


DIPLOMATIC MISSIONS AS INTERNATIONAL LAW SUBJECTS WITHIN THE REPUBLIC OF MOLDOVA JURISDICTION

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There are many countries in the world and not all are members of the United Nations. Many states have proclaimed their independence, but were not recognized, and they are not subjects of international law. In case a state is a subject of international law, it has an identity, so obviously it has both - rights and obligations in the global coexistence. Under these conditions occurs the exercise of diplomatic law. Diplomatic missions exercise diplomacy and obviously promote foreign policy of the State. The authors highlight the diplomatic functions and diplomatic activity, characterise the functions of diplomatic missions and the specific of functions of diplomatic missions of the Republic of Moldova accredited in other states. The authors also highlight the features of the Moldovan diplomacy, as well as the constitutional principles of Moldova's foreign policy.

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After the Declaration of Independence on August 27, 1991 the Republic of Moldova became an independent, sovereign, unitary and indivisible state, a state of law, a democratic state in which the human dignity, rights and freedoms, free development of human personality, justice and political pluralism have been declared supreme values and were now guaranteed by the state. This act has led to the statement of the highest value of the state - its people and citizens, as well as the necessity for the state to protect their interests regardless of their location. On March 2, 1992 Moldova has joined the United Nations and in this context the country became the subject of International Law. Many countries have recognized the Republic of Moldova as a state and concluded bilateral treaties with it. Article 8 of the Constitution of Moldova stipulates compliance with international law and international treaties. In this regard, the Republic of Moldova pledges to respect the United Nations Charter and the Treaties to which it is a party. It promises to build relations with other states on universally recognized principles and norms of international law. Namely this constitutional basis determines the foreign policy of the Republic of Moldova. The bases for diplomatic law have emerged in terms of interstate relations. In this case, unanimously recognized party relationships appear, in which one country (Moldova) as a subject of international law establishes diplomatic relations. Contemporary international law is a system of principles

and rules governing the relations between sovereign states and other derivative and secondary subjects in relation to these states. These norms represent the will of the states, and compliance with them, if necessary, can be ensured or imposed by the possibility of using coercion applied on individual or collective basis. International relations and international law by their nature have a coordination character and in no way - subordination. The first point underpinning the delimitation of the sphere and functions of the state diplomatic activity and the missions is based on the nature of the missions. They carry out only those activities which the state body, created specifically to achieve some foreign policy, may have. The second point in relation to functions and activity of diplomatic missions is represented by their finite nature. The third point is the agreement between the relevant states on the functions and activities of diplomatic missions.

By becoming a subject of international law the Republic of Moldova has initiated the establishment of diplomatic relations with other subjects of international law, respectively, establishing permanent diplomatic missions abroad. The process of reorganization of the specialized state institutions has been launched at the same time. Reorganization or, better to say, the formation of diplomatic service of the Republic of Moldova was a creative process. It was interesting and difficult at the same time due to the fact that at that moment the country did not have a legal framework allowing to exercise

its external functions, did not have diplomatic staff with relevant training, did not have experience in external relations, and did not have a database of norms and principles of international law. Despite the aforementioned problems and difficulties, over 2-3 years Moldova has managed to organize the Moldovan diplomatic service. It was concentrated in the central office of the Foreign Affairs Minister and also in the diplomatic missions abroad.

Moldovan diplomatic missions are located in states that have friendly relations with our country and established cooperation ties in economic, commercial and political fields. The structure of diplomatic missions is classic. The mission is led by the Head of mission in the rank of Ambassador. Each mission has its structure, determined by traditions and specificity of the host state and also by functional needs of the mission.

Within the created framework of international law, foreign policy and diplomacy is conducted in institutionalized forms, on different levels, ranging from bilateral activities to participation in multilateral structures, from economic to cultural fields, etc. It even covers activities aimed at promoting stability, peace and international security, development or relations with neighbors, and integration into the international community. A dense and varied network of international Agreements regulates the foreign policy and diplomatic activity of states. These

include bilateral and multilateral agreements which can be sub-regional, regional and global.

Political-diplomatic relations arise due to mutual recognition of states. A state declares that it considers the other one to be the bearer of sovereignty and the subject of international law. At the same time, recognition signifies the commitments of states lying at the base of their mutual relationships. Such status can be ruined by closing the diplomatic relations at the initiative of certain or both parties. It may happen due to many reasons, like deep political divergences, which can mean the initiation of a military conflict. It can happen due to the war arising between the states, or the change of political orientation of the country, or even in cases when the new power is not recognized by others. The breach of political relations doesn't mean that all contacts between countries are stopped. Usually, every country can appoint a third party to represent its interests.¹

Despite the modern quietism, affirmed by Pierre Joseph Proudhon in the system of economic compulsion, the human life consists of permanent struggle, a struggle against shortages, a struggle against the nature, a struggle against fellows, consequently, against oneself. He adds that "this is the universal law of nature and humanity". Misunderstandings, disputes, quarrels, rivalries, fights, scuffles: the everyday words illustrate this general agenda of dissensions. So, the conflict exists in the heart of the society, but this is social, banal, ordinary phenomenon and non-pathological in the same extent. Cicero said "Loneliness isn't conflictual". In addition to the said quote we can mention the great philosopher Freud, who used to say: "the conflict is internal, consubstantial for any society to the same extent as violence and goodwill". That's why I would say that diplomatic missions are a solution to these natural kinds of conflicts. In the doctrine of international law, diplomatic relations are defined as "directing due to

representative authorities and peaceful ways of external relations between one subject of international law and any other subject of international law". The activity of diplomatic missions is based on some strict rules elaborated in order to fulfill their function to the greatest possible extent.

From the point of view of unfolding and timeframes, the activity of diplomatic missions involves 3 stages. Firstly, there are instructions which the diplomatic missions have or receive from the government: since the very moment of execution of the task by the mission, through notes and demarches of the accredited state, and at the end – to submission of reports to the government regarding the results of the mission accomplished, based on instructions previously received.²

The entire activity of diplomatic missions and their staff is regulated by instructions which the government of the accredited state provides. In these instructions the general duties and lines of behavior to be followed by the staff are specified, as well as those related to achievement of the final goal of the mission. They cover the time period of presence of the mission on the territory of the accredited state.

The instructions given to diplomatic agents in relation to their departure and taking over the position have a general character. They cover the aspects and points such agents must know in relation to policy of the accrediting state towards to the accredited state, the problems pending between those 2 states, the ideas such agents have to embody in the course of their mission etc. Outside this general guidance, diplomatic agent will also receive exact instructions regarding every issue he/she has to solve.

The instructions can be divided into written instructions (stated in documents) and oral ones (transmitted verbally). Instructions can be classified (must not be known to anyone except the respective diplomatic agent) and unconcealed (may be communicated to the accredited state).

Usually, the instructions are classified, but the diplomatic agent can have the freedom or even the obligation in some cases, to transfer such information to authorities of the accredited state.

Diplomatic demarche may have different purposes: to communicate the accredited state or to request the information; to send different proposals (for concluding a treaty); to ask government to perform a certain function (obtaining certain privileges); to warn the government to end some hostile acts. Diplomatic demarche may be oral, written and mixed. Verbal demarche is materialized through the meetings with the Head of mission. Verbal demarche can take the form of a declaration or representation.³

It is frequently used for communications, because these are official messages sent by a diplomatic mission to the Foreign Ministry of the accredited state and vice versa; it can come from the diplomatic mission as a permanent authority of international relations of a state or from the Head of mission; notes express a unilateral will; notes must comply with the specific diplomatic style.

Diplomatic documents. In diplomacy, direct and oral contacts represent in general the closest method. That's why mostly the letters addressed by the diplomatic mission to authorities of the accredited state or those received from them are related to administrative problems or routine issues. As for the other problems the written form is limited, and for some of them it might be unacceptable at all (obtaining or verification of political information takes place exclusively by conversations).

Diplomatic notes. Verbal note is aimed at issues of secondary importance, but usually it is used for specifying certain details of a concrete situation, or exposing the content of some important conversation. Verbal notes are used in correspondence between foreign missions, a diplomatic mission and the Foreign Ministry, and between the diplomatic missions.

¹ Convenția pentru apărarea drepturilor omului și a libertăților fundamentale

² Protocolul Nr. 11 la Convenția pentru Apărarea Omului și a libertăților fundamentale. Adoptată de Adunarea Parlamentară a Consiliului Europei la 06.10.1992

³ Pactul internațional cu privire la drepturile economice, sociale vol.1, 1998

– Sighed note is a more solemn document. This note is addressed to the Ministry of Foreign Affairs or in private to the Head of mission.

– Private letter has a less protocol character than the sighed note and is used for communications of personal character. Personal letter concerns a very little number of persons and it is addressed by the Head of mission to the Head of State, Head of Government, Foreign Ministry or to other officials and vice versa. The personal letters are not used by the states as sighed notes.

– Collective note is a note addressed to a government by the representatives of several states. This note is intended to bring common remarks of them. It is an extremely solemn way of communication.

– Aide-mémoire (memory aid) is a document currently used the more as it is inseparable of oral demarche. Aide-mémoire is meant to present in brief certain pending problems between 2 states, to expose discussed issues and to give in written form the point of view of the respective state (detailed presentation of facts and arguments);

– Identical notes and parallel notes. These documents are less important. Identical notes are perfected by the Heads of mission, which expose their mutual opinion. These are addressed to the Foreign Ministry of the accredited state. Having a mutual idea with identical content, notes can also differ by shape and style. It's not obligatory to hand over identical notes simultaneously. It's about notes with the same content which are simultaneously presented.

– Circular notes are used to transfer current information, protocols or administrative data.

Diplomatic style has had an important role over the centuries, being among the most important and traditional requirements for diplomatic agents. This requirement results from the actual operating conditions for diplomatic activity (personalities involved, the nature and context of their approach to problems etc.). The concept of diplomatic style has two meanings: diplomatic style that assumes a set of rules governing the obligatory form of documents, and a

second meaning refers to the style itself. Each treated issue requires drafting of a particular note; the appropriate tool will be found depending on the subject of the motion or negotiations (in some cases sending a verbal note, in other cases - exchange of letters or a treaty). Also a major role in negotiations is played by the "protocol" which is of great importance in activities of diplomatic missions. To be more precise, the diplomatic style includes the protocol which represents actions of all mission members. Protocol encodes and introduces practical rules governing the ceremony, which are to be strictly observed. Byzantine diplomacy "Protocol" means the first part of an official act, in which participants are listed in a specific order. In present, the concept of the "protocol" means all rules under which the official representatives of every state implement policies and arrange procedures of various diplomatic ceremonies.⁴

The nature of the problem requires finding a suitable form of communication: for example, a serious matter should not be treated in a personal note; at the same time an agreement is not included in a note, but requires an exchange of notes or a protocol. In relation to the correspondence the answer is the same. The protocol and local practice should also be taken into consideration. In addition, there are specific rules related to terminology used in documents, the need to put the signature, the type of paper to be used, as well as the courtesy formulas to be used taking into account the note, and especially the recipient (protocol formulas are different in relation to different positions).

Duties of diplomatic missions. Mainly, duties of the diplomatic mission are the following. The first element that diplomatic mission must take into account is the obligation not to interfere in internal affairs of the sending state. Non-intervention in the internal affairs of a state is a fundamental principle of contemporary international law and a basic obligation of the states in the course of relations between them. Being the representatives of states the diplomatic missions in their work must always take weigh their conduct. It is

widely accepted that the envoys should not meddle in the domestic politics of the state in which they are accredited. The doctrine has always stated and the practice has confirmed the interdiction for diplomatic agents to interfere with the internal affairs of the receiving state. Vienna Convention, referring to the duties of the persons enjoying diplomatic privileges and immunities, stipulates the same obligation: "They also have the obligation not to interfere with the internal affairs of that state". Prohibition to interfere with the internal affairs of the receiving state covers both - private acts of members of the mission, as well as those initiated by the sending state. It makes no difference whether a diplomatic representative acts on his own behalf or under instructions given by the sending state.

A Head of mission cannot take part in the election campaign in the host state; he/she cannot support a political party or take actions in relation to disputes able to divide a country; he/she cannot contribute to maintaining disorder or participate in conspiracies seeking to overthrow the government; he/she cannot influence any foreign policy in order to ruin relations between the receiving state and the third countries. The diplomatic mission is obliged to refrain from any public statements, press conferences, speeches, which can disturb the good relations between the host state and third states, or which could not reflect economic reality of the country, whenever these actions affect the interests of the sending state and vice versa.

Another measure with preventive character is to limit contacts of diplomatic missions only to certain organs of the host state by implementing the rule that all diplomatic mission communications in the host state should pass through the Ministry of Foreign Affairs. Thus, in performing its functions, the diplomatic mission could not directly address the competent authorities, but only through the Ministry of Foreign Affairs. This limit derives from the fundamental obligation of the diplomatic mission not to interfere with the internal affairs of the host state. In order to promote the interests of the state and its foreign

policy, a government is interested to provide a single point of view, clearly and unambiguously, to avoid confusion and contradictory explanations. This would not be ensured, if foreign missions had unlimited permission to contact various departments of the government or any authority of the host state. The diplomatic mission and its members are bound by the laws of the host state; mission has a general obligation to ensure that none of its members abuses the powers granted by the mission statute (smuggling, violations of currency laws, etc.), and that all actions are made with observance of laws and local regulations. With all the benefits from privileges and immunities which diplomatic missions and diplomatic agents have, they must respect the laws of the sending state.

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