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Exposé

# The Use of Objects in the Diplomatic System: Legal Principles and Paradoxes

By

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# I. Introduction

Diplomacy inheres a paradox unity of the significant and the trivial. For instance, a Head of State may visit a foreign country and enact ceremonial gestures with the local hosts. They exchange gifts, they open art exhibitions, they finance a monument's restoration, and they announce all these signals of shared values on their official Twitter accounts. – Dominant International Relations (IR) theories focus on military power or economic rationalities and thus cannot make proper sense of such diplomatic practices. At other times, however, IR studies identify linear ties between diplomatic occurrences and crucial outcomes of peace-and-war-settings. They may then praise diplomacy as the only means to avert inter-state conflicts. In brief, if one used a binary lens distinguishing the 'politically trivial' from the 'politically significant', one would find that diplomacy paradoxically unifies this dichotomy. What is more, this unity of the global importance and unimportance seems to apply across the world over multiple centuries. How to make sense of this persistently paradoxical nature of diplomacy?

The dissertation's goal is to generate a legally and empirically validated, coherent theory uncovering the fundamental paradox permeating the diplomatic system. On a theory-building level, the dissertation draws from Modern Systems Theory<sup>1</sup> to reconceptualize the social domain of diplomacy as an autopoietic system. It then seeks to empirically capture the structure and the semantics of the diplomatic system through a functionally oriented content analysis of relevant laws on diplomacy, including the Vienna Convention of Diplomatic Relations 1961<sup>2</sup>, and of national laws on state awards. The empirical study categorizes issue areas into allegedly 'trivial' and into seemingly 'significant' regimes; the goal is then to identify within the laws of both categories equivalent semantics governing inter-state relations. Legal norms of both power-centered regimes (such as the stationing of foreign armed forces) and seemingly power-remote, insignificant matters (such as the regulation of inter-state gift-giving)<sup>3</sup> are expected to reflect the same underlying structure of the diplomatic system.

A central hypothesis is that this underlying structure grounds itself on a systemic indeterminacy that may be labelled *peace-and-power-paradox*, or the *paradox of overlapping sovereignties*. Whatever the issue area, the diplomatic system always observes a semiotically imbued information, namely the movement of a semiotic signifier of one sovereign entity into another sovereign's territory. This "semiotic invasion"<sup>4</sup> of polities constituted by 'power' (i.e. by centralized capacities of physical violence) sparks the systemic response of foregrounding a semantics of 'peace', which in turn, is again

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<sup>1</sup> Luhmann, *Soziale Systeme*; Luhmann, *Die Gesellschaft der Gesellschaft*.

<sup>2</sup> Vienna Convention on Diplomatic Relations, 18. April 1961, *United Nations Treaty Series*, Vol. 500, p. 95.

<sup>3</sup> Much of what had traditionally been deemed insignificant in diplomacy resurfaced in the literature of the so-called 'new diplomatic history', spearheaded by Watkins, 'Toward a New Diplomatic History of Medieval and Early Modern Europe'; for recent overviews, see Sowerby, 'Early Modern Diplomatic History'; and Um and Clark, 'Introduction: The Art of Embassy'.

<sup>4</sup> Lotman, 'On the Semiosphere', 215.

only fuelled by a substrate of ‘power’.<sup>5</sup> It is this peace-and-power-paradox which offer an explanation for the semantics of diplomatic law, such as for that of ‘extraterritoriality’ and ‘immunity’, and it is this paradox which renders seemingly inconsistent regulations possible, such as that of polities utilizing (own) state awards while simultaneously prohibiting (foreign) state awards.

This prospectus will briefly outline the theoretical approach (section II), depict basic information on the methods and the sample the analysis intends to draw from (section III), and provide a schematic outlook on how the dissertation is to proceed both temporally and substantially (section IV).

## II. Literature Review and Theoretical Approach

### a. The Typological Approach to IR

The discipline of International Relations usually analyses inter-state ties in terms of a closed system based on an agent-structure-pattern. The *locus classicus* of a systems-theoretical approach to IR designates sovereign states as ‘agents’ who interact within a constraining ‘structure’ defined by military capabilities.<sup>6</sup> Within such a so-called neo-realist viewpoint, both diplomatic occurrences and international law cannot be but subordinate reflections of rational power politics.<sup>7</sup>

Opposing the narrow focus on armed forces, others proposed a wider opening of this system towards a range of environmental cues. Rather than just allowing military capabilities to structurally determine the agents’ interactions, they generate a typology prominently spearheaded by economy<sup>8</sup>, but also selectively comprising issues of technology, ecology, morality, or friend-foe-ideas.<sup>9</sup> Any typological approach, however, faces weaknesses. The criteria behind the typology remains ambivalent<sup>10</sup>, and its enumeration requires constant adaptation over time.<sup>11</sup> If one transformed this typology into an information encoded in a binary scheme, then its types would be unified as ‘world politics’ while its

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<sup>5</sup> On the paradoxes of peace, see also Hippler and Vec, ‘Peace as a Polemic Concept’; and Vec, ‘From Invisible Peace to the Legitimation of War’.

<sup>6</sup> Waltz, *Theory of International Politics*.

<sup>7</sup> Slaughter, Tulumello, and Wood, ‘International Law and International Relations Theory’; Goldsmith and Posner, *The Limits of International Law*.

<sup>8</sup> Gilpin, *The Political Economy of International Relations*; Keohane, *After Hegemony: Cooperation and Discord in the World Political Economy*; Moravcsik, ‘Taking Preferences Seriously: A Liberal Theory of International Politics’.

<sup>9</sup> Deudney, ‘Regrounding Realism: Anarchy, Security, and Changing Material Contexts’; Haas, ‘Introduction: Epistemic Communities and International Policy Coordination’; Finnemore and Sikkink, ‘International Norm Dynamics and Political Change’; Wendt, *Social Theory of International Politics*.

<sup>10</sup> Cf. the concept of ‘interaction capacity’ whose degree supposedly distinguishes an ‘international system’ from an ‘international society’, in Buzan and Little, *International Systems in World History: Remaking the Study of International Relations*.

<sup>11</sup> Cf. the conceptually open-ended ‘spillover’ in Haas, *Beyond the Nation-State: Functionalism and International Organization*; or the trick of defining ‘institutions’ and ‘regimes’ so extensively that it serves as a residual variable that can conveniently absorb any *ad hoc* phenomenon as needed, in Krasner, *International Regimes*; Abbott et al., ‘The Concept of Legalization’.

negative opposite would be the ‘apolitical’ or the ‘trivial’.<sup>12</sup> In such a binary scheme, where could one locate, for instance, ping-pong diplomacy – or many other key happenings of diplomacy, such as state visits<sup>13</sup>, digital diplomacy<sup>14</sup>, or high-level gift exchanges<sup>15</sup> etc.?<sup>16</sup> Ping-pong may seem politically trivial, and yet no one would deny that ping-pong diplomacy formed a world political aspect of central importance.<sup>17</sup> But it cannot be subsumed under the labels of ‘economy’ or ‘military’. No typology could reflect ping-pong diplomacy’s political centrality. A typological approach cannot properly clarify why it leaves out so-called trivialities, and what conditions the system to view something as significant for world politics and something else as trivial.

#### b. Towards Autopoietic Systems

This typological thinking resided at the level of *structure*; while outside of IR, general system theories moved forward to find systems which not only self-organize their structure, but which also constitute their internal *elements*. Organic bodies constantly de- and regenerate their multitude of cells; a single cell itself undergoes dynamic processes of metabolism in order to recurrently reproduce its internal elements. Self-(re-)producing, or autopoietic, systems operate so as to perpetually constitute their elements and boundaries (e.g. skin, membrane) against the environment.<sup>18</sup> They are both *open* towards the environment (to obtain energy and information), but they are also operationally *closed*, meaning that any system-internal operation connects itself only to system-internal operations. An autopoietic system must thus necessarily be self-referential in its operations. The implication of this self-referentiality is that there is no pre-given environmental ‘item’ that enters the system as an objectively ascertainable ‘input’ anymore, but that the environment can only *irritate* the system. It is then up to the system whether it transforms the environmental irritation into system-internal, i.e. self-produced, information or not.<sup>19</sup>

Such systems seek autopoiesis and *only autopoiesis*. Any other teleological claim would necessarily be a contingent interpolation by an observer who, in turn, is itself a system with self-referentially produced

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<sup>12</sup> A semantically more common antonym may have traditionally been ‘society’ – see Hegel, *Grundlinien der Philosophie des Rechts*. Today, with the growing understanding that politics is *part* of society rather than outside of it, the IR discipline tends to use ‘culture’ as the antonym of world politics; see Lebow, *A Cultural Theory of International Relations*; Reus-Smit, *On Cultural Diversity: International Theory in a World of Difference..*

<sup>13</sup> Paulmann, *Pomp und Politik*.

<sup>14</sup> Bjola and Holmes, *Digital Diplomacy: Theory and Practice*.

<sup>15</sup> Stollberg-Rilinger, *Rituale*.

<sup>16</sup> See also the ‘practice turn’ in diplomatic studies, e.g. Sending, Pouliot, and Neumann, *Diplomacy and the Making of World Politics*; Adler-Nissen, *Bourdieu in International Relations*; I have explored similar issues in previous papers such as Pacher, ‘The Ritual Creation of Political Symbols: International Exchanges in Public Diplomacy’ and Pacher, ‘The Diplomacy of Post-Soviet de Facto States’.

<sup>17</sup> Hong and Sun, ‘The Butterfly Effect and the Making of “Ping-Pong Diplomacy”’.

<sup>18</sup> Maturana and Varela, *Autopoiesis and Cognition*.

<sup>19</sup> For discussions of these concepts with regards to the legal system, see Teubner, *Recht als autopoietisches System*; Baxter, ‘Niklas Luhmann’s Theory of Autopoietic Legal Systems’; Kang, ‘Making Paradoxes Invisible’; with regards to International Relations, see especially Albert, *A Theory of World Politics*.

and therefore contingent semantics – such as the distinction of ‘politically significant’/‘politically trivial’.

c. Diplomacy’s Autopoiesis and Paradox

One can detect a cognate of autopoiesis even in classical IR theories. What they have in common is their functionally equivalent response to what keeps the international system afloat. Rather than autopoiesis, they call it power-maximization, national interest, or survival.<sup>20</sup> All these terms are so general that they are never fully determinable. In the end, they pose a variety of semantic propositions all of which denote the character of an a-teleological autopoiesis.<sup>21</sup> This perspective offers the key to understand why ‘trivialities’ (like state awards, ping pong, and other ubiquitous occurrences in diplomacy) *can* be thought of as ‘significant’ within the international system.

It is on the basis of such observations that the dissertation seeks to completely reconceptualize the diplomatic system. In brief, the theory section will regard diplomacy as an autopoietic, self-referential system separate from, but structurally coupled to, the political system. This inter-system relation between politics and diplomacy gives rise to communications that paradoxically operate both under the political medium of ‘power’ (which seem politically significant) and under the diplomatic medium of ‘peace’ (which seem politically trivial). While the semantics of ‘power’ signals organized capacities of physical force, the semantics of ‘peace’ conveys a generalized commitment to not utilize power. As every diplomatic communication combines both power and peace, the system is fundamentally grounded on this paradox. A closer illumination of the diplomatic mechanisms not only erodes the significant/trivial-dichotomy, but it also explains why even seemingly harmless objects used in diplomacy, such as state awards, always give rise to fundamental mistrust.<sup>22</sup> The paradox unity of power-induced structural mistrust on the one hand and peace-induced amical engagement on the other hand is expected to find positivization in diplomatic law, often with semantics that invisibilizes this paradox (e.g. exterritoriality, inviolability).<sup>23</sup>

The central hypothesis posits that the deployment of seemingly harmless diplomatic objects will (in spite of all peace-semantics and in spite of all trivialities) always be operationalized through power *and* peace. This paradoxical combination finds its expression in (a) the recipient state’s structural mistrust against the deployed objects, and in (b) the deploying state’s tendency to instrumentalize the objects thus deployed. Semiotically speaking, any object-deployment within the diplomatic system equals a

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<sup>20</sup> Morgenthau, *Politics Among Nations: The Struggle for Power and Peace*; Mearsheimer, *The Tragedy of Great Power Politics*.

<sup>21</sup> Otherwise world politics would cease to operate once the goal was attained; cf. Wendt, *Quantum Mind and Social Science*, 140.

<sup>22</sup> See also discussions on non-military statecraft in Goddard, MacDonald, and Nexon, ‘Repertoires of Statecraft’; Kornprobst, ‘Statecraft, Strategy and Diplomacy’.

<sup>23</sup> Deak, ‘Classification, Immunities and Privileges of Diplomatic Agents’; Preuss, ‘Capacity for Legation and the Theoretical Basis of Diplomatic Immunities’.

‘semiotic invasion’ to the detriment of the recipient state;<sup>24</sup> one could call it the ‘paradox of overlapping sovereignties’. This component of power immanent to diplomacy tendentially generates political conflicts, against which the diplomatic system foregrounds a semantics of peace which, in turn, only finds operationalization with power. This power-and-peace-paradox is not to be understood as the ‘tragedy’ of diplomacy, but rather as essential in order to ensure the autopoiesis of the diplomatic system.

There are many other aspects to this reconceptualization of the diplomatic system for whose elaboration this exposé offers too little space, including a digression on the historical evolution that led to the emergence of a self-referential system of diplomacy<sup>25</sup> and its laws.<sup>26</sup> The theoretical gist is, however, the erosion of the significance/triviality-distinction and thus the unfolding of diplomacy’s fundamental paradox. This conceptual deconstruction of the system opens up a way to understand seemingly harmless diplomatic practices as functional equivalents to military and economic issues, for all these objects ultimately serve to enact – however paradox it may seem – the function of ‘peace’.<sup>27</sup>

### III. Methods

The distinction of significance/triviality turns out to be contingent once one observes ‘trivial’ matters as equally treated like ‘significant’ issue areas. Taking the lens of observing both sides of the distinction as functional equivalents would thus offer a method to validate the claim. This empirical approach could draw from positivized materials that store system-internal semantics. With regards to the diplomatic system, such materials could be best provided by legal texts regulating inter-state relations.

The study would thus analyze the semantics and functions of the laws on various issue areas, some of which IR theories would deem trivial (i.e. without obvious military or economic rationales), others of which seem highly significant (e.g. armed forces, foreign investment). Such materials would involve, inter alia, the international legal regulation of ambassadors and embassies<sup>28</sup>, aspects of dual citizenships<sup>29</sup>, foreign military<sup>30</sup>, trade relations<sup>31</sup>, national laws on state awards and diplomatic gifts,

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<sup>24</sup> Lotman, ‘On the Semiosphere’, 215.

<sup>25</sup> Tilly, *Coercion, Capital, and European States, AD 990-1992*; Mattingly, *Renaissance Diplomacy*; Lazzarini, *Communication and Conflict: Italian Diplomacy in the Early Renaissance, 1350-1520*.

<sup>26</sup> Vec, “‘Technische’ gegen ‘Symbolische’ Verfahrensformen? Die Normierung und Ausdifferenzierung der Gesandtenränge nach der juristischen und politischen Literatur des 18. und 19. Jahrhunderts”; Bjola and Kornprobst, *Understanding International Diplomacy*, 63–76.

<sup>27</sup> Various strands of IR theorizing, such as that on the ‘everyday’ or on the ‘post-human’ in world politics, touch upon similar notions that dilute the boundary between hard political matters and the allegedly apolitical. For instance, ‘the everyday’ can be thought of as “a device for engaging with conceptions of politics that hold that everything and everywhere can be political”, write Guillaume and Huysmans, ‘The Concept of “the Everyday”’, 278; see also Bennett, *Vibrant Matter: A Political Ecology of Things*; and Cudworth and Hobden, *Posthuman International Relations: Complexity, Ecologism and Global Politics*.

<sup>28</sup> Denza, *Diplomatic Law: Commentary on the Vienna Convention on Diplomatic Relations*.

<sup>29</sup> Spiro, ‘A New International Law of Citizenship’.

<sup>30</sup> Woodliffe, ‘The Stationing of Foreign Armed Forces Abroad in Peacetime’.

<sup>31</sup> Carr and Stone, *International Trade Law*.

but also an analysis of the literature on non-legalized issues that operate under the label of ‘public diplomacy’ (e.g. student exchanges, panda diplomacy, state-led art exhibitions in foreign countries etc.).

Using theoretically-induced variables, the doctrinal-legal analysis expects to find patterns of the peace-and-power-paradox across the laws’ semantics. A semiotics of sovereignty, structural mistrust, and various strategies of invisibilizing the paradox are hypothesized to be found within every issue area, regardless of whether they would be judged as ‘significant’ or ‘trivial’ by traditional IR theories. The analogous structure combining both harmless objects such as state awards and crucial power-centered matters such as military weapons would indicate a validation of the systems-theoretical assumptions about the fundamental structure of the diplomatic system.

## IV. Planned Approach

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  - c. Paradoxes and De-Paradoxification in Diplomacy
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**b. Preliminary Timetable**

One may expect the further work on the dissertation to take three years, starting in the final quarter of 2020 and reaching into the third quarter of 2023. A preliminary timetable (see Table 1) decomposes the work process into three phases: One comprising the empirical research, another one consisting of the actual writing, and a final revision phase which disembarks into the *defensio*.

*Table 1:* Preliminary timetable for the planned dissertation, divided into four calendar years and their quarters (Q1-Q4).

	2020	2021				2022				2023		
	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3
<b>Empirical Research</b>												
Planning Phase												
Literature Search & Evaluation												
Collection of Legal Documents												
Doctrinal-Legal Analysis												
<b>Dissertation-Writing Phase</b>												
Collection of Sources												
Writing of Methods and Results												
Theory Section												
Discussion Section												
Introduction & Conclusion												
<b>Final Phase</b>												
Revision												
Layout												
Defensio												



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