DIPLOMACY

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1. Notion

In the opinion of one author, "of all the factors that make for the power of a Nation, the most important, however unstable, is the quality of diplomacy. All the other factors that determine national power are, as it were, the raw material out of which the power of a Nation is fashioned" (Morgenthau, p. 135). The sense given here does not, however, correspond to diplomacy as defined by diplomats, but is used as a synonym of foreign policy.

Although the origins of diplomacy are to be found in the distant past, the word itself is quite recent and, according to Sir Ernest Satow, was first used in the English language in 1787, even though Leibniz published the Codex Juris Gentium Diplomaticus in 1693.

In order to obtain a reasonable definition of diplomacy, it is necessary to narrow the field since the word is used in various senses, most of them accepted by lexicologists as valid. In the first place diplomacy is used as a synonym of foreign policy, especially by the press and even by experts such as Garrett Mattingly, whose remarkable book "Renaissance Diplomacy" can be quoted as an example. Diplomacy, in the sense of the international procedure of a given State, can be applied to its overall foreign policy (e.g. Brazilian diplomacy), to a particular geographical region (Middle East diplomacy, North–South diplomacy, etc.) or it may refer to a particular era (modern diplomacy, Renaissance diplomacy, future diplomacy).

Secondly, in many countries the term diplomacy is employed to denote tact, care, courtesy or politeness, and sometimes to connote duplicity, astuteness and guile.

The third sense, more difficult to characterize, is the one which comprises all the functions performed by a diplomat.

Comparing the definitions given by scholars highlights wide differences and shows the difficulty of reaching a definition which is concise, illuminating and generic.

Often quoted is the definition of Rivier, for whom diplomacy is "the science and art of representing States and negotiating". Michael Hardy makes a point of not using the word "diplomacy" in its widest sense, where it becomes synonymous with the execution of foreign policy. In his view: "Diplomacy, or diplomatic relations may be defined . . . as being the conduct, through representative organs and by peaceful means, of the external relations of a given subject of international law with any other such subject or subjects"(Hardy, p. 1).

Satow, giving a more subjective definition, says that "Diplomacy is the application of intelligence and tact to the conduct of official relations between the governments of independent states, extending sometimes also to their relations with vassal states" (Satow, p. 1).

Morton Kaplan, thinking in terms of policy planning, says that "statecraft . . . includes the construction of strategies for securing the national interest in the international arena, as well as the execution of these strategies by diplomats" (Kaplan, p. 548). Thus some authors base their definitions on diplomatic functions and then generally emphasize the idea of negotiation; others restrict themselves to making it a matter of diplomatic or international law; and, as in Kaplan's case, the definition covers not only diplomacy proper but foreign policy as well. Calvet de Magalhães criticizes most of the existing definitions since they do not correspond to "pure diplomacy". In his opinion, diplomacy is "an instrument of foreign policy for the establishment or development of peaceful contacts between governments of different States, by intermediaries (the diplomatic agents) mutually recognized by their respective governments"(Magalhães, p. 88; → Diplomatic Agents and Missions).

(a) Parliamentary diplomacy

The expression "parliamentary diplomacy" is used to describe the → negotiations and discussions carried out in international organizations according to their rules of procedure (→ International Organizations, Internal Law and

Rules). Dean Rusk developed this basic idea and defined the term in detail:

> "What might be called parliamentary diplomacy is a type of multilateral negotiation which involves at least four factors: First, a continuing organization with interests and responsibilities which are broader than the specific items that happen to appear upon the agenda at any particular time – in other words, more than a traditional international conference called to cover specific agenda. Second, regular public debate exposed to the media of mass communication and in touch, therefore, with public opinions around the globe. Third, rules of procedure which govern the process of debate and which are themselves subject to tactical manipulation to advance or oppose a point of view. And lastly, formal conclusions, ordinarily expressed in resolutions, which are reached by majority votes of some description, on a simple or two-thirds majority or based upon a financial contribution or economic stake – some with and some without a veto. Typically, we are talking about the United Nations and its related organizations, although not exclusively so, because the same type of organization is growing up in other parts of the international scene" (Rusk, p. 121).

At present, parliamentary diplomacy has a more precise meaning since the first factor mentioned by Dean Rusk corresponds to multilateral diplomacy, while the second is public diplomacy.

Originally, the idea of parliamentary diplomacy was linked to the work of the → United Nations General Assembly and the → United Nations Security Council, but at present it applies to every international organization in which, *grosso modo*, similar rules of procedure exist.

Parliamentary diplomacy is closely linked to multilateral diplomacy, but due to the confusion which exists between these two aspects of diplomacy, separate consideration is advisable. What characterizes parliamentary diplomacy is that the objectives of a delegation to an international conference or meeting are attained through the use of the rules of procedure, which can be skilfully used in order to interrupt a debate, modify the voting procedure and, in some cases, create the necessary confusion in order to put off a vote likely to be contrary to the delegation.

In parliamentary diplomacy the aims or motives are similar to those of traditional diplomacy, but they are striven for in congresses or public conferences, by using completely different methods (→ Conferences and Congresses, International). It must be borne in mind that, in using the rules of procedure, delegates at international conferences still need the qualities held to be indispensable in traditional diplomacy, though adapted to fit the particular atmosphere.

In parliamentary diplomacy the central problem is the vote, and in this respect there has been an important development since the beginning of the century. The equality of States, defended so jealously by Ruy Barbosa at the Second Hague Peace Conference of 1907, is today regarded as one of the basic points of procedure (→ Hague Peace Conferences of 1899 and 1907). On any question decided in an international conference, each State has the right to a vote, and the vote of the weakest shall be equal in value to that of the strongest (→ States, Sovereign Equality; → Voting Rules in International Conferences and Organizations).

The abolition of the unanimity rule and the adoption of the rule of the majority vote marked an important step in the development of international organizations. The → United Nations Charter, after establishing the basic principle of "sovereign equality of all its Members", recognizes that "Decisions of the General Assembly on important questions shall be made by a two-thirds majority of the members present and voting" (Art. 18(2)). The election of the president of an organization may be decisive in parliamentary diplomacy, since he has the power to interpret the Rules of Procedure. The last word, however, resides with the plenary assembly, which may revoke an interpretation given by its president.

An example clearly shows how the skilful use of the Rules of Procedure or their ignorance can change an important issue. The entry of the People's Republic of China into the United Nations in October 1971, with the consequent expulsion of Nationalist China, demonstrates this (→ China; → Taiwan). In 1970, the Albanian motion on the entry of the Peking Government received a simple majority, but it was not approved because the qualified majority had been made a requirement. The next year, the General Assembly rejected the United States' proposal that

each proposal to expel Formosa should be considered an important question, thus opening the way for the subsequent approval of the Albanian proposal.

The consequences of an erroneous interpretation of the Rules of Procedure occurred in Vienna in September 1982 during the General Conference of the → International Atomic Energy Agency. The Conference was called upon to vote on the suspension of the rights of Israel in the Agency as a consequence of the unjustified bombardment and destruction of the Iraqi atomic plant in Tumuz. The proposal for suspension did not obtain the necessary two-thirds majority demanded by the Statute and was rejected. The result was not contested, but when the report of the credentials committee was submitted, the delegation of Iraq proposed the addition of the words "with the exception of the credentials presented by the Israeli delegation". Under the Rules of Procedure this amendment needed only a simple majority. The president of the Conference, after very careful scrutiny, announced the result of a roll-call vote (40 in favour and 40 against) and declared that under Rule 78 the amendment was not adopted. Up to this point the Rules of Procedure had been respected. A few minutes later, and after the chair spelt out the votes cast, the delegate from Madagascar announced that his country had not been mentioned and that his vote was in favour of rejection of the credentials. At this stage, under normal practice, the president should have informed the delegate that since the result of the vote had been announced, he could only register the statement in the summary records; but he preferred to consult the Agency's legal adviser who declared that the vote should be accepted. In spite of some vigorous protests against this totally mistaken interpretation of the Rules of Procedure, the chair finally accepted the amendment, rejecting the credentials of the Israeli delegation.

The superpowers are loath to admit the majority vote on certain questions. During the discussions on outer space in 1961, the Committee set up by the General Assembly was only able to initiate its deliberation after its chairman read a compromise in which it was said that agreement would be reached without the need for voting. This solution was provoked by the Soviet Union, who was determined not to be overruled on questions of outer space, and the proposal had the tacit backing of the United States. As Karl Zemanek points out:

> "after [the United States had agreed to an increase in membership of the Committee, and after it had thereby lost the certainty of a majority favourable to it, its procedural interests largely coincided with those of the Soviet Union. This was one of the earliest manifestations of a spirit which came to be characteristic of all further proceedings dealing with the subject of outer space within the framework of the United Nations. Whatever else may divide the two space Powers, they remain firmly united in their common interest to prevent the 'cannots' from dictating what they ought or ought not to do in outer space" (Zemanek, p. 203).

This policy has been followed since then by the major powers in other meetings of a high technological nature in which they would be outvoted. The → Conferences on the Law of the Sea dragged on for eight years, until December 1982, due to a procedure aimed at finding a compromise solution.

It is still too early to fix the limits of parliamentary diplomacy and, although a number of works on the rules of procedure of certain international organizations can be quoted, doctrine has hardly begun to evaluate their influence in the field of diplomacy. But there is no doubt that diplomatic aims can be attained through parliamentary diplomacy, i.e. by the skilful use of rules of procedure.

Despite its importance, however, parliamentary diplomacy cannot be dissociated from traditional diplomacy, which has a much wider field of activity. Both these forms of diplomacy have identical aims, parliamentary diplomacy needing to be completed by traditional diplomacy, which can, behind the scenes, exercise much greater influence away from the public eye.

(*b*) *Multilateral diplomacy*

At present, a distinction must be made between bilateral and multilateral diplomacy. Nowadays, very few issues exclusively affect the relations between two countries: If they take on really important connotations, they will automatically extrapolate to multilateral diplomacy. Because of their far-reaching consequences for the rest of the international community, the results of bilateral encounters between representatives of the two

major powers are of vital interest to most countries of the world.

The idea of multilateral diplomacy is linked to the idea of international conferences and congresses, but its most important manifestation is the UN General Assembly. The various UN bodies, → United Nations Specialized Agencies, important regional organizations and all of their organs are the fora of multilateral diplomacy.

In the past, multilateral diplomacy came to the fore above all in post-war years, when former belligerents were forced to participate in peace conferences. At such moments, diplomacy took on a collective aspect, but exceptionally and only temporarily. The Peace of → Westphalia in 1648 and the → Vienna Congress in 1815 are ready examples of this.

In the 19th century, States began to feel the necessity of settling common legal, economic and technical problems through discussions with one another, and in many cases realized the convenience of setting up permanent organs to deal with them. In this way there sprang up the first organizations in the fields of postal and telegraphic communication, railways, protection of trade marks and patent rights, and so on.

Although the idea of multilateral diplomacy evokes political connotations, it is really in the technical and scientific fields that the interests of all States are most closely felt. Questions connected with meteorology, civil aviation, shipping, public health, social assistance in all its forms, postal and telegraphic communication, the distribution of radio waves, and innumerable other questions can only be solved satisfactorily through collaboration on a multilateral scale.

But it was in the period following World War II that high-level multilateral meetings really showed how extremely useful they could be in solving world problems. Much of their success was due to the great advances in air transport which first made it possible for heads of States and governments to leave their countries for short periods. The meeting at Munich between Hitler, Mussolini, Chamberlain and Daladier does indeed furnish an important pre-war example (→ Munich Agreement (1938)), while the meetings at Cairo, Tehran, Moscow and Yalta between the heads of State or governments of the principal Allied nations were to shape the post-war world (→ Tehran Conference (1943); → Yalta Conference (1945)).

Multilateral diplomacy is affected either through exchanges of information between States which are linked together by political or economic ties or by means of international meetings. Exchanges of information on the multilateral plane are carried out in every field. The Inter-American system of consultation offers an important example in the political sphere. When crises occurred on the South American continent and a problem arose of → recognition of a → *de facto* government, the American governments have on more than one occasion acted multilaterally with a view to granting simultaneous recognition, acting as a body but through individual decisions.

But where the need for exchanges of information is most felt is in matters concerning health conditions in different countries (→ Public Health, International Cooperation). Data from all over the world are collected and analyzed by the → World Health Organization. Similarly, countries exchange data with each other on matters concerning the state of their herds, their crops, their forest reserves (→ Food and Agriculture Organization of the United Nations). In meteorology, too, multilateral collaboration is absolutely essential for accurate weather forecasting (→ World Meteorological Organization).

Multilateral diplomacy as it is practised in the large international organizations is substantially different from traditional diplomacy. The debates are held in an atmosphere of publicity and are known to the general public. The qualities of the orator, at one time held to be indispensable to the good diplomat, are once more considered important in this new form of diplomacy. Traditional diplomacy, however, continues to be the principal factor in solving questions raised in international organizations, where even in the United Nations discussion behind the scenes – the so-called quiet diplomacy – is carried on alongside the debates.

The growing development of multilateral diplomacy is causing bilateral diplomacy in the traditional sense to lose ground, for there can be no doubt that purely bilateral diplomacy can no longer cope with the responsibility of trying to solve the whole vast range of questions which are bound up with → international relations today.

Multilateral diplomacy brought in its wake not only the creation of missions accredited to international organizations, as distinct from those accredited to a given government, but also the

necessity of adapting the international law of diplomacy to this situation. The result of this adaptation was the → Vienna Convention on the Representation of States in Their Relations with International Organizations of a Universal Character (1975). The Missions accredited to international organizations are to be found especially in New York, Geneva, and Vienna. In the headquarters of the principal regional organizations there are specialized missions as in the case of Washington (→ Organization of American States) or Brussels (→ European Communities).

(c) *Public diplomacy*

Public diplomacy is the counterpart of secret diplomacy (→ Diplomacy, Secret). Even though one can mention past examples, such as Richelieu's "petits écrits", public diplomacy began to play an important role in international relations as from World War I. Foreseeing a quick and glorious victory, the general public on both sides had accepted the war with a certain enthusiasm; subsequently, however, in the wake of all the misery the war brought, the public began to seek a scapegoat in secret diplomacy. This trend gained even more strength from the first of → Wilson's Fourteen Points which proposed that in future there should be nothing but "open covenants of peace openly arrived at", and that "diplomacy should proceed always openly and in the public view". The Fourteen Points were followed by the Four Principles, the Four Ends and the Five Particulars, all of which was most confusing. Woodrow Wilson's high ideals could not be ignored, but between the ideal and practical reality there was a wide gap, as events soon proved. At Versailles, faced by irreconcilable interests and extreme positions, many of which he had listed in his Fourteen Points, Wilson reverted to secret diplomacy and together with Clemenceau, Lloyd George and Orlando held more than a hundred and fifty meetings behind closed doors. In fact, Wilson introduced an idea that was disastrous for diplomacy.

The Fletcher School of Law and Diplomacy teaches that the expression "public diplomacy" is used:

> "to indicate a dimension of international relations beyond traditional diplomacy, and includes the cultivation by government of public opinion in the other countries; the interaction, outside the framework of government, of groups and interests in one country, with those in another; communication between those whose job is communication . . . ; and the result of these processes for the formation of policy and the conduct of foreign affairs."

According to this definition, the term public diplomacy does not include information about foreign policy supplied by a government to the public opinion of its country, but only when the information is aimed at public opinion in other countries; nor does the information necessarily have to have organs of State as its sources, but can also be given out by private bodies, such as pressure groups, by religious or racial → minorities, by commercial organizations, or even by private individuals.

Public diplomacy can play an important and beneficial role in clarifying world public opinion as to the aims of a given government. The question is the extent to which a government can influence public opinion without distorting the facts (→ Propaganda). Unfortunately, those entrusted with information are prone to lavish praise on the leaders of the country, a policy liable to produce a backlash. The necessity of a very judicious use of public diplomacy can no longer be denied, especially when it takes seriously into account the principal aims of a country's foreign policy.

2. *Historical Evolution of Legal Rules*

(a) *Personal inviolability*

Contact between the most primitive societies only became possible with the acceptance of the principle of inviolability of the envoy, which can also be considered chronologically the first rule of international law (→ History of the Law of Nations). From the moment it was understood that the envoy from a neighbouring tribe should not be murdered at first sight, the basic idea of diplomacy came into existence, justifying R. Redslob's opinion that "diplomacy is as ancient as the nations themselves". According to Edmund A. Walsh, the art of representation and negotiation is as old as social relations and began, in fact, as soon as families, clans, tribes and peoples came into contact with one another and sought to regulate marriage customs and contracts, hunting, trade, navigation, communications, disagreements and wars (Walsh, p. 159).

The inviolability of the envoy was the basis from

which all the other privileges sprang, but for centuries it was the only really important privilege (→ Diplomatic Agents and Missions, Privileges and Immunities). History is full of examples in which respect for the envoy was such that he was considered sacrosanct.

It could be expected that with the passing of the centuries the respect for the rules of international law relating to diplomacy would already have been consolidated and accepted by all States and peoples. The situation which existed prior to World War II justified such expectation, but unfortunately the post-war period has witnessed numerous cases of disregard for the inviolability of diplomatic missions and agents and one may wonder whether it will be possible to revert to the former climate. The → United States Diplomatic and Consular Staff in Tehran Case dealt with a deplorable example of such disregard.

(*b*) *Permanent diplomatic missions*

With the creation of permanent diplomatic missions in the 15th century, the inviolability of the ambassador was no longer sufficient, and new privileges and immunities came into existence. The ambassador's inviolability was extended to his residence and to his household, where even the cook enjoyed special protection; his couriers and dispatches had to be protected. Since the ambassador was inviolable and could not be arrested, local tribunals had no jurisdiction over his acts.

The legal nature of all these privileges and immunities presented a challenge to legal scholars, who, with few exceptions, developed the doctrine of the ambassador's exterritoriality, following in most cases the teachings of Grotius. This theory, however, led to some far-reaching conclusions, such as the right of the ambassador to judge members of his household and carry out his judgments. Fauchille mentions the case of the Spanish ambassador in Venice who condemned one of his servants to death and hanged him from a window. The Marquis de Rosny, later Duque de Sully, condemned, in 1603, one of his gentilhommes to death for having committed murder in London and requested the local authorities to carry out the sentence. Another abusive interpretation of the ambassador's exterritoriality was the amazing claim, in Rome and Madrid, of the *franchise de quartier* according to which local police should remain out of sight of the embassy. This resulted in the emergence of small fiefs, in which all sorts of abuses, such as the sale of → contraband, flourished. This institution was finally abolished, as was the *droit de chapelle* aimed at protecting the ambassador's chaplain and other worshippers from the very strict laws which condemned to death those accused of heresy. These three examples are exceptions, however.

(*c*) *Congress of Vienna*

The Congress of Vienna, assembled under the double impact of the French Revolution and the Napoleonic Wars, opened up a new phase in the history of diplomacy. The Regulation on the classification of diplomatic agents, which was adopted at Vienna on March 19, 1815 (see Final Act, Annex 17, CTS, Vol. 64, p. 2), had the great distinction of putting an end to the eternal wrangles over precedence which were one of the chief worries of the diplomatic agent. It also cut out another point of friction by adopting the alternate system in the signature of treaties. It is symptomatic that at Vienna, when the moment came to sign the Final Act, it was necessary to open an extra door in the hall in order to enable the plenipotentiaries to enter and withdraw simultaneously.

The Regulation, giving a ruling on the precedence of diplomatic agents, was welcomed as a last resort by the Congress of Vienna after other solutions more in line with the thought of the period had been put aside. After two months' deliberation, a committee put forward a proposal to group diplomatic agents into three classes in accordance with a similar grouping of all the States themselves. The proposal fell through, however, mainly because of doubts raised as to how the big republics should be placed. Finding it impossible to adopt a classification of sovereigns and heads of State, the negotiators finally fell back on a proposal presented in 1760 by the Marquis of Pombal on the occasion of the wedding of Dom Pedro and the Princess of Brazil, which said that thenceforth ambassadors would be received in accordance with the date of their credentials. At the time, the rule was bitterly criticized, but it was realized to be the only acceptable solution, and was adopted as follows: "Diplomatic employees will take precedence over each other, in each class, according to the date of the official notification of their arrival"

(Regulation, Art. 4). This rule, with small variations, was adopted almost a century and a half later, in Art. 16 of the → Vienna Convention on Diplomatic Relations (1961).

(*d*) *League of Nations and multilateral diplomacy*

In the study of the historical development of the legal rules of diplomacy, mention must be made of the evolution brought about by multilateral diplomacy. The problem of the privileges and immunities of permanent missions to international organizations began with the → League of Nations, but became extremely complex after World War II due to the increase in the number of such organizations. In terms of international law, it is a new problem and first arose in March 1924, when the Foreign Minister of Brazil informed the Secretary-General of the League of Nations that his government was creating in Geneva a permanent representation which would be headed by an ambassador with his usual privileges and immunities. Since some doubts were raised, Clovis Bevilaqua, the legal adviser of the Brazilian Ministry of Foreign Affairs, pointed out in June 1925 that

> "the country where the League of Nations has its seat must respect the immunities which international law grants to the delegates of States when they have a public character and when they are in that country in the exercise of their functions *vis-à-vis* the League, simply because they are in that country with that objective. The delegates of other countries to the League of Nations have, due to their capacity as representatives of sovereign States, a right to those immunities which are generally recognized in the case of diplomatic agents. The situation of Switzerland, in this case, is similar to that of Holland where the Permanent Court of International Justice has its seat and whose members enjoy diplomatic privileges and immunities" (Pareceres do Consultores Jurídicos do Ministério das Relações Exteriores (Pareceres) 1913–1934 (1962) p. 311, in Portuguese).

This decision of the Brazilian Government caused a certain amount of surprise among students of international law and the first reactions were of a negative character (for example, those of Siotto-Pintor and P. Fauchille).

With the multiplication of international organizations and the consequent creation of permanent missions, the governments where these organizations were situated were obliged to recognize their privileges and immunities. The situation became quite complex and finally the → International Law Commission (ILC) decided to take up the subject. During a conference held in Vienna from February 5 to March 14, 1975, the Vienna Convention on the Representation of States in Their Relations with International Organizations of a Universal Character was signed. A comparison between this Convention and the 1961 Convention on Diplomatic Relations shows that international law places both kinds of missions on almost the same footing, in spite of the objections of many "host countries" that tried to modify the ILC's draft.

(*e*) *Vienna Convention on Diplomatic Relations*

With the signing on April 18, 1961 of the Vienna Convention on Diplomatic Relations, the historical evolution of the legal rules on diplomacy reached its highest point.

The ILC pointed out that its work had been one of codification, in other words, that it had acted *de lege lata* (→ Codification of International Law). Codification does not necessarily immobilize international law, since later practice can influence or modify a written treaty. This was one of the most difficult rules with which the ILC had to cope when formulating Art. 38 of their proposed draft for the → Vienna Convention on the Law of Treaties (1969), which read: "A treaty may be modified by subsequent practice in the application of the treaty establishing the agreement of the parties to modify its provisions" (Yearbook of the ILC, Vol. 2 (1966) p. 236). This was one of the very few draft articles which the Vienna Conference on the Law of Treaties rejected. But even so, States in their mutual relations will continue to adapt treaties, subject to certain limitations, to international reality, the UN Charter being an excellent example of this practice which cannot be considered as contrary to existing international law.

The Vienna Convention on Diplomatic Relations can also be used as an example of how the international community adapts itself to existing situations. Even though most of its articles are based on well-established practices, the interpretation of some of them does not correspond to the

original ideas of their authors. In this sense, however, it must be pointed out that in some of these articles the 1961 Conference acted *de lege ferenda*. The rule laid down in Art. 27 under which "the mission may install and use a wireless transmitter only with the consent of the receiving State" is typical. This provision was one of the most controversial articles adopted during the 1961 Conference. The ILC draft did not contain this restriction, but its position was rejected. However, this article has never exerted even the smallest influence, and the industrialized countries have continued to use their transmitters in spite of the requirement of the host State's consent.

3. *Special Legal Problems*

(*a*) *Consular relations*

In the study of the historical evolution of legal rules on diplomacy, special reference must be made to → consular relations, since in most countries the diplomatic and the consular careers have been merged into a single career. The distinction drawn by most authorities between the function of diplomats and → consuls has slowly but surely diminished, since members of the foreign service will work alternatively in one branch or the other, using the same techniques in both.

The fact that consuls and diplomats represent their country abroad has also had a big influence on the granting to consuls privileges and immunities which in many cases are identical to those granted to diplomats. Until World War II, some countries, such as the United Kingdom and the United States, were opposed to the granting of such privileges to consuls, who were placed on almost the same footing as → aliens.

In the late 1940s a series of incidents proved that it was necessary to review their position, especially after the Mukden incident in October 1949, where the United States Consulate was seized by the local authorities and the consul arrested. This situation provoked a strong reaction in the Department of State which finally recognized the necessity of guaranteeing its consular officers abroad. An ensuing series of consular agreements was signed, recognizing, on a bilateral basis, privileges and immunities. This phenomenon did not escape the notice of the ILC that in its draft on Consular Relations, following the idea put forward by Special Rapporteur Jaroslav Žourek, tried to adapt, *mutatis mutandis*, many of the articles which had been accepted in the 1961 Convention on Diplomatic Relations. In spite of the reaction of some delegations and contrary to the progressive approach of the ILC, the 1963 Vienna Convention on Consular Relations provides in its articles relating to the consular post, as distinct from those relating to consular officers, for treatment similar to that accorded to diplomatic missions.

The incident between the United States and Iran in November 1979 dealt not only with the United States embassy in Tehran, but as well with the Consulates in Tabriz and Shiraz which were also seized and their personnel subjected to hardship, so much so that the → International Court of Justice (ICJ) in its judgment stressed that the international law on consuls as well as on diplomats had been violated by the Government of Iran.

(*b*) *Influence of legal considerations on foreign policy*

Diplomacy is often confused with foreign policy, when in reality it is one of the tools used by governments in the pursuit of their foreign policy.

Even though governments will normally adopt a pragmatic approach in determining their foreign policy, elements such as local and world public opinion, as well as the legality of measures which they will adopt, also play a role. In this sense, the influence of international law on positions taken by States must not be underestimated: a government will always try to clothe a decision in a legal mantle (→ Foreign Policy, Influence of Legal Considerations upon).

Taking into account the importance of international law, governments usually rely on the opinions of the legal adviser of the Ministry of External Relations, whose impartiality may be lacking due to a normal tendency to present the case in a manner favourable to the government. The task of a legal adviser is extremely delicate since his personal prestige will be linked to an opinion which may not correspond to existing international law. Also an opinion given may have the undesirable effect of being used later on as an argument against the adviser's own government.

International lawyers and diplomats are no longer capable of coping with all the new legal

problems for which a profound academic knowledge is indispensable. Academicians and lawyers linked to academic institutes have the task of reformulating decisions taken in order to place them in a different light, to wit in harmony with international law.

(c) *The right of legation*

The Vienna Convention on Diplomatic Relations provides in Art. 2 that the establishment of diplomatic relations between States takes place by mutual consent, thus brushing aside the controversial right of legation. According to traditional international law, every recognized independent State was held to be entitled to exercise this right of legation, namely, to send diplomatic agents to defend its interests and likewise to receive such agents. But even those authors who accepted the existence of the right of legation stressed the fact that no State has the right to demand the establishment of diplomatic relations (→ Diplomatic Relations, Establishment and Severance). Professor Sandström's draft provided that "when two States possessing the right of legation agree to the establishment of permanent diplomatic relations with each other, each of them may set up a diplomatic mission in the other". This provision, however, was not accepted since many members of the ILC stressed the inconvenience of including in the future convention an imperfect right.

In short, it is up to the interested States to establish diplomatic relations or not, and such a decision does not necessarily mean the establishment of a diplomatic mission. Even though the right of legation is not mentioned in the 1961 Convention, it is still widely used in legal terminology.

4. *Evaluation*

Diplomatic methods and objectives have always adapted themselves to changing circumstances, and World War I was no exception since it brought in its wake multilateral and public diplomacy. Woodrow Wilson's ideas caught on and even though he quickly realized that negotiations could not be public, an irreparable harm had been done. The aftermath of World War II witnessed the transfer of world leadership to the United States and the Soviet Union. Great Britain and France, which for so long had played the leading role, were relegated to secondary positions, together with other European countries, such as Germany and Italy, all of them with invaluable experience in international affairs, a quality lacking in the two new superpowers.

The root of the evolution in diplomatic methods is not to be found in these political upheavals but in the technological revolution and the realization that the power of a nation is linked to commercial and financial stability. The importance of international trade is not a novelty and the policy of Venice and the other Italian maritime States was always in this direction. Even though the British diplomatic service considered it most improper for an embassy or legation to obtain commercial concessions for its nationals, British foreign policy always took stringent measures to guarantee a continuous supply of raw material and the maintenance of the sea routes to all corners of the globe. The territorial scramble in Africa and Asia in the 19th century was another display of this phenomenon.

Even though the principal interest of a diplomatic mission is no longer exclusively political, the fundamentals of diplomacy have remained constant. The four principal functions of a diplomatic mission continue to be the same: representation, protection, negotiation and information. Representation and negotiation are bi- and multilateral; → diplomatic protection also means protection, *inter alia*, of the economic, commercial, financial and cultural interests of the sending State and of its nationals; and information covering almost every subject must be analyzed and forwarded to the competent authorities.

Modern technology has had a corresponding effect on diplomacy, especially in the field of communication. The ease with which a head of government, a foreign minister or an expert can reach any part of the world, returning almost immediately, is of the utmost importance. Certain highly technical subjects which in the past would have created enormous logistical problems, can be easily solved on a multilateral basis as a result of meetings of experts held under the aegis of specialized agencies. Nowadays, embassies are linked to their ministries not only by telephone and telex, but many are in a position to send directly by satellite documents distributed, for example, in the United Nations.

The facility in transportation has also resulted in another novelty in the field of diplomacy, to wit → conferences of ambassadors. These meetings are usually of a regional nature and the exchange of information can be of considerable value.

Summit diplomacy has also become a frequent phenomenon since World War II, and meetings of heads of government have become in many cases commonplace. The rapidity with which a head of State or a prime minister can travel makes these lightning trips more attractive. In some cases, such meetings are of a periodical nature and in the framework of a regional organization such as those of the European Communities or the annual meetings of heads of State of the → Organization of African Unity.

More often than not, summit diplomacy is linked with public diplomacy, since these meetings of heads of State can have wide news coverage offering the politicians involved useful contact with the mass media, as in the case of the Williamsburg (Virginia) meeting in May 1983.

In the evaluation of the law of diplomacy one must revert to the 1961 Convention on Diplomatic Relations. The first conclusion is that provisions of the Vienna Convention are *lex lata* even for those very few countries that have not as yet ratified or adhered to it. In the case of newly independent States the rules it codifies can be considered prevailing international law (→ New States and International Law). Some of its provisions have also undergone change.

Reference has been made to unwarranted violations of the inviolability of diplomatic missions and agents, which have in most cases provoked the severance of diplomatic relations, but in the past would have been considered *casus belli*. In this sense, the words of the ICJ in the United States Diplomatic and Consular Staff in Tehran Case are eloquent and significant:

> "Such events cannot fail to undermine the edifice of law carefully constructed by mankind over a period of centuries, the maintenance of which is vital for the security and well-being of the complex international community of the present day, to which it is more essential than ever that the rules developed to ensure the ordered progress of relations between its members should be constantly and scrupulously respected" (Judgment, ICJ Reports 1980, p. 43).

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DIPLOMACY, SECRET

1. Notion; History

The idea that secret diplomacy should be condemned as being pernicious can be linked to the first of Woodrow → Wilson's Fourteen Points, that in future there should be nothing but "open covenants of peace openly arrived at" and that "diplomacy shall proceed always frankly and in the public view".

In spite of advice to the contrary, President Wilson participated in the Paris Peace Conference (1919). His exercise in → diplomacy ended dismally, with the United States Senate refusing to ratify the → Versailles Peace Treaty (1919) which he had signed. The concept of open diplomacy did not survive its first test and at Versailles Wilson himself reverted to secret diplomacy; Lloyd George, Clemenceau, Orlando and he held over 150 meetings behind closed doors.

The idea of secret diplomacy might seem totally out of place in → international conferences and congresses, where, apparently, all decisions are thrashed out and decided upon in the plenary. Yet, it is precisely in the conferences held under the auspices of the → United Nations and of the