, a diplomat can leave the host state, also if a member of his close family violated the law.\(^{903}\)

With reference to parity in international relations, other states were also sensitive in matters of dealing with and expected to be treated, as equal parties. In the 1950s, China was quite clear in its demand for equal treatment in relations with the United States. (Because of certain treatment by the Western powers in the past, China was unusually sensitive to disrespectful handling.)\(^{904}\) In American-Chinese diplomatic relations, the acceptance of the „principle of equality and reciprocity” by the United States in 1954-1955, was a fundamental

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\(^{899}\) Vienna Convention. Article 26.

\(^{900}\) Hargitai: Viszonosság: 419.

\(^{901}\) Later, there were identified the persons of the two ladies, they were Mrs. Karl E. Somerlatte, the wife of the Embassy Second Secretary and Mrs. Houston Stiff, the wife of the assistant naval attaché. U. S. Wife to leave Moscow. Daytona Beach Morning Journal. 29 October, 1954.Vol. XXX, No. 160, 1.

\(^{902}\) Blischenko op. cit. 88.

\(^{903}\) Hingorani op. cit. 187-188.

The Chinese condition for the repatriation of American civilians, held in China after the revolution. The Chinese citizens were free to leave the United States at any time, nevertheless, most of them did not wish to seize this opportunity.

The offended pride of Mexico in Mexican-American relations has prevented or even halted the diplomatic negotiations in the past, for example, when in 1950 the air transport talks failed, due to Mexico's anticipation to be treated on the basis of equality. After the World War II, Japan had been viewed by the international community by an analogy with a domestic society – in hierarchical terms. The country had reconciled to the defeat and to its "secondary position" in the postwar world. With the economic growth, Japan recovered its national self-esteem and was getting prepared "to play its part in a scheme of world politics," thus, in 1971 it did not relate well to the decision of the American President to visit the country without prior diplomatic consultations. This was the infamous "Nixon shock," which made the Japanese-American diplomatic negotiations more difficult from that point.

(Richard Nixon, similarly to Henry Kissinger, was a major figure in the history of American foreign policy. The global diplomatic game and the imperatives of realpolitik appealed to him.)

The Vienna Convention provides that a state may apply a restrictive explanation to an other state, in response to a similar action of the latter, which means that a state may refuse a particular treatment towards an other state, if the latter refuses to take a conduct, similar to that of the former. This provision of the Vienna Convention can not be interpreted in a way that a state, by following a certain behavior towards an other state, is entitled to demand a similar

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910 The United States and Japan have a unique relationship, deriving from the role America played in reshaping Japanese politics after Japan's defeat in the World War II, and their friendship was called one of "patron-client" or "parent and child". Starkey–Boyer–Wilkenfeld op. cit. 69.

911 Cohen op. cit. 37.


treatment, rather than a state may reject a certain treatment to an other state, if the latter refuses to take an approach, similar to the behavior of the former. For example, in 1976, eighty-seven American diplomats in Manila were fined for parking violations, right after the penalizing of their Philippine colleagues in the District of Columbia for illegal parking.²⁹¹⁴

In practice, it is not always easy to size the equivalent action or reaction towards the other state, so the measures of reciprocity are not absolute in international and diplomacy law. In 1987, Russia retracted the beach privileges of the American Embassy in Moscow on the river at Nikolnaia Gora, as a direct response to the decision of the United States to withdraw recreational privileges for Russian diplomats, living in Glen Cove, Long Island. Mayor Parente closed the beaches to the Soviet diplomats in May 1981.²⁹¹⁵ The 36-acre estate, being rented by the Soviet representatives was exempt from property taxes – a privilege, granted by the United States to a number of countries.²⁹¹⁶ After this decision of the mayor, the Glen Cove City Council was warned by the U. S. State Department to stop meddling in foreign affairs and was promised the Department's support of tax reimbursements, demanded by the Mayor, when the Council banned Russian diplomats from using the city's beaches and tennis courts.²⁹¹⁷

Diplomatic privileges could be cancelled in a way of a special agreement between the interested states. They also could be withdrawn by simply not practicing them, only if other states do not object such mode of conduct. In this case, such conduct leads to establishment of a new practice. In exceptional cases, in a situation of emergency, a unilateral formal cancellation could take place, considered by the state, which issued the respective act, as a merely temporary measure that requires the relevant codification and reasoning. Such an emergency could occur in situations, when a country is in state of war, the bilateral diplomatic relations have been interrupted between the combatants and the diplomatic representatives of the sending state have to immediately leave the territory of the enemy state.²⁹¹⁸

For example, in 1944, England cancelled diplomatic relations and freedom of movement of accredited diplomatic representatives of foreign states,²⁹¹⁹ except for those from the USSR.

²⁹¹⁷ Ibid.
²⁹¹⁸ Haraszti–Herczeg–Nagy op. cit. 410.
²⁹¹⁹ The same measure was applied to consular representatives. Levin: Diplomaticheskii… 153.
the USA and the British dominions. This was a measure, demanded by the circumstances of the existing warfare.

Referring to the state of war, it should be added that under such crisis circumstances, the diplomatic privileges could be limited. In ancient times, it was natural that after the declaration of war the envoy was imprisoned. For example, in Turkey this was practiced even in the eighteenth century. In the twentieth century, the principle of the inviolability (and safety) of envoys during warfare was usually respected and they were allowed to leave the country in a state of war without impediments. However, exceptions occurred, when for example, at times of the World War II the Germans and the Finns obstructed the leave of the Soviet diplomats. (In 1948 Russia firmly restricted the movement of the foreign diplomats in Moscow.)

Rubin remarks that diplomatic privileges are not always strictly followed at the times of war, unlike the times of peace. In 1994, the British Government forbade diplomatic representatives of neutral countries and some allied states to commute at night, besides, to send couriers and encoded cipher telegrams. The British feared that the envoys would reveal the details of the landing,'s preparations, so this exchange illustrates that the limitation of diplomacy during a war goes together with the control of diplomats.

The situations of limitations regarding free movement and possibility to leave the country also took place at the so-called diplomatic "embargo" in England. In the United States, the free movement of a Finnish diplomat was forbidden on the whole territory of the country, when authorities found that this could harm America's security.

Reciprocity is still a powerful weapon of vengeance for the injustice done, when some states by fabricated pretexts, limit the rights of diplomats of sending states. The reciprocal treatment in international public law is not a special institution of the area of diplomatic privileges and immunities. States tend to reciprocate the treatment, considered by them rude, unworthy or prejudicial, by similar acts (retaliation), and to respond by violation to violation,
caused to them (reprisal).\textsuperscript{924} The possibility of application of reciprocity,\textsuperscript{925} as of an effective sanction, beyond doubt, has a moderating influence on the behavior of states.\textsuperscript{926}

As to enforcement of international law, besides the execution measures of the United Nations Council, judicial decisions of the International Court of Justice and self-help (self-defense), also the loss of legal rights and privileges is a common enforcement method, used by states in relation to withdrawal of legal rights and privileges. Typical example of this method is severing of diplomatic relations, which may be followed by trade embargos, along with the freezing of assets and suspension of treaty rights. The application of the listed measures and even the mere threat of them can prove to be effective in enforcing of international obligations.\textsuperscript{927}

Accordingly, besides reciprocity, public opinion is the other measure, in order to follow international law, since states are well aware of the fact that their violations of law in regard to other states may be reciprocated. States generally try to avoid criticism for failure concerning observation of the rules of international law.\textsuperscript{928} According to the traditional Western view, international law is founded essentially on consensus.

Regarding observation of the rules of international law, it has to be noted here that according to experts, practically, a state must comply with every norm that governs the international interaction of states, even without a formal joining. (And states normally observe their treaties, and respect the rules of international law.) A state does not have to declare via diplomatic way that it agrees with a norm of international law, it is sufficient to prove that the norm is recognized by the common opinion of the civilized world.\textsuperscript{929}

Diplomacy, among other means, serve, as a means of enforcing the law. The traditional method of preserving the integrity of the law has been for the injured or offended states to lodge protests against those acts, deemed violations of existing law. Such remonstrations are commonly coupled with demands that the wrong done be appropriately righted. Whereas minor violations of the law may be corrected in consequence of such protests (if only for the sake of the law in most instances remain unaffected by lodging diplomatic protests.)\textsuperscript{930}

\textsuperscript{924} Ustor op. cit. 486–487.
\textsuperscript{925} Verdross and Simma find that the institution of reciprocity induces the maintenance of inter-state relations „go wild”. Verdross–Simma op. cit. 50.
\textsuperscript{926} Ustor op. cit. 487.
\textsuperscript{928} Hillier op. cit. 31.
\textsuperscript{930} Glahn op. cit. 8.
Scholars advise that a one-sided cancellation of diplomatic privileges, established by international custom, realized without a consent or at least non-opposition of other states could only induce retaliation and reprisal, which would lead not to the effective force of the given custom, but to the termination of diplomatic relations with the state, which had taken such a step. Consent is also waived as the basis of international law. Actually, a state is able to reject acceptance of diplomatic representatives without their obedience to the jurisdiction of the receiving state, but all other states would immediately suggest the same practice, as a result. No state wished to act in this way, so far. It is not very likely that such state of affairs, as a measure to be established on a permanent basis would be possible on a broad scale. Consequently, cancellation of diplomatic privileges and immunities is more likely, when there is no need in their application in one state anymore, and this could be a base for a precedent for other states and commence establishment of a new international custom.

On the subject of the requirement of non-discrimination, the provisions of the Vienna Convention are designed to be of general application, so they should be applied in a uniform manner to all states involved: "the receiving State shall not discriminate as between States". The Convention enhances the establishment of bilateral relations and prevents the principle of non-discrimination from being considered as the only possible determining factor – this principle is to be applied together with the principle of reciprocity. In addition, the standard of reciprocity emphasizes the sovereignty of the states involved. In principle, the receiving state is obliged to provide identical treatment to all missions they have agreed to receive on their territory. The application of equal treatment, which is not considered discrimination, is also discussed in the Convention, in a situation when a receiving state applies a provision of the Convention restrictively, because of the limitative interpretation of the same provision to its mission in the sending state.
Notwithstanding, questions arise, similar to that about the application of the principle of reciprocity, whether a state should provide the same treatment to the missions of all states, equally, because reciprocity, practically, is a positive form of non-discrimination, as formulated by Hardy.937

For example, privileges and immunities of ambassadors are granted by common consent of all nations, and none of them can refuse or withdraw these privileges and immunities on their own. This also means that regardless of the fact that a state has the right to reject a diplomatic representative of a sending state, if it accepts the person, then it has ipso jure provide him with privileges and immunities, established by custom. In this mode, the termination of some diplomatic privileges could be realized on the same base for establishment and application of norms of public international law, explicitly, the common consent and reciprocity. Granting privileges and immunities over and above those, provided by the Vienna Convention, require the consent of both the sending and the receiving state.938

With respect to the link between reciprocity and non-discrimination, in practice, there are situations, when a receiving state attempts to avoid provision of some additional rights to a foreign diplomatic representation, referring to the principle of non-discrimination. Demin considers that the principle of reciprocity could contradict the principle of non-discrimination, according to which the receiving state has to provide the diplomatic missions of all states with equal rights.939 On the other hand, as stipulated in the Vienna Convention,940 in case of such controversy, the standards of reciprocity prevail.

There is one more theory in diplomacy law – the principle of responsibility941 that needs to be observed by all the persons, enjoying diplomatic privileges and immunities, which had not received much emphasis in international law, though, perhaps due to the practice that legal theorists customarily stress privileges and immunities on the state’s territorial jurisdiction and not on jurisdiction itself, as a mechanism of protection against abuses of the privileges and immunities.942

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937 Hardy op. cit. 83-84.
938 Hardy op. cit. 15.
939 Demin op. cit. 20-21.
940 Vienna Convention. Article 47.
941 The principles of responsibility and functional necessity are viewed by some authors as general principles of policy and diplomatic privileges and immunities are examined with their consideration, noting, that these principles are not taken for strictly interdependent notions, rather generally correlated ones. B. S. Murty: The International Law of Diplomacy. The Diplomatic Instrument and Word Public Order. New Haven Press. New Haven, 1989, 345.
942 Murty op. cit. 346.
The standard of responsibility is reflected in the Vienna Convention, as well. Back in time, the International Law Commission, in the draft articles on "Diplomatic Intercourse and Immunities," addressed the topic of interference with a concise statement that the beneficiaries of diplomatic privileges and immunities are obliged to respect the laws and regulations of the receiving state, and not to interfere in its internal affairs.

The principle of non-interference was later incorporated into the Vienna Convention. In this course, the enjoyment of diplomatic privileges and immunities is not independent from the fulfillment of the defined prescriptions. Some note that the expression "without prejudice of" in the body of the Vienna Convention, conveys that there is no direct association between diplomatic privileges and immunities, and their observance in the sense that any break in their fulfillment does not affect privileges and immunities directly. Nonetheless, as a result of the irresponsible acts, the receiving state may adopt counter-measures, such as declaring the irresponsible individual persona non grata, and this would withdraw the diplomatic privileges and immunities from him for a reasonable period of time, permitted to leave the territory of the host country. The other possible measure is that the receiving state would ask the irresponsible individual to leave its territory after a specified, reasonable period of time. (The topic of counter-measures, adopted by states is investigated in more detail in the Chapter III. 5. of the present work.)

Vienna Convention. Article 41(1).


The principle of non-interference into domestic matters of a sovereign state has been an important proviso in charters of international organizations, as well. For example, in the wording of the Organization of American States it is "No State or group of States has the right to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any other State." This principle prohibits the application of armed force and any other form of interference or attempted threat against another state, including its political, economic and cultural elements. The Charter of the United Nations contains a similar prerequisite: "All Members shall refrain in their International relations from the threat or use of force against the territorial integrity or political interdependence of any State, or in any other manner inconsistent with the Purposes of the United Nations."

In the opinion of Garcia-Amador, the language of both aforementioned documents, despite the prohibition of force along with the purpose of the relevant provisions are broad enough to include any action that entails a threat or use of force, as means of enforcing international claims. Report on International Responsibility by F. V. García-Amador, Special Rapporteur. Doc. A/CN.4/96. Yearbook of the International Law Commission. Vol. II. 1956, 217-218.


III. 4. 3. Secondary, honorary and ceremonial privileges, provided to diplomatic agents, on the basis of reciprocity

The present sub-section is devoted to additional privileges, customarily attributed to diplomats, called by different authors, as „secondary”, „honorary”, and „ceremonial” privileges. These honors, which also belong to the group of diplomatic privileges, are viewed by some scholars, as rights. It should be noted here that regarding diplomatic privileges and immunities, they are attributed both to diplomatic agents and ambassadors (heads of missions), i. e. not depending on diplomatic rank, however, certain privileges, especially some honorary ones might be enjoyed by ambassadors (heads of missions), only.

The honorary privileges of diplomats entitle them to fly the national flag of the sending state on the building of the diplomatic mission, to receive the entry permit to the foreign passport out of turn, to pass through the fast lane at immigration, while expecting courteous and quick procedure, also that their personal baggage should only be screened in case of reasonable suspicion, etc. 947

The honorary privileges of diplomatic representatives include invitations to celebrations, festivities, jubilees, parades and other official ceremonies, held in the host country. What is more, ambassadors are entitled to a salute of military vessels at their visit on official occasion. There are separate seats at the halls of legislative organs, allocated for diplomats. If a diplomatic representative wishes to visit the places of interest or some institution of the host country, he is habitually provided an opportunity to listen to an explanation of the head of the organization or some authoritative person. In some countries, diplomatic representatives are entitled to extraordinary travel and passage to places of celebrations and spectacles, upon the presentation of the diplomatic card. 948

The honorary privileges are may well be viewed as universal diplomatic culture, the observance of which can result in a clash of cultures sometimes, caused by situations of miscommunication, as in the Astoria affair. Hirosi Saito, the former Japanese Ambassador to the United States, died in Washington in October 1938. President Franklin D. Roosevelt ordered the U. S. Navy to convey the late Ambassador’s ashes to Japan, as a mark of respect, by the cruiser Astoria. The President made this decision without consulting the State Department, and

947 Rubin op. cit. 92-93.
948 Blishchenko: Diplomaticheskoe … 373.
regardless of the grave state of American-Japanese relations, at times of Japanese aggression against China and infringement of American interests. The President did not take into account, how this gesture would be viewed by Japan, where extraordinary importance is attached to paying respect to the dead. This act of courtesy initiated a resonance in Tokyo never intended in Washington, being perceived by Japan as a gesture of deep political significance.

Reciprocity, as one of the basic principles of bilateral relations between two states, used to be reflected in the rules of diplomatic protocol, as well. Non-compliance with the principle reciprocity and diplomatic protocol could be regarded, as an unfriendly act and lead to retaliatory steps. Application of the principle of reciprocity in diplomatic relations, is reflected in the legislation of states, as it had been defined earlier. Conversely, in a number of cases the margin between the legal norms, rules of courtesy or custom is quite conditional and flexible, therefore, it could not be always clearly defined. As a matter of course, states provide certain other privileges to diplomats, founded on reciprocity, called secondary privileges, as follows:

- right to organize their way of life (and the life of the diplomatic mission) on the base of customs and standards of their home countries, including organization of cultural events for the members of the diplomatic corps and citizens of the sending state, who live in the host state;
- right to subscribe to all necessary periodicals, including those, which are prohibited from being imported into the receiving state;
- right to have a church or chapel of the practiced religious cult on the premises of the diplomatic mission or at some other place of the town, being attended by citizens of


Equally, the State Department and the American Embassy in Tokyo were perplexed and discomforted by the whole affair. The cruise and the American crew were welcomed in Yokohama with big excitement and festivities with extensive programs, nevertheless the participation of representatives of the United States in this effusive ceremonial would not be in accord with the actual American-Japanese relations. It req uired all of Joseph C. Grew's skills, who was the American Ambassador in Tokyo, to smooth over this delicate matter. The affair was considered by Cohen as a diplomatic blunder – by unintentionally failing to take cross-cultural differences into account, the United States sent a misleading diplomatic signal. Cohen op. cit. 4-6.


According to Article 3(e) of the Vienna Convention, the functions of a diplomatic mission consist, inter alia in developing cultural relations between the sending state and the receiving state.


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the sending state, who live in the host state, as well — droit de chapelle or droit du culte; right to have a doctor (such a doctor might not have the professional diploma of the receiving state).

At Soviet times, the venerable St. Louis des Français church, which has been allocated for the use by the French Embassy, enjoyed uneven support of the United States and Western diplomatic corps. Father Marie-Léopold Braun acted, as chaplain of the church and priest at the American Embassy. Although the majority of the congregation consisted of Soviet citizens, the priests in this church were only foreigners — French or American. Braun ministered to a mixed congregation of diplomats from the United States and Catholic countries of Europe, to Russian Catholics displaced from other churches and to members of various confessions, who were connected with political events.

The privileges of having a church and a doctor became obsolete by today, but in the past they used to bring up the question of providing diplomatic immunities to the priest or the doctor, for according to „franchise de d’hôtel” of the head of the mission, the head of the mission might have in his residence a chapel of the faith to which he belonged. In this course, the inviolability of the premises of the mission certainly included freedom of private worship, but it was not considered necessary to insert such a provision to such effect into „Draft articles concerning diplomatic intercourse and immunities.”

Weninger considers the priest and the doctor, as personnel non officiel, along with the personal secretary and office manager. Most of states kept themselves to the practice of not granting diplomatic immunities to these persons, considering them as members of technical

955 This privilege originates from the period of Reformation, when Protestant religious practices were forbidden in Catholic countries.
956 Jennings–Watts op. cit. 1103.
958 The „foreigners’ church” was located across the street from the Lubianka prison, the main political prison in the Soviet capital.
959 The chaplain of the American Embassy served in Moscow from 1934 to 1945.
960 Moreover, they supposedly all belonged to the group of „experts on Russia” of the Vatican.
961 Parker–Bucar op. cit. 49
964 Wéninger op. cit. 168.
personnel, allowing, though on the base of agreement and reciprocity provided them with diplomatic privileges.

III. 5. Responses and countermeasures of states, with regard to diplomatic privileges and immunities

International politics are characterized by a system, in which rules are self-enforced by threats of costly retaliation.

Vattel believed that it is not lawful to ill-treat an ambassador by way of retaliation. In that way, Charles V ordered the arrest of the French Ambassador, who had announced the declaration of war. In return, Francis I ordered the arrest of Granvelle, the Ambassador of the Emperor. The parties agreed afterwards that the ambassadors should be conducted to the frontier and mutually released at the same time.

In case, an ambassador behaves offensively, becoming dangerous, commits an act of violence, injures the subject of the receiving state, "various measures proportionate to the nature and the extent of his office". In such situations, the injured persons should apply to their sovereign, who will demand justice from the ambassador's master, and if the justice is refused, the sovereign will order the violator to leave his domains.

Retaliation (and reprisal) occurs in all aspects of international relations, but perhaps it is most appropriate, effective and quick to apply it in case of violation of diplomatic privileges.

Ustor notes that reciprocity had a great influence on the development of provisions of diplomacy law. Furthermore, it could play an important role in development of solid and detailed rules of customary law in diplomacy law, at a relatively early period of history. The automatism, which brought immediate and effective retaliation, following a breach of envoy's rights, encouraged the rulers and states, sending envoys, to develop and maintain relevant meticulous rules.

Failing to achieve compliance with international law, passing through the customary methods for the peaceful settlement of disputes, can lead to the imposition of sanctions. Political
considerations intrude even more, than ordinarily at this stage, for only such sanctions are likely to be attempted, as will be not only technically feasible, but also politically possible and advisable. 

Needless to say that imposition of sanctions will create more difficulties for the state, violating international law, than they will for the state or states, applying the punitive measures. It is to note that violation of the rules by a given state – even if no sanction is attempted – does not render the rule invalid.

Reprisal is the return of unlawful state actions, also with unlawful acts, in retaliation for damage suffered. „Damage” denotes loss, damnum, whether this is a financial quantification of physical injury or damage, or of other consequences of a breach of duty. Reprisals refer to acts, which are illegal, if taken alone, but become legal, when adopted by one state in retaliation for the commission of an earlier, illegal act, committed by an other state, if the violation was not remedied through diplomatic channels. The aim of reprisals is partly satisfaction for the infringement, or extort of reimbursement for the caused damage. Reprisal is a violent measure, therefore, it is not in line with the idea of international law, thus, should be possibly avoided in peace time, however it is unescapable in times of war against a cruel enemy.

Application of reprisal is, actually, a case of self-help and it may involve a number of measures, for example, seizure of property, arrest or deportation of subjects of the offender state, interruption of economic relations and others. It comes from the nature of reprisals that they could be applied by states, only. The application of reprisals could be related to legal disputes, as well and in this case their reason is in the denial of justice, when the other party does not want to declare war yet: „...si in re minime dubia plane contra ius iudicatum sit...”

Reprisals are acts, which, although normally illegal, are exceptionally permitted as reaction of one state against a violation of its right by another state. Typical examples of...
reprisals against a state, responsible for an international delict are the confiscation of property of the state or of its citizens or nonfulfillment of treaty obligations in relation to that state. Generally, international delict may be stated, as: a state incurs responsibility, if it administers justice to aliens in a fundamentally unfair manner.

In the exercise of reprisals, the use of armed force is not excluded, for example, in case of an attack against enemy civilians, in order to compel the enemy to stop attacking civilians.

In diplomacy law, the possibility for application of measures of reprisals follows from the provisions of the Vienna Convention.

The application of such measures is considered to be valid if the provisions of the Convention are applied by the sending state restrictively. The difficulty in application of reprisals is in definition of the adequacy and appropriateness of the applied measures. In view of the past cases, we can not talk yet about steady patterns, related to the character of applied retaliations.

The use of reprisal recognized in modern diplomacy, if they are applied as proportionate response to the offending conduct and in this sense are not considered to be measures, taken against international law, even though they were illegal on their own.

(What's more, deterrence is viewed, as a means, preventing attacks by threatening high costs from retaliation.)

Recourse to reprisals, an old institution of the ancient common law, which is characterized as disenfranchised response to the powerless action, provides certain opportunities for overcoming the severe restrictions, imposed by the Charter of the United Nations. The main conditions are holding negotiations to resolve the dispute and complying with the principle of proportionality in case of fruitless negotiations. Reprisals were known in the Middle Ages already, when Vattel called them a way of achieving justice among the nations, which can not be otherwise achieved by them. In the nineteenth century reprisals were applied to force colonial peoples to comply with the conditions, imposed on them by the power of the unequal treaties and the protection by colonial countries the interests of their citizens.

It is a generally recognized principle that reprisals must be in proportion to the delict, against which they are taken.

Hence, reprisals could be called sanctions of international law.

Diplomatic personnel is not enjoying freedom of movement in the host country automatically, in fact, as it may seem. The receiving state may create by its law or regulations zones, entry into which is prohibited or restricted for reasons of security, as it have been already mentioned above. However, the recent decades have seen such restrictions, imposed on diplomats, as a reprisal or more correctly, as retorsion, for delicts of their own government.\footnote{Glahn op. cit. 463.}

In this mode, the United States curbed from July 1966 to 5 August, 1967, travel by Russian diplomats, in retaliation for a similar Russian action. Subsequent travel restrictions curbed the movement of all diplomats from Socialist states in the United States, which were eased for representatives of China in November 1971 and for Soviet diplomats in March, 1974.\footnote{Ibid.}

In August 1967, the Great Britain limited the Embassy personnel from China to an area of five miles from the center of London. In 1981, the travel of diplomatic personnel at the Polish Embassy in Washington was limited to this city, in retaliation for surrounding with police the equivalent facilities in Poland. In 1983, the Department of State announced a new list of areas in the United States, open or closed to the diplomatic agents and journalists of the Soviet Union.\footnote{Glahn op. cit. 464.}

International legal doctrine permits to conclude that the act of aggression may be regarded both as a crime, committed by certain persons individually, and as a crime, committed by states and/or corporate entities. This situation gives rise to the still not fully resolved question of who and how should be responsible for the commitment of the crime of aggression.\footnote{Gorokhovskaya op. cit. 52.} When counteracting terrorist threats and acts, the difficulty also lies in the definition of the norm of proportionality in the implementation of the principle of self-defense. Scholars had put forward three principles, none of which can not be recognized, as an impeccable, however (and of course, does not contain any specific conditions):

- „an eye for an eye”\footnote{The principle of exact reciprocity was used in the famous Code of Hammurabi, created in 1700’s B.C. The famous legal Code was based on the principle „eye for an eye”. See in particular Mihály Knoskó (trans.): Hammurabi törvényei. (The laws of Hammurabi.) Ajtai K. Albert Könyvnyomdája. Kolozsvár, 1911, 12-86.} – the act of self-defense must comply with the terrorist act, committed before;
“cumulative proportionality” – the act of self-defense must be proportionate to the act of all previously committed acts of terrorism; “tit for tat” or “terrifying proportion” – the observance of the principle of proportionality with respect to the common threat of terrorism.

Mutuality, in regard to relevant travel provisions of the Vienna Convention, developed into an effective institution, functioning as practice, influencing bilateral relations of receiving and sending states. In response to severing measures, states reciprocated by introduction of the same practice. There is another case, different from negative reciprocity, when a state applies a provision of the Vienna Convention not restrictively, but factually ignores it. In this case, the measures, taken against the state, which did not follow the provision, should be considered as reprisals against a state that violated international law.

According to the general practice of reciprocity regarding the use of diplomacy, a state could apply different methods towards other states, as a reaction to certain conduct or as a tool of influence, as follows:
- to indicate the wish to improve the existing diplomatic relationship, in case the behavior of the other state would change in a certain direction;
- to provide the other state with what it wants, like diplomatic recognition, foreign aid, etc. in exchange for the desired change;
- to ignore the requests of another state, also to restrict foreign aid, recall diplomats, tighten diplomatic relations, if the other party uses unwanted means.

The cooling of existing diplomatic relations, the recall of ambassadors, reducing the number of embassy staff, closing of some diplomatic missions are the measures, which in practice, are subject to reciprocity. The interruption of diplomatic relations is a relatively rare instrument, since that would be the lowest point in foreign relations of two states. However, the Vienna Convention, however, limits these reprisals, as well, at least by the interpretation of the International Court of Justic. Hargitai: Viszonosság… 420.


The practice of bringing diplomatic pressure for ending a dispute through the machinery of international organizations, is also a mode of settlement of issues in international law. Merrills op. cit. 113.

Brownlie notes that the non-establishment or withdrawal of diplomatic representation may be the result of political consideration or a form of non-military sanction. Brownlie: Principles… 351.

Mingst op. cit. 126-127.
closure of a diplomatic representation, taking into consideration the presumed reciprocity, is a suitable measure to indicate the deterioration of relations.\textsuperscript{1000}

The final recall of a diplomat can indicate that the diplomatic relations between two states had worsened, as it happened in 1998, when Russia recalled its ambassadors in London and Washington, as a protest against the new Iraqi intervention of these two states. In April 2008, two military attachés of the U. S. Embassy in Moscow were expelled, as a decision in response to the expulsion of two Russian diplomats of the Russian Embassy in Washington. In 2009, the expulsion of two Iranian diplomats from London, was announced personally by Gordon Brown, the Prime Minister, under "\textit{completely unfounded accusations}", as a countermeasure to the expulsion of two British diplomats from Tehran. The Iranian side explained its decision by a formula, commonly used, in such situations, namely because of diplomats’ "activity, incompatible with their scope of activities".\textsuperscript{1001}

In January 2016, Iranian diplomats had to leave Saudi Arabia and return home, after the Kingdom severed its diplomatic ties with the Islamic Republic and cut diplomatic ties with Iran. The media informed that several Saudi allies have followed the Kingdom’s lead and scaled back or cut their diplomatic ties to Iran.\textsuperscript{1002} In this course, Bahrain has followed Saudi Arabia in severing the diplomatic ties with Iran in a little while and ordered Iranian diplomats to leave the country within 48 hours.\textsuperscript{1003} The United Arab Emirates, besides decided to downgrade the diplomatic ties with Iran, and Sudan expelled the Iranian Ambassador there,\textsuperscript{1004} Kuwait also recalled its Ambassador in Iran,\textsuperscript{1005} thus, the progressing opposition of Iran and Saudi Arabia

\textsuperscript{1000} Such cases often took place during the Cold War period, right after the World War II, and later on political reasons, in the subsequent block situation. Hargitai: Viszonosság… 421-422.

\textsuperscript{1001} The British Foreign Ministry did not disclose the identity of the expelled British diplomats, only revealed that they were not members of the technical staff, but persons, engaged in actual diplomatic activity and the Ambassador was not among the diplomats, who were called on to leave. Kölcsönös kiutasítások Teheránból és Londonból. (Mutual expulsions from Tehran and London.) CoolPolitika.hu. 24 June, 2009. (Accessed on 7 December, 2015.) http://www.coolpolitika.hu/kolcsonos_kiutasitasok_tehranbol_es_londonbol


\textsuperscript{1003} The decision was caused by the "cowardly" attacks on the Saudi Embassy in Iran by protesters, who were angry for execution of Shia cleric Sheikh Nimr al Nimr. No Saudi diplomats were in the Embassy at the time when the protesters lit fires and smashed furniture in the building. Hassan Rohani, the President of Iran condemned the attack against the Saudi Embassy and promised to bring to account the perpetrators. Szaudi-Arábia megszakítja diplomáciai kapcsolatait Iránnal. (Saudi Arabia terminates its diplomatic ties with Iran.) NOL. 4 January, 2016. (Accessed on 4 January, 2016.) http://nol.hu/kulfold/szaudi-arabia-megszakitja-diplomaciali-kapcsolatait-irannal-1582781


\textsuperscript{1005} Kuwait is visszahívja iráni nagykövetét. (Kuwait recalls its Ambassador to Iran, too.) NOL. 4 January, 2016. (Accessed on 4 January, 2016.) http://nol.hu/kulfold/kuwait-is-visszahivja-az-irani-nagykovetet-1582999
caused not only a discord between the two countries, but a conflict that was going to involve the whole Middle East.

In international law and in diplomatic practice, the term *persona non grata* is traditionally applied to "… a person not acceptable (for reasons peculiar to himself) to the court or government to which it is proposed to accredit him in the character of an ambassador or minister."

The custom of reciprocity also applies to the termination procedures, governing agreements on extradition of diplomatic personnel.

The sending state may inform the receiving state of announcing a diplomat *persona non grata* or refuse the acceptance of a member of the diplomatic mission.

Habitually, afterwards, the sending state also notifies the host country that its official(s), as staff member(s) of the related diplomatic mission, is no longer welcome there (the reasoning is not obligatory, in this case), and these diplomats are offered to leave the host country. (Repeated violations of the laws of the receiving state, or contempt for them, committed by a diplomatic agent, also put the violator into character of *persona non grata*.)

Usually, such steps lead to a crisis and tension in bilateral relations. Interruption of diplomatic relations or such threat is the classical instrument of diplomatic pressure.

The system of sanctions, generally applied by international law, can be applied in case of violation of diplomacy law, as well. Certainly, such measures must be proportionate to the infringement.

In application of reciprocity, the Vienna Convention indicates, where the line between the pressure of political character and international law is.

In 2015, the Russian authorities declared *persona non grata* a Swedish diplomat. As it was stated on the website of the Russian Foreign Ministry: "The expulsion of the Swedish diplomat was a response to unfriendly actions of Stockholm, which previously acted in the same..."
way with a representative of the Russian diplomatic mission.” A high-ranking source from the Russian Foreign Ministry also said in this regard to the representatives of press that the responsibility for the consequences of this provocative step in relation to Russian-Swedish relations laid entirely on the Swedish side.\textsuperscript{1015} The fact of expulsion had been confirmed\textsuperscript{1016} by Johan Tegel, spokesperson of the Swedish Foreign Ministry, explaining that Moscow’s decision was a reprisal for the recent expulsion of a Russian diplomat from Sweden for activities incompatible with the provisions of the Vienna Convention.\textsuperscript{1017} The Swedish official did not specify the exact time when the Russian diplomat, was declared \textit{persona non grata},\textsuperscript{1018} expressing that this incident would affect the relations between the two countries.\textsuperscript{1019}

With regard to coercive use of the Diplomatic Instrument, although diplomatic immunity is normally used for constructive purposes, it may occasionally be used for coercive purposes, especially measures, designed to block a target state’s access to the transnational arenas of formal authority. Charges of unlawfulness tend to arise in connection with what is regarded as premature recognition or deliberate nonrecognition. An additional charge often relates to severance of diplomatic relations. This type of coercion included withdrawal, requiring the target state to withdraw heads of diplomatic missions, trade agencies and consular officials.\textsuperscript{1020}

The severance of diplomatic relations may be partial or complete. It may be carried out gradually by first with drawing heads of diplomatic missions, only. It may be taken, as an expression of disapproval of a target state’s conduct or as a deliberate means of coercion. At times, it serves, as a preliminary warning to a target state of more drastic coercion. Often, it is used, as a form of sanction against a prior, unlawful act.\textsuperscript{1021} Accordingly, the United States

\textsuperscript{1016} The fact of the Swedish diplomat, being declared \textit{persona non grata} in Russia was also announced on the Swedish television channel (SVT) – the Swedish public service television company. Ryssland kastar ut svensk diplomat. (\textit{Russia throws out a Swedish diplomat}.) SVT.se. 4 August, 2015. (Accessed on 16 January, 2016.) http://www.svt.se/nyheter/ryssland-kastar-ut-svensk-hog-diplomat
\textsuperscript{1018} The parties did not disclose the names or the positions of the two diplomats. Sweden expels Russian diplomat, Moscow makes tit-for-tat move. Reuters. 3 August, 2015. (Accessed on 16 January, 2016.) http://uk.reuters.com/article/uk-sweden-russia-diplomacy-idUKKCN0Q821N20150803
\textsuperscript{1020} Lung-chu Chen op. cit. 307.
\textsuperscript{1021} Lung-chu Chen op. cit. 308.
For that reason, in 1979 it froze all Iranian assets under its jurisdiction.

In *Ethiopia v. Eritrea*, the specially constituted Commission found Eritrea liable for the violation of the Vienna Convention by arresting and detaining the chargé d'affaires in September 1998 and October 1999, disregarding his diplomatic immunity. Furthermore, Eritrea, due to retain of a box containing correspondence of the Ethiopian Embassy (including blank passports for five years), was found liable for violating official Ethiopian diplomatic correspondence and interfering with the functioning of the mission, in breach of provisions of the Vienna Convention.

On the other side, Ethiopia is found guilty regarding the breaches of diplomacy law regarding the departure of Eritrean diplomatic personnel from the Addis Ababa airport in May 1998, by attempting to search the Ambassador's person, also his hand luggage, confiscating papers from his briefcase and interfering with his checked luggage, in addition, by searching other departing diplomats and their luggage, without regard to their diplomatic immunity. Furthermore, Ethiopia is liable for violating the provisions of the Vienna Convention by entering, ransacking, searching and seizing the Eritrean Embassy Residence, as well as official vehicles and other property, without Eritrea's consent.

(In this case, neither the Security Council nor the Organization of African Unity attributed responsibility — they did not decide which state was the aggressor and which was the victim, and the Commission did not pay attention to the question of occupation of territory.) Nonetheless, the parties followed the principle of reciprocity during this time, trying to maintain the existing diplomatic relations despite of the ongoing warfare.

When dealing with uncertainties, engendered by the parties' reciprocal decisions to maintain diplomatic relations in the face of hostilities, reciprocity can arrange for a helpful indicator in application of the flexibility, delivered by the Vienna Convention, for example, in


*The Eritrea-Ethiopia Claims Commission is an independent body, operating under Article 5 of the Agreement signed in Algiers on December 12, 2000 between the Governments of the State of Eritrea and the Federal Democratic Republic of Ethiopia.*

*Vienna Convention. Article 29.*

*Doc. cit. Articles 24, 29.*

*Doc. cit. Articles 29, 36.*

*Doc. cit. Article 22.*


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proclaiming the rationality of the deadlines, set for the departure of diplomats and the level of monitoring of the diplomatic representatives of the involved states.\textsuperscript{1031}

The world community is increasingly witnessing abuses of diplomatic immunities and privileges.\textsuperscript{1032} Within the diplomacy law there occurred a number of events in the course of the last decades, which clearly can be considered violation of international legal norms.\textsuperscript{1033} For example, the well-known cases of Tehran and Libya. In 1984, during the events, related to the Libyan People’s Bureau in London,\textsuperscript{1034} the police have reluctantly had to accept that whoever shot their colleague, Yvonne Fletcher, that person would escape justice by claiming diplomatic immunity.\textsuperscript{1035} The Government of Great Britain responded slowly to the incident and ",did not hastily expel the entire Libyan mission’’,\textsuperscript{1036} because Great Britain was afraid of Libya’s excessive retaliation against British diplomats and citizens in Libya.\textsuperscript{1037}

In the recent years they talk about reprisals rather reluctantly, taking into account not the best historical traditions of their application. Therefore, the term "reprisals" was replaced by the term "counteraction", although there is no certainty that this definition is more successful, it is clear only that this is a reaction with the use of force. It may be recalled the (unsuccessful) attempt to free American hostages with diplomatic status, who were kept in the American Embassy in Tehran, in 1980.\textsuperscript{1038}

The problem of abuse has become more serious today, partly because of a vast increase of diplomatic missions and personnel, thanks to a rapid growth of new states with less diplomatic experience. Such abuses have generated outcry by local residents and prompted calls for change, as witnessed by a past uproar over diplomatic parking "privileges" in New York City. The outcry of local residents, demanding an end to such abuses, is understandable. But the problem it reflects can not be fixed quickly. Remedies to deal with violations in this are depend in large measure on sanctions of reciprocity and retaliation. The right of aggregation

\begin{footnotesize}
\begin{enumerate}
\item[1032] Lung-chu Chen op. cit. 306.
\item[1033] Hargitai: Diplomáciai… 225.
\item[1036] The House of Commons Foreign Affairs Committee considered certain amendments to the Vienna Conventions after the incident, but found their practical implementation unfeasible. House of Commons Foreign Affairs Committee. First Report. The Abuse of Diplomatic Immunities and Privileges. Commons Papers. No. 127, 1985, para. 42.
\item[1038] Cherkes op. cit. 118.
\end{enumerate}
\end{footnotesize}
and the power to demand recall, though not fully effective, are important safeguards against abuse in a decentralized system.

The norms of international law, including, first and foremost those in the Charter of the United Nations, do not provide an answer to the question of legality of reprisal with application of force. State practice also does not answer this question, although practice is often a factor of lawmaking in international law. The thesis of illegality of reprisals with application of force and not only of reprisals in general, has some foundation in the Charter of the United Nations, namely the prohibition of use of force or threat of force, although it has no direct relation to reprisals. In the context of the use of force, we are speaking of war, in fact.

In fact, cases of abuse of diplomatic privileges and immunities remained unpunished for ages, partly, due to fear of retaliation. It is of principal importance in international legal regulation of diplomatic privileges and immunities to achieve the state of affairs when the norms of international law would not remain acknowledged theoretically only and they could ensure the enforcement of provisions of the Vienna Convention. Abuses of diplomatic privileges and immunities are impermissible, when the violating diplomats escape responsibility for criminal acts, committed in foreign countries.

On 5 April, 1983, France expelled forty-seven Soviet diplomats and residents, accusing them of espionage. (The size of the excluded group was unusual and the action was comparable only to deportation of one hundred and five Soviet citizens in 1971.) The Interior Ministry said in a statement that the gravity and extent of their activities justified immediate expulsion. The incident coincided with the deportation of Russians from Britain and Spain, but officials in these two countries expressed that these measures did not relate to the French act. According to French sources, the Soviet Union was likely to retaliate by expelling French citizens, working in the Soviet Union. The Soviet Embassy said in a statement that it vigorously protested against the “totally unfounded and arbitrary decision of the French authorities”, adding that no evidence of illegal activity had been offered.

In view of the increasing tendency of diplomatic agents of some states to indulge in undercover activities, certain other states, copied the example of the Great Britain, which started...
to apply in the eighties of the last century the rule of absolute reciprocity, for example, the number of the diplomats from the USSR in the mission in London was the same, as the number of British diplomats in Moscow. In this fashion, in October 1986, the United States informed the USSR that fifty-five Russian diplomats were *persona non gratae*. The United States conveyed it officially that it would henceforward apply the twin rules of parity and reciprocity in its diplomatic relations. Accordingly, the reaction of the USSR, forbidding Russian personnel from working in the American Embassy in Moscow would be met by a reciprocal refusal to allow American personnel to work in the Russian Embassy in Washington.\(^\text{1043}\)

In 2000, Moscow announced expulsion orders for nine Polish diplomats, „*because of activities not in accordance with their diplomatic status*”, after Poland’s expulsion of nine Russian diplomats, accused of intelligence work. Andrzej Zalucki, the Polish Ambassador, was summoned to the Russian Foreign Ministry to be presented the note that conveyed the decision of Russian authorities. Poland declared the expulsion of the nine Russian diplomats on the grounds, which an official communique described as spying „*against Poland’s vital interests*”.\(^\text{1044}\) The expulsion was ordered on the same charge of spying and the Polish diplomats had to leave Russia by 28 January, 2000.\(^\text{1045}\)

In December 2010, another incident over espionage overshadowed the Russian-British relations, when a Russian diplomat to Great Britain was expelled from the country after „*violation of the rules of the game*”. Russia requested to recall an employee of the British Embassy in Moscow, in response. London rejected any grounds for such action, but fulfilled the request. Earlier, four Russian diplomats were expelled from Great Britain in 2007, in response to Russia’s refusal to extradite businessperson Andrei Lugovoi, accused by the Brits of involvement in the murder of Alexander Litvinenko, the former officer of the Federal Security Service of the Russian Federation (FSB).\(^\text{1046}\)

In 2015, three Russian spies were uncovered by the Czech Security Information Service (BIS) in Prague, so the persons, enjoying diplomatic immunity, had quietly leave the Czech Republic. According to press, the Czech Republic, being concerned about a possible conflict with Russia, did not expel the diplomats, rather did renew their residence permits, declaring them *persona non grata*. In response, Moscow refused to provide two Czech diplomats with

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\(^{1043}\) Greig op. cit. 136.


residence permits on the territory of Russia. Previously, two Russian diplomats had been expelled from Prague by the Czechs in 2009, with accusations of espionage in the field of energetics.

Since diplomats can not be arrested in the receiving state, when they are caught spying, the host state may only demand their recall or declare them 
persona non grata 
. Accordingly, when one country wishes to "slap" an other one for a perceived wrong, it takes a number of steps available, ranging from pulling some diplomatic personnel out of the host country or downgrading its diplomatic mission there, to breaking off diplomatic relations.

In 2001, when defense contractor Raymond Davis killed two would-be assassins in Lahore, Pakistan, he created an international incident that worsened the already problematic diplomatic ties between the United States and Pakistan. Since Davis had entered Pakistan with a diplomatic passport, that, under international law, it meant that Pakistan admitted him to the country with diplomatic immunity. After the shooting, the American diplomat was removed from Pakistan, since it was customary and necessary, but Pakistan also demanded removal of other diplomats, who were suspected to be engaged in spying and other intelligence and defense activities in the nation's borders. Pakistan handed over a list of 331 Americans, working in Pakistan with diplomatic immunity, who were requested to leave the country (and not be declared 
persona non grata 
if they left the country voluntarily, within the stipulated time).

Sometimes a state demonstratively, at the same time expels a number of diplomats, referring to their unlawful intelligence activity, then the sending state expels the same number of envoys in response. In the latter case, it does not matter, if the expelled diplomats also conducted intelligence activities or just fell innocent victims of foreign policy. Consequently, reciprocity, mutuality used in diplomatic games, is reciprocity, applied in political sense and not reciprocity, used in legal sense.

Further cases of involvement of diplomatic agents in intelligence activity are considered in Section V. 2. 2. of the present work, under diplomatic information and intelligence.

In November 2014, the Russian Foreign Ministry confirmed the expulsion of an employee of the German Embassy in Moscow and several Polish diplomats, as a "response measure" to the acts of authorities of Poland and Germany. This step of Russian authorities
was motivated by „hostile acts” of Berlin towards Russian diplomats in Germany, and expulsion of several Russian diplomats from Poland. The names of diplomats, declared in Germany and Russia \textit{persona non grata}, „for activities, incompatible with their status”, were not revealed.\footnote{Rossiia otvetila Pol’she i Germanii vysylkoi diplomatov. (Russia answered Poland and Germany by expulsion of diplomats.) 17 November, 2014. (Accessed on 2 January, 2016.) http://www.bbc.com/russian/international/2014/11/141117_russia_poland_germany_diplomats}

Public opinion is also could serve, as an effective sanction, meant for states want to be seen to be adhering to international law, that is why they take considerable efforts to justify their particular position in international law. For that reason, reciprocity is the basis of current international law – no government can accept its legal claims to be honored, unless it demonstrates a corresponding willingness to honor the similar claims of its foreign counterparts.\footnote{The existence of international law per se is generally not challenged, but the substantive content of its expression has been challenged and continues to be so. Rebecca M. M. Wallace–Olga Martin-Ortega: International Law. Sweet&Maxwell. London, 2013, 4-6.} With the advent of modern international law after the World War II, the inequality in reciprocity faded away.\footnote{Bardo Fassbender–Anne Peters: The Oxford Handbook of The History of International Law. Oxford University Press. Oxford, 2012, 509.}

In opinion of Herdegen, a possible right of reprisal, as the basis for the forcible entry on diplomatic premises, the opening of a diplomatic bag or other actions, involving the use of force, can not be discarded on the grounds that reprisals, involving the use of force, are only permissible in armed conflicts. To the extent that the right to reprisals suspends obligations under the Vienna Convention, the territorial sovereignty of the receiving state provides a sufficient basis for the use of physical force. Although, it is suggested that the proper construction of the Vienna rules on diplomatic relations,\footnote{Vienna Convention. Articles 22(1) and 27(3).} in the light of the drafting history, as well, as the ambiguous wording of the provisions themselves, rules out any right to reprisals, direct against the diplomatic mission.\footnote{Matthias Herdegen: The Abuse of diplomatic Privileges and Countermeasures not Covered by the Vienna Convention on Diplomatic Relations. Heidelberg Journal of International Law. Vol. 46, No 4, 1986, 747.}
IV. Personal inviolability of the diplomatic agent: categories of diplomatic immunity

IV. 1. Immunity from civil and administrative jurisdiction

There are several beneficiaries of immunity from the jurisdiction of a foreign court in customary international law, among others states, heads of state, armed forces, diplomats and diplomatic staff.

The research, conducted with respect to immunity, afforded to career diplomats, is commenced in the present section with examination of the position of ambassadors.

Wicquefort states that the ambassador is not allowed to concern himself in the parties that are formed in a court, nor to enter into the fractions that divide a state where he had negotiations.

An ambassador must be independent of the sovereign authority, of both the civil and the criminal jurisdiction of the host country.

Furthermore, an ambassador ought to have no communication with the party, which declares against the sovereign or against his first minister. The ambassador, who offended the first minister, ruined the affairs of his own prince, and rendered himself incapable of negotiating.

In connection to other diplomats, before the Vienna Convention envoys were not exempt from the provisions of the receiving state's administrative law, particularly from the law enforcement provisions, as well. For example, a diplomat could not organize fireworks in the park of the embassy's palace, bypassing the receiving state's fire-protection rules or drive his car on the walkway, he would be required to maintain the air-raid measures, etc. In case of road traffic offenses of envoys, some states in practice sent the compiled report on the offense to the sending state.

O'Connell asserts that there is two ways of approaching the question of personal immunity of diplomatic agents from civil suit:


Abraham de Wicquefort: The Ambassador and his Functions. Berridge: Diplomatic Classics... 122.


Berridge: Diplomatic Classics... 122.

Flachbarth op. cit. 103.
a) from the point of view of distinguishing by analogy with the treatment of sovereign immunity between acts *jure gestionis*\textsuperscript{1061} and acts *jure imperii*, and

b) from the argument that a diplomat in a situation of jeopardy of legal proceedings may be incapacitated to some extent in his freedom of diplomatic action.

Consequently, this matter could be examined from the point of view of municipal law, distinguishing the systems that extend complete immunity from those, which recognize only qualified immunity.\textsuperscript{1062}

The primary aspect of diplomacy law is granting immunity from local jurisdiction. Diplomatic agents enjoy immunity *ratione personae*, i. e. complete personal inviolability\textsuperscript{1063} and absolute immunity from criminal jurisdiction. Their immunity from civil jurisdiction may also be recognized, however, given less coercive nature and might be limited in respect of certain solely private actions. In the face of the restrain that procedural immunities and other privileges of foreign diplomatic missions placed on the territorial jurisdiction of the receiving country, states, usually thoroughly observe them.

Wickermasinghe resumes that despite of certain serious cases of abuse, there is no substantial body of opinion, which advocates for abolition of restrictions.\textsuperscript{1064} Diplomatic agents are afforded the highest degree of privileges and immunities.\textsuperscript{1065} Special immunity is afforded to the person of the ambassador, also to his entourage. It had been a long practice of supporting and feeding the envoys, but it was abolished with time.\textsuperscript{1066}

Not only governments, but also civil persons are concerned that diplomats would fulfil their obligations under the Vienna Convention. The treaty failed, however, to include a provision on settlement of civil claims, adding instead a Resolution on the Consideration of Civil Claims,\textsuperscript{1067} according to which a sending state can waive the immunity of members of its diplomatic missions in respect of civil claims of citizens of the receiving state, if it would not

\textsuperscript{1061} For example, as illustrated in *Hellenic Lines Ltd. v. Moore*, 345 F. 2d 978 (1965), in the United States, an order can not be delivered to an ambassador, addressed to his government, which complicates gaining jurisdiction regarding acts *jure gestionis*.

\textsuperscript{1062} O’Connell op. cit. 897.

\textsuperscript{1063} International dictionaries, traditionally, interpret inviolability, as immunity. Dictionnaire de la terminologie du droit international. (Dictionary of terminology of international law.) Sirey. Paris, 1960, 350-351.


\textsuperscript{1066} Nagy op. cit. 422.

\textsuperscript{1067} Resolution on the Consideration of Civil Claims. A/CONF.20/10/Add.1, 90. Adopted at the 12th plenary meeting of the United Nations Conference on Diplomatic Intercourse and Immunities on 14 April, 1961 in Vienna.
impede the performance of the functions of the mission. In case when the immunity is not waived, the sending state should do its best to produce just settlement of the civil claims. Brown notes that in practice, it is uncertain to what extent a sending state has to waive diplomatic immunity, in order to address claims, according to the laws of sending states. Above and beyond, legal systems are different and states are generally very reluctant to waive diplomatic immunity. If there is a case of unacceptable behavior of a diplomatic agent, by both countries, they rather withdraw him from the receiving state.

The following cases illustrate the rule, according to which in common law, customarily, civil proceedings can not be taken against a diplomat. In 1859, in *Magdalena Steam Navigation Co. v. Martin*, it was argued that the court would proceed to judgment on a private debt, so that the execution could be imposed, as soon as the diplomat lost his status. In this case, the defendant was a shareholder in and, consequently, contributory of the *Magdalena Steam Navigation Company*. The Company had to be wound up, according to *The Joint Stock Companies' Act*, therefore, the appointed liquidator made a call of 61. per share on all stakeholders. The defendant did not pay the call in due time, and a writ has been sued out against him and served upon him, to recover the alleged debt. The defendant stated that he was a born alien and never was a subject of Her Majesty the Queen by naturalization, denization or otherwise, and due to the fact that he was the Envoy Extraordinary and Minister Plenipotentiary of and for the Republics of Guatemala and New Granada, respectively, a suit could not be brought against him, because he was a privileged person, as an ambassador, in addition, having no real property in England.

Subsequently, in this case, the diplomat, as a public minister, could not be compelled to answer. The plaintiff argued that the diplomat, despite of his character of foreign ambassador, could be sued for a debt – as any private alien, since he was a member of his trading company, thus being engaged in trade activity. Eventually, the argument that the court should proceed to judgment on a private debt, failed and the court decided that the service of the writ was
impossible, despite of the fact that under the Act of 1708 the writ would be void, similarly to the next case.

In Musurus Bey v. Gadban\(^\text{1074}\) in 1894, the principal question was related to the right of the plaintiff, as executor of Musurus Pacha, to set up the Statute of Limitations in answer to the claim of the defendants, Paul Gadban and William Clarence Watson for money, previously lent by them to Musurus Pacha back in 1873, while he was an ambassador in London, accredited by the Sultan of Turkey. Musurus Pacha was recalled and left England in February 1886, then returning to Turkey, where he resided until his death in 1890, having appointed the plaintiff his executor. In 1873, Musurus Pacha, serving as Ambassador in London, borrowed 3 107 pounds from the defendants, who were trading in partnership at that time, and never paid back the debt. After the death of the ambassador, his executors in 1891 engaged Gadban to collect bonds and money, belonging to the estate of the death, and this action resulted in a writ, issued in 1892, to recover from Gadban’s executors the bonds and money, which Gadban had collected prior to his agreement with the plaintiff. Gadban’s executors asserted that they are entitled to be paid the 3 107 pounds, lent in 1873, which sum remained unpaid.

In this case, the court found that Gadban and Watson had no cause of action against Musurus Pacha prior to 1885, when he presented his letters of recall. Also, there could be no execution against an ambassador while he was accredited or not even when he was recalled,\(^\text{1075}\) only if he remained in the accrediting state for a reasonable period of time, as it was in case of Musurus Pacha, who remained in England no longer, than it was necessary, in order to make the necessary preparations for his departure. The Ambassador’s privilege did not cease at the moment, when he presented his letter of recall and it continued until his return to Turkey, so there was not an effective cause of action against him, while he stayed in England, finishing his affairs after his recall. Consequently, in this case the plaintiff could not set up the Statute of Limitations to the claim of Gadban and Watson, the Court of Appeal upheld the judgment and the appeal was dismissed with costs.

The duration of the „reasonable time” is decided by the court and if a diplomat stays in the receiving state beyond this period of time, he becomes amenable to the jurisdiction.\(^\text{1076}\) The case of In re Suarez\(^\text{1077}\) is an exceptional one, regarding the „reasonable” time period. The Bolivian Minister to London was the administrator of an estate in London, which was the reason

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\(^{1074}\) Musurus Bey v. Gadban and others. 2 Q. B. 352 (1894).

\(^{1075}\) As it was held in the case of Magdalena Steam Navigation Co. v. Martin in 1859.

\(^{1076}\) O’Connell op. cit. 907.

\(^{1077}\) In re Suarez [1918] 1 Ch. 176.
The Minister received formal waiver of his diplomatic immunity and there was made an order. In three years, the execution of the order was requested and one of the defenses, raised in this case was that the waiver became invalid by that time, since it was not shown that it was provided with the consent of the Government. The Court of Appeal held that the Government’s consent was given, so the waiver of diplomatic immunity for the purposes of the trial did not extend to execution, there was needed a separate waiver to the proceedings, related to the execution. It should be added here that the Vienna Convention contains the same provision, necessitating a separate waiver of diplomatic immunity in respect of the execution of a judgment.

With respect to international law regarding the scope of diplomatic immunity, the Vienna Convention is the governing international legal authority in this matter. The Vienna Convention provides that diplomats and diplomatic staff shall receive immunity from the jurisdiction of the receiving state. The degree of enjoyed immunities vary, and states tend to keep themselves to the principle of reciprocity. The highest degree of immunity is received by the diplomatic agent, defined by the Convention, as the "the head of the mission or a member of the diplomatic staff of the mission".

Diplomatic immunity is enjoyed from the moment, when the official enters the host country or the government of the receiving state was informed about his appointment. The immunity expires, when the official functions are terminated.

In addition to provisions on protection, the Vienna Convention authorizes diplomatic agents with complete immunity, except to real actions that involve private immobile property, located on the territory of the receiving state, and not held on behalf of the mission; actions in succession, in which the diplomat is an executor or heir; actions, related to any professional or commercial activity, exercised by the diplomat in the receiving state outside his.”}

official functions,\(^{1083}\) i.e. as a private person\(^{1084}\) (and not on behalf of his government).\(^{1085}\) The diplomat, on his part, has to respect the laws and regulations of the receiving state.\(^{1086}\)

The question, whether the private residence of a diplomatic agent is included within this third exception, was considered during the case *Intpro Properties v. Sauvel*.\(^{1087}\) The landlord of the house, leased to the French Government and occupied by a diplomatic agent and his family, requested access for contractors to perform the repair work and this was denied. The landlord turned to the court and the French Government got involved into the proceedings, either, as defendant for breach of the agreement, regarding the repair and refusal of access, and afterwards the claim was pursued solely against the French Government.

According to the State Immunity Act of 1978, provisions on immunity to immovable property, which is located on territory of the United Kingdom, does not apply to „proceedings concerning a State’s title to or its possession of property used for purposes of a diplomatic mission“.\(^{1088}\) The Court of Appeal found in this case that the usage of the house, as private residence by a diplomat was not enough to be qualified, as usage for the purposes of a diplomatic mission, also referring to the provisions of the Vienna Convention, which elaborate on matters, related to premises\(^{1089}\) of a diplomatic mission\(^{1090}\) and on the exception to diplomatic immunity from jurisdiction of the receiving state, regarding private immovable property, situated in the territory of the receiving state.\(^{1091}\)

Similarly, in *Portion 20 of Plot 15 Athol (Pty) Ltd v. Rodrigues* in 1999,\(^{1092}\) the South African High Court held that the property, purchased by the Ambassador of Angola in Johannesburg, as a residence,\(^{1093}\) was acquired, as a private investment, accordingly, it was not occupied for the official purposes of the diplomatic mission. The premises of the diplomatic mission of Angola were located in Pretoria, so the eviction order in this case could be given, based on the fact that the obligations, arising under the purchase agreement had not been met.

\(^{1083}\) Vienna Convention. Article 31(1)(a)(b)(c).
\(^{1084}\) Doc. cit. Article 31(1)(b).
\(^{1085}\) The case of *De Andrade v. De Andrade* illustrates the provision on immunity from civil and administrative jurisdiction including civil proceedings, related to private matters. In this case the immunity of the diplomatic agent was upheld due to divorce and custody proceedings, since matrimonial proceedings, involving a claim for property adjustment, related to property, purchased as an investment, does not fall within this exception, under the Vienna Convention. *De Andrade v. De Andrade*. 118 ILR 299, 1984.
\(^{1086}\) Vienna Convention. Article 41(1).
\(^{1089}\) The Vienna Convention does not specify the number of rooms of an embassy.
\(^{1090}\) Vienna Convention. Article 1(i).
\(^{1091}\) Doc. cit. Article 31(a).
\(^{1092}\) *Portion 20 of Plot 15 Athol (Pty) Ltd v. Rodrigues*. South Africa, High Court, Witwatersrand Local Division, 21 October, 1999.
\(^{1093}\) In fact, the Ambassador had its principal residence in Pretoria. Ibid.
The diplomatic immunities, accorded to agents of state by the Vienna Convention, diminish the jurisdiction of the receiving state, so the Convention strives to restore some kind of balance, providing certain remedies in cases of abuse. The jurisdictional immunities apply only at the procedural level, and diplomatic agents are obliged to respect the laws of the receiving state. Therefore, once diplomatic immunity is waived, the local courts may enjoy jurisdiction within the usual limits, set by international law. All members of the diplomatic mission, entitled to immunity while at the office, continue to enjoy immunity ratione personae, with respect to their official acts, even after they have left the office.

O'Connell remarks that there is no rule of international law, which renders inviolate all the property of a diplomatic agent, nevertheless, it could not be stated that only the property, held in virtue of diplomat's office is immune from the jurisdiction of the receiving state. Even at the time of Grotius, it was accepted that for reasons of ambassador's security, "every thing belonging to him must be protected from all compulsion".

The diplomat's property in the embassy also enjoys the protection that the embassy can afford. The question of the extent to which private property outside the embassy is covered by immunity, remains ambiguous. (Conversely, Hotman believes that it would not be lawful, by reason of any debt or obligation to enter into the ambassador's house and to sale his movables and horse, since even in criminal causes there ought to be applied both respect and discretion.)

The property of a diplomatic agent includes items in his private residence and other property, such as bank account, motor car, and other items of personal use or necessary for livelihood. A diplomat's bank account is immune due to the fact that it cannot be promptly determined, what proportion of the account is needed to maintain diplomatic functions and dignity, as illustrated in the case of Re Ledoux.

The Supreme Court of Uruguay ordered Vienna Convention. Articles 31, 32. Grant and Barker consider that the term "immunity" is employed primarily to denote exemption from legal process. As such, an immunity does not imply or involve non-amenability to law or non-liability ratione materiae, as must be clear when it is appreciated that an immunity may invariably be waived. Possibly, the term should not be used in relation to anything other than curial jurisdiction. Grant – Barker op. cit. 159.


A diplomat's motor car is immune from seizure and in a number of countries, including the United Kingdom, even from parking regulations. Ibid.


O'Connell op. cit. 902.

Re Ledoux, Ann. Dig. 1943-1945, Case No. 75.
to release the diplomatic accounts at a bank that was subject to judicial moratorium, acknowledging the immunity of such bank accounts.

The general rule today is that embassy bank accounts enjoy absolute immunity from execution, because of the peculiar character of such accounts – being used for the maintenance and functioning of the diplomatic mission, and destined for a public or sovereign purpose. In this respect, this sovereign purpose endows these accounts with sovereign nature. The courts are generally understand by the „maintenance and functioning of the diplomatic mission”, based on relevant cases, related to funds, regarded being used for public or sovereign purpose: the provision of accommodation for diplomatic personnel, repair and maintenance of non-commercial real estate; payment of salaries, wages, allowances; travel and other expenses for diplomatic personnel, also for the „day-to-day running of the mission”. Diplomatic agents are commonly enjoy special or favorable treatment, with regard to bank accounts, which may for example, be regarded, as those that belong to non-residents, thus the transfer procedures with the sending state would be simplified. Certainly, enforcement measures to freeze a foreign embassy funds can be taken, if the money available on its bank account are not to be used for the purposes, which are directly related to the functions of a diplomatic mission.

The inviolability of the residence of a diplomat is still an „obscure” topic, in opinion of O’Connel, since some writers limit diplomatic inviolability to the embassy, the chancery and the ambassador’s house, while others extend it to the principal residence of the staff and to other embassy property, and others again propose that all real estate, owned by any diplomat should be covered by inviolability. There is a clear difference between the house, privately owned by a diplomat and the public property of his state. The question of immunity of the public property of the sending state from the local jurisdiction of the receiving state depends on its use – whether for public or commercial purpose. In case the property is used for embassy purposes, it is considered to be public by definition and then it is inviolable.

The diplomat’s property is viewed through different principles, as it was considered in 1929 by the Supreme Court of Czechoslovakia in the case *Immunity of Legation Building*, arising out of a writ of execution regarding the Hungarian diplomatic property, to secure

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1106 Denza op. cit. 227.
1108 O’Connel op. cit. 902.
The Supreme Court distinguished between the embassy property \textit{stricto sensu} and the "dwellings of all diplomatic persons," and a country home, an agricultural estate or a factory, owned for private purposes by a diplomat.

With respect to the limitation of diplomatic inviolability of diplomatic agents, while this principle is well established, one exception is widely asserted. In case, when a diplomat commits an act of violence, which disturbs the internal order of the receiving state, in such a manner, as makes it necessary to put him under restraint for the purpose of preventing similar acts, or if he conspires against the receiving state and the conspiracy can be made harmless only by putting him under restraint, he may be arrested for the time being, although he must in due time be safely sent home. (For example, in the forementioned case of Gyllenburg, his papers were searched after his arrest and used, as evidence of his being an accomplice in the plot.)

The Vienna Convention, nevertheless, does not refer to such exception.

The commentary of the International Law Commission on the final draft of Articles on Diplomatic Intercourse and Immunities, expressed that the principle, by virtue of which the diplomatic agent is exempt from measures that would amount to direct coercion, does not exclude, in respect of the diplomatic agent, either measures of self-defense, nor, in exceptional circumstances, measures to prevent him from committing crimes or offences.

It must be emphasized that a diplomatic agent can not complain, if he is injured in consequence of his own unjustifiable behavior, as for example, in attacking an individual, who in self-defense retaliates or in unreasonably or willfully placing himself in dangerous or awkward positions, such as in a disorderly crowd.

According to Levin, the absence of restrictions on personal immunity of diplomatic agents would mean vulnerability to any arbitrariness from the part of diplomats, and could impose responsibility on states for such eventual cases. In fact, a state would be often incapable to prevent such occasions of abuse.

To summarize different opinions of scholars, it is permissible to restrict personal inviolability of diplomats in the following cases:

- when a diplomat puts itself at risk by his actions;
- when persons violate diplomatic immunity;
- in order to prevent the commission of an offense.

\begin{itemize}
  \item \textsuperscript{1110} I\textbf{bid.}
  \item \textsuperscript{1111} Jennings–Watts op. cit. 1074.
  \item \textsuperscript{1112} Vienna Convention. Article 29.
  \item \textsuperscript{1114} Jennings–Watts op. cit. 1074-1075.
  \item \textsuperscript{1115} Levin: Diplomaticheskii... 315-316.
\end{itemize}
- in self-defense on the part of a diplomat;
- in self-defense against actions of a diplomat.

In international practice, the seizure of diplomats in the act is often accompanied by a mutual exchange of notes of protest between the states, indicating the justification of such actions or their illegality.\textsuperscript{1116}

It has to be pointed out here that diplomatic missions or embassies are not themselves legal entities, they should be rather viewed, as a collection of persons, situated in diplomatic premises, all of which – individually – enjoy their own inviolability. In case, a dispute arises with the sending state, the issue has to be resolved by the law, related to foreign state immunity.\textsuperscript{1117} The Vienna Convention provides the same inviolability and protection of a diplomat’s private residence and property (with certain exceptions),\textsuperscript{1118} as it affords to the premises of the diplomatic mission.\textsuperscript{1119}

With regard to contemporary diplomatic practice, concerning diplomatic privileges and immunities, Gumeniuk notes that the leading countries of the world, especially the United States, Canada, France and the United Kingdom, in recent years have been increasingly carried out a general limitation of administrative law. One of the reasons for such practice – internal considerations of a political nature, aspiration of governing bodies of the host states to adequately respond to the public uproar, caused by the numerous cases of abuse of diplomatic privileges and immunities by foreign diplomatic missions and their individual employees.\textsuperscript{1120}

This is what guided the governments of the United States, the United Kingdom and Canada, which recently introduced new rules that allow to bring diplomats to administrative justice, in response to numerous and factually unpunished violations of traffic rules. (In addition, in some cases, these states introduced immunity from the criminal jurisdiction of diplomats, as well.) The other reason for restrictions of diplomatic freedoms is connected to the association of diplomatic agents with terrorist activity, when the involvement of certain diplomatic missions it often obvious.\textsuperscript{1121}

Also, a significant role in politics of restrictions of diplomatic independences plays the desire of some governments to ensure their own economic interests. On this basis, in 1985 the United States introduced the compulsory insurance of diplomatic vehicles, under the threat of

\textsuperscript{1116} Demin op. cit. 110-115.
\textsuperscript{1117} Brown: Diplomatic... 80.
\textsuperscript{1118} Vienna Convention. Article 31(3).
\textsuperscript{1119} Doc. cit. Article 30.
\textsuperscript{1121} Ibid.
cancellation of driving licenses. In 1987, Great Britain passed a law, according to which, the Foreign Office has received the right to limit the amount of space, used by diplomatic missions, which are covered by diplomatic privileges and immunities. This has resulted in a higher fee for public municipal services, subsequently, increasing the number of different taxes. In general, except of the fore-mentioned countries, the doctrine of limited immunity of states is more and more supported by Argentina, Austria, Belgium, Egypt, Italy, the Netherlands, Pakistan and Germany. The judicial practice, carried out on the basis of this doctrine, starting from the beginning of the 1970s created such precedents as consideration by the courts claims of private firms towards diplomatic missions and arrest of bank accounts of embassies by court. According to Gumeniuk, this all testifies the fact that diplomatic privileges and immunities are an extremely sensitive category of daily diplomatic practice.

Furthermore, the difference between the official functions of a diplomat and his private commercial activity is still a disputable question, when it has to be defined, whether a certain property enjoys diplomatic immunity.

IV. 2. Immunity from criminal jurisdiction

Regarding the criminal cases, with respect to diplomatic agents, the legal practice is completely unified. In olden times, according to some authors, foreigners, including messengers, did not stand trial in a foreign country, but were deported to their country of origin. Others argue with this statement, claiming that there is little evidence, regarding the fate of a messenger, who transgressed a law in the recipient country, for that reason, no firm conclusion can be drawn. It appears that diplomatic immunity was not granted in such a case and the messenger was sued in the host country, suffering the sentence, meted out to him.

Starting from the sixteenth century, no case have occurred, when a diplomat would be prosecuted in the receiving state, without his consent, as it had been illustrated by the forementionned Mendoza case. Before the Vienna Convention, the exemption of diplomats from criminal jurisdiction did not mean that they might freely commit crimes or offences. The immunity of diplomatic agents on criminal cases had only consequences relating to procedure, and therefore, their criminal responsibility remained entire.

Gumeniuk op. cit. 79.

Elgavish op. cit. 88-90.

Papakostas op. cit. 58.

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The most customary act, taken by the Ministries of Foreign Affairs in cases when diplomatic agents, enjoying immunity, committed a crime in the receiving state, is that the violence of law is reported to the respective ambassador, and in serious cases the violator might be recalled by its sending state. In certain cases, the withdrawal is requested by the receiving state.

As it has been previously mentioned, the Vienna Convention declares that a diplomatic agent is not liable to any form of arrest or detention. There is a possible exception to the rule of immunity from arrest, in case, when a diplomat has to be put under constraint in the interests of local order. Such restraint of a diplomat must be no more, than is necessary, nor endure for longer, than necessary. The arrest of a diplomat is justified by emergency and by necessity for preserving the security of the receiving state.

A diplomat may not be restrained from leaving the host state, even if he leaves unpaid debts behind. The case of the Baron de Wrech from 1772 is an example to this rule. Baron de Wrech, the Minister Plenipotentiary of the Landgrave of Hesse-Cassel, after being recalled, was about leaving Paris without paying his debts, when the Due d’Aiguillon refused to give him his passport, at the request of baron’s creditors. De Wrech turned to his colleagues for help and they sent a joint note of protest to the Duke, objecting against the service of the writ on de Wrech, claiming that it was against of the Law of Nations and liberty, therefore they appealed to the justice and equity of His Most Christian Majesty to protect their rights and privileges. The Duke replied to the note that the circumstance of the case could not lead to infringement of diplomatic rights and privileges, and the French Ministry in its memorandum expressed that a minister can not take advantage of his privileges to avoid paying his debts in the foreign country where he resides, for this would be contrary to the intentions of his sovereign.

In February 1918, the Soviet Government in Petrograd arrested and threw into prison Count Constantine Diamandi, the Romanian Minister, because he would not return to Moscow a store of gold and jewels, which had been cached by the czarist government in Romania, in order to save them from the German advance. In those days, it was an outrageous case to grab a diplomatic representative. The Diplomatic Corps assembled all the Chiefs of Mission under the chairmanship of rather stately British Ambassador, Francis and presented their protest to

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1125 Vienna Convention. Article 29.
1126 O’Connell op. cit. 900.
Lenin, the Head of the Soviet Government, in person.

Livingston Phelps, the second secretary to the American Embassy, interpreting Francis, said he had not come to discuss the ambassador's arrest, only the violation of the principle of diplomatic immunity. The Romanian Ambassador was eventually released, but was also ordered to leave the city.

When the Iranian Minister to the United States was arrested, handcuffed and brought before a magistrate in Maryland on a charge of violating traffic regulations on 27 November, 1935, Cordell Hull, the Secretary of State of the United States issued the following official apology the Iranian Government, to justify the punishment of the police officers concerned:

"If we are to be in a position to demand proper treatment of our representatives abroad, we must accord such treatment to our own representatives in this country, and this Government has no intention of departing from its obligations under international law in this respect."

It has not occurred since centuries that an envoy would be arrested or brought in front of the criminal court, wrote Flachbarth in 1951.

The majority of states would try to avoid admitting its diplomat's involvement in an illegal act. But when a diplomatic agent violates a law that is serious enough to attract the attention of the receiving state, the involved state turns to the remedies, provided by the Vienna Convention. Due to the provisions, according to which a diplomat can not be arrested, taken into custody and be subject to prosecution in the receiving state, the Yugoslav authorities did not initiate criminal proceedings against the Ambassador of Austria in Belgrade, who on 6 November, 1976, accidentally shot the French Ambassador Pierre Sébilleau.

It is by and large considered that diplomatic agents are immune not from the law itself, but from the application and execution of the law by the authorities of the receiving state. The provisions of the Vienna Convention were designed to foster and protect the diplomatic practice, rather than to represent and protect the interests of an individual diplomat. Restricting or even limiting some of diplomatic privileges and immunities would have a deterrent effect on diplomatic agents, and withhold them from abuse. Furthermore, the receiving state shall not oblige a diplomat to give evidence, as a witness.
Diplomats are exempt from subpoena, as witness, so they are not obliged to give evidence in a lawsuit, conducted at the tribunals of the country they are accredited to. A diplomatic agent is not obliged to appear, as witness neither in a civil or an administrative court, nor to give evidence before a commissioner, sent to his house.\textsuperscript{1134} And as the summoning creates a relative obligation for them, for this reason, they can not even be summoned by the tribunals to attend under this capacity.

The exemption of diplomats from the obligation to give evidence has its basis on the inviolability of these persons. The obligation to give evidence constitutes a dependence on the judicial jurisdiction, and the intervention of a person in a suit as a witness may have further consequences of judicial nature for this person. Therefore, diplomats, who should be left unmolested to fulfill the mission, imposed on them, can not be obliged to attend at the tribunals under the qualification of a witness, in theory.\textsuperscript{1135} All the same, if the diplomat chooses for himself to appear, as a witness, the courts can make use of his evidence.\textsuperscript{1136}

The requirements on personal inviolability of diplomatic agents – provided they are not nationals of the receiving state, including freedom from arrest and detention,\textsuperscript{1137} were violated during the hostage case in the United States Diplomatic and Consular Staff in Tehran.\textsuperscript{1138} Failure to interpret the changing political environment in the host country may turn out to be costly to the foreign policy goals of the sending country.

For instance, in 1979, American diplomats found themselves at the center of a revolutionary storm in Tehran, when Iranian students took over the embassy building, together with its staff. The occupation\textsuperscript{1139} of the American Embassy exemplified „a dramatic breach of widely excepted international diplomatic protocol, but it also highlighted a significant weakness in American-style country expertise”\textsuperscript{1140}. The United States, being caught off-guard, did not respond well to the violent situation and „the intelligence and diplomatic fiasco reached its climax”,\textsuperscript{1141} when the personnel of the American Embassy was taken hostage.

Irrespective diplomacy law has advanced into an independent and self-sufficient branch of law by now, outlining the rights and obligations both of the sending and the receiving state,

\textsuperscript{1134} Jennings–Watts op. cit. 1100-1101.
\textsuperscript{1135} Papakostas op. cit. 75.
\textsuperscript{1136} Jennings–Watts op. cit. 1101.
\textsuperscript{1137} Vienna Convention. Article 29.
\textsuperscript{1140} Starkey–Boyer–Wilkenfeld op. cit. 55.
\textsuperscript{1141} Starkey–Boyer–Wilkenfeld op. cit. 56.
The developed remedies, applied in cases of abuse, still, there are not always satisfying or unanimous answers to situations when diplomacy law collides with criminal law.

The provisions of the International Law Commission on state responsibility address the way an injured state may handle the issues in the field of diplomatic relations. The immunity from criminal jurisdiction bears an absolute character and applies even to those cases, where there is an abuse of immunity. This has been confirmed by the International Court of Justice in the judgment of the Diplomatic and Consular Staff in Tehran.

At the same time, the Court emphasized that the removal of criminal jurisdiction does not mean impunity, for "diplomacy law itself provides the necessary means of defense against, and sanction for, illicit activities by members of diplomatic or consular missions."

In line with the decision of the International Court of Justice, concerning the American Hostages Case, it was held that the fundamental character of the principle of inviolability was strongly underlined by the provisions the Vienna Convention.

Even in cases of armed conflict or in the case of a breach in diplomatic relations, inviolability of diplomatic members, premises, property and archives of the mission must be respected by the receiving state. But the observance of this principle does not mean that a diplomatic agent caught in the act of committing an assault or other offence may not, on occasion, be briefly arrested by the police of the receiving state, in order to prevent the commission of the particular crime.

In spite of the fact that a diplomatic agent enjoys absolute immunity from the criminal jurisdiction of the receiving state, in 1987, the United States took steps towards an indictment Christenson, poses the question that since the courts are part of the "system", are all trials, therefore, political? Or, because in every political trial the accused is charged with a specific violation of the criminal code, are no trials political? Ron Christenson: Political trials: Gordian knots in the law. Transaction Publishers. New Jersey, 1999, 1.

Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries. 2001, 131: "Article 50. Obligations not affected by countermeasures. … 2. A State taking countermeasures is not relieved from fulfilling its obligations: … (b) to respect the inviolability of diplomatic and consular agents, premises, archives and documents."

Wolf, elaborating on state responsibility, considers inviolability, as a special case of foreign law, the violation of which evokes state responsibility. Joachim Wolf: Die Haftung der Staaten für Privatpersonen nach Völkerrecht. (The liability of states for private individuals under international law.) Duncker&Humblot (Verlag). Berlin, 1997, 357.

The same provisions apply to consular relations.

However, the Court was not able to ensure the enforcement of the judgement and compliance with the Order for the indication of provisional measures. In addition, not only Iran ignore the Court's Order and Judgement, but even the United States ignored the Order, when it decided on military action in flagrant disregard of the Order's clause against either party exacerbating the situation. Matthew Neuhaus – Gregory Hammond: Diplomatic privileges and the International Court of Justice – protection or platitudes? Sidney Law Review. Vol 9, 1980-1982, 662.


Vienna Convention. Articles 44, 45.

of an Ambassador, prior to the termination of official accreditation. Subsequent an incident, involving two U. S. nationals, one of whom was seriously injured, Ambassador Abisinito was recalled by the sending state on 17 February, 1987, and his accreditation to the United States ceased, as of 24 February, 1987. Nonetheless, the U. S. Attorney Office informed Abisinito’s criminal lawyers that prosecution was not “currently being contemplated”, only in January 1988.\footnote{1150}

In January 2002, the Russian Supreme Court upheld the conviction of Valentin Moiseyev, a former high-ranking diplomat, who was arrested by the Russian Federal Security Service (FSB), the former KGB, in 1998 on charges of spying for South Korea. A year after his arrest, while the case was still pending trial, Vladimir Putin, then the head of the FSB, told reporters that the diplomat’s guilt had been proven beyond a doubt.\footnote{1151} At a retrial in August 2001, the diplomat was sentenced to four and a half years' imprisonment in a strict regime colony. The Court accepted the evidence of the criminal activity of Moiseyev, provided by the investigators of the FSB, and found him guilty of high treason. The diplomat did not plead guilty.\footnote{1152} Moiseyev was released from prison on 3 December, 2002 and immediately filed a complaint with the Strasbourg Court, insisting on his innocence. Eventually, in 2008, the European Court of Human Rights upheld a complaint of the former senior official of the Russian Foreign Ministry against the Russian authorities, who was convicted of spying\footnote{1153} and ordered to pay him compensation in the amount of 28.9 thousand Euros, as well as to cover the legal costs.\footnote{1154}

Legal immunity can be lifted in some cases, limited or refused by the entitled person, himself. Such measures are necessary in cases, when immunity turns into an obstacle.\footnote{1155} The maxim “Quilibet potest renunciare juri pro se in troducto.” applies to the waiver\footnote{1156} of the privilege of diplomatic immunity.\footnote{1157} In cases, where it’s deemed politically wise, a diplomat’s...
The home country can also waive his diplomatic immunity and this would make the emissary subject to the jurisdiction of the host country. The Vienna Convention addresses the question of waiver, prescribing that the waiver is a prerogative of the sending state, not the diplomatic agent in question, the waiver from jurisdiction has to be expressed, and that the waiver related to civil or administrative proceedings shall not be held to imply waiver regarding the execution of the judgement. In this last case a separate waiver would be needed.

Malanczuk considers that in terms of diplomatic immunity that can be waived (the same way as sovereign immunity), and the effect is to change an unenforceable obligation into an enforceable one. The immunity, conferred by the state, can be waived by the state against the diplomat's wish, as well. On the other hand, a waiver by a diplomat is ineffective, unless authorized by his superiors. Diplomatic immunity can be waived "in the face of the court" – after the proceedings have been commenced or by an agreement made before the proceedings are commenced. The two forms of the waiver "in the face of the court" are: 1) "express" – expressly stating to the court that immunity is waived, and 2) "implied" – defending action, without challenging the jurisdiction of the court.

In this course, the right of waiver from immunity belongs to the government of the country, represented by the diplomat. One of the important cases of the past is when the Chancellor of the German Embassy in Santiago, in 1909, had murdered the porter of the Embassy, a subject of Chile and then proceeded to arson, in the attempt to cover his theft, but after the approval of German Government he was tried and executed in Santiago, Chile on 5 June, 1910.

The waiver must be expressed in a way that the court has to insist on a communication from the head of the mission, before it can proceed to hear the suit, and it has to be continuous to confer jurisdiction. The situation of withdrawal of waiver is illustrated in the case of Re Hillhouse in 1955, when the Canadian Embassy in Buenos Aires withdrew its waiver and this act was held by the Supreme Court of Argentina to bar the jurisdiction, since the Court had no jurisdiction, until the immunity was waived. In consequence, diplomatic immunity may...
be waived, but the waiver is made not by the envoy, but by the state, that is not the diplomat, but the sending state is entitled to immunity. On 16 October, 1969, the Bulgarian Government waived the immunity of one of its diplomatic agents from the Embassy in Copenhagen, who participated in armed robbery in the same city.\textsuperscript{1166}

A state may withdraw diplomatic immunity in case when a diplomat commits a crime, but such cases are rather rare. A notable example of a deprivation of diplomatic immunity happened in 1997, when a sending state waived diplomatic immunity for his foreign officer. George Makharadze, the Minister-Counsellor of the Embassy of Georgia in the United States, driving under the influence of alcohol, caused a road traffic accident, in which the sixteen years old Jovian Uoltrik died.\textsuperscript{1167} Although, diplomatic immunity would have shielded the diplomat from prosecution in the United States. The Government of Georgia has notified the U. S. State Department of its consent to bring Makharadze to justice in U. S. courts. Georgia waived the diplomat’s immunity, and he was subsequently convicted by a U. S. court to imprisonment for twenty-one years for involuntary manslaughter. Afterwards, the mother of the dead filed a lawsuit against both the Government of Georgia and the condemned diplomat. The amount of the compensation was determined by agreement.\textsuperscript{1168}

Silviu Ionescu, the Romanian chargé d’affaires in Singapore, was convicted in July 2010 for a deadly 2009 hit-and-run accident. In the accident that fueled widespread public outrage, a thirty-year old pedestrian was killed and two others injured. In 2013, the diplomat was convicted to a three-year imprisonment. The Indonesian widow of the killed man was awarded 240,000 dollars at the High Court of Romania.\textsuperscript{1169}

In 2002, the Russian diplomat Andrei Knyazev was convicted and punished for running over two Canadian women. The diplomat caused the traffic accident in 2001, as a result of which one of the women died and the other one was seriously injured. Knyazev was found guilty for violation of traffic rules and the rules of exploitation of means of transport, stated in the verdict.\textsuperscript{1170} After the car accident,\textsuperscript{1171} the diplomat refused to take the field sobriety test, citing diplomatic immunity. Later, the Canadian authorities tried to achieve the removal of

\textsuperscript{1166} Nagy op. cit. 423.
\textsuperscript{1167} The Embassy of Georgia assumed all the costs of the funeral, the payment of a lump sum and a pension.\textsuperscript{1168} Lukashuk op. cit. 87.
\textsuperscript{1171} In connection to car accidents, diplomatic agents are not under obligation to take out automobile insurance in the receiving state.
Knyazev’s diplomatic immunity, but the Russian Foreign Ministry rejected the request and recalled the diplomat.

While the pending trial, Knyazev was sent home, to Russia.

At the court hearing in Moscow, Knyazev said that he was driving without breaking the speed limit, but his car lost control because of the slippery road.

In the end, the former First Secretary of the Russian Embassy in Ottawa was sentenced for a four-year imprisonment in a Russian penal colony.

As for compensation for material and moral damages, the relatives of the victims sued the Canadian Government for the sum of two million dollars, claiming that it did not ensure the security of its citizens. The Canadian government agreed to pay the required amount, so as to receive a compensation from Russia afterwards.

When handling incidents, involving foreign officials, law enforcement officers should remember that the individual is an official representative of the foreign government and should be granted the appropriate degree of respect. Law enforcement officers also should promptly ascertain the level of immunity, afforded to such individuals and understand its parameters, so that the officer can appropriately and effectively enforce the law. By and large, the overwhelming majority of foreign officials are mindful of the need to obey the law and are committed to maintaining healthy diplomatic relations with the host country.

Particular statements or actions of diplomats could be followed by certain consequences, when they are, for example, of a political character.

In this way, in 2014, the conduct of André Goodfriend, the chargé d'affaires of the American Embassy in Budapest, caused serious tension in Hungarian-American diplomatic relations. The United States did not withdraw diplomatic immunity of Goodfriend, initiated by Péter Polt, Attorney General and requested by Péter Szijjártó, Hungary’s Minister for Foreign Affairs and Trade from John Kerry, the United States Secretary of State, after a public criminal case was launched in Hungary due to "libel, causing great injury of interest, committed before the general public".
involved into. Goodfriend in his declarations on state of affairs in Hungary, reportedly, made statements on Ildikó Vida’s, Tax Authority Chairman, implication of corruption.\footnote{Marad Goodfriend mentessége... és Vida is. (Goodfriend’s immunity stays... and Vida, too.) Népszava. 21 January, 2015. (Accessed on 20 January, 2016.) http://nepszava.hu/cikk/1045910-marad-goodfriend-mentessege-es-vida-is}

The investigation of this case had been initiated by Civil Unity Forum (CÔF), the rather governmental NGO that filed a report „\textit{against an unknown perpetrator}”, because in opinion of CÔF, under Hungarian law corruption was a crime, along with the situation, when someone possessed data on corruption and failed to report that, and the Americans missed to make this report. By leaving the premises of the American Embassy in Budapest, Goodfriend entered the territory of Hungary, thus, having certain obligations, arising under Hungarian law. In this very case it would be the obligation of giving the alleged evidence of the fact of corruption to the Hungarian authorities that would also explain, why entry of six Hungarian officials was denied to the United States.\footnote{Feljelentést tesznek a békemenetesek az USA ügyvivője miatt. (The organizers of peace march file a report because of the U. S. chargé d’affaires.) HVG. 13 November, 2014. (Accessed on 20 January, 2016.) http://hvg.hu/ithton/20141113_Feljelentest_tesznek_a_bekemenetesek_az_U}


Ádány notes, regarding the incident with Goodfriend that the clear conclusion, based on the analysis of legislation is that the current regulatory environment, owing to the lack of
practical consequences of other distinction between other immunities, which could be provided under diplomatic and international law, is not suitable to avoid similar cases in the future.

In cases of personal delinquencies by an envoy, the maximum recourse available to the host country is to demand the lifting of diplomatic immunity and if it is rejected, to demand the withdrawal of the individual – to declare him persona non grata. It is customary to negotiate bilaterally the departure of the diplomat, without public announcement.

(By opinion of Värk, the Vienna Convention and its travaux préparatoires contain no provisions on the effect of a prior agreement between concerned states to waive diplomatic immunity, so prior waiver of immunity regarding criminal acts is still very unlikely, but the receiving states could consider such step with regard to other states, whose diplomats tend to gravely misbehave.)

Nonetheless, scholars accentuate that diplomatic immunity should continue to be available in cases, when diplomatic agents abuse their privileges and immunities. Firstly, as argued by Higgins, one can not "assume" criminal guilt in advance of a trial, to argue that for that reason there should be no immunity from trial. Secondly, it would be very easy for the receiving state to insist that a foreign diplomat was abusing his position and that under these circumstances, he was not entitled to rely upon immunities. It is evident that "scrupulous governments" could use such a line of argument to harass foreign diplomats and bring pressure to bear on them. Higgins stresses that even if, in particular cases, a diplomat behaved in a reprehensible manner, it is important to maintain the integrity of the Vienna Convention, "for the larger good".

By the same token, Hickey and Fisch assert that unilateral removal or limitation of criminal jurisdiction immunity from the foreign diplomatic corps would invite or even require the reciprocal removal of such immunity, presently enjoyed by diplomats of the receiving states (and their families), living abroad. Removal of diplomatic immunity would create a threat of false criminal prosecution, especially in periods of political tension, when the need for uninhibited discourse is particularly valuable. The exposure of the diplomatic corps to such unnecessary risks ultimately may result in a personnel shortage of individuals, willing to serve at foreign posts.
There is much discussion concerning the extent to which states are immune from actions, regarding serious breaches of international criminal law, such as crimes of genocide and torture.¹¹⁹⁰

IV. 3. Immunity from duties

The customs, supposedly, appeared in ancient China, Mesopotamia and Egypt, along with the development of human civilization. The customs played a significant role in the development of maritime trade in the Greek city-states and in the territory of the later Roman Empire.¹¹⁹¹ The Manu Code¹¹⁹² elaborates on the system and procedures of customs, penalizing the smugglers.¹¹⁹³ The customs revenues belonged to the income of the ruler, who could convey the right to collect custom fees to others both in ancient times and later, in the Middle Ages. Thus, in medieval Hungary, the right to collect customs – *ius tributi*,¹¹⁹⁴ was reserved to the king – *ius regalis*. The Hungarian King could also confer to others this right, called *absque privilegio*.¹¹⁹⁵

At the beginning of the twentieth century, a serious problem, concerning the diplomatic corps in Norway was the illegal selling of alcohol. That was a serious matter during the prohibition years. The diplomatic corps was entitled to import alcohol for its own consumption and only the legations could buy liquor, by providing special slips. Notwithstanding, the Minister for Foreign Affairs of Norway made a „gentlemen’s agreement” with the British Minister, allowing to import liquor, which was a clear breach of Norwegian regulations and an example of „*how some foreign representatives were more equal than others*”,¹¹⁹⁶ despite of the formal equality among the members of the diplomatic corps.

Envoys enjoy exemptions from customs fees under the conditions of reciprocity in most of the countries, but the abuses associated with such exceptions, such as profiteering and

¹¹⁹⁰ Lowe op. cit. 185.
¹¹⁹² The Code of Manu presumably originates from the second century B.C.
¹¹⁹⁴ This right was also called *theloneum* or *telonium*.
¹¹⁹⁵ Pardavi op. cit. 41.
¹¹⁹⁶ The information about illegal sales of liquor leaked to the press, but the Ministry of Foreign Affairs made serious efforts to shield the diplomatic corps and to protect them against unwanted attention and against loss of face. Sharp–Wiseman op. cit. 89-90.
currency exports, occurred in the early twentieth century, as well.

In the forties of the last century, despite of the critical situation in Europe, if compare with the living conditions in other European countries, the American diplomats lived lavishly in Russia. Even with the card system in food supply, they have always had fuel for diplomatic cars, besides were provided with summer cottages, lived in spacious apartments.

In addition, a special currency exchange rate has been set for diplomatic agents, more profitable, than the official one.

Presumably, almost every employee of the U. S. Embassy in Moscow, in varying degrees, had been engaged in speculation at those times, either by illegal imports of Soviet currency, using diplomatic immunity, or through import of duty free goods: whiskey, cigarettes and others. These products were sold then at a huge profit. Some employees of the Embassy, being engaged in speculation on a large scale, returned home with tens of thousands of dollars, often in the form of works of art (exported due to the inviolability of diplomatic transportation), and sometimes in cash or in the form of checks. No one was ever fired from the State Department for such speculation activity.

Bucar states that Americans in Moscow were smuggling money under the cover of inviolability of diplomatic transportation. Until December 1947, diplomats were able to travel to Tehran, Warsaw, Bucharest, Budapest and other capitals, where they had the opportunity to acquire Soviet money (mostly false). The Soviet money was exported into the USSR, by means of diplomatic immunity and used for personal use or resold at a higher rate.

Americans were also actively engaged in the illegal sale of duty-free imported goods, for instance, cigarettes.

A fairly large number of Americans left the Soviet Union with two-three dozen chests and bags of enormous proportions, with a total weight of more than one or two tons, using the inviolability of diplomatic baggage, not to be examined by the Soviet customs authorities, carrying valuable books, jewelry, antiques, cameras, etc.

The Soviet Government did not prevent the import of goods from abroad within a certain quota, but it has taken measures to stop the enormous illegal imports. Besides the permitted

Flachbarth op. cit. 104.

The American diplomats enjoyed privileges in getting train tickets, and had all the opportunities for interesting leisure time. They regularly sent home butter, bacon, pastries and preserves. Parker – Bucar op. cit. 51.

Ibid.

Parker – Bucar op. cit. 87-88.

Some diplomats were able to exchange money at the State Department on a diplomatic rate. Ibid.

Certain American diplomats also illegally sold currency in U. S. dollars to their co-workers, as well as to employees of other foreign missions in Moscow, engaged in similar smuggling operations. Parker – Bucar op. cit. 90.

In Moscow, the proceeds for the sold goods in rubles were transferred then into dollars or used for the purchase of valuable antique items, such as Russian icons, to illegally export them for sale. Ibid.

Parker – Bucar op. cit. 89-90.
imports within the established quota, any newly arriving American diplomat was allowed to bring to five-ten tons of household items, without paying any customs dues. In addition, diplomatic personnel enjoying diplomatic immunity, could bring, and actually brought to at least a ton of goods – each under diplomatic seal. Finally, diplomatic pouches (bags, sacks), arriving at the Embassy every month, weighed several tons and more than fifty percent consisted of clothes and other things, designed for the personnel of the Embassy.\textsuperscript{1205}

Even with the fact that the topic subject of the diplomatic pouch/bag does not belong to the circle of personal privileges and inviolabilities of diplomatic agents, due to the large number and gravity of abuse, related to diplomatic pouch/bag, with involvement of diplomatic officers, it is unavoidable to mention this topic in the present work, as well.

By virtue of the Vienna Convention,\textsuperscript{1206} diplomatic inviolability covers the correspondence, as well – inviolability of diplomat’s documents. This is a form of communication with the sending state. Diplomatic pouch is one of the most common forms of communication of the diplomatic mission with its center and other offices of its state, therefore, it is the inseparable part of his daily work, and especially that diplomatic correspondence and other official papers are transferred via diplomatic pouch, sometimes by diplomatic bag.

In daily practice, there are cases, when the privileges and immunities of the correspondence of diplomatic agents and the correspondence of their embassy are closely interrelated and interconnected. (Above and beyond, there are authors, who consider the inviolability of diplomatic communications – both of the diplomat and its embassy – altogether, under „inviolability of means of communication”,\textsuperscript{1207} namely that it covers official correspondence, diplomatic papers and archives, diplomatic bags, diplomatic couriers and messages in code or cipher.)

In this fashion, in legal literature, much attention has been given to provisions, surrounding diplomacy law. Although the importance of the bag for documentary communication was widely superseded by use of radio and coded computer files, the diplomatic bag still has considerable importance for conveying secret materials,\textsuperscript{1208} often conveyed in „personal” diplomatic bags. It is also a well-known fact that sending states are often abuse the inviolability of diplomatic pouch, for example for transportation of firearms.\textsuperscript{1209}

\textsuperscript{1205} Parker–Bucar op. cit. 91.
\textsuperscript{1206} Vienna Convention. Article 30(2).
\textsuperscript{1207} Lung-chu Chen op. cit. 302; Glahn op. cit. 460.
\textsuperscript{1208} Gardiner op. cit. 358.
\textsuperscript{1209} Demin op. cit. 75.
In Great Britain, for instance, personal diplomatic bags had been used to transport diamonds, drugs or weapons to terrorists, as well. A study by the UK government notes that during the last ten years 546 serious offenses were committed in London by persons, enjoying privileges and immunities.

As illustration of the grave abuse of diplomatic privileges and immunities, when prohibited items are conveyed by diplomatic officers, in May 2001, Tair Nematov, trade representative of the Embassy of Tajikistan in Kazakhstan, Alma-Ata was arrested by Kazakh authorities. Fourteen kilograms of heroin were found in his apartment and ten kilograms of the same drug were seized by the officers of the Kazakh Secret Service, found at the diplomat's garage. In addition, some days earlier, sixty-two kilograms of heroin, fifty-four thousand dollars and a check for the amount 1 261 000 pounds was exposed in the two cars, belonging to the Ambassador and the trade representative of Tajikistan to Kazakhstan. According to operational data, the drugs were intended for the trade representative.

The inspection of the cars, detained on the highway from Kyrgyzstan to Alma-Ata, was carried out with the consent of the Ambassador.

In 2009, the Swedish police arrested two North Korean diplomats on suspicion of smuggling 230 000 cigarettes into the Nordic country, according to the reports of the Swedish Customs. The two diplomats claimed diplomatic immunity, being accredited in Russia, but having no accreditation in Sweden, and foreign diplomats are only immune from criminal prosecution in countries where they have been accredited with the authorities. An official at the 


Other five people were taken to custody with Nematov, charged for smuggling of drugs and organization of a criminal group. Torgovyi predstavitel' Tadzhikistana v Kazakhstane okazalsia narkotorgovtsem. (The Trade Representative of Tajikistan in Kazakhstan appeared to be a drug dealer.) Lenta.ru. 24 May, 2000. (Accessed on 19 January, 2016.) http://lenta.ru/world/2000/05/23/drugs/

This was not the first case of drug trafficking with the involvement of Tajik diplomats, though. In 1999, in Moscow Airport "Domodedovo", Russian customs officers arrested a courier, arrived from Dushanbe with the Tajik diplomatic pouch. The "mail" contained six and a half -kilogram of heroin. In January 2000, six kilograms of heroin were found at two diplomatic couriers, who arrived to the Russian Federation from Tajikistan. (In this regard, Mikhail Vanin, the Chairman of the State Customs Committee of the Russian Federation has expressed concern regarding the fact that according to his information, "state institutions of Tajikistan are beginning to get involved" into the drug trade, as reported by press.) In August 2003, the representatives of State Drug Control Department of Russia in the city of Moscow, detained diplomatic couriers, arrived from the Republic of Tajikistan to Airport "Domodedovo" and found eight kilograms of heroin in the diplomatic valise. Professiia – diplomat, dolzhnost' – konsul. (Profession – diplomat, position – konsul.) Seatruth. N 15 (0386). 17 April, 2013. (Accessed on 19 January, 2016.) http://seatruth.com/issues/_-15/2850-professiya-diplomat-dolzhnost-konsul.html


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North Korean Embassy in Stockholm said earlier that he did not know about the arrests.\textsuperscript{1215} The Korean diplomats were sentenced to eight months in prison, as reported by press.\textsuperscript{1216}

Customs immunity belongs to the personal inviolability of the diplomatic agent. Customs immunities consist of three main components: unhindered export and import of personal goods; relief of declared items from customs taxes; exemption, as a general rule, of personal baggage from customs inspection.\textsuperscript{1217} Diplomats enjoy immunity from customs, being exempt from all customs duties on items, intended for the personal use, and their personal baggage is not subject to inspection\textsuperscript{1218} and X-ray screening.\textsuperscript{1219}

The exception from this rule is when there are substantial grounds for believing that the baggage contains items, prohibited for import or export. In the latter case, the inspection shall be conducted in the presence of the diplomat or his representative. The diplomatic bag was defined in the Draft Articles of the International Law Commission as packages, containing official correspondence, documents or articles, intended exclusively for official use, which bear visible external marks of their character,\textsuperscript{1220} and used for official communications with missions, consular posts or delegations.\textsuperscript{1221}

In opinion of Olaoye, since in practice, the „diplomatic bag” may range from a small purse to an airplane,\textsuperscript{1222} and even small containers can be abused, as diplomatic bags, by the inclusion into them of drugs or small firearms, the use of large containers\textsuperscript{1223} On occasion, the baggage travels separately from the diplomat, the inspection could be performed in presence of the diplomat or his authorized representative,\textsuperscript{1224} responsible for the carriage of that baggage. Demin notes that states do not consider means of transport (vehicle, truck, airplane, railway wagon), which carry out the transportation of a diplomatic bag, as a diplomatic bag.\textsuperscript{1225}

In practice, a diplomatic bag is usually a large canvas sack, intended for the safe and confidential transportation of articles, as classified documents, vital communiqués,
encoding/decoding equipment, passports and government seals.

Owing to the fact that the Vienna Convention proposes no definition of the content of the diplomatic bag that would be allowed to carry, which has led to abuses and to International Law Commission's work in this area.

The limits of the diplomatic pouch, such as size, weight and number of pieces, are usually applied during its transportation via airlift. In April 1996, at the Butovo customs checkpoint outside Moscow, the customs checked the personal luggage of three Italian diplomats, transported by an Italian firm. During the search of the truck, there was found a large number of objects of ancient art, forbidden to export. The smuggled goods were confiscated. As stated by the Russian customs, they inspect a diplomatic baggage only being confident in the presence of a contraband.

Nowadays in France, for example, the tax-free alcohol and tobacco quotas are granted to all diplomatic missions, for their own usage.

The diplomatic missions, resident in France, enjoy a special customs regime with respect to vehicles, enjoying exemption from value added tax at their purchase. But this tax is due, when the means of transport is sold in France, except for the case, when the buyer of the vehicle is an other diplomat. Consequently, the tax regime for foreign citizens staying in France, therefore, seems characterized by great diversity, a variety that caused, on the one hand, by the broad interpretation of tax authorities and the other hand, by the large number of bilateral tax treaties.

In our time, the ambassador and his diplomatic staff are exempt from any form of taxation in the receiving state, also from the payment of local levies. The interpretation of what constitutes a tax varies in practice and many countries have shifted matters such as exemption from payment of taxes or VAT to a graduated, bilateral reciprocal regime, linking exemption to similar facilities for their own diplomats in the country concerned.

Rana remarks that rich states, such as the United States are especially adept at enforcing such reciprocity.
resumes that the exemptions from customs duties and inspections are of substantial practical significance and can cause problems due to the natural aspiration of the receiving states to prevent abuse of such valuable privileges, and the natural human weaknesses of diplomats.\footnote{Anthony Aust: Handbook of International Law. Cambridge University Press. Cambridge, 2010, 146.}

The sending state and the head of the diplomatic mission are exempt from all taxes, related to the premises\footnote{The Exemption applies to both owned and leased diplomatic premises. Vienna Convention. Article 23(1).} of the mission, but not from operating dues – „payment for specific services rendered”,\footnote{Ibid.} such as payments for electricity, water supply, and others. The Government of Germany, starting from 1994, allocated funds in order of social assistance to the Ambassador of an African country, who was not able to uphold her embassy.\footnote{Lukashuk: Mezhdunarodnoe… 88.}

Diplomatic immunity also applies to vehicles – boats, planes and cars, which can not be subject to search, requisition, attachment or execution. This does not exclude the right of traffic police to record violations of traffic rules and report them to the Ministry of Foreign Affairs. Immunity of diplomatic vehicles does not apply to drivers of these means of transportation, if they are not diplomats. In September 1995, in Moscow, there was arrested and then prosecuted the driver of the Embassy of Saudi Arabia on charges of hostage taking. In this case, a hostage was taken to Moscow region by a car that belonged to the Embassy.\footnote{Ibid.}

Customs immunity also belongs to diplomat’s personal immunity, and it consists of three main components: import and export of articles of personal use without let or hindrance, release of these personal items from customs duties, and exemption of personal baggage from customs inspection, as a general rule.\footnote{Vienna Convention. Article 36(1).} On 6 March, 2016, Son Young Nam, the First Secretary of the North Korean Embassy in Dhaka, got caught by the Bangladeshi customs, trying to smuggle gold into the country, which had an estimated worth of 1,4 million dollars.\footnote{The confiscated gold weighted about twenty-seven kilograms in total. North Korean diplomat stopped with nearly £1m in gold at Dhaka airport. The Guardian. 6 March, 2015. (Accessed on 9 April, 2016.) http://www.theguardian.com/world/2015/mar/06/north-korean-diplomat-gold-dhaka-airport-bangladesh}

The diplomat, traveling from Dubai, passed through the green channel at Dhaka Airport, then a customs officer asked to scan his hand luggage and the envoy said there was nothing to scan.\footnote{Serajul Quadir: Bangladesh seizes $1.4 million in gold from North Korean diplomat. Reuters. 6 March, 2016. (Accessed on 9 April, 2016.) http://www.reuters.com/article/us-bangladesh-northkorea-diplomat-idUSKBN0M21GY20150306}

In Norway, during the period of the World War I, there was a major diplomatic scandal, involving the German courier, baron von Rautenfels. The baron, together with two associates,
hid 600-700 kilograms of bombs and explosives in an apartment in Kristiania. The explosives had been brought to the country in suitcases, sealed with "Auswärtiges Amt, Berlin", addressed to the German legation, intended for ships, departing to Norway. The German authorities protested against the arrest of the courier and demanded his release. The baron was eventually released, after a few days of custody, mostly for the reason of placating the police and the press. In this situation, the right to self-defense outweighed diplomatic immunity and the inviolability of diplomatic luggage.

Smuggling by diplomatic agents still remained to be a recurring problem in Norway after the World War II, with growing scope of the smuggled items, among others, as a result of arranging of tax-free orders for diplomats, issued by the Ministry of Foreign Affairs in July 1945. It was noted that the Czech legation received 128,000 cigarettes and 1,450 cigars between December 1946 and July 1947. The Czech legation included two diplomats and six non-diplomats, and that equaled seventy-five cigarettes and a cigar per person a day. The legation also ordered 160 bottles of liquor and sixty-four bottles of wine. The most interesting case of smuggling of that time, however, was related to the Cuban Minister in 1951. Senior Xiques, during his eighteen months in Norway, has imported under diplomatic privilege, and then sold twelve grand pianos.

The Draft Articles on the Diplomatic Courier and Diplomatic Bag, adopted by the International Law Commission in 1989, provides the absolute inviolability of the diplomatic bag. The material specifies the duties of the sending, receiving and transit states, including provisions on non-discrimination and reciprocity.

In the last decade of our century, there was a steady trend towards the increase of cases of inspection, regarding both the personal baggage and the hand luggage of foreign diplomats, due to the tightening of the rules of airports controls at the registration of passengers. In order to ensure the safety of flights, in a number of countries, almost all passengers have to go through personal inspection, including diplomats (sometimes except of ambassadors). Demin points out that it could be argued that such inspection violates the Vienna Convention, because diplomatic

1242 [Foreign Office, Berlin].

1243 Sharp–Wiseman op. cit. 90.


1245 Vienna Convention. Article 28(1).

luggage is subjected to inspection not due to „serious grounds for presuming that it contains articles not covered by the exemptions”\textsuperscript{1247} and prohibited articles, but as a preventive measure.

The personal inspection of diplomats is unacceptable, as well. On the other hand, it is possible to bring arguments, justifying the lawfulness of such screening. Firstly, the inspection, carried out in airports, strictly speaking is not a customs inspection, referred to in the Vienna Convention.\textsuperscript{1248} In the doctrine of Western states, the validity of screening at airports is substantiated, with reference to the fact that the inspection in many countries is performed by employees of private airlines, rather than by the host state.

Nevertheless, the resolution of this issue of inspection, theoretically, should be guided by the need to balance the interests both of the receiving and the sending state. Demin agrees that diplomats should be exempted from inspection, at the same time, one should exclude the possibility of unlawful interference of criminals, who may act under the guise of diplomats, into the activity of civil aviation. A possible solution to this problem could be to develop and ad to international agreements provisions, regarding the procedure of special access of diplomats to aircraft. This procedure could include, for example, exemption from inspection of diplomats, provided, the airline had been notified by the Ministry of Foreign Affairs of the host state about the flight of a particular diplomatic agent.\textsuperscript{1249}

There is an ongoing dispute, concerning the examination of the diplomatic bag.\textsuperscript{1250} States, as a rule, try not to permit the inspection of their diplomatic pouch by technical means.\textsuperscript{1251} Ross claims that with regard to the prevention of illegal use of diplomatic pouch, such as transportation of prohibited items, the pouch should be passed through X-ray machine check (electronic scanning) and the customs agents could utilize the service of narcotics detection dogs to sniff for the presence of contraband. These rapid, unobtrusive procedures that preserve the confidentiality of documents, do not collide with the provisions of the Vienna Convention, which limits the contents of the diplomatic pouch to documents and articles, intended for official use by diplomatic agents.\textsuperscript{1252}

In history, the diplomatic „bag” has ranged from a small package to collection of large crates. There have been allegations of the use of diplomatic bags to smuggle drugs and weapons.

\textsuperscript{1247} Vienna Convention. Article 36(2).
\textsuperscript{1248} Ibid.
\textsuperscript{1249} Demin op. cit. 134-136.
\textsuperscript{1250} Nelson op. cit. 494.
\textsuperscript{1251} Demin op. cit. 81.
\textsuperscript{1252} In case of exposure of forbidden articles, customs officials could require the opening of the diplomatic bag in the presence of an official from the sending state, and if the foreign official would refuse to allow the inspection of the pouch, customs officials could decline the dispatch entrance to the receiving state. Ross: Rethinking… 199-200.
In 1964, at the Rome airport there was opened an Egyptian diplomatic bag and inside was found a bound and drugged Israeli citizen. Due to the increase of such cases, a number of states have argued that it is permissible to subject the diplomatic bag to electronic or other similar screening, although this has not been universally accepted.

In practice, it appears that a state has limited scope for protest, when its diplomatic bag is opened to reveal weapons, drugs or other non-official articles. Hillier stresses that the diplomatic bag should be opened only, where there is one hundred per cent certainty of finding prohibited items, considering it to be a lesson for customs and other officials.

From the contemporary practice of states, for example in Canada, in order to accord foreign diplomatic missions and the persons, connected with them a treatment that is comparable to the treatment, accorded to Canadian diplomatic missions and persons, connected with them abroad, the Minister for Foreign Affairs may, by order, extend any of the privileges and immunities accorded, other than duty and tax relief privileges, and grant, withdraw or restore any of the privileges, immunities or benefits, set out in the relevant regulations.

The Minister for Foreign Affairs or a person, authorized by the Minister, may issue certificates that may be received in evidence to resolve the questions, regarding matters, such as the consent of the Government of Canada to the establishment of diplomatic missions.

The recent diplomatic incidents have illustrated significant problems, deriving from the application of the conventional regulation of diplomatic communication and focused attention on the progress of its revision. The increasing number of abuse of the diplomatic bag by some sending states—especially that neither its size nor its weight is specified by the Vienna Convention—has intensified the apprehension of several receiving states for their national security, also engendering a critical reappraisal of diplomatic communication by the entire legal system.

IV. 4. Immunity in the third country

Foreign diplomats, arriving to a third state for business purposes are usually provided with a diplomatic visa and granted immunities, the amount of which is established by local law.
If a diplomat enters the third state for personal purposes (as a tourist, for holiday, to visit friends, etc.), the host state provides him, as a rule, with a non-diplomatic visa, but no immunities and privileges, however. Non-recognition of immunity for diplomats, traveling to third countries for personal reasons, were confirmed by numerous precedents.\textsuperscript{1259}

A third state has also to grant the same immunity and protection to the official communication of the diplomatic agent in transit, as it is accorded by the receiving state. „Transit state” means a state, through whose territory a diplomatic agent passes in transit. The official communication of diplomatic agents encompasses official correspondence, also messages in code or cipher.\textsuperscript{1260} Diplomatic documents are collectively referred to, as \textit{dépêche}.\textsuperscript{1261} The diplomatic immunity in this case applies to the diplomatic bag, as well.\textsuperscript{1262}

The case of \textit{Bergman v. De Sieyes}\textsuperscript{1263} was initiated in the state court upon the defendant’s deceit, and then it was removed by the defendant for diversity of the citizenship. The defendant, a citizen of France, at the time of the commencement of the action was appointed, acting and accredited Minister of the Republic of France to the Republic of Bolivia, which had not accepted him, as Minister yet. At the same time, the service of the summons and complaint on him was effected in New York, while he was temporarily present in the city, en route from France to his post in Bolivia, awaiting the transportation. The Court had to decide whether a diplomatic minister en route to his post, was immune from service of evil process in a third country, through which he was passing on the way to the receiving state. The plaintiff argued that since the defendant was not a diplomat, accredited to the United States, but accredited to the Republic of Bolivia, and due to the fact the summons and complaint did not prevent him from discharging his diplomatic functions by restraint on his personal freedom, he was not entitled to immunity from service.\textsuperscript{1264}

\textsuperscript{1259} The Russian practice in this matter is different from the conventional one. Foreign diplomats, entering with diplomatic passports, usually receive a diplomatic visa, regardless of the purpose of the visit, and are considered, as having diplomatic immunity. The Russian legal literature attempted to provide a doctrinal base of the current practices. Thus, Blishchenko and Zhdanov advocated for the need of provision diplomats with immunities on the territory of a third country, regardless of the purpose of entry, arguing that most of the countries guarantee a vacation to their diplomatic representatives, so it would be logical to assume that a person who goes on vacation, has the same rights, as the person who is on vacation in a third state. I. P. Blishchenko–N. V. Zhdanov: Printsip neprikosnovennosti diplomaticeskogo agenta. (The principle of inviolability of the diplomatic agent.) Sovetskii ezhegodnik mezhdunarodnogo prava. 1973. „Nauka”. Moskva, 1975, 28.

\textsuperscript{1260} The Vienna Convention. Article 40(3).

\textsuperscript{1261} Jónás–Szondy op. cit. 268.

\textsuperscript{1262} Ibid. Article 40(4).


In this case, the Court, considering the occurred situation res integra, held that a diplomat in transitu would be entitled to the same immunity as a diplomat in situ. In the United States there was extensive federal legislation in the general area of the Bergman case besides the Vienna Convention, which provided that whenever any process was sued or prosecuted by any person in any court in the United States, where any foreign ambassador or public minister, authorized and received, as such by the President, would be arrested or imprisoned, such a process had to be deemed void.

By general practice, diplomatic immunities, granted by the Vienna Convention, apply regarding the jurisdiction of the receiving state. All the same, a diplomatic agent is accorded to diplomatic immunity in situations, when he travels to his post or returns to the sending state through the territory of a third country or visits a third state, which has granted him a diplomatic passport visa.

It is worth to add here that a diplomatic passport provides its holder with certain advantages, for example, visa-free entry if the entry otherwise would be subject to visa regulations, but the document alone does not entitle its beholder to a special status.

Additionally, possession of a "diplomatic visa" does not constitute acceptance, as a diplomatic agent, as it was confirmed by certain judicial decisions.

Moreover, the third state is required to ensure the diplomat's transit or return (and provide the agent of state, above his inviolability, with some other immunities, which could be required to ensure his transit or return).

A third state is not obliged to allow the transit, however, the prohibition of such passage would be considered, as an unfriendly act.

In the situation, when the transit state does not recognize the sending state as a state or does not recognize the government of that state, then its diplomat in a short transit would not considered as a diplomatic agent, entitled to diplomatic immunities. In 2002, Pakistan broke diplomatic relations with the government of Afghanistan, which functioned during the rule of...
Taliban. The government of Pakistan escorted the Ambassador of Afghanistan to the Afghan border and handed him over to the proamerican military formation. The United States had never recognized the government of Taliban, so the Ambassador was arrested by the American authorities and forwarded to the Guantanamo Bay detention camp.\textsuperscript{1275}

Brown asserts that if the transit is connected to official functions, it should be more likely to attract inviolability to the traveler, than in cases of travel for pleasure. Mere presence of a diplomatic agent in the territory of the transit state should be treated very cautiously as a passage, if there is no evidence of actual passing through. In addition to that, there must be evidence that the diplomat in transit has been duly accredited – appointed and posted to a permanent diplomatic mission by the sending state, and accepted by the receiving state.\textsuperscript{1276}

The situation is more difficult in cases with the status of non-accredited diplomats (not the members of diplomatic delegations). Kovalev points out that in the doctrine of international law this question belongs to the unexplored matters. The Vienna Convention dedicates only one article to the status of diplomats on territory of a third state, besides, the legislation and practice of states in this matter is not constant. It is possible to single out three options for the stay of foreign diplomats on the territory of a third state: intersection of the territory of a third state in transit on a journey to another country; entering a third country on official business or for personal reasons; staying in the territory of a third state by virtue of force majeure, such as forced landing of aircraft, war, natural disaster, etc.\textsuperscript{1277}

Despite of the legal regulation of immunity of diplomatic agents in the third country, Bruhács agrees that the provisions of the Vienna Convention regarding the status of diplomats in transit, not quite pertinent today, as a result of the development of aviation. The Vienna Convention does not regulate the status of diplomatic representatives in other – non-transit states. Several cases occurred, by which it can be concluded that privileges and immunities of diplomatic representatives in such states are not granted.\textsuperscript{1278}

\textsuperscript{1275} Demin op. cit. 168.
\textsuperscript{1276} Brown: Diplomatic… 62.
\textsuperscript{1277} A. A. Kovalev: Privilegii i immunitety v sovremennom mezhdunarodnom prave. (Privileges and immunities in contemporary international law.) „Nauka“. Moskva, 1986, 23.
\textsuperscript{1278} Bruhács op. cit. 285.
V. Special matters of diplomatic privileges and immunities

V. 1. Abuse of diplomatic privileges and immunities

The main focus of the penultimate, fifth chapter of the present research is on issues and challenging or problematic questions of diplomatic privileges and immunities: further examples of misuse of privileges and immunities by diplomatic agents, the abuse of diplomats themselves, also possible remedies to cases of misapplication of the mentioned concepts and ways of protection of envoys.

The analysis of the subject of abuse in diplomacy law is worth to start with a short excursus into the notion of abuse in law, for "That no person may abuse his rights has long been accepted in theory as a principle of international law."

The principle that no person may abuse his rights has been accepted in theory in former times, as well, as principle of international law. Lauterpacht was one of the earlier writers to accept it.

Abuse of right undermines the moral basis of society, multiplies the legal nihilism and ultimately contributes to arbitrariness. The state's task is to build its legal policy in such a way, as to minimize this phenomenon and to limit abuse of right, as much as possible.

However, the question of whether it is possible to use the right for evil, is still controversial. Even the Roman jurists denied the possibility of abuse of law, arguing that "nullus videtur dolo facere, qui iure suo utitur". Although the term "abuse of right" had been used for quite a long time already in the legislation of many countries, some jurists consider that it has no legal meaning.

Accordingly, in science, there is no common standpoint, regarding the notion of the abuse of right, and this state of affairs, in consequence, generates the different interpretation regarding the relation of notions of "abuse of right" and "offense".

Such state of affairs...
justifies the juridical complexity of the institution of abuse of right. \(^{1285}\) Leist considers that the term abuse of right is self-contradictory, because it contains mutually exclusive notions: it can not be abuse in the frame of law, and the abuse itself is contrary to law. \(^{1286}\)

The prohibition of abuse of right may now be seen, as a precise concept of definite content and common application, but may not be a prime instrument of peaceful change (in the way Lauterpacht envisaged it). Hitherto, this principle is a „potent rule of international law none the less”, as resumed by Taylor. \(^{1287}\) By a common legal definition, the abuse of right means an illegal and unfair conduct, causing harm to someone. In the broadest sense of the word, abuse must be regarded, as malicious, illegal, immoral and dishonest behavior. As a legal phenomenon, abuse of right is quite common in practice, in particular, as abuse of power, \(^{1288}\) done in an official capacity, which affects the performance of official duties.

Abuse of diplomatic immunity, as formulated in reference books, means illegal actions of diplomats in the receiving state, incompatible with their official activities. Abuse of diplomatic immunity is expressed in a serious violation of laws, regulations and rules, established in the receiving state: interference into domestic affairs; collecting information about the host country by unlawful means; use of office and residential premises, as well as means of transport for purposes, incompatible with diplomatic functions; establishment of direct relationships with government agencies, enterprises, military units without the permission of the Foreign Ministry and the Department of External Relations of the Ministry of Defense; engagement in commercial activities. \(^{1289}\)

The authorities of the receiving state have the right to apply prevention and suppression measures towards illegal activities of the offending diplomats, such as confiscate the objects, which confirm such prohibited activities, and draw up reports on the illegal actions of the diplomatic staff. The offending diplomats can be declared undesirable persons (persona non grata), with their expulsion from the territory of the receiving state. \(^{1290}\)

In opinion of Higgins, generally, diplomats are required to comply with local law, but will be immune from the local jurisdiction to apply and enforce such laws. \(^{1291}\) It has to be précised here that in fact, in international law only those regulations have binding forces on

\(^{1285}\) K. M. Kazbekova: „Zloupotreblenie pravom“ i „pravonarušenie“: sootnosenie poniatii. („Abuse of right” and „offense”: the correlation of notions.) Biznes v zakone. No 1, 2010, 74.


\(^{1287}\) Taylor op. cit. 325.

\(^{1288}\) Malinovskii op. cit. 26-27.

\(^{1289}\) Nikitchenko op. cit. 111.

\(^{1290}\) Ibid. 111.

\(^{1291}\) Higgins: Problems… 87.
In the creation of which they have participated (for instance, bilateral or multilateral treaties). In the event, states did not take part in the creation of a regulation, it still may have binding effect on them, in case the binding force of which they subsequently have recognized.

In history, desolately, there were always diplomats, who overstepped the boundaries of acceptable behavior. For example, minor incidents, related to incorrect behavior of different ambassador suits in Russia, were habitual during the late medieval period. To give an instance, the Polish gentry used to cut the tails of horses in the streets of Moscow, just for fun. The ambassadorial suite of the Lithuanian Embassy often fought with Russian constables. In 1559, in Novgorod, a person from the Swedish Embassy burnt by candle a Russian Orthodox icon and was incarcerated for such a disrespectful act. He was soon released, after it found out that he behaved that way because of being drunk.

This case of punishment of a member of an ambassadorial suit was an exception and it took place for the reason that the religious feelings of Russians were offended. Normally, members of ambassadorial suits, if committed a crime in Russia, were not penalized by the Russian authorities, who would usually demand the punishment of the offenders from the host country. In this fashion, the Russian diplomatic practice followed the norm of exterritoriality of the ambassador and his suit, formulated by Grotius.

In modern times, diplomatic privileges and immunities normally get into the center of attention when the cases of their abuse are reported in the news. Despite of the fact that democracy is founded upon the principle, according to which no one is above the law, nevertheless, international law permits diplomats to escape liability for crimes or civil wrongs that they commit in the country, where they are being hosted. Some scholars estimate that each year, individuals with diplomatic immunity commit thousands of crimes around the world.

Diplomatic immunity has been asserted in a number of cases, with respect to liability, related to a diplomat's crime or otherwise illegal behavior. Examples, except from the listed above, also include preventing a court from jurisdiction to undertake child protective proceedings, in the case of children abuses by their diplomats parents and domestic workers.

In the sixteenth century, the nobles have spent their entire lives in camps: those, who were not soldiers, had to serve as officials, traveling back and forth. Endre Bojtár: Litván kalauz. (Lithuanian guide.) Akadémiai Kiadó. Budapest, 1990, 51-52.

Yuzefovich op. cit. 42.

Yuzefovich op. cit. 43.


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cases. (The cases of domestic workers are particularly vulnerable to claims of diplomatic immunity.

Similar to many other cases, involving diplomats, the cases, brought by abused domestic workers, have often been dismissed for lack of jurisdiction on account of diplomatic immunity, asserted by the diplomat, being charged, or otherwise have been unsuccessful for the domestic worker plaintiffs.)

An other abuse of diplomatic privilege is found in cases of „deadbeat diplomats“, who avoid paying spousal and child support, by claiming immunity from jurisdiction of the courts. These diplomats make use of the fact that by virtue of the Vienna Convention, they can not be sued criminally and civilly.

As a result, the abuse of provisions of diplomatic immunity provokes indignation in ordinary people from time to time. Diplomatic privileges and immunities are almost always observed by states, for the reason that states have a common interest in preserving them. A state may be under pressure from its internal public opinion, but it usually resists the pressure, because otherwise a state would create a precedent, which could be used against its own diplomats in foreign countries. Major breaches of these rules are rare, and receive disproportionate publicity because of their rarity.

In this course, the case of the United States Diplomatic and Consular Staff in Tehran and Draft Articles on Responsibility of States for Internationally Wrongful Acts refer to the question of remedies, available in diplomacy law in situations of abuse. In concordance with the Draft Articles on State Responsibility, an injured state could take action at a number of levels. At the first level, a state could declare a diplomat persona non grata, to terminate or suspend diplomatic relations with the other state, to recall ambassadors, as provided for by the Vienna Convention. At the second level, measures may be taken, affecting diplomatic

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1297 Tabion v. Mufti, 73 F.3d 535, 537 (4th Cir. 1996).
1298 The receiving state could intervene into these cases by requesting a waiver of diplomatic immunity from the sending state, to ensure that domestic workers have an opportunity to be heard in court. Amy Tai: Unlocking the door to justice: protecting the rights and remedies of domestic workers in the face of diplomatic immunity. In: Journal of Gender, Social Policy & the Law. Vol 16, No 1, 2007, 222.
1300 Castro op. cit. 353-354.
1301 For example, in the American Hostages Case.
1302 Keaton admits that a high number of such incidents remain unreported. Keaton op. cit. 580.
1303 Malanczuk op. cit. 123.
privileges, and not influencing the inviolability of diplomatic personnel, also premises, archives and documents.

In the American Hostages Case, the International Court of Justice asserted that diplomacy law itself provided the necessary means of defense against, and sanction for, illicit activities by members of diplomatic (and consular) missions.

In this course, diplomatic immunity means that a diplomat's obligation to respect the laws of the host state could be enforced via normal legal instruments.

There have been many instances of interference in the internal affairs of the receiving state by the diplomatic agent, when the envoy concerned abused his office, for example, disrespecting the rule that a diplomat must not take action in the host country to suppress by force, like kidnapping or assassination, the activities of opponents of the sending state's regime. The diplomats, the same, must not assist in the preparation of terrorist acts in or against the receiving state. In 1986, the Syrian Embassy in London was found to have actively assisted in a terrorist attempt to blow up in flight a civil aircraft, departing from Heathrow airport. The diplomatic relation between the Great Britain and Syria were broken off.

Commenting on the Libyan People's Bureau affair, Higgins concludes that terroristic abuse of diplomatic status can not be controlled by trying to amend the Vienna Convention, but rather by close coordination between the parts of government and international security cooperation. In addition, governments should not accommodate those, who are reluctant to conform to the requirements of diplomacy law and the abuse curbing measures, available in the Convention, such as limiting the size of the diplomatic mission in the receiving state, declaration of an envoy persona non grata, are to be applied with "firmness and vigor" and not just reserved for cases of espionage.

Diplomats also get tax-exempt real estate for their official businesses, but many of them abuse their status by using their property to turn a profit. Diplomats from the Philippines, for example, ran a bank, a restaurant and an airline office from their tax-free complex in New York. The Big Apple once took Turkey to court to collect seventy million dollars in back taxes, owed...
by its diplomats, but ended up settling for five million dollars. Meanwhile, diplomats from Zaire once failed to pay their landlord 400 000 dollars in rent. When the landlord sued them, the U. S. State Department defended the Zairians, because they were protected by diplomatic immunity.

Among the occasions of abuse of immunity by diplomats themselves, there are cases of careless and negligent driving, often in an intoxicated condition, which results in death or injury to innocent passers, or damage to property. In the 1950s there were several very embarrassing drunk-driving incidents among the diplomats, stationed in Norway. For example, the Belgian minister was caught in 1950, 1952 and 1953, but even after being summoned to the Ministry of Foreign Affairs, he faced no consequence.\textsuperscript{1312}

Sharp and Wiseman find that this might be owing to the fact that Belgium was an allied state. The Belgian Minister was caught, while driving under the influence of alcohol, again in 1956, when a liberal paper demanded his immediate recall. The Ministry of Foreign Affairs agreed then with the Minister that he would visit Copenhagen and Stockholm, where he was also accredited and that he would not return to Oslo. This was a solution to the incident that allowed the diplomat to save face.\textsuperscript{1313}

The first secretary of the Turkish legation in Norway got involved in three incidents during autumn/winter 1952-1953, including drunken driving, rowdiness, battery and threats against the police. After the recall, the diplomat still managed to get involved into a car crash. In such situations, the Ministry of Foreign Affairs of Norway strived to arrange the matters bilaterally, with the involved sending state (some legations would enforce internal discipline). This was the case, when the Czechoslovak commercial attaché, after being caught driving drunk, left on “vacation” soon after the incident.\textsuperscript{1314}

An other aspect of diplomatic privilege that attracts public notice are traffic offenses, when embassies accumulate parking tickets. In practice, there is a number of countries, where embassy cars are no longer exempt from traffic fines and embassies are to settle the payment. What is more, there are countries, where publication of parking offence statistics in the media serves, as a deterrent measure, or to keep the rate of recurrence of traffic violations within bounds.\textsuperscript{1315} Diplomatic agents have been often taking advantage of what was meant to be a

\textsuperscript{1311} In such cases a diplomat, due to his immunity, can not be obliged to go through a breath test or other medical examination.
\textsuperscript{1312} Sharp–Wiseman op. cit. 91.
\textsuperscript{1313} Ibid.
\textsuperscript{1314} Sharp–Wiseman op. cit. 96-97.
\textsuperscript{1315} Rana: The 21st Century Ambassador… 56.
professionals and the duty to uphold the rule of law. Such abuses manifest themselves in various ways, from unpaid parking tickets to abduction.

Diplomats in Washington often abuse the privilege by parking anywhere they like, even in the middle of the street. In the 1960s, with permission from the State Department, the city police began ticketing diplomatic offenders, and the tickets had to be paid. Before long, the number of parking violations decreased, worldwide. In this way, the law that governed diplomats had been modified by the same principle of reciprocity, quickly and automatically.

According to media sources, foreign diplomats in New York City alone racked up over sixteen million dollars in unpaid parking tickets between 1997 and 2015. Egypt tops the list of countries in terms of their diplomatic debt, with about two million dollars currently owed, and Nigeria with Indonesia round out the top three. Inconsolably, "there are still those who feel they can ignore the laws of the City they work in simply because they have immunity ... the Open Data can put a dent in that by bringing to light when regulations are being thwarted by those who have immunity," making the city less safe as a result.

When an ambassador willfully violates the instructions of the sending state or exceeds the brief, received from his government that is considered a professional indiscretion. In such rare cases, the envoy believes that he is acting in conformity with some higher values or thinks that he knows better where the sending state's real interest lies than his colleagues from the Ministry of Foreign Affairs.

Sanctions, imposed on a rogue ambassador, usually follow the civil service procedures, if there is no other – special law, governing the diplomatic service. The sanction measured applied range from authoritative removal from a post abroad to suspension from the service, formal inquiry and in the worst case – dismissal. The criminal procedures are rather rare in such cases. Even dismissals of ambassadors are reasonably uncommon.

In 2009, the Ukrainian Foreign Ministry has confirmed that Volodymyr Belashov, the Ukrainian Ambassador in South Korea, was involved in a road accident in Seoul, but denied those reports in the media, according to which the Ambassador was under the influence of alcohol. The reports said that the Ambassador locked himself in his car for one-and-a-half hours and refused to take a field sobriety test, citing diplomatic immunity. Belashov told Interfax-

Roskin – Berry op. cit. 268-300.


Rana: The 21st Century Ambassador... 183-185. DOI: 10.15774/PPKE.JAK.2017.003
Ukraine that this was a minor road accident and the case was artificially raised to the level of a serious incident, for unclear reasons. 

“I can explain this by the so-called fight of the Korean side against an alleged abuse of diplomatic immunity and privileges by diplomats.”, he assumed.

The usual response of receiving states to abuse has been either to get the violator „recalled” by the sending state or, if that was not possible, declare the envoy persona non grata and expel him. In fact, international law allows taking of countermeasures in appropriate cases (within the limits, prescribed by the law), yet, such a response should be carefully weighted, since it could provoke reciprocal measures and deterioration of bilateral diplomatic relations. The ultimate sanction and prevention measure, available for governments, is severance of diplomatic relations. This preventive measure does not seem to be incompatible with international law and may be seen, as a genuine attempt to reduce the risk of abuse. Besides the severance of diplomatic relations, a number of other mechanisms are available in order to prevent abuse of immunity and violations of diplomacy law.

Diplomatic privileges and immunities allow free – undisturbed performance of a diplomat’s duties in the host country, also assisting the accomplishment of objectives of a diplomatic mission in the receiving state. The reasoning of granting diplomatic privileges and immunities derives from the time, when the community of states realized that it was not possible to reach agreement, if the envoy was murdered during negotiations or at his arrival to the receiving state. This inviolability of envoys served, as foundation for other immunities and privileges.

Higgins notes that the Vienna Convention was agreed to be largely confirmatory of existing customary law and for about fifteen years, it was generally felt that the treaty’s provisions provided a fair balance between the interests of the sending and the receiving states. As time passed by, in many capitals of the world one started to feel that diplomats were abusing their privileged status.

Fassbender, analyzing the cases of diplomats, who assisted to terrorist activity, pointed out the controversy in this regard. Some regret the fact that states have not agreed yet on limitations of diplomatic immunity in related situations, while others, on the contrary, may fear

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1320 Higgins: The Abuse… 642.
that such limitations could expose the effective performance of diplomatic functions to arbitrary
determinations of what exactly constitutes such participation.

At the times of threats, coming from terrorist acts, it is certainly difficult to regulate the
practice the diplomatic bag. For the solution of this issue, there should be found a balance
between the rights and obligations of states involved.

By the mid-1970s, it became clear that
certain diplomatic missions were holding firearms, contrary to the provisions of local law. Later
it found out that the terrorists incidents, in which the weapons used, were provided from
diplomatic sources (i.e. diplomatic bag).

There were governments that promoted state terrorism through the involvement of their
embassies in the concerned countries, illustrated by events of the aforementioned Libyan
People’s Bureau case in 1984, which demanded human sacrifice and fell into the category of
an offence against the security of state.

In 1984, a terrorist group, organized by a Venezuelan terrorist (who had been given the
code name “Carlos”, because of his South American root),
committed a bomb attack on the
“Maison de France”, arts center in West Berlin, as a result of which one person was killed an
d twenty-three injured. Previously, the members of the radical organization had left a bag with
explosives at the Syrian Embassy in East Berlin, with consent of the Syrian Ambassador, who
 got charged with assistance for having failed to prevent the terrorists from removing the
explosives from the premises of the Syrian Embassy.

In 2003, Hadi Soleimanpour, Iran’s Ambassador to Argentina from 1991 to 1994, was
accused of complicity in the 1994 car bomb attack on the Jewish Cultural Centre in Buenos
Aires, in which eighty-five people were killed. (The diplomat was, in fact, not present
when this car bomb attack took place.) Soleimanpour was arrested in Northern England, on an
extradition warrant from Argentina. Iran protested at the arrest, demanded apology and
extradition.

Great Britain denied the former Ambassador’s extradition, “because insufficient
evidence had been presented”.

Iran broke off relations with Argentina and warned Britain of
retaliation if London did not release Soleimanpour. Iran recalled Mortaza Sarmadi, the Iranian

Fassbender op. cit. 78.

Chapal op. cit. 255.

Higgins: The Abuse… 643.

Bardo Fassbender: “Diplomatic immunity –
Vienna Convention on Diplomatic Relations–
effect of diplomatic immunity on states other than receiving state–
relationship between state immunity and diplomatic immunity–
state succession and diplomatic immunit

Hadi Soleimanpour v. Crown Prosecution Service 535/03.

Court of Justice Queen’s Bench Division. 12
September 2003.

Congressional Record. Proceedings and Debates of the 108th
Congress. Second Session. Vol. 150, PT. 13, July

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There are opinions in mass media, according to which, it is high time to end diplomatic immunity. In 2010, the United Airlines Flight 633 from Washington DC to Denver, was disrupted and terrorized, not by some extremist, but a diplomat from Qatar. Mohammad Al Madadi, a junior diplomat, on a routine assignment to visit a Qatari citizen in a U. S. prison, decided to smoke a pipe in the plane’s lavatory, saying that „he was trying to light his shoes on fire”\footnote{Karen de Young: Diplomat on Denver flight to be sent back to Qatar, U. S. says. The Washington Post. 9 April, 2010. (Accessed on 28 March, 2016.) http://www.washingtonpost.com/wp-dyn/content/article/2010/04/08/AR2010040805826.html} to mask the smell of the bathroom, before proceeding to his seat. The flight attendant challenged Madadi again, and notified the air marshals on the plane, when the diplomat declined a request to hand over his lighter. That was the moment, when, according to media, Madadi's business trip „started to become a minor international incident”. The air marshals, having talked to Madadi briefly, confined him to his seat, and activated a national alert system for all planes in flight, through the pilot.\footnote{Fighter jets were scrambled, and President Obama was warned about a possible terrorist threat.} The American authorities, after questioning Madadi on the ground and finding no explosives, found that there were no offense beyond illegal smoking, a charge from which the diplomat was immune, because of his diplomatic status.\footnote{Ibid.} In the end, Madadi was released without being charged, despite his illegal and dangerous act.

The main reason for preserving the present status of diplomatic privileges and immunities, despite of constant abuses, is the „political reality of reciprocity”, for there is a fear of reprisal – direct governmental responses of sending states in the form of fabricated charges, an official campaign of harassment against the diplomatic representatives of the receiving states.\footnote{Ross: Rethinking… 203.} And states try to maintain amicable relations, avoiding potential situations of their rupture, because they fear of situations of abuse of their diplomats, based on false political reasons.

Deliberate breaches of diplomatic immunity bring calls for „drastic action”.\footnote{Brown: Diplomatic… 85.} Ross agrees with the idea that the United Nations\footnote{Northrop regards that the United Nations, as well as the International court of Justice has to contribute to resolving the ideological conflicts and disturbances of our world by peaceful means, rather than the suicidal resort to war in an atomic age. F. S. C. Northrop: The Taming of the Nations: A Study of the Cultural Bases of International Policy. The Macmillan Company. New York, 1954, 336.} is the proper forum to address the case of reform
of the current practice of diplomatic immunity particularly that the true intentions of the Vienna Convention are not accomplished and the relations among the nation states continue to deteriorate. The Organization needs to establish new guiding principles, keeping the basic concept of diplomatic privileges and immunities, and has to set up reasonable limits concerning the persons, who would be entitled to such freedoms.

Riordan believes that politicians must "get tighter control over diplomatic machines," in many cases through a broader use of "political" civil servants, since diplomats are incapable of self-examination, consequently, the wider public must execute a "ruthless audit of what foreign-policy machines and diplomatic services (i.e. embassies) do".

On the topic of compensation in case of diplomats, who commit a crime, an accident that happened in the United States in 1976, turned to be one of the incidents, which in particular, contributed to the Congress's decision to change the old law regarding the status of diplomatic immunity. In this peculiar case, a car, driven by a Panamanian diplomat at night, ran a traffic light and struck another car, in which Dr. Halla Brown, a prominent professor of medicine was a passenger. As a result of the accident, Dr. Brown was paralyzed and her medical bills had exceeded 250,000 dollars, by the time the Congress acted.

In late 1997, after a dance performance, given at the Egyptian Embassy in Israel, dancer S. Shalom filed a lawsuit in the local court, demanding compensation for moral damages in the amount of 286,000 dollars. She claimed that the Ambassador allowed himself impermissible liberties, as a result of which her reputation has been damaged. The Israeli Court rejected the claim of sexual harassment, referring to diplomatic immunity of the Egyptian Ambassador.

With reference to the state practice of Israel, due to the country's long exposure to terrorist attacks, the government developed a system of compensations of victims of hostile actions, both for physical and property damages. The recompenses are paid from state funds, namely by Social Security Agency and from a special fund, derived from property taxes.

Ross suggests that the victims of diplomatic crime would also participate in this international debate. Ross: Rethinking… 205.

Riordan op. cit. 135.


Lukashuk: Mezhdunarodnoe… 89-90.


V. 1. 1. The measures and proposals, to address abuse of diplomatic privileges and immunities

The receiving state may require recompensation for offenses, committed by foreign diplomats, by reason of immunity of diplomatic agents from the jurisdiction of the receiving state does not exempt them from the jurisdiction of the sending state. Diplomats could be found accountable for law-breaking in a foreign state, depending on civil and criminal laws of the sending state. The privileges and immunities, distanced by the Vienna Convention, are subject to reciprocal limitations. If the receiving state oversteps legal rights, given to the sending state, the sending state is allowed to reciprocate this conduct towards the diplomats of the receiving state. Others suggest to cut off all foreign aid to any country, whose diplomat has committed a crime, as a solution. But, again, „that only closes the barn door after the horses are loose”.

There were proposals to render justice to victims of criminal acts, committed by diplomats, such as creation of a fund for compensation of victims and also establishment of an insurance scheme, requiring embassies to carry out insurance for their staff, as a condition of maintaining diplomatic relations with the receiving state. Keaton argues that the claims fund would have tremendous costs and serious problems would arise on the fund’s implementation. As to the compulsory insurance scheme, that would inevitably both endanger the lives of American diplomats and lead to international insurance wars.

Correspondingly, Hickey and Fisch are also skeptical, as to any recompense fund, arguing that there is no need at all for a specialized compensation or insurance fund for victims of „diplomatic crime”, for the reason that this might reduce the sense of individual responsibility of a foreign diplomatic personnel. (Besides, in the United States, the new seriously harmed victims of diplomatic crime presently receive expeditious and generous compensation, as a matter of practice by foreign missions, with the encouragement of the State Department.)

The U. S. States Department policy suggests mediation of relations between the United States Government and foreign missions, by taking the following measures:

1341 Vienna Convention. Article 31(4).
1342 Doc. cit. Article 47.
1344 Brown: Diplomatic… 85.
1345 Keaton op. cit. 604.
1346 Hickey–Fisch op. cit. 381.
- to bar the offender from reentering the United States;
- to expel the entire family of the diplomatic agent, in case of juvenile perpetrators, i.e., when the child of the diplomat committed the crime;
- to monitor diplomatic traffic violations, by usage of standardized point system to evaluate diplomat’s observance of traffic regulations;
- to introduce uniformity in issuance of identity cards to all foreign diplomats; to implement the persona non grata procedure; to waive diplomatic immunity;
- to apply political and economic pressure against the sending states of offending diplomats.

In addition to these measures, American theorists proposed the establishment of a claims fund to compensate the persons, injured by diplomats, who would be remunerated from the financial pool, funded by the United States Government, with extension of bilateral immunity agreements to participating countries. This measure would require the diplomat’s participation in the compensation procedure, while he would become the “witness” in the determination of liability, without affecting diplomatic immunity status.

Ross also considers the flaws of the claims fund proposal, namely that foreign missions might not voluntarily reimburse the claims bureau and the American taxpayers are unlikely to support the financial responsibility of their Government for wrongdoings of foreign diplomats. The possible mandatory insurance scheme would not function smoothly, either, seeing that the current relevant legislation is not enforceable, unless there is a right of direct action against the insurer. Additionally, the insurance companies may not be willing to insure foreign embassies.

With respect to the proposal of some experts, concerning the eventual establishment of the Permanent International Diplomatic Criminal Court with mandatory jurisdiction over diplomatic agents, accused of crimes, Ross warns that it might happen that such a court would function in inquisitorial mode, while acting, as both the prosecution and the defense. This court would have the power not only to impose monetary fines, but if necessary, even to imprison diplomats, in its own penal facilities. The practical advantages of this proposal are that this court could operate free from the potential unfair preconceived notion of local proceedings, and that the use of this court outside a bilateral relations structure would prevent the termination of...
diplomatic relations in extreme cases.\textsuperscript{1349} It has to be noted here that in spite of theoretical advantages, related to the functioning of such a court, however, this is a proposal that does not really take reality into consideration.

It is beyond controversy that members of diplomatic missions have violated the civil and criminal laws of host states in a great number of occasions. The problem of abuse of diplomatic privileges and immunities could be divided into two categories: I. deliberate abuse, which is of political or terrorist character; II. abuse of personal nature. Keaton, affirming that the unfortunate ramifications of the doctrine of diplomatic immunity must not continue to be tolerated,\textsuperscript{1350} sums up the main reasons for diplomatic immunity abuse, as follows:

1) the opportunity for abuse, provided by the Vienna Convention and the Diplomatic Relations Act;
2) the lack of enforcement of diplomacy laws by the receiving state;
3) the lack of cooperation by the sending state;
4) the „Foreign Agent Explosion” – the dramatic increase in the number of individuals, granted diplomatic status.\textsuperscript{1351}

In line with this, Crawford, commenting on Article 26 on state responsibility about compensation,\textsuperscript{1352} noted that it was a well-established practice that a state might seek compensation in respect of personal injuries, suffered by its officials or nationals. The compensable personal injury included not only associated material losses, but also non-material damage, suffered by the individual – sometimes referred to in national legal systems, as „moral damage”.

The arsenal of justifiable countermeasures against the abuse of diplomatic immunities and privileges, especially the use of force purporting to safeguard elementary interests of the receiving state or to protect human lives, has always been the object of legal controversy. The rigidity of the Vienna Convention, as well as the obvious reciprocal benefits for the sending and the receiving states have substantially contributed to preserve the respect for the immunities and privileges, under the Convention.\textsuperscript{1353} However, it is evident by now that the provisions of the Vienna Convention are inadequate to effectively fight against the deeds of certain diplomatic agents, who violate

\textsuperscript{1349} Ross: Rethinking… 196.
\textsuperscript{1351} Keaton op. cit. 582-586.
\textsuperscript{1353} Herdegen op. cit. 734-735.
national security of the receiving state, engaging in activities, such as espionage and terrorism, and in general, against any subversive activity. Experts stress that with regard of such activities, the important thing is not to punish, but to prevent them.

In theory, such measures, as recall, dismissal and expulsion are effective sanctions, for they act as specific deterrents to gross infractions of the receiving state's laws, by removing the offender from the country.

Diplomatic practice shows the other trend, namely that receiving states usually expel diplomats in cases of grave charges. The curtailment of abuses of diplomatic immunity has to begin with both the diplomat's individual compliance with local laws, and the sending state's efficient policing of its own diplomats abroad.

(Regarding the compliance with local laws, it has to be noted here that a diplomatic agent has to obey not all existing national regulations, but the relevant ones, for example, the traffic rules, also the pertinent bilateral agreements of the sending and the receiving state.) At any rate, the excess of diplomatic privileges and immunities is impermissible – they have to be limited by the scope, necessary for the exercise of functions.

V. 2. Diplomatic intercourse and freedom of diplomatic communication

Diplomats, as envoys and messengers between the sovereigns, are "the eyes and ears, the voice and hands of their government and nation in foreign lands". The policy reasons for the diplomatic immunity, which rests on the functions of the diplomatic mission, is that free communication of views among states could be impeded, if diplomats were subject to the prospect of political prosecutions that is killing the messenger.

(At the same time, it is believed that diplomats tend to hide their true thoughts).

The scientific concept of the present dissertation necessitates to address the topic of diplomatic intercourse, as well, due to the new challenges – even risks that affect the daily work of diplomatic agents, and the freedom of diplomatic communiqué. The modern means of communication accelerate the political work of diplomats. Emerging technologies affect the whole range of diplomatic activity, providing new opportunities and at the same time,
threatening previously sacred functions. On the other hand, some diplomats abuse their privileges and immunities, with regard to contemporary means and networks of communication, the actual content of their messages and statements, also the transmission of (strictly) secret diplomatic contents.

In ancient times, the problem was mainly to ensure the physical safety of ambassadors, together with their suit. It was important that ambassadors could achieve the destination place, to deliver the gifts, sent by his ruler, and that their dignity, and subsequently, the dignity of their sovereigns was not harmed in the host country. As noted by Gentili, an ambassador was not just a bearer of messages, but also was called judge affairs, and as the noble Venetians had advised us – was the ears and eyes of his government. There were also ambassadors, whose instructions included directions to play the part of spy and find out everything possible about the affairs of the sovereign, to whom they were accredited.

Later in history, the problem of the security of information had raised, namely its protection against interception, leakage, modification, blocking and finally, destruction. As a general rule, diplomatic agents are allowed to maintain contacts with authorities of the host country only via the Ministry of Foreign Affairs of the receiving state. The specific duties of diplomats include assessing, reassuring, verifying of incoming and outgoing information. The means by and through which states are able to communicate with each other, constitute the „diplomatic channel”. The instructions and other messages, which pass by means of this network, evidently, must remain secret, and in particular, not to come to the attention of the receiving state.

On the topic of adjustment of diplomatic activity to the change in status of bilateral relations, it is worth mentioning here that by virtue of the respectful provisions of the Vienna Convention, the documents and archives of the diplomatic mission shall be inviolable at any time and wherever they may be, that is, in situations, when they are, due to any reason, not at the diplomatic mission anymore. This immunity is valid „any time”, which means, that is, even after the interruption of diplomatic relations.

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1360 Riordan op. cit. 63.
1361 Ibid.
1363 Petrik op. cit. 126-127.
1364 Vienna Convention. Article 41(2).
1365 Freeman: The Diplomat’s… 121.
1366 Greig op. cit. 133.
1368 The Vienna Convention does not specify the term „archives”, however.
During the World War II, for example, certain states, such as Germany, frequently violated diplomatic privileges and immunities. On 22 June 1941, after Germany treacherously attacked the Soviet Union, the Gestapo occupied the Soviet Embassy in Berlin, and the Nazi policemen threw the Russian files, full of documents directly to the street. While the Nazis were attacking the iron door of one of the rooms, from which black smoke has billowed, Lagutin, the member of the Soviet Trade Representation, who dealt with cryptography, had fired the encryption keys. When the Nazis caught him, Lagutin, choking of smoke and in a semi-conscious state, was first brutally beaten, then taken away by the SS officers. Lagutin was released by the Germans only a few days later, upon the urging of the Soviet Embassy (coming back full of bruises and splitting blood).

Eventually, the Soviet diplomats could leave Germany only after the exchange of the colony of one thousand five hundred Soviet citizens, who returned to the Soviet Union and one hundred and twenty German nationals, residing in the Soviet Union, who came back to Germany.

The diplomat (along with the soldier) is a major actor in international relations, since he is not only represents his country, but in his person, virtually "merges" with it, as a political unit.

The political work of an ambassador retains primacy among his other duties, since political understanding between countries forms the base for development of other sectoral activities. The political actions, undertaken by an ambassador, include the following activities:

- communication, presenting the views of the home country on issues, important or directly concern the two nations, or affect a third country, whether these are regional or global matters. It is left to the ambassador to decide on the level to which he will make his démarche and the channels to transmit his views. The ambassador reports the interlocutor's reaction to the sending state, usually via a cipher message. (Generally, the envoys of the great powers are most often to visit the Ministry of Foreign Affairs of the host country with representations on third-country and global issues, while ambassadors of the middle and lesser powers concentrate on bilateral topics.).

In 1941, Hitler assembled the largest army in history, which included not only Germans, but other nations, gradually involving Italians, Hungarians, Romanians, and even Spaniards, and sent it to conquer and enslave Russia. The biggest battles of the World War II occurred in the east. The Soviet Union lost 26 million people to the Nazis, the United States lost fewer, than half a million. Roskin – Berry op. cit. 71.


The exchange of the Soviet colony happened then on the Bulgarian-Turkish border. Berezhkov op. cit. 109.

Berezhkov op. cit. 98-111.

- raising of political issues at the initiative of the ambassador, to probe intentions and to convey assessments to the sending state that will warn, alter or advise, in anticipation of some event, or analyze an ongoing situation. An ambassador, normally, would not raise a new bilateral issue on his own initiative, without clearance from the sending state. If the envoy makes a tentative sounding that is aligned with home policy, he clarifies it that he speaks on his own authority, not on instruction, i.e. an envoy has a zone of autonomy;
- establishment of contacts not solely at principal, but also at intermediary or senior advisor levels, using non-official contacts to reach out key individuals (even at large embassies, located in Moscow or Beijing);
- connections with opposition groups or political parties, however, in this case of such interactions, actions have to be adjusted to circumstance.

In this course, the ambassador’s “guiding star” is to accept the legacy of contacts, he inherited from his predecessors and using this base, discover actual and potential allies for relation building.\textsuperscript{1374}

On the topic of restraints of diplomatic agents, the primary prohibition, laid by international law, is abstention from all interference – by word or deed – in the internal affairs of the receiving state. This prohibition is all-inclusive: diplomats may not discuss pending legislation, may not comment on political controversies, and endorse or criticize the host government, political parties, or party platforms. Diplomats may not correspond with the press and other news media on any matter that is still subject of communication from their government to that of the receiving state before the latter has received it, nor publish any correspondence from the latter, without obtaining prior authorization.\textsuperscript{1375}

A minor violation of these restraints on the diplomat’s activities may be overlooked or lead to a protest by the appropriate authorities of the host country. But then if the violation was prepared or was of serious nature, the receiving state is fully within its rights if it requests the recall of the offender or, as quite often happens, expels him at once.\textsuperscript{1376} Thus, the diplomatic missions, together with the members, are expected to observe proper standards of respect and deference towards the authorities of the receiving state and the state itself.

\textsuperscript{1374} Rana: The 21st Century Ambassador… 78-80.
\textsuperscript{1375} It is also prohibited, but difficult to prove the use of an embassy, as a center for the dissemination of propaganda regarding a matter, on which the two governments concerned may be in disagreement, and the conversion of any diplomatic mission into a center of subversive or spy activities in favor of the ideological or national interests of the sending state. Glahn op. cit. 462.
\textsuperscript{1376} Glahn op. cit. 463.
There were many occasions in diplomatic history, when the demand for recall or dismissal of diplomats happened due to their conduct, after the content of their memos and notes had been revealed, and studied. In 1792, M. E. C. Genest, the French Minister was demanded to be recalled after expressing contempt for the opinions of the President of the United States. In 1804, the U. S. Ambassador in Spain wrote a threatening note to the Spanish Government, and his recall was demanded afterwards.

In 1809, E. J. Jackson was demanded to be recalled by the United States for his insinuations against the higher authorities in the U. S. Department of State.

In certain situations, the receiving state prefers to expel a diplomat, as illustrated by the following examples below. It has to be mentioned here that factually, there is no significant difference between recall and expulsion of diplomatic agents. In practice, the difference lies in the periods, within which the diplomat has to leave the receiving country.

In 1957, Philip Bonsal, the American Ambassador to Colombia was reassigned, after he expressed criticism towards the suspension of the democratic procedures in that state.

After this incident, Bonsal was assigned to Cuba in February 1959 and then recalled to Washington in October 1960, in retaliation for a Cuban demand that the United States Embassy staff in Havana would be sharply reduced. He never returned.

The next two examples, below, illustrate the situation, when, it is not easy to distinct, whether diplomats are present at opposition-related events, as observers or attend them, as a demonstration for a cause. Due to the fact that these two cases can not be always clearly separated, non-democratic governments often responded to such events, related to foreign diplomatic officers, by their expulsion. The diplomatic mission, on such occasions, sometimes decides to send to the event not the ambassador, but an "unknown" diplomatic agent, to be able to gather the necessary information, without giving the impression of being demonstrative. (The situations with expressly demonstrative intentions of diplomatic agents, with regard to Pride parades, are considered further, on page 216.)

In 1996, Robin Meyer, the Second Secretary at the U. S. Interests Section in Havana, engaged in the monitoring of the situation in the field of human rights in Cuba.
Foreign Ministry accused Meyer of being engaged in counterrevolution, instead of dealing with diplomacy, and she was expelled from the country.1381

In 1997, Serge Alexandrov, the first secretary of the American Embassy in Minsk was expelled by the Belarus Government for provocative conduct, after the diplomat attended a protest rally against Alexander Lukashenko, the President of Belarus.1382 In a few days after the incident, the United States ordered the expulsion of a Belarus diplomat in retaliation for the „unwarranted and unjustified” step of Minsk. Besides, Washington recalled Kenneth Yalowitz, the American Ambassador to Belarus and expelled Vladimir Gramyka, the first secretary of the Belarussian Embassy (giving him 24 hours to leave).1383

A diplomat represents his country both formally and informally, as the official agent of communication, and in his personal conduct, as an example of the people of his country.1384 While establishing new contacts and maintain the existing ones, diplomats should express themselves responsibly, to avoid for example, ignorant use of history to make political points. If a statement is spread not in a private conversation, it is considered to be public.1385

The French Ambassadress to London lately said that Napoleon, were he alive today, would struggle passionately to save the European Union, because he dedicated life to the idea of a united Europe. The historian Simon Schama made short work of this sentiment, pointing out that Napoleon’s idea of a united Europe meant one under French hegemony,1386 being ruled by a police state, while nations had to compulsory donate their most celebrated and precious works of art to the Louvre.1387

1386 Hegemony, from the Greek „to lead”, means holding sway over other lands. Powerful countries are said to have hegemony over weak neighbors, when they can, to some degree, control their foreign and domestic policies. Roskin–Berry op. cit. 84.
In other situations, when a diplomat acts without legal authorization, this could be interpreted by the accredited state as if he spoke on behalf of the sending state, and such cases could cause tension in bilateral diplomatic relations. In October 2002, Craig Murray, the British Ambassador to Uzbekistan in his speech, given in Tashkent at the opening of Freedom House, a non-governmental organization of the United States, said that Uzbekistan, in his opinion, was neither a functional democracy, nor appeared to be moving in the direction of democracy. The Ambassador was summoned afterwards to the Uzbek Foreign Ministry, which expressed its dissatisfaction with the speech. The British Foreign and Commonwealth Office also criticized the diplomat, who, after his outspoken talk, became "the victim of threats from Downing Street" and "the rogue ambassador".

V. 2. 1. The challenges of diplomatic communication in modern times

The rise of virtual reality enables a novel type of terrorism and war. Under the circumstances of contemporary informational warfare, the traditional routes to tackle threats, related to cyberspace, including via law enforcement authorities, can sometimes prove to be rather slow to set in motion, accordingly, cyber security became a center of security policy strategies on both sides of the Atlantic. The central issue in cyberspace is jurisdictional, which arises from the fact that it is difficult to locate cyberspace conduct territorially.

This threat affected the diplomatic communication as well, for example, WikiLeaks...
high profile series of redacted classified materials connected, among others, to American
diplomatic cables.\footnote{Jakub Šimek: Hacktivists and whistleblowers – an emerging hybrid threat? In: Panorama of global security
environment. Centre for European and North Atlantic Affairs. Bratislava, 2012, 663.} In this fashion, Foreign Ministries find themselves on a virtual treadmill,
under constant pressure to meet the latest standards for technological development.\footnote{Evan H. Potter (ed.): Cyber-Diplomacy. McGill-Queen’s University
Press. Montreal, 2002, 198.}

The freedom of contact ensures the effective performance of the functions of diplomatic
missions and inviolability of official correspondence is an important condition of successful
diplomatic work. The Vienna Convention specifies the assets of contact (including the
diplomatic courier),\footnote{The diplomatic courier is an ancient institution of international law, remaining a substantial element of contacts
between the diplomatic mission and the sending state. A courier, provided with a special passport or courier
identification card, has to be protected by both the sending and the transit state. The courier's arrest, detention is
also considered, to be a serious violation of international law.} the encrypted or ciphered messages and radio communication, although
the latter is possible only with the permission of the receiving state. The packages, constituting
the diplomatic bag, have to be equipped with external signs, such as seal, which should clearly
shows the class of the pouch, and may contain only diplomatic documents or articles, intended
for official use. Diplomatic pouch and other official shipments are not supposed to be tampered
with.\footnote{Roskin–Berry op. cit. 287.}

Writing is one of the most important communication technologies in early diplomatic
activity. The exchange of written and oral communiqué remains a challenge for e-diplomacy.
Communication is a vital strategic diplomatic instrument. Diplomatic correspondence has been
widely acknowledged and accepted, as an expression of law.\footnote{"The diplomatic correspondence between Governments must supply abundant evidence of customary
international law. For various reasons, however, much of the correspondence is not published." Ways and means
for making the evidence of customary international law more readily available. Report of the International Law

It is clear that such correspondence, and declarations can contain express and indirect
recognition of customary rules (or of a practice, as law) binding on the state of the expeditor, at
least in relations with the addressees. The court makes full use of such correspondence,
attaching to it decisive importance,\footnote{Wolfke op. cit. 150.} as it was well illustrated by the Fisheries case in 1951,\footnote{United Kingdom v Norway [1951] ICJ 3.}
when the Court made a comment on a French note and on the reply to it by the Norwegian
Government.\footnote{International Court of Justice. Reports of Judgements. 1951, 135-136.} (The United Kingdom requested the International Court of Justice to
determine how far Norway’s territorial claim extended to the sea and to award the damages,
suffered by the United Kingdom in compensation for Norwegian interference with British
fishing vessels in the disputed waters, stating that Norway's claim to such an extent of waters was actually against international law.)

In this case, diplomatic correspondence served, as evidence of knowledge of international practice and at the same time of its tacit recognition. Similarly, diplomatic correspondence was cited in the Free Passage case on the right of passageway between Daman and enclaves, namely the letters between British and Portuguese authorities in India.

Freedom of communication of a diplomatic agent with the sending state is an extremely important diplomatic immunity. In diplomatic practice, starting from ancient times, traditionally, the host country had to provide diplomatic missions with all necessary conditions for unimpeded communication with their government. The possibility of diplomatic missions to maintain un undisclosed communication with the center is an essential aspect of such a relationship.

The diplomatic correspondence and all documents are also inviolate, not depending on their location, also whether or not contained in the diplomatic bag. The obligation to allow and provide an open relationship, between diplomats and their governments, also extends to third states, through the territory of which the official correspondence of the diplomatic mission is transited.

Notwithstanding, the requirement of exemption of the diplomatic pouch from unsealing, in diplomatic practice of many countries there was a tendency towards limiting the immunities of diplomatic mail. Accordingly, if there is serious suspicion of malicious use of the pouch, the host country has the right to demand the unsealing of the mail and in case of refusal— to return the mail to the sender.

The provisions on diplomatic immunity protect the channels of diplomatic communication by exempting diplomats from local jurisdiction, so that they could perform their duties with freedom, independence and security. Regarding diplomatic communication

Ibid.


Gumeniuk op. cit. 77.

Regarding the provision on inviolability of documents of the foreign sovereign, in Fayed v. Al-Tajir it was held to exclude the jurisdiction of English courts with regard to a defamation action that arose out of a memorandum, written by the head of diplomatic mission about the alleged malfeasances of a member of the diplomatic staff.


In connection to the inviolability of diplomatic documents, in Shearson Lehman Bros. Inc. v. Maclaine Watson&Co. Ltd. it was held that a body, enjoying diplomatic immunity can not be obliged to present its documents, unless they were communicated to a third party with its authority.


Greig op. cit. 134.

Vienna Convention. Articles 40, 27.

Doc. cit. Article 40.
methods, in 2012 Wu Xiaqing, China’s Vice-Minister for Environmental Protection, complained about the U. S. Embassy in Beijing for regularly tweeting data on air pollution in China, while the data on smog was collected by air-sensors at the Embassy’s premises, the Chinese authorities found that such practice was in the breach of the Vienna Convention. The Vice-Minister said on the issue that the public release of air-quality data by foreign governments’ representatives1414 „not only doesn’t abide by the spirits of the Vienna Convention on Diplomatic Relations and Vienna Convention on Consular Relations, but also violates relevant provisions of environmental protection.” Officials in China and Hong Kong have „grudgingly” responded by releasing their own data on air condition.1415

This episode in China was followed with similar criticism, expressed by the Russian authorities towards the intensive blogging of the American Ambassador in Russia. In connection to these online-related incidents, Kurbalija believes that the provisions of the Vienna Convention1416 on communication via official channels are the most controversial ones, specifying that diplomats should act in accordance with the law of the accrediting state and conduct their official business via the Ministry of Foreign Affairs. Furthermore, China’s reaction reveals cautions toward the position of diplomats in the Internet era. The fact that the complaint was placed not by the Ministry of Foreign Affairs of China, shows that Chinese authorities decided to send a diplomatic signal by expressing uneasiness, without escalating the conflict though, since customarily, in situations of breach of the Vienna Convention, protests are communicated by a diplomatic note or in more extreme cases by declaring the involved foreign diplomats persona non grata.1417

Above and beyond, such situations illustrate the underlying tension between the traditional perceptions of diplomacy, as strictly representation on a foreign state, and on the other hand, the view that diplomacy has the much broader task of involvement into local social dynamics, particularly, when it comes to protection of global values, such as human rights or environment.1418

1415 Ibid.
1416 Vienna Convention. Article 41.
1418 Ibid.
Constantinou argues that what makes a communication "diplomatic", is its conditioning by the knowledge that it represents sovereignty. This "delegation of presence" is the key condition of the possibility of diplomatic practice.

Diplomatic writing, as representation of the sovereign, entails the "diplomatic text". Due to the fact that the representation does not take place at a foreign ministry only, it includes diplomatic cables and communication by actors in contexts, where they represent the state, namely leaders, politicians, government departments and their formally recognized agencies.

George F. Kennan was the author of the famous "long telegram"—a cipher message that shaped the policy of the United States of containment towards the Soviet Union, sent during the times of the Cold War.

In 1946, Kennan, who stationed in Moscow at that time, submitted a report on the U. S.-Soviet relations. On 22 February, 1946, Kennan, the Soviet expert, who had extensive experience in Russia, sent an 8,000-word telegram to Washington.

In the message, Kennan advised Washington to adopt a firmer stance towards Moscow. (Later, Kennan regretted about his containment of the Soviet Union, softened his attitude toward the Soviets, and urged a policy of "disengagement", arguing for the neutralization of Central Europe.)

Freedom of diplomatic communication, in the same way, as freedom of diplomatic movement, could be limited under certain circumstances, according to the Vienna Convention, since it allows reciprocity in application of provisions on the freedom of diplomatic communication. Furthermore, customary international law justifies the suspension of diplomatic missions in times of war.

The telegram is also known, as "The Long Telegram".
The cable had a powerful impact within the Truman Administration, where it provided the intellectual framework for hardening the U. S. relations with the Soviet Union. Ibid.
Findling op. cit. 259.
Neutralization referred to "disengagement"—diplomatic policy in 1950s, based on a neutralized, non-aligned area of Central Europe around and including Germany, with both the United States and the Soviet Union agreeing to keep "hands off" those areas. Kennan op. cit. 146.
Doc. cit. Article 27.
Kish op. cit. 68.
"Diplomatic agents navigate between Scylla and Charybdis."1431 They are sent abroad to fulfil particular tasks – to create goodwill among the local population, to negotiate with the government of the receiving state, "perhaps even to monitor the human rights situation in that State".1432 At the same time, they are not expected to interfere in the receiving state’s internal affairs. As a result, the fundamental problem, which diplomatic agents frequently encounter is that the remarks, made by them, which are considered to touch upon the internal affairs of the receiving state, may meet with irritation and accusations of interference. No government likes to be criticized for its human rights record, its reluctance to prosecute war crimes or its inability to deal with corruption.1433

The diplomatic involvement into the advancement of human rights may also serve, as a reason for recall of diplomatic agents. In contemporary diplomatic relations we can witness the increased inclination of diplomats of certain countries to leave their role, as passive observers of violations of human rights in the host country. However, it happens sometimes that the diplomatic activity, aimed at protection of individuals seems to collide with the host state's rights, such as self-determination and sovereignty, and the Vienna Convention does not explicitly cover these cases and does not set up the hierarchy of legislation. This situation poses questions to diplomats, when they discover abuses of human rights in the host country, because international law, at first sight, does not offer a solution to such cases.1434

Nonetheless, in recent years, diplomats have become more aware of the possibility of being accused of meddling, regarding to other norms of the Vienna Convention,1435 for instance, the provision of non-interference into the internal affairs of the host state.1436

In August 2007, Nuala Lawlor, the Canadian chargé d'affaires in Sudan was expelled by the Sudanese Government, after she had, reportedly, called for the release of opposition leaders of that state. After that, Canada’s Foreign Ministry announced that a Sudanese diplomat would be expelled from Canada in response to Sudan’s decision to expel Nuala Lawlor a week before, who was accused of "meddling in its affairs". The Sudanese diplomat held a similar rank to Lawlor.1437

1431 Paul Behrens: Diplomatic Interference and Competing Interests in International Law. The British Yearbook of International Law. Vol. 82, No 1, 2012, 178. [Hereinafter: Paul Behrens: Diplomatic…]
1432 Ibid.
1433 Behrens: Diplomatic… 178-180.
1434 In addition, the Havana Convention does not provide clear instructions in this regard, either.
1436 Vienna Convention. Article 41(1).
Cooperation with other embassies is a particularly powerful way to strengthen the case, which the diplomatic agent pursues, and his subsequent defense, if the receiving state takes exception to his actions. Such cooperation is mostly suitable, when diplomats seek to achieve an objective, which is shared by several states, and therefore, seem especially appropriate in situations, where his actions are motivated by human rights concerns. Collective representation in the form of statements of support or joint demarches appear to become a more common feature only in recent years, but they offer advantages, which comments by an individual diplomat lack. That is to say, the lone diplomat is an embarrassment, a group of embassies is a force, which the receiving state ignores at its own peril.

As it can be seen in the following examples, there are situations, when diplomats, having attended opposition-related events, as observers, to gather related information or even, as a demonstration for a cause, faced no negative consequences from the part of the receiving state. In these cases, both the ambassadors and other members of the diplomatic mission, could openly and freely participate in the events.

In May 2010, ambassadors and chargés d'affaires of ten countries, accredited to Slovakia, published a joint letter, in which they expressed their support for the lesbian, gay, bisexual and transgender (LGBT) Pride parade in Bratislava.

This action resulted in charges of interference from commentators of the receiving state, but it did not seem to be criticized by the Slovak Government.

In 2011, twenty heads of mission signed a statement in support of Slovak Pride, hence the parade had the official backing of the embassies of the UK, Norway, Finland, the Netherlands, Ireland, Spain, Switzerland, and France.

"We, as members of the international community, stand both literally and figuratively with parade participants as they peacefully assemble to stand up for their human rights, and raise awareness of the LGBT community in Slovakia," as stated in the joint statement signed by the twenty ambassadors.
In June 2016, on the occasion of Budapest Pride parade, a record, thirty-one embassies in Hungary issued a joint statement, celebrating the festival. This was not the first time that embassies in Budapest showed their support towards the parade that this year was also being attended by the American and Israeli Ambassadors.

Behrens notes that states have been traditionally critical towards human rights involvement by diplomatic agents. Nonetheless, the absence of reference to the participation of diplomatic agents into the protection of human rights in the receiving state in the Vienna Convention, does not mean that human rights involvement cannot be qualified, as a diplomatic function under international law, for the phrasing of the Vienna Convention, regarding the five functions of a diplomatic mission clarifies that they do not constitute an exhaustive list.

In addition, the reference to the observation and reporting of conditions and development in the receiving state is broad enough to cover the direct involvement of diplomatic agents into human rights of the receiving state. Diplomats can occasionally become eyewitnesses to relevant events. Behrens comes to a conclusion that the need for diplomatic involvement into human rights is very real, because people in the receiving state, who become subjects of such violations, may often have no other way to realize their rights, but through the assistance of other states. Therefore, in international relations, "the diplomatic gadfly is a necessary beast".

Serious incidents, caused by diplomats, especially, those that received local publicity, in due course lead to a recall by the sending state, made sometimes at an unofficial pressure of the receiving state. Political offence, for example, direct interference in the domestic affairs of the country, is another serious situation, when the receiving state might demand the withdrawal of the involved diplomat. In the course of the incident, the state that initiated the act of

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1442 Embassy of the United States: Joint Press Release on the Occasion of the 21st Budapest Pride Festival. The joint press release was issued by the Embassies of Argentina, Australia, Austria, Belgium, Brazil, Canada, Chile, Cyprus, Denmark, Estonia, Finland, France, Germany, Greece, Ireland, Israel, Italy, Lithuania, Malta, Norway, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, Switzerland, The Netherlands, New Zealand, The United Kingdom, The United States, and the British Council. 28 June, 2016. (Accessed on 23 December, 2016.) https://hungary.usembassy.gov/pr_0628016.html


1445 Paul Behrens op. cit. 7.

1446 Vienna Convention. Article 3(1): „The functions of a diplomatic mission, inter alia, in:....”.

1447 Ibid.

1448 Ibid.

1449 Betty Behrens op. cit. 38.
withdrawal has to be ready in time for a reciprocal action by the other side. In case of ambassadors, an open persona non grata declaration is very rare, though.

Kurbalija notes that internet and social media communication put some provisions of the Vienna Convention out of sync with current times, so the related article on facilitation of free communication of diplomatic missions may require reworking, to update the Convention. For example, it is a big question, whether the diplomatic e-mail should enjoy the same protection, as the traditional diplomatic valise. If the Vienna Convention is strictly interpreted with respect to communication with local entities, then many modern e-diplomats, who use a blog or community pages (for example, Twitter and Facebook), would be considered persona non grata, so the relevant provisions of the Convention may require redrafting.

Diplomatic agents are active users of public diplomacy, such as twitter, using it to convey messages, making them stronger.

Hitherto, Kurbalija states that e-mail and e-documents do have diplomatic protection. Since diplomatic communication, including electronic documents, is protected under the Vienna Convention, consequently, digital assets enjoy the same diplomatic protection, as physical resources. The dilemmas, which still exist today, are connected to the question on reasonable responsibility of the host state in ensuring electronic immunity (e-immunity).

Electronic immunity has come into the focus of attention of the international community, as a result of our growing dependence on internet. The new space of internet requires new rules, consequently, for cyberspace, we need cyber-law.

Kurbalija resumes that today the focus is Internet access is not universal, equal for everyone and free, consequently, the possibility to take part in the online social life is not uniform. In some countries, for example Cuba, North Korea, China, Saudi Arabia, Syria, Vietnam, Internet access is drastically restricted, monitored and censored by government. The websites, blogs and forums, focusing on political topics are the most highly monitored (as in the situation of the WikiLeaks case).


Vienna Convention. Article 29.

Doc. cit. Article 41(2).


China is being prepared the Cybersecurity Law, aimed at strengthening of protection and security of key information infrastructure and key data. The second draft of the Cybersecurity Law stipulates that China will adopt priority protection over key information infrastructure that would seriously jeopardize national security and the public interest, in case data was damaged or leaked. Katerine Jo: Cybersecurity Law: Stricter Rules on Big Data. China Law&Practice. Vol. 29, No 3. September-October 2016, 12-13.

DOI: 10.15774/PPKE.JAK.2017.003
mainly on the specifics of application of the existing law to matters, related to the internet, not on inventing new law.\textsuperscript{1458}

By virtue of the Vienna Convention, diplomatic missions are entitled to free communication,\textsuperscript{1459} and „free” also implies that this communication is free from surveillance. In addition, the wireless communication is „physical”, travelling through the „air”, under the sovereignty of the involved state and the Vienna Convention obliges third countries to protect diplomatic communication in transit.\textsuperscript{1460} The additional dilemma is related to the situation that most of the communication between an embassy and the sending state is performed via various internet links, so the question is whether the receiving state can impose special obligations on private companies – the Internet service providers, to protect diplomatic communication.

A new problem to solve is the protection of electronic documents, saved in the „cloud”, for example, Google Docs, since e-mail or documents, stored there, and might be vulnerable, regardless of the legal status of diplomatic protection. Moreover, cloud computing will make all the digital resources available on demand across the world,\textsuperscript{1461} thus, the new scientific revolution has arrived just as we face an exponential increase in data.\textsuperscript{1462}

International law presently sees the world through the lens of various jurisdictions, which are inherently linked to location, geography and territorial boundaries. In the current paradigm, the territoriality principle represents the core of the international law thinking on jurisdiction, to be precise that a state has jurisdiction over all that occurs in its territory for the simple reason that it occurs in its territory. (The relationship between state and territory is of overwhelming importance to the existence of the international order, hitherto, the nature of this relationship has never been fully resolved.)\textsuperscript{1463}

Jellinek called territory „the indispensable spatial basis” for a state to exercise power via its subjects, indirectly.\textsuperscript{1464} Lauterpacht précises that a state rules within territory, not over

\textsuperscript{1458} Mundie argues that privacy violations should be considered serious criminal offenses, for the only effective deterrence would be strong punishments. Craig Mundie: Privacy Pragmatism. In: Foreign Affairs. Vol. 93, No 2, March-April 2014, 36.
\textsuperscript{1459} Vienna Convention. Article 27(1).
\textsuperscript{1460} Doc. cit. Article 40(3).
\textsuperscript{1463} Michael J. Strauss: Territorial Leasing in Diplomacy and International Law. Brill Nijhoff. Leiden, 1953, 29
All the same, it is not always easy or even possible to determine, where in real space geographical terms events take place online.

Diplomats have also to deal with the problem of cyber espionage or cyber exploits – the theft of information from networked systems.

With respect to the universality of diplomatic immunities, the provisions of the Vienna Convention on the inviolability of archives at any time and any place, makes diplomatic privileges even more "virtual", than internet itself, since the physical limitations to the "movability" of diplomatic documents and archives, present at the time when the Convention was drafted, do not exist anymore. Subsequently, the principle of universality of diplomatic protection may need to be re-examined or maybe even limited.

On the other hand, changes in management, organization, forms and methods of diplomatic structures, caused by a modification of the well-known system of international relations, globalization and internationalization of transnational problems, along with the growing influence of new information technologies, made a strong impact on the diplomatic process, and increased the share of multilateral diplomatic activities of the relevant institutions.

In view of that, for instance, the Ministry of Foreign Affairs of the Russian Federation pays special attention to the problem of information-psychological security of the diplomatic service – protection of diplomatic servants from negative external information-psychological influence.

The professionalism of diplomatic agents in the sphere of information technologies protect them from hasty decisions and steps. Diplomatic information is a special kind of data, and depending on its source, types and level of reliability, it is able to cardinally change the


Information-psychological security is "the use of information to guarantee the functional reliability of the psyche and consciousness of a person at times of peace or war". Aleksander Cherkasov: "Formirovat' gotovnost' k boiu." ("Forming of military readiness.") Orientir. June 1995, 15.


Petrik doc. cit. 135.

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relations between states.\textsuperscript{1475} (In history, falsificated documents, for example the ,,Testament of Peter the Great“\textsuperscript{1476} or the ,,Ems Dispatch“,\textsuperscript{1477} which contained desinformation, caused serious tensions in diplomatic relations and even led to wars.)\textsuperscript{1478}

The Vienna Convention, regulating the diplomatic freedom of communication, provides that a diplomatic mission may use all appropriate means to exercise diplomatic communication, for official purpose, but can install and use a wireless transmitter only with the consent of the receiving state. The receiving state has to permit and protect the freedom of diplomatic communication for official purpose.\textsuperscript{1479}

At the same time, in modern conditions, every diplomatic servant must be firmly aware of and comply with information security requirements, taking special care, when working on personal computers, while turning to services, by using e-mail and fax, landline telephone and cell phone. The fight against terrorism calls for adoption of a number of not individual, but of a whole complex of measures for prevention of criminal actions. It is about ensuring the physical, informational, technical and psychological safety of individuals and technical means.\textsuperscript{1480}

The right to use ,,all appropriate means, including diplomatic couriers and messages in code“\textsuperscript{1481} is on the other hand restricted by the terms of the second sentence of this provision of the Vienna Convention to communication with the sending government and its missions, and consulates, wherever situated. Written messages from the mission, however, would be entitled to inviolability, either, as archives or as correspondence of the mission, while in transit to the intended recipient, so that the receiving state would in any event not be entitled to inspect them in order to verify, whether or not they were in code or cipher.\textsuperscript{1482}

Denza notes that states complain of breach of international law, when their own communications are compromised, while simultaneously stating that it is unpatriotic or naïve for questions to be raised about their own conduct. Although the evidence is limited, it suggests that more states now have the capacity and the inclination to carry out sophisticated surveillance and that interception is increasingly carried out against friendly as well as hostile states. There

\begin{footnotes}
\item[1475] Petrik doc. cit. 166.
\item[1476] [Le Testament de Pierre le Grand.]
\item[1477] [Die Emser Depesche.]
\item[1478] Petrik op. cit. 170.
\item[1479] Vienna Convention. Article 27(1).
\item[1480] Petrik op. cit. 132.
\item[1481] Vienna Convention. Article 27(1).
\item[1482] ,,It may be assumed that the words ‘all appropriate means’ include methods of communication such as fax and electronic mail which were not in use when the Vienna Convention was drawn up but which have since become standard.” Denza op. cit. 213.
\end{footnotes}
is no, however opinio juris, suggesting that the law, prohibiting violation of the right to free and secret diplomatic communication, as set out in the Vienna Convention, has changed.

The exceptional disregard for this particular rule of international law may be explained by the lack of reciprocity, given that the majority of states do not have the capacity for surveillance, together with the possibility for the technologically advanced intelligence services to carry out interception by methods which are increasingly difficult for the target missions to detect.

Knowing the vulnerability of communications sent by wireless, telephone or by correspondence through public facilities, according to the regulations of the Vienna Convention, states attach primary importance to the security of the diplomatic bag for reliable transmission of confidential material. On the other hand, there is a continuing need to balance the requirement for confidentiality of diplomatic communications with the necessity for safeguards against possible abuse. Denza resumed that the provisions of the Vienna Convention shifted the balance in favor of greater protection for the bag, even that the cases of abuse, as well as public reaction to such incidents show, how difficult it is to achieve an acceptable balance.

Overall, the documents (papers) and correspondence of diplomats is inviolable, therefore it cannot be detained or opened used by local authorities for official purposes, and also it should be protected from abuse of individuals. Along with this, it has to be noted that in practice, the assurance of inviolability of diplomatic correspondence may face difficulties, in case diplomats send their letters via regular postal mail, since the envelope, sent under such circumstances lacks the visible mark, like in case of the diplomatic bag, which would enable local authorities to identify the character of the mail.

At the time of the drafting of the Vienna Convention, there was not a need yet for providing a definition for the "diplomatic bag". Ever since, the practice has grown for considering not only diplomatic correspondence, but also large wooden crates, capable of containing metallic equipment, arms, bombs, or even kidnapped individuals, as falling within the immunity from search of the diplomatic bag. This rule on diplomatic immunity needs to be revised and refined, restricting it to diplomatic "communications" only in writing or on tape.
. 2. 2. Diplomatic information and intelligence

Espionage and intelligence, which were already first mentioned in the Old Testament, became customary components of diplomacy and state organization by the eighteenth century.\textsuperscript{1490} Gentili believed that if on the mere suspicion that an envoy came to the host country not as an ambassador, but as a spy, it had to be lawful to deprive him of the title of ambassador and to degrade him, then „the door would be flung wide open to the unscrupulous for outrages against all ambassadors“.\textsuperscript{1491}

Pufendorf noted, concerning the legates, who commonly constituted one of the principal headings of the law of nations that even those, who have been sent to the enemy, if, indeed, they had the appearance of legates and not of spies, were inviolable by the very law of nature.\textsuperscript{1492} Persons of that kind were necessary in order to win or to preserve peace, and the law of nations had to provide the safety of those individuals, without whom „the end which it orders cannot be obtained“.\textsuperscript{1493}

Intelligence, according to its function, protected state leaders form external and internal dangers, and laid the foundations of a secure communication. As remarked by Frum, we all want the benefits of improved national security, but „the information most needed for national defense is not obtained by asking nicely for“.\textsuperscript{1494}

In the face of the fact that the diplomatic agent is authorized to collect information by lawful means, espionage, evidently, is not within this category. Spying is, actually, a treaty violation by the diplomatic agent, under the express direction and approval of the sending state. Granting domestic law and treaties provide for privileges and immunities in furtherance of diplomatic relations, espionage is not a fundamental purpose of the community.\textsuperscript{1495}

Whereas espionage may be in reality a concomitant of diplomacy, one can not analogize that such a practice \textit{de facto} makes it acceptable. When the receiving state consent to host a foreign diplomatic community, it is not agreeing that espionage becomes an acceptable objective.\textsuperscript{1496}

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\textsuperscript{1491} Berridge: Diplomatic Classics… 66.
\textsuperscript{1493} Pufendorf op. cit. 167.
\textsuperscript{1494} David Frum: We need more secrecy. The Atlantic. May 2014, 15-16.
\textsuperscript{1495} Ward op. cit. 666.
\textsuperscript{1496} Ibid.
In the sixteenth century, members of diplomatic missions did not disdain espionage, there was even a special ironic term that characterized the spying diplomats – *espion honorable*.

In that epoch, in Russia, foreign envoys had no possibility to communicate with locals or their own government. An envoy could hand over instructions of his sovereign to other envoys, who already arrived to Russia, only in presence of Russian constables. The strict guard was necessitated also due to the hazard of espionage. Consequently, the foreign envoys were allowed to transmit a message to their government, only if the Tsar had previously got familiar with it.

The blanket mandate of immunity encompasses the most serious crime against a government – espionage. Such threat of national security is prohibited by law.

On occasions, when the authorities judged that the home legitimate order or the safety of the country is seriously endangered by the acts of a diplomatic agent, they might ask for his revocation or even confine him within his own quarters and lead him out of the territory of the country in a manner, not in conformity to his diplomatic capacity.

Characteristic examples are the cases of Count Ghyllenborg and Prince Cellamare, who conspired, the one in London, and the other in Paris, against the states in which they were accredited, and were forcibly expelled.

These were the two famous precedents in the eighteenth, related to undercover activities, the cases of Gyllenburg and Cellamare, both concerning ambassadors, who were arrested for conspiracy. In the first case, Gyllenburg was arrested in 1717 for conspiracy against George I, and in the other case, Cellamare was arrested in 1718 for conspiracy against the Regent Orleans.

Goldsmith and Posner, analyzing the ambassadorial immunity, claim that it reflects equilibria, which arises from strategic behavior in pairwise interactions among all states. States are more likely to violate diplomatic immunity, when stakes change, so that the benefits of violating immunity or the benefits of respecting immunity are low. In this mode, probably the

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1497 Yuzefovich op. cit. 16.
1498 Yuzefovich op. cit. 77.
1499 Ward op. cit. 658.
1501 Martens: Causes célèbres… 97, 149.
1503 Martens op. cit. 139.
most frequent denial of diplomatic immunity occurs, when a diplomat does something in the
host state that threatens its national security, because in that case the state receives a higher
payoff from compromising diplomatic immunity.\textsuperscript{1504}

In 1727, James Francis Fitzjames,\textsuperscript{1505} the Duke of Liria,\textsuperscript{1506} appointed the first Spanish
Ambassador to Russia,\textsuperscript{1507} wrote his memoirs, in Saint Petersburg, based on diplomatic
dispatch.\textsuperscript{1508} The Ambassador described the diplomatic and political life of the country, mainly
focusing on its foreign affairs.\textsuperscript{1509} The chronicles contained portrait characteristics of the royal
suit, written not only after personal experiences, but also taking into consideration rumors and
different other types of information, intended to be used by professional diplomats and secret
service agents (for example, description of looks, intellectual potential, positive and negative
traits, personal means and contacts, etc.).\textsuperscript{1510} Such „portraits” were intended for practical work
of members of the Spanish diplomatic mission and the successor of the Ambassador.\textsuperscript{1511}

In the nineteenth century – up to the present, this method, rooted in thousands of years,
had explosively widespread and extended into further development. While the method of
execution has changed fundamentally during the passage of the centuries, the causes of
intelligence today still stand on the same ground that had been laid out at the time, when
espionage occurred.\textsuperscript{1512} The attitude to espionage\textsuperscript{1513} at times used to be rather concessive, than
despicable.\textsuperscript{1514}

\textsuperscript{1504} Goldsmith–Posner op. cit. 56-58.
\textsuperscript{1505} Fitjames was the grandson of King James VII. Steve Murdoch: Network North: Scottish Kin, Commercial And
\textsuperscript{1506} The Duke was called by Russians in everyday life, as „Gertsog Liriiskii” (Duke of Liria). J. A. Limonov (ed.):
Rossiia XVIII glazami inostrantsev. (Russia of the XVIIIth century by the eyes of foreigners.) Leningrad,
1989, 7.
\textsuperscript{1508} The Duke described events from November 1727 to November 1730. Limonov op. cit. 7.
\textsuperscript{1509} By those times, the independent foreign policy of Russia, its success, along with the favorable international
situation, helped Russian diplomacy to strengthen the international position and prestige of the Russian Empire.
LENINGRADSKOGO UNIVERSITETA. Leningrad, 1974, 76.
\textsuperscript{1510} Gertsog Liriiskii: Zapiski o prebyvanii pri imperatorskom rossiiskom dvore v zvanii posla korolia ispanskogo.
(Duke Liriiskii: Notes on the stay at the imperial Russian court in the rank of ambassador of the king of Spain.)
In: Limonov op. cit. 189-535.
\textsuperscript{1511} Limonov op. cit. 8.
\textsuperscript{1512} Győrfy op. cit. 9.
\textsuperscript{1513} Spying, just like war, is a historical phenomenon that is obviously, evaluated in its own way, in different eras.
With time, the meaning of the secret service itself has changed, as well, caused by the changes in interpretation of
such notions, as state or military secret. Tamás Bolyki (ed.): A világ leghírhedtebb titkosszolgálatai. (The world’s
\textsuperscript{1514} „To spy for the interests of the motherland: honor, patriotism, noble deed. To think for the motherland,
sacrifice our live for the homeland, without batting an eyelid: duty. To betray the motherland: dishonesty.” Árpád
Botár: A láthatatlan handsereg. Kémek, árulók, merénylők. (The invisible army: spies, traitors, assassins.) Zrínyi
On 9 September, 1915, the United States demanded the recall of Konstantin Dumba, the Ambassador of the Austro-Hungarian Monarchy, and the Count was expelled, because he supported industrial espionage in the host state. The imperial Ambassador provided financial support for press articles in favor of the Central Powers, as a means of crippling America's munitions industry. Dumba also had been associated with the organization of strikes at American munition plants. The Ambassador, upon his return to Austria, was accorded a reception, similar to hero's welcome.

On 4 December, 1915, the Department of State notified the German Government that the German naval attaché Captain Boy-Ed and the military attaché Captain von Papen, were considered personae non gratae, following the discovery of incriminating documents, relating to German espionage and sabotage activities in the United States.

Embassy staff, in general, also contains specialists of different agencies, outside the Ministry of Foreign Affairs, such as the Defense Ministry, the intelligence establishment and some other ministries or departments. Placing intelligence officials within embassies in an old tradition, linked to the notion of diplomacy, as “war by other means”, is justified by the fact that an “undeclared” diplomat, who is an intelligence official, is immune from actions by the receiving state. The worst that such diplomat (intelligence official) could face, when caught is expulsion via persona non grata route. In practice, intelligence agencies of the receiving state manage to identify such officials, however, calculations of reciprocity request a cautious treatment.

Intelligence is the area of state security, which is vital to international relations. Nevertheless, Kish notes that espionage is unregulated by international law, even with its increasing importance in the “New World Order.” International law recognizes the diplomatic function of observation, the appropriate exercise of which have need of additional provisions for certain diplomatic freedoms. Essentially, the diplomatic freedom of movement is a necessary precognition for ensuring the effectiveness of diplomatic observation. This is the reason, why the function of observation have been closely linked to freedom of movement, in the long history of diplomacy law.

The freedom of diplomatic movement has been presented some problems of regulation during the early development of diplomacy law. This kind of freedom, constantly exercised by
the sending state and tacitly accepted by the receiving state, was considered, as an inherent element of diplomatic relations, firmly instituted in customary international law.

The World War II, above the other international conflicts, was also the war of intelligence, as well, plenty of dramatical events. Intelligence played an essential role in each arena and in every conflict of the war.\textsuperscript{1519} The legal practice of states, regarding intelligence activity, was amply consistent until the World War II, according to which, diplomatic agents were allowed to travel in the entire territory of the host country. There were only some exceptions of specifically designated strategic areas.\textsuperscript{1520}

In connection with the secret diplomacy all through the Second World War, there are well known the stories of British diplomatic couriers, who arrived to the provincial cities of Yugoslavia with diplomatic bags, stuffed with weapons, instead of diplomatic mail. These scandals resulted in an explosion of a suitcase, brought from Sofia to Istanbul, in a hotel. The incident was officially attributed to enemy sabotage, but journalists’ circles claimed that the infernal machine was in the luggage of a British diplomat, who was, actually, an intelligence agent.\textsuperscript{1521}

In the course of the major war, a number of (mostly undisclosed) organizations was created in Great Britain, with the aim to expand their networks of secret agents in other countries. The British Foreign Office has restored the so-called „PID” – the Political Intelligence Department, which functioned during the First World War. The department was led by Sir Reginald („Rex”) Leeper, who later, during the campaign against the Greek patriots in 1944, was appointed the British Ambassador in Greece.\textsuperscript{1522} „PID” was engaged in secret intelligence activities in all countries that have already participated or by all accounts should have been sooner or later take part in the war.\textsuperscript{1523} These were special employees of the British Embassy, exempt from normal duties, occupied only with collection, collation and systematization of materials, covering all aspects of life in the countries, where they worked.\textsuperscript{1524}

In addition, as stated by Bucar and Parker, the U. S. intelligence leaders used the alliance, established between the Soviet Union and the United States during the war, in order

\textsuperscript{1520} Kish op. cit. 59.
\textsuperscript{1521} Leeper was also recognized, as the founder of the British Council.
\textsuperscript{1522} The „Russian Affairs Secretariat” of the British Foreign Office, created during the war, was the basic organization of the British Foreign Office, which provided the „experts on Russian affairs”. The „Russian” or „Slavic” Secretariat, allegedly, had its representatives in Moscow and in almost all Eastern European capitals, as well as in Helsinki and in South Korea. Ibid.
\textsuperscript{1523} Parker–Bucar op. cit. 38-54.
to infiltrate intelligence personnel into the territory of the Soviet Union, to conduct intelligence work against the country's allies.

Furthermore, during the Second World War, it was not a secret that Yugoslavia became an arena, where there labored a large number of foreign spies and agents, under the cover of diplomatic ranks, such as different attachés, press attachés and their assistants, like local consuls and representatives of the British Council.

For the duration of the global war, when secret diplomacy also had been flourished, the British intelligence agents were supposedly, at all agencies, related to the British diplomatic missions. Ronald Campbell, the British Ambassador in Belgrade, so they say, threatened to resign, when in the office of one of his attachés there were discovered mines of large explosive force. His strong indignation was also evoked by the fact that the attaché's office was directly under his own bureau.

V. 2. 1. 2. Examples of diplomatic involvement into intelligence activities from the period of the Cold War until the contemporary period

Anabelle Bucar was an employee of the U. S. State Department and at the same time, the American strategic intelligence officer, employed in 1947. In February 1948, Bucar made a shocking announcement about her secret marriage to the opera singer Konstantin Lapshin, and her decision on remaining in the USSR.

After her resignation, Bucar wrote a book on the employees of the American and other Western embassies in Moscow, on how they were gathering secret information about the Soviet military, industry and science, along with their methods of secret-service work and recruitment of Soviet people for special subversive tasks. The book contains numerous facts of such alleged activities, which Bucar was able to gather by means of her official position and connections in the West.

On the other hand, the Soviet intelligence experts were also skilled to spot the vulnerable targets and notice opportunities, making foreign diplomats to betray their country. In 1952, John Vassal was appointed at the British Embassy in Moscow to the naval attaché. The new...
diplomat found it difficult to function at the British Embassy, in line for to the snobbery of diplomatic circles, but the bigger problem was his secret homosexuality, which was penalized at the time, both in Great Britain, and in the Soviet Union, with imprisonment. In 1954, being invited to a party, Vassal had the opportunity to drink much alcohol and meet several men. Soon after the bash, he was shown the compromising photographs, made at the event, and was blackmailed to work for the Soviet intelligence. The diplomat had been providing the Soviets with information, related to British military data until 1956, when he returned to London. Vassal continued to work for KGB until 1961, when he was discovered and sentenced for 18 years, eventually, released after 10 years in prison.\(^{1531}\)

In situations of escalation of a conflict in bilateral relations, or when an intelligence agent gets caught at espionage, a round of mutual expulsion takes place, as it happened during the years of Cold War between the United States and the Soviet Union or as it happens from time to time between India and Pakistan. There are cases, when embassy-based espionage incidents emerge between friendly states, and then the agents in question are expelled „*without fanfare*”\(^{1531}\). Therefore, the use of embassies for intelligence collection is a „*normal activity, much more widespread than at first sight*”\(^{1532}\) and the most of substantial diplomatic systems host such covert officials. Intelligence agents function within an embassy under special internal procedures and answerable to the ambassador only in a limited way.

Intelligence systems deliver similar „*end-product*”, as embassies, i. e. information and forecasts of international affairs, the difference is in the operational methods, used by intelligence officials, because they also involve secret agents, as sources, which rationalizes the clandestine way of their mode of operation. (Ambassadors are customarily given special instructions on the limited supervision of intelligence officials. Typically, agents do not disclose the operational aspects of their work to ambassadors, but are expected to share with them the obtained hard information.)\(^{1533}\)

In the course of the Cold War, bugging of embassies was an established practice.\(^{1534}\) In the 1950s, the American Embassy in Budapest was monitored by every lawful means, and also intelligence tools by ÁVÓ,\(^{1535}\) the secret police of Hungary, trying to inspect the Embassy staff,

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\(^{1532}\) Rana: *The 21st Century Ambassador…* 151.

\(^{1533}\) Rana: *The 21st Century Ambassador…* 150-152.


\(^{1535}\) ÁVO – the State Security Department, was established in Hungary in early 1945\(^{1536}\), later re-named into ÁVH - the State Security Authority. David Irving: *Uprising!* Hodder and Stoughton Limited. London, 1981, 48, 53.
including the Hungarian employees and also technical staff. The Hungarian staff members were periodically questioned, besides, listening devices were deployed to the Embassy, probably, placed in every room. The members of the American staff were even watched.

In 1950, there was also arrested and tried Edgar Sanders, a British businessman – the sole senior foreign representative of the International Standard Electric Corporation, residing in Budapest, who was convicted of espionage and sabotage on the basis of a "confession" in court. Sanders was sentenced to 13 years in prison. The failed attempts to free the English prisoner led to a breakdown in bilateral relations and a British trade embargo.

Hungary, being convinced that "Captain Sanders" was a spy, issued a Note of protest, demanding Great Britain to recall him. On 18 August, 1953, Sanders was freed, as an act of clemency, which was the outcome of the fresh course in Hungarian foreign politics. Britain scored a propaganda victory of the Foreign Office. The British Government lifted the embargo, but the normalization of bilateral diplomatic relations took far longer, than it was expected. This conflict overshadowed the whole Hungarian-British diplomatic relations from 1949 to 1956.

In conducting one method of espionage operations, the sending state inserts an intelligence collector into the diplomatic structure. When the operative is arrested, it is routine for the sending state to invoke the shield of diplomatic immunity. Due to the fact that the operative can not be punished, the receiving state retaliates by declaring the collector persona non grata and directing his immediate departure, thus terminating his diplomatic privileges and immunities. On the other hand, the privileged status of diplomatic agents in this case is a protection, which encourages the illegal act.

Abuse of diplomatic immunities, reportedly, took place regarding the information-gathering methods of states (more precisely, their intelligence agencies), as well, when some diplomats got involved, for instance, in case of the practice of Central Intelligence Agency (CIA) and Federal Bureau of Investigation (FBI) of the United States in the sixtieth and seventieth of the last century. A number of CIA operators in foreign countries used to work
under state cover. The CIA stations served, as principal headquarters of covert activity in the
country, in which they were located, all over the World.\footnote{The station usually was housed in a United States Embassy, in the capital city, while CIA bases were in other major cities, sometimes on American or foreign military bases. As an example, the CIA’s largest station in West Germany was located in Bonn and the chief of station was a member of staff of the American embassy. Victor Marchetti–John D. Marks: The CIA and the Cult of Intelligence. Dell Publishing Co., Inc. New York, 1974, 87.}

The CIA agents mostly operated abroad, under the auspices of the U. S. Embassies and trade missions. The secret service agents usually were indicated in diplomats’ roster, as attachés.\footnote{Tamás Bolyki (ed.): A világ leghírhedtebb titkosszolgálatai. (The world’s most notorious secret services.) 2010 alapítvány. Budapest, 1999, 89.} This is the way that some diplomats and military attachés provided the required information. Application of espionage was followed, in return, by usage of counterespionage (also more delicately referred to as counterintelligence), as it took place in case of the United States and the Soviet Union\footnote{Witiw remarks that historically, the United States and the Soviet Union have tolerated a certain amount of espionage. Eric Paul Witiw: Persona non grata: Expelling diplomats who abuse their privileges. New York Law School Journal of International and Comparative Law. Vol. 9, 1988, 348.} during the period of the Cold War.\footnote{The period of the Cold War ended in 1989-1991 with arousal of a new international order. B. J. C. McKercher: The international order and the new century. In: McKercher op. cit. xv.} (There was established a division within the intelligence community of the United States, called Office of Soviet Analysis – SOVA\footnote{Michael R. Beschloss–Strobe Talbott: At the highest levels: the inside story of the end of the cold war. Little, Brown&Company. New York, 1994, 142.} that studied and evaluated the political situation in the Soviet Union.\footnote{The Office of Soviet Analysis was directed by George Kolt. Ibid.} 1544

In 1964, it found out that the American Embassy in Moscow had been bugged by the Committee of State Security of the Soviet Union (KGB). The American counterespionage and security specialists determined that the equipment was installed back in 1952, when the building had been renovated by Russians. Regarding FBA’s activity, it operated a wiretap program against numerous foreign embassies in Washington, mostly of former socialist countries. Certain embassies of non-socialist countries had their phones tapped, too, especially, when their nations were engaged in negotiations with the U. S. Government or during important developments in these countries.\footnote{Beschloss–Talbott op. cit. 186-214.}

Despite its diversities, intelligence\footnote{Secrecy is intelligence’s trademark – the basis of its relationship with government and its own self-image. Michael Herman: Intelligence Services in the Information Age. Theory and Practice. Frank Cass Publishers. London, 2005, 13.} has a distinctive status and all states recognize it, as a permanent part of their apparatus.\footnote{Herman op. cit. 12.} For example, in the United States, the Bureau of

\footnote{DOI: 10.15774/PPKE.JAK.2017.003}
Intelligence and Research, the reports from American embassies and foreign stations, also further information that other agencies choose to supply, and within the Justice Department, the Federal Bureau of Investigation deals with counterespionage. It should be specified here that the documents of intelligence character (purpose) can not be regarded, as documents, belonging to a diplomatic agent or his mission. Documents of such kind are not connected to the authorized activities of diplomatic missions and do not relate to the performance of official functions of envoys. The problems, connected to the inviolability of diplomatic archives, documents and official correspondence is of the areas of diplomacy law that would require further research.

In 1982, in U. S. v. Kostadinov, the espionage accusation against Penyu Baychev Kostadinov, assistant commercial councilor of the trade office of the Bulgarian Ministry of Foreign Trade, was dismissed on the ground that the defendant was fully immune from the criminal jurisdiction of the United States, by virtue of diplomatic immunity. The diplomat served, as Head of Trade Office that was opened for the purpose of promoting trade between Bulgaria and the United States, and the latter recognized the premises of the office, as part of the premises of the Bulgarian Embassy in Washington. Kostadinov, allegedly, purchased secret documents from an individual in the United States, concerning various security procedures for American nuclear weapons, paying 300 dollars, and asked for further documents. That individual forwarded the details of the purchase to the Federal Bureau of Investigation, whose agents recorded the meeting on audio and videotape. The agents arrested Kostadinov, right after he left the meeting. The diplomat was indicted on the count of attempted espionage and conspiracy to commit espionage, yet, managed to escape the punishment due to his diplomatic status. Sometimes even states, being allies, can engage in intelligence activities against each other, under diplomatic coverage. Thus, in 1995, five diplomats of the American Embassy in Paris were accused of economic espionage against the French Government.
Pamela Harriman (allegedly, "privately fumed as well") was summoned by the French to receive an official protest. The French counterintelligence officials learnt in short time about the network of CIA officers, operating against them and the operation was quickly unraveled. The French part, breaching the traditional protocol, did not expel the four accused spies, working under diplomatic cover, as the phrase goes, for activities, "incompatible with their diplomatic status" and raised an uproar over the fact of spying. The publicity posed questions, asking whether spying on allies for economic data is a worthy pursuit for the CIA or whether its operatives should better concentrate on the activities of terrorists and other deep political secrets abroad.

In 1989, the Government of the United States expelled Lieutenant Colonel Yuri N. Pakhtusov, a Soviet military attaché, based at the Soviet Embassy in Washington, for alleged spying. The Soviet Government reacted a week later, by expelling Lieutenant Colonel Daniel Francis Van Gundy, an assistant army attaché, stationed at the American Embassy in Moscow, along with "acknowledging that the expulsion was a diplomatic tit for tat". (Previously, in October 1986, five American diplomats were ordered home in an exchange of accusations of spying and diplomatic expulsions.)

In 1999, Ethiopia has expelled Asmerom Girma, the Eritrean Ambassador from Addis Ababa for activities, incompatible with his diplomatic status, and he was given 24 hours from 10 February, 1999 to leave the country. By this act, Ethiopia made a step back from the solution of the territorial dispute between the two east African neighbors. By the time of the incident, Ethiopia expelled more than 40 Eritrean diplomats and local staff of the Embassy of Eritrea in Addis Ababa.

In March 2001, Colin L. Powell, U. S. Secretary of State, ordered fifty Russian diplomats to leave the United States. Powell summoned Yuri V. Ushakov, the Ambassador of Russia to the State Department, to inform him that six Russian diplomats had to leave the

According to the press, the eviction took place partly in response to the spy case that involved Robert Philip Hanssen, a former FBI agent, who was accused of selling secrets to Moscow over a period of fifteen years. At those times, this was the largest eviction since the exodus in 1986, when President Ronald Reagan ordered fifty-five Soviet diplomats to leave, "also in response to the disproportional presence of Russian spies in the United States, compared with the number of American intelligence agents in Russia." The U.S. officials did not reveal the names of any of the alleged Russian spies.

On the subject of expulsion of diplomats over engaging in activities, incompatible with their status, he may be expelled from the receiving state. Lowe points out that many suspected spies have been expelled, due to this reason, over the years. When a person ceases to be a diplomat, he loses his entitlement to immunity, except regarding official acts, for which the diplomatic immunity continues.

Since Edward J. Snowden disclosed in 2012 dragnet surveillance by the National Security Agency and its allies, "unprecedented in its scale," it is well known that the communication of embassies with their sending states is consistently monitored, despite the relevant provisions of the Vienna Convention. (However, this was not a new information for embassy staffs.) The activity of intelligence services mainly draws attention in case of "media-interesting topics," such as uncovering or expelling spies.

According to some sources, certain countries appoint proficient intelligence agents, as military attachés, who use then their position to gather information on military and industrial potential of the receiving state, i.e. state secrets, with application of both legal and illegal methods, thus getting engaged in foreign policy intelligence activity. The work of military attachés – army, naval and air – serving, for instance at U.S. embassies, is classified. They are considered "legal spies," gathering information on the host country's defenses, size and quality of the army, types of weapons and other, related matters.
Foreign policy intelligence is a sector of political intelligence activity, related to assurance of foreign policy activity of a state in general and its bodies, serving the area of foreign relations.\textsuperscript{1568} State secret – particularly protected information of various kinds, provided in special lists, which is important for defense interests of state, the transfer of which to the disposal of foreign countries can objectively harm those interests.\textsuperscript{1569}

On May 12, 2011, Colonel Vadim Leiderman, the military attaché of Israel was detained in Moscow on suspicion of espionage. According to the Federal Security Service of the Russian Federation, the diplomat, actually, was a career intelligence officer, who tried to obtain data on military-technical cooperation and assistance of Russia to a number of Arab states and CIS countries. Israeli media, citing a source in the Foreign Ministry, reported on the \textit{“symmetrical”} expulsion of the military attaché of the Russian Embassy.\textsuperscript{1570} The diplomat left Russia within 48 hours, being declared \textit{persona non grata}. As it was stressed by the Israeli Ministry of Defense, the charges against Leiderman, related to accusation of spying, were unfounded.\textsuperscript{1571}

In August 2011, the Public Relations Center of the Federal Security Service of the Russian Federation reported that Gabriel Grecu, an employee of the Foreign Information Service – the Romanian intelligence service, who worked in the national Embassy, as First Secretary of the Political Department, was detained in Moscow, while trying to obtain secret information of military character from a Russian citizen. As a symmetrical response, the Romanian authorities declared Anatoliy Akopov, the First Secretary of the Russian Embassy in Bucharest \textit{persona non grata}.\textsuperscript{1572}

In May 2013, Ryan C. Fogle, an American diplomat, was accused of spying and was told to leave Russia. Fogle was briefly detained first, by the Russian State Security Service and then was ordered to leave the country after being accused of trying to recruit a Russian counterterrorism officer to work, as an American agent, according to press.\textsuperscript{1573} The Russian NTV channel broadcast the record of Fogle during the recruitment, wearing a blond wig. As it was reported by media sources, the Department of State of the United States confirmed that Fogle worked in Moscow, as an embassy employee, but would give no details about his job.

\begin{thebibliography}{99}

\bibitem{1568} Nikitchenko op. cit. 244.
\bibitem{1569} Nikitchenko op. cit. 323.
\bibitem{1571} Voennogo attashe Izrailia vyslali za promyshlennyi shpionazh. (The military attaché of Israel was expelled for industrial espionage.) Lenta.ru. 19 May, 2011. (Accessed on 8 April, 2016.) https://lenta.ru/news/2011/05/19/attachel1/
\bibitem{1573} Ryan Fogle leaves Russia after being accused of operating, as CIA spy. The Guardian. 19 May, 2013. (Accessed on 8 January, 2016.) http://www.theguardian.com/world/2013/may/19/ryan-fogle-russia-cia-spy

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The Central Intelligence Agency of the United States has made no statement on the case and the American Embassy in Moscow refused to comment the incident.

The Russian Foreign Ministry posted a statement on its website saying that it had declared Ryan C. Fogle, listed, as third secretary in the Political Section at the American Embassy, persona non grata, and Fogle had to leave the country quickly. The Russian Federal Security Service believed that Fogle's listed diplomatic post at the American Embassy was a cover and alleged that Fogle was, actually, a CIA officer.

In the incident with Fogle, the media drew parallels between these allegations and some earlier cases, which took place on the Russian territory. In 2001, the Russian television show showed a video that alleged to depict an attempt of an American naval attaché to recruit a Russian source in Moscow. In 2002, Russia accused two American diplomats of being CIA operatives, who were trying to recruit spies. In 2006, Russia accused two British diplomats of spying.

In 2014, a number of Polish diplomats was expelled from Moscow in response to the expulsion of several Russian diplomats by the Polish side, according to comments, made by the Department of Information and Press of the Russian Foreign Ministry.

Earlier it was reported that Warsaw expelled from Poland, by the decision of the Polish authorities, several Russian diplomats, allegedly, for activities, incompatible with their status. In November 2014, there have been already cases of expulsion of foreign diplomats from Moscow. For example, an employee of the Political Department of the German Embassy in Moscow was revoked, as well. This happened after an employee of the Russian Consulate General in Bonn was expelled from Germany "without attracting unnecessary attention", after months of surveillance by the German security services.

Priimak–Moshkin. Ibid.

Catching a foreign intelligence officer red-handed, as it was indicated in the Russian statement, raised serious questions about relations with the United States, despite the friendly meeting of Secretary of State John F. Kerry and Russian President Vladimir Putin in Moscow that took place prior to the incident. Will Englung–Kathy Lally: Ryan C. Fogle, U. S. diplomat accused of spying, ordered to leave Russia. The Washington Post. 14 May, 2013. (Accessed on 18 January, 2016.) https://www.washingtonpost.com/world/russia-says-it-detained-us-spy/2013/05/14/d8bdf394-bc86-11e2-9b09-1638acc3942e_story.html

Ibid.

The Ministry called Warsaw's actions a "hostile and unfounded" step. Moscow responded to the expulsion by expelling several Russian diplomats from Poland. "Yes, unfortunately, the Polish authorities have indeed taken such an unfriendly and completely unwarranted step. In this regard, the Russian side made an adequate response, and a number of Polish diplomats have already left the territory of our country for activities, 'incompatible with their status'.", as it was said in a statement on the website of the Russian Ministry of Foreign Affairs. Moskva vyslala riad pol'skih diplomatov. (Moscow expelled a number of Polish diplomats.) TV Tsentr–Official site of the television company. 17 November, 2014. (Accessed on 6 January, 2016.) http://www.tvc.ru/news/show/id/55206


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The expulsion of diplomats is not always directly linked to a proven fact of espionage or with the charges of undercover activities. Nevertheless, in practice, such an unfavorable step is often explained by states, as disclosure of spy networks.\textsuperscript{1579} However, a spy scandal does not necessarily leads to the expulsion of embassy staff – such situations occur in case of strained relations between the two countries.

Transparency has been for a long time a rare commodity in international affairs, as formulated by Larkin. Governments, nongovernmental organizations, journalists can now make use of a large amount of open-source information, drawn from commercial surveillance satellites, drones, smartphones and computers, to reveal hidden activities in contested areas. In the next decades the explosion of surveillance sensors and data analytics, driven by the market, will bring an unprecedented level of transparency\textsuperscript{1580} to global affairs.\textsuperscript{1581} (The threat of drone\textsuperscript{1582} surveillance,\textsuperscript{1583} midair collisions and even terrorist attacks created a new market for systems that can detect and disrupt drones.)

Transparency will weaken strategies that rely on secrecy, even in case that they are legitimate. It will become riskier for states to dispatch military forces, spies or diplomats in secret. Transparency may also spoil sensitive diplomatic negotiations or intelligence relationships, which can not survive „in the open“.\textsuperscript{1584}

At the same time, since the revelations\textsuperscript{1585} of Snowden, it became evident that terrorist networks increasingly use encryption software to send messages and the security services are not very successful so far to decode such messages. This state of affairs clearly demonstrates that security authorities are only at the early stages of searching for answers to these technical innovations, thus facing a substantial obstacle to their investigative work.\textsuperscript{1586}

\textsuperscript{1580} Global transparency has been a goal of the U. S. foreign policy since at least 1918, when President Woodrow Wilson called for an end of secret diplomatic agreements in his Fourteen Points. Larkin op. cit. 137.
\textsuperscript{1582} Cronin claims that drone strikes must be legally justified, transparent and infrequent. Audrey Kurth Cronin: Why Drones Fail. In: Foreign Affairs. Vol. 92, No 4, July-August 2013, 54.
\textsuperscript{1583} Drone strikes are a necessary instrument of counterterrorism, at the same time, a drone strike may violate the local state’s sovereignty. Still, drone warfare is likely to expand in the years to come. Daniel Byman: Why Drines Work. Foreign Affairs. Vol. 92, No 4, July-August 2013, 32-34.
\textsuperscript{1584} Larkin op. cit. 144-146.
\textsuperscript{1585} Many top officials in Washington seem to think that reporting a crime should be a crime, at least in the case of Snowden, according to Hertsgaard. Mark Hertsgaard: Whistle-blower, beware. International New York Times. 27 May, 2016, 7.
The Vienna Convention does not determine what methods of information gathering are lawful or unlawful. The accusations, made with regard to diplomatic agents, such as "activities incompatible with diplomatic status" or "unacceptable activities" are ambiguous. In addition, some accusations are made on political reasons, being used as a pretext to expel certain diplomatic agents, therefore, they are not always justified and reflect the actual state of affairs.

The temporary or ad hoc withdrawal of an ambassador is used, as one of the signals in diplomacy. The explanation, often given in such cases is that the envoy was "recalled for consultations". This is a classic signal of displeasure by the sending state that suggests a bilateral problem. The progressive diplomatic escalation steps in the situation of a crisis in bilateral diplomatic relations are, as follows:

- definitive recall;
- formal downgrading of relations to sub-ambassadorial level – i.e. embassies headed by a chargé d'affaires en pied;
- withdrawal of embassies;
- formal break in diplomatic ties.

In case of breach of diplomatic relations, a state could still leave intact consular relations to provide consular protection, unless they are specifically ended, as well. A state might entrust a third country with the task of looking after routine matters, like the upkeep of property. For example, the Swiss have specialized in offering such services, as a premier neutral state.

Free and secret communication between a diplomatic mission and its sending government is from the point of view of its effective operation probably the most important of all the privileges and immunities, accorded under international diplomacy law. Without such a right of free communication the mission can not effectively carry out two of its most important functions – negotiating with the government of the receiving state and reporting to the government of the sending state on conditions and developments in the receiving state. If the confidentiality of the communications of the mission could not be relied on, they would have little advantage over press reporting.

The temptation of the states to intercept the communications between other states and their diplomatic missions has always been strong, and the possibility of doing this while escaping detection has increased with the greater sophistication of modern methods.

1588 Denza op. cit. 211.
detection. In modern practice it was rare, even during wartime for states, maintaining diplomatic relations to block or overtly to claim the right to censor diplomatic communications.\textsuperscript{1589}

In the long run, diplomacy and espionage were considered in the past, as some interrelated and inseparable professions. Illicit intelligence, the espionage is incompatible with the functions of diplomatic missions – this is a generally recognized rule of international law. It does not weaken, rather strengthens this rule that it had been many times and repeatedly transgressed.\textsuperscript{1590}

On the subject of suggested solutions, the reevaluation of the receiving state’s domestic procedure must effectively restrict the diplomat’s license to commit espionage, which would involve a change in existing laws to deny immunity in cases, where diplomatic members abused their privileges and immunities. The amendment should clearly posit that espionage is not a proper diplomatic function. The other possible remedy might be through the use of unilateral reservations to any future treaties, which may be connected to the matter of diplomatic immunity.\textsuperscript{1591}

Treaty enforcement via adjudication could provide an appropriate international solution, in opinion of Ward. In case, a receiving state believed that a foreign diplomat was engaged in espionage, such an injured state could pursue its course of action in the international forum. The applied principle would be that the sending state has violated the terms by not acting in good faith.\textsuperscript{1592} As a result, criminal penalty could revoke the existing diplomatic license for espionage, force the diplomatic community out of clandestine collection and restore diplomacy to the role, which it was designed for.\textsuperscript{1593}

V. 3. Freedom of diplomatic movement

The sufficient exercise of diplomatic functions requires general recognition of several diplomatic freedoms, such as freedom of movement and freedom of communication, which are inter-reliant freedoms, being developed in parallel, and they complement each other.\textsuperscript{1594}

Before the adoption of the Vienna Convention, the customary international law on movement of diplomatic agents was diverse and even controversial. Several states argued the

\textsuperscript{1589} Denza op. cit. 212.
\textsuperscript{1590} Ustor op. cit. 117.
\textsuperscript{1591} Ward op. cit. 667-670
\textsuperscript{1592} An other bilateral method of litigation, as alternative remedy, could be arbitration.
\textsuperscript{1593} Ward op. cit. 671.
\textsuperscript{1594} Kish op. cit. 64.
For the reciprocal restraints were in contrast with the general practice of free movement of diplomats. The question of codifying the question of diplomatic movement was not even raised until the debate in the International Law Commission on diplomatic relations in 1957. It was Fitzmaurice, who proposed the matter for codification and suggested the regulation of the diplomatic freedom of movement. During the debates, the main challenge was to ascertain the proper balance between freedom of movement and national security.

The Vienna Conference on Diplomatic Relations in 1961, unanimously adopted the general rule regulating the movement of diplomatic agents in the territory of the receiving state. Diplomatic staff enjoy free movement and travel within the territory of the host state, subject to laws, regulating entry into certain areas for reasons of national security. Notwithstanding, the bilateral application of the diplomatic movement varies, depending on the current political relation of the states involved.

In practice, states in matters of diplomatic movement, sometimes disregard the conventional balance of interests between the sending and the receiving state and follow the interests of national security. The Soviet Union often restricted the movement of diplomats in its territory, including such large cities, as Kaliningrad, Vladivostok, Gorky, also the territory of the Soviet Socialist Republic of Kazakhstan. These restraints have been lifted in a large part after the dissolution of the Soviet Union in 1991.

While on the subject of freedom of diplomatic movement, at times of warfare, receiving states could apply further restrictions, for example, in case of total suspension of diplomatic movement in the United Kingdom for the period, prior to the Normandy Invasion in 1944. The British regulations also included the assertion of a temporary right to censor the contents of all diplomatic mailbags.

(Kish op. cit. 60.)


(Vienna Convention. Article 26.)

Wallace–Martin-Ortega op. cit. 147.

(Kish op. cit. 62.)

The restriction of movement applied to all incoming foreigners, as well.

There were located strategically important (military) objects on the territory of the Soviet Socialist Republic of Kazakhstan, such as Baikonur spaceport.

(Kish op. cit. 63.)

Glahn op. cit. 464.

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Army,\textsuperscript{1604} which was one of the large-scale military operations of strategic importance, during the World War II,\textsuperscript{1605} took place on 6 June, 1944,)\textsuperscript{1606}

Hence, the common freedom of diplomatic communication operated only in times of peace. The receiving states severely restricted diplomatic communication during the World War II that is why it happened that the United Kingdom suspended all diplomatic communication before the Normandy Invasion,\textsuperscript{1607} despite of the fact that in 1944, the war came to its final phase already.\textsuperscript{1608}

With reference to the role of diplomatic agents in wartime, many suppose that diplomats and warriors are opposites. In certain aspects they are: military officers are precise, definite, enthusiastic persons, while diplomats – also officers of diplomatic or foreign service – subtle, cautious, used to dealing with ambiguities. According to the common view, diplomats work for peace, whereas soldiers practice war, and so the two do not have much in common. This is not accurate, for diplomats and warriors are, or should be, part of the same foreign policy: „one does not make sense without the other“.\textsuperscript{1609} Subsequently, diplomacy should not be divorced from war.

Well along, the start of the Cold War resulted in a fundamental change in practice of states, related to movement of diplomatic agents. In 1948, the Soviet Union, along with certain other East European states, imposed restrictions on the movement of Western diplomats beyond the areas of capital cities.\textsuperscript{1610} In January 1952, the Soviet Union introduced such restrictions, as 50 kilometers around Moscow, and this distance was adjusted to 40 kilometers in 1953. This was one of the most extensive imposed travel limitations on record, since the Soviet Government converted eighty percent of the area of the Soviet Union into a forbidden zone, including incidentally, the capitals of Ukraine and Belorussia. The ban was reduced in extent in 1974 and again, later.\textsuperscript{1611}

\textsuperscript{1604} In the summer of the Normandy landings, the military situation of the Wehrmacht was rather bad already. Therefore, after the invasion, Hitler, while preparing a strike on Franco-American troops, decided to deploy the Empire’s secret weapon, involving German diplomats. The plan was to conclude through diplomatic negotiations (extortion, in fact) the anti-Soviet agreement with the government of the United States and Great Britain. G. L. Rozanov: Titkos diplomácia: 1944-1945. (Secret diplomacy: 1944-1945.) Kossuth Könyvkiadó. Budapest, 1985, 16.
\textsuperscript{1607} Zemszkov op. cit. 64.
\textsuperscript{1608} Faluhelyi: Államközi… 144.
\textsuperscript{1609} Roskin–Berry op. cit. 292.
\textsuperscript{1610} Kish op. cit. 59.
\textsuperscript{1611} Glahn op. cit. 463.
The United States and the United Kingdom, together with other Western states, protested against such restraining measures and retaliated by introducing reciprocal restrictions. For example, France restricted the movement of diplomats of the Soviet bloc to the regions of Seine, Seine-et-Oise and Seine-et-Marne, excluding the townships of Versailles.

The most drastic restrictions on the movement of diplomats were imposed by Cambodia under the Pol Pot Government, when members of eleven foreign missions, accredited to Cambodia, lived under virtual house arrest, being forbidden to venture more, than two hundred yards from their compounds. Diplomatic missions were not permitted to operate automobiles, in addition, meals had to be ordered daily through Khmer Rouge military personnel, who delivered them then to each mission.

In this way, the laws of the host country can restrict freedom of movement of diplomatic agents, which provisions may prohibit the entry into certain areas or zones, or might be bound by rules.

Restrictions on freedom of movement of diplomatic agents could be removed by the host state, with the consent of the sending state regarding reciprocity, therefore in such questions the application of the principle of reciprocity is the decisive factor.

V. 4. International protection of the diplomatic agent

Diplomatic agents, serving abroad, fulfill important responsibilities by representing the political interests of their government and fellow citizen in the host state, gather information about the policies and interests of foreign governments, reporting the data back to the sending state, along with making recommendations to their government on foreign policy. The whole work, performed by diplomatic agents abroad, is being accomplished without the direct protection of the sending state. De Wicquefort called the abuse of the person of the ambassador a violation of the Law of Nations back in 1681.

The Vienna Convention assures the personal inviolability of the diplomatic agent, who has to be treated in the host country with owed respect, not to be liable to arrest or detention and be well protected from attack.

(The principle of diplomacy law, according to which the...
reputation of foreign sovereigns and their envoys ought to be respected and protected, originates from the period of classical international law. At those times, the dignity of the envoy was the prime consideration and a number of European codes strictly punished such offenses.)\textsuperscript{1617}

Measures of method of direct coercion could not be used in case of a diplomat. However, this principle does not exclude measures of self-defense or application of other measures, in exceptional situations, intended at prevention of a crimes, committed by diplomatic agents.

The receiving state has to provide the inviolability of diplomatic premises\textsuperscript{1618} and to investigate the cases of attacks on them, punishing the persons, who violated diplomatic immunity. The receiving state has the right to investigate the offenses, committed on its territory, including those in premises of diplomatic missions. In practice, this right is limited by certain factors.

The inviolability of the premises (along with other immunities of a diplomatic mission) does not allow the investigations, performed by local authorities, the use of coercive measures,\textsuperscript{1619} and other, relevant actions, conducted within the premises of the mission without the expressed permission of the head of mission.

Furthermore, in line with the privilege of a diplomatic mission to organize its internal life at its own discretion, local authorities, exercising their jurisdiction shall not intervene in matters, pertaining wholly to the domestic jurisdiction of the foreign diplomatic representation. The cases from practice in this area show that that the question of responsibility arises, when the state incited itself the violation of the inviolability of diplomatic premises and failed to prevent the violation of their inviolability.

The inviolability of the premises of diplomatic missions, at the same time, creates possibilities for abuse from the part of the sending state. To prevent such cases, the Vienna Convention has a provision, which establishes that the premises of the mission must not be used for purposes, incompatible with the functions of the representation.\textsuperscript{1620}

In this way, premises shall not be used, as storage spaces for objects, not compatible with the functions and goals of the diplomatic mission, for example, weapons, armaments, drugs, intelligence technology, also the premises can not be used for commercial purposes.

\textsuperscript{1617} Deák op. cit. 251.
\textsuperscript{1618} Vienna Convention. Article 22(1).
\textsuperscript{1619} Doc. cit. Article 22(2).
\textsuperscript{1620} Doc. cit. Article 41(3).
V. 4. 1. Examples of violation of diplomatic immunity by the receiving states from the sixteenth century until the period of the Cold War

As it had been ascertained above, in lieu of various reasons, some already considered in the present work, diplomatic privileges and immunities seem to be inseparable attributes of the diplomatic function, along with provisions on protection of diplomatic agents. The present subsection is devoted to reflect on cases of abuse of persons of diplomatic agents in the receiving states, when they were often hampered in exercise of their functions.

In 1567 J. Bykovskij, the Lithuanian envoy was incarcerated, because he threatened Ivan the Terrible (1533–1584) with war and rudely claimed the return of Polotsk, captured four years before. The angry Tsar demanded to keep the royal envoy under severe circumstances, in a tight, airless prison cell, not for long time, though. Going beyond ceremony was not typical for the Russian rulers, who did not infringe the right of the ambassadorial inviolability.

(The Russian "Posol'sko delo" contained records and notes, with details of diplomatic visits of foreign envoys.)

In United States v. Ortega, the receiving state failed to provide proper protection of a diplomatic representative. In this case, Juan Gualberto de Ortega was accused for an assault, committed on Hilario de Rivas y Salmon, the Spanish chargé d'affaires and for infracting the law of nations by committing violence upon his person. On the night of the assault, Salmon was returning from the circus, when Ortega followed him, then after seizing the breast of his coat, angrily told him that the chargé d'affaires had insulted him. Ortega claimed that Salmon published many falsehoods against him, therefore he demanded satisfaction. Salmon denied the allegation and threatened Ortega to hit him if the defendant would not let him go. The arguments of the two had no result, so Salmon thrust Ortega with the point of his umbrella.

Jennings–Watts op. cit. 1069.


Ivan the Terrible, the practiced negotiator, started to receive ambassadors, when he was a boy. Yuzefovich op. cit. 109.

Yuzefovich op. cit. 44.


United States v. Ortega.


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which was returned with a blow with an other umbrella. The two gentlemen eventually had a fight, and there were two witnesses of the battery. Salmon, being a person of a public character at the time, when the offence was committed, was entitled to all immunities of a foreign minister. In this case, it has been noted that a neglect or refusal to perform the duty of the United States to afford redress for the violation of privileges and immunities of foreign ministers, which are consecrated by the practice of the civilized world, might lead to retaliation upon the ministers. The opinion of the court, delivered on 16 March, 1826, found Ortega guilty.

There were situations of clashes in history, fueled by ethnic intolerance and religious fanaticism, when diplomats became victims of such events. In January 1829, a fanatical group of „defenders of the Islamic faith”, broke into the territory of the Russian Representation in Tehran and killed everyone, who happened to be there. This event went down in history, as the „massacre in the Russian Embassy in Tehran” – the mass murder of the personnel of the Russian Embassy by Islamic fanatics. During the massacre was also killed the Head of the diplomatic mission, Alexander Griboedov, accused by the fanatics of aiding the apostates from Islam, who found refuge in the embassy premises.

The bloodbath in the Russian Embassy sparked a diplomatic row. The Shah of Persia sent to St. Petersburg an official delegation to settle the relations with Russia, headed by his grandson Khosrow Mirza. The Persian envoys brought not only a formal apology to Russia over the death of her representative, but also rich gifts, presented to Nikolai I, the Czar of Russia, in respect of the shed blood. Eventually, the incident did not cause serious complications in the relations between Russia and Persia.

A diplomatic agent gets a higher level of protection in the receiving state, than a foreign person. In August 1914, after Britain declared war against Germany, it resulted in „the assemblage of an exceedingly excited and unruly mob” before the British Embassy in Berlin. The small force of police, sent to guard His Majesty’s Embassy was soon overpowered and the situation became more threatening. The demonstrators crashed the windows of the embassy

1629 Alexander Griboedov was also a composer, writer, poet, and playwright, who wrote the famous „Woe from Wit” in 1823. Griboedov had married three months before his diplomatic assignment, and his pregnant wife, Nina lost her baby, having learnt about the tragedy. Y. Hechinov: Zhizn’ i smert’ A. Griboedova. (Life and death of A. Griboedov.) Nauka i Zhizn’. No. 4, April 2016. (Accessed on 10 April, 2016.) http://www.nkj.ru/archive/articles/3687/
1630 Petrik op. cit. 128.
1631 The gifts included the famous 88,7 carat diamond „Shakh” – one of the most precious stones in the world, which shines today in the collection of the State Diamond Fund of the Russian Federation in the Kremlin, Moscow.
building. The Sir E. Goschen, the British Ambassador in Berlin, telephoned to the Foreign Office, which informed the German Chief of Police, and an adequate force of mounted forces, sent in short time, cleared the street and provided the proper guard of the embassy. After the incident, the British Ambassador had received his passport and safely returned to England.

The provision of inviolability of diplomatic agents requires that the host country has to take all indispensable measures of protection, including, if needed, provision of a special guard.

Diplomats enter the host country under safe-conduct, by definition, and hurting a diplomat had been always viewed, as a great breach of honor. Still, the measures of protection of diplomatic agents were not always respected by host states, therefore assassination of diplomats took place not only in ancient times. (Nevertheless, except for the reasons of legitimate self-defense, is not allowable that an ambassador would arbitrarily take satisfaction for an offence, caused to him.)

In 1923, in Lausanne was killed V. V. Vorovskii, a Soviet diplomat, by a Russian Swiss citizen, Konradi. (Vorovskii became the first Soviet diplomat, entitled to establish direct contacts with diplomatic representatives of other states, especially, regarding the issues of ceasefire and peace.)

In 1927, in Warsaw was killed the Soviet plenipotentiary representative P. L. Voikov, by a Russian emigrant and member of the White Guard, Kaverda.

The Soviet Government stated in its note of protest that the receiving states have not provided due protection to the diplomatic agents, representatives of the Soviet Union in the respective countries, and demanded strict punishment of the offenders. In the Vorovskii case, only in 1927, signed a special protocol in which Switzerland condemned this criminal act and expressed its deep regrets.

In the Voikov case, Kaverda was found guilty by the Emergency Court, sentenced to life imprisonment with deprivation of rights.

According to some sources, the assassinations were made for the reasons of harming the political and economic relations with the Soviet Union. Sabanin op. cit. 136-137; V. I. Lisovskii: MezhdunarodnoIe pravo. (International law.) Izdatel’stvo "Vysshaia shkola". Moskva, 1970, 214.

The special protocol was signed after the economic boycott, declared by Russia in 1923.

In the Vorovskii case, an Italian tribunal decided that diplomatic envoys of non-recognized governments are entitled to diplomatic privileges. Papakostas op. cit. 54.

Sabanin op. cit. 137.
A special penalty is to be paid, when someone commits a derogatory act towards diplomatic dignity, as it happened in *Frend v. United States* in 1938, when a conviction was upheld under a Congressional Resolution, which prohibited the display of any flag, banner placard or device within five hundred feet of an embassy in the District of Columbia, made or adapted for the purpose of intimidation, coercion or bringing into public disrepute any diplomatic representative. Placing placates of threatening nature was considered, as a mere insult, since there was no offence made under ordinary criminal law. In the case all four defendants "flagrantly violated" the terms of the resolution, since at the time of the arrest, each of the violators was parading in the public streets, in front of the Austrian or the German Embassy, in the company of other persons, some of whom were carrying banners or placards inscribed with language, the repetition of which was intended to bring into contempt the German Government.

The plan of this congregation of people with "opprobrious signs and songs" in the streets in front of the embassies, was intended to bring into public disrepute political, social or economic views of the mentioned foreign governments. Therefore, the Court found all the respondents guilty under the provisions of the local law making it an offense to aid in a violation of law. The purpose of the Resolution was to protect the foreign diplomats in their embassies from harassment, which would bring into odium the countries they represent. Such kind of annoyance towards diplomatic agents "would nullify the inviolability of ambassadors... as they are protected in every country throughout the world".

Similarly to warfare, when the bearers of flags of truce were considered as sacred persons, during the times of peace ambassadors, charged with friendly national intercourse, are objects of special respect and protection, each according to the rights that belong to his rank and station. Therefore, under international law, every government had to take all reasonable precautions to prevent the performing of acts which the Congressional Resolution makes unlawful. In this course, the Government of the United States was responsible to foreign nations for all violations by the United States of their international obligations. This responsibility

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1644 *Frend et al. v. United States*. 100 F.2d 691 (D.C. Cir. 1938).
1646 The same rule applies to legations and consulates, as well as their representatives in the District of Columbia. Ibid.
1649 U. S. Court of Appeals for the District of Columbia Circuit No. 7198, 2.
1651 U. S. Court of Appeals for the District of Columbia Circuit No. 7198, 3.
included the duty of protecting the person and residence of ambassadors against invasion, as well as against any other act, intended to disturb the peace or dignity of diplomatic missions or its members.

The representatives of foreign governments are entitled to freedom from any attempted intimidation or coercion, by the comity of nations. Addressing the question of free speech and free assembly, it was held that there was no right to an offensive demonstration in front of an embassy or residence of a diplomat, who is a guest in the receiving state and had to be protected under the respectful provisions of international law.

The Italian legislation in 1930 intended to punish crimes, committed against foreign heads of state or diplomatic agents, but only in cases, when the offense took place in Italy. The criminal acts, committed abroad, would not be punished, even if the perpetrator was Italian, as in this case, the responsibility lies in the state, on the territory of which the crime has been committed.

V. 4. 2. Examples of violation of diplomatic immunity by the receiving states from the period of the Cold War until the contemporary period

With regard to not absolute character of diplomatic inviolability and the possibility of legitimate self-defense in case of unlawful actions of the envoy, before the Vienna Convention, not all authors were of the opinion that a state was obliged to create criminal legislation, aimed at the protection of diplomats, although a number of states certainly had such provisions, like Great Britain since 1708. On the other hand, the lack of national legislation did not exempt the host state from the fulfillment of its obligations, related to protection of diplomatic agents.

The atrocious attacks on diplomatic posts all over the world, increasing in number, often accompanied with murder of diplomatic personnel. The threats, which diplomats have to face in their daily work, are striking examples of dangers of this profession. The offenders have not been traced and punished in all of these cases. In large number of such outrages, the official authorities concerned, failed to take proper action to prevent criminal assaults on the person, freedom and dignity of diplomatic agents or to take measures in order to punish the criminals.


Flachbarth op. cit. 102.

Blishchenko – Zhdanov op. cit. 120.
The attacks on diplomatic agents illustrate the fact that states breach their international legal obligation to protect diplomatic premises and diplomatic personnel, enshrined in the Vienna Convention. Diplomatic agents became targets for murder and kidnap, particularly in the 1960s and early 1970s, and the extent of the obligation to protect them from attacks became highly topical.

In China, during the first chaotic year of the 1966-1970 Cultural Revolution, when the Foreign Ministry was taken over by the Red Guards, foreign embassies became a target for xenophobia. This was a serious test for the diplomatic corps. Stone-throwing demonstrators besieged the embassies, among others, of East Europe, Mongolia, Burma and India, but did not cross the property line into physical violation of the embassy. In August 1967, the demonstrators burnt the British mission and other embassies watched this helplessly, sheltering fellow diplomats, who jumped over walls to seek temporary respite, and tried to provide help in other ways. The diplomats from the Soviet Union and India were declared persona non grata and the diplomatic corps, decided to show solidarity by seeing them off to the airport, getting through the political groupings and braving the demonstrating crowds of Red Guards.

The Vienna Convention emphasizes the functional necessity of diplomatic privileges and immunities for the efficient conduct of functions, as enunciated in the case of Boos v. Barry. The need to protect diplomats is grounded in the nation’s interest in international relations and that diplomatic personnel are essential to conduct the international affairs. It is also admitted here that “protecting foreign emissaries has a long history and noble purpose”, accentuating that “nations should treat and hold intercourse together, in order to promote their interests, -- to avoid injuring each other, -- and to adjust and terminate their disputes.”

The obligation of the sending state to ensure the adequate protection of foreign diplomatic agents means prevention of abuse, suppression of infringements, the punishment of offenders, compensation for damages and the international cooperation of states, regarding the protection of diplomatic agents. Residence of the head of mission and private apartment of diplomats can not be accessed without permission of the ambassador or the diplomatic agent, respectfully. The persons, who accompany a diplomatic agent are also inviolable and entitled to receive the protection of the receiving state. The protection, provided by the receiving

1655 Vienna Convention. Article 22.
1657 Sharp–Wiseman op. cit. 136.
1659 Ibid.
1660 Demin op. cit. 117-122.
1661 Vienna Convention. Article 37.
state extends to the perimeter of a diplomatic mission, consequently, guards or police personnel could not patrol or be placed inside the premises or buildings of diplomatic missions.

It has to be added here that there are three cases, when the host state is not responsible for the violation of personal inviolability of a diplomat. The receiving state shall be exempt from accountability, when the actions, taken against the diplomat, were committed in self-defense against the diplomat, if a diplomat by his actions exposes himself to the risk – provoking dangerous situations (for example, visits places, offensive for morality); when the perpetrator of an attack on a diplomat, did not know about his official status.

The diplomatic agent, while must refrain from any interference in the internal affairs of the host country, not to violate its laws, regulations and customs, avoiding criticism or manifestations of neglect towards them, also has to observe politeness and correctness in relations with officials of the state, where he is accredited. In 1946, the Soviet Ministry of Foreign Affairs has offered Pinghu Suarez, one of the secretaries of the Brazilian Embassy to leave the country, due to the fact that he caused a scandal in the Hotel "National", where he stayed in Moscow.

Suarez, who otherwise had a bad reputation in the hotel, one evening (allegedly, already drunk), came to the "Café National". There were no vacant seats, so the diplomat tried to occupy the empty chair on the stage, reserved for the orchestra, replying to the observations of the restaurant' director that local customs were "irrelevant for Pinghu Suarez, a Brazilian diplomat, enjoying diplomatic immunity in the USSR". To emphasize his rights, Suarez hit the restaurant's director. After this, the guests intermeddled into the incident, trying to calm Suarez. In the end, the desperately resisting diplomat was escorted to his room, then came back, however to start breaking furniture in the hotel lobby. Eventually, on returning to Rio de Janeiro, Suarez was received there, as a "hero", who came home from the battlefield.

Denza notes that the Vienna Convention does not determine the proper steps to be taken by the host state, to ensure the protection of diplomats of the sending state.

Kurbalija agrees that the Convention is vague with regard to how to define the applicable measures, of protection of diplomats, who were kidnapped or attacked, therefore the relevant provisions may...
require a reinterpretation of what is appropriate protection in modern times.\textsuperscript{1669} Due to the fact that the Convention does not specify „all appropriate steps”\textsuperscript{1670} of protection, the receiving states chose the procedures of protection according to their domestic laws, sometimes, applying measures of protection, which could not be right under other circumstances.\textsuperscript{1671}

The Vienna Convention does not specify, who may not arrest or detain a diplomatic agent, therefore it is accepted that the host authorities take all the necessary safety measures to protect diplomatic officers. Minnaar points out that the „protection”, implied by the Convention, referred more to the provision of safety and security in times of civil unrest,\textsuperscript{1672} also armed insurrection and mob violence or rioting.\textsuperscript{1673} Hence, at the time, when the Convention was signed, the high level of crime was not such issue it became in the 1990s, so the extension of this protection would also include situations of terrorist attacks on diplomatic missions, kidnapping and hostage taking of foreign diplomats.\textsuperscript{1674} Moreover, the international responsibility for protection of diplomatic officials „remains the host state’s duty and its guilt, rather than innocence”,\textsuperscript{1675} and is assumed every time, when at attack occurs on embassy staff.

In April 1970, Ambassador of Germany Count Karl von Spreti was kidnapped by an armed group in Guatemala. The kidnappers issued an ultimatum, threatening to kill the Ambassador if the government would not release twenty-two political prisoners. The Guatemalan Government refused to meet this demand and as a result, the German Ambassador was found dead not far from the Guatemalan capital.\textsuperscript{1676}

West Germany's leader, Willy Brandt, has denounced the murder, as an „infamous murder”. Brandt, in his letter, accused Guatemala’s Government of „irresponsible behavior” and „doing virtually nothing” to save Count von Spreti. After the incident, West Germany has recalled the remaining embassy staff from Guatemala. It was the second time, when a Central

\begin{thebibliography}{99}
\bibitem{1670} Vienna Convention. Article 22(2).
\bibitem{1671} Demin op. cit. 118.
\bibitem{1672} For example, the situation that arose in the American Hostages Case in 1979.
\bibitem{1674} Petrik op. cit. 132.
\bibitem{1675} Minnaar op. cit. 68.
\bibitem{1676} V. I. Maiorov (ed.): Mezhdunarodnoe publichnoe pravo. (International public law.) Praktikum. Izdatel’stvo IUURGU. Cheliabinsk, 2005, 27.
\end{thebibliography}
The American government has refused to meet kidnappers' demands during a series of political abductions on the continent.

Count von Spreti was the second foreign ambassador to be murdered in Guatemala, following the death of U. S. Ambassador John Meir, who was killed during a kidnap attempt in 1968.

A week before the assassination of the German Ambassador, the Government of Argentina refused to intervene in the case of a kidnapped Paraguayan diplomat, who was later released unharmed.

There have been many reports on terrorist acts of groups against diplomatic missions, for example, the acts of Ustashi against Yugoslav diplomatic representations. In 1971, members of Ustashi assassinated the Yugoslav Ambassador to Sweden, in addition, explosive devices were placed inside planes and cinemas, the Yugoslav diplomatic missions in West Germany and the USA had been attacked, and these acts of violence often resulted in fatalities.

In the past decade, terrorism and counterterrorism have moved to the forefront of scholarly and policy discussion alike.

On 24 April, 1975, four armed members of the Red Army Faction (RAF), invaded the Embassy of Germany in Sweden, taking eleven hostages, including the military attaché Baron von Mirbach and Ambassador Dietrich Stoecher. One of the demands of terrorists was to release the RAF leaders. The careless handling of explosives by terrorists caused massive explosion and fire in the captured room. As a result, one of the terrorists died, the others were arrested.

Violations of time-honored diplomatic privileges and immunities had been observed in history, but they never were as numerous, as in the past decade. Cases of capture of embassy buildings and hostage taking of peoples, found there have become a quite common phenomenon, as well as attacks on embassies, invasion of diplomatic missions, murder of...
ambassadors and members of the diplomatic staff.\textsuperscript{1684} (Sabanin counted only seven cases of murder of diplomatic representatives during the nineteenth era until the first decades of the twentieth century.)\textsuperscript{1685} Embassies are no longer considered to be the territory of foreign state that occupies them, despite of the articles of popular press reports.\textsuperscript{1686}

In modern conditions, the problem of physical, also informational, technical and other kinds of security of diplomatic missions is no less relevant, than in the past, especially, that the problem concerns all states. In this course, it is inevitable to pay attention to the cases of attacks of diplomatic premises in the present thesis, as well. This area of diplomacy is highly relevant for the purpose of the dissertation, since diplomatic buildings, such as premises and private residences are not attacked, as mere constructions, but with aim to harm diplomatic agents, which may be currently in or around them.

Consequently, it is only a matter of viewpoint, which inviolability to highlight – the one of embassy premises or of the diplomatic agents. What's more, if the attack is performed on a work day, this is directly affects the personal inviolability of the diplomatic agents, for they are, with high degree of certainty, may be in the building in question. In everyday practice, however, it is not that easy and clear to decide the question of the subject of inviolability, regarding attacks on diplomatic premises, which will be illustrated with the following examples, also elaborating on the means and solutions, related to the protection of diplomatic buildings.

In the 1950s, the situations when vandals threw rocks at the glass-walled Consulate of the United States in Frankfurt, created only a „nuisance”, before the event of 1959, when ten thousand Bolivians stoned the American Embassy in La Paz. The death of American personnel at Saigon and the growing threat of anti-American violence elsewhere forced the Department of State to increase the security of embassy buildings. As a result of involvement of the United States in Vietnam in mid-1960s, protesters attacked American embassies in Moscow, Bucharest, Sofia and other cities. The violence reached a new level when terrorists started to kill embassy employers, as it happened in an attack on the Saigon Embassy in 1965.

Terrorists continued to target the American embassies in the 1970s, with murderous assaults in Khartoum in 1973, Athens in 1974 and Kuala Lumpur in 1975. In 1976, Ambassador Francis E. Meloy was assassinated in Beirut. The previously mentioned crisis in Tehran in

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\textsuperscript{1685} Sabanin op. cit. 134.

\textsuperscript{1686} Bederman op. cit. 211.
during which the Iranian government made no effort to provide assistance to American hostages, showed that American diplomats could not rely on local authorities for protection anymore. Therefore, the Department of State decided to increase Marine guard detachments at American embassies. In addition, it was decided to make the architecture of embassy premises, ambassadors' residences and other properties of diplomatic missions of the United States less vulnerable via changes in construction (e.g. renovations), along with installment of surveillance equipment.

In this course, the threat of terrorism forced a fundamental change in the thinking about American embassies, which, until the 1970s were viewed, as prominent and accessible public buildings to be seen, used and visited, also being viewed, as inviolate until the hostage crisis in Tehran. The formerly symbolically important “glass box” was no longer useful, as a design paradigm. In 1983, the new Embassy in Kuala Lumpur was constructed looking friendly, but “built like a fortress.” In the same year, suicide bombs killed scores at the Marine Guard quarters and at the American Embassy compound in Beirut. From 1975 to 1985, there had been 243 outbreaks and attempted attacks against American diplomatic installations. The overall vulnerability of American property, personnel and information abroad, demanded an overhaul in diplomatic security.

The near simultaneous terrorist bomb attack on the U. S. Embassies in Kenya and Tanzania on 7 August, 1998 resulted in the death of over two hundred-twenty persons and the wounding of 4 000 others, instituted the most devastating assaults ever perpetrated against diplomatic establishments.

The explosions were caused by bombs hidden trucks, driven by suicide bombers.
The disposition of a typical American Embassy is getting more classified and interesting around the third floor, where might be the political section, the military attachés. The most sensitive and secret offices are on the top floor, like the CIA station. (The electronics offices, such as the conventional communications room that transmits the embassy’s reports to Washington, often encrypted, are on the top floor, not only to be close to their antennas, but also to give staffers time to destroy files and cryptographic machines, should the embassy be attacked.) The ambassador or deputy chief mission (DCM), whose office is likely to be on the third floor, represents the United States to the host government, conveying its wishes, requests, support or disapproval.\footnote{Ibid.}

As aptly noted by Rana, "We live in a violent age. Ambassadors, other diplomats and their physical premises have become significant targets for terrorists and for various disaffected groups.... Such incidents come in waves and no region is exempt."\footnote{Rana: The 21st Century Ambassador... 62.} The term of "terrorism"\footnote{Up till now, there is no clear, officially adopted and universal definition of the phenomenon of terrorism. Richárd Schneider: Az ENSZ harca a terrorizmus ellen: az ENSZ terrorizmus-ellenes fellépése 2001. szeptember 28-ig, az 1373. számú BT-határozatig. (The UN fight against terrorism: anti-terrorism action by the United Nations until the Security Council Resolution No 1373 as of 28 September, 2001.) Biztonságpolitikai szemle. Vol. 8. January-February, 2015. Corvinus Külügyi és Kulturális Egyesület. Budapest, 2015, 6.} was first used at the Third International Conference, held in Brussels in 1929, and the issue of terrorism was considered by the Third through Sixth International Conference for the Unification of Penal Law (between 1929-1935).\footnote{Blishchenko–Zhdanov op. cit. 232.} It has been a practice of the international community to work out conventions for the suppression of international terrorist acts in general – by the League of Nations or with regard to individual types of terrorist acts – by the United Nations.\footnote{Ibid.}

without locking themselves into increasingly complex and durable intergovernmental arrangements.

The sovereign's duty is to ensure public safety. (Since the World War II, the number of wars has diminished and the number of civil wars has increased.) Petrtik argues that the protection of diplomatic staff abroad is not regulated by legal norms at the international level and that the Vienna Convention is only declares the necessity of protection of diplomatic premises by the receiving state, as a "special duty".

Personal inviolability of the diplomatic agent (and his family) assumes increased responsibility of the host state for the security of this matter. In line with the high occurrence of political acts of violence against diplomatic agents, along with using them as an instrument of chantage, the General Assembly of the United Nations adopted the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents.

This Convention emphasizes that the persons concerned are entitled to special protection and that the sending state shall be responsible for the behavior of persons, enjoying diplomatic immunity. It should also be noted that in accordance with the provisions of the Convention, such offenses, as murder, kidnapping, attack on the official premises, private accommodation or means of transport of diplomatic agents, the threat of any such attack, as well as attempts to such attacks or acts, as an accomplice in any such attack shall be considered, as a crime.

The contracted parties of the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, undertake to make these crimes punishable by "appropriate penalties which take into account their grave nature" and extradite the offenders or to apply the domestic law.

States have to cooperate in prevention of crimes, taking all practicable measures, coordinating the undertaken steps, exchanging information, related to the person of the alleged offender and circumstances of


Bowring believes that the right of peoples to self-determination is the most significant gain of post-World War II international law. Bowring op. cit. 9.

Vienna Convention. Article 22(1).

Brownlie: Principles… 367.

The Convention against Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents. Article 2.

Doc. cit. Article 2(2).

The Convention against Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents. Article 4.

Doc. cit. Article 4(a).

Doc. cit. Article 5(1).
the crime.\textsuperscript{1710} In addition, the state, in whose territory the person, who committed a crime against a protected person is present, has to either extradict or prosecute him, in accordance with its laws.\textsuperscript{1711} The Convention does not specify the term period of the punishment, though.

The adoption of the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents demonstrates that diplomacy law is not a static branch of public international law, it is dynamically developing and has to address further questions that arise with time, such as protection of life of diplomatic agents.

Therefore, ensuring the security of persons, who enjoy diplomatic immunity in accordance with international law, rests primarily on the state of their stay (the receiving state). Many states have adopted special related laws, for example, in Russia, provisions, with respect to protection of foreign representatives are part of the actual Criminal Code, under the „Crimes against peace and security of mankind“.\textsuperscript{1712} Nonetheless, states often violate the integrity of these privileged persons themselves.

The most famous case of modern times occurred in 1979, when the Iranian authorities made the diplomatic and consular personnel of the United States hostages. This case arouse before the International Court of Justice out of the events, following the overthrow of the Shah,\textsuperscript{1713} during which the Embassy of the United States in Iran was occupied, its contents seized and its personnel held captive.\textsuperscript{1714}

Considering the case with the American Embassy in Tehran, the International Court of Justice emphasized that there were not more important conditions for relations between countries, than the implication of diplomatic representatives and embassies. The Court found that Iran violated international law\textsuperscript{1715} and defined its responsibilities, as well as the obligation to pay damages. Simultaneously, the Court pointed out that the violation of the inviolability

\textsuperscript{1710} The Convention against Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents. Article 5(2).
\textsuperscript{1711} Doc. cit. Article 7.
\textsuperscript{1712} The Criminal Code of the Russian Federation. Special Part. Section XII. Chapter 34. Crimes against peace and security of mankind. Article 360: „The attacks on persons or institutions that enjoy international protection: 1. Assault of a representative of a foreign country or an employee of an international organization, who enjoys international protection, as well as of offices or residential premises, or vehicles of persons enjoying international protection, – shall be punished by imprisonment for a term not exceeding five years. 2. The same act, committed for the purpose of provocation of war or complication of international relations, – shall be punished by imprisonment for a term from three to seven years.”
\textsuperscript{1714} Similar violations took place in the case of Consular missions of the United States.
In February 1980, Spain broke off diplomatic relations with Guatemala, after the police entered the premises of the Mission to free them from peasants, who had taken the Spanish Ambassador, together with other staff hostage, even that the Ambassador refused their entry.

Solemn way of presenting apologies (satisfaction) takes place only when the authorities of the receiving state have hurt the ambassador knowingly, being aware of his official position. In 2013, Netherlands formally apologized to Russia for detainment of Dmitri Borodin, the Russian diplomat in The Hague.

Frans Timmermans, the Dutch Foreign Minister, on behalf of the Kingdom of the Netherlands, expressed official apologies to the Russian Federation for the breach of international law, in particular the Vienna Convention, in connection to the detainment of the Russian diplomatic councilor of the Russian Embassy in The Hague by the Dutch police.

Before the expression of regret, Thijs van Son, the Dutch Foreign Ministry spokesperson declared that "if the investigation will show that the Vienna Convention had been violated, the Netherland authorities would apologize to the Russian Federation". The Russian diplomatic representative was attacked in his apartment in The Hague by armed persons, wearing a camouflage uniform. Aleksandr Lukashevich, the official representative of the Russian Foreign Ministry, said that the diplomat, under completely false pretenses about his alleged ill-treatment of children, in front of the same children, was severely beaten. The police officers shackled the diplomat in handcuffs, escorted him to the police station, where he had to spend almost the whole night, and then was released without any apologies or explanations. Right after the incident, the Ambassador of Netherlands was summoned to the Russian Foreign Ministry and was handed the note of protest with regard to the attack of the Russian diplomat. In addition, President Vladimir Putin demanded the Netherland authorities to conduct an investigation of the incident and to punish the guilty.

At peacetime, embassies do not require permanent monitoring, performed by the host state, to secure the safety of premises. Today, terrorism is the greatest threat to humanity.
country in the world can guarantee its safety against this violence.\textsuperscript{1721} Terrorist act is a socially dangerous criminal act in terrorism,\textsuperscript{1722} aimed at creation of conditions to influence international organizations, governments and their representatives, legal or physical persons, or groups of persons with the aim of forcing to perform or refrain from carrying out certain acts, committed by intimidation, with the intention to harm innocent people.\textsuperscript{1723}

The extremist activities in the world are immediate reaction to the rising internal conflicts in a society.\textsuperscript{1724} There are diplomatic missions of certain countries, for example, the United States, the United Kingdom, Turkey and Israel, which are often a target to terrorist attacks, therefore need increased protection. From 2001 to 2007, the United States lost five ambassadors on duty, through acts of terrorism and assassination. Turkey is another nation that has gravely suffered from radicals, for example at the hands of Kurdish separatists, then at the end of 2003, because of terrorists, linked with Al Qaeda.\textsuperscript{1725}

In recent decades the number of all kinds of terrorist organizations and groups in the world has significantly increased. Their activity is often directed against diplomatic and consular missions. Abduction and murder of diplomatic servants – independently from their diplomatic rank, attacks on diplomatic premises, seizure of buildings and explosions have become frequent. It has to be asserted at this point of the dissertation, again, that from the point of view of diplomacy law and diplomatic privileges and immunities, there is no difference between diplomats in terms of their rank. Either the attack was committed against a head of representation (ambassadors) or a diplomatic agent, both of them enjoy the same level of inviolability and protection. The following, more than a few examples, presented in chronological order in the rest of this section, are chosen to demonstrate the state of affairs, when diplomatic rank had no significance from the part of perpetrators, in the course of numerous terrorist attacks, planned and committed against diplomatic officers.

In 1975, in Beirut, Lebanon, there was created another Armenian terrorist organization (ASOA), with its headquarters in Damascus. Within six months of its existence, ASOA


\textsuperscript{1722} Terrorist acts, committed by civilians, have become an instrument of international influence, with global consequences. Nataliya Dryomina-Volog: A human being – a value, instrument or subject of international policy? In: S. V. Kivalov (ch. ed.): Al’manakh mezhdunarodnogo prava. Vypusk 1. „Feniks”. Odessa, 2009, 53.


\textsuperscript{1725} Rana: The 21st Century Ambassador… 62.
organized nineteen murders of Turkish diplomats in various countries around the world. Armenian terrorists have carried out attacks on Turkish targets throughout the world for the reason of vengeance for the death of countless Armenians – which was genocide, in fact, at the beginning of the last century, at the hands of the Turks. The recognition of the so called "Armenian genocide", committed by Turkey is prioritized, as Armenia's foreign policy.

The formation of ASALA was the final act in a series of interrelated factors. Armenian extremists have been threatening and assassinating Turkish diplomats before. For instance, in 1973, Gourgen Yanikian killed two Turkish diplomats in California, USA. The shooting was followed by a two-year hiatus, before the first attack, claimed under the ASALA name.

On 14 October, 1975 Ambassador Ismail Erez was killed in Paris, together with his driver Talip Yener. Two Armenian terrorist organizations – Armenian Secret Army for the Liberation of Armenia (ASALA) and Justice Commandos against Armenian Genocide (JCAG) disputed among themselves over the responsibility for the commitment of the terrorist act. On 22 October, 1975, three armed terrorists broke into the Turkish Embassy in Vienna, murdered Ambassador Danis Tunalidzhil. The responsibility for the crime was taken by terrorist group Victorious Armenian Army. On 28 October, 1975, a rocket bombardment of the building of the Turkish Embassy in Beirut has caused considerable damages to the premises.

On 16 February, 1976, Oktar Sirit, the first secretary of the Turkish Embassy in Beirut was killed by a bandit, who managed to escape. The responsibility for these crimes was taken by ASALA. On 17 May, 1976, Turkey's diplomatic offices in Frankfurt, Essen and Cologne simultaneously have become targets of bomb attacks of Armenian terrorist organizations.

On 7 May, 1977, in Beirut Armenian terrorists were shooting at cars of military attaché in Turkey Nahit Karakai and attaché on administrative and economic issues Ilham Ozbakan. The Armenian terrorist organization ASALA claimed responsibility for the crime.


The aim of the terrorist organization was to fight for the "great Armenia".

Mustafaeva – Sevdimaliev – Aliev – Iylmaz op. cit. 172.
On 2 June, 1978, in Madrid, three Armenian terrorists, armed with automatic weapons opened fire on the car of Turkish Ambassador Zeki Kiuneral, who was leaving the territory of the embassy. In the shooting, there was killed Peclet Kiuneral, the wife of the Ambassador and retired Ambassador Besir Bals oglu. The driver, Antonio Torres died in the hospital during the operation. The responsibility for the attack was disputed between ASALA and JCAG.\footnote{ASALA napominaet o sebe: chto stoit za ugrozami armianskih terroristov? (ASALA reminds itself: what is behind the threats of Armenian terrorist?) 1Newz.az. 22 August, 2012. (Accessed on 15 May, 2016.) http://www.1news.az/analytics/20120822120023634.html} On 8 July, 1978, in Paris, members of the organization „New Armenian Resistance”,\footnote{Armenia, located at the intersection of conflicting interests and aspirations of two-three empires, had lost its national independence and state identity at the end of the XIV century. The Armenians never gave up on the desire to re-create their own independent state or seek some autonomy. K. S. Gadzhiev: Geopolitika Kavkaza. (The geopolitics of the Caucasus.) „Mezhdunarodnye otnosheniia.” Moskva, 2003, 120.} assassinated an attaché of the Turkish Embassy.

On 8 July, 1979, in Paris terrorists of JCAG produced an explosion in the building of the Turkish labor attaché. On 8 November, 1979, an explosion, produced by ASALA, destroyed the building of the Turkish Embassy, in Rome.\footnote{Mustafaev–Sevdimaliev–Aliev–Iylmaz op. cit. 175-177.} On 22 December, 1979, an Armenian terrorist killed Elmaz Sholpan, the tourism attaché of the Turkish Embassy, while he was walking on the crowded Champs-Elysees. Responsibility for the murder of the diplomat was taken by several terrorist organizations: ASALA, JCAG and the „Squad of Armenian militants against genocide.”\footnote{ASALA napominaet o sebe: chto stoit za ugrozami armianskih terroristov? (ASALA reminds itself: what is behind the threats of Armenian terrorist?) 1Newz.az. 22 August, 2012. (Accessed on 15 May, 2016.) http://www.1news.az/analytics/20120822120023634.html}

On 6 February, 1980, an Armenian terrorist opened fire in front of the Turkish Embassy in Bern, wounding Ambassador Dogan Türkmens, who was in a car at that time. Armenian terrorist Max Klindzhyan was subsequently arrested and returned to Switzerland, for the conduct of the investigation. The responsibility for the assassination attempt was taken over by the Armenian terrorist organization JCAG.\footnote{ASALA napominaet o sebe: chto stoit za ugrozami armianskih terroristov? (ASALA reminds itself: what is behind the threats of Armenian terrorist?) 1Newz.az. 22 August, 2012. (Accessed on 15 May, 2016.) http://www.1news.az/analytics/20120822120023634.html} On 31 July, 1980, Ghalib Ozman, management attaché of the Turkish Embassy in Athens, was in a car, together with his family, when the car was fired by Armenian terrorists. Ozman and his fourteen-year-old daughter, Neslihan died. Seville, the Ambassador’s wife and their sixteen-year-old son, Kenan, were injured. ASALA claimed responsibility for the crime.\footnote{Mustafaev–Sevdimaliev–Aliev–Iylmaz op. cit. 181.}

On 26 September, 1980, Armenian terrorists produced an armed attack on Seldzhuk Bakalbashi, press adviser of the Turkish Embassy in Paris, when the diplomat was returning
Despite the best efforts of doctors, Bakalbashi remained paralyzed for life. The responsibility for the terrorist act was taken by ASALA and a group of professional killers from the "Organization of the Armenian Secret Army".

On 17 December, 1980, Engin Sever, the security attaché was killed in Sydney, by Armenian terrorists from JCAG.

From 1970 to 1980, ASALA organized the murder of thirty-four Turkish diplomats, and continued its extremist activity.

On 2 January, 1981, ASALA issued in the press in Beirut, an official threat of "attacks on Swiss diplomats around the world". This statement was made in response to the alleged mistreatment of "Suzy and Alex", two terrorists of ASALA, imprisoned in Switzerland. On 14 January 1981, the car of Ahmed Erbeili, adviser on Economic Affairs of the Turkish Embassy in Paris, was exploded. The responsibility for the explosion act was taken by the terrorist group The Squad of Alex Enikomechian.

On 4 March, 1981, in Paris, two terrorists from ASALA opened fire on Roshat Morali, labor attaché of the Turkish Embassy in France, Teselli Ari, responsible for religious affairs at the embassy and Ilkai Karakoshu, representative of Anadolu Bank, when they were getting in their cars. Roshat was shot by the terrorists, Ari was seriously wounded and died the next day.

On 12 March, 1981, Armenian terrorists from JCAG attacked the Turkish Embassy in Tehran and two security guards were killed. The criminals were arrested by local law enforcement agencies and handed over to authorities. Responsibility for the attack was taken by the Armenian terrorist organization JCAG.

On 3 April, 1981, a terrorist shot at Kavit Demir, labor attaché of the Turkish Embassy in Denmark, while the diplomat was returning home. Responsibility for the committed crime was taken by ASALA and JCAG. On 17 September, 1981 an explosion damaged the building of the Swiss Embassy in Tehran by the Armenian terrorist group "Organization of 9 June".

On 25 October, 1981, an Armenian terrorist shot at Gekberk Erdgenekon, the second secretary of the Turkish Embassy in Rome. The diplomat, wounded in the arm, came out of the car and...
returned fire from a service weapon, but the criminal managed to escape. The responsibility for
the terrorist act, committed in the name of „Suicide Squad of 24 September“, was taken by
ASALA.\textsuperscript{1746}

On 8 April, 1982, in Ottawa, members of ASALA attacked and seriously injured Kani
Gungor, trade attaché of the Turkish Embassy to Canada, at the parking lot of his house. The
diplomat was permanently paralyzed for the rest of his life.\textsuperscript{1748} On 7 June, 1982, members of
JCAG killed Erkut Akbai, the administrative attaché of the Turkish Embassy to Portugal and
Hadid Akbai, his wife, at the entrance to their house in Lisbon.\textsuperscript{1749} On 27 August, 1982,
terrorists from JCAG killed in Ottawa Atilla Altikat, military attaché of the Turkish Embassy
to Canada. The diplomat was killed while driving his car, when he stopped at a traffic light in
the street, going to work from home. The perpetrators of the attack are still at large.\textsuperscript{1750}

On February 28, 1983, there was found and defused an explosive device in front of the
Turkish Embassy in Luxembourg. The terrorist group New Armenian Resistance
Organization\textsuperscript{1751} took the responsibility for the planned crime.\textsuperscript{1752} In all Armenian extremist
activities, terrorism goes together with psychological coercion. Terrorism is used, as a means
of propaganda and an instrument of intimidation.\textsuperscript{1753} On 8 July, 1983, Armenian terrorists
attacked the British Embassy in Paris, as an act of protest against the trial of Armenian terrorists
in London. On 14 July, 1983, Dursun Aksoy, attaché at the Turkish Embassy to Belgium was
shot dead in his car, while driving in Brussels. The gunman escaped, the responsibility for the
committed murder was taken by ASALA, JCAG and Armenian Revolutionary Army
(ARA).\textsuperscript{1754}

On 22 July, 1983, the Armenian terrorist group Orly Organization produced an
Armenian terrorists from ARA attempted to capture the Turkish Embassy to Portugal. The

\textsuperscript{1746} The attack was made in honor of the four members of ASALA, who occupied the Turkish Consulate in Paris
on 24 September, 1981.
\textsuperscript{1747} Mustafaeva–Sevdimaliev–Aliev–Iylmaz op. cit. 198.
\textsuperscript{1748} Turkish Canadian Relations, 05.02.2016. Turkish Embassy in Ottawa. (Accessed on 16 May, 2016.)
\textsuperscript{1749} Mustafaeva–Sevdimaliev–Aliev–Iylmaz op. cit. 207.
\textsuperscript{1750} Turkish Canadian Relations, 05.02.2016. Turkish Embassy in Ottawa. (Accessed on 16 May, 2016.)
\textsuperscript{1751} The headquarters of the terrorist group, which is part of ASALA, was located in France.
\textsuperscript{1752} Mustafaeva–Sevdimaliev–Aliev–Iylmaz op. cit. 212.
brussels-armenians-claim-deed.html.
bandits were not able to break through and finding themselves in a hopeless situation, occupied
the apartment of J. Mihchioglu, the Deputy Head of Mission, taking hostage his wife and
children. The bomb exploded in the hands of one of the bandits, killing the wife of the Head of
Mission, together with four terrorists. On 29 July, 1983, the Iranian authorities had to increase
the security of the French Embassy in Tehran after having received an alert about the threat to
explode the building. The intimidation came from Orly Organization with the demand to release
twenty-one Armenian criminals in France.

On 10 August, 1983, there was exploded a car, filled with blasting agents, at the French
Embassy in Tehran; on 9 September, 1983, there were exploded two cars of the Turkish
Embassy in Tehran (two embassy staff members were injured); on 6 October, 1983, a car of the
French Embassy in Tehran was exploded (two passengers were injured); on 29 October, 1983,
a grenade was exploded in the stairwell of the French Embassy in Beirut (one terrorist was
detained by the security services, the other managed to escape). All the listed explosions were
carried out by the Armenian terrorists from ASALA.

As illustrated by these last cases, unlike its more rightist Armenian counterpart organizations, such as JCAG, ASALA carried out
attacks against states, associated in various ways with Turkey.

On 29 October, 1983, three Armenian terrorist from ASALA captured the Turkish Embassy in Beirut (one of the terrorists
was arrested by the security service).

On 28 March, 1984, Hasan Servet Oktem, the first secretary of the Turkish Ambassador,
was wounded in an attack of terrorists from ASALA.

On 20 June, 1984 Erdogan Ozen, acting assistant advisor for social affairs at the Turkish Embassy to Austria, was killed as a result of a
car explosion by ARA. Five other people, including two Austrian police officers were seriously
injured. In December 1984, the Belgian police found an explosive device, placed in front of the
apartment of Selchuk Ilchiu, an employee of the Turkish Embassy in Brussels. According to
sources, the terrorist act was carried out by one of the Armenian terrorist organizations,
operating in Western Europe.

On 12 March, 1985 in Ottawa, three armed terrorists from ARA shot at the Turkish
Embassy to Canada. The terrorists, having killed the agents of federal security service
Pinkerton, broke into the building and captured hostages. Ambassador Dzhoshkun Kirs
managed to jump out from the second floor window. The Ambassador was seriously injured in
the result of the fall and was lying on the ground for four hours of the siege. The Armenian
terrorists have been captured by the police, arrested and prosecuted in Canada.
On 9 October, 1986, ASALA transferred to the Western news agency in Beirut a letter, written by hand, with warnings of tougher measures against France, in case of V. Garabedian and two other Middle Eastern terrorists would not be released. The document stated that ASALA would direct its attacks on French airports, airplanes, ships, trains, and diplomats, in retaliation for police raids on apartments of Armenians in France. From 1975 to 1986 ASALA claimed responsibility for the attacks on two hundred Turkish diplomatic and non-diplomatic organizations, as a result of which, fifty-eight diplomats were killed, thirty-four of whom were Turks.

A counter-claim by Uganda in the Case concerning Armed Activities on the Territory of the Congo that Congolese soldiers had occupied the Ugandan diplomatic mission in Kinshasa in 1998 and violated the Vienna Convention by threatening and maltreating staff on the premises. Uganda alleged that even with the protests by Ugandan Embassy officials, the Congolese Government did not take action. Uganda stated that a Note of protest was sent by the Ugandan Embassy to the Ministry of Foreign Affairs of the Democratic Republic of the Congo. (Uganda claimed that the Congolese troops forcibly seized the official residence of the Ugandan Ambassador in Kinshasa and stole property, including personal belongings to the Ambassador).

The International Court of Justice found that regarding the attacks on Uganda’s diplomatic premises in Kinshasa, and acts of maltreatment by Congolese forces of persons within the Ugandan Embassy, also the mistreatment by members of Ugandan diplomats at Ndjili International Airport by the Congolese armed forces, Congo has breached its obligations under the Vienna Convention. In addition, the Court found the Democratic Republic of the Congo guilty for removal of almost all documents from the archives, along with the working files of the Ugandan Embassy. The Court obliged Congo to bear responsibility for the violation of international law on diplomatic relations and found that Uganda was entitled to reparations. The reparations in international law are aimed to restore the victim of a breach

1758 Il’gar Dzhafarov: Armianskie terroristy ASALA ugrozhaiut turetskim diplomatam. (Armenian terrorists from ASALA threaten Turkish diplomats.) Aze.az. 22 April, 2011. (Accessed on 15 May, 2016.)
http://aze.az/news_armyanskie_terroristyi_as_56473.html
1759 Vienna Convention. Article 22.
1760 Doc. cit. Article 29.
1763 Reparations – compensation for war damage by a defeated state. Freeman: The Diplomat’s… 197.
to the position it would have enjoyed, if the infraction had not occurred, for under the vital
notion, no international wrong must go unpunished.

State representatives are increasingly become victims of violence, including international terrorism. In 1997, terrorists attacked the U. S. Embassy in Lebanon, killing sixteen people. In 1998, terrorists attacked U. S. Embassies in Kenya and Tanzania, killing twelve people. As a result, the United States adopted a program of transformation embassy buildings into fortresses in several countries. By agreement with the local government, the security was strengthened and carried out by the U. S. marines.

The richer, more industrialized states have developed sophisticated mechanisms to provide for the safety of diplomatic personnel on their territory, many developing states are unable to provide even the basic requirements, such as perimeter guards and some form of rapid reaction force. This was certainly the case in Tanzania and most probably in Kenya in the run-up to the attacks in 1998. As a result, it is increasingly the case that sending states have to rely on locally employed security personnel or even their own security forces to provide necessary security.

Krzysztof Supronowicz, Poland’s Ambassador to Yemen was released from captivity, after he was abducted by armed members of a local tribe in Sanaa and detained in the mountains, until March 2000. The Yemeni authorities did not fulfill the demand of the kidnappers to release the Ambassador in exchange of release of Haleem al-Sheikh, so the diplomat was released a few days later, and he survived the detention unharmed. (The Yemeni Army troops encircled the area where the diplomat was preserved, and believably the sight of the fortified military squads made the kidnappers to change their mind.)

Of late, heightened vigilance and observation requires the involvement of diplomatic agents’ cases into a cts of terrorism and explosions, when there were used cars, stuffed with explosives, being parked near diplomatic premises.

Since achieving independence at the end of the World War II, Indonesia has experienced two violent revolutions. The country has suffered from fierce separatists and radical-extremist movements. Indonesian terrorists have repeatedly targeted foreigners, especially Australians. For example, in September 2004, a car
bomb has been detonated outside the Australian Embassy in Jakarta, killing nine and wounding 150 people.  

On 27 April, 2007 the Estonian Government removed the Bronze soldier, a World War II monument to the memory of Soviet soldiers, who liberated the city, from the middle of Tallinn to the cemetary of the Estonian Defense Forces. As an act of protest, several youth organizations in Moscow started a virtual siege on the Estonian Embassy, preventing staff and visitors from entering or leaving the building, and physically attacking the embassy and Marina Kaljurand, the Estonian Ambassador. The Russian authorities were tolerant towards these acts.  

Värk states that in reality the protection of embassy premises and staff are not often needed, since states refrain from interfering, being interested in mutually friendly relations. Besides, states wish their own diplomatic missions and staff to have the widest possible freedom of operations in receiving states.  

Hungary also ensures the provision of certain police measures in protection of diplomatic missions and their staff members, as well as the increased police control of the districts of diplomatic representations. It can be stated that in recent years, the major terrorist acts highly influenced the demands of the police for increased protection of diplomatic representations, and there significantly increased the needs from diplomatic missions, accredited in the country, for initiatives to enhance the security measures, related to protection of their premises.  

Certain embassies in Budapest, such as the American, Israeli and British, ensured their premises with separate defense and security structures. As a result of acts, performed by international terrorist organizations, mainly bombings, most countries in the world pay enhanced attention to security of diplomatic representations of these states. The American and Israeli ambassadors are provided constant personal protection.  

In August 2009, Molotov cocktails were thrown by unknowns at the Slovak Embassy in Budapest. According to the Police Department of Budapest, the lighter bottles, did not ignited, so there was no damage to the embassy building. The President, the Prime Minister and the Ministry of Foreign Affairs of Hungary condemned the attack, which further complicated

1769 Frun op. cit. 13.  
1771 Värk: The Siege… 144.  
1772 András Papp: A diplomáciai mentességben részesülő terrorveszélyezett személyek és objektumok biztosításának helyzete. (The provision of security of persons and objects, enjoying diplomatic exemptions, which are vulnerable to terrorist attacks.) Kard és Toll. No 2. Budapest, 2006, 126-128.  
1773 Papp op. cit. 129.
the resolution of the existing disputes between the two states. The Ministry of Foreign Affairs of the Slovak Republic regarded this incident, as an individual delict. There are cases of revolutions, when governments lose control over the situation, as it happened during the Arab Spring, when the involved Arabic countries were unable to protect their own citizens, not mentioning foreign diplomats. It occurred that there was no special legislation to punish the lawbreakers during these stormy events. The Vienna Convention does not regulate the situations when diplomatic agents fall victims of crimes, only prescribes that diplomats have to be treated inviolably and host states bear responsibility for their protection. John Christopher Stevens, the U. S. Ambassador to Libya was among four Americans killed in an attack by Muslim protesters on the U. S. Consulate compound in Benghazi.

On the tragic incident with Ambassador Stevens, Kelly notes that many Americans either don’t realize or won’t believe that diplomacy has gotten dangerous. In the years, since 1979, “scores” of U. S. diplomats have died or been injured, flying over Scotland, working in Kenya or driving in Mexico. Certainly, being a diplomat has always had its severities, but in recent years, and especially since 9/11, diplomatic work has gotten more hazardous for two main reasons. Firstly, the places, where unarmed diplomats now serve, are far more dangerous. The diplomatic posts, in places, such as Baghdad and Kabul, which in an earlier time would have been evacuated, as considered too risky, have instead been turned into the largest U. S. Embassies in the world, at the same time, creating huge targets of opportunity. For instance, in 2011, heavily armed insurgents attacked the U. S. Embassy in Kabul. Although no U. S. diplomats were killed during the outbreak, a rocket penetrated the embassy’s wall. Secondly, due to the inherent dilemma of practicing diplomacy in an increasingly unstable

Molotov-koktélt dobtak a budapesti szlovák nagykövetségre. (Molotov cocktail was thrown at the Slovakian Embassy in Budapest.)


Diplomatic duty, by Kelly, which in the popular mind and in the estimation of too many members of the U. S. Congress is viewed as "a soft metier of wingtips and canapes", in fact, is "an increasingly harsh grind of improvised explosive devices and post-traumatic stress disorder". However, foreign service personnel, standing shoulder to shoulder with U. S. troops, protecting national security in so many inhospitable locales that they could well brand themselves "soldiers without guns". Stephen R. Kelly: America’s foreign service: Soldiers without guns. Chicago Tribune. 14 September, 2012. (Accessed on 29 December, 2016.) http://articles.chicagotribune.com/2012-09-14/opinion/ct-oped-0914-embassy-20120914_1_diplomats-british-consulate-kabul

With respect to American envoys, there are two plaques in the lobby of the State Department of the United States, to honor diplomats, who have died since 1780 in the line of duty.

world, when diplomats are trained to win hearts and minds, also to influence people on behalf of their sending states, they can not perform that effectively „from a fortress.”  

Diplomats need to be able to interact with nationals of host countries, to effectively defend security interests of their home country, and they need to do that in perilous places, where those interests are threatened. If diplomats would avoid foreign postings, they might, as well, conduct diplomacy by email and fax machine from their state’s capital. Nonetheless, even this practice would not make them safer.

Diplomats, intelligence agents and the military missed obvious warning signs that could have enabled them to prevent the deadly attack on the U. S. diplomatic mission in Benghazi. The Ambassador, who was killed in the attack, was criticized for refusing offers to reinstate soldiers at the mission before the raid. The military was also criticized for failing to respond more quickly on the night of the attack on 11 September, 2012.

On 6 March, 2016, Ukrainian demonstrators threw eggs at the Russian Embassy, in Kiev and broke several windows of the building, demanding the release of the pilot Nadiya Savchenko, detained in Russia for her complicity in the murder of two Russian journalists. Several hundred people marched to the Russian Embassy, where they burnt Russian flags. Two demonstrators climbed over the fence of the Embassy and installed the Ukrainian flag on its wall.

On 30 August, 2016, an explosion occurred in the car of the Chinese Embassy to Kyrgyzstan. The strong detonation, which could be heard almost everywhere in the Kyrgyz capital, killed the driver of the car and wounded two guardians of the diplomatic mission. The blast destroyed the Embassy’s gate and fence and broke the windows of nearby buildings.

On 17 September, 2016, just one day before the Russian parliamentary elections, the Embassy of Russia in Kiev, where there was an opportunity to vote, as well, has been attacked, and this is not the first act of violence against the diplomatic mission. (On March 10, 2016, incendiary bottles were thrown at the building, but it did not caught fire.) The election polls had been opened at the Russian Embassy in Kiev and at three Russian Consulates General in

1779 Ibid.
1780 Ibid.
Ukraine, as well. However, some days before President Petro Poroshenko instructed the Foreign Minister of Ukraine to inform Moscow that these elections could not be held in Ukraine.

The Russian presidential spokesman Dmitry Peskov responded to the incident in Kiev, stating that Ukraine could not prohibit the voting at Russia’s diplomatic representations. According to the Vienna Convention, Kyiv was obliged to guarantee the security of the Russian missions. According to Russian diplomats, the electoral roll of the Russian diplomatic missions included eighty thousand Russian citizens.

Organized crime is reinforced by the new technologies, since internet makes the laundering of the proceeds of crime easier and also harder to detect, especially, that the criminal organizations are faster, than the non-criminal sector in taking advantage of the new networked world. Riordan affirms that international terrorism is closely linked to organized crime and the new technologies open up new opportunities for global terrorists.

Due to the threat of terrorism today, an increased cooperation of intelligence services is required. In a number of terrorist attacks, clearly foreigners are the targeted persons.

The appalling murder of the Russian Ambassador Extraordinary and Plenipotentiary to Turkey, Andrey Karlov, cowardly shot in his back by a Turkish ex-policeman on 19 December, 2016 in Ankara, during the opening of a photo exhibition, was unanimously condemned by the world leaders and officials. The obvious culprits of the crime (apart from the killer and his accomplices), according to press, are the Turkish security forces: the police and security services. These structures had to organize the protection of persons, having special status, especially that the host country carries greater responsibility for the security of ambassadors, however, the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents does not stipulate the responsibility of the host country. Karlov was the fourth Russian Ambassador Plenipotentiary, after Griboyedov.
Vorovsky and Voikov, whose cases were considered earlier in this work, who was killed in the line of duty.\textsuperscript{1790}

Kupriianov remarks that to be a diplomat is a dangerous profession. When a person represents his country, he receives all the accolades and honors that people want to render to his country. On the other hand, in the same way, hatred of a country is also projected onto its diplomats, and sometimes this takes the form of bullets.\textsuperscript{1791}

The Vienna Convention mentions functions of a diplomatic mission, which encompass, \textit{inter alia}: representation of the sending state in the receiving state,\textsuperscript{1792} protection of interests of the sending state and of its nationals in the receiving state,\textsuperscript{1793} negotiation,\textsuperscript{1794} observation of conditions and developments in the receiving state and reporting them to the sending state,\textsuperscript{1795} and promotion of friendly relations.\textsuperscript{1796} Embassies are also targets of terrorist attacks, also for violent protests and group incursions by asylum seekers. In a number of capitals, ambassadors, representing countries that face acute threat, are escorted by police officers and diplomatic protection group personnel, providing „portal to portal cervices“. Chanceries and residences of ambassadors are also protected by heavily armed personnel in many countries.

Every diplomatic mission has adopted procedures for handling the threats that ambassadors and other members of diplomatic corps receive via telephone, mail and other means, including protection by private security agencies. There is an increase in the number of sending states that deploy their own home-based armed security guards to protect ambassadors and embassies, almost always with the support of the receiving state. The architecture of diplomatic premises and access routes for the buildings have to take into account this threat environment.\textsuperscript{1797}

The major powers are able to afford spending vast sums on upgrading the physical security of such structures, by installing blast-proof doors and walls, toughening the windows, constructing strong barriers at entry points, also providing the diplomats with bulletproof vehicles. The smaller countries that have more modest financial means, consider that the general precautions they implement, along with their relative anonymity are the best protection. Diplomatic training programs in most of countries cover security procedures. Security

\textsuperscript{1790} Aleksei Kupriianov: Chetvertyi na postu. (Fourth in the post.) Lenta.ru. 20 December, 2016. (Accessed on 20 December, 2016.) https://lenta.ru/articles/2016/12/20/killed_ambassador/

\textsuperscript{1791} Ibid.

\textsuperscript{1792} Vienna Convention. Article 3(1)(a).

\textsuperscript{1793} Doc. cit. Article 3(1)(b).

\textsuperscript{1794} Doc. cit. Article 3(1)(c).

\textsuperscript{1795} Doc. cit. Article 3(1)(d).

\textsuperscript{1796} Doc. cit. Article 3(1)(e).

\textsuperscript{1797} Rana: The 21st Century Ambassador… 62.
specialists are often on deputation from the home police or security forces at large embassies, to take care of the ambassador’s personal security jointly with the deputy chief of mission.

1798

The envoys could become accidentally involved in a crisis situation, as it happened in December 1996, during the seizure of the Japanese Embassy in Lima by local extremists in the course of a national day reception. At the same time, Rana warns that security precautions, effected beyond a certain limit, usually become a burden and give diminishing returns in terms of actual safety. The safekeeping measures, enforced too strongly, prevent envoys from wide outreach and normal day-to-day activity, which is also part of the inevitable change and adaptation in our violent times.

1799

"Embassies are symbolically charged buildings uniquely defined by domestic politics, foreign affairs, and a complex set of representational requirements."

1800

From the time when embassies became targets for terror, it affected the architecture of embassy buildings, and the new security standards turned these constructions into the modern equivalent of frontier stockades.

1801

The crime wave in Venezuela has reached embassies, as well. In January 2012, Mexico’s Ambassador and his wife were kidnapped. On 8 April, 2012, Guillermo Cholele, a Costa Rican attaché, was kidnapped in Caracas for ransom.

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In general, about a dozen cases have been reported publicly in the past two years. There is no clear evidence that foreign diplomats are being specifically targeted, but at the same time, the diplomatic status did not offer much protection from Venezuela’s crime wave. The Government deployed hundreds of policemen to rescue Cholele, and he was released relatively unharmed in a day. Nevertheless, generally, most foreign officials have found Venezuela’s security services substandard. Embassies are given three phone numbers to use in an emergency. When the Mexicans called these emergency lines, after the abduction of their ambassador, nobody answered the call. The Government of Venezuela has even set up a diplomatic protection squad, but it started to operate only with a third of the staff it needed. Some diplomats said that their countries would reject such services anyway, for fear that Venezuelan guards would act, as spies, or worse. Thus, the authorities had to apply more measures to fulfill their obligations to protect foreign diplomats under the Vienna Convention.

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Ibid.

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Loeffler op. cit. 3-11.

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Two months earlier, the Chilean Consul was shot and wounded by kidnappers. Crime in Venezuela: No immunity here. The Economist. 14 April, 2012, 16.

1803

Ibid.
On 5 March, 2015, Mark Lippert, the U. S. Ambassador to South Korea was stabbed during an event, organized by the Korean Council for Reconciliation and Cooperation, which advocates for peaceful reunification between North and South Korea. The Ambassador was slashed in the face, also suffered five cuts in his left arm and hand, shortly before he was supposed to give a speech. The attack was performed by Kim Ki-Jong, who was convicted afterwards of attempt of murder, assault the foreign envoy, also business obstruction and sentenced to twelve years in prison by the Seoul Central District Court.

In October 2015, there was an artillery attack on the Russian Embassy in Damascus, which was apparently made by the insurgents. Protesters, loyal to the regime of the Syrian President Bashar al-Assad, gathered in the vicinity of the Embassy at that time to express their gratitude to Russia for interventions of military forces in support of Assad. No one was hurt at the Russian Embassy, according to the news. Sergei Lavrov, the Minister for Foreign Affairs of the Russian Federation, condemned the attack and said it was obviously a terrorist act.

On 8 November, 2015, the Head of Press and the driver of the Serbian Embassy in Libya were kidnapped on their way to Tunisia. The Serbian Ambassador and his family traveled in one of the cars of the three-vehicle diplomatic convoy, and he survived the armed attack unscathed. The two kidnapped Embassy employees were probably killed during the air raid by the United States in February, 2016, on the supposed terrorist training center of the Islamic State, discovered in Sabratha.

V. 4. 3. Measures of special protection of diplomatic agents, adopted by states in recent times

According to a general practice, the principle of reciprocity is applied in determination of the levels and forms of diplomatic protection, provided to foreign missions. There are countries, which provide protection for foreign missions, as part of their regular policing

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1807 Amerikaiak bombáztták le a Libiában elrabolt két szerb diplomátát. (The Americans bombed the two Serbian diplomats, kidnapped in Libya.) Index. 2 February, 2016. (Accessed on 7 April, 2016.) http://index.hu/kulfold/2016/02/20/amerikaiak_bombaztak_le_a_libiaban_elrabolt_ket_szerb_diplomatat/
Minnaar, elaborating on protection of host countries, provided to diplomatic representations abroad, brings South African missions, as an example, particularly that their diplomatic personnel had also been victims of armed attacks (Mexico), burglaries (Zambia), muggings (Kenya) and car thefts (Hungary).

In this way, diplomatic residences in Italy are served by the regular vehicle and foot police patrols in the neighborhood of embassies. In the Czech Republic, each suburb of Prague has a special police “protection unit”, engaged in investigation of problems that embassies report to the police. In Indonesia, the special protection unit regularly patrols areas of official residences or where it is not feasible, the task is performed by the local police. The diplomatic missions in Slovak Republic are protected by the Department for the Protection of foreign Missions of the Ministry of Home Affairs, where there is an officer on 24-hour duty to deal with the incoming calls and emergencies.

The domains of policing and international security belonged once to the domestic issues, par excellence, as noted by Riordan. According to Blishchenko and Zhdanov, the increased protection of diplomats has to involve the following measures:

- to increase the sanctions in domestic legislation against persons, who encroach on the security of foreign representatives, enjoying special protection under international law;
- to establish a system that would ensure the inevitability of punishment for criminal acts, in accordance with international conventions;
- to harmonize the legislation in the field of criminal law that would eliminate “certain advantages”, in terms of consequences of criminal acts, provided for in various countries.

The protection of foreign missions in the United States is provided, upon request, by the Office of Foreign Missions, in Washington only, by the U. S. Secret Service Uniform Branch Division and the U. S. Diplomatic Security Service. Both organizations provide help in case of security threats, such as manslaughter, kidnapping, hostage-taking, etc. The foreign missions outside Washington are protected, if requested, by the local police that is normally the municipal police.

Minnaar op. cit. 72-76.
Riordan op. cit. 51.
Blishchenko – Zhdanov op. cit. 196.
The ultimate responsibility for protection of diplomatic personnel in the United States lies on the Federal Government.
The U. S. Security Service, operates in 31 U. S. cities and more, than 160 foreign countries, playing a vital role in protection of 275 U. S. diplomatic missions and their personnel overseas.
Minnaar op. cit. 75.
In Great Britain, there was decided by the Foreign and Commonwealth Office at the early 2000s to significantly increase the capital budget for new embassy buildings and to replace those that were assessed, as insecure and for additional defenses at those posts, where some weaknesses were identified. The decision was taken after the bomb explosion on 20 November, 2003 at Pera House in Istanbul, where Roger Short, the Consul-general, his assistant and eight local staff lost their lives. This was the most deadly assault on a British mission since the Boxer siege in Peking,\textsuperscript{1814} in 1900.\textsuperscript{1815} In the United Kingdom, the Protocol Department of the Foreign and Commonwealth Office governs the protection of foreign missions, according to the U. K. Diplomatic Privileges and Immunities Memorandum. The level of protection depends on its accession by the Security Section of the Protocol Department, Diplomatic Protection Group of the Metropolitan Police\textsuperscript{1816} and the Special Branch.\textsuperscript{1817}

The threat and risk assessment of foreign missions in Canada is carried out by the Royal Canadian Mounted Police that provides the protection of embassies and diplomatic residences, performed by police officers on a 24-hour basis. Furthermore, the special neighborhood watch system for diplomats and emergency numbers extend the protection of diplomatic personnel.\textsuperscript{1818}

Diplomatic personnel are specifically charged with the process of developing, formulating and interpreting of state’s foreign policy. In this role, they stand on the front line of the so-called war on terror. Where terrorist attacks take place on ordinary citizens, diplomatic establishments play an essential role in securing the interests of their nationals in foreign states. Furthermore, the role of diplomatic missions in gathering and interpreting security information should not be underestimated.\textsuperscript{1819}

The declaration on the war of terror served to place diplomatic personnel around the world on the frontier of that war. A rather symbolic illustration of this fact can be given – that the abduction and murder of Ihab Al-Sherif, the Egyptian Ambassador-Designated to Iraq and the targeting of two more high-level Muslim diplomats from Bahran and Pakistan in Iraq in July, 2005. On 21 July, 2005, two Algerian diplomats, including Ali Balarousi, the top Algerian

\textsuperscript{1815} Bertram op. cit. 447.
\textsuperscript{1816} London is the only city in the world with two independent police administrations: the Metropolitan Police of London and the City Police. The reasons for that state of affairs go far back in history. Christian Heermann: A Scotland Yard titkaiból. (From the secrets of Scotland Yard.) Zrínyi Katonai Kiadó. Budapest, 1989, 14-15.
\textsuperscript{1817} Minnaar op. cit. 75.
\textsuperscript{1818} Ibid.
\textsuperscript{1819} Barker op. cit. xii.
diplomat in Iraq, were abducted. According to press reports, the diplomats were targeted because of the support of their governments for the activities of Western states in Iraq.

Special protection in case of diplomatic agents means more reliable protection, than that which states are obliged to grant to private persons.

The request of special protection, mostly granted only on a reciprocal basis, although some missions assume that such service is granted automatically, when requested. The degree of special protection of diplomats is determined by the level of threat or risk to the specific diplomatic mission, as assessed by the receiving state and could be provided in the following forms:

- Permanent posts: a) police officer, placed in front of a specific building, with possible support, provided by a second police officer, usually on a 24-hour basis, b) guards, placed within the diplomatic mission's building (or waiting areas). Direct communication lines or emergency buttons could be installed in both cases.
- Mobile posts: in forms of patrol cars, motorcycle patrols, foot or street patrols, including regular visits by police officers to embassies and official residencies, along with inspections of the exterior of these buildings and their surroundings.
- Backup for permanent and mobile posts: additional police vehicles can support the permanent and mobile posts, including special reaction mobile units, in necessary cases.

The majority of the above-listed measures are instituted by host governments primarily to deter terrorist or political acts against diplomats, rather than to protect foreign missions from an ongoing criminal activity.

The host government is also to bear the costs for special protection measures. Certain countries, for instance Angola and Egypt established special protection units or diplomatic guards. Nonetheless, in practice, the "diplomatic police" is mainly used for surveillance purposes and not specifically for the protection of diplomats or assurance of the security of diplomatic missions, as for example, in case of Saudi Arabia. The actual protection of diplomats is habitually provided on request by military guards and not the police. In addition, some countries provide special telephone lines, linking embassies directly to local police stations, for instance, Malaysia, where they are called "hot-lines". Certain authorities, as in Seoul, use the "police-box" system at official residences and chanceries that contains a register to be signed by police officers during routine patrols. In Hong

Barker op. cit. 16.
Blishchenko – Zhdanov op. cit. 121.
Minnaar op. cit. 77-78.
Ibid.
Kong, an emergency button is installed in the office of the head of diplomatic mission, to alert the Hong Kong Police VIP Protection Unit. In Japan such emergency button system also encompasses the residence of the head of mission.\textsuperscript{1824}

In Moscow and Saint Petersburg, the protection of foreign missions is carried out, upon request, by the Independent Battalion or Patrol Service on a 24-hour basis. The division operates in 12-hour shifts and is monitored by patrol cars every four or six hours. In Beijing, police boxes are installed on most of the streets and every embassy has a fulltime guard, working in shifts, at the entrance to the embassy compound.\textsuperscript{1825}

The protection of diplomatic personnel lacks in some countries, for instance, Nigeria. In Lagos, armed gangs view diplomatic staff as targets for money, robbing their homes, shooting at diplomatic vehicles, bribing embassies for telephone lines or allowance of other services. Therefore, most embassies in Nigeria hire private security guards and install expensive alarm systems.\textsuperscript{1826}

Satow asserts that regarding the protection of diplomats in the receiving state, it seemed to be clearly established that the „appropriate steps” did not include surrendering to demands, made by kidnappers, when a diplomatic kidnapping had taken place. Further, the „appropriate steps” the receiving state was required to take to protect diplomats,\textsuperscript{1827} had to be determined in the light of relevant circumstances. The major capitals would have several thousand diplomats, all entitled to inviolability and obviously, it would be an impossible burden for each of them to have special police protection.\textsuperscript{1828} As one British former diplomat, himself the subject of a failed kidnapping attempt, has noted: „it is the special status of the diplomatic agent which renders him unsafe”.\textsuperscript{1829}

Hargitai observes that despite of the fact that the Vienna Convention provides\textsuperscript{1830} the host state’s obligation to protect the sending state’s diplomatic premises from any kind of intrusion, time and again, there are disagreements between the sending state and the receiving state on the reasoning of a permanent police post. In this case, the issue should be clarified,

\textsuperscript{1824} Minnaar op. cit. 76.
\textsuperscript{1825} Ibid.
\textsuperscript{1826} Sipho George Nene: Foreign Service, Diplomatic Immunity means less than nothing in lawless Lagos. Sunday Independent. 4 August, 1996.
\textsuperscript{1827} On the other hand, Hevener notes that the protection of diplomats „merits special attention because diplomats are especially vulnerable symbolic targets of political violence”. N. K. Hevener (ed.): Diplomacy in a Dangerous World: Protection for Diplomats under International Law. Westview Press. Boulder, 1986, 5.
\textsuperscript{1830} Vienna Convention. Article 22.
taking into account the principle of reciprocity. Permanent police presence and protection can not be refused, if the sending state insist on it and undertakes the relevant costs.

The current flood of terrorism has reached an unprecedented peak in all its manifestations and has resulted in a dramatic increase of incidents against international officials.

Experts note that the increasing number of violent acts against diplomatic agents shows that The Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents proved to be ineffective so far, primarily due to the fact that many countries have not joined it yet, consequently, they are not bind by the provisions of the Convention.

Consequently, it could be seen that the protection of diplomatic staff and missions abroad is still insufficient and unreliable. The level of protection of diplomatic service in general, should be adequate to the already existing and also the new threats of information technology (IT), mathematical software, technical and certainly, physical character.

Nonetheless, it is also considered that to counter terrorism, good police work is needed, rather than large armies.

In recent times, privileges of diplomatic officers have been viewed in proper perspective: diplomatic inviolability means little more, than that the diplomat enjoys a somewhat greater protection under criminal legislation, than other aliens do. This protection is guaranteed by the receiving state, hence it is a question of domestic law, not international law, by some authors. International law only obliges states to promulgate and enforce the inviolability, i.e the protection of diplomatic agents. This inviolability, actually, as noted by Glahn, is neither absolute, nor unconditional: if a diplomat acts in an illegal manner when measures of self-defense or police action are needed to restrain him, he can not stand on the privilege of inviolability.

On the other hand, during the past decades, attacks on diplomats have continued on a scale, never witnessed before. Ambassadors have been kidnapped and then murdered; ambassadors have been kidnapped and later released; and ambassadors have been wounded in attacks. At times such tragic incidents occurred on at least a weekly basis. What is more, these attacks on diplomatic personnel were to be found around the world, although most of them took place in Europe.

Hargitai: Viszonosság… 422.


Kolobov op. cit. 58.

Petrik op. cit. 128.

Roskin–Berry op. cit. 197.

Glahn op. cit. 453.
VI. Conclusions

The aim of the present thesis is to investigate the content and specifics of the functioning of privileges and immunities of diplomats – their practical effectuation, both in theory and practice, taking into account the actualities of the modern world. To reach its objectives, this scientific project examined a vast amount of relevant bibliography, originally issued in seven languages, having reviewed the diverse standpoints of selected legal authorities of both West and East, on this significant and actual area of international law.

With regard to the scope of the study, the regulations on the length placed some limits on the paper’s volume. For that reason, to answer the principal question of the research, whether the present range of personal privileges and immunities of diplomatic agents is necessary for the efficient performance of their duties, the thesis was written focusing rather on diplomatic practice, than theory.

The need for envoys had been ascended from the earliest times, with the necessity of their protection, which gradually evolved into the principle of their inviolability. The purpose of diplomatic immunity is to promote effectiveness of formal relations. The concept of diplomatic immunity has age-old ancestries and could be found in international practice of ancient civilizations, for instance, Egypt, Greece, Rome, India and China. The personal inviolability of diplomats encompassed immunity from civil and criminal jurisdiction of the host state. Moreover, the receiving sovereign had a special duty to protect the diplomat’s person. The wrongdoings towards diplomats were penalized and the recognition of diplomatic immunity by the receiving state turned into a customary norm.

States can not exist without close interaction with each other, maintained via foreign policy. Diplomatic agents are the intermediaries in such international relationships, therefore, the legal regulation of their privileges and immunities has an important goal – the successful cooperation with all participants of the system of international relations. Furthermore, a diplomat assist citizens of his state, who live or travel in the host country, for example, the people of culture or business.

Diplomacy at all times played a considerable role in resolving of interstate conflicts, often assisting in prevention of wars. States, in the process of interaction with each other, must stand by to such fundamental principles, as equality, respect for sovereignty of others and non-interference in each other's affairs. Diplomacy have been traditionally viewed, as an inter-state
activity, being monopolized by career diplomats, who represented their sovereign and government.

The very first – ancient states upheld the institution of temporary embassies already, as a mode of communication. In view of that, states of all times needed permanent and stable channels of connections in order to maintain foreign relations and international cooperation.

The process of interstate communication, encompassed special structures by which subjects of international law could keep each other informed about their positions on various issues, also to notify on legal actions and to obtain the necessary information.

These special structures gradually institutionalized with time, during the development of international relations, turning into organizations, which perform and manage the external functions of states. This course of institutionalization was accompanied with the occurrence of norms in domestic and international law that governed the activity of these establishments.

Before the World War II, diplomacy law consisted basically of common norms. The intensive process of codification of these legal norms at universal level began at the second half of the twentieth century. In the twenty-first century, diplomacy law, with its ancient roots, embraces a large and in many aspects developed body of law.

Diplomatic privileges and immunities is a principle of international law that provides foreign diplomats with protection from legal action in the country of their mission (the receiving state). The concept of diplomatic privileges and immunities was acknowledged in interactions of sovereign entities since ancient times. The diplomatic immunities and privileges, as we know and apply them today, advanced parallel with diplomatic practice, during the evolution of international justice.

Due to the state of affairs that there is no difference between diplomatic privileges and immunities, in terms of legal force, they are customarily used both in theory and practice, as a collective term. In general, the term “diplomatic privileges and immunities” means the rights, advantages and benefits, provided to diplomatic missions and their staff members, in order to facilitate the efficient performance of their functions.

Historically, the diplomatic privileges and immunities were granted on bilateral basis, but this could lead to misunderstandings or even armed conflicts, especially that in terms of power and influence states were not equal. In international doctrine, there were several basic approaches to the justification for diplomatic privileges and immunities.

The principle of reciprocity provided that granting diplomatic privileges and immunity was carried out on a reciprocal basis, the principle of alternative was based on the allegation that granting privileges and immunities is the right, not the obligation of a state, and the
principle of functional necessity, founded on the idea that the receiving state had to create proper conditions for effective operation of diplomatic missions. In view of that, the main three prevailing theories in history, the notion of diplomatic privileges and immunities was based on were:

- representative character: the foreign delegate should be treated, as if the sovereign himself was in his place (the oldest principle);
- extraterritorially: the diplomat and his suite were located beyond the territory of the receiving state, on the soil of their home state;
- functional necessity: the diplomatic immunities are necessary for the performance of the diplomatic functions.

Based on cases from the rich history of diplomatic relations, it can be determined that none of the concepts that served, as basis for diplomatic immunities and privileges in the past, applied solely, were be able to provide a satisfactory juridical basis for the provision of diplomatic immunities and privileges. The principle of representative character and the principle of extraterritoriality, being favored in different periods of time in diplomatic relations, were able to provide explanations to certain matters, with respect to diplomatic practice, yet, not all of them, and were not be able to provide a comprehensive justification for granting of privileges and immunities to diplomats. The principle of functional necessity, despite of its advantages (and popularity), is a leading theory of modern times that supports the doctrine of diplomatic privileges and immunities, still, is not a complete model, lacking a mechanism of restriction of diplomatic rights and freedoms.

In this fashion, while the provision of diplomatic privileges and immunities used to be put forward in terms of extraterritoriality and governmental representation in the past, in this day and age the dominant view is that privileges and immunities are granted on the basis of functional necessity. With respect to the sources of diplomacy law, this branch of law is part of international law and as such, its resources derive from international law. In line for the entry into force of the Vienna Convention and a high number of its parties, treaty is the main source of the law of diplomatic relations, namely this Convention, which serves, as the „Scripture” of diplomacy law and service.

The process of development and establishment of diplomatic privileges and immunities had been a contradictory and difficult process in the past. Privileges and immunities evolved progressively, based on existing practices in various countries and on the development of diplomatic traditions and institutions. The history of diplomacy shows that there were two contradictory trends in diplomatic privileges and immunities – their expansion and restriction.
At the beginning, the scope of diplomatic privileges and immunities had been expanding and their protection needed to be ensured. Later, emerged the need for legally bounding provisions on proper—physical safety of diplomatic representatives, also it was necessary to ensure the protection of their dignity. Initially, states managed to address these questions individually, so domestic laws, for example, penal and administrative codes, contained different relevant norms, according to which it could be said that generally, insulting an ambassador or foreign representative entailed a more severe punishment, than offending an individual.

The Vienna Convention, being among the most ratified international conventions, has shaped the comprehensive legal framework of the practice of diplomatic relations. The Convention has been created with an aim to establish a balance of rights between the sending and receiving state. The Convention codified the customary law of diplomatic relations, along with the range of diplomatic immunity.

It has to be noted here that privileges and immunities, granted to diplomats by the Convention, are based on the theory of functional necessity, which means that these privileges and immunities are necessary to support the diplomats to effectively execute their professional functions. The principles of extraterritoriality and representative character, associated with diplomatic privileges and immunities over a long time in history, were not addressed by the Convention. The model of extraterritoriality theorizes the legal fiction that the diplomat legally remained in the sending state even when he was temporally in the receiving state. The representative character theory suggested that the diplomat was the personification of the sending state, consequently, he should have received the same privileges, as the sovereign.

Privileges and immunities of agents of state have gone a long way by now, when they were justified and it had been cleared out that such invulnerabilities and exemptions are given not for the personal benefit of the holders. Diplomatic privileges and immunities are provided on a functional basis to promote the communication and cooperation of states in their international relations. There have been developed legal rules to balance the interests of sending and receiving states. Besides, states do not dare to one-sidedly limit or end diplomatic immunity.

Under the Vienna Convention, the diplomatic agent, who falls into the category of the diplomatic representative entitled to diplomatic privileges and immunities, is a diplomat, who is not a national or permanent resident of the receiving state. The qualified diplomatic agent is inviolable in the receiving state, enjoying privileges and immunities from the moment, when he enters the territory of the receiving state or his appointment is notified to the Ministry of...
Foreign Affairs (or such other ministry, as may be agreed). Diplomatic privileges and immunities are normally end when the diplomat leaves the receiving state or the reasonably period for his leave has expired (privileges and immunities last until this time even in a case of an armed conflict).

Concerning the different kinds of diplomatic privileges and immunities, there are some of them, among the personal privileges and immunities of diplomatic agents, which are not provided (codified) by international law, nonetheless, could be provided by receiving states in virtue of existing international customary practices (usages). For example, invitation of diplomats to programs, held in the receiving state, such as celebrations, anniversaries, military parades, demonstrations and rallies, according to rules of international courtesy and diplomatic protocol.

There is a tendency in the recent decades towards the reduction of differences between the provisions of diplomacy law and norms of international comity, particularly after the adoption of the Vienna Convention, when many of privileges, provided by receiving states on the base of courtesy, such as tax and customs exemptions, became legally binding. Some scholars see the difference between privileges and immunities in the fact that the former is a group of legal guarantees, required for the activity of diplomatic agents in the receiving state, while the latter relates to matters of prestige of the sending state (and is of ceremonial, protocollar character), regulated usually not by legally binding rules, but rather on the basis of norms of international comity or already existing usages.

Regarding the rationale of diplomatic privileges and immunities, the question is related to the double aspect of diplomatic representation: the sovereign immunity – immunity *ratione materiae*, attached to official acts of foreign states and the wider, but more conditional elements of functional privileges and immunities of the diplomatic staff and the premises.\(^{1838}\) The immunities *ratione personae*, attached to diplomatic agents, provide them with immunity from national proceedings in the receiving state, however, diplomats can not always enjoy immunity in international proceedings, in case of commitment of an international crime.\(^{1839}\)

Moreover, when diplomats leaves their office, they will enjoy general immunity regarding their official acts – *ratione materiae*. Diplomats enjoy immunity from the jurisdiction

\(^{1838}\) Brownlie: Principles… 351.

\(^{1839}\) The term „international crime“ initially appeared to characterize the aggressive war. J. A. Reshetov: Bor’ba s mezhdunarodnymi prestupleniami protiv mira i bezopasnosti. *(The fight with international crimes against peace and security.)* Mezhdunarodnye otnosheniia. Moskva, 1983, 6.
Diplomatic immunity could be waived and in that case local law shall be applied. In line for immunities _ratione personae_, they are attached to enable the proper functioning of particular offices of state, rather than to benefit the office-holder individually. It is true that diplomats are exempt from criminal, civil and administrative jurisdiction of the host country. However, this exemption may be waived by their home country – it is the sending state is to decide whether the immunity of a diplomatic representative should be waived. Furthermore, the immunity of a diplomat from the jurisdiction of the host country does not exempt him from the jurisdiction of his home country. It is also within the discretion of the host country to declare any member of the diplomatic staff _persona non grata_ (or unwanted person). This may be done at any time and there is no obligation to explain the decision. In such situations, the home country, as a rule, would recall the person or terminate his function with the mission.

The Vienna Convention grants diplomats a wide range of immunity, in fact and diplomatic immunity had always been regarded, as a legal institution, which was reflected first in usual, then in treaty norms of international law. The immunity of diplomatic agent from criminal, civil and administrative jurisdiction is considered in the Vienna Convention, with relevant exceptions.

The receiving state has limited possibilities to deal with abuse of immunity, committed by a diplomat. One of the applicable means is declaring the diplomat _persona non grata_. In this case, the sending state shall recall the diplomat or terminate his functions at the mission (representation), which also means that it has to eliminate the diplomat's immunity.  

On condition, the sending state rejects or miscarries to react to the receiving state's declaration regarding one of its diplomats, the receiving state may refuse to recognize a person, considered to be a member of the diplomatic mission. An other route, obtainable to the receiving state, is to reach an agreement with the sending state to waive the diplomat's immunity, when the sending state can waive the diplomatic immunity, and the waiver has to be expressed.

Personal inviolability is a fundamental principle and the basis of privileges and immunities of diplomatic agents, however, it is not absolute. Diplomatic immunity is not a justification of what otherwise would be illegal.
diplomatic agent should be governed by the very important rule – the obligation to respect the laws of the host state.

A diplomatic agent has enduring immunity, regarding his official acts and the immunity continues after he leaves the post. In the face of the fact that there is no obligatory definition of an „official act”, it could be assumed that the notion includes all matters with respect to diplomat’s official responsibilities. Further significant immunities are: a diplomatic agent is not obliged to give evidence, as a witness; he is exempt from execution in the receiving state; he is exempt from most of taxes of the receiving state.

Additionally, a diplomat has exemption to some extent from customs and public duties, social security legislation and military service. Besides, the personal luggage of the diplomatic agent is free from customs inspection, in practice, with certain exceptions, however. When there is a serious ground to assume that the baggage contains prohibited articles, the customs inspection can be carried out. The diplomat himself is not subject to personal search.

There are cases, in which receiving states refer to an other important standard – the principle of non-discrimination, when they want to avoid the provision of further rights to a diplomatic mission, on the basis of reciprocity. The principle of non-discrimination could be used, as a „restrictive” measure, since receiving states have to provide diplomatic missions and diplomats with equal status. In case of collision of these two principles, receiving states have to follow the principle of reciprocity. Subsequently, the application of the principle of reciprocity, practically, smoothen out the differences in regulation of status of diplomatic agents, fostering the creation of relevant norms.

Domestic legislation of the status of diplomatic agents enables the receiving states, in some cases, to address more fully this question, than it would be possible via the regulations of international law, taking into consideration their specifics and prerequisites. Domestic legislation of the receiving state plays an important role in the regulation of questions and norms of diplomacy law, being able to address them at a deeper level or deal with questions, not explicitly specified by international law.

The Vienna Convention also provides for the resolution of certain matters by the legislation of the receiving state. The regulations of the receiving state can not, certainly, collide with the provisions of the Vienna Convention, which take precedence over the domestic regulations. Judicial precedents, viewing by common law states, as additional sources of

1844 There are some fundamental differences, however, in approach to legal research between the United States and Great Britain. See more in: Robert Logan: United States Legal Research. Guides to Legal Research: No 2. Legal Information Resources Ltd. Mytholmroyd, 1990.
diplomacy law, also can regulate the status of diplomatic representatives, in particular cases. In these countries judicial precedents are considered by their courts, as sources of domestic law. Domestic legislation, judicial decisions, precedents, diplomatic practice, thus play an important role in the establishment of diplomacy law, law without being its formal sources. Elements of diplomatic practice, such as official notes, declarations and correspondence also contribute into the legal regulation of the status of diplomatic representatives in the receiving state, often used in argumentation of a state's position on a concrete issue. The regulation of certain aspects of the status of foreign diplomatic agents varies in the practice of states, depending on their legal system, customs and traditions. Notwithstanding, in concordance with the principle of reciprocity, present in the Vienna Convention, states have to conform their lawmaking activity to the domestic legislation, judicial and diplomatic practice of other states. With respect to freedom of diplomatic communication, states must keep a proper legal balance of interests of the sending and the receiving state. According to conventional international law, the protection of the diplomatic communication of the sending state, for example by means of inviolability of the diplomatic bag, is well-adjusted by the necessities of national security of the receiving state, by means of the requirement of consent to the use of the wireless transmitter by diplomatic agents. In practice, diplomatic communication of the sending state by electronic means, is electronically surveilled by the receiving state, dictated by reasons of its national security. The developments in state practice, owing to technological progress, regarding the contemporary means of diplomatic communications, therefore, necessitate the revision on the respectful provisions of international law of diplomatic communication. The series of abuse cases, as shown from examples presented in the present work, related to diplomatic privileges and immunities, demonstrate the state of affairs that there are serious problems in this area of international law. The lawbreaker diplomat is usually not prosecuted in the receiving state, because this question is within the discretion of the sending state. The Vienna Convention provides that immunity of diplomatic officials may be waived by the sending state, and in some cases, sending states agree to waive the immunity of their diplomats, but often after envoy had left the receiving state. Reasonably, receiving states prefer to prosecute the offenders themselves, after their diplomatic immunity was waived, rather than have him prosecuted by the sending state.
It is necessary to improve the existing legislation, which will match up to the realities of the modern world and to provide satisfactory enforcement mechanism to deal with abuse. The problem of diplomatic immunity became a worldwide issue, concerning every nation. Diplomatic immunity is not immunity from legal liability, but immunity from suit. Diplomats are not placed above the law. However, there is an opinion that the provisions of the Vienna Convention regarding importance of personal inviolability of diplomatic agents, as legal guarantee of their unimpeded and effective activity in the host state and inadmissibility of their detention, favors the situation of those diplomats, who are engaged in illegal activities in the host state, and seriously limits the ability of local law enforcement agencies to combat abuse of diplomatic privileges and immunities.

The authors of the Vienna Convention could not, in point of fact, foreseen in 1961 the impetuous development of scientific thought – life well exceeded the text of the Convention. Diplomatic agents need a certain amount of immunity to be safe from unjustifiable legal harassment, and at the same time, they have to respect and comply with the letter of law, keeping their activity abroad within the frame of their official functions. There are many cases of abuse of privileges and immunities and also cases of illegal acts by diplomats during their service at foreign missions.

It has been already claimed many times that the Vienna Convention to be revised and diplomatic privileges and immunities – transformed, so that diplomacy law would be able to adapt to changes of time and to prevent crimes, committed under the cover of diplomatic freedoms. The present provisions on the status of diplomatic agents, enshrined in the Vienna Convention, have to be improved in the light of the fact that states, being interrelated, try to boost their global presence and influence in the world, increasing the number of state servants abroad, as well. Since the adoption of the Vienna Convention, there have been many serious changes, related to diplomatic scope of activity, including the new forms of collection and transmission of information, not covered by this treaty. The existing lacunas in jurisdiction bring new challenges for diplomatic practice and sometimes lead to problems.

Organized crime, as one of the most serious global threats is becoming more internationalized and specialized, with many sophisticated forms of expression, degrading the positive values of contemporary society. The future fights against organized crime will be centralized at an international – or at least European level, including the unification of criminal

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Even with the high level of contemporary scientific development, the problem of protection of diplomats has not been fully resolved. Diplomatic representatives are still in danger, performing their functions and the growing wave of terrorism worldwide generated new tasks, related to their protection. Increased protection is also needed to be provided to diplomatic information – the special category of data.

Consequently, in modern diplomacy, the protection of diplomatic agents has to be ensured at physical, psychological, technical and informational level. It may be required to treat the information – whether on hard copy or in electronic form, with certain safety measures.

Diplomats have to be also very cautious with automobiles, which park in the vicinity of diplomatic premises and diplomatic residences, due to a number of cases, when motor vehicles, stuffed with explosives were used during terrorist attacks, since extremist operations have become increasingly common today.

There were many different terrorist organizations and groups, carrying out activities, often directed at diplomatic missions. Cases of kidnapping of diplomatic personnel, murder, armed attacks on diplomatic premises, seizure of buildings or their explosion have become quite frequent. To combat terrorism, special extra safety measures are required. Scholars believe that the question of the full protection of diplomatic agents in the territory of the host state, as well during his transit through the territory of other countries is not enough developed in contemporary international law, neither by science of international law, nor by domestic legislations. Therefore, further development of these matters would be necessary, along with improvement of the already existing legislation and codification of new norms with respect to the protection of diplomats.

The attacks on ambassadors and diplomatic personnel, in general, is not a new phenomenon. Acts of violence against envoys had already taken place in ancient times. Diplomats had been always the favored target of criminals and in modern times become the preferred target of terrorists. International law addresses the matter of protection of diplomats and certain conventions had been created in this regard. Respectively, the host state has to facilitate the transportation of diplomatic personnel (and property) in case of armed conflicts, as well.

With adoption of the diplomatic convention in 1961, the responsibility to protect diplomatic officials is on the host country, both in times of peace and war. Nevertheless, diplomats are still being kidnapped or taken hostage by radical groups to force state authorities.

Svrček op. cit. 636.
to agree with their conditions, therefore the life of contemporary envoys is still unsafe. It is no doubt that the measures of protection of diplomatic personnel should be increased.

Grounded on presented literature and extensive research on diplomatic privileges and immunities of career diplomats, there are a number of conclusions, which can be distinguished. Scholars note that the principles of the Vienna Convention „seem incapable of amendment“ 1848. The Convention is not likely to be transformed in the foreseeable future, because of the fear of reciprocity, it is unlikely that the international community will pass any legislation or make any amendments to it „that would make even a small dent in the absolute nature of diplomatic immunity“ 1849.

In line for diplomatic immunity is „adamantly prized and guarded by all parties to the VCDR, States typically resist any attempt to whittle away these protections for their own diplomats.“ 1850. Notwithstanding, new ideas were proposed, to administer justice, presented in the closing part of this Chapter.

The Vienna Convention, due to its limitations, is not able to address the new emerging related issues alone, for that reason, experts suggest to draft an annex to address the most pertinent issues. Furthermore, there are proposals regarding the compensation of victims of criminal acts, committed by diplomats, by introduction of obligatory insurance, also the creation of claims funds would provide the necessary financial means for recompense of the sufferers.

Addressing the question of victim compensation is just a part of the solution to the issues, related to diplomatic privileges and immunities – the main task is to ensure that the perpetrators of such crimes would be held accountable and prosecuted. Supplementary bi- or rather, multilateral agreements between states also could be effective to specify or even reduce diplomatic immunity, on terms of waiver.

In addition, it is necessary to determine the scope of diplomatic immunities and privileges, during their transit through third states. Besides, it is needed to specify the size of the diplomatic bag, allow its electronic scanning and other ways of nonintrusive examination of the diplomatic bag. The conveyance of prohibited articles is a risk factor for the host country, so states could decide on matters, related to the diplomatic bag, accepting a list of allowed items.

1848 Brown: Diplomatic… 85.
1850 Kappus op. cit. 271-272.
With regard to methods of curbing abuse, there is a number of attempts have been made to solve the problem of abuse of diplomatic immunity. States have the power and legal means to punish the violations of abuse. Some of the proposed solutions so far, at international level, along with the review and amendment of the Vienna Convention is purchase of insurance by diplomats of the sending state; establishment of a special - international and/or domestic compensation fund for the victims of abuse; declaration of persona non grata, request for waiver of immunity from the sending state; trial of the crime by the International Court of Justice; severing the bilateral diplomatic relations, and even political and economic isolation of felonious nations at international level. (It has to be taken into account that the sending state under the principle of reciprocity will also introduce such measures and sanctions, towards the diplomats of the receiving state.)

The compromise approach, normally taken regarding the crimes, committed by diplomats, led to the state of affairs, when diplomatic agents often view diplomatic immunity, as impunity. The trend towards restricting diplomatic immunity was reflected in the Vienna Convention, a serious reduction regarding the persons, entitled to broad immunities. A comprehensive solution is needed for accountability of diplomatic agents. The offenders have to be brought to account.

The wrongdoer diplomat must be fully accountable for his crimes, which would include trial and punishment for the crime committed, and in justified cases. Yet, all these proposed solutions, for their successful implementation would require an effective mechanism of enforcement, developed and introduced with the consent of states. Therefore, a new immunity abuse policy is needed, on the basis of the Vienna Convention.

States bear primary responsibility for protection of their citizens, and also bear primary accountability for the conduct of their citizens abroad. Due to the increasing frequency of assaults on diplomatic personnel, it should be specified what are the exact "appropriate steps" to be taken by the host state, referred to in the Vienna Convention with respect to the protection of diplomats. The Convention neither imposes a penalty for the infringements, nor a compensation for damages.

The protection of diplomatic personnel in host countries is mostly afforded by measures, carried out by local (municipal) police, such as police post standing, uniformed presence, moving patrols, marked police vehicles. Embassies, if affordable, hire private security guards and install additional emergency telephone lines to be connected to police stations. Subsequently, the protection of diplomatic personnel and embassy premises in our days can not be called consistent and sufficient under all circumstances, in every state.
sending state also could provide armed guard to protect their diplomats abroad, but in this case a question arises regarding the legal side of use and transportation of armaments.

Regarding the privilege of diplomatic missions to organize their internal life it has its boundaries, as well. Reference to this privilege allows only in the most general way to justify the legitimacy of the existence of internal security and to define the scope of its activity. The essence of the Vienna Convention is to ensure inviolability of a diplomatic mission from executive jurisdiction of the receiving state and immunity from the executive and enforcement jurisdiction of the sending state. Authorities of the host state should be able to obtain a permission to search the premises of the diplomatic mission, with strong evidence of involvement of the concerned embassy in criminal act, or maintaining ties to extremist groups and organizations.

The review of advancement of diplomatic privileges and immunities, starting from the most basic writings to present day materials and considerations, shows a tendency towards narrowing the scope of these rights and freedoms. Proposals for amending the Vienna Convention to decrease the scope of diplomatic immunity, thus reduce the number of related criminal acts, committed by diplomatic agents, have to consider a possible important factor. The process of narrowing of diplomatic immunity could be slowed down by the fact that such tightening would, logically, deprive diplomatic immunity from its absolute status.

Therefore, experts warn from this step, fearing of possible nuisance of diplomatic officers from the part of the receiving state, for example, by false accusations, which could lead to arrest and detention of the alleged diplomatic offenders or even their expel. Unilateral reduction of privileges and immunities of foreign diplomatic by the receiving state could result in reciprocal – even stricter reduction of immunity or other, unfavorable measures by the sending states. Consequently, diplomatic privileges and immunities heavily depend on reciprocity.

The development of new forms of relationships between the subjects of international law can foster the emergence of new forms of diplomatic activity. These new forms, in turn, could enhance the appearance of new norms, which would governing diplomatic activity. In this fashion, the adoption of „good practices” package that would advise a standard way of complying with legal issues, based on expertise, applied in the field of diplomatic service of states. The diplomatic practice, conducted within the frame of diplomacy law and in harmony with the rules of international law, might contribute into the emergence of new norms and standards, and broader – in the birth of new diplomatic activity.
It could be ascertained at this point that receiving states normally did not harm delegates and envoys, for religious or/and practical reasons, fearing of the anger of gods or retribution of sending states. As a matter of fact, all civilizations acknowledged the need for protection of delegates from detriment while they perform the duties, therefore their inviolability became a universal customary rule (proving its importance even for the early states). The level of protection depended on the given society. This highly respectful attitude of nations towards inviolability of envoys fostered the justification and rationalization of diplomatic immunities, along with their growth.

At the beginning, the concern was not over the immunity of delegates from the law of the host country, but over ensuring their personal safety. Abusing a herald – an official messenger was considered to be a wicked act. Diplomacy law, along with its central institution of privileges and immunities, and diplomacy in general, had been forming simultaneously with development of states and served, as an instrument of realization of their foreign policy goals.

The practice and doctrine of legal immunity of diplomats from the law of the receiving state came a long way, evolving slowly and progressively. With time, the immunity of ambassadors was extended to their suite and vicinity. The provision of diplomats with protecting measures of absolute character, such as privileges and immunities, exposed these immunities to abuse.

Diplomacy changes together with the global processes, responding "in the character of both state and society". 1851

Diplomacy is that indispensable area, which presents the foreign policy of a state in foreign countries of the world. Even so, there is "ample ground for concern about the future of the discipline" of diplomacy, which, nonetheless, was able to cope with perplexing reality, due to its flexibility.

The modern diplomats have to reinvent, reassert and reaffirm themselves. According to the predictions of experts, the regulating role of diplomacy law in international relations will strengthen, owing to intensification of interstate contacts worldwide. The requirement towards transformation of forms, methods and institutions of diplomacy, will continue to cause changes of its infrastructure. Nonetheless, the fundamental principles and norms of diplomacy law will stay in effect. By means of diplomatic agents play the role of intermediaries in establishment and maintenance of international relations, the important goal of international legal regulation of diplomatic privileges and immunities is the assurance of successful cooperation between the participants of the system of international relations. The management of diplomatic immunity, viewed separately from state immunity by now, is maintained by states at universal level, even


1852 Eyefinger: Diplomacy… 838.
with recurrent cases of abuse, for diplomatic immunity is considered essential in upholding peace and security in the world. At the same time, the large part of issues, concerning diplomacy law, needs to be addressed at legislative level of states through implementation of international legal norms in national legislation. However, it is vital in international legal regulation of privileges and immunities of diplomatic agents that international standards would not remain just declarative and would ensure the implementation of norms. It is impermissible to abuse diplomatic privileges and immunities and to reject responsibility for crimes, committed on the territory of foreign states.

One of the trends is the steady expansion of the circle of persons, who enjoy privileges and immunities, and the other one is erasing of differences in the status of various categories of diplomatic staff. These tendencies presume that the diplomatic status, except, perhaps only the honorable privileges, will gradually be extended to all categories of diplomatic staff, although this process is repressed by certain factors, such as differences between states in terms of politics, population, geographical location, the nature of relations in the international arena, as well as by the strengthening of the current trend towards limiting diplomatic privileges and immunities.

To conclude, it can be said that the Vienna Convention forms the legal background for diplomatic privileges and immunities, providing space for less official organization of practice. The collected cases of the dissertation clearly show that the issues, emerging in the sphere of diplomatic relations, related to diplomatic agents, are not always resolved strictly following the provisions of the Vienna Convention. The Convention, in this way, frameworks the authorized context for diplomatic activity and then the everyday practice and realities of our complex life determine the actual answer or step.

There are some provisions in certain legal studies, indicating the emergence of a new approach to the institution of diplomatic privileges and immunities, which have not received due development in the doctrine of international law. Consequently, at present we cannot talk about the existence of a coherent theory, and therefore, future research of this area of diplomacy law is needed.

The results of doctoral thesis could serve, as a base for future scientific papers, studies and research, since regarding the topic of diplomatic privileges and immunities, contemporary international law has to develop more effective responses to fill the existing gaps. Accordingly, the present dissertation, hopefully, will contribute to awareness raising regarding the current issues in the field of diplomatic privileges and immunities that need to be addressed via legal steps.
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