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**NATYRA JURIDIKE E IMUNITETIT DIPLOMATIK SIPAS TË
DREJTËS NDËRKOMBËTARE**

**ПРАВНАТА ПРИРОДА НА ДИПЛОМАТСКИОТ
ИМУНИТЕТ СПОРЕД МЕЃУНАРОДНОТО ПРАВО**

**THE LEGAL NATURE OF DIPLOMATIC IMMUNITY UNDER
INTERNATIONAL LAW**

Abstract

The institution of diplomatic immunity has been in existence since ancient times, and legal science recognizes it as an ancient institution that is still in existence even in times that have passed. The importance and role of diplomatic immunity is recognized both in international law and domestic law of states. In this regard, the topic in question is crucial due to the international conventions and positive laws that address it.

The purpose of this paper is to clarify the meaning, the legal concept, international, and political-institutional significance of diplomatic immunity under international law, as it has a direct connection with diplomatic agents, they enjoy certain immunity and privileges in the receiving state.

The paper is focused on the international legal and scientific field, which, besides being legal and international, also has political and institutional significance.

Keywords: *diplomatic agent; diplomatic immunity; convention; law.*

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Introduction

Taking into consideration that diplomatic agents are appointed by the sending state for the purpose of representing the state abroad, as such, they have enjoyed and continue to enjoy certain privileges and immunities under international law, namely under international conventions. Thus, the diplomatic agents at the same time are charged with certain rights and obligations in order to represent the state abroad and as such have enjoyed and enjoy special immunities and privileges international protection.

It is crucial to be emphasized that physical force or attack cannot be used against them, nor cannot carried out any punishment be executed by the receiving state or regardless of which state they are accredited to. The diplomatic immunity does not guarantee that the diplomatic agent will not be attacked, despite of the country he is sent to, he cannot be punished for a criminal offense. Therefore, diplomatic immunity is a regime that is based on the internal laws of states, and especially on international laws that regulate and address the issue of diplomatic immunity.

In accordance with theoretical viewpoints the immunity granted to diplomats is meant to enable them to perform their significant duties without any restrictions from local authorities. This issue is also foreseen in the Vienna Convention on Diplomatic Relations, which ensures that the receiving state is responsible for treating them with respect and taking all necessary measures to prevent any attack on his person, freedom, or dignity.

Historically, it has been known that the diplomatic immunity is an ancient institution including its legal and political institutional significance which is still applicable today.

As part of international law, states must place importance on the concept of diplomatic immunity in their diplomatic relations, and ensure it is always based on international law and does not violate the immunity of diplomatic agents. This is crucial and should be considered in its own legal and political importance, which undoubtedly produces effects on diplomatic relations between two states, namely the sending state and receiving state, based on the principles of diplomatic immunity, as one of the earliest elements of international relations.

1. Historical aspects of diplomatic immunity

The development of diplomatic relations has had a significant impact on the regulation of diplomatic immunities and privileges. The customary norms of different states were more focused on protecting their representatives. Today's theories of international law, in regulating this issue, hold that the legal basis of diplomatic immunity must provide inevitable security for diplomatic

agents, in order for them to perform their function without fear of measures and abuses that may come from the state bodies of the receiving state.²

The traditional concept of diplomatic immunities is ancient in origin and well established in international law and practice.³ The law of diplomatic privileges and immunities is as old as the system of international law itself. They exist in the main because of the identity of a particular person, being the diplomat or consular representative of a foreign sovereign state, and as such they are essentially immunities “*ratione personae*”.⁴

The privileges and immunities that apply to various types of diplomatic personnel arose partly as a consequence of sovereign immunity, independence and equality of states, but also of consequences of the fundamental requirements of the international system. States must communicate and consult with each other and with international organizations, but to do so, they require a diplomatic corp. Since these individuals represent their states in various ways, they also benefit from the legal principle of state sovereignty. This matter is entirely practical.⁵ Otherwise, the diplomatic immunity is essential for it undergrids the international system.⁶ Diplomatic immunity was first established as a rule of international law before becoming codified in a treaty.⁷ In this context, it is important to mention that treaties can be bilateral and multilateral. Thus, bilateral treaties are agreements between two states, while multilateral treaties are agreements between more than two states.⁸ When it comes to bilateral agreements, international law considers states to be independent subjects in international relations, i.e., diplomatic relations, and they are equal, when discussing bilateral agreements, multilateral agreements do not require recognition between them.

However, it is true that diplomatic immunity has its own legal framework and unclear defining boundaries. This is due to the limited impact that a sovereign state has on another state, which cannot be enforced.⁹

² Марковски, Д. (2016). Дипломатија - организација и практика / Diplomacy - organization and practice, Skopje, pp. 226, 227.

³ Michaels, D. B. (1971). *Internationals Privileges and Immunities*, The Hague, p. 7.

⁴ Dixon, M. et. al. (2016). *Cases & Materias on International Law*, Oxford, p. 346. Immunity “*ratione personae*”, also known as “personal immunity”, is granted to a limited number of incumbent high-ranking state officials, including the head of state, the head of government, and the minister for foreign affairs.

⁵ Shaw, M. N. (2008). *International Law*, Cambridge, p. 751.

⁶ Frey, L.S & Frey, M. L. “Diplomatic Imunnity: An Admittedly Short Survey”, Author: Novaković, M. (2020). *Diplomatic Immunity*, Serbia, p. 2.

⁷ Lennon, A. T. J. & Eiss, C. (2004). *Reshaping Rogue States*, Cambridge, p. 20.

⁸ Egede, E. & Sutch, P. (2013). *The Politics of International Law and International Justice*, Edinburgh, p. 54.

⁹ Mcclanahan, G.V. (1989). *Diplomatic Immunity-Principles, Practicles, Problems*, London, p. 2.

Diplomatic immunity is an example of a convention that existed for centuries before it was codified in formal agreements in the 1960.¹⁰ The Vienna Convention on Diplomatic Relations¹¹ clearly states in its preamble that privileges and immunities are not intended to provide advantages to individuals, but it is to ensure successful performance of functions in diplomatic missions as representatives of states. According to some thinkers, privileges and immunities are based on implicit contracts, the diplomatic agents personality is characterized by the state's personification as a subject of international law or by assuming reciprocal obligations, etc.

Despite different opinions, the scope and content of diplomatic privileges and immunities today are more specific, so that in practice a set of customary international rules has been established, by which most of the issues related to the subject matter are regulated and which at the same time is considered to have a legal basis that comes from customary norms. After the adoption of the Vienna Convention, it can be said that there are no longer any differences regarding the interpretation of the legal basis of diplomatic privileges and immunities.¹² However, according to the convention in question, if certain issues are not specifically regulated, then the customary rules of international law must be used.¹³ According to this, in the application of the provisions of the present Convention, the receiving state shall not discriminate as between states. Thus, discrimination shall not be regarded as taking place: (a) where the receiving state applies any of the provisions of the present convention restrictively because of a restrictive application of that provision to its mission in the sending state; and b) where by custom or agreement states extend to each other more favourable treatment than is required by the provisions of the present convention.¹⁴

The term "immunitas", was accorded as a special privilege to certain individuals.¹⁵ In theory and practice, it has been established that immunity is a right established by customary international law. According to the Vienna Convention, immunities and privileges cannot differ based on their legal basis.

The term "immunity", today can include numerous exemptions, such as exemption from criminal, civil, and judicial liability. Meanwhile, the term "privilege", means numerous exemptions from paying taxes and other public

¹⁰ Viotti, P. R. & Kauppi, M. V. (2012). *International Relations Theory*, Lanham, Boulder, New York, London, p.147.

¹¹ The Vienna Convention on Diplomatic Relations was done at Vienna on 18 April 1961 and entered into force on 24 April 1964. The original of the Convention is in Chinese, English, French, Russian and Spanish language. See article 48 and 53 of the Convention.

¹² Марковски, Д. (2016). *Дипломатија - организација и практика / Diplomacy - organization and practice*, Skorje, p. 227.

¹³ Ibid, p. 228.

¹⁴ Vienna Convention on Diplomatic Relations, 1961, article 47, paragraph 1 and 2.

¹⁵ Frey, L.S & Frey, M. L. "Diplomatic Immunity: An Admittedly Short Survey", Author: Novaković, M. (2020). *Diplomatic Immunity*, Serbia, p. 4.

revenues.¹⁶ Therefore, immunity is defined as the exclusion of international law in the particular situation or the exclusion from the jurisdiction of state bodies in the receiving state. While privileges consist of the granting of many conveniences to diplomatic missions and their personnel by the receiving state. In its broad meaning, immunity also implies a kind of convenience, even though the mission and its diplomatic personnel enjoy the most privileged position, but first of all, they are not subject to the law of the receiving state's jurisdiction.

The term "privileges", is broader and includes immunity, which is restricted in meaning. According to legal doctrine, immunities have a legal basis in international law, but they also violate the sovereignty of the receiving state. Immunities operate in accordance with the internal laws of states. As far as privileges are concerned, it is believed that they are expressions of kindness and not required, but they are governed by the internal laws of the receiving state. In the diplomatic doctrine, the concept of immunities and privileges as an entire system of measures has been established as a concept of a system of measures by which the protection of diplomatic communications and diplomatic missions as a whole is ensured.¹⁷ Otherwise, the term "diplomatic immunity", should be understood to mean "the general exemption of diplomatic ministers from the operation of local law, the exception being that a minister who is plotting against the security of the nation to which he or she is accredited maybe arrested and sent out of the country".¹⁸

On the other hand, the legitimization of diplomatic immunity, or rather its abuse by diplomatic agents due to their personal interest, in the legislature of the relevant government. That is, the government as the appointee, among other things, is responsible for its reputation in the receiving state. The reputation of the sending state is seen through the behavior of its diplomats, who are present in everyday life in the receiving state, which means that they are a subject of interest which sends a clear signal to the public for all illegal behavior and cases, respectively, in disregarding the laws and customary rules of the state where they are staying. In some countries, it is considered an open issue to respect the legislation of the receiving state. For example, in England, diplomats are required to follow the laws of the receiving state and pay penalties for illegal parking of vehicles. In the American diplomatic service, the greatest violation of a diplomat's career is considered to be the violation of diplomatic protection when performing illegal acts or engaging in improper behavior. In addition to traffic violations, diplomats also commit similar violations of excise and customs goods, such as cigarettes, alcohol, perfumes,

¹⁶ Марковски, Д. (2016). Дипломатија - организација и практика / Diplomacy - organization and practice, Skopje, p. 228.

¹⁷ Запрова, Т. Д. & Сотирски Ј. (2014). Дипломатска организација, дејност и професија, Shtip, p. 105.

¹⁸ Mwenda, K. K. (2011). Public International Law and the Regulation of Diplomatic Immunity in the Fight Against Corruption, Pretoria, p. 49.

and other items. Also, trafficking the aforementioned goods to places with local populations in the receiving state for personal gain is considered a serious violation of the sending state's reputation. With the aim of preventing similar incidents, the head of mission and his deputy are required to conduct inspections to prevent members of the mission from abusing privileges. In most states, the protocol specifies the number of products to be supplied within a calendar year, for which restrictions have also been set regarding the quantity of products needed for the needs of the mission and its members.¹⁹

As can be seen, most of the law covering this area concerns the privileges and immunities granted to diplomatic premises and diplomatic personnel. Privileges, however, consist of "essential exemptions from laws and regulations". For example, exemptions from taxes, while immunities, do not imply any kind of exemption from substantive law, but provide a procedural protection from enforcement processes in the receiving state".

In general, diplomats enjoy absolute immunity based on status "ratione personae", from civil and criminal prosecution, while consuls enjoy only functional immunity "ratione materiae", for acts performed in the exercise of official functions.²⁰ If we look at these two terms in terms of state immunity, it turns out that such immunity is conditioned in these directions, namely, immunity "ratione personae", which mainly protects the most important representatives and decision-makers of the state, while immunity "ratione materiae", which protects any official or former state official, but always taking into account the official obligation. It is here that the distinction between official and private actions that occur comes into consideration. This distinction is made based on the functionality and nature of the action and not on the motive.²¹ Immunity "ratione personae", also known as "personal immunity", is granted to a limited number of incumbent high-ranking state officials, including the head of state, the head of government, and the minister for foreign affairs.²²

2. The purpose of diplomatic immunity

The purpose of the immunity that diplomats enjoy is to enable them to perform their important duties without any restrictions from local authorities. Allowing the head of a diplomatic mission to move freely is in the best interest of the state he represents. Due to the fact that force is not used against diplomats, they have enjoyed certain privileges and immunity since ancient times, which ensures the independence of their personality, property, and

¹⁹ Марковски, Д. (2016). Дипломатија - организација и практика / Diplomacy - organization and practice, Skopje, pp. 228-229.

²⁰ Lau, Ch. (2005). Diplomatic & Consular Law: Research Guide, p. 4.

²¹ Bolewski, W. (2007). Diplomacy and International Law in Globalized Relations, New York, pp. 95-96.

²² Webb, P. (2013). International Judicial Integration and Fragmentation, Oxford, p. 73.

dignity, as well as the dignity of the state they represent. Such privileges and immunities, which are both recognized by international law and international practice, are especially strengthened by the codification of the Vienna Convention on Diplomatic Relations of April 18, 1961. Therefore, this convention provides legal force and contractual form to the obligations between the state and the diplomats who perform their function.²³ In essence it means that the receiving state shall treat him with due respect and shall take all appropriate steps to prevent any attack on his person, freedom or dignity.²⁴

3. Theories of diplomatic immunity

In international law, extritoriality primarily refers to the jurisdiction and laws of a sovereign state that extend from one territory to another, usually pursuant to an agreement regarding these rights.²⁵ In other words, privileges and immunities were no longer justified based on the two principles that were previously accepted. These were, the embassy enjoys extritoriality, while the head of mission with the rank of ambassador is the representative of the head of state. In the period between the World Wars, the League of Nation's Committee of Legal Experts had ruled that the granting of diplomatic privileges and immunities was not justified by extritoriality and, as Hardy says, the similar reasoning and the rejection in the Vienna Convention of extritoriality as a reason for privileges and immunities "may be considered conclusive". Extritoriality is not a justification for diplomatic immunity, but, as Vattel described it two centuries ago, it is simply a "figurative way" of expressing it. In accordance with the functional approach of the Vienna Convention on Diplomatic Relations, the document stresses the significance of describing the complete functions of the diplomatic mission. This was the first instance of doing this through a formal legal instrument. It is evident that the Vienna Convention has generally strengthened privileges that are clearly connected to the regular functioning of the diplomatic mission, while less important categories, such as personnel categories, that benefit from them are reduced. As Denza notes "reducing privileges and immunities to the lowest necessary level makes it easier to defend them before public opinion".²⁶ Otherwise, the concept of extritoriality removes the diplomat from responsibility to the government to which he is accredited.²⁷

²³ Вуд. Ц. Р. & Серес. Ц. (2009). Дипломатски церемонијал и протокол, Skorje, p. 55.

²⁴ Vienna Convention on Diplomatic Relations, 1961, article 29.

²⁵ Griffiths, M. et. al. (2002). International Relations-The Key Concepts, London & New York, p. 103.

²⁶ Berridge, G. R. "Grotius", Authors: Berridge, G. R. et. al. (2001). Diplomatic Theory from Machiavelli to Kissinger, New York, pp. 167-168.

²⁷ Michaels, D. B. (1971). Internationals Privileges and Immunities, The Hague, p. 49.

However, there are various theories regarding the legal basis of these immunities which a diplomat enjoys in the territories of the receiving state.

The first and oldest appears to be the doctrine of “extritoriality”, which implies that the premises of a mission in theory are outside the territory of the receiving state and represent a sort of extension of the territory of the sending state. Similarly, an ambassador who represents by fiction the actual person of his sovereign must be regarded by a further fiction as being outside the territory of the power to which he is accredited. This doctrine which held the field for a considerable period both among text writers and in judicial decisions has come to be adversely criticized in recent years though it is still referred to in a somewhat restricted sense.²⁸ It is said that the fiction of “extritoriality”, fails to provide an adequate basis because the extent of exemption that would flow from this doctrine has never been accepted in practice, as both the premises of the mission and the diplomatic agent come within the jurisdiction of the receiving state for certain purposes. Thus, for example, a diplomatic agent is expected to act in conformity with the laws of the receiving state and observe its police regulations though he cannot be prosecuted for violation of the same. Again, if he engages in trade or business in his private capacity or owns real property, he is not exempted from local legislation and is required to pay rates and taxes. Moreover, even in respect of the premises of the mission municipal charges are normally required to be paid for beneficial services rendered and crimes committed within the premises of the mission are to be tried in accordance with the laws of the receiving state. Oppenheim, however, considers that the term “extritoriality”, has nevertheless some practical value because it demonstrates clearly the fact that diplomatic agents must, in most respects, be treated as though they were not within the territory of the receiving state.²⁹

In another theory, the term “extritoriality”, is commonly used to describe the immunity enjoyed by diplomats. According to jurists from the 17th and 18th centuries, this meant that the receiving state’s authority was necessary in extreme circumstances to treat the ambassador, his staff, and property as if they were located outside the territory of the receiving state. To prevent controversial legal opinions, their opinion is that the provision that permits movement or action is sufficient to define the immunity that diplomats require with the aim of justifying their requests to local authorities.³⁰

The second theory has to do with representative character. Another basis for grant of diplomatic immunities, which has been advanced from time to time, is the “representative character”, of the diplomatic agent, that is to

²⁸ Sen. B. A. (1965). *Diplomat’s Hand Book of International Law and Practice*, The Hague, p. 80.

²⁹ Ibid, p. 81. The term “diplomatic agent or agents”, has been used instead of the term “envoy or envoys”, since it is more reasonable under international law.

³⁰ Вуд. Џ. Р. & Серес. Џ. (2009). *Дипломатски церемонијал и протокол*, Скопје, p. 55.

say, the diplomatic agent as representing a sovereign state owes no allegiance to the state to which he is accredited and as such he could not be subjected to the laws and jurisdiction of the receiving state. According to this theory, any insult to the ambassador is considered a slight upon the personal dignity of the sovereign whose diplomatic agent is and consequently the receiving state is obliged to treat the diplomatic agent in a manner befitting his representative character.³¹

The third theory is about functional necessity. The modern tendency is, however, to allow immunities and privileges to diplomatic agent on the basis of “functional necessity”, that is to say, the immunities are to be granted to the diplomats because they could not exercise their functions perfectly unless they enjoyed such privileges. It is obvious that were they liable to ordinary legal and political interference from the state or other individuals, and thus more or less be dependent on the goodwill of the government of the state to which they are accredited, they might be influenced by considerations of safety and comfort in a degree which would materially hamper them in the exercise of their functions. It is this concept of “functional necessity”, which, it is said, casts an obligation on states to grant a certain minimum of immunities, and that minimum comprises such immunities and privileges as will permit the diplomatic agent to carry out his functions without hindrance or avoidable difficulty. Nothing less will ensure compliance with the maxim “ne impediatur legatio”. It is on the basis of “functional necessity”, that the International Law Commission proceeded in preparation of the Draft Articles on the subject, and the Vienna Convention on Diplomatic Relations 1961 also appears to have proceeded on this footing for it is stated in the preamble to the convention that “the purpose of such privileges and immunities is not to benefit individuals but to ensure the efficient performance of the functions of diplomatic missions as representing states”. It would, however, appear that the concept of functional necessity is not altogether a satisfactory basis as there can always be scope for difference in views and attitude of the states as to what kinds of jurisdictional acts on the part of a state would constitute interference with the legitimate functions of a diplomatic agent.³²

4. Principles of diplomatic immunity

Regarding the inviolability of diplomatic agents in the book “De Jure Belli Ac Pacis”, by Grotius³³ which is a broader and more important aspect of diplomatic law, perhaps even the most important issue of international law of

³¹ Sen. B. A. (1965). *Diplomat's Hand Book of International Law and Practice*, The Hague, p. 81.

³² *Ibid*, p. 82.

³³ Hugo Grotius (1583-1645) is recognized as the most significant author of international law, the first author who compiled International Law into a complete system, and the creator of International Law.

his time. What he specifies is the provision of special treatment to ambassadors, especially when they are accused of serious criminal offences, which is currently known as the removal or loss of diplomatic immunity. He pointed out that this issue is very serious and suggested its resolution through key distinctions, such as “we must discuss the ambassador’s personality first, followed by his suite and property”. The ambassador, as Grotius emphasized, was the only one who was subject to special protection by the laws of the states. The question was which law would offer him this special protection and within what limits.³⁴

Diplomatic immunity is a principle of international law by which certain foreign government officials are not subject to the jurisdiction of local courts and other authorities for both their official and, to a large extent, their personal activities.³⁵ Therefore, the international law on immunities itself includes diplomatic immunity and state immunity.³⁶

The law regarding diplomatic immunities and privileges has been in existence for several thousand years. The issue was rather referred to the inviolability of diplomatic immunity, which was one of the early principles of international law. It is evident that the principle of inviolability of diplomatic agents was viewed differently and frequently resulted in divisions between the empires of ancient times.³⁷

The principle of diplomatic immunity is one of the oldest elements of foreign relations. Ancient Greek and Roman governments, for example, accorded special status to diplomatic agents, and the basic concept has evolved and endured until the present. As a matter of international law, diplomatic immunity was primarily based on custom and international practice until quite recently. In the period since World War II, a number of international conventions (most noteworthy, the Vienna Convention on Diplomatic Relations and the Vienna Convention on Consular Relations) have been concluded. These conventions have formalized the customary rules and made their application more uniform.

Notwithstanding the antiquity of the concept of diplomatic immunity, its purpose is often misunderstood by the citizens of this and other countries. Occasional abuses of diplomatic immunity, which are brought to public attention, have also served to prejudice public attitudes toward this practice. Dealing with the concept of immunity poses particular problems for law

³⁴ Berridge, G. R. (2001). *Diplomacia-Teoria dhe praktika*, Leicester, p. 58.

³⁵ *Diplomatic and Consular Immunity, Guidance for Law Enforcement and Judicial Authorities*, United States Department of State Office of Foreign Missions, Washington, D.C. 20522-2008, Revised August, 2018, p. 2.

³⁶ Morris, M. “International Humanitarian Law-State collusion and the conundrum of jurisdiction”, Authors of the book: Biersteker, Th. J. et. al. (2007). *International Law and International Relations*, London & New York, p. 195.

³⁷ Barker, J. C. (2004). *International Law and International Relations*, New York, p. 161.

enforcement officers who, by virtue of their oath and training, are unaccustomed to granting special privileges or concessions to individuals who break the law. On the other hand, police officers who understand the importance of diplomatic immunity may be inclined to be overly generous in its application if they do not have a full understanding of its parameters. It is the purpose of this booklet to familiarize police officers with the general rules of diplomatic and consular immunity and to provide them with specific guidance regarding the handling of difficult situations.³⁸

The principle of inviolability in respect of the person of the diplomatic agent originally arose out of the concept that the diplomat represented the person of his sovereign and that any insult to him constituted an affront to the prince who had sent him. In course of time, however, it came to be recognized on the basis that it was essential to ensure inviolability of the person of the ambassador in order to allow him to perform his functions without any hindrance from the government of the receiving state, its officials and even private persons. The term “inviolability”, means that the diplomatic agent shall be immune from any form of arrest or detention. The receiving state shall treat him with due respect, and it is required to take all appropriate steps to prevent any attack on his person, freedom or dignity.³⁹ The article 29 of the Vienna Convention provides for this as well, as it states “The person of a diplomatic agent shall be inviolable. He shall not be liable to any form of arrest or detention. The receiving state shall treat him with due respect and shall take all appropriate steps to prevent any attack on his person, freedom or dignity”.⁴⁰ This means that the receiving state is obliged to provide a higher degree of protection for the diplomatic agents personality than is granted to a private person. It is the duty of the government to which the representative is accredited to take all necessary measures to protect the immunity of the diplomatic agent. If any action of the official person violates the immunity of the representative, then compensation is required.

5. The right of legation

It is generally said that every recognized independent state is entitled to the right of legation as one of the attributes of sovereignty. The right of legation, it is asserted, comprises the right to accredit its diplomatic agent to other states and the obligation to receive diplomatic agents when accredited

³⁸ Diplomatic and Consular Immunity, Guidance for Law Enforcement and Judicial Authorities, United States Department of State Office of Foreign Missions, Washington, D.C. 20522-2008, Revised August, 2018, p. 3. The term “diplomatic agent or agents”, has been used instead of the term “envoy or envoys”, since it is more reasonable under international law.

³⁹ Sen. B. A. (1965). Diplomat’s Hand Book of International Law and Practice, The Hague, p. 90.

⁴⁰ Vienna Convention on Diplomatic Relations, 1961, article 29.

by those states. On a closer examination of the authorities and state practice, it would appear that the “right of legation”, is no more than the “competence”, of a sovereign state to accredit diplomatic agent to another state and to receive the diplomatic agent of a foreign state. Thus, no state is obliged to receive diplomatic agent accredited by another, nor can it be compelled to send its diplomatic agents to other states.⁴¹ It is not obligatory that a state should be diplomatically represented in every country it recognizes nor is it necessary that it should consent to receive diplomatic agents from all such states. Diplomatic missions are opened in practice by mutual consent of the states concerned.⁴² Therefore, the diplomatic agents also differ from other officials of states in that their presence in the receiving state relies on that states consent and they enjoy immunity only in the receiving state.⁴³

It is crucial to mention that in addition to the conventions that regulate and address diplomatic immunity, there is also the Havana Convention on Consular Agents, 1928, which in Article 1 provides “States may appoint in the territory of others, with the express or tacit consent of the latter, consuls who shall there represent and defend their commercial and industrial interests and render to their nationals such assistance and protection as they may need”.⁴⁴ It is accurate to be emphasized for the the differences between diplomats and consuls which are primarily due to their representative character in international relations.

Conclusion

Diplomatic immunity as an institution in itself and at the same time as a principle of international law consists of the rights of certain officials of a foreign government, respectively, the diplomatic agents of the sending state should not be subject to the jurisdiction of local courts and other authorities in the receiving state in relation to their official activities as well as part of their personal activities.

Considering what I have explained so far, I can conclude that diplomatic immunity is still recognized today as an ancient institution in legal science and occupies a central place, regardless of the time periods through which it has passed. It is worth emphasizing that diplomatic immunity enjoys a special place not only in legal sciences, but also in other sciences which approximately regulate the issue of diplomatic immunity. In this regard, it is

⁴¹ Sen. B. A. (1965). *Diplomat's Hand Book of International Law and Practice*, The Hague, p. 8.

⁴² *Ibid*, p. 9.

⁴³ Orakhelashvili, A. (2019). *Akehurst's Modern Introduction to International Law*, London & New York, p. 243. The term “diplomatic agent or agents” has been used instead of the term “envoy or envoys”, since it is more reasonable under international law.

⁴⁴ Havana Convention on Consular Agents, 1928, article 1.

important to mention that diplomatic immunity began as a rule of customary international law before it was codified in a treaty.

What remains characteristic of diplomatic immunity is the doctrine of extritoriality, representative character and functional necessity, otherwise known as the theory of diplomatic immunity, which are recognized and accepted internationally.

However, the issue of diplomatic immunity remains an important topic in diplomatic relations, and aside from its the political significance, it is essential to pay attention to the institutional aspect of it that is based on both domestic and international laws

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