



## The Concept, Nature and Content of Diplomatic Activity, Diplomatic Service and Diplomatic Law in the Modern Period

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### **Abstract**

This article examines the essence of the concepts of diplomatic service and diplomatic law, the legal status, rights, privileges and obligations of diplomatic missions and their employees. Also, the international and national legal bases of diplomatic activity are analyzed and proposals are made for improving the legislation.

**Keywords:** *Foreign Policy; Diplomatic Service; Diplomatic Law; Ministry of Foreign Affairs; Bodies of External Relations; Vienna Conventions; Diplomatic Representation; Draft Law “on The Diplomatic Service of the Republic of Uzbekistan”*

### **Introduction**

Diplomacy is one of the oldest professions in the world, dating back several millennia. For a long time, diplomatic missions were temporary, and only from the 14th century did permanent representations appear in the Italian city-states in the form of special state departments that were engaged in foreign policy.

In the process of development of international relations, we can say that diplomacy is the professional activity of state bodies and officials to represent and protect the interests of the state and its citizens in relations with other states [Основы дипломатии, 2019].

The development of globalization and integration processes in the world, including the creation of visa-free zones and an increase in migration flows, and the emergence of conflicts in international sociopolitical and economic relations, have a great impact on the diplomatic service.

The resolution of the UN General Assembly (December 18, 2019; No. 74/188) emphasized the need to develop a Convention on measures of diplomatic protection, due to the importance of diplomatic

protection in relations between states in a rapidly changing world. Today, in world practice, the effective organization and legal regulation of diplomatic activity are considered as one of the urgent problems, taking into account qualitative changes in international relations and measures of diplomatic protection.

In the process of establishing New Uzbekistan, such measures are being implemented as the adoption of comprehensive measures to radically reform the legal framework of the diplomatic service, ensuring the effective participation of the diplomatic service in solving strategic problems in the foreign policy and foreign economic spheres, and paying special attention to the development of “economic diplomacy”. Tasks such as strengthening the coordinating role of the Ministry of Foreign Affairs in the implementation of a unified foreign policy and foreign economic activity of Uzbekistan are defined, as well as the tasks, functions and powers of the relevant ministries, departments and local governments are defined and delineated.

Modern diplomacy, operating in the context of globalization, covers the multifaceted foreign policy activities of heads of state and government, foreign affairs departments and diplomatic missions abroad. The main instruments and methods of modern diplomacy are negotiations, in which compromises are sought in solving emerging problems.

Diplomacy is carried out through the diplomatic service. The diplomatic service is the activity of diplomatic personnel in the central office and abroad to fulfil the tasks of the state’s foreign policy through diplomatic instruments. The diplomatic service is a functional duty of state bodies and officials [Турсунова М.У, 2020].

According to the draft Law “On the diplomatic service of the Republic of Uzbekistan”, the diplomatic service is a professional activity of citizens of the Republic of Uzbekistan in the state bodies of the Republic, aimed at implementing the foreign policy of Uzbekistan, protecting and promoting its national interests in the field of international relations, as well as protecting the rights and legitimate interests of citizens and legal entities of Uzbekistan abroad<sup>1</sup> [3]. This definition of the diplomatic service reflects its essence. The structure of the diplomatic service includes the central bodies of external relations located on the territory of their state, and foreign bodies of external relations located outside their state [Турсунова М.У, 2020].

Diplomatic service is carried out on a permanent, professional and reimbursable basis, is organized exclusively in diplomatic positions in state structures of the Foreign Ministry, requires from citizens replacing or applying for positions in the diplomatic service, special, primarily linguistic, international legal, politico–regional, political economic and managerial training, certain experience in international professional activity, moral and psychological stability [Яковенко Н.А, 2016].

Based on the foregoing, we think that the diplomatic service as a special type of professional service activity, differs from other types of labour activity in that it is carried out on behalf of the state in order to ensure a fair order and maintain lasting peace between peoples, the security of the state, its integrity and sovereignty, observance of the legal rights and freedoms of citizens, as well as in working conditions in foreign missions in a specific legal regime, which is determined by diplomatic privileges and immunity [Турсунова М.У, 2020].

Employees of the diplomatic service have a legal status and the features of which are the establishment of additional state guarantees and the specifics of diplomatic activity; they are designed to compensate for the risks faced by members of the diplomatic service and their families. These persons enjoy diplomatic privileges and immunity in the host country [Турсунова М.У, 2020].

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<sup>1</sup> Draft law “On the diplomatic service of the Republic of Uzbekistan”. [http://old.mv.gov.uz/ru/getPublicService/332?action=view&item\\_id=1403](http://old.mv.gov.uz/ru/getPublicService/332?action=view&item_id=1403).

Diplomatic privileges are additional perks and benefits aimed at facilitating the work of diplomatic missions and their staff.

Diplomatic immunity is the special right of diplomatic servants to be exempted from local jurisdiction, the inapplicability of coercive measures provided for by the internal law of the host country for violating its laws and regulations.

The group of privileges and immunities of a diplomatic mission includes the following acts (or refraining from acts): inviolability of the premises of diplomatic missions; inviolability of the archives and documents of the mission; customs and tax privileges; the right of the mission to use the flag and emblem of the sending state on the premises of the mission, as well as on its vehicles.

The feature of the diplomatic service of the Republic of Uzbekistan is that it is carried out only in the positions of the diplomatic service in state bodies. Diplomatic employees are assigned diplomatic ranks (class ranks) in accordance with their positions, taking into account the length of service and the results of their professional activities.

The diplomatic service has the peculiarities of legal regulation. In addition to the normative legal acts of the Republic of Uzbekistan, the norms of international law apply to employees of the diplomatic service, in particular, the Vienna Convention on Diplomatic Relations of 1961<sup>2</sup> and the Vienna Convention on Consular Relations of 1963<sup>3</sup>.

At the same time, employees of the diplomatic service are obliged to comply with the laws and customs of the host country, regime restrictions, including those related to movement within its territory [Занко Т.А, 2014].

In foreign legal literature, the opinion is also expressed that the specifics of the diplomatic service are expressed in significant differences in the rights and obligations that apply to diplomatic workers. Thus, the authors of “Career Diplomacy: Life and Work in the U.S. Foreign Service” identify four main differences: prevalence throughout the world, the assignment of ranks and pay system, the “raise or dismissal” system, the possibility of early retirement (50 years old with 20 years of diplomatic service) [Kopp Harry W, 2011].

In our opinion, the essence of the diplomatic service is manifested in its principles, its tasks and functions.

Firstly, the essence of the diplomatic service is reflected by scientifically substantiated and legislatively enshrined principles, initial ideas and provisions. The principles are of a basic nature, they determine the socio-political meaning of the status, trends and patterns of formation, development, change and termination of service relations. Unfortunately, the principles of the diplomatic service in the legislation of Uzbekistan have not received special normative enshrinement.

On the basis of a comparative legal study and analysis of materials related to the conduct of foreign policy through the diplomatic service, the following basic principles of the diplomatic service can be formulated: legality, consistent upholding of national interests, patriotism and responsibility to the country and its people, political neutrality, openness, honesty, morality, devotion, consistency, professionalism and constructive pragmatism, predictability [Занко Т.А, 2014].

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<sup>2</sup> The Vienna Convention on Diplomatic Relations of 1961. [https://legal.un.org/ilc/texts/instruments/english/conventions/9\\_1\\_1961.pdf](https://legal.un.org/ilc/texts/instruments/english/conventions/9_1_1961.pdf).

<sup>3</sup> The Vienna Convention on Consular Relations of 1963. [https://legal.un.org/ilc/texts/instruments/english/conventions/9\\_2\\_1963.pdf](https://legal.un.org/ilc/texts/instruments/english/conventions/9_2_1963.pdf).

Secondly, the essence of the diplomatic service is manifested in its tasks and functions. The main tasks of the bodies of the diplomatic service of Uzbekistan in the draft Law “On the diplomatic service of the Republic of Uzbekistan” are the following:

- Ensuring the implementation of the foreign policy and foreign economic course of the Republic of Uzbekistan;
- Taking measures to protect and promote its national interests in the field of international relations;
- Ensuring by diplomatic means and methods of protecting the independence, sovereignty, security, territorial integrity and inviolability of the borders of the Republic of Uzbekistan;
- Ensuring comprehensive protection of the rights and legitimate interests of citizens and legal entities of the Republic of Uzbekistan abroad;
- Representation of the Republic of Uzbekistan in relations with foreign states, international organizations and other subjects of international relations;
- Promotion of international initiatives of the Republic of Uzbekistan in the most important areas of regional and international policy;
- Promotion of the consistent development of international cooperation in various fields of bilateral and multilateral nature and etc.

The bodies of the diplomatic service of the Republic of Uzbekistan perform the following main functions:

- Developing proposals for foreign policy strategy;
- Carrying out systematic information and analytical work on constant monitoring of the situation in the region and the world;
- Identification and evaluation of challenges and threats in a timely manner;
- Studying and analyzing the processes and trends of international politics and the world economy, as well as develop forecasts and practical recommendations based on them;
- Ensuring the Participation of the Republic of Uzbekistan in the Activities of International Organizations, Conferences, Meetings, Forums;
- Ensuring negotiations with representatives of foreign states, international organizations and other subjects of international law and etc.<sup>4</sup>

The current regulatory legal acts of the Republic of Uzbekistan do not define either the concept of the diplomatic service, or its system of bodies, principles, tasks and functions, or the features of the legal status of a diplomatic worker. In our opinion, the system of bodies of the diplomatic service of Uzbekistan consists of the Ministry of Foreign Affairs, its territorial divisions, diplomatic missions and consular offices of the Republic of Uzbekistan abroad. So, this provision should be enshrined in law in the draft law “On the diplomatic service of the Republic of Uzbekistan”.

Diplomatic representation – a permanent body of foreign relations of the state, located on the territory of another state. A diplomatic mission acts on behalf of the state that established it on all political and other issues arising in the relations between states.

Diplomatic representation is divided into two types: embassies and missions. The head of the embassy is the ambassador, the head of the mission is the envoy or charge d’affaires. Most states establish diplomatic relations between themselves at the level of embassies. The level of diplomatic representations of the states is stipulated in the agreement on the establishment of diplomatic relations between them [Искевич И.С, 2014].

A consular office is a body of foreign relations of a state established on the territory of another state to perform certain functions. Consular activity, in contrast to diplomatic activity, which deals mainly

<sup>4</sup> Draft law “On the diplomatic service of the Republic of Uzbekistan”. [http://old.m.y.gov.uz/ru/getPublicService/332?action=view&item\\_id=1403](http://old.m.y.gov.uz/ru/getPublicService/332?action=view&item_id=1403).

with political issues, is aimed at protecting the economic interests of the state, the interests of individuals and legal entities abroad, providing them with various services, solving their problems and processing documents (visas, passports, certificates, etc.).

The activity of the state in the field of foreign relations is its diplomatic activity in a broad sense, covering all official communications and relations of this state in the international arena. The law governing this activity is called diplomatic, which is a branch of general international law. Diplomatic law is a set of legal norms governing issues related to the establishment and maintenance of official relations between states, as well as between states and international organizations, in particular, the status, privileges and immunities of diplomatic (consular) missions and diplomatic (consular) representatives, also called the right of foreign relations [Международное публичное право, 2018].

The norms of law that determine the position and activity of the bodies of foreign relations, regulate and legally guarantee the diplomatic activity of subjects of international law, are the norms of diplomatic law. Diplomatic law regulates the position and activities (status and functions) of the official bodies of foreign relations of the subjects of international law.

The subject of diplomatic law is the official activity of the states—participants of international communication in the field of foreign relations. These include the legal regulation of foreign relations of states, the forms of their representations abroad, the organization of the diplomatic service, the preparation and creation of diplomatic acts, their qualifications, the training of diplomatic and consular personnel, and a number of aspects of a civil law character.

Diplomatic law finds its expression in the norms of domestic law. This means that the forms and principles of organizing the diplomatic activity of each actor of international law are also determined by the norms of domestic law, which are binding on the territory of each state.

The most important modern sources that codify diplomatic law are named as follows: The Vienna Convention on Diplomatic Relations of 1961, the Vienna Convention on Consular Relations of 1963, the Convention on Special Missions of 1969, the Vienna Convention on the Representation of States in Their Relations with International Organizations of a Universal Character of 1975.

When it comes to multilateral diplomacy, especially diplomacy, carried out within the UN system, the most important sources are The Convention on the Privileges and Immunities of the United Nations of 1946 [17] and the Convention on the Privileges and Immunities of the Specialized Agencies of 1947.<sup>5</sup>

Diplomatic law, broadly understood as the law of external relations, also includes consular law, the sources of which include the Vienna Convention on Consular Relations of 1963, which codifies the field of consular relations at the universal level, as well as other international agreements and sources, for example, the European Convention on Consular Functions of 1967.<sup>6</sup> Some internal acts are also of interest (for example, consular charters of states).

Based on the above, the diplomatic service of the Republic of Uzbekistan can be defined as the professional activity of citizens of the Republic of Uzbekistan in its state bodies, aimed at conducting the foreign policy of the state, protecting and promoting its national interests in the international arena, as well as protecting the rights and legitimate interests of citizens and legal entities of Uzbekistan abroad.

<sup>5</sup> The Convention on the Privileges and Immunities of the Specialized Agencies of 1947. <https://lex.uz/docs/2662273>.

<sup>6</sup> Европейская конвенция о консульских функциях. Париж, 11 декабря 1967 г. <https://www.coe.int/ru/web/conventions/full-list/-/conventions/treaty/061>.

The specifics of the diplomatic service are as follows: the presence of diplomatic privileges and immunities for diplomatic employees; service only in positions in state bodies; taking into account the peculiarities of the legal regulation of the diplomatic service by the normative legal acts of the Republic of Uzbekistan and the norms of international law.

The legislative basis of the diplomatic service of the Republic of Uzbekistan is formed by the following legislative acts:

1. International legal acts in the field of diplomatic law;
2. Domestic regulatory legal acts.

The normative legal acts used to regulate the activities of the diplomatic service of the Republic of Uzbekistan must comply with modern requirements that are set before the bodies of external relations, which requires further improvement of the legal framework for the activities of the diplomatic service of Uzbekistan. At the same time, it is important to eliminate disagreements, gaps in the provisions of existing regulatory legal acts. In this regard, there is an urgent need for the speedy adoption of the Law “On the diplomatic service of the Republic of Uzbekistan”, which should regulate all aspects of the diplomatic service.

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