Application of the Principle of Mutual Consent in the Consular Relations between States

Jana Maftei[1]

Abstract: The pursuit of consular activity by one state on the territory of another state affects the sovereignty of the latter. In the spirit of respect for state sovereignty, the establishment and conduct of consular relations, a separate category of international relations, part of all relations governed by international law, are subject to the principle of mutual consent of states involved in consular relations. This study focuses in particular on the analysis of the application of the principle of mutual consent to the establishment and maintenance of consular relations, the establishment of consular offices, the appointment and admission of members of the consular office and the exercise of consular functions, from the perspective of the 1963 Vienna Convention to consular relations. We will emphasize the special importance and indispensable nature of this principle for states wishing to maintain consular relations, in close correlation and in the light of the principle of sovereign equality of states. For the elaboration of the paper we have used as research methods the analysis of the problems generated by the mentioned subject with regard to the doctrinal views expressed in the treaties and papers, the documentary research, the interpretation of legal norms in the matter.

Keywords: Vienna Convention on Consular Relations (1963); public international law; consular law; international relations; sovereignty

1. Introductory Remarks

The complex architecture of international relations between states regulated by public international law includes a special category, whose archetype is shrouded in the fog of history, the consular relations. We did not intend an incursion into diachronic, we did it on other occasions (Maftei, 2010, pp. 9-15; Maftei, 2009). The literature on the origin of the consular institution is considerable, the concern for this subject being justified, as appreciated by Julius Puente, who referring to "*its long*

[1] Professor, PhD, "Danubius" University of Galati, Faculty of Law, Romania, Address: 3 Galati Blvd, Galati, Romania, tel: +40372 361 102, fax: +40372 361 290. Corresponding author: janamaftei@univ-danubius.ro.

and laudable history", considers that "*of those institutions which have come down to us from remote times, one of the most practical, and the one that, undoubtedly, has played its part most creditably, has been the consular establishment*" (Puente, 1930, p. 321)[1].

But although consular protection is one of the oldest international institutions, the codification of the rules governing consular relations was achieved through the Vienna Convention on Consular Relations, 1963 (VCCR) (United Nations, 1963)[2], a document that has substantially synthesized hundreds of years of consular practice of states, developed over time to protect the interests of their own citizens in another country and which has gained almost universal recognition (Lee & Quigley, 2008, pp. 3 et seq.)[3]

Considered to be the most important treaty in this matter, the VCCR regulates the basic rules in consular matters. There are added the rules of conventional consular law of a regional nature[4] and those contained in the numerous bilateral agreements

[1] In the same vein, see for example (Seen, 1965, p. 201; Anghel, 2011, p. 522 et seq.; Maliţa, 1975, p. 249 et seq.; Maresca, 1971; Poumarède, 2001, etc.

[2] VCCR was adopted on 22 April 1963 by the United Nations Conference on Consular Relations held at the Neue Hofburg in Vienna, Austria, from 4 March to 22 April 1963. The Conference also adopted the Optional Protocol concerning Acquisition of Nationality, the Optional Protocol concerning the Compulsory Settlement of Disputes, the Final Act and three resolutions annexed to that Act. The Convention and the two Protocols were deposited with the Secretary-General of the United Nations. The Convention entered into force on 19 March 1967, in accordance with article 77. Romania ratified this convention by the Decree of the State Council no. 481/1972, published in the Official Monitor, no. 10/28 January 1972.

[3] The VCCR has 180 States Parties (Nations, Vienna Convention on Consular Relations, 1963).

[4] * European Convention on Consular Functions, opened for signature by the member States and for accession by European States which are not member States at 11/12/1967, entered into force at 09/06/2011 (Council of Europe, 1967) (Maftei, 2016). *EU consular protection legal system (European Commission). *Agreement on the consular assistance and co-operation between the Government of the Republic of Latvia, the Government of the Republic of Estonia and the Government of the Republic of Lithuania, Done in Vilnius on February 5, 1999, replaced by a new agreement signed in 2019 and entered into force in 2020, as the old provisions had conflicted with the legal framework in the field of consular assistance in the European Union and with the current national legislation of the three states; (Baltic States, 2020). *Treaty of Co-operation between Denmark, Finland, Iceland, Norway and Sweden (the Helsinki Treaty). This Treaty was signed on 23 March 1962 and entered into force on 1 July 1962; the original text has been amended by Agreements that were signed on 13 February 1971, 11 March 1974, 15 June 1983, 6 May 1985, 21 August 1991, 18 March 1993, and 29 September 1995; the most recent amendments entered into force on 2 January 1996; in accord with art 34: „*Public Officials in the Foreign Services of any of the High Contracting Parties who are serving outside the Nordic countries shall, to the extent that it is compatible with their duties and when no objection is lodged by the country in which they are serving, also be of assistance to citizens of the other Nordic countries, should the latter not be represented in the territory concerned*." (Nordic Co-operation).* Convention of GUUAM Member States on Mutual Rendering of Assistance in Consular Matters entered into force 9 December 2002; Organization for Democracy and Economic Development-GUAM

between states that have consular relations. The codification by VCCR of the fundamental principles and norms of consular law, driven by the expansion of international flows of material and spiritual values, by the amplification of collaboration and cooperation relations in the fields of trade, transport, technology, science, marked an important stage in the evolution of this institution (Ecobescu & Bădescu, 1975, p. 5).

The provisions of the VCCR codify and stablish the general norms allowed in international practice in the field of consular relations (Maftei, 2009). These rules provide a framework for concluding bilateral consular conventions between countries. The VCCR is a legal instrument for States Parties to promote consular relations. The provisions of the VCCR are in accordance with the fundamental principles of state sovereignty and their equality in rights, non-interference in the internal affairs of other states. These principles underlie the establishment of consular relations, the exercise of consular functions and the benefit of consular privileges and immunities[1].

By providing this legal framework, the VCCR, as stated in its Preamble, seeks to contribute to the development of friendly relations between nations, considering the aims and principles of the United Nations Charter, in particular those on sovereign equality of states, the maintenance of international peace and security, as well as the promotion of friendly relations between nations.

The fulfillment of this desideratum has as a premise the observance of the principle of mutual consent of the states involved in consular relations, a fundamental sine-qua-non-rule for the existence of this category of international relations. In the following we will analyze the application of the principle of mutual consent regarding the establishment and maintenance of consular relations, the establishment of consular offices, the appointment and admission of members of the consular office and the exercise of consular functions, from the perspective of VCCR regulations.

(hereinafter – GUAM) is an international regional organization which includes the Republic of Azerbaijan, Georgia, the Republic of Moldova and Ukraine (GUAM, 2002).

[1] The explanatory memorandum of the Decree of the State Council no. 481/1972, published in the Official Monitor no. 10/28 January 1972 for the accession of the Socialist Republic of Romania to the Vienna Convention on Consular Relations.

2. The Application of the Principle of Mutual Consent in Establishing and Maintaining Consular Relations

Consular relations, the object of regulation of consular law, constitute that part of international relations, interstate relations established by the agreement of two states on the exercise of consular functions by specialized bodies on the territory of the other state (Anghel, 2011, p. 540; Maftei, 2016, pp. 66-67). The establishment of consular relations requires the agreement between the states concerned, being regulated by norms of international, conventional and customary law. The development of consular relations between states in accordance with the fundamental principles of international law presupposes "*mutual will to cooperate*", as well as "*mutual trust*" (Maresca, 1971, p. 113).

The establishment of consular relations is a bilateral act, which involves the consistent manifestation of will of two states wishing to maintain consular relations, as it results from the VCCR regulation, which in art. 2 point 1 provides that the establishment of consular relations between states is done on the basis of their mutual consent: "*The establishment of consular relations between States takes place by mutual consent*".

This rule establishes the absolutely necessary feature of the mutual agreement, as a legal basis for the establishment of consular relations, which cannot exist, in conclusion, in the absence of the convergent consent of the two states. Consequently, the establishment of consular relations takes place under the agreement between two states (Smolinska, Boutros, Lozanorios, & Lunca, 2015, p. 14).

The logical-legal analysis of Article 2 of the VCCR reveals some essential rules regarding the establishment of consular relations. Thus, at point 1 of this article it is formulated a rule of international law[1] with customary origins, a fundamental rule in consular law: the establishment of consular relations is based on the agreement of the states concerned. The practical and concrete manifestation of this requirement lies in the fact that the establishment of consular relations is triggered by the initiation of this agreement by one of the states, which notifies (informs) the other state of its desire to open a consular office in its territory. The consent regarding the establishment of consular relations can be expressed expressly or implicitly (Anghel, 2011, p. 546).

[1] *"A Dictionary of Diplomacy"* defines consent as being "*a basic principle of international law, in that it must be given by a state before that state can be bound by a treaty; and in that any change in an existing legal arrangement requires the consent of all the parties"*(Berridge & James, 2003, p. 51).

The agreement on the establishment of consular relations shall be expressly or formally expressed if the States concerned directly agree, stating this fact clearly and effectively. The way of expressing the consent is made by concluding a legal document that can take the form of the *bilateral treaty*[1] or the *consular convention*[2]. The agreement between the two states can be formulated as in the following example: "*Romania and the Republic of Turkey, animated by the desire to develop and strengthen bilateral ties of friendship and cooperation on consular and legal issues, convinced that the deepening of consular relations between Romania and the Republic of Turkey will promote the further development of cooperation in other areas, aware that Romania and the Republic of Turkey are parties to the Vienna Convention of 24 April 1963 on Consular Relations, wishing to regulate and promote their consular relations, have decided to conclude this Consular Convention…*[3]"

The agreement of the two states on the establishment of consular relations may also be established in a provision contained in a trade and navigation treaty or in an agreement of friendship and cooperation, but may also take the simplified form of an exchange of notes (declarations in written with an identical text; synonymous with a treaty in simplified form) (Rusu, 2004, p. 195) by which the parties agreed to send and receive consuls. It should be noted that all these acts must be opposable in the case (Anghel, 1978, p. 77). Regardless of the form of the agreement on the establishment of consular relations between the two states (express or tacit), this agreement must, in all cases, be certain as to its existence. In accordance with art. 2 point 2 of the VCCR: "The consent given to the establishment of diplomatic relations between two States implies, unless otherwise stated, consent to the establishment of consular relations". This regulation expresses the second way of expressing consent (implicit) and which is achieved both by establishing diplomatic relations, unless otherwise indicated, and by the acceptance of the State of residence for the sending State to establish consular posts in its territory (Burian, 2001, p. 110); a fact also revealed by art. 3 paragraph 2 of the 1961 Vienna Convention on Diplomatic Relations (VCDR): "*Nothing in this Convention shall be construed as preventing the performance of consular functions by a diplomatic mission*". It is considered,

[1] See, for example, the Treaty between Romania and the Republic of Moldova on legal assistance in civil and criminal matters - Law no. 177/1997, for the ratification of the Treaty between Romania and the Republic of Moldova on legal assistance in civil and criminal matters, signed in Chisinau on July 6, 1996, published in the Official Monitor of Romania, Part I, no. 310 / November 1997;

[2] See, for example, the Consular Convention between Romania and the Republic of Turkey, signed in Ankara on July 6, 1999, ratified by Law no. 161/2000, published in the Official Monitor, Part I no. 490 of October 9, 2000, in force since October 9, 2000.

[3] Preamble to the Consular Convention between Romania and the Republic of Turkey

therefore, that when establishing diplomatic relations, the state of residence implicitly expressed the consent for the exercise of consular functions by the diplomatic mission of the sending state (Bonciog, 1996, p. 33). The phrase "*unless otherwise stated*" used in art. 2 pt. 2, of the VCCR requires a clarification: in order to determine whether the establishment of diplomatic relations between the two states did not involve and the establishment of consular relations must be considered any act or fact that confirms that the parties did not intend to establish diplomatic relations to involve the establishment of consular relations. The reference moment for the existence of the contrary indication must be the date of manifestation of the consent for the establishment of diplomatic relations. The third paragraph of art. 2 of the VCCR also sets out a generally accepted rule of international law. According to the principle of legal similarity, *similia similibus*, the termination of consular relations must take place in the same way in which they were established, i.e. by expressing the express consent of states (Burian & Balan, 2003, p. 89). This means that in the event of the rupture of diplomatic relations between two states, consular relations will persist, unless specified directly their rupture, because as provided in paragraph 3 of Article 2 of the 1963 Vienna Convention: "*The severance of diplomatic relations shall not ipso facto involve the severance of consular relations".*

The imperative feature (de jus cogens) of the principle of sovereign equality, which applies in relations between states, also has as consequence that the establishment of consular relations does not and cannot constitute a unilateral act of a state, but an act of consonant will of the states wishing to conduct consular relations. If consular activity were to be carried out by a State in the territory of a State without the consent of the latter, the situation would be an act of interference in the internal affairs of that State; in other words, its sovereignty would be disregarded, violated.

Consular relations exist from the date of the act by which they were established or from any date agreed by the parties, regardless of the reciprocal establishment by the two states of consulates, but the time of their commencement may be different. Undoubtedly, the establishment of consulates is a natural continuation of the establishment of consular relations, but not mandatory. The states involved in consular relations may decide, by mutual agreement, which of the ways of exercising consular functions is most appropriate for them. The establishment of consulates is, however, able to confirm the existence of consular relations.

3. The Application of the Principle of Mutual Consent to the Establishment of Consular Posts

The establishment of a consular office and the exercise of consular functions through it imply a derogation from the principle of sovereignty, the consular office of the sending state existing and operating within the territorial jurisdiction of the state of residence, which makes necessary the agreement of the states in "consular relations" (Bonciog, 2000, p. 35). The fact that the consular post is an external relations body that mediates the establishment, maintenance and development of interstate relations in certain areas, as well as the fact that the consular post, although belonging to one state, operates on the territory of another state, determine the existence of special rules on its creation, organization and functioning, as well as its legal status.

Regarding the establishment of consular offices, art. 4, point 1 of the VCCR establishes the rule according to which a consular post can be established on the territory of the state of residence only with the consent of that state: "*A consular post may be established in the territory of the receiving State only with that State's consent*". In order to obtain consent, it is necessary for the two states to relate, to conclude a certain agreement having as object the consular relations between the two states. The creation of a consular post can only be done after the establishment of consular relations, "*a state must be in consular relations with another state before it can establish consular posts in that state's territory*" (Berridge & James, 2003, pg. 54-55). The agreement on the establishment of a consular post may determine the birth of consular relations (Bonciog, 2000, p. 35), but the establishment of consular relations does not automatically generate the right to establish consular offices.

Paragraph 1 of Article 4 sets out the rule that the consent of the State of residence is indispensable for the establishment of a consulate on its territory, but without differentiating between the different ranks: consulate general, consulate vice-consulate or consular agency. This rule derives from the sovereign power that each state exercises over its territory and concerns both the case when the consulate is created at the time of establishing consular relations, and the case when the consulate is created later. If a consulate is to be set up with the establishment of consular relations, the consent of the State of residence for the establishment of a consulate may be given in general terms in the agreement on the establishment of consular relations, but may be expressed and detailed in a consular convention regarding aspects of the consular post. The consent of the two States may also be included in a subsequent agreement concerning the establishment of consulates only, as may be provided in an annex to a consular convention, which establishes the consular

district, the rank of the consular post, its category or by - an additional protocol to a consular convention or a note from the ministry of foreign affairs of the receiving state (Năstase, Aurescu, & Jura, 2002, p. 185).

Article 4 of the VCCR also does not regulate the conditions under which the agreement on the establishment of a consulate may be amended. The provision in paragraph 3 makes specific reference to the fact that "*Subsequent changes in the seat of the consular post, its classification or the consular district may be made by the sending State only with the consent of the receiving State"* and constitutes a reaffirmation of the principle of sovereignty of the State of residence, the wording reiterating the protection of its interests. The State of residence may not abuse its right of sovereignty, which means that it does not have the right to unilaterally change the consular district or the seat of the consular post. In exceptional cases, the receiving State may request the sending State to change its seat of consulate or consular district. The wording in paragraph 3 of Article 4 of these provisions concerning any subsequent amendments which may be made to the seat of the consular post or consular post shall in no way restrict the right of the sending State to close the consulate temporarily or permanently, if this corresponds to its interests.

The fourth paragraph of art. 4 of the VCCR refers to the situation in which an already established consulate wishes to open a vice-consulate or a consular agency within the limits of its constituency. It is also necessary to recall the indispensable existence of the consent of the State of residence and, in this situation; the fourth paragraph therefore refers to the establishment of a new consular post, vice-consulate or consular agency, requiring compliance with the rule on the absolutely necessary existence of the consent of the State of residence. The agreement of the receiving State shall also be required as a rule provided for in the fifth paragraph, in the case where it is desired to open an office, forming part of an already established consulate, but outside it: "*The prior express consent of the receiving State shall also be required for the opening of an office forming part of an existing consular post elsewhere than at the seat thereof*". The consent of the State of residence must therefore be "*express and prior*".

The following characteristics of the consent necessary for the establishment of consular offices were identified in the Romanian doctrine (Bonciog, 2000, pp. 36-37):

a) the consent of the State of residence is *general*, in the sense that it is necessary for all consular posts (offices), regardless of their category, their rank, their degree of independence;

b) the consent of the State of residence is *continuous*, because it must be requested for the entire duration of the operation of a consular office, even when it is subsequently amended;

c) the consent is *comprehensive*, as it must be given for all the basic components of a consular office;

d) the consent of the state of residence *is not revocable* as long as the *rebus sic stantibus* rule is applied[1];

e) the sending State, in turn, does not have the discretionary right to request, *unilaterally*, changes to the initial consent given by the State of residence, as the rules of international law establish the principle that no one may abuse of a right.

Resuming the provisions of VCCR 1963, in the Consular Convention concluded between Romania and Croatia[2], for example, the two states agreed in this regard that "*the sending State may establish a consular office in the territory of the State of residence, only with its consent*", and "*The seat of the consular post, its classification and the consular district shall be established by the sending State and shall be subject to the approval of the receiving State; subsequent changes in the seat of the consular post, its classification or the consular district may be made by the sending State only with the consent of the receiving State*" (art. 2).

[1] According to the theory of contingency in the field of international treaties, a fundamental change in the circumstances envisaged at its conclusion may lead to its termination, revision or suspension. Article 62, Vienna Convention on the Law of Treaties 1969: *1. A fundamental change of circumstances which has occurred with regard to those existing at the time of the conclusion of a treaty, and which was not foreseen by the parties, may not be invoked as a ground for terminating or withdrawing from the treaty unless: (a) the existence of those circumstances constituted an essential basis of the consent of the parties to be bound by the treaty; and (b) the effect of the change is radically to transform the extent of obligations still to be performed under the treaty. 2. A fundamental change of circumstances may not be invoked as a ground for terminating or withdrawing from a treaty: (a) if the treaty establishes a boundary; or (b) if the fundamental change is the result of a breach by the party invoking it either of an obligation under the treaty or of any other international obligation owed to any other party to the treaty" (United Nations, 1969)* For details on the rebus sic stantibus rule, see, e.g. (Shaw, 2008, p. 950 et seq.; Kulaga, 477-497; Kolb, 2020).

[2] Consular Convention between Romania and the Republic of Croatia, signed in Zagreb on May 19, 1997, ratified by Law no. 14/8 January 1998, published in the Official Monitor of Romania, Part I, no. January 13, 1998.

4. Application of the Principle of Mutual Consent to the Appointment and Admission of Members of the Consular Post

The procedure for appointing consular officers involves distinctions, as they are heads of consular offices or belong to the category of members of the consular staff. A consular office, depending on the class it holds, is headed by a consul general, consul, vice-consul, consular agent, empowered with consular functions, who has responsibilities of representation and coordinates the entire activity of the institution he leads.

Article 10 of the VCCR sets out a fundamental principle, which is then developed in the following articles:

„1. Heads of consular posts are appointed by the sending State and are admitted to the exercise of their functions by the receiving State.

2. Subject to the provisions of the present Convention, the formalities for the appointment and for the admission of the head of a consular post are determined by the laws, regulations and usages of the sending State and of the receiving State respectively."

It states that in order to have the status of head of consular post, a person must meet two conditions: first he must be appointed by the competent authority of the sending status as consul general, consul, vice-consul or consular agent, among its own citizens, then must be admitted to exercise the incumbent functions by the state of residence. It is therefore the responsibility of each State to determine the arrangements for the appointment and admission of the Head of the Consular Post in accordance with the laws, regulations and customs of the sending State and the State of residence, respectively.

The appointment and admission of a head of a consular post is achieved, therefore, by unilateral acts of each state (issuance and transmission of the consular patent and, correlatively, acceptance of the appointment by exequatur); the final purpose of the procedure has international validity, the bilateral report of consular appointment and admission bearing the name in the specialized doctrine of "consular appointment report" (Burian, 2003, pp. 202-203)

The report of the consular appointment includes in its structure two sides:

a) appointment by consular patent and its transmission in order to admit the concrete person to the exercise of consular functions;

b) the decision of the state of residence to admit the foreign consul to the exercise of consular functions, which is called exequatur (Mazilu, 2003, pg. 293-294; Ciucă, 2000, p. 330).

The consular patent has the feature of a letter of accreditation (attesting the official quality of the head of the diplomatic mission). It is, in fact, a special document with which the person designated in it by the sending State is invested in order to fulfill the function of head of consular office in the state of residence.

The *Diplomatic Dictionary* (Alexie, 1979) defines in detail this document attesting the head of the consular office, rules regarding the consular patent and its content being fixed by the VCCR regulations themselves (art.11).

"*1. The head of a consular post shall be provided by the sending State with a document, in the form of a commission or similar instrument, made out for each appointment, certifying his capacity and showing, as a general rule, his full name, his category and class, the consular district and the seat of the consular post.*

2. The sending State shall transmit the commission or similar instrument through the diplomatic or other appropriate channel to the Government of the State in whose territory the head of a consular post is to exercise his functions.

3. If the receiving State agrees, the sending State may, instead of a commission or similar instrument, send to the receiving State a notification containing the particulars required by paragraph 1 of this article."

The exequatur represents the authorization that the state of residence issues for the admission of the head of the consular post (Takacs & Niciu, 1976, p. 215) and by which it recognizes this quality (art.12 VCCR):

"*1. The head of a consular post is admitted to the exercise of his functions by an authorization from the receiving State termed an exequatur, whatever the form of this authorization.*

2. A State which refused to grant an exequatur is not obliged to give to the sending State reasons for such refusal.

3. Subject to the provisions of articles 13 and 15, the head of a consular post shall not enter upon his duties until he has received an exequatur."

Regarding the consular officers, it should be noted that the appointment of any consular officer, other than the head of the consular post, requires only the procedure for notifying the appointment, the State of residence being entitled to request the

sending State that the notification be made in due time until the appointment and presentation to the post, and the admission of any consular officer, except the head of the consular post, is based on the declaration of the consular officer appointed as the acceptable person by the state of residence (Maliţa, 1975, pp. 256-257).

If the receiving State explicitly declares or suggests that the appointed consular officer is not a *persona grata* (Latin expression for "agreed person"), the sending State shall be required to revoke the appointment of that official. The declaration of the consular officer as an acceptable person can be made, in some cases, in the form of issuing visas for entry into the country of residence (Anghel, 2011, p. 365).

VCCR mentions in art.19 that the sending state may appoint according to its will the members of the consular staff, but considering the limits established by art. 20, 22 and 23 (concerning consular staff, nationality of consular officers and *persona non grata*).

The sending State must notify the State of residence sufficiently in advance of the name and surname, category and class of all consular officers other than the head of the consular post so that the receiving State can exercise, if it so wishes, the rights conferred on it by paragraph 3 of art. 23[1].

The sending State may request the State of residence, but only if its laws and regulations so require, to grant exequatur to a consular officer who is not the head of a consular post. Correspondingly, the receiving State may, if its laws and regulations so require, grant exequatur to a consular officer who is not the head of a consular post.

5. The Application of the Principle of Mutual Consent to the Exercise of Consular Functions

The system of consular functions is able to reveal to us the multiple and complex relationships created by the consular law (Maresca, 1972, p. 135). The consular functions make up the content of the consular relations representing the totality of the attributions that the consular offices and their consular staff have. They formed the basis of the emergence of the consular institution and its further development.

[1] This paragraph contains the following regulation: "*A person appointed as a member of a consular post may be declared unacceptable before arriving in the territory of the receiving State or, if already in the receiving State, before entering on his duties with the consular post. In any such case, the sending State shall withdraw his appointment."*

These attributions of consular representatives were established through customs, treaties and bilateral consular conventions, depending on the interests of the states (Maliţa, 1975, p. 258; Oppenheim, 1920, p. 837), being difficult to inventory (Bonciog, 2000, p. 39), precisely because the consular officer focuses on his person, within the consular district where he has the right to act, all the skills of the bodies whose competence is to solve various situations that may arise regarding the interests of the sending state and its citizens (Anghel, 2011, p. 375).

The exercise of consular functions by consular posts and also by diplomatic missions, aims at fulfilling, in essence, what the VCCR provided in Article 5, which extensively lists the main functions of consular offices (Constantin, 2004, pp. 395; Takacs & Niciu, 1976, pp. 217). The scope of consular functions is determined, in each case, by the tasks assigned to the consular office by the sending state, but also by the admission by the receiving state of each of the responsibilities of the consular office (Alexandrescu, Bărbulescu, Fotino, & Iosipescu, 1976, p. 153; Nastase, 2006, p. 271).

Of course, this is by no means an exhaustive list. The scope of a consul's functions depends to a large extent on the provisions of the treaty or consular convention governing consular relations between his home state and the receiving state (Seen, 1965, p. 227). States list in the consular conventions which they conclude only the main functions, establishing, in principle, that consular offices may also perform other functions than those expressly mentioned, which may be diversified according to the evolution of international relations, the interests of states.

The receiving State - the only one able to exercise acts of jurisdiction in its territory - may accept, using the attribute of sovereignty, the existence of foreign consular offices in its territory and their exercise of their consular functions with its organs, establishing the conditions and limits of their exercise. This acceptance of the exercise of consular functions is made, first of all, by the consular conventions concluded between the sending state and the state of residence, in which the attributions of the consuls are listed, as well as the conditions for their exercise[1].

[1] Article 9 of the Consular Convention concluded between Romania and Ukraine, for example, provides, thus, that the consular officer has the right: 1. to protect the rights and interests of the sending State and its citizens, to provide assistance and assistance; 2. to promote the development of commercial, economic, legal, tourist, ecological, technical-scientific relations, in the field of cultural, humanitarian and educational information between the sending state and the receiving state and to contribute in other ways to the development of friendly relations between them; 3. to be informed, by all lawful means, of the conditions and evolution of the commercial, economic, cultural and scientific life of the receiving State, to make reports thereon to the Government of the sending State; 4. to perform

In addition to the fact that consular functions are limited by the laws of the sending state, the consul can perform only the entrusted functions, according to national law, the limits within which the consular office is allowed to exercise a consular function are also given by state sovereignty of residence, its bodies being the only ones entitled to make acts of jurisdiction on its territory. It will admit, however, that a foreign body, in this case - the consular office, will carry out its activity on its territory, as a representative of an order of law belonging to another state, for reasons related to interstate cooperation. In all cases, however, the scope of consular duties will be restricted to certain categories of well-defined social relations, a contrary situation being likely to create a conflict between the jurisdictions of the two states. This limitation is also provided for in Article 1 of the Havana Convention of 1928, according to which "*the consul must exercise the functions conferred by his State, without prejudice to the legislation of the State of residence*".

Bilateral consular conventions refer to the laws and regulations of the State of residence, both as regards the admissibility of the office as such and as regards the conditions of exercise. Article 39 of the Convention between Romania and the Republic of Poland states, for example, with regard to communication with the authorities of the receiving State that: "*1. The consular officer shall perform his duties in his consular district. However, in exceptional cases, he may exercise his functions outside this constituency with the consent of the State of residence. 2. In the exercise of his functions, the consular officer may address: a) the competent local authorities of the consular district; b) the competent central authorities of the State of residence, in so far as this is permitted by the laws, regulations and customs of that State, as well as by international agreements*".

The exercise of consular functions ensures the fulfillment of the mandate received by the consular officer at his appointment, the fulfillment of the tasks entrusted to him by the state of which he is a citizen. The normative framework of the exercise of consular functions is ensured by the laws of the states, in the general sense of the term, by the VCCR, by the bilateral consular conventions, by custom. If the VCCR establishes the general legal framework of the relevant regulations, the bilateral conventions generally take over these regulations and adapt them to the needs, to the interests of the two states; they may provide for the exercise of any other functions

any other functions entrusted to him by the sending State, which are not prohibited by the laws and regulations of the receiving State or which are not opposed by the receiving State. - The consular convention between Romania and Ukraine, signed in Bucharest on September 3, 1992, ratified by Law no. 18 / 02.04.1993, published in the Official Monitor of Romania, Part I, no. 71 of April 8, 1993.

entrusted to a consular post by the sending State, which are not prohibited by the laws and regulations of the State of residence or which the State of residence does not oppose or which are mentioned in international agreements in force between the sending State and state of residence (art. 5. point m VCCR).

7. Conclusions

The issue of state sovereignty occupies a central place in consular relations, VCCR 1963 recalling the principle of sovereign equality in its preamble. The exercise of consular relations involves the creation of an exceptional situation that competes with the sovereignty of two states: the sending state and the receiving state. One of the purposes of this convention is to regulate and reconcile this meeting of state sovereignties in order to guarantee mutual respect (Smolinska, Boutros, Lozanorios, & Lunca, 2015, p. 12). Morgenthau is of the opinion that without mutual respect for the territorial jurisdiction of the nation and without the legal application of this respect, the international law and a system of states based on it obviously could not exist (Morgenthau, 2007, p. 333).

The respect for the principle of sovereignty incorporates in its content the principle of mutual consent with regard to the exercise of consular relations. The essentially conventional nature of the agreement on the establishment of consular relations, the establishment of consular offices, the appointment and admission of members of the consular office and the exercise of consular functions derives from the following: consular relations are relations established between certain subjects of international law; according to the principles of international law (the principle of sovereignty, the principle of territorial independence, etc.), states are equal subjects in any relations established and carried out between them; therefore, consular relations, as part of all relations governed by international law, must be established and conducted on the basis of the same principles, without exception.

No rule of international law can bind a state other than those which it has created for itself by consent. For the international relations, balance and stability depend on the observance of the principles and norms thus created, on the promotion and protection of the values common to all states, and in

this context harmony and order are ensured by the principle of mutual consent.

8. References

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