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Permanent Diplomatic Missions

1. INTRODUCTION

As an introduction, I should mention three ideas. The first idea is that Permanent Diplomatic Missions, better known as Embassies, were regulated by customary international law, and subsequently codified in the Convention on Diplomatic Relations, signed in Vienna on 18 April 1961.

The second point to note is that the International Court of Justice attaches extraordinary importance to this Convention. The Court, in its Judgment of 15 December 1979, in the case concerning United States diplomatic and consular personnel in Tehran (para. 41), considered that "although no State is under an obligation to maintain diplomatic or consular relations with another, it cannot for that reason fail to recognise the peremptory obligations inherent therein, now codified in the



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Vienna Conventions of 1961 and 1963".

Thirdly, some preliminary notions about the Vienna Convention should be made clear: 1) this Convention regulates permanent diplomatic relations between States; 2) this Convention does not regulate, because it has specific conventions, diplomatic relations of two kinds. The first type is called "multilateral diplomacy", which is the relations between States and International Organisations, or between International Organisations. The second type is called "*ad hoc* diplomacy", which are temporary special missions in relations between States; and 3) the Preamble to the Convention recognises that diplomatic immunities and privileges "are granted, not for the benefit of individuals, but in order to ensure the effective performance of the functions of diplomatic missions as representatives of States".

2. ESTABLISHMENT, MAINTENANCE, SUSPENSION, AND TERMINATION OF DIPLOMATIC MISSIONS

On the establishment, maintenance, suspension, and termination of Permanent Diplomatic Missions, five ideas are worth noting.

The first idea is that the establishment of diplomatic relations between States and the

sending of Permanent Diplomatic Missions is carried out by mutual consent. This requires the conclusion of a bilateral international treaty. The principle of mutual consent applies in three important areas: 1) in the determination of the rank of the Mission, which depends on the rank of its Head. They can be either ambassadors or nuncios; or envoys, ministers and internuncios; or chargés d'affaires; (2) in opening offices in locations other than the Mission; and (3) in cases of multiple accreditation. On the one hand, when a State accredits a Head of Mission to two or more States. On the other hand, when two or more States accredit the same Head of Mission to a third State. However, the principle of mutual consent does not apply in determining the number of persons who are to make up the Mission. If there is no agreement between the accrediting and receiving States, the interests of the receiving State take precedence.

The second point to note is that the maintenance of Permanent Diplomatic Missions is governed by the principle of mutual consent. To facilitate this, the Vienna Convention has established a delicate balance of powers. Thus, on the one hand, it affirms two obligations of the persons of the sending State who are members of the Mission. These are the duty to respect the laws and regulations of the receiving State; and

the obligation not to interfere in the internal affairs of that State.

On the other hand, the Convention establishes important rights of the receiving State of the Mission, which can decide at any time, and without having to justify it, that the Head or another member of the diplomatic staff is *persona non grata* or that other members of the Mission are unacceptable. In such cases, if the sending State does not remove the person within a reasonable period of time, the receiving State may deny him or her the status of member of the mission, which entails the loss of diplomatic immunities and privileges.

The third point to note concerns the suspension and termination of diplomatic missions. In these two cases, the principle of mutual consent never applies. There will always be a unilateral decision to suspend or terminate a diplomatic mission. These two cases have different effects. Suspension, which is of a provisional nature, usually, but not always, has reciprocal effects. However, termination, which is of a permanent nature, will always have reciprocal effects.

The fourth idea is to point out that the Vienna Convention does not regulate the causes of these two cases. Suspension may be due to "unfriendly" acts, economic problems, etc. Termination means the severance of diplomatic

relations. It may be due to: 1) the outbreak of an armed conflict between the two States; 2) the disappearance of the sending State or the receiving State; 3) non-recognition of the *de facto* government of one of them; 4) economic reasons; etc.

The fifth and last idea to underline is that the Vienna Convention does regulate some of the consequences of the suspension or termination of diplomatic relations. In this sense, the Convention establishes the obligation of the receiving State both to facilitate the departure from its territory and to respect and protect the premises, property, and archives of the mission, even in the event of armed conflict in both cases.

3. FUNCTIONS OF THE PERMANENT DIPLOMATIC MISSION

The Vienna Convention contains an open-ended enumeration of the main functions of the Permanent Diplomatic Mission, as they consist "principally" of: (1) representing the sending State in the receiving State; (2) protecting in the receiving State the interests of the sending State and those of its nationals, within the limits permitted by international law; (3) negotiating with the Government of the receiving State; (4) ascertaining by all lawful means the conditions

and developments in the receiving State and reporting thereon to the Government of the sending State; and (5) promoting friendly relations and developing economic, cultural and scientific relations between the sending State and the receiving State.

Moreover, the Vienna Convention allows the diplomatic mission to exercise consular functions. In fact, almost all Missions have a "consular post" of the sending State within them.

4. DIPLOMATIC INVIOABILITY, IMMUNITIES AND PRIVILEGES

On diplomatic inviolability, immunities and privileges, the Vienna Convention distinguishes between those that are specific to the Permanent Diplomatic Mission and those that affect only the natural persons who make up the Mission.

With regard to the Permanent Diplomatic Mission, it enjoys the following five privileges: 1) inviolability of the Mission's headquarters, archives, documents, and correspondence. This inviolability merits three comments. Firstly, I must point out that the fiction of the extraterritoriality of embassies is false. They are the territory of the receiving State, even if it does not exercise jurisdiction there. Secondly, there may be problems with the practice of diplomatic

asylum, since this is not recognised in general international law and, furthermore, there is an obligation not to use the premises of the Mission in a way that is incompatible with the functions of the Mission. Thirdly, problems may arise in the event of a fire at the headquarters, since the agents of the host State, including firemen, need the consent of the Head of Mission to enter the premises. 2) freedom and inviolability of communication, including the diplomatic bag; 3) the right to use the flag and coat of arms of the sending State; 4) tax and customs exemptions; and 5) absolute immunity from jurisdiction and execution.

With regard to the natural persons making up the Diplomatic Mission, the Vienna Convention distinguishes between four classes of persons. First, diplomatic agents, who are both the Head of Mission and any member of the diplomatic staff of the Mission.

The privileges and immunities of diplomatic agents and members of their families are the following six: (1) personal inviolability; (2) inviolability of residence, papers and correspondence; (3) immunity from jurisdiction and execution; (4) immunity from taxation; (5) immunity from customs duties; and (6) exemption from the laws of the receiving State relating to social security.

The second group of persons are the administrative and technical staff members, who are defined as "Mission staff members employed in the administrative and technical service of the Mission".

The privileges and immunities of these persons and their families are the same as for diplomatic agents, but with two important differences: on the one hand, their immunity from civil and administrative jurisdiction will be relative and, on the other hand, their customs immunity will be only for the objects of the first installation.

The third group of persons are the domestic staff of the Diplomatic Mission. They are defined as "the members of the Mission's staff employed in its domestic service". They would be the cooks, porters, chauffeurs... of the diplomatic mission.

Their privileges and immunities are more limited, being reduced to three: (1) immunity for acts performed in the performance of their duties; (2) exemption from taxation of salaries; and (3) exemption from compliance with social security laws.

The fourth and final group of persons are the private "servants" of members of the Diplomatic Mission. They are defined as "any person in the domestic service of a member of the Mission, who is not an employee of the sending State". Over time, the term "servant" was considered

outdated and they are now referred to as "personnel in the private service of a member of the Mission". Their privileges and immunities are very limited. The only privilege they enjoy is exemption from taxation on their salaries.

