



LEGAL ASPECTS OF DIGITAL DIPLOMACY

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ABSTRACT

The rapid development of digital technologies and the pandemic experience at the international and national levels have made it clear that every day all key areas are undergoing digital transformation. From this perspective, the diplomatic service is no exception. Information and communication technologies have become the tools or means by which, at little or less cost and within a given time frame, a country can ensure the implementation of its foreign policy priorities. Furthermore, the possibilities of the digital world are not limited by borders. Therefore, the purpose of this article is to explore the legal aspects of digital diplomacy, especially in the context of the Vienna Convention on Diplomatic Relations of 1961¹. The authors of the Convention could not foresee that digital platforms could be created and foreign policy goals could be implemented remotely between representatives of states by using information and communication technologies.

1 Vienna Convention on Diplomatic Relations, (1961). United Nations, Treaty Series, vol. 500, p.2.

INTRODUCTION

In the wake of the development of a modern type of diplomacy – digital diplomacy – we can say that innovative diplomatic services of states require a greater emphasis on the possibilities of information and communication technologies. Digital advances will contribute to developing automated approaches in the decision-making process. It will promote achieving foreign policy goals timely without physical representation in different parts of the world. This process is also important for the improvement of electronic management systems for high-level events.

For the first time in the history of diplomacy, the Danish government appointed a tech ambassador in 2017. A digital ambassador aims to strengthen ties with the IT industry and encourage investment in Denmark from tech companies.² The President of the French Republic Emmanuel Macron named David Martinon as an ambassador for digital affairs. The functions of an ambassador include digital governance, international negotiations and the development of cooperation with digital companies.³ In 2020, Austria appointed its first tech ambassador.⁴ Estonia also has an ambassador for cybersecurity. Overall, the number of countries with representatives in this area is increasing.

The development of digital platforms and the establishment of virtual embassies will give ministries of foreign affairs the ability to communicate with different types of audiences. Countries, especially small states, can better present their foreign policy agenda to a wider audience if they properly plan and execute social media campaigns. Furthermore, online ministerial meetings, summits, conferences and forums in bilateral and multilateral formats have been held in response to the pandemic.

In light of the above, based on the Vienna Convention on Diplomatic Relations terms – digital di-

plomacy and virtual embassy should be defined for states to create modern international legal norms for digital diplomatic relations. This international legal framework will facilitate the development of appropriate national laws for the diplomatic services of states.

DIGITAL FOREIGN POLICY FRAMEWORKS

To develop a digital foreign policy framework, some states have adopted digital foreign policy strategies. Such documents outline countries' approaches to digital issues and digitization concerning their foreign policies. They also include areas of policy priorities regarding digitization and how these priorities are pursued as part of the country's foreign policy.⁵ At the same time, the absence of a comprehensive digital foreign policy strategy does not indicate that a country is paying less attention to digital topics in its foreign policy. For example, although Germany does not have a comprehensive digital foreign policy strategy document, 'cyber foreign policy' is listed as one of the key German foreign policy topics on the website of its ministry of foreign affairs. Also, Estonia and Canada refer to digital topics in their respective foreign policy strategies.⁶

As for digital foreign policy strategies, in 2020, Switzerland adopted its digital foreign policy strategy 2021-2024. According to this document, a global phenomenon such as digitalisation requires an international set of rules, comprising both legally binding and non-binding instruments. International treaties and customary international law are legally binding instruments. Non-binding instruments include soft law best practices, technical standards and benchmarks.⁷

Switzerland supports capacity-building in the areas of digital technologies and cybersecurity. States must have the necessary capacities to receive benefits from digitalisation. These capacities include both the ability to develop strategies and

2 Sanchez Alejandro W., (2018). The Rise of the Tech Ambassador. <https://www.diplomaticourier.com/posts/the-rise-of-the-tech-ambassador/> [Last seen March 3, 2023].

3 Hussein Dia, (2018). Tech + Diplomacy = TechDiplomacy; Cities Drive a New Era of Digital Policy and Innovation. <https://www.indrastra.com/2018/01/tech-diplomacy-cities-new-era-digital-policy-innovation-004-01-2018-0036.html> [Last seen March 3, 2023].

4 Tech Diplomacy. <https://www.open-austria.com/tech-diplomacy/> [Last seen March 3, 2023].

5 Andjelkovic, K., Hone, K., Perucica, N., Digital Foreign Policy. <https://www.diplomacy.edu/topics/digital-foreign-policy/> [Last seen March 7, 2023].

6 Id.

7 Digital Foreign Policy Strategy, (2020). The Federal Council, Switzerland, p.8.

policies as well as specific technical expertise. In this regard, Switzerland works closely with multi-lateral partners.⁸

Switzerland as a highly developed state can benefit from the opportunities that digitalisation opens up in foreign markets as well as access to high-quality digital services. Digitalisation is shaping global supply chains, in which the Swiss economy is highly integrated. Simultaneously, it is equally important that personal data and intellectual property are properly protected and that companies and infrastructures are protected against cyberattacks and industrial espionage. Regional approaches to the regulation of the digital space, in particular at a European level, also play a significant role for Switzerland, which has an interest in ensuring that divergent standards do not create barriers to trade. It is essential to put in place transparent structures for the use and forwarding of data to enable the development of innovative applications and increase added value as well.⁹

As one of the world's most digitised countries, Denmark has a strong foundation for engaging with international technological development. The strategy for Denmark's tech diplomacy focuses efforts towards a democratic and safe technological future. According to the document, there is no question that the tech sector must be regulated – the question is how to regulate it.¹⁰ The tech giants should uphold their part of the social contract. Denmark will help drive forward the global discussion on challenges related to tech companies' data-driven and algorithmic business models and push for international solutions including on the issue of taxation of the digital economy – an issue where Denmark is actively engaged in negotiations internationally.¹¹

Investments in research and development of new technologies are a key competitive parameter that is shifting the geopolitical balance of power. Many countries are using digital tools to advance foreign policy objectives in the grey area between war and peace. Digital platforms connect different actors and have provided an unprecedented number of people globally with the opportunity to ex-

press their views. Denmark's tech diplomacy contributes to domestic discussions with perspectives and knowledge on global trends from the frontier of technology development.¹²

Digital technology is a key issue for French foreign policy and public action as a whole, be it for the success of France's economy in the global competitive sphere or for conditions of stability, security and power on a global scale. The French international digital strategy focuses on three key pillars: governance, the economy and security. It is a reference framework and diplomatic roadmap. This strategy enables France to promote a world which associates freedom and respect for standards.¹³

The Dutch Digitalisation Strategy is a government-wide approach. The Netherlands aims to become a digital frontrunner in Europe – a testbed for companies from all over the world, where they can develop and test new applications. When things change rapidly, as in the digital transformation, it is important to get – and keep – everyone on board. That applies to people in the labour market and to society as a whole. This means that everyone needs to learn the basics at an early age and that people need to keep their skills up-to-date throughout their lives in response to new types of jobs.¹⁴ The digital transformation is changing the Dutch economy and society, but common values remain the same. The government sees opportunities but also understands the concerns that people have about digitalisation. In this regard, the government will continue to preserve values and fundamental rights in the digital age, including safety, security, the rights to privacy and self-determination, fair competition, solidarity and good governance.¹⁵

In view of the above, states have created a digital foreign policy framework by the adoption of the country's digital foreign policy strategy and digitalisation strategy of the state. These documents

8 Id., p. 9.

9 Id., p. 10.

10 Strategy for Denmark's Tech Diplomacy 2021-2023, (2021), Ministry of Foreign Affairs of Denmark, pp.2-3.

11 Id., p. 7.

12 Id., p. 6.

13 France's International Digital Strategy. <https://www.diplomatie.gouv.fr/en/french-foreign-policy/digital-diplomacy/france-s-international-digital-strategy/> [Last seen March 10, 2023].

14 Dutch Digitalization Strategy. <https://www.nederlanddigitaal.nl/english/dutch-digitalisation-strategy/> [Last seen March 10, 2023].

15 Id.

define the role of information and communication technologies in implementing foreign policy priorities. They represent roadmaps for the digital transformation of diplomatic services and determine values that should be protected by state bodies in this process. At the same time, digital foreign policy frameworks of states pay special attention to the challenges of digital technologies and define some ways to overcome obstacles including protecting critical information infrastructures from cyberattacks. However, they could not provide a legal understanding of digital diplomacy. States can clarify legal aspects of digital foreign policy based on the development of the international legal framework for digital diplomacy.

PRACTICAL STEPS FOR DIGITAL TRANSFORMATION OF DIPLOMATIC SERVICES

One of the practical steps for the digital transformation of diplomatic services was to establish a new diplomatic position – a tech ambassador or an ambassador for digital affairs and cybersecurity. In the case of Denmark, the tech ambassador has a global mandate and is supported by a team based in Silicon Valley, Copenhagen and Beijing. The presence in Silicon Valley is particularly important for representing Denmark and building bridges to the tech industry. Denmark's tech diplomacy focuses on six defined roles: 1) Representation of the Danish Government and central administration concerning the global tech industry; 2) Collection of knowledge about technological developments and support of innovation, 3) Building coalition with global stakeholders, including other countries, companies, business organizations, multilateral organizations and civil society; 4) Contributing expertise and insight to the Danish public debate on technological development and the influence of the tech industry; 5) Developing Policy through the collection of knowledge and international perspectives on technological development; 6) Promoting Danish tech exports and foreign investment in Denmark.¹⁶

French digital diplomacy is structured around five major themes: 1) Promoting and supervising

the development of innovations and the control of breakthrough technologies, in particular, artificial intelligence; 2) Ensuring the security and international stability of the digital space; 3) Protecting human rights, democratic values and the French language in the digital world; 4) Strengthening the influence and attractiveness of French digital actors; 5) Contributing to Internet governance.¹⁷ The French ambassador for digital affairs focuses on the following functions: advocating broad governance that is faithful to the diversity of actors in the digital sphere (states, private sector, civil societies); supporting the concepts of privacy; advocating fair platforms that are transparent and act responsibly; protecting intellectual property rights without restraining innovation; participating in the development of the European tech ecosystem (supporting industries, education and training, fair taxation rules, funding the innovation, ensuring equal broadband coverage); promoting European standards in international negotiations (Internet governance, trade agreements); supporting the French Tech network, that highlights tech ecosystems throughout the country and in hubs abroad.¹⁸

After a major cyber-attack in 2007, Estonia prioritized cybersecurity. The NATO Cooperative Cyber Defense Center of Excellence was established with the support of the Alliance in Tallinn one year after the attack.¹⁹ Since 2018, Estonia has had an ambassador at Large for Cyber Diplomacy. Cyber ambassador is supported by the Cyber Diplomacy Department, established in 2019 at the Ministry of Foreign Affairs of Estonia. Safeguarding Estonia's cyberspace depends on the capability to secure critical information systems and a global, open, free, stable and secure cyberspace that is subject to existing international law and norms for

17 France Diplomacy. <https://www.diplomatie.gouv.fr/en/french-foreign-policy/digital-diplomacy/news/article/2019-annual-report-of-the-ambassador-for-digital-affairs> [Last seen March 12, 2023].

18 France unveiled its international strategy for digital affairs and appointed a dedicated ambassador. <https://ife.ee/en/international-strategy-for-digital/> [Last seen March 12, 2023].

19 Stupp, C., (2018). Estonia's First Cyber Ambassador Seeks to Improve Global Cyber Defense. https://www.wsj.com/articles/estonias-first-cyber-ambassador-seeks-to-improve-global-cyber-defense_1536358734 [Last seen March 14, 2023].

16 See supra note 10, p. 10.

responsible state behaviour. Cyber diplomacy is mainly focused on state behaviour in cyberspace and the principles and norms that apply to states in cyberspace. Cyber diplomats also contribute to the fight against international cybercrime and the protection of free and open internet.²⁰ The United States, Australia, the UK, France and Germany already have named top diplomats in charge of cyber policy.²¹

Based on the analysis of international practice, the functions of ambassadors for digital and cyber affairs may be: 1) Protecting human rights and democratic values in the digital world; 2) Constant communication with information and communication technology and data-oriented companies, including transnational technology companies. As a result of regular communication with them, attracting investments and offering to these companies the opening of representative offices and data centers in the sending state based on international investment agreements concluded at the bilateral level; 3) Representation of their countries in international bilateral and multilateral forums of digital transformation, cybersecurity and participation in determining issues related to digital, cyber policy; 4) Establishing close cooperation with senior diplomats of other countries with a similar mandate, relevant representatives of international organizations, both global and regional levels, including with the UN Secretary-General's Envoy on technology; 5) Obtaining and analyzing information about international trends in digital transformation and sectoral issues of implementation of digital governance, both in terms of foreign policy and education, health, agriculture, tourism, energy and other priority areas for the country; 6) Proactively offering partners initiatives on developing digital skills and protecting critical information systems in the sending state; 7) Promoting enhancement of the digital capacities in the diplomatic service of the sending state; 8) Preparing a strategic vision for the use of artificial intelligence and the development of automated approaches in the diplo-

matic missions; 9) Developing the concept of virtual embassies in cooperation with host states and technology companies; 10) Participating in international forums and other activities with the focus on defining cybersecurity issues and strengthening cyber capacities.

In terms of the digital transformation of diplomatic services, artificial intelligence can play a significant role, especially in cases of analyzing big data timely. Artificial intelligence is a real instrument to provide automatic routine tasks in the field of foreign policy. More precisely, robots as re-programmable multi-purpose devices designed for the handling of materials and tools for the processing of parts or specialized devices utilizing varying programmed movements to complete a variety of tasks.²² Regardless of opportunities, artificial intelligence may pose some risks and challenges. Because of the nature of AI ethical and legal questions can be pondered especially in terms of protecting human rights. The EU has a clear vision of the development of the legal framework for AI. Particularly, the EU AI Act proposed a regulatory framework for Artificial Intelligence. It focuses on the following 4 specific objectives: 1) ensure that AI systems placed on the Union market and used are safe and respect existing law on fundamental rights and Union values; 2) ensure legal certainty to facilitate investment and innovation in AI; 3) enhance governance and effective enforcement of existing law on fundamental rights and safety requirements applicable to AI systems; 4) facilitate the development of a single market for lawful, safe and trustworthy AI applications and prevent market fragmentation.²³ It is essential to take into consideration that AI applications should be provided with objective information. Based on such information, robots would be able to make the right conclusions and assist diplomats. Chatbots are integral parts of the digital world and they can effectively perform automatic routine tasks for various purposes.

20 Cyber Diplomacy, Ministry of Foreign Affairs of the Republic of Estonia. <<https://www.vm.ee/en/international-law-cyber-diplomacy/cyber-diplomacy>> [Last seen March 14, 2023].

21 See supra note 19.

22 Jarota, M., (2021). Artificial Intelligence and Robotization in the EU – Should We Change OHS Law? *Journal of Occupational Medicine and Toxicology*. p. 2.

23 Artificial Intelligence Act. (2021). Regulation of the European Parliament and of the Council. p. 3.

CONCLUSION

The development of the legal framework for digital diplomacy will generally facilitate the achievement of modern foreign policy goals more effectively and timely. Furthermore, it will enable states to obtain new functions in modern international politics. Nowadays digital components are significant elements of international politics. There are discussions of the necessity to build alliances around digital affairs. Therefore, countries need their representatives – ambassadors for digital affairs to be involved in defining priorities of international digital policy. They will contribute to creating new opportunities to respond to the demands of digital reality and determining states' new functions in the international digital order.

In addition, ministries of foreign affairs will have continuous communication with both exter-

nal and internal audiences by using automated approaches, including "chatbots". Developing the concept of virtual embassies and defining related legal issues at the international level will allow states, especially small states, to establish digital diplomatic relations with any country in the world through appropriate secure programs and applications. To achieve this goal, amendments should be made to the Vienna Convention on Diplomatic Relations of 1961 which contributes to the development of diplomatic relations among nations, irrespective of their differing constitutional and social systems and creates international legal grounds for this.

Overall, in the future, the international digital system will further change traditional approaches to diplomatic services and illustrate the effectiveness of digital tools, especially in terms of improving digital rapid response capabilities.

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