

The Vienna Conventions on Diplomatic and on Consular Relations: A Philosophy of the Preambles

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ABSTRACT

The Vienna Convention on Diplomatic Relations and The Vienna Convention on Consular Relations constitute the very focal part of the diplomatic and consular law and its codification. Although adopted six decades ago, they remain an irreplaceable part of defining, explaining and implementation of diplomatic work, roles of diplomats, their mission and relations among key actors of this profession and activity.

This article dwells on the substances, understanding and messages of the preambles of both Conventions. They rest on tradition, are rich with continuity, flexibility as well as with defined legal form and structure. Their language is dry, formal, nuanced, direct and open at the same time. They content moral and ethical aspects, but also functionality, pointing out that diplomacy must be based on rules that respect legal basis of human behaviour and on promotion of friendly relations among nations, regardless of differences that exist among them. We understand this as a philosophy of the preambles.

KEY WORDS: Vienna Convention on Diplomatic Relations, Vienna Convention on Consular Relations, preamble, tradition, philosophy, ethics

POVZETEK

Dunajska konvencija o diplomatskih odnosih in Dunajska konvencija o konzularnih odnosih predstavljata ključni del diplomatskega in konzularnega prava ter njegove kodifikacije. Čeprav sta bili sprejeti pred šestimi desetletji, ostajata nenadomestljiv del definiranja, razlaganja in izvajanja diplomatskega dela, diplomatov, njihovega poslanstva in odnosov med ključnimi dejavniki diplomacije kot poklica in kot dejavnosti.

Prispevek se ukvarja z vsebino, razumevanjem in s sporočilnostjo preambul obeh konvencij. Obe temeljita na tradiciji in sta bogati s kontinuiteto, fleksibilnostjo ter z jasno pravno formo in strukturo. Njun jezik je suhoparen, formalen ter znansiran kakor tudi neposreden in odprt hkrati. Vsebujeta moralne in etične vidike ter funkcionalnost in poudarjata, da mora diplomacija izhajati iz pravil, ki upoštevajo pravno osnovo človeškega obnašanja in razvijanje prijateljskih odnosov med narodi ne glede na številne razlike med njimi. Navedeno lahko razumemo kot filozofijo obeh preambul.

KLJUČNE BESEDE: Dunajska konvencija o diplomatskih odnosih, Dunajska konvencija o konzularnih odnosih, preambula, tradicija, filozofija, etika

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INTRODUCTION

Both Vienna Conventions, namely The Vienna Convention on Diplomatic Relations (henceforth Diplomatic Convention) and The Vienna Convention on Consular Relations (henceforth Consular Convention; when speaking about both of them also: Conventions), form the very corps of the diplomatic and consular law. Adopted and ratified almost six decades ago, they remain the main fundament for codifying diplomats' acts and behaviour, and the way diplomacy functions as a profession and as an organization. Scholarly discourse on both Conventions primarily focuses on presenting and explaining legal and protocol aspects of these two documents, but also their practical applicability in management of relations between states as well as between states and international organizations. The aspect of the applicability of both Conventions is rich, detailed and nuanced as well.²

Our ambition in this paper is, however, to look beyond this, at the sophisticated indirect meaning of both Conventions, having in mind messages they bring, substance they share, and nuances they inhibit. Generally speaking, we call this endeavor *a search for the philosophy of the Conventions*. Our research focus is on the philosophy of the preambles of the both Conventions. We pay primary focus on the preamble of the Diplomatic Convention and comparative focus on the preamble of the Consular Convention. We contemplate on the preambles, discuss and draw comparisons as well as generalize how they are understood within diplomatic studies, but also beyond them, referring not only to legal studies but also to philosophy, history, ethics, sociology and psychology.³

For this purpose, we use methods of analysis, synthesis, comment, comparison and, since the author of this contribution is a career diplomat, also a method of observing through one's own participation.⁴ Our main thesis is that understanding the multilayered substance of the both preambles brings us to a conclusion that diplomacy is not only a profession, but also a mission with deep ethical and moral aspects, framed with and resting on a clear legal background, rich with tradition, continuity and functionality.⁵

2 For more on this comp. Berridge and James, 2003, Feltham, 1994, Okano-Heijmans, 2013, Sen, 1988, Wagner, 2007, and Wouters et al, 2013.

3 For more on this comp. Crieckemans, 2014, Jazbec, 2013, and Kaufmann, 2013.

4 More on this method in Burnham, 2004, and Mason, 2002.

5 For more on this comp. Cooper, 2013.

DIPLOMATIC AND CONSULAR LAW

The key point in the development of diplomacy and in the process of codification of diplomatic and consular law was the adoption and ratification of Vienna Convention on Diplomatic Relations (1961 and 1964) and the Vienna Convention on Consular Relations (1963 and 1967), around sixty years ago.⁶ Both legal documents arrange and dwell, in the most developed, comprehensive and systematic way, the work of diplomats and their definition. Further on, they elaborate on various aspects of their mission, and deal with basic elements of the diplomatic structure as well as with the relations among them, primarily between the sending and the receiving state and their authorities, i.e. foreign ministries in particular. They discuss rights and duties of diplomats, diplomatic missions and their states in the broader frame of their efficient performance and management.

Together with the Convention on Special Missions and the Convention on the Representation of States in Their Relations with International Organizations of a Universal Character and within the frame of the founding Charter of the United Nations, they present the basic corps of diplomatic and consular law. Additionally, both Conventions count among those international legal documents that are ratified by the highest number of states (the Diplomatic one even by 192) and are among the most respected and implemented ones.⁷ Also for this reason, diplomatic and consular law presents the most advanced part of the codified areas of the international law.⁸

One could define diplomatic and consular law as a system of legal rules and principles of international customary and obligatory law that explains diplomatic and consular relations among states, legal status (rights and duties) of states' representations and representatives abroad (and international functionaries) and takes care of their international legal status, their duties, as well as their privileges and immunities. Besides regular bilateral diplomatic relations and special missions, it also regulates, within the frame of multilateral diplomacy, the legal status of the states' representatives accredited at international organizations and at international conferences, and defines rules of international employees (Bohte and Sancin, 2006: 36).

6 For more on this comp. Brglez, 1998.

7 For a collection of these and some other conventions from this area see Simoniti (2014).

8 For more on a relation between diplomacy and law see Farer, 2013.

As main sources of diplomatic and consular law, one should list international general and special customary law, international treaty law, general legal principles that are generally accepted, as well as customs, habits and rules of politeness. This is important to bear in mind since both preambles, in their last clause, point out that “the rules of customary international law” are those, which shall govern, also in the future, any questions that are not expressly regulated within the Conventions (either of them). This shows the immense importance of customs transformed into international legal norms – it is the custom from which stems regulation of diplomatic work and all related issues.

GENERAL AND COMPARATIVE DISCUSSION ON BOTH CONVENTIONS

Before starting with an insight analysis of both preambles, let us have a brief look at Conventions, their form and structure, on a general and comparative level.⁹

Both Conventions start with a preamble that is followed by a series of articles. In the case of the Diplomatic Convention there are 53 articles and in the Consular one 79 articles. The forms of both documents follow the same approach, namely listing articles one by one, while presenting their content. After the preamble, the few opening articles present the purpose of the Conventions, define basic terminology¹⁰ as well as list diplomatic functions and consular functions.¹¹ Both Conventions end with a few articles presenting general and final provisions respectively (48 – 53 and 74 – 79).¹²

However, their structures differ. While in the Diplomatic one, articles follow one by one without being listed in various structural or topical units; the Consular one is structured in such units. This difference is not only visual and structural, but also substantial. The Consular Convention is structured into four chapters with the first two structured into two sections, while chapters three and four have a unison structure from this point of view. All chapters, sections and articles have titles. The structure is as follows:¹³

9 Comp. also for example Simoniti and Agius, 2014.

10 Both Conventions use term “expressions” (Article 1). The title of this article in the Consular one is “Definitions”.

11 The official wording is “the functions of a diplomatic mission” (Article 3), but in the Consular one “consular functions” (Article 5).

12 When referencing both Conventions we always list first the Diplomatic Convention and then the Consular one, unless explicitly indicated.

13 Bold and italics M.J.

Chapter I. Consular Relations in General (articles 2 – 27)*Section I. Establishment and Conduct of Consular Relations (articles 2 – 24)**Section II. End of Consular Functions (articles 25 – 27)***Chapter II. Facilities, Privileges and Immunities Relating to Consular Posts, Career Consular Officers and other Members of a Consular Post (articles 28 – 57)***Section I. Facilities, Privileges and Immunities Relating to Consular Posts (articles 28 – 39)**Section II. Facilities, Privileges and Immunities Relating to Career Consular Officers and other Members of a Consular Post (articles 40 – 57)***Chapter III. Regime Relating to Honorary Consular Officers and Consular Posts Headed by such Officers (articles 58 – 68)****Chapter IV. General Provisions (articles 69 – 79)**

As far as the structure of the Consular Convention is concerned, one should also point out that it formally begins with Article 2: Establishment of consular relations, while the first Article (Definitions) belongs to the introductory part, although not officially defined as such. Additionally, as already mentioned, each article holds a title, which points out its substance and the topic of presentation. The Consular Convention is, as one can see, quite detailed, which helps to easier find the sought topic.

One could speculate that the main reason for this difference lies in the different core understanding of diplomatic and consular relations. Diplomatic relations are by definition a matter of political conduct between the government of the sending state and the government of the receiving one, i.e. implementing foreign policy, meaning politics as such (that depends on interests primarily and might be quite changeable). There are no exact forms and ways to pursue this, apart from having in mind diplomatic functions.¹⁴ Consular relations, as defined in the consular functions, however, concern basically provisions on interests of citizens and their companies of the sending state in the receiving state, i.e. protection of interests of bodies of private and corporate law. This protection is regulated by international law, as well as by legal arrangements of the sending and the receiving state. Consular relations are implemented by the legal book strictly, while diplomatic ones present primarily management of political affairs. Hence, the former must be defined clearly,

¹⁴ Comp. for example Benko, 1998, and Petrič, 2013: 118–141.

while the latter need not be, what is reflected also in the structure of both Conventions.

Another issue is the relation between the two Conventions. The Diplomatic one was adopted in April 1961 and entered into force on April 24, 1964, and the Consular one was adopted on April 24, 1963 and entered into force on March 19, 1967. From both preambles, one can understand that the Diplomatic one is a basis for the preparation and the adoption of the Consular one,¹⁵ since the second diplomatic function defines protection of interests that is presented and discussed in details in consular functions. From this stems their interdependence and the conclusion/presumption that the Consular Convention is a substantial continuation of the Diplomatic one. The dynamics of preparation, adoption and entering into force of both of them clearly show this as well. We should not speak about vertical subordination between the two of them, but should understand this relation as based on substance, topic of discussion and as a way to regulate and implement diplomatic and consular relations. The complementary nature of both Conventions as the primary aspect that defines their relation is an important achievement of both documents. It is a fact that throughout the major part of diplomatic history, diplomatic relations (and diplomatic service) as well as consular relations (and consular service) were two separate instruments and institutions, hardly having any direct contact. Only at the beginning of the previous century, when classical diplomacy was coming to its end, the trend of understanding both of them as a single and united part of the state administration, started to develop.

Last but not least, it is important to point out that both Conventions count among those with the biggest number of ratifications (192 and 180 respectively) among international conventions. This fact illustrates their wide acceptability and applicability, especially since they have been both practically in use for six decades without being changed at all.¹⁶ Further on, their recognition has not been questioned even though the international relations and the international community witnessed intensive structural changes during this period of time.¹⁷

¹⁵ More on this later on when we discuss both preambles.

¹⁶ There has not been a serious formalized try to amend them.

¹⁷ More on this in Jazbec, 2021.

THE PREAMBLE OF THE DIPLOMATIC CONVENTION

GENERAL REMARKS ON THE DIPLOMATIC CONVENTION

The preamble is brief and exact, describing primarily legal and diplomatic language that tries to encompass broad understanding of diplomacy, the mission of the Convention as well as the historical frame within which it was developed. It consists of five clauses and two short, open sentences, the opening and the closing one. The former introduces, in the preamble, the philosophy of the Diplomatic Convention and the latter introduces, with articles, its content. Its philosophy could be understood as a concentrated, condensed and crystalized notion of the whole document. One could also claim a kind of diplomatic mission as well as a mission for diplomats, while the content is present in the listed articles, a kind of *acquis diplomatique*.

The opening sentence “*The States Parties to the present Convention,*”¹⁸ informs the reader about the intentions of the states that are parties to this Convention, referring to the clauses of the preamble. The clauses that present ambitions of the Parties of the Diplomatic Convention are listed in the preamble and we discuss them thoroughly here on. And the closing sentence “*Have agreed as follows:*” directs the attention of the reader – after being acquainted with the preamble – to the content of the Convention, being a concrete, operational result, stemming from the spirit of the preamble and presented with a clear, direct legal and diplomatic language. Between the two sentences, there lies a condensed, concentrated, but still clear philosophy of the preamble that is, to our mind, also one of the main characteristics of the whole Convention, its mission and message.

CLAUSES AND THEIR UNDERSTANDING

With this section, we come to the main part of our paper, namely focusing on understanding the philosophy of the preambles of the Diplomatic Convention. We firstly quote the clause discussed and then analyze and comment on it. After finishing this clause vivisection and before heading to the comparatively repeat of the process with the preamble of the Consular Convention in the next part of the paper, we will comment and wrap up our view on this part.

¹⁸ Italics in this part of the paper are from the discussed Convention.

CLAUSE ONE

“Recalling that peoples of all nations from ancient times have recognized the status of diplomatic agents,”

The very beginning of this clause points out tradition – diplomacy is an old profession. It stems from ancient times and already then it was obvious that those persons, who intermediate between two sides, need – in today’s language – a diplomatic status, i.e. protection and immunity, to be able to pursue their missions. Further on, ancient times were before states – nation states – came to existence, since peoples of all nations were recognizing this fact, as the clause says. The notion of a nation state emerged with the Peace of Westphalia, while the first origins of diplomacy, as we understand it today, appeared more than three millennia earlier, in ancient times, as the clause number one defines it. According to Jazbec (2009: 31-51), this helps to define the period of early diplomacy.

Additionally, the fact that diplomacy originates from ancient times in which diplomatic immunity was an accepted principle, serves as the point of departure for understanding not only the Diplomatic Convention, but diplomatic affairs as such. The authors of the Convention placed this reference, this recall, at the very beginning of the document. Whenever discussing diplomacy, one should bear in mind that this is not only “the most important institution of our society of states” (Berridge, 2015:1), the “funny old trade” (Roberts, 2014: ix) and the “most rewarding of profession (Ibid., p. x), but an activity with a millennia long tradition, experiences and, consequently, flexibility.

One would hardly wish to have a better, more concise and messaging opening of the Convention that presents the very core of diplomatic and consular law and lays down the fundamentals of this activity.¹⁹

CLAUSE TWO

“Having in mind the purposes and principles of the Charter of the United Nations concerning the sovereign equality of States, the maintenance of international peace and security, and the promotion of friendly relations among nations,”

¹⁹ Jönsson and Hall speak about the essence of diplomacy (2005) and Magalhaes points out the pure concept of diplomacy (1988).

After defining the origin of diplomacy and the principle of immunity in clause one, the preamble makes, in the second clause, a further step in binding diplomacy, its mission and notion to a broader frame of human activity. We can clearly notice deduction as the main methodological approach in the preamble.

While defining a diplomatic mission, States Parties to this Convention had in mind the founding Charter of the United Nations that puts forth the principle of sovereign equality of States. It is the basic outline that marks relations among states in their international intercourse, with responsibilities, rights and duties at the same time: states are by legal definition equal, they all share sovereign equality. Next, they also share and agree upon the maintenance of international peace and security as their primary aim. Whatever their historical experiences are, they swear to peace and security. Even more, one could claim that with accepting this Convention and agreeing upon its content, they also express their commitment to peace and security; they oblige themselves to follow it. And henceforth, they promote friendly relations among nations.

This is of the utmost value – friendly relations among nations. This is a highly ethical aspect of the Diplomatic Convention and of the entire diplomatic business as well. Ethical moment is deeply engraved in what diplomats do and states believe in. It would be most probably too much to claim that all the states follow this principle in reality, but with the acceptance of the Diplomatic Convention, sixty years ago, they took this principle for granted and obliged themselves to follow it. And since the Convention has not been changed so far, we should claim it is still that way nowadays. This makes it possible to claim that diplomacy is a noble profession. One pragmatic aspect of diplomats' work is that they forward interests of their sending authority to the receiving authority, in a form of governmental decisions, which change and vary from time to time. But another, the principle one, is to do what they can to promote friendly relations between states. The former might be a criterion to evaluate a concrete diplomatic service of a concrete state, but the latter is the criterion to judge diplomacy as a profession.

CLAUSE THREE

“Believing that an international convention on diplomatic intercourse, privileges and immunities would contribute to the development of

friendly relations among nations, irrespective of their differing constitutional and social systems,”

Since presenting what States recall and have in mind, they express with clause three their belief in the power of legality in reaching political goals. Friendly relations among nations present that goal, placed in the founding document of the United Nations. Hence, an international document that would regulate making that goal true is needed in achieving this goal with the instrument of diplomacy. With a support of a legal tool that would dwell on diplomatic intercourse, privileges and immunities, States would be able to contribute in reaching that goal. With this clause, the preamble takes a step forward: States did not only agree upon, they also expressed their willingness to contribute, to take action in achieving this goal. International relations offer a broad spectrum of tools and arrangements for states to take action, although they are not obliged to. To stick to a passive behaviour is nothing new in international relations. It could be easy and comfortable, but this preamble and its clause three encourage them to be active, to contribute. And this rests on what is being put in the very core of diplomatic work since ancient times. Namely, the status of diplomatic agents should be also legally defined in a separate binding document.

Such a document would enable States to focus on developing friendly relations among nations as their primary goal, in particular since they were aware (and still are) of their different constitutional and social systems. This fact should not hinder States in promoting friendly relations. They pursue it irrespectively of existing differences, in their legal, political and social set ups. It is a manifestation of a statesmanship and a related wisdom to take this differences into account and try to reach out on their basis to others, who are – and will most probably remain – different. Apart from the principle of willingness, this shows a strong feeling of pragmatism that is part of each political discourse as well. What is important is that they all share a goal of promoting friendly relations among nations and believe in the usefulness of a legal act that will support them in doing so.

Diplomacy is an ancient profession, which rests on tradition and experience, based on millennia old acceptance of the status of diplomatic agents, while their mission rests, in a broader sense, on main international legal documents discussing and defining their mission. And States obliged themselves voluntarily to take this into account and fol-

low it while pursuing friendly relations. Tradition, ethics and wisdom emerge as main philosophical aspects of diplomacy.

CLAUSE FOUR

“Realizing that 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,”

Friendly relations among nations manifest the ultimate goal of states’ discourse in international relations. Diplomats pursue the achievement of this goal on behalf of their states, while representing them, and in doing so they enjoy the ancient instrument of diplomatic immunity, status and privilege. States agree with this and accept it. With this Convention they intentionally and formally deliver it to diplomatic agents.

But most probably, pragmatism and realistic approach also guided States to include in a separate clause an explicit reference pointing that diplomats enjoy this ancient affordability for the purpose of their mission only, and not, eventually, for their personal benefit. This aspect of their work is there to ensure efficient performance of the functions of diplomatic missions. This is a clear demonstration of functionality that the Convention places at the very centre of the diplomatic profession.

One could claim that it paid off very well that there is a commonly shared and legally binding awareness of this enjoying status and all the related privileges, only with an aim to be able to perform duties without disturbances, efficiently and for the benefit of developing friendly relations among nations and for the management of relations among states, and other international actors. This is the ultimate diplomatic mission and everything what diplomats have, share and enjoy is focused on fulfilling this goal. Even more, one could even claim that diplomats have to use each and every opportunity to maintain, deepen and broaden friendly relations. Diplomatic invention, skillfulness and imagination are and should be endless in pursuing this goal.

It is important to point out as well that diplomats, when fulfilling this goal, get enriched and benefit from achieving their objective. This is the real benefit in diplomatic work that an individual dealing with it should enjoy. The benefit lies hidden in achieving one’s mission, in

deepening friendships and promoting them. This benefit outreaches any quasi benefit that diplomat would try to get by misusing the Convention.

CLAUSE FIVE

“Affirming that the rules of customary international law should continue to govern questions not expressly regulated by the provisions of the present Convention,”

After laying down the origin, principles and notion of diplomatic profession with a reference to the United Nations Charter and to this Convention, the authors pointed out in the last, the fifth clause, the matter of a future regulation of diplomatic relations. The approach followed is a routine one, that is not new in legal documents. What is, however, important here, is that States have agreed to leave it to the customary international law to govern any open issues that might arise in the future, after the adoption of the Diplomatic Convention, concerning the work of diplomats and diplomatic relations as a whole. States demonstrated obvious trust in customs, being codified as a huge legal area, which is also the most important source of diplomatic and consular law.

We do not know about everything the authors of the this Convention had in mind when offering this approach. But the document lasted for six decades without changes and is going to last for a certain, probably long, time as well. Trust that States invested in international customary law to govern any questions did prove as well deserved. Judging the whole period of time, one can easily witness huge structural changes of the international community, which, however, did not prevent the Diplomatic Convention from functioning. Nothing, that was provided by the Convention, although sometimes outdated influenced the practical efficiency of the Convention in regulating diplomatic relations.²⁰ Even some technological aspects (like the introduction of internet into diplomatic communication) that appeared in diplomatic practice, not mentioned or envisaged by this Convention, (could not have been, of course) did not influence either the practical efficiency of diplomatic relations. This is by no doubt a huge success, both in theory as well as in practice, for such a broadly used legal document.

²⁰ Like regulating communication between diplomatic mission in the receiving State with its government in the sending state by a wireless transmitter with the consent of the receiving State (Article 26/1.).

Deduction, as the main methodological approach in the preamble, ends with this clause. As we can see from its quotation, it is of a general nature, defining in advance, with a *cart blanche*, that each and every question that could arise in diplomatic practice, regardless of any concrete binding, should be governed by the rules of customary international law. One could claim that deduction serves well as a method of presenting, explaining and codifying the philosophy of the preamble. In the end, a general approach comes to value again, wrapping up the conceptualization of the Diplomatic Convention.

SOME OF THE MOST IMPORTANT FINDINGS

After this detailed, multilayered and interdisciplinary analysis of each clause and the preamble of the Diplomatic Convention as a whole we comment on their messages and telling.

The Convention, as said, is a legal document that codifies diplomatic and consular law. It defines the object (“what”) as well as interprets it (“what does this mean”) for concrete diplomatic (and consular) practice, but also tells why it is that way (like stemming from the rules of customary international law, law of treaties, customs, habits).

This legal document is to a high degree complemented by a diplomatic approach, mainly through flexibility of wording and provisions.²¹ Definitions, to be able to stand the test of time, should be general, and exact to the point at the same time, but also open at the edge, not closed for possible new topics that should be regulated; they should stay open in a certain way. One could claim the discussed Convention is that type of a document: it is legally binding, dry and formal, but also narrow and broad, obligatory and advising in text and style, but at the same time also flexible and nuanced. It is functional, rests on tradition, continuity and accumulation of experiences. It also shares ethics and nobility, putting friendly relations among nations as well as the maintenance of international peace and security in the first place. From these stems the *de facto* definition of diplomacy and the guiding principle for the work of diplomats: they enjoy their diplomatic status since ancient times to be able to perform efficiently their main task, i. e. representing their states.

21 But diplomatic flexibility is just a means of making obligation possible by offering a flexible and broad approach to find a way of materializing obligatory approach. This way could differ from circumstances to circumstances, but still remains the same as a rule. Basically, it doesn't matter when the issue comes to this end, sometimes it does not at all (on purpose because of delaying it or since it is not possible in the given moment), the rule remains as it is. The author of this paper can back up this with his broad diplomatic experience.

To fully comprehend the nature and the notion of the preamble, and with it also the whole Convention, one should have a careful and closer look at the sequence of the highlights from each clause. They follow like this: *recalling, having in mind, believing, realizing, and affirming*.

From one point of view, this sequel illustrates the way diplomacy works in the long run as a process. It advances, cumulates, and complements the understanding, effect and contextualization of the philosophy of the Convention; that is, the legal and diplomatic documents that paved the way for diplomacy as we have been understanding it for the last six decades, and will most probably continue to do so for the same period of time, if not longer.

From another point of view, this sequence offers an additional insight view into the structure of the preamble and with this also into its philosophy as well as into the way States approached it. We stated earlier, in this part of the paper, that the Diplomatic Convention introduces its content with the opening and closing sentence as well as with the preamble, in between, that consists of five clauses. A careful and closer observation would show that, also in the preamble as such, there are the opening and closing clauses and three in between that put forward a concrete substance.

States that are Parties to the discussed Convention firstly, in clause one, *recall* the historical tradition, origin and validity of the status of diplomatic agents. Then, the three consecutive clauses define this substance: *having in mind, believing, and realizing*. They inform the reader what it is all about, what are the main parameters of this Convention as a paramount document that crafts out, together with the Consular Convention, a diplomatic paradigm. And lastly, with the fifth clause, we learn what they *affirm*: the general rule of governing any other question that may be brought into the focus of the Diplomatic Convention.

THE PREAMBLE OF THE CONSULAR CONVENTION

GENERAL REMARKS ON THE CONSULAR CONVENTION

In this part of the paper we discuss the preamble of the Consular Convention, using the same approach and methods as we did in the previous part with the Diplomatic one. This means that discussion is short-

er and more concentrated, since we do not repeat all those parts of the text discussed that are equally applicable to both Conventions, but primarily point out the differences and their understanding as well as meaning. We present all of the clauses, case by case, and then comment and compare them with those from the Diplomatic Convention, hence pointing out the differences and similarities.

The preamble of this Convention is also brief and exact, describing, with primarily legal language that tries to encompass a broad understanding of consular relations, being part of diplomatic relations, their mission as well as the historical frame within which they were developed. It consists of six clauses (one more than the Diplomatic one) and two short, open sentences, the opening and the closing one. The former introduces, in the preamble, the philosophy of the Consular Convention and the latter introduces its content in the articles. Its philosophy could be understood as a concentrated, condensed and crystalized notion of the whole document. One could also claim that it introduces a kind of a mission for consuls, while the content is present from the listed articles that are very exact, precise and stick to the point that could also be understood as a kind of *acquis consulaire*.

The opening sentence “*The States Parties to the present Convention,*”²² informs the reader about the intentions of the states that are parties to this Convention, referring to the clauses of the preamble. The clauses that present ambitions of the Parties of the Convention are listed in the preamble. As said, we discuss them here primarily on a comparative basis, pointing out the specifics of doing consular business as a separate, but consistently complementary part of diplomatic business as a whole.

The closing sentence “*Have agreed as follows:*” directs the attention of the reader – after being acquainted with the preamble – to the content of the Consular Convention, being a concrete and an operational result stemming from the spirit of the preamble and presented with a clear, direct legal language. Hardly any diplomatic notion could be noticed, due to the different nature of diplomatic relations and consular relations in their daily practical implementation.

22 Italics also in this part of the paper are from the discussed Convention.

COMPARISON OF CLAUSES WITH THE PREAMBLE OF THE DIPLOMATIC CONVENTION

We firstly quote the clause discussed and then analyze and comment on it, on a comparative basis with those of the preamble of the Diplomatic Convention. Since we have already discussed the clauses of the preamble of the Diplomatic Convention, we will try not to repeat the same findings, but just refer to them.

CLAUSE ONE

“Recalling that consular relations have been established between peoples since ancient times,”

The main message of this clause is the same as in the Diplomatic Convention: consular relations have been established since ancient times, though not between peoples of all nations, but “between peoples”. The pure purpose of their establishment is being pointed out, but not their recognition as such. There is no mention of the status of consular officers either.

With a reference to the time of origin (ancient times), one should add that consular relations, i.e. consular protection started to blossom during the period of the Italian City States when Mediterranean witnessed highly dynamic trade activities.²³ Generally speaking, this clause points out that long ago, there existed a strong interest of peoples for their personal protection as well as for the protection of their goods when travelling outside from their communities.

CLAUSE TWO

“Having in mind the Purposes and Principles of the Charter of the United Nations concerning the sovereign equality of States, the maintenance of international peace and security, and the promotion of friendly relations among nations,”

This clause is a very repetition of the second clause from the preamble of the Diplomatic Convention. This simple statement contains deep messaging: above all, it points out that diplomatic relations and consular relations are part of the same diplomatic intercourse, area and ac-

²³ With a similar approach one could say that diplomatic relations started to blossom during the period of the Greek City States when war and peace dominated diplomatic agenda.

tivity. When speaking about diplomats and consuls, they belong to the same, diplomatic profession, only the implementation of their functions differs in practice. This is due to the difference between diplomatic and consular functions. This comes out of the different nature of diplomatic relations (representing states) and consular relations (provision of protection of interests), but on a general level, the profession is one and the same.

As the second clause in the preamble of the Diplomatic Convention defines diplomacy, as here repeated, it also *via facti* defines what consuls – as part of the diplomatic profession – do. Hence, this clause is a kind of a policy prelude to the third and fourth that define the relation between the two Conventions.

CLAUSE THREE

“Considering that the United Nations Conference on Diplomatic Intercourse and Immunities adopted the Vienna Convention on Diplomatic relations which was opened for signature on 18 April 1961,”

The importance of this clause lies in the fact that it recognizes the importance of the Diplomatic Convention for defining consular relations. It is the Diplomatic Convention that laid down the premises for a consequent defining of consular relations with similar approach and similar legal document. Therefore, this clause defines the interdependence between the two Conventions and the fact that the Consular one stems from the Diplomatic one. However, had not this been the case, also Diplomatic Convention itself would have provided the basis for the exercise of consular relations. Though, consular relations are defined via this way, presented and elaborated in a much more detailed, applicable and efficient way.

Nevertheless, this does not presuppose a subordinated relation between the two Conventions and areas. It is more of a horizontal, complementary relation. Additionally, the States Parties to the Diplomatic Convention, expressed their belief in the third clause that such a Convention would contribute to the development of friendly relations among nations, and this one, as a kind of policy and process follow-up, states the fact of adopting the Diplomatic Convention. This fact has practically been taken as a starting point for adoption of a similar convention that would regulate consular relations.

CLAUSE FOUR

“Believing that an international convention on consular relations, privileges and immunities would also contribute to the development of friendly relations among nations, irrespective of their differing constitutional and social systems,”

This clause repeats the same notion, content and understanding that have already been presented in the third clause of the Diplomatic Convention. With this, it strengthens our belief that the relation between the two Conventions is of a complementary nature. A special convention, dealing only with consular relations, privileges and immunities, would contribute – as the Diplomatic one – to the development of friendly relations among nations, the ultimate aim of the States Parties to both Conventions. And, again, also in this case with the same approach: irrespective of the existing differences in their constitutional and social systems. Though, it should be added that the frame and scope of diplomatic immunity is bigger than of the consular one. But the former is still broad enough to satisfy all the needs of a consular post and consular officers to efficiently perform their functions.

While discussing the fourth clause, we can already notice that both preambles share the same value approach (tradition, continuity, ethics) and methodology (deduction). Clauses number three and four, hence, round up the relation between the two Conventions and also point to the fact that the Consular one has one clause more in the preamble. This strengthens their complementarity and interdependence, but also supports the impression of legal and diplomatic round up of the two documents.

CLAUSE FIVE

“Realizing that the purpose of such privileges and immunities is not to benefit individuals but to ensure the efficient performance of functions by consular posts on behalf of their respective States,”

Again, we see the repetition of the notion from the Diplomatic Convention, though with some differences that refer to the general differences between both types of relations.

While following the same stream of thought, legal logic, and func-

tionality as well, we notice one of the main differences between the two types of relations. Diplomatic agents represent their states, while consular officers perform consular functions on behalf of their states. Representation, as the first diplomatic function, is not also a consular function.²⁴ This could be, on a general level, described as the main difference between the two types of relations.

And, if we repeat after the discussion of clause four of the preamble of the Diplomatic Convention, what could only at first glance seem a bit idealistic, a devoted and engaged fulfillment of consular functions can bring by itself a huge personal benefit to a consular officer. It is the satisfaction of a person in need that reflects this benefit as a moral, ethical category. It remains with a consul for the rest of his/her life. Protection of interests of bodies of private and corporate law of the Sending State in the Receiving State offers a wide range of activities that, when implemented well, concisely and, in due time, exercise what is needed. This is important for a concrete person in the very moment and affects his/her destiny in a single decision of a consul. With the difference to this, diplomatic affairs are often impersonal, abstract and vague. They hardly affect destiny of a single person with a concrete diplomatic move or gesture, since they focus on management of relations between states what is always a process.

CLAUSE SIX

“Affirming that the rules of customary international law continue to govern matters not expressly regulated by the provisions of the present Convention,”

This clause also represents another repetition of a notion that the Diplomatic Convention already brought about for the whole area of diplomacy as a profession and activity. The affirmative nature of customary international law stands out obviously and generally.

There is, though, one terminological difference. This clause uses the term “matters” and the last one in the preamble of the Diplomatic Convention uses the term “questions”. The difference stems from different nature of the types of relations that was already discussed. However,

²⁴ Compare article number 3 of the Diplomatic Convention and the article number 5 of the Consular Convention respectively. However, consular officers are allowed to perform diplomatic functions under certain conditions: if there exist no diplomatic mission of the sending State in the Receiving States and if the Receiving State agrees with such an act (compare article 17 of the Consular Convention).

the trust invested in the rules of customary international law, also in this Convention, is definite and given here as well in advance.

SOME OF THE MOST IMPORTANT AND COMPARATIVE FINDINGS

As it is the case with the Diplomatic Convention, this Convention is also a legal document that codifies diplomatic and consular law; the former primarily as a frame and the latter in its concrete substance. It defines the object (“what”) as well as interprets it (“what does this mean”) for concrete consular practice, but also tells why it is that way (like stemming from the rules of customary international law, law of treaties, customs, habits as well as with a strong explicit and implicit reference to the Diplomatic Convention).

While the preamble shares to certain extent some aspects of diplomatic flexibility, this is not the rule of the document as a whole. Consular relations and their exercise mean an exact, precise and legally supported endeavor, where flexibility remains fixed within the limits of a legal act, regardless of the fact how broad these limits are and how much of a maneuver space they offer to the consular officer exercising these functions.²⁵

This Convention is also primarily legally binding, dry and formal, but also narrow and broad, obligatory and advisory in text and style; in some aspects, it is also flexible and nuanced, though this does not stand out as it does in the Diplomatic one. But it is functional, rests on tradition, continuity and accumulation of experiences. It shares ethics and nobility, putting friendly relations among nations and the maintenance of international peace and security in the first place. Also consular posts and officers enjoy their privileges and immunities for the efficient performance of consular functions on behalf of their states (although not to such extent as diplomatic agents).

If we try to have a careful and closer look at the sequence of the highlights from each clause, we would see the following order of appearance (in six key words, following the six clauses): *recalling, having in mind, considering, believing, realizing, and affirming.*

²⁵ But still this offers enough possibility to the consular officer to be flexible within the limits of the relevant law referring to each person (citizen of the Sending or of the Receiving State, citizen of a third state or being stateless) seeking service from him/her. The author of this paper can back up this with his broad consular experience.

Consular relations could be to a certain point, and in the long run, understood as a process, but more on a general level. They advance, cumulate, and complement the understanding, effect and contextualization of the philosophy of the preambles of both Conventions and of the Consular Convention; that is, the legal documents that paved the way for consular relations as we have understood them for the last six decades, and will most probably continue to do so for the same period of time, if not longer. One difference with the diplomatic relations would be the fact that globalization offers unlimited possibilities to travel, which creates more need for consular protection. It has not been put under question as diplomacy is from time to time because of the another effect of the globalization: the advanced development of media and transport technology sometimes create an impression that diplomacy is not needed anymore, since that technology can compensate diplomatic work (provision of information and maintaining contacts).

It is also with this sequence that it offers an additional, insight view in the structure of the preamble and with this also in its philosophy, as well as in the way States approached it. We stated that the Consular Convention also introduces its content with the opening and closing sentences as well as with the preamble in between that consists of six clauses. A careful and closer observation would show that also in the preamble as such there is the opening and closing clause and four in between that put forward a concrete substance (as already said before, one clause more than in the preamble of the Diplomatic Convention).

States that are Parties to the discussed Convention firstly, in clause one, *recall* the historical tradition, origin and validity of consular relations. Furthermore, the following four consecutive clauses define this substance: *having in mind*, *considering*, *believing*, and *realizing*. They inform the reader what it is all about, what are the main parameters of this Convention as a main document that crafts out the understanding of consular relations, as well as the content and the exercise of protection of interests, all understood as a part of the diplomatic paradigm as a whole, though not directly indicated as such. And lastly, in the sixth clause, we learn what they *affirm*: the general rule of governing any other questions that may be brought into the focus of the Convention.

Overall, the structure of both preambles follows the same approach, with a difference only in the number of clauses: six, i.e. one more, in

the case of the preamble of the Consular Convention. It points out a substantial and topical relation (complementarity above all) with the preamble of the Diplomatic Convention. This would as well mean that one should speak about the philosophy of both preambles as a whole. This philosophy is structured, consistent and presents an important aspect for understanding both Conventions as a fundament of diplomatic and consular law and its codification.

CONCLUSION

Our research interest in this paper focused on the preambles of the Vienna Convention on Diplomatic Relations and the Vienna Convention on Consular Relations. Both preambles present substantial, topical and areal introduction to both Conventions and their regulation of the field concerned.

With the opening and closing sentences as well as with the clauses in between (five in the Diplomatic Convention and six in the Consular one), both preambles elaborate the frame of the profession of diplomacy (with protection of interests, i.e. consular affairs as a complementary part of diplomacy) and its multilayered understanding, which rests on tradition, continuity and functionality. In addition to this, both preambles – apart from being a typical introduction to two of the most known international legal conventions – express ethics, moral standing, and nobleness. They point out the maintenance of international peace and security as well as the promotion of friendly relations among nations as their ultimate goal and mission. States that are Parties to both Conventions obliged themselves voluntarily to follow and respect them, regardless of differences between them as far as their constitutional and social systems are concerned.

It should also be pointed out that strong attention has been payed to the power of customary international law, which should govern all future questions or matters that are not regulated in the Conventions. With this affirmative approach, States expressed the important level of trust they placed in the rule of the law in advance, without exactly knowing what could happen. Although being a rather standard clause in many legal documents, this investment in trust in such an unpredictable area as international relations, adds significantly to the broad understanding of the notion of both preambles and Conventions. All

this is a result of a millennia long development of diplomacy that was codified six decades ago and is still in force and acceptable, in spite of huge structural changes that the international community has been facing throughout this time.

We argue that this wide-ranging set of characteristics that has a strong interdisciplinary nature, stemming primarily from international law (above all from the customary one), history, philosophy, diplomacy, ethics, sociology and psychology, presents a broad, general and defining understanding of diplomacy as a profession, activity and mission. From this complex approach, the philosophy of both Conventions could be contemplated as an advanced notion, cemented in both preambles. This is noticeable as a structural result that is elaborated and crafted out through both preambles and encompasses, on a general level, the undertaking of both Conventions and the mission of diplomatic work, while their concrete content is a matter of primarily legal explanation through a series of articles.

To wrap up, the above presented and discussed philosophy of the Conventions adds, to our strong belief, to the further and deeper understanding of both Vienna Conventions. They are far from being only two internationally renowned and respected legal acts that regulate diplomatic work in full. They primarily lay down a fundamental, cross referential and structurally advanced understanding of international intercourse that has a clear philosophical dimension, with diplomacy at its core.

This reasoning points out a demand for an interdisciplinary and structurally complex research, as well as understanding of diplomacy as one of the oldest professions with huge accumulation of tradition, continuity and functionality and flexibility. Therefore, this ancient instrument of regulating relations among states and promoting friendly relations among nations cannot function without its backing on ethics and trust, being the essential parts of both preambles. It is only the philosophical dimension that can encompass this substantively comprehensive approach and contemplation.

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TREATIES

Vienna Convention on Diplomatic Relations

http://untreaty.un.org/ilc/texts/instruments/english/conventions/9_1_1961.pdf (18.12.2020)

Vienna Convention on Consular Relations

http://untreaty.un.org/ilc/texts/instruments/english/conventions/9_2_1963.pdf (18.12.2020)