

The present Doctoral Dissertation is being published, as a monograph in the United States.

With respect to the right of first publication, taking into account the publisher's copyright interests and policy, the Doctoral School electronically made unreadable every other page of the thesis work, starting from the second page of the core volume.

Along with this, the Doctoral Dissertation is entirely accessible at the Libraries of the Doctoral School and the Faculty of Law and Political Sciences of Pázmány Péter Catholic University.

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

Natália DVORNYICSENKÓ
Doctoral Dissertation

Supervisor:
Prof. Péter KOVÁCS, DSc.

Pázmány Péter Catholic University
Faculty of Law and Political Sciences
Doctoral School of Law and Political Sciences

Budapest

2017

Dedication

to my beloved parents with profound gratitude.

Acknowledgements

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

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

My sincere gratitude also goes to Professor Vanda Lamm, whose help, suggestions and encouragement I really appreciate.

I am very grateful to the Doctoral School of Law and Political Sciences for the gained knowledge, support in research and professional administration.

Furthermore, I am thankful for the assistance of library staff and experts of the Ministry of Foreign Affairs of Hungary, the Library of the Hungarian National Assembly, the Bodleian Law Library at the University of Oxford, the Libraries of the London Metropolitan University and the Harvard Law School Library, who helped make my research on diplomacy more effective.

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

Disclaimer

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

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

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

Table of contents

Dedication	2
Acknowledgements	3
Disclaimer	4
Table of contents	5
Introduction	8
I. Background of the study	12
I. 1. Statement of the problem	12
I. 2. Relevance and aims of the research	16
I. 3. Summary of the thesis.....	18
I. 4. Methodology and sources	18
II. Sources and subjects of diplomacy law, with regard to diplomatic privileges and immunities.....	23
II. 1. Formal sources of diplomacy law, originating from international law	23
II. 1. 1. International custom	25
II. 1. 2. International conventions.....	30
II. 2. Supplementary sources of diplomacy law, originating from judicial decisions and national legislation	37
II. 2. 1. Judicial decisions at international level	37
II. 2. 2. National legislation	41
II. 2. 3. Judicial decisions at national level.....	47
III. Theoretical basis of the institution of diplomatic privileges and immunities	52
III. 1. The origin of the métier of the diplomat and the institution of diplomatic privileges and immunities	52
III. 1. 1. The basic concepts and terms of diplomacy, with regard to diplomatic privileges and immunities	52
III. 1. 2. The evolution of the institution of diplomatic privileges and immunities from ancient times until the eighteenth century	57
III. 1. 3. The advancement of the institution of diplomatic privileges and immunities from the nineteenth century until the contemporary period.....	77
III. 2. The conceptional clarification of the notion of diplomatic privileges and immunities	88
III. 3. The commencement and the termination of diplomatic privileges and immunities	112

III. 3. 1. The theoretical and practical aspects of the commencement of diplomatic privileges and immunities.....	112
III. 3. 2. The theoretical and practical aspects of the termination of diplomatic privileges and immunities	119
III. 3. 3. Diplomatic relations with authorities in exile	125
III. 4. The factors of reciprocity and non-discrimination, with regard to diplomatic privileges and immunities	126
III. 4. 1. The conceptual clarification of the notion of reciprocity	126
III. 4. 2. The practical examples of application of the principle of reciprocity	131
III. 4. 3. Secondary, honorary and ceremonial privileges, provided to diplomatic agents, on the basis of reciprocity.....	142
III. 5. Responses and countermeasures of states, with regard to diplomatic privileges and immunities.....	145
IV. Personal inviolability of the diplomatic agent: categories of diplomatic immunity	159
IV. 1. Immunity from civil and administrative jurisdiction	159
IV. 2. Immunity from criminal jurisdiction.....	169
IV. 3. Immunity from duties.....	180
IV. 4. Immunity in the third country	189
V. Special matters of diplomatic privileges and immunities	193
V. 1. Abuse of diplomatic privileges and immunities.....	193
V. 1. 1. The measures and proposals, to address abuse of diplomatic privileges and immunities	204
V. 2. Diplomatic intercourse and freedom of diplomatic communication.....	207
V. 2. 1. The challenges of diplomatic communication in modern times.....	213
V. 2. 2. Diplomatic information and intelligence	226
V. 2. 2. 1. Examples of diplomatic involvement into intelligence activities from the sixteenth century until the end of the World War II.....	227
V. 2. 2. 2. Examples of diplomatic involvement into intelligence activities from the period of the Cold War until the contemporary period.....	231
V. 3. Freedom of diplomatic movement	242
V. 4. International protection of the diplomatic agent	245
V. 4. 1. Examples of violation of diplomatic immunity by the receiving states from the sixteenth century until the period of the Cold War	247

V. 4. 2. Examples of violation of diplomatic immunity by the receiving states from the period of the Cold War until the contemporary period	251
V. 4. 3. Measures of special protection of diplomatic agents, adopted by states in recent times	276
VI. Conclusions	282
References	297
Cases.....	297
Bibliography.....	299
Journals.....	327
Newspapers	339
Other documents	340
Internet sources	343
List of author's publications in the subject matter of the thesis.....	354

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 society⁵ increasingly transcend state borders,⁶ therefore new sources of danger, conflicts and multiple tensions arise in the world,⁷ which can lead to wars.⁸

In addition, we are facing the crisis of sovereignty⁹ and identity that affects the European Union.¹⁰ Above and beyond, „*The world order changes quite quickly – like the types of iPhones.*”¹¹ This is where diplomacy steps in, as the international science and practice of peaceful settlement of disputes,¹² regarding issues both on the earth and in the outer space¹³

¹ V. V. Dvornichenko (co-author): *Istoriia mezhdunarodnogo i natsional'nogo turizma. (The history of international and national tourism.)* MESI. Moskva, 2001, 140-141.

² Shaun Riordan: *The New Diplomacy.* Polity Press. Cambridge, 2004, 60.

³ Globalization, surprisingly, strengthened diplomacy and weakened the diplomats. Yvan Bazouni: *Le métier de diplomate. (The profession of a diplomat.)* L'Harmattan. Paris, 2005, 81.

⁴ Mass tourism has also increased the public awareness of the world. Bazouni op. cit. 59.

⁵ The world is awash in new challenges that the current international order is ill equipped to handle. Stephen G. Brooks–William C. Wohlforth: *Reshaping the World Order. Foreign Affairs.* Vol. 88, No 2, 2009, 62.

⁶ Joel P. Trachtman: *The Future of International Law.* Cambridge University Pres. New York, 2013, xi.

⁷ M. V. Nozhenko: *Natsional'nye gosudarstva v Evrope. (National states in Europe.)* Norma. Sankt-Peterburg, 2007, 133.

⁸ Mead believes that the frame of reference within which the diplomats work, always contains war. Margaret Mead: *Warfare is Only an Invention – Not a biological Necessity.* Margaret Mead: Anthropology, A Human Science. D. Van Nostrand Co. Princeton, 1964, 129.

⁹ In opinion of Hart, „sovereign” in international law means no more, than „independent”, yet, with respect to the notion of sovereignty, the rules of international law are vague and conflicting on many points. H. L. A. Hart: *The Concept of Law.* Oxford University Press. Oxford, 1961, 216.

¹⁰ Jean-Claude Empereur: *À propos de la crise en Europe. États-Unis: une nouvelle vision géopolitique? (Apropos of crisis in Europe. United States: a new geopolitical vision?)* Revue Politique et Parlementaire. 117^e Année. No. 1077. Trimestriel Octobre-Décembre 2015, 23.

¹¹ Yulia Latynina: *Novyi mirovoi poriadok. (The new world order.)* Svobodnaia Mysl'. No 2(1644). OOO „Politizdat”. Moskva, 2015, 133.

¹² However, there is no peace, today, either formal or real. William Henry Chamberlin: *America's Second Crusade.* Liberty Fund, Inc. Indianapolis, 2008, vii.

¹³ A. Arbatov–V. Dvorkin (eds.): *Kosmos: oruzhie, diplomatiya, bezopasnost'. (Outer space: weapons, diplomacy, security.)* Moskovskii Tsentr Karnegi-Rossiiskaia politicheskaiia entsiklopediia (ROSSPEN). Moskva, 2009, 87-168.

needed.²⁴ Then some have argued of late that there is no real need for diplomats anymore.²⁵ Accordingly to a more radical opinion, the world of diplomacy needs ventilation badly or it may risk extinction, and that the veil of diplomatic privileges should be lifted, along with avoiding the narrowing and outdated structures of traditional diplomacy.²⁶

The supporters of diplomacy, on the contrary, deem that the diplomatic career is far from being out of date,²⁷ simply the requirements towards diplomats increased²⁸ and that the diplomatic agents have to work under much harder circumstances,²⁹ while the Foreign Office struggles to keep up with the growing demands.³⁰ 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,³¹ so diplomacy³² and diplomats are regarded, as important.³³ By practicing the art of negotiation, diplomats³⁴ are able to end or avoid international conflicts,³⁵ since security issues, human rights, environmental concerns, water rights, trade agreements, the birth of international organizations, efforts at peacekeeping,³⁶ arms control³⁷ and indeed, every aspect of foreign relations involves

²⁴ Kishan S. Rana: *Inside Diplomacy*. Manas Publications. New Delhi, 2006, 447.

²⁵ Paul Sharp: Who Needs Diplomats? The problem of diplomatic representation. In: Christer Jönsson–Richard Langhorne (ed.): *Diplomacy. History of diplomacy. Volume III*. Sage Publications Ltd. London, 2011, 58-74.

²⁶ Carne Ross: *Independent Diplomat. Dispatches from an Unaccountable Elite*. Cornell University Press. Ithaca, 2007, 207-211.

²⁷ „If it is accepted that cross-cultural communication and respect for civilizational plurality are defining features of the contemporary era, it follows that diplomacy not only survives globalization, but indeed is more important than ever,²⁷ both in bilateral and multilateral contexts.” Jan Melissen (ed.): *Innovation in Diplomatic Practice*. Macmillan Press Ltd. London, 1999, 16.

²⁸ The organizational changes in the global community, with the emergence of new international actors and the growth of multilateral diplomacy led to the necessity to develop a new diplomatic strategy and to improve the functioning of diplomatic service, which is essential for the regulation of complex contemporary international relations, and management of the existing international system in terms of our open and interconnected world that became interdependent, in ways, unimagined before. Alberts Sarkanis: The strength of the EU lies in its unity and diversity. *Macedonian Diplomatic Bulletin – Diplomatic News*. MBD No. 103. February 2016, 13.

²⁹ A. N. Kovaljov: *A diplomácia ábécéje. (The alphabet of diplomacy.)* Kossuth Könyvkiadó. Budapest, 1979, 16.

³⁰ Michael Binyon: *Diplomas in diplomacy. The World Today*. August&September 2015, Vol. 71, No 4, 42.

³¹ Sharp: *Diplomatic...* 1.

³² Morgenthau considers „the quality of diplomacy” among the elements of national power. H. J. Morgenthau: *Politics Among Nations: The Struggle for Power and Peace*. McGraw-Hill/Irwin. New York, 1966, 139-143.

³³ *Ibid.*

³⁴ Martens believed that while performing his functions, a diplomat has to respect the forms, without becoming a formalist. Charles de Martens: *Le Guide Diplomatique. (The Diplomatic Guide.)* F. A. Brockhaus. Leipzig, 1866, 158.

³⁵ The „balance of power” system in its ideal form is a system in which any combination of actors within alliances is possible, as long as no alliance gains a marked preponderance in capabilities. Morton A. Kaplan: *Some Problems of International Systems Research*. In: Karl W. Deutsch: *International Political Communities: An Anthology*. Garden City, N. Y. Anchor books. New York, 1966, 473.

³⁶ Not a single day passes by that we would not hear of a humanitarian crisis around the world. M. Akif Kirecci: *Humanitarian Diplomacy in Theory and Practice. Perceptions*. *Journal of International Affairs*. Vol. XX, No. 1. Spring 2015, 1.

³⁷ Traditionally, the histories of arms control began in the sixth century B. C., when two bands of Chinese river pirates started to settle the matter of conflict by conference, instead of fighting. The modern disarmament started

I. Background of the study

I. 1. Statement of the problem

The presented doctoral thesis is devoted to the topic of the specifics of diplomatic privileges and immunities in international law, including the related theory and practice. The paper deals with relevant and current diplomatic issues of our days, which occur in the course of the diplomatic practice, as contemporary diplomacy became more complex, owing to the new emerging tools,⁴⁶ and diplomatic agents bear a much higher degree of responsibility for their acts. From the point of view of law,⁴⁷ diplomacy⁴⁸ belongs to the scope of international law and being state-oriented,⁴⁹ regulates the contacts of international entities.⁵⁰

However, the establishment of diplomatic relations⁵¹ and diplomacy itself,⁵² producing legal resources,⁵³ which help to understand, justify and argue over future state behavior,⁵⁴ is a more ancient institution, than international law.⁵⁵ The sovereign states,⁵⁶ as subjects of

⁴⁶ Jovan Kurbalija: E-Diplomacy and Diplomacy law in the Internet Era. In: Katharina Ziolkowski (ed.): Peacetime Regime for State Activities in Cyberspace. International Law, International Relations and Diplomacy. NATO CCD COE Publication. Tallinn, 2013, 398.

⁴⁷ „*The law is the witness and external deposit of our moral life. Its history is the history of the moral development of the race. The practice of it, in spite of popular jests, tends to make good citizens and good men.*” Oliver Wendell Holmes: The Path of the Law. Harvard Law Review. Vol. 10, 25 March, 1897, 457.

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

⁴⁹ In diplomatic practice the tensions between the modern desire to establish universal standards of international conduct and the traditional desire to advance the national interests yet maintain peace are clear. Edwin Egede–Peter Sutch: The Politics of International Law and International Justice. Edinburgh University Press Ltd. Edinburgh, 2013, 215.

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

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

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

⁵³ In addition, nowadays, not only does law increasingly resemble politics, but politics increasingly resembles law. Matthew Stone–Illan rua Wall–Costas Douzinas: Law, politics and the political. In: Matthew Stone–Illan rua Wall–Costas Douzinas: New Critical Legal Thinking. Law and the Political. Routledge. New York, 2012, 1.

⁵⁴ Ian Hurd: Law and the practice of diplomacy. International journal. Northwestern University. Summer 2011, 587.

⁵⁵ József Hargitai: A diplomáciai és konzuli kapcsolatok joga. (*The law of diplomatic and consular relations.*) Aula Kiadó. Budapest, 2005, 28-29.

⁵⁶ Scholars argue that states and their governments are no longer to be considered as the primary elements of international society. In these circumstances, there have been calls for a new conception of international law that would accord with the current realities of an international society, in which states can not be regarded as possessing primacy of position anymore, or possessing the rights and privileges of sovereignty, as it has been traditionally conceived. Charles Covell: Kant and the Law of Peace. Palgrave. New York, 1998, 177.

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

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

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

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

⁶⁸ Dixon op. cit. 209.

⁶⁹ Goldsmith–Posner op. cit. 9.

⁷⁰ In opinion of Hampton, the claim that the state is desirable to all is a constant element of consent theories. Jean Hampton: *Political philosophy*. Westview Press Inc. Oxford, 1998, 71.

⁷¹ Sergii Kononenko: *Formy politologichnogo rozuminnia mizhnarodnyh vidnosyn. (Forms of politological understanding of international relations.)* Natsional'na Akademiia Nauk Ukrainy, Institut Vsesvitn'oi Istorii. Kyiv, 2012, 21.

⁷² The concept of world peace was outlined by Kant in the eighteenth century, on an underlying assumption of multiplicity. Rüdiger Safranski: *How Much Globalization Can We Bear?* Polity Press. Cambridge, 2005, 5.

⁷³ The doctrine of peaceful coexistence originally appeared in the Soviet literature on international law. Gaetano Arangio-Ruiz: *The UN Declaration on Friendly Relations and the System of the Sources of International Law*. Sijthoff&Noordhoff International Publishers B. V. Alpen aan den Rijn, 1979, 149.

⁷⁴ Stevencon stresses that peace is the most imperative business in the world today – the world's most universal desire and most powerful force, for war bears a mortal danger to the human race. Adlai E. Stevencon: *Putting Things First. A Democratic View*. Foreign Affairs. An American Quarterly Review. Vol. 38, No. 2. Council on Foreign Relations, Inc. January 1960, 191.

⁷⁵ B. Sen: *A Diplomat's Handbook of International Law and Practice*. Martinus Nijhoff. The Hague, 1965, x.

is of civil or criminal nature, since in foreign relations every country is in a position of a sending and receiving state, simultaneously. In the history, abuse applied to the functioning of diplomatic premises, either. Therefore, in the light of these occasions, some academics believe today that legal immunity should not be absolute.⁸⁶

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

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

I. 2. Relevance and aims of the research

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

⁸⁶ N. I. Matuzov–A. V. Mal'ko: *Teoriia gosudarstva i prava. (Theory of state and law.)* „Jurist“. Moskva, 2004, 234.

⁸⁷ Hasel Fox: *The law of state immunity.* Oxford University Press. Oxford, 2008, 449.

⁸⁸ V. V. Petrik: *Konsul'sko-diplomaticheskaia sluzhba Rossii. (Consular-diplomatic service of Russia.)* Izdatel'stvo Tomskogo Politekhicheskogo Universiteta. Tomsk, 2010, 44.

I. 3. Summary of the thesis

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

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

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

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

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

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

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

I. 4. Methodology and sources

A comparative study of the concept of diplomatic privileges and immunities is presented, with regard to the legal literature and the corresponding international legislation. The

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

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

The fundamental basis of diplomacy law had been formulated in the works of Ch. de Martens (1854),⁸⁹ I. Kiss (1876),⁹⁰ R. Monnet (1910),⁹¹ L. Búza (1935),⁹² L. Oppenheim (1948),⁹³ D. B. Levin (1949),⁹⁴ E. Flachbarth,⁹⁵ H. Nicolson (1963),⁹⁶ E. Ustor (1965),⁹⁷ G. I. Tunkin (1970),⁹⁸ F. Faluhelyi,⁹⁹ just to name a few. (It should be added here, that except of the mentioned Hungarian authors, other Hungarian legal scholars¹⁰⁰ have also paid significant

⁸⁹ Charles de Martens: *Le Guide Diplomatique. (The Diplomatic Guide.)* Imprimé Par Plon Frères. Paris, 1854. [Hereinafter: Martens: *Le Guide Diplomatique*, 1854...]

⁹⁰ 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.

⁹¹ R. Monnet: *Manuel Diplomatique et Consulaire. (Diplomatic and Consular Guide.)* Berger-Levrault&C^{ie} Éditeurs. Paris, 1910.

⁹² László Búza: *A nemzetközi jog tankönyve. (The text-book of international law.)* Politzer Zsigmond és fia kiadása. Budapest, 1935.

⁹³ L. Oppenheim: *International Law.* Longmans, Green and Co. London, 1948.

⁹⁴ D. B. Levin: *Diplomaticeskii immunitet. (Diplomatic immunity.)* Izdatel'stvo Akademii Nauk SSSR. Moskva, 1949. [Hereinafter: Levin: *Diplomaticeskii...*]

⁹⁵ Ernő Flachbarth: *Nemzetközi jog I. Egyetemi jegyzet. (International law I. Lecture notes.)* Tankönyvkiadó Jegyzetsokszorosító Üzem. Budapest, 1951.

⁹⁶ Harold Nicolson: *Diplomacy.* Oxford University Press. New York, 1963. [Hereinafter: Nicolson: *Diplomacy...*]

⁹⁷ Endre Ustor: *A diplomáciai kapcsolatok joga. (The law of diplomatic relations.)* Közgazdasági és jogi Könyvkiadó. Budapest, 1965.

⁹⁸ G. I. Tunkin: *Teoriia mezhdunarodnogo prava. (The theory of international law.)* Mezhdunarodnye otnosheniia. Moskva, 1970.

⁹⁹ Ferenc Faluhelyi: *Államközi jog. (Interstate law.)* Dr. Karl Könyvesbolt kiadása. Pécs, 1936. [Hereinafter: Faluhelyi: *Államközi...*]

¹⁰⁰ István Apáthy: *Tételes európai nemzetközi jog. (The itemized European international law.)* Franklin-Társulat Magyar Irodalmi Intézet és Könyvnyomda, Budapest, 1888; János Csarada: *A tételes nemzetközi jog rendszere. (The system of itemized international law.)* Politzer Zsigmond és fia kiadása. Budapest, 1901; László Vincze

The cases, presented in the present thesis in order to illustrate the development, theory and practice, also issues, regarding diplomatic privileges and immunities, have been chosen among the most representative ones. The selected cases had established a precedent or exemplify tendencies in diplomacy and international law.

international legal norms, governing the status of a diplomatic mission”,¹¹³ thus, regarding diplomacy law in a narrower sense, without accentuating the subject of the diplomatic agent.)

Diplomacy law, similarly to domestic law, has a wide range of sources,¹¹⁴ 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.¹¹⁵ The process of formation of conventional rules of diplomatic relations began in the nineteenth century and was completed by the second half of the twentieth century, thus establishing the system of legal rules, which is currently in force.

In recent years, in the scientific literature¹¹⁶ in addition to the term, „diplomacy law” appeared the term „law of external relations”¹¹⁷ (with international treaties and customs, as major sources), in particular, reference can be made to works of Sandrovskii.¹¹⁸ The concept of „law of external relations” was supported by a number of scholars, for example, Lukashuk, Tunkin, Abashidze and Fedorov. However, this term does not fully reflect the content of the subject of regulation in this area, as in this case, we are speaking not about foreign relations in general, rather about international relations of official subjects of international law.¹¹⁹

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

¹¹³ Demin op. cit. 8.

¹¹⁴ There is some doctrinal disagreement as to the concept of a „source”. Mark E. Villiger: *Customary International Law and Treaties. A Manual on the Theory and Practice of the Interpretation of Sources*. Schulthess Kluwer Law International. The Hague, 1997, 7.

¹¹⁵ Barston op. cit. 3.

¹¹⁶ Science is the study of those judgements, concerning which universal agreement can be obtained. Norman Campbell op. cit. 27.

¹¹⁷ N. A. Kuchub: *Mezhdunarodnoe pravo. (International law.)* GOU OGU. Orenburg, 2004, 68.

¹¹⁸ Sandrovskii op. cit. 264.

¹¹⁹ Questions regarding whether international law is law were arising even in the twentieth century. Glanville Williams: *International Law and the Controversy concerning the word 'Law'*. *British Year Book of International Law*. 1945, 148.

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.*”¹³⁰ 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.¹³¹

According to Mingst, whether a hegemon or a group of states resolves a problem in a certain way, these customs become permanent when more states follow them, and with time, these customs get codified into law.¹³² However, the law, based on customary law, is limited. On the one hand, these limits occur due to the fact that customary law develops rather slowly. Besides, the customs become occasionally obsolete.¹³³ In addition, not all states participate in the development of laws,¹³⁴ 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.¹³⁵

The Statute of the International Court of Justice (ICJ), by and large regarded, as a complete statement of the sources¹³⁶ of international law,¹³⁷ formulates the two criteria for definition of custom in international law – general practice, and the acceptance of this practice,

the position of a state in the process of formation of a custom and, accordingly, will testify the absence of the state's consent with the emerging norm – *opinio non juris*. A. V. Troianovskii: *Metodologicheskie problemy ustanovleniia opinio juris. (Methodological problems in establishment of opinio juris.)* Naukovii visnik Mizhnarodnogo humanitarnogo universitetu. Jurisprudentsiia. No 5, 2013, 303-305.

¹³⁰ Harold Nicolson: *The Evolution of Diplomatic Method*. University of Leicester Press. Leicester, 1988, 2.

¹³¹ Curt Beck: *Amending diplomatic immunity: recent Congressional Proposals*. ILSA Journal of International Law. Vol. 12:117, 1988, 118.

¹³² There is a widespread opinion that the custom is favorable to the powerful, though. Kolb op. cit. 17.

¹³³ Thirlway points out such a feature of customs, as their „fluidity”. Hugh Thirlway: *The Sources of International Law*. Oxford University Press. Oxford, 2014, 229.

¹³⁴ Law is the principal institution, through which a society can assert its values. Alexander M. Bickel: *The morality of consent*. New Haven and London: Yale University Press, New Haven, 1977, 5.

¹³⁵ Karen A. Mingst: *A nemzetközi kapcsolatok alapjai. (The essentials of international relations.)* Napvilág Kiadó. Budapest, 2011, 211-212.

¹³⁶ 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. Ian Brownlie: *Principles of Public International Law*. Oxford University Press. Oxford, 2007, 5. [Hereinafter: Brownlie: Principles...]

¹³⁷ *Ibid.*

international life.¹⁴⁶ The provision to respect the laws of the host country,¹⁴⁷ viewed by Denza as the most important of the four general obligations of the diplomatic agent,¹⁴⁸ under the Vienna Convention,¹⁴⁹ requires demonstration of special circumspection in their actions and in everyday behavior, also tact and thoughtfulness in conversations and in giving public statements.¹⁵⁰

The theory of extritoriality has outdated, also because it is generally recognized that diplomatic representations and diplomatic agents have to respect the laws of the receiving country.¹⁵¹ In this line, enjoying the variety of special protections and privileges in a host state, the diplomatic representative must adhere to certain customary rules. For example, they are expected to stay out of the politics of the host state, i.e. to criticize the legislation, personnel, or policies of the host state is not allowed. The words (speeches, announcements), conveyed by diplomatic agents, either in oral or written form, could be examined in detail, concerning the content, which sometimes might be of legal nature.

The importance of additional sources, as diplomatic notes, which had evidenced the practice of states, issued by governments on different issues, along with the policy statements, made by the Foreign Offices on such matters, is increasing, because these materials are often treated, as precedents. The diplomatic notes, addressed by one government to another, conventionally, contain references of past practice and it is reasonable to give due weight to precedents in international law, which, by its nature should depend on usage and practice of nations.¹⁵²

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

¹⁴⁶ Ustor op. cit. 58.

¹⁴⁷ Vienna Convention. Article 41(1).

¹⁴⁸ Denza op. cit. 373.

¹⁴⁹ Vienna Convention. Article 41(1)(2)(3).

¹⁵⁰ Petrik op. cit. 45.

¹⁵¹ V. F. Nikitchenko (ed.): *Kontrazvedivatel'nyi slovar'*. (*Counterintelligence dictionary*.) Vysshiaia krasnoznamennaia shkola Komiteta Gosudarstvennoi Bezopasnosti pri Sovete Ministrov SSSR im. F. E. Dzerzhinskogo. Moskva, 1972, 365-366.

¹⁵² Sen: A Diplomat's... XIII.

II. 1. 2. International conventions

With the establishment of relations between subjects of international law,¹⁵⁷ there appeared the need for their regulation by legal norms¹⁵⁸ and rules of international procedure. International law provides a system of rules,¹⁵⁹ governing the conduct of inter-state relations.¹⁶⁰ In view of that, diplomatic intercourse between states is greatly facilitated by legal principles, concerning the inviolability of embassy premises and of communications with the home state and the immunity from legal process of foreign diplomatic representatives in the courts of the receiving state. International law can also offer an answer¹⁶¹ to the majority of international disputes,¹⁶² though, in some cases the dispute may not be susceptible of settlement by the application of legal rules. Therefore, international law can not exist in isolation from the political factors, operating in the sphere of international relations,¹⁶³ in particular, in the sphere of diplomacy.

The rules on diplomatic relations, as the earliest norms of international law, developed by way of certain habits in relations between the countries that required certain ways of treatment of delegates and envoys,¹⁶⁴ for example, their inviolability, which is the most basic rule of diplomacy law.¹⁶⁵ Thus, the predispositions of standardization and codification of the

¹⁵⁷ „The greatest single factor in determining a state's attitude towards international law is its view of where its interests lie.” Merrills op. cit. 9.

¹⁵⁸ Scholars note that there is an increasing demand for more empirical legal research, to know how legal decision-making, legal enforcement, also law in general really works outside the statute. Dame Hazel Genn–Martin Partington–Sally Wheeler: Law in the real world: improving our understanding of how law works. The Nuffield Foundation. London, 2006, iii.

¹⁵⁹ The different sources of international law are not arranged in a fixed hierarchical order, however. In practice, supplementing each other, they are applied side by side. In case of a clear conflict, treaties prevail over custom and custom prevails over general principles of law and the subsidiary sources. Peter Malanczuk: Akehurst's Modern Introduction to International Law. Routledge. London, 1997, 57.

¹⁶⁰ Boyle and Chinkin, speaking of reform of international law-making, note that the international legal system moved far beyond the traditional categorization of the sources of international law in the Statute of the International Court of Justice and engendered flexibility in this regard. The new instruments include such techniques, as opting into (or out) treaty amendments that allow for technical changes, or extension to the scope of existing treaties, without the need for adoption of formal processes, such as diplomatic conferences. A future question that arises is who determines an instrument to be law-making, since it is no longer the case that such decisions are made by heads of governments or Ministers of Foreign Affairs. Boyle–Chinkin op. cit. 35.

¹⁶¹ Abashidze asserts that international law has no alternative. A. H. Abashidze: Sokhranit li mezhdunarodnoe pravo aktivnuiu reguliruiushchuiu funktsiiu v globaliziruiushchem mire? (*Will international law preserve its active regulative function in the globalizing world?*) In: K. A. Bekiashev (ed.): Budushchee mezhdunarodnogo prava. (*The future of international law.*) „OOO Prospekt”. Moskva, 2016, 21.

¹⁶² Crawford states that every second problem in our world is an international one. James Crawford: Brownlie's Principles of Public International Law. Oxford University Press. Oxford, 2012, xviii.

¹⁶³ D. W. Greig: International Law. Butterworth&Co. Publishers Ltd. London, 1976, 1.

¹⁶⁴ David Elgavish: Did Diplomatic Immunity Exist in the Ancient Near East? Journal of the History of International Law. Vol. 2, No 1, 2000, 73.

¹⁶⁵ Denza op. cit. 210.

countries,¹⁷⁵ is the Vienna Protocol as of 7 March, 1815 on the ranks of diplomatic representatives, completed by the Aachen Protocol in 1818, concluded by Britain, France, Russia, Austria and Prussia,¹⁷⁶ the so-called Concert of Europe.¹⁷⁷

The other endeavor of codification of diplomacy law was made by the League of Nations of Great Britain in the 1920s.¹⁷⁸ Partial official codification of diplomacy law was first made on a regional scale in Latin America by the Convention regarding Diplomatic Officers in 1928.¹⁷⁹ Presently, diplomacy law is generally codified. Before the creation of the Vienna Convention, the two most important documents were the Havana Convention¹⁸⁰ and the Harvard Research Draft Convention on Diplomatic Privileges and Immunities.¹⁸¹ The Research in International Law, organized by the Harvard Law School, had prepared this draft, along with some others, in anticipation of the first Conference for the Codification of International Law that took place in The Hague in March 1930. The drafts, as a rule, were intended not to be limited to the statement of existing international law,¹⁸² but to contain certain provisions,¹⁸³ which would formulate new law.¹⁸⁴

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

¹⁷⁵ The monarchical Europe only appeared to be homogenous, having political, social, economic and intellectual differences, in fact. What they had in common was royal despotism, aristocratic privilege and bureaucracy. François Fejtö (ed.): *The opening of an era: 1848*. Allan Wingate. London, 1948, 3.

¹⁷⁶ Marek St. Korowicz: *Introduction to International Law: Present Conceptions Of International Law In Theory And Practice*. Springer Science&Business Media. Dordrecht, 2013, 267.

¹⁷⁷ Haraszti–Herczegh–Nagy op. cit. 47.

¹⁷⁸ Report of the Committee of Experts for the Progressive Codification of International Law. Pub.C.196.M.70.1927.V.

¹⁷⁹ Convention regarding Diplomatic Officers, ratified by Act No. 72 of 19 December, 1928. Signed in Havana on 20 February, 1928. [Hereinafter: Havana Convention.]

¹⁸⁰ Simbeye notes that the Havana Convention did not differentiate between criminal and civil jurisdiction and thus seemed to take the absolute stance. Simbeye op. cit. 99.

¹⁸¹ Research in International Law. Draft of Conventions Prepared for the Codification of International Law. Harvard Law School. Cambridge, 1932. *The American Journal of International Law. Supplement: Research in International Law*. American Society of International Law. Vol. 26, No 1, 1932.

¹⁸² International law, in its turn, can not be defined only as a set of legal rules, applicable in the international society. By its generality and neutrality, this branch of law takes into account the changes of international realities and therefore, the evolution of the matter, i. e. the historical development. Ferhat Horchani: *Les sources du Droit International Public. (Sources of International Public Law.)* L. G. D. J–C. P. U–DELTA. Paris–el Manar–Beyrouth, 2008, 18.

¹⁸³ Sandström, Special rapporteur suggested some additional articles into the draft of the Vienna Convention: „*If a State applies a rule of the draft narrowly, the other States shall not be bound, vis-à-vis that State, to apply it more liberally.*” and „*Two more States may agree to extend the privileges and immunities referred to in the draft and the classes of persons for the benefit thereof.*” Draft articles concerning diplomatic intercourse and immunities. Yearbook of the International Law Commission. Documents of the tenth session including the report of the Commission to the General Assembly. Doc. A/CN.4/116/Add.2. Vol. II. 1958, 19.

¹⁸⁴ Columbia Law Review. Columbia Law Review Association, Inc. Vol. 30, No 1. January, 1930, 142.

provisions in the Convention, which would limit its parties in settling questions of diplomatic relations, entering into agreements with other parties or with each other.¹⁹⁰

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

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

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

¹⁹⁰ Ustor op. cit. 57.

¹⁹¹ Vienna Convention. Preamble.

¹⁹² Fox op. cit. 455.

¹⁹³ The American Hostages Case op. cit. 3.

they should be applied.²⁰³ In cases of collisions with *jus cogens*²⁰⁴ norms,²⁰⁵ the *jus cogens* rules²⁰⁶ override the related provisions of the treaty.²⁰⁷ The International Law Commission pointed out a generally accepted principle that when several norms stand on one issue, they should to the possible extent be interpreted, so as to give rise to a single set of attuned obligations, also that there is not necessary that a conflict of norms would take place, it may occur that one of the rules assists in the interpretation of the other rule.

It seems that the world has not changed so drastically yet, as in recent decades. International law contains among its principles and concepts, the content of world-shaking movements.²⁰⁸ 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.²⁰⁹ Globalization is transforming the world²¹⁰ and we are along the road, on which the international society of states²¹¹ is becoming a world society.²¹² A peacefully international society is only possible, when it is based upon the law, and such a basis must be established in conformity with factual reality. Therefore, if international law failed to influence and to regulate adequately the course of international relations, it would lose its value.²¹³

²⁰³ Thirlway op. cit. 133.

²⁰⁴ Lukashuk believed that imperative norms existed in international law in the remote past already, for without them any kind of law and order would be doubtful. I. I. Lukashuk: *Mekhanizm mezhdunarodno-pravovogo regulirovaniia. (Mechanism of international-legal regulation.)* Vyscha shkola. Kiev, 1980, 47.

²⁰⁵ The International Law Commission admitted that „*there is not as yet any generally accepted criterion by which to identify a general rule of international law as having the character of jus cogens.*” Eric Suy: 1969 Vienna Convention. Article 53. Treaties conflicting with a preemptory norm of general international law (‘*jus cogens*’). In: Olivier Corten–Pierre Klein (eds.): *The Vienna Conventions on the Law of Treaties. A Commentary. Volume II.* Oxford University Press. New York, 2011, 1227.

²⁰⁶ Cassese, sharing the pessimistic view on the contemporary condition of international law and international community, resuming that many of promising international legal projects, in particular, *jus cogens* and *erga omnes* turned to be not very successful. G. I. Bogush: Antonio Cassese (1937-2011): uchenyi, iurist, gumanist. (*Antonio Cassese (1937-2011): scholar, jurist, humanist.*) In: S. V. Kivalov (ch. ed.): *Al'manakh mezhdunarodnogo prava. Vypusk 3. „Feniks”.* Odessa, 2011, 169.

²⁰⁷ Vienna Convention on the Law of Treaties. Article 53.

²⁰⁸ Bill Bowring: *The Degradation of the International Legal Order? The Rehabilitation of Law and the Possibility of Politics.* Routledge-Cavendish. New York, 2008, 208.

²⁰⁹ Attila Badó–Mátyás Bence: Reforming the Hungarian Lay Justice System. In: Péter Cserne–István H. Szilágyi–Miklós Könczöl–Máté Paksy–Péter Takács–Szilárd Tattay (eds.): *Theatrum legale mundi. Symbola Cs. Varga oblata. Szent István Társulat. Budapest, 2007, 12.*

²¹⁰ According to the negative opinions about globalization, „*We can now posit a fourth generation of rights: rights that justify military intervention in the name of humanity.*” Adam Gearey: *Globalization and Law: Trade, Rights, War.* Rowman&Littlefield Publishers, Inc. Lanham, 2005, 14.

²¹¹ International society is seen, as an imagined community, with an existence in the life-worlds of statesmen. Iver B. Neumann: John Vincent and the English School of International Relations. In: Iver B. Neumann–Ole Waever (eds.): *The Future of International Relations.* Routledge, New York, 2001, 40.

²¹² Paul Sharp–Geoffrey Wiseman (eds.): *The Diplomatic Corps as an Institution of International Society.* Palgrave Macmillan. New York, 2007, 277.

²¹³ Chris N. Okeke: *Controversial subjects of contemporary international law.* Rotterdam University Press. Rotterdam, 1974, 217.

the termination of an extradition treaty may result in an accused person avoiding prosecution abroad.²²³

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

Nevertheless, the proposition that states may be held accountable under international law by arbitral tribunals, created by treaty is neither new, nor radical. There were hundreds of such cases in the nineteenth century and the defendant states were of all types: rich and powerful, European or ex-colonial. Therefore, such a mechanism of holding states answerable²²⁸ is not an invention.²²⁹ Contemporary international law codified principles or formalized concepts, the existence of which dates back to the first organized human communities, such as the inviolability of ambassadors, *pacta sunt servanda*, the concept of just war and the protection of human rights („*you shall not murder*”), and others.²³⁰

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

²²³ F. A. Mann: *Foreign Affairs in English Courts*. Clarendon Press. Oxford, 1986, 8. [Hereinafter: Mann: *Foreign...*]

²²⁴ The growing necessity of peaceful cooperation between all nations nowadays has pushed to some extent to the background the endless doctrinal disputes concerning the basis of international law. Karol Wolfke: *Custom in Present International Law*. Martinus Nijhoff Publishers. Dordrecht, 1993, 172-173.

²²⁵ Anthony Carty: *The decay of international law?* Manchester University Press. Manchester, 1986, 66.

²²⁶ Smith–Light op. cit. 3-6.

²²⁷ Jellinek considers war, as the first and the oldest form of international legal coexistence of peoples. Cited by Cherkes in: M. E. Cherkes: *Mezhdunarodnoe gumanitarnoe pravo. (International humanitarian law.)* In: S. V. Kivalov (ch. ed.): *Al'manakh mezhdunarodnogo prava. Vypusk 1. „Feniks”*. Odessa, 2009, 104.

²²⁸ But the truth is that international tribunals tend to irritate responsible states – whether they rich or poor – in individual cases. Hitherto, the decisions of international tribunals should be respected by states, in order to achieve the long-term benefits of the rule of law: „*Respect for settled and legitimate expectations is a precondition for healthy international relations.*” Jan Paulsson: *Denial of Justice in International Law*. Cambridge University Press. Cambridge, 2005, 261-263.

²²⁹ Under international law, the general notion of denial of justice generates liability, whenever an uncorrected national judgement is vitiated by fundamental unfairness. Thus it must be, as long as international law does not impose specific supranational procedural rules in the form of treaties. Paulsson op. cit. 5.

²³⁰ Horchani op. cit. 20-21.

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.²³⁷ The judges have a dominant role in setting policy²³⁸ and taking part in all major institutional and social issues. Joyner asserts that it is important, on the other hand, not to overrate judicial decisions and arbitral awards, as sources of international law, for each case is decided on its own merits and the decision affects only the states, involved in each particular case. (Henry Kissinger, himself the subject of judicial and activist interest for his actions while in office, was among those diplomats, who, in one of his works, warned of the risks of judicial tyranny and the use of the principle of universal jurisdiction, as means of settling political scores.)²³⁹

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.²⁴⁰ 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.²⁴¹ 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.²⁴²

International law provides standards, by which national systems can be judged from outside. Sources of contemporary diplomacy law in general, besides international norms, found in customs and international agreements, also encompass regulations and decisions of international conferences and organizations governing relations of a diplomatic nature.²⁴³

²³⁷ Mario P. Chiti: Judicial and Political Power: Where is the Dividing Line? A Praise for Judicialization and for Judicial Restraint. *European Public Law*. Vol. 21, No. 4. December 2015, 406.

²³⁸ Law is an attempt to speak right to might, or truth to power, and the lawyer's role is to facilitate this with ever greater facility. Jason A. Beckett: Faith and resignation. A journey through international law. Matthew Stone–Illan rua Wall–Costas Douzinas op. cit. 145.

²³⁹ Henry Kissinger: The Pitfalls of Universal Jurisdiction. *Foreign Affairs*, 80(4), July-August 2001, 86-96.

²⁴⁰ Joyner shares the point of view, according to which this source, besides judicial decisions of national and international courts, also includes teachings and writings of the most highly qualified jurists and publicists. Christopher C. Joyner: *International Law in the 21st Century*. Rowman&Littlefield Publishers, Inc. Lanham, 2005, 14.

²⁴¹ Malanczuk op. cit. 51.

²⁴² The decisions of courts may not always be welcome, for example, when an accused is released from the jurisdiction, however, the courts have the opportunity, occasionally, to develop clear rules. Jonathan Brown: Diplomatic Immunity: State Practice under the Vienna Convention on Diplomatic Relations. *The International and Comparative Law Quarterly*. Vol. 37, No. 1. January, 1988, 59. [Hereinafter: Brown: Diplomatic ...]

²⁴³ „*The source of international law is a way of confirmation of legal rulings.*” Vasil'eva–Bakinovskaia op. cit. 43.

these issues, initially emerged in the national law, and then came to international law, as customary norms.²⁴⁷

In this way, national legislation, together with judicial precedents and diplomatic practice, certainly plays an essential role in the establishment of norms of international law, without being formal sources of international law.²⁴⁸ Furthermore, international law is observed, studies show, to approximately the same degree, as domestic law. In fact, law is about as essential in providing order and predictability to international relations, as it is for domestic relations.²⁴⁹

States, handling contentious issues in a similar way, create a so-called parallel legislation, which would subsequently get enshrined in international law first in the form of international customs, and then, after their general admission, as ordinary or conventional standards, they will become norms of international law. These are national norms, the most appropriate in terms of practice, the example for which is the legislation of an other state. Such norms function, as the generally accepted international rules that govern the norms of diplomacy law (also the movement in the air space,²⁵⁰ navigation rules, and maritime law).

A special feature of the system of sources of diplomacy law is that it includes, along with sources, such as international order and international agreement, acts of national legislation. The part of legal sources, related to domestic law, is linked to branches of law, like constitutional law, administrative law, public service and others.²⁵¹

Initially, according to Zoller, it was national law that contributed to the customary formation of the diplomatic status. Two texts in this regard deserve to be recalled. One is the Dutch proclamation as of 29 March, 1651²⁵² that forbade the arrest of diplomats and their servants, also the seizure of their property. The other document is the aforementioned famous Diplomatic Privileges Act of 1708, affirming the „sacred and inviolable” character of rights and

²⁴⁷ Marchenko op. cit. 47.

²⁴⁸ Tunkin op. cit. 209-211.

²⁴⁹ Roskin-Berry op. cit. 301.

²⁵⁰ The law of international spaces requires the establishment of uniform international legislation, administration and adjudication. The maintenance of the balance of power in international spaces constitutes the main objectives of the common legal regime of international spaces. John Kish: *The Law of International Spaces*. A. W. Sijthoff. Leiden, 1973, 1-3.

²⁵¹ Martonyi affirms that the traditional dividing line between the international and national regulations is increasingly blurred. The universal principles, theorems, practices and international norms, also regulations, which express them, are being enforced in a unity that is difficult to separate, along with the national regulations and with the regulations under and outside the state. Martonyi op. cit. 87.

²⁵² The Act of Abjuration was the declaration of independence by many of the provinces of the Netherlands from Spain in 1581, during the Dutch Revolt, signed on 26 July, 1581 in The Hague. Stephen E. Lucas: *The „Plakkaat van Verlatinge”*: A Neglected Model for the American Declaration of Independence. Rosemarijn Hofte-Johanna In: C. Kardux (eds.): *Connecting Cultures: The Netherlands in Five Centuries of Transatlantic Exchange*. Paperback. Amsterdam, 1994, 189–207.

the host country. In the late 1990s, this unofficial ban was eventually unofficially canceled. Since then, the restrictions applied only to those persons, who had access to state secrets.²⁵⁸

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

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

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

²⁵⁸ Lukashuk: *Mezhdunarodnoe...* 89.

²⁵⁹ Ustor op. cit. 59.

²⁶⁰ For example, bilateral agreements on diplomatic relations between Russia and Azerbaijan, Armenia, Denmark, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Tajikistan, Turkmenistan, Uzbekistan, Ukraine, and other states.

obligations, privileges, allowance and compensation²⁶⁵ system, also labor achievements, incentives and awards of diplomatic representatives, for example: Argentina,²⁶⁶ Armenia,²⁶⁷ Estonia,²⁶⁸ Germany,²⁶⁹ Great Britain,²⁷⁰ Kazakhstan,²⁷¹ Kyrgyzstan,²⁷² Moldova,²⁷³ Tajikistan,²⁷⁴ Turkmenistan,²⁷⁵ and the United States.²⁷⁶

In Canada, the Foreign Missions and International Organizations Act,²⁷⁷ implementing the Vienna Convention, also provides qualified immunity to foreign diplomatic members of the administrative and technical staff, and members of the service staff. (The Vienna Convention does not apply to foreign sovereigns themselves or their property.)²⁷⁸

In Hungary, the new law on foreign representations and long-term foreign service, is aimed at regulation of the work of foreign representations, creating the conditions of a single administration for foreign affairs, which encompasses foreign economy, also cultural and science diplomacy. This law introduces a uniform regulation, expanding tasks and instruments of the foreign policy of Hungary.²⁷⁹ The tasks, while aimed at representation and protection of the effective representation of Hungary abroad, comprise the consecutive representation of Hungarian stand and interests abroad.²⁸⁰

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

²⁶⁵ Compensation used to describe reparation in the narrow sense of the payment of money, as a „valuation” of the wrong done. Brownlie: State... 199.

²⁶⁶ The law of Argentina „On the foreign service” No. 20957 as of 22 May, 1975.

²⁶⁷ Act of the Republic of Armenia „On diplomatic service” LA-249 as of 21 November, 2001.

²⁶⁸ Foreign Relations Act of Estonia as of 10 May, 2006.

²⁶⁹ Foreign Service Act of the Federal Republic of Germany as of 20 June, 2002.

²⁷⁰ „An Act to amend the law on diplomatic privileges and immunities by giving effect to the Vienna Convention on Diplomatic Relations; and for purposes connected therewith.” Diplomatic Privileges Act of Great Britain as of 31 July, 1964.

²⁷¹ Act of the Republic of Kazakhstan „On diplomatic service of the Republic of Kazakhstan” No 299-II as of 7 March, 2002.

²⁷² Act of the Kyrgyz Republic „On diplomatic service” as of 28 June, 2002.

²⁷³ Act of the Republic of Moldova „On diplomatic service” No 761-XV as of 27 December, 2001.

²⁷⁴ Act of the Republic of Tajikistan „On diplomatic service” No 276 as of 5 November, 2002.

²⁷⁵ Act of Turkmenistan „On diplomatic service” as of 19 December, 2000.

²⁷⁶ Foreign Service Act of 1980. (P.L. 96-465) of the United States of America.

²⁷⁷ The Foreign Missions and International Organizations Act. (CAN) S.C. 1991, c. 41, Part 1.

²⁷⁸ Margaret Buist: Halsbury’s Laws of Canada: conflict of Laws. Lexis Nexis Canada Inc. Markham, 2011, 23.

²⁷⁹ 2016. évi LXXIII. törvény a külképviseletekről és a tartós külszolgálatról. (2016. LXXIII Law on foreign representations and long-term foreign service.) Adopted on 13 June, 2016 in Budapest. Magyar Közlöny. No 90, 23 June, 2016.

²⁸⁰ The new act, focusing on the creation of a transparent, uniform and stable long-term foreign service system, considers among its key objectives also the reduction of bureaucracy, at the same time increasing the effectiveness of the control of foreign representations of Hungary. Ibid.

of a diplomatic mission, turns to be a perplexing situation, relating to a diplomat's status in the receiving state. The presented case was addressed according to standards of customary international law. Boris Bakhmeteff was an Ambassador, representing the Russian Government in Washington, namely the Kerensky régime, which existed for a few months only, until it was overthrown in October 1917. This revolutionary event was followed by a period of uncertainty in Washington. The United States had found themselves in an awkward position regarding Bakhmeteff's status. Nevertheless, the American authorities did not suspend the official intercourse with the Ambassador. The situation cleared with the establishment of the Russian Soviet Republic in November 1917. By Hershey, who found this case with Bakhmeteff „strange”,²⁸⁶ 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.²⁸⁷

Sometime later, the perplexing situation over the change in the Russian Government and recognition of the successor of the Provisional Government of Russia, resulted in a suit at law, where the main question was over recovery of the private deposit of the Russian Government with the New York bank, due to the occurrence of the new assignment, made by the Russian Soviet Government to the United States of the right of the new Russian Government to the bank account. The bank account in question was opened in 1916 by the Imperial Russian Government and despite of the fact that the Soviet Government dismissed Bakhmeteff, as Ambassador in 1917, the United States continued to recognize him, as Ambassador until 1922.²⁸⁸

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.²⁸⁹ In this situation, the case was reminded to the Court of Appeals for further proceedings.

²⁸⁶ Amos S. Hershey: The Status of Mr. Bakhmeteff, The Russian Ambassador in Washington. The American Journal of International Law. Vol. 16, No 3, 1922, 426.

²⁸⁷ Hershey op. cit. 426-428.

²⁸⁸ After the retirement of Bakhmeteff as Ambassador, the United States continued to recognize him, as custodian of Russian property in the United States.

²⁸⁹ The Court found that „*What government is to be regarded here as representative of a foreign sovereign state is a political rather than a judicial question, and is to be determined by the political department of the government.*”, having concluded that „... *the recognition of the Soviet Government left unaffected those legal consequences of the previous recognition of the Provisional Government and its representatives, which attached to action taken here prior to the later recognition.*” *Guaranty Trust Co. of New York v. United States*. 304 U. S. 126 (58 S.Ct. 785, 82 L.Ed. 1224).

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

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

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

In 1997, the Israeli President held that a rental agreement was a contract subject to

²⁹⁵ Ibid.

²⁹⁶ Roger O’Keefe: „Immunity *Ratione Materiae* from Foreign Criminal Jurisdiction and the Concept of ‘Acts Performed in an Official Capacity’.” Report, given at „Immunity *ratione materiae* of state officials from foreign criminal jurisdiction.” Material of the seminar, held on 21 March, 2014 in Strasbourg, 6.

²⁹⁷ Charles Rousseau: *Chronique des faits internationaux. (Chronicle of international facts.)* Revue Générale de Droit International Public, 83/351. 1980, 364.

²⁹⁸ Security is what a country does to safeguard its sovereignty. Roskin–Berry op. cit. 196.

²⁹⁹ Friedo Sachser: Federal Republic of Germany. Domestic Affairs. American Jewish Yearbook. 1982, 205-206.

³⁰⁰ *Agbor v. Metropolitan Police Commissioner* [1969] 2 All E. R. 707.

³⁰¹ Vienna Convention. Articles 22(2), 30(1).

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

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

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

To begin the examination of the matter of diplomatic privileges and immunities, it is necessary to have a deeper insight into this domain of international law and consider the legal origins of the subject, along with its historical evolution, mentioning the main stages, paying some attention to the emergence of the *métier* of the diplomat,³⁰⁶ itself. Further, the historiographical outline of the subject will be presented. However, due to the limits of volume, a detailed description of the history of development of this institution is not feasible on the pages of the present work, only the most relevant stages are given prominence to. The general development of diplomatic privileges and immunities will be reviewed, highlighting some related notable historical moments, fragments and cases, worth elaborating on.

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

³⁰⁶ According to the belief of the author, to be a real „diplomat” is not a mere profession, rather a true *métier*, i. e. both an occupation and a vocation.

agents. Every state may well create its own rules.³¹⁹ Obviously, even the most skillful diplomat can not reverse the general course of history. Yet, if a diplomat is smart, flexible, energetic, courageous, well understands his opponent's psychology, enjoys trust of his environment and respect of his adversaries, he often capable to achieve a positive outcome, or at least an acceptable compromise, where a diplomat, lacking these qualities would fail.³²⁰ In this fashion, Callières, claims that diplomacy should be a separate profession.³²¹

The title of ambassador³²² is the title, traditionally given to a diplomatic agent of the highest class in inter-state relations. The Vienna Convention avoids application of this term, speaking only about the head of the mission.³²³ In the face of the fact that heads of most diplomatic missions continued to be styled ambassadors, this title is occasionally conferred, as it had been in the past, on persons rather of special, than permanent missions or „at large”, and is employed also simply to designate a domestic rank in the diplomatic services of some states.³²⁴ An ambassador³²⁵ is a diplomatic agent of the highest rank,³²⁶ viewed by Wotton, as „one official the state cannot do without”.³²⁷ The difference between the ranks of envoys has been established due to diplomatic protocol³²⁸ and not due to law.³²⁹

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

³¹⁹ Jennings–Watts op. cit. 1054.

³²⁰ I. M. Maiszkii: Egy szovjet diplomata visszaemlékezései. (*Memoires of a Soviet diplomat.*) Gondolat-Kossuth. Budapest, 1975, 87.

³²¹ „... seeing the qualifications and learning that are necessary for the forming of good ministers are of a very large extent, they are sufficient of themselves to take up a man's whole time, and their functions are of importance enough to make a profession by itself; so that those that set themselves apart for that service ought not to be distracted by other employments which have no manner of affinity with such sort of business.” François de Callières: *The Art of Negotiating with Sovereign Princes*. Berridge: *Diplomatic Classics*... 140-141.

³²² The term is less commonly used for the designation of delegates to organs of international organizations, and never for representatives of such organizations. John P. Grant–J. Craig Barker (eds.): *Parry&Grant Encyclopaedic Dictionary of International Law*. Oxford University Press Inc. New York, 2009, 26.

³²³ Vienna Convention. Article 1(a).

³²⁴ Grant–Barker op. cit. 26.

³²⁵ Berridge (ed.): *Diplomatic Classics*... 5.

³²⁶ International practice shows that accreditation of a citizen of the host country as an ambassador, is not applied. I. A. Melikhov: *Lichnoszt' v diplomatii. Na istoricheskikh paralleliakh.* (*The individual in diplomacy. On historical parallels.*) Vostok-Zapad. Moskva, 2011, 21.

³²⁷ Freeman: *The Diplomat's*... 9.

³²⁸ The norms of international courtesy and rules of protocol constitute the foundation of the whole system of diplomatic privileges and immunities, however, the matter of grounds for binding force of international courtesy and protocol is an other complex theoretical and practical question.

³²⁹ D. P. O'Connell: *International Law*. Volume I. Stevens&Sons. London, 1970, 894.

³³⁰ Vienna Convention. Article 1(b).

and the members of the staff of the mission. The latter include the members of the diplomatic staff and of the (domestic) service staff.³³⁸

It has to be emphasized here that from the point of view of diplomatic privileges and immunities, there is no difference between diplomats in terms of their rank. The offered cases and examples of the present dissertation involve both heads of mission³³⁹ (ambassadors) and diplomatic agents – members of diplomatic staff,³⁴⁰ illustrating the state of affairs that diplomatic class rank has no significance from the point of view of diplomatic privileges and immunities. The selected illustrations are presented in chronological order, which seemed to be the most logical organization, in terms of structure, narration and traceability of this work, exemplifying the advancement of diplomatic privileges and immunities, attributed to career diplomats. Accordingly, the cases, involved heads of missions will alternate with cases, linked to members of diplomatic staff.

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

It had long been practice in most states to maintain a list or register of the personnel of foreign diplomatic missions³⁴⁴ – the so-called „diplomatic list”. The obligation on notification on personnel appointments and movements contained in the Vienna Convention,³⁴⁵ gave the diplomatic list more significance, not least in indicating these entitled to diplomatic privileges and immunities.³⁴⁶

³³⁸ Greig op. cit. 135.

³³⁹ Vienna Convention. Article 1(a).

³⁴⁰ Doc. cit. Article 1(d).

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

³⁴² Ibid.

³⁴³ Nikitchenko op. cit. 144.

³⁴⁴ John P. Grant–J. Craig Barker (eds.): Parry&Grant Encyclopaedic Dictionary of International Law. Oxford University Press Inc. New York, 2009, 155.

³⁴⁵ Vienna Convention. Article 10.

³⁴⁶ Grant–Barker op. cit. 155; Denza op. cit. 88-90.

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

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

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

With respect to the period of Oriental antiquity, there are segmental data regarding the employment of intermediaries among the peoples of Egypt,³⁶² Assyria, Babylon, Israel, China and India. As to India, Arthashastra, the ancient treatise on statesmanship, written by Kautilya in the fourth century B. C., contained observations and advice concerning the conduct of diplomacy.³⁶³ In addition, the early states of India recognized the inviolability of ancient embassies.³⁶⁴ The historical books of the Old Testament contain probably the most momentous references about the use of such ancient mediators in situations of negotiations, especially the

³⁵⁷ Jónás–Szondy op. cit. 829.

³⁵⁸ The covenants to be concluded were learnt by heart by the elders of tribes before the invention of writing. The conclusion of an ancient treaty was sealed with an oath by both parties, in the presence of priests. D. B. Levin: *Istoriia mezhdunarodnogo prava. (The history of international law.)* Izdatel'stvo Instituta mezhdunarodnykh otnoshenii. Moskva, 1962, 3-4. [Hereinafter: Levin: *Istoriia...*]

³⁵⁹ The immunity of ambassadors can be traced back to pre-history, to the time, when it was assumed that primitive societies decided, it was more important hearing the message, than eating the bearer of the message. Hamilton–Langhorne op. cit. 7.

³⁶⁰ Levin: *Diplomaticheskii...* 27.

³⁶¹ *Ibid.*

³⁶² The world's first state was born in Egypt and around 3000 B.C. in the Nile valley, the state already existed. J. P. Francev (ed.): *Világtörténet. I. Kötet. (World History. Volume I.)* Kossuth Könyvkiadó. Budapest, 1962, 139.

³⁶³ Jönsson op. cit. 16.

³⁶⁴ L. A. Vasil'eva–O. A. Bakinovskaia: *Mezhdunarodnoe publichnoe pravo. (International public law.)* Chastnoe izdatel'skoe unitarnoe predpriiatie „Tetralit". Minsk, 2014, 15.

handle the interests of their lands.³⁷¹ (The recompense of envoys for the work done was often of symbolic character, for example, in Athens, embassy members received a daily reimbursement, close in value to the payment of a lightly armed warrior.)³⁷² Since the Greek held that they were in a permanent state of war with all barbarians, foreign ambassadors were not allowed to enter Greek territory, unless they were escorted by heralds.³⁷³

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.³⁷⁴ The term *diploma* had been extended then to other certificates,³⁷⁵ intended to grant immunities to foreign communities or tribes in forms of pacts.³⁷⁶ The instances of breach of the rule of the inviolability of envoys were rare and seem always to have been followed by terrible reprisals.

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

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

³⁷¹ V. M. Repets'kii: Stanovlennia ta rozvytok prava zovnishnikh znosyn. (*Establishment and development of law of external relations.*) In: S. V. Kivalov (ch. ed.): Al'manakh mezhdunarodnogo prava. Vypusk 2. „Feniks”. Odessa, 2010, 224.

³⁷² F. E. Adcock–D. J. Mosley: *Diplomacy in Ancient Greece*. Thames and Hudson. London, 1975, 176.

³⁷³ Montell Ogdon: *Juridical Bases of Diplomatic Immunity: A Study in the Origin, Growth and Purpose of the Law*. John Byrne&Co. Washington, 1936, 16.

³⁷⁴ Gajzágó op. cit. 12-13.

³⁷⁵ V. A. Zorin: *Osnovy diplomaticheskoi sluzhby. (The foundation of diplomatic service.)* Institut Mezhdunarodnykh Otnoshenii. Moskva, 1964, 12.

³⁷⁶ The professional activity, related to handling of such official documents was later named „*res diplomatica*”. Kincses op. cit. 21.

³⁷⁷ Eileen Young. *Ibid.*

³⁷⁸ János Sáringer: A diplomáciai rangok eredete és használata a középkortól napjainkig. (*The origin and use of diplomatic ranks from the Middle Ages to the present day.*) *Külügyi Szemle*. XV/2016/1, 3.

³⁷⁹ Búza–Hajdú op. cit. 31.

the inviolability of envoys a fundamental principle and its violation – an exceptional crime,³⁸⁷ even among barbarians.³⁸⁸

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

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

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

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

³⁸⁸ Magalhaes op. cit. 16-26.

³⁸⁹ The word *orator* had been used, sometimes, as a synonym for legate and ambassador. Coleman Phillipson: *The International Law and Custom of Ancient Greece and Rome*. Volume I. Macmillan and Co., Limited. London, 1911, 307.

³⁹⁰ Magalhaes op. cit. 27-39.

³⁹¹ Emer de Vattel: *The Law of Nations*. In: G. R. Berridge (ed.): *Diplomatic Classics: selected texts from Comynnes to Vattel*. Palgrave Macmillan. Basingstoke, 2004, 181. [Hereinafter: Emer de Vattel: *The Law of Nations*. In: Berridge: *Diplomatic Classics*...]

³⁹² Emer de Vattel: *The Law of Nations; or Principles of the Law of Nature, Applied to the Conduct and Affairs of Nations and Sovereigns*. (Translated from the French.) Simeon Buttlar. Northampton, 1820, 525.

³⁹³ Frey-Frey op. cit. 84-85.

attention.⁴⁰⁰ Thus, the transformation of diplomatic missions into a permanent institution, entailed the formation of special departments of foreign affairs (external relations) and formalization of rights and privileges of diplomats.⁴⁰¹

With respect to the Eastern part of Europe, when, at the beginning of ninth century, the eastern Slavic state „Russkaia zemlia” (Russian land) was formed, its diplomats had already been visiting the courts of Byzantine and Frankish Emperors.⁴⁰² The foreign envoys were received in the ceremonial halls of the City Councils.⁴⁰³ In ancient Russia, the diplomatic relations were so extensive that this fostered the creation of the special diplomatic institution – „Posol’skii prikaz”,⁴⁰⁴ based on customs and precedents, which dealt with foreign affairs,⁴⁰⁵ and established the diplomatic ranks,⁴⁰⁶ such ambassador, envoy and courier.⁴⁰⁷ The inviolability of ambassadors had been confirmed in agreements and was stringently obeyed,⁴⁰⁸ even the delegates of hostile countries received special, protecting credentials – „opasnye gramoty”,⁴⁰⁹ enabling them to exit and leave the host state without obstructions.⁴¹⁰

At the end of the twelfth century, the treaty charter of Novgorod with the Nordic countries⁴¹¹ on peace, ambassadorial and trade relations, also on judicature, contained early immunity rules of ambassadorial law, which provided by application of fines and mutual economic reprisals,⁴¹² the personal safety of ambassadors, merchants, hostages, priests,

⁴⁰⁰ Donald E. Queller: *The Office of the Ambassador in the Middle Ages*. Princeton University Press. Princeton, 1967, 95.

⁴⁰¹ Korovin op. cit. 17.

⁴⁰² V. A. Vitiازهeva–B. M. Kirikov: Leningrad. Lenizdat, 1986, 19.

⁴⁰³ B. D. Suris (ed.): *Novgorod. 1100 let. (Novgorod. 1100 Years of the City.)* „Khudozhnik RSFSR”. Leningrad, 1959, 9.

⁴⁰⁴ In commemoration of the 200th anniversary of the Ministry of Foreign Affairs of the Russian Federation, there was established the Diplomatic Worker's Day by the Decree of President Vladimir Putin No. 1279 as of 31 October, 2002. This professional holiday is celebrated on 10 February, a date, which conventionally, considered in the national historiography to be the day of formation of the Posol’skii prikaz – the first Russian Foreign Ministry.

⁴⁰⁵ L. A. Yuzefovich: „Kak v posol’skikh obychaiakh vedetsia...” („As it goes in ambassadorial customs...”) *Mezhdunarodnye otnosheniia*. Moskva, 1988, 12-13.

⁴⁰⁶ Starting from the sixteenth century, in the ancient Russian documents there could be find six diplomatic ranks: two ambassadors – „velikii posol” and „legkii posol”, two delegates – „poslanniki” and „poslannye”, and two couriers – „poslantsy” and „gontsy”. Petrik op. cit. 8.

⁴⁰⁷ Petrik op. cit. 29.

⁴⁰⁸ Petrik op. cit. 41.

⁴⁰⁹ Until the twelfth century, there were not written laws in Russia, and the legal codes were living in verbal form. Such law scientists call the custom, as the guilty were judged, according to the custom. M. F. Kotliar: *Iz istorii mis’kogo samovriaduvannia na Rusi. (From the history of municipal government in Russia.)* *Ukrayins’kii Istorichnyi Zhurnal*. No 1 (526), January-February, 2016, 12.

⁴¹⁰ Levin: *Istoriia*... 28-33.

⁴¹¹ It should be added that the agreements of that time did not include all the rules that guided the involved parties – usually every new treaty emphasized the actual questions and the provisions of previous contracts were included in the concept of the „old world”, remaining in force, if cancellation of an article was not specified. V. T. Pashuto: *Drevneishie gosudarstva na territorii SSSR. Materialy i issledovaniia. (The oldest states on the territory of the USSR. Materials and researches.)* Izdatel’stvo „Nauka”. Moskva, 1984, 17-18.

⁴¹² The economic reprisals were, for instance, trade gaps, the arrest of merchants, closing trade courts, and others.

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.⁴²¹

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 Hungary⁴²² was attacked near Belgrade⁴²³ 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.⁴²⁴ 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.⁴²⁵ 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,⁴²⁶ being the most known author of that period,⁴²⁷ sometimes (not quite correctly) labeled, as the „father of international law”.⁴²⁸

⁴²¹ The Khan perpetrated this violence together with his son, suspecting that the Russian Government was going to influence the Crimea through Turkey. Ibid.

⁴²² The Hungarian state was created, as a result of St. Stephen's organizer and founder activity. János Zlinszky: A magyar jogalkotás kezdetei. Szent István, államalapító és törvényhozó. (*The beginnings of Hungarian legislation. Saint Stephen, the founder of state and lawmaker.*) In: János Bollók–Gyula Kristó (trans.): Szent István király Intelmei és Törvényei. (*Saint Stephen's Exhortations and Laws.*) Szent István Társulat. Budapest, 2002, 5.

⁴²³ Belgrade was called at that time Nádor Fehérvár, which was the main border town.

⁴²⁴ Frey–Frey op. cit. 107-139.

⁴²⁵ Frey–Frey op. cit. 92.

⁴²⁶ J. G. Starke: Introduction to International Law. Butterworth&Co. Publishers Ltd. London, 1984, 11.

⁴²⁷ Károly Nagy: A nemzetközi jog, valamint Magyarország külkapcsolatainak története. (*The history of international law and the foreign relations of Hungary.*) Antológia Kiadó és Nyomda. Lakitelek, 1995, 89-90.

⁴²⁸ W. E. Butler: William Whewell translator of Hugo Grotius. In: S. V. Kivalov (ch. ed.): Al'manakh mezhdunarodnogo prava. Vypusk 2. „Feniks”. Odessa, 2011, 122.

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 custom⁴³³ 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,⁴³⁴ since the reign of King Matthias I (the Renaissance King),⁴³⁵ who conducted a lively diplomatic activity,⁴³⁶ envoys⁴³⁷ could apply for a lawsuit delay, if it was necessary.⁴³⁸ (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.)⁴³⁹

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

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

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

⁴³⁵ King Matthias I (1458-1490), was the greatest Hungarian king of the Renaissance. László Veszprémy: *The Holy Crown of Saint Stephen*. In: Attila Zsoldos (ed.): *Saint Stephen and His Country. A Newborn Kingdom in Central Europe: Hungary*. Lucidus Kiadó. Budapest, 2001, 103.

⁴³⁶ Zsolt Zoltán Braun: *A Magyar Diplomáciai Szervezetrendszer I. Hunyadi Mátyás uralkodásától a kiegyezés koráig. (The Hungarian Diplomatic Organization System from the reign of Matthias Hunyadi I until the age of Compromise.)* De iurisprudentia et jure publico. *Journal of Legal and Political Sciences*. Vol. VIII, No 2, 2014, 4.

⁴³⁷ Miklós Lindvai Bánfi, the head sommelier master was the most famous Hungarian aristocratic envoy. Vilmos Fraknói: *Mátyás király magyar diplomatái. (The Hungarian diplomats of king Matthias.)* Századok. Vol. XXXIII, Booklet I, 1.

⁴³⁸ Domokos Kosáry: *Magyar külpolitika Mohács előtt. (The Hungarian foreign policy before Mohács.)* Magvető Kiadó. Budapest, 1978, 46.

⁴³⁹ Braun op. cit. 5.

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

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

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

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

⁴⁴⁶ Rubin op. cit. 82.

⁴⁴⁷ Garrett Mattingly: Renaissance Diplomacy. Dover Publications Inc. New York, 1988, 39-44.

⁴⁴⁸ The serious crime was considered to be treason, treachery, or adultery. Korovin op. cit. 18.

⁴⁴⁹ The arrest of Venetian citizens produced by Venice authorities in the premises of the French Embassy at that epoch, led to a break in diplomatic relations between France and Venice. Ibid.

⁴⁵⁰ Ibid.

⁴⁵¹ Mattingly op. cit. 47-55.

⁴⁵² Jeremy Black: Diplomatic history: a new appraisal. McKercher op. cit. 4.

⁴⁵³ Betty Behrens: Treatises on the ambassador written in the fifteenth and early sixteenth centuries. English Historical Review. Vol. 51, 1936, 616-627.

⁴⁵⁴ Black op. cit. 4.

based on the legal fiction of extritoriality, 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 extritoriality, proposing that their status in civil suits would remain the same, as if they did not leave their country.

The problematic questions were connected not to the immunity from civil, rather from criminal jurisdiction. In addition, the crimes, resident ambassadors were likely to be charged with were mainly of political nature, where the existing medieval theory was difficult to apply. In opinion of Grotius, regardless justice⁴⁶² and equity that required equal punishment for equal crimes, *jure gentium*,⁴⁶³ 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.⁴⁶⁴ Consequently, the only one resolution of this difficulty was to view ambassadors, as persons, not bound by the laws of the country where they resided. Grotius expressed a modern vision of ambassadorial immunity, with the implication of complete diplomatic extritoriality, and it eventually got ingrained in international law.⁴⁶⁵

It should be précised here that in spite of the fact that Grotius is considered to be the „father” of international law, the title „international law” comes from Richard Zuchaeus (Zouch), Professor of Oxford, also called „*the living Pandect of the law*”,⁴⁶⁶ who used it in his main work, published in 1650,⁴⁶⁷ instead of *jus inter gentes* (law of nations, *droit les gens*,

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

⁴⁶³ Filmer remarks that Grotius „*can scarce tell*” what to make to be the law of nations or where to find it. Sir Robert Filmer: *Observations Upon H. Grotius De Jure Belli et Pacis*. Peter Laslett (ed.) *Patriarcha and Other Political Works of Sir Robert Filmer*. Basil Blackwell. Oxford, 1949, 267.

⁴⁶⁴ Frey–Frey op. cit. 236–244.

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

⁴⁶⁶ Izaak Walton: *The Lives of John Donne, Sir Henry Wotton, Richard Hooker, Georges Herbert and Dr. Robert Sanderson*. T. Wilson and R. Spence, in High-Ousegate. York, 1807, 391.

⁴⁶⁷ Richard Zouche: *Iuris et judicii feccialis, sive, juris inter gentes, et quaestionum de eodem explicatio: qua quae ad pacem & bellum inter diversos principes, aut populos spectant, ex praecipuis historico-jure-peritis, exhibentur*. Carnegie Institution of Washington. Washington, 2011.

The Chinese officials were looking down at European Powers, refusing to treat them on a footing of equality and international law.⁴⁷⁹ 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)*”,⁴⁸⁰ was the main part of the diplomatic protocol.⁴⁸¹ 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.⁴⁸² Consequently, the first official mission of the Embassy of Russia in China under the leadership of Fedor Baykov in 1656, ended in failure exactly for the reason that the envoy refused to give the certificate and gifts, sent by Tsar Alexei Mikhailovich⁴⁸³ to anyone other, than the emperor, and to perform the rite kou gou.⁴⁸⁴

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.⁴⁸⁵ (The diplomatic representatives of the *ad hoc*⁴⁸⁶ diplomatic missions were the successors of the ancient messengers.)⁴⁸⁷ The rise with respect to the development of diplomatic immunities at this time

⁴⁷⁹ George W. Keeton–Georg Schwarzenberger (eds.): *The Frontiers of International Law*. Stevens&Sons Limited. London, 1962, 55.

⁴⁸⁰ This was the act of deep respect – the highest sign of reverence in the Asian culture. Those who performed the bowing and other procedures, thereby recognized themselves and their own state as tributaries of the Chinese monarch.

⁴⁸¹ V. S. Miasnikov: *Dogovornymi stat'iami utverdili. (Approved by treaty articles.)* Habarovsk. Moskva, 1997, 84.

⁴⁸² The subsequent envoys from other countries had a similar experience and result, as Baykov, thus, during the following decades, the Chinese „*had scored victories*” over the Arabs, Dutch, Portuguese, British and Americans. Eventually, the new Chinese Emperor in 1873 allowed the envoys to place the letters of credence at a table, close to him, and to stay standing. Since that time, the ritual of prostration before the Chinese Emperor had been dispensed. William Woodville Rockhill: *Diplomatic Missions to the Court of China: The Kotow Question I*. *The American Historical Review*. Vol. 2, No. 4, July 1897, 639-624.

⁴⁸³ At that time Russia belonged to those countries, who had a serious impact on the historical destiny of Eastern Europe. L. E. Semenova–B. N. 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.

⁴⁸⁴ Zonova: *Diplomatia*... 184.

⁴⁸⁵ In those times, the courts were filled with reports of controversies among the diplomatic agents of various states, who claimed precedence over each other at receptions and on other occasions, such as at a dinner or in church. Francis Deák: *Classification, Immunities and Privileges of Diplomatic Agents*. *Southern California Law Review*. Vol. I, No. 3. 1928, 215-216.

⁴⁸⁶ Consequently, the *ad hoc* diplomacy is the oldest form of diplomacy.

⁴⁸⁷ Frey–Frey op. cit. 158.

In England, the case with *Mattueoff* has resulted in passing by the Parliament of England a similar, special legislation, aimed at protection foreign diplomats against criminal and civil proceedings. This was the clearest act of such kind, adopted by a state in the meanwhile.⁴⁹⁸ The awkward situation of the government appeared because of the fact that the merchants committed no crime, yet, had to be arrested and investigated in front of the Privy Council. Theorists and judges claimed that the tradesmen violated neither any statute nor none of the common law principles, so the men were finally found not guilty. The government passed the Act of Anne⁴⁹⁹ 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,⁵⁰⁰ for example, by means of the Act of 1790,⁵⁰¹ which codified the diplomatic immunity in the United States upon the existing common law.⁵⁰² The Act of 1790⁵⁰³ embraced the rule of *Respublica v. De Longchamps*, which stated that diplomatic immunity was virtually absolute. *De Longchamps*⁵⁰⁴ was the *prima facie* case of diplomatic immunity in the United States, therefore worth mentioning here. De Longchamps, a French national, was charged with violation of international law that protected diplomats, under Pennsylvania law, by insulting and assaulting the French Consul-general in his residence. The jury found de Longchamps guilty and the court determined that the defendant had committed an atrocious violation of the law of nations, when he threatened and menaced bodily harm and violence to the person of the Secretary of the French Legation, because the person of a public minister was sacred and inviolable.

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

⁴⁹⁸ M. S. Anderson: *The Rise of Modern Diplomacy 1450-1919*. Longman Publishing. New York, 1993, 54.

⁴⁹⁹ 7 Anne c. XII (1708).

⁵⁰⁰ Frey–Frey op. cit. 228-229.

⁵⁰¹ American Act of April 30, 1790, passed by the First Congress.

⁵⁰² Robert A. Wilson: *Diplomatic Immunity from Criminal Jurisdiction: Essential to Effective International Relations*. Loyola of Los Angeles International and Comparative Law Review. Vol. 7, No. 113, 1984, 119.

⁵⁰³ The Act of 1790 was in force until its repeal in 1978 with the passage of the Diplomatic Relations Act: Pub. L. No 95-393, 92 Stat. 808 (1978) (codified at 22 U. S. C. § 254, 28 U. S. C. Enacted on 30 September, 1978.

⁵⁰⁴ *Respublica v. De Longchamps* 1 U. S. 111 (1784).

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

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

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

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

⁵¹⁶ Teghze op. cit. 275.

⁵¹⁷ Later some other titles emerged, as *chargés d'affaires*, *agents chargés d'affaires*, *residents*, etc., nonetheless their legal status and scope of authority was identical to the status of the ambassador. Zonova op. cit. 24-32.

⁵¹⁸ Thus, the diplomatic ranks have developed in Europe, and starting from the eighteenth century, gradually spread around the world. János Sáringer: *A diplomáciai rangok eredete és használata a középkortól napjainkig. (The origin and use of diplomatic ranks from the Middle Ages to the present day.)* *Külügyi Szemle*. XV/2016/1, 29.

⁵¹⁹ There are nine diplomatic ranks today. Zonova op. cit. 32.

⁵²⁰ The levels of seniority survived to the present day. Zonova op. cit. 47.

⁵²¹ In 1815, the Great Powers had arrogated themselves the role of guarantors of peace, yet, diplomacy of those times could not be called trustworthy. Martti Koskenniemi: *The Gentle Civilizer of Nations: The Rise and Fall of International Law 1870-1960*. Cambridge University Press. Cambridge, 2002, 15.

⁵²² David Jayne Hill: *The Classification of Diplomatic Agents*. *The American Journal of International Law*, Vol. 21, No 4, 1927, 737.

⁵²³ Paul Meerts: *Persuasion through negotiation at the Congress of Vienna 1814-1815*. DiploFoundation. 2013. (Accessed on 10 January, 2016.) <http://www.diplomacy.edu/resources/general/persuasion-through-negotiation-congress-vienna-1814-1815>

⁵²⁴ Coleman Phillipson–Noel Buxton: *The Questions of the Bosphorus and Dardanelles*. In: Stevens and Haynes. *Law Publishers-Bell Yard, Temple Bar*. London, 1917, 47.

governing all official relations between states,⁵³⁴ by the beginning of the twentieth century. It should be noted here that even the system of norms of diplomacy law used to be attached to the ambassadorial law in the past, still, some experts kept this association.⁵³⁵

In the twentieth century,⁵³⁶ the eminent role of the great power was reflected in diplomatic custom, as well. For instance, the highest rank in the diplomatic profession – the ambassador, applied only to diplomats of great powers,⁵³⁷ who served at the court of an other great power.⁵³⁸ The crisis of 1914⁵³⁹ affected the status of diplomats and diminished their freedom of action by change in the nature of the military organization. In this course, a gap had developed between the customs and traditions of diplomats.⁵⁴⁰

What is more, in 1918, after the Bolsheviki gradually took over the power in the country, the Soviet Russia eliminated the previously used diplomatic ranks, and uniformly, had sent a Plenipotentiary Representative to each country. The credentials of the Soviet Plenipotentiary Representative precised his diplomatic rank – ambassador or envoy, so that the Representative could take its rightful place among the diplomatic representatives of other states in the country of residence.⁵⁴¹ Nonetheless, this diplomatic rank was not recognized by the host states and the Representatives were ranked behind the *chargé d'affaires*.⁵⁴²

In olden times, various further factors served, as reasons for refusal of the *agrément*, except for political behavior, such as personality, manners,⁵⁴³ and even gender. In diplomacy,

⁵³³ Jan Wouters–Sanderijn Duquet: *Unus Inter Plures?* The EEAS, the Vienna Convention and international Diplomatic Practice. KU Leuven-Leuven Centre for Global Governance Studies-Institute for International Law. Working Paper No. 139, 2014, 5.

⁵³⁴ Blishchenko–Durdenevskii op. cit. 328.

⁵³⁵ See in particular: D. B. Levin: *Mezhdunarodnoe pravo, vneshniaia politika i diplomatiia. (International law, foreign policy and diplomacy.)* Mezhdunarodnye otnosheniia. Moskva, 1981, 123.

⁵³⁶ The diplomats of the early twentieth century adhered to the ideas, which had dominated diplomatic thinking during the previous two centuries: balance of power and *raison d'état*.

⁵³⁷ The majority of diplomats, who advanced to high positions in the period before the World War I, had received their training under the great masters of nineteenth-century diplomacy: Bismarck in Germany, Gorchakov in Russia, Disraeli in Great Britain, Cavour in Italy and Andrassy in Austria-Hungary.

⁵³⁸ This custom had been formed during the previous centuries and continued to be maintained.

⁵³⁹ In some years later, in 1918, by the end of the World War I, Europe ceased to be the center of the world and a new balance of power was to be achieved. A. J. P. Taylor: *The Struggle For Mastery in Europe, 1848-1918.* Clarendon Press. Oxford, 1954, 568.

⁵⁴⁰ Felix Gilbert–David Clay Large: *The end of the European Era: 1890 to the Present. (The Norton History of Modern Europe.)* W. W. Norton&Company. New York, 2009, 107-110.

⁵⁴¹ The diplomatic rank had been used until 1941, when there had been introduced the ranks of diplomatic representatives of the USSR. V. P. Abarenkov (ed.): *Kratkii politicheskii slovar'. (Concise political dictionary.)* Politizdat. Moskva, 1988, 331.

⁵⁴² János Sáringer: *A diplomáciai rangok eredete és használata a középkortól napjainkig. (The origin and use of diplomatic ranks from the Middle Ages to the present day.)* Külügyi Szemle. XV/2016/1, 26.

⁵⁴³ Flachbarth op. cit. 101.

responsible for the wellbeing of all his staff. Additionally, most countries developed a formal or informal internal system of ranking of their own ambassadors, in grades or categories.⁵⁵²

Every diplomatic service had its envoy exemplars, for example in case of the Soviet Union, Anatoly Dobrynin was one of them, who served for twenty-four years, as the Ambassador in Washington D. C.⁵⁵³ In case of the United States, it was George F. Kennan,⁵⁵⁴ accredited in Moscow, in the first years of the Cold War, widely acknowledged, as a giant figure in policy shaping. Kennan, a leading figure in the diplomacy of Soviet-American relations since World War II and an important foreign policy theorist, was appointed Ambassador to Russia⁵⁵⁵ in 1952,⁵⁵⁶ but served only a short term, being declared *persona non grata* by the Soviets for some unflattering remarks, made about Soviet treatment of Western diplomats while on a visit to Berlin.⁵⁵⁷ The United States justified the speech of the diplomat, but recalled him.⁵⁵⁸

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

⁵⁵² For instance, the United States, Germany and India have three effective grades, and only a few states, such as Kenya, Thailand and Turkey appoint ambassadors in a single grade. Besides, there are countries like Germany and China, which attach ranks to capitals. Rana: *The 21st Century Ambassador*... 25-26.

⁵⁵³ The Ambassador even had a special parking spot in the State Department garage, for some time. This was a privilege that allowed him to avoid the main entrance, and unexpected meetings with the press. Vajda op. cit. 74.

⁵⁵⁴ Speaking of professionalism in the conduct of foreign policy, Kennan emphasizes that by developing a corps of professional officers superior anything that exists or ever existed in this field, and by treating them with respect, drawing on their insight and experience, it would be a considerable help in conduct of diplomatic practice. The Ambassador added that this have run counter to strong prejudices and preconceptions in sections of public mind. George F. Kennan: *Diplomacy in the Modern World*. In: George F. Kennan: *American Diplomacy*. University of Chicago Press. Chicago, 1984, 93.

⁵⁵⁵ Kennan had been previously appointed to Russia as diplomat several times already by that time. David Shavit: *United States Relations With Russia and the Soviet Union. A Historical Dictionary*. Greenwood Press. Westport, 1993, 104.

⁵⁵⁶ Kennan studied Russian language and culture in Berlin from 1929 to 1931. John E. Findling: *Dictionary of American Diplomatic History*. Greenwood Press. Westport, 1980, 258.

⁵⁵⁷ Findling op. cit. 259.

⁵⁵⁸ Murty op. cit. 416.

⁵⁵⁹ For the most part, the Convention represented restatement of principles, normally observed by governments and therefore, it closely approximated existing international law and practice. In areas, in which the practice was not uniform, or where it appeared to the assembled plenipotentiaries of eighty-one states that existing practice should be changed, the Conference established new rules. Leo T. Harris: *Diplomatic Privileges and Immunities: A New Regime is Soon to be Adopted by the United States*. *The American Journal of International Law*. Vol. 62, No 1, January, 1968, 98-99.

⁵⁶⁰ Magalhaes op. cit. 40-48.

⁵⁶¹ I. S. Iskevitch–A. V. Podolyskii: *Diplomaticeskoe i konsul'skoe pravo. (Diplomatic and consular law.)* Izdatel'stvo FGBOU VPO „TGTU”. Tambov, 2014, 44.

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

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

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

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

⁵⁷² Frey–Frey op. cit. 3.

⁵⁷³ James Lee Ray–Juliet Kaarbo: Global Politics. Wadsworth, Cengage Learning. Boston, 2011, 251.

⁵⁷⁴ Further, a „*better recognition of the diplomatist as a professional is worthwhile*”, while the diplomatic system is facing the challenge to build excellence into its genetic code, for at stake is the enlargement of the international power and influence of one's nation. Rana: The 21st Century Ambassador... 190-202.

⁵⁷⁵ Freeman: The Diplomat's... 84

⁵⁷⁶ Sharp: Diplomatic... 1.

⁵⁷⁷ Andrew F. Cooper: Celebrity Diplomacy. Paradigm Publishers. Boulder, 2008, vi.

anachronism.⁵⁸⁹ Some experts began to talk about decadence – the decline of traditional diplomacy back in the twentieth century.⁵⁹⁰ Others stated it was going through a crisis, at least, claiming that the technological progress made the contemporary communication cheap and secure, therefore they were hesitating about a real need for professional diplomats.⁵⁹¹ There were designs to replace the functions of permanent diplomatic representations⁵⁹² with a small body of „*superambassadors*”, who would coordinate the international relations of their governments with other countries within a more or less large geographical region.⁵⁹³

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

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

⁵⁸⁹ Semi Cohen (ed.): *Les diplomates. Négociateur dans un monde chaotique. (The diplomats. Negotiate in a chaotic world.)* Éditions Autrement-Collection Mutations. Paris, 2002, 77.

⁵⁹⁰ Philippe Cahier: *Le Droit Diplomatique Contemporain. (Contemporary Diplomacy law.)* Librairie Droz. Geneva, 1964, 15. [Hereinafter: Cahier: *Le Droit...*]

⁵⁹¹ David Dilks (ed.): *The Diaries of Sir Alexander Cadogan (1938-1945)*. Cassel. London, 1971, 249.

⁵⁹² In addition, certain authors believe that some ambassadors „*do little of substance, and some embassies work perfectly well without them – maybe better*”. Roskin–Berry op. cit. 288.

⁵⁹³ D. B. Levin: *Diplomatiia. (Diplomacy.)* Izdatel'stvo sotsial'no-ekonomicheskoi literatury. Moskva, 1962, 163-164.

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

⁵⁹⁵ E. J. Arechaga: *Sovremennoe mezhdunarodnoe pravo. (The modern international law.)* Progress. Moskva, 1983, 470.

⁵⁹⁶ Sáringer op. cit. 29.

⁵⁹⁷ Frey–Frey op. cit. 9.

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

⁵⁹⁹ See more on historical bases of diplomatic immunity in: Ogdon op. cit. 8-30.

III. 2. The conceptional clarification of the notion of diplomatic privileges and immunities

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

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

According to dictionaries, juridical immunity [from Latin *immunitas*]⁶⁰¹ stands for freedom from service,⁶⁰² also from any burden, duty, tax or penalty⁶⁰³ and exemption from jurisdiction.⁶⁰⁴

Historically, general changes in immunities, enjoyed by sovereigns, have been forced by the necessity of trade. Whereas the absolute approach to sovereign immunities required the primacy of sovereignty, the growth of state interest and capacity in commercial interests. The need for subjects to have the same confidence in transactions with state commercial entities, led to the abandonment of absolute sovereign immunity, permitting subject and sovereign to engage, while enjoying confidence in equal legal protection, in their private or commercial capacities. This shift became necessary to protect the rights and interests of subjects from the vast asymmetry of state power.⁶⁰⁵

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

⁶⁰¹ The concept of *immunitas* had been used by the ancient Romans to describe the exemption of an individual from service or duty to the state. A. M. Silverstein: *The History of Immunology*. W. E. Paul (ed.): *Fundamental Immunology*. Lippincott-Raven Publishers. Philadelphia, 1999, 19.

⁶⁰² Hohfeld defines legal immunity as exemption from legal power. Walter Wheeler Cook (ed.): *Fundamental legal conceptions*. As applied in judicial reasoning by Wesley Newcomb Hohfeld. Yale University Press. New Haven, 1919, 8.

⁶⁰³ *The Royal English Dictionary and Word Treasury*. Société Française d'Éditions Nelson. Paris, 1948, 274.

⁶⁰⁴ *The Concise Oxford Dictionary of current English*. Oxford University Press. Oxford, 1954, 594.

⁶⁰⁵ Boas op. cit. 278-279.

represents the practice of holding individuals responsible for their wrongful acts. Hugo Grotius⁶¹³ was the first, who presented a theory based on the sacredness of ambassadors,⁶¹⁴ believing that both divine and human law protected the ambassadors as sacred persons, so violating this law would be not only impermissible, but also irreligious.

As remarked by Corbett, it was only with Grotius⁶¹⁵ that the thesis of broad civil and criminal immunity became dominant in the literature. Grotius attributed civilian arguments restricting diplomatic privilege to a misinterpretation of the Roman-law texts, due to confusing the *legati*, who represented Roman provinces with those representing independent peoples. It was the latter, who had the chief claim to immunity.⁶¹⁶ Before the adoption of the Vienna Convention, diplomatic privileges were „... *in reality a little more than the agreed consequences of the mutually accepted obligation incumbent upon States to treat such foreign diplomatic representatives as exempt from their jurisdiction. Herein lies the juridical basis of these immunities.*”⁶¹⁷

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

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

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

⁶¹³ General jurisprudence became independent since Grotius. Wilhelm Dilthey: *The Essence of Philosophy*. The University of North Carolina Press. Chapel Hill, 1954, 12.

⁶¹⁴ The ambassadorial duties were formulated by Hugo Brierly, such as *protectio, negotiatio* and *informatio*.

⁶¹⁵ Grotius op. cit. ch. XVIII, sec. x.

⁶¹⁶ Corbett op. cit. 23.

⁶¹⁷ Hurst op. cit. 195.

⁶¹⁸ Martens: *Le guide diplomatique*, 1854... 83.

embassy house or official residence of a diplomatic representative, regarded as part of the territory of the host state and being inviolable.

The judicial interpretation of the theory of extraterritoriality appeared in *Wilson v. Blanco*,⁶²² where the Supreme Court of New York stated in 1889 that the rule of international law „*derives support from the legal fiction that an ambassador is not an inhabitant of the country to which he is accredited, but of the country of his origin, and whose sovereign he represents, and within whose territory he, in contemplation of law, always abides*”.⁶²³

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

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

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

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

⁶²² *Wilson v. Blanco*. 56 N. Y. Sup. Ct. 582, 4 N. Y. S. 714 (1889).

⁶²³ *Ibid.*

⁶²⁴ Analogous judicial interpretations of the theory of extraterritoriality are found in the following several cases. In *The King v. Guerchy*, 1 Black. W. 545, 96 Eng. Rep. 315 (1765) the court decided that an ambassador is not subject to the courts of the receiving state, and he is believed by legal fiction, to still be a resident of the sending state. In *Taylor v. Best*, 14 C. B. 487, 517, 139 Eng. Rep. 201, 213 (1854), it was held that the foundation of the privilege of exemption from the jurisdiction of the English courts was that the ambassador was supposed to be in the country of his master. In *Attorney General v. Kent*, 1 H.&C. 12, 23, 158 Eng. Rep. 782, 786 (1862), it was decided that diplomatic immunity was based on the principle: „*an ambassador is deemed to be resident in the country by which he is accredited*”.

⁶²⁵ Hurst op. cit. 196-203.

⁶²⁶ Flachbarth op. cit. 102.

⁶²⁷ Jónás–Szondy op. cit. 830.

⁶²⁸ Jónás–Szondy op. cit. 829.

⁶²⁹ The various meanings of extraterritoriality were analyzed by Wilson. Clifton Wilson

1

– their reduction

1

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

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

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

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

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

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

⁶³⁴ Levin op. cit. 232-241.

⁶³⁵ Clifton E. Wilson: Diplomatic Privileges and Immunities. The University of Arizona Press. Tucson, 1967, 1-7.

⁶³⁶ I. P. Blishchenko: Precedenty v mezhdunarodnom prave. (*Precedents in international law.*) Mezhdunarodnye otnosheniia. Moskva, 1977, 45-46.



constructions of the past and strived to provide a realistic justification of international legal institutions, in particular, diplomatic immunity, as well.⁶³⁹

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

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

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

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

⁶³⁹ Blishchenko–Durdenevskii op. cit. 335-339.

⁶⁴⁰ Blishchenko–Durdenevskii op. cit. 340-343.

⁶⁴¹ O’Neill op. cit. 361.

⁶⁴² Ustor op. cit. 235.

⁶⁴³ The concepts of functional immunity and state responsibility are closely connected. State responsibility arises, when the claim for functional immunity succeeds. In accordance, the criteria for imposing state responsibility may also determine, whether an act is „official”. Brian Man-Ho Chok: Let the Responsible be Responsible: Judicial Oversight and Over-Optimism in the Arrest Warrant Case and the Fall of the Head of State Immunity Doctrine in International And Domestic Courts. *American University International Law Review*. Vol. 30, Issue 3, 2015, 499.

⁶⁴⁴ Nina Maja Bergmar: Demanding Accountability Where Accountability Is Due: A Functional Necessity Approach to Diplomatic Immunity Under the Vienna Convention. *Vanderbilt Journal of Transnational Law*. Vol. 47, 2014, 523-524.

⁶⁴⁵ Robert Wilson op. cit. 118.

positive norms of ambassadorial law, which govern the status of diplomatic representatives abroad.⁶⁵¹

Successively, the theory of diplomatic functions could serve not as an optimal basis, but rather an additional principle for determination of the limits of authority of diplomatic immunity, since it lacks the solid legal norm, in absence of which this concept can not function, as the legal basis of diplomatic privileges and immunities. At present, there is a widespread opinion in the doctrine of international law that the theory of functional necessity and the representative theory should be applied together, as a combined theory. The Draft Convention on Diplomatic Relations of 1961 originally referred to the theory of functional necessity, applied by that time by the majority of states, and the Soviet delegation⁶⁵² proposed to introduce into the text of the Convention also the representative theory, and that diplomatic missions are representative bodies of states.⁶⁵³ Authors note that the use of both theories at the same time does not eliminate the disadvantages of each.⁶⁵⁴

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

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

⁶⁵² United Nations Conference on Diplomatic Intercourse and Immunities. Official Records. Vol. I. 2 March -14 April 1961, Geneva, 1962, 27-230.

⁶⁵³ Vienna Convention. Preamble.

⁶⁵⁴ Levin op. cit. 265-267; Demin op. cit. 27-28.

⁶⁵⁵ Hargitai: Viszonosság... 423.

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

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

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

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

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

⁶⁶³ Károly Nagy: *Nemzetközi jog. (International law.)* Püski Kiadó Kft. Budapest, 1999, 422.

⁶⁶⁴ Denza op. cit. 210.

⁶⁶⁵ Vaughan Lowe: *International Law.* Oxford University Press. Oxford, 2007, 3.

⁶⁶⁶ Alkis-Basil N. Papakostas: *The immunity from Jurisdiction of diplomatic agents.* Athens, 1967, 7.

⁶⁶⁷ Hans Kelsen: *Principles of International Law.* (Revised and edited by Robert W. Tucker) Holt, Rinehart and Winston, Inc. New York, 1967, 366.

⁶⁶⁸ Nimeyers *Zeitschrift für internationales Recht.* Vol. 39. Schmidt&Klaunig. Berlin, 1928, 284.

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 battle⁶⁷⁷ of Mohács,⁶⁷⁸ as a response.⁶⁷⁹

In the sixteenth century the king was the highest authority in the kingdom. This was the accepted wisdom at the time, when sovereignty⁶⁸⁰ was coined in 1576. The immunity of kings was expressed in the maxim *par in parem non habet imperium*, that is equals do not exercise authority over each other. State immunity grew from this personal immunity of the sovereign.⁶⁸¹ While the sovereign had absolute immunity outside his state under both civil and criminal jurisdictions⁶⁸² his diplomats during the nineteenth century also had immunity, but only in their receiving states. The strength of sovereignty reinforced the absoluteness of immunities. Envoys played a great role in representing their monarchs and leaders in foreign states and were initially inviolable and immune from the criminal jurisdiction of their receiving states on the basis of their representative status.⁶⁸³

In the beginning of the twentieth century, the concept of extritoriality⁶⁸⁴ still has been used, as a basis for extending privileges and immunities. Thus, in the following related case, concerning diplomatic privileges and immunities, *In re Zoltán Sz.*, the suspect, using deceitful information and a false document, participated in persuading the authorities at the Hungarian Legation in Vienna to issue a passport. In this case, the key question was where the felony had been committed. The Supreme Court of Hungary found that the offence was committed not abroad, but on the territory of the Hungarian state, for the premises of the Royal Hungarian Legation (with the privilege of extritoriality) had to be regarded, as Hungarian territory.

Zarnóczy (eds.): *A Divided Hungary in Europe*. Cambridge Scholars Publishing. Newcastle upon Tyne, 2014, ix.

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

⁶⁷⁹ Kosáry op. cit. 157-158.

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

⁶⁸¹ Yitiha Simbeye: *Immunity and International Criminal Law*. Ashgate Publishing Ltd. Farnham, 2004, 93.

⁶⁸² *The Schooner Exchange v. Mc Faddon*, 11 U. S. 116 (1812).

⁶⁸³ Simbeye op. cit. 96-100.

⁶⁸⁴ The principal applications of extritoriality 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.

prevailing rules of the host country, while immunity – which has a negative meaning – stands for an exception from some legal requirement.⁶⁹⁶

The difference between a diplomatic privilege and a diplomatic immunity, according to Levi, very conditionally, is that the former is grounded on international courtesy⁶⁹⁷ 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,⁶⁹⁸ Convention on privileges and immunities of the United Nations⁶⁹⁹ 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.)⁷⁰⁰

There are no strict rules in international law to be applied when it is necessary to decide which members of the diplomatic staff should enjoy immunity. In practice, it is widespread that members of the diplomatic staff are granted the same privileges and immunities, as heads of mission. Some states include into the circle of receivers members of the technical and service staff, as well, believing that due to the fact that these persons have access to sensitive data, related to diplomats and functioning of the mission, they also need diplomatic protection against a possible pressure of the host country.⁷⁰¹

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

The accredited diplomatic agents get diplomatic license plates, but still have to pay parking and traffic tickets. This is one of the areas, where reciprocity tends to be self-enforcing

⁶⁹⁶ Szemesi op. cit. 144.

⁶⁹⁷ Levin op. cit. 148-149; Cecil Hurst: Les immunités diplomatiques. (*Diplomatic immunities.*) Recueil des Cours de l'Académie de Droit international de la Haye. Tome 12. La Haye, 1926, 123.

⁶⁹⁸ The Convention regarding Diplomatic Officers. 155 LNTS 259. Signed on 20 February, 1928 in Havana. Entered into force on 21 May, 1929. [Hereinafter: Havana Convention.]

⁶⁹⁹ Convention on the privileges and immunities of the United Nations. Adopted by the General Assembly of the United Nations on 13 February, 1946. Entered into force on 17 September, 1946.

⁷⁰⁰ Blishchenko–Durdenevskii op. cit. 329.

⁷⁰¹ Harris op. cit. 362.

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

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

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

In opinion of Rana, privileges and immunities remain one of the pillars of the diplomatic system. They are taken for granted in times of normalcy, but function as a safety net for diplomats and embassy, when relations between countries deteriorate or when a crisis erupts.⁷¹² In the absence of legal regulation in a particular area, governments are forced, given the particular circumstances, to make exceptions for certain persons, which leads to a large variety in practice and opens a loophole for subjectivity and even abuse.

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

HVG.HU. 19 May, 2013. (Accessed on 6 June, 2016.)
http://hvg.hu/cegauto/20130519_Megbelyegtik_a_szabalytalankodo_diplomata

⁷⁰⁹ Vienna Convention. Article 25.

⁷¹⁰ Blishchenko–Durdenevskii op. cit. 374.

⁷¹¹ Matuzov–Mal’ko op. cit. 233.

⁷¹² Rana: The 21st Century Ambassador... 57.

1. If the exemptions are intended to facilitate the position of various subjects, then the privileges are mainly oriented to the political elite, the power authorities and officials. However, the privileges are established not only with relation to persons, in whom authority is vested. As monopoly, exclusive rights, they may be granted in certain cases to citizens, enterprises, institutions, organizations and other entities.
2. While exemptions apply to a larger circle of persons and have a broader scope of use, privileges are specific exemptions – exceptions to exceptions. Their number can not be large, otherwise the privileges would collide with the fundamental principles of law – justice, equality, etc.
3. Exemptions are mainly characterize the special legal status of subjects, being essentially provided to the respective groups and segments of the population (disabled, pensioners, students, single mothers, and others). The privileges could be established in special status (diplomats, 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.⁷¹⁹

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

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

⁷¹⁹ Matuzov–Mal’ko op. cit. 233-234.

⁷²⁰ Levin citing Hothorn. Levin: *Diplomaticheskii...* 267.

⁷²¹ Demin op. cit. 23.

⁷²² Anne Peters–Evelyne Lagrande–Stefan Oeter–Christian Tomuschat (eds.): *Immunities in the Age of Global Constitutionalism*. Brill Nijhoff. Leiden, 2015, 1.

international law, the Constitution and domestic law. (Diplomatic corps is not considered to be a juridical person, based on a norm of diplomacy law.⁷²⁸ All the same, diplomatic corps is accepted as a public institution⁷²⁹ with limited functions, in accordance with international traditions and customs.)⁷³⁰

In consequence, on the basis of the above said, the following conclusions could be made: immunities are a general legal category, for they are established according to the rules of international, constitutional, criminal, and civil procedure. Experts admit, though, that the previously mentioned features of legal immunities are rather conventional, since privileges and immunities are very closely related concepts, in many ways.⁷³¹

As noted by Demin, the position of certain scholars, such as Bogdanov,⁷³² Hardy,⁷³³ Jecny,⁷³⁴ Ganiushkin,⁷³⁵ Nikolaev,⁷³⁶ Nikiforov, Borunkov,⁷³⁷ Sandrovskii,⁷³⁸ Movchan,⁷³⁹ Ushakov,⁷⁴⁰ Levi,⁷⁴¹ Levin,⁷⁴² suggest the emergence of a new approach to the institution of diplomatic immunities and privileges, which has not received yet a proper development in the doctrine of international law.

At the same time, some authors do not share this opinion, such as Denza, considering that the justifications for diplomatic immunities of states are different, as evidenced by the growing volume of detailed rules and exceptions in the areas of both immunities.⁷⁴³ There is no coherent theory yet of this new approach to the institution of diplomatic privileges and immunities, and there are only scattered utterances of individual jurists, which can be

⁷²⁸ J. P. Brovka (co-author): *Mezhdunarodnoe publichnoe pravo. Osobennaia chast'.* (*International public law. Special part.*) Amalfeia. Minsk, 2011, 162.

⁷²⁹ The diplomatic corps is not mentioned in the Vienna Convention, and according to Sharp and Wiseman, its role was not considered to be of sufficient importance. Sharp–Wiseman op. cit. 32.

⁷³⁰ L. L. Fedorov: *Diplomat i konsul.* (*The diplomat and the consul.*) Mezhdunarodnye otnosheniia. Moskva, 1965, 115.

⁷³¹ Matuzov–Mal'ko op. cit. 232–235.

⁷³² O. V. Bogdanov: *Pravovye voprosy prebyvaniia OON v SSHA. Privilegii i immunitety OON.* (*Legal questions of the UN in the USA. Privileges and immunities of the UN.*) Izdatel'stvo IMO. Moskva, 1962, 49.

⁷³³ Hardy op. cit. 43.

⁷³⁴ Dobromil Jecny: *Introduction into diplomatic Practice.* Svoboda. Praha, 1968, 44.

⁷³⁵ B. V. Ganiushkin: *Diplomaticheskoe pravo mezhdunarodnykh organizatsii.* (*Diplomacy law of international organizations.*) Mezhdunarodnye otnosheniia. Moskva, 1972, 169.

⁷³⁶ A. Nikolaev: *Diplomaticheskie immunitety i privilegii.* (*Diplomatic immunities and privileges.*) *Mezhdunarodnaia zhizn'.* No 8, 1983, 152.

⁷³⁷ D. S. Nikiforov–A. F. Borunkov: *Diplomaticheskii protokol v SSSR: printsipy, normy, praktika.* (*Diplomatic protocol in the USSR: Principles, norms, practice.*) Mezhdunarodnye otnosheniia. Moskva, 1985, 44.

⁷³⁸ K. K. Sandrovskii: *Diplomaticheskoe pravo.* (*Diplomacy law.*) Vyscha shkola. Kiev, 1981, 163.

⁷³⁹ A. P. Movchan–N. A. Ushakov: *Kodifikatsiia i progressivnoe razvitie mezhdunarodnogo prava na sovremennom etape.* (*The codification and progressive development of international law at the present stage.*) MGIMO. Moskva, 1975, 118.

⁷⁴⁰ Ibid.

⁷⁴¹ Wener Levi: *Contemporary International Law: A Concise Introduction.* Westview Press. Boulder, 1979, 96.

⁷⁴² Levin op. cit. 270.

⁷⁴³ Denza op. cit. 284.

III. 3. The commencement and the termination of diplomatic privileges and immunities

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

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

Correspondingly, the receiving state has to provide the diplomatic mission of the sending state with the facilities,⁷⁴⁷ needed for its functioning,⁷⁴⁸ along with provision of a comprehensive facilitation,⁷⁴⁹ to protect the diplomatic premises,⁷⁵⁰ which includes immunity from the search of premises or means of transport⁷⁵¹ and protection of archives, documents,⁷⁵² official correspondence,⁷⁵³ personal correspondence and property of officials,⁷⁵⁴ also the diplomatic bag can not be opened or detained.⁷⁵⁵

Above and beyond, diplomatic agents are released from the obligation of any personal and public services.⁷⁵⁶ The exemption of diplomatic agents from all personal services, natural

⁷⁴⁷ The embassy premises and accommodations for embassy personnel are chosen, being guided by the principles of reciprocity and equitable cost. The terms and conditions of possible constructions are established in separate agreements between the sending and the receiving states. Marian Nash Leich: Contemporary practice of the United States relating to international law. The American Journal of International Law. Vol. 81, 1987, 651-642.

⁷⁴⁸ Vienna Convention. Article 21(1).

⁷⁴⁹ Doc. cit. Article 25.

⁷⁵⁰ Doc. cit. Article 30.

⁷⁵¹ Doc. cit. Article 22.

⁷⁵² Doc. cit. Article 24.

⁷⁵³ Doc. cit. Article 27(2).

⁷⁵⁴ Doc. cit. Article 30.

⁷⁵⁵ Doc. cit. Article 27(3).

⁷⁵⁶ Doc. cit. Article 35.

state or to the foreign minister, in case of a chargé d'affaires.⁷⁶³ Ever since the purpose of the diplomatic 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 relations⁷⁶⁴ with the host country, and no reasoning or justification of the rejection could be asked for.⁷⁶⁵ 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.⁷⁶⁶

This approval is called the assignment of the *agrément* – the *agrégation*. The envoy becomes formally recognized through the formal reception and can officially commence to exercise his functions. The diplomatic representative may be considered, as having taken up his functions even before the official recognition,⁷⁶⁷ when he has notified his arrival and a true copy of his credentials has been presented to the Ministry for Foreign Affairs of the receiving state, if that is in accordance with the practice, prevailing in that specific country.⁷⁶⁸

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.⁷⁶⁹ 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.⁷⁷⁰ On 14 July 1809, the United States

⁷⁶³ In the past, the event of death of the sovereign, new authorizations were required, but this accidental state of affairs did not affect the privileges and immunities of the diplomat – they continued to be present for the period until the new permissions would arrive.

⁷⁶⁴ 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.

⁷⁶⁵ In practice, Great Britain and the United States are usually claim some explanation for the refusal. D. B. Levin–G. P. Kaliuzhnaia (eds.): *Mezhdunarodnoe pravo. (International law.)* Ministerstvo vysshego i srednego special'nogo obrazovaniia RSFSR. Moskva, 1960, 196. [Hereinafter: Levin–Kaliuzhnaia: *Mezhdunarodnoe pravo*, 1960...]

⁷⁶⁶ Alf Ross: *A textbook of International Law*. Longmans, Green and Co. London, 1948, 200-201.

⁷⁶⁷ Recognition is important to become a member of the community of states and a subject of its law – this is how states achieve membership and personality. By becoming a member of the community, states become subject of its rights and duties. Corbett op. cit. 67-68.

⁷⁶⁸ Jennings–Watts op. cit. 1064-1065.

⁷⁶⁹ Despite of the lack of official acknowledgement, Dana worked in Russia, as a private citizen, to build support for the American cause.

⁷⁷⁰ This decision was conveyed by Russian Special Envoy Maksim Alopeus to William Pinkney, American Minister-Designate in London.

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

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

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

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

⁷⁷⁶ Glichitch op. cit. 20.

⁷⁷⁷ In the course of diplomatic negotiations, the parties had to overcome many difficulties, for the Americans insisted on debt assumption of the Russian Provisional Government and the compensation of the American industrialists, but eventually, they had to withdraw from these claims. Géza Herczegh: *A diplomáciai kapcsolatok története. II. rész. 1933-1945. (The history of diplomatic relations. Vol. II. 1933-1945.)* Tankönyvkiadó. Budapest, 1966, 19.

⁷⁷⁸ Herczegh op. cit. 20.

⁷⁷⁹ Philippe Blanchèr: *Droit des relations inetrnationales. (Law of international relations.)* LexisNexis SA. Durban, 2015, 121.

⁷⁸⁰ Christian Eckart: *Promises of States under International Law.* Hart Publishing. Oxford and Portland, 2012, 29-30.

⁷⁸¹ Grant–Barker op. cit. 157.

The functional immunity for official acts⁷⁸⁹ of the diplomatic agent⁷⁹⁰ 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.⁷⁹¹ (The interpretation of the concept of „official acts” is subject of different opinions, however.)⁷⁹² The listed privileges and immunities are valid for the indicated time even in situations of armed conflicts⁷⁹³ and this applies to the premises of the diplomatic mission, as well.⁷⁹⁴

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

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

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

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

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

⁷⁹¹ Doc. cit. Article 39(2).

⁷⁹² Mazzeschi op. cit. 5.

⁷⁹³ Vienna Convention. Articles 39(2), 44.

⁷⁹⁴ Doc. cit. Article 45(a).

⁷⁹⁵ Doc. cit. Article 39(1).

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

⁷⁹⁷ Doc. cit. Article 10(1) (b), (c), (d).

⁷⁹⁸ Doc. cit. Article 10(2).

⁷⁹⁹ *R. v. Madan*. 1All E. R. 588 at 591 (CA) [1961].

⁸⁰⁰ *R. v. Palacios*. O. J. No 3104, 7 D.L.R. (4th) 112 (Ont. C. A.) [1962].

relations between states in war);⁸⁰⁹ the diplomatic relations are interrupted; the sending or the receiving state ceases; the diplomatic representative dies; there are personal changes regarding the head of the sending or the receiving state (except for the functions of head of state shall be provided by a corporate body); there is a change in the form of government of the sending or the receiving state.

The request of the receiving state for recall of a member of a diplomatic mission of the sending state may involve any member of a mission, before or after he has been formally received. There have been numerous cases of such evokes in history of diplomacy law. Some examples from past American experience in case of chiefs of missions are, as follows: case of Genêt by the United States in France (1792); 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); Marcolletta 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).⁸¹⁰

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

Róza Bedy-Schwimmer⁸¹⁴ was Hungary's first female ambassador, appointed on 19 November, 1918, to represent the first democratic Hungarian Government in Switzerland, by virtue of her excellent political relations. In January 1919, she was recalled, however, due to

gumanitarnom prave. (*Application of „unilateral act of state” in international humanitarian law.*) In: S. V. Kivalov (ch. ed.): *Al'manakh mezhdunarodnogo prava. Vypusk 1. „Feniks”*. Odessa, 2009, 172.

⁸⁰⁹ I. I. Kotliarov: *Mezhdunarodnoe gumanitarnoe pravo. (International humanitarian law.)* Iurlitinform. Moskva, 2003, 57.

⁸¹⁰ Reves op. cit. 77.

⁸¹¹ Reves op. cit. 78.

⁸¹² Vienna Convention. Article 7.

⁸¹³ Petrik op. cit. 61.

⁸¹⁴ Bedy-Schwimmer was best known abroad, as Rosika Schwimmer.

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

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

In January 1989, Rudy Van den Borre, a Belgian soldier, member of the administrative and technical staff of the Belgian Embassy in Washington, was arrested in Florida, after confessing to two homicides,⁸²¹ while being on vacation in that state.⁸²² 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.⁸²³

⁸²¹ The murder was committed by a gun from the Belgian Embassy, being an act of revenge against a male lover, as a Broward Circuit Court jury was told, according to the press. Larry Keller: Belgian Soldier's Trial in Beach Slayings Opens. 10 August, 1989. SunSentinel. (Accessed on 20 January, 2016.) http://articles.sun-sentinel.com/1989-08-10/news/8902250233_1_belgian-beaches-slaying

⁸²² Carlos Sanchez: Embassy Driver Held in Fla. Slayings. 13 January, 1989. The Washington Post. (Accessed on 20 January, 2016.) <https://www.washingtonpost.com/archive/politics/1989/01/13/embassy-driver-held-in-fla-slayings/712bc04b-b9a9-4fd6-8e6e-b14d01efc0d0/>

⁸²³ David A. Jones, Jr.–Jonathan T. Fried: Diplomatic Immunity: Recent Developments in Law and Practice. Proceedings of the Annual Meeting (American Society of International Law.), Vol. 85, 17-20 April, 1991, 265.

representation.⁸³² Further reasons for termination of a diplomatic mission are the diplomat's recall from the host state or extinction of the host country, and outbreak of war⁸³³ between the receiving and the sending state.

The outbreak of war causes at once the breaking off any continuing diplomatic relations between the belligerents. The diplomats of both sides are recalled and leave for home, as soon as the necessary arrangements for their safe return can be made. In case, the conditions appear to make it desirable, enemy diplomatic personnel may be safeguarded in some particular location, to ensure observance of its immunity and safety, as it happened with the Japanese diplomats in the United States in December 1941. In rare cases, a member of the diplomatic mission can be left behind, in charge of both the building and archives,⁸³⁴ but certainly, this can be done with the permission of the host government.⁸³⁵

The fact that an outbreak of hostilities between the sending and the receiving state would not affect diplomatic privileges and immunities is confirmed by the Vienna Convention, completed with a prescription that the receiving country has to allow the official (if he is not citizen of the receiving state), together with members of his family (no matter of their citizenship) to leave the territory at the earliest possible time.⁸³⁶ 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.⁸³⁷ The protection in this case is provided independently from the reason of the breach of diplomatic relations.⁸³⁸

To be noted here that the rupture of diplomatic relations does not necessarily mean outbreak of war between the parties.⁸³⁹ The sending state is allowed to delegate the guarding of diplomatic premises, together with the related assets and archives to a third country, acceptable

⁸³² Vienna Convention. Article 43(b).

⁸³³ In the second half of the twentieth century, the legal term „war” is gradually being misplaced in favor of the category of a much broader and politically neutral term „armed conflict”. A. P. Ladynenko: Vidy vooruzhennykh konfliktov i primenimoe k nim pravo. (*Types of armed conflict and the law, applicable to them.*) In: S. V. Kivalov (ch. ed.): Al'manakh mezhdunarodnogo prava. Vypusk 1. „Feniks”. Odessa, 2009, 141.

⁸³⁴ The archives of the diplomatic mission in that case get sealed.

⁸³⁵ Gerhard von Glahn: Law Among Nations. Macmillan Publishing Company. New York, 1981, 630.

⁸³⁶ Vienna Convention. Article 44.

⁸³⁷ Doc. cit. Article 45.

⁸³⁸ The reasons for the breach of diplomatic relations are not fully specified here, only a possible armed conflict is mentioned.

⁸³⁹ Charles Rousseau: Droit International Public. (*International Public Law.*) Librairie du Recueil Sirey. Paris, 1953, 339.

so-called „borrowed diplomatic status”, i. e. they may enjoy diplomatic status, as members of diplomatic missions of other states.)⁸⁴⁴

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

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

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

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

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

⁸⁴⁴ Talmon op. cit. 156-157.

⁸⁴⁵ Vienna Convention. Article 9(1).

⁸⁴⁶ Talmon op. cit. 159.

⁸⁴⁷ In diplomatic practice, the mutual consent of states may also be expressed quite informally. Brownlie: Principles... 350.

⁸⁴⁸ Eyefinger: Diplomacy ... 837.

⁸⁴⁹ Pfeffer asserts that states can always find opportunities to help those whose support they want. Although the *quid pro quo* rarely needs to be explicit, helping people out revokes reciprocity – the almost universal principle that favors must be repaid. Jeffrey Pfeffer: Power Play. Harvard Business Review. July-August, 88/2010, 87.

international peace⁸⁵⁸ and security.⁸⁵⁹ Moreover, Southwick believes that „*Reciprocity stands as the keystone in the construction of diplomatic privilege.*”⁸⁶⁰ 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.⁸⁶¹

The principle of reciprocity is the advancement of a more general and more ancient principle – comity⁸⁶² (*comitas gentium*) that requires states to treat the foreign rule of law with polity and consideration, hence, comity demands to respect foreign law.⁸⁶³ Mann believes that comity – *courtoisie internationale*,⁸⁶⁴ is one of the most ambiguous and multifaceted conceptions in law, particularly in the sphere of international affairs,⁸⁶⁵ and it is hard not to agree with him, since the concept has broadened by now, being applied, as synonym for a rule of public international law, a moral obligation, expediency, courtesy, reciprocity, utility, custom, private international law and others.⁸⁶⁶

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

Reflective Approach. In: Volker Rittberger (ed.): *Regime Theory and International Relations*. Clarendon Press. Oxford, 1993, 53.

⁸⁵⁸ 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 Quarterly Review. Vol. 51, No. 4. Council on Foreign Relations, Inc. July 1973, 727.

⁸⁵⁹ L. V. Tikhomirova–M. J. Tikhomirov: *Iuridicheskaia entsiklopediia. (Juridical encyclopaedy.)* Izdatel'stvo M. J. Tikhomirova. Moskva, 2008, 703.

⁸⁶⁰ James T. Southwick: *Abuse of diplomatic privilege and immunity: compensatory and restrictive reforms*. Syracuse Journal of International Law and Commerce. Syracuse University College of Law. Vol. 15, No. 83, 1988-1989, 89.

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

⁸⁶² 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 International Law. No. 46. 1972-1973, 215.

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

⁸⁶⁴ Maier exemplifies international comity, as a synonym for diplomacy. Harold Maier: *Interest Balancing and Extraterritorial Jurisdiction*. American Journal of Comparative Law. Vol. 31. 1983, 579, 589.

⁸⁶⁵ Mann: *Foreign...* 134.

⁸⁶⁶ Joel R. Paul: *The Transformation of International Comity*. Law and Contemporary Problems. Vol 71, No. 19. 2008, 19-20.

⁸⁶⁷ By Ustor, international comity is not a source of law. The rules on the ritual order, titles, the etiquette, the various dogmas, regarding the way of showing respect towards diplomats, do not have any binding legal force and their violation could be revenged, maximum, by practicing reciprocity. Ustor op. cit. 59.

concept of mutuality: „*Rooted in necessity, immunity was buttressed by religion, sanctioned by custom, and fortified by reciprocity.*”⁸⁷⁴

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

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

According to the principle of good faith, enshrined in the Charter of the United Nations, all member states should fulfill in good faith the obligations, undertaken in the Charter. The provision excludes the possibility, when in international life states, creating regulations, at their interpretation and application would consciously, bearing their own unilateral interests in mind, act in detriment of other states. In the course of the creation of regulations, their formulation in a way that would allow a particular state to place its own unilateral benefits against interests of their contractual parties. It is often a lack of good faith that evokes the debates and disagreements in the application of regulations, which lead to disruption of peace between states.⁸⁸¹ As pointed out by Hargitai, some authors⁸⁸² share the opinion that reciprocity is the second, pragmatic column along with *bona fides*, international law is based on.⁸⁸³

⁸⁷⁴ Frey–Frey op. cit. 3.

⁸⁷⁵ Cambridge International Dictionary of English. Cambridge University Press. Cambridge, 1995, 1184.

⁸⁷⁶ Hubert Thierry–Jean Combacau–Serge Sur–Charles Vallée: Droit International Public. (*Public International Law.*) Éditions Montchrestien. Paris, 1981, 2.

⁸⁷⁷ Demin op. cit. 21.

⁸⁷⁸ Grant–Barker op. cit. 502.

⁸⁷⁹ Charter of the United Nations. Article 2(2).

⁸⁸⁰ „*All Members, in order to ensure to all of them the rights and benefits resulting from membership, shall fulfill in good faith the obligations assumed by them in accordance with the present Charter.*” Ibid.

⁸⁸¹ Hajdu–Sik op. cit. 395.

⁸⁸² Alfred Verdross–Bruno Simma: Universelles Völkerrecht. Theorie und Praxis. (*Universal International Law. Theory and practice.*) Duncker&Humblot. Berlin, 1984, 48.

⁸⁸³ Reciprocity has law enforcement and warranty significance in the system of international law. Further, reciprocity, characteristically, has a dual role, for it contributes into the formation of the norms of international law, and compliance with existing standards. Hargitai: Viszonosság... 418.

diplomats to perform effectively in the host country, it is vital that they enjoy protection from interference, so that they may operate an environment of security and confidentiality.⁸⁸⁸

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.

Norms, corresponding to both positive and negative reciprocity can be found under the Vienna Convention. The relevant provisions of the Convention⁸⁸⁹ that make it possible to exercise positive reciprocity, are realized by allowing states, on the basis of custom or agreement, the provision of more favorable treatment to each other, than it is provided by the Convention. For example, in connection to diplomatic privileges and immunities – it is granting of mutual exemption from value added tax.

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

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

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

⁸⁸⁸ Lung-chu Chen: An introduction to Contemporary International Law. Oxford University Press. Oxford, 2015, 302.

⁸⁸⁹ Vienna Convention. Article 47(2)(b).

⁸⁹⁰ Clifton E. Wilson op. cit. 130-132.

⁸⁹¹ Levin: Diplomatičeskii... 295-297.

Convention, the state, which applies this measure, does not violate the provisions of the Vienna Convention.

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

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

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

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

⁸⁹⁹ Vienna Convention. Article 26.

⁹⁰⁰ Hargitai: Viszonosság: 419.

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

⁹⁰² Blischenko op. cit. 88.

⁹⁰³ Hingorani op. cit. 187-188.

⁹⁰⁴ Kenneth T. Young: Negotiating with the Chinese Communists. McGraw-Hill. New York, 1968, 348.

treatment, rather than a state may reject a certain treatment to an other state, if the latter refuses to take an approach, similar to the behavior of the former. For example, in 1976, eighty-seven American diplomats in Manila were fined for parking violations, right after the penalizing of their Philippine colleagues in the District of Columbia for illegal parking.⁹¹⁴

In practice, it is not always easy to size the equivalent action or reaction towards the other state, so the measures of reciprocity are not absolute in international and diplomacy law. In 1987, Russia retracted the beach privileges of the American Embassy in Moscow on the river at Nikolnaia Gora, as a direct response to the decision of the United States to withdraw recreational privileges for Russian diplomats, living in Glen Cove, Long Island. Mayor Parente closed the beaches to the Soviet diplomats in May 1981.⁹¹⁵ 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.⁹¹⁶ After this decision of the mayor, the Glen Cove City Council was warned by the U. S. State Department to stop meddling in foreign affairs and was promised the Department's support of tax reimbursements, demanded by the Mayor, when the Council banned Russian diplomats from using the city's beaches and tennis courts.⁹¹⁷

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.⁹¹⁸

For example, in 1944, England cancelled diplomatic relations and freedom of movement of accredited diplomatic representatives of foreign states,⁹¹⁹ except for those from the USSR,

⁹¹⁴ Kenneth Turan: The Devilish Demands of Diplomatic Immunity. The Washington Post. 11 January, 1976, col. 1, 6.

⁹¹⁵ John T. McQuiston: Controversy with Russians in Glen Cove flares anew. The New York Times. 11 September, 1983. (Accessed on 2 January, 2016.) <http://www.nytimes.com/1983/09/11/nyregion/controversy-with-russians-in-glen-cove-flares-anew.html>

⁹¹⁶ 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. James Barron: Glen Cove and Russians: what's next? The New York Times. 29 August, 1982. (Accessed on 2 January, 2016.) <http://www.nytimes.com/1982/08/29/nyregion/glen-cove-and-russians-what-s-next.html>

⁹¹⁷ Ibid.

⁹¹⁸ Haraszti–Herczegh–Nagy op. cit. 410.

⁹¹⁹ The same measure was applied to consular representatives. Levin: Diplomaticheskii... 153.

caused to them (reprisal).⁹²⁴ The possibility of application of reciprocity,⁹²⁵ as of an effective sanction, beyond doubt, has a moderating influence on the behavior of states.⁹²⁶

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

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

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

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

⁹²⁴ Ustor op. cit. 486-487.

⁹²⁵ Verdross and Simma find that the institution of reciprocity induces the maintenance of inter-state relations „go wild”. Verdross-Simma op. cit. 50.

⁹²⁶ Ustor op. cit. 487.

⁹²⁷ Tim Hillier: Sourcebook on Public International Law. Cavendish Publishing Limited. London, 1998, 30.

⁹²⁸ Hillier op. cit. 31.

⁹²⁹ Andrew Clapham: Brierly's Law of Nations. Oxford University Press. Oxford, 2012, 504.

⁹³⁰ Glahn op. cit. 8.

Notwithstanding, questions arise, similar to that about the application of the principle of reciprocity, whether a state should provide the same treatment to the missions of all states, equally, because reciprocity, practically, is a positive form of non-discrimination, as formulated by Hardy.⁹³⁷

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

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

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

⁹³⁷ Hardy op. cit. 83-84.

⁹³⁸ Hardy op. cit. 15.

⁹³⁹ Demin op. cit. 20-21.

⁹⁴⁰ Vienna Convention. Article 47.

⁹⁴¹ The principles of responsibility and functional necessity are viewed by some authors as general principles of policy and diplomatic privileges and immunities are examined with their consideration, noting, that these principles are not taken for strictly interdependent notions, rather generally correlated ones. B. S. Murty: *The International Law of Diplomacy. The Diplomatic Instrument and Word Public Order*. New Haven Press. New Haven, 1989, 345.

⁹⁴² Murty op. cit. 346.

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

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

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

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

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

⁹⁴⁷ Rubin op. cit. 92-93.

⁹⁴⁸ Blishchenko: *Diplomaticheskoe ...* 373.

-

the sending state, who live in the host state, as well⁹⁵⁵ – *droit de chapelle* or *droit du culte*;⁹⁵⁶

- right to have a doctor (such a doctor might not have the professional diploma of the receiving state).⁹⁵⁷

At Soviet times, the venerable St. Louis des Français church,⁹⁵⁸ which has been allocated for the use by the French Embassy, enjoyed uneven support of the United States and Western diplomatic corps. Father Marie-Léopold Braun acted, as chaplain of the church and priest at the American Embassy.⁹⁵⁹ Although the majority of the congregation consisted of Soviet citizens, the priests in this church were only foreigners – French or American.⁹⁶⁰ Braun ministered to a mixed congregation of diplomats from the United States and Catholic countries of Europe, to Russian Catholics displaced from other churches and to members of various confessions, who were connected with political events.⁹⁶¹

The privileges of having a church and a doctor became obsolete by today, but in the past they used to bring up the question of providing diplomatic immunities to the priest or the doctor, for according to „*franchise de d'hôtel*” of the head of the mission, the head of the mission might have in his residence a chapel of the faith to which he belonged.⁹⁶² 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.”⁹⁶³

Weninger considers the priest and the doctor, as *personnel non officiel*, along with the personal secretary and office manager.⁹⁶⁴ Most of states kept themselves to the practice of not granting diplomatic immunities to these persons, considering them as members of technical

⁹⁵⁵ This privilege originates from the period of Reformation, when Protestant religious practices were forbidden in Catholic countries.

⁹⁵⁶ Jennings–Watts op. cit. 1103.

⁹⁵⁷ A. V. Sabanin: Posol'skoe i konsul'skoe pravo. (*Ambassadorial and consular law.*) Krasnyi Proletarii. Moskva, 1930, 201-202.

⁹⁵⁸ The „foreigners' church” was located across the street from the Lubianka prison, the main political prison in the Soviet capital.

⁹⁵⁹ The chaplain of the American Embassy served in Moscow from 1934 to 1945.

⁹⁶⁰ Moreover, they supposedly all belonged to the group of „experts on Russia” of the Vatican.

⁹⁶¹ Parker–Bucar op. cit. 49

⁹⁶² Draft of the Institute of International Law on diplomatic immunities. Article 8. Vol. II. *Annuaire de l'Institut de Droit international.* 1929, 307.

⁹⁶³ Yearbook of the International Law Commission. Documents of the ninth session including the report of the Commission to the General Assembly. Vol. II. Doc. A/3623. 1957, 137.

⁹⁶⁴ Wéninger op. cit. 168.

considerations intrude even more, than ordinarily at this stage, for only such sanctions are likely to be attempted, as will be not only technically feasible, but also politically possible and advisable:⁹⁷² boycotts, embargoes, reprisals.⁹⁷³ Needless to say that imposition of sanctions will create more difficulties for the state, violating international law, than they will for the state or states, applying the punitive measures. It is to note that violation of the rules by a given state – even if no sanction is attempted – does not render the rule invalid.⁹⁷⁴

Reprisal is the return of unlawful state actions, also with unlawful acts, in retaliation for damage suffered. „Damage” denotes loss, *damnum*, whether this is a financial quantification of physical injury or damage, or of other consequences of a breach of duty.⁹⁷⁵ Reprisals refer to acts, which are illegal, if taken alone, but become legal, when adopted by one state in retaliation for the commission of an earlier, illegal act, committed by an other state, if the violation was not remedied through diplomatic channels. The aim of reprisals is partly satisfaction for the infringement, or extort of reimbursement for the caused damage. Reprisal is a violent measure, therefore, it is not in line with the idea of international law, thus, should be possibly avoided in peace time, however it is unescapable in times of war against a cruel enemy.⁹⁷⁶

Application of reprisal is, actually, a case of self-help and it may involve a number of measures, for example, seizure of property, arrest or deportation of subjects of the offender state, interruption of economic relations and others. It comes from the nature of reprisals that they could be applied by states, only. The application of reprisals could be related to legal disputes, as well and in this case their reason is in the denial of justice, when the other party does not want to declare war⁹⁷⁷ yet: „...*si in re minime dubia plane contra ius iudicatum sit...*”⁹⁷⁸

Reprisals are acts,⁹⁷⁹ which, although normally illegal, are exceptionally permitted as reaction of one state against a violation of its right by another state.⁹⁸⁰ Typical examples of

⁹⁷² The sanctions, applied by states also include pacific blockades, adopted by an individual state, a group of states or collectively. Glahn op. cit. 9.

⁹⁷³ 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 diplomatic 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*. American Journal of International Law. No. 53. The American Society of International Law. 1959, 1-29.

⁹⁷⁴ Glahn op. cit. 9-13.

⁹⁷⁵ Ian Brownlie: *State Responsibility*. Part I. Clarendon Press. Oxford, 1983, 199. [Hereinafter: Brownlie: State...]

⁹⁷⁶ Jónás–Szondy op. cit. 805.

⁹⁷⁷ Ibid.

⁹⁷⁸ Grotius op. cit. ch. XVIII, s. 4, art. 5.

⁹⁷⁹ Andrew Clapham–Paola Gaeta (eds.): *The Oxford Handbook of International Law in Armed Conflict*. Oxford University Press. Oxford, 2014, 109.

⁹⁸⁰ International law generally forbade recourse to force, as a means of settling disputes in the twentieth century. Paulsson op. cit. 37.

Since reprisals are sanctions against violations of international law – they are international delicts.⁹⁸⁷

Diplomatic personnel is not enjoying freedom of movement in the host country automatically, in fact, as it may seem. The receiving state may create by its law or regulations zones, entry into which is prohibited or restricted for reasons of security, as it have been already mentioned above. However, the recent decades have seen such restrictions, imposed on diplomats, as a reprisal or more correctly, as retorsion, for delicts of their own government.⁹⁸⁸

In this mode, the United States curbed from July 1966 to 5 August, 1967, travel by Russian diplomats, in retaliation for a similar Russian action. Subsequent travel restrictions curbed the movement of all diplomats from Socialist states in the United States, which were eased for representatives of China in November 1971 and for Soviet diplomats in March, 1974.⁹⁸⁹

In August 1967, the Great Britain limited the Embassy personnel from China to an area of five miles from the center of London. In 1981, the travel of diplomatic personnel at the Polish Embassy in Washington was limited to this city, in retaliation for surrounding with police the equivalent facilities in Poland. In 1983, the Department of State announced a new list of areas in the United States, open or closed to the diplomatic agents and journalists of the Soviet Union.⁹⁹⁰

International legal doctrine permits to conclude that the act of aggression may be regarded both as a crime, committed by certain persons individually, and as a crime, committed by states and/or corporate entities. This situation gives rise to the still not fully resolved question of who and how should be responsible for the commitment of the crime of aggression.⁹⁹¹ When counteracting terrorist threats and acts, the difficulty also lies in the definition of the norm of proportionality in the implementation of the principle of self-defense. Scholars had put forward three principles, none of which can not be recognized, as an impeccable, however (and of course, does not contain any specific conditions):

- „an eye for an eye”⁹⁹² – the act of self-defense must comply with the terrorist act, committed before;

⁹⁸⁷ Hans Kelsen: Principles of International Law. (Revised and edited by Robert W. Tucker) Holt, Rinehart and Winston, Inc. New York, 1967, 21-22.

⁹⁸⁸ Glahn op. cit. 463.

⁹⁸⁹ Ibid.

⁹⁹⁰ Glahn op. cit. 464.

⁹⁹¹ Gorokhovskaia op. cit. 52.

⁹⁹² The principle of exact reciprocity was used in the famous Code of Hammurabi, created in 1700's B.C. The famous legal Code was based on the principle „eye for an eye”. See in particular Mihály Kmoskó (trans.): Hammurabi törvényei. (*The laws of Hammurabi.*) Ajtai K. Albert Könyvnyomdája. Kolozsvár, 1911, 12-86.

closure of a diplomatic representation, taking into consideration the presumed reciprocity, is a suitable measure to indicate the deterioration of relations.¹⁰⁰⁰

The final recall of a diplomat can indicate that the diplomatic relations between two states had worsened, as it happened in 1998, when Russia recalled its ambassadors in London and Washington, as a protest against the new Iraqi intervention of these two states. In April 2008, two military attachés of the U. S. Embassy in Moscow were expelled, as a decision in response to the expulsion of two Russian diplomats of the Russian Embassy in Washington. In 2009, the expulsion of two Iranian diplomats from London, was announced personally by Gordon Brown, the Prime Minister, under „*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*”.¹⁰⁰¹

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

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

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

¹⁰⁰² Iranian Diplomats Leave Saudi Arabia. *The Wall Street Journal*. 6 January, 2016. (Accessed on 18 January, 2016.) <http://www.wsj.com/articles/iranian-diplomats-leave-saudi-arabia-1452088325>

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

¹⁰⁰⁴ Bahrain Orders Iranian Diplomats To Leave. *Sky News*. 4 January, 2016. (Accessed on 18 January, 2016.) <http://news.sky.com/story/1616091/bahrain-orders-iranian-diplomats-to-leave>

¹⁰⁰⁵ Kuwait is visszahívja iráni nagykövétét. *(Kuwait recalls its Ambassador to Iran, too.)* NOL. 4 January, 2016. (Accessed on 4 January, 2016.) <http://nol.hu/kulfold/kuvait-is-visszahivja-az-irani-nagykovetet-1582999>

way with a representative of the Russian diplomatic mission.” A high-ranking source from the Russian Foreign Ministry also said in this regard to the representatives of press that the responsibility for the consequences of this provocative step in relation to Russian-Swedish relations laid entirely on the Swedish side.¹⁰¹⁵ The fact of expulsion had been confirmed¹⁰¹⁶ 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.¹⁰¹⁷ The Swedish official did not specify the exact time when the Russian diplomat, was declared *persona non grata*,¹⁰¹⁸ expressing that this incident would affect the relations between the two countries.¹⁰¹⁹

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

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

¹⁰¹⁵ 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>

¹⁰¹⁶ The fact of the Swedish diplomat, being declared *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>

¹⁰¹⁷ Sweden says diplomat expelled from Moscow in retaliatory move. Yahoo News. 3 August, 2015. (Accessed on 16 January, 2016.) <http://news.yahoo.com/swedish-diplomat-expelled-moscow-swedish-foreign-ministry-164757848.html>

¹⁰¹⁸ The parties did not disclose the names or the positions of the two diplomats. Sweden expels Russian diplomat, Moscow makes tit-for-tat move. Reuters. 3 August, 2015. (Accessed on 16 January, 2016.) <http://uk.reuters.com/article/uk-sweden-russia-diplomacy-idUKKCN0Q821N20150803>

¹⁰¹⁹ Iz Moskvyy vydvorili shvedskogo diplomata. (*A Swedish diplomat was expelled from Moscow.*) Gazeta Kul’tura. 3 August, 2015. (Accessed on 16 January, 2016.) <http://portal-kultura.ru/articles/obshchiy-plan/111765-iz-moskvyy-tydvorili-shvedskogo-diplomata/>

¹⁰²⁰ Lung-chu Chen op. cit. 307.

¹⁰²¹ Lung-chu Chen op. cit. 308.

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.¹⁰³¹

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

In the recent years they talk about reprisals rather reluctantly, taking into account not the best historical traditions of their application. Therefore, the term „reprisals” was replaced by the term „counteraction”, although there is no certainty that this definition is more successful, it is clear only that this is a reaction with the use of force. It may be recalled the (unsuccessful) attempt to free American hostages with diplomatic status, who were kept in the American Embassy in Tehran, in 1980.¹⁰³⁸

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

¹⁰³¹ Martin Dixon–Robert McCorquodale–Sarah Williams: Cases and Materials on International Law. Oxford University Press. Oxford, 2011, 340.

¹⁰³² Lung-chu Chen op. cit. 306.

¹⁰³³ Hargitai: Diplomáciai... 225.

¹⁰³⁴ Andy Buchanan: 1984: Libyan embassy shots kill policewoman. BBC News. 17 April, 1984. (Accessed on 3 January, 2016.) http://news.bbc.co.uk/onthisday/hi/dates/stories/april/17/newsid_2488000/2488369.stm

¹⁰³⁵ 1984: Libyan embassy siege ends. BBC News. 27 April, 1984. (Accessed on 3 January, 2016.) http://news.bbc.co.uk/onthisday/hi/dates/stories/april/27/newsid_2502000/2502565.stm

¹⁰³⁶ The House of Commons Foreign Affairs Committee considered certain amendments to the Vienna Conventions after the incident, but found their practical implementation unfeasible. House of Commons Foreign Affairs Committee. First Report. The Abuse of Diplomatic Immunities and Privileges. Commons Papers. No. 127, 1985, para. 42.

¹⁰³⁷ Arthur J. Goldberg: Diplomatic Immunity and Terrorism. New Zealand Law Journal. 1985, 151; David A. Goodman: Reciprocation as means of curtailing diplomatic immunity abuse in the United States: the United States needs to play hard ball. The Houston Journal of International Law. Vol. 11:393, 1988-1989, 394.

¹⁰³⁸ Cherkes op. cit. 118.

to apply in the eighties of the last century the rule of absolute reciprocity, for example, the number of the diplomats from the USSR in the mission in London was the same, as the number of British diplomats in Moscow. In this fashion, in October 1986, the United States informed the USSR that fifty-five Russian diplomats were *personae non gratae*. The United States conveyed it officially that it would henceforward apply the twin rules of parity and reciprocity in its diplomatic relations. Accordingly, the reaction of the USSR, forbidding Russian personnel from working in the American Embassy in Moscow would be met by a reciprocal refusal to allow American personnel to work in the Russian Embassy in Washington.¹⁰⁴³

In 2000, Moscow announced expulsion orders for nine Polish diplomats, „*because of activities not in accordance with their diplomatic status*”, after Poland’s expulsion of nine Russian diplomats, accused of intelligence work. Andrzej Zalucki, the Polish Ambassador, was summoned to the Russian Foreign Ministry to be presented the note that conveyed the decision of Russian authorities. Poland declared the expulsion of the nine Russian diplomats on the grounds, which an official communique described as spying „*against Poland’s vital interests*”.¹⁰⁴⁴ The expulsion was ordered on the same charge of spying and the Polish diplomats had to leave Russia by 28 January, 2000.¹⁰⁴⁵

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).¹⁰⁴⁶

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

¹⁰⁴³ Greig op. cit. 136.

¹⁰⁴⁴ 9 Poles Are Expelled By Kremlin In Retaliation. Chicago Tribune. 22 January, 2000. (Accessed on 8 January, 2016.) http://articles.chicagotribune.com/2000-01-22/news/0001220112_1_polish-embassy-spying-poland

¹⁰⁴⁵ Nine Polish diplomats. HighBeam Research. January, 2000. (Accessed on 8 January, 2016.) <https://www.highbeam.com/doc/1G1-58924826.html>

¹⁰⁴⁶ Nezhelatel’nyi skandal. (*Unwanted scandal.*) Vzgljad – Delovaia Gazeta. 22 December, 2010. (Accessed on 8 January, 2016.) <http://vz.ru/politics/2010/12/22/456777.html>

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.¹⁰⁵¹

Public opinion is also could serve, as an effective sanction, meant for states want to be seen to be adhering to international law, that is why they take considerable efforts to justify their particular position in international law. For that reason, reciprocity is the basis of current international law – no government can accept its legal claims to be honored, unless it demonstrates a corresponding willingness to honor the similar claims of its foreign counterparts.¹⁰⁵² With the advent of modern international law after the World War II, the inequality in reciprocity faded away.¹⁰⁵³

In opinion of Herdegen, a possible right of reprisal, as the basis for the forcible entry on diplomatic premises, the opening of a diplomatic bag or other actions, involving the use of force, can not be discarded on the grounds that reprisals, involving the use of force, are only permissible in armed conflicts. To the extent that the right to reprisals suspends obligations under the Vienna Convention, the territorial sovereignty of the receiving state provides a sufficient basis for the use of physical force. Although, it is suggested that the proper construction of the Vienna rules on diplomatic relations,¹⁰⁵⁴ in the light of the drafting history, as well, as the ambiguous wording of the provisions themselves, rules out any right to reprisals, direct against the diplomatic mission.¹⁰⁵⁵

¹⁰⁵¹ Rossiia otvetila Pol'she i Germanii vysylkoi diplomatov. (*Russia answered Poland and Germany by expulsion of diplomats.*) 17 November, 2014. (Accessed on 2 January, 2016.) http://www.bbc.com/russian/international/2014/11/141117_russia_poland_germany_diplomats

¹⁰⁵² The existence of international law per se is generally not challenged, but the substantive content of its expression has been challenged and continues to be so. Rebecca M. M. Wallace–Olga Martin-Ortega: *International Law*. Sweet&Maxwell. London, 2013, 4-6.

¹⁰⁵³ Bardo Fassbender–Anne Peters: *The Oxford Handbook of The History of International Law*. Oxford University Press. Oxford, 2012, 509.

¹⁰⁵⁴ Vienna Convention. Articles 22(1) and 27(3).

¹⁰⁵⁵ Matthias Herdegen: *The Abuse of diplomatic Privileges and Countermeasures not Covered by the Vienna Convention on Diplomatic Relations*. Heidelberg Journal of International Law. Vol. 46, No 4, 1986, 747.

- a) from the point of view of distinguishing by analogy with the treatment of sovereign immunity between acts *jure gestionis*¹⁰⁶¹ and acts *jure imperii*, and
- b) from the argument that a diplomat in a situation of jeopardy of legal proceedings may be incapacitated to some extent in his freedom of diplomatic action.

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

The primary aspect of diplomacy law is granting immunity from local jurisdiction. Diplomatic agents enjoy immunity *ratione personae*, i. e. complete personal inviolability¹⁰⁶³ and absolute immunity from criminal jurisdiction. Their immunity from civil jurisdiction may also be recognized, however, given less coercive nature and might be limited in respect of certain solely private actions. In the face of the restraint that procedural immunities and other privileges of foreign diplomatic missions placed on the territorial jurisdiction of the receiving country, states, usually thoroughly observe them.

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

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

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

¹⁰⁶² O'Connell op. cit. 897.

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

¹⁰⁶⁴ Chanaka Wickremasinghe: Immunities enjoyed by officials of states and international organizations. Malcolm D. Evans (ed.): International Law. Oxford University Press. Oxford, 2010, 382-383.

¹⁰⁶⁵ Diplomatic and Consular Immunity: Guidance for Law Enforcement and Judicial Authorities. United States Department of State, Office of Foreign Missions. Washington, 2015, 7.

¹⁰⁶⁶ Nagy op. cit. 422.

¹⁰⁶⁷ Resolution on the Consideration of Civil Claims. A/CONF.20/10/Add.1, 90. Adopted at the 12th plenary meeting of the United Nations Conference on Diplomatic Intercourse and Immunities on 14 April, 1961 in Vienna.

impossible, despite of the fact that under the Act of 1708 the writ would be void, similarly to the next case.

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

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

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

¹⁰⁷⁴ *Musurus Bey v. Gadban and others*. 2 Q. B. 352 (1894).

¹⁰⁷⁵ As it was held in the case of *Magdalena Steam Navigation Co. v. Martin* in 1859.

¹⁰⁷⁶ O'Connell op. cit. 907.

¹⁰⁷⁷ *In re Suarez* [1918] 1 Ch. 176.

official functions,¹⁰⁸³ i. e. as a private person¹⁰⁸⁴ (and not on behalf of his government).¹⁰⁸⁵ The diplomat, on his part, has to respect the laws and regulations of the receiving state.¹⁰⁸⁶

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

According to the State Immunity Act of 1978, provisions on immunity to immovable property, which is located on territory of the United Kingdom, does not apply to „*proceedings concerning a State's title to or its possession of property used for purposes of a diplomatic mission*”.¹⁰⁸⁸ The Court of Appeal found in this case that the usage of the house, as private residence by a diplomat was not enough to be qualified, as usage for the purposes of a diplomatic mission, also referring to the provisions of the Vienna Convention, which elaborate on matters, related to premises¹⁰⁸⁹ of a diplomatic mission¹⁰⁹⁰ and on the exception to diplomatic immunity from jurisdiction of the receiving state, regarding private immovable property, situated in the territory of the receiving state.¹⁰⁹¹

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

¹⁰⁸³ Vienna Convention. Article 31(1)(a)(b)(c).

¹⁰⁸⁴ Doc. cit. Article 31(1)(b).

¹⁰⁸⁵ The case of *De Andrade v. De Andrade* illustrates the provision on immunity from civil and administrative jurisdiction including civil proceedings, related to private matters. In this case the immunity of the diplomatic agent was upheld due to divorce and custody proceedings, since matrimonial proceedings, involving a claim for property adjustment, related to property, purchased as an investment, does not fall within this exception, under the Vienna Convention. *De Andrade v. De Andrade*. 118 ILR 299, 1984.

¹⁰⁸⁶ Vienna Convention. Article 41(1).

¹⁰⁸⁷ *Intpro Properties (U. K.) Ltd. v. Sauvel*. [1983] 2 WLR 908.

¹⁰⁸⁸ The State Immunity Act. 1978. Part I. Supplementary Provisions. Section 16, 1(b).

¹⁰⁸⁹ The Vienna Convention does not specify the number of rooms of an embassy.

¹⁰⁹⁰ Vienna Convention. Article 1(i).

¹⁰⁹¹ Doc. cit. Article 31(a).

¹⁰⁹² *Portion 20 of Plot 15 Athol (Pty) Ltd v. Rodrigues*. South Africa, High Court, Witwatersrand Local Division, 21 October, 1999.

¹⁰⁹³ In fact, the Ambassador had its principal residence in Pretoria. *Ibid.*

to release the diplomatic accounts at a bank that was subject to judicial moratorium, acknowledging the immunity of such bank accounts.

The general rule today is that embassy bank accounts enjoy absolute immunity from execution, because of the peculiar character of such accounts – being used for the maintenance and functioning of the diplomatic mission, and destined for a public or sovereign purpose. In this respect, this sovereign purpose endows these accounts with sovereign nature. The courts are generally understood by the „maintenance and functioning of the diplomatic mission”, based on relevant cases, related to funds, regarded being used for public or sovereign purpose: the provision of accommodation for diplomatic personnel, repair and maintenance of non-commercial real estate; payment of salaries, wages, allowances; travel and other expenses for diplomatic personnel,¹¹⁰⁴ also for the „*day-to-day running of the mission*”.¹¹⁰⁵

Diplomatic agents 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.¹¹⁰⁶ Certainly, enforcement measures to freeze a foreign embassy funds can be taken, if the money available on its bank account are not to be used for the purposes, which are directly related to the functions of a diplomatic mission.¹¹⁰⁷

The inviolability of the residence of a diplomat is still an „obscure” topic, in opinion of O’Connell, 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.¹¹⁰⁸

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*,¹¹⁰⁹ arising out of a writ of execution regarding the Hungarian diplomatic property, to secure

¹¹⁰⁴ Xiaodong Yang: *State Immunity in International Law*. Cambridge University Press. Cambridge, 2012, 409-410.

¹¹⁰⁵ *Alcolm v. Colombia*, England, [1984] 1 AC 580. 597, 599, 604; 74 ILR 170, 180, 182, 187.

¹¹⁰⁶ Denza op. cit. 227.

¹¹⁰⁷ Charles Chatterjee: *International Law and Diplomacy*. Routledge. London, 2010, 224.

¹¹⁰⁸ O’Connell op. cit. 902.

¹¹⁰⁹ *Immunity of Legation Buildings (Czechoslovakia)* case. Ann. Dig., 1927-1928, case No. 251.

- 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.¹¹¹⁶

It has to be pointed out here that diplomatic missions or embassies are not themselves legal entities, they should be rather viewed, as a collection of persons, situated in diplomatic premises, all of which – individually – enjoy their own inviolability. In case, a dispute arises with the sending state, the issue has to be resolved by the law, related to foreign state immunity.¹¹¹⁷ The Vienna Convention provides the same inviolability and protection of a diplomat's private residence and property (with certain exceptions),¹¹¹⁸ as it affords to the premises of the diplomatic mission.¹¹¹⁹

With regard to contemporary diplomatic practice, concerning diplomatic privileges and immunities, Gumeniuk notes that the leading countries of the world, especially the United States, Canada, France and the United Kingdom, in recent years have been increasingly carried out a general limitation of administrative law. One of the reasons for such practice – internal considerations of a political nature, aspiration of governing bodies of the host states to adequately respond to the public uproar, caused by the numerous cases of abuse of diplomatic privileges and immunities by foreign diplomatic missions and their individual employees.¹¹²⁰

This is what guided the governments of the United States, the United Kingdom and Canada, which recently introduced new rules that allow to bring diplomats to administrative justice, in response to numerous and factually unpunished violations of traffic rules. (In addition, in some cases, these states introduced immunity from the criminal jurisdiction of diplomats, as well.) The other reason for restrictions of diplomatic freedoms is connected to the association of diplomatic agents with terrorist activity, when the involvement of certain diplomatic missions it often obvious.¹¹²¹

Also, a significant role in politics of restrictions of diplomatic independences plays the desire of some governments to ensure their own economic interests. On this basis, in 1985 the United States introduced the compulsory insurance of diplomatic vehicles, under the threat of

¹¹¹⁶ Demin op. cit. 110-115.

¹¹¹⁷ Brown: Diplomatic... 80.

¹¹¹⁸ Vienna Convention. Article 31(3).

¹¹¹⁹ Doc. cit. Article 30.

¹¹²⁰ B. I. Gumeniuk: *Diplomatichna sluzhba: pravove reguliuvannia. (Diplomatic service: legal regulation.)* „Lybid”. Kyiv, 2007, 78.

¹¹²¹ Ibid.

The most customary act, taken by the Ministries of Foreign Affairs in cases, when diplomatic agents, enjoying immunity, committed a crime in the receiving state, is that the violence of law is reported to the respective ambassador, and in serious cases the violator might be recalled by its sending state. In certain cases, the withdrawal is requested by the receiving state.

As it has been previously mentioned, the Vienna Convention declares that a diplomatic agent is not liable to any form of arrest or detention.¹¹²⁵ There is a possible exception to the rule of immunity from arrest, in case, when a diplomat has to be put under constraint in the interests of local order. Such restraint of a diplomat must be no more, than is necessary, nor endure for longer, than necessary. The arrest of a diplomat is justified by emergency and by necessity for preserving the security of the receiving state.¹¹²⁶

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.¹¹²⁷

In February 1918, the Soviet Government in Petrograd arrested and threw into prison Count Constantine Diamandi, the Romanian Minister, because he would not return to Moscow a store of gold and jewels, which had been cached by the czarist government in Romania, in order to save them from the German advance. In those days, it was an outrageous case to grab a diplomatic representative. The Diplomatic Corps assembled all the Chiefs of Mission under the chairmanship of rather stately British Ambassador, Francis and presented their protest to

¹¹²⁵ Vienna Convention. Article 29.

¹¹²⁶ O'Connell op. cit. 900.

¹¹²⁷ *The Case of de Wrech*. 1772. Charles De Martens: Causes célèbres du droit des gens. Tome second. (*Famous cases of the law of nations. Volume Two.*) Brockhaus&Avenarius. Paris, 1843, 110.

Diplomats are exempt from subpoena, as witness, so they are not obliged to give evidence in a lawsuit, conducted at the tribunals of the country they are accredited to. A diplomatic agent is not obliged to appear, as witness neither in a civil or an administrative court, nor to give evidence before a commissioner, sent to his house.¹¹³⁴ And as the summoning creates a relative obligation for them, for this reason, they can not even be summoned by the tribunals to attend under this capacity.

The exemption of diplomats from the obligation to give evidence has its basis on the inviolability of these persons. The obligation to give evidence constitutes a dependence on the judicial jurisdiction, and the intervention of a person in a suit as a witness may have further consequences of judicial nature for this person. Therefore, diplomats, who should be left unmolested to fulfill the mission, imposed on them, can not be obliged to attend at the tribunals under the qualification of a witness, in theory.¹¹³⁵ All the same, if the diplomat chooses for himself to appear, as a witness, the courts can make use of his evidence.¹¹³⁶

The requirements on personal inviolability of diplomatic agents – provided they are not nationals of the receiving state, including freedom from arrest and detention,¹¹³⁷ were violated during the hostage case in the United States Diplomatic and Consular Staff in Tehran.¹¹³⁸ Failure to interpret the changing political environment in the host country may turn out to be costly to the foreign policy goals of the sending country.

For instance, in 1979, American diplomats found themselves at the center of a revolutionary storm in Tehran, when Iranian students took over the embassy building, together with its staff. The occupation¹¹³⁹ 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*”.¹¹⁴⁰ The United States, being caught off-guard, did not respond well to the violent situation and „*the intelligence and diplomatic fiasco reached its climax*”,¹¹⁴¹ when the personnel of the American Embassy was taken hostage.

Irrespective diplomacy law has advanced into an independent and self-sufficient branch of law by now, outlining the rights and obligations both of the sending and the receiving state,

¹¹³⁴ Jennings–Watts op. cit. 1100-1101.

¹¹³⁵ Papakostas op. cit. 75.

¹¹³⁶ Jennings–Watts op. cit. 1101.

¹¹³⁷ Vienna Convention. Article 29.

¹¹³⁸ The American Hostages Case. Judgement of 24 May, 1980, paras. 31, 37, 62, 63, 77.

¹¹³⁹ Occupation is a temporary seizure by armed forces of a state the territory of another state. I. N. Artsibasov–S. A. Egorov: Vooruzhennyi konflikt: pravo, politika, diplomatiia. (*Armed conflict: law, politics, diplomacy.*) Mezhdunarodnye otnosheniia. Moskva, 1989, 139.

¹¹⁴⁰ Starkey–Boyer–Wilkenfeld op. cit. 55.

¹¹⁴¹ Starkey–Boyer–Wilkenfeld op. cit. 56.

of an Ambassador, prior to the termination of official accreditation. Subsequent an incident, involving two U. S. nationals, one of whom was seriously injured, Ambassador Abisinito was recalled by the sending state on 17 February, 1987, and his accreditation to the United States ceased, as of 24 February, 1987. Nonetheless, the U. S. Attorney Office informed Abisinito's criminal lawyers that prosecution was not „*currently being contemplated*”, only in January 1988.¹¹⁵⁰

In January 2002, the Russian Supreme Court upheld the conviction of Valentin Moiseyev, a former high-ranking diplomat, who was arrested by the Russian Federal Security Service (FSB), the former KGB, in 1998 on charges of spying for South Korea. A year after his arrest, while the case was still pending trial, Vladimir Putin, then the head of the FSB, told reporters that the diplomat's guilt had been proven beyond a doubt.¹¹⁵¹ At a retrial in August 2001, the diplomat was sentenced to four and a half years' imprisonment in a strict regime colony. The Court accepted the evidence of the criminal activity of Moiseyev, provided by the investigators of the FSB, and found him guilty of high treason. The diplomat did not plead guilty.¹¹⁵² Moiseyev was released from prison on 3 December, 2002 and immediately filed a complaint with the Strasbourg Court, insisting on his innocence. Eventually, in 2008, the European Court of Human Rights upheld a complaint of the former senior official of the Russian Foreign Ministry against the Russian authorities, who was convicted of spying¹¹⁵³ and ordered to pay him compensation in the amount of 28.9 thousand Euros, as well as to cover the legal costs.¹¹⁵⁴

Legal immunity can be lifted in some cases, limited or refused by the entitled person, himself. Such measures are necessary in cases, when immunity turns into an obstacle.¹¹⁵⁵ The maxim „*Quilibet potest renunciare juri pro se introducto.*” applies to the waiver¹¹⁵⁶ of the privilege of diplomatic immunity.¹¹⁵⁷ In cases, where it's deemed politically wise, a diplomat's

¹¹⁵⁰ Wallace–Martin–Ortega op. cit. 148.

¹¹⁵¹ Michael Flynn: Spy mania. Bulletin of the Atomic Scientists. September/October, 2002, 15.

¹¹⁵² According to the explanation of the former diplomat, with the South Koreans he just had extremely friendly relations, and the materials, conveyed to them were taken from public sources.

¹¹⁵³ In 2004, Moiseyev, also a scientist-orientalist, wrote a book on modern methods of work of the Russian special services, state of the judicial system and the human rights situation in Russia: V. I. Moiseyev: Kak ia byl „Iuzhnokorrejskim shpionom”. (*How I was a „South Korean spy”*.) Moskovskaia hel'sinki gruppa–Agenstvo CIP RGB. Moskva, 2004.

¹¹⁵⁴ Strasbourg osudil Rossiiu za prigovor ulichennomu v shpionazhe diplomatu. (*Strasbourg condemned Russia for the verdict on the diplomat, who was caught spying.*) Novaia gazeta. 9 October, 2008. (Accessed on 12 October, 2016.) <https://www.novayagazeta.ru/news/2008/10/09/40325-strasbourg-osudil-rossiyu-za-prigovor-ulichennomu-v-shpionazhe-diplomatu>

¹¹⁵⁵ Matuzov–Mal'ko op. cit. 234.

¹¹⁵⁶ Also applied to the case of *In re Suarez* [1918] 1 Ch. 176.

¹¹⁵⁷ G. Schwarzenberger: Diplomatic Immunity. The Modern Law Review. Vol. 5, No. 1. July 1941, 65.

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.¹¹⁶⁶

A state may withdraw diplomatic immunity in case when a diplomat commits a crime, but such cases are rather rare. A notable example of a deprivation of diplomatic immunity happened in 1997, when a sending state waived diplomatic immunity for his foreign officer. George Makharadze, the Minister-Counsellor of the Embassy of Georgia in the United States, driving under the influence of alcohol, caused a road traffic accident, in which the sixteen years old Jovian Uoltrik died.¹¹⁶⁷ Although, diplomatic immunity would have shielded the diplomat from prosecution in the United States. The Government of Georgia has notified the U. S. State Department of its consent to bring Makharadze to justice in U. S. courts. Georgia waived the diplomat's immunity, and he was subsequently convicted by a U. S. court to imprisonment for twenty-one years for involuntary manslaughter. Afterwards, the mother of the dead filed a lawsuit against both the Government of Georgia and the condemned diplomat. The amount of the compensation was determined by agreement.¹¹⁶⁸

Silviu Ionescu, the Romanian chargé d'affaires in Singapore, was convicted in July 2010 for a deadly 2009 hit-and-run accident. In the accident that fueled widespread public outrage, a thirty-year old pedestrian was killed and two others injured. In 2013, the diplomat was convicted to a three-year imprisonment. The Indonesian widow of the killed man was awarded 240,000 dollars at the High Court of Romania.¹¹⁶⁹

In 2002, the Russian diplomat Andrei Knyazev was convicted and punished for running over two Canadian women. The diplomat caused the traffic accident in 2001, as a result of which one of the women died and the other one was seriously injured. Knyazev was found guilty for violation of traffic rules and the rules of exploitation of means of transport, stated in the verdict.¹¹⁷⁰ After the car accident,¹¹⁷¹ the diplomat refused to take the field sobriety test, citing diplomatic immunity. Later, the Canadian authorities tried to achieve the removal of

¹¹⁶⁶ Nagy op. cit. 423.

¹¹⁶⁷ The Embassy of Georgia assumed all the costs of the funeral, the payment of a lump sum and a pension.

¹¹⁶⁸ Lukashuk op. cit. 87.

¹¹⁶⁹ 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>

¹¹⁷⁰ The Criminal Code of the Russian Federation. Article 264, Part 2.

¹¹⁷¹ In connection to car accidents, diplomatic agents are not under obligation to take out automobile insurance in the receiving state.

involved into. Goodfriend in his declarations on state of affairs in Hungary, reportedly, made statements on Ildikó Vida's, Tax Authority Chairman, implication of corruption.¹¹⁷⁸

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 corruption was a crime, along with the situation, when someone possessed data on corruption and failed to report that, and the Americans missed to make this report. By leaving the premises of the American Embassy in Budapest, Goodfriend entered the territory of Hungary, thus, having certain obligations, arising under Hungarian law. In this very case it would be the obligation of giving the alleged evidence of the fact of corruption to the Hungarian authorities that would also explain, why entry of six Hungarian officials was denied to the United States.¹¹⁷⁹ Goodfriend reacted to this situation on Twitter by „*History of diplomacy & int'l relations & rationale for the Vienna Convention <http://goo.gl/GHiqgy>¹¹⁸⁰ always makes good reading.*”¹¹⁸¹ With escalation of the incident,¹¹⁸² 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. Eventually, Goodfriend, replaced by Coleen Bell, the new U. S. Ambassador to Hungary, left the country in 2015, referring to (alleged and never justified) family reasons,¹¹⁸³ and the investigation was terminated.¹¹⁸⁴

Ádány notes, regarding the incident with Goodfriend that the clear conclusion, based on the analysis of legislation is that the current regulatory environment, owing to the lack of

¹¹⁷⁸ Marad Goodfriend mentessége... és Vida is. (*Goodfriend's immunity stays... and Vida, too.*) Népszava. 21 January, 2015. (Accessed on 20 January, 2016.) <http://nepszava.hu/cikk/1045910-marad-goodfriend-mentessege-es-vida-is>

¹¹⁷⁹ Feljelentést tesznek a békemenetesk az USA ügyvivője miatt. (*The organizers of peace march file a report because of the U. S. chargé d'affaires.*) HVG. 13 November, 2014. (Accessed on 20 January, 2016.) http://hvg.hu/itthon/20141113_Feljelentest_tesznek_a_bekemenetesk_az_U

¹¹⁸⁰ The entry, made on 13 November, 2014, contained reference to the Vienna Convention on Diplomatic Relations of 1961: „http://legal.un.org/ilc/texts/instruments/english/conventions/9_1_1961.pdf”.

¹¹⁸¹ 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/itthon/20141113_Visszavagott_az_USA_ugyvivoje_a_feljelent

¹¹⁸² In October 2014, András Simonyi, Hungary's former Ambassador in Washington, called this incident in a television program a „*nuclear diplomatic bomb*”. András Simonyi: Nukleáris diplomáciai bomba a kitiltási ügy. (*András Simonyi: the expulsion case is a nuclear diplomatic bomb.*) HVG. 20 October, 2014. (Accessed on 20 January, 2016.) http://hvg.hu/itthon/20141020_simonyi_nuklearis_diplomaciai_bomba

¹¹⁸³ Goodfriend és a hazai belpolitika. (*Goodfriend and the domestic internal affairs.*) Magyar Nemzet. 8 December, 2014. (Accessed on 20 January, 2016.) http://mno.hu/magyar_nemzet_belfoldi_hirei/goodfriend-es-a-hazai-belpolitika-1262169

¹¹⁸⁴ Távozik André Goodfriend. (*André Goodfriend is leaving.*) Magyar Nemzet. 11 February, 2015. (Accessed on 20 January, 2016.) http://mno.hu/magyar_nemzet_belfoldi_hirei/lezarult-a-nav-vizsgalat-1275685

There is much discussion concerning the extent to which states are immune from actions, regarding serious breaches of international criminal law, such as crimes of genocide and torture.¹¹⁹⁰

IV. 3. Immunity from duties

The customs, supposedly, appeared in ancient China, Mesopotamia and Egypt, along with the development of human civilization. The customs played a significant role in the development of maritime trade in the Greek city-states and in the territory of the later Roman Empire.¹¹⁹¹ The Manu Code¹¹⁹² elaborates on the system and procedures of customs, penalizing the smugglers.¹¹⁹³ The customs revenues belonged to the income of the ruler, who could convey the right to collect custom fees to others both in ancient times and later, in the Middle Ages. Thus, in medieval Hungary, the right to collect customs – *ius tributi*,¹¹⁹⁴ was reserved to the king – *ius regalis*. The Hungarian King could also confer to others this right, called *absque privilegio*.¹¹⁹⁵

At the beginning of the twentieth century, a serious problem, concerning the diplomatic corps in Norway was the illegal selling of alcohol. That was a serious matter during the prohibition years. The diplomatic corps was entitled to import alcohol for its own consumption and only the legations could buy liquor, by providing special slips. Notwithstanding, the Minister for Foreign Affairs of Norway made a „gentlemen’s agreement” with the British Minister, allowing to import liquor, which was a clear breach of Norwegian regulations and an example of „*how some foreign representatives were more equal than others*”,¹¹⁹⁶ despite of the formal equality among the members of the diplomatic corps.

Envoys enjoy exemptions from customs fees under the conditions of reciprocity in most of the countries, but the abuses associated with such exceptions, such as profiteering and

¹¹⁹⁰ Lowe op. cit. 185.

¹¹⁹¹ László Pardavi: A kereskedelmi vámok evolúciója az ókorban és a középkorban. (*The evolution of trade customs in the ancient times and the medieval period.*) Jogtörténeti szemle. No. 2. ELTE Magyar Állam- és Jogtörténeti Tanszék-KGRE Jogtörténeti-Jogelméleti Intézet-SZE Jogtörténeti Tanszék-ME Jogtörténeti Tanszék. Budapest, 2012, 38.

¹¹⁹² The Code of Manu presumably originates from the second century B.C.

¹¹⁹³ Mihály Bochkor: Manu Törvényei. (*The laws of Manu.*) Az Erdélyi Múzeum-Egyesület Jog és Társadalomtudományi Szakosztálya–Benkő Gyulan Cs. és Kir. Ud. Könnykereskedés. Budapest, 1915, 143.

¹¹⁹⁴ This right was also called *theloneum* or *telonium*.

¹¹⁹⁵ Pardavi op. cit. 41.

¹¹⁹⁶ The information about illegal sales of liquor leaked to the press, but the Ministry of Foreign Affairs made serious efforts to shield the diplomatic corps and to protect them against unwanted attention and against loss of face. Sharp–Wiseman op. cit. 89-90.

imports within the established quota, any newly arriving American diplomat was allowed to bring to five-ten tons of household items, without paying any customs dues. In addition, diplomatic personnel enjoying diplomatic immunity, could bring, and actually brought to at least a ton of goods – each under diplomatic seal. Finally, diplomatic pouches (bags, sacks), arriving at the Embassy every month, weighed several tons and more than fifty percent consisted of clothes and other things, designed for the personnel of the Embassy.¹²⁰⁵

Even with the fact that the topic subject of the diplomatic pouch/bag does not belong to the circle of personal privileges and inviolabilities of diplomatic agents, due to the large number and gravity of abuse, related to diplomatic pouch/bag, with involvement of diplomatic officers, it is unavoidable to mention this topic in the present work, as well.

By virtue of the Vienna Convention,¹²⁰⁶ diplomatic inviolability covers the correspondence, as well – inviolability of diplomat's documents. This is a form of communication with the sending state. Diplomatic pouch is one of the most common forms of communication of the diplomatic mission with its center and other offices of its state, therefore, it is the inseparable part of his daily work, and especially that diplomatic correspondence and other official papers are transferred via diplomatic pouch, sometimes by diplomatic bag.

In daily practice, there are cases, when the privileges and immunities of the correspondence of diplomatic agents and the correspondence of their embassy are closely interrelated and interconnected. (Above and beyond, there are authors, who consider the inviolability of diplomatic communications – both of the diplomat and its embassy – altogether, under „*inviolability of means of communication*”,¹²⁰⁷ namely that it covers official correspondence, diplomatic papers and archives, diplomatic bags, diplomatic couriers and messages in code or cipher.)

In this fashion, in legal literature, much attention has been given to provisions, surrounding diplomacy law. Although the importance of the bag for documentary communication was widely superseded by use of radio and coded computer files, the diplomatic bag still has considerable importance for conveying secret materials,¹²⁰⁸ often conveyed in „personal” diplomatic bags. It is also a well-known fact that sending states are often abuse the inviolability of diplomatic pouch, for example for transportation of firearms.¹²⁰⁹

¹²⁰⁵ Parker–Bucar op. cit. 91.

¹²⁰⁶ Vienna Convention. Article 30(2).

¹²⁰⁷ Lung-chu Chen op. cit. 302; Glahn op. cit. 460.

¹²⁰⁸ Gardiner op. cit. 358.

¹²⁰⁹ Demin op. cit. 75.

North Korean Embassy in Stockholm said earlier that he did not know about the arrests.¹²¹⁵ The Korean diplomats were sentenced to eight months in prison, as reported by press.¹²¹⁶

Customs immunity belongs to the personal inviolability of the diplomatic agent. Customs immunities consist of three main components: unhindered export and import of personal goods; relief of declared items from customs taxes; exemption, as a general rule, of personal baggage from customs inspection.¹²¹⁷ Diplomats enjoy immunity from customs, being exempt from all customs duties on items, intended for the personal use, and their personal baggage is not subject to inspection¹²¹⁸ and X-ray screening.¹²¹⁹

The exception from this rule is when there are substantial grounds for believing that the baggage contains items, prohibited for import or export. In the latter case, the inspection shall be conducted in the presence of the diplomat or his representative. The diplomatic bag was defined in the Draft Articles of the International Law Commission as packages, containing official correspondence, documents or articles, intended exclusively for official use, which bear visible external marks of their character,¹²²⁰ and used for official communications with missions, consular posts or delegations.¹²²¹

In opinion of Olaoye, since in practice, the „diplomatic bag” may range from a small purse to an airplane,¹²²² and even small containers can be abused, as diplomatic bags, by the inclusion into them of drugs or small firearms, the use of large containers¹²²³ On occasion, the baggage travels separately from the diplomat, the inspection could be performed in presence of the diplomat or his authorized representative,¹²²⁴ responsible for the carriage of that baggage. Demin notes that states do not consider means of transport (vehicle, truck, airplane, railway wagon), which carry out the transportation of a diplomatic bag, as a diplomatic bag.¹²²⁵

In practice, a diplomatic bag is usually a large canvas sack, intended for the safe and confidential transportation of articles, as classified documents, vital communiqués,

¹²¹⁵ Ibid.

¹²¹⁶ DPRK diplos arrested for smuggling (again). North Korean Economy Watch. 22 November, 2009. (Accessed on 11 January, 2016.) <http://www.nkeconwatch.com/2009/11/22/dprk-diplos-arrested-for-smuggling-again/>

¹²¹⁷ Gumeniuk op. cit. 76.

¹²¹⁸ Vienna Convention. Article 34.

¹²¹⁹ Denza op. cit. 225.

¹²²⁰ Draft Articles on the Status of the Diplomatic Courier and the Diplomatic Bag Not Accompanied by Diplomatic Courier and Draft Optional Protocols. Yearbook of the International Law Commission, Vol. II, Part Two, 1989. Article 3(2).

¹²²¹ Doc. cit. Article 1.

¹²²² Olaoye op. cit. 92.

¹²²³ Jennings–Watts op. cit.

¹²²⁴ Frank–Sulyok op. cit. 44.

¹²²⁵ Demin op. cit. 89.

resumes that the exemptions from customs duties and inspections are of substantial practical significance and can cause problems due to the natural aspiration of the receiving states to prevent abuse of such valuable privileges, and the natural human weaknesses of diplomats.¹²³⁴

The sending state and the head of the diplomatic mission are exempt from all taxes, related to the premises¹²³⁵ of the mission, but not from operating dues – „payment for specific services rendered”,¹²³⁶ 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.¹²³⁷

Diplomatic immunity also applies to vehicles – boats, planes and cars, which can not be subject to search, requisition, attachment or execution. This does not exclude the right of traffic police to record violations of traffic rules and report them to the Ministry of Foreign Affairs. Immunity of diplomatic vehicles does not apply to drivers of these means of transportation, if they are not diplomats. In September 1995, in Moscow, there was arrested and then prosecuted the driver of the Embassy of Saudi Arabia on charges of hostage taking. In this case, a hostage was taken to Moscow region by a car that belonged to the Embassy.¹²³⁸

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.¹²³⁹ 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.¹²⁴⁰ 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.¹²⁴¹

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,

¹²³⁴ Anthony Aust: *Handbook of International Law*. Cambridge University Press. Cambridge, 2010, 146.

¹²³⁵ The Exemption applies to both owned and leased diplomatic premises. Vienna Convention. Article 23(1).

¹²³⁶ *Ibid.*

¹²³⁷ Lukashuk: *Mezhdunarodnoe...* 88.

¹²³⁸ *Ibid.*

¹²³⁹ Vienna Convention. Article 36(1).

¹²⁴⁰ The confiscated gold weighted about twenty-seven kilograms in total. North Korean diplomat stopped with nearly £1m in gold at Dhaka airport. *The Guardian*. 6 March, 2015. (Accessed on 9 April, 2016.) <http://www.theguardian.com/world/2015/mar/06/north-korean-diplomat-gold-dhaka-airport-bangladesh>

¹²⁴¹ Serajul Quadir: Bangladesh seizes \$1.4 million in gold from North Korean diplomat. *Reuters*. 6 March, 2016. (Accessed on 9 April, 2016.) <http://www.reuters.com/article/us-bangladesh-northkorea-diplomat-idUSKBN0M21GY20150306>

luggage is subjected to inspection not due to „*serious grounds for presuming that it contains articles not covered by the exemptions*”¹²⁴⁷ and prohibited articles, but as a preventive measure.

The personal inspection of diplomats is unacceptable, as well. On the other hand, it is possible to bring arguments, justifying the lawfulness of such screening. Firstly, the inspection, carried out in airports, strictly speaking is not a customs inspection, referred to in the Vienna Convention.¹²⁴⁸ In the doctrine of Western states, the validity of screening at airports is substantiated, with reference to the fact that the inspection in many countries is performed by employees of private airlines, rather than by the host state.

Nevertheless, the resolution of this issue of inspection, theoretically, should be guided by the need to balance the interests both of the receiving and the sending state. Demin agrees that diplomats should be exempted from inspection, at the same time, one should exclude the possibility of unlawful interference of criminals, who may act under the guise of diplomats, into the activity of civil aviation. A possible solution to this problem could be to develop and add to international agreements provisions, regarding the procedure of special access of diplomats to aircraft. This procedure could include, for example, exemption from inspection of diplomats, provided, the airline had been notified by the Ministry of Foreign Affairs of the host state about the flight of a particular diplomatic agent.¹²⁴⁹

There is an ongoing dispute, concerning the examination of the diplomatic bag.¹²⁵⁰ States, as a rule, try not to permit the inspection of their diplomatic pouch by technical means.¹²⁵¹ Ross claims that with regard to the prevention of illegal use of diplomatic pouch, such as transportation of prohibited items, the pouch should be passed through X-ray machine check (electronic scanning) and the customs agents could utilize the service of narcotics detection dogs to sniff for the presence of contraband. These rapid, unobtrusive procedures that preserve the confidentiality of documents, do not collide with the provisions of the Vienna Convention, which limits the contents of the diplomatic pouch to documents and articles, intended for official use by diplomatic agents.¹²⁵²

In history, the diplomatic „bag” has ranged from a small package to collection of large crates. There have been allegations of the use of diplomatic bags to smuggle drugs and weapons.

¹²⁴⁷ Vienna Convention. Article 36(2).

¹²⁴⁸ Ibid.

¹²⁴⁹ Demin op. cit. 134-136.

¹²⁵⁰ Nelson op. cit. 494.

¹²⁵¹ Demin op. cit. 81.

¹²⁵² In case of exposure of forbidden articles, customs officials could require the opening of the diplomatic bag in the presence of an official from the sending state, and if the foreign official would refuse to allow the inspection of the pouch, customs officials could decline the dispatch entrance to the receiving state. Ross: Rethinking... 199-200.

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.¹²⁵⁹

A third state has also to grant the same immunity and protection to the official communication of the diplomatic agent in transit, as it is accorded by the receiving state. „Transit state” means a state, through whose territory a diplomatic agent passes in transit. The official communication of diplomatic agents encompasses official correspondence, also messages in code or cipher.¹²⁶⁰ Diplomatic documents are collectively referred to, as *dépeche*.¹²⁶¹ The diplomatic immunity in this case applies to the diplomatic bag, as well.¹²⁶²

The case of *Bergman v. De Sieyes*¹²⁶³ was initiated in the state court upon the defendant’s deceit, and then it was removed by the defendant for diversity of the citizenship. The defendant, a citizen of France, at the time of the commencement of the action was appointed, acting and accredited Minister of the Republic of France to the Republic of Bolivia, which had not accepted him, as Minister yet. At the same time, the service of the summons and complaint on him was effected in New York, while he was temporarily present in the city, en route from France to his post in Bolivia, awaiting the transportation. The Court had to decide whether a diplomatic minister en route to his post, was immune from service of evil process in a third country, through which he was passing on the way to the receiving state. The plaintiff argued that since the defendant was not a diplomat, accredited to the United States, but accredited to the Republic of Bolivia, and due to the fact the summons and complaint did not prevent him from discharging his diplomatic functions by restraint on his personal freedom, he was not entitled to immunity from service.¹²⁶⁴

¹²⁵⁹ The Russian practice in this matter is different from the conventional one. Foreign diplomats, entering with diplomatic passports, usually receive a diplomatic visa, regardless of the purpose of the visit, and are considered, as having diplomatic immunity. The Russian legal literature attempted to provide a doctrinal base of the current practices. Thus, Blishchenko and Zhdanov advocated for the need of provision diplomats with immunities on the territory of a third country, regardless of the purpose of entry, arguing that most of the countries guarantee a vacation to their diplomatic representatives, so it would be logical to assume that a person who goes on vacation, has the same rights, as the person who is on vacation in a third state. I. P. Blishchenko–N. V. Zhdanov: Printsip neprikosnovennosti diplomaticheskogo agenta. (*The principle of inviolability of the diplomatic agent.*) Sovetskii ezhegodnik mezhdunarodnogo prava. 1973. „Nauka”. Moskva, 1975, 28.

¹²⁶⁰ The Vienna Convention. Article 40(3).

¹²⁶¹ Jónás–Szondy op. cit. 268.

¹²⁶² Ibid. Article 40(4).

¹²⁶³ *Bergman v. De Sieyes*. 71 F. Supp. 334 (S. D. N. Y. 1946).

¹²⁶⁴ Henry J. Steiner–Detlev F. Vagts: Transnational legal problems. The Foundation Press, Inc. New York, 1976, 549.

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.¹²⁷⁵

Brown asserts that if the transit is connected to official functions, it should be more likely to attract inviolability to the traveler, than in cases of travel for pleasure. Mere presence of a diplomatic agent in the territory of the transit state should be treated very cautiously as a passage, if there is no evidence of actual passing through. In addition to that, there must be evidence that the diplomat in transit has been duly accredited – appointed and posted to a permanent diplomatic mission by the sending state, and accepted by the receiving state.¹²⁷⁶

The situation is more difficult in cases with the status of non-accredited diplomats (not the members of diplomatic delegations). Kovalev points out that in the doctrine of international law this question belongs to the unexplored matters. The Vienna Convention dedicates only one article to the status of diplomats on territory of a third state, besides, the legislation and practice of states in this matter is not constant. It is possible to single out three options for the stay of foreign diplomats on the territory of a third state: intersection of the territory of a third state in transit on a journey to another country; entering a third country on official business or for personal reasons; staying in the territory of a third state by virtue of force majeure, such as forced landing of aircraft, war, natural disaster, etc.¹²⁷⁷

Despite of the legal regulation of immunity of diplomatic agents in the third country, Bruhács agrees that the provisions of the Vienna Convention regarding the status of diplomats in transit, not quite pertinent today, as a result of the development of aviation. The Vienna Convention does not regulate the status of diplomatic representatives in other – non-transit states. Several cases occurred, by which it can be concluded that privileges and immunities of diplomatic representatives in such states are not granted.¹²⁷⁸

¹²⁷⁵ Demin op. cit. 168.

¹²⁷⁶ Brown: Diplomatic... 62.

¹²⁷⁷ A. A. Kovalev: Privilegii i immunitety v sovremennom mezhdunarodnom prave. (*Privileges and immunities in contemporary international law.*) „Nauka”. Moskva, 1986, 23.

¹²⁷⁸ Bruhács op. cit. 285.

justifies the juridical complexity of the institution of abuse of right.¹²⁸⁵ Leist considers that the term abuse of right is self-contradictory, because it contains mutually exclusive notions: it can not be abuse in the frame of law, and the abuse itself is contrary to law.¹²⁸⁶

The prohibition of abuse of right may now be seen, as a precise concept of definite content and common application, but may not be a prime instrument of peaceful change (in the way Lauterpacht envisaged it). Hitherto, this principle is a „*potent rule of international law none the less*”, as resumed by Taylor.¹²⁸⁷ By a common legal definition, the abuse of right means an illegal and unfair conduct, causing harm to someone. In the broadest sense of the word, abuse must be regarded, as malicious, illegal, immoral and dishonest behavior. As a legal phenomenon, abuse of right is quite common in practice, in particular, as abuse of power,¹²⁸⁸ done in an official capacity, which affects the performance of official duties.

Abuse of diplomatic immunity, as formulated in reference books, means illegal actions of diplomats in the receiving state, incompatible with their official activities. Abuse of diplomatic immunity is expressed in a serious violation of laws, regulations and rules, established in the receiving state: interference into domestic affairs; collecting information about the host country by unlawful means; use of office and residential premises, as well as means of transport for purposes, incompatible with diplomatic functions; establishment of direct relationships with government agencies, enterprises, military units without the permission of the Foreign Ministry and the Department of External Relations of the Ministry of Defense; engagement in commercial activities.¹²⁸⁹

The authorities of the receiving state have the right to apply prevention and suppression measures towards illegal activities of the offending diplomats, such as confiscate the objects, which confirm such prohibited activities, and draw up reports on the illegal actions of the diplomatic staff. The offending diplomats can be declared undesirable persons (*persona non grata*), with their expulsion from the territory of the receiving state.¹²⁹⁰

In opinion of Higgins, generally, diplomats are required to comply with local law, but will be immune from the local jurisdiction to apply and enforce such laws.¹²⁹¹ It has to be précised here that in fact, in international law only those regulations have binding forces on

¹²⁸⁵ K. M. Kazbekova: „Zloupotreblenie pravom” i „pravonarushenie”: sootnesenie poniatii. („*Abuse of right*” and „*offense*”: *the correlation of notions*.) *Biznes v zakone*. No 1, 2010, 74.

¹²⁸⁶ O. E. Leist: Sushchnosty prava. Problemy teorii i filosofii prava. (*The essence of law. The problems of theory and philosophy of law*.) IKD „Zertsalo-M”. Moskva, 2002, 123.

¹²⁸⁷ Taylor op. cit. 325.

¹²⁸⁸ Malinovskii op. cit. 26-27.

¹²⁸⁹ Nikitchenko op. cit. 111.

¹²⁹⁰ Ibid. 111.

¹²⁹¹ Higgins: *Problems...* 87.

cases.¹²⁹⁷ (The cases of domestic workers are particularly vulnerable to claims of diplomatic immunity.¹²⁹⁸

Similar to many other cases, involving diplomats, the cases, brought by abused domestic workers, have often been dismissed for lack of jurisdiction on account of diplomatic immunity, asserted by the diplomat, being charged, or otherwise have been unsuccessful for the domestic worker plaintiffs.)¹²⁹⁹

An other abuse of diplomatic privilege is found in cases of „deadbeat diplomats”, who avoid paying spousal and child support, by claiming immunity from jurisdiction of the courts. These diplomats make use of the fact that by virtue of the Vienna Convention, they can not be sued criminally and civilly.¹³⁰⁰

As a result, the abuse of provisions of diplomatic immunity provokes indignation in ordinary people from time to time. Diplomatic privileges and immunities are almost always observed by states, for the reason that states have a common interest in preserving them. A state may be under pressure from its internal public opinion, but it usually resists the pressure, because otherwise a state would create a precedent, which could be used against its own diplomats in foreign countries. Major breaches of these rules¹³⁰¹ are rare,¹³⁰² and receive disproportionate publicity because of their rarity.¹³⁰³

In this course, the case of the *United States Diplomatic and Consular Staff in Tehran*¹³⁰⁴ and Draft Articles on Responsibility of States for Internationally Wrongful Acts refer to the question of remedies, available in diplomacy law in situations of abuse. In concordance with the Draft Articles on State Responsibility, an injured state could take action at a number of levels. At the first level, a state could declare a diplomat *persona non grata*, to terminate or suspend diplomatic relations with the other state, to recall ambassadors, as provided for by the Vienna Convention. At the second level, measures may be taken, affecting diplomatic

¹²⁹⁷ *Tabion v. Mufti*, 73 F.3d 535, 537 (4th Cir. 1996).

¹²⁹⁸ The receiving state could intervene into these cases by requesting a waiver of diplomatic immunity from the sending state, to ensure that domestic workers have an opportunity to be heard in court. Amy Tai: Unlocking the door to justice: protecting the rights and remedies of domestic workers in the face of diplomatic immunity. In: *Journal of Gender, Social Policy&the Law*. Vol 16, No 1, 2007, 222.

¹²⁹⁹ Emily F. Siedell: Swarna and Baoanan: Unraveling the Diplomatic Immunity Defense to Domestic Workers Abuse. *Maryland Journal of International Law*. Vol. 26, Issue 1, 2011, 176-177.

¹³⁰⁰ Castro op. cit. 353-354.

¹³⁰¹ For example, in the American Hostages Case.

¹³⁰² Keaton admits that a high number of such incidents remain unreported. Keaton op. cit. 580.

¹³⁰³ Malanczuk op. cit. 123.

¹³⁰⁴ The American Hostages Case. Judgement of 24 May, 1980, paras. 41, 86.

by its diplomats, but ended up settling for five million dollars. Meanwhile, diplomats from Zaire once failed to pay their landlord 400 000 dollars in rent. When the landlord sued them, the U. S. State Department defended the Zairians, because they were protected by diplomatic immunity.

Among the occasions of abuse of immunity by diplomats themselves, there are cases of careless and negligent driving, often in an intoxicated condition, which results in death or injury to innocent passers, or damage to property. In the 1950s there were several very embarrassing drunk-driving¹³¹¹ 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.¹³¹²

Sharp and Wiseman find that this might be owing to the fact that Belgium was an allied state. The Belgian Minister was caught, while driving under the influence of alcohol, again in 1956, when a liberal paper demanded his immediate recall. The Ministry of Foreign Affairs agreed then with the Minister that he would visit Copenhagen and Stockholm, where he was also accredited and that he would not return to Oslo. This was a solution to the incident that allowed the diplomat to save face.¹³¹³

The first secretary of the Turkish legation in Norway got involved in three incidents during autumn/winter 1952-1953, including drunken driving, rowdiness, battery and threats against the police. After the recall, the diplomat still managed to get involved into a car crash. In such situations, the Ministry of Foreign Affairs of Norway strived to arrange the matters bilaterally, with the involved sending state (some legations would enforce internal discipline). This was the case, when the Czechoslovak commercial attaché, after being caught driving drunk, left on „vacation” soon after the incident.¹³¹⁴

An other aspect of diplomatic privilege that attracts public notice are traffic offenses, when embassies accumulate parking tickets. In practice, there is a number of countries, where embassy cars are no longer exempt from traffic fines and embassies are to settle the payment. What is more, there are countries, where publication of parking offence statistics in the media serves, as a deterrent measure, or to keep the rate of recurrence of traffic violations within bounds.¹³¹⁵ Diplomatic agents have been often taking advantage of what was meant to be a

¹³¹¹ In such cases a diplomat, due to his immunity, can not be obliged to go through a breath test or other medical examination.

¹³¹² Sharp–Wiseman op. cit. 91.

¹³¹³ Ibid.

¹³¹⁴ Sharp–Wiseman op. cit. 96-97.

¹³¹⁵ Rana: The 21st Century Ambassador... 56.

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.¹³¹⁹

The usual response of receiving states to abuse has been either to get the violator „recalled” by the sending state or, if that was not possible, declare the envoy *persona non grata* and expel him. In fact, international law allows taking of countermeasures in appropriate cases (within the limits, prescribed by the law), yet, such a response should be carefully weighted, since it could provoke reciprocal measures and deterioration of bilateral diplomatic relations. The ultimate sanction and prevention measure, available for governments, is severance of diplomatic relations. This preventive measure does not seem to be incompatible with international law and may be seen, as a genuine attempt to reduce the risk of abuse. Besides the severance of diplomatic relations, a number of other mechanisms are available in order to prevent abuse of immunity and violations of diplomacy law.

Diplomatic privileges and immunities allow free – undisturbed performance of a diplomat’s duties in the host country, also assisting the accomplishment of objectives of a diplomatic mission in the receiving state. The reasoning of granting diplomatic privileges and immunities derives from the time, when the community of states realized that it was not possible to reach agreement, if the envoy was murdered during negotiations or at his arrival to the receiving state. This inviolability of envoys served, as foundation for other immunities and privileges.

Higgins notes that the Vienna Convention was agreed to be largely confirmatory of existing customary law and for about fifteen years, it was generally felt that the treaty’s provisions provided a fair balance between the interests of the sending and the receiving states. As time passed by, in many capitals of the world one started to feel that diplomats were abusing their privileged status.¹³²⁰

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

¹³¹⁹ Kyiv denies reports of drunk-driving accident caused by Ukrainian ambassador in Korea. Interfax-Ukraine. 22 December, 2009. (Accessed on 4 April, 2016.) <http://en.interfax.com.ua/news/general/28411.html>

¹³²⁰ Higgins: The Abuse... 642.

Ambassador to Great Britain, „*for consultations*”. After the recall, the British Embassy in Tehran was fired on twice.¹³²⁷

There are opinions in mass media, according to which, it is high time to end diplomatic immunity. In 2010, the United Airlines Flight 633 from Washington DC to Denver, was disrupted and terrorized, not by some extremist, but a diplomat from Qatar. Mohammad Al Madadi, a junior diplomat, on a routine assignment to visit a Qatari citizen in a U. S. prison, decided to smoke a pipe in the plane’s lavatory, saying that „*he was trying to light his shoes on fire*”¹³²⁸ to mask the smell of the bathroom, before proceeding to his seat. The flight attendant challenged Madadi again, and notified the air marshals on the plane, when the diplomat declined a request to hand over his lighter. That was the moment, when, according to media, Madadi's business trip „*started to become a minor international incident*”. The air marshals, having talked to Madadi briefly, confined him to his seat, and activated a national alert system for all planes in flight, through the pilot.¹³²⁹ The American authorities, after questioning Madadi on the ground and finding no explosives, found that there were no offense beyond illegal smoking, a charge from which the diplomat was immune, because of his diplomatic status.¹³³⁰ 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.¹³³¹ 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”.¹³³² Ross agrees with the idea that the United Nations¹³³³ is the proper forum to address the case of reform

¹³²⁷ Britain denies extradition. Chicago Tribune. 13 November, 2003. (Accessed on 9 January, 2016.) http://articles.chicagotribune.com/2003-11-13/news/0311130120_1_juan-jose-galeano-jewish-center-bombing-hadi-soleimanpour

¹³²⁸ Karen de Young: Diplomat on Denver flight to be sent back to Qatar, U. S. says. The Washington Post. 9 April, 2010. (Accessed on 28 March, 2016.) <http://www.washingtonpost.com/wp-dyn/content/article/2010/04/08/AR2010040805826.html>

¹³²⁹ Fighter jets were scrambled, and President Obama was warned about a possible terrorist threat.

¹³³⁰ Ibid.

¹³³¹ Ross: Rethinking... 203.

¹³³² Brown: Diplomatic... 85.

¹³³³ 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.

V. 1. 1. The measures and proposals, to address abuse of diplomatic privileges and immunities

The receiving state may require recompensation for offenses, committed by foreign diplomats, by reason of immunity of diplomatic agents from the jurisdiction of the receiving state does not exempt them from the jurisdiction of the sending state.¹³⁴¹ 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.¹³⁴² Others suggest to cut off all foreign aid to any country, whose diplomat has committed a crime, as a solution. But, again, „*that only closes the barn door after the horses are loose*”.¹³⁴³

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.¹³⁴⁴ 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.¹³⁴⁵

Correspondingly, Hickey and Fisch are also skeptical, as to any recompense fund, arguing that there is no need at all for a specialized compensation or insurance fund for victims of „diplomatic crime”, for the reason that this might reduce the sense of individual responsibility of a foreign diplomatic personnel. (Besides, in the United States, the new seriously harmed victims of diplomatic crime presently receive expeditious and generous compensation, as a matter of practice by foreign missions, with the encouragement of the State Department.)¹³⁴⁶

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

¹³⁴¹ Vienna Convention. Article 31(4).

¹³⁴² Doc. cit. Article 47.

¹³⁴³ Jim Longworth: Time to end diplomatic immunity. Yes Weekly. 14 April, 2010. (Accessed on 28 March, 2016.) <http://yesweekly.com/article-9169-time-to-end-diplomatic-immunity.html>

¹³⁴⁴ Brown: Diplomatic... 85.

¹³⁴⁵ Keaton op. cit. 604.

¹³⁴⁶ Hickey–Fisch op. cit. 381.

diplomatic relations in extreme cases.¹³⁴⁹ It has to be noted here that in spite of theoretical advantages, related to the functioning of such a court, however, this is a proposal that does not really take reality into consideration.

It is beyond controversy that members of diplomatic missions have violated the civil and criminal laws of host states in a great number of occasions. The problem of abuse of diplomatic privileges and immunities could be divided into two categories: I. deliberate abuse, which is of political or terrorist character; II. abuse of personal nature. Keaton, affirming that the unfortunate ramifications of the doctrine of diplomatic immunity must not continue to be tolerated,¹³⁵⁰ sums up the main reasons for diplomatic immunity abuse, as follows:

- 1) the opportunity for abuse, provided by the Vienna Convention and the Diplomatic Relations Act;
- 2) the lack of enforcement of diplomacy laws by the receiving state;
- 3) the lack of cooperation by the sending state;
- 4) the „Foreign Agent Explosion” – the dramatic increase in the number of individuals, granted diplomatic status.¹³⁵¹

In line with this, Crawford, commenting on Article 26 on state responsibility about compensation,¹³⁵² noted that it was a well-established practice that a state might seek compensation in respect of personal injuries, suffered by its officials or nationals. The compensable personal injury included not only associated material losses, but also non-material damage, suffered by the individual – sometimes referred to in national legal systems, as „moral damage”.

The arsenal of justifiable countermeasures against the abuse of diplomatic immunities and privileges, especially the use of force purporting to safeguard elementary interests of the receiving state or to protect human lives, has always been the object of legal controversy. The rigidity of the Vienna Convention, as well as the obvious reciprocal benefits for the sending and the receiving states have substantially contributed to preserve the respect for the immunities and privileges, under the Convention.¹³⁵³

However, it is evident by now that the provisions of the Vienna Convention are inadequate to effectively fight against the deeds of certain diplomatic agents, who violate

¹³⁴⁹ Ross: *Rethinking...* 196.

¹³⁵⁰ Juliana J. Keaton: *Does the Fifth Amendment Takings Clause Mandate Relief for Victims of Diplomatic Immunity Abuse?* *Hastings Constitutional Law Quarterly*. Vol. 17, 1989-1990. Spring 1990, 607.

¹³⁵¹ Keaton *op. cit.* 582-586.

¹³⁵² James Crawford: *The International Law Commission's Articles on State Responsibility. Introduction, Text and Commentaries*. Cambridge University Press. Cambridge, 2002, 223.

¹³⁵³ Herdegen *op. cit.* 734-735.

threatening previously sacred functions.¹³⁶⁰ On the other hand, some diplomats abuse their privileges and immunities, with regard to contemporary means and networks of communication, the actual content of their messages and statements, also the transmission of (strictly) secret diplomatic contents.

In ancient times, the problem was mainly to ensure the physical safety of ambassadors, together with their suit. It was important that ambassadors could achieve the destination place, to deliver the gifts, sent by his ruler, and that their dignity, and subsequently, the dignity of their sovereigns was not harmed in the host country. As noted by Gentili, an ambassador was not just a bearer of messages, but also was called judge affairs, and as the noble Venetians had advised us – was the ears and eyes of his government. There were also ambassadors, whose instructions included directions to play the part of spy and find out everything possible about the affairs of the sovereign,¹³⁶¹ to whom they were accredited.¹³⁶²

Later in history, the problem of the security of information had raised, namely its protection against interception, leakage, modification, blocking and finally, destruction.¹³⁶³ As a general rule, diplomatic agents are allowed to maintain contacts with authorities of the host country only via the Ministry of Foreign Affairs of the receiving state.¹³⁶⁴ The specific duties of diplomats include assessing, reassuring, verifying of incoming and outgoing information.¹³⁶⁵ The means by and through which states are able to communicate with each other, constitute the „diplomatic channel“. The instructions and other messages, which pass by means of this network, evidently, must remain secret, and in particular, not to come to the attention of the receiving state.¹³⁶⁶

On the topic of adjustment of diplomatic activity to the change in status of bilateral relations, it is worth mentioning here that by virtue of the respectful provisions of the Vienna Convention,¹³⁶⁷ the documents and archives¹³⁶⁸ of the diplomatic mission shall be inviolable at any time and wherever they may be, that is, in situations, when they are, due to any reason, not at the diplomatic mission anymore. This immunity is valid „any time“, which means, that is, even after the interruption of diplomatic relations.

¹³⁶⁰ Riordan op. cit. 63.

¹³⁶¹ Ibid.

¹³⁶² It is believed that Henry VII of England never allowed resident ambassadors in his kingdom for this very reason. Alberico Gentili: Three books on Embassies. Book III, Chapter 14. Berridge: Diplomatic Classics... 64.

¹³⁶³ Petrik op. cit. 126-127.

¹³⁶⁴ Vienna Convention. Article 41(2).

¹³⁶⁵ Freeman: The Diplomat's... 121.

¹³⁶⁶ Greig op. cit. 133.

¹³⁶⁷ Vienna Convention. Article 24.

¹³⁶⁸ The Vienna Convention does not specify the term „archives“, however.

- raising of political issues at the initiative of the ambassador, to probe intentions and to convey assessments to the sending state that will warn, alter or advise, in anticipation of some event, or analyze an ongoing situation. An ambassador, normally, would not raise a new bilateral issue on his own initiative, without clearance from the sending state. If the envoy makes a tentative sounding that is aligned with home policy, he clarifies it that he speaks on his own authority, not on instruction, i. e. an envoy has a zone of autonomy;
- establishment of contacts not solely at principal, but also at intermediary or senior advisor levels, using non-official contacts to reach out key individuals (even at large embassies, located in Moscow or Beijing);
- connections with opposition groups or political parties, however, in this case of such interactions, actions have to be adjusted to circumstance.

In this course, the ambassador's „*guiding star*” is to accept the legacy of contacts, he inherited from his predecessors and using this base, discover actual and potential allies for relation building.¹³⁷⁴

On the topic of restraints of diplomatic agents, the primary prohibition, laid by international law, is abstention from all interference – by word or deed – in the internal affairs of the receiving state. This prohibition is all-inclusive: diplomats may not discuss pending legislation, may not comment on political controversies, and endorse or criticize the host government, political parties, or party platforms. Diplomats may not correspond with the press and other news media on any matter that is still subject of communication from their government to that of the receiving state before the latter has received it, nor publish any correspondence from the latter, without obtaining prior authorization.¹³⁷⁵

A minor violation of these restrains on the diplomat's activities may be overlooked or lead to a protest by the appropriate authorities of the host country. But then if the violation was prepared or was of serious nature, the receiving state is fully within its rights if it requests the recall of the offender or, as quite often happens, expels him at once.¹³⁷⁶ Thus, the diplomatic missions, together with the members, are expected to observe proper standards of respect and deference towards the authorities of the receiving state and the state itself.

¹³⁷⁴ Rana: *The 21st Century Ambassador*... 78-80.

¹³⁷⁵ It is also prohibited, but difficult to prove the use of an embassy, as a center for the dissemination of propaganda regarding a matter, on which the two governments concerned may be in disagreement, and the conversion of any diplomatic mission into a center of subversive or spy activities in favor of the ideological or national interests of the sending state. Glahn op. cit. 462.

¹³⁷⁶ Glahn op. cit. 463.

Foreign Ministry accused Meyer of being engaged in counterrevolution, instead of dealing with diplomacy, and she was expelled from the country.¹³⁸¹

In 1997, Serge Alexandrov, the first secretary of the American Embassy in Minsk was expelled by the Belarus Government for provocative conduct, after the diplomat attended a protest rally against Alexander Lukashenko, the President of Belarus.¹³⁸² In a few days after the incident, the United States ordered the expulsion of a Belarus diplomat in retaliation for the „unwarranted and unjustified” step of Minsk. Besides, Washington recalled Kenneth Yalowitz, the American Ambassador to Belarus and expelled Vladimir Gramyka, the first secretary of the Belarussian Embassy (giving him 24 hours to leave).¹³⁸³

A diplomat represents his country both formally and informally, as the official agent of communication, and in his personal conduct, as an example of the people of his country.¹³⁸⁴ While establishing new contacts and maintain the existing ones, diplomats should express themselves responsibly, to avoid for example, ignorant use of history to make political points. If a statement is spread not in a private conversation, it is considered to be public.¹³⁸⁵

The French Ambassadors to London lately said that Napoleon, were he alive today, would struggle passionately to save the European Union, because he dedicated life to the idea of a united Europe. The historian Simon Schama made short work of this sentiment, pointing out that Napoleon’s idea of a united Europe meant one under French hegemony,¹³⁸⁶ being ruled by a police state, while nations had to compulsorily donate their most celebrated and precious works of art to the Louvre.¹³⁸⁷

¹³⁸¹ Expulsions of Cuban diplomats, past and present. Havana Journal. 15 May, 2003. (Accessed on 2 December, 2015.) http://havanajournal.com/politics/entry/expulsions_of_cuban_diplomats_past_and_present/

¹³⁸² By opinion of Nedokus, the main mission of the Belarusian state ideology is to strengthen the legitimacy of the charismatic Alexander Lukashenko by ideological legitimacy of the system, created by him. Igor’ Nedokus: Rol’ gosudarstvennoi ideologii v formirovanii politicheskogo rezhima Respubliki Belarus’. (*The role of state ideology in forming the political regime in the Republic of Belarus.*) Persy Mizhnarodny Kangres dasledchykau Belarusi. (*The First International Congress of Belarusian Studies.*) Working Papers. Volume 1. (2012). Vytautas Magnus University Press. Kaunas, 2011, 96.

¹³⁸³ Steven Erlanger: U. S. Expels a Belarus Diplomat, and Warns of Repression There. The New York Times. March 27, 1997. (Accessed on 14 November, 2015.) <http://www.nytimes.com/1997/03/27/world/us-expels-a-belarus-diplomat-and-warns-of-repression-there.html>

¹³⁸⁴ Jack C. Plano–Roy Olton: *The International Relations Dictionary*. Holt, Rinehart and Winston, Inc. New York, 1969, 215.

¹³⁸⁵ Aleksandr Verkhovskii: Uголовnoe pravo stran OBSE protiv prestuplenii nenavisti, vzbuzhdeniia nenavisti i iazyka vrazhdy. (*Criminal Law of the OSCE states against hate crimes, incitement to hatred and hate speech.*) Informatsionno-Analiticheskii Tsentr „Sova”. Moskva, 2015, 92.

¹³⁸⁶ Hegemony, from the Greek „to lead”, means holding sway over other lands. Powerful countries are said to have hegemony over weak neighbors, when they can, to some degree, control their foreign and domestic policies. Roskin–Berry op. cit. 84.

¹³⁸⁷ Nicolas T. Parsons: „Progressive Politics”: The Alchemy of a Slogan. Hungarian Review. Vol. VII, No 2, March 2016, 57.

high profile series of redacted classified materials connected, among others, to American diplomatic cables.¹³⁹⁷ In this fashion, Foreign Ministries find themselves on a virtual treadmill, under constant pressure to meet the latest standards for technological development.¹³⁹⁸

The freedom of contact ensures the effective performance of the functions of diplomatic missions and inviolability of official correspondence is an important condition of successful diplomatic work. The Vienna Convention specifies the assets of contact (including the diplomatic courier),¹³⁹⁹ the encrypted or ciphered messages and radio communication, although the latter is possible only with the permission of the receiving state. The packages, constituting the diplomatic bag, have to be equipped with external signs, such as seal, which should clearly shows the class of the pouch, and may contain only diplomatic documents or articles, intended for official use. Diplomatic pouch and other official shipments are not supposed to be tampered with.¹⁴⁰⁰

Writing is one of the most important communication technologies in early diplomatic activity. The exchange of written and oral communiqué remains a challenge for e-diplomacy. Communication is a vital strategic diplomatic instrument. Diplomatic correspondence has been widely acknowledged and accepted, as an expression of law.¹⁴⁰¹

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,¹⁴⁰² as it was well illustrated by the Fisheries case in 1951,¹⁴⁰³ when the Court made a comment on a French note and on the reply to it by the Norwegian Government.¹⁴⁰⁴ (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

¹³⁹⁷ Jakub Šimek: Hacktivists and whistleblowers – an emerging hybrid threat? In: Panorama of global security environment. Centre for European and North Atlantic Affairs. Bratislava, 2012, 663.

¹³⁹⁸ Evan H. Potter (ed.): Cyber-Diplomacy. McGill-Queen's University Press. Montreal, 2002, 198.

¹³⁹⁹ 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.

¹⁴⁰⁰ Roskin-Berry op. cit. 287.

¹⁴⁰¹ „*The diplomatic correspondence between Governments must supply abundant evidence of customary international law. For various reasons, however, much of the correspondence is not published.*” Ways and means for making the evidence of customary international law more readily available. Report of the International Law Commission. Yearbook of the International Law Commission. Vol. II, 1950, para. 71, 371.

¹⁴⁰² Wolfke op. cit. 150.

¹⁴⁰³ *United Kingdom v Norway* [1951] ICJ 3.

¹⁴⁰⁴ International Court of Justice. Reports of Judgements. 1951, 135-136.

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' representatives¹⁴¹⁴ „*not only doesn't abide by the spirits of the Vienna Convention on Diplomatic Relations and Vienna Convention on Consular Relations, but also violates relevant provisions of environmental protection.*” Officials in China and Hong Kong have „*grudgingly*” responded by releasing their own data on air condition.¹⁴¹⁵

This episode in China was followed with similar criticism, expressed by the Russian authorities towards the intensive blogging of the American Ambassador in Russia. In connection to these online-related incidents, Kurbalija believes that the provisions of the Vienna Convention¹⁴¹⁶ on communication via official channels are the most controversial ones, specifying that diplomats should act in accordance with the law of the accrediting state and conduct their official business via the Ministry of Foreign Affairs. Furthermore, China's reaction reveals cautions toward the position of diplomats in the Internet era. The fact that the complaint was placed not by the Ministry of Foreign Affairs of China, shows that Chinese authorities decided to send a diplomatic signal by expressing uneasiness, without escalating the conflict though, since customarily, in situations of breach of the Vienna Convention, protests are communicated by a diplomatic note or in more extreme cases by declaring the involved foreign diplomats *persona non grata*.¹⁴¹⁷

Above and beyond, such situations illustrate the underlying tension between the traditional perceptions of diplomacy, as strictly representation on a foreign state, and on the other hand, the view that diplomacy has the much broader task of involvement into local social dynamics, particularly, when it comes to protection of global values, such as human rights or environment.¹⁴¹⁸

¹⁴¹⁴ The American Embassy started to gather and publish air-quality data in 2008, which practice was followed by its Guangzhou Consulate in 2011 and the Shanghai Consulate in 2012. Keith Bradsher: China Asks Other Nations Not to Release Its Air Data. The New York Times. 5 June, 2012. (Accessed on 12 January, 2016.) http://www.nytimes.com/2012/06/06/world/asia/china-asks-embassies-to-stop-measuring-air-pollution.html?_r=2

¹⁴¹⁵ Ibid.

¹⁴¹⁶ Vienna Convention. Article 41.

¹⁴¹⁷ Jovan Kurbalija: Is tweeting a breach of diplomatic function? DiploFoundation. 7 June, 2012. (Accessed on 12 January, 2016.) <http://www.diplomacy.edu/blog/tweeting-breach-diplomatic-function>

¹⁴¹⁸ Ibid.

„*Diplomatic agents navigate between Scylla and Charybdis.*”¹⁴³¹ They are sent abroad to fulfil particular tasks – to create goodwill among the local population, to negotiate with the government of the receiving state, „*perhaps even to monitor the human rights situation in that State*”.¹⁴³² At the same time, they are not expected to interfere in the receiving state’s internal affairs. As a result, the fundamental problem, which diplomatic agents frequently encounter is that the remarks, made by them, which are considered to touch upon the internal affairs of the receiving state, may meet with irritation and accusations of interference. No government likes to be criticized for its human rights record, its reluctance to prosecute war crimes or its inability to deal with corruption.¹⁴³³

The diplomatic involvement into the advancement of human rights may also serve, as a reason for recall of diplomatic agents. In contemporary diplomatic relations we can witness the increased inclination of diplomats of certain countries to leave their role, as passive observers of violations of human rights in the host country. However, it happens sometimes that the diplomatic activity, aimed at protection of individuals seems to collide with the host state's rights, such as self-determination and sovereignty, and the Vienna Convention does not explicitly cover these cases and does not set up the hierarchy of legislation. This situation poses questions to diplomats, when they discover abuses of human rights in the host country, because international law, at first sight, does not offer a solution to such cases.¹⁴³⁴

Nonetheless, in recent years, diplomats have become more aware of the possibility of being accused of meddling, regarding to other norms of the Vienna Convention,¹⁴³⁵ for instance, the provision of non-interference into the internal affairs of the host state.¹⁴³⁶

In August 2007, Nuala Lawlor, the Canadian chargé d’affaires in Sudan was expelled by the Sudanese Government, after she had, reportedly, called for the release of opposition leaders of that state. After that, Canada’s Foreign Ministry announced that a Sudanese diplomat would be expelled from Canada in response to Sudan’s decision to expel Nuala Lawlor a week before, who was accused of „*meddling in its affairs*”. The Sudanese diplomat held a similar rank to Lawlor.¹⁴³⁷

¹⁴³¹ Paul Behrens: Diplomatic Interference and Competing Interests in International Law. The British Yearbook of International Law. Vol. 82, No 1, 2012, 178. [Hereinafter: Paul Behrens: Diplomatic...]

¹⁴³² Ibid.

¹⁴³³ Behrens: Diplomatic... 178-180.

¹⁴³⁴ In addition, the Havana Convention does not provide clear instructions in this regard, either.

¹⁴³⁵ Paul Behrens: None of their business? Diplomatic involvement in human rights. Melbourne Journal of International Law. Vol. 15, 2014, 1-3.

¹⁴³⁶ Vienna Convention. Article 41(1).

¹⁴³⁷ Sudan: Canada Retaliates for Expelled Envoy. The New York Times. 30 August, 2007. (Accessed on 19 January, 2016.) <http://www.nytimes.com/2007/08/30/world/africa/30briefs-sudan.html?pagewanted=print>.

In June 2016, on the occasion of Budapest Pride parade, a record, thirty-one embassies in Hungary issued a joint statement,¹⁴⁴² celebrating the festival. This was not the first time that embassies in Budapest showed their support towards the parade¹⁴⁴³ that this year was also being attended by the American and Israeli Ambassadors.¹⁴⁴⁴

Behrens notes that states have been traditionally critical towards human rights involvement by diplomatic agents.¹⁴⁴⁵ 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 mission¹⁴⁴⁶ clarifies that they do not constitute an exhaustive list.¹⁴⁴⁷

In addition, the reference to the observation and reporting of conditions and development in the receiving state is broad enough to cover the direct involvement of diplomatic agents into human rights of the receiving state. Diplomats can occasionally become eyewitnesses to relevant events.¹⁴⁴⁸ 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*”.¹⁴⁴⁹

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

¹⁴⁴² Embassy of the United States: Joint Press Release on the Occasion of the 21st Budapest Pride Festival. The joint press release was issued by the Embassies of Argentina, Australia, Austria, Belgium, Brazil, Canada, Chile, Cyprus, Denmark, Estonia, Finland, France, Germany, Greece, Ireland, Israel, Italy, Lithuania, Malta, Norway, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, Switzerland, The Netherlands, New Zealand, The United Kingdom, The United States, and the British Council. 28 June, 2016. (Accessed on 23 December, 2016.) https://hungary.usembassy.gov/pr_0628016.html

¹⁴⁴³ In 2015, twenty-five embassies backed the Budapest Pride event. Embassies issue joint statement celebrating Budapest Pride. The Budapest Beacon. 28 June, 2016. (Accessed on 23 December, 2016.) <http://budapestbeacon.com/news-in-brief/embassies-issue-joint-statement-celebrating-budapest-pride/35579>

¹⁴⁴⁴ Budapest Pride: thousands march across Hungarian capital to promote LMBTQ rights. Hungary today. 4 July, 2016. (Accessed on 23 December, 2016.) <http://hungarytoday.hu/news/budapest-pride-thousands-march-across-hungarian-capital-promote-lmbtq-communities-31215>

¹⁴⁴⁵ Paul Behrens op. cit. 7.

¹⁴⁴⁶ Vienna Convention. Article 3(1): „*The functions of a diplomatic mission, inter alia, in: ...*”.

¹⁴⁴⁷ Betty Behrens op. cit. 12.

¹⁴⁴⁸ Ibid.

¹⁴⁴⁹ Betty Behrens op. cit. 38.

mainly on the specifics of application of the existing law to matters, related to the internet, not on inventing new law.¹⁴⁵⁸

By virtue of the Vienna Convention, diplomatic missions are entitled to free communication,¹⁴⁵⁹ and „free” also implies that this communication is free from surveillance. In addition, the wireless communication is „physical”, travelling through the „air”, under the sovereignty of the involved state and the Vienna Convention obliges third countries to protect diplomatic communication in transit.¹⁴⁶⁰ The additional dilemma is related to the situation that most of the communication between an embassy and the sending state is performed via various internet links, so the question is whether the receiving state can impose special obligations on private companies – the Internet service providers, to protect diplomatic communication.

A new problem to solve is the protection of electronic documents, saved in the „cloud”, for example, Google Docs, since e-mail or documents, stored there, and might be vulnerable, regardless of the legal status of diplomatic protection. Moreover, cloud computing will make all the digital resources available on demand across the world,¹⁴⁶¹ thus, the new scientific revolution has arrived just as we face an exponential increase in data.¹⁴⁶²

International law presently sees the world through the lens of various jurisdictions, which are inherently linked to location, geography and territorial boundaries. In the current paradigm, the territoriality principle represents the core of the international law thinking on jurisdiction, to be precise that a state has jurisdiction over all that occurs in its territory for the simple reason that it occurs in its territory. (The relationship between state and territory is of overwhelming importance to the existence of the international order, hitherto, the nature of this relationship has never been fully resolved.)¹⁴⁶³

Jellinek called territory „*the indispensable spatial basis*” for a state to exercise power via its subjects, indirectly.¹⁴⁶⁴ Lauterpacht précises that a state rules within territory, not over

¹⁴⁵⁸ Mundie argues that privacy violations should be considered serious criminal offenses, for the only effective deterrence would be strong punishments. Craig Mundie: Privacy Pragmatism. In: Foreign Affairs. Vol. 93, No 2, March-April 2014, 36.

¹⁴⁵⁹ Vienna Convention. Article 27(1).

¹⁴⁶⁰ Doc. cit. Article 40(3).

¹⁴⁶¹ Andrew McAfee–Erik Brynjolfsson: Human Work in the Robotic Future. Foreign Affairs. Vol. 95, No 4. July-August 2016, 139.

¹⁴⁶² Tony Hey: The Next Scientific Revolution. Harvard Business Review. Vol. 88, No 11. November 2010, 57.

¹⁴⁶³ Michael J. Strauss: Territorial Leasing in Diplomacy and International Law. Brill Nijhoff. Leiden, 1953, 29

¹⁴⁶⁴ Georg Jellinek: L'État moderne et son droit. Tome 2. (*The modern state and its law. Vol. 2.*) M. Giard&E. Brière. Paris, 1913, 22-24.



relations between states.¹⁴⁷⁵ (In history, falsificated documents, for example the „Testament of Peter the Great”¹⁴⁷⁶ or the „Ems Dispatch”,¹⁴⁷⁷ which contained desinformation, caused serious tensions in diplomatic relations and even led to wars.)¹⁴⁷⁸

The Vienna Convention, regulating the diplomatic freedom of communication, provides that a diplomatic mission may use all appropriate means to exercise diplomatic communication, for official purpose, but can install and use a wireless transmitter only with the consent of the receiving state. The receiving state has to permit and protect the freedom of diplomatic communication for official purpose.¹⁴⁷⁹

At the same time, in modern conditions, every diplomatic servant must be firmly aware of and comply with information security requirements, taking special care, when working on personal computers, while turning to services, by using e-mail and fax, landline telephone and cell phone. The fight against terrorism calls for adoption of a number of not individual, but of a whole complex of measures for prevention of criminal actions. It is about ensuring the physical, informational, technical and psychological safety of individuals and technical means.¹⁴⁸⁰

The right to use „*all appropriate means, including diplomatic couriers and messages in code*”¹⁴⁸¹ is on the other hand restricted by the terms of the second sentence of this provision of the Vienna Convention to communication with the sending government and its missions, and consulates, wherever situated. Written messages from the mission, however, would be entitled to inviolability, either, as archives or as correspondence of the mission, while in transit to the intended recipient, so that the receiving state would in any event not be entitled to inspect them in order to verify, whether or not they were in code or cipher.¹⁴⁸²

Denza notes that states complain of breach of international law, when their own communications are compromised, while simultaneously stating that it is unpatriotic or naïve for questions to be raised about their own conduct. Although the evidence is limited, it suggests that more states now have the capacity and the inclination to carry out sophisticated surveillance and that interception is increasingly carried out against friendly as well as hostile states. There

¹⁴⁷⁵ Petrik doc. cit. 166.

¹⁴⁷⁶ [Le Testament de Pierre le Grand.]

¹⁴⁷⁷ [Die Emser Depesche.]

¹⁴⁷⁸ Petrik op. cit. 170.

¹⁴⁷⁹ Vienna Convention. Article 27(1).

¹⁴⁸⁰ Petrik op. cit. 132.

¹⁴⁸¹ Vienna Convention. Article 27(1).

¹⁴⁸² „It may be assumed that the words ‘all appropriate means’ include methods of communication such as fax and electronic mail which were not in use when the Vienna Convention was drawn up but which have since become standard.” Denza op. cit. 213.

. 2. 2. Diplomatic information and intelligence

Espionage and intelligence, which were already first mentioned in the Old Testament, became customary components of diplomacy and state organization by the eighteenth century.¹⁴⁹⁰ Gentili believed that if on the mere suspicion that an envoy came to the host country not as an ambassador, but as a spy, it had to be lawful to deprive him of the title of ambassador and to degrade him, then „*the door would be flung wide open to the unscrupulous for outrages against all ambassadors*”.¹⁴⁹¹

Pufendorf noted, concerning the legates, who commonly constituted one of the principal headings of the law of nations that even those, who have been sent to the enemy, if, indeed, they had the appearance of legates and not of spies, were inviolable by the very law of nature.¹⁴⁹² Persons of that kind were necessary in order to win or to preserve peace, and the law of nations had to provide the safety of those individuals, without whom „*the end which it orders cannot be obtained*”.¹⁴⁹³

Intelligence, according to its function, protected state leaders from external and internal dangers, and laid the foundations of a secure communication. As remarked by Frum, we all want the benefits of improved national security, but „*the information most needed for national defense is not obtained by asking nicely for*”.¹⁴⁹⁴

In the face of the fact that the diplomatic agent is authorized to collect information by lawful means, espionage, evidently, is not within this category. Spying is, actually, a treaty violation by the diplomatic agent, under the express direction and approval of the sending state. Granting domestic law and treaties provide for privileges and immunities in furtherance of diplomatic relations, espionage is not a fundamental purpose of the community.¹⁴⁹⁵

Whereas espionage may be in reality a concomitant of diplomacy, one can not analogize that such a practice *de facto* makes it acceptable. When the receiving state consent to host a foreign diplomatic community, it is not agreeing that espionage becomes an acceptable objective.¹⁴⁹⁶

¹⁴⁹⁰ Iván Györfy (trans.): A kémkedés históriája. (*The story of espionage.*) A BBC History Különszáma: A kémek titkos története. Az ókortól a terror elleni háborúig. Kossuth Kiadó Zrt. Budapest, 2016, 7-9.

¹⁴⁹¹ Berridge: Diplomatic Classics... 66.

¹⁴⁹² Samuel Pufendorf: Elementorium Jurisprudentiale Universalis Libri Duo. Vol. II. The Clarendon Press. Oxford, 1931, 166.

¹⁴⁹³ Pufendorf op. cit. 167.

¹⁴⁹⁴ David Frum: We need more secrecy. The Atlantic. May 2014, 15-16.

¹⁴⁹⁵ Ward op. cit. 666.

¹⁴⁹⁶ Ibid.

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.¹⁵⁰⁴

In 1727, James Francis Fitzjames,¹⁵⁰⁵ the Duke of Liria,¹⁵⁰⁶ appointed the first Spanish Ambassador to Russia,¹⁵⁰⁷ wrote his memoirs, in Saint Petersburg, based on diplomatic dispatch.¹⁵⁰⁸ The Ambassador described the diplomatic and political life of the country, mainly focusing on its foreign affairs.¹⁵⁰⁹ The chronicles contained portrait characteristics of the royal suit, written not only after personal experiences, but also taking into consideration rumors and different other types of information, intended to be used by professional diplomats and secret service agents (for example, description of looks, intellectual potential, positive and negative traits, personal means and contacts, etc.).¹⁵¹⁰ Such „portraits” were intended for practical work of members of the Spanish diplomatic mission and the successor of the Ambassador.¹⁵¹¹

In the nineteenth century – up to the present, this method, rooted in thousands of years, had explosively widespread and extended into further development. While the method of execution has changed fundamentally during the passage of the centuries, the causes of intelligence today still stand on the same ground that had been laid out at the time, when espionage occurred.¹⁵¹² The attitude to espionage¹⁵¹³ at times used to be rather concessive, than despicable.¹⁵¹⁴

¹⁵⁰⁴ Goldsmith–Posner op. cit. 56-58.

¹⁵⁰⁵ Fitzjames was the grandson of King James VII. Steve Murdoch: *Network North: Scottish Kin, Commercial And Covert Associations in Northern Europe, 1603-1746*. Koninklijke Brill NV. Leiden, 2006, 325.

¹⁵⁰⁶ The Duke was called by Russians in everyday life, as „Gertsog Liriiskii” (Duke of Liria). J. A. Limonov (ed.): *Rossii XVIII glazami inostrantsev. (Russia of the XVIIIth century by the eyes of foreigners.)* Lenizdat. Leningrad, 1989, 7.

¹⁵⁰⁷ Rebecca Wills: *The Jacobites and Russia, 1715-1750*. Tuckwell Press Ltd. Edinburgh, 1994, 130.

¹⁵⁰⁸ The Duke described events from November 1727 to November 1730. Limonov op. cit. 7.

¹⁵⁰⁹ By those times, the independent foreign policy of Russia, its success, along with the favorable international situation, helped Russian diplomacy to strengthen the international position and prestige of the Russian Empire. S. B. Okun': *Istoriia SSSR. Lektsii. Chasty I. (The history of the USSR. Lectures. Part I.)* Izdatel'stvo Leningradskogo Universiteta. Leningrad, 1974, 76.

¹⁵¹⁰ Gertsog Liriiskii: *Zapiski o prebyvanii pri imperatorskom rossiiskom dvore v zvanii posla korolia ispanskogo. (Duke Liriiskii: Notes on the stay at the imperial Russian court in the rank of ambassador of the king of Spain.)* In: Limonov op. cit. 189-535.

¹⁵¹¹ Limonov op. cit. 8.

¹⁵¹² Györffy op. cit. 9.

¹⁵¹³ Spying, just like war, is a historical phenomenon that is obviously, evaluated in its own way, in different eras. With time, the meaning of the secret service itself has changed, as well, caused by the changes in interpretation of such notions, as state or military secret. Tamás Bolyki (ed.): *A világ leghírhedtebb titkosszolgálatai. (The world's most notorious secret services.)* 2010 alapítvány. Budapest, 1999, 7.

¹⁵¹⁴ „To spy for the interests of the motherland: honor, patriotism, noble deed. To think for the motherland, sacrifice our live for the homeland, without batting an eyelid: duty. To betray the motherland: dishonesty.” Árpád Botár: *A láthatatlan handsereg. Kémek, árulók, merénylők. (The invisible army: spies, traitors, assassins.)* Zrínyi Katonai Kiadó. Budapest, 1990, 3.

the sending state and tacitly accepted by the receiving state, was considered, as an inherent element of diplomatic relations, firmly instituted in customary international law.

The World War II, above the other international conflicts, was also the war of intelligence, as well, plenty of dramatical events. Intelligence played an essential role in each arena and in every conflict of the war.¹⁵¹⁹ The legal practice of states, regarding intelligence activity, was amply consistent until the World War II, according to which, diplomatic agents were allowed to travel in the entire territory of the host country. There were only some exceptions of specifically designated strategic areas.¹⁵²⁰

In connection with the secret diplomacy all through the Second World War, there are well known the stories of British diplomatic couriers, who arrived to the provincial cities of Yugoslavia with diplomatic bags, stuffed with weapons, instead of diplomatic mail. These scandals resulted in an explosion of a suitcase, brought from Sofia to Istanbul, in a hotel. The incident was officially attributed to enemy sabotage, but journalists' circles claimed that the infernal machine was in the luggage of a British diplomat, who was, actually, an intelligence agent.¹⁵²¹

In the course of the major war, a number of (mostly undisclosed) organizations was created in Great Britain, with the aim to expand their networks of secret agents in other countries. The British Foreign Office has restored the so-called „PID” – the Political Intelligence Department, which functioned during the First World War. The department was led by Sir Reginald („Rex”) Leeper, who later, during the campaign against the Greek patriots in 1944, was appointed the British Ambassador in Greece.¹⁵²² „PID” was engaged in secret intelligence activities in all countries that have already participated or by all accounts should have been sooner or later take part in the war.¹⁵²³ These were special employees of the British Embassy, exempt from normal duties, occupied only with collection, collation and systematization of materials, covering all aspects of life in the countries, where they worked.¹⁵²⁴

In addition, as stated by Bucar and Parker, the U. S. intelligence leaders used the alliance, established between the Soviet Union and the United States during the war, in order

¹⁵¹⁹ Michael Goodman: Kémek a második világháborúban. (*Spies in World War II.*) A BBC History Különszáma: A kémek titkos története. Az ókortól a terror elleni háborúig. Kossuth Kiadó Zrt. 2016, 64-66.

¹⁵²⁰ Kish op. cit. 59.

¹⁵²¹ Parker–Bucar op. cit. 12.

¹⁵²² Leeper was also recognized, as the founder of the British Council.

¹⁵²³ The „Russian Affairs Secretariat” of the British Foreign Office, created during the war, was the basic organization of the British Foreign Office, which provided the „experts on Russian affairs”. The „Russian” or „Slavic” Secretariat, allegedly, had its representatives in Moscow and in almost all Eastern European capitals, as well as in Helsinki and in South Korea. Ibid.

¹⁵²⁴ Parker–Bucar op. cit. 38-54.

diplomat found it difficult to function at the British Embassy, in line for to the snobbery of diplomatic circles, but the bigger problem was his secret homosexuality, which was penalized at the time, both in Great Britain, and in the Soviet Union, with imprisonment. In 1954, being invited to a party, Vassal had the opportunity to drink much alcohol and meet several men. Soon after the bash, he was shown the compromising photographs, made at the event, and was blackmailed to work for the Soviet intelligence. The diplomat had been providing the Soviets with information, related to British military data until 1956, when he returned to London. Vassal continued to work for KGB until 1961, when he was discovered and sentenced for 18 years, eventually, released after 10 years in prison.¹⁵³¹

In situations of escalation of a conflict in bilateral relations, or when an intelligence agent gets caught at espionage, a round of mutual expulsion takes place, as it happened during the years of Cold War between the United States and the Soviet Union or as it happens from time to time between India and Pakistan. There are cases, when embassy-based espionage incidents emerge between friendly states, and then the agents in question are expelled „*without fanfare*”. Therefore, the use of embassies for intelligence collection is a „*normal activity, much more widespread than at first sight*”¹⁵³² and the most of substantial diplomatic systems host such covert officials. Intelligence agents function within an embassy under special internal procedures and answerable to the ambassador only in a limited way.

Intelligence systems deliver similar „end-product”, as embassies, i. e. information and forecasts of international affairs, the difference is in the operational methods, used by intelligence officials, because they also involve secret agents, as sources, which rationalizes the clandestine way of their mode of operation. (Ambassadors are customarily given special instructions on the limited supervision of intelligence officials. Typically, agents do not disclose the operational aspects of their work to ambassadors, but are expected to share with them the obtained hard information.)¹⁵³³

In the course of the Cold War, bugging of embassies was an established practice.¹⁵³⁴ In the 1950s, the American Embassy in Budapest was monitored by every lawful means, and also intelligence tools by ÁVÓ,¹⁵³⁵ the secret police of Hungary, trying to inspect the Embassy staff,

¹⁵³¹ Michael Goodman: Moszkvának dolgoztak. (*Worked for Moscow.*) A BBC History Különszáma: A kémek titkos története. Az ókortól a terror elleni háborúig. Kossuth Kiadó Zrt. 2016, 116.

¹⁵³² Rana: The 21st Century Ambassador... 151.

¹⁵³³ Rana: The 21st Century Ambassador... 150-152.

¹⁵³⁴ Dániel Litván: Trükkök tárháza. (*The warehouse of tricks.*) A BBC History Különszáma: A kémek titkos története. Az ókortól a terror elleni háborúig. Kossuth Kiadó Zrt. 2016, 13.

¹⁵³⁵ ÁVÓ – the State Security Department, was established in Hungary in early 1945th, later re-named into ÁVH - the State Security Authority. David Irving: Uprising! Hodder and Stoughton Limited. London, 1981, 48, 53.

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.¹⁵³⁹

The CIA agents mostly operated abroad, under the auspices of the U. S. Embassies and trade missions. The secret service agents usually were indicated in diplomats' roster, as attachés.¹⁵⁴⁰ 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 Union¹⁵⁴¹ during the period of the Cold War.¹⁵⁴² (There was established a division within the intelligence community of the United States, called Office of Soviet Analysis – SOVA¹⁵⁴³ that studied and evaluated the political situation in the Soviet Union.)¹⁵⁴⁴

In 1964, it found out that the American Embassy in Moscow had been bugged by the Committee of State Security of the Soviet Union (KGB). The American counterespionage and security specialists determined that the equipment was installed back in 1952, when the building had been renovated by Russians. Regarding FBA's activity, it operated a wiretap program against numerous foreign embassies in Washington, mostly of former socialist countries. Certain embassies of non-socialist countries had their phones tapped, too, especially, when their nations were engaged in negotiations with the U. S. Government or during important developments in these countries.¹⁵⁴⁵

Despite its diversities, intelligence¹⁵⁴⁶ has a distinctive status and all states recognize it, as a permanent part of their apparatus.¹⁵⁴⁷ For example, in the United States, the Bureau of

¹⁵³⁹ The station usually was housed in a United States Embassy, in the capital city, while CIA bases were in other major cities, sometimes on American or foreign military bases. As an example, the CIA's largest station in West Germany was located in Bonn and the chief of station was a member of staff of the American embassy. Victor Marchetti–John D. Marks: *The CIA and the Cult of Intelligence*. Dell Publishing Co., Inc. New York, 1974, 87.

¹⁵⁴⁰ Tamás Bolyki (ed.): *A világ leghírhedtebb titkosszolgálatai. (The world's most notorious secret services.)* 2010 alapítvány. Budapest, 1999, 89.

¹⁵⁴¹ Witiw remarks that historically, the United States and the Soviet Union have tolerated a certain amount of espionage. Eric Paul Witiw: *Persona non grata: Expelling diplomats who abuse their privileges*. New York Law School Journal of International and Comparative Law. Vol. 9, 1988, 348.

¹⁵⁴² The period of the Cold War ended in 1989-1991 with arousal of a new international order. B. J. C. McKercher: *The international order and the new century*. In: McKercher op. cit. xv.

¹⁵⁴³ Michael R. Beschloss–Strobe Talbott: *At the highest levels: the inside story of the end of the cold war*. Little, Brown&Company. New York, 1994, 142.

¹⁵⁴⁴ The Office of Soviet Analysis was directed by George Kolt. Ibid.

¹⁵⁴⁵ Beschloss–Talbott op. cit. 186-214.

¹⁵⁴⁶ Secrecy is intelligence's trademark – the basis of its relationship with government and its own self-image. Michael Herman: *Intelligence Services in the Information Age. Theory and Practice*. Frank Cass Publishers. London, 2005, 13.

¹⁵⁴⁷ Herman op. cit. 12.

Pamela Harriman (allegedly, „*privately fumed as well*”) was summoned by the French to receive an official protest.¹⁵⁵⁵ The French counterintelligence officials learnt in short time about the network of CIA officers, operating against them and the operation was quickly unraveled. The French part, breaching the traditional protocol, did not expel the four accused spies, working under diplomatic cover, as the phrase goes, for activities, „incompatible with their diplomatic status” and raised an uproar over the fact of spying. The publicity posed questions, asking whether spying on allies for economic data is a worthy pursuit for the CIA or whether its operatives should better concentrate on the activities of terrorists and other deep political secrets abroad.¹⁵⁵⁶

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.¹⁵⁵⁷ 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.)¹⁵⁵⁸

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.¹⁵⁵⁹ By the time of the incident, Ethiopia expelled more than 40 Eritrean diplomats and local staff of the Embassy of Eritrea in Addis Ababa.¹⁵⁶⁰

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

¹⁵⁵⁵ James Risen: Downplayed by CIA, Paris Incident Has Wide Impact: France: Economic spying affair faded quickly from news. Officials now admit it severely hampered agency. Los Angeles Times. 11 October, 1995. (Accessed on 9 April, 2016.) http://articles.latimes.com/1995-10-11/news/mn-55816_1_cia-officials

¹⁵⁵⁶ Tim Weiner: C.I.A. Confirms Blunders During Economic Spying on France. The New York Times. 13 March, 1995. (Accessed on 9 April, 2016.) <http://www.nytimes.com/1996/03/13/world/cia-confirms-blunders-during-economic-spying-on-france.html>

¹⁵⁵⁷ Barbara Gamarekian: The Thaw of Glasnost Warms Social Circuit. New York Times, B6, col. 1. 15 March, 1989.

¹⁵⁵⁸ Bill Keller: Moscow Expels Attaché in Response to „Provocation”. New York Times, A14, col. 1. 15 March, 1989.

¹⁵⁵⁹ Ethiopia expels Eritrean envoy. BBC News. 10 February, 1999. (Accessed on 9 April, 2016.) <http://news.bbc.co.uk/2/hi/africa/276351.stm>

¹⁵⁶⁰ A Chronology of the Crisis Between Eritrea and Ethiopia: 1988-1999. DEHAI – Eritrea online. (Accessed on 9 April, 2016.) <http://www.dehai.org/conflict/articles/chronology.html>

Foreign policy intelligence is a sector of political intelligence activity, related to assurance of foreign policy activity of a state in general and its bodies, serving the area of foreign relations.¹⁵⁶⁸ State secret – particularly protected information of various kinds, provided in special lists, which is important for defense interests of state, the transfer of which to the disposal of foreign countries can objectively harm those interests.¹⁵⁶⁹

On May 12, 2011, Colonel Vadim Leiderman, the military attaché of Israel was detained in Moscow on suspicion of espionage. According to the Federal Security Service of the Russian Federation, the diplomat, actually, was a career intelligence officer, who tried to obtain data on military-technical cooperation and assistance of Russia to a number of Arab states and CIS countries. Israeli media, citing a source in the Foreign Ministry, reported on the „*symmetrical*” expulsion of the military attaché of the Russian Embassy.¹⁵⁷⁰ The diplomat left Russia within 48 hours, being declared *persona non grata*. As it was stressed by the Israeli Ministry of Defense, the charges against Leiderman, related to accusation of spying, were unfounded.¹⁵⁷¹

In August 2011, the Public Relations Center of the Federal Security Service of the Russian Federation reported that Gabriel Grecu, an employee of the Foreign Information Service – the Romanian intelligence service, who worked in the national Embassy, as First Secretary of the Political Department, was detained in Moscow, while trying to obtain secret information of military character from a Russian citizen. As a symmetrical response, the Romanian authorities declared Anatoliy Akopov, the First Secretary of the Russian Embassy in Bucharest *persona non grata*.¹⁵⁷²

In May 2013, Ryan C. Fogle, an American diplomat, was accused of spying and was told to leave Russia. Fogle was briefly detained first, by the Russian State Security Service and then was ordered to leave the country after being accused of trying to recruit a Russian counterterrorism officer to work, as an American agent, according to press.¹⁵⁷³ The Russian NTV channel broadcast the record of Fogle during the recruitment, wearing a blond wig. As it was reported by media sources, the Department of State of the United States confirmed that Fogle worked in Moscow, as an embassy employee, but would give no details about his job.

¹⁵⁶⁸ Nikitchenko op. cit. 244.

¹⁵⁶⁹ Nikitchenko op. cit. 323.

¹⁵⁷⁰ Artur Priimak–Mikhail Moshkin: „Posleduiut i drugie deistviia.” („*Other actions will follow.*”) Vzgliad. 21 October, 2014. (Accessed on 8 January, 2016.) <http://vz.ru/politics/2014/10/21/711521.html>

¹⁵⁷¹ Voennogo attashe Izrailia vyslali za promyshlennyyi shpionazh. (*The military attaché of Israel was expelled for industrial espionage.*) Lenta.ru. 19 May, 2011. (Accessed on 8 April, 2016.) <https://lenta.ru/news/2011/05/19/attache1/>

¹⁵⁷² Romania-Russia Tensions Escalate Over Spy Scandal. Novinite. 18 August, 2010. (Accessed on 8 January, 2016.) <http://www.novinite.com/articles/119287/Romania-Russia+Tensions+Escalate+over+Spy+Scandal>

¹⁵⁷³ Ryan Fogle leaves Russia after being accused of operating, as CIA spy. The Guardian. 19 May, 2013. (Accessed on 8 January, 2016.) <http://www.theguardian.com/world/2013/may/19/ryan-fogle-russia-cia-spy>

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.¹⁵⁷⁹ However, a spy scandal does not necessarily lead to the expulsion of embassy staff – such situations occur in case of strained relations between the two countries.

Transparency has been for a long time a rare commodity in international affairs, as formulated by Larkin. Governments, nongovernmental organizations, journalists can now make use of a large amount of open-source information, drawn from commercial surveillance satellites, drones, smartphones and computers, to reveal hidden activities in contested areas. In the next decades the explosion of surveillance sensors and data analytics, driven by the market, will bring an unprecedented level of transparency¹⁵⁸⁰ to global affairs.¹⁵⁸¹ (The threat of drone¹⁵⁸² surveillance,¹⁵⁸³ midair collisions and even terrorist attacks created a new market for systems that can detect and disrupt drones.)

Transparency will weaken strategies that rely on secrecy, even in case that they are legitimate. It will become riskier for states to dispatch military forces, spies or diplomats in secret. Transparency may also spoil sensitive diplomatic negotiations or intelligence relationships, which can not survive „in the open”.¹⁵⁸⁴

At the same time, since the revelations¹⁵⁸⁵ of Snowden, it became evident that terrorist networks increasingly use encryption software to send messages and the security services are not very successful so far to decode such messages. This state of affairs clearly demonstrates that security authorities are only at the early stages of searching for answers to these technical innovations, thus facing a substantial obstacle to their investigative work.¹⁵⁸⁶

¹⁵⁷⁹ At time of the height of the Cold War, „*Moscow and Washington periodically cleaned out each other's spy networks.*” Craig R. Whitney: 5 Americans Are Called Spies By France and Told to Leave. 23 February, 1995. The New York Times. (Accessed on 19 January, 2016.) <http://www.nytimes.com/1995/02/23/world/5-americans-are-called-spies-by-france-and-told-to-leave.html?pagewanted=all>

¹⁵⁸⁰ Global transparency has been a goal of the U. S. foreign policy since at least 1918, when President Woodrow Wilson called for an end of secret diplomatic agreements in his Fourteen Points. Larkin op. cit. 137.

¹⁵⁸¹ Sean P. Larkin: The Age of Transparency. International Relations Without Secrets. Foreign Affairs. Vol. 95, No 3. May-June 2016, 136.

¹⁵⁸² Cronin claims that drone strikes must be legally justified, transparent and infrequent. Audrey Kurth Cronin: Why Drones Fail. In: Foreign Affairs. Vol. 92, No 4, July-August 2013, 54.

¹⁵⁸³ Drone strikes are a necessary instrument of counterterrorism, at the same time, a drone strike may violate the local state's sovereignty. Still, drone warfare is likely to expand in the years to come. Daniel Byman: Why Drones Work. Foreign Affairs. Vol. 92, No 4, July-August 2013, 32-34.

¹⁵⁸⁴ Larkin op. cit. 144-146.

¹⁵⁸⁵ Many top officials in Washington seem to think that reporting a crime should be a crime, at least in the case of Snowden, according to Hertsgaard. Mark Hertsgaard: Whistle-blower, beware. International New York Times. 27 May, 2016, 7.

¹⁵⁸⁶ Kristina Eichhorst: The Return of the Terror Tourists. International Reports. The Globalization of Terrorism. Konrad-Adenauer-Stiftung E.V. Berlin, 2016/1, 60-61.

detection. In modern practice it was rare, even during wartime for states, maintaining diplomatic relations to block or overtly to claim the right to censor diplomatic communications.¹⁵⁸⁹

In the long run, diplomacy and espionage were considered in the past, as some interrelated and inseparable professions. Illicit intelligence, the espionage is incompatible with the functions of diplomatic missions – this is a generally recognized rule of international law. It does not weaken, rather strengthens this rule that it had been many times and repeatedly transgressed.¹⁵⁹⁰

On the subject of suggested solutions, the reevaluation of the receiving state's domestic procedure must effectively restrict the diplomat's license to commit espionage, which would involve a change in existing laws to deny immunity in cases, where diplomatic members abused their privileges and immunities. The amendment should clearly posit that espionage is not a proper diplomatic function. The other possible remedy might be through the use of unilateral reservations to any future treaties, which may be connected to the matter of diplomatic immunity.¹⁵⁹¹

Treaty enforcement via adjudication could provide an appropriate international solution, in opinion of Ward. In case, a receiving state believed that a foreign diplomat was engaged in espionage, such an injured state could pursue its course of action in the international forum. The applied principle would be that the sending state has violated the terms by not acting in good faith.¹⁵⁹² As a result, criminal penalty could revoke the existing diplomatic license for espionage, force the diplomatic community out of clandestine collection and restore diplomacy to the role, which it was designed for.¹⁵⁹³

V. 3. Freedom of diplomatic movement

The sufficient exercise of diplomatic functions requires general recognition of several diplomatic freedoms, such as freedom of movement and freedom of communication, which are inter-reliant freedoms, being developed in parallel, and they complement each other.¹⁵⁹⁴

Before the adoption of the Vienna Convention, the customary international law on movement of diplomatic agents was diverse and even controversial. Several states argued the

¹⁵⁸⁹ Denza op. cit. 212.

¹⁵⁹⁰ Ustor op. cit. 117.

¹⁵⁹¹ Ward op. cit. 667-670

¹⁵⁹² An other bilateral method of litigation, as alternative remedy, could be arbitration.

¹⁵⁹³ Ward op. cit. 671.

¹⁵⁹⁴ Kish op. cit. 64.

Army,¹⁶⁰⁴ which was one of the large-scale military operations of strategic importance, during the World War II,¹⁶⁰⁵ took place on 6 June, 1944.)¹⁶⁰⁶

Hence, the common freedom of diplomatic communication operated only in times of peace. The receiving states severely restricted diplomatic communication during the World War II that is why it happened that the United Kingdom suspended all diplomatic communication before the Normandy Invasion,¹⁶⁰⁷ despite of the fact that in 1944, the war came to its final phase already.¹⁶⁰⁸

With reference to the role of diplomatic agents in wartime, many suppose that diplomats and warriors are opposites. In certain aspects they are: military officers are precise, definite, enthusiastic persons, while diplomats – also officers of diplomatic or foreign service – subtle, cautious, used to dealing with ambiguities. According to the common view, diplomats work for peace, whereas soldiers practice war, and so the two do not have much in common. This is not accurate, for diplomats and warriors are, or should be, part of the same foreign policy: „*one does not make sense without the other*”.¹⁶⁰⁹ Subsequently, diplomacy should not be divorced from war.

Well along, the start of the Cold War resulted in a fundamental change in practice of states, related to movement of diplomatic agents. In 1948, the Soviet Union, along with certain other East European states, imposed restrictions on the movement of Western diplomats beyond the areas of capital cities.¹⁶¹⁰ In January 1952, the Soviet Union introduced such restrictions, as 50 kilometers around Moscow, and this distance was adjusted to 40 kilometers in 1953. This was one of the most extensive imposed travel limitations on record, since the Soviet Government converted eighty percent of the area of the Soviet Union into a forbidden zone, including incidentally, the capitals of Ukraine and Belorussia. The ban was reduced in extent in 1974 and again, later.¹⁶¹¹

¹⁶⁰⁴ In the summer of the Normandy landings, the military situation of the Wehrmacht was rather bad already. Therefore, after the invasion, Hitler, while preparing a strike on Franco-American troops, decided to deploy the Empire's secret weapon, involving German diplomats. The plan was to conclude through diplomatic negotiations (extortion, in fact) the anti-Soviet agreement with the government of the United States and Great Britain. G. L. Rozanov: *Titkos diplomácia: 1944-1945. (Secret diplomacy: 1944-1945.)* Kossuth Könyvkiadó. Budapest, 1985, 16.

¹⁶⁰⁵ I. N. Zemszkov: *A második front diplomáciai története. (Diplomatic history of the second front.)* Kossuth Könyvkiadó–Kárpáti Könyvkiadó. Budapest, 1984, 256-257.

¹⁶⁰⁶ Sándor Pirityi: *Óceánok, flották. (Oceans, fleets.)* Zrínyi Katonai Kiadó. Budapest, 1973, 14.

¹⁶⁰⁷ Zemszkov op. cit. 64.

¹⁶⁰⁸ Faluhelyi: *Államközi...* 144.

¹⁶⁰⁹ Roskin–Berry op. cit. 292.

¹⁶¹⁰ Kish op. cit. 59.

¹⁶¹¹ Glahn op. cit. 463.

reputation of foreign sovereigns and their envoys ought to be respected and protected, originates from the period of classical international law. At those times, the dignity of the envoy was the prime consideration and a number of European codes strictly punished such offenses.)¹⁶¹⁷

Measures of method of direct coercion could not be used in case of a diplomat. However, this principle does not exclude measures of self-defense or application of other measures, in exceptional situations, intended at prevention of a crimes, committed by diplomatic agents.

The receiving state has to provide the inviolability of diplomatic premises¹⁶¹⁸ and to investigate the cases of attacks on them, punishing the persons, who violated diplomatic immunity. The receiving state has the right to investigate the offenses, committed on its territory, including those in premises of diplomatic missions. In practice, this right is limited by certain factors.

The inviolability of the premises (along with other immunities of a diplomatic mission) does not allow the investigations, performed by local authorities, the use of coercive measures,¹⁶¹⁹ and other, relevant actions, conducted within the premises of the mission without the expressed permission of the head of mission.

Furthermore, in line with the privilege of a diplomatic mission to organize its internal life at its own discretion, local authorities, exercising their jurisdiction shall not intervene in matters, pertaining wholly to the domestic jurisdiction of the foreign diplomatic representation. The cases from practice in this area show that that the question of responsibility arises, when the state incited itself the violation of the inviolability of diplomatic premises and failed to prevent the violation of their inviolability.

The inviolability of the premises of diplomatic missions, at the same time, creates possibilities for abuse from the part of the sending state. To prevent such cases, the Vienna Convention has a provision, which establishes that the premises of the mission must not be used for purposes, incompatible with the functions of the representation.¹⁶²⁰

In this way, premises shall not be used, as storage spaces for objects, not compatible with the functions and goals of the diplomatic mission, for example, weapons, armaments, drugs, intelligence technology, also the premises can not be used for commercial purposes.

¹⁶¹⁷ Deák op. cit. 251.

¹⁶¹⁸ Vienna Convention. Article 22(1).

¹⁶¹⁹ Doc. cit. Article 22(2).

¹⁶²⁰ Doc. cit. Article 41(3).

which was returned with a blow with an other umbrella. The two gentlemen eventually had a fight, and there were two witnesses of the battery. Salmon, being a person of a public character at the time, when the offence was committed, was entitled to all immunities of a foreign minister. In this case, it has been noted that a neglect or refusal to perform the duty of the United States to afford redress for the violation of privileges and immunities of foreign ministers, which are consecrated by the practice of the civilized world, might lead to retaliation upon the ministers. The opinion of the court, delivered on 16 March, 1826, found Ortega guilty.

There were situations of clashes in history, fueled by ethnic intolerance and religious fanaticism, when diplomats became victims of such events. In January 1829, a fanatical group of „defenders of the Islamic faith”, broke into the territory of the Russian Representation in Tehran and killed everyone, who happened to be there. This event went down in history, as the „massacre in the Russian Embassy in Tehran” – the mass murder of the personnel of the Russian Embassy by Islamic fanatics. During the massacre was also killed the Head of the diplomatic mission, Alexander Griboedov,¹⁶²⁹ accused by the fanatics of aiding the apostates from Islam, who found refuge in the embassy premises.¹⁶³⁰

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,¹⁶³¹ presented to Nikolai I, the Czar of Russia, in respect of the shed blood. Eventually, the incident did not cause serious complications in the relations between Russia and Persia.¹⁶³²

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*”¹⁶³³ before the British Embassy in Berlin. The small force of police, sent to guard His Majesty’s Embassy was soon overpowered and the situation became more threatening. The demonstrators crashed the windows of the embassy

¹⁶²⁹ Alexander Griboedov was also a composer, writer, poet, and playwright, who wrote the famous „Woe from Wit” in 1823. Griboedov had married three months before his diplomatic assignment, and his pregnant wife, Nina lost her baby, having learnt about the tragedy. Y. Hechinov: Zhizn’ i smert’ A. Griboedova. (*Life and death of A. Griboedov.*) Nauka i Zhizn’. No. 4, April 2016. (Accessed on 10 April, 2016.) <http://www.nkj.ru/archive/articles/3687/>

¹⁶³⁰ Petrik op. cit. 128.

¹⁶³¹ The gifts included the famous 88,7 carat diamond „Shakh” – one of the most precious stones in the world, which shines today in the collection of the State Diamond Fund of the Russian Federation in the Kremlin, Moscow.

¹⁶³² Mikhael Katz: Neprikosновенnoe litso gosudarstva. (*The inviolable person of state.*) LiveJournal. 10 November, 2015. (Accessed on 29 March, 2016.) <http://mikhaelkatz.livejournal.com/65739.html>

¹⁶³³ Great Britain, Foreign Office: Collected Diplomatic Documents Relating to the Outbreak of the European War. H. M. Stationery Office, Harrison and Sons Printers. London, 1915, 112.

A special penalty is to be paid, when someone commits a derogatory act towards diplomatic dignity, as it happened in *Frend v. United States*¹⁶⁴⁴ in 1938, when a conviction was upheld under a Congressional Resolution,¹⁶⁴⁵ which prohibited the display of any flag, banner placard or device within five hundred feet of an embassy in the District of Columbia,¹⁶⁴⁶ made or adapted for the purpose of intimidation, coercion or bringing into public disrepute any diplomatic representative. Placing placates of threatening nature was considered, as a mere insult, since there was no offence made under ordinary criminal law. In the case all four defendants „*flagrantly violated*”¹⁶⁴⁷ the terms of the resolution,¹⁶⁴⁸ since at the time of the arrest, each of the violators was parading in the public streets, in front of the Austrian or the German Embassy, in the company of other persons, some of whom were carrying banners or placards inscribed with language, the repetition of which was intended to bring into contempt the German Government.

The plan of this congregation of people with „*opprobrious signs and songs*”¹⁶⁴⁹ 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.¹⁶⁵⁰ 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*”.¹⁶⁵¹

Similarly to warfare, when the bearers of flags of truce were considered as sacred persons, during the times of peace ambassadors, charged with friendly national intercourse, are objects of special respect and protection, each according to the rights that belong to his rank and station. Therefore, under international law, every government had to take all reasonable precautions to prevent the performing of acts which the Congressional Resolution makes unlawful. In this course, the Government of the United States was responsible to foreign nations for all violations by the United States of their international obligations. This responsibility

¹⁶⁴⁴ *Frend et al. v. United States*. 100 F.2d 691 (D.C. Cir. 1938).

¹⁶⁴⁵ 52 Stat. 30, 22 U. S.C.A. §§ 255a, 255b.

¹⁶⁴⁶ The same rule applies to legations and consulates, as well as their representatives in the District of Columbia. *Ibid.*

¹⁶⁴⁷ U. S. Court of Appeals for the District of Columbia Circuit - 100 F.2d 691 (D.C. Cir. 1938). No. 7198. Decision as of 31 October, 1938, 2.

¹⁶⁴⁸ 52 Stat. 30, 22 U. S.C.A. §§ 255a, 255b, 2.

¹⁶⁴⁹ U. S. Court of Appeals for the District of Columbia Circuit No. 7198, 2.

¹⁶⁵⁰ D.C.Code 1929, T. 6, § 5.

¹⁶⁵¹ U. S. Court of Appeals for the District of Columbia Circuit No. 7198, 3.

The attacks on diplomatic agents illustrate the fact that states breach their international legal obligation to protect diplomatic premises and diplomatic personnel, enshrined in the Vienna Convention.¹⁶⁵⁵ 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.¹⁶⁵⁶

In China, during the first chaotic year of the 1966-1970 Cultural Revolution, when the Foreign Ministry was taken over by the Red Guards, foreign embassies became a target for xenophobia. This was a serious test for the diplomatic corps. Stone-throwing demonstrators besieged the embassies, among others, of East Europe, Mongolia, Burma and India, but did not cross the property line into physical violation of the embassy. In August 1967, the demonstrators burnt the British mission and other embassies watched this helplessly, sheltering fellow diplomats, who jumped over walls to seek temporary respite, and tried to provide help in other ways. The diplomats from the Soviet Union and India were declared *persona non grata* and the diplomatic corps, decided to show solidarity by seeing them off to the airport, getting through the political groupings and braving the demonstrating crowds of Red Guards.¹⁶⁵⁷

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*.¹⁶⁵⁸ The need to protect diplomats is grounded in the nation's interest in international relations and that diplomatic personnel are essential to conduct the international affairs. It is also admitted here that „*protecting foreign emissaries has a long history and noble purpose*”, accentuating that „*nations should treat and hold intercourse together, in order to promote their interests, -- to avoid injuring each other, -- and to adjust and terminate their disputes.*”¹⁶⁵⁹

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.¹⁶⁶⁰ 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.¹⁶⁶¹ The protection, provided by the receiving

¹⁶⁵⁵ Vienna Convention. Article 22.

¹⁶⁵⁶ Ola Engdahl: Protection of Personnel in Peace Operations. Martinus Nijhoff Publishers. Leiden, 2007, 126.

¹⁶⁵⁷ Sharp-Wiseman op. cit. 136.

¹⁶⁵⁸ *Boos v. Barry* (No. 86-803), 485 U. S. 312 (1988).

¹⁶⁵⁹ Ibid.

¹⁶⁶⁰ Demin op. cit. 117-122.

¹⁶⁶¹ Vienna Convention. Article 37.

require a reinterpretation of what is appropriate protection in modern times.¹⁶⁶⁹ Due to the fact that the Convention does not specify „all appropriate steps”¹⁶⁷⁰ of protection, the receiving states chose the procedures of protection according to their domestic laws, sometimes, applying measures of protection, which could not be right under other circumstances.¹⁶⁷¹

The Vienna Convention does not specify, who may not arrest or detain a diplomatic agent, therefore it is accepted that the host authorities take all the necessary safety measures to protect diplomatic officers. Minnaar points out that the „protection”, implied by the Convention, referred more to the provision of safety and security in times of civil unrest,¹⁶⁷² also armed insurrection and mob violence or rioting.¹⁶⁷³ Hence, at the time, when the Convention was signed, the high level of crime was not such issue it became in the 1990s, so the extension of this protection would also include situations of terrorist attacks on diplomatic missions, kidnapping and hostage taking of foreign diplomats.¹⁶⁷⁴ Moreover, the international responsibility for protection of diplomatic officials „*remains the host state’s duty and its guilt, rather than innocence*”,¹⁶⁷⁵ and is assumed every time, when an attack occurs on embassy staff.

In April 1970, Ambassador of Germany Count Karl von Spreti was kidnapped by an armed group in Guatemala. The kidnapers 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.¹⁶⁷⁶

West Germany's leader, Willy Brandt, has denounced the murder, as an „*infamous murder*”. Brandt, in his letter, accused Guatemala’s Government of „*irresponsible behavior*” and „*doing virtually nothing*” to save Count von Spreti. After the incident, West Germany has recalled the remaining embassy staff from Guatemala. It was the second time, when a Central

¹⁶⁶⁹ Jovan Kurbalija: Is it time for a review of the Vienna Convention on Diplomatic Relations? DiploFoundation. 16 April, 2012. (Accessed on 15 April, 2016.) <http://www.diplomacy.edu/blog/it-time-review-vienna-convention-diplomatic-relations>

¹⁶⁷⁰ Vienna Convention. Article 22(2).

¹⁶⁷¹ Demin op. cit. 118.

¹⁶⁷² For example, the situation that arose in the American Hostages Case in 1979.

¹⁶⁷³ Anthony Minnaar: Protection of foreign missions in South Africa. *African Security Review*. Vol. 9, No 2, 2000, 68.

¹⁶⁷⁴ Petrik op. cit. 132.

¹⁶⁷⁵ Minnaar op. cit. 68.

¹⁶⁷⁶ V. I. Maiorov (ed.): *Mezhdunarodnoe publichnoe pravo. (International public law.) Praktikum. Izdatel’stvo IUURGU. Cheliabinsk, 2005, 27.*

ambassadors and members of the diplomatic staff.¹⁶⁸⁴ (Sabanin counted only seven cases of murder of diplomatic representatives during the nineteenth era until the first decades of the twentieth century.)¹⁶⁸⁵ Embassies are no longer considered to be the territory of foreign state that occupies them, despite of the articles of popular press reports.¹⁶⁸⁶

In modern conditions, the problem of physical, also informational, technical and other kinds of security of diplomatic missions is no less relevant, than in the past, especially, that the problem concerns all states. In this course, it is inevitable to pay attention to the cases of attacks of diplomatic premises in the present thesis, as well. This area of diplomacy is highly relevant for the purpose of the dissertation, since diplomatic buildings, such as premises and private residences are not attacked, as mere constructions, but with aim to harm diplomatic agents, which may be currently in or around them.

Consequently, it is only a matter of viewpoint, which inviolability to highlight – the one of embassy premises or of the diplomatic agents. What's more, if the attack is performed on a work day, this is directly affects the personal inviolability of the diplomatic agents, for they are, with high degree of certainty, may be in the building in question. In everyday practice, however, it is not that easy and clear to decide the question of the subject of inviolability, regarding attacks on diplomatic premises, which will be illustrated with the following examples, also elaborating on the means and solutions, related to the protection of diplomatic buildings.

In the 1950s, the situations when vandals threw rocks at the glass-walled Consulate of the United States in Frankfurt, created only a „*nuisance*”, before the event of 1959, when ten thousand Bolivians stoned the American Embassy in La Paz. The death of American personnel at Saigon and the growing threat of anti-American violence elsewhere forced the Department of State to increase the security of embassy buildings. As a result of involvement of the United States in Vietnam in mid-1960s, protesters attacked American embassies in Moscow, Bucharest, Sofia and other cities. The violence reached a new level when terrorists started to kill embassy employers, as it happened in an attack on the Saigon Embassy in 1965.

Terrorists continued to target the American embassies in the 1970s, with murderous assaults in Khartoum in 1973, Athens in 1974 and Kuala Lumpur in 1975. In 1976, Ambassador Francis E. Meloy was assassinated in Beirut. The previously mentioned crisis in Tehran in

¹⁶⁸⁴ O. A. Kolobov (ed.): *Diplomaticeskaja sluzhba: rossiiskii standart. (Diplomatic service: Russian standard.)* Ministerstvo Obrazovaniia Rossiiskoi Federatsii–Hizhegorodskii Gosudarstvennyi Universitet im. N. I. Lobachevskogo. Nizhnii Novgorod, 2008, 58.

¹⁶⁸⁵ Sabanin op. cit. 134.

¹⁶⁸⁶ Bederman op. cit. 211.

The disposition of a typical American Embassy is getting more classified and interesting around the third floor, where might be the political section, the military attachés. The most sensitive and secret offices are on the top floor, like the CIA station. (The electronics offices, such as the conventional communications room that transmits the embassy's reports to Washington, often encrypted, are on the top floor, not only to be close to their antennas, but also to give staffers time to destroy files and cryptographic machines, should the embassy be attacked.) The ambassador or deputy chief mission (DCM), whose office is likely to be on the third floor, represents the United States to the host government, conveying its wishes, requests, support or disapproval.¹⁶⁹²

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.*”¹⁶⁹³ The term of „terrorism”¹⁶⁹⁴ 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).¹⁶⁹⁵ It has been a practice of the international community to work out conventions for the suppression of international terrorist acts in general – by the League of Nations or with regard to individual types of terrorist acts – by the United Nations.¹⁶⁹⁶

Transnational terrorism¹⁶⁹⁷ has emerged, as a common challenge to states,¹⁶⁹⁸ including all great powers.¹⁶⁹⁹ Reisman points out that states, facing criminal activity in our time, including terrorism (cross-border flow of terrorists)¹⁷⁰⁰ and other forms of purposive political violence, acting alone, seem less and less be able to accomplish what is expected of them,

¹⁶⁹² Ibid.

¹⁶⁹³ Rana: *The 21st Century Ambassador*... 62.

¹⁶⁹⁴ Up till now, there is no clear, officially adopted and universal definition of the phenomenon of terrorism. Richárd Schneider: *Az ENSZ harca a terrorizmus ellen: az ENSZ terrorizmus-ellenes fellépése 2001. szeptember 28-ig, az 1373. számú BT-határozatig.* (*The UN fight against terrorism: anti-terrorism action by the United Nations until the Security Council Resolution No 1373 as of 28 September, 2001.*) *Biztonságpolitikai szemle*. Vol. 8:1. January-February, 2015. Corvinus Külügyi és Kulturális Egyesület. Budapest, 2015, 6.

¹⁶⁹⁵ Blishchenko–Zhdanov op. cit. 232.

¹⁶⁹⁶ Ibid.

¹⁶⁹⁷ See more on globalization of terrorism in: *Auslandsinformationen. Die Globalisierung des Terrorismus. (Globalization of terrorism.)* 32. Jahrgang, Ausgabe 1, 2016, 4-138.

¹⁶⁹⁸ 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 op. cit. 39.

¹⁶⁹⁹ T. V. Paul–James J. Wirtz–Michel Fortmann (eds.): *Balance of Power. Theory and Practice in the 21st Century*. Stanford University Press. Stanford. 2004, 363.

¹⁷⁰⁰ Richard N. Haass: *The Unraveling*. *Foreign Affairs*. Vol. 93, No 6, November-December 2014, 71.

the crime.¹⁷¹⁰ In addition, the state, in whose territory the person, who committed a crime against a protected person is present, has to either extradict or prosecute him, in accordance with its laws.¹⁷¹¹ The Convention does not specify the term period of the punishment, though.

The adoption of the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents demonstrates that diplomacy law is not a static branch of public international law, it is dynamically developing and has to address further questions that arise with time, such as protection of life of diplomatic agents.

Therefore, ensuring the security of persons, who enjoy diplomatic immunity in accordance with international law, rests primarily on the state of their stay (the receiving state). Many states have adopted special related laws, for example, in Russia, provisions, with respect to protection of foreign representatives are part of the actual Criminal Code, under the „Crimes against peace and security of mankind”.¹⁷¹² Nonetheless, states often violate the integrity of these privileged persons themselves.

The most famous case of modern times occurred in 1979, when the Iranian authorities made the diplomatic and consular personnel of the United States hostages. This case arose before the International Court of Justice out of the events, following the overthrow of the Shah,¹⁷¹³ during which the Embassy of the United States in Iran was occupied, its contents seized and its personnel held captive.¹⁷¹⁴

Considering the case with the American Embassy in Tehran, the International Court of Justice emphasized that there were not more important conditions for relations between countries, than the implication of diplomatic representatives and embassies. The Court found that Iran violated international law¹⁷¹⁵ and defined its responsibilities, as well as the obligation to pay damages. Simultaneously, the Court pointed out that the violation of the inviolability

¹⁷¹⁰ The Convention against Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents. Article 5(2).

¹⁷¹¹ Doc. cit. Article 7.

¹⁷¹² The Criminal Code of the Russian Federation. Special Part. Section XII. Chapter 34. Crimes against peace and security of mankind. Article 360: „*The attacks on persons or institutions that enjoy international protection.: 1. Assault of a representative of a foreign country or an employee of an international organization, who enjoys international protection, as well as of offices or residential premises, or vehicles of persons enjoying international protection, – shall be punished by imprisonment for a term not exceeding five years. 2. The same act, committed for the purpose of provocation of war or complication of international relations, – shall be punished by imprisonment for a term from three to seven years.*”

¹⁷¹³ Lord Templeman (ed.): Public International Law. Old Bailey Press Ltd. London, 1997, 136.

¹⁷¹⁴ Similar violations took place in the case of Consular missions of the United States.

¹⁷¹⁵ Many of the rules of sovereignty and multilateral diplomacy are not codified, still, when fundamental practices are violated, as in the seizure of the American Embassy in Tehran, disapproval is virtually universal. Robert O. Keohane: International Institutions: Two Approaches. In: International Studies Quarterly. Vol. 32, No. 3, 1988, 385.

country in the world can guarantee its safety against this violence.¹⁷²¹ Terrorist act is a socially dangerous criminal act in terrorism,¹⁷²² aimed at creation of conditions to influence international organizations, governments and their representatives, legal or physical persons, or groups of persons with the aim of forcing to perform or refrain from carrying out certain acts, committed by intimidation, with the intention to harm innocent people.¹⁷²³

The extremist activities in the world are immediate reaction to the rising internal conflicts in a society.¹⁷²⁴ There are diplomatic missions of certain countries, for example, the United States, the United Kingdom, Turkey and Israel, which are often a target to terrorist attacks, therefore need increased protection. From 2001 to 2007, the United States lost five ambassadors on duty, through acts of terrorism and assassination. Turkey is another nation that has gravely suffered from radicals, for example at the hands of Kurdish separatists, then at the end of 2003, because of terrorists, linked with Al Qaeda.¹⁷²⁵

In recent decades the number of all kinds of terrorist organizations and groups in the world has significantly increased. Their activity is often directed against diplomatic and consular missions. Abduction and murder of diplomatic servants – independently from their diplomatic rank, attacks on diplomatic premises, seizure of buildings and explosions have become frequent. It has to be asserted at this point of the dissertation, again, that from the point of view of diplomacy law and diplomatic privileges and immunities, there is no difference between diplomats in terms of their rank. Either the attack was committed against a head of representation (ambassadors) or a diplomatic agent, both of them enjoy the same level of inviolability and protection. The following, more than a few examples, presented in chronological order in the rest of this section, are chosen to demonstrate the state of affairs, when diplomatic rank had no significance from the part of perpetrators, in the course of numerous terrorist attacks, planned and committed against diplomatic officers.

In 1975, in Beirut, Lebanon, there was created another Armenian terrorist organization (ASOA), with its headquarters in Damascus. Within six months of its existence, ASOA

¹⁷²¹ Mehriban Alijeva: Örmény terrorista szervezetek Azerbajdzsán ellenes tevékenysége. (*The anti-Azerbaijan activity of Armenian terrorist organizations.*) Karabah tényei és valósága. (*Facts and reality of Karabakh.*) Hejdar Alijev Alapítványa. Baku, 2006, 1.

¹⁷²² Terrorist acts, committed by civilians, have become an instrument of international influence, with global consequences. Nataliya Dryomina-Volog: A human being – a value, instrument or subject of international policy? In: S. V. Kivalov (ch. ed.): Al'manakh mezhdunarodnogo prava. Vypusk 1. „Feniks”. Odessa, 2009, 53.

¹⁷²³ V. F. Antipenko: Mezhdunarodnoe antiterroristicheskoe pravo v usloviakh global'nogo krizisa. (*International antiterrorist law in times of global crisis.*) In: S. V. Kivalov (ch. ed.): Al'manakh mezhdunarodnogo prava. Vypusk 1. „Feniks”. Odessa, 2009, 21.

¹⁷²⁴ Elemír Nečej–Vladimír Tarasovič: Extremism vs. Armed forces. Panorama of global security environment. Centre for European and North Atlantic Affairs. Bratislava, 2012, 680.

¹⁷²⁵ Rana: The 21st Century Ambassador... 62.

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.¹⁷³³ On 8 July, 1978, in Paris, members of the organization „New Armenian Resistance”,¹⁷³⁴ assassinated an attaché of the Turkish Embassy.

On 8 July, 1979, in Paris terrorists of JCAG produced an explosion in the building of the Turkish labor attaché. On 8 November, 1979, an explosion, produced by ASALA, destroyed the building of the Turkish Embassy, in Rome.¹⁷³⁵ 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.”¹⁷³⁶

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.¹⁷³⁷ 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.¹⁷³⁸

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

¹⁷³³ ASALA napominaet o sebe: chto stoit za ugrozami armianskih terroristov? (*ASALA reminds itself: what is behind the threats of Armenian terrorist?*) INewz.az. 22 August, 2012. (Accessed on 15 May, 2016.) <http://www.1news.az/analytics/20120822120023634.html>

¹⁷³⁴ Armenia, located at the intersection of conflicting interests and aspirations of two-three empires, had lost its national independence and state identity at the end of the XIV century. The Armenians never gave up on the desire to re-create their own independent state or seek some autonomy. K. S. Gadzhiev: *Geopolitika Kavkaza. (The geopolitics of the Caucasus.)* „Mezhdunarodnye otnosheniia.” Moskva, 2003, 120.

¹⁷³⁵ Mustafaeva–Sevdimaliev–Aliev–Iylmaz op. cit. 175-177.

¹⁷³⁶ ASALA napominaet o sebe: chto stoit za ugrozami armianskih terroristov? (*ASALA reminds itself: what is behind the threats of Armenian terrorist?*) INewz.az. 22 August, 2012. (Accessed on 15 May, 2016.) <http://www.1news.az/analytics/20120822120023634.html>

¹⁷³⁷ Mustafaeva–Sevdimaliev–Aliev–Iylmaz op. cit. 181.

¹⁷³⁸ Jesse Russell–Ronald Cohn: Spisok terroristicheskikh operatsii ASALA. (*List of terrorist operations of ASALA.*) VSD. Moskva, 2012, 34.

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”,¹⁷⁴⁶ was taken by ASALA.¹⁷⁴⁷

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.¹⁷⁴⁸ On 7 June, 1982, members of JCAG killed Erkut Akbai, the administrative attaché of the Turkish Embassy to Portugal and Hadid Akbai, his wife, at the entrance to their house in Lisbon.¹⁷⁴⁹ On 27 August, 1982, terrorists from JCAG killed in Ottawa Atilla Altikat, military attaché of the Turkish Embassy to Canada. The diplomat was killed while driving his car, when he stopped at a traffic light in the street, going to work from home. The perpetrators of the attack are still at large.¹⁷⁵⁰

On February 28, 1983, there was found and defused an explosive device in front of the Turkish Embassy in Luxembourg. The terrorist group New Armenian Resistance Organization¹⁷⁵¹ took the responsibility for the planned crime.¹⁷⁵² In all Armenian extremist activities, terrorism goes together with psychological coercion. Terrorism is used, as a means of propaganda and an instrument of intimidation.¹⁷⁵³ On 8 July, 1983, Armenian terrorists attacked the British Embassy in Paris, as an act of protest against the trial of Armenian terrorists in London. On 14 July, 1983, Dursun Aksoy, attaché at the Turkish Embassy to Belgium was shot dead in his car, while driving in Brussels. The gunman escaped, the responsibility for the committed murder was taken by ASALA, JCAG and Armenian Revolutionary Army (ARA).¹⁷⁵⁴

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

¹⁷⁴⁶ The attack was made in honor of the four members of ASALA, who occupied the Turkish Consulate in Paris on 24 September, 1981.

¹⁷⁴⁷ Mustafaeva–Sevdimaliev–Aliev–Iylmaz op. cit. 198.

¹⁷⁴⁸ Turkish Canadian Relations, 05.02.2016. Turkish Embassy in Ottawa. (Accessed on 16 May, 2016.) <http://ottava.be.mfa.gov.tr/ShowInfoNotes.aspx?ID=225922>

¹⁷⁴⁹ Mustafaeva–Sevdimaliev–Aliev–Iylmaz op. cit. 207.

¹⁷⁵⁰ Turkish Canadian Relations, 05.02.2016. Turkish Embassy in Ottawa. (Accessed on 16 May, 2016.) <http://ottava.be.mfa.gov.tr/ShowInfoNotes.aspx?ID=225922>

¹⁷⁵¹ The headquarters of the terrorist group, which is part of ASALA, was located in France.

¹⁷⁵² Mustafaeva–Sevdimaliev–Aliev–Iylmaz op. cit. 212.

¹⁷⁵³ Armenian Terror. HistoryofTruth.com (Accessed on 15 May, 2016.) <http://www.historyoftruth.com/armenian-terror>

¹⁷⁵⁴ Around the World; Turk Slain in Brussels; Armenian Claim Deed. The New York Times. 15 July, 1983. (Accessed on 17 May, 2016.) <http://www.nytimes.com/1983/07/15/world/around-the-world-turk-slain-in-brussels-armenians-claim-deed.html>.

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.¹⁷⁵⁷ 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.¹⁷⁵⁸

A counter-claim by Uganda in the Case concerning Armed Activities on the Territory of the Congo that Congolese soldiers had occupied the Ugandan diplomatic mission in Kinshasa in 1998 and violated the Vienna Convention by threatening and maltreating staff on the premises. Uganda alleged that even with the protests by Ugandan Embassy officials, the Congolese Government did not take action. Uganda stated that a Note of protest was sent by the Ugandan Embassy to the Ministry of Foreign Affairs of the Democratic Republic of the Congo. (Uganda claimed that the Congolese troops forcibly seized the official residence of the Ugandan Ambassador in Kinshasa and stole property, including personal belongings to the Ambassador).

The International Court of Justice found that regarding the attacks on Uganda's diplomatic premises in Kinshasa,¹⁷⁵⁹ 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,¹⁷⁶⁰ 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.¹⁷⁶¹ The Court obliged Congo¹⁷⁶² to bear responsibility for the violation of international law on diplomatic relations and found that Uganda was entitled to reparations.¹⁷⁶³ The reparations in international law are aimed to restore the victim of a breach

¹⁷⁵⁷ Mustafaeva–Sevdimaliev–Aliev–Iylmaz op. cit. 220-234.

¹⁷⁵⁸ Il'gar Dzhafarov: Armianskie terroristy ASALA ugrozhaiut turetskim diplomatam. (*Armenian terrorists from ASALA threaten Turkish diplomats.*) Aze.az. 22 April, 2011. (Accessed on 15 May, 2016.) http://aze.az/news_armyanskie_terroristy_as_56473.html

¹⁷⁵⁹ Vienna Convention. Article 22.

¹⁷⁶⁰ Doc. cit. Article 29.

¹⁷⁶¹ Doc. cit. Article 24.

¹⁷⁶² *Democratic Republic of the Congo v. Uganda*, Case concerning armed activities on the territory of the Congo. I. C. J. Reports. Judgement of 19 December, 2005, 105-115.

¹⁷⁶³ Reparations – compensation for war damage by a defeated state. Freeman: The Diplomat's... 197.

bomb has been detonated outside the Australian Embassy in Jakarta, killing nine and wounding 150 people.¹⁷⁶⁹

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 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.¹⁷⁷⁰ 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.¹⁷⁷¹

Hungary also ensures the provision of certain police measures in protection of diplomatic missions and their staff members, as well as the increased police control of the districts of diplomatic representations. It can be stated that in recent years, the major terrorist acts highly influenced the demands of the police for increased protection of diplomatic representations, and there significantly increased the needs from diplomatic missions, accredited in the country, for initiatives to enhance the security measures, related to protection of their premises.¹⁷⁷²

Certain embassies in Budapest, such as the American, Israeli and British, ensured their premises with separate defense and security structures. As a result of acts, performed by international terrorist organizations, mainly bombings, most countries in the world pay enhanced attention to security of diplomatic representations of these states. The American and Israeli ambassadors are provided constant personal protection.¹⁷⁷³

In August 2009, Molotov cocktails were thrown by unknowns at the Slovak Embassy in Budapest. According to the Police Department of Budapest, the lighter bottles, did not ignited, so there was no damage to the embassy building. The President, the Prime Minister and the Ministry of Foreign Affairs of Hungary condemned the attack, which further complicated

¹⁷⁶⁹ Frum op. cit. 13.

¹⁷⁷⁰ René Värk: The Siege of the Estonian Embassy in Moscow: Protection of a Diplomatic Mission and Its Staff in the Receiving State. *Juridica International* XV/2008, 145. [Hereinafter: Värk: The Siege...]

¹⁷⁷¹ Värk: The Siege... 144.

¹⁷⁷² András Papp: A diplomáciai mentességben részesülő terrorveszélyezett személyek és objektumok biztosításának helyzete. (*The provision of security of persons and objects, enjoying diplomatic exemptions, which are vulnerable to terrorist attacks.*) Kard és Toll. No 2. Budapest, 2006, 126-128.

¹⁷⁷³ Papp op. cit. 129.

world, when diplomats are trained to win hearts and minds, also to influence people on behalf of their sending states, they can not perform that effectively „*from a fortress*.”¹⁷⁷⁹

Diplomats need to be able to interact with nationals of host countries, to effectively defend security interests of their home country, and they need to do that in perilous places, where those interests are threatened. If diplomats would avoid foreign postings, they might, as well, conduct diplomacy by email and fax machine from their state's capital. Nonetheless, even this practice would not make them safer.¹⁷⁸⁰

Diplomats, intelligence agents and the military missed obvious warning signs that could have enabled them to prevent the deadly attack on the U. S. diplomatic mission in Benghazi. The Ambassador, who was killed in the attack, was criticized for refusing offers to reinstate soldiers at the mission before the raid. The military was also criticized for failing to respond more quickly on the night of the attack on 11 September, 2012.¹⁷⁸¹

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.¹⁷⁸²

On 30 August, 2016, an explosion occurred in the car of the Chinese Embassy to Kyrgyzstan. The strong detonation, which could be heard almost everywhere in the Kyrgyz capital, killed the driver of the car and wounded two guardians of the diplomatic mission. The blast destroyed the Embassy's gate and fence and broke the windows of nearby buildings.¹⁷⁸³

On 17 September, 2016, just one day before the Russian parliamentary elections, the Embassy of Russia in Kiev, where there was an opportunity to vote, as well, has been attacked, and this is not the first act of violence against the diplomatic mission. (On March 10, 2016, incendiary bottles were thrown at the building, but it did not caught fire.) The election polls had been opened at the Russian Embassy in Kiev and at three Russian Consulates General in

¹⁷⁷⁹ Ibid.

¹⁷⁸⁰ Ibid.

¹⁷⁸¹ U. S. embassy assault in Benghazi which resulted in death of U. S. ambassador „was preventable”, finds Senate report. Daily Mail. 16 January, 2014. (Accessed on 10 April, 2016.) <http://www.dailymail.co.uk/news/article-2540433/U-S-embassy-assault-Benghazi-resulted-death-American-ambassador-preventable.html>

¹⁷⁸² Tüntetőik tojással dobálták meg a kijevi orosz nagykövetséget. (*Protesters threw eggs at the Russian Embassy in Kiev.*) HVG. 6 March, 2016. (Accessed on 6 March, 2016.) http://hvg.hu/vilag/20160306_Tuntetok_tojassal_dobaltak_meg_a_kijevi_orosz_nagykovetseget

¹⁷⁸³ Robbanás történt Kína kirgizisztáni nagykövetségénél. (*Explosion at Embassy of China in Kyrgyzstan.*) HVG.hu. 30 August, 2016. (Accessed on 30 August, 2016.) http://hvg.hu/vilag/20160830_kirigz_kina

Vorovsky and Voikov, whose cases were considered earlier in this work, who was killed in the line of duty.¹⁷⁹⁰

Kupriianov remarks that to be a diplomat is a dangerous profession. When a person represents his country, he receives all the accolades and honors that people want to render to his country. On the other hand, in the same way, hatred of a country is also projected onto its diplomats, and sometimes this takes the form of bullets.¹⁷⁹¹

The Vienna Convention mentions functions of a diplomatic mission, which encompass, *inter alia*: representation of the sending state in the receiving state,¹⁷⁹² protection of interests of the sending state and of its nationals in the receiving state,¹⁷⁹³ negotiation,¹⁷⁹⁴ observation of conditions and developments in the receiving state and reporting them to the sending state,¹⁷⁹⁵ and promotion of friendly relations.¹⁷⁹⁶ Embassies are also targets of terrorist attacks, also for violent protests and group incursions by asylum seekers. In a number of capitals, ambassadors, representing countries that face acute threat, are escorted by police officers and diplomatic protection group personnel, providing „portal to portal 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.¹⁷⁹⁷

The major powers are able to afford spending vast sums on upgrading the physical security of such structures, by installing blast-proof doors and walls, toughening the windows, constructing strong barriers at entry points, also providing the diplomats with bulletproof vehicles. The smaller countries that have more modest financial means, consider that the general precautions they implement, along with their relative anonymity are the best protection. Diplomatic training programs in most of countries cover security procedures. Security

¹⁷⁹⁰ Aleksei Kupriianov: Chetvertyi na postu. (*Fourth in the post.*) Lenta.ru. 20 December, 2016. (Accessed on 20 December, 2016.) https://lenta.ru/articles/2016/12/20/killed_ambassador/

¹⁷⁹¹ Ibid.

¹⁷⁹² Vienna Convention. Article 3(1)(a).

¹⁷⁹³ Doc. cit. Article 3(1)(b).

¹⁷⁹⁴ Doc. cit. Article 3(1)(c).

¹⁷⁹⁵ Doc. cit. Article 3(1)(d).

¹⁷⁹⁶ Doc. cit. Article 3(1)(e).

¹⁷⁹⁷ Rana: *The 21st Century Ambassador*... 62.

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,¹⁸⁰⁴ 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.¹⁸⁰⁵

In October 2015, there was an artillery attack on the Russian Embassy in Damascus, which was apparently made by the insurgents. Protesters, loyal to the regime of the Syrian President Bashar al-Assad, gathered in the vicinity of the Embassy at that time to express their gratitude to Russia for interventions of military forces in support of Assad. No one was hurt at the Russian Embassy, according to the news. Sergei Lavrov, the Minister for Foreign Affairs of the Russian Federation, condemned the attack and said it was obviously a terrorist act.¹⁸⁰⁶

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.¹⁸⁰⁷

V. 4. 3. Measures of special protection of diplomatic agents, adopted by states in recent times

According to a general practice, the principle of reciprocity is applied in determination of the levels and forms of diplomatic protection, provided to foreign missions. There are countries, which provide protection for foreign missions, as part of their regular policing

¹⁸⁰⁴ Ki-Jong, who has 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. K. J. Kwon–Holly Yan: S. Korean man charged with attempted murder in U. S. ambassador stabbing. 1 April, 2015. CNN. (Accessed on 9 April, 2016.) <http://edition.cnn.com/2015/04/01/asia/south-korea-us-ambassador-attack-charge/>

¹⁸⁰⁵ Hyoung Joo Choi–Kathy Novak: U. S. Ambassador Mark Lippert's attacker gets 12 years in stabbing case. 11 September, 2015. CNN. (Accessed on 9 April, 2016.) <http://edition.cnn.com/2015/09/10/asia/south-korean-stabbing-sentence-u-s-ambassador/>

¹⁸⁰⁶ Tüzérségi támadás érte a damaszkuszi orosz nagykövetséget. (*Artillery attack on the Russian Embassy in Damascus.*) NOL. 13 October, 2015. (Accessed on 15 October, 2015.) <http://nol.hu/kulfold/tuzersegi-tamadas-erte-a-damaszkuszi-orosz-nagykovetseget-1568765>

¹⁸⁰⁷ Amerikaiak bombázták le a Líbiában 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/



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,¹⁸¹⁴ in 1900.¹⁸¹⁵ In the United Kingdom, the Protocol Department of the Foreign and Commonwealth Office governs the protection of foreign missions, according to the U. K. Diplomatic Privileges and Immunities Memorandum. The level of protection depends on its accession by the Security Section of the Protocol Department, Diplomatic Protection Group of the Metropolitan Police¹⁸¹⁶ and the Special Branch.¹⁸¹⁷

The threat and risk assessment of foreign missions in Canada is carried out by the Royal Canadian Mounted Police that provides the protection of embassies and diplomatic residences, performed by police officers on a 24-hour basis. Furthermore, the special neighborhood watch system for diplomats and emergency numbers extend the protection of diplomatic personnel.¹⁸¹⁸

Diplomatic personnel are specifically charged with the process of developing, formulating and interpreting of state's foreign policy. In this role, they stand on the front line of the so-called war on terror. Where terrorist attacks take place on ordinary citizens, diplomatic establishments play an essential role in securing the interests of their nationals in foreign states. Furthermore, the role of diplomatic missions in gathering and interpreting security information should not be underestimated.¹⁸¹⁹

The declaration on the war of terror served to place diplomatic personnel around the world on the frontier of that war. A rather symbolic illustration of this fact can be given – that the abduction and murder of Ihab Al-Sherif, the Egyptian Ambassador-Designated to Iraq and the targeting of two more high-level Muslim diplomats from Bahran and Pakistan in Iraq in July, 2005. On 21 July, 2005, two Algerian diplomats, including Ali Balarousi, the top Algerian

¹⁸¹⁴ The Boxers burned down all of the bungalows of the British mission. The site was never re-occupied, and finally sold in 1923. Mark Bertram: Room for Diplomacy. Britain's Diplomatic Buildings Overseas 1800-2000. Spire Book Ltd. London, 2011, 137.

¹⁸¹⁵ Bertram op. cit. 447.

¹⁸¹⁶ London is the only city in the world with two independent police administrations: the Metropolitan Police of London and the City Police. The reasons for that state of affairs go far back in history. Christian Heermann: A Scotland Yard titkaiból. (*From the secrets of Scotland Yard.*) Zrinyi Katonai Kiadó. Budapest, 1989, 14-15.

¹⁸¹⁷ Minnaar op. cit. 75.

¹⁸¹⁸ Ibid.

¹⁸¹⁹ Barker op. cit. xii.

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.¹⁸²⁴

In Moscow and Saint Petersburg, the protection of foreign missions is carried out, upon request, by the Independent Battalion or Patrol Service on a 24-hour basis. The division operates in 12-hour shifts and is monitored by patrol cars every four or six hours. In Beijing, police boxes are installed on most of the streets and every embassy has a fulltime guard, working in shifts, at the entrance to the embassy compound.¹⁸²⁵

The protection of diplomatic personnel lacks in some countries, for instance, Nigeria. In Lagos, armed gangs view diplomatic staff as targets for money, robbing their homes, shooting at diplomatic vehicles, bribing embassies for telephone lines or allowance of other services. Therefore, most embassies in Nigeria hire private security guards and install expensive alarm systems.¹⁸²⁶

Satow asserts that regarding the protection of diplomats in the receiving state, it seemed to be clearly established that the „appropriate steps” did not include surrendering to demands, made by kidnapers, when a diplomatic kidnapping had taken place. Further, the „appropriate steps” the receiving state was required to take to protect diplomats,¹⁸²⁷ had to be determined in the light of relevant circumstances. The major capitals would have several thousand diplomats, all entitled to inviolability and obviously, it would be an impossible burden for each of them to have special police protection.¹⁸²⁸ As one British former diplomat, himself the subject of a failed kidnapping attempt, has noted: „*it is the special status of the diplomatic agent which renders him unsafe*”.¹⁸²⁹

Hargitai observes that despite of the fact that the Vienna Convention provides¹⁸³⁰ the host state’s obligation to protect the sending state’s diplomatic premises from any kind of intrusion, time and again, there are disagreements between the sending state and the receiving state on the reasoning of a permanent police post. In this case, the issue should be clarified,

¹⁸²⁴ Minnaar op. cit. 76.

¹⁸²⁵ Ibid.

¹⁸²⁶ Siphon George Nene: Foreign Service, Diplomatic Immunity means less than nothing in lawless Lagos. Sunday Independent. 4 August, 1996.

¹⁸²⁷ On the other hand, Hevener notes that the protection of diplomats „*merits special attention because diplomats are especially vulnerable symbolic targets of political violence*”. N. K. Hevener (ed.): Diplomacy in a Dangerous World: Protection for Diplomats under International Law. Westview Press. Boulder, 1986, 5.

¹⁸²⁸ Ernest Mason Satow: Satow’s Guide to Diplomatic Practice. Longman. London, 1979, 120-121.

¹⁸²⁹ Geoffrey Jackson: Concorde Diplomacy: The Ambassador’s Role in the World Today. Harnish Hamilton. London, 1981, 92-93.

¹⁸³⁰ Vienna Convention. Article 22.

VI. Conclusions

The aim of the present thesis is to investigate the content and specifics of the functioning of privileges and immunities of diplomats – their practical effectuation, both in theory and practice, taking into account the actualities of the modern world. To reach its objectives, this scientific project examined a vast amount of relevant bibliography, originally issued in seven languages, having reviewed the diverse standpoints of selected legal authorities of both West and East, on this significant and actual area of international law.

With regard to the scope of the study, the regulations on the length placed some limits on the paper's volume. For that reason, to answer the principal question of the research, whether the present range of personal privileges and immunities of diplomatic agents is necessary for the efficient performance of their duties, the thesis was written focusing rather on diplomatic practice, than theory.

The need for envoys had been ascended from the earliest times, with the necessity of their protection, which gradually evolved into the principle of their inviolability. The purpose of diplomatic immunity is to promote effectiveness of formal relations. The concept of diplomatic immunity has age-old ancestries and could be found in international practice of ancient civilizations, for instance, Egypt, Greece, Rome, India and China. The personal inviolability of diplomats encompassed immunity from civil and criminal jurisdiction of the host state. Moreover, the receiving sovereign had a special duty to protect the diplomat's person. The wrongdoings towards diplomats were penalized and the recognition of diplomatic immunity by the receiving state turned into a customary norm.

States can not exist without close interaction with each other, maintained via foreign policy. Diplomatic agents are the intermediaries in such international relationships, therefore, the legal regulation of their privileges and immunities has an important goal – the successful cooperation with all participants of the system of international relations. Furthermore, a diplomat assist citizens of his state, who live or travel in the host country, for example, the people of culture or business.

Diplomacy at all times played a considerable role in resolving of interstate conflicts, often assisting in prevention of wars. States, in the process of interaction with each other, must stand by to such fundamental principles, as equality, respect for sovereignty of others and non-interference in each other's affairs. Diplomacy have been traditionally viewed, as an inter-state

principle of functional necessity, founded on the idea that the receiving state had to create proper conditions for effective operation of diplomatic missions. In view of that, the main three prevailing theories in history, the notion of diplomatic privileges and immunities was based on were:

- representative character: the foreign delegate should be treated, as if the sovereign himself was in his place (the oldest principle);
- extraterritorially: the diplomat and his suite were located beyond the territory of the receiving state, on the soil of their home state;
- functional necessity: the diplomatic immunities are necessary for the performance of the diplomatic functions.

Based on cases from the rich history of diplomatic relations, it can be determined that none of the concepts that served, as basis for diplomatic immunities and privileges in the past, applied solely, were able to provide a satisfactory juridical basis for the provision of diplomatic immunities and privileges. The principle of representative character and the principle of extraterritoriality, being favored in different periods of time in diplomatic relations, were able to provide explanations to certain matters, with respect to diplomatic practice, yet, not all of them, and were not able to provide a comprehensive justification for granting of privileges and immunities to diplomats. The principle of functional necessity, despite of its advantages (and popularity), is a leading theory of modern times that supports the doctrine of diplomatic privileges and immunities, still, is not a complete model, lacking a mechanism of restriction of diplomatic rights and freedoms.

In this fashion, while the provision of diplomatic privileges and immunities used to be put forward in terms of extraterritoriality and governmental representation in the past, in this day and age the dominant view is that privileges and immunities are granted on the basis of functional necessity. With respect to the sources of diplomacy law, this branch of law is part of international law and as such, its resources derive from international law. In line for the entry into force of the Vienna Convention and a high number of its parties, treaty is the main source of the law of diplomatic relations, namely this Convention, which serves, as the „Scripture” of diplomacy law and service.

The process of development and establishment of diplomatic privileges and immunities had been a contradictory and difficult process in the past. Privileges and immunities evolved progressively, based on existing practices in various countries and on the development of diplomatic traditions and institutions. The history of diplomacy shows that there were two contradictory trends in diplomatic privileges and immunities – their expansion and restriction.

Foreign Affairs (or such other ministry, as may be agreed). Diplomatic privileges and immunities are normally end when the diplomat leaves the receiving state or the reasonably period for his leave has expired (privileges and immunities last until this time even in a case of an armed conflict).

Concerning the different kinds of diplomatic privileges and immunities, there are some of them, among the personal privileges and immunities of diplomatic agents, which are not provided (codified) by international law, nonetheless, could be provided by receiving states in virtue of existing international customary practices (usages). For example, invitation of diplomats to programs, held in the receiving state, such as celebrations, anniversaries, military parades, demonstrations and rallies, according to rules of international courtesy and diplomatic protocol.

There is a tendency in the recent decades towards the reduction of differences between the provisions of diplomacy law and norms of international comity, particularly after the adoption of the Vienna Convention, when many of privileges, provided by receiving states on the base of courtesy, such as tax and customs exemptions, became legally binding. Some scholars see the difference between privileges and immunities in the fact that the former is a group of legal guarantees, required for the activity of diplomatic agents in the receiving state, while the latter relates to matters of prestige of the sending state (and is of ceremonial, protocollar character), regulated usually not by legally binding rules, but rather on the basis of norms of international comity or already existing usages.

Regarding the rationale of diplomatic privileges and immunities, the question is related to the double aspect of diplomatic representation: the sovereign immunity – immunity *ratione materiae*, attached to official acts of foreign states and the wider, but more conditional elements of functional privileges and immunities of the diplomatic staff and the premises.¹⁸³⁸ The immunities *ratione personae*, attached to diplomatic agents, provide them with immunity from national proceedings in the receiving state, however, diplomats can not always enjoy immunity in international proceedings, in case of commitment of an international crime.¹⁸³⁹

Moreover, when diplomats leaves their office, they will enjoy general immunity regarding their official acts – *ratione materiae*. Diplomats enjoy immunity from the jurisdiction

¹⁸³⁸ Brownlie: Principles... 351.

¹⁸³⁹ The term „international crime” initially appeared to characterize the aggressive war. J. A. Reshetov: Bor’ba s mezhdunarodnymi prestupleniami protiv mira i bezopasnosti. (*The fight with international crimes against peace and security.*) Mezhdunarodnye otnosheniia. Moskva, 1983, 6.

diplomatic 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, smoothens out the differences in regulation of status of diplomatic agents, fostering the creation of relevant norms.

Domestic legislation of the status of diplomatic agents enables the receiving states, in some cases, to address more fully this question, than it would be possible via the regulations of international law, taking into consideration their specifics and prerequisites. Domestic legislation of the receiving state plays an important role in the regulation of questions and norms of diplomacy law, being able to address them at a deeper level or deal with questions, not explicitly specified by international law.

The Vienna Convention also provides for the resolution of certain matters by the legislation of the receiving state. The regulations of the receiving state can not, certainly, collide with the provisions of the Vienna Convention, which take precedence over the domestic regulations. Judicial precedents, viewing by common law states,¹⁸⁴⁴ as additional sources of

¹⁸⁴⁴ There are some fundamental differences, however, in approach to legal research between the United States and Great Britain. See more in: Robert Logan: United States Legal Research. Guides to Legal Research: No 2. Legal Information Resources Ltd. Mytholmroyd, 1990.

It is necessary to improve the existing legislation, which will match up to the realities of the modern world and to provide satisfactory enforcement mechanism to deal with abuse. The problem of diplomatic immunity became a worldwide issue, concerning every nation. Diplomatic immunity is not immunity from legal liability, but immunity from suit. Diplomats are not placed above the law. However, there is an opinion that the provisions of the Vienna Convention regarding importance of personal inviolability of diplomatic agents, as legal guarantee of their unimpeded and effective activity in the host state and inadmissibility of their detention, favors the situation of those diplomats, who are engaged in illegal activities in the host state, and seriously limits the ability of local law enforcement agencies to combat abuse of diplomatic privileges and immunities.

The authors of the Vienna Convention could not, in point of fact, foreseen in 1961 the impetuous development of scientific thought – life well exceeded the text of the Convention. Diplomatic agents need a certain amount of immunity to be safe from unjustifiable legal harassment, and at the same time, they have to respect and comply with the letter of law, keeping their activity abroad within the frame of their official functions. There are many cases of abuse of privileges and immunities and also cases of illegal acts by diplomats during their service at foreign missions.

It has been already claimed many times that the Vienna Convention to be revised and diplomatic privileges and immunities – transformed, so that diplomacy law would be able to adapt to changes of time and to prevent crimes, committed under the cover of diplomatic freedoms. The present provisions on the status of diplomatic agents, enshrined in the Vienna Convention, have to be improved in the light of the fact that states, being interrelated, try to boost their global presence and influence in the world, increasing the number of state servants abroad, as well. Since the adoption of the Vienna Convention, there have been many serious changes, related to diplomatic scope of activity, including the new forms of collection and transmission of information, not covered by this treaty. The existing lacunas in jurisdiction bring new challenges for diplomatic practice and sometimes lead to problems.

Organized crime, as one of the most serious global threats is becoming more internationalized and specialized, with many sophisticated forms of expression, degrading the positive values of contemporary society.¹⁸⁴⁶ The future fights against organized crime will be centralized at an international – or at least European level, including the unification of criminal

¹⁸⁴⁶ Miloš Svrček: Legal means of fighting against organized crime in the international perspective. Panorama of global security environment. Centre for European and North Atlantic Affairs. Bratislava, 2011, 631.

to agree with their conditions, therefore the life of contemporary envoys is still unsafe. It is no doubt that the measures of protection of diplomatic personnel should be increased.

Grounded on presented literature and extensive research on diplomatic privileges and immunities of career diplomats, there are a number of conclusions, which can be distinguished. Scholars note that the principles of the Vienna Convention „*seem incapable of amendment*”.¹⁸⁴⁸ The Convention is not likely to be transformed in the foreseen future, because of the fear of reciprocity, it is unlikely that the international community will pass any legislation or make any amendments to it „*that would make even a small dent in the absolute nature of diplomatic immunity*”.¹⁸⁴⁹

In line for diplomatic immunity is „*adamantly prized and guarded by all parties to the VCDR, States typically resist any attempt to whittle away these protections for their own diplomats.*”¹⁸⁵⁰ Notwithstanding, new ideas were proposed, to administer justice, presented in the closing part of this Chapter.

The Vienna Convention, due to its limitations, is not able to address the new emerging related issues alone, for that reason, experts suggest to draft an annex to address the most pertinent issues. Furthermore, there are proposals regarding the compensation of victims of criminal acts, committed by diplomats, by introduction of obligatory insurance, also the creation of claims funds would provide the necessary financial means for recompense of the sufferers.

Addressing the question of victim compensation is just a part of the solution to the issues, related to diplomatic privileges and immunities – the main task is to ensure that the perpetrators of such crimes would be held accountable and prosecuted. Supplementary bi- or rather, multilateral agreements between states also could be effective to specify or even reduce diplomatic immunity, on terms of waiver.

In addition, it is necessary to determine the scope of diplomatic immunities and privileges, during their transit through third states. Besides, it is needed to specify the size of the diplomatic bag, allow its electronic scanning and other ways of nonintrusive examination of the diplomatic bag. The conveyance of prohibited articles is a risk factor for the host country, so states could decide on matters, related to the diplomatic bag, accepting a list of allowed items.

¹⁸⁴⁸ Brown: Diplomatic... 85.

¹⁸⁴⁹ Jennifer Hoover Kappus: Does Immunity Mean Impunity? The Legal and Political Battle of Household Workers Against Trafficking and Exploitation by Their Foreign Diplomat Employer. Case Western Reserve Law Review. Vol 61, 2010, 306.

¹⁸⁵⁰ Kappus op. cit. 271-272.

sending state also could provide armed guard to protect their diplomats abroad, but in this case a question arises regarding the legal side of use and transportation of armaments.)

Regarding the privilege of diplomatic missions to organize their internal life it has its boundaries, as well. Reference to this privilege allows only in the most general way to justify the legitimacy of the existence of internal security and to define the scope of its activity. The essence of the Vienna Convention is to ensure inviolability of a diplomatic mission from executive jurisdiction of the receiving state and immunity from the executive and enforcement jurisdiction of the sending state. Authorities of the host state should be able to obtain a permission to search the premises of the diplomatic mission, with strong evidence of involvement of the concerned embassy in criminal act, or maintaining ties to extremist groups and organizations.

The review of advancement of diplomatic privileges and immunities, starting from the most basic writings to present day materials and considerations, shows a tendency towards narrowing the scope of these rights and freedoms. Proposals for amending the Vienna Convention to decrease the scope of diplomatic immunity, thus reduce the number of related criminal acts, committed by diplomatic agents, have to consider a possible important factor. The process of narrowing of diplomatic immunity could be slowed down by the fact that such tightening would, logically, deprive diplomatic immunity from its absolute status.

Therefore, experts warn from this step, fearing of possible nuisance of diplomatic officers from the part of the receiving state, for example, by false accusations, which could lead to arrest and detention of the alleged diplomatic offenders or even their expel. Unilateral reduction of privileges and immunities of foreign diplomatic by the receiving state could result in reciprocal – even stricter reduction of immunity or other, unfavorable measures by the sending states. Consequently, diplomatic privileges and immunities heavily depend on reciprocity.

The development of new forms of relationships between the subjects of international law can foster the emergence of new forms of diplomatic activity. These new forms, in turn, could enhance the appearance of new norms, which would governing diplomatic activity. In this fashion, the adoption of „good practices” package that would advise a standard way of complying with legal issues, based on expertise, applied in the field of diplomatic service of states. The diplomatic practice, conducted within the frame of diplomacy law and in harmony with the rules of international law, might contribute into the emergence of new norms and standards, and broader – in the birth of new diplomatic activity.

References

Cases

Agbor v. Metropolitan Police Commissioner [1969] 2 All E. R. 707.

Bergman v. De Sieyes. 71 F. Supp. 334 (S. D. N. Y. 1946).

Boos v. Barry (No. 86-803), 485 U. S. 312 (1988).

De Andrade v. De Andrade. 118 ILR 299, 1984.

De Fallois v. Piatakoff, et al., and Commercial Delegation of the U. S.S.R. in France, French Court of Cassation, 26 February, 1935, Paris.

Democratic Republic of the Congo v. Uganda, Case concerning armed activities on the territory of the Congo. I. C. J. Reports. Judgement of 19 December, 2005.

Dupont v. Pichon 4 U. S. 321 (1805).

Empson v. Smith [1965] 2 All E. R. 881.

Fenton Textile Association v. Krassin. 38 T. L. R. 259. (1921).

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

Frend et al. v. United States. 100 F.2d 691 (D.C. Cir. 1938).

Ghosh v. D’Rosario [1966] 1 QB 426.

Guaranty Trust Co. of New York v. United States. 304 U. S. 126 (58 S.Ct. 785, 82 L.Ed. 1224).

Hadi Soleimanpour v. Crown Prosecution Service 535/03. Court of Justice Queen's Bench Division. 12 September 2003.

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

Immunity of Legation Buildings (Czechoslovakia) case. Ann. Dig., 1927-1928, case No. 251.

In re Terrence K, 524 N. Y. S. 2d 290, 292 (New Rochelle City Ct. 1949).

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

International Court of Justice. Reports of judgements, advisory opinions and orders. Case concerning United States diplomatic and consular staff in Tehran. (*United States of America v. Iran*) Judgement of 24 May, 1980.

Intpro Properties (U. K.) Ltd. v. Sauvel. [1983] 2 WLR 908.

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).

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

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

Bibliography

- Abashidze, A. H.: Sokhranit li mezhdunarodnoe pravo aktivnuiu reguliruiushchuiu funktsiiu v globaliziruiushchem mire? (*Will international law preserve its active regulative function in the globalizing world?*) In: Bekiashev, K. A. (ed.): Budushchee mezhdunarodnogo prava. (*The future of international law.*) „OOO Prospekt”. Moskva, 2016.
- Abashidze, A. H.–Fedotov, M. V.: Pravo vneshnikh snoshenii. (*The law of external relations.*) Mezhdunarodnye otnosheniia. Moskva, 2009.
- Abass, Ademola: International Law. Text, Cases, and Materials. Oxford University Press. Oxford, 2014.
- Adair, E. R.: The Exterritoriality of Ambassadors in the Sixteenth and Seventeenth Centuries. Longmans, Green and Co. London, 1929.
- Adcock, F. E.–Mosley, D. J.: Diplomacy in Ancient Greece. Thames and Hudson. London, 1975.
- Akehurst, Michael: A modern introduction to international law. Atherton Press. New York, 1970.
- Alijeva, Mehriban: Örmény terrorista szervezetek Azerbajdzsán ellenes tevékenysége. (*The anti-Azerbaijan activity of Armenian terrorist organizations.*) Karabah tényei és valósága. (*Facts and reality of Karabakh.*) Hejdar Alijev Alapítványa. Baku, 2006.
- Amerasinghe, C. F.: Principles of the Institutional Law of International Organizations. Cambridge University Press. Cambridge, 2005.
- Anderson, M. S.: The Rise of Modern Diplomacy 1450-1919. Longman Publishing. New York, 1993.
- Antipenko, V. F.: Mezhdunarodnoe antiterroristicheskoe pravo v usloviakh global'nogo krizisa. (*International antiterrorist law in times of global crisis.*) In: Kivalov, S. V. (ch. ed.): Al'manakh mezhdunarodnogo prava. Vypusk 1. „Feniks”. Odessa, 2009.
- Anton, Donald K.– Mathew, Penelope–Morgan, Wayne: International Law. Cases and Materials. Oxford University Press. Oxford, 2005.
- Apáthy, István: Tétéles európai nemzetközi jog. (*The itemized European international law.*) Franklin-Társulat Magyar Irodalmi Intézet és Könyvnyomda, Budapest, 1888.
- Arangio-Ruiz, Gaetano: The UN Declaration on Friendly Relations and the System of the Sources of International Law. Sijthoff&Noordhoff International Publishers B. V. Alpen aan den Rijn, 1979.

- Bederman, David. J.: Religion and the Sources of International Law in Antiquity. In: Janis, Mark W. (ed.): *The Influence of Religion on the Development of International Law*. Martinus Nijhoff Publishers. Dordrecht, 1991.
- Berezhkov, Valentin: Egy diplomata Hitlernél. (*With diplomatic mission to Hitler.*) In: Berezhkov, Valentin–Rzhevskaja, Elena: *A játszma véget ér. (The game is over.)* Zrínyi Katonai Kiadó. Budapest, 1966.
- Berridge, G. R. (ed.): *Diplomatic Classics: selected texts from Comynes to Vattel*. Palgrave Macmillan. Basingstoke, 2004.
- Berridge, G. R.: *Diplomacy. Theory and Practice*. Palgrave Macmillan. London, 2010.
- Bertram, Mark: *Room for Diplomacy. Britain's Diplomatic Buildings Overseas 1800-2000*. Spire Book Ltd. London, 2011.
- Beschloss, Michael R.–Strobe, Talbott: *At the highest levels: the inside story of the end of the cold war*. Little, Brown&Company. New York, 1994.
- Bickel, Alexander, M.: *The morality of consent*. New Haven and London: Yale University Press, New Haven, 1977.
- Bilandzic, Vladimir–Dahlmann, Dittmar–Kosanovic, Milan (eds.): *From Helsinki to Belgrade*. Bonn University Press. Bonn, 2012.
- Bíró, Gáspár: Bevezetés a nemzetközi politikai viszonyok tanulmányozásába. (*Introduction into the study of international political relations.*) Osiris Kiadó. Budapest, 2003.
- Black, Henry Campbell: *Black's Law Dictionary*. West Publishing Company. St. Paul. 1968.
- Blanchèr, Philippe: *Droit des relations internationales. (Law of international relations.)* LexisNexis SA. Durban, 2015.
- Blishchenko, I. P.: *Diplomaticheskoe pravo. (Diplomacy law.)* Vysshaya Shkola. Moskva, 1990.
- Blishchenko, I. P.: *Precedenty v mezhdunarodnom prave. (Precedents in international law.)* Mezhdunarodnye otnosheniia. Moskva, 1977.
- Blishchenko, I. P.–Durdenevskii, V. N.: *Diplomaticheskoe i konsul'skoe pravo. (Diplomatic and consular law.)* Izdatel'stvo Instituta mezhdunarodnyh otnoshenii. Moskva.
- Blishchenko, I.–Zhdanov, N.: *Terrorism i mezhdunarodnoe pravo. (Terrorism and international law.)* Izdatel'stvo „Progress”. Moskva, 1984.
- Boas, Gideon: *Public International Law*. Edward Elgar Publishing, Inc. Northampton, 2012.
- Bochkor, Mihály: *Manu Törvényei. (The laws of Manu.)* Az Erdélyi Múzeum-Egyesület Jog és Társadalomtudományi Szakosztálya–Benkő Gyula Cs. és Kir. Udv. Könyvkereskedés. Budapest, 1915.

- Bucar, Annabelle: Pravda ob amerikanskikh diplomatakh. (*The truth about American diplomats.*) Izdatel'stvo „Literaturnoi Gazety”. Moskva, 1949.
- Buist, Margaret: Halsbury's Laws of Canada: conflict of Laws. Lexis Nexis Canada Inc. Markham, 2011.
- Butler, W. E.: William Whewell translator of Hugo Grotius. In: Kivalov, S. V. (ch. ed.): Al'manakh mezhdunarodnogo prava. Vypusk 2. „Feniks”. Odessa, 2011.
- Búza, László: A nemzetközi jog tankönyve. (*The text-book of international law.*) Politzer Zsigmond és fia kiadása. Budapest, 1935.
- Byers, Michael: Custom, Power and the Power of Rules. International Relations and Customary International Law. Cambridge University Press. Cambridge, 1999.
- Cahier, Philippe: Le Droit Diplomatique Contemporain. (*Contemporary Diplomacy law.*) Librairie Droz. Geneva, 1964.
- Callières, François, de: The Art of Negotiating with Sovereign Princes. In: Berridge, G. R. (ed.): Diplomatic Classics: selected texts from Comynes to Vattel. Palgrave Macmillan. Basingstoke, 2004.
- Cambridge International Dictionary of English. Cambridge University Press. Cambridge, 1995.
- Campbell, A. C. (ed.): The rights of war and peace, including the Law of nature and of nations. Vol. II. Printed by B. Boothroyd. London, 1814.
- Campbell, Norman: What Is Science? Dover Publications. Mineola, 1952.
- Capps, Patrick–Evans, Malcolm–Konstadinidis, Stratos (eds.): Asserting Jurisdiction: International and Legal Perspectives. Hart Publishing. Oxford, 2003.
- Carreau, Dominique–Marrella, Fabrizio: Droit International. (*International Law.*) Editions A. Pedone. Paris, 2012.
- Carty, Anthony: The decay of international law? Manchester University Press. Manchester, 1986.
- Cassese, Antonio: International Law. Oxford University Press. Oxford, 2005.
- Chamberlin, William Henry: America's Second Crusade. Liberty Fund, Inc. Indianapolis, 2008.
- Chapal, Philippe: Le courrier diplomatique et la valise diplomatique. (*The diplomatic courier and the diplomatic bag.*) Société française pour le droit international: Colloque (22e: 1988. Université de Tours). Aspects récents du droit des relations diplomatiques. Éditions A. Pedone. Paris, 1989.
- Chatterjee, Charles: International Law and Diplomacy. Routledge. London, 2010.
- Chazournes, Laurence Boisson, de–Kohen, Marcelo G.–Viñuales, Jorge E. (eds.): Diplomatic and Judicial Means of Dispute Settlement. Martinus Nijhoff Publishers. Leiden, 2013.

- Covell, Charles: *Kant and the Law of Peace*. Palgrave. New York, 1998, 177.
- Crawford, James: *Brownlie's Principles of Public International Law*. Oxford University Press. Oxford, 2012.
- Crawford, James: *The International Law Commission's Articles on State Responsibility. Introduction, Text and Commentaries*. Cambridge University Press. Cambridge, 2002, 223.
- Csák, Elemér: *Foglalkozása úrhajós. (Occupation: astronaut.)* Kossuth Könyvkiadó–Zrínyi Katonai Kiadó. Budapest, 1980.
- Csarada, János: *A tételes nemzetközi jog rendszere. (The system of itemized international law.)* Politzer Zsigmond és fia kiadása. Budapest, 1901.
- Csekonics, Iván: *A diplomácia fogalmai. (The concepts of diplomacy.)* In: Mártonffy, Károly (ed.): *Közigazgatásunk nemzetközi kapcsolatai. (International relations of our public administration.)* Állami Kiadó. Budapest, 1941.
- Demin, Y. G.: *Status diplomaticheskikh predstavitel'stv i ikh personala. (The status of diplomatic representations and their personnel.)* Mezhdunarodnye otnosheniia. Moskva, 2010.
- Denza, Eileen: *Diplomacy law. Commentary on the Vienna Convention on Diplomatic Relations*. Oxford University Press. London, 2008.
- Derian, James Der: *On Diplomacy. A Genealogy of Western Estrangement*. Basil Blackwell Ltd. Oxford, 1987.
- Deutsch, Karl W. (co-author): *From Political Community and the North Atlantic Area*. Princeton University Press. Princeton, 1957.
- Dictionnaire de la terminologie du droit international. (Dictionary of terminology of international law.)* Sirey. Paris, 1960.
- Dilks, David (ed.): *The Diaries of Sir Alexander Cadogan (1938-1945)*. Cassel. London, 1971.
- Dilthey, Wilhelm: *The Essence of Philosophy*. The University of North Carolina Press. Chapel Hill, 1954.
- Dinh, Nguen Quoc–Daillier, Patrick–Pellet, Alain: *Droit International Public. (Public International Law.)* Librairie Générale de Droit et de Jurisprudence, E. J. A. Paris, 1992.
- Diószegi, István: *Klasszikus diplomácia – hatalmi politika. (Classical diplomacy – power politics.)* Gondolat Kiadó. Budapest, 1967.
- Dixon, Martin: *International Law*. Oxford University Press. Oxford, 2013.
- Dixon, Martin–McCorquodale, Robert–Williams, Sarah: *Cases and Materials on International Law*. Oxford University Press. Oxford, 2011.
- Dobrynin, Anatoly: *In Confidence: Moscow's Ambassador to America's Six Cold War Presidents (1962-1986)*. Times Books, a division of Random House, Inc. New York, 1995.

- Fejtő, François (ed.): *The opening of an era: 1848*. Allan Wingate. London, 1948.
- Filmer, Robert, Sir: *Observations Upon H. Grotius De Jure Belli et Pacis*. In: Laslett, Peter (ed.) *Patriarcha and Other Political Works of Sir Robert Filmer*. Basil Blackwell. Oxford, 1949.
- Findling, John E.: *Dictionary of American Diplomatic History*. Greenwood Press. Westport, 1980.
- Flachbarth, Ernő: *Nemzetközi jog I. Egyetemi jegyzet. (International law I. Lecture notes.)* Tankönyvkiadó Jegyzetsokszorosító Üzem. Budapest, 1951.
- Flanders, Stephen A.–Flanders, Carl N. (eds.): *Dictionary of American Foreign Affairs*. Macmillan Publishing Company. New York, 1993.
- Fleischmann, Max: *Das Völkerrecht. Systematisch Dargestellt von Franz von Liszt. (International law. Systematically presented by Franz von Liszt.)* Verlag Von Julius Springer. Berlin, 1925.
- Fletcher, Catherine: *Diplomacy in Renaissance Rome: The Rise of the Resident Ambassador*. Cambridge University Press. Cambridge, 2015.
- Fox, Hazel: *The law of state immunity*. Oxford University Press. Oxford, 2008.
- Francev, J. P. (ed.): *Világtörténet. I. Kötet. (World History. Volume I.)* Kossuth Könyvkiadó. Budapest, 1962.
- Franck, Thomas M.: *Fairness in International Law and Institutions*. Oxford University Press. Oxford, 1997.
- Frank, Tímea–Sulyok, Gábor: *A diplomáciai és a konzuli kapcsolatok joga. (The law of diplomatic and consular relations.)* Rejtjel Kiadó. Budapest, 2002.
- Freeman, Chas W.: *The Diplomat's Dictionary*. United States Institute of Peace Press. Washington, 2010.
- Frey, Linda S.–Frey, Marsha L.: *The History of Diplomatic Immunity*. Ohio State University Press. Columbus, 1999.
- Frum, David: *We need more secrecy*. The Atlantic. May 2014.
- Gadzhiev, K. S.: *Geopolitika Kavkaza. (The geopolitics of the Caucasus.)* „Mezhdunarodnye otnosheniia.” Moskva, 2003.
- Gajzágó, László: *A háború és béke joga. (The law of war and peace.)* Stephaneum Nyomda. Budapest, 1942.
- Gardiner, Richard K.: *International Law*. Pearson Education Limited. Harlow, 2003.
- Gearey, Adam: *Globalization and Law: Trade, Rights, War*. Rowman&Littlefield Publishers, Inc. Lanham, 2005.

- Hamilton, Keith–Langhorne, Richard: *The practice of diplomacy. Its Evolution, Theory and Administration.* Routledge Publishing. London, 2002.
- Hampton, Jean: *Political philosophy.* Westview Press Inc. Oxford, 1998.
- Haraszti, György–Herczegh, Géza–Nagy, Károly: *Nemzetközi jog. (International law.)* Tankönyvkiadó. Budapest, 1976.
- Hardy, Michael: *Modern Diplomacy law.* Manchester University Press. Manchester, 1968.
- Hargitai, József: *A diplomáciai és konzuli kapcsolatok joga. (The law of diplomatic and consular relations.)* Budapest, 2005.
- Harris, D. J.: *Cases and Materials on International Law.* Thomson Sweet&Maxwell. London, 2004.
- Hart, H. L. A.: *The Concept of Law.* Oxford University Press. Oxford, 1961.
- Heermann, Christian: *A Scotland Yard titkaiból. (From the secrets of Scotland Yard.)* Zrínyi Katonai Kiadó. Budapest, 1989.
- Herczegh, Géza: *A diplomáciai kapcsolatok története. II. rész. 1933-1945. (The history of diplomatic relations. Vol. II. 1933-1945.)* Tankönyvkiadó. Budapest, 1966.
- Herczegh, Géza: *Magyarország külpolitikája (896-1919). (Foreign policy of Hungary (896-1919).)* Kossuth Könyvkiadó. Budapest, 1987.
- Herczegh, Géza–Arday, Lajos–Joháncsik, János: *Magyarország nemzetközi kapcsolatainak története.* Zrínyi Miklós Nemzetvédelmi Egyetem. Budapest, 2001.
- Herman, Michael: *Intelligence Services in the Information Age. Theory and Practice.* Frank Cass Publishers. London, 2005.
- Hevener, N. K. (ed.): *Diplomacy in a Dangerous World: Protection for Diplomats under International Law.* Westview Press. Boulder, 1986.
- Higgins, Rosalyn: *Problems and process. International law and how we use it.* Oxford University Press. Oxford, 1994.
- Hillier, Tim: *Sourcebook on Public International Law.* Cavendish Publishing Limited. London, 1998.
- Hingorani, R. C.: *Modern International Law.* Oceana Publications, Inc. New York, 1979.
- Horchani, Ferhat: *Les sources du Droit Inetrnational Public. (Sources of International Public Law.)* L. G. D. J–C. P. U–DELTA. Paris–el Manar–Beyrouth, 2008.
- Hotman, Jean: *The Ambassador.* Berridge, G. R. (ed.): *Diplomatic Classics: selected texts from Commynes to Vattel.* Palgrave Macmillan. Basingstoke, 2004.
- Hurd, Douglas: *The Search for Peace.* Warner Books. London, 1997.

- Kaplan, Morton A.: Some Problems of International Systems Research. In: Deutsch, Karl W.: International Political Communities: An Anthology. Garden City, N. Y. Anchor books. New York, 1966.
- Kaufmann, Johan: The Diplomacy of International Relations. Kluwer Law International. The Hague, 1998.
- Keeton, George W.–Schwarzenberger, Georg (eds.): The Frontiers of International Law. Stevens&Sons Limited. London, 1962.
- Kelsen, Hans: Principles of International Law. (Revised and edited by Tucker, Robert W.) Holt, Rinehart and Winston, Inc. New York, 1967.
- Kende, Tamás–Nagy, Boldizsár–Sonnevend, Pál–Valki, László (ed.): Nemzetközi jog. (*International law.*) Wolters Kluwer. Budapest, 2014.
- Kennan, George F.: Diplomacy in the Modern World. In: Kennan, George F.: American Diplomacy. University of Chicago Press. Chicago, 1984.
- Kincses, László: Diplomáciatörténet. (*The history of diplomacy.*) HVG-ORAC Kiadó Kft. Budapest, 2005.
- Kish, John: International Law and Espionage. Kluwer Law International. The Hague, 1995.
- Kish, John: The Law of International Spaces. A. W. Sijthoff. Leiden, 1973.
- Kiss, Csaba Gy. (ed.): Magyarorsággutatás. (*Hungarian research.*) A Magyarorsággutató Csoport. Budapest, 1987.
- Kiss, István: Európai nemzetközi jog. (*European international law.*) Érsek-Lyceumi Kö- és Könyvnyomda. Eger, 1876.
- Klučka, Ján–Elbert, L’udmila: Regionalism and its contribution to general international law. UPJŠ in Košice. Košice, 2015.
- Kmoskó, Mihály (trans.): Hammurabi törvényei. (*The laws of Hammurabi.*) Ajtai K. Albert Könyvnyomdája. Kolozsvár, 1911.
- Kolb, Robert: Réflexions sur les politiques juridiques extérieures. (*Reflections on external legal policies.*) Editions A. Pedone. Paris, 2015.
- Kolobov, O. A. (ed.): Diplomatičeskaja služba: rossiiskii standart. (*Diplomatic service: Russian standard.*) Ministerstvo Obrazovaniia Rossijskoj Federatsii-Hizhegorodskii Gosudarstvennyi Universitet im. N. I. Lobachevskogo. Nizhnii Novgorod, 2008.
- Kondorosi, Ferenc–Maros, Kitti–Visegrády, Antal: A világ jogi kultúrái – a jogi kultúrák világa. (*The legal cultures of the world – the world of legal cultures.*) Napvilág Kiadó. Budapest, 2008.

- Ladynenko, A. P.: Vidy vooruzhennykh konfliktov i primenimoe k nim pravo. (*Types of armed conflict and the law, applicable to them.*) In: Kivalov, S. V. (ch. ed.): Al'manakh mezhdunarodnogo prava. Vypusk 1. „Feniks”. Odessa, 2009.
- Langhorne, Richard: The regulation of Diplomatic Practice: The Beginnings to the Vienna Convention on Diplomatic Relations, 1961. In: Jönsson, Christer–Langhorne, Richard (ed.): *Diplomacy. History of Diplomacy. Volume II.* Sage Publications Ltd. London, 2011.
- Lauterpacht, H.: *The Function of Law in the International Community.* Archon Books. Hamden, 1966.
- Lauterpacht, Hersch: *Private Law Sources and Analogies of International Law: With Special Reference to International Arbitration.* Longmans. Green and Co. Ltd. London, 1927.
- Lebedev, S. N.–Kabatova, J. V. (eds.): *Mezhdunarodnoe chastnoe pravo. (International private law.)* Statut. Moskva, 2011.
- Lemkin, Raphael: *Axis Rule in Occupied Europe: Laws of Occupation – Analysis of Government – Proposals for Redress.* Carnegie Endowment for International Peace, Division of International Law. Washington, DC, 1944.
- Lengyel, István: *Forradalom és diplomácia. (Revolution and diplomacy.)* Kossuth Könyvkiadó. Budapest, 1987.
- Lensen, George Alexander (ed.): *Revelations of a Russian Diplomat. The Memoirs of Dimitri I. Abrikossov.* University of Washington Press. Seattle, 1964.
- Leonov, A. V.: *Diplomaticeskii immunitet. (Diplomatic immunity.)* Infra. Moskva, 2007.
- Levin, D. B.: *Diplomaticeskii immunitet. (Diplomatic immunity.)* Izdatel'stvo Akademii Nauk SSSR. Moskva, 1949.
- Levin, D. B.: *Diplomatia. (Diplomacy.)* Izdatel'stvo sotsial'no-ekonomicheskoi literatury. Moskva, 1962.
- Levin, D. B.: *Istoriia mezhdunarodnogo prava. (The history of international law.)* Izdatel'stvo Instituta mezhdunarodnykh otnoshenii. Moskva, 1962.
- Levin, D. B.: *Mezhdunarodnoe pravo, vneshniaia politika i diplomatia. (International law, foreign policy and diplomacy.)* Mezhdunarodnye otnosheniia. Moskva, 1981.
- Levin, D. B.–Kaliuzhnaia, G. P. (eds.): *Mezhdunarodnoe pravo. (International law.)* Ministerstvo vysshego i srednego special'nogo obrazovaniia RSFSR. Moskva, 1960.
- Levin, D. B.–Kalyuzhnaia, G. P. (eds.): *Mezhdunarodnoje pravo. (International law.)* Izdatel'stvo iuridicheskoi literatury. Moskva, 1964.
- Link, Arthur S.: *Woodrow Wilson: Revolution, War, and Peace.* Wiley-Blackwell. New York, 1979.

- Malinovskii, A. A.: Zloupotreblenie sub"ektivnym pravom. (*Abuse of subjective right.*) Iurlitinform. Moskva, 2007.
- Mann, F. A.: Foreign Affairs in English Courts. Clarendon Press. Oxford, 1986.
- Mann, M.: Natsii i natsionalizm. (*Nations and nationalism.*) Praxis. Moskva, 2002.
- Marchenko, M. N.: Tendentsii razvitiia prava v sovremennom mire. (*Tendencies of development of law in the modern world.*) Izdatel'stvo „Prospekt”. Moskva, 2015.
- Marchetti, Victor–Marks, John D.: The CIA and the Cult of Intelligence. Dell Publishing Co., Inc. New York, 1974.
- Martens, Charles, de: Causes célèbres du droit des gens. Tome premier. (*Famous causes of international law. Volume One.*) Brockhaus&Avenarius. Paris, 1843.
- Martens, Charles, de: Le Guide Diplomatique. (*The Diplomatic Guide.*) F. A. Brockhaus. Leipzig, 1866.
- Martens, Charles, de: Le Guide Diplomatique. (*The Diplomatic Guide.*) Imprimé Par Plon Frères. Paris, 1854.
- Martin, Györgyi: „*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, Vanda (ed.): Liber Amicorum Prandler Árpád. Tanulmányok Prandler Árpád 80. születésnapja alkalmából. (*Liber Amicorum Árpád Prandler. Studies on the occasion of Árpád Prandler's 80th birthday.*) MTA Jogtudományi Intézet. Budapest, 2010.
- Martin, Laurence W.: Diplomacy in modern European history. The MacMillan Company. New York, 1966.
- Martonyi, János: Globális szabályozások és Európa. (*Global regulations and Europe.*) A közigazgatás egyes alapproblémái. Emlékkötet Martonyi János halálának 25. évfordulója alkalmából. (*Certain basic problems of administration. Commemorative Edition, dedicated to the 25th anniversary of the death of János Martonyi.*) SZTE ÁJTK Közigazgatási Jogi és Pénzügyi Jogi Tanszék. Szeged, 2007.
- Mattingly, Garrett: Renaissance Diplomacy. Dover Publications Inc. New York, 1988.
- Matuzov, N. I.–Mal'ko, A. V.: Teoriia gosudarstva i prava. (*Theory of state and law.*) „Jurist”. Moskva, 2004.
- McDougal, Myres S.–Lasswell, Harold D.: The Identification and Appraisal of Diverse Systems of Public Order. American Journal of International Law. No. 53. The American Society of International Law. 1959.

- Moser, Leo J.: Cross-Cultural Dimensions: U. S. – Japan. In: Bendahmane, Diane B.–Moser, Leo (eds.): Toward a Better Understanding: U. S. Japan Relations. Brookings Institution. Washington, 1986.
- Moskin, J. Robert: American Statecraft: The Story of the U. S. Foreign Service. St. Martin's Press. New York, 2013.
- Murdoch, Steve: Network North: Scottish Kin, Commercial And Covert Associations in Northern Europe, 1603-1746. Koninklijke Brill NV. Leiden, 2006.
- Murray, Craig: Murder in Samarkand: A British Ambassador's Controversial Defiance of Tyranny in the War on Terror. Mainstream Publishing. Edinburgh and London. 2007.
- Murty, B. S.: The International Law of Diplomacy. The Diplomatic Instrument and Word Public Order. New Haven Press. New Haven, 1989.
- Mustafaeva, Aiten–Sevdimaliev, Ramiz–Aliiev, Agshin–Iylmaz, Reha (eds.): Prestupleniia armianskih terroristicheskikh i banditskikh formirovanii protiv chelovechestva (XIX-XXI vv.). Kratkaia khronologicheskaiia entsiklopedia. (*Crimes of Armenian terrorist and bandit formations against humanity (XX-XXIst centuries). Concise chronological encyclopaedy.*) Institut po pravam cheloveka Natsional'noi Akademii Nauk Azerbaidzhana. Baku, 2002.
- Nagy, Károly: A nemzetközi jog, valamint Magyarország külkapcsolatainak története. (*The history of international law and the foreign relations of Hungary.*) Antológia Kiadó és Nyomda. Lakitelek, 1995.
- Nagy, Károly: Nemzetközi jog. (*International law.*) Püski Kiadó Kft. Budapest, 1999.
- Neumann, Iver B.: John Vincent and the English School of International Relations. In: Neumann, Iver B.–Waever, Ole (eds.): The Future of International Relations. Routledge, New York, 2001.
- Nicolson, Harold: Diplomacy. Oxford University Press. New York, 1963.
- Nicolson, Harold: The Evolution of Diplomatic Method. University of Leicester Press. Leicester, 1988.
- Nikitchenko, V. F. (ed.): Kontrrazvedivatel'nyi slovar'. (*Counterintelligence dictionary.*) Vysshaiia krasnoznamennaia shkola Komiteta Gosudarstvennoi Bezopasnosti pri Sovete Ministrov SSSR im. F. E. Dzerzhinskogo. Moskva, 1972.
- Northrop, F. S. C.: The Taming of the Nations: A Study of the Cultural Bases of International Policy. The Macmillan Company. New York, 1954.
- Nozhenko, M. V.: Natsional'nye gosudarstva v Evrope. (*National states in Europe.*) Norma. Sankt-Peterburg, 2007.
- O'Connell, D. P.: International Law. Volume I. Stevens&Sons. London, 1970.

- Popov, V. I.: *Sovremennaiia diplomatiia. Teoriia i praktika. (Modern diplomacy. Theory and practice.)* Nauka i Iskusstvo. Moskva, 2000.
- Potemkin, V. P. (ed.): *Istoriia diplomatii. (The history of diplomacy.)* Gosudarstvennoe Izdatel'stvo Politicheskoi Literatury. Moskva, 1959.
- Potter, Evan H. (ed.): *Cyber-Diplomacy.* McGill-Queen's University Press. Montreal, 2002.
- Pritz, Pál: *Magyar diplomácia a két háború között. (Hungarian diplomacy between the two wars.)* Magyar történelmi társulat. Budapest, 1995.
- Pufendorf, Samuel: *Elementorium Jurisprudentiale Universalis Libri Duo. Vol. II.* The Clarendon Press. Oxford, 1931.
- Queller, Donald E.: *The Office of the Ambassador in the Middle Ages.* Princeton University Press. Princeton, 1967.
- Quinton, Anthony (ed.): *Political philosophy.* Oxford University Press. Oxford, 1967.
- Rady, Martyn: *Russia, Poland and the Ukraine 1462-1725.* Hodder&Stoughton. London, 1990.
- Rana, Kishan S.: *Inside Diplomacy.* Manas Publications. New Delhi, 2006.
- Rana, Kishan S.: *The 21st Century Ambassador. Plenipotentiary to Chief Executive.* Oxford University Press. New Delhi, 2005.
- Ray, James Lee–Kaarbo, Juliet: *Global Politics.* Wadsworth, Cengage Learning. Boston, 2011.
- Reisman, W. Michael (ed.): *Jurisdiction in International Law.* Dartmouth Publishing Company Limited. Aldershot, 1999.
- Repets'kii, V. M.: *Stanovlennia ta rozvytok prava zovnishnikh znosyn. (Establishment and development of law of external relations.)* In: Kivalov, S. V. (ch. ed.): *Al'manakh mezhdunarodnogo prava. Vypusk 2. „Feniks”.* Odessa, 2010.
- Reshetov, J. A.: *Bor'ba s mezhdunarodnymi prestupleniiami protiv mira i bezopasnosti. (The fight with international crimes against peace and security.)* Mezhdunarodnye otnosheniia. Moskva, 1983.
- Riordan, Shaun: *The New Diplomacy.* Polity Press. Cambridge, 2004.
- Romsics, Gergely: *A lehetetlen művészete. Diplomácia, erőegyensúly és vetélkedés a klasszikus realizmus tükrében. (The art of impossible. Diplomacy, balance of power and rivalry in the light of classical realism.)* Osiris Kiadó. Budapest, 2009.
- Rona, Thomas P.: *Weapon Systems and Information War.* Boeing Aerospace Co. Seattle, WA. July 1976.
- Rónai Horváth, Jenő (ed.): *Hadtörténelmi közlemények. (Military history publications.)* Vol. II, Tome II. Az MTA Hadtudományi Bizottsága. Budapest, 1889.

- Semenova, L. E.–Floria, B. N.–Shvarts, I. (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.
- Sen, B.: A Diplomat’s Handbook of International Law and Practice. Martinus Nijhoff. The Hague, 1965.
- Sharp, Paul: Diplomatic Theory of International Relations. Cambridge University Press. New York, 2009.
- Simbeye, Yitiha: Immunity and International Criminal Law. Ashgate Publishing Ltd. Farnham, 2004.
- Simma, Bruno: „Reciprocity.” Bernhardt, Rudolf (ed.): Encyclopedia of Public International Law. North-Holland Co. Amsterdam, 1992.
- Simma, Bruno: Das Reziprozitätselement im Zustandekommen völkerrechtlicher Verträge: gedanken zu einem Bauprinzip der internationalen Rechtsbeziehungen. (*The element of reciprocity in conclusion of international treaties: thoughts on the structural element of international legal relations.*) Duncker&Humblot. Berlin, 1972.
- Simpson, Gerry: International Law in Diplomatic History. Crawford, James–Koskenniemi, Martti (eds.): The Cambridge Companion to International Law. Cambridge University Press. Cambridge, 2012.
- Slovar’ mezhdunarodnogo prava. (*Dictionary of international law.*) Mezhdunarodnye otnosheniia. Moskva, 1986.
- Smith, Karen E.–Light, Margo (eds.): Ethics and Foreign Policy. Cambridge University Press. Cambridge, 2001.
- Sörensen, Georg: The global polity and changes in statehood. In: Ougaard, Morten–Higgott, Richard (eds.): Towards a Global Polity. Routledge. New York, 2002.
- Starke, J. G.: Introduction to International Law. Butterworth&Co. Publishers Ltd., London, 1984.
- Starkey, Brigid–Boyer, Mark A.–Wilkenfeld, Jonathan: International Negotiation in a Complex World. Rowman&Littlefield Publishers, Inc. New York, 2016.
- Starkey, Brigid–Boyer, Mark A.–Wilkenfeld, Jonathan: Negotiating a Complex World. Rowman&Littlefield Publishers, Inc. Lanham, 1999.
- Steiner, Henry J.–Vagts, Detlev F.: Transnational legal problems. The Foundation Press, Inc. New York, 1976.

- Thomas, Timothy L.: Russia's Asymmetrical approach to Information Warfare. Cimbala, Stephen J. (ed.): *The Russian military into the twenty-first century*. Routledge. New York, 2013.
- Tikhomirova, L. V.–Tikhomirov, M. J.: *Iuridicheskaia entsiklopediia. (Juridical encyclopaedy.)* Izdatel'stvo M. J. Tikhomirova. Moskva, 2008.
- Torkunov, A. V. (ed.): *Diplomaticheskaia sluzhba. (Diplomatic Service.)* Rossiiskaia politicheskaia entsiklopediia – ROSSPEN. Moskva, 2002.
- Trachtman, Joel P.: *The Future of International Law*. Cambridge University Pres. New York, 2013.
- Tunkin, G. I.: *Teoriia mezhdunarodnogo prava. (The theory of international law.)* Mezhdunarodnye otnosheniia. Moskva, 1970.
- Tunkin, G. I.: *Voprosy teorii mezhdunarodnogo prava. (Questions of international law theory.)* Gosizurizdat. Moskva, 1962.
- U. S. Department of State: *Dictionary of International Relations Terms*. Washington, 1987.
- Ustor, Endre: *A diplomáciai kapcsolatok joga. (The law of diplomatic relations.)* Közgazdasági és jogi Könyvkiadó. Budapest, 1965.
- Vajda, Péter: *Diplomácia mundérban. (Diplomacy in mundir.)* Zrínyi Katonai Kiadó. Budapest, 1981.
- Vasil'eva, L. A.–Bakinovskaia, O. A.: *Mezhdunarodnoe publichnoe pravo. (International public law.)* Chastnoe izdatel'skoe unitarnoe predpriiatie „Tetralit”. Minsk, 2014.
- Vattel, Emer, de: *The Law of Nations*. In: Berridge, G. R. (ed.): *Diplomatic Classics: selected texts from Comynnes to Vattel*. Palgrave Macmillan. Basingstoke, 2004.
- Vattel, Emer, de: *The Law of Nations; or Principles of the Law of Nature, Applied to the Conduct and Affairs of Nations and Sovereigns. (Translated from the French.)* Simeon Buttler. Northampton, 1820.
- Vel'iaminov, G. M.: *Mezhdunarodnoe ekonomicheskoe pravo i process. (International economic law and trial.)* Volters Kluwer. Moskva, 2004.
- Veszprémy, László: *The Holy Crown of Saint Stephen*. Attila Zsoldos (ed.): *Saint Stephen and His Country. A Newborn Kingdom in Central Europe: Hungary*. Lucidus Kiadó. Budapest, 2001.
- Villiger, Mark E.: *Customary International Law and Treaties. A Manual on the Theory and Practice of the Interpretation of Sources*. Schulthess Kluwer Law International. The Hague, 1997.

- Wolf, Charles–Rosen, Brian: Public diplomacy. How to Think About and Improve It. RAND Corporation. Santa Monica, 2004.
- Wolf, Joachim: Die Haftung der Staaten für Privatpersonen nach Völkerrecht. (*The liability of states for private individuals under international law.*) Duncker&Humblot (Verlag). Berlin, 1997.
- Wolfke, Karol: Custom in Present International Law. Martinus Nijhoff Publishers. Dordrecht, 1993.
- Wolfrum, Rüdiger (ed.): The Max Planck Encyclopedia of Public International Law. Oxford University Press. Oxford, 2013
- Wolfrum, Rüdiger: Sources of International law. Max Planck Foundation for International Peace and the Rule of Law. Heidelberg, 2011.
- Wood, John R.–Serres, Jean: Diplomatičeskii tseremonial i protokol. (Diplomatic ceremonial and protocol.) Progress. Moskva, 1976.
- Woodley, Mick: Osborn's Law Dictionary. Sweet&Maxwell. Andover, 2009.
- Yang, Xiaodong: State Immunity in International Law. Cambridge University Press. Cambridge, 2012.
- Young, Kenneth T.: Negotiating with the Chinese Communists. McGraw-Hill. New York, 1968.
- Yuzefovich, L. A.: „Kak v posol'skikh obyčaiakh vedetsia...” („As it goes in ambassadorial customs...”) Mezhdunarodnye otnosheniia. Moskva, 1988.
- Zeileissen, Christian: Die abgabenrechtlichen Privilegien in den diplomatischen und konsularischen Beziehungen. (*The tax exemptions in the diplomatic and consular relations.*) Wilhelm Braumüller. Wien, 1971.
- Zemskov, I. N.: A második front diplomáciai története. (*Diplomatic history of the second front.*) Kossuth Könyvkiadó–Kárpáti Könyvkiadó. Budapest, 1984.
- Zlinszky, János: A magyar jogalkotás kezdetei. Szent István, államalapító és törvényhozó. (*The beginnings of Hungarian legislation. Saint Stephen, the founder of state and lawmaker.*) Bollók, János–Kristó, Gyula (trans.): Szent István király Intelmei és Törvényei. (*Saint Stephen's Exhortations and Laws.*) Szent István Társulat. Budapest, 2002.
- Zoller, Elizabeth: Droits internes es statut diplomatique. (*Internal laws and diplomatic status.*) Société française pour le droit international. Colloque (22e: 1988: Université de Tours). Aspects récents du droit des relations diplomatiques. Éditions A. Pedone. Paris, 1989.
- Zonova, T. V. (ed.): Diplomatiia inostrannyh gosudarstv. (*Diplomacy of foreign states.*) ROSSPEN. Moskva, 2004.

Journals

Ádány, Tamás Vince: Megjegyzések a diplomaták személyes mentességeiről a Goodfriend ügy margójára. (*Notes on personal immunities of diplomats on the subject of the Goodfriend case.*) Pázmány Law Working Papers. 2015/10.

Aichi, Kiichi: Japan's Legacy and Destiny of Change. *Foreign Affairs. An American Quarterly Review*. Vol. 48, No. 1. Council on Foreign Relations, Inc. October 1969.

Akehurst, Michael: Jurisdiction in International Law. *British Yearbook of International Law*. No. 46. 1972-1973.

Around the World. *World Intellectual Property Report*. Vol. 30, No 1. January, 2016.

Auslandsinformationen. Die Globalisierung des Terrorismus. (*Globalization of terrorism.*) 32. Jahrgang, Ausgabe 1, 2016.

Bagi, Zoltán: „Nekünk Mohács kell.” (*„Mohács is what we need.”*) Papp, Sándor (ed.): AETAS-Történettudományi folyóirat. Vol. 23, No. 4, 2008.

Barker, J. Craig–Warbrick, Colin–Mc Goldrick, Dominic: State Immunity, Diplomatic Immunity and Act of State: A Triple Protection against Legal Action? *The International and Comparative Law Quarterly*. Vol. 47, No. 4. October, 1998.

Bátányi, Gábor: Diplomacy by Show Trial: The Espionage Case of Edgar Sanders and British-Hungarian Relations, 1949-53. *Slavonic&East European Review*. Vol. 93, No. 4. October 2015.

Beck, Curt: Amending diplomatic immunity: recent Congressional Proposals. *ILSA Journal of International Law*. Vol. 12:117, 1988.

Behrens, Betty: Treatises on the ambassador written in the fifteenth and early sixteenth centuries. *English Historical Review*. Vol. 51, 1936.

Behrens, Paul: Diplomatic Interference and Competing Interests in International Law. *The British Yearbook of International Law*. Vol. 82, No 1, 2012.

Behrens, Paul: None of their business? Diplomatic involvement in human rights. *Melbourne Journal of International Law*. Vol. 15, 2014.

Bergmar, Nina Maja: Demanding Accountability Where Accountability Is Due: A Functional Necessity Approach to Diplomatic Immunity Under the Vienna Convention. *Vanderbilt Journal of Transnational Law*. Vol. 47, 2014.

Binyon, Michael: Diplomas in diplomacy. *The World Today*. August&September 2015, Vol. 71, No 4.

Draft articles concerning diplomatic intercourse and immunities. Yearbook of the International Law Commission. Documents of the tenth session including the report of the Commission to the General Assembly. Doc. A/CN.4/116/Add.2. Vol. II. 1958.

Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries. Text adopted by the International Law Commission at its fifty-third session, in 2001, and submitted to the General Assembly as a part of the Commission's report covering the work of that session (A/56/10).

Draft Articles on the Status of the Diplomatic Courier and the Diplomatic Bag Not Accompanied by Diplomatic Courier and Draft Optional Protocols. Yearbook of the International Law Commission. Vol. II, Part II, 1989.

Draft of the Institute of International Law on diplomatic immunities. Article 8. Vol. II. Annuaire de l'Institut de Droit international. 1929.

Young, Eileen: The development of the law of diplomatic relations. British Yearbook for International Law. Vol. 40, 1964.

Elgavish, David: Did Diplomatic Immunity Exist in the Ancient Near East? Journal of the History of International Law. Vol. 2, No 1, 2000.

Hahn, Elliott J.: An Overview of the Japanese Legal System. Northwestern Journal of International Law & Business. Volume 5, Issue 3 Fall, 1983.

Empereur, Jean-Claude: Á propos de la crise en Europe. États-Unis: une nouvelle vision géopolitique? (*Apropos of crisis in Europe. United States: a new geopolitical vision?*) Revue Politique et Parlementaire. 117^e Année. No. 1077. Trimestriel Octobre-Décembre 2015.

Farhangi, Leslie Shirin: Insuring against Abuse of Diplomatic Immunity. Stanford Law Review, Vol. 38, No. 6, Rev. 1517. July, 1986.

Fassbender, Bardo: „Diplomatic immunity–Vienna Convention on Diplomatic Relations–effect of diplomatic immunity on states other than receiving state–relationship between state immunity and diplomatic immunity–state succession and diplomatic immunity.” The American Journal of International Law. Vol. 92, No 1, 1998.

Fisler Damrosch, Lori: Changing the International Law of Sovereign Immunity Through National Decisions. Vanderbilt Journal of Transnational Law. Vol. 44, No 1185, 2011.

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

Gaines-Ross, Leslie: Reputation Warfare. Harvard Business Review. December, 88/2010.

Garnett, Richard: State and diplomatic immunity and employment rights: European law to the rescue? International and Comparative Law Quarterly. Vol. 64, Issue 04, October 2015.

- Hershey, Amos S.: The Status of Mr. Bakhmeteff, The Russian Ambassador in Washington. *The American Journal of International Law*. Vol. 16, No 3, 1922.
- Higgins, Rosalyn: The Abuse of Diplomatic Privileges and Immunities: Recent United Kingdom Experience. Editorial Comments. *The American Journal of International Law*. Vol. 79, No 1, 1985.
- Hilderbrandt, Mireille: Law as Information in the Era of Data-Driven Agency. *The Modern Law Review*. Vol. 79, No. 1. January 2016.
- Hill, David Jayne: The Classification of Diplomatic Agents. *The American Journal of International Law*, Vol. 21, No 4, 1927.
- Hocking, B.: The End(s) of Diplomacy. *International Journal*. Vol. 53, No. 1, 1997-1998.
- Holmes, Oliver Wendell: The Path of the Law. *Harvard Law Review*. Vol. 10, 25 March, 1897.
- Hoover, Kappus Jennifer: Does Immunity Mean Impunity? The Legal and Political Battle of Household Workers Against Trafficking and Exploitation by Their Foreign Diplomat Employer. *Case Western Reserve Law Review*. Vol 61, 2010.
- House of Commons Foreign Affairs Committee. First Report. The Abuse of Diplomatic Immunities and Privileges. Commons Papesr. No. 127, 1985.
- Iasunik, L. I.: Osobennosti administrativno-pravovyh osnov upravleniia inostrannymi delami v Ukraine. (*The particularities of administrative-legal bases of the management of foreign affairs in Ukraine.*) *Pravo.ua*. No 1, 2014.
- Ikonen, Pertti: Public Diplomacy is important tool to convey messages. *Macedonian Diplomatic Bulletin*. May, 2016.
- Jansen, Marius B.: Japan Looks Back. *Foreign Affairs. An American Quarterly Review*. Council on Foreign Relations Inc. Vol. 47, No. 1, October 1968.
- Jensen, De Lamar: The Ottoman Turks in Sixteenth Century French Diplomacy. *Sixteenth Century Journal*, Vol. 16, Issue 4. Winter, 1985.
- Jo, Katerine: Cybersecurity Law: Stricter Rules on Big Data. *China Law&Practice*. Vol. 29, No 3. September-October 2016.
- Jones, David A., Jr.–Fried, Jonathan T.: Diplomatic Immunity: Recent Developments in Law and Practice. *Proceedings of the Annual Meeting (American Society of International Law.)*, Vol. 85, 17-20 April, 1991.
- Kazbekova, K. M.: „Zloupotreblenie pravom” i „pravonarushenie”: sootnesenie poniatii. (*„Abuse of right” and „offense”: the corellation of notions.*) *Biznes v zakone*. No 1, 2010.

- Lauterpacht, E.: The Codification of the Law of Diplomatic Immunity. Transactions of the Grotius Society. Problems of Public and Private International Law, Transactions for the Year 1954. Vol. 40. 1954.
- Leist, O. E.: Sushchnosty prava. Problemy teorii i filosofii prava. (*The essence of law. The problems of theory and philosophy of law.*) IKD „Zertsalo-M”. Moskva, 2002.
- Loskarev, N. V.: K vprosu o klassifikatsii legal’nykh definitsii. (*To the question of classification of legal definitions.*) Juridicheskaia nauka. No 3, 2013.
- Maier, Harold: Interest Balancing and Extraterritorial Jurisdiction. American Journal of Comparative Law. Vol. 31. 1983.
- Man-Ho Chok, Brian: Let the Responsible be Responsible: Judicial Oversight and Over-Optimism in the Arrest Warrant Case and the Fall of the Head of State Immunity Doctrine in International And Domestic Courts. American University International Law Review. Vol. 30, Issue 3, 2015.
- Mazzeschi, Riccardo Pisillo: The functional immunity of State officials from foreign jurisdiction: A critique of the traditional theories. Questions of International Law, 17, 2015, 3.
- McAfee, Andrew– Brynjolfsson, Erik: Human Work in the Robotic Future. Foreign Affairs. Vol. 95, No 4. July-August 2016.
- McCorquodale, Robert: Defining the international rule of law: defying gravity? International & Comparative Law Quarterly. Vol. 65, Part 2, April 2016.
- McDougal, Myres S.–Lasswell, Harold D.: The Identification and Appraisal of Diverse Systems of Public Order. American Journal of International Law. No. 53. The American Society of International Law. 1959.
- Mezhdunarodnaia politika noveishego vremeni v dogovorah, notah i deklaratsiiakh. (*International politics of modern times in agreements, notes and declarations.*) Izdatel’stvo NKID, chast’ III, vypusk I, 1928.
- Minnaar, Athony: Protection of foreign missions in South Africa. African Security Review. Vol. 9, No. 2, 2000.
- Mundie, Craig: Privacy Pragmatism. Foreign Affairs. Vol. 93, No 2, March-April 2014.
- Nash Leich, Marian: Contemporary practise of the United States relating to international law. The American Journal of International Law. Vol. 81, 1987.
- Naumescu, Valentin: Diplomatic service today: between political decisions and administrative criteria. Transylvanian Review of Administrative Sciences. No 44E/2015.
- Nečej, Elemír–Tarasovič, Vladimír: Extremism vs. Armed forces. Panorama of global security environment. Centre for European and North Atlantic Affairs. Bratislava, 2012.

Paul, Joel R.: The Transformation of International Comity. *Law and Contemporary Problems*. Vol 71, No. 19. 2008.

Perrenoud, Georges: Les restrictions á la liberté de déplacement des diplomates. (*The restrictions of freedom of movement of diplomats.*) *Revue générale de droit international public*. Vol. 57, 1953.

Pfeffer, Jeffrey: Power Play. *Harvard Business Review*. July-August, 88/2010.

Rattner, Stephen: The Thin Justice of International Law: a Moral Reckoning of the Law of Nations. *The Modern Law Review*. Vol. 79. No 5, September 2016.

Reeves, Jesse S. (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.

Reeves, Jesse S.: The Elkton Incident. *The American Journal of International Law*. Vol. 30, No 1, 1936.

Renan, Ernst: Mark Avrelii. (*Marcus Aurelius.*) Izdatel'stvo Tsentra „Terra”. Iaroslavl', 1991.

Resnik, Judith: Reinventing Courts as Democratic Institutions. In: *Dædalus*. Vol. 143, No 3. Summer 2014.

Ross, Mitchell S.: Rethinking Diplomatic Immunity: A Review of Remedial Approaches to Address the Abuses of diplomatic Privileges and Immunities. *American University International Law Review*. Vol. 4, Issue I, Article 14, 2011.

Rousseau, Charles: Chronique des faits internationaux. (*Chronicle of international facts.*) *Revue Générale de Droit International Public*, 83/351. 1980.

Rozakis, Christos L.: Terrorism and the internationally protected persons in the light of the ILC's Draft Articles. In: *The International and Comparative Law Quarterly*. Vol. 23, No 1, January 1974.

Rudd, Jonathan L.: Diplomatic Immunity. *FBI Law Enforcement Bulletin*. February 2008.

Russel, M. J.: Fluctuations in Reciprocity. *The International and Comparative Law Quarterly*. Vol. 1, No 2, April, 1952.

Sachser, Friedo: Federal Republic of Germany. Domestic Affairs. *American Jewish Yearbook*. 1982.

Salmond, John William: *Jurisprudence*. Stevens&Haynes. London, 1913.

Sandrovskii, K. K.: Pravo vneshnikh snoshenii. (*The law of external relations.*) Izdatel'skoe ob'edinenie „Vyshcha shkola”. Kiev, 1986.

Svantesson, Dan Jerker B.: International Law and Order in Cyberspace – Cloud Computing and the Need to Revisit the Foundations of „Jurisdiction”. Aspen Review. Central Europe. No 1, 2016.

Svrček, Miloš: Legal means of fighting against organized crime in the international perspective. In: Panorama of global security environment. Centre for European and North Atlantic Affairs. Bratislava, 2011.

Tai, Amy: Unlocking the door to justice: protecting the rights and remedies of domestic workers in the face of diplomatic immunity. Journal of Gender, Social Policy & the Law. Vol 16, No 1, 2007.

Taki, Victor: Moldavia and Wallachia in the eyes of Russian observers in the first half of the 19th century. In: East Central Europe/L'Europe Du Centre-Est: Eine wissenschaftliche Zeitschrift. Vol. 32, No 1-2. 2005.

Taylor, G. D. S.: The content of the rule against abuse of rights in international law. British Yearbook of International Law. Vol. 46. 1972-1973.

Tease, Antoinette Marie: Diplomatic Immunity and Divorce: *Fernandez v. Fernandez*. Connecticut Law Review. Vol. 21, 1988-1989.

Tsybulevskaia, O. I.: Zloupotreblenie pravom, kak npravstvennaia problema. (*Abuse of right, as moral problem.*) Vestnik VolGU. Serii 5. Vypusk 6. 2003-2004.

U. S. Wife to leave Moscow. Daytona Beach Morning Journal. 29 October, 1954. Vol. XXX, No. 160.

Vagts, Alfred: Review: Russian Diplomatic history – N. S. or O. S.? World Politics, Vol. 2, No 1. October, 1949. Cambridge University Press.

Värk, René: Personal Inviolability and Diplomatic Immunity in Respect of Serious Crimes. Juridica International. No. 8, 2003.

Värk, René: The Siege of the Estonian Embassy in Moscow: Protection of a Diplomatic Mission and Its Staff in the Receiving State. Juridica International XV/2008.

Verkhovskii, Aleksandr: Ugolovnoe pravo stran OBSE protiv prestuplenii nenavisti, vzbuzhdeniia nenavisti i iazyka vrazhdy. (*Criminal Law of the OSCE states against hate crimes, incitement to hatred and hate speech.*) Informatsionno-Analiticheskii Tsentr „Sova”. Moskva, 2015.

Vystuplenie Prezidenta Rossiiskoi Federatsii V. V. Putina na vos'mom Soveshchanii poslov i postoiannykh predstavitelei Rossiiskoi Federatsii. (*Speech by President of the Russian Federation at the eighth Meeting of ambassadors and permanent representatives of the Russian*

Newspapers

Footlick, Jerrold K.–Whitmore, Jane: Beyond the Law. Newsweek. (United States Edition.)
Section: Justice. 8 August, 1977.

Gamarekian, Barbara: The Thaw of Glasnost Warms Social Circuit. New York Times, 15
March, 1989.

Keller, Bill: Moscow Expels Attaché in Response to „Provocation”. New York Times, 15
March, 1989.

LGBT: Police readied for march. The Slovak Spectator. Vol. 17, No 22, 6-12 June, 2011.

Nene, Siphon George: Foreign Service, Diplomatic Immunity means less than nothing in lawless
Lagos. Sunday Independent. 4 August, 1996.

Szabad a szaanai lengyel nagykövet. (*The Polish Ambassador in Sanaa is free.*) Népszava. 6
March, 2000.

Turan, Kenneth: The Devilish Demands of Diplomatic Immunity. The Washington Post. 11
January, 1976.

Levush, Ruth: Israel: Compensation for Victims of Terrorism. Report for Congress. November 2007. Directorate of Legal Research for Foreign, Comparative, and International Law. 2007. Library of Congress. 96th Congress, First Session. Legislative History of the Diplomatic Relations Act. Committee Print. 1979.

Professional Education for a Professional Foreign Service. AFSA 2014 QDDR Paper. American Foreign Service Association.

Property Tax and Compensation Fund Law, 5721-1961, as amended, 15 LSI 101 (5721-1960/61).

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

Report of the Committee of Experts for the Progressive Codification of International Law. Pub.C.196.M.70.1927.V.

Report of the International Law Commission covering the Work of its Ninth session, 23 April – 28 June 1957. Official Records of the General Assembly, Twelfth Session, Supplement No 9, UN Doc. A/3623, Chapter II(III), Article 33. Yearbook of the International Law Commission. Vol. II, 1957.

Report of the International Law Commission. Yearbook of the International Law Commission. Vol. II, 1950.

Report of the International Law Committee. Doc. A/61/10, 2006.

Report on International Responsibility by F. V. García-Amador, Special Rapporteur. Doc. A/CN.4/96. In: Yearbook of the International Law Commission. Vol. II. 1956.

Research in International Law. Draft of Conventions Prepared for the Codification of International Law. Harvard Law School. Cambridge, 1932. The American Journal of International Law. Supplement: Research in International Law. American Society of International Law. Vol. 26, No 1, 1932.

Resolution on the Consideration of Civil Claims. A/CONF.20/10/Add.1, 90. Adopted at the 12th plenary meeting of the United Nations Conference on Diplomatic Intercourse and Immunities on 14 April, 1961 in Vienna.

The Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents. Annexed to General Assembly resolution 3166 (XVIII) of 14 December 1973. Entered into force on 20 February 1977. United Nations, Treaty Series. Vol. 1035.

The Convention regarding Diplomatic Officers. 155 LNTS 259. Signed on 20 February, 1928 in Havana. Entered into force on 21 May, 1929.

Internet sources

9 Poles Are Expelled By Kremlin In Retaliation. Chicago Tribune. 22 January, 2000. (Accessed on 8 January, 2016.) http://articles.chicagotribune.com/2000-01-22/news/0001220112_1_polish-embassy-spying-poland

A Chronology of the Crisis Between Eritrea and Ethiopia: 1988-1999. DEHAI – Eritrea online. (Accessed on 9 April, 2016.) <http://www.dehai.org/conflict/articles/chronology.html>

Amerikaiak bombázták le a Líbiában 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/

ASALA napominaet o sebe: chto stoit za ugrozami armianskih terroristov? (*ASALA reminds itself: what is behind the threats of Armenian terrorist?*) 1Newz.az. 22 August, 2012. (Accessed on 15 May, 2016.) <http://www.1news.az/analytics/20120822120023634.html>

Assault on U. S. consulate in Benghazi leaves 4 dead, including U. S. Ambassador J. Christopher Stevens. CBS News. 11 September, 2012. (Accessed on 10 April, 2016.) <http://www.cbsnews.com/news/assault-on-us-consulate-in-benghazi-leaves-4-dead-including-us-ambassador-j-christopher-stevens/>

Baabar, Mariana: Do tenancy laws apply to Austrian embassy? Pakistan Defense. 16 June, 2010. (Accessed on 14 January, 2016.) <http://defence.pk/threads/austrian-embassy-in-a-tenancy-lawsuit.62002/>

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-veszelyezetteti-rijad-es-teheran-viszalya-1582819>

Barnes, Bart: Philip Bonsal Dies at 92; Last Ambassador to Cuba. Last Ambassador to Cuba. HighBeam Research. 30 June, 1995. (Accessed on 2 December, 2015.) <https://www.highbeam.com/doc/1P2-841608.html>

Barron, James: Glen Cove and Russians: what's next? The New York Times. 29 August, 1982. (Accessed on 2 January, 2016.) <http://www.nytimes.com/1982/08/29/nyregion/glen-cove-and-russians-what-s-next.html>

Berezina, Nastia: V MID Rossii obiasnili prichinu vydvoreniia Shvedskogo diplomata. (*The Russian Foreign Ministry explained the reason for the expulsion of the Swedish diplomat.*) 4

Edward Snowden on police pursuing journalist data: the scandal is what the law allows. *The Guardian*. 16 April, 2016. (Accessed on 17 April, 2016.)

<http://www.theguardian.com/australia-news/2016/apr/17/edward-snowden-on-police-pursuing-journalist-data-the-scandal-is-what-the-law-allows>

Embassies issue joint statement celebrating Budapest Pride. *The Budapest Beacon*. 28 June, 2016. (Accessed on 23 December, 2016.) <http://budapestbeacon.com/news-in-brief/embassies-issue-joint-statement-celebrating-budapest-pride/35579>

Embassy of the United States: Joint Press Release on the Occasion of the 21st Budapest Pride Festival. The joint press release was issued by the Embassies of Argentina, Australia, Austria, Belgium, Brazil, Canada, Chile, Cyprus, Denmark, Estonia, Finland, France, Germany, Greece, Ireland, Israel, Italy, Lithuania, Malta, Norway, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, Switzerland, The Netherlands, New Zealand, The United Kingdom, The United States, and the British Council. 28 June, 2016. (Accessed on 23 December, 2016.) https://hungary.usembassy.gov/pr_0628016.html

Englung, Will–Lally, Kathy: Ryan C. Fogle, U. S. diplomat accused of spying, ordered to leave Russia. *The Washington Post*. 14 May, 2013. (Accessed on 18 January, 2016.) https://www.washingtonpost.com/world/russia-says-it-detained-us-spy/2013/05/14/d8bdf394-bc86-11e2-9b09-1638acc3942e_story.html

Erlanger, Steven: U. S. Expels a Belarus Diplomat, and Warns of Repression There. *The New York Times*. March 27, 1997. (Accessed on 14 November, 2015.) <http://www.nytimes.com/1997/03/27/world/us-expels-a-belarus-diplomat-and-warns-of-repression-there.html>

Expulsion of Iraq Diplomat Assigned to Iraq Mission to the UN (Taken Question). U. S. Department of State. 14 June, 2002. (Accessed on 1 January, 2016.) <http://2001-2009.state.gov/r/pa/prs/ps/2002/11130.htm>

Expulsions of Cuban diplomats, past and present. *Havana Journal*. 15 May, 2003. (Accessed on 2 December, 2015.)

http://havanajournal.com/politics/entry/expulsions_of_cuban_diplomats_past_and_present/

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>

International Law Commission. Analytical Guide to the Work of the International Law Commission: Immunity of State officials from foreign criminal jurisdiction. (Accessed on 28 November, 2016.) http://legal.un.org/ilc/guide/4_2.shtml

Iranian Diplomats Leave Saudi Arabia. The Wall Street Journal. 6 January, 2016. (Accessed on 18 January, 2016.) <http://www.wsj.com/articles/iranian-diplomats-leave-saudi-arabia-1452088325>

Iz Moskvy vydvorili shvedskogo diplomata. (*A Swedish diplomat was expelled from Moscow.*) Gazeta Kul'tura. 3 August, 2015. (Accessed on 16 January, 2016.) <http://portal-kultura.ru/articles/obshchiy-plan/111765-iz-moskvy-vydvorili-shvedskogo-diplomata/>

Katz, Mikhael: Neprikosновенnoje litso gosudarstva. (*The inviolable person of state.*) LiveJournal. 10 November, 2015. (Accessed on 29 March, 2016.) <http://mikhaelkatz.livejournal.com/65739.html>

Keller, Larry: Belgian Soldier's Trial in Beach Slaying Opens. 10 August, 1989. SunSentinel. (Accessed on 20 January, 2016.) http://articles.sun-sentinel.com/1989-08-10/news/8902250233_1_belgian-beaches-slaying

Kelly, Stephen R.: America's foreign service: Soldiers without guns. Chicago Tribune. 14 September, 2012. (Accessed on 29 December, 2016.) http://articles.chicagotribune.com/2012-09-14/opinion/ct-oped-0914-embassy-20120914_1_diplomats-british-consulate-kabul

Kharal, Asad: Persona non grata: US agrees to recall 331 'diplomatic staffers'. The Express Tribune. 24 March, 2011. (Accessed on 26 February, 2016.) <http://tribune.com.pk/story/136830/persona-non-grata-us-agrees-to-recall-331-diplomatic-staffers/>

Kölcsönös kiutasítások Teheránból és Londonból. (*Mutual expulsions from Tehran and London.*) CoolPolitika.hu. 24 June, 2009. (Accessed on 7 December, 2015.) http://www.coolpolitika.hu/kolcsonos_kiutasitasok_teheranbol_es_londonbol

Kupriianov, Aleksei: Chetvertyi na postu. (*Fourth in the post.*) Lenta.ru. 20 December, 2016. (Accessed on 20 December, 2016.) https://lenta.ru/articles/2016/12/20/killed_ambassador/

Kurbalija, Jovan: Do e-mail and e-documents have diplomatic protection? 13 June, 2013. DiploFoundation. (Accessed on 11 January, 2016.) <http://www.diplomacy.edu/blog/do-e-mail-and-e-documents-have-diplomatic-protection>

Kurbalija, Jovan: Is it time for a review of the Vienna Convention on Diplomatic Relations? DiploFoundation. 16 April, 2012. (Accessed on 15 April, 2016.) <http://www.diplomacy.edu/blog/it-time-review-vienna-convention-diplomatic-relations>

October, 2013. (Accessed on 2 December, 2015.)
<http://www.rosbalt.ru/main/2013/10/09/1185815.html>

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

Moskva vyslala riad pol'skih diplomatov. (*Moscow expelled a number of Polish diplomats.*) TV Tsentr – Official site of the television company. 17 November, 2014. (Accessed on 6 January, 2016.) <http://www.tvc.ru/news/show/id/55206>

Nezhelatel'nyi skandal. (*Unwanted scandal.*) Vzgliad – Delovaia Gazeta. 22 December, 2010. (Accessed on 8 January, 2016.) <http://vz.ru/politics/2010/12/22/456777.html>

Niderlany izvinilis' za zaderzhanie russkogo diplomata. (*The Netherlands apologized for detainment of a Russian diplomat.*) Lenta.RU. 9 October, 2013. (Accessed on 3 December, 2015.) <http://lenta.ru/news/2013/10/09/sorry/>

Niederhauser, Emil: *The Rise of Nationality in Eastern Europe.* Corvina Kiadó. Budapest, 1981.

Nikoliukin, S. V.: *Vzaimnost' v mezhdunarodnom chastnom prave. (Reciprocity in international private law.)* Novii Iuridicheskii Zhurnal. No 2, 2012.

North Korean diplomat stopped with nearly £1m in gold at Dhaka airport. *The Guardian.* 6 March, 2015. (Accessed on 9 April, 2016.)
<http://www.theguardian.com/world/2015/mar/06/north-korean-diplomat-gold-dhaka-airport-bangladesh>

Orosz kémek buktak le Prágában. (*Russian spies got caught in Prague.*) 12 March, 2015. (Accessed on 20 January, 2016.) <http://nol.hu/kulfold/csendben-tavoztak-az-orosz-kemek-pragabol-1521597>

Priimak, Artur–Moshkin, Mikhail: „Posleduiut i drugie deistviia.” (*„Other actions will follow.”*) Vzgliad. 21 October, 2014. (Accessed on 8 January, 2016.)
<http://vz.ru/politics/2014/10/21/711521.html>

Primary Documents – Constantin Dumba on the 'Dumba Affair', September 1915. *Firstworldwar.com.* (Accessed on 9 April, 2016.)
http://www.firstworldwar.com/source/dumba_dumba.htm

Professiiia – diplomat, dolzhnost' – konsul. (*Profession – diplomat, position – konsul.*) *Seatruth.* N 15 (0386). 17 April, 2013. (Accessed on 19 January, 2016.) http://seatruth.com/issues/_-15/2850-professiya-diplomat-dolzhnost-konsul.html

Strasbourg osudil Rossiiu za prigovor ulichenomiu v shpionazhe diplomatu. (*Strasbourg condemned Russia for the verdict on the diplomat, who was caught spying.*) Novaia gazeta. 9 October, 2008. (Accessed on 12 October, 2016.) <https://www.novayagazeta.ru/news/2008/10/09/40325-strasbourg-osudil-rossiyu-za-prigovor-ulichenomiu-v-shpionazhe-diplomatu>

Sudan: Canada Retaliates for Expelled Envoy. The New York Times. 30 August, 2007. (Accessed on 19 January, 2016.) <http://www.nytimes.com/2007/08/30/world/africa/30briefs-sudan.html?pagewanted=print>.

Sweden expels Russian diplomat, Moscow makes tit-for-tat move. Reuters. 3 August, 2015. (Accessed on 16 January, 2016.) <http://uk.reuters.com/article/uk-sweden-russia-diplomacy-idUKKCN0Q821N20150803>

Sweden says diplomat expelled from Moscow in retaliatory move. Yahoo News. 3 August, 2015. (Accessed on 16 January, 2016.) <http://news.yahoo.com/swedish-diplomat-expelled-moscow-swedish-foreign-ministry-164757848.html>

Szaudi-Arábia megszakítja diplomáciai kapcsolatait Iránnal. (*Saudi Arabia terminates its diplomatic ties with Iran.*) NOL. 4 January, 2016. (Accessed on 4 January, 2016.) <http://nol.hu/kulfold/szaudi-arabia-megszakitja-diplomaciai-kapcsolatait-irannal-1582781>

Távozik André Goodfriend. (*André Goodfriend is leaving.*) Magyar Nemzet. 11 February, 2015. (Accessed on 20 January, 2016.) http://mno.hu/magyar_nemzet_belfoldi_hirei/lezarulta-nav-vizsgalat-1275685

Torgovyi predstavitel' Tadzshikistana v Kazakhstane okazalsia narkotorgovtsem. (*The Trade Representative of Tajikistan in Kazakhstan appeared to be a drug dealer.*) Lenta.ru. 24 May, 2000. (Accessed on 19 January, 2016.) <http://lenta.ru/world/2000/05/23/drugs/>

Tüntetők tojással dobálták meg a kijevi orosz nagykövetséget. (*Protesters threw eggs at the Russian Embassy in Kiev.*) HVG. 6 March, 2016. (Accessed on 6 March, 2016.) http://hvg.hu/vilag/20160306_Tuntetok_tojassal_dobaltak_meg_a_kijevi_orosz_nagykovetseget

Tüzérségi támadás érte a damaszkuszi orosz nagykövetséget. (*Artillery attack on the Russian Embassy in Damascus.*) 13 October, 2015. (Accessed on 15 October, 2015.) <http://nol.hu/kulfold/tuzersegi-tamadas-erte-a-damaszkuszi-orosz-nagykovetseget-1568765>

U. S. Embassy assault in Benghazi which resulted in death of U. S. ambassador „was preventable”, finds Senate report. Daily Mail. 16 January, 2014. (Accessed on 10 April, 2016.) <http://www.dailymail.co.uk/news/article-2540433/U-S-embassy-assault-Benghazi-resulted-death-American-ambassador-preventable.html>

- Wright, Robin–Lichtblau, Eric: U. S. Orders 50 Diplomats From Russia to Leave. 22 March, 2001. Los Angeles Times. (Accessed on 18 January, 2016.)
<http://articles.latimes.com/2001/mar/22/news/mn-41222>
- Young, Karen, de: Diplomat on Denver flight to be sent back to Qatar, U. S. says. The Washington Post. 9 April, 2010. (Accessed on 28 March, 2016.)
<http://www.washingtonpost.com/wp-dyn/content/article/2010/04/08/AR2010040805826.html>
- 1984: Libyan embassy siege ends. BBC News. 27 April, 1984. (Accessed on 3 January, 2016.)
http://news.bbc.co.uk/onthisday/hi/dates/stories/april/27/newsid_2502000/2502565.stm
- Ethiopia expels Eritrean envoy. BBC News. 10 February, 1999. (Accessed on 9 April, 2016.)
<http://news.bbc.co.uk/2/hi/africa/276351.stm>
- Nine Polish diplomats. HighBeam Research. January, 2000. (Accessed on 8 January, 2016.)
<https://www.highbeam.com/doc/1G1-58924826.html>
- Diplomatic bag: The inside story. 10 March, 2000. BBC News. (Accessed on 19 January, 2016.)
<http://news.bbc.co.uk/2/hi/uk/672786.stm>
- Britain denies extradition. Chicago Tribune. 13 November, 2003. (Accessed on 9 January, 2016.) http://articles.chicagotribune.com/2003-11-13/news/0311130120_1_juan-jose-galeano-jewish-center-bombing-hadi-soleimanpour
- Bahrain Orders Iranian Diplomats To Leave. Sky News. 4 January, 2016. (Accessed on 18 January, 2016.) <http://news.sky.com/story/1616091/bahrain-orders-iranian-diplomats-to-leave>
- Pride – An open letter. The Slovak Spectator. 24 May, 2010. (Accessed on 10 November, 2016.)
<http://spectator.sme.sk/c/20036288/pride-an-open-letter.html>
- Baku, Nurani: From Protest to Terror. Region Plus. 13 March, 2013. (Accessed on 17 May, 2016.) <http://regionplus.az/en/articles/view/2189>
- Sanchez, Carlos: Embassy Driver Held in Fla. Slayings. 13 January, 1989. The Washington Post. (Accessed on 20 January, 2016.)
<https://www.washingtonpost.com/archive/politics/1989/01/13/embassy-driver-held-in-fla-slayings/712bc04b-b9a9-4fd6-8e6e-b14d01efc0d0/>
- Turkish Canadian Relations, 05.02.2016. Turkish Embassy in Ottawa. (Accessed on 16 May, 2016.) <http://ottawa.be.mfa.gov.tr/ShowInfoNotes.aspx?ID=225922>
- Armenian Terror. HistoryofTruth.com (Accessed on 15 May, 2016.)
<http://www.historyoftruth.com/armenian-terror>

