



Theories and Practices of Modern Diplomacy



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Dedication

I would like to dedicate the success of this study to my almighty god for granting me his protection and knowledge in coming out with this importance study I wish to recognize my Co-author PhD Candidate Dut Bol Ayuel Bill with his Family and colleagues with whom I work closely during the stages of writing this Book am also thankful to Prof Marial Awuou Vice Chancellor of Upper Nile University and in particular my Colleagues in the Faculty of Economic and Social Studies for their help and courage from the day one to the last day of Writing this Book,

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1| The Concepts/Nature/ Meaning of Diplomacy

According to Sir Ernest Satow, Diplomacy stands for an abstract quality or gift for international relations (to achieve PESTEL for the Survival of its citizens from other states).

Sir Henry Walter looks at a diplomat as '... an honest man sent abroad to lie on behalf of his country, he is the mouthpiece, ear, eye, noose, and feeling of their state.

Diplomacy is not an end in itself. It is seen as a tool to advance state interest. It is an instrument that provides a means by which government learns about, speaks to, and negotiates with others in international relations in PESTEL (Political, Economic, Social, Technological, Environmental and Legal).

A diplomacy is a tool, which states use to gain and expand relations among nations in the international system. This is a vital instrument in the game nations play to pursue their interest. For example, the sentiments of Stilwell and Stalin have some justification; they do not suggest the real nature of Diplomacy, which consists of the techniques and procedures for conducting relations among states.

The means, methods, and strategies advanced in Diplomacy do not matter, what matters if you can achieve your foreign policy and national interest either peacefully or coercively. In itself, Diplomacy, like any machinery, is neither moral nor immoral; its use and value depend upon the intentions and abilities of those who practice it (The actors and Behavior).

Diplomacy functions through a web of foreign offices, embassies, legations consulates, and special missions all over the world. It is commonly bilateral in character, but multilateral diplomacy has become increasingly significant because of the growing importance of international conferences, international organizations, regional arrangements, and collective security measures. The dimensions of Diplomacy have been widened by the rapid growth of informal relations between the US developments, which is new in scope although not in essence. The advent of informal access on a large scale (Globalization).

Diplomacy remains a central mechanism for conducting the world's work and as such, it is a major instrument of national policy and international relations.

Since no state in the world can survive without other states, all nations have the following imperative/principles that each state needs from any other state it is dealing with in/for Diplomacy.

These are:

- Equality: all states are equal
- Dignity: All states want respect from each other even the weakest/less powerful or small states do
- Sovereign: Every state wants to act independently without any other state's opinion
- National Interest- All states seek to promote their national/selfish interest in international relations

2| The Historical Background of Diplomacy

The term 'diplomacy' is derived from the Greek word *diploma*, which means a double document. During the Greek City-State and all passports, imperial letters were stamped on double metal plates folded and sewn together. The term was applied to all official documents. This conferred certain privileges and immunities. With the emergence of states, diplomacy took on a more multilateral level making it more complex and sophisticated and creating a basis for distinct, clear rules to govern protect the class of people that are involved in diplomacy.

When we talk about the history/ evolution/ development/ foundation/ basis/beginnings/ philosophy, we know how diplomacy originated. Without this history, the meaning/nature/and concept of diplomacy would be distorted. The development of diplomacy lies in two separate/distinct periods of the *Adhoc* (temporary, informal, non-permanent, antiquity). The city-states practiced different economic activities like farming and shipbuilding, among others, so they needed to exchange these with other city-states. They sent representatives on *Adhocan* basis to discuss terms and the permanent period. However, development is said to be European in nature, but it turns out that it is just a tactic to make diplomacy or hijack concepts to deny African documentaries to take on an international stage.

Diplomacy in antiquity means practice of diplomacy in ancient times. There was no documented evidence of practice of diplomacy in ancient history; men could not survive alone economically and politically, there was the desire to enter into friendly relations with their neighbours. According to Nascimento da Silva (1972), diplomacy must have originated once people of various background or culture made contact and sought to find a common ground for their dealings. Representation and negotiation from historical accounts can be said to be as old as families, clans, tribes, and people met one another and sought to regulate marriage customs and contracts hunting trade, navigation communications disagreements and wars.

Diplomacy then was modern diplomacy ad-hoc in nature. Evidences of history show that cases of negotiations, alliances and coalitions of various people existed since antiquity. Though there could have been no legal norms regulating diplomatic relations, emissaries, who were sent by communities for negotiation and settlement of disputes, enjoyed privileges and special protection based on religion. Gasiokwu (1997) quoting Harold Nicolson says:

'Even in prehistory there must have been common moments when one group of savages, if only for the purpose of indicating that they had enough of the day's battle, would like a pause in which to collect their wounded and bury their dead.'

The above quote emphasized the need for negotiation in those days to save man from annihilation. Those, who had to play those roles, saw how dangerous they were and could never have accomplished them, if not given some sort of special protection. The beginning of diplomacy dates to the Eastern Mediterranean and the region around the Tigris and Euphrates valleys. Diplomatic records in the region show that what appeared to be embassies can be found in the region from as far back as the great Babylonian Emperor, Hammurabi (1792-1750 BC). These beginnings found continuance and advancement in ancient Greece and Rome, which originated many concepts and practices used in modern diplomacy.

Diplomatic missions are described in Homer's *Iliad* (about 850 BC) and the Greeks, followed by the Romans, wrote treaties, established the rudiments of international law, initiated or revived other aspects of diplomatic practice, and used ambassadors to negotiate disputes. The Byzantine

Empire, which flourished after Rome's collapse, added further to the beginning of diplomacy by training negotiators and establishing the first foreign affairs department.

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The diplomacy of Italian city-states started in the 15th century and contributed to the beginning of diplomacy by establishing first permanent diplomatic missions since Hammurabi's time, more than 3,000 years earlier. Italians also introduced summit meeting as a diplomatic practice and became practically known for diplomatic practice and for diplomatic artifice.

The French system is the direct predecessor of modern diplomacy. Cardinal Richelieu, who served as chief minister (1624-1642) to King Louis XIII, saw diplomacy as an ongoing process rather than expedience. He consolidated all foreign affairs functions under one ministry. Later, during Louis XIV's reign (1643-1715), the minister of foreign affairs became a member of the King's cabinet and permanent embassies were established in all major capitals, with lesser ranked missions in minor capitals. It was also at the end of this era that Francois de Callieres wrote the first diplomatic manual on negotiating with sovereigns.

Ancient China during the Eastern Chou Dynasty (770-256 BC) made contacts with other parts of Asia. Problems were solved according to the accepted principles and envoys were given instructions on how to act to maintain peaceful relations with other heads of states.

Contribution to the development of diplomacy by Africans can be traced to ancient Egypt, which is said to have contributed more to diplomacy in antiquity. Egypt had contacts with the Mediterranean countries, Arab states, Babylon and India ever before the fourth century BC. Egypt sent and received trade delegations from these states with which she had contact. It seems earliest recorded diplomatic intercourse of 'international' relevance took place in the Nile valley. The wealth of Egypt made it a focal point of commerce and thus brought it into contact with other people. The first treaty of which the full text was preserved was the one drawn up between Ramese II of Egypt and Hattusalis, the prince of the Hittites. This treaty among other things dealt with the extradition of deserters to their country of origin with the pledge that neither the guilty, nor their wives, mothers, children will be put to death.

Finally, old diplomacy that developed mostly in Europe had several traits; one was elite domination. L'état, c'est moi (I am the state). Louis XIV supposedly proclaimed with some justification and true to that assertion, foreign policy was dominated by the monarch and ministers and diplomatic corps recruited from the nobility and gentry. Democracy had begun in a few places, but the saying of the people in foreign affair was still minimal. As conducted by the elite, diplomacy was further marked by secrecy; treaties were often secret. There were a few multilateral conferences such as the congress of Vienna (1815) but bilateral diplomacy (direct negotiations between two countries) was the normal form of negotiation.

In summary, diplomacy in antiquity was mainly by ad-hoc diplomacy, military diplomacy and the art of peace treaties.

2.1. Contemporary Diplomacy

Modern Diplomacy started in Westphalia Treaty in 1648 when national states were created. This treaty gave credence to the concepts of: Sovereign statehood, International law, Diplomacy, and Balance of power. The world had expanded and European states noticed the need to have envoys stay permanently at their stations (embassies) so as to represent their states more closely. Modern Diplomacy is highly respected (held in high esteem), but many times is also controversial.

Contemporary Diplomacy can be said to have started in the 17th century. From this period, diplomacy underwent a series of revolutionary processes differing from the Greek period, antiquity in the era of Italian city-states. The sending of envoys and maintaining permanent legation was already an accepted tradition in Europe at this time. The treaty of Westphalia in 1648 was precisely the direct source of modern diplomacy. This treaty confirmed the principle of balance of power in Europe and thus obliged states to keep watch on one another. The treaty was seen to be the most important judicial instrument of the time, and most importantly, laid the foundation for the development of international law and diplomacy by its recognition of the existence of European states as separate sovereign kingdoms, thus the evolution of diplomacy based on peaceful co-existence of the monarchs.

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Harold (1939), whose little book 'Diplomacy' has been a classic on the subject, has called attention to three developments of the 19th and 20th centuries, which have greatly affected the theory and practice of diplomacy. These are

- The growing sense of the community of nations
- The increasing appreciation of the importance of public opinion and
- The rapid increase in communications

The first two developments have clearly enlarged the diplomat's functions and enhanced his importance. The result has been the 'worldwide intermeshing' of foreign offices and diplomatic posts through which most of the formal contacts between states are now maintained.

As the number of international organizations, groupings, and conferences increased, multilateral diplomacy took on added significance. The impact of public opinion on diplomacy is now generally recognised, but until the era of the new diplomacy, that impact seemed to be slight.

Today it is demonstrable that the policy makers of all nations, including those of totalitarian states, are sensitive to currents of public sentiments: witness the time and effort that are devoted to educational and propaganda work. One of the main functions of diplomatic representatives is reporting on the attributes of the people in the country to which they are accredited. As Lord Gore -Booth (1979) puts it:

Diplomacy in this period proceeded according to well-defined rules and civilised convention. It was personal and flexible and its style, while not without subtlety, was clear enough for all who took part in it to understand, not only what was explicitly said, but also what was to be taken for granted. By 17th and 18th centuries European monarchs maintained missions abroad, they also made efforts to keep and improve on their diplomatic relations.

Modern diplomacy covers a wide range of human activities, involving state and non-state actors. These actors advance their interests through dialogue, correspondence, conferences, lobbying, negotiation, threats of war and even acts of violence. The 1961 Vienna Convention on Diplomatic Relations and the 1963 Convention on Consular Relations are important landmarks in contemporary times.

2.2. Conclusion

There was no documented evidence of practice of diplomacy in ancient history; men could not survive alone economically and politically, there was the desire to enter into friendly relations with their neighbors. Contemporary diplomacy can be said to have started in the 17th century; from that period, diplomacy underwent series of revolutionary processes differing from the practice during the Greek period, antiquity in the era of Italian city-states. The conduct of diplomacy is shaped by political, economic, social and technological goals.

Modern diplomacy covers a wide range of human activities, involving state and non-state actors. These actors advance their interests through dialogue, correspondence, conferences, lobbying, negotiation, threats of war and even acts of violence.

3| Types of Diplomacy

The previous unit described the evolution of diplomacy and now it's important that since you know the evolution of the subject, it is now that you must also know the types of diplomacy that actors (both states and non-state) use in the conduct of diplomacy in international relations to pursue their interests. The objectives of you studying this course unit are:

At the end of this unit, you should be able to:

- Describe diplomatic practice in the modern era
- Distinguish key events in relations among nations
- Develop the vital skills employed in the study of diplomacy
- Analyses types of diplomacy

The types of diplomacy are:

3.1. *Leader-to-Leader Diplomacy*

Modern transportation and communication have spawned an upsurge of high-level diplomacy. National leaders regularly hold bilateral or multilateral summit conferences and foreign ministers and other high-ranking diplomats jet between countries conducting shuttle diplomacy.

The advent of globetrotting, leader-to-leader diplomacy and the increased frequency of telecommunications diplomacy are mixed blessings. Meeting between leaders can demonstrate an important symbolic shift in relations. For 50 years after the outbreak of the Korean War, the relationship between Pyongyang and Seoul was antagonistic. This changed in June 2000 when President Kim Jong II of North Korea and his South Korean counterpart met in Pyongyang, which was an achievement.

Another dramatic breakthrough is the 1978 Camp David Accord, which saw normalizing Egyptian-Israeli relations after decades of hostility and three wars. The Accord was produced after US President Jimmy Carter, Egyptian President Anwar Sadat, and Israeli Prime Minister Menachem Begin isolate themselves at the presidential retreat in Maryland, United States.

3.2. *Democratized Diplomacy*

The elite and executive domineering character has changed in several ways. One result of democratized diplomacy is that diplomats are drawn from wider range of society and thus, there are more representatives of their nations. It also means, though they have lost the common frame of reference once provided by this similar cosmopolitan, elite backgrounds.

Diplomats have their attitudes rooted in their cultures and are more apt to suffer from antagonisms. The diplomats conduct public diplomacy aimed at influencing not just leaders but also the legislatures, interest groups, and public opinion in other countries. The former United Nations (UN) Secretary General has reportedly said, "If I can get the support of governments, then I get the support of the people. People move governments."

3.3. *Cultural Diplomacy (Globalization)*

Cultural diplomacy can be defined as a new way of making diplomacy by the involvement of non-governmental and non-professional actors in the making of diplomacy. Through the structure of globalization, culture plays a major role in the definition of identity and the relations between people. Joseph Nye points out the importance of having a soft power besides a hard power. When conventional diplomacy fails, better knowledge can help bridge the gap between different cultures. One of the pioneers of citizen

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diplomacy, physicist Robert W. Fuller frequently travelled to the Soviet Union in the 1970s and 1980s to alleviate the Cold War.

After the collapse of the Soviet Union, Dr. Fuller continued this work around the world and developed the idea of reducing rankism to promote peace. It has become a subject of academic studies based on historical essays on the United States (US), Europe and the Cold War.

3.4. Parliamentary Diplomacy

Parliamentary diplomacy refers to debate and voting in international organisations. These sometimes supplant negotiation and compromise. The maneuvering (steering) involved in parliamentary diplomacy was strongly evident in the UN with regard to North Korea during 1993 and 1994. The US had to proceed with care. With threats of UN-endorsed sanctions against North Korea, China and Russia were averse to sanctions and each possessed a veto 'What will the Chinese do?'. Assistant Secretary Gallucci rhetorically asked reporters at a briefing, "Will you be able to pass a sanctions resolution? If there is anybody in this room who knows things they know, if they are willing to give me odds, and I do not care in which direction, I'll take them. I do not know what the Chinese are going to do."

In May 1994, the five permanent members of the Security Council issued a joint statement calling on North Korea to provide evidence that it was not reprocessing spent nuclear reactor fuel rods into plutonium for weapons. Among other benefits, this statement indicated to Pyongyang that the five permanent members (P5) of the Security Council were united in opposition to a North Korean nuclear-weapons capability and that even Chinese and Russian patience was not vast. Parliamentary diplomacy was used by Dean Rusk to describe the negotiations and discussions carried out in international organization in accordance with its rule of procedure, but with special reference to the General Assembly and the security of the United Nations. Subsequently, Dean Rusk developed the basis idea and defined the term in details. It is a type of multilateral negotiations, which involves the following:

First, a continuing organization with interest and responsibilities, which are broader than the specific items that happen to appear upon the agenda at the particular conference in other words more than a traditional international conference, called to cover specific agenda.

Second, a regular public debate exposed to the media of mass communication and in touch, therefore with public opinion around the globe.

Thirdly, there are rules of procedure which govern the process of debate, and which are subject to tactical manipulation to advance or oppose a point of view. And lastly, formal conclusions ordinarily expressed in resolution, which are reached by the majority votes of some description on a simple or two-third majority based on a financial contribution or economic stake-some and some without a veto.

3.5. Informal Diplomacy

Informal diplomacy has been used for centuries to communicate between powers. Most diplomats work to recruit figures in other nations who might give informal access to a country's leadership. In some situations, the United States of America (US) and the People's Republic of China adopted these using interlocutors such as academic members of the think-tank. This occurs when governments wish to express intentions or suggest resolving a diplomatic situation but do not wish to express a formal position. Informal diplomacy is known as Track II Diplomacy. Non-official (academic scholars, retired civil and military officials, public figures, and social activists) engage in dialogue with the aim of conflict resolution or confidence building.

3.6. Gunboat Diplomacy

This refers to the pursuit of foreign policy objectives with the aid of conspicuous display of military power implying or constituting a direct threat of warfare should terms not be agreeable to the superior force. The term comes from the period of colonial imperialism where the European powers would intimidate other

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states integrating trade through a demonstration of their superior military power. A country negotiating with a European power would notice that a warship has appeared off its coast. The mere sight of such power usually had a considerable effect and it was rarely necessary for such boats to use other measures such as demonstrations of cannon fire. The British diplomat and naval thinker, James Cable (1971, 1994) defined the phenomenon as 'the use or threat of limited naval force, otherwise than an act of war, in order to secure advantage or to avert loss, either in the furtherance of an international dispute or else against foreign nationals within the territory or the jurisdiction of their state.'

He further broke down the concept into four key areas:

3.6.1. Definitive Force

It is the use of gunboat diplomacy to create or remove a fait accompli.

3.6.2. Purposeful Force

It is an application of naval force to change the policy or character of the target government or group.

3.6.3. Catalytic Force

It is a mechanism designed to buy a breathing space or present policy makers with an increased range of options.

3.6.4. Expressive Force

It uses navies to send a political message; interestingly this aspect of gunboat diplomacy is undervalued and almost dismissed by cable.

Diplomatic points were made by the Clinton administration in the Yugoslav wars of the 1990s (in alliance with the United Kingdom [UK] during the Blair administration) using sea launched Tomahawk missiles and E-3 AWACS airborne surveillance aircraft in a more passive display of military presence. Gunboat diplomacy in the post Cold War world is still based mostly on naval forces; owing to the US Navy's overwhelming sea power. US administrations have frequently changed the disposition of their major naval fleets to influence opinion in foreign capitals.

3.7. Defence Diplomacy

It is the peaceful application of resources from across the spectrum of defence to achieve positive outcomes in the development of bilateral and multilateral relationships. It does not include military operations, but subsumes such other defence activity as international personnel exchanges, ship and aircraft visits, high-level engagement (for example ministers, and senior defence personnel) training and exercises, security sector reformed, bilateral military staff talks, and so on.

3.8. Multilateral Diplomacy

Conferences involving several nations occurred during the 19th Century; the practice has expanded in the modern era. Woodrow Wilson's call for the League of Nations symbolizes the rise of multilateral diplomacy. There are several permanent worlds and regional international organizations. Ad-hoc conferences and treaties are also more apt to be multilateral. Multilateral diplomacy has increased for several reasons.

Technological progress is one. Advances in travel and communications technology allow faster and more frequent contacts among countries. More countries and leaders realize that any one country cannot solve many global concerns, such as the environment. It is attractive to smaller countries to influence world politics beyond individual world power.

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3.9. Regional Diplomacy

It refers to the conduct of relations between states that belong to a specialized geographic region. It has become a strong force in international relations. Globalization and inter-dependence have made all states aware that neighborhood co-operation works to mutual benefit. Small countries see the benefit of numbers, for economic and political advantage.

3.10. Public Diplomacy

It uses every available means of communication including cultural and educational exchanges, distribution of publications, press, and radio and television lectures. It is the task of public diplomacy to analyse the similar activity of foreign governments and see its influence on public opinion and on the formulation and carrying out of foreign policy.

Other types of diplomacy that you should read about are:

- Secret diplomacy,
- Language diplomacy,
- Funereal diplomacy,
- Economic diplomacy,
- Coercive diplomacy or 'forceful persuasion'.

3.11. Secret Diplomacy

It was mainly used in the League of Nations which involves powers negotiating in closed doors with, but its danger is that in case of a disagreement between/amongst the parties, it can easily lead to war. The WWII was caused by this kind of diplomacy.

3.12. Economic Diplomacy

This type is concerned with economic policy issues, e.g. work of delegations at standard setting organizations such as World Trade Organization (WTO). Economic diplomats also monitor and report on economic policies in foreign countries and give the home government advice on how to best influence them. Economic diplomacy employs economic resources, either as rewards or sanctions, in pursuit of a particular foreign policy objective. This is sometimes called 'economic statecraft'

3.13. Coercive Diplomacy or 'Forceful Persuasion'

It is the 'attempt to get a target, a state, a group (or groups) within a state, or a no state actor-to change its objectionable behavior through either the threat to use force or the actual use of limited force. This term also refers to diplomacy pre-supposing military force's use or threatened use to achieve political objectives. Coercive Diplomacy is essentially a diplomatic strategy that relies on the threat of force rather than the use of force. Suppose force must be used to strengthen diplomatic efforts at persuasion. In that case, it is employed in an exemplary manner, in the form of quite limited military action, to demonstrate resolution and willingness to escalate to high levels of military action if necessary.

Coercive Diplomacy can be more clearly described as 'a political-diplomatic strategy' that aims to influence an adversary's will or incentive structure. It is a strategy that combines threats of force, and, if necessary, the limited and selective use of force in discrete and controlled increments, in a bargaining strategy that includes positive inducements. The aim is to induce an adversary to comply with one's demands, or to negotiate the most favorable compromise possible, while simultaneously managing the crisis to prevent unwanted military escalation.

Coercive diplomacy attempts to have force to be a much more 'flexible, refined psychological instrument of policy in contrast to the 'quick, decisive' military strategy, which uses force as a blunt instrument.

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3.14. Conclusion

You must note in this concluding section that types of diplomacy continue to remain a tool actors used in advancing their interest. It is a means through which actors interact with other powers.

3.15. Summary

In this Chapter the types of diplomacy have been discussed which helps you learn how actors have been able to use diplomacy to achieve their various aims. You also learn that types of diplomacy explain how actors have been able to interact with one another. So, now the questions are:

- Do you know the many types of diplomacy that actors use in the conduct of relations today?
- Can you contrast the types from each other?

4| Qualities of a Diplomat/Practice of Diplomacy

For Diplomacy to flourish, there are practitioners officially appointed to perform diplomatic functions. As we have said earlier on in this unit, such appointed officials must be imbued with certain characteristics and qualities which must include the following among others:

- Sound Bargaining power
- Good negotiation skill
- Tact
- Intelligence
- Shrewdness
- Humility
- Sound Analytical mind
- Quick wit
- Apt response to issues
- Self-initiative
- Level-headedness
- Common sense
- Eloquence
- Decency
- Sociability

The diplomat needs all these qualities among others to effectively perform his/her functions amongst which are:

- Representation: A diplomat/envoy/ambassador or emissary is the 'eyes' and 'ears' of his state, people, culture and country in another country.
- Negotiation and Bargaining: He is the instrument of dialogue for his people. He should know when to sound tough or compromise. He should be firm or soft as the situation requires and at his own discretion.
- Extraction of Information: This has to be cautiously performed so that the envoy will not be labeled a spy or be accused of espionage activities by his host country. A diplomat has to reveal helpful information concerning the host country to his home country. He has to be very careful in doing this.

The above-listed among others are functions of diplomatic practice I.

5| Institutional Basis of Diplomacy

5.1. Introduction

These are the actors/ pivot through which diplomacy is conducted. International politics is a narrower field than international relations because the former entails a power struggle. The latter connotes the sum total of relationships in the global system. These relations include scientific, military-economic, cultural, social and political relationships. Various actors play these roles on the diplomatic stage. This unit examines who these actors are, how they play these roles, and why they are necessary.

Actors on the stage of international diplomacy can be identified as any group of persons, individuals or entities that, through their activities, influence the operation of diplomatic practices on the international scene. Ojo (1988) suggested that they should be regarded as actors; all individuals, groups and other non-state entities, which independently enter into transactions that have political consequences and at the same time are international in scope.

Therefore, the objectives of this lesson/unit are that at the end you should be able to:

- Define the role of each of the actors/ institutions
- Define the role of actors on the diplomatic stage, explain the inter-connections between political, economic and legal dimensions of diplomacy
- Explore the dynamics of contemporary international relations; including forces for change and continuity analysis how actors conduct their roles in the international system.

5.2. Head of State (State)

The contemporary world of liberalism (Globalization), which emerged after the end of the cold war in the 1990s, has seen the Head of States become the number one diplomat to conduct relations for their state. Until recently, states were thought to be the only actors of international diplomacy (Realism Theory). This is so because diplomacy, as earlier noted, comprises any means by which states establish or maintain mutual relationships, communicate with each other. Brownlie 1979 maintains that diplomacy involves the exchange of permanent or at least regular representatives necessary for states to give substance to their membership of the United Nations (UN) and other major inter-governmental organizations. These representatives are in their own right actors since they personify the states.

States personified by the heads are the principal actors of international diplomacy because they are always at the head of any diplomatic intercourse but when they are not so doing, they send individuals who act as embodiment of the head and states as their delegates and representatives. The head appends his signature to, commits the generality of the country. He is assumed a legitimate actor, being an embodiment of the whole people. The roles of this institution are divided into two:

5.2.1. Internally (at Home)

- Appointment of the Minister of foreign Affairs
- Appointment/disappointment of Envoys/Ambassadors
- Receiving foreign dignitaries/ Envoys/Ambassadors
- Issuing of a letter of credence
- Signing treaties/ agreements, etc

5.2.2. Abroad (Outside His/her States)

- Ceremonial honors
- Signing treaties/agreements

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- Representing his State in another state, etc

5.3. State's Foreign Minister (*Minister of Foreign Affairs*)

A State's foreign minister is a highly regarded actor on the diplomatic stage. This person is the center (pivot) of communication between states and international organizations. This person is normally appointed by the Head of States or the Prime Minister (Head of Government).

He/She works in consultation with the head of state and other as the case maybe; he is also a principal actor. In traditional autocratic forms of government, he is a trained official belonging to the diplomatic service (civil servant). He could commit his country into agreements and treaties or even sign laws that govern diplomatic conduct. The foreign minister, however, deals with normal intercourse between governments; and in this, if he is an amateur or untraveled, he comes easily under the influence of the caste of diplomatists inside his office and his group abroad.

However, a foreign minister may resist or even control such influences if he has political power outside the world of officials. The policy of each minister is delimited not only by influence of professional officials and diplomatists but also by existing treaties and even current negotiations begun by a predecessor even when a change of party in control of the government takes place, the so called continuity of foreign policy holds good to a considerable degree. Other cabinet ministers are also actors when they are entrusted with the responsibility to act in that capacity. In such situations when they enter into agreements, it is assumed to be binding on their states because they are legitimately delegated. Other cabinet ministers are also actors when they are entrusted with the responsibility to act in that capacity. In such situations, whatever they bind is assumed to be binding on their states because they are legitimately delegated.

Other cabinet ministers are also actors who are entrusted with responsibility to act in that capacity. In such situations, what they sign is assumed to be binding on their states because they are legitimately delegated. The roles are almost the same with the ones of the Head of State as seen below:

5.3.1. Internally (at Home)

- Recommend Ambassadors for appointment to the HoS
- Receiving foreign dignitaries/ Envoys/Ambassadors
- Issuing of a letter of credence
- Signing treaties/ agreements, etc
- Ceremonial honors
- Source of information for international organizations
- Representing his state in another state, etc

5.4. Head of Mission

Their roles/functions are stipulated in the Vienna Convention on Diplomatic Relations in 1961 in Article (3). The functions of a diplomatic mission consist, inter alia, in:

- Representing the sending State in the receiving State;
- Protecting in the receiving State the interests of the sending State and of its nationals, within the limits permitted by international law;
- Negotiating with the Government of the receiving State;
- Ascertaining by all lawful means conditions and developments in the receiving State, and reporting thereon to the Government of the sending State;
- Promoting friendly relations between the sending State and the receiving State, and developing their economic, cultural and scientific relations.

Others in the contemporary world are:

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- Issues of documents like visas, death, birth and marriage certificates

5.5. *Non-Governmental Organization*

In today's world, Non-Governmental Organizations have become key players in diplomacy as well since the world of international relations now includes non-state actors.

Non-government organizations (NGOs) of international repute such as Red Cross, Amnesty International, Ford Foundation, Rockefeller foundation and so on are also actors on the diplomatic stage because their reports and activities have caused governments to do something to retrace their steps and actions against their citizens and those of other states. These organizations consist of individuals from various countries who share common interests and concerns. These institutions are non-political; their activities have on several occasions affected the political behavior of states and other actors in the international system.

5.6. *Individuals*

Individuals sometimes undertake certain actions without reference to their national government, aimed at influencing the behaviour of other actors. It is on record that James Donovan, a New York Attorney, negotiated the exchange of US pilot, France Gray Powers a convicted spy. The black American activist and Democratic Party nomination contender for the 1984 and 1988 US presidential elections Jesse Jackson negotiated the release of an American pilot whose plane was shot down over Syria controlled positions in Lebanon in early 1984. The role played by Nelson Mandela in resolving the problem involving Libya, when she was under sanction for refusal to hand over two of her nationals for trial over bombing of an American airliner over Lockerbie is worth mentioning. The suspects were eventually handed over after Mandela's intervention while, he was no longer president of South Africa.

These talented individuals can be regarded as actors on the diplomatic stage because they are capable of influencing diplomatic opinion, which equally depends on the status, granted them by their states and other states.

5.7. *Diplomatic and Consular Officers*

Diplomatic and consular officers are also actors on diplomatic stage. A diplomatic agent and his legation personify the state he represents; an act against him is assumed an action against his state. In his position and according to the Vienna Convention on Diplomatic Relations of 1961, he represents, protects, negotiates, ascertains by lawful means, and promotes the interests of the state. Diplomatic and consular officers play a major role on the diplomatic stage and most often, they have been a target of assassination attempts, kidnap and even murder and thus a subject of diplomatic tussle between nations. For an actor on the diplomatic stage to be able to carry out the functions stated above, he needs some protection in respect of each class.

In furtherance of this, both the 1961, and 1963 Vienna Conventions on Diplomatic and Consular Relations all have entries for his privileges and immunities but strictly for the efficient performance of his duties or functions. In this regard, Articles 22,29,30,31 and 33 of the 1961 convention and Articles 27, 31 and 40 of the 1963 convention are relevant. Besides, steps have been taken to protect the international actor, especially in the New York Convention on Special Missions 1969 and the Convention on the Punishment of Crimes against Internationally Protected Persons Including Diplomatic Agents, 1973.

In an address before the American-Japan Society in Tokyo, on November 22, 1938, Joseph C. Grew, US Ambassador to Japan, commenting on the work of the professional diplomat, thus explained the supreme purpose and duty of an ambassador: He must be, first and foremost, an interpreter, and this function of interpreting acts both ways.

First of all, he tries to understand the country which he serves –its conditions, its mentality, its actions, and its underlying motives, and to explain these things clearly to his own government. And then,

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contrariwise, he seeks means of making known to the government and the people of the country to which he is accredited the purposes and hopes and desires of his native land. He is an agent of mutual adjustment between the ideas and forces upon which nations act.

From this statement, it can be held that diplomatic and consular officers have the eyes and ears of their government in other countries. Their functions are to execute the policies of their own country, to protect its interest and nationals, and to keep their government informed of major developments in the world. It is expected that they must have cultivated a wide variety of social contacts, with the ranking officials of the foreign office and of the foreign government in general, with their fellow diplomats, with influential persons in all walks of life, with articulate groups in the country.

5.8. Conclusion

Actors in the diplomatic stage continue to remain a subject of discourse in the international system. They influence the operation of diplomatic practices on the international scene.

5.9. Summary

In this unit, efforts have been made to illustrate a few examples of the contemporary individual maneuvers in their private capacities to influence the course of world politics. The state remains the most consistent and important factor in the international system, the increasing role played by other actors cannot be ignored. It is also true that actions of most of these non-state actors are directly primarily at influencing the actions of government and are, therefore, important to the extent to which they are able to achieve their aim.

6| Establishment of Diplomatic Mission/Consular

Foreign states wishing to establish diplomatic or consular premises in another state must obtain written approval from that Government. Get information on the requirements and procedures involved in opening an embassy, high commission or consular post.

6.1. Stage 1: Needs and Capacity Assessment

There are some questions states must ask themselves including the following:

- Do we need an embassy or consular post in that particular state?
- Do we have the resources (personnel and funds)?
- How many embassies do we need?
- What class of embassy, etc?

How you answer these questions determines if you will open an embassy or not.

6.2. Stage 2: Consultation

A foreign state wishing to open a new diplomatic mission or consular post must send a request to the Office of Protocol/ Ministry in charge by way of Note.

In the case of an embassy or high commission, the request may be issued by the Foreign Affairs ministry of the sending state, from its Permanent Mission to the United Nations, or from its embassy in Washington, D.C.

In the case of a consular post headed by a career consular officer, the request must in principle be issued by the diplomatic mission accredited to Canada and must contain the following information:

- Classification of the position and proposed consular district
- Detailed justification of the need and importance of establishing such a post
- In the case of a consular post headed by an honorary consular officer, please consult the guidelines in this regard

6.3. Step 3: Notification

This stage is after the states have accepted to open missions in each other's capital; both the states have to notify the persons to be sent in their capacity.

Once a foreign state has received permission to open a diplomatic mission or consular post and has identified its location, the real property to be used as its premises, that state must obtain written approval to purchase the property.

6.4. Step 4: Issue of Credence/ Exequaturs

This letter shows that you have the powers to act on behalf of the sending state, and signed by the Head of State or the Minister in charge.

6.5. Step 5: The Agent Can Act on Behalf of the Other States

One person can represent a 3rd party state as long as all the states involved are in consent.

Establishment of Diplomatic Mission/Consular

6.6. Other Important Things to Note/ Conclusion

In international law, establishing a diplomatic mission, like establishing diplomatic relations themselves, 'takes place by mutual consent,' in accordance with Article 2 of the Vienna Convention on Diplomatic Relations.

In the case of consular posts, Article 4 of the Vienna Convention on Consular Relations, 1963 states the following:

- A consular post may be established in the territory of the receiving State only with that State's consent.
- The seat of the consular post, its classification and the consular district shall be established by the sending State and shall be subject to the approval of the receiving State.
- Subsequent changes in the seat of the consular post, its classification or the consular district may be made by the sending State only with the consent of the receiving State.
- The consent of the receiving State shall also be required if a consulate-general or a consulate desires to open a vice-consulate or a consular agency in a locality other than that in which it is itself established.
- The prior express consent of the receiving State shall also be required for the opening of an office forming part of an existing consular post elsewhere than at the seat thereof publication.

7| Role and Functions of Diplomatic Agent

Their roles/functions are stipulated in the Vienna Convention on Diplomatic Relations in Article (3).
The functions of a diplomatic mission consist, inter alia, in:

- Representing the sending State in the receiving State;
- Protecting in the receiving State the interests of the sending State and of its nationals, within the limits permitted by international law;
- Negotiating with the Government of the receiving State;
- Ascertaining by all lawful means conditions and developments in the receiving State, and reporting thereon to the Government of the sending State;
- Promoting friendly relations between the sending State and the receiving State, and developing their economic, cultural and scientific relations.

Others in the contemporary world are:

- Issues of documents like visas, death, birth and marriage certificates

8| Privileges and Immunities of Diplomats

8.1. Introduction

At the end of this unit, you should be able to:

- Explain the difference between the concepts of immunities,
- Privileges and facilities, providing examples of each,
- Describe the legal basis of diplomatic privileges and immunities as it relates to individuals, states and representatives, diplomatic missions, and consular missions compare and contrast the privileges and immunities of diplomatic missions and agents with those of consular missions and agents explain the theoretical justifications for privileges and immunities and how regulation has evolved.

Indeed, it is a common saying that no man is an island. It is, therefore, true in the same vein, that no nation is an island. From these two symbolical assertions, it can easily be seen why interactions among nations just like interpersonal interactions, are indispensable to human existence. It is this understanding that informed the establishment of diplomatic and consular relations among nations. This art of representation and negotiation is, therefore, as old as social relations which, in fact started as soon as families, clans, tribes and people came into contact with one another and sought to regulate marriage, customs and contracts, hunting trade, navigation communications, disagreements and wars.

The 1961 Convention on Diplomatic Relations was created to enable diplomats to conduct their duties to enjoy privileges and immunities to respect the laws and regulations of the receiving state and it is expected of them not to interfere in the internal affairs of the receiving state. As stated in the preamble of the Vienna Convention on Diplomatic Relations 1961: '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.' The above statement primarily means that these privileges and immunities are accorded diplomats not necessarily for who they are but for what they do. The justification for diplomatic immunity is because the diplomat is a representative of a sovereign or independent state or official of an international organisation. For this reason, he needs an atmosphere free of pressure to operate and negotiate. He may even serve in a country that is not necessarily friendly to his home country. The principles of privileges and immunities as early as 1883 became a principle in the decided case of *Fisher vs. Berger*; here it was held *inter alia* that the diplomatic documents were properly admitted in evidence.

Privileges and Immunities are enjoyments, freedoms, protections, obligation and rights of all offered to all persons covered in the VCDL, 1961 to allow them perform their functions/roles.

The concept of privileges and immunities is an ancient one as can be seen indicated in the legal opening paragraph of the Vienna Convention on Diplomatic Relations of 1961, which is, 'Recalling that people of all nations from ancient times have recognized the status of diplomatic agents.' There are three theories that explain the need for privileges and immunities as:

- The theory of extra territoriality
- The theory of representation
- The theory of functional necessity

8.2. The Theory of Extra Territoriality

The theory of extra territoriality emerged with the emergency of modern states in the international system. This was a time when states set up permanent foreign missions. The implication is that the setting up of a foreign mission means the extension of a state's territory in the land. The police in the receiving state have no right to enter the premises except with the permission of the head of mission (Article 22 of the

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Vienna Convention on Diplomatic Relations 1961). This theory is based on two different and yet related legal fictions. These are:

- The concept of territory where the diplomatic premises is considered as part and parcel of the territory of the sending state and
- The concept of residence, which holds that the diplomat is not subject to local laws of the receiving state but he is residing in his own territory. According to Satow (1979), the term 'extra-territoriality' is used to denote the immunities accorded to foreign sovereigns and to diplomatic agents...it is more in accordance with the actual position to interpret it as denoting that he is not subject to the authority or jurisdiction of the state to which he is accredited.

8.3. The Theory of Representation

The theory of representation emphasizes that a diplomat is a personification of a sovereign state and therefore if attacked, a sovereign state is attacked. According to Satow, these immunities are founded on common usage and tacit consent; they are essential to relations between sovereign independent states. They are given on the understanding that they are reciprocally accorded, and their infringement by a state would lead to protest by the diplomatic body resident therein and would prejudicially affect its own representation abroad. Satow's view above not only confirms the relevance of privileges and immunities in diplomatic and consular practice in a changing world, but also introduces the concept of reciprocity, which is seen to be an effective tool for the enforcement of diplomatic and consular law. The theory of representation receives credence in the case of *Bergman vs. Desieyes* where it was held that a foreign minister enroute his post in another country is entitled to innocent passage through a third country, and is entitled to the same immunity from jurisdiction of the courts of a third country that he could have if he were resident therein.

8.4. The Theory of Functional Necessity

This theory is based on the fact that the independence of a state requires freedom of movement and communication for her diplomats in foreign territories to be effective. The interacting states are independent and sovereign, but far apart. According to Rebecca Wallace, diplomatic privileges and immunities have, as their *raison d'être* a functional objective the purpose of such privilege and immunities is not to benefit individuals but to ensure the efficient performance of the functions of diplomatic missions and representing states. This view emphasises that if states must interact, maintain their sovereignty and independence, diplomats will have to do it on their behalf. For them to be able to do this, they need privileges and immunities. The duty, which the receiving state owes under international law as regards the inviolability of diplomatic premises and the jurisdictional immunity of foreign representatives, is definite enough; manifestation of that duty, however, is to be found in a municipal context. Therefore, in the event of a breach of the duty, the sending state may have recourse through diplomatic channels to an official protest and even possibly the submission of a claim for reparation. The receiving state is required to ensure that the standards set by international law are met and may employ for the purpose whatever means or combination of means it chooses, whether administrative legislative or judicial. These restrictions placed on envoys to make up that body of international and national law known as diplomatic privileges and immunities.

The privileges and immunities of diplomats have been codified in several conventions, some of these are:

- The Vienna Convention on Diplomatic Relations 1961
- The Vienna Convention on Consular Relations 1963
- The Convention on Special Missions 1969
- Privileges and Immunities of the UN 1946
- Privileges and Immunities of Special Agencies 1947

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- Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons including Diplomatic Agents 1973

International law has provided for the personal inviolability of diplomats who shall also not be liable to arrest or detention. This protection extends to his private residence, his papers, correspondence and his property.

8.5. Privileges and Immunities

These begin as soon as the agent arrives in the receiving state and end at when they are leaving. These privileges and immunities as mentioned in paragraph four of the preamble of the same convention is not meant to be for the benefit of individuals but to ensure efficient performance of their functions. The development of socio-political and economic relations among nations also necessitated the emergence of appropriate law and regulations. According to Article 18, of the VCDL, 1961 the procedure to be observed in each State for the reception of heads of mission shall be uniform.

The Privileges and Immunities are stated in Articles (20-31) of the VCDL.

8.5.1. The Right to Use the Flag and Emblem of the Sending State

Article 20 states that the mission and its head shall have the right to use the flag and emblem of the sending State on the premises of the mission, including the residence of the head of the mission, and on his means of transport.

8.5.2. Acquisition of Accommodation in the Receiving State

Article 21 (1).The receiving State shall either facilitate the acquisition on its territory, in accordance with its laws, by the sending State of premises necessary for its mission or assist the latter in obtaining accommodation in some other way. (2). It shall also, where necessary, assist missions in obtaining suitable accommodation for their members.

8.5.3. Inviolability of the Premises of the Mission

Article 22 (1). The premises of the mission shall be inviolable. The agents of the receiving State may not enter them, except with the consent of the head of the mission.(2).The receiving State is under a special duty to take all appropriate steps to protect the premises of the mission against any intrusion or damage and to prevent any disturbance of the peace of the mission or impairment of its dignity.(3).The premises of the mission, their furnishings and other property thereon and the means of transport of the mission shall be immune from search, requisition, attachment or execution.

8.5.4. Exemption from All National, Regional or Municipal Dues and Taxes

Article 23(1). The sending State and the head of the mission shall be exempt from all national, regional or municipal dues and taxes in respect of the premises of the mission, whether owned or leased, other than such as represent payment for specific services rendered. (2).The exemption from taxation referred to in this article shall not apply to such dues and taxes payable under the law of the receiving State by persons contracting with the sending State or the head of the mission.

8.5.5. The Archives and Documents

Article 24 states that the archives and documents of the mission shall be inviolable at any time and wherever they may be.

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8.5.6. Accordance of Full Facilities

Article 25 states that the receiving State shall accord full facilities for the performance of the functions of the mission.

8.5.7. Freedom of Movement and Travel in Its Territory

Article 26 states that subject to its laws and regulations concerning zones entry into which is prohibited or regulated for reasons of national security, the receiving State shall ensure to all members of the mission freedom of movement and travel in its territory.

8.5.8. Freedom of Communication

Article 27 (1). The receiving State shall permit and protect free communication on the part of the mission for all official purposes. In communicating with the Government and the other missions and consulates of the sending State, wherever situated, the mission may employ all appropriate means, including diplomatic couriers and messages in code or cipher. However, the mission may install and use a wireless transmitter only with the consent of the receiving State. (2).The official correspondence of the mission shall be inviolable. Official correspondence means all correspondence relating to the mission and its functions. (3).The diplomatic bag shall not be opened or detained. (4).The diplomatic bag's packages must bear visible external marks of their character and may contain only diplomatic documents or articles intended for official use. (5).The diplomatic courier, who shall be provided with an official document indicating his status and the number of packages constituting the diplomatic bag, shall be protected by the receiving State in the performance of his functions. He shall enjoy person inviolability and shall not be liable to any form of arrest or detention.

8.5.9. Fees and Charges

Article 28 states that the fees and charges levied by the mission in the course of its official duties shall be exempt from all dues and taxes.

8.5.10. The Person of a Diplomatic Agent Shall Be Inviolable

Article 29 states that 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 personality, freedom or dignity.

8.5.11. Inviolability of the Residence of the Ambassador

Article 30 (1).The private residence of a diplomatic agent shall enjoy the same inviolability and protection as the premises of the mission. (2).His papers, correspondence and, except as provided in paragraph 3 of article 31, his property, shall likewise enjoy inviolability.

8.5.12. Immunity from the Criminal Jurisdiction

Article 31 (1). A diplomatic agent shall enjoy immunity from the criminal jurisdiction of the receiving State. He shall also enjoy immunity from its civil and administrative jurisdiction, except in the case of: (a) A real action relating to private immovable property situated in the territory of the receiving State, unless he holds it on behalf of the sending State for the purposes of the mission; (b) An action relating to succession in which the diplomatic agent is involved as executor, administrator, heir or legatee as a private person and not on behalf of the sending State; (c) An action relating to any professional or commercial activity exercised by the diplomatic agent in the receiving State outside his official functions. (2).A diplomatic agent is not obliged to give evidence as a witness. (3).No measures of execution may be taken in respect of a diplomatic agent except in the cases coming under subparagraphs (a), (b) and (c) of paragraph 1 of this article, and provided that the measures concerned can be taken without infringing the inviolability of his person or of his

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residence. (4).The immunity of a diplomatic agent from the jurisdiction of the receiving State does not exempt him from the jurisdiction of the sending State.

8.5.13. Waiver of Immunities and Privileges

Article 32 (1). The immunity from jurisdiction of diplomatic agents and of persons enjoying immunity under article 37 may be waived by the sending State. (2).Waiver must always be expressed. (3).The initiation of proceedings by a diplomatic agent or by a person enjoying immunity from jurisdiction under article 37 shall preclude him from invoking immunity from jurisdiction in respect of any counterclaim directly connected with the principal claim. (4).Waiver of immunity from jurisdiction in respect of civil or administrative proceedings shall not be held to imply waiver of immunity in respect of the execution of the judgment, for which a separate waiver shall be necessary.

8.6. Conclusion

The guiding laws of diplomatic and consular relations clearly define, among others, what constitutes immunities and privileges of diplomatic agents and consular officers, as well as their obligation to the receiving states. These immunities and privileges include personal inviolability, civil and criminal jurisdiction immunity, and taxation and customs duties.

9| Termination of Diplomatic Mission/Consular Agents

This happens at two levels

9.1. *Individual Level*

- Death of the agent
- Retirement
- End of Contract
- Recall
- Persona non grata
- Illness or other reasons obstruct his/her work

9.2. *Entire Embassy Level*

- Return of all passports
- War and conflict
- Expiry of contract
- Persona non grata

10 | Consular Agents

This falls into two: career consul and honorary consul.

10.1. Career Consul

These are full time employees of the government (they are civil servants), and they enjoy immunities and privileges almost to the extent of the diplomatic agent.

10.2. Functions of Consular Agents

10.2.1. Appointment, Supervision and Duties of the Honorary Consul

The Honorary (Hon) consul is one of the actors of international relations. In the overwhelming majority of cases consuls serve in the country of which they are a citizen (the receiving or host country) and support the interests of the citizens and legal entities of another country (the sending country or state), as well as serving commercial and economic interests with the official agreement of the sending state. Further, they can play an important role in stimulating cultural, educational, scientific relations or sport and tourism.

The basis of their appointment generally considers the individual's prestige, influence, integrity, stability of assets, and a certain commitment to the sending state. Material allowances are not usually partaken instead of the consul's activities.

International regulations governed by the universal Vienna Convention on Consular Relations passed in Vienna on April 24, 1963, were incorporated into Hungarian law in the 13th statutory decree of 1987. Besides this, the regulations are guaranteed by the 2/1995 Foreign Ministerial Decree and the 4/1995 Foreign Ministerial Mandate. In respect of honorary consuls, Hungarian legal regulations follow international law.

10.2.1.1. Appointment

Anyone nominated for the office of honorary consul must be either a citizen of the receiving country or a Hungarian citizen living in the receiving country with a permanent residence in the given consular district. The candidates must be

- held in high public esteem and of social repute in the receiving country
- able to operate from own resources without remuneration
- appropriately qualified
- knowledgeable in the Hungarian language (Hungarian citizens should have the opportunity of interacting in mother tongue, e.g. with the help of a Hungarian colleague)
- have no criminal record unbound by fulfilling functions on behalf of a third state (such persons may only apply in special cases).

A Hungarian head of diplomatic mission or consulate, a minister, a leader of a central authority or national interest-co-ordinating body of the sending country may put forward a nomination to the foreign minister, who has the legal authority to make such an appointment.

In connection with the appointment process in the receiving country, the diplomatic or consular mission's tasks are:

- Preliminary inquiries (whether the candidate is willing to undertake the position if all legal requirements are fulfilled).
- Personal proposal (must include personal data; citizenship; personal data and citizenship of the candidate's parents and spouse; school diplomas; linguistic knowledge; occupation; place of work;

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assets; connections with Hungary and interests; commencement of residency in the receiving country; address of home and/or residence; address of Hungarian property; home or residence; last place of residence in Hungary; reason for leaving Hungary as well as date; any possible previous Hon Consular charges and the designation of the sending country).

- The candidacy must be reasoned: did the choice rest on the basis of personal acquaintance/reference/commendation; the candidate's connection with the Hungarian community living in the receiving country/consular district. A certificate of a clean criminal record must be attached.
- The diplomatic mission requests preliminary consent from the receiving country (the appropriate diplomatic note must include the candidate's personal data; consular tasks; the name of the consular representation).
- The head of the Hungarian diplomatic mission, who has supervisory authority, asks the candidate to accept the nomination for Honorary Consul (the request should include the designation of the consular representation; the representation with supervising authority; the honorary consular official's rank; the conditions of service; tasks).

When the Honorary consular candidate confirms acceptance of the appointment in writing, the Foreign Ministry sets out the legal documentation of appointment which:

- Confirms the Hon. Consular official's post
- Contains the Hon. Consul's name, rank, his/her representation's consular district, its headquarters and ambit of responsibilities
- Declares that the appointment is for an indefinite period

The deed of appointment is forwarded via Hungarian diplomatic or other appropriate channels to the government of the receiving country.

The receiving country issues authorization confirming acceptance (patent to guarantee the rights of consular office=exequatur). The head of the diplomatic mission or his/her proxy hands over the deeds of appointment and exequatur and after receiving possession of these, the Honorary Consul may begin his/her duty (in exceptional cases, and with the receiving country's explicit permission, he/she may do so simultaneously or prior to thereof).

The Hon Consul, after accepting the appointment, makes a ceremonial declaration in the presence of the foreign minister or the minister's proxy, in which he/she agrees to the following:

- To fulfil his/her tasks and duties in their entirety
- To observe secrecy rules
- To personally sign the declaration

The diplomatic or consular mission subsequently advises the receiving country's foreign ministry of the commencement date of the Hon Consul's duties and sends them the Hon Consul's signature, initials and a copy of the stamp.

The foreign minister manages the supervision of the honorary consul's services via the head of the diplomatic or consular mission. The Hon consul's scope of authority in his/her consular district is not exclusive since it is possible that a career diplomatic/consular representation operates in parallel. The Hungarian Foreign Ministry Consular Department arranges and harmonizes the relevant tasks between the Hon. Consul and the leading foreign representative.

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10.2.1.2. The Rank of the Honorary Consular Representation

The foreign minister determines the rank of the representation headed by the honorary consular officer with the consent of the receiving country. In this respect, the level of relations between the Republic of Hungary and the receiving country in terms of commercial, economic, cultural, scientific relations and tourism must be taken into consideration, as well as the commitment of relations to the given consular district, the number of Hungarian citizens with residency and the honorary consul official's prestige.

Ranks available: Hon. Consul General, Hon. Consul, Hon. Vice-Consul or Consular Clerk.

10.2.1.3. Suspension of Work

The honorary consul can suspend his/her work for shorter than three months (e.g. due to illness or another unavoidable reason).

Any suspension period, which lasts longer than three months, requires prior written permission from the head of the supervising diplomatic mission.

The Hungarian Foreign Ministry may also order the suspension for a period shorter than six months if an investigation of the Hon Consuls working conditions becomes necessary based on a proposal by the head of the supervising mission. Subsequently, the foreign ministry will decide on continuing functions or withdrawing the appointment.

The supervising diplomatic mission notifies the receiving country's foreign ministry of the suspension of work and the expected duration. In such cases, the tasks – temporarily - are carried out by a temporarily designated consul or previously registered Hon consular clerk.

10.2.1.4. Cancellation of Appointment

The honorary consul's appointment ends upon his/her death or resignation, or withdrawal of appointment.

The authority to withdraw an appointment lies with the Foreign Minister. The withdrawal of the appointment is carried out on the proposal of the supervising diplomatic mission; the Hon Consul and the Foreign Ministry of the receiving country must receive a subsequent note 30 days in advance. Reasons for the withdrawal can include:

- Functioning of the Hon Consul no longer serves any interests
- The receiving country withdraws the exequatur
- The Hon Consul repeatedly ignores the instructions of the head of the supervising mission
- Suspends work for longer than three months without prior permission
- Repeatedly or gravely breaks Hungarian law or the receiving country, or if criminal proceedings are brought against him/her
- Behavior inconsistent with post
- Illness or other reasons obstruct his/her work
- Death
- Retirement
- War and conflict
- Expiry of contract
- Age (Retirement)
- Persona non grata

10.2.1.5. The Honorary Consul's Duties

- Represents the interests of citizens, legal entities and non-legal entities of the Republic of Hungary in the receiving country within the framework of international law.
- Promotes the development of commercial, economic, cultural, scientific, and tourism relations.

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- Gathers information on the receiving country's current affairs in the above areas and prepares a report for his/her foreign minister as well as responding to inquiries of relevant persons.
- Undertakes interest representation for Hungarian citizens in matters of inheritance.
- Undertakes interest representation for underage and legally non-competent persons, especially if they require the appointment of a legal guardian or trustee.
- Ensures representation of Hungarian citizens in relation to the receiving country's authorities and courts in keeping with local procedural regulations and secures their civil rights, as well as representing their interests when they are not present or are otherwise incapacitated.
- Provides assistance and support to Hungarian citizens, legal entities and organisations.
- Provides assistance and support to maritime ships under Hungarian flag as well as to Hungarian-registered aircraft and crew.
- May receive passport, visa or residency requests within its consular district and after following procedures for identification, forward these within 3 days to the diplomatic mission in charge.

The Honorary consul is not under any obligation to prepare political reports. He/she must prepare, however, an annual report on his consular activities, matters of relevance to Hungary and his financial accounts for his supervising mission, which is then forwarded to the Foreign Ministry.

The consul is obliged to inform the foreign minister, without delay, if he has been asked by a third country to perform honorary consular duties on its behalf.

10.2.1.6. Material Conditions of Service

Honorary consuls are expected to provide offices, furniture and equipment at their own expense. The supervising mission provides the official stamp, while the Republic of Hungary provides:

- The state flag.
- The coat of arms.
- The armorial bearings contain the representation's Hungarian name and the foreign language.

The Honorary Consul receives guidance, directives and Hungarian legal advice in relation to its functions and receives regular updates on the current affairs of Hungary's economic, commercial, cultural, scientific, and tourism activities.

10.2.1.7. Financial Conditions of Service

Honorary consuls are not entitled to remuneration for their services, but, if required, they may sign a contract with the Foreign Ministry on the material and financial conditions of their services in advance. The consul collects fees and taxes for certain services, as prescribed by law, and he/she may use a part of these revenues to cover justified and necessary costs incurred. Honorary consular officials must keep a record of their revenues and spending, which the supervising mission has a right to examine.

Hon Consuls may subsequently submit a request for reimbursement of costs in the following cases:

- an extraordinary change in social circumstances, war, or natural disaster substantially increases the number of Hungarian victims or clients in need
- the total expenses of services undertaken exceed revenues from consular fees.

Costs incurred by the Hon. Consul which are subject to reimbursement include telecommunications, travel and postal costs related to official consular services, a consular loan or the transport costs of returning a Hungarian citizen or his remains to Hungary. It is not possible to reclaim protocol-related costs or fees paid to staff. If a surplus of revenue from consular fees accrues, the consul is required, after a settling of accounts, to transfer the difference to the supervisory mission.

Consular Agents

10.2.1.8. Immunities and the Protection of the Hon. Consul's Representation

Due to the fact that the Honorary Consul is, in most cases, a citizen, native or permanent resident of the receiving country, his immunities and privileges are far fewer than those of career consuls and especially diplomats, and they apply only in cases strictly connected to his consular activities.

Honorary consuls are entitled to immunity from jurisdiction - in civil and administrative procedures - and testimony, in a limited scope, only in tasks undertaken on commission of the sending country. He may refuse to testify about facts related to his official duties. He/she must take part in criminal proceedings. Suppose he/she is a citizen of the sending country or a third country. In that case, the title of honorary consul exempts him from registering as a foreigner and from the requirements related to permanent residency in the receiving country.

Any reimbursement and income connected to honorary consular services are exempt from tax.

In respect of the consular duties, he/she is exempt from personal service, communal work, military duties, requisition of goods and garrison provision. Staff members of the honorary consul are entitled to immunity from jurisdiction but are not exempt from providing legal testimony. The head of the supervising mission must be informed if a member of staff is charged in criminal proceedings. Personal staff and family members enjoy no immunities of any kind.

The receiving country must protect the consular offices from intrusion and damage. The Hon Consul's files - even if kept separately - are inviolable at all times.

The Hon Consul's offices, if owned or rented by the sending state, are exempt from national, regional and local taxes and charges.

The new law on VAT introduced in Hungary, effective till January 2008, no longer permits the general reclamation of VAT, but an exemption from customs fees continues to apply in relation to equipment, documents and furniture used in connection with the consular service and dispatched to Hungary by the sending country.

10.2.1.9. Honorary Consuls' Entitlement to Issue Certificates

Based on the joint Foreign Ministry and Justice Ministry decree no. 1/2002 (I.23.), the Foreign Minister may authorize the Honorary Consul to issue the following consular certificates:

- authentication of a signature or initials of a Hungarian citizen or legal entity written on records testifying to legal transactions or affidavits prepared in a foreign country but used in Hungary, if signed in the presence of the honorary consul by the subject personally present, or his legal representative, or if the signature is claimed to be his own
- authenticating a document as the exact copy of the original presented to him
- testifying to the fact that a Hungarian citizen is alive

11|Protocol and Procedure

In international politics, protocol is the etiquette of diplomacy and affairs of state. It may also refer to an international agreement that supplements or amends a treaty.

In diplomat, a protocol is a rule that shows how an activity should be performed, especially in diplomacy. Protocols are often unwritten guidelines in diplomatic services and governmental fields of endeavor. Protocols specify the proper and generally-accepted behavior in matters of state and diplomacy, such as showing appropriate respect to a head of state, ranking diplomats in chronological order of their accreditation at court, and so on. One definition is: Protocol is commonly described as a set of international courtesy rules. These well-established and time-honored rules have made it easier for nations and people to live and work together. Part of protocol has always been the acknowledgment of the hierarchical standing of all present. Protocol rules are based on the principles of civility.

Protocol is even truer than its diplomacy; it is a lubricant for states to conduct their relationship peacefully.

11.1. Definitions of Protocol

There are two meanings of the word *protocol*. It is defined as an international agreement that supplements or amends a treaty in the legal sense. In the diplomatic sense, the term refers to the set of rules, procedures, conventions and ceremonies that relate to relations between states. In general, protocol represents the recognized and generally accepted system of international courtesies.

The term *protocol* is derived from the Greek word *protokollan* (first glue). This comes from the act of gluing a sheet of paper to the front of a document to preserve it when it was sealed, which imparted additional authenticity to it. In the beginning, the term protocol related to the various forms of interaction observed in official correspondence between states, which were often elaborated in nature. However, it has come to cover a much wider range of international relations over time.

11.2. The Areas of Where Protocol and Protocol

11.2.1. Precedence between Heads of Diplomatic Missions

This is based on the class into which diplomat falls and seniority, which is based on the date of arrival and presentation of credentials, to the head of state or Foreign Affairs minister. In case two Heads of Mission arrived at the same time, and date seniority is based on the letter of the country alphabetically in French or day when they commenced their functions. Overall determining precedence is determined or adopted by a state. At gatherings where HOMs, are present a Charge Rank come third.

11.2.2. Individual Precedence within Mission

The order in most cases is as:

- Minister Plenipotentiary
- Minister-Counsellor
- Counsellor
- First Secretary
- Second Secretary
- Third Secretary

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The position service and specialist of Attachés is determined by individual missions, but they usually come before the First secretaries but rarely above the diplomat.

11.2.3. Individual Precedence at Formal Diplomatic Functions

This is based on rank and as follows

- Apostle Nuncio (In countries where he/she is the Doyen)
- Ambassador, High Commissioner, Apostle Nuncio
- Envoy Extraordinary and Minister Plenipotentiary
- Charge d’Affaires(*enttre*)
- Charge d’Affaires(*ad interim*)
- Minister Plenipotentiary
- Minister-Counsellor
- Counsellor
- First Secretary
- Second Secretary
- Third Secretary

Service and specialist attaches are usually placed immediately after Counsellors, but practice varies.

11.2.4. Precedent of Heads of Mission within the National Order of Precedent

This follows custom, but usually after the members of the cabinet and MPs, in UK HOMs are placed 8th from the sovereignty and close members of the Royal family in national precedence.

12| Recognition of States and Governments

12.1. Introduction

Some definitions of 'international law' can be found on the Web as follows:

- The body of laws governing relations between nations' International law is the term commonly used for referring to the system of implicit and explicit agreements that bind together nation-states in adherence to recognized values and standards, differing from other legal systems in that it concerns nations rather than private citizens.
- Complex network of principles, treaties, judicial decisions, customs, practices, and writings of experts that are binding on States in their mutual relations.
- The common point of the definitions is that, international law deals with the states and states activities. Addition to the States and the State's activities international law has a wide range of interests, as Shaw indicates 'Public international law covers relations between states... and regulates the operations of the many international institutions.'
- Nevertheless, 'the states were the original and remain the primary actors in the international legal system.'

12.2. States as the Main Subjects of International Law

In all legal systems, the subject of law is an entity, which has enforceable rights and duties at the law. It can be a company or an individual and both are defined as 'legal person' by the law.

International law is constituted by States and it is generally concerning the activities and the transactions of States. As Warbrick says 'International law..... has something to do with States.'

Fifty years ago, it was generally admitted that 'States are the only legal persons of the international law' but today conception is rather different, the participants can be regarded as; states, international organisations, regional organisations, non-governmental organisations, public companies, private companies and individuals.

12.3. Recognition

At the initial years of 20th century, there were nearly fifty states in the world arena, just before the World War II the number reached approximately seventy-five and in 2005, there were almost 200. Each State creation, again and with some problems, put the recognition concept on the agenda of international community. Recognition has become much important especially by reason of its results.

What is meant by recognition of States? Grant defines it as 'a procedure whereby the governments of existing states respond to certain changes in the world community.' Then, it can be said that, recognition is an activity of States as a 'legal person' of international law.

As mentioned above because of its results, today recognition is a popular subject of international law. Recognition of an entity doesn't mean only that this entity has met the required qualifications, but also that the recognizing state will enter into relations with the recognized State and let that State enjoy usual legal consequences of recognition such as privileges and immunities within the domestic legal order.

Therefore, it is claimed that generally the decision of to recognize or not, depends on political views rather than legal grounds. It is right because to enter into relations with a foreign State and permit some privileges to her, is directly relevant to the State's interests. Thus, when States give a decision about recognition, of course they will weigh the advantages against the disadvantages of this decision.

Is there a duty of recognition? Lauterpacht and Guggenheim hug the opinion that recognition is constitutive, but that there is a duty to recognise. This point of view has been criticised as bearing no relation

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to the State practice and for its inconsistency. Brownlie asserts that, 'recognition is an optional and political act and there is no duty in this regard.'

12.4. Under What Circumstances Is Recognition Necessary?

- When an old state has been swallowed/merged/disappeared in a new state for example Russia in 1917 was swallowed in the USSR.
- When an old state splits/disintegrates (Sudan and S. Sudan)
- When a state ceases to be colony/get independence
- Newly created

The conditions of recognition according to B. Sen are:

- Must have a stable government
- A sufficient degree of international stability
- Well definition territory

In addition, the other conditions of recognition by Britain are:

- Degree of civilization
- Legitimacy of regime
- Religion
- During the cold war 1945-1990s was based on ideology

12.5. Recognition of States

There are mainly two theories relevant to recognition, the constitutive and the declaratory theory.

12.5.1. The Constitutive Theory

The constitutive theory asserts that States and governments do not legally exist until recognized by the international community and the declaratory theory adopts that States and governments gain in the international personality when they come into existence.

According to the constitutive theory, creation of a new State depends on the acceptance of present States. The new State will have the rights and duties at the time of being recognised. However, this theory has some queries, such as what will happen if some existing States recognise the new one and the others do not? And how it could be possible to put in force some restrains, like prohibition on aggression, against the unrecognized State?

12.5.2. The Declaratory Theory

The declaratory theory claims that a State will be formed free from the consents of the other States, just after she meets the international requirements. This approach is laid down in the first sentence of Article 3 of the Montevideo Convention (1933), 'The political existence of the state is independent of recognition by the other states.' The declaratory theory seems to be more adequate for practice than the other. Since the recognition has a political side, in practice, the States prefer a middle way between these two doctrines and classic qualifications to seek some basic requirements of international law for recognition. It was sufficient for a new State to fulfill the four criteria in the past. In 1930s some States also looked for that a new State must obey some fundamental standards of the international community. As an example for recent times, in the European Communities Declaration on the 'Guidelines on the Recognition of new States in Eastern Europe and the Soviet Union' it is indicated that 'The Community and its member States adopt a common position on the process of recognition of these new States, which requires:- respect for the provisions of the Charter of the United Nations and the commitments subscribed to in the Final Act of Helsinki and in the Charter of Paris,

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especially with regard to the rule of law, democracy and human rights; - guarantees for the rights of ethnic and national groups and minorities in accordance with the commitments subscribed to in the framework of the CSCE- respect for the inviolability of all frontiers which can only be changed by peaceful means and by common agreement;- acceptance of all relevant commitments with regard to disarmament and nuclear non-proliferation as well as to security and regional stability; commitment to settle by agreement, including where appropriate by recourse to arbitration, all questions concerning State succession and regional disputes. The Community and its member States will not recognise entities which are the result of aggression.'

At the end of the Declaration, as a conclusion, it is added that 'The commitment to these principles opens the way to recognition by the Community and its member States and to the establishment of diplomatic relations.' However, it will be well-advised to repeat that, in practice recognition is used for to point out political approval or disapproval. Political assessments always effect the decision.

12.6. Recognition of Governments

As mentioned above the third criteria of the statehood is an 'effective government', therefore a decision to recognise a new State generally includes the recognition of government. They might be seen as similar concepts; however, recognition of a government is different from recognition of a State. Recognition of government would be discussed where the change of the government is unconstitutional.

In practice, the effective control of the new government over the territory is a preferable criterion for the recognition but it requires being settled and likely to continue. The other difference is that, the recognition of a State is about its legal personality; on the other hand recognition of a government is relevant to the status of the administrative authority. Effective control has a common use but it is not the only approach for the recognition of government, the Tobar doctrine handles it in a different way.

According to Tobar doctrine, an unconstitutional change of the government should be recognized only when the people accept it. This was used by United States in Central America especially in order to protect stability. In 1980 UK declared that, it would not recognise the governments apart from States. Shaw argues that correctly, 'the reason of this declaration was the perception that recognition meant approval and was often embarrassing for instance in case of regimes violating human rights.' This political change, to not recognise governments officially, was followed by the other countries after a short time.

12.7. De Facto and De Jure Recognition

Akehurst argues that the distinction between de facto and de jure recognition is one of the most confusing circumstances of recognition and at first hand, he objects to the expressions de facto and de jure recognition. According to him, they are technically incorrect since the words de jure or de facto describe the government, not the act of recognition. Indeed, the subject is about the legal status of the government. Similarly, Aust defines the de facto and de jure recognition by relying on the legal status of the government.

Recognition de jure means that the entity fully satisfies the applicable legal criteria; recognition de facto is only of the entity's current position and is therefore usually provisional.

De jure recognition is of course stronger, while de facto recognition is more tentative and more connected with effective control of the recognized state over its territory, as when the United Kingdom recognized the Soviet Union de facto in 1921, but de jure only in 1924.

The assessments or the definitions of the both concepts can be changed in different situations but it is the fact that everything is relevant to the intention of the government concerned and the general context of fact and law. De facto recognition can be thought as an attitude of wait and see, since it includes ambiguity. This method gives the recognizing state the opportunity of acting in accordance with the political facts and its interests.

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12.8. What Is Premature Recognition?

Since it is a political decision of States, in some circumstances, the recognition occurs before the criteria of statehood have been fulfilled by the new State. In such cases, the problem is to determine the premature recognition is an intervention in the internal affairs of another state or is an admissible recognition of a new state that has emerged or is emerging as a result of secession. Recognitions of Bosnia-Herzegovina and Croatia were the well-known examples of premature recognition in the near past as both states had not an effective control on their whole parts of territories at the time being recognized.

12.9. What Is an Implied Recognition?

Recognition is about intention and may be expressed or implied. To understand how a State may recognize another State by implication it is necessary to look into the same certain circumstances. Lauterpacht states that, the establishing of diplomatic relations and maybe, to grant the exequatur or signing a bilateral treaty includes extensive relations between the two states justify the implication. A congratulation message to a new State for obtaining sovereignty will bear recognition of that State, but unofficial contacts do not have the same result, just like the informal relations established between United States and Communist China in the 1960s and early 1970s.

It does not mean recognition when two states both signed a multilateral treaty such as United Nations Charter. Israel and many Arab countries are UN members at the present but it does not change Arab non-recognition of the Israel State. On the other hand, when a State affirms the membership in the UN of an entity, needless to say that recognition occurs. As an example, United Kingdom recognised the Former Yugoslav Republic of Macedonia by supporting its membership in the UN. In practice, implied recognition is not preferred since the states want to have their control of recognition and in general, they use a formal way for it.

12.10. What Is Conditional Recognition?

Conditional recognition means that to recognize an entity as a State only when it fulfills some conditions. It was first seen in the Berlin Congress of 1878, Great Britain, France, Italy and Germany marked the recognition of Bulgaria, Serbia, Romania and Montenegro with the condition that these countries would not impose any religious disabilities on any of their subjects. It may cause some political problems, but the condition's non-observance would not invalidate the recognition since the law does not attach value to any condition unless it depends upon agreements made by the particular parties.

12.11. What Is Collective Recognition?

In 1971 the International Law Commission stated that collective recognition means that States act collectively during the process of receiving information of the situation, evaluating that information and reaching a decision, and communicating that decision. This may be seen as a result of increased corporation between the States. The idea of act collectively has been a subject of a debate since the foundation of the League of Nations and the establishment of the United Nations. However, the States preferred to keep the control of recognition in their authorized bodies. As Shaw stated, 'the most that could be said is that membership of the United Nations constitutes powerful evidence of statehood.'

12.12. What Is Withdrawal of Recognition?

Sometimes it is possible to withdraw a granted recognition. Especially, it is easier for the de facto recognition since the position is different with the de facto recognition which includes an ambiguity for the future of the entity. If the government of the entity loses the effective control on its territory, there will be no ground for recognition and it may be taken back. On the other hand, de jure recognition is more difficult to withdraw because as mentioned above it is stronger than de facto recognition. De jure recognition may be the case only if the State is annexed or conquered by another State.

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12.13. *What Is Non-Recognition?*

The doctrine of non-recognition, also known as the Stimson Doctrine of non-recognition, means to not grant recognition to the new entities or the some factual positions which are the result of any illegal actions such as using force. General in the light of the decision of the Commission to review its programme of work extract from the principle that legal rights cannot obtain from an illegal situation. (ex- injuria jus non oritur)

The doctrine was brought forward by the United States Secretary of State; Mr. Stimson in 1932, relevant to the Japanese occupation of Manchuria. It was accepted by a resolution of the Assembly of the League of Nations. In the resolution it is stated that 'Considering that the principles governing international relations and the peaceful settlement of disputes between members of the League above referred to are in full harmony with the Pact of Paris, which is one of the corner-stones of the peace organization of the world, and under Art. 2 of which the High Contracting Parties agree that the settlement or solution of all disputes or conflicts, of whatever nature and whatever origin they may be, which may arise among them, shall never be sought except by pacific means; . . . proclaims the binding nature of the principles and provisions referred to above and declares that it is incumbent upon the members of the League of Nations not to recognize any situation, treaty, or agreement, which may be brought about by means contrary to the Covenant of the League of Nations or to the Pact of Paris. . . .'

However, this intention did not reflect to the practice until the Second World War; 'the Italian occupation of the Empire of Ethiopia and the German takeover of Czechoslovakia were recognised de facto over the years by Western Powers.' After 1945, it was again discussed and took place in some international instruments such as UN Charter (Article 2(4)), the draft Declaration on the Rights and Duties of States and Security Council resolution 242 (1967) on the solution to the Middle East conflict. Especially draft Declaration on the Rights and Duties of States indicated that, every State has the duty to refrain from recognizing any territorial acquisition by another State where achieved by means of the threat or use of force or in any other manner inconsistent with international law and order. In this context, 'in 1990, the Security Council adopted resolution 662, which characterised the Iraqi annexation of Kuwait 'null and void' and called on all states and institutions not to recognise the annexation.'

12.14. *Legal Consequences of Recognition*

'Recognition is a unilateral act of a State and one that has international legal consequences', for instance where State grants recognition to an entity, it accepts that they will have relations subject to international law on basis of State/State. In practice, like claimed by declaratory theory, the political existence of a State is not bound to the recognition of other States, therefore an unrecognized State has to act comply with the international law rules. It means that, when the States sign an international agreement, which is signed by a State, they have not recognized, they will have the right to ask from that state to fulfill the responsibilities grow out of the agreement.

After recognition, the recognising States would respect to the rights of the new State which indicated in the International Law Commission Draft Declaration on Rights and Duties of States, 1949, such as 'right to independence and hence to exercise freely, right to exercise jurisdiction over its territory and over all persons, right to equality in law with every other State, right of individual or collective self-defense against armed attack.'

The participation in the international process is not the only result of recognition, at the same time the recognised State will be able to enjoy usual legal consequences of recognition such as privileges and immunities within the domestic legal order. As an example, Plessis lists some privileges and immunities within the municipal law of United Kingdom as follows:

- Only a recognized state or government has locus stand in the UK courts
- Only a recognized state or government (or its agents), may plead immunity from suit. It cannot be sued without its consent

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- Only the legislative, executive or judicial acts of a recognized state or government will be given legal effect within the United Kingdom

Shaw adds one more 'it will be entitled to possession in the recognising state of property belonging to its predecessor.'

12.15. Conclusion

Recognition is one of the most complicated topics in international law. It is complicated because it involves critical political results and legal effects both in international and municipal law. Political assessments always affect the recognition decision. Where the States give a recognition decision, of course, they will weigh the advantages against the disadvantages of this decision. If some cases relevant to recognition in international law are looked into, I think it can be understood clearly, to grant recognition completely depends on political considerations. In my opinion, recognition for a State means merely deciding whether it is suitable for her needs or not.

There are two theories to explain recognition; the constitutive and the declaratory theory. The constitutive theory asserts that States and governments do not legally exist until recognized by the international community and the declaratory theory adopts that States and governments gain in the international personality when they come into existence. I think the declaratory theory is more conformable to reason and parallel to the practice of international law and it is supported by the Montevideo Convention on Rights and Duties of States. However, I think it is very difficult to lay down regulation on state activities since they are not stable. They may change time to time. Rules concerning recognition have the same character. Every case should be assessed in itself. States make international law and again they are breached by States. There is always an exception of rules in international law. The important thing is to find a legal cover and nowadays, it does not seem to be so difficult. I think in the past States were more honest; it was easy to understand what they really intended to do but today, the situation is different, an explanation or a behavior can be understood only after seeing the results. And it is called policy which the decision of recognition relies on.

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‘Theories and Practices of Modern Diplomacy’ focuses mainly on the diplomatic relation and how the States benefit from that relationship as we all know that no state that can live in isolation without cooperation with other state. The term diplomacy is used to guide the young diplomats on how to address their issues in a diplomatic manner in order to achieve a total peaceful co-existence between the states across the globe. Through diplomacy the States can benefit equally.



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