chapter 2

Who Are the Diplomats and How Do They Operate?

Having learned something of how the history of diplomacy has evolved, we now look at how the profession of diplomat has developed, the methods used to recruit them, and how a common way of treating diplomats has been formulated.

THE EVOLUTION OF THE DIPLOMATIC CADRE

Diplomatic systems evolved with the creation of an organizational structure to institutionalize the functions and resources of diplomacy. For the career of a diplomat to develop, the role of diplomacy within a system of government had to be recognized. And for this to happen, the skills of diplomacy had to be seen as worth teaching. They could not simply be acquired through breeding, money, or both.

Early appointments of diplomats, as we have seen in the case of the Italian city states, were of well-connected and well-heeled envoys. Increasingly, these were seen as not undesirable qualifications but something less than a complete resume. States needed communicators who were schooled in what were seen as diplomatic skills. Writers like François de Callières (1645–1717), an advisor to the King Louis XIV of France, recognized the distinctive talents required. His book, *De la Manière de Négocier avec les Souverains*, became an early guide to diplomatic practice and recommended rules that could be applied in diplomatic negotiation.

Box 2-1 Diplomatic Recognition

Diplomats are usually deployed only in states with which their countries have diplomatic relations. And a normal first step in this process is the recognition under international law of one state by another. Recognition is usually a written acknowledgment, but diplomatic relations do not follow automatically. The United States recognizes the state of North Korea (Japan and South Korea do not), but has never established diplomatic relations with it. Western Sahara is a territory where sovereignty has been disputed for decades between Morocco and Sahrawi Arab Democratic Republic (SADR), also known as the Polisario Front. Over eighty countries recognize the SADR as the legitimate ruler of Western Sahara, while the Arab League recognizes Morocco. The world is also divided over recognition of Kosovo. Recognition of governments may also be an issue. In the early stages in the Syrian Civil War, the EU, Saudi Arabia, Libya, and Qatar—and eventually the United States—recognized the Syrian National Council as the legitimate representative of the Syrian people

Callières, who had himself negotiated treaties, thought diplomacy of such importance that its practitioners required special skills and knowledge and that a professional cadre was required. He argued that if it were

> a firm and lasting maxim in France, not to employ any persons in public negotiations, except those that have gone through this kind of apprenticeship, and these sorts of studies . . . the King would be better served in his negotiations.[1]

De Callières also saw the need to give advice on drinking. A diplomat "should drink in such a manner as not to lose control of his own faculties while endeavoring to loosen the self-control of others."[2] And he noted that patience, calmness, and a willingness to be bored were essential attributes of the professional diplomat: "One should avoid bitter and obstinate discussions with Princes and their ministers but reason with them without passion and without always wanting to have the last word."[3] Sound advice in many other contexts as well!

Progress toward the diplomatic system we recognize today has been gradual. The type of career that developed has changed according to technology of the time and the functions seen as appropriate for diplomats. In that process, two divisions were commonly observed until recent times. First, officers who served overseas did not serve at home. Second, the political and consular specialties were treated as different careers.

Maintaining separate careers for those serving in the home ministry or department from those in the overseas service persisted until well into the twentieth century in many diplomatic services. Though the U.K. Foreign Department, later named the Foreign Office, was established in 1782, it was only in 1919 that its staff in London and the Diplomatic Service overseas were merged. In 1943, they were both merged with the Consular Service. The Foreign and Commonwealth Office that exists today was itself a merger of the Commonwealth and Foreign Offices in 1968. Social stratification also played its part in developments as the belief persisted that higher social echelons should represent the country abroad, while others should remain at home. It was not until after the Wriston Report of 1954 that the U.S. Foreign Service was fully integrated in career terms with the U.S. State Department, which had been responsible for home service officers.

The division between diplomatic and consular functions also continued until well into the twentieth century. The United States had a small diplomatic service throughout the nineteenth century. Yet the consular service—including consuls, consular agents, and commercial agents who protected American ships and crews abroad and promote American commerce—had become an important instrument in the search for export markets. There were already 480 U.S. consulates in 1860, including the commercial agencies, and by 1890 the number had risen to 760. In 1895, President Cleveland started the practice of filling consular vacancies on the basis of written examinations, including

language tests. Other measures regulated the payment of salaries and inspections of consular posts. Today, ease of travel and communication has greatly reduced the need for so many consular posts.

Commerce was already a mainstay of foreign policy and diplomacy in the eighteenth century. Yet the British Foreign Office did not acquire a commercial department until 1865. In 1880, a commercial secretary was nominated to the British embassy in Paris with consular status. Until 1856, most American consuls were unsalaried, even though international influence was increasingly exerted through business. In the nineteenth century, foreign investment became a major component of foreign relations. Germany invested in Romanian railways, France in the Ottoman Empire, and the United Kingdom in Egypt. The Russian government borrowed on the French financial markets, and the U.S. government worked for business interests to build the Panama Canal.

Along with organizational changes, diplomatic systems instituted entrance exams, open to all, and stressed the need for language training. The Prussian foreign ministry had been established soon after the Napoleonic era and in 1827 was one of the first in the world to require entrance examinations and formal university qualifications. The French stuck longer to old traditions and had no systematic recruitment beyond accepting the social elite who displayed the beautiful manners of the era. The French ministry moved to its purpose-built premises on the Quai d'Orsay in 1853, but no entrance exam was instituted in France until 1877. The Russian foreign service began an entrance exam for diplomats, including language proficiency, in 1859.

After World War I, the United States remodeled its diplomatic service to reflect its growing interests and presence overseas. The small U.S. diplomatic service, which in 1924 numbered 122 men serving mostly in Europe, was an exclusive group. It was paid little and was highly elitist, drawn from rich and high society. In contrast, the 511 members (in 1924) of the consular service served in 256 overseas posts under professional regulations and enjoyed a generous pay scale. The State Department oversaw the consular service but had little real control over the diplomatic service. The Foreign Service Act of 1924, known after its congressional sponsor as the Rogers Act, merged the diplomatic and consular services into a new Foreign Service. It established pay and retirement to make the service attractive and accessible to more and professionalized the oversight, recruitment, and training of officers. The act also instituted interchangeability between diplomatic and consular assignments and between assignments abroad and at home in the State Department. The Rogers Act also formally enacted a system of promotion on merit and retirement at sixty-five years old. The first women and African Americans were recruited into the Foreign Service in the 1920s. Until 1972, the British Foreign Office still required women who married to resign from the service. Conditions of employment have changed: in 2014, there are spouses who have job share postings—four months on, four months off.

Even after the passing of the Rogers Act, the resistance of the traditionalists to admit consular officials to embassies persisted. It resulted in the appointment of Wilbur Carr, who started his career as a clerk in the State Department and rose to director of the U.S. consular service as Chairman of State's personnel board. The State Department also tried to resist attempts of the Agriculture and Commerce Departments to appoint their own attachés. The establishment of the Foreign Service opened the way for the appointment of career officers as chiefs of mission. But the importance of political appointments to such positions persisted for the remainder of the twentieth century and into the twenty-first. Career officers rarely make up more than half of the total of U.S. chiefs of mission.

After World War II, the United States expanded its service again. Diplomacy was seen as a vital support for the new U.S. outreach. From only 840 officers in 1940, the service grew to more than 1,300 in 1953. By 1957, there were 3,400 officers after the integration of many home civil service officers into the Foreign Service. In 2013, the United States had 270 posts. In June 2011, according to a Government Accountability Office (GAO) report, the State Department employed 13,385 Foreign Service officers and 44,256 locally engaged staff. The comparable figures in 2011 for France were 5,988 and 5,177 with 271 missions; the United Kingdom had 4,580 and 8,659 with 245 missions; and Estonia had 539 diplomats in 46 missions. Not all countries favor large numbers of diplomats. In 2012, there were reported to be more staff at the U.S. embassy in New Delhi than the whole of the Indian diplomatic service. The comparative sizes of staff and uses countries make of them will be discussed in Chapter 9.

THE USE OF INTELLIGENCE

International relations after World War II did not only give a boost to diplomatic staff. The expectation of long-term hostility resulting from political and ideological divisions of the Cold War gave a major impetus to the budgets and recruitment of agencies concerned with intelligence gathering. This was a continuation of long-standing practice of using nondiplomats, such as military attachés, in missions. The French diplomat Marquis de Noailles noted in 1901 that intelligence and espionage had been "the besetting sin of the attachés wearing epaulettes."[4] The British Foreign Office assumed responsibility for the Secret Intelligence Service and the Government Code and Cypher School after World War I. But the U.S. Central Intelligence Agency was established only in 1947 to consolidate foreign intelligence gathering. The Soviet Union saw intelligence as one of the major functions of its diplomatic service, and the representatives of state security (KGB) and Soviet Military Intelligence (GRU) were strongly represented in embassies. Counterintelligence operations grew to defend conventional diplomatic activity from this new growth industry. Diplomatic missions could, of course, be goldmines of information. British intelligence with assistance from the

eavesdropping Government Communication Headquarters (GCHQ) is alleged to have broken the cipher codes of the French embassy for three years during the United Kingdom's negotiations for accession to the European Economic Community (EEC) and had full access to cables sent by the embassy to the French foreign ministry.

The use of diplomatic cover for intelligence operations is obviously invaluable, but it challenges the separateness of diplomats and the basis of trust of overseas missions, which we shall examine later in this chapter when discussing immunities and privileges. And the boundary between reporting and intelligence gathering is impossible to draw. Intelligence activities in a practical sense are a manifestation of the intelligent use of diplomacy recommended by Satow. And some of the intelligence officers included in diplomatic missions are liaison points with the host country's intelligence community. Intelligence is widely shared among states in areas such as international criminal investigations and nonproliferation of weapons of mass destruction, so like diplomacy it has a peace-promoting purpose. Intelligence challenges the boundaries of diplomacy, but in many practical ways, it complements it. In any case, given the history of international contacts, the amount of data now digitalized, and the venal nature of some human conduct, intelligence has to be incorporated in any survey of how diplomacy functions and the opportunities that are presented.

PROFESSIONALS OR POLITICIANS?

Chapter 9 will discuss how far national organizational reforms see consolidation, centralization, professionalization, perfecting of diplomatic functions, and greater efficiency as the keys to better diplomacy. The professionalizing of the diplomatic service means that cadres have been created. Such cadres, following the German sociologist Max Weber's view of society, may behave like occupational groups and promote professionalization as means of securing rewards and ensuring a monopoly in the provision of their services. A career structure, with entrance requirements and promotions, breeds an institutional culture where organizational strategies and institutional survival in the face of rivalries assume an importance of their own beyond the activity of diplomacy. As Sir Ivor Roberts wrote in his final dispatch to the British Foreign Secretary in 2006, "Wading through, the plethora of business plans, capability reviews, skill audits . . . we have forgotten what diplomacy is all about."[5] The establishment of a professional diplomatic career has influenced the acceptance of practices of where and how diplomats operate and has promoted a fierce determination to defend the monopoly of such status.

Yet this process of professionalizing has now raised other questions because of the changes in skill sets that governments perceive they need for diplomats. The British Foreign Office no longer promises a career for life and is recruiting personnel from a wide variety of career paths. Previous careers in the military, with non-government organizations (NGOs), in business, and in

academic life are now seen as offering a good basis for entrance into foreign services. In many countries, there has been a trend toward deprofessionalizing the cadre with the employment of outside contractors and consultants. Specialists in finance and human resources now figure on boards of major diplomatic services. We have already seen how many local staff the major diplomatic services employ. The progress made in refining the efficiency of the services has paralleled business methods and the introduction and integration into diplomacy of new technologies. All diplomatic services, as will be examined in Chapter 3, now have to compete for resources with other parts of government, many of which have now assumed prominent roles in international relations on issues such as education, the environment, and overseas development assistance.

Throughout history, the skill set of a diplomat has been a search for a mixture of qualities. Many systems have included political and business figures whose skills have been seen as appropriate for diplomacy. The results that are sought will vary according to the governing system. Is the diplomat to be an extension of the political master? How is the work of the diplomat to be measured? Is it important that he or she be well liked by the host government? Would this result in favors? Is the main function to be source of confidential information from the host government? Is it necessary to be a political associate of the sending government? How far is the diplomat just another bureaucrat or is the main task to master strategy and deploy Machiavelli's wiliness? Is the professional to be a party animal, with a capacity to stimulate unguarded comments and pick up valuable information? Should the diplomat to be a businessperson with managerial skills, or an issues person, perhaps an expert on defense or environmental issues? Or rather a facilitator, a stimulator of others, a team builder? What languages are necessary for the job?

Whatever the relative merits of career versus politician, many diplomatic systems have appointed political figures as ambassadors. Examples have been Benjamin Franklin (U.S. ambassador to France), Sir Christopher Soames (U.K. ambassador to France), and Adan Chavez (brother of the President of Venezuela and Venezuelan ambassador to Cuba). All have served in lieu of professional diplomats. The political figure, well connected at home, will be seen as an individual of weight and influence in the country where he or she serves and someone who will have direct lines of communication to the head of government. A politician may feel that a professional cadre of diplomats will try to implement their own favored policies. The state may not appear as the unitary actor that some theories promote. An individual of trust whose position is owed to head of government may do the job better. But the individual may lack any background in diplomacy or knowledge of the language or culture of the country to which he is accredited. For many years, Pakistan had a tradition of sending retired senior military figures as envoys, reflecting the long periods of military control of

the government. President Obama continued the tradition in the United States of naming trusted allies from outside the career of diplomacy as heads of mission to major U.S. posts. The former CEO of the Henson Company, Charles Rivkin, a Democratic Party fund-raiser in California, was U.S. ambassador to Paris. The former head of Goldman Sachs in Germany, Philip Murphy, was ambassador to Germany, and as U.S. ambassador to China the former U.S. Secretary of Commerce, Gary Locke, succeeded the former Republican governor of Utah, John Huntsman. The status and title of ambassador clearly matters to attract such individuals to the job, which is probably a good thing for diplomacy!

The time of service of the envoy in a diplomatic post can also be an important consideration. The old model of a personal envoy sent by a ruler meant that a representative would spend years in one post. The U.K. Viceroy John Lawrence spent a total of sixteen years in India, preceded by two years language training. In smaller countries, the practice is still to rely on trusted individuals for long periods. Their connections and knowledge of a posting outweigh all arguments for rotation. Such is the case with the long-serving representative of the Republic of Djibouti to the United Nations and to the United States, Roble Olhaye, who as of mid-2014 had been in his posts since 1988 and in 1989 was appointed as nonresident ambassador to Canada.

Overall, the personality and ability of the head of mission is important. He or she must represent the state in circumstances that may be routine but may also have no precedents. The head must be versatile, capable of making decisions with little or no guidance but must also follow wider foreign policy considerations of his or her government, which the envoy may not personally support. The ambassador must be contactable by the receiving state at all times. I recall being summoned by the Cuban Foreign Minister at three o'clock one morning to talk about U.K. assistance in evacuating Hugo Chavez from Caracas, during his brief removal from power in 2002. Overall, the head of mission's behavior and performance matters in diplomacy. As Sir Jeremy Greenstock has written, "It is surprisingly easy to make an ass of yourself. Yet the influence of a small power can be enlarged, and that of a great power can be diminished, by the personal effectiveness or ineffectiveness of its representative."[6]

DIPLOMATIC PRIVILEGES AND IMMUNITIES

Whether diplomats deserve special treatment because of the nature of their jobs compared, for example, to traveling merchants and businessmen has exercised legal systems in states and experts for centuries. How to enforce implementation of such special provisions—called immunities and privileges—and limit abuses has also been a preoccupation. The practice has only been codified in international law since 1961.

Box 2-2 **Diplomatic Privilege**

The words *diplomats* and *privileges* are often seen as closely associated. Sales of cars promoted for UN diplomats in New York City gives the flavor: "BMW of Manhattan, Inc. recognizes the invaluable role played by the Diplomatic Community worldwide. It is for this reason that BMW of Manhattan has introduced the Diplomatic Privilege Program, created exclusively for Diplomats and Members of International Organizations."

Source: BMWNYC.com, http://www.bmwnyc.com/WebSiteSurvey

Many traditions of immunities and privileges go back to ancient times. As we have seen, the word diplomacy derives from the Greek and Latin, indicating a special status of holding a document. Equally, the Islamic world used the concept of *aman*, or safe conduct, accorded the diplomat a status outside ordinary citizens. As late as 1400, most of the Western world still thought of itself as one undivided society and the Roman Catholic Church's Christianity was a fundamental influence on medieval thinking and activity. Roman law gave some legal basis for diplomatic immunity, but it sometimes found itself in conflict with canon law of the church. The latter dealt in detail with key diplomatic concepts like sovereignty, the preservation of peace, and the rules of war.

Certain words came to be used to identify the individuals who enjoyed the special status of diplomats. The *nuntius*, who in the medieval world was charged with preparing for meetings between principals, was granted special recognition and immunities. And the *procurator* who performed specific functions such as the delivery of documents, the payment of debts, and conclusion of treaties was also treated in ways distinct from ordinary citizens where he performed his functions. As diplomats came to assume distinctive roles, which began to intrude on preciously protected areas of sovereignty, then they needed themselves to acquire special status. Following the customary conventions that heads of state enjoyed for immunities and privileges, it was a natural extension of such customs to accord similar privileges to the diplomatic staff who represented them.

Because of slowness of communication and the time it took to deliver messages, guarantee of safety of envoys in their journeys to their posts was seen as the first prerequisite. Once in a post, the envoy was in practical terms isolated with little support day to day and much leeway in terms of how diplomatic functions were fulfilled. This stress on protecting the individual, rather than the government that was represented, is one reason why issue of immunities and privileges has long and durable roots in diplomatic history. The role of the church in diplomacy and usefulness of diplomacy to the papacy also gave diplomats a special status. There was recognition that the ambassador had a noble calling and this was supported by senior church figures.

Bernard Du Rosier, Archbishop of Toulouse, described in the fifteenth century what protection diplomats needed in the performance of their functions. He stressed practical measures like freedom of access, transit, safety

from violence and exemption from local taxes, tolls, and custom duties. Du Rosier produced a first guidebook for diplomatic practice, his *Short Treatise about Ambassadors*, in 1436 when he himself was serving at the court of the King of Castile. His book throws invaluable light on the diplomatic practice of its time. His writings concentrated on diplomatic practice before the establishment of the resident embassy. In his day, payment of per diem rates for ambassadors was often delayed, and it became normal practice for the receiving state to pay the living expenses for ambassadors. So this was one way that the treatment of ambassadors began to differ from the treatment of heralds and simple messengers.

New attention was given to the status of envoys when permanent missions came to be the norm. Many got into financial difficulties and had to be protected from creditors. There was general acceptance that ambassadors did not have immunity from crimes but recognition that if they did transgress, they should be punished by the sending state. It was in this way that the powers of the receiving state to expel offending diplomats emerged. Important concepts of declaring a head of mission persona non grata developed and Hugo Grotius, the renowned Dutch jurist (1583–1645) argued for setting out the full legal basis for immunities and privileges. Gradually, the practice developed that, even though an ambassador could be expelled, he could not be detained or tried. And immunity of an ambassador from civil liability was established in the seventeenth century, protecting those who fell into debt.

By the middle of the eighteenth century, Vattel's work, *Le Droit des Gens* had established key elements of the customary privileges and immunities of diplomats, their premises, property, and communications. Vattel and Grotius (who served himself as Sweden's ambassador to France, having been sent into exile by the Dutch authorities) both saw the diplomat's status as being tied to the concept of extraterritoriality. They were separate from the jurisdiction of the territory in which they served. It is, however, generally accepted that the foreign mission's premises are not deemed to be foreign territory. Crimes occurring within diplomatic premises are governed by the law in the host state.

After centuries of acceptance of customary status and long debates by international jurists, it took until the second half of the twentieth century for the modern practice of diplomatic and consular immunities and privileges to be codified. The Vienna Convention on Diplomatic Relations of 1961 (VCDR) was the result of five years of work within the UN's International Law Commission. It sought to codify what had arisen over past centuries and made clear that anything that was not expressly covered in the document might still be a valid immunity or privilege under customary law. In drafting the VCDR, the UN was recognizing old problems and anticipating new ones. The Cold War had created a hostile environment for diplomats, and the process of the decolonization underway in the 1950s and 1960s anticipated the creation of many new states, most of which would be small and whose diplomats would be vulnerable and short of resources to establish genuinely independent diplomatic services. They needed to have certainty in status.

Like many international treaties and conventions, the VCDR has been subject to lack of enforceability and created tensions when its provisions have been ignored. Communist China treated it and diplomatic missions in Beijing with contempt. At different periods in history, the U.S. and U.K. embassies in Tehran have been invaded and ransacked. Yet norms have been established that most states have been loath to contravene, even under provocative acts. Attacks on the premises of embassies and residences of diplomatic staff, because they are symbolic and vulnerable targets, have occurred frequently throughout history. Yet the convention still stands and has been supplemented by a Vienna Convention on Consular Relations of 1963 (VCCR). Together the two conventions are some of the most widely ratified conventions in the world. As of 2013, 189 states had ratified the VCDR and 176 the VCCR.

THE VCDR AND VCCR

What then does the VCDR contain and how far is it still relevant to how diplomats behave?

The VCDR is based on reciprocity—every state in the system plays the role of both a sending and receiving state. The first important concept is that international relations are a public good and that friendly relations greatly enhance the value of international discourse. So the rationale is that diplomats function better and achieve better results if they operate within a predictable and reciprocally enforced legal framework. The preamble to the VCDR makes clear the immunities and privileges are not for the personal benefit of the diplomat, but "to ensure the efficient performance of the functions of diplomatic missions as representing states."[7] The VCDR aims to make diplomacy more efficient not to facilitate agreeable lifestyles for diplomats.

Article 2 of the convention establishes the principle of mutuality: "The establishment of diplomatic relations between States, and of permanent diplomatic missions, takes place by mutual consent."[8] This is diplomacy in its purest form. International relations must be noncoercive and the VCDR establishes a level playing field and does not permit any discrimination. In diplomatic relations there can be no second or third class partners.

The third important provision of the VCDR is Article 3, which defines inter alia the recognized functions of a diplomatic mission. These functions are the closest the modern diplomatic system has come to defining its own practice. First, the mission is to represent the sending country. Second, it is authorized to protect the interests of the sending state in the receiving state, which includes the protection of nationals. Third, the mission may negotiate with the government of the receiving state. Fourth, the mission can ascertain, by all lawful means, conditions and developments in the receiving state and report thereon. Fifth—and the widest provision of all—the mission may engage in promoting friendly relations between the sending and receiving state, which is stated to include developing their economic, cultural, and scientific relations.

In order to benefit from the provisions of the VCDR and VCCR, the diplomat has to show he is operating within these parameters. If he or she chooses to engage in activities that are not permitted by the VCDR, then the immunities and privileges granted do not apply.

What else does the VCDR preserve of the immunities that have been recognized, as the VCDR notes, "from ancient times"? The VCDR makes no stipulation as to who should be appointed as head of mission but does state that "members of the diplomatic staff of the mission should in principle be of the nationality of the sending State."[9] The value of having diplomatic staff is enhanced if they have the trust of the receiving state. In the case of the head of mission, the prior approval of the receiving state must be sought—the French term *agrément* is used to describe this. The VCDR states that, apart from the head of mission, all other staff may be freely appointed by the sending state. The persona non grata provision of Article 9 balances this and gives the receiving state the ultimate power to expel any diplomatic agent.

It is clear, therefore, that appointing heads of a diplomatic mission itself involves diplomacy. A formal approach proposing a candidate is made by the sending state to the receiving state. If diplomatic relations are to flourish, then the head of mission should be a figure that is acceptable to the receiving state. Agréments are refused and under the VCDR no reasons need be given. For all other members of the mission, the receiving state has no influence on appointments but the names of military attachés can be required in advance. In other respects, the VCDR tries to make diplomatic relations flexible. The expenses of representation are high and remain a concern to smaller countries. So the accreditation of one ambassador to several countries is a way to alleviate this. Similarly, the provisions that locally engaged employees of missions are acceptable have added great flexibility and practicality to employment as such employees are generally excluded from the immunities and privileges granted to the diplomatic staff.

Once accepted as a head of mission, the diplomat must present his credentials to the receiving state and from the date and hour of this credentials ceremony, his or her status as head of mission begins. The VCDR states, "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."[10] But the privileges will normally begin on arrival; in some cases the presentation of credentials will not be arranged for several days or weeks.

Generally, the VCDR does not discriminate between a head of mission and other diplomatic staff. All are treated the same. Some reduced level of immunities and privileges may be accorded to administrative and technical staff and service staff who are not nationals of the receiving state. The VCDR is specific that the immunities and privileges shall only apply to acts of such staff performed in their official duties.

The VCDR goes on to grant significant immunities and privileges to diplomatic staff, their premises, and their archives. The concept of inviolability is central to how they are treated and reinforces the sense of separateness and

protection that diplomacy enjoys. Article 22 states that "the premises of the mission shall be inviolable."[11] No part of diplomatic premises or property can be entered by the security agents or other officials of the receiving state without the consent of the head of mission. There is no exception to this rule even when under Article 41 the receiving state believes that the premises are being used for "purposes incompatible with the functions of the mission."[12] Important for today's functions, this inviolability includes vehicles, archives and documents (which cover computers and other devices containing official material such as smart phones), and also the communications equipment of all embassies. Inviolability has also been important to the development of the practice of diplomatic asylum, which is not mentioned in the VCDR and has been treated on an ad hoc basis by sovereign states. The presence of inviolable buildings within a country has created a unique separateness of space and functions outside of the normal rules of law operating within that country.

In an age of ready identification of a diplomatic mission as a target for attack, the receiving state must in all circumstances protect the premises of the sending state. Article 22.2 of the VCDR states that 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."[13]

Among the most important personal privileges accorded to a diplomat is the exemption from taxation. Article 34 of the VCDR provides that a diplomatic agent should be exempt from all dues and taxes. There are exceptions to this rule if the taxes, like sales taxes and value-added tax (VAT), are included in everyday prices. Second, the taxes would be levied in activities unrelated to the diplomatic activities, such as property taxes on personal purchases of, for example, a holiday home for the diplomat. A third exception where tax must be paid is a diplomat's obligation to pay estate tax. And a final category where there is no tax exemption is in relation to charges for services rendered. So taxes on municipal services like road cleaning or road and bridge tolls must be paid. These exemptions in the VCDR are designed to preserve the separation of diplomatic staff of the sending state from the receiving state and thus avoid any blurring of their status with those of nationals who pay taxes to fund the government services of the receiving state.

The VCDR also recognizes that even with inviolability and nonliability for taxes on property and income the diplomat could still be effectively controlled by the receiving state to limit his or her effectiveness. So the VCDR provides that the receiving state may not restrict the travel of diplomats, nor interfere with their communications. And an important revenue source for many countries—visa and passport fees—cannot be taxed by the host country, again reinforcing the separateness of all financial transactions.

A diplomat is also immune from prosecution for a crime committed in a country to which he or she is accredited. Under Article 31 of the VCDR, there are no exceptions to this at all. As early as 1571, when Scotland was independent, the Bishop of Ross, the representative of Mary Queen of Scots, was held

captive by Queen Elizabeth of England. English lawyers had given their opinion that an ambassador who incited an uprising against a ruler to whom he was accredited could be tried. However, the customary law of not treating ambassadors like common citizens suggested the opposite, and the Bishop was held for only a short time before being expelled. This provision for immunity from criminal jurisdiction is obviously an extraordinary measure given that diplomats, if this is enforced to the letter, could literally get away with murder. The VCDR saw the need to protect diplomatic agents against a receiving state wishing to harass them through its own judicial system by making certain offenses criminal and using these to restrict freedom of diplomatic activity. The crime of blasphemy might be one. So instead of limiting the criminal immunity they included the pragmatic provision that in cases where the activity was indeed criminal and outside official functions, the sending state could waive the immunity of those concerned (Article 32). This is indeed an important provision that limits the scope for diplomats to go rogue and abuse their privileges.

Box 2-3 Limitations of the VCDR

The tragic case in 1982 of the Austrian ambassador to Yugoslavia accidentally but fatally shooting the French ambassador on a hunting trip in Yugoslavia shows that the VCDR had not covered all eventualities. There was no possibility of diplomacy simply washing its hands of this incident. Instead the matter was settled in the Austrian courts, which determined that the though the hunting party was hosted by the Yugoslav government and was therefore part the ambassador's official duties, the Austrian government was not liable for its diplomat's actions.

Modern examples of diplomatic immunity being claimed for prima facie criminal acts are the Libyan diplomats involved in the murder of policewoman Yvonne Fletcher outside the Libyan embassy in London in 1984 and the case of Raymond Davies, the U.S. attaché, who shot two Pakistani motorcyclists in 2010. In neither case did the sending country waive diplomatic immunity. In the case of the deputy head of mission of the Republic of Georgia who was arrested in 1997 for vehicular homicide and driving under the influence in the United States, the diplomat's immunity was waived.

The VCDR is specific in granting diplomatic agents the necessary freedoms to perform their functions without restrictions. Article 26 guarantees their freedom to travel and Article 27 their freedom to communicate with the sending state for all official purposes. The same article provides that "official correspondence of the mission shall be inviolable."[14] This covers the treatment of the diplomatic bag. It does, of course, also now cover encrypted digital communications. None of these can be intercepted, inspected, or interfered with. On the surveillance of, rather than interference with, free communications, the VCDR is silent, and if there were negotiations to revise the convention, this matter would certainly be seen as a clarification that was needed. Likewise, the prominence afforded by the VCDR to diplomatic bags seems partly outdated, though still relevant. In modern diplomacy, the regular arrival of diplomatic

couriers, often former military officers traveling in the first class cabin with the diplomatic bag in the adjoining seat, is now an infrequent event. But the importance of the diplomatic bag remains, particularly in the transporting of equipment. Parts for communication equipment, security doors, and new construction components are all normally shipped to the site of diplomatic missions. Armored cars for ambassadors would similarly constitute cargo in a diplomatic bag, which cannot be inspected.

If the number and variety of privileges and immunities are impressive there are some important balancing provisions that give to the receiving state significant powers to prevent abuse and to protect the sovereignty of the state. First, the general power of declaring "any member of the diplomatic staff of the mission persona non grata"[15] is absolute and requires no reason. So, even though the appointment of diplomatic staff is not restricted under the VCDR, any unwelcome nominees could be easily removed. The VCDR also provides that the size of the diplomatic mission must be what is regarded as reasonable and normal in all the circumstances (Article 11). Thus, a proposal by the embassy of North Korea to appoint another twenty commercial officers to serve in London could be rejected on VCDR grounds alone.

Article 41 is another key balancing provision of the VCDR. Nowhere does the document mention espionage but with this has long been an integral part of diplomacy. In this respect, again the VCDR has been realistic and permitted diplomatic activity is framed in terms of noninterference. Article 41 provides that "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."[16] As we have seen, if the receiving state decides there has been such interference, there are provisions for expelling any diplomat as not acceptable. This declaration of persona non grata is unlimited and no reason for the expulsion is required. Indeed, the VCDR even allows persona non grata to be declared against a diplomat who has yet to enter the country.

How closely are these important provisions followed? In the annals of diplomacy there are many instances where the provisions of the VCDR have been disregarded or have led to complex disagreements between sending and receiving states. There are many known instances of agrément being refused for the appointment of a head of mission and many others that have not come to light. In the recent history of U.K. relations with Iran, the nomination for British ambassador of David Reddaway was refused by the Iranian authorities. This was, of course, Iran's right under the VCDR. An infamous flouting of the duty to protect of the receiving state also involves Iran. In November 1979, the United States embassy in Tehran was invaded by students. For over fifteen months, the staff was held hostage with the receiving state taking no action to give effect to their duty to protect the mission or the immunity of the diplomats. In more recent times, diplomatic missions in Syria have been attacked and the missions closed.

Interpretation of the VCDR is also sometimes disputed. Even the issue of what constitutes a tax, and therefore from which diplomatic staff is exempt, has been subject to argument. Many embassies in London have long refused to pay the congestion charge imposed on all vehicles entering central London. The embassies that refuse to pay say that it is a tax. The British government says it is a law, similar to a toll on a road that diplomats, as we have seen, must pay. As of mid-2012, the Foreign Office listed the unpaid charges by leading embassies as follows:

- USA: £6,146,640
- Russia: £4,653,960
- Japan: £4,160,280
- Germany: £3,641,170
- Nigeria: £3,129,030[17]

Use of the persona non grata provisions is still frequent and the reasons given reflect the changing nature of diplomatic activities. In September 2012, Russia demanded U.S. Agency for International Development (USAID) officials leave the country, accusing the United States of using their programs on such issues as good governance to interfere in Russian internal affairs. In the words of the Russian Foreign Ministry statement, "We are talking about attempts through the issuing of grants to affect the course of political processes, including elections on various levels, and institutions of civil society."[18] The United States and Venezuela also had reciprocal expulsion of diplomats in 2013. The tit-for-tat reactions are also common. Indeed, in the VCDR itself, there appears to be recognition of this practice in Article 47, which recognizes an exception to the principle of nondiscrimination:

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 . . . 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.[19]

Even in countries with close economic ties, diplomats are often used as pawns to show disapproval of behavior. The United Kingdom was a major aid donor to Malawi in 2011, but it did not prevent Malawi from declaring the British High Commissioner persona non grata when his cable describing the President of Malawi as "becoming ever more autocratic and intolerant of criticism"[20] was leaked. The British immediately expelled the Malawian acting High Commissioner in London. What diplomats say in private as part of their reporting on developments in the country is part of the game that all play under the VCDR. Carlos Pascual, the U.S. ambassador to Mexico in 2010, was only doing his job in reporting what he saw as the shortcomings of the Mexican

police. Wikileaks published what he reported alongside thousands of other U.S. cables they had harvested from the U.S. digital system and the Mexicans spotted it. Diplomats are regularly used as a vent for sovereign state anger, frustration, and hurt pride. In this way, the VCDR provides sensitive states with an outlet that avoids anything more violent—an undervalued service to international relations.

Other abuses concern the freedom of communications granted to diplomatic missions. Diplomatic bags have been used for arms and drugs trafficking. Yet a case occurring at a London airport in 1984 was unusual. It was not in fact a case, more a crate. A customs officer became suspicious that two large crates with air holes in them were perhaps not normal diplomatic cargo, even though they were labeled as emanating from the Nigerian High Commission. Because the cartons did not have lead or wax seals they did not constitute a diplomatic bag, so the U.K. authorities checked the contents, knowing that a former Nigerian foreign minister, Mr. Umaru Dikko, had been abducted earlier that day. Mr. Dikko was found drugged and unconscious in this diplomatic cargo. The Nigerian diplomats involved were declared persona non grata.

The Vienna Convention on Consular Relations is two years younger than the VCDR (drafted in 1963) and almost double the length. It is beyond the scope of this book to review in detail the differences and provisions of this document, but there are many overlaps and some important new features. The roles of the consular officer are defined in great detail, unlike the parallel provisions in the VCDR. Article 5 sets out consular functions with the first one defined as "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."[21] Specific consular roles are identified such as appearing before tribunals, looking after the interests of minors, transmitting judicial and other documents, performing duties of a notary, and assisting merchant ships and aircraft registered in the name of the sending state. These functions, long the stock in trade of consular officers throughout history, are codified in the VCCR.

Consular services have been provided by states for centuries and, as we have seen, many consular officers figured in international relations in the nineteenth century. The word *consul* seems to have had its origins as signifying an arbitrator in commercial disputes. Consular officials also figured in a system of extraterritorial rights, which were established in the nineteenth century between western powers and Asian countries—China, Japan, and Siam. These officials were not subject to national laws but to those of their home state. And the VCCR built on the large number of bilateral conventions governing consular immunities and privileges and a few regional agreements such as the Havana Convention of 1928.

What then are provisions that merit attention as establishing different provisions between consular and diplomatic officials? First, consular officials are divided in two broad categories: career and honorary consuls. Career consuls

themselves are divided into three classes: consuls general, consuls, and vice-consuls. The honorary consul is an appointment of great flexibility and continues to be widely used. He or she is usually a local resident in the receiving state with a private business or active in some profession. There is no requirement that such honorary consuls should be citizens of the sending state and may indeed be of any nationality, including that of the receiving state. The honorary consuls perform only limited duties and are usually paid an honorarium. Most deal with providing local assistance to distressed subjects—those that have been robbed, may need emergency medical care, or are in trouble with the local authorities for whatever reason. They visit citizens of the states they represent in jail and are a cost-effective way of handling local issues with an experienced resident of the country. They know the local authorities and can apply common sense with a dollop of official clout.

The head of a consular post does not present credentials; rather, he or she will hold an exequatur that confirms the appointment. No advance approval is required for such appointments. A consul, unlike a diplomatic agent, can be required to give evidence in a court of law in the receiving state. Consular premises were generally not treated as inviolable before the VCCR, and customary law provided only limited immunities and no privileges to consular posts and consuls. This status was seen as unsatisfactory as states began to merge their consular and diplomatic services after World War II. States therefore concluded consular conventions and gave some inviolability to consular premises as well as extensive tax and customs privileges to career consuls. This practice is followed in the VCCR, and the status of career consuls on immunities and privileges has many similar, though not always identical, features to those of the VCDR for diplomatic staff. Under Articles 40 and 41 of the VCCR, the career consul enjoys some personal inviolability. The receiving state is under a duty to protect his or her "person, freedom and dignity."[22] A consular officer enjoys some immunity from criminal charges and he or she may be arrested or detained only in the case of a grave crime. In such an event, the head of the consular post must be notified. All these immunities are stated to apply only "in respect of acts performed in the exercise of consular functions."[23] This was the subject of the dispute between the U.S. police in New York City and the deputy consul general of India in 2013, when the official was arrested on charges of giving false information on a visa application of an employee.

Rules on waiver of immunities by the sending state are similar in the VCCR to those of the VCDR. An honorary consul has very limited personal immunity or privileges, and if he or she is a national of the receiving state, then the only immunity would be to the official files kept in a separate part of a work office.

One important provision of the VCCR, which recognizes the central role of consular officers in protecting their nationals, is Article 36. This provides that

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.[24]

This of course is essential to enable the fulfillment of the protecting function, central to the VCDR, and requires close liaison between officials of the sending and receiving states.

WHAT IS CHANGING IN DIPLOMATS' BEHAVIOR?

The establishment of the common immunities and privileges is one of diplomacy's successes and preserves a system of continuity, respect, and common aspiration for diplomacy. It is one of the clearest illustrations of treating diplomacy and its officials as a public international good. What reforms of the VCDR and VCCR does modern diplomacy suggest may be appropriate to take account of the expanding functions of modern diplomacy?

Diplomats now negotiate on issues far removed from territorial boundaries and tariff levels, which may have seemed the standard fare of former times. Double taxation, prisoner exchange, education protocols, and environmental cooperation are among those that have become the common currency of modern diplomacy. The vast growth in tourism, education exchanges, and business travel means more work for diplomats dealing with nationals in trouble, injured by natural disasters, or charged with crimes. Diplomats talk to local media and NGOs. Yet they are living in an environment where the government may control many aspects of governance—parts of the economy, communications, media, and the judiciary. The spirit of the VCDR and VCCR is that it is in no state's interests to create an overtly hostile environment where diplomats resent their treatment.

Diplomats and their consular equivalents are also in touch digitally with their own nationals and with citizens of the receiving country in ways that were unimaginable twenty years ago. Protecting citizens or communicating with protecting powers is a more demanding job because cell phone calls, texting, and social media allow more possibilities. The diplomat and the consul are always contactable and are usually the helpers of first or last resort. As will be discussed further in Chapter 9, the increase in foreign travel has highlighted the differences in law between states—for example, in policies on gender and sexuality issues, dress codes, and drugs and alcohol availability—and the demand for consular services has increased greatly. From 2011 to 2012, British consular services handled nearly 280,000 face-to-face inquiries and helped in over 97,000 assistance cases, including difficult and complex cases involving

deaths or murders, forced marriage, or child abduction. Between February 2011 and February 2012, there were nearly 10.5 million visits to the travel and living abroad pages of the U.K. Foreign Office website.

The principles of the VCDR and VCCR remain sound, but the growing intrusiveness, globalization, and footprint of communications, together with the interaction of diplomatic and consular officials with nonstate actors, mean that diplomatic functions are expanding. They mean that the boundaries of activities of sending and receiving states are no longer as clear. Through social media, missions can now contact direct citizens of the receiving state without the knowledge or permission of its government. How far, for example, does freedom to communicate and freedom to report on a country extend to using diplomatic staff and facilities to debate issues with the nationals of the country? How far do the conventions cover active promotion of trade and investment opportunities by the sending state, which may reduce the business and income of those in the receiving state? How far can a mission use public diplomacy programs to promote a more favorable view of the sending state among the receiving state's public? And is the use of all forms of surveillance equipment from a diplomatic mission totally unlawful or is merely an extension of the reporting function under the VCDR?

DIPLOMATIC ASYLUM

One consequence of the diplomatic inviolability provisions of the VCDR and VCCR is the capacity of a mission to offer diplomatic asylum. This by its nature is never without controversy. Diplomatic asylum is sought when a person or persons uses the inviolability provisions of the VCDR and VCCR to seek refuge in a diplomatic mission. There is no reference in the VCDR to this, and nations have never agreed a worldwide convention or treaty that codifies the practice. In Latin America, where Atle Grahl-Madsen described the effects of decades of political turmoil as leading to situations "where today's government officials may be tomorrow's refugees, and vice versa,"[25] there are several conventions related to the right of asylum. The most recent is the Organization of American States (OAS) Caracas Convention of 1954, drafted in response to the mass invasions of embassies in the aftermath of the coup against President Arbenz in Guatemala. Though it does provide for guidelines on when diplomatic asylum may be granted, only fourteen of the thirty-five members of the OAS have so far ratified the convention.

Most countries are extremely cautious about the granting of asylum because it is likely to become a lasting irritant to diplomatic relations. The missions granting such asylum requests generally mark themselves out as doing something that may displease or embarrass the receiving state. On several occasions, Fidel Castro reacted with fury to embassies in Havana giving asylum to Cuban dissidents by bombarding the same missions—Peru in 1980, Mexico in 2003—with hundreds of other supposed dissidents. Nevertheless, asylum is widely perceived as a legitimate use of diplomatic missions. Tensions

in civil society and the global media attention to several high-profile cases suggest that its use in on the rise. Nevertheless, the International Law Commission, charged with drafting the provisions of the VCCR and VCDR, agreed that the issue of diplomatic asylum should be set aside, and so it is reasonable to assume, as the preamble of the VCDR states, that the "rules of customary international law"[26] still govern how it is treated.

Under general international law, asylum is regarded as a matter of humanitarian practice rather than a legal right, and the UN has stated that the right to grant asylum is a right of a sovereign state. The Declaration on Territorial Asylum adopted by the UNGA in 1967 affirms that "the grant of asylum is a peaceful and humanitarian act, a normal exercise of state sovereignty, and that it shall be respected by all other states."[27] Asylum requests are stimulated by knowledge of the world outside and the rights others enjoy. Indeed the concept of virtual asylum, meaning a request based on denial of Internet access, is now being mooted. The case studies of diplomatic asylum discussed below illustrate the complex mixture of factors that apply. The granting of asylum is seldom a final solution in diplomacy.

Case Study

The case of former President of Honduras Manuel Zelaya shows the granting of asylum in Latin America has a recent high-profile example. Manuel Zelaya was rumored to be planning a referendum to change the constitution to permit himself multiple terms as president. Hondurans in other parts of government reacted with alarm. They removed Zelaya from power, arresting him in his pajamas, and sent him to exile in Costa Rica in June 2009—a combined action by the Honduran Assembly, opposition, and Supreme Court. Zelaya resurfaced in September 2009 in the Brazilian embassy in Tegucigalpa. The former president had been smuggled into Honduras in the trunk of a Brazilian diplomat's car. The Honduran government originally gave the embassy a deadline of ten days to surrender Zelaya and then surrounded the building with troops, threatening to cut off water and electricity. This was certainly far from the spirit and letter of the VCDR. Article 22 states that

> 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."[28]

The Honduran government said that Zelaya's activities were in any case incompatible with asylum as he was using his presence in the Brazilian mission to campaign politically for his reinstatement as president.

Eventually Zelaya negotiated another exile—this time in the Dominican Republic. In 2011, he signed an agreement with the new president of Honduras permitting his return.

Zelaya's case was unusual, both in content and solution, as strong political elements were involved, and most OAS governments, including the United States, did not recognize Zelaya's removal from power. But Brazil's solution, frustrated at the affront to a democratically elected president, was to use the VCDR provisions for an overtly political purpose. The inviolability of their premises and property—a diplomatic vehicle—was used to reintroduce Zelaya back into the country. It was a misuse of the VCDR to use the premises to protect a political figure however unjust his removal from office might have been. It is hard to see Brazil's action as anything other than an interference in internal affairs. Second, by permitting Zelaya to campaign from within the embassy, it was in contravention of Article 41.3 of the VCDR, which states that "the premise of the mission must not be used in any manner incompatible with the functions of the mission."[29]

The next example shows another type of diplomatic asylum, where a political activist uses a diplomatic mission in the country to draw attention to his treatment in the receiving state. In April 2012, Chinese dissident Chen Guangcheng arrived at the U.S. embassy in Beijing following a dramatic escape from house arrest. The blind dissident had scaled a high wall and was driven hundreds of kilometers to Beijing. Unlike Zelaya, this example is of an ordinary citizen, who had found living in his own country uncomfortable but, while not actually in jail, was restricted in movements. He timed his arrival at the U.S. embassy to make maximum diplomatic impact as the U.S. Secretary of State was about to visit China. He knew that the attention he would receive would be direct and swift. Negotiations began, and the United States proposed that an educational visa be obtained for Mr. Chen to leave China. Diplomatic negotiations were used to provide an acceptable outcome and to supplement successfully the provisions of inviolability of the VCDR, which gave the time that was needed for a solution. Neither the United States nor China wanted to make a lasting issue of the case.

The VCDR provisions were used successfully in the independence struggle of one of the world's newest states—East Timor. In 1999, the East Timorese leader Xanana Gusmão was housed for two weeks in the British embassy compound in Jakarta and then successfully transported out of Indonesia through use of the British ambassador's car. Indonesia's initial plan was to fly Gusmão to Dili and hand him over to the UN mission in East Timor. But this would have been dangerous because of the warring militias who had taken over. The cause of a new sovereign state was well served by the VCDR.

The lives of several U.S. embassy personnel were also protected by the Canadian mission in the aftermath of the invasion of the U.S. embassy in Tehran in 1979. The Canadian ambassador Ken Taylor, working with a CIA agent who had arrived in Tehran as a movie director, issued false Canadian passports to them with authority issued by a special Canadian Government Order in Council. This showed a diplomatic intelligence of which Satow might have approved, and the story was the basis of the compelling movies *Argo* and *Canadian Caper*.

In June 2012, Julian Assange, the founder of Wikileaks, an organization that had leaked thousands of U.S. diplomatic cables to the international media, took refuge in the

(Continued)

(Continued)

embassy of Ecuador in London. Mr. Assange had been on bail granted by British courts pending his appeal against extradition proceedings to Sweden on sexual assault charges. That appeal was lost. Mr. Assange was familiar with diplomatic practice, including of course, the use of missions to make communications to the sending state. Article 27 of the VCDR states that the mission may employ all appropriate means for such communications, including diplomatic couriers and "messages in code or cipher."[30] A disgruntled U.S. government employee at a U.S. military facility in Iraq contacted them with diplomatic material of interest.

Few have done so much in modern times as Mr. Assange to give the administrators of diplomatic services pause for thought. The function of reporting from the receiving state requires more of diplomats than mere repetition of what is in newspapers. Mr. Assange, however, associated the centuries-long practice of confidential reporting and communicating with the host government as a betrayal of transparency in government. His Wikileaks organization had for several years sought to reveal details of documents that illustrated the secrecy of government, business, and organizations and that, in its view, deserved to have the whistle blown on their activities.

Mr. Assange, an Australian national, had not been charged with an offense in relation to Wikileaks' operation in the United Kingdom or Sweden, but once inside the embassy of Ecuador stated he would remain there indefinitely. Having shown contempt for one part of the VCDR, he now availed himself of another. It is interesting to note that Ecuador did ratify the OAS Convention of 1954 on Diplomatic Asylum, which in Article III states, "It is not lawful to grant asylum to persons who, at the time of requesting it, are under Indictment or on trial for common offenses or have been convicted by competent regular courts and have not served the respective sentence."[31]

Despite the apparent inconsistency with Ecuador's obligations, British police have, at the time of writing, continued to respect the inviolability of the embassy. This case has again reminded diplomats that asylum is easier granted than ended. During his stay in the embassy, Mr. Assange attempted to orchestrate the granting of further asylum status for the U.S. National Security Agency (NSA) contractor Edward Snowden who, though not in a diplomatic mission, applied with Wikileaks' guidance for asylum to fifteen countries, including Ecuador. The British newspaper *The Independent* reported in July 2013 that relations between Ecuador and Mr. Assange were becoming "incredibly strained," information they stated they obtained from a source in Quito—at least respecting diplomatic confidentiality![32]

AND PERSONALLY

My own experiences give examples of the importance of the VCDR for maintaining diplomatic activity. In Venezuela, I served as deputy head of mission of the British embassy from 1994 to 1997. In late 1994, Hugo Chavez, a military officer, was pardoned for his role in a 1992 coup against former President

Carlos Andres Perez and released from jail. Chavez's plans quickly became the talk of political classes in Venezuela and its press pundits, and we picked up a new nervousness from our contacts with the police. I discussed with my ambassador, John Flynn, the interest of the United Kingdom in contacting Chavez to assess whether he was a credible political figure and, if so, how he might launch his campaign. The United Kingdom had considerable commercial interests in Venezuela, not least in the oil industry. Our Chilean-born press attaché, Carlos Villalobos, had good contacts with everyone in politics and duly arranged a lunch meeting in February 1995, which we fixed for a well-known Caracas restaurant. I attended with Villalobos, and Chavez came with his then senior advisor, Luis Miquilena. We realized what we were doing was unusual, as we did not know of any other embassy that had contacted Chavez for a meeting. We did, of course, maintain regular contacts with all parts of the Venezuelan political system. So we took the precaution of informing the Venezuelan security service (DISIP) in advance of the purpose of our meeting, knowing that what we did would be in public view.

The content of our talks proved that Chavez did indeed have interests in a political career, and we reported duly to London as one of our many meetings in Venezuela that year. However, all was not well with our hosts. We had been seen in the restaurant as the police were tracking Chavez's moves. The following day, officers came to the embassy and said they wanted to arrest Villalobos and me for interference in Venezuelan internal affairs. Clearly, this was a reference to Article 41 of the VCDR; in their view, we were exceeding our diplomatic functions. It was more serious in any case for Villalobos, who did not have full diplomatic immunity. Diplomatically, we turned to another recognized function of missions—negotiation. The ambassador made our case to the minister of the interior—we did not take sides, we talked to everyone, and, if anything, a chat with a representative of a Western democracy should be good for Chavez's initiation to political life. We were perhaps vindicated in diplomatic reporting responsibility when, in 1998, Hugo Chavez was elected as President of Venezuela, and remained in office until his death in 2013.

SUGGESTIONS FOR FURTHER READING

1. Berridge, G. R. *Diplomacy: Theory and Practice*, 4th ed. New York: Palgrave Macmillan, 2010.
2. Sharp, Paul. "Diplomacy in International Relations: Theory and Other Disciplinary Perspectives." In *Diplomacy in a Globalizing World: Theories and Practices*, ed. Pauline Kerr and Geoffrey Wiseman. New York: Oxford University Press, 2012.