

CHAPTER 11

INSTITUTIONAL BACKGROUND AND TYPICAL FORMS OF BILATERAL INTERSTATE RELATIONS

This textbook mostly concentrates on the issues of global international relations and multilateral cooperation, especially in the institutionalized form of international organizations. Nevertheless, it is important to mention that for several thousands of years the relationship between states almost exclusively meant **bilateral relations**, which are still significant today. Hungary has embassies in 87 states and consular relations with 127 states. Furthermore, Hungary has concluded approximately 1750 bilateral treaties with almost 130 states. Thus, it is visible that a huge mass of international norms exists in this field.

Bilateral relations are typically created between states when they have a common interest. Naturally states which are geographically close have numerous 'common matters', from the regulation of border control, through criminal legal assistance to cultural and scientific cooperation. Hungary for instance, has the most bilateral treaties with Austria, partly due to the common history, and partly to neighborly relations. Two countries cannot only be connected to each other if their relationship is friendly, though this is usually essential for the establishment of relations. However, it was often the case in history that although the relationship between two states had become severed, they did not terminate diplomatic or other contractual relationship between themselves.

As it could be read in the chapters describing the historical part, the bilateral relations of states had already started in Ancient times, and permanent envoys have already been sent in the Middle Ages. The provisions of the peace treaties of Westphalia and of the Congress of Vienna show that by then European states had deep and complex bilateral diplomatic relations among them. Until the mid-20th century customary international law contained these rules, when, in 1961, states adopted the **Vienna Convention on Diplomatic Relations**, which codified them.¹ This convention fundamentally defines diplomatic relations to this day, both at a bilateral and at a multilateral level.

11.1. THE INSTITUTIONAL BACKGROUND OF BILATERAL RELATIONS

Typically, several state organs can participate in defining state foreign policy aims and directions and in managing the tasks related to the administration of foreign affairs. In Hungary, the Government, the Parliament, the Ministry of Foreign Affairs and even the President of the Republic (head of state) has a role in this. It is not only within the state where it is worth establishing the proper institutions and division of competences for the administration of bilateral relations, but also in the other state concerned. The most important form of this is the establishment of a diplomatic representation (usually in the form of embassy).

The **President** (head of state) represents Hungary, and shall have the power to recognize the binding force of an international treaty based on parliamentary authorization to do so. The head of state does normally also have tasks in connection with the promulgation/transformation of concluded treaties into Hungarian law, and he sends and receives ambassadors and envoys.

¹ Vienna Convention on Diplomatic Relations, 1961.

The **National Assembly** (parliament) also has tasks relating to the management and administration of bilateral and other international relations. It can also take part in defining foreign policy aims and principles. The parliament participates in the conclusion of treaties, can provide mandate for their conclusion (i.e. to the President as head of state). Furthermore, it also has a role in the promulgation/transformation of treaties into Hungarian law.²

The parliament itself can have foreign relations, with the parliaments of other states, and they are also entitled to deal with foreign policy issues. In Hungary, this is primarily done in the parliamentary **Committee on Foreign Affairs**, which e.g. regularly holds hearings where the Minister of Foreign Affairs summarizes his governmental work. The Committee on Foreign Affairs regularly discusses current questions of foreign policy, and to these debates not only the heads of the Ministry of Foreign Affairs are invited, but also the representatives of other state organs, institutions, as well as independent experts. A widely-followed part of their work is the hearing of ambassadors prior to their appointment. Another important field of their operation is parliamentary diplomacy. They keep close ties with the ambassadors accredited to Hungary, and regularly receive parliamentary and other delegations from abroad. The representatives of the Committee on Foreign Affairs, with the permission of the Speaker of the National Assembly, can participate in negotiations abroad in the frame of bilateral relations, as well as the leaders and members of the Committee are frequent guests at professional conferences both in Hungary and abroad. A close and regular connection has been established with the partner committees of the Visegrad countries.

The foreign policy activity of the state is primarily defined by the head of the government and the **minister of foreign affairs**. The Ministry of Foreign Affairs is responsible for the worldwide representation of national interests, for the achievement of state foreign policy goals, and for the establishment and maintenance of international relations. The minister of foreign affairs harmonizes the achievement of state foreign affairs and foreign economic interests, and coordinates the activity of other members of the Government in relation to their activities concerning foreign policy and foreign economic interests.

The minister collects information on the state of international relations, the international situation, and informs the members of the Government about these. The Ministry of Foreign Affairs directs the foreign (diplomatic and consular) missions, and the above-mentioned information collection is primarily conducted through them.

A significant task of the Hungarian Ministry of Foreign Affairs is the formation of European Union policy and the representation of the state interest in the EU. The Ministry of Foreign Affairs forms the position of the Government on national security issues, especially regarding Hungary's NATO membership.

The ministry prepares and takes care of the treaties to-be-concluded or already concluded by the Hungarian state. Recommendation as to the conclusion of treaties are made by the minister, who also directs the procedure of conclusion, and supervises to the execution of treaties.

The minister of foreign affairs cooperates with the other ministers in those questions, which have an international aspect – e.g. with the ministers of finance, trade, economy – about investments, trade agreements and about the international development policy.

The minister, through the Ministry of Foreign Affairs, assumes organizational, diplomatic and protocol tasks in relation to the visit of heads of states and/or governments, as well as regarding the organization of intergovernmental conferences.³

² For more detail see Act L of 2005 on the procedure regarding international treaties.

³ For more detail see Government Decree 94/2018. (V. 22.) on the powers and functions of the members of the Government.

The minister shall propose the recognition of newly created states, and the establishment, suspension, restoration or termination of diplomatic and consular relations. It recommends the establishment or termination of diplomatic or consular representations. It establishes and terminates honorary consular representations.

In the management of Hungary's foreign policy more than 1,500 persons participate, approximately 900-1,000 work in the ministry and 500-600 in the diplomatic and consular missions. The minister of foreign affairs proposes the accreditation and recall of the heads of foreign missions. It appoints the head of the honorary consular mission and decides on the revocation of such appointment. The minister shall also appoint diplomatic and consular staff.

Main tasks of the minister of foreign affairs

- definition of foreign policy goals;
- worldwide representation of national interest;
- formation and coordination of international relations;
- collection of information on the state of international relations, the international situation, and information of the members of the Government about these;
- direction of Hungary's representations abroad;
- representation of Hungary in international organizations;
- participation in the conclusion of treaties;
- harmonization and coordination of the activity of other members of the Government in relation to issues having an international aspect;
- recommendation for the recognition of newly created states, and the establishment, suspension, restoration or termination of diplomatic and consular relations.

The main tasks of the **diplomatic mission** are the representation of the sending state in the receiving state; the protection of the interests of the sending state in the receiving state; negotiation with the Government of the receiving state; ascertaining by all lawful means the conditions and developments in the receiving state and reporting about it to the sending state; and the promotion of friendly relations and the development of economic, cultural and scientific relations.⁴ Naturally, these tasks can only be executed by a person who is accepted by the Government of the receiving state, and they shall have the right to deny the acceptance of the accreditation of the proposed diplomat, as well as to subsequently declare the person '*persona non grata*'. The improvement of bilateral relations is not possible without trust toward the diplomat and mutual respect. Ambassadors are the only persons doing diplomatic work. Typically, they have a second in command, who is called deputy chief of mission. The members of the staff can have different tasks and titles/names, thus one can hear about different attachés, like military attaché or cultural attaché. The work of the diplomats is aided by the administrative and technical staff. Based on this, the headcount of a diplomatic mission can vary, as it is greatly influenced by the sending state's financial possibilities and prestige. Traditionally, big states maintain big diplomatic missions even in such states which are not their most important partners. Thus, approximately 50 people work e.g. in both the American and Russian embassies in Budapest. (The USA has more than 11 thousand diplomats present in 190 states of the world.⁵)

Consular missions have been established to protect the citizens of the sending state. Thus, the protection of the interests of Hungarian citizens abroad is ensured primarily by the consuls. Naturally, if it is necessary the diplomatic mission can also act in the interest of its citizens, but this is usually only typical when there is no consular mission in a given state. A sending state can have only one

⁴ Vienna Convention on Diplomatic Relations, 1961, Art. 3.

⁵ ROBERTS 2013.

diplomatic mission in a receiving state, which is typically seated in the capital city, to be ‘close to the fire’. Contrary to this, a sending state can have multiple consular missions in the receiving state, and they can be seated in any of the cities. Usually consular missions are in those cities, where the presence and activity of the sending state’s citizens are significant. The embassy of Hungary in Washington, for instance, performs consular tasks as well, besides which there are three more consulates general in the USA: in New York, Los Angeles, and Chicago. Besides the official and professional consulates, the state can appoint honorary consuls as well. These persons typically have a good personal relationship with the sending state, they live in the territory of the receiving state, and thus they can assist the citizens of the sending state, supplementing the work of the professional consuls. In the USA, e.g., besides the three consulates general 19 honorary consuls work, in such cities as Atlanta, Boston, Denver, Honolulu, Houston, Miami or New Orleans. Similarly, it can be mentioned, that the Romanian state has a consulate general in Szeged, and six other states have honorary consuls: France, Finland, Israel, Italy, Austria and Serbia.

The tasks of the consul can be very diverse. The 1963 Vienna Convention on Consular Relations lists the protection of the interests of the receiving state in the sending state and of its nationals, both individuals and corporate bodies, as consular functions. It is also the task of the consul to further develop the commercial, economic, cultural and scientific relations between the two states and to gather information and to report about these to the sending state. The consul also has administrative tasks, such as issuing passports and travel documents, e.g. visas or appropriate documents to persons wishing to travel to the sending state. It helps and assists the nationals of the sending state (e.g. if their official documents are lost or if their money is stolen, or if they suffer an accident), as well as it can perform public notary and civil registrar functions. The consul can represent and arrange appropriate representation for nationals of the sending state before the tribunals and other authorities of the receiving state.⁶

Main tasks of the diplomatic mission

- representation of the sending state in the receiving state;
- protection of the interests of the sending state in the receiving state;
- negotiation with the Government of the receiving state;
- getting information, by all lawful means, on the conditions and developments in the receiving state and reporting about it to the sending state;
- promotion of friendly relations and the development of economic, cultural and scientific relations.

Main tasks of the consular mission

- protection of the interests of the receiving state in the sending state and of its nationals, both individuals and corporate bodies;
- furthering the development of commercial, economic, cultural and scientific relations between the two states and gathering information as well as reporting to the sending state about the above;
- issuing passports and travel documents, e.g. visas or appropriate documents to persons wishing to travel to the sending state;
- helping and assisting the nationals of the sending state;
- performance of public notary and civil registrar functions; representation and arrangement for appropriate representation for nationals of the sending state before the tribunals and other authorities of the receiving state.

⁶ Vienna Convention on Consular Relations, 1963, Art. 5.

Besides diplomatic and consular representations, states frequently establish **offices** to enhance trade and cultural relations on the territory of certain states. The Balassi Institute works worldwide in 24 cities (e.g. in New York, Paris, London, Rome, Beijing, Istanbul and Delhi) to develop closer relations and to promote Hungarian culture, education and science. Hungarian Tourism Offices have been established in 23 countries for the promotion of tourism.

11.2. TYPICAL AREAS OF BILATERAL RELATIONS

In previous centuries, those areas, in which states wish to cooperate with each other have become wider and wider. The classical spheres of bilateral cooperation were trade and military assistance. Compared to this, several dozens of cooperation areas can be mentioned at the beginning of the 21st century in addition to the above.

Treaties of **good neighborliness and friendship** typically create the consensus necessary between the two states and constitute a foundation for further joint endeavors. Commerce between the two states and economic investment directed into each other's territory are promoted thereby.

Besides economic and commercial relations states establish cooperation in **education, culture, science, technology, communication and transportation**. They assist their citizens in participating in educational programs in the other state, they support the organization of joint cultural events, and participation in scientific and research projects, as well as joint developments of the transportation system important for both, e.g. to build a railway-line together. They may also conclude agreements to start scheduled flights between them.

Neighboring countries shall agree on the order of the **border** between them, and about the locations of land and water border-crossings. Several further questions can arise with respect to the border between them, e.g. shipping and fishing in the frontier-river, the use of its water for irrigation, or building a power plant on it. It is also useful to decide regarding the common border how they can cooperate in the prevention of transborder criminal activities as cooperation against transnational crime is not only important for neighboring states. The institutions of mutual assistance in criminal matters and extradition are old territories of bilateral cooperation. (For more detail, see Chapter 13.)

Besides cooperation in the field of criminal law, **mutual assistance** in civil and family law matters is also significant. This is especially important for those states which have considerable number of citizens or nationals of the other state living in their territory.

Plant- and animal **health**, the protection of the environment are also important fields of cooperation, let's just mention the transborder effect of water- or aerial pollution, for instance). In the field of human healthcare the prevention of epidemics is significant.

Numerous bilateral agreements concern **tax issues**, especially the prevention of double taxation, namely when the two states agree that the tax-payer does not have to pay a tax in both countries after the same income. These treaties contain unique conditions, and separately regulate the tax to be paid e.g. after the income from employment and after income from purchasing a property. Nowadays, these agreements also regulate the means of cooperation between the states to fight tax evasion. The exchange of information in tax affairs is one of the examples of the increase of information sharing between states. Information cooperation can also cover national security and intelligence matters.

Many states have agreements on the **amicable, peaceful settlement of disputes**, in which they agree which procedures they shall use to seek resolution in case of a dispute. These agreements usually propose diplomatic resolution and negotiation, but frequently also provide for arbitration or the use of one of the international courts.

States can decide to organize **sport** events together; Austria and Switzerland, for instance, jointly organized the European Football Championship in 2008, and Poland and Ukraine did the same in 2012. Hungary, together with Croatia, also applied for the organization of this latter.

Different kinds of cooperation can also be found in **energy sector**, e.g. states can purchase natural gas, oil or electricity from each other. Such cooperation can also cover the issue of one state assisting the other in building a nuclear power plant.

Military cooperation might extend to the organization of joint trainings and war games, military exercises, and the states can agree on the sale and purchase of weapons and military vehicles, or they can even establish closer alliance in the event of an armed conflict.

The bilateral cooperation of states can practically cover any of the areas which are not in contravention of the principles of international law and fundamental human rights. Thus, e.g. while there is no limit to military cooperation, it is forbidden by international law to agree to commit an armed attack or aggression against a third state, or to jointly execute genocide or torture of people.

QUESTIONS FOR SELF-CHECK

1. Name at least three state organs which participate in the formation of international relations.
2. What are the foreign affairs functions/tasks of the President?
3. How can the National Assembly participate in the execution of foreign affairs?
4. List the tasks of the minister of foreign affairs.
5. What is the difference between the tasks of the diplomatic and consular mission?
6. List at least five typical areas of bilateral cooperation.
7. What are the typical agreements in relation to the border between two states?
8. What does the agreement for the prevention of double taxation mean?

RECOMMENDED LITERATURE

Vienna Convention on Diplomatic Relations, Vienna, 1961.

Vienna Convention on Consular Relations, Vienna, 1963.

