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**The duty of non-interference and its impact on
the diplomatic message under the *Vienna
Convention on Diplomatic Relations***

Volume I: Text

by

Paul Behrens

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.....

For Mami, Ellis and Robert

Abstract

The rule of non-interference in the internal affairs of the receiving State, which is today enshrined in Article 41 (1) of the *Vienna Convention on Diplomatic Relations*, contains a fundamental duty of the diplomatic agent. But the Convention does not define the scope and extent of the concept of interference, nor its relationship with norms which inform its character.

This thesis investigates a particular form of interference: interference through the diplomatic message. In its first part, it examines the problems arising from an analysis of the available sources on the law of diplomatic interference. It also approaches the meaning of "interference" in diplomatic relations and endeavours to come to an understanding of the diplomatic message and its legal bases, and of the legal context of the rule of non-interference.

The second part identifies tendencies in State practice to withdraw certain aspects of their internal and external affairs from the reach of "acceptable" diplomatic messages. The concomitant allegations of interference lead to a consideration of the underlying diplomatic conduct from three perspectives: the topics of interference through the diplomatic message, the recipients of the interfering message and the methods of disseminating the message.

But the thesis also investigates defences which are at the disposal of diplomatic agents and sending States and which have on occasion been invoked in justification of the alleged conduct of interference. It also suggests ways of reconciling the resulting conflict between the permissive and restrictive norms which apply in this field.

By so doing, it reaches an understanding of diplomatic interference which is based on a more contextual legal analysis and which allows the identification of a concept which does justice to the diverging legitimate interests of sending State, receiving State and the diplomatic agents themselves.

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"Gentlemen, – If the goddess of diplomacy were to be sculptured I would present her wrapped in a dark robe with a finger on her lip."

Catacazy (Russian Minister to the United States). Quoted in *The Times*, 30 December 1871

Introduction

The diplomatic duty of non-interference touches upon contradictory interests of States. Its rationale lies in the fact that there are certain matters which States consider to fall within their exclusive domain and which brook no participation by foreign representatives. It is for that reason that the duty of non-interference is seen as firmly rooted in the principles of the sovereignty and equality of States¹.

At the same time, most sending States will feel entitled to an attempt to influence certain matters in the receiving State – projected laws for instance, which would negatively affect the interests of the sending State and measures which would lead to a mistreatment of nationals of the sending State in the receiving State. Moreover, by accepting permanent diplomatic agents, receiving States have to expect that they will engage in precisely these forms of diplomatic activity.

¹ Cahier, p. 142.

This conflict of interests is mirrored in international law by a conflict of norms. Whereas the rule of non-interference (Article 41 (1) 2 of the *Vienna Convention on Diplomatic Relations*) protects the interests of the receiving State, the affirmation of the functions of the diplomatic agent (Article 3) supports the interests of the sending State and its representatives. But while the Convention codifies these diverging rules, it does not elaborate on the connection between them; the conflict of norms is unresolved.

This thesis endeavours to identify the fields of interference which have emerged in the practice of States, to analyse the impact of the functions of the diplomatic agent on these situations, and to offer a reconciliation between the divergent norms. In so doing, it focuses on one aspect of interference in particular: interference through the diplomatic message. The reason for this is the particular importance of the diplomatic message, which features (in a verbal or non-verbal form) in most cases of interference. But the diplomatic message is also a necessary prerequisite for the fulfilment of diplomatic functions. Diplomacy, in most cases, cannot proceed "with a finger on her lips". As *Glahn* remarked: "At the root of all diplomatic practice is the need for communication"².

Coming to a better understanding of the idea of interference is not an exclusively academic endeavour. It has practical benefits for diplomatic agents who have to conform to the duties which international law imposes upon them, but it also

² Glahn / Taulbee, p. 401. Indeed, the German translation of "ambassador" ("Botschafter" – ie, messenger) reflects a significant part of the rationale for the very existence of the diplomatic office.

renders assistance to the States concerned in their attempts to make a legal assessment of certain forms of diplomatic behaviour. The many cases in which diplomats and their critics disagreed on the evaluation of behaviour as "interference" attest to the need for the identification of international rules on this duty in particular. Later instruments on diplomatic law also require sending States to come to a more precise understanding of the constituent elements of interference than that which the wording of Article 41 of the *Vienna Convention on Diplomatic Relations* provides³.

There is, at present, a lack of international guidelines on the duty of non-interference⁴. Authorities on diplomatic law frequently mention the rule of non-interference, but what *Przetacznik* observed thirty years ago, still holds: the extent of this diplomatic duty has received neither systematic nor exhaustive treatment⁵. Most authors either do not elaborate on the constituent elements of interference, or limit themselves to an overview of the cases in the field. The correlation between diplomatic functions and diplomatic interference has, to date, not been adequately discussed, nor has there been an attempt to resolve the conflict posed by these divergent norms.

³ Article 77 (2) of the 1975 *Vienna Convention on the Representation of States in their Relations with International Organizations of a Universal Character* – which will be discussed later – imposes certain duties on sending States in cases of "grave and manifest interference" by persons enjoying duties and privileges under that Convention, whereas Article 41 (1) 2 of the *Vienna Convention on Diplomatic Relations* only speaks of the "duty not to interfere".

⁴ See on this matter *NYIL* (1984), p. 308.

⁵ *Przetacznik* (1976), pp. 57, 58.

There is therefore room for a study which identifies the fields of interference and which considers this form of diplomatic conduct in its legal context. This is the objective of this thesis.

The main aspect of its first part is an examination of the concept of "diplomatic interference", as it can be derived from the intentions that emerged during the codification process, from academic opinion and from the practice of members of the international community. The first chapter, which evaluates the available sources, illustrates the methodological difficulties which any investigation of diplomatic interference faces. The second chapter deals with the interpretation of the term "interference" as it appears in the *Vienna Convention on Diplomatic Relations*, and it investigates conclusions that may be drawn from the use of the term in selected other fields of international law. The third chapter provides an approach towards the conduct which limits the remit of the thesis – the diplomatic message. The fourth chapter concludes the first part with an examination of the legal context of interference through the diplomatic message; it looks therefore in particular at the impact of permissive and restrictive norms on the evaluation of conduct which is alleged to be interference.

The objective of the second part is the identification of particular fields of diplomatic interference through the diplomatic message. It dissects the behaviour of interference into its integral elements by looking at objects, contacts and methods of the diplomatic message. The fifth chapter (objects) deals in particular with political, military and economic affairs which may become topics of the diplomatic message, but it also evaluates the use of individuals in the receiving

State as targets. The sixth chapter (contacts) examines the recipients of the diplomatic message. The seventh chapter (methods) deals with the activities adopted by diplomatic agents in their endeavour to disseminate the message. The conclusion seeks to evaluate the nature of the obligation of non-interference and broaches the possibility of its incorporation in a formal document setting out the duties of diplomatic agents.

For reasons explained in the first chapter, this thesis relies to a significant degree on an evaluation of past State practice in the field of diplomatic relations. Newspaper accounts and cases reported in digests and by academic writers, occupy a prominent place in this regard. Details and sources for notable instances of interference through the diplomatic message are provided in Annex A. When these cases are mentioned in the text, reference is usually made to the receiving State, the name of the diplomatic agent, the year and the name of the sending State. On some occasions, a diplomatic agent has provoked more than one reaction through more than one form of behaviour. In those situations, the case is given a particular number to distinguish it from other cases involving the same diplomat⁶. The same system of numbering is adopted in the Annexes.

The term "*Vienna Convention*" will be used throughout the text for the 1961 *Vienna Convention on Diplomatic Relations*. Articles numbers refer to provisions of the *Vienna Convention*, unless otherwise indicated.

⁶ For instance: "Indonesia: the 2000 case of Gelbard (No 3) (US)" refers to a case involving the US diplomat Gelbard, which took place in Indonesia in 2000. It is the third case involving Gelbard.

Introduction

This thesis incorporates some of the findings which were presented in the thesis *The Legal Limits of Diplomatic Observation*, submitted for the degree of LLM to the University of Birmingham in 2001. These findings form part of the discussions in Chapter 1, section 2 a – d.

Academic opinion, factual instances of interference through the diplomatic message, case law and other materials have been considered up to 1 January 2007.

**Part I – Towards a Concept of Interference
Through the Diplomatic Message**

Chapter 1 – Evaluating Diplomatic Interference: A Problem of Sources

The problem of interference is a problem of approach as well as assessment. Before a positive finding can be made that a particular diplomatic behaviour qualifies as interference, the question needs to be answered what material may be used to come to such a conclusion. The two principal sources to which Article 38 of the *Statute of the International Court of Justice* (ICJ) refers – conventional and customary law – pose particular challenges in this regard, and these difficulties will be discussed in this chapter.

That is not to say that the "subsidiary means for the determination of the law", which Article 38 also mentions, are without any benefit for the assessment of interference. But they pose problems of a different kind. As far as "teachings of highly qualified publicists"⁷ are concerned, reference has already been made to the scarcity of studies which explore the concept of interference in a systematic and exhaustive manner⁸. As far as judicial decisions⁹ are concerned, very few of the cases decided by international courts and tribunals have dealt with the question of diplomatic interference. Nor is there a substantial body of case law in national courts on this matter¹⁰: interference is commonly seen as a political, and not a legal offence. In those instances in which interfering behaviour also violated rules of

⁷ Article 38 (1) (d) *Statute of the International Court of Justice*. See also Mr Justice Gray *The Paquete Habana*, 175 U. S. 677, 20 S. Ct. 290, 44 L. Ed. 320 (1900), cf. Janis / Noyes, pp. 66, 71, 75.

⁸ *Supra*, p. 10.

⁹ Article 38 (1) (d) *Statute of the International Court of Justice*.

¹⁰ On the use for international law of decisions by national courts see Mendelson (1996), pp. 81, 82.

domestic criminal law, the immunity enjoyed by diplomatic agents usually forms a bar to legal proceedings on these issues.

Neither judgments nor writings have provided an adequate analysis of more recent phenomena in the field of diplomatic interference – for instance, the important question of the relationship between interference and reporting on human rights abuses. However, where academic or judicial opinions exist, reference is made to them in the subsequent analysis of diplomatic interference.

1. The applicable Conventional Law

The basis for the understanding of interference which is adopted in this thesis is interference committed by diplomats of one State to another State – a concept based on the prohibition of this conduct in Article 41 (1) 2 of the *Vienna Convention on Diplomatic Relations*¹¹. Chapter 2 will explore the natural meaning of the word "interference", as it appears in the text and provide an analysis of the opinions voiced in the International Law Commission (ILC) on the concept of interference.

However, when news media and even expert commentators on diplomatic relations refer to "diplomatic interference", they do not always speak of conduct committed by permanent representatives to States. The reference may concern *ad hoc* diplomats, diplomats to international organizations and consular agents. Specific legal regimes are applicable to these officials, and the question therefore arises

¹¹ See Annex B.

whether the assessment of conduct committed by those agents can be the basis of analogies to the behaviour under consideration

The duties of *ad hoc* diplomats are today regulated in the *Convention on Special Missions* of 1969, whose Article 47 (1) 2 prohibits interference in the affairs of the receiving State¹². The wording is identical to that of Article 41 of the *Vienna Convention*, and there is evidence that the ILC did not intend to convey a different meaning through this norm. In fact, when the rule of non-interference in the draft on special missions was first introduced (as Draft Article 38), the Chairman of the ILC explained that the major difference to Article 41 was to be seen in other paragraphs of that draft¹³. The 1965 Commentary on the *Draft Articles on Special Missions* likewise made clear that the first paragraph in its substance reproduced the first paragraphs of Article 41 of the 1961 *Vienna Convention* and of Article 55 of the *Vienna Convention on Consular Relations* and added that "the rule in question is at present a general rule of international law"¹⁴.

To diplomats who represent their States at international organizations or conferences, the 1975 *Vienna Convention on the Representation of States in their Relations with International Organizations of a Universal Character* applies which, in Article 77 (1) 2, contains a rule whose text is again identical to that of Article 41 (1) 2 of the *Vienna Convention*. But the position of representatives under this instrument differs from that of diplomatic agents to States. The roles of three actors – the sending State, the international organization (or conference) and the

¹² See Annex D.

¹³ The chairman pointed out that, if Draft Article 38 were compared to Article 41 of the *Vienna Convention*, the "major difference" would be seen to occur in paragraph 2. YILC 1965 (1), p. 240, para. 52.

¹⁴ YILC 1965 (2), p. 189, Draft Article 40 [Draft Articles on Special Missions]. See also YILC 1967 (2), p. 367, Draft Article 48 [Draft Articles on Special Missions with Commentaries].

host State need to be considered. It is the protection of the host State which forms the rationale for Article 77 (1) 2 of the 1975 Convention.

The different position of representatives under this instrument prompted some members of the ILC to voice doubts about the applicability of the rule of non-interference. It was stated in particular that diplomats to international organizations, as part of their duties, sometimes had to engage in criticism of members of the international community which might include their hosts¹⁵. ILC Member Ushakov pointed to the difficulty of assessing interference in the case of permanent missions to international organizations and even suggested the deletion of the rule¹⁶.

This view was not unopposed; other Members felt that representatives of this kind were in the same situation as regular diplomats and that the rule of non-interference addressed a "real need" of the host State¹⁷. Albónico made express reference to the regulation of the duty in the 1961 *Vienna Convention* and the *Vienna Convention on Consular Relations* and stated that the equivalent provision in the instant draft "neither added to nor took anything away from those provisions"¹⁸.

In the end, the rule of non-interference not only survived in the text, but the ILC adopted a provision (later reproduced in Article 77 (2) 2 of the 1975 Convention) which is absent from the three other instruments which are discussed here: the sending State has a positive obligation to withdraw diplomats guilty of "manifest and grave interference" in the affairs of the host, to terminate their functions or to

¹⁵ Cf. YILC 1968 (1), p. 51, para. 55 [Mr Bartoš]; YILC 1969 (1), p. 175, para. 45 [Mr Bartoš]; YILC 1970 (1), p. 29, para. 12 [Mr Rosenne]; YILC 1971 (1), p. 76, para. 25 [Mr Ushakov]; YILC 1971 (1), p. 191, para. 59 [Mr Castañeda].

¹⁶ YILC 1971 (1), p. 76, para. 25 [Mr Ushakov].

¹⁷ YILC 1969 (1), p. 41, para. 16 [Mr Ignacio-Pinto]. Cf. also YILC 1971 (1), p. 78, para. 41 [Mr. Albónico].

¹⁸ YILC 1971 (1), p. 78, para. 41 [Mr. Albónico].

secure their departure¹⁹. The ILC Commentary explains that this obligation was imposed because of the "absence of the *persona non grata* procedure in relations between States and international organizations"²⁰. It is however the first time that an instrument on diplomatic relations made express reference to the link between diplomatic interference and potential sanctions. The duty imposed on the sending State confirms the importance which the drafters put on interference even by representatives to international organizations, and therefore justifies the use of these cases in analogy. But it also draws attention to the fact that a differentiation between several forms of interference, with reference to their degree of gravity, is possible.

At the time of writing, the Convention has not yet entered into force. However, there is evidence that Article 77 represents customary international law. This was the opinion of several members of the ILC²¹, and it is further corroborated by the existence of cases in which host States protested against interfering behaviour by diplomats assigned to missions at international organizations²².

¹⁹ Unless the sending State waives the immunity of the diplomatic agent; YILC 1971 (II), part 1, p. 326, Article 75.

²⁰ YILC 1971 (II), part 1, p. 326, Article 75, Commentary, para. 1.

²¹ "There could be no doubt about the existence of such a duty", YILC 1969 (1), p. 176, para. 53 [Mr. Ustor]; cf. also YILC 1971 (1), p. 74, para. 89 [Mr. Ushakov].

²² See the 1962 case of Prokhorov and Vyrodov (host State: US), Whiteman (1970), p. 90; the 1976 case of Mahdavi (host State: Switzerland), *RGDIP* (1977), p. 555; the 1977 case of Karpov (host State: US), U.S. News and World Report, "America: World's No. 1 Spy Target", 10 December 1979; the 1977 case of Rybachenko (host State: France), Minnick, p. 197; the 1978 case of Dinh Ba Thi (host State: US), Minnick, pp. 102 / 103; the 1983 case of Mikheyev (host State: US), Minnick, p. 151; the 1998 case of Borbonet and others (host State: US), Torres de la Llosa (1998); the 1999 case of an unnamed member of the Russian mission to the United Nations (host State: US), Gertz (1999); the 2002 case of two unnamed members of the Cuban mission to the United States (host State: US), Kessler / De Young (2002); the 2003 case of Rahman et al (host State: US), *United Press International*, "U.S. orders two Iraqi diplomats expelled", 5 March 2003; the 2003 caes of Gonzalez et al (host State: US), Reilly (2003).

The work of consular agents has likewise provoked allegations of interference in the internal affairs of the receiving State²³. The treaty applicable in this regard is the 1963 *Vienna Convention on Consular Relations*.

The wisdom of enshrining a rule on interference in this Convention was doubted in the ILC. On the one hand, there seemed to be evidence that the ban on interference had become customary international law²⁴. On the other hand, some Members felt that a distinction was necessary between career consular officials and honorary consuls. It was argued that, as the latter were often citizens of the receiving State, the duty of non-interference should not apply to them to the same degree as to foreign consuls²⁵. Citizens, after all, enjoyed "political rights and duties"²⁶. Not everybody agreed; Edmonds for one drew an analogy to the case of citizens who had accepted public office and found that in some jurisdictions this, too, required them to refrain from involvement in political affairs²⁷.

The distinction between the rights of foreign officials and those of citizens of the State is indeed not in all aspects comprehensible. Specific rights (such as the right to vote and stand in elections) will certainly not apply to foreign officials. But the rights which matter most in a consideration of interference through messages – such as the right to criticize the government – are based on the freedom of expression, which is recognised by international instruments as a human, not merely a civil right²⁸. Career consuls who act in an "unofficial" capacity, therefore

²³ See e.g. the 1999 case of *Maus* (USA and Mexico).

²⁴ Cf. YILC 1960 (1), p. 109, para. 82 [Mr Bartos].

²⁵ YILC 1960 (1), p. 109, para. 83 [Mr Bartos]; YILC 1960 (1), p. 216, para. 14 [Mr Zourek].

²⁶ YILC 1960 (1), p. 216, para. 14 [Mr Zourek].

²⁷ YILC 1960 (1), p. 217, para. 18 [Mr Edmonds].

²⁸ Cf. Article 19 (2) *International Covenant on Civil and Political Rights* [ICCPR], Article 10 *European Convention on Human Rights* [ECHR], Article 13 *American Convention on Human Rights* [ACHR], Article 9 (2) of the *Banjul Charter*. Of these instruments, the ECHR predates the *Vienna Convention on Consular Relations* and the *Vienna Convention on Diplomatic Relations*. See *infra*, p. 176.

do enjoy some of the rights from which nationals of the receiving State benefit. But in their official capacities, diplomats, career and honorary consuls all experience, because of their office, limitations to the exercise of their freedom of expression which are imposed by the rule of non-interference. There appeared to be agreement in the ILC itself that even citizens of the receiving State were not allowed to use their titles as honorary consuls in political activities²⁹.

In the *Draft Articles on Consular Relations* (1961), the ban on interference appears in Article 55 (for career consuls³⁰), and in Article 66 (for honorary consuls³¹). The commentary to Draft Article 66 made clear that honorary consular officials who are also nationals of the receiving State "must not use their official position for purposes of internal politics"³².

The 1963 *Vienna Convention on Consular Relations* follows the distinction between career consular consuls (Article 55) and honorary consuls (Article 58 (2)). The wording of the rule of non-interference is identical to that in Article 41 of the *Vienna Convention on Diplomatic Relations*.

The rule of non-interference was thus given the same wording in all four conventions under consideration, and the debates in the ILC suggest that it had been the intention to impose the same duty on the addressees of these instruments. This view is reinforced by several cases in which receiving States took issue with an alleged occurrence of interference by addressees of the three later conventions and therefore recognized the existence of this duty. In 1982 for instance, the Israeli

²⁹ YILC 1960 (1), p. 109, para. 83 [Mr Bartos] and Draft Articles on Consular Relations and Commentaries, YILC 1961 (2), p. 126 [Article 66, Commentary (1)].

³⁰ YILC 1961 (2), p. 123.

³¹ YILC 1961 (2), p. 126.

³² Draft Articles on Consular Relations and Commentaries, YILC 1961 (2), p. 126 [Article 66, Commentary (1)].

Consul in Bombay was expelled after making certain controversial remarks which the Foreign Ministry called "highly objectionable". On this occasion, the ministry also referred to the consul's "unacceptable interference in the internal affairs of India"³³. And when, in 1988, the US Ambassador Richard Melton was accused of supporting terrorist activities and expelled from Nicaragua, the Nicaraguan Foreign Minister stated that Melton's behaviour violated "the Vienna Convention on Consular Relations, which categorically bans all interference in the internal affairs of states"³⁴, whereas the Nicaraguan Ambassador to Washington (more appropriately) explained that the expulsion was based on the rule of non-interference enshrined in Article 41 of the *Vienna Convention on Diplomatic Relations*³⁵. It does not appear that this statement intended to differ in the evaluation of Melton's conduct from the remarks of the Foreign Minister³⁶.

With regard to the duty of interference, the three conventions which were concluded later therefore create a degree of parallelism which permits the use of cases arising in their fields to shed light on comparable instances in diplomatic law. Differences however exist with regard to the functions of the addressees of the four conventions. The consideration of diplomatic functions is important (and will be the topic of examination at a later stage³⁷), because they frequently will have an impact on the extent of the duty not to interfere. The ILC referred to this relationship between diplomatic functions and duties when it stated in its 1958

³³ India: the 1982 case of Hasseen (Israel).

³⁴ *BBC Summary of World Broadcasts (Managua Home Service, Nicaragua)*, "Nicaraguan President, Foreign Minister on expulsion of US Ambassador", 13 July 1988.

³⁵ *Inter Press Service*, "United States: Defends Expulsion of Nicaraguan Ambassador", 13 July 1988.

³⁶ See also India: the 2001 case of Sandrolini (US); and cf. Ukraine: the 1995 case of Molochkov (Russia).

³⁷ See *infra*, p. 153.

Commentary on the *Draft Articles Concerning Diplomatic Intercourse and Immunities* that the "making of representations for the purpose of protecting the interests" of the sending State or its nationals was not to be considered interference³⁸. In its Commentary on the 1971 *Draft Articles on the Representation of States in their Relations with International Organizations*, the ILC explained that the provision on "grave and manifest interference" did not apply in the cases of acts performed "in carrying out the functions of the mission or the tasks of the delegation"³⁹. Functions therefore are capable of limiting the reach of the rule of non-interference.

Not all functions available to permanent diplomatic agents to States are available to the addressees of the other conventions, and, conversely, some of the other instruments contain functions of which traditional diplomats cannot avail themselves. For example, the task of representation exists in the case of permanent missions to international organizations only with regard to the representation of the sending State to the international organization (and not, for instance, to the host State⁴⁰). The *Consular Convention* does not contain a provision on representation at all, and consular agents also do not have the task of negotiation. Permanent missions to international organizations can negotiate with "and within" the organization (for instance, with other Member States), but observer missions can only negotiate "with" the organization⁴¹.

³⁸ See Annex H, para. 2.

³⁹ YILC 1971 (2), part 1, p. 326, Article 75, para. 2.

⁴⁰ See Annex E, Article 6 (a).

⁴¹ YILC 1971 (2), part 1, p. 290, Article 6, *Commentary*, para. 5 and see YILC 1971 (2), part 1, p. 291, Article 7, *Commentary*, para. 5.

On the other hand, the *Vienna Convention on Consular Relations* contains a whole host of tasks which are not available to the diplomatic mission⁴² (unless, pursuant to Article 3 (2) of the *Vienna Convention*, it performs consular functions as well).

It is true that Article 3 (1) of the *Vienna Convention*, by using the words "*inter alia*" indicates that the Article is not to be understood as containing an exhaustive list of functions. In theory it would be possible to expand the traditional diplomatic tasks by reference to functions which are regulated in the other three conventions.

But the codification history of another instrument shows that the existence of such additional functions is not to be assumed lightly.

Article 6 of the 1971 *Draft Articles on the Representation of States in their Relations with International Organizations*, which listed the functions of permanent missions to international organizations, had, like its equivalent the *Vienna Convention*, contained the phrase "*inter alia*", and its non-exhaustive nature was pointed out at the 1975 Conference⁴³. But when the Conference wanted to add the additional function of protection of interests of the sending State, it chose to do so by express amendment – a procedure which would have been unnecessary if such a function could easily be assumed to exist as an implied task⁴⁴. A diplomat who, in the absence of an express provision, claims the existence of a diplomatic task, also carries the burden of proof of the existence of such a function under customary international law or under bilateral or multilateral agreements.

⁴² See Annex C, Article 5 (d) to (m).

⁴³ YILC 1971 (2), part 1, p. 289, Article 6; 1975 Conference, Official Records, Volume I, p. 105, para. 55 [Mr Calle y Calle].

⁴⁴ As the Indonesian delegate seemed to suggest. Official Records, Volume I, p. 105, para. 59 [Mr Joewono].

If, therefore, diplomatic functions are included in the consideration of diplomatic duties, the extent of the duty not to interfere, will vary depending on the addressee. The consideration of analogous cases will always have to bear in mind the specific circumstances of the situation⁴⁵. Diplomats will not, as a general rule, be able to use functions, which are only available under other conventions, as justifications for their acts. If on the other hand a consul is accused of interference and does not invoke the function of representation as a defence, it would not be appropriate to draw a negative conclusion from this case for comparable cases of diplomatic behaviour. In the case of diplomatic agents, this function is a recognized part of their office.

2. The applicable Customary Law

Prior to the adoption of the *Vienna Convention on Diplomatic Relations*, customary law was the most important source for the evaluation of diplomatic behaviour⁴⁶. The Convention itself was primarily intended to "codify customary international law"⁴⁷; and the opinion has been voiced that only few genuinely new issues were

⁴⁵ This is in particular the case if the acts of members of special missions are to be considered, as the *Convention on Special Missions* contains no list of functions in the first place (see Annex D, Article 3).

⁴⁶ Some multilateral treaties existed (e.g. the 1928 *Havana Convention*), but none of them were of a universal character. See Zemanek, p. 399.

⁴⁷ Bollini Shaw (Argentina), A / CONF. 20 / 14, p. 83, para. 55. The preamble of the Vienna Convention itself makes reference to this situation by emphasizing that "peoples of all nations from ancient times have recognized the status of diplomatic agents", Preamble, para. 2. See also Higgins (1985), p. 642. On the perception of the *Vienna Convention* as becoming customary law itself, see Higgins (1986), p. 137.

introduced⁴⁸. The rule of non-interference certainly formed part of that body of general customary law which existed at the time of the creation of the 1961 Convention. Evidence for this can be adduced from the regulation of this duty in various Draft Codes on Diplomatic Law which were then in existence⁴⁹, together with the adoption of the rule of non-interference by the signatories of the 1928 *Havana Convention Regarding Diplomatic Officers*⁵⁰ and its confirmation by leading authorities on international law at that time⁵¹.

The continued importance of customary law for today's interpretation of the rule of non-interference lies in the fact that it fills the gaps left by the *Vienna Convention*⁵²; and because of that, it can be said to have maintained its position as "la source principale"⁵³. This function of customary law is particularly valuable when vague terms like "interference" are employed; further guidance might here be derived from practice and opinion of members of the international community. The sanctions provided by receiving States to a particular diplomatic conduct are of great importance in this context. However, the assessment of this source comes with its own difficulties.

A first problem relates to the identification of the appropriate author of the State sanction (which will be discussed in section 2 a). A second issue concerns the identification of those sanctions which can be found to express the reaction of a

⁴⁸ Bindschedler, p. 34. See however Do Nascimento e Silva (1992a), p. 1031, who agrees that most of the Convention's articles were based on "well-established practices", but points out that "in some of these articles the 1961 Conference acted *de lege ferenda*." For a more detailed discussion, see Suy, pp. 86, 87.

⁴⁹ See *Bluntschli's Draft Code* (1868), para. 225, *Fiore's Draft Code* (1890), para. 482; *Project of the American Institute of International Law* (1925), Article 16, *Project of the International Commission of American Jurists* (1927), Article 16.

⁵⁰ Article 12 of the *Havana Convention*.

⁵¹ See Wicquefort, p. 315; Calvo (1885), p. 224; Accioly (2), p. 330, para. 1149, Hackworth, pp. 472 – 474.

⁵² Preamble, para. 6. In the same vein Hardy, p. 15.

⁵³ Yakembe, p. 24, referring to diplomatic relations between States.

receiving State to an alleged conduct of interference and thus to contribute to State practice in the field (section 2 b).

The assessment of *opinio iuris* (section 2 c) carries even greater potential for controversy. Here, the question arises whether a State which adopts a sanction against specific diplomatic behaviour does in fact intend to pronounce an opinion on the acceptability of the conduct in question. The circumstances of the individual case may point in a different direction.

A last difficulty concerns the assessment of customary law itself. The identification of State Practice and *opinio iuris* for only one State would not suffice for this. Section 2 e. therefore endeavours to identify a method which would allow the assessment of the law once individual State reactions have been found to exist.

a. The author of the sanction

aa. State actors

Customary international law is formed by the subjects of international law – in particular States⁵⁴ – but the question arises whether its formation must be limited to those States which are immediately concerned by the offending diplomatic act⁵⁵. This would pose a problem in some situations. When, for instance, the French Ambassador to the United Kingdom, Daniel Bernard, was accused in 2001 of making derogatory remarks about Israel, a protest was made by that State. It is true that Israel was in this case neither sending nor receiving State. On the other hand, it

⁵⁴ See Kimminich / Hobe, p. 178.

⁵⁵ The ICJ referred to "[t]he States concerned" when discussing the requirements of the subjective element of customary law, *North Sea Continental Shelf Cases*, ICJ Reports 1969, para. 77.

would be difficult to deny that it was directly involved⁵⁶. But there seems to be no need to impose such a restriction; even less so, as diplomatic rules are of concern to the international community as a whole. States which judge that a particular diplomatic behaviour is unlawful make a contribution to the formation of customary law; and in this context it matters little whether they are immediately concerned by the conduct in question.

It is more difficult to identify the appropriate State organ that is entitled to provide a sanction. According to an older school of thought only those organs "which had the capacity to bind [the State] to international obligations" should be credited with the power to create State practice⁵⁷. *Mendelson* however pointed out that acts other than those which bear a semblance to treaties also influence international law – a nationalization decree is named as an example⁵⁸. Following this view, international law governs "relations between States as a whole, not just their executives"; acts therefore of executive, legislature and judiciary are seen as forming State practice if they touch upon international relations⁵⁹. This opinion has particular merit in the field of diplomatic law.

Acts like the expulsion of a diplomat or the severing of diplomatic ties were accepted as State practice even before the *Vienna Convention* came into existence; but they were accepted as stemming not from the treaty-making powers of the executive, but from the sovereignty of the receiving State. They are not acts to which both parties consented in order to create bilateral obligations; they are unilateral acts which the sending State endures because it has no choice. It seems therefore inappropriate to create an analogy to the law of treaties; any State action

⁵⁶ cf. BBC Online, "'Anti-semitic' French envoy under fire", 20 December 2001.

⁵⁷ Strupp (1934), pp. 313 – 315.

⁵⁸ Mendelson (1998), p. 198.

⁵⁹ Mendelson (1998), p. 199.

touching upon international relations and reflecting a legal opinion is of relevance in this context.

A particular problem however arises if different organs of the receiving State issue different sanctions. The relationship between the acting organs is of great significance in this context.

A 2000 incident involving the US Ambassador to Indonesia, Robert Gelbard⁶⁰, underlines this point. Gelbard had allegedly lobbied the Indonesian government for the appointment of Agus Wirahadikusumah as new head of the armed forces. The reported conduct resulted in a number of negative sanctions from within the receiving State. The Indonesian Minister of Defence accused Gelbard of interference and threatened his expulsion. The Indonesian Parliament resorted to the same threat; President Wahid however, refused to remove the diplomat.

This case highlights a potential weakness of the theory that any State actor may contribute to customary law and an advantage of *Strupp's* opinion. It seems quite understandable that States would prefer to vest the power of shaping international relations not in individual politicians but in organs which are entitled to represent the State. However, if the Indonesian President had not rejected the options suggested by his Minister of Defence and the Parliament, the criticism of Gelbard would have presented itself as an act by the highest authority of the receiving State which expressed an opinion⁶¹. The matter therefore turns on the question which among the acting authorities had the last say on the issue.

⁶⁰ The 2000 case of Gelbard (No 7) (Indonesia and USA).

⁶¹ Even in the instant case, the President did not reject the *criticism* as such.

This view reflects both on *Mendelson's* and *Strupp's* theories. On the one hand, it is true that any State organ may act in ways that affect international relations; on the other hand, the "highest authority in the field" will typically be the State organ to which the receiving State has given the power to bind it to international obligations⁶². But the opinions of subordinate State organs are not irrelevant, even if they are later contradicted by higher authorities. In those cases the authors of the sanction will not contribute to the creation of customary law, but their views may provide guidance for the (textual) interpretation of the term "interference" – especially if the authors possess particular expertise in the matter under consideration (as did the Minister of Defence in the case of Gelbard).

bb. Non-State actors

Non-governmental organizations, academics, journalists and individual politicians have on occasion accused a diplomat of interference, even when the host government remained silent on the matter. Their actions are therefore in principle not relevant to the formation of customary law, although, as in the case of subordinate State organs, they may aid in the assessment of the literal meaning of "interference". This is so much more important, as some non-State actors, such as foreign relations experts and former ambassadors, have considerable experience of diplomatic conduct and are aware of the sanctions States typically adopt to counter certain forms of diplomatic behaviour.

⁶² cf. Article 7 (2) of the *Vienna Convention on the Law of Treaties* (1969).

Non-State actors may also wield considerable influence in the decision-making process of organs of the State⁶³. An illustration is provided when the non-State actors are themselves prominent members of the ruling party. In these situations the heads of government or Foreign Office may indeed feel the pressure to use sanctions against a diplomatic agent and may act to retain the support of their party. Furthermore, the legal system of the receiving State may provide for situations in which persons who are not normally considered State organs are given a decisive role in the formation of State practice. The constitution may demand the consent of a significant part of the opposition for certain aspects of legislation⁶⁴; or it may return power to the people themselves by means of a referendum. Their verdict then represents not merely an influence, but the root of State practice. Cases of this kind will have to be considered within the limits of their specific contexts.

From time to time, diplomatic agents have felt a strain on the exercise of their functions, which seemed to originate with non-State actors, but could ultimately be traced back to the government of the receiving State. An illustration is provided when a newspaper upon which the government wields considerable influence, gives a reaction to a form of diplomatic behaviour⁶⁵. But it is questionable if news media, apart from official gazettes, could in any case be seen as acting on behalf of the State. Even governments which exert the strictest control of the press have on

⁶³ Mendelson (1998), p. 203.

⁶⁴ E.g. when a qualified majority is required under a pluralistic system; e.g. Article 79 (2) of the German *Grundgesetz*.

⁶⁵ Cf. Clark on the situation in China: "[...] at least ninety per cent of the information comes from official sources such as People's Daily, Peking Radio or the New China news Agency", Clark, p. 209. Among the reactions given by newspapers is the one issued by the *Emancipation Daily*, a Chinese Communist newspaper, following an incident of alleged interference by a US Vice Consul to China in 1949. The *Emancipation Daily*, referring to the subsequent detention of the consular officer, declared that this treatment was "a sample of what foreigners could expect and warned 'all American imperialists to abandon provocative actions or take the consequences', Clifton Wilson (1967), p. 70, fn. 156, *New York Times*, 11 July 1949, p. 8.

occasion allowed the promulgation of views they did not agree with to display their tolerance to the world. It is therefore difficult to distinguish cases in which the opinion originated with the editors from those in which they too acted under the influence of a State organ.

In other instances, parts of the population – a government-inspired mob – directs its force against diplomatic agents. Thus, the Soviet Union found reason in 1967 to complain of "organized persecution and wild hooligan violence" against her missions in China, and there was evidence that the mob was incited by Chinese authorities⁶⁶.

A government however which chooses to act through newspapers or through mob violence does not assert its authority, it conceals it behind the principal perpetrators of the act. The international community is not supposed to learn of the fact that the State itself is involved; but this means that the formation of State practice is deprived of an essential element. State practice wants to be communicated⁶⁷; a State which hides its authority deprives itself of the benefits of official reaction and cannot be said to have contributed to the creation of State practice as part of customary law.

b. The assessment of State practice

States have a wide range of options to counter a perceived breach of Article 41⁶⁸. The ICJ in the *Hostages Case* spoke of diplomatic law as a "self-contained régime", which "specifies the means at the disposal of the receiving State" to

⁶⁶ Murty, p. 502.

⁶⁷ See Mendelson (1998), p. 204.

⁶⁸ The availability of sanctions to counter breaches of the rule of non-interference, was however noted even prior to the codification of the rule. See Louter, p. 39.

counter abuses of privileges and immunities⁶⁹. The sanctions expressly mentioned in the judgment are the declaration *persona non grata* and the severing of diplomatic ties altogether⁷⁰, but the cases in the field demonstrate that States have used a much greater variety of sanctions to react to behaviour they considered inappropriate⁷¹.

aa. Reactions to diplomatic behaviour

Common among the negative reactions to diplomatic behaviour⁷² are invitations to diplomats to explain themselves, but the receiving State may also take the opportunity to explain its own views⁷³.

Receiving States have in the past voiced "their surprise" with regard to specific forms of behaviour⁷⁴, but they have also taken the opportunity to directly express disapproval – a sanction which is of particular significance for the assessment of *opinio iuris*, if the host refers to "interfering conduct". Thus, the invitation issued by the British Consul General in Hong Kong in 1998 to candidates in the forthcoming elections to meet with British diplomats, encountered an expression of disapproval by China which called this behaviour "direct interference" in the affairs of Hong Kong⁷⁵.

⁶⁹ *Hostages Case*, ICJ Reports 1980, para. 86.

⁷⁰ *Hostages Case*, ICJ Reports 1980, para. 85. See also Witiw, p. 345.

⁷¹ An overview of sanctions at the disposal of a receiving State is provided in Hill, p. 252 et seq. The subsequent examination deals in particular with those sanctions which have played a role in cases of diplomatic interference.

⁷² A State does of course have the possibility to to abstain from the award of any sanction or to approve the diplomatic behaviour, see the 2000 case of Sandrolini (India and USA).

⁷³ As for instance in the 2002 case of Algosaibi (No 1), the Saudi Ambassador to Britain.

⁷⁴ As in the 1990 case of the US Ambassador to Pakistan, Japan Economic Newswire, "Pakistan Summons U.S. Charge d'Affaires", 16 September 1990.

⁷⁵ Pringle (1998). On the use of disapproval to avoid the sterner sanction of expulsion, see Blum, p. 1038.

In more serious cases, a meeting may be convened between higher authorities of receiving and sending State to resolve the conflict. Thus, after an incident arising from certain remarks by the US Ambassador to Canada, Porter, in 1975⁷⁶, a meeting of Foreign Ministers of both countries took place, at the conclusion of which a communiqué was published implying a rejection of the Ambassador's views. On other occasions, receiving States have, in the face of real or perceived interference, issued a warning. As opposed to a mere expression of disapproval, the threat of a specific sanction is then apparent (usually the expulsion of the offending diplomat)⁷⁷.

Expulsion – the declaration *persona non grata* (Article 9 of the *Vienna Convention*) – constitutes by far the most important sanction employed by States⁷⁸. There is reason to treat cases in which the host "ordered the expulsion" of a diplomat not differently from those in which it "requested the recall" – the difference appears to be one of nuance⁷⁹. It is this sanction (expulsion) to which the ICJ refers when it speaks of the "entirely efficacious" means of a host State wishing to react to the abuse of diplomatic functions⁸⁰.

⁷⁶ The 1975 case of Porter (Annex A).

⁷⁷ Cf the warning issued by Badawi, the Malaysian Deputy Prime Minister, in the 1999 case of Malaysia and diplomats from various countries.

⁷⁸ Cf. the 2001 case of Antonio Bandini, Italian Ambassador to Eritrea, the 2000 case of Irfanur Raja, Pakistani Deputy High Commissioner to Bangladesh, the 1997 case of Mohammad Baqeri, Iranian Ambassador to Turkey, the 1996 case of Robin Meyer, US diplomat in Cuba, the 1995 case of Saeid Bateni, the Iranian deputy chief of mission in Jordan, the 1988 case of Mason Hendrickson, First Secretary at the US Embassy to Singapore, the 1982 case of Yossef Haseen, an Israeli diplomat to India. On the existing terminological differentiations, see Satow (1979), pp. 178, 179, para. 21.15.

⁷⁹ See Hillier's explanation on the reason why sending States will usually be happy to comply with a request to withdraw diplomatic agents, Hillier, p. 153. *Richtsteig* mentions in this context the German practice: The *Auswärtige Amt* seldomly declares diplomats *persona non grata*, but informs the missions concerned of its intention to issue the respective declaration, if the diplomats in question are not withdrawn. *Richtsteig*, Art. 9, p. 32.

⁸⁰ *Hostages Case*, ICJ Reports 1980, para. 86 with further elaboration.

A qualified form of expulsion is the declaration *persona non grata* with a ceiling⁸¹. This means that, following the request of withdrawal, the number of staff that can be employed by the embassy is being limited for the future⁸². It is a sanction which has in the past been employed as a reaction in particular to (real or perceived) espionage activities by members of the diplomatic mission⁸³.

Even more severe is the qualified ceiling which was for instance imposed by the British government on the mission of the Soviet Union in 1971 amid allegations of intelligence activities by mission staff⁸⁴. Declarations *personae non gratae* were issued, and the number of Soviet officials still in the country was used as the level of a ceiling. But in addition to that, the level was to be reduced by one if a Soviet official would be "required to leave the country as a result of his having been detected in intelligence activities"⁸⁵.

Above the level of declarations *persona non grata*, the receiving State has the possibility to remove top-level diplomats or to sever diplomatic relations altogether. These sanctions are rarely employed as reactions to behaviour of alleged interference⁸⁶. But in 1987, a rupture in diplomatic relations occurred between Australia and Libya, and conduct by the Libyan diplomatic mission to Australia

⁸¹ The possibility of imposing a ceiling is addressed by Article 11 (1) of the *Vienna Convention*. The article does however not provide an immediate link to the declaration *persona non grata*, but speaks about the "reasonable and normal" limits which the receiving State may require for missions on its territory. The use of declarations *personae non gratae* to establish a ceiling may therefore be criticized. Cf. Satow (1979), p. 179, para. 21.15.

⁸² An example is the ceiling imposed on the Soviet embassy in the United States in 1985; fifty diplomats of the Soviet Union were expelled from the territory of the United States "in order to meet the [ceiling] requirements of Congress", Denza (1998), Art. 11, p. 81.

⁸³ See McClanahan, p. 163.

⁸⁴ The aide-mémoire given to the chargé d'affaires pointed to the increase in intelligence gathering activities by Soviet officials. In this case, the withdrawal of 105 Soviet officials was requested, Denza (1998), Art. 9, p. 63. Ninety were expelled, the re-entry of fifteen others was refused, Green, (1981), p. 149.

⁸⁵ Denza (1998), Article 9, p. 64.

⁸⁶ *Glahn* for instance mentions the removal of top-level diplomats with a view to the withdrawal of the Swedish and the US Ambassador from the respective capitals of these States, following Swedish criticism about the US attacks on Hanoi and Haiphong, *Glahn* (1986), p. 444.

appeared to be partly responsible for this. On this occasion, the Australian Prime Minister referred to a "pattern of destabilization" emanating from the Libyan side; he would "not allow a situation where the existence of a bureau of Libya here is going to facilitate the [sowing] of dissension within Australia."⁸⁷ The ICJ too, made express reference to this sanction in the *Hostages Case*⁸⁸.

There are, finally, sanctions which consist in the denial of certain diplomatic rights. Two cases have to be distinguished in this context: a diplomatic right may exist because the legal system of the receiving State awarded it; but diplomats also enjoy certain rights because they are entitled to them under international law. If a right is constituted by a unilateral act of the receiving State to which the latter was not obliged under international law, then this right can in general be revoked; both grant and denial flow from the sovereignty of the host. A State may grant free access to its national libraries to diplomatic personnel, but is free to change its policy in this matter. In other cases the situation is less clear; an act the receiving State believes to lie within its sole discretion may clash with rules of international law whose remit is not clearly defined. In November 1998, the Malaysian Judge Augustine Paul refused to admit foreign diplomats to the trial of Anwar Ibrahim, the former Deputy Prime Minister of the country. While the United States maintained that diplomats and journalists had "complied with the court-stated procedures for entering the courtroom"⁸⁹, the argument could be advanced for the Malaysian side that the right to attend a trial had only been unilaterally granted by the State and could be revoked in the same way. On the other hand, one of the

⁸⁷ Doubodin (1987).

⁸⁸ *Hostages Case*, ICJ Reports 1980, para. 85.

⁸⁹ CNN World, "Malaysia's Anwar returns to court for closely watched trial", 3 November 1998.

functions of diplomatic agents is the observation of conditions in the receiving State⁹⁰, and the host must "accord full facilities for the performance of the functions" of the diplomatic mission⁹¹.

Similar problems arise when a receiving State limits the diplomatic freedom of travel⁹² or even arrests, detains or mistreats diplomatic agents⁹³ in reaction to a perceived occurrence of interference. In these instances, rights are affected which are enshrined in the *Vienna Convention* – the freedom to travel is guaranteed under Article 26 (except for security zones), the inviolability of the diplomatic agent is codified in Article 29.

In cases of this kind, the question may be asked whether a valid instance of State practice has occurred. In view particularly of the arbitrary way in which States have applied unlawful sanctions, it appears difficult to base a system of graded reactions to diplomatic behaviour on practice which breaches international obligations. But the legality of a sanction appears to influence rather the existence of *opinio iuris* than the formation of State practice, and it will be revisited at that point⁹⁴. The creation of State practice seems not to be prevented by the adoption of an unlawful act. The fact must be taken into account that States may change existing customary law through the adoption of a new practice; what appears at the beginning as a breach of existing rules may in the future be considered the first instance of new law in this field.

⁹⁰ Cf. Article 3 (1) (d) of the *Vienna Convention*.

⁹¹ Article 25 of the *Vienna Convention*. See also *infra* p. 157 on the specific question of human rights monitoring.

⁹² See on travel restrictions in the days of the Soviet Union, Kish, p. 63, fn. 4.

⁹³ See for instance the 1963 case of Boris Voronin, Russian diplomat in the (DR) Congo.

⁹⁴ *Infra*, p. 50

bb. Preventive sanctions

State sanctions do not have to take the shape of reactions. A receiving State may fear the occurrence of interference in the future. In this case, the State concerned does not have to wait until the offending conduct has happened in fact; diplomatic law makes preventive sanctions available to the receiving State.

The *Vienna Convention* envisages sanctions of this kind when it allows for a declaration *persona non grata* even before diplomats have taken up their posts (Article 9 (1) 3). This has happened in the past particularly with regard to potential interference by candidates for diplomatic office. The basis for such a sanction is often a form of conduct or attitude which is known from the diplomat's past. However, the boundary between reaction and preventive action is not always clear cut. The receiving State reacts to behaviour or attitudes in the diplomat's past, but it also issues a preventive action in respect of the appointment in question.

An example is the 1977 case of the designated US Ambassador to Greece, Schaufele, whom the Greek government declared undesirable. At issue was Schaufele's hearing before the Foreign Affairs Committee of the US Senate, at which he had allegedly put in question the boundaries of Greece⁹⁵. The United States eventually appointed Robert McCloskey in Schaufele's stead.

Other sanctions of diplomatic law have also been issued in a preventive form. As to warnings, it may be mentioned that in August 1969 (at the time of the trial of the students in Kinshasa), General Mobutu of Congo (Zaire) asked the doyen of the

⁹⁵ *RGDIP* (1977), p. 827.

diplomatic corps to forbid accredited diplomats from interfering in the internal affairs of the Congo⁹⁶.

Denials of rights and privileges have also appeared in this context. The United States in 1984 denied a visa to Oleg Yermishkin, the Soviet Olympic Attaché, due to his alleged ties with the KGB⁹⁷. And in the above mentioned case of diplomats wishing to attend the 1998 trial of Anwar Ibrahim, the sanction issued by Judge Augustine Paul was likewise given preventively – according to the BBC, the judge was of the opinion that allowing official observers would be an "insult to the court" and convey the impression that the court "may not be dispensing justice"⁹⁸.

Preventive sanctions are then as much a part of the arsenal of actions a receiving State can employ as are State reactions. They are subject to the same difficulties – questions of unlawful preventive sanctions are as relevant here as in the realm of reactions. But preventive sanctions carry the additional difficulty that they often refer to conduct which, as it has not yet materialized, is ill-defined and therefore not well suited for an analysis of the components of interference.

c. The assessment of *opinio iuris*

If a clear instance of State practice has been established – if, for instance, the receiving State expels a diplomatic agent – the question remains whether the State, with this sanction, wished to express a legal opinion on a specific diplomatic

⁹⁶ Salmon (1996), p. 134, para. 205.

⁹⁷ Thatcher (1984).

⁹⁸ Frei et al (1998).

behaviour or whether other reasons (such as political motivations) informed the decision.

This problem arises, because receiving States do not always supply reason for their negative sanctions; nor are they required to do so⁹⁹. States often resort to vague terms in these circumstances and refer for instance to "activities incompatible with the diplomatic status" which were allegedly committed by the diplomatic agent.

On the other hand, negative sanctions may also be used to react to abuses of diplomatic functions (as the ICJ indicated¹⁰⁰); and in that case, the sanction can indeed reflect a legal opinion on specific behaviour. Furthermore, some sanctions are typically employed in cases of specific diplomatic behaviour¹⁰¹ and may therefore assist in the evaluation of this conduct by members of the international community.

It appears that a proper evaluation of *opinio iuris* must have regard not only to the actions and accusations of the receiving State, especially if these accusations are vague enough to cover diverse forms of behaviour. Additional evidence must be taken into account; and influences have to be identified which, outside the diplomatic behaviour itself, may have moved the host to issue the sanction. These questions will be discussed in the following sections.

aa. The assessment of *opinio iuris* in cases of State actions

⁹⁹ The case of the declaration *persona non grata* makes this particularly clear: see Article 9 of the *Vienna Convention* ("without having to explain its decision"). *Hostages Case*, ICJ Reports 1980, para. 85, Witiw, p. 354.

¹⁰⁰ *Hostages Case*, ICJ Reports 1980, para. 86.

¹⁰¹ The ICJ for instance pointed out that receiving States may react with a declaration *persona non grata* to acts of espionage or interference, *Hostages Case*, ICJ Reports 1980, para. 85. See also Satow on the link between interference and employment of declarations *personae non gratae*, Satow (1979), p. 133, para. 15.32. Cf. also Satow (1979), p. 179, para. 21.15.

(1) Express statements of law

If a receiving State singles out a specific diplomatic conduct and declares it to breach rules of diplomatic law, the assessment of *opinio iuris* causes few problems. Reference may here be made to a 1999 case involving diplomats in Namibia. After the US mission had voiced its concern about the treatment of civilians in the Caprivi region, the Namibian Ministry of Foreign Affairs warned diplomatic missions to "stop interfering in the country's internal affairs" and made express reference to Article 41 of the *Vienna Convention*¹⁰². If the State reaction contains such a clear reference to the law, then it may be held to its words. If there were other reasons behind the criticism, the State can reasonably be expected to have expressed them.

Such an express statement may also be an approval of the diplomatic conduct. One example is the 2000 case of Christopher Sandrolini, the US Consul-General to India, who had come under criticism when he had sent two of the consulate's employees to a region where eleven Trinamool activists had been killed in July of that year. The CPI-M (the Communist Party of India) demanded Sandrolini's expulsion, but on this occasion, the Indian Minister for Foreign Affairs confirmed the Consulate's right "to visit any area under its jurisdiction"¹⁰³. There is then little doubt that the receiving State did not see the diplomatic behaviour as interference in internal affairs.

In the majority of cases however, the explanation of the host is less clear or missing altogether; and then the question arises whether there were motives other than preceding diplomatic behaviour which may have influenced the decision.

¹⁰² Moyo (1999).

¹⁰³ *India Express*, "US consul-general meets Basu to resolve row", 10 August 2000.

(2) Particular political systems as an influence on *opinio iuris*

It is possible that a particular political system shaped the decision of the receiving State. This problem found discussion particularly in the era of the Cold War. *Wilson* for instance noted that many cases of detention and arrest of persons entitled to diplomatic immunity occurred in Communist countries¹⁰⁴; and he suggests that these forms of State reaction were inherent to the particular system prevailing in that State – they were used to "control foreigners in a 'closed' society"¹⁰⁵. If this were accepted, then it would be difficult indeed to distinguish between State reactions based on a particular preceding behaviour and those which are influenced only by the fact that the addressee is a foreigner.

However, Western democracies (which *Wilson* would perceive as "open societies") are also known to have issued State reactions for reasons outside the personal conduct of a diplomatic agent. Political reasons which are unconnected to diplomatic relations, may be at the root of such sanctions – as in a 1989 case in which the United Kingdom expelled three South African officials while making clear that they had been selected at random¹⁰⁶. On other occasions, declarations *persona non grata* are issued which are based on the wish to retaliate for an unfriendly act against the sending State's own diplomats.

The preference for specific sanctions may on occasion have differed according to the political system of the receiving State; but a differentiation between "open" and

¹⁰⁴ "Of the 69 persons entitled to diplomatic immunity who were arrested and detained, 52 were in Communist countries at the time; 5 each in the Middle East, South America and Europe; and 1 each in the Far East and Africa", Clifton Wilson (1967), pp. 69, 70.

¹⁰⁵ Clifton Wilson (1967), p. 70.

¹⁰⁶ The background to this expulsion was formed by the discovery of an agreement between South Africans and Ulster loyalists to exchange military secrets. Denza (1998), Article 9, p. 66. On the various possible motivations for a State sanction, in particular for an expulsion, see Schuschnigg, p. 248.

"closed" societies does not help to distinguish sanctions based on legal considerations from those based on other reasons.

(3) Difficult relations between sending and receiving State as an influence on *opinio iuris*

The relationship between two States may allow greater insight into the motives behind a sanction. Features of the Cold War reappear, but this time in the field of political relations. Thus, *Sen* believed in the late 1980s that it was in many cases no longer the diplomats themselves who carried the blame for a declaration *persona non grata* –

"[...] in the vast majority of cases the changing norms in the behaviour pattern of states themselves has been the root cause [...] continuing friction in east-west relations [...] seem to have been reflected in the functioning of diplomatic missions"¹⁰⁷

Today, some State reactions are still allegedly influenced by the considerations that divided the world in this period. When for instance, in 1996, the US diplomat Robin Meyer was expelled from Cuba and the Cuban Foreign Ministry stated that Ms Meyer had "supported, organized and united small counterrevolutionary groups", the US State Department referred to this explanation as a "typical Cuban response to human rights work"¹⁰⁸. In the circumstances of the case however, the possibility cannot be discounted that the Cuban reaction was based on particular aspects of Ms Meyer's conduct, rather than on Cuba's relationship with the United States.

¹⁰⁷ *Sen* (1988), p. 55.

¹⁰⁸ The 1996 case of Robin Meyer (Cuba and USA).

Strained relations between States are not unknown to have influenced State conduct towards diplomatic agents. The mutual expulsions of diplomats between India and Pakistan will often have to be seen in this context¹⁰⁹. And in 2003, on the eve of the Second Persian Gulf War, the United States called upon various States to expel Iraqi diplomats; explaining that the diplomats were representatives of a "'corrupt and ruthless regime' and that replacements would soon be appointed by a new, legitimate Iraqi Government"¹¹⁰. The replies received made clear that some States did consider the sanction of expulsion as connected to personal diplomatic conduct. The Netherlands declared that Iraqi diplomats

"would be allowed to stay as long as they did not violate the terms under which they were posted in the country."¹¹¹

But the very fact that the United States issued this request and that other States complied with it, demonstrates that sanctions towards diplomats do not always have a link to specific personal conduct.

Would it therefore be appropriate to dismiss cases in which sending and receiving State lived in an antagonistic relationship? This view encounters problems both of a technical and a legal nature. The very concept of "hostile relationship" lacks certainty – periods of *détente* invariably occur, and in those times the treatment of diplomats has to be seen in a very different light. More importantly, there is no legal reason to ignore this group of cases. Public International Law by necessity

¹⁰⁹ See Shahzad (2003). In February 2003, the Pakistani Deputy High Commissioner in New Delhi was expelled; then India's Deputy High Commissioner in Islamabad was expelled, Kumar (2003). In 1994, Pakistan expelled four Indian diplomats who were working in the consulate-general in Karachi, and the consulate-general was closed. Bourke (1994).

¹¹⁰ The case according to BBC Online, "European haven for Iraq envoys", 21 March 2003.

¹¹¹ BBC *loc. cit.* See also the reaction of Malaysia to the US request, BBC *loc. cit.*

exists in a political context; and the *opinio iuris* States provide under the strain of difficult relations is as valid an element of customary law as the opinion issued in friendly relations, as long as it is recognizable as such. Nor does the existence of difficult relations prevent a State from expressing an objective opinion on the legal status of diplomatic behaviour. The above mentioned statement by the Netherlands illustrates this point – the Netherlands, after all, formed part of the coalition which supported the United States in its campaign against Iraq.

The approach followed here is one of caution towards those cases which arose between antagonistic states. Circumstances may indicate that a particular sanction was an extension of the general hostility between two States. But the possibility cannot be discounted that the receiving State was genuinely concerned about the personal behaviour of an accredited diplomat.

(4) Friendly or beneficial relations between sending and receiving State as an influence on *opinio iuris*

Friendly relations, like hostility, may distort the real opinion of the host on the general evaluation of diplomatic behaviour. A 1988 case may serve as an example: the United Kingdom asked for the withdrawal of an Israel attaché suspected of espionage¹¹², and another diplomat who had already left the country, was told not to return¹¹³. In this instance however, the government made it clear that the two diplomats could be replaced¹¹⁴; a move understood to mean that the Government only wished "to show anger"¹¹⁵. It is conceivable that the sanction would have been more severe if the sending State had not been on generally friendly terms with the host¹¹⁶.

Lenient sanctions in response to personal diplomatic misconduct may therefore not always be indicative of *opinio iuris* on the behaviour in question. In cases where sending and receiving State enjoy friendly relations, other motives behind the sanction cannot be easily discounted.

There are also situations, in which a particular conduct by the diplomatic agent may be beneficial to the receiving State or to members of its administration. In these instances, it may not be the generally friendly relations between both States which

¹¹² McEwen (1988).

¹¹³ McEwen (1988).

¹¹⁴ Denza (1998), Art. 9, p. 64.

¹¹⁵ McEwen (1988).

¹¹⁶ Similar considerations may explain the receiving State's reaction in the case of Algosaihi, the Saudi Ambassador to Britain (*infra*, p. 112). On this occasion, the Foreign Office merely made its own position clear to the Saudi Ambassador. An envoy from a country which enjoyed less friendly relations with the sending State might well have been expelled. BBC Online, "Diplomat censured over bomb poem", 18 April 2002.

cause the omission of a sanction, but it would still not be surprising if the receiving State's reaction was lenient or even welcoming.

One example for this situation is the 1979 case of the French military attaché to Argentina who, at a time when human rights violations by the Videla junta had already become known, expressed "public support and admiration for the conduct of the Argentine military forces in defending freedom against subversion"¹¹⁷.

It would be difficult to base the existence of general *opinio iuris* on cases in which the conduct of the diplomatic agent was beneficial to a government which derived a personal benefit from the diplomatic message. In these cases, it appears that considerations which are not of a legal nature may have exerted a strong influence on the positive reception or the omission of any reaction. In an evaluation of cases in which a beneficial context may have influenced the decision of the receiving State, it appears necessary to have regard also to the way in which States in general deal with situations of this kind (this approach will be discussed in section 2. d). In the particular case of the French attaché, it is worthy of note that France distanced herself from the comments and withdrew the diplomatic agent.

(5) *Opinio iuris* in the context of other elements of diplomatic behaviour

In some cases, the receiving State provides a negative sanction which refers to a specific form of diplomatic behaviour, but not to diplomatic interference. Apart from situations in which there had never been an instance of interference to begin with, there are also cases in which one and the same behaviour may fulfil the characteristics of interference but also of a different conduct, such as the violation

¹¹⁷ Denza (1998), p. 377.

of laws of the receiving State. Kidnapping of nationals of the sending State for instance has been considered by some authors in the context of interference¹¹⁸, but there is a possibility that a negative State reaction in the context of such behaviour may demonstrate a legal opinion not on interference, but on the infringement of local laws and human rights. This coinciding of interference through the diplomatic message and other forms of diplomatic behaviour will be discussed in Chapter 3.

bb. The assessment of *opinio iuris* when the State does not issue a sanction

In some cases, there is no evidence that the receiving State issued any sanction to a particular diplomatic behaviour. There are, of course, instances, in which the receiving State did not learn of the interfering conduct and was therefore deprived from an opportunity to react. But there are also cases in which even expert commentators criticized the conduct in question, but the receiving State itself remained silent. The question then appears whether influences other than legal considerations may have moved the acting State to its decision.

One such influence may be the friendly state of relations between sending and receiving State¹¹⁹ or the fact that the government of the receiving State benefitted from the behaviour in question¹²⁰. These instances pose particular problems for the assessment of interference itself. Could interference ever exist if the receiving government tolerates or even welcomes the diplomatic conduct? *Prima facie* it

¹¹⁸ Cf. Rousseau, p. 167.

¹¹⁹ See *supra*, p. 46.

¹²⁰ See *supra*, p. 46.

would seem that no injustice is done to a host who willingly accepts the diplomatic action. However, as discussed in the case of the French military attaché to Argentina in 1979¹²¹, the absence of a reaction does not necessarily imply the issuing of a legal opinion; the motives for the omission may rather be seen in the political benefits for the government of the receiving State. The comparison to sanctions other States have issued in similar circumstances, but also the comparison to sanctions this particular receiving State issued when it did not benefit from the action (for instance, when the diplomatic message concerned third States), help to ascertain concept and legal nature of diplomatic interference in these cases.

Intentional absence of any sanction may also occur because the receiving State deemed the preceding behaviour too insignificant to react to it. *Fenwick* for instance points out that minor violations of diplomatic duties might be "overlooked by the local government"¹²², and in the case of diplomats to international organizations and conferences, the ILC made it clear that a distinction between "grave and manifest" and other forms of interference is in theory possible¹²³. An illustration is provided by the 2000 case of Robert Gelbard, the American Ambassador to Indonesia, who touched a senior official while talking to him. While a political observer at that time highlighted the offensive character of Gelbard's behaviour, the comparable insignificance of the occurrence may explain why no State reaction was issued in this case¹²⁴.

¹²¹ See *supra*, p. 47.

¹²² Fenwick (1965), p. 561, and see Glahn (1986), p. 462.

¹²³ See *supra*, p. 18 and Article 77 (2) 2 of the 1975 *Vienna Convention on the Representation of States in their Relations with International Organizations of a Universal Character*.

¹²⁴ The 2000 case of Gelbard (No 4) (Indonesia and USA).

In this context too, the comparison with sanctions other receiving States issued, appears necessary: what one individual State considers insignificant, may yet be evaluated as interference by the international community in general.

cc. The assessment of *opinio iuris* when the action by the receiving State is deficient

The assessment of the objective part of a State sanction can be difficult for a variety of reasons – because the State resorted to means which are unlawful under conventional or customary law¹²⁵, because the State acted through non-State actors¹²⁶, or because the State referred to a diplomatic behaviour which did not in fact exist. In these instances an element of State practice is amiss – the legality of the act, the communication of the act to the sending State or the link between the act and the preceding conduct.

However, this deficiency of the objective part does not necessarily reflect on the subjective element of customary law. For the (alleged) diplomatic conduct, to which the receiving State took exception, may also have come into existence in other States where it met with appropriate State practice. The subjective element in cases of deficient State practice is therefore not without relevance; it may support what other members of the international community expressed in a way capable of forming customary law.

¹²⁵ See *supra*, p. 37.

¹²⁶ See *supra*, p. 31.

However, the assessment of *opinio iuris* in these instances carries its own difficulties. In cases in which States adopted an unlawful sanction, there may be evidence that the specific diplomatic conduct to which this measure referred, was considered objectionable. But it would be difficult to determine what importance the receiving State accorded to the diplomatic conduct. The hierarchy that can be established for lawful measures – where a declaration *persona non grata* appears as a more severe expression of misgivings than an expression of "surprise" – is not transferable to the field of unlawful measures; it is a field which is too vague and ill-defined to allow the assumption that the receiving State employed unlawful sanctions to give different weighting to different forms of diplomatic conduct. In 1948 for instance, a British diplomat was beaten up by Czech police who attempted to force him into a car; his glasses were broken, his coat was torn¹²⁷. This does not mean that he was guilty of conduct more heinous than that of a diplomat who suffered a lesser degree of mistreatment.

The same reservations apply when the receiving State expressed its misgivings through middlemen (newspapers, the mob etc). Through these actions, the receiving State will have expressed its objections to the diplomatic behaviour in question, but it does not appear possible to establish a hierarchy between measures whose ultimate implementation is outside the control of the government.

If, on the other hand, the receiving State referred to diplomatic behaviour which may never have existed in this particular way, the assessment of the subjective side of the sanction can be of considerable importance. In this instance, the adopted

¹²⁷ Clifton Wilson (1967), p. 67, *New York Times*, 20 Oct 1948, p. 4, *The Times*, "British Office In Prague Raided. Embassy Secretary Roughly Handled", 19 Oct 1948, p. 3.

measure is based on a hypothetical case; and that allows conclusions about the underlying motivation of the receiving State.

Two situations may be distinguished. The State may have genuinely assumed that an offending behaviour had taken place. In this case the sanction which was issued is indicative of the underlying opinion that conduct of this kind would not be tolerated.

Secondly, the State may (for political or other reasons) have invented the incident. In that case, the reasons supplied by the receiving State will often retain their importance. It is significant that receiving States who wish to adopt a negative sanction for political purposes, often feel compelled to refer, nonetheless, to specific reasons which might find general acceptance in the international community. The consideration of these reasons may lead to the identification of forms of diplomatic behaviour which, in general, would not be tolerated by receiving States.

One illustration is provided by the 1969 case of Petros Moliviatis. Mr Moliviatis, who was a Greek diplomat in the Soviet Union, was expelled on allegations of espionage and the recruitment of Soviet residents to obtain confidential information¹²⁸. The Greek side strenuously denied the allegations and voiced the suspicion that Moliviatis' visit to the Greek community in the Soviet Union had been the real reason for the sanction.

If the version of the Greek side were accepted, it would still be of some meaning that the Soviet Union deemed it necessary to allege the existence of espionage activities. The mere maintenance of contact to a minority in the receiving State did apparently not suffice for charges of inappropriate behaviour.

¹²⁸ RGDIP, "Chronique des faits internationaux", (1963), pp. 178 – 180.

A consideration of the subjective side of a sanction is therefore not necessarily made irrelevant by a deficiency on the objective side. A discussion of the motives leading to a particular sanction may in some cases grant insight into the legal assessment of a specific diplomatic behaviour, even if the receiving State did not express its opinion in an appropriate way.

dd. Indications for *opinio iuris*

While there are motives which indicate that a receiving State may not have been guided by the wish to express *opinio iuris* when issuing a particular sanction, there are also instances of positive evidence which demonstrate that a legal opinion on particular forms of diplomatic behaviour did exist.

(1) A clear expression of *opinio iuris*

An express statement of the view that preceding behaviour was in breach of diplomatic rules is certainly the strongest indication of *opinio iuris*. This situation has been discussed above¹²⁹.

¹²⁹ See *supra*, p. 41.

(2) Past conduct

If a receiving State habitually uses a specific sanction for a certain group of diplomatic offences, then it can be inferred that it conveys a negative opinion on the conduct in question, even if it does not make express reference to diplomatic rules. And States have made it clear in the past that certain forms of behaviour will be met with particular sanctions – in its 1985 report for instance, the British Government linked the sanction of ceilings on diplomatic missions to abuses of immunities¹³⁰. While the statement made no reference to particular forms of abuse, it did at least serve to exclude political motives as influences on this form of State reactions. An even more specific statement was provided by the US State Department in 1965 when it noted that

"other than in espionage cases, the United States had not formally declared any foreign diplomat *persona non grata* for some time [...]"¹³¹

In these cases, the issuing of the sanction itself may help to assess the underlying opinion, even if, in a new case of this kind, no reasons are offered. The past use of this sanction and the declared position of the receiving State toward sanctions of this kind provide a background which allows the conclusion that the State links the measure to a particular diplomatic behaviour.

¹³⁰ *UK Government Report* (1985), para. 28. On commonalities and differences between interference and other forms of diplomatic misconduct, see Chapter 4.

¹³¹ Whiteman (1970), p. 92, 93 quoting the Briefing Book prepared for the witness for the Department of State for the Hearing on July 6, 1965, before the Subcommittee of the Committee on Foreign Relations, U. S. Senate, on the *Vienna Convention on Diplomatic Relations*.

(3) Evaluation through the circumstances of the case

The circumstances of a case may assist in the evaluation of the rationale behind a particular sanction. Based on the details of the incident, a reasonable inference may in some cases be made that the context informed the decision of the receiving State. In February 1996 for instance, Bahrain declared *persona non grata* the Third Secretary of the Iranian Embassy, but both receiving and the sending State refused to provide details of the case¹³². However, media reports placed the case in the context of Shi'ite protests that had taken place in Bahrain, following the arrest of a Shi'ite cleric; the expelled diplomat was said to have incited protests against the government.

But not every case is clear enough to allow the conclusion that a link between sanction and diplomatic behaviour can be established. If a State provides no reasons for the decision, the danger of a misinterpretation of its motives cannot be discounted. The receiving State itself may clearly reject any link to a particular action by the diplomatic agent. This happened in September 2001, when the Italian Ambassador Bandini was expelled from the territory of Eritrea. As the expulsion took place only hours after the Ambassador had delivered a critical demarche from the European Union, denouncing human rights violations in Eritrea, it seemed a fair assumption to see the measure against Bandini as a response to this particular action. The Italian Foreign Ministry did so¹³³.

¹³² The Bahraini government employed general formulae to describe the underlying behaviour. *Reuters*, "Bahrein expels Iranian Diplomat", 1 February 1996.

¹³³ BBC Online, "Eritrea expels Italian ambassador", 1 October 2001.

The Director of European Affairs at the Eritrean Foreign Ministry however, denied any link to the demarche and indicated that Bandini's expulsion was linked to the Ambassador's personal conduct.

The circumstances of the case certainly justify doubts about this explanation. Cases of this kind also remain interesting if compared to similar sanctions which other States issued in similar situations. At the same time, the receiving State on this occasion made it clear that, at any rate, it did not wish to express *opinio iuris* with regard to the delivery of the demarche by the diplomatic agent.

In other cases, the problem of *opinio iuris* becomes a problem of the available material. There are situations where there is neither an official explanation of the motives behind the measure, nor sufficient information by other sources. In other cases again, information is plentiful, and it is the wealth of information that makes it difficult to assess the position of the State. On 4 September 2001, President Lukashenko of Belarus declared that the US Ambassador Kozak would have to leave Minsk after the elections¹³⁴. Lukashenko referred to "Americans telling us what to do", to "sleazy election techniques", to opposition leaders in the pay of the United States whose objective it was to remove him, and to the personal involvement of Kozak in an alleged conspiracy by foreign secret services to overthrow the president of Belarus.

It became known that the United States had indeed provided financial help to the opposition in Belarus – through the funding of websites, newspapers, opinion polls, and had supported a student resistance movement. Five leaders of the opposition had, prior to the elections, met in the US Embassy to agree on a common candidate.

¹³⁴ Cf. Traynor (2001).

In a letter to a newspaper, Kozak admitted that the United States had adopted an approach towards Belarus similar to that pursued in Nicaragua in 1989 – 1990.

From an analytical point of view, this mass of information creates more problems than it resolves; the question remains whether the sanction referred to all forms of conduct mentioned in the Belarusian accusations or to individual acts.

The circumstances of a sanction are particularly suited for the assessment of *opinio iuris* if they leave no reasonable doubt about the link between the measure and preceding diplomatic conduct. The temporal perspective is here of importance: if there is only a small interval between the sanction and the diplomatic conduct, then it appears more likely that the measure was adopted with a view to the specific behaviour. Important too is the view of the sending State regarding the sanction issued to one of its agents; the more so, if the position of the sending State is not contradicted by the receiving State.

The circumstances of a case may therefore help to ascertain a link between diplomatic conduct and measures adopted by the receiving State, and allow conclusions about the motivations of the host. But the acceptance of the motivation as *opinio iuris* may remain controversial – not every measure by the receiving State which can be linked to individual conduct is the expression of a wish to declare the conduct unlawful interference. Other motives – particularly the state of relations between sending and receiving State – may have played their part¹³⁵ and require examination in the individual case.

¹³⁵ See *supra*, pp. 43, 46.

(4) Evaluation if friendly relations existed

It is suggested that there is particularly strong evidence for the existence of *opinio iuris* if sending and receiving State live in a relationship of general friendship. A State stands to lose a lot if it subjects the diplomats of a friendly nation to negative sanctions. The fact that it still considers it necessary to adopt these measures emphasizes the preceding diplomatic conduct as a major factor in the decision-making process of the receiving State.

For understandable reasons, these are not frequent occurrences¹³⁶. But from time to time States found it necessary to criticize individual diplomatic behaviour even in these situations. The severe criticism which Coats, the designated US Ambassador to Germany, attracted by the German government in 2001 is an example (Coats had pleaded for an increase in German military spending if Germany were to maintain a "central partnership in NATO"¹³⁷). In 1977, the French President Giscard d'Estaing took exception to visits by American diplomats to members of the Socialist-Communist Alliance at a time when municipal elections were taking place in France¹³⁸. And in 1976, the Israeli government criticized Malcolm Toon, the US Ambassador to that State, who had made certain comments on Israeli efforts to receive more financial aid from the United States¹³⁹.

However, even in these situations, the possible existence of other motives behind the State reaction can not always be denied. In 1962 for instance, the German

¹³⁶ When for instance, the United Kingdom in 1988 expelled two Israeli diplomats, *The Times* called this the "apparently unprecedented step of expelling a diplomat of a friendly country", McEwen (1988).

¹³⁷ Morrison (2001).

¹³⁸ *Facts on File World News Digest*, "Giscard scores U.S. talks with left", 9 April 1977.

¹³⁹ *Facts on File World News Digest*, "U.S., Israel dispute aid", 17 April 1976.

Ambassador to the United States, Grewe, was recalled after a series of incidents which involved remarks by the diplomat on the question of Berlin. However, contemporary news reports also indicated that the personal incompatibility between Grewe and the new Kennedy administration may have contributed to the fact that the envoy had exhausted his usefulness¹⁴⁰. The exploration of additional motives can therefore influence the evaluation of diplomatic behaviour even in cases of generally friendly relations between sending and receiving State.

d. The assessment of the law

aa. General usage as indicated through the position of a multitude of States

One State alone cannot create customary law. Once the objective and the subjective side of a receiving State's behaviour have been established, the question therefore remains whether other members of the international community share that individual State's view of the diplomatic conduct in question.

An examination of this kind may identify genuine differences in the positions of receiving States. When for instance the United States in 1967 recalled Wymberley Coerr, their Ambassador to Ecuador, they did so in recognition of Ecuador's concerns over critical remarks Coerr had made about the President of the receiving State. However, the United States themselves disagreed with the receiving State's evaluation of these remarks. According to Ecuador, Coerr's criticism did "not conform to diplomatic practice [...]". The American government on the other hand stated that the opinions of no member of the Alliance (an Inter-American economic

¹⁴⁰ *The Times*, "Summoned home for consultation", 8 May 1962.

development programme) should be "immune from respectful and friendly examination by others"¹⁴¹.

On the other hand, receiving States often remain silent on the reasons behind sanctions against diplomats or describe the behaviour that triggered the sanction in vague terms only¹⁴². Some receiving States may not issue any sanction in an individual case, even though other States may have reacted differently. The question therefore arises whether there must be evidence of a particular position adopted by every member of the international community before a practice can be accepted as international custom.

Early in its history, the ICJ referred to "constant and uniform usage" as the basis of customary law¹⁴³ and, later, to State practice, "including that of States whose interests are especially affected", which had to be "extensive and virtually uniform"¹⁴⁴. But "extensive" State practice does not mean "universal" usage¹⁴⁵. Various authorities pointed out that, as not all States will have the opportunity to participate in the creation of a rule of customary law, the behaviour of "the great majority of the interested States [...]" or that of a "representative number" should be taken into account¹⁴⁶. This approach has even greater validity if the State conduct in question is not the obligatory adherence to a rule, but the voluntary evaluation of a particular form of behaviour. In the field of diplomatic relations, it is the diplomat who has to adhere to the rule of non-interference, and it is the receiving State which may issue an evaluation of this adherence. But as no

¹⁴¹ Whiteman, p. 145.

¹⁴² See *supra*, p. 40.

¹⁴³ *Asylum Case*, ICJ Reports 1950, p. 277.

¹⁴⁴ *North Sea Continental Shelf Cases*, ICJ Reports 1969, para. 74.

¹⁴⁵ Harris (2004), p. 37; Heintschel von Heinegg, p. 216; Vitzthum, p. 56, fn. 320.

¹⁴⁶ *North Sea Continental Shelf Cases*, Dissenting Opinion of Judge Lachs, ICJ Reports 1969, p. 230; Heintschel von Heinegg, pp. 216, 217. See also *North Sea Continental Shelf Cases*, ICJ Reports 1969, para. 73.

receiving State is bound to give reasons for its sanctions or to adopt sanctions in the first place, and as not every receiving State will be faced with the same forms of diplomatic interference in the first place, it would be unrealistic to expect that all receiving States can contribute to the creation of customary law in this field.

States that have a particular "interest" in the matter are, as the 2001 case of *Bernard* has shown¹⁴⁷ not limited to sending and receiving State. Due to the universal nature of diplomatic law, every State can claim to have an interest in the development of its rules. In practice, however, the circle of concerned States is more restricted; usually only receiving and sending State explore specific features of the behaviour in question. An assessment of customary law by reference to a practice adopted by a great number of States is therefore only possible through a comparative approach, which allows similar cases of interference, occurring in different countries, to be considered in the same category.

bb. General usage as indicated through agreement between sending and receiving State

With regard to the States whose opinions ought to be considered in order to identify the existence of customary law, some authorities have pointed out that it is particularly important to look to States with different "political, economic and legal systems", but also to take into account the geographical distribution of the State practice under consideration¹⁴⁸. Strong evidence for the existence of customary law is therefore derived from the fact that States with diverse (possibly even

¹⁴⁷ See *supra*, p. 27.

¹⁴⁸ Heintschel von Heinegg, p 217; *North Sea Continental Shelf Cases*, Dissenting Opinion of Judge Lachs, ICJ Reports 1969, p. 227.

antagonistic) systems agree in their evaluation of a particular diplomatic conduct. The rationale for this is that particular value should attach to situations in which States are capable of transcending political or geographical boundaries to join in the assessment of a rule of law.

It is in keeping with this reasoning to attach similar value to cases in which, in instances of alleged diplomatic interference, sending and receiving States agree on the legal assessment of the conduct. A negative sanction provided by the receiving State will usually create a difficult situation: an expulsion order for instance carries a particular loss of face for the sending State. If, in spite of that, both States find it possible to agree on a point of law, the development of customary law may have received considerable support. The often quoted *Caroline Case* may be recalled in analogy: the disagreement between Britain and the United States concerned the facts of the case; but the British side accepted the considerations of law suggested by the US Secretary of State¹⁴⁹ and the rule thus established a landmark in the development of customary international law in this field.

These considerations are applicable in the field of diplomatic relations as well. When, in 1988, the Hungarian diplomat Karoly Gyoerfi, was expelled from Romania amid charges that he had distributed leaflets, which the receiving State described as "hostile", "inciting" and "anti Romanian", Hungary did not claim that such behaviour would be acceptable in relations between States. The General Secretary of the Hungarian Communist Party however, expressed a different evaluation of the *factual* situation and was quoted as stating:

¹⁴⁹ cf. Henkin et al, p. 872, Maris, p. 322, D'Amato, p. 34.

"I do not know who could have thought up the idea of accusing a Hungarian diplomat of disseminating leaflets whose content is libellous and hostile against the leaders of a host country"¹⁵⁰.

In a 1999 case, the agreement between sending and receiving State on the acceptability of the contested behaviour was even clearer. The Deputy Prime Minister of Malaysia had in that year raised accusations of interference against diplomatic missions in the country and supported his statement with allegations that foreign diplomats had offered their help to the opposition with a view to toppling the government (local newspapers reported that US diplomats had offered money to opposition parties).

The United States Embassy did not contradict the position that the funding of political parties would exceed the limits of diplomatic functions. But it denied the facts and stated:

"The embassy is not providing funding for election-related activities in any way, shape or form. The US strongly supports democracy, and free and fair elections. It does not interfere or take sides in elections"¹⁵¹

It is suggested that, if sending and receiving State are able to agree on the legal assessment in these situations, the rules thus established will be likely to apply also between States whose relationship is not disturbed by diplomatic incidents of this kind. The reason why such an agreement is not an uncommon feature is partially explained by the principle of reciprocity: a State which claims that the conduct of

¹⁵⁰ Blitz (1988).

¹⁵¹ BBC Online, "Malaysia accuses diplomats", 24 November 1999.

its envoys has not violated the law will also have to face the use of this interpretation of the law by foreign agents on its own territory.

cc. General usage as indicated through the action of a single State

Acts by a single State cannot amount to customary law; but the conduct of some States can still carry significant evidentiary value. Mention has already been made of the importance of sanctions provided by a receiving State which maintains friendly relations with the sending State¹⁵². Its usefulness also carries into the evaluation of general customary law: the position of a State which acted because it felt that diplomatic agents of a friendly State had breached the law may well be shared by other States which are free of the ties of friendship.

In some cases, the sending State issued a negative sanction to its own diplomats. Such behaviour likewise has relevance for the establishment of customary law. As in the case of friendly States, a negative sanction is an atypical act, because the acting State surrenders a beneficial position. If it nevertheless finds it necessary to adopt the sanction, because of its understanding of the proper fulfilment of diplomatic duties, then this interpretation is likely to meet with agreement in the wider international community.

And such cases have come into existence. Thus, in March 1964, the US Department of State warned embassy employees in Malaysia not to engage in

¹⁵² See *supra*, p. 58.

partisan political activities¹⁵³. In the 1979 case of the French military attaché to Argentina, which has been discussed above, the French government distanced itself from its diplomat¹⁵⁴ and removed him from his post.

In some cases, an opinion on the behaviour in question is provided by a third State. If that State has no personal or political stake in the case in question, then its opinion too has strong evidentiary value for the identification of the legal opinion held by other members of the international community. It is after all the view of an unbiased subject of international law. But cases of this kind are rare.

Israel in the 2001 case of Bernard¹⁵⁵ had reason to see itself as a concerned state, due to the nature of the remarks attributed to the French Ambassador. On the other hand, when Per Ahlmark criticized the United Kingdom in the same case, he was able to provide an unbiased view on the responsibility of the receiving government. But Ahlmark was at that time no longer a representative of the Swedish government¹⁵⁶, so that his comments could not be seen as necessarily reflecting the opinion of the State. The fact remains that third States wish to avoid the appearance of participation in the affairs of sending and receiving State and therefore deprive the assessment of diplomatic interference of an important source.

The rule of non-interference is recognized not only in the *Vienna Convention*, but also in other instruments on diplomatic and consular law in this field. The consideration of the latter instruments in analogy is, in principle, possible, although

¹⁵³ Whiteman (1970), p. 144. See also the 1964 case of Armin Meyer (Lebanon and USA).

¹⁵⁴ See *supra*, p. 47. See also the 1892 case of Borup, as recounted by Vagts, pp. 223, 224.

¹⁵⁵ *Supra*, p. 27.

¹⁵⁶ Ahlmark used to be Deputy Prime Minister of Sweden. Ahlmark (2002).

the existing differences as to the codification of diplomatic and consular functions will have to be taken into account.

Customary law has certainly maintained its prominent position among the sources on diplomatic duties. Its main advantage lies in the availability of numerous reports on instances of diplomatic behaviour and State sanctions. But custom has its disadvantages too – its subjective element in particular is difficult to assess. Frequently, contextual elements – such as the general state of relations between sending and receiving State, have to be considered to come to an assessment of the reasons which have informed a particular State sanction.

Once *opinio iuris* of one receiving State toward a specific diplomatic behaviour has been established, the question must be raised whether this position meets with agreement in the international community. Various factors aid in the process of identifying the existence of general customary law: in first place, the adoption of general practice among States. But it has been found that the existence of agreement between receiving and sending State on the legal assessment of a particular case and even certain admissions by sending States alone can be of value. They are no substitute for the establishment of the views of a greater number of States as elements of customary diplomatic law. But they indicate the existence of positions which may well find the approval of a majority of members of the international community.

Chapter 2 – The Concept of Interference

An examination of diplomatic interference encounters the difficulty that there is no generally accepted legal definition of the concept itself. It is the purpose of this chapter to obtain a better understanding of "interference" by investigating the ordinary meaning of the word, but also by evaluating the use of the term in International Law in general, and the treatment of this concept in the discussions of the International Law Commission.

1. The natural meaning of "interference"

The descent of the word "interference" has been traced to the Old French "s'entreférir" (to strike each other)¹ and from there to the Latin "ferire"² (to strike, knock, smite, hit³), so that even in this early form an element of disturbance is recognisable. Originally, the word was used in reference to a horse knocking one leg against another; from there it came to be applied to things in general which clashed or got in each other's way⁴. As to today's meaning, the *Oxford English Dictionary* (OED) suggests two ways of understanding the word:

"to meddle with; to interpose and take part in something, esp. without having the right to do so; to intermeddle."⁵

¹ Oxford English Dictionary [OED], "interfere (v)".

² Merriam-Webster, "interfere".

³ Notre Dame, "ferio [ferire]"; Menge, p. 295, "ferio".

⁴ OED, "interfere (v)", 1 and 2a.

⁵ OED, "interfere (v)", 4 b.

and

"[t]o interpose, take part, so as to affect some action; to intervene"⁶

Common to both meanings is the conduct of taking part in an ongoing process or state of affairs; but the element of disturbance which was so apparent in the Latin and Old French roots likewise survives. It is hinted at in the first meaning; but it also emerges in some of the examples the OED provides for the second one⁷.

Merriam-Webster offers the following definition:

"[...] to enter into or take a part in the concerns of others"⁸

This definition emphasizes another feature of "interference". The interfering element is, from the perspective of the other parties, an alien influence. If the examples provided by the OED are considered in the light of this, it will be found that this element forms an inherent part of all of them⁹.

In the French version of the *Vienna Convention*, whose text is equally authentic¹⁰, the second sentence of Article 41 (1) reads as follows:

⁶ OED, "interfere (v)", 5. The other meanings suggested either refer to things ("[4. a.] to come into collision"), to specific actions ("[6.] U. S. Football, To interpose between the player with the ball and a would-be tackler so as to help the former.") or are considered obsolete ("[2. b.] [...] to clash in opinions, tendencies, etc.").

⁷ Cf. : "They may interfere in elections by the use of corrupt means to bribe or intimidate the electors", Brougham, p. 102; and further examples in OED, "interfere (v)", 5.

⁸ Merriam-Webster, "interfere". The reservations mentioned *supra* about the other definitions provided by the OED apply here as well. Thus, Merriam-Webster has for instance: "4: to act reciprocally so as to augment, diminish, or otherwise affect one another - - used of waves".

⁹ One of the examples quoted for the first meaning ("to meddle with") reads: "Cannot you hold your tongue... and no one will interfere with you?", Jowett, p. 370. An example for the second meaning ("to take part in the concerns of others"): "Montoni and the rest of the party interfered and separated them", Radcliffe, p. xxviii.

¹⁰ Article 53 of the *Vienna Convention*.

"Elles ont également le devoir de ne pas s'immiscer dans les affaires intérieures de cet Etat."

For the verb "s'immiscer", *Hachette* offers the following meaning:

"S'ingérer dans, se mêler mal à propos de"¹¹

and it offers as an example for the word (in its intransitive meaning):

"Vous vous immiscez dans une affaire qui ne vous regarde pas"¹²

Apparent again are the fact that an element has been brought from the outside into an existing situation; but the French version – and the given example in particular – also supports the view that *immixtion* carries a decidedly negative connotation.

From a textual perspective then, interference can be described as the introduction of a new element into a pre-existing state of affairs, which usually causes a disturbance to the existing structures and is therefore typically regarded as a negative influence by one or several of the parties affected.

This use of the term has changed little over the last two or three centuries¹³. It was available to members of the International Law Commission; and it must be assumed that it formed the semantic basis of their considerations when they drafted the respective rule against diplomatic interference in 1957.

¹¹ Hachette, "immiscer (s)".

¹² Hachette, "immiscer (s)".

¹³ The first example for the first meaning of "interference" as used in this context ("to meddle") dates from the year 1632, OED, "interfere (v)", 4. b. The second meaning ("to interpose") has an example dated 1743, OED, "interfere (v)", 5.

2. Towards a narrower view

The definition of interference which thus emerges is so broad that it covers a multitude of diverse activities. Some authors indeed give a wide scope to the concept of "interference". *Sen* mentions among examples for interference the "[r]endering of aid or active assistance [...] in favour of a party in the national elections"¹⁴; *Rousseau* goes even further and includes the organization of a secret police and the kidnapping of dissidents who live in the receiving State¹⁵. *Oppenheim* mentions among forms of interference espionage¹⁶, kidnapping and the assassination of opponents and involvement in the preparation of terrorist acts¹⁷.

Other writers however have tried to restrict the meaning. *Denza*, with reference to the codification history, observes that Article 41 does not contain a rule against *intervention* – a form of conduct pertaining to relations between States themselves – but the duty of non-*interference*, which was historically incumbent on diplomatic agents themselves and referred to their private behaviour – "personal comments or activities [...] not made on instructions"¹⁸. Similarly, *Salmon* distinguishes between "le concept de non-immixtion" and "[le] principe de non-intervention" and states that it was the former which applied to members of the diplomatic mission¹⁹.

Not everybody agrees with the restrictive view on interference. *Hardy*, referring to the same Article of the Convention, finds that

¹⁴ *Sen* (1988), p. 90.

¹⁵ *Rousseau*, p. 167. Similarly *Verdross*, p. 567, para. 889, fn. 27.

¹⁶ *Oppenheim* (1992), p. 1068. See also *Delupis*, p. 69, fn. 101, *Przetacznik* (1976), p. 59, similarly *Dinh*, p. 716.

¹⁷ *Oppenheim* (1992), pp. 1068, 1069.

¹⁸ *Denza* (1998), Article 41, p. 376. Cf. also *Accioly* (1), p. 277, para. 364.

¹⁹ *Salmon* (1996), p. 129, para. 197.

"[t]his provision embraces, beside private acts, activities which the sending State may sanction and, indeed, officially order the diplomat to execute [...]"²⁰

Oppenheim, in his section on diplomatic interference in internal affairs, states:

"It matters not whether an envoy acts thus on his own account, or on instructions from his home state. If he does so, he abuses his position [...]"²¹

The conclusions reached in the last section cannot resolve this dichotomy. But the scope of "interference" becomes clearer, if it is contrasted with the natural meaning of "intervention". This will be the subject of examination of the following subsection.

a. A textual analysis of "intervention"

Intervention too has Latin origins; "intervenire" means "to come between"²². The understanding of the term has seen no great changes over the centuries. The OED offers two relevant meanings²³ which are still in use. In the first alternative, "to intervene" is understood as

²⁰ Hardy, p. 17. Some authors do in fact use the terms "intervention" and "interference" interchangeably: cf. Baldus, p. 77; Mahalingam, p. 221; Schröder, p. 619; Udombana, p. 56. *Salmon* uses the terms interchangeably in his 1993 article on self-determination, but makes a distinction in the 1996 edition of his book on diplomatic law; Salmon (1993), p. 268; Salmon (1996), p. 129, para. 197. Others refer to "diplomatic interference" when describing acts which would be carried out on instructions by the sending State; cf. Clarke, p. 192; Sanei, p. 825; Hall (1924), p. 344 ("Interventions, whether armed or diplomatic [...]"); Zelniker, p. 1015 ("[...] the duty of states to refrain from interfering in the affairs of other states.").

²¹ Oppenheim (1992), p. 1069.

²² Merriam-Webster, "intervene". Menge, p. 402, "intervenio".

²³ The other alternatives listed refer to things, space and time or events and occurrences: Alternative 2 refers only to events or occurrences, alternatives 3b and 4a refer to things, 4b to space and time. Alternative 5 is obsolete, with the last example provided dating from 1839, OED, "intervene (v)".

"com[ing] in as something extraneous, in the course of some action, state of things, etc."²⁴

and in the second alternative:

"To come between in action; to interfere, interpose; also, to act as intermediary"²⁵

The first meaning is less indicative of the intentions and the shape of action taken by the author of the intervention. The term is used in a neutral way; the emphasis is on the physical position of the author. The second alternative gives the authors a more defined role; they appear not merely as extraneous elements, but they take part in an ongoing state of affairs. *Merriam-Webster* in this context names the example of intervening "to stop a fight"²⁶; a form of conduct which may occur more frequently in situations where the intervening person has the power to do so. In inter-State relationships this power would lie rather with the States themselves than with their agents acting in a private capacity. But there are situations where two States are not on speaking terms or have reached an impasse. In those cases a particularly influential private person – a religious leader, a businessman – might act as an intermediary; moved rather by private motives than State instructions. Likewise, a diplomat who has built a position of trust with the receiving government might employ this authority to act as a private intermediary between sending and receiving State rather than as the official channel of the sending State's government.

²⁴ OED, "intervene (v)", 1.

²⁵ OED, "intervene (v)", 3 a.

²⁶ Merriam-Webster, "intervene", 3.

The examples provided by the OED for the second alternative of the verb do not allow the assumption that acts performed in a private capacity are excluded²⁷. Nor does a literal analysis of *interference* allow the conclusion that the interferor would always act in a private capacity²⁸.

A further point merits observation. The OED uses "interfere" as a synonym for the word "intervene" (in the second alternative mentioned above). *Merriam Webster* too lists "to interfere" as an explanation for the verb "to intervene":

"to interfere usually by force or threat of force in another nation's internal affairs especially to compel or prevent an action"²⁹

This does not necessarily mean that "interference" and "intervention" cover the same ground. However, "interference" might embrace "intervention". *Merriam Webster* in particular seems to suggest that intervention is a special, narrower case of interference³⁰.

The natural meaning of "interference" therefore covers activities which are typically of a private character as well as those which are typically official in nature (as in the *Merriam Webster* example). The main difference between "interference" and "intervention" seems to be notional rather than definitive: the emphasis of "interference" lies on the negative character of the conduct; the emphasis of

²⁷ The OED includes, for instance, the following example: "When his own brother.. came to intervene in the affair with very unbecoming menaces", Carte, p. 88., OED, "intervene (v)", 3. a.

²⁸ The OED itself refers to examples of "official interference"; e.g. "Parliament interfered to protect employers against their labourers", Froude, p. 29. Cf. also: "A Sheik Arab, who lives here, has really all the power, whenever he pleases to interfere.", Pococke, p. 133.

²⁹ Merriam-Webster, "intervene", 5. b.

³⁰ See also Hachette "s'ingérer" was offered as a synonym for "s'immiscer". However, as an explanation for "ingérence", Hachette refers expressly to State intervention ("Pour un État, action de s'ingérer dans les affaires d'un autre État") Hachette, "ingérence".

"intervention" lies on the fact that the author of the act brings an extraneous element into an already existing state of affairs³¹.

b. Interference and intervention in Public International Law

The considerations of the International Law Commission in the drafting of the rule of non-interference would have been informed by the natural meaning of the term; but the drafters were also aware of the understanding of "interference" and "intervention" in the law of nations³². But how does Public International Law deal with these two concepts?

The term "intervention" has been used to describe the general involvement of one State in the affairs of another. Article 8 of the *Montevideo Convention* makes express reference to the ban on intervention³³; and the *Charter of the United Nations* has been interpreted as containing the same obligation³⁴. In the ILC discussions, Ago too pointed out that in his view, the *Charter* (in Article 2 (4)) contained a rule against State intervention. As it is the distinction between the terms "intervention" and "interference" which is at issue here, it bears observation

³¹ Merriam-Webster attempts the following distinction. "Interfere implies hindering <noise *interfered* with my concentration> [...] Intervene may imply an occurring in space or time between two things or a stepping in to stop a conflict <quarreled until the manager *intervened*>", Merriam-Webster, "interfere".

³² See references made by Ago and Verdross, YILC 1957 (1), p. 149, para. 36 [Mr. Ago]; YILC 1957 (1), p. 146, para. 2 [Mr. Ago]; YILC 1957 (1), p. 147, para. 20 [Mr. Verdross].

³³ "No state has the right to intervene in the internal or external affairs of another." Article 8, *Montevideo Convention*.

³⁴ Kelsen, p. 770. See also Schwenninger: "Article 2, paragraph 4 of the United Nations Charter is the most authoritative statement prohibiting intervention [...]", Schwenninger, p. 427. For a different view, see Schröder, p. 620.

that "interference" does not once appear in the *Charter* text; and the only occurrence of "intervention" is to be found in Article 2 (7) – an article which contains a general ban on intervention by the United Nations and does therefore not concern "intervention" by a Member State³⁵.

Some later instruments use the term "intervention" when referring to State behaviour. Thus, the 1975 *Helsinki Final Act* states in Article VI:

"The participating States will refrain from any intervention, direct or indirect, individual or collective, in the internal or external affairs falling within the domestic jurisdiction of another participating State, regardless of their mutual relations."

But even in this instrument, the situation is not unambiguous. Article VIII for instance, which imposes the obligation on participating States to respect equal rights of peoples and the right to self-determination also grants the right to peoples to determine their political status without external "interference". The *Final Act* does not specify the author of the interference, which may therefore be a State actor.

In most instruments of international law which refer to "interference", the distinction between this conduct and "intervention" is far from clear. The *Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of Their Independence and Sovereignty* for instance makes use of both terms. As it was adopted only four years after the Vienna Convention³⁶, one

³⁵ See also Oppermann, p. 1436; Schröder, pp. 620, 621. However, for a different view see Zelniker, p. 1017. It may be argued that the situation envisaged in Article 2 (7) is more akin to that of a State government intervening with the enjoyment by its citizens of human rights.

³⁶ GA Res 2131 (XX).

may presume that the legal understanding of the terms "interference" and "intervention" would have been identical to that available to the drafters of the former instrument. But the Declaration does not elaborate on the difference between the two concepts. In its Preamble, the General Assembly expresses its concern about the increasing threat to universal peace due to "armed intervention and other direct or indirect forms of interference" and condemns, in Article 1, "armed intervention and all other forms of interference".

The third principle of the *Friendly Relations Declaration* of 1970 employs similar language:

"The principle concerning the duty not to intervene in matters within the domestic jurisdiction of any State, in accordance with the Charter

No State [...] has the right to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any other State. Consequently, armed intervention and all other forms of interference or attempted threats against the personality of the State or against its political, economic and cultural elements, are in violation of international law."

If the adopted text was supposed to contain any distinction between "interference" and "intervention", it would not be a distinction based on authorship of the act. It is indeed difficult to read any form of differentiation into the text. In the title and the first sentence of the third principle, "intervention" appears as the umbrella term for any form of unwarranted State involvement in the affairs of another State. In the second sentence, "interference" appears as the umbrella term, to which "armed intervention" and "all other forms of interference"³⁷ would be sub-categories. The

³⁷ Emphasis added. On this point, cf. Arangio-Ruiz, p. 488.

conclusion is difficult to avoid that the General Assembly in these cases uses "interference" and "intervention" as interchangeable terms³⁸.

The examination of instruments establishing regional organizations further compounds the difficulty. The *Charter of the Organization of American States*, signed nine years before the ILC debates on diplomatic intercourse and immunities began, contains this rule:

"Article 19

No State or group of States has the right to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any other State. The foregoing principle prohibits not only armed force but also any other form of interference or attempted threat against the personality of the State or against its political, economic, and cultural elements."³⁹

The first sentence is identical to the version later used in the *Friendly Relations Declaration*; it employs the verb "intervene". The second sentence however arms against the possibility that a reader might interpret "intervention" as "military intervention" only. The argument can be made that the use of the term "intervention" is particularly common when the behaviour in question takes place on the military plane. However, there is little doubt that the *Charter of the OAS*, too, uses the terms "intervention" and "interference", interchangeably.

It is difficult to derive from the general usage of the term "interference" in international law an understanding that would limit the concept to conduct by non-

³⁸ See also Article 2 (III) (e) of the 1981 *Declaration on the Inadmissibility of Intervention and Interference in the Internal Affairs of States*, GA Res 36 / 103 (1981).

³⁹ The text of this Article (originally Article 15) existed in the original (1948) Charter and is not the result of later amendments.

State actors only. On the contrary, numerous instruments on international law use the word "interference" when they refer to State behaviour. Thus, Article III of the *Charter of the Organization for African Unity* (1963) provides:

"The Member States, in pursuit of the purposes stated in Article II solemnly affirm and declare their adherence to the following principles:
1. The sovereign equality of all Member States
2. Non-interference in the internal affairs of States
[...]"⁴⁰

In the 1955 *Warsaw Pact*, the Member States declare that they will adhere "to the principle of respect for the independence and sovereignty of states and of non-interference in their affairs"⁴¹.

States are also considered to be the authors of interference in various resolutions of the General Assembly. The above mentioned Resolution 2131 (XX) affirms the right of every State to choose its own "political, economic, cultural and social" system, "without interference in any form by another State"⁴². The 1981 *Declaration on the Inadmissibility of Intervention and Interference in the Internal Affairs of States* contains the duty of "a State" to refrain from "any act of military, political or economic interference in the internal affairs of another State"⁴³ and to refrain from the distortion of human rights issues "as a means of interference in the internal affairs of States"⁴⁴.

Even "intervention" is not necessarily a term that is strictly reserved to State actors.

The 1974 *Charter of Economic Rights and Duties of States* speaks of private

⁴⁰ On the reception and significance of this rule, see Udombana, p. 56.

⁴¹ Article 8 of the 1955 *Warsaw Pact*. Cf. also Article II (5) of the 1988 *Bilateral Agreement between Afghanistan and Pakistan*.

⁴² Article 5 of GA Res 2131 (XX). See also Article 2 of the same resolution.

⁴³ Article 2 (II) (c) of GA Res 36 / 103 (1981).

⁴⁴ Article 2 (II) (l) of GA Res 36 / 103 (1981). See also Articles 1; 2 (II) (h); 2 (II) (j); 2 (II) (k) of the same resolution.

authors when it states that "Transnational corporations shall not intervene in the internal affairs of a host State"⁴⁵.

State practice too has not made a clear distinction between "interference" and "intervention". There is evidence that, prior to the codification of the ban on an international level, "interference" had been used as one synonym for State intervention. In 1913, at the death of Sheikh Qasim of Qatar, who had ended Ottoman rule in his country, the [British] India Office suggested that the British Political Resident in Qatar should inform the new Sheikh

"that H.M.G. will allow no outside interference in the affairs of Katr [...] the former might be told that he has nothing to fear from the Turks"⁴⁶

In a more recent example, Bosnia and Herzegovina referred in her submission to the Court to

"[its] right [...] to conduct its affairs and to determine matters within its domestic jurisdiction without interference or intervention by any foreign State [...]"⁴⁷.

While it is possible that Bosnia and Herzegovina simply used "interference or intervention" as a hendiadys, it is also conceivable that she intended to convey the notion of two distinguishable concepts. In that case however, no details on the

⁴⁵ GA Res 3281 (XXIX), Chapter II, Article 2 (2) (b).

⁴⁶ *Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar v Bahrain)*, Merits, Counter-Memorial submitted by the State of Qatar, 31 December 1997, Chapter III, p. 61, para 3.43. It is also interesting that the Monroe Doctrine (1823) referred to potential "interposition" by European powers (in the affairs of governments recognized by the United States). See Plischke, p. 20. "Interposing" had been seen as a synonym for "interfering", see *supra*, p. 67, but President Monroe clearly referred to action by States.

⁴⁷ *Application of the Genocide Convention*, Request for the Indication of Provisional Measures, in: Order of 8 April 1993 (Provisional Measures), ICJ Reports 1993, para. 36.

meaning of either term had been provided, and the submitting State certainly did not reserve the term "interference" for authors acting in a private capacity.

The government of Iran, in the 1980 *Hostages Case*, described as "interference" a form of conduct whose alleged author was a State. The Iranian Foreign Ministry maintained that the taking of hostages in Iran

"only represents a marginal and secondary aspect of an overall problem, one such that it cannot be studied separately, and which involves, inter alia, more than 25 years of continual interference by the United States in the internal affairs of Iran [...]"⁴⁸

But Iran provided no further evidence for her allegations⁴⁹; and she did not explain whether she differentiated between "interference" and "intervention". What is clear from her communications is that a State was seen as the author of the offending conduct.

In oral pleadings in the *Arrest Warrant* case (November 2000), the Democratic Republic of Congo made this comment:

"[...] Belgium challenges the sovereignty of the Democratic Republic of the Congo, interferes in the management of its internal affairs and disregards its personality"⁵⁰.

⁴⁸ *Hostages Case*, ICJ Reports 1980, para. 10, telex, dated 16 March (received 17 March) 1980, from the Minister for Foreign Affairs of Iran [Translation from the French], and see para. 35 for an earlier, similar use of "interference".

⁴⁹ Cf. *Hostages Case*, ICJ Reports 1980, para. 37.

⁵⁰ *Arrest Warrant*, Oral pleadings of 22 November 2000 (translation). The original uses the phrase "s'immiscie dans la gestion de ses affaires intérieures et ignore sa personnalité".

The International Court of Justice too, has used the terms interchangeably. Thus, in *Nicaragua v United States*, it found that the "principle of non-intervention involves the right of every sovereign State to conduct its affairs without outside interference [...]"⁵¹. In its 2005 judgment in the case of the *Democratic Republic of Congo v Uganda* the court found that Uganda had committed "interference in the internal affairs of the DRC and in the civil war there raging", but referred in the next sentence to the behaviour in question as "unlawful military intervention"⁵²,

Neither States nor the jurisprudence of the ICJ therefore reveal a distinction between "interference" and "intervention" by reference to the author of the conduct. However, that does not mean that "interference" in diplomatic law might not have gained a particular meaning which differs from that otherwise used in international law. The next section will therefore explore the question whether such a specific meaning is apparent from the drafters' intentions and from subsequent State practice.

⁵¹ *Nicaragua v. United States*, ICJ Reports 1986, para 202.

⁵² *Case Concerning Armed Activities on the Territory of the Congo*, Judgment 3 February 2006, para. 165. See also Declaration by Judge Koroma (in the same case), para. 4. In a recent case, the ICJ made reference to the *Right of Passage* case (ICJ Reports 1960, pp. 6 – 46) and mentioned the concept of interference in a context which shows the hallmarks of "State intervention": "the dispute arose in 1954, when India interfered with Portugal's alleged right of passage [...]". *Case Concerning Certain Property*, ICJ Reports 2005, para. 42.

c. The concept of diplomatic interference in the *travaux préparatoires* and in State Practice

aa. The debate in the International Law Commission

The discussion in the ILC on the rule of non-interference can be traced to an initiative by its members Padilla Nervo and García Amador. On 5 June 1957, the former introduced a provision on non-interference in an amendment to Draft Article 27⁵³. Later experts put great weight on the early discussions of the rule. To supporters of the narrower view of "interference" these debates reveal that the drafters were concerned with the duty of a diplomat "in his personal activities not to meddle in the domestic affairs of the receiving State"⁵⁴.

An analysis of the debate in the International Law Commission however faces the difficulty that the terms "intervention" and "interference" were not understood in a uniform way by its members. At least three different strands can be identified. Some speakers, particularly in the early contributions, followed the more traditional usage in international law and focused on the disturbing character of the behaviour. In view of authorship, they seem to have used the words "intervention" and "interference" interchangeably. Khoman's statement for instance implies that receiving States might interpret the fulfilment of *official* diplomatic duties as "interference":

"Representations made to the receiving State when it contemplated passing laws affecting the interest of the

⁵³ See Annex F.

⁵⁴ Denza (1998), Article 41, p. 376.

sending State or its nationals might be interpreted as interference, yet it was the positive duty of an ambassador to make them."⁵⁵

Special Rapporteur Sandström pointed out that his original Article 27 had not included a rule on "non-intervention"

"partly also because diplomatic agents almost invariably intervened only on the instructions of their Governments"⁵⁶

which implies that in the remaining cases, diplomats would "intervene" in a private capacity⁵⁷.

The second strand of opinion (the "narrower view") did make a distinction based on authorship. Nobody expressed it more clearly than Liang, on the second day of the discussion:

"[I]t was essential to distinguish between the acts of diplomatic agents in their official capacity and their private acts. A provision such as that at the end of paragraph 1 of the amendment would be justified if it referred only to the private acts of diplomatic agents. In cases where diplomatic agents took steps which could be regarded as intervention in the politics of the

⁵⁵ YILC 1957 (1), p. 143, para. 71 [Mr. Khoman]. Fitzgerald, too referred to official acts of diplomatic agents when stating his own objections to the mention of "foreign politics" in the draft and indicated that these acts might be perceived as interference: "He was also doubtful about the inclusion of the words 'foreign politics' in that paragraph. While it was a firmly established principle that envoys must not interfere in the domestic politics of the receiving State, it might be argued that their role was precisely, if not to interfere, at least to concern themselves with its foreign policy.", YILC 1957 (1), p. 143, para. 76 [Sir Gerald Fitzmaurice].

⁵⁶ YILC 1957 (1), p. 143, para. 58 [Mr. Sandström].

⁵⁷ The interchangeable use of the terms is probably even clearer in Hsu's contribution: "The concept of 'intervention', as Mr. Padilla Nervo had defined it, seemed to have no place in the article, such dictatorial interference being an act of State for which the diplomat obliged to 'perform' it could not be blamed.", YILC 1957 (1), p. 147, para. 17 [Mr. Hsu]. Cf. also Tunkin, who referred to the "matter of intervention" when discussing the rule of non-interference contained in the Draft Article, YILC 1957 (1), p. 146, para. 7 [Mr. Tunkin].

receiving State, it was on behalf of their Governments [...]"⁵⁸

and other speakers also accepted this view⁵⁹.

A third strand was triggered by Padilla Nervo's contribution, which defined "intervention" as "dictatorial interference"⁶⁰ – a term which had been used in academic debate at that time⁶¹. Padilla Nervo understood it as implying the posing of an ultimatum to the receiving State, involving "threat to or recourse to compulsion", if the demand were not complied with⁶². Yokota interpreted this statement in his own contribution in the following way:

"it followed [from Padilla Nervos' statement on "dictatorial interference"] that intervention pure and simple was permitted to diplomatic agents. He doubted, however, whether any State would accept such a proposition. For an ambassador to encourage or subsidize a political party in the receiving State was an unwarranted interference, although it was not a dictatorial intervention. He accordingly preferred the word 'interfere'."

In Yokota's view then, "interference" would be the overarching term. Sub-categories would be "intervention" in the meaning Padilla Nervo had given it ("dictatorial interference") and "intervention pure and simple" (including the subsidizing of political parties).

⁵⁸ YILC 1957 (1), p. 147, para. 12 [Mr. Liang].

⁵⁹ cf. YILC 1957 (1), p. 147, para. 20 [Mr. Verdross], para. 22 [Sir Gerald Fitzmaurice], p. 148, para. 26 [Mr. Matine-Daftary], p. 149, para. 36 [Mr. Ago]. Padilla Nervo himself saw that difference; to him, non-intervention was "indisputably one of the elementary duties of States". YILC 1957 (1), p. 145, para. 83 [Mr. Padilla Nervo].

⁶⁰ YILC 1957 (1), p. 145, para. 83 [Mr. Padilla Nervo].

⁶¹ Padilla Nervo himself referred to Lauterpacht (1950), pp. 167, 168. See also Falk, p. 172; Quincy Wright, p. 5 (highlighting, in particular, diplomatic "intervention"). *Heffter* in 1882 stated, similarly, that a diplomat had to refrain from "Einmischung in die Verwaltung mit Anmaßung von befehlender Gewalt und Form", *Heffter*, p. 426.

⁶² YILC 1957 (1), p. 145, para. 83 [Mr. Padilla Nervo].

For those who saw a difference between "interference" as a private act and "intervention" as an act performed in an official capacity, it was not always understandable why the latter should be included in the instrument under discussion. In their view, the ban on intervention was a State duty which should not be included in a text dealing with the duties of diplomats⁶³.

But not everybody agreed with the omission of State intervention from the draft.

Padilla Nervo had made clear at the beginning that he supported the inclusion of State intervention:

"[...] non-intervention was indisputably one of the elementary duties of States. And since such undue intervention on the part of States normally took place through the medium of their diplomatic representatives, it would be strange if a codification of the duties of diplomatic agents made no reference to that fundamental, though perhaps self-evident, duty."⁶⁴

El-Erian too stated that it was a duty incumbent on diplomatic agents, "both in an official and in a personal capacity" to respect the political independence of the host⁶⁵.

In later contributions, particularly after Ago and others had expressed their strict opposition to a reference to State intervention, the drafters of the original amendment, adopted a slight change to their style of reasoning. García Amador declared that it was "not of primary importance", if the interference was an act of

⁶³ YILC 1957 (1), p. 149, para. 36 [Mr. Ago] and YILC 1957 (1), p. 148, para. 26 [Mr. Matine-Daftary].

⁶⁴ YILC 1957 (1), p. 143, para. 58 [Mr. Padilla Nervo]. YILC 1957 (1), p. 148, para. 30 [Mr. García Amador].

⁶⁵ YILC 1957 (1), p. 148, para. 24 [Mr. El-Erian].

State or not⁶⁶. This was not a substantial change of opinion. If authorship does not matter for the Draft Article, then it does embrace both State conduct and private behaviour.

Other members of the ILC employed examples for their understanding of diplomatic interference which indicate that interference on instructions would also be covered. Thus, reference was made to the issuing of ultimat⁶⁷ (which do not make sense if the diplomat cannot act with the authority of the sending State) and to the subsidizing of political parties⁶⁸ (which will rarely be done out of the diplomat's private purse). If these examples are accepted as reflecting traditional cases of interference, then interference on instructions forms part of the rule of non-interference at least in the customary law of diplomatic relations.

Even the supporters of the narrower view admitted the difficulty of finding a dividing line⁶⁹. The ILC was unable to reach agreement on this question⁷⁰, and the Commission followed García Amador's suggestion of leaving the wording to the Drafting Committee⁷¹. Ago and Scelle (with some foresight) voiced their concerns about the advisability of this decision⁷².

Twenty days later, at the 429th meeting of the ILC, the issue became again the subject of debate, this time, in the context of the commentary to the provision⁷³. In

⁶⁶ YILC 1957 (1), p. 148, para. 29 [Mr. García Amador]. See also YILC 1957 (1), p. 149, para. 42 [Mr. Padilla Nervo].

⁶⁷ YILC 1957 (1), p. 145, para. 80 [Mr. Bartos].

⁶⁸ YILC 1957 (1), p. 146, para. 10 [Mr. Yokota].

⁶⁹ cf. YILC 1957 (1), p. 150, para. 49 [Mr. Edmonds].

⁷⁰ Shortly before the end of the debate, supporters of the wider view still insisted that it did not matter whether the interfering diplomat had acted on instructions or not, cf. YILC 1957 (1), p. 149, para. 42 [Mr. Padilla Nervo], whereas supporters of the narrow view upheld their opinion that a distinction had to be made, cf. YILC 1957 (1), p. 150, para. 49 [Mr. Edmonds].

⁷¹ YILC 1957 (1), p. 148, para. 30 [Mr. García Amador] and YILC 1957 (1), p. 150.

⁷² YILC 1957 (1), p. 149, para. 35 [Mr. Ago]; YILC 1957 (1), p. 150, para. 51 [Mr. Scelle].

⁷³ The provision itself had now become Draft Article 32.

line with the supporters of the narrower view, paragraph 2 of the Draft Commentary stated that persons enjoying diplomatic privileges and immunities must, "outside their functions" not interfere in the internal affairs of their host⁷⁴. García Amador reiterated his position: there was a duty to abstain from interference "within [diplomatic functions] as well", and accordingly, he moved for a deletion of the words "outside their functions"⁷⁵. Tunkin, too, thought it "quite clear" that interference applied to official functions as well⁷⁶. Scelle, who had supported the narrower view when the provision was first discussed, did not agree, but raised no objections either⁷⁷, and the Commission decided to delete the words⁷⁸.

The Report of the ILC to the General Assembly contained the rule as Draft Article 33⁷⁹.

When that Article was again discussed in 1958, the supporters of the narrower view were still members of the Commission. In view of their strong views expressed when it first was introduced – in a form not much different from the final one⁸⁰ – one might have expected some objections or a request for clarification. But the article was accepted unanimously⁸¹.

What is more, at the 477th meeting of the Commission, when the Commentary to the Draft Article was discussed, Liang, a supporter of the narrower view, now

⁷⁴ This is apparent from the subsequent discussions of the draft. The Drafting Committee originally seemed to have suggested that persons enjoying diplomatic privileges and immunities must not interfere "in matters which are essentially the private concern of the receiving State". This phrase was eventually substituted by the words "in the internal affairs of the receiving State", YILC 1957 (1), p. 220, para. 80 [Chairman].

⁷⁵ YILC 1957 (1), p. 220, para. 74, [Mr. García Amador].

⁷⁶ YILC 1957 (1), p. 220, para. 77, [Mr. Tunkin].

⁷⁷ Scelle's disagreement may be inferred from the fact that he expressly supported García Amador on the "second and third points" he had made, but not on the first one, which concerned interference within the functions of diplomatic agents, YILC 1957 (1), p. 220, para. 79, [Mr. Scelle].

⁷⁸ YILC 1957 (1), p. 220, para. 80 (at the end).

⁷⁹ See Annex G.

⁸⁰ See *supra*, p. 82.

⁸¹ YILC 1958 (1), p. 181, para. 7 [Chairman].

illustrated diplomatic interference with an example which would hardly ever be carried out as a private endeavour:

"They might interfere in the internal affairs of a State in much more serious ways as, for example, in fomenting civil war."⁸²

In its 1958 Report to the General Assembly, the provision (now Draft Article 40 (1)) was left unaltered. The phrasing of the rule is in fact identical with the current Article 41 of the *Vienna Convention*, except for one minor change: the word "diplomatic" was removed by the Vienna Conference.

bb. The use of the word "interference" in State practice

It is possible – and asserted by some authors – that receiving States employ a narrower view of interference than that suggested by its natural meaning, so that the term covers only personal behaviour not carried out on instructions⁸³.

An example is the most prominent case in the field of diplomatic interference – that of Lord Sackville⁸⁴. Sackville, the British Minister to the United States, received in 1888 a letter allegedly written by a naturalized American citizen of English birth. The author asked Sackville for advice regarding the forthcoming presidential

⁸² YILC 1958 (1), p. 250, para. 27 [Mr. Liang].

⁸³ Denza (1998), Art. 41, p. 376. Such a distinction is in keeping with the reasoning of supporters of the narrower view. The question may however be asked whether it is indeed possible to distinguish between cases in which a diplomatic agent acted on instructions and those in which he did not (cf. the doubt expressed by Edmonds, YILC 1957 (1), p. 150, para. 49 [Mr. Edmonds] and by Scelle, YILC 1957 (1), p. 150, para. 51 [Mr. Scelle].) This issue will be explored more fully at a later stage (see section 2. b. dd. (*infra*, p. 98).

⁸⁴ For a description of the case see State Papers, pp. 479 – 578; Denza (1998), Art. 41, p. 376; Nicholas Henderson (1988); Meyer (1988); Rousseau, p. 167; Satow (1979), p. 133, para. 15.32; Whiteman (1970), p. 96; Gover, pp. 118 – 123; Satow (1922), pp. 396 – 401; Stuart, pp. 539 – 540; Plischke, p. 303; Hyde, p. 736; Lawrence, p. 268; Stowell, p. 323, fn. 52.

elections. The writer voiced his doubts about the continuation of the England-friendly policy of the incumbent Democrat Cleveland. Sackville replied by letter in which he wrote that he believed the Democrats to be "still desirous of maintaining friendly relations with Great Britain".

It then turned out that Sackville's correspondent had in reality been a member of the Republican party. The letter was reprinted in the *New York Times* under the headline "The British Lion's Paw Thrust Into American Politics". Cleveland insisted on the recall of Sackville; the Minister was handed his papers in October 1888⁸⁵.

Sackville's correspondent had maintained that he sought the Minister's advice "privately and confidentially", and Sackville marked his reply "Private"⁸⁶. This seems to support the view that receiving States do understand interference as private behaviour – conduct not carried out on instructions.

However, the Sackville case provokes certain questions concerning the possibility of the existence of implied general instructions – a point which will be discussed later.

In a case preceding that of Sackville, the issue was diplomatic conduct which was quite clearly carried out on instructions. In 1848, the British Foreign Secretary instructed the British representative to Spain, Bulwer, to convey a message to the Spanish Minister of Foreign Affairs, containing advice on governmental appointments⁸⁷. This would have been the sort of case that Fitzmaurice had in mind

⁸⁵ State Papers, pp. 483 – 484. It appears that Harrison (Cleveland's challenger) too considered the Sackville letter a "gross interference by a foreign diplomat in the internal affairs of the United States"; cf. Nicholas Henderson (1988).

⁸⁶ Cf. Lawrence, p. 268..

⁸⁷ Geffcken, p. 664; Satow (1979), p. 183, para. 21.19.

when, in the ILC, he spoke against the inclusion of instances in which the diplomat acted as a mere "mouthpiece"⁸⁸.

In Bulwer's case, however, the receiving government did resent the advice "as interference in the domestic affairs [...]"⁸⁹, and requested Bulwer's recall⁹⁰.

The cases emerging after 1961 are equally diverse in nature. In many instances in which the receiving State used the word "interference", it is simply not clear whether the underlying behaviour was carried out on instructions or not. Only one case has been found in which the receiving State made mention of "interference" while making it clear that the sanction was aimed at a purely personal behaviour. In September 2001, the Italian Ambassador to Eritrea was expelled for interference in the internal affairs of that State⁹¹. Eritrea stated that the

"expulsion was a personal matter [...] It is not about Italy and Eritrea, it is about one man".

But even here, a contextual view of the case allowed for doubts about the sincerity of that statement, as was pointed out above⁹².

In some cases, the circumstances of the incident indicate that the diplomat acted on instructions. In 1980, the Soviet Ambassador Sofinsky was expelled from New Zealand amid allegations that he was involved in the funding of a political party in the receiving State. On this occasion, the Prime Minister of New Zealand made explicit reference to the duty of diplomatic agents not to "interfere in the domestic

⁸⁸ YILC 1957 (1), p. 147, para. 22 [Sir Gerald Fitzmaurice]. See for a similar view Svarlien, p. 246; Oppenheim (1992), p. 1066.

⁸⁹ Satow (1979), p. 183, para. 21.19.

⁹⁰ Satow, *loc. cit.* The British government refused to recall Bulwer.

⁹¹ The statement issued by the Director of European Affairs at the Eritrean Foreign Ministry referred to interference "in the internal politics of Eritrea". BBC Online, "Eritrea plays down diplomatic row", 2 October 2001.

⁹² See *supra*, p. 55.

politics" of the receiving State⁹³, but he also pointed out that there was "no doubt the Socialist Unity Party has been financed by the Soviet government for some time". Indeed, Mr Muldoon stated that it was the personal involvement of the Ambassador which showed "that this is a matter of official Soviet policy."⁹⁴.

Evidence for underlying instructions was even clearer in the 1996 case of Meyers, a US diplomat to Myanmar, who was accused by the Burmese government of interference⁹⁵. The US State Department replied to the allegations by confirming that Meyers had carried out "her diplomatic role on instructions from Washington."⁹⁶

The word "interference" is therefore employed by receiving States to characterise conduct which may at least in some cases consist in the implementation of instructions.

On the other hand, the offended host might not always be aware of the underlying instructions. In Meyer's case, the State Department found it necessary to draw attention to the fact after the event had occurred.

But does it matter to the receiving State?

The fact that States have on occasion adopted preventive measures against conduct they labelled "interference"⁹⁷, militates against this assumption.

⁹³ *Associated Press*, "New Zealand Boots Soviet Ambassador", 23 January 1980.

⁹⁴ *Facts on File World News Digest*, "Soviet Ambassador Expelled", 8 February 1980. See also the 1982 case of Meir Rosenne (France and Israel) and the 1988 case of Richard Melton (No 1) (Nicaragua and USA).

⁹⁵ *Reuters*, "U. S. denies Burma interference charges", 2 October 1996.

⁹⁶ *Reuters*, *loc. cit.*

⁹⁷ See Salmon (1976), p. 41, *Le Soir*, 23 August 1969, on the warning issued by Mobutu (President of Zaire) concerning "any form" ("de quelque manière") of interference. The general caution voiced with a view to cases which are reported by a secondary source (and have possibly undergone a process of translation) applies here. See *supra*, p. 58.

Thus, in 1999, Sri Lanka sent a note to all foreign missions warning that "any premature comment on the Wayamba election controversy could amount to an interference" in the internal affairs⁹⁸. The note was issued in the wake of an American statement which drew attention to problems with the Wayamaba provincial polls. A spokesperson for the US embassy declared in this context:

"We are naturally concerned about news reports of violence surrounding the election and about the allegations of voting day irregularities [...] The US believes that fair and free elections are essential for democracy."⁹⁹

If behaviour of this kind formed the background of the preventive sanction, the warning would indeed embrace official conduct by diplomatic agents. It is more likely that the State of Sri Lanka wished to protect itself from any form of interference, regardless of the "private" or "official" capacity of the offending diplomat¹⁰⁰.

There is in fact no evidence that States make this differentiation in cases of this kind. It seems more likely that they do not care whether instructions were in existence, once the offending behaviour has been committed¹⁰¹; the word "interference" has thus been used to describe cases in which the alleged behaviour was private, cases in which it was official and cases in which it lies in the future is therefore of an undetermined nature.

⁹⁸ Jansz (1999).

⁹⁹ Jansz (1999).

¹⁰⁰ See also the 1998 case of Malaysia, concerning diplomats from various States.

¹⁰¹ Cf. Oppenheim (1992), p. 1068. A historical incident which illustrates the position taken by receiving States in this regard is that of the Russian envoy to Britain, Bestoujew-Rioumine, in 1720, Satow (1932), p. 277.

d. A critique of the narrower understanding of "diplomatic interference"

If State practice does not support the "narrower view" of interference, the question remains what reasons its proponents¹⁰² put forward in the International Law Commission to support their opinion, and how these reasons are to be evaluated.

aa. The argument that the duties of States have no place in the Convention

Ago accepted the general rule banning "illicit intervention of a State in the affairs of other States"¹⁰³, but thought that it had no place in an instrument dealing with personal diplomatic duties¹⁰⁴.

This position was not shared by everybody in the Commission. Even fellow supporters of the narrower view like Liang stated that the future "convention would define the rights and duties of States"¹⁰⁵.

A textual analysis of the Vienna Convention supports this position. By necessity, this instrument mentions diplomatic personnel – it is diplomatic agents who staff missions and fulfil their functions – but it does so mainly by reference to State duties and rights. Thus, Article 3 lists diplomatic functions not as personal tasks of the diplomatic agent, but as "functions of the diplomatic mission". The Preamble makes clear that "privileges and immunities" do not exist "to benefit individuals but to ensure the efficient performance of the functions of diplomatic missions as representing States [...]". The logic of Ago's opinion would suggest that the

¹⁰² E.g., YILC 1957 (1), p. 146, para. 2 [Mr. Ago], cf. also YILC 1957 (1), p. 147, para. 12 [Mr. Liang], YILC 1957 (1), p. 147, para. 22 [Sir Gerald Fitzmaurice], YILC 1957 (1), p. 149, para. 39 [Mr. Scelle].

¹⁰³ YILC 1957 (1), p. 149, para. 36 [Mr. Ago].

¹⁰⁴ YILC 1957 (1), p. 149, para. 36 [Mr. Ago].

¹⁰⁵ YILC 1957 (1), p. 147, para. 12 [Mr. Liang].

obligations of the sending State should not be covered by the *Vienna Convention*, but that is not the case; the convention explicitly refers to duties which are not personal to the diplomatic agent (cf. Article 9 (1) 2; Article 7 (2); Article 8 (2)). The rights and duties of the receiving State are addressed too; in particular the right to expel a diplomat (Article 9) and duties concerning the granting of inviolability and immunity (cf. Article 29; Article 30; Article 31 etc).

Restricting the duty of Art. 41 (1) 2 to private diplomatic conduct would result in a curious imbalance. The duties of diplomats would be personal; not so their rights: those are enjoyed only by virtue of their office. The sending State would have duties with regard to the appointment of diplomatic agents, but none with regard to their actual conduct in office.

Two aspects of contextual analysis cast further doubt on this position.

Article 3 (1) of the Vienna Convention contains a list of diplomatic functions, which are phrased as "functions of a diplomatic mission". This raises the question why a draft which defines official diplomatic behaviour in a positive way (by reference to the functions) should not be allowed do so in a negative way (by reference to the limits). As Padilla Nervo pointed out, diplomats are after all the medium through which the sending State acts; and State intervention might well take place through their persons¹⁰⁶.

In fact, Article 3 does define diplomatic behaviour in a negative way too. It allows diplomatic agents to protect "interests of the sending State", but only "within the limits permitted by international law" (Article 3 (1) (b)); it permits diplomatic observation, but only "by [...] lawful means" (Article (3 (1) (d)). These are duties which a diplomatic agent owes to the receiving State even when acting in a official

¹⁰⁶ YILC 1957 (1), p. 143, para. 58 [Mr. Padilla Nervo].

capacity. The statement that the draft only dealt with the personal duties of diplomatic agents might require repositioning in view of this context.

A second consideration derives from the duty to respect the laws and regulations of the receiving State. The interpretation of this provision has given rise to similar difficulties. To ILC Member Tunkin the rule had to "refer to the private conduct of the diplomatic agent, since his official acts could not be subject to the law of the receiving State"¹⁰⁷. *Satow* on the other hand expresses the view that the provision applies to the "official as well as the private activities of diplomats"¹⁰⁸. The example he furnishes is the exercise of consular functions by diplomats, which would be permissible only if the law of the host allowed it¹⁰⁹.

There is indeed no reason why receiving States should not be entitled to expect conformity with their laws in view of official diplomatic acts. The contrary position would favour the legal system of the sending State over that of the host; a spying diplomat in particular could frequently claim that the laws of the receiving State did not apply to the offending behaviour, as the information was collected in an official capacity¹¹⁰. Article 3 (1) (d) points into a different direction¹¹¹.

Based on these considerations it can be stated that the *Vienna Convention* does codify some of the duties which exist with regard to official conduct of diplomats. In the light of this, the argument that a rule on official duties has "no place in the draft", is difficult to accept.

¹⁰⁷ YILC 1957 (1), p. 149, para. 38 [Mr. Tunkin].

¹⁰⁸ *Satow* (1979), p. 133, para. 15. 31.

¹⁰⁹ *Satow*, loc. cit.

¹¹⁰ See Kim, pp. 55 – 66 for a discussion of the applicability of both international and domestic law to the conduct of espionage.

¹¹¹ Article 3 (1) (d) states the diplomatic function of "ascertaining by all lawful means conditions and developments in the receiving State" [emphasis added]. Cf. Kim, loc. cit., particularly at pp. 66 – 67.

bb. The argument that the diplomat, in cases of interference on instructions, is "not to blame"

In Liang's first contribution on the topic, he appeared to suggest that diplomats lack personal responsibility over behaviour which they committed on instructions.

The diplomatic agent here was

"[...] in the same position as a military or naval officer who had to carry out the orders of his superiors and could not use his discretion."¹¹²

But not every member of the ILC accepted the argument of lack of personal responsibility. Pal stated that

"[i]f such [governmental] orders involved intervention in the affairs of the receiving State, the agent would be exceeding his function, even though obliged to obey his Government's orders, and he would also violate the rules of conduct, though at the instance of his Government."¹¹³

It is Liang's analogy in particular which appears questionable. Even if it were accepted that diplomatic agents and military or naval officers fulfil comparable functions, it must be observed that the thought that responsibility in international law can only attach to States and not their agents, had been abandoned long before the ILC discussions on diplomatic intercourse commenced. The *Nuremberg Charter* of 1945 had made it clear that international law allowed for personal

¹¹² YILC 1957 (1), p. 147, para. 12 [Mr. Liang]. See also YILC 1957 (1), p. 147, para. 22 [Sir Gerald Fitzmaurice] and YILC 1957 (1), p. 149, para. 38 [Mr. Tunkin].

¹¹³ YILC 1957 (1), p. 148, para. 28 [Mr. Pal].

responsibility for certain acts; and that acting on instructions by the State could not remove that responsibility. Subsequent international criminal tribunals have in principle followed this position¹¹⁴, and case law available at the time of the ILC debates also corroborates this view¹¹⁵. The analogy to military and naval officers therefore points in a direction opposite from that suggested by Liang.

Apart from this, analogy requires a certain degree of parallelism between the comparators, and it is doubtful whether the constituting elements of the position of a diplomatic agent and of that of a soldier show a satisfactory degree of similarity. The training given to both professions is fundamentally different; the instruction in international law which generally forms part of diplomatic education cannot be assumed to be present in the training of a soldier and may justify a heavier burden of responsibility on the part of the former. The carrying out of an order in the heat of battle and the following of telecommunicated instructions in a foreign country constitute further differences in view of the situational context in which both agents have to act. In this regard, the diplomat generally has a certain advantage and may have to shoulder the concomitant responsibility. The expectations attached to both professions are also different: a soldier's life and that of comrades may depend on the ability to follow orders immediately; diplomats however *must* be expected to use their own discretion, as only they can fully comprehend all the circumstances of the current position. This too puts a greater degree of responsibility in their hands. If, in the light of the above, a soldier is still expected not to act as "an

¹¹⁴ See Article 8 of the *Nuremberg Charter*; Article 7 (4) of the *ICTY Statute*; Article 6 (4) of the *ICTR Statute*. Article 33 of the *Rome Statute* of the International Criminal Court allows for the first time a defence of superior orders under very restrictive conditions, but this is a departure from the law on superior orders as it existed at the time of the drafting of the *Vienna Convention*. See on this point Gaeta, p. 173 et seq. and Garraway (1999).

¹¹⁵ See *List Trial*, Law Reports of Trials of War Criminals, Vol. VIII (1949), Part II, p. 50; *Dover Castle*, 16 *AJIL* (1922), p. 707; *Llandoverly Castle*, 16 *AJIL* (1922), p. 722.

automaton that did nothing more than follow orders given"¹¹⁶, then this sentiment must apply *a fortiori* to diplomats who enjoy all the advantages named above¹¹⁷.

cc. The possibility of distinction

A further question arises from the ILC debates. Most supporters of the narrower view seemed to find no difficulty in distinguishing between official and private behaviour¹¹⁸, and this is a view which had been expressed by some voices in the literature as well. *Hall* for instance had stated that the "character of the diplomatic agent is not [...] inseparable from his personality" and that therefore a diplomat "does not represent his country, except when he is actually engaged in his diplomatic business"¹¹⁹. Some ILC Members however noted that the distinction between official and private conduct may be very difficult to achieve¹²⁰.

Two aspects of this problem warrant consideration. Firstly, there may be parts of the *Vienna Convention* which are much clearer on parameters for a distinction between official and private conduct, and from which therefore a general test can be derived which is applicable to interference as well. Secondly, the question has to be asked if a distinction in the particular field of diplomatic interference is indeed possible.

¹¹⁶ Hendin, para. 66, with reference to *Einsatzgruppen Case, Trials of War Criminals before the Nuernberg Military Tribunals under Control Council Law No.10 (1946 – 1949)*, p. 470.

¹¹⁷ This does not mean that the positions of soldier and diplomat can never approach one another. *Blischtschenko*, in reference to a *Prawda* article, mentions a situation arising in Laos in 1960, when the personnel of embassies of the SEATO countries took part in the active battle for the capital in December of that year; *Blischtschenko*, p. 182. But incidents of this kind are too rare to justify the generalised parallelism between soldiers and diplomats that Liang deemed fit to make.

¹¹⁸ See for instance YILC 1957 (1), p. 146, para. 2 [Mr. Ago]; YILC 1957 (1), p. 147, para. 12 [Mr. Liang]; YILC 1957 (1), p. 147, para. 22 [Sir Gerald Fitzmaurice], YILC 1957 (1), p. 147, para. 17 [Mr. Hsu]; YILC 1957 (1), p. 147, para. 20 [Mr. Verdross]; YILC 1957 (1), p. 148, para. 26 [Mr. Matine-Daftary].

¹¹⁹ *Hall* (1924), p. 363.

¹²⁰ YILC 1957 (1), p. 150, para. 49 [Mr. Edmonds]. See also YILC 1957 (1), p. 149, para. 38 [Mr. Tunkin]; YILC 1957 (1), p. 150, para. 51 [Mr. Scelle].

(1) The distinction between "official" and "private" acts in the *Vienna Convention*

Some provisions of the *Vienna Convention* confer particular benefits on official acts and therefore presuppose the possibility of a distinction between official and private behaviour in these fields.

Prominent among these norms is Article 31 (1) (c) which provides that immunity from civil or administrative jurisdiction does not apply with regard to actions relating to professional or commercial activities performed by a diplomat "outside his official function". But the history of the rule demonstrates the difficulties of differentiation: when the League of Nations discussed exceptions to diplomatic immunity,

"[...] neither the [League's] Sub-Committee's report nor the replies of Governments suggest[ed] any juridical criterion to be applied in distinguishing between official and non-official acts"¹²¹

Domestic courts have attempted to overcome the difficulty. In *Propend Finance Pty Limited and Others v. Sing and Others*, the English High Court had to decide whether the police liaison functions carried out by an Australian diplomat (Sing)¹²² constituted an exception to diplomatic immunity. It identified a number of issues which distinguished the performance of an official function from the performance of a professional or commercial activity – the fact that Sing had not engaged in an activity for profit¹²³, that the Foreign Office of the receiving State had been notified of the particular activities in question¹²⁴, that the guidelines given to Sing by the

¹²¹ YILC 1956 (2) Doc. A / CN. 4 / 98, para. 101.

¹²² *Propend Finance Pty Limited and Others v. Sing And Others*, 111 ILR (1998), p. 616 (QB).

¹²³ *Propend Finance Pty Limited and Others v. Sing And Others*, 111 ILR (1998), p. 636 (QB).

¹²⁴ *Propend Finance Pty Limited and Others v. Sing And Others*, 111 ILR (1998), p. 616 (QB).

sending State referred to the activities in question¹²⁵, and that they formed an "integral part" of his functions as a member of the mission¹²⁶. In *Portugal v. Goncalves*, a Belgian Court had to decide whether the ordering of translations formed part of the functions of a diplomatic mission¹²⁷ and concluded that activities which were incidental but indispensable for the performance of the functions listed in Article 3 of the *Vienna Convention*, were part of the framework of diplomatic functions¹²⁸. It put particular emphasis on the fact that the activity in question had been carried out on behalf of the sending State¹²⁹. In neither judgment was the underlying assumption of the rule – that a distinction is at all possible – challenged.

And yet, certain difficulties may arise due to the nature of particular diplomatic activities. Laws J, in the *Propend Finance Pty Limited* case used the example of a doctor engaging "in some medical practice during his tour of duty"¹³⁰ for an activity which would fall within the remit of Article 31 (1) (c) – this would therefore count as a professional or commercial activity and except the person from immunity.

On the other hand, during the proceedings of the Vienna Conference, the British delegate mentioned a similar example with regard to the closely related Article 42 (which prohibits the carrying out, for profit, of professional or commercial activities by diplomatic agents). The delegate stated that there was no reason to

¹²⁵ *Propend Finance Pty Limited and Others v. Sing And Others*, 111 ILR (1998), p. 636 (QB).

¹²⁶ *Propend Finance Pty Limited and Others v. Sing And Others*, 111 ILR (1998), p. 637 (QB).

¹²⁷ *Portugal v Goncalves*, 82 ILR (1990), p. 115.

¹²⁸ *Portugal v Goncalves*, 82 ILR (1990), p. 117.

¹²⁹ "The following points must be taken into consideration, on the basis of the file summarizing the case: [...].

– Martins de Oliveira ordered the translation at issue on behalf of the Portuguese State", *Portugal v Goncalves*, 82 ILR (1990), p. 117.

¹³⁰ *Propend Finance Pty Limited and Others v. Sing And Others*, 111 ILR (1998), p. 636 (QB).

prevent an embassy chaplain "from ministering to the spiritual needs or attending to the physical health of persons outside the diplomatic mission."¹³¹.

But the question may be asked what the position would be, if the chaplain gave a sermon to a mixed congregation – one consisting partly of embassy staff and partly of outsiders. What, if the chaplain's remuneration consisted of contributions by this congregation?

The problem of activities which fulfil simultaneously official functions and functions outside the diplomatic task, is not resolved in the text or the judicial interpretation of Article 31 (1) (c).

Article 38 (1) (immunity and inviolability of diplomats who are nationals or permanent residents of the receiving State) requires a similar distinction: immunity and inviolability attach only to "official acts performed in the exercise" of their functions. *Denza* and *Satow* suggest that these "official acts" cover only conduct carried out "on behalf of the sending State"¹³², a distinction which approaches the concept of instructions as introduced by Liang in the discussions about interference¹³³. Diplomats who follow instructions certainly act on behalf of the sending State and perform official acts; but a difficulty arises when the limits of the instructions are not well defined. This point will be discussed in more detail later in this section¹³⁴.

Article 37 (2) provides that members of the technical and administrative staff do not enjoy immunity from civil and administrative jurisdiction for "acts performed

¹³¹ UN Docs.. A / Conf. 20 / C 1 / L 173; A / Conf. 20 / 14 pp. 165 - 6, 212 – 13, *Denza* (1998), Art. 31.1, p. 250.

¹³² *Denza* (1998), Art. 38, p. 342; Art. 37.2 – 4, p. 335 and fn. 20; *Satow* (1979), para. 17.6.

¹³³ "It [an intervention] was in fact an act of State, the conduct of the diplomatic agent being involved only in so far as he made himself objectionable when carrying out his instructions. In that respect, the diplomatic agent was in the same position as a military or naval officer who had to carry out the orders of his superiors and could not use his discretion.", YILC 1957 (1), p. 147, para. 12 [Mr. Liang].

¹³⁴ *Infra*, p. 108.

outside the course of their duties". *Denza* contrasts the phrase "course of duties" with the one contained in Article 38 (1) ("official acts performed in the exercise of his functions") and gives the former a wider remit, as acts incidental to the work for the mission would be included:

"Administrative and technical staff enjoy immunity for acts performed during the working day which are reasonably incidental to employment with the diplomatic mission – for example driving to an official appointment or giving instructions for delivery of equipment to mission premises."¹³⁵

It appears however that the problem of a valid distinction between private and official acts survives in both situations. Acts "on behalf of the sending State" are not necessarily acts with well-defined boundaries; the interests of the sending State may well require a more flexible approach¹³⁶. As far as "acts incidental to the employment" are concerned, the difficulty of a distinction between official and private behaviour is almost inherent to the phrase.

This is well illustrated by a case arising in the context of members of the service staff, for whom a provision similar to Article 37 (2) exists in Article 37 (3).

In the 1970s, Kalifa Keita, chauffeur at the Embassy of Mali to Belgium, was accused of having killed the Ambassador of Mali to Belgium¹³⁷. Keita admitted that the act had "privately motivated"¹³⁸, but the Republic of Mali maintained that Keita was entitled to diplomatic immunity as he had been on embassy premises and was

¹³⁵ *Denza* (1998), Art. 37.2 – 4, p. 335. "In the context of Article 37.2 above these words ['official acts performed in the exercise of his functions', in Art. 38 (1)] were contrasted with the words 'acts performed outside the course of their duties', and it was suggested there that 'official acts performed in the exercise of his functions' covered only acts performed on behalf of the sending State", *Denza* (1998), Art. 38, p. 342.

¹³⁶ The problem will be discussed *infra*, at p. 84.

¹³⁷ *Ministère Public and Republic of Mali v. Keita*, 77 ILR (1985), p. 411.

¹³⁸ *Ministère Public and Republic of Mali v. Keita*, 77 ILR (1985), p. 412.

engaged in the performance of his duties when the crime was committed¹³⁹. The Belgian Court agreed that the act had occurred during Keita's hours of service and that he was "at the disposal of the legation"¹⁴⁰, but found that the act had been "committed neither within the framework nor in the interests of the task entrusted to him of acting as an embassy chauffeur."¹⁴¹

At first sight, the conclusion that the taking of human life does not form part of the duties of an embassy employee seems obvious enough. But the inclusion of "acts incidental to the employment" allows cases to prosper which are more difficult to categorize. The lack of a thematical connection between the act in question and the diplomatic employment is not always a useful criterion for the identification of "private" activities.

Thus, the Netherlands Supreme Court in 1975 held that a member of the service staff who had driven a car under the influence of drink had done so "in the performance of the duties of a servant, in which case acts contrary to road traffic provisions are committed in the performance of such duties"¹⁴². Violations of road traffic provisions can certainly result in the death of another user of the road; in such a case, the application of the court's ruling would mean that this act too was done "in the performance of the duties".

This analysis of provisions which require a distinction between official and private conduct demonstrates that the character of the "official act" is elusive¹⁴³. In their

¹³⁹ *Ministère Public and Republic of Mali v. Keita*, 77 ILR (1985), p. 410.

¹⁴⁰ *Ministère Public and Republic of Mali v. Keita*, 77 ILR (1985), p. 411.

¹⁴¹ *Ministère Public and Republic of Mali v. Keita*, 77 ILR (1985), p. 412.

¹⁴² 1976 *NYIL* 338; the case according to Denza (1998), Art. 37.2 – 4, p. 337.

¹⁴³ Apart from the above named Articles of the Convention, a number of other provisions require such a distinction. Article 42 for instance forbids diplomatic agents to practise a professional or commercial activity "for personal profit"; Article 34 (d) states that a diplomatic agent is not exempt from dues and taxes attaching to "private income having its source in the receiving State". The distinction between private and official duties of the "mission" has to be made in Article 28; the diplomat's "private residence" is mentioned in Article 30.

search for a provision which would help to determine whether an act (in the context of Article 31 (1) (c)) falls within "official [diplomatic] functions", several courts have made reference to Article 3 of the Convention¹⁴⁴. But the phrase "*inter alia*" in Article 3 makes clear that the five acts mentioned there do not constitute an exhaustive list¹⁴⁵ (although, as pointed out above, the existence of functions not expressly mentioned in Article 3 is not to be assumed lightly¹⁴⁶). Beyond that, there may be other acts which would have to qualify as performance of official functions, even though their character may not be congruent with the instructions received by the diplomatic agent. One coherent process can involve various stages which partake of the official character of the ultimate result. If diplomats are given instructions to conduct negotiations with a politician in the receiving State, they may go to some length to effect a positive outcome; they may issue a dinner invitation, allocate funds to the occasion, organise the dinner and engage in small talk before the actual topic is broached. Each of these steps is important for the desired outcome. It would appear unduly narrow to say that the diplomatic function of negotiation started only at the very moment at which diplomats open their mouths to talk about the issue described in the instructions. The setting of the scene

¹⁴⁴ See for instance the Civil Court of Brussels in *Goncalves*: "Article 3 of the Vienna Convention certainly determines the functions of a diplomatic mission. But the interpretation given by Goncalves to that Article is too restrictive and too literal.", *Portugal v. Goncalves*, 82 ILR (1990), p. 117. Laws J seemed likewise to refer to an international standard of ascertaining diplomatic functions when he commented on the fact that Superintendent Sing's work as a police liaison officer was part of his diplomatic function: "The analogy with a military attaché seems to me an apt one.", *Propend Finance Pty Limited and Others v. Sing And Others*, 111 ILR (1998), p. 637 (QB) (referring to an earlier statement made in an affidavit for the defendants, at p. 616). It should however be pointed out that the judge also made mention of the fact that the appointment of Sing as "First Secretary (Police Liaison)" had been notified to the Foreign and Commonwealth Office (p. 616), which suggests a bilateral standard for the assessment of diplomatic functions. The Court of Appeal revisited this point and also referred to the fact that Sing had appeared on the London Diplomatic List as "First Secretary (Police Liaison)", *Propend Finance Pty Limited and Others v. Sing And Others*, 111 ILR (1998), p. 660 (CA). But see also the criticism voiced by *Denza* on a use of Article 3 in this context, *Denza* (1998), Art. 31.1, p. 252.

¹⁴⁵ See *Dinh*, p. 716; *Suy*, p. 93.

¹⁴⁶ *Supra*, p. 24.

is an important part in the process of negotiation, whose outcome might be very different if it had taken place through an exchange of e-mails¹⁴⁷. If in the course of such a process the diplomat breaks a caterer's dinner plate, this would be part of conduct which had been carried out in the performance of official functions. This wide understanding of functions blurs the distinction between acts committed "in the course of duties" and "official acts performed in the exercise of a function" which has been mentioned above. While the "course of duties" includes acts incidental to duties, the definition of "exercise of a function" includes preliminary acts. In both cases, the actual conduct carried out in an official capacity is wider than the words "duty" or "function" may suggest¹⁴⁸.

This wide scope may be part of the reasons why some authors maintain that the distinction between official and private acts has not been resolved satisfactorily in the Convention¹⁴⁹. The difficulty however can vary depending on the context in which the behaviour in question takes place. A good example is perhaps provided by Article 31 (1) (b) which excludes diplomatic immunity from civil and administrative jurisdiction in cases concerning actions "relating to succession", when the diplomat is involved as "a private person and not on behalf of the sending State"¹⁵⁰. But in cases of interference through the diplomatic message, the difficulty of distinction becomes much more apparent.

¹⁴⁷ See on this point, *Miller*: "In most societies a person wants to size up his or her interlocutor before engaging in serious conversation – especially if the interlocutor is a foreigner [...] This calls for preliminaries – small talk, a cup of coffee or tea, maybe even two or three meetings before the person is ready to convey information or discuss coming to an agreement", *Miller* (1992a), p. 11.

¹⁴⁸ As far as interference through the diplomatic message is concerned, the question of preliminary acts will be addressed in the next chapter.

¹⁴⁹ *Ipsen* (1999), p. 494.

¹⁵⁰ *Denza*, in discussing this rule, notes that succession proceedings were "very unlikely" to cause an impediment to the exercise of diplomatic functions or have a damaging effect on the dignity of the mission; *Denza* (1998), Art. 31, p. 246.

(2) The distinction between "official" and "private" acts in the context of diplomatic interference

In the ILC debates on interference, Scelle suggested a pragmatic approach to the problem of distinction: if the receiving State found the diplomatic behaviour offensive, "it could always ask the sending State whether it approved it."¹⁵¹; if it did, the act in question would be official in nature. But cases are rare in which both states engage in a discussion on the authorization of the diplomatic conduct; and there is a temptation for the States concerned to shift the blame for the alleged interference to the hapless diplomat, even if instructions existed.

A further problem was addressed by Tunkin, who acknowledged that in some cases of alleged (State) intervention, the "personal behaviour of the ambassador may play a part"¹⁵². The intentions of diplomat and sending State might therefore overlap.

At first glance it may appear questionable why the intentions of the diplomatic agent should matter for the evaluation of the official character of an act. But it is true that diplomats who turn their involvement in matters of the receiving State into their personal affair, set an example which differs from those whom the supporters of the narrower view had in mind. Braden for instance, the US Ambassador who took such a passionate interest in the Argentinian presidential elections in 1946 that Péron supporters used the slogan "Péron Si! Braden No!", behaved quite differently from Liang's diplomat who has to "carry out the orders of his superiors"¹⁵³ or

¹⁵¹ YILC 1957 (1), p. 150, para. 51 [Mr. Scelle].

¹⁵² YILC 1957 (1), p. 149, para. 38 [Mr. Tunkin].

¹⁵³ With reference to the above named analogy to military and naval officers, YILC 1957 (1), p. 147, para. 12 [Mr. Liang].

Fitzmaurice's diplomat who is "merely the mouthpiece of his Government"¹⁵⁴. The conclusion would be that diplomats might trigger the applicability of Article 41 even though they acted on instructions – because they intentionally turned the instructed acts into private endeavours.

If the subjective side of diplomatic behaviour can blur the line between official and private acts, the same can be said about the objective nature of diplomatic conduct. A difficulty therefore exists when a diplomatic agent carries out a form of behaviour which fulfils both an official and a private purpose. An illustration of this situation is the above mentioned example of the embassy chaplain who preaches to a mixed congregation¹⁵⁵. One and the same behaviour might then objectively be perceived as fulfilling two different purposes; one of them official, the other one private.

A diplomatic agent may for instance disseminate a message which is intended to be entirely private, and yet appear to the world outside as engaging in behaviour which carries official connotations. An example is the 2001 case of Bernard, the French Ambassador to the United Kingdom¹⁵⁶, who was accused of having employed derogatory language about the State of Israel in a private setting. The Ambassador himself insisted on the private nature of the conduct¹⁵⁷, but others found it more difficult to deny the official character of an act, when its author was a diplomatic agent. A speaker for the office of the Israeli Prime Minister, stated that

¹⁵⁴ YILC 1957 (1), p. 147, para. 22 [Sir Gerald Fitzmaurice].

¹⁵⁵ *Supra*, p. 101.

¹⁵⁶ *Supra*, p. 27.

¹⁵⁷ Bernard asserted his outrage about the fact "that a private discussion found its way into the media", BBC Online, 20 December 2001, "Anti-Semitic" French envoy under fire".

"One would not expect that from a representative of the French government [...] If the French government does not take action, it would imply that the French government condones it and I think that would be inconceivable."¹⁵⁸

In this and comparable cases¹⁵⁹, it appears that the determination of the character of the act depends strongly on the use the recipient makes of the message thus distributed. Had Barbara Amiel, the wife of Bernard's host, decided not to refer to his remarks in her newspaper column, or had she used them years later in a volume of journalistic memoirs, the ambassador's comments may have appeared as entirely private thoughts of a man who once was the representative of his State.

A further difficulty arises from the very nature of the diplomatic instructions, which seemed to be so significant to some members of the ILC in evaluating whether a form of diplomatic behaviour was "official" in character¹⁶⁰. In academic literature, *Sen* expressed the opinion that a diplomat calling on the Foreign Office in the receiving State should "only in cases of riots or sudden civil commotion when the lives or property of the nationals of his home state are in danger" act without prior instructions by the government of the sending State¹⁶¹. But he admits that in other situations – when for example the Foreign Office itself sends for the

¹⁵⁸ MacAskill (2001). See also the comment by Jim Murphy, chairman of the (British) Labour group "Friends of Israel", MacAskill (2001).

¹⁵⁹ Cf. the 1975 case of William Porter (US Ambassador to Canada).

¹⁶⁰ Notably Liang, "In cases where diplomatic agents took steps which could be regarded as intervention in the politics of the receiving State, it was on behalf of their Governments, and he could not conceive of any intervention – in the sense in which Mr. Padilla Nervo, quoting Lauterpacht and Brierly, had defined it – occurring except on the explicit instructions of the sending State. It was in fact an act of State, the conduct of the diplomatic agent being involved only in so far as he made himself objectionable when carrying out his instructions", YILC 1957 (1), p. 147, para. 12 [Mr. Liang; emphasis added]. But Padilla Nervo, a supporter of the wider view, also seemed to give strength to the view that official acts in this context were those carried on instructions when he declared it "immaterial whether in such instances" – instances of interference – "the diplomatic agent acted on his own initiative or on the instructions of his Government".

¹⁶¹ *Sen* (1988), p. 52.

diplomat – the envoy may not be in possession of instructions and may yet have to "uphold the honour and dignity of his own government and justify their actions"¹⁶².

The clear-defined image of a diplomatic agent who has orders to negotiate a particular treaty and nothing else is somewhat inappropriate in the age of permanent diplomacy. The advent of modern telecommunications may mean that diplomats no longer need to wait for weeks before obtaining precise instructions – but it may also have reinforced the responsibility of diplomatic agents¹⁶³. After all, if governments can now communicate directly via e-mail, the continued rationale for having diplomats (and not just technical support teams) lies in the fact that they can observe and assess developments in the receiving country on a permanent basis¹⁶⁴; and this in turn indicates the existence of general instructions to that effect. Even if general orders are not expressly issued, the possibility exists that there are some instructions which, due to the nature of the diplomatic office, are implied from the outset. To some degree they are likely to mirror the functions listed in Article 3 – which was partly based on existing international customary law¹⁶⁵. It would indeed be strange if a diplomatic agent were appointed to a post, but the duties of representation, protection of interests or observation did not form part of the underlying understanding of the position.

This existence of (express or implied) general instructions can change the evaluation of a *prima facie* private conduct and as such, contributes to the problem of differentiation.

¹⁶² Sen (1988), p. 53.

¹⁶³ See however *Société Française pour le Droit International*, p. 148.

¹⁶⁴ See also Do Nascimento e Silva (1972), p. 61.

¹⁶⁵ cf. Denza (1998), Article 3, at p. 29 on the recognition of the core functions of the mission in the last four hundred years.

This consideration can, for instance, be applied to the 1888 Sackville case¹⁶⁶, which supporters of the narrower view had given in the ILC as an illustration of private interference¹⁶⁷.

The mere fact that Sackville's correspondence was intended to stay confidential¹⁶⁸ is not sufficient to determine the character of his behaviour. Confidential correspondence – that for instance between a diplomatic handler and a recruited spy in the receiving State – may be an entirely official diplomatic behaviour. The outward "private" appearance of an act, as the case of Bernard has shown¹⁶⁹ is likewise not always enough to convince the international community of the private nature of the act. In Sackville's case, the very content of the correspondence gives reason to doubt.

Sackville's correspondent was skillful enough to refer to the interests of his "mother land" in a politically difficult situation (earlier in the year, President Cleveland, who had been accused of being too pro-British, had taken a "tougher line" in Anglo-American affairs¹⁷⁰). Sackville's correspondent stated the concerns which these developments had caused him as a former British citizen.

In his reply, the minister reassured his correspondent by stating that the party in power was "I believe, still desirous of maintaining friendly relations with Great

¹⁶⁶ See *supra*, p. 88.

¹⁶⁷ YILC 1957 (1), p. 147, para. 17 [Mr. Hsu]. See also YILC 1957 (1), p. 147, para. 15 [Mr. Liang], following a contribution in which he stated that the rule on non-interference should refer to private acts only, YILC 1957 (1), p. 147, para. 12 [Mr. Liang], YILC 1957 (1), p. 147, para. 22 [Sir Gerald Fitzmaurice].

¹⁶⁸ The following sentence was included in Osgoodby's letter: "I apply to you, privately and confidentially, for information, which shall in its turn be treated as secret and private", *State Papers*, pp. 483, 484.

¹⁶⁹ *supra*, pp. 65, 107.

¹⁷⁰ By seeking authorization to ban British-Canadian imports. For more details, see *Harper's Weekly* (online), 1888 Overview.

Britain [...] Allowances must [...] be made for the political situation as regards the Presidential election thus created."¹⁷¹

It would appear from this, that Sackville did not so much intend to carry out a correspondence for private reasons, but that he acted with a view to protecting the interests of the sending State. This impression is further enhanced, if the note of urgency is taken into account which was apparent from the correspondent's letter¹⁷². Given these circumstances, the statement that Sackville's conduct was private, because he had no specific orders to reply to the writer, appears insufficient. Room must be given in this context to the possibility that the conduct was based on implied orders inherent to the very position of diplomatic agents. The boundaries between private and official behaviour become, once again, less clear¹⁷³.

The strongest evidence for the existence of implied orders in every diplomatic appointment can be found in the first function listed in Article 3 – that of representation. It may be argued that it would not be consistent to send diplomats abroad without making the duty of representation part of their tasks. It may be more difficult however to define the reach of this duty¹⁷⁴. So comprehensive is the duty of representation that it may certainly touch upon aspects of life which diplomats themselves have considered private.

¹⁷¹ *State Papers*, p. 484.

¹⁷² The writer drew an analogy to the 1876 election between Hayes and Tilden, which had been decided by a very narrow margin (4,033,950 votes for Hayes, 4,284,757 votes for Tilden. Hayes obtained more votes in the Electoral College). Famighetti (2000), p. 502. The presidential race between Cleveland and Harrison was in fact to prove even closer. Cleveland won 5,540,050 votes against Harrison's 5,444,337. Harrison did however obtain more votes in the Electoral College.

¹⁷³ A more recent example is provided by the 1975 case of the US Ambassador to Canada, Porter. (*Infra*, p. 212).

¹⁷⁴ See also Monsignore Casaroli's opinion on the crucial importance of the function of representation for the fulfilment of all other diplomatic tasks. UN General Assembly, United Nations Conference on Diplomatic Intercourse and Immunities, Vienna 2 March - 14 April 1961, *Official Records, Vol. 2, Annexes, Final Act, Vienna Convention on Diplomatic Relations, Optional Protocols, Resolutions*, A / CONF. 20 / C. 1, Second Meeting, 6 March 1961, p. 59, para. 26.

The 2002 case of Ghazi Algosaibi, the Saudi Ambassador to the United Kingdom, may serve as an illustration¹⁷⁵. Algosaibi had published a poem in the Arabic newspaper *Al Hayat* in which he referred in complimentary terms to Ayat Akhras, a young suicide bomber. The Ambassador defended his actions by stating that he was "both a poet and an ambassador" and that he had written the poem "in his role as a poet [...]"¹⁷⁶.

This position was not accepted by his critics. Michael Whine, speaking for the Board of Deputies of British Jews, reacted by asking the question: "Is [Algosaibi] a member of the Saudi diplomatic corps whose government is promoting peace, or is he promoting suicide terrorists? He should make up his mind"¹⁷⁷. The Foreign and Commonwealth Office, while not expressively declaring whether it regarded Algosaibi's poem an aspect of private behaviour, did state that it wished to make its views on suicide bombings "known to the Saudi Ambassador"¹⁷⁸. Algosaibi himself reacted to a letter by the Board of Deputies of British Jews with a statement published on the official website of the Saudi Embassy to the United Kingdom and signed "Ghazi Algosaibi (Ambassador)" – a choice of venue and style which sits somewhat uneasily with his previous statements which had emphasized his position as a poet¹⁷⁹.

The existence of implied orders is in the context of representation more apparent than in the context of any other function; and it is suggested that the distinction

¹⁷⁵ See Annex A, the 2002 case of Algosaibi (No 1) (UK and Saudi Arabia).

¹⁷⁶ Simon Henderson (2002).

¹⁷⁷ La Guardia (2002).

¹⁷⁸ BBC Online, "Diplomat censured over bomb poem", 18 April 2002.

¹⁷⁹ See also the 1895 case of Thurston, the Hawaiian Minister to the United States who claimed that certain information which he had given to a newspaper, was not provided "in his representative capacity" – a defence not accepted by the receiving State. Moore, p. 506, Hyde, p. 736.

between private and official acts becomes most difficult in this field of diplomatic work.

A further thought expressed in the ILC concerns the problem of the evaluation of conduct when diplomats overstepped the limits of their instructions¹⁸⁰.

Scelle, as mentioned above, expressed the view that the receiving State could ask the sending State whether it approved the conduct in question¹⁸¹. Other Members however, felt that "intervention" at least was always an official behaviour, even if the "personal behaviour" of the envoy played a role in this¹⁸². The latter opinion appears more convincing. If a State sends diplomats abroad, it establishes an expectation that these agents are representing the sending State and speak for its interests. The reach of diplomatic tasks extends to acts of such considerable weight (including the declaration of war) that the receiving State must be able to trust the appearance that acts of accredited diplomats are in principle based on the authority of their State.

Legal theory reflects this consideration in the area of State responsibility. The ILC, in its *Draft Articles on the Responsibility of States for internationally wrongful acts*, had considered the responsibility of States in cases in which State organs exceeded their authority, and reached the conclusion that the acts remained attributable to the State as long as the organ acted "in that capacity" (Article 7)¹⁸³.

¹⁸⁰ See in this regard YILC 1957 (1), p. 147, para. 17 [Mr. Hsu].

¹⁸¹ See *supra*, p. 106.

¹⁸² YILC 1957 (1), p. 149, para. 38 [Mr. Tunkin].

¹⁸³ The Commentary to Draft Article 4 states that "State organs" cover "all the individual and collective entities which make up the organization of the State and act on its behalf". *Official Records of the General Assembly, Fifty-sixth session, Supplement no. 10 (A/56/10)*, chp.IV.E.2. Commentary on Article 4, para. 1, page 84. In the context of Draft Article 6, the ILC makes reference to diplomats as State organs. *Official Records, loc. cit.*, Commentary on Article 6 (para. 4), p. 96.

This "capacity" to which Article 7 refers, will have to be determined in the case of diplomats by reference to diplomatic functions. That however means that the remit of the Article becomes very wide.

For instance, even if it were assumed that in the Sackville incident, the British Minister could not have relied on implied instructions, it still remains a significant feature of the case that he was not approached as an altogether private citizen. His correspondent made clear that he had written to Sackville because of the very office of the diplomat: he knew "of no one better able to direct me" than the Minister who was "at the fountain head of knowledge on this question"¹⁸⁴. If diplomats in situations of this kind then proceed to give advice in order to preserve their country's best interests, it is difficult to deny that they will be perceived as acting in the capacity of their office.

It is the function of representation which again leads to particular difficulties of distinction: in this context, the differentiation between "acting within the capacity" and acting outside it, will often be problematic.

Ghazi Alghosaibi¹⁸⁵ claimed to have acted outside the capacity; but, particularly in a country where he was known for his diplomatic office rather than for his literary achievements, the assumption would have been made that his behaviour was attributable to that of a person whom the Saudi government deemed fit to represent its interests and position. Other cases support this view¹⁸⁶. The intention to act privately and the qualification of the behaviour as "private" is not always a sufficient defence. "Acting in capacity of the office" appears to require a test that is less dependent on the judgement of the individual diplomat. The behaviour of the

¹⁸⁴ *State Papers*, p. 483.

¹⁸⁵ *Supra*, p. 112.

¹⁸⁶ Cf. the 2001 Bernard case (French Ambassador to the UK) and the Thurston case, *supra*, p. 112.

diplomatic agent, it seems, must be so manifestly contrary to the known position of the sending government – taking into account that governments are capable of arbitrary and very unfriendly acts – that the host must be forced to conclude that the conduct is entirely private in nature. Cases in which the facts are so clear, may exist. But they are so rare that the question must be asked whether the drafters of Article 41 truly wanted the applicability of the rule to be reduced to such a limited scope.

A different approach to the determination of the concept of non-interference is offered by *Salmon*. In his work on diplomatic law, *Salmon* does emphasize that a distinction between "non-interference" and "non-intervention" is important. But his distinction does not run along the lines of official duty and private act, nor does he use the absence of instructions as a yardstick to determine the remit of the rule. *Salmon* rather endeavours to differentiate between duties owed by the State and duties owed by diplomatic personnel, and he acknowledges the existence of intersections between the two:

"Il y a sans doute des relations entre les deux concepts [non-immixtion et non-intervention] en ce sens que si le diplomate se fait l'agent d'une intervention étatique caractérisée, par exemple en favorisant une guerre civile ou en apportant une aide militaire ou financière à une opposition armée, il violera aussi son obligation personnelle comme membre de la mission"¹⁸⁷

The applicability of Article 41 (1) 2 is therefore triggered not by the fact that a diplomat acted in a private capacity, but by the fact that the person of a diplomat was involved. As the examples furnished in this context show, this may extend to

¹⁸⁷ *Salmon* (1996), p. 129, para. 197.

activities which most probably would be based on a policy adopted by the sending State – diplomats who render military or financial aid to an armed opposition would hardly ever act on their own initiatives, using their own means. To *Salmon*, the personal duty of the envoy is, by comparison, wider than that of the sending State¹⁸⁸. *Verdross*, who in 1961 was President of the Vienna Conference on Diplomatic Relations, expressed a similar view in his later writings on Public International Law. In his view the rule of non-interference as enshrined in Article 41 (1) went "much further" than the prohibition of intervention contained in the *Charter of the United Nations*¹⁸⁹.

This thesis will follow the view that the applicability of the rule of non-interference requires merely the personal involvement of a diplomatic agent. This appears to be in keeping with the view eventually adopted by the ILC, when they deleted the words "outside their functions" from the Commentary to the Draft¹⁹⁰. It is also a preferable approach in view of the difficulty of distinction, which was recognized by the International Law Commission itself. It is, most of all, an interpretation which finds support in State practice. Receiving States, which are supposed to be the beneficiaries of this rule, require protection from interference by diplomatic agents. The question whether the interfering agent acted on instructions or not, is of secondary importance.

¹⁸⁸ *Salmon* (1996), p. 129, para. 197.

¹⁸⁹ *Verdross* [3rd edition], p. 567, para. 889. *Verdross* too did not make a distinction between official and private acts of the diplomatic agent. His dividing line between acts by diplomatic agents and State intervention would have been determined by the subject matter. Interference in his view embraced meddling with and without the use of force; intervention in the form given to it by the UN Charter referred to forceful intervention only. "Die Diplomaten dürfen sich aber nach Art. 41 Abs. 1 nicht in die inneren Angelegenheiten des Empfangsstaates einmischen (interfere). Dieses Verbot geht viel weiter als das Interventionsverbot der UN-Charta [...], da es auch Einmischungen ohne Druckmittel umfaßt.", *Verdross*, loc. cit.

¹⁹⁰ See *supra*, p. 87.

The concept of interference which emerges from an examination of its ordinary meaning, can encompass a great variety of acts. However, an attempt is sometimes been made to come to a narrower understanding of the term by distinguishing (State) intervention from (private) interference by diplomats.

The employment of the terms "intervention" and "interference" in international law in general lends little support to a distinction along these lines: the words tend to be used interchangeably, and "interference" has certainly been used to describe State behaviour.

Some Members of the ILC on the other hand did express the view that the diplomatic duty of non-interference should exclude acts which are carried out on instructions. This opinion however finds no basis in State practice; receiving States have used the term "interference" with regard to "official" conduct as well (and have continued to do so after 1961).

Apart from this, the narrower view encounters significant difficulties. It is most of all, not always possible to establish a clear distinction between "private" and "official acts". This difficulty occurs in cases of "overlapping intentions", when diplomatic agents attached personal intentions to official State policy; but also, when the same diplomatic act fulfils official and private functions. The possible existence of general and implied instructions further compounds the problem. Finally, even diplomats who act *ultra vires* may, under certain circumstances, have to be considered as acting on behalf of the sending States.

This does not mean that there can never be private behaviour by diplomatic agents. But the space for genuinely private conduct can become so small that it is questionable whether it was the drafters' intention to give the rule of non-interference such an extremely limited remit.

This thesis acknowledges the distinction between "intervention" and "interference". But "interference" will be understood as the personal, as opposed to the private, act of a diplomat, regardless of the existence of (express or implied) instructions.

Chapter 3 – Basis and Concept of the Diplomatic Message

The remit of this thesis is limited to interference through the diplomatic message. For the purposes of this examination, the establishment of a concept of the "message" is therefore as important as the identification of "interference" itself. This is the objective of this chapter, which will at first discuss the basis of the diplomatic message as apparent from the *Vienna Convention*, then examine the forms of appearance of the diplomatic message and, finally, the possibility and evaluation of the co-existence of the diplomatic message with other forms of behaviour.

1. The Legal Basis of the Diplomatic Message

The diplomatic message does not find its mandate in one particular rule of the *Vienna Convention*. It is rather a form of conduct which is presupposed by a variety of provisions. Of these, Article 27 makes the clearest reference to it, when it demands that receiving States "shall permit and protect free communication on the part of the mission for all official purposes" (Art. 27 (1))¹. It is true that this article is of particular significance when communication between the mission and the

¹ Cf. Ramsey, p. 53, and for the traditional importance of this freedom Deák, p. 352 and Denza (1992), p. 1042.

sending State is concerned² – and such communication is rarely the target of allegations of interference, as it does not immediately impact on pre-existing conditions in the receiving State. On the other hand, Article 27 (2) defines official correspondence as "all correspondence relating to the mission and its functions"³. The value of the rights enshrined in Article 27 for communication with the receiving State has also been mentioned in the literature⁴. The codification history supports this view. A draft article submitted by the Special Rapporteur in 1957 to the ILC had made express mention of the freedom of communication "between the mission and the ministry of foreign affairs of the sending State or its consulates and nationals in the territory of the receiving State"⁵. But this had been considered too narrow by many members of the ILC⁶. The more general wording which was adopted by the Commission and which appears in the first sentence of Article 27 (1) of the *Vienna Convention* was therefore a conscious choice⁷. In the comments on the Draft Articles, the ILC refers to other addressees besides the sending State's government; thus, nationals of the sending state⁸, international organizations⁹ and

² Article 27 (1) 2 allows the use of "all appropriate means" for purposes of communications, but mentions only communication with "the government and the other missions and consulates of the sending State."

³ Emphasis added.

⁴ "Without such a right of free communication the mission cannot effectively carry out two of its most important functions – negotiating with the Government of the receiving State and reporting to the Government of the sending State on conditions and developments in the receiving State", Denza (1998), Article 27 (1), p. 173.

⁵ YILC 1957 (1), p. 74, para. 27 [The Chairman].

⁶ Liang, YILC 1957 (1), p. 74 para. 33, preferred a simple reference to "'official communications' or some other very general term"; Fitzmaurice, YILC 1957 (1), p. 74, para. 37 also preferred a "general form of words"; otherwise he would have seen no alternative "to listing [...] all those to whom official communications could possibly be sent." Cf also YILC 1957 (1), p. 75, para. 47 [Mr Tunkin]; YILC 1957 (1), p. 75, para. 51 [Mr Khoman].

⁷ The phrase "The receiving State shall permit and protect free communication on the part of the mission for all official purposes" appears in Article 21 (1) 1 of the ILC Draft Articles 1957, p. 137; and it recurs in Article 25 (1) 1 of the ILC Draft Articles 1958, p. 96.

⁸ Commentary to Article 21 (1), ILC Draft Articles 1957, p. 138, para. 1.

⁹ *ibid.*

missions of other states¹⁰ all find mention¹¹. However, it is only with respect to the right of communication "with the government and the other missions and consulates of the sending State" that the concept of the message is further developed. In this regard, mention is made of the appropriate means which may be employed by the mission and which include diplomatic couriers and messages in code and cipher¹².

A norm which clearly presupposes the dissemination of the diplomatic message within the receiving State, is found in Article 41 (2) of the *Vienna Convention*, a provision which, in *Hardy's* view, contains a "basic guideline" as to the way in which the affairs of the mission have to be conducted¹³. This paragraph states that all official business must be conducted "with or through" the local Ministry of Foreign Affairs or other ministries "as may be agreed".

There have indeed been cases where interference was alleged by the receiving State, because a diplomatic agent had seen it fit to choose a channel other than the foreign ministry¹⁴. But there is little doubt that the rationale for a rule which designs a particular channel as the appropriate way for "mission business" lies not so much in the fact that the use of other channels would be disagreeable, but in the fear that these channels might be exploited for an inappropriate distribution of the diplomatic message by representatives of the sending State. The codification history supports this link to the message. The drafters of this provision stated that

¹⁰ Commentary to Article 25 (1), ILC Draft Articles 1958, p. 97, para. 2.

¹¹ However, see the comment by the Swiss government on the 1957 Draft Articles for a more restrictive view, which would have limited the remit of the general freedom of communication to the mission's exchanges with the sending State's government and the consulates "under its authority within the receiving State", YILC 1958 (2), p. 130.

¹² Article 27 (1) 2 Vienna Convention on Diplomatic Relations; cf earlier Article 21 (1) 2, ILC Draft Articles 1957, p. 137 and Article 25 (1) 2, ILC Draft Articles 1958, YILC 1958 (2), p. 96. Article 27 (1) 3 of the Vienna Convention also makes mention of the use of wireless transmitters: their employment is only allowed with the consent of the receiving state.

¹³ Hardy, p. 17.

¹⁴ See for instance the 1906 case of Montagnini; Salmon (1996), p. 130, para. 199.

the diplomatic behaviour they had in mind was the conduct of "negotiations" (which normally had to be conducted through the foreign ministry)¹⁵. Negotiations however are unavoidably based on the giving and receiving of information.

The diplomatic message is further presupposed by Article 3 of the *Vienna Convention*. In fact, none of the functions to which this provision makes reference could be appropriately fulfilled without the dissemination of a message; and in some cases, diplomats who were accused of interference, invoked the necessary fulfilment of particular functions in their defence.¹⁶

Of the various functions mentioned in this context, the function of representation (Article 3 (1) (a)) constitutes perhaps the clearest link to the message. The Latin roots of the verb make the connection particularly clear. *Repraesentare* had the meaning of presenting something, of placing it before someone¹⁷. *Glahn* comes close to this original meaning, when he states, under the heading "Representation" that diplomats represent "the policies" of their governments to the receiving state¹⁸; *Sen* writes that the diplomat represents the sending State by "acting as the mouthpiece" of his government¹⁹.

It is therefore not surprising that the large majority of cases of (alleged) interference can be based, from the diplomat's point of view, on the carrying out of the task of representation, which obliges the agent to forward a message (which may well be done in a non-verbal form). To name one example, the American

¹⁵ YILC 1957 (I), 428th Meeting, 27 June 1957, p. 219, para 58, [Mr García Amador].

¹⁶ See the 2003 case of an unnamed German diplomat in Estonia. Helmer (2003). Cf. also *supra*, p. 22.

¹⁷ Cf. Online Etymology Dictionary, "represent".

¹⁸ Glahn (1992), p. 517.

¹⁹ Sen (1988), p. 56. Similar Oppenheim (1967), p. 785, with regard to the functions of an ambassador. See however Dembinski (p. 40) for a wider approach to this function.

Ambassador to Israel, Martin Indyk, drew criticism when, in 1995, he decided to stay away from the opening ceremony of festivities marking the 3000th anniversary of the city of Jerusalem²⁰ (a controversial event which had met with calls for its boycott). While the US maintained that Indyk's absence was not intended to support a boycott²¹, the fact that the EU for one had been quite clear in its opposition to the event²² may have led Israeli observers to believe that the diplomatic absence was linked to the function of representation of the policies of the sending State²³.

The conduct of negotiations (Article 3 (1) (c) of the *Vienna Convention*) is, as mentioned above, one of the forms of diplomatic behaviour which, by necessity, involve the issuing of the diplomatic message. In *Glahn's* view, this function constitutes the "original reason for having diplomats"²⁴. And yet there are extremely few cases of alleged interference which can be clearly attributed to the exercise of negotiation. Its diminished importance due to advances in direct, inter-governmental exchanges, may be a reason²⁵; but an even more important cause may be that the process of negotiation is ill suited for the public gaze. The receiving State gains nothing by declaring publicly that a diplomatic agent, in the process of negotiations, had engaged in interference; nor does it usually help diplomats to

²⁰ *BBC Summary of World Broadcasts (Voice of Israel, 5 September 1995)*, "Issue of Jerusalem 3000; Reaction to US envoy's absence from Jerusalem 3000 events", 7 September 1995.

²¹ Kuttler (1995).

²² *Mideast Mirror*, "Jerusalem 3000 celebrations prompt Palestinian call on Israel to review its policy on the city", 5 September 1995.

²³ Ehud Olmert, at that time mayor of Jerusalem, spoke on this occasion of the city being an "open wound" in US-Israeli relations; Kuttler (1995). See also the 2005 case of Grant (the British High Commissioner to Pakistan).

²⁴ Glahn (1992), p. 517.

²⁵ Glahn, *loc. cit.*

conduct negotiations in a public forum, where their interference might become obvious.

However, in a 1999 case allegations of interference made their appearance in the context of negotiations, when Richard Hecklinger, the US Ambassador to Thailand, warned against a delay in the construction of the Bo Nok power plant²⁶. As the plant was partly funded by a company based in the United States, his remarks went beyond the mere representation of views held by the sending State's government; they became – and were understood as such at that time²⁷ – an effort to gain support for the adoption of a particular policy by the Thai government.

As far as the promotion of friendly relations and the development of economic, cultural and scientific relations is concerned (Art. 3 (1) (e)), the connection between this function and the diplomatic message was highlighted even in the codification process. *Richtsteig* refers to the intentions of the drafters of the *Vienna Convention* which would have allowed diplomatic agents also to "disseminate information about their home country, including that country's views on foreign affairs"²⁸. This aspect of Art. 3 (1) (e) – the public relations function – makes the need for the diplomatic message particularly clear. *Glahn's* opinion on this form of behaviour supports this: "The diplomat," he writes,

"continually tries to create goodwill for his own state and its policies. This propaganda-public relations function means giving and attending parties and dinners; giving lectures and other speeches; attending

²⁶ The 1995 case of Hecklinger (US Ambassador to Thailand).

²⁷ Mehta (1999).

²⁸ Richtsteig, Article 3, p. 23 (translated from the German). See *supra*, p. 87. See also Strupp / Schlochauer, "Diplomatie", p. 365.

dedications of monuments, building, and (lately) foreign assistance projects; and so on."²⁹

In fact, about two thirds of the cases in which interference through the diplomatic message has been alleged, occurred in connection with a diplomatic engagement in public relations.

The protection of interests of the receiving State and of its nationals (Article 3 (1) (b)) likewise relies on the possibility to disseminate the diplomatic message. This is true of both aspects of this function. With regard to the protection of interests of the State itself, *Richtsteig* maintains that the diplomatic mission has the right to issue a reply (*Gegendarstellung*) if the dignity or the interests of its State are disparaged³⁰.

There are indeed numerous cases where diplomatic agents issued a public message because they felt that interests of the sending State were at stake. One of the prominent recent examples was that of the British High Commissioner to Kenya, who in 2004 launched a sharp attack on alleged corruption in the sending State's government³¹. This was more than a mere *representation* of the attitude of the government of the sending State. Britain was the biggest foreign investor in Kenya; corruption in the receiving State therefore had a direct effect on the economic interests of the sending State³².

The protection of interests of nationals of the sending State also presupposes the diplomatic message, but it has also produced cases in which allegations of

²⁹ Glahn (1992), p. 518.

³⁰ With particular reference to the German perspective: "Bei Verunglimpfung eines Staates ist dessen diplomatische Mission in Deutschland als der völkerrechtliche Vertreter zur Interessenwahrnehmung im Gastland und damit auch zu einer **Gegendarstellung** zum Schutz der souveränen Würde und der Interessen dieses Staates berechtigt.", *Richtsteig*, Article 3, p. 21 [Emphasis by *Richtsteig*]. See also Funck-Brentano / Sorel, p. 70.

³¹ Vasagar (2005).

³² See also the 1998 case of Vergau (in the context of the significant Kurdish population in Germany), *Süddeutsche Zeitung*, "Deutscher Diplomat kritisiert", 14 December 1998.

interference emerged. When, for instance, the US Ambassador to Yugoslavia, in 1976 tried to obtain the release an American citizen convicted of espionage³³, the Yugoslavian President Tito accused the Ambassador of interference. Tito in fact singled out the forwarding of unwanted information and alleged that the diplomat thought it paid to "criticize those who think otherwise. He is giving lessons about our internal and foreign policy"³⁴.

Reference should also be made to Article 3 (1) (d) – the function of diplomatic observation. The wording of this rule does not immediately suggest that the diplomatic agent here appears as the distributor of a message. And yet it is in some situations necessary that a diplomat, in order to engage in the collection of information, forwards a message as well. A source will feel more at ease if the flow of information goes in both directions and may indeed make this a condition for the provision of information. Instances of this kind may be at the root of allegations of interference when a diplomat is criticised for "meeting", or (as in the case of the British Deputy High Commissioner to Gambia in 2001³⁵), "interacting" with the opposition.

The link between diplomatic message and diplomatic observation is made even clearer if the fact is borne in mind that presence alone can be indicative of a message. Diplomats who are seen on the campaign trail of a political candidate at election time may well be considered to be sending a message, even if they do not

³³ Facts on File World News Digest, "Jailed American Freed", 31 July 1976.

³⁴ *Information Bank Abstracts, The New York Times*, "[Pres Tito, in Quotation of the Day criticizing...]", 1 August 1976.

³⁵ West Africa Net, "The Joshi case – Jammeh's latest blunder", 24 August 2001.

utter a word³⁶. If Martin Indyk in the above mentioned case³⁷ had chosen, as one of only a few ambassadors, to attend the opening ceremony of the celebrations of the 3000th anniversary of Jerusalem, he might well have relied on the function of observation, but the message forwarded by the United States would have been loud and clear.

2. Aspects of the diplomatic message: preliminary tasks, auxiliary tasks and minimum requirements

The issuing of the diplomatic message can consist of several stages. For instance, the impact that a message will have may depend on the physical and the social context in which the diplomat delivered it, and from this may arise a need to create an appropriate social setting for its delivery. *Glahn*, when speaking about the "public relations" function, refers to the necessity of "giving and attending parties and dinners"³⁸. Such an environment may make an invited guest more receptive towards a suggested policy or may soften the blow of a critical remark.

In some instances, the nature of the message itself involves certain preliminary steps until the message reaches the intended addressee. The way in which a letter reaches the press serves as an illustration. In 1981, Robin A. Berrington, the

³⁶ See for instance the case of the Pakistani High Commissioner to the United Kingdom in 2001; *infra*, p. 110.

³⁷ *Supra*, p. 104.

³⁸ *Glahn* (1992), p. 518. Cf. also Callières *De la manière de négocier avec les souverains*, in Satow (1979), p. 443.

Cultural Affairs and Press Officer at the American embassy to Ireland, wrote a letter in which he stated that Ireland was "small potatoes" by comparison to other European countries, that weather and food were dull and that the hottest item in current debate was whether Ronald Reagan's ancestors came from Tipperary³⁹. If the letter, as intended, had been kept within a private circle, it would not have raised eyebrows. As it was, it ended up in a publicity handout about the American President, which Mr Berrington had prepared. There therefore existed a staggered approach to the dissemination of the message, and it is noteworthy that the receiving State took the different nature of these stages into account. The Irish Department of Foreign Affairs decided not to comment, as the letter had been a private one⁴⁰.

The giving of an interview or the distribution of leaflets likewise involves stages of dissemination. A radio or television interview is usually recorded before it is broadcast; an interview given to newspapers requires publication⁴¹. Leaflets need to be received and read by the addressee before it can be said that the message has been forwarded⁴².

It is necessary to take these stages of delivery into account, as it is sometimes not the ultimate delivery of the message, but steps preliminary to this, which attract accusations of interference by the receiving State. For instance, in 1987, the Australian Prime Minister Hawke accused Libyan representatives of arranging "training in the techniques of propaganda"⁴³ (to Australian citizens). The ultimate

³⁹ Jennings (1981).

⁴⁰ Flynn (1981). But cf the Sackville case, *supra*, p. 59.

⁴¹ See for instance the 1994 case of the interview given by the US Ambassador to Trinidad and Tobago. Beard (1994).

⁴² See for instance the 1976 case of the Libyan Ambassador to Egypt, Satow (1979), p. 186, para. 21.24.

⁴³ Australian Yearbook of International Law, 1984 – 1987, p. 463.

carriers of propaganda in this instance are therefore not the diplomats themselves. But the preliminary stage (the training) which enabled the creation of propaganda, was nevertheless of considerable significance to the receiving State. It was one of the reasons which led to the severing of diplomatic relations between Australia and Libya in that year⁴⁴.

Preliminary behaviour can also exist because the offended recipient was not the primary addressee of the message. The message may have been addressed to nationals of the diplomat's own country, or it may even have been issued outside the receiving State. The latter may only learn of the message through accounts given by the media; but its reaction may still target the information itself and not its later delivery to the ultimate recipient. The case of Nancy Powell, the American Ambassador to Pakistan, is an illustration. In January 2003, Powell had stated that Pakistan must cease using the country as a platform for terrorism⁴⁵. The Ambassador made these remarks at a meeting of the American Business Council in Karachi. All the same, the negative reaction that she received, concerned the message itself⁴⁶ and the language used⁴⁷; the reaction by the receiving State was the holding of a meeting with Ms Powell and the Deputy Foreign Secretary to discuss her statements⁴⁸.

⁴⁴ *Fenwick* refers to a similar situation when he discusses the influence exercised by German embassies and consulates on the local press in the 1930s. The ultimate carriers of propaganda was the press, but the propaganda would not have come into existence without the preliminary activities (in particular, the subsidizing of the press). *Fenwick* (1941), p. 628.

⁴⁵ The Press Trust of India, "Nancy Powell asks Pak to end infiltration, proposes cease [fire]", 23 January 2003.

⁴⁶ Cf. the reaction by the opposition alliance Muttahida Majlis-e-Amal. Curran (2003).

⁴⁷ Cf. the reaction by Professor Khurshid Ahmed, vice-president of the Jamaat-i-Islami party, Curran (2003).

⁴⁸ Curran (2003).

A message can therefore experience various stages before it reaches the ultimate addressee or is delivered by its ultimate carrier; but each of these stages can carry significance in the eyes of the receiving State.

Apart from preliminary behaviour, there is sometimes a form of conduct which accompanies the dissemination of the message – a gesture for instance or a facial expression, which is employed to emphasize a particular point. There are cases where this auxiliary behaviour became the source of criticism. An example is the case of Robert S. Gelbard, the US Ambassador to Indonesia, who in 2000 was seen "jabbing his finger into the chest" of an official in Jakarta⁴⁹, a form of conduct which, as one American analyst put it, was considered "deeply offensive" in Indonesia⁵⁰. However, it might also be argued that the auxiliary behaviour carried a message itself – that of disrespect towards Indonesian culture⁵¹.

This leads to another aspect which is particular to the diplomatic message: it is possible that a message is transmitted in an entirely non-verbal form. Most examples introduced by Members of the International Law Commission in the context of interference through the message, referred to verbal messages. But Yokota also made reference to the subsidizing of political parties⁵², and the ILC's 1957 commentary on the rule of non-interference expressly states that the norm embraces the taking part in political campaigns⁵³. But even non-verbal support given by a diplomatic agent to a political party carries a distinct message.

⁴⁹ The Jakarta Post, "U.S. Ambassador in Jakarta ruffles feathers again", 4 September 2000. Cf. also *supra*, p. 49.

⁵⁰ Barber (2000).

⁵¹ It is noteworthy that neither the *Jakarta Post* nor the *Washington Times* explain what the principal message had been which Gelbard's gestures had sought to emphasize.

⁵² YILC 1957 (1), p. 146, para. 10 [Mr Yokota].

⁵³ ILC Draft Articles 1957, Art. 33 (Commentary, para. 2), p. 143.

Reference can be made to the message issued by US Ambassador to Lebanon Meyer in 1964 to members of the mission, which warned against "statements" as well as "actions" which could suggest that the US government or its Embassy favoured particular candidates in the forthcoming elections⁵⁴; it therefore identified the significance even of non-verbal messages. Such messages may on occasion speak a clearer language than their verbal counterparts⁵⁵.

One may ask the question what form of behaviour appears on the other end of the scale – in other words, what the minimum requirements are for the dissemination of the diplomatic message. It has been mentioned before that the mere presence of a diplomat may suffice to convey a message⁵⁶, and there is evidence that some diplomats are quite aware of this significance. A case from the 19th century illustrates this situation. After the coup d'état of Louis Napoléon in 1851, the customary weekly receptions of diplomatic agents continued. The American and Swiss representatives however decided not to attend⁵⁷. A similar case occurred in 1954, when the American and British ambassadors to Moscow (Hayter and Bohlen) were invited to a dinner party which was attended also by the East German ambassador. On realizing that this diplomat was present, Hayter and Bohlen decided to leave the party⁵⁸. There existed in both situations the danger that mere presence could be construed as carrying an implied message of considerable weight: in the 1851 case, that of the recognition of a government which had come

⁵⁴ Whiteman (1970), p. 143. Emphasis added. See also *supra*, p. 35.

⁵⁵ In this context, instances may be recalled in which diplomatic agents resorted to the use of force in support of a particular position. See for instance the example provided in Blischtschenko, p. 182 and *MiamiHerald*, "Attack at Cuba's diplomatic mission: Was it provoked?", 6 May 2000.

⁵⁶ See *supra*, p. 107.

⁵⁷ Shewmaker / Stevens, p. 182.

⁵⁸ Satow (1979), p. 453 (para 44.73).

to power by unconstitutional means; in the 1954 case, that of the recognition of the German Democratic Republic.

Absence, too, will not always be interpreted as a neutral act. The absence of Ambassador Indyk from the anniversary celebrations of Jerusalem has been discussed above⁵⁹. The sending State had felt the need to distance itself from the impression that the diplomatic behaviour had conveyed a message; and critics in the receiving State perceived Indyk's conduct as carrying a distinct message⁶⁰.

These considerations however do illustrate the difficulty in evaluating behaviour as dissemination of a message. If on occasion the presence of a diplomat in a particular situation is criticised, the explanation might be offered that the agent was merely observing events⁶¹. In cases of absence, the diplomatic agent may claim the existence of prior commitments – as Indyk did in the Jerusalem case.

However, from the negative reaction that such (minimalist) conduct has encountered, it is possible to draw some conclusions as to criteria which can be used to support the finding that a message had indeed been sent.

It is suggested that, firstly, the situational context – in its physical, temporal and personal aspects – impacts on the classification of a certain conduct as dissemination of a message.

⁵⁹ See *supra*, p. 123.

⁶⁰ When it became known that Indyk would not attend the opening ceremony, the "young guard" of the National Religious Party held a demonstration outside the US embassy in Tel Aviv. The issue was important enough to become the reason for meetings between the Israeli Ambassador and "administration officials" in Washington, *BBC Summary of World Broadcasts (Voice of Israel, 5 September 1995)*, "Issue of Jerusalem 3000; Reaction to US envoy's absence from Jerusalem 3000 events", 7 September 1995. See also *supra*, p. 123.

⁶¹ See the 2001 case of Jaffer (Pakistani High Commissioner to the UK).

The physical location matters. In 2001, William Shannon, the American ambassador to Ireland was photographed sitting in the campaign bus of *Fine Gael*⁶², and subsequently drew the criticism of the Irish Prime Minister⁶³. Had he been seen in a nearby CNN studio, the existence of a message of participation in partisan politics could not reasonably have been inferred. The temporal aspect matters no less – had he driven his car along the same route as the campaign bus a few hours later on that day, the message of support would not have been conveyed. The personal context is likewise of importance – if the persons around him (the recipients of a non-verbal message) had not been Members of Fine Gael, one could not have reasonably alleged the forwarding of a supportive message to that party through the presence of the Ambassador.

Apart from the situational context, the relationship between sending and receiving State may have a considerable impact on the evaluation of non-verbal conduct as a form of dissemination of the diplomatic message. The 1995 case of Indyk illustrates this situation⁶⁴. The traditionally strong bond between the United States and Israel made Indyk's absence particularly conspicuous and enhanced the perception of a disseminated message. The other extreme may be considered: It is possible that an ambassador whose mission represented two states stayed away from an important event in the receiving State. In that case, it would be very difficult for critics in the receiving State to claim that absence equalled the dissemination of a message. Which State would be the sender?

Finally, in some cases the relationship between the sending State and the particular event itself works as a further criterion. The participation of the Ambassador of an

⁶² *Associated Press*, "U.S. Ambassador in Controversy Over Irish Elections", 27 May 2001.

⁶³ *The Washington Post*, "U.S. Envoy to Ireland Criticized", 28 May 1981.

⁶⁴ See *supra*, p. 123.

Arab State at the opening ceremony of the "Jerusalem 3000" celebrations would, in view of the Palestinian protests against the ceremony and the general criticism that the celebrations ignored the Islamic influence on Jerusalem⁶⁵, have sent a message as clear as that conveyed by the absence of Indyk.

3. The co-existence of the dissemination of the diplomatic message and other forms of diplomatic behaviour

If the issuing of the diplomatic message embraces any conduct which can conceivably transmit a message – even mere presence and absence of the envoy – then it is difficult to define its limits. The 1960 case to which *Blischtschenko* refers⁶⁶, in which personnel of diplomatic missions in Laos shot at paratroopers under the command of Kong Le, transmits the message that the diplomats of the respective countries disagreed with the leader of the coup d'état. The commission of crimes on the territory of the receiving State demonstrates disregard for the prevailing legal order. Participation in a plot to overthrow the government of the receiving State⁶⁷ indicates that the diplomatic agent does not support the incumbent government.

⁶⁵ Cf. *Mideast Mirror*, "Jerusalem 3000 celebrations prompt Palestinian call on Israel to review its policy on the city", 5 September 1995. The Israeli Prime Minister, Yitzhak Rabin, was reported to have exclaimed at the beginning of the celebrations: "United Jerusalem is ours. Jerusalem forever!", *Mideast Mirror*, *loc. cit.*

⁶⁶ *Blischtschenko*, p.182, see *supra*, p. 98.

⁶⁷ Cf. the case of the eight American diplomats who were expelled from Nicaragua in 1988 on charges that they had plotted to overthrow the Sandinista government; *The Washington Post*, "Bush's Choice: New Crop of Envoy", 7 June 1990.

But the question remains whether it is reasonable to classify these cases as deliveries of messages. When South Korean diplomats in 1967 abducted South Korean citizens from the territory of West Germany⁶⁸, the diplomats themselves may not have considered this behaviour to carry a message; indeed, it would have been in their interest to prevent the dissemination of the message that they disregarded local laws. The receiving State would be more interested in the actual breach of its laws than in a potential message; the message conveyed by the breach thus disappears behind the primary thrust of the conduct.

But there may be other instances in which the dissemination of the message, inspite of its coinciding with another form of conduct, will remain so clear that it can without doubt be considered the principal aspect of the behaviour. There is also room for a third category of cases, in which message and coinciding behaviour are of equal strength, so that the dissemination of the message can justifiably be considered without thereby denying the force of the coinciding conduct.

The distinction between these three categories is not always easy, but a number of tests can be applied to reach an assessment of instances of coinciding behaviour.

a. The intention of the diplomatic agent

The intention behind the objectively disseminated message may in some cases provide a useful help for its evaluation. As mentioned above, an envoy may have gone to some effort to keep the adopted conduct secret. It would then seem inappropriate to dismiss an intention which consisted quite the opposite of the attitude which informs the issuing of a diplomatic message. It is suggested that this

⁶⁸ Rousseau, p. 167; *Minerva* (1967), pp. 144 – 146.

consideration applies to a variety of instances in which the laws of the receiving state have been infringed – cases of kidnapping and smuggling among them⁶⁹.

On the other hand, the mere intention to conceal particular acts from the general public does not necessarily imply that a message was not transmitted at the same time. There are, for instance, several cases in which diplomats had been accused of meeting with members of the opposition (the coinciding behaviour in those cases would be the fulfilment of the function of observation)⁷⁰ or even of plotting to overthrow the government of the receiving State⁷¹. In these instances, a message will have been sent, even though the diplomatic agents may wish to shield it from public and government of the receiving State: it is a message transmitted to the selected contacts only. Diplomats might indeed assign the greatest importance to that message, for the faction with which they consort today may form the government of tomorrow.

Intention is of particular significance if the conduct is non-verbal in character – if therefore the distinction between message and other forms of behaviour is not immediately apparent from diplomatic statements. On the other hand, in these instances, the difficulty of assessing the true intention is particularly apparent. When Indyk did not participate in the opening ceremony of "Jerusalem 3000", the sending State went to some effort to explain that there had been no intention to transmit a message⁷². Indyk himself stated that he was occupied with a Labor Day

⁶⁹ See e.g. Gray (1984).

⁷⁰ For instance the 1993 case of the Spanish diplomat in Equatorial Guinea, the 1988 case of the Iranian Ambassador to Turkey and the 2000 case of the US diplomat to Sudan. See Annex A for details and sources. In 1983, Soviet diplomats were expelled from Iran for establishing contacts with "treacherous and mercenary agents", *Xinhua General Overseas News Service*, "Iran expels Soviet diplomats", 5 May 1983.

⁷¹ As in the case of the American diplomats to Nicaragua mentioned above, *supra*, p. 134.

⁷² See *supra*, p. 123.

barbecue⁷³. In the light of the importance which this event had for the receiving State, this reason may have raised some doubts in the minds of his critics. The possibility cannot be discounted that in some cases an envoy, regretting the force of the message, may decide not to assist in the establishment of the true intent.

On the other hand, diplomatic behaviour may be motivated by more than one reason. Cases concerning diplomatic visits to dissidents underline this point. In 2000, the government of Myanmar took exception to the fact that John Jenkins, the British Ambassador, had tried to visit Tin Oo, deputy chairman of the National League for Democracy⁷⁴. Tin Oo and several other National League politicians, including its leader, Aung Suu Kyi, had been kept under house arrest by the military government. The intention to engage in human rights observation may have set a cause for Jenkins' action, especially as he reportedly had tried to find out whether Aung Suu Kyi was safe⁷⁵. At the same time, his behaviour was probably also intended to carry a message of support (it was also reported that Jenkins was at that time "leading demands for assurances" for Suu Kyi's safety⁷⁶). In such instances, the message does not lose its significance; in the mind of the diplomat, it is not obscured by the coinciding behaviour.

Similar considerations apply in some instances in which diplomats provide funds to political parties⁷⁷. The achievement of a better position in electoral campaigns is certainly one of the intentions behind the conduct. But at the same time, such behaviour will often reflect an intention to convey a message of support –

⁷³ Peter Wilson (1995).

⁷⁴ *Associated Press*, "Myanmar accuses 2 Western countries of instigating 'unrest'", 5 September 2000. Cf. also the earlier case involving visits to Aung Suu Kyi: the 1996 case of Myanmar and Western States.

⁷⁵ Farrell (2000).

⁷⁶ Farrell (2000).

⁷⁷ See for instance the 1980 case of Sofinsky (New Zealand and USSR).

especially, as sending State and supported party will normally share certain political beliefs.

Ascertaining the intention of the diplomatic agent is therefore a useful tool which allows a critical evaluation of cases in which the dissemination of a message did not even feature in the diplomat's mind. But this test carries difficulties too – apart from the problem of identifying the true intention, the fact also remains that the perspective of one diplomat may differ considerably from that of the receiving State or from other envoys in a similar situation.

b. The weight of the accusation

A further criterion of evaluation is formed by the weight of the accusation: in other words, by the question which aspect of the behaviour – the message or a coinciding conduct – attracted the negative reaction. This test sometimes supports the diplomat's intentions – especially if the agent violated the laws of the receiving State.

Thus, when certain Scandinavian countries in 1976 expelled North Korean envoys amid reports of large-scale smuggling activities, the conduct triggering the sanction was described as "illegally trafficking in marijuana, cigarettes and liquor"⁷⁸. There is little doubt that in such a case the weight of the accusation rests on the violation itself and not on the message it carries.

In some cases, the assessment of the diplomatic conduct provided by the receiving State may differ considerably from that of the diplomatic agent or the sending

⁷⁸ Gray (1984). See also for a West German case concerning Romanian diplomats in 1984: *Associated Press*, "Government Says Romanians Plotted to Bomb Radio Free Europe", 10 May 1985.

State. This criterion is therefore of particular use as a check against the declared or inferred intentions of the envoy, and as such, it invites further analysis.

For instance, in the "Jerusalem 3000" case, the declared intention of the diplomat and the assessment by his critics were quite at odds⁷⁹. Similarly, in the case of William V. Shannon, a spokesman for the ambassador denied that the Ambassador's presence in the campaign bus of Fine Gael carried a message of support⁸⁰. The Irish Prime Minister saw it quite differently⁸¹. It is this perspective of the receiving State which allows for a different assessment of the behaviour and for the inclusion of such cases among instances of potential interference through the diplomatic message.

But this test carries difficulties as well. There is, firstly, the difficulty of establishing the position of the receiving State – especially if the latter has used vague phrases like "activities incompatible with the diplomatic status" instead of precise accusations. Secondly, the question arises why the views of the receiving State should be preferred to those of the diplomatic agent. And finally, the views of one particular receiving State may differ from those of other States in similar situations and may therefore not be representative for the opinion of the international community. The case of Christopher Dell, the American Ambassador to Zimbabwe may be recalled, who in 2005 entered a restricted area in Harare⁸². The receiving State interpreted this behaviour as carrying a distinct message of provocation; but it is comparatively rare that a State in such a situation would see in this behaviour anything else than a violation of local laws (in conjunction with the restrictions of Article 26 of the *Vienna Convention*).

⁷⁹ See *supra*, p. 123.

⁸⁰ *The Washington Post*, "U.S. Envoy to Ireland Criticized", 28 May 1981. See *supra*, p. 133.

⁸¹ *The Washington Post*, *loc. cit.*

⁸² The 2005 case of Dell (US Ambassador to Zimbabwe).

c. The character of the conduct

The character of the conduct as a criterion involves an objective perspective: the question of the message character is explored from the point of view of an uninvolved outsider. On some occasions, an uninvolved outsider did in fact exist and provided a comment on the event⁸³. In other instances, a comparison to the assessment provided by receiving States in similar situations will be of use.

The parameters identified in section 2 for the evaluation of the message character – the situational context, the relationship between sending and receiving State and the relationship of the sending State to the particular event – are useful tools when the question needs to be discussed whether the message aspect is clear enough to survive as diplomatic behaviour in its own right or whether it virtually disappears behind a "principal" form of conduct.

An objective assessment of acts of smuggling and kidnapping would confirm the general view expressed above – the violation of local laws becomes so dominant that it supplants the message character. Most other breaches of domestic law, including the entering of security zones, are subject to the same consideration; to most receiving States it would appear that it is the harm to the legal system or the danger to State security which makes the conduct significant. On the other hand, there are some breaches of local law which presuppose the existence of a message. If a diplomatic agent is accused of incitement to violence (as was the spokesman of

⁸³ For instance, see the comments of Per Ahlmark (the former Swedish Deputy Prime Minister) on the 2001 case of Bernard (French Ambassador to the UK). Ahlmark (2002).

the US embassy to Haiti, Schragar, in 1994⁸⁴), then this behaviour by its very nature necessitates the dissemination of a message.

The funding of political parties, consorting with the opposition and plotting to overthrow the government of the sending State are forms of conduct which, to an outside observer, retain their message component. As a general rule, these acts do involve the issuing of a supportive message to a faction in the receiving State⁸⁵.

The circumstances of a particular instance can justify an assessment which differs from that which receiving States would normally award to cases of this kind. For instance, the use of physical force will usually be considered a violation of local law in which any message component becomes insignificant. But in some instances, the situational context warrants a different evaluation.

In 2004, the Israeli ambassador to Sweden, Mazel, attended the opening of an exhibition and took exception to an exhibit which featured the picture of a female suicide bomber⁸⁶. Mazel physically attacked the artwork, which also included electrical installations, and caused it to short-circuit. If the parameters for the assessment of the existence of a diplomatic message are taken into account – in particular, the relationship of the sending State to the specific event, then it is difficult to conclude that the message had lost its significance..

Finally, cases in which the mere presence or absence of a diplomatic agent may convey a message, do not lend themselves to generalization; the very nature of the

⁸⁴ *BBC Summary of World Broadcasts (Radio Metropole)*, "Foreign Ministry protest against US embassy spokesman", 28 September 1994.

⁸⁵ On State reactions in this field, see for instance the 1988 case of Mason Hendrickson (the US Ambassador to Singapore). Hendrickson had met with potential candidates of the Singaporean opposition, which triggered a letter in the *Washington Post* by Tommy Koh, the Ambassador of the Republic of Singapore to the United States. Mr Koh stated that the American ambassador had intended to encourage citizens of Singapore to engage in anti-governmental activities. The message character was therefore quite clear in the allegations. Cf. also the reaction by the Irish Prime Minister to the Shannon case (*supra*, p. 139).

⁸⁶ Channel News Asia, "Sweden and Israel in furious diplomatic row over art scandal", 18 January 2004.

behaviour here requires an assessment based on the particular circumstances of every instance. The objective approach is particularly useful in these cases, as the assessments provided by the receiving State and the diplomatic agent will often contradict each other. An objective assessment of the "Jerusalem 3000" case will, in view of the situational context, the relationship between Israel and the United States and the significance of the event for the Israel, have to yield the conclusion that a message was disseminated (even if this may not have been the intention of the diplomatic agent⁸⁷), and that this message was strong enough to retain its character in the face of potentially coinciding behaviour.

The weakness of the objective approach lies in the possibility that such a test may move away from the realities of the case. It is possible that all the actors in a particular instance agree that the dissemination of the diplomatic message is supplanted by a coinciding conduct, but that an outside observer would still come to the conclusion that a distinct message had been forwarded.

It would appear that the clearest understanding of a particular form of conduct is not achieved by following a "subjective" or "objective" test, but by adopting a comprehensive view which takes into consideration all three perspectives mentioned above.

This thesis will be limited to cases in which either the weight of the accusation or the clear or reasonably inferred intention of the diplomatic agent indicate that the dissemination of the diplomatic message has kept its significance. In the remaining instances, the question will be asked whether, from the point of view of an outside observer, the message character still appears important enough to survive. As a

⁸⁷ See also *supra*, p. 137.

general rule, cases of kidnapping, smuggling and other violations of the domestic law of the receiving State will not fulfil this condition. Cases in which support had been given to a political party, to dissidents or to conspirators, will be considered to carry a distinctive message to the intended recipient. Cases in which force was used or in which the mere presence or absence of the diplomatic agent was the issue, will be considered in the light of the circumstances prevailing in the particular incident, having regard to the relationship between sending and receiving State, and to the significance of the event for both States.

The *Vienna Convention* recognizes that envoys must be able to avail themselves of the diplomatic message to fulfil their functions – in particular, the tasks of representation and the protection of interests. The message here is understood as encompassing preliminary and auxiliary conduct too, and as extending to verbal and non-verbal behaviour alike.

This however raises questions about the minimum conditions which need to be in place before the existence of such a message can be assumed. It is suggested that the situational context can help to identify the existence of a message. An equally important indication is the relationship between sending and receiving State and the attitude taken by the sending State to a particular event.

In some cases, a situation may be identified in which the diplomatic message coincides with another form of behaviour. In these instances, the question arises whether the message has kept its significance or become completely supplanted by

the coinciding behaviour. The intention of the diplomatic agent may assist in the resolution of this question, but it encounters the difficulty that more than one reason may have been the cause of the conduct. The weight of the accusation by the receiving State renders further assistance in this matter, but it carries its own difficulties: the opinion of the receiving State may not be shared by other States in comparable situations. A third approach requires the adoption of an objective point of view to examine the character of the conduct. But this approach may theoretically lead to results which differ both from the intent of the diplomat and the accusations of the receiving State.

An appropriate evaluation has to take all three perspectives into account in an attempt to identify the diplomatic message and to discard cases in which the message has lost its character as a significant form of diplomatic behaviour.

Chapter 4 – The Legal Context of Diplomatic Interference Through the Diplomatic Message

The evaluation of the concept of interference requires not only an analysis of Article 41 (1), but also an examination of the relationship between that rule and other provisions which impact on the legal character of diplomatic behaviour. The reason for this is that a violation of another limitation on diplomatic conduct may cancel out the possibility of a violation of Article 41 (1) 2; or the rule of non-interference might be completely embraced by another limitation on diplomatic conduct. Likewise, diplomats accused of interference might, in their defence, refer to norms of international law which permit the behaviour in question.

The interaction of these rules is the topic of this chapter.

1. Interference and other limitations under international law

Among restrictions other than the rule of non-interference, the duty to respect the laws and regulations of the receiving State should, because of its significance in diplomatic relations, be named in first place. This duty is set out in Article 41 (1) 1 of the *Vienna Convention*. The relationship between this rule and the ban on interference is, however, far from settled. *Denza* for one criticizes the physical proximity of the two provisions which she considers quite different¹:

"[c]onduct which on the part of a diplomatic agent
would amount to an interference in the internal affairs

¹ *Denza* (1998), Article 41, p. 376.

of the receiving State will at least in democratic societies be permissible under local law [...]"²

However, some authors have pointed out that one form of behaviour might well violate both duties; *Richtsteig* for instance, who referred to instances of "intelligence activities", considered them as infringing both rules of Article 41 (1)³. Several incidents in diplomatic and consular relations confirm that receiving States have on occasion understood a form of behaviour as breaching both domestic law and the rule of non-interference. Prominent among them is the case of *Gerritsen v De La Madrid Hurtado* which was decided by the United States Court of Appeals (9th Circuit) in 1987. The case was based on events which developed when one Jack Gerritsen, outside the Mexican consulate in Los Angeles, distributed leaflets critical of the Mexican government⁴. According to Gerritsen, consular staff reacted to this by subjecting him to physical abuse and even kidnapping and interrogating him. In this case, the court made express reference to Article 55 (1) of the *Vienna Convention on Consular Relations*⁵, which literally reproduces the text of Article 41 (1) of the *Vienna Convention on Diplomatic Relations*⁶. With regard to the relationship between the duty not to interfere and the duty to respect the laws and regulations of the receiving State, the court noted that some unlawful acts can indeed be tantamount to a breach of the rule of non-interference as well:

"Wrongful acts committed by an official or employee of a Mexican consulate [...] to suppress criticism of Mexico [...] constitute an interference with the United States internal affairs because these acts impair the

² Denza, *loc. cit.*

³ Richtsteig, Art. 3, p. 22.

⁴ *Gerritsen v De La Madrid Hurtado*, 819 F.2d (9th Cir. 1987), at 1513. Harnish, p. 350, fn. 24.

⁵ On the use of the respective provisions of consular law in analogy to Art. 41 (1) of the *Vienna Convention*, see *supra*, p. 21.

⁶ *Gerritsen v De La Madrid Hurtado*, 819 F.2d (9th Cir. 1987), at 1516.

citizenry's ability to promote self-government through robust discourse concerning issues of public import."⁷

Reference may also be made to the 1985 case of William Hardwood, a First Secretary at the US embassy to Warsaw, who was expelled together with a consular agent for having helped to lead an "illegal" May Day parade. But Poland left no doubt that it considered this behaviour to be not only in violation of domestic laws, but also an instance of interference. A note of protest which was handed to the American chargé d'affaires, stated that the diplomatic conduct "clearly violated [...] international norms and conventions and [...] constituted intolerable interference in the polish internal affairs"⁸.

Another example is the 1988 case of Richard Melton, the American Ambassador to Nicaragua. Melton was expelled in July of that year for interfering in the internal affairs of the receiving State⁹. Miguel d'Escoto, the Nicaraguan Foreign Minister, provided further explanations on the State reaction and the conduct that triggered it, in a letter which he handed to Melton and in which he referred to "illegal activities by provocative extreme right-wing groups", which had "complemented" terrorist actions and which had been encouraged by Richard Melton¹⁰. The letter continued:

"This behaviour on the part of North American diplomats accredited to Nicaragua is totally unacceptable; [it...] totally violates the provisions of the Vienna Convention on Consular Relations [*sic*], which categorically bans all interference in the internal affairs of states. "¹¹

⁷ *ibid.* See also Milhaupt, p. 847.

⁸ Xinhua, "Poland protests U.S. diplomats' involvement in May day anti-government demonstrations", 3 May 1985.

⁹ Meyer (1988). See *supra*, p. 22.

¹⁰ BBC Summary of World Broadcasts (Managua home service), "Nicaraguan President, Foreign Minister on expulsion of US Ambassador", 13 July 1988.

¹¹ BBC Summary of World Broadcasts, *loc. cit.*

There is therefore no reason to doubt that in this case, too, the receiving State evaluated one and the same behaviour as breaching both domestic laws and the ban on diplomatic interference.

Certain difficulties attach to the view that conduct amounting to interference would, in democratic societies, be "permissible under local law". An approach which focuses on democratic societies to evaluate the conflict between two rules of diplomatic law, may evoke criticism: diplomatic law is shaped not only by the democratic members of the international community; and the formation of State practice and *opinio iuris* with regard to the assessment of a particular conduct does not depend on the internal constitution of the State participating in this formation.

Furthermore, the opinion that democracies always employ this strict dividing line, is also subject to certain doubt. Democracies do in fact rely on a host of rules which regulate the freedom of expression. The laws against defamation and libel, to which *Salmon* refers¹², are only one example. One may also think of laws prohibiting incitement to violence, and cases have come into existence where democratic states had to react to diplomatic behaviour of this kind¹³.

Moreover, a view which envisaged a strict division between interfering behaviour and behaviour that is in violation of local laws, does not appear to take into account the possibility of conduct which disseminates an offensive message in a non-verbal form and may therefore be found to amount to interference¹⁴. The above named case of Zvi Mazel, the Israeli ambassador to Sweden in 2004, serves as an

¹² *Salmon* (1996), p. 135, para. 207.

¹³ The case of two Libyan diplomats may be recalled, who in 1980 were expelled from the United States for disseminating literature which called for the "liquidation" of the opponents of Colonel Qadhafi. *Ritchie* (1980).

¹⁴ See *supra*, p. 130.

example¹⁵. A diplomat who engages in the destruction of a piece of art, must be aware that this behaviour is in violation of domestic laws protecting private property. At the same time, it can be argued that it was for the Kingdom of Sweden to decide whether to permit the exhibition of an artwork or not, and not for a foreign diplomat. There is, then, no reason why such conduct should not at the same time be found to be in breach of both Article 41 (1) 1 and Article 41 (1) 2 of the *Vienna Convention*.

Indeed, the original concept of interference suggests a close relationship between interference and acts unlawful under local law. The natural meaning of the term as it was available to Members of the International Law Commission, has such a wide scope¹⁶ that it can be understood as embracing acts which violate the laws of the receiving State. An illegal act is certainly one which introduces a new element into a pre-existing state of affairs of such a character that it clashes with the values which the host wishes to convey through its established legal order and therefore will be regularly regarded as negative by that State.

There are other significant limitations on diplomatic conduct which lie outside the regime of the *Vienna Convention* but may have an impact on the rule and scope of non-interference. Prominent in this context is the general rule of non-intervention by a State in the affairs of another State. The relationship between diplomatic interference and State intervention has already been broached¹⁷. The view followed here is based on *Salmon's* finding that the personal obligation of diplomats is more

¹⁵ *Supra*, p. 141.

¹⁶ See *supra*, p. 69.

¹⁷ See *supra*, p. 74.

extensive than that of their States¹⁸. Diplomatic interference therefore, which only focuses on behaviour adopted by the person of the diplomatic agent, extends to areas which are not covered by State intervention (and likewise, State intervention embraces areas which are not covered by the rule against diplomatic interference – for instance, if the State chooses to act through other agents than its diplomats).

Salmon emphasizes at the same time that there may be intersections between State intervention and diplomatic interference¹⁹. The reason for that lies in the fact that diplomats, like any other State organs²⁰, may be utilized by the State as the carriers of State intervention. Among the examples mentioned by *Salmon* for such intersections are the promotion of civil war and the giving of military or financial assistance to an armed opposition²¹.

Receiving States occasionally refer to this connection between diplomatic interference and State intervention. Thus, while in the above mentioned case of *Hardwood*, the note of protest referred to "interference" by the diplomatic agent in Polish affairs²², a spokesman for the Polish government accused the sending State itself of attempting to interfere in the country's internal affairs²³.

The ban on State intervention and the ban on personal interference by diplomats therefore are not restrictions which are mutually exclusive. Intervention, if performed through diplomatic agents, qualifies as behaviour which violates Article 41 (1) 2. Diplomats on the other hand, who adopt interfering conduct in their

¹⁸ *Salmon* (1996), p. 129, para. 197, see *supra*, p. 116.

¹⁹ *Salmon, loc. cit.*

²⁰ See *supra*, p. 115.

²¹ *Salmon, loc. cit.*, see *supra*, p. 115.

²² Xinhua, "Poland protests U.S. diplomats' involvement in May day anti-government demonstrations", 3 May 1985.

²³ *Bobinski* (1985). See also the 1979 case of *Cutler* (the designated American Ambassador to Iran) and the 1988 case of *Melton* (US Ambassador to Nicaragua).

capacity as State organs, violate not only the rule against diplomatic interference, but incur also the sending State's responsibility for an unlawful act of State ²⁴.

2. Potential exceptions to the rule of non-interference

In many cases, sending and receiving States simply disagree on the facts of an alleged behaviour of interference. But on other occasions, diplomatic agents or sending States deny the validity of the assessment done by the hosts and invoke legal rules which would allow a different evaluation of the conduct in question. These provisions do likewise shape the legal context of interference through the diplomatic message. If they are successfully applied, they may serve to limit the reach of the duty of non-interference²⁵.

One example for a situation in which an attempt at legal justification was made, is the case of an unnamed German diplomat who in 2003 was criticized by a Member of the European Parliament for a speech in Estonia which favoured that country's accession to the EU²⁶. The assessments provided by the diplomat and his critic were

²⁴ cf. Draft Article 7 of *Draft Articles on State Responsibility* (2001). The difficulty of distinguishing between acts performed in the capacity of a diplomatic agent and other acts, has been discussed above (*supra*, p. 93 et seq).

²⁵ The thought that there might be limitations to the concept of diplomatic interference was expressed even in the older literature. Bluntschli for instance restricted the ban on interference to those instances where the diplomatic conduct had been carried out "sans motif", Bluntschli, p. 143, para. 225. For a later affirmation of these considerations, see Cahier, p. 142; Przetacznik (1976), pp. 60 – 62.

²⁶ The 2003 case of a German diplomat (Estonia and Germany), Helmer (2003).

quite different; what the MEP considered to be interference was, in the eyes of the diplomat, a legitimate exercise of diplomatic functions²⁷.

The fulfilment of diplomatic functions is indeed the ground most often invoked by diplomats and sending States in an effort to explain or justify alleged interference; and it will therefore be the first limitation to the rule of non-interference to be discussed here. From a structural point of view, the conflict presented is a conflict of norms: between the rule enshrined in Article 41 (1) 2 of the *Vienna Convention* and other provisions of international law (which do not necessarily come from the field of diplomatic law).

However, it is in line with the jurisprudence of the International Court of Justice if particular care is exercised in assessing whether a conflict between sources exists²⁸. Even if such a conflict has been established, it may be possible to resolve it through recourse to methods which are apparent from the respective sources themselves (and their *travaux préparatoires*). With regard to the relationship between interference and diplomatic functions in particular, it appears that the drafters of the *Vienna Convention* envisaged the possibility of a clash and, at least partially, indicated ways of dealing with it.

²⁷ See also Poland: the 1985 case of Hardwood (US) and China: the 1998 case of the UK Consul-General's office in Hong Kong.

²⁸ It may be recalled that the ICJ in the *Elettronica Sicula Case* (ICJ Reports 1989, para. 50) went so far as to read a significant rule of customary law (the exhaustion of local remedies) into a treaty which had made no mention of it instead of finding that the two sources were in conflict.

a. The conflict between the rule of non-interference and the fulfilment of diplomatic functions

aa. The existence of a diplomatic function

At first glance, the insistence by the sending State that its agent had only fulfilled diplomatic functions, appears to be a utilization of Article 3 of the Vienna Convention to restrict the remit of the rule of non-interference. However, any such use of Article 3 presupposes that a diplomatic function had been fulfilled in the first place.

There are, for instance, several cases in which a diplomatic agent made comments on the situation of people in the receiving State who belonged to the same ethnic group as one which had a prominent position in the sending State. In 1999 for instance, the Mexican consul in Atlanta, Teodoro Maus, called for a boycott of companies which mistreated citizens of Hispanic origin²⁹, and in 2005, Belarus expelled three Polish diplomats amid allegations that Warsaw was inciting and funding the Polish minority in the receiving State³⁰. But it is, in these cases, not always clear if the diplomatic agents in question could have relied on the function of Article 3 (1) (b) in its second alternative, which envisages the protection of interests of nationals of the sending State.

²⁹ The 1999 case of Maus (Mexico and USA). *The Boston Herald*, "Editorial; Undiplomatic diplomat", 9 January 2000.

³⁰ Defence and Security (Russia), "1.9 Diplomatic Scandal between Poland and Belarus reached its peak", 29 July 2005.

No problems arise if the persons forming the object of the diplomatic message, have (only) the citizenship of the sending State. This was the situation in the case of 1963 of the Greek diplomat Moliviatis, who had kept contact to ethnic Greeks who still had the nationality of the sending State even though they were resident in the Soviet Union³¹.

When on the other hand, the German Ambassador to Turkey, Vergau, in 1998 stated that the Kurdish problem was of concern to Germany as well, he may well have felt entitled to do so because of the significant Kurdish population in Germany³². The persons in question however were not nationals of the sending State, and the diplomat could therefore not have relied on this particular function³³.

Those cases, in which the persons to which the message refers, possess the nationality of both sending and receiving State, cause greater problems. An analogy to the regulation of diplomatic protection *stricto sensu* (ie, cases in which a State adopts as its own claim the cause of nationals who have suffered an international wrong) would lead to a restrictive view. In those instances, States can only exercise diplomatic protection if the nationality of the sending State is "predominant"³⁴ (factors like habitual residence, family ties, language have been suggested for an evaluation of that requirement³⁵).

³¹ See *supra*, p. 52.

³² The 1998 case of Vergau (Turkey and Germany).

³³ Cf. also Salmon (1996), p. 106, para. 155; Guggenheim, p. 495; *AFDI* (1976), p. 1000.

³⁴ Article 7 of the 2006 *Draft Articles on Diplomatic Protection*. The ILC Commentaries also make reference to the *Nottebohm case*, ICJ Reports 1955, pp. 22 – 23, in which the Court discussed the requirement of "real and effective nationality" in cases of dual nationality. Article 4 of the *Hague Convention on Certain Questions Relating to the Conflict of Nationality Laws* (1930) was even stricter and did not allow diplomatic protection in these cases.

³⁵ *Draft Articles on Diplomatic Protection*, Article 7, Commentary, para. 5; *Nottebohm case*, ICJ Reports 1955, p. 22.

However, as will be discussed later, significant differences exist between the protection of interests and "diplomatic protection" in the narrow sense³⁶. In view of persons with dual nationality as objects of the message, the less intrusive character of the protection of interests may well lead to a more generous interpretation of this task. *Salmon*, who examined the State practice in this field, concludes that diplomatic protection of citizens with dual nationality remains at any rate a reality³⁷.

Similar difficulties arise with regard to the other functions mentioned in Article 3. The 2000 case of Raymond Chrétien, then Canadian Ambassador to the United States, illustrates a difficulty concerning the first alternative of Article 3 (1) (b). Chrétien reportedly expressed a distinct preference for the American presidential candidate Al Gore, whom he called "a friend of Canada", over his opponent, on whom he was less complimentary³⁸. While "friend of Canada" may indicate that the Ambassador was representing the interests of the sending State, there is evidence that observers both in the sending and in the receiving State saw this statement by Chrétien, a nephew of the leader of the Canadian Liberal Party, as supporting a party rather than a country³⁹. That however appears to be outside the remit of a diplomatic function which is not concerned with the support of a political group, but with the protection of the interests of the sending state.

³⁶ See *infra*, p. 235.

³⁷ *Salmon* (1996), p. 107, para. 156.

³⁸ *Thorne* (2000).

³⁹ At the time, the incident was seen by commentators as part of "Republican-Liberal antagonism", *Blanchfield* (2000). Joe Clark, leader of the Progressive Conservative Party of Canada, was quoted as saying that any other diplomat but the Prime Minister's nephew would be "called in for a reprimand" over these statements. *Thorne* (2000). It was reported that the Bush camp was left offended and bemused by the remarks of the ambassador (*Blanchfield*, (2000)). The impact the statement had on the Republican contender can also be gauged by the fact that, a few months later, the newly elected President Bush refused to send his congratulations to the re-election of Jean Chrétien as Prime Minister. *Agence France Presse*, "M. Bush: Le relations avec le Canada pourraient être plus difficiles", 16 December 2000.

The above mentioned case of the German diplomat to Estonia⁴⁰ is likewise an instance where the natural meaning of the function invoked may differ from the behaviour adopted by the diplomatic agent. The "promotion of German culture" to which the diplomat referred, may be embraced by the "public relations" function of which *Glahn* and *Richtsteig* make mention⁴¹. But not every conduct qualifies as the fulfilment of such a function. If the diplomat had only encouraged his audience to give vote in favour of accession to the European Union⁴², he would not have disseminated any information about the sending State and could therefore not have engaged in the promotion of its culture⁴³.

The problem that arises in any attempt to come to an understanding of diplomatic functions, is that the list provided in Article 3 of the Vienna Convention is open-ended. Nothing, in particular, bars a sending and a receiving State from creating by mutual agreement a new diplomatic function in their relations⁴⁴. On the other hand, not every function which, in the view of a sending State exists outside those expressly listed in the Article, will be accepted as such by the international community.

In the particular context of interference through the diplomatic message, there is one non-traditional diplomatic function which has received a measure of support

⁴⁰ *Supra*, p. 151.

⁴¹ See *supra*, p. 124.

⁴² as *Helmer* seems to suggest; *Helmer* (2003).

⁴³ Diplomatic agents may usually find it easier to rely on the function of observation (Article 3 (1) (d) of the *Vienna Convention*), whose fulfilment can cover a broad variety of activities. However, receiving States have on occasion insisted on a clear distinction between this function and other forms of behaviour as well. See the 1996 case of Myanmar and several Western States; *BBC Summary of World Broadcasts (TV Myanmar, Myanmar)*, " Ruling council explains actions against opposition at news briefing", 4 October 1996.

⁴⁴ See *supra*, p. 24.

among some States – that of human rights monitoring⁴⁵. Numerous cases have come into existence where diplomatic agents have spoken out against perceived violations of or risks to the enjoyment of human rights in the receiving State⁴⁶, among them the 1996 case of Robin Meyer, the American diplomat in Cuba, to which reference has been made above⁴⁷. While the State Department saw her conduct as belonging to the ordinary functions of a human rights observer, the negative reaction provided by Cuba appeared to indicate that the host not only perceived a clash between a function and the rule of non-interference⁴⁸, but that it refused to accept the very function of human rights monitoring.

This and other instances in which the exercise of this potential function had met with negative responses, appear to support *Salmon's* opinion, according to which diplomats run the risk of committing interference if they call for respect for human rights⁴⁹ – although *Salmon* would not see it as a violation of the principle of non-intervention if the State itself engaged in such behaviour⁵⁰. This opinion is less convincing if the view is adopted that it is not the official or non-official nature of the act that matters for the applicability of the rule of Article 41 (1) 1, but the personal involvement of the diplomatic agent⁵¹.

⁴⁵ "Human rights monitoring" is here understood as encompassing observation proper, analysis and reporting on the findings, but also the critical evaluation of a human rights record.

⁴⁶ For instance the 1999 case of the US mission to Namibia which expressed concern about the way civilians were treated in the Caprivi region by security forces; the October 1999 case of the US consul general to China who warned of a potential threat to the freedom of the media if the Chinese proposal to create a government-appointed press council were to go ahead; the 1998 case of the US ambassador to Mozambique (see *infra*, p. 160) and the 2004 case of Craig Murray (No 5) (Uzbekistan and United Kingdom).

⁴⁷ See *supra*, p. 43. But see the later appointment of Timothy Brown to the same country, *infra*, p. 159.

⁴⁸ It should however be noted that Jose Luis Ponce, the Cuban diplomat expelled in retaliation for the expulsion of Robin Meyer, did refer to "intervention" on the side of Meyer, Lippman (1996).

⁴⁹ *Salmon* (1996), p. 129, para. 197.

⁵⁰ *Salmon*, *loc. cit.* and p. 134, para. 205.

⁵¹ See *supra*, p. 116. In fact, the cases introduced by *Salmon* himself do not always allow for the assumption that the diplomatic agents involved in them acted in a private capacity. One may in this context refer to the 1963 case of three Chinese diplomats to the Soviet Union whose recall was

The different nature of the human rights which are being monitored, contributes to the difficulty in evaluating a diplomatic message which criticizes their violation. On the one hand, the conduct of a diplomatic agent who acts as a human rights observer, might concern aspects of rights which are disputed even among international courts or which may fall within the "margin of appreciation" which a State may enjoy in its implementation of human rights. If for instance a receiving State banned a particular publication on grounds of its perceived immorality (which is a – potentially justified – interference with the freedom of expression⁵²), and a diplomatic agent accredited to that State issued a statement criticizing the host's understanding of morality, there may be little support in the international community for the opinion that the diplomat was fulfilling an accepted function of "human rights monitoring"⁵³.

On the other hand, the violation of some human rights may be so serious as to constitute the commission of an international crime and to fall within the remit of universal jurisdiction. If organs of the receiving State map the killing of members of, say, an ethnic group, with the specific intention to destroy that group in whole or in part, they are thereby planning conduct which qualifies as genocide⁵⁴; and which therefore triggers the obligation for any State which has ratified the *Genocide Convention* to prevent the crime⁵⁵. If the sending State is party to the *Genocide Convention*, then an early warning issued through its diplomatic agents

demanding as they had distributed a long document which was critical of Khrushchev's policy of peaceful co-existence. Salmon (1996), p. 133, para. 202.

⁵² Article 19 (3) (b) of the *ICCPR* accepts "morals" as one of the protected interests which can justify a restriction of the freedom of expression. See also Article 10 (2) of the *ECHR* (1950) and Article 13 (2) (b) of the *ACHR* (1969).

⁵³ On the margin of appreciation in this regard, see *Handyside*, paras 47 and 48.

⁵⁴ Article II of the *Genocide Convention*; Article 6 of the *ICC Statute*; Article 4 of the *ICTY Statute*; Article 2 of the *ICTR Statute*.

⁵⁵ Article I of the *Genocide Convention* reads: "The Contracting Parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and to punish."

may be unavoidable to discharge its duty under that Convention. Such a warning, which might take the form of a frank report on the observation of fundamental human rights in the receiving State, may in fact be the least interfering method which, in light of the alternatives (economic and other sanctions, forceful measures) the sending State can adopt.

In view of this, it would seem to be incorrect to state that human rights monitoring could never fall within the remit of diplomatic functions. In order to obtain an accurate assessment of the nature of human rights monitoring, it is suggested that the following considerations will have to be taken into account.

Firstly, if sending and receiving State agree that the monitoring of human rights by diplomatic agents is permitted in their international relations, then the receiving State cannot rely on the opinion that human rights monitoring is not an internationally accepted function of diplomatic agents. This includes the implied recognition of human rights monitoring as a diplomatic function; if for instance, the receiving State accepts the appointment of diplomats described as human rights observers to the staff of a mission and allows them for a certain amount of time to continue in this work, it would then be estopped from claiming that the monitoring of human rights is not a diplomatic function⁵⁶.

Secondly, the monitoring of human rights may, at the same time, be the fulfilment of another function of the diplomatic agent, which is accepted under international

⁵⁶ Cf. for an example, the appointment of Timothy Brown as a human rights observer at the US Interests Section in Cuba. It is interesting to note that the Cuban criticism of Brown concerned particular aspects of his work, for instance, the alleged staging of an anti-government demonstration, and that the receiving State expressly referred to "interference in the internal affairs of our country", instead of claiming that the diplomatic function of human rights observation did not exist in the first place. Miami Herald, "Cuba accuses U. S. diplomat of meddling, sowing dissent", 19 September 1998.

law. Thus, the mere observation of human rights and reporting thereon to the sending State is in fact a form of behaviour which is in compliance with Article 3 (1) (d) of the Vienna Convention. But even a diplomatic agent who criticises the host for apparent human rights abuses – the case which causes the greater difficulties with regard to interference through the diplomatic message – may simultaneously fulfil an already recognised function. This may be, because interests of the sending State are concerned (Article 3 (1) (b)) – for instance, when current mistreatment of the receiving State's own nationals causes refugees to cross the border into the sending State. In other cases, the diplomatic agent may fulfil the function of representation – by acquainting the government of the receiving State with the perspective of the government of the sending State on its human rights record. When, for instance, the American ambassador to Mozambique stated that the presidential and legislative elections of 1999 should be just and transparent⁵⁷, there was little doubt that he was expressing the position of the sending State's government⁵⁸.

Thirdly, in those cases in which the sending State has to fulfil an international obligation which calls for the prevention, reporting or halting of human rights abuses, the fulfilment of this function becomes, if it is by necessity or because of requirements of efficiency best done through diplomatic agents, a diplomatic function in its own right. The prevention of genocide, as mentioned above, is an example of this case. Another example is provided by a people's right to self-

⁵⁷ Mozambique: the 1998 case of Curran (US).

⁵⁸ The evidence for that lies in the fact that Curran was able to threaten the withdrawal of US financial support for the 1999 elections for the case that if Mozambican opposition parties boycotted this event.

determination, whose corollary may be an obligation upon the sending State to aid in the realization of that right⁵⁹.

The monitoring of human rights is an aspect of diplomatic work which will remain subject to the changing attitudes of the international community with respect to its significance. It is probably not yet possible to speak of it as a function in its own right; the great range of human rights and the difficulty of ascertaining legitimate State interference with them plays a part in this. But the three exceptions discussed above indicate that diplomatic agents already enjoy a significant space in which they can criticize the human rights record of the receiving State without incurring the charge of exceeding the remit of established diplomatic functions according to their "ordinary and natural" meaning.

That is not to say that every monitoring of human rights will also be lawful under international law. The legality of diplomatic behaviour is a question which has immediate impact on the question of interference. The following section will examine why this is the case, and how the legality of diplomatic behaviour is to be evaluated in its relationship with diplomatic functions.

bb. The significance of the legality of diplomatic conduct and its impact on the duty of non-interference

The discussion of the functions of diplomatic agents has so far been based on an analysis of their ordinary and natural meaning. However, the question whether a diplomatic agent has acted in accordance with the rules of international law may in

⁵⁹ This point is discussed in more detail in Chapter 5, (*infra*, p. 227).

fact be an integral part not only of the assessment, but of the very definition of a function. This in turn informs the assessment of any potential clash between the rule of non-interference and diplomatic functions: if the fulfilment of a diplomatic function can only mean the lawful fulfilment of that function, then interfering agents who have also violated a rule of international law, have *ipso facto* acted outside their diplomatic functions. On this analysis, there could in those instances be no clash between the rule of non-interference and the fulfilment of a diplomatic function.

The view that the fulfilment of a diplomatic function must always refer to a "lawful" fulfilment, finds a significant measure of support. *Green* for instance concludes that a diplomatic agent who ordered physical attacks, engages in behaviour "remote from the normal duties and activities of a diplomat"⁶⁰. The Court in the *Gerritsen* case⁶¹ was of the opinion that the acts (of violence) which were allegedly committed were violations of international law and were "thus [...] not consular functions as defined in Article 5 (a) [of the *Vienna Convention on Consular Relations*]"⁶². The House of Commons Foreign Affairs Committee found in its report on the Abuse of Diplomatic Immunities and Privileges that

"[...] criminal activities can never be justified by reference to these functions [of a diplomatic agent]"⁶³

On the other hand, *Ben-Asher*, in his discussion of the legal context of diplomatic immunities, warns of the possibility that a narrow view of diplomatic functions

⁶⁰ *Green*, p. 150. The rule of international law which is violated in this instance is, if the diplomatic agent acted as organ of his State, the rule against the use of force (Article 2 (4) of the *UN Charter*).

⁶¹ See *supra*, p. 146.

⁶² *Gerritsen v De La Madrid Hurtado*, 819 F.2d (9th Cir. 1987), at 1516.

⁶³ *House of Commons Report* (1984), para. 16.

may lead to undue pressure being exercised by the receiving State on persons enjoying diplomatic immunities⁶⁴. This fear is not unfounded.

But this is not necessarily the only possible result if the opinion is adopted that the definition of functions encompasses their lawful exercise. The view that unlawful behaviour would deprive a diplomatic agent of diplomatic privileges and immunities seems, at first sight, to be a consistent application of the theory of functional necessity⁶⁵. On the other hand, the ILC also took into account "the representative character of the head of the mission and of the mission itself"⁶⁶, so that the drafter's theoretical basis for the granting of privileges and immunities might best be described as a modified theory of functional necessity⁶⁷. The Preamble confirms that privileges and immunities are granted to ensure the efficient performance of the functions⁶⁸, but they are also assigned to diplomatic agents as the representatives of the sending State⁶⁹. This somewhat diminishes the force of the argument that functions must be defined widely, so that no incentive is given to receiving States to violate immunities on the basis of an allegation that a function has been fulfilled in an unlawful manner.

⁶⁴ Ben-Asher, at fn. 287 et seq [p. 31].

⁶⁵ YILC 1958, vol. (2), p. 95 ["Section II. Diplomatic Privileges and Immunities"], para. 3. On the rise of this theory as a basis for diplomatic privileges and immunities, see Barker (2006), pp. 48 – 53.

⁶⁶ YILC *loc. cit.* See Barker (1996), p. 65. On the survival of the "representative character theory" in the *Vienna Convention*, see Babesail, p. 24. However, see Donough, p. 486; Farhangi, p. 1520; Shapiro, p. 283. For an older formulation of the representative character theory, see Wolff, pp. 532, 533.

⁶⁷ See on the codification history Kerley, pp. 92, 93 and Barker (1996), pp. 55 – 65.

⁶⁸ Preamble, para. 5.

⁶⁹ "diplomatic missions as representing States", Preamble, para. 5 (Emphasis added). Cf. Zemanek, p. 408. There is a difference between the "representative character" of diplomatic agents and the function of representation: the former refers to a quality that attaches to the person of the diplomat, the latter describes a particular behaviour. State practice points in the same direction. After the killing of Police Constable Yvonne Fletcher in 1984, as a result of sub-machine gun fire coming out of the Libyan People's Bureau in London, the United Kingdom cut diplomatic relations with Libya and expelled Libyan diplomats instead of violating their diplomatic immunity, Lederer (1984). Four years earlier, a Libyan diplomat had been expelled from the United Kingdom for considering cooperating with the IRA (the 1980 case of Musa Kusa (UK and Libya)).

The wording of the *Vienna Convention* itself indicates that the remit of a diplomatic function must be narrowed down by reference to its lawful exercise. Article 3 twice refers to the limits of the law: when it is dealing with the function of protecting the interests of the sending State and its nationals (Article 3 (1) (b))⁷⁰ and when it is dealing with the function of observation (Article 3 (1) (d))⁷¹. These references are not expressly repeated in the provisions dealing the other diplomatic functions, but that does not mean that legality forms part only of the functions of observation and protection. The codification history of Article 3 (1) (d) is illuminating in that regard. The rule, as initially proposed, contained no reference to international law⁷². In response to criticism by governments who felt that diplomatic protection of interests should only take place "after the ordinary remedies in the courts of the receiving State [had] been exhausted"⁷³, ILC Member García Amador suggested the inclusion of a phrase to the effect that Article 2 (b) (as it was at the time) was "without prejudice to the principles of international law governing diplomatic protection"⁷⁴. This change is today reflected in the wording of the *Vienna Convention*⁷⁵. It cannot be assumed that it was the ILC's intention to let the other diplomatic functions be exercised in a way prejudicial to the rules of international law, because it did not add a similar proviso in their cases. If that had

⁷⁰ See also Regala, p. 55.

⁷¹ There is no material difference between the reference to "lawful means" and the reference to "international law"; the legality of both functions is determined by reference to international law, Kish, p. 55. See the discussion in Kim, p. 53 et seq with further references. For a different assessment, cf. Awuye, p. 136.

⁷² The draft article read out by the Special Rapporteur on 5 June 1957 simply stated in its relevant part: "The functions of the diplomatic mission consist *inter alia* in [...] 2. Protecting the interests of its country and of its nationals in the receiving country [...]", YILC 1957 (1), p. 144, para. 64 [Mr Sandström].

⁷³ YILC 1958 (2), p. 115, Comments by Governments, Chile (letter dated 10 March 1958).

⁷⁴ YILC 1958 (1), p. 92, para. 32 [García Amador].

⁷⁵ The ILC itself only took these concerns into account in the commentary to the Draft Articles 1958 (Article 3, Commentary, para. 4).

been the intention of the drafters, a clear expression to that avail would have been expected.

A statement made by the Tunisian representative at the Vienna Conference is likewise of interest. Mr Bouziri explained that

"his delegation was much perturbed [...] at the presence of the words 'by all lawful means' in the Commission's sub-paragraph (d). The whole codification was obviously subject to national and international law, and such provisos were not only unnecessary, but also dangerous"⁷⁶

This view is reflected in the literature as well; *Do Nascimento e Silva* speaks in this context of an insertion *ex abundante cautela* – as "every provision" of the *Vienna Convention* had to be performed within the limits of international law anyway⁷⁷.

Even if the opinion were followed that the concept of functions must not be narrowed down by the lawfulness of their exercise, the compatibility of the diplomatic behaviour with international law would still have to be considered in order to assess the question whether a form of interference has taken place. The reason for that lies in the way the drafters perceived the interrelationship between interference and functions and the impact of lawfulness on this relationship. The 1958 ILC commentary on the rule of non-interference (then Article 40) states in its relevant part that the protection of interests of the sending State or of its nationals does not constitute interference if it is done "in accordance with international

⁷⁶ A / CONF. 20 / 14, 8th meeting, p. 80, para. 22.

⁷⁷ Do Nascimento e Silva (1972), p. 63. This would appear to be in line with the generally accepted rule of interpretation of treaties which calls for a consideration of any international rules which are applicable in relations between the parties; a rule which is today enshrined in Article 31 (3) (c) of the *Vienna Convention on the Law of Treaties* (1969).

law⁷⁸. In the light of the foregoing considerations, this reference to international law will have to be applied to other functions as well.

The inclusion of a test of legality in the 1958 ILC commentary on the rule of non-interference⁷⁹ does however lead to a somewhat peculiar situation. The lack of compliance of the diplomatic conduct with international law appears here as a possible prerequisite for the assumption of interference. On the other hand, the rule of non-interference is itself customary and conventional law; it is part of that body of international law which needs to be violated before a finding of interference can be made.

It is suggested that the correct way of reading paragraph 2 of the 1958 Commentary on Draft Article 40 is one that, in the first place, calls for an identification of breaches of international law *other* than that of the rule of non-interference⁸⁰. In the remaining cases, customary law establishes the meaning of interference as it is understood by the international community.

This view mediates between two quite different opinions. It takes into account the opinion expressed in the *Gerritsen* case, according to which a wrongful act can constitute interference⁸¹ – a view which appears particularly appropriate if the natural and ordinary meaning of the term "interference" is applied, which easily embraces unlawful forms of behaviour⁸² (interference *lato sensu*). But it also respects the opinion that interference possesses aspects which are independent from

⁷⁸ See Annex H, Article 40, Commentary, paragraph 2. A somewhat odd situation is created by the fact that the commentary to Article 3 (on diplomatic functions) reads in its relevant part: "The validity of the rule laid down in article 40, paragraph 1, which prohibits interference in the internal affairs of the receiving State [...] is not affected in any way", ILC Draft Articles 1958, Art. 3, Commentary para. 4. But if the lawful exercise of the function of protection is not to be considered interference, then it does give shape to the rule of non-interference and limits the validity of its applicability.

⁷⁹ Cf. Annex H, Article 40, Commentary, paragraph 2

⁸⁰ On this point, see *supra*, p. 145.

⁸¹ *Gerritsen v De La Madrid Hurtado*, 819 F.2d (9th Cir. 1987), at 1516.

⁸² See *supra*, p. 149 and p. 69.

the question of lawfulness⁸³. This leads to the territory of interference other than through unlawful acts; interference as defined by rules of customary law (interference *stricto sensu*).

The legality of a diplomatic conduct may therefore have to be assessed under both opinions which have been discussed in this context: Either in order to establish whether a function has been fulfilled in the first place (if legality is seen as a prerequisite for the fulfilment of a function) or as an aid to the resolution of a clash between the rule of non-interference and a diplomatic function.

b. The conflict between the rule of non-interference and other rules of international law, in particular human rights

The regulation of diplomatic functions is not the only rule which diplomatic agents can invoke in their support if they are faced with an accusation of interference. But a reliance on other provisions also triggers the question whether they can possibly enjoy, in international law, a higher rank than that accorded to Article 41 (1) 2.

In other fields of diplomatic law, the existence of such rules has been accepted. When for instance the ICJ in the *Hostages Case* states that the observance of the personal inviolability of the diplomatic agent and of the premises of the diplomatic mission does "naturally" not mean

⁸³ Cf. Denza (1998), Art. 41, p. 376, with particular reference to Article 41 (1) 1 of the *Vienna Convention*.

"that a diplomatic agent caught in the act of committing an assault or other offence may not, on occasion, be briefly arrested by the police of the receiving State in order to prevent the commission of the particular crime"⁸⁴

it went a far way in establishing a hierarchy which gives the respective diplomatic rights only second place behind higher values which are embodied in other rules of international law – for instance, the protection awarded to the human right of life. Similarly, in their response to the House of Commons Foreign Affairs Committee's Review of the *Vienna Convention on Diplomatic Relations*, the British government indicated that there may be situations in which the inviolability of the diplomatic bag may clash (because of its contents) with "national security or the personal safety of the public or of individuals"⁸⁵. In such cases, the government would "not hesitate" to adopt actions based on "the overriding right to self-defence or the duty to protect human life"⁸⁶. These instances point to the possibility that rules of diplomatic law, in particular circumstances, may have to stand back behind other, "overriding" rules of international law.

The position of human rights is of particular importance here. The clash between human rights and the rules of diplomatic law leads to a junction of two of the most significant strands of modern international law: the rights of the individual here meet with a body of law which is an issue of the sovereignty of States.

⁸⁴ *Hostages Case*, ICJ Reports 1980, para. 86. It may be understandable that the ICJ considered the physical integrity of a human being as higher ranking than the diplomatic right to be free from arrest, but there is reason to be critical of the court if it goes so far as to restrict the diplomatic right if any "other offence" has been committed. Such a sweeping formulation may easily offer an incentive for abuse by receiving States.

⁸⁵ *UK Government Report* (1985), para. 48.

⁸⁶ *UK Government Report*, *loc. cit.* Cf. Herdegen, p. 749. See also Beaumont, p. 398 with reference to the ILC opinion on the relationship between personal inviolability and a State's right to self-defence; Värk, p. 117 and Ramey, p. 152, fn. 645. In the older literature, cf. Zorn, p. 35.

The rule of non-interference can clash with human rights in two ways: firstly, if diplomats are safeguarding the rights of others, and secondly, if they are protecting their own rights.

aa. The protection of human rights of others

As far as the first alternative is concerned, the human rights which are of concern here, are those of persons who do not possess the nationality of the sending State (otherwise the diplomatic agent would fulfil the function of Article 3 (1) (b)). One example for the safeguarding of human rights of others is the case of Victor Raphael, US military attaché to the Philippines, who reportedly tried to convince government soldiers not to shoot at rebels – which earned him the accusation of committing interference⁸⁷.

Likewise, the granting of diplomatic asylum forms an issue of great significance for the conflict between the rule of non-interference and human rights⁸⁸. On the one hand, the asylum seeker may be saved from an unfair trial, torture or death⁸⁹; on the other hand, as the International Court of Justice pointed out, the granting of asylum "withdraws the offender from the jurisdiction of the territorial state and constitutes an intervention in matters which are exclusively within the competence of that state"⁹⁰. In the 1967 discussions on the Draft Articles on Special Missions, it was

⁸⁷ Japan Economic Newswire, "U.S. diplomat accused of interfering in August Philippine coup", 22 October 1987.

⁸⁸ See Barberis on the changing theoretical basis for the granting of diplomatic asylum (p. 281); Jeffery, p. 13; Riveles, pp. 144 – 145.

⁸⁹ See Articles 6 (1); 7 (1); 9; 14 of the *ICCPR* (1966) for a codification of the respective rights. Cf. Jeffery, pp. 22 – 24.

⁹⁰ *Asylum Case*, ICJ Reports (1950), p. 275. On this case, see Porcino, p. 443. See also Jeffery, p. 19 et seq.

ILC Member Jiménez de Aréchaga who supported the view that the rule of non-interference would not necessarily embrace the right of diplomatic asylum⁹¹.

If such a clash exists, then the question arises by what methods this conflict can be resolved.

The usefulness of traditional ways of establishing a hierarchy between conflicting sources is somewhat diminished in this case. *Ben-Asher*, who examined conflicts between human rights and immunities as part of diplomatic law, states with some justification that the

"[establishment of a] hierarchy of sources is usually helpful for determining hierarchy of conflicting rules in the same area, say, continental shelf delimitation, rather than determining priority between distinct areas"⁹²

The reason for this is apparent when some of the traditional rules for the resolution of conflicts between norms in international law are considered. Article 59 of the *Vienna Convention on the Law of Treaties* gives validity to a later treaty over a previous treaty. But its applicability is restricted to those cases in which the treaties

⁹¹ YILC 1967 (1), p. 242, para. 97. In that session, the ILC had debated a draft which prohibited the use of the premises of the mission in a manner "incompatible with the functions of the special mission". Unlike the *Vienna Convention*, the draft article did not explain that the functions could be laid down by general international law or by special agreements. Jiménez de Aréchaga was concerned that, as a result, the ban of interference would therefore embrace the granting of diplomatic asylum, regardless of any existing international agreements on this topic (which may have been more generous). YILC 1967 (1), p. 241, para. 90. – The problem of diplomatic asylum was raised in the ILC debates as early as 1957. The minutes of the discussion on the rules on mission premises show that the conflict between the preservation of the right to life or physical integrity and the sovereign rights of the receiving State were apparent to ILC Members, but in the end, the ILC decided against the inclusion of an article on asylum in the draft on diplomatic intercourse and immunities. See YILC 1957 (1), p. 54, para. 33 and p. 57, para. 72. See also Denza (forthcoming), Article 22, and Denza (1998), Article 22, p. 117. On the customary law character of diplomatic asylum today, see Roberts, p. 239. A different position is taken by *Rossitto* ("the right to grant diplomatic asylum is not generally recognized by international law"), p. 111. Doubtful also Seidl-Hohenveldern, p. 189.

⁹² Ben-Asher, [p. 223] at fn. 226.

"relate to the same subject-matter", which would be a strange assumption in the case of treaties on diplomatic law and treaties on human rights. And then – which rule of international law would be the more recent one? The human right to life, to name one example, is enshrined in the *European Convention on Human Rights*, which dates from 1950⁹³. The rule of non-interference is enshrined in the *Vienna Convention on Diplomatic Relations* of 1961. The right to life is re-affirmed in the *International Covenant on Civil and Political Rights* of 1966⁹⁴. The rule of non-interference is re-affirmed in the *Convention on Special Missions* of 1969⁹⁵. The right of life reappears in the *American Convention on Human Rights* of the same year⁹⁶, and so forth. The applicability of the respective conventions may vary (the *Convention on Special Missions* does not deal with permanent representatives), but it would be unrealistic to maintain that the drafters of the later documents in the same field did not believe in the continued existence of the respective rules.

Similar reservations apply to the *lex specialis* rule which likewise has found a home in international law⁹⁷. Speciality presupposes at the very least that one rule possesses an element which is missing in the other rule. But this can easily be said about both the protection of a human right and the ban on diplomatic interference⁹⁸.

A further possibility of establishing a hierarchy between conflicting norms is presented by the identification of a peremptory norm of international law. The circle of *jus cogens* norms however, is greatly restricted⁹⁹. There does not appear in

⁹³ Article 2 (1) of the *ECHR*.

⁹⁴ Article 6 (1) of the *ICCPR*.

⁹⁵ Article 47 (1) 2 of the *Convention on Special Missions*.

⁹⁶ Article 4 (1) of the *ACHR*.

⁹⁷ On the *lex specialis* rule cf. Thirlway, p. 136, Shaw, p. 116.

⁹⁸ *Ben-Asher* comes to a similar result as far as conflicts between human rights and diplomatic immunity are concerned: "[...] both will roughly be equal from a hierarchy of sources perspective", Ben-Asher, [p. 23], at fn. 225.

⁹⁹ According to *Shaw*, even the peremptory character of unlawful use of force, genocide, slave trading and piracy is debatable Shaw, p. 117. See however Värk, pp. 114, 115.

academic debate to be a suggestion that diplomatic law belongs in that category¹⁰⁰ (although its fundamental character for the international community has been referred to in the literature¹⁰¹).

It is different with human rights: here, the case for a *jus cogens* character of certain fundamental rights – and even that of all human rights¹⁰² – has been advanced. The reason for that is that the *Vienna Convention on the Law of Treaties* refers to peremptory norms of general international law as those from "which no derogation is permitted [...]"¹⁰³. The major human rights instruments all contain rights which do not permit derogation¹⁰⁴, but the circle of these rights is not the same in the conventions. The four rights, which *ACHR*, *ECHR* and *ICCPR* consider non-derogable – the right to life¹⁰⁵, the freedom from torture or inhuman or degrading treatment or punishment¹⁰⁶, the freedom from slavery¹⁰⁷ and the *nullum crimen sine lege* principle of criminal law¹⁰⁸ – may, because of this universal acceptance of their non-derogability, enjoy a better chance of being accepted into the circle of norms of *jus cogens*¹⁰⁹. But even their status as peremptory norms is not undisputed¹¹⁰. The position of the right to life itself, which should represent the "supreme value in the hierarchy of human rights"¹¹¹ attracts some doubts in this regard. The *ECHR* for

¹⁰⁰ See for instance, Whiteman (1977) at pp. 625, 626.

¹⁰¹ Cf. Danielko, at p. 131.

¹⁰² See the discussion at Parker / Neylon, p. 441 et seq.

¹⁰³ Article 53 *Vienna Convention on the Law of Treaties* (1969).

¹⁰⁴ See Article 4 of the *ICCPR*, Article 15 of the *ECHR*, Article 27 of the *ACHR*. The *Banjul Charter on Human and Peoples' Rights* does not contain a rule on non-derogation, but the African Commission has suggested that the entire instrument remains in force even in time of armed conflict, *Commission Nationale des Droits de l'homme et des Libertés v Chad*, Decision October 1995, para. 21; Shelton, p. 160. On the rationale for according non-derogable rights a higher place in the hierarchy of human rights, see Farer, pp. 115 – 116. Cf. also Koji, p. 920.

¹⁰⁵ Article 6 *ICCPR*, Article 2 *ECHR*, Article 4 *ACHR*.

¹⁰⁶ Article 7 *ICCPR*, Article 3 *ECHR*, Article 5 *ACHR*.

¹⁰⁷ Article 8 (1) and (2) *ICCPR*, Article 4 (1) *ECHR*, Article 6 *ACHR*.

¹⁰⁸ Article 15 *ICCPR*, Article 7 *ECHR*, Article 9 *ACHR*.

¹⁰⁹ Cf. Koji, p. 927.

¹¹⁰ For a discussion, see Caplan, p. 772 et seq.; Herdegen, p. 755.

¹¹¹ *K.-H. W. v Germany*, (2003) ECHR, para. 66.

example allows for some exceptions to the non-derogability of the right of life (namely, for "lawful acts of war"¹¹²).

Two main reasons may be identified for the reluctance of the international community to welcome new candidates (including norms of diplomatic law) into the group of *jus cogens* norms and to debate the position of existing ones. The first pertains to the formation of *jus cogens*, the second to its effects. As to the formation, the *Vienna Convention on the Law of Treaties (VCLT)* demands that such a rule be "accepted and recognized by the international community of States as a whole" as *jus cogens*¹¹³. It is true that the Chairman of the Drafting Committee of the *VCLT* pointed out that the words "as a whole" were not to be read as requiring unanimous consent, but that support by "a very large majority" of States would suffice¹¹⁴. But this "very large majority" needs to be established; and it also appears to be in keeping with the spirit of Article 53 *VCLT* to demand an agreement of States "crossing ideological and political divides"¹¹⁵. As stated before, at least the four rights that are non-derogable in the three major human rights instruments, may, because of the nearly universal applicability of these norms, be said to fulfil this criterium.

Apart from this consideration, the effects of a clash with a *jus cogens* norm may make States hesitant to accept rules, including fundamental human rights, as peremptory norms of international law. According to the *VCLT*, the clash of a treaty with *jus cogens* does not merely result in a re-interpretation of the offending clauses, but the clashing treaty is void if it collides with an already existing peremptory norm, or becomes void and terminates, if the peremptory norm

¹¹² Article 15 (2) *ECHR*.

¹¹³ Article 53 *Vienna Convention on the Law of Treaties* (1969).

¹¹⁴ Quoted in French-Merrill, p. 315.

¹¹⁵ Ben-Asher, [p. 26], at fn. 242.

emerges later¹¹⁶. In the former case, the Convention expressly excludes the separability of treaty provisions¹¹⁷: the offensive provisions cannot be separated from those which do not clash (and which may have been negotiated under great difficulties). The treaty is invalid in its entirety¹¹⁸.

It is therefore likely that States would prefer other means of dealing with an apparent clash between the rule of non-interference and the protection of fundamental human rights.

One way of doing so would be to engage in what has been termed the "reconciliation of norms"¹¹⁹. It is in fact a method of interpretation which, by taking into account the impact of both norms, tries to avoid the conclusion of a clash¹²⁰. As a conflict exists if there is no way of fulfilling both norms, reconciliation is possible if "there is at least one way of complying with all [the] requirements" of the two rules¹²¹. In so doing, it is well possible that one rule conditions the meaning of the other¹²².

In the case of a clash between the rule on non-interference and the protection of fundamental human rights, it will be the non-derogable right that informs the interpretation of Article 41 (1) of the *Vienna Convention*. The way to comply with both norms is by accepting that the necessary protection of a non-derogable human rights is withdrawn from the definition of interference; or that a diplomatic agent who acts to protect fundamental human rights is justified in committing

¹¹⁶ Articles 53 and 64 *Vienna Convention on the Law of Treaties* (1969), Magalonna, p. 531.

¹¹⁷ Article 44 (5) *Vienna Convention on the Law of Treaties* (1969).

¹¹⁸ Sinclair, p. 167 with reference to the codification history.

¹¹⁹ Sadat-Akhavi, p. 34 et seq.

¹²⁰ *Sadat-Akhavi* in fact makes a distinction between "interpretation" (p. 25 et seq) and "reconciliation" (p. 34 et seq). However, the method of finding a way which reconciles apparently conflicting rules appears to be the adoption of an understanding which allows a co-existence; this, however, is a task of interpretation.

¹²¹ Sadat-Akhavi, p. 34.

¹²² See the example *Sadat-Akhavi* provides for a potential clash of Article 9 ICESCR and Article 26 ICCPR, Sadat-Akhavi, p. 42.

interference. There is reason to believe that the international community, given the choice between such an interpretation and the identification of *jus cogens* which would void the *Vienna Convention* would prefer the former alternative. The discussion on the above mentioned right of asylum is an illustration for this situation. *Green* expresses the opinion that the granting of asylum is permitted in international law "when the life of the fugitive is in immediate peril"¹²³. The opinion of Austria in the 1970s on the granting of diplomatic asylum made the relationship between interference and the protection of human rights even clearer. In response to General Assembly Resolution 3321 (XXIX) of 1974, which invited Member States to express their views on the question of diplomatic asylum, Austria confirmed that, in her view, the granting of asylum on the premises of a mission constituted "a grave interference with the sovereignty of the receiving country". But she added:

"Any such interference with another State's sovereignty is only justifiable under special circumstances: where a person is in immediate, serious danger, or where a State persecutes the person concerned in a manner incompatible with minimum standards of human rights."¹²⁴

The protection of fundamental human rights then, if it is necessarily performed by diplomatic agents, appears as a form of diplomatic behaviour which is either

¹²³ *Green*, p. 143

¹²⁴ Views expressed by Member States pursuant to operative paragraph 1 of GA Res 3321 (XXIX). Report of the Secretary General, *Question of Diplomatic Asylum*, 2 December 1975, Agenda item 112, A/10150. This appears to be not substantially different from the view expressed by the Legal Bureau of the Canadian Department of External Affairs, which however would also have granted a right to asylum if the individual faced "a serious and imminent risk of violence" (one may think here of the threat of torture). *Green*, p. 143. See also the earlier advice by the British Law Officers in the time of the Franco-Prussian War: "That this being ta case of the saving of human life, we think that the Consul was justified in giving every facility for the escape of those whose personal safety was in danger [...]", Sir R. Collier, Sir J. Colerdige and Sir T. Twiss to Earl Granville, 5 September 1870, quoted in *British Digest*, p. 907.

withdrawn from the scope of the very definition of "interference", or which fails to fulfil the requirements of Article 41 (1) 2 of the *Vienna Convention*, as interference in this context would have to be understood as including "unjustified" interference only. It is suggested that this conclusion will be, as a reconciliation of norms, more acceptable to most receiving States than the assumption of a clash with rules which potentially possess *jus cogens* character.

bb. The protection of the diplomatic agent's own human rights

Diplomats accused of interference might not only invoke the safeguarding of the human rights of others, but may wish to rely on the protection of their own rights. In the context of interference through the diplomatic message, the human right which is of particular relevance, is that of the freedom of expression¹²⁵. That this right should be available to diplomatic agents, is not a new thought. *Gentili* stated in 1594 that he did "not deny ambassadors freedom of speech" and condemned those who had mistreated envoys who had made use of that right¹²⁶. In more recent days, the Prime Minister of France referred to this right when, in 1982, he warned of a too narrow understanding of the diplomatic duty of reserve:

"il ne faudrait pas qu'une conception trop étroite du devoir de réserve aboutisse à réduire la liberté d'expression de ceux que la France accueille dans l'exercice de leurs fonctions officielles"¹²⁷

¹²⁵ Article 19 (2) *ICCPR*, Article 10 *ECHR*, Article 13 *ACHR*, Article 9 (2) of the *Banjul Charter*.

¹²⁶ *Gentili*, p. 119.

¹²⁷ *AFDI* (1982), p. 1100.

The government of the Netherlands, in a 1983 Memorandum, likewise referred to the "freedom of expression" which existed in international law and was "also a right of diplomats"¹²⁸.

Diplomatic agents themselves have on occasion relied on the freedom of expression. An older illustration for this is the 1895 case of the Hawaiian Minister to the United States, Thurston. Thurston, who had received a letter which implied that the United States were supporting the royalist faction in Hawaii, was accused of making that letter available to a New York newspaper¹²⁹. In his defence to the US Secretary of State Gresham, Thurston mentioned that the American Senator Kyle had received a letter which was "even more severe in its terms" and which had subsequently been published.

More recently, the American Ambassador to Nicaragua (Trivelli) relied on the freedom of expression when, in 2006, he was accused of interfering in the internal affairs of the receiving State. Trivelli, who had made certain comments on the forthcoming presidential elections in Nicaragua, was quoted as saying that he was free to express his opinion on any subject¹³⁰.

At the same time, there is evidence that receiving States will not always accept this defence by diplomatic agents. In the case of Thurston, for instance, Secretary of State Gresham replied that

¹²⁸ *NYIL* (1984), p. 308.

¹²⁹ Moore, pp. 503 – 507, *The Times*, "The United States", 21 Mar 1895, p. 5, Hyde, p. 736 and see *supra*, p. 112.

¹³⁰ Aleman (2006). The US government supported this view. *Intelligence Research Ltd, Caribbean & Central America Report*, "US takes active role in Nicaraguan elections", 25 April 2006.

"Senator Kyle was a citizen of the United States, and as such might say and do things which a foreign minister could not say or do with propriety"¹³¹

It appears therefore that the United States did not perceive the offending diplomat as enjoying the same rights as a citizen of the sending State (today, one would enlarge the circle to include "ordinary persons" regardless of nationality). The receiving State appeared to see the rationale for these restrictions in the office of the foreign minister itself. Similarly, *Salmon* implied that diplomatic agents are subject to certain duties¹³² which restrict their ways of expressing themselves.

In structural terms, this means that a conflict between the obligatory norm of the duty of non-interference and the permissive norm of the human right of expression¹³³ could be avoided by reference to inherent limitations to the freedom of expression which apply to diplomatic agents, but not to other individuals.

The thought that members of particular professions must accept certain restrictions to the freedom of expression, is not new. In this regard, several voices in this debate have made an analogy to the situation of State civil servants. When for instance in 1964 the American Secretary of State Rusk warned against the involvement of Malaysian employees of the US embassy in Malaysia in the forthcoming elections in that State, he referred to the fact that the Malaysian government had decided that its own employees would have to resign their posts if

¹³¹ Moore, p. 506. In a similar vein, *Fenwick* expressed the opinion that diplomatic criticism of speeches made in the US Congress was likely "to be sharply resented", whereas "in the name of freedom of speech", the "most offensive remarks" made by Parliamentarians would not give rise to a right of protest by the diplomatic mission, Fenwick (1965), p. 561, fn. 26 and accompanying text.

¹³² The "obligation de réserve", Salmon (1996), p. 131, para. 201.

¹³³ The use of this terminology follows its understanding in Sadat-Akhavi, p. 5.

they wanted to participate in the elections¹³⁴. And when the ILC in 1960 discussed the applicability of the duty of non-interference to honorary consuls (who were frequently nationals of the receiving State), ILC Member Edmonds drew an analogy to citizens who had accepted public office and found that they, too, had to refrain from involvement in political affairs in some jurisdictions¹³⁵.

The cases of civil servants and soldiers which have been decided by the European Court of Human Rights shed further light on the nature of the limitations on the freedom of expression which are applicable in these cases. The Court (and the Commission) made it quite clear that members of these professions do not, because of their status, automatically lose the freedom of expression which the Convention provides¹³⁶. There were, however, also "duties and responsibilities" which attached to the exercise of this right¹³⁷. In order to ascertain the remit of these "duties and responsibilities", Court and Commission found it necessary to investigate the status of the applicants. In the case of *Haseldine* for instance – a member of the British Foreign Office who was dismissed in 1989 after he had written a letter to *The Guardian*, which was critical of his government – the Commission thought it relevant that he had been "responsible for supervising the enforcement of the embargo against South Africa" (the letter had criticized a government decision

¹³⁴ The 1964 case of James Dunbar Bell et al (Malaysia and USA).

¹³⁵ See *supra*, p. 20.

¹³⁶ Cf. *Haseldine v The United Kingdom*, Admissibility Decision 13 May 1992; *Grigoriades v Greece*, (1999) 27 EHRR, para. 45.

¹³⁷ "The Commission recalls that whoever exercises his freedom of expression owes "duties and responsibilities", the scope of which depends on his situation and the means he uses *Haseldine v The United Kingdom*, Admissibility Decision 13 May 1992. Both the ECHR (in Article 10 (2)) and the ICCPR (in Article 19 (3)) ICCPR make reference to the "duties and responsibilities" which the exercise of this right carries. The ACHR does not refer to "duties and responsibilities" but allows for a wide range of grounds for limitations of the right and expressly states that propaganda for war and "incitement[...] to lawless violence or to any other similar action" shall be punishable by law (Article 13 (5)). The Banjul Charter mentions neither limitations nor duties and responsibilities in Article 9 (2).

pertaining to South African diplomats), and that "at the time of writing his letter he held a post in the Information Department". The Commission therefore found it

"reasonable that a civil servant in a sensitive post should be subject to at least some restrictions and conditions on his freedom of expression concerning information gained in his official capacity [...] or relating directly to his functions, particularly when these concern politically sensitive matters."¹³⁸

A similar view was pronounced by the Court in the 1976 case of *Engel and Others v The Netherlands* in which it accepted certain limitations on the freedom of expression in the instance of military personnel by stating the view that the functioning of an army necessitated "legal rules designed to prevent servicemen from undermining military discipline, for example by writings"¹³⁹. Judges Pettiti and Gölcüklü, in their dissenting opinion in the *Grigoriades* case, referred to this judgment and added the observation that the freedom of a citizen who was no longer in the army had to be distinguished from the "the more limited freedom of expression of a soldier required to respect rank while doing national service" (as was the case with *Grigoriades*)¹⁴⁰.

Given the distinction between civil servants "in sensitive posts", other civil servants¹⁴¹ and military personnel, the role of a diplomatic agent appears to be closest to the first category. The differences in training and discretion given to diplomatic agents, as opposed to soldiers, have been pointed out above¹⁴². On the other hand, diplomatic agents will frequently be expected to handle sensitive

¹³⁸ *Haseldine v The United Kingdom*, Admissibility Decision 13 May 1992.

¹³⁹ *Engel and Others v. The Netherlands*, (1979 – 1980) 1 EHRR, para. 100.

¹⁴⁰ *Grigoriades v Greece* (1999) 27 EHRR, Dissenting Opinion Pettiti, Gölcüklü.

¹⁴¹ As for instance Ms *Glaserapp*, a teacher of art and handicraft in secondary schools, who had written a letter to a Communist paper which confirmed her allegation to the Communist party, *Glaserapp v Germany*, (1986) 9 EHRR, paras. 13 and 21.

¹⁴² *Supra*, p. 97.

information coming from both the government of the sending State and a variety of sources within the receiving State. To this limited degree, the position of a diplomatic agent in international relations is not dissimilar to that of the civil servant Haseldine in his relations to the Foreign Office as his employer.

Court and Commission have also been able to elaborate on the kind of limitations which are inherent to the position of State civil servants. They referred in this context to a duty of neutrality¹⁴³ – in the *Haseldine* case for instance, the Commission thought it "incompatible" with the applicant's status as a civil servant to criticize the policies of his government "to whom he was responsible as an employee"¹⁴⁴.

A duty of discretion was likewise accepted¹⁴⁵ – at least as far as civil servants are concerned who actually have to handle sensitive matters as part of their employment. Thus, the Commission in *Haseldine* placed particular weight on the question of the accessibility of the information which the applicant had conveyed through his letter to the Guardian: while it did not deny Haseldine's contention that the information was not confidential, it found it "significant" that he had refused to answer questions about his source and concluded that this information was therefore "not easily or publicly available."¹⁴⁶

In *Kosiek*, the Commission made furthermore reference to a duty of moderation applicable to civil servants¹⁴⁷; a duty which appears to pertain rather to the methods used in exercising the freedom of expression than to the content of the message¹⁴⁸.

¹⁴³ Cf. Coussirat-Coustere, p. 414.

¹⁴⁴ *Haseldine v The United Kingdom*, Admissibility Decision 13 May 1992.

¹⁴⁵ *Jacobs / White*, p. 283.

¹⁴⁶ *Haseldine v The United Kingdom*, Admissibility Decision 13 May 1992.

¹⁴⁷ *Kosiek v The Federal Republic of Germany*, Commission Report 1984, p. 37, para. 85.

¹⁴⁸ For instance, the 2005 *Charter on Professional Ethics*, which is applicable to staff of the Council of Europe, refers to the duty of moderation when it calls on staff members to refrain from acts

These analogies provide useful guidance for the evaluation of particular forms of diplomatic conduct as interference; and in this capacity, reference will be made to them in the context of the Second Part. However, the general applicability of the limitations on the freedom of expression of civil servants to the case of diplomatic agents warrants consideration even at this stage. The three duties outlined above appear to be congruent to certain duties which have been highlighted in the case of diplomats in their relations with receiving States.

A duty of discretion – or "reserve" – has been accepted for diplomatic agents as well¹⁴⁹. *Salmon* notes in this context that "open" criticism of the government of the sending State or even of opposition politicians must be avoided to fulfil this obligation¹⁵⁰. The circle of parties protected by the duty of discretion is however different: in the case of State civil servants the duty exists to safeguard the interests of their government and other affected parties in the State; in the case of diplomatic law, which is not concerned with the relationship between diplomats and their own governments¹⁵¹, the duty exists in order to protect the interests of the receiving State. It is in this context that *Glahn's* opinion on media contacts can be understood; diplomatic agents were in his view barred from corresponding with the press and other news media

"likely to tarnish the Organisation's image or undermine the dignity or integrity of their post", *Charter on Professional Ethics*, para. 11. See also *Haseldine v The United Kingdom*, Admissibility Decision 13 May 1992. It may be recalled in this context that the Greek government in *Grigoriades* – which however concerned military personnel – stated that "The nature of the letter [which Grigoriades had forwarded] as a threat to discipline was also apparent from the fact that it had been addressed to a superior officer. The applicant's remarks had not been made in the more innocuous context of, for instance, an informal discussion between officers of the same rank.". *Grigoriades v Greece*, (1999) 27 EHRR, para. 43.

¹⁴⁹ Mauroy, in the above quoted statement (*supra*, p. 176) referred to a "devoir de réserve".

¹⁵⁰ *Salmon* (1996), p. 131, para. 201.

¹⁵¹ See on this point *Smith*, p. 70.

"on any matter that is still a subject of communication between their own government and the host government. [...]"¹⁵²

In the 1998 case of Brian Curran, the US Ambassador to Mozambique¹⁵³, part of the criticism levelled at the diplomatic agent was also the public nature of Mr Curran's remarks. "[I]f he really wants to offer his advice or criticism", stated Manues Tome, the Secretary General of the Mozambique Liberation Front Party (the ruling party of the country), "he can do that through diplomatic channels"¹⁵⁴. The negative reaction issued by receiving States in this context demonstrates support for the assumption of a duty of discretion for diplomatic agents¹⁵⁵.

A civil servant's duty of neutrality also finds its equivalent in diplomatic law, but the direction (and purpose) of the duty are again different. In the domestic arena, the duty of neutrality allows the civil service to function with the appearance of a non-biased administration; the parties benefitting from the neutrality of the civil service are the citizens of the State. In diplomatic relations, an unbiased position of diplomatic agents is not expected – they are, after all, the representatives of their States and have to defend its position – but in certain situations a duty of neutrality is nonetheless accepted, for the benefit of the receiving State¹⁵⁶.

This duty is particularly apparent when diplomatic behaviour at times of political campaigns is concerned. The obligation to refrain from taking part in such campaigns was one of the examples to which the 1958 Commentary on the rule of

¹⁵² Glahn 1986, p. 462.

¹⁵³ See *supra*, p. 160.

¹⁵⁴ *Xinhua*, "US Ambassador accused of meddling with Mozambican internal affairs", 15 September 1998.

¹⁵⁵ See also Ghana: the 2000 case of Murray (No 1) (UK); Namibia: the 1999 case of American and other diplomats.

¹⁵⁶ Accioly went so far as to speak of a duty of "loyalty" towards the foreign sovereign, which barred diplomats from, e.g. participating in partisan intrigues. Accioly (2), p. 330, para. 1149. See also Yankson, p. 11.

non-interference made express reference¹⁵⁷. State practice supports the existence of this duty. When for instance in 1984, the US Ambassador to El Salvador allegedly worked for the election victory of Duarte, the Republican Senator Helms demanded in a letter to President Reagan the withdrawal of the envoy and referred to the duty of neutrality. The American embassy in El Salvador did not deny the existence of such a duty, but insisted that "[w]e have been completely neutral in these elections"¹⁵⁸.

Thirdly, the existence of a duty of moderation also appears to be a feature of diplomatic law. The negative State reactions which insulting diplomatic behaviour received in the past, attest to the fact that members of the international community impose this obligation on diplomatic agents as well. One illustration is the 1983 case of the Libyan representatives in Australia who had disseminated copies of a letter calling Ronald Reagan a "new world Hitler" and subsequently became the subject of criticism by the receiving State¹⁵⁹. It is in this context that the classic case of Catacazy appears as well – the Russian Minister to the United States, who was expelled in 1871 after he had allegedly engaged in "abusive and vituperative language"¹⁶⁰.

Certain restrictions on the freedom of expression are therefore as commonly accepted in the case of diplomatic agents as in the case of civil servants, and the main duties of discretion, neutrality and moderation are identifiable in both contexts – though with different directions and purposes. The justification for such limitations may, as in the case of the clash between the duty of non-interference

¹⁵⁷ See Annex H.

¹⁵⁸ Gottlieb (1984). See also Malaysia: the 1964 case of Bell (USA) and Lebanon: the 1964 case of Meyer (USA). See also Przetacznik (1975), p. 309.

¹⁵⁹ Australia: the 1983 case of Oreibi (Libya). See also Kenya: the 2004 case of Clay (No 2) (UK).

¹⁶⁰ Moore, p. 502.

and the protection of human rights of others, be seen in a restrictive interpretation which would allow a reconciliation of the two norms. In the former conflict, the duty of non-interference had to be interpreted narrowly to allow for the continued validity of human rights; in the latter conflict, the evidence identified above suggests that the human right of expression would be interpreted narrowly to allow for the continued existence of the duty of non-interference.

An alternative explanation – and one, which perhaps finds a greater measure of support in the international community – is the consideration that diplomats, upon entering this particular service, accept an implied waiver of their freedom of expression to the extent of the limits dictated by the office. This was in fact the conclusion which the European Commission on human rights reached in the analogous case of *Haseldine*: The Commission found that

"by entering the diplomatic service the applicant accepted certain restrictions on the exercise of his freedom of expression as being inherent in his duties."¹⁶¹

It appears reasonable to infer a similar acceptance of inherent limitations in the case of diplomats in their relations with receiving States.

In aspects of life which are not affected by the fulfilment of their duties, civil servants continue to enjoy the rights from which every individual in their State can benefit. The European Court of Human Rights thus found in the case of *Vogt v Germany*:

¹⁶¹ *Haseldine v The United Kingdom*, Admissibility Decision 13 May 1992.

"Although it is legitimate for a State to impose on civil servants, on account of their status, a duty of discretion, civil servants are individuals and, as such, qualify for the protection of Article 10 [...] of the Convention."¹⁶²

The same consideration applies to diplomatic agents in the receiving State. The residual freedom of expression, being a human right, exists for representatives of foreign States as it does for other persons¹⁶³, once the diplomatic agents have fulfilled the duties imposed upon their office¹⁶⁴. This "diplomatic office" on the other hand is a very broad concept and is capable of leaving its mark on acts which even the diplomatic agent had not intended to be "official"¹⁶⁵. The realm of genuinely private acts can therefore, in practice, be limited to a considerable degree.

* * *

The identification of the legal context of interference is an important step towards an understanding of interference itself. For the norms considered in this regard are

¹⁶² *Vogt v. Germany*, (1996) 21 EHRR, para. 53. See also *Glaserapp v Germany*, (1986) 9 EHRR, para 49; and partly dissenting opinion Spielmann in the *Glaserapp* case, paras 3, 13 and 14. Cf. also Krisch, p. 249.

¹⁶³ It is interesting to note in this context that even in the 18th century, *Wolff* stated that ambassadors "as regards those acts which are required to conduct that business [for which they are sent] they differ from other foreigners [...] but as regards their own private acts, which have no bearing on that business, they do not differ from other foreigners", *Wolff*, p. 534. However, it has been pointed out above that the remit for acts which the diplomatic agent performed in a clearly private capacity can be very narrow (*supra*, p. 115). – The receiving State can of course impose further limitations on the freedom of expression for *all* persons under its jurisdiction, if certain conditions are met. Cf. Article 19 (3) ICCPR, Article 10 (2) ECHR and Article 13 (2) – (5) ACHR which all provide for the possibility of limitations. Limiting the freedom of expression in particular to protect the "rights and reputations of others" may have an impact on diplomatic work as well – *Salmon* for one points to the violation of libel laws as one of the pitfalls which diplomatic agents have to avoid. See *supra*, p.148.

¹⁶⁴ Civil servants as citizens of the receiving State of course enjoy additional rights outside the freedom of expression – such as certain political rights – which those diplomats who are not nationals of the receiving State do not have.

¹⁶⁵ See *supra*, p. 109.

provisions which can impact on the same diplomatic behaviour that forms the basis of allegations of interference and on the legal evaluation of the conduct. They may be prohibitive norms, whose thrust goes in the same direction as the ban on interference; they may be permissive norms, which appear to give the diplomatic agents a basis for their behaviour. Chief among the permissive norms – in view of their relevance in international relations – is the regulation of diplomatic functions, whose adequate assessment necessitates an evaluation of the legality of the diplomatic behaviour.

Apart from the fulfilment of functions, the exercise of human rights may be used as a justification for the acts of the agent. The two aspects discussed in this context were the protection of the rights of others and the protection of the diplomat's own freedom of expression. With regard to the latter right, it has been found that analogies can be made to the position of State civil servants as identified by the main human rights bodies. The duties of diplomats may differ from those of civil servants as far as their purpose is concerned, but the forms of limitation put upon the freedom of expression are remarkably similar in both cases.

**Part II – The Fields of Interference Through
the Diplomatic Message**

While academic commentators and the members of the International Law Commission themselves made an attempt to come to a closer understanding of the concept of interference by providing examples in the field, the view that clear areas of interference exist, is not uncontested. The reason is that the term "interference" appears to be too elusive to be subject to definitional guidelines. *Salmon* speaks in this regard of a "relative concept" ("un concept relatif") which experiences variations in time and space¹. The view has also been suggested that the evaluation of diplomatic conduct as interference depends on the "liberality" of the regime to which the diplomatic agent is accredited².

On the other hand, by incorporating the concept of diplomatic interference in an international convention, the drafters opened it up to traditional methods of Treaty interpretation – including the literal interpretation, which presupposes an understanding of the ordinary meaning of the term. An exploration of the "ordinary meaning" can involve a method of categorization – an approach by which categories are formed, based on the properties of particular objects³. Interference, from this point of view, would be defined by its constituent definitional elements. But in modern linguistic debate, the traditional method of categorization is frequently seen as insufficient to approach the meaning of an object⁴. The prototype theory, proposed by *Eleanor Rosch*, takes this criticism into account and suggests that an audience perceives the meaning of a word by reference to

¹ *Salmon* (1996), p. 129, para. 198. *NYIL* (1984), p. 308.

² Cf. in the particular context of contacts with the opposition, *Salmon* (1996), p. 130, para. 200.

³ The meaning of "chair", for instance, could be covered by the equation "four legs + seat + back". See *Frank* (2001) (with reference to the classical Aristotelian method of categorization).

⁴ One question that arises concerns the appearance of "non-typical" members of the category. Is a chair which is missing one leg still a chair?

particular examples which appear more typical for the concept in question than others⁵. This school of thought thus acknowledges that examples may exist which are atypical, but it suggests that the users of words do consider certain members of a category as its preferred representatives⁶. Interference, from this perspective, is then understood by reference to the typical representatives of the concept – an approach which is also apparent in the 1958 Draft Commentary of the ILC, which suggested by way of example that diplomatic agents "must not take part in political campaigns"⁷. The identification of typical areas of interference is therefore essential for an understanding of the "ordinary meaning" of the term. Apart from the usefulness of this method as a tool of interpretation, it carries a particular significance for the establishment of customary international law in the field. The differences in time, space, liberality of the regime and cultural traditions of the receiving State may be considerable; but if there are forms of diplomatic behaviour which, across all these divisions, have been condemned as "interference", then they will provide the clearest form of evidence for the understanding of interference as adopted by the international community.

This thesis follows the view that the identification of areas of interference is not only useful, but also a possible endeavour. The case of the Spanish Ambassador Mendoza who in the 16th century was involved in a plot to overthrow Queen

⁵ A kitchen chair therefore may serve as a typical example for the object "chair"; a dentist's chair or a ducking stool are perhaps less prominent prototypes. Cf. Rosch (1973), p. 113.

⁶ Cf. the study which *Rosch* conducted with 200 American psychology students who were given a list of members of certain categories (furniture, vehicle, toys, clothing etc) and asked to state if they considered the members to be good representatives of the category or not. In the ranking that emerged, objects like "chair", "sofa", "couch" occupied the first three ranks of the category "furniture", whereas "fan" and "telephone" occupied the bottom ranks. An automobile was a more typical "vehicle" than an elevator, a doll a more typical "toy" than books, pants were more typical items of "clothing" than a cane. Rosch (1975), pp. 197 – 199, 229 – 233 (Experiment 1).

⁷ ILC Draft Articles 1958, Art. 40, Commentary.

Elizabeth I, may be mentioned by way of example⁸. Any State respecting its sovereignty is likely to view this kind of diplomatic behaviour as a prototype of interference – regardless of the State's political or cultural setup. As one author indicated: the examination of State practice serves as good evidence for the existence of "sensitive zones" of interference⁹.

The existence of prototypes of interference does not negate the usefulness of a structural framework. With regard to interference through the diplomatic message, it is in particular possible to distinguish various aspects of the behaviour in question, which facilitates the understanding of the concept. Thus, a receiving State might object to the very subject matter which forms the focus of the conduct – ie, to the topics of the diplomatic message. A receiving State might also take exception to the contacts which help diplomatic agents in the fulfilment of their tasks – the recipients (channels) of a diplomatic message. Lastly, a receiving State may criticize the method of the conduct – the very activities employed in the dissemination of the diplomatic message. A similar classification was suggested by Padilla Nervo in the International Law Commission, when he voiced the opinion that interference could be carried out

"through improper channels, on matters that lay outside the scope of his legitimate official interests, and in a manner inconsistent with the nature of the diplomatic function"¹⁰.

⁸ The case according to Satow (1979), p. 179, para. 21.16; Calvo (1888), p. 315.

⁹ "zones sensibles", Salmon (1996), p. 129, para. 198.

¹⁰ YILC 1957 (1), p. 149, para. 42 [Mr. Padilla Nervo].

This division into objects, contacts and methods forms the structural basis for the following analysis. As these three elements are present in every situation in which a diplomatic message has been sent, the discussion of individual forms of interference is possible under several headings. In the following chapters, instances of interference are therefore investigated in those contexts which appear most significant for the sanction which the conduct received. For instance, situations in which diplomats conversed with the public, are discussed in Chapter 6 (Channels of Interference) when the selection of the channel itself gave rise to criticism. They are also discussed in Chapter 7 (Methods of Interference), when the propaganda activity of the diplomat was the focus of the accusations. Participation in political campaigns is discussed in Chapter 5 (Objects of Interference), as there is evidence that States are concerned not about a particular activity, but about *any* partisan involvement in this particular topic.

On some occasions, it is not the element itself, but a combination of two elements, which triggered the State reaction – for instance, the link between a particular topic and a particular channel. These cases will be explained in more detail when they arise.

The adoption of this method is informed by the opportunities it offers for a more detailed legal analysis. For instance, each of the forms of potential interference which are thus established, may also provide diplomats with possible justifications for their conduct; but the justifications may vary from instance to instance. These justifications are established mainly through the legitimate fulfilment of diplomatic

functions, but may also derive from other norms of international law which call for the behaviour adopted by the diplomatic agent¹¹.

¹¹ See *supra*, pp. 151 et seq.

Chapter 5 – The Objects of Interference

1. Objects inside and outside the receiving State

The original Draft Article on interference which was discussed in the International Law Commission banned interference both in the "domestic" and in "foreign politics" of the receiving State¹. But doubts about the wisdom of including "foreign politics" were expressed at a very early stage. Fitzmaurice for one took the view that the role of diplomatic agents was "precisely, if not to interfere, at least to concern themselves with its foreign policy"². Other members of the ILC supported this position³. At the end of the debate, the suggestion was accepted that the wording of the provision should be referred to the Drafting Committee⁴.

The revised Article stated that interference "in the internal affairs" of the receiving State was forbidden⁵. This wording remained the same at the Vienna Conference and is today reproduced in Article 41 of the *Vienna Convention*.

Prima facie, this version seemed to indicate a reduction of the ambit of the norm; and this is in fact the interpretation it receives in the views of some academic writers⁶.

¹ YILC 1957 (1), p. 143, para. 55 [Padilla Nervo]; Annex F, para. 55.

² YILC 1957 (1), p. 145, para. 76 [Sir Gerald Fitzmaurice].

³ YILC 1957 (1), p. 146, para. 2 [Mr. Ago], YILC 1957 (1), p. 146, para. 7 [Mr. Tunkin], YILC 1957 (1), p. 147, para. 11 [Mr Yokota].

⁴ Cf. YILC 1957 (1), p. 149, para. 42 [Mr Padilla Nervo] and p. 150, para. 52 [Mr Amado].

⁵ YILC 1957 (1), p. 220, para. 78 [Mr.Tunkin], and see ILC Draft Articles 1957 [Article 33].

But there is reason to believe that such an understanding of the rule of non-interference would depart from customary international law as it existed at the time of the ILC debates. Of the various draft codes which were in existence by that time, only *Fiore's* code contained a provision which was similarly narrow⁷. The draft codes by the American Institute of International Law⁸ and the International Commission of American Jurists⁹ ban interference both in the internal and foreign "political life" of the receiving State¹⁰. *Bluntschli's* draft code simply speaks of meddling in the "affaires du pays"¹¹, whereas *Phillimore* calls on diplomatic agents to "consider the welfare of the country to which they are sent"¹². The 1928 *Havana Convention* stated that participation "in the domestic or foreign politics" of the receiving State is not allowed¹³. State practice in existence at that time supports the view that States would not tolerate the meddling in foreign affairs either¹⁴.

⁶ Denza (1998), Art. 41, p. 376; Richtsteig, Art. 41, p. 98. Some writers had even before the signing of the *Vienna Convention* expressed the view that the rule of non-interference concerned interference in the internal affairs of the State, see Szilassy, pp. 140, 141.

⁷ See *Fiore's Draft Code* (1890), para. 482.

⁸ *Project of the American Institute of International Law* (1925), Article 16.

⁹ *Project of the International Commission of American Jurists* (1927), Article 16.

¹⁰ In 1921, *Ellery Stowell* went so far as to say: "No doubt interference in international affairs is generally a more serious offense, and will be found to be less frequently extenuated by circumstances", *Stowell*, pp. 320, 321.

¹¹ *Bluntschli's Draft Code* (1868), para. 225.

¹² *Phillimore's Draft Code* (1926), para. 34.

¹³ *Havana Convention* (1928), Article 12. See also the *Resolution by American Foreign Ministers* 1940, *Hackworth*, p. 474. Cf. also *Accioly* (2), p. 331, para. 1150.

¹⁴ See for instance the case of *Goodrich* (1757): refusal to accept the British envoy to Sweden because he had visited the prince of a third country, with which Sweden was at war. *Schmalz*, p. 87. Also the *Marcoleta* case (1906): demand of recall of the Nicaraguan Minister to the USA, where the object of interference was the construction of an interoceanic canal, *Moore*, pp. 497 – 499. Also the *Suritz* case (1940): demand of recall of the Soviet Ambassador to France, who had congratulated Stalin in an uncoded telegram on having defeated the plans of "Anglo-French warmongers", *Time*, 8 April 1940, "Allies v. Soviets"; *The Times*, "France And The Soviet. The Recall Of M. Suritz, Relations With Italy", 28 March 1940. See also Chapter I, section 15 of the *Foreign Service Regulations* of the United States (January 1941), which simply banned participation in "political matters of the country to which [officers of the Foreign Service] are accredited or assigned." *Hackworth*, p. 472.

State practice after the signing of the *Vienna Convention* points in a similar direction¹⁵. Thus, when in 2001 the Chinese Ambassador to South Korea, Wu Dawei, suggested that South Korea should engage in prior consultations with China if it wished to tackle the issue of reopening direct air flights to Taiwan, he made remarks which clearly touched upon the external affairs of the receiving State. But this statement evoked a negative response by a member of the Korean government who called the Ambassador's comments "nonsense" and added that the decision "is purely up to us"¹⁶. This comment highlights a fundamental problem which an attempt to narrow the ban on interference to "internal affairs", encounters: some issues of "foreign politics" are considered by receiving States to lie squarely within their own domain. Even in the debates of the ILC, a similar line of thought had been advanced by the Secretary of the Commission (Liang):

"As for the reference to 'domestic or foreign politics', logically speaking the formulation and directing of the foreign policy of a State came within the meaning of 'matters within its domestic jurisdiction'."¹⁷

The clarity of the distinction between "internal" and "external" politics is therefore impaired by the nature of the subject matter – in particular, by the possibility of overlaps between the two concepts.

¹⁵ See Netherlands: the 1965 case of the Chinese chargé d'affaires and the 1970 case of the Soviet mission; Yugoslavia: the 1976 case of Silberman (No 1) (USA); Greece: the 1977 case of Schaufele (USA); India: the 1982 case of Hasseen (Israel); Australia: the 1983 case of Oreibi (Libya) and the 2001 case of Xiaoping (China); Sierra Leone: the 1994 case of Prinz (No 2) (Germany); Turkey: the 1997 case of Baqeri (Iran); Germany: the 2001 case of Coats (USA); United Kingdom: the 2002 case of Algosaibi (No 1 and No 2); Sweden: the 2004 case of Mazel (Israel).

¹⁶ Son (2000).

¹⁷ YILC 1957 (1), p. 147, para. 14 [Mr. Liang].

This possibility invites the consideration of a range of situations in which a *prima facie* external matter may have repercussions on the internal affairs of the receiving State.

First of all, the "formulation and direction" of foreign policy, to use Liang's words, is done by organs of the receiving State; and the creation of a particular position in foreign affairs is therefore regularly seen by the host as a matter which falls within its exclusive domain.

A case occurring in 1983 illustrates this matter. The South African Ambassador to Australia, Worrall, was quoted as referring to the Australian policy towards his State as "confrontational, prescriptive and intrusive". The Australian Foreign Minister declared that he considered these remarks to exceed limits of propriety. Pik Botha on the other hand, his South African colleague, pointed out that his Ambassador had only discussed foreign policy and had not touched upon Australian domestic policy at all¹⁸.

However, in cases of this kind, the diplomatic conduct is still perceived as unacceptable by the receiving State¹⁹, which may with some justification consider this behaviour as relating to the work of those of its authorities to whom the task of shaping foreign policies is entrusted, and thus as an intrusion in its internal affairs²⁰.

Secondly, a similar situation arises when a diplomatic agent makes negative remarks about a third state. This too, is *prima facie* a matter of external relations.

¹⁸ *BBC Summary of World Broadcasts (Johannesburg Home Service, South Africa, 29 March 1983), "Pik Botha's Response to Australian Criticism", 30 March 1983.*

¹⁹ See also the 1977 case of Irrarazabal, the Chilean Ambassador to France and the 2001 case of Ren Xiaoping (spokeswoman of the Chinese embassy in Australia). For a case before the *Vienna Convention*: the case of the Japanese Ambassador to the United States, who in 1921 stated his opinion on a pending piece of legislation which would have terminated the Gentleman's Agreement between the USA and Japan of 1907, Stuart, p. 540.

²⁰ Cf. also Dembinski, p. 232. See also Rosenau's definition of "intervention" follows a similar reasoning; he includes acts which aim at the modification of policies which emanate from the decision-making process of the authority structure of the foreign State, be they internal policies or foreign policies. Rosenau (1969), as referred to in Kegley et al., p. 83.

But it has been pointed out in the literature that such statements can impair the receiving State's relations with the third State, and should therefore be considered to fall within the scope of prohibited interference²¹. Reference can be made to the 1983 case involving the Libyan People's Bureau in Australia, which had made available copies of a letter in which Colonel Ghaddafi had called Reagan a "new world Hitler". As a result, the mission became subject of sharp criticism by the Australian Foreign Ministry²².

In such a situation, a receiving State may in fact not have much of a choice, as silence can be interpreted by the affected third State as acceptance of the diplomatic conduct²³. But by thus provoking a clear expression of the receiving State's views, the diplomatic agent forces a decision in a domain which the former considers its own.

Thirdly, in some situations, diplomatic agents might remark on the relationship between the receiving State and an international organization. This too seems to be a matter of external affairs which should not be covered by the wording of Article 41. But it is here that the overlap between foreign policies and their formulation by State organs becomes particularly apparent. When therefore Dan Coats in 2001, at his confirmation hearing for the post of US Ambassador to Germany, indicated that his prospective receiving State needed to allocate more resources to NATO, his remarks met with distinctive criticism by the German side which considered the

²¹ Richtsteig, Art. 3, p. 23.

²² *Australian Yearbook of International Law*, (1981 – 1983), pp. 505 – 506. See also the 1961 case of the Polish Ambassador to the USA.

²³ See Salmon (1996), p. 135, para. 207.

matter to be "an internal German issue"²⁴. There is no doubt that budgetary issues would usually be considered to fall within the internal affairs of the receiving State. Fourthly, the object of the diplomatic message may, because of its very nature, contain internal and external aspects²⁵. Thus, a diplomatic agent might refer to a territory whose sovereignty is disputed between the receiving State and a third State. The case of the US Ambassador Nancy Powell, who in 2003 called on Pakistan to stop militants from infiltrating Kashmir, may be named as an example²⁶. It is of some significance that the Pakistani Prime Minister in the context of this case declared that "[n]o one would be allowed to interfere in our internal affairs"²⁷.

Fifthly, a similar situation exists if the message concerns *erga omnes* obligations of the receiving State. When in July 2000 the American Ambassador to Indonesia, Robert Gelbard, called on Indonesia to bring "to justice those who were responsible for the violence in East Timor", he had to face criticism from the receiving State and demands for his recall²⁸. However, the punishment of perpetrators of genocide²⁹ is a duty enshrined in Article I of the *Genocide Convention* which embodies customary international law³⁰; and the ICJ stated in 1996 that the duties

²⁴ Lindsay (2001). See *supra*, p. 58. See also the speech given by a German diplomat in the course of the EU referendum campaign in Estonia, *supra*, p. 151.

²⁵ Cf. on this problem Asante, p. 261.

²⁶ See *supra*, p. 129.

²⁷ BBC Worldwide Monitoring (The News web site), "Pakistani premier says interference in Pakistani affairs not to be allowed", 26 January 2003.

²⁸ Spencer (2000).

²⁹ The basic documents of the District Court in Dili, which deals with the adjudication of crimes committed in the period following the declaration of independence by East Timor, work on the assumption that genocide may have been committed in this period (see jurisdiction of the Dili Court, in UNTAET Reg. 2000/11 (6 March 2000), s. 10).

³⁰ This obligation was therefore applicable to Indonesia, which was not a party of the Genocide Convention. See *Reservations to the Genocide Convention*, ICJ Reports 1951, p. 23 on the binding force of principles of the Convention even on States which are non-parties.

established by the *Genocide Convention* were owed *erga omnes*³¹. From the perspective of a receiving State on the other hand, it still appeared that the diplomatic agent of a foreign power was offering unsolicited advice on the work of its domestic criminal justice system.

The diplomatic message may also concern other grave breaches of human rights in the receiving State. Sometimes, as *Sen* points out, there may be a link to the interests of other states: "such a situation may sow the seeds of a revolution whose repercussions may not be confined within the boundary of the particular state"³². Some human rights violations (such as slavery, racial discrimination) are breaches of obligations which exist *erga omnes*³³. But on the point of racial discrimination it may be recalled that, for instance, the South African Prime Minister Botha in 1987 criticized Western diplomats who had "gone out of their way to express solidarity with the black population"³⁴ and whom he accused of "meddling in South African politics"³⁵. The protection of "basic rights of the human person"³⁶ may be owed to the international community as a whole, but from the perspective of the receiving State, they also impact upon important aspects which belong to the domestic domain of the State.

If these cases appear to support Liang's comment in the ILC, it should also be noted that his concerns were shared by other members of the Commission. Padilla Nervo agreed that it was "not always easy" to tell external policy apart from "matters of

³¹ *Application of the Genocide Convention, Preliminary Objections*, ICJ Reports 1996, para. 31. See also *Barcelona Traction*, ICJ Reports 1970, para. 34. More recently, the ICJ accepted that the right of peoples to self-determination contains an *erga omnes* obligation, *East Timor*, ICJ Reports 1995, para. 29.

³² *Sen* (1988), p. 54.

³³ *Barcelona Traction*, ICJ Reports 1970, para. 34.

³⁴ *Jim Jones* (1987).

³⁵ *Lehrer et al* (1987).

³⁶ cf. *Barcelona Traction*, ICJ Reports 1970, para. 34.

domestic concern"³⁷. Special Rapporteur Sandström suggested that the wording of Article 12 of the *Havana Convention* (which included a ban on participation in foreign politics) be used; and when, at the end of the 412th meeting, it was decided to leave the matter to the Drafting Committee, Amado likewise requested the Committee to keep in mind the wording of that Article of the *Havana Convention* – "since that appeared to meet the point precisely"³⁸.

In the discussions of the commentary on the Draft Article on non-interference, García Amador remarked that "the concept of 'internal affairs' in the article had already been interpreted by the Secretary as covering both domestic and foreign politics"³⁹.

There arose no opposition to García Amador's suggestion on this interpretation of the norm. On the contrary, two members of the ILC expressed clear support for his view⁴⁰. Tunkin added that the words "internal order" (in the first draft of the article⁴¹) had to be understood not as indicating a territorial notion, but in the meaning of Article 2 (7) of the UN Charter⁴². There however, reference had been made to "matters [...] within the domestic jurisdiction" of the State concerned.

This interpretation would give the phrase "internal affairs" a rather extensive understanding; but in light of the considerations made above and the corresponding State practice, it seems the preferable approach. As long as the object of the message concerns an aspect which falls within the sovereign rights of the receiving State, it affects its "domestic jurisdiction", and only if that possibility can be ruled

³⁷ YILC 1957 (1), p. 149, para. 42 [Mr Padilla Nervo].

³⁸ YILC 1957 (1), p. 150, para. 52 [Mr Amado].

³⁹ YILC 1957 (1), p. 220, para. 76 [Mr. García Amador].

⁴⁰ YILC 1957 (1), p. 220, para. 78 [Mr.Tunkin]; YILC 1957 (1), p. 220, para. 79 [Mr. Scelle].

⁴¹ See *supra*, Annex F, para. 55. The construction of the first draft suggests that a diplomatic "manner consistent with the internal order" of the receiving State was seen as encompassing the absence of interference (cf. the words "in particular" in that draft).

⁴² YILC 1957 (1), p. 220, para. 78 [Mr.Tunkin], and see YILC 1957 (1), p. 146, para. 8 [Mr Tunkin].

out (for instance, if the topic exclusively concerns debates between political parties in the *sending* State), could it be said that it does not fall within the "internal affairs" of the State.

2. Particular Objects of Interference through the Diplomatic Message

a. The receiving State as such

The receiving State, its constitutional and political structure have, as objects of the diplomatic message, received a certain measure of attention in academic debate.

Satow for one mentions the fact that a potential receiving State might refuse a candidate for a diplomatic post if the candidate "entertained sentiments of enmity toward" that State⁴³. State practice however does not provide many examples of this kind. In most cases, the object of the message is more narrowly defined.

However, one example in this category is the 1981 case of Berrington, a US diplomat in Ireland, who in a letter had made derogatory remarks about the receiving State⁴⁴. Ireland took no steps against Berrington, but it should be noted that the Ministry of Foreign Affairs refrained from so doing as it deemed the letter to be "private"⁴⁵. An official at that time was quoted as stating "[w]e are as sensitive as the next country but we are not hypersensitive [...]", which suggests that the reason behind the lack of State reaction was not to be seen in any consent to this form of behaviour but in the fact that the statements did not reach the level of a diplomatic incident. It should also be mentioned that, even though no negative

⁴³ *Satow* (1979), p. 89.

⁴⁴ See *supra*, p. 128.

⁴⁵ *Flynn* (1981).

reaction was forthcoming from the hosts, the sending State did recall its own agent⁴⁶.

When in March 1976 the American Ambassador to Mexico Joseph-John Jova described Mexico as a State with a "monarchical" system of succession, the reaction was more pronounced. On that occasion, a government minister (and candidate in the presidential elections) took exception to the remarks and stated that they constituted "apparent efforts to destabilise through mocking criticism"⁴⁷. The ambassador felt compelled to issue a statement in which he now described Mexico as "a model of democracy and authentic freedom"⁴⁸.

The fulfilment of certain diplomatic functions may require the agent to use the receiving State as an object of the diplomatic message. A situation of this kind may arise if the diplomat has to protect the interests of the sending State or its nationals under Article 3 (1) (b) of the *Vienna Convention*. If for instance a certain territory is disputed between sending and receiving State, the diplomatic agent must enjoy the right to make representations on behalf of the government of the sending State⁴⁹. *Richtsteig* stresses that the observation of this function permits even critical statements about the receiving State⁵⁰.

A review of the cases mentioned in this context however reveals that the offending diplomatic behaviour was often not limited to a mere criticism of the State, but contained an element of insult as well. A very pronounced threat to the dignity of the receiving State might even be countered with withdrawal or expulsion, as the

⁴⁶ Flynn (1981).

⁴⁷ Intelligence Research Latin America, "Mexico", 2 April 1976.

⁴⁸ Intelligence Research, *loc. cit.*

⁴⁹ See Sen (1988), p. 60.

⁵⁰ Richtsteig, Art. 41, p. 98.

1981 case of Berrington, but also the 2000 case of Irfanur Raja have shown⁵¹. But conduct of an insulting nature concerns the activity rather than the object of the message (see Chapter 7). Based on the available State practice, it is not possible to come to the conclusion that the international community is willing to withdraw this particular object – the receiving State as such – from the remit of the permitted diplomatic message.

b. Political affairs

Political objects of diplomatic messages constitute the area which the receiving State views with the greatest suspicion, and in which the greatest number of cases of negative State reactions have arisen. This is reflected by the emphasis which members of the ILC put on this particular issue⁵². Its importance as a potential target of the diplomatic message is also stressed in academic debate; *Oppenheim* for instance maintains that diplomatic agents "have no right whatever to take part in [the] political life" of the receiving State⁵³; and it has also been established that, with regard to political matters, a diplomatic duty of reserve exists⁵⁴.

On the other hand, it is the very office of the diplomatic agent which may provide justifications in this regard. It is particularly in the field of political objects that the function of Article 3 (1) (b) of the *Vienna Convention* may be affected. This

⁵¹ See the 2000 case of Raja (Bangladesh and Pakistan).

⁵² Cf. YILC 1957 (1), p. 146, para. 2 [Mr Ago] ("interference in domestic politics"), YILC 1957 (1), p. 146, para. 2 [Mr Ago] ("meddling in the politics of the receiving State" seen as an example of interference), YILC 1957 (1), p. 145, para. 80 [Mr Bartos] ("domestic, but also [...] foreign policy").

⁵³ Oppenheim (1967), p. 787. See also *F. E. Smith*, who refers to the ban of Ambassador's "association [...] with the public affairs of the country to which they are accredited", Smith, p. 70.

⁵⁴ *AFDI* (1977), p. 1070. See also *supra*, p. 182.

conflict of norms was well understood even during the debates of the ILC, in which Bartos pointed out that the rule against interference

"did not affect the right of [...] envoys to intervene in a proper manner in order to defend the interests of their sending States even in matters of domestic policy."⁵⁵

Later writers on diplomatic law agree that this is a field in which the diplomatic agent is likely to be called upon to act⁵⁶.

A review of State practice shows that one area within the field of political objects carries the greatest potential for conflict for the diplomatic messenger: that of partisan politics in the context of electoral campaigns. The significance of this object was recognised in the ILC debates⁵⁷; indeed, the "tak[ing] part in political campaigns" was the only example of interference which the ILC's 1958 Commentary on the Draft Articles mentioned⁵⁸. Academic commentators also accepted the importance of this issue and included it in their lists of potential fields of interference⁵⁹.

The practice of receiving States on diplomatic participation in political campaigns (as opposed to statements on their fairness, their compliance with international standards etc⁶⁰) appears to be quite clear: as a rule, such conduct meets with disapproval in States with varying political and ideological systems (although the

⁵⁵ YILC 1957 (1), p. 145, para. 80 [Mr Bartos].

⁵⁶ Sen (1988), p. 60.

⁵⁷ see YILC 1957 (1), p. 148, para. 26 [Mr. Matine-Daftary].

⁵⁸ See Annex H.

⁵⁹ e.g. Glahn 1986, p. 462; Oppenheim (1967), p. 787; Green, p. 149; Louter, p. 38; Fenwick, p. 561.

⁶⁰ These forms of conduct will be discussed *infra*, p. 229).

sanctions which were adopted, differ considerably)⁶¹. In some cases, even sending States felt it necessary to remind its agents that participation in campaigning was not acceptable behaviour. The 1964 warning issued by the US State Department to employees of the American embassy in Malaysia is of interest here⁶². The State Department made clear that any participation in partisan politics would require the respective diplomats to resign their posts; it was therefore the object of the message (the elections), and not a particular activity, which was deemed to be potentially offensive.

Among the defences employed by diplomatic agents in these situations, the function of observation features prominently. When the US Ambassador to Ireland Shannon was seen on the campaign bus of the *Fine Gael* party in 1981, he referred to his duty of reporting on events in the receiving State to his government and stated that it had been his intention to spend time with a representative of each of the leading parties⁶³. This explanation was not accepted by Charles Haughey, then Prime Minister of Ireland, who observed that Shannon had "put his foot in" and remarked that his own party would not have considered his taking part in its campaign⁶⁴.

The British Foreign Office took a more lenient approach when, in 2001, it replied to a complaint about the Pakistani High Commissioner who had allegedly joined the campaign of the Conservative Parliamentary candidate in Bradford. A spokesman stated that it was "usual" for diplomats

⁶¹ See Nicaragua: 1984 case of Bergold (US), accusation; Bulgaria: 2001 case of Smirnov (Russia), expulsion; United States: 1964 case of Bell (US), preventive warning; 1964 case of Meyer (US) preventive warning; Ireland: 1981 case of Shannon (US), criticism.

⁶² See *supra*, p. 64; cf. also the 1964 case of Meyer (US).

⁶³ Green, p. 149.

⁶⁴ *Associated Press*, "U.S. Ambassador in Controversy Over Irish Elections", 27 May 1981.

"to attend and observe political meetings, it's part of their job. The fact that he has been at these meetings is not a problem at all."⁶⁵

The Foreign Office however agreed to look into the allegations⁶⁶.

If Britain were to accept the active campaigning on behalf of a political party as part of the diplomatic function of observation, she would certainly find herself in an isolated position. Shannon's view appears more understandable: a diplomatic agent might seek to fulfil the function of observation by following the campaign trail, while refraining from actively participating in the political effort. In Shannon's case, the question may be asked why it would be necessary to board the party's campaign bus instead of watching the event as a distant observer. The spatial and temporal proximity to the political event has been referred to above⁶⁷ as one of the important factors in deciding whether a message (in this case, a message of support) had been delivered. By taking part in the campaign, a diplomatic agent does make a *prima facie* case for a finding of interference in the internal affairs of the State, and may find it difficult to rebut this presumption.

In this field of diplomatic behaviour, diplomatic agents may also claim to have acted to protect the interests of the sending State. However, as a defence against the participation in a campaign itself (as opposed to the mere meeting of political candidates) this is rarely invoked. One such incident can be seen in the 2000 case of Raymond Chrétien, the Canadian Ambassador to the United States, who, in the run-up to the American presidential elections of that year had come out in favour of Al Gore as a "friend of Canada" and criticized George W Bush⁶⁸. His remarks

⁶⁵ Walsh (2001).

⁶⁶ Walsh (2001).

⁶⁷ *Supra*, p. 132.

⁶⁸ Thorne (2000).

might well be understood to refer to the protection of the interests of the sending State. But neither can it be said that such an exception to the ban on interference in these instances has found support in the international community, nor was this a case where the fulfilment of a function under Article 3 (1) (b) was, on the factual side, free from doubt⁶⁹.

Diplomatic involvement in party politics has not only come under attack when political campaigns were concerned. On some occasions, the receiving State found it objectionable that diplomats engaged in criticism or endorsement of political parties outside the context of campaigns. These instances in fact involve a combination of object and activity. The object of the message on its own (the political party) would not usually appear offensive, had the diplomats restricted themselves to neutral comments. On the other hand, the activity alone might have been accepted, had it involved a more neutral target.

There is some evidence that the endorsement of a faction in the receiving State or its policies will not be tolerated⁷⁰. Such endorsement may be quite overt⁷¹, or it may be implicit in behaviour whose main thrust ostensibly goes in a different direction – as in the case of Sandrolini, the US consul general to India who in 2000 sent employees of the consulate to the Birbhum district, where eleven Trinamool activists had been killed in the previous month⁷². This may, on the face of it, not

⁶⁹ See *supra*, p. 155.

⁷⁰ Cf. Turkey: the 1979 case of Dodson (UK); United Kingdom: Singapore: the 1988 case of Hendrickson (US); Israel: the 1996 case of Martin Indyk (US); Afghanistan: the 1998 case of certain Iranian diplomats; India: the 2000 case of Sandrolini (UK). See Annex A for details and sources.

⁷¹ See the 1988 case of Hendrickson (US) in Singapore.

⁷² See *supra*, p. 41.

have been a promotion of the All Trinamool Congress, but the receiving State still felt that a violation of the duty of non-interference had occurred⁷³.

There is less evidence that criticism of a party other than the ruling one would also be seen as an unacceptable act⁷⁴. The reason for that is to be found in pragmatic considerations: the government of the receiving State will, in general, have no reason to be upset about criticism directed at an opposition party.

This raises the question whether the negative reactions given to the dissemination of an endorsement are based on political considerations or on *opinio iuris* to the effect that diplomats are barred from this conduct. Writers on diplomatic law however assert that the ban on endorsements (or criticisms) of political parties is indeed embraced by the rule of non-interference⁷⁵. Here, as in the case of participation in political campaigns, the diplomatic agent adopting such behaviour will at any rate give the appearance of violating Article 41 (1) 2 of the *Vienna Convention*.

On the other hand, it is suggested that a diplomatic agent in this situation may find it easier to rebut the assumption of interference by reference to the fulfilment of diplomatic duties than in the context of political campaigns. The efficient safeguarding of the sending State's interests in particular presupposes the possibility of early action by the diplomatic agent. If therefore a party which is intent on forming the next government of the receiving State, supports policies which are detrimental to the sending State, the latter cannot be expected to wait until the party has attained a position of power, when any attempt to influence the

⁷³ The 2000 case of Sandrolini (US) in India.

⁷⁴ But see Belgium: the 1979 case of a Zairian diplomat. There was no official State reaction when Raymond Chrétien in the above mentioned case of 2000 criticized the Presidential candidate of the Republican party.

⁷⁵ Glahn 1986, p. 462; Oppenheim (1967), p. 787; Oppenheim (1992), p. 1068.

course of its policies might be in vain. Nor could it be said that a diplomatic agent in such a situation is entirely comparable to the agent who participates in political campaigns. In the first case, the diplomatic conduct may influence the party manifesto in order to safeguard the interests of the sending State. In the second case, the diplomatic conduct affects the freedom of the vote – ultimately, the right to decide about the composition of the government of the State. This however, is a sovereign right which only the receiving State enjoys.

In some cases, a diplomatic agent may invoke the function of observation in justification of the offending behaviour. Sandrolini in the above-mentioned case referred to the freedom of travel⁷⁶; a freedom which was considered by the drafters of the relevant provision as a necessary prerequisite for diplomatic observation⁷⁷. Commentators described the officials' journey as a "fact-finding mission"⁷⁸.

The evaluation of such situations depends on the circumstances of the individual case, and in particular on the question which component – the dissemination of a message or the collection of information – serves as a better characterization of the particular conduct. A consular agent who, as in this case, "requests an official version of the incident"⁷⁹ acts on a level very different from that of an agent who delivers a speech in praise of the Trinamool Party. In the former case, India would find herself in a very isolated position if she insisted that such conduct amounted to interference. In the latter case, she would join the ranks of many receiving States

⁷⁶ Article 26 of the *Vienna Convention on Diplomatic Relations*. It is remarkable that neither the Consul-General nor his critics referred to the *Vienna Convention on Consular Relations* in this context.

⁷⁷ ILC Draft Articles 1958, Article 23, para. 2, p. 96.

⁷⁸ *The Press Trust of India*, "Basu seeks PM's intervention against 'foreign interference'", 11 August 2000.

⁷⁹ *The Press Trust of India*, *loc. cit.*

who have concluded that the endorsing or criticizing of a political party is *prima facie* meddling in their internal affairs.

In other situations, diplomats have triggered negative State reactions when the object of their message had been policies adopted by the receiving government itself⁸⁰. These significant fields of potential interference will be discussed in the subsequent sections, in the contexts of the particular objectives which feature principally in the cases that have emerged since 1961.

c. Economic affairs

Economic matters, and particular economic policies, belong to the standard objects of the diplomatic message. The advice or criticism which diplomats have offered in this field, has often met with negative reactions; and it appears that these reactions emanate from States which differ considerably in their ideological and political systems⁸¹. One example is the 1975 case of the outgoing US Ambassador to Canada, Porter⁸². Porter referred in his talk to journalists to a number of matters which fell into the domain of economic policies of the receiving State. Among other issues, he criticized the withdrawal of tax privileges for certain magazines as well as controls on the takeover of Canadian firms by foreign businesses⁸³. The

⁸⁰ Cf. Glahn 1986, p. 462. On the question of potential justifications in this context, see Cahier, p. 142. For a historical case involving the Papal nuncio to Argentina in 1884, who was expelled after criticizing certain government policies, see Satow (1957), p. 299.

⁸¹ See for instance Canada: the 1975 case of Porter (US) and the 1982 case of Robinson (US); Vanuatu: the 1992 case of Pearson (Australia); Kenya: the 1995 case of Brazeal (US); Thailand: the 1999 case of Hecklinger; Ghana: the 2001 case of Murray (UK); Bangladesh: the 2001 case of Peters (US); Egypt: the 2003 case of Welch (US).

⁸² See *supra*, p. 34.

⁸³ Best (1976).

Canadian Prime Minister, speaking in Parliament, found that Porter had exceeded the limits which an ambassador must observe.

It is understandable that receiving States wish to protect the right to make their own decisions on economic policies. On the other hand, this topic represents an area in which the sending State, too, may have considerable interests. *Sen* points out that a sending State's concerns may well refer to the commercial field and names as examples preferential tariffs for products from the sending State and "investments in industrial projects"⁸⁴. In the Porter case, the argument can indeed be made that the Ambassador was protecting the interests of the United States. For instance, the magazines to which he referred when criticizing taxation policy, were the Canadian versions of two American publications (*Time* magazine and *Reader's Digest*), whereas his unease about policies on takeovers referred in particular to situations affecting US companies. Article 3 (1) (b) of the *Vienna Convention* certainly has to embrace the important field of economic affairs. This seems to be very much the situation to which *Sen* refers when he states that diplomats needs to be "ever vigilant" to prevent a situation where a receiving State might change a situation which was economically advantageous to the sending State, and that they must take "immediate steps [...] to arrest its development by making representations [...]"⁸⁵.

A closer look at the Porter case does in fact show that the diplomatic behaviour contained additional components, to which the receiving State may have taken exception. The fact that the American ambassador addressed his concerns to journalists instead of the Canadian government may have played a role in the shaping of the negative reaction which Porter received. It would not have been the

⁸⁴ *Sen* (1988), p. 60. See, on the latter alternative, the 1999 case *Hecklinger (US) in Thailand*.

⁸⁵ *Sen* (1988), p. 61.

only case in which a receiving State had been sensitive about the diplomatic dissemination of a message in such a manner⁸⁶.

Apart from Article 3 (1) (b), Article 3 (1) (e) makes specific reference to the development of economic relations as a diplomatic function – a "more recent preoccupation", as *Hardy* points out⁸⁷. According to *Richtsteig*, the promotion of trade by the diplomatic mission must be limited to "informative, mediating, general activities"⁸⁸. But if a diplomatic agent has to act in an "informative" capacity in these fields, then economic affairs can at any rate not be excluded from the objects of the diplomatic message. Save for the existence of additional elements in the diplomatic behaviour which may themselves trigger a negative State reaction, economic political decisions therefore constitute a legitimate object of the diplomatic message.

One particular aspect of economic affairs has gained an outstanding position in diplomatic messages of the recent past – the existence of corruption in the receiving State. The selection of this topic as the object of the diplomatic message has evoked criticism in several cases⁸⁹.

But if corruption is the object of the message, then it is, as with other economic matters, possible that the sending State has an interest in the issue, which the diplomat has to protect. The British High Commissioner to Kenya for instance (Clay), received a sharp rebuke from the Kenyan Minister of Foreign Affairs when, in 2004, he made remarks about corruption in the government of the receiving

⁸⁶ Cf. the 1980 case of the US Ambassador Robinson to Canada. See also Chapter 6.

⁸⁷ *Hardy*, p. 16.

⁸⁸ *Richtsteig*, Art. 3, p. 22.

⁸⁹ Cf. Ghana: the 2000 case of Craig Murray (UK); Kenya: the 2004 case of Edward Clay (UK); Zimbabwe: the 2005 case of Christopher Dell (US).

State⁹⁰. But Clay was referring to specific cases which involved a British company and was speaking as the representative of the State which was the biggest foreign investor in Kenya.

A diplomat who makes remarks of this kind may find it more difficult to rely on the function of developing economic relations – if this function is to be given the narrow scope which *Richtsteig* suggested⁹¹. A reference to corruption in the receiving State certainly goes beyond merely "general" behaviour. Bringing the existing state of corruption to the attention of the receiving State may also be perceived as an attack on the dignity of that State. But in the context of Article 3 (1) (b) of the *Vienna Convention*, it would be difficult to deny a diplomat the right to make such representations, if corruption affects the genuine business concerns of the sending State or its nationals.

A further justification for the sending State and its agents may derive under the *United Nations Convention against Corruption* (2003), if both States are parties to it⁹². Article 46 (4) of the Convention allows authorities of one State to give information relating to criminal matters to competent authorities of another State party, even "without prior request". Certain conditions are however attached to such a procedure: the transmitting State must believe that such information can assist in the criminal inquiries of the other State or result in a request by that State pursuant to the Convention, and such a transmission is still subject to the domestic law of the other State.

⁹⁰ *Africa News (The East African Standard)*, "Kenya; Bad Publicity", 27 February 2005. See also *supra*, p. 125.

⁹¹ See *supra*, p. 214.

⁹² According to the United Nations Office of Drugs and Crimes, 103 States have ratified or acceded to the Convention. <http://www.unodc.org/unodc/crime_signatures_corruption.html>.

An examination of the cases in which receiving States have given negative reactions to diplomatic agents in this field shows that the topic of the message was often not the only potentially objectionable element in these instances. In Clay's case, the British High Commissioner had made his comments to a wider audience (the British Business Association in Kenya). But he made it clear that he had previously raised his government's concerns with the Kenyan administration itself⁹³. There is no evidence that the administration resorted to any reaction at that stage.

The choice of the channel therefore appears to be of some significance⁹⁴, and as such, this will be discussed in Chapter 6. State practice does not permit an inference to the effect that the choice even of this sensitive object would, on its own, allow the duty of non-interference to restrict the diplomatic protection of State interests.

d. Military affairs

The military affairs of the receiving State form a traditional topic of the diplomatic message; frequently, because of the receiving State's concerns about its own security. The Secretary of the International Law Commission accorded such significance to interference of this kind that he protested the emphasis which the 1957 Commentary on the Draft Articles had placed on participation in political campaigns: diplomats, in his view, might interfere "in much more serious ways as,

⁹³ Barasa (2005).

⁹⁴ See also Zimbabwe: the 2005 case of Christopher Dell (No 2) (US), who addressed his remarks to a university audience.

for example, in fomenting civil war."⁹⁵ This view is also reflected in modern academic debate on this topic⁹⁶.

However, in those cases, the message character will frequently be superseded by other aspects of the diplomatic behaviour, and as such, the participation in a civil war falls outside the remit of the current examination⁹⁷.

But there are instances in which the message character still maintains its individual significance, and in which the diplomatic behaviour did receive a negative reaction. These reactions originate with States whose political and ideological structure⁹⁸ differ considerably.

The 2001 case of Michael Kozak serves as an example in the field. Kozak, the US ambassador to Belarus, had stated in a letter to *The Guardian* that the "objective and to some degree methodology" of the United States were the same in the case of Belarus as in the case of Nicaragua in 1989 – 1990. Analysts were quick to interpret his words in the light of support given to the Contras while Kozak had been posted to that country⁹⁹. The Foreign Minister of Belarus himself accused Kozak of giving support to the opposition¹⁰⁰. The message element remained at any rate quite discernible in this case and was not superseded by other aspects of the same diplomatic behaviour¹⁰¹.

The effective fulfilment of diplomatic duties does sometimes necessitate the existence of military matters as targets of the diplomatic message. The function of observation is one example. Military attachés might, for instance, send out a

⁹⁵ YILC 1958 (1), p. 250, para. 27 [Mr. Liang].

⁹⁶ Cf. Salmon (1996), p. 129, para. 197.

⁹⁷ See also *supra*, p. 134.

⁹⁸ See for instance Turkey: the 1979 case of Dodson (UK); Canada: the 1982 case of Robinson (US); Indonesia: the 2000 case of Gelbard (No 3) (US); Germany: the 2001 case of Coats (US).

⁹⁹ Lagnado (2001).

¹⁰⁰ Peterson (2001).

¹⁰¹ For an example from a State with a different political and ideological structure, see the 2001 case of the designated US Ambassador Coats to Germany.

message by their very presence at conferences on military matters, but might also find it necessary to attend these events to fulfil the functions of Article 3 (1) (d). The view that the collection of information on the security policy of the receiving State is part of the diplomatic function of observation, has also found support in the literature¹⁰².

The involvement in the military affairs of the receiving State can furthermore be part of the function of Article 3 (1) (b). The concerns of the sending State may be quite legitimate, as an example suggested by *Sen* shows. In his view, a State who receives advance knowledge of the fact that its neighbour "was negotiating with another state for a military alliance, [...] could make its representations before the pact is finalised, and it is possible that on many an occasion such representation would carry due weight."¹⁰³ Decisions which the receiving State makes on military matters, may well impact on the security of the sending State. If for instance the receiving State allows its armed forces or mercenaries to cause incidents along the border with the sending State, that State's diplomats might well express the desire for the adoption and implementation of an effective military penal code by the receiving State. The receiving State may consider this a matter of domestic jurisdiction, but the issue encounters legitimate security interests of the sending State.

If both sending and receiving State belong to the same defensive alliance¹⁰⁴, the sending State may also have legitimate interests which affect the shaping of the domestic policies of the receiving State. If, for instance, the sending State felt that the contributions of the receiving State to the alliance were less burdensome than

¹⁰² Richtsteig, Art. 3, p. 22.

¹⁰³ *Sen* (1988), p. 54.

¹⁰⁴ As in the 2001 *Coats* case (Germany and US).

its own, it may maintain that the safeguarding of its financial concerns necessitated representations by its diplomatic agents.

While States have given negative reactions to diplomatic participation in military politics, it would be misleading to infer that the international community regards military issues as falling outside the range of permitted objects of the diplomatic message. The cases which appear in this context, frequently contain additional elements which, it is suggested, carried greater weight in the opinions of the receiving State than the mere discussion of a military matter. In some cases, the critical message was forwarded to the public at large¹⁰⁵ or to a political party¹⁰⁶. In other cases, the style in which the message was clothed, was instrumental for the provocation of a negative State reaction. In September 2000 for instance, the American Ambassador to Indonesia, Robert Gelbard, accused the Indonesian General Syahnakri of spreading rumours and suggested that the General failed to concentrate on his military duties¹⁰⁷. The criticism Gelbard received was probably connected less to the fact that he had chosen a member of the military as the topic of his message, than to the offensive language in which he had engaged¹⁰⁸.

Not only have military affairs in themselves not been found to be beyond the permitted range of the diplomatic message; in view of the considerable security concerns of the *sending* State it would on the contrary appear to be one of the diplomatic message's essential objectives. An absolute ban on the discussion of this matter would bring the receiving State at variance with the principle *ne impediatur legatio*.

¹⁰⁵ See Canada: the 1982 case of Robinson (US) (speeches).

¹⁰⁶ Cf. Turkey: the 1979 case of Dodson (UK) (Justice Party).

¹⁰⁷ *Joyo Indonesian News*, "Syahnakri plays down spat with US Ambassador Gelbard", 28 September 2000.

¹⁰⁸ Indonesia: the 2000 case of Gelbard (No 5).

e. Human Rights

Incidents in which diplomatic agents showed an interest in the way in which citizens – and in particular, certain minorities – were treated in the receiving States, occurred at several stages in the history of diplomatic relations. *Wicquefort* mentions the case of envoys of certain Germany Princes, who in 1570 were criticized when they asked Charles IX of France to "spare his Protestant Subjects"¹⁰⁹. But it is fair to say that the human rights situation in the receiving State (and beyond that, the general treatment of nationals of that State) has only recently become a more prominent feature of the diplomatic message. The evaluation of such behaviour is far from clear.

The reactions of many receiving States (and sometimes even sending States) reveal a sensitive attitude with regard to this issue. In the past, diplomats have received negative reactions for their criticism of their hosts' human rights record in general¹¹⁰ – as happened, for instance, in 2002, when the French Ambassador to Haiti, Yves Gaudeul, commented on human rights violations in the receiving State¹¹¹. Following this event, the Haitian Prime Minister met Mr Gaudeul to "exchange[...] points of view regarding respect for the Vienna Convention"¹¹².

¹⁰⁹ *Wicquefort*, p. 316.

¹¹⁰ See, e.g., El Salvador: the 1982 case of Hinton (US); Cuba: the 1996 case of Meyer (US) and the 1998 case of Brown (US); Haiti: the 2002 case of Gaudeul (France); Zimbabwe: the 2002 case of Donnelly (UK); United Kingdom: the 2004 case of Murray (UK ambassador to Uzbekistan).

¹¹¹ BBC Monitoring of International Reports, "Haiti: Highlights of Radio Metropole News", 24 April 2002.

¹¹² BBC Monitoring of International Reports, "Haiti: Foreign Minister on Prime Minister's Meeting with French Ambassador", 30 April 2002.

Other diplomats focused on the violations of particular rights. Political rights feature prominently in more recent instances of diplomatic messages¹¹³. When, for instance, the British High Commissioner to Kenya in 2000 called on political parties to allow for elections without violence, the Kenyan President was quoted as stating: "The British High Commissioner has no right to interfere with our affairs, because we do not interfere with the political affairs of Britain"¹¹⁴. In other instances, the comments of the agents in question referred to the freedom of the press¹¹⁵ or to perceived instances of discrimination¹¹⁶ or the fairness of trial proceedings¹¹⁷.

In other situations still, the diplomatic message concerned the rights denied to a particular person or group of people. One such case occurred in 1990, when the US Ambassador to Pakistan, criticized the receiving State's treatment of Benazir Bhutto as "discriminatory"¹¹⁸. In response, the Pakistani government expressed its surprise at these remarks and stated that they "amounted to interference in the internal affairs of Pakistan".

Some writers express a very critical view on diplomatic agents who make human rights the topic of their messages. *Satow* for instance, when talking about the tasks of the head of the mission, holds that

¹¹³ See for instance Burma: the 1996 case of Meyers (US); Mozambique: the 1996 case of Curran (US); Sri Lanka: the 1999 case (preventive sanction against foreign missions); Peru: the 2000 case of Hart (UK); Ghana: the 2000 case of Murray (no. 2); Kenya: the 2002 case of Clay (UK); Macedonia: the 2004 case of Butler (US).

¹¹⁴ *Agence France Presse*, "Kenyan president accuses Britain of interference", 4 October 2002.

¹¹⁵ See China: the 1999 case of Klosson (US).

¹¹⁶ See USA: the 1999 case of Maus (Mexico).

¹¹⁷ As happened in 1998 in Malaysia, when Augustine Paul, the presiding judge in the trial of Anwar Ibrahim, refused to admit observers to the trial and stated that their admittance would convey the impression that the court "may not be dispensing justice", BBC Online, "Anwar upbeat as trial opens", 2 November 1998.

¹¹⁸ The 1990 case of Oakley (US in Pakistan).

"He must on no account occupy himself with the interests of any but the subjects or *ressortissants* [...] of his own sovereign or state, and especially not with those of the subjects of the local sovereign."¹¹⁹

However, this view does not consider the possibility that the treatment of citizens of the receiving State may, even if the human rights of the nationals of the *sending* State are not affected, still have repercussions on the interests of the latter. Reference has already been made to the opinion by *Sen*, who found that the denial of human rights can trigger a revolutionary development not confined to the boundaries of the receiving State¹²⁰. Frequently, the adverse effects of human rights violations will be quite direct: they can set in motion a flow of refugees, which will concern sending States sharing a border with the receiving State. This scenario apart, the arrest of citizens of the receiving State who work at the diplomatic mission of the sending State may seriously affect the performance of its functions (and therefore be in violation of Article 25 of the *Vienna Convention*), the detention of employees of a company registered in the sending State will affect the interests of the sending State's citizens, and so forth.

In other instances, an envoy may claim that the exercise of diplomatic observation can be invoked as a justification. Cases of this kind emerge in particular when diplomatic agents are present at the exercise of political rights by nationals of the receiving State – in the form of demonstrations or spontaneous gatherings. The 1989 case of two British diplomats, who participated in a march by students in Romania (which resulted in the storming of the television station in Bucharest) is

¹¹⁹ Satow (1979), p. 450.

¹²⁰ *Supra*, p. 200.

an example¹²¹. The diplomats in question were criticized by Members of Parliament of their own country as well as by a former British Ambassador¹²², but they defended their actions by reference to the duty of observation; they had gone along as "fairly passive observers" and had to join in the cheering in order to avoid raising suspicion¹²³ – a statement which makes the link between the function of observation and the distribution of a message particularly clear.

In cases of this kind, the possibility cannot be discounted that an element other than the selection of the object may have informed the criticism with which the diplomatic behaviour had met. A diplomatic agent who participates in the storming of a television station may be found to engage in an activity which goes beyond that of a "fairly passive observer" – a distinction which one expert commentator found important to stress¹²⁴. This, however, is a consideration which concerns the activity, not the topic of the message.

It is however true, that in those cases in which the choice of topic itself was criticized, diplomatic agents find it not always possible to effectively invoke the function of observation or that of protection of interests as justifications. As pointed out above, some authorities caution diplomats against their involvement in the promotion of human rights in the receiving State when interests of the sending State are not at all affected¹²⁵. On the other hand, it would be difficult to conclude that there is consistent State practice to the effect that participation in human rights matters which do not affect interests of the sending State, always constitutes

¹²¹ Travis (1989). But see also the 1998 case of Timothy Brown (US human rights observer in Cuba).

¹²² Travis (1989). Denza (1998), Art. 41, p. 377.

¹²³ Stacey (1989).

¹²⁴ Graham (1989). *Oppenheim*, similarly, makes the distinction between watching events "with a vigilant eye" and taking part in the political life of the receiving State, *Oppenheim* (1992), p. 1068.

¹²⁵ *Supra*, p. 157.

interference. While there are many cases in which receiving States objected to diplomatic behaviour of this kind, there are also numerous instances in which the sending States had been able to appoint employees to diplomatic missions whose stated purpose it was to deal with human rights affairs, or who were expressly labeled "Human Rights Attachés"¹²⁶. Not all members of the international community therefore agree that the choice of human rights as a topic of the diplomatic message is in itself interference.

The evaluation of diplomatic conduct in this field depends to a considerable degree on the particular human right which is the object of the diplomatic message. *Salmon* warns that in some States the understanding of human rights is not the same as that prevailing in the sending State¹²⁷. This view carries particular importance with regard to specific human rights and their implementation. If, for instance, a receiving State bans the sale of a particular publication on its territory on grounds of the protection of morals – an exception to the freedom of expression which is accepted in the major human rights instruments¹²⁸, then it will base this decision on the prevailing interpretation in that State, and will in general be entitled to do so¹²⁹. Diplomatic agents who criticize this decision and rely in their criticism

¹²⁶ See for instance for the Netherlands: Second Secretary, responsible for political affairs and human rights (Fédération Internationale des Ligues des Droits de l'Homme [1999]); Switzerland: human rights attaché in Colombia (Centro de Medios Independientes de Colombia, "S.O.S. for Francisco Ramirez", 20 October 2004) and human rights attaché in Turkey (BBC Summary of World Broadcasts [TRT TV Ankara], "Parliament official says political determination needed to stop torture", 24 July 2000); United Kingdom: First Secretary (human rights) in Nepal; (*Nepali Times*, "Money for Rights", 5 – 11 July 2002); United States: diplomatic agents responsible for human rights work in Argentina, (Rosenfeld (1979)) and human rights attaché to the Soviet Union (BBC Summary of World Broadcasts [Telegraph Agency of the Soviet Union], "US Embassy Officials Working 'Under CIA Instructions' with Radio Liberty", 22 May 1986); US human rights attaché to Cuba (Varlamov (1998)); US human rights attaché to Guatemala (Mahoney / Eguren, p. 43).

¹²⁷ *Salmon* (1996), p. 134, para. 205.

¹²⁸ Cf. Article 19 (3) (b) *ICCPR*; Article 10 (2) *ECHR* and Article 13 (2) (b) *ACHR*.

¹²⁹ See with regard to this problem *Handyside v UK*, (1979 – 1980) 1 EHHR, para. 57. But cf. also para. 49 in that case.

on the perception of "morals" which prevails in the sending State, may find it difficult to defend themselves against the charge of interference.

On the other hand, there may be cases where the perceived violations of human rights by the receiving State are so severe that they reach the level of crimes against humanity or genocide. In those instances, it is difficult for a receiving State to reject criticism of its activities on the mere basis that the author of the criticism comes from a State which adopts a different interpretation of human rights.

International law does accept certain obligations which a State owes not only to its citizens, but to the international community as a whole¹³⁰. A diplomatic agent who makes human rights obligations which have attained the level of *erga omnes* duties the topic of the message, can therefore claim to act in matters which concern not only the receiving, but the sending State as well.

The examples provided by the ICJ in this field point to human rights violations, which will typically affect a large group of persons rather than one individual – in the *Barcelona Traction* case, reference was made to acts of aggression, genocide, slavery and racial discrimination¹³¹. It is noteworthy that the first three examples have today found their way into the Statute of the ICC¹³², and the fourth – racial discrimination – can be seen as an essential element for the commission of certain crimes against humanity¹³³. There is reason to draw the boundaries wider, so that they encompass all international crimes. These crimes are already widely accepted

¹³⁰ See *supra*, p. 199.

¹³¹ *Barcelona Traction*, ICJ Reports 1970, para. 34.

¹³² See, for aggression: Article 5; for genocide: Article 6; for slavery: Article 7 (1) (c) of the *ICC Statute*.

¹³³ Cf. the crime of persecution, Article 7 (1) (h) of the *ICC Statute* and Article 7 (1) (h), no. 3 of the *Elements of Crime*; and see the crime of apartheid, Article 7 (1) (j) of the *ICC Statute* and Article 7 (1) (j), no. 4 of the *Elements of Crime*.

to fall under the universal jurisdiction of States¹³⁴ – which emphasizes their character as violations of obligations which are owed to the international community at large. It would be strange if the sending State had the right to prosecute nationals of the receiving State for international crimes, but would not have the right to resort to less intrusive measures – for instance, by letting its diplomats draw attention to the commission of human rights violations which reached the level of international crimes. In the particular case of genocide, the possibility to intervene in the affairs of a State involved in these crimes, has been seen as being enshrined in the *Genocide Convention* itself, whose Article I calls on the Contracting Parties to "prevent and punish" the crime¹³⁵.

There are indeed cases, in which the diplomatic message concerned the perpetration of international crimes¹³⁶. It has been mentioned above, that in 2000, Ambassador Gelbard called on the Indonesian government to bring the perpetrators of the massacres in East Timor to justice¹³⁷. Given the fact that the crimes committed during East Timor's struggle for independence are currently judicially examined under the headings of "genocide", "war crimes" and "crimes against humanity"¹³⁸, the ambassador did refer to the violation of obligations which Indonesia owed to the international community as a whole; his remarks therefore

¹³⁴ Commentary of the ILC on the *Draft Code of Crimes against the Peace and Security of Mankind* (1996), p. 31 [Commentary, para. 1 on Article 9], referring to the entitlement of States to exercise universal jurisdiction over, *inter alia*, crimes against humanity and war crimes. Cf. also *Eichmann*, 36 ILR (1961), pp. 5 and 277 and *Barbie*, 78 ILR (1988), pp. 78, 125, 136.

¹³⁵ Such a right of intervention was suggested, among others, by Raphael Lemkin, the creator of the term "genocide" (Lemkin, p. 150). If the position were followed that Article I permits military intervention (see the discussion in Schabas, pp. 491 – 493), then the norm must allow *a fortiori* the use of the diplomatic message to draw attention to the pending commission of the crime.

¹³⁶ See in Bolivia: 1980 case of Weissman (US) (disappearances); Namibia: 1999 case of US and other diplomats (abuse of civilians); Indonesia: 2000 case of Gelbard (no. 1) (US) (perpetrators of crimes against humanity and genocide).

¹³⁷ See *supra*, p. 199.

¹³⁸ UNTAET Reg. 2000/11 (6 March 2000), s. 10.

did not fulfil the conditions of interference in the internal affairs of the receiving State.

A more complicated situation arises when the diplomatic message refers to the political rights of the citizens of the receiving State. It is in this context that the right of peoples to self-determination, which is an inherently political right¹³⁹, makes its appearance. The ICJ confirmed that this right "has an *erga omnes*" character¹⁴⁰; and numerous General Assembly Resolutions have in fact called for the rendering of "moral and material assistance" by all States to peoples striving for the realization of this right¹⁴¹. The 1980 *Espiell Study on The Right to Self-Determination* speaks of a "positive legal obligation to assist a people struggling against colonial domination"¹⁴².

The extent of this right, however, is debated. A right to external self-determination (including the breaking away from a State) can, in view of the legitimate protection of the territorial integrity of the State¹⁴³, only be accepted in narrowly defined circumstances¹⁴⁴. The Supreme Court of Canada, in its *Reference Re Secession of Quebec*, would have accepted such a right only with regard to colonial peoples and those under "alien subjugation, domination or exploitation"¹⁴⁵, but it would deny it in cases in which peoples enjoy the right to internal self-determination¹⁴⁶ – a form of self-determination it defines as "a people's pursuit of its political, economic,

¹³⁹ Some authors have even argued that self-determination could be seen as part of *jus cogens*, cf. Frowein, p. 218.

¹⁴⁰ *East Timor*, ICJ Reports 1995, para. 29.

¹⁴¹ GA Res 2105 (XX); GA Res 2649 (XXV); GA Res 3070 (XXVIII); GA Res 3163 (XXVIII) and GA Res 3328 (XXIX).

¹⁴² Espiell (1980).

¹⁴³ GA Res 1514 (XV), operative para. 6.

¹⁴⁴ Cf. Thürer, pp. 367, 368.

¹⁴⁵ *Re Secession of Quebec*, 115 ILR (1999), paras. 132, 133.

¹⁴⁶ *loc. cit.*, para. 138.

social and cultural development within the framework of an existing state"¹⁴⁷. This distinction is well supported in modern legal discourse on self-determination¹⁴⁸.

A diplomatic agent who endorses a group's right to external self-determination will, then, not automatically be able to invoke the existence of an obligation owed *erga omnes*. The expulsion of Libyan diplomats from Australia in 1987 is an example¹⁴⁹.

The circumstances of the case suggest that the demands of a speaker of the aborigines for an independent republic was seen in connection with the "subversive activities" in which the Libyan mission allegedly engaged¹⁵⁰. It would be difficult to consider the Australia of the 1980s as a State which, through "subjugation, domination or exploitation" denied the right of internal self-determination to her indigenous peoples; a diplomatic behaviour which endorsed a right to external self-determination could therefore not be considered to fall within the remit of representations concerning *erga omnes* duties.

Representations relating to the right of internal self-determination are a more significant feature in diplomatic relations today. This right is enjoyed by all peoples, including those outside the contexts of colonialism or "foreign domination", as its codification in Article 1 *ICCPR* and Article 1 *ICESCR* makes

¹⁴⁷ *loc. cit.*, para. 126. See on the internal aspect of self-determination, Thornberry, p. 101. Similarly Cassese: the right "for a people really and freely to choose its own political and economic regime", Cassese (1995), p. 101. On the concept of "people", see Knop, pp. 50 – 65; Musgrave, pp. 148 – 179.

¹⁴⁸ Cassese (1995), p. 101; Rosas, p. 227; Shaw, p. 271. The *Friendly Relations Declaration* (1970) rejects an interpretation which encourages actions which would impair the territorial integrity of States if they conduct "themselves in compliance with the principle of equal rights and self-determination of peoples [...]". Similarly *Vienna Declaration* (1993), Article I (2). On the differentiation between internal and external self-determination, see also Wheatley, p. 229; Thornberry, p. 101; Rosas, p. 243.

¹⁴⁹ See *supra*, p. 35 and p. 129.

¹⁵⁰ See Ipsen, p. 489.

clear¹⁵¹. But the recognition of the right of political self-determination presupposes the existence of other human rights¹⁵²; a diplomatic agent urging their protection can therefore not lightly be accused of meddling in internal affairs – they are, as necessary requisites of the right to self-determination, owed to the international community as a whole.

This includes the "classical" political rights; chief among them the right to vote and to stand in elections¹⁵³. Diplomatic agents have indeed on numerous occasions called for fair elections in receiving States, have urged voters to participate in the elections or have voiced their doubts about the lawful procedure of elections¹⁵⁴. The 2000 case of the British High Commissioner to Kenya who called for elections free of violence, has been mentioned above¹⁵⁵. In view of the above considerations, it would appear that Clay did enjoy the right to make this particular political right the object of his message; it is a necessary ingredient of the right to internal self-determination, and thus emanation of an obligation which the receiving State owed to the international community.

The right to internal self-determination is also affected if certain other human rights are violated. Academic writers have in this regard made reference to the freedom of assembly and association and the freedom of expression¹⁵⁶. The reason behind such

¹⁵¹ "All peoples have the right of self-determination" (Emphasis added), Article 1 ICCPR; Article 1 ICESCR; Article 20 *Banjul Charter and Helsinki Final Act* (1975), 1 A. VIII. See also GA 1514 (XV), para. 2; Cassese (1995), p. 102; Wheatley, fn. 22 and accompanying text, with reference to Article 1 (2) of the 1993 *Vienna Declaration*.

¹⁵² See Musgrave, p. 98; Shaw, p. 272.

¹⁵³ Article 25 ICCPR, Article 23 ACHR, and cf. Article 3 *Protocol I to the ECHR*; *Charter of Paris* (1990): "Democratic government is based on the will of the people, expressed regularly through free and fair elections"; *Copenhagen Document* (1990), para. 6. See Wheatley, p. 237. However, for a critical view, see Thürer, p. 367. See Asante, pp. 276, 277 and Reiter et al, p. 640 on the connection between political and other rights, and Skogly, p. 519.

¹⁵⁴ See *supra*, p. 221.

¹⁵⁵ *Supra*, p. 221.

¹⁵⁶ Shaw, p. 272; Wheatley, pp. 240, 241; Thornberry, p. 136. The European Court of Human Rights expressed it in this way: "Democracy thrives on freedom of expression", *Socialist Party and Others v Turkey* (1999) 27 EHRR 51, at para. 45.

an interpretation of internal self-determination is that the group in whose favour the right is held to exist may find it impossible to determine its political status, if it is prevented from forming its own political party, or has to rely on the goodwill of government-controlled media to bring its message to the people. It therefore appears justified to consider cases in which diplomatic agents did, for instance, call for the freedom of the media¹⁵⁷, in the light of the right of self-determination and to exclude them from the scope of interference.

On the other hand, self-determination is a group right, enjoyed by entities which fulfil the criteria of a "people"¹⁵⁸. If diplomats make representations because the human rights of one individual have been violated, they go beyond the selection of rights whose protection is owed *erga omnes*. There are reasons why violations of the human rights of individuals (unless they amount to international crimes) should be seen as falling exclusively into the jurisdiction of the receiving State. If the collective right of self-determination is not granted, the people affected often have no choice but to rely on the assistance of the international community to ensure the implementation of this principle¹⁵⁹. If the violation concerns only a member of the group, then that individual can make himself heard through the group itself or may even have recourse to the justice system of the receiving State¹⁶⁰.

However, this rule must allow for certain exceptions. It is, for instance, not uncommon, that the actions of the receiving State target one particular individual

¹⁵⁷ As for instance in the 1999 case of Michael Klosson (the US Consul General in Hong Kong).

¹⁵⁸ Article 1 (2) *UN Charter*; Article 1 (1) *ICCPR*. The *Friendly Relations Declaration* refers to the duty of every State to "refrain from any forcible action which deprives peoples [...] of the principle of [...] self-determination". See also *Re Secession of Quebec*, 115 ILR (1999), paras 123 et seq on the definition of "people"; and Chadwick, pp. 4 and 5. Cf. also Castellino (in particular, pp. 56, 57) and Christakis (p. 324) with particular reference to peoples enjoying the right to internal self-determination.

¹⁵⁹ Cf. Cassese (1995), p. 142 on the limitations pertaining to the lodging of a complaint with regard to a violation of Article 1 *ICCPR* with the Human Rights Committee.

¹⁶⁰ Individuals may also have the possibility to lodge a complaint with an international Human Rights body. However, see Dimitrijevic (p. 57) on the limitations that apply.

because of that person's relevance for the group (e.g. if the individual is its leader), and that therefore the restrictions on the liberty of that person may well affect the exercise of the right to self-determination by the collective. In such situations, a diplomatic message whose object are the human rights of individuals can nevertheless pertain to a violation of *erga omnes* obligations. The 1990 case of Oakley, the US Ambassador to Pakistan, is an example.

Oakley, while in Washington, had labelled as "discriminatory" the treatment of Benazir Bhutto, the former Prime Minister of Pakistan and was subsequently told by the Pakistani Ministry of Foreign Affairs that his comments constituted "unwarranted interference" in the internal affairs of that State¹⁶¹. In view of the above considerations, the opinion cannot be upheld that Oakley's message was outside the remit of his functions. The making of representations in matters of human rights is a task which a diplomatic agent is entitled to fulfil, as long as the rights concerned are essential for the free determination of the political status by the people of the receiving State¹⁶².

¹⁶¹ *Japan Economic Newswire*, "Pakistan Summons U. S. Chargé d'Affaires", 16 September 1990. See also the 1996 case of Western diplomats in Myanmar.

¹⁶² In this context, it should be noted that the message of this character might concern not only the human rights of politicians, but e.g. also those of journalists whose liberty was restricted because they were critical of the government of the receiving State. See in this regard the case of Karl Prinz (Germany) and other diplomats, who in 1993 had made the fate of detained journalists in Sierra Leone the topic of their messages.

f. Nationals of the sending State

Diplomats have on occasion attracted criticism for messages whose topic were the nationals of the sending State resident in the receiving State¹⁶³. An example is the case of Silberman, the American ambassador to Yugoslavia, who in 1976 had lobbied for the release of the American citizen Laszlo Toth, whom Yugoslav authorities had arrested on charges of espionage¹⁶⁴. This behaviour earned Silberman criticism by Tito, who accused the Ambassador of interference¹⁶⁵, and also resulted in some criticism by the sending State itself¹⁶⁶.

The potential for a clash between the rule of non-interference and the fulfilment of diplomatic functions is seldomly as apparent as in these cases. The conflict is caused in particular by (today's) Article 3 (1) (b) of the *Vienna Convention*; a difficulty of which the International Law Commission was aware at a very early stage. ILC Member Khorman pointed out in June 1957 that cases may arise where representations on draft legislation in the receiving State which affected the interests of nationals of the sending State might be perceived as interference, but that it was still "the positive duty of an ambassador to make them"¹⁶⁷.

The delegate for Colombia to the Sixth Committee of the General Assembly likewise recognized the potential for conflict when he spoke against the inclusion of the function of the protection of interests, which, he feared, might lead to the

¹⁶³ See for instance Soviet Union: the 1963 case of the Greek embassy; Yugoslavia: the 1976 case of Silberman (No 1) (US); United States: the 1980 case of Tarhuni and Ibrahim (Libya) and Indonesia: the 2000 case of Gelbard (No 7) (US).

¹⁶⁴ *Facts on File World News Digest*, "Jailed American Freed", 31 July 1976.

¹⁶⁵ *Facts on File World News Digest*, "Tito attacks U.S. envoy", 14 August 1976.

¹⁶⁶ *Facts on File World News Digest*, "Jailed American Freed", 31 July 1976.

¹⁶⁷ YILC 1957 (1), p. 145, para. 71 [Mr Khorman]. This sentiment is reflected in the 1958 commentary, see Annex H, para. 2.

authorization or encouragement of diplomatic interference in certain disputes. In his view, protection of foreign nationals should be "exclusively a matter for the receiving State"¹⁶⁸.

The protection of interests was however accepted as a function by the Vienna Conference in 1961. Academic opinion too agrees that diplomatic agents must have the possibility to make nationals of the sending State the object of their message if they are to protect their interests¹⁶⁹. *Sen* mentions matters of immigration, residence, trade and travel, which would require the making of representations to protect interests¹⁷⁰. *Satow* (speaking of the duties of the head of mission) would allow the "furtherance of [...] legitimate private interests" of the sending State's citizens, but would be more careful if legal proceedings have been commenced against them:

"He should not, however, interfere in civil actions that may be brought against them, or in criminal matters except where manifest injustice or a departure from the strict course of legal procedure has taken place."¹⁷¹

This statement may require qualification in view of the fact that diplomatic missions may, according to Article 3 (2) of the *Vienna Convention*, also engage in the carrying out of consular functions. In this case, the legal evaluation of such behaviour will have to follow the rules of the 1963 *Vienna Convention on Consular Relations*¹⁷². That convention however contains certain rights which have an impact on diplomatic involvement in cases of legal proceedings against the citizen – in

¹⁶⁸ UN Sixth Committee (1958), p. 119, para. 6 [Mr Zuleta Angel (Colombia)].

¹⁶⁹ See *Sen* (1988), p. 61 and *Satow* (1979), p. 450. *Murray* spoke of a "droit naturel de surveillance" concerning nationals of the sending State, *Murray*, p. 143.

¹⁷⁰ *Sen* (1988), p. 461.

¹⁷¹ *Satow* (1979), p. 450.

¹⁷² Cf. *Denza* (1998), p. 33.

particular, the right to visit nationals of the sending State in prison, to converse with them and to arrange legal representation¹⁷³. These functions cannot be adequately fulfilled if the rule of non-interference were to ban the selection of nationals of the sending State as a topic of the diplomatic message.

On the other hand, it is true that several attempts have been made to subject the exercise of this function to particular conditions. The history of these initiatives predates the *Vienna Convention*. When, for instance, in 1905, the French Minister to Venezuela, Taigny, lodged a protest with the government of that State for its decision to close the offices of the French cable company, he made himself the subject of criticism (and was ultimately recalled)¹⁷⁴. The Venezuelan government on this occasion stated that diplomatic acts in situations of this kind were limited to cases in which a denial of justice had taken place. In 1920, Zorn wrote that protection by envoys was only possible if the receiving State (and in particular, its courts) had failed in this effort¹⁷⁵. Even in the 1958 debates of the Sixth Committee, a delegate argued that a foreign national who had been wronged "could normally have recourse to the ordinary judicial and administrative tribunals" of the receiving State¹⁷⁶.

This reasoning has certain advantages: while it is not necessary to deny the function of protection altogether, it is nevertheless possible, by requiring the approach of domestic venues prior to diplomatic representations, to take into account the interests, and ultimately the sovereignty, of the receiving State.

¹⁷³ Article 36 (1) (c) of the *Vienna Convention on Consular Relations*. See Pinto, pp. 528, 529.

¹⁷⁴ Satow (1979), p. 182, para. 21.18; Przetacznik (1976), p. 61.

¹⁷⁵ Zorn, p. 54.

¹⁷⁶ UN Sixth Committee (1958), p. 119, para. 6 [Mr Zuleta Angel].

Modern opinion in international law tends to distinguish between the diplomatic protection of interests and "diplomatic protection *stricto sensu*", i.e., cases in which a State in its own right takes up – through diplomatic means or otherwise – the cause of its nationals who have suffered injuries from internationally wrongful acts of other States¹⁷⁷. In this situation, the ILC has made it quite clear that local remedies must be exhausted before the State of the national can bring the claim¹⁷⁸. The commentaries on the *Draft Articles on Diplomatic Protection* contain a reference to the distinction between this form of diplomatic protection and consular assistance; diplomatic protection *stricto sensu* is called "essentially remedial" whereas consular assistance is "largely preventive". It is concluded that there cannot be a requirement for the exhaustion of local remedies in the latter case, as the wrongful act will not yet have been committed¹⁷⁹.

These considerations are of equal interest in the case of the diplomatic protection of interests under Article 3 (1) (b) of the *Vienna Convention*. Diplomats, as was pointed out in the ILC in 1958, may well have to act to protect the interests of nationals which are affected e.g. by draft legislation¹⁸⁰. In these circumstances, they usually act outside fields in which nationals of the sending State can seek relief from "judicial and administrative tribunals"; there may therefore be greater space for diplomatic representations in this area.

¹⁷⁷ The 2006 *Draft Articles on Diplomatic Protection* (2006), Article 1; Dembinski, p. 41.

¹⁷⁸ The 2006 *Draft Articles on Diplomatic Protection* (2006), Article 15.

¹⁷⁹ The 2006 *Draft Articles on Diplomatic Protection* (2006), Article 1, Commentary, paras. 9 and 10.

¹⁸⁰ YILC 1957 (1), p. 145, para. 71 [Mr Khorman].

A review of the cases which have arisen in the field of the protection of interests shows that it is frequently the intensity of the diplomatic act, as opposed to the topic of the message itself, which provoked negative State reactions.

In the 1976 case of Silberman, the style employed by the American Ambassador played a distinct role in the reaction which his own State adopted; the State Department reportedly thought Silberman "too zealous" in his efforts¹⁸¹.

And when in a similar case in 2000, the US Ambassador Gelbard had allegedly sought to achieve the release of an American citizen, the Indonesian Minister of Defence made reference to particular activities adopted by the diplomat in this endeavour¹⁸². The problems resulting from such lobbying efforts will be discussed later¹⁸³.

It is rare that a receiving State would consider the mere selection of nationals as a topic of the message an instance of interference. On the contrary, examples exist where receiving States have been quite understanding of the need for messages of this kind. In the 1957 discussions of the ILC, Special Rapporteur Sandström referred to the case of a certain tax, exemption from which had been granted in Germany to citizens of States formerly at war with that country. Sweden had made representations concerning the perceived discrimination which this measure included, "and its intervention had been taken in good part"¹⁸⁴. The general practice of States does not allow the conclusion that the selection of nationals as a topic would be considered to fall within the scope of interference. It is furthermore suggested that this object of the diplomatic message is a necessary prerequisite for

¹⁸¹ *Facts on File World News Digest*, "Jailed American Freed", 31 July 1976.

¹⁸² Agence France Presse, "Minister says Indonesia caught US 'infiltrator' in troubled Irian Jaya", 23 October 2000.

¹⁸³ See *infra*, p. 286.

¹⁸⁴ YILC 1957 (1), p. 149, para. 34 [Mr Sandström].

the fulfilment of the function of Article 3 (1) (b) of the *Vienna Convention*, and that a receiving State which bans messages of this kind without qualification, will find itself in breach of Article 25 of that Convention.

It is possible to identify certain fields or "prototypical situations", in which the international community agrees that a particular diplomatic behaviour, because of the object of the diplomatic message, affects matters which fall within the exclusive jurisdiction of the hosts and therefore constitute interference in their internal affairs.

But these objects are not numerous. The only clear instance is that of diplomatic messages in the narrow field of political campaigns; here, it seems that receiving States with diverse political backgrounds, and authorities on diplomatic law consider any participation an interference in the internal affairs of the State. With regard to most other topics, diplomatic agents are able to rely on extensive grounds to justify a treatment of matters which the receiving State may consider to fall within its own jurisdiction. The fulfilment of the traditional functions as enshrined in Article 3 of the *Vienna Convention* frequently allows for an assessment in favour of the diplomatic agent.

In fact, the trigger for negative State reactions is often to be found in a different aspect of the conduct – in the choice of an inappropriate channel, of an activity exceeding the acceptable or in a combination of elements. These instances and the evaluation they received will be discussed in more detail in the following chapters.

Chapter 6 – The Channels of Interference

The diplomatic message requires a recipient; a channel to whom the message is sent. For an application of Article 41 of the *Vienna Convention*, the question arises whether the choice of a particular contact alone can violate the rule of non-interference. Diplomatic history certainly knows of cases in which receiving States made it clear that their negative reactions were caused by the selection of a particular channel for the diplomatic message.

The examination of these channels will be the object of this chapter. It will also deal with instances in which the negative reaction concerned not only the mere selection of the recipient of the diplomatic message, but the connection between channel and topic. An example for this is the discussion by diplomatic agents of military matters with members of the opposition. The selection of military affairs as a topic does not in itself constitute interference¹. The selection of the opposition as a channel of the message is also unlikely to accomplish that. But the link between this topic and this channel has led to unease among some receiving States and to allegations of "plotting" with the opposition.

¹ See *supra*, p. 219.

1. The government of the receiving State

Cases in which diplomatic agents were accused of interference when choosing the government of the receiving State as a channel, are without exception instances in which an element other than the selection of the recipient took centre stage. Thus, when in 1995 Aurelia Brazeal, the US Ambassador to Kenya, told the Information Minister of the receiving State that the United States wanted Kenya to allow private radio and television stations "before the end of June", she was accused of interference, but the government was responding to the style of the message, and to the issuing, as they saw it, of an ultimatum².

The importance of the availability of the government as a channel has been emphasized in the literature³. In fact, diplomatic agents, who discuss official matters not only with the government of the receiving State but with other channels as well, may sometimes find themselves in violation of international law. The rule that the government – in fact, the Foreign Ministry – is the proper channel for official business was acknowledged even before the signing of the *Vienna Convention*. In this context, reference is sometimes made to the 1906 case of Montagnini, a secretary at the Papal nunciature in France, who was expelled after he had forwarded official communications to the French episcopate⁴. *Murray*

² *Agence France Presse*, "US ambassador accused of meddling in Kenya's internal affairs", 16 February 1995.

³ Green, p. 148; see also Sen (1988), p. 58.

⁴ *The Times*, "France and the Vatican", 12 December 1906; Salmon (1996), p. 130, para. 199; Salmon (1976), p. 41. *Stowell* stated in 1921 that an instance of interference may be found to exist in some cases in which diplomats passed "over the heads of those with whom they are expected to negotiate", *Stowell*, p. 323.

maintained that even conversations with the sovereign of the receiving State could not replace negotiations with the Minister of Foreign Affairs⁵.

Today, Article 41 (2) of the *Vienna Convention* confirms this rule of customary law by envisaging the Foreign Ministry as the channel for business which the sending State entrusts to its diplomats. This provision was discussed at some length in the International Law Commission, and it is clear from the debates that the "business" for which the Foreign Office was the proper channel, embraced not only the reception, but also the transmission of information⁶.

Contact with other branches of the government can evoke a negative State reaction⁷. The German practice on this matter may serve as an illustration: there, the Foreign Office made it clear through a circular that diplomatic missions were not allowed to correspond directly with the authorities of the States or with local authorities on matters "of fundamental significance"⁸.

On the other hand, Article 41 (2) also provides that other government agencies may serve as diplomatic contacts, if both States are agreeable to this. Such contacts are a common feature in diplomatic life⁹. The rationale for this provision is to be seen in the nature of the matters to be discussed, which often calls for the involvement of

⁵ Murray, p. 145.

⁶ See for instance García Amador, who expressly referred to the function of "negotiation", YILC 1957 (1), p. 219, para. 58 [Mr García Amador]. Cahier expresses the opinion that it was the fear of diplomatic interference that led to the adoption of the rule which is today enshrined in Article 41 (2) of the *Vienna Convention*. Cahier, p. 144. Cf. Przetacznik (1971), p. 373. For an older formulation of the rule, see Funck-Brentano / Sorel, p. 70.

⁷ See Salmon (1976), p. 44.

⁸ "von grundsätzlicher Bedeutung", Richtsteig, Art. 41, p. 99.

⁹ See Hardy, p. 18 and earlier Strupp / Schlochauer, "Gesandtschaftsrecht", p. 670. See YILC 1957 (1), p. 219, para. 58 [Mr García Amador], who continued his discussion of "negotiations" with the Foreign Office by referring to "contact to other authorities". Both the 1957 and the 1958 Draft Articles refer to the fact that the mission may, in these cases, "deal" directly with other authorities in the receiving State. ILC Draft Articles 1957, p. 142, 143 (Article 33); ILC Draft Articles 1958, p. 104, Art. 40, Commentary.

specialist agencies¹⁰. It has been pointed out in the literature that contacts of this kind are particularly popular between specialised attachés and their respective ministries in the receiving State (especially, the defence attaché and the Ministry of Defence) and, as *Richtsteig* notes, such contacts are often established even without the express consent of the receiving State¹¹.

It therefore does not appear possible to identify a rule in international law which would ban contact to the government of the receiving State on the basis of the selection of this source altogether. While in theory, a more restrictive approach is possible with regard to contacts with ministries other than the Foreign Office, State practice seems to go in the opposite direction and to permit such communications even if the express consent of the receiving State had not been granted beforehand.

2. The public in the receiving State

Diplomatic agents have on occasion received a negative reaction after they spoke to the public in the receiving State. Contact to the "public" as it is understood here includes instances in which diplomats had to be aware that their message would eventually be communicated to the public at large. This embraces cases of remarks made in the presence of journalists (as in the 1975 case of Porter¹² and in the 2001

¹⁰ See also YILC 1957 (1), p. 148, para. 27 [Mr. Matine-Daftary] and YILC 1957 (1), p. 149, para. 33 [The Chairman, (i.e., Mr. Jaroslav Zourek)].

¹¹ *Richtsteig*, Art. 41, p. 99. On technical attachés: "ainsi les attachés commerciaux avec le ministère du Commerce extérieur [...]", *Salmon*, pp. 44, 45. The case is discussed by Rousseau under the header "Devoir de non-ingérence des agents diplomatiques dans les affaires intérieures de l'Etat accréditaire", *Rousseau*, p. 167. *Salmon* points out that the option to deal directly with other ministries is not a rule of law, but "pratique internationale", cf. *Salmon*, pp 44, 45.

¹² *Supra*, p. 34 and p. 212.

case of Bernard¹³), but it also includes addresses to more selected groups of individuals in circumstances when the remarks would reach the general public in the due course of time – (e.g. talks given before a Chamber of Commerce¹⁴).

Historically, the public did not occupy a high rank among the available channels for the diplomatic message – *Akzin* speaks in this regard of an "attitude of indifference or diffidence"¹⁵ on the part of diplomatic agents, which probably changed only after the First World War. Today, there is no doubt that Foreign Ministries consider relations with the public an essential part of the tasks of their diplomats abroad¹⁶. Nor does it appear that receiving States consider the very selection of this channel as a violation of the rule against diplomatic interference. The days are gone when the American Attorney-General stated that a diplomat had "no authority to communicate his sentiments to the people of the United States"¹⁷, and only in very extreme circumstances – e.g. when the mission was under virtual siege by forces of the receiving State¹⁸ did individual States block any contact to the public – a restriction which could not be said to have been accepted by the international community. In the age of the internet, where numerous embassies maintain their own websites, such a limitation would also be well-nigh impossible to enforce.

¹³ *Supra*, p. 107.

¹⁴ See for instance the 1982 case of Deane Hinton, the US Ambassador to El Salvador; *Facts on File World News Digest*, "U.S. Backs Off from Envoy's Remarks", 19 November 1982.

¹⁵ *Akzin*, p. 2.

¹⁶ Cf. *Blankenhorn*: "Le temps où le diplomate évitait, soit par commodité, soit par timidité, le contact avec les représentants de l'opinion publique est définitivement révolu.", *Blankenhorn*, p. 430.

¹⁷ Correspondence of the Attorneys General, separate entry of 27 July 1797 (Charles Lee), quoted in Hoffman, p. 352.

¹⁸ See Glahn, pp. 463, 464 (referring to the situation of foreign diplomats under the regime of Pol Pot), with further references.

On the other hand, State practice furnishes many cases in which diplomatic agents did give public talks and were invited to do so by the receiving State; and even instances in which the absence from a public met with negative reactions¹⁹.

Diplomatic agents can rely on the fact that the fulfilment of certain functions requires the possibility of addressing the public. *Strupp / Schlochauer* for instance point out that it is one of the legitimate functions of foreign policy to create understanding for the positions of the sending State²⁰. *Green* expresses his opinion in similar words: the diplomat, in his view, "must be permitted to explain publicly the views of his government when opportunity to do so arises"²¹. As an example, he refers to the case of diplomats who represent a belligerent State in a neutral country or a neutral State in a belligerent country. In these instances, it is apparent that an envoy whose objective is the representation of the sending State and the protection of its interests must be able to communicate the government's stance to the general public.

Of even greater significance is in this context the promotion of friendly relations, in particular the public relations aspect of this function²². In *Richtsteig's* view, the function of Article 3 (1) (e) makes it necessary that the public of the receiving State is given access to the mission²³, but it can equally be said that diplomats cannot fulfil their task of informing about the sending State if they are barred from access to the public in the receiving State²⁴. The selection of the public as a channel is thus not a sufficient foundation for a charge of interference which would hold up to the standards of international law.

¹⁹ See the 1995 case of *Indyk (No 2)* (Israel and US).

²⁰ *Strupp / Schlochauer*, "Diplomatie", p. 365.

²¹ *Green*, p. 148; see also *Sen* (1988), p. 58.

²² See *supra*, p. 124.

²³ *Richtsteig*, Art. 3, p. 23.

²⁴ see also *Glahn* (1992), p. 518, on the public relations function.

On the other hand, the combination between the channel and a particular object of the message may warrant a different evaluation; as is apparent from the views of some writers who maintain that diplomats are barred from discussing certain matters in public²⁵. *Plischke* for instance points out that diplomatic agents may "not publicly criticize the actions of the legislative or executive branches of the governments" of the receiving States²⁶.

It is in this regard significant that the object of external relations occupies such a large proportion of instances which resulted in negative reactions²⁷ (especially, if the diplomat made to an audience negative comments on foreign governments). As mentioned above, a receiving State which does not react to behaviour of this kind risks attracting the charge of collusion in the diplomatic conduct²⁸.

There is evidence from a variety of jurisdictions that the diplomatic hosts will likewise not tolerate public criticism of governments or policies of the receiving State²⁹. This includes incidents when diplomats publicly addressed individual government personalities or the structure of the government³⁰; the State and its boundaries or disputed territories³¹; or individual policies – on justice³² and economy³³ for instance, and, very prominently, on human rights³⁴.

²⁵ Glahn 1986, p. 462 and see Do Nascimento E Silva, who pointed out that "No negotiations, be they of a diplomatic nature or not, can be conducted openly". Do Nascimento e Silva, (1992b, at p. 1034).

²⁶ *Plischke*, p. 313.

²⁷ See for the United States: the 1961 case of the Polish Ambassador; The Netherlands: the 1965 case (Chinese diplomats) and the 1970 case (Soviet diplomats); Australia: the 1983 case of Suleiman Oreibi (Libya), the 1983 case of Worrall (South Africa) and the 2001 case of Ren Xiaoping (China); Argentina: the 1985 case of the Israeli ambassador; Egypt: the 1998 case of Kurtzer (USA); South Korea: the 2000 case of Wu Dawei (China).

²⁸ *Supra*, p. 198.

²⁹ See Stuart, p. 539 with particular reference to US practice.

³⁰ See Ecuador: the 1967 case of Coerr (USA); France: the 1984 case of Galbraith (USA); Egypt: the 2003 case of Welch (USA).

³¹ See Mexico: the 1976 case of Jova (USA); Lithuania: the 1992 case of Widacki (Poland); Israel: the 2000 case of Indyk (no 1) (USA) and the 2002 case of Kurtzer (USA); Bangladesh: the 2000 case of Raja (Pakistan); Ukraine: the 2004 case of Herbst (USA).

An example is the case of the British High Commissioner to Kenya, who in 2005 criticised before the British Business Association of Kenya alleged corruption in the government of the receiving State³⁵. The reaction by the Kenyan Foreign Minister was sharp in the extreme; Mr Mwakwere stated that the diplomat was "talking nonsense" and was a "liar of the highest order who is beyond reform [...] a congenital liar."³⁶ However, as mentioned in Chapter 5, the High Commissioner had reportedly raised these matters with the government before without provoking a negative State reaction³⁷. It appears to have been the connection between the particular target and the public as a channel which the Kenyan government did not wish to tolerate.

This unease about public criticism of government and governmental policies is shared by many States with different political systems. The rationale for this is that the impact of criticism uttered behind closed doors at the Foreign Office can be kept to a minimum. But if a diplomat highlights the shortcomings of the receiving State's government in a public forum, the repercussions may be beyond the control of the government. They may antagonize the people against the government and may thus influence their political choice.

³² See Trinidad and Tobago: the 1994 case of Cowal (USA); Peru: the 1997 case of Jett (USA); Malaysia: the 1998 incident concerning diplomatic observers at the trial of Ibrahim (preventive sanction); Indonesia: the 2000 case of Gelbard (no 1 and no 5) (USA); Sri Lanka: the 2001 case concerning several diplomats (preventive sanction); and Haiti: the 2002 case of Gaudoul (France).

³³ See Canada: the 1982 case of Robinson (USA); Ghana: the 2000 case of Murray (no 1) (UK) and the 2001 case of Murray (UK); Bangladesh: the 2001 case of Peters (USA); Kenya: the 2004 case of Clay (UK); Zimbabwe: the 2005 case of Dell (no 2) (USA).

³⁴ See South Africa: the 1987 case concerning Western diplomats; Pakistan: the 1990 case of Oakley (USA); Mozambique: the 1998 case of Curran (USA); Sri Lanka: the 1999 case concerning all foreign missions (preventive sanction); Namibia: the 1999 case concerning various diplomats; China: the 1999 case of Klosson (USA); Peru: the 2000 case of Hart (UK); Israel: the 2002 case of Algosaibi (no 2) (Saudi Arabian ambassador in the UK); Kenya: the 2002 case of Clay (UK); United Kingdom: the 2004 case of Murray (UK ambassador in Uzbekistan).

³⁵ Barasa (2005), and see *supra*, p. 214.

³⁶ Africa News (The East African Standard), "Kenya; Bad Publicity", 27 February 2005.

³⁷ *Supra*, p. 216.

From the point of view of the diplomatic agent, this sensitivity on the side of receiving States constitutes one of the prominent restrictions on the freedom of expression which have to be accepted³⁸.

The position of a diplomatic agent here is not dissimilar from that of State civil servants, who likewise are subject to a duty of reserve as far as the public discussion of their governments is concerned³⁹. It is of some significance that in two of the most prominent cases relating to the freedom of expression of civil servants – *Haseldine* and *Grigoriades* – the human rights bodies emphasized the channel chosen by the civil servant. Thus, in *Haseldine*, it was of importance to the Commission that the applicant had used the public as a recipient for his remarks on the government: he had "in expressing his opinions used a means which has a wide and immediate impact, namely a daily national newspaper with wide circulation"⁴⁰. Taking account of these considerations, the Commission found that the authorities of the United Kingdom were justified in dismissing Haseldine.

The *Grigoriades* case concerned criticism of the Greek army by the soldier Grigoriades – a conduct which led to his conviction in Greece on charges of insulting the army⁴¹. The channel was again of importance; Grigoriades had made his statements in a letter which he delivered to his commanding officer through a taxi driver. The Greek government argued that the letter was not "a mere private expression of opinions", as delivery by taxi driver did not provide the same guarantees of privacy as delivery through the postal service⁴².

³⁸ See *supra*, p. 176.

³⁹ See the discussion *supra*, at p. 179.

⁴⁰ *Haseldine v The United Kingdom*, Admissibility Decision 13 May 1992.

⁴¹ *Grigoriades v Greece*, (1999) 27 EHRR, para. 18.

⁴² Grigoriades had also provided a copy of the letter to a fellow officer. *Grigoriades v Greece*, (1999) 27 EHRR, para. 43.

For the Court however, it was of importance that the letter was "not published [...] or disseminated [...] to a wider audience"⁴³; and it found that the conviction was not justified⁴⁴.

The cases in the field of diplomatic relations confirm that receiving States tend to expect a similar restriction on the liberty of diplomatic agents in their territory. The difference, as stated above, lies in the rationale behind the duties of the civil servant and those of the diplomatic agent⁴⁵.

This concern of receiving States is even more apparent when the object of the message is not a matter of governmental policies, but a matter of party politics. Even outside the special situation of political campaigns⁴⁶, there are numerous instances where diplomatic agents had attracted criticism for behaviour which allegedly conveyed the message to the public that the envoy favoured a particular political faction⁴⁷. In April 2001 for instance, the Malaysian government made clear to diplomats that taking part in party political functions or being "partisan" would result in a serious reaction by the Foreign Ministry lest diplomats believed they had a "licence to interfere" in the internal affairs of the State⁴⁸.

It is of significance in this context that diplomats who openly declare a preference for a political party may, depending on the influence they or their sending States

⁴³ *Grigoriades v Greece*, (1999) 27 EHRR, para. 47.

⁴⁴ *Grigoriades v Greece*, (1999) 27 EHRR, para. 48. Cf. *Jacobs / White*, p. 283. See also the emphasis that the dissenting judges put on the channel: *Grigoriades v Greece* (1999) 27 EHRR, Dissent by Judges Freeland / Russo / Valticos / Loizou / Morenilla, para. 6.

⁴⁵ See *supra*, p. 182.

⁴⁶ *Supra*, p. 206.

⁴⁷ See Turkey: the 1979 case of Dodson (UK); Cuba: the 1996 case of Planas (Spain); Myanmar: the 1998 case of Wiederman (USA) and the 2000 case of Jenkins (UK); India: the 2000 case of Sandrolini (USA); Bangladesh: the 2001 case of an unnamed Indian and an unnamed Pakistani diplomat; Malaysia: the 2001 case concerning various diplomats; Iran: the 2004 case of Maltzahn (Germany).

⁴⁸ *Malaysia General News*, "Meddling Diplomats can be ordered to leave", 6 April 2001.

enjoy, exert an influence on public opinion to which they are not entitled. If a people has the right to "freely determine their political status"⁴⁹, then this right must be opposable to envoys of the sending State as well.

While the public discussion of these issues – external and internal policies, human rights and partisan politics – frequently triggered negative State reactions, there may be reasons why a diplomat has to deal with them before a wider audience.

An envoy may consider that the interests of the sending State or of its nationals require a public debate on the matters named above. *Richtsteig* is one of those authors who draw particular attention to the relationship between the rule of non-interference and the duty of Article 3 (1) (b). His conclusion is that this duty enables diplomats to engage in public criticism of developments in the receiving State, if this criticism or correction is "objectively necessary"⁵⁰.

This approach assists in the understanding of the relationship between the functions of a diplomatic agent and the rule of non-interference. The tasks assigned to envoys under the *Vienna Convention* allow a diplomatic agent to make the issues named above objects even of public discussion, but only, if diplomatic functions do indeed require this. This perspective introduces a principle of proportionality into the assessment which mediates between the interests of sending and receiving State. But the evaluation of proportionality has to be performed from an objective point of view; the claims of the envoy alone would not suffice.

There is some evidence that receiving States, too, rely on this approach. The 1999 case concerning the American embassy to Namibia, is an example. When the US

⁴⁹ Article 1 (2) *ICCPR*; see *supra*, p. 229.

⁵⁰ *Richtsteig*, Article 41, p. 98.

embassy voiced concerns about human rights abuses in the Caprivi region, the Namibian government criticised these remarks and referred to the rule of non-interference. It did however issue this statement: "Heads of mission should use the established diplomatic channels to raise their concerns"⁵¹. Namibia's accusation therefore concerned not so much object or channel, but the fact that the diplomatic agent confronted this particular channel with this particular object. The reaction implied that use of the Foreign Office (the "established diplomatic channels") for the dissemination of such criticism would have been seen as the less intrusive alternative. Going to the public was not objectively required⁵².

This question of "less intrusive alternatives" becomes particularly apparent if the topic is the denial of human rights in the receiving State⁵³. Alternatives at the disposal of the diplomat may here include the raising of the matter with the government, the discussion of the matter with opposition politicians, but also – in situations in which nationals of the receiving State can resolve the matter themselves – the absence of any form of diplomatic behaviour.

The specific right concerned and the availability of alternatives strongly inform the evaluation of proportionality. A situation of ongoing genocide by a totalitarian regime may justify public criticism by the diplomatic agent: the right concerned constitutes an *erga omnes* interest of eminent importance; the government of the receiving State will not usually be receptive to criticism; an effective opposition is non-existent and the threat to the right highlights the urgency of the situation.

⁵¹ Moyo (1999).

⁵² See also the 2000 case of Craig Murray (No 1) (United Kingdom) and the reaction Ghanaian Minister of Communication: "the Forum was not the right one". Cf. also the 2004 case of Clay (No 2) (UK and Kenya), which suggests a staggered approach: the diplomat approached the government first before taking the case to the public.

⁵³ See Pakistan: the 1990 case of Oakley (US); Mozambique: the 1998 case of Curran (US); Namibia: the 1999 case of several diplomats; China: the 1999 case of Klosson (US); Peru: the 2000 case of Hart (UK); Kenya: the 2002 case of Clay (UK).

On the other hand, diplomats who publicly criticize the banning of a specific publication in a democratic State, find themselves on less firm ground. Apart from recourse to the government of the receiving State, the alleged violation of the right can be taken up by the opposition of that State, and the affected parties will have recourse to the judicial system of the receiving State. The "objective necessity" to act is in this case not apparent.

3. The opposition in the receiving State

The selection of the opposition as a recipient of the diplomatic message has sometimes met with negative reactions⁵⁴. One of the most significant cases in this field emerged in 1983, when the government of Malta tried to ban all contacts between diplomatic missions and the opposition Nationalist Party. But this incident also highlights the stance taken by the international community on attempts by individual receiving States to issue sanctions in this field. The reactions by sending States were unusually strong. The United States doubted the validity of the ban; and several diplomatic missions were said to have ignored it⁵⁵. The European Parliament condemned the ban and called for the cancelling of EC aid to Malta⁵⁶. A joint note of protest was issued by the representatives of Libya, Kuwait, Tunisia and the PLO – an important step, as Malta had endeavoured to be on friendly terms

⁵⁴ For a historical incident, see the 1921 incident of Gaisford, the British minister to Guatemala, Satow (1957), p. 292.

⁵⁵ Alexander MacLeod, "Malta's democracy is cast in doubt", *Christian Science Monitor*, 1 March 1983

⁵⁶ *Facts on File World News Digest*, "Parliamentary Boycott Ended", 8 April 1983.

with Arab States⁵⁷. In the end, the Maltese government gave in to the barrage of negative reactions and allowed contacts under certain conditions⁵⁸.

The concerns of the governments of receiving States might, to a degree, be understandable. Discussions with the opposition can create a considerable danger to them: it is, after all, one of the principal purposes of the opposition to effect a change of government, and the information provided by diplomatic agents may be important for the fulfilment of this aim. At the same time, the fulfilment of diplomatic functions – in particular, the functions of observation and the public relations function – presupposes the availability of this channel, and the reactions of sending States in the Malta case underlined this point.

Indeed, negative reactions which arise in this field are frequently based not on the selection of the channel as such, but on the existence of an additional element. Diplomats who in 2001 attended a briefing organised by the People's Justice Party of Malaysia on the condition of Anwar Ibrahim (the imprisoned former Deputy Prime Minister of that State), were criticised for this behaviour. However, a minister in the Prime Minister's Department stated that it was "not wrong" for diplomatic agents to listen to speeches at party events, "but they should not take an active part in the function or be partisan"⁵⁹.

The dividing line between partisan conduct and the mere selection of the channel may be fine, but it appears that the choice of the recipient alone will not usually suffice as a foundation for a negative State reaction. A situation on the other hand,

⁵⁷ Kamm, *loc. cit.*

⁵⁸ "[C]ontacts designed to give an image of the Nationalists as the alternative government." were still banned, Kamm, *loc. cit.* With this qualification, the offensive element in the diplomatic behaviour moved from the mere choice of the source to a form of dissemination of a diplomatic message (endorsement of the opposition).

⁵⁹ Malaysia, the 2001 case of American and other diplomats.

in which diplomats discussed a particular object with these particular recipients, may again warrant a different evaluation.

The handling of two particular topics has in this context attracted negative State reactions: the policies of the government of the receiving State and the particular party (its existence, its manifesto) itself.

The case of Glenn Warren, a US political officer, who was expelled from Sudan in 2000, illustrates the difficulties which a diplomat may encounter when discussing government policies with the opposition. According to the United States, the expulsion was based on Warren's meeting with members of the oppositional Democratic National Alliance⁶⁰. The Sudanese Foreign Minister Ismail however, emphasized that Warren had discussed "issues related to Sudanese security and stability"⁶¹. Neither the sending nor the receiving State appear to have expressed the opinion that the choice of source itself constituted diplomatic interference. The United States in fact insisted that Warren had done nothing wrong and that the receiving State had "never told U.S. officials they could not meet with the group"⁶². And yet, envoys need to be able to exchange views on policy matters with the opposition if they are to adequately fulfil their functions; in particular those of the representation of the sending State and of the protection of its interests. Today's opposition may be tomorrow's government; diplomatic agents who have to wait with the discussion of political affairs until a political faction has attained this position, face considerable and possibly irreversible disadvantages. They may in particular not have been able to correct prejudices which the opposition harbours regarding the external policies of the receiving State; and a sending State which

⁶⁰ CNN Online, "U.S. diplomat expelled from Sudan", 7 December 2000.

⁶¹ CBS Online, "U.S. Diplomat Kicked Out Of Sudan", 7 December 2000.

⁶² CNN Online, "U.S. diplomat expelled from Sudan", 7 December 2000.

lacks the possibility to discuss this object with this channel will not be able to adjust its own policies in order to reach a compromise with the potential future government of the receiving State.

Several members of the international community have demonstrated an understanding for the need to contact the opposition on political matters. The case of Lord Halifax, then British Ambassador to the United States, serves as an illustration. In 1941, Halifax faced criticism by the Director of the "America First Committee" who disapproved of talks which the Ambassador had had with Senator George and Representative Bloom concerning a Bill then pending in Congress. However, Secretary of State Hull expressed the view that the meetings did not constitute a "departure from established precedents"⁶³.

A similar conclusion can be reached with regard to the public relations function, which includes the presentation of political positions of the sending State. After the British High Commissioner to Canada in 1981, Sir John Ford, encountered criticism by the receiving State for his discussion of the British North America Act with members of the opposition⁶⁴, *Green* argued that Ford had only fulfilled his functions by explaining "his understanding of the views of the British government or members of parliament"; and that the charges of interference

"merely indicated that the complainants, regardless of their official position, knew little of the true function of the diplomat"⁶⁵

⁶³ Whiteman (1970), p. 144, 145.

⁶⁴ This is the version of events provided by Ford himself; Hutton (1981). There may also have been an element of lobbying to the diplomatic behaviour.

⁶⁵ Green, p. 148.

In the light of these considerations, it would be difficult to maintain that talks about political issues with the opposition of the receiving State can justifiably be held to constitute unwarranted interference in the internal affairs of the State.

However, a significant number of States expressed their objection when the party itself became the object of the diplomatic message; particularly, when the message was one of support⁶⁶. In these instances, the envoy exerts direct influence on the political affairs of the receiving State and confers an advantage upon the opposition which the government does not have and which, depending on the position of the sending State, may be of considerable weight. As has been pointed out above⁶⁷, the view has been suggested in the literature that endorsement and criticism of factions in the receiving State are embraced by the rule of non-interference⁶⁸.

On other occasions, the very presence of a diplomatic agent at a particular opposition event provokes the accusation of interference – for instance, an envoy's attendance at a demonstration⁶⁹. State reactions in these cases however do not indicate a uniform pattern.

When, for instance, in 1997 the First Secretary at the US embassy in Belarus, was expelled after he had been detained at an anti-government protest, the American government did not agree with the assessment provided by the Belarusian President

⁶⁶ No cases have been reported in which negative criticism of an opposition party would have met with a negative sanction by the host government. Cases of negative reactions for endorsements of a faction: Turkey: the 1979 case of Dodson (UK); South Africa: the 1987 case of several Western diplomats; Singapore: the 1988 case of Hendrickson (USA); Afghanistan: the 1998 case of Iranian diplomats; Zimbabwe: the 2002 case of Donnelly (UK). For an earlier case, see Geffcken, p. 664: the case of the papal nuncio to France in 1865, who had become the subject of criticism after he had complimented the bishops of Orléans and of Poitiers on their stance against the French government.

⁶⁷ See *supra*, p. 210.

⁶⁸ Glahn (1986), p. 462.

⁶⁹ See for instance Bolivia: the 1963 case of Cuban diplomats; Congo: the 1971 case of certain Soviet and Eastern European diplomats; Poland: the 1985 case of Hardwood (US); United Kingdom: the 1989 case of Brown (UK diplomat in Romania); Belarus: the 1997 case of Alexandrov (US).

(who referred to "provocative actions") and stated that the diplomat had been carrying out "normal" diplomatic duties⁷⁰. On the other hand, in the 1989 case of the two British diplomats who had joined a demonstration in Romania, some of the reactions emanating from within the sending State itself were quite critical of this conduct⁷¹.

The presence of an envoy also became the topic of accusations in some cases in which diplomatic agents attended party meetings⁷² and even in instances when diplomats met individual politicians⁷³. One example is the 2002 case of the Taiwanese diplomat Chien-yeh, who was accused of interference following a meeting with opposition politicians in Nauru⁷⁴.

In these cases, the very presence of the diplomat will often be perceived as transmitting a message; and in the eyes of the host government, this will often be a message of support for the opposition. The reaction of the President of Nauru in Chien-yeh's case illustrates this point: President Harris found that the diplomat had been "interested in seeing and being seen talking with the opposition"⁷⁵.

However, the acceptance of such a wide ban on interference would have a considerable impact on the fulfilment of diplomatic functions, in particular the task of promoting friendly relations with the receiving State which cannot be satisfactorily fulfilled, if friendly relations can be maintained only with the

⁷⁰ The 1997 case of Alexandrov (US diplomat in Belarus).

⁷¹ See *supra*, p. 222.

⁷² See Italy: 1976 case of the French Ambassador; France: 1977 case of the US ambassador; Equatorial Guinea: 1993 case of Bustamante (Spain); Cuba: 1996 case of Cordech Planas (Spain); Malaysia: 2000 case concerning diplomats from the United States and various other countries.

⁷³ See Sierra Leone: 1994 case of Prinz (Germany); Myanmar: 1996 case concerning diplomats from various countries, and 2000 case concerning John Jenkins (UK); China: 1998 case concerning the Consul General (UK); Sudan: 2000 case of Warren (USA); Bangladesh: 2001 case concerning an "Indian and a Palestinian" diplomat; Kenya: 2001 case of James (UK); Eritrea: 2001 case of Bandini (Italy); Nauru: 2002 case of Chien-yeh (Taiwan); Iran: 2004 case of Maltzahn (Germany).

⁷⁴ *China Post*, "MOFA dismisses interference charge by Nauru President", 20 August 2002. See also the 1977 case of American diplomats in France.

⁷⁵ *China Post*, *loc. cit.*

government. But friendly relations with the opposition are difficult to maintain if diplomats are barred from the use of friendly words. This function therefore necessitates a form of conduct which the host government may well consider to amount to moral support to the opposition.

In Chien-yeh's case, the Taiwanese government invoked this very function in defence of its diplomat. Katharine Chang, spokeswoman of the Ministry of Foreign Affairs stated that it was a diplomat's job "to make friends with everyone", and that therefore being friendly with the opposition could not be considered to fall within the ambit of interference⁷⁶.

The protection of interests of the sending State and of its nationals likewise militates for the acceptance of this form of conduct. The considerations mentioned above⁷⁷ are valid in this context as well; if the sending State has to wait until the opposition has gained power before it can allow its diplomats to enter into a discussion with this faction about its policies, it may already have lost any meaningful opportunity to protect its interests⁷⁸.

Finally, the function of observation might likewise necessitate the diplomatic presence at party events and the discussion of party policies. If as *Oppenheim* maintains, it is a diplomatic task to "watch political events and political parties with a vigilant eye"⁷⁹, then this office must embrace the opportunity to observe these actors on the political plane. And States have made reference to this function: in the 1997 case of *Alexandrov* for instance⁸⁰, the United States stated that their envoy

⁷⁶ Ko (2002).

⁷⁷ See *supra*, p. 252.

⁷⁸ See also Blischtschenko, p. 180.

⁷⁹ Oppenheim (1967), p. 787.

⁸⁰ See *supra*, p. 254.

had merely been observing a political demonstration⁸¹. In 1976, the French Prime Minister, by referring to the diplomatic duty of observation, defended the Republic's Ambassador to Italy, who had been criticized by a French Parliamentarian for attending a meeting of the Italian party *Democrazia Cristiana*⁸². Some authors have however suggested a differentiation between the function of observation and the dissemination of a diplomatic message. *Richtsteig* for instance accepts the monitoring of political demonstrations as a diplomatic duty, but he does limit the permitted conduct to "tacit observation", which would exclude behaviour that could be misunderstood as "ostentatious partisanship" and provocation⁸³.

It is however difficult to see how this distinction can be carried into practice. If diplomats march with the protesters, their presence bears a distinct message of support, even if they do not utter a word. Even if diplomatic observers stand at the sidelines, they have to expect an interpretation which emphasizes the fact that they "turned up for the event". The diplomatic behaviour then retains its character as a message to the public, and as such, its evaluation follows the consideration outlined in the previous section.

If, on the other hand, diplomats attend a private gathering of opposition politicians, they will find it easier to base this conduct on the exercise of the function of diplomatic observation. The more open the party meeting and the more active the role of the diplomatic observer⁸⁴, the more likely is it that members of the international community will interpret the conduct as "ostentatious partisanship" and therefore as interference in internal affairs.

⁸¹ Kilborn et al (1997).

⁸² *Annuaire Française de Droit International*, "Pratique Française" (1976), p. 1000.

⁸³ *Richtsteig*, Art. 3, p. 22.

⁸⁴ See the 2001 case of *Joshi* (the UK High Commissioner to Ghana).

In some States, the faction which the diplomat has contacted, represents a people striving for the realization of its right to self-determination. The question then arises whether diplomats who use this channel and convey support to the faction, can invoke the right of self-determination to justify their behaviour as representatives of their States. This question becomes particularly relevant when the faction is not a lawful party, but is composed of underground activists, dissidents or revolutionaries.

The traditional view in the literature was cautious with regard to this conduct⁸⁵; and even some members of the International Law Commission voiced the opinion (without consideration of the principle of self-determination) that diplomatic endorsement of political factions would be an "improper action"⁸⁶ and constitute "unwarranted interference"⁸⁷.

The opposing view would allow any State to give a certain degree of assistance to peoples striving for self-determination⁸⁸. Whereas ILC Member Ago in 1957 condemned the giving of "moral support [...] to a political party in the receiving State"⁸⁹ the view of the international community today is not quite as clear.

It is in particular difficult to ignore the numerous General Assembly Resolutions which call for the rendering of "moral and material assistance" by all States to peoples striving for self-determination⁹⁰ and for the provision of "all necessary measures" to facilitate its implementation⁹¹. On certain occasions, particular international instruments and decisions have phrased the assistance to the

⁸⁵ See Salmon (1996), p. 129, para. 199; Clark, p. 74; Ipsen, p. 489.

⁸⁶ YILC 1957 (1), p. 149, para. 36 [Mr. Ago].

⁸⁷ YILC 1957 (1), p. 146, para. 10 [Mr. Yokota].

⁸⁸ cf. on this matter Shaw, p. 1038.

⁸⁹ YILC 1957 (1), p. 149, para. 36 [Mr. Ago].

⁹⁰ See *supra*, p. 227.

⁹¹ GA Res 2160 (XXI). Cf. also GA Res 31 / 33, GA Res 2649 (XXV) and the *Friendly Relations Declaration* (1970): "[...] such peoples are entitled to seek and to receive support in accordance with the purposes and principles of the Charter [...]" [emphasis added].

realization of the right of self-determination as a duty of members of the international community⁹².

It is suggested that in this context too, the principle of proportionality plays a significant role and is capable of providing a tool to balance the obligations emanating from the right to self-determination and the concerns of the receiving State for its sovereignty and territorial integrity.

This principle requires an examination of the "objective necessity" of the diplomatic behaviour⁹³; and this involves a consideration of the system of the receiving State. If the State grants the right to internal self-determination to its citizens, but denies the right to external self-determination, then it will be difficult for diplomatic agents to claim that it was "objectively necessary" to render moral support to the party in question. In States of this kind, the opposition can be expected to avail itself of the political, and, if necessary, judicial venues to make its voice heard.

But even in States which deny the right to internal self-determination, the diplomatic endorsement of a party is not automatically a proportionate act. Two aspects of proportionality require attention in this context. Firstly, it is possible that the diplomat can use alternatives which have a lesser impact on the internal affairs of the receiving State, but may have the same or even greater efficiency. These may include talks with the government itself and the soliciting of the help of third States whose relations with the government of the receiving State may be stronger than those which the sending State enjoys⁹⁴.

⁹² See *supra*, p. 227 and GA Res 2787 (XXVI), para. 7; GA Res 36 / 103 (1981), Annex, Article 2 (III) and *Israeli Wall*, ICJ Reports 2004, para. 159. On the latter context, Tams, p. 166.

⁹³ See *supra*, p. 248.

⁹⁴ Reference should also be made to the methods for the peaceful resolution of conflicts which GA Res 2734 (XXV), para. 6 lists. Some of the means suggested in this context (including negotiation

Secondly, the importance of the diplomatic message will have to be weighed against the legitimate interests of the receiving State. These interests may include the security of that State and its obligations to safeguard the human rights of its nationals.

The dangers of moral support provided by diplomatic agents to factions in the receiving State should not be underestimated. Behaviour of this kind can lead to unrest within that territory – especially when the factions consists of revolutionaries who now act in the belief that they enjoy the support of the sending State.

But the weighing up of interests can yield the result that a diplomatic agent had no other choice but to give support to the opposition, and that this form of behaviour may have been the least intrusive alternative. For instance, giving moral support to a faction which is opposed to the imminent commission of international crimes by the government, is a path which is less disturbing than a military intervention by the international community, the adoption of economic sanctions or even (in some cases) recourse to international judicial bodies. Interference in these circumstances is justified by the duty to assist peoples in the realization of their right of self-determination.

and inquiry) are applicable here as well. Other methods, such as arbitration and judicial settlement, may be considered even more intrusive by the receiving State than talks to the opposition, as they unavoidably involve an amount of publicity.

4. Individuals in the receiving State

In many instances, a diplomat may wish to use particular individuals as recipients of the diplomatic message. Businessmen, religious leaders and academics for instance are invaluable contacts for the diplomatic mission in the receiving State – regardless whether their nationality is that of the sending or of the receiving State⁹⁵. Cases however exist in which the receiving State took exception to the choice of individuals as channels of the diplomatic message. Individuals who were nationals of the receiving State were on occasion deterred from having contact with the mission because it was feared that subversive activities might emanate from the latter⁹⁶. In even more instances did State behaviour of this kind indicate an intention to directly obstruct the work of the embassy. In an extreme case in 1950, the receiving State (Bulgaria) arrested, tried and convicted nationals who had had contacts with diplomats of the United States, leading to the severing of diplomatic relations by the sending State⁹⁷.

On other occasions, obstacles were put in the way of nationals of the receiving State who wished to visit the embassy. It was reported that all visitors to the US embassy in Moscow in the 1960s were photographed⁹⁸; *Dembinski* mentions that the Soviet Union as a receiving State also stationed policemen in front of embassies of the United States, the United Kingdom and Germany, who would prevent some potential visitors from entering them⁹⁹.

⁹⁵ Cf. Sen (1988), p. 58.

⁹⁶ Murty, p. 501.

⁹⁷ Murty, *loc. cit.*

⁹⁸ Rositzke, p. 48.

⁹⁹ Dembinski, p. 246.

Most of the cases which feature negative reactions of this kind, date from the period of the Cold War and involved the main antagonists of that era – Western States on the one hand, East European States and the Soviet Union on the other¹⁰⁰. This in itself would not militate against the assumption of the existence of customary law to the effect that contacts with individual persons in the receiving State constituted interference. However, even in this period, the sanctions did not pass without protest. The United States for instance asked the Czech government (one of the governments which had issued negative sanctions against the employment of local staff) "whether employment by an American embassy or legation [made] local nationals traitors per se"¹⁰¹, and when Hungary tried and convicted employees of the US mission in Budapest, a note of protest was handed to the Hungarian Minister in Washington which drew attention to the "impairment of normal and proper functions of the American legation"¹⁰². Cases of negative sanctions for the employment of nationals as embassy staff, as *Wilson* writes, "virtually disappeared from public records after 1955"¹⁰³. If they had been the expression of a legal opinion against contact to certain individuals, one would have expected a wide-scale continuation of the practice after this period. Apart from that, the fulfilment of legitimate functions of the envoy presupposes the availability of this channel. The employment of local staff is important for the fulfilment of the

¹⁰⁰ *Wilson* notes that between 1950 and 1955, more than twenty locals employed "by British and American diplomatic and informational missions in Bulgaria, Hungary, and Czechoslovakia [...] suffered penalties ranging from detention and arrest to torture and execution. Hungary appeared to have the greatest number penalized,; Bulgaria meted out the most severe treatment", *Wilson*, p. 205. An exception to this pattern is a case which involved India in 1954: India used "system of checking Indian employees of the United States Embassy to uncover possible security risks". This concerned about 300 staff members, Clifton Wilson (1967), p. 212. *Wilson* however suggests that this case might have to be seen in the context of the security checks in the United States during the McCarthy era, Clifton Wilson, *loc. cit.*

¹⁰¹ Clifton Wilson (1967), pp. 206, 207.

¹⁰² Murty, p. 501.

¹⁰³ Clifton Wilson (1967), p. 215.

function of observation and other diplomatic tasks, and their work for the embassy requires by necessity the possibility of using those nationals of the receiving State as recipients of the diplomatic message. If the receiving State gives a negative reaction to this behaviour, it obstructs the work of the mission and places itself in violation of Article 25 of the *Vienna Convention*.

With regard to individuals who are nationals of the sending State, the situation is even clearer. *Dembinski* speaks in this context of a "subjective right" of contact with its own nationals which the sending State enjoys¹⁰⁴; *Green* points out that such conduct does not qualify as interference¹⁰⁵.

The duty to protect the interests of nationals of the sending State (Article 3 (1) (b)) can at any rate not be satisfactorily fulfilled if such contacts were perceived as interference. Similarly, if the diplomatic mission is also charged with the fulfilment of consular functions (a possibility which Article 3 (2) of the *Vienna Convention* envisages), the possibility to make nationals of the sending State the recipients of the diplomatic message becomes a prerequisite of that task. The right to "communicate" with nationals of the receiving State, to which the *Vienna Convention on Consular Relations* makes reference, encompasses the exchange of messages. On the matter of communication, Article 36 (1) (a) of that Convention states:

"(a) consular officers shall be free to communicate with nationals of the sending State and to have access to them. Nationals of the sending State shall have the same freedom with respect to communication with and access to consular officers of the sending State [...]"

¹⁰⁴ *Dembinski*, pp. 245, 246.

¹⁰⁵ *Green*, p. 149.

– a provision, which the International Court of Justice confirmed as "the basic principle governing consular protection"¹⁰⁶.

If, therefore, the selection of individuals as a channel is not sufficient to warrant a finding of interference, the question may be asked whether the connection between a particular object and this channel may allow for such a finding.

In 2004 for instance, the German Ambassador to Iran, Paul Maltzahn, met with Ayatollah Montazeri and was sharply criticised for this behaviour and accused of meddling¹⁰⁷. But his critics had also made reference to the various topics which his talks with Montazeri had involved; they ranged from foreign affairs (the United States, Israel and Iraq) to internal politics (the elections in Iran)¹⁰⁸.

The potential problems which are caused by the discussion of certain matters with individuals in the receiving State, found consideration in the debates of the ILC. With reference to the predecessor of Article 41 (2) (the rule that official business has to be conducted through the Ministry of Foreign Affairs of the receiving State), ILC Member Scelle pointed out that the diplomatic mission might well wish

"to discuss a matter with a leading recognized authority, perhaps ecclesiastic, perhaps scientific, or perhaps even political; surely it did not first have to receive the permission of the ministry of foreign affairs?"¹⁰⁹

¹⁰⁶ *La Grand*, ICJ Reports (2001), para. 74.

¹⁰⁷ The 2004 case of Maltzahn (No 1) (German diplomat in Iran). See also Salmon (1996), p. 129, para. 199, with regard to nuncios in France.

¹⁰⁸ Nirumand (2004).

¹⁰⁹ YILC 1957 (1), p. 150, para. 45 [Mr. Scelle].

Padilla Nervo, who had co-sponsored the Article, declared that this had "naturally" not been the intention and explained that paragraph 2 was meant to refer only to "official business", to which he gave a narrow interpretation¹¹⁰.

The case of Maltzahn suggests that some States are sensitive as far as the discussion of government policies with their nationals are concerned. However, the paucity of State practice in this field makes it at any rate difficult to conclude that the international community as a whole considers the choice of this topic interference.

Furthermore, the protection of interests of the sending State and its nationals may well require diplomatic contacts with individuals whose actions have affected these interests, and it may also require a discussion of the policies leading to these actions.

The function of observation also plays a role in situations of this kind. An illustration is the 1987 case of the US Military Attaché Raphael, who was accused of interfering in the affairs of the Philippines after he had tried to dissuade soldiers loyal to President Aquino from attacking mutineers. The US Ambassador defended Raphael's conduct by stating that Raphael had been "monitoring" events¹¹¹. In some situations, the appropriate fulfilment of the function of observation will indeed require a mutual flow of information¹¹², and this may include cases in which governmental policies had been the topic of the message. It is more difficult to apply this to the Raphael case, in which the diplomatic message was so significant

¹¹⁰ Padilla Nervo defined official business as "negotiations with government departments designed to lead up to an agreement or arrangement between the two States concerned". YILC 1957 (1), p. 149, para. 46 [Mr. Padilla Nervo].

¹¹¹ David Jones (1987).

¹¹² See *supra*, p. 126.

that the role of the diplomat as a neutral observer was in fact superseded by that of the messenger.

The task of promoting friendly relations between sending and receiving State likewise requires not only the possibility of contacting individuals in the receiving State¹¹³, but also the selection of governmental policies as a topic of the message forwarded to them. In this context, the public relations aspect of this function is of importance: a diplomatic agent must be able to present the views of the sending State, even if these views should be critical of the policies of the receiving State¹¹⁴.

The discussion and criticising of governmental policies in the presence of this channel may, in particular circumstances, also be based on the provision of moral support by States to aid in the realization of the right of self-determination¹¹⁵. The evaluation of the diplomatic behaviour in such a situation follows the conclusions reached above¹¹⁶. The balancing of interests in particular can be a very delicate affair in specific situations. In the Raphael case for instance, the diplomat acted to prevent harm to the lives of individuals. But the affected interests of the receiving State were security concerns of considerable significance. The intended action against the mutineers was a response to the fifth attempt at a coup d'état since the President had taken office¹¹⁷.

¹¹³ See Sen (1988), p. 58 and Richtsteig, Art. 25, p. 54.

¹¹⁴ Richtsteig, Art. 3, p. 23.

¹¹⁵ See *supra*, p. 258.

¹¹⁶ *Supra*, p. 258.

¹¹⁷ *Japan Economic Newswire*, "U.S. Diplomat accused of interfering in August Philippine Coup", 22 October 1987.

The mere selection of a channel for the diplomatic message does, as a general rule, not prompt receiving States to accuse an envoy of interference. While the Foreign Ministry is envisaged in the *Vienna Convention* as the normal recipient of official business, States in general accept the diplomatic need to communicate with other channels as well. Difficulties arise, when a particular topic – most of all, governmental policies – is discussed with a particular recipient.

Thus, a significant number of States show themselves sensitive to the criticizing of governmental policies before the public of the receiving State. But such criticism can be justified by reference to the functions of the diplomatic mission, in particular, the task of protecting the interests of the sending State and the protection of rights which are endangered by the breach of *erga omnes* obligations. It was however found that the application of the principle of proportionality is capable of mediating between the divergent interests. Not every representation by a diplomatic agent in the fulfilment of these tasks is "objectively necessary".

When the channel of the message is the opposition, receiving States tend to feel unease if the topic of the message are governmental policies or partisan politics. But again, diplomatic functions can be invoked as justifications; as well as the defence of acting in furtherance of the right to self-determination.

Finally, nationals both of the receiving State and of the sending State may be approached as channels of the diplomatic message. There is very little State practice to the effect that the discussion even of governmental policies could bring contact with these particular recipients of the message into the ambit of interference. Furthermore, envoys are frequently able to employ the promotion of friendly relations and the protection of interests of the sending State as a basis for their conduct. In these cases, too, proportionality requires a weighing of the

affected interests, which, it is suggested, will often favour the need for the diplomatic message.

Chapter 7 – The Methods of Interference

As in the case of targets and sources of the diplomatic message, an analysis of the methods adopted to disseminate the message is facilitated by the division of the means of dissemination into particular groups which deserve individual consideration. A first distinction which can be made is that of non-verbal and verbal activities¹. Within these groups, further sub-divisions are suggested by the practice of receiving States which take exception to particular forms of diplomatic conduct in these fields.

1. Non-verbal activities

a. Personal characteristics of the diplomatic agent

In past cases in diplomatic relations, a situation sometimes occurred in which a (potential) receiving State rejected diplomats because of reasons rooted in their persons; and in which the host government found that these personal characteristics did disseminate a message.

In the history of diplomatic relations, there appears for instance the 1847 case of the Graf von Westphalen, to which *Satow* makes reference²: the King of Hanover rejected the Graf as an envoy, "because he was a Roman Catholic".

¹ See *Glahn* who distinguishes between interference "by word" and "by deed", Glahn / Taulbee (2006), p. 416.

² *Satow* (1979), p. 90, para. 12.6. See also YILC, 1957 (1), p. 13, para. 42 [Mr. Yokota] and Lawrence, p. 266 (Keiley case).

Modern instances in which the rejection of a diplomatic agent was based on such grounds, are rare. Reference may however be made to the 1968 instance of the appointment of Horace Phillips as British ambassador to Saudi-Arabia: the agrément, which had already been provided, was withdrawn by the receiving State, on the grounds that Phillips was a Jew³. *Green* also refers to the 1970 case of Ms Muller, a German diplomat who was envisaged for a posting to the Vatican, and whose agrément the receiving State refused – "objecting to women in diplomatic posts dealing directly with the Holy See."⁴

Such restrictions will today have to be considered in the context of the human rights obligations which international law imposes upon States. It has been pointed out above that the assumption of diplomatic office does carry with it implied restrictions to certain human rights⁵. But there is a difference between a diplomatic agent who (as in the case of Thurston⁶) actively forwards information to a newspaper and then claims to enjoy the same right as any national of the receiving State and a diplomatic agent who follows a particular religious belief or experiences a negative treatment on account of his or her gender. In the latter cases, the grounds of distinction which are invoked by the receiving State, carry such an importance in the envoy's private sphere, that it would not be possible to consider such discrimination to fall within the limitations which the envoy has voluntarily accepted by taking up the diplomatic office, and which the sending State accepts by sending the diplomat abroad.

There is certainly not a sufficient degree of generality in State practice to indicate that a diplomatic agent would be seen as being deprived, *e.g.* of the right to

³ *Green*, p. 153.

⁴ *Green*, p. 154.

⁵ See *supra*, p. 184.

⁶ See *supra*, p. 177.

privacy⁷, the freedom of religion⁸ or of the freedom from discrimination⁹. While receiving States occasionally reject diplomatic agents in connection with allegations of interference even before they arrive in the territory of that State, the hosts relied in the vast majority of cases on particular forms of behaviour by the diplomatic agent; in other words, they took exception to potential representatives for what they did, and not for their personal characteristics.

When for instance in 1979 Iran rejected Walter Cutler as the proposed US Ambassador, the Iranian Foreign Minister referred, by way of explanation, to past "intervention" by the United States in the affairs of African States, including Zaire, to which Cutler had been posted. There was a clear indication that the Minister had a personal conduct in mind: according to him, the United States would have to send "an ambassador with better credentials", if they desired better relations with Iran¹⁰.

Even in the few cases in which, since 1961, receiving States took exception to diplomatic agents on the basis of personal characteristics alone, doubts remain as to the evaluation of the State reaction as an expression of *opinio iuris*. Both the 1968 case of Phillips and the 1970 case of Muller show certain inconsistencies in the conduct of the receiving States.

In the case of Phillips, the Foreign and Commonwealth Office, while accepting the decision of Saudi Arabia, pointed out that the diplomat had had "a record of long service in the Arab world, including previous service in the Embassy at Jiddah from 1953 to 1956"¹¹. In the case of Muller, *Green* remarked that the Vatican did "not hesitate [...] to appoint women as members of its delegation to international

⁷ Article 17 (1) *ICCPR*; Article 8 (1) *ECHR*; Article 11 (2) *ACHR*.

⁸ Article 18 (1) *ICCPR*; Article 9 (1) *ECHR*; Article 12 (1) *ACHR*.

⁹ Article 26 *ICCPR*; Article 14 *ECHR*; Article 1 (1) *ACHR*.

¹⁰ *Facts on File World News Digest*, "U.S. Ambassador Barred", 8 June 1979.

¹¹ *The Times*, "Saudis reject Jew as British envoy", 10 April 1968.

conferences, as it did to the Diplomatic Conference on the Development of Humanitarian Law in Armed Conflict held in Geneva from 1974 to 1977"¹².

However, a receiving State which on one occasion does not consider the personal characteristics to be a bar to diplomatic service and on another occasion invokes the same characteristics to justify a refusal to accept a diplomatic agent, could not be said to have issued a clear legal opinion with regard to the evaluation of the characteristics in question. The point can even be made that the receiving States in these cases have established a legitimate expectation in the eyes of the sending States that they will accept these characteristics in the future.

State practice therefore does not support the conclusion that personal properties alone suffice for the assertion of interference. Some action or omission on the part of the envoy is expected; personal characteristics on their own would not be an appropriate basis for accusations of this kind.

b. The funding of factions

The allocation of money to political groups in the receiving State by diplomatic agents has a long history in diplomatic relations¹³. The assessment of the funding of factions does however face the question whether the main thrust of the diplomatic conduct lay in the provision of money (or other material goods) or whether the co-existing dissemination of a message did maintain its individual character.

¹² Green, p. 153.

¹³ See the examples provided by Butler / Maccoby, pp. 80, 81.

The answer depends on the circumstances of the case. It is, for instance, possible, that a diplomatic agent simply wanted to better the chances of a political party in forthcoming elections and that the money, while coming from mission funds, may indeed have been intended as an anonymous donation. In this case, the message character would regularly be supplanted by the actual provision of the financial aid. But there are also cases in which the provision of money carried an unconcealed message of support as well; and, as has been pointed out above, such a message to the party itself may have been the important element of the diplomatic behaviour¹⁴. It is in this regard noteworthy that the members of the International Law Commission, when discussing funding as an appearance of interference, saw it in the same context as the dissemination of an encouraging message. Thus, Ago considered it improper to give "moral or financial support" to a party in the receiving State¹⁵; Yokota stated that "[f]or an ambassador to encourage or subsidize" a party would amount to interference¹⁶.

The provision of material advantages to recipients in the receiving State has been the topic of some debate in academic literature. In 1964 for instance, *Satow* still suggested that "[i]t may be that the Law of Nations is not concerned with bribery. It seems rather a question of morality."¹⁷. Other authors are quite clear in their condemnation of the use of money to achieve the aims of diplomacy. *Yakembe* for instance states that the diplomatic mission must at all costs avoid having recourse

¹⁴ See *supra*, p. 136.

¹⁵ YILC 1957 (1), p. 149, para. 36 [Mr Ago].

¹⁶ YILC 1957 (1), p. 146, para. 10 [Mr Yokota].

¹⁷ *Satow* (1964), p. 103. He did however concede that "the employment of bribes to obtain secret information" was generally condemned.

to "corruption"¹⁸, and several authors see in this form of behaviour one of the principal examples of interference¹⁹.

A third opinion which is supported in this context requires a closer examination of the conduct in question. *Sen* for instance states that bribery is in general behaviour "overstepping the boundaries of propriety"²⁰. But he also draws attention to the difference between bribery and the customary exchange of presents: in some countries, the tradition existed to give "small presents and flowers on certain occasions such as Christmas or the New Year Day"²¹.

Modern State practice shows that receiving States have on several occasions taken a negative stance towards the provision of material support by a diplomatic agent to a faction in the receiving State. One of the most prominent cases was the 1980 incident involving the Soviet Ambassador to New Zealand, Vsevolod Sofinsky, who was accused of having given money to the Socialist Unity party and was subsequently expelled²². On this occasion, the Prime Minister of New Zealand pointed out that it was "an established international convention that a diplomatic representative does not interfere in the domestic politics of the country he is accredited to"²³

In another case, in 1999, Malaysia alleged that Canadian and other diplomats were providing funds to politicians of the opposition in the run up to the elections in November of that year²⁴. In this context, the Deputy Prime Minister declared that diplomats who were found to interfere in Malaysian politics would not be allowed

¹⁸ Yakembe, p. 67.

¹⁹ Salmon (1996), p. 129, para. 197; and see Oppenheim (1967), p. 787 with particular reference to the case of the French Ambassador to Britain, 1677 – 1681.

²⁰ Sen (1965), p. 59, see also Mukharji, p. 23.

²¹ Sen (1965), p. 60. See also Satow (1964), p. 103.

²² *Facts on File World News Digest*, "Soviet Ambassador Expelled", 8 February 1980.

²³ *Associated Press*, "New Zealand boots Soviet Ambassador", 23 January 1980.

²⁴ *Toronto Star*, "Malaysia tells West to butt out", 26 November 1999.

to serve in that State²⁵. The official reaction by governments of sending States questioned the factual basis of the allegations, but did not deny that the giving of money to a party constituted interference. The Canadian International Development Minister Minna for instance was quoted as saying that the sending State did not use its money

"[...] for political funding and I would be very surprised if any was used for that. If it were, we would take action, but I'm sure it is not. We're pretty careful with how our money is spent."²⁶

These cases reflect a general tendency in international law to combat corruption – a tendency which is evidenced through the conclusion of numerous regional conventions and instruments on questions of corruption and bribery in the past ten years²⁷, and through the relatively speedy acceptance of the United Nations *Convention against Corruption* by members of the international community²⁸. Some of these instruments make express reference to the funding of political parties. Thus, Article 7 (3) of the UN *Convention on Corruption* calls on State Parties to "consider" enhancing transparency in the funding, *inter alia*, of political

²⁵ *Toronto Star*, *loc. cit.*

²⁶ Trickey (1999). Australia and Britain likewise denied that donations had been made, Pereira (1999). The United States likewise denied the accusations, BBC Online, "Malaysia accuses diplomats", 24 November 1999. The material assistance rendered to factions in the receiving State does not have to be monetary in nature to trigger a negative State reaction, as the 1996 case of Robin Meyer has shown (distribution of book and magazines to the opposition).

²⁷ For instance, for the OAS: the *Inter-American Convention against Corruption* (1996) ["the Inter-American Convention"]; for the EU: the *Protocol drawn up on the basis of Article K.3 of the Treaty on European Union to the Convention on the protection of the European Communities' financial interests* (1996) ["the 1996 Protocol"]; the *Council Framework Decision 2003/568/JHA of 22 July 2003 on combating corruption in the private sector* (2003) ["the 2003 Framework Decision"]; for the Council of Europe: the *Council of Europe Criminal Law Convention on Corruption* (1999) ["the Council of Europe Convention"]; for the OECD: the *Convention On Combating Bribery of Foreign Officials in International Business Transactions* (1997) ["the OECD Convention"]; for the African Union: the *African Union Convention on Preventing and Combating Corruption* (2003) ["the African Union Convention"].

²⁸ The *United Nations Convention against Corruption* ["the UN Convention"] was adopted on 31 October 2003 and entered into force on 14 December 2005; it has (as of February 2007) 84 parties.

parties, and Article 10 of the African Union *Convention on Preventing and Combating Corruption* provides that State Parties shall, *inter alia*, adopt legislative measures to "[p]roscribe the use of funds acquired through illegal and corrupt practices to finance political parties"²⁹. Beyond that, these instruments provide useful guidance as to what members of the international community consider to constitute a form of illicit provision of material means. For the understanding of "corruption" or "bribery" is remarkably similar in all of them. Thus, the instruments agree that the act of bribery or corruption involves, on the one hand, the offering (or promising, giving etc) of a monetary or other benefit to the recipient³⁰ and the intended provision of a service (which can be an act or an omission) in exchange for this advantage³¹. This reciprocal relationship is important: the advantage offered may be direct or indirect in nature, but a direct return service is expected – the act of the author of bribery therefore is goal-oriented³².

²⁹ The rules contained in some of the other instruments will, depending on the circumstances of the case, encompass leading party members. Thus, Article 6 of the *Council of Europe Convention* refers to "Bribery of members of foreign public assemblies". The *OECD Convention* refers to bribery of "public foreign officials" (Article 1 (2)) and explains in its commentary that "In special circumstances, public authority may in fact be held by persons (e.g., political party officials in single party states) not formally designated as public officials. Such persons, through their de facto performance of a public function, may, under the legal principles of some countries, be considered to be foreign public officials", *OECD Convention*, Commentary to Article 1, para. 16.

³⁰ Articles 15, 16, 21 of the *United Nations Convention*; Articles 2 and 5 of the *Council of Europe Convention*; Articles VI and VIII of the *Inter-American Convention*; Article 3 of the *1996 Protocol* ("an advantage of any kind whatsoever"); Article 2 of the *2003 Framework Decision*; Article 1 of the *OECD Convention*; Article 4 (1) (b) of the *African Union Convention* ("any goods of monetary value, or other benefit"); Article 4 (1) (e) of the same convention.

³¹ Articles 15, 16, 21 of the *United Nations Convention*; Articles 2, 5 and 7 of the *Council of Europe Convention*; Articles VI and VIII of the *Inter-American Convention*; Article 3 of the *1996 Protocol*; Article 2 of the *2003 Framework Decision*; Article 1 of the *OECD Convention*; Article 4 (1) (b) and (e) of the *African Union Convention*.

³² Cf the words "in order that" in Articles 15, 16 and 21 of the *United Nations Convention*; "for him or her to act or refrain from acting" in Article 2 of the *Council of Europe Convention*; "in exchange for" in Articles VI and VIII of the *Inter-American Convention*; "for him to act or refrain from acting" in Article 3 of the *1996 Protocol*; "in order that" in Article 2 of the *2003 Framework Decision* and in Article 1 of the *OECD Convention*; "in exchange for" in Article 4 (1) (b) of the *African Union Convention*; "for him or her to act or refrain from acting" in Article 4 (1) (e) of the *African Union Convention*.

In addition to these elements, the United Nations Convention also states that the material advantage which is offered (or promised or given) must have been an "undue" advantage³³. This element forms part of only some of the regional conventions³⁴. However, the absence of these words in the other instruments³⁵ does not imply that it was the intention of the drafters to encourage a criminalization of acts which involve the tendering of an advantage which is owed to the recipient. Such advantages may, after all, consist of legitimate fees which are attached to the use of particular facilities.

These regulations may not themselves allow the evaluation that the foreign funding of political *parties* is, on its own, tantamount to interference under international law. However, existing State practice confirms that members of the international community do consider this particular behaviour a damaging intrusion in their own affairs. A great number of States, covering a wide spectrum of different political systems and beliefs, have therefore adopted legislation which deals with this particular issue of party financing through foreign funding³⁶.

One of the reasons for this concern is that the exercise of influence on the electoral process by foreign powers will impact on the political rights of the nationals of the receiving State. The right to free elections has been recognised by the leading human rights instruments³⁷; and this freedom is endangered if, during the electoral

³³ Articles 15, 16 and 21 of the *United Nations Convention*.

³⁴ Article 2 of the *Council of Europe Convention*; Article 2 (1) (a) of the 2003 *Framework Decision*; Article 1 of the *OECD Convention*. The *African Union Convention* makes reference to it with regard to bribery of a person working in the private sector (Article 4 (1) (e)), but not with regard to persons who fall under Article 4 (1) (b).

³⁵ The *Inter-American Convention*, the 1996 *Protocol*.

³⁶ *Dingake* mentions the examples of Armenia, Azerbaijan, Georgia, Greece, Germany, Moldova, Japan, Russia, the United Kingdom and the United States, with varying degrees of restrictions on foreign funding. *Dingake* (2006). The *Agency for Legislative Initiatives* stated in 2006 that, out of a sample of 111 countries, 64 % had adopted legal regulations on the foreign funding of political parties. See also Wall (pp. 515 – 517) for the practice of the United Kingdom and the United States.

³⁷ Article 25 *ICCPR*; Article 3 of *Protocol 1 to the ECHR*; Article 23 (1) *ACHR*.

campaign, the funding received by a foreign power allows one party to gain significant advantages over its competitors³⁸. A comfortable budget certainly grants the benefitting party better means to make itself known to the electorate, to publish its image and to present its candidates.

This link between foreign States and the potential influence on the electoral process was made particularly clear in the debate which took place in the United States in the 1970s, when legislative efforts were made to ban the foreign funding of political parties. Senator Lloyd Bentsen, who had supported the prohibitive legislation, was quoted as stating

"I do not think foreign nationals have any business in our political campaigns. They cannot vote in our elections so why should we allow them to finance our elections? Their loyalties lie elsewhere; they lie with their own countries and their own governments."³⁹

The significance of the influence of foreign funding on electoral matters in the target State is particularly apparent if the provision of material assistance is made by an affluent State for the benefit of parties in a comparably poor State. This was the situation when, in 1964, the United States itself engaged in large scale funding of the presidential campaign of Eduardo Frei in Chile, who then emerged as the successful candidate⁴⁰.

Diplomats who are involved in situations of this kind, may be able to invoke certain grounds of justification in their favour.

³⁸ *Petras* for one doubts whether an election in which the foreign State finances "networks of cadres, mass media outlets [...] innumerable advisers, high-tech communications and transport" can still be considered to comply with the principle of "free elections" *Petras* (2005).

³⁹ 120 Cong. Rec. 8783 (1974); quoted in *Damrosch*, p. 23.

⁴⁰ *Associated Press*, "Report: CIA Funded Chilean Parties", 13 November 2000. *George Washington University, National Security Archive News*, "Chile 1964: CIA cover support in Frei election detailed; operational and policy records released for first time", 25 September 2004 (updated 27 September 2004).

The promotion of friendly relations between the sending and the receiving State is, for instance, a function, which necessitates close contacts with factions in the receiving State. The maintenance of such contacts may indeed involve the provision of material means; but it is necessary to distinguish between the cases that have emerged in this field. There is a difference between the diplomatic envoy who invites members of the opposition to a dinner at the embassy (and therefore treats them to free food) and the envoy who pays for the maintenance of the party's website (and therefore enhances the faction's public profile). In the former case, the diplomatic agent will have acted primarily in fulfilment of the function enshrined in Article 3 (1) (e) of the *Vienna Convention*, as no direct advantage is expected from the tendering of the material means. In the latter case, the activity of the diplomat is goal-oriented.

The advantage which the envoy expects in return will (as opposed to cases in which the recipient of the support is a public official) often not consist in a return service, but will be established by the strengthening of a faction deemed to be favourable to the policies of the sending State – or the weakening of a faction deemed to be dangerous to the interests of that State⁴¹.

Similar considerations concern the question whether the diplomatic agent is offering a "due" or an "undue" advantage. If diplomats subscribe to party newsletters or attend events for which the party charges an admission fee, it will be understood that they have to provide due payment in return. There is no reported case where a receiving State would have taken exception to the provision of material advantages in these situations; but it is true that the dividing line between

⁴¹ For instance, when Salvador Allende had come to power in Chile, the recipients of US financial contributions included not only the conservative Christian Democratic Party, but also the Radical Party of the Left, in an effort to weaken the Socialist government of the elected President. *Associated Press*, "Report: CIA Funded Chilean Parties", 13 November 2000.

due and undue advantages may become thin. The proceeds of party publications and of party events which carry an admission fee, might, after all, be spent on the next electoral campaign. But in this case, intervening causes lie between the original act of the diplomat and the consequences of the act; the argument can be advanced that the diplomatic agent did not set the direct cause for any financial impact on the electoral campaign.

In some cases in which diplomatic agents offered material advantages to their contacts, the evaluation of this activity has to take into account the fact that the diplomats may even have been required to adopt this conduct. If it is for instance the custom in a receiving State – as in the example to which *Sen* refers – to give flowers or small presents on specific holidays, then an envoy who chooses to abstain from this tradition will not only have missed an opportunity to promote friendly relations with the receiving State, but may through this omission have created the opposite effect.

A further justification for the provision of material advantages to factions may derive from the right of self-determination enjoyed by peoples in the receiving State and the corresponding right – or even duty⁴² – of sending States to aid in this endeavour. This line of reasoning is not of merely hypothetical significance. The African National Congress for instance, received foreign funding during the time of the apartheid rule – as did other opponents to the National Party government in this period⁴³.

⁴² See *supra*, p. 227.

⁴³ Leon (2005). See also Dingake (2006).

In this context, it is of some importance that numerous General Assembly Resolutions which confirm the right to self-determination call on all States to provide not only moral, but also "material assistance" to peoples striving for the realization of this right⁴⁴. In the particular case of apartheid – a phenomenon which the international community has recognised as a crime against humanity⁴⁵ – the General Assembly spoke of the "duty of every State" to contribute to the implementation of the rule of self-determination⁴⁶ and appealed to all governments "to provide every assistance", including direct assistance, "to the national movement of the oppressed people of South Africa in their legitimate struggle"⁴⁷.

A sending State therefore which intends to fulfil these obligations by providing financial assistance to factions struggling for self-determination, may encounter a conflict of duties. The possibility of a reconciliation of the obligations attached to the right to self-determination and the rule of non-interference will depend, to a considerable degree, on the evaluation of the objective necessity of the provision of material means in the relevant case.

The elements of proportionality which have been examined above⁴⁸, apply in this instance as well. For instance, there may on some occasions be less intrusive means at the disposal of the diplomatic agent than the provision of financial support to a political party. The giving of financial aid to neutral organizations, whose main objective is observation of, but not participation in, the electoral process, is an example for alternatives of this kind. When for instance Malaysia in 1999 accused diplomats from various countries (including Canada) of funding opposition

⁴⁴ See *supra*, p. 227.

⁴⁵ Article I (1) *Apartheid Convention* (1973); cf. Article 7 (1) (j) of the ICC Statute.

⁴⁶ GA Res 2787 (XXVI), para. 7.

⁴⁷ GA Res 2775 (XXVI), para. 6.

⁴⁸ See *supra*, p. 259.

parties⁴⁹, the Canadian Minister of Foreign Affairs denied the accusations, but stated that support had been offered "to a couple of non-governmental organizations [...] to provide monitoring of the election itself"⁵⁰. That is not to say that the funding of non-governmental organizations will in all circumstances be acceptable to members of the international community. There is reason to believe that cases in which substantial financial support to NGOs results in a strong dependency on the donor, will raise concerns about undue influence of the sending State⁵¹.

Other alternatives include the provision of material means to support local educational or informative initiatives or the rendering of assistance to development projects –which benefit all parties in the receiving State on an equal basis. A strict application of the principle of proportionality may therefore yield the result that the giving of funds to a faction in the receiving State was not the least intrusive way of helping in the legitimate struggle for self-determination.

However, on other occasions – especially, when the government of the receiving State keeps a strict control on the formation of dissenting political opinion or bars the legitimate existence of opposition parties altogether, the giving of material assistance to dissident groups may be the only method which will effectively and realistically help an oppressed people to realize its right to self-determination. The case of the African National Congress in South Africa is an example – a group which was for a long time banned by the ruling government and which did, during that period, depend on material assistance from the outside to continue its endeavours to achieve self-determination for the black majority.

⁴⁹ See *supra*, p. 274.

⁵⁰ *Toronto Star*, "Malaysia tells West to butt out", 26 November 1999.

⁵¹ See the 2006 case of Doe (UK diplomat in Russia), in which President Putin was quoted as saying: "states cannot use NGOs as an instrument of foreign policy on the territory of other states".

2. Verbal Activities

a. Political Lobbying

In the work of diplomatic agents, the use of the diplomatic message for political lobbying occupies a prominent place. To a degree, it is understandable that some receiving States consider an attempt to persuade addressees of a particular course of conduct, a distinct intrusion in internal affairs. On the other hand, there may be reason to claim that it is precisely the function of a diplomatic agent to attempt to sway the minds of politicians in a direction favourable to the sending State⁵².

There is particular justification for this opinion when the recipients are agents of the government of the receiving State. But even here there are cases where diplomatic agents met with negative reactions from within the receiving State⁵³.

In 2000 for instance, the US Ambassador to Indonesia, Robert Gelbard, was accused of exerting his influence on the government in Jakarta to choose the reformer Wirahadikusumah as the new army chief – a move, which the Minister of Defence of the receiving State described as "interfering in Indonesian affairs"⁵⁴.

⁵² *Szilassy* for instance distinguishes between "ingérence" and "un effort, très légitime, de gagner l'opinion à la cause de son pays", *Szilassy*, p. 141.

⁵³ See for instance Yugoslavia: the 1976 case of Silberman (USA); Sierra Leone: the 1993 case of diplomats from various countries; Kenya: the 1995 case of Aurea Brazeal (USA); Israel: the 1996 case of Indyk (No 4) (USA); the 1997 case of Indyk (No 6) (USA); the 1997 case of Indyk (No 7) (USA); Indonesia: the 2000 case of Gelbard (No 7) (USA); the 2000 case of Gelbard (No 8) (USA); Ghana: the 2000 case of Craig Murray (No 2) (UK); the 2001 case of Murray (No 4) (UK); Bangladesh: the 2001 case of Mary Ann Peters (USA).

⁵⁴ Simon (2000). See also the 1995 case of the US Ambassador to Kenya; *Agence France Presse*, "US ambassador accused of meddling in Kenya's internal affairs", 16 February 1995.

But diplomatic agents who try to change the direction of the government of the receiving State may be able to rely on accepted reasons for doing so. The function of negotiation (Article 3 (1) (c) of the *Vienna Convention*) in particular could not be meaningfully carried out, were there not an expectation on both sides that the activity will include an attempt at persuasion. However, cases are rare in which negotiation (which usually takes place behind closed doors⁵⁵) was perceived as "interference" by the receiving State⁵⁶.

The protection of interests of the sending State and of its nationals (Article 3 (1) (b) of the Convention) plays a more significant role. Several cases in this field concern nationals of the sending State whose rights were limited by the receiving State. Such a case occurred in 1975, when the American citizen Laszlo Toth was detained by Yugoslavia on suspicion of espionage. The US Ambassador Silberman tried to effect his release and found his activities severely rebuked by President Tito⁵⁷.

However, diplomatic agents must enjoy the right to make representations on behalf of their nationals if they are to fulfil their duties under Article 3 (1) (b) and Article 3 (2) of the *Vienna Convention* – particularly, when rights as fundamental as the freedom of the person are concerned.

A feature of increasing significance in diplomatic relations are the attempts by diplomatic agents to persuade the government of the receiving State to protect the rights of its own citizens. In these circumstances, the right to self-determination and its concomitant duties incumbent upon members of the international community

⁵⁵ Do Nascimento E Silva (1992b), p. 1034.

⁵⁶ See *supra*, p. 123.

⁵⁷ *The Economist*, "Yugoslavia: Neutral on whose side?", 2 April 1977. See also the 2000 case of Gelbard (No 8). *Antara. The Indonesian National News Agency*, "Indonesia: US Embassy denies American arrested in Irian Jaya was spy", 23 October 2000.

influences the evaluation of diplomatic behaviour which, in the absence of this justification, would have qualified as interference through the diplomatic message.

A diplomatic agent, for instance, might call on the government of the receiving State to conduct free and fair elections. An illustration is the 2000 case of Craig Murray, then British Deputy High Commissioner to Ghana, who had requested that the electoral commission permit only people with new identity cards to vote in the elections⁵⁸ (the use of the customary "thumbprint" cards having been criticized for the potential of election fraud which it carried⁵⁹). These comments earned him a warning by the Foreign Minister of the receiving State, who called them "unacceptable" and found that they "bordered on direct interference" in the internal affairs of Ghana⁶⁰. But free and universal elections are a significant element in the struggle of peoples to determine their political status, and a diplomatic agent who manages to persuade the government of the receiving State to ensure the fairness of elections, will with this action aid a people in the realization of their right of self-determination.

If any of these justifications are invoked, the principle of proportionality will require an assessment of the potential availability of less intrusive alternatives to the diplomatic conduct. There is evidence in State practice that receiving States are quite sensitive to gradations even within the activity of persuading the government. Thus, several cases in which negative sanctions had been issued, concern situations

⁵⁸ *Agence France Presse*, "Ghana warns against foreign interference in elections", 28 November 2000.

⁵⁹ Cf. *BBC Online*, "Ruling party wins Ghana court battle", 4 December 2000.

⁶⁰ *Agence France Presse*, *loc. cit.*

in which diplomats put pressure on their recipients to achieve their ends⁶¹ (even in the absence of threats, which will be discussed below).

States appear to be similarly concerned when a diplomatic agent "demanded" or "called for" a particular conduct⁶². But at the other end of the scale are cases in which diplomats merely offered advice. Unwanted advice may well be considered a nuisance; but there is evidence that this form of behaviour is accepted even if the opinion expressed did not concern a matter in which the sending State had a direct interest. One of the few examples in this regard is the 2001 case of Mary Ann Peters, the American ambassador to Bangladesh. Peters had suggested a "five-point action economic agenda" to the government of the receiving State, which covered areas such as power, gas and telephones, in an effort to improve Bangladeshi economy⁶³. These remarks reportedly drew open criticism only from smaller parties "and left-leaning organisations". The Prime Minister confined herself to stating that every political party had its manifesto on whose basis it would operate⁶⁴.

The style employed by the diplomatic agent is therefore of some importance for the evaluation of the proportionality of the persuasive activity. This is true even if the diplomat has strong reasons for attempting to sway the mind of the government.

Thus, in the 2000 case of the US Ambassador to Indonesia (Gelbard), who worked towards the release of the American citizen Maness, it was the forceful manner of his activities which appeared to have caused concern to the receiving State. The

⁶¹ This was alleged by Yugoslavia in the 1976 case of Silberman (USA); by Israel in the 1996 case of Indyk (No 4) (USA) and in the 1997 case of Indyk (No 6) (USA) and in the 1997 case of Indyk (No 7) (USA); as well as by Indonesia in the 2000 case of Gelbard (No 7) (USA).

⁶² See Sierra Leone: the 1993 case of diplomats from various countries; Kenya: the 1995 case of Aurea Brazeal (USA); Indonesia: the 2000 case of Gelbard (No 8) (USA); Ghana: the 2001 case of Murray (No 4) (UK).

⁶³ Habib (2001).

⁶⁴ Habib (2001).

Indonesian Minister of Defence went so far as to claim that the US Ambassador had "taken [Maness] to Jakarta when he was about to be deported"⁶⁵.

These cases illustrate that the principle of proportionality is of importance not only when the diplomatic activity of persuasion is compared to less intrusive alternatives, but also when the methods *within* the conduct of persuasion are discussed. A request for the release of a citizen is quite different from a demand or a physical taking away; the offering of advice is distinct from the application of pressure.

That is not to say that there could not be circumstances in which even the making of forceful representations will be justified. In this regard, the interests of the sending State as well as those of the receiving State have to be considered. If, for instance, the application of pressure on the receiving State is the only method of saving the lives of nationals of the sending State from an imminent danger⁶⁶, a diplomatic agent could not be found to have engaged in unjustified interference in the affairs of the receiving State.

Similar considerations apply when a diplomatic agent attempts to sway the minds of factions or individual politicians in the receiving State. Communication with political parties is part of the tasks of a diplomatic agent, and this behaviour must include the possibility that the recipients will become more favourable to the sending State than they had been before⁶⁷. Moreover, it is true that political parties

⁶⁵ *Agence France Presse*, "Minister says Indonesia caught US 'infiltrator' in troubled Irian Jaya", 23 October 2000. The author of the article also remarked that the Minister provided no details on "how the ambassador could have taken someone that was about to be deported away from immigration officials."

⁶⁶ See for instance the example that *Green* provided (representing a neutral State in a belligerent country), *supra*, p. 243.

⁶⁷ The dangers of having to wait with such activities until for instance, an opposition party becomes the new government of the receiving State, have been mentioned above, *supra*, p. 252.

and individual politicians have to expect that they will be the target of lobbying activities – by messengers from inside as well as outside the receiving State⁶⁸.

On the other hand, there are numerous instances in which diplomatic persuasion was resented, even when the recipients were politicians of the receiving State⁶⁹.

Thus, in 1995, the US Ambassador to Israel, Martin Indyk, faced criticism when he allegedly attempted to persuade members of the Knesset to oppose a Bill which would have made it more difficult for Israel to return the Golan Heights to Syria⁷⁰. The accusations leveled at Indyk referred to "US interference in internal Israeli affairs"⁷¹.

If however the cases in which envoys received negative reactions for trying to sway the minds of politicians, are subjected to scrutiny, a pattern emerges which demonstrates that receiving States are more sensitive to certain aspects of the diplomatic behaviour than to others.

There is, for instance, a particular tendency on the part of receiving States to give negative sanctions to activities which show a close connection to an electoral campaign. One example is the 1988 case Hendrickson, a US diplomat in Singapore, who was expelled after he had encouraged a former solicitor-general to run as opposition candidate in the forthcoming elections⁷². Sensitivity towards this form of (indirect) participation in electoral campaigns is perhaps not surprising. The

⁶⁸ On the significance of lobbying as part of diplomatic tasks, see Berridge, p. 124.

⁶⁹ See Canada: the 1981 case of Ford (UK); Nicaragua: the 1984 case of Bergold (USA); Singapore: the 1988 case of Hendrickson (USA); Israel: the 1995 case of Indyk (No 1) (USA); Indonesia: the 1999 case of Gelbard (No 1) (USA); Bosnia and Herzegovina: the 2001 case of Miller and Barry (USA).

⁷⁰ *The Zionist Organization of America*, "Ambassador Indyk Reportedly Interfered in Latest Israeli Cabinet Appointments", 9 July 1997, with reference to the *Washington Times*, 27 July 1995.

⁷¹ *Agence France Presse*, "US envoy intervenes to try to save Syrian peace talks", 26 July 1995. See also the 1984 case of Harry Bergold, *IPS-Inter Press Service*, "Nicaragua: US Ambassador accused of interfering in domestic affairs", 25 October 1984.

⁷² Cumming-Bruce (1988). See *supra*, p. 141.

restrictive view of the international community regarding this target of the diplomatic message has been mentioned above⁷³.

An important second category of cases are those instances in which the diplomatic agent discussed matters which concerned the security of the receiving State. An illustration is the 2000 case of Warren, a US diplomat who was expelled from Sudan for talking with leaders of political factions about matters pertaining to Sudanese security⁷⁴. An element of persuasion was apparent in this case as well: at the time of Warren's arrest, it was reported that the participants at that meeting were "plotting an internal uprising supported by armed action"⁷⁵.

Academic opinion supports the view that "conspiring" with factions to the detriment of the security of the receiving State would not be a tolerable form of diplomatic behaviour, and that it would constitute interference⁷⁶.

A third category of cases is formed by those instances in which diplomatic agents applied pressure on factions or politicians in the receiving State in an attempt to sway their minds. This form of persuasion played a role in the historical case of Montagnini which was mentioned above⁷⁷. The papal nuncio in this case had not only maintained contact with the French bishops, but had also exerted pressure on them; and it appears that this part of his behaviour was instrumental in the negative sanction (expulsion) which he received⁷⁸.

Apart from these three categories, there are in fact not many instances in which receiving States would have issued a negative reaction to diplomatic attempts to persuade politicians or factions in the receiving State. Montagnini, Hendrickson

⁷³ *Supra*, p.206. See also Bosnia and Herzegovina: the 2001 case of Miller and Barry (USA).

⁷⁴ *Supra*, p. 252.

⁷⁵ *CNN*, "Sudan says it uncovered plot involving U.S. diplomat", 7 December 2000.

⁷⁶ Green, p. 133, Salmon (1996), p. 129, para. 199.

⁷⁷ See *supra*, p. 239.

⁷⁸ Salmon (1996), p. 129, para. 199.

and Warren were all expelled by their receiving States. But in the above mentioned 1995 case of the US Ambassador Indyk to Israel, no State reaction was issued⁷⁹. And when in 1981, the British High Commissioner to Canada Sir John Ford was accused of trying to persuade Canadian Members of Parliament to vote against draft legislation affecting the Canadian constitution, the Minister of External Affairs remarked that he would not lodge a complaint with the sending State⁸⁰.

Furthermore, a diplomatic agent who attempts to change the mind of politicians in the receiving State may also be able to refer to the fulfilment of particular functions as a defence against accusations of interference. The need in particular to protect the interests of the sending State may be of significance even if the recipient of the message is a member of the opposition; and it may be important even if sensitive military matters are the topic of the message.

If, for instance, a political party in the receiving State is fundamentally opposed to that State's membership in a defensive alliance, to which the sending State belongs as well, then the interests of the sending State require that diplomats do not have to wait until the party forms the new government before they can attempt to persuade it otherwise. It is precisely in the time between elections, when the policy of the party is still in its formative stage, that such an attempt may yield the most promising results. Barring diplomatic agents from this activity would therefore deprive them of the most efficient way of fulfilling their function of protection in this regard.

Article 3 (1) (e) likewise opens the possibility of activities which may result in the changing of attitudes and opinions of factions in the receiving State. It was

⁷⁹ Israel: the 1995 case of Indyk (No 1) (US).

⁸⁰ Although he did concede that the High Commissioner "may have acted beyond 'normal functions'", Hutton (1981).

mentioned that *Green* for one understood the 1981 case of John Ford not as an incident of interference, but as the fulfilment of a function, which consisted in the provision of an explanation of the views of the receiving State⁸¹. This opinion may have been at variance with that indicated by the Canadian Minister of External Affairs, but it draws support from authors such as *Richtsteig*, who consider the forwarding of the opinion of the sending State to be part of the public relations function incumbent on diplomatic agents under Article 3 (1) (e)⁸².

But even if the diplomatic agent can invoke the existence of a function, the particular activity will still have to be objectively required for the fulfilment of that function. There is a difference between a diplomat who advises a faction in the sending State on the benefits of a military alliance and a diplomat who persuades a faction to engage in an internal uprising against the government of the day. Neither State practice nor academic opinion support the assumption that in cases in which the diplomatic activity moves outside the objectively necessary behaviour, the agent would still be able to invoke the fulfilment of a function as a justification for the conduct.

b. Propaganda

The term "propaganda" is here understood in the way which *Ioannou* suggested and which seems to best reflect the use of the concept in international relations: as

⁸¹ *Supra*, p. 253.

⁸² *Richtsteig*, Art. 3, p. 23.

"a method of communication which attempts, in a systematic way, to influence and manipulate the behaviour of people, so as to produce a predetermined effect"⁸³

Propaganda activities thus share with lobbying activities the fact that the diplomatic messenger will engage in conduct of persuasion. But the recipient in this case is the general public, and this difference may matter in the evaluation of the method⁸⁴.

Unlike the receiving State's government, the public is not designated as the official channel for diplomatic communication, and unlike politicians and political factions, the public does not have to expect lobbying efforts by agents of a foreign power.

Propaganda activities have on occasion received a negative evaluation in the literature. *Berridge* for instance states that they are "not diplomacy. [They are] a form of political advertising"⁸⁵. *Nicolson* expressed it in these words: "In the days of the old diplomacy, it would have been an act of unthinkable vulgarity to appeal to the common people any issue of international policy"⁸⁶.

Salmon on the other hand highlights the thin dividing line between information and propaganda. In his view, diplomatic agents need to devote particular care to the manner in which they inform – the publication of information bulletins by the embassy for instance carries the risk of leaning towards propaganda activities⁸⁷.

⁸³ Ioannou, p. 1135. *Berridge* and *James* likewise refer to the public as the channel of propaganda activities, but also stress the means of communication when they define propaganda as the "use of mass communications to reinforce or change public opinion, domestic or foreign", *Berridge / James*, p. 215. See also *OED*, "propaganda, *n*" (no 3).

⁸⁴ See also *Whitton* (p. 889) on the rationale for concerns regarding propaganda by foreign States.

⁸⁵ *Berridge*, p. 128.

⁸⁶ *Harold Nicolson*, quoted in *Regala*, p. 43. See also *Lauterpacht* on interference through "hostile propaganda", which he describes as "nothing short of an attack against the international personality of that State, against its international sovereignty and external independence", *Lauterpacht* (1977), p. 281. The examples which *Lauterpacht* provides make clear that he did not exclude propaganda activities by diplomats from this consideration. Cf. *Lauterpacht* (1977), p. 283.

⁸⁷ *Salmon*, (1996), pp. 132, 133, para. 202. See also *Do Nascimento e Silva* (1992a), p. 1028.

Receiving States too have on occasion reacted negatively to the activity of propaganda itself⁸⁸. However, in most instances which have arisen in this field, the persuasive diplomatic activity did not, on its own, form the basis of the negative sanction. In modern international relations, States in general recognize that diplomats, in the fulfilment of their functions, have to be able to address the public, and that their messages to the public may be able to change the latter's preconceived opinions.

Several diplomatic duties call for the use of persuasive activities to this extent.

In the context of the protection of interests, *Richtsteig* stresses that the mission must have the right to engage in public criticism or in the correction of a perception ("Richtigstellung") if that is objectively necessary⁸⁹. *Blischtschenko* also highlights the need to protect the image and the rights of the sending State, and it appears that he, too, would resolve the resulting conflict between the interests of sending and receiving State by considering the manner of the dissemination of the message. Where *Richtsteig* talked about activities that need to be "objectively necessary" and *Salmon* about the "caution" that needs to be applied, *Blischtschenko* refers to "tact and resolve" that are required on the part of the diplomatic agent⁹⁰.

The promotion of friendly relations and the development of economic, cultural and scientific relations can likewise require a diplomat to engage in an activity which can be perceived as a persuasion of the public. *Blum* emphasizes the danger that informative activities in the fields of economics, culture etc may be perceived as

⁸⁸ See Netherlands: the 1966 case of the Chinese chargé d'affaires; USSR: the 1966 case of certain Israeli diplomats. For reflections on propaganda by diplomats prior to the *Vienna Convention*, see Fenwick (1941), p. 627; Preuss, p. 706; Satow (1917), p. 369 (the case of the French envoy to Sweden in 1833).

⁸⁹ *Richtsteig*, Art. 41, p. 98. On the general difficulty of evaluating propaganda as unlawful "intervention", see Quincy Wright, p. 5.

⁹⁰ *Blischtschenko*, p. 181.

"intervention" by the receiving State⁹¹. On the other hand, if the public relations function imposes the task on diplomatic agents to explain the policies of the sending State to the public, the possibility cannot be discounted that diplomats will succeed in changing the public's preconceived views of the sending State.

Receiving States have acknowledged the necessity of persuasive activities in the context of the "public relations function". An exchange of opinions between the American Congressman Klein and the Assistant Secretary of State Gross, which took place in 1949, provides an illustration: Klein had complained about "anonymous propaganda favorable to the present regime in Spain" which allegedly had emanated from the Spanish embassy in the United States.

In his reply, Gross referred to the practice adopted by the United States itself. American diplomats, he explained, were under the "plain duty [...] scrupulously to abstain from interfering" in the internal affairs of their receiving States⁹². But he continued:

"Nevertheless, it is, of course, one of their functions to endeavor to influence, by any proper means, public and official sentiment to favor the policies of this Government"⁹³

In light of this, Gross would have found it "embarrassing for the Department" to object to activities of the Spanish embassy which sought to create a positive image of the government of the sending State⁹⁴.

⁹¹ Blum, p. 1038.

⁹² Whiteman (1970), p. 145.

⁹³ Whiteman, *loc. cit.*

⁹⁴ See for a similar case, the evaluation of "propaganda material" by the British Under-Secretary of Foreign Affairs in 1956, Hardy, p. 18.

There is therefore reason to believe that a diplomatic agent who merely wishes to promote a particular cause, will, as a general rule, be able to rely on the justifications which the fulfilment of diplomatic functions provides. "Propaganda", in the way in which it has been defined above, is not *per se* tantamount to interference. No other conclusion can be derived from a consideration of international instruments on this activity. It is in this context of interest that General Assembly Resolution 110 / II, entitled *Measures to be Taken against Propaganda and the Inciters of a New War*, expressly calls on Member States to promote friendly relations "by all means of publicity and propaganda available to them"⁹⁵.

The situation is quite different if the topic of the persuasive effort consists of objects which the international community condemns. In this regard, international instruments dealing with propaganda have identified issues whose advocacy, it is safe to say, will meet with negative reactions of receiving States. Prominent among these areas is the promotion of (unlawful) war⁹⁶, encouragement of threats to the peace, breach of the peace or aggression⁹⁷, and advocacy of hatred against peoples, races or religions⁹⁸. Of more relevance in the field of diplomatic relations are instances of (alleged) promotion of violence. In Resolution 33 / 73, entitled *Declaration on the Preparation of Societies for Life in Peace*, the UN General Assembly called on States to "discourage and eliminate [...] advocacy of violence

⁹⁵ GA Res 110 / II, para. 2.

⁹⁶ Article 20 (1) ICCPR; Article 13 (5) ACHR; UNESCO Resolution 4.301 (1970), preamble and paras 1 and 2, *Friendly Relations Declaration*, 1st principle, para. 3; GA Res 33 / 73, preamble and para. I. 3.

⁹⁷ *Convention on the International Right of Correction* (1952), 3rd paragraph of the preamble; GA Res 110 (II), para. 1; UNESCO Resolution IV.1.5.021 (1954); UNESCO Resolution 4.301 (1970), preamble; UNESCO *Mass Media Declaration* (1978), preamble.

⁹⁸ GA Res 33 / 73, para. 8; UNESCO Resolution 4.301 (1970), preamble and para. 1; UNESCO *Mass Media Declaration* (1978), preamble, paras 4 and 13; *International Convention on the Elimination of all Forms of Racial Discrimination* (1965), Article 2 (2) (b) and Article 4.

and war⁹⁹. There is evidence that this statement reflects the consensus of members of the international community (the resolution was carried by 138 votes to none¹⁰⁰). The issue became pertinent in the above mentioned case of the Saudi Ambassador to the United Kingdom, Alghosbi, who, in a poem, had praised a suicide bomber¹⁰¹, but it had also arisen in an earlier case in 1989, when David Tothill, the South African ambassador to Australia, engaged in conduct which the receiving State considered to "implicitly condone" an attack on the house of the representative of the African National Congress. Tothill was sharply criticized by the Australian government¹⁰². In Alghosbi's case, the Foreign Office made its own position clear to the Ambassador. In neither case did the diplomat claim that official functions justified the promotion of violence¹⁰³.

The position of the international community is even more pronounced on activities which not only intend to change the mindset of the addressees but endeavour to cause a particular action as a direct result of the persuasive effort. In the first case, the diplomatic agent introduces the audience to a new line of reasoning, and there is every possibility that, in a cool moment of reflection, the recipients may reject the arguments. But if a diplomat incites an audience to immediate acts, the recipients do not have that opportunity, and the receiving State itself is deprived of a chance to correct the impression thus conveyed.

In international instruments on propaganda, this situation is reflected by the greater number of topics which are condemned if they are used as objectives of incitement.

⁹⁹ GA Res 33 / 73, para. II (a) (ii).

¹⁰⁰ Two States abstained; Ioannou, p. 1136.

¹⁰¹ See *supra*, p. 112.

¹⁰² 12 *Australian Yearbook* (1988 – 1989), p. 451.

¹⁰³ As discussed above, Alghosbi claimed that he had written the offending poem in his role as a poet.

War¹⁰⁴, racial hatred¹⁰⁵ and violence¹⁰⁶ are again among those subject matters, but they are joined by "acts incompatible with the internal order or security of a territory"¹⁰⁷, terrorist or armed activities¹⁰⁸ and subversive activities¹⁰⁹. The *Friendly Relations Declaration* also refers to the duty of States to refrain from "instigating [...] acts of civil strife"¹¹⁰, a provision which echoes the earlier statement of the 1949 General Assembly Resolution *Essentials of Peace*, which called on every nation to refrain from "fomenting civil strife"¹¹¹

In the field of diplomatic relations, receiving States have regularly resorted to serious sanctions (expulsions) against diplomats in the most damaging cases; when, for instance, diplomatic agents called for the overthrow of the government or for violent or terrorist activities¹¹².

The possibility of interference of this kind was apparent even at the drafting stage of the rule on non-interference. In the 1958 ILC debates, the Secretary to the Commission pointed out that interference might take the very serious shape of a diplomatic agent "fomenting civil war"¹¹³. In cases of such an extreme nature, the

¹⁰⁴ Article 2 *Broadcasting Convention* (1936); UNESCO *Mass Media Declaration* (1978), preamble, 4th paragraph, Articles I and III. GA Res 381 (V) condemns propaganda which constitutes incitement to "conflicts or acts of aggression" (para. 2 (1)).

¹⁰⁵ GA Res 33 / 73, para. II (a) (ii). Cf. also Article 13 (5) *ACHR*.

¹⁰⁶ Article 20 (2) *ICCPR*; Article 13 (5) *ACHR*; *International Convention on the Elimination of all Forms of Racial Discrimination* (1965), Article 4 (a).

¹⁰⁷ Article 1 *Broadcasting Convention* (1936).

¹⁰⁸ *Friendly Relations Declaration*, 3rd principle, 2nd paragraph; GA Res 2131 (XX), para. 2.

¹⁰⁹ *Friendly Relations Declaration*, 3rd principle, 2nd paragraph; GA Res 2131 (XX), para. 2.

¹¹⁰ *Friendly Relations Declaration*, 1st principle, 9th paragraph.

¹¹¹ GA Res 290 (IV), para. 3. GA Res 36 / 103 even refers to a duty of States to refrain from the "encouragement" of "rebellious or secessionist activities within other States". However, as has been pointed out, this resolution, which was adopted against many negative votes, is unlikely to reflect international law on this point. Oppermann, p. 1439.

¹¹² See United States: the 1980 case of Tarhuni and Ibrahim (Libya); Egypt: the 1981 case of Polyakov (Soviet Union); Nicaragua: the 1988 case of Melton (USA); Haiti: the 1994 case of Schrager (USA); Pakistan: the 1994 case of consular officials (India); Jordan: the 1995 case of Batani (Iran); Congo: the 2000 case of Burgess (USA).

¹¹³ See *supra*, p. 88.

conduct of diplomats might, if they have a sufficient degree of control over the principal perpetrators of the violence, even amount to a violation of the ban on the use of force as enshrined in Article 2 (4) of the UN Charter.

Below that level, States also criticised diplomatic agents for the instigation of strikes¹¹⁴ and political demonstrations or social unrest¹¹⁵ in general. In 1983 for instance, the American diplomats Richard LaRoche and Edward Donovan were expelled from the territory of Surinam on charges of "instigating labor unrest" in the country¹¹⁶.

In the cases which arose in this context, there has been no attempt to justify the activity of persuasion by reference to other norms of international law. Instead, sending States and diplomatic agents preferred to deny the factual assessment by the receiving State¹¹⁷.

The reasons for this reluctance to rely on justifications may have to be seen in the fact that sending States fear retaliatory action by the receiving State whose diplomatic agents would be able to invoke the same grounds. It would also be difficult to establish that the prompting of a particular act had been "objectively necessary" for the exercise of this right. The question may be asked why for instance it should have been the diplomatic agent who called for the organization of strikes, anti-government demonstrations and the like, if such an activity could just as well have been performed by nationals of the receiving State.

¹¹⁴ See Costa Rica: the 1979 case of three Soviet diplomats; Surinam: the 1983 case of LaRoche and Donovan (USA); Nicaragua: the 1989 case of Barmon and Cassman (USA).

¹¹⁵ See Australia: the 1987 case of Gashut and others (Libya); Bahrein: the 1996 case of Dokoohki (Iran); Cuba: the 1998 case of Brown (USA).

¹¹⁶ Gedda (1983). For historical cases, see Oppenheim (1967), p. 816.

¹¹⁷ As for instance in the 1998 case of Timothy Brown; *Miami Herald*, "Cuba accuses U.S. diplomat of meddling, sowing dissent", 19 September 1989.

However, even in cases of incitement to particular acts, the evaluation of the diplomatic behaviour as unlawful interference remains restricted to those instances in which the objective of the incitement meets with the disapproval of the international community. If, on the other hand, diplomats call for acts which are in compliance with international law, an allegation of interference has no basis in the law.

There are few instances in which receiving States in situations of this kind would have taken exception to a diplomatic call for action. One such case occurred in 2004, when the US Ambassador to Macedonia had to face accusations of "gross interference"¹¹⁸ in internal affairs after he had appealed to voters in the receiving State to participate in elections¹¹⁹.

But even in this rather isolated case, the criticism did not come from a representative of the receiving State, but from individual politicians (including the former Minister of the Interior) of Macedonia. The Ambassador had in fact supported the spirit of Article 1 *ICCPR*; he had encouraged the people of the receiving State to exercise their right to freely determine their political status.

There is, then, a clear indication that the international community will not tolerate the instigation by diplomatic agents to acts which violate norms of international law; but there is no evidence for general State practice which would bar diplomatic agents from calling for acts which fall within the limits of the international legal order.

¹¹⁸ Radio Free Europe/Radio Liberty, "Newline 04-04-26. Macdeonian Presidential candidate rejects U.S., EU calls for participation in elections".

¹¹⁹ Radio Free Europe, *loc. cit.*

A third form of propaganda which has found mention in international instruments, concerns the dissemination of false or distorted information. Thus, in Resolution 127 (II), the General Assembly invited governments of Member States to

"study such measures as might with advantage be taken on the national plane to combat, within the limits of constitutional procedures, the diffusion of false or distorted reports likely to injure friendly relations between States [...]"¹²⁰

The concern of the international community about messages of this nature is also apparent from the references made in other resolutions and conventions¹²¹.

Surprisingly, and inspite of Sir Henry Wotton's famous bonmot¹²², allegations of deliberate dissemination of falsehoods are not a very common occurrence in modern diplomatic relations. The reason for this may be seen as much in the desire of receiving States not to further aggravate the situation as in the fact that many envoys may be selective with the truth rather than misstating a case altogether.

On the other hand, it was mentioned that Edward Clay, the British High Commissioner to Kenya, was in 2005 called a "congenital liar" by the Foreign Minister of the receiving State¹²³. In 2000, the Deputy High Commissioner of Pakistan to Bangladesh, Irfanur Raja, speaking about atrocities committed in the Bangladeshi war of independence, denied that they had been initiated by the

¹²⁰ GA Res 127 (II), para. 1.

¹²¹ See GA Res 634 (VII) ("dissemination of false and distorted information"); UNESCO *Mass Media Declaration* (1978), preamble, paragraph 11 ("diffusion of false or distorted reports"), Article 3 of the *Broadcasting Convention* (1936) (with regard to transmissions on the respective State's own territory); *Convention on the International Right of Correction* (1952), preamble ("false or distorted reports").

¹²² "An Ambassador is an honest man, sent to lie abroad for the good of his country", Berridge / James, p. 279.

¹²³ See *supra*, p. 245.

Pakistani army, but maintained that they had been provoked by the currently ruling party in Bangladesh¹²⁴. Raja also referred to about 26,000 people killed in the conflict – as opposed to the three million who, according to Bangladeshi sources, had lost their lives¹²⁵. The case resulted in Raja's withdrawal; and the Bangladeshi Foreign Minister expressed his hope that Bangladesh would resist "all designs and machinations" in the future.

While there have been no claims that false or distorted information can be justified by reference to diplomatic functions (sending States are more likely to insist on the truth of the statements), it should however be noted that not every case of falsification is likely to qualify as interference. The international instruments in this field do not in fact condemn the spreading of falsehoods as such – they qualify their negative evaluation by referring to behaviour which is "likely to injure friendly relations"¹²⁶ or which leads to damage to "international harmony"¹²⁷ or "international understanding"¹²⁸.

In the field of diplomatic relations, the same considerations apply. There is no evidence that receiving States would take objection to just any distortion of a given factual situation. But if the distortion has reached a level where it carries the potential of damaging the relations between the States (which is usually the case when it offends the State, its history or its representatives), a diplomat will not be

¹²⁴ *E-mela*, "Pakistan regrets over controversial remark and recalls Deputy High Commissioner [*sic*]".

¹²⁵ Hossain / Price (2000).

¹²⁶ GA Res 127 (II) 1947, para. 1; UNESCO *Mass Media Declaration* (1978), preamble, paragraph 11; *Convention on the International Right of Correction* (1952), preamble.

¹²⁷ GA Res 634 (VII), preamble.

¹²⁸ GA Res 634 (VII), operative paragraph; Article 3 of the *Broadcasting Convention* (1936) (with regard to transmissions on the respective State's own territory).

able to escape the accusation of unjustified interference through damaging propaganda.

c. Insults

The use of insulting language has, for a long time, presented diplomatic relations with particular difficulties. In the early 18th century, *François de Callières* called on diplomatic agents to communicate "without too much heat":

"il faut éviter les contestations aigres & obstinées avec les Princes & avec leurs Ministres & leur représenter la raison sans trop de chaleur, & sans vouloir avoir toujours le dernier mot."¹²⁹

And indeed, cases have arisen in which diplomatic behaviour which the receiving State deemed insulting in nature had met with negative reactions. One of the most prominent cases was that of Catacazy, the Russian Minister to the United States, who in 1871 was accused of "interference and impropriety" (and subsequently expelled) after he had "made himself personally offensive in conversation" and had employed "abusive and vituperative language" towards the recipients of his message, which included public officials¹³⁰.

¹²⁹ Callières, quoted in Satow (1979), p. 445, para. 44.29. See also Nicolson, p. 116 et seq. See also *Heffter*: "Der Abgeordnete hat sich daher jeder Kränkung des auswärtigen Staates und seiner Institutionen zu enthalten [...]", *Heffter*, p. 426.

¹³⁰ Moore, pp. 501 – 503; State of the Union Address, 4 December 1871; and see 32 *American Law Review* (1898), p. 268, Satow (1979), p. 180, para. 21.17, Moore, pp. 501 – 503; Higgins / Hall, p. 361; Jones, pp. 266, 267; Pavlovskaya, Chapter 1. *Accioly* viewed cases of insults to the government of the receiving State as instances of a violation of the duty of "loyalty" which the diplomatic agent owed to the foreign sovereign, *Accioly* (2), p. 330, para. 1149. For comparable incidents see 32 *American Law Review* (1898), pp. 265 – 267; Hyde, p. 735; Satow (1922), p. 417; Satow (1932), p. 88 and Plischke, p. 302.

Modern authors too, express the opinion that insulting remarks are incompatible with the position of a diplomat and represent interference in the internal affairs of the receiving State¹³¹. *Plischke*, when dealing with the topic of diplomatic interference, speaks of the prohibition on the expression of "harsh or disagreeable opinions upon any local political question"¹³². In *Blischtschenko's* view, an insulting speech would regularly lead to demands for the recall "of this tactless person"¹³³. *Richtsteig* points out that even insulting remarks on a third State constitute interference in the internal affairs of the receiving State – an issue which has been discussed above¹³⁴.

The rationale for objections by the receiving State to insulting behaviour on the part of a diplomatic agent can be seen in the fact that diplomats who have engaged in such conduct have themselves put an obstacle into the fulfilment of essential functions of their missions, as they have significantly reduced the basis of trust which these functions presuppose. This consideration is well illustrated by the *Catacazy* case. The United States on this occasion pointed out that his conduct had been of such a character as "materially to impair his usefulness to his own government and to render intercourse with him, for either business or social purposes, highly disagreeable"¹³⁵.

The question however remains what form of diplomatic behaviour falls into the category of "insults". In this context, three issues in particular require examination: the potential victim of the insults, the nature of insulting behaviour and the standard of assessment.

¹³¹ See *Prczetacznik* (1976), p. 58, no. 2; *Blischtschenko*, p. 181; *Richtsteig*, Art. 3, p. 23; *Salmon* (1996), p. 131, para. 201.

¹³² *Plischke*, p. 313,

¹³³ *Blischtschenko*, *loc. cit.*

¹³⁴ *Richtsteig*, *loc. cit.* See *supra*, p. 198.

¹³⁵ *Glahn* (1986), p. 463.

The possibility that insulting conduct presupposes the existence of particular characteristics in the potential victim, had been raised in the context of the *Grigoriades* case, which was earlier introduced as an analogy to the evaluation of restrictions on the diplomatic freedom of speech¹³⁶. It was of importance to the court that Grigoriades' comments had been made "in the context of a general and lengthy discourse critical of army life and the army as an institution" and that they did not contain "any insults directed against either the recipient of the letter or any other person."¹³⁷ The implication is that institutions are incapable of being insulted; insults are targeted at the *personal* dignity of the victim.

This view is not unopposed. In *Griogriades* itself, Judge Jumbrek pointed out in his concurring opinion that the applicant's remarks had approached "the concept of a 'collective insult'" and found that the army as such should enjoy protection against insults¹³⁸. In diplomatic relations, there have certainly been incidents when derogatory remarks about an institution (the State, the government and its policies) have met with negative criticism¹³⁹.

The above mentioned case of Raja, the Deputy High Commissioner of Pakistan, who was expelled from Bangladesh in 2000, demonstrates how difficult it can be to draw the distinguishing line between insults affecting a collective and insults which concern the personal dignity of individuals¹⁴⁰. It would be difficult to deny that Bangladesh, which owed its existence to the war of independence, was the target of the remarks by the Pakistani diplomat. However, it would be equally difficult to

¹³⁶ See *supra*, pp. 180 and 246.

¹³⁷ *Grigoriades v Greece*, (1999) 27 EHRR, at para. 47.

¹³⁸ *Grigoriades v Greece*, (1999) 27 EHRR, Concurring opinion Jambrek, paras. 4 and 5.

¹³⁹ See for instance Mexico: the 1976 case of Joseph-John Jova (USA); United States: the 1981 case of Berrington (US diplomat posted in Ireland); Trinidad and Tobago: the 1994 case of Cowal (USA); Bangladesh: the 2000 case of Raja (Pakistan); United Kingdom: the 2001 case of Bernard (France) and the 2002 case of Algosaiabi (Saudi Arabia); Ukraine: the 2004 case of Herbst (USA).

¹⁴⁰ See *supra*, p. 300.

deny that Raja's statements also served to offend those in the receiving State who had witnessed the atrocities committed in the war of independence and had been affected by them.

In the light of the existing instances of negative State sanctions given to collective insults by diplomatic agents, it would not appear possible to exclude this form of behaviour from the scope of diplomatic interference. As in the case of personal insults, the diplomatic conduct clashes with pre-existing feelings and attitudes in the receiving State, and past State practice indicates that offences to the dignity of an institution will be considered as serious as offences to the dignity of a person.

The question whether the necessary fulfilment of diplomatic functions may justify the adoption of insulting conduct, does not appear to have been raised in academic debate. It may be argued that, on the contrary, recourse to insults exceeds the boundaries of the objectively necessary implementation of diplomatic tasks. Moreover, the employment of insults can hardly be said to constitute an effective method for the fulfilment of diplomatic functions. As the *Cataczy* case has shown, the results of such behaviour can be counter-productive to such a degree that the receiving State may consider it pointless to have any further dealings with the diplomatic agent.

On the other hand, diplomats may sometimes find it necessary to resort to critical remarks to fulfil the functions of their office. The government of the receiving State may, for instance, have publicly misstated the intentions of the sending State and thus conveyed an unfavourable impression of the latter. A diplomatic agent could not correct the impression without, at least impliedly, conveying criticism of the position taken by the receiving State.

This difficulty leads to the second matter which requires consideration – the nature of insults; in particular, the distinction between insults and criticism.

According to one opinion, such a distinction is not in fact necessary. *Blischtschenko* thus includes in his consideration of behaviour which interferes in the internal affairs of the State "political speeches which insult the receiving State", but also speeches which "sharply criticise the ruling order in that country"¹⁴¹.

But it would be difficult to maintain that such a wide concept of interference could be justified under international law. It is noteworthy that Judge Jambrek in the above mentioned *Grigoriades* case¹⁴² found that, while the army was in theory capable of being insulted, it "should not be shielded from criticism"¹⁴³ – he therefore returned to the distinction between criticism and insults; a distinction which had been particularly important to applicant¹⁴⁴ and respondent State¹⁴⁵. The dissenting Judge Casadevall likewise differentiated between "criticism" and "insults". The former would in principle be embraced by the freedom of expression¹⁴⁶, but the words used in the instant case did constitute, in his view, "an insult, and even an outrage, to a State institution"¹⁴⁷.

There is reason to follow this distinction in the field of diplomatic relations as well. The fulfilment of the functions to which Article 3 of the *Vienna Convention* refers, often requires a diplomatic agent to take a position which is critical of that adopted

¹⁴¹ *Blischtschenko*, p. 181 [translation from the German].

¹⁴² *Supra*, p. 304.

¹⁴³ *Grigoriades v Greece*, (1999) 27 EHRR, Concurring Opinion Judge Jambrek, para. 5.

¹⁴⁴ *Grigoriades v Greece*, (1999) 27 EHRR, paras. 18, 22, 42.

¹⁴⁵ *Grigoriades v Greece*, (1999) 27 EHRR, para. 27 (reference to Article 181 of the Greek Criminal Code).

¹⁴⁶ "[...] provided that the criticism is couched in terms that are not excessive and strike a fair balance with regard to the rights of others, order and morals [...]", *Grigoriades v Greece*, (1999) 27 EHRR, Dissenting Opinion Casadevall, para. 3.

¹⁴⁷ *Grigoriades v Greece*, (1999) 27 EHRR, Dissenting Opinion Casadevall, para. 3. See also Dissenting Opinion Freeland / Russo / Valticos / Loizou / Morenilla, para. 7 ("the language of insubordination rather than that of permissible criticism.").

by the receiving State. The protection of the interests of the sending State may make it necessary that a diplomat correct an impression of the sending State which a statement by the government of the receiving State has conveyed¹⁴⁸. On other occasions, the interests of the sending State may force a diplomatic agent to highlight the existence of particular deficiencies in the receiving State – as in the case of Edward Clay, the British High Commissioner to Kenya in 2004, who alerted the government of the receiving State to British concerns about ongoing corruption in Kenya¹⁴⁹. On this occasion, a negative sanction was only forwarded when the High Commissioner made his criticism in a public forum; there is no evidence that the receiving State had felt provoked at the earlier stage, when the addressee of the criticism had still been the government of that State.

If diplomats assist a people in the realization of its right to self-determination, their behaviour may likewise necessitate the possibility to make critical remarks. As with the protection of interests of the sending State, these remarks may focus on problems in the receiving State, but they may be of some importance, if they stay on the informative side. An example is provided by the 2000 case of the British Ambassador to Peru, Roger Hart, who voiced his doubts about the fairness of the presidential elections in the receiving State in that year, and received a rebuke for these comments by one of the vice-presidential candidates¹⁵⁰. The receiving State itself however did not react with a negative sanction to the diplomatic activity.

Even the promotion of friendly relations under Article 3 (1) (e) of the *Vienna Convention* can justify criticism of the receiving State. The public relations aspect of this function requires a diplomatic agent to explain the position of the sending

¹⁴⁸ See in this context Richtsteig, Article 3, p. 21.

¹⁴⁹ Barasa (2005). See *supra*, p. 125 and p. 216.

¹⁵⁰ *Associated Press – German*, "Peruanischer Praesident Fujimori muss sich Stichwahl stellen", 13 April 2000.

State¹⁵¹, and this may include an elaboration of points on which the views of the sending State differ markedly from those of the receiving State. This can be the case, for instance, if the sending State is a member of a supranational organization which has decided on a political course critical to that adopted by the receiving State. A fair representation of the situation aids in the promotion of mutual understanding, and therefore a critical evaluation even of the differences between sending and receiving State contributes to the fulfilment of this diplomatic function.

However, if criticism by diplomats is accepted as an element of the implementation of their tasks in the receiving State, then it becomes necessary to ascertain the dividing line between sharp criticism and insulting activities. State practice provides some guidance as to typical examples of conduct which members of the international community will consider insulting.

One such incident occurred in 1983, when Libyan diplomats in Australia made available copies of a document which called the US President Reagan "a new world Hitler" and described his leadership as a return to "incredible savagery"¹⁵². As in the *Cataczy* case, the receiving States took action against the offending diplomats: the Libyan representative in Australia received a sharp rebuke by the Australian Ministry of Foreign Affairs.

This case is representative of many instances in which diplomatic activities of similar character met with negative reactions¹⁵³. What they have in common, is that

¹⁵¹ See *supra*, p. 124

¹⁵² 10 *Australian Yearbook of International Law*, (1981 – 1983), pp. 505, 506. See *supra*, p. 184.

¹⁵³ See for Panama: the 1964 case of Reid-Adam (UK); Mexico: the 1976 case of Joseph-John Jova (USA); Belgium: the 1979 case of the Zairian Ambassador; Australia: the 1980 case of Soudrikov (Soviet Union); United States: the 1981 case of Berrington (US diplomat posted in Ireland); Iran: the 1982 case of Dunn and McDonald (Australia); Trinidad and Tobago: the 1994 case of Cowal (USA); Israel: the 1997 case of Indyk (No 5) (USA); Indonesia: the 2000 case of Gelbard (No 5)

the conduct involved an attack on the dignity of the particular target – whether a person or an institution. An indication for the existence of such an attack is often the use of emotive, rather than objective language. But there have been instances in which even a statement which was *prima facie* informative in nature had been deemed to overstep the boundary between criticism and insults – especially if a diplomat supported a revisionist view on historical events which appeared to depreciate their significance¹⁵⁴.

This emphasis on the violation of the dignity of the victim finds its reflection in various attempts by States and their organs to come to an approach of the concept of "insults". When the *Grigoriades* case was still debated in the national courts, the Greek Court of Cassation found that the concept of "insult" included

"every show of contempt damaging the esteem, and respect for, and the reputation of, the protected value. To qualify as an insult, such expression must convey contempt, taunt and denigration; it is not sufficient merely to call into question the protected value"¹⁵⁵.

Similarly, in German criminal law, "insulting" (a crime under section 185 of the German *Strafgesetzbuch*) is understood as the "unjustified attack on the honour of another through intentional manifestation of disregard or disrespect"¹⁵⁶, where "honour" is defined as the "inner value or the dignity" of the victim¹⁵⁷.

These approaches retain their validity in the context of insults as a form of diplomatic interference. It is of interest to reconsider here the 1949 exchange

(USA) and the 2001 case of Gelbard (No 9) (USA); Bangladesh: the 2000 case of Raja (Pakistan); United Kingdom: the 2001 case of Bernard (France) and the 2002 cases of Algozaibi (Nos 1 and 2) (Saudi Arabia); Ukraine: the 2004 case of Herbst (USA).

¹⁵⁴ See for instance the 2002 case of the Soviet Ambassador to the United Kingdom Algozaibi (No 2) and the 2000 case of the Pakistani Deputy High Commissioner to Bangladesh, Irfanur Raja.

¹⁵⁵ *Grigoriades v Greece*, (1999) 27 EHRR, para. 24.

¹⁵⁶ Tröndle, § 185, p. 987 at marginal 1 [Translation].

¹⁵⁷ Tröndle, *loc. cit.*, at marginal 2.

between the American Congressman Klein and the Assistant Secretary of State Gross¹⁵⁸. Gross defended the rights of missions to attempt to exert influence on public and official opinion to steer them in a direction favourable to the receiving State. However, he implied that the State Department would feel entitled to take action against the diplomatic agents, if their activity took on "an offensive character"¹⁵⁹.

In the Catacazy incident, the American President remarked in his State of the Union address of 1871:

"[i]t was impossible, with self-respect or with a just regard to the dignity of the country, to permit Mr. Catacazy to continue to hold intercourse with this Government after his personal abuse of Government officials [...]"¹⁶⁰

The attack on dignity and self-respect of the target therefore played a significant role in the considerations which led to the expulsion of the Russian minister.

In the light of these perspectives, it appears that diplomatic behaviour which exceeds the limits of justified criticism is one which targets not merely particular deficiencies in the receiving State but constitutes a direct attack on the dignity of the victim – be it a natural person or an institution of the State.

In some instances in which a receiving State felt that a diplomatic agent had engaged in insulting activities, the envoy may not have been aware of the potential impact of the conduct. In those cases, the standard of the assessment of the behaviour requires discussion – the question, in other words, whether "insults" exist

¹⁵⁸ See *supra*, p. 294.

¹⁵⁹ Whiteman (1970), p. 145.

¹⁶⁰ State of the Union Address, 4 December 1871.

if an objectively insulting behaviour is present, or whether it is necessary that the objective conduct is accompanied by intent on the side of the diplomatic envoy.

For instance, in the 2000 case of the American Ambassador to Indonesia, Robert Gelbard, who was seen thrusting his finger into the chest of an official¹⁶¹, the question may be asked whether the envoy was aware of the cultural offence which his behaviour would cause¹⁶².

However, other cases show that sending States traditionally expect their diplomatic agents to exercise sensitivity with regard to local customs. One example is the 1846 case of Jewett, the American chargé d'affaires in Peru, whose perceived insult consisted in the leaving out of the title "Excellency" or "Honourable" in communication with the Peruvian Minister of Foreign Affairs¹⁶³. The American Secretary of State expressed his regret about this conduct in a note to Jewett and explained that

"[...] such breaches of established etiquette often give greater offence than real injuries. This is emphatically the case in regard to the Spanish race. They have ever been peculiarly tenacious in requiring the observance of such forms. However ridiculous this may appear to us, it is with them a matter of substance [...]"¹⁶⁴

There is also more recent evidence indicating that receiving States, too, will expect a certain familiarity with the prevailing customs and will not investigate the subjective side of the conduct. Thus, in 1982, two Australian diplomats were accused of asking two Muslim women to remove their headgear when they were

¹⁶¹ Barber (2000); see *supra*, p. 130.

¹⁶² Gelbard's conduct became the issue of discussion by an American analyst who noted that "such behavior is considered deeply offensive in Indonesia", Barber (2000).

¹⁶³ Satow (1979), p. 180, para. 21.17.

¹⁶⁴ Moore, p. 493. Lord Malmesbury in 1813 struck a similar note when, offering advice to a diplomat, he warned him "never to sneer at what may strike you as singular and absurd". Satow (1979), p. 446.

being photographed for visa purposes¹⁶⁵. Iran expelled the diplomats without examining whether they had been aware of the insulting character of their conduct. However, Australia too, did not invoke a lack of the subjective element as a justification, but rather denied the allegation that the request had been made in the first place¹⁶⁶.

The practice of neither sending nor receiving States offers sufficient support for the opinion that the intention of the diplomatic agent matters to members of the international community when an alleged insulting activity is to be assessed. The reason for this may be seen in the inherent properties of the diplomatic office; representatives sent abroad to communicate with channels in the receiving State must be presumed to possess adequate awareness of local customs and the particular sensitivities of individual situations to identify the potential impact of their behaviour and to avoid the adoption of activities, which, from an objective point of view, are insulting in nature.

d. Intimidation

The possibility that a diplomatic agent may use intimidation in an attempt to influence recipients of the message in the receiving State, has on occasion been discussed in the literature¹⁶⁷, but the difficulty arising from this form of behaviour were considered even in the debates of the International Law Commission. ILC

¹⁶⁵ *Australian Yearbook of International Law* (1981 – 1983), p. 507; *United Press International*, "Veil lifted on diplomatic flap", 5 January 1983.

¹⁶⁶ *Australian Yearbook of International Law*, *loc. cit.*

¹⁶⁷ E.g. Oppenheim (1967), p. 787. *Mookerjee* refers to diplomacy as an "intelligently devised method of implementing the foreign policy of a government [...] by means of negotiation, persuasion, threat and pressure", *Mookerjee*, p. 100.

Member Bartos for instance stated that the rule of "non-intervention" would preclude "anything constituting a 'diplomatic' ultimatum to the receiving State to change its policy"¹⁶⁸. Similarly, Padilla Nervo, when discussing the meaning of "intervention" referred to the concept of "dictatorial interference":

"action [...] implying a peremptory demand for positive conduct or abstention – a demand which, if not complied with, involved threat to or recourse to compulsion, though not necessarily physical compulsion, in some form."¹⁶⁹

Diplomatic agents have certainly had to face severe accusations when they engaged in behaviour which their critics in the receiving State perceived as "threats" or "ultimata"¹⁷⁰. One example is the 1998 case of the US Ambassador to Mozambique, Brian Curran, who threatened the withdrawal of financial aid by the United States for the 1999 elections, if the elections took place without the participation of the opposition parties¹⁷¹. The General Secretary of the ruling Frelimo party appeared to refer to the principle of the equality of sovereign States when, in his reply to Curran's threat, he remarked that "political and financial blackmails are outdated, particularly in an era of economic globalization when all nations should respect each other"¹⁷².

However, the scope of the concept of "intimidation" which will be considered in this section, is even wider than that of threats made with the intention to change the opinions of their addressees in the receiving State. The warning of negative

¹⁶⁸ YILC 1957 (1), p. 145, para. 80 [Mr Bartos].

¹⁶⁹ YILC 1957 (1), p. 145, para. 83 [Mr Padilla Nervo]. See also Quincy Wright, p. 5: "In general, persuasion is legitimate, coercion illegitimate."

¹⁷⁰ See Kenya: the 1995 case of Brazeal (USA); Mozambique: the 1998 case of Curran (USA); Indonesia: the 2000 case of Gelbard (No 6) (USA).

¹⁷¹ *Xinhua*, "US Ambassador accused of meddling with Mozambican internal affairs", 15 September 1998. See also *supra* (Kenya, EU, 2005).

¹⁷² By the Secretary General of the ruling party of Mozambique, *Xinhua*, *loc. cit.*

consequences may suffice to render the recipient fearful, even if the diplomatic agent did not anticipate a direct advantage from this announcement¹⁷³. An example is the case of an unnamed Iraqi diplomat who in 1982 adopted "threatening behaviour" during a demonstration by the Islamic Union of Iraqi Students in the United Kingdom, which prompted "strong representations" by the Foreign Ministry and a statement by the Embassy "that the incident was regretted and would not be repeated"¹⁷⁴.

On the other hand, if diplomatic agents simply voice a desire that a certain conduct should be adopted by a certain date, they do not yet engage in behaviour which carries the properties of intimidation.

When for instance the American Ambassador urged the Kenyan government in 1995 to enact a law which would liberalize electronic media¹⁷⁵, she received sharp reprimands from several government ministers¹⁷⁶, among them the Minister for Agriculture, who found it "particularly annoying when an ambassador arrogantly decides to issue an ultimatum to a government minister"¹⁷⁷. The Ambassador had indeed indicated a date by which she would have liked to see the adoption of the law¹⁷⁸. But intimidation (and also a "threat" in the way in which Padilla Nervo understood it), would have required at least the indication of some negative consequence¹⁷⁹. Statements which simply call for the adoption of a course of action by a particular date, fall below that standard. In certain cases, they may constitute

¹⁷³ Although this will often be the intended result of intimidation. Cf. the definition provided by the OED on the verb "intimidate": "To render timid, inspire with fear; to overawe, cow; in modern use *esp.* to force to or deter from some action by threats or violence", OED, *intimidate (v)*.

¹⁷⁴ National Union of Students, Evidence, *House of Commons Report* (1984), p. 55, para. 17.

¹⁷⁵ See *supra*, p. 239.

¹⁷⁶ *Xinhua*, "US Ambassador under fire for interfering kenyan affairs [sic]", 16 February 1995.

¹⁷⁷ *Agence France Presse*, "US ambassador accused of meddling in Kenya' internal affairs", 16 February 1995.

¹⁷⁸ *Agence France Presse*, *loc. cit.*

¹⁷⁹ See in this context also the definition provided by the OED: "A denunciation to a person of ill to befall him [...] *fig.* an indication of impending evil.". OED "threat (n)".

interference for different reasons – as a resort to insulting conduct, for instance, or as persuasion¹⁸⁰ which exceeds objective necessity.

But even if a situation exists in which the diplomatic agent announced certain negative consequences to the recipient, the evaluation of the conduct might yield a finding that a form of unjustified interference did not exist.

An example is the case of Gelbard, the US Ambassador to Indonesia, who in September 2000 called upon the government to take steps against the perpetrators of violence in West Timor and to bring to justice those responsible for the killings of three employees of the United Nations¹⁸¹. The Ambassador did warn of negative consequences which might result from inactivity on the side of the receiving State; Indonesia, in Gelbard's view, would risk "losing moral support if this issue is not addressed"¹⁸².

But this consequence would not (necessarily) be dependent on the sending State. In the light of growing international sensitivity towards the commission of international crimes, the negative consequence would with great probability have occurred in the ordinary course of events, even without contributory activity by the United States¹⁸³. Given this situation, there is even reason to consider the Ambassador's statement a note of caution sounded by a State which is usually on friendly terms with the receiving State; and as such, this statement would have been in keeping with his function under Article 3 (1) (e) of the Convention.

On other occasions, the evaluation of a threatening behaviour as interference might be rejected because the agent of the sending State warned of a negative

¹⁸⁰ See *supra*, p. 286.

¹⁸¹ Morrison (2000).

¹⁸² Morrison (2000).

¹⁸³ Cf. *Stowell*, who stated that a "foreign representative must be allowed to communicate [...] the consequences which he believes will result from the adoption of the proposed measure", *Stowell*, p. 325.

consequence which the government of the sending State was entitled to adopt¹⁸⁴. One example is a warning that the sending State would resort to self-defence if it were to become the object of an armed attack. In this case, the diplomatic agent would merely refer to conditions stipulated by Article 51 of the *UN Charter* (and corresponding customary law).

An example which is of greater relevance in modern diplomatic relations is provided by indications that economic assistance might be withdrawn – a form of conduct which featured in the above mentioned case of Brian Curran¹⁸⁵.

However, as long as a possibility of financial support has not assumed the shape of a contractual obligation, it must be considered a matter of the individual State's discretion whether it wishes to avail itself of this option or not. It is, as the UN General Assembly has confirmed on several occasions, an emanation of the sovereignty of a State that it may freely dispose of its wealth and engage in economic activities without hindrance¹⁸⁶ – a discretion, which in some of the resolutions had been considered an "inalienable right" of States¹⁸⁷.

Furthermore, in the context of diplomatic relations, the announcement of a potential denial of financial aid may also be justified by the need to protect the interests of the sending State. These interests are negatively affected if, for instance, the receiving State puts the purpose of the financial aid in danger. A case of this kind may occur if that State is unwilling to take the necessary steps in the fight against corruption. In such a situation, the interests of the sending States are

¹⁸⁴ One example is provided by the historical case of Pinckney, the American Minister to Spain, whose recall was requested in 1804 after he had indicated that he would inform American consuls "of the critical state of the relations between the two countries, and direct them to notify American citizens to be ready to withdraw with their property", Satow (1917), p. 371.

¹⁸⁵ *Supra*, p. 313.

¹⁸⁶ See GA Res 1515 (XV), para. 5; GA Res 1803 (XVII), preamble, fourth paragraph; GA Res 3281 (XXIX), Chapter II, Article 2 (1); GA Res 3201 (S-VI), para. 4 (e).

¹⁸⁷ See GA Res 1803 (XVII), preamble, fourth paragraph; GA Res 3201 (S-VI), para. 4 (e).

affected, as part of the financial support that is to be rendered to the receiving State may disappear into channels which were not the intended recipients of the aid (and might even be opposed to the sending State as such).

A similar diversion of the purpose of financial aid exists if the very objective which gave rise to the initiative has undergone a fundamental change. If for instance a sending State is prepared to render financial aid for the holding of free elections, then the purpose of the support is no longer guaranteed if the opposition parties decide to boycott the elections.

In both instances, the diplomatic agent acts to protect the interests (in particular, the financial concerns) of the sending State. These cases therefore do involve a diplomatic announcement of a negative consequence, but it is a consequence which can lawfully be adopted by the sending State and which serves to fulfil the diplomatic function of Article 3 (1) (b) of the *Vienna Convention*¹⁸⁸.

The remaining cases are those in which a diplomatic agent indicates the possibility of negative consequences whose adoption is not within the rights of the sending State. One example is the threat that the sending State will resort to the use of armed force against the receiving State if certain conditions are not met¹⁸⁹. In the absence of circumstances which warrant the use of force, such an announcement by a diplomatic representative will constitute a threat with means which the

¹⁸⁸ See on this point also YILC 1957 (1), p. 145, para. 80 [Mr Bartos].

¹⁸⁹ A threat with a declaration of war was historically one of the principal meanings of the term "ultimatum" in the realm of diplomatic relations See OED, "ultimatum (n)" (no 1). See also the discussion on diplomatic ultimata in the ILC and Padilla Nervo's concept of "dictatorial interference". *Supra*, p. 313; YILC 1957 (1), p. 145, para. 83 [Mr Padilla Nervo].

international community does not consider to be within the discretion of the sending State and indeed a violation of international law¹⁹⁰.

There is evidence that threats aiming at the violation of human rights of nationals of the receiving State – or indeed nationals of other States residing on its territory – will also be considered interference in its internal affairs. This position is, on the one hand, suggested by instances in which receiving States gave negative reactions to behaviour which did infringe the human rights of people on its territory – in particular, cases in which the right to life¹⁹¹ or the right to physical integrity and freedom were involved¹⁹². In 1994 for example, Pakistan shut down the Indian consulate-general amid accusations of Indian involvement in the "terrorism and violence in Karachi". Pakistan directly blamed officials of the Indian mission for lending support to the unrest that had taken place in Karachi in the past months¹⁹³.

But there is also evidence that "mere" threats of activities against persons on the territory of the receiving State will not be accepted by receiving States¹⁹⁴.

One example is the case of Musa Kusa, Secretary of the Libyan People's Bureau in London, who, in an interview in 1980 referred to the activities of Libyan revolutionary committees in England and voiced his approval of their plans to kill Libyan exiles¹⁹⁵. In reaction to his remarks, the Foreign Office summoned Kusa

¹⁹⁰ It will constitute a threat in violation of Article 2 (4) of the *UN Charter*. This position is reinforced by subsequent treaties which deny legal value to concessions made because of a threat or use of force, Article 52 *Vienna Convention on the Law of Treaties*. See also various Resolutions of General Assembly and Security Council on the inadmissibility of the acquisition of territory through force: GA Res 2936 (XXVII), 6th paragraph of the preamble; GA Res 34 / 30, 2nd paragraph of the preamble; SC Res 242, 2nd paragraph of the preamble. See also the *Friendly Relations Declaration* which seeks to outlaw threats against "political, economic and cultural elements" of a State.

¹⁹¹ Cf. Art. 6 *ICCPR*; Art. 2 *ECHR*; Art. 4 *ACHR*; Art. 4 of the *Banjul Charter*.

¹⁹² Cf. Art. 7, Art. 9 *ICCPR*; Art. 3, Art. 5 *ECHR*; Art. 5, Art. 7 *ACHR*; Art. 4, Art. 6 of the *Banjul Charter*.

¹⁹³ See Bourke (1994).

¹⁹⁴ See for example United States: the 1980 case of Tarhuni and Ibrahim (Libya); United Kingdom: the 1980 case of Musa Kusa (Libya) and the 1982 case of an Iraqi diplomat; Jordan: the 1995 case of Bateni (Iran).

¹⁹⁵ *Associated Press*, "Report Two Libyans In England Marked For Death", 13 June 1980.

and told him that his continued presence in Britain was "no longer in the interests of Anglo-Libyan relations."¹⁹⁶

A similar case was reported in the United States in the same year, when two Libyan diplomats were expelled for distributing literature which advocated the killing of Libyan dissidents¹⁹⁷.

The reactions of the receiving States in these instances then do not allow for the assumption that the issuing of threats to persons living on their territories would receive any other treatment than the issuing of threats concerning characteristics of the State itself. In both situations, members of the international community reject the respective messages as interference in their internal affairs and usually react with severe sanctions. Neither does it appear that grounds for justification in these instances were ever claimed, nor that they would have been accepted by the governments of the receiving States.

As far as specific methods of the dissemination of the diplomatic message are concerned, it is therefore possible to identify certain prototypes of behaviour which receiving States consider to fulfil the conditions of interference in internal affairs.

But these forms of conduct must involve a personal action or omission by the diplomatic agent; the mere existence of personal characteristics does not suffice.

Even where there is a *prima facie* case that the diplomatic agent has engaged in acts of interference, this conduct may often be justified by reference to the

¹⁹⁶ *Associated Press, loc. cit.*

¹⁹⁷ Ritchie (1980).

objectively necessary fulfilment of diplomatic functions. Thus, the funding of factions in the receiving State may infringe a people's right to freely determine its political status. But if the activity in question does not aim at the provision of a distinct return service and does not involve the granting of an undue advantage, it may be justified under Article 3 (1) (e) of the *Vienna Convention*. If the receiving State denies its peoples the right to internal self-determination, the envoy may also derive a justification from the right (or indeed the duty) to render assistance to peoples striving for the realization of self-determination.

A diplomatic agent who engages in an activity of political lobbying can, if the recipient is the government of the receiving State, usually rely on the justification provided by diplomatic functions which call for such conduct; prominently the tasks of negotiation and protection of interests of the sending State. But the principle of proportionality retains its importance in this field as well: thus, diplomats who exert pressure on the receiving State will not always find this activity covered by the remit of their functions.

Similar considerations apply to diplomats who attempt to change the minds of factions or particular politicians in the receiving State. This activity does not in itself qualify as interference. But the absence of a need to fulfil diplomatic functions may warrant a different evaluation; especially if the persuasive efforts amounted to the exertion of pressure on the recipient.

The diplomatic involvement in propaganda activities does not in itself constitute an activity of interference; and attempts to sway the minds of the public may in fact be necessary for the fulfilment of the functions of Article 3 (1) (b) and (e) of the *Vienna Convention*. However, the evaluation takes a different course if the objective of propaganda is the promotion of certain unlawful aims, such as hatred

of peoples or races, or consists in incitement to acts unlawful under international law. The dissemination of distorted information will also qualify as interference, if it damages friendly relations between sending and receiving State.

Insulting behaviour by the diplomatic agent will be considered interference; but a distinction needs to be drawn between insults and sharp criticism. The latter may be necessary for the fulfilment of diplomatic functions; the former will involve disregard of the dignity of the victim (who can be a natural or a juridical person).

The consideration of intimidating behaviour adopted in the dissemination of the diplomatic message requires a differentiation between the threat of negative consequences which are not lawfully within the discretion of the sending States and the warning of consequences which are. In the former case, an instance of intimidation exists. But if the sending State merely threatens behaviour which it can lawfully adopt or warns of consequences of an act of the receiving State which will occur in the natural course of events anyway, the receiving State has no basis in international law to support a charge of interference in its internal affairs.

Conclusion

The diplomatic duty of non-interference moves between two spheres of interests which give shape to the concept of this obligation. Receiving States will insist on the preservation of their sovereign rights and may perceive a need to exclude outside influence from matters falling within their discretion. Sending States feel the importance to protect their interests and those of their nationals abroad. The *Vienna Convention* takes account of these diverging motivations by providing a codification of diplomatic functions which contains in prominent place the task of representing the sending State and protecting its interests, and by subjecting diplomatic agents at the same time to the duty not to interfere in the affairs of the receiving State. But the Convention does not resolve the conflict which unavoidably results from these very different norms.

This dichotomy, together with the vagueness which is inherent to the term "interference", may be the reason why some voices in the debate on diplomatic duties have highlighted the fact that there are no international standards for the application of the rule of non-interference and have spoken with doubt about the possibility of creating international guidelines on that matter¹.

Based on the findings of this thesis, it is suggested that the establishment of guidelines is not an impossible endeavour. But such guidelines would not

¹ *NYIL* (1984), p. 308.

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necessarily be clear and simple commandments to diplomatic agents. Any attempt to understand the elements of interference has to take into account the legitimate interests of the sending State and the forms of behaviour which a receiving State, by accepting diplomatic representatives, has to expect.

This thesis has identified the fields of interference through the diplomatic message by evaluating the conclusions which can be drawn from existing State practice. But it was also important to analyse the impact that relevant diplomatic functions and the existence of other permissive norms of international law had on the diplomatic conduct in question. In the course of this examination, it was suggested that a reconciliation of the rule of non-interference and the norms that conflict with it is possible by the restriction of their respective remits. Thus, the applicability of the rule of non-interference finds its limits when it meets with the lawful exercise of diplomatic functions. Reliance on functions on the other hand is restricted to their objectively necessary exercise; acts which go beyond these limits will frequently lead a diplomatic agent back into the field of interference.

The fact that the ambit of diplomatic interference can be ascertained and can theoretically be codified in an international instrument on diplomatic duties, does not *per se* mean that this would be a useful endeavour. The government of the Netherlands for instance, which dealt with this question in a 1983 Memorandum, concluded that an initiative to seek general interpretation on the concept of interference would be "inadvisable"². The principal reason for its reluctance was

² Statement by the Government of The Netherlands, 8 March 1983, *NYIL* (1984), p. 309. This hesitation with regard to codification is not a new feature in diplomatic law. During the 1958 discussions of the Sixth Committee on the *Draft Articles on Diplomatic Intercourse and Immunities*,

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the concern that many States might exploit such an initiative to lobby for their view that diplomatic assistance to the protection of human rights would constitute interference.

Apart from the fact that this view may have changed somewhat in the last quarter of a century – at least with regard to human rights abuses which amount to international crimes – there is also good reason to state that it would be beneficial for sending States and their diplomats to know exactly what the extent of their duties are. For a violation of these duties brings with it the responsibility of the State whose agents committed the breach. It may be recalled that a later instrument on diplomatic law – the 1975 *Vienna Convention on the Representation of States in their Relations with International Organizations of a Universal Character* – contains very specific obligations incumbent upon a State whose diplomats have engaged in "grave and manifest interference in the internal affairs of the host State"³.

But a better understanding of what constitutes interference is also in the interest of diplomatic agents themselves. At present, the personal lawful sanctions with which even grave instances of diplomatic interference can be countered, are (from the point of view of the receiving States) limited to the declaration *persona non grata*. This will not necessarily remain the case in the future. Several authors on diplomatic law have already envisaged the possibility of the establishment of a

the Colombian delegate voiced his concerns about the codification of the functions of the mission, and the Australian delegate expressed doubts about the wisdom of adopting an instrument on diplomatic law in the first place. In both cases, the reason for these doubts seemed to be fears about a too restrictive interpretation or application of the rules, once they were codified. Sixth Committee, p. 119, para. 6 [Mr Zuleta Angel]; p. 90, para. 14 [Mr Cutts].

³ Article 77 (2) of the 1975 *Vienna Convention on the Representation of States in their Relations with International Organizations of a Universal Character*. The Convention has 33 parties and requires the deposit of 35 instruments of ratification or accession to enter into force.

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permanent tribunal with jurisdiction over offences for which diplomatic agents must accept personal responsibility⁴.

The regulation adopted in the 1975 Convention may in fact provide the most useful guidance for the future treatment and understanding of diplomatic interference. For it recognizes that not all forms of interference carry the same significance in view of their intrusive character. A legislative effort may well follow the distinction suggested in this instrument.

Instances of "grave and manifest interference" might thus be included in a comprehensive convention on diplomatic duties. One may think of unlawful threats by diplomatic agents, the bribing of parties and politicians and, beyond the field of interference through the diplomatic message, cases of espionage and unlawful use of force.

Forms of diplomatic interference which do not reach this level – for instance, certain persuasive efforts which leave the boundaries of proportionality – will remain outside this instrument – but they may find a regulation in soft-law guidelines on diplomatic conduct.

This solution takes into account the considerations of those who were reluctant to accept a "general interpretation" of this diplomatic conduct, and who saw benefits in the vagueness which inhabited the term "interference". At the same time, it provides States and diplomats alike with the necessary guidance on a duty whose

⁴ On the possibility of the establishment of a permanent diplomatic court, see Groff, p. 227 et seq.; Maginnis, p. 990; Stephen Wright, pp. 185 – 188. Ben-Asher advocates the establishment of a "forum for arbitration", which would deal with human rights violations by persons enjoying diplomatic privileges. A critical stance to international adjudication in this field is taken by Shapiro, p. 297.

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limits had never been determined with the force of law, but whose existence had been accepted since the very beginnings of diplomatic law.

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Note: additional sources for incidents of diplomatic interference are listed in Annex A.

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Convention on Diplomatic Relations

Volume II: Appendices

by

Paul Behrens

A thesis submitted to
University College London
for the degree of
Doctor of Philosophy



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UCL

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A. 1 1961, April; unnamed (USA and Poland)

United States. The Polish Ambassador to the United States is criticized over remarks about a third State.

After the Ambassador had, in addresses to the public, attacked the Federal Republic of Germany, the US Secretary of State issued a warning letter him on 19 April 1961, which read in its relevant part:

"The Ambassador will recall that he has, on a number of occasions during the tenure of his post in the United States, availed himself of the opportunity to deliver public addresses to American audiences during which he has expressed the views of his Government on various matters. The Secretary of State considers these representational activities, as such, as falling within the bounds of the Ambassador's diplomatic function, in spite of the fact that the United States Government may not have shared some of the views expressed. Such activities do not, however, properly extend to making public attacks in the United States upon a government with which the United States maintains friendly relations. The Secretary of State expects that there will be no recurrence of such improper activity".

Whiteman (1970), p. 147, 148

A. 2 1962, May; Wilhelm Grewe (USA and West Germany)

United States. Professor Wilhelm Grewe, the West German Ambassador to the United States, is recalled to Germany, following several incidents which reveal a significant difference in attitude between the Ambassador and the host government.

Grewe left a bad impression on the American government when, in a television interview in autumn 1961, he recalled the treaty obligations of the four powers with regard to Berlin and warned against the making of concessions to Russia on that question.

After US proposals to Russia on the question of Berlin had been leaked, the US government started to ignore the German Embassy and communicated directly with the government of West Germany through the US Ambassador in that country. However, Grewe was reportedly not held responsible for the leak itself.

It was learnt that President Kennedy thought Grewe "incompatible".

Grewe was officially recalled to Bonn for consultations; in June 1962, Karl Heinrich Knappstein was announced as Grewe's successor.

The Times, "Bonn Envoy Leaving Washington. Embassy Ignored For Two Weeks By White House, Crisis In U.S.-German Relations Over Berlin", 8 May 1962

The Times, "Summoned home for consultation", 8 May 1962

The Times, "Professor Grewe's Successor", 6 June 1962

A. 3 1963; Petros Moliviatis (USSR and Greece)

Soviet Union. Petros Moliviatis, Second Secretary at the Greek embassy in Moscow, is expelled.

According to the Soviet government, Mr Moliviatis had engaged in espionage activities and had recruited three Soviet residents to furnish confidential information about the USSR.

The Greek Ambassador on the other hand called the accusations "absolutely false". According to the Greek side, the expulsion of Moliviatis showed the intention of the Soviet government to impede contacts between the Greek embassy and ethnic Greeks living in the Soviet Union. An estimated population of 51,000 Greeks lived at that time in parts of the Soviet Union, including Kazakhstan; they had kept their Greek nationality and some of them had asked for repatriation. Moliviatis had visited the Soviet Greeks in July 1962.

RGDIP, "Chronique des faits internationaux", (1963), pp. 178 – 180

Salmon (1996), p. 133

A. 4 1963, June; unnamed (USSR and China)

Soviet Union. Three Chinese diplomats are expelled after they distributed a document in the Soviet Union.

The diplomats were accused of distributing the Chinese party letter of 14 June 1963, which dealt with 25 points which the Chinese side wanted to discuss at Sino-Soviet ideological discussions in Moscow. The letter allegedly contained accusations targeted at Khrushchev's personal policy of peaceful coexistence.

The USSR demanded the immediate withdrawal of the three members of the Chinese mission.

The Chinese side complied, but the Chinese Foreign Ministry called the Russian decision an "unreasonable demand". Officials of the Chinese Foreign Ministry and other government departments welcomed the returning diplomats with flowers.

The Times, "China condemns Russia for Expulsions. "Manufacturing Split in Communist Movement". Decision to carry on with Moscow Conference", 1 July 1963

Salmon (1976), p. 42

A. 5 1963, August; Robert Lasalle et al. (Bolivia and Cuba)

Bolivia. The Cuban embassy is criticized for an alleged conduct of interference.

The Bolivian Minister of Foreign Affairs sent an official note of protest to the Cuban Chargé d'Affaires in Bolivia, Robert Lasalle. The Bolivian side

complained about interference by members of the Cuban mission in strikes which affected the mining industry and which, in the previous month, had been started by trade unions in the Catavi region.

RGDIP, "Chronique des Faits Internationaux" (1964), p. 164

Salmon (1996), p. 130.

Salmon (1976), p. 41

A. 6 1963, November; Boris Voronin (Congo and USSR)

Congo (Democratic Republic of Congo). Boris Voronin, Counsellor at the Russian Embassy to Congo, is expelled amid allegations of subversive activities.

Voronin had allegedly provided active support to a plot against the Congolese government. Voronin was arrested together with Yuri Myakotnykh, the Soviet Press Attaché. He was put on an airplane to Brussels, apparently immediately (being not even given the opportunity to dress). Voronin also claimed to have been beaten by Congolese security forces.

The Times, "Russian official leaves Congo", 23 November 1963

A. 7 1964, March; Randle Reid-Adam (Panama and UK)

Panama. The British Ambassador, Randle Reid-Adam, is criticized by the local press over remarks made about Panamanian citizens.

Reid-Adam had allegedly stated during a cocktail-party that every Panamanian could be bought for £100.

The Panamanian press attacked Reid-Adam over these remarks. On 27 March, a molotov cocktail was thrown from a passing car and exploded near the terrace of the Embassy, in the proximity of the Ambassador and his wife.

The British side apparently had immediately denied the allegations about the Ambassador's remarks. Toward the end of March, Reid-Adam returned to London, where during a medical check-up it was found that he was not fit for service in Central America on account of the "special climatic conditions of that region" ("en raison des conditions climatiques spéciales de cette région", *RGDIP*). The United Kingdom did however deny that the Ambassador had been declared *persona non grata* or that his return was connected to the alleged incident at the cocktail party.

On 29 Mai 1964, the nomination of Sir Alan Williams as successor to Reid-Adam was announced.

The Times, "Envoys return from Panama", 2 April 1964

Rousseau, p. 167

RGDIP, "Chronique des faits internationaux" (1964), p. 956

A. 8 1964, March; James Dunbar Bell et al (Malaysia and USA)

Malaysia. The US Department of State issues a letter to James Dunbar Bell, US Ambassador in Malaysia on 13 March, warning against partisan political activities by embassy employees.

The background to this note of caution was formed by the Malaysian Parliamentary elections which were to take place in April 1964. Secretary of State Rusk's letter referred to Malaysian employees of the American Embassy and stated that they would be required to resign their position if they took part in partisan political activities and should not expect to be re-

employed immediately after the elections. The State Department made reference to the position adopted by the Malaysian government with regard to its own employees and stated that they too had to resign their positions if they wanted to participate in political campaigns and could not expect to be re-employed until a year later. Rusk considered that a foreign State should use even more caution in this regard than the host State.

The Times, "The Tunku Wins A Sweeping Victory Party's 89 Seats In Malaya", 27 April 1964

Whiteman (1970), p. 144

A. 9 1964, March; Armin H Meyer et al (Lebanon and USA)

Lebanon. The US Ambassador Armin H. Meyer warns (American) diplomatic agents on 19 March not to engage in the electoral campaign of that year.

In a memorandum of 16 March 1964, the American Ambassador stated:

"Embassy employees and their dependents are hereby cautioned against taking any actions or making any statements which could in any way suggest that the Embassy or the United States Government favors any candidate or candidates in the forthcoming general elections in Lebanon. In other words, a strict attitude of non-involvement by this Embassy must be maintained throughout the election period. In any discussions on local political matters it should be made clear that the American Embassy supports no candidate and has no role in the elections."

The background to this note of caution were the Parliamentary elections in Lebanon, which were scheduled for 5 April to 3 May 1964.

Whiteman (1970), p. 143

A. 10 1965, Davis Bartov (USSR and Israel)

Soviet Union. Davis Bartov, First Secretary at the Israeli embassy in Moscow, is accused of propaganda activities.

In the course of a journey to Georgia, Bartov had allegedly distributed cigarettes as well as Israeli books and journals and had urged Soviet citizens to leave the Soviet Union and to settle in Israel.

According to the *Zaria Vostoka* (a Georgian newspaper), Bartov had engaged in "zionist propaganda". His books and journals had, according to the newspaper, been rejected by the population of Georgia "with indignation".

RGDIP, "Chronique des Faits Internationaux" (1965), p. 833

Salmon (1976), p. 41

Salmon (1996), p. 133

A. 11 1965, unnamed (Netherlands and China)

The Netherlands. The Chargé d'affaires of the People's Republic of China is reproached by the government of the Netherlands for anti-American propaganda. The chargé d'affaires had exhibited the material in question in his office.

Salmon (1996), p. 135

Panhuyt et al, *International Law in the Netherlands*, volume 3, Alphen aan den Rijn 1980, p. 250

A. 12 1966, September; unnamed (USSR and Israel)

Soviet Union. The Soviet Union accuses Israeli diplomats of "zionist propaganda" which, it is alleged, is incompatible with their functions.

Salmon (1976), p. 41

Salmon (1996), p. 133

Le Monde, 7 September 1966

A. 13 1967, October; Wymberley Coerr (Ecuador and USA)

Ecuador. Wymberley Coerr, the US Ambassador to Ecuador, is criticized for comments he made on 6 October 1967 at a ceremony at the American School (*Colegio Americano*) in Quito.

The speech reportedly dealt in a critical way with remarks made by the President of Ecuador to journalists at Punta del Este.

Following the speech, the Ambassador of Ecuador in Washington forwarded a note to the US Secretary of State Rusk in which the recall of Coerr was requested, as his statements were seen as revealing an "attitude of public, open criticism of the Constitutional President of the Republic of Ecuador, Dr. Otto Arosemena Gómez [...] This unusual demeanor on the part of Ambassador Coerr, which does not conform to diplomatic practice and respect for the highest authority of the State would be an impediment to him in the future in acting to strengthen the cordial and friendly relations which Ecuador maintains and desires to make even closer with the Government of the United States of America."

The United States do recall Coerr, but the American Assistant Secretary of State, Oliver, noted that Coerr's speech was seen by the American side as a reasoned, non-polemical discussion on widely held points of view about the Alliance for Progress. To convert Ambassador Coerr's words on this occasion into "'... public, open criticism of the... President of Ecuador...' is

an unexpected reaction [...] The issues that Ambassador Coerr discussed are of transcendental importance to all members of the Alliance for Progress and to their peoples. No member's opinion should be immune from respectful and friendly examination by others."

Whiteman (1970), p. 145,

RGDIP, "Chronique des faits internationaux", (1968), p. 431

Rousseau, p. 166

A. 14 1968, May; Semyon Tsarapkin (West Germany and USSR)

West Germany. The Soviet Ambassador to West Germany, Semyon Tsarapkin, is accused of interference after his participation in a demonstration by the Extraparliamentary Opposition (*Außerparlamentarische Opposition, APO*).

Instead of attending the official ceremonies on the occasion of the 150th anniversary of the birth of Karl Marx, Tsarapkin had joined a demonstration by students of the extreme left, who formed part of the *APO*. Tsarapkin was criticized for this conduct by two Conservative Members of Parliament (Members of the *Christlich-Demokratische Union, CDU*), Dr Egon Klepsch and Walther Leisler Kiep, who accused the Ambassador of "an interference with the internal affairs of Germany which was difficult to tolerate".

The German authorities however merely pointed out that the demonstration had been officially authorised and did not provide any further comments.

Przetacznik (1975), p. 309

RGDIP, "Chronique de faits internationaux", (1969), p. 155

A. 15 1969, August; unnamed (DR Congo and various States)

Democratic Republic of Congo. At the time of the Kinshasa trial of students who had participated in anti-government demonstrations, General Mobutu asks the doyen of the diplomatic corps (the apostolic nuncio) to forbid the diplomatic corps accredited in Kinshasa to interfere in any way in the internal affairs of the Congo.

Salmon (1976), p. 41

Salmon (1996), p. 134

Le Soir, 23 August 1969

A. 16 1970; unnamed (Netherlands and USSR)

The Netherlands. The mission of the Soviet Union comes under attack for the distribution of certain materials damaging to a third State.

The embassy of the USSR had distributed publications which contained an attack on Israeli leaders. In the States-General of The Netherlands, the following question was asked of the Minister of Foreign Affairs on this matter:

"Is the Minister not of the opinion that, although in this country embassies cannot be denied the right to make public their government's views on international questions, the abuse of this right for the sake of conducting a campaign which unhesitatingly draws parallels between Israeli leaders and Nazi criminals, exceeds the bounds of what is admissible?"

The Minister of Foreign Affairs made the following reply:

"The Minister has pointed out in the proper quarters that distribution of

publications directed against third countries should be outside the scope of activities of embassies established in The Hague".

Salmon (1996), p. 135

Panhuys et al, *International Law in the Netherlands*, volume 3, Alphen aan den Rijn 1980, p. 250

2 *NYIL* (1971), p. 167

A. 17 1970, April; unnamed (Belgium and Greece)

Belgium. The Greek Ambassador to Belgium is criticized for the embassy's involvement in the organization of a conference which led to clashes between students and security forces in Brussels.

On 20 April 1970, the *Association Europe-Grèce* organized a conference on the topic "The rôle of Greece in Europe today" at the *Cercle des Nations* in Brussels. The Greek embassy had invited the participants of the conference to a reception after the conference.

As the event coincided with the third anniversary of the coup d'état of the colonels in Greece, the Foreign Ministry feared that it would meet with the disapproval of the Belgian public. The Foreign Ministry therefore asked the Greek embassy to use its influence to postpone the conference. The conference did however take place, resulting in serious clashes between students who protested against it, and Belgian security forces.

The Belgian Foreign Minister then summoned the Greek Ambassador and told him that the Belgian government regretted that its previous requests had gone unheeded. The Foreign Minister told the Ambassador that the role of diplomats envisaged the facilitating of relations between States and that they had to be inspired by this objective under all circumstances.

As a result of these talks, the Greek Ambassador effected the cancellation of some further events and celebrations which had been planned.

RBDI, "La pratique belge", (1972), Vol. VIII, part 1, pp. 316 – 319, para. 567

Salmon (1996), p. 134

A. 18 1971, July; unnamed (Congo and USSR / Eastern European States)

Congo (Democratic Republic of Congo). Six diplomats assigned to the Soviet Embassy and an unnamed number of diplomats from the embassies of Yugoslavia, Romania, Poland and Czechoslovakia are expelled amid allegations of involvement in demonstrations.

The background to the expulsions is formed by anti-government student demonstrations at the University of Lovanium, which then resulted in the closure of the university and the conscription of the students into the army. It is reported that the diplomats were involved in the demonstrations.

President Mobutu, who considered the demonstrations as part of a plot against the government and a plan to kill him, was quoted as stating: "In fact, a foreign hand had sought to use the students of Lovanium to achieve its aims". In an interview, he also warned of a "cascade of diplomatic breaks".

Information Bank Abstracts, *The New York Times*, "[About 12 Soviet and E Eur diplomats expelled from the Congo...]", 29 July 1971

The Times, "Congo expels Communist block diplomats", 30 July 1971

A. 19 1971, October; Limbourg et al (Greece and West Germany and other States)

Greece. Peter Limbourg, the West German Ambassador to Greece, is criticized for the maintenance of contacts to certain politicians.

The background to Limbourg's conduct and the criticism it attracted was a statement reported by the State-owned *Athens News Agency*, according to which the Greek military junta expressed the opinion that foreign Ambassadors should not keep contact with former politicians who "had placed themselves outside the country's political system by refusing to recognize the constitution".

In a letter to the news agency, Limbourg had protested against this statement and had said that in all democratic countries, including his own State, such restrictions on contacts did not exist. Limbourg subsequently paid visits to the former conservative Prime Minister Kanellopoulos and to a leading politician of the Greek *Centre Union*, Mavros.

A spokesman of the American Embassy was likewise quoted as stating: "The embassy is not changing its pattern of operation in connexion with its efforts to keep in touch with all shades of Greek political opinion."

Limbourg's behaviour and that of the American Ambassador Tasca, who had visited the former Prime Minister Karamanlis, lead to sharp criticism by the Greek regime.

Salmon (1996), p. 131

The Times, "Greek Cabinet Minister attacks German envoy", 14 October 1971

A. 20 1972, March; I Sholokov et al (Bolivia and USSR)

Bolivia. 119 Soviet diplomats, Embassy employees and dependants, including the First Secretary (Sholokov) are expelled amid allegations of having contact to subversive elements in the country.

It is reported that the Bolivian government had proof that Sholokov was in touch with Bolivian extremists. The expulsion came amid charges that the diplomats had maintained contact to the Army of National Liberation (ELN), a Communist guerilla organization. The government also accuses the Embassy of financing leftist rebel movements. There were furthermore

charges that the 119 expelled persons were complicit in a Cuban-organized plot to invade Bolivia. The Bolivian Foreign Minister Gutierrez announced the expulsion in a national television broadcast and stressed that the government still wished to maintain "correct" diplomatic relations with the USSR.

The Soviet Ambassador Scherbachevick denied the charges of wrongful activities and was quoted as saying: "I do not understand how the Foreign Ministry can have given credit to such a lie". He also protested against the mass expulsion which he described as outrageous.

Information Bank Abstracts, The New York Times, "[Bolivian Govt orders 119 Soviet aides to leave in 7 days...]", 30 March 1972

Information Bank Abstracts, The New York Times, "[USSR Amb Shcherbachevich in La Paz denies any wrongdoing...]", 31 March 1972

Richard Wigg, "Soviet poet 'expelled' after visit to Bolivia", *The Times*, 1 April 1972

Intelligence Research Limited, Latin America, "News in Brief. Bolivia", 7 April 1972

Information Bank Abstracts, The New York Times, "[Soviet Embassy requests exit visas for 69 of 119 aides...]", 8 April 1972

Information Bank Abstracts, The New York Times, "[1st group of 30 Soviet diplomats and embassy staff...]", 11 April 1972

Samuel T. Francis, "Critical Issues. The Soviet Strategy of Terror. Chapter 1 The Evidence of Soviet Support for Terrorism", *Heritage Foundation Reports*, 1985

A. 21 1972, August; Pyotr Abrassimov (France and USSR)

France. Pyotr Abrassimov, the Soviet Ambassador to France, is criticized for a letter which he had written and which was published in the bulletin *U.R.S.S.* (edited by the Soviet Bureau of Information in Paris).

Abrassimov had written the letter on 31 August to François Mitterand, then

First Secretary of the Socialist Party. It was a reply to a letter by Mitterand to Abrassimov, in which the former expressed the worries of the Socialist Party about the situation of the Jews in the Soviet Union and the obstacles Soviet authorities put on their emigration to Israel. Abrassimov wrote that he was forced to communicate his reply through the press, as Mitterand had made his statements in a public way, and he could not leave room for speculations. Abrassimov's reply was a strong defence of the measures which the Soviet authorities had taken with regard to the matter of emigration by Jews. *Rousseau* described its style as courteous, however vigorous.

However, the Secretary-General of the *Ligue des droits de l'homme*, Daniel Mayer, was quoted as saying that a rarely had an Ambassador used such insolence, and such an authoritarian tone.

Combat, 8 September 1972

RGDIP, "Chronique des faits internationaux" (1973), p. 1214

A. 22 1974; General Nuño (Belgium and Chile)

Belgium. General Nuño, the Chilean Ambassador to Belgium, is sharply criticized after he made a statement to the News Agency *Belga*.

Shortly after his appointment, General Nuño made a declaration to *Belga* in which he tried to justify the rôle of the Chilean armed forces during the overthrow of the government of President Allende. Nuño himself had been involved in the coup d'état.

On 29 May 1974, Senator Calewaert asked the government about its evaluation of this incident. The Senator himself stated that the Ambassador's attitude was contrary to diplomatic usage and rules of courtesy.

The Minister of Foreign Affairs replied that Nuño's remarks to *Belga* may have been unusual, but that one could not qualify them as "discourteous".

He continued to say that it was part of the tasks of a diplomat to explain the prevailing situation in his country and the position of his government. A diplomat was however not allowed to adopt a conduct which amounted to interference in domestic policies in Belgium or which would disturb the public order in Belgium. The Minister also pointed out that the Belgian government's opinion and assessment of the political situation in Chile differed from the views of the Ambassador.

In the Chamber of Representatives, Mr Delrue moved that in view of General Nuño's participation in the coup d'état and in view of his public declaration which had justified with passion the action of the Chilean Junta, the presence of the Ambassador be declared undesirable.

RBDI, "La pratique belge", Vol. XII, part 1 (1976), pp. 186 – 188, para. 976

Salmon (1996), p. 132

A. 23 1975, July; Raul Sainz Rodriguez et al (France and Cuba)

France. Raul Sainz Rodriguez (First Secretary), Ernesto Herrera Reyes, (Second Secretary), and Pedro Zamora Larra, Cuban diplomats working in the cultural section of the Cuban Embassy to France, are expelled amid accusations of contacts to terrorists.

The three diplomats had allegedly maintained contact with Ilich Ramirez Sanchez ("Carlos the Jackal"). It is reported that they had transferred money and instructions to the Venezuelan terrorist.

The French Foreign Ministry summoned Alejo Carpentier, the Cuban Chargé d'Affaires, and told him about the decision to expel the three diplomats. A spokesman of the French Ministry of the Interior said that the Carlos affair had shown the "close links between the terrorist networks and certain foreign intelligence services."

The Cuban Embassy in a statement denied the allegations of involvement with Carlos. It also stated that the Cuban government rejected terrorist methods.

Richard Wigg, "Expulsion of Cubans in Paris 'jackal' case", *The Times*, 11 July 1975

Raymond Carroll / Seth S. Goldschlager, "All Roads Lead to Paris", *Newsweek*, 21 July 1975

The Economist, "Latin America; Goodbye Che", 26 July 1975

Samuel T. Francis, "Critical Issues. The Soviet Strategy of Terror. Chapter 1 The Evidence of Soviet Support for Terrorism", *Heritage Foundation Reports*, 1985

A. 24 1975, December; William Porter (Canada and USA)

Canada. US Ambassador William Porter is criticized for remarks he made about various aspects of Canada's economic policies.

At a private dinner party on 13 December 1975, Porter had addressed a number of journalists and declared that relations between Canada and the US had taken a turn for the worse. He referred to the Canadian decision to sell oil and gas to the US at the world price (which signalled a sharp increase in the price), the efforts of the Province Saskatchewan to buy or nationalize potassium deposits and private (mostly American) companies, pending legislation which intended to withdraw tax privileges for the Canadian editions of the US media *Time Magazine* and *Reader's Digest*, the ban on American advertisements on cable television in Canada, controls on foreign investment, and Canadian efforts to diversify its foreign relations to be culturally and economically more independent from the United States. He also showed himself happy about the defeat of the *Nouveau Parti Démocratique* (New Democratic Party) in the elections of British Columbia.

The Canadian Prime Minister Pierre Trudeau accused Porter in a speech to Parliament on 15 December of having exceeded the bounds of diplomatic propriety. He also stated that Porter should address such opinions, if he had them, to his own government. Porter's opinions surprised him in substance and in form and did not correspond with those which shortly before the incident had been expressed by President Ford and Kissinger. Trudeau said that he was informed that Porter's views had not received official approval.

Criticism of the Ambassador's behaviour came also from the *Nouveau Parti Démocratique*. A farewell reception for the Ambassador was boycotted by several members of Trudeau's cabinet.

On 18 December, a friendly communiqué, issued after a meeting of Kissinger and McEachen (his Canadian counterpart) implied a rejection of the opinions expressed by Porter.

Facts on File World News Digest, "Trudeau raps Porter on Canada remarks", 27 December 1975

Newsweek, "Canada: The Bitter Truth", 29 December 1975

John Best, "Canada", *The Times*, 23 April 1976

RGDIP, "Chronique des faits internationaux" (1976), pp. 897, 898

A. 25 1976, March; Joseph-John Jova (Mexico and USA)

Mexico. US Ambassador Joseph-John Jova is criticized for comments made during a symposium on the relations between the United States and Mexico, organized by the State Department at the University of Washington on 18 March 1976.

The Ambassador had stated that the political system in Mexico was one of "monarchical succession, no matter how democratic" at least as far as the current practice of presidential succession was concerned.

José Lopez Portillo, then candidate in the July presidential elections of Mexico, sharply criticized Jova for this behaviour and spoke of them as "apparent efforts to destabilise through mocking criticism".

Following the reactions, the Ambassador published immediately a statement in which he described Mexico as "a model of democracy and authentic freedom" and her President (then Luis Echeverria) as "one of the century's great leaders".

Intelligence Research Limited, Latin America, "Mexico", 2 April 1976

RGDIP, "Chronique des faits internationaux" (1976), pp. 1218, 1219

Rousseau, p. 166

A. 26 1976, April; Malcolm Toon (Israel and USA)

Israel. Malcolm Toon, the American Ambassador to Israel, becomes the subject of criticism after he made comments about certain aspects of Israeli policy.

The background to Toon's comments and the criticism they received, was formed by a foreign aid bill, which envisaged additional financial help to Israel, and which Ford had threatened to veto. At a news conference in April, Toon accused Israel of trying to pressure the American Congress into providing more aid. The Ambassador also criticized the Israeli Finance Ministry for budgeting funds that were not in fact received. Toon himself had asked to be identified only as a "Western diplomat", but his identity became subsequently known.

The Israeli government reportedly considered the comments a violation of the rules of diplomacy. The Israeli Foreign Minister Yigal Allon stated that he would ask Toon to explain his behaviour.

The US State Department disassociated itself from Toon's remarks.

Information Bank Abstracts, The New York Times, "[Israeli officials on Apr 9 criticize...]", 10 April 1976

Moshe Brilliant, "Israeli-US tiff over pressure on Congress", *The Times*, 10 April 1976

Facts on File World News Digest, "U.S., Israel dispute aid", 17 April 1976

A. 27 1976, June; François Puaux (Italy and France)

Italy. François Puaux, the French Ambassador to Italy, is criticized for attending the meeting of a political party.

After Puaux had attended an election meeting of Christian Democracy (*Democrazia Cristiana*, the Christian democratic party of Italy) in Rome, a French Parliamentarian had expressed his surprise about this conduct.

Jacques Chirac, then Prime Minister under President Giscard d'Estaing, however defended the Ambassador's presence at the meeting. Chirac stated:

"Monsieur Deputy, I regret to tell you that you demonstrate a surprising ignorance of diplomatic usages. A diplomat would in fact always attend, as an observer, political meetings to which he is invited. That is true in all the countries of the world.

It is for that reason that diplomats of Eastern countries find themselves present at all the political meetings held in all the great countries. I recall for instance that not a single one was missing from the last congress of the UDR [*Union de Démocrates pour la République*, the Gaullist political party] in Nice. In the same way, the Ambassador of the Soviet Union came to greet, very legitimately and naturally, the candidate for the presidency of the Republic during the Presidential campaign." [Translation from the French]

Annuaire Française de Droit International, "Pratique Française" (1976), p. 1000

A. 28 1976, June; Milod El-Sedik Ramadan (Egypt and Libya)

Egypt. Milod El-Sedik Ramadan, the Libyan Ambassador to Egypt, is expelled after his distribution of pamphlets.

According to Egyptian officials, Ramadan had handed out pamphlets which were hostile to the government of President Sadat. He was then detained and questioned by security authorities and later declared *persona non grata* by the Egyptian government.

Satow (1979), p. 186, para. 21.24,

The Times, "Libyan envoy is expelled from Egypt", 1 July 1976

A. 29 1976, July; Laurence Silberman (No 1) (Yugoslavia and USA)

Yugoslavia. The American Ambassador to Yugoslavia, Laurence Silberman, is criticized for his attempts to help an American citizen in Yugoslavia.

Silberman had tried to effect the release of Laszlo Toth, a US citizen, who had been imprisoned for espionage. Toth had been arrested in 1975 after he had, at a visit to the Pik Vrbas refinery, asked the director of the refinery to give him photographs of the plant. Toth was in fact released on 23 July 1976. Silberman had referred to Toth as "innocent as the driven snow" and noted that "the U.S. government owes complete support to its citizens in situations like this."

In an interview with *Tanyug*, the official Yugoslav news agency, Tito sharply criticized Silberman and accused him of interference in the affairs of Yugoslavia. But Silberman also faced criticism from within the receiving State. The Ambassador claimed that the Eastern European Section of the

State Department found him "too zealous" in his efforts to free Toth; but that he had had the support of President Ford and Secretary of State Kissinger.

Facts on File World News Digest, "Tito Attacks U.S. Envoy", 14 August 1976, p. 594 C1

The Economist, "Yugoslavia: Neutral On Whose Side?", 2 April 1977, p. 65

Facts on File World News Digest, "Jailed American Freed", 31 July 1976, p. 559 A2

Boskovic, Boris, "[Yugoslavian relations with the United States are cooling ...]", *The Associated Press*, 11 July 1977

Malcolm W Browne, "[Pres Tito harshly denounces US Amb Laurence H Silberman...]", *Information Bank Abstracts, The New York Times*, 1 August 1976

Information Bank Abstracts, The New York Times, "[Pres Tito, in Quotation of the Day criticizing...]", 1 August 1976

Information Bank Abstracts, The New York Times, "[US State Dept spokesman, acknowledging that 'we have seen news repts'...]", 1 August 1976

Facts on File World News Digest, "Tito attacks U.S. envoy", 14 August 1976

Information Bank Abstracts, The New York Times, "[Ed on public attack by Pres Tito on Amb Laurence H Silberman...]", 15 August 1976

A. 30 1976, July; Laurence Silberman (No 2) (Yugoslavia and USA)

Yugoslavia. Laurence Silberman, the US Ambassador to Yugoslavia is criticized after he wrote an article in the American periodical *Foreign Policy*. Josip Broz Tito, the President of Yugoslavia, is quoted as stating on 31 July 1976: "[...] the U.S. ambassador in Belgrade, Silberman, has initiated a campaign against us in the U.S. Just look how he is behaving. He is saying that it pays to exert pressure on Yugoslavia and criticize those who think

otherwise. He is giving lessons about our internal and foreign policy and interfering in our affairs." It is reportedly the first time that Tito had singled out an individual diplomat and launched such criticism at him. Tito's concerns are seen in the context of potential American attempts to "compromise" Yugoslavia ahead of the summit of the Non-Aligned Movement in Colombia.

A spokesman for the State Department said that Silberman had the full confidence of President Ford and Secretary of State Kissinger. He also said that "it is against US policy to interfere in internal affairs of Yugoslavia" and noted that the United States were not engaged in a campaign against Yugoslavia, and that there was no initiative to compromise Yugoslavia ahead of the Colombia summit.

Facts on File World News Digest, "Tito Attacks U.S. Envoy", 14 August 1976, p. 594 C1

The Economist, "Jugoslavia: Neutral On Whose Side?", 2 April 1977, p. 65

Facts on File World News Digest, "Jailed American Freed", 31 July 1976, p. 559 A2

Boskovic, Boris, "[Yugoslavian relations with the United States are cooling ...]", *The Associated Press*, 11 July 1977

Malcolm W Browne, "[Pres Tito harshly denounces US Amb Laurence H Silberman...]", *Information Bank Abstracts, The New York Times*, 1 August 1976

Information Bank Abstracts, The New York Times, "[Pres Tito, in Quotation of the Day criticizing...]", 1 August 1976

Information Bank Abstracts, The New York Times, "[US State Dept spokesman, acknowledging that 'we have seen news repts'...]", 1 August 1976

Facts on File World News Digest, "Tito attacks U.S. envoy", 14 August 1976

Information Bank Abstracts, The New York Times, "[Ed on public attack by Pres Tito on Amb Laurence H Silberman...]", 15 August 1976

A. 31 1977, April; unnamed (France and USA)

France. A meeting between American diplomats and certain French politicians arouses the criticism of the French President.

Two U.S. diplomats – a First Secretary and a Second Secretary – had visited Jean Kanapa, an official of the French Communist Party, in Paris. This incident, together with a visit by US Secretary of State Vance to members of the French Socialist-Communist Alliance, prompted the French President Valery Giscard d'Éstaing to express his concern and to say that US contacts of this kind amounted to interference in the internal affairs of France. The visits reportedly happened in March; at a time, when municipal elections took place in France. Giscard d'Éstaing pointed out that he had refrained from seeing leaders of the US Democratic Party during the time of the American election campaign. It is reported that Senators Hubert Humphrey and George Wallace had, during that period, sought a meeting with the French President in Paris, but were turned down.

The US Secretary of State said that it was part of US policy to have lower level diplomats talk to local Communist politicians. A spokesman for the American Embassy in France stated that the two diplomats had merely talked about foreign policy with the politicians. He also declared that the United States would not interfere in the "electoral affairs" of other countries and stated: "These conversations are nothing new. We have had some for years, with the Communists inclusive."

Kanapa himself referred to an inconsistency on the side of the French President: "He never said a word when Messrs Ford, Kissinger, the Englishman Callaghan, and the German Schmidt (and very recently in his case) declared that they were against the participation of Communist ministers in a French Government. Not only did he say nothing, but he supported this interference at the Puerto-Rico summit last summer. [...] In a word, the French President tells a foreign government: please, now, practise discrimination against the French Communist Party. It is quite intolerable."

Charles Hargrove, "French leftist views put across to US diplomats", *The Times*, 6 April 1977

Facts on File World News Digest, "Giscard scores U.S. talks with left", 9 April 1977

A. 32 1977, June; Irrarazabal (France and Chile)

France. Irrarazabal, the Chilean Ambassador to France is criticized for remarks made about the reception by the President of France of Mrs Allende, the widow of Salvador Allende.

Irrarazabal had reportedly complained about the reception of Mrs Allende, but he had also added that the President had perhaps welcomed the wife of the deposed Chilean President out of politeness – Mrs Allende had received Giscard d'Éstaing in Chile when the latter was Minister of Finance in 1972.

The French Foreign Minister however expressed the view that he considered the remarks of the Chilean Ambassador as not conforming to the customs and the duty of reserve that are incumbent upon ambassadors.

Salmon (1996), p. 132

AFDI, "Pratique Française du droit international" (1977), p. 1071

A. 33 1977, July; William Schaufele (Greece and USA)

Greece. The Greek Government declares the designated US Ambassador to Greece, William Schaufele, undesirable, on account of opinions he expressed at his hearing before the Foreign Affairs Committee of the Senate.

Schaufele had reportedly said that the boundaries which had been set in the past in a thoughtless way were the reason of the current tension

between Greece and Turkey relating to islands in the Aegean Sea. He allegedly attributed the reason of the tensions to the strange distribution of Greek territories close to the Turkish coast.

George Mavros, president of the Union of the Democratic Centre objected to an ambassador who, in his view, put in doubt the boundaries of a State to which he (would be) accredited and concluded that Schaufele had "put water on Turkish mills", and that his mission in Greece had therefore become more difficult. Papandreou, President of the Socialist Party (PASOK) declared that Schaufele was simply undesirable.

Menelas D. Alexandrakis, the Greek Ambassador to the United States, stated that the comments by Schaufele, in Greek opinion, appeared to question Greece's right to the territory.

The State Department declared on 21 July that it regretted the "unfortunate interpretation" given to Schaufele's statement. Schaufele had in fact declared that the problem was due to an "inhabitual arrangement" of the geography which had been rendered as "international settlement" by *Vima*, a Greek newspaper. The Greek government asked to let the matter rest until September.

On 4 December 1977, President Carter declared that instead of Schaufele, Robert McCloskey would become Ambassador to Greece.

RGDIP, "Chronique des faits internationaux" (1977), p. 827

RGDIP, "Chronique des faits internationaux" (1978), p. 276

Facts on File World News Digest, "Schaufele rejected as U.S. envoy", 6 August 1977

Rousseau, p. 167

A. 34 1978, September; unnamed (Ghana and USSR and East Germany)

Ghana. Four Soviet and one East German diplomat are expelled from Ghana amid charges of interference, based on their allegedly subversive activities.

According to reports from Ghana, the diplomats were accused of fomenting unrest. They had carried out activities in trade unions, universities and the press of Ghana which were deemed undiplomatic and hostile. Ghana charged the diplomats with interference in her internal affairs.

However, according to other reports, an alleged engagement in espionage activities may also have contributed to the decision by the Ghanaian government.

The Washington Post, "[Ghana was reported to have expelled...]", 9 September 1978

Xinhua News Agency, "four soviet diplomats expelled from ghana", 11 September 1978

Xinhua News Agency, "kenyan paper exposes soviet spying activities", 4 October 1978

Facts on File World News Digest, "Ghana", 3 November 1978

A. 35 1979; unnamed (Belgium and Zaire)

Belgium. The Ambassador of Zaire is criticized for remarks on party politics which were published in a Belgian newspaper.

The Ambassador had stated a critical opinion on the President of one of the major political parties in Belgium. The Belgian Minister for Foreign Affairs expressed his regret over these statements which in his view could have been interpreted as polemic.

Salmon (1996), p. 132

A. 36 1979; unnamed (Argentina and France)

Argentina. The French military attaché is criticized for remarks on the Argentinian military.

The military attaché had expressed his "public support and admiration for the conduct of the Argentine military forces in defending freedom against subversion". At that time, cases of disappearance and breaches of human rights had become widely known in Argentina (and denounced by human rights organizations and the Organization of American States). The French Minister for Foreign Affairs, replying to a question posed in the *Assemblée Nationale*, distanced himself from the attaché's statements and declared that the attaché had been removed from the Embassy post.

Denza (1998), Art. 41, p. 377

A. 37 1979, January; Derek S. L. Dodson (Turkey and UK)

Turkey. The British Ambassador to Turkey, Sir Derek Dodson, is accused of interference after he had allegedly congratulated a party leader.

On 26 December 1978, the Turkish Parliament voted on the decision by the Council of Ministers to declare martial law in thirteen provinces. According to Yilmaz Kemal Bor, a delegate of the (ruling) Republican People's Party, the British Ambassador had after the debates congratulated Süleyman Demirel, the leader of the opposition Justice Party.

Gündüz Ökçün, the Turkish Foreign Minister, replied to Bor in the Turkish National Assembly by stating that "the Government will do whatever is necessary to prevent any country from interfering in Turkey's internal affairs".

Bülent Ecevit, the Turkish Prime Minister, made a statement in which he distinguished between diplomatic talks with politicians and attempts to

influence them. The Prime Minister said: "It goes without saying that the Ambassador or diplomatic representative of any country may converse, within certain limits, with anybody he may come across in the corridors of the National Assembly, which are open to anybody. Nothing could be more natural. I cannot conceive that any country's ambassador who knows the Turkish nation would indulge in talk [calculated] to influence Turkey's internal affairs and domestic policies. Furthermore, I should think that if, perchance, any foreign representative were to wish to indulge in such talk, the party leader he was talking to would make the appropriate response."

Dodson himself denied the facts of the allegations. In a statement, the Ambassador said: "Prior to the Interior Minister, the Honourable Ozaydinli's statement in the Turkish Grand National Assembly, I met him first and then Mr Demirel in the space of half an hour, shook hands with them and talked with them for a few minutes. As I did not meet the Honourable Demirel after the voting at all, the question of my having him congratulated on any subject does not arise."

The Economist, "A present of a bayonet for an unhappy anniversary", 30 December 1978

BBC Summary of World Broadcasts (Turkish National News Agency, Turkey, 3 January 1979), "British Ambassador Accused of Interfering in Turkey's Internal Affairs", 5 January 1979

BBC Summary of World Broadcasts (Turkish National News Agency, Turkey, 4 January 1979), "British Ambassador Accused of Interfering in Turkey's Internal Affairs", 6 January 1979

A. 38 1979, January; Loh I Cheng (US and Taiwan)

United States. Loh I Cheng, a Taiwanese diplomat, is withdrawn amid accusations over his criticism of US policy on China.

The background to Cheng's criticism and his expulsion is formed by US President Carter's new China policy which envisaged the taking up of full

diplomatic relations with the People's Republic of China as of 1 March 1979 and the downgrading of the Taiwanese embassy to a "liaison office" as of 1 January 1979. Loh had written letters to the *New York Times*, *Daily News*, and the *Washington Star* which were critical of the new policy. In a letter published on 26 December 1978 in the *New York Times*, Cheng had said that he could "see why the leaders of Israel are nervous about the value of American promises." He called on friends of Taiwan in that letter to "write senators and congressmen urging Congress to adopt resolutions guaranteeing that adequate defense supplies will be sold to Taiwan" and called the US policy a "shabby treatment" of the population of Taiwan. According to some sources, the US government considered Cheng's conduct to violate "general diplomatic practices"

Dan Morgan, "Taiwan Recalls Diplomat Who Scored U.S. Policy", *The Washington Post*, 30 January 1979

George Gedda, "[The Carter administration has expelled...]", *Associated Press*, 30 January 1979

Information Bank Abstracts, *The New York Times*, "[US reptdly has expelled Taiwan official...]", 31 January 1979

A. 39 1979, March; Ho Xuan Dich (Canada and Vietnam)

Canada. Ho Xuan Dich, Second Secretary at the Vietnamese Embassy to Canada, is expelled amid accusations of objectionable behaviour towards Vietnamese exiles.

The diplomat was accused of intimidating members of the Vietnamese community in Canada. According to an investigation carried out by the Royal Canadian Mounted Police, he had threatened reprisals against relatives of the Vietnamese exiles who still lived in Vietnam.

In a statement, the Vietnamese embassy indicated that the decision to expel Ho was based on "false reasons".

Facts on File World News Digest, "Vietnamese Diplomat Expelled", 13 April 1979

A. 40 1979, June; Walter Cutler (Iran and USA)

Iran. Iran rejects the designated US Ambassador Walter Cutler. The Iranian Foreign Minister Ibrahim Yazdi refers in explanation of this to the alleged American intervention in Zaire (Democratic Republic of Congo), while Cutler was US Ambassador there in 1978. Yazdi is quoted as saying "In view of the United States intervention in Africa, especially Zaire, I realized that relations between Teheran and Washington could not be improved through our acceptance of a former United States ambassador to Zaire to represent his country here. If America wants better relations, it will have to send an ambassador with better credentials."

The U.S. State Department declared that there were no plans to withdraw Cutler's name or to reassign him and that President Carter and Secretary of State Cyrus Vance maintained "full confidence" in Mr Cutler.

Glahn (1986), p. 444

Facts on File World News Digest, "U.S. Ambassador Barred", 8 June 1979

Jim Hoagland, "U.S. Rebuffs Iran over Rejection of Envoy", *The Washington Post*, 5 June 1979

William Branigin, "Iranian Official Accuses Iraq of Promoting Unrest", *The Washington Post*, 7 June 1979

A. 41 1979, August; Yuri Chernisch et al (Costa Rica and USSR)

Costa Rica. Three Soviet diplomats – identified as Yuri Chernisch (First Secretary), Alexander Mordovets (Second Secretary) and Olga Mordovets (Cultural Attaché) are expelled amid allegations of interference in labour affairs.

At a time of serious labour strikes, Rodrigo Carazo Odio, the President of Costa Rica, announced the expulsion of the diplomats in a televised speech. The President told his audience that he would not "remain silent" when Costa Rica was "endangered by strange forces, both foreign and domestic". The President did not directly accuse the diplomats of instigating the strikes, but said that the strikes were caused by "political subversion" and that "international agitators" were behind the strikes and the occurrences of violence. *Xinhua* quoted government officials as saying that the Soviet diplomats "had violated the principle of non-interference in the internal affairs" of Costa Rica.

The Soviet Embassy denied charges of interference in Costa Rica's internal affairs. The head of the commercial section, Sergi Skopiov, declared his surprise at the decision.

Associated Press, "International News. San Jose, Costa Rica", 20 August 1979

Intelligence Research Limited, Latin America Political Report, "Costa Rica: red herring", 24 August 1979

Facts on File World News Digest, "3 Soviet Envoys Expelled During Strike", 7 September 1979

Xinhua News Agency, "costa rica not to allow moscow to replace expelled diplomats", 10 September 1979

Intelligence Research Limited, Latin America Weekly Report, "Review: The events of the year at a glance", 4 January 1980

Joe Frazier, "International News. Mexico City", *Associated Press*, 17 February 1980

U.S. News & World Report, "Fanned by opportunists from Havana and Moscow, strife between the region's haves and have-nots makes upheaval almost inevitable.", 10 March 1980

U.S. News & World Report, "Central America: Why Such a Hotbed", 19 May 1980

A. 42 1980, January; Vsevolod Sofinsky (New Zealand and USSR)

New Zealand. The Soviet Ambassador, Vsevolod Sofinsky, is expelled for allegedly rendering financial aid to a political party in the receiving State.

According to the Prime Minister of New Zealand, Robert Muldoon, Sofinsky had been personally involved in the transfer of money from the Soviet government to the Socialist Unity Party (a breakaway group from the New Zealand Communist Party). Muldoon stated that there "is no doubt the Socialist Unity Party has been financed by the Soviet government for some time". Muldoon also said that the amounts given to the party had been "substantial" and that the evidence collected by the Security Intelligence Service had been "conclusive". Muldoon furthermore said: "The personal involvement of the Ambassador shows that this is a matter of official Soviet policy."

In a statement, the Prime Minister reported that the Ambassador had been told to leave the country immediately. Muldoon said: "It is an established international convention that a diplomatic representative does not interfere in the domestic politics of the country he is accredited to".

According to Sofinsky, the accusations against him were "lies" and "slander". The Socialist Unity Party likewise stated that it had not received any money from the Soviet side.

Associated Press, "New Zealand Boots Soviet Ambassador", 23 January 1980

Facts on File World News Digest, "Soviet Ambassador Expelled", 8 February 1980

Hank Schouten / Paul Loxton Molineaux, "Judge modernised SIS", *The Dominion Post (New Zealand)*, 2 March 2006

A. 43 1980, April; Mohammed S. A. Tarhuni et al (USA and Libya)

United States. Mohammed S. A. Tarhuni, Cultural Attaché and Muftah S. Ibrahim, Third Secretary at the Libyan people's bureau, are expelled after they distributed documents with objectionable contents.

Tarhuni and Ibrahim had allegedly distributed literature which called for the "liquidation" of opponents of Gaddafi living in the United States. Colonel Gaddafi had, from February 1980 on, warned that his enemies would be "eliminated physically".

The Washington Post, "Another Libyan Exile Assassinated in London", 26 April 1980

Joe Ritchie, "U.S. Expels 4 More Libyan Diplomats", *Washington Post*, 4 May 1980

Associated Press, "U.S. Expels Libyan Diplomats", 5 May 1980

Christian Science Monitor, "Four Libyan diplomats expelled by US", 5 May 1980

Carl Hartman, "Expelled Libyans Refusing to Leave U.S.", *Associated Press*, 7 May 1980

A. 44 1980, May; Nuri Ahmed Swedan (USA and Libya)

United States. The expulsion of four members of the Libyan diplomatic mission (Nuri Ahmed Swedan, Ali Ramram, Mohammed Gamudi and Abdulla Zbedi) is announced amid allegations of inappropriate behaviour towards Libyan exiles.

According to a spokeswoman of the State Department, the four diplomats "have been engaging in intimidation activities toward Libyan dissidents in this country."

The State Department asked the four diplomats to leave because of their engagement "in activities that we consider unacceptable".

Joe Ritchie, "U.S. Expels 4 More Libyan Diplomats", *Washington Post*, 4 May 1980

Associated Press, "U.S. Throws Out Libyan Diplomats", 4 May 1980

Associated Press, "U.S. Expels Libyan Diplomats", 5 May 1980

Christian Science Monitor, "Four Libyan diplomats expelled by US", 5 May 1980

Carl Hartman, "Expelled Libyans Refusing to Leave U.S.", *Associated Press*, 7 May 1980

Facts on File World News Digest, "U.S. Expels Four Envoys", 16 May 1980

A. 45 1980, May; unnamed (UK and Libya)

United Kingdom. Four people connected to the Libyan mission to the United Kingdom are expelled following their behaviour towards Libyan nationals.

Two of the Libyans are described as being "directly involved" in the People's Bureau, the two others are described as being "indirectly connected" to it (*The Times*). The four people reportedly engaged in harassment and intimidation of Libyan dissidents resident in London. They allegedly threatened the Libyan exiles with death if they did not return to Libya.

Douglas Hurd, then Minister of State at the Foreign Office, announced the expulsion of the four Libyans in May 1980 for "activities incompatible with their functions". The decision comes in the wake of the killing of two Libyans in London in April 1980, but Hurd was quoted as saying that there was no evidence directly linking the four expelled Libyans to these events.

Youssef M Ibrahim, "[British Foreign Affairs Min Douglas Hurd...]", *Information Bank Abstracts, The New York Times*, 12 May 1980

The Times, "Libya agrees to withdraw four members of London mission", 13 May 1980

The Washington Post, "Libya Recalls 4 Envoys Under British Pressure", 13 May 1980

Facts on File World News Digest, "U.S. Expels Four Envoys", 16 May 1980

Facts on File World News Digest, "Libyan Diplomat Expelled", 20 June 1980

A. 46 1980, June; Musa Kusa (UK and Libya)

United Kingdom. Musa Kusa, Secretary of the Libyan diplomatic mission to London is expelled, following remarks he made to a reporter about the pending killings of Libyan exiles.

The background to Kusa's statement was formed by recent executions of Libyan dissidents in London and other Western European States. Kusa reportedly said to Michael Horsnell, a reporter of *The Times*: "The revolutionary committees have decided last night to kill two more people in the United Kingdom. I approve of this. They [the targets] are resident in Britain. I do not know how it will be done or if it will be soon. They are former government employees and they have misappropriated funds. Now they present themselves in this country as spokesmen for the anti-revolution, but they are thieves. We don't like breaking the law here but we are fighting these people because they worked against our revolution."

Kusa also made reference to the IRA and stated: "We are now seriously thinking of cooperating with the IRA if the British Government continues to support those Libyans who are hiding here." Kusa said that those who dealt with Israel, Egypt and the United States "commit high treason and deserve to die, wherever they may be".

The remarks by the Secretary of the Libyan mission prompted an investigation by Scotland Yard's anti-terrorist squad. On the day after his

statement, Kusa was summoned by the Foreign Office and was told by Sir Ian Gilmour, the Deputy Foreign Secretary, that he had 48 hours to leave the country.

In a statement to the House of Commons, Gilmour said that, while the United Kingdom desired good relations with Libya, "we are making clear that the Libyan authorities must understand what can and cannot be done under the law of the United Kingdom, and that criminal actions in the United Kingdom must cease".

In the House of Lords, Lord Goronwy-Roberts stated: "It is quite intolerable that any embassy in any country should connive at and officially approve incitements to murder. That is what happened on the steps of the Libyan Embassy yesterday. It is an act of criminality."

Mr Kusa was quoted as saying that the two men whom the revolutionary committees had identified, would still die. He stated: "the British authorities believe if they close down the bureau everything will be finished. I am willing to say here strongly it is a mistake. It will continue." With regard to the IRA, Kusa reiterated his former position: "We believe strongly that the British government supports them [the Libyan exiles] by all means, giving them security, giving them hiding places, and giving them cars. [...] If the British authorities keep taking this action against the [Libyan] Revolutionary Council and help the other side, I expect they [the Libyan regime] will help the IRA again. We believe the IRA is the British liberation movement, so according to this principle, we have the right to support them."

Green, p. 150 et seq.

Associated Press, "Report Two Libyans In England Marked For Death", 13 June 1980

Associated Press, "British Expel Top Libyan Envoy", 13 June 1980

Nikki Fine, "British Expel Libyan Diplomat", *Associated Press*, 13 June 1980

Michael Horsnell, "Gaddafi men sentence to death two Libyan exiles in London Threat to link with IRA", *The Times*, 13 June 1980

Stewart Tendler / Richard Ford / Michael Horsnell / Frances Gibb, "Head of Libyan mission is expelled after death threats", *The Times*, 14 June 1980

The Washington Post, "Britain Expels Libyan Diplomat for Approving Death Squad", 14 June 1980

The New York Times, "Britain expels envoy of Libya who backed assassination squads", 14 June 1980

Facts on File World News Digest, "Libyan Diplomat Expelled", 20 June 1980

A. 47 1980, August; Marvin Weissman (Bolivia and USA)

Bolivia. The American Ambassador to Bolivia, Marvin Weissman, is criticized for allegedly allowing a journalist to send a message through diplomatic channels.

According to Fernando Palacios, the Bolivian Minister for Information, Weissman had allowed Ray Bonner, a freelance journalist at the Washington Post, to send a story through an embassy cable to America. In his story, Bonner had referred to the events of the recent coup d'état and talked about attempts by the armed forces to "to tighten their grip on Bolivia's major cities and mining districts." Bonner also referred to instances of disappearances.

Palacios made the following statement at a news conference: "The ambassador validated and authorized this message on an official telex sent to the Department of State [...] It is up to the governments affected, international organizations and world opinion to judge the actions of the ambassador in signing the cable we exhibit here". The Minister also said that the use of embassy channels for the transmission of such "false and libelous" material was a violation of the *Vienna Convention* and a "direct foreign intervention in Bolivia's internal affairs".

In reply to the question whether any steps would be taken against the United States in this matter, Bonner said: "We are going to take the necessary measures through corresponding diplomatic means".

Tom Fenton, "U.S. Ambassador Accused of Send Newspaper Story on Embassy Telex", *Associated Press*, 4 August 1980

Associated Press, "International News", 5 August 1980

A. 48 1980, November; Nikolai Soudarikov (Australia and USSR)

Australia. Nikolai Soudarikov, the Soviet Ambassador to Australia, is criticized for a speech in which he referred to the attitude of the Australian government to the Soviet Union.

At a State luncheon during an official visit to the Australian State of Tasmania, the Ambassador stated that the Australian government was "slandering" the Soviet Union, had discriminated against his State and misunderstood its "noble policies" towards Australia. Soudarikov further stated that Russia in her history had "never really" invaded anyone else.

Brian Harradine, an independent Senator, called on the Australian Foreign Minister to caution Soudarikov and to tell him that he had committed an abuse of diplomatic privileges. Harradine referred to Soudarikov's speech as an "an undiplomatic diatribe against Australia."

A spokesman for the Premier of Tasmania indicated that the speech had embarrassed the Premier.

The Australian Foreign Ministry however did not caution Soudarikov. A spokesman for the Department of Foreign Affairs stated that the department believed Australians to be capable of judging the merits of the Ambassador's remarks.

In the Australian Senate, Dame Margaret Guilfoyle, representing the Minister for Foreign Affairs, made the following statement in reply to a question concerning the incident:

"[...] technically, the remarks which the Ambassador is reported to have made do not constitute a departure from customary diplomatic behaviour [...] In Australia the Soviet Ambassador enjoys rights of free speech and access to a generally free Press which neither he nor any other Soviet citizen nor any foreign visitor can enjoy in the Soviet Union."

8 *Australian Yearbook of International Law* (1978 – 1980), p. 403

Xinhua News Agency, "soviet ambassador attacks australian government", 22 November 1980

A. 49 1981, January; Robin A. Berrington (Ireland and USA)

Ireland. The American Cultural Affairs and Press Officer, Robin Berrington, is recalled, after a letter which he had written and which was critical of the receiving State, reaches the press.

In a letter to a friend, Berrington had written that Ireland was "small potatoes compared to the rest of Europe. The weather and the food are well matched to each other, they're dull". The letter also contained the observation that the hottest item in Ireland was "whether Ronald Reagan's ancestors really came from Tipperary." Berrington also wrote: "What keeps the rest of us going is wondering how the Irish will handle their next five months' mail strike (as in 1979), three months' petrol shortage (as in 1980), or dairy dispute and breakdown in telephones, buses, electricity and garbage pickups (as in 1978, 1979, 1980 ... ad infinitum). At least it makes great street theater." The diplomat furthermore referred to the "high cost of goods", the "long, dark and damp winters" and the sectarian troubles in the North as a "constant depressant". His letter also included a reference to the

people of Ireland whom he called "enigmatic and unpredictable despite their easy approachability and charm."

The paper ended up accidentally in a publicity handout about US President Reagan, which Berrington had prepared, and it thus reached several journalists. The *Irish Times* decided to print excerpts of the letter.

The United States recalled Berrington when the letter was published. The Irish Foreign Ministry did not officially comment on the affair, because the letter was private. American newspapers reported that the Irish Prime Minister Haughey was upset about Berrington's comments, but this allegation was denied by an official of the Irish Foreign Ministry, who also emphasized that Haughey had not sought Berrington's removal.

The official was quoted as stating: "The key point is that when a diplomat makes a gaffe and offends people [...] the host country can look for evidence of that offense and have him recalled. In this case, that evidence has not been thick on the ground. It wasn't the Irish who ordered him on that plane. We are as sensitive as the next country but we are not hypersensitive. We don't expect people here to live in unflagging euphoria."

It is reported that the American Ambassador Shannon apologized to the Irish members of his staff and that he said, in a statement that "the Irish are famous for their sense of humor and I think I shall have to rely on it in this instance."

Anne-Gerard Flynn, "Irish Laud Diplomat called home by U.S.", *The New York Times*, 8 February 1981

Peter Jennings, "World News Tonight – ABC News Transcripts", *ABC News Transcripts*, 29 January 1981

A. 50 1981, January; John Ford (Canada and USA)

Canada. The British High Commissioner to Canada, Sir John Ford, is criticized for his lobbying activities.

The allegations arose in the context of the Canadian government's attempt to patriate and amend the constitution. At the Governor General's annual skating party for Members of Parliament, Ford had talked to two MPs of the New Democratic Party (Ian Waddell and Jim Manly) about the legislative package. According to Waddell, the High Commissioner had told him and Manly not to support the package. According to Ford, he had merely warned the two politicians that a request, which would amend the British North America Act, could not expect easy passage in the British Parliament. Waddell, who had initially not recognized the High Commissioner, recalled: "I said that we've been told by [British] officials and leaders that it would go through. Then he said, "Well, I'm telling you it won't go through. I'm the British High Commissioner. – I was shocked - - I didn't know what to say." Ed Broadbent, Parliamentary leader of the New Democratic Party, took exception to this conduct and was quoted as stating: "That's an intolerable interference in Canadian affairs". Broadbent also said that the High Commissioner "must be told that he should cease and desist from interfering in our internal affairs [...] But I also wouldn't rule out the question that he should be sent home."

The Liberal Party likewise referred to the incident as interference in Canadian affairs and started a Parliamentary investigation of the situation. Mark MacGuigan, the Canadian External Affairs Minister, commented as follows on Ford's behaviour: "This is an entirely appropriate type of diplomatic activity [...] However, there are indications that the high commissioner went beyond these normal functions into internal political matters. I have also been informed that there is no intention on the part of the British government to intervene in affairs which are properly matters for Canadians." Before the Canadian House of Commons, MacGuigan had been more severe: "If [the reports] are true, I might say that that conduct would be doing a great disservice to the government of the United Kingdom and it would be conduct completely unacceptable to this government."

There was some speculation that the fact that Ford retired earlier than initially intended, was linked to the remarks of the High Commissioner and the reaction they received.

The High Commissioner pointed out that he was carrying out his professional duties by attempting to relay British views.

Richard Doyon, "Section: Regional News", *United Press International*, 6 February 1981

Arthur L. Gavshon, "Ambassador Retired in Midst of Controversy", *Associated Press*, 10 February 1981

Alexander MacLeod, "British hang on in tug of war over Canada's Constitution", *Christian Science Monitor*, 13 February 1981

The Economist, "Which Canada should Britain listen to?", 14 February 1981

Charles J. Hanley, "An AP News Special", *Associated Press*, 15 February 1981

Andrew P. Hutton, "Section: Regional News", *United Press International*, 16 February 1981

Richard Doyon, "Section: Regional News", *United Press International*, 25 February 1981

A. 51 1981, May; William V. Shannon (Ireland and USA)

Ireland. The American Ambassador to Ireland, William V. Shannon, is criticized for his apparent participation in the electoral campaign (for the June 1981 elections).

In May 1981, Shannon joined Garret FitzGerald, the leader of the *Fine Gael* party, in his campaign. On this occasion, the Ambassador was photographed sitting with FitzGerald in the campaign bus of *Fine Gael* in County Wicklow.

Shannon later stated that he had attended the party conferences of the three major parties and he intended to spend a day observing the campaigns of each of these parties as well. Ronald Clifton, the Public Affairs Officer of the American Embassy, confirmed that the "ambassador has no intention of taking part in the campaign, he is not endorsing any

candidate or party and he is not taking a partisan position". Clifton also emphasized that the US government was not taking sides.

However, the Irish Prime Minister, Charles J Haughey (*Fianna Fail* Party), took exception to Shannon's behaviour. He stated that the Ambassador had "put his foot in" and added: "Certainly we would not contemplate having him take part in our campaign or being associated with us in any way."

Salmon (1996), p. 132

Associated Press, "U.S. Ambassador in Controversy Over Irish Elections", 27 May 1981

The Washington Post, "U.S. Envoy to Ireland Criticized", 28 May 1981

A. 52 1981, September; Vladimir Polyakov (Egypt and USSR)

Egypt. The Soviet Ambassador, Vladimir Polyakov, is expelled by Anwar Sadat for "meddling in Egypt's internal affairs". Six other embassy officials are likewise expelled. It was apparently alleged that Polyakov was involved in the conflict between Muslims and Coptic Christians in Egypt. In a statement, the Egyptian cabinet accused the Soviet Union of "recruiting agents in Egypt [...] exploiting religious strife, and influencing the spread and escalation of the sectarian conflict". According to the statement, Polyakov had been summoned to the Foreign Ministry where he was told that the "suspicious activities of the Soviet diplomats [were] tantamount to intervention in Egypt's internal affairs." The statement also said that the Soviet diplomats had made "suspicious contacts" with political opponents of the President and had attempted to "cause troubles on the internal front, distort democracy and incite sedition and conflicts among Egyptians" Polyakov was reportedly accused of personally directing a plot against Sadat and of fomenting civil and religious unrest.

Mark Muth (Editor), "Egypt expels Soviet Ambassador", *Christian Science Monitor*, 16 September 1981

Lisette Balouny, "Section: International News", *Associated Press*, 16 September 1981

Maurice Guindi, "Egypt-Soviet relations close to total break", *United Press International*, 16 September 1981

David B. Ottaway, "Top Soviets Expelled By Egypt; Ambassador, Aides Accused of Inciting Sectarian Struggle; Egypt Accuses Soviets of Fomenting Strife", *The Washington Post*, 16 September 1981

The Independent, "Back in Cairo", 14 August 1990, p. 10

A. 53 1982; unnamed (Belgium and Israel)

Belgium. The Israeli Ambassador to Belgium is criticized for certain remarks about Belgian journalists.

In the context of discussions about the Israeli invasion of Lebanon, the Israeli Ambassador referred to Belgian journalists as liars and insinuated that it could not be proved that they were (not) paid by the PLO.

The Belgian Minister for Foreign Affairs (Tindemans), expressed his regret over the vivaciousness in the tone of the diplomatic message and the lack of moderation. He did however state that in this case there was no interference with the affairs of Belgium.

Salmon (1996), p. 132

A. 54 1982, May; Paul Robinson (Canada and USA)

Paul Robinson, the American Ambassador to Canada, is criticized over remarks on Canada's budgetary policies.

In several speeches, the Ambassador had called on the Canadian government to increase the defence budget, to place missiles on F-18 fighter planes, send another brigade of troops to Europe and to buy more warships. Before an audience in Ontario, Robinson criticized Canada for spending too much on social services. The Ambassador also made reference to the Foreign Investment Review Agency (which monitors the takeovers of Canadian businesses) and called it "discriminatory".

These comments aroused negative reactions from various Canadian lawmakers. Pauline Jewett, Member of Parliament for the New Democratic Party stated that the Ambassador had overstepped his authority. Jewett was quoted as saying: "The ambassador interferes too much in Canadian affairs, has too many opinions, is insulting and patronizing to this country and its people [...] While Canadians greatly respect our friends to the south and always welcome dialogue on important issues, we do not need to be lectured to or told by foreign representatives how to spend our money and conduct our public business." She also stated: "He's got no bloody business talking about our social policies [...] He doesn't even know what they are. He just doesn't have a feel for the job."

John Crosbie, a Conservative Member of Parliament, remarked that he did not think that Robinson should be recalled, but he, too, considered the Ambassador's statements on Canadian social policy inappropriate. Crosbie, an expert of foreign affairs, said that Robinson "would be well-advised not to talk about that again [...] I just don't think it's helpful. It's unwise and unwarranted intervention but I don't think we should take it too seriously."

Salmon (1996), p. 132

Andrew Cohen, "Regional News. Ottawa", *United Press International*, 13 May 1982

A. 55 1982, May; James C Cason (Uruguay and USA)

Uruguay. James C Cason, First Secretary and Political Attaché at the US Embassy to Uruguay, is expelled amid charges of interference.

The President of Uruguay, Gregorio Alvarez, stated that a US diplomat (later identified as Cason) had been expelled for "attempting to interfere in internal affairs of the Uruguayan state". Alvarez referred to the "misconduct of a functionary" which "in no way affects the prestige of the U.S. government, nor the excellent state of relations between the two countries". It is reported that Cason had "improper discussions" (*Associated Press*, 30 May 1982) with a high-ranking official of the Foreign Ministry and a naval chief. According to other sources, Cason had had close contacts with political dissidents in Uruguay. There was also speculation that Cason had repeated the criticism expressed by some American generals on the government of Uruguay.

US Ambassador Aranda denied that Cason had done anything wrong. Aranda was recalled to Washington for consultations on the affair. A State Department official was quoted as saying that the United States did not consider the decision by Uruguay "warranted or justified".

United Press International, "U.S. diplomat told to leave Uruguay", 24 May 1982

Associated Press, "U.S. Diplomat Declared Unwelcome", 24 May 1982

Associated Press, "US Envoy Recalled to Consult on Diplomat's Expulsion", 30 May 1982

Douglas Martin, "Move by Uruguay worries U.S. Aides", *The New York Times*, 3 June 1982

Associated Press, "Uruguayan Envoy Expelled By U.S.", 7 June 1982

BBC Summary of World Broadcasts (Radio Peace and Progress, USSR, 8 June 1982),
"Other Reports; 'Spy centres' in US embassies in Latin America", 16 June 1982

Facts on File World News Digest, "Uruguay", 23 July 1982

A. 56 1982, June; Yossef Hasseen (India and Israel)

India. Yossef Hasseen, the Israeli Consul in Bombay, is expelled after he criticized Indian policy.

In an interview with the *Sunday Observer* (Bombay), Hasseen made the following remarks:

"You must remember that there is a strong Arab Moslem lobby in Delhi. There are Arab ambassadors in Delhi who put very strong diplomatic pressure on you. I know they want us out of Bombay. And they use the local Moslems as their spokesmen. I don't see any Hindus asking for the closure of the Israeli consulate in Bombay. Your politicians are afraid of the Arabs [...] They are afraid that Iraq will cancel their contracts, Saudi Arabia will stop accepting laborers -- I think it is wrong. Our feeling is that you are competing with Pakistan in who is more anti-Israeli. India is always asking for the floor at the U.N. and other international forums to denounce Israel and prove to the Arabs that you are doing more than Pakistan. This way you think you will impress the Arabs."

India declared the Consul *persona non grata* and gave him 48 hours to leave the country. The Indian Foreign Ministry issued a statement in which it said that Hasseen's interview "contains statements which are highly objectionable and not in keeping with his consular functions and constitute an unacceptable interference in the domestic affairs of India".

Xinhua News Agency, "israel's consul in india expelled", 8 July 1982

United Press International, "Section: International", 8 July 1982

P. R. Kumaraswamy, "Beyond the Veil: Israel-Pakistan Relations", *Jaffee Center for Strategic Studies*, Memorandum no. 55, March 2000

<<http://216.239.37.100/search?q=cache:dm9fuz->

www.tau.ac.il/jcss/memoranda/memo55.pdf+%2Bdiplomat+%2Bexpelled+%2B%22persona+non+grata%22&hl=en

footnote 21982>

P. R. Kumaraswamy, "Indian-Israel Relations: Humble Beginnings, a Bright Future", The American Jewish Committee [no date]. Available online:
<<http://web.archive.org/web/20021002033853/http://www.ajc.org/InTheMedia/Publications.asp?did=512>>

A. 57 1982, June; Meir Rosenne (France and Israel)

France. The Israeli Ambassador Meir Rosenne is criticized for remarks made about a statement by the French President, François Mitterrand.

At a news conference in Hungary, Mitterrand had discussed the Israeli attacks on Beirut. During the conference, a Palestinian reporter posed a question in which he referred to "Israel perpetuating Oradour in Lebanon" (Oradour-sur-Glane is a village in France where an SS battalion carried out a massacre on civilians in 1944). Mitterrand replied by saying that France "disapproves all interventions of one country in the affairs of another and all the more so violent interventions, all military interventions. And, the characteristics of a military intervention, when it meets resistance, is to provoke, as you say, Oradours. No more than I accepted the Oradour provoked by the German occupation of France, do I accept [other] Oradours, including in Beirut, or eventual Oradours in all the conflicts which follow the same terrible logic. That is why, for example, I condemn an intervention such as that [by the Soviet Union] in Afghanistan". After these remarks, Rosenne was ordered by the Israeli Foreign Minister Yitzhak Shamir to lodge a "vigorous protest" with the French government. Rosenne's protest called the President's remarks "sacrilege".

In reply, the Élysée Palace declared that the Israeli side had failed to examine Mitterrand's remarks as a whole and in context, and it referred Israel "to the reality of the facts".

Associated Press, "France rejects Israeli protest of Mitterrand statement", 12 July 1982

United Press International, "Foreign Briefs", 12 July 1982

A. 58 1982, October / November; Dean R. Hinton (El Salvador and USA)

El Salvador. The American Ambassador Dean R. Hinton is criticised for his remarks on the Human Rights record of the receiving State and its legal system.

Before the American Chamber of Commerce in San Salvador, Hinton had stated that the United States might withdraw aid to El Salvador if the State did not make "substantial progress" on Human Rights and on bringing the murderers of US citizens to justice. Hinton also said that the rightist "mafia" – parts of the armed forces that had carried out murder and kidnapping – had to be stopped, and that its activities were as much a threat to the nation as the leftist guerillas that were fighting the government.

Two days later, the Ambassador said in an interview that the El Salvadorian legal system was "rotten" and stated: "You can't have a democratic society unless you have a rule of law".

Hinton's remarks aroused criticism in El Salvador and in the United States. The El Salvadorian Chamber of Commerce declared that his comments were a "a slap in the wounded and bloodied face of our country".

But White House officials likewise expressed their "concern" and "surprise" at Hinton's remarks. While the speech had been cleared by Assistant Secretary of State Enders, it had apparently not been approved beforehand by the White House.

However, Larry Speakes, spokesman of the White House, declared that the Ambassador's comments were "in keeping with the major outlines of (U.S.) policy with El Salvador". He stressed that Hinton still had "the full faith and confidence of the President".

Facts on File World News Digest, "U.S. Backs Off from Envoy's Remarks", 19 November 1982

Marlise Simons, "Salvador Aid: U.S. resolve is questioned", *The New York Times*, 21 November 1982

Salmon (1996), p. 134

A. 59 1982, December; John Dunn et al (Iran and Australia)

Iran. The Australian diplomats John Dunn and Barry McDonald are expelled from the country after they reportedly asked two women to remove their facial covers.

The Iranian Chargé d'Affaires in Australia, Jeddi, told a press conference that Dunn and McDonald had insisted that two women (who had applied for visas) be photographed without their headdress. Jeddi added that the Australian government had displayed "contempt for Islamic principles and tenets considered inviolable in Iran". He added that under "diplomatic practices and convention and usage, no embassy has the power or authority to impose rules and regulations contravening the Constitution of the ruling State".

The Iranian government lodged an official protest against the alleged demand by the Australian diplomats and expelled both Dunn and McDonald. A spokesman for the Iranian Foreign Ministry was quoted as saying that the diplomats' demand had "insult[ed] Islamic sanctity".

Sources in the Australian Foreign Ministry denied that the women had been asked to provide photographs without headscarves. They said that their visa applications had been rejected because the women wanted to visit Australia for propaganda purposes. The Australian Minister for Foreign Affairs declared his concern over the expulsions. Australia retaliated by expelling two Iranian diplomats.

BBC Summary of World Broadcasts (Melbourne Radio, Australia, 31 December 1982), "Iranian-Australian relations", 3 January 1983

United Press International, "Veil lifted on diplomatic flap", 5 January 1983

Australian Yearbook of International Law, 1981 – 1983, pp. 506 - 509

A. 60 1983; unnamed (Malta and various States)

Malta. Dominic Mintoff, Prime Minister of Malta and leader of the Maltese Labour Party, prohibits diplomatic contacts with the opposition Nationalist Party.

The Nationalist Party, which had won 31 out of 65 seats in the Maltese Parliament, had boycotted Parliamentary sessions since 1981. In April 1982, Prime Minister Mintoff declared the seats of the Nationalist Party vacant and refused to allow it access to television and radio stations. Eddie Fenech Adami, leader of the Nationalist Party, then tried to broadcast from a television station in Sicily, which prompted Mintoff to adopt the "Foreign Interference Act" in September 1982, according to which foreigners and Maltese citizens usually resident abroad were not allowed to engage in "foreign activities" in Malta, unless their work "in no way constitutes an interference in the internal affairs of Malta or the foreign policy pursued by its Government and this activity in no way gives an advantage to one or some only of the political parties over any other such party".

On 10 January 1983, the Maltese government sent out notes to all diplomatic missions in Malta which instructed the heads of missions to make sure that their diplomats refrained from "contacts of any kind with members of the Nationalist Party". Carmelo Mifsud Bonnici, the designated leader of the Labour Party, explained that the rationale behind the decision was that ambassadors of foreign nations should not give the impression that the legitimate government was not that of the Labour Party.

Several embassies protested against the ban. James Rentschler, the US Ambassador to Malta, denied the validity of the decision and declared that it violated the *Vienna Convention*. Rentschler expressly referred to the diplomatic task of studying "by all lawful means, conditions and

developments" in the receiving State. Rentschler also deemed the Maltese government to be in violation of the *Final Act of the Helsinki Conference*, "which condemns the kind of anti-opposition discriminatory activity normally associated with totalitarian regimes".

Other missions opposed to the ban included embassies from countries with whom the Maltese government had sought to maintain good relations, including many Arab States. The Ambassadors of Kuwait, Libya, Tunisia and the representative of the PLO submitted a joint protest and rejected a request to withdraw their protest.

Diplomatic agents did reportedly continue to maintain contacts with the Nationalist Party, apparently on instructions by their governments. Diplomats in Malta claimed that the prohibition isolated them from over half of the Maltese population. Several missions, including the Australian High Commission, cancelled their National Day celebrations, as supporters of the Nationalist Party would not have been allowed to attend. The Australian High Commission stated: "The Maltese Government's ban on contacts with the Nationalist Party is unacceptable by any measure".

Adami, the leader of the Nationalist Party, called for the resignation of Foreign Minister Trigona over this matter.

On 7 February 1983, the Maltese government stated that it acknowledged the right of diplomats to contact members of the Nationalist Party under certain circumstances. But "contacts designed to give an image of the Nationalists as an alternative government" remained forbidden.

The European Parliament passed a resolution in March 1983, which sharply criticised the Maltese government for the ban on diplomatic contact with the Nationalist Party. The Parliament also called for a cancellation of aid to Malta.

As a reaction, the Maltese Parliament threatened to withdraw the Maltese Ambassador to the European Community.

Peter Nichols, "Malta sliding to the East, opposition fears", *The Times*, 2 December 1982

The Economist, "World politics and current affairs", 5 February 1983

The Times, "Maltese minister 'blundered'", 8 February 1983

Henry Kamm, "Malta Takes on the World in Diplomatic War", *The New York Times*, 20 February 1983

Alexander MacLeod, "Malta's democracy is cast in doubt", *Christian Science Monitor*, 1 March 1983

Facts on File World News Digest, "Parliamentary Boycott Ended", 8 April 1983

Salmon (1996), p. 131

A. 61 1983, January; Richard LaRoche et al (Surinam and USA)

Surinam. Two American diplomats, Richard LaRoche and Edward Donovan, are expelled from the country amid allegations of participation in labour affairs of that country.

LaRoche and Donovan were accused by the government of Surinam of instigating labour unrest in that State. These allegations had been made several months ago; however, the decision to expel the two diplomats was made only after the United States had suspended a \$ 1.5m aid programme to the State and after the State Department had criticized the execution of fifteen opponents to the government of Surinam. Surinam accused LaRoche and Donovan of meddling in the internal affairs of the country.

The US State Department denied the charges and retaliated by expelling a Surinamese diplomat.

George Gedda, "US Sees Sharp Leftward Drift in Surinam", *Associated Press*, 5 January 1983

A. 62 1983, March; Denis Worrall (Australia and South Africa)

Australia. Denis Worrall, the South African Ambassador to Australia, is criticized for a speech in which he discussed matters of Australian policy. In his speech, Worrall had reportedly provided an examination of Australian policy towards South Africa which he called "confrontational, prescriptive and intrusive".

The Australian Minister of Foreign Affairs, Bill Hayden, subsequently issued a statement in which he said that diplomatic representatives were entitled and even encouraged to present their governments' views. It was however not appropriate to publicly criticize the policies of the Australian government. The Foreign Minister was of the opinion that Worrall's speech included comments which exceeded acceptable limits.

Pik Botha, the South African Foreign Minister, declared that he agreed with the principle on the role of diplomatic representatives expressed by Hayden. However, he noted that Worrall had referred not to Australia's domestic policy, but to foreign policy in general. Worrall had also, in Pik's opinion, only provided a factual description of South African perception of Australian policy, and his conclusions had not been intended to be critical. With regard to the words "confrontational, prescriptive and intrusive" which Worrall had used, Botha found that they were neither emotive nor ill-considered.

Australian Yearbook of International Law (1981 – 1983), p. 505

BBC Summary of World Broadcasts (Johannesburg Home Service, South Africa, 29 March 1983), "Pik Botha's Response to Australian Criticism", 30 March 1983

A. 63 1983, May; unnamed (Iran and USSR)

Iran. Eighteen Soviet diplomatic and consular officials are expelled amid reports about Iranian displeasure about the contacts they maintained.

According to a statement by the Iranian Foreign Ministry, the Soviet officials were "accused of interfering with the internal affairs of the Islamic republic through establishing contacts and taking advantage of treacherous and mercenary agents." The Foreign Ministry also stated that the officials had violated diplomatic regulations and internationally recognized principles. The allegations reportedly referred to the contacts the Soviet officials had kept with members of the Tudeh party – a Communist group which was dissolved on the same day on which the expulsions took place.

Xinhua News Agency, "iran expels soviet diplomats", 4 May 1983

The New York Times, "Iranians dissolve Communist Party", 5 May 1983

BBC Summary of World Broadcasts, (*Iranian radio and agency*, Iran, 25 May 1983),
"Expulsion of Iranian diplomats from the USSR", 27 May 1983

United Press International, "List of Soviet officials expelled, arrested, withdrawn", 24 August 1983

A. 64 1983, May; Yevgeny Shmagin (West Germany and USSR)

West Germany. Yevgeny Shmagin, Second Secretary at the Soviet Embassy in Bonn, is expelled after he allegedly tried to exercise influence on the German peace movement.

It is reported that Shmagin had attempted to influence the peace movement by attending their meetings and putting forward Soviet arguments for disarmament by the Western States.

However, Shmagin was also accused of having tried to recruit an agent. He was expelled together with three other high-ranking Soviet diplomats who were charged with espionage – an allegation which the Soviet Union denied.

Tony Paterson, "Four Soviets exposed as spies", *United Press International*, 18 May 1983

John Tagliabue, "A German magazine names 4 as Soviet spies", *The New York Times*, 18 May 1983

Tony Paterson, "West German magazine tabs four Soviets as spies", *United Press International*, 19 May 1983

A. 65 1983, June; Langhorne Motley (Brazil and USA)

Brazil. The outgoing American Ambassador, Langhorne Motley, is criticized over certain remarks made to Brazilian Parliamentarians.

In June 1983, 209 Brazilian Parliamentarians of all parties had sent a letter to Javier Pérez de Cuéllar, the Secretary-General of the United Nations, which condemned the policy of the United States in Central America. A copy of this letter was sent to Langhorne Motley.

On 30 June 1983, Motley sent a reply to the 209 Parliamentarians, which contained a defence of the policy of the United States.

The style of that message was described by its addressees as "flippant". Airton Soarès, head of the Parliamentary opposition, called the Ambassador's remarks "offensive from a protocolary point of view". Motley was accused by other Parliamentarians of interference in the internal affairs of Brazil. Flavio Marcilio, President of the National Congress, called some of Motley's remarks "insulting" and refused to shake the Ambassador's hand when the latter left Brazil.

Salmon (1996), p. 132

RGDIP, "Chronique des faits internationaux", (1984), pp. 212, 213

A. 66 1983, November; Suleiman Oreibi (Australia and Libya)

Australia. Suleiman Oreibi, a Libyan representative in Australia, is criticized for his distribution of a document.

The Libyan People's Bureau in Australia had distributed copies of a letter by Colonel Gaddafi, which, following the invasion of Grenada, called US President Reagan "the new world Hitler". The letter also said that Reagan was the President of a "tyrannical super power", that his presidency was a "setback for humanity" and a return to "incredible savagery". The letter was also sent to the Australian Prime Minister Hawke (and returned as "undelivered").

The Australian Department of Foreign Affairs called the letter "unacceptable" – a move which was interpreted as a reproach of the Libyan representative himself.

10 Australian Yearbook of International Law, (1981 – 1983), pp. 505, 506

A. 67 1984, February; Evan Galbraith (France and USA)

France. The American Ambassador to France, Evan Galbraith, is criticized for remarks he made about French communists.

Galbraith had stated in February in a television interview that a French communist was "a poor Frenchman gone wrong".

The Ambassador's comment triggered negative reactions from various French politicians. Charles Fiterman, the French Transport Minister (and one of four Communist Ministers in the government of President Mitterrand), called the remarks "crude and stupid". The leader of the French Communist party, Georges Marchais, was quoted as saying: "This American Ambassador, where does he think he is? He thinks he is in Grenada, he thinks he is in Nicaragua, he thinks he is in Honduras. I would like to know what people would say if the Ambassador of the Soviet Union

were to object to a particular party or a particular minister". It is reported that even the Gaullist party described the Ambassador's behaviour as interference in the internal affairs of France.

The French Prime Minister, Pierre Mauroy, summoned Evan Galbraith and told him that his statement had been "unacceptable". The United States maintained that the incident had been a "misunderstanding", arising from an erroneous and incomplete version of the interview. The State Department said that the government maintained full confidence in Galbraith.

Salmon (1996), p. 132

Paul Webster, "US envoy makes French see red", *Manchester Guardian Weekly*, 12 February 1984

Newsweek, "An Enovy's Faux Pas", 13 February 1984

A. 68 1984, May; Thomas Pickering (El Salvador and USA)

El Salvador. Thomas Pickering, the American Ambassador to El Salvador, faces criticism over his alleged involvement in the presidential election in May 1984.

Jesse Helms, Republican Senator and member of the Senate Foreign Relations Committee, asked President Reagan in a private letter to dismiss Pickering, as the Ambassador was trying to effect the election victory of Jose Napoleon Duarte, the candidate for the Christian Democrats.

Helms allegedly accused the Ambassador of inviting Christian Democrat election officials to keep questionable voter registration lists in the elections. (The use of these lists had led to accusations of fraud in the January round of the elections). Helms' letter reportedly stated that Pickering had "taken actions which support only one candidate", had "manipulated the electoral results" and that the Ambassador had "used his diplomatic capacity to strangle liberty during the night. He must be immediately withdrawn."

Helms' letter was also reported to state that the United States "is supposed to be neutral down there and should cling to that".

A spokesman for the US embassy in El Salvador denied the charges of partiality and stated: "We have been completely neutral in these elections. Our own interest in the elections is that they be free, open and honest and we support any procedures to arrive at that".

Henry Gottlieb, "Helms Asks Reagan To Fire Ambassador To El Salvador", *Associated Press*, 2 May 1984

Joseph B. Frazier, "Helms, Candidate Charge U.S. Interference As Campaign Winds Down", *Associated Press*, 3 May 1984

Robert J. McCartney, "Helms Said to Demand Envoy Pickering's Ouster", *The Washington Post*, 3 May 1984

Facts on File World News Digest, "Moderate, Rightist, Both Claim Salvador Election Victory;
D'Aubuisson Charges 'Irregularities.'", 11 May 1984

A. 69 1984, October; Harry Bergold (Nicaragua and USA)

Nicaragua. Harry Bergold, the American Ambassador to Nicaragua, faces accusations of interference after his alleged involvement in partisan politics. Bayardo Arce, member of the Political Committee of the ruling Sandinistas and also the vice-presidential candidate of the Sandinistas, accused Bergold and a US embassy team of "going [from] house to house in the political parties, getting them to abstain" from participation in the forthcoming (November) elections. Arce accused Bergold of interference in Nicaragua's internal affairs.

Similar accusations had been made by a member of the Democratic Conservative Party (PCD) who stated that diplomats were "threatening and cajoling" PCD candidates to withdraw from the elections.

The American government had called the November elections a "sham", as one opposition alliance was boycotting it.

Inter Press Service, "Nicaragua: U.S. Ambassador accused of Interfering in Domestic Affairs", 25 October 1984

A. 70 1985, March; Dov Schmorak (Argentina and Israel)

Argentina. Antonio Paleari (a Peronist congressman) calls Dov Schmorak, the Israeli Ambassador to Argentina, "insolent" and accuses him of "meddling in matters of national concern". He also intends to ask for his declaration *persona non grata* and his expulsion. This follows statements which the Israeli Ambassador is alleged to have made, to the effect that Argentina should not permit the establishment of an office by the Palestine Liberation Organisation in Buenos Aires.

BBC Summary of World Broadcasts, "Peronist deputy to seek expulsion of Israeli Ambassador" 11 March 1985

A. 71 1985, May; William Hardwood (Poland and USA)

Poland. William Hardwood, First Secretary at the US Embassy in Poland, and David Hopper, US consul in Cracow, are criticized over their participation in a demonstration.

The Polish government alleges that Hardwood and Hopper had been identified in an illegal parade on 1 May 1985, whose leaders had behaved in an aggressive manner and had shouted anti-state slogans. The demonstration was reportedly a pro-*Solidarność* event. According to the US embassy, one of the two officials was kicked and jostled and forced into an unmarked police vehicle.

The Polish Foreign Ministry stated in a Note to the US Chargé d'Affaires in Warsaw that Hardwood and Hopper's behaviour constituted a violation of their diplomatic status and of fundamental international norms and customs and "unacceptable interference in Poland's internal affairs."

Wladyslaw Klaczynski, Deputy Director of the Press Department of the Polish Foreign Ministry, was quoted as commenting, in a telephone interview: "I would like to stress that it was not us who invited those two gentlemen to the illegal demonstration". Klaczynski also demanded an end to the United States' "interfering in our internal affairs."

Jerzy Urban, spokesman for the Polish government, likewise accused the United States, with reference to this diplomatic incident, of trying to interfere in the internal affairs of Poland.

Andrzej Walatek, commenting on Warsaw home service, referred to the diplomatic duty enshrined in the *Vienna Convention on Diplomatic Relations* not to interfere in the internal affairs of the receiving State. Polish television on 2 May 1985 referred to the duty to promote the development of friendly relations and juxtaposed this to the, in its view, provocative behaviour by Hardwood and Hopper.

The US State Department referred to the charges as a "bald fabrication" and retaliated by expelling four Polish diplomats. The US Embassy stated that Hardwood and Hopper "were performing normal diplomatic functions as observers repeat observers of events [...] They were not in any way participating in these events nor were they part of any group."

Xinhua News Agency, "poland protests u.s. diplomats' involvement in may-day anti-government demonstrations", 2 May 1985

Bradley Graham, "Poland Accuses U. S. Diplomats Of Leading Protest Near Krakow", *The Washington Post*, 3 May 1985

Matthew C. Vita, "International News", *Associated Press*, 3 May 1985

Christopher Bobinski, "Poles expel U.S. diplomats over Solidarity May Day protest", *Financial Times*, 4 May 1985

BBC Summary of World Broadcasts (Warsaw Home Service, Poland, 2 May 1985), "Polish Protest over Participation of US Diplomats in "Illegal Parade"", 4 May 1985

BBC Summary of World Broadcasts, "Poland and USA expel diplomats", 6 May 1985

Christopher Bobinski, "Poland warns U.S. over 'interference attempt'", *Financial Times*, 8 May 1985

A. 72 1985, December; unnamed (Chile and various States)

Chile. The Chilean President Pinochet warns ambassadors of foreign States against partisan political behaviour in Chile.

In a speech to volunteers of the Women's National Secretariat (on the occasion of National Woman's Day), Pinochet said that it was not the function of the ambassadors to take sides, with certain political groups in Chile. It is reported that Pinochet's speech followed a reception which Ambassadors of the European Communities had given to representatives of eleven parties committed to the Chilean transition to democracy.

Salmon (1996), p. 131

BBC Summary of World Broadcasts (El Mercurio, Chile, 22 November 1985), "Pinochet on US Relations, Democracy and "Meddling Ambassadors"", 5 December 1985

BBC Summary of World Broadcasts (Santiago Home Service, Chile, 2 December 1985), "Pinochet on US Relations, Democracy and "Meddling Ambassadors"", 5 December 1985

A. 73 1987, March; unnamed (Tunisia and Iran)

Tunisia. Tunisia breaks off diplomatic relations with Iran, amid allegations that the Iranian mission had maintained contacts with Tunisian extremist

groups.

According to the Tunisian Foreign Ministry, the Iranian embassy had engaged in activities which were beyond the scope of a diplomatic mission. The Ministry accused the embassy of helping Tunisian extremist groups to get in touch with certain Iranian organizations to create disturbances in Tunisia. Tunisia accused Iranian diplomats of "[sowing] religious discord in Tunisia" and of propagating anarchy and religious sedition. Tunisia also alleged that the Iranian embassy recruited Tunisian extremists abroad for subversive activities.

Xinhua News Agency, "tunisia explains reasons for breaking relations with iran", 26 March 1987

Xinhua News Agency, "tunisia asks iran to withdraw diplomats in three days", 26 March 1987

Xinhua News Agency, "tunisia breaks diplomatic relations with iran", 26 March 1987

Michel Deure, "Tunisia severs relations with Iran", *United Press International*, 26 March 1987

Associated Press, "Tunisia Breaks Relations With Iran", 26 March 1987

Associated Press, "From AP Newsfeatures", 7 February 1988

A. 74 1987, May; Shaban Gashut (Australia and Libya)

Australia. The Australian government severs diplomatic ties with Libya, following a visit to Libya by an Aboriginal activist and allegations of the creation of unrest in Australia through the help of the mission.

Michael Mansell, an Aboriginal activist and barrister, had attended a conference of "Revolutionary Forces" in Libya. The conference was sponsored by Colonel Ghaddafi, the air fare was paid by Libya. In April 1987, Mr Mansell had threatened to attempt to obtain funding from the

Libyan Republic unless Australia agreed to some demands by the Aborigines, including the cancellation of the celebration of Australia's bicentenary in the following year.

Following this, the Australian Prime Minister Bob Hawke terminated on 19 May 1987 diplomatic relations with Libya; he ordered all Libyan diplomats to leave the country within ten days. Speaking on television, Mr Hawke referred expressly to Mr Mansell's trip. Hawke stated: "I had reached a point with my colleagues where we had sufficient information to guarantee that these things [the Libyan support of dissidence in the region] were happening and I'm not going to tolerate it any longer." While Hawke said that Mansells' visit "would not of itself be sufficient to precipitate this decision", he said that it "was part of a pattern of destabilization." Hawke stated that Libya was causing unrest in the Pacific region and said that he would "not allow a situation where the existence of a bureau of Libya here is going to facilitate the sowing of dissension within Australia." At a news conference, Hawke accused Libya of meddling in Australian affairs. The Prime Minister also accused Libyan representatives of arranging "training in the techniques of propaganda, agitation and guerilla work [...]"

Among the expelled diplomats was Shaban Gashut, the Secretary of the Libyan's People's Bureau, who was also accredited to New Zealand. David Lange, Prime Minister of New Zealand, stated however that Gashut would remain accredited to that State. His refusal to follow the Australian example was interpreted in the press in the light of New Zealand's "sizeable Muslim population" and the fact that Iran, "Libya's Islamic ally, is New Zealand's fifth largest export market." (*Hill*)

The Libyan Foreign Ministry reportedly said that it "stresses that in establishing relations with different states and peoples of the world, it always aims at continuous, fruitful cooperation on the basis of mutual respect and non-interference in internal affairs in accordance with international principles and conventions."

Appendix A. Cases of Interference through the diplomatic message 1961 – 2006

Stephen Taylor, "World Summary: Defence ties cut over Libya row", *The Times*, 11 May 1987

Tony Duboudin, "Australian embassies on terror alert after Hawke cuts Libya ties", *The Times*, 20 May 1987

Russell Hill, "Lange will keep up Tripoli ties", *The Times*, 20 May 1987

Chris Sherwell, "Fiji's Military Coup Ends Peacefully", *The Financial Times*, 20 May 1987, p. 48

United Press International, "Libya: Australia involved in campaign against the Arab nation", 21 May 1987

Facts on File World News Digest, "Libyan Diplomats Expelled", 22 May 1987

The Times, "The Week: Abroad", 24 May 1987

Australian Yearbook of International Law, 1984 – 1987, p. 463

A. 75 1987, August; unnamed (South Africa and various States)

South Africa. The diplomats of various States are accused of interference for their conduct of expressing solidarity with the black population.

In a speech in August 1987, the South African President Botha criticized Western embassies in particular and stated that some diplomats abused their posts. Botha said that several diplomats had gone to some lengths to express solidarity with the black population and named as examples the attendance of funerals in black townships. Botha accused the diplomats of meddling in the country's affairs (according to other sources, of meddling in opposition politics) and also intimated that further action would be taken "to bring the staff of embassies who are acting off-limits under control, or to restrict their movements."

Jim Lehrer et al, "Raging Bull; Worth the Risk; Mea Culpa; Fair Air?", *Educational Broadcasting and GWETA; The MacNeil/Lehrer NewsHour*, 13 August 1987

Jim Jones, "Botha Threat To Curb Diplomats", *Financial Times*, 14 August 1987

Facts on File World News Digest, "Mbeki Restricted", 31 December 1987

A. 76 1987, October; Victor Raphael (Philippines and USA)

The Philippines. Victor Raphael, the American Military Attaché, faces accusations of interference after he told government soldiers not to attack insurgents.

Raphael reportedly had links with Colonel Gregorio Honasan, who was the leader of the fifth attempted coup d'état against Corazon Aquino, the President of the Philippines. During the attempt, which took place on 28 August 1987, Raphael tried to persuade an assault team not to attack rebels which were holed up in Camp Aguinaldo.

Following these events, accusations of interference were made against Raphael. An apparently high-ranking military official was quoted as saying that Raphael should be dismissed because of his links to Honasan.

Nicholas Platt however (US Ambassador to The Philippines), rejected any claims that members of the Embassy had supported the rebels. Platt was quoted as stating: "We checked around and saw what the situation was." Platt called Raphael "a trusted member of the staff" and said that the military attaché was monitoring events.

Japan Economic Newswire, "Asian News – Philippines; U.S. diplomat accused of interfering in August Philippine Coup", 22 October 1987

David W. Jones, "Security increased for Aquino's Davao visit", *United Press International*, 22 October 1987

A. 77 1988, April; Manuchehr Mottaki (Turkey and Iran)

Turkey. Manuchehr Mottaki, the Iranian Ambassador to Turkey, becomes the subject of criticism after he attended the meeting of a political party.

The Ambassador had reportedly participated in a meeting of solidarity with the Palestinian people, which had been organized by the Welfare Party in Konya.

Meust Yilmaz, the Turkish Foreign Minister, took exception to this behaviour. In an address to the Turkish Grand National Assembly on 18 April 1988, Yilmaz said that Mottaki's conduct was against diplomatic practice and the *Vienna Convention*.

In the following year (April 1989), after a further deterioration of Turkish-Iranian relations, Nuzhet Kandemir, Under-Secretary at the Turkish Foreign Ministry, referred to the 1988 incident and stated:

"The ambassador [Mottaki], exactly one year ago, participated in a meeting organised in Konya by one of our political parties and actively took part in the function by appearing on the rostrum. At that time, this incident naturally created a justified sensitivity in our public opinion. Furthermore, it was observed with regret that the ambassador of Iran revealed distorted information to the press on some of his contacts with the Ministry of Foreign Affairs. Following these incidents, the ambassador was received by the Turkish Minister of Foreign Affairs and personally warned by him for his behaviour, which was contrary to diplomatic practices and the relevant provisions of the Vienna Convention related to the functions of diplomats. Our Minister had then clearly stated that if such incidents should reoccur we would be compelled to take necessary measures."

BBC Summary of World Broadcasts (Ankara home service, Turkey, 18 April 1988), "In brief: General; Turkish Foreign Minister on relations with Greece, Iranian envoy's conduct", 20 April 1988

BBC Summary of World Broadcasts (Anatolia, Turkey, 3 April 1989), "Iran links diplomatic row with Turkey to Salman Rushdie Affair", 5 April 1989

BBC Worldwide Monitoring (NTV television, Turkey, 16 August 2005), "Turkey says Iranian foreign minister-designate not persona non grata in 1989", 16 August 2005

A. 78 1988, May; Mason Hendrickson (Singapore and USA)

Singapore. Mason Hendrickson, First Secretary at the US Embassy is expelled amid allegations that he encouraged potential candidates to run in the forthcoming elections.

Patrick Seong, a Singaporean lawyer who had been arrested under the Internal Security Act, stated that he had met Mr Hendrickson on several occasions, and that the diplomat, at the last meeting, had suggested that lawyers who were opposed to the government, should become election candidates. Hendrickson allegedly added that money should not be a problem for the potential candidates.

Francis Seow, formerly Solicitor-General of Singapore and President of the Law Society, had, according to official investigations, likewise met Hendrickson. Mr Seow was arrested by the government of Singapore; he, too, had been expected to stand as a candidate in the forthcoming elections.

The government of Singapore accused Hendrickson of identifying possible candidates, of cultivating and advising them and of urging them to stand against the government. It alleged in particular that Hendrickson had tried to enlist Seow which it called "highly improper behaviour for a diplomat". The government also stated: "[...] Hendrickson went further to urge Seow in explicit and direct terms to get a group of young professionals to contest the next general election and become a more effective opposition." The government accused Hendrickson of interfering in the country's internal affairs and expelled him.

In a letter to *The Washington Post*, Tommy B. Koh, Ambassador of the Republic of Singapore, stated:

"[...] the Singapore government did not request the withdrawal of Mr. Hendrickson because of his meeting with a potential opposition candidate. The request was based on the fact that he had violated Article 41(1) of the Vienna Convention in the following ways: He cultivated disgruntled Singaporeans with a view to encouraging them in their antigovernment political activities. He told a Singaporean lawyer that lawyers should contest elections against the government because they were disgruntled, articulate and enjoyed a professional status. He also told Francis Seow [...] that he was the best person to lead opposition candidates and encouraged him to recruit more young professionals to join him in forming a more effective opposition in parliament."

Officials of the US State Department denied the accusations made against Hendrickson. The US government declared that Hendrickson had only fulfilled his diplomatic duties and had done nothing improper. It denied that there had been a plan to interfere in Singapore's internal affairs.

Roger Matthews, "Singapore Slaps The Hand That Feeds It", *Financial Times*, 23 May 1988

Nick Cumming-Bruce, "Expelled envoy in new row", *The Guardian*, 21 May 1988

The Economist, "Trigger-happy in Singapore", 28 May 1988

Tommy B. Koh, "The Conduct of a Diplomat in Singapore. Letters.", *The Washington Post*, 14 June 1988

Denza (1998), Article 41, p. 377

A. 79 1988, July; Richard Melton (No 1) et al (Nicaragua and USA)

Nicaragua. Richard Melton, the American Ambassador to Nicaragua, is expelled amid allegations that he supported terrorist activities. Seven other US diplomatic and consular officials are also expelled.

The background to the Nicaraguan decision was reportedly formed by an incident in which US diplomats were involved. Two diplomats had attended an anti-government rally at Nandaime, which had resulted in fights between the protestors and the security forces.

In July 1988, Miguel d'Escoto, the Nicaraguan Foreign Minister, stated that Melton had been expelled because of his "interventionist policy in Nicaragua's domestic affairs, which clearly violates the Vienna Convention". D'Escoto said that terrorist actions in Nicaragua were "complemented by illegal activities by provocative extreme right-wing groups which, openly and barefacedly, have been encouraged by Ambassador Richard Melton himself and other high-ranking officials of [the US] diplomatic mission. Examples of this intolerable campaign are the recent provocations on Sunday [10th July] in the city of Nandaime, in which a group of aides to US congressmen and two US embassy officials participated. This behaviour on the part of North American diplomats accredited to Nicaragua is totally unacceptable; in no way contributes to the development of good relations between our two countries and, on the contrary, further hinders them; and totally violates the provisions of the Vienna Convention on Consular Relations, which categorically bans all interference in the internal affairs of states." D'Escoto also stated: "I believe that, although they were misguided, certain activities by the opposition could still be considered political. However, as this Mr Melton was deepening and expanding his work in Nicaragua, he was practically making that alleged political activity a complementary, indivisible and inseparable part of the state terrorism which the USA has been promoting, basically through the contras. Mr Melton wanted the political opposition [...] to end and be fused into a single package of terrorist activity, with different tasks within that framework." It

was reported that d'Escoto also accused Melton of "attempting to set up an internal front to overthrow the Government".

In a letter to George Shultz, the US Secretary of State, d'Escoto also claimed that Melton represented "the Reagan government's total disregard of the most elemental norms of international coexistence."

Carlos Tunnermann, the Nicaraguan Ambassador to the United States, stated that the expulsion of the American diplomats was based on Article 41 of the *Vienna Convention on Diplomatic Relations* which prohibited diplomats from interfering in the internal affairs of the receiving State. He affirmed the Nicaraguan government's charges that the diplomats had been "fomenting illegal and provocative actions against the government."

Richard Melton suggested that the expulsion was part of an attempt "to intimidate the opposition itself by trying to demonstrate to them that they're alone, they're isolated." The American government denied the allegations made against Melton and resorted to retaliation by expelling Tunnermann and seven other Nicaraguan diplomats. Tunnermann called this decision "vengeful and without justification".

Xinhua News Agency, "nicaragua shuts down catholic radio", 11 July 1988

Bryna Brennan, "Ambassador Leaves; Embassy Denies Improper Behavior of Diplomats", *The Associated Press*, 12 July 1988

BBC Summary of World Broadcasts (Managua Home Service, Nicaragua), "Nicaraguan President, Foreign Minister on expulsion of US Ambassador", 13 July 1988

Lionel Barber / Tim Coone, "Washington Expels Nicaraguan Ambassador In Retaliatory Move", *Financial Times*, 13 July 1988

A. Kurguzov, "On expulsion of US Ambassador from Nicaragua", *TASS*, 13 July 1988

Inter Press Service, "United States: Defends Expulsion of Nicaraguan Ambassador", 13 July 1988

Facts on File World News Digest, "Nicaragua, U.S. Trade Diplomatic Expulsions; U.S. Said to Meddle in Internal Affairs", 15 July 1988

The Washington Post, "Expelled Envoy's Visa Plea Rejected", 22 July 1988

Karl E. Meyer, "The Editorial Notebook; The Diplomat's Tightrope", *The New York Times*, 26 July 1988

Federal News Service, "State Department regular briefing. Briefer: Charles Redman ", 7 September 1988

St Petersburg Times (Florida), "Turkey said to move Kurds to Iran", 8 September 1988

The Washington Post, "Bush's Choice: New Crop of Envoy", 7 June 1990

A. 80 1988, November; Haywood Rankin (Iraq and USA)

Iraq. Haywood Rankin, Head of the Political Section at the US Embassy in Iraq, is expelled, amid allegations of maintaining contacts which the receiving State found undesirable.

According to the US State Department, no "adequate explanation" was given for the rationale behind Rankin's expulsion. According to diplomatic sources however, Rankin's contacts with the minority Kurdish population had been considered too extensive by the Iraqi government. Rankin had reportedly made an unauthorized journey to the North of the country, the home of some 3.5 million Kurds. There was also speculation that Rankin may have lead a group of Senate Foreign Relations Committee staff members to meet Kurdish politicians close to the (then) rebel leader Jalal Talabani.

Charles Redman, spokesman for the US State Department, stated that none of Rankin's actions had been incompatible with his status or his duties. Redman did not answer the question whether Rankin had maintained contact to the Kurds, but in reply to the question whether any US diplomats in Baghdad had contact with Kurdish "or other opposition figures in Iraq", Redman stated:

"Let me just answer that in terms of a worldwide practice as you know it, which is that our embassies and our diplomats are there to know the

countries in which they live and work. To do that, they deal with all segments of society on the political spectrum. That means with parties in power, parties in opposition. That is simply the practice that we follow around the world, and it's a practice we encourage people to follow here in the United States."

The United States reacted to the expulsion of Rankin by declaring an Iraqi diplomat *persona non grata*.

Xinhua News Agency, "u.s. expels iraqi diplomat for retaliation", 17 November 1988

David B. Ottaway, "Iraq Said to Have Expelled High-Level U.S. Diplomat", *The Washington Post*, 17 November 1988

Federal News Service, "State Department Regular Briefing. Briefer: Charles Redman", 17 November 1988

Middle East Defense News, "Iraq Expels British, U.S. diplomats", 21 November 1988

A. 81 1988, November; Karoly Gyoerfi (Romania and Hungary)

Romania. The Hungarian commercial counsellor, Karoly Gyoerfi, is detained and later expelled amid allegations of having distributed "hostile" and "anti-Romanian" leaflets.

According to an official Hungarian report, Gyoerfi was stopped when driving a car with diplomatic licence plates and questioned about the distribution of inciting leaflets.

According to the Hungarian news agency MTI, Ioan Totu, the Romanian Foreign Minister, told the Hungarian Ambassador that the Foreign Ministry had reached "the irrefutable conclusion that the Hungarian diplomat had spread inciting, hostile leaflets". It later emerged that Romania accused Gyoerfi of "anti-Romanian, anti-socialist and provocative actions".

Totu asked for the recall of Gyoerfi and finally ordered him out of Romania. Karoly Grosz, General Secretary of the Hungarian Communist Party, denied the allegations against Gyoerfi. He was quoted as stating: "I do not know who could have thought up the idea of accusing a Hungarian diplomat of disseminating leaflets whose content is libellous and hostile against the leaders of a host country".

Hungary lodged a protest with the Romanian government over the expulsion of Gyoerfi and retaliated by expelling a political counsellor of the Romanian embassy to Hungary.

Associated Press, "Romania, Hungary Feud Over Diplomat's Detention", 18 November 1988

James Blitz, "Old Nationalist Tensions Lead To Hungary-Romania Discord", *Financial Times*, 26 November 1988

BBC Summary of World Broadcasts (Hungarian Telegraph Agency, Hungary / Bucharest Home Service, Romania, 24 November 1988), "Hungarian Romanian relations; Hungarian expulsion of Romanian diplomat and Romanian protest ", 28 November 1988

The Toronto Star, "Romania forcing thousands to leave villages for new towns", 29 November 1988

A. 82 1989, April; David Tothill (Australia and South Africa)

Australia. The South African Ambassador is criticized after remarks made about Eddie Funde, the representative of the African National Congress in Australia.

In January 1989, an attack had taken place on the house of Eddie Funde, in the course of which a shotgun was fired twice. Following the attack, the South African Ambassador David Tothill had made remarks in an interview which, in the eyes of the Australian government, implicitly condoned the attack. Tothill rejected in particular Funde's claims that the South African

government might be linked to the attack. Tohill remarked that, even if South Africa sent out hit squads, the visa policy of Australia would mean that such a squad would have to wait more than six months to enter Australia.

In a written answer in the Australian Parliament in April 1989, the Minister for Foreign Affairs and Trade, Senator Gareth Evans, stated his government's rejection of Tohill's comments and added: "My Department reiterated to the Embassy the need for statements from diplomatic missions to observe normal proprieties and, in particular, that material should not be cast in terms offensive to the Australian Government or individuals."

12 *Australian Yearbook of International Law*, "Diplomats", (1988 – 1989), p. 451

Hobart Mercury, "[Mr Eddie Funde Pretoria uses hitmen [...]]", 31 January 1989

BBC Summary of World Broadcasts (SAPA, South Africa), "South and Southern Africa in brief; S African envoy denies claim of "hit team" attack on home of ANC representative in Sydney", 1 February 1989

A. 83 1989, May; Kathleen Barmon et al (Nicaragua and USA)

Nicaragua. Several US diplomats are expelled after their alleged involvement in a teachers' strike.

According to a spokesman of the Sandinista Party (the ruling party in Nicaragua), Kathleen Williamson Barmon, the attaché for Central American labour affairs, and Joel Franklin Cassman, economic attaché (according to other sources, Second Secretary in charge of the trade and economics section), were expelled "for interfering in the internal affairs of the country. They went around distributing money and exhorting the teachers to strike."

The official newspaper of the Sandinista National Liberation Front reported that the diplomats had instigated the strikes and had met with members of

the Social Christian Party and the Labor Unification Union at two private schools.

Miguel d'Escoto, the Nicaraguan Minister of Foreign Affairs, was quoted as saying: "This shows the United States government is committed to disobeying the norms of civilized coexistence and is pledged to destabilizing governments, such as the one in Nicaragua [...]".

However, a press officer of the US State Department called the allegations "totally false and without any credible foundation.". He added that the two diplomats had engaged in normal activities which were compatible with their positions.

Doralisa Pilarte, "Nicaragua Expels Two U.S. Diplomats, Accuses Them of Instigating Strikes", *Associated Press*, 25 May 1989

Judy Woodruff et al, " Speaker Under Fire; Raising the Roof; Encore; Bridging the Gap", *Educational Broadcasting and GWETA; The MacNeil/Lehrer NewsHour*, 25 May 1989

BBC Summary of World Broadcasts (Voz de Nicaragua, Radio Sandino, Sistema Sandinista television, Nicaragua), "Nicaragua expels two US diplomats", 29 May 1989

Salmon (1996), p. 130

A. 84 1989, June; Richard Melton (No 2) (Brazil and USA)

Brazil. The Brazilian government considers the possibility of rejecting Richard Melton as the new American Ambassador to that State in view of his alleged former conduct of interference.

According to media reports, the Brazilian government had been particularly concerned about Melton's recent expulsion from Nicaragua (see *supra*), but also about the fact that the diplomat had been posted to the Dominican Republic in 1965, at a time when the United States supported the invasion of that country.

However, the Brazilian government reportedly refrained from rejecting Melton, in order to avoid a deterioration of Brazilian-American relations.

Intelligence Research Ltd, Latin America Weekly Report, "'Unfair practices' row saves Melton; plans to reject 'interfering' ambassador are abandoned", 15 June 1989

A. 85 1989, December; Michael Brown (Romania and UK)

Romania. Lt Michael Brown, the British Assistant Defence Attaché, and another diplomat are criticized after they joined a march of students and workers after the fall of Nicolae Ceaușescu.

The diplomats had joined the crowd which stormed the television station in Bucharest.

Several British Members of Parliament had attacked the two diplomats over this behaviour and claimed that it had put the concept of diplomatic immunity at risk. Sir John Graham, a former British Ambassador, wrote in *The Times*:

"Whatever the personal feelings of individual diplomats, active participation, as distinct from observation, in the politics of the country to which their ambassador is accredited is inconsistent with their diplomatic status".

Michael Brown described his participation in the demonstration as follows:

"At that moment we were Romanians. [...] We were cheering with them and shouted: 'Down with Ceausescus'". Brown added that the diplomats were "taken along with it all [...] They wanted us there because we were British. The British have a tremendous standing with the kids [...] If we hadn't cheered with the rest they might have asked questions." He also stated: "The students at the television centre knew I was a British diplomat and said to me, 'Tell the world, tell the world' and that is what I am doing."

Brown stated that staff at the embassy did not feel that the participation in the demonstration had contravened their diplomatic role, as the two diplomats had gone along as "fairly passive observers".

According to a Second Secretary of the British embassy in Romania, pairs

of British diplomats did consistently go out to monitor the events in that State and took care to be back within precisely three hours.

The British Foreign Office defended the behaviour of the diplomats. A Foreign Office spokesman was quoted as saying: "If he had not shown some degree of enthusiasm the crowd might have asked who he was. There were concerns in the crowd about the activities of the security forces".

Denza (1998), Art. 41, p. 377

Robin Stacey, "British envoys joined revolt; Romania", *The Times*, 27 December 1989

Alan Travis, "Rebirth of Romania: Thatcher praises people's courage", *The Guardian*, 28 December 1989

Sir John Graham, letter, *The Times*, 27 Dec 1989, 30 Dec 1989 (quoted in Denza (1998), p. 377)

A. 86 1990, September; Robert Oakley (Pakistan and USA)

Pakistan. After comments by the American chargé d'affaires, Robert Oakley, on the treatment of Benazir Bhutto, the diplomat is accused of interference.

Oakley had stated in Washington that the treatment of the former Pakistani Prime Minister, Benazir Bhutto, was discriminatory. The Ambassador warned against politically selective prosecutions on account of alleged corruption. (Bhutto and her party were accused by the Pakistani President of serious acts of corruption). It is reported that Oakley also said that members of the Islamic Democratic Alliance who had served Zia Ul-Haq (the former Pakistani military ruler) should be brought to account.

The Pakistani government stated that Oakley's remarks amounted to interference in the internal affairs of the country. According to a spokesman of the Pakistani Foreign Ministry, the American chargé d'affaires was informed that the government was surprised by Oakley's comments.

Richard Boucher, spokesman of the US State Department, stated in reply to a question about Oakley's comments: "I'm certainly aware that Ambassador Oakley made the remarks, and he speaks for the US government."

Japan Economic Newswire, "Pakistan summons U.S. Charge d'Affairs", 16 September 1990

The New York Times, "Straight Talk on Pakistan", 24 September 1990

Federal News Service, "CB State Department Regular Briefing. Briefer: Richard Boucher", 25 September 1990

A. 87 1992, July; James Pearson (Vanuatu and Australia)

Vanuatu. James Pearson, the Australian Acting High Commissioner to Vanuatu, is expelled amid allegations of interference in the internal affairs of the receiving State.

Pearson had voiced to the Vanuatu Deputy Prime Minister, Sethy Regevanu, Australian concerns about the new Business Licence Act. The Act, passed in June 1992, gave the Minister of Finance the authority to grant or revoke business licences, without the need to provide an explanation and without a possibility of appeal. In Australia's view, this piece of legislation put at risk Australian investment in Vanuatu. Pearson was quoted as saying that the Act could have repercussions on the development of the economy of Vanuatu. (Australia maintained an aid programme to the amount of 10 million Australian dollar (£4.25 million) in Vanuatu).

In an interview with Radio Vanuatu, the country's Foreign Minister declared that Vanuatu would not tolerate any interference in its internal affairs by diplomatic missions or foreign investors. Vanuatu gave Pearson 24 hours to leave the country. Willie Jimmy, the Finance Minister of Vanuatu, demanded a public apology by Australia.

Australia however maintained that the decision by the government of Vanuatu was unjustified. Gareth Evans, the Australian Foreign Minister, tried, in a telephone call with Maxime Carlot, the Prime Minister of Vanuatu, to convince the latter to change the decision.

Carlot declared that the decision was not negotiable. The Prime Minister was quoted as stating that he understood the Australian reaction, "but for our sovereignty we see that something is not normal so we have to make our decisions inside [Vanuatu] regarding our internal affairs".

The Australian government subsequently cancelled the goodwill visits of two Australian ships to Port Vila (the capital of Vanuatu).

Associated Press, "Australia Protests Expulsion Of High Commissioner", 4 July 1992

Adam Connolly, "Australian diplomat expelled from Vanuatu", *The Advertiser*, 4 July 1992

P Atkinson, "Vanuatu dumps Aussie", *Sunday Mail (Australia)*, 5 July 1992

Xinhua News Agency, "roundup: australia-vanuatu ties strained over diplomatic bicker", 6 July 1992

Xinhua News Agency, "vanuatu criticizes australian foreign minister's diplomatic behavior", 10 July 1992

Herald Sun, "Picking our mark", 31 July 1992

14 *Australian Yearbook of International Law*, "Diplomatic Relations", (1992), p. 575

A. 88 1992, August; Jan Widacki (Lithuania and Poland)

Lithuania. Jan Widacki, the Polish Ambassador to Lithuania, is criticized over remarks concerning the Polish minority in the receiving State.

Widacki was quoted as saying that Poles living in Lithuania never had left Poland. According to the Ambassador, the situation of the Polish minority in Lithuania was not comparable to that of Poles living elsewhere in the

world, for instance in the United States or Canada. (Poland and Lithuania had formed a union for centuries).

Vidmantas Povilionis, Chairman of the Lithuanian Parliamentary Committee on Foreign Affairs, took exception to these remarks. He interpreted them as a Polish refusal to give up its claims to the Vilnius region and said that the position by the Polish government expressed by its Ambassador reflected a wish to disrupt relations between Lithuania and Poland. Povilionis referred to Widacki's comments as forming part of a propaganda campaign which aimed at exerting pressure on Lithuania. In Povilionis view, the statement could be qualified as interference in the internal affairs of another State.

Widacki later clarified his statement and explained that he had meant to reflect the feelings of ethnic Poles living in Lithuania today, which were that it had not been them who had left Poland, but Poland which had left them after the war.

Dainius Junevicius, the Lithuanian Ambassador to Poland, stated that the correct formulation would have been that Poland had left a Lithuania she had occupied.

BBC Summary of World Broadcasts (Radio Vilnius, Lithuania), "Other Reports; Polish ambassador accused of interfering in Lithuanian internal affairs", 25 August 1992

Polish Press Agency, "Ambassador: Poland should condemn past occupation of Lithuania", 24 September 1992

Patricia Koza, "Lithuania, Poland seek to overcome differences", United Press International, 27 September 1992

A. 89 1993, October; Karl Prinz (No 1) et al (Sierra Leone and various States)

Sierra Leone. The diplomatic agents of several Western countries attract criticism for calling for the release of five journalists.

Five journalists of the weekly *New Breed* had been arrested for criticising the military rule of Sierra Leone, Valentine Strasser (and, reportedly, for publishing stories of alleged corruption concerning high-ranking military officials). Following this incident, several Western diplomats allegedly urged the release of the journalists. According to diplomatic sources, the subsequent State reaction was particularly aimed at the German Ambassador Karl Prinz, who had also gone to a Freetown police station and met with the journalists.

Bishop Gooding, the acting Foreign Minister, stated that the diplomats had interfered "without justification and contrary to the principles of diplomatic law and practice". He also said that the ruling council would not sit by while "these diplomats encourage elements in their purpose of destabilizing the state, weaken our efforts to conclude the rebel war and reverse the severe economic decline [...] If the West can tolerate what happened in Russia when President Boris Yeltsin took over the parliament in the name of democracy, then they must extend the same to us". Sierra Leonian authorities also accuse the diplomats of encouraging opposition to the National Provisional Ruling Council of the State.

Press reports in November 1992 stated that Karl Prinz had been declared *persona non grata*. However, Abbas Bundu, the Foreign Minister of Sierra Leone, stated that Prinz was still the German Ambassador to this country and that discussions between Sierra Leone and Germany would continue.

But when Prinz was eventually expelled in April 1994 (see there), Prinz's actions in the case of the journalists formed one of the instances to which the Sierra Leonian government made express reference. According to Bundu, the government had sent a note of protest to Germany when Prinz visited the journalists at the police station and had in fact asked for Prinz's recall even then.

BBC Summary of World Broadcasts (Agence France Press, France), "Western diplomats accused of interference", 25 October 1993

Agence France Presse, "Sierra Leone declares German ambassador persona non grata", 8 November 1993

BBC Summary of World Broadcasts (German Press Agency, Germany), "Government spokesman denies report that German ambassador to be expelled", 10 November 1993

Agence France Presse, "L'incident diplomatique entre l'Allemagne et la Sierra-Leone en voie d'etre resolu", 12 November 1993

Lansana Fofana, "Sierra Leone – Politics: German Diplomat ordered to leave", *Inter Press Service*, 9 April 1994

A. 90 1993, December; Diego Sanchez Bustamante (Equatorial Guinea and Spain)

Equatorial Guinea. The Spanish Consul-General Sanchez Bustamante is expelled amid allegations of interference in the country's internal affairs.

The Consul had reportedly held a meeting with opposition parties which did not stand in the recent (and controversial) legislative elections.

Subsequently, the government of Equatorial Guinea accused Sanchez Bustamante of interference in the internal affairs of that State. The government had on three occasions requested the withdrawal of the Consul-General – allegedly, because "his attitude contravened international laws" (*RNE Radio 1*).

The Director-General of the Diplomatic Information Office (at the Spanish Foreign Ministry), made the following statement: "The Foreign Ministry regrets this decision of the government of [Equatorial] Guinea and totally refutes the allegations made against the Spanish consul in Bata; it fully backs the conduct of the consul Diego Sanchez Bustamante. The Spanish consul restricted himself to accomplishing his functions correctly, following the spirit and the letter of the Vienna Convention [...]"

The Spanish Foreign Ministry described the matter as very serious and recalled its Ambassador to Equatorial Guinea to consultations in Madrid.

BBC Summary of World Broadcasts (RNE Radio 1, Spain), "Spanish Foreign Ministry official denies allegations of interference", 13 December 1993

A. 91 1994, February; Sally Cowal (Trinidad and Tobago and USA)

Trinidad and Tobago. Sally Cowal, the American Ambassador to Trinidad and Tobago is criticized over comments regarding the policies of the government of the receiving State on crime.

In an interview, Cowal made this remark: "It's not that crime is going on but the seeming paralysis of government to deal with it". With reference to the American refusal to open a DEA (Drug Enforcement Administration) office in Trinidad and Tobago, Cowal said: "Crime won't be solved by a DEA office, but could be helped by better courts and better pay for policemen".

Vincent Cabrera, leader of the Bank and General Workers Union, took exception to these remarks and stated that they constituted "grave interference in the internal affairs of Trinidad and Tobago."

Gordon Draper however, the Trinidadian Minister of Information, was quoted as saying that the government "was not offended" by Cowal's comments.

David Beard, "In Land Of Calypso, Crime Hits A Sour Note", *Associated Press*, 1 March 1994

A. 92 1994, April; Karl Prinz (No 2) (Sierra Leone and Germany)

Sierra Leone. The German Ambassador to Sierra Leone, Karl Prinz, is expelled after he had visited Charles Taylor, the Liberian guerilla leader (later President of Liberia).

Prince had visited Taylor in his headquarters in Liberia, and had through this action provoked the displeasure of Sierra Leone. Taylor was at that time a supporter of Foday Sankoh, leader of the Revolutionary United Front in Sierra Leone, which fought against the Sierra Leonian government.

Abbas Bundu, Foreign Minister of Sierra Leone, referred to the "undiplomatic and unfriendly behaviour" displayed by Prinz and to three formal protests which the government of the receiving State had made to Germany. He referred in particular to Prinz's visit with Taylor, of which the Sierra Leonian government had not been notified and the results of which had not been discussed with the Sierra Leonian government. Bundu was quoted as saying: "This is annoying because we are at war with Mr. Taylor for providing support to the Revolutionary United Front rebels fighting this country".

Lansana Fofana, "Sierra Leone – Politics: German diplomat ordered to leave", *Inter Press Service*, 9 April 1994

Süddeutsche Zeitung, "Sierra Leone weist deutschen Botschafter aus", 11 April 1994

taz (Die Tageszeitung), "Demokrat in Ungnade. Sierra Leones Militaerregime weist deutschen Botschafter aus", 11 April 1994

Agence France Presse, "Germany writes off half commercial debts owed by Sierra Leone", 9 November 1994

A. 93 1994, September; Stanley Schrager (Haiti and USA)

Haiti. Stanley Schrager, the US Embassy spokesman, becomes the target of criticism after he ridiculed a government ban on demonstrations.

After the Haitian Ministry of Information had issued a ban on demonstrations with the stated rationale "to avoid the chaos and the bloodbath so evidently desired by some", Schrager had reportedly

remarked that, if the United States were to support democracy, they could not "support a ban that prohibits demonstrations".

The Haitian Ministry of Foreign Affairs issued a note of protest to the embassy, charging Schrager with issuing "inflammatory statements [...] in addition to intolerable interference in the internal affairs of the Republic of Haiti, deliberately inciting the population to violence and outrageously sabotaging the Port-au-Prince Agreement." The Foreign Ministry called Stanley Schrager a specialist in "manipulation and disinformation". The note by the Ministry concluded with a reminder to all members of the US embassy of their duty of restraint.

Charles David, the Foreign Minister of the *de facto* government of Haiti, accused Schrager of making "incendiary declarations", of interfering in Haitian affairs through his comments on the government ban on demonstrations and of "deliberately inciting the population to violence".

David Beard, "U.S. to Haiti: Stop the Brutality", *Charleston Gazette (West Virginia)*, 22 September 1994

Anita Snow, "U.S. Forces Begin Dismantling Heart of Haiti's Former Military Power", *Associated Press*, 22 September 1994

David Beard, "Haitians Explode With Joy, Some Clash With Police", *Associated Press*, 24 September 1994

Seattle Post-Intelligencer, "Gunfight Rocks Haiti City; Police, Troops Abandon Posts after Shootout", 26 September 1994

BBC Summary of World Broadcasts (Radio Metropole, Haiti), "Foreign Ministry protest against US embassy spokesman", 28 September 1994

A. 94 1994, December; unnamed (Pakistan and India)

Pakistan. The Pakistani Foreign Ministry requests the closure of the Indian consulate-general in Karachi and the withdrawal of all its personnel. The

move comes amid allegations that the consulate-general had stirred ethnic and sectarian unrest in Karachi. It is reported that in the recent outbreaks of violence in Karachi, hundreds of people lost their lives.

Nazimuddin Sheikh, the Pakistani Foreign Minister, stated: "we have been constrained to take this decision because of clear and fresh evidence of India's involvement in the planning, instigation and execution of acts of terrorism in Karachi, which violate the international law". With particular reference to the consulate-general, Sheikh remarked that Pakistan had voiced concerns "over the illegal and impermissible activities of the Indian consulate- general" in August 1993, but that, "far from stopping its illegal activities, the Indian consulate-general in Karachi has been involved in fomenting disaffection in Karachi. Its officials have repeatedly pressured visa seekers to engage in anti-Pakistan activities". Sheikh also noted that three persons who were arrested on terrorism charges had told Pakistani authorities that the consulate in Karachi ran a network to "train terrorists in India and for bringing them back to Karachi." The Minister reportedly accused Indian diplomats of "propagation of disaffection and propaganda against the unity, territorial integrity and sovereignty of Pakistan."

S.K. Lambah, the Indian High Commissioner to Pakistan, called the Pakistani decision "an extreme and unwarranted measure" and declared that "charges advanced by the government of Pakistan are vague and baseless". A spokesman for the Indian Foreign Ministry likewise denied the claims of Indian involvement in the violence in Karachi and called the decision to close the consulate "a matter of greatest regret".

Xinhua News Agency, "d p 2141 bc-pakistan-india-consulate-closure hke122627 --india asked to close consulate general in karachi", 26 December 1994

Anwar Iqbal, "Pakistan closes Indian consulate", *United Press International*, 26 December 1994

Sami Zubeiri, "Pakistan accuses India of terrorism, closes consulate, expels diplomat", *Agence France Presse*, 26 December 1994

Georg Bourke, "Pakistan shuts Indian mission", *The Guardian*, 27 December 1994

A. 95 1995, February; Qiang Pinxing (India and China)

India. Qiang Pinxing, Chinese Consul General in Bombay, is accused by the National Union of Journalists of putting pressure on the vice chancellor of SNDT University (Shreemati Nathibai Damodar Thackersey Indian Women's University) to terminate the photo exhibition "Women in Exile" by the photo journalist Vijay Kranti. The exhibition was part of the "Festival of Women from the Roof of the World" organized by the Tibetan Women's Association. It is reported that Qiang Pinxing visited the exhibition on the fourth day of the Festival and objected to several pictures, including a photograph called "Protest with Prayers" showing female Tibetan refugees during a public demonstration outside the UN office in New Delhi. The Vice Chancellor then ordered the show to end one day ahead of schedule.

The General Secretary of the NUJ, Balbir Punj, declared that "This behavior of the Chinese Consul General is completely incompatible with his assignment as a diplomat and amounts to a direct and undesirable interference in the democratic functioning of an Indian photo-journalist". He also said that "The Chinese ambassador must be told in clear words that unlike China, India is a truly democratic country where every individual, especially the photographers, journalists and artists have complete freedom of expression".

World Tibet Network News, "Journalists condemn harrassment of Indian photo-journalist and demand expulsion of Chinese diplomat in Bombay", 3 February 1995 (referring to a Press Release of 29 January 1995 by the National Union of Journalists, India),
<http://www.tibet.ca/wtnarchive/1995/2/3_2.html>

World Tibet News Network, "The Festival of Women from Roof of the World", 8 February 1995. Available online:
<http://www.tibet.ca/en/wtnarchive/1995/2/8_1.html>

A. 96 1995, February; Aurelia Brazeal (Kenya and USA)

Kenya. The American Ambassador Aurelia Brazeal faces criticism for remarks she reportedly made to Johnstone Makau, the Kenyan Minister of Information.

Brazeal had allegedly told the Minister that the United States would like to see Parliamentary debate and enactment of a law which would allow private radio and television stations in Kenya before the end of June. The Ambassador was quoted as saying: "The information age is here with us and there is no way of stopping it. It is here here in the form of computers, TVs and radios". The Kenyan government had refused to issue licences to independent TV and radio stations. The Kenyan opposition claimed that the State-run TV and radio stations displayed a bias against them.

Several Kenyan Cabinet Ministers accused Brazeal of interference in Kenyan affairs. Darius Mbela, the Minister for Land Reclamation, Regional and Water Development, said that Brazeal should understand that Kenya was a sovereign State and that considerations of national unity and security had to be taken into account in the context of Kenya's right to vet applicants for private stations.

Joseph Kamotho, Education Minister and Secretary General of the Kenya African National Union Party (KANU, the ruling party in Kenya), issued the following statement: "The ruling party would wish to remind the ambassador that Kenya is a free and independent state [...] any external interference in the licencing of of radio and television is tantamount to interference with our sovereignty and freedom".

Simeone Nyachae, the Minister for Agriculture, Livestock Development and Marketing, reportedly said: "it is particularly annoying when an ambassador arrogantly decides to issue an ultimatum to a government minister". Nyachae accused Brazeal of displaying a lack of courtesy and said that it was unheard of in diplomatic circles that a government would receive instructions from a foreign Ambassador. Nyachae stated that Brazeal should have used proper diplomatic procedures to voice her concerns.

Stephen Kalonzo Musyoka, the Minister for Foreign Affairs and International Cooperation, had a meeting with Aurealia Brazeal to discuss the situation arising from her remarks to Makau.

A spokesman for the US Embassy in Kenya stated that Brazeal, when talking about the liberalization of the media, had followed US policy on civil liberties. The spokesman stated: "The US government will continue to emphasize the importance of civil liberties". The Ambassador denied that she had given a deadline for the implementation of the liberalization of television and radio.

Agence France Presse, "US ambassador accused of meddling in Kenya' internal affairs", 16 February 1995

Xinhua News Agency, "us ambassador under fire for interfering kenyan affairs", 16 February 1995

BBC Summary of World Broadcasts (KBC Radio, Kenya), "Kenya; Ruling party says US ambassador's comments interference in internal affairs", 17 February 1995

BBC Summary of World Broadcasts (KBC Radio, Kenya), "Kenya; Minister criticizes US ambassador's treatment of information minister", 17 February 1995

BBC Summary of World Broadcasts (KBC Radio, Kenya), "Kenya; US ambassador denies giving deadline for media liberalization", 20 February 1995

BBC Summary of World Broadcasts (Kenya News Agency, Kenya), "Kenya; Minister criticizes US ambassador's reported remarks on liberalization of media", 20 February 1995

Federal News Service, "Prepared Testimony of Thomas R. Lansner before the United States House of Representatives Committee on International Relations Subcommittee on Africa", 22 February 1995

A. 97 1995, March; Alexei Molochkov et al (Ukraine and Russia)

Ukraine. The four members of the Russian consulate in Crimea (three consular officials and one technical specialist) are expelled (according to other sources, withdrawn) after accusations that they engaged in "provocative action[s]".

The consulate had worked on applications for Russian citizenship from inhabitants of Crimea (whose population consists to a considerable degree of ethnic Russians). Some of the visitors were given forms which affirmed their right to become Russian citizens. However, it was reported that the laws of Ukraine did not permit dual citizenship.

At a press conference on 23 March 1995, representatives of the Ukrainian Foreign Ministry, Interior Ministry and Supreme Soviet alleged that the consular group in Crimea were engaging in political work. On 27 March, the Ukrainian Deputy Justice Minister, Chernysh, threatened the group with expulsion if they did not stop their "provocative action" and reportedly referred to various Articles of the *Vienna Convention on Consular Relations* and the Ukrainian Law on Citizenship (*Official Kremlin International News Broadcast*). On the same day, Ukraine forwarded a note to the consular group, asking them to stop their activities in Crimea immediately as they constituted interference in Ukraine's internal affairs. The consular group eventually returned to Russia in April.

A spokesman of the Russian Foreign Ministry stated that "certain political circles" in Ukraine accused the consulate of recruiting Crimeans for Russia. He further said that Russia had suggested the holding of talks on this problem. The Russian Foreign Ministry denied the accusations of interference.

Leonid Smolyakov, the Russian Ambassador to Ukraine, denied any violation of the Ukrainian law on citizenship or the *Vienna Convention on Consular Relations*. Smolyakov stated that the consular officials had performed routine consular duties, and that informing visitors on questions of Russian naturalization, pension benefits, military duty etc belonged to the range of consular tasks which were performed throughout the world. Alexei

Fyodorovich Molochkov, head of the expelled consular group, likewise stated: "Our task was the same as the task of any consular department of a foreign state in the host country".

BBC Summary of World Broadcasts (ITAR-TASS News Agency, Russia, 30 March 1995), "crimea; Russian consulate ordered out of Crimea", 1 April 1995

BBC Summary of World Broadcasts (RIA News Agency, Russia), "crimea; Russian consular group in Crimea ceases activity", 6 April 1995

Official Kremlin International News Broadcast, "Press Briefing by Russian Federation Foreign Ministry Spokesman", 11 April 1995

A. 98 1995, July; Martin Indyk (No 1) (Israel and USA)

Israel. Martin Indyk, the American Ambassador to Israel, is criticized for lobbying against a piece of draft legislation.

Indyk reportedly met with Aryeh Deri, leader of the Shas Party, and with David Levy (Likud) to discuss the "Golan Consolidation Bill" pending in the Knesset. Indyk allegedly lobbied against the passing of the bill which would have reduced the likelihood of Israel ceding the Golan Heights to Syria. According to an unnamed Member of the Knesset, "Indyk wanted to make sure that Deri and Levy understood what is at stake and the gravity of such a vote". Deri himself stated that the Ambassador had told him that the passing of the bill could be used by Syria to slow down the peace process and that Israel would be blamed for halting negotiations even if Syria were responsible.

Likud and far-right parties protested Indyk's behaviour and spoke of "US interference in Israeli affairs".

The US embassy admitted that Indyk met with Israeli parliamentarians but denied any attempt by the Ambassador to stop the bill. Richard Scorza, spokesman for the embassy, was quoted as saying: "In no way did the

ambassador engage in anything that can even remotely be described as lobbying. That is false".

Agence France Presse, "US envoy intervenes to try to save Syrian peace talks", 26 July 1995

James Morrison, "Part A; World; Embassy Row; Indyk on the Spot", *Washington Times*, 27 July 1995

A. 99 1995, July; Bernd Mützelburg (Kenya and Germany)

Kenya. The German Ambassador, Bernd Mützelburg, is criticized over certain remarks on the development of the receiving State, which he had made.

Mützelburg had condemned the continued violence in Kenya and had suggested that conflicts be resolved through dialogue.

President Daniel arap Moi accused Mützelburg of interference in Kenya's internal affairs. The President reportedly said that Mützelburg was arrogant and was using non-governmental organizations to revolutionize the Kenyans. Moi threatened the expulsion of Mützelburg, if the Ambassador did not stop presenting himself as the mouthpiece of the opposition.

Xinhua News Agency, "german ambassador accused of interfering in kenyan internal affairs", 13 July 1995

Süddeutsche Zeitung, "Moi erneuert Angriffe auf deutschen Botschafter", 18 July 1995

BBC Worldwide Monitoring (Daily Nation web site, Kenya), "Kenyan writer raps government supporters over attacks on Western envoys", 20 July 2004

A. 100 1995, August; Martin Indyk (No 2) (Israel and USA)

Israel. The US Ambassador Martin Indyk faces criticism after his decision not to attend the opening ceremonies of a festival celebrating the 3000th anniversary of the founding of Jerusalem.

The celebrations had been controversial because of the disputed status of the city of Jerusalem. Faisal Husseini, *de facto* Palestinian minister for Jerusalem, had called for a boycott of the celebrations. Diplomats from the European Union had stayed away from the event, and indeed, out of the 70 invited ambassadors, only 17 did attend.

Indyk received negative reactions for his decision. Indyk's intended absence became the reason for talks between Itamar Rabinovich, the Israeli Ambassador in Washington, and US administration officials. A spokeswoman for the Prime Minister stated that Rabin was unhappy about the fact that Indyk and so many other diplomats had stayed away from the event. The Mayor of Jerusalem, Ehud Olmert, was quoted as saying that the US Ambassador's absence demonstrated that "Jerusalem is like an open wound in the relations between us and the US".

The President of the Conference of Presidents of Major American Jewish Organizations asked the US Secretary of State for clarification on Indyk's absence.

Indyk denied that the USA were boycotting the celebrations. He referred to prior commitments that he had had to fulfil, at a barbecue given for the American community in Israel to mark the US Labour Day holiday, and a visit to a women's shelter in Herzliya, Tel Aviv. Indyk also pointed out that the United States had been represented by a cultural officer at the opening ceremony.

Indyk later attended the first official celebrations of the Jerusalem anniversary in New York. Warren Christopher, the US Secretary of State, also stressed that no political statement was intended. In a letter written to the Conference of Presidents of Major American Jewish Organizations, Christopher said: "Let me assure you that the level of our participation at the Knesset opening for Jerusalem 3000 was in no way intended to boycott

the event."

Mideast Mirror, "Jerusalem 3000 celebrations prompt Palestinian call on Israel to review its policy on the city", 5 September 1995

The Jerusalem Post, "Indyk's absence from opening of Jerusalem 3000 ires government", 6 September 1995

Barry Parker, "Jersualem's 3000th birthday party too Jewish for some", *The Australian*, 6 September 1995

BBC Summary of World Broadcasts (Voice of Israel, 5 September 1995), "Issue of Jerusalem 3000; Reaction to US envoy's absence from Jerusalem 3000 events", 7 September 1995

Peter Wilson, "Envoy's absence angers Israel", *The Australian*, 7 September 1995

Hillel Kuttler, "Christopher: Indyk didn't snub Jerusalem 3000", *The Jerusalem Post*, 11 September 1995

Sharon Samber, "Roller coaster diplomat career of Ambassador Martin Indyk plummets again", *Jewish Telegraphic Agency*, 29 September 2000
<<http://www.ijn.com/archive/2000%20arch/092900.htm>>

A. 101 1995, December; Saeid Bateni (Jordan and Iran)

Jordan. The deputy chief of mission at the Iranian embassy, Saeid Bateni, is expelled from the territory for "activities that are not in line with diplomatic norms". Bateni allegedly visited the Nabatean city of Petra to inquire about the itineraries of the tourists; according to officials, he had been "scouting [the] site for an ambush". It is reported that Bateni had implicitly urged Jordanian residents there to attack Israeli tourists.

Following his expulsion, the Jordanian diplomat Ahmad Faisal al-Sabbagh is declared *persona non grata* for activities "considered to have been inconsistent with the nature of his diplomatic activity" and told to leave Iran

within a week.

Associated Press Worldstream, "International News. ["Jordan on Sunday asked..."]", 9 December 1995

The Jerusalem Post, "Iranian diplomat said expelled from Jordan for anti-Israel plot", 10 December 1995

Payk.Net, "Jordan expels diplomat, Iran retaliates", 13 December 1995
<<http://www.payk.net/maillingLists/iran-news/html/1995/msg00313.html>>

Mideast Mirror, 11 December 1995, p. 11; "Prepared Testimony of Michael Eisenstadt, Senior Fellow, The Washington Institute for Near East Policy, Statement before the United States Senate Foreign Relations Committee, Subcommittee on Near East and South Asian Affairs, 'Iran under Khatami: Weapons of mass destruction, terrorism, and the Arab-Israeli conflict', 14 May 1998 (revised 18 May 1998)",
<<http://www.washingtoninstitute.org/media/eisenstadt/mike.htm>>

A. 102 1996, February; Abdul-Rasool Dokoohki (Bahrain and Iran)

Bahrain. Third Secretary Abdul-Rasool Dokoohki of the Iranian embassy is expelled, reportedly for "activities incompatible with his diplomatic status".

A Bahraini official stated that Dokoohki had been "carrying out duties and practices outside his diplomatic duty". While both the Bahraini government and the Iranian embassy refused to provide details, Bahrain had accused Iran of instigating the Shi'ite violent protests against the Bahraini government. Shi'ites in Bahrain had protested from December 1994 following the arrest of Sheik Ali Salman, a Shi'ite cleric who had called for the restoration of parliament.

According to *United Press*, Dokoohki had been seen contacting members of the Shi'ite opposition.

Thomas Hussain, "Bahrain orders Iranian diplomat out", *United Press International*, 1 February 1999

"Bahrein expels Iranian Diplomat" (1 February 1996),
<<http://www.payk.net/maillingLists/iran-news/html/1996/msg00133.html>>

Robin Allen, "More detained in Bahrain unrest: Crackdown on Shia dissidents leads to 41 further arrests", *Financial Times*, 5 February 1996

The Iran Brief, "Bahrain and Iran expel diplomats", 5 February 1996

A. 103 1996, May; Martin Indyk (No 3) (Israel and USA)

Israel. The US Ambassador, Martin Indyk, faces criticism over his assistance to President Clinton in the latter's endorsement of Shimon Peres, the Israeli candidate of the Labor Party in the May 1996 elections. Officials of Likud accuse Indyk of "crafting Clinton's strategy of openly backing [...] Shimon Peres" (*Samber*). There is some speculation in the media that this situation marred relations between Clinton and Benjamin Netanyahu, who emerged as winner of the elections, and may have explained Indyk's replacement as an ambassador in 1997. Indyk does however return for a second stint as ambassador in 2000.

Sharon Samber, "Roller coaster diplomat career of Ambassador Martin Indyk plummets again", *Jewish Telegraphic Agency*,
<<http://www.ijn.com/archive/2000%20arch/092900.htm>>

Michael Arnold, "U.S. Envoy Hit Over Remarks On Jerusalem. Indyk: No Solution But To Share City", <<http://www.forward.com/issues/2000/00.09.22/news3.html>>

A. 104 1996, August; Robin Meyer (Cuba and USA)

Cuba. Robin Meyer, a diplomat in the political-economic section in the US interests section in Havana, is expelled. Meyer had been concerned with

human rights in Cuba, she had established contacts with dissidents in Cuba and distributed literature which included a *Guide to Resources for a Transition in Cuba*, the booklet "How to Organize a Trade Union Meeting" (produced by the *American Federation of Labor – Congress of Industrial Organizations*), Spanish language copies of the *Miami Herald*, George Orwell's *Animal Farm*, and copies of the *Universal Declaration of Human Rights*.

Meyer had also monitored the human rights situation in Cuba, interviewed participants in protest demonstrations and had forwarded information to Amnesty International and Radio Marti.

Several unofficial sanctions had reportedly preceded Meyer's expulsion (such as her surveillance by the Cuban government, and even the ramming of her car by a car driven by security agents who had followed her). Security agents also confiscated the literature Meyer had distributed.

When Meyer was expelled, Rafael Dausa, spokesman for the Cuban Foreign Ministry, accused her of behaviour beyond diplomatic conduct and said that she had "supported, organized and united small counterrevolutionary groups". Dausa also stated: "Ms. Meyer was not engaging in diplomacy; she was engaging in counterrevolution."

American State Department officials were quoted as saying that the Cuban side typically took this attitude to Human Rights work, that it was alleged by Cuba that all dissent was fomented by the United States, and that Cuba thereby attempted to discredit the legitimacy of the opposition.

Sara Decosse of *Human Rights Watch* explained that "The Cuban government is extremely uncomfortable with human rights monitoring". Meyer elaborated that "[...] It's kind of an all-out effort to keep dissidents isolated and keep international public opinion from knowing what is going on."

The US government retaliated by expelling Jose Luis Ponce, a Cuban diplomat who stated in the *Washington Post*: "There's no way you can compare what she was doing there to what I do here. She was intervening in Cuban affairs. My role has been to try to open lines of communication and lessen tensions."

Appendix A. Cases of Interference through the diplomatic message 1961 – 2006

James Morrison, "Part A; World; Embassy Row; Mr Ponce Packs Up", *The Washington Times*, 26 August 1996

David L. Marcus, "Saying No to Fidel: Cuban dissidents push for revolution, but they know chances are dim", *The Gazette (Montreal, Quebec)*, 12 October 1996

Thomas W. Lippman, "Surviving a Nightmare Inside Castro's Cuba. Expelled Foreign Service Officer Details Harassment During Human Rights Mission in Havana", *The Washington Post*, 1 November 1996, p. A 23

Frank Calzon, "Castro Fears the Modest Cuban Independent Libraries", *The Miami Herald*, 22 October 1999,
<<http://www.cubacenter.org/media/archives/1999/fall/libraries.html>>

A. 105 1996, October; Marilyn Meyers (Myanmar and USA)

Myanmar. The US chargé d'affaires in Rangoon, Marilyn Meyers, is criticized over comments she made about a planned congress of the National League for Democracy (NLD, Aung San Suu Kyi's party).

It is reported that Marilyn Meyers had met with the Director-General of the Political Department of the Burmese Ministry of Foreign Affairs and had spoken about the meeting of the NLD which was intended to take place in September. Ms Meyers allegedly said that the meeting should take place without any disturbance. In the words of Kin Maung Win, the Director-General of the Political Department, Ms Meyers had also "intimated that if any action was taken against the NLD or the holding of the meeting it would have negative implications." It is reported that Marilyn Meyers had warned of a negative reaction which could be provoked in the United States if action were taken against Aung San Suu Kyi.

At a press conference, Kin Maung Win made the following statement in reply to reporters' questions on this incident:

"[...] I think we have to see back a little bit and to look at the core of what was said. Well, in fact, the meeting of the NLD and the action or whatever

action that was being contemplated or being done by the government is a purely internal affair, it is purely our internal affair. And for a foreign nation to come to responsible officials of the Foreign Ministry and to say officially what should or should not be done, well, I don't know what will be the interpretation of their side, but from our side, we assume that this is going beyond the accepted norms of diplomacy of friendly relations between the two countries. And it is in this vein that I replied to her that we cannot but regard such statements as being interference in our internal affairs, that we have laid down our own policies, we have chosen the right path and we will not be deviated by any pressure or intimidation from abroad."

Nyunt Swe, the Deputy Foreign Minister, was quoted as saying: "No action has been taken so far against foreign diplomats violating the Vienna Convention, in consideration of friendly relations... But if violations affect national sovereignty, action will have to be taken".

Meyers was not declared *persona non grata*, but she intended to leave Burma, as she was retiring from the diplomatic service.

Glyn Davies, Deputy US State Department spokesperson, called the allegations "groundless". Davies also said that Meyers had "been carrying out her diplomatic role on instructions from Washington".

The United States Information Agency, "State Department Report", 2 October 1996,
<<http://www.hri.org/docs/statedep/96-10-02.std.html>>

Burma Net (Reuters), "US denies Burma interference charges", Washington, 2 October 1996
<<http://www.burmanet.org/burmanet/1996/bnn1096n531.txt>>

Burma Alert, "SLORC says U.S. interfered", (Oct. 1996) vol. 7, no. 10

Associated Press, "US Rejects Burmese Charges of Interference", 2 October 1996

BBC Summary of World Broadcasts (TV Myanmar, Myanmar), "Ruling council explains actions against opposition at news briefing", 4 October 1996

Japan Economic Newswire, "U.S. diplomat breaches norms of diplomacy, Myanmar says", 1 October 1996

A. 106 1996, October; unnamed (Myanmar and Western States)

Myanmar. At a press conference, Burmese government officials take exception to frequent visits by diplomatic agents to Aung San Suu Kyi, and elaborate on Myanmar's understanding of the interplay between the duty of observation and the duty not to interfere in the internal affairs of the State.

After a discussion of the case of Marilyn Meyers (see *supra*), the Kyodo News correspondent had posed the question whether diplomatic agents did not have "the right to contact any political party to learn the situation about the country". Deputy Foreign Minister Nyunt Swe replied: "There are certain provisions, Article 3 and Article 41 of the Vienna Convention, by which diplomats are supposed to conduct themselves."

Colonel Kyaw Thein, Head of Strategic Studies at the Ministry of Defence, added:

"Concerning the diplomats going to meet politicians to understand [the] political situation in the country, what we think is that it is acceptable to the government that diplomats go to meet with politicians in order to know the political situation in the country. But what happened is that a flurry of visits and return visits between diplomats, especially Western diplomats, and Aung San Suu Kyi, about 137 times, have been made since [the] lifting of the restraining order on Daw Suu Kyi.

It is understandable that, to know the true political situation, you can go and meet the politicians once or twice. But more than a hundred times, I think it cannot be termed as routine diplomatic visits for study of the local situation. And it is very obviously strange for Daw Aung San Suu Kyi why she received the Western diplomats so many times and why she did not meet other Asian diplomats also."

BBC Summary of World Broadcasts (TV Myanmar, Myanmar), "Ruling council explains actions against opposition at news briefing", 4 October 1996

Japan Economic Newswire, "U.S. diplomat breaches norms of diplomacy, Myanmar says",
1 October 1996

A. 107 1996, November; Cordech Planas (Cuba and Spain)

Cuba. The designated Spanish Ambassador Cordech Planas becomes the subject of criticism over remarks made to the news media.

Planas had stated to the Spanish *ABC* that, as Ambassador to Cuba, he would keep his doors open to members of the anti-Castro opposition, in line with the policy of the Spanish Conservative Prime Minister Aznar. Aznar had called for an opening of Cuba to democracy.

Roberto Robaina, the Cuban Foreign Minister, stated in a verbal diplomatic note to Eudaldo Mirapeix, the outgoing Spanish Ambassador, that Cordech Planas' comments revealed "a work agenda that makes interference priority number one." The Cuban government withdrew its approval of Cordech Planas and referred to his remarks which had been "not appropriate for a diplomat". It also announced that it would lodge a complaint with Spain over this "clumsy political interference". The Cuban Foreign Ministry was quoted as stating that his comments constituted open and unacceptable interference in Cuba's internal affairs and that they constituted a breach of the *Vienna Convention*.

The Spanish Foreign Minister on the other hand, was quoted as stating that Cordech Planas' remarks were "extremely prudent and open to dialogue" and in line with his government's policy on Cuba.

Xinhua News Agency, "Cuba to revoke approval to spanish ambassador", 26 November 1996

Agence France Presse, "Spanish embassy, under siege, vows business as usual in Cuba", 27 November 1996

A. 108 1996, December; Martin Indyk (No 4) (Israel and USA)

Israel. The American Ambassador Martin Indyk is criticized over a meeting with Rabbi Ovaida Yosef, a former Chief Sefardic Rabbi of Israel and spiritual leader of the Shas Party.

It is reported that Indyk had asked the Rabbi to use his influence on Eli Suissa (Interior Minister and also a member of Shas) to effect a stop of a planned project to build Jewish homes in one of Jerusalem's eastern neighbourhoods.

Indyk's behaviour triggered strong opposition inside and outside Israel, *inter alia* from the *New York Jewish Week* and the *Zionist Organization of America*, which referred to the conduct as interference in Israel's internal affairs. ZOA President Morton A. Klein, opposed Indyk's nomination to the post of Assistant Secretary of State in 1997 with the words "Ambassador Indyk's repeated meddling in Israel's internal affairs should disqualify him from being named Assistant Secretary of State. That position should be reserved for someone who understands that Israel is a valued ally of the United States, not a banana republic to be bullied and harangued."

Indyk himself denied that he had discussed the development project with Ovaida Yosef.

Xinhua News Agency, "Israeli interior minister to approve housing plan in Eastern Jerusalem", 18 December 1996

Agence France Presse, "Israel halts Jewish building plan in East Jerusalem: newspaper", 18 December 1996

Claude Patrice, "Une certaine inquietude commence a gagner les rangs du gouvernement israelien ", *Le Monde*, 21 December 1996

The Zionist Organization of America, "Ambassador Indyk reportedly interfered in latest Israeli Cabinet appointments", 9 July 1997, ><http://www.zoa.org/pressrel/19970709b.htm><

A. 109 1997, February; Mohammad Reza Baqeri (Turkey and Iran)

Turkey. The Iranian Ambassador to Turkey, Mohammad Reza Baqeri, is expelled.

Baqeri had attended the Islamic *al-Quds* International Day ceremonies in Sincan (a district of Ankara) and had delivered a speech in which he claimed that Jews and Zionists took pride in their fundamentalism. The Ambassador was further quoted as saying: "If fundamentalism means to return to original roots of Islam and Qur'an, yes, we Iranians are fundamentalists. We are Muslims and our motto and main goal are to support the rule of Islam". It was also reported that Baqeri was calling for the liberation of Jerusalem.

Turkish media and politicians accused Baqeri of interfering in the domestic affairs of Turkey through the promotion of Islamic rule. The Turkish government expelled Baqeri.

In an interview with *Turkiye*, the Ambassador claimed that he had kept to the facts concerning Israel and that beyond that he had not made reference to Turkey. The Ambassador stated: "I did not mention Hizbullah or anything like that. I simply produced historic examples to show that Israel is a fundamentalist state. I did not even mention Yasir Arafat".

Iran in turn ordered the expulsion of the Turkish Ambassador to Iran, Osman Koruturk, and of the Consul General to Oromuiyeh (Northwestern Iran), Ufuk Ozsancak for "actions that were in violation of their diplomatic status"

Dr. Ely Karmon, *The Demise of Radical Islam in Turkey. "The Iranian Connection" Revisited*, 3 June 2000, (International Policy Institute for Counter-Terrorism)
<<http://www.ict.org.il/articles/articleDET.cfm?articleid=130>>

Hamed Mottalebi, "Tehran-Ankara Ties revived", *Echo of Islam*, April 1998
<<http://www.netiran.com/Htdocs/Clippings/FPolitics/980400XXFP01.html>>

A. 110 1997, March; Serzh Alexandrov (Belarus and USA)

Belarus. The First Secretary of the US embassy, Serzh Alexandrov, is declared *persona non grata* and asked to leave.

Alexandrov had attended an unauthorized protest against the Belarusian President Aleksandr Lukashenko, in which about 10,000 people participated. He was detained at this event; his behaviour was described as "incompatible with his diplomatic status". Belarusian authorities accused Alexandrov of provocative actions, of fomenting anti-government sentiment and of working for the CIA. Alexandrov's departure within 24 hours was requested by the Belarusian government.

The American side stated that Alexandrov had been observing a political demonstration; a behaviour which the USA referred to as a normal diplomatic duty.

After the expulsion of Alexandrov, the American Ambassador to Belarus, Kenneth Yalowitz, was recalled to Washington for consultations. Vladimir Gramyka, First Secretary at the Belarusian embassy in the United States, was expelled in apparent retaliation.

Denza (1998), Article 41, p. 377, fn. 1.

CNN, "US diplomat leaving Belarus", 23 March 1997,
<<http://www.cnn.com/WORLD/9703/23/briefs.pm/belarus/index.html>>

Facts on File World News Digest, "U.S. Envoy Expelled; Other Developments", 27 March 1997

Robert Kilborn / Cynthia Hanson / Debbie Hodges, "The News in Brief", *Christian Science Monitor*, 28 March 1997

A. 111 1997, March; Martin Indyk (No 5) (Israel and USA)

Israel. The US Ambassador, Martin Indyk, publicly exchanges words with General Rehavam Ze'evi, a Member of the Knesset (Moledet Party). Ze'evi had, in a parliamentary session, called Indyk a *yehudon* ("Jew boy"); the background was apparently formed by the pressure Indyk had allegedly put on Israel to make concessions to the Palestinians. At a later meeting with Ze'evi, Indyk reacted to this word by saying:

"The last time someone called me a Jewboy, I was 15 years old and he got a punch in the face." Ze'evi repeated the insult (*yehudon*); to which Indyk reportedly said: "You are a disgrace to the state of Israel". Ze'evi replied: "And you are a son of a bitch".

Ze'evi later apologized to Indyk; the Israeli Foreign Ministry criticized Ze'evi's behaviour, and Eitan Bentsur, Director General at the Foreign Ministry, apologized to Indyk.

Indyk was quoted as saying: "I'm not interested in getting into the details, but what's important here is that a member of the Knesset, leader of a political party, is attacking with an anti-Semitic slur the representative of the United States of America in Israel."

US State Department spokesman Nicholas Burns commented as follows: "I won't repeat what the gentleman said, I mean if I [should] call him a gentleman. [Everyone who knows Indyk knows that] he's an honorable person, he does not deserve to be insulted publicly [...] He represents the president."

Matthew Dorf, "Israel sorry for slur against U. S. envoy", *Jewish Telegraphic Agency*, 14 March 1997

Jewish Bulletin of Northern Carolina, <<http://www.jewishsf.com/bk970314/ussorry.htm>>

Lucille Barnes, "Principals Inject High Drama Into Crumbling of the Peace Process", *People Watch*, April / May 1997, pp. 52 – 56, <<http://www.washington-report.org/backissues/0497/9704052.htm>>

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The Sunday Times News (Sri Lanka), "Taking turns: To brave Mavericks", 23 March 1997, <<http://www.lacnet.org/suntimes/970323/news5.html>>

Jewish Bulletin of Northern Carolina, "Drama erupts in the Knesset: Ambassador slurred as 'Jew-boy'", 11 January 2002 [?], <<http://www.jewishsf.com/bk020111/i18.shtml>>

Douglas Bloomfield, "No different standards for Jewish envoys", *Washington Jewish Week*, 17 January 2002, <<http://www.peacenow.org/nia/news/bloomfield0102.html>>

A. 112 1997, March; Martin Indyk (No 6) (Israel and USA)

Israel. The US Ambassador Martin Indyk faces criticism after being consulted by Israeli cabinet ministers.

It is alleged that during a government session on the question of withdrawal from the occupied territories, the Israeli Prime Minister and other cabinet ministers interrupted the meeting several times to seek the approval of the American Ambassador.

Uzi Landau, Member of the Knesset and chairman of the Knesset Foreign Affairs and Defense committee, subsequently accused Indyk of "pressuring members of government" and "interfering in Israel's internal political affairs". Landau compared Indyk to the first British High Commissioner to Palestine, Herbert Samuel, and stated that Indyk needed "to be reminded that he is not the British High Commissioner". The former Israeli Prime Minister Yitzhak Shamir stated (allegedly also with reference to that government session) that there had not been an Israeli government that had tolerated such a degree of interference in its affairs as that of the current Prime Minister Netanyahu.

Yisrael Harel, "Like a viceroy", *The Jerusalem Post*, 21 March 1997

The Zionist Organization of America, 9 July 1997, <<http://www.zoa.org/pressrel/19970709b.htm>>

A. 113 1997, June; Dennis Jett (Peru and USA)

Peru. The American Ambassador Dennis Jett faces criticism after his comments on armaments policy.

With reference to the Peruvian decision to buy MiG-29s, Jett had voiced the concern to reporters that this purchase could lead to a regional arms race. Jett also stated that the money "should be used to build new schools" and roads. Jett was quoted as saying that it would be "worthwhile having a debate over this country's priorities and the threats it faces."

The President of the Peruvian Congress, Victor Joy Way, took exception to these remarks. He stated that the budget policies of Peru were a domestic matter and added: "Apart from being an impertinent treatment of our internal affairs, they [Jett's comments] reflect a high level of ignorance of what is happening in this country. "These comments are unfortunate, totally out of place, and [against] what the Vienna Convention says about non-interference in internal affairs."

Francisco Tudela, the Peruvian Minister of Foreign Affairs, asked the US Ambassador for an explanation of his comments. Jett stated that he would continue to provide his opinions "since it is not unfriendly to defend Peruvian democracy".

According to some analysts, this remark indicated that Jett had been acting on instructions by the American government which might have been worried about the possibility of another coup d'état in Peru, based on military support.

Associated Press, "U.S. ambassador's comments on jet purchase angers Peru", 25 June 1997

James Morrison, "Part A; World; Embassy Row; Making a Name", *The Washington Times*, 27 June 1997

Abraham Lama, "Peru – Politics: U.S. Ambassador sparks political uproar", *Inter Press Service*, 4 July 1997

A. 114 1997, July; Martin Indyk (No 7) (Israel and USA)

Israel. The US Ambassador Martin Indyk is accused of trying to influence cabinet appointments in Israel.

Indyk reportedly put pressure on Netanyahu, the Israeli Prime Minister, to prevent him from appointing Ariel Sharon to the office of Finance Minister.

According to *Yediot Ahronot* (an Israeli newspaper), Indyk had expressed "his opposition in a subtle, diplomatic way".

Simon Shiffer, the political reporter of *Yediot Ahronot*, noted that Yitzhak Mordechai, the Israeli Minister of Defence, had been used by the United States to pressure Netanyahu into refraining from appointing Sharon to this post. Mordechai had reportedly held secret conversations with Martin Indyk on this matter. Shiffer stated: "Indyk's role, particularly his involvement in transmitting messages from Washington (designed to) to block Sharon securing a seat in the key 'kitchen cabinet' needs further scrutiny. [...] I have no doubt whatsoever that Indyk played a very, very important role during this last political crisis... Certainly there is increasing evidence that he passed on messages to all concerned. Put simply, he stressed the US's opposition to Sharon being part of Israel's key defense and political unit. There's no doubt about it".

This alleged conduct by Indyk led to accusations in the media and by Jewish organizations in America of interference in the internal affairs of Israel.

Indyk himself called Ariel Sharon to deny the accusations. Sharon is reported to have replied with some irony: "Of course not [...] Who could imagine the greatest democracy in the world intervening in the internal affairs of the only democracy in the Middle East - particularly in a minor matter like choosing an finance minister?"

The Zionist Organization of America, "Ambassador Indyk reportedly interfered in latest Israeli Cabinet appointments", 9 July 1997, <<http://www.zoa.org/pressrel/19970709b.htm>>

Uri Dan / Dennis Eisenberg, "An American vassal?", *The Jerusalem Post*, 10 July 1997

A. 115 1998, January; Daniel Kurtzer (No 1) (Egypt and USA)

Egypt. The designated US Ambassador, Daniel Kurtzer, is attacked over critical remarks on the question of participation in a conference by Arab countries.

Kurtzer had accused Egypt and other Arab countries of making a serious mistake in conducting a boycott of the Middle East economic conference in Dohar, Qatar in November. The conference was supported by the United States. Kurtzer was quoted as stating: "The U.S. heard the message by those who did not attend Doha, but it was a wrong message [...] The Doha conference was designed to benefit all the states of the Middle East, not as a reward to any particular state".

In *Al Akhbar*, an Egyptian government-owned newspaper, the paper's chief editor, Jalal Duwaydar, attacked Kurtzer over these comments. In Duwaydar's view, Kurtzer was representing not US, but Israeli interests and was under the influence "of the notions of the Jewish and Zionist lobby" (*BBC*). Duwaydar also stated that the Ambassador must take care not to infringe the sovereignty of his receiving State. The chief editor was quoted as saying that Kurtzer must refrain from critical remarks "if he wants to serve the interests of his country".

BBC online, "Egyptian paper attacks US ambassador", 16 January 1998,
<<http://news.bbc.co.uk/1/hi/world/americas/47926.stm>>

Associated Press, "Egyptian paper says US ambassador 'influenced by Jewish notions'",
16 January 1998

James Morrison, "Part A; World; Embassy Row; Blaming Egypt", *The Washington Times*,
16 January 1998

BBC Summary of World Broadcasts (MENA News Agency, Egypt), "Newspaper criticizes US ambassador's remark on Doha conference boycott", 17 January 1998

A. 116 1998, May; unnamed (China and UK)

China. The United Kingdom is accused of interfering in internal affairs of Hong Kong.

The criticism arose from an invitation which the UK Consul General in Hong Kong had issued to candidates of the forthcoming elections to meet British diplomats.

A spokesman for the Chinese Ministry of Foreign Affairs, Zhu Bangzao, was quoted as stating that this conduct constituted "direct interference" in the affairs of Hong Kong. A candidate of the Alliance for the Betterment of Hong Kong (a group which is politically close to Beijing), however, also took exception to the invitation. Lau Kong-wah stated: "It seems very strange to me that their political section wants to know about my campaign strategy at this time [...] It's not necessary. I don't want to put forward an image that I allow foreign intervention in our election".

Trevor Adams however, spokesman for the Consul General's office, denied the charges of interference. According to Adams, "we are merely informing ourselves about it [...] We are just going to listen to what they have to say"

James Pringle, "Invitation by British angers Beijing", *The Times*, 8 May 1998

A. 117 1998, September; unnamed (Afghanistan and Iran)

Afghanistan. Following the killing of Iranian diplomats, the Taliban leadership of Afghanistan accuses the dead of having been military advisors who had aided the Afghan opposition. They call on Iran to

apologize for interference in Afghanistan's internal affairs.

Mullah Mohammad Omar, the leader of the Taleban, claimed that the killings were carried out by "renegades" not acting under orders. However, he maintained that Iran condemned the killings only "to hide Iranian interference in Afghanistan during which thousands of people were killed" and he urged the United Nations to condemn Iran for the interference in Afghanistan.

BBC, "Taleban accuse Iran", 13 September 1998,
<http://news.bbc.co.uk/1/hi/world/south_asia/169901.stm>

The Times, 16 September 1998

Christopher Thomas, "Iran reinforces border as battle of words grows", *The Times*, 18 September 1998

A. 118 1998, September; Brian Curran (Mozambique and USA)

Mozambique. The American Ambassador to Mozambique, Brian Curran, is criticised after his remarks on the presidential and legislative elections.

Curran had reportedly made the following comment about the elections, which were scheduled for 1999: "For next year's elections to be fair, democratic, transparent and serious, it is necessary that all opposition parties take part in the process". Curran further said that the United States would withdraw financial support for the elections, if Mozambican opposition parties decided to boycott the event.

Manues Tome, the General Secretary of Frelimo, the ruling Mozambique Liberation Front Party, took exception to these remarks and stated that the American ambassador should know that the elections were a matter for decision by the Mozambicans. Tome was quoted as stating: "Mr. Ambassador should give up passing the message through the press, whatever the nature of the message is [...] if he really wants to offer his

advice or criticism, he can do that through diplomatic channels." Tome also said (apparently with regard to the threat of the withdrawal of financial support) that "political and financial blackmails are outdated, particularly in an era of economic globalization when all nations should respect each other".

Xinhua News Agency, "us ambassador accused of meddling with mozambican internal affairs", 15 September 1998

Associated Press, "International News", 16 September 1998

A. 119 1998, September; Kent Wiedemann (Myanmar and USA)

Myanmar. The American Chargé d'Affaires Kent Wiedemann is criticized over his comments concerning the National League for Democracy.

In an interview with the BBC, Wiedemann had come to the defence of the National League of Democracy and Aung San Suu Kyi and had stated that the latter would not be deported from Myanmar. Wiedemann also stated that the preemptive measures which the government of Myanmar had adopted to prevent the illegal convening of Parliament were detention measures.

Thet Shay, a commentator of the Burmese newspaper "Myanmar Alin", criticized this behaviour as interference in the internal affairs of Myanmar. Shay referred to Article 41 of the Vienna Convention and pointed out that the question of Aung Suu Kyi's deportation and the preemptive measures taken by the Burmese government were "internal affairs of Myanmar".

BBC Worldwide Monitoring (Myanmar Alin, Myanmar), "Paper attacks foreign media, diplomats", 19 September 1998

A. 120 1998, September; Timothy Brown (Cuba and USA)

Cuba. Timothy Brown, the Human Rights observer of the US Interests Section in Havana, is accused of interference. On 28 August, Brown had been outside a courtroom in Havana, when the trial of a dissident took place, who was sentenced to 3 years in prison for "spreading false information".

The Cuban side accused Brown of inciting opponents to Castro's regime to stage a public anti-government demonstration on this occasion. Alejandro Gonzalez, spokesman for the Cuban Foreign Ministry, claimed that one diplomat [Brown] had conducted "activities that fall within the definition of interference in the internal affairs of our country and promotion of counterrevolutionary activities" and that the US Interests Section had on several occasions been warned about the behaviour of some of its members. Gonzalez further remarked that Brown's activities "have absolutely nothing to do with his status as a diplomat".

The Miami Herald, "Cuba accuses U. S. diplomat of meddling, sowing dissent", 19 September 1998

<<http://www.fiu.edu/~fcf/cubaaccuses.html>>

Pascal Fletcher, "Expulsions cast Cold War shadow over U. S. – Cuban ties", *Reuters*, 24 December 1998, <<http://www.fiu.edu/~fcf/coldwarthreespiesexpelled.html>>

A. 121 1998, November; unnamed (Malaysia and various States)

Malaysia. Foreign diplomats wishing to attend the trial of Anwar Ibrahim, the former Deputy Prime Minister, are told that this behaviour would amount to interference.

Judge Augustine Paul refused to grant observer status to foreign diplomats; he stated that allowing official observers at the trial would be an "insult to

the court" and give the impression that "it may not be dispensing justice". He further stated: "the presence of these people would amount to interference in the powers and functions conferred on me by the constitution". While the judge said that representatives of human rights groups and the local Bar Council would be permitted to the public galleries, bailiffs barred access to the court room to a representative of the U. S. Embassy, who reportedly had been the second person in the queue of spectators waiting for admission.

James Rubin, spokesman for the State Department, stated: "We certainly see no reason why diplomats and journalists who have complied with the court-stated procedures for entering the courtroom should be arbitrarily prevented from doing so". Several diplomats intended to file a complaint with Malaysian authorities.

Matt Frei / David Willis / Simon Ingram, "Anwar upbeat as trial opens", *BBC online*, 2 November 1998

<<http://news.bbc.co.uk/1/hi/world/asia-pacific/205764.stm>>

CNN World, "Malaysia's Anwar returns to court for closely watched trial", 3 November 1998
<<http://www.cnn.com/WORLD/asiapcf/9811/03/anwar.trial.day.two.01/>>

A. 122 1998, December; Hans-Joachim Vergau (Turkey and Germany)

Turkey. Hans-Joachim Vergau, the German Ambassador to Turkey, becomes the subject of criticism after remarks about the situation of the Kurds in Turkey.

In an interview with the Turkish News Agency Anadolu, Vergau had remarked that the situation of the Kurds was not only a matter for Turkey, but for the Federal Republic of Germany as well. Vergau had referred to the considerable number of Kurds in Germany.

A representative of the Turkish government was quoted as stating that this statement had been "insolent" ("eine Frechheit"). The representative further

commented that these remarks amounted to an interference in the internal affairs of Turkey. He further accused Vergau of being ignorant even of the German case law on the Kurdish situation (Many German courts, according to the government representative, had rejected asylum requests by Kurds, using the argument that there was, in general, no ethnic persecution in Turkey.)

Süddeutsche Zeitung, "Deutscher Diplomat kritisiert. Nach Äusserung zur Kurdenfrage. Ankara warnt vor Einmischung in innere Angelegenheiten", 14 December 1998

A. 123 1999, February; unnamed (Sri Lanka and various States)

Sri Lanka. Foreign diplomats are warned over possible interference in forthcoming elections.

The US Embassy had stated concerns about violence, instances of rigging and intimidation at the provincial polls in Wayamba. Other missions had drawn attention to alleged fraud in these elections.

On 2 February 1999, the Foreign Ministry in Sri Lanka issued a note to all foreign missions in which it stated that "any premature comment on the Wayamba election controversy could amount to an interference in Sri Lanka's internal affairs" (*Jansz*).

The US embassy declined to withdraw their statements. A spokesman stated: "We are naturally concerned about news reports of violence surrounding the election and about the allegations of voting day irregularities [...] The US believes that fair and free elections are essential for democracy". Other diplomats judged the Foreign Ministry note an "awkward reaction".

Frederica Jansz, "Diplomatic row over Wayamba", *The Sunday Times* [Sri Lanka], 7 February 1999,

<<http://www.lacnet.org/suntimes/990207/frontm.html>>

A. 124 1999, August; unnamed (Namibia and USA and other States)

Namibia. The embassy of the United States in Namibia is criticized after it made statements about the human rights situation in the Caprivi Region.

The American embassy had voiced its concerns about reports that civilians in the Caprivi region were being abused by security forces, following an attack in Katima Mulilo by a secessionist group in early August. The embassy urged the government forces to refrain from human rights abuses and to respect the rights guaranteed to all citizens under the Namibian constitution. The embassy furthermore paid tribute to the Defence Minister for his "frank admission" of mistakes made in the Caprivi Region.

A day after the statement, the Namibian government called on diplomatic missions and international organizations to "stop interfering in the country's internal affairs". The Foreign Ministry drew attention to Article 41 of the *Vienna Convention* and said that remarks made by some heads of mission on the situation in the Caprivi Region were inconsistent with this rule. The statement read in part: "The Ministry of Foreign Affairs does not accept that the heads of missions should make statements which amount to interference in the internal affairs of Namibia. Heads of mission should use the established diplomatic channels to raise their concerns". The Foreign Ministry also took exception to the fact that heads of diplomatic missions criticized the actions of the Namibian Defence Forces while they did not condemn the terrorist attacks at Katima Mulilo. The Ministry stated: "While we have nothing to hide we resent unprofessional behaviour by some diplomatic missions which have the effect of giving moral encouragement and comfort to the terrorists".

Panafrican News Agency, "Namibia; US Expresses Concern Over Human Rights Abuse In Caprivi", 18 August 1999

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Christof Maletsky, "US remarks over abuse rile Namibia", *Business Day (South Africa)*, 20 August 1999

Xinhua News Agency, "namibia unhappy with u.s. comments on caprivi", 20 August 1999

Tabby Moyo, "Namibia; Government lashes out at foreign missions", *The Namibian (Windhoek)*, 20 August 1999

A. 125 1999, September; Richard Hecklinger (Thailand and USA)

Thailand. Richard Hecklinger, the US Ambassador to Thailand, is criticized over comments he made concerning a planned power plant in the receiving State.

Hecklinger had met with Savit Bhotiwihok, the Thai Minister of the Prime Minister's Office responsible for energy policy. After the meeting, Savit Bhotiwihok said in an interview with a Thai newspaper that Hecklinger had voiced his concerns about delays in the construction of the Bo Nok power plant. The project of the Bo Nok plant was partially funded by Edison Mission Energy, which is based in the United States. Hecklinger reportedly indicated that the delays could erode the potential of investment. The delay in particular in the public-hearing process could create problems for future investment.

The Ambassador's remarks caused a negative reaction from grassroots groups and academics. Dr Danai Kimapadanai, a leading academic, who had been involved in the public consultation process concerning Bo Nok, was quoted as saying: "This is pressure on the Thai government to approve the project's construction".

The American embassy on the other hand defended Hecklinger's comments by referring to its "[...] duty to advocate U.S. business in the same way Thai embassies do in other countries."

Kamol Sukin, "US envoy accused of meddling", *The Nation (Thailand)*, 29 September 1999

Harish Mehta, "Anti-foreign feeling resurging in Thailand", *Business Times (Singapore)*, 1 December 1999

Business Day (Thailand), "GMO issue poses serious questions for Asia", 1 December 1999

Greenpeace, "Edison out. The Struggle to Stop Coal-Fired Power Plants in Bo Nok and Ban Krut, Thailand", 2002. Available online:

<<http://www.greenpeace.org/raw/content/usa/press/reports/edison-out-the-struggle-to-st.pdf>>

A. 126 1999, October; Robert Gelbard (No 1) (Indonesia and USA)

Indonesia. The US Ambassador, Robert Gelbard, becomes the subject of criticism following remarks concerning the leadership of the Indonesian Bank Restructuring Agency (IBRA).

Gelbard had suggested that Glenn Yusuf, Chairman of IBRA, should not be succeeded by Sudibyo. The United States favoured Yusuf himself.

Amien Rais, speaker of the People's Consultative Assembly, Muslim political leader and opponent of the Indonesian president Wahid, called this behaviour a "direct, concrete intervention with an element of insult". Rais also stated: "I really don't like the methods used by that superpower nation's ambassador". Sudibyo stated "I won't be pressured by anyone. I also have strong political back-up".

In November, it was reported that Rais and Gelbard had resolved the incident after Gelbard had assured Rais that his remarks had not aimed at interference in Indonesia's internal affairs.

The Straits Times (Singapore), "Pals again", 6 November 1999

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Jose Manuel Tesoro, "The Rise – and Rise – of Amien Rais. Is the MPR chief merely kingmaker, or the power behind the throne?", *Asiaweek.com*, 12 November 1999, vol. 25, no. 45,
<<http://www.asiaweek.com/asiaweek/magazine/99/1112/nat.indonesia.rais.html>>

Dan Murphy, "Indonesia sours against the US. Threats of anti-American violence result in travel warning and the Embassy's closure through Monday", *The Christian Science Monitor*, 3 November 2000,

Jakarta Post, "U. S. ambassador in Jakarta ruffles feathers again", 4 September 2000

A. 127 1999, October; Michael Klosson (China and USA)

China. Michael Klosson, the American Consul-General to Hong Kong, is criticized for remarks made in his first public speech.

In this speech, delivered before the American Chamber of Commerce, Klosson voiced his opposition to plans by the Law Reform Commission which envisaged the creation of a press council, to be established by the government. In Klosson's view, such a council could put the freedom of the media at risk and would cause international concern. Klosson was quoted as saying: "If Hong Kong wants to be woefully misunderstood in the rest of the world, there is no better way to do so than to put in place a government-appointed statutory body wielding penalties to 'improve' the press."

Gary Cheng Kai-nam, the Vice Chairman of the Democratic Alliance for the Betterment of Hong Kong, reacted to Klosson's remarks by calling them interference in the internal affairs of Hong Kong. Cheng stated: "He [Klosson] thinks the Hong Kong Government should not interfere with Hong Kong's independence but on the other hand he would also be doing the same thing".

Glenn Schloss, "US diplomat speaks against press council", *South China Morning Post*, 27 October 1999

A. 128 1999, November; unnamed (Malaysia and Australia, Canada, UK and USA)

Malaysia. Foreign diplomats are accused of financially supporting opposition parties in the forthcoming elections. According to allegations by the youth movement of the United Malays National Organisation, British, Australian, Canadian and US diplomats had offered money to opposition parties; the newspaper further maintained that diplomatic officials had met with politicians and attended opposition news conferences.

Abdullah Ahmad Badawi, Deputy Prime Minister, stated: "It seems that there are people who are interfering by offering support to the opposition with a view to toppling the Barisan National Government [...] The Foreign Ministry will make a report and when all this is proved we will take appropriate action"

Badawi also announced that diplomats who were involved in this form of interference would not be allowed to serve in Malaysia. Badawi, too, singled out diplomats from Australia, Canada, the United Kingdom and the USA who, he alleged, had provided funds to the opposition with a view to topple the ruling coalition. In Badawi's view, this amounted "to interference in our country's internal affairs"

Lloyd Axworthy, Foreign Affairs Minister of Canada, denied the allegations and was quoted as saying: "There's no interference, it's a false claim [...] The only support we have been offering is to a couple of non-governmental organizations [...] to provide monitoring of the election itself. But we have given no money to opposition parties or any political support." Maria Minna, the Canadian International Development Minister, said that Canadian diplomats were, as part of their routine tasks, in touch with opposition figures, non-governmental organizations and government figures, and suggested that it "could be that people are unhappy with the fact that our officials have gone to different events, including [those of] opposition parties". On the issue of financial support to parties, Minna stated: "Our money is not for political funding and I would be very surprised if any was

used for that. If it were, we would take action, but I'm sure it is not. We're pretty careful with how our money is spent."

Charles Barclay, spokesman of the US embassy, stated (with particular reference to the forthcoming elections), "[...] we're neutral in the process [...] We're not providing any funding in any way, shape or form." James Warren, press officer at the US embassy, declared: "The embassy is not providing funding for election-related activities in any way, shape or form. The US strongly supports democracy, and free and fair elections. It does not interfere or take sides in elections". Press events by the ruling parties (the National Front coalition) and opposition parties were attended in the exercise of a "normal diplomatic function and an expression of our interest in the democratic process in Malaysia".

The opposition coalition too denied the claims and spoke about "more dirty tricks from the governing coalition" (*BBC*).

BBC online, "Malaysia accuses diplomats", 24 November 1999,
<<http://news.bbc.co.uk/1/hi/world/asia-pacific/534847.stm>>

Sean Yoong, "Embassies deny trying to fund Malaysian opposition campaign", *Associated Press*, 24 November 1999

Mike Trickey, "Ottawa denies funding opposition: Official says Canada wants to depose ruling coalition", *Calgary Herald*, 25 November 1999

Conor O'Clery, "Malaysian governing coalition throws mud at opposition", *The Irish Times*, 25 November 1999

Brendan Pereira, "Diplomats "giving money to opposition", *The Straits Times (Singapore)*, 25 November 1999

The Toronto Star, "Malaysia tells West to butt out", 26 November 1999

Martin Regg Cohn, "Dirty tricks accusations fly as Malaysians head to polls", *The Toronto Star*, 27 November 1999

A. 129 1999, December; Teodoro Maus (USA and Mexico)

United States. Teodoro Maus, the Mexican consul in Atlanta, makes comments which arouse criticism.

In an interview for WPLO-AM, a Spanish-language radio station in Lawrenceville, Maus referred to companies which exploited immigrant workers and suggested a national boycott of shops which did not offer services in Spanish. He also called for a boycott by people of Hispanic origin of companies in Georgia which discriminated against Hispanic customers. The consul was quoted as stating: "If in some area, in some zone, in some place, in some business they are not being treated with dignity, with the respect they need, well, we begin to deal with an economic boycott,"

Political scientists called the occurrence "unusual", as the issue did not directly affect his government.

The director of the center for the Study of Global Issues at the University of Georgia, Dr Pak, called the comments "inappropriate... [h]is office is designed to protect, not Mexican-Americans, but Mexican citizens. Advising them to boycott some products, that really is not protecting or promoting their interests. It's a political retaliation ... he's not there in Atlanta to do that sort of thing." Other commentators accused Maus of "meddling in domestic politics" (*Boston Herald*).

The press attaché of the consulate of Atlanta stated that Maus did not intend to organize a boycott, but that he wanted leaders of the Hispanic community to exert "economic pressure" on businesses that treated the community unfairly.

Associated Press, "Mexican consul calls for boycott of companies that mistreat Hispanics", 5 January 2000

The San Diego Union-Tribune, "Mexican consul urges boycott in Georgia", 6 January 2000

Associated Press, "Mexican Consul Calls for Boycott", 6 January 2000

The Boston Herald, "Editorial; Undiplomatic diplomat", 9 January 2000

A. 130 2000, April; Roger Hart (Peru and UK)

Peru. Roger Hart, the British Ambassador to Peru, faces criticism after his comments on the presidential elections in the receiving State.

As reports of certain problems during the elections became known (including, allegedly, the distribution of pre-marked ballots), Hart stated: "We don't have a lot of confidence in the voting process either. It is clear that there has been a lot of irregularities during the campaign and during the day of the vote".

Francisco Tuleda, who was President Alberto Fujimori's candidate for the office of Vice President, called these remarks an interference in the internal affairs of Peru. Foreign governments, according to Tuleda, were making judgements about elections in another country even before the result had been announced.

Associated Press German, "Peruanischer Praesident Fujimori muss sich Stichwahl stellen Tagesmeldung", 13 April 2000

Monte Hayes, "Peru's presidential race will require a run-off", *Associated Press*, 13 April 2000

The Toronto Star, "Fujimori faces runoff for Peru's Presidency", 13 April 2000

A. 131 2000, May; Raymond Chrétien (USA and Canada)

United States. The Canadian Ambassador, Raymond Chrétien, is criticized for comments on the candidates in the American presidential elections.

In a televised speech to federal officials in Ottawa, Chrétien, nephew of the Canadian Prime Minister Jean Chrétien, said: "We know Vice-President

Gore. He knows us. He's a friend of Canada [...] Governor Bush, on the other hand, doesn't know us as much and obviously we'd have to work on him quite a lot. Seems to have forgotten the name of our prime minister" – (a comment referring to an incident in which Bush had been unable to correctly identify the Canadian Prime Minister). The Ambassador added: "When he [Bush] thinks of borders, he thinks of Mexico, not Canada". However, Chrétien also stated: "We will deal with whomever is elected."

Various commentators took issue with these remarks. Joe Clark, leader of the Canadian Conservative Party, stated: "Any other diplomat would have been called in for a reprimand by his senior officials [...] There should not be a double standard for the prime minister's nephew."

It was also reported that the Bush camp felt offended and bemused by the comments. David Jones, a US diplomat (former political councillor at the US Embassy) called the Ambassador's comments "unprecedented and completely inappropriate interference in America's internal politics" (*Solberg*).

Michael Bliss, a Professor of History at the University of Toronto, was quoted as stating: "These are certainly unusual things for an ambassador to say in public. Usually, these are the sorts of things that are said (by ambassadors) in private to their own governments."

A spokeswoman for the Canadian Prime Minister had the following comment on the incident: "Raymond Chretien has outstanding diplomatic credentials. He was making observations on the situation in the United States, and he was quite clear to say that no matter who was elected we would work closely together to continue our ongoing good relationship with the Americans [...] I think he went out of his way to say that no matter who was elected we'd continue our very close and fruitful relationship [...] I don't think he took sides."

A Foreign Affairs spokeswoman was quoted as stating that the Ambassador "clearly showed he was not expressing a preference for any candidate. As the ambassador said, we will work with whichever candidate is the successful candidate, as we have in the past".

Prime Minister Chrétien himself stated on a later occasion: "We don't express any view. He [Raymond Chrétien] has stated a fact, that

Appendix A. Cases of Interference through the diplomatic message 1961 – 2006

one knew Canada more than the other. [...] That does not mean that we have a preference."

Sault Star (Sault Saint Marie Ontario), "Gore seen as best choice for Canada", 1 June 2000

Stephen Thorne, "Clark slams Gore endorsement", *Timmins Daily Press (Ontario)*, 2 June 2000

Stephen Thorne, "Reprimand ambassador, Clark says: Should not have endorsed Gore candidacy", *Niagara Falls Review (Ontario)*, 2 June 2000

Prince George Citizen (British Columbia), "Diplomacy?", 3 June 2000

Robert Russo, "PM's ambassador nephew to transfer to France from U.S.", *Welland Tribune (Ontario)*, 15 June 2000

Agence France Presse, "Raymond Chretien, neveu du Premier ministre, nommé ambassadeur en France", 24 June 2000

Mike Blanchfield, "Alliance will Americanize Canada: Chretien: The prime minister's America-bashing, which helped him in his first election in 1993, could backfire on him this time", *Welland Tribune (Ontario)*, 25 October 2000

Sarnia Observer, "Chretien pays tribute to Clinton", 4 December 2000

Hilary MacKenzie, "Chretien salutes Clinton as good friend, great statesman: 'We discuss politics very good,' PM says of U.S. president", *Sudbury Star (Ontario)*, 4 December 2000

Agence France Presse, "M. Bush : les relations avec le Canada pourraient être plus difficiles", 16 December 2000

Robert Russo, "PM meeting with Bush expected soon", *Sarnia Observer (Ontario)*, 16 December 2000

Monte Solberg, "Time to stop shooting from hip, Canada needs a new approach", *The Hill Times*, 12 February 2001

David Jones, "Canada-US Relations after September 11: Back to Basics", *Options politiques / Policy Options*, March 2002, p. 4, <www.irpp.org/po/archive/mar02/jones.pdf>

The Star Phoenix (Saskatoon, Saskatchewan), "Friend-bashing has long history", 15 December 2005

A. 132 2000, July; Robert S Gelbard (No 2) (Indonesia and USA)

Indonesia. The US Ambassador Robert S. Gelbard is accused of interference, following remarks which touch upon the economic situation of Indonesia and judicial consequences of the violence in East Timor.

On 29 June 2000, Gelbard delivered a speech at Trisakti University, Jakarta, in which he stated: "[...] we encourage Indonesia to help East Timor with its own transition to democracy, to resettle former [militia] members away from West Timor, to let remaining refugees return to their homes, and to bring to accountability and to justice those who were responsible for the violence in East Timor last year."

On matters of economy, the Ambassador said: "It is also important that all parties respect the sanctity of legal contracts. All investors need to be able to anticipate the legal consequences of their own actions and those of their Indonesian partners and the confidence that their cases will be heard on their merits.

These reforms are critical to encouraging foreign investment to return to Indonesia. But even more important, they will provide the foundation for sustainable growth in the future and an economy that will be less vulnerable to swings in confidence, since it will be governed by rules and laws, not by the whims and interests of a small circle of individuals."

In reaction to this and other activities by Gelbard, Indonesian legislators accused him of pressuring the government of the receiving State, military leaders accused him of "interfering in its internal affairs as it grapples with parallel political and economic crises." (Spencer). Calls for his replacement, issued *inter alia* by politicians and by the media for his "unreasonable interference in domestic affairs that were entirely beyond the authority of

any envoy" (*laksama.net*) were rejected by the Indonesian President Wahid.

Robert S. Gelbard, "Respecting the rule of law and human rights in Indonesia", *Speech delivered at the Trisakti University, Jakarta*, 29 June 2000, <<http://www.hamline.edu/apakabar/basisdata/2000/07/02/0025.html>>

Geoff Spencer, "US Support for Indonesia Declines Amid Anti-Americanism", *Joyo Indonesian News, AP*, 30 October 2000, <<http://www.malaysia.net/lists/sangkancil/2000-10/msg01084.html>>

Laksama.net, "The World has changed", 14 October 2001, <http://www.laksamana.net/vnews.cfm?ncat=19&news_id=1313>

A. 133 2000, August; D: Christopher Sandrolini (India and USA)

India. The US Consul-General Christopher Sandrolini is criticized for sending two of the consulate's employees to Nanur in the Birbhum district, where eleven Trinamool activists had been killed in July. This journey was described by the media (*Press Trust of India*) as a "fact finding mission". The two officials reportedly had called on the Block Development Officer of Nanur and requested an official version of the events.

The CPI-M called for the Consul-General's expulsion for "meddling in the internal affairs of West Bengal". In a letter to the Prime Minister, Jyoti Basu (Chief Minister of West Bengal), expressed his "surprise" over the visit. Basu wrote in this letter: "Let me state unequivocally that such a visit by any consulate or embassy on a fact-finding mission is totally unprecedented during the past 53 years, at least in such an open manner, and I would like to register the protest of the state government in the strongest possible terms against the action of the U S Consul-General,"

Sandrolini was summoned to a meeting with Basu; he also had a meeting with Chief Secretary Manish Gupta and with Deputy Chief Minister Buddhadev Bhattacharjee.

During Sandrolini's meeting with Basu, the consul-general referred to Article 26 of the *Vienna Convention on Diplomatic Relations*, which, he alleged, gave his officials the right to visit any place. The Chief Minister on the other hand was quoted as stating: "I am of the view that the visit of the consulate personnel was in gross violation of Article 41 of the Vienna Convention which prohibits such interference in the internal affairs of any country".

Basu also requested the Prime Minister to deal with this matter appropriately. CPI-M State Secretary Anil Biswas likewise expressed the opinion that the consular officials had violated the *Vienna Convention*. In his view, the freedom to go anywhere where there was no restriction, did exist, but the officials were barred from holding independent inquiries.

Deputy Chief Minister Buddhadev Bhattacharjee told the press that the Chief Minister would write to Prime Minister Vajpayee to ask for his intervention in the matter.

Ajit Panja however, the Minister of State for External Affairs, maintained that the consulate had the right to visit "any area under its jurisdiction" (*India Express*). He announced that Sandrolini would have a meeting with him as well.

India Express, "US consul-general meets Basu to resolve row", 10 August 2000,
<<http://www.indian-express.com/ie/daily/20000810/ina10020.html>>

The Statesman (India), "Consul-General meets Buddha", 10 August 2000

The Press Trust of India, "Basu seeks PMs intervention against 'foreign interference'", 11 August 2000

A. 134 2000, August; D: Denis Burgess et al (Congo and USA)

Congo. Two US diplomats, the cultural adviser Denis Burgess and the political adviser Roger Moran, are expelled for inappropriate behaviour.

According to Daniel Mulunda, head of the All-African Conference of Churches, the US diplomats were plotting to overthrow President Kabila. He accused them of organizing meetings with members of the opposition at which they reportedly said that Mr Kabila had to be overthrown, even if this required a bloodbath. According to the Congolese Ambassador to the United States, Faida Mitifu, the two diplomats had attended a dinner party in Kinshasa and had on this occasion urged guests who were members of the opposition, to overthrow Kabila. Mitifu was quoted as stating: "It was some kind of incitement to revolution, which for the government of the Congo is a very sensitive issue because we are a country at war and a victim of invasion,"

The Congolese Ministry of Foreign Affairs itself did not refer to specific incidents; the government expelled the two diplomats for "making statements inconsistent with their diplomatic role" (*Guardian*). Two other diplomats were under investigation for the same charges.

The US embassy did not comment. A spokesman for the US State Department referred to the claims as "utterly false and outrageous".

James Morrison, "Part A; World; Embassy Row; Diplomats expelled", *The Washington Times*, 23 August 2000

Stephanie Walters, "Kinshasa expels US diplomats", *BBC online*, 19 August 2000, <<http://news.bbc.co.uk/1/hi/world/africa/888131.stm>>

The Guardian, "Timeline of US 'spy' expulsions", 22 March 2001, <<http://www.guardian.co.uk/bush/story/0,7369,461206,00.html>>

A. 135 2000, August; Robert S Gelbard (No 3) (Indonesia and USA)

Indonesia. The US Ambassador Robert S. Gelbard is criticized for remarks made in an interview.

In a 90 minute interview at the US embassy, the Ambassador made the following statement: "We are very concerned about the opportunities which exist in Indonesia now that it has become such an open society, for extremist groups, including extremist terrorist groups from the outside, to burrow in and implant themselves in Indonesia. We believe that has begun." Gelbard was also quoted as stating: "Unfortunately, Indonesia's so-called intelligence agencies have continued to try to argue that the real enemies in Indonesia are the United States and Australia as opposed to, once again, looking at . . . the real potential threat to their national security". Gelbard also criticized some appointments to the Indonesian cabinet. He reportedly stated that a number of ministers of the outgoing cabinet "had American companies very much in their crosshairs [...] Some of them, unfortunately, appear still to be in the Cabinet. It is shocking to me that the minister of environment [Sonny Keraf] will stay on, for example. [He] has focused virtually only on criticism of American companies and has done virtually nothing to deal with the problems, the real, most important environmental problems which affect Indonesia."

Yasril Ananta Baharuddin, head of the Indonesian House of Representatives Commission I (for Security and Foreign Affairs) considered Gelbard's comments an intrusion in Indonesia's domestic affairs and stated that there would be no excuse for the Foreign Ministry not to summon Gelbard. Baharuddin stated: "His (Gelbard's) clarification should be explained by the foreign ministry to Commission I in its next hearing". He continued to say: "[...] a diplomat accredited to a nation does not have the right to comment or intervene on issues of that country [...] if there is a diplomat who intervenes in a country's domestic affairs, that country has a right to expel him". Yasril made reference to the greater powers of the House under the amended constitution, pertaining to foreign affairs, which reportedly included the acceptance of foreign ambassadors (*Jakarta Post*).

The Foreign Minister, Alwi Shihab, expressed the opinion that Gelbard should be more sensitive to Indonesia's concerns: "He should learn about the psychology of Indonesians. Though he might have good intentions, if he doesn't understand the culture it could be misinterpreted [...]". On 7 September 2000, Shihab stated that the Foreign Ministry had asked Gelbard for a clarification of his statements, as they were considered interference in Indonesia's internal affairs. The Foreign Minister expressed his belief that Gelbard may have misunderstood things and jumped at the wrong conclusions.

Richard S. Ehrlich, "Indonesia's security effort off target, U.S. envoy says; It demonizes Americans while foreign terrorists infiltrate", *The Washington Times*, 29 August 2000

Jakarta Post, "U.S. ambassador in Jakarta ruffles feathers again", 4 September 2000

Antara – The Indonesian National News Agency, "Indonesia: Foreign Ministry asks US Envoy to clarify his statements", 8 September 2000

A. 136 2000, August; Craig Murray (No 1) (Ghana and UK)

Ghana. The British Deputy High Commissioner to Ghana, Craig Murray, is criticized for remarks made at a conference.

At the workshop on "Information for Accountability" in Accra, Murray referred to the problem of corruption. Murray reportedly said: "There is corruption in Ghana. The perception is that it is rising." The Deputy High Commissioner maintained that foreigners who won contracts in Ghana had to pay a percentage of the contract value which would then go to people who were highly placed in the government.

Following these remarks, government officials were quoted as saying that they would ask the Minister for Foreign Affairs to summon Murray, and that Murray had to either provide concrete examples of his accusations or had

to apologize. According to the officials, Murray would be "out of Ghana", if he refused to choose one of the two options.

John Mahama, the Minister of Communications, who was an attendee at the event, remarked that the diplomat's "comments took a lot of people by surprise because the Forum was not the right one". He also criticized Murray's statement as "too generalized, lacking specifics".

The Dispatch (Accra), "Ghana: Government To Deport Diplomat?", 5 September 2000

Financial Times, "Observer: Speak low. Observer Column", 3 October 2000

Jonathan Ungoes / Thomas Franchetti / Mark Franchetti, "The British ambassador says his hosts are boiling people to death...", *Sunday Times*, 26 October 2003

A. 137 2000, September (?); Robert Gelbard (Indonesia and USA) (No 4)

Indonesia. The US Ambassador Robert S. Gelbard is criticized for an insulting gesture.

The *Washington Times* reported that the Ambassador had been "seen [...] 'jabbing his finger into the chest' of a senior Javanese official in Jakarta".

The source of the *Washington Times* is an analyst who refused to be identified, but who stated that behaviour of this kind was considered deeply offensive. American analysts reportedly also found that Gelbard's "tough-talking style" was less effective in a country like Indonesia which expected subtlety and politeness from diplomats accredited there.

At Gelbard's departure in 2001, *Laksama.net* stated: "His term here was characterized by unreasonable interference in domestic affairs that were entirely beyond the authority of any envoy."

Ben Barber, "Indonesia asks U.S. envoy to prove his charge", *The Washington Times*, 30 August 2000, p. A 11

The Jakarta Post, "U. S. ambassador in Jakarta ruffles feathers again", 4 September 2000

Laksamana.net, "The World has changed", 14 October 2001,
<http://www.laksamana.net/vnews.cfm?ncat=19&news_id=1313>

A. 138 2000, September; John Jenkins (Myanmar and UK)

Burma (Myanmar). The British Ambassador, John Jenkins, is criticized for trying to visit a politician.

Jenkins had tried on 4 September 2000 to reach the house of Tin Oo, deputy chairman of the National League for Democracy. The NLD had won the 1990 elections, but the military government had not handed over power. Tin Oo, together with Suu Kyi and other leaders of the NLD, had been under house arrest since 1 September 2000. According to the government, a plainclothes security officer had prevented Jenkins from "forcing his way" into Oo's house.

The government of Myanmar accused Jenkins of overstepping "universal diplomatic norms". In a speech reported by all state-run newspapers, Lt. Gen. Khin Nyunt, the chief of military intelligence, said on 4 September that "two Western countries" (the United States and the United Kingdom) were "creating unrest in the country by agitating a handful of disruptive and subversionist groups who will follow their dictates". On that day, the Deputy Foreign Minister Khin Maung Win met foreign diplomats to justify restrictions placed on the NLD politicians, but British and US diplomats were not invited. On 5 September, the Malaysian government stated: "It is difficult to understand why a foreign ambassador was so adamant to intrude into the internal affairs of an independent and sovereign nation"

Stephen Farrell, "Britain's envoy manhandled in search for Suu Kyi", *The Times*, 4 September 2000

Associated Press, "Myanmar Accuses West of Instigating", 5 September 2000

A. 139 2000, September; Martin Indyk (No 8) (Israel and USA)

Israel. The US Ambassador Martin Indyk is criticized for remarks on the question of Jerusalem.

On 14 September, at the Hebrew Union College in Jerusalem, Indyk declared: "There is no other solution [on Jerusalem] but to share the holy city [...] It is not, and cannot be, the exclusive preserve of one religion, and the solution cannot come from one side challenging or denying another side's beliefs. Here too, mutual respect is the foundation for any agreement" While Yossi Alpher, director of the Israel office of the American Jewish Committee, stated "I don't think [the Ambassador's remarks] differed from Barak's policy, he just stated it differently", a number of Israelis regarded Indyk's remarks as direct American interference.

The politician Uzi Landau (Member of the Knesset, Likud) demanded on 17 September that the Prime Minister (Ehud Barak) declare Indyk *persona non grata*. Indyk's remarks on Jerusalem were "out of his line". Landau was quoted as stating that the Prime Minister now had to behave like leaders of other sovereign nations. Landau also wrote to President Clinton stating that "It is simply unacceptable for a foreign diplomat to involve himself so provocatively in the most sensitive affairs of the country to which he is posted [...] By needlessly raising Arab expectations on the Jerusalem issue, rather than moderating them, Ambassador Indyk has caused inestimable damage to the peace process." He demanded Indyk's recall by Washington.

Gerald Steinberg, political scientist at Bar-Ilan University, stated "There's a very big difference between an Israeli official and an American government official making a statement like that [...] Barak represents the Israeli electorate and is accountable to the Knesset. Martin Indyk was not elected by anybody in Israel. Statements on Jerusalem, even when they sound the same, have very different nuances when they come from an American

official. I think it's possible that Martin Indyk doesn't understand the nuances here."

Larry Schwartz, spokesman of the US Embassy, declared on 14 September that "[o]ur policy (on Jerusalem) has not changed. Jerusalem is holy to Jews, Christians and Muslims. We believe that the future of Jerusalem should be negotiated between the parties, and Ambassador Indyk was making the obvious point that tolerance and coexistence will be required by all for there to be a genuine and lasting peace"

People's Daily, "Barak Urged to Declare U. S. Ambassador 'Persona Non Grata'", 18 September 2000,
<http://english.peopledaily.com.cn/200009/18/eng20000918_50724.html>

Michael Arnold, "U. S. Envoy Hit Over Remarks On Jerusalem. Indyk: No Solution But To Share City", *Forward*, 22 September 2000,
<<http://www.forward.com/issues/2000/00.09.22/news3.html>>

A. 140 2000, September; Robert S Gelbard (No 5) (Indonesia and USA)

Indonesia. The US Ambassador Robert S. Gelbard, is criticized for his verbal attack on a high ranking officer.

Major General Kiki Syahnakri had maintained that US Marines were deployed in West Timor, which Gelbard denied in September 2000. The Ambassador stated: "I think General Kiki Syahnakri only creates rumors. He should concentrate on his daily duties [...] There are no US Marines [in Timor]. I think General Syahnakri finds difficulties in his duties, so he blames others". Syahnakri refused to comment on the statement.

Demonstrators at the US Embassy accused Gelbard of frequent interference in the country's political affairs and demanded the expulsion of the Ambassador. Yasril Ananta Baharuddin, Chairman of Commission I of the Indonesian House of Representatives, maintained that Gelbard's statement on General Syahnakri amounted to undue interference in

Indonesia's internal affairs. Commission I urged the Foreign Ministry to summon the Ambassador to clarify his statements. Yasril was quoted as saying that if the Ministry failed to do so, the Commission itself would summon Gelbard.

Joyo Indonesian News, "Syahnakri plays down spat with US Ambassador Gelbard", 28 September 2000,

<<http://www.malaysia.net/lists/sangkancil/2000-09/msg00544.html>>

Antara – The Indonesian National News Agency, "House Commission urges Foreign Ministry to summon US Envoy", 28 September 2000

Laksama.net, "The World has changed", 14 October 2001,

<http://www.laksamana.net/vnews.cfm?ncat=19&news_id=1313>

A. 141 2000, September; Robert S Gelbard (No 6) (Indonesia and USA)

Indonesia. The US Ambassador Robert S. Gelbard is criticized for his remarks on Indonesia's omission to deal with the militia in West Timor.

Gelbard, speaking at an economic conference, co-hosted by the US Embassy on 25 September 2000, accused Indonesia of failing to bring the military under greater civilian control. He also charged the receiving State with failing to disarm militias who were accused of killing three UN refugee workers in West Timor. Gelbard added: "Indonesia risks losing moral support if this issue is not addressed", but he also offered the support of the United States and the international community. His comments were similar to the remarks by US Defence Secretary William Cohen, who had said earlier (in Jakarta) that there could be consequences for Jakarta's relations with the international community and pointed out that continued economic assistance to Indonesia was endangered if security was not restored in West Timor.

The Ambassador's comments resulted in charges of American interference in Indonesian affairs. The Defence Minister Mahfud threatened Gelbard's expulsion. President Wahid however denied this option and stated that the Ambassador should be treated with the honour becoming a foreign diplomat.

Sheldon W. Simon, "The United States and Southeast Asia: Blowing Hot and Cold", *Center for Strategic and International Studies*, issue December 2000,
>http://www.csis.org/pacfor/cc/004Qus_asean.html<

US Committee for Refugees, "USCR Condemns Killing of UN Refugee Workers in Indonesia, Calls on Indonesia and UN to Take Immediate Action to Contain Unrestrained Violence", 6 September 2000. Available online:
<<http://web.archive.org/web/20000930150157/refugees.org/news/crisis/indonesia/indonesia.htm>>

Agence France Presse, "UN Security Council delegation to visit Indonesia", 25 September 2000

James Morrison, "Part A; World; Embassy Row; Warning Indonesia", *The Washington Times*, 27 September 2000

A. 142 2000, October; Robert S Gelbard (No 7) (Indonesia and USA)

Indonesia. The US Ambassador Robert S. Gelbard is accused of trying to influence the selection of the new head of the Indonesian army.

According to the Minister of Defence, Mahfud, Gelbard had exerted pressure on the government to pick Lieutenant General Agus Wirahadikusumah as the new head of the army. He accused Gelbard of "interfering" in senior military appointments. Mahfud threatened the expulsion of Gelbard, an option which was rejected by President Wahid. In view particularly of Gelbard's alleged attempts to influence the appointment of high-ranking military officials, a member of the the Foreign Affairs

Committee of the Indonesian Parliament expressed his dislike of the Ambassador to the BBC; Indonesian Members of Parliament were compiling a petition to President Wahid to ask him for the removal of Gelbard, and the Indonesian parliament threatened to expel the Ambassador.

The US Embassy denied Mahfud's charges and stated that it was "deeply concerned by these kinds of false statements emanating from the Ministry of Defense and elsewhere", calling them astonishing and irresponsible. Gelbard also denied the charge of trying to influence appointments.

BBC online, "US denies interfering in Indonesia", 16 October 2000,
<<http://news.bbc.co.uk/1/hi/world/asia-pacific/974694.stm>>

Richard Galpin, "Wahid urged to remove US ambassador", *BBC online*, 2 November 2000,
<<http://news.bbc.co.uk/1/hi/world/asia-pacific/1003746.stm>>

Dan Murphy, "Indonesia sours against the US. Threats of anti-American violence result in travel warning and the Embassy's closure through Monday", *The Christian Science Monitor*, 3 November 2000

Alex Spillius, "Americans are warned to avoid Indonesia", *Daily Telegraph*, 3 November 2000,
<<http://www.telegraph.co.uk/news/main.jhtml?xml=%2Fnews%2F2000%2F11%2F03%2Fwindo03.xml>>

Sheldon W. Simon, "The United States and Southeast Asia: Blowing Hot and Cold", *Center for Strategic and International Studies*, issue December 2000,
<http://www.csis.org/pacfor/cc/004Qus_asean.html>

Terence Lee, "Indonesia Outs Its History", *Tempo*, 5 February 2001

**A. 143 2000, October; Robert S Gelbard (No 8)
(Indonesia and USA)**

Indonesia. The US Ambassador Gelbard is criticized over his behaviour in the case of Maness.

Aaron Ward Maness, a US citizen, had, according to the Indonesian Minister of Defence, Mahfud, been apprehended in Irian Jaya. Mahfud called Maness an "infiltrator" who was suspected of working for the independence of Irian Jaya and of inciting violence in Wamena. He stated that, while there was no concrete evidence which linked the US citizen to activities of espionage, his behaviour in Irian Jaya in early October justified strong suspicion.

The Minister of Defence commented as follows on Gelbard's involvement: "Aaron Ward Maness [...] was arrested on October 21 but he was taken by the US ambassador to Jakarta when he was about to be deported at the Sukarno-Hatta international airport [...] Based on the information that I obtained, the man was not deported as he was immediately taken by Ambassador Gelbard." The Minister threatened the expulsion of Gelbard, an option which was rejected by President Wahid.

The US Embassy maintained that Maness was a tourist, and further stated that it was "dismayed and perplexed" by Mahfud's charges. It denied any intervention on Gelbard's part in the deportation of the American and spoke of a "pattern of disinformation to create a climate of anti-Americanism" (*Jakarta Post*). Gelbard himself stated that Maness was a US Air Force pensioner.

Alwi Shihab, Indonesian Minister of Foreign Affairs, said in reference to Maness "[t]he actions of one person cannot be used as a reflection of the policy of the U. S. government as a whole". He did not think it necessary to summon Gelbard – "It's enough for our director general to call him up on the telephone and seek clarification".

Antara – The Indonesian National News Agency, "Indonesia: US Embassy denies American arrested in Irian Jaya was spy", 23 October 2000

Agence France Presse, "Minister says Indonesia caught US 'infiltrator' in troubled Irian Jaya", 23 October 2000

Jakarta Post, "US Embassy Denies Arrested American Is a Spy", 23 October 2000, <<http://www.hamline.edu/apakabar/basisdata/2000/10/23/0014.html>>

United Nations Foundation Unwire, "Arrest, Release and Tribunal For Inciting Violence", 23 October 2000, <<http://www.unfoundation.org/unwire/archives/UNWIRE001023.asp>>

Japan Economic Newswire, "U.S. embassy accuses Indonesian ministers of creating rift", 28 October 2000

Sheldon W. Simon, "The United States and Southeast Asia: Blowing Hot and Cold", Center for Strategic and International Studies, issue December 2000. Available online: <http://web.archive.org/web/20010304021706/http://www.csis.org/pacfor/cc/004Qus_asean.html>

A. 144 2000, November; Craig Murray (No 2) (Ghana and UK)

Ghana. Craig Murray, the British Deputy High Commissioner to Ghana, is criticized for remarks made in the run-up to the presidential and general elections in December.

Murray had called on the electoral commission to let only people with new identity cards vote.

The Foreign Minister of Ghana, Victor Gbeho, was quoted as saying that Murray's comments "bordered on direct interference in the internal affairs of Ghana and are clearly unacceptable".

Rod Pullen, the British High Commissioner, defended his deputy and said that Mr Murray's remarks had been made without malice. Mr Pullen also drew attention to the fact that the United Kingdom had provided funds for the identity card replacement exercise, after several political parties in Ghana had affirmed the need for it.

On 27 November 2000, however, Victor Gbeho addressed the diplomatic corps and warned foreign governments and institutions not to interfere in the elections. Gbeho stated: "It must be understood that donor assistance confers no licence on any government or institution to directly or indirectly interfere in matters that fall within the domestic jurisdiction of Ghana".

Agence France Presse, "Ghana warns against foreign interference in elections", 28 November 2000

A. 145 2000, November; Wu Dawei (South Korea and China)

South Korea. The Chinese Ambassador Wu Dawei is criticized over remarks on relations between Korea and Taiwan.

Wu Dawei had told Korean journalists during a lecture and a question-and-answer session at the Korea Press Foundation in Seoul that Korea should have consulted with China when dealing with the possibility of reopening direct air flights between Seoul and Taipei.

In reaction to these remarks, an official at the Korean Foreign Affairs-Trade Ministry was quoted as saying: "That is nonsense. The decision is purely up to us."

On 21 November 2000, Lee Joung-binn, the Korean Foreign Affairs-Trade Minister stated that Korea had protested against the remarks. The Minister was said: "We have concluded that Ambassador Wu, in making the remarks, crossed the line of acceptable speech for a diplomat serving in Seoul [...] Therefore, our government has conveyed our message to him through an appropriate channel".

Son Key-young, "Seoul Protesteds [*sic*] China Envoy's 'Inappropriate' Remarks", *Korea Times*, 22 November 2000, reported on *World Tibet Network News*, 22 November 2000.

Available online:

<http://www.tibet.ca/wtnarchive/2000/11/22_4.html>

Son Key-young, "China Envoy Angers Koreans Again", *The Korea Times*, 17 November 2000,

A. 146 2000, November; Irfanur Raja (Bangladesh and Pakistan)

Bangladesh. The Pakistani Deputy High Commissioner, Irfanur Rehman Raja, is expelled over comments on the Bangladesh war of liberation.

In November, Raja had refused to apologize for war crimes committed by Pakistani forces in the war of 1971. He also denied Bangladeshi claims that nearly three million people were killed in the war and spoke, in reference to a recent report, of a figure of about 26,000. Raja further stated at a seminar on 27 November that the atrocities during the war were triggered by "miscreants" from Bangladesh's ruling party and not by the Pakistani army. The Bangladeshi government lodged a strong protest with the Pakistani government. Political and civil rights groups called for Raja's expulsion; violent protests took place in Dhaka.

According to the Bangladeshi Foreign Minister Azad, the people of Bangladesh had reacted with "indignation and hatred" to the comments. Azad was also quoted as stating that it was the expectation of all patriotic people that those who cherished independence and were in favour of the War of Liberation would be united on the question of independence and sovereignty. The Minister regretted that the opposition party BNP had initially not commented on the remarks and hoped that in the future Bangladesh would be "united and resist all designs and machinations".

On 30 November, Raja was withdrawn by the Pakistani government; a spokesman for the Pakistani Foreign Office expressed his regret over "the controversy surrounding the reported remarks of the Pakistan Deputy High Commissioner [...] In the circumstances it has become impossible for the officer to carry out his duties and responsibilities as a member of the High Commission. The government has, therefore, decided to transfer him from Dhaka."

However, according to the Bangladeshi Home Minister Nasim, Raja had not left the country.

On 15 December, Iqbal Ahmad Khan, the Pakistani High Commissioner, was summoned by the Foreign Office in Bangladesh and told that the conduct of Raja was not compatible with his status as a diplomatic agent. Raja was declared *persona non grata*, which was reportedly the first time Bangladesh had taken such a step against a foreign diplomat.

The Pakistani government rejected allegations of undiplomatic behaviour. Pakistan stated that it deeply regretted the decision, that it was surprising and unjustified and not in keeping with the spirit of friendly relations between the two States.

Moazzem Hossain / Susannah Price, "Dhaka expels Pakistani diplomat", *BBC online*, 15 December 2000, <http://news.bbc.co.uk/1/low/world/south_asia/1072262.stm>

E-mela, "Pakistan regrets over controversial remark and recalls Deputy High Commissioner [sic]". Available online:

<<http://web.archive.org/web/20010617072434/http://e-mela.com/Bangladesh/>>

Ikram ul Majeed Sehgal, "From the Desk of the Publisher and Managing Editor", *Globe*, vol. 13, no. 12, December 2000, Karachi (Pakistan). Available online:

<<http://web.archive.org/web/20011115065700/http://www.defencejournal.com/globe/2000/dec/publisher.htm>>

A. 147 2000, December; Glen Warren (Sudan and USA)

Sudan. Glen Warren, a US diplomat (working as a political officer) is expelled following meetings with opposition leaders.

Warren had reportedly met leading politicians of the oppositional National Democratic Alliance in a house in Al-Amarat, a suburb of Khartoum. Sudanese security officers entered the house, conducted a search and confiscated notebooks and mobile phones. The participants of the meeting were arrested and accused of plotting an uprising, backed by military

action, of attempting the capture of towns and of trying, with American help, to sabotage installations.

Mustafa Osman Ismail, Foreign Minister of Sudan, was quoted as stating that Warren had been caught in a meeting with leaders of non-registered political organizations and was discussing with them issues related to Sudanese security and stability. Ismail referred to this meeting as "an example [...] of hostile American activity against Sudan"; it was "against his diplomatic mission in Khartoum". Warren was given three days to leave the country.

Al-Anbaa, an official newspaper, claimed that Warren was "participating in a sabotage scheme. The official coordinated with the alliance to carry out an armed act with American support". It also stated that the participants had planned "an internal uprising supported by armed action [...] the group was found in possession of a plan on how to support the rebel Sudan People's Liberation Army". The sabotage acts were allegedly directed against vital installations of Sudan.

A member of the alliance, the lawyer Ghazi Suleiman, denied that the meeting was secret and said that authorities had known about it.

The US Embassy did not immediately comment. However, President Clinton's special envoy for Sudan, Harry Johnston, called the idea that the US worked with the National Democratic Alliance to plot a popular uprising "ridiculous".

Phil Reeker, State Department spokesman, stated that the USA "utterly reject[ed]" the idea that Warren had committed a wrong by meeting with opposition members. Reeker remarked that the meeting involved discussions of Sudan's general political situation. He also added that the Sudanese government had never told the US side that they could not meet with the group.

BBC online, "American diplomat expelled from Sudan", 7 December 2000
<<http://news.bbc.co.uk/1/hi/world/africa/1059839.stm>>

CNN, "U. S. diplomat expelled from Sudan", 7 December 2000. Available online:
<<http://www.cnn.com/2000/WORLD/africa/12/07/sudan.diplomat.03/>>

CBS, "U. S. Diplomat Kicked Out Of Sudan", 7 December 2000. Available online:
<<http://www.cbsnews.com/stories/2000/12/07/world/main255471.shtml>>

CNN, "Sudan says it uncovered plot involving U. S. diplomat", 7 December 2000. Available online:
<<http://web.archive.org/web/20021008143710/http://www.cnn.com/2000/WORLD/africa/12/07/sudan.plot.reut/>>

A. 148 2001, February; Thomas Miller (Bosnia and Herzegovina and USA)

Bosnia-Herzegovina. The US Ambassador Thomas Miller receives a warning for his alleged behaviour of interference.

It was claimed that Miller had tried to persuade parliamentarians to vote for a pro-Western coalition and its candidate for the office of Prime Minister in the parliamentary vote for a new government. In January, he had voiced concerns regarding the Prime Minister's choice of cabinet members which were reportedly drawn from political groups close to the Serb Democratic Party – the party of Radovan Karadzic, who is wanted by the International Criminal Tribunal for the Former Yugoslavia.

Zivko Radisic, chairman of the Bosnian presidency, stressed at a news conference that foreign diplomats were "not here to choose [local] officials, to declare who is modern and who is not, to influence the voters, to influence the media". He accused Miller of "interfering in the country's internal affairs by intimidating parliament deputies" and suggested the expulsion of Miller (as well as of Robert Barry, who headed the OSCE mission in Bosnia). Ante Jelavic, another member of the presidency, supported Radisic with the words: "With due respect for US Ambassador Thomas Miller, I personally disagree sometimes with his behaviour and political actions, because he oversteps sometimes". Halid Genjac, the third member of the presidency, did not agree with Radisic because of the

"unpredictable effect on relations with the United States" which could ensue.

The US Embassy in Sarajevo maintained that Miller's behaviour was "in line with an ambassador's responsibilities".

Richard Boucher, spokesman for the US State Department, stated that "The United States has full confidence in Ambassador Miller [...] He and we will continue to work with the rest of the international community on the economic and political development of Bosnia-Herzegovina"

Balkan Times, "U. S. Ambassador to Bosnia Warned About Possible Expulsion", 24 January 2001, 6 February 2001, (*Reuters, AP, AFP*). Available online:
<<http://web.archive.org/web/20040514091017/http://balkantimes.com/html2/english/3414.htm>>

Radio Free Europe / Radio Liberty Newslines, "Bosnian Serbs, Croats Unite Against U. S. Ambassador", vol. 5, no. 26, 7 February 2001. Available online:
<<http://www.b-info.com/tools/miva/newsview.mv?url=news/2001-02/text/feb07.rfe>>

Agence France Presse, "US, British ambassadors accused of interfering in Bosnian politics", 7 February 2001

Brian Denny, "NATO-occupied Bosnia", *The Guardian*, 21 February 2001. Available online:
<<http://web.archive.org/web/20050901133125/http://www.zip.com.au/~cpa/garchve3/1034nato.html>>

A. 149 2001, March, unnamed (Bangladesh and India / Pakistan)

Bangladesh. Two diplomats are criticized over a meeting with the former president of the country.

According to Begum Khaleda Zia, the chairperson of the BNP and leader of the opposition in Parliament, an Indian and a Pakistani diplomat (according to other sources, an ambassador and an intelligence officer) had met General Ershad, former President of Bangladesh and chairman of the

Jatiya Party, who was at that time imprisoned in Dhaka Central Jail. His visitors allegedly made an attempt to persuade him to "dissociate from the four party Opposition alliance". Naziur Rahman Manjur, Secretary General of the Jatiya Party, claimed that an Indian diplomat had met Ershad to pressure him into writing a letter to party leaders to seek a division vote.

Khaleda Zia referred to the visit as "interference into the country's internal politics". She also called it a "conspiracy to grab the power by sending the chief of a foreign country's intelligence agency and an ambassador to the Dhaka Central Jail violating all the existing rules and regulations and undermining the prestige and dignity of an independent nation". The visit was "part of the naked manifestation" of an attempt to break the four-party opposition alliance and it "created hatred and resentment among the people of Bangladesh against those who tried to interfere in the country's internal politics in a 'secret way' on behalf of the government violating all the diplomatic norms [...] We think such a behaviour was humiliating for an independent and sovereign nation".

The prison authorities however stated that they did not know anything about the visits. The Indian High Commission likewise denied the involvement of an Indian diplomat.

United News of Bangladesh, "India-Protest", 19 March 2001

United News of Bangladesh, "Khaleda-Condemn", 19 March 2001

The New Nation, "Khaleda blasts diplomats visit to Central Jail", vol. 2, no. 173, 20 March 2001. Available online:

<<http://web.archive.org/web/20021114212320/http://www.nation-online.com/200103/20/n1032001.htm>>

Atiqur Rahman, "RAW hand' in bid to break up alliance", *Tribune News Service*, 21 March 2001. Available online:

<<http://web.archive.org/web/20060516102410/http://www.tribuneindia.com/2001/20010321/world.htm>>

Haroon Habib, "Bangla Opposition alliance faces split", *The Hindu*, 28 March 2001,

<<http://www.hinduonnet.com/thehindu/2001/03/28/stories/0328000e.htm>>

A. 150 2001, March; Boris Smirnov (Bulgaria and Russia)

Bulgaria. Boris Smirnov, Counsellor at the Russian embassy to Bulgaria, is expelled. It is alleged that Smirnov had "lobbied" for the success of pro-Russian candidates in the Parliamentary elections. Smirnov stands accused of interference in the domestic affairs of Bulgaria.

RIA Novosti, "Bulgaria identifies expelled Russian diplomats", 19 March 2001

A. 151 2001, April; Craig Murray (No 3) (Ghana and UK)

Ghana. The Deputy British High Commissioner, Craig Murray, is accused in connection with his behaviour during the elections in December 2000.

According to Tumesih Bah, the deputy national chairman of the NDC (National Democratic Party), Murray had "forced his presence" (*Yanquoi*) into the operation room of the electoral commission building during the elections. In Bah's view, this conduct infringed Ghana's sovereignty as an independent State.

The NDC accused Murray of interference in the internal affairs of Ghana. Bah was quoted as stating that the Deputy High Commissioner's behaviour was "beyond his diplomatic mission, and totally unacceptable to the NDC and the entire Ghanaian citizenry" (*Yanquoi*).

Orlando Yanquoi, "NDC Accuses British Diplomat Of Political Interference", *Expo Times* (Sierra Leone), vol. 7, no. 3, 11 – 24 April 2001

A. 152 2001, April; Craig Murray (No 4) (Ghana and UK)

Ghana. The Deputy British High Commissioner, Craig Murray, is criticized over remarks made in the Volta region.

During his visit, Murray commended the present government for its anti-corruption campaign and promised British support in the battle against corruption. He did however also suggest to the government of President Kufuor the privatization of certain institutions, including the GCB (Ghana Commercial Bank) and the Ghana Civil Aviation Authority to provide better services to the people of Ghana. Murray also declared his agreement with the government's decision to put some public officials on leave while investigating their record. According to the government, a great number of officials had used their positions to provide money for the election expenses of the NDC (the ousted National Democratic Party).

The NDC accused Murray of interference in the internal affairs of Ghana. NDC's Deputy National Chairman, Tumesih Bah, was quoted as stating that the Deputy High Commissioner's behaviour was "beyond his diplomatic mission, and totally unacceptable to the NDC and the entire Ghanaian citizenry" (*Yanquoi*). Bah remarked that his party was "ready to take a legal action against Mr. Morris despite his diplomatic immunities for his interference in the internal affairs of Ghana."

Orando Yanquoi, "NDC Accuses British Diplomat Of Political Interference", *Expo Times* (*Sierra Leone*), vol. 7, no. 3, 11 – 24 April 2001

Africa News / Accra Mail, "Ghana; Government Asked to Privatise GCB And GCAA", 16 April 2001

A. 153 2001, April; unnamed (Malaysia and the USA and other States)

Malaysia. After several diplomatic agents, including members of the US mission to Malaysia, attended a meeting in which the Parti Keadilan Nasional (National Justice Party) briefed attendees on the medical condition of Anwar Ibrahim (the former Deputy Prime Minister), the government issues a warning.

Rais Yatim, Minister in the Prime Minister's Department, who was asked to comment on the diplomatic attendance, reportedly stated that diplomatic agents who interfered in the internal affairs of the country, could be asked to leave. The Minister added that there had also been "a case of a diplomat being actively involved in developments of a local political party". In a situation of this kind, the diplomats, according to Rais Yatim, could be asked to show cause for their actions. The Minister emphasized that "it is not wrong for a diplomat to accept an invitation by a political party to listen to speeches but they should not take an active part in the function or be partisan". However, Dr Yatim also stated that diplomats should be asked why they had been so keen to attend the meeting (by the Parti Keadilan Nasional).

Malaysia General News, "Meddling Diplomats can be ordered to leave", 6 April 2001

A. 154 2001, April; Jeffrey James (Kenya and UK)

Kenya. Jeffrey James, the British High Commissioner, is accused of meddling in Kenya's political affairs.

It is reported that Daniel arap Moi, the Kenyan President, warned James to cease meddling in the Kenyan constitutional review process. Kenya, the President stated, was a sovereign country and could not tolerate interference in its internal affairs by "the likes of Jeffrey James who do not understand their role as diplomats or willingly choose to annoy". Moi also

said that the constitutional review process was "not an undertaking of the British government and is not within his [James'] domain".

The President did not make reference to a specific form of behaviour which had triggered his comments. However, two possible explanations stand out from analyses provided by the media. Several news sources referred to Moi's displeasure "with the company the envoy kept" (*Kihuria / Muiruri*). It became known that James maintained contact with Richard Leakey and had recently met him in Northern Kenya. Leakey was Head of the Kenyan Civil Service and Secretary to the Cabinet, but was forced to resign in March 2001.

But James had also met with members of the constitutional review commission (which was led by Professor Ghai), to receive direct information on the review process. It is reported that the government had been worried about the possibility that James might have attempted to influence the review process.

Agence France Presse, "Kenya's Moi tells British envoy to 'keep off' reform process", 15 April 2001

Agence France Presse, "Kenyan president censures UK envoy as fears heighten over reforms", 15 April 2001

Njonjo Kihuria / Maina Muiruri "What went wrong with Sir Jeffrey's diplomacy?", *Sunday Standard web site*, Kenya, 2 December 2001, reported in *BBC Worldwide Monitoring*, "Kenya: Paper analyses why British envoy was rebuked by President Moi", 2 December 2001

A. 155 2001, April; Ren Xiaoping (Australia and China)

Australia. The Chinese embassy is criticized over remarks directed against the Australian Prime Minister, John Howard.

Howard had expressed support for the US President George W. Bush's promise to help defend Taiwan. He had also said he did not want to see

any aggression by China against Taiwan and referred to potential damage to bilateral relations.

The spokeswoman for the Chinese embassy in Australia, Ren Xiaoping, said that Howard's remarks had been "inappropriate...and certainly [...] not helpful to the stability of the situation across the Taiwan Strait [...] China hopes Australia will stick to the 'one China' policy ... and avoid through its own action any possible damage to the bilateral relations over the Taiwan question". Ren took exception particularly to the reference to Chinese aggression: "The word 'aggression' is certainly a badly chosen word [but] his remarks in total we think are inappropriate"

John Howard replied as follows: "I thought the reaction of the Embassy was unnecessary. And, I would point out, if they look at the totality of what I said, that I would want to see everybody involved exercise a degree of calm and restraint [*sic*]. We adhere, as a country, to a One China policy. We would expect both China and Taiwan to show restraint in the cross strait relations between those two entities. But I don't think the Embassy reaction was either appropriate or necessary."

On 27 April, Xie Xiaoyan, the chargé d'affaires of the PR China, was summoned to a meeting with Colin Heseltine, First Assistant Secretary of the North Asian division in the Ministry of Foreign Affairs. A spokesman for Alexander Downer, the Minister of Foreign Affairs, declared: "We called him in just to put our position on the table [...] We have a One China policy and have had since 1972 – we urge all the parties involved to settle their differences peacefully and not resort to the use of force."

For the Chinese embassy, Ren Xiaoping defended her initial comments and called in turn the Prime Minister's latest remarks "inappropriate".

Taipei Times, "China rebukes Australian PM over Taiwan" (*Reuters*), 28 April 2001.

Available online: <<http://taipeitimes.com/news/2001/04/28/story/0000083489>>

Annabel Crabb, "Howard Carpets Chinese Envoy", *The Age*, 28 April 2001. Available online:

<<http://web.archive.org/web/20021027163627/http://www.theage.com.au/news/2001/04/28/FFXURZST0MC.html>>

ABC [Australian Broadcasting Corporation] News Online, "China criticises Australia", 27 April 2001,
<<http://web.archive.org/web/20031017120452/http://www.abc.net.au/worldtoday/s284305.htm>>

Ian Henderson, "Navy row threatens China ties", *The Australian*, 30 April 2001

A. 156 2001, June; Abdul Qader Jaffer (UK and Pakistan)

United Kingdom. The Pakistani High Commissioner, Abdul Qader Jaffer, becomes subject of criticism after he allegedly campaigned on behalf of a political candidate in Bradford.

Richard North, the election agent for Imran Hussein (the UK Independence Party's candidate in Bradford), reportedly made the following remarks in a letter to the Foreign Secretary: "The Pakistani High Commissioner visited mosques and asked people to support Mohammed Riaz, the Conservative candidate. What right has the representative of a foreign government to interfere in a British election?" North considered such a conduct "outrageous".

A spokesman for the Foreign Office stated: "We are aware of these allegations and we are investigating to see if there's anything in them." However, the spokesman also added: "It is usual for foreign diplomats to attend and observe political meetings, it's part of their job. The fact that he has been at these meetings is not a problem at all."

Telegraph & Argus, "Foreign Office probes Commissioner's visit", 5 June 2001. Available online:

<<http://archive.ilkleygazette.co.uk/2001/6/5/139652.html>>

Sarah Walsh, "Foreign Office probes Commissioner's visit.", *This is Bradford*, 6 June 2001

A. 157 2001, June; Mary Ann Peters (Bangladesh and USA)

Bangladesh. Mary Ann Peters, the American Ambassador to Bangladesh, is criticized for submitting an economic plan to the government.

During a speech given to the American Chamber of Commerce in Bangladesh, Peters had offered a "five-point action economic agenda" outlining "ports, power, garments, natural gas and phones" as areas to which the next government should give priority in its first hundred days. Peters stated: "I realise that this list is not sacrosanct, but I offer it as a starting point for the new Government".

Various political parties in Bangladesh took exception to these remarks. The Bangladesh Communist Party issued a statement in which it said that the comments had been "uncalled for and directly interfered in Bangladesh's domestic affairs". The President and the Secretary General of the Communist Party were also quoted as stating that such "remarks are expression[s] of naked imperialist interference and are devoid of accepted diplomatic norms".

Sheikh Hasina, the Prime Minister, pointed out that every party had its own election manifesto on whose basis it would run the government. Begum Khaleda Zia, the main opposition leader, did not comment on Ms Peters' remarks.

Agence France Presse, "US envoy sets economic targets for post-election Bangladesh", 16 May 2001

Xinhua News Agency, "Bangladeshi Leftist Party Blasts U.S. Ambassador in Dhaka", 17 May 2001

James Morrison, "Part A; World; Embassy Row [...] Bangladesh Anger", *The Washington Times*, 18 May 2001

Haaron Habib, "U. S. envoy's remarks raise hackles in Dhaka", *The Hindu*, 16 June 2001. Available online:

<<http://www.hinduonnet.com/thehindu/2001/06/16/stories/0316000j.htm>>

A. 158 2001, July / August; Dan Coats (Germany and USA)

Germany. Dan Coats, the new US Ambassador to Germany, is criticized over comments made before the Senate Foreign Relations Committee.

At his confirmation hearing for the post of Ambassador to Germany, Coats remarked to the Senate Committee: "If they [Germany] are to maintain a central partnership in NATO, it has to be accompanied by more than rhetoric; it has to be accompanied by resources". Coats also stated that there would be a "great danger" that the European rapid-response force would be a "hollow force", if Germany did not increase her military spending; it would lack the "necessary infrastructure with training and equipment to be an effective fighting force unless it is supported by a sufficient budget".

Bela Anda, spokesman for the German chancellor Schröder, told a newspaper that German officials were "'astonished' at the audacity of Coats' statements on what they consider to be an 'internal German issue,' and that they will respond to Washington through 'appropriate channels.'"

Agence France Presse, "Germany rankled by US ambassador nominee's comments on defense: report", 3 August 2001

James Morrison, "Germany 'astonished'", *The Washington Times*, 6 August 2001

Daryl Lindsey, "US ambassador starts off on stern foot with Germany", *Christian Science Monitor*, 6 August 2001

A. 159 2001, August: Dan Donahue et al (Afghanistan and United States, Australia and Germany)

Afghanistan. Three diplomatic and consular agents (from the USA, from Australia and from Germany) are expelled. They had attempted to visit a number of nationals of Western countries (two American, two Australian and four German aid workers), who had been detained on charges of preaching Christianity.

Taleban officials told the envoys that their presence hampered their investigation into a "widespread conspiracy by foreign aid organisations to spread Christianity" (*The Times*). They were also told that foreign interference would be "counter-productive" and would not aid the release of the detainees.

David Donahue, the American consul-general who was expelled, reported that the envoys had been warned that "any sign of persistence in pressure or trying to hurry the investigation will be counterproductive." Donahue emphasized the detainees' right to consular access.

Donahue and his colleagues left the country without having had the opportunity to speak to the detained aid workers.

Zahid Hussein / Roger Boyes, "Taleban tell diplomats to leave country", *The Times*, 17 August 2001

Kathy Gannon, "Taliban say visas of Western diplomats will not be extended beyond Tuesday", *Associated Press*, 18 August 2001

Kathy Gannon, "Disappointed diplomats to leave Afghanistan - without seeing detained nationals", *Associated Press*, 20 August 2001

A. 160 2001, August; unnamed (Sri Lanka and various States)

Sri Lanka. Foreign diplomats receive a warning with regard to possible interference through remarks on the current situation in the country.

In August 2001, the situation in Sri Lanka was marked by issues such as the prorogation of Parliament, a referendum to establish a new constitution, the amending or enacting of the new constitution through extra-parliamentary methods and the independence of the judiciary (an impeachment motion had been brought against Chief Justice Sarath Silva); issues which the International Bar Association had wished to examine in the country through a delegation headed by Lord Brennan (to whom a visa was however denied).

The Foreign Ministry in Sri Lanka issued a warning note to diplomats and foreign funded NGOs to the effect that their comments on the current Sri Lankan situation might amount to an interference in the internal affairs of that State. Such public statements would be "contrary to the well-established norms of diplomatic conduct and practice. [The Ministry] invited the attention of resident diplomatic missions to the relevant provisions of the Vienna Convention relating to the Diplomatic Relations, in particular Article 41. The Foreign Ministry has stated that if any diplomat or diplomatic mission wished to make any representation, it could be done through the Ministry of Foreign Affairs or with its knowledge" (*de Silva*).

Nilika de Silva, "UN envoy wants CJ to step aside", *The Sunday Times* [Sri Lanka], 19 August 2001. Available online:
<<http://sundaytimes.lk/010819/frontm.html>>

A. 161 2001, August; Bharat Joshi (Gambia and UK)

Gambia. The British Deputy High Commissioner, Bharat Joshi, is expelled after attending a meeting with the opposition.

Bharat Joshi had attended and "interacted" at an opposition press conference to which he was invited. This conduct received condemnation by Fatumata Jahumpa Cessay, a Gambian government official; Joshi, whose presence was found to be "harmful to Gambia's national interests" (*BBC*), was declared *persona non grata* and given 72 hours to leave the country. According to the British Foreign Office, this decision had been taken at the highest level. The Acting Gambian Minister of Justice, Joseph Joof, was later quoted as stating that the decision had not been "an arbitrary one but [came] as a result of persistent and unacceptable interference in the internal and domestic affairs of the Gambia".

According to the Foreign Office Minister Ben Bradshaw "no satisfactory reason ha[d] been given" by the Gambian government for the expulsion. Bharat Joshi had, according to Foreign Office Ministers, fulfilled a normal part of the tasks of a diplomatic envoy, and his expulsion had no justification. Foreign Office sources also stressed that reporting on political events of the country was standard diplomatic work.

It is reported that other diplomats (such as the Nigerian High Commissioner, the Chinese Ambassador and the Liberian Ambassador) had been invited to rallies of the ruling party in the past.

The Gambian High Commissioner in Britain was summoned to the Foreign Office to provide an explanation.

On 1 October 2001, the British Government decided to take the following measures in response to the expulsion: the recall of the Gambian Deputy High Commissioner was requested, a planned ship's visit to Gambia was cancelled and Chevening scholarships for Gambian officials were withdrawn.

The background for the political tensions may have been provided by the forthcoming elections in October, which were considered to provide a challenge to the government of President Yayha Jammeh.

Richard Beeston, "UK envoy expelled by The Gambia", *The Times*, 24 August 2001

BBC online, "Gambia kicks out British diplomat", 23 August 2001,
<<http://news.bbc.co.uk/1/hi/world/africa/1506126.stm>>

West Africa.net, "The Joshi case – Jammeh's latest blunder", 24 August 2001,
<<http://www.west-africa.net/jammeh/wwwboard/messages/1479.html>>

Agence France Presse, "'Unacceptable' overseas interference over expelled envoy: Gambia", 30 August 2001

Foreign and Commonwealth Office, Press and Public Affairs Office of the British High Commission in New Delhi, "Britain's Measures Following Expulsion Of British Diplomat", 1 October 2001. Available online:
<http://web.archive.org/web/20040101165515/http://www.ukinindia.org/press/general/gen_266.asp>

A. 162 2001, September; Michael Kozak (Belarus and USA)

Belarus. The US Embassy is accused of paying opposition leaders in Belarus to remove President Lukashenko.

The Embassy by its own admission contributed to opposition parties through non-governmental organizations which were affiliated to them. The US provided funds for websites, newspapers and "manipulative opinion polls" and it actively supported a student resistance movement. Prior to the elections, five opposition leaders met in the US embassy to agree on a common candidate.

The American Ambassador to Belarus, Michael Kozak, stated in a letter to *The Guardian* on 25 August 2001 that that the (American) "objective and to some degree methodology" were the same in the cases of Nicaragua 1989 – 1990 and in Belarus in 2001. The United States was working to "institute some modicum of press access for the opposition and a transparent vote-counting process. Twelve years ago, we advised the Nicaraguan opposition that the best way to pursue their political agenda was through participation in a peaceful electoral process; today we are giving the same advice to the opposition in Belarus." The aim was to "help Belarus develop an electoral

system that meets the international standards Belarus committed itself to when it joined the OSCE."

Following this, The Belarusian Minister for Foreign Affairs accused Kozak "of giving 'covert support' to the opposition".

President Lukashenko stated that he was under personal attack and that the US had "crossed a fine line of intervention". He was quoted as saying: "We will not have Americans telling us what to do... We cannot be brought to our knees". He further said that the US and the West had engaged in "sleazy election techniques", and read a list of opposition leaders he claimed had been paid by the US Embassy in Minsk to "remove" him. Michael Kozak personally was called a spy and the man behind "White Stork", an alleged conspiracy by foreign secret services to overthrow Lukashenko. On 4 September 2001, Lukashenko stated that Kozak would have to leave Minsk after the elections.

Michael Kozak stated that to him, there was "nothing to be embarrassed about if you say you want to develop an open, civil society [...] We made no secret about it."

Michael G. Kozak, "Letter: Belarus and the Balkans", *The Guardian*, 25 August 2001

Mark Almond, "Letter: For Nicaragua, read Belarus", *The Guardian*, 21 August 2001

Scott Peterson, "US spends millions to bolster Belarus opposition. Authoritarian President Lukashenko headed toward a reelection win yesterday", *Christian Science Monitor*, 10 September 2001

Ian Traynor, "Belarussian foils dictator-buster... for now: Tested US foreign election strategy fails against Lukashenko", *The Guardian*, 14 September 2001

Pravda Online [English], "Lukashenko: 'Yugoslav scenario won't materialize'", 5 September 2001

<<http://newsfromrussia.com/main/2001/09/05/14255.html>>

Alice Lagnado, "US adopts 'Contras policy' in communist Belarus", *The Times*, 3 September 2001

Alice Lagnado, "Why the rural millions love a dictator; In Belarus, the re-election of the autocratic president was probably rigged. But is the US right to finance the opposition?", *New Statesman*, 17 September 2001

**A. 163 2001, September; Robert S Gelbard (No 9)
(Indonesia and USA)**

Indonesia. US Ambassador Robert S. Gelbard is attacked over his criticism of statements by Dr Dewi Fortuna Anwar, a political scientist and former foreign affairs advisor under President Habibie.

In an interview with the *Jakarta Post*, Dewi had stated: "They [the Americans] can catch and kill terrorists, but terrorism will continue to grow as long as there are people who think they are treated unjustly and that there is no other recourse except to carry out terror [...]" Dewi was also quoted as saying: "America cannot continue mistreating the Palestinians and to continue to regard Israel whether rightly or wrongly as 'my ally'. As long as the Palestinian problem is not resolved, then there are always people who are willing to sacrifice themselves to fight for their rights."

In the same newspaper, Gelbard called these remarks "anti-semitic and misinformed". He further stated that Dewi's comments suggested "that the terrible acts against Americans and even acts of terrorism within Indonesia may be justified. Terrorism threatens all of humanity and can never ever be justified [...] The fact is that the United States seeks to bring the perpetrators to justice on the basis of solid evidence, without rancor towards any race or creed. The community of nations, including Muslim nations such as Pakistan has already expressed its strong support for the efforts to bring these criminals against humanity to justice. Some of America's strongest allies and closest friends are Islamic nations."

These remarks by Gelbard sparked criticism in the newspapers. Gelbard was said to have "a few bones to pick" (Guerin), and his image was described as "fallen even further in recent weeks after his outspoken comments reacting to reasoned analysis of the terrorist attacks from

political scientist Dewi Fortuna Anwar" (*Laksama.net*, 25 September). When Gelbard left Indonesia in the same year, it was claimed that "[h]is term here was characterized by unreasonable interference in domestic affairs that were entirely beyond the authority of any envoy." (*Laksama.net*, 14 October)

The Jakarta Post, "Act together to prevent violence", 14 September 2001

Don Greenlees, "US keen to count Indonesia an ally – war of terror – New World disorder", *The Australian*, 18 September 2001

Radio Singapore International, "The new war on terrorism", 21 September 2001. Available online:

<http://web.archive.org/web/20030724221136/http://rsi.com.sg/en/programmes/ind_med_wat/2001/09_21.htm>

Laksama.net, "Boyce to Get Jakarta Post", 25 September 2001. Available online:

<http://web.archive.org/web/20040108113006/http://laksamana.net/vnews.cfm?ncat=22&news_id=1237>

Bill Guerin, "Indonesia needs to come off the fence", *Asia Times online*, 19 September 2001

<<http://www.atimes.com/se-asia/C119Ae01.html>>

Laksama.net, "The World has changed", 14 October 2001. Available online:

<http://web.archive.org/web/20030923052131/http://www.laksamana.net/vnews.cfm?ncat=19&news_id=1313>

A. 164 2001, October; Antonio Bandini (No 1) (Eritrea and Italy)

Eritrea. The Italian Ambassador Antonio Bandini is expelled following criticism of the human rights situation in Eritrea.

Bandini had on 28 September delivered a démarche from the EU to Eritrea, in which the EU denounced human rights violations in Eritrea after the

arrest of eleven dissidents, the detention of at least eight journalists and the closing down of the private press, prior to elections which were to take place in December.

Hours after he had delivered the *démarche*, Bandini was ordered to leave the country. The Director of European Affairs at the Eritrean Foreign Ministry, Semere Russom, stated that the Ambassador "had been interfering in the internal politics of Eritrea which was incompatible with his diplomatic status".

According to the Italian Foreign Ministry, Bandini had been "singled out because he also [acted] as the dean of the European Union diplomatic corps in Asmara".

The Italian government reacted by expelling Tseggai Mogos, the Eritrean Ambassador.

Alex Last, "Eritrea plays down diplomatic row", *BBC Online*, 2 October 2001
<<http://news.bbc.co.uk/1/hi/world/africa/1574910.stm>>

BBC Online, "Eritrea expels Italian ambassador", 1 October 2001,
<<http://news.bbc.co.uk/1/hi/world/africa/1572517.stm>>

BBC Online, "Italy expels Eritrea's ambassador", 2 October 2001,
<<http://news.bbc.co.uk/1/hi/world/africa/1575814.stm>>

UN Integrated Regional Information Network, "Eritrea: Italian community worried by expulsion of ambassador", *Africa News*, 9 October 2001

A. 165 2001, October; Antonio Bandini (No 2); (Eritrea and Italy)

Eritrea. After the expulsion of the Italian Ambassador Antonio Bandini (see *supra*), speculation arises that the decision may stand in connection with Bandini's contacts to the opposition in the receiving State.

Bandini had contacted Eritrean dissidents while they were still in office and had held, together with other Western ambassadors, a joint meeting with them after they had been dismissed from office, to hear their position.

The Eritrean government, while stating that Bandini had interfered in the internal politics of Eritrea, did in fact deny that his expulsion stood in connection with the démarche he had delivered on behalf of the European Union (see *supra*). According to Semere Russom, Director of European Affairs at the Eritrean Foreign Ministry, Bandini's "expulsion was a personal matter, and was not linked to the presentation of the EU demarche". Semere added that Eritrea had two or three weeks ago asked Italy to withdraw the Ambassador, but that there had been no timely response by the sending State.

The Eritrean Foreign Ministry noted that the expulsion was "directed towards the diplomat alone and should not otherwise have a bearing on the close and historical ties of partnership with Italy and other EU member states." Italy, Eritrea's former colonial power, was in 2001 the largest single donor to Eritrea.

Alex Last, "Eritrea plays down diplomatic row", *BBC Online*, 2 October 2001
<<http://news.bbc.co.uk/1/hi/world/africa/1574910.stm>>

UN Integrated Regional Information Network, "Eritrea: Italian community worried by expulsion of ambassador", *Africa News*, 9 October 2001

A. 166 2001, December; Daniel Bernard (UK and France)

United Kingdom. The French Ambassador, Daniel Bernard, is accused of making anti-semitic remarks.

It is alleged that during a private dinner party hosted by Lord Black of Crossharbour on 14 December 2001, Bernard stated that "the current troubles in the world were all because of 'that shitty little country Israel'" (*Amiel, quoting Bernard*). Bernard allegedly continued: "Why should the world be in danger of World War Three because of those people?"

Lord Black's wife, Barbara Amiel, referred to the comment in a column for the *Daily Telegraph*, without naming the Ambassador, who was however soon identified by other media.

Pro-Israeli British Members of Parliament called for Bernard's resignation. Gwyneth Dunwoody MP, president of the "Friends of Israel" group, was quoted as saying: "He should resign immediately and I am writing to President Chirac to demand that if he does not resign then he should be sacked." The group's chairman, Jim Murphy MP, "urged Mr Chirac to tell Mr Bernard to 'come clean and apologise for the hurt and offence he has caused'". On Bernard's alleged remarks, he said: "If these are his views, then the French government should take action. Such views are simply not consistent with the post he holds."

In Israel, Raanan Gissin, spokesman for Prime Minister Ariel Sharon, stated: "If he did say that, it is pure anti-semitism. One would not expect that from a representative of the French government. There is no doubt that if such a statement was made, it requires a strong condemnation." He further said: "It is for the French government to decide. If the French government does not take action, it would imply that the French government condones it and I think that would be inconceivable."

The Israeli Foreign Ministry however declared that it did not intend to react. Daniel Bernard said that his comment had been "thoroughly distorted". He reportedly felt "outraged that a private discussion found its way into the media" (*BBC*), but also made clear that he had no intention to apologize. Yves Charpentier, spokesman for the Ambassador, stated that Daniel Bernard was "cross" and added: "He did not use those words". However, he later explained that the Ambassador had referred in the course of the discussion to "'little Israel' in the sense that it is geographically small, but that nevertheless the scale of the consequences is huge and the repercussions around the world are tremendous" (*BBC*). According to Charpentier, no formal protests had been received by the embassy. The French Foreign Ministry denied the charges of anti-semitism and called them "malevolent insinuations".

The fact that the French government did not recall Bernard, earned it some criticism (see *Hines*). However, Per Ahlmark, the former Swedish deputy

Prime Minister, also hinted at a measure of responsibility which the receiving government had to take: "He was not recalled by his government; Tony Blair's government did not request his recall; popular opinion treated the matter as merely another scandal", Ahlmark stated.

Andrew Pierce, "Diplomatic gaffe puts Tory salon out of joint", *The Times*, 19 December 2001

BBC Online, "Anti-Semitic" French envoy under fire, 20 December 2001. Available online: <<http://news.bbc.co.uk/1/hi/world/europe/1721172.stm>>

Ewen MacAskill, "Israel seeks head of French envoy: Foreign ministry said to be 'incandescent' after ambassador allegedly speaks of 'shitty little country'", *The Guardian*, 20 December 2001

Deborah Orr, "I'm fed up being called an anti-semite", *The Independent*, 21 December 2001

Lady Powell of Bayswater, "Not my views" (letter), *The Daily Telegraph*, 19 December 2001

Matthew Norman, "[Chapeaux aloft to the embassy of France...]", *The Guardian Diary*, 19 December 2001

Barbara Amiel, "Islamists overplay their hand but London salons don't see it", *The Daily Telegraph*, 17 December 2001, p. 18

Miriam Dunn, "Mon dieu and other thoughts", *Malta Today*, 13 January 2002. Available online: <<http://www.maltatoday.com.mt/2002/0113/opinion.html>>

Miriam Shaviv, "The BBC 'not usually considered a friend of Israel'", *Jerusalem Post*, 26 March 2002

Per Ahlmark, "Today's anti-Semitism masquerades as criticism of Israel", *Sunday Times* (South Africa), 19 May 2002

Cragg Hines, "Why 'those people' need U. S. support", *The Houston Chronicle*, 21 June 2002

World Jewish News, "Reports from across the globe", 23 August 2002

A. 167 2002, January; Daniel Kurtzer (No 2) (Israel and USA)

Israel. The US Ambassador Daniel Kurtzer is criticized over remarks seen as interference.

While a dispute between disabled citizens and the Israeli government on the question of increased benefits was ongoing, Kurtzer stipulated in a speech to the Orthodox assembly in Jerusalem that "Israel should allocate funds for the disabled and not for Jewish settlements". He maintained that the US "should have a say in budget allocations because it is 'a major investor in the Israeli economy'".

Following Kurtzer's remarks, Zvi Hendel, a Member of the Knesset for the National Union-Israel Our Home Party, stated in Parliament on 8 January: "Irrespective of the fact that this is a representative of a foreign country [...] the State of Israel should not ignore the intervention of a little jewboy who represents the U.S [...]".

These words were broadcast on radio and television in Israel. Hendel also stated that how Israel spent her money was none of Kurtzer's business and that the Ambassador meddled "in an internal Israeli dispute".

Chief Rabbi Yisrael Lau and President Moshe Katsav attacked Hendel over his comments. The Prime Minister's Office said that Ariel Sharon "strongly" condemned the remarks. Michael Melchior, the Deputy Foreign Minister, was quoted as saying that Hendel had violated the honour of the Knesset and inflicted harm on the Jewish people. Opposition leader Yossi Sarid expressed support for Kurtzer, the leader of the Labor faction, Efi Oshaya, lodged a complaint with regard to Hendel's remarks with the Knesset Ethics Committee. Hendel himself apologized on 10 January "to anyone who was offended" and admitted the "Nazi connotations" the term (*yehudon*) had,

"but denied that was his intent". While Kurtzer did not comment on Hendel's remark, it was called "extreme and outrageous" by embassy sources.

Douglas Bloomfield, "No different standards for Jewish envoys", *Washington Jewish Week*, 17 January 2002

Jewish Bulletin News of Northern Carolina, "Drama erupts in the Knesset: Ambassador slurred as 'Jew-boy'", 11 January 2002. Available online:

<http://www.jewishsf.com/content/2-0-/module/displaystory/story_id/17486/edition_id/347/format/html/displaystory.html>

Focus on Israel, "Disabled Protesters Making Most Noise In This Year's Budget Battle", 10 January 2002,

Nina Gilbert, "MK Hendel calls Kurtzer 'little Jew boy'", *Jerusalem Post*, 9 January 2002

Associated Press, "Israeli legislator uses ethnic slur against U.S. ambassador", 8 January 2002

Gil Hoffman, "Melchior: Israelis not concerned about anti-Semitism abroad", *Jerusalem Post*, 8 January 2002, available online:

<<http://www.preventgenocide.org/prevent/news-monitor/2002jan.htm>>

Avraham Shmuel Levin, "About that 'Jewboy' remark", *The Jewish Press*, 15 February 2002

Available online:

<http://www.jewishpress.com/print.do/13458/About_That_&%2339%3BJewboy&%2339%3B_Remark.html>

Manfred Harder, "EU will Israel zum Frieden zwingen. 'Konfliktparteien sind nicht in der Lage, den Karren aus dem Dreck zu ziehen", *Hamburger Abendblatt*, 24 January 2002

A. 168 2002, April; Ghazi Algosaibi (No 1) (UK and Saudi Arabia)

United Kingdom. The Saudi Ambassador, Ghazi Algosaibi, is criticized over a poem he published.

On 13 April 2002, the poem "The Martyrs" by Algosaibi, who is also a renowned poet in the Arab world, was published on the front page of the Arabic daily *Al Hayat*. In it, he appears to praise Palestinian suicide bombers with the words "You died to honour God's word. (You) committed suicide? We committed suicide by living like the dead". On the death of Ayat Akhras, a girl who had killed herself and two Israelis with explosives on 29 March 2002 in Jerusalem, he wrote: "Tell Ayat, the bride of loftiness . . . She embraced death with a smile while the leaders are running away from death. Doors of heaven are opened for her". The poem also refers to the absence of American help when requested by Arab leaders: "We complained to the idols of a White House whose heart is filled with darkness".

A spokesman for the Foreign and Commonwealth Office said: "We regard suicide bombings as a form of terrorism, and we would like to make our views known to the Saudi ambassador [...] We're not saying reprimand or rebuke. We don't intend to take the matter any further". Fiona Macaulay, spokeswoman for the Board of Deputies of British Jews, was quoted as saying: "It is deeply disturbing that a senior Saudi diplomat publicly supports the continued terrorist bombing campaign [...] This is clearly condoning violence against Jewish people, and is a completely unacceptable position for the ambassador to take." Michael Whine, a spokesman for the Board of Deputies, asked: "Is he a member of the Saudi diplomatic corps whose government is promoting peace, or is he promoting suicide terrorists? He should make up his mind." The Board of Deputies was "appalled" and intended to write to Dr Algosaibi in protest.

Some commentators claimed that the poem had been misunderstood and that its focus had been the "sacrifice" of a young woman, not praise for suicide bombers. Abdel Magid Farid, chairman of the Arab Research Center said at a meeting at Westminster University that "the poem had

been 'unfortunately inaccurately translated' into English". However, Algosaibi himself stated that the poem had not been misinterpreted; his meaning was quite clear. He added: "People are going to fight with whatever is at their disposal, and if they only have their bodies they will use their bodies."

On 25 April, after the Foreign Office had made its position clear to Algosaibi, the Ambassador said he would change the poem only if British Jews referred to present and past leaders in Israel as terrorists. On the Saudi Embassy website on that day, he accused Israel of committing war crimes. However, Dr Algosaibi also told officials that he was both a poet and an ambassador; his poem had been written in his role as a poet.

Paul Harris, "Saudi envoy praises bombers", *The Observer*, 14 April 2002, p. 2

Anton La Guardia, "Protest at envoy's martyr poem", *The Daily Telegraph*, 18 April 2002, p. 13

Brian Whitaker and agencies, "Anger at diplomat's ode to suicide bomber", *The Guardian*, 19 April 2002, p. 14

BBC Online, "Diplomat censured over bomb poem", 18 April 2002, <<http://news.bbc.co.uk/1/hi/uk/1937696.stm>>

Susannah Tarbush, "Algosaibi seeks to dispel myth about Kingdom", *Saudi Gazette*, 10 July 2002

Simon Henderson, "The West must stop kidding itself about Saudi Arabia", *The Daily Telegraph*, 11 July 2002, p. 24

Giles Foden, "Saturday review: Books: When authors take sides: Should writers engage with politics?", *The Guardian*, 27 April 2002, p. 8

Anton La Guardia, "Arab envoy defends poem on 'martyrs'", *The Daily Telegraph*, 26 April 2002, p. 16

A. 169 2002, April; Yves Gaudeul (Haiti and France)

Haiti. The French Ambassador Yves Gaudeul is criticized for a statement made in April 2002.

During a dinner discussion hosted by the Franco-Haitian Chamber of Commerce, the French Ambassador referred to various problems he perceived as existing in the Haiti (a former French colony). Gaudeul mentioned human rights violations, corruption of the public administration, the degradation of the educational system, the confusion of the roles of police and justice and the loss of moral values. According to Gaudeul, Haiti was far from representing a modern State in which republican legality and tolerance were cultivated. Gaudeul was quoted as stating that the government "should be able to put an end to this situation by reestablishing republican liberty." The Ambassador called upon Haitians to consider whether they wanted a modern State or a feudal society.

The government of Haiti criticized the French Ambassador for these remarks. The Communications Minister referred to the need to respect the *Vienna Convention*. In a communiqué, the government condemned the "inappropriate statements, indeed even the racist connotations that the accredited diplomats in Haiti allow themselves to make" (*Radio Metropole, BBC Monitoring, 22 April 2002*). The government also made it clear that it considered Gaudeul's remarks interference in the internal affairs of Haiti.

The French Ministry issued a statement on the internet in which it explained that the Ambassador had been referring to the contribution which France could make to the modernization of Haiti.

In late April 2002, a meeting between the Haitian Prime Minister (Yvon Neptune) and the French Ambassador was convened. According to the Haitian Foreign Minister, Prime Minister Neptune had done "what he should to draw the ambassador's attention to the role of accredited diplomats in the country".

BBC Monitoring International Reports (Radio Metropole, Haiti), "Haitian Minister to question French Ambassador over 'inappropriate remarks'", 22 April 2002

BBC Monitoring International Reports (Radio Metropole, Haiti), "Minister to meet French envoy after alleged "interference" in Haitian Affairs", 23 April 2003

BBC Monitoring International Reports (Radio Metropole, Haiti), "Haiti: Highlights of Radio Metropole News 1145 GMT 22 APR 02", 24 April 2002

BBC Monitoring International Reports (Radio Metropole, Haiti), "Haiti: Highlights of Radio Metropole News 1145 GMT 23 APR 02", 24 April 2002

BBC Monitoring International Reports (Radio Metropole, Haiti), "Haiti: Highlights of Radio Metropole News 1145 GMT 25 APR 02", 26 April 2002

BBC Monitoring International Reports (Radio Metropole, Haiti), "Haiti: Foreign Minister on Prime Minister's meeting with French Ambassador", 30 April 2002

A. 170 2002, June; Brian Donnelly (Zimbabwe and UK)

Zimbabwe. The British Ambassador, Brian Donnelly, is placed under surveillance and accused of "meddling".

It is reported that two lawyers, Sternford Moyo and Wilbert Mapombere, had contacted Donnelly to thank him for "his support for their campaign to restore civil rights to Zimbabwe". Donnelly was allegedly an intelligence officer, posted to Zimbabwe in a British campaign aiming at the removal of Mugabe

The High Commissioner was accused by the state-run newspaper *The Herald* of "meddling in Zimbabwean politics [and] activities to undermine the legitimate government of President Mugabe". According to *The Herald*, "Security agents have placed the British High Commissioner to Zimbabwe, Mr Brian Donnelly, under 24-hour surveillance following his alleged involvement in political activities deemed incompatible with his diplomatic duties". The two lawyers were arrested and accused of "trying to 'subvert a constitutional government'".

The British Foreign Office denied the allegations and stated: "The British High Commissioner is not involved, and has never been, in this kind of activity [...] The allegations in the Zimbabwe press are baseless."

BBC Online, "Zimbabwe 'tracking' British diplomat",
<<http://news.bbc.co.uk/1/hi/world/africa/2046602.stm>>

Hindustan Times, "British ambassador to Harare placed under surveillance", 15 June 2002,
<http://www.zimbabwesituation.com/june16_2002.html#link13>

A. 171 2002, July; Ghazi Algosaibi (No 2) (UK and Saudi Arabia)

United Kingdom. The Saudi Ambassador, Dr Ghazi Algosaibi, is criticized for his remarks on Israeli policies.

At a meeting at Westminster University, organized by the Arab Research Centre in London, Algosaibi said on 9 July that suicide bombers in Israel were not religious fanatics, but were "driven to extreme measures by their desperate circumstances under Israeli occupation [...] The man who kills himself does it because he has decided it is better to die than to live as a slave".

Referring to the Israeli occupation of Palestinian lands, Algosaibi stated: "This is a war of occupation, far more severe than anything the Germans did when they occupied Europe in World War Two".

A spokesman for the Foreign Office said on 9 July that the remarks were "wrong and insensitive".

The chairman of the Holocaust Education Trust, Lord Janner, stated: "This man should be dismissed. He is the most undiplomatic diplomat we have had in Britain since the war."

A spokesman for the Embassy of Israel said: "This is not the first time that we have heard outrageous and irresponsible comments from this man. This

statement is hardly surprising from a person who praises suicide bombers. Hopefully peace in the Middle East has better friends than this."

Sandra Laville, "Israelis 'are worse than Nazis'", *The Daily Telegraph*, 10 July 2002, p. 13

Richard Beeston, "Occupation 'worse than Nazis'", *The Times*, 10 July 2002, p. 15

Gabriel Milland, "Palestinian plight is 'worse than holocaust'", *The Express*, 10 July 2002, p. 20

Susannah Tarbush, "Algozaibi seeks to dispel myths about Kingdom", *Saudi Gazette*, 10 July 2002

Simon Henderson, "The West must stop kidding itself about Saudi Arabia", *The Daily Telegraph*, 11 July 2002

A. 172 2002, August; Wang Chien-yeh (Nauru and Taiwan)

Nauru. Nauru severs diplomatic relations with Taiwan, ostensibly because of a behaviour of interference on the part of a Taiwanese diplomat.

The diplomat was accused by Rene Harris, the President of Nauru, of trying to interfere in the national elections in Nauru and of meeting with members of opposition parties. Harris was quoted as stating: "One of my ministers ran in a by-election and [the Taiwanese diplomat] was more interested in seeing and being seen talking with the opposition. He claimed he didn't go there, but people saw him. He never saw my minister".

According to *China Times Express*, the diplomatic agent in question was Wang Chien-yeh.

Katherine Chang, the Taiwanese Foreign Minister, stated that it was a "serious matter when a diplomat interferes with the internal affairs of its diplomatic ally. Our diplomats would never do such a thing". She added that Taiwanese diplomats working overseas "understand the way to perform their duties. They have interfered in neither other countries' internal politics

nor their elections". While Chang admitted that the diplomat had had contacts with the opposition, she also stated: "It is quite appropriate for the Taiwan diplomats to have relations with the ruling party and opposition parties in Nauru while Taiwan was one of Nauru's allies." According to Chang, it was the task of diplomats to make friends with everyone, and it could not be considered interference in a State's internal affairs if a diplomat was friendly to members of the opposition.

Ko Shu-ling, "Paraguay reaffirms relations with Taiwan / Denials: Taiwan's foreign ministry denied the South American country wanted to sever ties and that a Taiwanese diplomat had interfered in the affairs of Nauru's government", *Taipei Times*, 20 August 2002.

Available on the internet:

<<http://www.taipeitimes.com/News/archives/2002/08/20/0000164880>>

China Post, "MOFA dismisses interference charge by Nauru President", 20 August 2002

A. 173 2002, October; Edward Clay (No 1) (Kenya and UK)

Kenya. The British High Commissioner Edward Clay is criticized after his statements on the forthcoming general elections.

Clay called on the political parties of Kenya to conduct the elections free of violence. At a speech to the Law Society of Kenya, Clay stated: "We are not concerned with who wins the election, but how he wins it, because our main interest is in the electoral process and how the competing parties conduct their campaigns [...]." Clay was also quoted as stating that the elections were "of great concern both to Kenyans and foreigners", as they would usher in a new leadership.

Daniel arap Moi, the Kenyan President, accused Clay of interference in the internal affairs of Kenya. At a rally in the town of Eldoret, Moi reportedly stated, with reference to Clay's remarks: "The British High Commissioner has no right to interfere with our affairs, because we do not interfere with the political affairs of Britain".

Agence France Presse, "Kenyan president accuses Britain of interference", 4 October 2002

A. 174 2003, January; Nancy Powell (Pakistan and USA)

Pakistan. Nancy Powell, the American Ambassador to Pakistan, is criticized over remarks she made about the situation in Kashmir.

At a meeting of the American Business Council, Powell stated that Pakistan must make sure that its promises to stop the infiltrations of militants across the Line of Control in Kashmir (a ceasefire line between the zone controlled by Pakistan and that controlled by India) are implemented. She also called on Pakistan to keep its promise not to use the country as a platform for terrorism.

Muttahida Majlis-e-Amal, the Islamic party alliance which forms the main opposition in the Pakistani Parliament called Powell's comments "outrageous". The Secretary-General of *Jamiat Ulema-e-Islam* (described as a "pro-Taliban Islamic group"), was quoted as stating that the "American ambassador has no right to interfere in the internal affairs of Pakistan, and she must be asked by Pakistan government to leave".

The government of Pakistan did not in fact expel Powell, but the Ambassador was summoned to the Foreign Office, where she discussed her statements with Anisuddin Ahmed, Additional Foreign Secretary. During that talk, Ahmed stated that there was no Pakistani infiltration across the Line of Control, and that Pakistan had taken all necessary measures to prevent infiltration.

The Pakistani Prime Minister Jamali reportedly stated, with reference to the Powell case, that it was not possible to stop anyone from issuing statements. Jamali did however add that serious notice would be taken if a statement was considered to amount to interference in Pakistan's internal affairs. The Prime Minister was quoted as saying: "No one would be allowed to interfere in our internal affairs".

St. Louis Post-Dispatch (Missouri), "Nation / World / Islamic leaders want U.S. diplomat expelled", 25 January 2003

The Press Trust of India, "Nancy Powell asks Pak to end infiltration, proposes cease", 23 January 2003

The Pakistan Newswire, "Nancy visits FO to clarify her remarks", 24 January 2003

Bronwyn Curran, "Pakistan angered by US call to end Kashmir incursions", *Agence France Presse*, 24 January 2003

BBC Worldwide Monitoring (The News web site, Pakistan), "Pakistani premier says interference in Pakistani affairs not to be allowed", 26 January 2003

A. 175 2003, February; Jalil Abbas Jeelani, (India and Pakistani)

India. Jalil Abbas Jeelani, the Pakistani Chargé d'Affairs in India, is expelled from the country, together with four other members of the embassy.

India accuses Jeelani of having personally provided monetary funds to separatists in the Indian zone of Kashmir.

The Pakistani mission in New Delhi referred to the accusations as "ridiculous and baseless".

Palash Kumar, "Agence France Presse: India, Pakistan ties sink further as top diplomats expelled", *World News Connection*, 8 February 2003

Sunday Mail (Queensland, Australia), "Diplomat expelled", 9 February 2003

Independent on Sunday, "Diplomats expelled", 9 February 2003

The Press Trust of India, "Diplomats", 3 August 2003

A. 176 2003, February; Husham Hussein (Philippines and Iraq)

Philippines. Husham Hussein, a Second Secretary at the Iraqi embassy to the the Philippines (according to other sources: a consul), is expelled. The decision was allegedly made after one of Hussein's telephone conversations was traced back to the *Abu Sayyaf* group, a terrorist organization. The *Abu Sayyaf* group is suspected to be responsible for a bomb attack which in October 2002 killed four Filipinos and an American soldier.

The Foreign Ministry of the Philippines is reported to have "hinted" that the diplomat had also been in touch with extremist groups in the receiving State.

The Iraqi Foreign Ministry debated the facts of the allegations and stated that an unsuccessful attempt had been made by the US embassy to persuade Hussein to betray national secrets.

Channel NewsAsia, "Manila asks Iraq to recall envoy allegedly linked to terrorists", 12 February 2003

Agence France Presse, "Iraq denies diplomat expelled from Manila linked to terrorism", 12 February 2003

The Statesman (India), "Intense wrangling to end NATO crisis", 13 February 2003

Milwaukee Journal Sentinel (Wisconsin), "Terrorism briefing", 13 February 2003

Manila Standard, "Iraqi envoy expelled", 13 February 2003

Leon Harris / Heidi Collins / Nic Robertson / Richard Roth, "Chief Weapons Inspectors Give Another Update on Iraq to U.N. Tomorrow", *CNN*, 13 February 2003

Xinhua News Agency, "Xinhua summary of major Asia-Pacific news, Friday, Feb. 14", 14 February 2003

Xinhua News Agency, "Expelled Iraqi diplomat leaves Philippines", 14 February 2003

The Post and Courier (Charleston, SC), "Terrorism advances and warnings", 5 March 2003

A. 177 2003, May; Fahad Al-Thumairy (US and Saudi Arabia)

United States. Fahad Al-Thumairy, a member of the Islamic and Cultural Affairs Section of the Saudi consulate in the United States, is expelled. The expulsion is, according to some reports, based on the suspicion that Al-Thumairy had links with terrorist groups.

A senior official of the United States however was quoted as stating that the reason for the expulsion had been the fact that Al-Thumairy did not qualify for a diplomatic visa.

Agence France Presse, "Saudi diplomat expelled from US: report", 10 May 2003

Agence France Presse, "Saudi diplomat expelled from US says he was not interrogated", 11 May 2003

Sydney Morning Herald, "Focus / Diplomat expelled", 12 May 2003

Agence France Presse, "Expelled Saudi diplomat is not a terrorism suspect: senior US official", 12 May 2003

Seth Ackerman. "Who knew?: The unanswered questions of 9/11", *Institute for Public Affairs / In these Times*, 29 September 2003

Jeff Jacoby, "Religious hatred Saudi-style", *The Boston Globe*, 6 February 2005

A. 178 2003, June; David Welch (Egypt and US)

Egypt. Legal proceedings are started against the American Ambassador to Egypt following a speech made in June 2003.

David Welch, the US Ambassador had, during the annual meeting of the American Chamber of Commerce in Cairo, sharply criticized the performance of the Egyptian government and had called for changes to the currently existing political and economic strategies.

As a consequence, the Egyptian lawyer Nabih El-Wahsh filed a lawsuit against Welch, on the grounds that the Ambassador had interfered with the internal policies of Egypt.

Al-Ahram Weekly, "Lawyer sues Welch ", 12 – 18 June 2003; available on the internet
<<http://weekly.ahram.org.eg/2003/642/eg2.htm>>

A. 179 2003, August; unnamed (Estonia and Germany)

Estonia. An unnamed German diplomat is criticized for an alleged behaviour of interference.

In the run-up to the Estonian referendum on joining the European Union, a German diplomat reportedly made a speech from the campaign bus of the European Commission, calling for an affirmative vote in favour of joining the EU. Roger Helmer, the Euro-sceptic MEP who reported the incident, engaged in a debate with the diplomat in which Helmer expressed his opinion that the diplomat had committed a "direct interference in an internal Estonian political debate" which "constituted a serious breach of Article 41 of the Vienna Convention".

According to Helmer, the diplomatic agent invoked the promotion of German culture as a justification of his behaviour.

Roger Helmer, "Estonia faces the EU propaganda barrage as expansion takes hold", *Lincolnshire Echo*, 2 September 2003

A. 180 2003, September; Gukuna, Seth (Taiwan and Solomon Islands)

Taiwan. Seth Gukuna, the Ambassador of the Solomon Islands is replaced after his criticism of a Taiwanese politician.

Parris Chang, who represents the Democratic Progressive Party in the Legislative Yuan (the Taiwanese legislature), and who is also a convenor of the Yuan's Foreign and Overseas Chinese Affairs Committee, had criticized the "dollar diplomacy" in which, in his view, the State of Nauru engaged.

This article triggered a response by Gukuna, who, in a letter to Chang, expressed his disappointment over it. (The Solomon Islands are in some regards beneficiaries of Nauru's support).

According to Chang, Gukuna's remarks were "inappropriate" and damaged the ties between Taiwan and the Solomon Islands. Chang called for an apology by Gukuna and reportedly said that he would "examine closely the proposed budget for the Solomon Islands in the legislative session" (*Taipei Times*).

Melody Chen, "Taiwan: AIT denies director leaving for White House", *World News Connection / Taipei Times*, 9 September 2003

A. 181 2003, December; Roberto Socorro Garcia (US and Cuba)

United States. Socorro Garcia, a third secretary at the Cuban Interests Section in Washington, is expelled from the country. It is reported that the diplomat had regularly visited Cuban spies who were in prison in the United States. According to an unnamed State Department official, the expulsion was based on the fact that the diplomat had associated with criminal elements.

Rafael Dausa, Director for North America at the Cuban Foreign Ministry declared that Socorro Garcia had undertaken no "activities that were

damaging to the American government or that violated his diplomat status", and that he had "always worked by abiding by the diplomatic status and the rules of international law, in particular the 1961 Geneva Convention on Diplomatic Relations [*sic*]".

George Gedda, "U.S. expels Cuban diplomat, accusing him of associating with criminal elements", *Associated Press*, 3 January 2004

Agence France Presse, "US expels Cuban diplomat", 3 January 2004

The Houston Chronicle, "National briefs / State Department expels Cuban diplomat ", 4 January 2004

Geelong Advertiser, "Diplomat out", 5 January 2004

Anita Snow, "Cuba defends diplomat expelled from US, denies American accusations", *Associated Press*, 8 January 2004

Agence France Presse, "Cuba defends Cuban diplomat expelled by US over drug allegations", 8 January 2004

Xinhua News Agency, "Cuba refutes US accusation against its diplomat", 9 January 2004
The Miami Herald, " Claims of drug ties in envoy's expulsion rejected; CUBA", 9 January 2004

St. Petersburg Times (Florida), "Robbers who killed U.S. tourist still at large", 9 January 2004

A. 182 2004, January; Zvi Mazel (Sweden and Israel)

Sweden. The Israeli Ambassador Zvi Mazel is criticized after he physically attacked the artwork "Snow White and The Madness of Truth", which was part of the "Making Differences" exhibition in the Stockholm Museum of National Antiquities. The "Making Differences" exhibition was organized as part of a conference on genocide, which was hosted by the Swedish

government. The exhibit "Snow White and The Madness of Truth" displayed a miniature sailboat which swam on a pool of red water. The photograph of a smiling Hanadi Jaradat – a Palestinian suicide bomber who had killed 21 Israelis in Haifa in October 2003 – was attached to the boat.

Mazel was videotaped when he tore down a spotlight and threw it into the water, which caused a short-circuit to the installation. This, according to Kristian Berg, the Director of the museum, caused a life-threatening situation; and Berg asked the Ambassador to leave the building. The Swedish Foreign Ministry described Mazel's conduct as "unacceptable" and stated that it would summon the diplomat to let him explain his behaviour.

The Israeli Ambassador was quoted as saying: "This is not art, this is a monstrous glorification of suicide bombers and an incitement to genocide against the Israeli people."

The Israeli Prime Minister Ariel Sharon supported Mazel's conduct and stated in a cabinet meeting: "I called our Zvi Mazel, our ambassador in Sweden to thank him for his actions in the face of this fresh outbreak of anti-Semitism, and I told him he had the support of the government in this incident [...] We are witnessing the rise of anti-Semitism across the whole world and particularly in Europe where this phenomenon is taking on dangerous proportions [...] Ambassador Mazel behaved exactly as he needed to".

ONASA News Agency, "Israeli Ambassador kicked out of Swedish Museum after vandalizing art", 17 January 2004

Channel News Asia, "Sweden and Israel in furious diplomatic row over art scandal", 18 January 2004

Göran Rosenberg, "Das Meer der Wölfe; Israels Botschafter und das Kunstwerk", *Süddeutsche Zeitung*, 24 January 2004

A. 183 2004, March; Paul von Maltzahn (No 1) (Iran and Germany)

Iran. Paul von Maltzahn, the German Ambassador to Iran, is accused of interference after he had met with Hussein Ali Montazeri, an influential Grand Ayatollah. During the meeting, Maltzahn and Montazeri allegedly discussed the United States, Israel, Judaism, Iraq, and the elections in Iran. Right-wing newspapers in Iran spoke of an interference in the internal affairs of the country; the pro-Khamenei newspaper Kayhan called the meeting "wilful and illegal". According to Kayhan, Maltzahn was about to be withdrawn to pre-empt his expulsion. The Iranian Vice President Mohammed Ali Abtahi however denied these reports.

BBC Monitoring International Reports (referring to Kayhan, Iran), "BBC Monitoring Quotes from the Iranian Press 7 March 2004 (2)", 7 March 2004

Die Welt, "Iran; Gerüchte um Ausweisung des deutschen Botschafters", 8 March 2004

Bahman Nirumand, "Rüffel aus Teheran - Botschafter soll gehen; Diplomat Maltzahn fällt in Ungnade: Iran will ihn ausweisen, weil er einen berühmten Regimekritiker traf", *taz (Die Tageszeitung)*, 9 March 2004

A. 184 2004, March; Paul von Maltzahn (No 2) (Iran and Germany)

Iran. The German Ambassador Paul von Maltzahn is accused of having made meddling remarks after his meeting with the Iranian Grand Ayatollah Montazeri (see above). According to the pro-Khamenei newspaper Kayhan, Maltzahn made comments which "which interfered in the internal affairs of Iran".

According to Kayhan, Maltzahn was about to be withdrawn to pre-empt his expulsion. The Iranian Vice President Mohammed Ali Abtahi however denied these reports.

BBC Monitoring International Reports (referring to *Kayhan*, Iran), "BBC Monitoring Quotes from the Iranian Press 7 March 2004 (2)", 7 March 2004

Die Welt, "Iran; Gerüchte um Ausweisung des deutschen Botschafters", 8 March 2004

Bahman Nirumand, "Rüffel aus Teheran - Botschafter soll gehen; Diplomat Maltzahn fällt in Ungnade: Iran will ihn ausweisen, weil er einen berühmten Regimekritiker traf", *taz (Die Tageszeitung)*, 9 March 2004

A. 185 2004, April (?); Lawrence Butler (Macedonia and US)

Macedonia. The American Ambassador Lawrence Butler receives criticism for his remarks on the presidential elections. Butler had called on voters to participate in the elections. Ljube Boskovski, formerly Minister of the Interior and later barred by the Macedonian election watchdog from participating in the elections, called Butler's statement a "gross interference in the internal affairs of Macedonia". Boskovski himself had called for a boycott of the elections.

Radio Free Europe/Radio Liberty, "Macedonian Presidential Candidate rejects U.S., EU calls for participation in elections", 26 April 2004. Available on the internet: <http://www.rferl.org/newsline/2004/04/4-SEE/see-260404.asp?po=y>

A. 186 2004, June; John Herbst, (Ukraine and US)

Ukraine. The American Ambassador John Herbst is criticized for comments he made during an interview with *Ukrayinska Pravda*. In the interview, the ambassador stated, when talking about Ukrainian Members of Parliament: "The Soviet Union was one of the most primitive and twisted experiments of the last century. People who began their careers in the communist period

absorbed a very great deal of those political methods. And so it is not surprising that people brought up in that system can express themselves in precisely that primitive way."

Herbst's remarks trigger the criticism by a pro-government weekly that he had made "undiplomatic and ill-mannered" remarks (*BBC*).

BBC Worldwide Monitoring (referring to 2000, Ukraine, 11 June 2004), "Ukrainian weekly dubs US ambassador undiplomatic, ill-mannered", 12 June 2004

A. 187 2004, July: Edward Clay (No 2) (Kenya and UK)

Kenya. Sir Edward Clay, the British High Commissioner to Kenya, is criticized for statements which highlight the level of corruption in the Kenyan government.

At a meeting of the British Business Association in July 2004, Clay noted that corruption had cost the (Kenyan) taxpayer 15 billion shillings (more than £112m in 2007). Clay stated: "Evidently the practitioners now in government have the arrogance, greed and perhaps a desperate sense of panic to lead them to eat like gluttons. [...] They may expect we shall not see, or notice, or will forgive them a bit of gluttony because they profess to like Oxfam lunches. But they can hardly expect us not to care when their gluttony causes them to vomit all over our shoes." The High Commissioner also said that he had personally raised the concerns of his government with the administration of the Kenyan President.

Newspaper reports pointed out that the United Kingdom was the biggest foreign investor in Kenya and had been concerned about the reemergence of corruption in this country.

The Kenyan Foreign Minister, Chirau Ali Mwakwere, was quoted as saying in July in reply to Clay's remarks: "His job is not like that of a comedian. He has abused us and we are telling him to explain the facts of the case or else he should shut up."

Africa News / The East African Standard, "Kenya; Bad Publicity", 27 February 2005

Agence France Presse, "Angry Kenya lashes out at EU aid cut threat", 26 October 2005

Lucas Barasa, "Criticism that rubbed officials the wrong way", *The Nation (Kenya)*, 3 February 2005

Jeevan Vasagar, "Kenyan president faces rebellion on sleaze: MPs from ruling party push for vote of no confidence in Kibaki after cabinet splits over British envoy's corruption allegations",

The Guardian, 24 February 2005

The Guardian, "War of words", 24 February 2005

A. 188 2004, October; Craig Murray (No 5) (Uzbekistan and UK)

Uzbekistan. Craig Murray, the British Ambassador to Uzbekistan, is withdrawn by the British government. The decision by the sending State follows Mr Murray's outspoken criticism of the human rights record of Uzbekistan, in which he had engaged shortly after his arrival in Uzbekistan in 2002. In October 2002, Craig Murray gave a speech ("Freedom House speech") in which accused the government of the Uzbek President of failings with regard to the human rights situation. In this speech, the Ambassador said: "Uzbekistan is not a functioning democracy, nor does it appear to be moving in the direction of democracy." Murray also referred to two political prisoners who allegedly had been boiled to death, of torture in prisons and of dissidents who had been committed to institutions for the mentally ill. In June 2003, Murray accused Uzbekistan of "widespread and systematic torture" and of corruption. In March 2004, Murray's assessment of the Uzbek government was as follows: "This is a kleptocratic government with an economic policy that is causing deepening poverty".

The Uzbek government complained about the Freedom House speech, and it is reported that Murray was advised by his superiors against upsetting

Uzbekistan in the future. It is also believed that the Uzbek government had lobbied the Foreign Office to recall Murray.

The British Foreign Office however maintained that Murray had not been withdrawn for his criticism of the Uzbek Human Rights record. Murray is officially placed on "temporary sick leave".

Uzbek opposition parties and Human Rights groups protested the withdrawal of Craig Murray. However, Mikhail Ardzinov, leader of the Independent Human Rights Organization of Uzbekistan, accused Murray of "meddling in internal affairs of a sovereign state".

Ferghana.Ru Information Agency, "British Ambassador to Uzbekistan Craig Murray castigates the Uzbek media again", 5 May 2004. Available on the internet: <<http://enews.ferghana.ru/article.php?id=394>>

Bagila Bukharbayeva, "British Embassy accuses veteran Uzbek rights defender of advocating government interests", *Associated Press*, 23 June 2003

BBC Online, "UK removes Uzbekistan ambassador", 14 October 2004

Agence France Presse, "Britain withdraws outspoken envoy from Uzbekistan amid torture row", 15 October 2004

Richard Beeston, "Ousted rebel envoy voices fears for free speech", *The Times*, 15 October 2004

Nick Paton Walsh, "Envoy in human rights row dismissed", *The Guardian*, 15 October 2004

Anne Penketh, "Ambassador's Sacking: Murray: I feel I was stitched up. I felt I had no option but to go public", *The Independent*, 16 October 2004

The Guardian, "Human rights: Evidence grows of abuses", 16 October 2004

BBC Monitoring International Reports (Harakat website, Uzbekistan), "(Corr) Uzbek Opposition Protests against British envoy's removal", 16 October 2004

Phil Stephens, "The price of turning a diplomatic blind eye", *The Financial Times*, 19 October 2004

Martin Williams, "Human rights group in plea for Scots envoy [...]", *The Herald (Glasgow)*, 25 October 2003

Jonathan Ungoed-Thomas / Mark Franchetti, "The British ambassador says his hosts are boiling people to death...", *Sunday Times*, 26 October 2003

Mark MacKinnon, "Diplomat speaks up and pays the price", *The Globe and Mail (Canada)*, 26 October 2004

Bagila Bukhar-Bayeva, "Uzbek rights protest backs British envoy", *The Independent*, 1 November 2003

BBC Monitoring International Reports (Centrasia web site, Russia), "Uzbek opposition's Samad Murod denies joining protest against UK envoy", 6 November 2003

A. 189 2004, November; James Wizeye (Uganda and Rwandan)

Uganda. James Wizeye, an administrative attaché at the Rwandan embassy in Uganda, is expelled from the country. According to Uganda, the diplomat had links to the PRA (the People's Redemption Army), a group based in the Democratic Republic of Congo and in northwest Uganda, which fights against the Ugandan government. Uganda accused Rwanda of supporting the PRA. Nsaba Buturo, the Ugandan Information Minister, stated that "this gentleman [Wizeye] was involved in activities meant to destabilise our country" and noted that Wizeye had been named by eight members of the PRA who had been arrested in northwest Uganda.

A spokesman for the Ugandan army was however quoted as stating that the expulsion had nothing to do with the arrest of PRA operatives.

Agence France Presse, "Uganda, Rwanda expel low-ranking diplomats", 26 November 2004

Frank Nyakairu, "Uganda, Rwanda expel diplomats", *The Monitor (Uganda)*, 27 November 2004

Kabona Esiara, "Traders urge Rwanda, Uganda not to fight", *The Monitor (Uganda)*, 29 November 2004

Gus Selassie, "Expulsion of Envoys Puts Rwanda-Uganda Diplomatic Ties Under Stress", *World Markets Analysis*, 29 November 2004

Evelyn Lirri, "Expelled diplomats not linked to PRA", *The Monitor (Uganda)*, 29 November 2004

Joyce Namutebi / John Odyek, "Uganda protests diplomat's expulsion", *New Vision (Uganda)*, 1 December 2004

Xinhua News Agency, "Uganda, Rwanda to ease tensional ties", 5 December 2004

Alex Atuhaire, "Nothing new about PRA activities – Mbabazi", *The Monitor (Uganda)*, 8 December 2004

Charles Cobb, "Conflict with DRC inevitable without action from the international community – top official", *Accra Mail*, 15 December 2004

The Monitor (Uganda), "Pick up the phone Kagame, Museveni", 6 May 2005

A. 190 2005, February; Edward Clay (No 3) (Kenya and UK)

Kenya. The British High Commissioner to Kenya, Sir Edward Clay, is criticised after he hands a dossier with twenty alleged cases of corruption to the government. The dossier apparently implicated four cabinet ministers. The Kenyan Foreign Minister Mwakwere stated that the High Commissioner "was talking nonsense. I think he had taken one too many. The language was rude and maybe that is the message he has been given by his government. He is projecting the image of his country very badly by insulting and accusing individual leaders without substantiation." He also remarked that Clay was "a liar of the highest order who is beyond reform.

He is a congenital liar". According to Mwakwere, the High Commissioner was "undiplomatic and unfit to represent his country" (*The People*, Kenya). Several cabinet ministers called for Clay's arrest. Moody Awori, the Kenyan Vice-President, was quoted as saying that Kenyans "would not allow themselves to be dictated by foreigners" (*Xinhua*).

BBC Monitoring International Reports (The People, Kenya), "British Envoy Congenital Liar – Kenyan Foreign Minister", 4 February 2005

Xinhua News Agency, "Roundup: Kenyan officials angered by British envoy's graft allegations", 4 February 2005

Africa News / The East African Standard, "Kenya; Bad Publicity", 27 February 2005

Agence France Presse, "Angry Kenya lashes out at EU aid cut threat", 26 October 2005

Lucas Barasa, "Criticism that rubbed officials the wrong way", *The Nation (Kenya)*, 3 February 2005

Jeevan Vasagar, "Kenyan president faces rebellion on sleaze: MPs from ruling party push for vote of no confidence in Kibaki after cabinet splits over British envoy's corruption allegations",
The Guardian, 24 February 2005

The Guardian, "War of words", 24 February 2005

A. 191 2005, June; Mark Lyall Grant (Pakistan and UK)

Pakistan. Mark Lyall Grant, the British High Commissioner to Pakistan, is criticized after he gave an interview on the "Guest Hour" programme of Peshawar Press. In reply to a question, Grant stated that the United Kingdom did not consider the President of Pakistan a military dictator and that it supported his doctrine of "enlightened moderation".

Roedad Khan, a former Presidential adviser, criticized the British diplomat for considering a President who had come to power "illegally", had "toppled

an elected government in a military coup" and "denied the people the right to elect their President in accordance with the Constitution", a democrat. Khan raised the following questions: "Doesn't this amount to interference in our internal affairs? Isn't interference in domestic politics out of bounds to foreign Ambassadors? Isn't it covered by article 41 of the Vienna Convention, which imposes a duty on diplomats, in their personal activities, not to interfere in the internal affairs of the receiving state, or meddle in its domestic affairs?"

The Nation (Pakistan), "Article: Her Britannic Majesty's envoy speaks", 15 June 2005

Business Recorder, "UK supports Pak-India dialogue process: Envoy", 26 May 2005

A. 192 2005, May; Marek Bucko (Belarus and Poland)

Belarus. Marek Bucko, a Polish diplomat, is expelled from the country. The Belarusian Foreign Ministry spokesman was quoted as stating that the "'persona non grata' status of the Polish diplomat resulted from his attempts to destabilize the Belarusian society".

Bucko's duty included the maintenance of contact with Poles in Belarus, but he also allegedly had been in touch with the Belarusian opposition. It appears that the Belarusian government took exception to both tasks. Polish diplomats were accused of trying to politically influence Belarusians; and according to *Izvestia* (Russia), the government had, for years, been angered by the contacts between Polish diplomats and the opposition.

But President Lukashenko had also accused Western States of using the sizeable Polish minority in Belarus to incite revolution. According to Lukashenko, Polish diplomats were interfering with internal affairs of Belarus.

Monika Scislowska, "Poland says it will expel Belarusian diplomat in tit-for-tat move", *Associated Press*, 18 May 2005

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Polish News Bulletin, "Diplomatic War Between Poland and Belarus Intensifies", 19 May 2005

Interfax News Agency, "Polish diplomat expelled for attempts to destabilize Belarus", 19 May 2005

Vanessa Gera, "Poland's president calls for greater international involvement in Belarus", *Associated Press*, 20 May 2005

Associated Press, "Right-wing Polish lawmaker assails Belarus' treatment of Polish minority", 23 May 2005

BBC Worldwide Monitoring (Polish Radio, Poland), "Polish consul expelled from Belarus", 15 July 2005

PAP (Polish Press Agency) Newswire, "Foreign ministry on diplomatic dispute with Belarus", 17 July 2005

The Warsaw Voice, "Talks of Partnership – News", 20 July 2005

Defense and Security (Russia), "1.9. Belarussian Authorities expel an American and Poles from the country", 22 July 2005

BBC Worldwide Monitoring (TV Polonia, Poland), 25 July 2005

RIA Novosti, "Diplomatic war between Belarus and Poland underway", 26 July 2005

Polish News Bulletin, "Lukashenko Accuses West of Planning Intervention in Belarus", 27 July 2005

Mandy Kirby, "Parliamentary Speaker Moots Polish Third-Party Representative in Belarus as Diplomatic Spat Continues", *World Markets Analysis*, 27 July 2005

ANSA English Media Service, "Belarus: Strife with Warsaw over minority escalates", 28 July 2005

Defense and Security (Russia), "1.9. Diplomatic scandal between Poland and Belarus reached its peak", 29 July 2005

BBC Worldwide Monitoring (Charter-97 website, Belarus), "Polish, French nationals reportedly expelled from Belarus", 24 October 2005

A. 193 2005, October; Christopher Dell (No 1) (Zimbabwe and USA)

Zimbabwe. Christopher Dell, the US Ambassador to Zimbabwe, is detained for half an hour by security services after he allegedly attempted to enter a restricted area in Harare, near the residence of Robert Mugabe.

The Zimbabwean Foreign Ministry issued a statement according to which Mr Dell's behaviour "was clearly intended to provoke an unwarranted diplomatic incident". Sources in the government were quoted as saying that the occurrence had been part of an American attempt to effect "regime change" in Zimbabwe.

Tages-Anzeiger, "Globo", 17 October 2005

Anne Penketh, "US Ambassador is held at gunpoint over Mugabe plot", *The Independent*, 15 October 2005

Africa News / The Herald, "Zimbabwe; United States Envoy On a Failed Mission to Zim", 21 October 2005

Bahrain News Agency, "US Ambassador to Harare seized by security forces", 14 October 2005

BBC Monitoring International Reports (Zimbabwe Herald, Zimbabwe), "BBC Monitoring. Quotes from the African Press 21 October", 21 October 2005

A. 194 2005, November; Christopher Dell (No 2)
(Zimbabwe and USA)

Zimbabwe. The American Ambassador Christopher Dell is criticized after giving a speech at a university in Eastern Zimbabwe, in which he accused the Zimbabwean government of mismanagement and corruption. Dell also drew attention to the demolition of thousands of homes in 2006, which, in his view, resulted in a humanitarian crisis in the State.

According to the *Sunday Mail* (Zimbabwe), Mugabe wanted the US Ambassador to explain why he was "meddling in the internal affairs of Zimbabwe". Joseph Kurebwa, Lecturer and political scientist at the University of Zimbabwe, was quoted as stating that Dell had "a mission to [...] foment trouble in Zimbabwe against the government".

Angus Shaw, "Report: Mugabe to summon U.S. ambassador in Zimbabwe", *Associated Press*, 6 November 2005

BBC Worldwide Monitoring (ZTV1, Zimbabwe, 9 November 2005), "Zimbabwean dons say US envoy "main agent for political upheaval"", 10 November 2005

A. 195 2006, January; Marc Doe (Russia and UK)

Russia. The Russian Federal Security Service (FSB) alleges that Marc Doe, a political secretary at the British Embassy, had given money to non-governmental organizations. According to the FSB, the money came from the Global Opportunities Fund of the British Foreign Office. FSB claimed that the beneficiaries included the Committee against Torture, the Centre for the Development of Democracy and Human Rights, Penal Reform International and the Helsinki Group (a Human Rights organization which had frequently criticized Putin's government). However, Lyudmila Alexeyeva, Head of the Moscow Helsinki Group, was reported as stating that the last time the group had received money from Britain, had been in 2004, to conduct a study on the Russian prisons system. Andrei Kortunov,

who headed the New Eurasia Foundation stated that he had received funds from the British Embassy for a two-year programme, that aimed at making regional Russian newspapers more sustainable.

The Russian President Putin acknowledged the importance of NGOs "as controls over the activities of the state itself" and pledged Russia's support for NGOs. He was however also quoted as saying that Russia wanted NGOs to be independent and not "to be led by puppet masters from abroad [...] states cannot use NGOs as an instrument of foreign policy on the territory of other states."

The British Ambassador, Anthony Brenton, defended Doe's behaviour and stated that the financing of NGOs had taken place "transparently" and was partly aimed at helping victims of rape and torture. Brenton stated that there was nothing unlawful or improper about the funding of NGOs in Russia.

Peter Finn, "Russia Says British Used Rock to Spy; Security Service Accuses Four Diplomats", *The Washington Post*, 24 January 2006

Michael Mainville, "Between a rock and a spy case", *The Toronto Star*, 24 January 2006

Birmingham Evening Mail, "Spy claim diplomats face axe", 24 January 2006

BBC Monitoring International Reports (Ekho Moskvyy radio, Russia), "Russian Observer says spy scandal provocation against NGOs", 25 January 2006

Carl Schreck, "Putin: Spy Flap Justifies NGO Law", *Moscow Times*, 26 January 2006

Federal News Service, Official Kremlin International News Broadcast, "Press Conference with President of the Russian Federation Vladimir Putin. The Kremlin, 12:00, January 31, 2006", 31 January 2006

BBC Worldwide Monitoring (RTR Russia TV, Russia), "Putin comments on spy allegations – clarification", 31 January 2006

BBC Worldwide Monitoring (RTR Russia TV, Russia), "Putin says spy scandal will not harm relations with UK", 31 January 2006

Nick Paton Walsh, "Ambassador defends diplomat in spying row: British envoy hits back over Moscow transmitter: Putin to raise Russian allegations with Blair", *The Guardian*, 1 February 2006

Vladimir Isachenkov, "Report: Russia's spymaster says Moscow won't expel British diplomats accused of spying", *Associated Press*, 21 February 2006

A. 196 2006, April; Paul Trivelli (Nicaragua and USA)

Nicaragua. The American Ambassador Paul Trivelli meets with right wing parties in the country and allegedly urges them to support the presidential candidate of the Alianza Liberal, Eduardo Montealegre.

Trivelli faced criticism for his attempts to unite the divided Liberals against the Frente Sandinista de Liberación Nacional (FSLN) and for his comments on the forthcoming presidential elections. Trivelli had stated that Nicaragua was threatened by a "creeping coup", in which allies of the former President Aleman would take power (the USA supported the current government of Enrique Bolanos). The FSLN accused Trivelli of interfering in Nicaragua's internal affairs. Nicaraguan politicians also accused Trivelli of pressuring the ruling party to nominate a candidate who was not linked to Aleman.

The Ambassador however stated that he was free to express his opinion on any subject; the Nicaraguan government likewise defended the diplomat's right to express his opinion. Trivelli also said that he was merely trying to defend Nicaragua's diplomatic progress.

Kate Joynes, "U.S. Holds Talks with Nicaragua's Splintered Right", *World Markets Research*, 19 April 2006

Intelligence Research Ltd, Latinnews Daily, "Nicaragua: Montealegre leads polls", 20 April 2006

Filadelfo Aleman, "U.S. ambassador to Nicaragua defends his right to weigh in on country's politics", *Associated Press*, 21 April 2006

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The Miami Herald, "Rebel ambush kills 16 from military convoy. Nicaragua U. S. Ambassador defends comments ", 22 April 2006

Ian James, "Nicaragua's Ortega accuses U.S. of interfering in country's presidential race", *Associated Press*, 23 April 2006

Intelligence Research Ltd, Caribbean & Central America Report, "US takes active role in Nicaraguan elections", 25 April 2006

Intelligence Research Ltd, Latinnews Daily, "Nicaragua: Chávez accused of interfering in elections", 26 April 2006

Filadelfo Aleman, " U.S. official: Nicaraguan voters face stark choices in November election", *Associated Press* 27 April 2006

Joan Russow, " US Intervention in Nicaragua Election: Should US Citizens Not be Outraged?", *PEJ News*, 4 November 2006. Available Online:
<<http://www.pej.org/html/modules.php?op=modload&name=News&file=article&sid=5916&mode=thread&order=0&thold=0>>

A. 197 2006, April; Stanislav Kazécky (Cuba and Czech Republic)

Cuba. The Czech diplomat Stanislav Kazécky is expelled. Felipe Perez Roque, the Cuban Foreign Minister, referred to "subversive tasks" carried out by Mr Kazécky and accused the diplomat of giving money and material goods to opposition groups. Stanislav Kazécky stated that his expulsion was connected to the fact that he had met leaders of the opposition.

It is also reported that the Czech Republic had become increasingly outspoken about the treatment of dissidents in Cuba. Kazécky himself described the Human Rights situation in Cuba as being "not good" and "rather difficult."

Appendix A. Cases of Interference through the diplomatic message 1961 – 2006

Czech News Agency, "Cuba expels Czech diplomat, Prague protests – Ministry", 13 April 2006

Olga R. Rodriguez, "Cuba says expelled Czech diplomat is spy for U.S.", *Associated Press*, 14 April 2006

Marion Barbel, "Czech Diplomat Expelled from Cuba", *World Markets Analysis*, 14 April 2006

The Australian, "Cubans expel Czech 'for spying'", 17 August 2006

Pablo Bachelet, "Cuban regime feeling heat from Czechs; The Czechs are stepping up their efforts to aid the Cuban dissident movement, triggering an angry response from Havana.",

The Miami Herald, 24 July 2006

A. 198 2006, July; K. Kimar (Kimura) et al. (Kyrgyzstan and USA)

Kyrgyzstan. Two American diplomats (named as K. Kimar and P. Paulites) are expelled. The Kyrgyz Foreign Ministry stated that, according to information provided by Kyrgyz special services, the two diplomats had "repeatedly interfered in the country's internal affairs, which is incompatible with their diplomatic status and generally recognized norms of international law".

According to a US Embassy statement, the expelled diplomats were accused of maintaining inappropriate contacts with leaders of Kyrgyz non-governmental organizations. The Embassy denied allegations that the diplomats had engaged in inappropriate conduct. It pointed out that the Kyrgyz decision could be seen as an "attempt to intimidate embassies and silence the voice of civil society." The Embassy also stated that the USA would "continue to maintain contact with all sectors of Kyrgyz society, including government officials, opposition, and leaders of non-governmental and community organizations."

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Interfax News Agency, "Two Americans expelled from Kyrgyzstan were intelligence officers – media", 11 July 2006

The Times of Central Asia, "Kyrgyzstan expels US diplomats after secret services report", 12 July 2006

Ria Novosti, "Kyrgyzstan expelled U.S. diplomats after secret services report", 12 July 2006

The Frontrunner, "Two US Diplomats Expelled From Kyrgyzstan", 12 July 2006

Interfax News Agency, "Two U.S. diplomats expelled from Kyrgyzstan", 12 July 2006

The Times of Central Asia, "Kyrgyzstan expels two US diplomats", 13 July 2006

Defense and Security (Russia), "Two American diplomats expelled from Kyrgyzstan", 14 July 2006

US Fed News, "State Dept.: U.S., Kyrgyz Republic reach deal on Manas Coalition Airbase", 18 July 2006

States News Service, "U.S., Kyrgyz Republic reach deal on Manas Coalition Airbase", 18 July 2006

BBC Monitoring International Reports (Kyrgyz news agency Kabar, Kyrgyzstan), "Kyrgyz Foreign Ministry confirms expulsion of diplomats from USA", 2 August 2006

BBC Worldwide Monitoring (Kyrgyz news agency 24.kg website, Kyrgyzstan), "US expulsion of Kyrgyz diplomats result of 'unfortunate' Kyrgyz decision",

RIA Novosti, "Diplomatic spat with U.S. over – Kyrgyzstan", 10 August 2006

Facts on File, "Kyrgyzstan; U.S. Air Base Agreement Signed", 24 August 2006

A. 199 2006, September; Patrick Cole (Solomon Islands and Australia)

Solomon Islands. Patrick Cole, the Australian High Commissioner, is expelled for alleged meddling in the internal affairs of the Solomon Islands. According to the Australian Foreign Minister (Alexander Downer), the Prime Minister of the Solomon Islands believed that Mr Cole had been "talking too much to the opposition" and had voiced opposition to the setting up of a governmental commission that was to investigate riots which had taken place in Honiara, the capital of the Solomon Islands, in April 2006. The Australian government was concerned that the inquiry would try to blame the police for the riots, which would include Australian police officers serving in the Solomon Islands.

Downer protested the decision to expel Cole, which he called "an outrageous thing to do", a personal attack on Cole and "an extremely unprofessional thing to have done".

Australian Associated Press, "Fed: Govt must quickly investigate Solomons expulsion: Greens", 13 September 2006

Australian Associated Press, "Fed: Aust diplomat expelled from Solomons", 13 September 2006

The Daily Telegraph (Australia), "Diplomat expelled", 13 September 2006

A. 200 2006, October; Oleg Riabchikov (Lithuania and Russia)

Lithuania. The expulsion of Oleg Riabchikov, First Secretary at the Russian Embassy, is announced. According to the *Baltic News Service*, part of the reasons behind the decision had been Riabchikov's attempts to influence the position of Lithuania in the ongoing conflict between Russia and

Georgia. Lithuania, Poland and Ukraine had offered to mediate in this conflict, but Lithuania had also shown herself supportive of Georgia.

US Fed News, "VOA News: Lithuania expels Russian envoy on suspicion of spying", 8 October 2006

BBC Worldwide Monitoring (Channel One TV, Russia), "Lithuanian sources report Russian diplomat to be expelled - Russian TV", 9 October 2006

Interfax News Agency, "Kirkilas: No reasons to spoil relations with Russia over expulsion of a diplomat", 9 October 2006

The Ottawa Sun, "World Sunflashes Column", 9 October 2006

Agence France Presse, "Lithuania expels Russian diplomat", 11 October 2006

Baltic News Service, "Russian Duma Deputies have no reproaches against Lithuania over expulsion of Russian diplomat (expanded version, new info throughout text)", 11 October 2006

Appendix B – The Vienna Convention on Diplomatic Relations 1961

United Nations Treaty Series, Vol. 500, p. 95

DONE AT VIENNA, ON 18 APRIL 1961

The States Parties to the present Convention,

Recalling that peoples of all nations from ancient times have recognized the status of diplomatic agents,

Having in mind the purposes and principles of the Charter of the United Nations concerning the sovereign equality of States, the maintenance of international peace and security, and the promotion of friendly relations among nations,

Believing that an international convention on diplomatic intercourse, privileges and immunities would contribute to the development of friendly relations among nations, irrespective of their differing constitutional and social systems,

Realizing that the purpose of such privileges and immunities is not to benefit individuals but to ensure the efficient performance of the functions of diplomatic missions as representing States,

Affirming that the rules of customary international law should continue to govern questions not expressly regulated by the provisions of the present Convention,

Have agreed as follows:

Article 1

For the purpose of the present Convention, the following expressions shall have the meanings hereunder assigned to them:

- (a) the "head of the mission" is the person charged by the sending State with the duty of acting in that capacity;
- (b) the "members of the mission" are the head of the mission and the members of the staff of the mission;
- (c) the "members of the staff of the mission" are the members of the diplomatic staff, of the administrative and technical staff and of the service staff of the mission;

- (d) the "members of the diplomatic staff" are the members of the staff of the mission having diplomatic rank;
- (e) a "diplomatic agent" is the head of the mission or a member of the diplomatic staff of the mission;
- (f) the "members of the administrative and technical staff" are the members of the staff of the mission employed in the administrative and technical service of the mission;
- (g) the "members of the service staff" are the members of the staff of the mission in the domestic service of the mission;
- (h) a "private servant" is a person who is in the domestic service of a member of the mission and who is not an employee of the sending State;
- (i) the "premises of the mission" are the buildings or parts of buildings and the land ancillary thereto, irrespective of ownership, used for the purposes of the mission including the residence of the head of the mission.

Article 2

The establishment of diplomatic relations between States, and of permanent diplomatic missions, takes place by mutual consent.

Article 3

1. The functions of a diplomatic mission consist inter alia in:

- (a) representing the sending State in the receiving State;
- (b) protecting in the receiving State the interests of the sending State and of its nationals, within the limits permitted by international law;
- (c) negotiating with the Government of the receiving State;
- (d) ascertaining by all lawful means conditions and developments in the receiving State, and reporting thereon to the Government of the sending State;
- (e) promoting friendly relations between the sending State and the receiving State, and developing their economic, cultural and scientific relations.

2. Nothing in the present Convention shall be construed as preventing the performance of consular functions by a diplomatic mission.

Article 4

1. The sending State must make certain that the agreement of the receiving State has been given for the person it proposes to accredit as head of the mission to that State.

2. The receiving State is not obliged to give reasons to the sending State for a refusal of agrément.

Article 5

1. The sending State may, after it has given due notification to the receiving States concerned, accredit a head of mission or assign any member of the diplomatic staff, as the case may be, to more than one State, unless there is express objection by any of the receiving States.

2. If the sending State accredits a head of mission to one or more other States it may establish a diplomatic mission headed by a charge d'affaires ad interim in each State where the head of mission has not his permanent seat.

3. A head of mission or any member of the diplomatic staff of the mission may act as representative of the sending State to any international organization.

Article 6

Two or more States may accredit the same person as head of mission to another State, unless objection is offered by the receiving State.

Article 7

Subject to the provisions of Articles 5, 8, 9 and 11, the sending State may freely appoint the members of the staff of the mission. In the case of military, naval or air attaches, the receiving State may require their names to be submitted beforehand, for its approval.

Article 8

1. Members of the diplomatic staff of the mission should in principle be of the nationality of the sending State.

2. Members of the diplomatic staff of the mission may not be appointed from among persons having the nationality of the receiving State, except with the consent of that State which may be withdrawn at any time.

3. The receiving State may reserve the same right with regard to nationals of a third State who are not also nationals of the sending State.

Article 9

1. The receiving State may at any time and without having to explain its decision, notify the sending State that the head of the mission or any member of the diplomatic staff of the mission is *persona non grata* or that any other member of the staff of the mission is not acceptable. In any such case, the sending State shall, as appropriate, either recall the person concerned or terminate his functions with the mission. A person may be declared *non grata* or not acceptable before arriving in the territory of the receiving State.

2. If the sending State refuses or fails within a reasonable period to carry out its obligations under paragraph 1 of this Article, the receiving State may refuse to recognize the person concerned as a member of the mission.

Article 10

1. The Ministry for Foreign Affairs of the receiving State, or such other ministry as may be agreed, shall be notified of:

- (a) the appointment of members of the mission, their arrival and their final departure or the termination of their functions with the mission;
- (b) the arrival and final departure of a person belonging to the family of a member of the mission and, where appropriate, the fact that a person becomes or ceases to be a member of the family of a member of the mission;
- (c) the arrival and final departure of private servants in the employ of persons referred to in sub-paragraph (a) of this paragraph and, where appropriate, the fact that they are leaving the employ of such persons;
- (d) the engagement and discharge of persons resident in the receiving State as members of the mission or private servants entitled to privileges and immunities.

2. Where possible, prior notification of arrival and final departure shall also be given.

Article 11

1. In the absence of specific agreement as to the size of the mission, the receiving State may require that the size of a mission be kept within limits considered by it to be reasonable and normal, having regard to circumstances and conditions in the receiving State and to the needs of the particular mission.

2. The receiving State may equally, within similar bounds and on a

nondiscriminatory basis, refuse to accept officials of a particular category.

Article 12

The sending State may not, without the prior express consent of the receiving State, establish offices forming part of the mission in localities other than those in which the mission itself is established.

Article 13

1. The head of the mission is considered as having taken up his functions in the receiving State either when he has presented his credentials or when he has notified his arrival and a true copy of his credentials has been presented to the Ministry for Foreign Affairs of the receiving State, or such other ministry as may be agreed, in accordance with the practice prevailing in the receiving State which shall be applied in a uniform manner.

2. The order of presentation of credentials or of a true copy thereof will be determined by the date and time of the arrival of the head of the mission.

Article 14

1. Heads of mission are divided into three classes, namely:

- (a) that of ambassadors or nuncios accredited to Heads of State, and other heads of mission of equivalent rank;
- (b) that of envoys, ministers and internuncios accredited to Heads of State;
- (c) that of charges d'affaires accredited to Ministers for Foreign Affairs.

2. Except as concerns precedence and etiquette, there shall be no differentiation between heads of mission by reason of their class.

Article 15

The class to which the heads of their missions are to be assigned shall be agreed between States.

Article 16

1. Heads of mission shall take precedence in their respective classes in the order of the date and time of taking up their functions in accordance with Article 13.
2. Alterations in the credentials of a head of mission not involving any change of class shall not affect his precedence.
3. This article is without prejudice to any practice accepted by the receiving State regarding the precedence of the representative of the Holy See.

Article 17

The precedence of the members of the diplomatic staff of the mission shall be notified by the head of the mission to the Ministry for Foreign Affairs or such other ministry as may be agreed.

Article 18

The procedure to be observed in each State for the reception of heads of mission shall be uniform in respect of each class.

Article 19

1. If the post of head of the mission is vacant, or if the head of the mission is unable to perform his functions, a charge d'affaires ad interim shall act provisionally as head of the mission. The name of the charge d'affaires ad interim shall be notified, either by the head of the mission or, in case he is unable to do so, by the Ministry for Foreign Affairs of the sending State to the Ministry for Foreign Affairs of the receiving State or such other ministry as may be agreed.
2. In cases where no member of the diplomatic staff of the mission is present in the receiving State, a member of the administrative and technical staff may, with the consent of the receiving State, be designated by the sending State to be in charge of the current administrative affairs of the mission.

Article 20

The mission and its head shall have the right to use the flag and emblem of the sending State on the premises of the mission, including the residence of the head of the mission, and on his means of transport.

Article 21

1. The receiving State shall either facilitate the acquisition on its territory, in accordance with its laws, by the sending State of premises necessary for its mission or assist the latter in obtaining accommodation in some other way.
2. It shall also, where necessary, assist missions in obtaining suitable accommodation for their members.

Article 22

1. The premises of the mission shall be inviolable. The agents of the receiving State may not enter them, except with the consent of the head of the mission.
2. The receiving State is under a special duty to take all appropriate steps to protect the premises of the mission against any intrusion or damage and to prevent any disturbance of the peace of the mission or impairment of its dignity.
3. The premises of the mission, their furnishings and other property thereon and the means of transport of the mission shall be immune from search, requisition, attachment or execution.

Article 23

1. The sending State and the head of the mission shall be exempt from all national, regional or municipal dues and taxes in respect of the premises of the mission, whether owned or leased, other than such as represent payment for specific services rendered.
2. The exemption from taxation referred to in this Article shall not apply to such dues and taxes payable under the law of the receiving State by persons contracting with the sending State or the head of the mission.

Article 24

The archives and documents of the mission shall be inviolable at any time and wherever they may be.

Article 25

The receiving State shall accord full facilities for the performance of the functions of the mission.

Article 26

Subject to its laws and regulations concerning zones entry into which is prohibited or regulated for reasons of national security, the receiving State shall ensure to all members of the mission freedom of movement and travel in its territory.

Article 27

1. The receiving State shall permit and protect free communication on the part of the mission for all official purposes. In communicating with the Government and the other missions and consulates of the sending State, wherever situated, the mission may employ all appropriate means, including diplomatic couriers and messages in code or cipher. However, the mission may install and use a wireless transmitter only with the consent of the receiving State.

2. The official correspondence of the mission shall be inviolable. Official correspondence means all correspondence relating to the mission and its functions.

3. The diplomatic bag shall not be opened or detained.

4. The packages constituting the diplomatic bag must bear visible external marks of their character and may contain only diplomatic documents or articles intended for official use.

5. The diplomatic courier, who shall be provided with an official document indicating his status and the number of packages constituting the diplomatic bag, shall be protected by the receiving State in the performance of his functions. He shall enjoy personal inviolability and shall not be liable to any form of arrest or detention.

6. The sending State or the mission may designate diplomatic couriers ad hoc. In such cases the provisions of paragraph 5 of this Article shall also apply, except that the immunities therein mentioned shall cease to apply when such a courier has delivered to the consignee the diplomatic bag in his charge.

7. A diplomatic bag may be entrusted to the captain of a commercial aircraft scheduled to land at an authorized port of entry. He shall be

provided with an official document indicating the number of packages constituting the bag but he shall not be considered to be a diplomatic courier. The mission may send one of its members to take possession of the diplomatic bag directly and freely from the captain of the aircraft.

Article 28

The fees and charges levied by the mission in the course of its official duties shall be exempt from all dues and taxes.

Article 29

The person of a diplomatic agent shall be inviolable. He shall not be liable to any form of arrest or detention. The receiving State shall treat him with due respect and shall take all appropriate steps to prevent any attack on his person, freedom or dignity.

Article 30

1. The private residence of a diplomatic agent shall enjoy the same inviolability and protection as the premises of the mission.
2. His papers, correspondence and, except as provided in paragraph 3 of Article 31, his property, shall likewise enjoy inviolability

Article 31

1. A diplomatic agent shall enjoy immunity from the criminal jurisdiction of the receiving State. He shall also enjoy immunity from its civil and administrative jurisdiction, except in the case of:

- (a) a real action relating to private immovable property situated in the territory of the receiving State, unless he holds it on behalf of the sending State for the purposes of the mission;
- (b) an action relating to succession in which the diplomatic agent is involved as executor, administrator, heir or legatee as a private person and not on behalf of the sending State;
- (c) an action relating to any professional or commercial activity exercised by the diplomatic agent in the receiving State outside his official functions.

2. A diplomatic agent is not obliged to give evidence as a witness.
3. No measures of execution may be taken in respect of a diplomatic agent

except in the cases coming under sub-paragraphs (a), (b) and (c) of paragraph 1 of this Article, and provided that the measures concerned can be taken without infringing the inviolability of his person or of his residence.

4. The immunity of a diplomatic agent from the jurisdiction of the receiving State does not exempt him from the jurisdiction of the sending State.

Article 32

1. The immunity from jurisdiction of diplomatic agents and of persons enjoying immunity under Article 37 may be waived by the sending State.

2. Waiver must always be express.

3. The initiation of proceedings by a diplomatic agent or by a person enjoying immunity from jurisdiction under Article 37 shall preclude him from invoking immunity from jurisdiction in respect of any counter-claim directly connected with the principal claim.

4. Waiver of immunity from jurisdiction in respect of civil or administrative proceedings shall not be held to imply waiver of immunity in respect of the execution of the judgment, for which a separate waiver shall be necessary.

Article 33

1. Subject to the provisions of paragraph 3 of this Article, a diplomatic agent shall with respect to services rendered for the sending State be exempt from social security provisions which may be in force in the receiving State.

2. The exemption provided for in paragraph 1 of this Article shall also apply to private servants who are in the sole employ of a diplomatic agent, on condition:

- (a) that they are not nationals of or permanently resident in the receiving State; and
- (b) that they are covered by the social security provisions which may be in force in the sending State or a third State.

3. A diplomatic agent who employs persons to whom the exemption provided for in paragraph 2 of this Article does not apply shall observe the obligations which the social security provisions of the receiving State impose upon employers.

4. The exemption provided for in paragraphs 1 and 2 of this Article shall not preclude voluntary participation in the social security system of the receiving State provided that such participation is permitted by that State.

5. The provisions of this Article shall not affect bilateral or multilateral agreements concerning social security concluded previously and shall not prevent the conclusion of such agreements in the future.

Article 34

A diplomatic agent shall be exempt from all dues and taxes, personal or real, national, regional or municipal, except:

- (a) indirect taxes of a kind which are normally incorporated in the price of goods or services;
- (b) dues and taxes on private immovable property situated in the territory of the receiving State, unless he holds it on behalf of the sending State for the purposes of the mission;
- (c) estate, succession or inheritance duties levied by the receiving State, subject to the provisions of paragraph 4 of Article 39;
- (d) dues and taxes on private income having its source in the receiving State and capital taxes on investments made in commercial undertakings in the receiving State;
- (e) charges levied for specific services rendered;
- (f) registration, court or record fees, mortgage dues and stamp duty, with respect to immovable property, subject to the provisions of Article 23.

Article 35

The receiving State shall exempt diplomatic agents from all personal services, from all public service of any kind whatsoever, and from military obligations such as those connected with requisitioning, military contributions and billeting.

Article 36

1. The receiving State shall, in accordance with such laws and regulations as it may adopt, permit entry of and grant exemption from all customs duties, taxes, and related charges other than charges for storage, cartage and similar services, on:

- (a) articles for the official use of the mission;
- (b) articles for the personal use of a diplomatic agent or members of his

family forming part of his household, including articles intended for his establishment.

2. The personal baggage of a diplomatic agent shall be exempt from inspection, unless there are serious grounds for presuming that it contains articles not covered by the exemptions mentioned in paragraph 1 of this Article, or articles the import or export of which is prohibited by the law or controlled by the quarantine regulations of the receiving State. Such inspection shall be conducted only in the presence of the diplomatic agent or of his authorized representative.

Article 37

1. The members of the family of a diplomatic agent forming part of his household shall, if they are not nationals of the receiving State, enjoy the privileges and immunities specified in Articles 29 to 36.

2. Members of the administrative and technical staff of the mission, together with members of their families forming part of their respective households, shall, if they are not nationals of or permanently resident in the receiving State, enjoy the privileges and immunities specified in Articles 29 to 35, except that the immunity from civil and administrative jurisdiction of the receiving State specified in paragraph 1 of Article 31 shall not extend to acts performed outside the course of their duties. They shall also enjoy the privileges specified in Article 36, paragraph 1, in respect of articles imported at the time of first installation.

3. Members of the service staff of the mission who are not nationals of or permanently resident in the receiving State shall enjoy immunity in respect of acts performed in the course of their duties, exemption from dues and taxes on the emoluments they receive by reason of their employment and the exemption contained in Article 33.

4. Private servants of members of the mission shall, if they are not nationals of or permanently resident in the receiving State, be exempt from dues and taxes on the emoluments they receive by reason of their employment. In other respects, they may enjoy privileges and immunities only to the extent admitted by the receiving State. However, the receiving State must exercise its jurisdiction over those persons in such a manner as not to interfere unduly with the performance of the functions of the mission.

Article 38

1. Except insofar as additional privileges and immunities may be granted by the receiving State, a diplomatic agent who is a national of or permanently resident in that State shall enjoy only immunity from jurisdiction, and

inviolability, in respect of official acts performed in the exercise of his functions.

2. Other members of the staff of the mission and private servants who are nationals of or permanently resident in the receiving State shall enjoy privileges and immunities only to the extent admitted by the receiving State. However, the receiving State must exercise its jurisdiction over those persons in such a manner as not to interfere unduly with the

performance of the functions of the mission.

Article 39

1. Every person entitled to privileges and immunities shall enjoy them from the moment he enters the territory of the receiving State on proceeding to take up his post or, if already in its territory, from the moment when his appointment is notified to the Ministry for Foreign Affairs or such other ministry as may be agreed.

2. When the functions of a person enjoying privileges and immunities have come to an end, such privileges and immunities shall normally cease at the moment when he leaves the country, or on expiry of a reasonable period in which to do so, but shall subsist until that time, even in case of armed conflict. However, with respect to acts performed by such a person in the exercise of his functions as a member of the mission, immunity shall continue to subsist.

3. In case of the death of a member of the mission, the members of his family shall continue to enjoy the privileges and immunities to which they are entitled until the expiry of a reasonable period in which to leave the country.

4. In the event of the death of a member of the mission not a national of or permanently resident in the receiving State or a member of his family

forming part of his household, the receiving State shall permit the withdrawal of the movable property of the deceased, with the exception of any property acquired in the country the export of which was prohibited at the time of his death. Estate, succession and inheritance duties shall not be levied on movable property the presence of which in the receiving State was due solely to the presence there of the deceased as a member of the mission or as a member of the family of a member of the mission.

Article 40

1. If a diplomatic agent passes through or is in the territory of a third State, which has granted him a passport visa if such visa was necessary, while proceeding to take up or to return to his post, or when returning to

his own country, the third State shall accord him inviolability and such other immunities as may be required to ensure his transit or return. The same shall apply in the case of any members of his family enjoying privileges or immunities who are accompanying the diplomatic agent, or travelling separately to join him or to return to their country.

2. In circumstances similar to those specified in paragraph 1 of this Article, third States shall not hinder the passage of members of the administrative and technical or service staff of a mission, and of members of their families, through their territories.

3. Third States shall accord to official correspondence and other official communications in transit, including messages in code or cipher, the same freedom and protection as is accorded by the receiving State. They shall accord to diplomatic couriers, who have been granted a passport visa if such visa was necessary, and diplomatic bags in transit the same inviolability and protection as the receiving State is bound to accord.

4. The obligations of third States under paragraphs 1, 2 and 3 of this Article shall also apply to the persons mentioned respectively in those paragraphs, and to official communications and diplomatic bags, whose presence in the territory of the third State is due to force majeure.

Article 41

1. Without prejudice to their privileges and immunities, it is the duty of all persons enjoying such privileges and immunities to respect the laws and regulations of the receiving State. They also have a duty not to interfere in the internal affairs of that State.

2. All official business with the receiving State entrusted to the mission by the sending State shall be conducted with or through the Ministry for Foreign Affairs of the receiving State or such other ministry as may be agreed.

3. The premises of the mission must not be used in any manner incompatible with the functions of the mission as laid down in the present Convention or by other rules of general international law or by any special agreements in force between the sending and the receiving State.

Article 42

A diplomatic agent shall not in the receiving State practise for personal profit any professional or commercial activity.

Article 43

The function of a diplomatic agent comes to an end, *inter alia*:

- (a) on notification by the sending State to the receiving State that the function of the diplomatic agent has come to an end;
- (b) on notification by the receiving State to the sending State that, in accordance with paragraph 2 of Article 9, it refuses to recognize the diplomatic agent as a member of the mission.

Article 44

The receiving State must, even in case of armed conflict, grant facilities in order to enable persons enjoying privileges and immunities, other than nationals of the receiving State, and members of the families of such persons irrespective of their nationality, to leave at the earliest possible moment. It must, in particular, in case of need, place at their disposal the necessary means of transport for themselves and their property.

Article 45

If diplomatic relations are broken off between two States, or if a mission is permanently or temporarily recalled:

- (a) the receiving State must, even in case of armed conflict, respect and protect the premises of the mission, together with its property and archives;
- (b) the sending State may entrust the custody of the premises of the mission, together with its property and archives, to a third State acceptable to the receiving State;
- (c) the sending State may entrust the protection of its interests and those of its nationals to a third State acceptable to the receiving State.

Article 46

A sending State may with the prior consent of a receiving State, and at the request of a third State not represented in the receiving State, undertake the temporary protection of the interests of the third State and of its nationals.

Article 47

1. In the application of the provisions of the present Convention, the receiving State shall not discriminate as between States.

2. However, discrimination shall not be regarded as taking place:

- (a) where the receiving State applies any of the provisions of the present Convention restrictively because of a restrictive application of that provision to its mission in the sending State;
- (b) where by custom or agreement States extend to each other more favourable treatment than is required by the provisions of the present Convention.

Article 48

The present Convention shall be open for signature by all States Members of the United Nations or of any of the specialized agencies or Parties to the Statute of the International Court of Justice, and by any other State invited by the General Assembly of the United Nations to become a Party to the Convention, as follows: until 31 October 1961 at the Federal Ministry for Foreign Affairs of Austria and subsequently, until 31 March 1962, at the United Nations Headquarters in New York.

Article 49

The present Convention is subject to ratification. The instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article 50

The present Convention shall remain open for accession by any State belonging to any of the four categories mentioned in Article 48. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 51

1. The present Convention shall enter into force on the thirtieth day following the date of deposit of the twenty-second instrument of ratification or accession with the Secretary-General of the United Nations.
2. For each State ratifying or acceding to the Convention after the deposit of the twenty-second instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification or accession.

Article 52

The Secretary-General of the United Nations shall inform all States belonging to any of the four categories mentioned in Article 48:

- (a) of signatures to the present Convention and of the deposit of instruments of ratification or accession, in accordance with Articles 48, 49 and 50;
- (b) of the date on which the present Convention will enter into force, in accordance with Article 51.

Article 53

The original of the present Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations, who shall send certified copies thereof to all States belonging to any of the four categories mentioned in Article 48.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, being duly authorized thereto by their respective Governments, have signed the present Convention.

DONE at Vienna, this eighteenth day of April one thousand nine hundred and sixty-one.

Appendix C – The Vienna Convention on Consular Relations 1963

United Nations Treaty Series, Vol. 596, p. 261

DONE AT VIENNA, ON 24 APRIL 1963

The States Parties to the present Convention,
Recalling that consular relations have been established between peoples since ancient times,
Having in mind the Purposes and Principles of the Charter of the United Nation concerning the sovereign equality of States, the maintenance of international peace and security, and the promotion of friendly relations among nations,
Considering that the United Nations Conference on Diplomatic Intercourse and Immunities adopted the Vienna Convention on Diplomatic Relations which was opened for signature on 18 April 1961,
Believing that an international convention on consular relations, privileges and immunities would also contribute to the development of friendly relations among nations, irrespective of their differing constitutional and social systems,
Realizing that the purpose of such privileges and immunities is not to benefit individuals but to ensure the efficient performance of functions by consular posts on behalf of their respective States,
Affirming that the rules of customary international law continue to govern matters not expressly regulated by the provisions of the present Convention,

Have agreed as follows:

Article 1

DEFINITIONS

1. For the purposes of the present Convention, the following expressions shall have the meanings hereunder assigned to them:

- (a) "consular post" means any consulate-general, consulate, vice-consulate or consular agency;
- (b) "consular district" means the area assigned to a consular post for the exercise of consular functions;
- (c) "head of consular post" means the person charged with the duty of acting in that capacity;
- (d) "consular officer" means any person, including the head of a consular post, entrusted in that capacity with the exercise of consular functions;
- (e) "consular employee" means any person employed in the administrative or technical service of a consular post;

- (f) "member of the service staff" means any person employed in the domestic service of a consular post;
 - (g) "members of the consular post" means consular officers, consular employees and members of the service staff;
 - (h) "members of the consular staff" means consular officers, other than the head of a consular post, consular employees and members of the service staff;
 - (i) "member of the private staff" means a person who is employed exclusively in the private service of a member of the consular post;
 - (j) "consular premises" means the buildings or parts of buildings and the land ancillary thereto, irrespective of ownership, used exclusively for the purposes of the consular post;
 - (k) "consular archives" includes all the papers, documents, correspondence, books, films, tapes and registers of the consular post, together with the ciphers and codes, the card-indexes and any article of furniture intended for their protection or safekeeping.
2. Consular officers are of two categories, namely career consular officers and honorary consular officers. The provisions of Chapter II of the present Convention apply to consular posts headed by career consular officers; the provisions of Chapter III govern consular posts headed by honorary consular officers.
3. The particular status of members of the consular posts who are nationals or permanent residents of the receiving State is governed by Article 71 of the present Convention.

CHAPTER I CONSULAR RELATIONS IN GENERAL

Section I ESTABLISHMENT AND CONDUCT OF CONSULAR RELATIONS

Article 2 ESTABLISHMENT OF CONSULAR RELATIONS

1. The establishment of consular relations between States takes place by mutual consent.
2. The consent given to the establishment of diplomatic relations between two States implies, unless otherwise stated, consent to the establishment of consular relations.
3. The severance of diplomatic relations shall not ipso facto involve the severance of consular relations.

Article 3 EXERCISE OF CONSULAR FUNCTIONS

Consular functions are exercised by consular posts. They are also exercised by diplomatic missions in accordance with the provisions of the present Convention.

Article 4

ESTABLISHMENT OF A CONSULAR POST

1. A consular post may be established in the territory of the receiving State only with that State's consent.
2. 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.
3. 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.
4. The consent of the receiving State shall also be required if a consulate-general or a consulate desires to open a vice-consulate or a consular agency in a locality other than that in which it is itself established.
5. 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.

Article 5

CONSULAR FUNCTIONS

Consular functions consist in:

- (a) protecting in the receiving State the interests of the sending State and of its nationals, both individuals and bodies corporate, within the limits permitted by international law;
- (b) furthering the development of commercial, economic, cultural and scientific relations between the sending State and the receiving State and otherwise promoting friendly relations between them in accordance with the provisions of the present Convention;
- (c) ascertaining by all lawful means conditions and developments in the commercial, economic, cultural and scientific life of the receiving State, reporting thereon to the Government of the sending State and giving information to persons interested;
- (d) issuing passports and travel documents to nationals of the sending State, and visas or appropriate documents to persons wishing to travel to the sending State;
- (e) helping and assisting nationals, both individuals and bodies corporate, of the sending State;
- (f) acting as notary and civil registrar and in capacities of a similar kind, and performing certain functions of an administrative nature, provided that there is nothing contrary thereto in the laws and regulations of the receiving State;
- (g) safeguarding the interests of nationals, both individuals and bodies corporate, of the sending State in cases of succession mortis causa in the territory of the receiving State, in accordance with the laws and regulations of the receiving State;
- (h) safeguarding, within the limits imposed by the laws and regulations of the receiving State, the interests of minors and other persons lacking full capacity who are nationals of the sending State, particularly where any guardianship or trusteeship is required with respect to such persons;

- (i) subject to the practices and procedures obtaining in the receiving State, representing or arranging appropriate representation for nationals of the sending State before the tribunals and other authorities of the receiving State, for the purpose of obtaining, in accordance with the laws and regulations of the receiving State, provisional measures for the preservation of the rights and interests of these nationals, where, because of absence or any other reason, such nationals are unable at the proper time to assume the defence of their rights and interests;
- (j) transmitting judicial and extrajudicial documents or executing letters rogatory or commissions to take evidence for the courts of the sending State in accordance with international agreements in force or, in the absence of such international agreements, in any other manner compatible with the laws and regulations of the receiving State;
- (k) exercising rights of supervision and inspection provided for in the laws and regulations of the sending State in respect of vessels having the nationality of the sending State, and of aircraft registered in that State, and in respect of their crews;
- (l) extending assistance to vessels and aircraft mentioned in sub-paragraph (k) of this Article and to their crews, taking statements regarding the voyage of a vessel, examining and stamping the ship's papers, and, without prejudice to the powers of the authorities of the receiving State, conducting investigations into any incidents which occurred during the voyage, and settling disputes of any kind between the master, the officers and the seamen in so far as this may be authorized by the laws and regulations of the sending State;
- (m) performing any other functions entrusted to a consular post by the sending State which are not prohibited by the laws and regulations of the receiving State or to which no objection is taken by the receiving State or which are referred to in the international agreements in force between the sending State and the receiving State.

Article 6

EXERCISE OF CONSULAR FUNCTIONS OUTSIDE THE CONSULAR DISTRICT

A consular officer may, in special circumstances, with the consent of the receiving State, exercise his functions outside his consular district.

Article 7

EXERCISE OF CONSULAR FUNCTIONS IN A THIRD STATE

The sending State may, after notifying the States concerned, entrust a consular post established in a particular State with the exercise of consular functions in another State, unless there is express objection by one of the States concerned.

Article 8

EXERCISE OF CONSULAR FUNCTIONS ON BEHALF OF A THIRD STATE

Upon appropriate notification to the receiving State, a consular post of the sending State may, unless the receiving State objects, exercise consular functions in the receiving State on behalf of a third State.

Article 9

CLASSES OF HEADS OF CONSULAR POSTS

1. Heads of consular posts are divided into four classes, namely:
 - (a) consuls-general;
 - (b) consuls;
 - (c) vice-consuls;
 - (d) consular agents.
2. Paragraph 1 of this Article in no way restricts the right of any of the Contracting Parties to fix the designation of consular officers other than the heads of consular posts.

Article 10

APPOINTMENT AND ADMISSION OF HEADS OF CONSULAR POSTS

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.

Article 11

THE CONSULAR COMMISSION OR NOTIFICATION OF APPOINTMENT

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.

Article 12

THE EXEQUATUR

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 refuses 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.

Article 13

PROVISIONAL ADMISSION OF HEADS OF CONSULAR POSTS

Pending delivery of the exequatur, the head of a consular post may be admitted on a provisional basis to the exercise of his functions. In that case, the provisions of the present Convention shall apply.

Article 14

NOTIFICATION TO THE AUTHORITIES OF THE CONSULAR DISTRICT

As soon as the head of a consular post is admitted even provisionally to the exercise of his functions, the receiving State shall immediately notify the competent authorities of the consular district. It shall also ensure that the necessary measures are taken to enable the head of a consular post to carry out the duties of his office and to have the benefit of the provisions of the present Convention.

Article 15

TEMPORARY EXERCISE OF THE FUNCTIONS OF THE HEAD OF A CONSULAR POST

1. If the head of a consular post is unable to carry out his functions or the position of head of consular post is vacant, an acting head of post may act provisionally as head of the consular post.
2. The full name of the acting head of post shall be notified either by the diplomatic mission of the sending State or, if that State has no such mission in the receiving State, by the head of the consular post, or, if he is unable to do so, by any competent authority of the sending State, to the Ministry for Foreign Affairs of the receiving State or to the authority designated by that Ministry. As a general rule, this notification shall be given in advance. The receiving State may make the admission as acting head of post of a person who is neither a diplomatic agent nor a consular officer of the sending State in the receiving State conditional on its consent.
3. The competent authorities of the receiving State shall afford assistance and protection to the acting head of post. While he is in charge of the post, the provisions of the present Convention shall apply to him on the same basis as to the head of the consular post concerned. The receiving State shall not, however, be obliged to grant to an acting head of post any facility, privilege or immunity which the head of the consular post enjoys only subject to conditions not fulfilled by the acting head of post.
4. When, in the circumstances referred to in paragraph 1 of this Article, a member of the diplomatic staff of the diplomatic mission of the sending State in the receiving State is designated by the sending State as an acting head of post, he shall, if the receiving State does not object thereto, continue to enjoy diplomatic privileges and immunities.

Article 16

PRECEDENCE AS BETWEEN HEADS OF CONSULAR POSTS

1. Heads of consular posts shall rank in each class according to the date of the grant of the exequatur.
2. If, however, the head of a consular post before obtaining the exequatur is admitted to the exercise of his functions provisionally, his precedence shall be determined according to the date of the provisional admission; this precedence shall be maintained after the granting of the exequatur.
3. The order of precedence as between two or more heads of consular posts who obtained the exequatur or provisional admission on the same date shall be determined according to the dates on which their commissions or similar instruments or the notifications referred to in paragraph 3 of Article 11 were presented to the receiving State.
4. Acting heads of posts shall rank after all heads of consular posts and, as between themselves, they shall rank according to the dates on which they assumed their functions as acting heads of posts as indicated in the notifications given under paragraph 2 of Article 15.
5. Honorary consular officers who are heads of consular posts shall rank in each class after career heads of consular posts, in the order and according to the rules laid down in the foregoing paragraphs.
6. Heads of consular posts shall have precedence over consular officers not having that status.

Article 17

PERFORMANCE OF DIPLOMATIC ACTS BY CONSULAR OFFICERS

1. In a State where the sending State has no diplomatic mission and is not represented by a diplomatic mission of a third State, a consular officer may, with the consent of the receiving State, and without affecting his consular status, be authorized to perform diplomatic acts. The performance of such acts by a consular officer shall not confer upon him any right to claim diplomatic privileges and immunities.
2. A consular officer may, after notification addressed to the receiving State, act as representative of the sending State to any inter-governmental organization. When so acting, he shall be entitled to enjoy any privileges and immunities accorded to such a representative by customary international law or by international agreements; however, in respect of the performance by him of any consular function, he shall not be entitled to any greater immunity from jurisdiction than that to which a consular officer is entitled under the present Convention.

Article 18

APPOINTMENT OF THE SAME PERSON BY TWO OR MORE STATES AS A CONSULAR OFFICER

Two or more States may, with the consent of the receiving State, appoint the same person as a consular officer in that State.

Article 19

APPOINTMENT OF MEMBERS OF CONSULAR STAFF

1. Subject to the provisions of Articles 20, 22 and 23, the sending State may freely appoint the members of the consular staff.
2. The full name, category and class of all consular officers, other than the head of a consular post, shall be notified by the sending State to the receiving State in sufficient time for the receiving State, if it so wishes, to exercise its rights under paragraph 3 of Article 23.
3. The sending State may, if required by its laws and regulations, request the receiving State to grant an exequatur to a consular officer other than the head of a consular post.
4. The receiving State may, if required by its laws and regulations, grant an exequatur to a consular officer other than the head of a consular post.

Article 20

SIZE OF THE CONSULAR STAFF

In the absence of an express agreement as to the size of the consular staff, the receiving State may require that the size of the staff be kept within limits considered by it to be reasonable and normal, having regard to circumstances and conditions in the consular district and to the needs of the particular post.

Article 21

PRECEDENCE AS BETWEEN CONSULAR OFFICERS OF A CONSULAR POST

The order of precedence as between the consular officers of a consular post and any change thereof shall be notified by the diplomatic mission of the sending State or, if that State has no such mission in the receiving State, by the head of the consular post, to the Ministry for Foreign Affairs of the receiving State or to the authority designated by that Ministry.

Article 22

NATIONALITY OF CONSULAR OFFICERS

1. Consular officers should, in principle, have the nationality of the sending State.
2. Consular officers may not be appointed from among persons having the nationality of the receiving State except with the express consent of that State which may be withdrawn at any time.
3. The receiving State may reserve the same right with regard to nationals of a third State who are not also nationals of the sending State.

Article 23

PERSONS DECLARED "NON GRATA"

1. The receiving State may at any time notify the sending State that a consular officer is persona non grata or that any other member of the

consular staff is not acceptable. In that event, the sending State shall, as the case may be, either recall the person concerned or terminate his functions with the consular post.

2. If the sending State refuses or fails within a reasonable time to carry out its obligations under paragraph 1 of this Article, the receiving State may, as the case may be, either withdraw the exequatur from the person concerned or cease to consider him as a member of the consular staff.

3. 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.

4. In the cases mentioned in paragraphs 1 and 3 of this Article, the receiving State is not obliged to give to the sending State reasons for its decision.

Article 24

NOTIFICATION TO THE RECEIVING STATE OF APPOINTMENTS, ARRIVALS AND DEPARTURES

1. The Ministry for Foreign Affairs of the receiving State or the authority designated by that Ministry shall be notified of:

(a) the appointment of members of a consular post, their arrival after appointment to the consular post, their final departure or the termination of their functions and any other changes affecting their status that may occur in the course of their service with the consular post;

(b) the arrival and final departure of a person belonging to the family of a member of a consular post forming part of his household and, where appropriate, the fact that a person becomes or ceases to be such a member of the family;

(c) the arrival and final departure of members of the private staff and, where appropriate, the termination of their service as such;

(d) the engagement and discharge of persons resident in the receiving State as members of a consular post or as members of the private staff entitled to privileges and immunities.

2. When possible, prior notification of arrival and final departure shall also be given.

Section II

END OF CONSULAR FUNCTIONS

Article 25

TERMINATION OF THE FUNCTIONS OF A MEMBER OF A CONSULAR POST

The functions of a member of a consular post shall come to an end *inter alia*:

(a) on notification by the sending State to the receiving State that his functions have come to an end;

(b) on withdrawal of the exequatur;

(c) on notification by the receiving State to the sending State that the receiving State has ceased to consider him as a member of the consular staff.

Article 26

DEPARTURE FROM THE TERRITORY OF THE RECEIVING STATE

The receiving State shall, even in case of armed conflict, grant to members of the consular post and members of the private staff, other than nationals of the receiving State, and to members of their families forming part of their households irrespective of nationality, the necessary time and facilities to enable them to prepare their departure and to leave at the earliest possible moment after the termination of the functions of the members concerned. In particular, it shall, in case of need, place at their disposal the necessary means of transport for themselves and their property other than property acquired in the receiving State the export of which is prohibited at the time of departure.

Article 27

PROTECTION OF CONSULAR PREMISES AND ARCHIVES AND OF THE INTERESTS OF THE SENDING STATE IN EXCEPTIONAL CIRCUMSTANCES

1. In the event of the severance of consular relations between two States:

(a) the receiving State shall, even in case of armed conflict, respect and protect the consular premises, together with the property of the consular post and the consular archives;

(b) the sending State may entrust the custody of the consular premises, together with the property contained therein and the consular archives, to a third State acceptable to the receiving State;

(c) the sending State may entrust the protection of its interests and those of its nationals to a third State acceptable to the receiving State.

2. In the event of the temporary or permanent closure of a consular post, the provisions of sub-paragraph (a) of paragraph 1 of this Article shall apply. In addition,

(a) if the sending State, although not represented in the receiving State by a diplomatic mission, has another consular post in the territory of that State, that consular post may be entrusted with the custody of the premises of the consular post which has been closed, together with the property contained therein and the consular archives, and, with the consent of the receiving State, with the exercise of consular functions in the district of that consular post; or

(b) if the sending State has no diplomatic mission and no other consular post in the receiving State, the provisions of sub-paragraphs (b) and (c) of paragraph 1 of this Article shall apply.

CHAPTER II
FACILITIES, PRIVILEGES AND IMMUNITIES RELATING TO CONSULAR POSTS, CAREER CONSULAR OFFICERS AND OTHER MEMBERS OF A CONSULAR POST

Section I
FACILITIES, PRIVILEGES AND IMMUNITIES RELATING TO A CONSULAR POST

Article 28
FACILITIES FOR THE WORK OF THE CONSULAR POST

The receiving State shall accord full facilities for the performance of the functions of the consular post.

Article 29
USE OF NATIONAL FLAG AND COAT-OF-ARMS

1. The sending State shall have the right to the use of its national flag and coat-of-arms in the receiving State in accordance with the provisions of this Article.
2. The national flag of the sending State may be flown and its coat-of-arms displayed on the building occupied by the consular post and at the entrance door thereof, on the residence of the head of the consular post and on his means of transport when used on official business.
3. In the exercise of the right accorded by this Article regard shall be had to the laws, regulations and usages of the receiving State.

Article 30
ACCOMMODATION

1. The receiving State shall either facilitate the acquisition on its territory, in accordance with its laws and regulations, by the sending State of premises necessary for its consular post or assist the latter in obtaining accommodation in some other way.
2. It shall also, where necessary, assist the consular post in obtaining suitable accommodation for its members.

Article 31
INVOLABILITY OF THE CONSULAR PREMISES

1. Consular premises shall be inviolable to the extent provided in this Article.
2. The authorities of the receiving State shall not enter that part of the consular premises which is used exclusively for the purpose of the work of the consular post except with the consent of the head of the consular post or of his designee or of the head of the diplomatic mission of the sending State. The consent of the head of the consular post may, however, be assumed in case of fire or other disaster requiring prompt protective action.

3. Subject to the provisions of paragraph 2 of this Article, the receiving State is under a special duty to take all appropriate steps to protect the consular premises against any intrusion or damage and to prevent any disturbance of the peace of the consular post or impairment of its dignity.

4. The consular premises, their furnishings, the property of the consular post and its means of transport shall be immune from any form of requisition for purposes of national defence or public utility. If expropriation is necessary for such purposes, all possible steps shall be taken to avoid impeding the performance of consular functions, and prompt, adequate and effective compensation shall be paid to the sending State.

Article 32

EXEMPTION FROM TAXATION OF CONSULAR PREMISES

1. Consular premises and the residence of the career head of consular post of which the sending State or any person acting on its behalf is the owner or lessee shall be exempt from all national, regional or municipal dues and taxes whatsoever, other than such as represent payment for specific services rendered.

2. The exemption from taxation referred to in paragraph 1 of this Article shall not apply to such dues and taxes if, under the law of the receiving State, they are payable by the person who contracted with the sending State or with the person acting on its behalf.

Article 33

INVIOABILITY OF THE CONSULAR ARCHIVES AND DOCUMENTS

The consular archives and documents shall be inviolable at all times and wherever they may be.

Article 34

FREEDOM OF MOVEMENT

Subject to its laws and regulations concerning zones entry into which is prohibited or regulated for reasons of national security, the receiving State shall ensure freedom of movement and travel in its territory to all members of the consular post.

Article 35

FREEDOM OF COMMUNICATION

1. The receiving State shall permit and protect freedom of communication on the part of the consular post for all official purposes. In communicating with the Government, the diplomatic missions and other consular posts, wherever situated, of the sending State, the consular post may employ all appropriate means, including diplomatic or consular couriers, diplomatic or consular bags and messages in code or cipher. However, the consular post may install and use a wireless transmitter only with the consent of the receiving State.

2. The official correspondence of the consular post shall be inviolable. Official correspondence means all correspondence relating to the consular post and its functions.

3. The consular bag shall be neither opened nor detained. Nevertheless, if the competent authorities of the receiving State have serious reason to believe that the bag contains something other than the correspondence, documents or articles referred to in paragraph 4 of this Article, they may request that the bag be opened in their presence by an authorized representative of the sending State. If this request is refused by the authorities of the sending State, the bag shall be returned to its place of origin.

4. The packages constituting the consular bag shall bear visible external marks of their character and may contain only official correspondence and documents or articles intended exclusively for official use.

5. The consular courier shall be provided with an official document indicating his status and the number of packages constituting the consular bag. Except with the consent of the receiving State he shall be neither a national of the receiving State, nor, unless he is a national of the sending State, a permanent resident of the receiving State. In the performance of his functions he shall be protected by the receiving State. He shall enjoy personal inviolability and shall not be liable to any form of arrest or detention.

6. The sending State, its diplomatic missions and its consular posts may designate consular couriers ad hoc. In such cases the provisions of paragraph 5 of this Article shall also apply except that the immunities therein mentioned shall cease to apply when such a courier has delivered to the consignee the consular bag in his charge.

7. A consular bag may be entrusted to the captain of a ship or of a commercial aircraft scheduled to land at an authorized port of entry. He shall be provided with an official document indicating the number of packages constituting the bag, but he shall not be considered to be a consular courier. By arrangement with the appropriate local authorities, the consular post may send one of its members to take possession of the bag directly and freely from the captain of the ship or of the aircraft.

Article 36

COMMUNICATION AND CONTACT WITH NATIONALS OF THE SENDING STATE

1. With a view to facilitating the exercise of consular functions relating to nationals of the sending State:

(a) consular officers shall be free to communicate with nationals of the sending State and to have access to them. Nationals of the sending State shall have the same freedom with respect to communication with and access to consular officers of the sending State;

(b) if he so requests, the competent authorities of the receiving State shall, without delay, inform the consular post of the sending State if, within its consular district, a national of that State is arrested or committed to prison or to custody pending trial or is detained in any other manner. Any communication addressed to the consular post by the person arrested, in

prison, custody or detention shall also be forwarded by the said authorities without delay. The said authorities shall inform the person concerned without delay of his rights under this sub-paragraph;

(c) consular officers shall have the right to visit a national of the sending State who is in prison, custody or detention, to converse and correspond with him and to arrange for his legal representation. They shall also have the right to visit any national of the sending State who is in prison, custody or detention in their district in pursuance of a judgment. Nevertheless, consular officers shall refrain from taking action on behalf of a national who is in prison, custody or detention if he expressly opposes such action.

2. The rights referred to in paragraph 1 of this Article shall be exercised in conformity with the laws and regulations of the receiving State, subject to the proviso, however, that the said laws and regulations must enable full effect to be given to the purposes for which the rights accorded under this Article are intended.

Article 37

INFORMATION IN CASES OF DEATHS, GUARDIANSHIP OR TRUSTEESHIP, WRECKS AND AIR ACCIDENTS

If the relevant information is available to the competent authorities of the receiving State, such authorities shall have the duty:

(a) in the case of the death of a national of the sending State, to inform without delay the consular post in whose district the death occurred;

(b) to inform the competent consular post without delay of any case where the appointment of a guardian or trustee appears to be in the interests of a minor or other person lacking full capacity who is a national of the sending State. The giving of this information shall, however, be without prejudice to the operation of the laws and regulations of the receiving State concerning such appointments;

(c) if a vessel, having the nationality of the sending State, is wrecked or runs aground in the territorial sea or internal waters of the receiving State, or if an aircraft registered in the sending State suffers an accident on the territory of the receiving State, to inform without delay the consular post nearest to the scene of the occurrence.

Article 38

COMMUNICATION WITH THE AUTHORITIES OF THE RECEIVING STATE

In the exercise of their functions, consular officers may address:

(a) the competent local authorities of their consular district;

(b) the competent central authorities of the receiving State if and to the extent that this is allowed by the laws, regulations and usages of the receiving State or by the relevant international agreements.

Article 39

CONSULAR FEES AND CHARGES

1. The consular post may levy in the territory of the receiving State the fees and charges provided by the laws and regulations of the sending State for consular acts.
2. The sums collected in the form of the fees and charges referred to in paragraph 1 of this Article, and the receipts for such fees and charges, shall be exempt from all dues and taxes in the receiving State.

Section II

**FACILITIES, PRIVILEGES AND IMMUNITIES RELATING TO CAREER
CONSULAR OFFICERS AND OTHER MEMBERS OF A CONSULAR
POST**

Article 40

PROTECTION OF CONSULAR OFFICERS

The receiving State shall treat consular officers with due respect and shall take all appropriate steps to prevent any attack on their person, freedom or dignity.

Article 41

PERSONAL INVIOABILITY OF CONSULAR OFFICERS

1. Consular officers shall not be liable to arrest or detention pending trial, except in the case of a grave crime and pursuant to a decision by the competent judicial authority.
2. Except in the case specified in paragraph 1 of this Article, consular officers shall not be committed to prison or liable to any other form of restriction on their personal freedom save in execution of a judicial decision of final effect.
3. If criminal proceedings are instituted against a consular officer, he must appear before the competent authorities. Nevertheless, the proceedings shall be conducted with the respect due to him by reason of his official position and, except in the case specified in paragraph 1 of this Article, in a manner which will hamper the exercise of consular functions as little as possible. When, in the circumstances mentioned in paragraph 1 of this Article, it has become necessary to detain a consular officer, the proceedings against him shall be instituted with the minimum of delay.

Article 42

NOTIFICATION OF ARREST, DETENTION OR PROSECUTION

In the event of the arrest or detention, pending trial, of a member of the consular staff, or of criminal proceedings being instituted against him, the receiving State shall promptly notify the head of the consular post. Should the latter be himself the object of any such measure, the receiving State shall notify the sending State through the diplomatic channel.

Article 43

IMMUNITY FROM JURISDICTION

1. Consular officers and consular employees shall not be amenable to the jurisdiction of the judicial or administrative authorities of the receiving State in respect of acts performed in the exercise of consular functions.
2. The provisions of paragraph 1 of this Article shall not, however, apply in respect of a civil action either:
 - (a) arising out of a contract concluded by a consular officer or a consular employee in which he did not contract expressly or impliedly as an agent of the sending State; or
 - (b) by a third party for damage arising from an accident in the receiving State caused by a vehicle, vessel or aircraft.

Article 44

LIABILITY TO GIVE EVIDENCE

1. Members of a consular post may be called upon to attend as witnesses in the course of judicial or administrative proceedings. A consular employee or a member of the service staff shall not, except in the cases mentioned in paragraph 3 of this Article, decline to give evidence. If a consular officer should decline to do so, no coercive measure or penalty may be applied to him.
2. The authority requiring the evidence of a consular officer shall avoid interference with the performance of his functions. It may, when possible, take such evidence at his residence or at the consular post or accept a statement from him in writing.
3. Members of a consular post are under no obligation to give evidence concerning matters connected with the exercise of their functions or to produce official correspondence and documents relating thereto. They are also entitled to decline to give evidence as expert witnesses with regard to the law of the sending State.

Article 45

WAIVER OF PRIVILEGES AND IMMUNITIES

1. The sending State may waive, with regard to a member of the consular post, any of the privileges and immunities provided for in Articles 41, 43 and 44.
2. The waiver shall in all cases be express, except as provided in paragraph 3 of this Article, and shall be communicated to the receiving State in writing.
3. The initiation of proceedings by a consular officer or a consular employee in a matter where he might enjoy immunity from jurisdiction under Article 43 shall preclude him from invoking immunity from jurisdiction in respect of any counter-claim directly connected with the principal claim.
4. The waiver of immunity from jurisdiction for the purposes of civil or administrative proceedings shall not be deemed to imply the waiver of immunity from the measures of execution resulting from the judicial decision; in respect of such measures, a separate waiver shall be necessary.

Article 46

EXEMPTION FROM REGISTRATION OF ALIENS AND RESIDENCE PERMITS

1. Consular officers and consular employees and members of their families forming part of their households shall be exempt from all obligations under the laws and regulations of the receiving State in regard to the registration of aliens and residence permits.
2. The provisions of paragraph 1 of this Article shall not, however, apply to any consular employee who is not a permanent employee of the sending State or who carries on any private gainful occupation in the receiving State or to any member of the family of any such employee.

Article 47

EXEMPTION FROM WORK PERMITS

1. Members of the consular post shall, with respect to services rendered for the sending State, be exempt from any obligations in regard to work permits imposed by the laws and regulations of the receiving State concerning the employment of foreign labour.
2. Members of the private staff of consular officers and of consular employees shall, if they do not carry on any other gainful occupation in the receiving State, be exempt from the obligations referred to in paragraph 1 of this Article.

Article 48

SOCIAL SECURITY EXEMPTION

1. Subject to the provisions of paragraph 3 of this Article, members of the consular post with respect to services rendered by them for the sending State, and members of their families forming part of their households, shall be exempt from social security provisions which may be in force in the receiving State.
2. The exemption provided for in paragraph 1 of this Article shall apply also to members of the private staff who are in the sole employ of members of the consular post, on condition:
 - (a) that they are not nationals of or permanently resident in the receiving State; and
 - (b) that they are covered by the social security provisions which are in force in the sending State or a third State.
3. Members of the consular post who employ persons to whom the exemption provided for in paragraph 2 of this Article does not apply shall observe the obligations which the social security provisions of the receiving State impose upon employers.
4. The exemption provided for in paragraphs 1 and 2 of this Article shall not preclude voluntary participation in the social security system of the receiving State, provided that such participation is permitted by that State.

Article 49

EXEMPTION FROM TAXATION

1. Consular officers and consular employees and members of their families forming part of their households shall be exempt from all dues and taxes, personal or real, national, regional or municipal, except:

- (a) indirect taxes of a kind which are normally incorporated in the price of goods or services;
- (b) dues or taxes on private immovable property situated in the territory of the receiving State, subject to the provisions of Article 32;
- (c) estate, succession or inheritance duties, and duties on transfers, levied by the receiving State, subject to the provisions of paragraph (b) of Article 51;
- (d) dues and taxes on private income, including capital gains, having its source in the receiving State and capital taxes relating to investments made in commercial or financial undertakings in the receiving State;
- (e) charges levied for specific services rendered;
- (f) registration, court or record fees, mortgage dues and stamp duties, subject to the provisions of Article 32.

2. Members of the service staff shall be exempt from dues and taxes on the wages which they receive for their services.

3. Members of the consular post who employ persons whose wages or salaries are not exempt from income tax in the receiving State shall observe the obligations which the laws and regulations of that State impose upon employers concerning the levying of income tax.

Article 50

EXEMPTION FROM CUSTOMS DUTIES AND INSPECTION

1. The receiving State shall, in accordance with such laws and regulations as it may adopt, permit entry of and grant exemption from all customs duties, taxes, and related charges other than charges for storage, cartage and similar services, on:

- (a) articles for the official use of the consular post;
- (b) articles for the personal use of a consular officer or members of his family forming part of his household, including articles intended for his establishment. The articles intended for consumption shall not exceed the quantities necessary for direct utilization by the persons concerned.

2. Consular employees shall enjoy the privileges and exemptions specified in paragraph 1 of this Article in respect of articles imported at the time of first installation.

3. Personal baggage accompanying consular officers and members of their families forming part of their households shall be exempt from inspection. It may be inspected only if there is serious reason to believe that it contains articles other than those referred to in sub-paragraph (b) of paragraph 1 of this Article, or articles the import or export of which is prohibited by the laws and regulations of the receiving State or which are subject to its quarantine laws and regulations. Such inspection shall be carried out in the presence of the consular officer or member of his family concerned.

Article 51

**ESTATE OF A MEMBER OF THE CONSULAR POST
OR OF A MEMBER OF HIS FAMILY**

In the event of the death of a member of the consular post or of a member of his family forming part of his household, the receiving State:

(a) shall permit the export of the movable property of the deceased, with the exception of any such property acquired in the receiving State the export of which was prohibited at the time of his death;

(b) shall not levy national, regional or municipal estate, succession or inheritance duties, and duties on transfers, on movable property the presence of which in the receiving State was due solely to the presence in that State of the deceased as a member of the consular post or as a member of the family of a member of the consular post.

Article 52

EXEMPTION FROM PERSONAL SERVICES AND CONTRIBUTIONS

The receiving State shall exempt members of the consular post and members of their families forming part of their households from all personal services, from all public service of any kind whatsoever, and from military obligations such as those connected with requisitioning, military contributions and billeting.

Article 53

BEGINNING AND END OF CONSULAR PRIVILEGES AND IMMUNITIES

1. Every member of the consular post shall enjoy the privileges and immunities provided in the present Convention from the moment he enters the territory of the receiving State on proceeding to take up his post or, if already in its territory, from the moment when he enters on his duties with the consular post.

2. Members of the family of a member of the consular post forming part of his household and members of his private staff shall receive the privileges and immunities provided in the present Convention from the date from which he enjoys privileges and immunities in accordance with paragraph 1 of this Article or from the date of their entry into the territory of the receiving State or from the date of their becoming a member of such family or private staff, whichever is the latest.

3. When the functions of a member of the consular post have come to an end, his privileges and immunities and those of a member of his family forming part of his household or a member of his private staff shall normally cease at the moment when the person concerned leaves the receiving State or on the expiry of a reasonable period in which to do so, whichever is the sooner, but shall subsist until that time, even in case of armed conflict. In the case of the persons referred to in paragraph 2 of this Article, their privileges and immunities shall come to an end when they cease to belong to the household or to be in the service of a member of the consular post provided, however, that if such persons intend leaving the receiving State

within a reasonable period thereafter, their privileges and immunities shall subsist until the time of their departure.

4. However, with respect to acts performed by a consular officer or a consular employee in the exercise of his functions, immunity from jurisdiction shall continue to subsist without limitation of time.

5. In the event of the death of a member of the consular post, the members of his family forming part of his household shall continue to enjoy the privileges and immunities accorded to them until they leave the receiving State or until the expiry of a reasonable period enabling them to do so, whichever is the sooner.

Article 54

OBLIGATIONS OF THIRD STATES

1. If a consular officer passes through or is in the territory of a third State, which has granted him a visa if a visa was necessary, while proceeding to take up or return to his post or when returning to the sending State, the third State shall accord to him all immunities provided for by the other Articles of the present Convention as may be required to ensure his transit or return. The same shall apply in the case of any member of his family forming part of his household enjoying such privileges and immunities who are accompanying the consular officer or travelling separately to join him or to return to the sending State.

2. In circumstances similar to those specified in paragraph 1 of this Article, third States shall not hinder the transit through their territory of other members of the consular post or of members of their families forming part of their households.

3. Third States shall accord to official correspondence and to other official communications in transit, including messages in code or cipher, the same freedom and protection as the receiving State is bound to accord under the present Convention. They shall accord to consular couriers who have been granted a visa, if a visa was necessary, and to consular bags in transit, the same inviolability and protection as the receiving State is bound to accord under the present Convention.

4. The obligations of third States under paragraphs 1, 2 and 3 of this Article shall also apply to the persons mentioned respectively in those paragraphs, and to official communications and to consular bags, whose presence in the territory of the third State is due to force majeure.

Article 55

RESPECT FOR THE LAWS AND REGULATIONS OF THE RECEIVING STATE

1. Without prejudice to their privileges and immunities, it is the duty of all persons enjoying such privileges and immunities to respect the laws and regulations of the receiving State. They also have a duty not to interfere in the internal affairs of that State.

2. The consular premises shall not be used in any manner incompatible with the exercise of consular functions.

3. The provisions of paragraph 2 of this Article shall not exclude the possibility of offices of other institutions or agencies being installed in part of the building in which the consular premises are situated, provided that the premises assigned to them are separate from those used by the consular post. In that event, the said offices shall not, for the purposes of the present Convention, be considered to form part of the consular premises.

Article 56

INSURANCE AGAINST THIRD PARTY RISKS

Members of the consular post shall comply with any requirement imposed by the laws and regulations of the receiving State in respect of insurance against third party risks arising from the use of any vehicle, vessel or aircraft.

Article 57

SPECIAL PROVISIONS CONCERNING PRIVATE GAINFUL OCCUPATION

1. Career consular officers shall not carry on for personal profit any professional or commercial activity in the receiving State.
2. Privileges and immunities provided in this Chapter shall not be accorded:
 - (a) to consular employees or to members of the service staff who carry on any private gainful occupation in the receiving State;
 - (b) to members of the family of a person referred to in sub-paragraph (a) of this paragraph or to members of his private staff;
 - (c) to members of the family of a member of a consular post who themselves carry on any private gainful occupation in the receiving State.

CHAPTER III

REGIME RELATING TO HONORARY CONSULAR OFFICERS AND CONSULAR POSTS HEADED BY SUCH OFFICERS

Article 58

GENERAL PROVISIONS RELATING TO FACILITIES, PRIVILEGES AND IMMUNITIES

1. Articles 28, 29, 30, 34, 35, 36, 37, 38 and 39, paragraph 3 of Article 54 and paragraphs 2 and 3 of Article 55 shall apply to consular posts headed by an honorary consular officer. In addition, the facilities, privileges and immunities of such consular posts shall be governed by Articles 59, 60, 61 and 62.
2. Articles 42 and 43, paragraph 3 of Article 44, Articles 45 and 53 and paragraph 1 of Article 55 shall apply to honorary consular officers. In addition, the facilities, privileges and immunities of such consular officers shall be governed by Articles 63, 64, 65, 66 and 67.
3. Privileges and immunities provided in the present Convention shall not be accorded to members of the family of an honorary consular officer or of a consular employee employed at a consular post headed by an honorary consular officer.

4. The exchange of consular bags between two consular posts headed by honorary consular officers in different States shall not be allowed without the consent of the two receiving States concerned.

Article 59

PROTECTION OF THE CONSULAR PREMISES

The receiving State shall take such steps as may be necessary to protect the consular premises of a consular post headed by an honorary consular officer against any intrusion or damage and to prevent any disturbance of the peace of the consular post or impairment of its dignity.

Article 60

EXEMPTION FROM TAXATION OF CONSULAR PREMISES

1. Consular premises of a consular post headed by an honorary consular officer of which the sending State is the owner or lessee shall be exempt from all national, regional or municipal dues and taxes whatsoever, other than such as represent payment for specific services rendered.

2. The exemption from taxation referred to in paragraph 1 of this Article shall not apply to such dues and taxes if, under the laws and regulations of the receiving State, they are payable by the person who contracted with the sending State.

Article 61

INVOLABILITY OF CONSULAR ARCHIVES AND DOCUMENTS

The consular archives and documents of a consular post headed by an honorary consular officer shall be inviolable at all times and wherever they may be, provided that they are kept separate from other papers and documents and, in particular, from the private correspondence of the head of a consular post and of any person working with him, and from the materials, books or documents relating to their profession or trade.

Article 62

EXEMPTION FROM CUSTOMS DUTIES

The receiving State shall, in accordance with such laws and regulations as it may adopt, permit entry of, and grant exemption from all customs duties, taxes, and related charges other than charges for storage, cartage and similar services on the following articles, provided that they are for the official use of a consular post headed by an honorary consular officer: coats-of-arms, flags, signboards, seals and stamps, books, official printed matter, office furniture, office equipment and similar articles supplied by or at the instance of the sending State to the consular post.

Article 63

CRIMINAL PROCEEDINGS

If criminal proceedings are instituted against an honorary consular officer, he must appear before the competent authorities. Nevertheless, the proceedings shall be conducted with the respect due to him by reason of his official position and, except when he is under arrest or detention, in a manner which will hamper the exercise of consular functions as little as possible. When it has become necessary to detain an honorary consular officer, the proceedings against him shall be instituted with the minimum of delay.

Article 64

PROTECTION OF HONORARY CONSULAR OFFICERS

The receiving State is under a duty to accord to an honorary consular officer such protection as may be required by reason of his official position.

Article 65

EXEMPTION FROM REGISTRATION OF ALIENS AND RESIDENCE PERMITS

Honorary consular officers, with the exception of those who carry on for personal profit any professional or commercial activity in the receiving State, shall be exempt from all obligations under the laws and regulations of the receiving State in regard to the registration of aliens and residence permits.

Article 66

EXEMPTION FROM TAXATION

An honorary consular officer shall be exempt from all dues and taxes on the remuneration and emoluments which he receives from the sending State in respect of the exercise of consular functions.

Article 67

EXEMPTION FROM PERSONAL SERVICES AND CONTRIBUTIONS

The receiving State shall exempt honorary consular officers from all personal services and from all public services of any kind whatsoever and from military obligations such as those connected with requisitioning, military contributions and billeting.

Article 68

OPTIONAL CHARACTER OF THE INSTITUTION OF HONORARY CONSULAR OFFICERS

Each State is free to decide whether it will appoint or receive honorary consular officers.

CHAPTER IV GENERAL PROVISIONS

Article 69

CONSULAR AGENTS WHO ARE NOT HEADS OF CONSULAR POSTS

1. Each State is free to decide whether it will establish or admit consular agencies conducted by consular agents not designated as heads of consular post by the sending State.
2. The conditions under which the consular agencies referred to in paragraph 1 of this Article may carry on their activities and the privileges and immunities which may be enjoyed by the consular agents in charge of them shall be determined by agreement between the sending State and the receiving State.

Article 70

EXERCISE OF CONSULAR FUNCTIONS BY DIPLOMATIC MISSIONS

1. The provisions of the present Convention apply also, so far as the context permits, to the exercise of consular functions by a diplomatic mission.
2. The names of members of a diplomatic mission assigned to the consular section or otherwise charged with the exercise of the consular functions of the mission shall be notified to the Ministry for Foreign Affairs of the receiving State or to the authority designated by that Ministry.
3. In the exercise of consular functions a diplomatic mission may address:
 - (a) the local authorities of the consular district;
 - (b) the central authorities of the receiving State if this is allowed by the laws, regulations and usages of the receiving State or by relevant international agreements.
4. The privileges and immunities of the members of a diplomatic mission referred to in paragraph 2 of this Article shall continue to be governed by the rules of international law concerning diplomatic relations.

Article 71

NATIONALS OR PERMANENT RESIDENTS OF THE RECEIVING STATE

1. Except in so far as additional facilities, privileges and immunities may be granted by the receiving State, consular officers who are nationals of or permanently resident in the receiving State shall enjoy only immunity from jurisdiction and personal inviolability in respect of official acts performed in the exercise of their functions, and the privilege provided in paragraph 3 of Article 44. So far as these consular officers are concerned, the receiving State shall likewise be bound by the obligation laid down in Article 42. If criminal proceedings are instituted against such a consular officer, the proceedings shall, except when he is under arrest or detention, be conducted in a manner which will hamper the exercise of consular functions as little as possible.

2. Other members of the consular post who are nationals of or permanently resident in the receiving State and members of their families, as well as members of the families of consular officers referred to in paragraph 1 of this Article, shall enjoy facilities, privileges and immunities only in so far as these are granted to them by the receiving State. Those members of the families of members of the consular post and those members of the private staff who are themselves nationals of or permanently resident in the receiving State shall likewise enjoy facilities, privileges and immunities only in so far as these are granted to them by the receiving State. The receiving State shall, however, exercise its jurisdiction over those persons in such a way as not to hinder unduly the performance of the functions of the consular post.

Article 72

NON-DISCRIMINATION

1. In the application of the provisions of the present Convention the receiving State shall not discriminate as between States.

2. However, discrimination shall not be regarded as taking place:

(a) where the receiving State applies any of the provisions of the present Convention restrictively because of a restrictive application of that provision to its consular posts in the sending State;

(b) where by custom or agreement States extend to each other more favourable treatment than is required by the provisions of the present Convention.

Article 73

RELATIONSHIP BETWEEN THE PRESENT CONVENTION AND OTHER INTERNATIONAL AGREEMENTS

1. The provisions of the present Convention shall not affect other international agreements in force as between States parties to them.

2. Nothing in the present Convention shall preclude States from concluding international agreements confirming or supplementing or extending or amplifying the provisions thereof.

CHAPTER V

FINAL PROVISIONS

Article 74

SIGNATURE

The present Convention shall be open for signature by all States Members of the United Nations or of any of the specialized agencies or Parties to the Statute of the International Court of Justice, and by any other State invited by the General Assembly of the United Nations to become a Party to the Convention, as follows until 31 October 1963 at the Federal Ministry for Foreign Affairs of the Republic of Austria and subsequently, until 31 March 1964, at the United Nations Headquarters in New York.

Article 75

RATIFICATION

The present Convention is subject to ratification. The instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article 76

ACCESSION

The present Convention shall remain open for accession by any State belonging to any of the four categories mentioned in Article 74. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 77

ENTRY INTO FORCE

1. The present Convention shall enter into force on the thirtieth day following the date of deposit of the twenty-second instrument of ratification or accession with the Secretary-General of the United Nations.
2. For each State ratifying or acceding to the Convention after the deposit of the twenty-second instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification or accession.

Article 78

NOTIFICATIONS BY THE SECRETARY-GENERAL

The Secretary-General of the United Nations shall inform all States belonging to any of the four categories mentioned in Article 74:

- (a) of signatures to the present Convention and of the deposit of instruments of ratification or accession, in accordance with Articles 74, 75 and 76;
- (b) of the date on which the present Convention will enter into force, in accordance with Article 77.

Article 79

AUTHENTIC TEXTS

The original of the present Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations, who shall send certified copies thereof to all States belonging to any of the four categories mentioned in Article 74.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, being duly authorized thereto by their respective Governments, have signed the present Convention.

DONE at Vienna, this twenty-fourth day of April, one thousand nine hundred and sixty-three.

Appendix D – The Convention on Special Missions 1969

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The States Parties to the present Convention,
Recalling that special treatment has always been accorded to special missions,
Having in mind the purposes and principles of the Charter of the United Nations concerning the sovereign equality of States, the maintenance of international peace and security and the development of friendly relations and cooperation among States,
Recalling that the importance of the question of special missions was recognized during the United Nations Conference on Diplomatic Intercourse and Immunities and in resolution I adopted by the Conference on 10 April 1961,
Considering that the United Nations Conference on Diplomatic Intercourse and Immunities adopted the Vienna Convention on Diplomatic Relations, which was opened for signature on 18 April 1961,
Considering that the United Nations Conference on Consular Relations adopted the Vienna Convention on Consular Relations, which was opened for signature on 24 April 1963,
Believing that an international convention on special missions would complement those two Conventions and would contribute to the development of friendly relations among nations, whatever their constitutional and social systems,
Realizing that the purpose of privileges and immunities relating to special missions is not to benefit individuals but to ensure the efficient performance of the functions of special missions as missions representing the State,
Affirming that the rules of customary international law continue to govern questions not regulated by the provisions of the present Convention,
Have agreed as follows:

Article 1

Use of terms

For the purposes of the present Convention:

a) a "special mission" is a temporary mission, representing the State which is sent by one State to another

State with the consent of the latter for the purpose of dealing with it on specific questions or of performing in relation to it a specific task;

b) a "permanent diplomatic mission" is a diplomatic mission within the meaning of the Vienna Convention on Diplomatic Relations;

c) a "consular post" is any consulate-general, consulate, vice-consulate or consular agency;

d) the "head of a special mission" is the person charged by the sending State with the duty of acting in that capacity;

e) a "representative of the sending State in the special mission" is any person on whom the sending State has conferred that capacity;

f) the "members of a special mission" are the head of the special mission, the representatives of the sending State in the special mission and the members of the staff of the special mission;

g) the "members of the staff of the special mission" are the members of the diplomatic staff, the administrative and technical staff and the service staff of the special missions;

h) the "members of the diplomatic staff" are the members of the staff of the special mission who have diplomatic status for the purposes of the special mission;

i) the "members of the administrative and technical staff" are the members of the staff of the special mission employed in the administrative and technical service of the special mission;

j) the "members of the service staff" are the members of the staff of the special mission employed by it as household workers or for similar tasks;

k) the "private staff" are persons employed exclusively in the private service of the members of the special mission.

Article 2

Sending of a special mission

A State may send a special mission to another State with the consent of the latter, previously obtained through the diplomatic or another agreed or mutually acceptable channel.

Article 3

Functions of a special mission

The functions of a special mission shall be determined by the mutual consent of the sending and the receiving State.

Article 4

Sending of the same special mission to two or more States

A State which wishes to send the same special mission to two or more States shall so inform each receiving

State when seeking the consent of that State.

Article 5

Sending of a joint special mission by two or more states

Two or more States which wish to send a joint special mission to another State shall so inform the receiving State when seeking the consent of that State.

Article 6

Sending of special missions by two or more States in order to deal with a question of common interest

Two or more States may each send a special mission at the same time to another State with the consent of that State obtained in accordance with article 2, in order to deal together, with the agreement of all of these States, with a question of common interest to all of them.

Article 7

Non-existence of diplomatic or consular relations

The existence of diplomatic or consular relations is not necessary for the sending or reception of a special mission.

Article 8

Appointment of the members of the special mission

Subject to the provisions of articles 10, 11 and 12, the sending State may freely appoint the members of the special mission after having given to the receiving State all necessary information concerning the size and composition of the special mission, and in particular the names and designations of the persons it intends to appoint. The receiving State may decline to accept a special mission of a size that is not considered by it to be reasonable, having regard to circumstances and conditions in the receiving State and to the needs of the particular mission. It may also, without giving reasons, decline to accept any person as a member of the special mission.

Article 9

Composition of the special mission

1. A special mission shall consist of one or more representatives of the sending State from among whom the sending State may appoint a head. It may also include diplomatic staff, administrative and technical staff and service staff.

2. When members of a permanent diplomatic mission or of a consular post in the receiving State are

included in a special mission, they shall retain their privileges and immunities as members of their permanent diplomatic mission or consular post in addition to the privileges and immunities accorded by the present Convention.

Article 10

Nationality of the members of the special mission

1. The representatives of the sending State in the special mission and the members of its diplomatic staff should in principle be of the nationality of the sending State.
2. Nationals of the receiving State may not be appointed to a special mission except with the consent of that State, which may be withdrawn at any time.
3. The receiving State may reserve the right provided for in paragraph 2 of this article with regard to nationals of a third State who are not also nationals of the sending State.

Article 11

Notifications

1. The Ministry of Foreign Affairs of the receiving State, or such other organ of that State as may be agreed, shall be notified of:
 - a) the composition of the special mission and any subsequent changes therein;
 - b) the arrival and final departure of members of the mission and the termination of their functions with the mission;
 - c) the arrival and final departure of any person accompanying a member of the mission;
 - d) the engagement and discharge of persons resident in the receiving State as members of the mission or as private staff;
 - e) the appointment of the head of the special mission or, if there is none, of the representative referred to in paragraph 1 of article 14, and of any substitute for them;
 - f) the location of the premises occupied by the special mission and of the private accommodation enjoying inviolability under articles 30, 36 and 39 as well as any other information that may be necessary to identify such premises and accommodation.
2. Unless it is impossible, notification of arrival and final departure must be given in advance.

Article 12

Persons declared 'non grata' or not acceptable

1. The receiving State may, at any time and without having to explain its decision, notify the sending State that any representative of the sending State in the special mission or any member of its diplomatic staff is

persona non grata or that any other member of the staff of the mission is not acceptable. In any such case, the sending State shall, as appropriate, either recall the person concerned or terminate his functions with the mission. A person may be declared non grata or not acceptable before arriving in the territory of the receiving State.

2. If the sending State refuses, or fails within a reasonable period, to carry out its obligations under paragraph 1 of this article, the receiving State may refuse to recognize the person concerned as a member of the special mission.

Article 13

Commencement of the functions of a special mission

1. The functions of a special mission shall commence as soon as the mission enters into official contact with the Ministry of Foreign Affairs or with such other organ of the receiving State as may be agreed.

2. The commencement of the functions of a special mission shall not depend upon presentation of the mission by the permanent diplomatic mission of the sending State or upon the submission of letters of credence or full powers.

Article 14

Authority to act on behalf of the special mission

1. The head of the special mission or, if the sending State has not appointed a head, one of the representatives of the sending State designated by the latter is authorized to act on behalf of the special mission and to address communications to the receiving State. The receiving State shall address communications concerning the special mission to the head of the mission, or, if there is none, to the representative referred to above, either direct or through the permanent diplomatic mission.

2. However, a member of the special mission may be authorized by the sending State, by the head of the special mission or, if there is none, by the representative referred to in paragraph 1 of this article, either to substitute for the head of the special mission or for the aforesaid representative or to perform particular acts on behalf of the mission.

Article 15

Organ of the receiving State with which official business is conducted

All official business with the receiving State entrusted to the special mission by the sending State shall be

conducted with or through the Ministry of Foreign Affairs or with such other organ of the receiving State as may be agreed.

Article 16

Rules concerning precedence

1. Where two or more special missions meet in the territory of the receiving State or of a third State, precedence among the missions shall be determined, in the absence of a special agreement, according to the alphabetical order of the names of the States used by the protocol of the State in whose territory the missions are meeting.
2. Precedence among two or more special missions which meet on a ceremonial or formal occasion shall be governed by the protocol in force in the receiving State.
3. Precedence among the members of the same special mission shall be that which is notified to the receiving State or to the third State in whose territory two or more special missions are meeting.

Article 17

Seat of the special mission

1. A special mission shall have its seat in the locality agreed by the States concerned.
2. In the absence of agreement, the special mission shall have its seat in the locality where the Ministry of Foreign Affairs of the receiving State is situated.
3. If the special mission performs its functions in different localities, the States concerned may agree that it shall have more than one seat from among which they may choose one as the principal seat.

Article 18

Meeting of special missions in the territory of a third State

1. Special missions from two or more States may meet in the territory of a third State only after obtaining the express consent of that State, which retains the right to withdraw it.
2. In giving its consent, the third State may lay down conditions which shall be observed by the sending States.
3. The third State shall assume in respect of the sending States the rights and obligations of a receiving State to the extent that it indicates in giving its consent.

Article 19

Right of the special mission to use the flag and emblem of the sending State

1. A special mission shall have the right to use the flag and emblem of the sending State on the premises

occupied by the mission, and on its means of transport when used on official business.

2. In the exercise of the right accorded by this article, regard shall be had to the laws, regulations and usages of the receiving State.

Article 20

End of the functions of a special mission

1. The functions of a special mission shall come to an end, inter alia, upon:

- a) the agreement of the State concerned;
- b) the completion of the task of the special mission;
- c) the expiry of the duration assigned for the special mission, unless it is expressly extended;
- d) notification by the sending State that it is terminating or recalling the special mission;
- e) notification by the receiving State that it considers the special mission terminated.

2. The severance of diplomatic or consular relations between the sending State and the receiving State shall not of itself have the effect of terminating special missions existing at the time of such severance.

Article 21

Status of the Head of State and persons of high rank

1. The Head of the sending State, when he leads a special mission, shall enjoy in the receiving State or in a third State the facilities, privileges and immunities accorded by international law to Heads of State on an official visit.

2. The Head of the Government, the Minister for Foreign Affairs and other persons of high rank, when they take part in a special mission of the sending State, shall enjoy in the receiving State or in a third State, in addition to what is granted by the present Convention, the facilities, privileges and immunities accorded by international law.

Article 22

General facilities

The receiving State shall accord to the special mission the facilities required for the performance of its functions, having regard to the nature and task of the special mission.

Article 23

Premises and accommodation

The receiving State shall assist the special mission, if it so requests, in procuring the necessary premises and obtaining suitable accommodation for its members.

Article 24

Exemption of the premises of the special mission from taxation

1. To the extent compatible with the nature and duration of the functions performed by the special mission, the sending State and the members of the special mission acting on behalf of the mission shall be exempt from all national, regional or municipal dues and taxes in respect of the premises occupied by the special mission, other than such as represent payment for specific services rendered.
2. The exemption from taxation referred to in this article shall not apply to such dues and taxes payable under the law of the receiving State by persons contracting with the sending State or with a member of the special mission.

Article 25

Inviolability of the premises

1. The premises where the special mission is established in accordance with the present Convention shall be inviolable. The agents of the receiving State may not enter the said premises, except with the consent of the head of the special mission or, if appropriate, of the head of the permanent diplomatic mission of the sending State accredited to the receiving State. Such consent may be assumed in case of fire or other disaster that seriously endangers public safety, and only in the event that it has not been possible to obtain the express consent of the head of the special mission or, where appropriate, of the head of the permanent mission.
2. The receiving State is under a special duty to take all appropriate steps to protect the premises of the special mission against any intrusion or damage and to prevent any disturbance of the peace of the mission or impairment of its dignity.
3. The premises of the special mission, their furnishings, other property used in the operation of the special mission and its means of transport shall be immune from search, requisition, attachment or execution.

Article 26

Inviolability of archives and documents

The archives and documents of the special mission shall be inviolable at all times and wherever they may be. They should, when necessary, bear visible external marks of identification.

Article 27

Freedom of movement

Subject to its laws and regulations concerning zones entry into which is prohibited or regulated for reasons of national security, the receiving State shall ensure to all members of the special mission such freedom of movement and travel in its territory as is necessary for the performance of the functions of the special mission.

Article 28

Freedom of communication

1. The receiving State shall permit and protect free communication on the part of the special mission for all official purposes. In communicating with the Government of the sending State, its diplomatic missions, its consular posts and its other special missions or with sections of the same mission, wherever situated, the special mission may employ all appropriate means, including couriers and messages in code or cipher. However, the special mission may install and use a wireless transmitter only with the consent of the receiving State.
2. The official correspondence of the special mission shall be inviolable. Official correspondence means all correspondence relating to the special mission and its functions.
3. Where practicable, the special mission shall use the means of communication, including the bag and the courier, of the permanent diplomatic mission of the sending State.
4. The bag of the special mission shall not be opened or detained.
5. The packages constituting the bag of the special mission must bear visible external marks of their character and may contain only documents or articles intended for the official use of the special mission.
6. The courier of the special mission, who shall be provided with an official document indicating his status and the number of packages constituting the bag, shall be protected by the receiving State in the performance of his functions. He shall enjoy personal inviolability and shall not be liable to any form of arrest or detention.
7. The sending State or the special mission may designate couriers ad hoc of the special mission. In such cases the provisions of paragraph 6 of this article shall also apply, except that the immunities therein mentioned shall cease to apply when the courier ad hoc has delivered to the consignee the special mission's bag in his charge.

8. The bag of the special mission may be entrusted to the captain of a ship or of a commercial aircraft scheduled to land at an authorized port of entry. The captain shall be provided with an official document indicating the number of packages constituting the bag, but he shall not be considered to be a courier of the special mission. By arrangement with the appropriate authorities, the special mission may send one of its members to take possession of the bag directly and freely from the captain of the ship or of the aircraft.

Article 29

Personal inviolability

The persons of the representatives of the sending State in the special mission and of the members of its diplomatic staff shall be inviolable. They shall not be liable to any form of arrest or detention. The receiving State shall treat them with due respect and shall take all appropriate steps to prevent any attack on their persons, freedom or dignity.

Article 30

Inviolability of the private accommodation

1. The private accommodation of the representatives of the sending State in the special mission and of the members of its diplomatic staff shall enjoy the same inviolability and protection as the premises of the special mission.

2. Their papers, their correspondence and, except as provided in paragraph 4 of article 31, their property shall likewise enjoy inviolability.

Article 31

Immunity from jurisdiction

1. The representatives of the sending State in the special mission and the members of its diplomatic staff shall enjoy immunity from the criminal jurisdiction of the receiving State.

2. They shall also enjoy immunity from the civil and administrative jurisdiction of the receiving State, except in the case of:

a) a real action relating to private immovable property situated in the territory of the receiving State, unless the person concerned holds it on behalf of the sending State for the purposes of the mission;

b) an action relating to succession in which the person concerned is involved as executor, administrator, heir or legatee as a private person and not on behalf of the sending State;

c) an action relating to any professional or commercial activity exercised by the person concerned in the receiving State outside his official functions;

d) an action for damages arising out of an accident caused by a vehicle used outside the official functions of the person concerned.

3. The representatives of the sending State in the special mission and the members of its diplomatic staff are not obliged to give evidence as witnesses.

4. No measures of execution may be taken in respect of a representative of the sending State in the special mission or a member of its diplomatic staff except in the cases coming under subparagraphs (a), (b), (c) and (d) of paragraph 2 of this article and provided that the measures concerned can be taken without infringing the inviolability of his person or his accommodation.

5. The immunity from jurisdiction of the representatives of the sending State in the special mission and of the members of its diplomatic staff does not exempt them from the jurisdiction of the sending State.

Article 32

Exemption from social security legislation

1. Subject to the provisions of paragraph 3 of this article, representatives of the sending State in the special mission and members of its diplomatic staff shall, in respect of services rendered for the sending State, be exempt from social security provisions which may be in force in the receiving State. 2. The exemption provided for in paragraph 1 of this article shall also apply to persons who are in the sole private employ of a representative of the sending State in the special mission or of a member of its diplomatic staff on condition:

a) that such employed persons are not nationals of or permanently resident in the receiving State; and

b) that they are covered by the social security provisions which may be in force in the sending State or a third State.

3. Representatives of the sending State in the special mission and members of its diplomatic staff who employ persons to whom the exemption provided for in paragraph 2 of this article does not apply shall observe the obligations which the social security provisions of the receiving State impose under employers.

4. The exemption provided for in paragraphs 1 and 2 of this article shall not preclude voluntary participation in the social security system of the receiving State where such participation is permitted by that State.

5. The provisions of this article shall not affect bilateral or multilateral agreements concerning social security concluded previously and shall not prevent the conclusion of such agreements in the future.

Article 33

Exemption from dues and taxes

The representatives of the sending State in the special mission and the members of its diplomatic staff shall be exempt from all dues and taxes, personal or real, national, regional or municipal, except:

- a) indirect taxes of a kind which are normally incorporated in the price of goods or services;
- b) dues and taxes on private immovable property situated in the territory of the receiving State, unless the person concerned holds it on behalf of the sending State for the purposes of the mission;
- c) estate, succession or inheritance duties levied by the receiving State, subject to the provisions of article 44;
- d) dues and taxes on private income having its source in the receiving State and capital taxes on investments made in commercial undertakings in the receiving State;
- e) charges levied for specific services rendered;
- f) registration, course or record fees, mortgage dues and stamp duty, subject to the provisions of article 24.

Article 34

Exemption from personal services

The receiving State shall exempt the representatives of the sending State in the special mission and the members of its diplomatic staff from all personal services, from all public service of any kind whatsoever, and from military obligations such as those connected with requisitioning, military contributions and billeting.

Article 35

Exemption from customs duties and inspection

1. Within the limits of such laws and regulations as it may adopt, the receiving State shall permit entry of, and grant exemption from all customs duties, taxes and related charges other than charges for storage, cartage and similar services, on:

- a) articles for the official use of the special mission;
- b) articles for the personal use of the representatives of the sending State in the special mission and the members of its diplomatic staff.

2. The personal baggage of the representatives of the sending State in the special mission and of the members of its diplomatic staff shall be exempt from inspection, unless there are serious grounds for presuming that it contains articles not covered by the exemptions mentioned in paragraph 1 of this article, or articles the import or export of which is prohibited by the law or controlled by the quarantine regulations of

the receiving State. In such cases, inspection shall be conducted only in the presence of the person concerned or of his authorized representative.

Article 36

Administrative and technical staff

Members of the administrative and technical staff of the special mission shall enjoy the privileges and immunities specified in articles 29 to 34, except that the immunity from civil and administrative jurisdiction of the receiving State specified in paragraph 2 of article 31 shall not extend to acts performed outside the course of their duties. They shall also enjoy the privileges mentioned in paragraph 1 of article 35 in respect of articles imported at the time of their first entry into the territory of the receiving State.

Article 37

Service staff

Members of the service staff of the special mission shall enjoy immunity from the jurisdiction of the receiving State in respect of acts performed in the course of their duties, exemption from dues and taxes on the emoluments they receive by reason of their employment, and exemption from social security legislation as provided in article 32.

Article 38

Private staff

Private staff of the members of the special mission shall be exempt from dues and taxes on the emoluments they receive by reason of their employment. In all other respects, they may enjoy privileges and immunities only to the extent permitted by the receiving State. However, the receiving State must exercise its jurisdiction over these persons in such a manner as to interfere unduly with the performance of the functions of the special mission.

Article 39

Members of the family

1. Members of the families of representatives of the sending State in the special mission and of members of its diplomatic staff shall, if they accompany such members of the special mission, enjoy the privileges and immunities specified in articles 29 to 35 provided that they are not nationals of or permanently resident in the receiving State.

2. Members of the families of members of the administrative and technical staff of the special mission shall,

if they accompany such members of the special mission, enjoy the privileges and immunities specified in article 36 provided that they are not nationals of or permanently resident in the receiving State.

Article 40

Nationals of the receiving State and persons permanently resident in the receiving State

1. Except in so far as additional privileges and immunities may be granted by the receiving State, the representatives of the sending State in the special mission and the members of its diplomatic staff who are nationals of or permanently resident in the receiving State shall enjoy only immunity from jurisdiction and inviolability in respect of official acts performed in the exercise of their functions.

2. Other members of the special mission and private staff who are nationals of or permanently resident in the receiving State shall enjoy privileges and immunities only to the extent granted to them by that State.

However, the receiving State must exercise its jurisdiction over those persons in such a manner as not to interfere unduly with the performance of the functions of the special mission.

Article 41

Waiver of immunity

1. The sending State may waive the immunity from jurisdiction of its representatives in the special mission, of the members of its diplomatic staff, and of other persons enjoying immunity under articles 36 to 40.

2. Waiver must always be express.

3. The initiation of proceedings by any of the persons referred to in paragraph 1 of this article shall preclude him from invoking immunity from jurisdiction in respect of any counter-claim directly connected with the principal claim.

4. Waiver of immunity from jurisdiction in respect of civil or administrative proceedings shall not be held to imply waiver of immunity in respect of the execution of the judgement, for which a separate waiver shall be necessary.

Article 42

Transit through the territory of a third State

1. If a representative of the sending State in the special mission or a member of its diplomatic staff passes through or is in the territory of a third State while proceeding to take up his functions or returning to the

sending State, the third State shall accord him inviolability and such other immunities as may be required to ensure his transit or return. The same shall apply in the case of any members of his family enjoying privileges or immunities who are accompanying the person referred to in this paragraph, whether travelling with him or travelling separately to join him or to return to their country.

2. In circumstances similar to those specified in paragraph 1 of this article, third States shall not hinder the transit of members of the administrative and technical or service staff of the special mission, or of members of their families, through their territories.

3. Third States shall accord to official correspondence and other official communications in transit, including messages in code or cipher, the same freedom and protection as the receiving State is bound to accord under the present Convention. Subject to the provisions of paragraph 4 of this article, they shall accord to the couriers and bags of the special mission in transit the same inviolability and protection as the receiving State is bound to accord under the present Convention.

4. The third State shall be bound to comply with its obligations in respect of the persons mentioned in paragraphs 1, 2 and 3 of this article only if it has been informed in advance, either in the visa application or by notification, of the transit of those persons as members of the special mission, members of their families or couriers, and has raised no objection to it.

5. The obligations of third States under paragraphs 1, 2 and 3 of this article shall also apply to the persons mentioned respectively in those paragraphs, and to the official communications and the bags of the special mission, when the use of the territory of the third State is due to force majeure.

Article 43

Duration of privileges and immunities

1. Every member of the special mission shall enjoy the privileges and immunities to which he is entitled from the moment he enters the territory of the receiving State for the purpose of performing his functions in the special mission or, if he is already in its territory, from the moment when his appointment is notified to the Ministry of Foreign Affairs or such other organ of the receiving State as may be agreed.

2. When the functions of a member of the special mission have come to an end, his privileges and immunities shall normally cease at the moment when he leaves the territory of the receiving State, or on the

expiry of a reasonable period in which to do so, but shall subsist until that time, even in case of armed conflict. However, in respect of acts performed by such a member in the exercise of his functions, immunity shall continue to subsist.

3. In the event of the death of a member of the special mission, the members of his family shall continue to enjoy the privileges and immunities to which they are entitled until the expiry of a reasonable period in which to leave the territory of the receiving State.

Article 44

Property of a member of the special mission or of a member of his family in the event of death

1. In the event of the death of a member of the special mission or of a member of his family accompanying him, if the deceased was not a national of or permanently resident in the receiving State, the receiving State shall permit the withdrawal of the movable property of the deceased, with the exception of any property acquired in the country the export of which was prohibited at the time of his death.

2. Estate, succession and inheritance duties shall not be levied on movable property which is in the receiving State solely because of the presence there of the deceased as a member of the special mission or of the family of a member of the mission.

Article 45

Facilities to leave the territory of the receiving State and to remove the archives of the special mission

1. The receiving State must, even in case of armed conflict, grant facilities to enable persons enjoying privileges and immunities, other than nationals of the receiving State, and members of the families of such persons, irrespective of their nationality, to leave at the earliest possible moment. In particular it must, in case of need, place at their disposal the necessary means of transport for themselves and their property.

2. The receiving State must grant the sending State facilities for removing the archives of the special mission from the territory of the receiving State.

Article 46

Consequences of the cessation of the functions of the special mission

1. When the functions of a special mission come to an end, the receiving State must respect and protect the premises of the special mission so long as they are assigned to it, as well as the property and archives of

the special mission. The sending State must withdraw the property and archives within a reasonable period of time.

2. In case of the absence or severance of diplomatic or consular relations between the sending State and the receiving State and if the functions of the special mission have come to an end, the sending State may, even if there is an armed conflict, entrust the custody of the property and archives of the special mission to a third State acceptable to the receiving State.

Article 47

Respect for the laws and regulations of the receiving State and use of the premises of the special mission

1. Without prejudice to their privileges and immunities, it is the duty of all persons enjoying these privileges and immunities under the present Convention to respect the laws and regulations of the receiving State.

They also have a duty not to interfere in the internal affairs of that State.

2. The premises of the special mission must not be used in any manner incompatible with the functions of the special mission as envisaged in the present Convention, in other rules of general international law or in any special agreements in force between the sending and the receiving State.

Article 48

Professional or commercial activity

The representatives of the sending State in the special mission and the members of its diplomatic staff shall not practise for personal profit any professional or commercial activity in the receiving State.

Article 49

Non-discrimination

1. In the application of the provisions of the present Convention, no discrimination shall be made as between States.

2. However, discrimination shall not be regarded as taking place:

a) Where the receiving State applies any of the provisions of the present Convention restrictively because of a restrictive application of that provision to its special mission in the sending State;

b) Where States modify among themselves, by custom or agreement, the extent of facilities, privileges and immunities for their special missions, although such a modification has not been agreed with other States, provided that it is not incompatible with the object and purpose of the present Convention and does not affect the enjoyment of the rights or the performance of the obligations of third States.

Article 50

Signature

The present Convention shall be open for signature by all States Members of the United Nations or of any of the specialized agencies or of the International Atomic Energy Agency or Parties to the Statute of the International Court of Justice, and by any other State invited by the General Assembly of the United Nations to become a Party to the Convention, until 31 December 1970 at United Nations Headquarters in New York.

Article 51

Ratification

The present Convention is subject to ratification. The instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article 52

Accession

The present Convention shall remain open for accession by any State belonging to any of the categories mentioned in article 50. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 53

Entry into force

1. The present Convention shall enter into force on the thirtieth day following the date of deposit of the twenty-second instrument of ratification or accession with the Secretary-General of the United Nations.

2. For each State ratifying or acceding to the Convention after the deposit of the twenty-second instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification or accession.

Article 54

Notification by the depositary

The Secretary-General of the United Nations shall inform all States belonging to any of the categories mentioned in article 50:

- a) of signatures to the present Convention and of the deposit of instruments of ratification or accession in accordance with articles 50, 51 and 52;
- b) of the date on which the present Convention will enter into force in accordance with article 53.

Article 55

Authentic texts

The original of the present Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations, who shall send certified copies thereof to all States belonging to any of the categories mentioned in article 50.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto by their respective Governments, have signed the present Convention, opened for signature at New York on 16 December 1969.

Appendix E - Vienna Convention on the Representation of States in their Relations with International Organizations of a Universal Character 1975

69 American Journal of International Law (1975), pp. 730 – 758

The States Parties to the present Convention,
Recognizing the increasingly important role of multilateral diplomacy in
relations between States
and the responsibilities of the United Nations, its specialized agencies and
other international
organizations of a universal character within the international community,
Having in mind the purposes and principles of the Charter of the United
Nations concerning the
sovereign equality of States, the maintenance of international peace and
security and the promotion of
friendly relations and cooperation among States,
Recalling the work of codification and progressive development of
international law applicable to
bilateral relations between States which was achieved by the Vienna
Convention on Diplomatic
Relations of 1961, the Vienna Convention on Consular Relations of 1963,
and the Convention on Special
Missions of 1969,
Believing that an international convention on the representation of States in
their relations with
international organizations of a universal character would contribute to the
promotion of friendly
relations and cooperation among States, irrespective of their political,
economic and social systems,
Recalling the provisions of Article 105 of the Charter of the United Nations,
Recognizing that the purpose of privileges and immunities contained in the
present Convention is
not to benefit individuals but to ensure the efficient performance of their
functions in connection with
organizations and conferences,
Taking account of the Convention on the Privileges and Immunities of the
United Nations of
1946, the Convention on the Privileges and Immunities of the Specialized
Agencies of 1947 and other
agreements in force between States and between States and international
organizations,
Affirming that the rules of customary international law continue to govern
questions not expressly

regulated by the provisions of the present Convention,
Have agreed as follows:

Part I.

Introduction

Article 1

Use of terms

1. For the purposes of the present Convention:

- (1) "international organization" means an intergovernmental organization;
- (2) "international organization of a universal character" means the United Nations, its specialized agencies, the International Atomic Energy Agency and any similar organization whose membership and responsibilities are on a worldwide scale;
- (3) "Organization" means the international organization in question;
- (4) "organ" means:
 - (a) any principal or subsidiary organ of an international organization, or
 - (b) any commission, committee or subgroup of any such organ, in which States are members;
- (5) "conference" means a conference of States convened by or under the auspices of an international organization;
- (6) "mission" means, as the case may be, the permanent mission or the permanent observer mission;
- (7) "permanent mission" means a mission of permanent character, representing the State, sent by a State member of an international organization to the Organization;
- (8) "permanent observer mission" means a mission of permanent character, representing the State, sent to an international organization by a State not a member of the Organization;
- (9) "delegation" means, as the case may be, the delegation to an organ or the delegation to a conference;
- (10) "delegation to an organ" means the delegation sent by a State to participate on its behalf in the proceedings of the organ;
- (11) "delegation to a conference" means the delegation sent by a State to participate on its behalf in the conference;
- (12) "observer delegation" means, as the case may be, the observer delegation to an organ or the observer delegation to a conference;
- (13) "observer delegation to an organ" means the delegation sent by a State to participate on its behalf as an observer in the proceedings of the organ;
- (14) "observer delegation to a conference" means the delegation sent by a State to participate on its behalf as an observer in the proceedings of the conference;
- (15) "host State" means the State in whose territory:
 - (a) the Organization has its seat or an office, or
 - (b) a meeting of an organ or a conference is held;
- (16) "sending State" means the State which sends:

- (a) a mission to the Organization at its seat or to an office of the Organization, or
- (b) a delegation to an organ or a delegation to a conference, or
- (c) an observer delegation to an organ or an observer delegation to a conference;
- (17) "head of mission" means, as the case may be, the permanent representative or the permanent observer;
- (18) "permanent representative" means the person charged by the sending State with the duty of acting as the head of the permanent mission;
- (19) "permanent observer" means the person charged by the sending State with the duty of acting as the head of the permanent observer mission;
- (20) "members of the mission" means the head of mission and the members of the staff;
- (21) "head of delegation" means the delegate charged by the sending State with the duty of acting in that capacity;
- (22) "delegate" means any person designated by a State to participate as its representative in the proceedings of an organ or in a conference;
- (23) "members of the delegation" means the delegates and the members of the staff;
- (24) "head of the observer delegation" means the observer delegate charged by the sending State with the duty of acting in that capacity;
- (25) "observer delegate" means any person designated by a State to attend as an observer the proceedings of an organ or of a conference;
- (26) "members of the observer delegation" means the observer delegates and the members of the staff;
- (27) "members of the staff" means the members of the diplomatic staff, the administrative and technical staff and the service staff of the mission, the delegation or the observer delegation;
- (28) "members of the diplomatic staff" means the members of the staff of the mission, the delegation or the observer delegation who enjoy diplomatic status for the purpose of the mission, the delegation or the observer delegation;
- (29) "members of the administrative and technical staff" means the members of the staff employed in the administrative and technical service of the mission, the delegation or the observer delegation;
- (30) "members of the service staff" means the members of the staff employed by the mission, the delegation or the observer delegation as household workers or for similar tasks;
- (31) "private staff" means persons employed exclusively in the private service of the members of the mission or the delegation;
- (32) "premises of the mission" means the buildings or parts of buildings and the land ancillary thereto, irrespective of ownership, used for the purpose of the mission, including the residence of the head of mission;
- (33) "premises of the delegation" means the buildings or parts of buildings, irrespective of ownership, used solely as the offices of the delegation;
- (34) "rules of the Organization" means, in particular, the constituent instruments, relevant decisions and resolutions, and established practice of the Organization.

2. The provisions of paragraph 1 of this article regarding the use of terms in the present Convention are without prejudice to the use of those terms or to

the meanings which may be given to them in other international instruments or the internal law of any State.

Article 2

Scope of the present Convention

1. The present Convention applies to the representation of States in their relations with any international organization of a universal character, and to their representation at conferences convened by or under the auspices of such an organization, when the Convention has been accepted by the host State and the Organization has completed the procedure envisaged by article 90.

2. The fact that the present Convention does not apply to other international organizations is without prejudice to the application to the representation of States in their relations with such other organizations of any of the rules set forth in the Convention which would be applicable under international law independently of the Convention.

3. The fact that the present Convention does not apply to other conferences is without prejudice to the application to the representation of States at such other conferences of any of the rules set forth in the Convention which would be applicable under international law independently of the Convention.

4. Nothing in the present Convention shall preclude the conclusion of agreements between States or between States and international organizations making the Convention applicable in whole or in part to international organizations or conferences other than those referred to in paragraph 1 of this article.

Article 3

Relationship between the present Convention and the relevant rules of international organizations or conferences

The provisions of the present Convention are without prejudice to any relevant rules of the Organization or to any relevant rules of procedure of the Conference.

Article 4

Relationship between the present Convention and other international agreements

The provisions of the present Convention:

(a)

are without prejudice to other international agreements in force between States or between States

and international organizations of a universal character, and

(b)

shall not preclude the conclusion of other international agreements regarding the representation of States in their relations with international organizations of a universal character or their representation at conferences convened by or under the auspices of such organizations.

Part II.

Missions to International Organizations

Article 5

Establishment of missions

1. Member States may, if the rules of the Organization so permit, establish permanent missions for the performance of the functions mentioned in article 6.
2. Non-member States may, if the rules of the Organization so permit, establish permanent observer missions for the performance of the functions mentioned in article 7.
3. The Organization shall notify the host State of the institution of a mission prior to its establishment.

Article 6

Functions of the permanent mission

The functions of the permanent mission consist, inter alia, in:

- (a) ensuring the representation of the sending State to the Organization;
- (b) maintaining liaison between the sending State and the Organization;
- (c) negotiating with and within the Organization;
- (d) ascertaining activities in the Organization and reporting thereon to the Government of the sending State;
- (e) ensuring the participation of the sending State in the activities of the Organization;
- (f) protecting the interests of the sending State in relation to the Organization;
- (g) promoting the realization of the purposes and principles of the Organization by cooperating with and within the Organization.

Article 7

Functions of the permanent observer mission

The functions of the permanent observer mission consist, inter alia, in:

- (a) ensuring the representation of the sending State and safeguarding its interests in relation to the Organization and maintaining liaison with it;
- (b) ascertaining activities in the Organization and reporting thereon to the Government of the sending State;
- (c) promoting cooperation with the Organization and negotiating with it.

Article 8

Multiple accreditation or appointment

1. The sending State may accredit the same person as head of mission to two or more international

organizations or appoint a head of mission as a member of the diplomatic staff of another of its missions.

2. The sending State may accredit a member of the diplomatic staff of the mission as head of mission to other international organizations or appoint a member of the staff of the mission as a member of the staff of another of its missions.

3. Two or more States may accredit the same person as head of mission to the same international organization.

Article 9

Appointment of the members of the mission

Subject to the provisions of articles 14 and 73, the sending State may freely appoint the members of the mission.

Article 10

Credentials of the head of mission

The credentials of the head of mission shall be issued by the Head of State, by the Head of Government, by the Minister for Foreign Affairs or, if the rules of the Organization so permit, by another competent authority of the sending State and shall be transmitted to the Organization.

Article 11

Accreditation to organs of the Organization

1. A member State may specify in the credentials issued to its permanent representative that he is authorized to act as a delegate to one or more organs of the Organization.

2. Unless a member State provides otherwise, its permanent representative may act as a delegate to organs of the Organization for which there are no special requirements as regards representation.

3. A non-member State may specify in the credentials issued to its permanent observer that he is authorized to act as an observer delegate to one or more organs of the Organization when this is permitted by the rules of the Organization or the organ concerned.

Article 12

Full powers for the conclusion of a treaty with the Organization

1. The head of mission, by virtue of his functions and without having to produce full powers, is considered as representing his State for the purpose of adopting the text of a treaty between that State and the Organization.

2. The head of mission is not considered by virtue of his functions as representing his State for the purpose of signing a treaty, or signing a treaty ad referendum, between that State and the Organization unless it appears from the practice of the Organization, or from other circumstances, that the intention of the parties was to dispense with full powers.

Article 13

Composition of the mission

In addition to the head of mission, the mission may include diplomatic staff, administrative and technical staff and service staff.

Article 14

Size of the mission

The size of the mission shall not exceed what is reasonable and normal, having regard to the functions of the Organization, the needs of the particular mission and the circumstances and conditions in the host State.

Article 15

Notifications

1. The sending State shall notify the Organization of:

- (a) the appointment, position, title and order of precedence of the members of the mission, their arrival, their final departure or the termination of their functions with the mission, and any other changes affecting their status that may occur in the course of their service with the mission;
- (b) the arrival and final departure of any person belonging to the family of a member of the mission and forming part of his household and, where appropriate, the fact that a person becomes or ceases to be such a member of the family;
- (c) the arrival and final departure of persons employed on the private staff of members of the mission and the termination of their employment as such;
- (d) the beginning and the termination of the employment of persons resident in the host State as members of the staff of the mission or as persons employed on the private staff;
- (e) the location of the premises of the mission and of the private residences enjoying inviolability

under articles 23 and 29, as well as any other information that may be necessary to identify such premises and residences.

2. Where possible, prior notification of arrival and final departure shall also be given.

3. The Organization shall transmit to the host State the notification referred to in paragraphs 1 and 2 of this article.

4. The sending State may also transmit to the host State the notification referred to in paragraphs 1 and 2 of this article.

Article 16

Acting head of mission

If the post of head of mission is vacant, or if the head of mission is unable to perform his functions, the sending State may appoint an acting head of mission whose name shall be notified to the Organization and by it to the host State.

Article 17

Precedence

1. Precedence among permanent representatives shall be determined by the alphabetical order of the names of the States used in the Organization.

2. Precedence among permanent observers shall be determined by the alphabetical order of the names of the States used in the Organization.

Article 18

Location of the mission

Missions should be established in the locality where the Organization has its seat. However, if the rules of the Organization so permit and with the prior consent of the host State, the sending State may establish a mission or an office of a mission in a locality other than that in which the Organization has its seat.

Article 19

Use of flag and emblem

1. The mission shall have the right to use the flag and emblem of the sending State on its premises. The head of mission shall have the same right as regards his residence and means of transport.

2. In the exercise of the right accorded by this article regard shall be had to the laws, regulations and usages of the host State.

Article 20

General facilities

1. The host State shall accord to the mission all necessary facilities for the performance of its functions.
2. The Organization shall assist the mission in obtaining those facilities and shall accord to the mission such facilities as lie within its own competence.

Article 21

Premises and accommodation

1. The host State and the Organization shall assist the sending State in obtaining on reasonable terms premises necessary for the mission in the territory of the host State. Where necessary, the host State shall facilitate in accordance with its laws the acquisition of such premises.
2. Where necessary, the host State and the Organization shall also assist the mission in obtaining on reasonable terms suitable accommodation for its members.

Article 22

Assistance by the Organization in respect of privileges and immunities

1. The Organization shall, where necessary, assist the sending State, its mission and the members of its mission in securing the enjoyment of the privileges and immunities provided for under the present Convention.
2. The Organization shall, where necessary, assist the host State in securing the discharge of the obligations of the sending State, its mission and the members of its mission in respect of the privileges and immunities provided for under the present Convention.

Article 23

Inviolability of premises

1. The premises of the mission shall be inviolable. The agents of the host State may not enter them, except with the consent of the head of mission.
2. (a) The host State is under a special duty to take all appropriate steps to protect the premises of the mission against any intrusion or damage and to prevent any disturbance of the peace of the mission or impairment of its dignity.
(b) In case of an attack on the premises of the mission, the host State shall take all appropriate steps to prosecute and punish persons who have committed the attack.

3. The premises of the mission, their furnishings and other property thereon and the means of transport of the mission shall be immune from search, requisition, attachment or execution.

Article 24

Exemption of the premises from taxation

1. The premises of the mission of which the sending State or any person acting on its behalf is the owner or the lessee shall be exempt from all national, regional or municipal dues and taxes other than such as represent payment for specific services rendered.

2. The exemption from taxation referred to in this article shall not apply to such dues and taxes payable under the law of the host State by persons contracting with the sending State or with any person acting on its behalf.

Article 25

Inviolability of archives and documents

The archives and documents of the mission shall be inviolable at all times and wherever they may be.

Article 26

Freedom of movement

Subject to its laws and regulations concerning zones entry into which is prohibited or regulated for reasons of national security, the host State shall ensure freedom of movement and travel in its territory to all members of the mission and members of their families forming part of their households.

Article 27

Freedom of communication

1. The host State shall permit and protect free communication on the part of the mission for all official purposes. In communicating with the Government of the sending State, its permanent diplomatic missions, consular posts, permanent missions, permanent observer missions, special missions, delegations and observer delegations, wherever situated, the mission may employ all appropriate means, including couriers and messages in code or cipher. However, the mission may install and use a wireless transmitter only with the consent of the host State.

2. The official correspondence of the mission shall be inviolable. Official correspondence means

all correspondence relating to the mission and its functions.

3. The bag of the mission shall not be opened or detained.

4. The packages constituting the bag of the mission must bear visible external marks of their character and may contain only documents or articles intended for the official use of the mission.

5. The courier of the mission, who shall be provided with an official document indicating his status and the number of packages constituting the bag, shall be protected by the host State in the performance of his functions. He shall enjoy personal inviolability and shall not be liable to any form of arrest or detention.

6. The sending State or the mission may designate couriers ad hoc of the mission. In such cases the provisions of paragraph 5 of this article shall also apply, except that the immunities therein mentioned shall cease to apply when the courier ad hoc has delivered to the consignee the mission's bag in his charge.

7. The bag of the mission may be entrusted to the captain of a ship or of a commercial aircraft scheduled to land at an authorized port of entry. He shall be provided with an official document indicating the number of packages constituting the bag, but he shall not be considered to be a courier of the mission. By arrangement with the appropriate authorities of the host State, the mission may send one of its members to take possession of the bag directly and freely from the captain of the ship or of the aircraft.

Article 28

Personal inviolability

The persons of the head of mission and of the members of the diplomatic staff of the mission shall be inviolable. They shall not be liable to any form of arrest or detention. The host State shall treat them with due respect and shall take all appropriate steps to prevent any attack on their persons, freedom or dignity and to prosecute and punish persons who have committed such attacks.

Article 29

Inviolability of residence and property

1. The private residence of the head of mission and of the members of the diplomatic staff of the mission shall enjoy the same inviolability and protection as the premises of the mission.

2. The papers, correspondence and, except as provided in paragraph 2 of article 30, the property of

the head of mission or of members of the diplomatic staff of the mission shall also enjoy inviolability.

Article 30

Immunity from jurisdiction

1. The head of mission and the members of the diplomatic staff of the mission shall enjoy immunity from the criminal jurisdiction of the host State. They shall also enjoy immunity from its civil and administrative jurisdiction, except in the case of:

(a)

a real action relating to private immovable property situated in the territory of the host State, unless the person in question holds it on behalf of the sending State for the purposes of the mission;

(b)

an action relating to succession in which the person in question is involved as executor, administrator, heir or legatee as a private person and not on behalf of the sending State;

(c)

an action relating to any professional or commercial activity exercised by the person in question in the host State outside his official functions.

2. No measures of execution may be taken in respect of the head of mission or a member of the diplomatic staff of the mission except in cases coming under subparagraphs (a), (b) and (c) of paragraph 1 of this article, and provided that the measures concerned can be taken without infringing the inviolability of his person or of his residence.

3. The head of mission and the members of the diplomatic staff of the mission are not obliged to give evidence as witnesses.

4. The immunity of the head of mission or of a member of the diplomatic staff of the mission from the jurisdiction of the host State does not exempt him from the jurisdiction of the sending State.

Article 31

Waiver of immunity

1. The immunity from jurisdiction of the head of mission and members of the diplomatic staff of the mission and of persons enjoying immunity under article 36 may be waived by the sending State.

2. Waiver must always be express.

3. The initiation of proceedings by any of the persons referred to in paragraph 1 of this article shall preclude him from invoking immunity from jurisdiction in respect of any counterclaim directly

connected with the principal claim.

4. Waiver of immunity from jurisdiction in respect of civil or administrative proceedings shall not be held to imply waiver of immunity in respect of the execution of the judgement, for which a separate waiver shall be necessary.

5. If the sending State does not waive the immunity of any of the persons mentioned in paragraph 1 of this article in respect of a civil action, it shall use its best endeavours to bring about a just settlement of the case.

Article 32

Exemption from social security legislation

1. Subject to the provisions of paragraph 3 of this article, the head of mission and the members of the diplomatic staff of the mission shall with respect to services rendered for the sending State be exempt from social security provisions which may be in force in the host State.

2. The exemption provided for in paragraph 1 of this article shall also apply to persons who are in the sole private employ of the head of mission or of a member of the diplomatic staff of the mission, on condition:

(a)

that such employed persons are not nationals of or permanently resident in the host State; and

(b)

that they are covered by the social security provisions which may be in force in the sending State or a third State.

3. The head of mission and the members of the diplomatic staff of the mission who employ persons to whom the exemption provided for in paragraph 2 of this article does not apply shall observe the obligations which the social security provisions of the host State impose upon employers.

4. The exemption provided for in paragraphs 1 and 2 of this article shall not preclude voluntary participation in the social security system of the host State provided that such participation is permitted by that State.

5. The provisions of this article shall not affect bilateral or multilateral agreements concerning social security concluded previously and shall not prevent the conclusion of such agreements in the future.

Article 33

Exemption from dues and taxes

The head of mission and the members of the diplomatic staff of the mission shall be exempt from

all dues and taxes, personal or real, national, regional or municipal, except:

(a)

indirect taxes of a kind which are normally incorporated in the price of goods or services;

(b)

dues and taxes on private immovable property situated in the territory of the host State, unless the person concerned holds it on behalf of the sending State for the purposes of the mission;

(c)

estate, succession or inheritance duties levied by the host State, subject to the provisions of paragraph 4 of article 38;

(d)

dues and taxes on private income having its source in the host State and capital taxes on investments made in commercial undertakings in the host State;

(e)

charges levied for specific services rendered;

(f)

registration, court or record fees, mortgage dues and stamp duty, with respect to immovable property, subject to the provisions of article 24.

Article 34

Exemption from personal services

The host State shall exempt the head of mission and the members of the diplomatic staff of the

mission from all personal services, from all public service of any kind whatsoever, and from military

obligations such as those connected with requisitioning, military contributions and billeting.

Article 35

Exemption from customs duties and inspection

1. The host State shall, in accordance with such laws and regulations as it may adopt, permit entry

of and grant exemption from all customs duties, taxes and related charges other than charges for storage, cartage and similar services, on:

(a)

articles for the official use of the mission;

(b)

articles for the personal use of the head of mission or a member of the diplomatic staff of the

mission, including articles intended for his establishment.

2. The personal baggage of the head of mission or a member of the diplomatic staff of the mission shall be exempt from inspection, unless there are serious grounds for presuming that it contains articles not covered by the exemptions mentioned in paragraph 1 of this article, or articles the import or export of which is prohibited by the law or controlled by the quarantine regulations of the host State. In such cases, inspection shall be conducted only in the presence of the person enjoying the exemption or of his authorized representative.

Article 36

Privileges and immunities of other persons

1. The members of the family of the head of mission forming part of his household and the members of the family of a member of the diplomatic staff of the mission forming part of his household shall, if they are not nationals of or permanently resident in the host State, enjoy the privileges and immunities specified in articles 28, 29, 30, 32, 33, 34 and in paragraphs 1(b) and 2 of article 35.

2. Members of the administrative and technical staff of the mission, together with members of their families forming part of their respective households who are not nationals of or permanently resident in the host State, shall enjoy the privileges and immunities specified in articles 28, 29, 30, 32, 33 and 34, except that the immunity from civil and administrative jurisdiction of the host State specified in paragraph 1 of article 30 shall not extend to acts performed outside the course of their duties. They shall also enjoy the privileges specified in paragraph 1 (b) of article 35 in respect of articles imported at the time of final installation.

3. Members of the service staff of the mission who are not nationals of or permanently resident in the host State shall enjoy immunity in respect of acts performed in the course of their duties, exemption from dues and taxes on the emoluments they receive by reason of their employment and the exemption specified in article 32.

4. Private staff of members of the mission shall, if they are not nationals of or permanently resident in the host State, be exempt from dues and taxes on the emoluments they receive by reason of their employment. In other respects, they may enjoy privileges and immunities only to the extent

admitted by the host State. However, the host State must exercise its jurisdiction over those persons in such a manner as not to interfere unduly with the performance of the functions of the mission.

Article 37

Nationals and permanent residents of the host State

1. Except in so far as additional privileges and immunities may be granted by the host State, the head of mission or any member of the diplomatic staff of the mission who is a national of or permanently resident in that State shall enjoy only immunity from jurisdiction and inviolability in respect of official acts performed in the exercise of his functions.
2. Other members of the staff of the mission who are nationals of or permanently resident in the host State shall enjoy only immunity from jurisdiction in respect of official acts performed in the exercise of their functions. In all other respects, those members, and persons on the private staff who are nationals of or permanently resident in the host State, shall enjoy privileges and immunities only to the extent admitted by the host State. However, the host State must exercise its jurisdiction over those members and persons in such a manner as not to interfere unduly with the performance of the functions of the mission.

Article 38

Duration of privileges and immunities

1. Every person entitled to privileges and immunities shall enjoy them from the moment he enters the territory of the host State on proceeding to take up his post or, if already in its territory, from the moment when his appointment is notified to the host State by the Organization or by the sending State.
2. When the functions of a person enjoying privileges and immunities have come to an end, such privileges and immunities shall normally cease at the moment when he leaves the territory, or on the expiry of a reasonable period in which to do so. However, with respect to acts performed by such a person in the exercise of his functions as a member of the mission, immunity shall continue to subsist.
3. In the event of the death of a member of the mission, the members of his family shall continue to enjoy the privileges and immunities to which they are entitled until the expiry of a reasonable period in which to leave the territory.

4. In the event of the death of a member of the mission not a national of or permanently resident in the host State or of a member of his family forming part of his household, the host State shall permit the withdrawal of the movable property of the deceased, with the exception of any property acquired in the territory the export of which was prohibited at the time of his death. Estate, succession and inheritance duties shall not be levied on movable property which is in the host State solely because of the presence there of the deceased as a member of the mission or of the family of a member of the mission.

Article 39

Professional or commercial activity

1. The head of mission and members of the diplomatic staff of the mission shall not practise for personal profit any professional or commercial activity in the host State.

2. Except insofar as such privileges and immunities may be granted by the host State, members of the administrative and technical staff and persons forming part of the household of a member of the mission shall not, when they practise a professional or commercial activity for personal profit, enjoy any privilege or immunity in respect of acts performed in the course of or in connection with the practise of such activity.

Article 40

End of functions

The functions of the head of mission or of a member of the diplomatic staff of the mission shall come to an end, inter alia:

(a) on notification of their termination by the sending State to the Organization;

(b) if the mission is finally or temporarily recalled.

Article 41

Protection of premises, property and archives

1. When the mission is temporarily or finally recalled, the host State must respect and protect the premises, property and archives of the mission. The sending State must take all appropriate measures to terminate this special duty of the host State as soon as possible. It may entrust custody of the premises, property and archives of the mission to the Organization if it so agrees, or to a third State acceptable to the host State.

2. The host State, if requested by the sending State, shall grant the latter facilities for removing the property and archives of the mission from the territory of the host State.

Part III.

Delegations to Organs and to Conferences

Article 42

Sending of delegations

1. A State may send a delegation to an organ or to a conference in accordance with the rules of the Organization.

2. Two or more States may send the same delegation to an organ or to a conference in accordance with the rules of the Organization.

Article 43

Appointment of the members of the delegation

Subject to the provisions of articles 46 and 73, the sending State may freely appoint the members of the delegation.

Article 44

Credentials of delegates

The credentials of the head of delegation and of other delegates shall be issued by the Head of State, by the Head of Government, by the Minister for Foreign Affairs or, if the rules of the Organization or the rules of procedure of the conference so permit, by another competent authority of the sending State. They shall be transmitted, as the case may be, to the Organization or to the conference.

Article 45

Composition of the delegation

In addition to the head of delegation, the delegation may include other delegates, diplomatic staff, administrative and technical staff and service staff.

Article 46

Size of the delegation

The size of the delegation shall not exceed what is reasonable and normal, having regard, as the case may be, to the functions of the organ or the object of the conference, as well as the needs of the particular delegation and the circumstances and conditions in the host State.

Article 47

Notifications

1. The sending State shall notify the Organization or, as the case may be, the conference of:

(a)

the composition of the delegation, including the position, title and order of precedence of the members of the delegation, and any subsequent changes therein;

(b)

the arrival and final departure of members of the delegation and the termination of their functions with the delegation;

(c)

the arrival and final departure of any person accompanying a member of the delegation;

(d)

the beginning and the termination of the employment of persons resident in the host State as members of the staff of the delegation or as persons employed on the private staff;

(e)

the location of the premises of the delegation and of the private accommodation enjoying inviolability under article 59, as well as any other information that may be necessary to identify such premises and accommodation.

2. Where possible, prior notification of arrival and final departure shall also be given.

3. The Organization or, as the case may be, the conference shall transmit to the host State the notifications referred to in paragraphs 1 and 2 of this article.

4. The sending State may also transmit to the host State the notifications referred to in paragraphs 1 and 2 of this article.

Article 48

Acting head of delegation

1. If the head of delegation is absent or unable to perform his functions, an acting head of delegation shall be designated from among the other delegates by the head of delegation or, in case he is unable to do so, by a competent authority of the sending State. The name of the acting head of delegation shall be notified, as the case may be, to the Organization or to the conference.

2. If a delegation does not have another delegate available to serve as acting head of delegation, another person may be designated for that purpose. In such case credentials must be issued and

transmitted in accordance with article 44.

Article 49

Precedence

Precedence among delegations shall be determined by the alphabetical order of the names of the States used in the Organization.

Article 50

Status of the Head of State and persons of high rank

1. The Head of State or any member of a collegial body performing the functions of Head of State under the constitution of the State concerned, when he leads the delegation, shall enjoy in the host State or in a third State, in addition to what is granted by the present Convention, the facilities, privileges and immunities accorded by international law to Heads of State.
2. The Head of Government, the Minister for Foreign Affairs or other person of high rank, when he leads or is a member of the delegation, shall enjoy in the host State or in a third State, in addition to what is granted by the present Convention, the facilities, privileges and immunities accorded by international law to such persons.

Article 51

General facilities

1. The host State shall accord to the delegation all necessary facilities for the performance of its tasks.
2. The Organization or, as the case may be, the conference shall assist the delegation in obtaining those facilities and shall accord to the delegation such facilities as lie within its own competence.

Article 52

Premises and accommodation

If so requested, the host State and, where necessary, the Organization or the conference shall assist the sending State in obtaining on reasonable terms premises necessary for the delegation and suitable accommodation for its members.

Article 53

Assistance in respect of privileges and immunities

1. The Organization or, as the case may be, the Organization and the conference shall, where necessary, assist the sending State, its delegation and the members of its delegation in securing the

enjoyment of the privileges and immunities provided for under the present Convention.

2. The Organization or, as the case may be, the Organization and the conference shall, where necessary, assist the host State in securing the discharge of the obligations of the sending State, its delegation and the members of its delegation in respect of the privileges and immunities provided for under the present Convention.

Article 54

Exemption of the premises from taxation

1. The sending State or any member of the delegation acting on behalf of the delegation shall be exempt from all national, regional or municipal dues and taxes in respect of the premises of the delegation other than such as represent payment for specific services rendered.

2. The exemption from taxation referred to in this article shall not apply to such dues and taxes payable under the law of the host State by persons contracting with the sending State or with a member of the delegation.

Article 55

Inviolability of archives and documents

The archives and documents of the delegation shall be inviolable at all times and wherever they may be.

Article 56

Freedom of movement

Subject to its laws and regulations concerning zones entry into which is prohibited or regulated for reasons of national security, the host State shall ensure to all members of the delegation such freedom of movement and travel in its territory as is necessary for the performance of the tasks of the delegation.

Article 57

Freedom of communication

1. The host State shall permit and protect free communication on the part of the delegation for all official purposes. In communicating with the Government of the sending State, its permanent diplomatic missions, consular posts, permanent missions, permanent observer missions, special missions, other delegations, and observer delegations, wherever situated, the delegation may employ all appropriate

means, including couriers and messages in code or cipher. However, the delegation may install and use a wireless transmitter only with the consent of the host State.

2. The official correspondence of the delegation shall be inviolable. Official correspondence

means all correspondence relating to the delegation and its tasks.

3. Where practicable, the delegation shall use the means of communication, including the bag and

the courier, of the permanent diplomatic mission, of a consular post, of the permanent mission or of the permanent observer mission of the sending State.

4. The bag of the delegation shall not be opened or detained.

5. The packages constituting the bag of the delegation must bear visible external marks of their character and may contain only documents or articles intended for the official use of the delegation.

6. The courier of the delegation, who shall be provided with an official document indicating his status and the number of packages constituting the bag, shall be protected by the host State in the performance of his functions. He shall enjoy personal inviolability and shall not be liable to any form of arrest or detention.

7. The sending State or the delegation may designate couriers ad hoc of the delegation. In such cases the provisions of paragraph 6 of this article shall also apply, except that the immunities therein mentioned shall cease to apply when the courier ad hoc has delivered to the consignee the delegation's bag in his charge.

8. The bag of the delegation may be entrusted to the captain of a ship or of a commercial aircraft scheduled to land at an authorized port of entry. He shall be provided with an official document indicating the number of packages constituting the bag, but he shall not be considered to be a courier of the delegation. By arrangement with the appropriate authorities of the host State, the delegation may send one of its members to take possession of the bag directly and freely from the captain of the ship or of the aircraft.

Article 58

Personal inviolability

The persons of the head of delegation and of other delegates and members of the diplomatic staff

of the delegation shall be inviolable. They shall not be liable, inter alia, to any form of arrest or detention. The host State shall treat them with due respect and shall take all appropriate steps to prevent

any attack on their persons, freedom or dignity and to prosecute and punish persons who have committed such attacks.

Article 59

Inviolability of private accommodation and property

1. The private accommodation of the head of delegation and of other delegates and members of the diplomatic staff of the delegation shall enjoy inviolability and protection.
2. The papers, correspondence and, except as provided in paragraph 2 of article 60, the property of the head of delegation and of other delegates or members of the diplomatic staff of the delegation shall also enjoy inviolability.

Article 60

Immunity from jurisdiction

1. The head of delegation and other delegates and members of the diplomatic staff of the delegation shall enjoy immunity from the criminal jurisdiction of the host State, and immunity from its civil and administrative jurisdiction in respect of all acts performed in the exercise of their official functions.
2. No measures of execution may be taken in respect of such persons unless they can be taken without infringing their rights under articles 58 and 59.
3. Such persons are not obliged to give evidence as witnesses.
4. Nothing in this article shall exempt such persons from the civil and administrative jurisdiction of the host State in relation to an action for damages arising from an accident caused by a vehicle, vessel or aircraft, used or owned by the persons in question, where those damages are not recoverable from insurance.
5. Any immunity of such persons from the jurisdiction of the host State does not exempt them from the jurisdiction of the sending State.

Article 61

Waiver of immunity

1. The immunity from jurisdiction of the head of delegation and of other delegates and members of the diplomatic staff of the delegation and of persons enjoying immunity under article 66 may be waived by the sending State.
2. Waiver must always be express.
3. The initiation of proceedings by any of the persons referred to in paragraph 1 of this article

shall preclude him from invoking immunity from jurisdiction in respect of any counterclaim directly connected with the principal claim.

4. Waiver of immunity from jurisdiction in respect of civil or administrative proceedings shall not be held to imply waiver of immunity in respect of the execution of the judgement, for which a separate waiver shall be necessary.

5. If the sending State does not waive the immunity of any of the persons mentioned in paragraph 1 of this article in respect of a civil action, it shall use its best endeavours to bring about a just settlement of the case.

Article 62

Exemption from social security legislation

1. Subject to the provisions of paragraph 3 of this article, the head of delegation and other delegates and members of the diplomatic staff of the delegation shall with respect to services rendered for the sending State be exempt from social security provisions which may be in force in the host State.

2. The exemption provided for in paragraph 1 of this article shall also apply to persons who are in the sole private employ of the head of delegation or of any other delegate or member of the diplomatic staff of the delegation, on condition:

(a) that such employed persons are not nationals of or permanently resident in the host State; and

(b) that they are covered by the social security provisions which may be in force in the sending State or a third State.

3. The head of delegation and other delegates and members of the diplomatic staff of the delegation who employ persons to whom the exemption provided for in paragraph 2 of this article does not apply shall observe the obligations which the social security provisions of the host State impose upon employers.

4. The exemption provided for in paragraphs 1 and 2 of this article shall not preclude voluntary participation in the social security system of the host State provided that such participation is permitted by that State.

5. The provisions of this article shall not affect bilateral or multilateral agreements concerning

social security concluded previously and shall not prevent the conclusion of such agreements in the future.

Article 63

Exemption from dues and taxes

The head of delegation and other delegates and members of the diplomatic staff of the delegation

shall be exempt, to the extent practicable, from all dues and taxes, personal or real, national, regional or municipal, except:

(a)

indirect taxes of a kind which are normally incorporated in the price of goods or services;

(b)

dues and taxes on private immovable property situated in the territory of the host State, unless the person concerned holds it on behalf of the sending State for the purposes of the delegation;

(c)

estate, succession or inheritance duties levied by the host State, subject to the provisions of paragraph 4 of article 68;

(d)

dues and taxes on private income having its source in the host State and capital taxes on investments made in commercial undertakings in the host State;

(e)

charges levied for specific services rendered;

(f)

registration, court or record fees, mortgage dues and stamp duty, with respect to immovable property, subject to the provisions of article 54.

Article 64

Exemption from personal services

The host State shall exempt the head of delegation and other delegates and members of the diplomatic staff of the delegation from all personal services, from all public service of any kind whatsoever, and from military obligations such as those connected with requisitioning, military contributions and billeting.

Article 65

Exemption from customs duties and inspection

1. The host State shall, in accordance with such laws and regulations as it may adopt, permit entry

of and grant exemption from all customs duties, taxes and related charges other than charges for storage, cartage and similar services, on:

(a)

articles for the official use of the delegation;

(b)

articles for the personal use of the head of delegation or any other delegate or member of the

diplomatic staff of the delegation, imported in his personal baggage at the time of his first entry into the

territory of the host State to attend the meeting of the organ or conference.

2. The personal baggage of the head of delegation or any other delegate or member of the

diplomatic staff of the delegation shall be exempt from inspection, unless there are serious grounds for

presuming that it contains articles not covered by the exemptions

mentioned in paragraph 1 of this

article, or articles the import or export of which is prohibited by the law or controlled by the quarantine

regulations of the host State. In such cases, inspection shall be conducted only in the presence of the

person enjoying the exemption or of his authorized representative.

Article 66

Privileges and immunities of other persons

1. The members of the family of the head of delegation who accompany him and the members of

the family of any other delegate or member of the diplomatic staff of the delegation who accompany him

shall, if they are not nationals of or permanently resident in the host State, enjoy the privileges and

immunities specified in articles 58, 60 and 64 and in paragraphs 1 (b) and 2 of article 65 and exemption

from aliens' registration obligations.

2. Members of the administrative and technical staff of the delegation shall, if they are not

nationals of or permanently resident in the host State, enjoy the privileges and immunities specified in

articles 58, 59, 60, 62, 63 and 64. They shall also enjoy the privileges specified in paragraph 1 (b) of

article 65 in respect of articles imported in their personal baggage at the time of their first entry into the

territory of the host State for the purpose of attending the meeting of the organ or conference. Members

of the family of a member of the administrative and technical staff who accompany him shall, if they are

not nationals of or permanently resident in the host State, enjoy the privileges and immunities specified

in articles 58, 60 and 64 and in paragraph 1 (b) of article 65 to the extent accorded to such a member of

the staff.

3. Members of the service staff of the delegation who are not nationals of or permanently resident in the host State shall enjoy the same immunity in respect of acts performed in the course of their duties as is accorded to members of the administrative and technical staff of the delegation, exemption from dues and taxes on the emoluments they receive by reason of their employment and the exemption specified in article 62.

4. Private staff of members of the delegation shall, if they are not nationals of or permanently resident in the host State, be exempt from dues and taxes on the emoluments they receive by reason of their employment. In other respects, they may enjoy privileges and immunities only to the extent admitted by the host State. However, the host State must exercise its jurisdiction over those persons in such a manner as not to interfere unduly with the performance of the tasks of the delegation.

Article 67

Nationals and permanent residents of the host State

1. Except insofar as additional privileges and immunities may be granted by the host State the head of delegation or any other delegate or member of the diplomatic staff of the delegation who is a national of or permanently resident in that State shall enjoy only immunity from jurisdiction and inviolability in respect of official acts performed in the exercise of his functions.

2. Other members of the staff of the delegation and persons on the private staff who are nationals of or permanently resident in the host State shall enjoy privileges and immunities only to the extent admitted by the host State. However, the host State must exercise its jurisdiction over those members and persons in such a manner as not to interfere unduly with the performance of the tasks of the delegation.

Article 68

Duration of privileges and immunities

1. Every person entitled to privileges and immunities shall enjoy them from the moment he enters the territory of the host State for the purpose of attending the meeting of an organ or conference or, if already in its territory, from the moment when his appointment is notified to the host State by the Organization, by the conference or by the sending State.

2. When the functions of a person enjoying privileges and immunities have come to an end, such privileges and immunities shall normally cease at the moment when he leaves the territory, or on the expiry of a reasonable period in which to do so. However, with respect to acts performed by such a person in the exercise of his functions as a member of the delegation, immunity shall continue to subsist.

3. In the event of the death of a member of the delegation, the members of his family shall continue to enjoy the privileges and immunities to which they are entitled until the expiry of a reasonable period in which to leave the territory.

4. In the event of the death of a member of the delegation not a national of or permanently resident in the host State or of a member of his family accompanying him, the host State shall permit the withdrawal of the movable property of the deceased, with the exception of any property acquired in the territory the export of which was prohibited at the time of his death. Estate, succession and inheritance duties shall not be levied on movable property which is in the host State solely because of the presence there of the deceased as a member of the delegation or of the family of a member of the delegation.

Article 69

End of functions

The functions of the head of delegation or of any other delegate or member of the diplomatic staff of the delegation shall come to an end, inter alia:

(a)

on notification of their termination by the sending State to the Organization or the conference;

(b)

upon the conclusion of the meeting of the organ or the conference.

Article 70

Protection of premises, property and archives

1. When the meeting of an organ or a conference comes to an end, the host State must respect and protect the premises of the delegation so long as they are used by it, as well as the property and archives of the delegation. The sending State must take all appropriate measures to terminate this special duty of the host State as soon as possible.

2. The host State, if requested by the sending State, shall grant the latter facilities for removing the property and the archives of the delegation from the territory of the host State.

Part IV.
Observer Delegations to
Organs and to Conferences

Article 71

Sending of observer delegations

A State may send an observer delegation to an organ or to a conference in accordance with the rules of the Organization.

Article 72

General provision concerning observer delegations

All the provisions of articles 43 to 70 of the present Convention shall apply to observer delegations.

Part V.
General Provisions

Article 73

Nationality of the members of the mission, the delegation
or the observer delegation

1. The head of mission and members of the diplomatic staff of the mission, the head of delegation, other delegates and members of the diplomatic staff of the delegation, the head of the observer delegation, other observer delegates and members of the diplomatic staff of the observer delegation should in principle be of the nationality of the sending State.
2. The head of mission and members of the diplomatic staff of the mission may not be appointed from among persons having the nationality of the host State except with the consent of that State, which may be withdrawn at any time.
3. Where the head of delegation, any other delegate or any member of the diplomatic staff of the delegation or the head of the observer delegation, any other observer delegate or any member of the diplomatic staff of the observer delegation is appointed from among persons having the nationality of the host State, the consent of that State shall be assumed if it has been notified of such appointment of a national of the host State and has made no objection.

Article 74

Laws concerning acquisition of nationality

Members of the mission, the delegation or the observer delegation not being nationals of the host

State, and members of their families forming part of their household or, as the case may be, accompanying them, shall not, solely by the operation of the law of the host State, acquire the nationality of that State.

Article 75

Privileges and immunities in case of multiple functions

When members of the permanent diplomatic mission or of a consular post in the host State are included in a mission, a delegation or an observer delegation, they shall retain their privileges and immunities as members of their permanent diplomatic mission or consular post in addition to the privileges and immunities accorded by the present Convention.

Article 76

Cooperation between sending States and host States

Whenever necessary and to the extent compatible with the independent exercise of the functions of the mission, the delegation or the observer delegation, the sending State shall cooperate as fully as possible with the host State in the conduct of any investigation or prosecution carried out pursuant to the provisions of articles 23, 28, 29 and 58.

Article 77

Respect for the laws and regulations of the host State

1. Without prejudice to their privileges and immunities, it is the duty of all persons enjoying such privileges and immunities to respect the laws and regulations of the host State. They also have a duty not to interfere in the internal affairs of that State.
2. In case of grave and manifest violation of the criminal law of the host State by a person enjoying immunity from jurisdiction, the sending State shall, unless it waives the immunity of the person concerned, recall him, terminate his functions with the mission, the delegation or the observer delegation or secure his departure, as appropriate. The sending State shall take the same action in case of grave and manifest interference in the internal affairs of the host State. The provisions of this paragraph shall not apply in the case of any act that the person concerned performed in carrying out the functions of the mission or the tasks of the delegation or of the observer delegation.
3. The premises of the mission and the premises of the delegation shall not be used in any manner incompatible with the exercise of the functions of the mission or the performance of the tasks of the delegation.
4. Nothing in this article shall be construed as prohibiting the host State from taking such measures as are necessary for its own protection. In that event

the host State shall, without prejudice to articles 84 and 85, consult the sending State in an appropriate manner in order to ensure that such measures do not interfere with the normal functioning of the mission, the delegation or the observer delegation.

5. The measures provided for in paragraph 4 of this article shall be taken with the approval of the Minister for Foreign Affairs or of any other competent minister in conformity with the constitutional rules of the host State.

Article 78

Insurance against third-party risks

The members of the mission, of the delegation or of the observer delegation shall comply with all obligations under the laws and regulations of the host State relating to third-party liability insurance for any vehicle, vessel or aircraft used or owned by them.

Article 79

Entry into the territory of the host State

1. The host State shall permit entry into its territory of:

(a)

members of the mission and members of their families forming part of their respective households, and

(b)

members of the delegation and members of their families accompanying them, and

(c)

members of the observer delegation and members of their families accompanying them.

2. Visas, when required, shall be granted as promptly as possible to any person referred to in paragraph 1 of this article.

Article 80

Facilities for departure

The host State shall, if requested, grant facilities to enable persons enjoying privileges and

immunities, other than nationals of the host State, and members of the families of such persons

irrespective of their nationality, to leave its territory.

Article 81

Transit through the territory of a third State

1. If a head of mission or a member of the diplomatic staff of the mission, a head of delegation,

other delegate or member of the diplomatic staff of the delegation, a head of an observer delegation,

other observer delegate or member of the diplomatic staff of the observer delegation passes through or is

in the territory of a third State which has granted him a passport visa if such visa was necessary, while proceeding to take up or to resume his functions, or when returning to his own country, the third State shall accord him inviolability and such other immunities as may be required to ensure his transit.

2. The provisions of paragraph 1 of this article shall also apply in the case of:

(a) members of the family of the head of mission or of a member of the diplomatic staff of the mission forming part of his household and enjoying privileges and immunities, whether travelling with him or travelling separately to join him or to return to their country;

(b) members of the family of the head of delegation, of any other delegate or member of the diplomatic staff of the delegation who are accompanying him and enjoying privileges and immunities, whether travelling with him or travelling separately to join him or to return to their country;

(c) members of the family of the head of the observer delegation, of any other observer delegate or member of the diplomatic staff of the observer delegation, who are accompanying him and enjoy privileges and immunities whether travelling with him or travelling separately to join him or to return to their country.

3. In circumstances similar to those specified in paragraphs 1 and 2 of this article, third States shall not hinder the passage of members of the administrative and technical or service staff, and of members of their families, through their territories.

4. Third States shall accord to official correspondence and other official communications in transit, including messages in code or cipher, the same freedom and protection as the host State is bound to accord under the present Convention. They shall accord to the couriers of the mission, of the delegation or of the observer delegation, who have been granted a passport visa if such visa was necessary, and to the bags of the mission, of the delegation or of the observer delegation in transit the same inviolability and protection as the host State is bound to accord under the present Convention.

5. The obligations of third States under paragraphs 1, 2, 3 and 4 of this article shall also apply to the persons mentioned respectively in those paragraphs and to the official communications and bags of

the mission, of the delegation or of the observer delegation when they are present in the territory of the third State owing to force majeure.

Article 82

Non-recognition of States or governments or absence of diplomatic or consular relations

1. The rights and obligations of the host State and of the sending State under the present

Convention shall be affected neither by the non-recognition by one of those States of the other State or

of its government nor by the non-existence or the severance of diplomatic or consular relations between them.

2. The establishment or maintenance of a mission, the sending or attendance of a delegation or of

an observer delegation or any act in application of the present Convention shall not by itself imply

recognition by the sending State of the host State or its government or by the host State of the sending State or its government.

Article 83

Non-discrimination

In the application of the provisions of the present Convention no discrimination shall be made as between States.

Article 84

Consultations

If a dispute between two or more States Parties arises out of the application or interpretation of

the present Convention, consultations between them shall be held upon the request of any of them. At

the request of any of the parties to the dispute, the Organization or the conference shall be invited to join in the consultations.

Article 85

Conciliation

1. If the dispute is not disposed of as a result of the consultations referred to in article 84 within

one month from the date of their inception, any State participating in the consultations may bring the

dispute before a conciliation commission constituted in accordance with the provisions of this article by

giving written notice to the Organization and to the other States participating in the consultations.

2. Each conciliation commission shall be composed of three members: two members who shall be

appointed respectively by each of the parties to the dispute, and a Chairman appointed in accordance with paragraph 3 of this article. Each State Party to the present Convention shall designate in advance a person to serve as a member of such a commission. It shall notify the designation to the Organization, which shall maintain a register of persons so designated. If it does not make the designation in advance, it may do so during the conciliation procedure up to the moment at which the Commission begins to draft the report which it is to prepare in accordance with paragraph 7 of this article.

3. The Chairman of the Commission shall be chosen by the other two members. If the other two members are unable to agree within one month from the notice referred to in paragraph 1 of this article or if one of the parties to the dispute has not availed itself of its right to designate a member of the Commission, the Chairman shall be designated at the request of one of the parties to the dispute by the chief administrative officer of the Organization. The appointment shall be made within a period of one month from such request. The chief administrative officer of the Organization shall appoint as the Chairman a qualified jurist who is neither an official of the Organization nor a national of any State party to the dispute.

4. Any vacancy shall be filled in the manner prescribed for the initial appointment.

5. The Commission shall function as soon as the Chairman has been appointed even if its composition is incomplete.

6. The Commission shall establish its own rules of procedure and shall reach its decisions and recommendations by a majority vote. It may recommend to the Organization, if the Organization is so authorized in accordance with the Charter of the United Nations, to request an advisory opinion from the International Court of Justice regarding the application or interpretation of the present Convention.

7. If the Commission is unable to obtain an agreement among the parties to the dispute on a settlement of the dispute within two months from the appointment of its Chairman, it shall prepare as soon as possible a report of its proceedings and transmit it to the parties to the dispute. The report shall include the Commission's conclusions upon the facts and questions of law and the recommendations which it has submitted to the parties to the dispute in order to facilitate a settlement of the dispute. The

two months time limit may be extended by decision of the Commission. The recommendations in the report of the Commission shall not be binding on the parties to the dispute unless all the parties to the dispute have accepted them. Nevertheless, any party to the dispute may declare unilaterally that it will abide by the recommendations in the report so far as it is concerned.

8. Nothing in the preceding paragraphs of this article shall preclude the establishment of any other appropriate procedure for the settlement of disputes arising out of the application or interpretation of the present Convention or the conclusion of any agreement between the parties to the dispute to submit the dispute to a procedure instituted in the Organization or to any other procedure.

9. This article is without prejudice to provisions concerning the settlement of disputes contained in international agreements in force between States or between States and international organizations.

Part VI. Final Clauses

Article 86

Signature

The present Convention shall be open for signature by all States until 30 September 1975 at the Federal Ministry for Foreign Affairs of the Republic of Austria and subsequently, until 30 March 1976, at United Nations Headquarters in New York.

Article 87

Ratification

The present Convention is subject to ratification. The instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article 88

Accession

The present Convention shall remain open for accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 89

Entry into force

1. The present Convention shall enter into force on the thirtieth day following the date of deposit

of the thirty-fifth instrument of ratification or accession.

2. For each State ratifying or acceding to the Convention after the deposit of the thirty-fifth

instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the

deposit by such State of its instrument of ratification or accession.

Article 90

Implementation by organizations

After the entry into force of the present Convention, the competent organ of an international

organization of a universal character may adopt a decision to implement the relevant provisions of the

Convention. The Organization shall communicate the decision to the host State and to the depositary of

the Convention.

Article 91

Notifications by the depositary

1. As depositary of the present Convention, the Secretary-General of the United Nations shall

inform all States:

(a)

of signatures to the Convention and of the deposit of instruments of ratification or accession, in

accordance with articles 86, 87 and 88;

(b)

of the date on which the Convention will enter into force, in accordance with article 89;

(c)

of any decision communicated in accordance with article 90.

2. The Secretary-General of the United Nations shall also inform all States, as necessary, of other

acts, notifications or communications relating to the present Convention.

Article 92

Authentic texts

The original of the present Convention, of which the Chinese, English, French, Russian and

Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations,

who shall send certified copies thereof to all States.

Appendix E. Vienna Convention on the Representation of States in their Relations with
International Organizations of a Universal Character 1975

IN WITNESS WHEREOF

the undersigned Plenipotentiaries, being duly authorized thereto by their
respective Governments, have signed the present Convention.

DONE

at Vienna this fourteenth day of March, one thousand nine hundred and
seventy-five.

Appendix F –The Padilla Nervo / García Amador Amendment 1957

Excerpt from the debates of the International Law Commission 1957

Note: The original Draft Articles prepared by Special Rapporteur Sandström's draft made no reference to the duty of non-interference. The original Draft Article 27 read: "Nonobstant les privilèges et immunités diplomatiques le bénéficiaire a le devoir de se comporter d'une manière compatible avec l'ordre intérieur de l'État accréditaire et notamment de se conformer aux lois et règlements dont il n'est pas exempté par le présent règlement et pourvu qu'ils ne fassent pas obstacle à l'exercice de ses fonctions." (Document A/CN.4/91, p. 12, Article 27)

ARTICLE 27

54. The CHAIRMAN invited Mr. Padilla Nervo to introduce the joint amendment submitted by him and Mr. García Amador to article 27 of the Special Rapporteur's draft.

55. Mr. PADILLA NERVO introduced the following text to replace the existing text of article 27:

"1. It is the duty of diplomatic agents to conduct themselves in a manner consistent with the internal order of the receiving State, to comply with those of its laws and regulations from whose application they are not exempted by the present provisions, and, in particular, not to interfere in the domestic or foreign politics of that State.

"2. All official business entrusted to a diplomatic mission by its Government shall be conducted with or through the ministry of foreign affairs.

3. The premises of the mission shall be used solely for the performance of the functions recognized as normal and legitimate under the provisions herein laid down or other rules of general international law and any special agreements in force between the sending and the receiving States."

Appendix G – Draft Article 33 and Commentary by the International Law Commission 1957

Article 33

1. Without prejudice to their diplomatic privileges and immunities, it is the duty of all persons enjoying such privileges and immunities to respect the laws and regulations of the receiving State. They also have a duty not to interfere in the internal affairs of that State.

2. Unless otherwise agreed, all official business with the receiving State, entrusted to a diplomatic mission by its government, shall be conducted with or through the Ministry for Foreign affairs of the receiving State.

[...]

Commentary

(1) The first sentence of paragraph 1 states the rule already mentioned, that in general it is the duty of the diplomatic agent, and of all persons enjoying diplomatic privileges and immunities, to respect the laws and regulations of the receiving State. Immunity from jurisdiction implies merely that the agent may not be brought before the court if he fails to fulfil his obligation. The duty

[p. 143] naturally does not apply where the agent's privileges and immunities exempt him from it. Failure by a diplomatic agent to fulfil his obligations does not absolve the receiving State from its duty to respect the agent's immunity.

(2) The second sentence of paragraph 1 states the rule that persons enjoying diplomatic privileges and immunities must not interfere in the internal affairs of the receiving State. In particular, they must not take part in political campaigns.

(3) Paragraph 2 lays down that the Ministry for Foreign Affairs of the receiving State is the normal channel through which the diplomatic mission shall conduct all official business entrusted to it by its Government; in the event, however, of agreement (whether express or tacit) between the two States, the mission may deal directly with other authorities of the receiving State.

[...]"

Appendix H – Draft Article 40 and Commentary by the International Law Commission 1958

Article 40

1. Without prejudice to their diplomatic privileges and immunities, it is the duty of all persons enjoying such privileges and immunities to respect the laws and regulations of the receiving State. They also have a duty not to interfere in the internal affairs of that State.

2. Unless otherwise agreed, all official business with the receiving State entrusted to a diplomatic mission by its Government, shall be conducted with or through the Ministry for Foreign Affairs of the receiving State.

[...]

Commentary

(1) Paragraph 1, which remains unchanged, states in its first sentence the rule already mentioned, that in general it is the duty of the diplomatic agent, and of all persons enjoying diplomatic privileges and immunities, to respect the laws and regulations of the receiving State. Immunity from jurisdiction implies merely that the agent may not be brought before the courts if he fails to fulfil his obligations. The duty naturally does not apply where the agent's privileges and immunities exempt him from it. Failure by a diplomatic agent to fulfil his obligations does not absolve the receiving State from its duty to respect the agent's immunity.

(2) The second sentence of paragraph 1 states the rule that persons enjoying diplomatic privileges and immunities must not interfere in the internal affairs of the receiving State; for example, they must not take part in political campaigns. The making of representations for the purpose of protecting the interests of the diplomatic agent's country or of its nationals in accordance with international law does not constitute interference in the internal affairs of the receiving State within the meaning of this provision.

(3) Paragraph 2 states that the Ministry for Foreign Affairs of the receiving State is the normal channel through which the diplomatic mission should conduct all official business entrusted to it by its Government: nevertheless, by agreement (whether express or implied) between the two States, the mission may deal directly with other authorities of the receiving State, as specialist attachés, in particular, frequently do.

[...]

