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The specific aspects of immunities and privileges of diplomatic agents in international law: legal theory and practice

Ph. D. thesis

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“Material, prepared for scientific debate.”

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To my beloved parents.
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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,1 which brings good results. In this fashion, among other factors, the intensification of mass international tourism2 impacted directly the embassies,3 by increasing and changing the nature of their work.4 At the same time, we experience some downsides of this course – the challenges to society increasingly transcend national borders,5 therefore new sources of danger, conflicts and multiple tensions arise in the world, which can lead to wars.6 Besides, we are facing the crisis of sovereignty7 and identity that affects the European Union.8 Above and beyond, „The world order changes quite quickly – like the types of iPhones.9 This is where diplomacy10 steps in, as the international science and practice of peaceful settlement of disputes,11 regarding issues both on the earth and in the outer space12 (by means of space

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1 V. V. Dvornichenko (co-author): Istoriia mezhdunarodnogo i natsional’nogo turizma. (The history of international and national tourism.) MESI. Moskva, 2001, 140-141.
4 Mass tourism has also increased the public awareness of the world. Bazouni op.cit. 59.
7 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.
diplomacy), since conflict resolution necessitates negotiating of international conflicts via diplomatic way.\textsuperscript{14}

The historical experience of human society shows that the change of socio-economic formations determines the content and organizational form of state foreign policy, and diplomatic service plays an important role in this regard,\textsuperscript{15} which differs from other types of public service by specifics of its activities in the field of ensuring international security and sovereignty of a country.\textsuperscript{16} Furthermore, in today's foreign policy conflicts, with respect to territorial issues, states,\textsuperscript{17} depending on the current international political situation, are able to go the furthest regarding the field of advocacy. International legal norms and the moral ideas of the international community are barely able to prevent states from this pursuit,\textsuperscript{18} for states are not eager to give up a part of their sovereignty,\textsuperscript{19} only under pressure from a higher power.\textsuperscript{20} In this context, an important role in international relations\textsuperscript{21} is given to diplomacy,\textsuperscript{22} which is delineated by certain dictionaries as “Dexterity or artfulness in securing advantages without

\textsuperscript{13} J. M. Baturin: Kosmicheskaia diplomaia i mezhdunarodnoe pravo. (Space diplomacy and international law.) Zvezdny gorodok. 2006, 5–7.
\textsuperscript{14} McDougal and Lasswell, speaking of diplomacy as instrument of policy and classification of strategies, claim that diplomacy depends primarily upon symbols in the form of offers, counteroffers and agreements among elite figures. A strategy uses indulgences, such as economic aid to allies or deprivations, such as boycott of unfriendly powers, and proceeds in isolation or coalition. Myres S. McDougal–Harold D. Lasswell: The Identification and Appraisal of Diverse Systems of Public Order. Americal Journal of International Law. No. 53. The American Society of International Law. 1959, 1–29.
\textsuperscript{16} There are have been many reasons, why states obey the rules that are usually unenforceable, such as power and coercion, self-interest and reciprocald benefits, institutionalized habit or inertia, the existence of a sense of community, procedural legitimacy of the process of rule creation, or the moral suasion that derives from a shared sense of justice. Andrew Hurell: International Society and the Study of Regimes: A Reflective Approach. In: Volker Rittberger (ed.): Regime Theory and International Relations. Clarendon Press. Oxford, 1993, 53.
\textsuperscript{17} Waltz considers that states are „unitary actors who, at a minimum, seek their own preservation and, at maximum, drive for universal domination”. Kenneth Waltz: Theory of International Politics. Random House. New York, 1979, 118.
arousing hostility..." and "skill in removing difficulties." It is the essential core of diplomacy to regulate the relations between states nonviolently, consequently, diplomacy via its omnilateral debates and bilateral exchanges helps to determine what is "the opinion of mankind", particularly that no state is an island and there is an organic interdependence of states. Diplomats, being members of 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.

Nevertheless, 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. Some experts began to talk about decadence – the decline of traditional diplomacy back in the twentieth century. 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. There were designs to replace the functions of permanent diplomatic representations with a small body of

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25 Jönsson points out that there are several attempt of theorising diplomacy, yet, no single widely accepted theory. Jönsson op. cit. 25.
26 Holsti believes that diplomacy has a restraining influence on state power, by "timing the sovereigns". Kalevi J. Holsti: Taming the Sovereigns: Institutional Change in International Politics. Cambridge University Press. New York, 2004, 184.
29 In the present thesis, words „envoy”, „mercy”, „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.
32 The expressions „home country”, „sending state” or “accrediting state” are used interchangeably in this thesis and refer to the diplomat’s country of nationality, which he represents in a diplomatic state, as a member of the diplomatic mission, accredited in the host country.
“superambassadors”, who would coordinate the international relations of their governments with other countries within a more or less large geographical region.\textsuperscript{37}

“When things go wrong in international affairs, we frequently find people talking about a failure of diplomacy.”\textsuperscript{38} There is a number of people, still thinking that high-ranking diplomats, viewed by some as an elite group with a common culture,\textsuperscript{39} bear manly a representational role,\textsuperscript{40} questioning the need for diplomacy,\textsuperscript{41} by stating that the traditional representational function of ambassadors is outdated, so their representational role would be better performed by visiting ministers or national celebrities.\textsuperscript{42} In addition, 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.\textsuperscript{43} 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 specialist 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.\textsuperscript{44} Many countries have perceived a relative decline in the prestige of their diplomatic services, considering that an optimization of the diplomatic process was needed.\textsuperscript{45} Then some have argued of late that there is no real need for diplomats anymore.\textsuperscript{46} Accordingly to a more radical opinion, the world of diplomacy needs ventilation badly or it

\textsuperscript{41} Anti-diplomacy arose in the newly formed states, referring to the intra-national estrangement in these lands, giving rise to utopianism that was aimed at ending diplomacy. Christen Jönsson: Theorising diplomacy. In: B. J. C. McKercher (ed.): Routledge Handbook of Diplomacy and Statecraft. Routledge. New York, 2012, 22.
\textsuperscript{42} “National representation and promotion is no longer delivered by impressive buildings and stiff protocol.” Riordan op. cit. 110.
\textsuperscript{43} There are authors, who begin to doubt the need for resident missions, in general. José Calvet de Magalhaes: The Pure Concept of Diplomacy. Greenwood Press, Inc. Westport, 1988, 88-99.
may risk extinction, and that the veil of diplomatic privileges should be lifted, along with avoiding the narrowing and outdated structures of traditional diplomacy.47

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,48 while the Foreign Office struggles to keep up with the growing demands.49 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 world50 that became interdependent, in ways, unimaginable before.51 “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,52 both in bilateral and multilateral contexts.”53 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.54 By practicing the art of negotiation, diplomats55 are able to end or avoid international conflicts,56 since security issues, human rights, environmental concerns, water rights, trade agreements, the birth of international organizations, efforts at peacekeeping, arms control57 and indeed, every aspect of foreign relations involves negotiation,

51 Riordan op. cit. 50.
52 This statement about the necessity of diplomacy is especially correct in virtue of the fact that the central activity of diplomats (and foreign policy leaders) is negotiation, which is both a skill and a science.
54 Sharp op. cit. 1.
55 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.
57 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
which in the end is about strategic interaction. In this way, 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”. Not a single day passes by that we would not hear of a humanitarian crisis around the world. 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 revival 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.

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60 “Diplomacy remains significant because its essence lies in the institution and not in the machinery...” Melissen op. cit. 37.
61 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.
64 Kirecci op. cit. 25.
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 immunities and privileges in international law, including the related legal 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 international law, require representation, to obtain legal capacity. 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

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

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

69 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.


72 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.

73 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.” Stevan Glichitch: Some Legal Aspects of the Petrov Affair. The Australian Quaterly. Vol. 26, No 2. 1954, 20.


diplomatic law, and this branch of law plays a significant role in establishing, nurturing and maintaining of diplomatic interactions between nations,\(^76\) which are always multidimensional.\(^77\)

The diplomatic service is a system of the work, performed by the diplomatic agents in the central apparatus and abroad, aimed at fulfillment of diplomatic tasks of their state.\(^78\) Subsequently, strategic behavior of states\(^79\) on the international arena is regulated by the legal environment and diplomacy can be a cause of change for international law. The main method of diplomacy is communication of all forms, including permanent contacts of a political\(^80\) nature between the agents of states. On this way, the major responsibilities of a 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.

To avoid the cases of misuse and abuse of diplomatic advantages, also their prevention is a serious challenge today. Improvement of the “diplomatic apparatus”,\(^81\) 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,\(^82\) 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,\(^83\) serves the policy of the

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\(^76\) 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.

\(^77\) 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.


\(^80\) 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.

\(^81\) Goldsmith–Posner op. cit. 9.

\(^82\) 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.

consolidation of peace and peaceful coexistence of peoples. 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.”

The subject of diplomatic immunities and privileges 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, 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 the laws of the host state. The abuse of diplomatic immunity sometimes led to violation of human rights of civil persons. 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

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88 The Vienna Convention has been published in Hungary by Legislative Decree No. 22 on 24 September, 1965.
89 The expression of „receiving state” and „host country” are used interchangeably in the present thesis and refer to the particular country, where a diplomat resides for the purpose of a diplomatic mission.
91 As aptly noted by our contemporary, “Even the terrorist activity, an individual or collective act of destruction, become habitual companions of the new world, being a wrong-headed ambition for selfhood…”. Aleksandr Neklessa: Serdtse t’my. (The heart of darkness.) Svobodnaia Mysl’. No 3 (1651). OOO „Politizdat”. Moskva, 2015, 112.
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.94 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.95 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.96 For all that, a practical
solution to this continuing problem is needed. Diplomatic 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 a diplomatic agent, together with the
matter of privileges and immunities provided to them, has significantly grown, in connection
with the question of the faithful execution of diplomat's official functions, due to the cases of
abuse of their position. In the present dissertation, according to my professional experience and
scope of interests, I intend to analyze the current state of affairs concerning the diplomatic
activity, concentrating on and presenting the actual issues related to the practice of diplomatic
agents’ activity, namely to their relation to privileges and immunities, which remain one of the
most problematic matters of diplomatic 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

96 V. V. Petrik: Konsul’sko-diplomaticheskaia služba Rossii. (Consular-diplomatic service of Russia.)
Izdatel’stvo Tomskogo Politekhnicheskogo Universiteta. Tomsk, 2010, 44.
is aimed at exploration and better understanding of the characteristics and the specifics of the personal privileges and immunities of diplomatic agents through examination of the theoretical basis and practice of diplomacy, also to inspect the extent to which these privileges and immunities could be invoked, highlight the new challenges in this area that diplomats have to handle in the twentieth 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:

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

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 and the description of the research area investigated. First, the statement of the problem is formulated, elaborating on the challenges diplomacy and diplomatic agents have to face today. Second, this section presents the actuality and significance of the selected topic to research, setting the aims to be achieved at the completion of the study. Third, the summary of the thesis is provided, along with the presentation of its structure. Finally, the methods of research were indicated, which is a descriptive examination of the history and present of the subject of diplomatic inviolability. To complete the thesis and establish consequences, methods, worked out in the field of legal theory were used. The theoretical parts of the present work are supported by bibliography on international and diplomacy law, completed in some cases by literature on theory and practice of international relations.

Chapter II introduces the theoretical basis of the subject of privileges and immunities. To grasp the concept of diplomatic privileges and immunities, it is helpful to briefly survey its historical evolution, together with the emergence of the notion and career of a diplomat. Therefore, this chapter starts with a historical excursus into the past of diplomacy, embracing the period between the ancient times and the modern age. The study of the diplomatic practice has a long tradition. The need for a comprehensive analysis of diplomatic relations from ancient epochs to the present time to deepen the existing knowledge about the problems of diplomacy, motivated a great number of scholars to examine the organization of the diplomatic corps, the issues of diplomatic privileges and immunities, and the functioning of diplomatic missions. The question why diplomatic envoys had to be provided with highly benevolent treatment had been posed and responded to in excess of eras. Diplomats, the former official messengers, meant to be delegates of peace, so their peacekeeping activity should had been provided with serious and distinctive protection. The monographs, textbooks and other theoretical works, created by now, make a large quantity of scientific material on study of development of diplomatic activity, executed by supreme authorities during various stages of international relations, starting from Ancient Greece, Ancient Rome, Byzantium, also investigating the basic principles of contemporary diplomacy and issues of diplomatic privileges and immunities. The history of processes, regarding evolvement and development of diplomatic privileges and immunities, plays an important role in understanding the core and essential characteristics of this institution, which necessitates to study the original sources – diplomatic documents, agreements and other historical literature. Furthermore, in Chapter II, besides the origination of concept of diplomatic privileges and immunities, examines the conditions of their commencement and termination. The Chapter also deals with the clarification of factors of reciprocity and non-discrimination,
which are vital notions of diplomatic law.

Chapter III provides a comprehensive review of the sources and subjects of diplomatic 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, diplomatic 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 diplomatic law regulate the activities of subjects of international law in order to maintain and strengthen peace and peaceful coexistence of nations. In addition, numerous 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 diplomatic law should be applied and implemented in a particular state and specify the issues, not addressed by the existing diplomatic laws or international law. The judicial decisions and broader – the jurisprudence aids to fill in the gaps of possibly too vague or equivocal regulations, clarifying the perplexing points. Whereas agreements are the essential sources of contemporary diplomatic 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. Compliance with the political and legal framework of the diplomatic service is essential for the establishment of diplomatic missions and for the establishment and development of diplomatic relations.

Chapter IV clarifies the notion of the diplomatic agent and describes the main categories of diplomatic immunity. In the Chapter are also studied some of the most significant cases, 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 and their immediate family members have the most protection, and they are immune from criminal prosecution and civil lawsuits. According to the theory of functional necessity, it is implicit that diplomatic immunity is a necessity for the maintenance of stable diplomatic relations between states. Diplomatic agents, carrying out their
diplomatic mission, by virtue of state immunity are exempted from the jurisdiction\(^{97}\) of the receiving state. Diplomatic agents should be treated as employees of public institutions of the sending state and so are released from the jurisdiction of a foreign state, however immunities are granted not to these “employees”, but to the sending state in respect of its foreign officers. As for the diplomatic privileges – certain additional rights and benefits, designed to facilitate the work of diplomatic missions and their personnel, initially they did not have a legal nature and for that reason they were not legally binding to states. Provision of diplomatic privileges used to be based on the rules of international comity,\(^{98}\) and were of optional character. With the adoption of the Vienna Convention, these differences between the diplomatic privileges and immunities were significantly reduced and the procedures of international comity, such as tax and customs privileges of diplomats, became norms of international law, therefore legally binding.

Chapter V discusses the special subjects 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, and enforcement instruments in this field. Diplomatic privileges and immunities are convened not for personal gain, but to create the most favorable conditions for the exercise of official functions of diplomatic agents. The legal nature of diplomatic immunities is that they are based on the principle that one sovereign state is not subject to an other sovereign state, and diplomatic agents represent the respective state itself. The Chapter also considers the means of international protection of diplomatic agents. The laws, which protect diplomats and embassies had also developed from customs that date back to the ancient past. The essence of the definition of diplomatic privileges and immunities, available in theory of diplomacy and international law, is to ensure that they are understood as a set of special privileges, rights and benefits granted to foreign diplomatic missions and their staff (and other, related persons), who are protected by international law on the whole territory of the receiving state. This is the key component, the central institution of the whole diplomatic law. In diplomatic and treaty practice of states, habitually legal theorists consider a set or group of specified rights and benefits, privileges and immunities, provided to

\(^{97}\) Jurisdiction is a form of legal power or competence, to control the legal relations of those subjects to that power. In public international law, often no international agreement could be reached over the scope of common goals and states proceed with policies, which create excessive assertions of jurisdiction and as a result, lead to a conflict situation. Patrick Capps–Malcolm Evans–Stratos Konstadinidis (eds.): Asserting Jurisdiction: International and Legal Perspectives. Hart Publishing. Oxford, 2003, xxv.

\(^{98}\) The term „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 „courtesy”. Huber, on the other side, seemed to have regarded comity, as being part of *ius gentium*, sometimes. Michael Akehurst: Jurisdiction in International Law. British Yearbook of Interational Law. No. 46. 1972-1973, 215.
diplomats, which complement each other. Contemporary diplomatic activity is also regulated by the provisions of the Convention on the Prevention of Crime and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents.

Chapter VI contains the conclusions on the present thesis, together with the outcome of the research conducted. In addition to deductions, the Chapter includes perspectives, related to the filed 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 diplomatic law, were used as theoretical basis of the paper. To reach the study's objectives, to define the consequences and make conclusions, I strived for a broad use of the available legal literature. Therefore, my 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, were supported by a wide-ranging spectrum of bibliography.

The main research method, applied during the preparation of the thesis is 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, French and German. In concordance with my background, language skills and scientific conceptions, I considered it 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 across-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 diplomatic law, and include new related historiographical materials, along with critical 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 diplomatic service 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 used 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 diplomatic 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 diplomatic law had been formulated in the works of Ch. de Martens (1854),99 I. Kiss (1876),100 R. Monnet (1910),101 L. Búza (1935),102 D. B. Levin

100 Kiss wrote the first textbook in Hungary that systematized international law. István Kiss: Európai nemzetközi jog. (European international law.) Érsek-Lyceumi Kö- és Könyvnyomda. Eger, 1876.
(1949), 103 L. Oppenheim (1955), 104 H. Nicolson (1963), 105 E. Ustor (1965), 106 G. Tunkin (1970), just to name a few. (It should be added here, that except of the mentioned Hungarian authors, other Hungarian legal scholars 108 have also paid significant attention to diplomatic law, including the matter of privileges and immunities, in their writings on international law.) 109 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), 110 I. P. Blishchenko (1990), 111 J. Hargitai (2005), 112 E. Denza (2008), 113 Y. G. Demin (2010), 114 G. R. Berridge (2010). 115

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

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103 D. B. Levin: Diplomaticheskii immunitet. (Diplomatic immunity.) Izdatel'stvo Akademii Nauk SSSR. Moskva, 1949. [Hereinafter: Levin: Diplomaticheskii…]


109 Considering the successive characteristics and trends of the science of Hungarian international law, four periods could be distinguished: 1) the period of the Habsburg Empire, 2) the so-called Horthy era, 3) the period, which started after the World War II and lasted until the change of regime, and 4) starting since 1989 – the era of the rule of law. Péter Kovács: A magyarországi nemzetközi jogtudomány rövid áttekintése. (A brief overview of international jurisprudence in Hungary.) In: András Jakab–Attila Menyhárd (eds.): Jogtudomány. Tudománytörténeti és tudományelméleti írások, gyakorlati tanácsokkal. HVG-ORAC Lap- és Könyvkiadó Kft. Budapest, 2015, 334.


112 József Hargitai: A diplomáciai és konzuli kapcsolatok joga. (The law of diplomatic and consular relations.) Budapest, 2005.


agreements, as well as regulations of the legislation of certain states, and the 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
diplomatic law. However, the central rules of rights and privileges of foreign envoys
concluded into this international treaty had been practiced already for more than two hundred
years. Diplomatic law used to consist of customary rules before the adoption of the Convention.
The adoption of the Vienna 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 Vienna Convention provided
the possibility to conclude further international (multilateral) agreements on the status and
protection of diplomatic agents. The majority of provisions of the Vienna 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.

The cases, presented in the present thesis in order to illustrate the development, theory
and practice, also issues, regarding the 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.

116 The scope of diplomatic privileges and immunities is specified in Articles 22-37 of the Vienna Convention.
II. Theoretical basis of the subject of privileges and immunities

II. 1. The conceptual clarification of the notion of the diplomatic agent

Investigating the question of international legal regulation of diplomatic privileges and immunities, it is worth to pay some attention to the concept of the diplomat itself, before moving next to the particular aspects the researched topic of diplomatic privileges and immunities. Accordingly, the present section is devoted to the transformation of the notion of the diplomat, presenting how it was perceived then and now. 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: “The respect which is due to sovereigns should reflect upon their representatives, and particularly upon an ambassador, as representing the person of his master in the highest degree.”\textsuperscript{118} 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.

“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.\textsuperscript{119} As formulated by Nicolson, “the business of a diplomatist” is to represent his own government in a foreign country,\textsuperscript{120} so to be a diplomat is a transnational profession,\textsuperscript{121} and diplomacy could be, to some, a professional fraternity.\textsuperscript{122} An ambassador\textsuperscript{123} is a diplomatic agent of the highest rank,\textsuperscript{124} viewed by Wotton as “one official the state cannot do without”.\textsuperscript{125} The difference between the ranks of envoys has been established due to diplomatic protocol and not due to law.\textsuperscript{126}

Due to the fact that diplomatic service is an activity, aimed at achieving foreign policy goals of states, the diplomatic service, as the most important tool of state authority and public

\textsuperscript{119} Freeman op. cit. 3.
\textsuperscript{123} Berridge (ed.): Diplomatic Classics… 5.
\textsuperscript{124} International practice shows that accreditation of a citizen of the host country as an ambassador, is not applied. Melihov op. cit. 21.
\textsuperscript{125} Freeman op. cit. 9.
administration, formulates very high requirements towards the diplomatic servants. Diplomacy offers non-military contribution to national security, for this can not be left to military power alone.127 “When something difficult needs to be accomplished, or when a settlement or general improvement in international relations is in prospect, more and better diplomacy is often needed.”128 The signals, sent through diplomacy can be loud and clear or they can be quite symbolic.129 In this fashion, Callières, claims that diplomacy should be a separate profession: “... 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.”130

Violence against an ambassador not only does an injury to the sovereign, whom he represents, but the violator attacks the common safety and welfare of all nations and renders 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 has to provide an ambassador with “the most particular protection and to see that he enjoys all possible safety”. Without such security, an envoy might be “troubled, harassed, and maltreated upon a thousand pretexts”, and he should have nothing to fear from the sovereign, to whom he is sent.131 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.”132 From the demonstration of necessity and the right of maintaining embassies, it follows that ambassadors (and other diplomatic representatives) should be placed in a position of perfect safety and inviolability, for if their person is not protected from violence of every kind, the right to maintain embassies becomes of doubtful value and can hardly be exercised with success. The term “inviolability” is sometimes used as a synonym to immunity,
and at other times – in a more restrictive sense of diplomatic dignity, assuming that the receiving state is 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 means that the receiving state has to take legal action against any person who would insult or harm an envoy.

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: “Embassy is an insular, inward-oriented community, with a distinct ethos – a home outpost implanted in a foreign land.” In this context, an ambassador is responsible for the wellbeing of all his staff. (Torquato remarked back in 1582 that to have the perfect ambassador, one must first have the perfect prince, however.) 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. Most countries have a formal or informal internal system of ranking of their own ambassadors, in grades or categories. 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. (There are countries like Germany and China, which attach ranks to capitals.) Every diplomatic service has 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. (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.) In case of the United States, it was George F. Kennan, accredited in Moscow, in the first years of the Cold War, widely acknowledged as a giant figure in policy

133 Vienna Convention. Article 29.
136 St. Thomas Aquinas was of the opinion that one of the duties of the kingly office was that the king would be solicitous for its improvement. St. Thomas Aquinas: On kingship, to the King of Cyprus. Pontifical Institute of Medieval Studies. Toronto, 1949, 67.
139 Vajda op. cit. 74.
140 Speaking of professionalism in the conduct of foreign policy, Kennan emphasizes that by developing a corps of professionals 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.
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{141} in 1952,\textsuperscript{142} but served only a short term, being declared \textit{persona non grata} by the Soviets for some unfriendly remarks, made about Soviet treatment of Western diplomats while on a visit to Berlin.\textsuperscript{143} The United States justified the speech of the diplomat, but recalled him.\textsuperscript{144}

The Vienna Convention that provides 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”, defines the concept of “diplomatic agent” as head of the mission or member of the diplomatic staff of the mission.\textsuperscript{145} In this way, the general rule of our days is that a diplomatic agent is a person, who was designated by the sending state and accredited in the receiving state. The sending state appoints a diplomatic agent, pursuant to its right to freely appoint the members of the staff of the mission.\textsuperscript{146} Diplomatic agents should be of the nationality of the sending state,\textsuperscript{147} while the receiving state may declare a member of the diplomatic staff unacceptable.\textsuperscript{148} 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,\textsuperscript{149} and this person shall not be practicing in the receiving state for personal profit or commercial activity, prohibited by the Vienna Convention.\textsuperscript{150} (The freedom of appointment and classification has changed by today, in a sense that in theory, the Ministry of Foreign Affairs of the receiving state shall be notified about the appointment of members of the diplomatic mission, their arrival and final departure or the termination of their functions with the mission. In addition, similar notifications are required in respect of other persons enjoying privileges or immunities.\textsuperscript{151} In contemporary diplomatic practice, some states require a great number of details to be submitted as part of the

\begin{itemize}
\item \textsuperscript{141} 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.
\item \textsuperscript{143} Findling op. cit. 259.
\item \textsuperscript{144} Murty op. cit. 416.
\item \textsuperscript{145} Vienna Convention. Article 1.
\item \textsuperscript{146} Doc. cit. Article 7.
\item \textsuperscript{147} Doc. cit. Article 8.
\item \textsuperscript{148} Doc. cit. Article 9.
\item \textsuperscript{149} Doc. cit. Article 3.
\item \textsuperscript{150} Doc. cit. Article 42.
\item \textsuperscript{151} Doc. cit. Article 10.
\end{itemize}
notification process and their Foreign Ministries shall determine whether the person, properly notified would be eligible for the classification, given based on these details.)

The concept of the legal position of diplomats was worked out by Grotius, who considered that they should be treated as if they had not entered the territory of the receiving state. 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.

Today we speak of diplomatic privileges and immunities, instead of extraterritoriality. The privilege means further rights and the immunity is exemption from a certain rule. As it had been reviewed in the previous chapters, the work of state representatives, such as 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. 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. (And one powerful reason why states do and always complied with international law is that they make rules to serve their interests.) In this way, the rationale behind the immunity, accorded to a diplomat is that immunity from a

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154 Vattel op. cit. 184.
158 Lowe op. cit. 19.
state’s jurisdiction is necessary to preclude the harassments of diplomats, preventing the
discharge of their official duties and the conduct of international relations.

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
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.\(^{159}\)

The modern professional diplomats can take on an aura of celebrity as their work is
scrutinized in the public eye.\(^{160}\) Ross, as a supporter of significant reforms, regarding the
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.\(^{161}\) Moreover, by
critical opinion of Riordan, diplomats, as a breed, rarely accept responsibility for their
mistakes.\(^{162}\) As well as classically, politicians or the unpredictable world situation is to blame
for policy failure.\(^{163}\) Diplomatic negotiation had been the prerogative of professional diplomats,
however, Kennan believes that the future trend is \("\text{diplomacy without diplomats}\",\) when
diplomats would be replaced by issue experts when conducting talks is needed.\(^{164}\) The other
trend in contemporary diplomacy is the global diplomat, whose primary attachment is not to a
nation-state, but rather to a transnational issue or cause.\(^{165}\)

At the same time, currently the way, in which we handle international relations, has to
be changed to reflect a new world.\(^{166}\) The Paper on Professional Education for a Professional
Foreign Service emphasizes that \("\text{Among the world’s diplomatic services, the Foreign Service}
of the United States is unique in terms of its minimal investment in its most important resource:}
\text{human capital.}\)\(^{,}\) so many of foreign service officers \("\text{lack a foundation in the theory, history,}

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\(^{159}\) M. I. Lazarev’s introduction to: John R. Wood–Jean Serres: Diplomaticheskii tseremonial i protokol.
(Diplomatic ceremonial and protocol.) Progress. Moskva, 1976, 12.


\(^{161}\) Ross: Rethinking... 205.

\(^{162}\) Riordan op. cit. 44

\(^{163}\) Riordan admits, though that there may be some justice in this, for the international situation is difficult to
predict. Ibid.


\(^{165}\) Starkey–Boyer–Wilkenfeld op. cit. 53.

\(^{166}\) Riordan op. cit. 3.
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. States have different selection approaches with regard to envoys, for instance, the American Ambassadors are drawn from the ranks of Foreign Service Officers (FSO), the corps of professional diplomats and also from the pool of political appointees, both those to whom the President has obligations for their contributions to his election campaign, and those, who possess the abilities and attributes to potentially benefit to the President and to the country.

With respect to the future of ambassador’s position, in the face of the fact that “Diplomats are often misunderstood and unappreciated.”, 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. 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. Freeman is convinced that diplomacy-free foreign policy would work no better, than strategy-free warfare. 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.”

168 According to the Paper, the officers of the Foreign Service also lack operational knowledge of the Department of State, USAID, FAS, FCS, the Foreign Service and national security decisionmaking. Ibid.
173 Freeman op. cit. 84.
174 Sharp: Diplomatic… 1.
II. 2. The origin of the subject of 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, paying some attention to the emergence of the métier of a diplomat itself. The general development of diplomatic privileges and immunities would be reviewed further, highlighting some related notable historical moments, fragments and cases, worth elaborating on.

The concept of diplomatic privileges and immunities was born next to prehistoric times. The inviolability of ancient legates followed from their equation to angels of heaven – messengers of God and apostles of Christ. The first envoys – the heralds 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. Hence, “... some common understanding of rudimentary diplomatic privileges and immunities existed from the earliest times.” Consequently, 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. (The diplomatic representatives of the ad hoc diplomatic missions are successors of the ancient messengers. That is, the ad hoc diplomacy is the oldest form of diplomacy.) These

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178 Kincses op. cit. 24.
179 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.
180 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 diplomatic law to refuse the accreditation of female ambassadors. László Vincze Weninger op. cit. 160.
181 “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.
183 Frey–Frey op. cit. 158.
first diplomats, as a rule, enjoyed personal immunity and were believed to own some sacredness. 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. (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.) 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 carried requests or formal messages. 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. 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.

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. 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 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

184 Cahier: Le Droit… 8.
186 Levin: Diplomaticheskii… 27.
187 Jönsson op. cit. 16.
188 According to Gajzágó, the Greek were not truly people of law, they were brilliant philosophers, but without possessing real legal skills, therefore they could not actually grasp the life through the law. László Gajzágó: A háború és béke joga. (The law of war and peace.) Stephaneum Nyomda. Budapest, 1942, 11.
with certain attached privileges. The ancient history of Greece is rich in examples of the extensive use of intermediaries, who were commuting between cities to handle the interests of their lands. The envoys were issued a permit to conduct negotiations in a form of paired waxed plates, called diploma – this is where the word diplomacy originates from. The term diploma had been extended then to other certificates, intended to grant immunities to foreign communities or tribes in forms of pacts.

In Rome, in the intervening time, the ambassadors – legati, 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 Antoninus, 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 inviolability of envoys a fundamental principle and its violation – an exceptional crime even among barbarians. 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. Nicolson also noted, “The Roman contribution to diplomacy is to be sought for, not in the area of negotiation, but in the area of international law.” considering that these inputs were rather to the theory, than to the practice of diplomacy.

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

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190 V. A. Zorin: Osnovy diplomaticheskoi sluzhby. (The foundation of diplomatic service.) Institut Mezhdunarodnyh Otoshenii. Moskva, 1964, 12.
191 The professional activity, related to handling of such official documents was later named “res diplomatica”. Kincses op. cit. 21.
192 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 munitii.
194 Freeman op. cit. 182.
195 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.) Polay Elemér Alapítvány. Szeged, 2013, 77.
196 Magalhaes op. cit. 16-26.
197 Nicolson: Diplomacy… 9.
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*, *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.198

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.199 At those times, ambassadorial law was 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.

With respect to the Eastern part of Europe, in Russia the diplomatic relations were so extensive that this fostered the creation of a special diplomatic institution – “Posolyskii prikaz”,200 based on customs and precedents, which dealt with foreign affairs201 and established the diplomatic ranks,202 such ambassador, envoy and courier.203 The inviolability of ambassadors was confirmed in agreements and was strictly obeyed,204 even the delegates of hostile countries received special, protecting credentials – “opasnye gramoty”, enabling them to exit and leave the host state without obstructions.205 At the end of the twelfth century, the treaty charter of Novgorod with the Nordic countries206 on peace, ambassadorial and trade

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198 Magalhaes op. cit. 27-39.
199 Frey–Frey op. cit. 84-85.
200 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 February 10, a date, which conventionally considered in the national historiography to be the day of formation of the Posolyskii prikaz – the first Russian Foreign Ministry.
202 Starting from the sixteenth century, in the ancient Russian documents there could be find six diplomatic ranks: two ambassadors – „velikiy posol”, „leikiy posol”, two delegates – „poslanniki”, „poslannye” and two couriers – „poslantsy”, „gontsy”. Petrik op. cit. 8.
203 Petrik op. cit. 29.
204 Petrik op. cit. 41.
205 Levin: Istoriia... 28-33.
206 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:
relations, also on judicature, contained early immunity rules of ambassadorial law, which provided by application of fines and mutual economic reprisals (for instance trade gaps, the arrest of merchants, closing trade courts and others), personal safety of ambassadors, merchants, hostages, priests, 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, also provided possible variants of answers to questions and speeches. Despite 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 Putivel 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 this precaution did not always saved 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 here 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.\(^{214}\)

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 \(lèse-majesté\) – 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 was attacked near Belgrade\(^ {215}\) 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.\(^ {216}\) 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.\(^ {217}\) 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,\(^ {218}\) being the most known author of that period.\(^ {219}\) 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. An 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.\(^ {220}\)

\(^{214}\) The Khan perpetrated this violence together with his son, suspecting that the Russian Government was going to influence the Crimea through Turkey. Ibid.
\(^{215}\) Belgrade was called at that time Nádor Fehérvár, which was the main bordertown.
\(^{216}\) Frey-Frey op. cit. 107-139.
\(^{217}\) Frey-Frey op. cit. 92.
\(^{220}\) Kincses op. cit. 29-30.
In this way, according to the legal literature of the fifteenth century, written by the forementioned 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 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\textsuperscript{221} 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),\textsuperscript{222} who conducted a lively diplomatic activity,\textsuperscript{223} envoys\textsuperscript{224} could apply for a lawsuit delay, if it was necessary.\textsuperscript{225} (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.)\textsuperscript{226} 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 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. The emergence of diplomatic corpus, when the ambassadors, accredited at a royal court made up a special corporation, could be dated to the eighteenth century.\textsuperscript{227}

The doctrine of diplomatic privileges and immunities incorporated some exceptions, as well. For instance, an ambassador enjoyed no immunity from being sentenced for committed crimes and violence, particularly, political crimes, such as espionage,\textsuperscript{228} conspiracy, treason, by the prince to whom he was accredited, along with other subjects. The perplexity of this state of affairs, 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{229}

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{230} 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{231} The establishment of permanent embassies fostered the growth of diplomatic archives.\textsuperscript{232} Correspondingly, the diplomatic documents, deposited in the archives, assisted in creation of a normative pattern.\textsuperscript{233} (There were numerous problems in the interpretation of diplomatic letters of those times.\textsuperscript{234} For example, since ambassadors were aware of the importance of their mission, they tried to portray themselves and their work in the best possible

\textsuperscript{227} Levin: Istoria… 46.
\textsuperscript{228} “Espionage is the sixth sense of the state.” Freeman op. cit. 75.
\textsuperscript{230} Mattingly op. cit. 47-55.
\textsuperscript{233} Black op. cit. 4.
light.\textsuperscript{235} The letters of envoys, remain, 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, in July 1541, when Antonio Rincon, 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, Rincon was a French agent in Poland\textsuperscript{236} and the assassination was committed by Habsburg agents.)\textsuperscript{237} 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.\textsuperscript{238}

Despite 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. Grotius argued that regardless justice and equity that required equal punishment for equal crimes, \textit{jure gentium},\textsuperscript{239} 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.\textsuperscript{240} Consequently, the only one resolution of this difficulty was to view ambassadors

\textsuperscript{236} V.-L. Bourilly: Antonio Rincon et la politique orientale de François Ier, 1522-1541. Revue Historique, t. 113, 1913, 268-308.
\textsuperscript{238} Frey–Frey op. cit. 234.
\textsuperscript{240} Frey–Frey op. cit. 236-244.
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.  

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 in 1648, which 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.

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 Chinese officials was 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. 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

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241 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.
242 Dating the origin of international law is controversial: the question is whether it is fundamentally a modern institution or it predates modernity. The prevailing view is that international law emerged in Europe in the period after the Peace of Westphalia. China Miéville: Between Equal Rights. Pluto Press. London, 2005, 156.
244 1648 replaced the feudal order with the modern system of international law and international relations, which takes the principle of territorial sovereignty as its starting point. Wouter G. Werner: „The Unnamed Third“: Roberta Kevelson’s Legal Semiotics and the Development of International Law. International Journal for the Semiotics of Law. Vol. 12, No. 3. 1999, 319.
246 Zonova: Diplomatia… 183.
themselves and their own state as tributaries of the Chinese monarch. 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 Alexej Mikhailovich\textsuperscript{250} to anyone other, than the emperor and perform the rite kou gou.\textsuperscript{251} (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.)\textsuperscript{252}

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. (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.)\textsuperscript{253} The rise with respect to the development of diplomatic immunities at this time 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.\textsuperscript{254}

In this way, one of the most spectacular legal cases, related to the immunity of diplomats from civil proceedings is the \textit{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

\textsuperscript{250} 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. Floria–I. Shvarts (eds.): Russkaia i ukrainskaia 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.
\textsuperscript{251} Zonova: Diplomatiia... 184.
\textsuperscript{252} 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.
\textsuperscript{254} Frey–Frey op. cit. 9.
debt. 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 ours 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 for the embarrassment, caused to the Russian envoy, who had been subjected to verbal and physical abuse. The situation has resulted in passing by the Parliament of England legislation, protecting 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. The theorists and the 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

255 Mattueof’s Case 10 Mod. 4, 5, 88 Eng. Rep. 598, 598 (Q.B. 1709).
256 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 op. cit. 194.
257 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.
258 Cecil Hurst op. cit. 190-192.
259 The Swedish head of mission abstained from this action, due to the reason that Sweden was currently at war with Russia.
262 7 Anne c. XII (1708).
263 Frey–Frey op. cit. 228-229.
264 American Act of April 30, 1790, passed by the First Congress.
266 Respublica v. De Longchamps 1 U. S. 111 (1784).
immunity in the United States, therefore worth mentioning here. De Longchamps, a French national, was charged with violating the 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 Act of 1790 was in force until its repeal in 1978 with the passage of the Diplomatic Relations Act.)

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 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 an other 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 beginning of the eighteenth century.

At the beginning of the modern age, diplomacy as an institution had been entirely installed in international law, being governed by universal principles, based on international custom and doctrine. As to diplomatic ranks, at first there was one class of envoys – the ambassadors. The European states started to differentiate the class of ambassadors only since the end of the fifteenth century. 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, as

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268 Anderson op. cit. 24-25.
269 Fox op. cit. 451-542.
272 Teghze op. cit. 275.
his residence with the relevant equipment. 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 an ambassador. Each European country had its own system of diplomatic ranks until the beginning of the nineteenth century. For example, by the end of the eighteenth century, in Great Britain there were already seven diplomatic ranks. In France, there were also seven levels of seniority of employees of the diplomatic service, initiated by Charles Maurice de Talleyrand. 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. Since the Powers failed in establishing a classification of states, they settled for the sorting of diplomatic agents by their individual right.) 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, contributing into the establishment of the first conventional norms with reference to the hierarchy of diplomatic agents and their particular precedence.

The diplomats, gathered together at the Congress were inspired by the desire to rebuild Europe on a fairer foundation.

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

273 Apáthy op. cit. 341-355.
274 There are nine diplomatic ranks today. Zonova op. cit. 24-33.
275 The levels of seniority survived to the present day. Zonova op. cit. 47.
278 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 pleni potentiary powers, i. e. full authority to represent the government of the sending state.
2. Envoy Extraordinary and Minister Plenipotentiary: an Envoy is a head of mission, with pleni potentiary 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).
4. Chargé d'affaires: is in charge of the affairs of a diplomatic mission in the temporary absence of a more senior diplomat. (A chargé d'affaires ad interim is 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.)


applied only to diplomats of great powers, who served at the court of an other great power. This custom had been formed during the previous centuries and continued to be maintained. (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 Andrassy in Austria-Hungary.) The diplomats of the early twentieth century adhered to the ideas, which had dominated diplomatic thinking during the previous two centuries: balance of power\(^{281}\) and raison d’État. The crisis of 1914\(^{282}\) affected the status of diplomats and diminished their freedom of action by changed in the nature of the military organization. In this course, a gap had developed between the customs and traditions of diplomats.\(^{283}\)

The League of Nations tried to make some progress in codification of norms of diplomatic activity, by presenting reports on diplomatic prerogatives and immunities, having recognized in 1924 that diplomatic privileges and immunities required codification at international level.\(^{284}\) 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.

The highlight of the twentieth century, in terms of diplomatic privileges and immunities, was the adoption of the Vienna Convention in 1961, a true international statute of the diplomatic agent.\(^{285}\) 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.\(^{286}\) The 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


\(^{282}\) In some years later, in 1918, by the end of the World War I, Europe ceased to be the centre 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.


\(^{285}\) Magalhaes op. cit. 40-48.

as of then from the customary to treaty law. The treaty ultimately defined the terms, related to diplomatic activity.

At present, 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, 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.

The volume of the present thesis permits drawing only a sketchy picture of the evolvement and strengthening of diplomatic privileges and immunities, without considering the treatment of envoys on all continents in more detail. (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.) Obviously, all international systems developed their own – specific customs and rules, depending on their national mentality – international 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.

The principle of sovereign equality of states is one of the generally recognized principles of international law. The norm of international law 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. The legal status of diplomatic agents is governed by international law, united under the name of “diplomatic law”. Diplomatic law is one of the oldest areas of international law, since the establishment of diplomatic activity between countries falls within one of the oldest activities. (Notwithstanding, the position of diplomatic law within public international

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287 Frey–Frey op. cit. 486-488.
289 Frey–Frey op. cit. 3.
291 Martin op. cit. 4.
law has been an object of debate). In addition, many institutions of international law were created over diplomatic negotiations. Diplomatic law arose and developed primarily as ambassadorial law – a set of rules governing the status of ambassador. Gradually, the ambassadorial law transformed into diplomatic law by the beginning of the twentieth century, forming into set of rules governing all official relations between states. It is should be noted here that the system of norms of diplomatic law used to be attached to the ambassadorial law in the past, nevertheless, some experts kept this association.

Modern European diplomacy is the ancestor of contemporary world politics. The European form of state and the European model of international relations had gradually extended at universal level. History of diplomacy is a live material, consisting of the practical activity of ministers of foreign affairs, ambassadors and other diplomatic representatives. Just the same, a strictly European diplomatic system was a closed period of history, because the European system functioned in isolation, while the rest of the world only projected European concerns. Nowadays the world is an active generator of policy and Europe is a distinctive part of the international community.

Summarizing this paragraph, it could be ascertained that the receiving state normally did not harm delegates and envoys, for religious or/and practical reasons, fearing of the anger of gods or retribution of the sending state. 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

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296 Martin op. cit. 2-3.
297 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.
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.

Another important requirement regarding the envoys was treating 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 when dealing with messengers and disrespecting or injuring a delegate could be used as casus belli – an alleged reason for war. 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 diplomatic law, it was not free of the power of customs after the period of the Middle Ages, as well. The diplomats always wanted to demonstrate the authority of their sovereign.

It is hard not to agree with those legal scholars who believe that international law – also called law between the nations, is a living organism or a live legislative system. Academics note that when we exam and study international law, it is necessary to take into account its time perspective, for this branch of law is subject to fast and frequent changes. International law, differently, for example, from civil law, is not a legal system, designed for long-term action, which would remain virtually unchanged, despite of the passage of time. On the contrary, in the field of international law we continue to witness occurrence of very significant changes. 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

300 Kovács op. cit. 77.
301 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.) Vysshie obrazovanie–Iurait Izdat. Moskva, 2009, 43.
norms, defining the diplomatic privileges and immunities, owing to the rising social role of the envoys.\textsuperscript{303}

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.

II. 3. The concept 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. Thus, the examination would start with the concept of diplomatic 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. Diplomatic immunity was in the beginning presented in international law as part of state immunity. It 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,\textsuperscript{304} including immunity and inviolability.

Diplomatic immunity\textsuperscript{305} is a principle of international law by which certain foreign government officials are not subject to the jurisdiction of local courts and other authorities. According to dictionaries, juridical immunity\textsuperscript{306} [from Latin \textit{immunitas}]\textsuperscript{307} stands for freedom

\begin{itemize}
\item\textsuperscript{303} Frey–Frey op. cit. 9.
\item\textsuperscript{304} Yuzefovich op. cit. 28.
\item\textsuperscript{305} Diplomatic immunities is one of the factors that brought the politics of international law into everyday life. Philippe Sands: Lawless World. Penguin Group. New York, 2005, i.
\item\textsuperscript{306} 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 and consular immunity, as well as immunity of other categories of persons, such as international organizations and special missions. Ebenezer Olugbenga Olaoye: The significance of the immunity clause for democratic consolidation in Nigeria. African Journal of Criminology and Justice Studies: AJCJS. Vol. 6, No. 1-2. November 2012, 90.
\item\textsuperscript{307} The concept of \textit{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. In: W. E. Paul (ed.): Fundamental Immunology. Lippincott–Raven Publishers. Philadelphia, 1999, 19.
\end{itemize}
from service, also from any burden, duty, tax or penalty and exemption from jurisdiction. 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, was the first who presented a theory based on the sacredness of ambassadors, 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. 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). 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.

From the previous paragraph with the historical overview, it could be perceived that the concept of diplomatic immunity had been established around several thousand years ago. This ancient principle has not considerably changed over the time and the related customs have been solidified via the precedent, created by interactions been Peter the Great and Queen Elizabeth I back in 1709. 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.

Later in history, 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 exterritoriality was the oldest of the listed ideas, eventually, in the legislative acts the theory of functionality prevailed. Before the adoption of the Vienna

308 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.
312 The ambassadorial duties were formulated by Hugo Grotius, such as protectio, negotiatio and informatio.
313 Martens: Le guide diplomatique, 1854... 83.
314 With reference to the Mattueof’s case.
315 Blishchenko–Durdenevskii op. cit. 335-343.
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.”\(^{316}\) 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 term, first used by Grotius. 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 numerous related legal cases, followed by judicial decisions 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.\(^{317}\)

The other two legal theories, used in the past to explain the principle of diplomatic privileges and immunities, were personal representation and functional necessity (or functional utility). 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.\(^{318}\) 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.\(^{319}\) 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 rule\(^{320}\) are at the same time inter-reliant and need mutual freedom, along with noninterference in their relations.\(^{321}\)

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

\(^{316}\) Hurst op. cit. 195.

\(^{317}\) Hurst op. cit. 196-203.


\(^{319}\) Wilson op. cit. 5-7.


\(^{321}\) Blishchenko op. cit. 17-18.
— *ne impediatur legatio* — the famous thesis of Bynkershock.\(^{322}\) 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.\(^{323}\) 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.”\(^{324}\)

The key justification for the protection of the diplomat when representing his sending state abroad is *ne impediatur legatus* — the foundation of diplomatic 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.\(^{325}\)

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 was in them. 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 Sultan Selim I.\(^{326}\) 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\(^{327}\) and detained the Turkish envoy for several years.\(^{328}\) 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. Other authors refer to past precedents. For example, previously Selim I did not allow envoy

\(^{322}\) Weninger op. cit. 163.  
\(^{324}\) Fox op. cit. 449.  
\(^{325}\) Fox op. cit. 455.  
\(^{326}\) The truce was valid only during the lifetime of the ruler, who concluded it, under the Turkish law.  
\(^{327}\) The Turks were viewed in Hungary as ancient enemy and the cooperation with this nation was not desirable not only because of religious differences, but also due to the differences of social nature. Géza Herczegh–Lajos Arday–János Joháncsik: Magyarszág nemzetközi kapcsolatainak története. (History of international relations of Hungary.) Zrínyi Miklós Nemzetvédelmi Egyetem. Budapest, 2001, 36.  
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.

There were situations of clashes, 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

329 Ragusa was the old Hungarian name of Dubrovnik.
330 Kosáry op. cit. 50-53.
331 Roman magistrates, known as praetores peregrini had been developing the third century B. C. the jus gentium – „the law of peoples”, to resolve disputes between non-Roman persons throughout the Roman Empire. Robert J. Beck–Anthony Clark Arend–Robert D. Vander Lugt op. cit. 34.
332 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.
333 Kosáry op. cit. 157-158.
334 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/
335 Petrik op. cit. 128.
336 The gifts included the famous 88,7 carat diamond “Shah” – 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.
I in respect of the shed blood. Finally, the incident did not cause serious complications in the relations between Russia and Persia.\textsuperscript{337}

The concept of exterritoriality\textsuperscript{338} has been used as basis for extending privileges and immunities. Thus, in the following related case, concerning diplomatic privileges and immunities, \textit{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 was 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) must be regarded as Hungarian territory. Consequently, all deeds, committed there have to be judged in line with the rules of criminal law of Hungary.\textsuperscript{339}

As Fox describes in her authoritative text on state immunity,\textsuperscript{340} 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.\textsuperscript{341}

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.\textsuperscript{342} (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, can not invoke their immunity to participate in unlawful deeds, such as unregulated commercial activities or espionage.\textsuperscript{343} The


\textsuperscript{338} 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.

\textsuperscript{339} \textit{In re Zoltán Sz.} (Hungary, 1928), Annual Digest (1927-1928), USA. Case No 252.


\textsuperscript{341} Fox op. cit. 580.

\textsuperscript{342} Fox op. cit. 448.

\textsuperscript{343} Wilson op. cit. 23-24.
accredited diplomats enjoys 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.344 It is important to stress here that diplomatic immunity does not mean exemption from liability, but immunity from suit.345

Privilege [from Latin *privilegium*] is freedom346 from some burden347 which others have to bear,348 special advantage or benefit,349 exempt, also belonging to class or office.350 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.351 The difference between a diplomatic privilege and a diplomatic immunity, 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,352 Convention on privileges and immunities of the United Nations353 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.)354

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

344 Fox op. cit. 451-452.
345 Fox op. cit. 450.
347 Hohfeld considers that privilege denotes absense of duty on the part of the one having the privilege. Cook op. cit. 8.
348 The Royal English Dictionary… 490.
349 Hohfeld notes that using „license” sometimes as if it was a synonym to „privilege”, is not strictly appropriate. Cook op. cit. 49.
351 Szemesi op. cit. 144.
354 Blishchenko–Durdenevskii op. cit. 329.
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.\textsuperscript{355}

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 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.\textsuperscript{356} 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.\textsuperscript{357} The situation is the same with diplomatic immunity – it is not a personal immunity, but immunity of the sending state.\textsuperscript{358}

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”,\textsuperscript{359} 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. An other problem, concerning the diplomatic corps in Norway at that period 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

\begin{thebibliography}{99}
\bibitem{355} Harris op. cit. 362.
\bibitem{356} Frank–Sulyok op. cit. 34.
\bibitem{357} Hurst op. cit. 245.
\bibitem{358} Fox op. cit. 452.
\bibitem{359} Sharp–Wiseman op. cit. 88.
\end{thebibliography}
own consumption and only the legations could buy liquor, by providing special slips. Notwithstanding, the Minister of 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”, despite of the formal equality among the members of the diplomatic corps. 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.\(^{360}\)

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.\(^{361}\) 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 agrément, others, think that such a diplomat should only be entitled to the privileges and immunities, granted by the receiving state.\(^{362}\)

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 the last part of this paragraph. 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 differentiately it regulates the specific questions of social life.\(^{363}\) 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.\(^{364}\) 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

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\(^{360}\) Sharp–Wiseman op. cit. 89-90.  
\(^{361}\) Vienna Convention. Article 25.  
\(^{362}\) Blishchenko–Durdenevskii op. cit. 374.  
\(^{363}\) Matuzov–Malko op. cit. 233.  
\(^{364}\) Rana: The 21st Century Ambassador… 57.
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 nature. 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.365

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 might have more than one interpretation in national legislations.366 In this case, these interpretations could collide367 under different historical circumstances.) 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:

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.

365 Matuzov–Maľko op. cit. 233.
366 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–Érika Váradi–Csema–Andrea Jánosi: Foundations of (European) Criminal Law-National Perspectives-Hungary. In: Norel Neagu (ed.): Foundations of European Criminal Law. Editura C. H. Beck. București, 2014, 44.
367 In Hungary, the principles of the „material” rule of law get prioroty in the legislation of criminal law. Fundamental Law of Hungary. Article XXVIII.
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, deputies, 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.368

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 diplomatic law, there were at least fifteen diplomatic immunity theories, put forward by different lawyers.369 In modern legal literature there are being discussed three theories: extraterritoriality, functional necessity and representative theory.370

Concerning legal immunity, it is viewed as 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

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368 Matuzov–Maľko op. cit. 233-234.
370 Demin op. cit. 23.
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 distinguish 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. The scope of persons, eligible to immunity, such as members of foreign diplomatic corps (headed by a Dean or Doyen, who is usually the ambassador with the longest period of service as such in the capital of the host country), always should be clearly defined in international law, the Constitution and domestic law. (Diplomatic corps is not considered to be a juridical person, based on a norm of diplomatic law. At the same time, diplomatic corps is accepted as a public institution with limited functions, in accordance with international traditions and customs.) Thus, on the basis of the above said, the following conclusions could be made: the 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

371 Matuzov–Mal’ko op. cit. 234.
373 As a rule, the Dean is granted limited power, so he is not an independent actor, as he should obtain the approval of his colleagues before acting on their behalf, usually on matters of prerogatives and privileges. Sharp–Wiseman op. cit. 32.
374 Freeman op. cit. 41.
376 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.
legal immunities are rather conventional, since privileges and immunities are very closely related concepts, in many ways.\textsuperscript{378}

II. 4. The commencement and the termination 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 \textit{agrément}. The issuance of the \textit{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.

A recent case of establishment of diplomatic relations related to Hungary and the Principality of Monaco. The two states decided to have embassy-level diplomatic relations in order to promote mutual understanding, strengthen the friendship and cooperation between their peoples. György Károlyi, the Hungarian Ambassador in Paris and Claude Cottalorda, the Ambassador of the Principality of Monaco signed a joint statement on establishment of diplomatic relations on 2 May 2016, in Paris, at the Hungarian Embassy. Hungary maintains now official diplomatic relations with every country in Europe. The Hungarian side plans to accredit an ambassador in Monaco in the near future. (The consular protection of the Hungarian citizens in Monaco, if needed, continues to be carried out by the Consular Section of the Hungarian Embassy in Paris.)\textsuperscript{379}

On obtaining the approval, the diplomat is provided with the letter of credence – \textit{lettre de créance},\textsuperscript{380} which is handed over at the reception to the head of the foreign state or to the foreign minister, in case of a chargé d’affaires.\textsuperscript{381} Ever since the purpose of the diplomatic

\textsuperscript{378} Matuzov-Mal’ko op. cit. 232-235.
\textsuperscript{380} The credentials are being issued in two copies. The original is addressed to the head of state, and the second copy, called \textit{copie d'usage} is sent to the Ministry of Foreign Affairs in the pursuit of obtaining the ambassador’s reception. The time of receiving the letter is important with regard of an ambassador’s ranking. Teghze op. cit. 279.
\textsuperscript{381} In the past, the event of death of the sovereign, new authorizations were required, but this accidental state of affairs did not affected the privileges and immunities of the diplomat – they continued to be present for the period until the new permissions would arrive.
immunity is the protection of diplomats, which is, with certain exceptions, absolute. A state can refuse a particular person even without the intention of breaking the existing diplomatic relations with the host country, and no reasoning or justification of the rejection could be asked for. (Levin and Kalyuzhnaja notice that Great Britain and the United States are usually claim some explanation.) Reasons for refusal of the agrément could be for example, hostile activity or hostile declarations of the diplomat towards the receiving state; former citizenship of the receiving state, etc. In practice, to avoid this rather awkward situation of rejection, the sending state secures approval of the future diplomat as persona grata, in advance. This approval is called the assignment of the agrément. However, states are not always observe the international norms and appoint their diplomats, sometimes without obtaining the preliminary permission of the host country. This happened in 1956, when Edward T. Wailes, the American diplomatic representative, who arrived on 2 November, but did not present his credentials during months and did not pay an official visit to the Hungarian authorities. When the Hungarian People’s Republic demanded the recall of the American diplomat, he secretly left the country. 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 of Foreign Affairs of Indonesia at that time, declared that the appointment of the new American Ambassador by the United States without preliminary

382 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.


386 Wailes did not present his credentials to the Hungarian Government, which was formed as a result of the Hungarian revolution of 1956, because the new Government of Hungary was not recognized by the United States at the beginning. By the time the American part has approved the presentation of the diplomat’s credentials to Hungarian authorities, it was too late, the Hungarians requested Wailes to leave the country and he had to go. Péter Kovács: A budapesti amerikai követség és az 1956-os forradalom. Kovács Péter beszélgetése Jordan Thomas Rogerszsel és Ernst A. Naggyal. 2. rész. Kovács Péter interjúalanya Jordan Thomas Rogers. (The American Embassy in Budapest and the Hungarian Revolution of 1956. Conversation of Péter Kovács with Jordan Thomas Rogers and Ernst A. Nagy. Part 2. The interviewee of Péter Kovács is Jordan Thomas Rogers.) Magyar Szemle. Vol. XVI, No. 7-8. 21 September, 2007. (Accessed on 9 March, 2016.) http://www.magyarszemle.hu/cikk/20070921_a_budapesti_amerikai_kovetseg_es_az_1956-os_forradalom_2_resz

consultations with the government of Indonesia was violation of the existing international rules.\footnote{D. B. Levin–G. P. Kaliuzhnaia (eds.): Mezhdunarodnoe pravo. (International law.) Izdatel’stvo iuridicheskoi literatury. Moskva, 1964, 245. [Hereinafter: Levin–Kaliuzhnaia: Mezhdunarodnoe pravo, 1964…]}

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, 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 Australia in a \textit{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.\footnote{Glichitch op. cit. 20.}

Due to the fact that no state is legally obliged to establish diplomatic relations with an other one, it is not either obliged to receive any designated individual as an envoy of a foreign state. 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 Hanover (1847); Keiley, sent by the United States to Italy, and by the United States to Austria-Hungary (1885);\footnote{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 \textit{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 practica nynore. Kovács: International… 393.} Blair, sent by the United States to China (1891).\footnote{Jesse S. Reeves (Reporter), Diplomatic Privileges and Immunities. The American Journal of International Law. Vol. 26, No 1. Supplement: Research in International Law. American Society of International Law. 1932, 67-69.}

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\footnote{Vienna Convention. Article 34.} and X-ray screening.\footnote{Denza op. cit. 225.} 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. In opinion
of Olaoye, the “diplomatic bag” may range from a small purse to an airplane\(^{394}\) and if the baggage travels separately from the diplomat, the inspection could be performed in presence of the diplomat or his authorized representative.\(^ {395}\) 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 diplomatic bag, as diplomatic bag.\(^ {396}\) 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.\(^{397}\) 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.\(^ {398}\)

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.\(^ {399}\) The recall of \textit{persona non grata} ambassadors, if not executed at the request of the receiving state,\(^{400}\) usually happens upon the letter sent by head of the sending state to the head of the receiving state. The letter of recall – \textit{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. (It often

\(^{394}\) Olaoye op. cit. 92.
\(^{395}\) Frank–Sulyok op. cit. 44.
\(^{396}\) Demin op. cit. 89.
\(^{398}\) Lukashuk: Mezhdunarodnoe… 91.
\(^{399}\) Lukashuk: Mezhdunarodnoe… 244-245.
\(^{400}\) „\textit{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 op. cit. 165.
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.)\textsuperscript{401}

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 diplomatic 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). 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{402} 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 beforehand, for approval.\textsuperscript{403} In practice, sending states announces the names of such diplomats without prior inquiry of approval.\textsuperscript{404}

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.\textsuperscript{405} In certain situations, on the contrary, the receiving state prefers to expel a diplomat, as in the following examples. 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.\textsuperscript{406} After this incident, Bonsal was

\textsuperscript{402} Reves op. cit. 77-78.
\textsuperscript{403} Vienna Convention. Article 7.
\textsuperscript{404} Petrik op. cit. 61.
\textsuperscript{405} Szemesi op. cit. 143.
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.  

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. The Cuban Foreign Ministry accused Meyer of being engaged in counterrevolution, instead of dealing with diplomacy, and she was expelled from the country.  

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. 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).  

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 “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”. 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.

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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.\textsuperscript{411} By the time of the incident, Ethiopia expelled more than 40 Eritrean diplomats and local staff of the Embassy of Eritrea in Addis Ababa.\textsuperscript{412}

In 2015, the Russian authorities declared \textit{persona non grata} a Swedish diplomat. As it was stated on the website of the Russian Foreign Ministry: “\textit{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-Sweedish relations laid entirely on the Swedish side.\textsuperscript{413} The fact of expulsion had been confirmed\textsuperscript{414} 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. The Swedish official did not specify the exact time when the Russian diplomat, was declared \textit{persona non grata},\textsuperscript{415} expressing that this incident would affect the relations between the two countries.\textsuperscript{416} The parties did not disclose the names or the positions of the two diplomats.\textsuperscript{417}

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

\begin{itemize}
  \item \textsuperscript{413} Nastia Berezina: V MID Rossii obiasnili prichinu vydvoreniia Shvedskogo diplomata. (The Russian Foreign Ministry explained the reason for the expulsion of the Swedish diplomat.) 4 August, 2015. (Accessed on 11 January, 2016.) http://www.rbc.ru/politics/04/08/2015/55c077969a79476b9d5cefb5
  \item \textsuperscript{414} 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. (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
\end{itemize}
back or cut their diplomatic ties to Iran. 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. 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. The United Arab Emirates also decided to downgrade the diplomatic ties with Iran, and Sudan expelled the Iranian Ambassador there, Kuwait also recalled its Ambassador in Iran, thus the progressing opposition of Iran and Saudi Arabia 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 term is a formal equivalent of “not acceptable”, in the case of staff members, which do not have a diplomatic rank.) In this course, repeat violations of the laws of the receiving state (or contempt for them) put the violator – the diplomat, into character of persona non grata. The Vienna Convention provides that the receiving state may at any time notify the sending state that the head of the mission or any member of the diplomatic staff of the mission is persona non grata, without having to explain its decision.

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 spying. Andrzej Zalucki, the Polish Ambassador, was

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421 Kuweit 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
422 Bahrein és Szudán is szakított Iránnal. (Bahrein and Sudan also broke with Iran.) NOL. 4 January, 2016. (Accessed on 4 January, 2016.) http://nol.hu/kulfold/az-is-elleni-harcot-veszelyezteti-rijad-es-teheran-viszalya-1582819
424 Brownlie op. cit. 355.
427 Vienna Convention. Article 9.
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 communiqué described as spying “against Poland’s vital interests”. The expulsion was ordered on the same charge of spying and the Polish diplomats had to leave Russia by 28 January, 2000.

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. 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 during the period of the Cold War. (There was established a division within the intelligence community of the United States, called Office of Soviet Analysis – SOVA that studied and evaluated the political situation in the Soviet Union.) 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

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430 The station is 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.
434 The Office of Soviet Analysis was directed by George Kolt. Ibid.
the U. S. Government or during important developments in these countries. (Above and beyond, Soviet embassies, consulates, trade organizations, representations, UN missions and press centers in many countries, allegedly functioned with officers and informers of KGB and Defense Intelligence Agency (DIA), which state of affairs rather irritated the “pure” diplomats.)

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 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 country immediately. 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.

In December 2010, an other 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).440

On May 12, 2011, 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 “symmetrical” expulsion of the military attaché of the Russian Embassy.441

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 persona non grata.442

In May 2013, Ryan C. Folge, an American diplomat was accused of spying and was told to leave Russia. Folge 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.443 The Russian NTV channel broadcast the record of Folge during the recruitment, wearing a blond wig. As it was reported by media sources, the Department of State of the United States confirmed that Folge worked in Moscow as an embassy employee, but would give no details about his job. 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.444 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 Folge’s

444 Priimak–Moshkin. Ibid.
listed diplomatic post at the American Embassy was a cover and alleged that Folge was actually a CIA officer. 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. The media drawn parallels between these allegations and some earlier cases, which took place on the Russian territory. In 2001, the Russian television 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 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 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.

Summing up this part on expulsion of diplomats, as it had been mentioned before, under the Vienna Convention, a receiving state may at any time and without disclosure of reasons declare the ambassador or an other diplomat of the sending state persona non grata. The sending state may not agree with the decision of the authorities of the host country, but the latter is entitled to refuse recognition of diplomatic immunity of the person, declared non grata. Accordingly, 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. 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. (Further cases of involvement of

diplomatic agents in intelligence activity are considered in Section V. 2.1. of the present work, among the special subjects of diplomatic privileges and immunities.)

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 provoking 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 country.

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.\textsuperscript{448} The Dupont v. Pichon was one of the earliest cases, associated with the question of duration of diplomatic privileges and immunities.\textsuperscript{449} Pichon was 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. 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).\textsuperscript{450} 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 the appointment.\textsuperscript{451} The functional immunity for official

\textsuperscript{448} Hurst op. cit. 294.
\textsuperscript{449} Dupont v. Pichon 4 U. S. 321 (1805).
\textsuperscript{450} Levin–Kaliuzhnaia op. cit. 203.
\textsuperscript{451} Vienna Convention. Article 39(1).
acts\textsuperscript{452} 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{453} The listed privileges and immunities are valid for the indicated time even in situations of armed conflicts\textsuperscript{454} and this applies to the premises of the diplomatic mission, as well.\textsuperscript{455} 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.\textsuperscript{456} 

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{457} 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{458} 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.) In case of family members and personal servants, the information of the appropriate ministry should be made, as well.\textsuperscript{459} 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{460} 

The case of \textit{Empson v. Smith}\textsuperscript{461} 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

\begin{itemize}
  \item 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 op. cit. 361.
  \item Vienna Convention. Article 39(2).
  \item Doc. cit. Articles 39(2), 44.
  \item Doc. cit. Article 45(a).
  \item Doc. cit. Article 37.
  \item Doc. cit. Article 39(1).
  \item Doc. cit. Article 39(1).
  \item Doc. cit. Article 10(1) (b), (c), (d).
  \item Doc. cit. Article 10(2).
\end{itemize}
course of appeal, the Diplomatic Privileges Act\textsuperscript{462} was adopted in the United Kingdom in 1964, Article 37(2) 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.\textsuperscript{463} (A year later after the verdict of the court, in \textit{Ghosh v. D’Rosario},\textsuperscript{464} 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.)

As regards the “moment” when diplomatic privileges and immunities end, usually it 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; 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.

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 state 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.\textsuperscript{465} (The murder was committed by a gun from the Belgian Embassy, being an act of revenge against a male lover,

\begin{thebibliography}{9}
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\item \textsuperscript{462} Diplomatic Privileges Act CH. 81. 1. ELIZABETH II. 1964.
\item \textsuperscript{463} Doc. cit. Article 37(2).
\item \textsuperscript{464} \textit{Ghosh v. D’Rosario} [1966] 1 QB 426.
as a Broward Circuit Court jury was told, according to the press.) 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.

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, 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. (It was commonly understood and accepted that a diplomat needed some time to get to the premises of the diplomatic mission, after he entered the territory of the receiving state, to take up his official functions afterwards, and with the expiration or termination of those to leave the territory of the host country, covered by diplomatic protection. This protection was provided even at times of armed conflicts between the sending and the receiving state.)

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

468 Apáthy op. cit. 393-394.
469 Hurst op. cit. 292-293.
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. (The relatives of the diplomat are entitled to these advantages until the expiration of the reasonable period, needed to leave the host country.)

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. Further reasons for termination of a diplomatic mission are outbreak of war between the receiving and the sending state, the diplomat’s recall from the host state or extinction of the host country.

The functioning of the Hungarian Embassy in Moscow was influenced by the fluctuation of politics. As it is known, on 2 February 1939, the Soviet Government broke off diplomatic relations with Hungary, after István Csáky, the Minister of Foreign Affairs at that time, announced on 13 January, 1939 that Hungary was going to join the anti-communist pact in the near future. After the step of the Soviets, Ambassador Mihály Arnóthy-Jungerth left Moscow on 5 February, 1939 and the operation of the Hungarian Embassy was ceased. The conclusion of the Soviet-German non-aggression pact on 23 August, 1939 created a very new situation and the Hungarian Government, being urged by the Germans, reestablished the diplomatic relations with the Soviet Union.

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

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471 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 belonging of a deceased are allowed in case of death of a member of the diplomat’s household, as well. Vienna Convention. Article 39(4).
472 Doc. cit. Article 39(3).
473 Doc. cit. Article 43(a).
474 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. Vienna Convention. Article 9(2).
475 Doc. cit. Article 43(b).
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. (The reasons for the breach of diplomatic relations are not fully specified here, only a possible armed conflict is mentioned). The sending state is allowed to delegate the guarding of diplomatic premises, together with the related assets and archives to a third country, acceptable for the receiving state. Diplomatic relations could be ceased in case of a social revolution in one of the states, which maintain diplomatic relations, however, it is not inevitable.

II. 5. The factors of reciprocity and non-discrimination

The diplomatic relations traditionally take place by mutual consent of states (which also may be expressed quite informally), accordingly, reciprocity is a "cardinal feature of the tradition". The ancient principle of reciprocity practically means mutual benefits, being a key notion of diplomatic relations. This olden rule 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.

In contemporary international law, the principle of reciprocity (or mutuality) is a generally accepted principle of international relations, under which states have to build

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477 Vienna Convention. Article 44.
478 Doc. cit. Article 45.
479 Slovary mezhdunarodnogo prava op. cit. 73.
481 Eyefinger: Diplomacy … 837.
483 The late 1980s were a turning point in the fate of international law, as a potential source of protection from strong states, so there have been systematic attacks on international law since the late 1980s. Bowring op. cit. 44, 59.
relationships with each other on a mutually beneficial and equitable basis,\textsuperscript{485} taking into account the legitimate interests of the other party, especially in matters of ensuring of international peace\textsuperscript{486} and security.\textsuperscript{487} Southwick, speaking of reciprocity among nations, believes that “Reciprocity stands as the keystone in the construction of diplomatic privilege.”\textsuperscript{488} Russel defines reciprocity as a “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{489}

In this way, the principle of reciprocity is one of the most important legal principles of international law. Nikoliukin considers that the consistent implementation of reciprocity allows, on the one hand, to safeguard stable relations between states,\textsuperscript{490} 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. The present principle is the advancement of a more general and more ancient principle of state legal relations – comity \textit{(comitas gentium)} that requires states to treat the foreign rule of law with polity and consideration, hence, comity demands to respect the foreign law. (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.\textsuperscript{491} Maier exemplifies international comity as a synonym for diplomacy.\textsuperscript{492} Mann believes that comity – \textit{courtoisie internationale}, is one of the most ambiguous and multifaceted conceptions in the law, particularly in the sphere of international affairs,\textsuperscript{493} and it is hard not to agree with

\textsuperscript{485} Webster regards diplomacy as a transaction between individuals or groups. Webster op. cit. 3. 
\textsuperscript{486} In words of Brzezinski “…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 Quaterly Review. Vol. 51, No. 4. Council on Foreign Relations, Inc. July 1973, 727. 
\textsuperscript{489} M. J. Russel: Fluctuations in Reciprocity. The International and Comparative Law Quaterly. Vol. 1, No 2, April, 1952, 181. 
\textsuperscript{490} 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.
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. Nikolyukin also notes that the principle of reciprocity should not be considered as a generally accepted legally binding principle or norm of international public law, agreeing with other authors in relation to the fact that in international relations an other 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 an other state in a unilateral way.

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 an other state, also to restrict foreign aid, recall diplomats, tighten diplomatic relations, if the other party uses unwanted means.

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500 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 op. cit. 351.
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 concept of mutuality: “Rooted in necessity, immunity was buttressed by religion, sanctioned by custom, and fortified by reciprocity.”

Reciprocity is considered a universally accepted principle of international law, applied in international relations, under which a state takes 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. In this way, reciprocity and a reciprocal action, which is about an agreement “to help each other and give each other advantages” – a long-standing standard in realization of international relations. 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 diplomatic law, according to Demin.

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 (mainly fiscal 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 par implicite turning into a silent acquiescence, and as a result being effected even without a special confirmation. 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 treatment of diplomatic representatives in all or a large number of states, then after their establishment the norms become part of public international law, being obligatory for each state.

502 Frey–Frey op. cit. 3.
505 Demin op. cit. 21.
506 Levin: Diplomaticeskii… 295-299.
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,\footnote{Gajzágó op. cit. 6.} so they need a framework of cooperation, in order to govern the matters by principles of diplomacy law (and treaty law).\footnote{Lowe op. cit. 2.}

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.)\footnote{Kenneth T. Young: Negotiating with the Chinese Communists. McGraw-Hill. New York, 1968, 348.} In American-Chinese diplomatic relations, the acceptance of the „principle of equality and reciprocity” by the United States in 1954-1955 was a fundamental 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.

Speaking of parity in international relations, other states were also sensitive in matters of dealing with and expected to be treated, as equal parties. 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.\footnote{Raymond Cohen: Negotiating Across Cultures. Communication Obstacles in International Diplomacy. United States Institute of Peace Press. Washington, 1992, 35-37.} The country put up with the defeat and with its “secondary position” in the postwar world.\footnote{Leo J. Moser: Cross-Cultural Dimensions: U. S. – Japan. In: Diane B. Bendahmane–Leo Moser (eds.): Toward a Better Understanding: U. S.-Japan Relations. Brookings Institution. Washington, 1986, 22.} With the economic growth, Japan recovered its national self-esteem and was getting prepared “to play its part in a scheme of world politics”,\footnote{Marius B. Jansen: Japan Looks Back. Foreign Affairs. An American Quaterly Review. Council on Foreign Relations Inc. Vol. 47, No. 1, October 1968, 44.} so in 1971 it did not relate well to the decision of the American President to visit the country without prior diplomatic consultations.\footnote{Japan became highly visible to Americans as an Asian power with the potential for contributing to the security of the region.) Kiichi Aichi: Japan’s Legacy and Destiny of Change. Foreign Affairs. An American Quaterly Review. Vol. 48, No. 1. Council on Foreign Relations, Inc. October 1969, 31.} This was the infamous “Nixon shock”, which made the Japanese-American diplomatic.
negotiations more difficult from that point. (Richard Nixon, such as 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.)

In *Ethiopia v. Eritrea*, the specially constituted Commission by Ethiopia 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 diplomatic 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.

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514 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.
515 Cohen op. cit. 37.
516 Henry Kissinger was very successful in personal diplomacy, with his trademark shuttle diplomacy – trips back and forth between the principal parties. Starkey–Boyer–Wilkenfeld op. cit. 57.
520 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.
521 Vienna Convention. Article 29.
523 Doc. cit. Articles 29, 36.
524 Doc. cit. Article 22.
and the Commission did not pay attention to the question of occupation of territory.\textsuperscript{526}

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 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{527}

Furthermore, 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.”\textsuperscript{528}

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. Application of the principle of reciprocity in diplomatic relations is reflected in the legislation of states.\textsuperscript{529} 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\textsuperscript{530} 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;


\textsuperscript{530} According to Article 3(e) of the Vienna Convention, the functions of a diplomatic mission consist, \textit{inter alia} in developing cultural relations between the sending state and the receiving state.
- right to have a church or chapel of the practiced religious cult on the premises of the diplomatic mission\textsuperscript{531} or at some other place of the town, being attended by citizens of the sending state, who live in the host state, as well;\textsuperscript{532}

- right to have a doctor (such a doctor might not have the professional diploma of the receiving state).\textsuperscript{533}

The last two privileges 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 l’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.\textsuperscript{534} 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.”\textsuperscript{535} Wéniger considers the priest and the doctor \emph{personel non officiel}, along with the personal secretary and office manager. Such members of the representation, unlike the ambassador, could be entitled to enjoy immunity and inviolability only in case they renounced the jurisdiction of the receiving state.\textsuperscript{536} Most of states kept themselves to the practice of not granting diplomatic immunities to these persons, considering them as members of technical personnel, allowing, though on the base of agreement and reciprocity provided them with diplomatic privileges. (The priest and the doctor of the diplomatic mission were considered as members of diplomat’s family and the diplomatic privileges and immunities were extended to these persons, too, for example in England, France and Spain.)\textsuperscript{537}

In the face of the fact that states allow the duty-free import of goods by the ambassador and his suit, diplomatic immunity is grounded on comity or courtesy and is not an obligatory rule of international law. This is the case when the international practice gradually has hardened into a rule of law, reflected, for example in the Vienna Convention. Subsequently, such kind of immunity is mostly based on reciprocity. Despite of the fact that these arrangements of

\textsuperscript{531} Vattel also elaborated on the right to freely exercise the minister’s religion in the host country. Vattel: The Law of Nations. In: Berridge: Diplomatic Classics… 185.

\textsuperscript{532} This privilege originates from the period of Reformation, when Protestant religious practices were forbidden in Catholic countries.


\textsuperscript{536} Wéniger op. cit. 168.

\textsuperscript{537} Blishchenko–Durdenevskii op. cit. 373-374.
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. Certain national legislations contain provisions regarding the general rules of customs courtesies, for example, in Great Britain, Russia and the United States.538

The so-called honorary and ceremonial privileges (or rights, by opinion of some scholars) also belong to the group of diplomatic privileges. 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.539

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.540

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 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

538 Wilson op. cit. 130-132.
539 Rubin op. cit. 92-93.
540 Blishchenko: Diplomaticheskoe … 373.
in Washington, being perceived by Japan as a gesture of deep political significance.\footnote{541 Joseph C. Grew: Ten Years in Japan. Hammond, Hammond And Company. London, 1944, 241.} 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 required 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.\footnote{542 Cohen op. cit. 4-6.}

With respect to the area of diplomacy, 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 cannot be interpreted in a way that a state, by following a certain behavior towards an other state is entitled to demand a similar 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. 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.\footnote{543 Kenneth Turan: The Devilish Demands of Diplomatic Immunity. The Washington Post. 11 January, 1976, col. 1, 6.}

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 detention of Dmitri Borodin, the Russian diplomat in The Hague. (The fact of presenting state apologies was confirmed by the official statement of Netherlands, as well). 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 detention of the Russian diplomatic councilor of the Russian Embassy in The Hague by the Dutch police.\footnote{544 MID RF: Niderlandy izvinilis’ za intsident s rossiiskim diplomatom v Gaage. (MOF RF: The Netherlands apologized for the incident with the Russian diplomat in The Hague.) Rosbalt. 9 October, 2013. (Accessed on 2 December, 2015.) http://www.rosbalt.ru/main/2013/10/09/1185815.html} 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
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.545

In international doctrine, there are several basic approaches to the justification for diplomatic privileges and immunities and one of these, along with the principle of functional necessity and principle of alternative is the principle of reciprocity. The principle of reciprocity is based on the concept that the provision of diplomatic privileges and immunities is granted on a reciprocal basis. Reciprocity is one of the basic principles of bilateral relations between two states, used to be reflected in the rules of diplomatic protocol. A number of diplomatic privileges and immunities, accorded to foreign diplomatic representatives on the basis of reciprocity, and this state of affairs is reflected in legislation of many countries. Non-compliance with the principle reciprocity and diplomatic protocol could be regarded as an unfriendly act and lead to retaliatory steps. It is important to note that diplomatic privileges and immunities themselves came to life by virtue of the principle of reciprocity, not through some external pressure. Subsequently, since reciprocity is one of the bases for the application of diplomatic privileges and immunities, exercising of this standard allows to extend their scope, because generally, states strive for cooperation and mutual benefits in foreign relations. 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 diplomatic law. The required formal prerequisite for reciprocity in case of a member of a diplomatic mission is acceptance by the receiving state, obtaining the agrément and being accredited in the host country.

The required formal precondition for such mutuality is recognition, when the sending state receives the license of the receiving state, allowing the sending state to execute its official functions on foreign territory. The recognition is followed by granting certain privileges and

immunities, which are a prerequisite of effective performance of diplomat’s official functions. In this way, the Vienna Convention defines the official functions, granted to the sending state, such as representation, protection of its citizens, along with the state interests of the diplomatic mission, negotiating, gathering of information, reporting to the host state’s government and promotion of friendly relations.\(^{546}\) It should be added that a state possess immunity even if its government has not been recognized. The immunity relates not to the recognition of a state or 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.\(^{547}\)

Francis Dana, the Minister to St. Petersburg, appointed by the new Government of the United States, arrived to Russia in August 1781 and left the country in August 1783, without even receiving the formal recognition from the Russian part. The existing diplomatic ties prevented Russia from Dana’s credentials at that time. Despite of lack of official acknowledgement, Dana worked in Russia as a private citizen to build support for the American cause. Levett Harris, appointed by President Thomas Jefferson in 1803 was the first U. S. Consul, accepted in Russia. This was the first official American representative to Russia, however, Russia did not reciprocate. Tsar Alexander agreed to send a minister to the United States in 1807, once the United States agreed to reciprocate by sending a representative of similar rank. (This decision was conveyed by Russian Special Envoy Maksim Alopeus to William Pinkney, American Minister-Designate in London.) On 14 July 1809, the United States 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.\(^{548}\)

Additionally, 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.\(^{549}\) (The principle of diplomatic 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

\(^{546}\) Vienna Convention. Article 3(1).


\(^{549}\) Vienna Convention. Article 29.
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 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 and 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 (after the economic boycott, declared by Russia in 1923), there was 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.)

550 Deák op. cit. 251.
551 Blishchenko–Durdenevskii op. cit. 352.
552 Csarada op. cit. 221-222.
554 Sabanin op. cit. 136.
556 Sabanin op. cit. 137.
The receiving state has to provide the diplomatic mission of the sending state the facilities, needed for its functioning, along with provision of a comprehensive facilitation, 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 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 Section IV.1. of the present work, which is devoted to the categories of diplomatic immunity.)

Besides, based on reciprocity, restrictive measures could be taken by states in bilateral relations. The same custom of reciprocity applies to the termination procedures – the principle of reciprocity also governs agreements on extradition of diplomatic personnel, as well. 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. As a practice, afterwards the sending state also notifies the host country that its official(s), as staff members of the related diplomatic mission, is no longer welcome there. There were cases of reciprocal action in history, taken upon declaring certain members of a diplomatic mission persona non grata, and

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558 Vienna Convention. Article 21(1).
559 Doc. cit. Article 25.
561 Doc. cit. Article 22.
563 Doc. cit. Article 27(2).
564 Doc. cit. Article 30.
565 Doc. cit. Article 27(3).
566 Doc. cit. Article 35.
567 Before the adoption of the Vienna Convention, fiscal exemptions, viewed as not inevitable for fulfillment of diplomatic tasks, were considered as „immunité de courtoisie“. Christian Zeileissen: Die abgabenrechtlichen Privilegien in den diplomatischen und konsularischen Beziehungen. (The tax exemptions in the diplomatic and consular relations.) Wilhelm Braumüller. Wien, 1971, 8.
568 Heintzen, elaborating on the legal foundations for the exemption of foreign diplomatic agents from German taxation and its practical implementation, stresses that national fiscal law should be revised systematically and abiding to international law, the practice of tax exemption has to measure up to the reasoning behind it, which is to grant independence and freedom to diplomatic agents. Markus Heintzen: Die Befreiung ausländischer Diplomaten von deutscher Besteuerung. (The exemption of foreign diplomats from German taxation.) Archiv des Völkerrechts. Vol. 45, No. 4, December, 2007, 482.
569 Doc. cit. Article 36.
570 Doc. cit. Article 39.
these persons were offered afterwards to leave the host country. Usually, such steps lead to a crisis and tension in bilateral relations. In 1984, during the events, related to the Libyan People’s Bureau in London,\textsuperscript{571} the police have reluctantly had to accept that whoever shot their colleague, Yvonne Fletcher, that person would escape justice by claiming diplomatic immunity.\textsuperscript{572} The Government of Great Britain responded slowly to the incident and “did not hastily expel the entire Libyan mission”, because Great Britain was afraid of Lybia’s excessive retaliation\textsuperscript{573} against British diplomats and citizens in Libya.\textsuperscript{574}

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.

American diplomats, serving for foreign missions have an extensive experience in terms of the negative sides of reciprocity, as shown in the following examples. In 1987, Russia retracted the beach privileges of the American Embassy in Moscow on the river at Nikolnaja 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.\textsuperscript{575} 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. The Glen Cove officials were unhappy with this honor and decided that the Soviet diplomats should not have use town, beach, golf and tennis facilities, without paying the large fee. (After this decision, 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

\textsuperscript{573} The House of Commons Foreign Affairs Committee considered certain amendments to the Vienna Conventions after the incident, but found their practical implementation unfeasable. House of Commons Foreign Affairs Committee. First Report. The Abuse of Diplomatic Immunities and Privileges. Commons Papers. No. 127, 1985, para. 42.
According to the rules of diplomatic immunity, a host country can declare a visiting envoy *persona non grata* and demand the diplomat to be recalled. 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).  

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. 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. 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

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Germany “without attracting unnecessary attention”, after months of surveillance by the German security services.⁵⁷⁹

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 persona non grata, “for activities, incompatible with their status”, were not revealed. (The diplomatic scandal broke out in connection to a sharp deterioration in relations between Russia and the European Union, related to the events in the Crimea and Eastern Ukraine.)⁵⁸⁰

The diplomats, declared persona non grata, would have to leave the country and never return, their diplomatic immunity would cease and they would be liable for prosecution in the host country. The host country does not need to give a reason for declaring an individual persona non grata and in rare cases, when they do, some countries use the tactic to name those diplomats, who publicly criticized the ruling regime, as a means of expelling.

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.⁵⁸¹ For example, in 1944 England cancelled diplomatic relations and freedom of movement of accredited diplomatic representatives of foreign states,⁵⁸² except for those from the USSR, the USA and

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⁵⁸¹ Haraszti—Herczegh—Nagy op. cit. 410.
⁵⁸² The same measure was applied to consular representatives. Levin: Diplomaticheskii… 153.
the British dominions. This was a measure demanded by the circumstances of the existing warfare.  

Refering 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.

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

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583 Ibid.
585 Rubin op. cit. 94-95.
587 The volume of the present thesis does not allow to list all the privileges, based on the principle of reciprocity and other types of provision of deference towards a diplomatic representative, he is entitled to expect as a person, personifying the sovereign people of the sending state.
588 Kelsen, elaborating on reprisals in international law, finds that there are appear to be two different kinds of forcible interference in the sphere of interests of a state normally protected by international law. The distinction between the two lies in the degree of interference – whether this interference is actually limited or unlimited, whether the action undertaken against a state is aimed at violation of certain interests of this state, only, or is aimed at its complete submission or total annihilation. Hans Kelsen: General Theory of Law and State. Vol. I. Transaction Publishers. New Brunswick, 2009, 330.
such a step. Consent is also viewed as the basis of international law. Theoretically, 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 principle 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. Still, 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.

Practically, a state must comply with every norm that governs the international interaction of states, even without a formal joining. 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. (States normally observe their treaties and respect the rules of international law.) For example, privileges and immunities of ambassadors are granted by common consent of all nations, and none of them

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590 Levin: Diplomatscheskii... 151-153.
591 Vienna Convention. Article 47(1).
593 Hardy op. cit. 83-84.
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 *ipsa 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.595

In contemporary diplomatic law, reciprocity comes into picture when a sending state believes that its diplomatic representatives had been falsely accused by the receiving state and it decides to take reciprocal measures to express its discontentment. The apprehension regarding conceivable reciprocal measures appears in the Vienna Convention under the provisions on reciprocity and non-discrimination. The principle of reciprocity assists as one of instruments of observance of the provisions of the Vienna Convention, for every state is normally serves as a sending and a receiving state, and countries are able to discipline those diplomats, who violate diplomatic law. 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.596 On the other hand, as stipulated in the Vienna Convention,597 in case of such controversy, the standards of reciprocity prevail.

595 Hardy op. cit. 15.
596 Demin op. cit. 20-21.
597 Vienna Convention. Article 47.
III. Sources and subjects of diplomatic law, with regard to diplomatic privileges and immunities

III. 1. International custom

Diplomatic law is the most ancient branch of international law and in the earliest period of history, under the emergence of international law, there developed two branches of diplomatic law – the ambassadorial law and the law of war. Accordingly, diplomatic 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 in other states – Jus legationum – the active ambassadorial law, and to receive diplomatic representatives of foreign states – Jus legationis – the passive right of representation. Ambassadorial law was gradually transformed into diplomatic law, governing all formal relations between states, by the beginning of the twentieth century. The right of representation had been based for a long time on international custom. (In contrast to this view on diplomatic law, our contemporar, Demin, believes that diplomatic law is a “set of international legal norms, governing the status of a diplomatic mission”, thus regarding diplomatic law in a narrower sense, without accentuating the subject of the diplomatic agent.)

Diplomatic 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.

999 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 no insult. The customary character of international law as one of its signal strenghts. David. J. Bederman: Religion and the Sources of International Law in Antiquity. In: Mark W. Janis (ed.): The Influence of Religio non the Development of International Law. Martinus Nijhoff Publishers. Dordrecht, 1991, 3.
601 Blishchenko–Durdenevskii op. cit. 328.
602 Demin: Status… 8.
604 Barston op. cit. 3.
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, “diplomatic 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. 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. (International law, called in the past law of nations, was viewed by some sources as a “… law of imperfect obligations inasmuch as there is no sovereign superior to enforce it, but the United Nations set up tribunals to try enemy persons accused of offences against, iter alia international law, committed during the Second World War.” Additionally, Hart finds that notions such as state, a right or law have great ambiguity.)

The rules of contemporary diplomatic 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 diplomatic 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.

Speaking of sources and subjects of diplomatic 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. Consequently, the active codification of diplomatic law in the second half of twentieth century led to the state of affairs that international treaties became the leading sources of diplomatic

608 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.
609 Mann op. cit. 121.
610 Osborn’s Concise Dictionary op. cit. 35.
611 Hart op. cit. 4.
law. In turn, national legislation of states reproduce the main provisions of diplomatic law and in some cases establish their more detailed regulation, as well as manage the issues that do not get a solution in public international law.

As it had been discussed above, diplomatic 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, which is a very old profession, full of tradition and symbolism, according to Farkas, belongs to those human activities that were first practiced, and 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. 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)."

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 Mings, 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.

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612 “Everywhere the basis of [legal] principle is tradition.” Holmes op. cit. 457, 472.
613 Starkey–Boyer–Wilkenfeld op. cit. 55.
616 Teosa op. cit. 31.
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. Kovács, investigating the effect of customary law on the possibilities and limitations of the development of international law in the practice of international tribunals, points out that the uncertainty of contours of customary international law a priori incites the restrained approach of the judges of international courts.

Sources of contemporary diplomatic 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. The Statute of the International Criminal Court (ICC), 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, as law. Subsequently, an international custom could be determined by the way states usually think and behave, regarding a certain matter. Hence, the 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

622 Mingst op. cit. 211-212.
624 Economides, speaking about the need for a permanent court, remarks that „An optimistic argument would suggest that the proposal for an ICC represents a significant shift in the politics of international justice and indicates a growing, broad based desire to individualise responsibility for crimes against humanity have long been agreed.” Karen E. Smith – Margo Light (eds.): Ethics and Foreign Policy. Cambridge University Press. Cambridge, 2001, 115.
625 Brownlie notes that the article itself does not refer to „sources” and, after a close examination, can not be regarded as a straightforward enumeration of sources. Brownlie op. cit. 5.
626 Ibid.
627 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.
628 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.
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.\textsuperscript{630}

The possibility to use international legal custom as a source of diplomatic law, stems, in particular, from the Preamble of the Vienna Convention,\textsuperscript{631} which contains a provision confirming that the rules of customary international law continue to govern questions not explicitly regulated by the provisions of the Convention. (The Preamble of the Vienna Convention on Consular Relations encloses almost an identical provision.)\textsuperscript{632}

Besides the custom, an other important notion of international law, related to the topic of the present thesis, is \textit{opinio juris}.\textsuperscript{633} 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 activity. Wolfrum believes that \textit{opinion juris} is based on a value judgment.\textsuperscript{634}

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.\textsuperscript{635}

The provision to respect the laws of the host country,\textsuperscript{636} viewed by Denza as the most important of the four general obligations of the diplomatic agent,\textsuperscript{637} under the Vienna

\textsuperscript{630} Abass op. cit. 35.
\textsuperscript{631} Vienna Convention. Preamble: „Affirming that the rules of customary international law should continue to govern questions not expressly regulated by the provisions of the present Convention.”
\textsuperscript{633} There is some disagreement as to how strictly the requirements of \textit{opinio juris} should be interpreted. In practice, the requirements of constant and uniform usage and \textit{opinio juris} stand together. Merrills op. cit. 5.
\textsuperscript{635} Sen: A Diplomat’s… XIII.
\textsuperscript{636} Vienna Convention. Article 41(1).
\textsuperscript{637} Denza op. cit. 373.
Convention,\textsuperscript{638} requires demonstration of special circumspection in their actions and in everyday behavior, also tact and thoughtfulness in conversations and in giving public statements.\textsuperscript{639} Talking of the significance of customs in a diplomat’s daily work, it has to be pointed out that his words (speeches, announcements), either in oral or written form, could be examined in detail, concerning the content, which sometimes might be of legal nature.

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. There were many occasions in the diplomatic history, when disrespectful conduct of diplomats resulted in demand for their recall or dismissal. In 1972, 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 1898, the private letters of the Spanish Minister in the United States had been published and it led to his recall, because they contained disparaging remarks about the President of the United States.\textsuperscript{640}

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.\textsuperscript{641} 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 that such limitations could expose the effective performance of diplomatic functions to arbitrary determinations of what exactly constitutes such participation.\textsuperscript{642}

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).\textsuperscript{643} There were governments that promoted state terrorism through the involvement of their

\textsuperscript{638} Vienna Convention. Article 41(1)(2)(3).
\textsuperscript{639} Petrik op. cit. 45.
\textsuperscript{640} Mutry op. cit. 416.
\textsuperscript{641} Higgins op. cit. 642.
\textsuperscript{642} Fassbender op. cit. 78.
\textsuperscript{643} Higgins op. cit. 643.
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 and 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. 644

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,645 in which eighty-five people were killed.646 (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 Ambassador to Great Britain, “for consultations”. After the recall, the British Embassy in Tehran was fired on twice.647

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 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.\textsuperscript{648}

III. 2. International conventions

With the establishment of relations between subjects of international law,\textsuperscript{649} there appeared the need for their regulation by legal norms and rules of international procedure. Thus, the predispositions of standardization and codification of the rules of diplomatic law led to the emergence of a set of international laws,\textsuperscript{650} binding on states.\textsuperscript{651} (Every state strives to more fully express its standpoints, when the international legal standards are being developed.)\textsuperscript{652} In international law there is no right as such to diplomatic relations – they are established by mutual consent.\textsuperscript{653} Agreements are among the fundamental sources of diplomatic law. Treaties and custom are of equal authority, although the later in time prevails, which conforms to the general maxim of \textit{lex posterior derogate priori} – a later law repeats an earlier law.\textsuperscript{654}

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 contribute 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 diplomatic law, which was attended by eight European countries,\textsuperscript{655} is the Vienna Protocol as of 7 March, 1815 on the ranks of diplomatic

\textsuperscript{649} „The greatest single factor in determining a state’s attitude towards international law is its view of where its interests lie. “ Merrrills op. cit. 9.
\textsuperscript{650} As to the requirement of compliance with the rules of international law, according to Giplin, modern international law “was imposed on the world by Western civilization, and it reflects the values and interests of Western civilization”. Robert Giplin: War and Change in World Politics. Cambridge University Press. Cambridge, 1981, 35-36.
\textsuperscript{653} Vienna Convention. Article 2.
\textsuperscript{654} Malanczuk op. cit. 56.
\textsuperscript{655} 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 Fejtő (ed.): The opening of an era: 1848. Allan Wingate. London, 1948, 3.
representatives, completed by the Aachen Protocol in 1818. The other endeavor of codification of diplomatic law was made by the League of Nations of Great Britain in the 1920s. Partial official codification of diplomatic law was first made on a regional scale in Latin America by the Convention regarding Diplomatic Officers in 1928. Presently, diplomatic law generally codified. Before the creation of the Vienna Convention, the two most important documents were the Havana Convention and the Harvard Research Draft Convention on Diplomatic Privileges and Immunities. 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, but to contain certain provisions, which would formulate new law.

Tunkin finds that the national legislation, judicial precedents, diplomatic practice, play an important role in the establishment of norms of international law, without being formal sources of international law. (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.”) Demin thinks that the significance of the legal regulation at national level is not always given the necessary valuation in the doctrine of international law, also in works on diplomacy and international law, and when giving characteristics to diplomatic missions and their personnel, the main accent is on the sources of diplomatic law, while the aspects of legal regulation at national level are paid much less attention to. The study of this status, performed without taking into the consideration the norms of national legislation, together with the judicial and diplomatic practice, would be inaccurate and incomplete. The legal regulation at national level helps the receiving state to individually

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661 Tunkin op. cit. 209-211.
delineate the specifics of the status of diplomatic missions and their personnel (considering their own interests and needs), in a more complete mode, than it is stipulated by norms of international law, which are often of compromise character.  

The modern stage of codification of diplomatic 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 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, highlighting the diplomatic mission as a multifaceted organ that performs certain functions and enjoys certain immunities. Considering the diplomatic mission as the main core of diplomatic law, the Convention thus extends the application of immunities and privileges for a new category of persons – members of diplomatic missions, which 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 the immunities and privileges have been extended to the administrative and technical staff of a diplomatic mission. The Convention solved the problem of equality of interests between the sending and the receiving state. The receiving state was

663 Demin op. cit. 21.
665 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.”
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. into legal norms.\textsuperscript{666} The rules of diplomatic law, laid down by the Vienna Convention, were defined by Denza as “the cornerstone of the modern international law”.\textsuperscript{667}

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: “… the purpose of such privileges and immunities... to ensure the efficient performance of the functions of diplomatic missions as representing States.”\textsuperscript{668} 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{669}

Furthermore, the International Court decided in 1980 that “the rules of diplomatic 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{670}

Additional international legal sources of diplomatic 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 VI on international protection of diplomatic agents), and also bilateral agreements on establishment of diplomatic relations.\textsuperscript{671}

\begin{itemize}
\item\textsuperscript{666} Teosa op. cit. 33-35.
\item\textsuperscript{667} Denza op. cit. 1.
\item\textsuperscript{668} Vienna Convention. Preamble.
\item\textsuperscript{669} Fox op. cit. 455.
\item\textsuperscript{670} The American Hostages Case op. cit. 3.
\item\textsuperscript{671} For example, bilateral agreements on diplomatic relations between Russia and Azerbaijan, Armenia, Denmark, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Tajikistan, Turkmenistan, Uzbekistan, Ukraine and other states.
\end{itemize}
customs and traditions of diplomatic protocol and diplomatic ceremonial. Diplomatic 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 (1961) and the Vienna Convention on Consular Relations (1963), the Vienna Convention on the Law of Treaties (1969).  

A special feature of the system of sources of diplomatic law is the fact that it includes, along with sources such as the international order and international contract, acts of national legislation. The part of legal sources, related to domestic law, is linked to branches of law, such as constitutional law, administrative law, public service and others. Thus, diplomatic 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, the sources of diplomatic law are constituted of two parts: international and domestic law. Domestic sources of diplomatic 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 diplomatic law, as well. There is a number of national sources of diplomatic law, adopted by states within the framework of national law. (The national legal sources might also include a number of regulations of subordinate character.) 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 it is granted by the Vienna Convention. The language of the Vienna Convention on Consular Relations. 596 UNTS 261 / 21 UST 77 / TIAS 6820. Done at Vienna, Austria on 24 April, 1963. Entered into force on 19 March, 1967. The Vienna Convention on the Law of Treaties. 1155 UNTS 331; 8 ILM 679. Done at Vienna, Austria on 23 May, 1969. Entered into force on 27 January, 1980.

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. János Martonyi: Globális szabályozások és Európa. (Global regulations and Europé.) In: A közigazgatás egyes alapproblémái. Emlékkötet Martonyi János halálának 25. évfordulójá alkalmából. (Certain basic problems of administration. Commemorative Edition, dedicated to the 25th anniversary of the death of János Martonyi.) SZTE ÁJK Közigazgatási Jogi és Pénzügyi Jogi Tanszék. Szeged, 2007, 87.


22 USC §254c: „Extension of more favorable or less favorable treatment than provided under Vienna Convention; authority of President. The President may, on the basis of reciprocity and under such terms and conditions as he may determine, specify privileges and for the mission, the members of the mission, their families, and the diplomatic couriers which result in more favorable treatment or less favorable treatment than is provided under the Vienna Convention. “
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 Vienna Convention. 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.) In the Diplomatic Relations Act it was also explicated that the Vienna Convention was the “essential United States law on the subject”. 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 the 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 the host country. In the late 1990s, this unofficial ban was eventually unofficially canceled. Since then, the restrictions applied only to those who had access to state secrets.

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. In Ukraine the legal basis and the procedure of organization of the activities, related to the diplomatic service 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

679 Lukashuk: Mezsdunarodnoje… 89.
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 regulation shows the prevalence of centralized regulation. Regarding the regulatory framework of Ukraine, Iasunik notes 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. 680 There is a number of other states, which regulate at the national level the questions of status, official duties, rights, obligations, privileges, allowance and compensation system, also labor achievements, incentives and awards of diplomatic representatives, for example: Argentina, 681 Armenia, 682 Estonia, 683 Germany, 684 Great Britain, 685 Kazakhstan, 686 Kyrgyzstan, 687 Moldova, 688 Tajikistan, 689 Turkmenistan, 690 United States. 691 Notwithstanding, the questions of diplomatic protocol and ceremonial are still regulated by customary law.

There is one more theory in diplomatic law – the principle of responsibility 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

681 The law of Argentina “On the foreign service” No. 20957 as of 22 May, 1975.
685 “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.
immunities. The standard of responsibility is reflected in the Vienna Convention, as well: “Without prejudice to their privileges and immunities, it is the duty of all persons enjoying such privileges and immunities to respect the laws and regulations of the receiving State. They also have a duty not to interfere in the internal affairs of that State.” 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: “Without prejudice to their diplomatic privileges and immunities, it is the duty of all persons enjoying such privileges and immunities to respect the laws and regulations of the receiving State. They also have a duty not to interfere in the internal affairs of that state.” 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 of the fulfilment of the defined prescriptions. Some note that the expression “without prejudice of” in the body of the Convention conveys that there is no direct association between diplomatic privileges and immunities, and their observance in the sense that any break in their fulfilment does not affect privileges and immunities directly. Nevertheless, 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 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,

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693 Vienna Convention. Article 41(1).
695 The principle of non-interference into domestic matters into 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 an other state, including its political, economical and cultural elements. The United Nations Charter 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 opinion of Garcia-Amarador, 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. Garcia-Amarador, Special Rapporteur. Doc. A/496. In: Yearbook of the International Law Commission. Vol. II. 1956, 217-218.
that these principles are not taken for strictly interdependent notions, rather generally correlated ones.)

The receiving state has also the right to require the diplomat's family members, who showed disrespect towards its laws, to leave the country. In 1954, the wife of the 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 caused bodily injury to nearby workers of the ongoing construction. 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. 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. Similarly to this incident, 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.

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. Under the concept of reciprocity, diplomats assigned to any country in the world, benefit equally from diplomatic immunity. Regarding diplomatic communication methods, in 2012 Wu Xiaoqing, 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’ representatives “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.” The American Embassy started to gather and publish air-quality data in 2008, which practice was followed by its

696 Murty op. cit. 345-346.
698 Blischenko op. cit. 88.
699 Hingorani op. cit. 187-188.
Guangzhou Consulate in 2011 and the Shanghai Consulate in 2012. Officials in China and Hong Kong have “grudgingly” responded by releasing their own data on air condition.\textsuperscript{700}

This episode in China was followed with similar criticism, expressed by the Russian authorities of intensive blogging of the American Ambassador in Russia. In connection to these online-related incidents, Kurbalija believes that the provisions of the Vienna Convention\textsuperscript{701} on communication via official channels is the most controversial, 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 \textit{persona non grata}. 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.\textsuperscript{702}

In bilateral diplomatic relations, there are situations of disagreement over the actual fact of diplomatic immunity. In 2013, David Cameron found that Spain was guilty of \textit{“an extremely serious action”} by opening a diplomatic bag at the Gibraltar border by Guardia Civil officers and thus breaching the principle of state immunity and principles, underlying the Vienna Convention.\textsuperscript{703} The Governor’s Office in Gibraltar had been sending diplomatic bags for more than two decades, including across the borders into Spain.\textsuperscript{704} This was the first time, however that a British diplomatic bag had been searched by a European Union or NATO member. Jose Manuel Garcia-Margallo, the Spanish Foreign Minister insisted that the bags, which had been dispatched by the Office of the Governor of Gibraltar, \textit{“were not technically diplomatic bags”}, explaining his standpoint by \textit{“A mailbag was opened, which is not a diplomatic bag in


\textsuperscript{701} Vienna Convention. Article 41.


\textsuperscript{703} Vienna Convention. Article 27(3).

\textsuperscript{704} Doc. cit. Article 27(5).
accordance with article 27 of the Vienna Convention. The Foreign Minister concluded the incident saying that as such, there was neither a diplomatic bag, nor a diplomatic incident. The Spanish press reported that the “diplomatic bag” was contained within a mailbag being carried by a courier company, along with other packages and suggested that the Guardia Civil opened the bag without noticing the seal, identifying the mail as diplomatic bag. The episode was followed by a further incident, when the Foreign Office of Great Britain summoned the Ambassador of Spain to protect about a violation of British Gibraltar Territorial waters by a Spanish research vessel, which drifted for twenty hours, disregarding the warnings from the Royal Navy, as it was reported by the British press.

The last occasion when a British diplomatic bag was searched, prior to the aforementioned occasion, happened in Zimbabwe in March 2000. Zimbabwean government had to face accusation of flouting diplomatic law by opening a six tonne freight delivery, intended for the British Mission in Harare. Zimbabweans claimed that they were searching for arms, which are not permitted to be sent in a “diplomatic bag”. The Vienna Convention also gives special status to couriers, who accompany the diplomatic mail, however, in the case of the United Kingdom, Queen's Messengers regularly travel on normal commercial flights, despite the potential sensitivity of the documents they carry. (Demin notes that sending states are often abuse the inviolability of diplomatic pouch, for example for transportation of firearms.)

Speaking of diplomatic bag (luggage), 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

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705 Doc. cit. Article 27(2).
706 Doc. cit. Article 27(6).
707 Doc. cit. Article 27(4).
710 Demin op. cit. 75.
on the highway from Kyrgyzstan to Alma-Ata, was carried out with the consent of the Ambassador. (Other five people were taken to custody with Nematov, charged for smuggling of drugs and organization of a criminal group.) 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 kilograms 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.

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 discovered cigarettes in the car, driven by the couple, was produced in Russia.) 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 North Korean Embassy in Stockholm said earlier that he did not know about the arrests. The Korean diplomats were sentenced to eight months in prison, as reported by press.

Värk remarks 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

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is not likely, because states are not enthusiastic about such changes, and put to risk a stable, more or less satisfactory and operable system. The United States is particularly sensitive to this question, for the reason that it maintains sizable diplomatic establishment almost everywhere and immunity is especially important, because the American officials might be subject to harassment under local laws or fabricated charges. 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.

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, such as treaties, custom, general principles, subsidiary sources, 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, peremptory norm overrides the related provisions of the treaty. The International Law Committee 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

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717 Värk: Personal Inviolability… 116.
719 Värk: Personal Inviolability… 119.
720 The Statute, being adopted by states during the founding Conference of the United Nations in 1945, thus reflects the state practice, which is „the raw material of customary law”. Villiger op. cit. 16.
722 Thirlway op. cit. 133.
726 Ibid. “(2) In applying international law, it is often necessary to determine the precise relationship between two or more rules and principles that are both valid and applicable in respect of a situation. For that purpose, the relevant relationships fall into two general types: Relationships of interpretation. This is the case where one norm assists in the interpretation of another. A norm may assist in the interpretation of another norm for example as an application, clarification, updating, or modification of the latter. In such situation, both norms are applied in conjunction.”
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. 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.

III. 4. Judicial decisions

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 diplomatic 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”.)

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 major source of European law. Mann finds that although 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 the termination of an extradition treaty may result in an accused person avoiding prosecution abroad. Furthermore, as noted by Merrills, the difficulty of bringing cases before international

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727 Bowring op. cit. 208.
730 Sharp–Wiseman op. cit. 277.
732 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 onto 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.
734 The tradition of The Hague as „judicial capital” goes back to the peace conferences.
735 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.
“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. (The related contribution, municipal courts can make, has certain limitations – in the absence of any doctrine of international stare decisis, municipal courts often differ on the interpretation of international law.)

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. Furthermore, 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 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 “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

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737 Merrills op. cit. 24-25.

738 Mann op. cit. 8-42.


740 Hershey op. cit. 426-428.
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. After the retirement of Bakhmeteff as Ambassador, the United States continued to recognize him as custodian of Russian property in the United States. 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. 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.” In this situation, the case was remanded to the Court of Appeals for further proceedings.741

In Fenton Textile Association v. Krassin742 in 1921, the Court of Appeal held that Leonid Krassin,743 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 under the common law, 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.

In De Fallois v. Piatakoff, et al., and Commercial Delegation of the U.S.S.R. in France744 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

743 Krassin served at the Government of the Soviet Union as People's Commisar for Trade and Industry from November 1918 until June 1920, then as People's Commisar for Foreign Trade from 6 July, 1923 until 18 November, 1925.
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. (When the German Democratic Republic joined the Federal Republic of Germany in 1990, it ceased to exist as a sovereign state, consequently, its diplomatic relations ended, too.) 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, because he was 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.

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

745 Former Syrian Ambassador to the German Democratic Republic, 115 ILR 595, 605, 1997.
746 Ibid.
West Berlin, as a result of which the two diplomats were expelled.\footnote{Charles Rousseau: Chronique des faits internationaux. Revue Générale de Droit International Public, 83/351. 1980, 364.} The deportation of the Iraqi diplomats in September 1980 was attributed to reasons of security and foreign policy.\footnote{Friedo Sachser: Federal Republic of Germany. Domestic Affairs. American Jewish Yearbook. 1982, 205-206.}

On the topic of controversies, related to purchase or rent of property to foreign embassies, in \textit{Agbor v. Metropolitan Police Commissioner},\footnote{Agbor v. Metropolitan Police Commissioner [1969] 2 All E. R. 707.} 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,\footnote{Vienna Convention. Article 22(2) and Article 30(1).} 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.\footnote{Ruth Levush: Israel: Compensation for Victims of Terrorism. Report for Congress. November 2007. Directorate of Legal Research for Foreign, Comparative, and International Law. 2007-00084, 6.} The President’s statement referred to the case, heard by the Israeli courts in \textit{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.\footnote{Her Majesty the Queen in Right of Canada v. Sheldon Edelson et al., 51 PD 625 (1997).}

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.)\(^{754}\) The Pakistani side found the Austrian Embassy’s conduct 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.\(^{755}\) Particular statements or actions of diplomats could be followed by certain consequences, when they are, for example, of a political character.\(^{756}\) 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 of 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*” that Goodfriend had been involved into. Goodfriend in his statements on state of affairs in Hungary, made statements on Ildikó Vida’s, Tax Authority Chairman, implication on corruption.\(^{757}\) The investigation of this case had been initiated by Civil Unity Forum (CÖF), the rather governmental NGO that filed a report „*against an unknown perpetrator*”, because in opinion of CÖF, under Hungarian law

\(^{754}\) *Qureshi v. USSR. PLD 1981 SC 377.*


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. With escalation of the incident, the Hungarian Government also required concrete proofs of corruption that Goodfriend could not present, due to his diplomatic immunity, which the United States denied to waive. By leaving the premises of the American Embassy in Budapest, Goodfriend entered the territory of Hungary, thus having obligations, arising under Hungarian law, which in this case – 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 was denied to the United States.758 (In October 2014, András Simonyi, Hungary's former Ambassador in Washington, called this incident in a TV programme a „nuclear diplomatic bomb.”.)759 Goodfriend reacted to this situation on Twitter by “History of diplomacy & int'l relations & rationale for the Vienna Convention http://goo.gl/GHiqgy760 always makes good reading.”761 Eventually, Goodfriend, replaced by Coleen Bell, the new U. S. Ambassador to Hungary, left the country in 2015, referring to family reasons,762 and the investigation was terminated.763 Ádány notes regarding the case that the current regulatory environment is not suitable to consider similar cases in the future, due to lack of practical consequences of other distinctions, related to exemptions, under diplomatic and international law.764

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

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761 Visszavágott az USA ügyvivője a feljelentéssel fenyegetőző COF-nek. (The U. S. charge d'affaires has hit back to COF, which is threatening of denunciation.) HVG. 13 November 2014. (Accessed on 20 January, 2016.) http://hvg.hu/iththon/20141113_Visszavagott_az_USA_ugyvivjo_e_a_feljelent
it is possible, obedience to international law\textsuperscript{765} – particularly the principle of \textit{pacta sunt servanda}, and abstention from (forcible) intervention in the affairs of others.\textsuperscript{766}

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 Tribunal. 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.\textsuperscript{767}

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.\textsuperscript{768}

Watts notes that the most of the law is customary international law, based on general practice of states, which is a phenomenon, being imprecise, as source of law, 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 are able occasionally 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 the law. Notwithstanding, international law does change, the problem is in the timeliness and in securing of the right direction for the change.\textsuperscript{769} In addition, a process or symptomatology, called globalization, named so for lack of a better name, significantly reshapes the legal development.\textsuperscript{770}

The International Court of Justice held that a diplomatic agent, caught in the act of committing an assault or other offence might, on occasion, could be briefly arrested by the

\textsuperscript{765} The growing necessity of peaceful cooperation between all nations nowadays has pushed to some extend to the backgrund 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{766} Smith–Light op. cit. 3-6.
\textsuperscript{767} Rana: The 21st Century Ambassador… 185.
\textsuperscript{768} Popov op. cit. 4.
\textsuperscript{770} Martonyi op. cit. 79.
police of the receiving state, to prevent the commission of the particular crime.\textsuperscript{771} 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.\textsuperscript{772} Thus, the Court considered that severance of diplomatic relations and cancelling of advantages of diplomatic status would be the punishment for the abuse.

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.\textsuperscript{773} The judges have a dominant role in setting policy and taking part in all major institutional and social issues.\textsuperscript{774} 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. 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.\textsuperscript{775} 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.\textsuperscript{776} 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. Brown points out that the decisions of courts may not always be welcome, for example, when an accused is released from the jurisdiction, but the courts have the opportunity, occasionally, though, to develop clear rules.\textsuperscript{777}

Certain other sources of international law, such as the legal doctrine and general principles of law, being recognized in legal systems at international level, may also serve as


\textsuperscript{774} Chitti op. cit. 719.

\textsuperscript{775} 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. Joyner op. cit. 14.

\textsuperscript{776} Malanczuk op. cit. 51.

additional sources of diplomatic law. 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 extention 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.\footnote{Boyle–Chinkin op. cit. 35.} (So far, scholars from different theoretical perspectives have acknowledged the broad range of participants in the current processes of international law-making.)\footnote{Boyle–Chinkin op. cit. 43.} Lastly, the different sources of international law are not arranged in a fixed hierarchical order. 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.\footnote{Malanczuk op. cit. 57.}

Summarizing Chapter III on sources and subject of diplomatic law with regard to the examined topic of diplomatic privileges and immunities, it should be mentioned here that in spite of the high level of codification concerning the legal sources, international law is not imposed on states in the sense that there is no international legislature. (In addition, according to the traditional Western view, international law is founded essentially on consensus.) 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. Two other measures in order to follow international law are reciprocity and public opinion, since states are well aware of the fact that their violations of law in regard to other states may be reciprocated, and states generally try to avoid criticism for failure concerning observation of the rules of international law.\footnote{Tim Hillier: Sourcebook on Public International Law. Cavendish Publishing Limited. London, 1998, 30-31.}
IV. Personal inviolability of the diplomatic agent

IV. 1. Categories of diplomatic immunity

IV. 1. 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 present work concentrates on immunity, afforded to career diplomats.

The research, conducted in the present section is commenced 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 negociations. 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.

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

a) from the point of view of distinguishing by analogy with the treatment of sovereign immunity between acts *jure gestionis* 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.

The primary aspect of diplomatic law is granting immunity from local jurisdiction. Diplomatic agents enjoy immunity *ratione personae*, i.e. complete personal inviolability and absolute immunity from criminal jurisdiction. Their immunity from civil jurisdiction may also

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784 Vattel op. cit. 183.

785 Berridge: Diplomatic Classics… 122.

786 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, adressed to his government, which complicates gaining jurisdiction regarding acts *jure gestionis*.

787 O’Connell op. cit. 897.

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 notes that despite of certain serious cases of abuse, there is no substantial body of opinion, which advocates for abolition of restrictions.789 Diplomatic agents are afforded the highest degree of privileges and immunities.790 Special immunity is afforded to the person of the ambassador, also to his entourage. It had been a long practice of supporting and feeding of diplomats, but it was abolished with time.791

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,792 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 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.793

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*,794 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 shareholder795 in and, accordingly, contributory of the Magdalena Steam

791 Nagy op. cit. 422.
793 Brown: Diplomatic… 78.
794 *Magdalena Steam Navigation Co. v. Martin.* 2 El. & El. 94 [1859].
795 Martin was entitled to one hundred shares in the capital stock of the Company. Ibid.
Navigation Company. The Company had to be wound up,\textsuperscript{796} according to The Joint Stock Companies’ Act, therefore the appointed liquidator made a call of 61. per share\textsuperscript{797} on all stakeholders. The defendant did not pay the call in due time, therefore 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, as a public minister, the diplomat 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 case of \textit{Musurus Bey v. Gadban}\textsuperscript{798} in 1894. The principal question of this case 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. 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 not.

\textsuperscript{796} The decision was taken at an extraordinary general meeting of the The Joint Stock Companies’ Act on 10 March, 1857. Ibid.

\textsuperscript{797} The liquidator made the call on 22 April, 1858. Ibid.

\textsuperscript{798} \textit{Musurus Bey v. Gadban and others.} 2 Q. B. 352 (1894).
recalled,799 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.800 The case of In re Suarez801 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 for the case. 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.802

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 ratione personae 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”.803 Furthermore, “The person of a diplomatic agent shall be inviolable. He shall not be liable to any form of arrest or detention. The receiving State shall treat him with due respect and shall take all appropriate

799 As it was held in the case of Magdalena Steam Navigation Co. v. Martin in 1859.
800 O’Connell op. cit. 907.
801 In re Suarez [1918] 1 Ch. 176.
802 Vienna Convention. Article 32(4).
803 Doc. cit. Article 1(e).
steps to prevent any attack on his person, freedom, or dignity.” \(^{804}\) The diplomat, on his part, has to respect the laws and regulations of the receiving state. \(^{805}\) (As it was earlier mentioned, 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.) \(^{806}\)

The Vienna Convention authorizes diplomatic agents with complete immunity, \(^{807}\) 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, \(^{808}\) i.e. as a private person \(^{809}\) (and not on behalf of his government). \(^{810}\) The question, whether the private residence of a diplomatic agent is included within this third exception, was considered during the case \textit{Intpro Properties v. Sauvel}. \(^{811}\) 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”. \(^{812}\) The Court of Appeal found 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,

\(^{804}\) Doc. cit. Article 29.
\(^{805}\) Doc. cit. Article 41(1).
\(^{806}\) Doc. cit. Article 39.
\(^{807}\) In 1915, in \textit{Breills v. Morla}, the French court has held that no proceedings may be instituted against a diplomat in respect of debts, occurred before his appointment. \textit{Breills v. Morla}. Edouard Clunet: Journal du droit international. Vol. 42, 1915, 444.
\(^{808}\) Vienna Convention. Article 31(1)(a)(b)(c).
\(^{809}\) Doc. cit. Article 31(1)(b).
\(^{810}\) The case of \textit{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. \textit{De Andrade v. De Andrade}. 118 ILR 299, 1984.
related to premises\textsuperscript{813} of a diplomatic mission\textsuperscript{814} 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.\textsuperscript{815} Similarly, in \textit{Portion 20 of Plot 15 Athol (Pty) Ltd v. Rodrigues} in 1999,\textsuperscript{816} the South African High Court held that the property, purchased by the Ambassador of Angola in Johannesburg, as a residence,\textsuperscript{817} 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.

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 \textit{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.\textsuperscript{818} Even at the time of Grotius, it was accepted that for reasons of ambassador’s security, “\textit{every thing belonging to him must be protected from all compulsion}”.\textsuperscript{819} 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.\textsuperscript{820} (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.)\textsuperscript{821}

\textsuperscript{813} The Vienna Convention does not specify the number of rooms of an embassy.

\textsuperscript{814} Vienna Convention. Article 1(i).

\textsuperscript{815} Doc. cit. Article 31(a).

\textsuperscript{816} \textit{Portion 20 of Plot 15 Athol (Pty) Ltd v. Rodrigues}. South Africa, High Court, Witwatersrand Local Division, 21 October, 1999.

\textsuperscript{817} In fact, the Ambassador had its principal residense in Pretoria. Ibid.

\textsuperscript{818} O’Connell op. cit. 902.


\textsuperscript{820} O’Connell op. cit. 902-903.

\textsuperscript{821} Jean Hotman: \textit{The Ambassador}. In: Berridge: \textit{Diplomatic Classics…} 80.
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 can not 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 to release the diplomatic accounts at a bank that was subject to judicial moratorium, acknowledging the immunity of such bank accounts. In practice, as noted by Denza, 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.

O’Connel finds that the inviolability of the residence of a diplomat is still an “obscure” topic, 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 satisfaction of an international arbitral award. The Supreme Court distinguished between the embassy property 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.

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

822 A diplomat’s motor car is immune from seizure and in a number of countries, including the United Kingdom, even from parking regulations. Ibid.
824 O’Connell op. cit. 902.
825 Re Ledoux, Ann. Dig. 1943-1945, Case No. 75.
826 Denza op. cit. 227.
827 O’Connel op. cit. 902.
829 Ibid.
to prevent such occasions of abuse. Demin reviews the cases, when it is permissible to restrict personal inviolability of diplomats:

- when a diplomat puts itself at risk by his actions;
- when persons violate diplomatic immunity;
- in order to prevent the commission of an offense;
- 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.

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. The Vienna Convention provides the same inviolability and protection of a diplomat’s private residence and property (with certain exceptions), as it affords to the premises of the diplomatic mission.

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. 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. 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.

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830 Levin: Diplomaticheskii... 315-316.
831 Brown: Diplomatic... 80.
832 Vienna Convention. Article 31(3).
833 Vienna Convention. Article 30.
Also, a significant role in politics of restrictions of diplomatic independences play 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 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. 1. 2. Immunity from criminal jurisdiction

Regarding the criminal cases, the legal practice is completely unified. Starting from the sixteenth century, no case have occurred, when a diplomat would be prosecuted in the receiving state, without his consent. When Mendoza, who was the Spanish Ambassador in London, conspired against the Queen Elizabeth in 1584, the Secret Council sought expert advice from Gentili, the remarkable Italian jurist and writer on international law, who was a professor of Oxford University at that time. 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, which was executed. Since then, in similar cases, a legal opinion is not asked for, and the envoy is recalled or expelled from the host 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

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835 Gumeniuk op. cit. 79.
836 Rubin op. cit. 82.
837 Vienna Convention. Article 29.
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 the 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.

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.

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.

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838 O’Connell op. cit. 900.
840 Nagy op. cit. 422.
841 Vienna Convention. Article 31(e).
The requirements on personal inviolability of diplomatic agents – provided they are not nationals of the receiving state, including freedom from arrest and detention, were violated during the hostage case in the United States Diplomatic and Consular Staff in Tehran. 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 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”. The United States, being caught off-guard, did not respond well to the violent situation and “the intelligence and diplomatic fiasco reached its climax”, when the personnel of the American Embassy was taken hostage.

Regardless of the fact that diplomatic 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, the developed remedies, applied in cases of abuse, still, there are not always satisfying or unanimous answers to situations when diplomatic 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 “diplomatic 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

842 Do. cit. Article 29.
844 Starkey–Boyer–Wilkenfeld op. cit. 55.
845 Starkey–Boyer–Wilkenfeld op. cit. 56.
846 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.
847 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.”
848 The same provisions apply to consular relations.
fundamental character of the principle of inviolability was strongly underlined by the provisions of 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."

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. The maxim “Quilibet potest renunciare juri pro se introducto.” applies to the waiver of the privilege of diplomatic immunity. In cases where it’s deemed politically wise, a diplomat’s 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 (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.

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

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850 Vienna Convention. Articles 44, 45.
852 Matuzov–Mal’ko op. cit. 234.
853 Also applied to the case of In re Suarez [1918] 1 Ch. 176.
855 Vienna Convention. Article 32(1).
856 Doc. cit. Article 32(2).
858 Malanczuk op. cit. 128.
859 Sen op. cit. 164.
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.\footnote{Nagy op. cit. 423.}

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. The Embassy of Georgia assumed all the costs of the funeral, the payment of a lump sum and a pension. 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.\footnote{Lukashuk op. cit. 87.}

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.\footnote{Ex-Romanian diplomat Silviu Ionescu dies: A look back at the hit-and-run case. The Straits Times. 10 December, 2014. (Accessed on 9 April, 2016.) http://www.straitstimes.com/singapore/courts-crime/ex-romanian-diplomat-silviu-ionescu-dies-a-look-back-at-the-hit-and-run-case}

In 2002, the Russian diplomat Andrei Kniazev 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. Kniazev was found guilty for violation of traffic rules and the rules of exploitation of means of transport, stated in the

\footnote{Re Hillhouse (1955) I. L. R., 538.}
After the car accident, the diplomat refused to take the field sobriety test, citing diplomatic immunity. Later, the Canadian authorities tried to achieve the removal of Kniazev’s diplomatic immunity, but the Russian Foreign Ministry rejected the request and recalled the diplomat.\(^{865}\) While the pending trial, Kniazev was sent home, to Russia. At the court hearing in Moscow, the acquitted said that he was driving without breaking the speed limit, but his car lost control because of the slippery road. In addition, the Canadian women were walking along the carriageway, instead of the sidewalk. 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.\(^{866}\) 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.\(^{867}\)

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 \textit{persona non grata}. It is customary to negotiate bilaterally the departure of the diplomat, without public announcement.\(^{868}\) (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.)\(^{869}\)

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.\(^{870}\)

\textbf{IV. 1. 3. Exemption 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

\(^{867}\) Lukashuk: Mezhdunarodnoe… 90.
\(^{868}\) Rana: The 21st Century Ambassador… 56.
\(^{869}\) Värk: Personal Inviolability… 118.
\(^{870}\) Lowe op. cit. 185.
development of maritime trade in the Greek city-states and in the territory of the later Roman Empire. The Manu Code elaborates on the system and procedures of customs, penalizing the smugglers. 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*, was reserved to the king – *ius regalis*. The Hungarian King could also confer to others this right, called *absque privilegio*.

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. Aust résumés 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.

The sending state and the head of the diplomatic mission are exempt from all taxes, related to the premises of the mission, but not from operating dues – “payment for specific services rendered”, 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.

The 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

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872 The Code of Manu presumably originates from the second century B.C.
874 This right was also called *thetaionem or telonium*.
875 Pardavi op.cit. 41.
876 Rana: The 21st Century Ambassador… 57.
877 Rana: The 21st Century Ambassador… 220.
879 The Exemption applies to both owned and leased diplomatic premises. Vienna Convention. Article 23(1).
880 Ibid.
881 Lukashuk: Mezsdunarodnoe… 88.
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.882

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.883 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.884 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.885

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”;886 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.887

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

882 Ibid.
883 Vienna Convention. Article 36(1).
886 [Foreign Office, Berlin].
887 Sharp–Wiseman op. cit. 90.
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 luggage is subjected to inspection not due to "serious grounds for presuming that it contains articles not covered by the exemptions" 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. 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, 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 add to international agreements provisions, regarding the procedure of special access of diplomats to aircraft. This procedure could include, for example,

889 Vienna Convention. Article 28(1).
891 Doc. cit. Article 36(2).
892 Ibid.
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.  

There is an ongoing dispute, concerning the examination of the diplomatic bag. States, as a rule, try not to permit the inspection of their diplomatic pouch by technical means. 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. 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.

In history, the “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. 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 sent certainty of finding prohibited items, considering it to be a lesson for customs and other officials.

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.\textsuperscript{900}

IV. 1. 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{901}

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. The official communication of diplomatic agents encompasses official correspondence, also messages in code or cipher.\textsuperscript{902} Diplomatic documents are collectively referred to as \textit{dépêche}.\textsuperscript{903} The diplomatic immunity in this case applies to the diplomatic bag, as well.\textsuperscript{904}

The case of \textit{Bergman v. De Sieyes}\textsuperscript{905} 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, 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

\textsuperscript{901} 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 diplomaticheskogo agenta. (The principle of inviolability of the diplomatic agent.) Sovetskii ezhegodnik mezhdunarodnogo prava. 1973, „Nauka”. Moskva, 1975, 28.
\textsuperscript{902} The Vienna Convention. Article 40(3).
\textsuperscript{904} Ibid. Article 40(4).
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. The Court, considering the 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,906 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.907

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
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.908 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 holder to a special status.909
Additionally, possession of a “diplomatic visa” does not constitute acceptance as a diplomatic
agent,910 as it was confirmed by certain judicial decisions.911 Moreover, the third state is
required to ensure the diplomat’s transit or return912 (and provide the agent of state, above his
inviolability, with some other immunities, which could be required to ensure his transit or
return).913 A third state is not obliged to allow the transit, however, the prohibition of such
passage would be considered as an unfriendly act.914 (Co-belligerent’s diplomats have no right
of passage through a third country. At the same time, there is no right in a belligerent to remove
diplomats from a neutral ship, at least on the high seas.)915

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906 See in particular, 28 U.S.C.A. §§1251(a)(2) and 1351, also 1 Stat. 117 (1790), as amended, 22 U.S.C.A. §252.
549-550.
908 G. V. Chernov: Amerikana. (Americana.) English-Russian Encyclopedic Dictionary. „Polygramma”.
909 Hajdu op. cit. 201.
910 Brown: Diplomatic... 58.
911 See also in U. S. v. Kostadinov 734 F.2d 905 (2d Cir. 1984). Court of Appeals, 912.
912 Vienna Convention. Article 40(1).
913 Vylezhanin op. cit. 542.
914 Bruhács op. cit. 285.
915 O’Connell op. cit. 913.
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.916

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.917

The situation is more difficult is 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.918

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.919

916 Demin op. cit. 168.
917 Brown: Diplomatic... 62.
919 Bruhács op. cit. 285.
V. Special subjects 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: 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.

In history, sadly, 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, because 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 extraterritoriality of the ambassador and his suit, formulated by Grotius.\footnote{Yuzefovich op. cit. 42-43.}

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. The abuse of provisions of diplomatic immunity sometimes provokes indignation in ordinary people. 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\footnote{For example, in the American Hostages Case.} are rare,\footnote{Keaton admints that a high number of such incidents remain unreported. Keaton op. cit. 580.} and receive disproportionate publicity because of their rarity.\footnote{Malanczuk op. cit. 123.} In this course, the case of the \textit{United States Diplomatic and Consular Staff in Tehran},\footnote{The American Hostages Case. Judgement of 24 May, 1980, paras. 41, 86.} and Draft
Articles on Responsibility of States for Internationally Wrongful Acts refer to the question of remedies, available in diplomatic 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 privileges, and not influencing the inviolability of diplomatic personnel, also premises, archives and documents.\textsuperscript{925}

In the American Hostages Case, the International Court of Justice\textsuperscript{926} asserted that diplomatic law itself provided the necessary means of defense against, and sanction for, illicit activities by members of diplomatic (and consular) missions”.\textsuperscript{927} 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.\textsuperscript{928}

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 diplomatic 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.\textsuperscript{929}

According to Crowley, foreign diplomats in New York City alone racked up over eighteen million dollars in unpaid parking tickets between 1997 and 2002. 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

\textsuperscript{925} Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, 2001, 133.

\textsuperscript{926} The International Criminal Court also declared that violations of diplomatic and consular immunities could not be justified as countermeasures in response to an internationally wrongful act by the sending state, even as countermeasures. The American Hostages Case. Judgement of 24 May, 1980, paras. 41, 86.

\textsuperscript{927} Ibid.

\textsuperscript{928} Brown believes that the rules of diplomatic law provide remedies for abuse of diplomatic law without resort to the wider doctrine of self-defense in international law. Brown: Diplomatic… 87.

\textsuperscript{929} Higgins op. cit. 651.
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.

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's 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. Diplomatic agents have been often taking advantage of what was meant to be a professional courtesy, extended among civilized countries. And those abuses have manifested themselves in many forms over the past two decades, ranging from unpaid parking tickets to abduction.

Among the occasions of abuse of immunity by diplomats themselves, besides traffic offences, 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. 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.

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.

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930 Rana: The 21st Century Ambassador… 56.
931 In such cases a diplomat, due to his immunity, can not be obliged to go through a breath test or other medical examination.
932 Sharp–Wiseman op. cit. 91.
933 Sharp–Wiseman op. cit. 96-97.
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-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 severance of diplomatic relations, a number of other mechanisms are available in order to prevent abuse of immunity and violations of diplomatic 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.

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 cigarette in the plane’s lavatory, saying that he was trying to light his shoes on fire. The pilot alerted authorities and within minutes, two F-16 fighter jets were scrambled to intercept the plane. 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. 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”. Ross agrees with the idea that the United Nations 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

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937 Ross: Rethinking… 203.

938 Brown: Diplomatic… 85.

939 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.

940 Ross suggests that the victims of diplomatic crime would also participate in this international debate. Ross: Rethinking… 205.

941 Ross: Rethinking… 204-205.
wider public must execute a “ruthless audit of what foreign-policy machines and diplomatic services (i. e. embassies) do”.942

Speaking 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.943

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.944

Speaking of practice of Israel, due to the country’s long exposure to terrorist attacks, the state 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 Agency945 and from a special fund, derived from property taxes.)946

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.947 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.948 Others suggest to cut off all foreign aid to any country, whose diplomat

942 Riordan op. cit. 135.
944 Lukashuk: Mezsdunarodnoe… 89-90.
947 Vienna Convention. Article 31(4).
948 Doc. cit. Article 47.
has committed a crime, as a solution. But, again, “that only closes the barn door after the horses are loose.” 949

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. 950 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. 951

The U. S. States Department policy suggests mediation of relations between the United States Government and foreign missions, by taking the following measures:

- 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. 952 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

950 Brown: Diplomatic… 85.
951 Keaton op. cit. 604.
952 The United States would seek reimbursement from the involved diplomatic mission, after the settlement of the issue with the diplomat. Ross: Rethinking… 193.
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. As to the Permanent International Diplomatic Criminal court with mandatory jurisdiction over diplomatic agents, accused of crimes, it might function in inquisition mode, while acting both the prosecution and the defense, having the power to imprison diplomats.  

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, 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 diplomatic 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.  

In line with this, Crawford, commenting on Article 26 on state responsibility about compensation, 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”.  

V. 2. Freedom of diplomatic communication  

Diplomats, as envoys and messengers between the sovereigns, are “the eyes and ears, the voice and head of their government and nation in foreign lands”. In ancient times, the problem was mainly to ensure the physical safety of ambassadors, together with their suit. It

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953 Ross: Rethinking… 191-196.  
955 Keaton op. cit. 582-586.  
957 Freeman op. cit. 67
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.\(^{958}\) (It is believed that Henry VII of England never allowed resident ambassadors in his kingdom for this very reason.)\(^{959}\)

Later in history, the problem of the security of information had raised, namely its protection against interception, leakage, modification, blocking and finally, destruction.\(^{960}\) 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 that state.\(^{961}\) The specific duties of diplomats include assessing, reassuring, verifying of incoming and outgoing information.\(^{962}\)

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 dëmarche 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.);

- 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

\(^{958}\) Plato had noticed that there were spies in his republic. Alberico Gentili: Three books on Embassies. Book III, Chapter 14. Berridge: Diplomatic Classics… 64.
\(^{959}\) Ibid.
\(^{960}\) Petrik op. cit. 126-127.
\(^{961}\) Vienna Convention. Article 41(2).
\(^{962}\) Freeman op. cit. 121.
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.963

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.964 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.965 Cyber security became a center of security policy strategies on both sides of the Atlantic. The rise of virtual reality enables a novel type of terrorism and warfare. Cyberspace also affects the relationship between individual and state sovereignty. The central issue in cyberspace is jurisdictional, which arises from the fact that it is difficult to locate cyberspace conduct territorially.966 This threat affected the diplomatic communication as well, for example, WikiLeaks published high profile series of redacted classified materials connected, among others, to American diplomatic cables.967 In this fashion, Foreign Ministries find themselves on a virtual treadmill, under constant pressure to meet the latest standards for technological development.968

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,969 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

965 Riordan op. cit. 63.
966 Trachtman op. cit. 85-90.
969 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.
shows the class of the pouch. These packages may contain only diplomatic documents or articles, intended for official use.

Embassy staff, in general, contains of 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. (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 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”. Therefore, use of embassies for intelligence collection is a “normal activity, much more widespread than at first sight” 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.)

970 Starkey–Boyer–Wilkenfeld op. cit. 55.
971 Rana: The 21st Century Ambassador… 151.
972 Rana: The 21st Century Ambassador… 150-152.
Writing is one of the most important communication technologies in history and 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. "The diplomatic correspondence between Governments must supply abundant evidence of customary international law. For various reasons, however, much of the correspondence is not published." 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, as it was well illustrated by the Fisheries case in 1951, when the Court made a comment on a French note and on the reply to it by the Norwegian Government. (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 undisclosed communication with the center is an essential aspect of such a

974 Wolfke op. cit. 150.
975 United Kingdom v Norway [1951] ICJ 3.
relationship. The diplomatic correspondence and all documents are also inviolate, not depending on their location. 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.

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. In February 1946, the State Department asked Kennan to draw up an analysis of Soviet behavior and the appropriate U. S. response. On 22 February, 1946, Kennan, the Soviet expert, who had extensive experience in Russia, sent a 8 000-word telegram to Washington. In the message, Kennan recommended Washington to adopt a firmer

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978 Gumeniuk op. cit. 77.
979 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. Fayed v. Al-Tajir [1988] QB 712.
980 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. Shearson Lehman Bros. Inc. v. Maclaine Watson&Co. Ltd. (No. 2) [1988] 1 All ER 116.
982 Doc. cit. Articles 40, 27.
983 Doc. cit. Article 40.
986 The telegram is also known as „The Long Telegram”.
stance towards Moscow. 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. (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.

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. Murray also referred to the high number of political detainees in prisons and the banning of political parties in Uzbekistan. 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”.

989 Findling op. cit. 259.
991 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.
993 Doc. cit. Article 27.
994 Kish op. cit. 68
996 A state is entitled to impose its ideology on its citizens (also, when needed, to oblige its nationals to take its side in its struggles against other states). Michael Akehurst: Jurisdiction in International Law. British Yearbook of International Law. No. 46. 1972-1973, 159.
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. However, in recent years, diplomats have become more aware of the possibility of being accused of meddling, regarding to other norms of the Vienna Convention, for instance, the provision of non-interference into the internal affairs of the host state.

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.

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 can not 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 protection in the host state.

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999 From the point of view of international ethics – is it our right or duty to protect the human rights of minorities? Zsolt Boda: A nemzetközi kapcsolatok etikája. (Ethics of international relations.) In: László Fekete: Kortárs etika. Nemzetközi Tankönyvkiadó. Budapest, 2004, 98.

1000 In addition, the Havana Convention does not provide clear instructions in this regard, either.


1002 Vienna Convention. Article 41(1).


1004 Behrens op. cit. 7.

1005 Vienna Convention. Article 3(1): „The functions of a diplomatic mission, inter alia, in:...”.

1006 Behrens op. cit. 12.
rights of the receiving state. Diplomats can occasionally become eyewitnesses to relevant events.\footnote{1007} 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”\footnote{1008}.

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 an other 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 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.\footnote{1009}

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\footnote{1010} 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,\footnote{1011} 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.\footnote{1012} 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 (electronic 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

\begin{flushright}
1007 Ibid.
1008 Behrens op. cit. 38.
1010 Vienna Convention. Article 29.
1011 Doc. cit. Article 41(2).
\end{flushright}
requires new rules, consequently, for cyberspace, we need cyber-law. Kurbalija résumé that today the focus is mainly on the specifics of application of the existing law to matters, related to the internet, not on inventing new law. According to provisions of the Vienna Convention, diplomatic missions are entitled to free communication, 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. 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. 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

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1013 Vienna Convention. Article 27(1).
1014 Doc. cit. Article 40(3).
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 cardinaly change the relations between states. (In history, falsificated documents, for example the “Testament of Peter the Great” or the “Ems Dispatch”, which contained desinformation, caused serious tensions in diplomatic relations and even led to wars.)

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.

V. 2.1. Diplomatic communication and intelligence.

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”. 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. Persons of that kind were necessary in order to win or to preserve

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1019 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.
1021 Petrik doc. cit. 135.
1022 Petrik doc. cit. 166.
1023 [Le Testament de Pierre le Grand.]
1024 [Die Ems Depesche.]
1025 Petrik op. cit. 170.
1026 Vienna Convention. Article 27(1).
1027 Beerridge: Diplomatic Classics… 66.
peace, and the law of nations had to provide the safety of those individuals, without whom “the end which it orders cannot be obtained”.1029

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* (honourable spy).1030 In the sixteenth century, 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.1031

In the eighteenth century there were two famous precedents, related to undercover activities, the cases of *Gyllenburg*1032 and *Cellamare*,1033 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 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.1034

In the eighteenth century, Duke Liriysky, the first Spanish Ambassador to Russia, in Saint Petersburg, wrote his memoirs, based on diplomatic dispatch,1035 about the diplomatic and political life of the country, mainly focusing on its foreign affairs.1036 The chronicles contained portrait characteristics of the royal suit, written not only after personal experiences,

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1029 Pufendorf op. cit. 167.
1030 Yuzefovich op. cit. 16.
1031 Yuzefovich op. cit. 77.
1033 Martens op. cit. 139.
1034 Goldsmith–Posner op. cit. 56-58.
1035 The Duke described events from November 1727 to November 1730. J. A. Limonov (ed.): Rossiia XVIII glazami inostrantsev. (Russia of the XVIIIth century by the eyes of foreigners.) Lenizdat. Leningrad, 1989, 7.
1036 By those times, the independent foreign policy of Russia, its success, along with the favourable international situation, helped Russian diplomacy to strengthen the internatioan position and prestige of the Russian Empire. S. B. Okun’: Istoriia SSSR. Lektsii. Chasty I. (The history of the USSR. Lectures. Part 1.) Izdatel’svo Leningradskogo Universiteta. Leningrad, 1974, 76.
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.). Such “portraits” were intended for practical work of members of the Spanish diplomatic mission and the successor of the Ambassador.

The attitude to espionage at times used to be rather concessive, than despicable: „To spy for the interests of the motherland: honor, patriotism, noble deed. To think for the motherland, sacrifice our life for the homeland, without batting an eyelid: duty. To betray the motherland: dishonesty.” In 1915, Konstantin Dumba, the Ambassador of the Austro-Hungarian Monarchy, was expelled from the United States, because he supported industrial espionage 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.

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 diplomatic law. The freedom of diplomatic movement has been presented some problems of regulation during the early development of diplomatic 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 legal practice of states, regarding intelligence activity, was amply consistent until the Second World War, according to which, diplomatic agents were allowed to

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1037 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.
1038 Limonov op. cit. 8.
travel in the entire territory of the host country. There were only some exceptions of specifically
designated strategic areas.1041

In the 1950s, the American Embassy in Budapest was monitored by every lawful means,
and also intelligence tools by ÁVÓ,1042 the secret police of Hungary, trying to inspect the
Embassy staff, 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.1043

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.1044 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.

Despite its diversities, intelligence1045 has a distinctive status and all states recognize it,
as a permanent part of their apparatus.1046 For example, in the United States, the Bureau of
Intelligence and Research,1047 proceeds the reports from American embassies and foreign

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1041 Kish op. cit. 59.
1042 ÁVÓ – the State Security Department, was established in Hungary in early 19456th, later re-named into ÁVH -
Thomas Rogersszel és Ernst A. Naggyal. 2. rész. Kovács Péter interjúalanya Jordan Thomas Rogers. (The
Thomas Rogers and Ernst A. Nagy. Part 2. The interviewee of Péter Kovács is Jordan Thomas Rogers.) Magyar
http://www.magyarpszemle.hu/cikk/20070921_a_budapesti_amerikai_kovetseg_es_az_1956-
os_forradalom_2_resz
1044 Gábor Bátonyi: Diplomacy by Show Trial: The Espionage Case of Edgar Sanders and British-Hungarian
1045 Secrecy is intelligence’s trademark – the basis of its relationship with government and its own self-image.
1046 Herman op. cit. 12.
1047 The Bureau of Intelligence and Research, headed by an Assistant Secretary of State, provides input into the
Ltd. London, 1988, 393.
stations, also further information that other agencies choose to supply, and within the Justice Department, the Federal Bureau of Investigation deals with counterespionage.\textsuperscript{1048}

In 1982, in \textit{U. S. v. Kostadinov},\textsuperscript{1049} 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. The diplomat 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 (including the former CIA station chief and his deputy) were accused of economic espionage against the French Government.\textsuperscript{1050} Ambassador Pamela Harriman (allegedly “\textit{privately fumed as well}”) was summoned by the French to receive an official protest.\textsuperscript{1051} 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

\textsuperscript{1048} Bowles op. cit. 393.  
\textsuperscript{1049} \textit{U. S. v. Kostadinov} 734 F.2d 905 (2d Cir. 1984). Court of Appeals.  
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.\textsuperscript{1052}

If a diplomatic agent was suspected of having committed an offence or of 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 in this was over the years. When a person ceases to be a diplomat, he loses his entitlement to immunity, except of regarding official acts, for which the diplomatic immunity continues.\textsuperscript{1053}

Since Edward Snowden disclosed in 2012 dragnet surveillance by the National Security Agency and its allies, “unprecedented in its scale”,\textsuperscript{1054} it is well known that the communication of embassies with their sending states is consistently monitored, despite of the relevant provisions of the Vienna Convention. (However, this was not a new information for embassy staffs.) The activity of intelligence\textsuperscript{1055} services mainly draws attention in case of “media-interesting topics”, such as uncovering or expelling spies.\textsuperscript{1056} In May 2011, colonel Vadim Leiderman, the Israeli military attaché, was detained by Russian security services in Moscow, in connection with involvement into espionage in favor of Israeli military-industrial complex. 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{1057}

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 \textit{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

\begin{thebibliography}{99}
\bibitem{1053} Lowe op. cit. 185.
\bibitem{1055} Generally, intelligence can be characterized as collection and delivering of relevant information to customer(s) in a timely manner. Roman Laml–Miroslav Novák: Intelligence options for a small country. Panorama of global security environment. Centre for European and North Atlantic Affairs. Bratislava, 2010, 505.
\bibitem{1056} Laml–Novák op. cit. 507.
\end{thebibliography}
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,\(^\text{1058}\) as a premier neutral state.

**V. 3. Freedom of diplomatic movement**

The sufficient exercise of diplomatic functions require 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.\(^\text{1059}\)

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 legality of restrictions of diplomatic movement, 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.\(^\text{1060}\) The Vienna Conference on Diplomatic Relations in 1961\(^\text{1061}\) unanimously adopted the general rule regulating the movement of diplomatic agents in the territory of the receiving state.\(^\text{1062}\) Notwithstanding, the bilateral application of the diplomatic

\(^{1058}\) Rana: The 21st Century Ambassador… 59-61.

\(^{1059}\) Kish op. cit. 64.

\(^{1060}\) Kish op. cit. 60.

\(^{1061}\) Besides the Vienna Convention of 1961, the diplomatic freedom of movement is subject to the right of self-defence under Article 51 of the Charter of the United Nations, signed on 26 June, 1945 in San Francisco, at the conclusion of the United Nations Conference on International Organization, and came into force on 24 October, 1945.

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.

Speaking 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. 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.

Later, 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. In early 1952, the Soviet Union introduced such restrictions, as 50 kilometers around Moscow, and this distance was increased to 40 kilometers in 1953. 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 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

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1063 Kish op. cit. 62.
1064 The restriction of movement applied to all incoming foreigners, as well.
1065 There were located strategically important (military) objects on the territory of the Soviet Socialist Republic of Kazakhstan, such as Baikonur spaceport.
1066 Kish op. cit. 63.
1067 The Normandy invasion was one of the large-scale military operations of strategic importance, during the World War II. I. N. Zemszkov: A második front diplomáciai története. (Diplomatic history of the second front.) Kossuth Könyvkiadó–Kárpáti Könyvkiadó. Budapest, 1984, 256-257.
1068 Zemszkov op. cit. 64.
1069 Kish op. cit. 59.
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.

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 “Posolysko 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

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1071 Györgyi Martin: „Quia sancti habentur legati – a diplomáciai képviselő szerepe a modern nemzetközi kapcsolatokban.” (Quia sancti habentur legati – the role of diplomatic representative in modern international relations.) In: Lamm op. cit. 72.
1074 Ivan the Terrible, the practiced negotiator, started to receive ambassadors, when he was a boy. Yuzefovich op. cit. 109.
1075 Yuzefovich op. cit. 44.
1078 Hilario de Rivas y Salmon, the chargé d’affairs of his Catholic Majesty, the King of Spain was appointed in the United States on 15 March, 1823.
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, 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 was delivered on 16 March, 1826, having found Ortega guilty.

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 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.

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

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1079 The charges towards the defendants were contained in two separate indictments, being both tried at the same time. United States v. Ortega. Case No. 15,971. 4 Wash. C. C. 531. 1825.
1081 Great Britain. Foreign Office op. cit. 113-114.
1082 Frend et al. v. United States. 100 F.2d 691 (D.C. Cir. 1938).
1084 The same rule applies to legations and consulates, as well as their representatives in the District of Columbia. Ibid.
diplomatic representative. Placing placats 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 “approbrious 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 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 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.

1087 U. S. Court of Appeals for the District of Columbia Circuit No. 7198, 2.
1089 U. S. Court of Appeals for the District of Columbia Circuit No. 7198, 3.
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.1090

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.1091 These attacks illustrate the fact that states breach their international legal obligation to protect diplomatic premises and diplomatic personnel, enshrined in the Vienna Convention.1092 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.1093

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 tired 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.1094

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.1095 The need to protect diplomats is grounded in the nation’s interest in international

1091 Blishchenko–Zhdanov op. cit. 120.
1092 Vienna Convention. Article 22.
1094 Sharp–Wiseman op. cit. 136.
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 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.

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. Due to the fact that the Convention does not specify “all appropriate steps” of protection, the receiving

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1096 Ibid.
1097 Demin op. cit. 117-122.
1098 Vienna Convention. Article 37.
1099 Minnaar op. cit. 72.
1100 Levin: Diplomaticheskii ... 315.
1101 Denza op. cit. 216.
1102 Vienna Convention. Article 29.
1104 Vienna Convention. Article 22(2).
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{1105}

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{1106} also armed insurrection and mob violence or rioting.\textsuperscript{1107} 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{1108} Moreover, the international responsibility for protection of diplomatic officials “\textit{remains the host state’s duty and its guilt, rather than innocence}”,\textsuperscript{1109} 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{1110} West Germany's leader, Willy Brandt, has denounced the murder as an “\textit{infamous murder}”. Brandt, in his letter, accused Guatemala’s Government of “\textit{irresponsible behavior}” and “\textit{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 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.\textsuperscript{1111}

\textsuperscript{1105} Demin op. cit. 118.
\textsuperscript{1106} For example, the situation that arose in the American Hostages Case in 1979.
\textsuperscript{1108} Petrik op. cit. 132.
\textsuperscript{1109} Minnaar op. cit. 68.
\textsuperscript{1110} V. I. Maiorov (ed.): Mezhdunarodnoe publichnoe pravo. Praktikum. Izdatel’stvo IUURGU. Cheliabinsk, 2005, 27.
\textsuperscript{1111} Guerrillas of the Rebel Armed Forces (FAR) were blamed for Mr Meir's death and the kidnap of other foreign diplomats in the country. 1970: West German envoy killed by rebels. BBC News. 5 April, 1970. (Accessed on 20 March, 2016.) http://news.bbc.co.uk/onthisday/hl/dates/stories/april/5/newsid_2522000/2522703.stm
There have been many reports on terrorist acts of Ustashi\textsuperscript{1112} against Yugoslav diplomatic missions. 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.\textsuperscript{1113}

On April 24, 1975, four armed members of the Red Army Faction (RAF),\textsuperscript{1114} 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.\textsuperscript{1115}

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{1116} (Sabanin counted only seven cases of murder of diplomatic representatives during the nineteenth era until the first decades of the twentieth century.)\textsuperscript{1117} Embassies are no longer considered to be the territory of foreign state that occupies them, despite of the articles of popular press reports.\textsuperscript{1118} 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 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

\textsuperscript{1114} The Red Army Faction existed in West Germany from 1970 to 1998. The organization committed numerous crimes, especially during the autumn of 1977, which led to a national crisis that became known as the “German Autumn”.
\textsuperscript{1117} Sabanin op. cit. 134.
\textsuperscript{1118} Bederman op. cit. 211.
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 1979, 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.

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.” The term of “terrorism” 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). It has been a practice of the international legal system to define terrorism in national laws and international agreements. In the midst of the escalating threat of terrorism, the United States decided to take additional security measures to protect its diplomatic missions. 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.

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1119 See The American Hostages Case.
1120 Loeffler op. cit. 236-239.
1122 Blishchenko–Zhdanov op. cit. 232.
Transnational terrorism has emerged as a common challenge to states, including all great powers. Reisman points out that states, facing criminal activity in our time, including terrorism and other forms of purposive political violence, acting alone, seem less and less be able to accomplish what is expected of them, without locking themselves into increasingly complex and durable intergovernmental arrangements. Above that, suicide terrorism poses a considerable problem for any society, since terrorists use suicide assaults to destabilize a society. No matter, whether a single individual acts out of private motives or as part of an organized group, attempting to change the existing order, the tactic of suicide terrorism is difficult to defeat or to manage for any form of government. The question that governments face now, is how to protect their citizens from harm inflicted by individuals, who deliberately harm themselves in order to harm others.

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

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1123 Ibid.
1124 In 2002, following the response of the United Kingdom and the United States to the events of the attacks on September 11, 2001, David Chandler proclaimed the “degradation” of international law. Bowring im. 39.
1127 In words of Leviash, “Terrorism is considered as one of the most ancient archetypes and extrema of war. In extremely generalized way, it is possible to assert that terrorism is an abnormal product of permanent crises in a fundamental triad “culture-civilization-barbarization…”” I. J. Leviash: Terrorintern: lex talionis ili znak global’noi bedy? (Terrorintern: lex talionis or sign of global trouble?) In: Svobodnaia Mysl’. No. 5 (1653). OOO Politizdat. Moskva, 2015, 109.
1130 Vienna Convention. Article 22(1).
1131 Brownlie op. cit. 367.
United Nations adopted the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents. The 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.\textsuperscript{1132} The contracted parties 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.\textsuperscript{1133} States have to cooperate in prevention of crimes, taking all practicable measures,\textsuperscript{1134} coordinating the undertaken steps,\textsuperscript{1135} exchanging information, related to the person of the alleged offender\textsuperscript{1136} and circumstances of the crime.\textsuperscript{1137} 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{1138} 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 diplomatic 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{1139} Nonetheless, states often violate the integrity of

\textsuperscript{1132} The Convention against Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents. Article 2.
\textsuperscript{1133} Doc. cit. Article 2(2).
\textsuperscript{1134} Doc. cit. Article 4.
\textsuperscript{1135} Doc. cit. Article 4(a).
\textsuperscript{1136} Doc. cit. Article 5(1).
\textsuperscript{1137} Doc. cit. Article 5(2).
\textsuperscript{1138} Ibid. Article 7.
\textsuperscript{1139} 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.”
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 arose before the International Court of Justice out of the events, following the overthrow of the Shah, during which the Embassy of the United States in Iran was occupied, its contents seized and its personnel held captive. Considering the case, 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 and defined its responsibilities, as well as the obligation to pay damages. Simultaneously, the Court pointed out that the violation of the inviolability of a diplomatic representation does not give reasons for the use of force and recognized the U.S. invasion of Iran illegal.

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.

At peacetime, embassies do not require permanent monitoring, performed by the host state, to secure the safety of premises. The extremist activities in the world are immediate reaction to the rising internal conflicts in a society. 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.

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 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 at the beginning of the last century.
at the hands of the Turks. 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.\textsuperscript{1147} On 14 October, 1975 Ambassador Ismail Erez was killed in Paris, together with his driver Talip Yener.\textsuperscript{1148} Two Armenian terrorist organizations – Armenian Secret Army for the Liberation of Armenia (ASALA)\textsuperscript{1149} and Justice Commandos against Armenian Genocide (JCAG) disputed among themselves for 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.\textsuperscript{1150} 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.\textsuperscript{1151} On 8 July, 1978, in Paris, members of the organization “New Armenian Resistance”,\textsuperscript{1152} assassinated an attaché of

\textsuperscript{1149} The aim of the terrorist organization was to fight for the „great Armenia”.
\textsuperscript{1150} Mustafaeva–Sevdimaliev–Aliev–Iylmaz op. cit. 172.
\textsuperscript{1152} 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
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.1153 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.”1154 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.1155 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.1156 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 home. 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.”1157 On 17 December, 1980, Engin Sever, the security attaché was killed in Sydney, by Armenian terrorists from JCAG.1158 From 1970 to 1980, ASALA organized the murder of thirty-four Turkish diplomats, and continued its extremist activity.1159 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*,1160 two terrorists of ASALA, imprisoned in Switzerland. On 14 January 14, 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.1161 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.1162 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”.1163 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”,1164 was taken by ASALA.1165 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.1166 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.1167 On 27 August, 1982, terrorists from JCAG killed in Ottawa Atilla Altikat, military attaché of the Turkish Embassy to Canada. The diplomat was

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1161 Mustafaeva–Svdimaliev–Aliev–Ilymaz op. cit. 191.
1164 The attack was made in honor of the four members of ASALA, who occupied the Turkish Consulate in Paris on 24 September, 1981.
1165 Mustafaeva–Svdimaliev–Aliev–Ilymaz op. cit. 198.
1167 Mustafaeva–Svdimaliev–Aliev–Ilymaz op. cit. 207.
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. 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 took the responsibility for the planned crime. In all Armenian extremist activities, terrorism goes together with psychological coercion. Terrorism is used as a means of propaganda and an instrument of intimidation. On 8 July 8, 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). On 22 July, 1983, the Armenian terrorist group Orly Organization produced an explosion at the French Embassy in Tehran. On 27 July, 1983, in Lisbon, a group of five Armenian terrorists from ARA attempted to capture the Turkish Embassy to Portugal. The 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

1169 The headquarters of the terrorist group, which is part of ASALA, was located in France.
1170 Mustafaeva–Seydimaliye–Aliev–Iylmaz op. cit. 212.
1173 Mustafaeva–Seydimaliye–Aliev–Iylmaz op. cit. 216-220.
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

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1174 Hyland op. cit. 29.
1176 Mustafaeva–Sevdimaliev–Aliev–Iylmaz op. cit. 233-234.
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.

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.

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.)

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 cemetery of the Estonian Defense Forces. As an act of protest, several youth

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1178 Vienna Convention. Article 22.
1179 Doc. cit. Article 29.
1182 Reparations – compensation for war damage by a defeated state. Freeman op. cit. 197.
1183 Lukashuk: Mezhdunarodnoe… 95.
1184 Szabad a szaanai lengyel nagykovet. (The Polish Ammbassador in Sanaa is free.) Népszava. 6 March, 2000, 8.
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.\textsuperscript{1185} The U. S. Department of State requested the authorities in Moscow to do everything possible “to reduce tensions, carry out responsibilities under the Vienna Convention concerning diplomatic premises and diplomats, and avoid harsh words and escalation”.\textsuperscript{1186} 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.\textsuperscript{1187}

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 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.\textsuperscript{1188}

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.\textsuperscript{1189} 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


\textsuperscript{1187} Värk: The Siege… 144.

\textsuperscript{1188} Molotov-koktélt dobtak a budapesti szlovák nagykövetségre. (Molotov cocktail was thrown at the Slovakian Embassy in Budapest.) HVG. 26 August, 2009. (Accessed on 7 April, 2016.) http://hvg.hu/itthon/20090826_molotov_koktel_szlovak_nagykovetsegre

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, 2012.¹¹⁹⁰

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.¹¹⁹¹

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.¹¹⁹² 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.¹¹⁹³ However, the activity of intelligence agencies violates the sovereignty of states. In this course, the counterterrorism policy of the European Union¹¹⁹⁴ after the events of 11 September, 2011 in the United States, was criticized for being “ineffective, slow and incoherent”, as well as for “disproportionate, self-serving and partly illegal measures that undermine democratic and judicial oversight as well as civil liberties”.¹¹⁹⁵

The Vienna Convention mentions functions of a diplomatic mission, which encompass, inter alia: representation of the sending state in the receiving state,¹¹⁹⁶ protection of interests of

¹¹⁹² Riordan op. cit. 51-53.
¹¹⁹³ Stefánia Bódi: Szuverenitás és az állam lakossága: állampolgárok és külföldiek. (Sovereignty and the state’s population: citizens and foreigners.) In: Takács (ed.) op. cit. 364.
¹¹⁹⁴ In opinion of Ifantis, the European Union, being one of the most unusual and widest-ranging global political actors, contributes to global governance norms, through its leading role, among others, on international law. Kostas Ifantis: Overcoming the limits of a concept. In: McKercher op. cit. 449.
¹¹⁹⁶ Vienna Convention. Article 3(1)(a).
the sending state and of its nationals in the receiving state,\textsuperscript{1197} negotiation,\textsuperscript{1198} observation of conditions and developments in the receiving state and reporting them to the sending state,\textsuperscript{1199} and promotion of friendly relations.\textsuperscript{1200} 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 services”. 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. 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 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. 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.\textsuperscript{1201}

\textsuperscript{1197} Doc. cit. Article 3(1)(b).
\textsuperscript{1198} Doc. cit. Article 3(1)(c).
\textsuperscript{1199} Doc. cit. Article 3(1)(d).
\textsuperscript{1200} Doc. cit. Article 3(1)(e).
“Embassies are symbolically charged buildings uniquely defined by domestic politics, foreign affairs, and a complex set of representational requirements.”

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. 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. 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.

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, assaulting the foreign envoy, also business obstruction and sentenced to twelve years in prison by the Seoul Central District Court. Ki-Jong, who has

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1203 Loeffler op. cit. 3-11.
1204 Two months earlier, the Chilean Consul was shot and wounded by kidnappers. Crime in Venezuela: No immunity here. The Economist. 14 April, 2012, 16.
1205 Ibid.
had a history of unpredictable behavior, received a suspended two-year prison sentence in 2010 for throwing a piece of concrete at the Japanese Ambassador to South Korea.1207

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 of Foreign Affairs of the Russian Federation, condemned the attack and said it was obviously a terrorist act.1208

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.1209

In general, 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 activities. 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

1209 Amerikaiak bombázták le a Libiában elrabolt két szerb diplomatát. (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/
Missions of the Ministry of Home Affairs, where there is an officer on 24-hour duty to deal with the incoming calls and emergencies.\textsuperscript{1210}

The domains of policing and international security belonged once to the domestic issues of states, \textit{par excellence}, as noted by Riordan.\textsuperscript{1211} 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.\textsuperscript{1212}

The protection of foreign missions in the United States\textsuperscript{1213} 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 of the 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.\textsuperscript{1214} 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{1215} in 1900.\textsuperscript{1216} 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

\textsuperscript{1210}Minnaar op. cit. 72-76.
\textsuperscript{1211}Riordan op. cit. 51.
\textsuperscript{1212}Blishchenko–Zhdanov op. cit. 196.
\textsuperscript{1213}The ultimate responsibility for protection of diplomatic personnel in the United States lies on the Federal Government.
\textsuperscript{1214}Minnaar op. cit. 75.
\textsuperscript{1216}Bertram op. cit. 447.
Protocol Department, Diplomatic Protection Group of the Metropolitan Police and the Special Branch.\textsuperscript{1217} 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{1218}

Special protection in case of diplomatic agents means more reliable protection, than that which states are obliged to grant to private persons.\textsuperscript{1219} 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.\textsuperscript{1220}

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.\textsuperscript{1221} 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

\textsuperscript{1217} Minnaar op. cit. 75.
\textsuperscript{1218} Ibid.
\textsuperscript{1219} Blishchenko–Zhdanov op. cit. 121.
\textsuperscript{1220} Minnaar op. cit. 77-78.
\textsuperscript{1221} Ibid.
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 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. 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, who work in 12-hour shifts and 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.\(^{1222}\) 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.\(^{1223}\)

Authors note that the increasing number of violent acts against diplomatic agents shows that the 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.\(^{1224}\) Closing this chapter, it could be seen that 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.\(^{1225}\)

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\(^{1222}\) Minnaar op. cit. 76.  
\(^{1224}\) Kolobov. Ibid.  
\(^{1225}\) Petrik op. cit. 128
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. 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 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, diplomatic 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, diplomatic law, with its ancient roots, embraces a large and in many aspects developed body of law.

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 to 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.

The diplomatic immunities and privileges, as we know and apply them today, advanced parallel with diplomatic practice, during the evolution of international justice. 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.

In this course, 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.

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 diplomatic 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.\textsuperscript{1226} 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. Moreover, when diplomats leaves their office, they will enjoy general immunity regarding their official acts – *ratione materiae*. Diplomats enjoy immunity from the jurisdiction of local courts, but not an exemption from substantive law. 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. Moreover, 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 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.\textsuperscript{1227} 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.\textsuperscript{1228} An other route, obtainable to the receiving state, is to reach an agreement with the sending state to waive

\textsuperscript{1226} Brownlie op. cit. 351.
\textsuperscript{1227} Vienna Convention. Article 9(1).
\textsuperscript{1228} Doc. cit. Article 9(2).
the diplomat’s immunity, when the sending state can waive the diplomatic immunity, and the waiver has to be expressed.1229

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. The official and private activities of the 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 diplomatic 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

1229 Vienna Convention. Article 32.
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 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 diplomatic 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, in international relations, 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 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

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1230 Vienna Convention. Article 47.
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.

The authors of the Vienna Convention could not, in point of fact, foreseen in 1961 the impetuous development of scientific thought. 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 diplomatic 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.1231 The future fights against organized crime will be centralized at an international – or at least European level, including the unification of criminal laws.1232 Even with of 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

1232 Svrček op. cit. 636.
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 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.

Scholars note, however that the principles of the Vienna Convention “seem incapable of amendment”. Once the Convention is not likely to be transformed in the foreseen future, new ideas were proposed, to administer justice. 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

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1233 Brown, Diplomatic… 85.
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. The Vienna Convention, due to its limitations, is not able to address the new emerging related issues alone. 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.

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 – reparations, made to the victims, and development of a system of victim compensation.

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 Vienna 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. (Supposedly, the 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.

Diplomacy changes together with the global processes, responding “in the character of both state and society”.1234 There is “ample ground for concern about the future of the discipline”1235 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 diplomatic 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 diplomatic law will stay in effect.

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 can not talk about the existence of a coherent theory, and therefore, future research of this area of diplomatic law is needed. The results of the present dissertation, hopefully, will contribute to awareness raising regarding to the currents issues in the field of diplomatic privileges and immunities, to be addressed via legal steps.

1235 Eyefinger: Diplomacy… 838.
References


American Act of April 30, 1790, passed by the First Congress.

Amerikaiak bombáztták le a Libiában elrabolt két szerb diplomatát. (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/


Apáthy, István: Tételes európai nemzetközi jog. (The itemized European international law.) FranklinTársulat Magyar Irodalmi Intézet és Könyvnyomda, Budapest, 1888.
Aquinas, Thomas, St.: On kingship, to the King of Cyprus. Pontifical Institute of Medieval Studies. Toronto, 1949.


Csarada, János: A teteles nemzetközi jog rendszere. (The system of itemized international law.) Politzer Zsigmond és fia kiadása. Budapest, 1901.


http://news.bbc.co.uk/2/hi/uk/672786.stm

Diplomatic Privileges Act CH. 81. 1. ELIZABETH II. 1964.


Dominiczak, Peter–Govan, Fiona: David Cameron: Gibraltar diplomatic bag incident was an ‘extremely serious action’. The Telegraph. 27 November, 2013. (Accessed on 15 January, 2016.)
http://www.telegraph.co.uk/news/worldnews/europe/gibraltar/10478182/David-Cameron-Gibraltar-diplomatic-bag-incident-was-an-extremely-serious-action.html


Former Syrian Ambassador to the German Democratic Republic, 115 ILR 595, 605, 1997.


Fraknói, Vilmos: Mátyás király magyar diplomatái. (The Hungarian diplomats of king Matthias.) Századok. Vol. XXXIII, Booklet I.


_Frend et al. v. United States._ 100 F.2d 691 (D.C. Cir. 1938).
Fundamental Law of Hungary. Article XXVIII.


Grotius, Hugo: De Jure Belli ac Pacis (The Law of War and Peace, 1625), book II, chapter XVIII.


Guerrillas of the Rebel Armed Forces (FAR) were blamed for Mr Meir's death and the kidnap of other foreign diplomats in the country. 1970: West German envoy killed by rebels. BBC News. 5 April, 1970. (Accessed on 20 March, 2016.) http://news.bbc.co.uk/onthisday/hi/dates/stories/april/5/newsid_2522000/2522703.stm


Hargitai, József: A diplomáciai és konzuli kapcsolatok joga. (The law of diplomatic and consular relations.) Budapest, 2005.


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


In re Zoltán Sz. (Hungary, 1928), Annual Digest (1927-1928), USA. Case No 252.

International Court of Justice. Reports of Judgements. 1951.


Kiss, István: Európai nemzetközi jog. (European international law.) Érsek-Lyceumi Kő- és Könyvvnyomda. Eger, 1876.
Kovács, Péter: A magyarországi nemzetközi jogtudomány rövid áttekintése. (A brief overview of international jurisprudence in Hungary.) In: Jakab, András–Menyhárd, Attila (eds.):


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


Magdalena Steam Navigation Co. v. Martin. 2 El. & El. 94 [1859].


Mattueof’s Case 10 Mod. 4, 5, 88 Eng. Rep. 598, 598 (Q.B. 1709).


Mezhdunarodnaia politika noveishego vremeni v dogovorah, notah i deklaratsiiah. (International politics of modern times in agreements, notes and declarations.) Izdatel’stvo NKID, chast’ III, vypusk I, 1928.


Molotov-koktélt dobtak a budapesti szlovák nagykövetségére. (Molotov cocktail was thrown at the Slovakian Embassy in Budapest.) HVG. 26 August, 2009. (Accessed on 7 April, 2016.) http://hvg.hu/itthon/20090826_molotov_koktel_szlovak_nagykovetsegre


Musurus Bey v. Gadban and others. 2 Q. B. 352 (1894).


North Korean diplomat stopped with nearly £1m in gold at Dhaka airport. Thr Guardian. 6 March, 2015. (Accessed on 9 April, 2016.)


Re Hillhouse (1955) I. L. R.

Re Ledoux, Ann. Dig. 1943-1945, Case No. 75.


Russell, Jessee–Cohn, Ronald: Spisok terroristicheskikh operatsii ASALA. (List of terrorist operations of ASALA.) VSD. Moskva, 2012.


Szabad a szaanai lengyel nagykovet. (The Polish Amnbassador in Sanaa is free.) Népszava. 6 March, 2000.


Teghze, Gyula: Nemzetközi jog. (International law.) Városi Nyomda, Debrecen, 1930.


United Nations, Statute of the International Court of Justice. 18 April, 1946.


Visszavágott az USA ügyvivője a feljelentéssel fenyegetőző CÖF-nek. (The U. S. charge d'affaires has hit back to COF, which is threatening of denunciation.) HVG. 13 November 2014. (Accessed on 20 January, 2016.) http://hvg.hu/ittthon/20141113_Visszavagott_az_USA_ugyvivoje_a_feljelent


Williams, Glanville: International Law and the Controversy concerning the word 'Law’. British Year Book of International Law. 1945.


7 Anne c. XII (1708).
List of publications in the subject matter of the thesis


The role of International Law in the system of International Relations. ORT Publishing. Stuttgart, 2014, 57-62.


Roly diplomatii v sisteme ozdorovleniia naseleniia. (The role of diplomacy in the system of health recovery of the population.) Belorussian State University of Informatics and Radioelectronics. Minsk, 2014, 415-417.


Roly sportivnoi diplomatiia v razvitii mezhdunarodnyh otnoshenii. (The role of sports diplomacy in development of international relations.) Belorussian State University of Physical Culture. Minsk, 2015, 82-86.

