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LEGISLATIVE BASIS OF THE US DEPARTMENT OF STATE: HISTORICAL BACKGROUND

The article is devoted to the analysis of the formation of the legal framework that enabled the existence and functioning of the State Department of the United States of America as the main body in conducting the country's foreign policy. The author emphasizes that certain historical conditions in which America found itself in different periods of its existence became a challenge for the continued existence of the State Department and the entire diplomatic service, and therefore the question of modernizing the US diplomatic service and transferring it to another was constantly on the agenda, a qualitatively new level. That is why, since the gradual departure from the idea of isolationism, American ruling circles have tried to "build" a diplomatic service that has all the hallmarks of flexibility, professionalism, and democracy. The author notes that the direct basis for the existence of foreign service is the US Constitution, although it does not fully answer the question of foreign policy by the US State Department, although it outlines the role of the US President in foreign policy. In general, the author emphasizes the changes in the status of the State Department and the diplomatic service, which were introduced by relevant legislation (Rogers Act of 1924, the Foreign Service Act of 1946 and 1980, etc.), the need for which was caused by certain historical conditions of existence of the American state and its place on the world stage.

Key word: USA; State Department; legislation; foreign service; Rogers Act.

Introduction

In the United States of America, the first diplomatic institutions were created directly by representative bodies and were initially directly subordinate to legislative rather than executive power structures. In January 1781, Congress (the legislative assembly of representatives of all colonies that declared their independence from England) established the Department of Foreign Affairs, and it is this date that is celebrated in the United States as the day of the emergence of the central diplomatic office. In 1789, in accordance with the US Constitution, adopted in 1787, the Department of Foreign Affairs was transformed into the Department of State and became subordinate to the President of the country. The Constitution, having summed up the general legal basis for the service of external relations, speaks of its organization in a very vague form; the limits of the competence of the executive and legislative branches are not determined, and the role of the State Department in the system of foreign affairs agencies is not clear. The Constitution did not say anything about a professional diplomatic service, which would subsequently negatively affect the activities of American diplomatic institutions in the 20th century (*The Constitution of the United States, URL...*). That is why, after a period of American isolationism at the beginning of the 20th century and changes in the requirements for the diplomatic service during World War II, the question of developing a qualitatively new legislative framework for the reorganization of the diplomatic service became on the agenda.

Materials and Methods

The main methods of scientific knowledge were comparative, problem-chronological methods and the method of analysis. In particular, the problem-chronological method was used when considering the basic laws of the US diplomatic service in chronological order, which was caused by the presence of certain problems in the functioning of the latter and to preserve historical continuity, present a single picture and take into account qualitative changes in the organization and functioning of the US diplomatic service. One of the main methods of scientific research was the comparative method, which made it possible, through comparison and analysis, to identify fundamental differences in the laws on the diplomatic service adopted at different times and thus made it possible to see qualitative changes in the status of the diplomatic service, which were necessary in the new conditions of the development of the state and the world. The principle of historicism is also used, which allows us to consider the phenomenon we are studying in its development.

Among the great scientific work concerning American foreign policy, it is difficult to distinguish precisely those works that focus on the legislative bases. Directly in this context, we can highlight the works of E. Plischke, which, although relating to American diplomacy in general, still in some way affect the consideration of the activities of the US State Department (*Plischke, E. 1999: 763*). The work of such American researchers as I. Stewart, E. Stowell, T.L. Reed deserves some attention (*Stewart, I. 1930; Stowell, E. 1931; Reed, T. L., 1978*).

Results and Discussion

Today, the US Foreign Service is represented by more than 14,000 professionals who pursue US foreign policy and assist US citizens abroad. However, this was not always the case. In the beginning of the formation of a new state, American politicians did not consider it necessary to create their own career diplomatic service. They motivated their position by the fact that for the United States, whose philosophy is based on republican motives, they do not accept monarchical diplomatic institutions and traditions of the Old World. Another argument against a kind of professionalization was the popular judgment of President E. Jackson since the 1930s: "The duties of civil servants are so simple that any reasonable person can fulfill them". (Matveev, V.M., 1987: 18).

Gradually, appointment to the diplomatic service became a kind of reward rather than a professional necessity. The president who won the election appointed his allies and friends to prestigious posts, rewarding them in such a way for their support, which negatively affected the efficiency of the work and the prestige of the United States. Gradually, in the process of the transformation of the United States into a powerful state and the emergence of ambitions for full participation in solving international problems, the attitude towards diplomacy and towards its main tool - the diplomatic service began to change. Therefore, America had no choice but to borrow the experience of that very Old World, which it so rejected in the 19th century. Initially, since the creation of the Department of State in 1789, there were two services in the United States of America that were engaged in diplomatic and consular activities and, accordingly, had different functions.

In particular, the Foreign Service ensured the functioning of the state by appointing ambassadors and ministers to work at embassies abroad, and the consular service provided consuls to assist United States sailors and to facilitate international trade and commerce. Throughout the 19th century, ambassadors and consuls were appointed to their posts by the President of the United States and until the end of the 19th century, their work was considered unpaid, and they had to provide for their livelihood by establishing commercial ties in the countries to which they were sent. In addition, it was not forbidden to earn a living while serving in the diplomatic service by setting up a private business or collecting fees. By the end of the nineteenth, the US Congress nevertheless decided to encourage the work of employees of the diplomatic service and in 1856 set a salary for consuls, which deprived them of the opportunity to engage in private business, but did not exclude the possibility of providing certain paid services.

At the beginning of the twentieth century, the laws of the Congress and a number of US presidents, by their orders, began to introduce a competitive criterion for admission to the diplomatic and consular service, thereby proclaiming the principle of career advancement based on knowledge, qualifications and experience. Therefore, after the end of the First World War, the question of completing the formation of a career diplomatic service arose on the agenda. It was created under the Rogers Act of 1924 as the US Foreign Service. However, the very integration of the staff of the State Department and the Foreign Service (the first were part of the Civil Service) was postponed and took place only in the 50s. (Zonova T.V., 2004: 11).

Representative Rogers, who led the congressional campaign, stated his objective in 1923: "Let us strive for a

foreign service which will be flexible and democratic; which will attract and retain the best men we have; which will offer reasonable pay, reasonable prospects for promotion, [and] reasonable provision against want when old age comes to a faithful servant" (*The Rogers Act, URL...*). Established in 1924 by the Rogers Act, the Foreign Service united the consular and diplomatic services of the US government into one administrative unit. In addition to the main functions of the Department of State, the Rogers Act dealt with the personnel issue, under which the Secretary of State of the United States of America was empowered to send diplomats abroad. In general, Rogers' Law established and regulated matters of admission to the diplomatic service. According to the said Law, persons wishing to enter the diplomatic service had to pass a special selection system, which was based on a series of written and oral examinations. The introduction of a rather difficult exam for the diplomatic service was caused by the desire of American political circles to recruit the most outstanding Americans, with exceptional professional qualities, capable of "effectively" defending the interests of the United States on the world stage in the context of the latter's departure from the policy of isolationism (*Stewart, I. 1930: 356*). The law established a specific merit-based promotion system, and established the Foreign Service Council and the Foreign Service Examination Commission, the former of which advised the Secretary of State on the management of the diplomatic service, and the latter governed the examination process. The law also regulated promotion issues on the basis of such an indicator as efficiency, but at the same time set limits on the number of promotions, thus maintaining a certain balance, so that each class of officers did not exceed a percentage of the total number of officers in the diplomatic service (*Evans, A. E., 1948: 206-210*). The law also resolved issues of material support for officers of the foreign service. In particular, certain salary limits were established, which had to vary from \$ 3,000 for officers of the lowest level (class 9) to \$ 9,000 for officers of the first class. The law also regulated the issue of social security through the provision of regular home leave and established a pension system. A special reinstatement provision allowed career officers who became mission leaders to remain in the diplomatic service beyond their terms of service. Previously, they were required to resign with no guarantee of a future appointment as president for other responsible duties, which sometimes led to the dismissal of the most experienced and competent officers at their peak. (*The Rogers Act, URL...*). To help reform the system of foreign service, the School of the Foreign Service was created to provide special training for future diplomats. The main focus was on language training in languages and other necessary skills of a professional diplomatic service. The U.S. government has also assumed responsibility for buying or renting office and residential space, further reducing the need for private capital as a precondition for a diplomatic career. Reflecting on these reforms, Assistant Secretary of State Wilbur J. Carr noted that "the diplomatic service has finally achieved the goal that the country's presidents, secretaries of state and businessmen have been striving for for years, namely, a reasonable and adequate position in the payment method and allowances for men who have served in the United States in a diplomatic or consular capacity in foreign countries". (*The Rogers Act, URL...*). Over time, however, it became clear that many of these advances were temporary. During the Great Depression, financial health in the government led to a suspension of promotions, lower

wages, the abolition of hospitality and subsistence benefits, paid home leave, and a suspension of employment for four years. As a result of such events in the mid-1930s, the number of the diplomatic service officers declined by more than 10 percent.

During the Second World War, there was a certain increase in various bodies and organizations performing certain functions in the international arena, but were not part of the structure of the US State Department. This, in turn, jeopardized the image of the "main" body in the implementation of US foreign policy, and opinions began to divide in American political circles about the original nature of the State Department and the scope of its responsibilities. In the end, as a result of discussions, it was decided to delegate the powers of most organizations to the State Department, which were outside its structure, and with the end of the war, the functions of the Department were significantly increased.

In 1946, the US Congress, at the request of the Department of State, considered and passed a new Foreign Service Act, which created six categories of foreign service personnel, namely: heads of mission, diplomatic service officers, consular agents, diplomatic service reservists, diplomatic service personnel, etc. called "foreign personnel", which was later renamed as citizens of the diplomatic service, and later as employees working in the field. Foreign Service officers had to spend most of their careers overseas and had to be ready to serve around the world. Foreign service personnel also included clerical and auxiliary posts. The purpose of this system was to eliminate the distinction between the diplomatic service and civil service personnel, which was a source of friction. The Foreign Service Act of 1946 also repealed the Acts of 1927 and 1930 that conferred diplomatic status on overseas diplomatic missions of the USDA, as the Department of State appointed an Agriculture and Trade Attaché at this stage. The Act of 1946 reorganized the Council of the Diplomatic Service, giving it broader staffing powers and established the post of Director General of the Diplomatic Service. It also introduced a "promotion or departure" system, the essence of which was mandatory retirement, provided that the employee of the diplomatic service did not receive a higher rank within a certain period of time. In fact, the concept itself was borrowed from the US Navy. The Act of 1946 also established the career minister rank for the most senior officers in the service, and established a mandatory age of retirement (*AN ACT To improve..., URL...*).

In the mid-1950s and 1960s, the Foreign Service faced a new challenge, namely, the confrontation of individual career expectations with the general interests of the Foreign Service, namely maintaining a balanced rank distribution. Many young officers felt they were moving too slowly up the career ladder (*Reed T. L., 1978: 411*).

Under President J. Kennedy, the authority of the State Department and American diplomatic staff abroad was increased. In May 1961, Kennedy gave the US ambassadors the right to control the activities of all American institutions abroad (except military missions). On his direct instructions, Secretary of State David Dean Rusk urged operational diplomatic staff to increase their activity and "not be afraid to make decisions" (*Zonova T.V., 2004: 12*).

However, the new approach to personnel management was not successful enough, leading to attempts in the late 1970s to revise the Act of 1946. During the drafting of this law, Congress decided to reinstate Foreign Service status for trade attachés. The Foreign Service Act

1980 is the last major legislative reform of the diplomatic service. It abolished the category of reserve officers in the diplomatic service and reformed the personnel system for non-diplomatic employees of local missions abroad (citizens of the diplomatic service). The law introduced hazard pay for diplomats serving in a dangerous and hostile environment, as well as other administrative changes.

The Act of 1980 also extended and expanded the Foreign Service Council, which now "was to include one or more representatives from the State Department, the United States Information Agency, the United States Agency for International Development, the Department of Agriculture, the Department of Commerce, the Department of Labor, Personnel Offices, Budget Offices, Equal Employment Opportunities Commission, and other agencies as the President may designate". This council was empowered to advise "the Secretary of State on matters pertaining to the Service, including the achievement of the objectives of maximum compatibility between agencies authorized by law to use the personnel system of the Foreign Service". (*UNITED STATES of AMERICA Excerpt from the Legislation on Foreign Affairs Through 1996 Foreign Service Act of 1980, URL...*). The law recommended that the president make appointments to senior diplomatic posts, predominantly from the personnel service. But a year later, the new US President Ronald Reagan will ignore this recommendation and appoint almost half of the ambassadors he replaced from among his personal acquaintances. At the same time, several experienced diplomatic professionals, whose career paths were blocked by the presidential "appointees", were forced to retire. The Foreign Service Association, which defends the interests of professional diplomats, in a special letter to President Reagan noted that irresponsible appointments for political rather than business reasons, "the respect for the United States in the world is falling". The presidents of the United States, who followed after R. Reagan, were more inclined than R. Reagan to rely on professional diplomats. Nevertheless, in general, the status of the latter remained permanently unstable (*Zonova T.V., 2004: 12*).

Conclusion

Prior to the enactment of the Foreign Service Act, there was little control over the selection of diplomatic and consular personnel representing the United States of America on the world stage. After World War I, it became clear that the diplomatic service needed restructuring. The first initiative was the Rogers Act of May 24, 1924. In 1924, the Rogers Act fundamentally reformed the foreign services by establishing a career organization based on competitive examination and merit promotion. In particular, the Rogers Act introduced a joint diplomatic and consular service into the united diplomatic service of the United States of America; a personnel system was introduced for the appointment of diplomats and support personnel; competitive exams for new employees were designated and career advancement through merit was envisaged. It was also important to establish the age of retirement, which was determined by the 65-year age limit. The second initiative was the Moses-Linthicum Law of February 23, 1931 (*Stowell, E. 1931:516*). This act amended the Rogers Act and tried to address concerns about the need to coordinate diplomatic and consular offices and streamline promotion policies. These two initiatives have made a significant contribution to the development of the diplomatic service. The next step in reforming the foreign service was the adoption of the 1946 Diplomatic

Service Law, which did not create a fundamentally new organization, but was most likely intended to improve, strengthen and expand the existing body. The main changes introduced by the Law of 1946 concerned administrative bodies, namely, the issue of the formation of a foreign service, its personnel and training, which, of course, can be attributed to the merits of this Law. In fact, the Diplomatic Service Act of 1946 helped to improve the organization of the diplomatic service, increase the attractiveness of career aspects of the service, and streamline career development. In 1980, with the approval of Congress of the US Foreign Service Act, personnel diplomacy acquired a solid new legal basis. Still, the main problem, namely, securing a stable place in the staff for the personnel diplomatic service, was not resolved. Today's US Foreign Service is run by the Director General, an officer appointed by the President of the United States on the recommendation and consent of the Senate. By unspoken tradition, this position is traditionally held by a current or former employee of the diplomatic service. Until 2016, in accordance with an administrative regulation of the Department of State, the head of the diplomatic service was also the director of the bureau of human resources, thus occupying two positions in the structural hierarchy, which, in fact, allowed him to hold a position equivalent to that of the deputy secretary of state. In particular, it is this provision that is regulated by legislative act 22 U.S. Code § 3928. Director General of Foreign Service (22 U.S. Code § 3928, URL...)

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ЗАКОНОДАВЧО-ПРАВОВЕ ПІДҐРУНТЯ ФУНКЦІОНУВАННЯ ДЕРЖАВНОГО ДЕПАРТАМЕНТУ США: ІСТОРИЧНА ДОВІДКА

Стаття присвячена аналізу формування нормативно-правової бази, яка уможливила існування та функціонування Державного департаменту Сполучених Штатів Америки як головного органу у проведенні зовнішнього курсу країни. Автор наголошує, що певні історичні умови, в яких опинялася Америка в різні періоди свого існування, ставали певним викликом для подальшого існування Державного департаменту та й всієї дипломатичної служби, а тому на порядок денний постійно поставало питання про модернізацію дипломатичної служби США та переведення її на інший, якісно новий рівень. Саме тому з моменту поступового відходу від ідеї ізоляціонізму, американські правлячі кола намагалися «побудувати» таку дипломатичну службу, яка б мала всі ознаки гнучкості, професійності та демократичності. Автор зазначає, що безпосереднім підґрунтям існування зовнішньої служби є Конституція США, хоча вона в повній мірі не дає відповіді на питання про проведення зовнішньої політики саме Державним департаментом США, хоча в ній в загальних рисах зазначається роль Президента США у здійсненні зовнішньої політики. Загалом, у статті автор наголошує на змінах щодо статусу Державного департаменту та дипломатичної служби, які були внесені відповідними законодавчими актами (Закон Роджерса від 1924 р., Закон про зовнішню службу від 1946 року та 1980 року тощо), необхідність прийняття яких була викликана певними історичними умовами існування американської держави та її місця на світовій арені.

Ключові слова: США; Державний департамент; законодавчий акт; зовнішня служба; Закон Роджерса.

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