

**Permanent Mission of Turkmenistan
to the United Nations**

866 UN Plaza,
Suite 424
New York, NY 10017

TKMUN/116/2010

The Permanent Mission of Turkmenistan to the United Nations presents its compliments to the Secretary-General of the United Nations, and in reference to the latter's note LA/COD/4 dated 9 April 2010, has the honour to transmit herewith information from the Government of Turkmenistan, for inclusion in the report of the Secretary-General regarding the General Assembly resolution 63/126 of 11 December 2008 entitled "Consideration of effective measures to enhance the protection, security and safety of diplomatic and consular missions and representatives".

The Permanent Mission of Turkmenistan to the United Nations avails itself of this opportunity to renew to the Secretary-General of the United Nations the assurances of its highest consideration.

New York, 7 June 2010

H.E. Mr. Ban Ki-moon
Secretary-General
United Nations
New York

Translated from Russian

Annex 1

Information of the Government of Turkmenistan on General Assembly resolution 63/126 of 11 December 2008 entitled "Consideration of effective measures to enhance the protection, security and safety of diplomatic and consular missions and representatives"

The foreign policy and diplomacy of Turkmenistan have focused unwaveringly on achieving national interests and on promoting international conditions favouring the effective implementation of long-term State programmes aimed at the comprehensive development of the State, at improving the welfare of the people and at increasingly integrating Turkmenistan into the world community. A fundamental aspect of the international activities of Turkmenistan has been and continues to be its focus on maintaining the principles of integrity and interconditionality in the strategic goals and agenda of its domestic and foreign policies, which seek to promote the social and economic growth of the country and the cultural and humanitarian development of society.

Today, Turkmenistan successfully maintains diplomatic relations with 129 States in the world and is party to 109 international conventions and agreements. In 2009, it adhered to an additional 10 international instruments, which reflects the consistency with which the State has sought to strengthen its international legal foundation.

Recognizing the importance of generally recognized norms of international law, Turkmenistan has adhered to a number of international documents in the area of diplomatic and consular relations, in particular those relating to the security and safety of diplomatic and consular missions and representatives. These include: the Vienna Convention on the Law of Treaties (Vienna, 23 May 1969), to which Turkmenistan became a party on 24 November 1995; the Vienna Convention on Diplomatic Relations (Vienna, 18 April 1961), to which Turkmenistan became a party on 18 June 1996; the Vienna Convention on Consular Relations (Vienna, 24 April 1963), to which Turkmenistan became a party on 18 June 1996; the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents (New York, 14 December 1973), to which Turkmenistan became a party on 30 April 1999; and the International Convention against the Taking of Hostages (New York, 17 December 1979), to which Turkmenistan became a party on 30 April 1999.

The activities of diplomatic missions and consular establishments are governed by the Constitution and laws of Turkmenistan, the generally recognized norms of international law and the international agreements to which Turkmenistan is party.

Under the laws of Turkmenistan, in particular the Act of 18 June 1996 on the status of diplomatic missions of Turkmenistan abroad, the Act of 18 June 1996 on consular establishments of Turkmenistan abroad and the Act of 20 December 1996 on diplomatic missions of foreign States in Turkmenistan, diplomatic missions, consular facilities and their staffs enjoy the immunities and privileges commensurate with their legal status.

Under article 15 of the Act of Turkmenistan on the status of diplomatic missions of Turkmenistan abroad, the heads and members of diplomatic missions of Turkmenistan abroad and members of their families, as well as the administrative and technical staff and members of their families, enjoy the privileges and immunities provided for under the Vienna Convention on Diplomatic Relations of 1961, provided no other bilateral arrangement between Turkmenistan and the receiving country in question applies.

Under article 20 of the Act of Turkmenistan on consular facilities of Turkmenistan abroad, consular officials, members of their staff and members of their families enjoy the privileges and immunities provided for under the Vienna Convention on Consular Relations of 1963, provided no other bilateral arrangement between Turkmenistan and the receiving country in question applies.

Under article 2 of the Act of Turkmenistan on diplomatic missions of foreign States in Turkmenistan, diplomatic missions of foreign States in Turkmenistan enjoy the privileges and immunities in the exercise of their functions provided for in the norms of international law.

The premises occupied by diplomatic missions are inviolable. Access to them may occur only with the consent of the head of mission or the person deputizing for him. The premises and the property therein, as well as the means of transport of the mission, enjoy immunity from all coercive measures, including search, requisition, attachment and execution.

The private residence of the head of mission and the living quarters of the diplomatic staff, the property situated therein and their means of transport enjoy the same inviolability and protection as the premises of the diplomatic mission.

The premises and means of transport referred to are not to be used for purposes incompatible with the functions of a diplomatic mission (article 12 of the Act).

Under article 14 of the Act, the archives, documents and official correspondence of the diplomatic mission are also inviolable.

The diplomatic pouch is not liable to being opened or detained. All packages constituting the diplomatic pouch are to bear visible external marks indicating their status, and they may contain only diplomatic documents or articles intended for official use.

The diplomatic courier enjoys personal inviolability in the performance of his functions. He may not be arrested or detained.

The personal baggage of the head of mission and of members of the diplomatic staff is exempt from inspection, unless there are grounds for presuming that it contains articles whose import or export is prohibited under Turkmen legislation. Customs inspection of the baggage of a diplomatic agent may take place only in his presence or in the presence of his authorized representative (article 16 of the Act).

Under article 42 of the Customs Code of Turkmenistan of 8 October 1993, the personal baggage and articles of persons enjoying diplomatic immunity and privileges under international treaties and intergovernmental agreements, as well as that of members of their families living with them, are exempt from customs control.

The head of mission and members of the diplomatic staff of the mission enjoy personal inviolability. They may not be subjected to detention, search or arrest, and they enjoy freedom of movement in the territory of Turkmenistan, with the exception of areas where entry is regulated by laws of Turkmenistan (article 17 of the Act of Turkmenistan on diplomatic missions of foreign States in Turkmenistan).

Under article 18 of the Act, the head of mission and the diplomatic staff of the mission enjoy immunity from the criminal, civil and administrative jurisdiction of Turkmenistan. However, such persons may be subject to the jurisdiction of Turkmenistan with the clear express consent of the accrediting State to that effect.

Immunity from civil jurisdiction does not extend to situations where the head of mission or members of the diplomatic staff of the mission enter into civil or legal relations as private individuals.

The head of mission and the diplomatic staff of the mission are not obliged to testify as witnesses and, if they agree to give testimony, they are not obliged to appear before a court or present themselves to investigative bodies.

The Criminal Code of Turkmenistan adopted on 18 April 2009 makes provisions for the special nature of bringing proceedings against persons enjoying privileges and immunity from criminal prosecution (article 50).

Under the legislation of Turkmenistan and the international treaties to which Turkmenistan is party, the following categories of persons enjoy immunity from criminal prosecution:

(1) the heads of mission of foreign States, the diplomatic staff of those missions and members of their families living with them who are not citizens of Turkmenistan;

(2) by mutual agreement, the administrative and technical staff of diplomatic missions who are neither permanent residents of Turkmenistan nor nationals of Turkmenistan, as well as members of their families living with them;

(3) by mutual agreement, members of the service staff of diplomatic missions who are neither permanent residents of Turkmenistan nor nationals of Turkmenistan;

(4) the heads of consular establishments and other official staff of consulates;

(5) diplomatic couriers;

(6) heads of Government and other representatives of foreign States, members of parliamentary and Government delegations and, by mutual agreement, the staff of delegations from foreign States visiting Turkmenistan in order to participate in international negotiations or international conferences and meetings or on some other official assignment, or passing through Turkmenistan in transit for such purposes, along with members of their families who are not nationals of Turkmenistan;

(7) heads of mission of foreign States, members of such diplomatic missions and their staff to international organizations situated in Turkmenistan on the basis of international treaties and generally accepted international traditions;

(8) heads of diplomatic missions and members of the diplomatic staff posted to third States who are in transit through Turkmenistan, along with members of their families who are accompanying them, travelling separately or returning to their country;

(9) other persons in conformity with norms set by the international treaties to which Turkmenistan is party (article 522 of the Criminal Procedure Code of Turkmenistan).

Under article 523 of the Criminal Procedure Code:

(1) The persons specified in article 522, paragraphs 1 and 5-8, of the Criminal Procedure Code and covered by provisions of international treaties to which Turkmenistan is party enjoy personal inviolability. They may not be detained or be held under arrest, except in cases where this is required in order to execute a legally enforceable judgement handed down against them.

(2) The persons specified in article 522, paragraphs 2-4, of the Code may be detained or held under arrest, unless instruments to which Turkmenistan is party provide otherwise, only in order to execute a legally enforceable judgement issued by a court in connection with the commission of a serious or very serious crime.

(3) A preliminary investigative body, prosecutor or court, having detained or held under arrest persons specified in parts 1 or 2 of the article, must without delay inform the ministry of foreign affairs of the country in question of that fact by telephone, telegraph or other means of rapid communication through the Ministry of Foreign Affairs of Turkmenistan.

Persons specified in article 522, paragraphs 1-3 and 5-8, of the Criminal Procedure Code have the right not to provide testimony as a witness or victim and, if they choose to testify, to do so without appearing before an investigator, prosecutor or court.

In the event that these persons provide testimony at the preliminary investigation stage as witnesses or victims but do not appear at the court session, the court may divulge their testimony.

The heads and other officials of consulates are not entitled to refuse to give testimony as witnesses or victims, except where the testimony relates to the performance of their official functions. In the event that officials of the consulate refuse to provide testimony as witnesses, coercive procedural measures are not to be applied against them. If the testimony is extremely important in a particular case, the matter can be resolved through the diplomatic channel.

If the consent to testify referred to earlier in the article is obtained, the summons given to the person in question is not to contain any mention of coercive measures that could be applied should the person in question fail to appear before the body summoning him.

Persons who enjoy immunity are not required to hand over to investigating bodies, prosecutors or courts correspondence or documents relating to the performance of their official duties (article 524 of the Criminal Procedure Code).

Under article 7, part 5, of the Criminal Code of Turkmenistan in its new redaction of 14 May 2010, issues relating to the criminal liability of diplomatic representatives of foreign States and other persons enjoying immunity who have

committed a crime in the territory of Turkmenistan are to be resolved in accordance with the norms of international law and the international treaties to which Turkmenistan is party.

The residence of the head of a diplomatic mission, the premises occupied by the diplomatic mission, the living quarters of members of the diplomatic staff, members of their families, their property and their means of transport are inviolable.

By mutual agreement, the immunity provided for in the first part of the article extends to the living quarters of service staff of the diplomatic mission who are not nationals of Turkmenistan and members of their families living with them.

By mutual agreement, the residence of the head of a consulate and the premises of the consulate are inviolable. Access to the premises, search of the premises, the seizure of objects that are of significance and needed for a criminal matter or the attachment of property may be carried out only at the request of or with the consent of the head of mission or consulate of the foreign State in question in accordance with the requirements of the Criminal Procedure Code.

The archives, official correspondence and other documents of the diplomatic mission or consulate are inviolable. Without the consent of the head of mission or consulate no procedural measures may be taken against them in terms of inspection or seizure of objects that are of significance in relation to a legal matter. The diplomatic pouch is not liable to detention or opening. Consent to enter the premises, as referred to in parts one, two and three of the article, or to the execution of procedural measures in the form of search, seizure of objects of importance in a legal matter, including inspection of official correspondence and other documents and seizure of such documents for use in a legal matter, should be requested by the prosecutor through the Ministry of Foreign Affairs of Turkmenistan.

In the cases referred to above, the seizure of objects of significance for a legal matter and their inspection are to be carried out in the presence of the prosecutor and a representative of the Ministry of Foreign Affairs of Turkmenistan (article 525 of the Criminal Procedure Code).

Under article 16 of the Code of Turkmenistan of Administrative Offences (17 December 1984), the question of liability for administrative offences committed in the territory of Turkmenistan by foreign nationals who, under the prevailing law and international treaties of Turkmenistan, enjoy immunity from the administrative jurisdiction of Turkmenistan, is resolved through the diplomatic channel.

A person who has the right to privileges and immunities enjoys them from the moment he enters the territory of Turkmenistan in transit to take up his post or, if he is already in Turkmenistan, from the moment his appointment is reported to the Ministry of Foreign Affairs of Turkmenistan.

The privileges and immunities of that person end when, in connection with the completion of his functions, he leaves Turkmenistan, or upon the expiry of a reasonable amount of time allowed for that person to leave. The privileges and immunities remain in effect for that person, however, if, due to circumstances beyond his control, he is unable to leave Turkmenistan.

In the event of the death of a staff member of a mission, his family members continue to enjoy privileges and immunities until the expiry of a reasonable amount of time given for them to leave.

In the event of the death of a staff member of a diplomatic mission who was neither a national of Turkmenistan nor a permanent resident of Turkmenistan or of a member of his family who was residing with him, the personal property of the deceased may be exported, with the exception of property whose export was prohibited by prevailing Turkmenistan law at the time of the death.

No inheritance tax or succession duties are collected on the personal property (article 22 of the Act of Turkmenistan on diplomatic missions of foreign States in Turkmenistan).

Under article 23 of the Act, in the event of a break in diplomatic relations between Turkmenistan and other States that have a diplomatic mission:

- the Government of Turkmenistan respects and protects the premises of the diplomatic mission, as well as its property and archives;
- the accrediting State, with the consent of the Government of Turkmenistan, may entrust the custody of the premises of its diplomatic mission, along with its property and archives, as well as the protection of its interests and the interests of its nationals, to a third State that has a diplomatic mission in Turkmenistan.

All members of the family of a diplomat enjoy diplomatic immunities and privileges if they are not nationals of Turkmenistan. The status of administrative and technical staff is equivalent to that of diplomatic staff, with the exception of the exemption of personal baggage from inspection, as well as immunity from civil and administrative jurisdiction, which does not extend to such staff. Immunity from civil and administrative jurisdiction of Turkmenistan applies only to acts committed by administrative and technical staff in the performance of their official duties.

Under article 23 of the Act, the privileges and immunities specified for diplomatic staff members of diplomatic missions extend to heads and members of State, governmental, and parliamentary delegations of foreign States that are in Turkmenistan on official or unofficial visits.
