



# DIPLOMATIC MISSIONS: establishment and functioning



3 October 2018

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# 1. Right of legation

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- Art. 2 of the VCDR “**The establishment of diplomatic relations between States, and of permanent diplomatic missions, takes place by mutual consent.**“
- **Right of legation** ≠ obligation
  - active right of legation (right to send missions)
  - passive right of legation (right to receive missions)
- Right to send/receive temporary special missions - diplomatic or consular relations are not necessary (see Art 7 of the Convention on Special Missions)



# Right of legation

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- The dipl. relations between Lithuania and Croatia were established on 18 March 1992. Croatia established the Embassy in Lithuania since June 2016.

<https://www.urm.lt/default/lt/dvisaliai-kroatija>

- Since 1 July 2018 the Embassy of the Republic of Lithuania was established in Croatia, Zagreb.
- The dipl. Mission was necessary having evaluated the interests of the Lithuanian foreign policy, the attention of the EU and other IOs to the region of the Western Balkans, etc.

<https://jp.lt/lietuva-nuo-liepos-ketina-steigti-ambasada-kroatijoje/>

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# Subjects of legation under the VCDR

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## Art. 2 of the VCDR:

*“The establishment of diplomatic relations between States, and of permanent diplomatic missions, takes place by mutual consent”*

**I. States** (sovereign and recognized internationally)

**II. Other *subjects* that have acquired international legal personality** (the VCDR does not cover int'l relations with IO's)

- a) The Holy See (the representatives of the Pope, not Vatican);
- b) The Order of Malta (former int'l legal personality, now – charity organization)
- c) Sub-federal subjects (rare; case of Bavaria in the beginning of the 20<sup>th</sup> century)
- d) The International Committee of the Red Cross;
- e) The Liberation movements



# It is interesting to read

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- <http://edition.cnn.com/2015/07/19/politics/cuba-u-s-embassies-opening/index.html>

the United States and Cuba re-established diplomatic relations. Ties were breached in 1961.



## 2. The modern titles of permanent diplomatic missions

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**Titles** **Embassy** – headed by Ambassador (equivalent - Vatican nunciature, representation of the British Commonwealth)

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**Mission** (equivalent - Vatican internunciature)

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\*People's Bureau (Libya)

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\*Trade representations (was popular in the USSR), see also:  
<http://en.delfi.lt/lithuania/economy/flanders-opens-trade-and-investment-office-in-vilnius.d?id=71233666>

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Remarks:

- Despite the title, all diplomatic missions are formally equal.
- In practice, titles *other than embassy* indicate weaker interstate relations.
- Seat of a mission: usually established in the capitals of the receiving state
- establishing offices forming part of the diplomatic mission in localities other than those in which the mission itself is established only with the prior express consent of the receiving State (Art. 12 of the VCDR)



# Seat of a diplomatic mission

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- On 6 December 2017 President Donald Trump recognised Jerusalem as Israel's capital

<https://eurojewcong.org/news/news-and-views/trump-recognises-jerusalem-israels-capital/>

<https://eurojewcong.org/news/news-and-views/eu-expresses-concern-us-recognition-jerusalem-israels-capital/>

- The international community does not recognise Israeli sovereignty over the entire city, believing its status should be resolved in negotiations. No other country has its embassy in Jerusalem.





# Seat of a diplomatic mission

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- Therefore, the President Trump announced the relocation of the American Embassy in Israel from Tel Aviv to Jerusalem.
- The American Embassy in Jerusalem was then inaugurated on 14 May 2018.



# Seat of a diplomatic mission

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- Palestine Sues the United States in the ICJ re Jerusalem Embassy, 28 Sept 2018:  
<https://www.ejiltalk.org/palestine-sues-the-united-states-in-the-icj-re-jerusalem-embassy/>
- Palestine instituted proceedings against the USA before the ICJ, claiming that the USA violated the Vienna Convention on Diplomatic Relations by moving its embassy to Israel from Tel Aviv to Jerusalem
- Palestine contends that under the Vienna Convention the diplomatic mission of a sending State must be established on the territory of the receiving State (Article 3 of the VCDR). In view of the special status of Jerusalem, Jerusalem is not Israeli territory, and therefore moving the embassy there meant that it was not established in the receiving state“, therefore, [t]he relocation of the United States Embassy in Israel to . . . Jerusalem constitutes a breach of the Vienna Convention”.



# No diplomatic relations and missions

- States willing to establish and maintain relations, but evade the official recognition because of political reasons, establish informal relations.
- when no diplomatic relations are established or the diplomatic relations were breached -> the so called departments of interest in the diplomatic missions of other states or the liaison groups are established



# No diplomatic relations and missions

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- E.g. on 12 August 2016 , the Head of the Palestinian mission Ambassador Taissir Al Adjouri presented his letters of credence, accrediting him to Lithuania, to the Foreign Minister of Lithuania. Adjouri is the first Head of the Palestinian mission to Lithuania. No diplomatic relations between Lithuania

and Palestine

- <http://www.urm.lt/default/en/news-ets-with-the-first-head-of-the-ia>



# The functions of diplomatic mission (Art. 3 VCDR)

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1. **Representation**
2. The **protection** of *state* and *citizens* interests (diplomatic protection is one of the means)
3. **Negotiations**
4. **Observation** (collect the information, draft documents, communicate officially..)
5. The maintenance of **friendly** relations (usually unofficial contacts)
6. **Other** functions (the list in Art 3 of the VCDR is open-ended)

## Remarks:

- The functions are carried out in accordance with the int'l law and laws of the receiving state.



# The functions of diplomatic mission (Art. 3 VCDR)

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The functions of diplomatic mission are to be distinguished from:

## 1. **Consular** functions:

1.1. because some of diplomatic functions cannot be delegated;

1.2. because the local law may prohibit situations when a diplomatic agent acts as a consular agent;

1.3. different requirements for consular functions on permanent basis (appointment/exequatur);

1.4 different legal sources (VCDR for diplomatic agent, VCCR for consular agent);

1.5. question of privileges and immunities.

performance of consular functions by the members of a diplomatic mission (see para. 2 of Art 3 of the VCDR; Arts. 2, 3, 70 of the VCCR)

▣ **Personal** activities of mission's members (the fostering of contacts in the official hunt is a function of ambassador – case *Heirs of Pierre S. v. Austria*, but the personal loan for casino is not – case *Fidelity Bank NA v. Government of Antigua and Barbuda*);

▣ **Commercial** activities – general promotion of economic interests is not an activity to generate direct profit, for example, sell tickets;

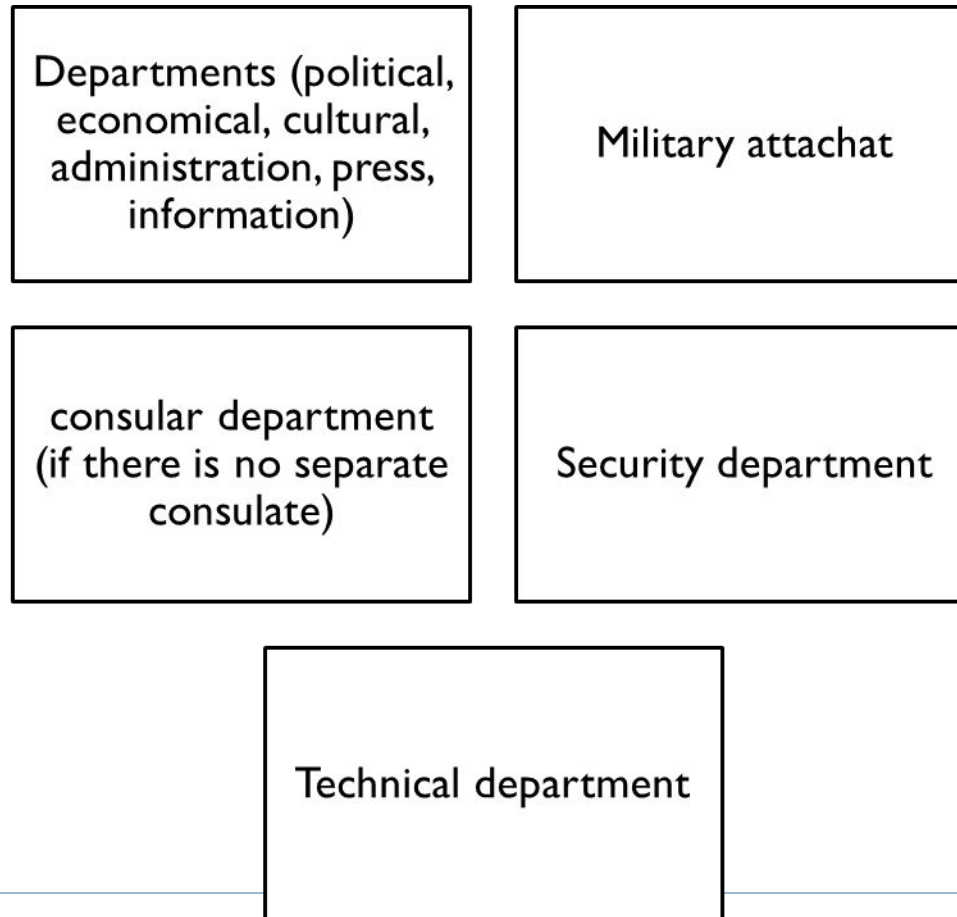
▣ **New** activities arising from other international obligations – international combat of crime, police liaison etc.

# 3. The structure of a diplomatic mission

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Not the object of the VCDR.

In practice:



# Size of a mission

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- Usually not limited but: *see art. 11 VCDR*;
- Limitations used in case of espionage or because of economic reasons;
- Limitations usually define the maximum number and are reciprocal.

## Art. 11 VCDR:

1. In the absence of specific agreement as to the size of the mission, the receiving State may

require that the size of a mission be kept within limits considered by it to be **reasonable** and **normal**, having regard to circumstances and conditions in the receiving State and to the needs of the particular mission.

2. The receiving State may equally, within similar bounds and on a non-discriminatory basis, refuse to accept officials of a particular category.





# Size of a mission

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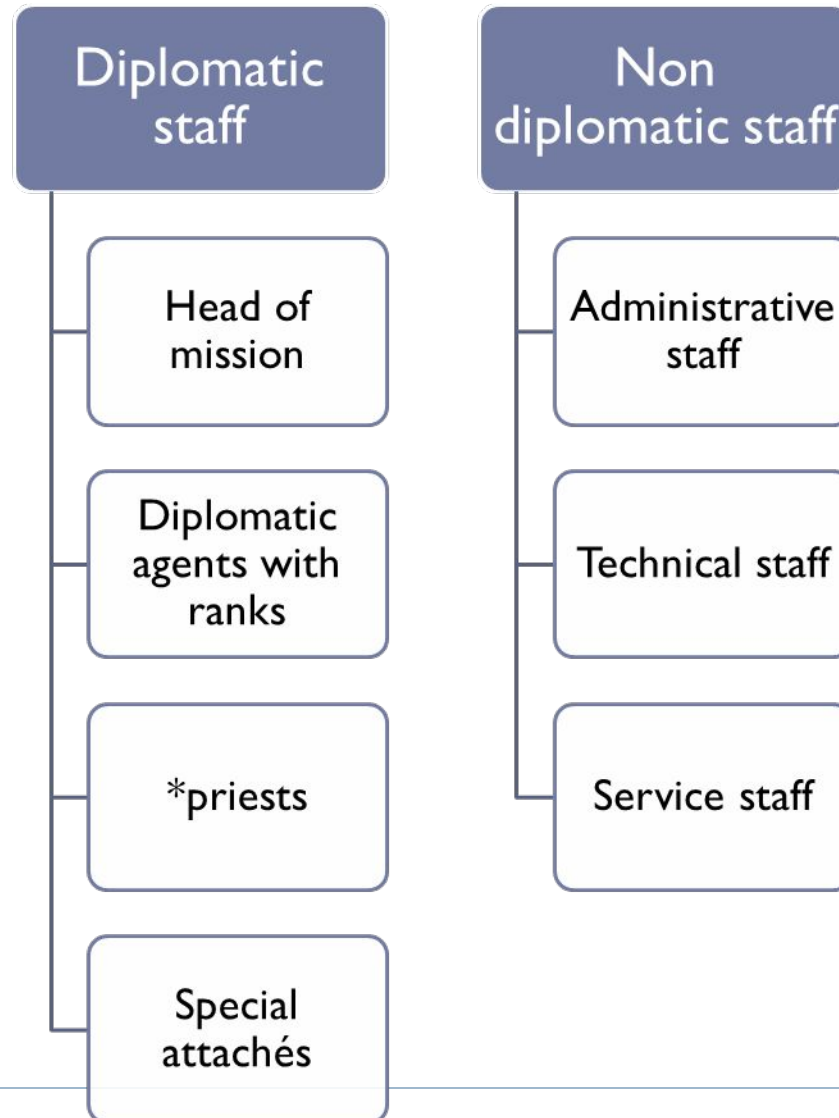
- <https://www.theguardian.com/world/2017/jul/30/russia-us-sanctions-retaliation-sergei-ryabkov>

Request of the Russian Federation to limit the diplomatic staff of the USA following the sanctions approved by the USA



# Staff of the diplomatic mission

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# Diplomatic corps / diplomatic body

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**Diplomatic corps** is understood:

- In the *strict* sense (comprises the heads of missions)
- In the *wide* sense (all diplomatic staff in the foreign state)

*Doyen (dean) of the diplomatic corps* is assigned by the virtue of the seniority of date of arrival or custom in the case of the Representative of the Holy See.

*The functions* of doyen (no political functions!):

- A spokesman on matters of status, P&I, protocol etc.;
- Informs colleagues on general matters,
- consults on the questions of local custom



# Head of diplomatic mission

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The head of the diplomatic mission: the person charged by the sending State with the duty of acting in that capacity (VCDR Art.1). Must be acceptable politically and personally for both states.

**Accreditation steps** of the head of the mission:

1. Selection of candidates (who represents the sending state best and who has deep personal links with the receiving state);
2. Request/granting of *agrément* (VCDR Art. 4)

The receiving State is not obliged to give reasons to the sending State for the refusal of *agrément* (*usually due to previous postings, conduct, personal characteristics..*)

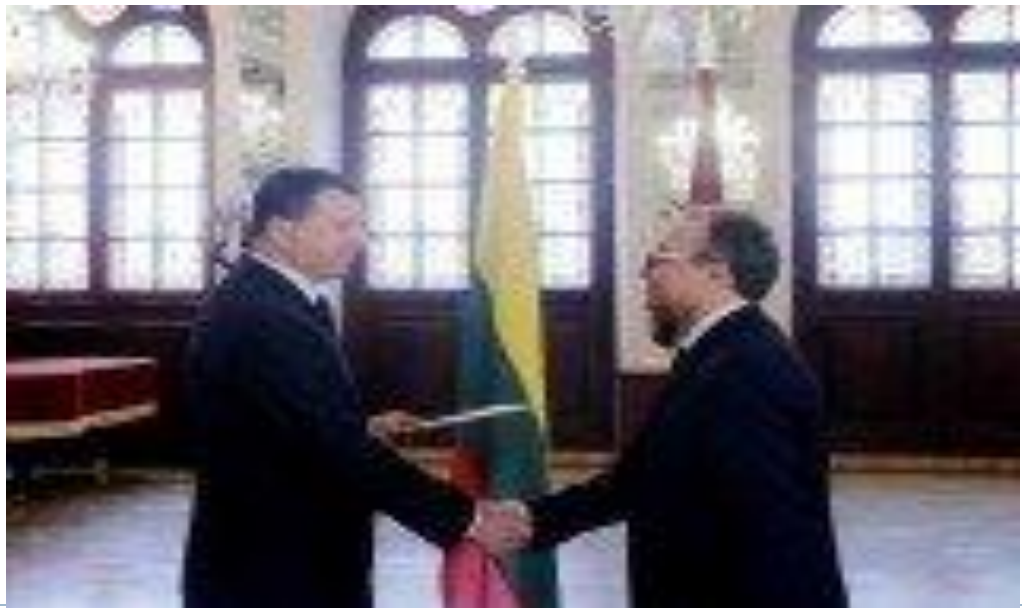
The *agrément* can be revoked until the arrival of the head of the mission; later the state can declare a person *non grata* or request for the withdrawal.

3. Adoption of a national act
4. Issue of credentials.

▶ When is the head of the mission considered as having taken up his functions in the receiving State? (see para 1 of Art 13 of the VCDR)

# Head of diplomatic mission

- On 17 August 2016, the Ambassador of Lithuania to Latvia Artūras Žurauskas presented his letters of credence to the President of Latvia Raimonds Vējonis
- <http://www.urm.lt/default/en/news/lithuanian-ambassador-presents-his-letters-of-credence-to-the-president-of-latvia>



# Head of diplomatic mission

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- It would be interesting to read:

<http://www.eurojewcong.org/news-and-views/14718-egypt-sends-ambassador-to-israel-for-first-time-since-2012.html>

- <http://www.timesofisrael.com/israels-new-egypt-ambassador-presents-credentials-to-sissi/>



## Head of diplomatic mission

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- ▣ **Multiple accreditation** – see VCDR Art. 5,6 – 1) sending of single diplomatic agent to more than one state or 2) sending by two or more states of a single ambassador to one receiving state.



# Appointment of the staff of the diplomatic mission

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*VCDR Art. 4-11:*

*The receiving state asks for:*

1. *Agrément* - if the head of mission is to be accredited;
2. *Preliminary list for approval* – if the military, naval or air attachés are to be appointed;
3. *General notification* – for other diplomatic staff (See Art. 10 VCDR) – no approval (freedom to appoint, dismiss and specify diplomatic functions and titles)
4. *When does the diplomatic staff start their functions in the receiving State?* After they arrive in the receiving state after their appointment and notify about it the competent institution (usually the Ministry of foreign affairs) of the receiving state





# Appointment of the staff of the diplomatic mission: rights of the receiving State

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- It is open to the receiving state to declare the Head of the mission and any member of the diplomatic staff of diplomatic mission as *persona non grata* or any other member of the staff of the mission as unacceptable before he/she arrives in the receiving State (Art 9 of the VCDR).
- The receiving state may limit the size fo the mission (Art 11 of the VCDR).



# Nationality of the diplomatic staff

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## Art 8 of the VCDR

- General rule: members of the diplomatic staff of the mission should be of the nationality of the sending State.
- Members of the diplomatic staff of the mission having the nationality of the receiving State – provided there is the consent of that receiving State. The consent may be withdrawn at any time.
- The receiving State may reserve the same right with regard to nationals of a third State who are not also nationals of the sending State.



# End of the function of the Head of diplomatic mission

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- See Art 43 of the VCDR
- Other cases when the functions of the Head of the DM end according to the domestic law of a certain sending State (e.g. recalling the Head of the diplomatic mission; resigning; losing the nationality of a sending State, death; other cases recognized in int'l law, when the activity of the dipl mission ends; rare - the period of his/her mission ends; other cases)
- E.g. Turkey has recalled its envoy to Germany in protest against German MPs declaring the 1915 massacre of Armenians during WWI as genocide:

<http://www.bbc.com/news/world-europe-36439092>

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# End of the function of the Head of diplomatic mission

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- When the head of the diplomatic mission is temporarily away or is unable to perform his functions temporarily, his mission does not end: a chargé d'affaires ad interim can act provisionally as head of the mission (see Art 19 of the VCDR)



# Diplomatic classes

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- Diplomatic classes defined in *Art. 14 of the VCDR* (simplified version of the 1815 Vienna Regl. No 17):

Heads of mission are divided into three classes (para 1 of Art 14 of the VCDR):

- a) **ambassadors** or **nuncios** accredited to Heads of State, and other heads of mission of equivalent rank;
- (b) **envoys, ministers** and **internuncios** accredited to Heads of State;
- (c) **chargés d'affaires** accredited to Ministers for Foreign Affairs.



# Diplomatic classes

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- The diplomatic class is agreed between the States (Art 15 of the VCDR)
- No differentiation between heads of mission by reason of their diplomatic class (except for precedence and etiquette) (para 2 of Art 14 of the VCDR)



# Diplomatic ranks

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- Diplomatic ranks (contrary to diplomatic classes) are defined under the **national** laws: usually **ambassadors, counselors, 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> secretaries, and attaches.**
- The ranks can be granted not only to the diplomatic agents working abroad, but also to the officers of national ministries for foreign relations who are in charge of maintenance of the official foreign relations.

