RIGHT OF LEGATION

- Flows from customary law
- Right to embassy BUT provided that the another state expresses its consent
- Active/Pasive form
Establishment of diplomatic mission

- Depends on state’s decision

- By mutual consent
  - article 2 of the VCDR
  - may be expressed in treaty or quite informally

- Recognition of state is important
MEMBERS OF DIPLOMATIC MISSION

- Head of the mission
- Personnel – diplomatic staff
  - administrative staff
  - service staff

= Head of the mission +
  diplomatic staff =
  diplomatic agents
HEAD OF THE MISSION

- Person charged by the sending State with the duty of acting in that capacity

Classes. Art. 14 of the VCDR:

1. ambassadors or nuncios accredited to Heads of State, and other heads of mission of equivalent rank;
2. envoys, ministers and internuncios, accredited to Heads of State;
3. charge d'affaires accredited to Ministers for Foreign Affairs.

Except as concerns precedence and etiquette, there shall be no differentiation between heads of mission by reason of their class.
Article 4 of the VCDR:
- agrément of the receiving state is necessary
- The receiving State is not obliged to give reasons to the sending State for a refusal of agrément.
- In case of the appointment of a chargé d'affaires ad interim as provisional head of the mission, in the case of the vacancy of the post of head or his inability, no agrément is required.
HEAD OF THE MISSION
TAKING UP OF FUNCTIONS

- when he has presented his credentials or
- when he has notified his arrival and a true copy of his credentials has been presented to the Ministry for FA of the receiving State, or such other ministry

- Heads of mission shall take precedence in their respective classes in the order of the date and time of taking up their functions
CREDENTIALS

- Full powers given by head of sending State to the ambassador to get accredited to receiving state and to take up of the official function of the chief of the mission
- Is presented to Head /MFA of the receiving State
- Must be distinguished from “Full Powers“

(special authorisation from the Head /Government of sending State to an agent who is charged to take part in a congress or conference and is entrusted for the negotiation or conclusion of a treaty)
MULTIPLE ACCREDITATION

- To be accredited to more than one state
- Obligation to duly notify
- State in question may rise an objection
- Useful for geographical reasons
SELECTION OF DIPLOMATIC AGENTS

- Career diplomats
- Political nominations (persons of distinguished standing in public life)
- Nominated /appointed by head of state
- Common criteria is nationality of sending state
- University qualified, experienced
- British practice (strictly tested by Civil Service Selection Board, practice and psychological tests)
PERSONA NON GRATA

- Every state has the right of refusing to accept a particular diplomatic agent
- No expression of reason is required
- One should distinguish between persona non grata and inadmissible (not acceptable) person
- At any time, whether before or after his arrival
- Usually receiving state does not require names of members of mission other than head of the mission to be submitted beforehand, to its approval (unless military, naval or air attachés)
WHAT HAPPENS AFTER AMBASSADOR´S ARRIVAL?

- Notification of arrival and waiting for an audience at the Head of the State

- Presentation of his Credentials / a copy of his Credentials to the Head of the State (to MFA if chargé d’affaires) = taking up his official function

- Enjoying the privileges and immunities from the moment he enters the territory of RS
PRIVILEGES AND IMMUNITIES OF DIPLOMATIC MISSION

- Right to use the flag and emblem
- Inviolability of diplomatic premises (absolute)
- Immunity from search, requisition, attachment or execution
- Tax exemption
- Inviolability of archives and documents (absolute)
- Right to communication (including couriers, codes and ciphers)
- Protection of official correspondence and diplomatic bags
PRIVILEGES AND IMMUNITIES OF DIPLOMATIC AGENTS

- Personal inviolability
- Inviolability of privat residence (absolute)
- Inviolability of property, cars, correspondence
- Immunity from criminal jurisdiction (absolute)
- Immunity from civil and administrative jurisdiction (3 exceptions)
- No obligation to witness
- Exemption from social security provisions
- Tax exemption
- Exemption from public service and military obligation
RATIONE PERSONE (BENEFICIARIES) OF IMMUNITIES

- Diplomatic agents – not nationals nor permanent residents of the RS + family members

- Members of the technical and administrative staff (limited extent; Art 37) + family members

- Members of the service staff (limited extent; Art 37) + family members
RATIONE TEMPORIS AND RATIONE LOCI OF IMMUNITIES

- From the moment of entering the territory up to the moment of leaving / to the expiration of reasonably period to do so /ever / waiver

- Territory of the RS (some of them absolutely) / territory of the third state (some of them conditionally)
DIPLOMATIC BAG

- Shall not been opened nor detained
- Must be clearly marked (seal, indication of destination)
- May be entrusted to:
  - diplomatic courier (personal inviolability)
  - courier *ad hoc* (limited inviolability)
  - captain of the commercial aircraft /ship (no immunity)
- Scanning practice in many countries
- Analytic Guide of the ILC on the status of diplomatic couriers and diplomatic bags (adopted in 1989)
WHAT MAY HAPPEN AFTER AN ABUSE OF IMMUNITY

- Persona non grata /not acceptable
- Waiver of the immunity by the sending state
- Severance/ breach of the diplomatic relations
- Other ‘unfriendly act’ as answer
- Nothing
THANK YOU FOR YOUR ATTENTION.

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