

## DIPLOMATIC LAW

## Contents

### CHAPTER I

<b>Prolegomene .....</b>	<b>9</b>
1. The state in Antiquity .....	9
2. The territory in the Middle Ages .....	14
3. The formation of national states .....	16

### CHAPTER II

<b>The state as a higher form of socio-political organization .....</b>	<b>19</b>
1. Theories that led to the grounding of the politico-legal state concept.....	19
2. The concept of statehood.....	25
3. Ways of lawful modifications of a state's territory .....	33

### CHAPTER III

<b>The population as a constituent of the state .....</b>	<b>39</b>
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### CHAPTER IV

<b>State functions.....</b>	<b>48</b>
1. State - higher form of social organization .....	48
2. Internal functions of the state .....	49
3. External functions of the state .....	51

### CHAPTER V

<b>Political conditions of state existence. State power .....</b>	<b>53</b>
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### CHAPTER VI

<b>Principles of Public International Law governing the formation of states and characteristic features.....</b>	<b>60</b>
1. General considerations .....	60
2. The principle of sovereignty. Sovereign equality of states .....	64
3. The principle of equal rights of peoples and the right to dispose of themselves .....	71

### CHAPTER VII

<b>Concept, definition and characteristics of diplomacy .....</b>	<b>80</b>
1. The concept of diplomacy. ....	80
2. The definition of diplomacy .....	81

## CHAPTER VIII

<b>Diplomatic law as a branch of public international law (concept, definition and characteristics).....</b>	<b>83</b>
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## CHAPTER IX

<b>Diplomatic law sources.....</b>	<b>85</b>
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## CHAPTER X

<b>Diplomatic relations.....</b>	<b>91</b>
1. The notion of diplomatic relations .....	91
2. Establishing diplomatic relations .....	92
3. Termination of diplomatic relations .....	95
4. The suspension of diplomatic relations .....	102
5. Legal consequences of breaking and suspending diplomatic relations ..	104
6. Representation of states interests.....	107

## CHAPTER XI

<b>Diplomatic missions .....</b>	<b>111</b>
1. General considerations .....	111
2. Classification of diplomatic missions.....	115
3. Structure and organization of the diplomatic mission .....	120

## CHAPTER XII

<b>Establishment and termination of a diplomatic mission .....</b>	<b>124</b>
1. Conditions of establishing a diplomatic mission.....	124
2. Transformation, suspension and termination of diplomatic missions ....	129

## CHAPTER XIII

<b>Members of the diplomatic mission .....</b>	<b>133</b>
1. Definition and categories of members of the mission .....	133
2. The head of mission .....	134
3. The staff of the diplomatic mission .....	139
4. Diplomatic corps .....	145
5. Appointment of diplomatic mission members.....	148
6. Termination of a diplomatic mission member function .....	161
8. Multiple accreditation.....	165

## CHAPTER XIV

<b>The functions of a diplomatic mission.....</b>	<b>168</b>
1. The concept, legal content and definition of the diplomatic functions...	168
2. Representation function.....	169
3. The negotiation function.....	170
4. Observation and information function.....	172
5. International cooperation.....	173
6. The function of protecting the interests of the sending state and its citizens.....	175

<b>CHAPTER XV</b>	
<b>Activity of the diplomatic mission .....</b>	<b>179</b>
<b>CHAPTER XVI</b>	
<b>Diplomatic immunities, privileges and facilities .....</b>	<b>186</b>
1. Notion, characterization, definition of diplomatic immunities, privileges and facilities .....	180
2. The theoretical foundation of granting diplomatic immunities, privileges and facilities.....	182
3. Jurisdictional immunity .....	191
4. Inviolability. General considerations.....	204
5. The inviolability of a diplomatic agent .....	211
6. Privileges of the diplomatic mission and its staff.....	214
7. The categories of persons enjoying a diplomatic status .....	220
<b>CHAPTER XVII</b>	
<b>Special missions as a form of exercise of the diplomatic activity.....</b>	<b>225</b>
1. General considerations. ....	225
2. The legal basis of diplomacy by special missions.....	225
3. Categories of special missions.....	226
<b>CHAPTER XVIII</b>	
<b>Legal framework of special missions .....</b>	<b>229</b>
1. The concept and features of a special mission .....	229
2. The terms of reference of a diplomatic mission .....	230
3. The functions / tasks of a special mission .....	230
4. Members of the special mission .....	231
5. Organisational aspects considered for the special mission.....	232
6. The special mission's headquarters .....	232
7. Rules of precedence.....	232
8. Diplomatic status of the special mission and its members .....	233
<b>CHAPTER XIX</b>	
<b>State bodies with responsibilities for external relations.....</b>	<b>234</b>
1. Head of state .....	234
2. Ministry of Foreign Affairs .....	235
<b>CHAPTER XX</b>	
<b>Multilateral diplomacy.....</b>	<b>238</b>
1. General considerations .....	238
2. Regulations within the multilateral diplomatic activity. ....	239
3. Subjects of multilateral diplomacy .....	240
4. International conferences.....	242
5. International organizations .....	249
<b>Bibliografie.....</b>	<b>269</b>

## CHAPTER I

### Prolegomene

Since antiquity, the power of law was treated as a command and, therefore, was enacted to prohibit, permit or punish, thereby regulating the life and activity in a community.

In this sense, there can be mentioned Seneca's opinion that said "The laws, is said, are not making us behave properly. And what else are they than advice blended with threats? First of all they do not convince, because they include threats, while advice do not compel anyone, but persuade him. Then, laws stop crime, while precepts urge to the fulfillment of debt (...). In this matter, I differ from Posidonius<sup>1</sup> who says, 'I do not come to terms with the fact that to the laws of Platon there were added also principles, because the law must be made with a voice coming from heaven to command, not to stand in question (...). However, they are useful and you will see that cities that have real bad laws, have bad habits<sup>2</sup>."

#### 1. The state in Antiquity

Historical evidence of the earliest forms of state organization are attested since antiquity. Thus, according to Cicero's allegations, the territory chosen by Romulus and which he defended was exceptional. The relief contained tuff hills<sup>3</sup> with steep slopes on all sides, surrounded by damp

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<sup>1</sup> Posidonius din Apameia – philosopher, researcher of the nation, etc. established in the Rhodos islands (cca 135-31 î.Hr.).

<sup>2</sup> *Epistulae ad Lucillum (Scrisorile către Lucillius)* – this volumen does not contain identification elements regarding the year of appearance.

<sup>3</sup> Rock formed by the accumulation and consolidation of ash, sand etc. from volcanic eruptions.

ravines. *Romulus chose a place rich in water sources and salubrious, although the region was haunted by disease, because the hills here..., winds and shading valleys*<sup>4</sup>.

Relevant to more accurately understand the link established between man and nature since ancient times, between the community and the place he lived in, is the legend of Romulus and Remus, descendants of Enei and his Ascanius, whom were originally from Alba. Their grandfather, Numitor, was deposed by his brother, then removed from succession his niece Rhea Silvia, restraining her to become western. However, Mars united before God with Rhea Silvia, and she gave birth to the twins, whom Amulius abandoned on the Tiber water. The two children did not die because they were rescued by a she-wolf, which took them to the Lupercalia cave, where she nursed them. From here they were taken by shepherds, Faustulus and Larentia, who have raised them in a hut, later called Romuli home. When they reached adolescence, the twins took revenge on Amulius - killed him - thus rendering Alba to Numitor. Afterward, the two young men started viewing auguries and started confident the foundation of Rome.

Every legend has its degree of fiction, so researchers in the late XVI appreciated it strictly as an information that lacked sense. It seems that the tale of the legend of founding Rome was not seized by those who mocked it in the Middle Ages and the Renaissance. For this reason, the legend was not considered as having the same level as a historical witness, Louis de Beaufort<sup>5</sup> considering it as part of the "fabulous traditions".

The same legend viewed through another prism, is a story told by the ancients, that has been reformulated for political purposes by the Romans in order to show the Greeks, who dominated that era, that the Romans have a civilization at least as old as theirs. Thus, this legend was formed clearly as a propaganda tool of the time, with the intention to enhance the nationalist sport of Romans.

With all these mentioned research, the reality of the Early Rome remained as obscure. Studies undertaken have allowed the establishment of clear elements, like the fact that the roman site was inhabited long before the foundation of the city and is actually a transition zone. Except this, there is

<sup>4</sup> Cicero (*Despre stat*, II, 6, 11).

<sup>5</sup> Dissertation on the uncertainty of the first five centuries of Roman history (Utrecht, 1738).

the view that the city would have been established by grouping different villages installed on hills, and by the expansive development of one of them, that dominated the other (a process known as *sinoicism*).

As a community organization, the Romans embedded the simplicity and hardness of peasants, where the father exercised a full authority, organizational form preserved until the third century. Later, the Romans had an increasing evolution, developing in all fields, especially in the military one. This has led Rome to extend over many centuries, in several stages, local, regional, mediterranean and continental.

In this context, relying on an equipped and well organized army, whose basic unit was the legion, Rome subjected the whole Italy, and then the Mediterranean sea, Greece and Minor Asia. Thus, Rome became the capital of a great empire and the heart of a civilization enriched by the values of Hellenism and oriental culture.

In forming its structure, the Roman Empire took advantage of the mistakes of opponents, winning skillfully from its geographical position, manipulating ethnic affinities. Thus, Rome early adopted the federalist principle and through a gradual assimilation, stretching the limits of human communities, caused a national consciousness and a sense of order known in history as the Roman order. In the research studies of this Roman social order, it is stated that "the duration of one year of functions was offset by the permanence of the ruling families, the diversity of characters, the reunion in the same hands of civil power and military power; knights commercially oriented, senators oriented towards earth - these two forces crossed paths and could meet consuls at crossroads<sup>6</sup>".

In general, we find even today many of the principles of Roman law, even if the decay of the Roman Empire from the II<sup>nd</sup> century until the early fourth century AD was accelerated by the migrations determined by the construction of the Chinese Wall, which prevented the eastward expansion of Central Asian tribes, forcing them to turn to the west.

It should be noted that not only in the II-IV<sup>th</sup> BC centuries people migrated, but since their appearance as a species. Differentiation, underlying the ethnic identity of each group is the result of the separate development of

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<sup>6</sup> Raymond Blach, Jean Cousin, *Roma și destinul ei*.

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different human communities that have migrated from a common point of origin. This separation between groups of people was not complete even in the Stone Age, as migrations have resulted from a full and interesting type of relatedness between isolated groups.

Migration, which essentially means the movement of peoples from one region to another in order to settle in the new place for a longer period of time or even permanently, helped the interpenetration and diffusion of cultures, understanding by these the tools, habits and forms of social organization. This explains the acceleration of the development of current civilizations, which likely would be deployed much slower if there would not have produced the interpenetration of civilizations and we rely on the same reasoning when models of antiquity state organization were the inspiration for modern society.

Migration represented, for many of the peoples of ancient history, a way of life, perpetuated throughout the centuries until the appearance of the first statal entities in the Middle Ages.

The era of the great migrations was determined by a desire of human societies to leave a region due to unfavourable conditions in the settled environment or due to the desire to live in prosperous places or to get rich, despoiling rich areas.

Historians have estimated that sedentary people tend to stay in places where they were used and only the deterioration of environmental conditions led to their migration.

Thus, there may be mentioned the sudden change of climate conditions causing the search of warmer or cooler places, volcanic eruptions or flooding of land surfaces which cannot be inhabited, periodic fluctuations of rainfall etc.

Except for cases caused by environmental conditions, much more common are the social situations that determine population migrations. In this context there may be mentioned the insufficient food reserves due to the increasing number of inhabitants, defeat in war, the desire for material gain which causes the invasion of more prosperous cities (such as the Ottoman tribes which invaded West Asia), finding religious and political freedom (Huguenots, Jews, Puritans and other groups that have migrated to North America).

Migration routes could not be fixed because they were influenced both by the tendency of groups to find an environment similar to that where they

left from and by the existence of natural barriers that hinder the advancement, such as mountain ranges, seas, rivers or desertified areas. This explains why certain areas of the steppe, polar tundra or forest stretching from Central Europe to the Pacific Ocean, were reasons for the migration for human communities.

Migrations from tropical to temperate areas or vice versa have been very rare.

The Sahara Desert in North Africa has divided the African peoples from the Mediterranean ones and prevented the Egyptians mixture with other cultures. Another example is the Himalayas in South Asia, which prevented the closeness of the peoples of India, except for its eastern and southern borders. To overcome these difficulties, the traditional migratory groups chose the safe mountain passes and certain straits.

Exemplifying the above, we just mention the Sinai peninsula in north-eastern Egypt, linked to the east of Arabia, uniting Africa and Asia, Bosphorus, which linked Europe to the Middle East and the valley between the mountains of Altay and the mountain range Tian Shan in Central Asia, ensuring the route through which the peoples of Central Asia have penetrated the west.

The migration phenomenon had several consequences, including the stimulation of other migrations by replacing some nations, reducing the number of people who made up migrating groups – because of shortages and wars - changing physical traits through the genetic mixture of the groups encountered, changes in language, culture and customs of other nations.

The main source of nomadic hordes was constituted by Central Asia, from where there started successive waves of migrants to eastern China, towards south into India and westwards into Europe. The emergence in the Central Asia of mongols in the third century AD, and the pressure on the Huns, determined them to invade China and to overcome the Urals, continuing their foray into the Volga River.

This movement led the Goths to pass in south-western Russia to the territories occupied by the Roman Empire, and they in turn have pushed the Germanic vandals into Gaul and Spain, somewhere at the beginning of the fifth century.

The Visigoths moved westward, through Italy, Gaul and Spain, managing to push the vandals in North Africa. Ostrogoths departed, after the

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Visigoths, in Italy and settled there.

On the other hand, the Huns that began the migratory movement eight centuries earlier, after being expelled by the Mongols, have followed the Goths in Europe, settling in the Hungary today, in the mid-fifth century. The Mongols were the ones who forced the departure of a large numbers of Slavs to eastern Europe.

Between centuries III and V, after the invasion of the Huns, there was installed a military and political stability, as the Chinese (in the east) and European peoples (in the West) took control of nomadic invasions.

Between centuries V and VI, Angles, Saxons pushed by the Visigoths sailed from northwest Germany and invaded southern Britain, their movement being performed through the sea area comprising Scandinavia and territories bordering the North Sea and the Baltic Sea.

Following the migratory invasions for centuries, the situation has undergone a process of stabilization and crystallization of nations, as well as a trend of creating more states starting even from the Middle Ages.

The period of great geographical discoveries triggered the colonization of new territories in the new world and, therefore, triggered another wave of mutations of human communities, but this time much reduced in number and intensity.

## 2. The territory in the Middle Ages

Trying a reference to the classifications of borders in various periods of history, in the Middle Ages there can be highlighted three types of borders that were imposed during the great geographical discoveries of centuries XV and XVI, after the famous expeditions conducted by Christopher Columbus, Vasco da Gama and Magellan Diaz, and after taking possession, as colonies and protectorates, by the Great Powers of the time, of vast areas of the territories newly discovered: fictional border, astronomical border and geometric border .

*The fictional border* is an abstract line marked on the map and sometimes marked in the field to determine the sovereignty of states over some discovered or unknown lands, but also over assumed existing territories. At the same time, they have arisen the natural and geometric borders, exclusively conditioned by the particularities of the physical environment.