

A photograph of the European Parliament building in Brussels, a large circular glass and steel structure with several flags flying in front of it. The building is the central focus of the cover.

R. P. BARSTON

MODERN DIPLOMACY

FOURTH EDITION

Modern Diplomacy

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Modern Diplomacy

Fourth Edition

R.P. Barston

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Preface

The concern of this book is to analyse some of the main elements that make up contemporary diplomacy. Since the completion of the first edition, a number of important changes have occurred within the international system, which have affected players, procedures and the content of diplomacy. The fourth edition has been substantially rewritten to reflect these developments. New chapters have been included on diplomatic strategy; developing diplomatic practice; communications methods, including media; and emerging networks and groupings. Other important changes covered include issues related to the cyber dimension of diplomacy. In addition, a further feature of this edition has been the opportunity to introduce a number of new or little discussed ideas and concepts including diplomatic space; counter diplomacy; the role of NGOs and other agencies as instruments of the ‘disguised’ state; and the promotion of events and conferences as part of ‘hub’ or niche diplomacy.

Modern Diplomacy is organised around six broad areas: the changing nature of diplomacy; developing diplomatic practice; negotiation; emerging groups and networks; use and issues in cyber diplomacy and the operation of diplomacy in specific sectors – international trade, international finance, environment, natural disasters and international conflict (security; mediation; normalisation). The final section of the book reviews and illustrates formal and informal uses in diplomatic practice of diplomatic correspondence and various types of international agreements. The purpose of this and other sections of the book is to convey something of the varied and complex nature of contemporary diplomacy, which the pursuit and study of by the practitioner and analyst, remains central to international relations and the challenge of order.

Professor R.P. Barston
Sussex

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List of abbreviations

AfDB	African Development Bank
ABM	anti-ballistic missile
ABS	American Bureau of Shipping
ACP	African, Caribbean and Pacific
ADB	Asian Development Bank
AIT	American Institute in Taiwan
AOSIS	Alliance of Small Island States
APEC	Asia–Pacific Economic Cooperation
ASEAN	Association of South-East Asian Nations
AU	African Union
BASIC	Brazil, South Africa, India, China
BDM	Banking and Debt Management
BIS	Bank for International Settlements
BNP	Banque Nationale de Paris
BRICS	Brazil, Russia, India, China, South Africa
CARICOM	Caribbean Community

CCFF	Compensatory and Contingency Financing Facility
CCNAA	Coordination Council for North American Affairs
CCF	complementary financing facility
CFP	Common Fisheries Policy
CFSP	common foreign policy and security policy
COP	Conference of the Parties
CSCE	Conference on Security and Cooperation in Europe
DDO	Deferred Drawdown Option
DHA	Department of Humanitarian Affairs
DPRK	Democratic People's Republic of Korea
DSP	dispute settlement procedure
EAS	East Asia Summit
EBRD	European Bank for Reconstruction and Development
EC	European Community
ECOSOC	(UN) Economic and Social Council
ECOWAS	Economic Community of West African States
EEAS	European External Action Service
EEZ	Exclusive Economic Zone
EFF	extended fund facility
EISA	Electoral Institute for Sustainable Democracy in Africa
EMSA	European Maritime Safety Agency
EPA	Economic Partnership Agreement
ERC	Emergency Relief Coordinator

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ESAF	extended structural adjustment facility
EU	European Union
FAO	(UN) Food and Agriculture Organisation
FAQs	frequently asked questions
FCO	Foreign and Commonwealth Office
FDI	foreign direct investment
FSB	Financial Stability Board
FSF	Financial Stability Forum
GAB	General Arrangements to Borrow
GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade
GCC	Gulf Cooperation Council
GEF	global environmental facility
GI	geographical indication
G-8	Group of 8
G-10	Group of 10
G-20	Group of 20
G-24	Group of 24
G-77	Group of 77
HIPC	Heavily Indebted Poor Countries
HMSS	Highly Migratory and Straddling Stocks
HRVP	high representative/vice president
IAEA	International Atomic Energy Agency

IBRD	International Bank for Reconstruction and Development
ICAO	International Civil Aviation Organisation
ICC	International Criminal Court
ICG-IOTWS	International Coordinating Group for the Early Warning and Mitigation System in the Indian Ocean
ICG-ITSU	International Coordinating Group for the Tsunami Warning System in the Pacific
ICJ	International Court of Justice
ICNT	Informal Composite Negotiating Text
ICRC	International Committee of the Red Cross
IDA	International Development Association
IDB	Inter-American Development Bank
IFC	International Finance Corporation
ILO	International Labour Organisation
IMF	International Monetary Fund
IMFC	International Monetary and Finance Committee
IMO	International Maritime Organisation
IOC	Intergovernmental Oceanographic Commission; International Olympic Committee
ISM	International Safety Management Code
ISPS	International Ship and Port Security
JETRO	Japan External Trade Organisation
Libor	London interbank offered rate
LICs	low-income countries

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MARPOL	International Convention for the Prevention of Pollution from Ships
MDG	Millennium Development Goals
MEPC	Marine Environmental Protection Committee
MFA	ministry of foreign affairs
MFN	most favoured nation
MITI	Ministry of International Trade and Industry
MONUSCO	United Nations Organisation Stabilisation Mission in the Congo
MOU	Memorandum of Understanding
NAB	New Arrangements to Borrow
NAFTA	North American Free Trade Agreement
NAM	Non-Aligned Movement
NEPs	New Economic Powers
NGO	non-governmental organisation
NGR	Negotiating Group on Rules
NLF	National Liberation Front
NMT	non-tariff measures
NOAA	National Oceanic and Atmospheric Administration
NORDREGS	Northern Canada Vessel Traffic Services Zone Regulations
OAS	Organisation of African States
OAU	Organisation of African Unity
OCHA	(UN) Office for the Coordination of Humanitarian Affairs
ODA	Overseas Development Assistance

OECD	Organisation for Economic Cooperation and Development
ONUC	United Nations Operation in the Congo
OPA	(US) Oil Pollution Act
OPEC	Organisation of Petroleum Exporting Countries
PLO	Palestine Liberation Organisation
PMOU	Paris Memorandum of Understanding on Port State Control
POW	prisoner of war
PRC	People's Republic of China
PRGF	Poverty Reduction and Growth Facility
PRGT	Poverty Reduction and Growth Trust
PTWC	Pacific Tsunami Warning Centre
RNT	Revised Negotiating Text
RORO	roll-on roll-off
SAF	structural adjustment facility
SALT I	Strategic Arms Limitation Talks
SAMA	Saudi Arabian Monetary Agency
SDR	special drawing rights
SFF	supplementary financing facility
SIDS	Small island Developing States
SIRG	Summit of the Implementation Review Group
SOLAS	Safety of Life at Sea Convention
SPS	sanitary and phytosanitary

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TNC	Transitional National Council
TPP	Trans-Pacific Partnership
TRIMS	trade-related investment measures
TRIPS	trade-related intellectual property rights
UAE	United Arab Emirates
UDI	unilateral declaration of independence
UN	United Nations
UNAMI	United Nations Assistance Mission for Iraq
UNASUR	Union of South American Nations
UNAVEM	United Nations Verification Mission in Angola
UNCCD	United Nations Convention to Combat Desertification
UNCED	United Nations Conference on Environment and Development
UNCLOS	United Nations Conference on the Law of the Sea
UNCTAD	United Nations on Trade and Development
UNDP	United Nations Development Programme
UNEF	United Nations Emergency Force
UNEP	United Nations Environmental Programme
UNESCO	United Nations Educational, Scientific and Cultural Organisation
UNFCCC	United Nations Framework Convention on Climate Change
UNICEF	United Nations International Children's Emergency Fund
UNIDO	United Nations International Development Organisation
UNIFCYP	United Nations Force in Cyprus

UNITA	União Nacional para la Independência Total de Angola
UNMOVIC	United Nations Monitoring, Verification and Inspection Commission
UNOGIL	United Nations Observation Group in Lebanon
UNPROFOR	United Nations Protection Force
UNRCCA	United Nations Regional Centre for Preventive Diplomacy for Central Asia
UNTAC	United Nations Transitional Authority in Cambodia
VMS	Vessel Monitoring System
WTO	World Trade Organisation
ZOPFAN	zone of peace, freedom and neutrality

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Chapter 1

The changing nature of diplomacy

Diplomacy is concerned with the management of relations between states and between states and other actors. From a state perspective, diplomacy is concerned with advising, shaping and implementing foreign policy. As such it is the means by which states through their formal and other representatives, as well as other actors, articulate, coordinate and secure particular or wider interests, using correspondence, private talks, exchanges of view, lobbying, visits, threats and other related activities.

Diplomacy is often thought of as being concerned with peaceful activity, although it may occur within war or armed conflict or be used in the orchestration of particular acts of violence, such as seeking overflight clearance for an air strike. The blurring of the line, in fact, between diplomatic activity and violence is one of the developments distinguishing modern diplomacy. More generally, there is also a widening content of diplomacy. At one level, the changes in the substantive form of diplomacy are reflected in terms such as 'oil diplomacy', 'resource diplomacy', 'knowledge diplomacy', 'global governance' and 'transition diplomacy'. Certainly, what constitutes diplomacy today goes beyond the sometimes rather narrow politico-strategic conception given to the term. Nor is it appropriate to view diplomacy in a restrictive or formal sense as being the preserve of foreign ministries and diplomatic service personnel. Rather, diplomacy is undertaken by a wide range of actors, including 'political' diplomats,¹ advisers, envoys and officials from a wide range of 'domestic' ministries or agencies with their foreign counterparts, reflecting its technical content; between officials from different international organisations such as the International Monetary Fund (IMF) and the United Nations (UN) Secretariat, or involving foreign corporations and a host government transnationally; and with or through non-governmental organisations (NGOs) and 'private' individuals.

In this chapter we are concerned with discussing some of the main changes that have taken place in diplomacy since the 1960s – the starting-point for the overall study. Before looking at the changes, some discussion of the tasks of diplomacy is necessary.

Tasks of diplomacy

The functions of diplomacy can be broken down into six broad areas: ceremonial, management, information/communication, international negotiation, duty of protection and normative/legal. Particular functions within those categories are set out in [Table 1.1](#). The significance of each will vary from state to state. For some, diplomacy may be largely devoted to ceremonial representation; others may allocate resources to high-level roving envoys or in support of an established role in international rule making. The functions of diplomacy are also particularly closely related to evolving events and issues such as international crises, human and natural disasters or outbreaks of violence, which shift the diplomatic spotlight on to previously remote geographic areas or issues.

Table 1.1 Tasks of diplomacy

Ceremonial

- protocol
- representation
- visits

Management

- day-to-day problems
- promotion of interests (political, economic, scientific, military, tourism)
- explanation and defence of policy
- strengthening bilateral relations
- bilateral coordination
- multilateral cooperation

Information and communication

- assessment and reporting
- monitoring

International negotiation

Duty of protection

Contribution to international order

- normative
- rule making
- mediation/pacific settlement

Traditionally, diplomacy has been associated with the first of the functions in [Table 1.1](#). Formal representation, protocol and participation in the diplomatic circuit of a national capital or international institution continue as important elements in state sovereignty and as part of the notion of international society. At a substantive level, much of the business of diplomacy is concerned with the management of short-term routine issues in bilateral and multilateral relations (coordination, consultation, lobbying, adjustment, the agenda of official or private visits).

These include the promotion and management of interests, which for most states are dominated by financial, economic, resource issues and tourism, along with threat management.

The term 'threat management' is used here to differentiate this form of diplomacy from defence, security policy or traditional military-security activities, and refers to coping with adverse developments affecting key interests. The term 'threat management' is also preferred since it reflects more fully the fusion of 'domestic' and international policy. Threats here are understood to include developments such as: large-scale cross-border refugee movement; the economic effects of pandemics; major crop failure; capital flight; bilateral dispute over loss of core export market; hostile transnational communications and media attacks; threats to Federal treaty-making capacity by subregional authorities; or adverse images of a state's stability caused by criminal activity or political upheaval.

Other management activities include the explanation and defence of a particular decision or policy. These particular functions rely heavily on diplomatic negotiating skill, linguistic and technical expertise.

A third function of diplomacy is acquisition of information and assessment, including acting as a listening post or early warning system. Next to substantive representation, an embassy, if it is functioning conventionally – and not all are – should identify any key issues and domestic or external patterns, together with their implications, in order to advise or warn the sending government. As Humphrey Trevelyan notes on embassies:

Apart from negotiating, the ambassador's basic task is to report on the political, social and economic conditions in the country in which he (she) is living, on the policy of its government and on his conversations with political leaders, officials and anyone else who has illuminated the local scene for him.²

Contribution to international order

In the final category are the diplomatic functions relating to conflict, disputes and international order. In the multilateralist view, an important function of diplomacy is the creation, drafting and amendment of a wide variety of international rules of a normative and regulatory kind that provide structure in the international system. The principal normative objective of diplomacy from a multilateralist perspective is contribution to the creation of universal rules. Multilateralism is thus distinct from other approaches, such as regionalism, and in direct contrast to narrow state power preoccupation, for example 'soft' power; 'smart' power.

Timely warning of adverse developments is one of the major tasks of an embassy, in cooperation with intelligence services, requiring considerable coordination, expertise, judgement and political courage.

Monitoring functions, which are generally omitted from discussion of diplomatic purposes, should be distinguished from assessments. The latter provide an analysis of short-run or longer-term developments relating

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to a state, region, organisation, individual or issue. Monitoring exists in a number of forms, including covert intelligence gathering. However, in terms of diplomatic functions it is defined here as the acquisition of data from public sources in a receiving state (such as press, television, radio, journals and other media outlets) about the reporting or presentation of the sending state. The concern is with the image being presented of that state, and the accuracy of press reports on its policy or actions in the media. Monitored reports are used to form the basis for a variety of diplomatic responses, including press rebuttals by a resident ambassador, television interviews, informal exchanges, through to formal protest. Other types of monitoring involve detailed tracking of foreign press, media and other communications sources for information on attitudes, foreign policy activity and indications of shift or changes. In laying the groundwork or preparing the basis for a policy or new initiatives, diplomacy aims to float an idea or promote information or evidence relating to an issue, in order to gain acceptance or political support for the proposals.

The function of international negotiations is at the core of many of the substantive functions set out so far. It is, however, no longer the preserve of the professional diplomat.

The duty of protection is a traditional function, which has assumed increased significance in contemporary diplomacy. The growing mobility of citizens, international sporting events and international conflicts have all added a variety of types of protection problems with which embassies and consulates now must deal.

In the final category are the diplomatic functions relating to conflict, disputes and international order. As part of the development of international order, an important function of diplomacy is the creation, drafting and amendment of a wide variety of international rules of a normative and regulatory kind that provide structure in the international system.

In the event of potential or actual bilateral or wider conflict or dispute, diplomacy is concerned with reducing tension, clarification, seeking acceptable formulae and, through personal contact, 'oiling the wheels' of bilateral and multilateral relations. An extension of this is contributing to order and orderly change. As Adam Watson suggests: 'the central task of diplomacy is not just the management of order, but the management of change and the maintenance by continued persuasion of order in the midst of change'.³

Counter-diplomacy

The converse of this can also be put, in that diplomacy may be a vehicle for the continuation of a dispute or conflict. In other words, differing state and non-state interests and weak or contested norms concerning local, regional or international order produce quite substantial differences between parties, in which diplomacy through direct initiatives, informal secret contacts or third parties simply cannot provide acceptable or

workable bridging solutions. Diplomacy is stalled, and meetings routinised without expectation of progress. In addition, for some, the purpose of ‘counter-diplomacy’ is the use of diplomacy to evade or frustrate political solutions or international rules. Counter-diplomacy seeks the continuation or extension of a conflict and facilitation of parallel violence.

Development of diplomacy

In discussing the development of diplomacy, an overview of the period will help to give some perspective in which to consider the major changes that have taken place. The views are a ‘snap shot’ of diplomacy at any one point. The purpose is to provide a benchmark and highlight aspects that have been noted as part of the development of diplomacy. The argument is, however, not about ‘old’ and ‘new’ diplomacy, but rather, as Hocking and others suggest, to see diplomacy in an evolutionary sense.⁴ Diplomacy is the subject of constant change, rather than major shifts constituting a new form.⁵ Harold Nicolson’s analysis – written in 1961 in *Foreign Affairs* on the theme ‘Diplomacy then and now’⁶ – is coloured especially by the impact of the Cold War, the intrusion of ideological conflict into diplomacy and its effect on explanation, and the transformation from the small international élite in old-style diplomacy to a new or ‘democratic’ conception of international relations requiring public explanation and ‘open’ diplomacy, despite its growing complexity. A further striking change for Nicolson was in values, especially in the loss of relations based on the ‘creation of confidence, [and] the acquisition of credit’.⁷ Burrows contrasted the *raison d’état* of that period with ethical foreign policy: ‘*Raison d’état* predominated and personal feelings had to be forgotten. It was lucky ethical foreign policy had not yet been invented.’⁸

Writing shortly after Nicolson, Livingston Merchant noted: the decline in the decision-making power of ambassadors but the widening of their area of competence through economic and commercial diplomacy; the greater use of personal diplomacy; and the burden created by multilateral diplomacy, with its accompanying growth in the use of specialists.⁹ In reviewing the period up to the 1970s, Plischke¹⁰ endorsed many of these points, but noted as far as the diplomatic environment was concerned the proliferation of the international community, including the trend towards fragmentation and smallness,¹¹ and the shift in the locus of decision-making power to national capitals.¹² Writing at the same time, Pranger additionally drew attention to methods, commenting on the growing volume of visits and increases in the number of treaties.¹³ Adam Watson, reviewing diplomacy and the nature of diplomatic dialogue, noted: the wide range of ministries involved in diplomacy; the corresponding decline in the influence of the foreign minister; the increase in the direct involvement of heads of government in the details of foreign

6 The changing nature of diplomacy

policy and diplomacy; and the growth in importance of the news media.¹⁴ The theme has been underscored by Small, who noted the ‘new communications architecture’ and suggests the ‘concomitant death of distance’: ‘When the cost of communication approaches zero, geography doesn’t matter anymore.’¹⁵

Hamilton and Langhorne, writing in the mid-1990s, in the post-Soviet and Yugoslav contexts, highlight that ‘established diplomatic procedures have, as in earlier periods of political upheaval and transition, been exploited for distinctly undiplomatic ends’.¹⁶ El Baradi analyses diplomacy over clandestine nuclear programmes in ‘the age of deception’.¹⁷ The emergence of a more unstable and fluid international system and types of transactions were central for Copeland.¹⁸ Other developments influencing diplomacy include the implications of informal e-diplomacy¹⁹ for diplomatic management, records and ‘control’.²⁰ The changing content, particularly the recognition of the forms of economic diplomacy, is examined by Melissen.²¹ McRae also noted the emergence of ‘network’ diplomacy and cross-regional groupings. The domestic dimensions, including the roles of citizens and other centres of influence are features addressed by Sharp.²² Meyer examines the nature and limits of bilateral political diplomacy; Greenstock diplomacy in an ‘open world’ of communications and social media.²³

Diplomatic setting

Three aspects of the diplomatic setting are explored in this section: membership, bloc and group development, and international institutions.

Membership

The continued expansion of the international community after 1945 has been one of the major factors shaping a number of features of modern diplomacy. The diplomatic community of some 40 states that fashioned the new post-war international institutions – the United Nations (UN), International Monetary Fund (IMF), International Bank for Reconstruction and Development (IBRD) and later the General Agreement on Tariffs and Trade (GATT) in the cramped, crowded plenary rooms – had tripled, largely as a result of decolonisation, less than a quarter of a century later. A fourth phase of expansion occurred after 1989 with the break-up of the former Soviet Union and Yugoslavia. By 2000, the number of UN member states had reached 189.²⁴

The expansion in membership had four main effects: on diplomatic style; the entry into force of conventions (making it possible for conventions to enter into force *without* major players); and the operating agendas

and procedures of international institutions. A fourth effect included the emergence of a variety of UN conference management styles, lobbying, corridor diplomacy, and the institutionalisation of the Group of 77 (later to become G-118 plus China), which have significantly affected the way in which diplomacy is conducted within the UN.

Players in diplomacy

An important feature of modern diplomacy is the enhanced role of personal diplomacy by the head of state or government. The direct or indirect involvement of heads of government in central foreign policy issues has generally reduced the overall role and influence in many instances of foreign ministers, and is at times at the expense of the local ambassador. The use of cabinet secretariats rather than foreign ministers, and private envoys as an indirect channel of communication and negotiation, often results in a local ambassador in a critical trouble spot or national capital being ill-informed on an issue or bypassed. A not dissimilar situation may arise in bilateral or multilateral summits of heads of government, in which the foreign minister or professional diplomatic service are left attempting to discover what was actually said or, worse still, agreed in private exchanges.

This is not to argue, however, that an ambassador is now redundant or a largely ceremonial figure. Crises and summits apart, the contemporary resident ambassador performs important functions as a specialist contact in national and international negotiations and promotion of interests. Much depends on the post and the person. While modern communications have eroded the assessment role, that is but one of several functions. Indeed, for most small and middle/larger powers, the ambassador is a critical player in the key capitals or organisations relevant for those states.

In terms of other players, the growth of post-war multilateral regulatory diplomacy, outlined above, has led to the involvement in external relations of a wider range of ministries, such as industry, aviation, environment, shipping, customs, health, education and sport. Linked to this development is the widening content of diplomacy, particularly through the internationalising of issues relating to terrorism, immigration, political refugees and other population issues, leading to international coordination by interior, justice and intelligence ministries.

Non-state actors have proliferated in number and type, ranging from traditional economic interest groups to resource, environment, humanitarian, aid, terrorist and global criminal interests. Other important non-state players include transnational religious groups, international foundations, donors, and medical, private mercenary and prisoner-of-war organisations. Former political leaders, too, have become actors pursuing parallel or 'private' diplomatic initiatives, with varying degrees of approval or endorsement, at the margins of international conflict.

Non-governmental organisations (NGOs) can be categorised as above, but also in terms of the nature of the linkages with national administration. In some instances, NGOs are closely linked to official administrations (integrated in a delegation, finance, or through consultation and shared intelligence); others operate transnationally, or in some cases operate in a twilight advocacy zone. Nor is it always clear in which category an organisation is operating.

The proliferation of non-state actors has led to questions about the primacy of the state as an actor in international relations. Here, however, it is argued that states continue to be the central authoritative decision units with respect to routine, critical and strategic decisions over the conduct of external policy. Nevertheless, the operating setting and ability to exert sustained influence have become far more complex.

Another important effect of expanded membership has been on the entry into force of conventions. For example the entry into force of the 1982 Convention on the Law of the Sea was triggered by the smaller members of the UN – such as Honduras, St Vincent and eventually Guyana in November 1994 – without ratification or accession at that time by major powers.²⁵ Although the possibility of conventions entering into force without the participation of major players remains (e.g. the Montreal Protocol on ozone depleting substances²⁶), thresholds or specific barriers to entry into force have been created in some agreements.

A further aspect of the membership of the international community is the existence of *de facto* states.²⁷ In considering such entries, a distinction needs to be made between entities that have or seek secessionist or breakaway status (Chechnya, Transnistria, Northern Cyprus, Bougainville, Kurdistan) from transborder or transboundary cooperation (e.g. the Three Borders Area of Austria, Italy and Slovenia).²⁸ The latter involve external relations between sub-state entities, which in effect constitute increasingly deeper functional cooperation in various sectors (economy, transport, social) contributing to the ‘distinctiveness’ of the entity, so that it is a recognisable entity within a wider regional framework. Other types of *de facto* states have emerged from civil conflicts in the Middle East and elsewhere, which have left breakaway states or areas such as Kurdistan (Iraq) and in Libya.

Overseas territories

Overseas territories and enclaves are a further distinct category. These perform many statelike functions, and some develop niche roles in international relations. In the financial services sector, for example the Cayman Islands has developed a role as an offshore financial centre. Such centres have, however, come under scrutiny, through pressure on the metropole or ‘host’ power, from institutions such as the European Commission and International Monetary Fund. In addition, the financial activities of offshore centres have also been the subject of Wikileaks-type exposure of unnamed bank-account transactions.

Blocs and groupings

An important structural feature of the post-1945 diplomatic setting is the growth of and modifications to blocs, groupings and international institutions. Of the changes in blocs and groupings since the 1960s, two in particular stand out: the end of the East–West Cold War system by the 1990s; and the demise of the Group of 77 (G-77) and the United Nations Conference on Trade and Development (UNCTAD). The non-aligned movement, initially charismatically led, had been established in the early post-war years at the Bandung Conference, whilst the trade and development agenda was pursued from 1964 through the UNCTAD conferences and developed by the G-77 as the new International Economic Order (NIEO) doctrine. By the early 1990s, the G-77 had lost much of its *raison d'être*, through competing interests and increasingly unwieldy size, whilst UNCTAD had become ineffective as a vehicle for trade and development reform. At an East–West level, the perceived end of the Cold War substantially brought to a close that axis of conflict.

The changes outlined above in effect removed or significantly reduced the East–West and North–South dimensions of the diplomatic system. With a depleted G-77/UNCTAD, the developing country development agenda moved uneasily into the World Trade Organisation (WTO) Doha Round framework, scattered through the UN system or tacked onto EU and other communiqués. Since 2000, the South has generally developed a variety of intra-South (South–South) cooperation mechanisms. In terms of East–West relations, the main effects of the end of the Cold War have been removal of East–West summit conferences; limited American–Russian diplomacy; and, for Russia, the long-term legacy of regaining its diplomatic space on its east European and Asian political and economic periphery.

In the transitional international system from 1990 to 2000, the diplomatic setting was distinguished by the largely unsuccessful diplomatic efforts of the Russian Federation to construct a new grouping based on the former Soviet Union and Eastern Europe. Second, the non-aligned movement in effect became defunct through loss of *raison d'être*, competing ideologies, interests and above all unwieldy size. In addition, the G-77 and associated UN General Assembly process of stylised global debate diplomacy became largely ineffective by the transition period.²⁹ In terms of other groupings, it is noteworthy that during the transition period a number of temporary international groupings (shifting membership) based upon economic, trade or other interests were formed, for specific purposes, as states adjusted foreign policies; and as regional organisations tried to develop new linkages with individual states and other regional organisations.

A number of these elements – particularly the fluid nature of groupings – have become more evident in the period since 2000. The international system post-2000 can in fact be characterised through four areas. First, the

fluidity in bilateral and other relations, with less clear-cut blocs. Second, the international system is not multipolar, but rather distinguished by the *absence* of polarity. International relations in the post-2000 system are based on much looser groupings, networks and exchanges. Some of these exchanges are routed through groups and networks in parallel to existing multilateral and regional institutions. Third, norms and core concepts are contested, in the key pillars of international order (security, trade and international financial and economic relations). Contested ideas are evident in the lessening of multilateralism and very different concepts of international trade order. They are seen, too, in the diplomacy of paradoxes, through competing and conflicting norms, in which norms compete or cancel each other out (the pursuit of arms control may be at the expense of norms on eradicating narcotics). The fourth feature of the post-2000 system is the very high level of regional organisation and bilateral diplomatic activity. Much of this is repetitive or stylised communiqué diplomacy.

Diplomatic process

The previous sections have looked at aspects of the changing international setting, players and changing blocs. In this section, aspects of the contemporary diplomatic process are noted as a basis for drawing the chapter to a close and setting the scene for further analysis in later chapters.

First, a striking feature of the diplomatic process is the continued fusion of domestic and foreign policy. The reasons for this are primarily the internationalisation of previously domestic issues, the erosion of the concept of domestic jurisdiction, transnational boundary-crossing transactions and globalisation of economies. Further special sets of factors are found in regions in which there is substantial population cross-movement or non-observance of borders in integrative organisations (such as the EU). The main effect of the increasing fusion of domestic and foreign policy is to alter the nature of diplomatic activity, bringing it into some policy areas and issues considered as 'domestic'. Some examples of these would include economic and financial policy; promotion of medical and pharmaceutical products and trade regulatory requirements; the international diplomacy of agriculture; land acquisition and oil licensing, in federal or transition states (e.g. Iraq). In the political category, the diplomatic agenda would include issues of: governance; corruption; 'foreign' economic policy; international banking oversight (standards); sovereignty and moral hazard decisions (e.g. whether to support a failed state; participate in a banking 'rescue'; or agree to a 'sunset' clause ending preferential assistance to heavily indebted poor countries (HIPC)). To these would be added traditional political concerns such as human rights and rule of law issues.

International agreements have been influenced by the decline in the role of the International Law Commission in preparing treaties

and the growing use at a global level of ‘soft’ law instruments such as action plans and framework agreements, influenced by the international and regional practice of UN specialised agencies such as the United Nations Environment Programme (UNEP), UNCTAD and the Food and Agriculture Organisation (FAO). Other forms of soft law include the decisions of the G-20, and the development of parallel institutions to the multilateral specialised agencies of the UN, discussed in [Chapters 5–7](#).

With respect to the multilateral process, the trend of informality in multilateral conferences – with fewer group-sponsored resolutions and changes in implementation procedures – is directly linked to the decline of blocs or large groupings and the growing ‘individuality’ of states (the search for ‘diplomatic space’), especially in technical negotiations and ad hoc or shifting coalitions of interests. Coalitions of small (often short-lived) groups rather than larger traditional blocs are marked features of contemporary trade and economic diplomacy. The breakdown of multilateral negotiations in the Doha framework (discussed in [Chapter 7](#)) has been accompanied by the rapid growth of bilateral relations and regional diplomacy ([Chapters 5–6](#)) reflecting the economic diplomacy. Underpinning that international economic diplomacy is the shift in the axis of political and economic power to the New Economic Powers (NEPs).

Open and secret diplomacy

One of the interesting issues in the study of diplomacy is the relationship between ‘open’ and ‘secret’ diplomacy. Earlier we noted Nicolson’s view on the shift from secret to parliamentary style and open diplomacy during the 1960s. The balance has once more shifted back to secret diplomacy, while of course recognising that much of modern diplomacy is in practice conducted on the basis of secrecy.

The extent of secrecy in international relations has been influenced particularly by the level of violence in the international system. Ongoing military operations are inevitably supported by extensive private and secret meetings between the principal players. The kidnapping of and attacks on diplomatic personnel, journalists, contract workers and tourists has led to the increased involvement of intelligence officers as diplomatic envoys in mediation and associated secret diplomacy. The diplomatic profession has never been a safe one, and in this respect has become less so.

Notes

1. The term is used by former US Secretary of State James Baker.
2. Humphrey Trevelyan, *Diplomatic Channels* (Macmillan, London, 1973), p. 85.

3. Adam Watson, *Diplomacy: The dialogue between states* (Methuen, London, 1984), p. 223.
4. See the underlying argument in B. Hocking, 'Catalytic diplomacy: beyond "newness" and "decline"', in J. Melissen (ed.), *Innovation in Diplomatic Practice* (Macmillan, London, 1999), pp. 21–42, and Jeremy Greenstock, 'Diplomacy: a lost art in an open world?', in Andrew Duff, *Making the Difference* (BiteBack, London, 2010), p.139.
5. For examples of this type of approach ('new' diplomacy) see David Davenport, 'The new diplomacy', *Policy Review*, No. 116, Dec. 02 [www.policyreview.org/Dec02]; Sian Riordan, *The New Diplomacy* (Polity Press, Cambridge, 2003); and Andrew Cottey and Anthony Forster, *Reshaping Defence Diplomacy* (Oxford University Press, London, 2004).
6. Reprinted with revisions in Harold Nicolson, *Diplomacy*, 3rd edn (Oxford University Press, London, 1963). pp. 244–62.
7. *Ibid.*, pp. 245–6.
8. Bernard Burrows, *Diplomat in a Changing World* (Memoir Book Club, Spennymoor, 2001).
9. Livingston Merchant, 'New techniques in diplomacy', in E.A.J. Johnson (ed.), *The Dimensions of Diplomacy* (John Hopkins Press, Baltimore, Md., 1964), pp. 117–35.
10. Elmer Plischke (ed.), *Modern Diplomacy: The Art and the Artisans* (American Enterprise Institute, Washington, DC, 1979).
11. *Ibid.*, pp. 92–8.
12. *Ibid.*, p. 58.
13. Robert J. Pranger, 'Contemporary diplomacy at work', in Plischke, op. cit., p. 76. Pranger notes that in 1977 the USA signed approximately 20 new treaties and nearly 500 new agreements with other states and international organisations.
14. Watson, op. cit., p. 126.
15. See Michael Small, 'Case study: The human security network', in Rob McRae and Don Hubert, *Human Security and the New Diplomacy* (McGill, Queen's University Press, Montreal, 2001), p. 231.
16. Keith Hamilton and Richard Langhorne, *The Practice of Diplomacy* (Routledge, London, 1995), p. 224.
17. Mohamed El Baradi, *The Age of Deception*, (Bloomsbury, London, 2011).
18. See Daryl Copeland, *Guerilla Diplomacy: Rethinking international relations* (Lynne Rienner, Boulder, 2009).
19. See Nikos Christodoulides (Consul General Republic of Cyprus), 'The internet and diplomacy' [www.unc.edu/dept/diplomacy].
20. Ambassador Charles Reis in US Department of State Open Forum: 'E-diplomacy: Using technology to advance foreign relations' [www.state.gov/slp/of/proc/17914]. See also David A. Bollier, 'The rise of netpolitik' [www.diplomacymonitor.com].
21. See Jan Melissen *et al.*, 'Economic Diplomacy', *The Hague Journal of Diplomacy*, vol. 5, no. 1–2, 2011.
22. Paul Sharp, *Making Sense of Citizen Diplomats*, (Leicester Diplomatic Studies Programme, Leicester, 2001) makes this point in his final paragraph.
23. Christopher Meyer, *Washington D.C. Confidential* (Weidenfield and Nicolson, London, 2005); Transcript BBCAM, 12 Dec. 2005 (Greenstock); and 'Diplomacy: A lost art in an open world?', in Andrew Duff (ed.), *Making the Difference: Essays in honour of Shirley Williams* (Biteback, London, 2010), pp. 136–144.

24. Fiji became the 127th member of the UN in 1970. UN members admitted after 2000 included the former Republic of Yugoslavia; Tuvalu; Switzerland; East Timor; Montenegro; South Sudan.
25. United Nations Convention on the Law of the Sea (1982). Under the terms of Article 308(1), the Convention entered into force one year after the 60th ratification. A number of smaller states including Malta, Honduras, St Vincent and the Grenadines, Barbados and Guyana (60th) brought the convention into force in November 1994. See *Ocean Policy News*, vol. 1, no. 7, Nov. 1994.
26. Montreal Protocol on Substances that Deplete the Ozone Layer, 26 *International Legal Materials* 550 (1987).
27. See Tozun Bahcheli, Barry Bartmann and Jerry Srebrnik, *De Facto States: The quest for sovereignty* (Routledge, London, 2004). This largely deals with why such entities seek separate status rather than their external relations (recognition, trade, policies, links with outside states).
28. See Barbara, J. Morehouse and Doris Westl-Kochi, *Challenged Borderlands* (Ashgate, Aldershot, 2004), pp. 193–213; Nina Caspersen, *Unrecognised States* (Polity, Cambridge, 2012), pp. 7–11, and [ch. 3](#).
29. See Report of the UN Secretary-General, 'In larger freedom: Toward development, security and human rights for all', A.59/2005, 21 March 2005, particularly paras 160–4, pp. 40–1.

Chapter 2

Foreign policy organisation

Introduction

In this chapter, the initial sections examine the role of foreign ministries and representation. This is followed by issues covering the management of key sectors such as trade and foreign ministry reorganisation. The final section discusses a number of aspects of abnormal relations and representation.

Central organisation of foreign policy

In general, the differences that exist in the central arrangements for conducting foreign policy in various states have been influenced by the expansion in the content of foreign policy, the loosening of central control and the increasingly technical nature of much of external policy. In advanced industrial states especially, the development of an increasingly complex foreign policy agenda – including such varied issues as energy, resources, telecommunications, transfrontier land pollution – as well as the more conventional or traditional political issues, has had several implications for central foreign-policy organisation.

The extension of the agenda finds its expression in the international role of ministries that have traditionally been considered as essentially ‘domestic’. In other words, external policy is no longer necessarily the preserve of the ministry of foreign affairs (MFA). The increasing complexity of foreign policy, too, has been accompanied, especially in larger states, not only by a proliferation of ministries but also by tendency for fragmentation of responsibility. Ministries or agencies acquire foreign policy interests, stakes and perspectives which are promoted and defended.

The tendency for fragmentation or independent action, especially in advanced industrial states, necessarily places constraints on the central political control of foreign policy.

Functions of foreign ministries

The main functions of foreign ministries are defined as: ceremonial, managerial, information and communication, international negotiation, duty of protection and contribution to international order. The balance of emphasis on each of these will vary between countries. In terms of carrying out most of these functions, foreign ministries have been particularly affected by the vast amount of information now available from a variety of sources about issues they would have reported on or other developments in international relations. The increasing range of departments now involved in conducting external relations means that the role of foreign ministries is not necessarily captured by the concept of 'gatekeeper'. The plurality of ministries means that in many instances the role of the foreign ministry will vary by issue and event. That said, it should be added that there are instances in which foreign ministries seek to retain the lead role across external sectors, for example Brazil, France, Canada, Australia. The position of embassies is somewhat different, in that whilst some functions may be contested (e.g. information and analysis) others – particularly substantive representation and management functions relating to explanation and promotion of interests - are of heightened importance.

Development of foreign ministries

The changed communications environment is one of the main factors influencing the organisational and functional development of foreign ministries. Changes in communication technology have affected several aspects of decision making. Speed of communication between the overseas post and centre has significantly altered, as has the 'time' relationship between the decisionmaker and event. The visual dimension of an event – drought, demonstration, the construction progress of a development project, armed clashes, military engagements – can be graphically captured both formally and informally by a range of actors. The net effect is to raise the volume of traffic and alter decision-making procedures. In relatively routine decision making, desk offices may receive up to several hundred emails daily, apart from other information sources such as news feeds, think tank reports via apps and social media communications. Diplomatic communications have become both informal and formal between posts and foreign ministries.

Selection and management of information has become an additional skill requirement. Clearing decisions is now much quicker and less cumbersome in some foreign ministries. The greater informality and ease of communication has been used by foreign ministries to outline views on issues via blogs and social media, especially before or after meetings,

giving them an additional arena, and perhaps importance. Changes in communications technology have also affected some aspects of negotiation as well as pre-phases and meetings of the G-20 with use of intranet limited user communications. The use of intranet systems by foreign ministry sherpas has varied from summit to summit. Indeed the use and impact of the technology changes outlined have not necessarily displaced traditional methods such as telephone contact. For example some telephone contact between the Russians and Chinese is formally logged on the Russian Federation website. Modern forms of so-called 'Hotlines' have now been arranged bilaterally by a number of countries, although in the case of India and the People's Republic of China (PRC), political and security factors held up installation.¹

Websites: foreign ministries, embassies and delegations

The development of websites by foreign ministries, embassies and delegations to international organisations is now standard practice. For foreign ministries, in particular, it is part of their renaissance as focal points for organising and projecting national presence. The foreign ministry websites serve to explain and record national foreign policy and rebut unacceptable actions or claims by other states. The construction of sites with differing emphases – such as visits, key events, or foreign policy statements – helps to convey the general political image and ambience of a state. Some aspects of site construction by delegations to international institutions remain embryonic. For example it is not clear what audience or value is reached or gained by video clips or YouTube statements by representatives in non-interview formats. Similarly, a non-operational foreign ministry or international organisation (or other) website closed for 'service', redesign or containing seriously out-of-date information significantly harms image, and, can undo or counteract other media activity.

Wikileaks: implications for foreign ministries and embassies

The leaked US cable traffic which appeared in the autumn of 2010, following earlier release of redacted material – the so-called Wikileaks affair – caused considerable controversy, and augmented the diplomatic security threats to states and other organisations.

The controversy surrounding the case in part arises from the virtually unprecedented scale of the leakage. The leaking of diplomatic telegrams and other documents into the public domain in their original format is relatively rare in diplomatic practice. An historical example would be

the leaking of confidential British diplomatic documents by Francesco Constantini, which appeared on the front page of *Giornale d'Italia* in 1936.² It is, on the other hand, commonplace for various forms of briefings and assessment, along with partial sight of papers, to be given to the press and other media as part of the dissemination of government views into the public domain, or to attack another state or group of states.

The current Wikileaks are of interest to practitioners and diplomatic theorists in that they offer a snapshot of parts of a foreign policy and its associated diplomacy. The cables reflect many of the standard tasks of diplomacy: observations on receiving country policies, personalities; assessments; setting out views; exploring the views of others, and third-party reporting on the activities of *other* states' diplomacy. The latter has been perceived as sensitive by some 'reported on' states. It is the scale of the leakage, and, the precedent set, which has caused probably the greatest difficulties. In the short term, the Wikileaks affair led to: counter-cyber measures to contain the attack; investigation; changes in encryption methods and procedures; and damage limitation diplomatic visits. The issue of the extradition of Julian Assange complicated UK–Latin America relations. A further impact has been transnational on the mobilisation of anti-authoritarian regime opinion and movements in the Middle East, e.g. Morocco, Tunisia, Egypt and elsewhere, especially in the initial phase of the 'Arab Spring'.

In looking at the impact on the conduct of diplomatic practice more generally, four aspects can be distinguished. First, issues are raised concerning the impact of leaks on future diplomatic trust. Trust in terms of the accuracy of what is being said and how information is handled – is an essential ingredient in diplomatic craft. Leaks impact on core diplomatic functions in that contacts and exchange may be questioned or undermined.

Second, leaks impact particularly on bilateral relations (e.g. USA–Afghanistan, USA–Saudi-Arabia), calling into question relations on short-term issues and more fundamental long-term cooperation. Effects may be short-term but the role of 'diplomatic memory' as a variable in diplomacy and foreign policy making should not be discounted.

Third, the leaked cables illustrate the problems embassies have in undertaking reporting functions in competition with print and online media. Common examples are reporting of political party conferences or conventions and leadership campaigns which differ little if at all from mainstream press analysis. Separately, doubt must be raised over whether such diplomatic reporting is worthwhile or not.

Fourth, the leaked cables have raised issues about the function of diplomats and the relationship between diplomatic and intelligence work. It is reasonable to inquire whether it is appropriate for diplomatic activity to extend to the detailed data targeting of UN personnel, including the UN Secretary-General. The questions raised in this context relate to the inviolability of premises and documents, the provisions of the UN Charter and Headquarters Agreement.

The foreign ministry

Foreign ministries as part of the overall machinery for conducting external policy, along with diplomatic posts overseas, differ in structure and importance.

At first sight, foreign ministries tend to have certain common organisational characteristics insofar as they generally contain a mix of functional, geographic, protocol, legal and administrative divisions. Apart from the question of size, which tends to have a telescopic effect, with divisions or departments covering greater geographic areas the smaller the actor, differences in organisational structure occur partly because of particular foreign policy interests, e.g. the Cyprus foreign ministry devotes a separate department to the Cyprus problem. Functional rather than geographic departments may be set up within foreign ministries for several reasons, including: the importance attached to a particular international grouping such as the EU, African Union (AU), Asia Pacific; the importance of bilateral trade relations; special emphasis placed on cultural diplomacy, e.g. in Japan, Austria, Canada, France, Mexico, United States; or as a response to policy issues, such as international energy questions that span several departments. Among the functional departments, for example in the US Department of State, are those dealing with energy, human rights, international narcotics matters, economic and business affairs, oceans and international environmental and scientific affairs. Such departments enable a foreign ministry to monitor and follow the work of other agencies, and if necessary to take the lead.³ The main potential benefits are the possibility of greater coordination and a broader perspective. However, the staffing of the more specialist functional departments (e.g. civil aviation) generally poses difficulties in view of the traditional training and preferences of diplomatic service personnel. To some extent, the problem has been lessened by the secondment of officials from the relevant 'domestic' ministries to functional departments in the foreign ministry.

Reorganisation of foreign ministries

Foreign ministries have undergone major reorganisation over the past decade. Reorganisations have addressed a variety of issues such as: improving central coordination; the balance between geographic and functional departments; achieving a more proactive structure; the best way to handle economic matters, including trade and various questions to do with reviving presence and effectiveness. Finding the right mix between departments within foreign ministries, and improving coordination between agencies, has proved consistently difficult, with different models moving in and out of fashion. The reorganisation of the Finnish foreign ministry,

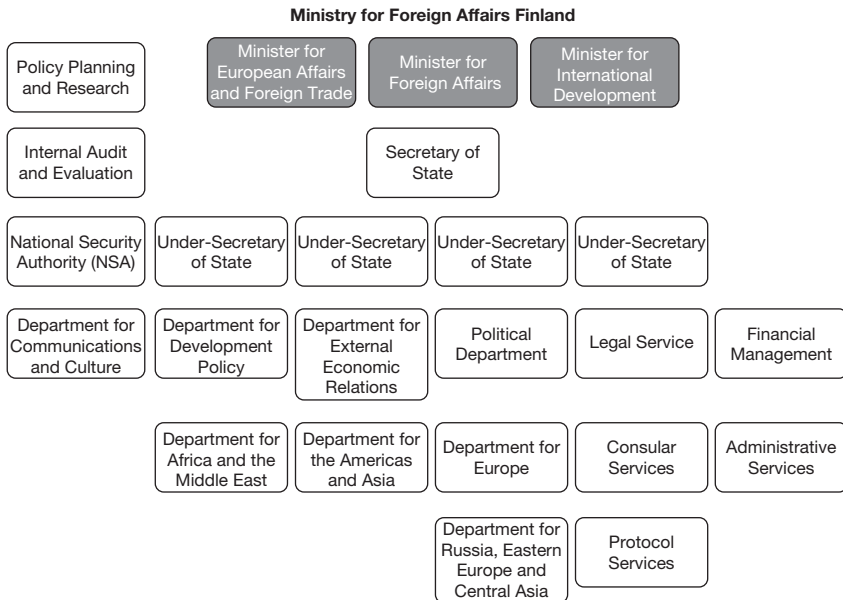


Figure 2.1 Finland Foreign Ministry

Source: Ministry for Foreign Affairs Finland

for example, took several years to complete (see [Figure 2.1](#)). As part of the review of overall structures, the Italian foreign ministry, moved over to a Directorates system in 2010, similar to that of the United Kingdom and other European powers (see [Figure 2.2](#)). The United Kingdom has also improved coordination at central government level through moving over to a national security council system. Efforts to improve the coordination and direction of foreign policy in developing countries have in the main involved building up agencies under the direct control of or attached institutionally to the head of government or state.

Related to issues of coordination are concerns over the need for a more proactive foreign policy and diplomacy which is better tuned to emerging issues. As part of the Japanese reorganisation noted earlier (2004–10), in response to one of the main concerns in the review for a more proactive foreign policy, the intelligence capabilities of the foreign ministry were reformed, with the creation of the Intelligence and Analysis Service.

A third important theme is that of increasing visibility and presence. As one of several measures, the interest in the United Kingdom – as part of the major review of its Foreign and Commonwealth Office (FCO) and Overseas Representation in 2010–11 – decided to reverse previous embassy/consulate closure policy and open up new representative offices as well as undertake greater visit diplomacy. The example of Mauritius offers an interesting contrast. In its review of external policy, Mauritius identified as a key objective the further projection of the image of

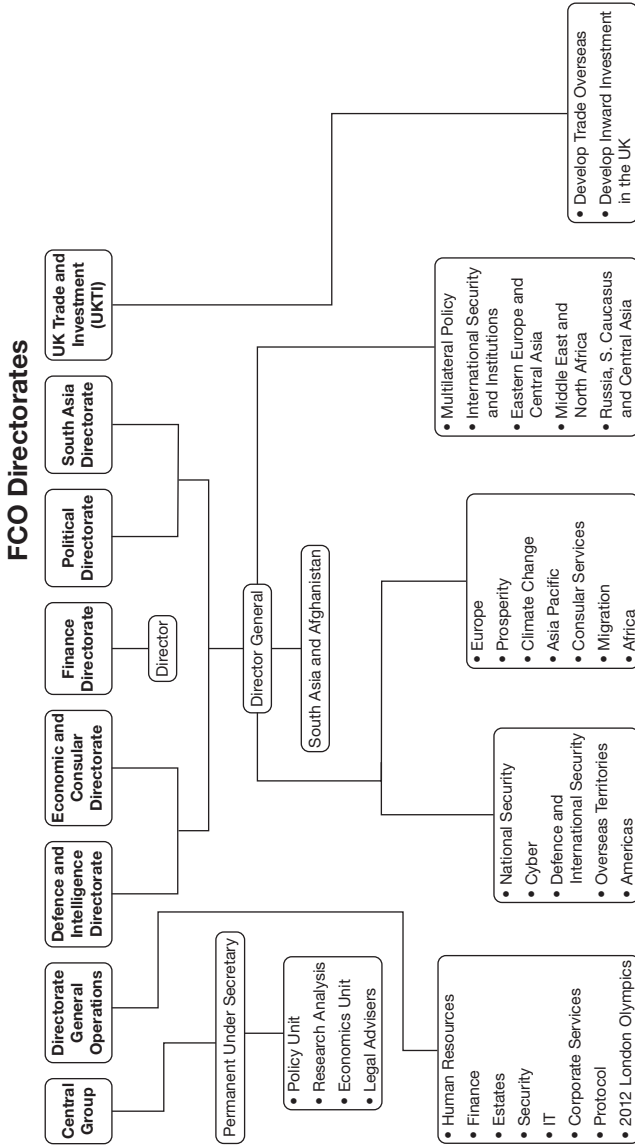


Figure 2.2 UK Foreign and Commonwealth Office

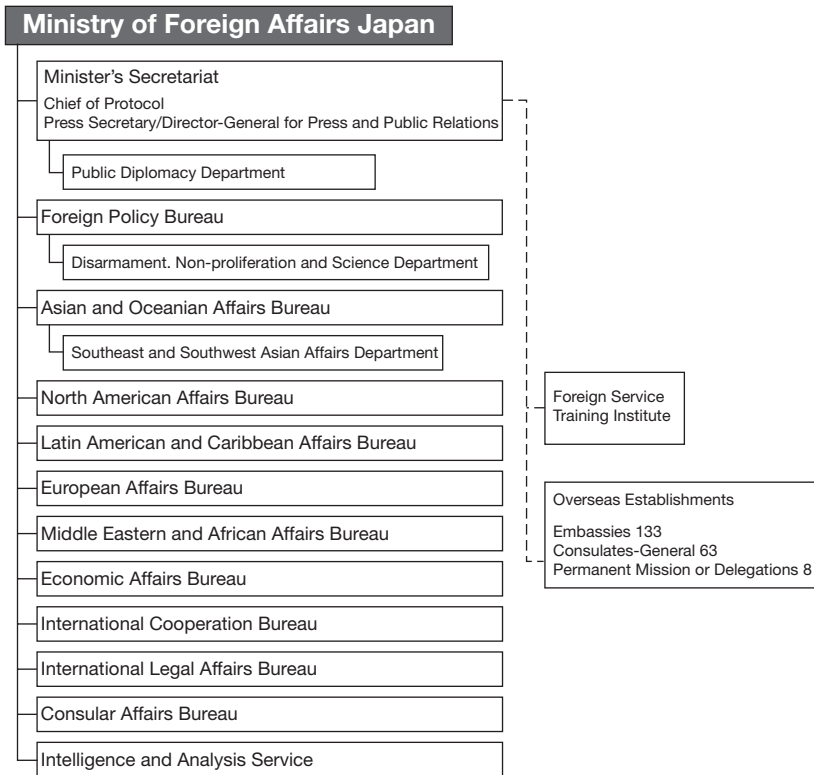


Figure 2.3 Ministry of Foreign Affairs Japan

Source: The Ministry for Foreign Affairs of Japan

Mauritius at international level, including increasing the representation of Mauritius and Mauritian nationals in international bodies.⁵ In an unusual move, the Japanese foreign ministry, as part of the reorganisation noted above, aimed to further understanding and trust in Japan through its pop culture diplomacy, using MANGA and Anime in addition to culture and art as its primary tools for cultural diplomacy.⁶

International economic policy: trade and finance

The arrangements for managing trade at a central and representational level have often fitted uneasily into the running of other parts of foreign policy. The uneasy relationship partly derives from problems such as duplication and poor liaison, stemming from dual trade and diplomatic representation overseas and from rivalry about who should be responsible for directing and coordinating overseas trade policy. The primacy of the trade or commerce ministry is justified in terms of expertise,

continuity and administrative links with export-financing agencies. In contrast, the arguments in favour of overall responsibility resting with the foreign ministry rely on the capacity of the foreign ministry to provide an overview, coordinate initiatives, and its traditional skills of political analysis and persuasion. In practice, while most states retain separate foreign and trade ministries, arrangements for overseas representation vary. Some states have, however, attempted to unify trade promotion in the foreign ministry. In the case of Canada, the External Affairs Ministry was reorganised in 1982, and the department became directly responsible for the promotion of Canadian trade overseas, as the primary federal government contact with foreign governments and international organisations that influence trade.⁷

The use of a single ministry as the main authority for foreign policy and trade is now used by the following countries.

Table 2.1 Single trade/foreign ministry

- Australia
- New Zealand
- Canada
- Ecuador
- Ireland
- Jamaica
- Mauritius
- Solomon Islands
- Brunei
- Korea (Republic of)
- Brazil
- Dominica

A number of approaches have been used to address the problem of responsibility for, and coordination of, trade policy. In the 2010–11 reorganisation in the United Kingdom, the reorientation focused on improving the economic aspects of the FCO's role by strengthening the Economic Service, and departmental reorganisation including a New Economies Unit. In contrast, emerging economies have opted for strong economic ministries combined with decentralisation. It is notable that developing countries like Nigeria, Guyana and Uganda have tended to split up ministries in sub-areas, reflecting their economic priorities, such as agriculture, power, forestry, tourism, water and land. Each of these routes has advantages and disadvantages. The UK approach has the benefit of allocating the lead role to the Trade Department, but leaves commercial and trade promotion uneasily located between individual FCO and Trade line departments, perhaps contributing to separation of political and economic (trade) aspects of foreign policy. The main disadvantages of decentralised solutions are that they tend to personalise power around one ministry or agency and reduce any input from the foreign ministry, which tends to become relatively weak. Sub-area ministry

solutions (e.g. mining) not only have the advantage of promoting expertise, but also have the disadvantage of excessively fragmenting the government structure, reducing planning capacity.

Representation

In general, states establish and maintain overseas representation for four main reasons. First, representation is either part of the process of achieving statehood and identity in international relations or, for established states, essential to being considered a power in the international system. Second, embassies are an important but by no means exclusive means of communication, and a source of contact with the host and other states and entities, enabling a state to participate in international discourse. Third, embassies are a means of dealing with a variety of particular problems arising with respect to bilateral relations, nations and multilateral fora. Fourth, embassies are the agencies for promoting core interests and bilateral coordinations of a country.

Most states have a core group of countries within their overall diplomatic representation. Those states within that group will be included for historical, alliance, ideological and economic reasons. For most states the membership of the core group is likely to remain relatively stable unless the state is undergoing major reorientation of its foreign policy or is in dispute. Adjustments in the ranking of countries in the core group, nevertheless, take place through modifications to staffing, budgetary allocation and tasks of those posts, in the light of such factors as changes in the volume of political work, trade opportunities, defence relations and tourism.

Beyond the core group, the spread of representation is influenced by such principles as balance, reciprocity and universality, and, above all, the availability of finance. The principle of universality is generally of importance for: major powers; those states with active foreign policies seeking 'reach', for example Cuba, Iran, Qatar, Saudi Arabia, United Arab Emirates (UAE) and Norway; or states with specialist roles, for example petroleum, which have high inbound diplomatic representation. High external representation is also popular with small powers conscious of their new-found status (e.g. Azerbaijan), or, as a safeguard against their strategic vulnerability, for example Georgia. Pressures to reciprocate diplomatic representation in theory reduce freedom of action. In practice, nevertheless, states often do not comply with the principle on political and above all economic grounds.

Apart from the general principles noted above, several other factors can come into play. The opening of further embassies may be part of a policy of prestige. In this sense, diplomatic real estate is seen as part of the accoutrements of power. Conflict between two or more states may lead to the extension of representation. Economic factors are among

the more important influences leading to increases or reductions in representation. Diplomatic relations may be opened up with another state because it has become important in trade, investment or financial terms. For example the opening of diplomatic relations between Malaysia and Kuwait reflected, apart from religious factors, the growing oil relationship between the two countries, as well as the Malaysian aim of attracting inward Arab financial investment.⁸ Other reasons, such as the need for economic intelligence, often influence the decision to establish an embassy. For example Brazil maintains a significant representation in Kenya because it is an important coffee producer and target for Brazilian foreign direct investment (FDI) projects concerning ethanol.⁹

Changes in the level of representation, above all, occur as part of the reorientation of foreign policy. The reasons for major reorientation may include economic factors such as a recognition of economic decline. Changes in representation are seen as important for altering export performances. As part of the 2011 reorganisation, for example, the UK opened consulates general in Canada and Brazil. It is important to note, too, that whilst economic factors are generally the lead drivers, value and normative factors can come into play. For example the UK reopened its embassy in Côte d'Ivoire as a contribution to stabilisation following disputed elections and in support of the UN effort there.

A final element of reorganisation concerns the increased role of foreign ministries (and embassies) vis-à-vis diaspora. Whilst this aspect of diplomacy has been important traditionally for large diaspora-linked states (e.g. the United States), a wider range of foreign ministries are now engaged in diaspora activity (such as Greece and Mali). Canada, for example, held its first official meeting with representatives of the Haitian diaspora in 2004. Diaspora, nevertheless, remain an uncertain terrain.¹⁰

Other forms of representation

Embassies are not necessarily the sole means of handling the economic aspects of diplomacy. Apart from a separate trade commissioner service used by some states, consular arrangements are used to varying degrees by most states. For example the Netherlands provides a striking illustration of a small but active economic power, with very high consular coverage, reflecting the widespread range of its companies' and nationals' commercial, technical assistance and maritime operations.¹¹

Much depends on the scale of resources, perception of interests and role in international relations. These might be relatively limited or localised. Jamaica maintained, for example, fourteen embassies and high commissions, four missions to international organisations and six consulates general. These were supported by some 19 honorary consulates in Europe, Latin America and the USA.¹² Jamaica had no significant

diplomatic presence in the Far East except the PRC, South-East Asia, much of Africa or the Middle East. The main focus of representation is regional (CARICOM), USA, UK, EU and UN.

The growing international involvement of internal ministries has resulted in the proliferation of representative offices overseas. These include development corporations, investment agencies, trade and tourist offices and student liaison bureaux. In Brazil's external trade APEX Brazil is a major player, together with the sugar and ethanol trade associations. As part of its reorganisation of trade representation, Kenya, for example, decided to use foreign nationals for commercial representation work at its overseas missions.¹³

To these must be added state and parastatal agencies such as banks, airlines and large corporations. In modern diplomacy, the blue neon sign has come to symbolise one aspect of the changing form of representation: the regional office of a major corporation is likely to be as important as or sometimes more important than its own or foreign diplomatic counterpart.

The growth of representative offices overseas and specialists from home departments in diplomatic posts has contributed to increased bureaucratic rivalry. One aspect of this is the development of multiple information channels for receiving, gathering and evaluating information. In Japan, for example, the information-gathering monopoly of the foreign ministry is rivalled by the Ministry of International Trade and Industry (MITI), using the overseas branches of the Japan External Trade Organisation (JETRO) and links with corporations; the Defence Agency through its attachés; and the Ministry of Finance through its personnel attached to Japanese embassies. Another noticeable effect is on the traditional embassy functions of reporting and assessments, which can become downgraded through overloading from routine protocol associated with inward visits by, for example, representatives of domestic ministries or parliamentarians and other political leaders. Third, and most important, are the enhanced problems of coordination and control brought about by the splintering of policy.

Representation and public relations

Information is one of several specialist posts that have been added to many embassies in recent years.¹⁴ Putting across the correct image of a country, its people and lifestyle, gathering the support of foreign media and public are major preoccupations for most states. In this way, modern diplomacy has changed to include information work, although not in a crude propaganda sense or the high-tempo marketing style of 'Expo'. The concern is with creating confidence in a country and its products; gaining a paragraph in a major newspaper; correcting a press story. In other words, information

work is short-term and incremental, facilitated by foreign ministry and agency websites, and is more akin to diplomatic journalism. Propaganda-style information work, however, continues to exist, especially in the media output of New Economic Powers, as part of the battle for ideas.

The importance of one other aspect of this type of diplomacy can be seen in how states have frequently augmented their official diplomatic channel by hiring the services of public relations agencies as part of public diplomacy initiatives. During the Anglo-Icelandic 'Cod War', Iceland used a London-based public relations firm, Whittaker Hunt, to put across its case.¹⁵ Lobbying by legal and other professional agencies is also a significant aspect of the public relations of states. The area covered by lobbying is wide, including such efforts as the attempts by the Bahamas to counteract their drug-trafficking image,¹⁶ or EU efforts to counter negative information in African media on the benefit of Economic Partnership Agreements (EPAs). Using PR for defensive purposes was illustrated following, for example, the 9/11 attack in 2001, when the Saudi Ambassador to the United States, Prince Bandar, hired the US public relations firm Burson-Marsteller to place advertisements in newspapers in the USA condemning the attacks, and appeared in TV networks to distance Saudi Arabia from the attacks.¹⁷

Formal and informal developments in information work have taken the conduct of foreign policy – particularly for some European states, the United States and others – outside its traditional diplomatic framework, by introducing new participants, and widening, in certain instances, the arena of debate. Social media may bring for a short period greater public attention to an issue as in the case of the plight of child soldiers in the Congo and activities of the Lord's Resistance Army, in 'Kony 2012'.¹⁸

The 'Disguised' state may also operate through 'neutral' or advocacy NGOs (e.g. the US World Agricultural Forum) or formal economic organisations linked to the state, such as the Russian and Chinese Marine Geological Associations, involved in deep seabed mining. Use of domestic agencies provides some distance from the centre, e.g. action on Iran sanction breaches against the Standard Chartered Bank included that by the New York state Department of Financial Services (DFS).¹⁹

Abnormal relations and non-recognition

The transformation of disputes and conflicts into higher levels of tension – leading eventually to breaks in diplomatic relations or other states of abnormal relations – is generally signalled by one or more factors relating to, for example, negotiation or border provisions. These include: abrogation of treaties or agreements dealing with security or non-intervention;²⁰ the reintroduction of fundamental demands at a critical stage of negotiation;²¹ the cancellation and non-continuation of key talks;²² economic sanctions; and border closure.²³

The transition to armed conflict has several important implications for the conduct of diplomacy. The Vienna Convention on Diplomatic Relations treats this question broadly in three areas: the implications for diplomatic agents, assets and protection of interests.²⁴ The first two of these will only be briefly noted here. Under Article 44 of the Vienna Convention, the receiving state is under an obligation to grant those with privileges and immunities the right to leave at the earliest possible moment.²⁵ Article 45 deals *inter alia* with assets, which in the event of a break or recall (either permanent or temporary) the receiving state has a duty to protect, including premises of the mission, its property and archives (Article 45(a)). The custody of these and the protection of interests, including materials, may be undertaken by a third state with the consent of the receiving state (Article 45(b) and (c)).²⁶

The conduct of relations under conditions of armed conflict or other serious conflict becomes extremely difficult in the absence of diplomatic relations. Three kinds of difficulties can be distinguished: lines of contact; the official competence to negotiate; and the scope of negotiations. Lines of contact may be opened directly, through a friendly power either in a third state or at the UN, or other intermediaries. It is not always the case that lines of contact can be easily established. In the Russo–Finnish war, for example, Finland, having gone through the suite of possibilities, used in an act of unconventional diplomacy an informal envoy (Hella Wuolijoki, a left-wing Finnish playwright) to establish contact with the Soviet ambassador to Sweden.²⁷ In cases where there is a lengthy absence of formal diplomatic relations, efforts to establish lines of communication can often be fragile and inconclusive.²⁸

At a formal level, more certainty may be achieved through the use of a third party as a protecting power,²⁹ as provided for under the Law of Armed Conflict and the Vienna Convention.³⁰ Third parties are quite widely used as protecting powers, as in the 1982 Falklands conflict in which the UK and Argentina were represented through interest sections respectively by Switzerland and Brazil.³¹ Agreements for the protection of interests in foreign states cover a range of matters extending to administrative, humanitarian and commercial questions, and the protection of nationals. The protecting power can also be involved in the process of normalising relations to varying degrees, ranging from the onward transmission of notes through to the ‘grey’ area of informal discussions and draft proposals. The initiation of normalisation and key stages is generally signalled through personal or special envoys.

It should be noted that the resumption of diplomatic relations may also be achieved through other means, including direct contact, friendly powers and intermediaries. The ending of diplomatic relations also does not mean necessarily the termination of consular relations. Consular officials have been used in those instances in which either there are no diplomatic relations, or diplomatic relations have been broken, for diplomatic and political functions.³² In these cases involving non-recognition, de-recognition or

exiled entities, several different mechanisms have evolved for transacting official and other business. These include the honorary representative,³³ liaison office, representative office and trade mission. The use of a permanent trade mission is probably the most common of these devices, especially in instances of long-standing formal absence of relations. In some cases, the style 'representative office' is preferred to liaison office, presumably since it more closely connotes recognition and statehood. For example the Turkish Federated State of Northern Cyprus maintains representative offices in Belgium, the UK, the USA and the UN. Indeed, US proposals to Vietnam following the Paris Peace Accords of 1973 for a liaison office, along the lines of the USA–PRC) liaison office prior to recognition, were rejected by Vietnam.³⁴ The US offer was subsequently withdrawn until 1991, when, as a result of progress on the Cambodian question, business pressure and a desire to resolve the outstanding US missing prisoners of war (POW)/missing in action (MIA) issue – the policy was revised. The USA subsequently opened POW/MIA liaison offices in Vietnam, Cambodia and Laos, staffed by non-permanent Defense Department personnel, with no diplomatic or political responsibility. The Hanoi office was upgraded in 1993 by diplomatic personnel, prior to full diplomatic relations.

Taiwan's relations with the PRC and the USA are interesting for the contrasting light they throw on issues of the pace of informality, and on the other hand the need to conduct international trade and implement international conventions in a stable, legal framework. Following recognition of the PRC, the USA established through the Taiwan Relations Act (1979)³⁵ a framework to enable trade and multilateral shipping and other technical agreements to be implemented through the American Institute in Taiwan (AIT) and Coordination Council for North American Affairs (CCNAA).³⁶

Summary

The differing arrangements states have for managing foreign policy have been influenced particularly by the growth in the nature and volume of international business. As more departments and agencies have become increasingly involved, so this has created problems of national coordination and institutional rivalry over the responsibility for (or direction of) the non-traditional areas of policy that are now considered part of foreign policy.

The contested and unstable international system post-2000 has also meant that the political functions of foreign ministries – assessments, options, advice and warning – have assumed greater significance. Rapid advances in international communications alter pace and methods of contact. For foreign ministries, adding value to function is a critical issue. However, for those with a stake in the international system, having a foreign policy is something that is increasingly expensive, often intangible, but an essential part of continued statehood and international presence.

Notes

1. [www.indiaexpress.com/news/delhis-hotline-to...../o 16 Oct 2011] and www.indiaexpress.com/.../indiachina....hotline-in.../4786531, 28 July 2012-08-19.
2. See C. Andrew, *The Mitrookin Archive* (Basic Books, Allen Lane, 1999) pp. 46–7; 67–9.
3. By 1997, there were 70 departments in the Foreign and Commonwealth Office (FCO). Of these 48 were now functional (e.g. energy, European integration, financial relations, trade relations and exports, maritime aviation and environment) and 22 were geographical. The other departments were specialist departments, such as the overseas labour adviser, inspectorate and legal advisers.
4. See speech Jeremy Brown, 28 Nov. 2011; and HC665, 12 May, 2011.
5. [www.gov.mu/portal/site/mfasite].
6. See [www.mofa.gov.jp/policy/culture/pop/index.html].
7. *Annual Report 1983–4* (Department of External Affairs, Ottawa, 1984) p. 22.
8. A Malaysian diplomatic mission was established in Kuwait on 25 May 1974. See *Foreign Affairs, Malaysia*, vol. 7, no. 2, June 1974.
9. Wayne A. Selcher, *Brazil's Multilateral Relations* (Westview Press, Boulder, Colo., 1978) p. 221.
10. On the Montreal Meeting 2004, see Final Report on Haiti Montreal Conference 10–11 December, 2004 (FOCAL, 2004). The Canadian government in review of its external policy cut back on a number of Canadian think-tanks, including FOCAL (Canadian Foundation for the Americas), which had been funded prior to that by the Canadian International Development Agency (CIDA). FOCAL ceased operations in June 2011. See [www.focal.ca/....485-commentary-where-is-the-conservative-vision-to-advance-and-protect-Canadian-interests-abroad].
11. *Vertegenwoordigingen van het Koninkrijk der Nederlanden in het buitenland* (Staatsuitgeverij–Gravenhage, Sept. 1984), pp. 97–9.
12. Correspondence Jamaican High Commissioner, London, March 1995.
13. See [www.apexbrazil.com.br/]. On Kenyan commercial reorganization, see [www.trademarks.org/.../foreigners-drive-Kenya's-new-trade-centered-diplomacy].
14. Lord Gore Booth (ed.), *Satow's Guide to Diplomatic Practice* (Longman, London, 1979), Appendix VI, p. 487. Of the 2,000 or so officials on the diplomatic lists of 130 countries in London in the mid-1970s, 380 were non-career diplomats working in specialist fields such as commercial, economic and financial, press and cultural relations. Diplomatic service officers also occupied positions in these areas.
15. *Sunday Times*, 20 Aug. 1972. Iceland established a secretary for information at the outset of the fisheries dispute with the UK in 1971. See R.P. Barston and Hjalmar W. Hannesson, 'The Anglo-Icelandic fisheries dispute', *International Relations* (David Davies Memorial Institute, London) vol. iv, no. 6, Nov. 1974, p. 575.
16. *Financial Times*, 25 June 1985.
17. See Craig Unger, *House of Bush House of Saud* (Gibson Square Books, London, 2004), pp. 4–5.
18. See www.Kony2012.com for details of the campaign group Invisible Children.
19. See LOS/PC N/30. 24 Oct. 1983, and ch. 16, pp. 329–30; and ISBA/17/c/16 (China); and ISBA/17/c/12 (Russia) for consortia mining applications; *Financial Times* 9 August 2012 on Iran sanctions case.
20. See Arie E. David, *The Strategy of Treaty Termination* (Yale University Press, London, 1975).

21. For example, in the Nov. 1941 US–Japanese negotiations prior to the Pearl Harbor attack, Ambassador Nomura presented so-called Proposal B, involving the stationing of a significant number of Japanese troops in Asia, on 20 Nov. 1941, knowing at that stage that the USA would find the proposals unacceptable. At that point the State Department, having broken Japanese ciphers, was aware that Japan had decided to terminate the negotiations on 29 Nov. 1941. See Paul Hyer, ‘Hu Shih, the diplomacy of gentle persuasion’, in Richard Dean Burns and Edward M. Bennett, *Diplomats in Crisis* (ABC-Clio, Santa Barbara, Calif., 1974), pp. 164–5 on Ambassador Nomura’s role in the 20–4 Nov. 1941 negotiations.
22. Iraqi demands, for example, prior to the occupation of Kuwait in 1990 were set out in a letter of 16 July 1990 to the Arab League, including those related to the disputed Rumailan oil-field. Subsequently, only one meeting was held on 1 Aug. 1990 between an Iraqi delegation led by Izzat Ibrahim and the Kuwaiti prime minister, Prince Saad. See John Bulloch and Harvey Morris, *Saddam’s War* (Faber & Faber, London. 1991), p. 105.
23. Border closure is indicative of a serious deterioration in relations, rather than the next step to war or armed conflict. It is therefore generally combined with one of the other five measures outlined. For example following the breakdown of the Iraq–Kuwait talks on 1 Aug., Iraq, having moved troops to the Kuwait border, closed the land border between the two countries. The Iraqi invasion began 12 hours later. See Bulloch and Morris, *op. cit.*, pp. 105–6.
24. See *American Journal of International Law (AJIL)*, 1961, pp. 1062–82, Articles 44 and 45. The notion of armed conflict is implicit in Article 40, which deals with diplomatic agents in or passing through the territory of third states.
25. Under Article 44, the receiving state is to facilitate departure for those with diplomatic privileges and immunities without discrimination as to nationality, and, where necessary, provide transport.
26. The duties of third states vis-à-vis diplomatic agents, administrative staff and diplomatic bags, which are in or pass through their territory, are set out in Article 40(1)–(3) of the Vienna Convention. The duty to accord inviolability, administrative and other assistance is extended in Article 40(3) to situations of *force majeure*.
27. See Max Jakobson, *The Diplomacy of the Russo-Finnish War 1939–40* (Harvard University Press, Cambridge, Mass., 1961), p. 155.
28. See, for example, Harold H. Saunders, ‘The beginning of the end’, in Warren Christopher (ed.), *American Hostages in Iran* (Yale University Press, New Haven, Conn., 1985), p. 289.
29. See Vaughn Lowe, ‘Diplomatic war: protecting powers’, *International and Comparative Law Quarterly*, vol. 39, 1990, pp. 472–3.
30. Geneva Convention for the Amelioration of the Condition of Wounded and Sick Armed Forces in the Field 1949, 75 *United Nations Treaty Series (UNTS)* vol. 31, arts 8–10; Geneva Protocol I, Cmnd. 6927, Art. 5.
31. *Financial Times*, 3 April 1982; *ansard* (House of Commons) vol. 59, col. 235 (1984). Diplomatic relations between the UK and Argentina were resumed in July 1990. See *The Times*, 19 July 1990. Up until then, the interests sections had been limited to four staff, plus secretaries, on each side. See *The Times*, 19 Aug. 1989.
32. States other than the protecting powers may be used to promote the resumption of relations. In the UK–Argentina conflict over the Falklands, apart from

Switzerland, the USA brokered informal proposals on a settlement during 1987. See *The Times*, 3 April 1987 on both initiatives.

33. For example, following the Suez Crisis in 1956, Australia and the UK retained officials in a consular capacity in the Canadian Embassy in Cairo. See *Satow's Guide to Diplomatic Practice*, 5th edn (Longman, London, 1959), p. 213. See also the US–PRC and Congo Civil War examples. In the Congo conflict, the Belgian consul in Elisabethville was used for discussions with the sessionist president Moïse Tshombe. See Luke T. Lee, *Vienna Convention in Consular Relations* (A.W. Sijthoff, Leyden, 1966), p. 180.
34. See G.R. Berridge, *Talking to the Enemy* (Macmillan, London, 1993), pp. 56–7.
35. *Taiwan Relations Act* (1979), as Stat. 14, 17, 22 USC 3305(a), in *American Digest of International Law 1981–8* (Department of State, 1994) p. 1209.
36. The Act provides for the bilateral implementation of certain multilateral conventions, e.g. in a shipping field where both countries have strong mutual shipping interests, the Exchange of Letters, 17 Aug. 1982, Arlington, Va, provides for the application of the Safety of Life at Sea, Marine Pollution 73/74 (MARPOL) and Load Lines conventions.

Chapter 3

Diplomatic methods

In this chapter we are concerned with addressing a number of questions and issues related to diplomatic instruments. These include: What diplomatic instruments or tools are available and what are their purposes? Why are some instruments preferred to others? Why do shifts or alterations in methods occur? What advantages or disadvantages are associated with particular methods?

One of the central tasks of diplomacy is the management of relations using a variety of formal means – diplomatic correspondence, statements, visits, negotiation – through to a range of other informal means such as telephone contact, press, e-mail, social media and unofficial visits. Other informal means include exchanges of view and diplomacy at the margins of meetings such as the UN, economic meetings and summits, regional organisations or at special events such as regional or global sporting occasions or occasionally state funerals.¹ To these should be added covert or secret means, using a variety of official or unofficial representatives, agents or contacts. These instruments may be used for cooperative or coercive purposes (or indeed in combination as ‘carrot and stick’).

While diplomacy in terms of ends can be regarded in the main as being concerned with peaceful purposes, nevertheless it is important to recognise a grey area in state practice that borders on, supports or is directly linked to the use of military, coercive or clandestine behaviour. Within this grey area are activities that include: intelligence gathering; political, economic or other support for opposition groups via public diplomacy contacts and programmes; covert operations such as international sanctions evasion; illegal weapons acquisition; and support for insurgent or terrorist groups.²

Diplomatic methods

States potentially have a wide range of diplomatic methods which together constitute diplomatic craft. The methods are set out separately in this part of the chapter for analytical purposes, though in diplomatic practice

methods are often combined. The categories are outlined, followed by a discussion of the use of methods including: the respective advantages and disadvantages of bilateral as against multilateral diplomacy; visits; signalling initiatives; and coercive actions. The final section of the chapter explores some of the factors which contribute to ineffective methods and foreign policy failure.

Cooperative strategy

Cooperative methods are central to much of diplomatic activity. The main methods involve: exchange of views; clarification of drafting; intention on policy; seeking support for an initiative and building bilateral relations or coalitions and negotiation. The various forms of negotiations are discussed in [Chapter 4](#). Exchanges of view and clarification of positions are probably the most difficult techniques in diplomatic craft. Moreover, the results may not be immediately obvious and may take some considerable time before a position is known. Considerable patience is required, coupled with effective preparation, to avoid diplomatic formalism and stereotypical exchanges. Cooperative methods also often include, especially in visits diplomacy, ceremonial or symbolic events to reinforce the visit. Symbolic visits to memorials, commemorative events, public grounds or opening ceremonies serve to signal the importance or significance of the event or bilateral relationship. The symbolism is strengthened by multimedia and social coverage. Shifting from cooperative methods to indicate dissatisfaction is achieved through informal briefing, formal statements, tabling draft amendments at an international or regional organisation, or, in extreme cases, withdrawal of funding, or veto.

Communications strategies

Communications methods can be broken down into four areas: image/presence; getting the message across; attack; counter-public diplomacy. The idea of establishing and projecting diplomatic presence has become a much more important feature of contemporary diplomacy. In part the reason for this is the growth in associated media technologies, which offer easy scope for information dissemination. From a systemic perspective, further reasons suggested are continued turbulence and uncertainty in the international system, which has fed back into national systems, encouraging attention to issues such as diplomatic effectiveness, national identity and 'reach'.

Media strategies directed at improving 'presence' objectives generally address key component parts of presence: general external perceptions; acquisition of track record; perceived effectiveness; perceived value. An aggressive media strategy based on acquiring media outlets, stations or dominating search engine or by being the default criteria may create

greater presence but may be counteracted or undermined by other elements, if not given enough attention. Other common causes of ineffective media methods are dissonance between an organisation's public affairs department explanations and the MFA's (or other department's) operational reality. Indicators of dissonance include undue use of formulae or formats for presenting information, for example 'Who we are', 'What we are about', 'Frequently Asked Questions (FAQs)' on MFA or international institution websites.

The second media area – getting the message across – has traditionally relied on briefing media leaks, press conferences and spokespersons. The latter are often used for on-the-record statements or re-stating formal positions in territorial disputes. Invariably spokespersons appear wooden and bland, or stereotypical when in attack mode. These traditional methods have been augmented by greater use of traditional media such as: special comment articles in leading quality press; foreign policy advertisements in foreign policy and international relations journals; and social media. The value of these augmented methods is, at best, questionable.

Counter-public diplomacy is aimed at blunting or weakening the impact of an ally or opponent's public diplomacy by using methods such as organising competing events; co-sponsoring or funding third-party NGOs to disseminate contrary views. Other counter-public diplomacy includes methods directed at shifting the order or timing of topics on a meeting agenda (human security versus poverty alleviation), or altering the specific terms of reference (e.g. 'food security' to 'food security and nutrition').

The effectiveness of these depends on three factors: the integration of the four component parts; balance and coordination between the differing methods; and not allowing one to run ahead or become out of line with the others.

Operational environment and the media

This section turns the focus round and sets out several common problems faced by MFAs and international organisations, generated by the media. To understand the reverse aspect it will be useful to review some essential features of the media environment and how news stories are constructed.³ As with other organisations, the media have been affected by pace and the rapid ways in which some events change. In preparing copy, journalists operate ultimately within editorial control and other controls depending on the political system. Journalists, when they have a particularly important story, are concerned to keep the 'newsness' of it intact, and its lead nature. The construction of news items relies on formal and informal rules with respect to sources including anonymity and supporting or contrary evidence and views. The growth of online news has affected several aspects of the process outlined above, particularly pace, and the need to turn out short mobile-media computer copy, rapidly. The competitive international pressures to put out short items

are considerable, even with incomplete information and limited sources. For example in a Polish climate change news item, the story relied on a leaked Polish letter warning fellow EU members of the risks of jeopardising euro economic recovery by moving to 25 per cent cuts in emissions from 1990 levels by 2020. However, only one source – an NGO, the World Wildlife Fund – was used to comment on Polish views, and no other EU governmental or Commission views were given.⁴

A common problem is contrasting levels of information on events such as clear information about fighting in a civil war. Another such issue is the absence of information concerning the position of a state on a set of negotiations or other foreign policy intentions, in contrast to a variety of information flooded across web search engines by foreign governments and other media outlets on other events in that country or organisation. Flooding commentary through websites i.e. ‘mirror’ information strategies, is a key technique in counter diplomacy, as part of the battle of ideas.

The media environment, in fact, can frequently be unpredictable and hostile. For example UN peace-keeping operations have been subject to periodic media attack regarding incidents and neutrality.⁵ In other methods, a foreign government may be targeted via a news item about the views of its domestic population (e.g. the cost of G-8 and G-20 summit meetings for Canadians).⁶

Another common category, reflecting the changing media roles, is involvement by the media as players in third-party disputes in which they have no apparent or direct connections. For example in the Ghana–EU dispute over whether Ghana should conclude the EPA, Xinhua (the official press agency of the PRC) became a player in the conflict, attacking the EU and its negotiating position. The line, in other words, between reporting and participant/propaganda is crossed.

In other categories, difficulties commonly occur over briefing and whether an MFA feels its views are adequately reflected in reporting; and if not, the implication. In the Gulf War, for example, the British embassy in Saudi Arabia felt that British domestic media reporting adversely affected perception of security amongst the British expatriate community.⁷

In briefing, an ambassador or official potentially runs the risk of his or her views being used by third parties. Information indirectly gathered in this way may be used to counter-attack or as part of an internal debate by a faction. Attributed views of the British ambassador to Afghanistan were used, for example, in the internal debate in France on future Afghan policy through a leaked telegram from the French chargé.⁸

Resistance and delay

Strategies based on resistance or seeking delay move diplomacy potentially into non-cooperative areas, if positions are held, rather than shifting to accommodation. Methods include: seeking clarification; calls for further meetings; drafting changes, with the aim of changing, delaying or blocking

proposals or initiatives. Common methods also include signalling preparedness to talk but pulling back; offering small concessions on currency or reform to stave off pressure; or agreeing to consider. Delaying methods of this type effectively seek to 'buy time' in a variety of contexts such as: gaining more preferred wording in a draft convention; protecting a core economic interest; avoiding environmental costs; achieving greater internal security; staving off external pressure for internal reform; or supporting an ally. Considerable diplomatic skill is required to use these methods effectively in that there may be a need to appear cooperative while underlying purposes are quite different. Positions need to be put in a manner that does not unduly offend but leaves an apparent way open in negotiations. Other methods include the use of diplomatic appointments. Delaying an appointment or not offering the level of accredited representative can signal dissatisfaction, or more fundamental differences. Defensive briefing is generally used in support of resistance or delaying methods.

Counter-strategies

Counter-strategies use the full range of diplomatic methods discussed above – cooperative, media, negotiation, economic sanctions, and other coercive measures. Common counter-strategies are political methods to: develop bilateral support; build wider coalitions; split a group or alliance; and side-diplomacy at the margins of the UN or standing international conference. Other strategies in crises include escalation to ratchet up pressure through a media campaign, or to negotiate a wider and 'deeper' range of sanctions. These traditional crisis management methods have increasingly been called into question, in that apparently effective counter-strategies to escalatory strategies rely not on progressive response but on the implicit threat of global economic collapse through disruption of strategic oil supplies and routes e.g. Iran – US. (See [Figure 3.1.](#))

There are a number of other non-crisis counter-strategy methods. For example third parties may be used as a means of promoting an idea or framing debate. In international institutions, secretariat staff advance their views through technical papers on subjects such as: the preferred methodologies for analysing international economic data; the form that future cooperation with other institutions might take; the continuation or not of a finance programme. Underlying some of these counter-strategies is a discourse on the wider issues of international cooperation, particularly debate over network versus intergovernmental forms of cooperation.

Expansion strategy

In expansion strategy, states and other actors seek to extend their influence and diplomatic space through groupings, institutions, dialogue and representation rather than in a territorial sense. Expansion strategies

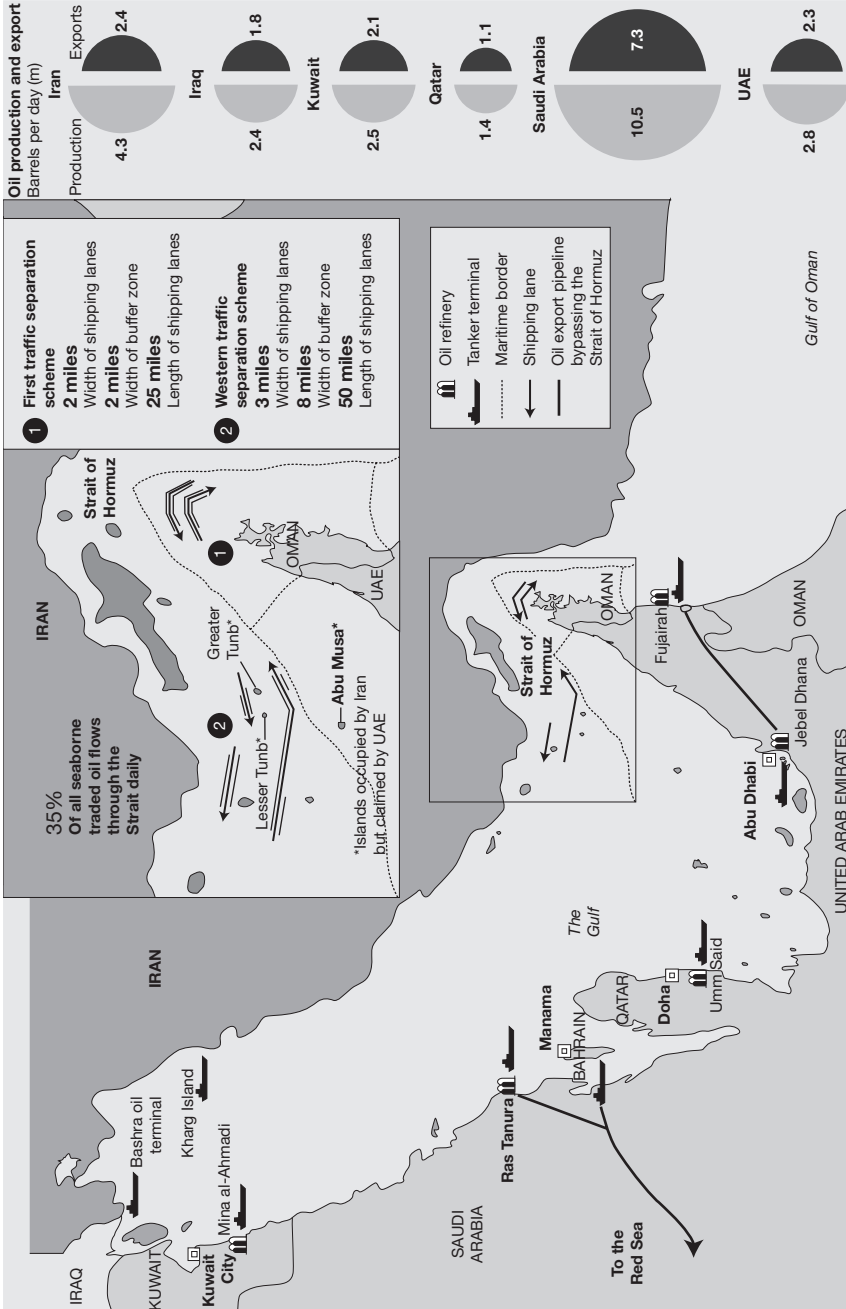


Figure 3.1 Strait of Hormuz

Source: *Financial Times*, 19 January 2012, p.7 © The Financial Times Limited. All rights reserved.

have three hub elements: membership, media and representation. That is diplomatic space is extended through opening new posts or raising the level of representation; joining or creating new institutions, and supporting such moves through a communications and social media programme. Expansion strategy may rely on either quiet diplomacy (step-by-step acquisition of membership or equity holdings, by stealth, or low profile) or more active and aggressive methods. Quiet diplomacy would use dialogue, special relationships and creation of a bilateral axis in a regional grouping. In contrast, more active strategy would annex or create a rival regional organisation and engage in strategic distraction. Strategic distraction involves diplomacy in weakening a rival organisation by clogging up a diplomatic calendar: hosting multiple meetings of officials, creating overload and disruption, with above all loss of *raison d'être*.

Active strategy

Active strategy is used here to refer to an overall foreign policy orientation which seeks to expand the role, activities and influence of a state or organisation. The state may become a leading regional player or operate at a global level as a broker, conduit for ideas or problem solver, working behind the scenes. Active strategy methods include relatively routine actions as well, as part of the incremental build-up of diplomatic influence. Examples of incremental methods include co-hosting international events; sponsoring or co-sponsoring resolutions; and mediation initiatives. Active strategy methods are generally supplemented by other methods such as high use of visit diplomacy, media and side-diplomacy. States too pay particular attention to promoting ideas onto the international agenda through sponsoring of or participating in high-level meetings and similar fora.

Choice of methods

The choice or selection of methods will normally be influenced by one or more of the following five factors: form, organisational routine, context, diplomatic style and perceptions of diplomatic space. Of these, form is defined as the preferred framework within which states and other actors seek to carry out their external relations. Form can be bilateral or multilateral; transnational (e.g. through NGOs); societal or economic; open, private or secret. Organisational routine is defined as the impact of organisational standard operating decision procedures (methods of work, choice). The practice of states contributes to a particular style or approach to diplomacy at a political and bureaucratic level. The former rather than the latter is likely to be the subject of most change. In a sense, diplomatic style, or at least elements of it, becomes in effect a diplomatic

trade mark (e.g. limited open diplomacy, preference for multilateral institutions, use of *communiqués*).⁹ Diplomatic style contributes to international identity and diplomatic reputation (e.g. treaty drafting skill, mediation, quiet diplomacy, acceptability, unpredictability).

Diplomatic space

Diplomatic space can be thought of as the milieu or setting within which diplomacy and foreign policy are carried out. The concept conveys an idea of how decisionmakers approach or perceive their operational environment (with its domestic, external and transnational components), and shape particular interests. Diplomatic space is not static and may be gained or lost. It is a central concept in diplomatic practice.

The elements that go to make up diplomatic space include:

- physical (location, facilities, architectural style)
- conceptual (ideas, language, commonly agreed or disputed terms or concepts)
- institutional – legal (treaties, organisational competence, membership)
- setting constraints (responses or anticipated positions of other actors).

The physical aspects of space such as location, topography and facilities are relatively fixed and relatively unchanging. Diplomatic assets such as embassies and consulates tend to remain stable with core missions. However, altering the geographic areas covered may produce more space, although the economic environment has become increasingly contested.

The architectural element in diplomatic space did historically receive considerable attention from, for example the United Kingdom and France. Architecture was part of the imperial presence. Twenty-first century conflict and violence have tended to mute this method for them, as embassies in some conflict zones remain shuttered. For others, such as Oman and the UAE, embassy design is an important part of diplomatic style and space.

The conceptual component of diplomatic space is at the core of the idea, and takes us to the central purposes of diplomacy. This component has become more important because of changes in communications methods – the open environment. Part of this addresses dealing with communications anonymity and threats to national and international identity, as national logos and titles are copied, imitated and used in information and cyber warfare, as part of the battle of ideas discussed in [Chapter 7](#).

The third element – the institutional-legal dimension of diplomatic space – is an important formal component. It addresses and is concerned with the formal aspects of statehood-sovereignty; legal recognition and capacity to conduct international relations. Activities in this area include:

diplomatic recognition; scaling up representation; membership of international institutions and good stewardship – associated with a track record of secretariat work; chairmanship of drafting committees and an active role in multilateral institutions.

As indicated earlier, diplomatic space is not a constant phenomenon. Rather, it is gained through careful use of diplomatic methods, especially visit diplomacy and maintenance of contacts by the MFA with sending missions and attention to follow-up action. Diplomatic space varies over time. It may be augmented through counter-strategies (see above). Other methods for increasing space are those which review and assess the levels of transactions (political, economic, military, cultural) to promote higher levels of dialogue or trade. More fundamentally, space may be regained through foreign policy reorientation.

Space is lost through the policies of other states. The reverse is also true in that a major cause of loss of space is inaction. Space can be used to:

- develop a core group of recognised foreign policy ideas
- assist the projection of diplomatic reputation
- ease pressure
- facilitate changes of direction
- support foreign policy initiatives.

The use of bilateral and multilateral relations

Bilateral relations

A number of types of bilateral relations can be distinguished:

- special relations, e.g. USA–UK (political–military), France–Germany (intraregional)
- economic–trade arrangements, e.g. most favoured nation (MFN)
- asymmetrical, e.g. alliance of major–minor powers; security – military cooperation; resource supply
- cultural, e.g. education, ethnic, religious;
- cross-boundary subnational;
- administrative, e.g. legal, technical, consular.

The choice or use of bilateral relations reflects factors such as historical links, alliance interests, the impact of regional organisation, resource possession and territorial boundaries. A number of general reasons can be suggested for why some states prefer to conduct foreign policy through bilateral relations. In some cases, a foreign policy has traditionally placed strong emphasis on bilateral visit diplomacy (e.g. the PRC, Japan and Russia), although it is also a feature of modern states (e.g. Malaysia, Egypt and Saudi Arabia).

Bilateral diplomacy provides a sense of control and management. It is, moreover, selective in that, in most instances other than dependent relations, states are able to target or develop links with other actors for political, economic, medical and technical or strategic purposes.¹⁰ Much of Cuba's international assistance – a central element in its international policy – is for example conducted through bilateral diplomacy.¹¹

The principal disadvantages of bilateral diplomacy are that it is time consuming and limits international contacts, unless supported by multi-lateral initiatives. The routine care and maintenance of bilateral relations requires significant commitments of organisation resources and may fragment expertise. In dependent bilateral relations, the dependent power may be vulnerable to coercive diplomacy and corresponding loss of foreign policy control if the main power seeks support on wider foreign policy issues as the 'price' of favoured bilateral status.

Bilateral relations aim to develop joint ideas, often as dominant directing concepts in regional and international fora, and the protection of shared interests. Bilateral special relations are distinguished by high levels of military–bureaucratic coordination, summits, extensive political cooperation and a network of formal treaties. Most special relations also involve informal secret arrangements in such areas as intelligence, weapons supply and security guarantees. A further distinguishing feature of some special relations is the manner in which adverse historical legacy is underplayed or managed as political theatre, in order not to undermine overall political cooperation.¹² Above all, the main characteristic of most bilateral special relations is the concern of one or both parties to retain exclusivity or the fiction of exclusivity, and exclude or reduce the significance of access by other actors.

Other purposes of bilateral relations are to act as a vehicle for securing regular trade access to international markets, particularly by smaller or developing state actors. The multilateralisation of some of these traditional arrangements at regional level has introduced elements of trade instability for a number of smaller African, Pacific and Caribbean powers.¹³

Bilateral commercial arrangements in the energy sector (e.g. Germany–Russia) are a further significant feature of the diplomacy of resource access.¹⁴ Other economic issues that feature significantly in bilateral diplomacy include transport, civil aviation, investment protection, trade dispute settlement and arrangements for repatriation of foreign earnings.¹⁵

The existence and resolution of territorial boundary issues have been a long-standing and important part of intra and inter-state relations.¹⁶ Traditionally, border issues – such as enclaves, illegal migration¹⁷ and smuggling – have been tolerated or managed at relatively low-key levels (e.g. India–Bangladesh, Mexico–USA, Northern Ireland–Eire),¹⁸ or in other instances 'frozen' by preventive diplomacy, peace-keeping or observer operations and other diplomatic-military methods (e.g. Golan Heights, Kashmir, Falkland Islands). However, since 2000 there has been

a resurgence relating to border issues in Central Asia, the Middle East and Latin America.

In the bilateral category a further and unusual form of relations are 'covert' bilateral relations. States in this category enjoy high shared interests but are prevented by domestic or transnational ethnic or ideological factors from conducting open political relations. Relations are conducted at a private or secret level, with strict bureaucratic controls over press and other information flows which might highlight contacts or give details of specific areas of cooperation, for example India–Israel.¹⁹

Multilateral relations

Multilateral diplomacy has now become an established and diverse feature of modern diplomacy, conducted through global institutions, permanent conferences and a variety of regional and pan-regional institutions. Individual states will have varying levels of involvement at a multilateral or regional level, but a number of general factors can be suggested that have influenced the growth of multilateralism. Multilateral international institutions provide a global arena for states and other actors in which participation demonstrates their sovereign equality, masking but not removing disparities of economic and other power. The state is able to project its views and receive diplomatic recognition of its identity.

Multilateral institutions, in addition, provide a framework or sense of solidarity within which states are able to display independence and operate within larger group fora. The institutions themselves are also seen as the preferred route or vehicle for articulating concepts of international order. General rule making in a wide variety of areas, the containment of conflict and conflict resolution are primary goals, in contrast to restrictive non-multilateralists who emphasise ad hoc, like-minded groups operating outside or independently of multilateral institutions, restricting these primarily to roles mobilising collective sanctions. Conflict resolution has been least influenced by multilateral judicial institutions, although this element of multilateralism has become more important as a factor in the promotion of pacific settlement with the establishment of specialist international legal machinery, such as the Law of the Sea Tribunal, which have contributed to the growth of multilateral norms.²⁰

Other factors influencing multilateralism derive specifically from aspects of foreign policy orientation. For some states, bilateral relations are not seen as a viable option, given the range of economic and other political interests. Multilateral institutions may also be favoured by those states that seek to depoliticise their foreign policy and assume an anodyne role in international relations. For example German and Japanese foreign humanitarian assistance is channelled largely through UN agencies such as the United Nations International Children's Emergency Fund (UNICEF), so reducing political exposure by multilateralising the aid.²¹

Visits

In general, visits are the workhorse for the strategic management of relations and policy, particularly in bilateral and also to a lesser extent in multilateral diplomacy. Broadly the purposes of visits fall into (though may cross over) one of the following five categories:

- symbolic
- improving diplomatic space
- addressing (or not) substantive issues
- signalling
- other purposes, e.g. reorientation.

In many instances visits at the level of head of government or foreign minister are in whole or part symbolic. In this sense the visit may serve to draw a line under a past historical period, and indicate by the level and other features that the parties wish to ‘mend’ fences and initiate improved relations after a period of political or other tension (e.g. Germany–USA post-Iraq war; USA–PRC relations or India–Pakistan over Kashmir). Whether such visits have any lasting substantive effect is in part related to the nature of the issues underlying the tension, such as policy differences over the handling of conflict, or territorial disputes. The latter, unless ‘insulated’ or taken out of the negotiating agenda (e.g. the Falkland Islands sovereignty issue in Anglo-Argentine relations was taken out of the discussion which then focused on other areas of cooperation) generally have greater negative impact than the former, leading to the cancelling out of the effects of the visits and reversion to previous levels of hostility.

A second important feature of visits is that they may be part of efforts to improve the diplomatic space and overall freedom of action of a state. Thus, states use visits and other methods such as initiatives (discussed below) to develop their credibility or international reputation, stake a claim to an idea, propose institutional reforms, or, quite simply, acquire a lead role or influence on an issue such as UN reform, genocide, climate change.

Third, visits are used for substantive purposes, such as an exchange of views, coordination of policy prior to a regional or multilateral gathering, or the negotiation of a bilateral issue (e.g. Saudi Arabia–Syria over Lebanon), or other agreements regulating relations such as a framework agreement for transborder relations. In the latter, negotiations visits by heads of government or foreign ministers are generally likely to be at the initial or concluding stages of the talks (e.g. applying political persuasion or pressure to initiate renegotiation of stalled talks, or breaking deadlock in the final stages of negotiations).

Fourth, visits may be used for a number of other specific purposes. These include signalling an important shift in a policy; for example the Sharon–Abbas meeting marked a significant move in the resumption of

Israel–Palestinian talks aimed at attempting to resolve the Palestinian and other related issues. A further important use of visits by heads of government or foreign ministers is to indicate foreign policy reorientation. The visit to Spain of Venezuela’s President Chavez, following his re-election, was part of a policy of shifting relations away from the USA.²²

Using all opportunities: side-diplomacy

The use of side-diplomacy – that is the holding of short discussions and meetings on matters other than the main formal business, at the margins of multilateral, regional and other events – is an established part of modern diplomatic practice. The annual meeting of the UN General Assembly, for example, provides opportunities for a variety of contacts and exchanges.²³ Occasionally unplanned and embarrassing diplomatic encounters can occur, as in the case of that between the British foreign secretary and Mugabe delegation while navigating the UN’s crowded intersessional diplomatic traffic.²⁴

Funerals of foreign leaders and statesmen have also traditionally offered venues for diplomatic and political contact from time to time. The funeral of President Arafat, for example, was used for a number of private side exchanges, such as that between Greek and Turkish representatives on the question of Turkish admission to the EU.²⁵ While providing opportunities for contact, such occasions present difficult protocol decisions on whether to attend the event or not, and the rank of person attending. The Arafat case highlights, too, a further type of diplomatic technique – the diplomacy of homage or pre-death diplomacy. Such occasions allow a leader to demonstrate association with a policy or cause and, more generally, promote the overall identity and position of a state by the visit. However, the decline in the phenomenon of the charismatic leader with long historical reach has reduced the importance and, above all, impact of this method.

Overall, side-diplomacy in its main form has the following advantages:

- it avoids public visits
- it is conducted in (relative) privacy
- key leaders are able to focus
- it is a vehicle for initial contact after break or hostility
- it provides opportunity for personal diplomacy
- it facilitates meetings or contact with several leaders in one location.

The effectiveness of diplomacy by visits

As we have seen, visits are an important part of the repertoire of diplomacy. However, they do not automatically produce the desired effect and their value may be misperceived or misinterpreted. Effectiveness may be

extremely limited if relations remain conducted largely at a ceremonial level. An economic or cultural agreement may not be implemented or followed up, and in this sense ceremony outweighs substance.²⁶

In other instances, relations between leaders may result in growing personal rapport, which may develop more quickly or be ahead of the underlying and unresolved bilateral or multilateral issues. While political rhetoric may suggest a 'new era' or 'historic opportunity', implementation is, in varying degrees, influenced by disaggregated bureaucratic and other agency interests – the 'many voices'.²⁷ Writing on the defunct Netherlands–Indonesian Cultural Agreement, Vos, for example, after noting problems of bureaucratic inertia, economic funding, change of personnel and competing projects, comments: 'the only constant is that the agreement remains while ministers and presidents come, evaluate, change and go'.²⁸

Bilateral visits may also suffer from other factors, such as inappropriate timing,²⁹ dissimilar expectations,³⁰ perceptions of different purposes and over-exaggeration of pressure or leverage. Visits may less frequently be proposed largely as diversion from domestic political difficulties. These former instances, particularly different conceptions of what might be achieved, suggest some of the principal weaknesses of this type of diplomacy.

Finally, some states – such as North Korea, the PRC, Cuba and Japan – rely heavily, or almost exclusively, on bilateral diplomacy, using in-bound visits as distinct from multilateral or plurilateral fora, or a mixture of the two. While in-bound visits provide the receiving state with advantages, such as controlling the nature of the setting or agenda, major limitations are related to time.

Getting the message across: signalling

Signalling is an established part of traditional diplomacy, and provides additional or other means of communication. It is, however, one of the least straightforward aspects of statecraft. Signalling may be defined as the use of verbal (e.g. unilateral statements, policy announcements) and non-verbal communication (e.g. appointments, release of POWs, using an agenda that omits areas of difference and focuses on areas of possible cooperation, non-attendance, level of representative, recall of an ambassador). Frequently, signalling uses economic instruments to indicate intentions or bring about changes in behaviour of another actor. For example the USA eased its trade embargo on North Korea in 1990 as part of the Five Point engagement policy of the Reagan Administration.³¹

Non-verbal actions of this kind should be distinguished from indirect verbal communication, in that non-verbal action can involve significant risk, be less ambiguous vis-à-vis origin, and involve formal approval.³²

Nevertheless, both forms of indirect communication are subject to misinterpretation, which is a particular feature of this method.

Signalling occurs for the following reasons or types of contexts:

- abnormal relations (an absence or break in diplomatic relations)
- conflict/dispute resolution
- intersessional conference communication
- an indication of review, or shift of policy
- exploratory first moves
- minimising politicisation or exposure of institutions and/or decisionmakers
- an escalation in a crisis.

What are some of the advantages or disadvantages of signalling? First, the use of indirect communication reduces the political cost or impact of rebuff or failure. Non-verbal measures such as trade concessions or aid programmes can be retracted relatively easily through non-implementation or being allowed to lapse. Second, the use of a general or indirect statement reduces over-politicisation of an organisation or decisionmaker and can demonstrate, by collective statements, collective solidarity. The IMF for example, as part of the review of its role in international debt management, has reviewed differing signalling devices it might use to indicate to IMF members and other international or financial bodies its assessment of the performance recovery or credit-worthiness of borrowing states.³³ For states themselves, announcements of the early repayment of international sovereign debt are intended as signals of economic robustness and foreign policy control. Third, signalling is an important device in cases of long-standing disputes and conflicts, or where states have not established or have broken diplomatic relations. Signalling, such as the visit of a parliamentary delegation, may be used by the sending state to edge formal relations along, or to test the climate or willingness to enter into bilateral or plurilateral talks. Fourth, use of indirect communication enables states and other actors to retain some measure of freedom of action, enabling them to shift tactics or develop other lines of approach.

The principal difficulties with signalling centre around the questions of reception and misperception. It is not always clear who the target is or whether the message has been received. This aspect is particularly evident in relations with isolated (e.g. North Korea, Burma, Sudan), fragmented (e.g. Indonesia, Congo, Haiti, Pakistan) and revolutionary or theocratic regimes (so-called dualist states, e.g. Iran). Further difficulties occur in that the messages may be untargeted, such as a general appeal for restraint (e.g. Security Council Resolution), unilateral acts or open statements. In the Ukraine election transition crisis, for example, President Putin undertook 'to work with any government'. The impact of open statements or appeals such as this tends to be weakened in that there is no clear recipient; the message may also contradict previous behaviour or be ambiguous about implementation.

A further important disadvantage of signalling is the effect of ‘noise’. Noise – that is, interference caused by factors such as competing outside events, inconsistencies emerging between a general policy on an issue and positions adopted in particular ongoing negotiations, or the effects of the volume of traffic – can limit the effectiveness of signalling. It has been argued that well-managed foreign ministries can generally cope with deciphering and assessing large amounts of political reporting. However, if, during rapidly changing events, a foreign minister or permanent representative is outside or excluded from an information loop, there can arise an information lag or out-of-date positions. Hans Blix, for example, commenting on the rapidly moving drafting negotiations over the role of the United Nations Monitoring, Verification and Inspection Commission (UNMOVIC) in Iraq, noted that the Russian foreign minister seemed not to have an up-to-date position on the draft resolution, picking up issues of concern which the drafting process had dropped or moved on from.³⁴

Finally, the actions of a state or other international actor may be misinterpreted or misunderstood and incorrect inferences drawn. An action may be interpreted as a signal by another state, when in fact it was not intended as such. For example, the withdrawal of the UK vessel *Endurance* from the South Atlantic patrol in 1981 was interpreted by Argentina as a withdrawal of the British defence commitment to maintain and protect the sovereignty of the Falkland Islands, when in fact the withdrawal was based on an economic cost review.³⁵

Initiatives

Initiatives are non-routine proposals put forward on a particular issue or problem. They may take the form of a sponsored draft resolution, new draft articles, proposals for restarting talks or similar moves to break deadlock, develop ideas and rules, and move forward issues. Initiatives are frequently undertaken in conjunction with two or more other states as co-sponsors in the context of multilateral conferences. In other instances, behind-the-scenes ‘quiet diplomacy’ is a vehicle for putting forward initiatives, especially in long-running disputes, for example Finland in the Aceh dispute. Where immediate impact and a wide élite audience are required, ideas are periodically floated as de facto proposals in the major international press. In technical diplomacy the day-to-day shipping business and the regular annual sessions of the International Maritime Organisation (IMO) are reported by *Lloyds List*, which during conference sessions becomes a player, acting through its daily reports as a transmitter, transmitting ideas, critiques and sometimes initiatives amongst the epistemic bureaucratic and commercial élite of the shipping world.

In looking at the reasons for initiatives, four purposes need to be carefully distinguished. First, initiatives are particularly part of the foreign

policy styles of those states with a high involvement in multilateral institutions and tradition of support for humanitarian assistance, human rights and pacific settlement of disputes.³⁶ Canada, for example cosponsored with Namibia (president of the Security Council) Resolution 1261 on the protection of children in war and the Accra conference with Ghana.³⁷ Second, the development of initiatives is a key role of office holders and chairs of working groups in standing and ad hoc multilateral conferences, as illustrated by Satiya Nandan's negotiating text in the UN Highly Migratory and Straddling Fish Stocks Negotiations, or the initiative by the chair of the WTO's General Council to break the Dohar trade talks deadlock. Apart from the above, a third sense in which diplomatic initiatives may be understood is in terms of factors such as prestige, claiming competence or exclusivity and, finally, power projection.

Coercive diplomacy

Coercive diplomacy aims to compel changes in behaviour using threats, sanctions and withdrawal or denial of rewards. Threats may or may not involve a 'ladder' or progressive escalation. In coercive diplomacy, force and pure violence does not automatically follow. Rather, the intention is to convey the possibility of pain or damage. Thus, an ultimatum may set time limits for unspecified action in the event of non-compliance. The threat is *implicit* and relies on ambiguity and uncertainty over subsequent events and expectations of the substantial costs of non-compliance. If threats are *explicit*, the assumption differs in that it relies more heavily on decisionmakers' rational assessment of the risks associated with non-compliance, given that specified consequences are set out.³⁸

Coercive action moves diplomacy into a grey area. Diplomacy no longer is distinguished by the notion of 'give and take', argument and persuasion, in which the parties achieve degrees of mutual benefit, but rather compulsion through force. Diplomacy shifts to become an instrument of coercive behaviour, rather than exchange and adjustment that is conducted through discussion, mediation or pacific settlement.

Summary

This chapter has examined the methods used in contemporary diplomacy. An important argument has been that there is a grey area in state practice – bordering on, supporting or directly linked to the use of military force, coercion or clandestine operations – which raises a number of issues regarding the legality of the action and whether it is an appropriate use of diplomacy. In terms of methods, this chapter has also underlined the importance of bilateral relations in the general conduct of diplomacy.

In diplomatic practice, visits are a key part of the methods used by states and other actors. The use, too, of diplomatic signalling has a number of advantages, particularly in increasing freedom of action; but its disadvantages are that it tends to be undifferentiated and not targeted. Above all, diplomacy is concerned with exchange and adjustment, conducted through discussion, mediation or pacific settlement.

Notes

1. See Theresa Whittleld, 'Groups of friends', in David M. Malone, *The UN Security Council from the Cold War to the 21st Century* (Lynne Rienner, London, 2004), pp. 311–24; H.E. Chelialo, 'Sport diplomacy between the United States and Iran', *Diplomacy and Statecraft*, vol. 12, no. 1, 2001, pp. 89–106.
2. Leon Sigal, *Disarming Strangers* (Princeton University Press, Princeton, N.J. 1998), p. 83, p. 271.
3. For discussion of these points, the contribution of Neill Barston, a senior journalist, was invaluable.
4. See *Financial Times*, 7 March, 2012
5. See on Ivory Coast [<http://www.un.org/en/peacekeeping/missions/unoci/>].
6. See *France 24*, 26 July 2010 ('G8 and G20 summit costs irks Canadians').
7. See Alan Munro, *An Arabian Affair* (Brasseys, London, 1996), p108.
8. See Sherrard Cowper-Coles, *Cables from Kabul* (Harper Press, London, 2011). *Le Canard* carried a leaked telegram from the French chargé in September 2008, reporting conversations with the British ambassador on whether American Strategy in Afghanistan was working. The attribution is disputed by the UK ambassador and is more likely to have been between the UK deputy head of mission and French chargé Jean-Francois Fritou (p. 156 and see on Holbrooke, p. 210 passim).
9. See Sigal, op. cit., pp. 36–7.
10. See Nicholas Bayne, in Nicholas Bayne and Stephen Woolcock, *The New Economic Diplomacy* (Ashgate, Aldershot, 2004), pp. 167–8.
11. For details of Cuba's international medical assistance policy, and Cuban–Venezuelan relations, see *Financial Times*, 9 Feb. 2005.
12. See, for example, the 60th Anniversary D-Day celebrations attended by Germany. See also German–USA relations. *Financial Times*, 24 Feb. 2005.
13. *The Guardian*, 21 Jan. 2005.
14. See Angela Stent, *Russia and Germany Reborn* (Princeton University Press, Princeton, N.J., 1999).
15. See, for example, on the significance of Moroccan repatriated earnings and the special arrangements with Spain, Italy and France, *IMF Survey*, 26 July 2004, p. 223.
16. See Barbara J. Morehouse and Doris Wastl-Kochi, *Challenged Borderlands* (Ashgate, Aldershot, 2004).
17. See *Financial Times*, 2 Feb. 2005, on the dispute between Malaysia and Philippines, Indonesia on illegal worker migration to Malaysia from those countries.
18. See Shyameli Ghosh, 'India–Bangladesh relations', in V.T. Patil and Nalini Kant Jha, *India in a Turbulent World* (South Asian Publishers, New Delhi, 2003), p. 114.

19. S. Nai, *Turbulent Relationship* (Manas, New Delhi, 2003).
20. See, for example, the work of the International Tribunal on the Law of the Sea (ITLOS): [www.itolos.org].
21. See the German UN Mission (Humanitarian Affairs): [www.germany-un.org/affairs].
22. On Chavez see Steve Ellner, *Venezuela: Politics Into the Chavez Era* (Lynne Rienner, London, 2004).
23. See McRae and Hubert, op. cit., on the use of the General Assembly for side-diplomacy.
24. *The Times*, 28 Sept. 2004. Jack Straw was attending the annual meeting of the UN General Assembly, New York, 2004.
25. For example, the Leader of the Turkish Opposition had discussions with the Greek foreign minister about the European Council meeting on Turkish admission to the EU, incidents involving Turkish aircraft incursions into Greek airspace, and the improvement of relations. See also *The Times*, 12 Nov. 2004.
26. See Christopher Hill, *The Changing Politics of Foreign Policy* (Palgrave, Basingstoke, 2003), p. 127.
27. See Hans Blix, *Disarming Iraq* (Bloomsbury, London, 2004), p. 72.
28. See Mi Li Vos, *International Cooperation: Between Politics and Practice* (Het Spinhuis, The Hague, 2001), p. 127.
29. Bernard Burrows recounts the example of President Nasser making an unscheduled aircraft stop in Bahrain at a time of political upheaval and having to divert him from touring Bahrain while the weather cleared. See Bernard Burrows, *Diplomat in a Changing World* (Memoir Book Club, Spennymoor, 2001), p. 74.
30. President Clinton for example in 1993 treated high-level talks with North Korea as a reward and not a path. As Undersecretary of State Kanter put it, 'one meeting meant one meeting', in Leon V. Sigal, *Disarming Strangers* (Princeton University Press, Princeton, N.J., 1998), p. 38.
31. See Sigal, op. cit., p. 26.
32. See Thomas Schelling, *Arms and Influence* (Yale University Press, New Haven, Conn., 1966), p. 150.
33. IMF, *Survey*, 7 Feb. 2005, p. 19.
34. Hans Blix, op. cit., pp. 75–6.
35. Nigel West, *Secret War in the Falklands* (Harmondsworth, Penguin, 2000).
36. See Philip Nel, Ian Taylor and Janis van de Westhuizen, *South Africa's Multilateral Diplomacy* (Ashgate, Aldershot, 2001) on the problem of competing priorities, pp. 80–9.
37. See McRae and Hubert, op. cit., pp. 140–1.
38. See, for example, the Barroso letter to the Danish prime minister on border control policy, in [Chapter 16](#), pp. 331–2.

Chapter 4

Negotiation

The aim of this chapter is to discuss both the nature of negotiation and the main characteristics of the negotiating process.

Negotiation can be defined as an attempt to explore and reconcile conflicting positions in order to reach an acceptable outcome. Whatever the nature of the outcome, which may actually favour one party more than another, the purpose of negotiation is the identification of areas of common interest and conflict.¹ In this sense, depending on the intentions of the parties, the areas of common interest may be clarified, refined and given negotiated form and substance. Areas of difference can and do frequently remain, and will perhaps be the subject of future negotiations, or indeed remain irreconcilable. In those instances in which the parties have highly antagonistic or polarised relations,² the process is likely to be dominated by the exposition, very often in public, of the areas of conflict. In these and sometimes other forms of negotiation, negotiation serves functions other than reconciling conflicting interests. These will include delay, publicity, diverting attention or seeking intelligence about the other party and its negotiating position.³

The process of negotiation itself is sometimes conceived of in an 'across the table' sense. While the proceedings may take this form at some stage, the overall process, especially in a multilateral context, is better understood as including more informal activities leading up to or during negotiation, such as lobbying, floating a proposal through a draft resolution, and exchanges of proposals and other consultations.⁴ Negotiation, too, of course, can be carried out 'at a distance' through formal or informal diplomatic correspondence, telephone, fax or e-mail.⁵ The mode of negotiation itself may also change during negotiations from an 'across the table' working session to correspondence between the parties about certain principles or detailed provisions of an agreement. Changes in mode of this kind, and other similar tactical demands for recess during negotiation, can have either positive or negative effects on the process of reaching agreement. Change to negotiation by written means may serve to expedite the negotiating process, particularly if major principles

and matters of substance have been resolved, reflecting substantial convergence over areas of common interest. If, however, unresolved issues remain (perhaps from earlier rounds of exchanges), the possibilities for reopening these, uncertainty over the concession rate and the opponent's intentions, together with the effect of the delay, become important intervening considerations.⁶

Before we consider in detail particular definitions of negotiation, one further general observation is useful at this point. So far, negotiation has been discussed in terms of the purpose and some features of the process; a third significant area relates to the changing forms of agreement that have been developed in more recent state practice. An important feature of modern practice, discussed at the end of the chapter, is the growth in 'unconventional' forms of agreement, in response to the complexity of issue areas and trend to multiparty agreements involving sovereign and non-sovereign actors.

Of the analytical literature,⁷ Fred C. Iklé's book *How Nations Negotiate* has had an important impact on the study of negotiation. Iklé has avoided a broad definitional approach that subsumes negotiation within the notion of bargaining or communication.⁸ Such broader conceptions have tended to ignore or obscure features of the negotiating process (such as agenda setting and the impact of the negotiating process on outcomes) in that they have focused on the wider context or setting of certain types of politico-strategic negotiation, involving warnings, threats and the use of coercive diplomacy.

In contrast, Iklé defines negotiations explicitly in terms of an exchange of proposals:

Negotiation is a process in which explicit proposals are put forward ostensibly for the purpose of reaching agreement on an exchange or on the realisation of a common interest where conflicting interests are present. It is the confrontation of explicit proposals that distinguishes negotiation from tacit bargaining and other forms of conflict behaviour.⁹

Classification

A valuable aspect of *How Nations Negotiate* is the fivefold classification of international negotiation according to the purpose of the parties.¹⁰

In the first of these, *extension* agreements (e.g. aviation landing rights, tariff agreements, renewal of a peace-keeping force mandate, renewal of leasing arrangements for an overseas military base), the purpose is to continue the existing state of affairs, and, as such, extension agreements are frequently, though not always, routine in nature.

Normalisation agreements are intended to bring to an end conflict through, for example, ceasefire arrangements, a peace treaty or the reestablishment of diplomatic relations. Negotiations for the purpose

of normalisation may involve a substantial degree of redistribution – the third category of negotiation.

In a *redistribution*, negotiation changes in the status quo or existing arrangements are sought in relation to, for example, territorial boundaries, voting powers in an international institution, budgetary contributions and similar matters.

The fourth category is the *innovative* agreement. In negotiations on an innovative agreement the parties seek to establish different sets of obligations or relationships by transferring some degree of political and legal power to non-state institutions, as in the Treaty of Rome; devising new regulatory institutions such as the International Sea-bed Authority¹¹ or cooperative institutions as in the Mano River Declaration.¹² The Sino–British agreement of 1984 on the future of Hong Kong provides an interesting example of a normalisation and innovative agreement, setting out the status and powers of Hong Kong as a Special Administrative Region of the PRC.¹³

In the final category are negotiations for *side-effects*. In this type of negotiation, one or more of the parties may seek objectives not directly related to reaching agreement. These can include putting on record statements of position, propaganda, gaining information about the negotiating position, strengths and weaknesses of the other party or undermining the resolve of an opponent.

The above categories provide a useful basic classification of negotiations, which can also be used to review changes in relations between states. The categories of course represent ideal types and in practice negotiations are often ‘mixed’ in character,¹⁴ containing elements of ‘pure’ bargaining,¹⁵ normalisation and redistribution, because of factors such as the scope of the subject matter or the extent of the differences between the parties. It is possible, too, for a party to misperceive or miscalculate the other’s intention regarding the negotiations, for example as extension rather than redistribution.¹⁶ Furthermore, in protracted and complex negotiations, a party may change its strategy during the course of the negotiation from one of ‘optimising’ or seeking a high level of concessions to one of ‘satisficing’ in which more workable or less dramatic achievements are accepted, thus altering the form of the negotiation.¹⁷

While the basic fivefold classification scheme encompasses many types of negotiation, others are not so easily accommodated. These include: negotiations on communiqués (‘textual’, interpretative, ideological); inward or outward ministerial visits (bidding on dates, venues, agenda and matters of protocol); and draft articles in a working group of a multilateral conference (interpretative, with negotiations focusing on particular meanings, formulae and concepts). In addition, ‘linked’ negotiations have become a feature of bilateral negotiations between industrialised and developing countries in which the successful conclusion of one issue may be related to an entirely different political or economic issue. For example, the government purchase of an item such as a naval vessel may be linked to changes in an air service agreement.

Classification by subject matter

The basic scheme of classification discussed above can be complemented by considering negotiation in terms of the subject matter. The indicative categories illustrating the range of modern negotiation are given in [Table 4.1](#).

Table 4.1 Classification of subjects handled in international negotiations

<i>Subject</i>	<i>Illustration</i>
1 Political	Communiqués; draft resolutions; extradition; cultural agreement; boundary changes; exchanges of POWs; air hijacking; establishment of diplomatic relations; mediation; improvement or normalisation of relations
2 Development	Loan; bilateral aid (personnel, equipment); project finance; international capital market borrowing; inward investment; capital transfer; debt rescheduling
3 Contractual	Offshore exploration rights; sale/purchase of oil, liquefied natural gas; equipment purchasers; hiring of foreign personnel
4 Economic	Trade agreement; balance of payments standby facility; tariff; anti-dumping; textile quota agreement; trade redistribution negotiation; sanctions
5 Security	Transit; overflight; establishment of border commission; arms purchase; bilateral security pact; joint development of weapons; mandate of peace-keeping force; base agreement; arms control
6 Regulatory	Convention against the use of mercenaries; law of the sea; flags of convenience; air services; fisheries; environmental; World Trade Organisation (WTO); international commodity agreement; shipping; health; narcotics
7 Administrative	Inward/outward visit; acquisition of land or buildings for embassy; opening trade mission; visa abolition agreement; consular access to detained nationals; headquarters agreement; closure of international or regional organisation

Multilateral negotiations

A third approach to considering differing types of negotiations is from the perspective of process. Using this perspective, which focuses on procedural influences and the roles of players and stakeholders, the following multilateral types can be distinguished for analytical purposes: collegiate; chair-led; fragmented multilateral; technical specialist; parliamentary; and informal. These categories can be used to complement the above two schemes (e.g. international negotiations on an innovative regulatory regime conducted on a collegiate basis).

Influences shaping negotiations

Broadly, three clusters of influences shaping negotiations can be distinguished: the negotiating environment or setting; available assets; and contingent variables. The first category – the setting – includes such factors as: the location of the talks;¹⁸ whether the negotiations are bilateral or multilateral; the extent to which the parties have regularised or friendly contact;¹⁹ abnormal or sensitive relations;²⁰ the amount of domestic support; and the degree of directly or indirectly related international tension. The setting can influence:

- The procedural conduct of negotiations as a result of the establishment of several working groups in a multilateral conference²¹ or through institutional competence,²² such as the Commission's responsibility for EU third-party fisheries agreements.²³
- The scope of negotiations (e.g. differences between external parties to a civil war can limit the mandate of a UN peace-keeping force).²⁴
- The content of a conference agenda.²⁵ A rotating presidency, conference chairman or mediator can attempt to structure a negotiation by putting forward proposals for an agenda, interpreting or articulating differences, as well as attempting to alter the pace of negotiation.²⁶
- Secrecy. Choice of setting can be used to promote the secrecy of talks and reduce or remove international media publicity. For example the final Bosnian peace talks were held at a remote US air force base near Daytona, Ohio, USA, where the principal protagonists and mediators were confined for a number of weeks. A further value of the site was that its technical computer facilities assisted the boundary and mapping aspects of the negotiations.

Other effects of setting can be seen in long-running bilateral and multilateral conferences in which decision making becomes protracted because of repetitive statements of formal positions in plenaries and other meetings, or the procedural need to agree regional positions. Indeed, some actors may have 'side-effect' objectives or other personal stakes in simply keeping talks going without conclusion. Examples of inconclusive long-running negotiation fora include the 43-member UN Ad Hoc Committee on the Indian Ocean, which has held 438 meetings since 1971,²⁷ the residual post United Nations Conference on the Law of the Sea (UNCLOS) negotiations on the Deep Seabed Mining regime from 1982 to 1992,²⁸ and the Falkland Islands talks since 1982. Routinised negotiations can sometimes be bypassed. For example the ritualised Israeli–Egyptian meetings at ambassadorial level in Washington, DC were bypassed in 1993 in favour of secret talks involving Egyptian and Israeli non-diplomatic personnel, initiated and chaired by Norway.²⁹

Second, there are those variables associated with the capabilities of the negotiating parties, such as the number and skill of diplomatic personnel,³⁰

the range of specialist expertise, the proximity of negotiators to central power and the capacity to control the communications process in conflict.³¹ Of these, negotiating style – that is the characteristic ways in which national and international decisionmakers approach negotiation, as a result of such influences as tradition, culture, bureaucratic organisation and perceptions of role – has received considerable attention. A number of studies have highlighted characteristics such as legalism, attachment to declaration of principles, inflexibility³³ and crudeness.³⁴ In one case, the remarkable combination of meticulous deliberation and ‘true grit’ is seen as the hallmark of one particular national style.³⁵ A further, and indeed crucial component of negotiating capability is the range of deployable assets. These will include the extent of domestic approval, the nature and range of effective means, trade-off possibilities and the degree of external support.

The third category – contingent variables – consists first of all of such factors as the internal politics connected with the development and attainment of negotiating positions. Other contingent variables include the cohesion of a government or its delegation, how far ‘opening’ positions are reevaluated, the concession rate, the impact of feedback and the influence of external events, such as a change of government, border clash or other incidents.³⁶

The process of negotiation

Basic model

A basic model by which bilateral and some multilateral negotiation can be conceptualised is one in which the negotiations are seen as being a progression, in which the parties agree an agenda, outline and explore opening positions, and seek compromises in order to narrow gaps between positions until a point of convergence is reached which forms the basis for substantive agreement.³⁷ The model may be put schematically as follows:

1. Preparatory phase:
 - preparation of national position
 - agree venue
 - outline agenda approved
 - level at which talks are to be conducted.
2. Opening phase (procedural):
 - confirm credentials of the parties
 - reestablish purpose and status of the talks (e.g. whether they are informal or preliminary discussions, formal talks or whether any follow-up talks are envisaged and at what venue)

- working documentation
 - working procedures
 - recess (if any)
 - language to be used
 - rules of procedure
 - agree which text or draft (if any) will be used as the basis for negotiation
 - whether there is to be an agreed record.
3. Opening phase (substantive):
 - confirm or amend agenda
 - exposition of opening position.
 4. Substantive negotiation:
 - exploration of areas of difference
 - construction of areas of agreement.
 5. Adjournment of the negotiation for further rounds of talks (if appropriate).
 6. Framework agreement reached.
 7. Legal clearance and residual drafting amendments.
 8. Initialling or signature of final agreement.
 9. Statement on proceedings or communiqué.

Process

The preparatory and initial phases of a negotiation can take some considerable time. Thus, matters such as the choice of the parties to be invited – e.g. the participation of the Vietminh at the 1954 Geneva Conference,³⁸ the National Liberation Front (NLF) in the 1968 Vietnam talks³⁹ and the Palestine Liberation Organisation (PLO) in the Geneva Middle East talks⁴⁰ – can be very contentious. So, too, can the content of the agenda⁴¹ and even the shape of the negotiating table⁴² become major obstacles to substantive progress in the initial phases of negotiation.

As far as procedural issues are concerned, the extent to which these may be dispensed with as routine or become contentious issues depends very much on the closeness in the relations between the parties, the organisational setting and the kind of issues involved.⁴³ The early stages of the Strategic Arms Limitation Talks (SALT I) negotiations were taken up with the not uncommon problem of the ordering of items for discussion. In this case, difficulties arose over whether to deal with an anti-ballistic missile (ABM) treaty first before moving on to offensive systems, or to treat these in parallel.⁴⁴

At the substantive phase, the negotiating process can take one of a number of forms. In ‘polarised’ negotiations, the process, as noted earlier, tends to be characterised by lengthy initial phases that involve exposition of positions and issues of principle.⁴⁵ In other forms of negotiation, the progression can be conceptualised as one in which the parties move from opening positions to seek compromises and narrow gaps between

positions until a point of convergence is reached on an item or issue, which then forms the basis for the expansion of areas of agreement. This type of process might be incremental, or, less commonly, 'linear'. The latter form of progression is found, for example, in certain kinds of multi-lateral trade negotiations in which, ideally, a generally agreed 'across-the-board' tariff reduction is negotiated, so reducing the need for bilateral haggling. In practice, the linear approach of the Kennedy Round was rapidly broken down as states attached lots of exceptions to their offers of tariff reduction.⁴⁶ A further illustration of the linear approach can be found in the negotiating methods used by officials in the Committee on Trade and Tourism of the Association of South-East Asian Nations (ASEAN), which has progressively made percentage cuts or zero-rated categories of goods traded within ASEAN.⁴⁷

Typically, the incremental process will involve attempts to narrow differences using one of a number of methods, such as establishing generally agreed principles; progressing through an agenda by leaving areas that are sticking points and moving on to other items upon which progress can be made; or trade-offs around blocs of concessions.⁴⁸

A second element frequently involves the search for referents. These might include attempting to gain agreement for: special rights such as fisheries access, transit landing or rights; acceptance of 'economy in transition status'; compensation; or a pricing and specification formula in an international weapons supply contract. Other forms of referents may be of a conceptual nature, such as the search to establish an agreed strategic 'language' in an arms-control negotiation, or mutually agreed conception of 'cost'. The search for and construction of referents forms a central part in negotiations of an incremental type. Without these, negotiations tend to become bogged down or protracted. This type of difficulty can be seen, for example, in a number of international civil aviation renegotiations in which one of the parties attempts to revise route structures and schedules, but fails in the negotiations to reach mutually agreed definitions of cost.

Apart from these types, the substantive phase of certain bilateral or multilateral negotiations might be quite informal. Not all the phases outlined above would be gone through. Negotiators might confine themselves to broad general issues and leave details to a later date for officials to bargain over and clarify. Informal negotiations may also occur at the margins of *other* negotiations, particularly in regional organisations (e.g. the EU) which perhaps may be addressing different issues. Furthermore, informal negotiations might lead to an agreement, for example to adjust foreign or domestic policies (such as to intervene in currency markets or to apply drug laws more rigorously) in which nothing appears on paper. In these instances, the use of informal negotiations depends on the relations between the parties, the type of issue under discussion and other reasons such as the wish of the parties to retain some degree of flexibility and freedom of action.

Complex multilateral diplomacy

Apart from the above, a number of additional features of multilateral negotiations require comment. First, an important part of some multilateral negotiations is not a process of exchanges of concession that produces convergence, but rather exchanges and proposals that are part of information building,⁴⁹ concept development, establishment of principles or building up descriptive texts. Second, when issues concerning international standards or scientific processes arise,⁵⁰ convergence is often difficult, since 'purist' states refuse to accept 'dilution' of standards or procedures and insist on rigorous rules. Rules based on hard science, in this view, are preferable to flexible obligations or voluntary codes. In some instances, solutions can only be found in modifying not the standard but the terms of application.

Finally, in fragmented multilateral conferences with diffuse and highly complex agendas, deadlock has resulted in 'end run' negotiations, which seek formulae in the final sessions to avert the collapse of a conference. For example, the collapse of the Intergovernmental Negotiating Conference on Desertification – which was divided on a number of major issues including financial arrangements for technical assistance – was averted by US proposals to defer solutions to financial arrangements until after the opening of the agreement for signature.⁵¹

Three areas of agreement

Three further features of the process of building up areas of agreement can be noted. First, structural complexity tends to be handled in one of several ways, such as: altering the level of responsibility in order to achieve a different perspective, as well as flexibility (e.g. by changing the level of representative in a negotiation); frequent redefinition of the problem by building up information and revising draft texts; and the use of innovative negotiating structures.

In addition, the diffusion of political power in complex multilateral conferences means that a number of states are able to wield a greater amount of influence than they normally would outside the context of such conferences. For example in the UNCLOS, Malta, Fiji, Cameroon, Peru and Venezuela have, through the skill and expertise of their individual representatives, played highly active roles.

For some states, that influence may last only as long as their special area of interest remains unresolved; others – perhaps because of the chairmanship of a committee, specialist knowledge or skill in breaking deadlock – manage to play a consistently more important role on major issues. Minor powers like these have the capacity to block, delay or facilitate compromise like others, yet they have the advantage of far fewer

domestic constraints. For larger powers, constraints could stem from, for example, a large and divided delegation, pressure from a domestic 'constituency' or the need to appear frequently constructive. The representatives of minor states frequently enjoy a great deal of delegated power; in contrast, for the major powers, the intervention in negotiation of a minister or senior adviser is not always appreciated by the technical negotiator, since the balance of initiative and decision shifts to the political élite.

Consensus

The second principal feature of the process of constructing consensus is that it is disjointed and fragmented. Substantial areas of disagreement remain as efforts are made to agree draft language in a text, trade blocs of issues or construct packages.⁵² Packages in effect often have to be structured from the 'bottom up' as negotiators move through new terrain, assisted in some instances by referents and formulae from other contexts.⁵³ In practice, too, there is considerable uncertainty as to the degree of support such efforts enjoy, since they are often made by the few or on a delegated basis, which then have to be presented and 'negotiated' as acceptable. During the process of structuring areas of possible agreement or packages, some difficult issues tend to be postponed to a later date or partially resolved, pending an overall settlement. The protracted nature of the negotiating process often means that issues that are only partially resolved can be reopened, thus temporarily halting or reversing the progress that has already been achieved. Examples of this occurred at the seventh session of UNCLOS when the USA reopened the question of the regime for marine scientific research, and within the Uruguay Round, when France reopened the question of the intellectual property rights and electronic goods. In other instances, efforts may be made to reinstate language from an earlier draft of a text, also risking reopening issues and unravelling any emerging consensus.⁵⁴

Issue learning curve

A third feature of multilateral conference diplomacy is the 'issue learning curve'. In complex innovative negotiation, negotiators progressively increase their knowledge of the issues at stake during the exploration of opposing positions, and so gradually come to understand the ramifications of the problems as well as recognising potentially new dimensions for conflict or consensus building.⁵⁵ The continued discovery of new facets of an issue presents negotiators with the opportunity to delay the search for agreements or maximise negotiating demands. A clear example of this phenomenon is provided by the negotiations on the issue of the regime

for the international seabed, which was probably the most complex and protracted issue at UNCLOS. The construction of a regime for managing deep seabed resources brought together in a unique and novel manner an immense range of problem areas straddling private and public international law, involving such questions as the legal status of mining consortia, taxation, the rights of pioneer mining investors, the powers of the Global Mining Enterprise and the constitution of the Seabed Mining Council.

The process of reaching consensus on the regime was complicated further by its format. Unlike some international agreements establishing institutions that set out a general framework for the powers and functions of an organisation, the seabed regime has quite detailed provisions on production rates, taxation and so on. In the event, the overall regime that began to emerge gained the support of developing countries within the Group of 77 (G-77), but not the USA or a number of other seabed mining states.

Moreover, the proposals (e.g. taxation rates) were too detailed to be a basis for consensus, given especially the distant time-scale for cheap seabed mining. The level of detail was a reflection of the predominance of a small group of technical specialists from, for example, the USA, Canada, Germany and Australia, and the expansion of negotiable issues as the frontier of the issue learning curve was extended. Many of these provisions (e.g. taxation, transfer of technology, institutional arrangements) were eventually overturned in 1992–3 in the so-called ‘compromise’ Implementation Agreement, concluded as a supplement to the 1982 Law of the Sea Convention, to facilitate the accession of the USA and other ‘mining’ powers to the Convention.

The dynamic of negotiation

The dynamic aspects of negotiation can usefully be understood through three concepts: focal points; the concession rate; and momentum. Focal points may take a number of forms, such as the British government’s demand for a policy of balance over the European Community budget and a specific reduction in contributions; blocs of policy issues, as in, for example EU membership negotiations with Austria, Finland, Sweden and Norway; or particular assurances might be sought such as over the issue of guarantees on the political structure of Hong Kong, in the Sino–British talks on the future of the colony. As Iklé suggests: ‘focal points are like a notch where a compromise might come to a halt, or a barrier over which an initial position cannot be budged’.⁵⁶ Focal points therefore serve not only to reduce the options negotiators have to work within, but also act as a means of evaluating compromise.

Second, the flow of negotiation will be influenced by the concession rate. In effect, the perceived extent to which a party makes a unilateral or reciprocal modification to its position serves to demonstrate engagement in or commitment to the negotiations. Concessions as such may be

made either informally or formally. The possibility of a change of position can be indicated informally by modifications in negotiating style. In other instances a willingness to reach agreement may be signalled by not actually raising a sensitive item or by omitting it from conditions attached to a negotiating bid.⁵⁷ Conversely, delegations may signal continued dissatisfaction with a draft text by insisting on the retention of square brackets around parts or the whole of a draft article or section of an agreement. Formally, a concession may be indicated in several ways, such as tabling a draft proposal, suggested modifications to an article in an agreement or contract, or withdrawal of a proposal.

The overall concession *rate* can be considered as consisting of subclusters of concessions, the pace of which will be influenced by several variables, including the degree of latitude in a decisionmaker's instructions, whether parts of an issue remain 'closed' or non-negotiable and the extent to which decisionmakers are operating under time constraints or deadlines. In bilateral negotiations, concessions tend to be more easily identified, unlike in complex multilateral diplomacy where the number of parties and scale of issues, some of which are quite often novel, make the construction of areas of agreement difficult. In multilateral negotiation, two elements in the concession rate need to be distinguished. First, there are those attempts at working-group level to reach negotiated solutions. Second, there are the initiatives by the secretariat or specifically designated conference chairmen to construct so-called 'packages', or draft composite chairmen's negotiating texts, which link together broad areas of agreement or postpone partly resolved or contentious items. Another form of 'package' might entail a straight trade-off of concessions. The interplay between the low-level (working group) concession rate and the construction of overarching packages or composite negotiating texts is one of the main distinguishing features of complex multilateral diplomacy.

The third concept in terms of the dynamic of negotiation is the idea of momentum. Loss of momentum in negotiations may occur for several reasons, such as the absence of a key negotiator, lack of movement on an issue or talks becoming bogged down in detail. Conversely, momentum may be sustained by regular negotiating sessions, the use of contact groups or third parties, as well as the concession rate discussed above.⁵⁸ Negotiators more rarely may seek to increase the momentum of negotiations by an ultimatum or setting a deadline. In the Sino-British talks on the future of Hong Kong, for example, the PRC set a deadline of 1 September 1984 for the conclusion of a framework agreement.

Characteristics of certain negotiations

The preceding sections of this chapter have looked at the negotiating process in general and some of the concepts that can be used to understand the processes of bilateral and multilateral negotiation. In the

section on classification (Table 4.1), seven indicative categories were put forward as a way of grouping and reflecting the range of modern negotiation. Analysis of a number of negotiations in the categories would suggest that certain of the negotiations in the particular classes do have some broadly similar characteristics. In the Category 1, for example, negotiations on communiqués tend to be ‘textual’ in nature, with limited scope for trade-off since the drafting is normally in the concluding phases of the proceedings.⁵⁹ As such, communiqués are invariably negotiated under extreme time constraints, preferred positions tend to be either accepted or not, and differences glossed to minimise public divergence and silence the norm on areas of major disagreement.

The effect of time constraints can also be seen in many other negotiations such as ad hoc law-making conferences, ministerial meetings of international organisations and multilateral conferences (Category 6), which have to be concluded by a specific date.⁶⁰ Closer to the conclusion of the conference, the pace of negotiating (unless heavily polarised) tends to increase, with lengthy sessions and a not uncommon feeling of having to produce something – a joint statement, agreed text – or conclude the outstanding provisions of an agreement (despite differences), all of which may have varying effects on the degree of generality or precision of the terms of the agreement.

In Category 6, negotiations over regulatory agreements tend to be highly complex and structurally distinguished from other categories by mixed delegations of government and commercial interests, and high degrees of direct or indirect non-governmental group lobbying. Civil aviation negotiations (or more strictly renegotiations) tend to focus on one or two issues, such as passenger capacity or new services. Agreements of the regulatory category are the least stable. Negotiations to change existing arrangements are normally lengthy, spanning several years of often inconclusive talks, as illustrated by Japan’s unsuccessful efforts to revise the 1952 US–Japan Civil Air Transport Agreement from 1976.⁶¹

The international debt crisis has given rise to a new and unusual genre of financial ‘rescue package’ negotiations.⁶² Debt rescheduling negotiations (Category 2) are multiparty negotiations involving heads of government, foreign and finance ministers, banking consortia, international banking officials and domestic economic, labour and banking interests in the rescheduling state. In these types of negotiations, political and economic élites in the rescheduling state are likely to be highly divided over strategies and policies, as the negotiations are conducted against a backdrop of shifting constraints in the form of deadlines, target dates and coercive pressures arising from the problems of meeting conditions attached to the rescue package. The pressures surrounding the rescheduling state were summed up by one director of a ministry of finance: ‘I go to New York and start ringing at one in the morning. The first hour to India and Singapore, the next hour I spend ringing the Middle East and then Germany, then Paris, then London and so it goes on’.⁶³

In Category 3, contractual negotiations tend to be handled at a specialist level. Contractual negotiations are also, unlike many other negotiations under discussion, distinct in that there is much less frequent ministerial or senior official involvement owing to the technical nature of the discussions, unless there is a major impasse. Negotiated agreements are frequently less stable, with renegotiation disputes arising out of the failure of a contracting party to purchase, for example, the amount of oil or gas agreed in a supply contract, or because price fluctuations in a commodity contract make the agreed pricing formula unattractive. The overall process of renegotiation can be quite lengthy, with the likelihood of adverse repercussions on other bilateral relations.

Hostage negotiations

In examining issues related to negotiations, an initial distinction between interstate negotiations and those involving hostages is necessary. The latter are distinct in terms of the uncertain status of the terrorist or other group, its capacity to deliver an agreement and the procedures under which it is operating. Unlike interstate negotiations, some part of the process may rely heavily on television, media and video communication.

In this section four different types of hostage negotiation are distinguished, drawn from the Iraq conflict. None of the cases involves a single method, but each is distinct in terms of the dominance of one of the methods.

In Case 1 (Bigley),⁶⁴ the negotiations model was distinguished by the use of multiple sources, including Islamic organisations, the Islamic community in the UK and ad hoc negotiators, such as Ayatollah Ali Sistani.⁶⁵ A second element was the high level of public media used by British interlocutors and relatives, through structured police-style appeals. The public 'no negotiation' line (prime minister, foreign secretary) put formal officeholders under considerable domestic pressure to take more action in the psychological contest with the hostage-holding group conducted through Al Jazeera. In Case 2 (Hassan), the negotiations model was characterised by rational appeal based on the nationality and humanitarian role of the victims in Iraq. In Case 3 (Italian hostage rescue), the model was non-public, with negotiations conducted by Italian intelligence and other European intelligence services.⁶⁶ In Case 4 (Japanese hostages), the model used quiet diplomacy and third-party mediation through Jordan, with, as in Case 3, an unknown ransom.⁶⁷

A number of general points emerge from the above cases. The conduct of negotiations between state and non-state actors has been given a different dimension by the use of video to communicate pure violence through execution. The use of video communication in hostage negotiations is not new, but rather than being used for the transmittal of appeals as part

of the psychological pressure in negotiation, the video of execution of hostages takes the meaning and techniques of conflict into new areas. Diplomatic issues are also raised over the transmission of these (and other tapes, e.g. Bin Laden) by foreign media stations.

Second, the above cases illustrate the use of hostage crises, including video/satellite communication, to pursue a wide range of internal and external policy objectives, including domestic destabilisation and weakening coalitions, at relatively low economic and organisational costs. Third, issues are raised in these and similar cases about negotiation strategies, in particular whether to pursue public or private negotiation ranks. The first and second cases reviewed here suggest the limitations of the public route. There is, too, clear danger in attempting to transfer negotiating techniques from domestic hostage or criminal negotiations into an international context, characterised by extreme ideological and cultural division.

Fourth, hostage crises test the limits of diplomacy, in that there is a high probability of failure, or that force is used.⁶⁸ Hostage negotiations are not beyond the capacity of diplomacy and it is not argued here that conventional diplomacy is defective. The question arises in the sense that the utility of diplomacy is put on the line in respect of one of its functions – the protection of nationals. It is also interesting in that context that nationality (or rather a change to Irish nationality) was used unsuccessfully as a vehicle for mediation and a rationale for release. Rather, hostage negotiations are well within the domain of diplomacy, which traditionally is concerned with developing and using a variety of contacts, and operating in dangerous situations. In most of these instances, however, a negotiated outcome was not an intended outcome. Absolute violence is incompatible with negotiated concession.

Multilateral conference negotiations

Collegiate-style negotiations are characterised by the subdivision of negotiating issues into blocs or groups, which are allocated on a decentralised basis to subcommittees and working groups reporting to separate chairmen, subordinate to the conference president/plenary. In essence, collegiate-style negotiations involve the building-up of 'composite' single negotiating texts drawing on subcommittee drafts. The method was extensively developed during the law of the sea negotiations (1973–82)⁶⁹ and has been widely used subsequently, for example in the Uruguay Round. In contrast, some multilateral conferences are predominantly chair-led, with texts filtered, refined and directed through the chair, usually assisted by a conference bureau, operating through lead delegations and private intercessional discussions with selected delegations. An example of chair-led negotiations is the UN Conference on Straddling and Highly Migratory Fish Stocks (1993–6).⁷⁰

Fragmented multilateral conferences generally have inconclusive preparatory phases; diffuse agendas; low political commitment by principal players to conference objectives, for example the World Population Summit, Cairo, 1994;⁷¹ and non or low-level attendance by principal players, for example the World Summit for Development (Stockholm, 1995).⁷² These types of broad issue or thematic conferences contrast particularly with the standing or permanent technical meetings of UN specialised agencies such as the IMO, the Food and Agriculture Organisation (FAO) and the International Atomic Energy Agency (IAEA), characterised by the coordinating and directing role of the lead core group, operating at sub-committee level and intercessional 'correspondence group' as a kind of subconference. Even in these types, extensive differences in technical conferences can emerge on central questions such as the economic cost of meeting enhanced international safety standards. For example the 1995 diplomatic IMO conference to revise the Safety of Life at Sea (SOLAS) Convention provisions on roll on/roll off (RORO) passenger vessels, following the *Estonia* disaster, was deadlocked over higher international standards, and could only agree on a conference resolution permitting ad hoc additional regional agreements on specific stability requirements. Those arguing for worldwide implementation over a phased period of the lower existing RORO stability standards (SOLAS 90), rather than introducing revised higher standards to cover survivability with significant levels of water on deck, included the Russian Federation, Greece, France, Belgium, India, Egypt, Brazil, Spain, Cyprus and Panama. The group proposing higher international standards with special regional standards as only a last resort included the UK, Denmark, Sweden, Finland, Norway, Estonia and the USA. It is interesting to note that in this highly fragmented context, in the central debate over international as against regional standards, the regional approach was supported for different reasons both by the higher standards states (last resort) and by the maritime minimalists (e.g. Japan, Philippines, Indonesia, Bangladesh, Republic of Korea, the PRC). For the latter, the regional argument was used ('special circumstances') to support the *non-application* of global higher international standards so as to *exempt* specific regions on geographical grounds, though in practice economic conversion or new building costs were the underlying reasons for the minimalists' position.⁷³

Parliamentary-style multilateral negotiations have been essentially influenced by the procedures, styles and practices of the UN General Assembly. These include extensive use of plenary debate; pluralism through one state one vote; and extensive numbers of multisponsored resolutions. Examples of parliamentary style negotiations are the proceedings of the preparatory Commission on the Status of Women,⁷⁴ and, the Assembly of the EU–African, Caribbean and Pacific Countries (ACP).⁷⁵ Finally, multilateral negotiations in informal meetings are generally not conducted on the basis of set rules of procedure.

Developments in international agreements

A number of important developments have taken place in the form and nature of modern international agreements. First, the increasing diversity of participants in the international system has led to the growth of agreements, not just between sovereign states, but between states and a wide range of other actors ranging from international organisations, corporations, international credit banks, to shipping consortia. Second, these changes have been reflected in the growing informality of instruments that are negotiated, and in particular the growth in usage of memoranda of understanding. The trend is in part influenced by national style, as well as convenience, since agreements and arrangements of this type avoid the requirement of constitutional approval. This usage, too, sometimes reflects the short-term intentions of the parties or incomplete nature of the agreement. Informal agreements have also been negotiated by states that do not have diplomatic relations to cover such matters as trade or fisheries regulation. Third, the inability of states to finalise precise terms or reach definitive agreements has been reflected in the ways in which obligations are formulated. In this respect, a number of novel forms of clauses giving effect to incompletely negotiated obligations have been developed, such as the so-called 'gentlemen's agreement', barter or counter-trade agreements, 'implementation' agreements and voluntary or self-limitation clauses, covering, for example, ceilings on motor vehicle exports or steel production. These types of agreements or schedules in agreements have the advantage of flexibility and are intended to expedite the process of negotiation. On the other hand, the lack of durability of such arrangements and their potential for causing dispute has often offset the short-term advantages.

Notes

1. Fred Charles Iklé, *How Nations Negotiate* (Harper and Row, New York, 1964).
2. See, for example, Robert L. Rothstein in *Global Bargaining* (Princeton University Press, Princeton, N.J., 1979), p. 150 *passim* on the polarised position during the integrated commodity negotiations at UNCTAD.
3. Iklé, *op. cit.*, p. 31.
4. In a strict sense consultations are distinct from negotiation, although in practice the line between the two is blurred. Writing in the context of GATT though applicable generally, Kenneth W. Dam notes: 'Although the carrying on of negotiations is to be distinguished from consultations, it is not clear to what extent the two exercises are to differ'. See *The GATT* (University of Chicago Press, Chicago, Ill., 1970), p. 85.
5. Diplomacy by correspondence has been extensively used as a technique in conflicts by UN secretaries-general. Secretaries-general, perhaps rather more than national decisionmakers, face limitations on the amount of information they

- receive. In the 1968 El Al hijacking crisis, for example, the secretary-general was not informed of the initiatives being made by the Italian government. See U. Thant, *View from the UN* (David and Charles, London, 1978), pp. 302–8.
6. In the Franco–American dispute on the removal of American military bases from France in 1966, the USA felt compelled eventually to end the exchange of diplomatic notes and move to direct discussion. As one American official put it: ‘We don’t advance anything by making debating points in diplomatic notes’; cited in Arie E. David, *The Strategy of Treaty Termination. Law Breaches and Retaliation* (Yale University Press, London, 1975), p. 121.
 7. A review of this literature including labour and other economic relations can be found in Charles Lockhart, *Bargaining in International Conflicts* (Columbia University Press, New York, 1979), pp. 1–35.
 8. For example Lockhart, op. cit. and Thomas C. Schelling, *The Strategy of Conflict* (Oxford University Press, London, 1963), and *Arms and Influence* (Yale University Press, New Haven, Conn. and London, 1966), pp. 131–41, for the concept of tacit bargaining.
 9. Iklé, op. cit., p. 3, and Schelling’s comment in *Arms and Influence*, p. 131.
 10. Iklé, op. cit., pp. 26–58.
 11. R.P. Barston, ‘Law of the Sea Conference: Old and new maritime regimes’, *International Relations* (David Davies Institute) vol. 6, no. 1, May 1978, pp. 306–10.
 12. *UNTS*, vol. 952, p. 264.
 13. *A Draft Agreement between the United Kingdom and the People’s Republic of China*, Misc. No. 20, 1984, Cmnd. 9352, especially Annex 1, pp. 14–23.
 14. A similar difficulty arises over efforts to apply the distinction between the ‘efficiency’ aspects of negotiation (i.e. the search for mutually profitable adjustments) and the ‘distributional’ (the division of an object in favour of one rather than another party) to differentiate respectively innovative and redistributive negotiations. See Iklé’s note on this, in Iklé, op. cit., p. 27.
 15. ‘Pure’ bargaining is understood in terms of the relationship between demands and concession. Demands are made, which may or may not be backed by coercive threats, with the aim or expectation of extracting concessions. Negotiation, at least in a cooperative sense, is distinct in that although demands are made the process involves adjustments, compromises, ‘bridging’ formulae and other ‘integrative’ behaviour. As Knut Midguard and Arild Underdal note, ‘pure bargaining consists of trying to get the other party or parties to make the largest number of concessions, while making the smallest possible concessions oneself’. See ‘Multiparty conferences’, in Daniel Druckman (ed.), *Negotiations: Social psychological perspectives* (Sage Publications, Beverly Hills, Calif., 1977), p. 332.
 16. This can happen at the outset of an air service negotiation in which one of the parties regards the issue as a routine extension, while the other uses the opening negotiations for redistribution.
 17. See Lockhart, op. cit., p. 9, and Robert D. Tollison and Thomas D. Willett, ‘Institutional mechanisms for dealing with international externalities: A public choice perspective’, in Ryan C. Amacher and Richard James Sweeney (eds), *The Law of the Sea: US Interest and Alternatives* (American Enterprise Institute for Public Policy Research, Washington, DC, 1976) esp. pp. 97–101 for a discussion of an optimal theory of negotiations.
 18. Sofia was chosen by Moscow for the Soviet–Egyptian talks of Nov. 1976, to reappraise the Egyptian–Soviet Treaty of Friendship, as an appropriate

- 'neutral' location. See Ismail Fahmy, *Negotiating for Peace in the Middle East* (Croom Helm, London, 1983), p. 177.
19. For example US Secretary of State Warren Christopher brokered a reopening of Syrian and Israel talks at ambassadorial level in Washington, DC (a route favoured to assist political leverage over the 'peace process'), after this strand had been broken off in Feb. 1995 by Syria following the Hebron massacre. See *The Times*, 14 March 1995.
 20. See G.R. Berridge, *Talking to the Enemy* (Macmillan, London, 1994), especially chs 1 and 3, pp. 33–58.
 21. See Ronald Barston, 'UN Conference on Straddling and Highly Migratory Fish Stocks', *Marine Policy*, March 1995, pp. 159–66.
 22. See Volker Rittberger, 'Global Conference on Diplomacy and International Policy Making', in *European Journal of Political Research* (Special issue: Negotiation), vol. 70, no. 11 (2), 1983, pp. 167–82.
 23. Michael Holden, *The Common Fisheries Policy* (Croom Helm, London, 1995).
 24. For the influence of setting on the formation of the UN peacekeeping force in Cyprus (UNFICYP) see R.P. Barston, 'Problems in international peace-keeping: the case of Cyprus', *International Relations* (David Davies Institute, London, Nov. 1974), pp. 559–84.
 25. See, for example, Henry Kissinger, *The White House Years* (Weidenfeld & Nicolson, London, 1979), p. 1205.
 26. For an analysis of Kissinger's role in the Arab–Israeli disengagement after the Oct. 1973 War see William B. Quandt, 'Kissinger and the Arab–Israeli disengagement negotiations', *Journal of International Affairs*, vol. 29, no. 1, Spring 1975, pp. 33–48, and William R. Brown, *The Last Crusade: A negotiator's Middle East handbook* (Nelson-Hall, Chicago, Ill., 1980). On mediators in the Arab–Israeli conflict from 1948 to 1979, see Saadia Touval, *The Peace Brokers* (Princeton University Press, Princeton, N.J., 1982).
 27. See UN/IO/372, 30 March 1995; A/AC.172/157, 8 Aug. 1994, Annex 1.
 28. For an account of the secretary-general's consultations to resolve the impasse over the Deep Sea-bed Mining Provisions of the 1982 Law of the Sea Convention (Part XI) held from 1992 to 1994, which produced the Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 Dec. 1982 (UN General Assembly Resolution 48/263), see *Law of the Sea Bulletin*, Special Issue IV, 16 Nov. 1994.
 29. During 1993, the Israeli foreign minister, Shimon Peres, and Mahmoud Abbas of the Palestine Liberation Organisation and other leading PLO officials held secret meetings in Norway and other locations under the brokerage of then Norwegian foreign minister Johan Jorgen Holst. The meetings ran parallel to the official talks that began in Madrid in Nov. 1991 but were deadlocked. News of the breakthrough overshadowed the 11th round of 'official talks' at which there was no progress. The secret talks resulted in the Israel–PLO agreement of 13 Sep. 1993. See *The Times*, 16 Sept. 1993.
 30. See Arthur Lall, *Modern International Negotiation* (Columbia University Press, New York, 1966), pp. 323–44; Iklé, op. cit., chs 6, 9 and 12; and P.J. Boyce, *Foreign Affairs for New States* (University of Queensland Press, St Lucia, Qld, 1977) esp. pp. 158–9 and 232–54.
 31. The problem of establishing negotiating mechanisms to enable talks to be held with the Iranian authorities was perceived as a major constraint by US

- decisionmakers during the Iranian hostage crisis. See 'The Iran Hostage Crisis', *Report for the Committee on Foreign Affairs of the United States House of Representatives* (US Government Printing Office, Washington, DC, 1981), pp. 382–3 for details of the mediatory role of Algeria, and, more generally, for a collection of some of the major developments.
32. Harold Nicolson, *Diplomacy*, 3rd edn (Oxford University Press, London, 1963), pp. 18, 30–8.
 33. On Soviet negotiating style, see for example Kissinger op. cit., pp. 1131–2, 1148–53, 1241. In his discussion of the negotiations to end the Vietnam War, Kissinger provides an illuminating insight into the negotiating style of South Vietnam's President Thieu, which was strongly influenced by French diplomatic style: 'He [Thieu] fought with a characteristic Vietnamese opaqueness and with a cultural arrogance compounded by French Cartesianism that defined any deviation from abstract, unilaterally proclaimed principles as irreconcilable error', pp. 1322–8.
 34. An account of Egyptian negotiations with the then Soviet foreign minister Andrei Gromyko can be found in Fahmy, op. cit., pp. 177–82. Fahmy notes the change in Soviet style from the tough formal approach session of the full delegation to that in the *tête-à-tête*.
 35. Michael Blaker, *Japanese International Negotiating Style* (Columbia University Press, New York, 1977), pp. 54–8.
 36. For example the grounding of the tanker *Amoco Cadiz* off Ushant, in 1976, causing major pollution damage, gave added weight to those seeking stronger anti-pollution measures at the Law of the Sea Conference. See R.P. Barston and Patricia Birnie (eds), *The Maritime Dimension* (George Allen & Unwin, London, 1980), p. 118.
 37. See I. William Zartman, 'Negotiation: Theory and reality', *Journal of International Affairs*, vol. 29, no. 1, Spring 1975, pp. 71–2.
 38. Sir Anthony Eden, *Full Circle* (Cassell, London, 1960), pp. 115–16.
 39. Gareth Porter, *A Peace Denied: The US, Vietnam and the Paris Agreement* (Indiana University Press, Bloomington, Ind., 1975), p. 77.
 40. See I. William Zartman and Maureen R. Berman, *The Practical Negotiator* (Yale University Press, New Haven, Conn., and London, 1982), p. 139 on the efforts to devise a procedural formula for PLO participation in the proposed Geneva conference.
 41. The scope of negotiations in terms of what is included or excluded on the agenda can be contentious. In the Sino-Indian boundary negotiations dispute arose over determining which sectors of the boundary should be discussed. China regarded inter alia the boundaries of Sikkim and Bhutan as outside the scope of the Sino-Indian boundary question. See *Reports to the Government of India and China on the Boundary Question* (Ministry of Foreign Affairs, India, 1961), pp. 37–9.
 42. The US spokesman Cyrus Vance initially proposed two long tables (a two-sided conference) for the Vietnamese peace talks. The Democratic Republic of Vietnam (DRV) insisted on a square table with one delegation seated on each of the four sides, thus showing the National Liberation Front as an equal partner. The USA then proposed a round table, which the DRV accepted, but which was rejected by the South Vietnamese government. A compromise eventually emerged through a slight alteration to the formula of a round table: two rectangular tables were placed at opposite ends of the table. See Porter, op. cit., p. 78.

43. Procedural differences over the order of questions or items on the agenda can lead to the opening-up of wider substantive matters. The fifth restricted session of the Geneva Conference on Indo-China, 24 May 1954, was taken up with discussion of whether military problems (cessation of hostilities, measures concerning regular and irregular forces, prisoners of war) should take priority over political problems (international supervision of agreement, guarantees) as the basis for further meetings. See secret telegram Secto 292, 25 May 1954, Smith (Head of Delegation) to State Department, in *Foreign Relations of the United States 1952-4: The Geneva Conference*, vol. 16 (US Government Printing Office, Washington, DC, 1981), pp. 907-11.
44. Gerard Smith notes: 'Semenov claimed not to understand what I [Smith] meant by "in parallel"'; *Double Talk: The Story of the First Strategic Arms Limitation Talks* (Doubleday, New York, 1980), p. 250.
45. Rothstein, *op. cit.*, pp. 148-57.
46. Johan Kaufmann, *Conference Diplomacy* (Sijthoff, Leiden, 1968), p. 181.
47. Interview (personal source).
48. Another important method involves the construction of formulae to bring the positions of the parties together or break an impasse. See Zartman and Berman, *op. cit.*, esp. pp. 109-46 and 166-79.
49. For further discussion and illustration of the phenomenon of information and concept building in the initial stages of negotiations, see [Chapter 4](#).
50. The issue of international standards versus national or regional exceptions is clearly illustrated in the debate within the international community over enhanced international standards of ferry safety against the background of continuing major ferry accidents such as *Herald of Free Enterprise* (Zeebrugge, 1987), *Donna Paz* (Philippines, 1991), *Estonia* (1995). More stringent international standards of passenger ferry stability (modifications to the 1990 Safety of Life at Sea Convention) were opposed by, for example, Greece, Morocco, Spain and the Russian Federation. See International Maritime Organisation, MSC 65/25, 30 May 1995.
51. See [Chapter 11](#), pp. 204-5.
52. Gilbert R. Winham, 'Negotiation as a management process', *World Politics*, vol. 30, 1977-8, pp. 87-107.
53. The concept of 'structural uncertainty' is discussed by John D. Steinbruner, *The Cybernetic Theory of Decision* (Princeton University Press, Princeton, N.J., 1974), p. 18, *passim*.
54. For example at the key April 1995 session of the UN Conference on Straddling and Highly Migratory Fish Stocks in New York, the veteran conference chairman Satya Nandan (Fiji) made an appeal in plenary for states not to reopen issues and so keep the conference moving towards some semblance of an agreement.
55. See Steinbruner, *op. cit.*, pp. 40-4, 136-9, for a discussion of causal and cognitive learning.
56. Iklé, *op. cit.*, p. 213.
57. Fahmy notes, in discussing the Egyptian-Soviet negotiations to reappraise the Treaty of Friendship, that Foreign Minister Gromyko did not raise the issue of Egyptian debt due to the Soviet Union in either the private meetings or full encounters of the two delegations. 'In fact this was the first time in any negotiation that the debt was not mentioned', *op. cit.*, pp. 181-2.
58. See Kissinger, *op. cit.*, p. 1137, and Zartman, *op. cit.*, pp. 74-7.

59. See Fahmy, for an unusual example of bilateral communiqué negotiations held before a projected Egyptian summit conference, *op. cit.*, p. 184. The practice of pre-communiqué negotiations is now, however, common in the run-up sessions to G-7 Summits. Indeed *leaking* of pre-conference draft G-7 communiqués has been used by leading G-7 states and/or the host state to float ideas and gain endorsement for proposals, e.g. Halifax Summit proposals on reform of the IMF and cutback in UN agencies including UNCTAD.
60. An interesting account of the concluding phases of a GATT meeting is in 'Notebook: Behind the scenes at the GATT trade talks', *New York Times*, 5 Dec. 1982.
61. Takayuki Hashizuma, 'US-Japan international aviation policies', in *Aerospace: Asia and the Pacific Basin* (Financial Times, London, 1984), pp. 18–22.
62. R.P. Barston, *International Politics Since 1945* (Elgar, Aldershot, 1991), pp. 115–21.
63. *The Observer*, 8 April 1984.
64. In the Iraq conflict over 170 foreigners were kidnapped in 2004, and at least 34 executed. It is not always easy to differentiate, however, political from economic ransom targets. On the kidnapping of Turkish businessmen in southern Iraq engaged in the UN project to clear sunken vessels from Umm Qasar and other ports, see *Lloyd's List*, 29 Dec. 2004.
65. *The Times*, 9 Oct. 2004.
66. See **Chapter 5**, on Japanese bilateral meetings at the G-8 Sea Island Summit 2004. The Japanese prime minister met separately with King Hassan of Jordan, to thank Jordan for mediation in the hostage crisis.
67. *The Times*, 7 March 2005, on the Calipari rescue mission.
68. For Linda Norgrove case see *The Guardian*, 15 February 2011 and successful rescue Helen Johnston, *The Daily Telegraph*, 2 June 2012.
69. See Barston, *op. cit.*, **ch. 6** for a discussion of state practice after 1982, in comparison to consensus of UNCLOS; see also **ch. 6**, footnotes 90, 91.
70. See Ronald Barston, 'UN Conference on Straddling and Highly Migratory Fish Stocks', *Marine Policy*, March 1995, pp. 159–66.
71. *UN Chronicle*, vol. XXI, no. 3, September 1994. More than 900 NGOs were accredited to the inconclusive Preparatory Meetings in March 1991, May 1993, and April 1994. The World Population Conference had met previously in Rome (1954), Belgrade (1965), Bucharest (1974) and Mexico City (1984).
72. Among heads of government not attending was the British prime minister, John Major. Several small and less developed countries cancelled on cost grounds, e.g. Malawi, preferring to allocate anticipated delegation costs to domestic poverty alleviation. See *The Guardian*, 7 March 1995.
73. See SOLAS/CONF.3/WP.2/Ad.1, 25 Nov. 1995: SOLAS/CONF.3/44, 28 Nov. 1995.
74. UN, WOM/825, 28 March 1995. Preparatory Commission on the Status of Women.
75. *The Courier*, Nov.–Dec. 1993.

Chapter 5

Developing diplomatic practice

This chapter is concerned with analysing some of the main changes that have taken place in diplomatic practice. The areas covered include diplomatic style, personal diplomacy, blocs and groupings, and quiet diplomacy. The chapter will also consider the phenomenon of transitional diplomacy, the development of operating procedures in multilateral conference diplomacy, and changing forms of implementing international agreements. Underpinning much of the discussion in these individual areas are three themes: fragmentation and fluidity of contemporary state groupings; the growth of regionalism; and the intrusion or involvement of diplomacy in areas that previously would have been regarded as 'domestic' policy.

Diplomatic style

The concept of diplomatic style is a useful means of thinking about the characteristic ways in which states and other actors approach and handle their external policy. This is not of course to say that every decision will necessarily reflect features of the diplomatic style. Within diplomatic style are included negotiating behaviour, preference for open or secret diplomacy, the kinds of envoys used, diplomatic language, preferred institutions and types of treaty instruments such as memoranda or treaties of friendship. For international institutions, diplomatic operating style reflects factors such as the impact of the ideas and style of the chief executive, the organisation's characteristic approach to problem solving, the conduct of negotiations and the types of agreements normally associated with the institution.

Examples of 'trade mark' diplomatic styles are those of the UK (technical drafting/international institution roles);¹ France (diplomacy of 'distinctiveness'; legality); Norway (remote location mediation);² and Japan (international secretariat roles, technical diplomacy).³

To what extent have styles changed? The expansion of the state community has brought with it a greater richness and variety in diplomatic styles, particularly at head-of-state level. This trend has been reinforced by the instability of governments, especially in Africa and the former Soviet Union. One effect of this, at the level of diplomatic officials, has been an increase in the number of military personnel holding diplomatic appointments.⁴ Embassies themselves, as a result, can become places of exile (or for monitoring exiles) and the classical functions impaired or not carried out at all. Instead, a considerable amount of time may be devoted to political-consular work involving nationals from the home state.

This, in fact, may reinforce a further noticeable development in diplomatic style, which is a tendency for developing countries to conduct their foreign policy from the centre through personalised diplomacy rather than through their own foreign ministry and embassy channels, where these exist. This has important implications both for the process by which images and views about another party are formed, and the execution of policy. Embassies may not in fact be providing information or feedback that the usual explanation or models of diplomatic and foreign policy organisations suggest. Rather, the interface between actors may be short-circuited, the decision process truncated and decision making personalised around the office of head of state and key advisers or agencies, transnational corporate actors or international institutions in a national capital. As noted in [Chapter 2](#), the foreign ministry, in some states, may rank third or fourth in the list of top five ministries behind the prime minister's department, security, treasury and the economic planning unit.

The general characteristics of the diplomatic style of some developing and smaller states, discussed above, contrast with more established regimes. The latter tend to have a plurality of bureaucratic interests, greater degrees of functional decentralisation and conventional feedback mechanisms. A further difference is that the main elements in the operating style of established states have become stabilised, and, to some extent, built in as standard operating procedures. Thus, a number of features of the overall operating styles of the United States, apart from variability in personal style at the executive level, have not greatly changed.

In US diplomatic style, the presidential special envoy has been used in a number of ways, as illustrated by General Marshall's mission to the PRC or the roving envoy role of W. Averell Harriman, and is a distinctive feature of American style.⁵ The special envoy becomes the additional 'eyes and ears' of the president, acting as a fact-finder or troubleshooter. For example, General Vernon Walters carried out extensive diplomatic missions for President Reagan, for example to Colombo during the Sri Lankan Tamil separatist crisis for talks with President Jayewardene.⁶ Richard C. Holbrooke, distinguished especially for his brokering of the Bosnia negotiations, was briefly President Obama's special envoy to Afghanistan and Pakistan. Although the special envoy may provide the president with additional or competing assessments, as well as strengthen

presidential control, the continued practice has been seen by some professional diplomatic service officers as an erosion of their areas of responsibility and influence.⁷ Other features of US style include the high use of memoranda of understanding and other informal instruments, working through ad hoc coalitions, and a preference for broad, package-type solutions in negotiations.⁸ Yet diplomatic styles do change, often with regime, turnover of administrations, or personality.

US operating style has tended to oscillate considerably towards the utility of multilateral institutional diplomacy.⁹ There has also been preference for bilateral or coalition diplomacy, coupled with a general quest for workable, smaller-scale regional arrangements with like-minded parties such as: the North American Free Trade Agreement (NAFTA); Asia Pacific Economic Cooperation (the Asian 'clean technologies' agreement rather than Kyoto); and the Trans-Pacific Partnership (TPP) Agreement.¹⁰

The neocons for example in the Bush Administration had a major influence on US foreign policy style, producing a strident, embattled ideology ('freedom', 'my watch') and fractured, leaked debates on policy – what Hans Blix called the problem of 'many voices'.¹¹ The neocon style, too, offered a pretence of diplomacy but more often a distaste for the diplomatic craft (Rumsfeld's infamous remark 'we are all speaking [on Iraq] from roughly the same script'), substantially divorced from the professional State Department diplomat. The style had a strong domestic interventionist element, with ongoing critiques of foreign regimes (governance, transparency, electoral process), intervention in foreign domestic affairs, and the practice of manufactured 'orange' revolutions.¹²

Elements of this were carried over into the public diplomacy rhetoric of the Obama Administration, though the main emphasis shifted to counter Chinese Pacific security and global trade influences. The strategic reorientation in US foreign policy was underlined by the civil–military conflict over Afghan policy (General McChrystal); withdrawal from Iraq and Afghanistan; Australia base agreement and the TPP Agreement.¹³ These examples suggest that whilst rhetorical elements of style may vary between administrations, core elements – perhaps with different emphasis or nuance – remain (e.g. preference for small group solutions, selective multilateralisation).¹⁴

Regime, representation and diplomatic style

Of the other developments that have affected diplomatic styles, frequent changes of regime through coups d'état or reestablishment of civilian or mixed regimes together with weak bureaucracies have been major factors that have prevented the emergence, with one or two exceptions, of any clear African styles. For example, post-apartheid South Africa, as part of the major changes to its style and international role, multilateralised its

foreign policy. Post-apartheid South Africa joined 45 multilateral organisations and became party to 68 multilateral treaties.¹⁵

The reemergence of Islamic or religious-based regimes is also of note. In the case of Iran, the public presentational aspects of Iranian policy changed dramatically after the fall of the Shah, especially in terms of language, the use of revolutionary communiqués and frequent insistence on the use of reservations in international conferences dealing with the Palestine problem. A further change associated with the Iranian regime is the dualist nature of Iranian foreign policy, comprising government-to-‘people’ diplomacy as well as traditional government-to-government diplomacy. ‘People’s diplomacy’ has involved establishing direct links with Islamic groups and organisations in other Islamic and non-Islamic states as vehicles for promoting Iranian interests; for example with Shia groups in Iraq and the provision of financial, military and other backing for Hezbollah and Islamic Jihad in Lebanon and other areas.

The domestic and transnational aspects of the rise of Islamic regimes and associated groups have influenced several aspects of diplomatic style. In particular, in terms of the *purposes* of diplomacy, an ideological element has been introduced into an already fragmented and divided international discourse; the issue of the freedom of publication and belief has provoked violent clashes, including periodic attacks on Western diplomatic missions in France, Denmark, Holland, Yemen and Egypt. In addition, further political change in the Middle East (the so-called ‘Arab Spring’) and Africa has introduced volatility and transitional regimes. One of the consequences of the ‘Arab Spring’ has been the removal of some of the traditional authoritarian leaderships (e.g. Egypt) which had cultivated major power patrons and styled their diplomacy as intermediaries and brokers in the demi-monde of intelligence and politics on a variety of Middle Eastern issue areas.

Other categories of regimes that have had an impact on diplomatic style are authoritarian regimes and isolated maverick states such as North Korea, Kazakhstan, Sudan, Chad and Belarus. The essentially closed nature of North Korea has limited and restricted normalisation. North Korean style is characterised particularly by the use of covert diplomacy, limited media communications, orchestrated state funerals and erratic shifts in policy.¹⁶

In terms of other factors influencing diplomatic style, the emergence of the PRC as an economic and military power has had a number of important effects on diplomatic practice. Chinese diplomatic style relies heavily on three principles. First, it is indirect. Second, the style relies on creating and maintaining distance. Third, the PRC is generally not strongly multilateral, reflecting the principle of avoiding unnecessary political exposure. The first and second principles were illustrated in the international finance and trade crisis in 2012, during which the PRC maintained distance during the crisis over whether it could directly join a Euro bailout. The *Financial Times* was used as a vehicle for indirectly

indicating the probable Chinese position, in an article on the crisis by a former Central Bank Monetary Policy Committee member. It is worth adding here that the use of ‘telephone’ diplomacy by President Sarkozy to try and secure Chinese agreement on loan support with Hu proved inappropriate and, ultimately, ineffective.¹⁷ The third principle, of avoiding unnecessary political exposure, is illustrated in the debates in the UN over the Security Council authorizing resolutions on the Libyan and Syrian crises in 2011–12.¹⁸

The central three principles underlying Chinese style are also seen especially in the formal machinery for setting out Chinese positions. In particular, the use of ‘spokesmen’ is a key feature of conducting diplomacy ‘at distance’. In Chinese diplomacy, official spokesmen at central level are used for one of four purposes: explanation of the current position; rebuttal, including denial and counter-attack; assertion of a claim (e.g. historical claims) and signalling. The latter is a widely used method to signal or convey a possible position, short of entering into bilateral or other discussions. For example during incidents in the East China Sea over the Senkaku (Diaoyu) Islands, the Chinese spokesman has restated formal claims to the islands or other aspects of its policy in the dispute.¹⁹

Chinese diplomatic style relies heavily on in-bound visits, rather than the leadership undertaking extensive international travel to conduct foreign policy, for linguistic, cultural and enhanced control reasons. Other unusual features of Chinese style include the use of domestic policy instruments, such as the timing and passage of internal legislation (as in the Taiwan dispute), or orchestrated urban violence (e.g. anti-Japanese rioting in the so-called ‘textbook’ dispute with Japan).²⁰ These methods enable the PRC in its regional diplomatic disputes to ratchet up pressure on opponents. Combined with periodic weapons testing, they add an element of uncertainty or frisson, intended or otherwise, to the PRC’s foreign policy profile.²¹ In terms of economic diplomacy, Chinese embassies function at a low-key consulate level, with reliance instead being put on ad hoc high Party-level and Chinese business, city and port delegations for overseas visits to conduct city/port diplomacy, centring on rapid logistic expansion, accelerated information-skill transfer arrangements, intelligence and market access. These methods are also used extensively by South Korea. Other elements of economic diplomacy include the use of very large business delegations to regional organization events (e.g. Asia-Pacific Economic Cooperation), and the rapid increase in its information (public diplomacy) effort. The latter has involved a 24-hour Arabic television station to improve its image, a battery of other media outlets (online *People’s Daily*, *Xinhua*, *China Daily*) and controlling interests in search engines (e.g. Google).²² An unusual feature of Chinese information diplomacy is the defence diplomacy component, which involves extensive defence visits (confidence building, defence cooperation, joint declarations), frequently to states not considered as areas of primary

interest. However, the communiqués and joint statements from these visits contribute to its foreign policy imagery, articulated through phrases such as ‘new security concept’, ‘collective security’ and ‘confidence building’ which replace the earlier traditional Five Principles of Peaceful Coexistence doctrine.²³

Diplomatic style: international institutions

The concept of diplomatic style can also be applied to international institutions and other actors. As far as international institutions are concerned, one of the major influences on operating style is that of the chief executive officer, who may often hold office for some considerable time.²⁴ The executive head will have wide-ranging influence on strategy, priorities and overall representation. The effect of change of chief executive can be seen, for example, in the case of the European Bank for Reconstruction and Development (EBRD) following the resignation of Attali. His less flamboyant successor Jacques de Larosière, former managing director of the IMF, abolished the merchant banking (privatisation) and development banking departments and created northern and southern geographical departments, to reduce duplication and provide some emphasis on public-sector banking.

A second element of institutional diplomatic style is the characteristic procedures for negotiation and problem solving. These might include: the general use of inner, limited-membership specialist working groups and intersessional correspondence groups (e.g. IMO); preparatory meetings and extensive ‘definitional’ legal reviews (e.g. Mediterranean Action Plan);²⁵ or financial ‘rescue package’ diplomacy conducted from the wings (e.g. IMF).

A third element of institutional style involves the characteristic framing of problems: the process by which the assessment or a course of action by decisionmakers is shaped by the dominant set of ideas or concepts relating to a class of issues or problems. Within international organisations, the ‘approach’ concepts held within those bodies that reflect the style tend to be fixed for some time and to be only periodically reviewed or changed, for example ‘sustainable development’, ‘transparency’, ‘trade liberalisation’ and ‘governance’.²⁶

The types of treaty or informal instruments used are indicative of the characteristic way an institution handles problems. An international institution may have, for example, an operating preference for informal instruments such as UNEP action plans, codes and guidelines, which may be copied by other international fora to become part of a wider international idiom or practice. At a regional organization level, a number of the operational styles of the EU (action plans, capacity building, strategic partnerships) have been incorporated into AU procedures as a result of contact through EU Associative diplomacy initiatives.

Diplomatic methods

Personal diplomacy – the growing impact

By using personal or direct diplomacy through visits, correspondence and telephone conversations, heads of government and foreign ministers, envoys and other senior leaders establish contacts, promote their country's image or try and improve bilateral, official and other relations. Personal diplomacy through visits is also used frequently to put the seal of approval on a major project or agreement. Visits of this kind, whether they be ceremonial, psychological or have a substantive purpose, reflect the growing involvement in diplomacy of the head of state or government and a variety of key representatives of banks, corporations, regional institutions and other organisations.

Bilateralism

Alongside regionalism, bilateralism is a particularly notable feature of diplomatic practice post-2000. It is separate but related to the growth of the former. The bilateral option has always existed as a core foreign policy instrument. As discussed in [Chapter 3](#), it is a means of achieving greater diplomatic space, and a sense of control (always useful in a domestic context) of external relations. The major factor accounting for the extensive increase in bilateralism is economic. Bilateral relations assist: securing market access; enhanced trade; security of supply; gaining alternative trade outlets.

The trend of greater bilateralism pre-dates the beginnings of the 2007 international trade and financial crises, and is influenced in addition by the loosening of the international system towards greater fluidity after the ending of the Cold War. In this sense, a further important factor is political – the reassertion of national identity by many smaller and medium-sized powers outside Europe. Frequent visit diplomacy by heads of state and government, and to a much lesser extent by foreign ministers, have become an integral part of that process.

In general, the growth of personal diplomacy has been brought about by changes in modern communications and the spread of regional collaboration outside Europe, in Africa, Latin America, the Caribbean and South-East Asia. Presidents or heads of government may communicate almost instantly by satellite with their counterparts overseas, telephone the leader of an opposition group or generally consult others directly seeking support. Communications extend the visual reach of a leader. In one well-known incident, President Johnson was monitoring Security Council proceedings on the Middle East and called Ambassador Arthur Goldberg to the telephone, informing him that his 'statement to the Security Council was excellent but he looked down at his paper too much!'²⁷

Video-conferencing now extends communication when other means of direct negotiation may be impossible. For example the UK resorted to two video-conference links with the Palestinian leadership for a meeting of the 'Quartet' in London in order to get round the Israeli travel ban on the Palestinian delegates.²⁸ In crises, direct communications may be a vital and perhaps the surest way of transmitting emergency information. For example US secretary of state Colin Powell directly spoke by telephone to the French foreign minister to warn of a suspected terrorist threat to a scheduled Air France flight to the USA.²⁹

Visits, too, have become synonymous with the presentational aspects of foreign policy – declarations, profile, as well as problem solving. In many instances, visits, especially those to major powers, are undertaken with an eye on the domestic or electoral value in the home country.

Another important reason for the continued use of personal diplomacy is that it may facilitate political transition. For example in the former Soviet Union, the setting of the state funerals of Soviet leaders was used as an opportunity for brief but important contacts between the new leadership and foreign politicians. The funeral of Yasser Arafat, for example, was used for a wide range of informal diplomatic contacts. Visits, too, can be used in the immediate aftermath of an internal civil war or coup to symbolize and reinforce change. For example the visit of Britain's foreign secretary, William Hague, to Benghazi, followed by the joint Anglo-French visit of Prime Minister David Cameron and President Nicholas Sarkozy to Tripoli and Benghazi immediately after the fall of Gaddafi, was intended to symbolize and underline Libyan political transition.³⁰

Personal diplomacy plays an important part in alliance and other collaborative relations. Regular, informal meetings have long been a feature of Anglo-American relations. French and British practices have differed in terms of the methods used to develop relations with their former colonies. In contrast to Britain, for whom the Commonwealth has progressively declined, French African diplomacy (as well as elsewhere) has relied heavily on presidential and foreign ministerial visits to both francophone and non-francophone states. A frequent purpose of such visits is to reassure allies of continued support. For example the 1984 African-French summit in Burundi, attended by President Mitterrand and the French foreign minister, was preoccupied with the question of Chad and French policy vis-à-vis Libya. The occasion also gave Mitterrand an opportunity to engage in some pre-summit 'old-style' personal diplomacy, when he held private talks with President Mobutu aboard the latter's presidential yacht on the Congo.³¹

The projection of national images and furthering trade relations are the other major purposes of personal diplomacy. For example at the end of 1984, the former British prime minister, Margaret Thatcher travelled 250,000 miles in 130 hours, principally for the formal signing of the Hong Kong agreement in Beijing with the PRC. The journey also took in meetings in Bahrain, Moscow, Delhi and Hong Kong, returning via Guam,

Honolulu and Washington.³² An economic mission was undertaken the following year to South-East Asia. It is not surprising that the political geography of heads of government sometimes becomes confused in these circumstances.

The growth of regional organizations has also meant that annual meetings provide an arena for a variety of diplomatic methods: bilateral side-diplomacy; lobbying; opening up new contacts; facilitating *competing* or *unrelated* business; and launching initiatives. For example President Obama used the nineteenth APEC Honolulu meeting to launch US proposals on the TPP. Regional organization meetings are used in addition for back-to-back events, and bilateral visits. India's Prime Minister Manmohan Singh, in an already very heavy travel schedule, used the double ASEAN/East Asia Summit (Bali) to make a carefully choreographed visit, on the return leg, to Singapore. Part of the visit was used to reinforce India's non-aligned image, by the unveiling of a statue of Pandit Nehru at a ceremony at the Asian Civilisations Museum on the banks of the Singapore River.³³

It is interesting to contrast the *pace* of modern diplomacy with that shortly after the Second World War. For example P.C. Spender (Australia) and Britain's foreign secretary, Ernest Bevin, travelled to the USA aboard the liner *Queen Mary* in September 1950. Bevin was travelling to the UN in New York, while Spender's mission was to gather support for a Pacific security pact. Spender sought to win Bevin's approval, but at the end of a personal meeting recounted: 'I felt that when I left Bevin's stateroom that despite the warm personal hearing, I had again failed to penetrate the United Kingdom indifference, if not opposition to the idea'.³⁴ Within less than a decade shortly after that, the first modern exponent of air travel in diplomacy, US secretary of state John Foster Dulles, became one of the most travelled post-war Secretaries of State, covering some 560,000 miles and attending 50 conferences in little more than six years.³⁵

Summits and conferences

In post-war diplomacy, summit conferences have been used not only in an East–West context but also for a variety of other purposes by an increasing number of states and institutions. The demise of the East–West form and the general diversification in the form and use of summits from the 1960s onwards have meant that the concept has lost much of its traditional meaning. In traditional diplomatic practice, 'summit' conveyed a sense of high occasion and special purpose, as an encounter and a venue for possible decisions of major importance,³⁶ but it has now become a term in diplomatic vocabulary for relatively routine meetings. The change is reflected in Japanese diplomatic practice. For example at the 2004 Sea Island G-8 summit, a US–Japanese bilateral meeting at the margins was recorded by Japan as a bilateral summit meeting, although it was in fact a 40-minute working lunch.³⁷

The term 'summit' has now been used for the regular annual heads-of-state or government meetings of the G-7/8, EU, ASEAN and APEC. It has also been adopted by some ad hoc UN global conferences, for example the Copenhagen World Social Summit (1995) and the Johannesburg Environment Summit (2000). An example of a special occasion summit can be seen in the meeting of Western hemisphere leaders at Miami in 1994, for the Summit of the Americas, to agree plans for a future free trade area. The Summit had last met in 1967 at Punta de Este. The event was also used for diplomacy on a side issue, concerning the announcement by the United States, Canada and Mexico of their decision to admit Chile to NAFTA (but which was not subsequently implemented). Since then, the diplomatic practice of the Summit, which has continued to meet periodically, has altered from international trade agenda issues to focus on domestic economic items linked to democratic governance. To improve coordination and implementation, the Summit of the Americas has set up the Summit of the Implementation Review Group (SIRG), confirming the now very wide usage of the term 'summit'.³⁸

Outside the diplomatic community, the word 'summit' is now used to refer to regular or annual business meetings or events. This transfer across into commercial practice further reflects the dilution of diplomatic language as the English language is globalised. Other related diplomatic terms which have suffered 'erosion' include the concept of 'high-level' meeting or 'segment'. The former term was used particularly in environmental diplomacy from the late 1980s to refer to the special ministerial element of a multilateral conference, which was designed to resolve more difficult issues and move the conference to a successful outcome. The term is now employed in extensive diplomatic practice (e.g. UN, AU) to refer to a wide range of relatively routine meetings of senior officials, business, media and others involved in external policy.³⁹

Some further general comments may be made on the above developments. While it has been argued that the use of summits has widened in terms of action and content, an exception to this development is the decline and reduction in significance of US–Russian Federation summits. The lessening of the significance of US–Russian summitry since the 1990s contrasts with the importance of the primary powers in previously managing East–West and global security. In the Cold War period (1947–71), East–West relations were handled through four-power conferences (USA, UK, France and the Soviet Union), limited membership conferences on specific issues such as Indo-the PRC in 1954, and bilateral personal visits or summits. US–Soviet bilateralism was a dominant feature of the classical period of détente from 1971 to 1976,⁴⁰ and 'revived' détente from 1985 to 1990. Some indication of the pluralism in diplomatic methods that were to feature after 1990 in the handling of East–West relations and broader international security were foreshadowed in the pan-European Helsinki Conference and 1990 Paris Conference on Security and Cooperation in Europe (CSCE) Summit.⁴¹ Subsequently, the increasing involvement of

European institutions in domestic transition in the former Soviet Union and the blurring in Europe of security roles, institutional responsibility and concepts ('security pluralism') were accentuated by a resurgence of conflicts on the European and Central Asian rim of the Russian Federation.

Apart from the decline or reduced significance of primary-power summits as vehicles for international security after 1992,⁴² the widening usage of summits for relatively *routine* matters raises questions about purpose and effectiveness. It can be argued that frequent or regularised meetings styled as 'summits' undermine the concept of the summit as a vehicle for resolving (or not) critical issues at the highest level, *after* they have been explored and examined to the greatest extent possible at other levels (e.g. foreign ministerial). The *non-routine* value of a high-level summit is best seen in the cases of emergency or unscheduled summits. The dramatic recall or reconvening of heads of government in the context of a crisis underlines the potential importance of summits as emergency or non-routine methods of last resort. An example of an emergency summit meeting was that reconvened by Egypt and Israel in 1995 in Cairo to try and resume the Israeli–Egyptian 'peace process' following attacks in the Gaza Strip.⁴³ Finally, we should note that in terms of diplomatic protocol, decisions on whether or not to convene a scheduled summit conference are both sensitive matters and indicative of current relations between states.⁴⁴

Multilateral diplomacy: consensus

The growth of consensus decision making is one of the developments in multilateral diplomatic methods worth particular comment. The post-war period saw the continued shift away from decision making based on unanimity. Writing on unanimity, I.L. Claude notes:

Traditional international law contributed the rule which served as the historic starting point for international voting and still serves as its basing point: the rule that every state has an equal voice in international proceedings and that no state can be bound without its consent. The ingredients of sovereign equality and sovereign immunity from externally imposed legislation were combined in the rule of unanimity.⁴⁵

The changing composition of the UN, including the emergence of the G-77 and the introduction of G-77 procedures into international institutions, has influenced the search for procedural solutions to avoid or at least lessen the confrontational aspects of majority–minority clashes. The rule of consensus is one such method. Others include weighted voting, as in the International Postal Union, and the rule that governments may 'opt out' of participation, as in the Nordic Council of Ministers.⁴⁶ In the UN, other than strict abstention, the practice of non-participation in proceedings or voting is widely used.

The use of consensus decision making in the UN dates particularly from the early 1970s. Consensus decision making is distinct from unanimity in that unanimity implies that there is no opposition or request for a vote. Decision making by consensus has come to mean the exhaustive search for widely acceptable solutions. In the UN system, the consensus method has been widely used, for example at the UN Disarmament Commission⁴⁷ and the Law of the Sea Conference.⁴⁸ Elsewhere, consensus has been used in the CSCE and meetings of the G-77 non-aligned, although the practice of the G-77 also allows for opting out and reservations. To avoid undue delay and make decision making more effective, other variations have been developed, such as combinations of consensus and 'cooling-off' periods for consultation and voting, as in the 1975 and 1980 Non-Proliferation Treaty Review Conference.⁴⁹ In UNCTAD, a combination of consensus and voting has been used. For example the US proposal for an International Resources Bank was voted on at UNCTAD IV at Nairobi and rejected.⁵⁰ In the IMF, meetings of the Executive Board are generally conducted on the basis of consensus. Occasionally opposition may be expressed after proposals have been formally agreed. For example during the second Mexican financial rescue package negotiations the UK, Germany and a number of other countries asked the IMF managing director to record their positions as abstentions, to register dissatisfaction with the Mexican rescue proposals.⁵¹ Finally, it should be noted that in international agreements, provisions relating to the negotiation of the agreement (e.g. consensus) should be distinguished from those governing the *implementation* of the agreement. Implementation arrangements, (e.g. on financial contributions) may, following the first conference of the parties, be set up on the basis of majority voting rather than consensus.

Consensus in practice

The practice of consensus would seem to have been widely adopted recently as a means of responding to the problem of dissatisfaction at majority voting and the difficulties created by the emergence of opposing blocs or groups in multilateral conferences. Consensus decision making clearly has advantages for the great powers in that lengthy decision making, which is a feature of the consensus method, provides opportunities for advancing and protecting their policies through lobbying, supporting draft proposals and forming support groups, without the threat of being frequently voted down. Ultimately, however, the consensus method may break down and voting take place, as, for example, in the Law of the Sea Conference in 1982, when a majority of the participants felt that continued US opposition to the seabed mining provisions was holding up the finalisation of the overall convention.⁵² But the advantages do not lie solely with the great powers. Minor powers and small states in some respects have enhanced opportunities for protecting their positions in the drafting process of a consensus system. Put differently, consensus may

be a convenient political fiction that is maintained during a conference to prevent premature break-up or postpone a decision. The Durban Session of the UN Climate Change Conference managed to maintain residual consensus by focusing on the future of the Kyoto Protocol, and salvaged the session in a last-ditch drafting formula which opened up the possibility of either post-Kyoto agreement (treaty) or an instrument having 'similar legal effect'. States subsequently may choose to interpret the meaning of a text in different ways and, indeed, implement it, if at all, in quite divergent ways; see [Chapter 11](#) on Durban, pp. 223–7.⁵³

Other reasons for voting taking place include testing the legitimacy of a consensus, or pressure from dissatisfied states who wish to place on record their position, knowing that key states are unlikely to support the declaration or resolution. The latter was well illustrated in the debate in the IMO in which a group of states led by Spain, and opposed by the USA, UK and Japan, sought to obtain a majority vote prohibiting the dumping at sea of radioactive waste.⁵⁴

One of the major disadvantages of consensus decision making in international institutions and conferences is the protracted nature of the process. Decision making is exhaustive and exhausting, as attempts are made to achieve compromise texts. At a procedural level, secretariats of international institutions and working group chairmen have, however, become important in searching for and in developing their own and others' compromise formulae. The method has also led to the development of innovative negotiating techniques to overcome deadlock and maintain momentum. For example in the IMO International Ship and Port Security (ISPS) negotiations on a new maritime security code, following the 9/11 incident, the chair of the conference moved the negotiations on to selected core strategic issues, in order to break deadlock and push through a convention. Inner groups, too, are frequently used, with the attendant danger of the feeling of exclusion by those not consulted or outside the inner-group process. Many small states and others with specialist interests (e.g. sea-level rise) felt marginalised at the Durban United Nations Framework Convention on Climate Change (UNFCCC) session as their issues were moved into a second tier (part resolved) as the major-power group grappled with trying to reach consensus on Kyoto Protocol issues.

Apart from the length of the decision-making process, a further related criticism has been made concerning the kinds of agreements that result from consensus decision making. Often the lowest common denominator dictates that the outcome may be a set of obligations with a very high degree of generality, or one steeped in qualifications. The technique of putting square brackets around parts of the text where there is no consensus can sometimes produce a labyrinthine set of brackets, resembling more an algebraic equation than a draft treaty article.⁵⁵

Finally, there is the question of whether decisions reached using consensus are likely to be more or less implemented than those reached on the basis of majority voting or other methods. While it might be assumed

that consensus decisions would command wide support, in practice the degree of support that a set of proposals commands may be uncertain, as in other forms of negotiation. That uncertainty or ambiguity may never be tested by vote or ascertained until after the conference, when the state may feel it does not wish to be bound by the terms of the consensus reached. Writing in the context of UNCTAD, Krishnamurti notes: 'many recommendations adopted by consensus in UNCTAD on trade, finance, least developed countries and other areas, remain only meagrely fulfilled'.⁵⁶ The rules of procedure require a two-thirds majority on matters of substance and a simple majority on procedural issues.

To speed up implementation and modification, the Montreal Protocol⁵⁷ introduced express tacit acceptance procedures for *adjustments*, which enter into force six months from notification for parties, as distinct from *amendments*, which are subject to ratification. The tacit acceptance procedure is one important method to reduce some of the ambiguity surrounding entry into force of agreements negotiated on the basis of consensus.

Other diplomatic methods

In the third section of the chapter the following areas of practice are discussed: quiet diplomacy; active strategies; innovation and NGOs; counter-public diplomacy; open versus secret diplomacy.

Quiet diplomacy

Quiet diplomacy, that is diplomacy conducted with minimal publicity behind the scenes, is a traditional feature of diplomacy, as well as a distinctive feature of the operating style of some states. Quiet diplomacy involves developing contacts and ideas, and taking formal initiatives in the public domain but without *directly* seeking high levels of public press attention. It should be distinguished from covert diplomacy, the essence of which is to conduct the exchanges in secrecy, and so-called 'two-track' diplomacy. The latter is the conduct of negotiations behind the cover of sets of renegotiations (e.g. Arab–Israeli Norwegian-assisted talks). Examples of quiet diplomacy include Canadian side-diplomacy at the UN and through small network groups to promote issues such as: the International Criminal Court (ICC) and civilians in armed conflicts; Japanese Middle East political and technical assistance diplomacy;⁵⁸ and the widespread use of 'Groups of Friends' within the UN. The latter comprise small groups of states, for example P5 (the permanent members of the UN Security Council) or non-Security Council members' groups, which are formed to assist the secretary-general in dispute settlement, operating publicly but 'behind the scenes'. The 'Group of Friends' on East Timor is an interesting example of a group that changed category from secret diplomacy (for reasons largely to do with

keeping the group limited and the avoidance of political wrangling) to public quiet diplomacy, in order to secure a necessary resolution in the Security Council.⁵⁹ The term is also used outside the UN framework, for example by other groups such as the Friends of Fossil Fuel Subsidy Reform, a non-G-20 group formed in 2010 to lobby the G-20 and APEC against subsidies.

Active strategies

Active strategies in diplomacy are generally associated with states which are seeking or attempting to maintain high-profile foreign policies. Active strategies generally involve frequent initiatives, broker roles, membership in drafting groups, as well as less obvious behind-the-scenes diplomacy. An interesting addition to the active repertoire is the growth generally in a number of states using 'event diplomacy', for example Qatar, Dubai, the PRC and Brazil. The PRC held its first pavilion at the Durban session of the UN Climate Conference.⁶⁰ Event diplomacy draws heavily, though not exclusively, on commerce-styled operations, reflecting also its economic purpose. Its aim is to establish and develop a track record of responsibility for hosting and managing a wide range of international events. These include: business conferences; meetings of standing international conventions; and special ministerial meetings (e.g. Doha Development Round). A key element in the strategy is to host multiple events, including major international sporting events in order to provide in effect a media PR 'collage' of activity.

Elements of this style are seen in the diplomatic practice of several states, which place importance on securing headquarters and secretariat functions of international conventions (e.g. Germany – International Convention on Countering Desertification), or secretary-generalships of international institutions (e.g. Japan – IMO).

What issues arise in terms of this type of diplomacy? The field has become more competitive, with growing numbers of states seeking to enhance influence and elevate this status. A net drain, especially for small states, is on MFA and Trade resources, in that the requirement for leading facilitator/chair posts (e.g. to WTO, UNFCCC) takes away scarce personnel. Competition has influenced increasing use of co-chair or host and pushed countries into unfamiliar areas. The attempt by the UAE to co-host an International Labour Organisation (ILO) conference was contested by NGOs on the grounds of the former's poor track record on labour conditions.⁶¹ In this type of diplomacy, not only is general track record important, but events are not one-off and periodically *return* to that country.

Innovation and NGOs

The role of Foundations such as Soros, Clinton and Gates as actors in contemporary diplomacy is one of the changes of particular note. These modern foundations are more proactive than their predecessors, with

global reach, supported by advanced communications technology and research-and-development sections. They also interface with several different 'sectors' of national administrations promoting capacity building, applied research and technology transfer.

The long-standing and seemingly intractable nature of food security issues has been an important driver in influencing the increasing role of foundations in agro-diplomacy, outside the framework of existing international and regional institutions such as the Food and Agriculture Organisation (FAO), EU and AU. One of the functions of a foundation is to act as a catalyst for promoting ideas and exerting pressure to elevate issues such as global health onto the international agenda. Bill Gates, for example, reported to the Cannes G-20 Leaders summit on global problems of health, finance and development.

Foundations have formalised their role using cooperation memorandums of understanding (MOUs) with several governments. For example the Gates Foundation concluded an MOU with the Brazilian Agency for Cooperation (ABC) aimed at improving agricultural staple crops, water management and reducing crop loss. The MOU is part of the Africa-Brazil Forum initiative, introduced by Brazil to try and use applied research and technology for poverty reduction and agricultural development. An interesting part of the initiative is the Africa-Brazil Agricultural Market Place, designed as a largely virtual device to promote linkage between potential project partners, designed by the Brazilian Agricultural Research Corporation (EMBRAPA). The scheme was first announced by the Brazilian foreign ministry, underlining its role as lead ministry across external sectors. The Africa-Brazil initiative has also supported extensive food security and agriculture themed event diplomacy in and outside Brazil.

Counter-public diplomacy

Counter-public diplomacy is a set of techniques used to block or minimize the impact of opposing ideas, statements or proposals. It is an important and neglected part of diplomatic craft. As argued earlier, counter-public diplomacy, like counter-terrorism, has become more important because of the transnational spread of ideas. In the cyber world the author or owner of ideas is not always known or clear. This aspect of counter-public diplomacy is illustrated in the flooding of search engines by a variety of organisations and institutions using 'mirror' techniques tracking and commenting on an event but using the same headline descriptor to maximise search-engine retrieval, or 'shell' (e.g. defunct or common descriptor sites but using a different content) for similar purposes.

Other elements of counter-public diplomacy use cooperative through to coercive methods (blocking items). Cooperative methods include co-hosting (to receive some of the benefits), association and sponsorship meetings and conferences. Prima facie co-hosting is designed to *appear* cooperative, whereas in practice the purpose may be to limit the political

influence and exclusive association of the other party with an idea, initiative or project. The US response to the International Conference on Climate Change and Food Security (ICCCFS) discussed below illustrates several aspects of counter-diplomacy.⁶⁴ Agro-diplomacy has become progressively more important in US foreign policy, in contexts such as: the WTO; food security; the link between poverty and terrorism; and commodity supply issues. Various aspects of agricultural issues feature as areas of interest in virtually every US agency. NGOs receiving US funding or other support include the World Agricultural Forum and the International Food Policy Research Institute (IFPRI).

The agro-chemical and genetic food industry is strongly represented as a player or participant in a number of US and other internal NGOs. The ICCFS conference, on climate change and food security, was hosted by the Chinese Academy of Agricultural Sciences (CAAS), as part of the PRC's growing international conference role on agriculture. The conference was essentially a BRICS (Brazil, Russian Federation, India, the PRC, South Africa) event, held in Beijing but joined by the United States. Indonesia was added to the list of participants.⁶⁵ At Durban, the outcome of the Beijing Conference was presented at a side event, moderated by a USAID official. The PR literature from IFPRI on the side event referred to 'new country level research' (though earlier IFPRI literature merely referred to a list of topics). No Chinese representative appeared on the list of speakers. The Climate Change and Food Security event is a classic case in counter-public diplomacy. Prior to the conference the US had been successful in broadening the UN international agenda from 'food security' to 'food security and nutrition'. US participation in the Beijing conference, together with leading the side event at Durban, asserted a presence on the issue, whilst reducing the Chinese role.

Open and secret diplomacy

The relationship between 'open' and secret diplomacy has been one of the central themes debated for some time in discussions of diplomatic practice. The view advanced by Harold Nicolson that there was a post-war shift from closed to so-called 'open' UN parliamentary-style diplomacy, along with the question of 'old' and 'new' diplomacy, framed the debate in a polemical and oversimplified sense. Here it is argued that much of modern diplomacy remains conducted on a confidential or secret basis, with open elements, rather than there being an overall shift to the open conduct of relations.

There are a number of reasons for the prevalence of secrecy in the conduct of diplomacy. In some instances there may be a shift from a confidential (limited public disclosure) to a secret level in order to protect sources, or to retain greater freedom of action to develop an initiative

or 'cut' a deal. Decisions to conduct relations from the outset at a secret level are influenced by factors such as bureaucratic politics (standard operating procedures), competing agency interests, the sensitivity of the relations in question or a wish to avoid public scrutiny. Exchanges are retained at a secret level to avoid core or critical interests being prejudiced through disclosure, which might cause significant political or other damage, impair military operations, or undermine a policy.

In *démarches* on sensitive issues, states seek to protect the exchanges for fear of adverse or unknown repercussions. Burrows, for example, recounts somewhat bitterly an interesting example during the 1961 Turkish crisis in which a private *démarche* by Western ambassadors to the Turkish government, opposing death sentences on the opposition leaders, was leaked to US media, effectively undermining the mediation initiative and general sense of trust. Secrecy, too, is an integral element of successful negotiations. There is, however, as Aggestam points out, an inbuilt tension between publicity and negotiation.⁶⁷

The general rise in secrecy in diplomacy has been influenced by several factors. In the first place, some elements of open diplomacy have declined or been eroded. It is, of course, the case that parts of the multilateral process have been opened up, for example Security Council meetings or as a result of NGO activities at multilateral conferences.⁶⁸ Nevertheless, much of bilateral or multilateral diplomacy remains closed – conducted confidentially or in secret. This is reflected, for example, in UN multilateral conference diplomacy with the cessation of verbatim or similar detailed records of proceedings for the most part after 1973. Diplomatic conference practice, too, has altered to increasing use of informal negotiating documents and draft amendments, rather than formally sponsored resolutions. The use of informal negotiating draft amendments/articles and commentaries has been accelerated by electronic communication.

The use of secrecy in diplomacy is influenced particularly by factors such as regime type, issues and instruments. Isolated and maverick regimes conduct the bulk of their external relations in secrecy, for example Belarus, North Korea and Iran.⁶⁹ Even when such regimes break out of isolation, much of their substantive external relations remains non-public. The use, too, of economic sanctions and other coercive restrictions inevitably forces pariah states to develop and conduct their relations through ad hoc 'underground' networks.⁷⁰

Conclusion

In this chapter, diplomatic methods have been examined from the following perspectives: diplomatic style; communicating policy; conferences; the development of consensus; differing ways of asserting influence; and the changing balance between 'open' and secret diplomacy. Diplomatic style is an important concept in helping to understand the operational,

diplomatic and foreign policy behaviour of states, as well as other agencies such as international institutions. The underlying argument is not put in stereotypical or character terms, as sometimes is the case in business or cultural-studies literature, but rather suggests that some elements sometimes (but not always) recur and are identifiable when considering who makes diplomatic decisions and how.

Similarly, in terms of identifying the style of international organisations, the key concepts are those relating to *organisational approach* (the characteristic ways of framing problems; dominant sets of ideas/approaches; and the process of making decisions).

In terms of communications, the use and growth of different methods (personal diplomacy, side-diplomacy and use of regional fora) has been illustrated. The chapter has argued that the framework or setting within which these are used has altered significantly: summits are routinised; the idea of 'high-level' commonplace and diplomatic language has transferred into the commercial sector. States as business operations sums up the diplomatic operations of some states. How to protect positions and advance interests, particularly through communication techniques and linkages with NGOs, remains a core feature of diplomatic practice.

Within conferences, the concept of consensus has become established and adapted to different contexts. Finally, it is argued that the balance between 'open' and 'secret' diplomacy has shifted to greater secrecy in the contest for ideas and influence.

Notes

1. See Peter Marshall, *Positive Diplomacy* (Macmillan Press, Basingstoke, 1999), pp. 154–64; John Dredie, *New Mandarins* (IB Taurus, London, 2004).
2. See Rob McRae and Don Hubert, *Human Security and the New Diplomacy* (McGill, Queen's University, Montreal, 2001), p. 231.
3. See Nicholas Bayne and Stephen Woolcock, *The New Economic Diplomacy* (Ashgate, Aldershot, 2004).
4. J. Boyce, *Foreign Affairs for New States* (University of Queensland Press, St Lucia, Qld, 1977), pp. 62–5.
5. Elmer Plischke (ed.), *Modern Diplomacy: The Art and the Artisans* (American Enterprise Institute, Washington, DC, 1979), p. 177.
6. *The Guardian*, 10 Dec. 1984. On the role of General Walters as US UN ambassador, see Seymour Maxwell Finger, *American Ambassadors at the UN* (UNITAR, New York, 1998), pp. 320–30.
7. Ambassador Richard C. Holbrooke was US special envoy (2009–10) until his death on 13 Dec. 2010. See [www.state.gov/5/pa/er/biog/129337.htm]. For difficulties in operating the role of special representative in a United Kingdom foreign-policy context, see Sherrard Cowper-Coles, *Cables from Kabul*, (Harper Collins, London 2011), pp. 205–6.
8. In an effort to resume arms control negotiations, the USA renewed its offer to hold 'umbrella talks' with the Soviet Union in October 1984. *The Guardian*, 16 Nov. 1984.

9. See John Gerrard Ruggie, 'The United States and the United Nations', *International Organisation*, vol. 39, no. 2, Spring 1985, pp. 343–56. On the US withdrawal from UNESCO, announced in Dec. 1983, see *Hearings*, Sub-committees on Human Rights and International Organisations of the Committee on Foreign Affairs, House of Representatives, 27 Sept. and 3 Oct. 1983; *US Withdrawal from UNESCO*, Report of a Staff Study Mission, Committee on Foreign Affairs, US House of Representatives, April 1984; *Assessment of US–UNESCO Relations 1984*, Report of a Staff Study Mission to Paris–UNESCO, Committee on Foreign Affairs, House of Representatives, 1985; *Hearings*, Sub-committees on Human Rights and International Organisations and International Operations, Committee of Foreign Affairs, House of Representatives, 26 July, 13 Sept. and 6 Dec. 1984.
10. See [www.ustr.gov/tpp].
11. See Hans Blix, *Disarming Iraq*, (Bloomsbury, London, 2004), pp. 22–3.
12. See for example on the lack of link up between the heavy US public diplomacy activity in the 1994 South African election and later limited US aid policies, Princeton Lyman, Interview Excerpts, in Claudia E. Anayaso, *Fifty Years of US Africa Policy* (Association for Diplomatic Studies Training, 2001), pp. 192–3. See also on the problem of evaluating public diplomacy, William A. Rugh, *The Practice of Public Diplomacy* (Palgrave Macmillan, Basingstoke, 2011), pp. 244–6, and pp. 248–9 (measuring effectiveness).
13. See Stanley A. McChrystal, 'Becoming the enemy', *Foreign Policy*, (March–April, 2011), pp. 66–72.
14. Compare for example outgoing US Trade Secretary Susan C. Schwab, 'After Doha', *Foreign Affairs* (May/June, 2011) with the US position at the APEC Honolulu Summit, on the future direction of multilateral negotiations post-Doha Round.
15. Timothy M. Shaw and Solar Oja, *Africa and the International Political System* (University of America Press, New York, 1982), pp. 22–3. On the decline of personal diplomacy and the evolution of South African foreign-policy style, see Deon Geldenhuys, *The Diplomacy of Isolation: South African foreign policymaking* (Macmillan, Johannesburg, 1984), pp. 17–19, 241–3. For an extensive discussion of post-apartheid reorientation see Philip Nel, *South Africa's Diplomacy and Global Change* (Ashgate, Aldershot, 2002).
16. Andrew Selth, *Burma's North Korean Gambit* (Strategic and Defence Studies Centre, ANU, Canberra, 2004). On North Korea's attempts to break its diplomatic isolation by using the Japanese LDP party, rather than diplomatic channels, to promote normalisation with Japan, see Leon V. Sigal, *Disarming Strangers: Nuclear diplomacy with North Korea* (Princeton University Press, Princeton, N.J., 1998), p. 26.
17. For comments of Yu Yongding, former member of the China Central Bank Monetary Policy Committee, see *Financial Times*, 1 Nov. 2011.
18. See **Chapter 10**, pp. 190–2.
19. On the Senkaku/Diaoyutai Islands dispute see for example statements of Foreign Ministry spokesperson Hong Lei on Japan's announcement of Naming the Affiliated islands of Diaoyu, on 3 March, 2012.
20. See *Guardian*, 18 April 2005. China and Japan have met at leadership level only in third countries since 1999. In the anti-Japanese riots – the 'text book' dispute – Japanese Prime Minister Koizumu met the Chinese leadership at the margins of the 2005 Non-Aligned Summit in Jakarta, rather than in China.

21. See on Chinese diplomacy Tang Jiaxuan, *Heavy Storm and Gentle Breeze*, (Harper Collins, London, 2011).
22. See [globalitnews.blogspot.com/.../china].
23. See [http://english.gov.cn/official/2011-03/31/content_1835499_u.htm. 21January2012].
24. For example Tolba (UNEP), Srivastava, O'Neil (IMO), Beltrano (International Coffee Organisation).
25. See MEDWAVES, No. 31, Winter 1994-5, pp. 5-6 on the Revision of the Barcelona Convention.
26. See **Chp. 6**, p. 98, **Chp.10**, pp. 196-7; **Chp. 11**, p. 223; **Chp. 12**, p. 241; **Chp. 13**, p. 248.
27. See *The Times*, 12 Nov. 2004. Seymour Maxwell Finger, *American Ambassadors at the UN* (UNITAR, New York, 1980), p. 16.
28. See *Financial Times*, 31 Jan. 2003.
29. See *The Times*, 26 Dec. 2003.
30. See *The Guardian*, 4 June 2011; and UPI, 16 Sept. 2011, on the Tripoli/Benghazi visits for meetings with the Libyan NTC.
31. See *The Guardian*, 10 Dec. 1984.
32. See *Sunday Times*, 23 Dec. 1984.
33. See *The Economic Times*, 20 Mar. 2011.
34. Sir Percy Spender, *Exercises in Diplomacy: The Anzus Treaties and the Colombo Plan* (Sydney University Press, Sydney, 1969), p. 35.
35. See Elmer Plischke, 'The new diplomacy', in Plischke, op. cit., p. 70.
36. See H. Nicolson, *The Evolution of Diplomatic Methods* (Cassell, London, 1954), pp. 42-3; and Keith Hamilton and Richard Langhorne, *The Practice of Diplomacy* (Routledge, London, 1995), pp. 26-7.
37. See [www.mofa.gv.jp/policy/economy/summit/2004] (G-8 2004 Summit).
38. The Summit of the Americas met previously in Santiago (1998), Quebec City (Canada) 2001, Monterrey (Mexico) 2004 and Mar del Plata (Argentina, 2005). The SIRG meets annually at the headquarters of the OAS in Washington, DC. See Embassy of the USA in Japan: [http://tokyo.usembassy.gov/e/policy/tpolicy-summit.html].
39. See UN secretary-general's remarks at a High Level Event on Scaling Up Nutrition, UN, 28 Sept. 2011 [un.org/en/issues/Food/taskforce/].
40. The 1963 US-Soviet direct communications link ('hotline') was renewed in an updated agreement of 30 September 1971. John H. Barton, *International Arms Control* (Stanford University Press, Stanford, Calif., 1976), pp. 330-7.
41. The Paris Summit was a landmark in the end of the Cold War. The summit endorsed the series of preceding negotiations on European troop reduction, force levels and frontiers.
42. From 1989 to 1995, bilateral US-Soviet/Russian Federation summits at head-of-state level were held in Malta (2-3 Dec. 1989, Bush-Gorbachev); Helsinki (9-10 Sep. 1990, Bush-Gorbachev); Moscow (30-1 July 1991, Bush-Gorbachev); Maryland (1 Feb. 1992, Bush-Yeltsin); Vancouver (3-4 April 1993, Clinton-Yeltsin); Moscow (6-7 May 1995, Clinton-Yeltsin meeting at 50th anniversary of Allied Victory over Nazi Germany).
43. *The Times*, 4 Jan. 1995.
44. The 11-13 Feb. 1991 US-Soviet summit was postponed because of the Gulf War and Baltic crisis, until 30-1 July 1991.

45. Inis L. Claude Jr., *Swords into Plowshares* (University of London Press, London, 1964), p. 112.
46. See Klaus Tornudd, 'From unanimity to voting and consensus. Trends and phenomena in joint decision making by governments', *Cooperation and Conflict*, vol. 17, 1982, p. 165.
47. Rule 18, Rules of Procedure of the Committee on Disarmament (*Yearbook of the United Nations*, New York, 1979) vol. 3, p. 487.
48. Appendix to 1974 Rules of Procedure, 27 June 1974. The agreement to use consensus was reached on 16 Nov. 1973.
49. See Tornudd, *op. cit.*, pp. 170–1.
50. TD/2 136. See UNCTAD IV, Vol. 1, pp. 53–4. For other examples of voting in UNCTAD, see R. Krishnamurti, 'UNCTAD as a negotiating instrument', *Journal of World Trade Law*, vol. 15, no. 1, Jan.–Feb. 1981, pp. 14–18.
51. Following the decision on the Mexican package, the UK, Germany, Belgium, Switzerland, the Netherlands and Norway, representing over 40 countries, asked for their position to be recorded as abstention. Belgium later revoked its abstention. See *Financial Times*, 16 Feb. 1995.
52. See R.P. Barston, 'The Law of the Sea. The conference and after', *Journal of World Trade Law*, vol. 17, no. 3, May–June 1983, pp. 208–10.
53. See R.P. Barston, 'The Third UN Law of the Sea Conference', in G.R. Berridge and A. Jennings, *Diplomacy at the UN* (Macmillan, London, 1985), pp. 158 *passim*; R.P. Barston and P. Birnie (eds), *The Maritime Dimension* (George Allen & Unwin, London, 1980), pp. 155–6 and **Chp. 11** on UNFCCC, pp. 223–7.
54. See IMO, LDC 9/12, 18 Oct. 1985, p. 37 *passim*.
55. As an example, see the selected documents of the second Non-Proliferation Treaty (NPT) review conference, in Stockholm International Peace Research Institute (SIPRI), *Yearbook, 1981*, pp. 346–65.
56. Krishnamurti, *op. cit.*, p. 7.
57. 27 *ILM* 1204, 1988, Article 72(b).
58. See *Japanese Blue Book* (Ministry of Foreign Affairs, Japan, 2004).
59. On Security Council diplomacy, see Jamsheed Marker, *Quiet Diplomacy*, (Oxford University Press, Oxford), pp. 390–418. On the development of the practice of 'Group of Friends' see David M. Malone, (ed.), *The UN Security Council* (Lynne Rienner, Boulder, Colo., 2004), pp. 316–21. See also Report of the Secretary General, SCOR, 48th year, S/25944 Supplement (April, May and June 1993), on the 'Group of Friends' for El Salvador, and similar groups on Haiti and Afghanistan. SC Resolution 1236 was the first public manifestation of the East Timor groups, Malone, p. 553.
60. See *Financial Times*, 5 Dec. 2011.
61. See [http://www.ituc-csi.org/ituc_criticises_uae_bid_to_chair.html].
62. *Innovation with Impact*, Report to the G-20, Nov. 2011.
63. [<http://www.africa.brazil.org/documents>]. EMBRAPA has a presidential cabinet and international relations secretariat.
64. Climate Change and Food Security Conference, Beijing, 6–8 Nov. 2011.
65. [<http://www.ifpri.org/pressrelease/leading-brics-researchers-recommend-agricultural-w....>]
66. See Bernard Burrows, *Diplomat in a Changing World* (Memoir Book Club, Spennymoor, 2001), p. 143.

67. Karin Aggestam, *Two Track Diplomacy: Negotiation Between Israel and the PLO Through Open and Secret Channels*, Davis Papers on Israel's Foreign Policy No. 53 (Leonard Davis Institute for International Relations, 1996), p. 206.
68. In 2001, 192 meetings of the Security Council were held, of which 159 contained public elements, and 33 private meetings were held. Some meetings classed as private were open to all non-members, and the Council met in public in June 2001 to evaluate procedural and substantive aspects of the work during that month. The Council has met on average 142 times a year. See 5/2002/603, 6 June 2002.
69. See, for example, Andrew Selth, *Burma's North Korean Gambit* (Defence Studies Centre, Canberra Papers on Strategy and Defence No. 154, 2004), p. 15.
70. See on Saddam Hussein's covert procurement and economic arrangements to evade sanctions, Scott Ritter, *War on Iraq* (Profile Books, New York, 2002), pp. 34–5.

Chapter 6

Groups and networks

Introduction

This chapter is concerned with changes in groups and linkages between states since the end of the twentieth century. In part the changes are a consequence of the collapse of communism, domestic pressures, and the loosening of the international system from that period. The two linking themes are the shift in the axis of political and economic power, particularly the PRC, and the fluidity of international groupings.

Blocs and groupings

Western economic summits

The creation of the Western economic summits represents an important innovation in Western diplomatic coordination. The summits began at Rambouillet in 1975 and were formalised in 1977 (US, UK, France, Italy, West Germany, Japan). Membership was progressively extended to include Canada, the European Community, and from 1998 the Russian Federation. By 2009, however, recurrent international banking, financial and trade crises, along with the rapid rise of emerging economies (Brazil, India, the PRC) brought the *format* into question. Ongoing governance issues suggested a broader membership; need for dialogue in the reform of central international institutions (UN, IMF, IBRD), and coordinated action on critical global issues. The establishment of the G-20 in effect supplanted the G-8 and the 2009 summit asserted its claim as ‘the premier forum for international economic coordination’.¹

Before looking in detail at the G-20, it is useful from a comparative perspective, to review some aspects of the work of the G-8, in that these are also found or ‘copied over’ into the G-20. The diplomatic practice of the G-8 has undergone several important changes since its inception, including in protocol,² agenda setting, venue and implementation.³

The format of the G-8 leaders summit was perhaps epitomised in the Evian Summit. This was a classic example of French diplomatic design, choreographed against the backdrop of the French Alps in the Haute-Savoie Department, on the southern shores of Lake Geneva. Even a cursory glance at the summit schedule (G-8 Heads of Delegation Meeting – Hotel Royal; Enlarged Dialogue Working Session – Veranda, Café Royal) conveys something of the ambience. The summit was used by France to project French distinctness, including widening the list of invited ‘dialogue’ states (e.g. Brazil, the PRC, Saudi Arabia and heads of the IMF, World Bank and WTO). The UK copied the French style at the 2005 Gleneagles Summit.⁴

A number of features of the G-8 diplomatic process have been carried over into the G-20: the effect of the rotational chair on agenda priorities; loss of focus as the original agenda broadens with membership; introducing competing sub-agendas, and the diversionary effect of external crises or events.⁵ In addition, the G-8 and G-20 summits⁶ have been used as a vehicle for side-diplomacy, and by the summit host country as an event in the domestic political process.⁷

EU: Development of diplomatic practice

The EU has developed as an important bloc actor through the common foreign and security policy (CFSP) and, to a far lesser extent, in the defence sector, on the basis of the Maastricht Treaty, Title V provisions and later amendments.⁸

As part of the process the diplomatic presence of the EU has been strengthened through the development of the post of high representative/vice president (HRVP) and the creation of the European External Action Service (EEAS) under the Lisbon Treaty.⁹ However, the EU, institutionally remains multi-hatted in international relations with responsibilities split across sectors. Much also depends on personality in terms of the interpretations.

In external relations, areas under Community competence include the common fisheries policy, transport and large areas of trade and environment policy. In other areas there is so-called ‘mixed’ competence. The absence of competence has not in itself prevented the Commission from being active in these residual areas such as trade, copyright and disaster relief. In practice, furthermore, the Commission has expanded its role *within* competences (e.g. expansion of environmental functions such as pollution to the general area of climate change) and *across* sectors (transport, trade, development aid) by means of the acquisition of new sectors.

Sector Commission expansion has been achieved through similar strategies vis à vis rival international and regional organisations, including: acquisition of membership; observer status; gaining representation rights; ‘cooperative’ links with other national/regional organisations; and annexation of rival organisations. The process has been described by Knud Erik Jørgensen as ‘draining other organizations [Council of Europe, OSCE] of missions’.¹⁰

The takeover of an organisation is illustrated in the international maritime transport sector by the Commission's annexation of the Paris Memorandum (PMOU) organisation, establishing responsibility for a new sector for maritime safety (regulation, inspection, enforcement) within the EU over that of the member states.¹¹

In the process outlined, so-called 'grey areas' have arisen over whether an issue falls within CFSP or external policy.¹² In a not dissimilar sense, coordination and function issues occur in the Lisbon Treaty framework between the Commission's responsibility, and that of the European External Action Service.¹³

The expansion of the role of the Community in external policy is influenced by three factors. In the first place, the Commission's role has increased because of the continuing fusion of domestic and foreign policy. Examples of multisector programmes in the politico-economic area include the first-generation associative diplomacy agreement (e.g. EU–ASEAN);¹⁴ dialogue diplomacy (e.g. Euro–Mediterranean dialogue); and EU–Council of Europe Strategic Partnership, set up following the 'Arab Spring'. Secondly, economic coercive instruments have become increasingly used by the EU and USA in foreign policy. Examples of the range of economic and administrative sanctions by the EU include those against: Iran, Burma¹⁵ and potential applicants (e.g. Serbia-Montenegro) concerning war crimes and human rights;¹⁶ and delayed trade agreements (e.g. with Pakistan over press freedom issues).¹⁷

In contrast to the above Commission expansion, development aid occupies an uncertain and ambiguous institutional position within the EU between CFSP, Commission and External Action Service.¹⁸ Regular reviews of aid policy have failed to find a coherent institutional structure or strategy. Examples of shifts in strategy or approach include shifts to governance-driven aid; human rights reform conditionality; retrenchment to near abroad¹⁹ (European periphery) post-2011 international finance and trade crisis; and budget reduction with reallocation to sector-specific aid.²⁰ The changes outlined above reflect a shift to a continental Europe²¹ orientation and political conditionality, coupled with a continued move away from the original EU Afro-Caribbean-Pacific trade (development) cooperation model.²² The continued use of political conditionality in EU external (aid) policy remains in contrast to Emerging Economic powers' diplomatic practice, which is far less constrained, giving greater freedom of action in trade policy and diplomacy vis à vis certain regimes.

Diplomatic actor: external role – one voice and representation

Regional organisations such as the EU, AU, ASEAN and Organisation of American States (OAS) face common problems of reaching agreed positions; maintaining cohesion and effective implementation when acting

as blocs internationally. Within the EU, the institutional arrangements require close cooperation between the president of the Council, HRVP and multiple commissioners. As argued above, the Commission has developed in external relations a large degree of autonomy. At the UN the Commission is a key part of a multidivisional delegation. Other areas such as the negotiation and management of Associative Diplomacy agreements (e.g. EU–ASEAN) and bilateral-regional agreements (e.g. EU–Brazil) are mainly handled by the Commission and EEAS at Brussels through permanent ambassadorial or visiting MFA delegations, largely detached from other EU operations.²³

In development diplomacy, evaluation of governance and compliance is the responsibility of the recently established Commission-staffed Budget Control Teams.²⁴ The effect of these and other EU-related arrangements is to widen the gap between EU ministers and technical negotiator, reducing member states' strategic and operational understanding and assessment of external relations. The gap is also widened through the practice of conducting internal discourse in language littered with abbreviations or acronyms. A notable example is: 'The future MFF should reinforce PCD', which would not be widely understood in many ministerial cabinet meetings.²⁵

In addition to the question of organisational autonomy and separation of technical from other external policy, difficulties in the CFSP branch have occurred across a wide range of foreign policy including over former Yugoslavia, Iran sanctions, diplomatic recognition of Croatia,²⁶ and aid to Cuba. The Commission has led a long-standing series of demands for 'one voice' and 'consistency', which have been combined with and made an integral part of its effort to extend its operations into and control over the CFSP.²⁷ These have been generally resisted within the CFSP framework.

EU representation

The issue of EU representation in international institutions has been a long-standing element in the 'one voice' debate. The question of EU representation on the UN Security Council, at the expense of existing European permanent members (United Kingdom and France), has been an area of traditional contention.²⁸ As regards the UN General Assembly, EU participation²⁹ was upgraded in Assembly Resolution 65/276 in 2011.³⁰ The changes strengthen the EU position within the UN system, and – coupled with the use of common positions – significantly influence its status.

The strand of moves to create 'one voice' through the Lisbon Treaty, reform and representation needs to be set against implications for foreign policy capacity. Moves to unify positions inevitably means the loss of individual or national foreign policy capacity, role and, above all, national representation of both routine and core positions. For example the wider international influence of Sweden, including its central role, has diminished since EU membership.³¹ As in all regional organisations, and more so in the EU, as a supranational case, creating and attaining unified

positions is time consuming, unwieldy, and affects flexibility in multilateral negotiations such as the WTO and UNFCCC.³²

Other aspects of capacity which are affected include choice (orientation) and available foreign policy instruments. The ability to shape foreign policy through visits and agreements is reduced as EU competence is expanded. Thus, the content of bilateral agreements is now considerably reduced. For example agreements concluded by Spain and the Philippines following the visit of the Spanish foreign minister were restricted to health, education and tourism.³³ On the wider but linked question of orientation, whilst some new small or micro states seek haven in the EU, existing small and medium-sized member states are concerned at exclusion as a result of the Franco-German axis. Where and how to channel diplomatic efforts, into intra or extra EU bloc diplomacy, have become difficult strategic choices for countries such as Poland, Austria, Cyprus, Greece and Ireland.³⁴

Changing blocs and groups

A number of features of diplomatic practice relating to blocs and groups raised in the previous sections – particularly issues to do with core ideas, problems of expansion and cohesion – are also noteworthy with respect to other established or newer groups discussed in this section. In particular, the Organisation of Petroleum Exporting Countries (OPEC) has remained a largely successful but unchanged – though narrowly focused – actor, in contrast to the loose, politically based Arab League or G-77. The G-77 has failed above all to develop or find an adequate *raison d'être* post-Cold War, or integrate into its central diplomatic practice the almost self-contained financial diplomacy of its subgroup the G-24. The Non-Aligned Movement (NAM) has similarly moved into a diplomatic dead-end, having failed to develop enough precise bridging ideas for its diffuse membership, punctuated by periodic unsuccessful calls for reform.

The element of formalism (resolution-style diplomacy, repetitive communiqués) has marked the diplomatic practice of the UN General Assembly, as well as the G-77 and NAM.³⁵ It is also seen in other groupings (e.g. G-8), and is copied in the Indian–EU dialogue, as the following extracts illustrate:³⁶

15. We remain committed to intensifying economic dialogue at all levels with a view to improving substantially market access and investment...

20. We reiterated our commitment to work towards further strengthening of the multilateral trading regime under the WTO. We affirmed that multilateral rules fairly agreed upon benefit every one. We reaffirmed that trade can play a positive role in development and that development should remain central to the ongoing negotiations in the WTO.

Other features, in addition, of particular note are the fluidity and changing composition of many groupings in contemporary diplomacy. Many traditional groupings in international trade negotiations have splintered. Wider blocs within the G-77 have fragmented or become non-operational, for example the African group. Instead, clusters of smaller groupings have been created, alongside or outside traditional regime fora.

G-20

The establishment at leader level of the G-20 in 2008, mainly as a response to the 2007–8 international financial crisis, was essentially an effort to create a more broadly based group than the G-8 by including emerging economies, and states such as Saudi Arabia, Mexico and Turkey, more closely into consultation and coordination on economic issues and international policy responses to major crises.³⁷ The additional spread of trade protectionism and international trade conflict has raised major issues about the group and its effectiveness.

The G-20 is an embryonic governance device. Its establishment raises questions concerning: its structure; membership (particularly the problem of excluded states); purposes;³⁸ and possible competitive impact on existing international institutions. Indeed, the establishment of the G-20 underlined the flawed initial conceptions of the UN San Francisco institutions, which divided responsibility – particularly for international trade and international financial rule making and management – into separate specialised agencies.³⁹

The main purposes of the G-20 can be distinguished as: the generation of ideas and consultation on issues; agenda setting and consensus building; policy coordination. The underlying political divisions, however, and different perceptions of international order, limit wider agreement on the development and articulation of shared norms. In this sense, the development of wider norms found in some of the diplomatic practices of the G-8 differentiate that group from the G-20.⁴⁰

The G-20 has developed in an ad hoc manner, without an extensive secretariat or implementation machinery.⁴¹ In practice, meetings of finance ministers are backed into meetings of related international institutions (e.g. the annual meeting of the IMF and World Bank),⁴² whilst G-20 leaders have met separately at summit level (and at other venues) once or twice per year.

In analysing the effectiveness of the G-20, four sets of constraints can be distinguished. The first is *legitimacy*: the question of membership remains divisive, with some states and regimes feeling excluded. In arguing the case for limited size, President Obama put it as follows: 'Everyone wants the smallest possible group that includes them.'⁴³ Amongst those states not in the G-20 are Norway, New Zealand, Taiwan and Switzerland. Africa and the Middle East are almost completely absent, both procedurally and

substantively. Micro states from Oceania are strikingly not represented. Development agendas are perceived to be marginalised or patched into communiqués.⁴⁴ The question of legitimacy also arises in terms of effect on the decision-making authority, and role, of existing international institutions such as the WTO and IMF.

Above all, in terms of policy consultation and position coordination, the G-20 is a diplomatic grouping rather than a network. The latter would require: a significant degree of interconnectedness; implied close coordination; institutional structure; mechanisms to implement coordinated decisions and to adjudicate in disputes.

The extent of strategic direction which the G-20 can provide remains a core issue in terms of format, priorities, time scale. For example, the Cannes Summit attempted, in less than a day-and-a-half, to cover several thematic areas: the Action Plan For Growth and Development; trade and development; agriculture, energy and climate; and financial reform. Ministerial elements have been added from time to time to the G-20 (e.g. Agriculture in 2011) and beneath that, specialist periodic working groups of officials and advisors (e.g. Development) mirror some aspects of G-8 practice.⁴⁵

Third, the broad G-20 leader agenda – unlike the earlier 2009 success of the narrowly defined G-20 finance ministers' initiatives on IMF quotas, reform and upgrading of the Basel financial institutions – has made consensus more difficult. For example United Kingdom, French and Russian officials were called in during the early hours of 12 November 2010 after US–Chinese talks broke down acrimoniously over US proposals to counter trade imbalances and currency issues. Long-standing conflicts are patched up or remain unresolved, disguised in opaque communiqués, indicative guidelines (on trade imbalances) or moved to working groups. As in other diplomatic fora, a symbolic treaty signing at the end of proceedings contributes to the image of G-20 cohesion.

Fourth, the G-20 exists in an institutionally competitive environment. That is, alongside the G-20, a range of other formal and informal groupings have emerged over the past decade (including BRICS and the Africa Partnership) as alternative routes at regional and bilateral levels. Excluded states have used these routes as means of protecting and articulating their interests. New groupings have also been developed as discussed below. A rival to the G-20, the G-28 (including non-G-20 members), was organised by Singapore in 2009. As Singapore's Foreign Minister George Yeo put it: 'In the nature of international politics, what isn't organized and what isn't heard tends to matter less.'⁴⁶

In contrast, the Latin American banking organisation the Inter-American Development Bank (IDB) set up the LAC/G20 initiative in April 2010 to create a network of central banks and finance ministries to support technically the LAC3 (Argentina, Brazil and Mexico) on G-20 issues. The IDB Network acts as a dialogue and information exchange mechanism between the LAC3 and other Latin American and Caribbean countries.⁴⁷

Network groups

The range of network groups comprises those built around specific issues: for example small Pacific and other island states concerned about global sea-level rise, and involved in groups such as the Alliance of Small Island States (AOSIS); or the landlocked states active in the UNCLOS (1973–82) negotiations, which have now re-emerged.⁴⁷ Network groups have also been formed within the G-20 and BRICS, particularly as: specialist linkages (e.g. statistics); ‘functional’ groups of officials (e.g. agriculture, health); and ‘external’ lobby groups (e.g. banking; fossil fuel reform).⁴⁸

Others include interest-based splinter groups, for example developing-country cotton or coffee producers. In multilateral conferences, wider ‘mixes’ of ad hoc interest coalitions built around short-term negotiating interests have become more apparent. In the Kyoto Protocol negotiations, for example, a disparate group, the so-called ‘Umbrella Group’, comprising inter alia New Zealand and Austria, drew together a coalition seeking greater flexibility on emission trading.

Within multilateral institutions, network groups made up of mixed state and non-state actors have become important focal points. The establishment of network groups reflects the civil society component of contemporary transnational interactions. As yet networks are embryonic, and as Ruggie argues,⁴⁹ while they represent a feature of contemporary international society, the exact scale or depth is not clear. Examples include a mixed association of states, NGOs and pharmaceutical companies in a grouping to promote the availability of low-cost medical drugs to developing countries. Network diplomacy has been a particular feature of Canadian diplomacy, which has devoted considerable effort to establishing pan-regional networks of interested mixed state and non-state actors to promote within multilateral international institutions rules on, for example, the treatment and status of children in armed conflict, anti-land mines and other aspects of civil conflict. Networks such as these have proved relatively resilient to changes of administration and loss of leading personalities, but, nevertheless, suffer from fractionalised interests and members’ competing agendas.⁵⁰

BRICS

The BRIC (Brazil, Russia, India, China) grouping has become an increasingly significant diplomatic actor since 2005. South Africa was added as a fifth member in 2011. The original BRIC concept identifies the four economies with leading GDP growth as critical players. The group met officially at foreign-minister level in 2008. The inter-MFA component along with coordination through the group’s permanent representatives in New York and Geneva remain distinctive characteristics.

The diplomatic evolution of the group is of note. Three of the four original members have in fact met at foreign-minister level (strategic dialogue) annually since 2000. The subsequent development of quadripartite

multilevel cooperation at ministerial level, based on a Russian Federation initiative, was first explored at the margins of the UN General Assembly in September 2006 and 2007. The latter established the framework of formal meetings of foreign ministers, a consultation process at deputy-foreign-minister level, and regular contacts through embassies and permanent representatives to the UN.

Following the first formal meeting of foreign ministers of Brazil, Russia, India and the PRC at Yekaterinburg on 16 May 2008, regular meetings have been held, generally during the annual UN General Assembly. In addition, an annual leader-level summit was added from 2010, and other meetings at ministerial and officials level (such as health) have followed since.⁵¹

The BRICS group has a number of constraints: individual members are economically competitive with differing export profiles; commodity-led versus manufactured/semi-industrialised exports cause friction; the baggage of traditional foreign-policy orientation and linkages (e.g. Middle East; bilateral security relations) leads to potential or actual differences; and significantly divergent views in practice on international order.

However, the grouping has several factors which help to sustain it. First, it offers an alternative route for political cooperation and initiatives. Second, a diplomatic framework has been established which combines traditional consultative grouping with network elements. For example the third BRIC Summit in Sanya, the PRC, included several satellite events: the back-to-back meeting of trade ministers; the Boha business forum; five working groups (officials); and seminars, for example the 'think tank' on BRIC research institutes. An interesting feature of the BRICS diplomatic architecture is the development of network structures, for example for the collation of members' national statistics, an agricultural information system, and pharmaceuticals. Third, the BRICS group is an entry point for the transmission of ideas and positions from other regional organisations and groupings. Fourth, the BRICS grouping has demonstrated flexibility in its capacity to deal with individual member differences, particularly foreign-policy differences on Middle East issues, including Libya and Syria. Flexibility is also evident in that the group re-forms or mutates into a different format where there is no previous cooperation or long-standing differences are evident. For example BRICS re-forms as the BASIC group (minus Russian Federation) in climate change negotiations (UNFCCC). The BASIC group, despite differences, exchanged positions 'on an hourly basis' during the Copenhagen session.⁵² The group was able to remain together despite substantial differences between them on, for example, legally binding emission controls. Other groups with partial BRICS membership include the Africa–Brazil and the Indian–Brazil–South Africa Dialogue Forum.⁵³

Regionalism

Perhaps one of the more striking features of evolving diplomatic practice is the growth of regionalism since 2000. Regionalism represents a partial

approach to international order. In some instances it is linked to multi-lateralism, as in the UN Charter, whilst in others (international trade) *in practice* it is a competitor. What might be described as first-generation regionalism, emanating in and from the Cold War, was gradually replaced by a number of post-Cold War institutions after 1990, reflecting the loosening of bloc aspects of the international system.

The following types of regionalism can be distinguished: establishment of new organisations (e.g. between the Russian Federation and some former republics;⁵⁴ see [Figure 6.1](#)); inter-regional organisation links (e.g. ASEAN–MERCOSUR);⁵⁵ bilateral–regional organisation link-ups (e.g. Brazil–AU);⁵⁶ establishment of rival or competitor regional organisations (e.g. East Asia Summit);⁵⁷ revived associative diplomacy (e.g. EU–India).⁵⁸

A further aspect of regionalism is development in internal regional cooperation, with a deepening of sectoral cooperation (e.g. ASEAN), though not necessarily supranational integration. Together these developments have brought about a major transformation – a vast diplomatic structure or architecture of meetings, exchanges, institutions, projects and communiqués. To this process has been added commercial media event diplomacy, using similar titles to inter-regional diplomatic institutional links to organise pseudo or hybrid diplomatic-commercial promotion seminars.⁵⁹

Transitional diplomacy

Transition diplomacy is concerned with the reconstruction of a state following the end of hostilities in an intra-state conflict or an external military intervention. Its development, although not new, has recurred particularly since the 1990s as a result of factors such as the break-up of the former Soviet Union, outbreaks of renewed intra-state conflicts and regime instability. It illustrates the changing nature of modern diplomacy through its involvement in domestic political-institutional reconstruction, alongside traditional areas such as aid, refugees, humanitarian aid, cease-fires and conflict mediation.

Three forms of transitional diplomacy can be distinguished, based in part on the nature of the political authorisation: peace transition operations mandated by the UN Security Council (e.g. Mozambique, Namibia and East Timor); multinational operations tasked/authorised by the UN (e.g. Bosnia and the Democratic Republic of Congo); and other military transition operations (e.g. Afghanistan, Macedonia and Iraq). Transition diplomacy involves a range of players, including lead members of the Security Council, directly interested states operating as so-called ‘Groups of Friends’, military force/economic donor states, officials or representatives of international organisations, and NGOs. The central elements of transition diplomacy are building political and administrative structures, setting up electoral systems, economic–physical reconstruction, human rights and other capacity-building measures. In some instances the central administration may be

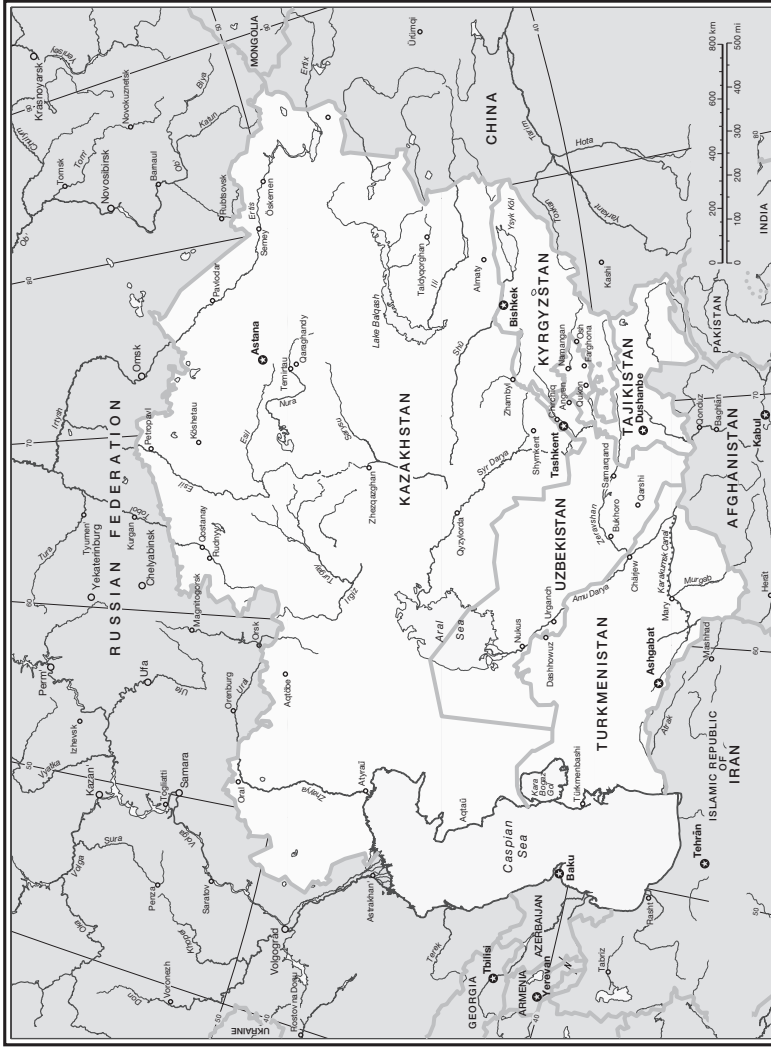


Figure 6.1 Former States of the Soviet Union

undertaken for a temporary period (e.g. Croatia), interim (e.g. East Timor and the Central African Republic) or a full administration pending final resolutions (e.g. Bosnia-Herzegovina). The term 'transitional authority' is used in some instances (e.g. Namibia) to indicate the functions and limited duration. Afghanistan, following the Bonn Agreement, was initially given the unusual title of 'Transitional Islamic State'. Following the overthrow of Colonel Gaddafi, the interim administration charged with electoral and constitutional reform was entitled 'Transitional National Council' (TNC).

A further feature of transition diplomacy is the reintroduction of war crimes tribunals (e.g. former Yugoslavia, Sierra Leone, Somalia). The ICC has additionally been set up to investigate other aspects of armed conflict, in particular genocide and abuse of human rights.

Conclusion

Diplomacy is subject to constant change and evolution. Its essential nature, however, does not radically alter. In the period under discussion, the principal changes that have occurred in diplomatic practice are particularly the result of the dynamics of blocs and groupings, and reflect the efforts to create new bloc groupings. Many groups that have been formed are narrowly focused around, for example, specific resource or climatic needs. In other instances, efforts have been made to put together, through ad hoc summit and other conferences, groupings of states which had previously not met in that format. There is, too, a strong element in non-European diplomacy, in particular of bilateralism. Bilateralism is sometimes a neglected aspect of diplomacy. If anything it is becoming a much stronger feature of international relations. The multilateral institutional framework, particularly in international trade, finance, environment and technical regulatory issues, has progressively developed through conference agreement frameworks, reflecting the changing content of diplomacy. It has become the architecture within which much of the international regulatory aspects of international society are established and revised, providing settings or contexts for state practice. The concept of consensus has become an integral part of that process. The boundaries, too, of diplomacy, at least for some though not all states (and indeed not to all states' liking), have been pushed into the domestic politics and political processes of other states, linking domestic reform or change with trade or other benefits.

Notes

1. See Rebecca M. Nelson, 'The G-20 and International Economic Cooperation' (CRS Report for Congress, R40977, December 2009, Pittsburgh Summit, September 2009).

2. The flag protocol used by Japan at the Kyushu-Okinawa Summit for the heads of state (HOS)/government (HOG) meetings took the following order: (a) host; (b) countries represented by HOS; (c) countries represented by HOG; (d) EC Commission. The order of countries in categories (b) and (c) was governed by the length of time the HOS or HOG was in office. For the foreign ministers' meeting a different order was used, which ran from host through to lastly the EC Commission. The order of the flags was determined by how long the foreign minister had been in office. The level of US representation at deputy-secretary-of-state level presented a flag protocol problem for the host. The principle applied was that of level of representation and the USA was accordingly placed last in the order of flags, prior to the EC Commission. The flags were then arranged from left to right, beginning with the host. At the G-8 finance ministers meeting, to differentiate the level of the meeting, a third method was used. In this case the flag order was the UN or alphabetical method. In this example a further protocol issue arose since Russia was scheduled to participate only in the latter half of the meeting. The G-7 flags were flown, followed by the Commission and Russia last. For details see www.mofa.gov.jp/policy/economy/Summit/2004 (G-8 Summit 2000).
3. The idea of widening G-8 negotiations was first put forward by Japan at the Okinawa Summit and developed by Canada with a proposal for a G-8 Africa Action Plan at the Kananaskis Summit in 2002.
4. The Evian Summit had a four-part main document (economic growth, sustainable development, improved security and regional issues), supported by 16 Declarations, including trade cooperation, oil tanker safety, health and several implementation reports.
5. For example, IT/digital divide (Japan, Okinawa); Africa Plan (Canada, Kananaskis); oil tanker safety; access to clean water and promoting multilateral institutions (France, Evian).
6. Japan held six bilateral meetings at the Sea Island Summit, 8–10 June 2004, with Germany, Russian Federation, France, UK, USA and Jordan. Japan's Prime Minister Koizumi met King Abdulla II of Jordan (not present at the summit) on 10 June 2004 to review the Iraq situation, contributing some of the Japanese Self Defence Force (SDF), Jordanian assistance in hostage incidents, a Japan–Jordan cooperation agreement, and to commemorate the 50th anniversary of diplomatic relations between Japan and Jordan. See [www.mofa.gov.jp/policy/economy/summit/2004] (G-8 Summit 2004).
7. [www.mofa.gov.jp/policy/economy/summit/2004] (G-8 Summit, 2004).
8. See Maastricht Treaty, Title V, Provisions on a Common Foreign and Security Policy, Art. J, 1–6.
9. See Simon Duke, 'Consistency, coherence and European external action', in Panos Koutrakos, *European Foreign Policy* (Elgar, Cheltenham, 2011), pp.15–30.
10. See Knud Erik Jørgansen and Ramses A. Wessel, 'The position of the European Union in (other) international organizations', in Panos Koutrakos, *ibid.*, pp. 276–7, at note 59. On the Council of Europe takeover, see 'New EU programme to support political and democratic reform in the Southern Mediterranean', 22 December 2011, 10/11/1597, 22 December 2011.
11. The Memorandum of Understanding on Port State Control in Implementing International Agreements on Maritime Safety and Protection of the Marine Environment, 26 Jan. 1982. 26 *ILM* 959, 1982. The Paris MOU was based on the Hague Memorandum signed by Belgium, Denmark, France, Federal

- Republic of Germany, Netherlands, Norway, Sweden and the UK in 1978. It is an intergovernmental administrative arrangement, influenced particularly by the increasing problems of marine pollution and marine accidents in European waters such as the *Amoco Cadiz* off Ushant. The Paris signatories are committed to carrying out port state control inspections on 25 per cent of foreign vessels entering their ports. See R.P. Barston, 'Port state control: evolving concepts', in Harry N. Scheiber (ed.), *Law of the Sea* (Martinus Nijhoff, The Hague, 2000) pp. 87–101.
12. European Space Council (ESC) inaugural meeting, 26 November 2004. *Financial Times*, 2 March 1995.
 13. On the Barosso Commission, appointments and the overlapping coordination responsibilities of the HR/VP, and External Action Service, see Europe Press IP/09/1837. 27 November 2009.
 14. See Chapter 5, *Modern Diplomacy* (second edition). On the role of the Vice-President of the Commission (Manuel Marin) on upgrading EU–India relations, including the Economic Cross Cultural Programme, see B. Krishnamurthy, 'India and the EU', in V.T. Patil and Nalini Kant Jha, *India in a Turbulent World* (South Asia Publishers, New Delhi, 2003), pp. 204–19. On sanctions and conditionality, see Karen Smith, *EU Foreign Policy in a Changing World* (Cambridge, Polity, 2003).
 15. The EU restrictions included travel restrictions on over 800 Burmese (Myanmar) ministers, military and officials, and economic sanctions on some 40 Burmese (and joint venture) enterprises. See Council Common Position 2005/340/CFSC, 25 April 2005, *Official Journal of the European Union*, L108, 29 April 2005. See COM (2011/303); IP/11/1597, 22 December 2011.
 16. The EU High Representative, Solana, postponed a meeting in 2005 with Serbian authorities on EU admission. See *The Times*, 18 Jan. 2005.
 17. See Krishnamurthy, op. cit., p. 217.
 18. Peter Clegg, paper to University of Reading, 10 February 2005.
 19. See 'EU development policy: An agenda for change', Memo 11.696.
 20. 17/11/1184, 13/2011.
 21. [http://ec.europa.eu/commission_2010-2014/Pule].
 22. [http://ec.Europe.eu/europeaid/hov/delivering_aid/budget_support/documents-/future.eubudget.support.eu.pdf]. Budget support is defined in terms of 'policy dialogue, financial transfer, performance assessment, capacity building, based on partnership and mutual accountability' (Sections 1 and 4). See also ACP-EU Council of Ministers (COM (2001) 836).
 23. For example over negotiations with the ACP, or bilateral review negotiations of a partnership agreement with another regime or organization.
 24. COM(2011) 638 Final (Design and Implementation).
 25. COM(2011) Final. 13/10/21 (Section 6).
 26. Cuba resumed diplomatic relations with Spain, France, the UK, Germany, Italy, Austria, Greece, Portugal and Sweden in 2004–5. The Czech Republic, the Netherlands and Poland opposed lifting of EU restrictions, imposed in 2003 in the dispute over Cuban arrest of dissidents and non-cooperation with anti-government activists.
 27. COM(2011) 637 op. cit. The Commission uses recurring formulae or phrases in various planning and budget documents to lodge its case. For example: 'The EU must intensify its joined up approach to security and poverty, where necessary adapting its legal basis and procedures. The EU's development,

- foreign and security policy initiatives should be linked so as to create a more coherent approach to peace and stability, poverty reduction and underlying causes of conflict' (Section 6, COM(2011) 637).
28. For a review of the question see David M. Malone (ed.), *The UN Security Council*, (Lynne Rienner, 2004), pp. 341–53.
 29. The EU website for the 66th UN General Assembly underlined the multi-hatted nature of the EU representation: president of the European Commission; HR/VP; and four commissioners. The web invited readers 'to consult the related links to the left for their respective agendas'. No email information was provided. [<http://europa.eu/eucalendar/event/id/253088-eu-av-66th-un-general-assembly/mode/wi...>].
 30. [<http://www.consilium.europe.eu/homepage/showfocus.aspx>].
 31. See R.P.Barston, 'The UN Conference on Straddling Stocks and Highly Migratory Fish Stocks', *Marine Policy*, vol. 19, no. 2, 1995, pp. 15–66.
 32. The EU became increasingly marginalized in the WTO Doha Round from 2007, locked on agriculture, and problems of EPAs with ACP countries on the post-Cotonou trade access arrangements.
 33. [<http://mb.com.ph/articles/199871/spain-s-foreign-minister-visits-philippines-sig...>].
 34. See *Financial Times*, 5 Dec. 2011.
 35. See Peter Marshall, *Positive Diplomacy* (Macmillan Press, Basingstoke, 1999) for an excellent example of this phenomenon in his Universal GATT speech, Annex 7, pp. 204–5.
 36. See Gupta, op. cit., pp. 61–3 for the fourth India–EU Summit, Joint Press Statement, 29 Nov. 2003.
 37. The membership of the G-20 includes Austria, Canada, Saudi Arabia (Group 1); India, Russia, South Africa, Turkey (Group 2); Argentina, Brazil, Mexico (Group 3); France, Germany, Italy, United Kingdom (Group 4); China, Indonesia, Japan, South Korea (Group 5). Since 2010, the G-20 leaders rotation for the host summit has been based on the five groupings: France (Group 4) hosted the 2011 summit; Mexico, 2012 (Group 3) and Russia (Group 2) in 2013. The G-8 presidency rotates through France, United States, United Kingdom, Russia, Germany, Japan, Italy and Canada.
 38. [http://www.g20.org/pub_comuniques.aspx]. Several countries which are not permanent members of the G-20 have been invited on an ad hoc basis to participate generally by host country. Invited countries include the Netherlands, invited by Canada, Ethiopia (Chair NEPAD), Malawi (Chair AU), Singapore (invited by Korea).
 39. See Inis L. Claude, *Swords into Plowshares* (University of London Press, London, 1964), pp. 356–67.
 40. The role of the G-8 in norm development was more defined in part because of the limited size and common international legal values. See, for example, Declaration of the G-8 Foreign Minister on the Rule of Law, 30 May 2007. [www.auswaertiges.amt.de/cac/servlet/.../4292/Expertentreffen071130.pdf].
 41. Coordination of the G-20 through a troika system of handover, from past host to current and future hosts. Proposals for a permanent secretariat have been put forward by, for example, France 2010 (located in Paris or Seoul); United Kingdom 2011 and opposed by Japan and Italy. Other proposals have included a 'cyber secretariat' (Korea).
 42. See [http://www.fin.ge.ca/n11/11_G84_eng.asp].

43. Interview: ABC News, September 24, 2009. President Obama hoped for fewer summits and commented that 'we have to update and reform and renew the institutions that were set up in a different time and place'.
44. See Africa Progress Panel. Koffi Annan Foundation. Org.2011, and [www.prnnews.com/.../president-obiang-at-g20_summit].
45. G20 Development Working Group [www.thecommonwealth.org/.../].
46. The 3G group is organized by Singapore through its permanent representative to the UN, New York. See S11a online: [org; www.mfa.gov.sg/newyork].
47. See *UN Law of the Sea Bulletin* no. 53 (United Nations, New York, 2004).
48. [http://www.iadh.org/en].
49. See John Gerard Ruggie, 'Reconstituting the global public domain: issues, action and practice', *European Journal of International Relations*, vol. 10, no. 4, Dec. 2004, pp. 499–531.
50. Network diplomacy has also been developed by international institutions, particularly UNEP and UNESCO (e.g. Small Island Developing States network programmes).
51. Alexander Kramarenko, 'Russia and the rise of the dialogue mechanism in the BRIC format' (MFA, Moscow, 2009); Sanya Declaration, Hainan, China, 14 April 2011.
52. See Karl Hallding, Marie Olsson, Aaron Atteridge, Marcus Carson, Antto Vihama and Mikael Roman, *Standing Alone* (Stockholm Environment Institute, 2011).
53. See on the India-Brazil-South Africa link-up [www.ibsa-trilateral.org], established in 2003. The Africa-Brazil Agricultural Innovation Market Place was set up in 2010.
54. See on the Russian Federation–Kazakh talks, 21 November, 2011 [http://www.mid-ru/brp_4.nsf/main_eng].
55. The initial ASEAN-MERCOSUR Ministerial Meeting was held in Brasilia, 24 Nov. 2008. [www.aseansec.org/22011.pdf].
56. CARICOM and Brazil held an initial summit in Brasilia in 2010.
57. The EAS was set up in December 2005 by ASEAN with Australia, China, India, Japan, Korea and New Zealand, Russia and the US joined in 2011.
58. See [eeas.europa.eu/india/summit_en-htm].
59. See, for example, the Financial Times Brazil-Africa Forum, 2012, held in Dar Es Salaam, Tanzania, on 3 May 2012.

Chapter 7

Cyber diplomacy

The cyber setting

The revolution in information and communications technology has had four main effects on the conduct of diplomacy. First, the transboundary effect of information technology has modified the relation between distance and time. Previously remote issues and conflicts are brought to global attention, though that focus is shaped by the demands of immediacy (breaking news), global media geopolitical preferences and commercial cultural imperatives. Real-time images of civil conflict are graphically captured on mobile phones, transmitted globally; mobile satellite television camera technology tracks and relays interviews and military operations from previously inaccessible locations. Second, media focus on an issue is not necessarily inconstant, although it has had the effect of altering the tempo or pace of some diplomacy and reducing or removing the effects of distance.

The consumerisation of information technology (IT) has led to greater geographic availability and correspondingly enhanced information depth. In comparison with earlier periods, the diplomatic setting is distinguished by the increasing volume of available opinion – official and private, data, comment and views – relating to international issues and events. The traditional diplomatic function of assessment has nevertheless in some senses become more difficult.

Third, and related, is the monetisation of the information revolution. The constant search for competitive advantage has driven technical development in integrated personal communications systems, making them an essential diplomatic tool. Correspondingly, the functions of personal communications systems have been widened, so that in a domestic societal context the constant search for information and applications has blurred the line between public and private space.

A fourth impact on the diplomatic setting and conduct of diplomacy has been with regard to the generation of a variety of new threats to diplomatic and commercial systems.

Institutional changes

The importance of the cyber dimension of diplomacy is reflected in the organisational changes which have been carried out in foreign ministries, embassies and other national and international agencies, including: countering transnational crime and terrorism; trade; and defence. Foreign ministries have expanded existing information and encryption sections and added new departments responsible for cyber diplomacy issues. For example following the Department of State Quadrennial Review, changes included enhancement of coordination on cyber issues and the appointment of an interagency cyber coordinator.¹ At an international level, enhancement of knowledge on cyber issues has entered into regional technical assistance diplomacy.² Other institutional changes have been influenced by the primary and emerging powers' drive for enhanced military cyber and counter-threat capability. As part of cyber warfare, the United States, the PRC and Russian Federation, particularly, have developed enhanced national capability as a major platform for contemporary conflict and as one of a number of instruments to support diplomatic objectives, and commercial and other operations.³ At an alliance level, counter-threat capability has been developed by NATO via the establishment of a regional coordination centre at Tallinn. Other international groupings including the G-8 and APEC have established standing groups on high-technology crime.

The battle for ideas and influence

Perhaps the major feature of the contemporary cyber setting is the increasing volume of information on a diverse range of events and issues. Traditionally, diplomacy has been concerned with the pursuit of ideas and acquisition of influence. In this sense, diplomacy is concerned with: shaping an idea; explaining a draft set of wording; promoting elements of a solution; countering an opposing proposal; successfully reaching close to a preferred outcome. As a vehicle for influence, diplomacy is also concerned with projecting or maintaining an image, in line with interests.

Ideas pursued in diplomacy can take a number of forms, such as: general indications of preferred outcomes (e.g. solutions to an international financial crisis; a governance rather than peace-keeping force); the shape of an agenda or emphasis of forthcoming major anniversary or review conference (e.g. whether the focus of the Rio conference review should be economic rather than environmental); structural/legal (e.g. institutional reform of the EU). In negotiation, ideas may take the form of offering perspectives and reasoned long-term approaches (e.g. setting out principles for action; offering a long-term consensus package); or they may constitute a formula in negotiations summarising key political concepts which are seen as essential for agreement (e.g. common but differentiated responsibilities as in climate negotiations at the Rio conference).⁴

Ideas of the type outlined above are pursued through: policy statements; initiatives; negotiation; briefing; bilateral exchanges; normalisation meetings; liaison with NGOs; regional and multilateral or side-diplomacy at the margins of international gatherings and signalling.

These traditional methods have not in the main altered, but rather additional means have been added to them. New methods include the use of search engines as image or influence sites by states, and the use of cyber techniques in support of political-military objectives, discussed below.

In terms of the augmentation of traditional methods, most foreign ministries and embassies maintain websites of various types and detail. These act as a record of activity and as a vehicle for promoting the public position of that state on an issue. Policy statements are regularly issued in this format, along with interviews given by permanent representatives and through sites forming part of the national website. These are frequently cross-linked to international institutions and search engines.

Similar website arrangements are maintained by international and regional organisations (and individual subdivisions within those) with varying degrees of success. The least successful tend to suffer from highly stylised or formatted summaries of meetings; repetitive formats and stylised language (meetings are 'slated to be held' and 'exchanges of view' take place).⁵ A further development of note is the use of information systems by standing international conventions. A pioneer convention in this respect is the 1982 UN Convention on the Law of the Sea, which – following entry into force – continued the documentary and maritime collation functions required under the convention (e.g. legislation, international Exclusive Economic Zone (EEZ) and boundary mapping; and Law of the Sea Tribunal cases).⁶ Subsequently, modern standing conventions, such as dealing with climate change or desertification,⁷ have augmented these documentary functions with wider reporting of meetings, NGO fora, and through interactive sites. That process, despite these changes in practice, remains incomplete in the continued absence of verbatim records of proceedings and records of informal negotiating proposals, which would provide a fuller record of the parties' conferences.

Other communications developments

Communications systems are used as an instrument of national diplomacy in other ways. As part of image building, some emerging powers have used standard search engines to augment traditional media in order to command communications space as part of a long-term communications strategy. Leasing communications space and response ranking on search engines relies on repetitive association and image (validity) creation to influence perceptions of that state.⁸

In other areas, as part of new methods to support active strategies, cyber methods have been used to counter weapons acquisition by other states or groups. The use of cyber methods has a number of advantages as an

indirect weapon. In particular, political or geographic constraints may limit the choice of means. In these instances, indirect methods have the advantage of concealing the originator, making the weapon a covert one, and have the added advantage of minimising collateral damage. For example the United States cyber attack on the Iranian nuclear programme was directed at weakening or destroying the knowledge base and communications infrastructure of the programme.⁹ Although only affecting part of the nuclear programme, the attack had the advantages over a conventional air attack of causing limited physical damage, minimising media coverage and leaving open the question of the attacker's identity.¹⁰ Whilst the attack had limited objectives, the methods also had the advantage of buying time in which to build up diplomatic support for enhanced economic sanctions whilst not foreclosing other non-diplomatic options. In particular, it gave credence to mid-scale strategies based on the 'best that could be achieved'? type rationale.

Civil conflicts

International and civil conflicts have traditionally been an area of external NGO interest and activity, with varying degrees of involvement from support for rival groups, medical and humanitarian assistance through to the reports and analyses by institutes and think tanks. The long running and obdurate nature of many so-called 'secondary' conflicts post-2000 (e.g. the Congo, Eritrea, Sudan, Guinea and Somalia) has been mirrored by a growth in political-economic and commentary NGOs (previously a feature of the Cold War period). In the post-2000 setting, political-economic commentary and monitoring groups have increased in number as part of the battle for ideas. They have extended their activities through web reporting and linkage with conventional media as outlets for their views on particular conflicts, and developed a variety of public diplomacy activities.

The impact of the web in civil conflict is evident in other aspects of the battle for ideas in terms of the reporting of events in a civil conflict and authenticity of sources. In rapidly changing civil-military exchanges, information may be absent, influenced by rumour (e.g. the whereabouts and fate of a leader) or consist of falsely fabricated reports. For their part, the media may receive reports of internal events or political statements from previously unknown websites.¹¹ In these types of situations, diplomatic information coexists with a variety of other media. Modern communications mean, too, that the boundary of conflicts has shifted to encompass diaspora or other externally domiciled nationals involved in the transmission, leakage and dissemination of rumour, information and ideas.¹²

The resurgence of piracy and armed attack at sea in several areas (e.g. off Somalia, the Gulf of Aden, and West Africa) has been accompanied by the emergence of web-based NGOs operating in the diplomatic-security margins of these conflicts.¹³ States, too, have used the Somali and South China Sea maritime conflicts to showcase on the web their naval capability and anti-piracy operations as part of power projection.¹⁴ In addition,

a third factor stems from the introduction by some states of a domestic ethical dimension to their foreign policy, seeking political-system reform in external regimes, which has led to the growth of commentary-advocacy groups linked in varying degrees to 'ethical' driver states.

The disguised state

The concept of the disguised state is used here to convey the idea of a state distancing itself from an event, issue, conflict or individual by use of third-party entities such as NGOs, spokesmen or other actors. The NGO gives cover; the state is able to influence events and pursue its policies without necessary identifications or approbations.

A number of different types of groups which are linked or act for disguised states to varying degrees can be distinguished on the basis of funding, area of operations and functions. In the first category are those groups wholly or largely funded through several states and/or integrative organisations rather than private (public) sources. For example, the Electoral Institute for the Sustainable Democracy in Africa (EISA) is supported by the EU and United States, with field offices in Maputo, Kinshasa, Antananarivo, N'Djamena, Nairobi and Harare, funded through the Dutch and Irish embassies.¹⁵ In the media sector, the International Crisis Group¹⁶ (with research field offices in several regions, media-networked) is EU/US-funded, though hybrid in terms of formal independence, reflecting the plurality of the EU. It can be argued that these groups operate in varying degrees as an outreach arm of the 'disguised' state.

In a second category are national commentary and political-economic NGOs which operate internationally, funded largely or exclusively by a single state. For example the conflict analysis NGO Ploughshares is Canadian-funded. In the political and economic dimensions of public diplomacy, the Qatar Foundation is cross-linked into Qatar Sports Investment.¹⁷

A third category comprises those political-technical NGOs, operating at the margins of international institutions, for example the Security Council Report.¹⁸ As such, commentary NGOs in the third category attempt to appear neutral, using similar emblems and logos to those of the international institution for legitimacy.

NGOs, which are mainly economic service providers, compose a fourth category. These essentially web-based organisations have developed more recently at the margins of long-standing divided state conflicts (e.g. Taiwan-PRC), offering a variety of information, quasi-diplomatic economic introductions, trade documentation and language services. Other web-based commercial-service NGOs have also emerged, in addition to traditional international NGOs, in the context of the resurgence of maritime crime and armed attacks off Somalia and elsewhere, offering information, negotiation and security services.

A fifth, interesting category can be distinguished comprising defunct sites. In these cases, sites have been copied, subjected to cyber attack or annexed.

These sites may be made redundant or ineffective through rival activity (e.g. title copied by rival site or made inoperative through losing exclusivity). In some instances, NGO information sites have been copied by states. For example, the name of the NGO site 'Diplomacy Monitor', run by the St Thomas University School of Law (a documentary station collating treaties, statements and other diplomatic documents), was adopted by the US Department of State/USAID for the public policy programme used by US embassy monitoring sites.¹⁹ The UN Public Affairs Department subsite 'Ten Stories the World Should Know More About' is not in use and is now used as a tag by a variety of short-term unconnected users.²⁰ Probably one of the major annexations of an intergovernmental secretariat data communications base occurred with the duplication and ultimate annexation of the Paris Memorandum Organisation, a technical administrative agency concerned with coordinating marine safety accident and ship inspection data. The database was annexed by the EU's European Maritime Safety Agency (EMSA).²¹

In a sixth category, non-governmental groups may also be quite opaque and shifting in membership. Identity is not clear and hence associations or linkage is obscured.²²

Conduct of diplomacy

The changes taking place in communications have affected several aspects of the conduct of diplomacy. International institutions, including the UN General Assembly, and standing international conventions have widely adopted social network sites as interactive facilities on their web-sites, although their impact is difficult to gauge.

As regards other uses, employing social network sites for diplomatic communication raises a number of issues. First is the question of distinguishing the public and private views of, for example, foreign ministers or lead international secretariat officials. It is not necessarily readily apparent whether a position taken up on a social network site by a minister or official negotiator is an official view or merely a private opinion.²³ In terms of neutrality, should an international secretariat lead negotiator on climate change use social network sites to comment between sessions of negotiations on the success or otherwise of foreign carbon tax legislation?²⁴ Does use of social network sites for diplomatic purposes risk undermining the neutrality of an official by going public in that manner? In what ways might it adversely affect the negotiating process by apparently ruling out an option before discussion?

Communication, civil conflicts and the role of the ambassador

The impact of the communications revolution is most extensively seen in civil conflicts. Personal communications systems have been used to

mobilise civil society, record real-time demonstration scenes, relay interviews and facilitate coordination of opposition groups.

In civil conflict contexts, the increasing tendency in some state practice of ambassadors taking open positions of opposition to the government to which they are accredited underlines potential tension between concepts of public policy (reaching members of society; organising civil society groups; funding opposition political groupings) and the conduct of diplomacy. Often, there is, too, a distinction of standard in the contradiction between what is seen as acceptable in public policy diplomacy undertaken externally and what is (or is not) accepted in one's own national backyard (domestic jurisdiction). These tensions have increased as a result of rapid change in communications systems.

Whilst the domestic jurisdiction provisions of the UN Charter in Article 2(7) have been progressively eroded through various forms of public diplomacy and regime change, the position of the Vienna Convention on Diplomatic Relations sets out the provisions on the formal powers of an ambassador and post in Articles 3, 24–7.²⁵ Article 3(d) identifies reporting and contact functions as follows: 'ascertaining by all lawful means conditions and developments in the receiving state and reporting thereon to the Government of the sending State'. Article 24 provides for inviolability of mission archives and documents: that full facilities be accorded for the performance of the functions of the mission (Article 25). As regards communication means, the receiving state shall 'permit and protect free communication on the part of the mission for all official purposes'. Under Article 26, freedom of movement and travel within the territory in the receiving state is allowed for, subject to [its] 'laws and regulations concerning zones, entry into which is prohibited or regulated for national security reasons'. Whilst these formal provisions are clear, interpretation varies considerably in diplomatic practices.

Bilateral relations: information strategies

A number of aspects of the conduct of bilateral relations have been affected by embassies' use of websites. In particular, the procedures for agreeing the content and timing of joint statements following bilateral meetings have moved beyond the routine. The tendency of embassies to want to keep up the flow of information on their websites and be seen to be up-to-date has generated problems of coordination in bilateral relations over ensuring adequate clearance. The expanded nature of modern diplomacy can mean that issues are often compartmentalised and not cleared across administrations. Negotiators remain within their separate areas of competence or 'boxes'. For its part, an embassy may perceive it has sufficient authority to issue press releases without the need for lengthy clearance if the meeting is considered routine or technical. The information released through the website is near immediate and potentially universal.

Two further difficulties can be distinguished. First, bilateral coordination may be relatively weak in some bilateral relations or groups. Second,

one party may seek to issue prematurely a statement for a number of reasons such as pressuring the other party to come into line, prestige or using the event to mark out a new unilateral position on an external issue, under the cover of a joint statement. Within the BRIC grouping for example, the Fifth Indian–China Financial Summit illustrated several of these aspects of coordination problems. The initial communiqué was issued by the Chinese embassy in New Delhi on its website shortly following the meeting.²⁶ However, the Indian lead department and other related ministry sources were uncertain in media exchanges seeking clarification on the substance of the Chinese version of the joint statement, widely available through the web, over the possible content and whether a meeting had in fact taken place.²⁷ In addition, parts of the joint statement on the international financial crisis were significantly at odds with the more flexible Indian position put out earlier at the Cannes G-20 summit. The text of the initial China–Indian joint statement was not posted later on the Indian economic affairs or foreign affairs ministry websites and subsequently did not appear on the main Chinese MFA website.²⁸ Whilst coordination problems of this kind are a feature of diplomacy, particularly on complex technical issues, changes in communications technology have extended the possibility of ‘information exploitation or advantage’ to the range of diplomatic methods and also conflict.

The information setting and smaller powers

Changes in the information setting and technology have affected states in different ways. Not all have the same capability for response or are able to match the ‘information pace’ of neighbours and others. The situation for smaller powers is illustrated, for example, by Zambia, which maintains press officers in nine of its 31 missions.²⁹ The reporting of a bilateral meeting may often be placed on a lower order than another policy area, despite the apparent importance attached by the other side. Posting on MFA websites can both highlight and exacerbate this problem. For example following the conclusion of an India–Bangladesh bilateral meeting at which 16 bilateral MOUs were concluded, details were released on the Indian MFA press and websites but not on Bangladesh sources. Internal Bangladesh media representatives sought equivalent information, but were directed to Indian sources, in view of the importance of the visit the following day by the foreign minister to the UN International Tribunal on the Law of the Sea in Germany to present the Bangladesh case in the dispute with Myanmar over territorial rights in the Bay of Bengal.

Multilateral diplomacy: documentary management and drafting

In multilateral conference diplomacy, changes in IT have had an impact particularly on documentary management. Working procedures of

international organisations and other types of multilateral ad hoc and standing conferences generally make the final texts and other documents submitted available electronically, though not all informal texts or proposed draft articles. The process was extended at the Seoul session of the UN Convention to Combat Desertification with the provision to delegations of tablets containing previous documents. No paper documents of past sessions were issued, with the UNFCCC secretariat issuing paper documents only from the current session. It is not yet clear how far these changes in conference procedures impacted on the knowledge base, involvement or negotiating inputs into the process, particularly of mid-level or marginal states. Nor is it clear whether the alteration has reduced involvement and had the effect of separating even further those states with high technical engagement through protection of special interests or epistemic expertise from smaller or marginal actors.

An important indicator in this respect is the future role of NGOs in multilateral environmental and other international fora, particularly as vehicles for providing both detailed snapshots of conference proceedings and collated reports of the overall proceedings. That tracking function, using websites, particularly since the Rio Summit, has facilitated greater public awareness across a wide range of public policy areas, including international disaster and emergency, disease prevention and environmental conferences. That apart, an important separate development has been the benefits of speedier draft text revision during sessions, which electronic technology has greatly assisted.

In terms of conference agenda setting, rather than reporting, another important development has been the use of social and other websites, particularly by emerging powers, to attempt to shape the forthcoming outline agendas and strategic direction of multilateral review and other conferences.

International fraud

International fraud has affected not only commercial organisations and states but also international institutions. The UN, including departments and individuals, have, as discussed above, been the subject of cyber attack. UN agencies have also been subject to significant international fraud attempts. In the main these have been linked to a variety of web-based commercial operations. In addition, other problems stem from the operation of so-called 'grey area' sites by external agencies, using similar UN logos and formats in attempts to link the site to the UN for political purposes, commercial access, state intelligence or other agency penetration operations.

Attempted email fraud has included advertising fraudulent development conferences (e.g. a Millennium Goals Review Conference in London and UN job vacancies), using similar UN logos and formats. As a result, the UN Web Services department has issued Fraud Alerts.

Further, relatively little known actors in the past (such as the Union of International Associations and International Customs Union) have acquired wider remits and prominence as international players.

International regulation of the cyber environment

The development of the Internet for global communication has brought two issues to the edge of the international agenda: the global regulation of the Internet and cyber security. International attempts to draw together multiple stakeholders from civil society, privatised telecommunications and other specialists, commercial organisations and government, included the initial UN World Summit on the Information Society, meeting in 2003 in Geneva, and a follow-up meeting in Tunis in 2005. The second-phase Tunis meeting established a policy dialogue forum – the Internet Governance Forum. Outside of this dialogue framework, the principal and emerging powers have largely handled issues of cyber security (definition of a cyber attack; free flow of information; net freedom; the ‘boundaries’ for acceptable attacks; the concept of what constitutes an acceptable counter-attack) through indirect diplomacy. These exchanges have largely been conducted at a bilateral level, led through institutes and think tanks, between Russia and the United States; and between the United States and the PRC. A wider framework was introduced through the London Diplomatic Conference and the WCIT special session of the ITU, although major gulfs between the main players limit progress.³⁰

Conclusion

The cyber setting has significantly affected many aspects of both the conduct of diplomacy and its central purposes. Distance has been altered in terms of events, locations and times. The pace of diplomacy has, accordingly, altered.

States, organisations and individuals have variously taken up cyber methods to: project and enhance presence and image; to act as a record in dispute; and as an instrument in the acquisition or denial of intelligence. Related, and perhaps central to the argument, is that cyber methods have elevated the battle for ideas in international relations and in themselves become crucial means in that conflict. A striking feature of that domain is the impact of cyber methods on diplomatic identity. One aspect is that identity is increasingly hidden or fabricated (the ‘disguised’ state) or, adopted, copied and used as a ‘shell’ for ideas, narratives, or polemic in the international contest for influence.

A further striking feature of the cyber setting is the extension and increase in sustained fraud operations by commercial and other organisations against international organisations. Taken together, the

developments discussed in this chapter suggest that whilst some aspects of the cyber environment can be used positively by states, others will continue to present increasing problems in what is an unregulated domain.

Notes

1. See [www.state.gov/s/dmr/qddr/index.htm].
2. East Africa Workshop on Cyber Security, 10 July, 2011 [<http://www.state.gov/s/cyberissues/releasesandremarks/169429.htm>].
3. *Independent (I)*, 1 Nov. 2011; *Financial Times*, 13 Oct. 2011.
4. See on climate concepts statement by Shri Jairam Ramesh, Ministry of State for Environment and Forests, commenting on the concepts relating to Measurement, Reporting and Verification (MRV) and finance in the Copenhagen Accord, to 7th Major Economies Forum, Rome, Italy, 30 June 2010, in SMR, 'MRV and equality: Critical issues in climate change discussion', 30 June 2010.
5. For an example of this type of Public Information Department clichéd stock summary reporting, see the report on the 80th and 81st Meeting of the Sixty-Second UN General Assembly, on small island states and climate change impact, UN GA/10689, 12 Feb. 2008.
6. See, for example, Oceans and Law of the Sea (Division for Ocean Affairs and Law of the Sea) (30th Anniversary, 1982–2012) [www.un.org/depts/los/].
7. On the UN Convention to Combat Desertification, see [unccd.int/], for UNCCD News; and UNFCCC for climate change.
8. On flooding websites through 'mirror' reporting, see People's Daily online, Xinhuanet, *Times of India*, Voice of America.
9. See *Guardian*, 16 Jan. 2011.
10. More generally as part of diplomatic methods, cyber techniques are used against a variety of foreign-policy targets, including: acquisition of information; site attacks; discrediting an opponent or set of views (e.g. on climate change); countering a policy; image projection and counter-intelligence.
11. For e-traffic to the *Financial Times* from NGOs in the Tunisian conflict, see Roula Khalaf, 2 Oct. 2011.
12. On the opposing cyber groups in the Syrian conflict, see *Financial Times*, 8 Feb. 2012.
13. See [www.diasporamatters.com/speak-with-one-vote/2011].
14. See [indiannavy.nic.in/operations/anti-piracy-operations].
15. See [www.eisa.org.za/].
16. See [www.crisisgroup.org/].
17. See [www.qf.org.qa/] and [www.qsi.com.qa/].
18. See [www.securitycouncilreport.org].
19. See [http://lawprofessors.typepad.com/law_libraries_log/2005/11/a_quick_peek_at_3.html].
20. See [<http://www.un.org/en/events/tenstories/08/westafrica.shtml>].
21. See [www.emsa.europe.eu].
22. See, for example, Mokhzani bin Zubir, 'Maritime Disputes and Cyber Warfare', *Journal of Diplomacy and Foreign Relations*, vol.8, no.1, July 2006, pp.69–87.
23. André Corrêa do Lago on the Rio+20 agenda, for example, blogged that the Rio+20 summit must focus on economic issues of sustainability and keep away

- from climate ‘un-environmentalising’ the conference. See [<http://www.rff.org/wv/archive/2011/09.aspx?PageIndex=3>].
24. There must be doubt as to whether the public tweeting of UN Executive Secretary to the UN Climate Change Convention, Christiana Figueres, in support of Australian carbon tax legislation in 2011 was appropriate for an international official, given the lead-up to the Durban negotiations, and biased in supporting a cap and trade system, which is a heavily flawed concept. See *Financial Times*, 13 Oct. 2011.
 25. Vienna Convention on Diplomatic Relations 1961, UNTS, vol. 500, p. 95. Entered into force 24 Apr. 1964.
 26. See *Financial Times*, 9 Nov. 2011 (‘Co-ordinated action Chindia style’, James Lamont).
 27. See [<http://in.china-embassy.org/eng/>] (8 Nov. 2011).
 28. See [http://www.mof.gov.cn/zhengwuxinxi/caizhengxinwen/201111/t201111_9_606246.ht...].
 29. Interview, 20 Mar. 2012. The main changes in the use of more specialized seconded press officers was from 2007, with appointments to the UK, USA, India and Ethiopia (AU).
 30. See www.itu.int/en/wcit.

Chapter 8

International financial relations

Within the past decade, questions to do with international financial relations have increasingly moved to the forefront of the international agenda. A noticeable feature of this development is the rise in importance of the IMF and the IBRD as international institutions responsible for the coordination and management of international liquidity and development finance. This chapter explores two areas: the main developments in the organisation and work of the IMF since 1973, and the management of the international debt crisis, including the role of the IMF.¹

Historical background

The IMF and the World Bank were formally set up on 27 December 1945, following the Bretton Woods Conference, attended by 44 countries.² Bretton Woods in fact was one of several major conferences held during the closing stages of the Second World War on the establishment of post-war institutions, including the UN conferences on food and agriculture at Hot Springs, Virginia, in May 1943, which culminated in the San Francisco conference of April 1945 which set up the United Nations. The Havana Charter, which was intended to establish an international trade organisation (ITO) to complement the IMF and the Bank, was, however, never ratified. It was not until 1947 that a much reduced version of an ITO in the form of the General Agreement on Tariffs and Trade (GATT) was established at Geneva.

The framing and drafting of the Bretton Woods agreements were strongly influenced by the wartime setting and the need to prevent the recurrence of a collapse of the international monetary system similar to that of the 1930s.³ The themes of reconstruction and the transition from a wartime to a peacetime international economy dominated the original conception of the IMF and the Bank. In this respect, too, the original conception of the Bank was weighted in favour of the reconstruction of

the economies of the war-torn European states, rather than addressing the economic concerns of developing countries. It is interesting to note in this context that the Indian proposals at Bretton Woods to include specific reference to the need for assistance for developing countries in the articles of agreement made little headway.⁴

The Bretton Woods system

The IMF's main tasks, as set out in Article 1, were the provision of international liquidity and assistance to members with balance-of-payments difficulties. Associated with these functions was the aim of promoting the orderly development of trade by discouraging direct controls, such as import quotas or discriminatory tariffs, to influence the balance of payments. However, the failure of states to ratify the Havana Charter, partly because of uncertainties caused by the scale of post-war reconstruction, meant that institutionally the IMF and the Bank were weakened since trade matters were not closely grouped with their work.

A key element of the Bretton Woods system was the maintenance of orderly exchange rates. An initial par value for the currencies of individual members was agreed, which could only be altered in the event of fundamental disequilibrium. The resources that the IMF has at its disposal for extending balance-of-payments assistance to member countries are derived from subscriptions equal to their quotas (ordinary resources) and borrowing from official institutions. Subscriptions are paid partly in an acceptable reserve asset and partly in a member's own currency. Apart from their reserve position in the IMF, members have access to IMF credit in four tranches or segments of 25 per cent of their quota, up to a limit of 100 per cent of quota. This is not necessarily an absolute limit and may be exceeded depending on the type of programme, assessed needs and the current guidelines on access.⁵ Drawings (purchases) above 25 per cent of quota are subject to increasing conditionality. This involves fund consultations with the member on performance criteria and reviews of its macroeconomic policies.

The functions of the IMF can be summarised as: regulatory (exchange rates); financial (providing additional liquidity); and consultative (providing a forum for the collective management of monetary and financial relations). As Cohen notes: 'For the first time ever, governments were formally committing themselves to the principle of collective responsibility for the management of the international monetary order.'⁶

The institutional arrangements were based on the clear distinction in principle that the IMF was to be a revolving fund lending surpluses to deficit countries on a temporary basis. The IBRD, on the other hand, was to be responsible for long-term lending. In more recent times, however, the blurring of this distinction is especially noteworthy.

Institutional arrangements

Under the articles of agreement, the principal decision-making body in the IMF is the Board of Governors (Article 12). It consists of one governor and one alternate governor appointed by each member of the IMF, who is usually the minister of finance or governor of the central bank and who serves for five years, subject to the approval of the appointing member. The Executive Board, which conducts the day-to-day business of the IMF, consists of both appointed and elected members. The members with the five largest quotas are each empowered to appoint an executive director, while the remainder are elected on a group basis. Elections are normally held every two years. In addition, the two members with the largest reserve positions in the IMF over the preceding two years may also each appoint an executive director, unless they are already entitled to do so by virtue of the size of their quotas. The Executive Board is chaired by the managing director, an office that has increasingly acquired significant, if discreet, political importance.⁷ The Board of Governors has a number of powers not shared by the Executive Board, including the admission of new members, the determination of quotas and the distribution of the net income of the IMF. Since 1953, the governing bodies of both the IMF and the World Bank have held consecutive meetings in Washington, DC, and every third annual meeting is in a member country other than the USA.

In many respects, the original aims and purposes of the Bank were not dissimilar to those of the IMF. As originally conceived (Article 1), the Bank's purposes were: to facilitate the investment of capital for productive purposes, including the restoration of economies destroyed by war; the conversion of productive facilities to peacetime needs; and, only third, to encourage the development of productive facilities in less developed countries. These aims were to be achieved through Bank guarantees and loans, although in practice the greater contributions to capital flows have not been through guarantees but direct lending. The Bank was established as a joint-stock bank, initially capitalised at \$10 billion. Under Article 5 (Section 3), each member has 250 votes plus one additional vote for each share of the stock held. Whereas in the IMF, quotas were the benchmark for drawing rights, in the Bank the ability to borrow was independent of capital contributions.

The institutional arrangements of the Bank closely follow those of the IMF. These provide for a board of governors, executive directors and president, supported, like the Fund, by an international staff. Some 23 countries have traditionally provided ten or more staff to the Bank, with the largest concentration being made up of nationals from the USA, UK, Germany, Japan, Australia, Canada, Pakistan and India.⁸ There are three main institutional differences between the Bank and the Fund. First, the Bank's articles of agreement provide for an advisory council, although in practice this rapidly fell into disuse. Second and most importantly, the

Bank (unlike the IMF) contains no jurisdictional provisions that limit the sovereignty of its members in the financial field. As such, the Bank's power of supervision, formally at least, is related to control over its own loan operations. The other difference relates to requirements for information. The IMF contains provisions on a wide range of information that members are obliged to provide on their payments, reserves and import–export positions. These have no counterpart in the Bank's articles of agreement, except for information required about projects financed by the Bank.

A special organisational feature of the Bank is the strong position of its president who, as the chief executive, is responsible for recommending the terms and conditions of loans to the governing directors, as well as organisational questions relating to the staffing and running of the Bank. In practice, the office of president has acquired importance, from the latter period of Eugene Black's presidency through that of George Woods and particularly Robert McNamara, when the Bank's role changed from being a bank per se to that of the central international development agency with a philosophy geared to project lending rather than more general programme aid.

Apart from operating as a development finance agency, the Bank has also acted in a dispute settlement role, as well as providing financial and other consultancy services to members. For example President Woods acted as a mediator in the negotiations after the Suez Crisis which led to the financial settlement between the United Arab Republic and the Suez Canal Company shareholders.⁹ The Bank subsequently acted as fiscal agent for funds contributed by various governments towards the cost of clearance of the canal. A further example of the successful mediatory role of the Bank can be seen in the long-running negotiations involving the Bank, India and Pakistan over the development of the Indus waters, which culminated eventually in the Indus Waters Treaty of 1960.¹⁰ With the creation of the International Finance Corporation (IFC) in 1956 and the International Development Association (IDA) in 1960, the three institutions became known as the 'World Bank Group'.

The evolution of the IMF

The impact of the IMF and the Bank during the late 1940s and early 1950s was limited in view of the scale of post-war reconstruction. For the most part, reconstruction finance was channelled from 1947 through the Marshall Aid Programme. Apart from the loans of 1947, the IMF made no further major loans until 1956. The shortage of IMF liquidity in effect meant that the USA became the residual source of international liquidity through the dollar, with the dollar acting as the major vehicle for international trade and investment and a reserve asset for central banks. However, a number of developments in the late 1950s and early 1960s

served to alter the focus of operations of both the IMF and the Bank, as well as to lessen the influence of the USA. In particular, from 1961 to 1963 there was an unprecedented increase in the accession of new members to the IMF, largely because of the rapid decolonisation in Africa, raising the membership to 102.¹¹ The expansion in membership inevitably brought an extended range of interests into the IMF, and radically altered the scale of potential demands on its resources. Apart from this, the period from the late 1950s saw the major Western European powers emerge as a leading decision-making group on international and financial and monetary matters. By this stage, European and Japanese recovery had moved out of the post-war reconstruction phase. Above all, the convertibility of Western European currencies (Japan followed in 1961) symbolised this transition, which was accompanied by a rapid development of the European capital markets.

In contrast, serious balance-of-payments deficits after 1958 led not only to concern in the USA about international confidence in the dollar, but the overall role of the USA as leading banker and aid donor in the Bretton Woods system. Commenting on the changed monetary relationships, Solomon, for example, contrasts the visit of Treasury Secretary Robert B. Anderson and Under-Secretary of State Dillon to Europe in 1960, to discuss with European officials ways of reducing the strain on the American balance of payments (especially the relief of US troop costs in Germany), with the visit 11 years earlier of Treasury Secretary John W. Snyder, bringing with him in almost imperial style US proposals for a devaluation of sterling and other European currencies.¹²

Against this context, the Group of 10 (G-10) – made up of Belgium, Canada, the Federal Republic of Germany, France, Italy, Japan, the Netherlands, Sweden, the UK and the USA, began to play an increasingly central role in negotiations on financial and monetary matters. The importance of the G-10, as the leading group within the IMF, can be seen institutionally in the borrowing arrangements, exclusive to G-10 members, known as the General Arrangements to Borrow (GAB).¹³ The GAB, which were agreed by the G-10 after the Paris negotiations in December 1961 and approved by the IMF's Executive Board in January 1962, commenced with a \$6 billion credit line. Although this was a valuable source of supplementary finance for the IMF, the GAB could only be called upon to finance drawings from the IMF by the participants. Unlike other IMF arrangements, major amendments to the GAB require not only the approval of the Executive Board but also the agreement of all 10 original participants.¹⁴ The GAB remained essentially unaltered until 1982. The exclusivity to the G-10 of the GAB, coupled with the undermining of collective decision making, led to criticism by industrialised countries outside the arrangements, as well as by less developed countries. The GAB were activated for the first time in 20 years in 1998 to finance a special drawing rights (SDR) augmentation of 6.3 billion of the extended fund facility (EFF) for Russia.

Special drawing rights

The influence of the G-10 was particularly illustrated during the negotiations to create a new reserve asset (later termed 'special drawing rights' or SDRs) from 1966 to 1968.¹⁵ Much of the preparatory work was conducted within the G-10 framework. However, the position of the IMF was asserted by the then managing director, Pierre-Paul Schweitzer, who sought to broaden the framework of discussions beyond the G-10. Schweitzer was supported by the USA, which preferred the discussions to be held within the framework of the IMF rather than face the possible concerted position of the European Community (EC). Four meetings of the deputies of the G-10 and the executive directors of the IMF, 10 of whom represented groups other than the G-10, were subsequently held during 1966–7. A further feature of the SDR negotiations was the close Franco-German collaboration, which has become a feature of the conduct of diplomacy on major international financial questions. Although the IMF itself did not in this instance take a leading role, the SDR negotiations did contribute to its technical status, through the secretariat work carried out by IMF staff. The SDR facility came into existence in July 1969, when sufficient approval was received (three-fifths of the members of the IMF having four-fifths of the total voting power) for the amendment to the IMF Articles of Agreement to come into force. The IMF made an initial allocation of SDRs the following year.

End of Bretton Woods

The Bretton Woods system of par values and convertibility of the dollar was in effect brought to an end in August 1971 by the package of measures taken by the USA which, in response to the exchange rate crisis, included the temporary suspension of dollar convertibility and a 10 per cent additional import tax.¹⁶ The dollar was further devalued in February 1973, and shortly afterwards most major currencies were allowed to float.

What form a future international monetary system might take was entrusted in July 1972 to the IMF's Committee of the Board of Governors on Reform of the International Monetary System and Related Issues (known as the 'Committee of 20'). In the event, the Committee of 20 achieved few of its long-range tasks, being overtaken by the events of the Arab–Israeli War and the subsequent oil crisis, which narrowed the committee's focus of negotiation to more immediate concerns. The problems of conducting complex multilateral negotiation on monetary reform are summed up by Fleming in this observation on the Committee of 20:

Very few of the major countries established coherent national positions over the whole range of these issues, and only the United States brought out a fairly comprehensive statement of its position ... The Europeans handicapped themselves by trying to agree issue by issue on a joint EEC position. The less developed countries made great efforts to agree a common programme of reform

through the Group of Twenty-Four, but this agreement was inevitably confined to a few isolated matters of common interest such as the nature of the link between SDR creation and development finance.¹⁷

A number of immediate measures, however, set out in the second part of the committee's report 'Outline for Reform', were later adopted by the IMF. These included the setting-up of an oil facility and extended borrowing arrangements, which are discussed separately below. The need for a broadly based advisory committee was also recognised, and the Committee of 20 was continued as a committee of the IMF, under the title 'Interim Committee'.

Post-Bretton Woods

In the decade following the exchange rate crisis of 1971–3, a number of broad changes took place in the structure and roles of the IMF. With exchange rates for major currencies floating, the IMF's regulatory functions received less emphasis. The second of the IMF's functions, the provision of international liquidity, began to assume greater importance, particularly through the provision of standby arrangements. However, as the scale of lending operations increased in the 1970s, the IMF found it could no longer rely on the resources derived from members' subscriptions and subsequently had to negotiate additional bilateral arrangements ('borrowed resources') with individual states, notably oil producers and large industrial countries. Borrowed resources have been used to establish temporary facilities for members with large balance-of-payments imbalances in relation to their quota and requiring large resources for long periods over and above the normal limits of borrowing. The supplementary financing facility (SFF) was set up in 1979, and broadly similar arrangements continued under the enlarged access policy from 1981–92 after the funds had been committed under the SFF. Following the second oil crisis of 1979, the IMF became an important financial intermediary vis-à-vis central banks, development agencies, the Bank for International Settlements (BIS) and creditor governments, as multifunding operations were developed to meet enhanced payments difficulties. With this development, the IMF's third function as a coordination and decision-making centre came to assume more importance, especially after the onset of the debt crisis in 1982. However, the IMF did not become the principal source of balance-of-payments support, since multilateral restructuring of debt and other financial support increasingly involved the central and commercial banks and other development institutions.

Institutional developments

In the main, the formal and informal structural changes in the IMF's central institutions have had the effect of broadening the participation

in decision making by introducing a wider range of states into the processes of dialogue and negotiation. Some of these changes, however, have been pragmatic appreciations of alterations in the political or economic importance of states. Thus, Saudi Arabia and the People's Republic of China have been added as single constituency members of the Executive Board. Saudi Arabia has appointed an executive director since 1978, which raised the number of executive directors to 21. In September 1980, the Board of Governors approved the increase in the number of elected members from 15 to 16, which enabled China to elect a director with only that country as the constituency. The Russian Federation joined the IMF in 1991, bringing the total number of executive directors to 24.¹⁸

Interim Committee

The establishment of the Interim Committee as the successor to the Committee of 20 in October 1974 was an important addition to the formal decision-making machinery of the IMF. The committee brings together, at the level of IMF governor, ministers or equivalent rank, 24 representatives, each of whom may appoint associates, plus the IMF managing director and observers from international and regional organisations. Switzerland also had observer status, until full IMF membership in 1992.

The Interim Committee, which usually meets twice a year, normally in conjunction with the IMF's annual meeting, and again in the spring, is responsible for the provision of advice and recommendations to the Board of Governors and Executive Board in three broad areas. These are:

- the proposals of the Executive Board to amend the articles of agreement
- measures to deal with sudden disturbances that pose a threat to the international monetary system
- supervising the management and adaptation of the international monetary system.

Between 1974 and 1976, for example, the Interim Committee had under its first and second areas of responsibility been concerned with the amendments to the IMF's articles to permit floating and setting-up and operation of the oil facility. Under the third area, the Interim Committee has examined the issue of SDR allocation, the IMF's enlarged access policy, and made recommendations on quota limits.¹⁹ The Title of the Interim Committee was altered on 30 September 1999, with 'interim' being finally deleted and the committee being restyled the International Monetary and Finance Committee (IMFC). The IMFC has taken on a much more strategic role, looking at issues such as sovereign debt management, debt relief and new initiatives.²⁰

Development Committee

The Development Committee, the second of the two committees established as part of the recommendations of the Committee of 20, was intended to carry on its work on the transfer of real resources to developing countries. Unlike the Interim Committee, it is a joint committee of the IMF and Bank. The committee consists of 22 members, generally ministers of finance, appointed in turn for successive periods of two years by each of the countries or groups of countries that nominate or appoint a member of the Bank's or IMF's Board of Executive Directors. In the main, the Development Committee has lacked a clear set of tasks, given its very broad mandate. The Development Committee's large size, with anything up to 150 participants, has also contributed to the committee having little impact. The Development Committee conceivably could have occupied a more central role, other than as a discussion forum, as a link between the IMF and the Bank. However, in practice it has tended to occupy an area covered by other international institutions such as UNCTAD, and straddled the borderlines between orthodox IMF functions, trade and development finance.

In recognition of the need to clarify the mandate and improve the effectiveness of the committee, a number of changes to its procedures were made in April 1979.²¹ A more novel approach was taken in September 1984 in response to initiatives from the June 1984 London seven-nation economic summit, the Cartagena group of foreign and finance ministers and the September 1984 meeting of the Commonwealth finance ministers, which called for a special extended meeting of the Development Committee on specifically defined finance, trade and debt issues. A number of changes were subsequently made for the informal session of the Development Committee held in April 1985, including the curtailment of the heavily attended plenary sessions, which had tended in the past to be largely taken up with prepared statements. The agenda of the informal sessions was also coordinated with the parallel Interim Committee meeting. These and other changes have had the effect of moving the Development Committee somewhat more in the direction of a vehicle for facilitating links between the IMF and the Bank.²²

Group of 24

Apart from the Interim and Development Committee, the establishment of the Group of 24 in November 1971, known officially as the Intergovernmental Group of 24 on International Monetary Affairs (G-24), should be noted. The stimulus for the creation of the group, which is a ministerial committee of the G-77 and not an official committee of the IMF, came from the virtual exclusion of developing countries from the

main negotiations conducted by the G-10 on the creation of the SDR and the 1971–3 exchange rate crisis.

The G-24 comprises eight members, each drawn from Africa, Asia and Latin America. The PRC also attends as an invitee. The group has steadily increased its effectiveness, especially from the late 1970s, but it has not yet been able to develop the level of contact and coordination of the G-10. In fact since 1973 the G-10 has intensified its extensive network of ministerial and official contacts, through regular meetings of its finance ministers, the subdivision into the G-5 and meetings of the G-7 deputies, normally in Paris in conjunction with officials from Working Party 3 of the Organisation for Economic Cooperation and Development (OECD). The G-24, however, has gradually developed from being simply a coordinating body to a forum for the preparation and presentation to the IMF and other institutions of its own concerted programmes, such as the 1979 Plan of Immediate Action. Meetings of the G-24²³ at deputy and ministerial level usually take place prior to those of the Interim Committee.²⁴ The IMF provides secretariat support. Although the size and disparate range of interests have limited the degree of coordination, a core group has emerged, made up of Argentina, Mexico, Brazil, India and Pakistan, whose ministers and officials individually play important roles intergovernmentally and as staff in international financial institutions.

Development of fund facilities

The IMF has been concerned with six broad issues since 1973:

- problems generated by fluctuations in commodity prices, such as petroleum, or shortfalls in commodity export earnings from, for example, cereals, sugar, tin, rubber and other commodities
- long-term arrangements to assist structural adjustment
- enlargement of its resources
- increases in quotas
- the extended payments crisis
- post-communist economic reconstruction in Russia, Eastern Europe and Central Asia.

In the main the IMF's approach, particularly on the first of these issues, has been based on augmenting the existing facilities; that is standby arrangements, with a number of temporary facilities, including those for oil, as well as the supplementary financing facility and enlarged access policy. To a large extent, the use of short-term facilities has been influenced by the third of the issues, that is the problem of enhancing the IMF's resources over and above those derived from members' subscriptions.

Underlying the debate about enlarging the access to IMF resources are a number of different issues. As regards *borrowed* resources, some of the

larger Western industrialised countries felt that the IMF might become unduly dependent on OPEC, although this view has to some extent been modified out of reluctant necessity. A separate issue has been whether there is actually a need for larger access on a continuing basis. Lack of agreement on this within the IMF has in turn prevented wider agreement on quotas versus borrowed resources to finance access. The issues of quota increases and other aspects of enlarged access, including SDR allocation, are returned to at the end of the chapter.

As regards structural adjustment facilities, the IMF has implemented a number of the ideas discussed in the Committee of 20, including an additional permanent facility known as the extended fund facility (EFF), which was set up in September 1974. The EFF is intended to provide support for member countries willing to undertake medium-term structural adjustment programmes to overcome payments difficulties for structural reasons such as production difficulties, changing patterns of trade, or weakness in their payments position because of development-related imports. The EFF facilities normally run for three years for amounts greater than the member's quota.

Modifications have also been made to other permanent facilities. For example, the compensatory financing facility (CFF) was extended in August 1979 to include fluctuations in receipts from travel and workers' remittances in the calculation of the export shortfall. A further modification was made to the CFF in May 1981, partly on the initiative of the UN Food and Agricultural Organisation (FAO), to extend the CFF to provide coverage for cereal crop failure or a sharp increase in the cost of cereal imports. Purchases under the CFF between 1979 and 1981 amounted to nearly SDR 1 billion, almost one-third of total purchases from the IMF.²⁵

The CFF has been progressively expanded in 1979 and again in 1990 as a result of the Gulf conflict, to widen the range of services to include loss of earnings from pipelines, canal transit fees, shipping and insurance. A contingency financing component was subsequently added and the facility was retitled the Compensatory and Contingency Financing Facility (CCFF).

Short-term facilities

Between 1974 and 1981, three short-term IMF facilities were set up using borrowed resources. These were the oil facilities (1974 and 1975) and the SFF. Both schemes were later augmented by special low-interest subsidy accounts for countries, defined by the UN secretary-general and IMF staff, which were worst affected by oil price increases or other special factors.²⁶ The IMF's experience in establishing these facilities suggests a number of general difficulties with regard to the negotiation of borrowed resources. First, the schemes have encountered political opposition. The first oil facility was opposed by the USA in response to OPEC policies, which after the outbreak of the October 1973 war classified countries for the

purposes of the oil embargo on the basis of whether they were friendly to Arab interests (e.g. the UK, France and Spain), 'neutral' (e.g. Japan and Germany) or hostile (e.g. the USA and the Netherlands). Although the embargo ended in March 1974, oil price rises (the marker for Gulf crude rose to \$11.65 per barrel after January 1974) had long-reaching effects on the economies of non-oil exporting developing countries, IMF facilities and the source of IMF funds.²⁷ US opposition in the Interim Committee was later withdrawn through a compromise that modifications to the IMF's articles would make it possible for the IMF to use a wider range of member-country currencies, in conformity with IMF policies, so increasing the liquidity of the IMF.²⁸ A second general problem arises from the need to secure a pool of contributions. The first oil facility was extended in 1975 when the Interim Committee recommended borrowing up to SDR 5 billion. To reach the target the Fund had to conclude agreements with 14 countries, seven of whom (mainly oil exporters) had contributed to the 1974 facility.²⁹ The USA was noticeably absent from the list of contributors.³⁰ Borrowing under the oil facilities was confined to 1974 and 1975. The oil facility was dissolved after 1983, which coincided with the softening of petroleum prices, by which stage outstanding repayments had been cleared.³¹

Not dissimilar difficulties were encountered over the establishment of the SFF (1977), although in this case the USA contributed to the financing of the facility. The scheme called for borrowing up to SDR 7.8 billion to provide additional support to countries with standby or extended arrangements, for adjustment programmes of up to three years. The facility took a considerable time to enter into operation (February 1979), a point criticised by the Interim Committee at its meeting in April 1978 in Mexico City.³² To raise the required SDR 7.8 billion, the IMF had to negotiate contributions, and later terms, with 14 countries, plus the Swiss National Bank. Not only was the group amorphous, but it included a significant number of small contributions, including those made by Qatar, Abu Dhabi, Kuwait, Belgium and, somewhat curiously, Guatemala. The major contributions were on an 'on-call' basis, as part of the liquid reserve assets of the donor could be called or expire before being drawn down. Furthermore, as part of the terms and conditions, purchases were at US commercial rates at OPEC insistence which, with conditionality, made the facility less attractive.³³ Yet the SFF was virtually fully drawn and no new commitments were permitted after February 1982.

Enlarged access policy

The unsatisfactory nature of the borrowing arrangements for the oil facilities and the SFF influenced a move away from individual OPEC countries to a more stable and cohesive donor group. From 1981, the IMF has relied heavily for borrowed resources on a group made up of the central

banks, the Bank for International Settlements (BIS),³⁴ the Saudi Arabian Monetary Agency (SAMA) and Japan. Saudi Arabia's enhanced role in the IMF (analogous to that of Japan in the World Bank) as a major contributor of borrowed resources is perhaps one of the most marked recent features in the development of the IMF. In May 1981 an agreement was concluded by the IMF with SAMA to borrow up to SDR 8 billion over six years. This enabled the IMF to continue lending operations using a mixture of ordinary and borrowed resources after the phasing-out of the SFF in 1982. To provide continued funding for the enlarged access policy, four new borrowing arrangements for SDR 6.8 billion were concluded in April 1984 with SAMA, the BIS, Japan and the National Bank of Belgium. Although the enlarged access policy is properly regarded as a short-term arrangement, it has been extended ad hoc on an annual basis from 1984 to 1992, using short and medium-term borrowed resources.

Quotas and IMF resources

The enlarged access policy was terminated in November 1992 as a result of quota increases becoming effective under the Ninth General Review of quotas. The eventual agreement on quota increases in effect enabled the IMF to switch over to a policy of reduced dependence on borrowed resources.³⁵ The cost, however, was achieved largely by IMF members drawing down on SDRs, leading the managing director to call for a new issue of SDRs. Other facilities developed since 1982 in addition to standby arrangements have mainly been of an ad hoc kind. An exception is the extended fund facility (EFF), which has been continued as a vehicle for providing medium-term programmes over three to four years, aimed at overcoming structural balance-of-payments problems. Countries that have used the EFF include Lithuania, Jordan, Egypt and the Philippines. Examples of ad hoc concessional facilities include the structural adjustment facility (SAF) 1986–93 and the enhanced structural adjustment facility (ESAF), based on the IMF's Trust Fund for low-income member countries.

The inability of the IMF to agree on appropriate long-term facilities, rather than a series of ad hoc arrangements, reflects the divisions among industrialised countries,³⁶ and between industrialised countries and the G-24, over the expansion of IMF resources.³⁷ Substantial differences have continued since the onset of the debt crises over:

- the need for a general issue of SDRs and the effect of this on global inflation
- the need for and scale of increase in IMF quotas
- the means of funding for special facilities for those poorest heavily indebted countries with little prospect of repaying or restructuring public (mainly Paris Club) official debt or debt to commercial banking sources.

One of the proposed solutions was to open up the conditions for access to General Arrangements to Borrow (GAB).³⁸ However, although the GAB has been progressively liberalised since 1983, this solution has been regarded as inadequate by the G-24 and other developing countries, which have preferred a package of measures, including general quota increases, rather than emergency Mexican-influenced rescue schemes.³⁹

Multilateral debt restructuring

The international debt crisis that developed in mid-1982 posed major problems of management for the international community. Not only were there no established institutional arrangements to cope with the scale of debt restructuring or renegotiations, but also no single institution or state group was capable of providing unaided the necessary financial resources to meet the needs of deficit countries. Prior to 1982, restructuring of official and commercial debt was generally on a small scale. Banks, too, preferred to avoid formal renegotiations. Such restructuring as took place was generally of a conventional refinancing kind. Between 1975 and 1982, only a minority of negotiations (seven out of 28) rescheduled over \$300 million.⁴⁰ However, five official debt reschedulings from 1982 to 1985 were for more than \$1 billion (Mexico, Morocco, Brazil, Zaire and Argentina) and over half of the 36 cases involved more than \$300 million.⁴¹

Another distinctive feature of the debt crisis was the suddenness with which the position of the major borrowers, such as Mexico, Brazil, Venezuela, Chile and Yugoslavia (see [Table 8.1](#)), deteriorated. The near-simultaneous loss of credit-worthiness by several large borrowers as a result affected perceptions of regional risk. For example the development of the Polish debt crisis in 1981 created uncertainty about financial and commercial relations with other parts of Eastern Europe, especially Hungary and Romania.⁴² With the onset of the Mexican crisis in mid-1982, a similar regionalisation of risk took place. By the time the IMF met at Toronto in the autumn of 1982, it seemed that the international community was faced with 'rolling over' one massive debt crisis after another.

Paris Club

Prior to 1982, multilateral official debt renegotiations were conducted mainly, though by no means exclusively, within the framework of the Paris Club. Other fora which have been used include aid consortia (e.g. for India and Pakistan) or special creditor groups, as in the cases of Mexico and Morocco. States have also approached major creditor 'sources' on a bilateral basis to restructure some parts of their official debt.

Table 8.1 Countries ranked by debt to banks, end December 1982 (\$ millions)

1. Mexico	62,888
2. Brazil	60,453
3. Venezuela	27,474
4. Argentina	25,681
5. Chile	11,610
6. Yugoslavia	9,821
7. Nigeria	8,527
8. Peru	5,353
9. Ecuador	4,488
10. Romania	4,243
11. Turkey	3,971
12. Morocco	3,882
13. Uruguay	1,531
14. Costa Rica	1,261
15. Sudan	1,119
16. Bolivia	940
17. Zaire	873
18. Dominican Republic	866
19. Nicaragua	814
20. Zambia	590
21. Jamaica	521
22. Honduras	469
23. Senegal	410
24. Madagascar	299
25. Togo	253
26. Malawi	202
27. Guyana	129

Source: Bank for International Settlements (BIS)

The Paris Club, which mainly consists of OECD creditors,⁴³ is a forum within which countries negotiate the restructuring of official debt, that is loans from creditor governments and private export credits guaranteed or insured by export credit agencies in the creditor countries. The origins of the Paris Club date to 1956, when several European countries met in Paris to discuss rescheduling Argentina's foreign debt, and similarly in 1961 and 1962 when certain Brazilian debts were rescheduled. The Paris Club meets at the French Treasury.

Initial responses to the debt crisis

In the absence of any formal international machinery for dealing with the debt crisis, the initial responses of necessity took the form of ad hoc rescue packages, or what has been called the 'fire brigade' approach. In

the main, such operations involved stop-gap financial support, selectively orchestrated to a large extent by the USA, together with, in some cases, short-term balance-of-payments finance via bridging loans. These were arranged mainly through the Basle-based central bank organisation, the BIS. In October 1982, for example, the US Treasury provided a \$1.23 billion 90-day loan to Brazil, though this was not formally announced until President Reagan's visit to Brazil in December 1982.⁴⁴ The \$1.23 billion loan was also supported by a trade package, allowing for the relaxation of controls on Brazilian sugar exports to the USA and the continuation of Brazilian subsidies on steel exports for a further two years.⁴⁵ In addition, Brazil secured \$600 million bridging finance from its six major bank creditors. Further short-term finance of \$1.2 billion was provided by the BIS in December 1982, pending attempts to agree a financial rescue package involving the IMF and commercial banks.⁴⁶

The Mexican and Brazilian crises highlighted what were to become four central problems in the management of the debt question: the need to mobilise internationally very large amounts of finance on a recurring basis; the complexity of the negotiating process owing to the number of secondary banks and other agencies; the need to coordinate the respective involvement of the IMF and commercial banks; and the inadequacy of IMF resources to meet the financial requirements of debtor countries over and above balance-of-payments financing.⁴⁷

The experience of the Mexican and Brazilian debt negotiations laid the basis for the subsequent development of the IMF's coordinating role. Thus, by mid-December 1982, Brazil had reached substantial agreement with the IMF for an IMF-supported programme, which was put to the Brazilian bank creditor group meeting in New York on 20 December 1982, attended by some 125 bank representatives and the IMF's then managing director, Jacques de Larosière. Nevertheless, the position remained precarious,⁴⁸ dependent on bridging operations, the maintenance of interbank lines and the mobilisation of large amounts of commercial and international institution funding.⁴⁹ Subsequently, the ideas underlying the IMF's approach to assembling financial packages became based on what was known as the 'critical mass' doctrine.⁵⁰ In essence, the doctrine, which shaped IMF policy until its modification in 1986, required commercial bank commitments to have reached a critical amount, normally over 90 per cent of that required, before IMF funds would be committed.

Following the Mexican and Brazilian crises, the debt position of a number of other developing countries also worsened substantially. In 1983–4, 23 countries sought debt relief within the framework of the Paris Club.⁵¹

Apart from the Paris Club agreements referred to above, 32 restructuring agreements were reached in principle by 26 countries through bank advisory committees, which were an important innovative feature of the debt crisis, during 1983–4.⁵² Since 1982, some 20–30 bank advisory committees have been set up. Each is chaired by a lead bank (with a deputy), generally with the largest country exposure, and is nominated by the

debtor country – such as Citibank, Bank of America and Manufacturers Hanover for Argentina, Bolivia and Chile respectively; trade factors, accounting, for example, for the German bank representation on the Polish committee; or third, traditional or specialist banking services, for example Manufacturers Hanover/Bank of Tokyo for the Philippines. The advisory committee for Ivory Coast is chaired by Banque Nationale de Paris (BNP), again illustrating the third factor. The advisory committee liaises and coordinates terms, conditions and the scale of commercial bank contributions to financial packages. Whilst some bank advisory committees – particularly those dealing with the bank debt of smaller African and Caribbean countries – have remained informal and ad hoc, being revived as and when necessary, those dealing with major Latin American countries have become highly institutionalised. (Four countries – Brazil, Mexico, Argentina and Venezuela – account for 80 per cent of US banks' exposure.)

Personal diplomacy

In this context, the IMF's coordinating role has involved the IMF's managing director in extensive personal diplomacy.⁵³ This has included personal interventions with foreign commercial banks to exert pressure in order to mobilise the required commercial bank funds to 'fit' alongside those of the IMF.⁵⁴ Apart from this, the strain on IMF liquidity has also involved the IMF managing director in extensive diplomatic efforts to secure a more stable base of borrowed resources.⁵⁵ Following the 1973–4 oil crisis, the IMF was forced to rely on a diverse group of 14 countries – half of which were OPEC members – to augment its borrowed resources to establish the second oil facility (1975–83), which caused the IMF management considerable concern.⁵⁶

To widen the lender base to continue funding under the enlarged access policy, four new borrowing arrangements for SDR 6.8 billion were concluded with the SAMA, the BIS, Japan and the National Bank of Belgium in April 1984, confirming the move away from OPEC.⁵⁷ A further agreement was concluded between the IMF and Japan in December 1986 for SDR 6 billion, effective until March 1991.⁵⁸

The debt restructuring process

From the 32 restructuring agreements noted above, a number of particular features require comment. First, the range of parties makes the negotiating process highly complex. In an extreme case such as Mexico, over 500 banks (apart from governments, institutions and other agencies)

have had some degree of involvement.⁵⁹ Certainly in the cases of the larger debtor countries, considerable strain has been placed on the coordination and communication resources of the bank advisory committees. While the establishment of the advisory committees was an important and innovative concept in international diplomacy,⁶⁰ the serial or cyclical nature of debt rescheduling, with debtor countries renegotiating fresh arrangements generally within two years, has led to questions being raised about the effectiveness of advisory committee procedures and approaches to the debt crisis. At a substantive level, a major policy-related difficulty that has emerged concerns the degree of financial participation in loan packages required of smaller and regional banks. In this respect, the extended number of banks involved in major debtor countries has meant that the task of gathering in banks for the required critical mass has had to be delegated to individual banks on the advisory committees, which have been given responsibility for national or regional coordination. The 'distancing' of smaller banks from the central decision-making process has been a contributory factor in the growing difficulty in gathering sufficient financial commitments, particularly as banks have sought to reduce loan risk exposure. The increasing difficulties in putting together loan packages were underlined with schemes such as so-called 'exit' bonds, designed especially to secure the one-time commitment of smaller banks before their withdrawal. A related procedural issue has concerned the over-representation of major US banks on advisory committees. Difficulties of this kind, for example, caused delay in the Nigerian negotiations during 1987–8, when Japanese banks were reluctant to commit resources because of non-membership on the lead advisory committee.⁶¹

A further distinctive feature of restructuring negotiations is in respect of the availability of information. Frequently, the exact scale of debt is not available to bank advisory economic committees or secondary banks. A particularly difficult issue is estimating the financing gap required for the maintenance of short-term interbank lines. Brazil, for example, established 16 Brazilian banks abroad as part of its development strategy, with a total of 104 branches and outstanding deposits in 1982 of \$10 billion.⁶² Other liabilities may be incurred by airlines, para-statal agencies and other subnational actors operating transnationally in, for example, development finance, manufacturing, defence⁶³ or service sectors such as shipping.⁶⁴ It is worth noting that, in response to these types of difficulties, Sri Lanka ceased to allow state corporations and government-supported enterprises such as Air Lanka, and the steel and shipping corporations, to raise loans from foreign sources.⁶⁵

Third, debt negotiations are extremely sensitive to domestic events in the debtor country, for example labour unrest, inflation rate movement, the removal of key players such as the central bank governor or finance minister, and changes of government.⁶⁶ Externally, too, international developments such as shifts in major creditor financial policy and, increasingly, hitherto unrelated trade disputes impinge on debt

negotiations, making them distinct from other forms of technical negotiations which generally tend to be much more 'insulated' from domestic and external pressures.

Fourth, although banks in theory approach negotiations on a case-by-case basis, it is not a line that is always easily maintained. An important corresponding development is the coordination between major Latin American debtors at bilateral and multilateral levels in the Cartagena Group and other fora on general debt strategy and approaches to particular negotiations. The Cartagena Group – which comprises Mexico, Bolivia, Chile, Colombia, the Dominican Republic, Ecuador, Peru, Uruguay and Venezuela – has met regularly at foreign and finance-minister level since 1984.⁶⁷ Linkages between negotiations have tended to occur because of the overlap of bank representatives on advisory committees and the leakage of information on terms. Furthermore, one negotiation may help or hinder another. For example banks were unwilling to deal with Bolivia's concessionary finance demands in late 1985 because of the onset of further negotiations with Mexico.⁶⁸ In the Nigerian debt negotiations, Japanese banks participated reluctantly because of earlier US Federal Reserve pressure over Mexico in late 1986. In contrast, the unwillingness of banks to have difficulties simultaneously with the 'big three' Latin American debtors was a factor hastening the 1987 Argentine bank restructuring agreement.⁶⁹

The above four characteristics have meant that debt-rescheduling negotiations have become some of the most complex and technical in contemporary multilateral diplomacy. Moreover, as far as the fourth feature (the linkage aspect) is concerned, a further distinctive development is the growing fusion of debt questions with other issues that have hitherto been treated separately. Debt negotiations in a number of instances have become tied up with other matters such as combatting the narcotics trade, tariff rates and trade disputes, as happened between Brazil and the USA in negotiations about the Brazilian Informatics Law restricting US computer exports to the reserved Brazilian market.⁷⁰

Transition

The period 1986–9 marked an important point of transition in the management of the debt crisis. Up to that point, bridging loans,⁷¹ retiming of interest, securitisation⁷² and trade financing⁷³ had stabilised the debt problem. However, the resurgence of payments difficulties during 1986–7, along with the October 1987 stock crash, brought short-run financing techniques full circle with the reemergence of temporary bridging-loan operations initiated by the USA for selected Latin American debtor states.⁷⁴ A further feature of the crisis was the impact of the collapse of oil prices in undermining the Baker proposals (outlined at the October 1985

IMF/World Bank meeting in Seoul) which had called for wider commercial lending of \$20 billion to the entire group of heavily indebted countries.⁷⁵ The uncertainty and instability caused by the crisis was reflected in the negotiations surrounding: the 'Jumbo' debt package of April 1987;⁷⁶ the unilateral US bridging loans of \$500 million to Argentina in late 1988; and Brazil's request for a \$3 billion 'trade liberalisation' facility, which caused surprise and alarm in the international financial community, given the relatively short time lapse since the 1982 crisis.

The main effect of the 1986–9 crisis was to accelerate moves by major creditor commercial banks to reduce exposure to Third World lending and seek ways of writing off debt. In this regard, the Citibank decision in May 1987, on reserve allocation for debt write-off, signalled a major change in strategy. The crisis underlined the severe differences between the US and European banks over debt management strategies. In general, European banks resented US pressure in the 1987 and 1995 crises to participate in mammoth rescue operations for Mexico.

Lack of coordination between the USA and Europe on debt strategy and policies has remained a feature of US–European financial relations. A further effect of US unilateral action, based on the primacy of regional economic interests, is on eroding the IMF guidelines that required a debtor country to have in place, at least in outline, an IMF programme before tranches of debt relief funds could be released.

The search for solutions

Since the 1986–9 financial crisis, efforts to find solutions to the debt crisis have moved away from strategies that attempted to blend new money with restructuring packages. Rather, the introduction of debt-reduction concepts in effect broke the psychological barriers by formally accepting the need to write off debt or find other ways of substantially reducing overhangs of interest or principal.

Efforts to find solutions to the debt crisis within the framework of the Paris Club for official debt should be distinguished from commercial bank debt-reduction operations. As regards the Paris Club, moves towards debt reductions initially were confined to greater flexibility over repayment and grace periods. For example Paris Club agreements with Mauritania, Uganda and Zaire were rescheduled for repayment between 15 and 20 years, with a 10-year grace period. Since the Toronto Economic Summit (1988) and Trinidad Commonwealth Finance Ministers Meeting in 1990, the Paris Club terms for qualifying countries and types of debt have been gradually eased on a selective basis. In line with the Houston G-7 Summit, for example, more favourable debt-relief terms were targeted at lower-income and middle-income countries. However, only four countries (El Salvador, Honduras, Morocco and Congo) concluded negotiations

on the basis of the revised terms. Further revision of the Paris Club terms have focused on provisions for least-developed countries for write-off of up to two-thirds of debt payments falling due. Paris Club agreements were reached with Cambodia, Guinea, Togo, Guinea-Bissau and Uganda.⁷⁷

In terms of commercial bank debt restructuring, 32 countries restructured bank debt between 1987 and 1997. This group, which includes Argentina, Mexico, Brazil and Nigeria, accounted for some 80 per cent of the bank debt of developing countries in the 1990s. Debt to commercial banks was reduced in real terms by \$50.3 billion at a cost of \$17.9 billion.⁷⁸ The agreements are in the main complex packages with restructuring, debt reduction and debt service reduction components, involving extensive negotiations over anything up to two years. These negotiations have rarely achieved completed agreements in that the package often deals with only part of the *overall* debt, or may be conditional on interest arrears repayment.⁷⁹ In the case of the Dominican Republic, for example, a lengthy stalemate over the issue of partial repayments was broken following the resumption of payments by the Dominican Republic, which facilitated preliminary agreement on terms of the package.⁸⁰

The restructuring agreements concluded after 1987 have been based, in part, on an acceptance by commercial banks of the principle of steep discounts for low-income countries (LICs) as part of 'exit' operations, while a complex range of instruments have been developed for middle-income countries where banks have long-term interests. In addition, a limited number of LICs have liquidated commercial debt via the IDA debt facility, for example Bolivia, Guyana and Sierra Leone. The IDA has also participated in multilateral donor-consortia agreements with low-income debtor countries such as Uganda.⁸¹

New priorities and approaches

The core roles of the IMF – provision of short-term lending, economic surveillance and technical assistance – remain broadly unchanged. The IMF has undergone, however, a number of important changes of priorities and approaches since 2000. From early 2004, it underwent a major shift of focus to poverty reduction and governance ('ownership' of programmes). The previous decade had focused very much on the financial aspects of bringing the Russian Federation and other republics of the former Soviet Union into the 'market' international system, and on the Asian financial crisis. Development finance was relatively low on the agenda. However, the onset of the global banking crisis in 2007 shifted the IMF focus, as in previous crisis periods, back to crisis management and stabilising economies.

The IMF's role in the post-2007 global economic crisis centred on the provision of short-term finance, and acting as a catalyst in the G-7 and the G-20. These roles were based on acceptance of the IMF as a relatively

independent technical player, positioned between the ‘old’ and the Emerging Economies, and were of critical importance. The 2007–8 financial crisis differed in a number of respects from the earlier 1982 and 1997 crises, particularly the banking (financial products) and US domestic sub-prime housing component. The IMF’s role in the first phase involved disbursements of over \$48 billion in short-term standby facilities and developed after 2009 into a guarantor or reserve cover finance role. IMF managing directors have had an important diplomatic role acting as a catalyst on the G-7 and in mobilisation of funds (Strauss-Kahn); and a debt management–arbiter role (Lagarde).

International IMF crisis lending

The nature of IMF financial support operations has altered in the various phases of the global economic crisis in relation to its severity and differing impact on states. The first phase in 2007–9 was perceived by the IMF as containment through short-term facilities. In that period, 16 standby arrangements, other than under the poverty and income programmes,⁸² were concluded. The group included a number of former Soviet and Yugoslav republics, eastern Europe, and central American (Costa Rica, El Salvador) countries. For example large standby arrangements were reached with Hungary (\$15.7 billion), Romania (\$17.5 billion) and a precautionary Flexible Credit Line on-call facility with Poland. The latter, however, was not drawn down. States with acute banking crises are also in this group (e.g. Iceland) and subsequent arrangements included Ireland, Greece and Portugal.⁸³

As part of containment policy, the IMF reviewed the workings of existing facilities and attempted to maintain access to funds through new types of arrangements and lessening conditionality. The IMF has also played an important catalytic role in urging the G-7 to: expand the resources of the Fund; review international bank practices; and set a target of raising Fund resources to \$500 billion. These ideas, along with banking reform in the wake of the Lehman banking group collapse, were agreed at the Rome G-7 Finance Ministers Meeting and the G-20 in April 2009.⁸⁴ Ahead of the Rome G-7 meeting, the IMF managing director entered into bilateral talks with Japan, resulting in Japan agreeing to provide a \$100 billion short-term loan to the Fund.⁸⁵ The G-20 call for enhanced resources and emerging-economy representational reform were endorsed by the IMF’s International Monetary and Financial Committee in April 2009. The G-20 communiqué reflected the changing political and economic power within the group, in that the drafting specifically designated the proposed enhanced resources to support growth in emerging markets and developing countries. The communiqué *prima facie* excluded developed industrialised European states.

Sources of IMF funding

The acute nature of international financial crises after 2007 placed considerable strain on the lending resources of the Fund. Since establishment, traditionally, the Fund has relied on one or a combination of quotas, SDRs and borrowed resources. In addition, the GAB and New Arrangements to Borrow (NAB) provide limited additional resources. The Fund has, apart from this, an amount of gold reserves.⁸⁶ However, the scale of sovereign debt crisis from 2007 and time pressure ruled out raising finance through quotas, which would have required national approval and taken 2–3 years to complete.

In order to raise IMF resources to \$500 billion to meet the core priority, a set of separate bilateral negotiations with more than 30 countries either pledges or agreements has been negotiated. In addition to the initial \$100 billion agreement with Japan, a similar amount up to \$100 billion was agreed with the United States in June 2009. Other agreements were concluded with: China (up to \$50 billion); UK (\$15 billion); Germany (\$15 billion); France (\$11 billion); and Russia (\$10 billion).⁸⁷ Of the other contributions, that of Belgium is of note, being nearly half the size of Russia's and reflecting the country's long-standing orientation of small-power support for international institutions.

Although the process of obtaining bilateral agreements is somewhat quicker, the negotiation of over 29 bilateral agreements or indications of intent is cumbersome and time consuming. Not all negotiations lead to a direct agreement, and in some instances the agreement may not be reached for a considerable time (e.g. Brazil, India).⁸⁸ It is, however, the price of the IMF remaining an essentially intergovernmental institution (at least as far as sourcing finances) rather than a commercialised institution seeking funds from the market.⁸⁹

As part of the process of altering how the IMF works, essentially to open up facilities and make the IMF's procedures less onerous, funds from the bilateral agreements are channelled under the revised agreements into an enlarged NAB. A further procedural change, to open up access, allows for the *general* opening up of the NAB for specified periods up to six months, rather than individual applications, to increase the financing available to the Fund.⁹⁰

Sale of gold

Apart from the 14th General Review of Quotas, which raised IMF quota resources to SDR 476.8 billion, a little known aspect of the Fund's efforts to increase its lending resources involved the sale of IMF gold. Prior to 2010, the IMF held some 2,814 metric tons of gold as reserve assets. Gold

is still an important reserve asset in a number of countries, though less significant for the IMF since introduction of the SDR. The IMF has sold gold intermittently since 1957 (1957–70, 1976–80 and 1999–2000), either as market or off-market transactions. The sales have generally been to augment Fund resources. The off-market transactions in gold in 1999–2000 included outstanding payments to the IMF by Mexico and Brazil. The sales were used to contribute to the IMF's participation in the HIPC initiative. The IMF Executive Board approved the sale of 403.3 metric tons of gold in 2009.⁹¹ Diplomatic issues involved the question of the impact of the gold sales on international markets, which was resolved in August 2009, with the Central Bank Gold Agreement.⁹² An unusual feature of the 2010 sales, which overall raised about \$15 billion, was the limited but connected group of countries which acquired slightly over half of the gold. In off-market transactions during 2009–10, the banking authorities of India, Mauritius, Sri Lanka and Bangladesh concluded purchase agreements for 212 metric tons of the total.

IMF role in debt management

How has the IMF been involved in the debt management aspects of the international economic crisis post-2008? The protracted nature of the global financial crisis posed several political issues for the Fund, particularly the scale of financing required in relation to IMF resources, and the multi-sovereign debt component. Nor was the precise scale of funding required either for the Eurozone or other vulnerable economies seeking IMF support known. The crisis differed also from the 1982 Latin American debt crisis in a number of respects: the Eurozone single currency dimension; and the banking, trade and liquidity components. A further challenge for the IMF, from a diplomatic perspective, derived from a changed axis of international political power: the United States was a critical player in the 1982 crisis, whereas in the post-2007 global crisis the axis had shifted, symbolised by the embryonic G-20. For the IMF, its role was, at best, ill-charted.

Eurozone debt and the IMF

The IMF role in the global economic crisis can be examined from two aspects: Eurozone debt; and the wider issues of IMF relations with other key players. As noted earlier, IMF initial strategy deployed lending arrangements, e.g. Ireland, Iceland, Greece (Package 1) as crisis management, and thereafter finance packages to support the Eurozone periphery (Portugal, Spain, Romania) as a containment strategy to limit

contagion. However, the IMF has been less directly involved as a core financial provider on subsequent Greek ‘bailouts’, partly because of IMF concerns over the recurring scale of Greek refinancing going beyond the resources of the Fund. In terms of other diplomatic aspects, the German-led focus on Eurozone treaty reform in effect side-lined the second-tier Greek bondholder negotiations, creating further uncertainty about the overall size of financial needs. In the event, the IMF as part of the troika (EU Commission, European Central Bank and IMF) held out for Greek assurances on macroeconomic policy, although its contribution to the cofinancing package was relatively small. Its continued role as a coordinator, providing limited but symbolic finance, was not dissimilar to that in the Brazilian (1982) negotiations.

A third issue concerns the principles underlying debt–restructuring packages (\$170 billion). In the second Greek financing, for example, the debt–restructuring agreement, mainly cofinanced by Greece and the European Rescue Fund, was based on debt swap with commercial creditors, €30 billion triple A bonds, and new Greek bonds. The agreement was based upon acceptance by Greece of significant reduction in its sovereignty through the EU monitoring provisions on Greek ministries, and through the bond structure which gave preference to the governmental (Rescue Fund) component in the event of default rather than commercial-sector bondholders. The agreement put the IMF in a difficult position between government and the commercial market.⁹³

The other major effect of Eurozone debt was the need to raise the IMF’s ‘firewall’ above that agreed at the 2009 G-20 meeting, to over \$1 trillion. As a price for enlarged IMF central resource, New Economic Powers (NEPs) required changes to IMF representation to reflect properly their new role. The NEPs in the 2009 G-20 communiqué furthermore stipulated that any widening of the IMF’s resources should be directed principally towards emerging and low-income countries rather than Europe. NEPs were reluctant to deal separately with European powers, as suggested by the failure of the ill-prepared Regling mission to China and the inconclusive subsequent visit of Chancellor Merkel. These and other issues on financial provisions underlined both the *extended* diplomatic role of NEP and their changed influence.

Financial diplomacy and low-income countries

For LICs the critical issues remain access to concessionary finance (credit lines) and debt relief. Within the IMF, some 40 countries have been identified as potentially meeting debt relief into the Heavily Indebted Poor Countries Scheme. The funding arrangements for LIC remain separate within the IMF and as such this tends to take them out of the mainstream of activity and isolate them. Occasionally, some move out of the

LICs category, and become eligible for other IMF finance facilities (e.g. Sri Lanka). Others opt out, relying on semi-isolation and support from external donor states (e.g. Lao PDR).

Debt relief as an issue area received considerable attention in the early post-2000 period, through NGO celebrity diplomacy, major music fundraising events, linkage with international action on poverty and disaster relief.⁹⁴ At a governmental level, the then UK Chancellor Gordon Brown, as Chairman of the IMFC, and through the G-7, used extensive personal diplomacy to raise awareness of funding requirements for LIC, and to boost contributions and other sources (e.g. gold sales) for IMF concessional facilities. The onset of the global financial crisis, however, shifted the focus of attention to macro debt management. As part of the overall reform and opening greater access to facilities, the existing Poverty Reduction and Growth Facility (PRGF) was replaced by the Poverty Reduction and Growth Trust (PRGT) in January 2010⁹⁵ with extended standby and emergency facilities.

A number of diplomatic issues have arisen in terms of the revised arrangements. As with funding other instruments, the IMF has now had to negotiate 14 separate bilateral contributions for the PRGF in the form of loans or other arrangements. However, no agreement for mutually acceptable lending terms could be reached with Germany, which had pledged SDR 1.53 billion, a similar amount to Japan, France and the UK. Overall the IMF needs constantly to negotiate additional contributions to meet projected concessional lending of SDR 11.3 billion beyond 2012.⁹⁶ Over 20 countries have drawn down on the PRGT, for SDR. 1.91 billion.⁹⁷

HIPC and debt relief

The IMF and World Bank launched the HIPC initiative in 1996 to reduce Heavily Indebted Poor Countries (HIPC) debt commitments to manageable levels. In 2005, the scheme was extended to allow 100 per cent relief on eligible debts by three multilateral institutions: IMF, the World Bank and the African Development Bank (AfDB). By 2006, the initiative had met its general aims, with 32 of the 39 countries meeting the completion point for receiving full debt relief (see [Table 8.2](#)).⁹⁸ The total cost on completion is estimated at \$76 billion, at current prices, financed through gold sales discussed earlier and contributions to the HIPC Trust.

Debt relief management illustrates the extremely complex nature of many aspects of contemporary diplomacy. As regards debt structure, major multilateral institutions account for only about 45 per cent of funding, the remainder being made up of small multilateral institutions, Paris Club and non-Paris Club bilateral creditors. These other elements have to be factored into a comprehensive debt-relief package for each qualifying country. Not all of the non-Paris Club official creditors or small multilateral development

Table 8.2 List of HIPC countries

<i>Post-Completion-Point Countries (32)</i>		
Afghanistan	Guinea Bissau	Nicaragua
Benin	Guyana	Niger
Bolivia	Haiti	Rwanda
Burkina Faso	Honduras	São Tomé and Príncipe
Burundi	Liberia	Senegal
Cameroon	Madagascar	Sierra Leone
Central African Republic	Malawi	Tanzania
Republic of Congo	Mali	Togo
Ethiopia	Mauritania	Uganda
The Gambia	Mozambique	Zambia
Ghana		
<i>Interim Countries (Between Decision and Completion Point) (4)</i>		
Chad	Comoros	Côte d'Ivoire
Guinea		
<i>Pre-Decision-Point Countries (3)</i>		
Eritrea	Somalia	Sudan

Source: International Monetary Fund

institutions (which account for 25–30 per cent of HIPC Initiative costs) have delivered their share of debt relief. The IMF and World Bank face an ongoing task of ethical diplomacy to persuade them to do so.

Three other problems can be distinguished. As with the financing of the PRGT, the finances of the HIPC Trust are similarly inadequate to meet fully the relief of all qualifying states. The large requirements of Sudan and Somalia, for example, are beyond its resources.

How to terminate the HIPC scheme is a second serious issue. The IMF and World Bank activated the so-called 'sunset clause', closing the HIPC scheme in 2006 to new entrants. The Fund and IPA Executive Boards ruled out, on moral hazard grounds, indefinite continuation of the HIPC scheme. To continue it would in the view of the Boards heighten the moral hazard argument of states receiving differential debt-relief preference.

A third difficulty is whether a state which has exited the scheme might be able to rejoin it later. The scheme was not intended to be permanent, but how to terminate it is not fully clear. The larger issue also remains that some HIPC states could fall back into requiring major debt relief without a scheme in place other than balance-of-payments assistance under the PRGT.

Indirect diplomacy: the emergence of the FSB

The creation of the Financial Stability Board (FSB) in April 2009, on the initiative of the G-20 Leaders Meeting, as the successor to the Financial Stability Forum (FSF; linked to the BIS) created a number of significant

long-term issues for the IMF. Prior to 2009, the FSF, a forum of the G-7, had remained a relatively minor player. The revival and reorganisation of the FSF into the FSB, with a broader mandate and quite different membership, has created a rival institution to the IMF. The creation of the FSB by the G-20 reflects their dissatisfaction with the slow-paced reforms of the IMF, and a general aim to create smaller, less formal and structured organisations than the IMF in which NEPs particularly would have a greater role and influence.

The FSB is in effect an embryonic governance institution, part of the emerging architecture of the post-Eurozone crisis. Under the 2009 Charter, the FSB is distinctive in that under Article 16 its decisions are 'not intended to create any legal rights or obligations'. However, its oversight competences, particularly concerning surveillance and economies not in compliance with international macroeconomic standards, mirror those of the IMF, in effect creating a parallel, limited-member organisation.

The central issue for the IMF is duplication. The FSB represents a challenge to the central position of the Fund on international financial and economic policy, and is an emerging form of non-multilateral governance. Its *modus operandi* is nominally informal, with a mixture of the biannual Plenary operating on the basis of consensus (Article 7), Steering Committee and Working Groups. The drafting of the Charter, however, lays out that the surveillance competences should be based on data which include IMF reports, but envisages other sources as well. The FSB is set in a carefully defined institutional structure which goes beyond that of an informal organisation.

The FSB is, in effect, a formal organisation parallel to the IMF, presented with elements of informality. In terms of membership, the G-20 membership is extended to add Hong Kong, Netherlands, Singapore, Spain and Switzerland, plus the ECB and EC. The Secretariat of the FSB is located at the BIS in Basel. Other regional banking arrangements reporting to the FSB have been added as part of the organisation. The mandate in the Charter and structure provides for administrative decisions which resemble 'soft law'. There are no provisions, however, for accountability.

The establishment of the FSB has raised major issues for the IMF, as a body operating in part of its jurisdiction, over which it had limited influence. In a sense, it may represent the early phase of the hollowing-out of its functions, short of displacement or annexation. The 'hollowing-out' model is similar to that of EU operations analysed in [Chapter 7](#).

The issue of links between the FSB and IMF, beyond the informal arrangements following the Joint IMF-FSB letter of 13 November 2008,⁹⁹ divided the IMF Executive Board. A number of Executive Board directors favoured the continuation of informal links or observer status. The proposal for IMF membership, supported by IMF technical staff,¹⁰⁰ was adopted on 8 September 2010.¹⁰¹

The IMF's evolving role

The IMF has acquired an additional and somewhat different role in finance and debt management as an arbiter and umpire. It has offered advice, counsel and warning. The latter are sometimes conveyed indirectly through signalling or leaks, reflecting concern at politicisation impacting on its perceived arbiter role. An increasing number of its internal policy debates, however, are now publicly available.

A second development is the acceptance of the IMF as the channel for processing and monitoring additional financial resources made available by Emerging Economic Powers. That route was preferred to separate bilateral arrangements with European powers, as a means of introducing conditionality on any European loans, and, on the other hand, dispersal through the IMF to emerging market economies. In addition, emerging powers have increased their coordination on raising external funding to the IMF (e.g. China–Japan) since the G-20 Cannes summit.

Conclusion

The central problem for the IMF since the onset of the global trade and financial crisis is the matching of its resources against the continuous expansion of its operations. The core roles of the IMF remain essentially unchanged: short-term lending, economic surveillance of member economies, and technical assistance. New priorities have been developed since 2000, particularly associated with the switch away from structural adjustment approaches to focus on poverty reduction, governance and wider engagement with civil society. In these and other areas there remains the question of overlap with the World Bank. The specialist role of the IMF has been further extended, however, in areas such as combating financial fraud and economic support for transitional regimes. Together, these suggest that the IMF's multifaceted role summed up by de Larosière continues to develop as 'part credit union, part referee and part economic adviser'.¹⁰²

Notes

1. For a selected bibliography on the IMF, see various IMF Staff Papers, e.g. Anne G.M. Salda, *The International Monetary Fund*, IMF Staff Papers, vol. 31, Supplement, Dec. 1984.
2. Of these, 29 countries signed the agreement, which rose to 35 at the inaugural meeting of the Board of Governors at Savannah on 8 March 1946. The Soviet Union, which was present at Bretton Woods, subsequently did not join the IMF. Three countries have subsequently left the IMF: Poland on 14 March 1950; Czechoslovakia on 31 Dec. 1954; and Cuba on 2 April 1964. Of

- the countries outside the UN, Italy became a member in 1947, and the FRG and Japan followed in 1952. On the Bretton Woods Conference, see, for example, J. Keith Horsefield, *The International Monetary Fund 1945–65*, vol. 1 (IMF, Washington, DC, 1969), **ch. 5**.
3. For the role of Keynes in the negotiations, see John Morton Blum, *From the Morgenthau Diaries: Years of War, 1941–4* (Houghton Mifflin, Boston, Mass., 1967), p. 273 *passim*.
 4. Horsefield, *op. cit.*, p. 93.
 5. For example, the IMF concluded a standby arrangement in April 1985 with the Dominican Republic over 12 months, for purchases of up to the equivalent of SDR (special drawing rights) 78.5 million, which is equivalent to 70 percent of the Dominican Republic's quota of SDR 112.1 million in the IMF. The standby arrangement is financed from the IMF's original (subscription) resources. See IMF, *Survey*, 29 April 1985, p. 140.
 6. Benjamin J. Cohen, *Organising the World's Money* (Macmillan, London, 1978), p. 93.
 7. Managing Directors have been: Camille Gutt (Belgium) 1946–51; Ivor Rooth (Sweden) 1951–6; Per Jacobsson (Sweden) 1956–63; Pierre-Paul Schweitzer (France) 1963–73; H. Johannes Witteveen (the Netherlands) 1973–8; Jacques de Larosière (France) 1978–87. See Margaret Garritsen de Vries, *The International Monetary Fund 1972–8*, vol. 2 (IMF, Washington, D.C., 1985), **ch. 52** for portraits of IMF staff.
 8. See for example staff distribution of IBRD/International Development Association (IDA), Table H-7, Appendix H, in Edward S. Mason and Robert E. Asher, *The World Bank Since Bretton Woods* (The Brookings Institution, Washington, D.C., 1973), pp. 879–80.
 9. *Ibid.*, p. 566.
 10. In the nine years of negotiations the Bank played a prominent role in putting forward a number of proposals to bridge the gap between the two sides. For Black's personal correspondence with Nehru, see Mason and Asher, *op. cit.*, p. 625.
 11. Horsefield, *op. cit.*, p. 496.
 12. Robert Solomon, *The International Monetary System 1945–81* (Harper and Row, New York, 1982), p. 33.
 13. See Michael Ainly, *The General Arrangements to Borrow*, Pamphlet Series No. 41 (IMF, Washington, D.C., 1984).
 14. Switzerland, which was not a member of the IMF, was associated with the GAB in June 1964. See exchange of letters between the Ambassador of Switzerland to the USA and the Managing Director of the Fund, 11 June 1964, in *Selected Decisions*, 10, 1983, pp. 148–52. Switzerland joined the IMF in 1992.
 15. The currency value of the SDR is determined daily by the IMF by summing the values of a basket of five currencies, based on market exchange rates in US dollars according to the following amounts: US dollar (0.57); Deutschmark (0.46); French franc (0.80); Japanese yen (31.0); pound sterling (0.0812). See IMF, *Annual Report*, 1995.
 16. For an evaluation of the Bretton Woods system, see W.M. Scammel, *International Monetary Policy: Bretton Woods and After* (Macmillan, London, 1975), **ch. 7**.
 17. Marcus Fleming, cited in Solomon, *op. cit.*, p. 237.

18. The membership was subsequently increased to 24 as a result of the admission of the Russian Federation, Eastern European and Central Asian states to the IMF. A single constituency seat was created for the Russian Federation.
19. Interim Committee communiqué, *IMF Survey*, 15 Oct. 1984, pp. 292–4.
20. See IMF, *Survey*, vol. 32, No. 6, 31 March, 2003.
21. *Select Decisions of the IMF*, 11, 30 April 1985, pp. 367–8.
22. See Fritz Fischer, ‘The spring 1985 meeting of the Development Committee’, *Finance and Development*, June 1985, pp. 8–9.
23. The membership of the G-24 in 1985 comprised Algeria, Argentina, Brazil, Colombia, Egypt, Ethiopia, Gabon, Ghana, Guatemala, India, Islamic Republic of Iran, Ivory Coast, Lebanon, Mexico, Nigeria, Pakistan, Peru, Philippines, Sri Lanka, Syrian Arab Republic, Trinidad and Tobago, Venezuela, Yugoslavia and Zaire.
24. See *The Times*, 18 Jan. 1983.
25. IMF, *Annual Report*, 1981, p. 84.
26. The 18 identified were: Bangladesh, Cameroon, Central African Republic, Egypt, Haiti, India, Ivory Coast, Kenya, Mali, Mauritania, Pakistan, Senegal, Sierra Leone, Somalia, Sri Lanka, Tanzania, Western Samoa and Democratic People’s Republic of the Yemen. IMF, *Annual Report*, 1977, p. 65.
27. Solomon, op. cit., p. 281. OPEC met in Kuwait on 16 Oct. 1973 and decided the following day to cut oil supplies by 5 per cent each month and to impose a total ban on certain countries supporting Israel. It was also agreed to raise posted prices from \$3 to \$5.12 per barrel. An extremely good analysis of OPEC, including the embargo, can be found in Albert L. Danielson, *The Evolution of OPEC* (Harcourt Brace Jovanovich, New York, 1982), pp. 159–99.
28. The entry into force of the second amendment to the IMF’s articles made it possible to add to the total of usable currencies about SDR 1 billion in currencies that had previously not been used or sold only on an irregular basis. The IMF’s holding of 11 currencies totalled about 85 per cent of all usable currencies at the end of April 1978, with the US dollar accounting for 50 per cent of the total. See IMF, *Annual Reports*, 1995, p. 55 and 1978, p. 234. In practice, however, the bulk of the IMF’s usable currency holdings is represented by a small number of currencies. At the end of 1980–1 the IMF’s holding of five currencies accounted for a little over 70 per cent of its total usable resources; IMF, *Annual Report*, 1981, p. 88.
29. See IMF, *Annual Report*, 1976, p. 54.
30. See IMF, *Annual Report*, 1975, pp. 54–6.
31. See IMF, *Annual Report*, 1975, pp. 54–6.
32. For the communiqué see IMF, *Annual Report*, 1978, Appendix IV.
33. See Solomon, op. cit., pp. 280–1 and A.I. MacBean and P.N. Snowden, *International Institutions in Trade and Finance* (George Allen and Unwin, London, 1983), p. 54.
34. *The Times*, 12 Dec. 1983.
35. *Private Market Financing for Developing Countries*, IMF, Dec. 1993, p. 1.
36. See the debate, for example, within the G-5 and G-10 conducted at the Toronto, Frankfurt and Paris meeting from Dec. to Feb. 1982–3, on emergency measures to deal with the debt crisis, including the first modification of access to the General Arrangements to Borrow (GAB). During the discussions, large quota increases were supported, for example, by Japan; in contrast, the USA favoured modifying access to the GAB, rather than quota

- increases, which were opposed by the US Congress. The G-7 Halifax Summit (June 1995) agreed eventually to modify the GAB further, in the wake of the renewed Mexican crisis, with the proposal to establish an Emergency Financing Mechanism. The UK plan to raise liquidity for the least developed through the sale of IMF gold was opposed by Germany, France and Japan. See *The Times* 10, 13 Dec. 1982; *New York Times*, 9 Dec. 1992; *The Times*, 10 Feb. 1983; *The Times*, 16 June 1995.
37. IMF, *Survey*, Sept. 1995, pp. 11–14.
 38. The G-10 met in Paris on 17 January 1983 in the context of the debt crisis and formally approved a number of proposals that substantially altered the GAB. These entailed increasing the credit lines from SDR 6.4 billion to SDR 17 billion and, in a major departure, opening the GAB, under well-defined circumstances, to non-participants. Arrangements were also made for the participation of Switzerland in lending operations and a lending agreement was reached with Saudi Arabia on 8 Jan. 1983. See *The Times*, 10 Jan. 1983; and Michael Ainley, *The General Arrangements to Borrow* (IMF, Washington, D.C., 1984), pp. 49–51.
 39. IMF, *Annual Report*, 1995. Mexico borrowed SDR 5.3 billion, the largest sum in the history of the IMF.
 40. See K. Burke Dillon *et al.*, *Recent Developments in External Debt Restructuring*, IMF Occasional Paper 40, Oct. 1985, p. 20.
 41. ‘Multilateral official debt rescheduling 1975–1985’, in Burke Dillon *et al.*, *op. cit.*, Table 4, p. 8.
 42. See William R. Cline, *International Debt: Systemic Risk and Policy Response* (Institute for International Economics, Washington, D.C., 1984), pp. 273–81; *Hearings*, US Senate, Committee on Banking, Housing and Urban Affairs, second session, 22 Feb. 1982, esp. pp. 77–80; *Hearings*, US Senate, Committee on Foreign Relations, Sub-committee on European Affairs, second session, 27 Jan. 1982, pp. 8–12.
 43. Members of the OECD Development Assistance Committee (DAC) include Australia, Austria, Belgium, Canada, Denmark, Finland, France, Federal Republic of Germany, Italy, Japan, the Netherlands, New Zealand, Norway, Sweden, Switzerland, the UK, the USA and the Commission of the EEC.
 44. *New York Times*, 3 Dec. 1982.
 45. *New York Times*, 8 Dec. 1982.
 46. *New York Times*, 13 Dec. 1982.
 47. IMF, *Annual Report*, 1985, p. 65.
 48. See the testimony of Henry C. Wallich before the House Sub-committee on International Trade, Investment and Monetary Policy, April–May 1983, pp. 75–99.
 49. IMF, *Survey*, 7 March 1983, pp. 65, 76.
 50. See Azizali F. Mohammed, ‘The case by case approach to debt problems’, *Finance and Development*, March 1985, especially pp. 27–30.
 51. K. Burke Dillon *et al.*, *Recent Developments in External Debt Restructuring*, IMF Occasional Paper 40, Oct. 1985, p. 19; Table 116, p. 47; and Table 17, pp. 47–62.
 52. *Ibid.*, p. 14.
 53. See Joseph Kraft, *The Mexican Rescue* (The Group of Thirty, New York, 1984), pp. 27–8.
 54. For example de Larosière intervened with the Italian bank Istituto Mobiliare Italiano and sent a telegram to the Minister of Commerce seeking ‘fullest co-operation’. See Kraft, *op. cit.*, pp. 27–8.

55. *The Times*, 12 Dec. 1983.
56. IMF, *Annual Report*, 1976, p. 54.
57. IMF, *Annual Report*, 1985, p. 69.
58. The agreement took effect on 24 Dec. 1986 and ran for four years. There is provision for a two-year extension depending on the IMF's liquidity and borrowing needs. IMF, *Survey*, 12 Jan. 1987.
59. Kraft, *op. cit.*, p. 54.
60. See remarks by William R. Rhodes, chairman of the Restructuring Committee, Citibank, Citi Corp, at the Group of 30, London, 3 Nov. 1983.
61. See *Financial Times*, 3 April 1987 and 6 Jan. 1988. Japanese corporations on the informal bilateral Japan–Nigeria Committee include C Itoh, Kawaho, Marubeni, Miusui, Mitsubishi, Sumitomo, Suzuki Motor, Toyo Menka Kaisha and Nishizawa.
62. See Carlos G. Langoni, 'The restructuring experience of Brazil', in Khadiga Haq (ed.), *The Lingering Debt Crisis* (North South Round Table, Islamabad, 1985), p. 113.
63. On the problem created for the IMF of the impact of undisclosed arms purchases on their assessments, see *The Times*, 4 Feb. 1983; the relationship between Third World debt and arms purchases is discussed in M. Brzoska, 'The military related debt of third world countries', *Journal of Peace Research*, vol. 20, no. 3, 1983, pp. 271–7.
64. Of the debt accumulated by Pemex, the Mexican state oil company, shipping purchases particularly were a significant component of the total Mexican debt, amounting to some US\$20 billion. See Kraft, *op. cit.*, pp. 27–8.
65. See *Financial Times*, 24 Jan. 1986.
66. See Table 17, fn. 1, p. 49 in Burke Dillon *et al.*, *op. cit.*, on renegotiation of agreements by new governments.
67. The text of the Caragena Consensus, 22 June 1984, can be found in *Hearings*, Committee of Foreign Affairs, House of Representatives, second session, 1 and 8 Aug. 1984, pp. 62–72.
68. See IMF, *Occasional Paper 43*, Feb. 1986, Table 40, fn. 5, p. 107, and p. 112 for details of the Mexican agreements and type of debt rescheduled.
69. *Financial Times*, 4 Jan. 1988.
70. *Financial Times*, 14 Oct. 1987.
71. See BIS, *Annual Report, 1983*, pp. 146–66.
72. For details of the Hungarian agreement concluded in 1986, which used US Treasury Bonds as collateral, see Maxwell Watson *et al.*, *International Capital Markets* (IMF, Jan. 1988), p. 62.
73. See IMF, *Occasional Paper 43, 1986*, Table 40, p. 120 and Bank for International Settlements, *Recent Innovations in International Banking*, 1986.
74. BIS, *Annual Report*, 1987, p. 1984.
75. The proposals by US Secretary of the Treasury Baker were outlined at the October 1985 IMF/World Bank Seoul meeting and called for new lending by commercial banks of \$20 billion over the following three years to the entire group of heavily indebted countries. Included in the group were Argentina, Bolivia, Brazil, Chile, Colombia, Ivory Coast, Ecuador, Mexico, Morocco, Nigeria, Peru, Philippines, Uruguay, Venezuela and Yugoslavia. See IMF/IBRD press release No. 13, 8 Oct., and statement by Secretary Baker before the Bretton Woods Committee in *Treasury News* (Department of the Treasury, Washington, DC), also found in IMF, *Survey*, 3 Feb. 1986.

76. IMF, *International Capital Markets*, Jan. 1988, Table 37, p. 91.
77. *Financial Times*, 1 March 1995; IMF, *Survey*, Sept. 1995 on Naples terms.
78. IMF, *Private Market Financing for Developing Countries*, Dec. 1993, p. 7.
79. See *Private Market Financing*, Table 3, p. 8 and Table A2, p. 52 passim.
80. See *Private Market Financing*, p. 10.
81. On 26 Feb. 1993 Uganda completed a buy-back of commercial debt comprising of mainly trade and suppliers' credits. The operation covered \$153 million of claims (89 per cent of total eligible principal) at a price of 12 cents per dollar of principal. The \$18 million cost was met by contributions from a consortia made up of IDA (\$10 million), the Netherlands (\$2.7 million) and Switzerland (\$0.7 million), and a bridging loan of \$5 million from Germany/EC. See *Private Market Financing*, Table A3, pp. 60–1, for other examples of the range and composition of buy-back arrangements.
82. The first group includes Armenia, Belarus, Bosnia-Herzegovina, Costa Rica, El Salvador, Georgia, Hungary, Iceland, Latvia, Mongolia, Pakistan, Romania, Serbia, Sri Lanka and Ukraine (2007-9). IMF, *Survey*, 25 June 2012.
83. For details of the IMF comparative study of 29 countries with IMF programmes, see [www.imf.org/external/pubs/ft/survey/so/2011/new041511a.htm].
84. IMF, *Survey*, 24 March 2009.
85. IMF, Press Release No. 08/284, Nov. 2008.
86. The NAB was set up at the G-7 Halifax Summit in 1995, following the Mexican financial crisis. The earlier GAB (1962–83) was created by 11 industrialized countries to enable the IMF to borrow specified currencies as an emergency back-up. The GAB was expanded in 1983 to SDR 17 billion from SDR 6 billion. The GAB has been periodically renewed for different intervals since 2008 and activated over 10 times by 1998. The GAB also includes a separate linked arrangement with Saudi Arabia for \$1.5 billion. The potential credit available to the IMF is approximately SDR 17 billion (\$27 billion). See IMF Standing Borrowing Arrangements, Nov. 18, 2011.
87. See 'Bolstering the IMF's Lending Capacity', IMF *Survey*, 6 Jan., 2012.
88. For example, the Brazilian agreement was signed on 22 Jan., 2010 following announcement on 10 June 2009. India announced a similar commitment to buy \$10 billion of IMF Notes on 5 Sept. 2009 and signed an agreement on 12 March 2010. See [<http://www.imf.org/external/np/exr/faq/contribution.htm>].
89. The Fund has approximately 16 active bilateral agreements (2012) for over \$204 billion and two active bilateral Note Purchase Agreements for approximately \$60 billion. See IMF Standing Borrowing Arrangements, 18 Nov. 2011.
90. The amended NAB became effective on 11 Mar. 2011, increasing resources available to the IMF under the NAB to SDR 367.5 billion (\$576 billion), from the SDR 34 billion under the original NAB. On 1 April 2011, the Executive Board approved the general activities procedure (approval is required from participants representing 85 per cent of total credit arrangements).
91. 'Gold in the IMF' (IMF, 1 September 2011).
92. European Central Bank Press Release, 7 August 2009 (Joint Statement on Gold).
93. See *Financial Times*, 21 Feb. 2012.
94. See Andrew F. Cooper, *Celebrity Diplomacy*.
95. See IMF, PIN No. 09194, July 29, 2009.

96. See Andrew Tweedie, *op cit.*, Table 3, p. 8. Contributions to the PRGT included Canada, China, Denmark, France, Japan, Korea, Netherlands, Norway, Spain, UK (effective) and pledges from Belgium, Italy, Saudi Arabia and Switzerland.
97. PRGT arrangements: Moldova, Malawi, Mauritania, Grenada, Guinea-Bissau, Lesotho, Burkino Faso, Benin, Armenia, Sierra Leone, Haiti, Yemen, Gambia, Tajikistan, Togo Extended Credit Facility, Nepal, Kyrgyz Republic (RCF), Solomon Islands, Honduras Standby Credit Facility. See Andrew Tweedie, 'Update in financing the Fund's concessional assistance and debt relief to low income member countries', (IMF) 1 April 2011, Table 5, p. 10.
98. See Otaviano Canuto and Reza Moghadan, 'Heavily Indebted Poor Countries (HIPC) Initiative and MDRI – Status of Implementation' (IMF), 8 Nov. 2011.
99. [www.imf.org/external/np/omd/2008/eng/pdf/111308.pdf]. For text of joint IMF-FSB letter, see [Chapter 16](#), pp. 316–317.
100. José Viñals and Sean Hagan, 'IMF Membership in the Financial Stability Board' (IMF, 10 August 2010).
101. IMF, PIN No. 101133, 27 September 2010.
102. Remarks by J. de Larosière to the Los Angeles World Affairs Council, 19 March 1986. Cf. comments of Michael Camdessus, de Larosière's successor as managing director, in IMF, *Survey*, 20 April 1987, p. 114.

Chapter 9

Trade, foreign policy and diplomacy

Introduction

Trade has traditionally been a concern of diplomacy. Trade interests and trade policies are generally part of the central preoccupations of most states. Ideally, trade policy and foreign policy should support each other, in the same way that defence and foreign policy have a mutually supportive relationship. Yet trade policy, rather more than defence, has tended to pull in divergent directions from foreign policy, unless, as is sometimes the case, economic issues dominate external policy. As a result, an additional task for diplomacy is dealing with external problems arising from the consequences of differing lines of external policy. Divergence between trade and foreign policy can sometimes arise from the practice of having separate diplomatic and trade missions, reflecting the tendency to treat the political and economic aspects of foreign policy separately. Trade and foreign policy may also diverge because of demands made by established trade interests within states.¹

Trade interests may of course be acquired for a number of reasons, such as long-standing commercial links, entrepreneurial exploitation of overseas markets or successful domestic lobbying, as in the case of European, Japanese² or US farming interests. Such interests, which either tacitly or formally become part of trade policy, may create strains or ambiguity in foreign policy, such as calls for the ending of sanctions against the Soviet Union by US grain farmers. Put differently, foreign-policy decisionmakers may consider that particular trade interests are incompatible with foreign policy, for example the US government's attitude to oil operations by Chevron in Angola or Conoco in Iran.³ Or they may attempt, publicly at least, to avoid involvement. Under these circumstances, the task of diplomacy is to reconcile or explain divergent interests to appropriate external actors, or to bring the trade policy and interests into line with foreign policy. The process of bringing trade and foreign policy into alignment can be difficult if trade interests, broadly defined, secure either sufficient

economic importance or official support for the separate conduct of trade or even its pursuit at the expense of foreign policy. The latter is well illustrated by the long-running diplomatic dispute between the EU and the USA over the protective aspects of the EU's Common Agricultural Policy (CAP).

Apart from the questions of divergence and primacy, trade policy may become a direct instrument of foreign policy. In this sense, trade is used to support or further objectives that are not exclusively economic but political or military. The political uses of trade involve diplomacy in initiatives to develop goodwill, promote regional cooperation, gain political influence or strategic assets (e.g. bases) within another state, through to coercive sanctions and other forms of punitive behaviour (see [Table 9.1](#)).

Table 9.1 Trade and diplomacy

- Multilateral rule making
- Bilateral political setting or legal framework
- Defence of trade interests
- Dispute settlement
- Creation of innovative agreements
- Economic sanctions

The international trade setting

In line with the general purposes of diplomacy, a key function of international trade diplomacy is contribution to stability and international order governing trade transactions. Concepts of universal rules for international trade have been developed only slowly, and have been contested, especially after 1945. In international trade regulations, universalism is countered by regionalism and the spread of bilateralism. The term 'multilateral' itself has now several different meanings in diplomatic practice, including arrangement of a non-universal kind involving several states.

In economic diplomacy, it is useful to distinguish those activities which can be broadly defined as including regulatory sector cooperation or dispute settlement arrangements from specific commercial-support diplomacy (see [Table 9.2](#)).

Table 9.2 Types of trade diplomacy.

- Regulatory (classification; tariffs; exemptions; EPAs; bilateral FTAs; double taxations)
- Sector Cooperation (maritime; civil aviation; oil supply; contract; services; environment)
- Disputes (trade imbalance; product contract implementation)

The setting for international trade diplomacy is distinguished by the post-war growth in the number of multilateral institutions with a direct

or indirect responsibility for trade, for example GATT/WTO, UNCTAD, the United Nations Economic and Social Council (ECOSOC), the United Nations Industrial Development Organisation (UNIDO), IFC and International Labour Organisation (ILO). Institutional pluralism reflected the growth in the state membership of the international community, as well as other factors such as developing-country dissatisfaction with Western-dominated institutions, continued North–South disputes over market access and corresponding efforts to develop South–South frameworks for trade.

At a regional level, the growth of regional and pan-regional institutions outside Europe, particularly ASEAN and APEC, is a second particularly striking feature of the trade setting post-1980. Regionalism, strongly influenced by rapid globalisation, reflects, too, a number of other concerns. In part these encompass for a number of states outside Europe issues linked to foreign-policy identity and the search for new groupings. In part, they also reflect dissatisfaction with older ‘labels’ (‘developing’, ‘South–South’) and large political groupings (G-77, G-90) and their institutions. In a third area, at the level of actors, the trade setting is distinguished by efforts to move out of traditional categories, and the establishment of issue and special interest-based groups for trade negotiations and other purposes (e.g. small island states, transition states, cotton producers, energy providers and ‘haven’ states hosting drug, transnational crime elements).

New economic powers such as Brazil, Korea and Vietnam pursue active foreign policies in trade-rule-making; regional economic institutions; promotion and defence of trade interests and trade disputes. ‘Labels’ are retained in some institutions, however, for pragmatic economic benefit reasons, although in practice the application of the term ‘developing’ is inappropriate for countries such as India and the PRC.

Finally, in terms of process, there are a number of sources of enhanced trade instability in the contemporary trade setting, including: regional instability in energy-producing states; environmental factors (e.g. desertification; irrigation conflicts; global sea-level rise); and food security supply/demand issues. Enhanced international trade conflict is a distinctive feature of relations among and between the United States, European Union, Japan and the PRC, along with ongoing disputes of differing degrees of seriousness involving lower- and middle-income states and small states. In this context it is interesting to note that the WTO has become an important vehicle for the channelling of trade disputes, particularly by lower- and middle-income states. Australia, Canada, Brazil and major trade players have used the WTO dispute procedures for trade-dispute settlement, but perhaps as importantly as part of political and economic methods to assert independence. The process of reaching global rules has become more complex as a result of greater regionalism and bilateralism in international trade relations.

The remainder of this chapter will examine issues connected with: the WTO and Doha Round; the growing importance of bilateral economic

agreements; international trade disputes; and ethical issues and standards in trade diplomacy.

Multilateral institutions: the WTO

The establishment of the WTO in 1995 as part of the triad of international institutions (Security Council, IMF/IBRD, WTO) was an important shift in the organisation at a multilateral level of trade relations.⁴ Prior to the WTO, international trade had been regulated on an intergovernmental basis from 1948 to 1994 under the General Agreement on Tariffs and Trade (GATT), an intergovernmental body set up after the failure to establish a WTO in 1945–6, via so-called trade ‘rounds’ of multilateral negotiations.⁵ These included the Annecy (1948), Dillon (1960–2), Kennedy (1964–7), Tokyo (1973–9) and Uruguay (1986–94) Rounds. The Tokyo Round was particularly important in terms of the breadth of negotiations.⁶ Although modest tariff cuts were agreed, the round more importantly entered new ground with agreements on non-tariff areas in the form of codes to the GATT agreement.⁷ The codes included those on subsidies and countervailing duties,⁸ customs valuations,⁹ anti-dumping,¹⁰ government procurement,¹¹ trade in civil aircraft,¹² import licensing and standards.¹³

Challenges to GATT

GATT faced a number of constraints in its efforts to liberalise world trade. In particular, the principle of non-discrimination has suffered major erosion. The use of variable import levies and other restrictions, for example, by customs unions and similar groupings, become a major source of friction, especially in the context of North–South trade relations. Qualitative restrictions were increasingly placed by industrialised countries on a wide range of developing country exports through standards, certifications, hygiene and environmental import procedures.

But by far the largest gap in the Tokyo Round was the failure to reach agreement on improving the Article 19 safeguard system, authorising emergency action against suppliers of disruptive imports. Agreement was prevented because of the fundamental disagreement over European Community demands for the right to apply discriminatory safeguard action with limited GATT surveillance, which was opposed by developing countries, joined in this instance by Japan. As Olivier Long notes, ‘the debate on the safeguard clause reveals a classic dilemma between, on the one hand, insistence on application of the rules at the risk of making the legal instrument unworkable and, on the other, a degree of tolerance which weakens the value of the instrument and the protection which member governments expect from it’.¹⁴

The issue of subsidies and corresponding charges of unfair competition have emerged as major sources of international trade conflict. Apart

from subsidies and mixing of trade and aid issues, managed trade has become a noticeable feature of international trade practice in response to increased trade competition and protectionism.

The Uruguay Round legacy

The functioning of the WTO has been influenced first by the Uruguay Round legacy. The broad scope of the Uruguay Round continued the approach of the Tokyo Round but added new sectors (agriculture, services, textiles),¹⁵ new issue areas (intellectual property rights, trade-related investment measures) as well as streamlining of GATT dispute procedures.¹⁶

The changes introduced by the Uruguay Round in effect laid the framework for the interim operation of the WTO. These include the traditional area of tariff reduction, with an agreed tariff reduction of 38 per cent on the pre-Uruguay Round tariff average of 6.4 per cent in developed countries. The agriculture negotiations focused on three areas: market access, domestic price support and export competition. The incorporation of agriculture, previously largely excluded under GATT, was of only limited success. The Cairns Group, which includes Canada, Australia, Argentina and New Zealand, remained dissatisfied at the staged quantitative reduction in the volumes of subsidised exports as the multilateralisation of thinly disguised voluntary export restraint negotiated between the USA and EU. For the Cairns Group, these provisions in the accord tended to confirm the unsatisfactory duopoly of the USA and EU in world agricultural markets. In the provisions on trade-related investment measures (TRIMS), the Uruguay Round broke new ground, mainly at US insistence, although opposed by India and Brazil. The final agreement banned TRIMS that are inconsistent with Article 2 (national treatment), such as domestic content requirements, and Article 11 (quantitative restrictions). The agreement, which did not cover subsidies and grants, was largely aimed at investment restrictions in developing countries. The provisions on trade aspects of intellectual property rights (TRIPS) cover patents, trademarks, copyright and trade in counterfeit goods. It is primarily aimed at the pharmaceutical, agrochemical, computer software and designer clothing markets. Counterfeit trade accounts for at least 6 per cent of world trade, and remains difficult to eradicate. The Uruguay Round compromise reflected this with weak phase-in provisions for developing countries and 'economies in transition'.

The Uruguay Round agreement, concluded in Marrakesh in 1994, established the WTO, and the Final Act annexe agreements on goals, services, intellectual property, dispute settlement, trade policy review mechanisms and related agreements. Additional agreements concluded after 1994 included the Protocols to the General Agreement on Trade in Services (GATS). The WTO held its first ministerial meeting in Singapore from 9–13 December 1996, and began an initial review of the Uruguay

Round agreements and schedules of commitments. The formal review of the subsequent work of the WTO in the period 1996–2000 was launched at the Doha Ministerial Conference in November 2001.¹⁷

The WTO negotiations process: Doha Round

The WTO international trade negotiations process post-Doha illustrates the continued evolution of diplomatic matters in the trade sector, and raises a number of issues relating to how agreements are reached in strategic trade arrangements. The initial Doha ministerial round was held from 10–13 November 2001 in Qatar. The subsequent Cancun review or ‘stocktaking’ meeting in 2003 confirmed continued extensive deadlock on the major issues. However, the Doha Round was in effect resurrected and brought back from failure at the 2004 General Council meeting in Geneva, using a revised agenda and different procedures, reminiscent more of earlier ‘Green Room’ GATT negotiations.

An important aspect of international trade negotiations is the increasing complexity of the agenda. Agenda issues are handled on a routine basis through the WTO technical committee structure. These separate negotiations nevertheless constitute elements within an overall ‘package’ of areas for decision – each sector with different degrees of agreement or consensus. Trade negotiations at Doha involved 21 agenda areas, including carry-over issues from the Uruguay Round (so-called ‘implementation’ issues) and core (evolving) traditional issues such as industrial tariffs, market access, agriculture, trade in services, TRIPS and the issue of special treatment for developing countries to minimise effects of tariff reductions, or market orientation for transition economies.¹⁸ The Doha Round, too, included a number of so-called ‘new issues’ (trade facilitation, investment, competition policy and government procurement).

In WTO negotiations the lead players – Brazil, EU, India, PRC, USA – have operated in and across several groups. Groups shifted in role and influence (e.g. Quad Secretariat, US, EU, Japan, Canada – in the early phases). Other lead groups include: the G-20 (Argentina, Brazil, Chile, Egypt, South Africa); the Cairns Group (agriculture; e.g. Argentina, Australia, Bolivia, Brazil, Canada, Malaysia, Thailand, Uruguay) and G-33 (special products). Specialist groups have also been formed, for example on cotton (e.g. Burkina Faso, Benin, Chad, Mali.), small island and transition states.¹⁹ The G-10 drew together a disparate group including Iceland, Israel, Japan, Switzerland and Taiwan. In the WTO context, negotiations are not generally formed or conducted around regional organisations (EU excepted) such as the Arab League, Mercosur, Caricom or blocs (e.g. Africa group), but rather are issue-based and fluid, and states may be in more than one grouping. In addition, some groups are formed (and later reformed) to promote ideas or concepts, e.g. Like-Minded Group, to promote focus on development issues, or finding strategic compromise to break deadlock, e.g. G-11. The informal G-11 was established in 2011

to try and salvage some outcomes after the long-running deadlock on the framework 2008 proposals (especially on the core area of agriculture) remained unresolved.²⁰

Resumption and breakdown of Doha Round trade talks

A number of general factors can be suggested for the phenomenon of breakdown and resumption of trade talks in post-GATT negotiations. A central area of difficulty remains the problem of moving through a highly complex agenda within a limited period of time with a large number of actors, partly based upon mini-ministerial preparatory meetings and chair/facilitator-coordinated pre-ministerial draft texts. In the Cancun case, the introduction of 'new (Singapore) issues' caused agenda overload, and was opposed by over 56 developing countries.²¹

In addition, further factors for breakdown were the problems of conducting compartmentalised (issue) negotiations in five sectors (agriculture, cotton, non-agricultural market access, development and Singapore issues), with few bridging or consensus opportunities, relying essentially on limited individual and group negotiations/consultation.

The Doha Round was partly salvaged at the WTO Geneva Council meeting in 2004, although deadlock continued until the final day of negotiations. The limited success at Geneva entailed the extension of the Council session by 24 hours from 29 July to 1 August, for continuous negotiations. The final phases of the negotiations were classic 'end-run' or 'take it or leave it' negotiations, within a limited group, reminiscent of GATT Green Room negotiations. The essential features of this process were the key roles played by the WTO's director-general, Supachai Panitchpakdi, and General Council chair Ambassador Shafaro Oshima (the chair had rotated in 2004) in coordinating the final texts. A framework agreement was negotiated which effectively refocused the Doha Round on agriculture/tariff reduction and trade facilitation. The agreement side-lined contested or deadlocked items (three of the four Singapore issues) into annexes for further consultation. It marked an important change in methods, particularly the use of a Quad ministerial meeting outside the WTO process,²² to lay the basis for an agriculture/tariff reduction/subsidy reform 'package' deal, which then had to be sold in the closing hours of 'end-run' consultations within the WTO process. The Geneva framework agreement was subsequently 're-opened', however, by the USA, EU and G-20 at the Hong Kong WTO meeting.

Since the Hong Kong ministerial meeting, limited progress was made at the Potsdam and Geneva ministerials. The major issues dividing states were centred around three areas: domestic subsidies (e.g. US, EU); better agricultural market access (e.g. to EU for developing countries); and improved access for industrial goods into developing countries. The main negotiating group included on agriculture the developing G-20 and, at a strategic level, the core group made up of Brazil, EU, India, PRC and

the USA. Efforts to pull the negotiations together included the attempted 'package deal' initiative of WTO's director-general, Pascal Lamy, in 2008. The onset of the global financial crisis brought in practice the Doha Round to an inconclusive end. Negotiating groups such as the Quad and EU broke up, as members withdrew or moved to negotiate bilateral arrangements with other states.²³ The major issues of agriculture and market access for non-agricultural goods effectively remained unresolved at the December 2011 Ministerial.

Negotiating Groups on Rules: the gulf in concepts

Apart from the differences noted above, significant differences existed in the negotiations in other areas. The problem of a large agenda, lack of focal points and excessive sub or sectoral negotiations is clearly illustrated in the work of the Negotiating Group on Rules (NGR). The very wide agenda of that group included nearly all the major or core issues before WTO, and its work is often omitted from accounts or evaluations of WTO. The remit of the NGR covered: (a) anti-dumping, subsidies, fisheries, vessel subsidies; (b) rules regarding the operation of RTAs; (c) provisions for transparency of RTAs (new topic). Issues addressed in the second area (regional trade agreements) included: the measurement and range of trade covered; special and differing treatment for development countries; the coherence of rules for RTAs involving developing countries.²⁴ A much reduced agenda might have stood more chance of success, rather than the ambitious negotiating 'List' devised at Doha.

The Doha Round illustrated one of the major difficulties with complex multilateral negotiations, that is the macro relationship of trade-offs between core areas (e.g. concessions in agriculture being matched by changes in the texts of other sectors, e.g. industrial access) and detailed provisions. Frequently that trade-off may be exaggerated or misperceived.

Prior to the 8th Ministerial Conference, Ambassador Francis summarised the very limited progress of several years of negotiations, and, particularly major conceptual differences amongst the Negotiating Group. The Doha Round used the concept of a 'Single Undertaking' (that is to reach agreement on all mandated sectors) for a multilateral solution as a version of a consensus model, though in practice the degree of subnegotiation and constant framing of exceptions created sets of mini-negotiations. The difficulties of smaller members, which had favoured the safeguards of development-based multilateral provisions from the Doha Round, were summed up by Robert Sisilo²⁵ lamenting moves to bilateralism, regional trade arrangements and the 'spaghetti bowl' of different rules (e.g. Rules of Origin):

'[But] even if offered bilateral and regional trade arrangements, we would hardly be likely to emerge as net beneficiaries when negotiating with a major trading power. We will be squeezed and when we squeak nobody will hear us.'

Critique of the WTO negotiation process

The main criticisms of the WTO process centre on transparency, marginalisation and structure. For example Jawaara and Kwa identify six problematic areas. In terms of participation, delegation sizes vary extensively. At Doha, the EC had a delegation of 508 (including 50 from the Commission), the USA 51, Canada 62, Indonesia 60 and India 48. At the other end of the scale, smaller developing countries had one or two representatives, for example the Maldives and St Vincent.²⁶ In order to assist small-state delegations with communications and preparation of international negotiating positions, the Commonwealth opened a special trade diplomacy 'embassy' in Geneva.

Second, on transparency, formal records of meetings or the decision process are not kept. Third, in the construction of draft texts, the use of square brackets to indicate differences of view on matters has been replaced since Seattle (1999) with general texts issued by the WTO director-general, working group facilitators or chair of the General Council. Fourth, the use of GATT-style Green Room meetings (small lead group) and mini-invitation-only ministerial preparatory meetings unnecessarily excludes states or limited major powers (Brazil, India, PRC, USA) and undermines consensus.

Finally, the WTO practice of holding the ministerial component of trade negotiations every two years has several disadvantages. Ministers became detached from the negotiating process and lack of regular input reduces strategic direction in the negotiations, shifting too much influence to the Secretariat /working group (chairs) or sector level. In these instances, the ministerial component is reduced to formal statements by delegations rather than negotiations. The problem of strategic direction and incorporating new initiatives into an ongoing (sector) agenda was evident in the lack of response to the Brazilian informal proposals in February 2011 in the G-11, made in response to US calls for 'more ambition' in the Doha talks, for greater market opening for five key farm products. The proposals were not discussed in the ongoing informal agriculture talks chaired by New Zealand's Ambassador Walker, which continued its existing agenda.²⁷

The WTO process: review of issues

The various methods of WTO international trade negotiations post-Uruguay Round have underlined the continuing problem of reaching multilateral agreement across a wide range of changing and complex trade issues. As argued above, one approach has been to redraw the strategic agenda, negotiating on a limited range of sectors.

The WTO multilateral negotiations may be contrasted with other types of multilateral process, such as UNCLOS, in a number of respects. UNCLOS (1973–82), like the WTO, had a highly complex agenda,

managed through ‘packets’ of issue areas, but a major difference was the dispersal of political power facilitated by the conference structure, for example chairs of working groups formed from a range of states and the operation of the consensus principle.

In multilateral conference diplomacy, small groups of lead players have become a standard feature of modern negotiations. The WTO, however, has yet to address the inability of special interest groups to get their interests articulated and mediated. The ‘Cotton Group’, however, is an exception. It has been able to get its interests on a narrowly defined issue accepted and recognised in the *central* WTO process, and, through skilful personal diplomacy, ensure the problem remained within the Doha Round core areas of negotiation. In comparison with other UN agencies, such as the IMF and IMO, the WTO has not developed negotiating structures and procedures to enable it to operate on the basis of consensus. Marginalisation remains a critical issue for the WTO.

The impact of the wider domestic and international trade setting underscores several political aspects affecting the dynamics of international trade negotiations. International trade negotiations require strong political mandates for negotiators, particularly the core ‘driver’ actors (Brazil, India, PRC, USA). Without clear Congressional approval, the United States remains heavily constrained in international trade negotiations. The freedom of action of the members of the core group is constrained in varying degrees by a variety of other factors, such as market share and currency reform issues.

Two further constraints should be noted. First, the shift in political and economic power since the start of the Doha Round has been accompanied by loss of overarching or shared values about acceptable global trade rules, reflecting the changed composition of the core trade negotiation group. The second factor is that WTO international Trade-Round negotiations are extremely time-sensitive. This is the principle that the window of opportunity for successful ‘closure’ of the negotiation decreases within subphases, and is reduced the longer the round progresses. In the final phase of trade rounds, mandates may be lost, lead players change, and, above all, negative aspects of the international environment may have an effect (e.g. post-2007 trade and finance crises).

Bilateral agreements

The rise in importance of bilateral economic agreements is one of the most striking aspects of the evolution of diplomacy against the backdrop of the Doha Round. Bilateral agreements cover a wide range of subjects.

They are often signed as part of a ‘package’ of agreements, in different sectors or are linked to allied projects. Bilateral agreements are not only the domain of local or regional arrangements, but especially are used as vehicles for building *extra* regional relations with states or organisations with which there has been limited or minimal contact (Table 9.3).

Table 9.3 Bilateral economic agreements

- Egypt–Mercosur Trade Agreement
- EU–Ghana IEPA
- Ghana–Equatorial Guinea Trade Agreement
- Congo (DRC)–China Memorandum of Understanding
- Spain–Philippines MOA – Health; Spanish language teachers provision
- Nigeria–Brazil Bilateral Cooperation Agreement
- Nigeria–India Pharmaceutical Agreement
- Saudi Arabia–India Strategic Partnership Agreement

Bilateral agreements may also cover specific government-financed projects. Examples are Brazil’s foreign direct investment (FDI) for a Brazilian ethanol plant in Ghana;²⁸ and the Iranian port cooperation agreement between Imam Khomeini port in Khuzestan province and Mombasa.²⁹

Bilateral economic agreements in EU diplomatic practice increased in part as a result of the failure of EU interregional negotiations, for example with ASEAN and MERCOSUR.³⁰ Separate EU free trade agreements include: EU–Korea;³¹ and trade, cooperation and development agreements, e.g. EU–South Africa. Other types of formal, structured international economic cooperation instruments include the EPAs developed by the EU from 2007, as forms of associative diplomacy at a bilateral level e.g. with individual members of the ACP group of states.

Both illustrate different aspects of the concept of diplomatic spaces. The Brazil–Ghana ethanol agreement illustrates the development of Brazil’s political relations linked to securing land areas for extension of its ethanol production facilities and renewable energy diplomacy. The initiatives, discussed below, have had mixed results. Increasing its diplomatic space, especially through low-key infrastructure projects, is a key aspect of Iranian diplomatic efforts to maintain outlets and political allies.

The following types of bilateral agreements can be distinguished: (a) inter-regional organisations; (b) regional organisations with another state(s) or institution; (c) general cooperation agreements; (d) sector agreements; (e) partnerships.

The main purpose of a bilateral agreement is to provide a governmental framework for the development of bilateral cooperation in either general or specified areas (trade, culture, science and technology, aviation). Thus, the purpose is to provide *structure*, facilitate regular exchanges, demarcate mechanisms for dealing with issues and priorities, and may be set for a fixed duration. Most, however, are open-ended. The following examples set out some of the types of agreements and their associated purposes. The final part of the section raises issues relating to evaluation and effectiveness.

The most common bilateral agreements are those general agreements which seek to promote economic cooperation, through trade and financial cooperation. Normally included are provisions on: the level and

frequency of future meetings; areas of cooperation (e.g. trade facilities, Customs, taxation); and designated authorities acting as focal points (e.g. Brazil–Nigeria; Saudi Arabia–Jordan). Bilateral agreements of this kind may be concluded at an intergovernmental interagency level, or with a regional organisation.

In addition to general cooperation agreements, states may seek to regulate specific sectors of bilateral relations, for example civil aviation, tourism, technical cooperation, education. In general, sector agreements contain priorities for revision and review. In arrangements between unequal states, smaller powers gain some sense of additional security through the prospects of *regularised* trade, transportation or technical support, for example Brazil–St Lucia.³² Other types of specified agreements, similar to sector agreements, are: (trade) supply contracts, or arrangements for export zones; or storage supply facilities, for example Saudi Arabia–Japan Oil Storage Agreement (Okinawa).³³

Technical cooperation agreements are now widespread and often represent frameworks for cooperation across several sectors, involving several agencies, for example Spain–Jordan in civil nuclear power and desalination cooperation,³⁴ and Nigeria–India pharmaceutical cooperation.³⁵

Multisector cooperation agreements are an established feature of the diplomatic practices of major and emerging powers. Styled as ‘Strategic Partnership Agreements’ they are used in general to signal interest in the development of mutual trade and related economic cooperation at a high, structured level through institutional arrangements and committee structures for meetings of officials and periodic ministerial-level exchanges. They are a feature of Sino–Russian diplomacy and have been used also by India, Brazil and copied by the United States.

Other forms of partnership agreements, for example in EU practice, are EU fisheries access agreements with third countries, such as Morocco and Angola. The agreements were cosmetically restyled ‘partnership agreements’ by the EU in 2012, following heavy criticism of the Common Fisheries Policy, and the limited aid and development benefits transferred to low-income fishing status. The ‘Arab Spring’ has influenced reorientation and the search for new arrangements to replace the EU agreements.

Implementation

Bilateral economic agreements have received some criticism. The effectiveness of some arrangements has been questioned in those cases in which large numbers of agreements have been concluded as part of a head-of-state visit, but which lacked substance or content. A second criticism concerns implementation, and the perceived effectiveness of agreements. Implementation may be weak as a result of agreements stalling, losing their drive and *raison d’être* and becoming routinised, or changes of government. For example the first and second-generation EU associative diplomacy agreements stalled in the 1980s and 1990s, with unclear

purposes, questioned by regional partners. In other instances, implementation issues have arisen in relation to the overall number of uncoordinated bilateral agreements, and problems of assessing when an agreement had become defunct or moribund. For example the Nigerian government identified 378 federal and state bilateral economic MOUs in a review conducted by its foreign ministry.³⁶

Brazil's ethanol projects in Africa illustrates the problems of institutions stalling and changes of government diplomacy. The ethanol initiatives have had mixed success because of the failure of the parties to allocate sufficient infrastructure, develop appropriate local crops and the need for governments to have the continuous interest and support of corporate partners to implement 'political vision'.

International trade disputes

This section of the chapter provides a number of illustrations of trade disputes to show the range of conflict. The intensification of globalisation has widened that range, though other important factors are historical, cultural, resource and regional, or local patterns of interaction (e.g. cross-border trade, local customs tariffs and transborder tourism transport regulations). A particular feature of international trade conflict is that disputes are not generally resolved as one-time actions but rather reemerge in a different form as regulations are tested, interpreted or ignored. Negotiating tactics, too, often rely on seeking short-term last-minute or partial agreements to stave off retaliatory action.

In the first area are disputes relating to challenges or doubts about the purposes, benefits and performance of regional arrangements. In the Ghana–EU Interim EPA dispute, domestic groups in Ghana opposed the signature and ratification of the interim agreement originally initialled in 2007, on the grounds of the impact of EU liberalised trade on the Ghana domestic market and Ghana's regional trade.³⁷ In addition, an unusual feature of the dispute was the opposition also of the Economic Community of West African States (ECOWAS), supported by Third World Network, a transnational NGO, because it was feared that the proposed EU EPA would have an adverse impact on local industry and on intraregional trade. Other examples of intra and regional organisation disputes include the Guyana–EU sugar market access dispute over EU sugar quotas for ACP countries, and in terms of perceived utility or effectiveness, EU–ASEAN associative diplomacy has declined as ASEAN has faced international challenges from competing regional arrangements and sought to revive its *raison d'être* with other external arrangements.

Disputes over market access are in fact common and as such can lead to varying degrees of conflict. Disputes may be triggered by quantitative or qualitative measures. In the India–Pakistan cotton/textile dispute,

for example, the All Pakistan Textile Mills Association lobbied, prior to a prime-ministerial visit, for reductions in Indian cotton quotas. The Malaysia–Singapore dispute (put initially by Singapore to the WTO) centred on Malaysia local content and licence restrictions on Singapore petrochemical products exported to Malaysia, introduced to limit Singapore products. The WTO case was eventually withdrawn and the matter resolved through diplomatic channels.³⁸

One of the growing categories of trade conflict involves the increasing use of non-tariff measures (NTMs) following further tariff reductions in the Uruguay Round. A major cause of disputes is the use of trade documentation regulations to in effect restrict entry of goods and services. Examples include: import licence requirements, as in the Argentine–Brazil trade dispute, where the increase in items requiring 60-day clearance by Argentina, in response to growing trade imbalance, became a major issue; trade endorsement fees and certification by embassies and local chambers of commerce (e.g. Bahrain, Iran, Jordan, Kuwait, Saudi Arabia, Syria, Turkey, UAE); and local agency agreement rules (e.g. UAE). Other aspects of documentation include the growing use of restrictive requirements relating to standards, testing, compulsory product certification (CCC) (e.g. the Jamaica–Trinidad dispute over standards certification requirements introduced by Trinidad on Jamaican goods). Technical safety requirements (e.g. electronic goods, medical equipment and building materials) by major actors (EU, Japan, PRC, USA) have impacted adversely particularly on Malaysia, Korea and Brazil.

Increasing environmental concerns within Western Europe, the USA and other regions have resulted in the introduction into trade relations of a wide variety of different types of environmental requirements. Examples include dolphin by-catch in tuna fishing (USA–Mexico),³⁹ eco-labelling, packaging and so-called ‘Green Purchasing’ laws. An area of particular concern has centred on tropical (‘rainforest’) timber depletion and the corresponding introduction of certification requirements (e.g. Forest Stewardship Council) for tropical timber in a number of countries. The issue, too, is a clear illustration of the role of subnational entities in international relations in shaping policy and implementing international conventions. For example, a number of states in Germany (e.g. Lower Saxony, Bremen and Schleswig-Holstein) have introduced legislation to restrict the use of tropical timber in public administration contracts if the timber cannot be certified as sourced from sustainably managed forests. Similar policies have been introduced by Australian State governments such as New South Wales, Queensland and Victoria.⁴⁰

Another major area of regulatory control that has impacted particularly on developing-country animal, fisheries and food exports are regulations in the animal, hygiene and sanitary fields. The area is not new but is poorly regulated internationally, for example live cattle exports. It has, however, been given added global focus by factors such as the Bovine Spongiform Encephalopathy crises affecting cattle, and issues related to intensive

agricultural methods introducing standards and control problems. The globalisation of the processed food and meat industry, with respect to sourcing products, has generated additional regulatory problems. Other factors include the spill-over effects of 9/11 (e.g. Bioterrorism Act) and the transnational impact of Asian pandemics on food-supply chains.

The growth in the global pharmaceutical industry has become an increasing source of trade conflict. The development of generic drugs by a wide range of countries has challenged the near market monopoly of major European and North American pharmaceutical corporations. A related issue is the supply of generic low-cost drugs to developing countries.

Disputes over generic goods exports have involved a number of countries, e.g. India and Brazil with the EU and USA. For its part, the BRICS group has designated pharmaceutical research and production as one of the sectors for increased technical cooperation amongst its members. Part of the difficulties in the India–EU dispute involved Indian objection to EU proposals for the drugs testing and approval schedules, which were regarded as an infringement of its sovereign and technical capacity. Other issues, making the dispute a complex ‘linked dispute’, centred on Indian difficulties with the EU conditionality approach (binding rules, labour conditions provisions) and its negotiating style of widening the areas of negotiation, in this instance beyond the pharmaceutical sector to include other items or sectors such as patent rights and registration processes.

Other sources of international trade dispute

Several general issues affecting the conduct of trade diplomacy are suggested by the examples in [Table 9.4](#) below.

Table 9.4 Other sources of international trade disputes

- contract (e.g. Vale case)
- port acquisition (DP World–US ports)
- civil aviation (landing rights; fifth freedoms)
- federal states (treaty capacity)

In the Vale case, a leading Brazilian global iron-ore company had attempted to build a fleet of up to 35 large ore carriers to control shipments of ore to the PRC, its largest customer, taking up to 45 per cent of Vale sales. The complex agreements involved construction of 19 vessels (almost as large as the Bank of America Tower in New York) for \$2.3 billion in the PRC, and the ore supply contract. Vale was, however, forced to abandon the project in that form following opposition from the China Ship Owners Association, and to seek other outlets for the vessels.

The Vale case⁴¹ illustrates the question of the scope of negotiated items (a written side-agreement on port access was not included) in complex

multicomponent projects. The case also points to the possible support or negotiating role of foreign and trade ministries, and of embassies in the provision of advice on local conditions, factors affecting contracts, and assessments of any possible impact of other domestic interests. The sensitivity of port issues in terms of access, usage and ownership is underlined in the Dubai DP World,⁴² Vale and other similar cases. A DP World bid for US ports met substantial US domestic opposition on security and other grounds. In civil aviation, landing rights issues were relatively common areas of international trade dispute. Bilateral civil aviation disputes, however, can spill over into other sectors of bilateral relations, and become 'linked' disputes which seriously damage relations, for example the Canada–UAE dispute. The long-running dispute, over unsuccessful UAE bids for increased main airport capacity into Canada, adversely affected general bilateral relations and Canada's efforts to secure UN Security Council nominations.

In the fourth example, relating to federal states, the growing number of actors in contemporary diplomacy has led to disputes about the capacity of individual states within Federal structures to complete international treaties and other agreements, rather than these being the responsibility of the federal government. For example, the Iraq government opposed Kurdistan claims in 2012 to rights to issue oil prospecting licences.⁴³ The central-government pressure delayed development and created an uncertain environment (with explicit contract consequences), scenarios oil majors invariably seek to avoid. Whilst, in theory, issues regarding treaty powers are addressed in constitutions, the formal capacity issue has become blurred as a result of the frequent use of informal international agreements and understandings which are not in treaty form.

Resources

Resource questions have traditionally been significant areas of dispute in international relations, but have become critical issues in and for twenty-first century diplomacy. The competition for resources has profoundly affected the international agenda and diplomatic methods. It remains a source of major instability in the international system. In agriculture, food security, particularly for developing and low-income countries, has become a critical item on the international agenda. A controversial dimension was added after 2007–8, as a result of moves to acquire land for crop production through land acquisition and leasing arrangements in Africa (e.g. Ethiopia, Sudan) and Asia, by several countries including Saudi Arabia, Korea and the PRC. The deals, which were mainly secret, were designed for agricultural production and 'export', in response to major price volatility in soya and wheat prices, and, export restrictions by leading grain producers, including Russia and Argentina. Land acquisition has proved divisive and a difficult issue for regional and international organisations, impinging on sovereignty and elite power in weak

developing states. In some instances, domestic opposition has been successful (e.g. against the Korean Daewoo Logistics proposed acquisition of 3 million acres in Madagascar), though the World Bank estimated that deals have totalled 140 million acres – an area larger than that devoted to wheat production in the USA.⁴⁴

In other areas in the agricultural sector, international lobby groups have become more extensive and much more active in open public diplomacy. EU–US lobby groups variously linked to national administrations, such as the World Agricultural Forum (United States), have been active in agenda setting (e.g. the discourse on sustainable agriculture) on genetic crops and agenda diversification (e.g. extension of agricultural issues into UNFCCC negotiations side-events). The expanded role of lobby groups is also notable in other resource sectors such as strategic metals. The growing significance of strategic metals (e.g. lithium, molybdenum, tantalum, niobin) is reflected in the rival international industry ‘summits’ and search for ‘conflict-free’ supply sources. The PRC, for example, which controls 90 per cent of the rare earth metals market, held the first rare commercial summit in Hangzhou in 2011. These previously relatively obscure events have received greater attention as governments and industry address issues of investment, access through WTO and secure supply.⁴⁵

In the fisheries sector, regulatory arrangements have been characterised by the steady growth of regional fisheries management organisations, spurred on by the 1982 Law of the Sea convention, which entered into force in 1994. Regional organisations, which face common issues of sustainable fishing, transboundary stock (e.g. tuna, quotas and illegal fishing) vary in scope and national effectiveness. In some areas, so-called ‘trade-aid’ access agreements have been concluded by developing coastal states with little or no mid or distant water fishing capabilities, with external states, allowing fishing by specified vessels⁴⁶ in their 200 nm EEZs. The breakdown of the EU access agreements with Morocco, Tunisia and other African states (e.g. Angola) is of particular interest as a diplomatic case study in several respects. The EU access agreements, which had been in place for over a decade-and-a-half, were not renewed following the collapse of the Common Fisheries Policy (CFP) and criticism of the ‘aid’ component of the access agreements by a coalition of EU transitional NGOs and scrutiny in the European Parliament. In an effort to revive the agreements, Spain entered into intensive bilateral diplomacy in 2012 with Morocco. However, following the abrogation of the agreements, several West African and other states have entered into less formal and, presumably, more lucrative arrangements with other governments (e.g. Senegal and the Russian Federation) and companies (e.g. in Italy). These arrangements offer even less oversight and environmental management of fisheries than the flawed EU predecessors.⁴⁷

Energy security has altered the balance of diplomatic attention to diversification of secure petroleum sources, strategic supply routes and maritime boundary claims. Three factors have influenced the shift in

importance: the break-up of the former Soviet Union in 1992, which meant it lost direct control over oil and gas resources and pipeline networks in the central Asian republics (see [Figure 6.1](#)); the volatility of the Middle East post-2003; and the economic rise of the PRC. The petroleum acquisition issue – routing, stockpiling, exploration and maritime claims – has introduced higher levels of dispute and regional instability. For example the Spratly dispute intensified following the PRC’s occupation in 1994 of the appropriately named Mischief Reef claimed by the Philippines, 200 kilometres off Palau.⁴⁸ The Philippines formally protested against the Chinese action in February 1995, referring to the Manila ASEAN Declaration. The Philippine protest note introduced a new geographical concept in maritime disputes – ‘nearest country stewardship’ – as the basis for its claim.

The Senkaku/Diaoyutu Islands dispute between the PRC and Japan illustrates the importance attached to remote rocks and islands in EEZ, boundary and resource claims. The dispute intensified following further incursions into the Japanese EEZ west of the Senkaku,⁴⁹ a remote group of islands and rocks approximately 200 kilometres east of the Chinese mainland and south-east of Okinawa (see [Figure 9.1](#)) by Chinese marine

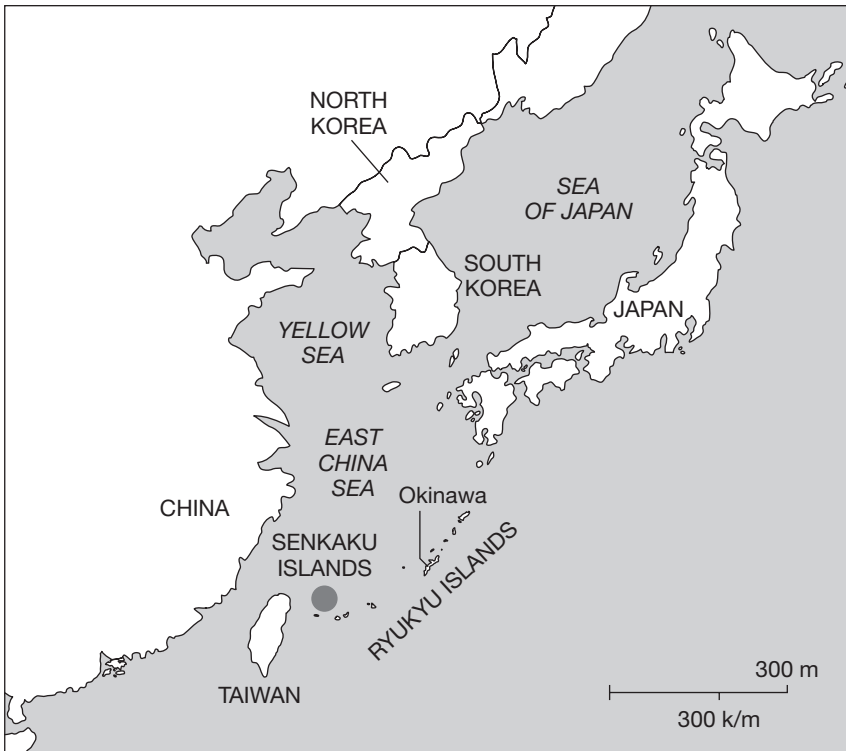


Figure 9.1 Senkaku Islands

research and naval vessels, and gas-well testing cutting into Japan's EEZ in the contested median line area.⁵⁰ Japanese countermoves included naval patrols, licensing, and the introduction of protective legislation on the lighthouse erected on the largest of the Senkaku group. The case illustrates a number of other interesting features, including the role of activists, organised protests and marine tourism as instruments of Chinese diplomacy in disputes.

The WTO: dispute settlement

The revised dispute settlement procedure (DSP) within the WTO, and its increasing use, are important changes from the previous GATT regime. The DSP is important in two different senses. While the process of dispute settlement has been greatly speeded up, with clear time lines, the threat of putting a dispute to the WTO can itself act as trigger for a negotiated solution, as parties seek to avoid political embarrassment or possible failure. In other instances, parties in a dispute may, after inconclusive or protracted negotiations, agree to keep a dispute out of the WTO framework (e.g. US–European aircraft construction contract dispute).⁵¹ Second, however, the WTO is now a vehicle for handling both an increasing range of disputes, involving a number of countries including Brazil, New Zealand, Norway, Australia and Canada. The WTO DSP has become an important vehicle in PRC diplomacy in its trade disputes with the USA, EU and more generally its strategy of multipolarity. In the main, the PRC has avoided overt trade controversy and so relied on joining others as a third-party complainant on issues such as US steel subsidies and intellectual property rights.

The following four examples illustrate some of the range of trade conflicts. First, in what may be regarded as a high-risk strategy with unknown consequences, states can seek authorisation from the WTO for retaliation against other states as a trade injury remedy. Canada, for example, initiated retaliation authorisation in three cases against the USA – over the so-called ‘Byrd Amendment’,⁵² softwood lumber subsidy and softwood lumber injury cases.

Second, Australia put an intellectual property rights (TRIPS) dispute with the EC to the WTO, over the protection of geographical indications (GIs), along with 12 other third parties, including Argentina, Brazil, Columbia, India, Mexico, New Zealand, the PRC and the USA. The Australia–EU dispute involved EU legislation over foodstuffs and agricultural products over terms such as ‘feta’ cheese and ‘Kalamata’ olives, or translations of geographical indications such as parmesan.⁵³ The WTO Dispute Panel concluded that the EC can determine any limitations on trademark rights only with respect to the territory of the EC.⁵⁴

Third, the WTO has dealt with a number of anti-dumping cases,⁵⁵ e.g. EU–India (cotton), Brazil (steel)⁵⁶ and US (steel).⁵⁷ In the latter case, brought inter alia by the EC, Japan, Korea, Switzerland, Norway and the PRC over the definitive safeguard measures adopted by the USA in the

form of increased duties on imports of several steel products (e.g. flat steel, rolled bar and stainless steel). The Panel decision was upheld on appeal, that the US measures violated Article 19:1 of GATT 1994.

The fourth example – the so-called ‘apples’ case – involved sanitary and phytosanitary (SPS) measures applied by Japan against US apples imported into Japan.⁵⁸ The Panel concluded, similarly to the anti-dumping cases above, that Japan’s justification for concern over the introduction (e.g. the disease ‘fire blight’, *Erwinia amylovora*) could not be reasonably sustained under Article 5.7 of the WTO SPS agreement, in that there was a large amount of science on the issue of risk, and that a precise risk assessment had not been carried out meeting the SPS criteria.⁵⁹

Ethical issues and International Standards

Universal norms in the field of international trade are relatively uneven in this area of international cooperation. At an international institution level, universal norms are most developed in, for example, the international labour fields and for transportation, although as in other areas, implementation is a varied national patchwork.

Ethical issues in international trade typically arise over issues such as loss of commercial market access or advantage and the cost of adherence to and enforcement of international regulations. Other examples include transactions with states with poor labour or human rights records, business practices, regulations of arms sales and other commercial activity with embargoed states.

The issue of illegal mining, its relationship to conflict funding and labour conditions, for example in the Democratic Republic of Congo, have proved intractable problems. Limited progress was made through the Kimberley process (authenticating sourcing, logistics tracking and mining conditions) negotiations. Above all, enforcement with respect to illegal traffic remains a major issue. Other efforts in, for example, the UN Security Council have included the extension of arms embargo regimes to include conflict minerals. The OECD has, apart from this, developed guidelines for the conduct of corporations in third countries.

International labour and environment standards have been developed by the International Labour Organisation (ILO) through a series of international conventions since the First World War, and through the specialised agencies of the UN (UNEP, IMO, UNIDO).⁶⁰ The trade-related international environmental norms discussed in [Chapter 11](#), pp. 208–14 (special areas, environmental safeguards, restoration, sustainable fisheries) influenced and extended through regional conventions (such as the Stockholm Environment convention, straddling fish-stock agreements), and bilateral agreements (e.g. on transboundary industrial pollution). As with labour condition regulations, the effectiveness varies both within and across regions.

In the field of international transportation, however, the link between international convention-driven standards and state practice is closest in the International Civil Aviation Organisation (ICAO) and maritime transport (IMO, ILO) sectors. In international shipping, international standards have been progressively developed from 1974 in safety, working conditions (ILO Convention 147)⁶¹ and vessel pollution control (MARPOL 73/78).⁶² Transportation by sea of dangerous and hazardous cargoes is regulated by the IMDG Code and other cargo codes.⁶³ The success of these conventions, at least between major trading centres, reflects the requirements for standardisation and international access. Unlike other convention areas, a key second factor is the enforcement regimes established under the Law of the Sea Convention, a near universal network of regional vessel inspection regimes, beginning with the Paris Memorandum (1982) covering North America and Europe, and extended in Latin America (Vina del Mar MOU), Far East (Tokyo MOU), Mediterranean and Black Sea.

Conclusion

This chapter has examined trade diplomacy through four main areas: multilateral and bilateral agreements; land disputes; and ethical issues in the conduct of international trade. The chapter highlighted in the discussion of WTO trade-round diplomacy two issues in particular: the time sensitivity of the talks (success decreases in relation to duration); and problems relating to the negotiating structures (Doha Round). These need: major overhaul to pull them out of narrow sectoral or technical formulae (agriculture) approaches; reduction in the ranges of topics covered; and less complex formats, with wider overarching negotiating areas, based on consensus procedures.

The second and third sections of the chapter explored the significant growth in importance of bilateral diplomacy and the wide range of content matter. Implementation of bilateral arrangements remains an issue in terms of control and ensuring effectiveness and avoiding ceremonialism. Bilateralism has also expanded as a result of the active diplomacy of the leading NEPs, with conclusion of both bilateral intergovernmental agreements as a subset of separate bilateral agreements with Regional Organisations. The second form – bilateral trade cooperation agreements *between* two regional organisations – has proved more difficult to develop. A linked theme running through these sections is the relationship between bilateralism and multilateralism. That is to say that whilst bilateralism brings benefits, it is nevertheless at the expense of multilateral rules and standards.

Trade is a central feature of diplomacy, rather than a discrete or distinct area of activity as under traditional diplomacy. For the diplomat, the task is to: assess constantly the relationship between national trade interests and the country's foreign policy; reconcile as necessary conflicting trade and foreign-policy interests; and ascertain the prospects and

possibilities for external trade cooperation and promotion. The expansion of international trade issues and the changing nature of how trade diplomacy is conducted requires foreign ministries to recruit or coopt additional technical and multidisciplinary personnel.

Notes

1. See Nicholas Bayne 'Economic diplomacy in practice: Domestic decision making', in Nicholas Bayne and Stephen Woolcock, *The New Economic Diplomacy*, (Ashgate, Farnham, 2011) 3rd edn, pp. 41–58; and, with Stephen Woolcock, 'The Future of Economic Diplomacy', *op. cit.*, pp. 359–77.
2. In the trade dispute between the USA and Japan over US exports of beef and citrus products, Japanese farming interests strongly lobbied the Agriculture Ministry and the Liberal Democratic Party's parliamentary farm committee to limit any quotas increase. The dispute brought the Japanese Agriculture and Foreign Ministries into dispute. In this instance, the tough line recommended by agriculture prevailed. See *Financial Times*, 4 April 1984.
3. *Financial Times*, 30 Jan. 1986.
4. Final Act embodying the results of the Uruguay Round, Marrakesh, 15 April 1994, UK Misc. no. 14 (1994) Cmnd. 2570.
5. *Basic Instruments and Selected Documents (BISD)*, vol. 3 (Geneva), p. 3.
6. Olivier Long, *Law and its Limitations in the GATT Multilateral Trade Negotiations* (GATT, Geneva, 1979).
7. *The Tokyo Round of Multilateral Trade Negotiations* (GATT, Geneva, 1979) and vol. 2, *Supplementary Report* (GATT, Geneva, 1979).
8. UK Misc. no. 21 (1979), Cmnd. 7658.
9. UK Misc. no. 26 (1979), Cmnd. 7663.
10. UK Misc. no. 27 (1979), Cmnd. 7664.
11. UK Misc. no. 25 (1979), Cmnd. 7662.
12. UK Misc. no. 24 (1979), Cmnd. 7661.
13. UK Misc. no. 20 (1979), Cmnd. 7657. The revision to these codes in the Uruguay Round, together with other amendments were carried over to become the main elements in the WTO system.
14. Long, *op. cit.*, p. 60.
15. UK Misc. no. 28 (1994), Cmnd.2556; UK Misc. no. 17 (1994) Cmnd.2559.
16. UK Misc. no. 15 (1994), Cmnd.2571.
17. See on WTO documentation [www.wto.org/english/docs_legal_e.htm].
18. See [www.wto.org].
19. See [www.wto.org/english/tratop_e/agric_e/negs_bkgrnd04_groups_e.htm] (WTO Agriculture Negotiations: countries, alliances and proposals).
20. The G-11 met at ambassadorial level, comprising the US, EU, Japan, Australia, China, India, Brazil, Argentina, South Africa, Mauritius. Much of the negotiations were conducted bilaterally between the US and China, India, Brazil.
21. See Fatoumata Jawara and Aileen Kwa, *Behind the Scenes at the WTO* (Zed Books, London) pp. 39–49.
22. See [www.wto.org/english/news04_c/dda_package_sum_28_29july04_e.htm]; and see *The Financial Times*, 30 Jan. 2006.

23. See Braz Baracuhy, 'Brazilian economic diplomacy: Agriculture and the WTO', in Nicholas Bayne and Stephen Woolcock, *The New Economic Diplomacy*, op.cit., pp. 354–5.
24. Under the transparency mechanism, RTAs falling under Article XXIV of GATT and Article V of the General Agreement on Services (GATS), RTAs falling under the Enabling Clause (trade arrangements between developing countries) are considered by the Committee on Trade and Development.
25. Statement by Robert Sisilo, Permanent Secretary of the Ministry of Foreign Affairs and External Trade, Solomon Islands, 8th Session Ministerial Conference, 15–17 December, 2011.
26. See Jawara and Kwa, op. cit., p. 86.
27. See [<http://avilacmg.wordpress.com/2011/02/18/>]. Brazil Proposes Greater Market Opening for Farm Products.
28. Brazil–Ghana DFI (Ethanol Plant) Agreement 2010.
29. Siyasat, Tehran, 7 March 2011.
30. EU–ASEAN (2009) and EU–MERCOSUR (2010).
31. EU–Korea Free Trade Agreement, 2010. See COM(2010) 136.
32. St. Lucia–Brazil Technical Cooperation Agreement, 26 April 2010. EU–South Africa Trade, Development and Cooperation Agreement, 11 October 1999.
33. Saudi Arabia–Japan Oil Storage Agreement, 14 June 2010.
34. Spain–Jordan Agreement on peaceful uses of nuclear energy, power generation and desalination, 2010.
35. Nigeria–India Pharmaceutical agreement, 20 March 2011.
36. [<http://allafrica.com/stories/201007080161.html>].
37. On the Ghana interim EPA (IEPA) see [twnafrica.org/index.php?inGhana-government-interim-epa]. For the domestic opposition to the agreement see Press Release, National CSO Platform, 28 August 2011, and [agritrade.cta.int/...EPAS/].
38. The Malaysia–Singapore dispute was the first case put to the WTO. *Financial Times*, 23 Feb. 1995.
39. See Daniel C. Esty, *Greening the GATT* (International Institute for Economics, Washington, DC, 1994), pp. 249–56; Richard H. Steinberg, *The Greening of Trade Law* (Rowman and Littlefield. Boulder, Colo. 2002).
40. See *International Trade Report* (Ministry of International Trade and Industry, Kuala Lumpur, 2004), p. 234.
41. See [<http://www.businesswheel.com/news/2011-12-6/>].
42. See J.K. Jackson, 'The Committee on Foreign Investment in the United States', Congressional Research Report R 33388. 29 July 2010.
43. See *Financial Times*, 16 Nov. 2011.
44. Lester R. Brown, 'The food issue: The new geographics of food', *Foreign Policy*, May–June 2011, pp. 58–61.
45. See [<http://www.mining.com>; www.globalwitness.org]. WTO dispute DS 431 (WTO, 2012)
46. See Chapter 18, pp. 405–7, 411 on fisheries access agreements with Angola.
47. [www.globalarabnetwork.com/301101308814.../morocco-russia-to-current-partnership-in-fisheries-sector.html].
48. See Daniel J. Dzurek, IBRU Boundary and Security Bulletin (April 1995) pp. 65–70; Foreign Policy (FP) August 15 2012
49. The Senkaku (Diaoyuta) are a group of eight uninhabited islands approximately 120 nm north-east of Taiwan, 200 nm east of the Chinese mainland,

and 200 nm south-east of Okinawa. Most of the islets are clustered around the largest island, Uotsuri/Diaoyu, which covers roughly 8 hectares and lies 170 km north-east of Taiwan and 410 km west of Okinawa. Two outlying islets, Kobi-sho/Huangwei Yu and Akao-sho/Chiwei Yu, are located 31 km and 108 km from Uotsuri/Diaoyu Island, respectively. Diaoyu is at 25°45'N 123°29'E. The elevations of the highest points of islands are: Diaoyutai 383 m, Beixiaodao 135 m, Nanxiaodao 149 m and Chongbeiyan 28 m.

50. Japan claimed the Senkaku Islands as official Japanese territory from 1896, part of the Nansei Shoto group. The Chinese claim the islands discovered in the 15th century and as part of Taiwan. The islands came under US control after the Second World War, and under the Agreement between Japan and the United States of America concerning the Ryukyu Islands and Daito Islands, 17 June 1971, reverted to Japan. See *Japan Times*, 23 Dec. 2004 for details of Japanese budget allocations for energy exploration.
51. *The Times* 18 May 2005.
52. United States Continued Dumping and Subsidy Offset Act (2000). See also Canada, [www.dfait_macc.gc.ca/tma_nac/disp/factsheet_en.asp; WT/DS/217/AB/R. WT/DS/234/AB/R].
53. See [www.dfat.gov.au/trade/negotiations/disputes/290].
54. See WTO, WT/DS290.
55. WTO, WT/DS141/AB/RW, 8 April 2003.
56. See Council Regulations (EC) no. 1784/2000, 11 Aug. 2000 (anti-dumping steel duty against Brazil, Czech Republic, Japan, PRC, Republic of Korea, Thailand), OJ EC no. L208, 18 Aug. 2000.
57. See WTO, DS248/AB/R. WT/DS259/AB/R, 10 Nov. 2003.
58. See WTO, WT/DS245/R, 15 July 2003 (Panel Report): WT/DS245/AB/R, 26 Nov. 2003 (AB Report).
59. Under the Agreement on the application of Sanitary and Phytosanitary Measures (SPS), a risk assessment must be carried out before measures are taken. The risk assessment must satisfy three conditions: identification of the diseases whose entry, establishment or spread the WTO member wants to prevent within its territory; evaluation of the likelihood of entry; and evaluation of the likely effects of SPS potential measures. See WTO, WT/DS 18/AB/R, 20 Oct.1998.
60. On the development of labour standards, see ILO Labour Standards and Merchant Shipping (ILO, Geneva, 1992).
61. Maritime Labour Convention (2006) (ILO, Geneva, 2006).
62. International Convention for the Prevention of Pollution from Ships (MARPOL 73/78) (IMO, London, 2013).
63. The general maritime shipping safety convention is the Safety of Life at Sea Convention (SOLAS) 1974 (as amended) (IMO, London, 2009). Part VI covers, for example, the Transportation of Dangerous Goods. Other Codes cover for example, containers (CSC) and solid bulk cargoes (International Maritime Solid Bulk Cargo Code) (IMO, London, 2009).

Chapter 10

Environmental diplomacy

In this chapter we shall be looking at some of the main characteristics of environmental diplomacy that have become apparent in the course of the increasing international attention directed at environmental questions over the past decade. Environmental issues have continued to move up the international agenda since the mid-1980s. As part of this process, an increasing number of bilateral, regional and global agreements and arrangements have been concluded by states, international institutions and other agencies. The characteristics of the negotiations will be discussed under four main headings: setting; the main players; process; and the form of agreements.

Setting

The first major post-war high-level global conference to discuss environmental questions was held in Stockholm in 1972.¹ Prior to that, environmental matters had in the main been handled through limited agreements, such as the 1911 Bering Sea Fur Seal Agreement (USA, UK, Japan and Russia)² or regionally, as in the case of the 1964 European Fisheries Convention.³ At an international level, examples of agreements include the International Convention for the Prevention of Pollution of the Sea by Oil (1954)⁴ and the Ramsar Convention concluded in 1971,⁵ which deals with protection of habitats. Most of the agreements concluded in the early pre-war and post-war years contained only two or three of the five necessary parts for effective conservation and management: jurisdiction, regulation and enforcement provisions, and not scientific advice or institutional implementation.

An important and continuing influence on the development of environmental diplomacy, apart from the Stockholm Conference, was the convening of the third UNCLOS in 1973.⁶ Although environmental issues were one of the number of complex issues before the conference, their inclusion within the jurisdictional context of the territorial sea, EEZ and

the seabed beyond the EEZ, known as the international area, furthered the process of considering environmental problems in the context of other multiple sea uses, such as navigation, fisheries, leisure, disposal and offshore oil exploration. In contrast, that part of the Stockholm process under the auspices of the United Nations Environment Programme (UNEP)⁷ has mainly tended to promote the negotiation of a number of regional and sectoral agreements, such as regional framework conventions with specific regional protocols, for example on combatting oil pollution⁸ or setting up special areas,⁹ and subregional marine scientific research projects.¹⁰ At the international level, initiatives and guidelines have included migratory species,¹¹ the Montreal Guidelines on Land Based Pollution,¹² ozone¹³ and transboundary movement of waste.¹⁴

International attention began to be increasingly focused on environmental regulation again at a global level from the mid-1980s. As in previous phases, renewed international activity is often brought about and influenced by major disasters. The short-run effect of adverse external events in catalysing diplomatic activity is in fact one of the main features of safety-related environmental diplomacy. Major incidents such as Chernobyl and *Exon Valdez* have the effect of dramatising a problem, galvanising non-governmental groups, and influencing calls for the revision of international codes and rules. Second, state practice – as evidenced in national administration, international guidelines and agreements – began increasingly to adopt a broader and more cautious approach to environmental conservation and management. This change reflected in part the shift in land planning and coastal-zone management approaches in some countries to incorporate integrative and multiple-use concepts. As a result, international agreements in this period are distinguished from most of those in the first decade after the Stockholm Conference by relating obligations to a variety of precautionary-type principles (e.g. best technology, environmental restoration, precautionary transfer and impact assessment) and changing procedures for the disposal of dangerous and toxic substances.¹⁵ The extent and consistency of implementation does, however, vary quite considerably; new disputes, mainly of an economic kind, have arisen over the obligations of developed countries, categories of most affected countries and institutional control over economic assistance.

A third development is the effect of scientific advancement on environmental initiatives and negotiations. The identification of serious new environmental problems associated with the ozone layer and ozone depletion, and the problem of global warming, have received widespread scientific acceptance within the international scientific community and given environmental issues a heightened urgency.¹⁶ The issues raised further major questions about the distribution of international responsibility and what assistance might be given to developing countries.

A fourth development, the United Nations Conference on Environment and Development (Rio Summit, 1992)¹⁷ has, despite limitations, brought

high-level attention to environmental issues. The follow-up process of national reporting and review meetings of the parties, which are a requirement of Rio agreements¹⁸ and similarly other related instruments, added to the momentum of environmental diplomatic initiatives, ensuring that the issue areas are kept to the forefront of international relations. In addition, the problem of inadequate environmental controls, for example over dumping at sea and defence-related waste, has been underlined in societies undergoing major political transition (e.g. the Russian Federation).¹⁹ Further, environmental destruction has been used as a politico-military technique in war and armed conflict, as in the destruction of Kuwait oilfields in the 1991 Kuwait occupation and the Iraqi destruction of the southern marsh Arabs' habitat, raising international concern over this form of environmental warfare.²⁰

Multilateral conference typology

Within the range of environmental diplomatic conferences, five broad types of process may be distinguished: collegiate, chair-led, fragmented (multilateral), fragmented (technical specialist core group) and informal.

In the collegiate category, the law-of-the-sea negotiations of 1972–82 have provided a basic master or model for much of subsequent contemporary multilateral environmental and other large-scale conferences.²¹ The stages of a collegiate-style conference can be represented schematically as follows:

1. Conference president/chairman (election)
2. Conference officers (bureau) (election)
3. Chairmen of main committees (appointed)
4. Plenary meetings
5. Formal working groups (reporting to chairs of main committees, president or plenary)
6. Informal working groups
7. Ad hoc groups of the conference (e.g. to address core outstanding issues, made up of selected states representing key interests)
8. Intersessional negotiations
9. Draft texts (e.g. informal negotiating text; revised composite negotiating text; draft convention)
10. Final closure sessions
11. Formal opening for signature

The concept of a collegiate conference is drawn from the idea of the amount of delegation given to the chairmen of the principal committees to create and promote draft texts within the committees, which are then put together to create a composite text for revision in order to create a single draft convention. This type of format has been adapted and used at general diplomatic conferences, like the London conference on the

Convention for the Prevention of Pollution of the Sea by Oil (MARPOL)²² and most UN specialised agencies, e.g. UNEP and the United Nations Development Programme (UNDP). The main modifications to the UNCLOS format have been the introduction of brief organisational and preparatory meetings, and, in a few instances, provision for ministerial negotiation.

Of the other indicative types, the fragmented multilateral conference is characterised by the absence of clear coalitions, limited bloc influence, and large numbers of uncommitted states. Major powers involved in fragmented negotiations will attempt to dominate as single actors rather than in coalitions, by influencing the agenda, and through specific interventions. An example of negotiations encompassing many of these features are the Montreal negotiations for a new agreement to replace the Montreal Guidelines on land-based sources of pollution.²³

Technical/specialist-styled negotiations managed by a core group are most frequently found in the negotiations conducted in the standing conferences and working groups of functional organisations such as the IMO, FAO, ICAO and IAEA. For example at the IMO, the specialist core group, common to plenary sessions of the Marine Environment Protection Committee (MEPC) and working groups, is made up of the USA, UK, Norway, Holland, France and Germany. In general, the G-77 as a coordinating body does not operate in these fora, and involvement by other states is mainly to protect or secure special interests (e.g. Turkey on the Turkish Straits, or Brazil to obtain exemptions or modified terms for older-type tanker tonnage).²⁴

In informal multilateral diplomacy, negotiations are conducted without extensive rules of procedure. Under these conditions, states tend to participate more on an individual rather than coalition or subregional group basis, as happened in the World Bank–Caribbean negotiations in 1993 to extend the global environment facility (GEF) to the wider Caribbean area.

Players in environmental diplomacy

Environmental diplomacy has involved an increasingly wide range of actors, including: new intergovernmental organisations, UN and other international institutions, secretariats, elected conference officials, NGOs,²⁵ as well as states.²⁶ The expansion of state members of the international community to nearly 190 means that, as in other forms of multilateral negotiations that have universal or near universal participation, the number of accredited delegates could be over 700, some two or three times the size of multilateral conferences in the first phase of multilateral environmental diplomacy (1972–9). Modern universality places major constraints on interpretation and other conference facilities,²⁷ location of meetings and logistics. Very few conference facilities at UN headquarters

in New York can handle multilateral conferences of this size at a time when New York is becoming a centre for non-standing multilateral conferences. In a sense, the United Nations is at breaking point. The physical effect of size on conference facilities has also affected the process of negotiations.

However, unlike earlier multilateral conferences, the actual accredited participation of nominally universal environmental conferences varies in practice quite considerably. In some instances, conferences on what might be considered issues of global importance have participation in the *negotiation* process of as few as 20–50 states (e.g. Vienna Convention for the Protection of the Ozone Layer²⁸ or UN intergovernmental negotiations on a land-based pollution convention),²⁹ although the participation level may rise during later negotiating phases as a convention or other instrument nears conclusion, and at the implementation stage itself as non-negotiating states accede to conventions. Those negotiations that have attracted high levels of accreditation and participation have generally been resource-related multilateral conferences, such as the UN Conference on Straddling and Highly Migratory Fish Stocks, or development-related, like the UN Conference on Sustainable Development of Small Island States.³⁰

Format

In the main, international environmental negotiations are conducted at a bureaucratic and technical level, rather than ministerial or political-leader. Ministerial involvement in ongoing technical-level negotiations is confined: to buttressing up a country's case; restating the negotiating position (particularly for domestic audiences); announcing a major change of policy; or negotiating broad policy objectives. In major international or global negotiations, ministerial involvement tends to be carefully orchestrated to provide for some involvement in the final phases leading up to signing an agreement. Exceptions with sustained ministerial involvement occur in those cases in which states are involved in serious regional disputes or have vital specific interests (e.g. Canada – Grand Banks fisheries; Russian Federation – overfishing, Sea of Okhotsk). Occasionally, too, ministers may play important brokering roles in the event of impasse (e.g. Germany at Rio on financial provisions).³¹ Since Rio, a further development has been the attempts to enhance heads-of-government or ministerial involvement by making provision for a heads-of-government general debate on current and long-range issues during a special section of the negotiations. This technique, styled the 'high-level segment', was used, for example, at the 1994 Barbados session of the Global Conference on Sustainable Development of Small Island Developing States,³² taking the theme 'Forging Partnerships for Sustainable Development'. So far, the technique, which has been mainly used in Rio-related multilateral diplomacy, has had only limited success because of non-participation by some

major players,³³ differing levels of ministerial participation and the tendency for this type of forum to become a de facto plenary for restatement of known positions.

Stakeholders

In multilateral diplomacy, one way of understanding the differing interests and degrees of involvement is through the concept of 'stakeholder'. Stakeholders are those states and other actors that seek to safeguard or enhance particular concerns or sets of interests over and above general or minimal interest in the proceedings of a conference. Stakeholders may seek negative or positive outcomes.

Five types of stakeholders can be distinguished: personal, international institutional, treaty, special interest, and substitution interests.

In the first category are stakeholders who are national diplomatic representatives or international civil servants who regularly act as multilateral conference office-holders or in secretariats. Diplomatic representatives of a number of smaller countries, such as Cape Verde, Fiji and Tanzania, have been particularly associated with ongoing or long-running conferences. The Law of the Sea Conference, for example, continued in reduced form with meetings on the disputed deep seabed mining provisions (Part 11)³⁴ in the Preparatory Commission for 10 years after the opening for signature of the Convention in 1982 until the major overhaul of UN activities undertaken by the UN's Secretary-General Boutros-Ghali.

International institutions, through their permanent secretariat staff, develop a variety of agenda-setting, financial, budgetary and project stakes.

In the third category, states may develop stakes as a result of initiating or hosting an initial diplomatic conference that negotiates an agreement which is subsequently either amended or reviewed. For example Canada was active and hosted the Montreal Protocol negotiations on ozone-depleting substances (CFCs),³⁵ as well as other related environmental negotiations. An interesting example of an unsuccessful Canadian initiative is provided by the 1994 review negotiations for an international convention on land-based sources of pollution. The initial negotiations, which produced best practice guidelines for dealing with land-based pollution (Montreal Guidelines), had been hosted and actively influenced by Canada in 1985. However, Canada was unable during the review negotiations to prevent the USA forcing the Montreal Guidelines to be abandoned as a basis for negotiation,³⁶ and had to accept US pressure to alter the agenda to one of financial mechanisms for assisting developing countries.

In the fourth stakeholder category, states often approach environmental negotiations with special interests. These might include problems arising from a nuclear power plant in a neighbouring state, desertification, transboundary pollution; or, conversely, powerful domestic lobbies (e.g. petrochemical, chemical or logging industries) which seek to limit or modify environmental legislation. An example of a new alliance of

special interests is provided by the Vatican, Saudi Arabia and Iran, set up to oppose or block population control proposals at the UN Global Conference on Population, held in Cairo in 1994.³⁷

In the fifth category of stakeholder are those actors that seek substitution goals. These might be negative, as in the previous example. Alternatively, substitution goals can take the form of attempting to focus the agenda of a diplomatic conference away from primary regulations or regime-building issues, to implementation questions such as review conferences, institutional arrangements or financial mechanisms. These tactics feature heavily in Swedish diplomacy, which has consistently sought in specialised standing technical diplomatic conferences and other fora to redirect the agenda to technical assistance mechanisms (consultants, studies, working groups and financial funds) in support of Sweden's high national interest in development diplomacy.³⁸

Delegations

A notable feature of environmental diplomacy in non-standing international conferences is the considerable variation in the size and composition of delegations, which is more accentuated than in other types of multilateral diplomacy. In part, this is due to the fact that environmental questions tend to be handled at an international level by representatives from diverse ministries such as fisheries, parks and recreation, tourism and scientific research institutes, rather than by fully fledged environment ministries. This tends to have the effect of narrowing perspectives and restricting contributions, particularly from developing-country participants, which are generally more active and comfortable on broader issue-based rather than environmental diplomacy, such as international declarations and programmes on sustainable development.

Which ministry is the lead ministry for sessions of a conference can be a source of dispute. In those instances in larger delegations where the departmental leadership of a delegation changes, there is often an alteration of style and emphasis in the way negotiations are conducted. Thus, the foreign ministry may place greater emphasis on national security considerations, political relations with other states and the tactics of diplomacy, than the specialist ministry. Changes between lead specialist ministries are less frequent and will affect priorities and interests. During negotiations, for example, at the Marine Environment Protection Committee of the IMO on special areas, the lead changed from the US coastguard (usual delegation leader), to National Oceanic and Atmospheric Administration (NOAA). As a result, the US position became for a brief period much more sympathetic to the concept of marine special areas.³⁹

The overall impact of a delegation will vary depending on factors such as negotiating past history, diplomatic skills, contribution to the intellectual process of negotiation and formal or informal committee roles. In some instances, limited resources may mean that a delegation's input

is deliberately restricted, for example to the legal field (e.g. Kenya and Singapore). Larger states such as the USA, the UK and the Netherlands have acquired roles, in addition to their traditional technical input, as treaty-drafting specialists,⁴⁰ invariably serving on drafting committees. In other instances, impact is achieved by acquiring the role of roving envoy or regional spokesman.⁴¹ For example, Indonesia's roving ambassador Hasim Djalal, who has responsibility for all maritime issues in international fora, has acquired a diplomatic reputation for performing with some skill the role of interlocutor, probing the meaning of draft international agreements, while avoiding discussion of Indonesia's position.

Finally, we should note the phenomenon of nominal or symbolic accreditation. Although a diplomatic conference may have, for example, one hundred states accredited, the actual participation level (measured by attendance throughout the conference and input) by accredited representatives will vary considerably. Minimal or token participation is usually associated with delegations exclusively made up of representatives of a permanent mission accredited to an international organisation.⁴²

International institutions: stakes and influence

In environmental and other diplomacy, international institutions carry out a number of roles. These include agenda setting, liaison, initiating studies, assisting working groups, sponsoring draft articles, brokering compromises, and overseeing the administration, review and amendment (if any) of conventions.

These roles, which amount to more than oiling the wheels of diplomacy, are often of decisive importance, and are generally undertaken in conjunction with elected or nominated conference chairmen or presidents, the chairmen of the principal committees of a conference and elected office-holders (e.g. regional group conference vice-presidents). The latter constitute the bureau of a diplomatic conference, which may be expanded on an ad hoc basis with the addition of other states.⁴³

In the course of the evolution of contemporary environmental diplomacy, international institutions have developed through their officials and chief executives, interests, doctrines and programme stakes. Such interests are analogous in some ways to departmental stakes in bureaucratic-politics theory. They are only in rare circumstances (e.g. a very narrow technical subject on which there is consensus) epistemic,⁴⁴ but rather personal, technical and managerial, and linked to the generation of international institutions' funding and programme budgets. In personality terms, leading figures such as Mostapha Tolba (UNEP) have done much to promote ideas about the international management of the environment, and to promote major programmes as well as harness support for the negotiations of a specific convention, such as Tolba's role in the Vienna and Montreal Protocol negotiations.⁴⁵ Specific international institutional interests are seen most clearly in pre-conference discussions

over which international institutions should have responsibility for initiating and managing negotiations. At the pre-conference and initial phases of negotiation, international institution interests are seen in secretariat-sponsored draft compilation or negotiating texts.⁴⁶ Nevertheless, secretariats are not always successful in having their texts used as a basis for further elaboration or negotiation. In the Forest Principles negotiations or Rio, for example, the secretariat text was not used; nor, secretariat texts at the Manila session of the UNFCCC Climate Conference.⁴⁷

International institution interests are evident in those parts of negotiations that are concerned with ongoing funding arrangements for a convention, including programme and permanent secretariat measures, which are generally among the main sources of conflict between North and South. Further, international institutions have become increasingly associated with the implementation of conventions. The institutional responsibility for and control of the management of the Barcelona Convention (Mediterranean) was a source of considerable acrimony between the UN's Food and Agriculture Organisation (FAO) and UNEP.⁴⁸ In a similar sense, international institutions may seek to use their existing competence within one convention to challenge and acquire responsibilities that come under another international organisation. For example the Basel Convention secretariat, with responsibility for aspects of transboundary movement of hazardous waste,⁴⁹ in seeking to broaden its jurisdictional boundaries came into conflict with the IAEA and IMO.

Multilateral process

Before we look at some of the specific features of the dynamic of environmental conference diplomacy, two general features of the process will be discussed: the effects of the rule of consensus, and the growing pluralism of actors and interests.

Consensus

For the most part, multilateral conferences since the 1970s have been conducted on the basis of the rule of consensus rather than unanimity or voting. The rule allows for voting only after all attempts to reach agreement on the basis of discussion have been explored. Thus, the consensus rule operates on the fiction that there is an emerging measure of support for a proposal or elements of a draft text. Negotiations continue on the basis of attempting to create wider consensus and construct *apparent* areas of agreement. In this way, the operation of the rule of consensus sometimes tends to disguise or postpone significant areas of disagreement. This inevitably means that negotiations are lengthy, even within fixed time frames or deadlines. As a result, under the consensus rule,

more and more business has tended to be conducted within the informal conference plenary, with fewer working groups and greater reliance on chairmen's consultations and so-called contact groups. A second, related fiction is that of broad consultation with delegations by the conference chairman to reduce differences. In practice, consultation may be selective and unequal for reasons of time and momentum. This tends to reinforce one of the central paradoxes of the consensus rule: that negotiations appear to be based on widespread agreement, whereas the depth of support at a multilateral conference is never really known.

Blocs and groups

The development of multilateral diplomacy has been marked by increasing pluralism and the decline of large traditional groups or blocs. Negotiations tend to be more personal, technical and pluralistic. In only relatively few instances can they be conceptualised as being epistemic, such as the initial ozone negotiations.⁵⁰ This is because of the complexity of issues, differing levels of representation at multilateral conferences, and the growing tendency as noted above to use representation to conferences from permanent missions. While traditional UN groupings continue, such as the Afro-Asian bloc, these have lost much of their significance as vehicles for substantive caucus or coordination, as regions splinter and redefine their membership and purposes. However, North-South divisions within multilateral conferences remain marked, but the groupings within these have changed over the past decade. In the South, the G-77 has found it increasingly difficult to operate as a clearing and coordinating group in environmental and other diplomacy because issues have become more technical and scientific and less susceptible to political brokerage or politically derived 'package' solutions. New subregional interests have emerged, like the Alliance of Small Island States which disputed the process and agenda promoted by 'established' (Latin American) members of the G-77 in the run-up to the Barbados Conference on the Sustainable Development of Small Island States in 1994. Other alliances have been created across regional groups, such as at Rio by Malaysia, India and Brazil to defeat a legally binding international agreement on forest management. While the G-77 has retained much of its coordinating structure, which is principally made up of the active core G-77 permanent mission ambassadors in Paris, Rome, Geneva and New York, the agenda coordinated by these chapters tends to focus now on periodic large-scale UN conferences (such as Sustainable Development or Habitat II) rather than detailed clearing of texts on South-South trade or technical cooperation negotiations.⁵¹

Within the developed states, loose informal consultation on environment and maritime-related matters has continued since the initial law-of-the-sea negotiations, with annual meetings and intersessional exchanges between members of the G-5 (now plus Germany).⁵² Of the former Soviet

Union allies, the socialist bloc itself has ceased to exist and is no longer a grouping for representation and other purposes in the UN system and in international agreements, following the collapse of the Soviet Union. The break-up of the bloc has weakened Russian Federation diplomatic capabilities. Concern over this led the Russian Federation to try and retain separate representation for Eastern Europe in the International Seabed Authority, during the final negotiations in 1994 to revise the Law of the Sea Convention.

In contrast, the EU has emerged as a bloc actor in multilateral conferences. The role of the EU Commission, to negotiate on behalf of member states in areas in which it has competence, has progressively expanded since the Maastricht Agreement into an increasing range of functional diplomacy. In general, the capacity of individual EU member states to conduct international environmental and other negotiations has as a result been severely constrained. Unless there is mixed or joint competence, EU members are represented by the Commission. In multilateral diplomacy EU member states cannot separately initiate draft proposals or intervene in debate outside the common line, (frequently lowest common denominator), making broker roles more difficult.

The expansion of the role of the EU, corresponding to changes in its competence, has fundamentally altered the dynamics of multilateral conferences, after removing key European players, limiting negotiating flexibility, and making it more easily open to attack as a large *bloc* e.g. in UNFCCC climate negotiations from NEPs and other states seeking less binding or special treatment for carbon emission commitments. An indirect effect of the EU as a bloc actor is on altering issue attention to sub or sector issues. To some extent the interactions shift in environmental diplomacy to middle rank actors, such as Canada, Norway, Australia, Mexico and other smaller non-EU countries including Chile, Papua New Guinea and members of the small island state group AOSIS.

Other important developments include the role of the BRICS group (minus Russian Federation) and the creation of ad hoc core groups (e.g. US with the New Economic Powers) acting as a conference driver.

The dynamic of environmental negotiations

The momentum of an international conference is the function of several factors, such as the role of conference and committee chairmen; the drafting and refining role of ad hoc and formal working groups in identifying compromise formulae on focal points, or providing draft text on specific areas of difficulty; and the concession rate.

The chair of a multilateral conference, with the support of the secretariat, can influence the momentum of negotiations in a number of ways, such as agenda setting, the conference timetable, and drafting texts and consultations with delegations. One of the main difficulties the chair faces in the course of chair-led negotiations is developing a distinctive or

personal negotiating text that is seen to be sufficiently neutral or distinctive from any text sponsored by a lead delegation or other group. Failure to maintain 'neutrality' can lead to substantial conflict and deadlock. In loose collegiate and fragmented multilateral conferences, the chair is generally less able to carry out the kind of roles discussed.

Other techniques developed to assist momentum are the use by the chair and states of reference points (e.g. provisions of Agenda 21), or borrowing from concepts and definitions from other agreements or codes. In some instances, however, the reference point or 'transferred' definition has the opposite effect. Rather than unifying or expediting, it has become a source of controversy.

Another notable feature of recent multilateral conference diplomacy is the use of non-papers and informal conference papers, in part in response to the complexity of environmental diplomacy. The use of non-papers and informal papers also coincides with the transformation and general loosening of group and bloc structures to more individual diplomacy and non-traditional links. Most importantly from the perspective of process, informal papers have to a considerable extent replaced the technique of individually or collectively sponsored draft articles, which typified multilateral negotiation up to the early 1980s. The technique assists particularly in the preparatory phase of negotiation in that provision for informal technical studies, outline agenda of priorities and other similar informal papers enables participants to have their ideas annotated in either the formal draft agenda or in a composite secretariat text. In the course of negotiations, informal papers submitted by delegations assist momentum in that parts of the informal paper may be periodically incorporated into an evolving draft text, possibly by the conference chairman, keeping participants committed to the consensus process.

Concession and compromise

One of the main causes of lack of momentum and deadlock in environmental diplomacy is the tendency to rely heavily on bracketing throughout the course of negotiations to indicate that certain parts of a text are unacceptable.

Other important related source of difficulty in environmental negotiations are the potential range and complexity of issues over which there is disagreement. These might be single issues, such as the conflict between African states and other members of the G-77 over priority for Africa in desertification negotiations (UNCCD), or one of several critical subareas of disagreement on a list of outstanding issues. Environmental negotiations, too, have recurring focal points of critical disagreement, such as financial arrangements (including eligibility for access to special funds) and control regimes for implementing environmental agreements. For example the draft financial provisions of Agenda 21 came from the preparatory working group to Rio with over 40 G-77 amendments.

Focal points, too, may often be quite specific. Protracted disputes have occurred over the meaning of a single word, such as the effect or meaning of inserting the word 'including' in the financial mechanisms section of Agenda 21. A further distinctive feature of environmental diplomacy is that financial disputes have led to the *extension* of disputes over 'categories of countries' or special cases.

Loss of momentum or deadlock can also occur as a result of the effect of increased political and technical knowledge about issues, and other delegations' positions, gained during the course of negotiations. This is evident especially in those parts of a negotiation in which attempts are being made to develop new concepts or international institutions. As the ramifications of proposals are better understood, delegations reappraise positions and as a result table amendments or perhaps withdraw earlier proposals.

In the event of deadlock, techniques have been developed in multilateral diplomacy to attempt to construct widely acceptable solutions. These include the appointment of a specific delegate to broker compromise formulae; contact groups; closed sessions of heads of delegations; and innovative revised texts sponsored by the chair. In addition, the constraints on the frequency and duration of non-standing multilateral conferences have meant that in a number of environmental conferences several all-night sessions have become the norm and several crucial issues have been postponed or deferred to the final meeting, or, if permitted, a follow-up 'implementation' or review conference.

It is also interesting that package-deal-type approaches are seemingly inappropriate or not particularly evident in environmental diplomacy. In part this results from the time constraints noted previously. Insofar as some environmental negotiations have become 'end run' (i.e. crucial issues stacked for the final meetings or postponed), it is difficult or impossible to use 'bottom-up' or package-deal strategies because of the complexity of issues and time constraints. Nor indeed may the idiom be understood by some delegations in a pluralistic and heavily divided North and South negotiating environment. Rather, the process of 'soft' law making increasingly relies on codes, variations of framework agreements, or simply language that defers a solution.

International environmental agreements and other measures

A variety of formal instruments such as treaties, agreements, conventions and protocols, as well as informal instruments such as codes, guidelines and declarations, have been used to create binding and non-binding rules. The choice of instrument is generally determined by such factors as the context of negotiations, purposes, number of parties, and above all the nature of the obligations undertaken. The growing use of qualified

language in international environmental agreements has given rise to the distinction between so-called 'hard' and 'soft' law. The use of phrases such as 'as appropriate', 'according to developing country capabilities',⁵³ and 'as far as possible'⁵⁴ reflect the need for accommodation, compromise and meeting particular interests, especially in a North–South context, without which international agreements in these areas would be less likely or impossible to reach. The process of balancing conflicting interests also underlines the point that the negotiation of environmental agreements, as with other forms of treaty negotiation, is essentially a textual process of attempting to have incorporated in draft agreements the interests and agendas of the respective protagonists.

Apart from the above developments, environmental diplomacy is also distinguished by the increased use of informal administrative or good-governance-type instruments such as declarations, codes, guidelines and action plans. These are generally non-binding and their growing use has been influenced by several features of current environmental diplomacy. First, the non-binding nature of the instrument facilitates reaching agreement on the basis of a lowest common denominator. That is some states that would not have accepted obligations in binding treaty language nevertheless are prepared to go along with non-obligatory documents, which are no more than a set of, for example, administrative recommendations on best practice, like the Authoritative Statement of Forest Principles.⁵⁵ Only rarely are codes upgraded into formal treaty instruments, such as the International Maritime Organisation Dangerous Goods Code.⁵⁶ Even then it is not clear which existing parties to the convention are applying the code in a mandatory manner through appropriate national legislation and enforcement. Implementation of soft law is generally weak.

Second, the use of informal instruments has been particularly influenced by the operating styles of international institutions and other agencies within the UN system. The UNEP has frequently used the formula of preparatory meetings followed by action plans. UNEP has also influenced the use of the concept of 'framework' conventions, which depend for implementation on subsequent sectoral agreements by the parties. Framework conventions have the advantage of laying the groundwork or 'kick-starting' environmental cooperation, and have become a feature of UNEP operating style, as in the Barcelona Convention. The growing practice of using framework conventions is further illustrated in the Rio Convention on Climate Change, which incorporates the term 'framework' within its title.⁵⁷ In this instance the use of 'framework' reflected the reluctance of some countries, for example the USA, to see (at least at Rio) specific timetables and commitments, favouring other fora and an 'all sources, all sinks approach'.⁵⁸

Third, codes and guidelines are being used as good governance instruments, which can be applied to problems quickly, rather than treaty instruments, which may be delayed through slow entry into force. Such

thinking lay behind Canadian and other support for the 1993 FAO Code of Conduct on Responsible Fishing,⁵⁹ in view of acute overfishing problems of the Newfoundland Grand Banks area.⁶⁰

Fourth, the process of selecting and adopting environmental agreements is influenced by the use of reference points, similar to focal points in negotiations, which become an authority or guide for negotiations in that they create parameters and have spill-over effect. Examples of documents, codes and guidelines in this category are UN General Assembly resolutions (e.g. Resolution 47/180), convening a conference on Human Habitats (Habitat II)⁶¹ and Agenda 21.

Notes

1. Report of the United Nations Conference on the Human Environment (UNCHE), Stockholm, 5–16 June 1972 (New York, 1973), UN Doc. A/CONF. 48/14/Rev. 1. The Declaration of Principles, Action Plan and Resolution on Institutional and Financial Arrangements are reproduced in 11 *ILM* (1972) 1416, 1421, 1466. The 27th session of the UN General Assembly approved the measures 116 in favour, none against and 10 abstentions.
2. 104 BFSP (1911) 175. For details of historical disaster diplomacy, see also Anthony Best, *On the Fringes of Diplomacy*, (Ashgate, 2011).
3. See R.P. Barston and P.W. Birnie, *The Maritime Dimension* (George Allen & Unwin, 1980).
4. International Convention for the Prevention of the Pollution of the Sea by Oil, 1954.
5. Convention on Wetlands of International Importance, 3 Feb. 1971, held at Ramsar, Iran; 11 *ILM*, p. 963. For an outline of the work of the Convention, see P.W. Birnie and A. Boyle, *International Law and the Environment* (Clarendon Press, Oxford, 1992) pp. 465–70.
6. See J.K. Sebenius, *Negotiating the Law of the Sea* (Harvard University Press, Cambridge, Mass., 1984); Robert L. Friedhiem, *Negotiating the New Ocean Regime* (University of South Carolina Press, Columbia, S.C., 1993).
7. For an assessment of the significance of the Stockholm Conference, see Lawrence Caldwell, *International Environmental Policy: Emergence and Dimensions*, 2nd edn (Duke University Press, Durham, N.C., 1990), chs 2 and 3; and Louis Sohn, 14 *Harv ILJ* (1973) pp. 423–515.
8. In the Mediterranean, Barcelona Convention, 16 Feb. 1976, in force 12 Feb. 1978; Persian/Arabic Gulf, Kuwait Regional Convention, 23 April 1978, in force 1 July 1979; Gulf of Guinea, Abidjan Convention, 23 March 1981, in force 5 Aug. 1984; in the Southeast Pacific, Lima Convention, 12 Nov. 1981, in force 19 May 1986; in the Red Sea and Gulf of Aden Environment Convention (with Protocol Concerning Combating Pollution by Oil and Other Harmful Substances in Cases of Emergency), Jeddah, 14 Feb. 1982, in force 20 Aug. 1985; in the Caribbean, Cartagena Convention (with Protocol), 24 March 1983, in force 11 Oct. 1986; in the Indian Ocean and East Africa, Nairobi Convention (with Protocols, Protected Areas and Wild Fauna and Flora and Combating Marine Pollution in Cases of Emergency), 21 June 1985, entered into force 30 May 1996, parties – Comoros, France (La Réunion), Kenya,

- Madagascar, Mauritius, Mozambique, Seychelles, Somalia, United Republic of Tanzania, South Africa; and in the Southwest Pacific, the Noumean Convention (with Protocols, Oil Pollution and Dumping), 25 Nov. 1986.
9. See R.P. Barston, 'Weighing the risks and changing the rules', *Seaways*, Aug. 1993, pp. 8–10.
 10. See, for example, Monitoring Programme of the Eastern Adriatic Coastal Area, *Report 1983–1991*, MAP Technical Reports, Series No. 86, UNEP, Athens, 1994. In 1989 at the Sixth Ordinary Meeting, Athens, the Barcelona contracting parties agreed to abandon the monitoring and research approach carried out from 1976 to 1989, which had included programmes on, for example, oceanographic processes, eutrophication, plankton blooms and pollutant transfer processes, instead shifting the emphasis to effects and techniques useful for establishing environmental quality criteria: measurement, modelling and prevention controls. See *Final Report on Research Projects Dealing with Toxicity of Pollutants on Marine Organisms*, MAP Technical Reports, Series No. 79, Athens, 1994. The limitations of regional monitoring are discussed in MAP Technical Reports, Series No. 81 (pp. 4–11), which notes low participation, lack of regularity and weakness in sampling procedures.
 11. Bonn Convention on Migratory Species (1979).
 12. Montreal Guidelines on Land Based Pollution, UNEP General Council Decisions 13/18 (II), 24 May 1985; revised as Washington Global Action Plan, 1995.
 13. Vienna Convention for the Protection of the Ozone Layer, 1985. See D. Freestone and R. Churchill (eds), *International Law and Global Climate Change* (Graham & Trotman, London, 1991); B. Benedict, *Ozone Diplomacy* (Cambridge, Mass., 1991); J. Brunée, *Acid Rain and Ozone Depletion* (Dobbs Ferry, N.Y., 1988), pp. 225–54.
 14. Cairo Guidelines on Waste Management, UNEP General Council Decision 14/30, 17 June 1987.
 15. For a discussion of this and other external factors shaping coastal zone management, see R.P. Barston, 'International dimensions of coastal zone management', *Ocean and Coastal Management*, 23, 1994, pp. 93–116.
 16. Benedict, *op. cit.*, ch. 1.
 17. For commentary and documents see Stanley P. Johnson, *The Earth Summit* (Graham & Trotman, London, 1993); M. Grubb, *The Earth Summit Agreements* (Royal Institute of International Affairs, London, 1993).
 18. The Rio agreements and instruments comprise the Framework Convention on Climate Change, A/AC.237/18 (Part II) Add. 1, 18 May 1992 (Johnson, *op. cit.*, pp. 59–102); Convention on Biological Diversity, 5 June 1992 (Johnson, *op. cit.*, pp. 82–102); Rio Declaration on Environment and Development, A/CONF.151/5 Rev. 1, 13 June 1992 (Johnson, *op. cit.*, pp. 118–22); Authoritative Statement on Forest Principles, A/CONF.151/6 Rev. 1, 13 June 1992 (Johnson, *op. cit.*, pp. 59–102). Agenda 21 (Programme of Action for Sustainable Development) is reproduced, along with the Rio Declaration and Authoritative Statement of Forest Principles, in *Agenda 21* (UNDPI, E.93.1.11).
 19. See David Scrivener, 'Environmental co-operation in the Euro-Arctic', *Environmental Politics*, vol. 4, no. 2, Summer 1995, on Norwegian–Russian Federation bilateral environmental cooperation, pp. 320–7.
 20. Following the Gulf War, the Security Council set up a Compensation Commission under Security Council Resolution 692 (1991) to review com-

- pensation claims resulting from Iraq's invasion and occupation of Kuwait. The first major large claim of \$950 million was submitted by the Kuwait Oil Company for reimbursement of the costs of extinguishing hundreds of oil wells set ablaze by Iraqi forces. See UN/IK/2367/25 Aug. 1994.
21. See UNEP/MG/IG/1/1/Add. 1, 6 April 1994.
 22. International Convention for the Prevention of Pollution from Ships (MARPOL 73/78) (International Maritime Organisation, London, 1992).
 23. UNEP/MG/IG/I/3, 29 April 1994; UNEP/MG/IG/I/L/I, 9 June 1994. See [Chapter 9](#) for case study of the Montreal review negotiations.
 24. See [Chapter 4](#), p. 66 for further discussion of this point on special interests in the context of the international negotiations at the IMO on international standards for ferry safety.
 25. For a valuable discussion of transnational actors and international institutions, see Peter Willetts, *Transnational Actors and Changing World Order* (International Peace Research Institute, Meigaku, Occasional Paper Series, No. 17, 1993).
 26. See 'Report of the Secretary-General', A/C.5/48/26 and Add. 1, and 'Report of the Advisory Committee on Administrative and Budgetary Questions', A/48/7/Add. 7; A/RES/48/259, 1 Aug. 1994 on the request to the secretary-general to keep special representatives and envoys to a minimum.
 27. For example, the Ad hoc Committee on the Indian Ocean; Commission on Sustainable Development; Commission on Human Rights, held 1,163 meetings. These were respectively New York 441; Geneva 629 and Vienna 93. See A/AG.172/159, 8 Aug. 1994, annex 2, p. 21.
 28. 26 *ILM* (1987) 1516, 1529; Benedict, op. cit., pp. 44 and 69.
 29. Global Programme of Action, UNEP/LBA/IG. 2/7 (1995), [ch. 10](#).
 30. A/CONF.164/INF 11, 18 April 1994.
 31. The then German environment minister Klaus Töpfer chaired the ministerial-level negotiations on forest principles. See Johnson on Töpfer's role, op. cit., pp. 109–10.
 32. A/CONF.167/3, 31 March 1994, para. 15.
 33. At the Barbados Conference, those states not sending heads of government or ministers to the High Level Segment included France.
 34. United Nations Convention on the Law of the Sea 1982. United Nations Sales No. E83 V5. The Preparatory Commission discussions included topics such as financial arrangements for the start-up of the Authority; licence arrangements; transfer of technology provisions and constitutional questions relating to representation and voting. For a summary see *Ocean Policy News*, vol. xi, no. 1, March 1994; and vol. xi, no. 3, June 1994. The modification to Part XI of the 1982 UNCLOS, known as the so-called 'Implementation Agreement', which made it possible for major powers such as the USA, Germany and the UK to accept the overall Convention, can be found in Fiji's draft resolution on the Agreement relating to the implementation of Part XI, A/48/L60, 22 June 1994.
 35. Canada was a member of the IG 'inner group' of heads of delegations convened by UNEP's Mostapha Tolba to formulate proposals on CFC controls during the negotiations prior to Montreal. See Benedict, op. cit., p. 72.
 36. The initial agenda for the land-based pollution negotiations had been drawn up by UNEP with the clear intention of the Conference using the Montreal Guidelines (1985) as a base text for the creation of a new agreement. See UNEP/MG/IG/1/2, 29 April 1994.
 37. *The Times*, 15 Aug. and 5 Sept. 1994.

38. At the opening session of the newly established International Maritime Organisation (IMO) Flag State Implementation Committee in 1993, Sweden threatened to withdraw its contributions to the IMO if the work of the new committee did not principally focus on technical assistance, rather than other questions such as reforming classification societies, favoured by Germany, Norway, the UK and the USA.
39. For an outline of the role of the environmental NGOs at the IMO, including the special areas debate, see G. Peet, 'The role of environmental non-governmental organisations at the Marine Environment Protection Committee (MEPC) of the IMO and at the London Dumping Convention', *Ocean and Coastal Management*, vol. 22, no. 1, 1994, pp. 3–18.
40. See Jill Barrett's account, for example, of the UK role in preparing the 'Base Negotiating Text' for the Washington session of the intergovernmental negotiating committee of the Climate Change Convention, in Freestone and Churchill, *op. cit.*, pp. 187–93.
41. At the August 1994 session of the UN Conference on Straddling Stocks and Highly Migratory Species, Ambassador Djalal lobbied, with support from the conference chairman Nandan (Fiji), to have the date of the fifth session of the conference altered to put it back to back with the formal opening of the new United Nations Deep Sea-bed Mining Committee.
42. For example at the third session of the UN Conference on Straddling Stocks and Highly Migratory Fish Stocks, 14–31 March 1994, 38 of the states accredited were represented by diplomats from their permanent missions. Of these, nine (Barbados, Belarus, Cape Verde, Congo, Estonia, Ivory Coast, Madagascar, Zambia and Zimbabwe) were not represented at the fourth session (15–26 August 1994). See A/CONF.164/INF 11, 18 April 1994.
43. The functions of the conference bureau include the strategic management of a diplomatic conference, consultation with contact groups and promoting compromise proposals. For example at the final session in Paris (6–17 June 1994) of the intergovernmental negotiating committee for the elaboration of an International Convention to Combat Desertification (INCD), the expanded bureau established a contact group of eight developed and eight developing countries to try and resolve the deadlock over the provisions in the draft text on international financial resources for combating desertification, A/AC.241/2.19, 7 June 1994.
44. See Emmanuel Adler, *International Organisation*, vol. 46, 1992, p. 101; M.J. Petersen, 'Whalers, cetologists, environmentalists and the international management of whaling', *International Organisation*, vol. 46, 1992, pp. 148–86; Peter M. Haas, 'Banning chlorofluorocarbons: epistemic community efforts to protect stratospheric ozone', *International Organisation*, vol. 46, 1992, pp. 187–224.
45. See Benedict, *op. cit.*, pp. 41–3.
46. For example the secretariat to the Intergovernmental Negotiations on Desertification (INCD) prepared the draft text for the Convention, which was discussed at the third session of the INCD, held in New York, 17–28 Jan. 1994. See A/AC.241/15.
47. Johnson, *op. cit.*, pp. 126 and 213–14.
48. On the conflict between which secretariat (FAO or UNEP) should run the Barcelona Convention, see Peter H. Sand, *Marine Environmental Law and UNEP* (Cassell Tycooly, London, 1988), f.n. 5, p. xvii. See also J.E. Carroz (who later became assistant secretary-general of FAO for fisheries), 'Institutional aspects

- of resources management in the Mediterranean', *Ocean Management*, 3, 1978, pp. 235–51.
49. On the issue of cooperation and competing documentation between the Basle Convention and other institutions, see SBC No. 94/008, Geneva, June 1994, Decision I/18, p. 56, for the records of relevant Basle decisions.
 50. See INC, A/AC. 237/Misc.1/Add. 1, 22 May 1991. See also Jill Barrett, 'The negotiation and drafting of the Climate Change Convention', in Freestone and Churchill, *op. cit.*, p. 187.
 51. See *Journal of the Group of 77*, vol. 7, no. 5, May 1994, p. 9 on the Paris G-77 Chapter, which in its programme working party focused on the World Summit for Social Development and Final Communiqué, 18th Meeting of Chairmen/Co-ordinators of the G-77, Geneva, 15 March 1995.
 52. D.H. Anderson, 'Legal implications of the entry into force of the UN Convention on the Law of the Sea', *International and Comparative Law Quarterly*, vol. 44, April 1995, p. 313 *passim*.
 53. See for example Articles 6 and 20 on the provision of financial resources.
 54. The expression 'as far as possible and as appropriate' is used extensively throughout the Convention on Biological Diversity, 5 June 1992. See for example Articles 5, 7, 8, 9, 10, 14.
 55. Stanley Johnson argues that the Forest Principles document was weakened in that it emanated from the Preparatory Commission, rather than using the UNCED Secretariat/Working Group draft. However, the degree of opposition from large, developing, newly industrialised countries – including Malaysia, India and Brazil – illustrated in fact the political inappropriateness of trying to raise the 'level' of the agreement, which would have been required if the Secretariat/Working Group text had been used. See Johnson, *op. cit.*, p. 126, and [ch. 7](#), and [ch. 9](#), pp. 213–14.
 56. International Maritime Organisation, IMDG Code, was made mandatory through incorporation with the 1974 Safety of Life at Sea Convention (SOLAS) in 1991.
 57. United Nations Framework Convention on Climate Change, in Report of the Intergovernmental Committee for a Framework Convention on Climate Change, A/AC.237/18 (Part II), Add. 1, 15 May 1992.
 58. Johnson, *op. cit.*, p. 58.
 59. See FAO, CCRF: TC/94/Inf. 11 Aug. 1994.
 60. See Douglas Day, 'Tending to the Achilles' heel of NAFO: Canada Acts to protect the nose and tail of the Grand Banks', *Marine Policy* (Special Issue) vol. 19, no. 4, July 1995, pp. 257–70.
 61. A/CONF.165/PC/2, 2, 22 Feb. 1993.

Environmental diplomacy: case examples

In this chapter, four conferences have been selected to illustrate some of the main issues and processes involved in multilateral negotiation introduced in the previous chapter. The conferences are on desertification, land-based pollution, a new regime for highly migratory and straddling stock fisheries, and the construction of an action plan for small island developing states (SIDs). The modus operandi of the four conferences is typical of that developed in multilateral environmental diplomacy since 1990. The case studies address two aspects of multilateral negotiations: questions of authority and influence using concepts such as stakeholders, substitution interests and agenda-setting; and, second, various aspects of the dynamic of the negotiation process (focal points, issue learning curve, issue expansion, momentum and structuring compromise).

The second part of the chapter takes three examples to illustrate issues relating to the implementation of environmental conventions. The first case, a maritime example (the *Selandang Ayu*) is used to show a variety of implementation issues relating to flag-of-convenience shipping and international safety and environmental conventions (weak flag-state regulatory control, delegation by the flag state of safety–International Safety Management code, ISM–functions to classification societies, limitation of liability through single-ship companies and the lack of mandatory international requirements for complex, emergency crisis-management training).

The second case–Paris MOU–is used to show the takeover of an inter-governmental institution (Paris MOU) by the European Commission, and, second, conflict between regional and international institutions with respect to both formation and implementation (including revision) of international regulations.

The third case–the Chad–Cameroon petroleum development project–is used to illustrate the problem of an international institution only applying governance and other conditionality to the state of (petroleum) origin and not the transit state.

Multilateral negotiation

Desertification

The Convention to Combat Desertification was concluded over a 13-month period in five substantive two-week sessions during 1993–4, chaired by Sweden with the concluding session held at UNESCO headquarters in Paris from 6 to 17 June 1994.¹

In addition to the plenary, the conference established two working groups on finance (co-chairs Canada and the Gambia) and regional annexes (chair France) and a legal committee (Tanzania). Overall, the conference was strongly divided both within and across North–South lines, reflecting the multiple range of competing interests. The G-77, chaired by Algeria, found it extremely difficult to reach coordinated positions, for example over priority for Africa, finance and other regional agreements. This case study focuses on two issues before the conference: claims to special status, and responsibility for international funding.

Claims to special status

Although the main features of a convention had been outlined by the fourth session, a number remained bracketed.² Major outstanding issues included the priority for Africa and annexes for other regions, financial sources and mechanisms, categories of countries and institutional questions. In the course of the negotiations, African states as potentially principal stakeholders were keen to retain the priority accorded to the region in the 1992 General Assembly Resolution 47/188. The African position, however, had been weakened at the initial meeting, which was partly devoted to an exchange of scientific and other information on desertification. As a result, rather than unifying participants on causes and technologies, it had the effect of widening the number of ‘bids’ by delegations claiming desertification or drought status. Other stakeholders that attempted to claim special status included the Russian Federation, which was opposed by the G-77. In an initial compromise, the Russian Federation gained special mention in the preamble to the draft convention. However, the Russian Federation reopened the issue in the final plenary, opposing the formula contained in the draft preamble – ‘Central Asia and Southern Caucasus’ – favouring ‘Central Asia and *trans-Caucasus*’ (emphasis added) in order to include Russian Federation territory. Of the other stakeholders, Saudi Arabia, for example, had substitution interests in that a primary Saudi concern was not desertification but to weaken references to the development of renewable energy resources in the draft convention.

Financial issues

Of the outstanding issues, the provisions of the conference on financial resources and mechanisms remained deadlocked until the final hours, and in fact seemed likely to prevent the conclusion of a convention. The financial issues included conflict over formulations to cover 'new and additional resources'; the commitments to the target of 0.7 per cent GNP for Overseas Development Assistance (ODA); and which international institution should have overall responsibility for coordinating and dispersing funds to combat desertification. A number of members of the G-77 favoured a new global fund, although this was opposed by the USA, EU and Africa. Sweden, for example, opposed the idea on the grounds of high administrative cost.

The financial provisions of the convention also created a number of specific focal points of disagreement within the overall 'categories of countries' dispute. The first of these involved differences over the drafting of Article 6 (developed country obligations), which also led to further loss of momentum and eventual deadlock as a result of a lengthy and inconclusive procedural debate over linkage between Article 6 and Articles 20–1 (financial resources and mechanisms). In an attempt to break the impasse on financial resource issues, discussions based on an informal text prepared by the working group co-chairman were transferred to a smaller contact group, which had only partly completed its work by the final day.

Among the other issues raised in the working group and contact group were those of a 'threshold kind', concerning which countries would qualify for concessionary assistance. In addition, a new issue that arose late in the negotiations was the realisation that under the draft text in Article 20(3) it was unclear whether a country might be a financial donor or recipient (or both). In the final plenary meeting (18 June 1994), Malaysia, India, Brazil and Bolivia indicated that Article 20(3) as drafted would turn a developing country into a donor. The drafting the Malaysian group objected to stated: 'Affected developing country Parties, taking into account their capabilities, undertake to mobilise adequate financial resources for the implementation of the Convention'. A Saudi Arabian amendment was accepted, which replaced 'the implementation of the Convention' in the draft of Article 20(3) with 'for their national action programmes'.

The deadlock on Article 6 (financial obligations of developed countries) was incompletely resolved through an unusual drafting formulation – 'developed country Parties' – which creates an unsatisfactory precedent of formally allowing for non-acceptance by some developed states. The differences generally between the OECD and G-77 on financial obligations had been foreshadowed in the earlier long-running dispute over whether obligations were 'as agreed' (G-77) or in the OECD language 'as *mutually* agreed' (emphasis added).

Of the outstanding institutional issues at the fifth session, the title for the secretariat (Article 23) responsible for coordinating implementation remained bracketed. The EU, Japan and Norway formally opposed the term 'Permanent Secretariat' on the grounds that the expression is not found in similar conventions. Other concerns were to keep the secretariat small and not, as African states wanted, to let it develop into an implementing agency, though the bracketing was eventually removed partly as a result of an opinion by the UN Legal Office.

The question of a global financial fund to counter desertification in effect remained unsolved. No direct formula could be agreed and the conference eventually accepted a US proposal to defer identification of a 'global mechanism' for funding until the first conference of the parties (Article 21(5)).

The UNCCD entered into force on 26 December 1996, with its headquarters in Bonn, and comprised 179 parties by 2002.³ The financial basis, as in other international institutions, remains problematic. The UNCCD has, however, established a network, which includes: a permanent secretariat; focal points; regional action programmes, with an emphasis on scientific collaboration; and a biennial Conference of the Parties (COP), with a review mechanism.⁴ The UNCCD provides a good illustration of this form of specialised technical diplomacy.⁵

Land-based sources of pollution

The UNEP negotiations to revise and create new international guidelines on land-based sources of pollution illustrate how the agenda and purposes of an international conference can be fundamentally altered and taken over by lead delegations. Conversely, the case illustrates how an international organisation and host government can lose control as stakeholders.

The Montreal Guidelines for the Protection of the Marine Environment from Land-based Pollution were adopted on 19 April 1985, after two years' negotiation under UNEP auspices by an ad hoc working group of experts.⁶ The guidelines are of a recommendatory nature, based upon prevailing concepts such as classification of substances, levels of protection, multiple use of the sea and levels of protection. Since then a number of different essentially more precautionary ideas, such as preventive action in the absence of full scientific information and the precautionary principle, have been developed at a national, regional and international level, in for example the Oslo–Paris Commission, Helsinki Commission, revised London Convention and the United Nations Conference on Environment and Development (UNCED).

In response to Agenda 21 (paragraph 17.29), UNEP authorised⁷ the Executive Director to direct: a preparatory process with two initial meetings to review selected regional seas programmes (Nairobi, 1993); a one-week

meeting of government-designated experts focusing on the Montreal Guidelines (Montreal, 1994); a final preparatory meeting of government-designated experts on the draft of the Programme of Action (Reykjavik, March 1995); and a two-week intergovernmental conference in Washington (November 1995) to revise and adopt the Programme of Action.⁸

The Montreal meeting (6–10 June 1994) was attended by representatives of 73 states and several international institutions and NGOs. Although the primary purpose of the Montreal meeting, as set out in the UNEP authorising decision, was to focus on the Montreal Guidelines, in the event the conference did not do so but substantially abandoned the guidelines as an approach and discussed instead the outlines of an action plan to assist developing countries to tackle marine pollution from land-based activities.

The switch of emphasis in the Montreal agenda represented a major failure of UNEP, since the Montreal Guidelines were one of the links to the UNEP Regional Seas Programmes. How did this occur when Canada, as a so-called 'Montreal Power', had built up extensive interests in environmental diplomacy? These interests had involved: hosting a number of conferences and active involvement as a coastal-state main player in the law-of-the-sea negotiations; Arctic interests, including the landmark Arctic Waters Act (1970);⁹ international fisheries;¹⁰ and marine-based development diplomacy. Canada had also been active in negotiations on global climate change and hosted the Montreal Protocol on substances that deplete the ozone layer.¹¹

As a major stakeholder, Canada aimed to bring the Montreal Guidelines up to date in the form of a new agreement, backed by an action plan. To achieve this, an intergovernmental meeting of selected experts had been held in Halifax, Canada in May 1991, although these discussions were overtaken by the broader UNCED preparatory process. Following the UNEP decision to hold an international conference on land-based sources of marine pollution, Canada, in liaison with UNEP officials, agreed to host a second preparatory meeting, focused on the Montreal Guidelines. In line with traditional Canadian diplomacy of hosting informal meetings of like-minded states, specialists and NGOs, a preparatory meeting was held in Ottawa in January 1994, with a core group of nine countries, plus Green Peace International.

Failure of the Canadian initiative

There are five main reasons for the failure of the Canadian diplomatic initiative. First, Canada was unable to prevent the USA, led by the Department of State (Office of Ocean Affairs) and NOAA, shifting the focus of the meeting to the capacity-building aspects of Montreal, Agenda 21 and UNCLOS, during the first main plenary. Second, Canada was unable, despite having the largest delegation and conference chairmanship, to refocus the meeting back to the Montreal Guidelines (Agenda Item 5). The highly disparate range of delegates included lawyers, scientists and

officials from foreign ministries, environment, water and merchant marine departments, comprising single-member delegations—many with limited backgrounds, if any, in land-based pollution. The G-77 did not function as such nor did it produce any coordinated position papers. In addition, some major players were absent or represented at embassy or junior-official level.¹² In this context few, apart from Finland and a small number of other states, were prepared to take on a seasoned US delegation, especially at the very outset of the meeting and probably without instructions on the matter. Moreover, three of the Ottawa group meeting (Australia, Sweden and the Netherlands) supported in the first plenary the US position, which criticised the Montreal Guidelines and sought to shift the conference attention instead to focus on capacity and technical-assistance building measures.

A third important factor in the failure of the Canadian initiative concerned the availability of conference documentation. In contrast to standing multilateral technical conferences with advance documentation-circulation rules of procedure, informal ad hoc multilateral conferences often face critical problems in preparatory document distribution. The documentary problem was compounded by the limited relationship of the preparatory meetings on Regional Seas Programmes to the primary aim of reviewing the Montreal Protocol.¹³ The UNEP Secretariat concept of the way in which the conference would develop was based on a key article-by-article review of the Montreal Guidelines. However, the article-based critique prepared by UNEP was not available until shortly before the opening meeting, preventing national appraisal. It also made it difficult or impossible for the conference chair to move the conference in the direction of a detailed article-by-article review in the plenary, following the UNCLOS method over the Revised Negotiating Text and Informal Negotiating Text. Such procedures would have required substantial pre-session meetings. The UNEP Secretariat incorrectly assumed that the Montreal meeting could move into the UNEP's text containing proposed changes to the Montreal Guidelines¹⁴ without adequate notice of the proposed detailed changes.

Fourth, Swedish policy, which aimed primarily to turn the Montreal meeting into a framework for external technical-assistance projects, indirectly assisted the US position¹⁵ of moving away from a review of the existing Montreal Guidelines. An interesting aspect of Sweden's strategy was its use of an NGO (Advisory Committee on the Protection of the Sea) to promote its central aim of external assistance for land-based pollution-reduction projects.¹⁶

Finally, an unusual feature of the Montreal meeting was the decision by the conference chairman to use four working groups, in view of the limited and varied expertise, as well as relatively low participation of states.¹⁷ It can be argued that the use of four working groups was excessive, given the low total participation at the Montreal Conference and the high number of single-member delegations. Together, these factors

enabled the USA as a principal stakeholder to move the Montreal meeting towards an action plan in the more recent style of UNEP, rather than review and update the 1985 Montreal Guidelines. Canada was, however, able to regain some measure of increased influence over the process at the subsequent review of the Montreal Guidelines in 2002 and at the Washington Conference.

Straddling and highly migratory fish stocks

The question of straddling and highly migratory fish stocks is one of a number of important gaps left over from the 1982 Convention on the Law of the Sea (UNCLOS). In, inter alia, Articles 63(2) and Articles 114–20, the convention failed to address adequately appropriate requirements for straddling and highly migratory fish stocks that transit through or straddle EEZs. The issue of straddling and highly migratory stocks in EEZ/high seas areas began to attract increasing political attention from the late 1980s because of the emergence of a number of conflicts between coastal and distant-water fishing states as pressures on stocks increased. This case study examines two notable features of the UN Straddling and Highly Migratory Fish Stocks Conference (1993–5): the phenomenon of issue expansion in the process of regime negotiation; and the methods used by the conference chairman in a chair-led multilateral negotiation.

Background

Straddling and highly migratory fish stocks such as tuna, squid and mackerel account for around 10 per cent of the world food supply, reaching a peak of around 13.7 million tons in 1989.¹⁸ Problems associated with the fisheries began to command international attention from the late 1980s because of stock depletion connected with high-seas drift-net fishing and conflicts involving coastal and long-range fleets in the North-east Atlantic (Canada/EU off the Grandbanks), Bering Sea, South-west Atlantic and Pacific. The issues have been addressed within the FAO and at UNCED (Chapter 17, Agenda 21). Technical consultations have been held within FAO, which led to the 1993 Agreement to promote far stricter flag-state control over fishing vessels and prevent reflagging.¹⁹ The 47th session of the General Assembly approved on 29 January 1993 an intergovernmental conference on straddling and highly migratory fish stocks.²⁰ An initial technical consultation was held under FAO auspices on 7–15 September 1992 and the UN conference subsequently met at UN headquarters on 19–23 April 1993, 12–30 July 1993, 14–31 March 1994 and 24 July–4 August 1995.

Players

The substantive phases of the UN conference have been influenced essentially by three groups of states: the extreme coastal states group

(Chile, Colombia, Ecuador and Peru) linked with activist coastal states (Canada, Argentina and Norway); the high-seas fishing group (Japan, Korea, Poland, together with China); and the moderate reformist coastal states (Australia and New Zealand). In a fourth group are entities (the USA, Russian Federation and EU) with perhaps divided interests, or, as in the case of the Russian Federation, very particular concerns, for example over the Bering Sea. Fifth, there is a large number of developing-country coastal states which are unorganised, and whose spokesmen are almost exclusively India and Indonesia. The extreme coastal-state group encompasses a coalition of disparate interests ranging from predominantly straddling stock concerns to migratory, or a combination of migratory/straddling stock fisheries issues in and beyond the EEZ.

While one of the main issues for Canada in its dispute, particularly with the EU, is control over straddling stocks in areas adjacent to its EEZ, such as the Grand Banks grounds,²¹ some of the Latin American members have a second or wider agenda of securing international acceptance of coastal-state rights over resources beyond the 200-mile EEZ, based on 'presencial sea'-type doctrine, articulated for example by Chile.²² The group remains linked by certain common tenets such as: unambiguous sovereign rights of coastal states over resources within the EEZ; recognition of the special interests of coastal states in areas outside the EEZ for management and conservation; flag-coastal state agreements to allow coastal-state inspection and arrest of foreign-flag vessels; and the application of national standards in the EEZ in the event of no consensus in a regional organisation on minimum international standards.

In contrast, the high-seas fishing states group (Japan, Korea and Poland) has taken a fundamentally opposing position based on *inter alia*: the concept of 'due regard' for the interests of both flag and coastal states; the coherence of measures across the whole of the migratory range of straddling stock (these measures may differ); and the scientific priority of the regional organisation over the coastal state. In addition, the group has sought to maintain the principle of flag-state responsibility and no arrest of vessels on the high seas (e.g. by coastal states). As regards the *form* of the outcome of the UN conference, the high-seas group has argued for a non-binding instrument. A number of aspects of the groups' position have also been supported in extreme form by the PRC.

Of other interests at the conference, New Zealand and Australia have played active roles as moderate reformist, regional actors, and as spokesmen of the micro-state South Pacific Forum. Other large regional powers—such as Mexico, Brazil, Indonesia, the Philippines and Malaysia—have, despite substantial high-seas fisheries interests as either fishing and/or transit states, adopted low-key, passive roles. The Australian and New Zealand approaches have been distinguished by emphasis on establishing concepts such as biological unity of stocks, scientific data-gathering and, above all, effective enforcement. Strong monitoring, too, has formed one of the main elements (along with the promotion of the FAO

‘flagging’ agreement and dispute settlement) in the overall line taken by the USA. In general, the USA occupied, publicly at least, an uneasy position, seeking an international instrument that balances coastal and high-seas fishing interests, though its private diplomacy has been shaped strongly by regional interests such as fisheries arrangements with the Russian Federation (e.g. Sea of Okhotsk)²³ and access agreements with the South Pacific Forum, rather than wider international interests. The Russian Federation itself has attempted in its open diplomacy to promote through a variety of draft proposals special provisions for enclaves in enclosed and semi-enclosed seas, in view of foreign overfishing that has brought about the collapse of the fishery industry in the Sea of Okhotsk, and difficulties in the Bering Sea.²⁴

A particular feature of the Russian Federation’s contribution to the conference has also been on conceptual and definitional issues, through one of the few working papers on the definition of straddling stocks, proposals for greater precision of the term ‘adjacent area’, and unified interpretation of main terms.

Issues: building regimes

The polarised nature of the UN Conference HCSS negotiations can be illustrated through at least four major areas.²⁵ The first of these concerns the geographic area of application or extent of the regulations outside the EEZ. This issue posed difficulties because of the lack of a precise definition in UNCLOS Article 63(2) of the extent of areas on the boundaries ‘adjacent to the zone’. Proposals on adjacency have been put forward or reintroduced at successive negotiations sessions of the conference since 1993, particularly by the Russian Federation. The Russian Federation proposals²⁶ envisaged the adjacent area as a narrow area of some 20–70 nautical miles beyond the EEZ, which might be a migration route through which a stock passes. The conference, however, was heavily divided and reluctant to move to precise definitions, given the very wide range of views from coastal states to high-seas distant-water fishing states. In contrast, within the coastal-state group, Canada and some Latin American states, for example, have wanted the area of application for regulation and enforcement outside the EEZ to be equivalent to the area covered by a regional fisheries organisation (e.g. the North Atlantic Fisheries Organisation–NAFO).²⁷

Compatibility of conservation measures

The question of compatibility of conservation and management measures inside and outside the 200-mile EEZ has remained one of the central issues. As the exchanges have progressed, it is also clear that several other new issues have been recognised, such as the primacy or not of management measures taken outside the EEZ over coastal-state measures, which have added to both the complexity and competing interpretations of the

respective working papers and draft articles. In other words, as the conference attempted to refine and give precise meaning to the earlier third session draft provisions on management measures in and outside the EEZ, the participants increasingly began to appreciate various ramifications that had previously not been understood or considered. A good example of one of the negotiating difficulties in this context of issue expansion was the problem of operationalising bridging formulae such as ‘minimum international standards’. While that formula had been put forward as a possible compromise to authorise fisheries enforcement outside 200-mile EEZs, particularly in the absence of a regional organisation or agreed fish stock management measures, the proposal made little headway because of the problem of establishing what was actually meant by a minimum international standard. At the fourth session in August 1994, difficulties over this question then triggered further exchanges on the biological unity of stocks and whether conservation measures would apply throughout the range of stocks outside the EEZ, rather than stocks only in narrow adjacent areas to the EEZ.²⁸

The ramifications of regional regulation increasingly caused concern for several larger developing and newly industrialised countries (e.g. Thailand, India, Indonesia, Chile and Mexico) because of possible restrictions on their freedom of action to develop their fisheries commercially. This new issue of externally imposed quotas influenced by high-seas factors impacting on coastal states’ fisheries operations in their EEZs was seen as a fundamental challenge to one of the major benefits developing countries obtained from UNCLOS: the 200-mile EEZ. The Indian delegate, reflecting this concern, aptly coined the new concept of ‘reverse creeping jurisdiction’.²⁹

Enforcement

As might be expected, enforcement issues (authority for enforcement, temporary measures and the registry or flag of a vessel and arrest) were the questions that most divided the conference. Canadian fisheries minister Paul Tobin summed up the general consensus that ‘the best conservation measures, supported by all states, will fail without effective enforcement’. Although there was apparent consensus at this general level of formulation, nevertheless widespread and fundamental differences continued over enforcement methods and the ‘pieces’ in the overall regime. The major focal point of dispute, however, was detention and arrest outside the EEZ, which divided the distant-water fishing states (Japan, Poland, Korea, Panama and some EU members—France, Spain and Italy) from the active coastal and other reformist states.

Negotiation process

The UN Conference on Straddling and Highly Migratory Fish Stocks is a classic example of a modern chair-led multilateral negotiation. The

complex negotiations were orchestrated under the chairmanship of veteran law-of-the-sea negotiator Satya Nandan (Fiji). The complex nature of the conference was underlined by the extensive range of interests: distant-water fishing, coastal reformist, flag-registering countries, developing coastal states, newly industrialised import or transit states (e.g. Malaysia), FAO, intergovernmental fisheries organisations (e.g. International Commission on North Atlantic Tuna) and a variety of NGOs. Nandan exercised overall influence in three main areas: on the content of the agenda, both prior to and during sessions; consultations with delegations; and, chiefly, through compiling, drafting and editorially revising the chairman's draft negotiating texts. Nandan's negotiating authority lay in his long experience of law-of-the-sea negotiations, particularly since the establishment of UNCLOS and his formal position as conference chairman.

As chairman, Nandan especially cultivated the concept of a channel of private access to the chairman, through which delegations were encouraged to submit draft articles, non-papers and other conference documents, on the understanding that these would be sympathetically received and dealt with in an even-handed manner. In a similar way, the chair benefited from receiving the texts of recent bilateral or multilateral fisheries agreements from delegations that were not widely available. For example the chairman drew upon as a model a number of sections of the US–Russian Federation Bering Sea Pollock Agreement.³⁰ The documentary/drafting channel in effect served to create an inner track of delegations; the process also helped to varying degrees to lock in inner-track delegations to the chairman's negotiating text.

As noted above, influence over the agenda and focus of negotiations is important to chair-led multilateral negotiations. It is by no means absolute or unlimited. Examples of Nandan's influence included keeping off the agenda as long as possible definitional questions of a controversial nature, such as the meaning of 'adjacency', and which fish species would be counted as straddling or highly migratory. The chairman also delayed as long as he could the critical question of deciding the *form* of any agreement. By leaving the question open, the chairman hoped to keep the dynamic of the conference moving ahead, resolving or partially settling issues, without reaching conclusions on whether the agreement would be in the form of guidelines or a legally binding treaty. Examples of the chairman's influence on the focus of the conference are found in many areas, including summary reports of sessions, attendance at informal intersessional meetings (e.g. Geneva, January 1994) and definition of critical outstanding negotiating issues at the fourth session (August 1994).

The limitations on the chair's influence in multilateral negotiations occur as states attempt to insert into the agenda sub-issues of particular concern, which could distort or fragment (as in the desertification negotiations) the overall process. For example at the UN Straddling Stocks Conference, the Russian Federation at the fifth session (March 1995)

threatened the chair that without satisfactory provisions on enclaves, the Russian Federation would be unable to sign an agreement.

A final area worth comment is the question of consensus in chair-led negotiations. In this case, the negotiations were relatively unusual in that the conference was conducted through the plenary (or the plenary as an informal working group of the whole) with little use of sub-working groups. Informal consultations were held before and during each session in order to define and take issues forward. These consultations were based on the consensus fiction that they were held with as wide a number of delegations as possible. In practice, up to the fourth session, consultations were limited to a relatively small number of lead delegations from the coastal-state, moderate-reformist and distant-water fishing groups. That fiction formally lasted until the closing stages of the fourth session. The issuing of two chairman's texts³¹—a calculated gamble by the chair to shift to treaty form—in the final days critically focused attention on consensus. It was clear that to break down the polarised positions on key issues, such as form and high-seas arrest, not only had further substantive alterations to the text to be negotiated, but also a broader consensus had to be achieved. However, the extended informal consultations (Geneva, February 1995), while contributing to further concessions, illustrated the problem of widening informal groups at the expense of consultations of the whole.

Summary

The UN Conference on Straddling and Highly Migratory Fish Stocks provides a number of insights into chair-led multilateral negotiations. As an exercise in regime building, to cover the gaps left by UNCLOS, the conference had in effect to break new ground in several areas. Much of the negotiating was of a highly polarised form. The early phases were also typically characterised by information or descriptive texts and non-papers, similar to the multilateral negotiations such as desertification, as efforts were made to construct possible regimes.

Another feature exhibited by the HMSS and other multilateral negotiations was the borrowing of concepts from other regimes (e.g. port-state control on ship safety and pollution) and, in this example, seeking to transplant them into other regimes without appropriate modifications. However, *fisheries* practice in the form of bilateral and other multilateral agreements provided models from which to draw. Finally, a relatively unusual feature of the conference was that in contrast to the desertification or land-based pollution negotiations, it did not generally subdivide on a collegiate basis into sub-working committees but throughout most of its main sessions met in informal consultations involving the chair or hosted by lead players. The greater emphasis on the use of informal working groups of the whole may become more extensively used as a model for global negotiations even of a specialist kind.

Small island developing states

The UN Conference on the Sustainable Development of Small Island Developing States met in Barbados from 25 April to 6 May 1994. The aims of the conference included reviewing the special problems of SIDS; establishing priorities for sustainable development; the management of resources; and national capacity building. The conference was attended by 120 states, international institutions, intergovernmental organisations and NGOs, as well as 40 heads of state and government, and other representatives who attended the special high-level round-table discussion in the final days. This case study examines one of the players in the process, the AOSIS: a new small-state pressure group, in conflict with the G-77.

Background

The UN Conference on Sustainable Development of Small Island Developing States was authorised under UN General Assembly Resolution 47/189. The conference has its roots in a number of regional conferences held by small states on problems of vulnerability, and international conferences on climatic change. At Rio, small island states registered their special claims in [Chapter 17](#) of Agenda 21. The Barbados Conference held a preparatory session in New York (15–16 April 1993) on organisational matters, at which Australia was elected as chair, and a disparate group of four vice-chairs (Japan, Romania, Antigua and Barbuda, and Cape Verde). The preparatory phase was limited to week-long regional meetings for the Indian and Pacific Oceans in Vanuatu and Trinidad, prior to the first session of the Preparatory Committee on the Programme of Action, 30 August–10 September 1993 in New York. During the process of negotiating the 15-Chapter Programme of Action, AOSIS differed substantially with leading members of the G-77. In addition, large parts of the Preamble and [Chapter 15](#) on implementation of sustainable development measures remained square-bracketed, reflecting differences both within AOSIS and the G-77, and between these groups and industrialised countries, particularly over financial mechanisms³² and relevant international agreements.³³

Alliance of Small Island States

AOSIS was formed in 1990 at the Second World Climate Conference in Geneva, with 36 members and five observers, bringing together as a new grouping island states from the Pacific, Indian and Atlantic oceans.³⁴ The idea for the grouping originated at the Small Islands Conference on Sea Level Rise, in Male in November 1989, to promote international attention on small island states and their vulnerability to threats such as global sea-level rise. For example few of the Maldives' 1,196 islands

rise above 3.5 metres. Similar difficulties face Tuvalu, Tokelu, Marshall Islands and Kiribati.

Barbados Preparatory Committee

The preparations for the UN Barbados Conference underlined two features of post-1990 diplomatic methods—the reduced ability of the G-77 to harmonise a collective position in multilateral conference of a technical rather than social-ideological nature, and the continued emergence of new groupings. At the initial Preparatory Committee, the G-77, through its predominantly Latin American leadership, attempted to assume responsibility for preparing the draft Programme of Action for the forthcoming session.³⁵ The G-77 text was rejected by the AOSIS group. The differences were outlined by Vanuatu, on behalf of the AOSIS group. In essence, AOSIS considered that the G-77 text introduced by Peru did not sufficiently take into account the concerns and critical threats faced by small island states at the lower levels of development. Issues underestimated, in the view of AOSIS, included: administrative capabilities and small states drowning in paper and consultants; the need for more early warning systems; promotion of new technologies to combat water shortage; and compensation for small states for hosting ‘environmental tourism’.

Many of the ideas were incorporated into the revised G-77 text with reluctance. The balance, though, had shifted, with the G-77 ending the role of coordinator to AOSIS. For example in the World Summit on Sustainable Development and the Mauritius Summit of Small Island States, AOSIS has been active in promoting the case of small and micro states. It remains an important lobbying group outside the G-77 framework.

Development of AOSIS

The future development of AOSIS as a negotiating group will be affected particularly by: the influence of logistical factors on group coordination, in view of the diverse range of membership; the existence of other groups that cross-cut the membership (e.g. South Pacific Forum); and above all the calibre of its diplomatic representatives. It is an axiom of modern diplomacy that small states frequently through the skill of the diplomats make greater contributions to *creating* rather than implementing international agreements.

Summary

Environmental negotiations, too, more than other types of negotiations, contain both a high degree of technical content and extensive issue learning. Follow-up implementation is generally weak, especially with action plans.

International agreements: implementation issues

Selandang Ayu

This case illustrated a number of implementation issues relating to international agreements. It involves the loss of a bulk carrier in December 2004 and resulting substantial oil pollution of the Alaska Wildlife Park.³⁶ The implementation issues in this case include the extent to which flag states implement their obligations under international conventions, and in particular the problem of flags of convenience. Flag-state obligations are set out in Article 94 of the 1982 UNCLOS.³⁷ Other applicable international conventions are the Safety of Life at Sea Convention (SOLAS),³⁸ and in particular the provisions and obligations relating to the International Safety Management (ISM) Code, and international regulations relating to the prevention of pollution. This case also raises issues regarding the lack of international regulations covering maritime crisis management on shore and ships.

Background

The *Selandang Ayu* was a 46,000 dwt bulk carrier, built in China in 1998, carrying a cargo of soya beans from Seattle (Tacoma) to China. The *Selandang Ayu* was under the Malaysian flag, with classification and ISM documentation from the American Bureau of Shipping (ABS). The vessel's registered owner, Ayu Navigation Sendiran Berhad (Singapore), was established in 1998 and registered in Malaysia as a single-ship company, which limited its liability, and was controlled by Hong Kong interests. The managing company (and effective owner/operator) was IMC Shipping (Singapore), established in 1966, with a fleet of 43 vessels (28 managed).

The *Selandang Ayu* suffered major engine failure on 8 December 2004, and eventually grounded in the Aleutian Islands, south-west of Anchorage. The ship broke in two on 7 December 2004.³⁹ The *Selandang Ayu* had been allowed to drift for 18 hours while attempts were made to effect engine repairs. Her master and the ship's operator (reluctant to involve the US coastal authorities on economic and other grounds) delayed the decision to seek US coastguard assistance until it was too late to prevent the vessel grounding. Similar incidents have occurred, such as *Amoco Cadiz* (disabled tanker, Ushant, dispute over salvage) and the *Braer*. In the *Braer* case (Scotland, 1993),⁴⁰ crucial delay occurred in the crisis decision-making process because of poor communications between the senior engine room staff (the company marine superintendent was aboard, complicating the command structure) and ship's master. Human-element factors were critical in the delay and the choices of action, prior to the vessel grounding and breaking up. In the absence of an official inquiry into the *Selandang Ayu* by Malaysia, no detailed conclusion can be drawn about the decision process in that case, except to note the extreme

length of time taken before seeking emergency shore support, and subsequently the lack of preparedness of the crew for emergency evacuation. These deficiencies were indicative of poor, or absent, safety procedures on the ship, required under the International Safety Management Code (ISM) of the International Maritime Organisation.

The incident caused major pollution (420,000 gallons of fuel oil, 18,000 gallons of diesel), severely polluting Unalaska Island in the Alaska Wildlife Maritime Heritage Park. Two crewmembers died during the attempted US coastguard rescue in extremely high seas in a region not far from the earlier *Exxon Valdez* disaster.

Selandang Ayu issues

The case raises a number of key international agreement implementation issues:

- Ships' routing and weather: the operator's routing could have put the vessel further south and been more prudent.
- Flag control: there was a lack of flag control (Malaysia) over the operators (e.g. on ship certification, flag inspection of vessel, safety audit, ISM audits), which were delegate to the American Bureau of Shipping (ABS) a vessel classification society.
Note (Classification society and ISM are technical maritime terms. Clarified for an international relations/diplomacy readership)
- Safety: the international safety requirements in SOLAS were not implemented on the vessel (emergency procedures, helicopter evacuation procedures, engine maintenance, ISM).
- Crisis management: the need for an international convention for crisis management training in maritime emergencies.

Summary

The *Selandang Ayu* case illustrates a number of key implementation issues. In particular, these focus on the role of the flag state Malaysia, in effect as a newly industrialised country: a new rather than traditional flag of convenience country. The ship, too, was nominally less than 10 years old. It therefore fell outside the inspection ship selection criteria of port-state control—set at over 12 years for bulk carriers for targeted enhanced inspection by regional maritime authorities (e.g. Paris Memorandum of Understanding, MOU; Tokyo MOU). The ship was therefore classified outside the high-risk category, yet ultimately was the cause of major oil pollution. On national legislation, the US Oil Pollution Act (OPA) 90 was subsequently reviewed to include bulk carriers and other cargo ships in addition to oil tankers. In conclusion, the case highlights the need for wider emergency training in the maritime field, similar to civil aviation regulations.

Annexation of the Paris MOU

The Paris Memorandum of Understanding (Paris MOU) was established in 1982 as an intergovernmental organisation to enhance administrative cooperation between European states on coordinated maritime safety inspection of foreign ships calling at their ports (see [Figure 11.1](#)).⁴¹ Such inspections—termed ‘port-state control’, as distinct from flag-state control—are a means of checking compliance of foreign vessels with international safety standards such as the IMO Safety of Life at Sea Convention (SOLAS) and against maritime pollution regulations. The establishment of the MOU had been influenced by periodic major marine pollution accidents such as the *Torrey Canyon* and the grounding of the *Amoco Cadiz* off Ushant. The subject of coastal state powers was also the subject of intensive discussion at the law-of-the-sea negotiations (1973–82). The International Labour Organisation (ILO) had also opened discussions on the question of safety, working conditions and substandard shipping, which subsequently resulted in the adoption of ILO Convention 147 on Minimum Standards of Working Conditions and Safety on merchant ships (ILO 147). The Paris Memorandum signed on 26 January 1982⁴² is an illustration of the cooperative arrangements envisaged in Article 211(3) of the 1982 Law of the Sea Convention, and a wider approach, beyond pollution issues, to increase cooperation between states on maritime safety.

The Paris MOU case provides an interesting insight, not generally discussed,⁴³ into the annexation of an intergovernmental organisation by the EC Commission. Other examples of elements of this type of approach by the Commission are acquisition of observer status in regional resource

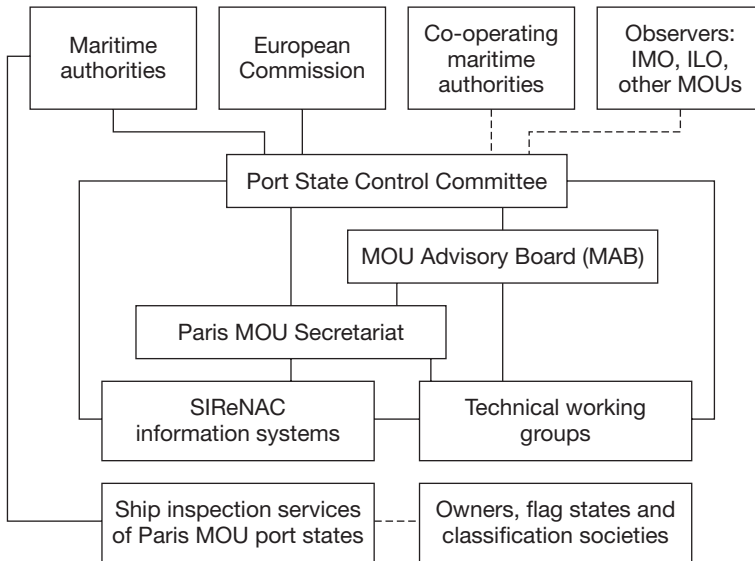


Figure 11.1 Paris MOU Organisational Structure

organisations (e.g. tuna fisheries) or subject ‘acquisition’ through international seminars, and ad hoc informal conferences.⁴⁴

The Commission strategy

The first stage of the Commission strategy (see [Table 11.1](#)) involved the development and extension substantively of EU competence in the environment sector post-*Amoco Cadiz* (1978). This, too, became part of an evolving EC maritime policy, which had its roots and core in issues such as the debate over a possible European shipping registry, and the lengthy dispute over the application of EC competition policy to the maritime sector. Other elements of the emergent EC maritime policy were Commission initiatives and draft directives in areas such as labour, liner conference (cargo) regulations and health regulations for the European maritime industry. These moves were essentially driven, with varying degrees of support, by France, Holland and Germany; later, in Phase II, by Sweden and Finland, and after the *Prestige*, by Spain. Perhaps the most important shift in the evolution of EC maritime policy occurred with the Commission focus on maritime safety, in particular through European Directive 95/21 on European Community regulations on port-state control, framed against the Common Policy on Safe Seas.⁴⁵

Table 11.1 Commission strategy: annexation of the Paris MOU

- Develop and extend community competence in environment.
- Establish competence in maritime area (labour, competition, health, liner conference regulations); budget.
- Obtain membership of PMOU.
- Submit discussion papers; draft EU regulations to PMOU.
- Contest intergovernmental international regulations (IMO).
- Issue competing EU Directives.
- Set up competing EU ship safety/information database (Equasis).
- Gain access and control of PMOU safety/ship inspection database.
- Establish European Maritime Safety Agency (EMSA); set up separate HQ (Lisbon).
- Recruit key national personnel for EMSA.
- International public diplomacy: vigorously defend EU and EMSA maritime safety role.
- Representation in international/regional institutions: conduct international negotiations.

The second stage of the Commission strategy involved membership of the Paris MOU and its major policy body the Port State Control Committee, together with involvement in the PMOU technical groups. Membership of the PMOU in effect laid the basis for the development and extension of European Directive 95/21 to EU member states. Second, it opened the possibility of access to the intergovernmental PMOU ship-inspection database. In the interim, the Commission developed the Equasis data

system—a record of individual ship detentions and other details on detained or banned vessels. Third, it enabled the Commission to become involved directly as a driver of maritime safety regulation within the PMOU.⁴⁶ The moves by the Commission inevitably led to issues being raised about compliance of non-EU members who were members of the PMOU, particularly Norway and the Russian Federation.

The factors that worked in favour of the Commission strategy are organisational and event-related. The PMOU is based upon a division between the computer-based data infrastructure operated by France (St Malo) and the policy/statistics data and diplomatic representation functions conducted by the Secretariat from Holland. The PMOU Secretariat (Holland) has remained a small (six personnel), efficient technical unit, though ultimately vulnerable to the larger and diverse EC Commission directorates. Second, maritime accidents such as the *Erika* (1999)⁴⁶ and *Prestige* (2002)⁴⁷ were used by the Commission to support its arguments on poor flag enforcement and weak international regulations that rely on implementation by individual states. In contrast is the view that standards have been raised by port-state control within the maritime industry, and that the mainstream tanker industry operated by the major petroleum countries is internally well regulated, with a good safety record.

Subsequent Commission proposals and directives in areas such as port-state control, bulk carriers, safety, tanker phase-out (the so-called *Erika* package), liability and negligence⁴⁹ put the Commission on a collision course with the IMO. The PMOU constitution has subsequently been periodically amended to incorporate EU directives.⁵⁰ These directives generally either bring into force IMO regulations before the international agreed date through EU (PMOU) port state control, in modified form, or are distinct EU-based port-state control and other regulations, applied to both European and foreign vessels in EU waters.

The development of EU directives, put through the Paris MOU, in effect meant that the PMOU had been almost completely annexed by the Commission by 2003. The ongoing clash with the IMO, as the EC asserted its maritime safety role, was illustrated, for example, in the aftermath of the *Prestige*. Prior to travelling to Greece on 10 January 2003 to meet the Greek minister of mercantile marine, IMO Secretary-General William O'Neil stated:

IMO is the forum where safety and pollution prevention standards affecting international shipping are considered and adopted. Standards adopted through IMO apply equally to all ships of all countries. Regional or unilateral application to foreign flag ships of national or regional requirements which go beyond the IMO standards would be detrimental to international shipping and should be avoided.⁵¹

The appointment of Mitropoulos (assistant secretary-general, Greece), a skilled technical draughtsman from the IMO Secretariat, as successor to the long-serving Canadian O'Neil, brought some change of style and an

effort by Mitropoulos to reach a rapprochement with the EU. The limits to that rapprochement posed interesting issues for the European head of an international organisation (IMO) in conflict with the European Commission.⁵²

The third stage of the EC Commission strategy has involved the establishment of the European Maritime Safety Agency (EMSA). Associated with this is extensive public diplomacy and other international maritime-safety negotiations. EMSA public diplomacy has vigorously defended the EU's and EMSA's maritime safety role, and has been underpinned by an anti-intergovernmental philosophy and an antipathy to international organisations (IMO).⁵³ The PMOU continues, but it remains an arena in which the Commission, through EMSA (at least for its European members), pursues a regional and global role in maritime safety. There is evidence, however, that individual member states are seeking to reassert intergovernmental processes in the PMOU.

Chad–Cameroon petroleum development project

International diplomacy relating to oil and gas pipelines has become an important element of diplomacy as energy supply and security have become key areas on the central agenda of international relations. The diplomacy of pipeline construction and operations involves a variety of actors, including governments and private-sector international petroleum/gas operators and international financial organisation (e.g. Caspian Sea pipeline) and often an international institution component (e.g. IMF/IBRD), as in the Chad–Cameroon project. NGOs have varying degrees of influence, from observing at the margin to attempting to highlight standards or environmental issues, although for the most part the diplomacy relating to various aspects of pipeline projects is mainly conducted at a confidential, secret, or back channel level, despite *appearing* to have a public environmental format.

The Chad–Cameroon project, in the category involving an international institution (IBRD, World Bank),⁵⁴ is used here to illustrate the problem of an international institution applying governance and other financial standards only on the state of petroleum origin (Chad), rather than also including the transit state (Cameroon). The 1,070-kilometre-long pipeline takes oil from landlocked Chad's southern oilfields to the Cameroon Atlantic port of Kribi (see [Figure 11.2](#)). Under the project arrangements, the World Bank has only a small segment (\$140 million) in the total cost (\$3.5 billion), which is funded through an international consortium involving financially or administratively Exxon Mobil, Chevron-Texaco and Esso, but had a critical role in the diplomacy of ensuring the financial coalition was formed. The World Bank involvement provided a sense of political security in an unstable area. The Bank's role involved setting a number of social, environmental and financial requirements, including budgetary allocation to health education, agriculture and infrastructure

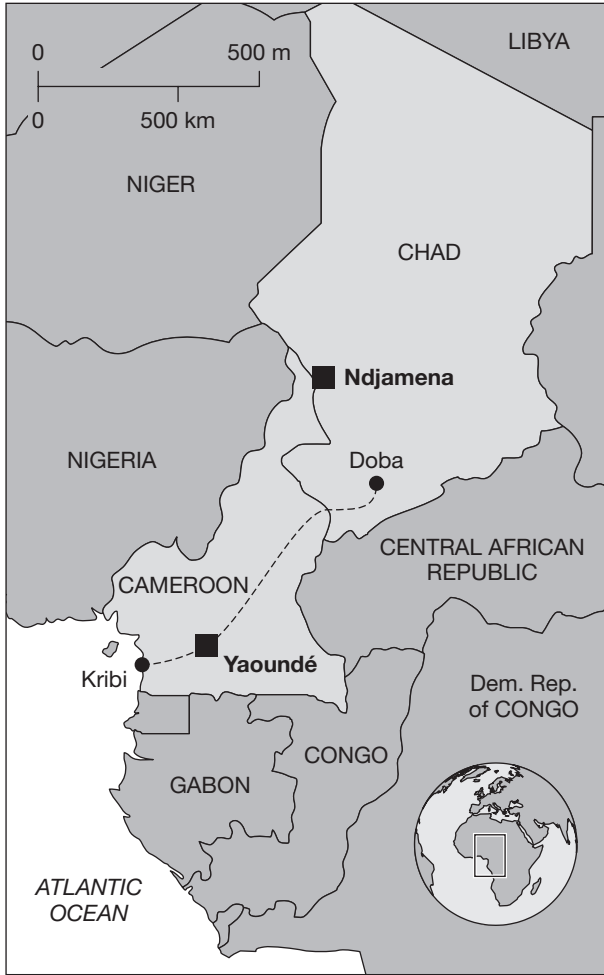


Figure 11.2 Chad–Cameroon petroleum

projects, as part of the main concept and implementation-supervision of the project.⁵⁵

An important issue, however, in terms of project design and implementation, has arisen in that the financial and governance requirements of the World Bank apply only to Chad. The Cameroon pipeline transit construction and operation phase was limited to construction, floating storage facilities, the encouragement of private investment and commercial financing, along with environmental management. There was no requirement, as for Chad, for designing a sound revenue-management programme. Criticism of the Bank was based, in effect, on the argument that it was using double standards.⁵⁶ In this view, the poor governance record of Cameroon and problems concerning its high degree of corruption (ranked 129th out of

146 on the Transparency International Perception of Corruption table), commented on in the IMF Executive Board Report on Article IV consultations with Cameroon, should have led to a revision of the initial plan to cover extension to Cameroon. Environmental difficulties, too, were highlighted by the Advisory Group, for both Chad and Cameroon. In the Chad sector, for example, the Advisory Group drew attention to the fact that the environmental plan had no implementation provisions for use conflict (e.g. the effect of the floating storage facility on fisheries or impact of pipeline construction on archaeological sites).⁵⁷

The Chad–Cameroon pipeline project underlines the problems of negotiating complex development projects and implementing them in regions of political instability and/or poor governance. International institutions may adopt, under pressure or through the views of the secretariats, restrictive positions on the ‘boundaries’ of the project. In this case, that IBRD conditionality only applied to the Chad petroleum sector; Cameroon was outside the scope of the project. The case also illuminates issues of environmental project design compliance. Earlier chapters, for example [Chapter 3](#), have discussed the importance of organisational style. The Chad–Cameroon pipeline project clearly illustrates the use of a formula or standard World Bank project approach (design, consultant, financial approval, implementation, external assessment for ‘quality control’), which limited wider ethical considerations and left the project too dependent on an advisory group in a controversial project, in which the Bank was unable to influence conditionality. The Bank eventually pulled out of the project in 2008.⁵⁸

Climate change: case study of drafting a compromise

The case study of the Durban session of the UNFCCC is used to show the drafting of a key compromise on the Kyoto Protocol in multilateral negotiations, and to provide details of Climate negotiations documentation. The case study also sets out for consideration the diplomatic methods and organisation factors which have constrained the negotiations.

Background

The UNFCCC is a product of the Rio ‘Earth Summit’, along with other conventions such as on Biodiversity. The UNFCCC as a framework instrument entered into force in 1994 and was augmented by protocol—the so called Kyoto Protocol—in 1995, which itself only entered into force over a decade later. An important consequence of having two instruments was that negotiations on the implementation of the UNFCCC and protocol were conducted in parallel processes, not necessarily linked, and in great technical detail by a core of epistemic officials from specialist technical ministries, with only limited and periodic political direction. These negotiations were headed by two separate structures—the AWG-KP (Kyoto

protocol) and the other under the UNFCCC, the Ad Hoc Working Group on Long-term Cooperative Action under the Convention.

The structure of the Kyoto Protocol, fashionable at the time, used the technique of three categories of parties: Annex 1 (industrialised and transition economies); Annex 11 (developed countries which contribute to costs of developing countries) and Non-Annex1 (developing). It would have consequences later as original larger developing economies rapidly accelerated economic growth and became the NEPs but continued to claim developing-country status with major implications for implementation of the convention and protocol.

The category 'developing' for India and China, in particular, was a convenient haven for moving in and out of obligations – a diplomatic flag of convenience, backed up by a strident discourse on the right to catch up on the process of industrialisation and not be disadvantaged by similar emission obligations to those of the developed. The central arguments in that discourse on the LCA texts drew on the Rio core concepts of common and differentiated responsibilities; equity (for development and carbon use) and equitable access to carbon space. As the Indian Environment Minister, Jairam Ramesh put it: 'carbon space is development space'.

The issues from 2005 centred on Kyoto obligations; implementation and binding obligations. Under the UNFCCC Long-Term Cooperative Action working group, the issues included: long-term 'vision'; adaptation (e.g. assistance costs of barriers; crop development); mitigation and finance.

Main sessions of UNFCCC have included Copenhagen, Cancun and Durban. Negotiations have been conducted on the basis of consensus. The deadlock of Copenhagen was, however, only broken through a last-minute deal made by the USA plus BASIC group (Brazil, South Africa, India, China). From 2008, the PRC, the world's largest emitter, emerged as a player in the BASIC group and from Durban it shifted its PR focus to include a side-event pavilion on its climate technologies, linking up with agriculture to present a wider public focus.

Prior to Copenhagen, the International Panel on Climate Change (IPCC) had issued its Fourth Assessment, which globalised the public debate on climate threats and heightened the scientific and political stakes (see [Chapter 7](#) on cyber diplomacy).

The issue of the future of the Kyoto protocol was effectively unresolved and pushed from session to ministerial session.

The Durban compromise

The negotiating focal point at Durban became what form a future Kyoto agreement might take. Issues centred on: when a post-Kyoto agreement would commence; what the obligations would be (whether they would be the same for all parties but perhaps with variable emission targets); and how to deal with the emissions gap between the voluntary pledges set out at Cancun and IPCC assessments.

The consensus approach was used to close or bring nearer to agreement second-tier issues such as forest protection; and agree further details on the modalities for the establishment of a \$100 billion fund by 2020 to assist poorer countries to cope with effects of climate change. However, many of the special-interest climate-change groups (e.g. small island states) remained unconvinced that they would receive either much attention or unconditional finance.

In the end run of the negotiations over Kyoto, the composition of the main players on core issues differed from Copenhagen and Cancun (USA–BASIC group model). The USA had little interest (major domestic, business and Congressional constraints) in a binding post-Kyoto agreement. Its diplomatic strategy was evasive and sought to buy time without commitment. Japan, Canada and the Russian Federation indicated that they would not support a second period of Kyoto.

By early Sunday 11 December 2011, the talks had overrun by three days, with all night sessions in the open theatre-like full plenary meetings. Fierce clashes occurred between the EU and India, supported by China, over the EU plan for a binding ‘road map’, in an atmosphere resembling an amphitheatre with observers, NGOs and other delegations looking on. The South African conference presidency attempted to broker separate exchanges between the EU and India during the plenary in the early hours of 11 December to try and narrow differences as the debate itself continued. The EU and India eventually reached an agreement based on a Brazilian draft which seemed to suggest parties might have several options with regard to the format the negotiations of a post-Kyoto agreement might take. The extent to which the EU and Indian chief negotiators had clearance for these final positions is open to question.

The draft

The compromise formula is found in document CP.17 as a proposal by the President for the Establishment of an Ad Hoc Working Group on the Durban Platform for Enhanced Action.

Draft decision -/CP.17

Establishment of an Ad Hoc Working Group on the Durban Platform for Enhanced Action

Proposal by the President

The Conference of the Parties,

Recognising that climate change represents an urgent and potentially irreversible threat to human societies and the planet and thus requires to be urgently addressed by all Parties, and acknowledging that the global nature of climate change calls for the widest possible cooperation by all countries and their participation in an effective and appropriate international response, with a view to accelerating the reduction of global greenhouse gas emissions,

Noting with grave concern the significant gap between the aggregate effect of Parties' mitigation pledges in terms of global annual emissions of greenhouse gases by 2020 and aggregate emission pathways consistent with having a likely chance of holding the increase in global average temperature below 2 °C or 1.5 °C above pre-industrial levels, *Recognising* that fulfilling the ultimate objective of the Convention will require strengthening the multilateral, rules-based regime under the Convention, *Noting* decision X/CMP.7 [Title], *Also noting* decision X/CP.17 [Title],

1. *Decides* to extend the Ad Hoc Working Group on Long-term Cooperative Action under the Convention for one year in order for it to continue its work and reach the agreed outcome pursuant to decision 1/CP.13 (Bali Action Plan) through decisions adopted by the sixteenth, seventeenth and eighteenth sessions of the Conference of the Parties, at which time the Ad Hoc Working Group on Long-term Cooperative Action under the Convention shall be terminated;
2. *Also decides* to launch a process to develop a protocol, another legal instrument or an agreed outcome with legal force under the Convention applicable to all Parties, through a subsidiary body under the Convention hereby established and to be known as the Ad Hoc Working Group on the Durban Platform for Enhanced Action;
3. *Further decides* that the Ad Hoc Working Group on the Durban Platform for Enhanced Action; shall start its work as a matter of urgency in the first half of 2012 and shall report to future sessions of the Conference of the Parties on the progress of its work;
4. *Decides* that the Ad Hoc Working Group on the Durban Platform for Enhanced Action shall complete its work as early as possible but no later than 2015 in order to adopt this protocol, legal instrument or agreed outcome with legal force at the twenty-first session of the Conference of the Parties and for it to come into effect and be implemented from 2020;
5. *Also decides* that the Ad Hoc Working Group on the Durban Platform for Enhanced Action shall plan its work in the first half of 2012, including, inter alia, on mitigation, adaptation, finance, technology development and transfer, transparency of action, and support and capacity-building, drawing upon submissions from Parties and relevant technical, social and economic information and expertise;
6. *Further decides* that the process shall raise the level of ambition and shall be informed, inter alia, by the Fifth Assessment Report of the Intergovernmental Panel on Climate Change, the outcomes of the 2013–2015 review and the work of the subsidiary bodies;
7. *Decides* to launch a workplan on enhancing mitigation ambition to identify and to explore options for a range of actions that can close the ambition gap with a view to ensuring the highest possible mitigation efforts by all Parties;
8. *Requests* Parties and observer organisations to submit by 28 February 2012 their views on options and ways for further increasing the level of ambition and decides to hold an in-session workshop at the first negotiating session in 2012 to consider options and ways for increasing ambition and possible further actions.

In Operative Paragraph 1, the Ad Hoc Working Group on Cooperative action is extended for a year and then disbanded.

The second, third and fourth paragraphs address the process of setting the Durban platform and the timetable for its work.

Paragraph 2 reflects the division of opinion between binding obligations for all parties on the one hand, as against giving flexibility in the form of the instrument. As drafted, Paragraph 2 seems to admit that the post-Kyoto agreement could take one of three forms: protocol; another legal instrument; or an agreed outcome with legal force. The issue is therefore left unresolved and options are presented. The third form (an agreed outcome with legal force) is the weakest of the three, with the meaning of 'with legal force' unclear and potentially weak.

General discussion

In discussing the effectiveness of the UNFCCC, different perspectives might be used, for example treaty structure; organisation of the negotiations; negotiating structures. Treaty structure: Based on standard UNCD standard model of a framework convention. What are the limitations of this approach? What are the problems of having the negotiating process split into two processes? Secretariat. Change of executive secretary at a critical juncture meant loss of knowledge and technical expertise. What impact might this have had?

Agenda

Would you have organised the agenda and other related topics differently? Ministerial involvement: Are the current intervals for ministerial involvement too wide. Should the political engagement be strengthened? What part did consensus play in the discussions? Negotiating process. What scope is there for trade-offs in the negotiations? How can the interests of smaller members of the Conference have their interests safeguarded? (EXAMPLE: Small Island States (AOSIS)).

Documents

unfccc.int/meetings/Cop_17/items/6070_phpunfccc.int/files/meetings/durban_nov...pdf/COP17/_durbanplatform.pdf
unfccc.int/2860.php

Notes

1. A/AC.241/15, Rev. 7, 1994.
2. International Convention to Combat Desertification, A/AC.241/15, Rev. 7, 1994.
3. See [www.unccd.int/convention].
4. See, on financial aspects, ICCD/CRIC(1)/6/ADD 3, 29 Oct. 2002.
5. See Report of the Secretary-General Implementation of the UN Convention to Combat Desertification. A/58/158, 16 July 2003.
6. UNEP, Decision 13/18/II, Governing Council of UNEP, 24 May 1985.

7. UNEP, Decision 17/20, 17 May 1993.
8. UNEP/MG/IG/1/1, Add. 1, 6 Apr. 1994.
9. See R.R. Churchill and A.V. Lowe, *International Law of the Sea* (Manchester University Press, Manchester, 1988), p. 245.
10. See, for example, Evelyne Meltzer, 'Global overview of straddling and highly migratory fish stocks: the nonsustainable nature of high seas fisheries', *Ocean Development and International Law*, vol. 25, 1994, pp. 255–344; R.P. Barston, 'UN Conference on Straddling and Highly Migratory Fish Stocks', *Marine Policy*, March 1995, pp. 159–66.
11. 26 *ILM*, 1987, 1541, 1550.
12. For example Germany and Japan.
13. See the next case study on the procedures adopted at the UN Straddling Stock and Highly Migratory Fish Stocks Conference, which went through an extensive 'knowledge extending' stage, draft non-papers, conference working papers and draft articles before it moved on to a text in draft treaty form.
14. UNEP/MG/IG/1/3, 29 April 1993.
15. 'The aim should be to identify sources of funding of, in particular, developing country projects. This should be done in the preparatory process for the Washington Conference, at the Conference itself or in the UNCED review of the Oceans Chapter of Agenda 21.' Swedish Position Paper, 30 May 1994, p. 15.
16. See statement by Dr Per Wraamner, head of the Swedish delegation to the UN Straddling Fish Stocks Conference. Sweden's entry into the EU in Jan. 1995 removed Sweden as an independent development assistance player. For example Sweden was unable to speak independently at the March 1995 session of the UN Conference on Straddling Fish Stocks as a result of EU entry.
17. See [Chapter 4](#).
18. United Nations Convention on the Law of the Sea, Annex 1 (United Nations publication, sales No. E.83.v.5). The highly migratory species listed in Annex I are: Albacore tuna; Bluefin tuna; Bigeye tuna; Skipjack tuna; Yellowfin tuna; Blackfin tuna; Little tuna; Southern bluefin tuna; Frigate mackerel; Pomfrets; Marlins; Sailfishes; Swordfish; Sauries; Dolphin; Oceanic sharks; Cetaceans.
19. Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas, FAO, Rome, 1993.
20. Report of the Secretary-General, A/48/451, 1993.
21. FAO Technical Paper 337, Rome 1994, pp. 54–9.
22. See Jane Gilliland Dalton, 'The Chilean Mar Presencial: a harmless concept or a dangerous precedent?', *Marine and Coastal Law*, vol. 8, no. 3, Aug. 1993, pp. 399–403.
23. See for example joint US–Russian Federation paper on the Sea of Okhotsk, A/CONF.164/L33, 28 July 1993.
24. A/CONF.164/L.25, 26 July 1993.
25. For the UN Conference on Straddling and Highly Migratory Fish Stocks, see R.P. Barston, 'The Draft UN Convention on Straddling Stocks and Highly Migratory Fish Stocks', *The Ocean Governance Study Group*, University of Hawaii, Jan. 1995.
26. See R.P. Barston, 'UN Conference on Straddling and Highly Migratory Fish Stocks', *op. cit.*, pp. 163–4.
27. See draft articles of Argentina, Canada, Chile, Iceland and New Zealand, A/CONF.164/L11/Rev.1, 26 July 1993.
28. A/CONF.164/3/Rev.1, 30 March 1994.

29. R.P. Barston, 'UN Conference on Straddling and Highly Migratory Fish Stocks', op. cit., p. 164.
30. United States–Russian Federation Bering Sea Pollock Agreement, 1994. For parties and details see *ILM*, vol. 34, no. 1, Jan. 1995.
31. The first text was styled the so-called 'Fish Paper', because of the design of the cover depicting fish straddling an imaginary EEZ.
32. Report of the Preparatory Committee for the Global Conference on the Sustainable Development of Small Island Developing States, UN General Assembly, A/48/36, New York, 1994.
33. A/48/36, New York, 1994. The USA at the first and second preparatory meetings put the whole of the preamble of the draft agreement into square brackets. See the General Assembly, Official Records, 48th Session, No. 36 (A/48/36).
34. Geoffrey Lean, *Our Planet* (UNEP), vol. 26, 1994.
35. A/CONF.164/13/Rev.1, 30 March 1994.
36. See *Lloyds List*, 8 Dec. 2004.
37. See United Nations Convention on the Law of the Sea (1982), Article 94.
38. Safety of Life at Sea Convention (SOLAS) (IMO, London, 1974 (as amended)), Part IX.
39. *Lloyd's List*, 9 December 2004; 14 Jan. 2005.
40. *Official Report, Braer*, 1993.
41. See Richard W.J. Schiferli, *20 Years* (Paris Memorandum on Port State Control, 2003). Headquarters–Netherlands; data–France.
42. See *ibid.*, pp. 12–16, for the text of the Final Declaration of the Diplomatic Conference on Maritime Safety, 26 January 1982. See also the draft agenda of the first meeting, in the Hague of the Paris MOU, on 7–8 October 1982, (PSCC-I/2 revised, 8 Sept. 1982), p. 19.
43. For an example of the narrowly interpreted European CFSP literature, which looks at the political-security level, and foreign-minister rather than technical-bureaucracies level of external relations, see Simon W. Duke, 'Preparing for European diplomacy', *Journal of Common Market Studies*, vol. 40, no. 5, 2002, pp. 879–80.
44. See R.P. Barston, 'Regional fisheries institutions', *International Journal of Maritime and Coastal Law*, August 1999; R.P. Barston, 'UN Conference on Straddling and Highly Migratory Fish Stock', op. cit.
45. See *European Commission: A Common Policy on Safe Seas*; Directive 95/21/EC Port State Control. The latter was implemented in Merchant Shipping (Port State Control) Regulations 1995 SI 1995, No. 3128, in force 1 Jan. 1996, and amended periodically.
46. See R.P. Barston, 'Port state control: evolving concepts' in H.N. Scheiber (ed.), *The Law of the Sea* (Kluwer, Netherlands, 2000), pp. 87–101.
47. The Maltese flag *Erika* (1976) broke up in heavy seas off the west coast of France on 12 Dec. 1999, affecting 400 km of coastline and 6,000 seabirds. *Lloyds List*, 14 Dec. 1999.
48. The Greek owned *Prestige* (Bahamas) 81,564 dwt. tanker, built in 1976, was disabled in heavy seas 13 Nov. 2002, 150 nm off Spain, before breaking up causing heavy oil pollution on the Spanish coastline. The tanker phase-out date under MARPOL 13G was 11 March 2005. The case also raised major issues of ports of refuge for disabled vessels. *Lloyds List*, 14 Nov. 2002.
49. See, for example, Directives 2001/106/EC and 2002/84/EC. Implemented in the UK by Merchant Shipping Regulations 2003, SI 2003, No. 1636, 22 July 2003.

50. See Paris MOU, *Annual Report* 2003.
51. See [www.imo.org]; also leaked Spanish tapes, *Lloyds List*, 15 Dec. 2005. The aftermath of the *Prestige* incident, 8 Jan. 2003. Greece held the presidency of the EU from 1 Jan. 2003; the Greek Minister of Mercantile Marine, G. Anomeritis, chaired the EU Maritime Transport Ministers Council.
52. The primacy of international institution rule making over regional or other national action is a central tenet of IMO (and other similar institutions). Cf. the little known speech of C.P. Srivastava to the opening session of the Paris MOU, at IMO headquarters, London, 29 Nov.1983, in personal correspondence and other papers; C.P. Srivastava, IMO Library, London.
53. See *Lloyds List*, 9 March 2005.
54. See [www.worldbank.org/external/projects] (on Chad).
55. Chad-Cameroon Petroleum Development Project. International Advisory Group Report Mission to Chad, 5–21 Dec. 2003, paras 44–7, p. 182.
56. Report IMF Executive Board, Article IV Consultation Cameroon. IMF, PIN No. 5/57, 29 April 2005. The Report offers an insight into the different philosophies and approaches of the IMF and World Bank, with the IMF preferring specific action, rather than the process-oriented development of the IBRD. For an example of the communications process school, replete with acronyms and checklists, see Masud Mozammel and Sina Odugbemi, *With The Support of Multitudes: Using Strategic Communication to Fight Poverty through PRSPs* (IBRD, London, 2005), especially pp. 126–7.
57. See *Report of Mission 8*, International Advisory Group, 1–12 Jan. 2005, para. 7.
58. See World Bank Press Release No. 2008/073/AFR.

Chapter 12

Disaster and emergency diplomacy

The Indian Ocean tsunami off northern Sumatra in 2004 resulted in one of the largest humanitarian disasters in modern times. The case serves to highlight a number of critical issues in humanitarian disaster diplomacy. The crisis in particular: graphically illustrated the limits to the information dimensions of globalisation; the role of national identity and foreign policy sensitivity; and underscored issues relating to international coordination, the role of the UN, and short versus long-term solutions. The scale of what was essentially a maritime-coastal disaster, too, necessitated the use of the military assets of external powers, rather than traditional NGO operations.

Historical background

National disasters and emergencies are a violent and intermittent part of individual and international life. While scientific knowledge of disaster phenomena – hurricanes and typhoons, tropical cyclones, flooding, drought, avalanche, earthquake and volcanic eruption, and disease transmission – has increased significantly, in many instances predictions of precise occurrence remain problematical. There is, too, the added difficulty of long periods of dormancy between catastrophic events, or between causation and detection. Krakatoa, a triple-cone volcanic island in the Sunda strait between Java and Sumatra, had, despite minor eruptions, been dormant for over 200 years prior to its eruption in 1883.¹ The event itself was novel and alarming. News of it, however, spread rapidly – aided by developments such as Morse Code, the Reuters news agency and the submarine telegraph cable, reaching the front page of the *Boston Globe* four hours after the initial report from the Lloyd's agent to Batavia.² Scientific understanding of the event at that time, nevertheless, was limited.

The irregularity of some phenomena has significant diplomatic consequences, as will be discussed later in this chapter, in terms of whether the issue remains (or not) on the policy agenda of international, regional and scientific organisations. Other features of natural disasters of significance for

diplomacy are related to location. In many instances disasters occur in remote regions of states, raising issues of access, overflight, international coordination and the presence of external organisations and agencies in moving to or operating in politically sensitive areas. The scale of some natural disasters such as the Pakistan and Thai floods in 2010–11 is so huge as to make them beyond normal international relief cooperation. The hurricanes Katrina and Rita affecting the southern United States underlined the logistical, policing and governance limits and vulnerability of a superpower to large-scale natural disasters. In some cases, states have policies that place secrecy or severely restrict information on major disasters and emergencies. China, for example, restricted information about the earthquake hitting Tangshan, a coal-mining and electricity centre 100 miles south-east of Peking, which measured 7.8–8.2 on the Richter Scale, killing an estimated 242,000 people. In the Armenian earthquake, in contrast, Gorbachev cut short a US visit in 1988 and accepted a large-scale Western emergency relief effort. National sea defence systems have tended to be minimal or, for economic reasons, work on long historical time-scale assessments. Japanese sea defences prior to the 2011 earthquake and tsunami were mainly constructed on a hypothesis of tsunami wave heights of 6–9m, whereas the 2011 tsunami was in parts several times that.

International disaster relief

International disasters have been dealt with through a mixture of ad hoc cooperation involving states, international charitable organisations and individual UN agencies, underpinned by ad hoc financial appeals, rather than from a permanent central UN budget, sufficient for complex disasters and emergencies. In many instances, individual state pledges are not matched by actual contributions.³ In an effort to improve the UN's coordinating role, the General Assembly adopted Resolution 46/182 in 1991, which included provisions for a high-level Emergency Relief Coordinator (ERC) and a Department of Humanitarian Affairs (DHA), later reorganised as the Office for the Coordination of Humanitarian Affairs (OCHA), headed by Under-Secretary-General Jan Egeland (Norway).⁴ The permanent element of the UN OCHA's budget covered by UN central funds has, nevertheless, remained small (around 10 per cent; \$11 million), and in addition to having to deal with over 18 UN agencies, the OCHA headquarters is functionally split between Geneva and New York, reflecting the organisational 'turf' wars of UN agencies.⁵

Early warning systems

A tsunami early warning system – the only one – was established in the Pacific following the 1960 Chilean and 1964 Alaskan tsunamis (see [Table 12.1](#)). The Pacific Tsunami Warning Centre (PTWC)⁶ is managed by the US

Table 12.1 Pacific and other tsunamis

<i>Date</i>	<i>Tsunami</i>
1 April 1946	Aleutia
4 November 1952	Kamchatka
9 March 1957	Aleutia
22 May 1960	Chile
28 March 1964	Alaska
9 October 1965	Manzanillo, Mexico
2 September 1992	Nicaragua
12 December 1992	Flores Island, Indonesia
12 July 1993	Okushiri, Japan
2 June 1994	Java, Indonesia
4 October 1994	Kuril Islands, Shikotan, Russia
1 November 1994	Philippines
21 February 1996	Northern Peru
17 July 1998	Papua New Guinea
17 August 1999	Sea of Marmara, Turkey
26 November 1999	Vanuatu
3 May 2000	Sulawesi, Indonesia
23 June 2001	Southern Peru
2 January 2002	Vanuatu
13 March 2011	Japan

Source: IOC, UNESCO (ITIC) For full details see archive at the International Tsunami Information Centre (List of Tsunamis).

NOAA, and is the operating arm of the International Coordination Group for the Tsunami Warning System in the Pacific (ICG-ITSU) established by UNESCO's Intergovernmental Oceanographic Commission (IOC). No system had been established, prior to the Indian Ocean tsunami, covering the Indian Ocean.⁷ The Pacific Early Warning System had 26 members states, including Hawaii, Australia, Fiji, the Cook Islands, New Zealand and Samoa, though it does not include a number of Pacific SIDSs; see [Figure 12.1](#).⁸

Indian ocean tsunami

The Indian Ocean tsunami struck at 7.58:50 local time (12.58:50 GMT) on 26 December 2004, off the west coast of northern Sumatra (see [Figure 12.2](#)). The earthquake, which began 25 miles under the seabed, registered 8.9 on the Richter Scale and generated a tsunami which reached Kenya and Somalia, 2,800 miles away.⁹ The tsunami travelled in parts at speeds of up to 500 mph, flooding the low-lying islands like Andaman and causing extensive devastation in Indonesia, Thailand, Sri Lanka and southern India before reaching East Africa. Other major tsunamis have included: Krakatoa, noted earlier, a volcanically caused tsunami resulting

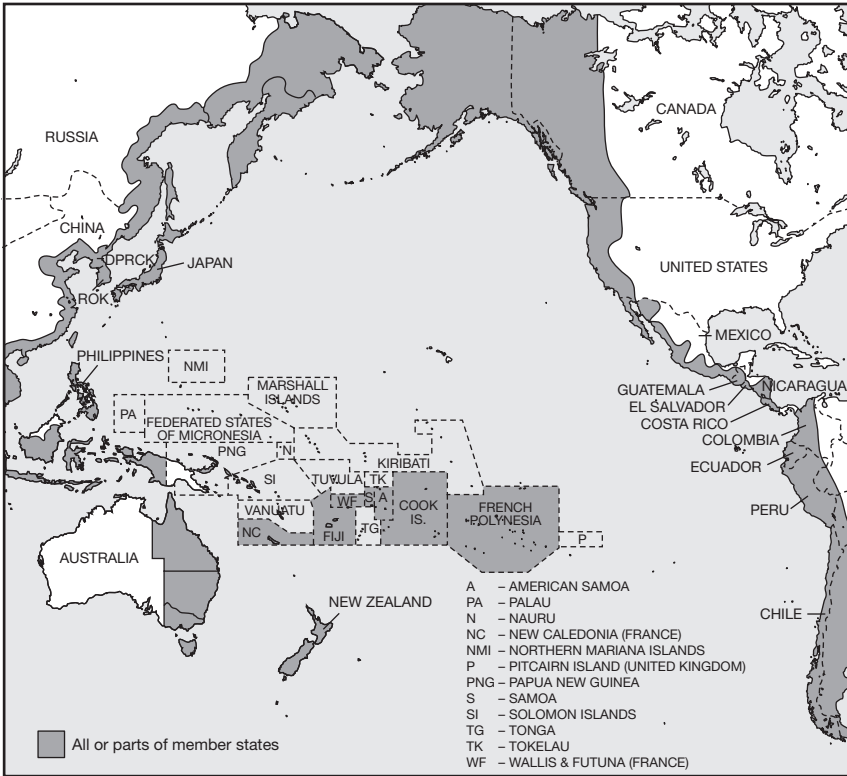


Figure 12.1 Tsunami warning system in the Pacific

in extreme coastal and longer-range damage and the loss of over 36,000 lives; along with a variety of other smaller and medium-range ones. An estimated 300,000 people died in the Indian Ocean tsunami.

Communications: the limits of interconnectedness

The role of information and communication in the Indian Ocean tsunami crisis is particularly striking. Rather than suggest a high degree of interconnectedness as an element of so-called globalisation, the case illustrates the central role of communication failures: the influence of information standard operating procedures on distribution; information bottlenecks; and the limited nature of international contacts between different monitoring or other scientific institutions concerned with tracking seismic and meteorological data. Within a region prone to volcanic activity and quakes, minor tremors were accepted. The high dependence of states within the Indian Ocean region on tourism, too, meant that there was a reluctance within Indian Ocean authorities to put out alerts warning of possible high levels of abnormal volcanic or possible tsunami activity.

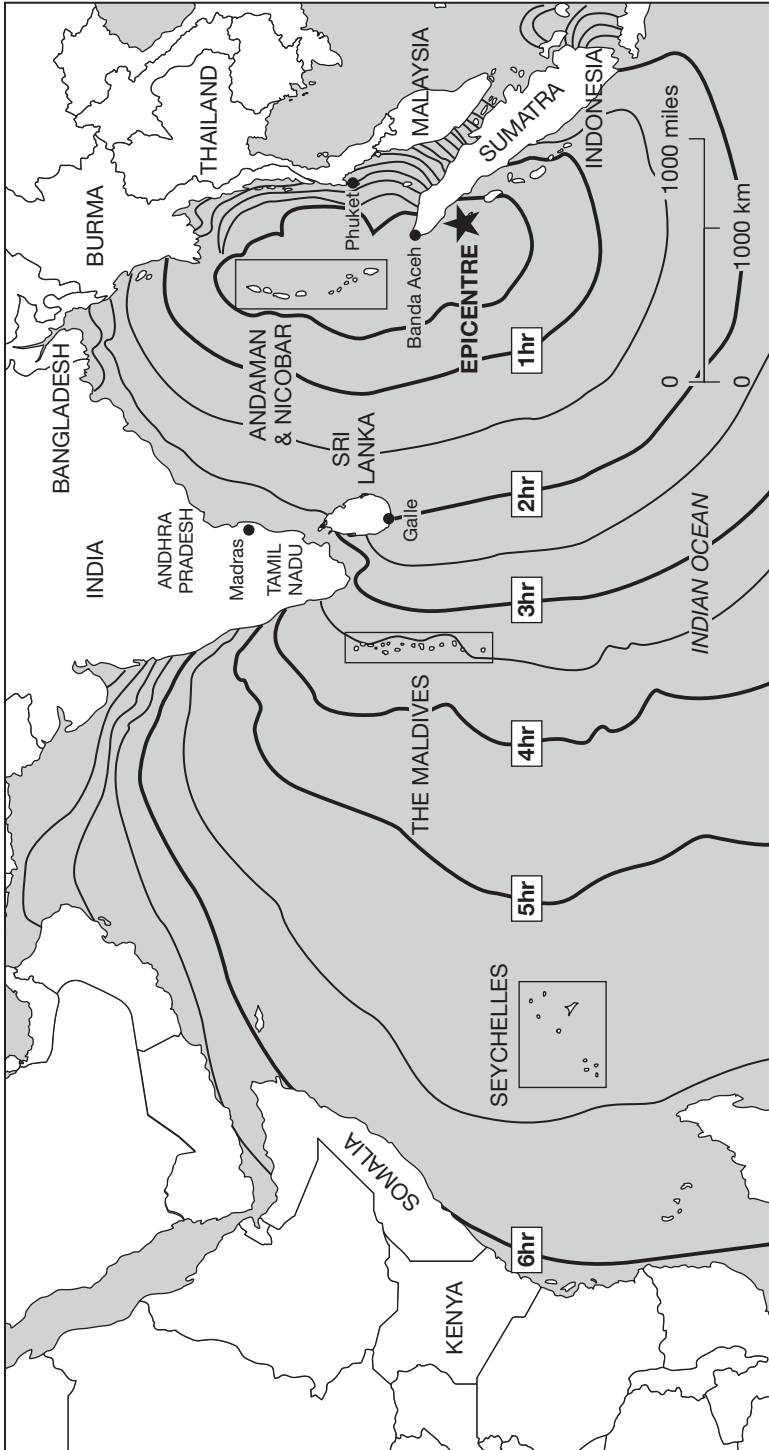


Figure 12.2 Indian Ocean Tsunami

The initial seismic activity off Sumatra was monitored at 7.58am on 26 December 2004, in Padang, central Indonesia, but the station experienced communication difficulties reaching the National Earthquake Centre in Jakarta. Elsewhere, the seismic activity was recorded at the Nagano observatory in Japan, in Australia and Honolulu. Information from these sources was distributed nationally, or, as part of standard procedures, to their diplomatic posts overseas, rather than to other countries.¹⁰ Furthermore, the initial routine Honolulu bulletin referred only to the Pacific region, despite the estimate being quickly revised to 8 on the Richter Scale.¹¹ Other reporting bottlenecks occurred, for example, between the Andaman and Nicobar Islands naval command with New Delhi.

The timing of the crisis was also a further important factor in the communications failure. International crises often have a habit of coinciding by design, or otherwise, with periods of international shutdown. This tsunami case broke over the holiday weekend of 26–7 December 2004, when national and international organisations – such as the Comprehensive Nuclear Test Ban Treaty Organisation, headquartered in Vienna, with a worldwide network of monitoring points – were without key operational personnel or at minimum manning levels. The Honolulu warning centre in the Pacific, too, had no points of contact in the Indian Ocean region.¹² The overall effect of bottlenecks and lack of linkage was to cut or severely reduce warning time, leaving little or no opportunity for emergency response that would have reduced the overall loss of human life. While these defects would be subsequently addressed, it remains unclear whether they would reoccur in analogous situations in future.

National perspectives

The diplomatic management of the actual crisis raised a number of issues regarding national response and how international cooperation would be organised. At a national level, one of the key questions concerns whether a head of state or government should be recalled in order to take personal control of national policy. Is recall necessary and can decision making in an international disaster crisis, at least for states, be delegated and/or conducted electronically or through conferencing? In essence, does key leadership make a difference, and what is the effect on decision outcomes of non-recall?

These issues arose when the EU High Representative Solana, in a move of *realpolitik*, continued with a private visit to the USA to see Condoleezza Rice, and later to the Middle East. In a British example, during the initial phase of the crisis, the prime minister remained on holiday in Sharm el Sheikh, Egypt, rather than returning to the UK. Decision making was conducted by the deputy prime minister, along with the foreign secretary and

chancellor of the exchequer, by telephone and conferencing with the prime minister. The case provoked considerable domestic controversy around the issue of whether the nature of the disaster and loss of British nationals meant it was proper for the prime minister to handle the issue personally.¹³

Views on the overall effect on British policy would suggest the response was initially bureaucratic-led, with incremental moves ‘trickled out’ by the Department for International Development and Ministry of Defence concerning, for example, financial aid and individual warship deployment.¹⁴ The initial government financial donation to the crisis was itself overtaken by the UK domestic combined charities’ Disaster Emergencies Committee pledges of £20 million, triggering the UK government progressively to increase its pledged contribution. Eventually, however, UK financial commitments to the UN OCHA Indian Ocean Earthquake-Tsunami Appeal (2005) rose to \$60 million (5.8 per cent) – the fifth largest donation behind those of Japan (22 per cent), private contributors (21 per cent), Norway (6.8 per cent) and Germany (6.3 per cent) in Phase I.¹⁵

International disaster coordination

The development of the international diplomatic efforts in the tsunami crisis was influenced by a core group of factors, including: the critical attitude of the USA towards the UN; the range of UN agencies involved; pressure for a UN coordinating role, particularly from smaller developed donors; and the foreign policy sensitivities of disaster-affected countries.

The diplomatic aspects of the crisis were unusual in a number of respects.¹⁶ In particular, the USA initially attempted to manage the crisis, in line with its ‘small coalition’ view, outside the framework of the UN, but later shifted to accept, formally at least, a UN coordinated operation. On 29 December, President Bush announced, from Crawford, the creation of a core group comprising India, Japan, Australia, plus the USA, to manage the crisis. There was no part, for example, for the UK, close ally in the Iraq conflict and a likely major donor, or the UN. The US model was endorsed, for example, by Indonesia, which had earlier put forward a similar regional proposal.¹⁷

However, the USA modified the core-group approach at the Jakarta one-day summit on 6 January, 2005,¹⁸ under pressure from the UN and a number of leading donor countries. The concept of a regional-donor group was, however, strongly supported by Japan. The Japanese MFA indicated nevertheless that the group would cease to exist after the Jakarta Summit and become part of the overall international effort. However, the group had been ‘innovative and effective in mobilising aid’.¹⁹ Japan, through ‘quiet diplomacy’, further consolidated its lead donor position (\$240 million) with meetings held with the World Bank and the Asian

Development Bank (ADB), and with Sri Lanka on 10 January 2005, on medium-term assistance.²⁰

The US decision was also influenced by recognition of the perceived need to repair its international image, damaged by the Iraq conflict. The tsunami crisis provided a rare opportunity to use overwhelming military power – elements of a US carrier group were rapidly deployed off Indonesia and Sri Lanka – for large-scale emergency humanitarian assistance. (In effect, control of ‘hard’ military power was traded off for possible ‘soft’ power, image and presentational benefits.)

The shift from the Aid Donor Core Group to an effort with substantial UN involvement represented a success for the State Department multilateralist position. The US secretary of state, Colin Powell, visited the region from 4–7 January and represented the USA at the Jakarta Summit. In an unusual piece of domestic public diplomacy, a national appeal to the US public was made through a joint address by Presidents Bush, Carter and Bush Snr.

The Jakarta Tsunami Summit Conference itself is interesting in two further respects. First, although the USA modified its position, the conference membership formula was still in practice one of G-8 (minus European powers), plus ASEAN and international/regional organisations. Added to ASEAN were other regional actors, including the PRC, Japan, South Korea, India, Sri Lanka and the Maldives, giving the conference a strong regional emphasis. Second, the conference was G-8 minus European powers, which signalled regional and other political sensitivity, despite the absentees’ large donor position. Third, 11 states (the Russian Federation, France, Germany, the Netherlands, Denmark, Norway, Sweden, East Timor, South Africa, Italy and Iran), plus the International Committee of the Red Cross (ICRC), had only observer status, and were not invited as full members of the summit.

National foreign policy sensitivity

In major international disasters and emergencies, national and foreign policy sensitivities are an important and often overlooked dimension. The Russian Federation, for example, was reluctant to call in outside assistance in the case of the nuclear submarine *Kursk* disabled in the Barents Sea.²¹ The PRC has been reluctant to disclose information on major accidents, medical emergencies (e.g. the ‘bird’ flu epidemic) or natural disasters. In the Indian Ocean tsunami case, sensitive issues arose because of long-standing insurgencies in two of the affected states (Indonesia – Aceh separatist movement; Sri Lanka – Tamil Tigers). Other political factors affecting Indonesia included the previously difficult debt rescheduling/structural adjustment negotiations with the IMF, and the East Timor question. Neither Indonesia nor Sri Lanka wished to see emergency international aid or medium-term assistance linked to insurgency/separatist issues, or their

domestic position on these weakened. Among the donor states, German assistance was linked initially to political progress in the two countries, but this position was later the subject of clarification by the German foreign minister. The UN secretary-general signalled unwillingness to link the issues by not travelling to areas of Tamil Tiger influence in Sri Lanka.

The scale of the tsunami devastation and extreme logistical problems (Aceh is a 14-hour road drive from Medan)²² necessitated reliance on external military assets, particularly helicopter and amphibious operations. The presence of extensive foreign military forces, particularly American, was politically sensitive, especially for the Indonesian government. Indonesia, for example, put a time limit for the withdrawal of foreign military personnel, which was set for the end of February or beginning of March 2005. Conversely, a number of donor states were concerned over the ambiguous status of Indonesian operations (anti-insurgent or humanitarian assistance). For example the Royal Malaysian Air Force refused to helicopter-lift Indonesian military forces on the grounds that its helicopter contingent was for 'aid' operations.

Disaster-affected states, too, were concerned at the possible presence and large numbers of NGOs and, to a lesser extent, intergovernmental organisations. Administrative and military restrictions were placed on NGO access to and in Aceh province by Indonesia. India refused to accept foreign aid and closed the Andaman and Nicobar Islands, where an estimated 4,000 people died, to NGOs.²³ Indian policy reflected sensitivity over its image – projected as an emerging major power, and bidding for a permanent UN Security Council seat. India, as noted earlier, had been invited to be a member of the original core group (the USA, Japan, Australia and India) put forward by the USA, and it wished to be seen as part of the solution, not part of the problem.

Debt relief: finding appropriate solutions in crisis

As part of the Western response to the Indian Ocean tsunami, the Paris Club and G-7 considered in early January 2005 a number of debt-relief proposals, including a moratorium on debt repayment (Canada and Germany) and debt 'write-off' (the UK). The proposals did not seem to be fully considered or take account of regional sensitivities, discussed above, on debt. In addition, some of the disaster-affected countries had not used the Paris Club, even in the Asian financial crisis, or have Paris Club arrangements. In fact, debt relief for Thailand, Malaysia and India could have been counter-productive, damaging their credit-worthiness and access to private capital markets, since the Paris Club would also require private creditors to write down their debt. The proposals were examples of the problem governments and bureaucracies face in crisis, in which there is short decision-making time, to come up with distinct and innovative solutions to problems; in other words, to be seen to be taking action.

The pressure to repeat similar ideas (e.g. on debt relief) is strong, with the result that often initiatives take on the appearance of standard operating responses. As the Indonesian finance minister put it: 'We didn't ask for a debt moratorium – they offered it to us.'²⁴

Organisation issues

In the tsunami crisis, many diplomatic posts in the Indian Ocean region found it difficult to report accurate information and assessment on the nature and magnitude of the crisis because of factors such as standard operating procedures, staffing and logistical problems. Many were not geared up for a complex and large-scale disaster, particularly in national and international multi-agency communication, or the protection of nationals and tracing missing persons or victims. In a number of European countries, reviews were carried out to evaluate the rational response. In Denmark, for example, a public review was undertaken to improve future Danish emergency preparedness. The report, involving 30 Danish authorities and private actors, identified a number of difficulties for Denmark during the crisis, including: the level of emergency preparedness of the Danish MFA and embassy in Bangkok; communications between the MFA and other Danish authorities; and limited international cooperation and coordination during the first phase of the catastrophe. The report also identified the problem of swiftly obtaining a precise basis of information for the initiation of humanitarian assistance, and that the EU underestimated the extent of the catastrophe.²⁵ Among the main recommendations of the report were:

- establishment of an MFA-based task force from the outset of a crisis (including travel agency, emergency services and insurance companies)
- establishment of a rapid deployment team
- strengthening of embassies' crisis preparedness (satellite phone, communications equipment, training, volunteers)
- cooperation with the MFA and Danish mobile telephone companies on information to Danes in emergency areas
- development of common formats and procedures for registration of missing persons and persons affected by catastrophe
- enhanced cooperation on crisis management under the auspices of the Nordic countries and EU
- intensified participation in humanitarian operations and cooperation within the UN and the EU.

International organisations: early warning systems

As noted earlier, no political or economic consensus existed prior to 2005 to extend the PTWC to similar arrangements for the Indian Ocean or other regions. In June 2004, the IOC meeting at technical level in

Bangkok failed to reach agreement on the issue. It was only following the massive catastrophe and loss of life in the Indian Ocean tsunami that the international community, along with UNESCO/IOC, eventually moved to establish an Indian Ocean system. A by-product of the tsunami crisis was the resumption of talks between Aceh separatists and the Indonesian government, mediated by Finland, leading to a peace agreement in July 2005.

The technical, administrative and economic issues of an early warning system were reviewed at the World Conference on Disaster Reduction in Kobe (18–22 January 2005) and the Phuket Regional Ministerial Meeting (28–9 January 2005). The IOC agreed at the 23rd Session of the IOC Assembly (21–30 June 2005) to establish an Early Warning and Mitigation System (ICG-IOTWS) for the Indian Ocean.

By 2010 partial elements of a warning system were established based on national centres receiving alerts from the US PTWC. An integrated system would require five elements: forecasting; detection; warning; preparedness; and mitigation. The major constraints were financial and selectivity of support. The US contribution to the IOC appeal was confined to technical assistance to Thailand, Sri Lanka, the Maldives and Indonesia, rather than to all Indian Ocean littoral states. Other technical factors affecting development of an integrated system include equipment failure, attacks on deep-sea monitoring equipment and communication gaps.

A number of factors can be put forward for the failure to implement an early warning system outside the Pacific region. First was the failure to secure internationally adequate funding or the technical support or a lead-technology state. Second, the question did not, in view of other competing issues, move onto the regional or international agenda. Third, there are a number of organisational factors. These particularly focus on UNESCO/IOC. From an international-relations theoretical perspective, they illustrate the process of agenda setting and how organisations track the dominant agenda. In this case, the UNESCO/IOC main focus followed the lead ideas in the UN during the 1980s and 1990s, such as sustainable development and SIDSs. The director-general of the IOC was not prepared to push or develop agendas outside that framework. International change on disaster management remains incremental and incomplete.

Summary

The Indian Ocean tsunami case is of particular interest because it:

- highlights the problem of the limits of coordination between institutions
- is a major example of information failure
- illustrates the failure or inability of organisations to move beyond the main agenda

- provides evidence on the limited role of NGOs in some disasters because of foreign policy sensitivities
- illustrates the role of standard operating procedures in organisations.

Notes

1. See Simon Winchester, *Krakatoa: The day that shook the world* (Penguin, Harmondsworth, 2003).
2. The public papers of William Berring and other eye-witness accounts, including the log of the mail packet *Governor General Loudon*, are held at the Royal Society.
3. Following the Bam earthquake, Iran received approximately \$17 million out of a pledged \$1 billion. See *Sunday Times*, 9 Jan. 2005 on Iranian statement.
4. UN General Assembly Resolution 46/182, Dec. 1991. Jan Egeland (Norway) was appointed by the secretary-general to replace Oshima (Japan) in September 2004. See [<http://ochaonline.un.org>].
5. Geneva operations include technical needs assessment and 'hardware' coordination; while the New York elements include strategic policy coordination and financial appeals.
6. See statement by Patricio Bernal, Executive Secretary, Intergovernmental Oceanographic Commission (IOC), 27 Jan. 2005 [www.unesco.org/tsunami].
7. The IOC masterplan on tsunami warning systems recommended extending the Pacific System to the Indian Ocean. On this point see Bernal, op. cit., 27 Jan. 2005.
8. The 26 member states were: Australia, Canada, Chile, Colombia, the Cook Islands, Costa Rica, the Democratic People's Republic of Korea, Ecuador, El Salvador, Fiji, France, Guatemala, Indonesia, Japan, the Republic of Korea, Mexico, New Zealand, Nicaragua, Peru, the Philippines, the Russian Federation, Samoa, Singapore, Thailand, the USA. 35 countries had designated Tsunami National Contacts (TNC) and Tsunami Warning Focal Points for receiving information on regional tsunami mitigation activities and tsunami alerts or advisors from the PTWC, JMA and WC/ATWC that serve as the international tsunami warning centres for the PTWS, by 2012, including additionally Malaysia, Tonga, Papua New Guinea 2007, Tulavu and Niue 2011. Countries expressing interest in ICG/PTWS activities, but which have not yet formally designated a TNC and TWFP are: Brunei, Cambodia, Honduras, Kiribati, Micronesia, Solomon Islands and Tokelau.
Source: [http://itic.ioc-unesco.org/index.php?option=com_content&view=article&id=1200&Itemid=...] For details of the Indian Ocean Tsunami Warning System see [<http://www.unesco.org/new/en/unesco/themes/pcpd/unesco-in-post-crisis-situations/ts>]. Since October 2011 Regional Tsunami Service providers (RTSP) of Australia, India and Indonesia have acted as primary sources for tsunami advisories for the India Ocean. The PTWC and Japan Meteorologic Agency (JMA) operated a parallel system up to 2012. See [<http://itic-ioc-unesco.org/index.php>].
9. *The Guardian*, 27 Dec. 2004.
10. See *Sunday Times*, 2 Jan. 2005.

11. See [www.prh.noaa.gov/ptwc/wmsg] for details of the PTWC standard operating procedures for levels of tsunami bulletin.
12. Interview.
13. *The Guardian*, 31 Dec. 2004, 1 Jan. 2005. The prime minister, however, left the G-8 Summit at Gleneagles following the London bombings, and closed the Summit early.
14. See statement by Hilary Benn, UK International Development Secretary, *The Guardian*, 3 Jan. 2005.
15. See Indian Ocean Earthquake-Tsunami Flash Appeal, Expenditure Tracking, Table 5, 30 June 2005 [<http://ochaonline.un.org>].
16. *The Guardian*, 30 Dec. 2004.
17. *The Guardian*, 1 Jan. 2005.
18. The 6 January Tsunami Conference was attended by the head of government or foreign ministers from all ASEAN countries (Brunei, Burma, Cambodia, Indonesia, Laos, Malaysia, Philippines, Singapore, Thailand and Vietnam) as well as Australia, Canada, China, India, Japan, Maldives, New Zealand, South Korea, Sri Lanka, the UK, USA, the EU Commission, UN, WHO, UNICEF, World Bank, ADB, Islamic Development Bank and IMF. Invited as observers were Denmark, East Timor, France, Germany, Iran, Italy, the Netherlands, Norway, Russia, Sweden, South Africa and the International Committee of the Red Cross (ICRC).
19. *Financial Times*, 6 Jan. 2005.
20. *Financial Times*, 6 Jan. 2005.
21. *The Times*, 13 Aug. 2000.
22. The author served in South-East Asia as UN Consultant with the National Institute of Public Administration Malaysia. He was also a member of the International Rescue Team in Heimaey, Iceland, 23 Jan. 1973, during the volcanic eruption.
23. *Financial Times*, 5 and 8 Jan. 2005.
24. *The Guardian*, 29 Dec. 2005.
25. See [www.um.dk], Tsu 15/06/05, interview and correspondence, Danish Embassy, London.

Chapter 13

Diplomacy and security

Defining security

The relationship between diplomacy and security is complex and evolving. The question of what constitutes security can be addressed from three perspectives: the international system; the nation-state; and the individual.

Internationally, security can be thought of in terms of the stability of the international system, defined as the level of tension or violence, and the corresponding extent to which actor interests can be accommodated through diplomacy, without recourse to violence, on the basis of mediation, rule and norm setting. In the event of violence occurring, the task of diplomacy is ultimately peaceful settlement, through the negotiation of ceasefires, withdrawal and other measures of a longer-term nature. From a quite different perspective, violence may be a preferred end in itself, and diplomacy the means of orchestrating violence rather than bringing about a negotiated solution.

At a national level, security has traditionally been considered in terms of responses to essentially external threats of a military kind. From this perspective, diplomacy features as the statecraft of force, involving such actions as deterring aggressors, building up coalitions, threatening or warning an opponent, and seeking international support of legitimacy for the use or control of force.

However, the advent of large numbers of small and vulnerable micro states into the international community, many with preoccupying internal economic problems, underlined the inadequacy of traditional strategic theory or guerrilla war-type definitions and perspectives.¹ The range of security threats from an advanced country perspective was highlighted in a Japanese study, which identified earthquake control as a central national security objective.² Other examples of 'domestic' security interests include food security, population control and water security (which frequently has an external threat dimension). Thus, security can be considered as the pursuit of policies, using diplomatic, military and other

means in relation to one or more of the following: external threats; regime maintenance; achievement of an acceptable level of economic viability, including avoidance of excessive economic dependence; ethnic stability; anti-terrorism; environmental threats; transnational sources of instability; and access to physical resources.

A third-level security can be thought of in terms of the individual – the diplomat and the private citizen. Security threats to diplomatic personnel and embassies have continued to increase as ‘spillover’ from Middle Eastern conflicts and transnational ethnic group conflict. At the level of the individual citizen, individuals tend to enjoy varying degrees of protection, depending on state capabilities and conceptions of national security. On occasion, states may have to take up exposed diplomatic positions in order to plead for their nationals.

Implications for diplomacy

Security interests of states and organisations are seldom static, except for a limited number of core values. New interests are acquired and marginal values are either elevated or discarded. At an economic level, continued access to overseas markets for key exports, the availability of raw materials, and the protection of the overseas assets of its nationals are frequently ranked as important security considerations. Conversely, security interests may be downgraded or contracted, as may happen with foreign bases or particular security agreements being allowed to lapse. States generally also face entirely novel and far-reaching threats from, for example, maritime fraud,³ international economic fraud, narcotics groups and transnationally organised crime.⁴ The purpose of diplomacy is to contribute to the process of recognising and identifying new interests at an early stage through continuous reporting and assessments, facilitating adjustment between different interests and contributing to policy implementation.

Second, the internal aspect of national security has a number of implications for diplomacy. Other domestic/international security concerns could involve threats such as financial fraud, refugee influx, hostage taking, and the activities of transnational religious groups. Dual-security states encounter problems concerning the balance of emphasis between internal and external security requirements and, in their external diplomacy, the need to compromise on pragmatic grounds with ideological opponents. For example those states with insurgency problems may find it necessary to attempt policies of political cooperation with an insurgent group’s protecting power. Writing albeit largely in an external context, Arnold Wolfers notes: ‘security covers a range of goals so wide that highly divergent policies can be interpreted as policies of security’.⁵

A third feature for many weaker states is the problem of establishing suitable regional security arrangements. A noticeable feature of recent diplomacy is the high priority attached by some states, which perceive

themselves weak or vulnerable in a local or regional context, to enhancing their security through declarations and treaties, frequently negotiated within the framework of the UN. In other instances, such as the break-up of the former Soviet Union, a security vacuum has led to a corridor of weak states in Northern and Central Europe attempting to seek NATO membership or associate status.

Finally, it should be recalled that the nexus between security and diplomacy can be broken in a number of circumstances. As we noted earlier, diplomacy may be directed entirely to the execution of violence. In other instances, a shift to the use of force might reflect dissatisfaction with the failure of diplomacy. For example during the Tehran hostage crisis, President Carter terminated the labyrinthine negotiations with Iran and authorised an attempted rescue mission of US diplomatic personnel. He recounts in his memoirs: 'We could no longer afford to depend on diplomacy. I decided to act.'⁶

Security and the international system

The founding concept of post-war international security within the UN framework was intended to be based on the idea of collective security. The UN Charter envisaged collective action to forestall or limit the action of a potential aggressor, through military and other measures. Thus, the UN Charter concept of security was one of states acting in concert to control or limit force. Such collective action clearly required universality of membership or something close to that, and the willingness of members to provide appropriate military forces on a suitable scale as envisaged under Article 43 of the Charter. Although UN membership expanded rapidly in the 1960s, an adequate agreement could not be reached to provide the UN with sufficient military force of a permanent nature. The closest the UN came to a collective security action against an aggressor was in the Korean War (1950–3) with the establishment of a UN force under US command. The Korean crisis provided the context for the wider role of the General Assembly on security matters when it passed the Uniting for Peace Resolution in November 1950 in response to the stalemate in the Security Council caused by the Soviet veto.⁷

The failure, however, to achieve collective security has meant that approaches to security within the UN system have been developed on an ad hoc basis, with the negotiation and establishment within the limits of what is politically possible of UN observer, truce and peace-keeping forces. The operating experience of the UN Military Observer Group in India and Pakistan, the United Nations Observation Group in Lebanon (UNOGIL) (1958), the United Nations Emergency Force (UNEF) (Suez, 1956) and Opération des Nations Unies (ONUC) in the Congo (1960–2), however, formed the basis for the subsequent development

of the concept of preventive diplomacy set out by Secretary-General Hammarskjöld.⁸ Central to the idea of preventive diplomacy was putting UN forces into areas of potential superpower conflict, to forestall direct involvement, with the aim of limiting the scale of the conflict. Writing in 1960, Hammarskjöld noted:

Those efforts must aim at keeping newly arising conflicts outside the sphere of bloc differences. Further, in the case of conflicts on the margin of, or inside the sphere of bloc differences, the United Nations should seek to bring such conflicts out of this sphere through solutions aiming, in the first instance, at their strict localization.⁹

Preventive diplomacy, to which the efforts of the UN have to a large extent been traditionally directed, is of special significance in cases where the original conflict may be said either to be the result of, or to imply risks for, intervention by the main powers.

In this way the success of preventive diplomacy depends on the inter-relationship between the peace-keeping operation and the related diplomatic efforts to resolve the conflict. Operating experience in the Congo, Cyprus (United Nations Force in Cyprus, UNIFCYP, 1964–) and the Lebanon (1978–) suggests that there are a number of particular conditions that influence the effectiveness of preventive diplomacy.¹⁰ First, states must be prepared to put the matter before the UN. Successive secretaries-general have criticised one or more parties to a conflict for their unwillingness to allow UN involvement. Other than this the cases under review indicate the importance of the initial and continued consent of the host government and the primary powers. The operation of ONUC especially brought the UN into major crisis. The USA and the Soviet Union not only had very different views on the legality and mission of ONUC, but the Soviet Union attacked the ‘impartiality’ of the secretary-general. In the troika proposal the Soviet Union called for substantial changes, including the establishment of three secretaries-general.¹¹ The controversy over the operation directly precipitated the financial crisis over the funding of UN peace-keeping operations. As a result of the dispute over the purposes of the force, the Soviet Union and a number of other states refused to finance it.

Following the Congo experience, subsequent UN operations have been funded in differing ways, such as voluntary contributions (as in the case of UNFICYP). The accumulating debt arising from peace-keeping operations rose to nearly \$400 million by 1985–6.¹²

While preventive diplomacy remains one of the important tasks or functions of the UN, the number and type of UN operations has subsequently expanded considerably under the Boutros-Ghali Agenda for Peace (see [Table 13.1](#)). Some of these operations are close in character to earlier UN missions such as border observations, while others are distinctive, resembling ‘governance’ operations (e.g. Cambodia, or relief-enforcement operations such as the United Nations Protection Force, UNPROFOR).

Although governance missions had been a subsidiary component of earlier UN operations, the authorisation of 'governance' forces whose primary tasks are for police, electoral and transfer of power functions raised important issues concerning the negotiation of resources, sovereignty in civil war and the potential longevity of operations.¹³

Preventive diplomacy: the development of a doctrine

The doctrine underpinning UN operations outlined above has been periodically revised since Boutros-Ghali's Agenda for Peace.¹⁴ In particular, a much greater focus has been given to preventive diplomacy. The earlier doctrine initiated by UN Secretary-General Dag Hammarskjöld has been reinterpreted in several respects since 2005, with greater emphases on the political and related diplomatic aspects of prevention, rather than the military aspects of peace-keeping forces.¹⁵

The line between core concepts of conflict prevention diplomacy, peacemaking and peacekeeping, is in practice blurred. Preventing conflict activities cannot be put into a neat box. The dimensions or features of long-running conflicts change – crisis, new flashpoints, movement of refugees, and the breakdown or resumption of political dialogue – and require as such differing mixes of approach or techniques. It is useful, however, in order to have some broad sense of the range of UN activities and to understand shifts in interpretation, to distinguish between conflict prevention and preventive diplomacy. Conflict prevention encompasses a wide range of UN activities including: political development; human rights issues, national dialogue processes and longer-term programmes to build national capacity to prevent conflict.¹⁶ In contrast, preventive diplomacy is much narrower in scope, with a focus on the timely use of diplomatic action to prevent the outbreak of serious conflict or to limit the geographical spread of conflict. Related actions are diplomatic moves to reduce political tension or crisis escalation. UN Secretary-General Ban Ki-Moon's re-thinking of the doctrine of preventive diplomacy, for example, has opened the application of the doctrine to a wider range of conflicts (especially those with limited prospect of *direct* great-power confrontation) and developed additional institution and methods.¹⁷ The use of preventive diplomacy is seen as having limitations, but could be usefully attempted nevertheless in *different* phases of conflict, and *during* a peace-keeping operation. The widening of the range of conflicts in which the UN has become involved has expanded to domestic political stability issues, including coups, coup attempts (e.g. Guinea, Mauritania, Niger) and volatile post-election situations (Afghanistan, Kenya, Zimbabwe and Ivory Coast).¹⁸

In reinterpreting preventive diplomacy, the secretary-general has relied for authority, both formally and informally, on Article 99 of the UN Charter. In Article 99, the secretary-general 'may bring to the attention of the Security Council matters which he considers as a threat to international

peace and security'. In practice, the interpretation of Article 99 has varied widely as in the cases of Dag Hammarskjöld (active, initiator), Kofi Annan (ideas, developing-world protagonist), Ban Ki-Moon (behind the scenes, technocratic). In terms of specific doctrine, early versions of preventive diplomacy (Hammarskjöld) relied heavily on crisis management and good offices of the secretary-general. Subsequently, UN diplomatic methods have been developed to include not only good offices but use of envoys, special representatives, shuttle diplomacy, mediation and Groups of Friends. The latter device, used not only for preventive diplomacy but other UN peace and security activities, consists of a group of countries who form to try and assist the resolution of a dispute or conflict. It is an important diplomatic function which acts as a kind of 'gatekeeper' to promote ideas, identify sticking points, and uphold mutually agreed principles.¹⁹

Additional diplomatic methods include the more extensive use of envoys and the extension of the concept of Resident Political Missions.²⁰ In 2011, for example, a new UN liaison office to the African Union was established. Other important institutional changes include the setting-up of UN Centres for Preventive Diplomacy, tasked with working on mediation, inter-ethnic dispute settlement and specific disputes; for example the United Nations Regional Centre for Preventive Diplomacy for Central Asia (UNRCCA) works on agreements for the peaceful sharing of water resources within the region and other sources of conflict.²¹

Other examples of the *political* dimension of contemporary preventive diplomacy include UN envoy diplomacy on state building (e.g. the South Sudan determination referendum, 2011); and political transition (e.g. the role of the UN in Guinea post-coup; Madagascar to implement the Maputo and Addis Ababa agreements); and shuttle diplomacy was used by the special envoy (General Olusegun Obasanjo) to try and normalise relations between Rwanda and the Democratic Republic of the Congo in 2008–9, averting renewed regional war.²² An unusual area of prevention is over the status and administration of towns and cities in disputed internal territory. The UN Assistance Mission for Iraq (UNAMI) was involved in the negotiations over Kirkuk, prior to the 2009–10 elections.

Preventive diplomacy has also developed a number of other methods, including undertaking fact-finding missions and formal inquiries. The purpose of these is to establish facts surrounding incidents – such as alleged atrocities in war zones, the fate of civilian refugees or migrant groups – and to assist in providing mechanisms for resolving the dispute. It requires personal, investigative diplomacy of the highest order. Examples include the inquiries into the deaths of Ghanaian migrant workers found in Gambia in 2007;²³ and the fact-finding mission by the UN special envoy to Afghanistan, looking into the deaths of Afghan civilians in air strikes in the course of US operations against the Taliban in the Afghanistan–Pakistan border area.²⁴ The Panel of Inquiry into the Gaza Flotilla Incident, 31 May 2010, served to emphasise the delicacy of these types of diplomatic investigations.

Implications for diplomacy

Contemporary versions of preventive diplomacy doctrine have taken the UN closer into the domestic structure and process of weak or vulnerable states. The UN inadvertently comes under pressure in terms of selecting sides and supporting rival claimants, compounded by issues associated with the use of force under [Ch.VII](#) (controlling civil disturbance; adequacy of response to geographic areas or groups; selectivity). The limitations of preventive diplomacy mainly centre on the fact that it tends to be time and event-bound. That is, the wider or fundamental problems of so-called 'secondary conflicts' remain. In other instances, state building or newly established electoral processes breakdown after a relatively short time, generating further rounds of instability. Finally, preventive diplomacy is an important part of the range of diplomatic techniques. For the UN, however, the implementation of preventive diplomacy coexists in an increasingly competitive international world. Its rivals include regional organisations, conflict resolution organisations (e.g. the Organisation of Eastern Caribbean States, Council of Europe) and private actors.

Rules and international security

Apart from preventive diplomacy and peace-enforcement approaches to security in the international system, a further important dimension of internationally derived security is the development of tacit and formal rules. Rules may take the form of treaties or agreements, less formal means including declarations, through to informal tacit arrangements such as customary restraints, or accepting the spirit of an agreement. In general, rule setting involves lengthy procedural and definitional diplomacy, especially within international organisations, in view of the high interests at stake. In the UN, extensive diplomatic efforts have been devoted to such issues as definitions of aggression, and the legal status of mercenaries and private-security firms. Related to these rule-setting conferences are investigations into, for example, challenges and threats to international security from new sources, such as internationally organised crime, the use of chemical weapons in particular conflicts and war crimes. These and other similar inquiries and UN special missions frequently form the basis for UN resolutions and formal legal instruments.

A noticeable feature of internationally sourced security is the efforts sponsored particularly, though not exclusively, by weaker states to establish regimes to regulate the status and use of particular territory. For example, the 1959 Antarctic Treaty (Article 1) reserves Antarctica for peaceful purposes. Other attempts to neutralise territory or limit the use or placing of weapons include Austrian neutrality (1955), the Rappaki plan for zonal disengagement in Europe (1957–8) and the creation of the Saudi Arabian–Iraq neutral zone. Since then, attempts to designate international areas for peaceful purposes have increased. For example the non-aligned

Table 13.1 UN peace-keeping operations since 1948.

<i>Force</i>	<i>Date</i>
UNTSO United Nations Truce Supervision Organisation	Since May 1948
UNMOGIP United Nations Military Observer Group in India and Pakistan	Since January 1949
UNFICYP United Nations Peace-keeping Force in Cyprus	Since March 1964
UNDOF United Nations Disengagement Observer Force	Since June 1974
UNIFIL United Nations Interim Force in Lebanon	Since March 1978
UNMIK United Nations Interim Administration Mission in Kosovo	Since June 1999
UNAMSIL United Nations Mission in Sierra Leone	October 1999–2005
UNMEE United Nations Mission in Ethiopia and Eritrea	Since July 2000
UNMIL United Nations Mission in Liberia	Since September 2003
UNOCI United Nations Operation in Côte d'Ivoire [Ivory Coast]	Since April 2004
MINUSTAH United Nations Stabilisation Mission in Haiti	Since 1 June 2004
UNMIT United Nations Integrated Mission in Timor-Leste [East Timor]	Since August 2006
UNAMID African Union-United Nations Hybrid Operations in Darfur	Since July 2007
MONUSCO United Nations Organisation Stabilisation Mission in the Democratic Republic of the Congo	Since July 2010
UNISFA United Nations Interim Security Force for Abyei	Since June 2011
UNMISS United Nations Mission in the Republic of South Sudan	Since July 2011
UNSMIS United Nations Supervision Mission in Syria	Since April 2012
Financial aspects	
Annual Budget	\$7.84 billion
Estimated total cost of operations (1948–2012)	\$69 billion
Outstanding contributions to peace keeping (as of 30 September 2005)	\$2.19 billion

Source: United Nations

movement discussed the Indian Ocean region at the Lusaka Conference in 1970. In December 1971, the issue was taken up by the UN General Assembly, which declared the Indian Ocean a zone of peace and formed the Ad hoc Committee on the Indian Ocean.²⁵ A number of regional treaties, including the Treaty of Tlatelolco (1967),²⁶ have declared nuclear-free zones. In South-East Asia, ASEAN issued a declaration in 1971 intended to secure recognition of South-East Asia as a zone of peace, freedom and neutrality (ZOPFAN),²⁷ while the Valletta Declaration of September 1984 made peaceful-use claims for the Mediterranean as a closed sea. Relatively few states now claim neutrality, although Turkmenistan declared permanent neutrality in 1995.²⁸ The Union of South American Nations issued a declaration of peaceful relations at Buenos Aires on 4 May 2010.²⁹

The security debate, too, has widened to include opposition by regional actors to the carriage of hazardous cargo, such as processed nuclear materials, by sea through areas such as the Caribbean and Pacific. The removal and transportation of enriched nuclear material for destruction or controls to improve nuclear security have been the subject of several summits, including the Seoul Nuclear Materials Summit. These and similar declarations suggest that states continue to find value in committing very significant amounts of their diplomatic time to establishing rules, declarations and regimes by international diplomatic conferences, for a wide range of varying risks.

Allies, alliances and diplomacy

The foregoing has looked at the scope and limitations on internationally sourced security in the form of preventive diplomacy and internationally agreed rules. Of the other national actions undertaken by states in the pursuit of security, three broad areas of diplomatic activity have been devoted to the enhancement of security, the redefinition of security interests and the maintenance of freedom of action.

In seeking to enhance security, states have traditionally had at their disposal methods such as negotiation of arms supplies and security arrangements with a protecting power. Other options are avoidance of direct involvement in conflicts, maintenance of a low diplomatic profile, or conversely seeking international support. Failure to achieve a wide basis of support was seen as a major source of weakness by the Iranian government during the long-drawn-out Iran–Iraq war. As Khomeini bitterly complained, Iran could count its allies on the fingers of one hand.⁴⁰ In the Yugoslav conflict, the inability of the Bosnian Muslim government to gain the unequivocal support of a major power, coupled with divisions among Western powers, severely hampered the Bosnian policy of securing weapons and military backing.

For many states, nevertheless, reliance has continued to be placed on bilateral arrangements. Such arrangements have involved security

support from a local power (e.g. Saudi Arabia–Bahrain). Support from external powers is often traditional, as in the case of United Kingdom–Oman. Other bilateral relations may be weapons-based (e.g. Russian Federation–Iran). In these instances the ability (or inability) to supply particular types of weapons, dual-use technology or restricted defence or nuclear materials can be seen by supplying powers as important indicators of the state of bilateral relations.

In bilateral economic relations, security issues occur for a number of reasons. These include: threats to supply (supply interruption); availability of strategic minerals; and restrictions (sanctions; embargoes) on end users. The concept of energy security in an absolute sense is for most states unobtainable. Most policies at best aim to reduce cost dependence. Thus, for example, Japan has concluded bilateral agreements with Saudi Arabia, and conducted regular diplomatic exchanges covering various sectors, including oil/gas exploration to ensure petroleum/LNG supplies.⁴¹

Alternative oil, unconventional oil supplies (e.g. oil sands) in North America, and conflict-free supply areas for strategic minerals, have also received greater attention.⁴² In some instances (e.g. rare earth), alternative strategic mineral sources remain largely unexplored to date on cost grounds, in that the PRC (36 per cent production) maintains a sales (90 per cent) monopoly position. Chinese control of production and pricing policies was challenged by the EU, US and Japan in the WTO.⁴³ However, the high volume of existing electronic manufacturing in the PRC makes external investment in alternative commercial rare-earth mining (e.g. Alaska) costly and currently unlikely on a large scale, without major national subsidy.⁴⁴

Relatively few formal security alliances have been concluded in recent years. This reflects the continuing emphasis on enhancing bilateral and regional economic cooperation, as a primary strategic orientation. The Gulf Cooperation Council (GCC), for example, was created in 1981. Diplomatic cooperation amongst the members (Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and the United Arab Emirates) has increased considerably since then, but GCC security cooperation remained relatively limited despite the Iraqi invasion of Kuwait and the Gulf War, prior to the Arab Spring.⁴⁵ It is interesting to note in comparison that the Association of South-East Asian Nations (ASEAN) also remained an essentially political and economic rather than security organisation for a considerable period after its formation. ASEAN's subsequent development, nevertheless, was affected by two factors: the loss of *raison d'être* as a result of the growth of competing pan-regional organizations, including APEC, and, the shift in the strategic axis of Asia–Pacific towards China and away from the United States. The first of these factors was perceived by some ASEAN members (e.g. Malaysia) as weakening their economic security and reducing their political influence. ASEAN distinguished only by its increasing range of summits, conferences and numerical additions (ASEAN + 1, ASEAN + 3), mutated into different combinations of cooperation in which they had increasingly less influence.⁴⁶ Second, the ASEAN Defence Ministers

Meeting Plus (ADMM+), in October 2010, moved ASEAN away from its original economic purpose into security cooperation.⁴⁷ ASEAN was no longer a limited membership economic group, but a large amorphous collection of routinised diplomatic events.

Within Europe, a security vacuum was created by the collapse of communism, and the accompanying dissolution of COMECON and the Warsaw Pact. Former members of the Warsaw Pact, including the Czech and Slovak republics, Hungary and Poland, joined NATO and the European Union. Several small former Soviet republics have attempted to similarly reorientate. For its part, the Russian Federation has attempted to deter further expansion of NATO, and to reconstruct economic security organisations with its minor Euro Asian republics, including Belarus and Kazakhstan.⁴⁸

Redefining security

Efforts to redefine the purposes and benefits of security arrangements have now become an almost everyday feature of international relations. Why does redefinition arise? What issues are raised by redefinition and how are they resolved? Major redefinition of security interests, rather than routine adjustments, is likely to occur for one of a number of reasons, such as: change of government; a desire to decrease dependency; dissatisfaction with a major 'guarantor'; to acquire enhanced economic benefits. Only very rarely does redefinition occur because of alliance or bloc collapse or disintegration, as in the case of the Warsaw Pact.

Strategies which may be used to redefine security are set out in [Table 13.2](#). One of the most commonly used is diversification, implemented: as a result of a change of government; as a means of decreasing dependency; or as a means of introducing balance as part of a foreign policy of maintaining a measure of equidistance between major partners. For example as part of Indian foreign and security policy, arms purchases are made from several suppliers, rather than relying on a traditional or limited number of suppliers. In strategic resources, the resource shift in Australian policy towards strategic resource export (uranium) to India was an important foreign policy gain for India.

In the international economic sector, redefinition strategies focus particularly on assessing market access, supply control and market dominance either through production or pricing policies. In the economic security component of its foreign policy, one of China's principle aims in strategic metals is to work towards market dominance or significant control of major strategic metals such as tantalum. The redefinition involves moving from trading to market dominance as a lead player, using corporate acquisitions, bilateral intergovernmental agreements (supply MOUs), and event diplomacy (business seminars/conferences).

Table 13.2 Redefinition strategies

- Diversification (offset, balance)
- Market access
- Expansion operations
- Organisational expansion/role development (bureaucratic)
- Reorientation
- Representational/join a regional/international organization

Political control strategies to achieve redefinition may be direct or indirect. Indirect strategies rely on assimilation through observer status, membership, agenda management and operation of secretariat functions of regional or international organisations, and creation of new regional or other security organisations. These are standard instruments in the foreign-policy strategies of primary and other major powers. For example the Russian Federation has attempted to redefine relations with the independent republics on its periphery, through bilateral agreements on economic integration declarations.

In expansion operations, the aim is to expand the activities of a regional or international organisation into fields in which they had not previously operated to any significant extent. This may be achieved through either cooperation with an existing organisation (e.g. EU–AU hybrid peace-keeping operations) or creation of additional centres or liaison offices (e.g. UN Centre for Preventive Diplomacy in Central Asia).

Security of small states

While there appears to have been reluctance among states to enter into formal multilateral alliance commitments, interest, nevertheless, has increased in regional arrangements of a lesser nature. A good example is the South Pacific Forum, which brings together Australia, the Cook Islands, Fiji, Kiribati, Nauru, New Zealand, Niue, Papua New Guinea, the Solomon Islands, Tonga, Tuvalu, Vanuatu and Western Samoa. The grouping has been drawn together on a number of issues, including problems connected with extended maritime boundaries under the Law of the Sea Convention, dumping of waste at sea, illegal fishing by distant-water fleets and nuclear testing.

Other small actors have sought security through a deliberate policy of joining as many regional and international organisations as possible, for example the Baltic states. The new Central Asian states have joined, for example, both the European Bank for Reconstruction and Development (EBRD) and the Asian Development Bank (ADB), despite dual membership clauses that limit duplicate economic benefits.⁴⁹ In this instance, membership alone, without drawing rights, is seen as a symbolically important element of security. For some, the membership cost of a large,

external multinational institution policy is too high (e.g. Uzbekistan), forcing a shift in strategy to one of enhancing inward representation by international organisations and corporate bodies. Uzbek policy, for example, has been to encourage the opening of missions in Tashkent, including an integrated UN regional office, corporate bodies such as IBM, and other institutions such as the Red Cross. Sensitive geo-strategic location and limited diplomatic resources have also meant that Uzbek policy has placed great importance on non-involvement in conflicts such as that between Azerbaijan and Armenia over Karabakh, and that involving Tadjikistan. Traditional diplomacy is seen as inadequate or even dangerous in the context of ethno-clan conflict.

A further aspect of the security of small states is the growing recognition of the range of threats faced by small states in the highly vulnerable category. For example the UN Conference on the Protection and Security of Small States identified three groups of threat:⁵⁰ international drug/currency networks; policing of the territorial sea and exclusive economic zone; piracy, mercenaries and terrorism.

In addition, intergovernmental conferences have addressed other specific areas of vulnerability, including global sea-level rise and other ecological problems such as desertification. In fact most of the above threats require high degrees of international cooperation via international institutions rather than low-level regional responses. Commenting on this problem, the representative of the Maldives noted: 'for the small state, diplomacy will always remain the first line of defence, no matter what steps are taken to strengthen its national defence capabilities'.⁵¹

Security: embassy and diplomat

Concern over the growing risks faced by diplomatic personnel, officials accredited to international organisations, and to diplomatic and consular premises has intensified considerably since the conclusion of the Vienna Convention on Diplomatic Relations in April 1961.⁵² The Vienna Convention provisions relating to security deal inter alia with the inviolability of the mission and the special duty of the receiving state to take all appropriate steps to protect the premises of the mission against any intrusion or damage, and prevent any disturbance or impairment of the dignity of the embassy (Article 22). The archives and documents of the mission are also inviolable (Article 24), as is the person of a diplomatic agent. The receiving state must take all appropriate steps to prevent any 'attack on his freedom, person or dignity'. Other relevant international agreements are the Vienna Convention on Consular Relations of 1963 (with Protocols), and the Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, including Diplomatic Agents, of 1973. In the event of a breach in relations or other serious conflict, the Vienna Convention on Diplomatic Relations allows for the

operation of protecting powers, acceptable to the host country. For example, British interests in Iran were assumed by Sweden from 1980 to 1988 for security reasons, despite the maintenance of diplomatic relations between the two countries.⁵³

In 1980, in view of continuing violations of the Vienna Convention, the UN General Assembly passed Resolution 35/168 establishing reporting procedures for incidents against embassies and diplomatic personnel.⁵⁴ States have used the reporting procedures for two different purposes: either to report violations regarding their own missions and representatives, or to submit information on incidents in their own territory, whether the incidents had or had not been previously reported by the other state concerned. The reports provide information on incidents ranging from assassination, bomb attacks, violent attacks on diplomatic buildings, including occupation, through to demonstrations.⁵⁵ Several of the incidents are extensions of ongoing regional conflict or civil war. Others involve breaches of travel restrictions in prohibited zones or security areas (Article 26). A further question that has arisen concerns the status of a representative office. For example, Sweden argued that an attack on the Turkish tourist office in Stockholm did not fall within the Vienna Convention, since the Turkish office did not enjoy diplomatic status.⁵⁶

Summary

In modern international relations, the nature of security and the security requirements of states have strikingly changed from the kinds of issues traditionally thought of as comprising threats. Many modern threats are, however, of a non-military nature and require diplomatic or other appropriate responses. Diplomacy, too, is an essential element in the continual process of defining, maintaining and enhancing security. In the main, UN peace-keeping and other quasi-military forces have made a relatively important though declining contribution to national and international security. In contrast, states have placed importance on using the UN as a forum for the generation and establishment of rules and regimes such as nuclear-free zones, zones of peace, environmental security and resource management. The economic dimension of security finds its expression in moves outside Europe – in the Middle East, Asia, the Pacific and Latin America – to increase regional cooperation, and promote stability through the establishment of groupings within which to promote trade, extradition, fisheries and exclusive economic zone (EEZ) management and other cooperation. Many of these are as yet embryonic, but they are an important indication of the differences in perceived needs and emphases of states. Overall, the security threats faced by modern states have become increasingly diverse and continue to pose additional, complex challenges for diplomacy.

Notes

1. R.H. Ullman, 'Redefining security', *International Security*, vol. 8, no. 1, 1983, pp. 129–33.
2. Japanese Defence White Paper (2011). The Defence review security threats identified were from maritime sources, earthquake, cyber and nuclear proliferation.
3. On maritime fraud see annual report of the International Maritime Bureau, 2012.
4. See UN report, UN Doc. E/CN.15/2011/5, International cooperation in combating transnational organized crime and corruption.
5. Arnold Wolfers, *Discord and Collaboration* (The Johns Hopkins Press, Baltimore, Md., 1962).
6. Jimmy Carter, *Keeping Faith* (Collins, London, 1982), p. 506.
7. Inis L. Claude Jr., *Swords into Plowshares*, 3rd edn (University of London Press, London, 1964), pp. 245–8; Hans Kelsen, *Recent Trends in the Law of the United Nations* (Stevens & Sons, London, 1951), pp. 953–90.
8. Alan James, *The Politics of Peace-Keeping* (Chatto & Windus, London, 1969), esp. chs 7 and 8.
9. *Public Papers of the Secretaries-General of the United Nations*, vol. 5 (Dag Hammarskjöld), 1960–1 (Columbia University Press, New York, 1975), pp. 131–2.
10. See R.P. Barston, 'Problems in international peacekeeping: the case of Cyprus', *International Relations* (David Davies Memorial Institute of International Studies, London) vol. 3, no. 11, May 1971, pp. 928–40.
11. Claude, op. cit., pp. 297–8.
12. The projected deficit as at 31 Dec. 1985 was \$390.7 million, of which \$116.3 million related to withholding, or delay in payments to the regular budget and the balance to peace-keeping activities. See A/40/1102, 12 April 1986, paras 11 and 15. See also *UN Chronicle*, vol. 19, no. 5, May 1982, pp. 65–70.
13. See *UN Peacekeeping Operations and Principles* (UN, New York, 2011).
14. See A/47/277. S/2411, 17 June 1992.
15. See *New Horizons Initiative, Progress Report*, no. 2, December 2011, and S/PRST/200/18. 23 Sept. 2010 on integrated peace-keeping and peace-building operations.
16. On the evolution of doctrine, see the core reports shaping key ideas, including Agenda for Peace, A/47/277 (S/24111); and Supplement A/50/60 (S/1995/1); Brahimi Report, A/55/305 (S/2000/809). See also 64th UN General Assembly, Fourth Committee.
17. See Ban Ki-Moon, *Preventive Diplomacy: Delivering Results*, S/2011/552.
18. See Lynn Pascoe, 'Rediscovering Preventive Diplomacy: a view from the United Nations'. Remarks at the Brookings Institution, 26 July 2010.
19. See S/2011/552. op.cit., p. 910.
20. See S/2011/552, *ibid.*, pp.12–13.
21. UN Regional Centre for Preventive Diplomacy in Central Asia (UNRCCA). S/2007/279, 16 August 2007.
22. See S/2011.552, op.cit., p. 10.
23. Joint UN-ECOWAS Final Report on Death of Ghanaians in Gambia, *Gambia News*, 14 May 2007.

24. On the role of UN Special Representative to Afghanistan Kai Eide in leading the fact-finding mission on the Azizabad massacre in August 2008, see Sherard Cowper-Coles, *Cables from Kabul* (Harper Collins, London, 2011), pp. 162–3.
25. For the UN Gaza Flotilla report, see UNGA A/HRC/15/21, 27 Sept. 2010. The Israeli ambassador was expelled by Turkey after the report eventually came out.
26. Raymond Cohen, *International Politics* (Longman, London, 1981), p. 156.
27. UN General Assembly Resolution 3314 (XXXIX) 29 UN GAOR, Supp. (no. 31), 142 UN Doc. A0631 (1975).
28. See the efforts of the special rapporteur, Enrique Bernales Ballesteros, to argue for a wider, more modern definition of mercenary, in address to UNGA Third Committee, GA/SHC/3752; see also International Committee of the Red Cross for a discussion of the status of mercenaries (Rule 108, Additional Protocol I to the International Convention against the Recruitment, Use, Training of Mercenaries, A/RES/44/34, 4 Dec. 1989.) On the rise of mercenaries' now very diverse role, see 'Alarming rise in mercenary activities' (OHCHR, 1 Nov. 2011) and Working Group Report on Private Security Companies, A/HRC/2651516, 7 Oct, 2011; A/66/317, 22 April 2011.
29. See, on private security companies, A/HRC/RES15/6, 7 Oct. 2011.
30. See statement by Giuseppe Di Gennaro, outgoing chairman of the UN Committee on Crime Prevention and Control, and executive director of the UN Fund for Drug Abuse Control, in *UN Chronicle*, vol. 19, no. 5, May 1982, p. 60.
31. *UNTS*, vol. 402, p. 71; *UKTS*, no. 97, 1961, Cmnd. 1535.
32. Austrian State Treaty, 15 May 1955, *UNTS*, vol. 217, p. 223; *UKTS*, no. 58, 1957, Cmnd. 214. Austrian neutrality was promulgated as a constitutional law on 26 Oct. 1955.
33. F.S. Northedge, *Descent From Power* (George Allen & Unwin, London, 1974), pp. 244–5.
34. Henry W. Degenhardt, *Treaties and Alliances of the World* (Longman, London, 1981), pp. 3 and 6.
35. See Resolution 2832 (XXVI) 16 Dec. 1971, and Philip Towle, 'The United Nations Ad Hoc Committee on the Indian Ocean: Blind alley or zone of peace?', in Larry W. Bowman and Ian Clark (eds), *The Indian Ocean in Global Politics* (Westview Press, Boulder, Colo., 1981), pp. 207–22. The committee is composed of these member states: Australia, Bangladesh, Bulgaria, Canada, China, Djibouti, Egypt, Ethiopia, Germany, Greece, India, Indonesia, Iran, Iraq, Italy, Japan, Kenya, Liberia, Madagascar, Malaysia, Maldives, Mauritius, Mozambique, the Netherlands, Norway, Oman, Pakistan, Panama, Poland, Romania, the Russian Federation, Seychelles, Singapore, Somalia, Sri Lanka, Sudan, Thailand, Uganda, United Arab Emirates, United Republic of Tanzania, Yemen, Yugoslavia, Zambia, Zimbabwe.
36. UN Doc. A/40/535, para. 238, p. 65.
37. Alison Broinowski, *Understanding ASEAN* (Macmillan, London, 1983), Appendix E, p. 294.
38. See Final Declaration of the first ministerial meeting of the Mediterranean members of the non-aligned movement, Valletta 10–11 Sept. 1984, UN Docs A/39/526 S/16758, and A/40/535, para. 253, p. 69.
39. Declaration of the Council of the Union of South American Nations, Buenos Aires, 4 May 2010.

40. Khomeini, quoted in Dilip Hiro, *The Longest War* (Grafton Books, London, 1989), pp. 154–5. The July 1984 Iranian offensive was proposed for diplomatic reasons. Failure the following year of Iran's March 1985 offensive in the Haur al Hawizeh marshes to seize the Basra–Baghdad road softened Tehran's attitude to relations with the Gulf Co-operation Council, and the Saudi foreign minister was invited to Teheran, prior to the GCC Muscat Summit; Hiro, p. 156.
41. See [http://www.meti.go.jp/english/press/2011/1011_02.html].
42. On North American oil sands extraction projects see *The Globe and Mail*, 21 Nov. 2011.
43. See *Financial Times*, 13 March, 2012, for the WTO dispute.
44. See on North American exploration [[www.youtube.com/Watch Alaska Rare Earth Conference 2011](http://www.youtube.com/Watch%20Alaska%20Rare%20Earth%20Conference%202011)].
45. See Alan Munro, *An Arabian Affair* (Brassey's, 1996), p.132. For details of the Saudi Arabian initiative in the GCC to move from a cooperation to a higher level of unification, see Euro Asia Review, 20 Dec. 2011.
46. See [<http://www.aseansec.org/16580.htm>]. The vast labyrinth of meetings is illustrated by one sector – the ASEAN+3 has 65 meetings (1 summit, 17 ministerial, 23 senior officials, 1 director-general, 17 technical and 6 'other track').
47. See VNN News 12 Oct. 2010, for interview with Malaysian minister of defence Dr Ahmad Hamidi over concern for primary role of ASEAN on defence.
48. Euro Asian Economic Council (Russian Federation, Belarus and Kazakhstan), Nov. 21, 2011.
49. Basic documents of the European Bank for Reconstruction and Development (EBRD), Agreement Establishing the EBRD 29 May 1990, Article 13 (vii).
50. Report of the Secretary-General, A/46/339, 18 Sept. 1991.
51. *Ibid.*, para 11(d), p. 35.
52. UN Doc. A/CONF.20/13, 16 April 1961, 55 *AJIL* 1961.
53. See *British Yearbook of International Law*, vol. 60 (1989), pp. 632–3.
54. See UN GA RES 35/168, 15 Dec. 1980; and A.RES/49/49, 17 Feb. 1995.
55. For details of incidents see A/49/295, 5 Aug. 1994.
56. See *ibid.*, p. 21 for the Swedish note verbale arguing that the attack on a tourist office fell outside the reporting requirements of Resolution 42/154.

Chapter 14

Diplomacy and mediation

One of the central tasks of diplomacy at an international level is contributing to the pacific settlement of disputes between states and other actors. The continued proliferation of disputes and armed conflict in the Cold War and post-Cold War period, many marked by their seeming insolubility, ethnic and nationalist nature or association with the break-up of the former Soviet Union, has meant the constant adaptation of diplomatic methods. This chapter will focus especially on one of these methods – mediation – and will examine the nature of mediation, the mediators, methods used in mediation and the limitations or success of mediation efforts.

Mediation: meaning and definitions

Traditionally, the methods used for the pacific settlement of disputes have included inquiry, negotiation, conciliation, arbitration, mediation and judicial settlement. This range of methods has received formal recognition in both the League of Nations Covenant and United Nations Charter.¹ Although the UN Charter distinguishes the pacific settlement of disputes in [Chapter 6](#) from enforcement under [Chapter 7](#), mediation is possible during the course of armed conflict or war.

In a strict sense, mediation should be distinguished from conciliation and arbitration, although there are a number of features common to all three. The essence of conciliation is more on facilitating communication between the parties and clarification of opposing positions, rather than necessarily proposing substantive solutions. Conciliation has been used particularly in domestic disputes, while in international diplomacy a number of initiatives under UN auspices in the 1950s and 1960s were of the conciliation type, such as the UN Commission on India and Pakistan, drawn from Security Council members, or individual envoys such as Sir Owen Dixon in the Kashmir dispute.² Intermediary functions under UN authorisation have been carried out by: named individuals (e.g. Count Bernadotte, Palestine); a named group (e.g. the Good Office Group on

Korea, 1951); a UN secretary-general (Pérez de Cuellar, Gulf, 1987); and more frequently by persons designated by a secretary-general (e.g. secretary-general's special representative for Angola and representatives of three observer states).³ The increasing use of envoys of differing types and varied missions has tended to blur the distinction between conciliation, good offices and mediation.⁴

Arbitration is properly distinguished from mediation in that it is generally juridically based. Moreover, the solution proposed by an arbitrator may not necessarily be reached on the basis of a balance between conflicting interests but on criteria such as arbitrators' interpretations and application of principles or precedents. Arbitration may be binding or non-binding. It is noticeable that compulsory dispute settlement provisions through arbitration have been a feature of several recent resource-related treaties.⁵

Mediation is distinct from conciliation or arbitration in that the mediator is either indirectly or directly attempting to promote a temporary or permanent solution based on a conception of outcomes likely to receive joint or widespread acceptance by the parties in dispute.⁶

A mediator is thus concerned with strategies to affect both the process and content of possible solutions. In other words, the aim of mediation is to change four elements: perception, approach, objectives and behaviour. In a useful definition of mediation, Kissinger put these four elements as follows: 'the utility of a mediator is that if trusted by both sides he can soften the edge of controversy and provide a mechanism for adjustment on issues of prestige'. The issues, however, need not necessarily be ones of prestige.⁷

Mediation is undertaken by third-party representatives mainly from states and international institutions, but also by individuals, NGOs and informal actors. Mediators should in some sense be external to the dispute, though they could be an ally of one of the parties. In order not to broaden or confuse the concept, 'mediation' by a formal office-holder in multilateral conferences is better understood by other concepts such as the 'brokering' of compromises or initiatives, negotiation initiatives or facilitating roles.

Two further points concerning the definition of mediation can be made. The first concerns the perception of the nature, status and purpose of an envoy's mission. In some instances, one or more parties may misperceive the status or purpose of a visit or talks. For example during the Chile–Argentine dispute over the Beagle Channel, with Argentinian and Chilean warships hours apart from confrontation in the Straits of Magellan, the pope's special envoy, Cardinal Samore, made it clear that his mission to both countries was not to mediate a settlement but rather to seek restraint: 'I speak rather of a mission and not of mediation, in a technical sense, because mediation is a juridical term that gives to the mediator, if not authority, at least the possibility of making proposals, not only to listen or to invite the parties. But we are still not in that phase.'⁸

A further important point, which is often ignored in mediation literature, partly because of the emphasis on mediation in bilateral conflict, is that there may be multiple levels of mediation occurring in a multiparty

dispute. Multiple layers or types of mediation occur particularly in multi-lateral conflict if one of the main protagonists is diplomatically isolated, or has limited diplomatic machinery. In these circumstances there is a tendency to use multiple or perhaps informal channels of communication and conduct several levels of mediation negotiations. Again, in civil war cases in which there is extensive external intervention by major powers and international organisations, some disputants attempt to play off various mediation initiatives linking them to battlefield developments, perhaps to delay mediation pending battlefield progress or seeking other concessions.

The mediators

Mediation is carried out by a wide range of actors, including formal office-holders of states, international institutions, special representatives, envoys and groups. In the informal category the range is extensive, with actors such as business, labour organisations, opposition politicians, aid workers, religious leaders and other 'citizen' diplomats being called in to perform on an invited basis (and sometimes not) mediation functions to varying degrees.⁹ It is also notable that a third category of mediator – the senior former office-holder, e.g. ex-US President Jimmy Carter, has become more prominent. Ex-President Carter carried out missions, for example, to North Korea, Haiti, Bosnia and Romania during 1994–5, seemingly for all intents and purposes, at least in the first three instances, as a secretary of state. It is not always clear, however, what precisely is the status of an 'unofficial' mediator. Other questions to do with status and purposes of mediation may arise because of the nature or circumstances of authorisation. For example in the Syrian crisis, former UN Secretary-General Kofi Annan was appointed as a joint special envoy of the United Nations and League of Arab States, to undertake a good offices mission. The authorisation was based on UN General Assembly resolution A/RES/66/253 of 16 February 2012, and consultations between UN Secretary-General Ban Ki-Moon and League of Arab States Secretary-General Nabil Elaraby, following deadlock in the UN Security Council over the appropriate action in response to the escalating violence in Syria.¹⁰ The UN Security Council was deadlocked following the Russian and Chinese 'double' veto of a draft resolution on the crisis. The concept of a joint special envoy raised issues concerning: the mandate of the envoy; the status of the League of Arab States' six point proposals;¹¹ priorities of the mission; and UN control of the mission. Another major priority for the UN Secretary-General was humanitarian relief and access for the Amos mission.¹² The deadlock in the UN Security Council meant that support for the joint mission was limited to a Security Council presidential statement on 21 March.¹³ The UN Security Council approved the following month an observer mission to Syria, and called for the implementation of the six-point proposal.¹⁴

Continued political deadlock over Syria, and lack of co-operation in the Security Council, from the main protagonists ultimately led Kofi Annan to resign on 9 August 2012.

With mediation, the timing of an initiative is often critical to its success. In the Syrian instance, for example, the conflict was well established, making the mediation mission much more difficult. Furthermore, confusion can arise when established diplomatic services and procedures have broken down during periods of significant political crisis or transition, periods of high-tension resolution, or war.¹⁵ In other instances, revolutionary or 'pariah' regimes seem to attract foreign-domiciled nationals who inhabit the grey area or demi-monde of 'representative' or contact channels and thrive on intrigue and crisis.¹⁶

Apart from questions to do with the status of mediators, it should be remembered that although juridically and analytically distinctions are made between inquiry, conciliation and mediation, diplomatic methods used in dealing with conflict may contain, in practice, elements of all three which are not always easy to distinguish. It is worth noting, too, that mediation may be undertaken on a collective or group basis.

The development of categories

Why have different categories of mediators developed? As regards the second, informal category, probably one of the main reasons is the growth in the role of the private commercial and financial sector as an adjunct of government when states seek to improve relations or reduce tension with other states. Second, as part of the growth of contacts in international society, large-scale post-war ethnic movements have created a new kind of transurban international relations in some regions, for example the Hispanic community relations in NAFTA in which domestic and international politics are fused over issues such as emigration, unemployment, banking, trade and environmental standards. Transurban international relations have influenced the emergence of new players, especially 'domestic' (e.g. city mayors or chief executives), as well as procedures and institutions.¹⁷ Third, informal mediators have been used in crises as a means of supplementing official channels to provide reassurance that the intended message or proposals are getting through. Fourth, informal mediators, particularly in the third category, have been used in cases of breaches of relations or periods of high international tension (e.g. hostage release).¹⁸ Fifth, informal mediators have sometimes been used to conduct secret negotiations parallel to official negotiations in order to make a breakthrough.

Mediation strategies

Mediation strategies can be employed to influence the setting, process and content of a dispute. Strategies concerning the setting include choice

of location, the means of communication, which parties to invite and whether the discussions are conducted in public or private. Inventive locations have included: the headquarters of a London antique company;¹⁹ a desert tent in no-man's land between opposing armies;²⁰ and the splendour of a papal palace.²¹ More often, though, initial or pre-negotiation contacts will be made at the margins of international or regional conferences or meetings.

While not decisive, location can have positive or negative effects in facilitating progress, or alternatively becoming an arena for sterile or routine exchanges. Ultimately, the outcome of mediation, particularly undertaken intensively over short periods of time in third-country locations, has to be taken back to national organisations for consideration, assessments and response.

Process

Mediation activities that address the process aspects of conflict are typically aimed at the perceptual and attitudinal approach of disputants, and seek to develop *engagement* and commitment to the negotiations. Mediation techniques in this area can be conceptualised as generally falling into two categories: procedure and approach. In the procedural group are proposals relating to the frequency of meetings, construction of an agenda, order of items and introduction of new texts. Within the approach group, techniques focus on developing rapport, the framing of the problem, creating commonly held conceptions about what the outcome might broadly look like, and willingness to progress from initial negotiations to substantive exchange and agreed solutions.

One of the main process techniques is that of clarification. For example, during the Beagle Channel dispute between Argentina and Chile noted earlier, the officially nominated papal mediator Cardinal Samore and his team devoted six months in the initial phase of the mediation (the talks ran intermittently from 1979 to 1984), gathering information and hearing both sides' positions.²² The use of the technique of clarifying and 'unpacking' the elements in the positions of the respective parties at any stage of negotiations makes this aspect of mediation similar to conciliation.

It is worth noting that other techniques have been developed in multi-lateral conference diplomacy to broker solutions between opposing blocs or groupings on focal points of disagreement through altering the structure of the decision-making group to redefine the problem. Committees of the whole or large working groups can be reduced to a more manageable size by creating a small group of 'representative' states under an ad hoc chairman. For example, at the third Conference on the Law of the Sea an ad hoc group was formed under Ambassador Castenada (Mexico) to try and reach a compromise solution on the intractable question of the

outer limit of the continental shelf.²³ As we have argued in Chapter 5,²⁴ the tendency to use smaller groups has to be matched by methods that make the output widely acceptable to the conference as a whole. Other methods include process techniques that attempt to alter the pace of mediation negotiations, rescheduling talks, keeping talks going and deadlines. Deadlines have, however, tended not to be greatly used by mediators for fear that undue use or failure to be met might weaken the credibility of the mediator.²⁵ Mediators may, nevertheless, encounter deadlines set by the *parties*, arising from domestic or other contexts such as a disputant's fear of running out of time, the perceived cost of political failure, or inability to complete a mediation because of an impending election.²⁶ Concern over the completion of a mediation mission is evident, too, in the best known – though not frequently used – example of mediation methods: 'shuttle' diplomacy.²⁷ As a form of high-risk strategy, shuttle diplomacy depends critically on momentum to maintain the engagement of the principal protagonists.

Content

At the level of content mediation, initiatives can be conceptualised in terms of whether the proposals are framework, integrative, incremental or compensatory.²⁸ Framework proposals aim to establish the overall basis for talks by, for example, agreeing general principles²⁹ or a timetable on which the dispute may be settled.³⁰ In this type of approach, a high premium is placed on rapport between opposing states and engagement in the process of finding acceptable solutions and subsequent implementation. Other strategies aim to establish common ground. These might be through proposals that reflect a generally held conception of the outcome or promote agreement by reducing the areas of substantive negotiation. Differences are narrowed³¹ and outstanding issues are relegated to bilateral understandings³² or secret protocol.³³ In the third category, incremental as distinct from comprehensive approaches essentially seek to focus on particular areas of dispute in order to make step-by-step progress. Compensation strategies are distinct in that a central assumption is that the distribution of benefits is unequal.

Constraints on mediation

As essentially an exercise in persuasion, mediation initiatives face a number of possible constraints. Almost immediately mediators cross the threshold from being simply transmitters of messages and move along the continuum of more direct or less passive involvement; then they face differing degrees of risk.³⁴ Their assets are principally political and diplomatic – negotiating

skill, past success, knowledge and perceived track record. Nor should mediation be considered in too mechanistic a manner with a mediator having deployable assets (e.g. trading off unrelated items in the UN), or threat–reward type models.³⁵ Rather, in most types of mediation, the mediator must generally rely on diplomatic skills of persuasion, explanation, concept creation and drafting,³⁶ and not trading economic rewards or coercion. In this context, risk may be encountered relatively quickly on the continuum of involvement. For example, decisions on whether the contents of a letter might be usefully transmitted or not can expose the function or office of mediator to possible criticism or loss of confidence. A second area of constraint may occur if a mediator attempts to overcome a sticking point by making proposals that are too far ahead along the route of perceived acceptable outcomes. For example during the so-called ‘proximity talks’ to resolve the Cyprus problem, UN Secretary-General Pérez de Cuellar attempted to make progress through a combination of procedural initiatives and narrowing the focus of negotiation:

I told the leaders that I would concentrate in the first instance on the two outstanding issues – territorial issues and displaced persons, and that I would proceed to a discussion of the other issues once I was satisfied that reasonable progress had been made in bringing the parties *within agreement range* on those two issues. [emphasis added]

However, the talks broke down because of opposition by both parties to various aspects of the secretary-general’s proposals.³⁷ More generally, the Cyprus problem is an example of a ‘closed’ issue area, where the prospects for mediation are extremely limited, given the domestic and external structural features of the problem. Lengthy UN peace-keeping operations, with routinely renewed mandates, tend to contribute eventually to the immobility.

A further quite common constraint on mediation can arise from different approaches to how the negotiations should be conducted. Differences may occur over whether to proceed on the basis of establishing general principles or examining specific issues. A marked feature of Henry Kissinger’s diplomatic style was to prefer to get agreement on sets of principles, which could be subsequently filled out later.³⁸ Kissinger’s approach was not, for example, to the liking of Sadat, who wanted to reach specific or tangible agreements.³⁹

Time pressures affect mediation negotiations in several ways, such as the resumption or calling-off of talks, loss of momentum or the threat of deadlines. In crises, mediators and other players often perceive that time is running out for political solutions and feel a loss of control. In the latter sense, opponents are ‘locked’ into a dispute; the costs of halting action are seen as too high. Corresponding benefits of alternative proposals or outcomes cannot be easily quantified, evaluated, or are unknown. Under these conditions, the prospects for successful mediation are generally remote. Thus, the mediatory efforts of the Russian Federation prior

to the Gulf War, culminating in the visit to Baghdad by Foreign Minister Alexander Kozyrev, ultimately failed because of the essentially 'closed' positions of Saddam Hussein and the advanced military preparations of the Allied coalition group.⁴⁰

Mediation and force

The relationship between mediation and military force is most clearly evident in protracted civil wars in the interplay between diplomatic efforts to reach political solutions and battlefield developments. The interplay is also particularly highlighted in the immediate follow-up processes to implement ceasefire agreements. In protracted civil war, mediation efforts, based on territorial partition plans and unsupported by sustained ceasefires, are unlikely to make much progress as combatants seek to maximise territorial gain or offset losses by extending enclaves or holding communications routes. Partition plans prepared by international institutions' mediators may become rapidly out of date, or require extensive readjustment when matched to actual force disposition on the ground; while conference negotiators may be able to suspend time procedurally, this seldom happens on battlefields. Moreover, without the political endorsement of principal external powers with stakes in the conflict, partition plans drawn up by third-party international mediators are unlikely to succeed.⁴¹ In turn, divisions between external powers about mediation proposals in themselves may become assets that civil war disputants use to protract a conflict.

As regards the implementation of mediated agreements, poorly monitored ceasefires and weak follow-up arrangements can undermine the prior mediation, and make subsequent mediators more difficult. For example, in the Ecuador–Peru border conflict, violence flared up again in 1995 – following the ceasefire mediated under the Rio Protocol by the USA, Chile, Argentina and Brazil – in part because a permanent observer force had not been established.⁴² Again, concern over premature reduction on cost grounds of the UN Angola Verification Mission (UNAVEM II) and the breakdown of the Angolan ceasefire in 1995 prompted UN Secretary-General Boutros-Ghali to seek approval from the Security Council for the restoration of the size of UNAVEM II to enable it to undertake an adequate level of monitoring, governance and good office functions to implement the Lusaka Protocol.⁴³

Loss of credibility and bias

Mediators may lose credibility for one or more of the following reasons: technical deficiencies, loss of secrecy, challenges to status and charges of partiality. Within the technical deficiencies category, factors include

appropriateness of the cultural or regional background of a mediator, administrative deficiencies and financial constraints. As regards information, mediation perhaps more than any other form of negotiation requires secret diplomacy. If elements of secret negotiations are leaked, difficulties occur in that possible concessions by one party are exposed, thus weakening its position; the credibility of the mediator may be called into question; or an incorrect or misinterpreted version of the 'contact' discussions or negotiations may be presented by the media, which requires denial or correction, and can reduce freedom of action. Third, the status of mediators may be undermined by personality factors; by divisions within a national or international executive or bureaucracy;⁴⁴ or be affected by other political initiatives or mediation efforts. Examples of the latter are the competing initiatives in Tajikistan from the Commission on Security and Cooperation in Europe (CSCE), USA–Russian Federation and the UN, and E3–Russian Federation proposals on Iran's nuclear programme.⁴⁵ Fourth, mediators may cease to be effective if they lose the confidence of any of the parties to a significant extent through perceived undue partiality.⁴⁶ A difficulty for mediators is that their proposals may not necessarily be biased or intended to favour one or more of the parties but represent 'best possible' solutions.

Rejection of mediation

Mediation efforts may be either implicitly or explicitly rejected. In the first category, a mediation mission may be accepted for reasons incidental with wanting a mediated outcome (such as symbolic or propaganda endorsement of a cause) or may have diversionary aims such as providing a cover for military preparations. Formal rejection of mediation is relatively rare, for example Margaret Thatcher's refusal to accept the UN mediation offices of Secretary-General Pérez de Cuellar after the Falklands War in 1982.⁴⁷

Successful mediation

In reviewing some of the main factors influencing the successful outcome of mediation, three in particular should be noted. First, the maintenance of secrecy is a central factor in facilitating the formation of new proposals,⁴⁸ continued momentum and avoiding the effects of leaked proposals such as mistrust and possible breakdown of contacts. Second, the use of informal mediators and outside powers with no or limited direct stakes can be a useful means of breaking sterile, standing meetings. For example the PLO–Israel meetings in 1993–4, brokered by the then Norwegian foreign minister Johan Jorgen Holst,⁴⁹ made substantial progress in laying

the basis in the informal Oslo talks for a limited PLO–Israeli agreement, in contrast to ritualised ambassadorial exchanges in Washington.⁵⁰ In addition, informal mediators may enjoy limited or short-run success as channels of communication or last-resort envoys (e.g. Carter missions to North Korea, Haiti, Bosnia), though their agreements may be fragile and subject to renegotiation.

Third, an important element in successful mediation is the role of overarching formulae that are used to construct agreements. Examples of these are: definitions of areas of military disengagement; composition and functions of a joint administrative regime for disputed territory; and a formula to leave aside or ‘suspend’ decisions on sovereignty, while reaching agreement on matters of practical cooperation such as bilateral transport, economic or air services.

Notes

1. Article 12 of the League of Nations Covenant identifies three techniques in the event of a dispute: arbitration, judicial settlement, or enquiry by the Council. Chapter 6, Article 33, United Nations Charter requires parties to resolve disputes through ‘negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements or other peaceful means of their choice’.
2. See Sidney D. Bailey, *The United Nations* (Macmillan, London, 1989), pp. 45–6.
3. Portugal, the Russian Federation and the USA are part of the UN mediation group on Angola. See SC/5892, 12 Aug. 1994.
4. See A/C.5/48/26 and Add. 10; A/RES/48/259, 1 Aug. 1994.
5. See Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of December 1982 relating to the Conservation and Management of Straddling Stocks and Highly Migratory Fish Stocks, A/CONF.164/22, 23 Aug. 1994, Article 29.
6. For a realist definition that depicts mediation in terms of self-interest and leverage, rather than a functional or international society perspective, see S. Touval and I.W. Zartman, ‘Mediation in international conflicts’, in K. Kressel and D.G. Pruitt, *Mediation Research* (Jossey-Bass Inc., San Francisco, Calif., 1989), pp. 115–37; and S. Touval and I.W. Zartman, ‘Mediation in theory’, in SAIS Papers in *International Affairs*, no. 6 (Westview Press, Boulder, Colo., 1985), pp. 7–17. This definition cannot accommodate multiple reasons for action; nor is it able satisfactorily to explain the reason for the involvement of international organisations (‘Born to mediate’, *Mediation*, 1989, p. 120). The third difficulty is that of leverage: macro trade-offs such as ‘shifts of position’ (i.e. threats to change orientation) are not easily related or relevant to the *conduct* of mediation, which is at a micro level, concerned with textual and conceptual construction in most mediation.
7. Henry Kissinger, *Years of Upheaval* (Little, Brown, Boston, Mass., 1982), p. 883.
8. Thomas Princen, ‘Mediation by the Vatican’, in J. Bercofitch and Jeffrey Rubin (eds) *Mediation in International Affairs* (St Martin’s Press, New York, 1992), pp. 154–5.

9. See V.D. Volkan, J.V. Montville and D.A. Julius, *The Psychodynamics of International Relationships* (Lexington Books, Mass., 1991), pp. 41–69.
10. See Secretary-General, SG/SM/14124, 23 February 2012, and joint statement [<http://www.un.org/sg/statements/index.asp?nid=5880>].
11. See UNSC 2042 (2012), 14 April 2012 (annex).
12. See Remarks by Secretary-General, Noon Press Briefing. UNHQ, 2 March 2012.
13. UN Press release SG/SM/14179.
14. See UNSC 2042 (2012), 14 April 2012. Algerian diplomat Lakdhar Brahimi replaced Kofi Annan; and Nasser Al-Kidua (Arab League) continued as Joint Arab League–UN Special Representative for Syria. See SG/SM/14471.
15. See John E. Hoffman Jr on the several competing and self-contained channels during the Iran hostage crisis between Iran and the United States, in Warren Christopher, *American Hostages in Iran* (Little Brown, Boston, Mass., 1982), pp. 251–2. These included an informal envoy channel; banking channel; and German counsel to the Iranian Ministry of Foreign Affairs, via the Iranian embassy in Bonn.
16. The formal ‘grey’ area channels between Iran and the USA were finally merged in Dec. 1980. See Christopher, *op. cit.*, p. 255.
17. See, for example, M. Delal Baer and Sidney Weintraub (eds), *The NAFTA Debate* (Lynne Rienner, Boulder, Colo., 1994) especially **chs 3** (environment) and **5** on US domestic politics of the USA–Mexico Free Trade Agreement.
18. Former British prime minister Edward Heath was one of a number of senior former heads of government or foreign ministers who visited Iraq in 1992 to secure the release of hostages detained as a ‘human shield’ by Saddam Hussein.
19. Former British foreign secretary Lord Carrington, who acted as mediator in the Yugoslav conflict, held meetings of respective factions at the head offices of Sotheby’s in London.
20. See James C. Jonah, ‘The UN and international conflict: The military talks at Kilometre Marker 101’, in Bercovitch and Rubin, *op. cit.*
21. Princen, *op. cit.*, p. 162. Princen notes: ‘In the Beagle Channel mediation, the location – that is, the Vatican itself – probably made a difference. The negotiators were constantly surrounded by the awesome ambience and when the mediator wanted to contact the decision-makers more directly, he would invite the foreign ministers with their advisors to come to Rome. Of course, the people who really needed to be impressed – namely the hard-line military leaders particularly in Argentina, never came.’
22. *Ibid.*, p. 155.
23. R.P. Barston, ‘The Law of the Sea Convention’, *Journal of World Trade Law*, vol. 17, no. 3, June 1983, pp. 207–24.
24. See **Chapter 5**, pp. 74–5 and also **Chapter 10**, pp. 191–2.
25. See Henry Kissinger, *Years of Upheaval* (Little Brown, Boston, Mass., 1982), p. 811 on avoiding setting time limits.
26. In the 1979–80 Iran hostage crisis, President Carter decided on 21 Dec. 1980 to mount one last crash campaign to solve the matter with 30 days left before the end of the presidency. See Roberts B. Owen, in Christopher, *op. cit.*, p. 311.
27. Kissinger suggests that the term ‘shuttle diplomacy’ was coined by Joe Sisco as the US negotiating team flew between Aswan and Jerusalem; see *op. cit.*, p. 799.

28. On incremental methods that break a dispute into particular sub-parts, see J.G. Stein, 'Structure, strategies and tactics of mediation: Kissinger and Carter in the Middle East', *Negotiation Journal*, no. 1, 1985, pp. 331–47.
29. The approach used in a number of mediation negotiations involving Henry Kissinger. See, for example, the Nov. 1993 Aswan talks between Israel and Egypt, in which he mediated. Kissinger wanted to approach the Aswan talks on the basis of principles but Sadat wanted definitive agreement. See Kissinger, *op. cit.*, pp. 799 and 81; Ismail Fahmy, *Negotiating for Peace in the Middle East* (Johns Hopkins, Baltimore, Md., 1983), p. 55.
30. Establishing agreed timetables for withdrawal is an important method in disengagement negotiations. See James C. Jonah, 'The UN and international conflict', in Bercovitch and Rubin, *op. cit.*, p. 187.
31. Roberts B. Owen in Christopher, *op. cit.*, on the role of Algeria in narrowing the differences between the USA and Iran. The talks alternated between Algiers and Washington during Nov.–Dec. 1980.
32. In the 1973 Israel–Egyptian disengagement negotiations on withdrawal of forces, the issue of reopening and rebuilding the Suez Canal was extracted from the main negotiations, and dealt with by a side-letter between the USA and Egypt. See Kissinger, *op. cit.*, p. 835.
33. The precise terms of the 1973 agreement – concluded in parallel negotiations to the UN 'Kilometre 101' talks, by the USA–Egypt and Israel – were not known to UN negotiators. See James C. Jonah in Bercovitch and Rubin, *op. cit.*, p. 187. Cf. Kissinger's account, *op. cit.*, p. 802.
34. On the mediator's need to assess whether to transmit proposals, see Haig's reaction to Costa Mendez's proposals on sovereignty, 'I'm afraid we'll have to go home. Your proposals will be utterly unacceptable to the British', in *Caveat* (Weidenfeld & Nicolson, London, 1984), pp. 281 and 29.
35. Bercovitch and Rubin, *op. cit.*, pp. 19–20, set out a framework that presents mediation as involving the possession and control of (mediator) resources (e.g. money, status, expertise and prestige) classified in six categories: reward, coercion, referent, legitimacy, expertise and information. The resource-strategy focus tends to obscure the point that an important feature of most types of mediation is the *process* of creating acceptable negotiating concepts and drafting appropriate language. The role of concept building in negotiation is central to construction, readjustment and innovation. The mediation process is likely to be highly incremental and non-coercive. In multiparty disputes, the process could involve multiple and competing mediation, as well as other initiatives, constituting a complex framework in which mediation efforts may be supported or undermined and undertaken by more than one mediator.
36. See, for example, Haig, *op. cit.*, p. 280.
37. See Report of the Secretary-General, S/24472, 21 Aug. 1992, para. 15.
38. In the Falklands conflict the Peruvian mediation approach of President Fernando Belaunde Terry was to attempt to approach the differences between the five basic points or principles: 'Simplify and we can still do it'. Quoted in Haig, *op. cit.*, p. 293.
39. James C. Jonah notes: 'a significant characteristic of agreements arranged by Dr Kissinger is that they usually required very detailed and careful negotiation at a lower level to put their provisions into practical form', in Bercovitch and Rubin, *op. cit.*, p. 154. See Kissinger, *op. cit.*, pp. 799 and 811. Cf. Christopher, *op. cit.*, for his attempt to establish principles at the meeting with the Iranian

- secret envoy 'The Traveller' (Sadegh Tabatbai) during the Iran hostage crisis, pp. 251, 302, 306.
40. See Lawrence Freedman and Efrain Karsh, *The Gulf Conflict: Diplomacy and War in the New World Order* (Princeton University Press, Princeton, N.J., 1993).
 41. See note 29, p. 100. *Keesing*, Sept. 1993, 39658.
 42. *Financial Times*, 24 Feb. 1995.
 43. See report of the Secretary-General, 4 Dec. 1994 (S/1994/1376) and his letter dated 7 Dec. 1994 (S/1994/1395) on restoring the strength of UNAVEM II, and the authorising Security Council Resolution 996 (1994), 8 Dec. 1994.
 44. On the impact of leaks during the Haig shuttle diplomacy in the Falklands conflict, and the dispute with US Ambassador Kirkpatrick, see Haig, *op. cit.*, pp. 269 and 285–6.
 45. On the secretary-general's Tadjik/Afghan border initiative, see SG/SM/5393, 23 Aug. 1994; *The Times* 20 Sept. 2005, on Iran.
 46. For example the Vance–Owen plan on the partition of Bosnia-Herzegovina was unacceptable to the Bosnian Serb leadership and the USA.
 47. On the abortive de Cuellar visit see *The Times*, 15 July 1982.
 48. The UN-led 'Kilometre 101' talks on Israeli–Egyptian disengagement of forces were ultimately successful in part because of their remote location and absence of the media. In addition, the membership of the talks was confined to Egypt and Israel, plus UN officials. The first phase of the talks actually took place at kilometre 109 on 27 Oct. 1973, and not kilometre 101, because of a map-reading error. See Jonah, *op. cit.*, p. 181.
 49. See James Mayall (ed.), *The New Intervention* (Cambridge University Press, Cambridge, 1996) on the UN role in Yugoslavia.
 50. An interesting feature of both the 'Kilometre 101' and the Oslo talks is that in both instances after the breakthrough the USA, having been shut out, reasserted its public diplomatic position through final-phase talks, and (in the latter case) a signing ceremony in Washington. See Jonah's dry comment on Kissinger's intervention, *op. cit.*, p. 186.

Chapter 15

The diplomacy of normalisation

Most states in the course of their political history undergo some periods of extreme hostility or abnormal relations with other states or organisations. In general, while many of these are resolved, a growing number persist or are only imperfectly resolved. There are, too, some states that choose to adopt a maverick isolationist orientation or confrontational role (e.g. Iran and North Korea). In this chapter, we are concerned with the development of normalisation in the context of severe tension or sustained periods of abnormal relations, rather than abnormality associated with maverick states. As such, the chapter will focus particularly on the factors that lead to abnormal relations, since these fundamentally affect subsequent attempts to reestablish normal relations. The remainder of the chapter will present an outline model of the normalisation process and discuss some of the main features of the normalisation process.

Definition of normalisation

Before defining normalisation, three general points should be borne in mind. First, there may not necessarily be a common conception of what is the cause of an abnormal state of affairs. Lack of congruence over the definitional aspects generally means that initiatives to improve relations are often not reciprocated and the conflict becomes punctuated by short-lived normalisation efforts. The foregoing argument also underlines a further issue when considering normalisation, and that is establishing a starting point at which relations may have begun to become abnormal. It may not necessarily be the case that there is always a clear boundary line, such as the occupation of territory or a rupture in all major relations, to demarcate the transition. Finally, apart from questions over the causes of abnormal relations and transition, differences over how to proceed can create ambiguity over the necessary or essential conditions for the initiation of normalisation or steps towards further improvement.

With the above in mind, abnormal relations in this chapter are defined as follows: a change in the existing state of relations between states, or states and other actors, through the introduction or intrusion of issues or events that cause significant levels of disruption, tension or animosity between the parties. Conversely, normalisation is seen as a process involving: the recognition of the need for measures to reduce tension or friction, and their introduction; promotion of improved relations; and isolation, containment or resolution – wholly or partly – of major sources of dispute or tension.

The development of abnormal relations at a political level is often evidenced by lengthy and generally obdurate negotiations, which are increasingly seen as unlikely to produce any significant results. While in some instances the unresolved nature of a problem might be seen as being mutually beneficial (e.g. the Cyprus problem for Greece and Turkey), increasing dissatisfaction is generally accompanied by moves by one of the parties to escalate the problem or abandon negotiations. Thus, during the 1972 ‘Cod War’, the UK and Iceland progressively widened the issues of dispute, following the introduction of Royal Naval protection vessels within the disputed 50-mile limit, culminating in the Icelandic threat to break off diplomatic relations with the UK on 11 September 1973.¹

In the 1982 Anglo–Argentine conflict, Argentina terminated bilateral talks with the UK and closed the diplomatic channel.² It is worth reiterating here, in terms of the definition of abnormality, that there can be quite different perceptions of how serious a decline has occurred, and about the prospects for future negotiations, as the Anglo–Argentine example further suggests.³

Other indications of rising tension between states are formal protests, political attacks, retaliatory political action and, in extreme instances, ultimatums. Diplomatic protest, while often used to express disapproval of a particular action (such as to condemn the passage of an aircraft or warship that has not been given appropriate clearance, or the behaviour of a diplomatic mission), can be used for a number of purposes, including opposition to a policy. For example the issue of workers’ economic conditions in Hong Kong was made the subject of a protest by the PRC to the UK in May 1967, beginning a period of intense conflict and progressive deterioration in Sino–British relations.⁴ Attacks on British diplomatic personnel and property in Peking and Shanghai, as relations deteriorated, led to a formal British protest later in May 1967.⁵

Sudden tension and retaliatory action

In contrast to progressive deteriorations of relations, sudden tension can be introduced into, and be the focus of, bilateral relations by quite specific events. Occasionally, these may result from revision of policy following a change of government. Thus, the political attack on the Chilean

government of General Pinochet in 1974 by the new British Labour prime minister in the House of Commons was protested by the Chilean government as 'offensive and intolerable language'.⁶ More commonly, offence at intrusion into the domestic affairs of a state can produce sudden sharp deterioration. For example the decision to permit the showing in Britain of the television film *Death of a Princess*, despite Saudi objections, led to a sharp deterioration in Saudi–British relations in 1980.⁷ Of longer impact was the deterioration in Sino–British political relations following the British government's sanctions after the Tiananmen Square massacre in 1990.⁸ The commencement of initial normalisation did not begin until 1991, which was symbolised in the visit of the British foreign secretary in April 1991 to China and Hong Kong, though the overall scope of Sino–British normalisation remained limited.⁹

Sudden deterioration in relations of the kind under discussion is often signified by attacks on diplomatic personnel and property overseas, as in the Sino–British Hong Kong conflict or against the British embassy in Teheran in the wake of the Iran hostage crisis.¹⁰ Attacks, too, on symbols of overseas corporate presence such as banks and factories are further indicators of deterioration in conflicts that have a strong commercial element. An example of the latter was the 1989 attacks by labour union groups on British banks in Uruguay; in support of Argentina, the aim was to halt commercial links between the Falkland Islands and Uruguay.¹¹

Other forms of retaliatory political action might be more symbolic than substantive. In expulsion cases, for example, the response to the initiating state might be deliberately low-key through the expulsion of low-grade personnel in order to limit the damage to relations.¹² In some instances, though, a state may feel for reasons of political prestige that it has no choice but to make an equivalent expulsion, as did the former Soviet Union following the UK's expulsion of 105 Soviet diplomats on security grounds in September 1971.¹³

Communicating the state of relations

The extensive range of diplomatic methods gives states great flexibility in communicating the tone or state of actual or intended relations with other actors. These range from decisions about the level of diplomatic relations and the choice of envoy through to unilateral or joint termination of diplomatic relations. The downgrading of relations is a serious act, which may only be partially offset by non-residential accreditation, and can lead to a general decline unless there are, for example, well-established economic relations.¹⁴

The reversal of this is relatively rare, as is illustrated by one of the few cases in British foreign policy – the upgrading of relations with Guinea.¹⁵ The level of representation can be altered in other ways, such as progressive reduction in staff until a point is reached where the staffing level is

token, making it difficult in effect to carry out diplomatic functions. The progressive reduction of staff can be intended to signal foreign-policy displeasure. The retention of even token representation, nevertheless, may be seen as important – as with the maintenance of a British diplomatic presence during the Iran hostage crisis¹⁶ or the Gulf War¹⁷ – as an indication of an unwillingness to move to breaking diplomatic relations, or for symbolic purposes.

The issue of non-appointment of an ambassador may arise in a number of different circumstances, including that following the recognition of a new state or government. Failure to nominate an ambassador or high commissioner is very often a 'wait-and-see' position linked to future behaviour and may reflect unease at the foreign policy of the receiving government. More usually, non-appointment of an ambassador and the maintenance of relations at the level of *chargé d'affaires* occurs as a result of a recall and deterioration in relations. It is intended to indicate extreme sensitivity and displeasure over bilateral matters or some aspect of the receiving country's foreign policy. Thus the UK eventually restored diplomatic relations at ambassadorial level with Chile in January 1980, after the British ambassador was withdrawn in December 1975 over the arrest and torture of a British national, Sheila Cassidy. Explaining the decision, the minister of state said that: 'Britain's best interests were no longer served by the absence of ambassadors and the appointment of ambassadors would allow the government to make its views known at the highest level; and Dr Cassidy's case was not closed'.¹⁸ The decision to recall an ambassador may be used by the receiving government as a means of making it known that the return of the ambassador would be unwelcome. Such a serious step could lead to the reciprocal withdrawal of ambassadors. In, for example, the Dikko case, the UK, following the attempted abduction from London of Umaru Dikko,¹⁹ a former minister in the deposed Shagari Government, expelled two members of the Nigerian High Commission in London. In addition, the Nigerian authorities were informed that the Nigerian High Commissioner, who had already been recalled for consultation, would not be welcome to return to Britain.²⁰ The Dikko affair provoked a major crisis in Anglo-Nigerian relations, which were already severely strained by international debt, IMF, trade credit and educational issues, as well as the financial debts of the Nigerian High Commission.²¹ Despite the Nigerian government's apparent wish to limit the diplomatic damage,²² a new high commissioner was not appointed until February 1986.²³

Breaks in diplomatic relations

Formal breaks in diplomatic relations vary in terms of their duration and effect. Those that have been caused by sensitivity to intrusion in domestic affairs tend to be the shortest in duration, at least in terms of diplomatic effects. The Saudi-British dispute over the film *Death of a Princess* led to a

break of only five months.²⁴ The economic effects on contracts, however, were much longer lasting.²⁵ Breaks in diplomatic relations over a foreign-policy issue can also be short, where the purpose is a nominal demonstration of opposition, as with some members of the Organisation of African Unity (OAU) over British handling of the Rhodesian unilateral declaration of independence (UDI) in 1965,²⁶ or Arab states towards Britain at the outbreak of the June 1967 Arab–Israeli War.²⁷

More substantial disruptions have occurred where there have been persistently uneasy relations, or deep-seated foreign-policy disputes, as between the UK and Iraq (1971–4),²⁸ or the UK and Guatemala over Belize (1981–6).²⁹ Lengthy breaks in diplomatic relations have also continued since 1986 between the UK and Libya,³⁰ as well as with Syria,³¹ over abuse of diplomatic privileges and involvement with international terrorism.

Economic indicators of formal relations

As far as economic indicators of abnormal relations are concerned, retaliatory economic action can take several forms. First, there are those actions that are linked to some form of diplomatic response, such as the reinforcement of a break in diplomatic relations linked to widening the impact of retaliatory action. For example at the outset of the 1967 Arab–Israeli War, Algeria sealed the offices of three Anglo-Dutch Shell companies in Algeria,³² while Iraq, in addition to breaking relations, banned UK and US aircraft from landing in Iraq. Economic retaliation may not necessarily be linked initially to diplomatic action but may serve as a precursor to more extensive retaliation, as with the initial UK restriction on military exports and Rolls Royce spare parts to Chile in 1974.

Where economic and diplomatic retaliation are linked, the question of normalisation can become problematical in terms of attempts to make progress in improving one or both levels of relations. Recognition of this point was made by the Guatemalan foreign minister, Mario Quiñónez Amézquita. Commenting on Guatemala's decision to resume consular relations with the UK in August 1986, he stressed: '[the decision] had been motivated by the desire to facilitate trade between Guatemala and the United Kingdom. It did not mean that the restoration of full diplomatic relations between the two countries was imminent'.³³

In those instances where the focus of dispute is largely economic, the intensity of dispute can, for all intents and purposes, make the diplomatic channel ineffective. Indicators of abnormality include, for example, the continued retention of foreign assets, as in the UK's dispute with Yemen in 1980 over aircraft-leasing payments.³⁴ In this and other instances where there is retaliatory action, such as restrictions on the use of the goods and services of certain countries (e.g. the Malaysian 'Buy British last campaign', 1981–3; or the Pergau Dam affair), the issue becomes a focal point

affecting a wide range of transactions between the two countries. These cases should be distinguished, however, in terms of their implications for normalisation, from those in which economic retaliatory action aims to shut off another country, as over Guatemala's actions against Belize in 1981, including closure of the border, expulsion of Belize students from Guatemalan universities and cutting trade ties.³⁵ The latter cases would seem to present much greater problems for normalisation.³⁶

In the final category under discussion here, we should note the effect of actions by or against nationals in precipitating interstate tension and/or crisis. With the growth in both transnational activity and post-war civil conflicts, the potential scope for incidents involving nationals (such as businesspeople, tourists, airline pilots, expatriate technical aid personnel, mercenaries, human rights campaigners, religious mediators, sports players and even writers) has increased dramatically. Often these disputes over the conditions and release of detained nationals are a common source of varying tension and instability in bilateral relations. For example the British pilots of the diverted aircraft involved in the kidnapping of Moïse Tshombe were detained in Algiers, adding further tension to Anglo–Algerian relations, broken off earlier over Rhodesian UDI. In other instances, human rights cases – such as those involving the UK with Chile, Iran, the Russian Federation, Malaysia and the PRC – have become almost standard features as one of many issues of friction that foreign secretaries periodically raise, but are occasionally elevated to become a central issue area. Furthermore, quite unexpected events can dramatically surface, as with the Salman Rushdie publication or Danish–Saudi dispute, illustrating the potential fragility of the process of normalisation.

The normalisation process

An indicative model of the 10 stages or phases of normalisation is set out in [Table 15.1](#). The model is indicative in that in some instances parties in a dispute may move quite quickly to direct negotiations, especially if there is a joint sense of urgency or defined issue at stake, omitting informal signalling or preparatory exchanges (e.g. economic pressures influencing the UK to seek rapprochement with Saudi Arabia following the dispute over *Death of a Princess*).³⁷ In other instances, initial or intermediate states of normalisation may in fact become areas of impasse or deadlock, with the withdrawal of concessions. In still other instances, progress towards even limited normalisation may be extremely lengthy (e.g. between the UK and Argentina,³⁸ or the USA and Vietnam³⁹) because of the importance attached to single issues of principle. In both instances, domestic economic pressure, however, was important in influencing the decisions to resume financial and trade relations, and diplomatic relations.

Table 15.1 Stages of normalisation

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1. Reestablishment of contact using formal or informal channels
 2. Informal exchanges (e.g. in areas of procedural or substance disagreement; ceasefire arrangements, including exchange of prisoners of war)
 3. Low-level signalling (e.g. conciliatory statements on dispute; positive public statements on changes of government or key officials; secret informal contacts; resumption of limited diplomatic relations)
 4. Partial resumption of trade and financial relations
 5. Initiation or resumption of preparatory negotiations (e.g. via third parties, protecting powers or directly; secret negotiations, either directly or at margins of other meetings)
 6. Removal of trade or other embargo restrictions
 7. Policy revision; bureaucratic search for new formulae; willingness to make new or significant substantive concessions on a unilateral or reciprocal basis; high-level public signalling
 8. Normalisation negotiations on core issues
 9. Conclusion of normalisation agreements; reestablishment of full diplomatic relations
 10. Normalisation implementation
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Factors influencing the normalisation process

The process of normalisation will be influenced by several factors, including: the effect of the domestic and external setting; the scope of institutions; the relationship between levels of contact, including ‘spill-over’; and how far key stumbling blocks to improved relations are removed or otherwise dealt with.

Carry-over effects

As regards possible external influences from the setting, in those instances in which parties to an armed conflict are seeking to take initial steps to terminate hostilities and lay the basis for future normalisation, repercussions from ceasefire agreements or other arrangements to terminate hostilities can significantly affect relations after the end of hostilities. These include the geographic scope of the ceasefire, what weapons are covered, and the terms and conditions set for future military operations by a defeated military power. A further ‘carry-over’ factor of importance concerns the significance or weight attached to diplomatic institutions put forward prior to or during hostilities. Negotiators may have in some instances adopted advanced positions or made seemingly large concessions to avert conflict or bring hostilities to an early end. Diplomatic proposals put forward *prior* to hostilities may be subsequently withdrawn, so creating a barrier, which limits future options. For example at the end of the 1982 Anglo–Argentine War over the Falkland Islands, the then British prime minister,

Margaret Thatcher, moved to a so-called 'Fortress Falklands' policy and refused to negotiate on the issue of their sovereignty, reversing earlier positions on diplomatic initiatives to resolve the dispute.⁴⁰

Of the other external-setting factors affecting normalisation, the previous track record of dispute settlement is especially important. In instances in which relations have been strained over a number of years, the normalisation process may be particularly vulnerable to renewed incidents, which either prevent rapprochement or produce agreements that are short-run.

Approaches to normalisation

In terms of efforts to initiate normalisation, a number of features need to be distinguished. First, normalisation may be limited or delayed by differences over whether the normalisation of diplomatic relations should be the first step, or, merely part of other moves to bring about normal relations. The former restrictive view seeks to avoid linkage by defining the first stage as taking place through the establishment or resumption of diplomatic ties before other issues can be dealt with. The question of diplomatic relations, for example, was a feature of the Anglo–Albanian dispute after 1945, in which the UK insisted on the need for the establishment of diplomatic relations before moving into the resolution of the major issue between the two countries – the return of Albanian gold held by the UK since the Second World War.⁴¹

Differences in approach to normalisation most frequently recur over the assessments each party makes over what they think are the most important issues to be resolved to enable normalisation to proceed. For example after the Vietnam War, US policy towards normalisation with Vietnam was based on a satisfactory resolution of the POW issue, whereas Vietnam considered relaxation of economic restrictions and economic assistance as critical measures. The question of differing 'states' of interests has been usefully addressed by Iklé using the concept of 'residual disagreement' in negotiations. Iklé distinguishes three forms of residual disagreement: *explicit* in the sense that issues are earmarked for future negotiations; *implicit*, in that an agreement may contain equivocal language; or *latent* if a difference is ignored, reviewed as unimportant, or put to one side, but later turns out to be seriously disputed.⁴² For example British policy in the dispute with Argentina in the Falklands conflict gradually shifted from making the sovereignty question an area of *implicit* residual disagreement via trade to one that put sovereignty 'on hold'. The problems in using this approach, however, were increasingly underlined for the UK through Anglo–Argentine boundary disputes over straddling fish stocks, and, more importantly, rights over the exploration and landing of potential oil discovered in Falkland Islands waters. 'Sovereignty' would not go away, despite convenient political fictions and the vicissitudes of domestic Argentine politics.

The effect of the failure to include an issue on a normalisation agenda is clearly illustrated in the deterioration of Anglo–Nigerian relations because of the continued detention of British nationals despite apparent normalisation after the Dikko affair.⁴³ In this instance, while detention of British nationals was an important issue for the UK, it was not included within the main group of largely trade and debt issues which were seen as the main vehicle for normalising Anglo–Nigerian relations. In effect, a secondary issue eventually became a primary source of dispute.

Development of normalisation

Two aspects of the development of normalisation will be briefly discussed in this section: the ‘transfer effect’ of sectors of relations between two or more states; and the issue of the extent to which bureaucratic approaches to problem solving inhibit the search for policy-implementation shifts to break deadlock and further normalisation. At an economic level, normalisation initiatives frequently attempt to separate trade and financial relations from the political aspect of a dispute. A number of questions arise that centre on whether trade and other economic transactions remain discrete sectors of activity, largely without ‘transfer effect’ (e.g. enhanced political goodwill) or neutral as far as political impact on dispute settlement is concerned. Can international financial relations be resumed without prejudice to the political elements of a dispute? Other questions centre on some of the effects of the development of two-way trade on normalisation. The extent to which governments ‘control’ trade as an instrument of policy is frequently overstated. What are the implications for normalisation of bilateral relations of measures to reduce trade imbalances? Limitations on the ability either to correct imbalances or use trade for political purposes can lead to increasing domestic pressure to remove all trade restrictions and political conditions on trade normalisation. For example following the Falklands conflict, the UK eventually abandoned the principle of trade reciprocity in July 1985, and withdrew unilaterally trade restrictions on Argentine goods and vessels coming into the UK.⁴⁴

Solutions, shifts of policy and the bureaucracy

Of the stages listed in the normalisation process in [Table 15.1](#), the most crucial is Stage 7 – policy revision and the search for new formulae to facilitate solutions. Considerable attention has been devoted to foreign-policy implementation and the extent to which decisions formulated by the executive are implemented by the bureaucracy.⁴⁵ A number of the propositions concerning weak or defective implementation are also supported from the diplomacy of normalisation. Bureaucratic limitations in

creating new options are particularly evident at the stage of a major shift or concession to promote normalisation. Many illustrations suggest that a combination of interdepartmental bureaucratic politics and traditional short-term approaches to problem solving tends to limit or constrain the creation of new formulae to break the deadlock of inconclusive rounds of negotiations. For example during the long-running abortive Anglo–Iranian negotiations in 1951–2, following Iranian nationalisation of the Anglo–Iranian Oil Company, the Foreign Office Persian Committee was requested by the British foreign secretary, Anthony Eden, to produce new proposals to break the deadlock at the resumed negotiations with Iran in the autumn of 1952. Ironically, pressure on the UK from the USA (which was presenting the UK position to Iran) constantly to redefine its position and come up with new proposals caused added resistance within the Foreign Office and other UK departments. In the event, no substantial new UK proposals to Mossadeq were forthcoming other than low-level incremental concessions, and Eden was reduced to restating his proposals of August 1952.⁴⁶

Normalisation arrangements and agreements

Normalisation arrangements and agreements take a number of different forms. These include informal discussions supplemented by a unilateral statement on relations between the two countries, joint statements, partial normalisation arrangements, through to formal normalisation agreements. Normalisation based on informal diplomatic exchanges and a unilateral statement (e.g. apology or statement of revised policy), as in the UK–Chile case, tend to be relatively short-lived and produce only limited results. In recognition of this, some normalisation agreements may be deliberately limited in scope. For example the reopening of consulate facilities to promote trade may be seen as more important than resolving a long-standing political dispute (e.g. UK–Guatemala). Finally, we should note the use of symbolic normalisation agreements. A symbolic normalisation agreement is generally not related in substance to a dispute but is used to signal the ‘new’ state of relations (e.g. UK–Yemen Investment Agreement).⁴⁷

Conclusion

In this chapter we have been concerned with looking at the factors leading to the development of abnormal relations between states, as well as discussing some of the features of the initial phases of normalisation. Considerable variability exists in terms of the form in which the normalisation process develops. The initial phases of transition can be usefully considered through the concept of ‘carry over’ (e.g. terms and

conditions of a ceasefire, whether or not ostensibly conciliatory proposals are restated or not after the cessation of hostilities). Diplomatic proposals may be withdrawn, so creating barriers to further progress. Other types may take the form of conditions set by one or more parties, which must be met before normalisation can be undertaken (e.g. political or economic reform). Important in this context are mutual perceptions of what constitutes an acceptable range of procedural and substantive concessions, initiatives and undertakings that would facilitate normalisation. In some instances normalisation hinges on one or two focal issues (e.g. return of annexed territory, renunciation of claims, or return of persons or assets). The concept of transfer effect is useful in focusing attention on the effect of side or sectoral initiatives (e.g. resumed trade) on normalisation attitudes on core issues.

In other cases, reduction of hostility may be based on some form of normalisation agreement. In these instances, the evolution of subsequent normalisation initiatives can be usefully understood by analysing the agreement in terms of areas of residual disagreement, which may be explicit, implicit (e.g. equivocal or ambiguous language) or latent (issue side-stepped or postponed). Normalisation is seldom based on clear-cut concessions, but rather is the product of complex and shifting political and diplomatic compromise.

Notes

1. 'The Anglo-Icelandic Fisheries Dispute', *International Relations*, vol. 10, no. 6, Nov. 1974, pp. 576–9.
2. *Financial Times*, 3 April 1982; *The Times*, 8 April 1982.
3. For example see the lack of response to the UN secretary-general's visit by the UK, and the rejection of UN Resolution 37/9, 1982: *The Times*, 15 July 1982; and the British position on the link between negotiations and sovereignty, *Hansard*, 15 Nov. 1982, vol. 32, col. 31–2.
4. The dispute ostensibly began over wages paid at a plastic flower factory and developed into rioting. See *The Times*, 15 May 1967.
5. The protest was delivered through the acting Chinese chargé d'affaires in London, Shen Ping. The subsequent seizure of the British mission in Shanghai on 14 Sept. 1967 marked a further point of deterioration and was the subject of a further formal protest. See *The Times*, 16 May 1966, and 20 Sept. 1967.
6. See *The Times*, 8 June 1974.
7. See *The Times*, 24 April 1980.
8. See *The Times*, 5 June 1989.
9. The subsequent visit of the British prime minister to China was preceded by that of the Chinese vice-premier to London. See *The Times*, 3 Sept. 1991.
10. Following clashes between police and Iranian demonstrators outside the US embassy in London, subsequent deportation of a number of students, and Iranian demonstrations outside the British embassy in Teheran during

- Aug. 1980, the British embassy suspended routine operations. Reduced staff continued residual tasks but the embassy was closed the following month as a safeguard against reprisals. See *The Times*, 13 and 18 Aug. 1980; 7 Sept. 1980.
11. British commercial interests in Uruguay were affected as part of demonstrations to prevent shipping services between the Falkland Islands, Uruguay and Chile. See *The Times*, Jan. 1989.
 12. In an intense period of expulsion from 1982 to 1984 involving the UK and Czechoslovakia, Britain indicated its desire to limit the effects of expulsion by expelling a low-grade clerical official from the Czech embassy in London. See *The Times*, 8 Jan. 1982; see Moscow case, *The Times*, 24 Jan. 2006.
 13. See *The Times*, 9 Oct. 1971 for the text of the Soviet Note, and 23 Oct. 1971.
 14. The withdrawal of the UK consulate from Taiwan in July 1971 marked a further stage in the decline of political relations, and continued sensitivity to the People's Republic of China. UK trade and commercial relations were largely unaffected. On the changing state of Anglo-Taiwanese diplomatic relations, see *The Times*, 21 July 1971.
 15. The UK agreed to appoint a chargé d'affaires to Conakry after talks between the then head of government, Colonel Traoré, and Margaret Thatcher in July 1984. Prior to this, diplomatic relations had been maintained at consulate level with the British ambassador to Senegal accredited to Guinea.
 16. See *The Times*, 15 Aug. 1980.
 17. Following the failure of the EC *démarche* to President Bani Sadr, EC governments recalled their envoys in protest and on 22 April imposed non-economic sanctions. EC ambassadors returned to Teheran on 27 April. See *The Times*, 14 and 28 April 1980.
 18. See *The Times*, 17 Jan. and 1 Feb. 1980. See also *The Times*, 13 Jan. 1980 for a clarification on the Cassidy case by Ridley (minister of state, Foreign and Commonwealth Office, London).
 19. *The Times*, 13 July 1984.
 20. See Foreign Secretary, *Hansard*, 12 July 1984, Col. 1366 and Col. 1373. See *First Report*, Foreign Affairs Committee, House of Commons, Session 1984–5 for a review of issues relating to the diplomatic bag and overall government policy, pp. xxiii–xxxi. The British government decided to withdraw its High Commissioner on 15 July 1984. See *The Times*, 16 July 1984.
 21. For a review of these, see *The Times*, 10 Jan. 1986.
 22. This was apparently put forward following the meeting between the UK special envoy, Sir Roger du Boulay and the Nigerian foreign minister, Ibrahim Gambari. Sir Roger du Boulay, special envoy of Sir Geoffrey Howe, was a retired diplomat who had served in Nigeria from 1948 to 1958. See *The Times*, 12 and 14 Sept. 1984.
 23. See *The Times*, 12 and 25 Feb. 1986. At the conclusion of a visit to Britain for talks with the prime minister in January 1986, the Nigerian foreign minister, Professor Akinyemi, indicated: 'that there were no longer any obstacles in the way of normalising diplomatic relations between London and Lagos. We are back on track.' See *The Times*, 10 Jan. 1986. Relations, however, remained tense over the closure of the UK visa office, trade and debt questions.
 24. Prince Fahd ordered the British ambassador to leave within 48 hours in April 1980, and diplomatic relations were restored on 26 Aug. 1980. See *The Times*, 24 April 1980.

25. See *The Times*, 4 July 1980.
26. Nine of the 39 members of the OAU broke diplomatic relations with Britain between 15 and 18 Dec. 1965 over Rhodesian UDI: Algeria, Congo (Brazzaville), Ghana, Guinea, Mali, Mauritania, Sudan, Tanzania and the UAR. The group resumed relations in 1966, except for the Algiers 'group' of Algeria, Congo (Brazzaville) Mali and Mauritania, and which maintained the break until April 1968. Negotiations on the resumption of relations were held with Algeria on behalf of the Algiers group by Sir Richard Beaumont, deputy under-secretary, Foreign and Commonwealth Office, from 17 to 22 March 1968. See *Keesing*, April 1968, p. 21181. Relations were only resumed with Tanzania.
27. The United Arab Republic resumed relations in Dec. 1967 after breaking in 1965 over Rhodesia. See *Keesing*, Dec. 1967, p. 22433A.
28. *The Times*, 11 April 1974.
29. Diplomatic relations had been reduced from ambassadorial to consular level in July 1963, over British policy of increasing Belize's self-government. Guatemala withdrew its consulate in London in July 1981 and severed all remaining diplomatic links by closing the Guatemalan consulate in Belize. El Salvador took over representation of Guatemalan interests in London until 1986.
30. The UK broke diplomatic relations with the Socialist People's Libyan Arab Jamahiiya on 22 April 1984. An interests section was established by Libya in the Royal Embassy, Saudi Arabia. For an outline of Anglo-Libyan relations from 1979 until the termination of relations following the shooting of WPC Fletcher outside the Libyan embassy, see *First Report*, Foreign Affairs Committee 1984–5, HMSO, London, 1985, pp. xxiii–xxvi.
31. Relations with the Syrian Arab Republic were broken on 31 Oct. 1986. Syria established an interests section in the Lebanese embassy.
32. *Keesing*, 11 June 1967, p. 22135.
33. *Keesing*, Sept. 1986, p. 34612; *The Times*, 2 Aug. 1986.
34. *The Times*, 17 Jan. 1980.
35. See *The Times*, 14 July and 8 Sept. 1981.
36. See, for example, Guatemala's reiteration of the rights to Belize; opposition to unilateral independence granted by the UK; non-recognition of Belize and non-acceptance of its land and maritime boundaries, in General Assembly, A138/PV.24 1983–4, 7 Oct. 1983, 38th Session, p. 67.
37. See note 24.
38. See Foreign Affairs Committee, 1983–4, Falkland Islands, vol. 1, pp. xxiv–xxxix; and interim agreement of Madrid talks, Joint Statement by British and Argentinian Delegations, 19 Oct. 1989.
39. The USA reestablished diplomatic links with Vietnam on 11 July 1995. See *Financial Times*, 12 July 1995.
40. The 'Fortress Falklands' policy was symbolised in Margaret Thatcher's visit to the Falkland Islands in January 1983. See *Hansard* (House of Commons), 17 Feb. 1983, col. 218; *The Times*, 10 and 13 Jan. 1983.
41. *Financial Times*, 18 July 1995.
42. F.C. Iklé, *How Nations Negotiate* (Harper & Row, New York, 1964) p. 14.
43. See note 19.
44. The UK decision to remove trade relations restrictions would appear to have been taken surprisingly quickly. Contrast the reply of the prime minister to

Hoyle, rejecting exceptions, *Hansard* (House of Commons) 19 April 1985, Col. 293, with Eggar's statement explaining the lifting of restrictions in July 1985, *Hansard* (House of Commons) 18 Nov. 1985, col. 30.

Argentina did not lift trade restrictions on direct British goods until 1 Aug. 1989. See *Financial Times*, 3 Aug. 1989.

45. S. Smith and M. Clarke (eds), *Foreign Policy Implementation* (Allen & Unwin, London, 1985).
46. The 20 August UK proposals were based on an arbitration formula and set of principles for compensation. The small, incremental concessions (carrot and stick) announced in Sept. 1952 which characterised the British approach, were limited to the delivery of 16 railway locomotives to Iran. See Middleton to FO, Tel750, 27 Sept. 1952.
47. Yemen had been in conflict with the UK after a Yemeni Airways aircraft had been impounded in London on debt grounds. A UK–Yemen Investment Agreement was subsequently signed during the later visit of the North Yemen foreign minister. See *Keesing*, April 1980, 30200.

Chapter 16

Diplomatic correspondence: case examples

In modern diplomatic practice, states generally use four methods for communicating directly with one another and other international actors. These are notes, letters, memoranda and aides-memoires. In addition, political leaders and other national personalities communicate with one another directly or indirectly through speeches, statements, communiqués and interviews with the press. Declarations, too, have become an important feature of modern international political life. We are, however, mainly concerned in this chapter with the four methods of diplomatic communication noted above. Examples are provided of some of the different usages of each of the forms of communication, although the variety of state practice makes it difficult to lay down hard-and-fast rules as to when one method should be used rather than another. The examples themselves have been chosen from a wide variety of international problems as a way also of introducing the reader to the documentation on some of the post-war issues. From this range of material it is hoped to convey some of the flavour and scope of post-war diplomacy and diplomatic exchanges.

Notes

Notes are the most widely used form of diplomatic correspondence. It is necessary to distinguish those notes that form a correspondence and may either be in the first or third person, from notes or letters that are used to bring an agreement into effect. The note is probably, despite the range of usage, the most formal of the four methods under discussion. When used in the third person the note generally commences with customary courtesies (e.g. 'the Embassy of [...] presents its compliments to') and concludes in a similar manner ('avails itself of the opportunity', etc.). In certain circumstances, for example protest notes or in third-person correspondence sometimes with an international organisation, customary

formalities may be partly or wholly dispensed with. Paragraphs in the note are not normally numbered and the note is initialled but not signed. In some state practice, for example that of Japan, the third-person note is styled a note verbale. In these instances, the title note verbale is put at the head of the note, but there are no other significant differences. The note verbale is used in diplomatic practice within the UN, as an alternative to a letter, for the circulation to members of statements or reports¹

Note verbale dated 2 December 1994 from the secretary-General addressed to the president of the Security Council

The Secretary-General presents his compliments to the President of the Security Council and, in accordance with paragraph 8 of Security Council resolution 816 (1993) of 31 March 1993, has the honour to bring to his attention further information received by the United Nations Protection Force (UNPROFOR) regarding apparent violations of the ban on flights in the airspace of Bosnia and Herzegovina.

Between 29 November and 1 December 1994, there appear to have been 18 flights of fixed or rotary-wing aircraft in the airspace of Bosnia and Herzegovina other than those exempted in accordance with paragraph 1 of resolution 816 (1993) or approved by UNPROFOR in accordance with paragraph 2 of that resolution. Details as to the itinerary of flights in the reporting period are attached as an annex to the present note verbale.

The total number of flights assessed as apparent violations is now 3,317.

Uses of diplomatic notes

Diplomatic notes are used for a variety of purposes ranging from routine matters of administration between an embassy and host foreign ministry, registration of treaties, granting or refusing overflight clearance, and peace proposals, through to official protests at the actions of other states and actors.

Protest notes

When states find it necessary to protest at certain actions this may be done verbally, by calling the ambassador or chargé to the foreign ministry. Alternatively, depending on the context and type of protest, a protest note may be issued. When put in the form of a note, the purpose is usually to place on record for political or legal purposes the state's position. This may form the basis for a claim or counter-claim at a subsequent date, or be a means of seeking political support in a wider forum.

A number of reasons for protests can be distinguished, such as: first, seeking to stop a policy developing (e.g. to contest a state's offshore maritime legislation); second, to protect interests (e.g. to maintain or counter a boundary claim by another state, or the occupation of territory); third, to affirm the right to do something (e.g. offshore exploration); or fourth,

to condemn an action (e.g. repeated or serious violation of air or sea space, arrest of vessels or breaches of ceasefire) with a view to exerting pressure to get a government to halt a policy or violations stopped.

Nuclear testing

The following examples illustrate these and other uses. The first illustration is taken from New Zealand's dispute with France over the French decision in 1963 to alter the location of its long-term nuclear test programme from the Sahara to the South Pacific. A number of protests and other diplomatic efforts were made by New Zealand to try and change the French decision. New Zealand subsequently took the case to the International Court of Justice (ICJ) on 9 May 1973.² The following are extracts from the second New Zealand note of protest, the French reply of 25 June 1963³ and the New Zealand position on overflight.⁴

Note from New Zealand Embassy to French Ministry of Foreign Affairs, 22 May 1963

The French authorities have been aware for some time of the grave concern felt by the New Zealand Government at various reports concerning France's plans to conduct test explosions of nuclear devices in the South Pacific region. The New Zealand Government has sought clarification of the intentions of the French Government in this respect through the New Zealand Embassy both in interviews with officials of the Ministry of Foreign Affairs and in the Embassy's Note of March 1963. In that Note it was indicated that if reports concerning the French Government's intention to test in the South Pacific were confirmed, the New Zealand Government would wish to convey certain other views to the French authorities. In spite of recurrent and increasingly detailed reports, which have produced growing public anxiety in New Zealand, it has continued to await official confirmation, in response to the Embassy's Note, that a decision to proceed with the establishment of a nuclear testing centre in the area has been taken.

On and about 2 May, reports of a press conference given in Papeete by General Thiry, head of a French civil and military mission, appeared both in the French metropolitan press and in New Zealand. It appeared from the statements attributed to General Thiry that a decision to establish a nuclear test zone in the area of Mururoa Atoll had been taken. Oral confirmation that a nuclear test zone had been decided on in the area described was subsequently given by the Ministry in response to enquiries by the Embassy.

In these circumstances, and even though it is understood that a period of some years may elapse before the first test can be held, the New Zealand Government feels compelled without further delay to present its views to the French authorities ...

The New Zealand Government must therefore protest strongly against the intention of the French Government to establish a nuclear testing centre in the South Pacific. It urges that the French Government reconsider, in the light of the views advanced in this Note, any decisions which may already have been taken.

Note from French Ministry of Foreign Affairs to New Zealand Embassy, 25 June 1963

Le Ministère des affaires étrangères présente ses compliments à l'Ambassade de Nouvelle-Zélande et a l'honneur de lui faire part de ce qui suit:

Le Ministère des affaires étrangères a pris connaissance avec attention de la note 1963/10 du 22 mai par laquelle l'Ambassade de Nouvelle-Zélande faisait connaître le point de vue de son gouvernement sur la création d'un polygone de tir français pour des essais nucléaires en Polynésie et au sujet de la cessation des essais nucléaires.

La position de la France à l'égard des expériences nucléaires est bien connue et n'a pas varié. A de nombreuses reprises ses représentants ont rappelé que l'immense pouvoir de destruction que représentent pour l'humanité les armes nucléaires demeurerait intact si la suspension des expériences n'était pas accompagnée de l'arrêt contrôlé des fabrications nouvelles et l'élimination progressive et vérifiée des stocks d'armes existants.

Le Gouvernement français demeure prêt à s'associer à tout moment à une politique de désarmement qui soit efficace et contrôlé. Mais en l'absence d'une telle politique et aussi longtemps que d'autres puissances posséderont les armes modernes il estime de son devoir de conserver sa liberté dans ce domaine.

C'est dans cette perspective qu'une décision tendant à l'établissement d'un polygone de tir pour des essais nucléaires en Polynésie française a été prise. Un délai assez long s'écoulera encore avant que ce champ de tir soit équipé et que des expériences nucléaires puissent y être effectuées.

Au demeurant le Gouvernement français croit devoir rappeler qu'il ne sera pas le premier à effectuer de telles expériences dans le Pacifique. D'autres Etats l'ont fait avant lui ainsi que le sait le Gouvernement de la Nouvelle-Zélande et il pourrait en être encore de même à l'avenir.

Le Ministère des affaires étrangères croit devoir également souligner que les services français chargés de la réalisation des essais nucléaires dans cette région veilleront tout particulièrement à assurer la protection des populations des pays riverains de l'océan Pacifique Sud. A cet égard le Gouvernement français se propose, ainsi qu'il en a déjà été fait part à l'Ambassade de Nouvelle-Zélande, de faire connaître aux autorités néozélandaises, au moment opportun, les conditions dans lesquelles se dérouleront ces expériences et les mesures prises pour éviter tout risque de retombées et éventuellement d'en discuter avec ces autorités.

Le Ministère des affaires étrangères saisit cette occasion pour renouveler à l'Ambassade de Nouvelle-Zélande les assurances de sa haute considération.

Note from New Zealand Ministry of External Affairs to French Embassy, 15 April 1966

The Ministry of External Affairs presents its compliments to the Embassy of France and has the honour to refer to the Embassy's Note No. 23 of 13 April

1966, which requested authorization for an aircraft of the French Air Force to overfly the islands of Niue and Aitutaki in the course of a flight from Noumea to Hao.

The Ministry desires to inform the Embassy that steps have been taken to advise the Ministry of Foreign Affairs in Paris that if the French Government proceeds with its intentions to conduct a series of nuclear weapons tests in the South Pacific Ocean, New Zealand, consistent with its obligation under the Partial Nuclear Test Ban Treaty of 1963, will be unable to grant authority for any visits to New Zealand territory by French military aircraft or ships or overflights of New Zealand by French military aircraft, unless assured that they are not carrying material intended for the test site, or for the monitoring of the tests, or for the support of forces and personnel engaged in the tests or in monitoring the tests, other than monitoring to detect possible health hazards ...

Note from New Zealand Ministry of External Affairs to French Embassy, 18 April 1966

The Ministry of External Affairs presents its compliments to the Embassy of France and has the honour to refer to the Embassy's Note No. 23 of 13 April and the Ministry's Note No. PM 59/5/6 of 15 April 1966.

The Ministry has been in consultation with the Government of the Cook Islands concerning the Embassy's request for authorization of the DC8 of the French Air Force to overfly Aitutaki on 24 April in the course of a flight from Noumea to Hao. The Government of the Cook Islands has requested that the Embassy be informed that its position is precisely the same as that of the New Zealand Government and that it cannot grant permission for the overflight without a similar assurance to that requested by the New Zealand Government.

The Ministry of External Affairs avails itself of this opportunity to renew to the Embassy of France the assurances of its highest consideration.

Note from French Embassy to the New Zealand Ministry of External Affairs, 21 April 1966

L'Ambassade de France présente ses compliments au Ministère des affaires extérieures, et a l'honneur de lui accuser réception de ses notes en date des 15 et 18 avril derniers, qui contiennent la réponse du Gouvernement néozélandais à la demande d'autorisation de survol de l'île Niue et de l'archipel des Cook présentée au nom de son Gouvernement.

Les modalités de la réponse néozélandaise ont été communiquées au Gouvernement français. Celui-ci a fait savoir à l'Ambassade qu'il souhaitait annuler sa demande. De ce fait, au cours de l'étape Nouméa-Hao, qui avait fait l'objet de cette demande, l'appareil militaire français se tiendra à l'écart de tout territoire et eaux territoriales néozélandais.

L'Ambassade de France saisit cette occasion pour renouveler au Ministère des affaires extérieures les assurances de sa très haute considération.

Protests at dumping wastes

The growing use of the coastal and ocean areas for land-based sourced discharges, toxic dumping and other activities, such as the disposal of the military byproducts of the Cold War, has led to increases in the number of protests in this area. For example Japan has protested on a number of occasions over Russian Federation nuclear dumping in the Sea of Japan, off the Maritime Provinces.⁵

Maps, boundaries and claims

States regard questions to do with boundaries and territory, such as the publication of maps by other states, claims and boundary adjustments, as highly sensitive matters. For example India made a formal protest to the PRC about the map attached to the Burmese–Chinese Boundary Treaty. India contested the map, which showed the western extremity of the Sino–Burmese boundary as ending at the Diphu L’Ka Pass, whereas on Indian and other maps the tri-junction was 5 miles north of the pass.⁶

Note from India to China, 30 December 1960

The Government of India present their compliments to the Government of the People’s Republic of China, and with reference to the text and the maps attached to the Burmese–Chinese Boundary Treaty of 1 October 1960 which were recently presented to the Parliament of the Union of Burma, have the honour to bring to the attention of the Government of the People’s Republic of China the following facts pertaining to the western extremity of the Burma–China boundary, where it meets the eastern extremity of the India–China boundary.

Although Article 5 of the Treaty does not specify the exact location of the western extremity of the Sino–Burmese boundary, in the map attached to the Treaty the boundary is shown as ending at the Diphu L’Ka Pass. The traditional boundary of India west of the Sino–Burmese boundary follows the watershed between D-chu in India and Lat-te in the Tibet region of China; and the tri-junction of India, Burma and China is five miles north of the Diphu L’Ka Pass, and not at the Diphu L’Ka Pass itself. The coordinates of the tri-junction are approximately longitude 97° 23’ east and latitude 28° 13’ north. The fact that the traditional boundary running along the Himalayan watershed passes through this point has in the past been accepted by the Governments of Burma and China and it has for many years been shown correctly on official maps published in India.

The Government of India recognise that the text of the Treaty has left the exact location of this point unspecified. The Government of India are however obliged to point out that the extremity of the boundary between the two countries has been shown on the maps attached to the Treaty in an erroneous manner. As the location of the tri-junction at the Diphu L’Ka Pass has an

adverse implication on the territorial integrity of India, the Government of India wish to make clear to the Government of the People's Republic of China that they would be unable to recognise this map insofar as it prejudicially affects Indian territory.

The Government of India take this opportunity to renew to the Government of the People's Republic of China the assurances of their highest consideration.

In the case of land or maritime boundaries that have been left incomplete and undelimited due to political disputes, difficulties can arise if attempts are made to close gaps or enclaves in a boundary. For example Argentina issued a protest note on 24 August 1994 after the UK closed a gap in the 200-mile fisheries boundary of the Falkland Islands.⁷

Letter dated 23 August 1994 from the permanent representative of Argentina to the United Nations addressed to the secretary-general

I have the honour to transmit to you the text of the protest note, dated 22 August 1994, from the Government of the Argentine Republic, regarding the unilateral measure taken by the United Kingdom of Great Britain and Northern Ireland extending its alleged maritime jurisdiction in the waters adjacent to the Malvinas.

I request that this note and its annex be circulated as an official document of the General Assembly, under item 45 of the provisional agenda of the forty-ninth session of the General Assembly entitled 'Question of the Falkland Islands (Malvinas)', and of the Security Council, and drawn to the attention of the Special Committee on the Situation with regard to the Implementation of the Declaration of the Granting of Independence to Colonial Countries and Peoples.

Signed Emilio J. Cardenas Ambassador
Permanent Representative

The general construction of new maritime boundaries after the 1982 Law of the Sea Convention has been a source of conflict in a number of regions, such as the South China Sea, Caribbean, Central America, Adriatic and Middle East. Issues have arisen over the appropriate use of straight base lines, remote uninhabited rocks and offshore installations to create territorial seas, and economic zones. In some instances states have readjusted their initial maritime boundaries to bring them more into conformity with the 1982 Law of the Sea Convention by modifying the coordinates of base lines to reduce the amount of maritime space claimed (e.g. Vietnam), or relinquished zonal claims based upon dubious or uninhabited rocks (e.g. the UK, Rockall, Scotland).

Nevertheless, maritime boundary disputes continue as an important source of friction and conflict between states in contemporary

international relations. For example St Kitts and Nevis issued a general protest through the UN secretary-general,⁸ to forward to parties to the 1982 United Nations Convention on the Law of the Sea over the use by Venezuela of Isla Aves, and adjacent installations, in bilateral maritime boundary treaties with the Netherlands, France and the USA, and the associated impact of these on St Kitts and Nevis.

Note verbale dated 26 November 2001 from the Ministry of Foreign Affairs of St Kitts and Nevis addressed to the secretary-general of the United Nations

The Ministry of Foreign Affairs of St. Kitts and Nevis ... has the honour to refer to the Venezuelan territory known as 'Isla Aves' and to the bilateral Maritime Boundary Delimitation Treaties arising therefrom and made between:

1. The Republic of Venezuela and the kingdom of the Netherlands, which entered into force on 15 December 1978;
2. The Republic of Venezuela and the United States of America, which entered into force on 24 November 1980;
3. The Republic of Venezuela and the French Republic, which entered into force on 28 January 1983.

The Government of St. Kitts and Nevis wishes to recall that, as recognized in customary international law and as reflected in the 1982 United Nations Convention on the Law of the Sea, rocks which cannot sustain human habitation or an economic life of their own shall have no exclusive economic zone or continental shelf.

The Government of St. Kitts and Nevis wishes further to recall that, as recognized in customary international law and as reflected in the 1982 United Nations convention on the Law of the Sea, the artificial installation and structure erected adjacent to 'Isla Aves' shall not possess the status of an island and shall have no territorial sea of its own and its presence does not affect the delimitation of the territorial sea, the exclusive economic zone or the continental shelf.

The maritime boundary treaties referred to above appear to grant 'Isla Aves' full status of territorial sea, exclusive economic zone or continental shelf. The Government of St. Kitts and Nevis has not acquiesced in the maritime boundary treaties referred to above.

The Government of St. Kitts and Nevis protests the status granted to 'Isla Aves' in the above-mentioned maritime boundary treaties and kindly requests the United Nations Secretary-General in his capacity as the depositary of the 1982 United Nations Convention on the Law of the Sea to communicate this note to the Parties to the said Convention.

Basseterre
26 November 2001

The maritime boundary arrangements between Venezuela (potentially zone-locks) and Trinidad and Tobago were protested by Guyana in the following note.⁹

Note Verbale dated February 2002 from the Ministry of Foreign Affairs of Guyana addressed to the Ministry of Enterprise Development and Foreign Affairs of Trinidad and Tobago and to the Ministry of External Affairs of Venezuela

The Ministry of Foreign Affairs of the Cooperative Republic of Guyana presents its compliments to the Ministry of External Affairs ... and has the honour to refer to the Treaty on Delimitation of Marine and Submarine Areas between the Republic of Trinidad and Tobago and the Bolivarian Republic of Venezuela signed at Caracas on 18 April 1990 and entered into force on 23 July 1991.

The Government of Guyana wishes to inform that it has concluded a review of its provisional maritime boundaries and of its potential claims to its extended continental shelf areas. It has emerged from that review that the aforementioned Treaty concluded between the Bolivarian Republic of Venezuela and the republic of Trinidad and Tobago purports to give to the parties to that Treaty rights over certain maritime areas which are a portion of Guyana's maritime space.

The Government of Guyana wishes to draw attention to article II of the said Treaty, wherein the geographical coordinates of the maritime boundaries between the Republic of Trinidad and Tobago and the Bolivarian Republic of Venezuela as defined in the aforesaid Treaty are set out.

The Government of the Cooperative Republic of Guyana wishes to inform the Government of ... that the encroachment by [Trinidad and Tobago] [Venezuela] into Guyana's maritime space is contrary to international maritime law and practice and does not affect Guyana's sovereignty and its exercise of sovereign rights over its maritime areas which are subject to the encroachment.

The Government of Guyana further wishes to advise that the coordinates that represent an encroachment of Guyana's maritime space are not recognized by the cooperative Republic of Guyana and cannot be opposable against Guyana.

The Government of the Cooperative Republic of Guyana wishes to bring to the attention of the Government of the Bolivarian Republic of Venezuela that the geographical coordinates forming the boundary lines which encroach upon Guyana's Maritime Space should be reviewed.

Georgetown, February 2002

Note verbale dated 27 March 2002 from the Ministry of Foreign Affairs of Trinidad and Tobago addressed to the Ministry of Foreign Affairs of Guyana (extracts)¹⁰

The Ministry of Foreign Affairs of the Republic of Trinidad and Tobago presents its compliments to the Ministry of Foreign Affairs of the Cooperative Republic of Guyana and has the honour to refer to the latter's note No. 102/2002 dated 1 February 2002, concerning the Trinidad and Tobago–Venezuela Treaty on the Delimitation of Marine and Submarine Areas which was signed on 18 April 1990 and entered into force on 23 July 1991.

The Ministry of Foreign Affairs wishes to inform the Ministry of Foreign Affairs that the Government of the Republic of Trinidad and Tobago has taken careful note of the timing of note 102/2002, and of its contents.

The Ministry of Foreign Affairs further wishes to advise the Ministry of Foreign Affairs that the Trinidad and Tobago–Venezuela Treaty on the Delimitation of Marine and Submarine Areas was negotiated and concluded in accordance with customary international law and the 1982 United Nations Convention on the Law of the Sea between two sovereign coastal States whose geographical relationship to each other is both that of oppositeness and of adjacency, and which resolved, equitably, their respective overlapping claims to territorial sea, exclusive economic zone and continental shelf jurisdictions in the Caribbean Sea, the Gulf of Paria, in the Serpent’s Mouth towards the Atlantic, and in the Atlantic Ocean to a distance of 200 nautical miles, and beyond that to the outer edge of the continental margin.

That Treaty validly concluded between Trinidad and Tobago and Venezuela, and in respect of which the international community has had notice since its registration in 1992 with the United Nations Secretariat in accordance with Article 102 of the Charter of the United Nations, in no way prejudices the rights and interests of Guyana in respect of its maritime jurisdictions.

In addition to the foregoing, Anselm Francis, a publicist and lecturer at the Institute of International Relations, University of the West Indies, St. Augustine, Trinidad and Tobago, writing in the *International Journal of Estuarine and Coastal Law*, vol. 6, No. 3, at page 179, published in 1991, had this to say about the 1990 Trinidad and Tobago–Venezuela Maritime Boundary Treaty:

Venezuela is located between Trinidad and Tobago and Guyana and its north-eastern coastline is concave. These two factors conspire to make Venezuela zone-locked if the equidistance method is applied. The question which must be addressed is whether that method must be adjusted to provide Venezuela with a corridor to the open Atlantic or whether Venezuela should be left to bemoan the cruel treatment meted out to her by nature.

The Government of the Republic of Trinidad and Tobago, in the light of the foregoing, does not consider that any aspect of the Trinidad and Tobago–Venezuela Maritime Boundary Treaty line requires review, including that part which delimits the marine and submarine areas where the two coastal States, possessing coastlines comparable in length to the coastline of Guyana, abut on the open Atlantic Ocean.

In keeping with the submission by the Government of the Cooperative Republic of Guyana of a copy of its note No. 102/2002 to the Secretary-General of the United Nations, an action taken twelve (12) years after the Trinidad and Tobago–Venezuela Treaty was signed, eleven (11) years after it entered into force, and ten (10) years after it was registered without protest, the Government of the Republic of Trinidad and Tobago will ensure that a similar treatment is accorded to this note in reply.

The Ministry of Foreign Affairs of the Republic of Trinidad and Tobago avails itself of this opportunity to renew to the Ministry of Foreign Affairs of the Cooperative Republic of Guyana the assurances of its highest consideration.

Port of Spain
27 March 2002

The proclamation of fisheries and other zones before borders with neighbouring states have been finally determined is a further source of conflict. In the Adriatic, for example, following the dissolution of the former Yugoslavia, Slovenia, in the absence of fully agreed borders with Croatia, and concerned over its loss of direct territorial sea exit to the high seas, issued a protest to Croatia over its unilateral declaration of an ecological and fisheries zone in the Adriatic Sea.¹¹

Note verbale dated 7 November 2003 from the Permanent Mission of Slovenia to the United Nations addressed to the secretary-general (extracts)

The Permanent Mission of the Republic of Slovenia to the United Nations presents its compliments to the Secretary-General of the United Nations as depositary of the United Nations Convention on the Law of the Sea of 1982, and has the honour to forward the attached note (see annex), by which the Republic of Slovenia has protested against the unilateral declaration of an ecological and fisheries protection zone in the Adriatic Sea by the Republic of Croatia. The Permanent Mission has further the honour to communicate the following:

The Republic of Slovenia has a direct territorial exit to the high seas and has the right to declare its own exclusive economic or ecological and fisheries protection zones. Slovenia has already exercised this right as one of the coastal republics of the former Socialist Federal Republic of Yugoslavia and ever since its dissolution, and consequently has the same right also at present. According to the Basic constitutional Charter on the Independence and Sovereignty of the Republic of Slovenia, the Republic of Slovenia, as an independent State, assumed the rights and obligations relating to the territorial sea which were until then implemented with other federal units of the former common State. As a result, the Republic of Slovenia has preserved the existing Slovenian jurisdiction over the Bay of Piran and a direct territorial exit to the high seas.

The preservation of a direct territorial exit to the high seas is in the vital interest of the Republic of Slovenia, and it can therefore not accept and does not recognize any unilateral measures of the neighbouring State that would prejudice the final establishment of the border with the Republic of Croatia. Since the border has not yet been finally established, although it has been defined in the initialled Treaty on the Common State Border, the unilateral declaration of an ecological and fisheries protection zone in the Adriatic Sea by the Republic of Croatia represents a violation of the obligations of the Republic of Croatia under international law. Such a decision prejudices the border at sea and encroaches on the area in which the Republic of Slovenia exercises its sovereignty and sovereign rights.

The Permanent Mission of the Republic of Slovenia to the United Nations would highly appreciate if the Secretary-General informs the States Parties to the 1982 United Nations convention on the Law of the Sea of the above note and its attachment and publishes both in the next Law of the Sea Bulletin.

Annex

Republic of Slovenia
 Ministry of Foreign Affairs
 No. ZSD-JVE-59/2003

The Ministry of Foreign Affairs of the Republic of Slovenia presents its compliments to the embassy of the Republic of Croatia and, with reference to the decision of the Republic of Croatia's Sabor of 3 October 2003 to declare an ecological and fisheries protection zone in the Adriatic Sea, has the honour to communicate the following:

The Republic of Slovenia strongly protests against the unilateral declaration of an ecological and fisheries protection zone by the Republic of Croatia in the Adriatic Sea. The Republic of Slovenia believes that the decision of the Republic of Croatia's Sabor is contrary to the general obligation of the Republic of Croatia under international law to refrain from any action that prevents or hinders the final enforcement of an agreed solution concerning the border at sea between the two States. With such a decision the Republic of Croatia has prejudiced the final enforcement of a consensual solution to the issue of the maritime boundary between the two countries and encroached on the area in which the Republic of Slovenia exercises its sovereignty and sovereign rights.

The decision of the Republic of Croatia's Sabor is also contrary to the European way of reaching agreements and taking coordinated action in protecting the Mediterranean and Adriatic seas based on multilateral regional arrangements and the formulation of agreed solutions.

In view of the above, the decision is unacceptable to the Republic of Slovenia from the international law aspect and unsuitable in the light of maintaining good-neighbourly relations.

The Ministry of Foreign Affairs of the Republic of Slovenia avails itself of this opportunity to renew to the Embassy of the Republic of Croatia the assurances of its highest consideration.

Ljubljana
 3 October 2003

In territorial disputes, in which territory has been occupied by one of the disputants, issuing a protest note serves to show that a claim is not extant, and the right to recover the territory is reserved. In the South China Sea conflict between, inter alia, China and Vietnam, China protested over Vietnam's occupation of some of the Nansha Islands.¹²

Letter dated 20 April 1987 from the representative of China to the secretary-general

I have the honour to enclose herewith the text of the statement issued on 15 April 1987 by the spokesman of the Ministry of Foreign Affairs of the People's Republic of China concerning the illegal occupation by the Vietnamese authorities of some of China's Nansha Islands.

I should be grateful if you would have this letter and the full text of its enclosure circulated as an official document of the General Assembly and of the Security Council.

(Signed) Li Luye
Permanent Representative of the
People's Republic of China to the United Nations

Annex

Statement issued on 15 April 1987 by the spokesman of the Ministry of Foreign Affairs of China

Recently Vietnamese authorities have once again encroached upon China's territorial integrity and sovereignty by brazenly sending troops to Bojiao Island of China's Nansha Islands and illegally occupying it. The Chinese Government has stated on many occasions that Nansha Islands as well as Xisha Islands, Zhongsha Islands and Dongsha Islands have always been China's sacred territory and that China has the indisputable sovereign right over these islands and their adjacent waters, which brook no encroachment by any country under whatever excuse and in whatever form. The Chinese Government strongly condemns the Vietnamese authorities for their illegal invasion and occupation of some islands of China's Nansha Islands and firmly demands that the Vietnamese side withdraw its troops from all the illegally occupied islands of Nansha Islands. The Chinese Government reserves the right to recover these occupied islands at an appropriate time.

Affirmation of rights

The use of protest notes to affirm rights is illustrated by the Libyan–Tunisian dispute over the delimitation of the continental shelf. During the course of the dispute, the two sides signed a special agreement on 10 June 1977¹³ to put the case before the International Court of Justice (ICJ). Prior to this, Libya had granted oil concessions in the disputed sector of the Gulf of Gabes and undertaken exploratory drilling. Tunisia protested at the Libyan actions, but Libya rejected the Tunisian protests in a note verbale of 2 May 1976 and affirmed its right to carry out drilling on the disputed continental shelf.¹⁴

Note verbale 1/7/76 of 2 May 1976

Le ministère des affaires étrangères de la République arabe libyenne adresse ses compliments à la haute représentation de la République tunisienne et a l'honneur de la prier de transmettre ce qui suit au Gouvernement de la République tunisienne.

Se référant à la note du ministère des affaires étrangères tunisien no 1630 du 15 avril 1976 relative aux activités du bateau français Maersk Tracker lié par un contrat avec le Gouvernement de la République arabe libyenne pour effectuer des opérations d'exploration et de forage dans ses eaux territoriales et sur son plateau continental, le ministère des affaires étrangères de la République arabe libyenne désire affirmer ce qui suit:

I. Le Gouvernement de la République arabe libyenne rejette entièrement le contenu de la note du ministère des affaires étrangères tunisien no 1630 du 15 avril 1976 ...

En conséquence, le Gouvernement de la République arabe libyenne attire l'attention du Gouvernement de la République tunisienne sur le fait qu'il va continuer à exercer ses droits légitimes sur son territoire et poursuivre l'exploration et l'exploitation de ses eaux territoriales et de son plateau continental.

Il prie donc le Gouvernement de la République tunisienne de reconsidérer sa note no 1630 du 15 avril 1976 et de ne pas faire obstacle aux opérations d'activité économique ou autres de la République arabe libyenne dans cette région.

A La Haute Représentation
De La République Tunisienne Soeur
Tripoli

The use of notes to protest claims and affirm rights can be seen in other instances, such as US protests over boundary and territorial claims that are considered excessive or inconsistent with the United Nations Convention on the Law of the Sea (UNCLOS) 1982,¹⁵ and the corresponding assertion of rights for its nationals and rights over navigation and overflight.

The note below sets out the standard US position on navigational rights and freedoms under the law of the sea and objections to Canada's Arctic vessel traffic regulations (paragraph 4).

US diplomatic note to Canadian Department of Foreign Affairs and International Trade, commenting on Canada's NORDREGs, July 2010

No. 625

The Embassy of the United States of America presents its compliments to the Department of Foreign Affairs and International Trade and has the honor to refer to the Northern Canada Vessel Traffic Services Zone Regulations (NORDREGs) which entered into effect on May 1, 2010.

The United States notes its support for the navigational safety and environmental protection objectives of NORDREGs and commends the Government of Canada for its efforts to promote the protection of the marine environment in the Arctic. As conditions in the Arctic continue to change and the volume of shipping traffic increases, Arctic coastal States need to consider ways to best protect and preserve this sensitive region.

The Government of the United States of America advises, however, that it continues to be concerned that the NORDREGs are inconsistent with important law of the sea principles related to navigational rights and freedoms and recommends that the Government of Canada submit its vessel traffic services and mandatory ship reporting system to the IMO for adoption.

Among our concerns, the NORDREGs purport to require Canadian permission for foreign flagged vessels to enter and transit certain areas that are within Canada's claimed exclusive economic zone and territorial sea and that enforcement action could include prosecution. In the view of the United States, this is not consistent with navigational rights and freedoms within the exclusive economic zone, the right of innocent passage within the territorial sea, and the right of transit passage through straits used for international navigation, all of which are bedrock principles of the law of the sea.

While Article 234 of the Law of the Sea Convention (the Convention) allows coastal states to adopt and enforce certain laws and regulations in ice-covered areas within the limits of their exclusive economic zones, these laws and regulations must be for the prevention, reduction and control of marine pollution from vessels and have 'due regard to navigation.' The United States does not believe that requiring permission to transit these areas meets the condition set forth in Article 234 of having due regard to navigation.

Additionally, the NORDREGs do not provide express exemptions for sovereign immune vessels from the applicability and enforcement of the final regulations. While the NORDREGs note that enforcement action would be consistent with international law, the United States wishes to note that, by virtue of Article 236 of the Convention, sovereign immune vessels are immune not only from enforcement of NORDREGs but also their applicability. The United States expects that this is a matter upon which our governments agree.

Finally, from a safety of navigation perspective, the United States has concerns about whether the NORDREGs vessel traffic services system is consistent with IMO guidance on the establishment of vessel traffic services.

In our view, measures like those contained in NORDREGs should be proposed to and adopted by the IMO to provide a solid legal foundation and broad international acceptance. The United States would welcome the opportunity to work with Canada and with others at the BMO on this matter.

The United States also reiterates its long-standing view that the Northwest Passage constitutes a strait used for international navigation. At a minimum, a measure such as the NORDREGs for an international strait would need to be proposed at and adopted by the IMO.

The United States noted with concern the references to 'sovereignty' in the statements accompanying the announcement of the regulations. The United States wishes to note that the NORDREGs do not, and cannot as a matter of law, increase the 'sovereignty' of Canada over any territory or marine area.

The Embassy of the United States of America avails itself of this opportunity to renew to the Department of Foreign Affairs and International Trade the assurances of its highest consideration.

Embassy of the United States of America
Ottawa, August 18, 2010

Source: US Digest of Practice in International Law 2010 (Department of State, 2011) [Chapter 12](#).

Violation of airspace

The following illustration is taken from the famous U-2 incident of May 1960. On 1 May 1960, in a major incident on the eve of the Paris Summit, the Soviet Union shot down a US U-2 intelligence aircraft over Sverdlovsk. The USA issued the following note on 6 May 1960.¹⁶

As already announced on 3 May, a United States National Aeronautical Space Agency unarmed weather research plane based at Adana, Turkey, and piloted by a civilian American has been missing since 1 May. The name of the American civilian pilot is Francis Gary Powers, born on 17 August 1929, at Jenkins, Kentucky.

In the light of the above the United States Government requests the Soviet Government to provide it with full facts of the Soviet investigation of this incident and to inform it of the fate of the pilot ...

The Soviet Union issued a protest note on 10 May 1960.¹⁷

Soviet note to the United States, 10 May 1960

The Government of the Union of Soviet Socialist Republics considers it necessary to communicate the following to the Government of the United States of America.

At 5.36 a.m. (Moscow time), on May 1, this year, a military plane violated the frontier of the USSR and invaded the air space of the Soviet Union to a distance of over 2,000 kilometres. The Government of the USSR, of course, could not leave unpunished such a gross violation of the Soviet state frontiers. When the deliberate nature of the flight of the intruding plane became obvious, it was brought down by Soviet rocket forces near Sverdlovsk ...

These and other data cited in the speeches by the head of the Soviet Government have utterly refuted the invented and hastily concocted story of the US State Department, set forth in an official press release on 5 May and alleging that the plane was conducting meteorological observations in the upper layers of the atmosphere along the Turkish–Soviet frontier.

It goes without saying that the Soviet Government has been compelled by the present circumstances to give strict orders to its armed forces to take all the necessary measures against the violation of Soviet frontiers by foreign aircraft ...

The Government of the Soviet Union strongly protests to the Government of the United States of America in connection with the aggressive acts by American aircraft and warns it that should such provocations be repeated, the Soviet Government will have to take retaliatory measures, the responsibility for whose consequences will rest with the governments of the states committing acts of aggression against other countries ...

The USA replied on 12 May to the Soviet protest note as follows:¹⁸

The Embassy of the United States of America refers to the Soviet Government's Note of 10 May concerning the shooting down of an American unarmed civilian aircraft on 1 May, and under instruction from its Government, has the honour to state the following.

The United States Government, in the statement issued by the Department of State on 9 May, has fully stated its position with respect to this incident.

In its Note the Soviet Government has stated that the collection of intelligence about the Soviet Union by American aircraft is a 'calculated policy' of the United States. The United States Government does not deny that it has pursued such a policy for purely defensive purposes. What it emphatically does deny is that this policy has any aggressive intent, or that the unarmed U-2 flight of 1 May was undertaken in an effort to prejudice the success of the forthcoming meeting of the Heads of Government in Paris or to 'return the state of American-Soviet relations to the worst times of the cold war'. Indeed, it is the Soviet Government's treatment of this case which if anything, may raise questions about its intention in respect to these matters.

For its part, the United States Government will participate in the Paris meeting on 16 May ... prepared to cooperate to the fullest extent in seeking agreements designed to reduce tensions, including effective safeguards against surprise attack which would make unnecessary issues of this kind.

Disputes on the record and the search for support

In some circumstances, states transmit protest notes through the UN in order to publicise their case by putting it on record, or have the matter discussed by the Security Council. Many aspects of the Cyprus problem have been disputed through the UN in this way, such as the lodging of a protest note by the Cyprus government against Turkish incursions of its air space.¹⁹ In the dispute between the UK and Guatemala over Belize, the Guatemalan government lodged with the secretary-general the text of a protest note sent to the UK, for circulation as a Security Council document.²⁰

Letter dated 17 September 1981 from the representative of Guatemala to the secretary-general

[Original in Spanish.] I have the honour to reproduce below the text of a note of protest against the United Kingdom dated 16 September 1981 and delivered yesterday to the Embassy of Switzerland, which is handling that country's affairs in Guatemala. The note reads as follows:

'The Ministry of External Relations presents its compliments to the Honourable Embassy of Switzerland, as the Embassy handling the affairs of the United Kingdom of Great Britain and Northern Ireland, and wishes to inform it that on Thursday, 10 September 1981, at 2 p.m., a British reconnaissance aircraft entered Guatemalan airspace without proper authorisation, flying over several departmental capitals as well as over the national capital, at an altitude of 35,000 feet.

'This unusual act constitutes a flagrant violation of the most elementary rules of international law and an abuse of territorial inviolability. Moreover, it demonstrates the aggressive attitude of the British Government in provoking a peaceful nation so insolently.

'The Ministry of Foreign Affairs request the Honourable Embassy of Switzerland to convey to the Government of the United Kingdom the most energetic protest of the Government of Guatemala against this act.'

Please arrange for this communication to be circulated as a Security Council document, with reference to Guatemala's request drawing the Council's attention to the dispute with the United Kingdom concerning the Territory of Belize.

(Signed) Eduard Castillo Arriola
Permanent Representative of Guatemala to the United Nations

Again, the US protest note to Libya following the clash in the Gulf of Sirte was transmitted to the president of the Security Council as a means *inter alia* of putting on the record US policy on freedom of navigation in international waters and the right of self-defence.²¹

Letter dated 19 August 1981 from the representative of the United States of America to the President of the Security Council

In accordance with Article 51 of the Charter of the United Nations, I wish, on behalf of my Government, to report that United States aircraft participating in a routine peaceful naval exercise in international waters in the Mediterranean Sea were subject to an unprovoked attack by Libyan aircraft. The attack took place at 0520 hours GMT on 19 August 1981. Acting in self-defence, United States aircraft returned fire, and two Libyan aircraft were shot down.

The United States Government today transmitted the following protest to the Government of Libya:

'The United States Government protests to the Government of Libya the unprovoked attack against American naval aircraft operating in international airspace approximately 60 miles from the coast of Libya. The attack occurred at 0520 GMT on 19 August 1981. The American aircraft were participating in a routine naval exercise by United States Navy Forces in international waters. In accordance with standard international practice, this exercise had been announced on 12 and 14 August through notices to airmen and to mariners. Prior notification of air operations within the Tripoli FIR (flight information region) had also been given. In accordance with these notifications, the exercise which began on 18 August will conclude at 1700 GMT 19 August.'

'The Government of the United States views this unprovoked attack with grave concern. Any further attacks against United States Forces operating in international waters and airspace will also be resisted with force if necessary.' In view of the gravity of Libya's action, and the threat it poses to the maintenance of international peace and security, I ask that you circulate the text of this letter as a document of the Security Council.

(Signed) Charles M. Lichenstein
Acting Representative of the United States of America to the United Nations

In the course of long-running disputes, reporting frontier, airspace or population attacks to the UN becomes an important feature of the information battle (e.g. Bosnia-Herzegovina's conflict with Serbia/Croatia) to gain international allies and diplomatic support within and outside the UN.²²

Letter dated 8 February 1993 from the representative of Bosnia and Herzegovina to the president of the Security Council (extracts)

[Original in English.][9 February 1993] Today, the Permanent Mission of the Republic of Bosnia and Herzegovina to the United Nations received disturbing information from the Command of the 2nd Army Corps of the Territorial Defense of Bosnia and Herzegovina in the Tuzla region, regarding intensified aggression by Serbian and Montenegrin extremists forces.

On 7 February 1993, the aggressor forces employed Howitzer cannons, anti-tank and anti-aircraft guns, mortars, and multi-barrelled rocket launchers from the ground, and both fixed-wing and rotary-wing aircraft which launched napalm and cluster bombs in attacks against the towns of Cerska, Konjevic Polje, and Kamenica. These latest attacks resulted in excess of 100 casualties and an influx of 4,000-plus refugees from these towns into the already overburdened city of Tuzla. These refugees reported that, given the continued attacks and the deteriorating situation, that another 5,000 refugees from the above-mentioned towns could be expected to arrive in Tuzla over the next two to three days ...

(Signed) Muhamed Sacirbey
Permanent Representative of Bosnia and Herzegovina
to the United Nations

Condemnation of action

The most common use of protest notes is for a condemnation of an action. In the following example, the Russian Federation, which was in dispute with the Danish government over support for Chechen separatists, summoned the Danish ambassador and issued a formal protest on 31 December 2004.²³

**Russian Deputy Minister of Foreign Affairs Vladimir Chizhov
converses with Danish ambassador to Moscow Lars Vissing**

[Unofficial translation from Russian]

**Ministry of Foreign Affairs of the Russian Federation – Information
and Press Department**

On December 31 Danish Ambassador Lars Vissing was summoned to the MFA of Russia, where Deputy Foreign Minister Vladimir Chizhov made a representation to him over the reports that had come in on a possible arrival of

Chechen emissary Akhmed Zakayev in Denmark in spring 2005 at the initiative of the so called Danish committee in support of Chechnya.

The Russian side presumes that the Danish authorities will do all they can to prevent Zakayev from turning up in Denmark or in accordance with their international antiterrorist obligations will detain this accomplice of terrorists on an Interpol inquiry in case of his entry into Danish territory for his subsequent extradition to Russia or the initiation of legal proceedings against him. Another appearance of Zakayev in Denmark would also signify that the Danish side is openly ignoring the Russian side's message regarding his stay in Copenhagen at the beginning of December 2004.

This kind of development of events cannot but adversely affect the state of bilateral relations between our countries.

December 31, 2004

The following example also illustrates the heightened attention given to public diplomacy and the tracking of media by governments in counter-terrorism, with the Russian Federation's attempt through the UK government to halt a possible Channel 4 interview.²⁴

Statement by the Ministry of Foreign Affairs of the Russian Federation regarding planned interview of terrorist/murderer Shamil Basayev on British Television Channel

[Unofficial translation from Russian]

Ministry of Foreign Affairs of the Russian Federation – Information and Press Department

Moscow has received extremely negatively news of the transmission being prepared on the British television Channel Four of an interview of the notorious terrorist and murderer Shamil Basayev. We regard this kind of action as another step for informational support of the terrorists operating in the North Caucasus.

We are sure that such an irresponsible step of spreading to a wide audience the views and threats of the bandit, who is on Interpol's wanted list and on the list of the counter-terrorism of the United Nations Security Council, runs counter to international community efforts in the struggle against terrorism.

The Embassy of Russia in Britain has asked the British authorities not to telecast the interview in question. Russian representatives drew attention to the likely adverse implications of the advocacy of terrorists' views.

February 3, 2005-05-21

Other uses of notes

A number of other uses of notes need to be distinguished.

First, a collective note is one that is presented by several parties to a government or international institution on a matter upon which they

wish to make joint representation. In the case of a regional organisation (e.g. ASEAN and the Caribbean Community, CARICOM), the text may be delivered by the current chairman, secretary-general or individual ambassadors as appropriate. In a similar way letters may take a collective form.²⁵ An interesting example is provided by the collective letter to the UN secretary-general signed by Fiji, Ireland and Senegal, representing the participating members of UNIFIL, on the serious difficulties encountered by UNIFIL in carrying out its mandate in the Lebanon. Another illustration can be seen in the collective letter of Argentina, Brazil, Chile and the USA to the president of the Security Council in their capacity as countries guaranteeing the 1942 Peruvian–Ecuadorian Protocol of Peace, Friendship and Frontiers.²⁶

Apart from collective notes or letters, other uses take the form of identical and similar notes. For example, Russia and China issued as a document of the Security Council a joint letter on 28 February 2003 about the situation in the Korean peninsula and concerning the Iraq question.²⁷

Annex I to the letter dated 28 February 2003 from the permanent representatives of China and the Russian Federation to the United Nations addressed to the secretary-general

[Original in Chinese and Russian.] On 27 February Minister for Foreign Affairs of the Russian Federation Igor Ivanov and Minister for Foreign Affairs of the People's Republic of China Tang Jiaxuan expressed profound concern over the situation in the Korean peninsula.

Guided by their sincere desire to assist the strengthening of peace and stability in the Asia-Pacific region, Russia and China call upon all concerned parties to exert the necessary efforts towards a peaceful and just resolution of the situation on the Korean peninsula.

The sides emphasize that ensuring the non-nuclear status of the Korean peninsula, the observance there of the regime of non-proliferation of weapons of mass destruction and the preservation in that region of peace, security and stability meet the common aspirations of the international community.

The sides note that a constructive and equal dialogue between the United States of America and the Democratic People's Republic of Korea has great significance for resolving the situation around the 'North Korean nuclear problem' and normalizing American–North Korean relations.

The sides regard as necessary the continuation of an active dialogue and the further development of cooperation between North and South Korea. This process constitutes a substantial contribution to improving the situation on the Korean peninsula and in North-East Asia as a whole.

The sides take into account the position stated by the Democratic People's Republic of Korea on the absence of an intention to create nuclear weapons and the desire signified by the United States of America and the Democratic People's Republic of Korea to resolve the problems by peaceful means.

The sides reiterate that Russia and China are ready to make every effort to facilitate the American–North Korean dialogue and, in a bilateral and multilateral format, to contribute actively to a political solution of the Korean nuclear problem and the preservation of peace and stability in the Asia-Pacific region.

Russia and China intend to continue to develop good-neighbourly, friendly ties and cooperation with the Democratic People's Republic of Korea and the Republic of Korea.

Annex II to the letter dated 28 February 2003 from the permanent representatives of China and the Russian Federation to the United Nations addressed to the secretary-general (extract)

[Original in Chinese and Russian.] On 27 February Minister for Foreign Affairs of the Russian Federation Igor Ivanov and Minister for Foreign Affairs of the People's Republic of China Tang Jiaxuan held an in-depth exchange of views on the Iraq question and reached a broad mutual understanding.

The sides expressed serious concern over the tensions around the Iraq question.

The sides favour a resolution of the Iraq crisis by political and diplomatic means within the framework of the United Nations. Resolution 1441 (2002) unanimously adopted by the United Nations Security Council on 8 November 2002, and the other relevant resolutions provide the necessary legal basis for that.

Russia and China proceeded from the assumption that inspection activities by the United Nations Monitoring Verification and Inspection Commission (UNMOVIC) and the International Atomic Energy Agency (IAEA) play an important role in the matter of resolving the Iraqi question, have achieved definite progress and should proceed further. The United Nations Security Council should strengthen the guidance and support of inspection work.

The sides emphasized that the Security Council bears the main responsibility for the maintenance of international peace and security and should, guided by the purposes and principles of the Charter of the United Nations, continue to play a central role in resolving the Iraq problem. All member States of the United Nations must respect and protect the authority and powers of the United Nations Security Council.

In the case of similar notes, states may agree after consultation to draft broadly similar though not identical language. This may occur when a number of states consult each other concerning the effect of reservations made by another state when acceding to an international treaty. Again, groups of states may agree to use similar language when reserving their positions on an issue.

Speaking and other notes

A quite different usage of note is in the sense of 'speaking notes' or *bouts de papier*, which may be left at the end of a call or a meeting to act as a form of aide-memoire to reduce the likelihood of misunderstanding about the points made. An example of the use of speaking notes occurred during US–North Vietnamese talks: 'The US delegation repeated its position at 12 different meetings and on at least one occasion US negotiator

Cyrus Vance read from “talking points”, which he left on the table for his counterpart Colonel Han Van Lau to pick up.²⁸

Talking points can themselves be the subject of internal conflict within the issuing side, as to what is exactly said and what impressions were left. For example the Bush Administration remained deeply divided over cooperation with North Korea. Under-Secretary Kanter met fierce resistance from Scowcroft (National Security Council adviser) and Under-Secretary of Defense Wolfowitz. At the high-level talks in New York on 22 January 1992, with Kim Yon Sun, secretary for international affairs of the Korean Workers’ Party, Kanter ‘was on a very tight leash’, as Sigal notes. ‘Kanter had plenty of help in the room, other agency representatives who would assure his strict adherence to the approved talking points.’

In UN practice, finally, documents are issued by the secretary-general with the title ‘note’. These are not third or first-person notes as such, have no formalities of introduction or conclusion, but resemble rather memoranda. As such, they tend to contain formal statements recording details of conference meetings or intersessional consultations.

Letters

Along with notes, letters are extensively used for diplomatic correspondence. Letters of correspondence should be distinguished, like notes, from letters that bring agreements into effect, although the opening and closing formalities are generally the same. Of the several uses of letters, a number are worth highlighting. First, a personal letter from one head of government (or foreign minister) to another is often used after changes of government or if relations between the states have been ‘frozen’ for some time due to a dispute. The letter may be delivered by an ambassador, or, more often, by a special envoy. A personal letter from one head of state to another may be used to supplement a note,²⁹ as well as make a diplomatic initiative or appeal. For example President Reagan, in an attempt to break the deadlock in negotiations on the Cyprus problem, sent a personal letter of 22 November 1984 to the president of Turkey, General Kenan Evren, urging resumption of negotiations.³⁰

In conflicts states warn enemies and, on occasion, friends. The initial phase of the Cyprus problem provides a famous illustration of the latter. Against the background of growing Greek–Turkish Cypriot intercommunal violence and the possibility of military intervention by Turkey, President Johnson sent an extremely tough warning to Turkey on 5 June 1964. The so-called ‘Johnson letter’ has been described as the ‘bluntest document ever sent to an ally’. In warning against intervention, the letter to President Inonu continued: ‘I hope you will understand that your NATO allies have not had a chance to consider whether they have an obligation to protect Turkey against Soviet intervention, without the full consent and understanding of its NATO allies.’³¹

The letter was also a model of Secretary of State Dean Rusk and Department of State drafting, in that it was sensitive to likely Turkish feelings and reaction. The tone of the letter was softened to appeal to Turkish national pride.³²

We have considered you as a great ally with fundamental common interests. Your security and prosperity have been the deep concern of the American people, and we have expressed that concern in the most practical terms. We and you fought together to resist the ambitions of the communist world revolution. This solidarity has meant a great deal to us, and I hope it means a great deal to your government and your people.

In September 2011 Palestine applied for membership of the UN. The Membership Committee was divided and failed to reach agreement on the application. However, in a separate application, Palestine was admitted to UNESCO on 31 October 2011 (103 for, 14 against, and 52 abstentions).



THE SECRETARY-GENERAL

23 September 2011

Dear Mr. President,

In accordance with rule 135 of the rules of procedure of the General Assembly and rule 59 of the provisional rules of procedure of the Security Council, I have the honour to convey herewith the attached application of Palestine for admission to membership in the United Nations, contained in a letter received on 23 September 2011 from its President. I also attach a further letter, dated 23 September 2011, received from him at the same time.

I should be grateful if you could bring the letter of application and its annex to the attention of the members of the Security Council. I would also be grateful if you could bring the further letter to the attention of the members of the Security Council.

Please accept, Mr. President, the assurances of my highest consideration

Ki Moon Ban

BAN/Ki-moon

The President of the Security Council presents his compliments to the members of the Council and has the honour to transmit herewith, for their information, a copy of a **note dated 23 September 2011 from the Secretary-General** addressed to the President of the Security Council, and its enclosures.

This note and its enclosures will be issued as a document of the Security Council under the symbol S/2011/592.

23 September 2011

Declaration of the State of Palestine

In connection with the application of the State of Palestine for admission to membership in the United Nations, I have the honor, in my capacity as the President of the State of Palestine and as the Chairman of the Executive Committee of the Palestine Liberation Organization, the sole legitimate representative of the Palestinian people, to solemnly declare that the State of Palestine is a peace-loving nation and that it accepts the obligations contained in the Charter of the United Nations and solemnly undertakes to fulfill them.

(Signed) Mahmoud Abbas
President of the State of Palestine
Chairman of the Executive Committee of the
Palestine Liberation Organization

Application of the State of Palestine for Admission to Membership in the United Nations

Excellency,

I have the profound honor, on behalf of the Palestinian people, to submit this application of the State of Palestine for admission to membership in the United Nations.

This application for membership is being submitted based on the Palestinian people's natural, legal and historic rights and based on United Nations General Assembly resolution 181 (II) of 29 November 1947 as well as the Declaration of Independence of the State of Palestine of 15 November 1988 and the acknowledgement by the General Assembly of this Declaration in resolution 43/177 of 15 December 1988.

In this connection, the State of Palestine affirms its commitment to the achievement of a just, lasting and comprehensive resolution of the Israeli-Palestinian conflict based on the vision of two-States living side by side in peace and security, as endorsed by the United Nations Security Council and General Assembly and the international community as a whole and based on international law and all relevant United Nations resolutions.

For the purpose of this application for admission, a declaration made pursuant to rule 58 of the Provisional Rules of Procedure of the Security Council and rule 134 of the Rules of Procedure of the General Assembly is appended to this letter.

I should be grateful if you would transmit this letter of application and the declaration to the Presidents of the Security Council and the General Assembly as soon as possible.

Mahmoud Abbas
President of the State of Palestine
Chairman of the Executive Committee of the
Palestine Liberation Organization
HE. Mr. Ban Ki-moon
The Secretary-General of the United Nations
The United Nations
New York

Questions, explanation and lines of action

Letters are most commonly used to raise questions and explain policy, as well as set out intended lines of action. An example of the latter, which had a major impact on post-war Japanese orientation, is the so-called ‘Yoshida letter’. The letter of 25 December 1951, from Prime Minister Shigeru Yoshida to John Foster Dulles, was the product of considerable pressure by Dulles to persuade the Japanese prime minister to conclude a peace treaty with the Republic of China and not Beijing. Yoshida was ambivalent as he sought to keep Japanese options open. However, he finally conceded shortly after the second meeting with Dulles on 18 December 1951 and accepted Dulles’s draft memorandum. The Yoshida letter helped the peace treaty with Japan through the US Senate in March 1952. Japan continued to recognise the Nationalist regime in Taiwan until 1972, after which it changed its recognition policy, in the wake of the USA’s revised policy (the so-called ‘Nixon shock’) towards the People’s Republic of China. The relevant section of the Yoshida letter sets out Japan’s recognition policy as follows:³³

My government is prepared as soon as legally possible to conclude with the National Government of China, if that government so desires, a Treaty which will re-establish normal relations between our governments in conformity with the principles set out in the multilateral Treaty of Peace, the terms of such bilateral treaty to be applicable as regards the territories now or hereafter under the actual control of the Japanese and Chinese National Governments ... I can assure you that the Japanese Government has no intention to conclude a bilateral Treaty with the Communist regime of China.

In the second example, the US trade representative uses a letter to set out the intention of negotiation on regional Asia-Pacific trade agreement, known as the Trans-Pacific Partnership Agreement. The letter is of interest in three respects. Its tone is drafted to reflect the delicate balance of US domestic

economic interests – mirrored in the US House of Representatives. Another feature of note is the new concept of a ‘high standard, 21st century agreement’ which various sections of the letter partly explain (market opportunities for a variety of workers; new opportunities for small and medium-sized businesses; environmental standards; worker rights; and transparency). The letter is also of particular interest in that the TPP negotiations illustrate part of the reorientation of US foreign policy, post-Iraq and Afghanistan, to Asia-Pacific in order to counter Chinese influence.

Letter of 14 December 2009 from Ronald Kirk to Nancy Pelosi, Speaker, US House of Representatives

Dear Madam Speaker:

On behalf of the President, I am pleased to notify Congress that the President intends to enter into negotiations of a regional, Asia-Pacific trade agreement, known as the Trans-Pacific Partnership (TPP) Agreement, with the objective of shaping a high-standard, broad-based regional agreement. This agreement will create a potential platform for economic integration across the Asia-Pacific region, a means to advance U.S. economic interests with the fastest-growing economies in the world, and a tool to expand U.S. exports, which are critical to our economic recovery and the creation and retention of high-paying, high-quality jobs in the United States. Successful conclusion of the TPP negotiations will require a high-standard, 21st century agreement with a membership and coverage that provides economically significant new market access opportunities for America’s workers, farmers, ranchers, service providers, and small businesses.

The huge markets of the Asia-Pacific region already are key destinations for U.S. manufactured goods, agricultural products, and service suppliers. U.S. goods exports to the Asia-Pacific region totaled \$747 billion in 2008, up 8.3 percent over the previous year, with agricultural products comprising \$76 billion of the 2008 total, a 30 percent increase over 2007. U.S. services exports totaled \$187 billion in 2008, up 7.7 percent over 2007. U.S. small- and medium-sized enterprises alone exported \$173 billion to the Asia-Pacific in 2008.

Yet even as our exports have grown, we have seen a proliferation of trade agreements in the Asia-Pacific region to which the United States is not a party. While the United States has concluded some agreements, there are now 175 preferential trade agreements in force that include Asia-Pacific countries, with another 20 awaiting implementation and more than 50 others under negotiation. These agreements, as well as other economic developments, have led to a significant decline in the U.S. share of key Asia-Pacific markets over the past decades. A declining U.S. market share in the Asia-Pacific region means fewer export-created American jobs. Through the TPP Agreement, we intend to reverse this trend and enhance U.S. competitiveness and our share of job-creating economic opportunities in the region.

Our TPP negotiating partners currently include Australia, Brunei Darussalam, Chile, New Zealand, Peru, Singapore, and Vietnam. These countries form an initial group of ‘like-minded’ countries that share a commitment to concluding a high-standard trade agreement. U.S. participation in the TPP Agreement is predicated on the shared objective of

expanding this initial group to additional countries throughout the Asia-Pacific region. Several already have expressed interest in potentially participating in the agreement. We will consult with Congress as we consider additional members and as we work to further expand the economic significance of the TPP Agreement and to ensure that it remains high standard.

The Administration is committed to establishing a new partnership with Congress to develop U.S. negotiating objectives for the TPP Agreement. Beginning immediately and continuing throughout the negotiations, the Administration will hold regular and rigorous consultations on all elements of the agreement in order to develop negotiating positions consistent with both Administration and Congressional priorities and objectives. The goal is to work closely with Congress and other stakeholders to shape a 21st century regional trade agreement that will benefit U.S. workers, manufacturers, service suppliers, farmers, ranchers, small businesses, and consumers.

As the Administration develops U.S. negotiating objectives for this regional agreement, we will review our approach to the range of issues that the U.S. free trade agreements have addressed in the past, recognizing that the concerns of U.S. workers, businesses, farmers, and consumers have evolved over time. In undertaking that review, the Administration will work closely with Congress on the elements of a high-standard regional agreement that, as appropriate, updates the U.S. approach to traditional trade issues, addresses new issues, incorporates new elements that reflect our current values and priorities, and responds to 21st century challenges.

For example, working together with Congress, the Administration hopes to develop innovative ideas for using the TPP Agreement to promote new technologies and emerging economic sectors, create new opportunities for U.S. small- and medium-sized businesses to increase exports to the region, and help U.S. firms participate in production and supply chains in order to encourage investment and production in the United States. We also will work with Congress to enhance the agreement's focus on environmental protection and conservation, transparency, workers rights and protections, and development. We could ultimately include other issues that are identified.

We also look forward to working with Congress to address the challenges we will face throughout these negotiations. These include how to negotiate a new regional agreement with countries with which we already have bilateral free trade agreements, how to integrate developing economies like Vietnam into a high-standard agreement, and how to address U.S. sensitivities on trade in agriculture and other sectors. The TPP Agreement provides an opportunity to develop a new model for U.S. trade negotiations and a new regional approach that focuses more on jobs, enhances U.S. competitiveness, and ensures that the benefits of our trade agreements are shared by all Americans. We look forward to working closely with you as we set US objectives and carry out negotiations to conclude this important new agreement.

Sincerely Ronald Kirk

Crises

In crisis diplomacy, states find it necessary sometimes to duplicate or reinforce the channels of communication. This might be a safeguard

to ensure that their policy is actually getting through, or, alternatively, an attempt to influence opinion in the other state by the use of a wide number of channels. The former was no doubt the reason why, in the Cuban missile crisis, the USA attempted to use the secretary-general of the United Nations as one of the routes to communicate the US decision on a 500-mile quarantine around Cuba to the Soviet Union.³⁴

Letter of 27 October 1962 from Adlai E. Stevenson, defining interception area around Cuba

Excellency: My Government has instructed me to inform you that the 'interception area' referred to in your letter of 25 October to the President of the United States and in his reply of 26 October, comprises:

- a. the area included within a circle with its centre at Havana and a radius of 500 nautical miles, and,
- b. the area included within a circle with its center at Cape Maisi (Maisi), located at the eastern tip of the island of Cuba, and a radius of 500 nautical miles.

You may wish to pass the above information to Chairman Khrushchev, so that he can proceed in accordance with his 26 October letter to you, in which he stated that he had ordered the masters of Soviet vessels bound for Cuba, but not yet within the interception area, to stay out of the area.

Accept, Excellency, the renewed assurances of my highest consideration.

Adlai E. Stevenson

Gulf War

In the lead-up to the Gulf War, the then President Bush, in circumstances of mounting tension, sent Secretary Baker on a final mission to deliver a letter to President Saddam Hussein, at a meeting with Iraqi Foreign Minister Tariq Aziz in Geneva, warning Iraq not to use chemical or biological weapons and to step back from war. Aziz refused to deliver the letter, leaving it on the table, and the talks broke up.³⁵

International Monetary Fund letter to ministers and governors dated November 13, 2008

The joint demarcation of responsibilities by the IMF and FSF in the international trade and eurozone crisis is a rare public document sent to G-20 ministers and governors of the IMF, issued at the onset of the financial crisis. The document deals with the sensitive issue of overlap between the activities of the IMF and FSF, and seeks to clarify the functions of each. The document is discussed further in [Chapter 8](#).³⁶



November 13, 2008

Dear Ministers and Governors:

The financial crisis has underscored the importance of international coordination both in responding to the crisis and in developing and implementing policies for a sounder financial system.

Coordination is important as well across the international financial institutions and bodies that support the efforts of national governments, including the IMF and the FSF.

In view of the ongoing financial crisis and against the background of the upcoming G20 Leaders' Summit on Financial Markets and the World Economy, we have decided to enhance our collaboration and would like to clarify how we see the roles of our respective bodies in that regard.

1. Surveillance of the global financial system is the responsibility of the IMF.
2. Elaboration of international financial sector supervisory and regulatory policies and standards, and coordination across the various standard setting bodies, is the principal task of the FSF. The IMF participates in this work and provides relevant inputs as a member of the FSF.
3. Implementation of policies in the financial sector is the responsibility of national authorities, who are accountable to national legislatures and governments. The IMF assesses authorities' implementation of such policies through FSAPs, ROSCs and Article IVs.
4. The IMF and the FSF will cooperate in conducting early warning exercises. The IMF assesses macro-financial risks and systemic vulnerabilities. The FSF assesses financial system vulnerabilities, drawing on the analyses of its member bodies, including the IMF. Where appropriate, the IMF and FSF may provide joint risk assessments and mitigation reports.

Our shared goal is to strengthen the international financial system. To that end, the IMF and the FSF stand ready to support the work of the G20.

Sincerely yours,

Dominique Strauss Kahn
Managing Director
International Monetary Fund

Mario Draghi
Chairman
Financial Stability Forum

Disputes and letters

A further general category of correspondence worthy of comment is the many types of letters which states address to the secretary-general and other UN office-holders in the course of a dispute. These may serve one of a number of purposes, such as putting a complaint, establishing a case, indicating that UN recommendations have been complied with, or, as in the following example, internationalising a dispute by seeking to put it before the Security Council.³⁷

Letter dated 16 September 1981 from the representative of the Sudan to the president of the Security Council

[Original in English.] Upon instructions from my Government, I have the honour to inform you that in another wanton act of aggression aimed at destabilising the security and tranquillity of the Sudanese people, the occupying Libyan armed forces in Chad have once again committed a series of hostile acts of aggression against the sovereignty and territorial integrity of the Democratic Republic of the Sudan. . . .

1. On 10 September 1981, a Libyan military plane violated Sudanese airspace and bombed a number of Sudanese villages in the vicinity of Eltina area in western Sudan. No casualties were reported.
2. On 15 September, at 0600 hours and 0930 hours, a number of Libyan planes based in Chad have twice bombarded Kulbus area in western Sudan. Four persons, including two children, were seriously injured in the souk (market-place).
3. On the same day, 15 September, at 1100 hours, two Libyan aircraft overflew the Sudanese city of El Geneina in another provocative act.

The Democratic Republic of the Sudan strongly condemns these repeated acts of aggression by Libya against the sovereignty and territorial integrity of the Sudan in flagrant violation of the principles and objectives enshrined in the Charter of the United Nations.

The Democratic Republic of the Sudan would like to draw the attention of the Security Council to the dangerous situation arising from the repeated Libyan acts of aggression against the Democratic Republic of the Sudan which would undoubtedly lead to the destabilization of the region and threaten international peace and security. The Democratic Republic of the Sudan trusts that the Council will closely follow the situation and take all necessary and appropriate measures to ensure that such Libyan acts of aggression would immediately stop and not be repeated.

My Government reserves the right to seize the Security Council of the above-mentioned situation and requests that this letter be circulated as a document of the Council.

(Signed) Abdel-Rahman Abdalla
Permanent Representative of the Sudan to the United Nations

In disputes, letters to the President of the Security Council are used to defend policy. The Democratic People's Republic of Korea (DPRK) informed the Security Council of its decision to withdraw from the NPT as follows.³⁸

Letter dated 12 March 1993 from the minister for foreign affairs of the Democratic People's Republic of Korea addressed to the president of the Security Council

I would like, upon authorization, to inform the Security Council that the Government of the Democratic People's Republic of Korea decided on

12 March 1993 to withdraw from the Treaty on the Non-Proliferation of Nuclear Weapons, in accordance with paragraph 1 of article X of the Treaty, in connection with the extraordinary situation prevailing in the Democratic People's Republic of Korea, which jeopardizes its supreme interests.

The United States together with south Korea has resumed the 'Team Spirit' joint military exercises, a nuclear war rehearsal, threatening the Democratic People's Republic of Korea, and instigated some officials of the secretariat of the International Atomic Energy Agency (IAEA) and certain Member States to adopt an unjust 'resolution' at the meeting of the IAEA Board of Governors on 25 February 1993 demanding that we open our military sites that have no relevance at all to the nuclear activities, in violation of the IAEA statute, the safeguards agreement and the agreement the IAEA had reached with the Democratic People's Republic of Korea.

This is an undisguised strong-arm act designed to disarm the Democratic People's Republic of Korea and strangle our socialist system, which jeopardizes its supreme interests.

If such an act were tolerated, it would only set a precedent for helping to legitimise the nuclear threats against the non-nuclear-weapon State parties and interference in their internal affairs, to say nothing of our country falling victim to a super-Power.

I hope that the Security Council will take note of the decision of the government of the Democratic People's Republic of Korea to withdraw from the Treaty until the United States nuclear threats and the unjust conduct of the IAEA against the Democratic People's Republic of Korea are recognized to have been removed.

(Signed) Kim Young Nam
Minister for Foreign Affairs Democratic People's Republic of Korea

Cuba, for example, used its return to the report of the International Law Commission as a means of conducting its dispute with the USA, as follows:³⁹

Annex to the letter dated July 2004 from the chargé d'affaires a.i. of the Permanent Mission of Cuba to the United Nations addressed to the secretary-general (extract)

For the purposes of complying with paragraph 3 of General Assembly resolution 58/77, of 9 December 2003, inviting governments to provide information to the International Law Commission regarding State practice on the topic 'Unilateral acts of States', the Government of the Republic of Cuba wishes to transmit the following observations:

The Republic of Cuba has reaffirmed on a number of occasions the fundamental importance it attaches to the topic 'Unilateral acts of States', which is under consideration by the International Law Commission, and the need to move forward in its codification and progressive development.

The Republic of Cuba wishes to draw the attention of the International Law Commission to unilateral acts which violate international law and the Charter of

the United Nations, such as the use of unilateral extraterritorial coercive economic measures as a means of political and economic compulsion, the aim of which is to undermine the sovereign rights of other states.

A clear example of unilateral acts of this type is the economic, commercial and financial embargo imposed by the United States of America against Cuba, which has been broadly rejected by the international community on numerous occasions, as shown by the 13 resolutions adopted by the General Assembly on this topic, and other instruments.

Collective letters: threats and warnings

In the Yugoslav conflict, the EC warned the Serb authorities of the consequences of refusal to accept the Vance-Owen peace plan in a collective letter to the president of the Security Council.⁴⁰

Letter dated 26 March 1993 from the representatives of France, Spain and the United Kingdom of Great Britain and Northern Ireland to the president of the Security Council

[Original in Spanish.] We have the honour to bring to your attention the text of the statement on Bosnia and Herzegovina adopted by the European Community and its member States at Brussels on 26 March 1993.

We should be most grateful if you would have the text of this letter and the statement circulated as a document of the Security Council.

<i>(Signed)</i>	<i>(Signed)</i>	<i>(Signed)</i>
ANTONIO PEDAUYE	JEAN-BERNARD MÉRIMÉE	SIR DAVID HANNAY, KCMG
<i>Chargé d'affaires a.i.</i>	<i>Permanent Representative</i>	<i>Permanent Representative</i>
<i>of Spain to the</i>	<i>of France to the</i>	<i>of the United Kingdom</i>
<i>United Nations</i>	<i>United Nations</i>	<i>To the United Nations</i>

Text of the statement

[Original in English and French.]

The European Community and its member States warmly commend the decision of the Bosnian Government to sign the Vance-Owen peace plan. They reiterate their unequivocal support for the plan and pay tribute to the valuable efforts of the two co-Chairmen.

They also welcome the agreement between the Muslim and Croat parties on the interim arrangements which form an important part of the peace package. They hope the Security Council of the United Nations will endorse the Vance-Owen peace plan, and they express their readiness to contribute substantially to its implementation.

The Community and its member States demand that the Serb side now accept the plan in its entirety and cooperate fully in all aspects of its

implementation. The Serbs must stop all aggressions at once, preparing the way for the cessation of hostilities by all sides.

If the Bosnian Serbs refuse to accept the plan now, full international pressure will be brought to bear on them. The community and its member States will continue strengthening sanctions and will consider further measures leading to the total isolation of Serbia-Montenegro.

Setting out positions

Letters to the secretary-general or president of the Security Council are most frequently used by states to set out their view on an issue before the Council or Assembly. Small states in particular have relied heavily upon transmitting rapidly to the secretary-general information on military attacks by more powerful neighbours, and seeking support through personal diplomacy by their resident representative to the UN. Laos, for example, has extensively used the technique reasonably successfully to put a 'brake' on Thailand, during the course of the ongoing Laos–Thai frontier disputes.⁴¹

Letter dated 28 December 1987 from the representative of the Lao People's Democratic Republic to the secretary-general

Upon instructions from my Government, and further to my earlier correspondence, in particular my letter dated 17 December, as well as the letter of the Permanent Representative of Thailand of 22 December [S/19378], I have the honour to transmit to you herewith the text of a statement issued on 27 December by the Ministry of Foreign Affairs of the Lao People's Democratic Republic on the Thai military attack against Lao territory.

I should be grateful if you would arrange to have the text circulated as an official document of the General Assembly and of the Security Council.

(Signed) Kithong Vongsay
Permanent Representative of the Lao People's Democratic
Republic to the United Nations

Annex

Statement issued at Vientiane on 27 December 1987 by the Ministry of Foreign Affairs of the Lao People's Democratic Republic

The government of the Lao People's Democratic Republic, since its foundation on 2 December 1975, has consistently pursued a policy of peace, friendship and good-neighbourliness with the Kingdom of Thailand, for the two peoples share similarities as to race, language, traditions and customs, enabling them to create better relations on a political basis, as stipulated in the Lao–Thai and Thai–Lao joint communiqués signed by the two Governments in 1979.

But it is regrettable that this policy of the Lao side has always been obstructed by the very serious frontier incidents between the two countries, particularly those of the three Lao hamlets in 1984, which are still far from being solved. This year, the Thai side once again has created a new grave incident: the Thai third army region forces have dispatched their paramilitary units to assure the protection of Thai private merchants engaged in the illegal felling of fine wood in Lao territory on the west side of Na Bo Noi canton, Botene district, Sayaboury province. And between 14 and 18 August 1987, the Thai side sent several infantry battalions to occupy this area, repeatedly attacked the Lao local force strongholds which are defending that area and then proclaimed deliberately this area to be part of Thai territory by unilaterally claiming that Nam Huang Nga river constitutes a frontier between the two countries. This arrogant claim runs counter to the 1907 Franco–Siamese treaty, which stipulates the following on the side of Luang–Prabang: ‘The frontier leaves the Mekong river, in the South, at the mouth of Nam Huang river and follows the thalweg of this river up to its source located at Phou Khoa Mieng mountain. From there the border follows the watershed between the Mekong river and the Menam river until it reaches the Mekong river at the point called Keng Pha Day.’

Reports

Reports undertaken by UN envoys, representatives and other mediators are sometimes circulated to UN members as letters. For example, the text of the Contact Ministerial Group (France, Germany, the Russian Federation, the UK and the USA) statement on territorial and other solutions for Bosnia-Herzegovina was issued in this form.⁴²

Ceasefire violations

Letters are the commonest form for expressing concern for circulation to the Security Council or as a more general document within the UN. Thus a state can attempt to focus the attention of the Security Council on specific aspects of a ceasefire violation, or other aspects of a mandate. In this form the letter can become close to a protest note. For example Bosnia-Herzegovina drew attention to continual attacks against Bihac by Croatian and Bosnian Serb forces, despite the ceasefire.⁴³

Letter dated 27 December 1994 from the permanent representative of Bosnia and Herzegovina to the United Nations addressed to the president of the Security Council

While there is supposed to be a cease-fire throughout the Republic of Bosnia and Herzegovina, the Bihac region continues to be under the coordinated attack of the so-called Croatian and Bosnian Serb forces. It appears that

some United Nations spokespersons have adopted the view that this does not constitute a violation of the cease-fire because, as they claim, the attacks are coming solely from elements directed by the so-called Croatian Serbs. (These assertions are being made by the same authorities who, at the height of the onslaught against the Bihac safe area, when it was politically convenient, maintained that there was no evidence of involvement on the part of the so-called Croatian Serbs.) In our view, this endeavour of ignoring the coordinated forces seriously undermines the credibility of the cease-fire and those who are empowered to enforce it.

May I ask for your kind assistance in circulating this letter as a document of the Security Council.

(Signed) Muhamed Sacirbey
Ambassador and Permanent Representative

Secretary-General

Finally, we should note the use of correspondence by the UN secretary-general for three important purposes: to initiate or recommend action, defend action taken and report. The first of these functions is illustrated in the secretary-general's letter to the president of the Security Council on the United Nations Angola Verification Mission (UNAVEM II). In a letter of 7 December 1994, the secretary-general indicated that, despite uncertainties on the ceasefire, he intended to proceed on the basis of Resolution 952 (1994) to restore the strength of UNAVEM to its previous level.⁴⁴

Letter dated 7 December 1994 from the secretary-general addressed to the president of the Security Council

As members of the Security Council will recall, paragraph 4 of Council resolution 952 (1994) of 27 October 1994, with the aim of consolidating the implementation of the peace agreement on Angola in its initial and most crucial stages, authorized the restoration of the strength of the United Nations Angola Verification Mission (UNAVEM II) to its previous level of 350 military observers and 126 police observers, with an appropriate number of international and local staff. The deployment of such additional personnel would take place upon receipt of my report to the Security Council that the Government of Angola and the União Nacional para la Independência Total de Angola (UNITA) had initialled a peace agreement and that an effective cease-fire was in place.

Council members are aware that the representatives of the Government and UNITA initialled the Lusaka Protocol on 31 October 1994 and signed it on 20 November.

Having assessed the situation, and in accordance with the provisions of resolution 952 (1994), I intend to proceed with the restoration of the strength of UNAVEM to its previous level, with an appropriate number of international and local staff, and the deployment of the mission throughout the country. I should like to stress that the actual enlargement of the mission would be dependent

on the strict observance by the parties of an effective cease-fire, and on the provision by them of satisfactory guarantees regarding the safety and security of the United Nations personnel concerned.

In addition to existing tasks, the mission would monitor and verify all major elements of the Lusaka Protocol and provide good offices to the parties, including at the local level. If need be, it would conduct inspections/ investigations of alleged violations independently, or jointly with the parties. In the meantime, my Special Representative would chair the Joint Commission in charge of implementation of the provisions of the Protocol.

I would be grateful if you would bring these matters to the attention of the members of the Security Council.

(Signed) Boutros Boutros-Ghali

Letters have also been used by the secretary-general to provide detailed explanations of the legal and administrative basis for actions taken. A clear example of this usage was the extended rebuttal by the secretary-general of Iraqi criticism of the procedures he proposed to use to establish a Boundary Commission to demarcate the Kuwait–Iraq boundary under Security Council Resolution 687 (1991). The secretary-general argued *inter alia*:⁴⁵

Letter dated 30 April 1991 from the secretary-general addressed to the minister for foreign affairs of Iraq

I have the honour to refer to your letter dated 23 April 1991, which was transmitted to me by a letter of the same date from the Permanent Representative of Iraq to the United Nations and which contained comments on the proposals made with regard to the implementation of paragraph 3 of Security Council resolution 687 (1991) and on which I must report to the Security Council no later than 2 May 1991 ...

The first comment of your Government is that, in international law, a boundary demarcation between two States can be carried out only by agreement between the parties and that the Security Council has no competence to impose such a demarcation. In this connection, I would like to recall that, in paragraph 2 of Resolution 687 (1991) the Security Council, acting under [Chapter VII](#) of the Charter of the United Nations, demanded that Iraq and Kuwait respect the inviolability of their international boundary and the allocation of islands ‘set out in the “Agreed Minutes between the State of Kuwait and the Republic of Iraq regarding the Restoration of Friendly Relations, Recognition and Related Matters”, signed by them in the exercise of their sovereignty at Baghdad on 4 October 1963’. In paragraph 3 of that resolution the Council called upon me to lend my ‘assistance to make arrangements with Iraq and Kuwait to demarcate the boundary between Iraq and Kuwait’. In an identical letter dated 6 April 1991 addressed to me and to the President of the Security Council (S/22456), your Government formally notified its acceptance of the provisions of that resolution. You further reconfirmed your Government’s

acceptance of paragraph 3 of resolution 687 (1991) at the end of your letter of 23 April 1991 (see annex II, enclosure) ...

Secondly, your Government states that the proposed demarcation would be prejudged by a specific reference to a map made available by the United Kingdom and which, according to the letter, the Legal Counsel described as 'a factual point'. I wish to state that the Legal Counsel of the United Nations did not describe the map as having been mentioned in the 1963 agreed minutes. In response to a question as to which map was referred to in document S/22412, your Permanent Representative was informed that the map in question was a 'United Kingdom map'. On a substantive level, however, I am obliged to point out that the resolution provides that the demarcation of the boundary should be based on 'appropriate material, including the map transmitted by Security Council document S/22412' [emphasis added]. In the light of this wording, I have proposed that the Commission will have to make 'necessary arrangements for the identification and examination of appropriate material relevant to the demarcation of the boundary'.

Thirdly, your Government queries the independence of experts to be appointed by me to serve on the Boundary Commission and comments on the proposed decision making by majority. I would like to assure you that, in appointing the independent experts of the Commission, I shall, as always, base my decisions on the need to ensure independence, competence and integrity. Furthermore, to ensure an equitable approach and the effective functioning of the Commission, I have proposed that neither Government should be able to frustrate the work of the Commission ...

(Signed) Javier Pérez De Cuellar
Secretary-General

In the third common use, the secretary-general reports back on actions taken with respect to implementation of ceasefires, and the work of his special envoys.

The secretary-general reported the progress of the UN special envoy Ambassador Edouard Brunner in the Georgia–Abkhazia dispute as follows:⁴⁶

Letter dated 6 August 1993 from the secretary-general to the president of the Security Council

[Original in English.] I have the honour to refer to Security Council resolution 849 (1993) of 9 July 1993 which, inter alia, stresses the importance the Council attaches to the implementation of a cease-fire and a peace process with the effective involvement of the United Nations. To this end, the Council requested me to send my Special Envoy for Georgia, Ambassador Edouard Brunner, to the region to assist in reaching an agreement on the implementation of the cease-fire.

A cease-fire agreement was signed on 27 July 1993 [S/26250, annex I] in Sochi by the Georgian and Abkhaz sides with the assistance of the Deputy Foreign Minister of the Russian Federation, Mr. Boris Pastukhov. My Special Envoy arrived in the region on 28 July, four hours after the cease-fire had

entered into force. He stayed in the region until 31 July and had discussions with both parties to the conflict as well as with officials from the Russian Federation. He held further discussions with Mr. Pastukhov and other interlocutors in Moscow on 3 August.

My Special Envoy's consultations focused on paragraph 9 of the cease-fire agreement which provides for all parties to the conflict to immediately resume, under United Nations auspices and with the cooperation of the Russian Federation, negotiations towards preparing an agreement on the comprehensive settlement of the conflict in Abkhazia.

The Georgian Head of State, Mr. Eduard Shevardnadze, was strongly in favour of the holding of a first round of negotiations between the two parties to the conflict in Abkhazia and suggested Geneva as the venue. The Abkhaz authorities, led by Mr. Vladislav Ardzinba, also supported a first round of negotiations in Geneva.

The Georgian and Abkhaz sides, as well as Deputy Minister Pastukhov, agreed that this process should start as soon as possible under United Nations auspices and with the Russian Federation acting as facilitator. However, with regard to the specific date and venue, Mr. Pastukhov preferred to wait and see how the cease-fire was faring before taking a position.

I welcome the outcome of my Special Envoy's consultations. The cease-fire and the deployment of United Nations and Russian observers are important steps in the right direction. However, a political process must also be started in order to tackle the root of the conflict, which is political in nature. The readiness of the two parties to meet and talk with each other provides an opportunity that must not be missed.

I have accordingly asked my Special Envoy to continue his efforts, with a view to convening a first round of negotiations before 15 September, possibly in Geneva.

I should be grateful if you could bring the above information to the attention of the Security Council.

(Signed) Boutros Boutros-Ghali

Draft letters

Draft letters should be distinguished from speaking notes. The draft letter is in effect a form of an advanced copy of a text. Its purpose is to alert another state as to the likely contents and use it as a vehicle for conveying reassurance or clearing up misunderstandings. For example, President Clinton's European special envoy presented clarifications of US policy towards the Russian Federation over the NATO 'partnership for peace proposals' in the form of a draft letter to President Yeltsin in February 1995.⁴⁷

Negotiation by correspondence

The last usage of letters discussed in this section is that of the conduct of negotiations by correspondence. In exchanges of this type, states might seek to obtain agreement about interpretations of a treaty or

draft article, establish general principles, or question certain interpretations. A clear example of this type of 'positional' negotiation can be found in the diplomatic correspondence of the opening sessions of the Preparatory Commission for the International Seabed Authority. The Preparatory Commission, or 'Prep. Comm.' as it became known, had been set up as part of the machinery envisaged under the Law of the Sea Convention, which was opened for signature on 10 December 1982. The purpose of the Commission was to establish rules and regulations for the international management of deep seabed resources in line with the provisions of the convention. Several states, including the Soviet Union and India, were anxious to register as so-called 'pioneer' investors, within the timetable laid down by the convention, and have their proposed areas of exploration registered with the Commission. Difficulties arose in that the convention envisaged exchanges of coordinates taking place, although at that point generally accepted procedures for this and other matters connected with the working of the Commission had not been agreed upon.

Some states, including France, generally sought to protect their position, while others criticised the Soviet and Indian interpretations.⁴⁸

Soviet letter dated 6 April 1983 to the chairman of the Preparatory Commission

The delegation of the USSR to the first session of the Preparatory Commission for the International Sea-bed Authority and for the International Tribunal for the Law of the Sea hereby transmits to the Commission the following information provided for in paragraph 5(a) of resolution II.

... the absence in resolution II of any provisions concerning reciprocal obligations of certifying States regarding the exchange of co-ordinates of areas for the purpose of determining the existence of conflicts has thus far precluded the possibility of initiating negotiations with other certifying States on the resolution of such conflicts ...

The Soviet Union also assumes that all certifying States which by 1 May 1983 send such notifications to the Preparatory Commission, their enterprises or companies will, after the resolution of any conflicts that may arise, be registered as pioneer investors, that they will be allocated pioneer areas in pursuance of their applications and that these areas will in future be considered areas previously allocated as pioneer areas as specified in paragraph 5(a) of resolution II.

The USSR delegation requests that this letter be circulated as an official document of the Preparatory Commission.

(Signed) I.K. Kolossovsky

Chairman of the USSR delegation to the first session of the Preparatory Commission for the International Sea-bed Authority and for the International Tribunal for the Law of the Sea

The Soviet position, and that of India, was opposed by France.⁴⁹

Letter dated 28 April 1983 from the permanent representative of France to the United Nations addressed to the chairman of the Preparatory Commission

My Government has taken note of the letter dated 24 April 1983 addressed to you by the Permanent Representative of India to the United Nations (LOS/PCN/7).

In that letter, the Government of India proposed that prospective certifying States should exchange by 1 May 1983 the co-ordinates of the areas in which pioneer investors would like to conduct pioneer activities within the meaning of resolution II governing preparatory investment and that negotiations should be initiated by that same date with a view to resolving any possible disputes. In addition, the Government of India stated that, if it did not receive any response on that matter by 1 May, it would feel free to proceed with the procedure laid down in resolution II. The Government of India thus suggested that it could already be registered at the current stage as a pioneer investor.

The French Government cannot accept such a position, with respect to which it has the same objections as those set out in the letter dated 27 April 1983 which it had the honour to send to you in response to the letter of 6 April from the Chairman of the delegation of the Union of Soviet Socialist Republics (LOS/PCN/8). It holds that no right or pre-emption can be based on the letter from the Permanent Representative of India or on any steps taken subsequently by India, acting either alone or with the Soviet Union or any other country.

I should be grateful, Sir, if you would have this letter circulated before 1 May as an official document of the Preparatory Commission.

(Signed) Luc De La Barre De Nanteuil
Permanent Representative of France to the United Nations

The French position was supported by Canada. In particular, Canada was concerned to see the talks, which it had initiated in July 1982, on procedures for dealing with disputes about overlapping mining site claims to be concluded before a state could register with the Preparatory Commission as authorised to approve mining operations.⁵⁰ In reply, the Soviet Union disputed the French interpretation and commented as follows on the significance of the Canadian-initiated talks.⁵¹

Letter dated 29 April 1983 from the permanent representative of the Union of Soviet Socialist Republics to the United Nations addressed to the chairman of the Preparatory Commission

The Soviet Union has studied the letter dated 27 April 1983 from the Permanent Representative of France to the United Nations addressed to the Chairman of the Preparatory Commission for the International Sea-bed Authority.

... an attempt is made in this letter to place on the same footing States which have signed the Convention and States which have not signed it, and to confer on the latter rights granted only to signatory States ...

The Canadian initiative regarding consultations among interested countries for the purpose of drafting a 'Memorandum of understanding on the settlement of conflicting claims with respect to sea-bed areas', to which the Permanent Representative of France refers, does not and cannot impose any obligations on signatory States.

The Soviet Union also appreciates the usefulness of achieving the relevant 'gentleman's agreement' concerning such an understanding; however, it does not consider this to be essential, since all questions concerning conflict resolution are settled by resolution II. The procedure for the resolution of possible conflicts of this kind has long been established by international practice, to which paragraph 5 of resolution II refers *inter alia* ...

During the exchange of letters, a number of states – including the UK,⁵² Belgium and Indonesia – formally reserved their position.⁵³

Letter dated 27 April 1983 from the representative of the United Kingdom of Great Britain and Northern Ireland addressed to the chairman of the Preparatory Commission

The delegation of the United Kingdom have noted the letter dated 6 April 1983 from the Chairman of the delegation of the Union of Soviet Socialist Republics addressed to the Preparatory Commission for the International Sea-bed Authority and for the International Tribunal for the Law of the Sea (LOS/PCN/4).

It is the view of the United Kingdom that it is in the interests of all States with deep sea mining interests that there should not be an overlapping of exploration areas in the deep sea-bed. In the absence of generally agreed arrangements for eliminating any possible overlaps, and having regard to its contingent interest, the United Kingdom reserves its position on the matters contained in that letter.

I request that this letter be circulated as an official document of the Preparatory Commission.

(Signed) Paul Fifoot
Leader of the United Kingdom delegation to the Preparatory Commission

Following these exchanges, the Indian note of 12 May indicated that coordinates had been exchanged with the Soviet Union, and both countries subsequently sought registration as pioneer investors.⁵⁴

Note verbale dated 12 May 1983 from the permanent representative of India to the United Nations addressed to the chairman of the Preparatory Commission

The Permanent Representative of India to the United Nations presents his compliments to the Chairman of the Preparatory Commission for the International Sea-bed Authority and for the International Tribunal for the Law of the Sea and,

in continuation of his note of 24 April 1983 (LOS/PCN/7) and upon instructions received from the Government of India, has the honour to state as follows.

The representatives of the Union of Soviet Socialist Republics and India met in New Delhi on 29 and 30 April 1983 and ensured themselves that, since the USSR intends to apply to the Preparatory Commission for registration and allocation of a pioneer area in the Pacific Ocean and India intends to apply to the Preparatory Commission for registration and allocation of a pioneer area in the central Indian Ocean, pursuant to the resolution governing preparatory investment in pioneer activities relating to polymetallic nodules, the areas in respect of which they intend to apply to the Preparatory Commission do not overlap one another. There is thus no conflict or controversy between the two countries in this regard ...

Letter dated 20 July 1983 from the acting permanent representative of the Union of Soviet Socialist Republics to the United Nations addressed to the chairman of the Preparatory Commission⁵⁵

...the Union of Soviet Socialist Republics, in accordance with resolution II of the United Nations Conference on the Law of the Sea, and as a certifying State, hereby submits to the Preparatory Commission on behalf of the Soviet enterprise Southern Production Association for Marine Geological Operations ('Yuzhmorgeologiya'), which is located in the town of Gelendzhik in the Krasnodarskiy district, and the General Director of which is Mr I.F. Glumov, an application for registration of the enterprise as a pioneer investor.

It is certified that this Soviet enterprise expended, before 1 January 1983, 40.9 million roubles on pioneer activities, as defined in resolution II, including 16 million roubles in the location, survey and evaluation of the area in respect of which this application is submitted. It is also certified that the list of coordinates of the area was submitted before 10 December 1982 by the Soviet enterprise concerned to the USSR Ministry of Geology as the State body with responsibility for issuing licences.

In accordance with paragraph 3(a) of resolution II, the application covers an area of the sea-bed 300,000 sq km having sufficient estimated commercial value to allow two mining operations. The area has been divided into two parts of equal estimated commercial value.

The data and information referred to in paragraph 3(a) of resolution II are being transmitted to the Preparatory Commission in a sealed packet in order to preserve their confidentiality as annex I to this application (5 maps).

The coordinates of the area, because of their strict confidentiality, are being kept by the Permanent Representative of the USSR to the United Nations in a sealed packet which will be transmitted immediately to the Preparatory Commission at your request as annex 2 to the application.

Coercive correspondence

Correspondence is used extensively for negotiations, statements of position, as a vehicle to restrict (or not) the actions of its members. The correspondence in this example follows Danish action to improve its intra-EU

border controls to counter cross-border crime, tax evasion and other illegal movements. The letter is an example of coercive diplomacy by correspondence, and uses the technique of closed language (unqualified phrases e.g. ‘full respect’, and, unspecified threats for non-compliance). The letter of 13 May 2011 from President of the European Commission Barroso illuminates several aspects of this form of coercive diplomacy. The structure of the letter immediately moves the *form* of the dispute away from informal telephone diplomacy. The letter is then structured to set out the basis of the dispute; the legal position (as defined by the Commission) and related principles; attacks Denmark’s actions in terms such as – ‘insofar as’ (para. 7); gives the Commission entré for oversight – ‘an open dialogue’ (para. 8); and threatens ‘all necessary steps to ensure the *full* respect of the relevant law’ (emphasis added).

Letter dated 12 May 2011 from José Manuel Barroso, president of the European Commission, to Mr Lars Lokke Rasmussen, prime minister of Denmark

[Source: ec.europa.eu/commission-2010-14/president/index_eu.htm. (Letter 13 May 2011, Barroso to Danish Prime Minister, Lars Løkke Rasmussen)]

Dear Prime Minister,

Thank you for our telephone discussion earlier today concerning the Danish Government’s intention to introduce strengthened intra-EU border control measures in order to fight cross-border crime and tax evasion.

I understand from the Danish Government announcement that the new measures are to take the form of a permanent customs presence at the borders and will imply the construction of new facilities, the recruitment of additional customs staff, comprehensive video surveillance and police back-up.

As you know, the European Commission has already expressed its grave concerns about the announced measures, which appear to put into question the smooth functioning of Europe’s Single Market and the benefits that an integrated area without internal borders brings for both businesses and citizens. Shortly after we spoke, I received a first legal assessment of the announced measures from the Commission services. This analysis raises important doubts about whether the proposed measures, if implemented in the ‘intensive and permanent’ way that has been announced, would be in line with Denmark’s obligations under European and international law, in particular the Treaty provisions and secondary legislation on the free movement of goods, persons, services and capital and the provisions of the Schengen Borders Code.

As a matter of principle, under the Treaty freedoms and under secondary law Member States may not carry out systematic intra-EU border controls, whether of goods or of people. They may, however, make spot checks where this is justified by over-riding public interests, such as the need to enforce tax legislation, subject always to compliance with the principle of proportionality.

In determining whether such checks may be considered proportionate, the Member State bears the burden of proof: it must demonstrate that such

measures are both apt to ensure observance of the legislation in question and indispensable to that end.

Insofar as the measures announced would be implemented in way that amounted to the introduction of systematic frontier controls, they would appear to be contrary to the Treaty freedoms (notably free movement of goods, freedom to provide services). Insofar as the envisaged measure would raise obstacles to the crossing of internal borders, and namely to fluid traffic flow at road crossing-points, they would appear to be incompatible with Articles 20 and 22 of the Schengen Borders Code.

I have taken note of the Danish Government's assurances that any new measures will fully respect this legal framework I would encourage you to refrain from unilateral steps in this regard and to engage with the European Commission in an open dialogue prior to implementing any new measures, in order to make sure that such measures would be fully compatible with Denmark's obligations.

I have asked Commissioner Malmstrom to coordinate this within the European Commission and would ask your Government to engage in constructive and open cooperation with her and her team, in particular to exchange information about the legal basis for the envisaged checks, the sources of information based on which these checks will be carried out, and whether the announced measures will be part of larger measures to combat crime throughout the whole Danish territory.

Whilst the European Commission is fully committed to ensuring that this dialogue results in a satisfactory outcome, I must recall that if necessary we will take all necessary steps to ensure the full respect of the relevant law.

Yours sincerely,
Signed: José Manuel BARROSO

The secretary-general of the United Nations uses letters to convey formal concern over an international issue or draw the attention of members to why a policy is failing. In this example, the UN secretary-general draws the attention to key helicopter and related equipment shortages which are severely reducing the effectiveness of the UN mission in the Congo (MONUSCO), especially to implement duty of protection to civilians.

Letter dated 20 September 2011 from the secretary-general addressed to the president of the Security Council

I would like to bring to your attention a matter of great concern regarding the acute shortage of military helicopters in the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO).

MONUSCO currently has only 14 military helicopters, comprising 10 utility helicopters and 4 observation helicopters. The Mission is facing a shortfall of

six military utility helicopters. The Mission has no attack helicopters at this time.

MONUSCO military helicopter assets are deployed exclusively in the eastern Democratic Republic of the Congo, namely in the Kivus and Province Orientale. Of the Mission's 10 military utility helicopters, 6 are deployed in Province Orientale in support of military operations to address the presence of the Lord's Resistance Army, whose murderous attacks against civilians in the Democratic Republic of the Congo have once again been on the rise, as well as remnant Ituri militia. The remaining four military utility helicopters are deployed in the Kivus; two of these are light helicopters with reduced capacity.

The impact of the shortage of military helicopters on the implementation of the MONUSCO mandate has become critical. Joint operations with the Congolese Armed Forces have had to be postponed, investigations of allegations of mass human rights violations have had to be delayed, and some deployments to protection hot-spots have had to be deferred. Getting essential supplies to United Nations troops in far-flung, volatile areas has also been extremely difficult. This is made all the more critical in the run-up to presidential and parliamentary elections scheduled in the Democratic Republic of the Congo on 28 November 2011.

The Secretariat has vigorously pursued contacts with troop-contributing countries over the past year regarding the provision of military helicopters. As a result, South Africa has pledged to provide MONUSCO with an additional military utility helicopter.

The Secretariat is also closely involved with the Security Council members and other Member States to address the root causes of this critical capability gap across United Nations peacekeeping operations, thinking 'outside the box' for new and innovative solutions. I have personally led several of these initiatives, and we have been actively supported in these efforts by a number of Member States.

However, we do not foresee a deployment of additional military helicopter assets to MONUSCO, beyond the pledge by South Africa, before the end of this year.

Critical capability gaps within United Nations peacekeeping operations are unfortunately not confined to MONUSCO. However, the current lack of military helicopters in MONUSCO has become acute, and it is my duty to inform you that the Mission is no longer able to carry out critical parts of its priority mandated tasks, including in relation to the protection of civilians, providing support to the elections and putting an end to the presence of armed groups, particularly in the Kivus.

I am concerned that if this situation is not addressed by the Security Council, the largest United Nations peacekeeping operation will be at risk of failure, with serious consequences for lives and livelihoods for the people of the Democratic Republic of the Congo. The credibility of the Council and of the United Nations is also at risk.

I would be grateful if you could bring the present letter to the attention of the members of the Security Council.

(Signed) BAN Ki-moon

Memoranda

A memorandum is essentially a detailed statement of facts and related arguments. It resembles a note, but is stylistically far freer, has no opening or closing formalities and need not be signed. It may have a security classification and for convenience is often delivered with a covering letter, as in the following example.⁵⁶

Letter dated 17 March 1993 from the representative of the Democratic People's Republic of Korea to the president of the Security Council

[Original in English.] I have the honour to transmit to you a memorandum of 15 March 1993 issued by the Ministry of Foreign Affairs of the Democratic People's Republic of Korea.

I should be grateful if you would have this letter and the memorandum circulated as a document of the Security Council.

(Signed) Pak Gil Yon
Permanent Representative of the Democratic People's
Republic of Korea to the United Nations

Text of the memorandum (extracts)

... Proceeding from its anti-nuclear peace policy, the Democratic People's Republic of Korea acceded to the Treaty on the Non-Proliferation of Nuclear Weapons with a view to getting the nuclear weapons of the United States withdrawn from south Korea, removing its nuclear threats against the DPRK and, furthermore, turning the Korean peninsula into a nuclear-weapon-free zone. It concluded the safeguards agreement with the International Atomic Energy Agency (IAEA) and has since accepted sincerely IAEA inspections.

This process has substantiated the integrity of the peaceful nuclear policy of the DPRK Government and further increased international trust in the DPRK.

However, the United States picking on the alleged 'suspicion of nuclear weapons development' by the DPRK, has resumed, together with the south Korean authorities, the 'Team Spirit' joint military exercises, a nuclear test war against the DPRK, which is a non-nuclear-weapon State, in violation of the obligations under the Treaty it ought to strictly fulfil as a nuclear-weapon State. Coincidentally, it has manipulated some officials of the IAEA secretariat and certain member States to adopt an unjust 'resolution' at the February meeting of the IAEA Board of Governors, forcibly calling for inspection of our military sites that have no relevance at all to nuclear activities.

The prevailing situation prevented the DPRK Government from fulfilling its obligations under the safeguards agreement any longer.

In this connection, considering it necessary to reveal the truth of the IAEA inspections in the DPRK, the Ministry of Foreign Affairs of the DPRK issues this memorandum...

II. The unjust assertions of some officials of the IAEA secretariat (extracts)
Some officials of the IAEA secretariat unreasonably insisted that there existed 'inconsistencies in principle' between the DPRK's initial report and the result of the IAEA's measurement. There are none of the 'inconsistencies in principle' they claimed.

Discrepancies between the DPRK's information and the result of the IAEA's measurement are not the alleged 'inconsistencies'. The discrepancies have originated from the IAEA's own disregard of our conditions for the operation of facilities and the characteristic features of our nuclear activities and also from the artificial fabrication by some officials of the IAEA secretariat of the result of the inspections ...

Modern usage of memoranda is very wide. For example, during the Iranian hostage crisis, the response of the US government of 8 November 1980 to the Iranian conditions set for the release of the US diplomatic hostages was delivered to the Iranian authorities by Algeria under a memorandum of 12 November 1980.⁵⁷ In 1970, Chancellor Willy Brandt and the German Democratic Republic's Chairman of the Council of Ministers Willy Stoph held two historic meetings, first at Erfurt in March and then in Kassel. Following the Kassel meeting, Chancellor Brandt's 20-point programme on the normalisation of inter-German relations was set out in a document that became known as the 'Kassel Memorandum'.⁵⁸

The following illustrations indicate some further contexts within which memoranda have been used. In the first example, the Soviet Union delivered a memorandum to Japan on 27 January 1960, after the conclusion of the United States–Japanese Treaty of Mutual Cooperation and Security. The memorandum was a mixture of protest, warning and a statement of policy on the disputed northern islands.⁵⁹

Memorandum dated 27 January 1960 from the Soviet Union to Japan

A so-called 'Treaty of Mutual Co-operation and Security' was signed between Japan and the United States on 19 January, this year. The contents of this treaty seriously affect the situation in the Far East and in the area of the Pacific, and therefore the interests of many states situated in that vast region, above all, of course, such direct neighbours of Japan as the Soviet Union and the Chinese People's Republic.

Under this treaty the stay of foreign troops and the presence of war bases on Japanese territory are again sanctioned for a long period with the voluntary consent of the Japanese Government. Article 6 of this treaty grants the United States 'use by its ground, air and naval forces of facilities and areas in Japan'. The treaty's reservations regarding consultations on its fulfilment cannot conceal the fact that Japan may be drawn into a military conflict against the will of the Japanese people.

The treaty perpetuates the actual occupation of Japan, places her territory at the disposal of a foreign power and alienates from Japan the islands of Okinawa and Bonin, and its provisions inevitably lead to the military, economic and political subordination of Japan...

The Soviet Government has repeatedly drawn the Japanese Government's attention to the danger of every step in international policy that increases the threat of a new war. It is obvious that at present there are particularly weighty grounds for such a warning. The conclusion of the military treaty by no means adds to Japan's security. On the contrary, it increases the danger of a catastrophe which would be the inevitable result of Japan becoming involved in a new war.

Is it not clear to everyone today that in conditions of a modern rocket-nuclear war the whole of Japan, with her small and densely populated territory, dotted, moreover, with foreign war bases, risks sharing the tragic fate of Hiroshima and Nagasaki in the very first minutes of hostilities? ...

Considering, however, that the new military treaty signed by the Government of Japan is directed against the Soviet Union, and also against the Chinese People's Republic, the Soviet Government cannot allow itself to contribute to an extension of the territory used by foreign armed forces by handing the aforesaid islands over to Japan.

In view of this, the Soviet Government considers it necessary to state that the islands of Habomai and Shikotan will be turned over to Japan, as envisaged in the joint declaration of the USSR and Japan of 19 October 1956 only on condition that all foreign troops are withdrawn from the territory of Japan and that a peace treaty is concluded between the USSR and Japan.

A common use of memoranda is in disputes to support a claim,⁶⁰ or establish a case, as in the Sino-Vietnamese example cited earlier. A particular line of policy of interpretation can be similarly set out to another government or organisation in a memorandum. During the Congolese Civil War, for example, UN Secretary-General Dag Hammarskjöld issued a unilateral declaration of interpretation, in the form of a memorandum, on the controversial question of the nature and scope of the role of the UN peace-keeping force in the Congo and its relations with the central and provincial governments.⁶¹

Statement by Mr Hammarskjöld on the interpretation of paragraph four of the Security Council Resolution of 9 August, 12 August 1960

The Secretary-General, with reference to the Security Council resolution of 9 August 1960 (S/4426), has the honour to inform the Council of the interpretation which he has given to the Central Government of the Republic of the Congo, as well as to the provincial government of Katanga, of operative paragraph 4 of the resolution.

Memorandum on implementation of the Security Council Resolution of 9 August 1960, Operative Paragraph 4

1. Operative paragraph 4 of the resolution of the Security Council of 9 August reads: '*Re-affirms* that the United Nations Force in the Congo will not be a party to or in any way intervene in or be used to influence the outcome of any internal conflict, constitutional or otherwise'. The paragraph has to be read together with operative paragraph 3, which reads: '*Declares* that the entry of the United Nations Force into the Province of Katanga is necessary for the full implementation of this resolution'.
2. Guidance for the interpretation of operative paragraph 4 can be found in the attitudes upheld by the Security Council in previous cases where elements of an external nature and elements of an internal nature have been mixed. The stand of the Security Council in those cases has been consistent. It most clearly emerges from the policy maintained in the case of Lebanon which, therefore, will be analysed here in the first instance.
3. In the Lebanese question, as considered by the Security Council in the summer of 1958, there was a conflict between the constitutional President Mr Chamoun, and a group of insurgents, among them Mr Karame, later Prime Minister of the Republic. The Government called for United Nations assistance, alleging that a rebellion was fomented from abroad and supported actively by the introduction of volunteers and arms across the border ...
4. Applying the line pursued by the Security Council in the Lebanese case to the interpretation of operative paragraph 4, it follows that the United Nations Force cannot be used on behalf of the Central Government to subdue or to force the provincial government to a specific line of action. It further follows that United Nations facilities cannot be used, for example, to transport civilian or military representatives, under the authority of their Central Government, to Katanga against the decision of the Katanga provincial government. It further follows that the United Nations Force has no duty, or right, to protect civilian or military personnel representing the Central Government, arriving in Katanga, beyond what follows from its general duty to maintain law and order. It finally follows that the United Nations, naturally, on the other hand, has no right to forbid the Central Government to take any action which by its own means, in accordance with the purpose and principles of the Charter, it can carry through in relation to Katanga. All these conclusions necessarily apply, *mutatis mutandis*, as regards the provincial government in its relations with the Central Government.
5. The policy line stated here, in interpretation of operative paragraph 4, represents a unilateral declaration of interpretation by the Secretary-General. It can be contested before the Security Council. And it can be changed by the Security Council through an explanation of its intentions in the resolution of 9 August. The finding is not subject to agreement or negotiation ...

A further illustration of the use of a memorandum is the Finnish government's proposal for the convening of a European security conference, which was put to Western and other governments in its memorandum of 5 May 1969.⁶²

Memorandum from the Finnish government on the convening of a European security conference, 5 May 1969 (extracts)

The Government of the Soviet Union approached recently the governments of European countries in the matter of the arrangement of a European security conference and of its preparations. This proposal concerning a special preparatory meeting was extended to the Government of Finland on 8 April 1969. The Government of Finland has on several occasions stated that Finland considers a well prepared conference on European security problems useful. The Government of Finland considers well-founded the view of the Soviet Union that such a conference should be convened without any preliminary conditions. The participants should have the right to present their views and to make their proposals on European questions ...

At the Foreign Ministers' meeting of Finland, Denmark, Iceland, Norway and Sweden, held in Copenhagen on 23 and 24 April 1969, a joint position was defined according to which 'preconditions for conferences on security problems are that they should be well prepared, that they should be timed so as to offer prospects of positive results, and that all States, whose participation is necessary for achieving a solution to European security problems, should be given opportunities to take part in the discussions ...'

This is why the Government of Finland considers that the preparations for the conference should begin through consultations between the governments concerned and, after the necessary conditions exist, a preparatory meeting for consideration of the questions connected with the arrangements of the conference could be convened ...

The Government of Finland is willing to act as the host for the security conference as well as for the preparatory meeting, provided that the governments concerned consider this as appropriate.

The Government of Finland will send this memorandum to the Governments of all European States, to those of East and West Germany and to the Governments of the United States of America and Canada ...

Memoranda and policy recommendations

Memoranda may also be used to set out policy recommendations. In the joint memorandum of France, Germany and the Russian Federation, a number of proposals for the handling of the Iraq conflict were set out to the president of the Security Council.⁶³

Letter dated 24 February 2003 from the permanent representatives of France, Germany and the Russian Federation to the United Nations addressed to the president of the Security Council

We would like to bring to the attention of the members of the Security Council that a joint memorandum has been prepared by France, Germany and the Russian Federation on the situation in Iraq.

We should like to emphasize that the ideas expressed in that declaration are not limited to the three signatories. We therefore appeal to other Council members to express their support for the declaration.

We would be grateful if you would have the present letter and its annex circulated as a document of the Security Council.

(Signed) Jean-Marc de La Sablière
Permanent Representative of France

(Signed) Gunter Pleuger
Permanent Representative of Germany

(Signed) Sergey Lavrov
Permanent Representative of the Russian Federation

Annex to the letter dated 24 February 2003 from the permanent representatives of France, Germany and the Russian Federation to the United Nations addressed to the president of the Security Council

Memorandum

1. Full and effective disarmament in accordance with the relevant Security Council resolutions remains the imperative objective of the international community. Our priority should be to achieve this peacefully through the inspection regime. The military option should only be a last resort. So far, the conditions for using force against Iraq have not been fulfilled:
 - While suspicions remain, no evidence has been given that Iraq still possesses weapons of mass destruction or capabilities in this field
 - Inspections have just reached their full pace; they are functioning without hindrance; they have already produced results
 - While not yet fully satisfactory, Iraqi cooperation is improving, as mentioned by the Chief Inspectors in their last report.
2. The Security Council must step up its efforts to give a real chance to the peaceful settlement of the crisis. In this context, the following conditions are of paramount importance:
 - The unity of the Security Council must be preserved
 - The pressure that is put on Iraq must be increased.
3. These conditions can be met and our common objective – the verifiable disarmament of Iraq – can be reached through the implementation of the following proposals:
 - (a) Clear programme of action for the inspections
In accordance with resolution 1284 (1999), the United Nations Monitoring, Verification and Inspection Commission (UNMOVIC) and the International Atomic Energy Agency (IAEA) have to submit their programme of work for approval by the Council. The presentation of this programme of work should be sped up, in particular the key remaining disarmament tasks to be completed by Iraq pursuant to its obligations to comply with the disarmament requirements of resolution 687 (1991) and other related resolutions.

The key remaining tasks shall be defined according to their degree of priority. What is required of Iraq for implementation of each task shall be clearly defined and precise.

Such a clear identification of tasks to be completed will oblige Iraq to cooperate more actively. It will also provide a clear means for the Council to assess the cooperation of Iraq.

(b) Reinforced inspections

Resolution 1441 (2002) established an intrusive and reinforced system of inspections. In this regard, all possibilities have not yet been explored. Further measures to strengthen inspections could include, as exemplified in the French non-paper previously communicated to the Chief Inspectors, the following: increase and diversification of staff and expertise; establishment of mobile units designed in particular to check on trucks; completion of the new system of aerial surveillance; systematic processing of data provided by the newly established system of aerial surveillance.

(c) Timelines for inspections and assessment

Within the framework of resolutions 1284 (1999) and 1441 (2002), the implementation of the programme of work shall be sequenced according to a realistic and rigorous timeline:

- The inspectors should be asked to submit the programme of work outlining the key substantive tasks for Iraq to accomplish, including missiles/delivery systems, chemical weapons/precursors, biological weapons/material and nuclear weapons in the context of the report due 1 March
- The Chief Inspectors shall report to the Council on implementation of the programme of work on a regular basis (every three weeks)
- A report of UNMOVIC and IAEA assessing the progress made in completing the tasks shall be submitted by the inspectors 120 days after the adoption of the programme of work in accordance with resolution 1284 (1999)
- At any time, in accordance with paragraph 11 of resolution 1441 (2002), the Executive Chairman of UNMOVIC and the Director-General of IAEA shall report immediately to the Council any interference by Iraq with inspections activities, as well as failure by Iraq to comply with its disarmament obligations
- At any time, additional meetings of the Security Council could be decided including at a high level.

To render possible a peaceful solution, inspections should be given the necessary time and resources. However, they cannot continue indefinitely. Iraq must disarm. Its full and active cooperation is necessary. This must include the provision of all the additional and specific information on issues raised by the inspectors as well as compliance with their requests, as expressed in particular in M. Blix's letter of 21 February 2003. The combination of a clear programme of action, reinforced inspections, a clear timeline and the military build-up provide a realistic means to reunite the Security Council and to exert maximum pressure on Iraq.

Memoranda and treaties

Finally, memoranda are frequently used in connection with treaties. In this usage the memorandum is to present to the other party a particular interpretation or understanding of a clause or section of the agreement. The memorandum may become the subject of a later exchange of letters. An interesting illustration of memoranda used in this way are the memoranda of the UK and the PRC, contained in the Draft Agreement on the Future of Hong Kong. The two memoranda set out the quite different interpretation each of the parties give to the definition and meaning of Hong Kong citizenship contained in the agreement.⁶⁴

Aides-memoires

The aide-memoire is used widely and, like a memorandum, is extremely versatile in terms of the contexts within which it can be used. It is rather less formal, however, than a memorandum. In essence an aide-memoire is drafted on the basis of discussions that have been held and is used to put forward new proposals, such as a visit, conference, trade fair or an interpretation of policy, or to provide new information. Another use is in the sense of an initiative. For example proposals on the reform of the Security Council were put forward by France in the form of an aide-memoire in December 1994.⁶⁵

Extracts from the following three examples taken from US practice indicate the wide variety of contexts in which an aide-memoire can be used. The first example is from the US dispute with Algeria over diplomatic property. The USA had acquired the property in 1948 and, after Algerian independence, carried out development work in 1962 on the site in order to build a new embassy. However, US Embassy staff were subsequently refused entry to the site by the Algerian authorities. Later, negotiations for an exchange of property for the Villa Mustapha Rais were inconclusive. In an aide-memoire of 13 April 1979 the Department of State referred to discussions with the Political Counsellor of the Algerian Embassy, the essence of which was to link progress on the Algerian request for new chancery space in the International Center in Washington to the US claim regarding the Villa Mustapha Rais. The aide-memoire in part reads:⁶⁶

The Department of State wishes to be responsive to the desire of the Algerian Embassy to obtain a suitable site for a new Chancery. At the same time, settlement of the United States claim, which dates from November 1964, remains a pressing concern of the United States Government.

In the second example, the Department of State submitted an aide-memoire on 6 March 1979 to the Soviet Embassy in Washington, in regard to the expiration on 31 March 1979 of the bilateral civil air transport agreement between them, signed originally on 4 November 1966.⁶⁷ The aide-memoire expressed US dissatisfaction with the inequitable application of the existing agreement by the Soviet Union, and listed actions that it would have to carry out in order to preserve the current level of services permitted its carrier, Aeroflot, by the USA while negotiations for a more satisfactory, long-term air transport relationship were pending.

A portion of the aide-memoire follows.⁶⁸

There are several aspects of US-USSR air transport relations which continue to be unsatisfactory to the United States. Moreover, the basic equity of the current agreement is in question because of the one-sided nature of services now being provided.

Under these circumstances, the United States will wish to review the bilateral air transport relationship with a view to negotiating a more satisfactory long-term relationship at the appropriate time. Until such negotiations reach a new agreement, the US is not disposed to extend those current arrangements which expire on March 31, 1979.

Absent contrary action by the Civil Aeronautics Board, the foreign air carrier permit issued to Aeroflot provides only for two weekly roundtrip flights effective April 1, 1979. However, the United States does not wish to alter the status quo precipitously. Accordingly, the Civil Aeronautics Board is prepared to issue Aeroflot appropriate authority to continue to operate the level of services specified in the March 3, 1978 exchange of notes, that is, up to four flights during the summer season, subject to such change as the Board may order. Should a US airline propose to operate scheduled services to the USSR, the United States would expect the Soviet authorities to take comparable action.

The Soviet authorities should understand that the willingness of the United States to preserve the status quo for Aeroflot while negotiations are pending is dependent on the following Soviet actions:

1. Confirmation no later than March 30, 1979 that applications by US airlines, whether previously designated under the Civil Air Transport Agreement or whether they are scheduled or charter airlines, for charter flights between the United States and the USSR will be accepted and processed by the Ministry of Civil Aviation under the uniform procedural requirements presently applied to applications by Pan American World Airways.
2. Approval of charter flight applications presented by US airlines, whether previously designated under the Civil Air Transport Agreement or whether they are scheduled or charter airlines.
3. Satisfactory arrangements so that US airlines are able to participate on the basis of fair and equal opportunity in both scheduled and charter programs arranged by US tour operators, including the Russian Travel Bureau, in connection with the 1980 Olympic Games in Moscow.

Aides-memoires and disputes

The third example is taken from the US–Canada Lockheed contract dispute. In 1976, Canada purchased 18 long-range patrol aircraft from the Lockheed Corporation of the USA. Shortly before the purchase, the US government, in an aide-memoire to Canada of 29 April 1976, gave certain undertakings in the event of Lockheed insolvency, that Canada would receive advantage and considerations no less favourable than would the USA. The aide-memoire also contained the US view regarding mutual security interests involved in Canadian acquisition of a modern long-range patrol capability.⁶⁹

With respect to Lockheed's overall financial viability, its ability to continue as a corporation and to fulfil the terms of its proposed contract with the Canadian Government, the United States Emergency Loan Guarantee Board (ELGB) and the United States Department of Defense have recently reviewed Lockheed's financial position and have expressed confidence in Lockheed's prospects ...

The United States Government shares with the Canadian Government a strong interest in the successful completion of the proposed Canadian procurement of eighteen Lockheed LRPA aircraft. In the view of the United States Government, the acquisition of these aircraft will substantially enhance Canada's ASW patrol capability, improve North American defense arrangements, contribute to NATO's overall security and thus is in the best interest of the United States. The proposed Canadian purchase will complement the purchase of a large number of Lockheed maritime patrol aircraft planned by the United States Government and should work to the mutual advantage of the two Governments ...

If a situation were to occur under US bankruptcy laws involving voluntary or involuntary reorganization or bankruptcy of Lockheed which might affect Lockheed's contract performance, the United States Government, recognizing that it is in its best interest to do so, will act with Canada in all matters relating to the Canadian LRPA contract to obtain for Canada advantages and considerations no less favourable than those that might be obtained by the United States with respect to performance of its own defense procurement contracts ...

Aides-memoires as frameworks

An unusual use of an aide-memoire occurred in the form of a detailed framework provided by the UN secretary-general to the Security Council on action required by member states with respect to the protection of civilians in armed conflict. The aide-memoire was also a baseline document for further development of Security Council action in this area.⁷⁰

Statement by the president of the Security Council

At the 4493rd meeting of the Security Council, held on 15 March 2002, in connection with the Council's consideration of the item entitled 'Protection of civilians in armed conflict', the President of the Security Council made the following statement on behalf of the Council:

'The Security Council recalls its resolutions 1265 (1999) of 17 September 1999 and 1296 (2000) of 19 April 2000 on the protection of civilians in armed conflict and the letter of 21 June 2001 from the President of the Security Council to the Secretary-General on the protection of civilians in armed conflict (S/2001/614).

'The Security Council reaffirms its concern at the hardships borne by civilians during armed conflict, and recognizes the consequent impact this has on durable peace, reconciliation and development, bearing in mind its primary responsibility under the Charter of the United Nations for the maintenance of international peace and security, and underlining the importance of taking measures aimed at conflict prevention and resolution.

'Having considered the reports of the Secretary-General of 8 September 1999 (S/1999/957) and of 30 March 2001 (S/2001/331) on the Protection of Civilians in Armed Conflict and welcoming the close cooperation with the Secretary-General in preparing the Aide Mémoire attached to this statement, the Security Council adopts the Aide Mémoire contained in the annex to the presidential statement as a means to facilitate its consideration of issues pertaining to protection of civilians. The Council further emphasizes the need, when considering ways to provide for the protection of civilians in armed conflict, to proceed on a case-by-case basis, taking into account the particular circumstances.

'The Security Council will review and update the contents of the Aide Mémoire as appropriate, and will remain actively seized of the matter.'

Official statements issued after the end of regional or other meetings are used to summarise the main areas of the talks, outline undertakings with respect to future cooperation, and provide information on future administrative arrangements. The drafting of statements is important in that the statement becomes a *record* of administrative and policy commitments. It is also a means of clarifying, defending or asserting organizational responsibility and authority. Paragraph 6 of the Chairman's statement at the end of the second East Asia Summit (EAS), 15 January 2007, reflects general concern within ASEAN, that the EAS would develop as a rival organization, through competitive projects and meetings. Inserted in the paragraph on an EAS Energy Cooperation Task Force is the requirement that [this should be] 'based on the existing ASEAN Energy Sectoral mechanisms'. Similar phrases are used in other sections of the document, and subsequently, as ASEAN attempts, with difficulty, to protect its organisational primacy.

Chairman's statement of the Second East Asia Summit, Cebu, Philippines, 15 January 2007

1. The Second East Asia Summit chaired by H.E. Gloria Macapagal Arroyo, President of the Republic of the Philippines was held on 15 January 2007 in Cebu City, the Republic of the Philippines.

2. The Heads of State/Government of ASEAN, Australia, the People's Republic of China, the Republic of India, Japan, the Republic of Korea and New Zealand had a productive exchange of views on regional and international issues, as well as on issues of strategic importance to the East Asian region.

Poverty Eradication

3. We reaffirmed our commitment to the eradication of poverty in East Asia. We resolved that improving the standard of living for our people should remain a central focus of our regional cooperation efforts. We also confirmed our commitment to achieve the target and objectives of the Millennium Development Goals (MDG's).

Energy

4. As a priority area for the second East Asia Summit, we convened a special session on energy to achieve our shared goal of ensuring affordable energy sources for development in our region. We expressed appreciation for the background paper prepared by the ASEAN Secretariat, and agreed that discussions should take into consideration:
 - a. energy security
 - b. renewable and alternative energy sources
 - c. energy efficiency and conservation, and
 - d. climate change
5. To this end, we signed the Cebu Declaration on East Asian Energy Security, which aims to achieve the following goals:
 - a. Improve the efficiency and environmental performance of fossil fuel use;
 - b. Reduce dependence on conventional fuels through intensified energy efficiency and conservation programs, hydropower, expansion of renewable energy systems and bio-fuel production/utilization, and for interested parties, civilian nuclear power;
 - c. Encourage the development of open and competitive regional and international markets geared towards providing affordable energy at all economic levels;
 - d. Mitigate greenhouse gas emission through effective policies and measures, thus contributing to global climate change abatement; and
 - e. Pursue and encourage investment in energy resource and infrastructure development through greater private sector involvement
6. We welcomed the various project proposals made on cooperation in energy security, including Japan's four-pillar initiative entitled 'Fueling Asia - Japan's Cooperation Initiative for Clean Energy and Sustainable Growth'. We agreed to establish an EAS Energy Cooperation Task Force, based on the existing ASEAN Energy Sectoral mechanisms, to follow up on our discussion and report on its recommendations at our next Summit. We welcomed Singapore's offer to host an EAS Energy Ministers Meeting to consider ways to enhance energy cooperation.

Summary

Of the main means of diplomatic correspondence – notes, letters, memoranda and aides-mémoires – the note (note verbale) is probably the most formal, despite the range of subject matter for which it is used. Exchanges of letters between heads of government have become an important element in the conduct of personal diplomacy. In fact written communication, whatever its form, is, despite developments in other forms of

communication, still central to diplomacy. It is the means by which states put their position on record, explain the details of their policies, record protests, support claims, seek collective approval and carry out many other actions that make up the business of international relations.

Notes

1. Security Council, S/1994/5/Add87, 5 Dec. 1994.
2. Nuclear Test Cases, vol. II, *New Zealand v. France*, ICJ, Pleadings, Oral Arguments, Documents, Annex III, p. 13, contains the list of notes exchanged.
3. *Ibid.*, pp. 14–16.
4. *Ibid.*, Annex IV, pp. 40–1.
5. See *Financial Times*, 20 Oct. 1993.
6. *Documents on International Affairs 1960* (Oxford University Press, London, 1964), p. 192.
7. A/49/150; A/49/334/S/1994, 24 Aug. 1994.
8. See note verbale 26 Nov. 2001, St Kitts addressed to UN Secretary-General. *Law of the Sea Bulletin*, no. 48. (United Nations, New York, 2002), p. 61.
9. See *Law of the Sea Bulletin*, no. 48, p. 62. The two notes of identical content, one addressed to the Ministry of External Affairs of Venezuela and the other to the Ministry of Enterprise Development and Foreign Affairs of Trinidad and Tobago, were communicated to the division for Ocean Affairs and the Law of the Sea of the United Nations, Office of Legal Affairs, by note verbale no. 21/2002 dated 7 February 2002 from the Permanent Mission of Guyana to the UN.
10. See *Law of the Sea Bulletin*, no. 48, p. 63. The note verbale was communicated to the Division for Ocean Affairs and the Law of the Sea of the United Nations, Office of Legal Affairs, by note verbale no. 118 dated 28 March 2002 from the Permanent Mission of Trinidad and Tobago to the UN.
11. See *Law of the Sea Bulletin*, no. 53, (United Nations, New York, 2004), pp. 70–1.
12. *Security Council Official Records*, Supplement 1987 (New York, 1994), S/18818, 21 April 1987.
13. Case concerning the continental shelf, *Tunisia v. Libyan Arab Jamahiriya*, ICJ, Pleadings, Oral Arguments, Documents, vol. 1, pp. 21–6.
14. *Ibid.*, Annex 33, p. 260.
15. For example the USA protested the use of straight base lines by Thailand in the Gulf of Thailand and near the Strait of Malacca. In the western Gulf of Thailand, the USA considered that Thailand has claimed approximately 3,000 square nautical miles as internal waters, which should be territorial sea, EEZ or high seas. In the south-eastern part of the Gulf of Thailand some additional 8,400 square nautical miles have been claimed as internal waters. See *Digest of US Practice in International Law* (International Law Institute, Washington, D.C., 2001), pp. 703–6 and 706–9 on the US position on the revised Seychelles Maritime Zones Act of 1999, requiring prior notification of warships, nuclear powered ships and any ships carrying nuclear or radioactive substances, before passage in the territorial sea or archipelago waters of the Seychelles. US Diplomatic Note 625, 2010 to Canadian Department of Foreign Affairs and International Trade (Department of State, 2010) and IMO, MSC 88/11/XX, 21 Sept. 2010.

16. *Department of State Bulletin*, 23 May 1960, p. 818.
17. *Soviet News*, 11 May 1960.
18. *Department of State Bulletin*, 30 May 1960, p. 852.
19. See letter 13 Aug. 1981, from the representative of Cyprus to the secretary-general, SCOR, 36th year, Supplement for July, Aug., Sept., S/14630, New York, 1983, pp. 40–1. Cf. SCOR, 1987, letter 2, Nov. 1987, protesting Turkish violation of Cypriot airspace.
20. *Ibid.*, S/14694, p. 76.
21. *Ibid.*, S/14632, pp. 41–2.
22. See S/25262, 9 Feb. 1993.
23. Ministry of Foreign Affairs, Russian Federation, Press Release, 31 Dec. 2004, 2752-31-12-2004.
24. Ministry of Foreign Affairs, Russian Federation, Press Release, 3 Feb. 2005, 210-03-02- 2005-05-21.
25. This may take the form of an authorised statement. See, for example, Carlos Romulo's statement outlining the ASEAN position on Kampuchea, including the need for troop withdrawal and a UN-sponsored international conference, in SCOR, 36th year, S/14386, p. 51. The Vietnamese position, rejecting an international conference in favour of regional dialogue and consultation can be found in the collective letter of Laos, People's Republic of Kampuchea, and Vietnam, of 19 May 1981, in *Communist Affairs: Documents and Analysis*, no. 1, Jan. 1982, pp. 134–5.
26. See SCOR, 36th year, S/14384, pp. 49–50, and S/14362, pp. 35–6 for background information on the Peru–Ecuador dispute.
27. See S/2003/238, 1 March 2003. (Princeton University Press, Princeton, N.J., 1988).
28. See Leon V. Sigal, *Disarming Strangers*, p. 36.
29. See, for example, Macmillan's appeal for restraint to Khrushchev in his letter of 19 July 1960, following East–West difficulties in the Committee of Ten on Disarmament, the second U-2 crisis and the Congo Civil War: 'I write to you now so plainly because I have the memory of our frank discussions with you in my mind. I simply do not understand what your purpose is today. If the present trend of events in the world continues, we may all of us one day, either by miscalculation or mischance, find ourselves caught up in a situation from which we cannot escape. I would ask you, therefore, to consider what I have said and to believe that I am writing to you like this because I feel it my duty to do so.' *Hansard* (House of Commons), vol. 627, Col. 253–6.
30. *The Sunday Times*, 16 Dec. 1984.
31. Edward Weintal and Charles Bartlett, *Facing the Brink* (Charles Scribner's Sons, New York, 1967), pp. 23–4.
32. *Ibid.*, p. 24.
33. See Chihiro Hosoya, 'Japan, China, the United States and United Kingdom, 1951–2, the case of the "Yoshida letter"', *International Affairs*, vol. 60, no. 2 (Spring 1984), pp. 256–7.
34. See U. Thant, *View from the UN* (David and Charles, London, 1977) Appendix I, pp. 466–7.
35. See Lawrence Freedman and Efrain Karsh, *The Gulf Conflict* (Faber & Faber, London, 1993), pp. 257–9.
36. Source: [www.imf.org/external/np/pmd/2008/eng/pdf/111308.pdf; www.imf.org/external/np/pp/eng/2010/081010.pdf].

37. SCOR, 36th year, S/14693, p. 76.
38. S/25 405, 12 March 1993.
39. A/59/140, 14 July 2004.
40. S/25476, 26 March 1993, ch. 35.
41. S/19389, 29 Dec. 1987.
42. Letter dated 5 Dec. 1994 from France, Germany, the Russian Federation, the UK and the USA, to President of the Security Council, S/1994/1378, 5 Dec. 1994.
43. S/1994/1452, 28 Dec. 1994.
44. S/22558/1345, 8 Dec. 1994.
45. S/22558, 30 April 1991.
46. S/26264, 6 Aug. 1993.
47. See *Financial Times*, 18 Feb. 1995.
48. LOS/PCN/4, 8 April 1983.
49. LOS/PCN/12, 29 April 1983.
50. LOS/PCN/15, 29 April 1983.
51. LOS/PCN/17, 29 April 1983.
52. LOS/PCN/13, 29 April 1983.
53. LOS/PCN/20, 12 May 1983.
54. LOS/PCN/21, 13 May 1983.
55. LOS/PCN/30, 24 Oct. 1983.
56. S/255422, 17 March 1993.
57. Paris News Agency, Teheran, 21 Dec. 1980.
58. C.C. Schweitzer *et al.*, *Politics and Government in the Federal Republic of Germany* (Berg Publishers, Leamington Spa, 1984), p. 381.
59. *Soviet News*, 29 Jan. 1960.
60. For example paragraph 3 of the Additional Memorandum of Morocco to the secretary-general, of 14 Sept. 1960, on the dispute with France over Mauritania, states: 'The Notes which the Government of Morocco has dispatched since then, whenever France unilaterally changed the status of Mauritania, are eloquent in this connection. They place the Moroccan territorial claim in clear perspective and deny to the Government of France any exercise of competence in respect of Mauritanian territory.' GAOR, Fifteenth Session, Agenda item 79, Doc. A/4445/Add.I.
61. SCOR, 15th year, Supplement for July, Aug., Sept. 1960, S/4417/Add. 6, pp. 64–5 and 70–1.
62. Finnish Embassy, London.
63. S/2003/214, 24 Feb. 2003.
64. *A Draft Agreement on the Future of Hong Kong*, Misc., no. 20 1984, Cmnd. 9352, pp. 28–9.
65. Security Council 3483 meeting, 16 Dec. 1994.
66. *Digest of United States Practice in International Law*, 1979 (Department of State, Washington, DC, 1983), pp. 576–7.
67. TIAS 6135; 17 UST 1909; entered into force 4 Nov. 1966 as amended, implemented and supplemented.
68. *Digest of United States Practice in International Law* (Department of State Bulletin, 1983), pp. 1136–7; TIAS 6135; 17 UST 1909, 4 Nov. 1966; Department of State File no. p. 79 0034–0754.
69. *Digest of United States Practice in International Law* (Department of State, Washington, 1977), pp. 746–8.
70. S/PRST/2002/6, 15 March 2002.

International treaties

Treaties can be defined as agreements that establish binding obligations between the parties – usually, though not exclusively, states – and whose terms and provisions are governed by international law.¹ While treaties in the main take a written form, oral exchanges or declarations may give rise to commitments binding on the state or parties concerned.²

The Vienna Convention on the Law of Treaties defines treaties in terms of states, in the following way: ‘An international agreement concluded between states in written form and governed by international law, whether embodied in a single instrument or in two related instruments and whatever its particular designation’ (Article 2).³ The wider definition, however, includes agreements between states and international organisations and between international organisations *inter se*,⁴ although for example McNair excluded agreements not in a written form.⁵

The term ‘treaty’ has in fact come to refer to a wide range of instruments. In its advisory opinion concerning the Customs Regime between Germany and Austria, the Permanent Court of International Justice noted *inter alia* that: ‘from the standpoint of the obligatory character of international engagements, it is well known that such engagements may be taken in the form of treaties, conventions, agreements, protocols or exchanges of notes’.⁶ Two points need to be mentioned therefore with respect to the definition of treaties. First, not all instruments of an international nature are intended to have an obligatory character, as in the case of certain forms of declarations, which may set out aspects of policy or principles. Second, the requirement that the agreement be governed by international law serves to differentiate a treaty from other agreements between states or other subjects of international law, which are governed not by international law *per se*, but by the national law of one of the parties (or mutually agreed national law of a third party). An agreement, for example, between two states for the supply of rice or petroleum products, from one of the parties, drawn up on the basis of a standard form of contract relevant to those commodities, would be governed by the terms of the contract, appropriate national regulations, as well as general principles of law, and not international law.

The criteria for determining whether an undertaking, oral agreement, document or set of documents, including an exchange of notes or correspondence, constitutes an international agreement have been outlined in recent US Department of State provisions and are worth citing as a clear indication of the considerations involved.⁷ The four criteria identified were: the identity and intention of the parties; the significance of the arrangements; specificity, including criteria for determining enforceability; and the necessity for two or more parties. As regards the first of these, the provisions stipulate that a party to an international agreement must be a state, state agency or an intergovernmental organisation, and that the parties intend the undertaking to be legally binding and not merely for political or moral purposes. Thus the Helsinki Final Act would not, according to this view, be considered legally binding.⁸ 'Significance' in the provisions is determined according to political importance, the size of grant made by, or credits payable to, the USA and the scale of continuing or future obligations. Under the third criterion, undertakings couched in vague or very general terms containing no objective criteria for determining enforceability or performance are not normally international agreements. The provisions under discussion also concluded that any oral agreement that meets the above criteria is an international agreement, but must be reduced to words.⁹

Treaties

In international relations, treaties are the instruments for many kinds of legal acts, ranging from bilateral or multilateral agreements on trade, customs and the creation of international organisations, to the ending of a military conflict and redistribution of territory.¹⁰

Treaties in the main are concluded in the following forms: heads of state, interstate, intergovernmental and international organisation. The choice of the type of party may depend on political considerations, such as the degree of symbolic or political importance attached to the matter and constitutional requirements. The choice of form, however, does not affect the binding nature of the obligations. Treaties between states are less formal, and more frequently used than those in heads-of-state form. Traditionally, treaties were concluded in heads-of-state form, but in modern practice treaties can be concluded in heads-of-state, interstate and intergovernmental form. When used in interstate form, the expression 'contracting parties' or 'states parties' is normally used in the text, rather than 'high contracting parties', in the heads-of-state form.¹¹

The designation 'treaty' itself has frequently been reserved for international agreements that are considered to be of particular importance, such as a peace treaty, alliance (e.g. the North Atlantic Treaty of 4 April 1949 or the South-East Asia Collective Defence Treaty of 8 September 1954) or marking significant changes in relationships (e.g. the Treaty of Amity and

Cooperation in South-East Asia of 24 February 1976 signed at Bali; the Montevideo Treaty establishing the Latin American Free Trade Area, 18 February 1960; the Treaty of Rome establishing the European Economic Community of 25 March 1957; and the Treaty of Lagos of 27 May 1975 creating the Economic Community of West African States).¹² However, state practice indicates that the range of issues regulated by treaty is now very wide, including such matters as extradition, navigation, treaties of friendship and setting up international institutions.¹³ Treaties may be concluded bilaterally or multilaterally. The decision to use the designation 'treaty', rather than, for example, 'agreement' depends very much on individual state practice, assessments of the issue and the 'style' of conducting external relations.¹⁴

Increased concern over the nature and effects of immigration in Europe was an important factor in the use of the term 'treaty' for the Anglo-French agreement in 2003 on Implementation of Frontier Controls at the Sea Ports of Both Countries on the Channel and North Sea.¹⁵ In view of the importance attached to defence cooperation between UK and France, the agreement is concluded in treaty form. Article 2 sets out the *scope* of the treaty. No duration for the treaty was set (Article 14).

Treaty between the United Kingdom of Great Britain and Northern Ireland and the French Republic for defence and security cooperation

ARTICLE 2

Scope: The Parties agree that cooperation undertaken under the provisions of this Treaty shall include:

1. the strengthening of the cooperation between the armed forces of both Parties as defined in a joint Letter of Intent, to be signed by Ministers of Defence of both Parties, which shall include inter alia increasingly close co-operation in the following fields: the conduct of joint exercises and other training activities; joint work on military doctrine and exchange of military personnel; sharing and pooling of materials, equipment and services, and, subject to the provisions of Article 5(2), close co-operation in contributing to and pooling forces and capabilities for military operations and employment of forces;
2. continuing and reinforcing the work on industrial and armament cooperation under the High Level Working Group, involving industry as appropriate, through a long-term joint approach aimed at delivering effective military equipment in the most efficient manner, minimising national constraints and strengthening industrial competitiveness;
3. the building and joint operating of such facilities as may be agreed between the Parties;
4. the sale or loan of materials, equipment and services by one Party to the other Party or the procurement by both Parties from third Parties;

5. the development of their defence technological and industrial bases and of centres of excellence around key technologies with efficient corporate governance mechanisms, on the territory of both Parties, thus developing greater interdependence between them;
6. the attachment or exchange of personnel between the Parties;
7. the exchange of information relating to the political, policy, planning and decision-making processes involved in the planning, launching and command and control of bilateral and multilateral military and civil-military operations;
8. subject to national security regulations, the exchange of classified data and information relating to the performance of different defence equipment and systems as well as for operational purposes.

Conventions

Multilateral instruments of a law-making or regulative type are generally given the designation 'convention'. Conventions are normally negotiated under the auspices of international or regional organisations or diplomatic conferences involving states and other subjects of international law. Examples of codification conventions include: the Vienna Convention on Diplomatic Relations of 18 April 1961;¹⁶ the Vienna Convention on Consular Relations of 24 April 1963;¹⁷ and the Vienna Convention on the Law of Treaties of 23 May 1969. Law-making or regulatory Conventions negotiated through conferences include the Convention on the Prohibition, Development, Production and Stockpiling of Bacteriological and Toxin Weapons of 10 April 1972,¹⁸ the several Geneva Conventions dealing with international humanitarian law including the rights and status of combatants and civilians, e.g. Geneva Conventions of 12 August 1949;¹⁹ and the Single Convention on Narcotic Drugs of 30 March 1961.²⁰

In international transport regulation, in the field of civil aviation, the Convention on International Civil Aviation (Chicago) 1944²¹ sets out general principles of air law, such as exclusive sovereignty over airspace above a state's territory, the nationality and registration of aircraft and provisions for establishing a permanent ICAO. Since 1947, ICAO itself has produced a number of conventions dealing with civil aviation standards and practices, as well as establishing rules on questions such as damage caused by aircraft to third parties (Rome, 1952)²² and air 'piracy' through the Convention for the Suppression of Unlawful Seizure of Aircraft, The Hague, 16 December 1970.²³

The importance of international transport logistics as a branch of new regulation in international relations is reflected in the Convention on Customs Treatment of Pool Containers used in International Transport.²⁴

The expanding content of diplomacy is also seen in a number of UN conventions on anti-corruption²⁵ and transnational crime,²⁶ which, while drafted in obligatory treaty form, attempt to establish public administrative standards, but are heavily qualified: 'consistent with the principles of

sovereign equality' (Article 3); public reporting (Article 10) 'in accordance with the fundamental principles of its domestic law, take such measures as may be necessary to enhance transparency in its public administration, including with regard to its organization, functioning and decision making processes, *where appropriate*'.²⁷

Other work on human rights has involved the establishment by the UN of investigative commissions to investigate and dismantle illegal groups and clandestine 'security' organisations, for example the United Nations–Guatemala Agreement in 2004.²⁸

Treaties of a law-making or regulatory kind produced by the specialised agencies of the UN normally take the designation 'convention'. Examples of these are the various labour conventions produced by the International Labour Organisation (ILO), the Universal Postal Union and the telecommunication conventions.²⁹ Conventions have also been concluded by regional and other bodies such as the Council of Europe and the UN Economic Commission for Europe across a wide range of subjects such as refugees,³⁰ human rights,³¹ and transboundary pollution.³² Conventions have also emerged from international and regional organisations in other areas such as maritime regulation and pollution control. The Intergovernmental Maritime Consultative Organisation, the main organisation in this field, was restyled the International Maritime Organisation (IMO) in May 1982. It has concluded major global conventions on shipping, safety and anti-pollution, including *inter alia* the 1973 International Convention for the Prevention of Pollution from Ships³³ and the International Convention for the Safety of Life at Sea (1974).³⁴ To avoid or reduce delays in entry into force and speed up the process, the IMO has developed the concept of express or tacit acceptance procedure.³⁵

While the above conventions can be classified into a number of general types, such as if the purpose is predominantly codification, institutive or regulative, a great many conventions usually evidence more than one of these features. Modern practice, too, suggests that some of the so-called 'law-making' conventions have developed distinctive legal formats and characteristics that resemble administrative law rather than traditional international public law. For example, the United Nations Convention on the Law of the Sea, opened for signature in Jamaica in December 1982,³⁶ is not simply a codification instrument, but goes much further than the four 1958 Geneva Law of the Sea Conventions in establishing new types of international regulations, rights and responsibilities, for example for the exclusive economic zone and deep seabed area. The Law of the Sea Convention of 1982 resembles administrative law in the way regimes are formulated and in the considerable amount of devolution of power and responsibility to international organisations and diplomatic conferences to continue the process of building and developing maritime law.³⁷

Although the above sections have discussed conventions as multilateral instruments produced by international and regional organisations, as well as diplomatic conferences, the designation is also used for many different

kinds of bilateral treaties, such as on consular conventions and double-taxation conventions. As with other forms of treaties, conventions can be concluded in heads of state, interstate or in intergovernmental form. They can often be simple single-article instruments, such as between France and Madagascar of 4 June 1973,³⁸ on postal and telecommunication matters, which has one article only (*article unique*) in which it is agreed to establish postal and telecommunication services.

Agreements

Treaties and conventions are the two most formal instruments in the range of various mechanisms available to states and other subjects of international law. Less formal and in more frequent use are agreements and exchanges of notes. Although less formal, the subject matter covered by agreements need not be routine. Agreements are, in fact, used for a variety of purposes, such as establishing the framework and mechanisms for interstate trade cooperation,³⁹ land and maritime boundaries,⁴⁰ resolving debt questions,⁴¹ fisheries regulations,⁴² air services arrangements⁴⁴ and many other similar forms of undertaking. However, whatever the subject matter, for an agreement to be properly considered as a treaty it is necessary to distinguish those agreements that are intended to have an obligatory character from those that do not.

Agreements are distinct from treaties and conventions in a strict sense in that the latter are generally of a more comprehensive kind and have a permanent subject matter. Agreements normally take the form of a single instrument and tend to be bilateral rather than multilateral. Exceptions to the latter are agreements made by regional groupings or organisations. Examples include: ASEAN agreements such as the Agreement on the Establishment of the ASEAN Secretariat, signed at Bali on 24 February 1976;⁴⁴ the Agreement on ASEAN Preferential Trading Arrangements, signed at Manila on 24 February 1977;⁴⁵ and the ASEAN Cultural Fund,⁴⁶ signed at Jakarta on 2 December 1978.

In general, agreements are usually concluded between governments, rather than in heads-of-state or interstate form, and take the form of a single instrument. Agreements may be for a limited duration, as in the following example concerning UK–Iraqi naval training.

Agreement concerning the training and maritime support to the Iraqi forces by and between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of Iraq

In order to enhance the ties of friendship between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of Iraq, and considering the importance of co-operation between the

two Governments in the field of training Navy and Marines forces, and for Military Academies and Institutes, and protecting Iraqi territorial water and Iraqi oil platforms, they have agreed the following:

Article 2

1. The United Kingdom Forces shall remain in Iraq for one (1) year starting from the date on which this Agreement enters into force.
2. The United Kingdom Forces mentioned in paragraph 1 of this Article, shall not exceed in any way one hundred (100) members of the United Kingdom Forces and the associated civilian component and five (5) naval ships with their respective crews.

Article 3

The United Kingdom Forces shall undertake the following tasks:

- a. Provision of tactical maritime support for the Iraqi Forces to protect Iraqi oil platforms and territorial waters, in co-ordination with Iraqi Forces and United States Forces.
- b. Training naval forces and marines.

Finally, it should be noted that agreements can be concluded between respective government departments in different countries. Interdepartmental agreements of this type have become very common, given both the increase in the volume of international business and the growing involvement of departments other than foreign ministries.

Some examples of the subject matter of international agreements in British practice are:

- Agreement between the United Kingdom and Russian Federation on Encrypted Communication Systems, 15 February 2012. (Extract)
- Agreement for the Implementation of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling and Highly Migratory Fish Stocks, 4 August 1995.⁴⁷
- South Africa. Agreement for Air Services between and beyond their Respective Territories, 11 August 1992.⁴⁸
- South Korea. Agreement for Cooperation in the Peaceful Uses of Nuclear Energy, 1992.⁴⁹
- Reciprocal Fisheries Agreement between the United Kingdom and United States with respect to the British Virgin and American Virgin Islands, 1983.⁵⁰
- Headquarters Agreement International Maritime Organisations, 25 February 1980.⁵¹
- Russian Federation. Agreement on the Establishment of Direct Secure Telephone Links between 10 Downing Street in London and the Kremlin in Moscow, 9 November 1992.⁵²

- Turkmenistan. For the Provision and Protection of Investments, February 2003.⁵³
- Agreement on the Enforcement of Sentences of the International Criminal Tribunal for the Former Yugoslavia, 11 March 2004.⁵⁴

Examples of international agreements in Malaysian practice are:

- Malaysia–Federal Republic of Germany Loan Agreement, 21 December 1976.⁵⁵
- MOU ASEAN–People’s Republic of China on Cooperation in Non-Traditional Security Issues, 10 January 2004.⁵⁶
- Malaysia–Bahrain Air Services Agreement, 17 October 1994.⁵⁷
- Malaysia–Japan Eighth Yen Loan Agreement (M\$210 million), 22 March 1982.⁵⁸
- Malaysia–Norway Double Taxation Agreement, 9 September 1971.⁵⁹
- Malaysia–Bosnia-Herzegovina, Croatia Trade Agreement in Encouragement and Reciprocal Protection of Investments, 26 October 1994.⁶⁰
- Malaysia–Saudi Arabia Investment Guarantee Agreement 2002.⁶¹
- Malaysia–ADB, 10 December 1981 (Batang Ai Hydropower Project).⁶²
- Malaysia–IBRD, 7 February 1983 (Kedah Valley’s Agricultural Development Project).⁶³
- Malaysia–Vietnam Cultural Agreement, 30 March 1995.⁶⁴
- Malaysia–Pakistan, Closer Economic Partnership Agreement, 2007.⁶⁵
- ASEAN Agreement on Disaster Management and Emergency Response, 26 July 2005.⁶⁶

Exchange of notes

The most common and frequently used treaty instrument for recording agreements between governments is through an exchange of notes or letters. The exchange of notes can: be between an ambassador or other appropriate representative and the MFA of the country to which they are accredited; take the form of a letter between the foreign or other ministers (or their empowered officials) of two respective countries; or be in the third person. The initiating note will set out matters such as definitions, terms and attached schedules, if any, or other provisions. If these are acceptable then the initiating note and the other government’s reply accepting these is to constitute an agreement.

To avoid the exchange becoming a correspondence through the passing of several notes, the terms of the notes to be exchanged are normally agreed upon through discussion beforehand. If the notes do not bear identical dates then the agreement takes effect from the date of the last note or such other dates as may be specified. Exchanges of notes as a general rule do not require ratification. It should not be concluded, however, that the subject matter need necessarily be routine in nature.

The format of exchanges of notes can be seen from the following example involving UK debt arrangements with Nicaragua. In this illustration, two points are of note: the agreement is concluded through the British ambassador at Managua, with the President of the Central Bank of Nicaragua as the authorised Nicaraguan representative. Second, the terms of the exchange of notes are based upon an agreed minute, concluded at Paris on 13 December 2002. The agreed minute is an informal administrative instrument, which is kept confidential for the purposes of this exchange of notes, and forms an integral part of the exchange dealing inter alia with the conditions applying to the payment schedules.⁶⁷

Exchange of Notes between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of Nicaragua concerning certain commercial debts (the United Kingdom/Nicaragua Debt Agreement No. 2 (2002))

[No. 1]

The British Ambassador at Managua to the President of the Central Bank of Nicaragua

Managua
22 July 2003

I have the honour to refer to the Agreed Minute on the consolidation of the Debt of the Republic of Nicaragua which was signed in Paris on 13 December 2002, and to inform Your Excellency that the Government of the United Kingdom of Great Britain and Northern Ireland is prepared to provide debt relief to the Government of the Republic of Nicaragua on the terms and conditions set out in the attached Annex.

If these terms and conditions are acceptable to the Government of the Republic of Nicaragua, I have the honour to propose that this Note together with its Annex, and your reply to that effect, shall constitute an Agreement between our two governments in this matter which shall be known as 'The United Kingdom/Nicaragua Debt Agreement No. 2 (2002)' and which shall enter into force on the date of your reply.

I have the honour to convey to Your Excellency the assurance of my highest consideration.

Tim Brownbill

[No. 2]

[Translation]

The President of the Central Bank of Nicaragua to the British Ambassador at Managua

Managua
30 July 2003

I have the honour to acknowledge receipt of Your Excellency' Note of 22 July 2003 which in translation reads as follows: [as in No. 1 above] ...

I have the honour to confirm that the terms and conditions set out in the Annex to your Note are acceptable to the Government of Nicaragua, and that your Note together with its annex, and this reply, shall constitute an Agreement between our two governments in this matter which shall be known as 'The United Kingdom/ Nicaragua Debt Agreement No. 2 (2002)' and which shall enter into force today.

I have the honour to convey to Your Excellency the assurance of my highest consideration.

Mario B. Alonso I

Exchanges of notes or letters constituting agreements also occur frequently between states and international organisations in connection with a variety of questions, such as headquarters facilities, arrangements for peace-keeping forces, and the arrangements and the costs to be borne in respect of an international conference hosted by a member country. For example an exchange of letters was used for financial and other related matters for the Second General Conference of UNIDO, held in Peru.⁶⁸ The exchange of letters between the Executive Director of UNIDO and the Peruvian Deputy Minister of Industry and Peruvian Permanent Representative to UNIDO amended Section V of the Lima Agreement of 12 March 1975, on the financial arrangements for the conference to take into account the additional expenditure incurred by the Peruvian authorities. The agreement came into force on 26 March by the exchange of letters.

Declarations

Since 1945, declarations have increasingly been used by states, reflecting the growing number of new states entering the international scene, diverse political groupings and the perceived need to demonstrate collective cooperation, as well as to project national and regional aspirations. The term 'Special Declaration' was used by the Union of South American Nations (UNASUR) to underline the significance they attached to the First Review Conference on the Rome statute of the International Criminal Court.

Special meeting of the Heads of State and Government of the Union of South American Nations (UNASUR): Special Declaration on the First Review Conference on the Rome Statute of the International Criminal Court

Buenos Aires, 4 May 2010

The Heads of State and Government of the Union of South American Nations (UNASUR), taking into consideration that the Treaty creating UNASUR – signed in Brasilia on 23 May 2008 – enshrines the principle of unrestricted respect for universal, indivisible and interdependent human rights, as one of the essential

conditions for building a common future of peace, economic and social prosperity and development of the peoples:

1. Express their belief that impunity for the authors of the most serious crimes under international law established in the Rome Statute of the International Criminal Court is a factor that endangers the stability of the international order.
2. Underscore the historical importance of the First Review Conference on the Rome Statute of the International Criminal Court, to be held in Kampala, Uganda, on 31 May–11 June 2010.
3. Highlight the fact that all UNASUR nations are Parties to the Rome Statute and, as such, commit to supporting the objectives of the Review Conferences aimed at completing the international criminal justice system adopted at the 1998 Rome Conference, focused mainly on the ICC.
4. Express their commitment to work constructively on the Review Conference with the purpose of adopting specific decisions on the topics to be analysed; and to participate actively in the examination exercise of the international criminal justice system to be carried out at said Conference, also encouraging Non Parties and civil society to partake in the work.
5. Recall the mandate of articles 5.2 and 123 of the Rome Statute by which the States undertook the commitment to make all possible efforts so that the Review Conference adopts a definition of the Crime of Aggression and the conditions for the Court to have jurisdiction over that crime. In this regard, they undertake the commitment to work actively so that deliberations on the jurisdiction matters regarding the crime of aggression are as effective as possible and contribute to the independence of the International Criminal Court and the integrity of the Rome Statute.

Whether in fact a declaration constitutes a treaty *per se* is open to considerable uncertainty. Difficulties of classification arise over declarations that are primarily political documents concerning future policy intentions, such as the Anglo–Irish Declaration of December 1993 on Northern Ireland. In this context it is interesting to note the use of the term ‘declaration’ in the Anglo–Chinese agreement on the future administrative arrangements for Hong Kong after 1997. The choice of ‘declaration’ in this case would suggest the provisional and ambiguous nature of the instrument.

Another aspect of the difficulty can be found in declarations that have mixed purposes and language. For example declarations of this type feature extensively in the diplomatic practice of ASEAN, which frequently seeks to exhort its members but often falls short of creating legally binding obligations. One such instance is the 1992 ASEAN Singapore Declaration, which contains a variety of general proposals for greater ASEAN political and security cooperation, including the zone of peace, freedom and neutrality (ZOPFAN), and restructuring ASEAN institutions.⁶⁹ One section of the Singapore Declaration, however, on ASEAN functional cooperation, contains a mixture of political statement and more precise obligations of an administrative kind on, for example, transfer of technology, the

establishment of a student exchange programme in the ASEAN region, and measures to combat drug trafficking.

The use of declarations is an established feature of European Community diplomatic practice. Two Maastricht European Council meetings of 9–10 December 1991, for example, issued a Declaration on Developments in the Soviet Union, dealing with inviolability of borders, peaceful settlement of disputes, and stating that the republics should initiate without delay effective control and security of nuclear weapons.⁷⁰ The European Council subsequently issued Guidelines on the Recognition of New States in Eastern Europe and the Soviet Union.⁷¹ The guidelines put forward criteria for recognition, including protection of human rights and respect for international agreements in force. The later practice of Community members, however, suggested differences in timings and approach with respect to recognition.⁷² Regarding the former Yugoslavia, the Community's recognition of Croatia and Slovenia was precipitated by the German Federal Republic's statement on recognition.⁷³

While certain declarations can be properly regarded as treaty instruments as such in view of their law-making function (e.g. Barcelona Declaration of 1921 recognising the right to a flag of states having no sea coast),⁷⁴ or because of specific undertakings in the agreement (e.g. the Declaration on the Neutrality of Laos, signed at Geneva on 23 July 1962),⁷⁵ others may not. In these latter instances, declarations published after a heads-of-government conference may partly contain agreements to do or not do something and partly statements of common policy, causing considerable difficulty in determining whether they may be regarded as a treaty instrument or are more properly regarded as policy documents. In general, state practice suggests that declarations having full treaty effect tend to be reinforced by treaty instruments. The Minsk Declaration on the Establishment of the Commonwealth of Independent States is an example.

The G-8 Declaration (Potsdam, 30 May 2007) was an interesting and unusual document which created administrative commitments to identify common ground and convene a meeting on the promotion of the rule of law. From a political perspective, the document is of particular interest as a statement of G-8 views on the rule of law in international relations.⁷⁶

A Declaration of G-8 foreign ministers on the rule of law

1. We, the Foreign Ministers of the G8, reaffirm that the rule of law is among the core principles on which we build our partnership and our efforts to promote lasting peace, security, democracy and human rights as well as sustainable development worldwide.
2. In a globalising world, respect for the rule of law enhances the quality and intensity of interaction within and between societies and economies. Trade, investment and the movement of people and ideas can create tremendous opportunities for all. For the process of globalisation to be peaceful, sustainable and beneficial for all, it is imperative to

adhere to the principles of supremacy of law, equality before the law, accountability to the law, legal certainty, procedural and legal transparency, equal and open access to justice for all, irrespective of gender, race, religion, age, class, creed or other status, avoidance of arbitrary application of the law, and eradication of corruption. International trade, foreign investment and the protection of property rights create a conducive environment for an ever closer interdependence in the economic sphere and beyond. Free and fair competition must be ensured through effective protection by state institutions. There can be no sustainable development without the rule of law to protect the rights and liberties of all persons. The advancement of the rule of law is, therefore, an imperative for any country that wants to achieve social and economic progress in a globalising world.

3. Together with democracy and the respect for human rights and fundamental freedoms, the rule of law is a key condition for lasting peace, security and sustainable development. At our meeting in Miyazaki on 13 July, 2000 we stated that 'efforts to prevent conflict must be based upon observance of international law, including the UN Charter, democracy, respect for human rights, the rule of law, good governance, sustainable development and other fundamental values, which constitute the foundation of international peace and security'. We are convinced that conflicts within societies cannot be settled in a peaceful manner unless all individuals, institutions and entities, public and private, including the state itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international law, including human rights law. The restoration of justice and the promotion of the rule of law are of particular importance in post-conflict societies and must be essential elements of any comprehensive conflict prevention or resolution strategy. In this context, we look forward to the Conference on the Rule of Law in Afghanistan – co-chaired by the United Nations together with Italy as host country and the Government of Afghanistan – to be held in Rome on 3 July, 2007, as an opportunity to enhance international commitment to Afghan justice sector reform.
4. The importance of the rule of law as a principle of governance extends beyond states' borders. We firmly believe that observance of international law including the Charter of the United Nations provides a framework for beneficial cooperation among states and international stability, and is a key condition for the non-violent resolution and prevention of conflicts. We reaffirm the need for universal adherence to and implementation of the rule of law and international law, which together with the principle of justice is essential for peaceful coexistence and cooperation among states. We call upon states to consider acceding to and implementing international instruments that advance our common interests in peace, democracy, and security through the rule of law.

5. Much has been done to promote the rule of law worldwide. We commend and support, in particular, the United Nations' activities in this field. We also welcome the increasing role of regional organisations in the promotion of the rule of law.
6. We have taken note of the report of the UN Secretary General of 23 August, 2004 ('The rule of law and transitional justice in conflict and post-conflict societies'). We recall the declaration of the 'World Summit' in 2005 which demands greater attention for the promotion of the rule of law, and support the implementation, without delay, of the conclusions and recommendations contained therein. We take note with satisfaction of the concrete measures proposed by the UN Secretary General's report of 14 December, 2006 ('Uniting our Strengths: Enhancing United Nations Support for the Rule of Law') with a view to strengthening the organisation's capacities in the area of rule of law, and look forward to the swift implementation of these proposals. We also expect that the promotion of the rule of law will play a major role in the activities of the United Nations' Peacebuilding Commission.
7. Despite numerous efforts to promote the rule of law, major challenges remain. Arbitrary administration of power and application of national and international law, impunity, lack of access to justice, lack of due process, weak accountability structures, terrorism, corruption, and activities of criminal organisations as well as disregard of norms and principles of international law, including the UN Charter, undermine international stability and the effective enjoyment of human rights, economic and social development in many countries around the world.
8. In order to meet these challenges, we, the Foreign Ministers of the G8, undertake to promote a more coherent international approach, tying together existing initiatives and supporting the United Nations, regional organisations, states and non-state actors active in this field. We recognise the importance of encouraging and respecting local ownership and leadership in the efforts towards the promotion of the rule of law. In order to effectively promote the rule of law, all stakeholders, international and national, governmental and non-governmental, have to join efforts. We recognise, in particular, the important role of academic institutions, media, professionals in the judicial systems, lawyers, business, and other actors of civil society in this endeavour. We are mindful that the promotion of the rule of law requires true commitment by and participation of all relevant stakeholders.
9. In order to identify further common ground, and with a view to discussing ways of supporting relevant international efforts, in particular those of the United Nations which play a pivotal role in this context, identifying gaps that need to be addressed and better coordinating our own efforts, we ask the German Presidency to convene, in the second half of 2007, a meeting at technical and expert level, including non-state actors and representatives of the United Nations, development banks and regional organisations.

10. This meeting should facilitate a closer dialogue on issues relating to the promotion of the rule of law, which should be opened to participants from non-G8 countries interested in cooperating with the G8 on issues related to the promotion of the rule of law.

Two further forms of declarations can be distinguished, both of which cannot be regarded as treaty instruments. First, unilateral declarations by states, such as declarations of war, declarations by third states on the outbreak of war that they will remain neutral, or declarations during or prior to an armed conflict such as made by the UK with regard to the total exclusion zone during the Falklands conflict with Argentina in 1982, or the total exclusion zone declared by Iraq in the Iran–Iraq War, do not constitute treaties.⁷⁸ Second, declarations that take the form of a communication to other states of an explanation and justification of a line of action taken in the past, or explanation of views and policies on an issue, such as the Spanish–Argentine Declaration on the Falklands and Gibraltar of 13 June 1984, are not treaties as such.

Other forms of treaties

Treaties exist in a number of other forms apart from those discussed in the last section. Differences in title derive from a number of factors, such as the political context in which the instrument was drafted, the type of subject matter, and others such as the institutional ‘style’ of the instruments produced by the organisation (e.g. international labour conventions).

Among other forms of treaties are charter (e.g. United Nations Charter, San Francisco, 1945);⁷⁹ and pact, which is used often for an alliance or solemn undertaking (e.g. ANZUS Security Pact;⁸⁰ Kellogg–Briand Pact, 1928, on the renunciation of war,⁸⁰ properly titled Treaty Providing for Renunciation of War as an Instrument of National Policy, 27 August 1928; or non-aggression, e.g. South Africa–Mozambique Nkomati Accord of 1984).⁸² ‘Pact’ is also used as noted above in a journalistic sense to mean a collective agreement, for example ‘Tin Pact’ to refer to the Association of Tin Producing Countries, including Malaysia, Indonesia, Thailand and Bolivia. Other forms of treaties are constitutional, such as the Constitution of the United Nations Educational, Scientific and Cultural Organisation (UNESCO);⁸³ or statute, used to designate an instrument that regulates an international institution or regime, for example the Statute of the Council of Europe,⁸⁴ and the Statute of the International Court of Justice.⁸⁵

Miscellaneous treaty forms and other international instruments

The term ‘act’ has widespread use and is distinguished from ‘general act’ in that the designation ‘act’ usually refers to an instrument that is part of a complex of agreements. The act usually contains the main terms and

provisions of a treaty and takes the form of a *chapeau*, such as the Act of the International Conference on Vietnam, 2 March 1973, acknowledging the Paris Agreement ending the Vietnam War.⁸⁶

A further form of usage of ‘act’ is the general act, which need not be a treaty in the strict sense, forming rather part of the overall instrument. As a treaty instrument the general act is often of an administrative nature, e.g. the General Act for the Pacific Settlement of Disputes, 26 September 1928,⁸⁷ prepared under the League of Nations, and the subsequent Revised General Act for the Pacific Settlement of Disputes, prepared under UN auspices, 28 April 1949.⁸⁸

Final act

The term ‘final act’ (*acte finale*) normally denotes a document that serves as a summary of the proceedings of an international conference. A final act is a form of *procès-verbal* and, accordingly, signature does not serve as an indication of being bound by the treaty or mean acceptance of the obligations contained in the treaty, which requires separate signature and ratification. In some circumstances the final act of a conference may contain not only the treaty or agreement itself but also resolutions connected with the treaty or agreement, including interim arrangements before the latter’ entry into force. For example, the Final Act of the Third UN Conference on the Law of the Sea⁸⁹ provides in resolution I(2) that:

The commission (for the International Sea Bed Authority) shall consist of the representatives of states and of Namibia, represented by the United Nations Council for Namibia, which have signed the convention or acceded to it. The representatives of signatories of the Final Act may participate fully in the deliberations of the Commission as observers but shall not be entitled to participate in the taking of decisions.

In those cases in which a final act is produced by an international conference, the document records inter alia the organisation of the conference, a survey of the texts and conclusions of the main committees, and the texts of any resolutions. In the case of the third UN Conference on the Law of the Sea, the final act contained inter alia:

- record of the prior United Nations’ resolutions on the law of the sea
- dates of sessions
- officers and committees
- conference documents and outline of major developments
- resolutions.

Apart from the question of the effect of signature with regard to a final act, a further issue is that of the status of annexes in the main convention.

In the Law of the Sea Convention, for example, Article 318 of the Final Provisions of the convention stipulates that, unless otherwise provided,

the annexes form an integral part of the convention. In contrast, resolutions contained in the Final Act are not incorporated in the main text of the convention, although there are references in the main convention to certain of the resolutions, for example Article 308(5). In an effort to link the convention and the resolutions, Paragraph 42 of the Final Act refers to the convention and Resolutions I–IV ‘forming an integral whole’.

Protocol

Of the other available international instruments, the protocol is widely used and extremely versatile. Eight main uses can be distinguished in international practice.

First, a protocol can be used to extend an agreement that is due to run out. International commodity agreements have, for example, been extended in this way: for example the International Olive Oil Agreement, the International Coffee Agreement and the International Wheat Trade Convention.⁹⁰ Second, a protocol may be used to amend or modify an agreement. Protocols are particularly used in this way in respect of agreements that are likely to need quite frequent revision, such as fisheries,⁹¹ double-taxation agreements (DTAs); for example, the Protocol amending the Agreement for the Avoidance of Double Taxation between the United Kingdom and Mauritius, 27 March 2003.⁹² If subsequent amendments should prove necessary these would normally be termed ‘additional protocols’ or ‘further supplementary protocols’.⁹³ Protocols can be used for many other types of amendments, such as procedural amendment altering the membership of a technical commission of an international organisation,⁹⁴ or the substantive provision of a multilateral law-making convention.⁹⁵

Third, a protocol may be pursuant to the main provisions of an agreement. For example the Protocol to the Franco–Soviet International Road Transport Agreement⁹⁶ is concerned with the application of the agreement and provides details of competent institutions and documentation procedures to facilitate road traffic in the two countries. Often a protocol may in fact be a separate instrument or set of instruments for dealing with questions connected with the running of an international organisation, such as the Fourth Protocol to the General Agreement on Privileges and Immunities of the Council of Europe – Provisions Concerning the European Court of Human Rights.⁹⁷

Fourth, in those instances in which it is necessary to supplement an agreement, a protocol can be used for the additional provisions. For example a supplementary protocol to an air services agreement may provide for additional fifth-freedom landing rights, to allow either or both of the parties to pick up passengers at additional points in order to balance passenger trade between the respective airlines.⁹⁸

Fifth, a protocol may be used to replace or supersede an existing arrangement, for example the United States–Philippines Protocol⁹⁹ on

safeguards with regard to the Nuclear Non-proliferation Treaty, which replaced the tripartite agreement with the International Atomic Agency.

Sixth, a protocol may be an optional instrument to a main agreement, concluded with the aim of extending the area of possible substantive agreement, for example the Optional Protocol to the Vienna Convention on Consular Relations, 24 April 1963.¹⁰⁰

Seventh, a protocol can be a technical instrument within a general agreement. In this usage, protocols are especially found, though not exclusively, in trade agreements between the EC and third parties. The agreement between the EC and Portugal of 22 July 1972 had, for example, eight protocols, covering a wide variety of matters such as tariff quotas, product 'ceilings' and detailed provisions on the term 'originating products'.¹⁰¹ The Treaty on European Union, Maastricht, 7 February 1992, lists 17 protocols and 33 declarations.

Protocols can also be found within many other types of general agreements, including peace treaties, ceasefire and similar agreements. The short-lived Paris Agreement of 27 January 1973, ending the Vietnam War, contained an attached protocol on the return of captured military personnel and captured foreign civilians.¹⁰² Protocols may sometimes be used in a main agreement to indicate some technical exception or interpretation, though this is more normally done through a side-memorandum or agreed minute.

Finally, protocols can be found in use as general instruments quite frequently in some treaty practice, being preferred to an agreement or exchange of notes, for example the Protocol on Financial Cooperation between the Federal Republic of Germany and Brazil.¹⁰³ In the style of the EU, the financial protocol is used to cover a wide range of economic arrangements with third parties.¹⁰⁴

Memoranda of understanding

Memoranda of understanding are now in widespread use by states and international institutions for regulating many aspects of their external relations in defence, aviation, commerce, education, science, industrial cooperation and other areas.¹⁰⁵ Whether they constitute international agreements in a strict treaty sense varies according to state practice. Much depends on the intentions of the parties and the terminology adopted.¹⁰⁶ Most are not published in official or other series and are not readily available beyond particular government departments, which tend to use the instrument most frequently. Indeed it may be some time before other departments become aware of an agreement. The latter point illustrates another aspect of the problem of national control over external policy, which was earlier highlighted in the discussion of national financial policy and the debt crisis (see [Chapter 6](#)). The main reasons for the use of memoranda of understanding instead of treaties are speed, flexibility and

confidentiality. Often they are adopted in order to avoid having a formal binding agreement. The delay arising from constitutional procedures is then avoided. Memoranda of understanding are flexible in that they can be brought into force without formal treaty procedures, and amended by the respective agencies as appropriate. They are also frequently used by states to protect arrangements they have entered into involving sensitive political, commercial or other economic information.

In addition, as a matter of style, certain states and groupings prefer to use informal instruments. For example the Commonwealth practice of using memoranda of understanding is perhaps in keeping with the concept of the Commonwealth as a club, with relations between members being furthered by informal rather than formal agreements.¹⁰⁷ The International Maritime Organisation (IMO) concluded an MOU with the World Customs Organisation (WCO) in 2002 to facilitate cooperation between ports and ships in counter-terrorism.¹⁰⁸ Examples of memoranda of understanding are:

- Memorandum of Understanding to Lay an Undersea Natural Gas Pipeline; Oman–India (Ministry of Petroleum), 11 May 1993.¹⁰⁹
- Memorandum of Understanding on Prohibiting Import and Export Trade in Prison Labour Products; China–USA, 7 August 1992.¹¹⁰
- Memorandum of Understanding to Provide Yen 400 million to Keep the Straits of Malacca Pollution Free; Malaysia, Indonesia, Singapore, Japan, 13 February 1981.¹¹¹
- Memorandum of Understanding Implementing Guidelines for Transfers of Nuclear-Related Dual Use Equipment, Material and Related Technology; Nuclear Suppliers Group, 3 April 1992.¹¹²

The following example, covering copyright arrangements between the UK and Nigeria, is for a period of five years, and is automatically renewable unless a party terminates the memorandum in writing. The MOU is drafted in treaty language and sets out obligations in a clear and not unduly complicated form. It may be regarded as a model of a concise, practical MOU.

Memorandum of understanding on strategic cooperation on copyright between the Intellectual Property Office of the United Kingdom and the Nigerian Copyright Commission of the Federal Republic of Nigeria

The Intellectual Property Office of the United Kingdom and the Nigerian Copyright Commission of the Federal Republic of Nigeria, hereinafter referred to as 'the Participants':

Recognising the value and importance of intellectual property in promoting a strong national and global economy and encouraging continued support of creative industries; *Acknowledging* the necessity of promoting, improving and

strengthening national copyright systems; *Desiring* to further enhance bilateral cooperation and improve commercial trade; Have reached the following Memorandum of Understanding on Strategic Cooperation on Copyright, hereinafter referred to as 'Memorandum'.

1. Purpose

This Memorandum sets out the understanding reached on a general framework for bilateral cooperation between the Participants. Throughout the Memorandum the Participants declare their willingness to strengthen the copyright strategic partnership through continued international cooperation between them on all matters relating to copyright.

2. Areas of Cooperation

To meet these stated objectives, the Participants will develop and strengthen the following areas of cooperation:

- a. Continued discussion of topical issues in the field of copyright and related rights;
- b. Exchange of information and sharing of best practice related to items in paragraph 1 above including joint consideration of copyright laws, regulations, enforcement procedures, rules and procedural documents;
- c. Seeking development and training opportunities in the field of copyright laws and regulations related to items in paragraph 1 above;
- d. Coordination on international copyright issues of importance under full consultation by both Participants;
- e. Collaboration by both Participants to promote and encourage the use and understanding of the IP system relating to copyright.

3. Consultation

The Participants will endeavour to:

- a. Establish a joint approach to include the specific activities outlined above. The listed examples are not exhaustive and may be extended to include other activities as and when agreed by both Participants;
- b. Ensure such plans are reflected in future bilateral agreements to be agreed by both Participants;
- c. Conduct regular formal meetings to review progress under this Memorandum and to update the work plan. The timing, frequency and location of any such meetings will be jointly decided by the Participants.

4. Financial Resources

With regard to financial arrangements, both Participants accept the following principles: the host organisation will be responsible for working lunches and related necessary expenses. The visiting organisation will be responsible for all travel expenses, accommodation and subsistence.

5. Limitations

This Memorandum shall have no effect on the obligations undertaken by both countries in accordance with the international copyright treaties that they have acceded to or the implementation of the domestic copyright laws, rules and regulations of the two countries.

Unless approved by the other Participant's government, no Participants hereto may disclose confidential national information of the other participant obtained through the information exchange and cooperation channel within the Memorandum.

6. Term

This Memorandum shall become effective when signed by the Participants and may be modified and supplemented with the mutual written consent of the Participants. All modifications and supplements will constitute an integral part hereof and be confirmed in written form.

This Memorandum has a validity term of five years and will be extended automatically for successive periods of five years unless a Participant terminates this Memorandum in writing at the expiration of any such five year period.

Either Participant may, at any time during the operation of this Memorandum, terminate this Memorandum upon ninety (90) days' written notice to the other Participant.

Unless otherwise agreed by the Participants through consultations, the termination hereof does not affect the implementation of unfinished cooperation within the Memorandum.

Signed at the Intellectual Property Office, Bloomsbury Street, London on 5 September 2011.

For the Intellectual Property Office of the United Kingdom:

JOHN ALTY Chief Executive &
Comptroller General Intellectual
Property Office

For the Nigerian Copyright Commission of the Federal Republic of Nigeria:

AFAM EZEKUDE Director General and
Chief Executive of the Nigerian Copyright
Commission

A number of issues have arisen in the use of memoranda of understanding. First, there is the question of the status of the instrument. Reference to the title alone of an instrument can be misleading, since some documents, although entitled memoranda, use treaty language and establish legal obligations. With regard to the language of an instrument, British practice differs somewhat from that of the USA, in the weight given to the language used in deciding the status of an instrument. The use of 'shall' rather than 'will', an express indication that the exchange 'shall constitute an agreement between our two governments' rather than 'record the understandings', and 'enter into force' and not 'come into operation' or 'come into effect' are considered consistent with treaty language.

Memoranda of understanding are most often used as subsidiary instruments to treaties. That is, they supplement the treaty by providing the framework for subsequent implementation. In air services agreements, the main agreement is often accompanied by a confidential memorandum of understanding that contains the generally critical details of flight frequencies and capacities. Difficulties over a subsidiary memorandum of understanding can occur on signature, or after the instrument has become effective, over its status and the interpretation of its provisions. For example such a

memorandum subsidiary to a treaty may contain provisions that purport to amend or are in other ways inconsistent with a treaty. In the case of confidential memoranda, a common problem with civil aviation, arms purchase and similar arrangements is that the agreements, given their informality, may be challenged or even repudiated by one or more of the parties. Equally, too frequent recourse to the modifying subsidiary memoranda of understanding can undermine the purposes of the governing treaty.

Two further issues are worth comment. As noted above, since memoranda of understanding may be considered confidential by a department or agency, the question can arise over the extent to which, if at all, the general public should be informed of their contents. For example in a recent British case only the outline contents of the memorandum of understanding concluded with the USA on Strategic Defence Initiative (SDI) contracts were released to Parliament.¹¹³ The frequent use of memoranda of understanding undoubtedly creates another grey area in terms of its effect in reducing public knowledge about foreign policy. A related aspect, from a governmental perspective, is what has been called the 'retrieval' problem. A general argument earlier in other chapters has been put in terms of the modern problem of internal control over foreign policy. It can be argued that excessive use of memoranda of understanding can create retrieval problems, in that instruments remain unpublished and within the organisational 'memory', such as it might be, of an individual department or agency. Since memoranda of understanding often remain unpublished, it could be argued, they may contribute to inconsistency, low norm setting and poor coordination in foreign policy.

Agreed minutes

An agreed minute is an informal instrument, which may or may not be a treaty. Agreements and conventions are often accompanied by an exchange of side-letters or an agreed minute,¹¹⁴ which serve to provide elaboration on an issue¹¹⁵ or reflect points of interpretation in a negotiation that do not appear in the main body of the text.¹¹⁶ The use of signed records of minutes alone frequently reflects the provisional or tentative nature of the exchange or the perception of its level of importance.

Interim agreements

In those instances when states are unable to reach complete agreement on a problem, a *modus vivendi* may be reached through an interim agreement or arrangement. In such cases the parties are unable to reach a full or final resolution of the issue and seek accordingly to arrive at interim or temporary measures pending a settlement of a particular problem or certain overall aspects of a dispute.

The style 'interim agreement' or 'arrangement' is often used as a device for reaching a *modus vivendi* or temporary solution. In the dispute over

the status of Macedonia, between Greece and the ex-Yugoslav Republic, Greece reached an interim agreement on relations and lifted its embargo on Macedonia.¹¹⁷ In other disputes, such as over fisheries for example, an exchange of notes constituting an interim agreement has been used for example between the UK and Iceland in the Cod War.¹¹⁸ The agreement, which set out fishing areas, time periods for fishing and size of trawlers, ran for two years. Article 3, in particular, provided that the termination of the agreement would not affect the legal position of either party with respect to the substantive dispute. The provision of a time limit on the duration of this agreement is generally found in arrangements of this type, although the actual title 'interim agreement' need not necessarily be used. For example the agreement between the government of the Gilbert Islands and the government of Japan of 26 June 1978,¹¹⁹ concerning the coasts of the Gilbert Islands, entered into force on signature and ran for two years.

It is clear that by nature, interim agreements, especially of this type, are at best temporary 'holding arrangements' and in consequence the parties face the prospect of almost continuous renegotiation of interim arrangements or arrangements to replace them.

The side-stepping of an issue holding up an interim solution is well illustrated by the Soviet–Japanese Interim Fishing Agreement of 24 May 1977. The dispute over the 200-mile exclusive fishing zone extension by Japan was complicated by the long-standing conflict over the disputed northern islands. The interim agreement used the manoeuvre of side-stepping the territorial stumbling-block and focused on fisheries only. Article 8 of the agreement provided that no provisions of the agreement could be 'construed so as to prejudice the positions ... of either Government ... in regard to various problems in mutual relations'.¹²⁰

Interim agreements are also frequently used in air-services negotiations. The interim agreement provides a temporary mechanism to enable air services to be revised or new routes and frequencies added. For example the United States–Federal Republic of Germany Interim Agreement on Aviation Transport Services of 27 April 1993 has been periodically revised.¹²¹

Interim agreements can be used in circumstances other than those in which the parties are in considerable dispute over an issue. Thus a state may wish to establish a temporary framework pending more technical negotiation. For instance a substantial rise in financial investment in a foreign country by a state's corporation may lead it to consider an interim agreement on investment protection with that country, for reasons of political confidence.¹²² Again, pending a comprehensive arrangement, states may seek an interim arrangement, as for example with the USA–GDR agreement, in this case termed an agreed minute on consular matters: 'The two governments agreed that pending entry into force of a comprehensive consular agreement their consular relations will be based on the Vienna Convention on Consular Relations, which they regard as

the codification in most material respects of customary international law on consular relations.¹²³ In the event that international agreement is seen as unlikely or the terms possibly unacceptable, states also sometimes safeguard their interests through an interim agreement, as for example the agreement between the USA, UK, FRG and France on interim arrangements¹²⁴ of 2 September 1982 relating to the regime for exchanging coordinates of deep seabed mining operations for polymetallic modules.

Formalities of treaties

The following section examines some of the formal questions concerned with finalising and concluding treaties.

Language

A bilateral treaty drawn up between two countries sharing the same language will be drawn up using that language. A treaty may, however, be drawn up in a language other than that of the parties. In those cases in which the treaty is drawn up in the language of three parties and a third language (e.g. French, Korean or English), the third language normally prevails in the event of any divergence of interpretation.¹²⁵ In cases in which more than one language is used,¹²⁶ particularly in a bilateral treaty, it is important that the languages used in the texts are harmonised by the appropriate drafting group to minimise excessive divergence of meaning.

The languages of treaties prepared under the auspices of the UN are Arabic, Chinese, English, French, Russian and Spanish, the official working languages of the UN.

Signature

Bilateral treaties are prepared for signature in duplicate in order that each of the two parties may have precedence in the original it retains, in terms of, if appropriate, language and title. Each country will appear first in the title and preamble of the original it retains and in the order of signature either above or to the left of the document. The country in whose capital the treaty is going to be signed is normally responsible for preparing the treaty for signature. Unless a treaty provides otherwise, it will come into effect from the date of signature. Exceptions to this are those instruments that make the entry into force of the treaty dependent on ratification. Entry into force is then achieved through an exchange of instruments of ratification.¹²⁷

In exceptional circumstances, a treaty, subject to ratification, may come into force provisionally, pending the ratification – for example the Malaysia–Indonesia Trade Agreement, 16 October 1973 (Article VIII).¹²⁸

Initialling and signature

In some circumstances, particularly if there is likely to be some delay before the conclusion of negotiations and signature, a treaty may be initialled as a means of authenticating the text. Initialling itself can be the equivalent of signature if this is the agreed intention of the parties. This is the case with less formal instruments, such as memoranda of understanding. In other cases, initialling may really mark a stage in the negotiating process, for example where a text is referred back to their governments by the negotiators. Further contact or negotiation may be required before a text is agreed for signature.

Entry into force

Entry into force may be made conditional on matters other than the number of ratifications. This is especially so in respect of technical international agreements. In international shipping agreements, entry into force may be made conditional on ratification or accession by states possessing a particular percentage of world gross shipping tonnage in order to give the greater effectiveness. Entry into force after signature (e.g. 90 days) is a device that enables the parties to make the appropriate technical adjustments, or administrative changes (e.g. in civil aviation schedules, visa regulations). In international loan agreements entry into force in multiparty instruments of the World Bank, or ADB, is made conditional on the subsidiary loan arrangements being concluded satisfactorily, and the loan becomes effective at a date specified in the agreement, for example 90 days after signature.

Registration

The concept of registering treaties has essentially been aimed at lessening the effect of secret diplomacy. By requiring states to register their treaties and agreements it was hoped to bring greater openness into international relations. The concept of registration was especially associated with US President Woodrow Wilson (open covenants of peace, openly arrived at). The League of Nations provided for registration under Article 18 and in particular that 'no such treaty shall be binding until so registered'. A significant change in Article 102 of the Charter of the United Nations from Article 18 is avoidance of the principle that unregistered treaties would lack binding force for the parties in question. As for the act of registration itself, registration of an instrument does not confer on that instrument the status of a treaty or agreement. In other words, registration cannot validate or make effective instruments that have failed to fulfil the requirements laid down by international law. On the other hand, failure to register a treaty or agreement does not invalidate it, though the position of

the parties may be affected before organs of the UN. Instruments lodged with the UN Secretariat for registration include: treaties and agreements concluded between states, and made by or with the specialised agencies and other organs of the UN; declarations accepting the compulsory jurisdiction of the ICJ; and other miscellaneous treaty matters such as terminations, ratifications, accessions and details of supplementary treaties.

Regulations to give effect to Article 102 were passed by the General Assembly in 1946 and have been modified on a number of occasions. The 1978 amendments in particular limited publication of agreements by giving the Secretariat the option of not publishing a registered bilateral or international agreement *in extenso* if it fell into one of three categories: technical assistance agreements (financial, commercial, administrative and technical); agreements relating to organisation of meetings or conferences; or agreements to be published in series other than *UNTS*. The restriction on publications was – formally at least – for reasons relating to the increase in the volume of treaties and cost. The effect of this little-known amendment has been considerable. For example the World Bank (IBRD), and International Finance Corporation (IFC) agreements are not normally published but available on special request only. In general, however, most states in practice take a restrictive view of registration out of political preference, for administrative reasons, or the wish to maintain the confidential nature of a transaction. Conversely, there are those high-profile states who selectively use registration – for example of aid or technical assistance agreements – to demonstrate their ‘active’ involvement in international relations, for example Germany and Japan.

Duration

Unless a treaty specifically expresses otherwise, no specific duration is set. In those cases in which it is felt necessary (e.g. visa abolition, investment protection agreement, commodity supply arrangement or technical assistance agreement on training) to limit the duration, a specific provision is required on the length of the agreement and the procedures to be allowed upon expiry.

A common device used in certain agreements is the so-called ‘revolving formula’ by which – upon the expiry of an agreement – provision is made for the continuation of the agreement for further periods of one year, provided that neither of the contracting parties indicates in writing to the contrary by a specified date prior to expiry.

Reservation

A reservation is a unilateral statement in whatever form made by a state when signing, ratifying or acceding to a treaty, issued with the intention of excluding or modifying the legal effects of particular provisions.

Reservations in this sense should be distinguished from interpretative statements made during the negotiation process and declarations made by states on signature, ratification or accession. Such statements or declarations could take the form of clarification of provisions that are unclear or ambiguous. Insofar as a declaration seeks to modify the intention of a provision or denounce as non-applicable or unacceptable a provision, then the better view is that it should be considered as a reservation.

The question of reservations' effect becomes acute with regard to multilateral agreements. The issue of reservations can also be relevant in a bilateral treaty context. In a bilateral treaty, specific provision can be made through either an accompanying confidential memorandum of understanding or in an attached protocol.

As regards multilateral instruments, the issues that arise include the effect on:

- the position of a state that accedes to a treaty with reservations vis-à-vis the treaty
- states objecting to the reservation vis-à-vis the reserving state
- those states who accept the reservations.

For example the issues are illustrated in the case of the separate objections of Hungary, FRG and Belgium to the individual reservations made by Bahrain, Egypt and Morocco to Article 27(3) of the Vienna Convention on Diplomatic Relations.¹²⁹

In an attempt to overcome those types of difficulties, many international conventions adopt a 'no reservations' formula, or a provision to the effect that reservations are not permitted unless otherwise specifically allowed for in the provisions.

The review of the issue by the International Law Commission concluded by recommending that, in those cases where reservations were permitted, it would be a matter for the objecting state as to how it would view its relations with the reserving state. This approach is amplified in Articles 20 and 21 of the 1969 Vienna Convention on the Law of Treaties.¹³⁰

Notice of termination

When considering the question of termination, it is important to distinguish termination that is permitted or implied within a treaty from unilateral denunciation or withdrawal. A treaty may be considered to remain in force unless it has been brought to an end by provisions in the treaty relating to expiry or lapse, or the parties have consented, in the absence of such provisions, to terminate it. Many treaties contain provisions of this kind, which set a specified period for the duration of the treaty.¹³¹

The right of termination proper is provided for in modern treaty practice through provisions for denunciation or withdrawal from the treaty upon giving a specified period of notice. Provisions may be drafted to allow

for a withdrawal or denunciation after an initial period (e.g. three years following entry into force) or withdrawal at any time upon notice, taking effect generally six months after receipt of the notification of denunciation or withdrawal. An exception to the latter is for the withdrawal or denunciation at any time to take immediate effect. An example of this is Article XVIII of the Articles of Agreement of the IMF, 27 December 1945.¹³² More difficult is the question of under what circumstances a state may unilaterally withdraw from a treaty that contains no provision for withdrawal or denunciation with or without notice. While in the main unilateral withdrawal under these circumstances is contentious, grounds may exist if there is evidence to indicate the parties intended a right of unilateral termination on notice, or the subject matter of the treaty implied the existence of such a right.

Article 56(1) of the Vienna Convention on the Law of Treaties provides that:

A treaty which contains no provision regarding its termination and which does not provide for denunciation or withdrawal is not subject to denunciation or withdrawal unless:

- a. it is established that the parties intended to admit the possibility of denunciation or withdrawal; or
- b. a right of denunciation or withdrawal may be implied by nature of the treaty.

The scope for dispute, however, in instances of unilateral withdrawal from a treaty which does not contain provision for withdrawal or denunciation is considerable. At this point it is sufficient to note that the Vienna Convention on the Law of Treaties nevertheless sets out three possible grounds a party may invoke for terminating or withdrawing from a treaty:

- a material breach of a bilateral treaty by one of the parties (Article 60(1))
- impossibility of performance (Article 61(1)), although this may not be invoked by a party if inability to carry out the obligation is a result of the breach of the obligation by that party of the treaty (Article 61(2))
- fundamental change of circumstances (Article 62).

The convention follows a relatively restrictive definition of fundamental change:

1. A fundamental change of circumstances which has occurred at the time of the conclusion of a treaty and which was not foreseen by the parties, may not be invoked as a ground for terminating or withdrawing from a treaty unless:

- (a) the existence of those circumstances constituted an essential basis for the consent of the parties to be bound by the treaty; and

- (b) the effect of the change is radically to transform the extent of obligations still to be performed under the treaty.
- 2. A fundamental change of circumstances may not be invoked as a ground for terminating or withdrawing from a treaty:
 - (a) if the treaty establishes a boundary; or
 - (b) if the fundamental change is the result of a breach by the party invoking it either of an obligation under the treaty or of any other international obligation owed to any other party to the treaty.
- 3. If, under the foregoing paragraphs, a party may invoke a fundamental change of circumstances as a ground for terminating or withdrawing from a treaty it may also invoke the change as a ground for suspending the operation of the treaty.

A notice of termination, withdrawal or denunciation is communicated through the diplomatic channel from the relevant authority to the other party or parties, or depository government or authority.

The notice must follow the manner and procedure provided for in the treaty or in the Vienna Convention. Unless the treaty provides otherwise, conditions cannot be attached, and the notice of termination will apply automatically to any other documents integral to the treaty, such as protocols, annexes, agreed minutes and declarations.

The notice takes effect from the period set, if any, from the date of deposit of the notice with the other party. It may be withdrawn or revoked before it takes effect.

Summary

In this chapter we have examined the range of modern international agreements. Along with the growth in the volume of treaties and agreements, a notable trend is in the diversity of instruments. Of the range of instruments in British practice, exchange of notes and agreements are the most frequently used.¹³³ A more important feature of the diversity of instruments is the increasing use of informal instruments such as memoranda of understanding and gentlemen' agreements. Informal instruments are often used for reasons of administrative ease, speed and political or commercial secrecy. Use of such instruments does give rise to a number of issues, including the effect on public accountability and the enhancement of bureaucratic power in diplomacy. There are, too, inevitably problems connected with the interpretation and binding nature of informal instruments, particularly memoranda of understanding, in the event of political and administrative change.

A final important change is in the content of agreements. States and other entities conclude agreements in order to manage better particular aspects of their external relations. Thus greater governmental involvement

in the economic sector has seen the emergence of a number of novel government-directed trade agreements. On the other hand, failure to accommodate conflicting interests has resulted in increasing use in many areas of interim-type agreements, which in themselves reflect the fragility and incompleteness of the understandings. Apart from using agreements to promote interests and resolve conflict, states seek to reduce risk. In this respect in particular the content of agreements is rapidly altering to reflect the broader diplomatic agenda, with agreements on such matters as investment protection, counter-terrorism and the intergovernmental regulation of securities markets. Above all, the expansion in the subject matter of agreements underlines the growing fusion of public and private interests in many areas of modern diplomacy.

Notes

1. Treaty collections vary considerably in terms of availability and coverage. For treaties deposited with the United Nations, see the *Multilateral Treaties deposited with the Secretary-General* (ST/LEG/SER.E.22) and the *UN Treaty Series (UNTS)*. The *UNDOC* current index ST/LIB/SER.M.71 (part II) contains information on texts, reports of conferences and occasionally information on registers of certain treaties, e.g. UNEP. Countries produce information on agreements concluded in gazettes and foreign-ministry bulletins, while a number have national treaty series. For example, US treaties are published on a calendar basis in *United States Treaties and Other International Agreements (UST)* and singly in the *Treaties and Other International Acts Series (TIAS)* published by the Department of State. Other relevant sources are *Foreign Relations of the United States, Treaties in Force, the Federal Register, Digest of US Practice in International Law* and *Department of State Bulletin*. UK treaties appear as Command Papers and on entry into force in the *UK Treaty Series (UKTS)*, which is indexed annually. For a consolidated index see Clive Parry and Charity Hopkins, *An Index of British Treaties 1969–1988* (HMSO, London, 1991). European Community treaties with third parties can be found, along with internal directives, in the *Official Journal*. The external treaties of the Community are in *Treaties, Agreements and Other Bilateral Commitments Linking the Communities with Non-Member Countries* (I/29/84 EN) and *The European Community, International Organisation and Multilateral Agreements*, 3rd rev. edn (Commission of the European Communities, Luxembourg, 1983). Other sources for agreements and related documents can be found in *International Legal Materials* and the various yearbooks of national and international law associations and similar organisations. For example the *Italian Yearbook of International Law* has a treaty section and the Japanese *Annual of International Law* has a documents section and a chronological list of bilateral and multilateral treaties concluded by Japan. M.J. Bowman and D.J. Harris, *Multilateral Treaties: Index and Current Status* (University of Nottingham Treaty Centre, Nottingham, 1992) is a useful general (though essentially European-based) index of agreements, which does not cover other regional agreements, for example ASEAN trade law or other functional areas. ASEAN agreements are contained in the *ASEAN*

Documents Series (ASEAN Secretariat, Jakarta); ILO agreements can be found inter alia in the ILO *Conventions and Recommendations*, 1919–92 (ILO, 1992). For the International Civil Aviation Organisation (ICAO) in the index to ICAO publications, see Thomas Buergenthal, *Law Making in the International Civil Aviation Organisation* (Syracuse University Press, Syracuse, N.Y., 1969); see pp. 231–6 for a note on ICAO documentation; *International Conference on Air Law*, Doc 9775-DC/2; James R. Fox *The Regulations of International Commercial Aviations* (Oceana Publications, Dobbs Ferry, New York, 2006) and M.H. Claringbould, *Transport: International Transport Treaties* (Kluwer, Antwerp, 1986). Council of Europe agreements are published in the *European Treaty Series (ETS)*. For agreements on maritime law, see R.R. Churchill and A.V. Lowe, *The Law of the Sea* (Manchester University Press, Manchester, 1985), and R.R. Churchill and Myron Nordquist (eds), *New Directions in the Law of the Sea*, vols 1–11 (Oceana Publications, Dobbs Ferry, N.Y., 1973–81). The office of the Special Representative of the Secretary-General for the Law of the Sea has begun to collate data on the history of the Law of the Sea Convention, as well as treaties relevant to it. Among these are *The Law of the Sea: Pollution by Dumping* (United Nations, New York, 1985) and *Multilateral Treaties Relevant to the United Nations Convention on the Law of the Sea* (United Nations, New York, 1985). Charles Rousseau and Michel Virally' *Revue générale de droit international public* (A. Pedone, Paris, 1986) is a very useful survey of a wide range of current international issues, covering, for example, agreements, territorial claims, disputes and breaks or resumptions of diplomatic relations. A valuable collection of treaty provisions for dispute settlement can be found in *A Survey of Treaty Provisions for the Pacific Settlement of International Disputes* (United Nations, New York, 1966); Yves Derains and Eric A. Schwartz, *A Guide to New ICC Rules of Arbitration* (Kluwer, Hague, 1998).

2. For discussion of the main issues concerning treaties, see Lord McNair, *The Law of Treaties* (Clarendon Press, Oxford, 1961) ch. 15, pp. 272–305 and, Anthony Aust *Modern Treaty Law and Practice* (Cambridge University Press, Cambridge, 2009). On rules concerning interpretation of treaties, see: L. Oppenheim, *International Law: A treatise*, vol. 1, 8th edn; H. Lauterpacht (ed.) (Longman, London, 1967), pp. 950–8. See also Ian Brownlie, *Principles of International Law*, 3rd edn (Oxford University Press, London, 1979); D.P. O'Connell, *International Law*, 2nd edn (Stevens and Sons, London, 1970); T.O. Elias, *The Modern Law of Treaties* (A.W. Sijhoff, Leiden, 1974); Paul Reuter, *Introduction au droit des traités* (Armand Colin, Paris, 1972).
3. UN Doc. A/Conf. 39/27, 23 May 1979, and UKTS, no. 58, Cmnd. 7964. The convention entered into force on 27 Jan. 1980. See UN Multilateral Treaties, ST/LEG/SER.G/, 1982, p. 619.
4. See Vienna Convention on the Law of Treaties between States and International Organisations or between International Organisations, which was opened for signature on 21 March 1986. For text see Rousseau and Virally, op. cit., pp. 501–44.
5. For further discussion of this point see Lord Gore Booth, *Satow' Guide to Diplomatic Practice* (Longman, London, 1979), p. 236, and McNair, op. cit.
6. Gore Booth, op. cit., p. 238.
7. The provisions are pursuant to 1 USC 1126 (the Case-Zablocki Act) requiring disclosure to Congress of all concluded agreements and consultation by agencies with the Secretary of State over proposed agreements. See *Code of Federal Regulations (CFR)*, vol. 22, 1985, pp. 448–54.

8. *Ibid.*, p. 448.
9. *Ibid.*, p. 450.
10. See O'Connell, *op. cit.*, pp. 195–205 on the classification of treaties.
11. Gore Booth, *op. cit.*, pp. 240–1.
12. North Atlantic Treaty, 4 April 1949, *UNTS*, vol. 34, p. 243; South-East Asia Collective Defence Treaty, 8 Sept. 1954, *UNTS*, vol. 209, p. 23. By a decision of the council of the South-East Asia Treaty Organisation on 24 Sept. 1975, the organisation ceased to exist as of 30 June 1977. The Collective Defence Treaty, however, remains in force; Treaty of Amity and Co-operation in South-East Asia, 24 Feb. 1976, *Foreign Affairs*, Malaysia (March 1976), p. 80; the Latin American Free Trade Area, established by the Treaty of Montevideo, 18 Feb. 1960, was replaced by the Latin American Integration Association, concluded at Montevideo on 12 Aug. 1980: *ILM*, vol. 20, p. 672. Treaty Establishing the European Economic Community (EEC), *UNTS*, vol. 298, p. 11. The Economic Community of West African States was set up by the Treaty of Lagos, 27 May 1975: *West Africa*, 16 June 1975, p. 679; while the treaty establishing the East African Community came into force on 1 Dec. 1967. The Community was dissolved in 1977 and finally wound up on 10 July 1984. See *The Times*, 12 July 1984.
13. See Bowman and Harris, *op. cit.*, pp. 481–90.
14. Hans Blix and Jirina H. Emerson, *The Treaty Maker's Handbook* (Ocean Publications, Dobbs Ferry, NY, 1973). On the effect of international revolution on diplomatic style, see Philippe Ardant, 'China' diplomatic practice during the Cultural Revolution, in Jerome A. Cohen, *China's Practice of International Law* (Harvard University Press, Cambridge, Mass., 1972), pp. 86–128.
15. See Treaty between the United Kingdom and France on Implementation of Frontier Controls at the Sea Ports of Both Countries on the Channel and North Sea, 4 Feb. 2003, UK Treaty Series, no. 18 (2004).
16. *UNTS*, vol. 500, p. 95. Entered into force, 24 April 1964.
17. *UNTS*, vol. 596, p. 261. Entered into force 19 March 1967.
18. *UKTS*, no. 11, 1976, Cmnd. 6397.
19. Conventions for the protection of war victims concerning (a) amelioration of the conditions of the wounded and sick armed forces in the field (238); (b) amelioration of the condition of wounded sick and shipwrecked members of armed forces at sea (239); (c) treatment of prisoners of war (240); (d) protection of civilian persons in time of war (241), *UNTS*, vol. 75, p. 31.
20. *UNTS*, vol. 520, p. 151; vol. 557, p. 280.
21. *UNTS*, vol. 15, p. 295; Thomas Buergenthal, *op. cit.*
22. *UNTS*, vol. 310, p. 181.
23. *UNTS*, vol. 860, p. 105.
24. See Convention on Customs Treatment of Pool Containers used in International Transport, 21 Jan. 1994, *UKTS*, no. 13, 2004, Cmnd. 6151.
25. UN Convention against Corruption, 11 Dec. 2003, 43 *ILM*, 37, 2004.
26. The UN Convention Against Transnational Organised Crime entered into force on 29 Sept. 2003.
27. See UN Convention Against Corruption, *op. cit.*, Articles 3 and 10.
28. See UN–Guatemala Agreement for the establishment of a commission for the investigation of illegal groups and clandestine security organisations (CICLACS), 7 Jan. 2004, 43 *ILM* 515, 2004.

29. See Edward W. Plowman, *International Law Governing Communications and Information* (Frances Pinter, London, 1982).
30. European agreement on transfer of responsibility for refugees, 16 Oct. 1980, Misc. no. 3, 1981, Cmnd. 8127.
31. Council of Europe, *Directorate of Human Rights of Aliens in Europe* (Martinus Nijhoff, Dordrecht, 1985).
32. Convention on Long-Range Trans-Boundary Air Pollution, 13 Nov. 1979, Misc. no. 10, 1980, Cmnd. 7885.
33. Done at London 2 Nov. 1973; entered into force 2 Oct. 1983; see R.R. Churchill and A.V. Lowe, *op. cit.*, pp. 220–1.
34. UKTS, no. 46, 1980, Cmnd. 7874.
35. See R.P. Barston and P.W. Birnie, *The Maritime Dimension* (George Allen & Unwin, London, 1980), pp. 116–20.
36. UK Misc. no. 11, 1983, Cmnd. 8941.
37. See Churchill and Nordquist, *op. cit.*; for further discussion on the evolution of state practice see R.P. Barston, 'The Law of the Sea', *Journal of World Trade Law*, vol. 17, no. 3, May–June 1983, pp. 207–23; R.P. Barston 'The Third UN Law of the Sea Conference', in G.R. Berridge and A. Jennings, *Diplomacy at the UN* (Macmillan, London, 1985), pp. 152–71; R.P. Barston, *International Politics Since 1945* (Elgar, Aldershot, 1991), pp. 133–61.
38. UNTS, vol. 978, p. 361.
39. Chia-Jui Cheng, *Basic Documents on International Trade Law* (Martinus Nijhoff, Dordrecht, 1986).
40. See J.R.V. Prescott, *The Maritime Political Boundaries of the World* (Methuen, London, 1985); Philphot Tansubkul, *Asean and the Law of the Sea* (Institute of Southeast Asia Studies, Singapore, 1982).
41. See Kenneth Rogoff and J. Zettelmayer, *Bankruptcy Procedures for Sovereigns: A history of ideas*, IMF Staff Papers, vol. 49, no. 3, 2002, pp. 470–507; Takatoshi Itoh and D. Folkerts-Landau, *International Capital Markets* (IMF, Washington, DC, 2005); R.P. Barston, *International Politics Since 1945*, pp. 77–82.
42. J.E. Carroz and M.J. Savini, 'The New International Law of Fisheries emerging from bilateral agreements', *Marine Policy*, vol. 3, 1979, pp. 79–98; P. Coper, 'The impact of UNCLOS III on management of the world's fisheries', *ibid.*, vol. 5 (1981), pp. 217–28; FAO, *Fisheries Technical Paper*, no. 223 (FIPP/T223, 1982); *International Joint Ventures in Fisheries* (FAO, Rome, 1983); Gerald Moore, 'Limits of territorial seas, fishing zones and exclusive economic zones' (FAO, Rome, 1985); *Coastal State Requirements for Foreign Fishing* (FAO, Rome, 1985).
43. Anthony Sampson, *Empires of the Sky. The Politics, Contests and Cartels of World Airlines* (Hodder & Stoughton, London, 1985).
44. *10 Years ASEAN* (ASEAN Secretariat, Jakarta, 1977), pp. 125–32; *Foreign Affairs*, Malaysia, March 1976, pp. 21–6.
45. See Preferential Trading Agreement, 1977, and amending Protocols, on [www.ASEANsec.org].
46. Agreement on the Establishment of the ASEAN Cultural Fund (ASEAN Documents, Jakarta, 1980), pp. 76–80.
47. UKTS, no. 19, 1995, Cmnd. 6176.
48. UKTS, no. 78, 1992, Cmnd. 2105.
49. UKTS, no. 38, 1992, Cmnd. 1961.
50. UKTS, no. 32, 1983, Cmnd. 8932.

51. *UKTS*, no. 44, 1980, Cmnd. 7917.
52. *UKTS*, no. 12, 1993, Cmnd. 2223.
53. *UKTS*, no. 47, 2003, Cmnd. 6021.
54. *UKTS*, no. 20, 2004, Cmnd. 6186.
55. *Foreign Affairs*, Malaysia, Dec. 1976, p. 57.
56. MOU ASEAN–People’s Republic of China on Cooperation in Non-Traditional Security Issues, 10 Jan. 2004. Malaysia–Saudi Arabia Investment Guarantee Agreement 2002.
57. ASEAN Documents Series, *Economic Report 2001–2* (Ministry of Finance, Malaysia, 2002), p. 243.
58. *Foreign Affairs*, Malaysia, March 1982, p. 92.
59. *Foreign Affairs*, Malaysia, Sept. 1971, p. 93.
60. *Foreign Affairs*, Malaysia, Dec. 1994, p. 63.
61. *Foreign Affairs*, Malaysia, June 2002, p. 65.
62. *Kertas Statut*, 43 Tahun 1982.
63. *Kertas Statut*, 116 Tahun 1983.
64. *Foreign Affairs*, Malaysia, March 1995, p. 49.
65. *Foreign Affairs*, Malaysia, May 2007, p.60.
66. *Foreign Affairs*, Malaysia, Sept. 2005, p.25.
67. *UKTS*, no. 40, 2003, Cmnd. 5982.
68. *UNTS*, vol. 962, p. 399.
69. 31 *ILM*, 498, 1992.
70. See Victor Rodríguez Cedeño, *Seventh Report on Unilateral Acts of States*, International Law Commission, A/CN.4/542, 22 April 2004, pp. 34–5.
71. See *Bulletin of the European Community*, vol. 24, 1991, no. 12, pp. 120–1.
72. See Cedeño, *op. cit.*, p. 34.
73. See Cedeño, *op. cit.*, p. 28.
74. *UNTS*, vol. 7, p. 73.
75. *UNTS*, vol. 456, p. 301.
76. See [www.auswae.tiges-omt.de/cae/servlet/...Expertentreffen071130.pdf].
77. See R.P. Barston and Patricia Birnie, ‘The Falkland Islands/Islands Malvinas Conflict: A question of zones’, *Marine Policy*, vol. 7, no. 1, Jan. 1983, p. 20 *passim*.
78. *Financial Times*, 14 June 1984.
79. *UNTS*, vol. 1, p. xvi.
80. Security treaty between Australia, New Zealand and the United States (ANZUS), 1 Sept. 1951, in J.A.S. Grenville, *The Major International Treaties 1944–73* (Methuen, London, 1974), pp. 337–9.
81. *League of Nations Treaty Series (LNTS)*, vol. 94, p. 57.
82. *The Guardian*, 4 July 1984.
83. *UNTS*, vol. 4, p. 275.
84. *UNTS*, vol. 87, p. 103.
85. *UKTS*, vol. 67, 1946, Cmnd. 7015.
86. *UNTS*, vol. 935, p. 405.
87. *LNTS*, vol. 93, p. 343.
88. *UNTS*, vol. 71, p. 101.
89. Misc. no. 11, 1983, Cmnd. 8941.
90. Olive Oil Agreement extended by Protocol, 23 March 1973, *UKTS*, no. 58, 1979, Cmnd. 7581; International Coffee Agreement, extended 26 Sept. 1974, *UNTS*, vol. 982, p. 332; and Protocol for the Fourth Extension of the Wheat Trade Convention, 26 April–17 May 1978, *UKTS*, no. 1, 1980, Cmnd. 7775.

91. Protocol on Procedures and Conditions for Japanese Salmon Fishing in the North East Pacific Ocean, *UNTS*, vol. 1402, p. 253.
92. *UKTS*, no. 50, 2003, Cmnd. 6082.
93. The Anglo–Swedish Convention for the Avoidance of Double Taxation (as amended) 27 Sept. 1973, *UKTS*, no. 33, 1974, Cmnd. 5607, is a good illustration of this usage, with the protocol being used as the means to bring into effect the several amendments to the convention.
94. See, for example, the modification of Article 56 of the Convention on Civil Aviation of 7 July 1971, extending the membership of the Air Navigation Commission from 12 to 15 members, *UNTS*, vol. 958, pp. 217–18.
95. See, for example, the protocol amending the Paris Convention on Obscene Publications, 4 May 1949, *UNTS*, vol. 47, p. 159.
96. *UNTS*, vol. 951, p. 187.
97. Paris, 16 Dec., 1971, *UKTS*, no. 58, 1971, Cmnd. 4739.
98. Protocol supplementary to the Air Services Agreement, 13 April 1970 between the United Kingdom and Soviet Union, *UKTS*, no. 42, 1970, Cmnd. 4388.
99. 21 Feb. 1973, *UNTS*, vol. 963, p. 267.
100. Vienna Convention on Consular Relations, 24 April 1963, *UNTS*, vol. 596, pp. 262 and 470, and Optional Protocol Concerning the Compulsory Settlement of Disputes, p. 488.
101. UK Misc. no. 51, 1972, Cmnd. 5164.
102. Protocol to the Agreement on Ending the War and Restoring Peace in Vietnam Concerning the Return of Captured Military Personnel and Captured Foreign Civilians, *UNTS*, vol. 935, 1974, p. 202.
103. 7 March 1974, *UNTS*, vol. 945, p. 163.
104. See, for example, financial protocol between the EC and Greece 28 Feb. 1977, *UKTS*, no. 91, Cmnd. 7839, and between the EC and Cyprus (with Final Act), 15 Sept. 1977, *UKTS*, no. 31, 1979, Cmnd. 7490.
105. See McNair, *op. cit.*, p. 15.
106. Anthony Aust, ‘Memoranda of understanding: the theory and practice of informal international instruments’, *The International and Comparative Law Quarterly*, vol. 35, 1986, pp. 787–812.
107. A number of institutions in the Commonwealth have been set up by informal instruments. The Commonwealth Secretariat was established by an unsigned and undated ‘Agreed Memorandum’, Cmnd. 2713.
108. See *IMO News*, no. 3, 2002, pp. 8–9.
109. *Financial Times*, 11 May 1993.
110. 31 *ILM*, 1071, 1992.
111. *Foreign Affairs*, Malaysia, March 1981, p. 89.
112. 31 *ILM*, 1094, 1992.
113. *Hansard*, 9 Dec. 1985, Cols 623, 629, 631, 634.
114. The defence-leasing arrangements between the UK and the USA for the Turks and Caicos Islands provide a good illustration of the use of a memorandum of understanding and an agreed minute. The memorandum to the main agreement deals with, *inter alia*, exemption from taxation and the status of local regulations, while the agreed minute refers to Article X of the agreement on civil claims, and clarifies the procedures under which islanders can make claims against the US government. See *UKTS*, no. 42, 1980, Cmnd. 7915.

115. United States–German Democratic Republic Agreed Minute on Negotiations Concerning the Establishment of Diplomatic Relations, 4 Sept. 1974, *UNTS*, vol. 967, p. 336.
116. The agreed minute in this case records the main issues and points of interpretation in the negotiations. See *UNTS*, vol. 953, p. 293. Cf. United States–Philippines Agreement of 30 April 1974 (agreed minute) *UNTS*, vol. 953, p. 161.
117. See Cedeño, *op. cit.*, FN 100, pp. 28–9.
118. *UKTS*, no. 122, 1973, Cmnd. 5484.
119. *Kiribati Gazette*, no. 5, 29 May 1981.
120. See Horoshi Kimura, ‘Soviet and Japanese negotiating behaviour’, *Orbis*, vol. 24, no. 1, Spring 1980, p. 67.
121. United States–Federal Republic of Germany Interim Agreement on Aviation Transport Services, 27 April 1993. Text: Department of State.
122. See the interim agreement between France and the Republic of Korea of 22 Jan. 1975. The agreement entered into force on signature and provided for termination either on the entry into force of the reciprocal convention or within a maximum of three years; *UNTS*, vol. 971, p. 385.
123. *UNTS*, vol. 967, p. 336.
124. *UKTS*, no. 46, 1982, Cmnd. 8685.
125. The English text of the 25 June 1971 Soviet–Argentinian trade agreement is specifically designated under the provisions of the agreement as the text to be used for interpretation and reference; *UNTS*, vol. 941, p. 14.
126. See F.A. Mann, *Foreign Affairs in English Courts* (Clarendon Press, Oxford, 1986), pp. 107–9 on foreign texts in British courts.
127. In some multilateral treaties the date of entry into force is suspended until some contingent circumstances occur, such as a given number of ratifications is achieved for entry into force.
128. Ministry of Trade, Malaysia, 1973, p. 8.
129. *UNTS*, vol. 798, p. 341; vol. 973, p. 328.
130. Vienna Convention on the Law of Treaties, 22 May 1969, entered into force 27 January 1980. See *UNTS*, vol. 1155, p. 331, and UK Treaty Series no. 058 (1981), Cmnd. 7964.
131. Under Article VI of the Long Term Agreement between the USA and Soviet Union, 29 June 1974, the agreement remained in force for ten years; *UNTS*, vol. 961, p. 118. A further example is the 1975 UK–Poland five-year trade agreement, *UKTS*, no. 64, 1976, Cmnd. 6874. When agreements of this type run out they are frequently kept in force, pending a new agreement, by an exchange of notes. An alternative procedure, if there is a time limit set to the duration of the agreement, is to include a simple provision in the final section to allow for the continuation of the agreement for further periods (e.g. of 12 months), provided that one or more of the contracting parties does not express objection to the continuation.
132. *UKTS*, no. 21, 1946, Cmnd. 6885.
133. A survey of British practice over the period 1972–82 based on the *UK Treaty Series* indicates that exchanges of notes on average account for some 40 percent of the instruments concluded.

Chapter 18

International agreements: case examples

In this chapter we look at five types of international agreements concerning: arrangements for embassies and consulates; trade; financial loans; fisheries; and cultural, educational and technological cooperation.

Arrangements for embassies and consulates

The arrangements regarding the establishment and operation of embassies and consulates are often concluded in the form of informal memoranda of understanding, reflecting their essentially private and sensitive nature, even for states enjoying relatively normal relations. The relevant international agreements concerning the operation and functioning of diplomatic missions include inter alia the Vienna Convention on Diplomatic Relations,¹ the Vienna Convention on Consular Relations,² and the convention on relations between international organisations.³

The issues arising about sites are extensive, including such questions as reversion of title to freehold property; dates and payments under lease arrangements; application of planning regulations, including alteration of buildings; interim arrangements; and the effect of the revision of any site's agreement or obligations under the existing agreement. In some instances, as a mark of political goodwill, economic expediency, or to facilitate securing an appropriate site in congested high-cost national capitals,⁴ reciprocal arrangements are agreed to charge nominal or token rent. The vacation of existing embassy premises and provisions for new premises involve similar, often lengthy negotiations. The following extract from the UK–Oman Agreement⁵ illustrates a number of these, including: vacation of existing property; cost of relocation and title; planning; and cessation of use.

Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Sultanate of Oman concerning the vacation of the British Embassy Compound in Muscat and the provision of new British Embassy premises

The Government of the United Kingdom of Great Britain and Northern Ireland ('The Government of the United Kingdom'), and The Government of The Sultanate of Oman ('The Government of the Sultanate of Oman').

Wishing to arrange for the vacation of the existing British Embassy premises and the provision of new British Embassy premises with freehold title;

Have agreed as follows:

Article 1

The Government of the United Kingdom shall:

- (a) on or before 31 January 1993 vacate that part of the existing British Embassy premises marked in red as 'Site Area A' on the plan attached at Annex A;
- (b) on or before 1 January 1995, vacate the remainder of the existing British Embassy premises marked in green as 'Site Area B' on the plan attached at Annex A;
- (c) on or before 1 January 1995, vacate the additional site at the existing British Embassy premises known as the British Embassy tennis court, marked in yellow as 'Site Area C' on the plan attached at Annex A;
- (d) on or before 1 January 1995, vacate the additional site at the existing British Embassy premises known as the British Embassy Escort Lines, marked in red as 'Site Area D' on the plan attached at Annex B.

Article 2

The Government of the Sultanate of Oman shall take sole possession of and responsibility for those parts of the existing British Embassy premises specified in Article 1 of this Agreement on the day following the date of vacation by the Government of the United Kingdom.

Article 3

The Government of the Sultanate of Oman shall:

- (a) in accordance with the schedule set out below, pay to the Government of the United Kingdom the sum of ten million pounds sterling (£10,000,000) by way of contribution towards the cost of relocating the British Embassy:
 - (i) two million five hundred thousand pounds sterling (£2,500,000) upon signature of this Agreement by both parties; and
 - (ii) two million five hundred thousand pounds sterling (£2,500,000) not later than 31 January 1993; and
 - (iii) two million five hundred thousand pounds sterling (£2,500,000) not later than 31 March 1993; and
 - (iv) two million five hundred thousand pounds sterling (£2,500,000) not later than 30 September 1993.
- (b) upon the date on which this Agreement enters into force, transfer absolutely ownership and title to the Government of the United Kingdom of the

site at Al-Khuwair, known as site no. 33, which is marked in red as 'Site Area E' on the plan attached at Annex C, for the purposes of construction of a new British Embassy and related accommodation, such site to include additionally the area of land marked in yellow as 'Site Area F' on the plan attached at Annex C and the existing vehicle access way and existing sub-station site marked in green as 'Site Area G' on the plan attached at Annex C;

- (c) provided the proposed buildings at Al-Khuwair (Site Area E) conform to the laws and regulations enforced by the Muscat Municipality and planning authorities, authorise planning consent for the proposed buildings.

Article 4

The Government of the Sultanate of Oman shall:

- (a) transfer absolutely ownership and title to the Government of the United Kingdom of the site at Rawdha marked in red as 'Site Area H' on the plan attached at Annex D, for the purpose of constructing the Residence of the Ambassador of the United Kingdom of Great Britain and Northern Ireland;
- (b) provided the proposed buildings at Rawdha (Site Area H) conform to the laws and regulations enforced by the Muscat Municipality and planning authorities, authorise planning consent for the proposed buildings;
- (c) in addition to the existing access to Site Area H from the public highway, grant a vehicular right of way to the Government of the United Kingdom over the tracks to the south of Site Area H on to the public highway.

Article 5

In order to secure freehold title to the sites specified in Articles 3 and 4 above for the Government of the United Kingdom, the Government of the Sultanate of Oman shall take all necessary steps according to the law. Such title shall, however, be subject to the following matters:

- (a) such ownership and title are exclusively for the purpose of occupation as the British Embassy with related accommodation and as the Ambassadorial Residence and cannot be assigned or transferred in any way whatsoever to any third party;
- (b) in the event that the Government of the United Kingdom has no further need for the sites for the purposes mentioned above they shall notify that fact to the Government of the Sultanate of Oman in writing. Title to the sites shall revert to the Government of the Sultanate of Oman three months after such notification;
- (c) the sea shore shall not be part of either property. It may be used by the Embassy and Residence, but may not be fenced or otherwise interfered with.

Article 6

This Agreement shall enter into force on the date of signature.

In witness whereof the undersigned, duly authorized thereto by their respective Governments, have signed this Agreement.

Done in duplicate at Muscat this fourth day of January, 1993, in the English and Arabic languages, the two texts being equally authoritative. In case of divergence between the two texts the English text shall prevail.

For the Government of the
United Kingdom of Great Britain and
Northern Ireland
T.J. Clark

For the Government of
the Sultanate of Oman
Qais Zawawi

Consulates

The following example of the UK–PRC mutual agreement to establish consulates-general⁶ illustrates several aspects of consular agreements, including: inviolability and special duty of the receiving state to protect the premises against intrusion or danger (Article 3); number of officers (Article 4); immunity (Article 7); and rights of consular officers to communicate with nationals arrested or committed to prison (Article 8).

Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People's Republic of China on the Establishment of a British Consulate-General at Shanghai and a Chinese Consulate-General at Manchester

The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People's Republic of China;

Proceeding from the common desire to develop friendly relations and strengthen consular relations between the two countries;

Have agreed to establish a Consulate-General of each country in the other, as follows:

Article 1

1. The Government of the People's Republic of China gives its consent to the Government of the United Kingdom to establish a Consulate-General at Shanghai, with the consular district comprising the Shanghai Municipality directly under the jurisdiction of the Central Government and the Provinces of Jiangsu and Zhejiang.
2. The Government of the United Kingdom gives its consent to the Government of the People's Republic of China to establish a Consulate-General at Manchester, with the consular district comprising the counties of Greater Manchester, Merseyside, Lancashire, Tyne and Wear, North Yorkshire, South Yorkshire, West Yorkshire, Durham and Derbyshire.
3. The dates on which the two Governments will establish the above-mentioned Consulates-General shall be determined by mutual agreement.

Article 2

In accordance with the relevant laws and regulations of their respective countries, and following friendly consultation, the Contracting Governments shall mutually provide necessary assistance for the establishment of the Consulates-General, including assistance in the acquisition of premises for the Consulates-General and accommodation for its members.

Article 3

1. The consular premises shall be inviolable. The authorities of the receiving State may not enter the consular premises without the consent of the head of the consular post or the head of the diplomatic mission of the sending State, or a person designated by one of those persons.
2. The receiving State is under a special duty to take all appropriate steps to protect the consular premises against any intrusion or damage and to prevent any disturbance of the peace of the consular post or impairment of its dignity.
3. The provisions of paragraph (1) of this Article shall likewise apply to the residences of consular officers.

Article 4

1. Unless otherwise agreed by the Contracting Governments, the number of members of the consular post shall not exceed the limit of 30 persons, of which that of consular officers shall not exceed the limit of 10 persons, and that of consular employees and members of the service staff shall not exceed the limit of 20 persons.
2. Consular officers shall be nationals of the sending State, and not nationals or permanent residents of the receiving State.

Article 5

1. The receiving State shall take all steps necessary to provide full facilities for the performance of consular functions by the consular officers of the sending State.
2. With the consent of the receiving State, consular officers shall be able to exercise consular functions in areas outside their consular district when necessary. The receiving State shall render necessary assistance in this regard.

Article 6

The receiving State shall treat consular officers with due respect, and shall take all appropriate steps to prevent any attack on their person, freedom or dignity.

Article 7

1. Members of the consular post and members of their families shall be immune from the criminal jurisdiction of the receiving State and shall not be liable to arrest or detention pending trial.
2. Members of the consular post shall be immune from the civil and administrative jurisdiction of the receiving State in respect of any act performed by them in the exercise of consular functions.
3. The provisions of paragraph (2) of this Article shall not apply in respect of a civil action:
 - a. relating to private immovable property situated in the receiving State, unless the member of the consular post holds it on behalf of the sending State for the purposes of the consular post;
 - b. relating to succession in which the member of the consular post is involved as executor, administrator, heir or legatee as a private person and not on behalf of the sending State;
 - c. relating to any professional or commercial activity exercised by the member of the consular post in the receiving State outside his official functions;

- d. arising out of a contract concluded by the member of the consular post in which he did not contract, expressly or impliedly, on behalf of the sending State;
 - e. by a third party for damage arising from an accident in the receiving State caused by a vehicle, vessel or aircraft.
4. No measures of execution shall be taken against any of the persons mentioned in this Article, except in the cases coming under subparagraphs (a), (b) and (c) of paragraph (3) of this Article and provided also that the measures concerned can be taken without infringing the inviolability of the person concerned or of his residence.
 5. Members of the consular post and members of their families may be called upon to attend as witnesses in the course of judicial or administrative proceedings. If a consular officer or a member of his family should decline to give evidence, no coercive measure or penalty shall be applied to that person. Consular employees and members of their families, as well as members of the service staff and members of their families, may not decline to give evidence except as provided in paragraph (6) of this Article.
 6. Members of the consular post are under no obligation to give evidence concerning matters relating to the exercise of their official functions or to produce official correspondence or documents. They are also entitled to decline to give evidence as expert witnesses with regard to the law of the sending State.
 7. In taking evidence from members of the consular post, the authorities of the receiving State shall take all appropriate measures to avoid interference with the performance of their consular functions. At the request of the head of the consular post, such evidence may, when possible, be given orally or in writing at the consular premises or at the residence of the person concerned.
 8. Members of the consular post who are nationals or permanent residents of the receiving State and members of their families, as well as those members of the families of the members of the consular post who are themselves nationals or permanent residents of the receiving State, shall not enjoy the rights, facilities and immunities provided for in this Article, except the immunity provided for in paragraph (6) of this Article.

Article 8

1. Consular officers shall have the right to communicate with nationals of the sending State and to have access to them in the consular district. The receiving State shall not in any way limit the communication of nationals of the sending State with the consular post or their access to it.
2. If a national of the sending State is arrested, committed to prison or detained in any other manner in the consular district, the competent authorities of the receiving State shall notify the consular post of the sending State to that effect as soon as possible and at the latest within seven days from the time at which the personal freedom of that national is restricted. A visit to that national as requested by consular officers shall be arranged by the competent authorities of the receiving State two days after the consular post is notified of the restriction of the personal freedom of that national. Subsequent visits shall be permitted at intervals not exceeding one month.
3. The rights mentioned in this Article shall be exercised within the framework of the laws and regulations of the receiving State, it being understood,

however, that those laws and regulations shall enable full effect to be given to the purposes for which the said rights are granted.

Article 9

Consular matters which are not dealt with in this Agreement shall be settled by the Contracting Governments in accordance with the relevant provisions of the Vienna Convention on Consular Relations of 24 April 1963,⁷ through friendly consultation and in a spirit of mutual understanding and co-operation.

Article 10

Paragraph (2) of Article 4 and Articles 5, 8 and 9 of this Agreement shall also apply to the diplomatic missions of the two States with respect to the exercise of consular functions.

Article 11

Each Contracting Government shall notify the other in writing of the completion of the procedures required by its respective national laws. This Agreement shall enter into force on the date of the later of those notifications.⁸

Done in duplicate at Beijing this 17th day of April 1984, in the English and Chinese languages, both texts being equally authoritative.

For the Government of the For the Government of the People's

United Kingdom
and Northern Ireland
Geoffrey Howe

Republic of China
Wu Xueqian

Trade agreements

States use a variety of means to promote (or regulate) international economic, financial and commercial relations. These include domestic measures, such as taxation and administrative concessions, tariffs, export subsidies, export-free zones, trade financing loans, anti-‘dumping’ measures, internationally agreed preference schemes and customs and other economic unions. Trade agreements are but one of the many instruments that are available in this broad range of measures.

In some state practice a trade agreement is styled an ‘economic cooperation agreement’ (e.g. Romania).⁹ However, most economic cooperation tends to cover not only trade matters but also a wide range of other items such as industrial cooperation, research and development, scientific exchange, and the establishment of economic and scientific working committees and commissions. Occasionally a time limit is put on the duration of the agreement, for example the UK–Poland five-year trade agreement.¹⁰

In a bilateral context, the decision to conclude a trade agreement will depend partly on the range of other agreements already in existence between the two parties, as well as other considerations such as the level and nature of total trade (e.g. whether it is one-sided, low in overall

volume, excessively commodity-oriented, or limited in the existing range of manufactured or semi-manufactured goods traded).

In other words, a trade agreement is usually designed to serve one or more specific purposes. In a political sense, a trade agreement might be signed to cement better relations, which have perhaps been dormant for many years. However, not all economic or commercial relations between states require the conclusion of an agreement of this type. Sometimes trade exchange is at an acceptable level and content without any major structural irregularities.

The general purpose of a trade agreement is to establish a legally binding framework within which to promote and conduct economic relations. Among the matters dealt with by an agreement are MFN and like-product treatment.¹¹ For example the Malaysian–Indonesian Trade Agreement of 16 October 1973 is pursuant to Article II of the Basic Agreement on Economic and Technical Cooperation (same date) between the two countries.¹² Article 1(2) contains provision for MFN treatment in issuing import and export licences, and in the following subparagraph (2(3)) provides for ‘like-product’ treatment:

Any advantage, favour, privilege or immunity granted or which may be granted by each Contracting Party on import or export of any product, originating or consigned to the territory for a third country, shall be accorded immediately and unconditionally to the like product originating in or consigned to the territory of either Contracting Party.

This type of provision is not always provided for, for example the Malaysia–Czechoslovakia Trade Agreement of 20 November 1972.¹³ Those parts of the MFN clause itself, which make the exchange of goods subject to relevant import and export laws, and foreign exchange controls, may be drafted in a number of ways to strengthen the MFN, for example, so that: ‘such laws and regulations shall not invalidate the most-favoured-nation provisions’.¹⁴ Or it may be weakened by qualification: ‘the contracting parties shall, subject to their respective import, export, foreign exchange or other laws, rules and regulations, provide the maximum facilities possible for the purpose of increasing the volume of trade between the two countries’.¹⁵

Scope and application of MFN and related provisions

The scope of a trade agreement with another state is often limited by excluding from the provisions the preferences, advantages or exceptions that have been or may be granted to generally defined groups of states or named countries. In this exception list might be the preferences granted to:

- neighbouring countries in order to improve frontier traffic or regional trade
- countries which are members of a customs union or free trade area

- the Commonwealth
- specified countries
- goods and commodities imported under economic or military aid programmes.

In a separate sense, the provisions of a trade agreement may be drafted so as not to preclude the states party to the agreement having the right to adopt or execute measures relating to *inter alia*:

- public security and national defence
- public health
- agricultural and veterinary regulations
- trade in specified items, for example precious metals, weapons, historical artefacts.

The scope of the trade agreement itself will often be set out in the form of two schedules referred to in either the first or second articles, which are set out as an annex (though still an integral part of the agreement). The respective schedules list the goods and commodities, for example rubber manufactures, timber and timber products, machinery and transport equipment; traded for beans, fresh fruit, fish, plywood, cement and bicycles. The schedules can be relatively simple and based on broad categories, as in the example below in the Singapore–PRC Trade Agreement of 1979.¹⁶

Schedule A. Exports from the Republic of Singapore to the People's Republic of China

Industrial Machinery and Transport Equipment and Parts
 Industrial and Domestic Electronic and Electrical Equipment and Components
 Rubber, Rubber Products and Processed Wood
 Chemicals, Petrochemicals, Pharmaceuticals and Fine Chemicals
 Medical and Scientific Instruments
 Others

Schedule B. Exports from the People's Republic of China to the Republic of Singapore

Rice and Other Cereals
 Foodstuffs and Canned Goods
 Tea, Native Produce and Special Products
 General Merchandise
 Stationery and Sports Articles
 Textiles
 Machinery and Instruments
 Agricultural Implements and Tools

Chemicals and Chemical Products
 Steel Products and Non-Ferrous Metals
 Animal By-Products
 Others

The content of the schedule is a matter for negotiation between the parties. Among the considerations relevant to the content are whether it is considered appropriate to have a detailed list, whether the categories of goods should be broken down according to a classification (e.g. primary products, manufactures), and whether the subcategories themselves need to be broken down so as to refer to detailed items (e.g. industrial machinery and equipment: offshore oil-rig compressor pumps). In some cases, the schedule is open-ended, and after listing certain manufactures concludes the list with a miscellaneous category 'other manufactures'. The schedule clause in the main agreement may, if considered necessary, make provision for the parties to hold consultation on any amendment to the list of goods in the future.

Apart from these provisions it is worth noting that additional provisions may be required for trade agreements involving centrally planned or socialist-type economies and market or quasi-market economies. In such cases, trade agreements of this kind, which are now less frequent, may need to reflect through specific provisions for the legal status of state-trading organisations, principles of non-discriminatory commercial treatment, financial subsidy and forms of currency payment. In addition, the question of the treatment of imports of products for immediate or ultimate consumption in governmental use is an issue for negotiation in those and other agreements.¹⁷

Miscellaneous provisions

Apart from the above, other provisions of trade agreements normally cover inter alia: means of payment, trade promotion, dispute settlement, merchant shipping, commercial aircraft, transit rights, duration of the agreement and entry into force. While some of these items follow a generally standard form, for example means of payment (acceptable convertible currency), others can take a number of widely differing forms, depending on what the parties seek to achieve or are able to agree in their negotiations as an acceptable outcome. For example provisions on the treatment of merchant vessels may be extended to provide an analogous treatment of each of the parties' commercial aircraft at their respective airports (blanket charge). Again, the merchant shipping clause in the MFN section can be based on MFN provisions for port charges and harbour facilities or the cargo status of a ship. If MFN status is granted to vessels without cargoes then this affords wide rights to the MFN party. On the other hand, a state may not wish to see vessels without cargoes frequently using its ports claiming MFN status, on economic and security grounds, and so

may seek a more restrictive MFN shipping clause not based on whether vessels had cargo. Article VIII of the Singapore–PRC Trade Agreement of 29 December 1979 has, for example, a restrictive clause:

Merchant vessels of each Contracting Party with cargo thereon shall enjoy: in respect of entry into, stay in, and departure from the ports of the other country most-favoured-nation treatment, granted by the laws, rules and regulations applicable to ships under any third-country flag.

In some cases, the shipping provisions section of a trade agreement is used as a means of putting mutual shipping and cargo handling on a firmer basis. For example Article II of the Brazilian–Ghanaian Trade Agreement provides that: ‘the contracting parties agree to promote the preferential participation of Brazilian and Ghanaian ships in the transportation of cargo between ports of both countries’.¹⁸ Apart from this type of general obligation, agreements may, in particular, seek to limit the amount of trade carried out by third-party shipping. In the Brazilian–Nigerian Trade Agreement, for example, Article VI provides that ships of third countries should not carry more than 20 per cent of trade between the two countries. An exception in this agreement is made for full bulk cargoes (Article VI(v)).¹⁹ As relatively new states have sought to build up their small merchant fleets, the frequency of shipping provisions in bilateral trade agreements has tended to increase. In fact, this tendency has been enhanced by the growing number of bilateral agreements exclusively devoted to shipping.²⁰

Re-export, barter and transit trade

Other miscellaneous provisions worth noting are, first, on transit trade. Transit trade provisions²¹ deal inter alia with reciprocal measures for the movement of goods from ports and other facilities of each of the contracting parties to those of third states. The growth in popularity of ‘export zones’ in or nearby the ports of new states has influenced the need for additional provisions to cover the transference of goods to and from export zones and ports.

Second, in some trade agreements the form in which the trade is carried out is defined in the general framework. Apart from the questions of schedules and means of payment already referred to, provisions may be included that seek to limit or prohibit certain kinds of trade between the parties, for example barter trade. That is, goods directly traded (or involving a third party) between the two parties are prevented from being exchanged on a barter or ‘counter-trade’ basis without the prior written consent of appropriate authorities in both countries.²²

Finally, commonly found in trade agreements concluded between advanced industrial countries and new states are provisions to protect the national identity and ‘integrity’ of the product exported. Such provisions may take one of several forms. For example an ‘origin of goods’ clause may be used to facilitate the eradication of origin, or prevention of goods and

commodities being given false places of origin, by including provisions on trade marks, packaging and an agreed definition for export purposes of what constitutes a 'locally' made product. Thus Article V, for example, of the trade agreement between Canada and Afghanistan provides:

With respect to trade marks, each of the contracting Parties shall protect the trade marks of the other Party to the extent that the national law of each Party permits. Each Party agrees to protect within its territorial scope the products of the other Party against all forms of dishonest competition particularly with regards to the use of false indications relative to place of origin. The contracting Parties undertake to assist one another in the prevention of any practice which might be prejudicial to their trade relations.

In a multilateral treaty context, the question of what constitutes 'locally' made is often difficult to reach agreement on in negotiations of a 'certificate of origin' clause, but also particularly difficult to enforce. This is especially so if, for example: component parts are imported from outside the region and re-exported within it; there is high regional protectionism; or one or more of the states in the regional grouping is generally involved in low-value-added re-export trade. Another approach in some international trade agreements to the related question of the end use of goods is to include provision on the re-export of goods. The parties may agree, for example, to allow either 're-export only by written mutual consent',²³ or to 'take steps to prevent the re-export of commodities and goods imported from the other within the framework of the agreement'.²⁴

Trade administration

Apart from the above, trade agreements often contain provisions for the establishment of joint consultative machinery; for example that of the Australia-PRC²⁵ meets annually or semi-annually at official level to deal with the implementation of the agreement, and to review its scope and effectiveness. The agreement may also include provisions on holding regular trade-promotion conferences. Provisions concerned with the establishment of a trade representative office would not normally be included in a trade agreement.²⁶ Instead, they would be the subject of a separate diplomatic or consular agreement. Such an agreement need not be negotiated simultaneously with the trade agreement, and indeed negotiations for a trade representation office (or additional consular office) are likely to follow quite some time later, against the background of the effectiveness and impact of the trade agreement.

Entry into force and duration

In general, trade agreements enter into force on signature, though in special cases entry is provisional, with full entry into force on an exchange of notes. In those cases in which ratification is required, entry into force

takes effect on the date of the exchange of instruments of ratification. In the event of the expiry of an agreement, commercial transactions concluded before the date of expiry but not fully executed are governed by the provisions of the agreement. A common formula for the duration of trade agreements is one that provides for the initial agreement to last for one to three years with automatic continuation of the agreement for further periods of one year, unless either party notifies the other in writing of its intent to terminate the agreement, at least 90 days prior to the expiry of each period.

International loan agreements

Finance for projects and capital-related activities can be generated from several sources, including domestic organisations, international capital markets and international institutions. The purpose of this section of the chapter is to provide a discussion of the legal framework of loans negotiated through international institutions, and highlight some of the broad issues that arise in terms of the construction of the agreement.

We should note first, though, that apart from fund sourcing from international institutions (e.g. the IBRD, IMF and regional institutions such as the ADB), states obtain financial resources from a variety of other sources: some are internally generated through bond issues; others by floating notes in a denominated currency, on the domestic capital market of a foreign country, through syndicated foreign loans, as well as bilateral loan and grant arrangements with other states.

Financial loans secured through international institutions for project finance under discussion here differ in a number of respects from funds obtained on the international commercial capital market or through bilateral official arrangements. Among the major differences between international institution funding and international capital market funding are the structure and composition of interest rate spread and external supervision.

Commercially acquired funding on the international capital market is generally geared to an internationally accepted lending rate, such as the London interbank offered rate (Libor). This variable rate is used to form the base point for the loan 'package', the terms of which are then spread at different percentage points above Libor for specific phases or periods of the amortisation. In some arrangements, not only a mix of interest levels is used (e.g. $\frac{3}{8}$ per cent above Libor for five years, $\frac{3}{4}$ per cent above for 10 years) but agreements can also contain a mix of base points, for example a combination of Libor and the US prime rate. The structure then of this type of package is a set of variable interest rates related to one or more base-point systems, which is applied to various tranches or blocks of the loan. The interest rate of the loan, since it is negotiated, provides

one of the key differences from the repayment provisions of projects funded by international institutions, which tend to be made up of relatively fixed components (such as interest rates) which are not greatly negotiable. This is not to say that there are no areas for negotiation, as we shall point out below. In addition, as far as the IBRD is concerned, from 1982, loans themselves have been based on a variable-rate system, calculated by the Bank, rather than the previous fixed-at-commitment system.

The second major difference between international-institution-sourced loans and commercial-capital loans is in the role of the international institution in the various phases of the project. This involvement includes project evaluation, tender procedures, monitoring project implementation and, in general terms, the acceptability of projects – reflecting the development philosophy of the institution, expressed in terms of preferences for particular kinds of projects (e.g. ADB agricultural sector development).

Although in this chapter we are concerned with project loans, since they are commonly used instruments, it should be noted that other types of instruments have developed. Experimentation with differing instruments is particularly noticeable in the IBRD.²⁷ Included in the range of development finance instruments created in recent years are: sector adjusting lending,²⁸ designed to support specific programmes and institutional development; the more comprehensive structural adjustment loans;²⁹ and financial intermediary loans for small and medium-sized enterprises. These facilities have been augmented by attempts to create new instruments to increase the flows of commercial capital to developing countries by linking the IBRD more directly through IBRD guarantees of late maturities and direct participation in syndicated loans.³⁰

Format and structure of international loan agreements

Loan agreements between a government and an international institution, such as the IBRD or ADB, with respect to project funding can be broadly broken down into six areas: general conditions; terms of the loan; execution of the project; other covenants; effective date and termination; and schedules.

The overall process from initiation to project completion can be put into the following categories:

1. Project identification
2. Appraisal mission (international institution)
3. Pre-qualifying tenders (if appropriate)
4. Government report (submission) to international institution
5. Negotiation (with international institution), cofinancing partners (if any) of draft subsidiary loan agreement, e.g. between the government (the borrower) and subsidiary political unit (where applicable), draft

relending agreement (e.g. to a public utility by the subsidiary political unit) where applicable.

6. Implementation (signature of agreement; effective date; tender, sub-contracting, progress evaluation).

Loan agreements financed through international institutions are governed by the framework or general conditions of the institution, for example the IBRD General Conditions Applicable to Loan and Guarantee Agreements, or Ordinary Operations Loan Regulations of the ADB.³¹ The general conditions set out certain terms and conditions to any loan agreement or guarantee with any member of the bank, including such matters as the application of the general conditions, the loan account and charges, currency provisions, cooperation and information, cancellation and the effective date of the agreement. The general conditions may be revised from time to time and are supplemented by guidelines, for example ADB Guidelines on the Use of Consultants, or IBRD Guidelines for Procurement under World Bank Loans and IDA Credits. In the event of any inconsistency between a loan agreement and the general conditions, the latter prevail. Some aspects of the general conditions may be omitted or amended as a result of negotiation, which is normally reflected in the first article of the agreement. Frameworks of this type are also used by official (governmental) sources of capital; for example General Terms and Conditions of the Japanese Overseas Economic Cooperation Fund which, although modelled on the IBRD, differ significantly in a number of respects both procedurally (e.g. payment based on presentation of letter of credit by the borrower) and substantively in respect to terms and conditions.³²

Interest rate and repayment

Following the provisions relating to the general conditions and definitions (first article), the terms of the loan are set out including the amount, interest rate and repayment schedule. As we have indicated, the interest rate and related bank charges are normally considered fixed items and are not negotiable in this type of loan. For example, in the loan agreement between Malaysia and the ADB for the Batang Ai hydropower project, the interest rate is set at 10.1 per cent per annum on \$40,400,000 in Article 11, Section 2.02; and the repayment of the principal amount of the loan is in accordance with the amortisation set out in Schedule 2.³³ Included in this schedule are the premiums on advanced repayment on an increasing percentage scale (1.5–10.1 per cent).

The system employed in this ADB loan example differs from that used by IBRD for project loans in two respects. The Malaysian–IBRD loan agreement for the Kedah Valleys agricultural development project of February 1983³⁴ can be used to illustrate the differences. In the first place (the question of different interest rates apart) the premiums on prepayment are calculated differently. In this example they are based on the

interest rate (expressed as a percentage per annum) applicable to the outstanding balance multiplied by a factor from 0.2 to 1.

Second, the interest rate in the IBRD example is variable and is determined by applying the concept 'cost of qualified borrowings'. Thus, Section 2.07(a) of the Kedah loan (IBRD) cited above reflects the changes in the IBRD's method of setting interest rates for new loans from July 1982. The revised system replaces the fixed-at-commitment method and has been principally influenced by the increasing exposure of the IBRD to interest-rate risk in recent years. In revising the interest-rate formula, the Bank took into consideration that to continue to lend or borrow at fixed rates would have increased its exposure to interest-rate risk. A second influence on the change in lending-rate policy was that continuation of the practice of making fixed-rate loans blocked the Bank from making use of short-term or variable-rate instruments. The combination of the old fixed-rate lending policy, combined with variable-rate borrowing, would have ultimately caused severe and unacceptable variability in IBRD net income. Under the revised system, the interest rate has been based on the cost of all the outstanding *borrowings* paid out to the Bank after 30 June 1982. Those borrowings are called 'qualified borrowings' in the agreement. The Bank interest rate is based on the pool of borrowings, made by the Bank (\$9 billion fiscal 1982), to which is added a spread of 0.5 per cent, as in the Kedah Valleys agricultural development project loan agreement, 7 February 1983, or the Jamaica-IBRD second technical assistance project.³⁵ For interest periods commencing in 1982, the initial rate for the Kedah Valleys project, for example, was 11.43 per cent (10.93 per cent + 0.50 per cent), paid on a semi-annual basis.

Commitment charge

Apart from the above structure, which affects the nominal cost of capital, the brief but extremely important provision in loan agreements – the commitment charge – is a further major variable in evaluating project cost. As already indicated, loan agreements contain, in addition to the interest-rate structure, a number of fixed components, such as Bank fees and the commitment charge. The commitment charge is a percentage rate (in the case under review, 0.75 per cent) per annum applied to the principal amount of the loan *not withdrawn* from time to time.³⁶ In other words, the effect of this provision is to put a premium on meeting deadlines during a project, which are essential to keeping the overall project 'on stream'. A further general difficulty that brings the commitment charge into play results from short-term alterations to the planning framework of the project. This can be caused by many factors, such as national budgetary deficits, switch of development emphasis, competing projects and sheer overload within a decision-making unit. These can result in the project either not being taken up for some time or being abandoned, and, in consequence, the incurring of high first and second 'phase' commitment charges.

Cofinancing

Traditionally, cofinancing has involved international institutions such as the World Bank, ADB and certain official sources, such as the Kuwait Fund or the Overseas Economic Cooperation Fund of Japan. However, since the late 1970s cofinancing has been extended to involve commercial sources of capital. The basis of this change lies in two main factors. First, international institutions involved in capital and project finance have increasingly come under pressure as their resources have become stretched, and, correspondingly, access to borrowing has become both difficult and costly in a period of high exchange-rate volatility. The involvement of commercial-source funding served to stretch resources of regional institutions such as the ADB and the Inter-American Development Bank.³⁷ Second, apart from increasing calls on the resources of international institutions, the profile of development projects put forward by less developed and newly industrialised countries altered to include more large-scale, cost-intensive projects, such as gas separator plants, chemical complexes and public utility schemes.³⁸ Therefore, commercial source funding became an increasingly important part of loan packages. By 1982, for example, commercial source funding of ADB projects had increased from 5 per cent in the early 1970s to over 14 per cent.

Within the World Bank, cofinancing has been further developed with the establishment in 1982 of cofinancing instruments that link the it more closely with the private commercial banking sector. The loan arrangements were informally termed 'B-loans' to distinguish them from the main long-term World Bank loans.³⁹ Under the scheme, the Bank committed \$500 million in order to mobilise \$2 billion for some 20 selected lending operations.⁴⁰ The two main objectives of the B-loan programme were to make additional funds available to developing countries from sources not otherwise available, and to achieve a lengthening of maturities more suitably matched to the borrowers capacity to repay. In one unusual case, the Bank guaranteed \$150 million of a commercial cofinancing of \$300 million for a Chilean highways project in order to assist the borrower in bringing together a much larger overall package of almost \$6 billion in reschedulings and over \$1 billion in new money.⁴¹

Implications of multiparty funding

The introduction of commercial-source funding into international loan agreements sourced by international institutions has a number of implications for both the structure and substance of the agreement. An important element in these arrangements, therefore, is the linkage between the parties, expressed in terms of the separate loan agreements that make up the package. These have to be completed to the satisfaction of the international institution before the commitment (loan amount) and, in consequence, the *overall* loan can become effective. Other issues involved

in multisource funding include inter alia: the conditions that lead to the suspension, cancellation or acceleration of the maturity of the loan; harmonisation or not of the different interest-rate structures in the loan; and the phase in which an international institution becomes involved in a joint cofinancing arrangement.

Finally, it can be argued, in terms of B-loans, that the Bank, in providing in effect trigger finance for much larger loans, took on a much wider role as a guarantor and through economic monitoring than is reflected in its nominal financial involvement. While this may unlock commercial finance and provide some measure of risk relief, it is not clear what the overall effect would be on the Bank and its cofinancing policies in the event of a major default.

Additional considerations

So far, loan agreements through international institutions have been discussed in terms of structure and issues relating to repayment. The bulk of the remainder of the provisions of loan agreements are concerned with obligations or undertakings with respect to the organisation and management of the project (e.g. accounting records, appointment of personnel, access by the institution to information on, and general, progress through inspections of the project). In loan agreements these provisions are styled 'covenants' and, as was suggested earlier, constitute one of the important areas of negotiation. Apart from the issues listed above, other areas of negotiation involve, for example, the details of provisions concerning other external debt that the borrower might incur, and conditions related to the financial capabilities of the party (e.g. a public utility) for whom the loan agreement has been negotiated.

Entry into force

The effective date of international loan agreements is determined by the general conditions, particular modifications to these, and other appropriate conditions in the loan agreement. The procedures for the effective date differ somewhat between types of loan agreements. For IBRD loans, for example, entry into force occurs when the relevant conditions described above have been met, including legal opinions submitted to the Bank, whereupon the Bank despatches to the borrower notice of acceptance. The effective date clause also stipulates a period (e.g. 90 days) by which the agreement should have come into force, otherwise all obligations are terminated unless the IBRD considers the reasons for delay acceptable. Multiparty cofinancing loans under the ADB require the subsidiary and relending agreement, and the agreements with lenders other than the ADB, to have been executed and delivered for the effectiveness of the agreement.

IBRD terms and conditions for flexible loans were generally further clarified in the following administrative document, which provided administrative guidance on structure and key terms.

**Financial Terms of IBRD Flexible Loan – Worksheet
for Loan Choices Instructions Form Version 1.1
(Updated 14-Sept-2010)**

1. Loan Information

1a Country Name: This is the official name of the country in which the project or program is located.

1b Project or Program Name: This is the complete name of the project or program, as it appears in the loan documents.

1c Borrower: This is the recipient (either sovereign or subnational entity) of the Bank loan.

1d Currency of Loan Amount: This is the currency of commitment of the loan. It could be US Dollar, Euro, Japanese Yen, British Pound, Swiss Franc, or two or more of these currencies.

Loan Amount: This is the loan amount agreed to by the Bank. If the loan is to be denominated in more than one currency, please indicate the name and percentage of each currency.

2. Spread over LIBOR

This is a component of the lending rate and is charged over LIBOR. Borrowers can choose between a fixed spread and a variable spread.

Fixed Spread: The fixed spread consists of the Bank's projected funding cost relative to LIBOR, plus the Bank's contractual spread, a risk premium, and a basis swap adjustment for currencies other than US dollars. This spread is fixed over the life of the loan, which means the Bank must absorb the full risk of future financing costs. The risk premium covers for the possibility of these costs being higher in the future. The fixed spread may vary according to the loan's average repayment maturity.

The fixed spread that will apply to the loan is the fixed spread as published by the Bank on its website at 12:01am, Washington, DC time, on the calendar day prior to loan signing. In the case of the Deferred Drawdown Option (DDO), the fixed spread for each withdrawal is the Bank's fixed spread for the loan currency in effect at 12:01am Washington DC time, on the withdrawal date.

Variable Spread: The variable spread consists of the Bank's average funding cost relative to LIBOR, plus the Bank's contractual spread. The variable spread is recalculated semi-annually, on January 1 and July 1, and passes the Bank's financing risk on to the Borrower.

Fixed Spread – Components

Variable Spread – Components

- Bank's standard lending spread • *Projected* funding cost relative to LIBOR • Risk premium • Basis swap adjustment (for non-USD loans)
- Bank's standard lending spread • *Average* funding cost relative to LIBOR

For the latest spreads, please visit: <http://treasury.worldbank.org/bdm/htm/ibrd.html>.

3. Repayment Terms

Borrowers have the flexibility to tailor the repayment terms by choosing any combination of grace period, final maturity, repayment schedule and amortization pattern. The repayment terms must fall within the policy limits of 30 years maximum final maturity (including the grace period) and 18 years maximum average repayment maturity. Borrowers can calculate these terms using the Repayment Profile Calculator available at: http://treasury.worldbank.org/bdm/htm/Repayment_Profile_Calculator.html

Management Department for available currencies, amounts, tenors, and rates as well as for specific instructions and forms related to this option.

7. Borrower's Rationale Statement for Choice of Loan Terms

This statement is given by the Borrower as an explanation for the chosen lending terms. It is important so that both the Borrower and the Bank have a record of and fully understand the Borrower's decisions.

8. Representation

This is a legal disclaimer provided by the Borrower which stipulates that the Borrower has made informed and independent decisions regarding the lending terms. It also stipulates that the Bank did not make specific recommendations about loan terms to the Borrower.

9. Borrower's Signature and Date

This section should be signed by the person who completed the worksheet for loan choices. The date is the date on which the worksheet was completed and signed.

Distribution

The completed and signed form should be attached to the Minutes of Negotiation. In addition, copies should be faxed or scanned and sent by email to:

- LOA Regional Service Account:

AFR – loafr@worldbank.org

EAP – loaeap@worldbank.org

ECA – loaeca@worldbank.org

LCR – loalcer@worldbank.org

MNA – loamna@worldbank.org

SAR – loasar@worldbank.org.

- Banking and Debt Management Department (BDM), (202-522-2102),
- Project Task Team Leader

Source: treasury.worldbank.org/web/instructionforLoanChoiceWorksheet.pdf.

Fisheries agreements

Fisheries agreements are an important and in a number of instances critical component of a licensing state's domestic and external economic relations. The form and range of subject matter will depend on how the agreement is negotiated, whether intergovernmentally or between a national fisheries agency and operator(s), or as an informal arrangement (e.g. between national fisheries agencies and/or associations); and on whether or not global, regional and subregional organisations are involved. Types of agreements can vary from simple cash-resource exchange agreements to complex arrangements involving fishing effort, financial, enforcement and other provisions. For example third-party fisheries agreements negotiated by the EU have taken a number of forms, including fisheries–trade access swaps (EC–Iceland); quota access–cash ('compensation') agreements; and agreements involving the swap of different species with third parties (e.g. EU–Norway).⁴²

Negotiation issues

The major issues for negotiation can include the following categories:

1. Operator licence conditions: company, registration, export, import and/or transshipment.
2. Vessels: number, type, size, registration, call-sign.
3. Fishing operations:
 - definitions (e.g. fish, operator, closed area, licence, offence, fisheries officer)
 - area (closure, conditions, exclusion, limitations – territorial sea, conditions regarding operations within *and* beyond EEZ)
 - species covered by the licence
 - by-catch
 - volume of catch
 - landing (ports, catch reporting *at sea*)
 - transshipment (if any).
4. Economic: amount, schedule, payment procedures, review of financial provisions.
5. Enforcement:
 - observers/inspectors (number, access on vessels and obligation to cooperate)
 - boarding and inspection (at sea)
 - port inspection
 - detention/arrest
 - penalties.

6. Scientific and technical cooperation.
7. Duration of agreement and revision.

In considering operator conditions, a point of increasing concern is the effective registration of foreign fishing vessels, and corresponding flag-state enforcement. In this respect, international guidelines have been introduced by the FAO (FAO 'Flagging Agreement') on vessel registration and inspection.⁴³ Obligations have also been entered into international conventions, for example the UN Convention on Highly Migratory and Straddling Fishing Stocks.⁴⁴

Regulations in international fisheries agreements regarding vessels vary considerably. As can be seen from the following EC–Angola example (Article 1),⁴⁵ the effort formula for the number of allowable vessels was based in part on gross registered ton (GRT) on a monthly average.

Protocol establishing the fishing rights and financial contribution provided for in the agreement between the European Economic Community and the Government of the People's Republic of Angola on fishing off Angola

Article 1

From 3 May 1987, for a period of two years, the limits referred to in Article 2 of the Agreement shall be as follows:

1. Shrimp vessels: 12,000 GRT per month as a yearly average. However, the quantities to be fished by Community vessels may not exceed 10,000 tonnes of shrimps per year, of which 30 per cent shall be prawns and 70 per cent shrimps.
2. Ocean-going tuna freezer boats: 25 vessels.

Article 2

1. The financial compensation provided for in Article 7 of the Agreement for the period referred to in Article 1 of this Protocol is fixed at 12,050,000 ECU, payable in two annual instalments, the first before 30 September 1987 and the second before 31 July 1988.
2. The use to which this compensation is put shall be the sole responsibility of Angola.
3. The compensation shall be paid into an account opened at a financial institution or any other body designated by Angola.

Article 3

1. The Community shall also contribute during the period referred to in Article 1 up to 350,000 ECU towards the financing of Angolan scientific and technical programmes (equipment, infrastructure, seminars, studies, etc.) in order to improve information on the fishery resources within Angola's fishing zone.
2. The competent Angolan authorities shall send to the Commission a report on the utilization of the funds.

3. The Community's contribution to the scientific and technical programmes shall be paid in two annual instalments into a specific account determined by the competent Angolan authorities.

Article 4

The Community shall assist Angolan nationals in obtaining places for study and training in establishments in its Member States or in the ACP States and shall provide for that purpose, during the period referred to in Article 1, 12 study grants of a maximum duration of five years, equivalent to 60 years of study, in scientific, technical, legal, economic and other subjects connected with fisheries.

Two of these grants, equivalent to a sum of no more than 90,000 ECU, may be used to finance the cost of participation in international conferences aimed at improving knowledge regarding fisheries resources.

Article 5

Should the Community fail to make the payments provided for in Articles 2 and 3 within the time limits laid down, the application of the Agreement may be suspended.

However, difficulties can occur over agreeing monthly GRT figures, combined with a coastal state's wish for stricter control over numbers. Other EC instruments have been based on limitations on vessels (e.g. EC–Madagascar, Article 1),⁴⁶ though the lower limit on 33 vessels fishing simultaneously was removed in the 1990 (EC–Madagascar) protocol, favouring in effect the EC distant-water fleets (see Article 1 below).

Protocol defining for the period 1 January 2004 to 31 December 2006 the tuna fishing opportunities and the financial contribution provided for in the agreement between the European Economic Community and the Democratic Republic of Madagascar on fishing off Madagascar (extracts)

Article 1

1. Under Article 2 of the Agreement, licences authorizing fishing in the Malagasy fishing zone shall be granted to 40 freezer tuna seiners and 40 surface longliners for a period of three years beginning on 1 January 2004.

In addition, at the request of the Community, certain permits may be granted to other categories of fishing vessel under conditions to be defined within the Joint Committee referred to in Article 9 of the Agreement.

2. Vessels flying the flag of a Member State of the European Community may fish for tuna in Madagascar's fishing zone only if they are in possession of a fishing licence issued under this Protocol in accordance with the arrangements described in the Annex.

Article 2

1. The financial contribution referred to in Article 7 of the Agreement shall be fixed at EUR 825 000 per year, comprising EUR 320 000 in financial compensation, to be paid not later than 30 September for the first year and

30 April for the second and third years, and EUR 505 000 for the measures referred to in Article 3 of this Protocol.

However, the financial compensation to be paid for the first year of application of the Protocol (1 January 2004 to 31 December 2004) shall be EUR 196 385 following deduction of the amount already paid under the preceding Protocol in respect of the period 1 January 2004 to 20 May 2004.

2. The financial contribution shall cover an annual catch of 11 000 tonnes of tuna in Malagasy waters; if the tuna caught by Community vessels in the Malagasy fishing zone exceeds this weight, the amount referred to above shall be proportionally increased. However, the total amount of the financial contribution paid by the Community shall not be more than twice the amount indicated in paragraph 1.
3. The financial compensation shall be paid into an account opened with the Public Treasury, to be specified by the Malagasy authorities.

Article 3

1. In order to guarantee the development of sustainable, responsible fisheries, the two parties shall in their mutual interest encourage a partnership aimed at promoting in particular: enhanced knowledge of fisheries resources and biological resources, fisheries inspection, development of non-industrial fishing, fishing communities and training.
2. The relevant Malagasy authorities shall send the commission an annual report on the use of the funds allocated to the measures provided for in paragraph 2, and on the implementation of those measures and the results achieved, not later than 31 March of the following year. The commission reserves the right to request the Ministry responsible for fisheries for any additional information. In the light of the actual implementation of those measures and after consulting the relevant Malagasy authorities in the context of a meeting of the Joint committee provided for in Article 9 of the Agreement, the commission may review the payments concerned.

Article 4

Should the European Community fail to make the payments provided for in articles 2 and 3, Madagascar may suspend application of this Protocol.

Article 6

The Annex to the Agreement between the European Economic Community and the Democratic Republic of Madagascar on fishing off Madagascar is hereby repealed and replaced by the Annex to this Protocol.

Article 7

This protocol shall enter into force on the date of its signing. It shall apply from 1 January 2004.

Annex conditions governing tuna-fishing activities by European Community vessels in the Malagasy Fishing Zone (extracts)

1. Licence application and issuing formalities

The procedure for applying for and issuing licences authorizing Community vessels to fish in Malagasy waters shall be as follows:

(a) Through its representative in Madagascar, the Commission shall present simultaneously to the Malagasy authorities:

- A licence application for each vessel, completed by owners wishing to fish under this Agreement, no later than 1 December preceding the year of validity of the licence.

By way of derogation from the above provision, vessel-owners who have not submitted a licence application prior to 1 December may do so during the calendar year under way no later than 30 days before the start of the fishing activities. In such cases, vessel owners shall pay the entire fees due for the full year in accordance with point 2(b).

- An annual application for prior authorization to enter Malagasy territorial waters; such authorization shall be valid for the duration of the licence.

Licence applications shall be made on the form provided by Madagascar for this purpose, in accordance with the specimen given in Appendix 1; they shall be accompanied by proof of payment of the advance chargeable to the vessel-owner.

(b) Licences shall be issued for a specific vessel and shall not be transferable.

However, at the request of the commission and in cases of *force majeure*, a vessel's licence shall be replaced by a new licence for another vessel whose features are similar to those of the vessel to be replaced. The owner of the vessel being replaced shall return the cancelled licence to the Malagasy Ministry responsible for sea fisheries via the Commission Delegation in Madagascar.

The new licence shall indicate:

- the date of issue,
- the fact that it invalidates and replaces the licence of the previous vessel.

No fee as laid down in Article 5 of the Agreement shall be due for the unexpired period of validity.

(c) The Malagasy authorities shall send the licence to the commission representative in Madagascar.

(d) Licences shall be kept on board at all times; however, on receipt of the advance payment notification sent by the commission to the Malagasy authorities, vessels shall be entered on a list of vessels authorized to fish, which shall be sent to the Malagasy authorities responsible for fisheries inspection. A copy of the said licence may be obtained by fax pending arrival of the licence itself; that copy shall be kept on board.

(e) Owners of tuna vessels shall be represented by an agent in Madagascar.

(f) Before the Protocol enters into force, the Malagasy authorities shall send the Commission Delegation in Madagascar full details of the bank accounts to be used for the payment of fees and advances ...

3. Catch delegation and statement of fees

(a) Vessels authorised to fish in Madagascar's fishing zone under this Agreement shall send information about their catches to Madagascar's Fisheries Surveillance Centre through the Commission Delegation in Madagascar, in accordance with the following procedure:

Tuna seiners and surface longliners shall complete a fishing form corresponding to the specimen given in Appendix 2 for each period spent fishing in Madagascar's fishing zone. The forms shall be sent to the relevant authorities referred to above no later than 31 March of the year following the year for which the licences were valid.

Forms must be completed legibly and be signed by the skipper of the vessel. In addition, they must be completed by all vessels which have obtained a licence, even if they have not fished ...

4. Communications

Skippers shall notify Madagascar's Fisheries Surveillance Centre, at least three hours in advance, by radio (dual frequency 8 755 Tx 8 231 Rx USB), by fax (261) 202 24 90 14 or by e-mail (csp-mprh@dts.mg) with confirmation of their intention to bring their vessel into or take it out of Madagascar's fishing zone ...

5. Observers

At the request of the Ministry responsible for fisheries, tuna seiners and surface longliners shall take an observer on board, who shall be treated as an officer. The time spent on board by observers shall be fixed by the Ministry responsible for fisheries, but, as a general rule, it should not exceed the time required to carry out their duties. The observers' specific activities are set out in Appendix 3.

The conditions governing their embarkation shall be defined by the Ministry responsible for fisheries, represented by Madagascar's Fisheries Surveillance centre.

Vessel-owners or their agents shall inform Madagascar's Fisheries Surveillance Centre at least two days in advance of their vessel's arrival in a Malagasy port with a view to taking the observer on board ...

7. Fishing zones

Community vessels shall have access to all waters under Madagascar's jurisdiction beyond 12 nautical miles from the coastline.

Should the Ministry responsible for fisheries decide to install experimental fish concentration devices, it shall inform the commission and the agents of the vessel-owners concerned, indicating the geographical position of the devices.

From the 30th day after such notification, it shall be forbidden to go within 1.5 nautical miles of those devices. The dismantling of any experimental devices must be reported to the same parties immediately.

8. Inspection and surveillance of fishing activities

Vessels holding a licence shall allow on board any officials duly authorised by the Republic of Madagascar to inspect and monitor fishing activities and shall assist them in the accomplishment of their duties.

9. Satellite monitoring

Since the Republic of Madagascar has introduced a Vessel Monitoring System (VMS) for its own fleet and intends to extend this system on a non-discriminatory basis to all vessels fishing in its fisheries zone, and Community vessels have been subject to satellite monitoring wherever they

operate under Community legislation since 1 January 2000, it is recommended that the national authorities of the flag States and of the Republic of Madagascar should monitor by satellite as follows vessels fishing under the Agreement:

1. For the purposes of satellite monitoring, the Malagasy authorities have communicated to the Community the coordinates (latitudes and longitudes) of Madagascar's fishing zone (Table 1). The map relating to the table of coordinates is attached in Appendix 4 ...

12. Penalties

Any breach of this Protocol or of Malagasy fisheries legislation shall be penalised in accordance with the Malagasy laws and regulations in force.

The Commission shall be informed in writing within 48 hours at the latest of any penalty imposed on any Community vessel, and of all the relevant facts concerning the case.

13. Boarding of vessels

1. Transmission of information

The Malagasy Ministry responsible for fisheries shall inform the Commission Delegation and the flag State in writing, within 48 hours, of the boarding of any community fishing vessel operating under the Agreement in Madagascar's fishing zone and shall transmit a brief report of the circumstances and reasons leading to such boarding. The Commission Delegation and the flag State shall also be kept informed of any proceedings initiated and penalties imposed ...

14. Environmental protection

In the interests of the environment, the two parties undertake to introduce the following measures:

- no vessel may spill oil or derivatives thereof into the Malagasy fishing zone, or throw plastic materials or household waste into that zone,
- responsible fisheries, rational management and the preservation of tuna stocks shall be promoted within the IOTC,
- protected and prohibited species, such as whales, dolphins, turtles and sea birds, may not be caught.

The European Community shall be entrusted with the task of notifying the Ministry responsible for fisheries of any environmentally-unfriendly act committed by any vessel fishing in the Malagasy fishing zone.

The Angolan agreement was denounced by the EU in 2006. The main reasons were increasing concern in the European Parliament over the implementation of the agreements, including lack of adequate monitoring by the EU of fishing operations and general concerns at over-fishing Angola waters. Paragraph 2 of EU Regulation 1185 suggests some of the environmental concerns.

**COUNCIL REGULATION (EC) No 1185/2006 of 24 July 2006
denouncing the agreement between the European Economic
Community and the Government of the People's Republic of Angola
on fishing off Angola and derogating from regulation (EC) No
2792/1999**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 36 and Article 37 in conjunction with Article 300(2) and the first subparagraph of Article 300(3) thereof,

Having regard to the proposal from the Commission,

Having regard to the Opinion of the European Parliament ⁽¹⁾

Whereas:

On 18 July 2005 the Commission adopted a Decision approving the conversion plan for fishing vessels affected by the non-renewal of the fishing protocol between the European Community and the Republic of Angola within the framework of the FIGG operational programme relating to Community structural interventions in the fisheries sector for Objective I regions in Spain during the 2000 to 2006 period.

(1) The Agreement between the European Economic Community and the Government of the People's Republic of Angola on fishing off Angola ⁽²⁾ (hereinafter referred to as 'the Agreement') was signed in Luanda on 1 February 1989 and entered into force on that date pursuant to Article 15 thereof.

(2) The last Protocol annexed to the Agreement, which set out, for the period from 3 August 2002 to 2 August 2004, the fishing opportunities and the financial contribution provided for by the Agreement ⁽³⁾, has not been renewed, since certain conditions laid down in the new legislative framework on Biological Aquatic Resources adopted by the Government of the Republic of Angola in October 2004 were incompatible with the Community's requirements for fishing by Community fishing vessels in the waters of Angola.

(3) It is therefore appropriate to denounce that Agreement in accordance with the procedure set out in Article 14 thereof.

(6) In order to facilitate the implementation of that conversion plan, Community fishing vessels covered by the plan which, as a result of this denunciation, cease their activities under the Agreement should be exempted from certain provisions of Regulation (EC) No 2792/1999. In particular, they should not be subject to the obligation to reimburse public aid for the temporary cessation of activities or for renewal, modernisation or equipment or to the obligation to demonstrate continuous activity in the year preceding their deletion from the Community's fishing vessel register,

HAS ADOPTED THIS REGULATION:

Article 1

The Agreement between the European Economic Community and the Government of the People's Republic of Angola on fishing off Angola signed in Luanda on 1 February 1989 is hereby denounced on behalf of the Community.

(4) Under Council Regulation (EC) No 2792/1999 of 17 December 1999 laying down the detailed rules and arrangements regarding the Community structural assistance in the fisheries sector ⁽⁴⁾, the Member States may grant compensation to fishermen and owners of vessels for the temporary cessation of activities where a fisheries agreement is not renewed, or where it is suspended

Article 2

The President of the Council is hereby authorised to designate the person(s) empowered to notify the Government of the Republic of Angola of the denunciation of the Agreement.

Article 3

1. Community fishing vessels listed in the conversion plan approved by the Commission Decision of 18 July 2005 shall not be subject to Article 10(3)(b)(ii) or (4) of Regulation (EC) No 2792/1999 or to point I.I(a) of Annex III thereto. Official Journal of the European Union L 214/11

2. The capacity of each vessel benefiting from the derogation under Article 10(4) of Regulation (EC) No 2792/1999 shall be considered as an exit supported by public aid subject to the provisions of Article 11(3) of Council Regulation (EC) No 2371/2002 of 20 December 2002 on the conservation and sustainable exploitation of fisheries resources under the common fisheries policy ⁽¹⁾.

Article 4

This Regulation shall enter into force on the seventh day following that of its publication in the Official Journal of the European Union.

This Regulation shall be binding in its entirety and directly applicable in all Member States. Done at Brussels, 24 July 2006.

⁽¹⁾ Opinion of 16 May 2006 (not yet published in the Official Journal).

⁽²⁾ OJ L 268, 19.9.1987, p. 66.

⁽³⁾ OJ L 351, 28.12.2002, p. 92.

⁽⁴⁾ OJ L 337, 30.12.1999, p. 10. Regulation as last amended by Regulation (EQ) No 485/2005 (OJ L 81, 30.3.2005, p. 1).

For the Council
The President
M. PEKKARINEN

Agreements on cultural, educational and technical cooperation

Agreements to further cultural and educational cooperation between states are long-standing devices to enhance and promote bilateral and multilateral relations. The arrangements are generally low-cost but have quite high-profile value. Technical cooperation agreements have also been used between UN Specialised Agencies to develop new forms and areas of organised cooperation. For example the UNEP and the International Olympic Committee (IOC) concluded a technical cooperation agreement following the Lillehammer Olympic Games in Norway. The organisations

aimed to develop jointly guidelines to cover environmental issues at international sporting events, such as environmental criteria for Olympic host sites, environmental impact assessment and audit systems.

In general, intergovernmental agreements will include provisions on language and study visits; mutual science and technology research projects; festivals, conferences and exhibitions; and the establishment of cultural centres. In addition, cultural and technical cooperation agreements generally have provisions for a Joint Commission, or similar body, responsible for implementation and review. For example the UK concluded education, science and cultural agreements with a number of the independent states of the former Soviet Union after the break-up of the USSR. The format and scope of these types of agreements is illustrated in the following example concluded between the UK and Republic of Kazakhstan.

Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of Kazakhstan on cooperation in the fields of education, science and culture

The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of Kazakhstan (hereinafter referred to as 'the Contracting Parties');

Desiring to strengthen and develop the friendly relations between the two countries and their peoples;

Being convinced that exchanges and co-operation in the fields of education, science and culture as well as in other fields contribute to a better mutual knowledge and understanding between the British and Kazakh people;

Have agreed as follows:

Article 1

The Contracting Parties shall encourage the development of relations between their two countries in the field of education by:

- (a) encouraging and facilitating direct co-operation, contacts and exchanges between people, institutions and organisations concerned with education in the two countries;
- (b) encouraging and facilitating the study of and instruction in the languages and literature of the other Contracting Party;
- (c) encouraging and facilitating co-operation and exchanges in teaching methods and materials, curriculum development and examinations;
- (d) providing scholarships and bursaries and promoting other means to facilitate study and research.

Article 2

The Contracting Parties shall encourage and facilitate the development of exchanges and research on problems of mutual interest in the fields of science and technology, including direct co-operation between scientific and research institutions in the two countries.

Article 3

The Contracting Parties shall encourage and facilitate direct contacts in the fields of literature, urban construction and design, the visual arts, the performing arts, film, television and radio, architecture, museums and galleries, libraries and archives and in other cultural areas.

Article 4

The Contracting Parties shall facilitate the exchange of information about measures to protect the historical and cultural heritage.

Article 5

Each Contracting Party shall encourage the establishment in its territory of cultural and information centres of the other Contracting Party to organise and carry out activities in pursuit of the purposes of this Agreement, and shall grant every facility within the limits of its legislation and capabilities to assist such centres. The expression 'cultural and information centres' shall include schools, language teaching institutions, libraries, resource centres and other institutions dedicated to the purposes of the present Agreement.

Article 6

The Contracting Parties shall encourage direct co-operation between press and publishing organisations in the two countries.

Article 7

The Contracting Parties shall encourage co-operation between their respective authorities in order to ensure the mutual protection of copyright and, within the terms of their legislation, lending rights.

Article 8

The Contracting Parties shall encourage the development of tourism between the two countries.

Article 9

The Contracting Parties shall encourage co-operation between sporting organisations and participation in sporting events in each other's countries.

Article 10

The Contracting Parties shall encourage contacts between young people and direct co-operation between youth organisations of the two countries.

Article 11

The Contracting Parties shall facilitate in appropriate ways attendance at seminars, festivals, competitions, exhibitions, conferences, symposia and meetings in fields covered by this Agreement and held in either country.

Article 12

The Contracting Parties shall encourage direct co-operation and exchanges between non-governmental organisations in all fields covered by this Agreement.

Article 13

All activities covered by this Agreement shall comply with the laws and regulations in force in the State of the Contracting Party in which they take place.

Article 14

The British Council shall act as principal agent of the Government of the United Kingdom of Great Britain and Northern Ireland in the implementation of this Agreement.

Article 15

Representatives of the Contracting Parties shall, whenever necessary or at the request of either Party, meet as a Mixed Commission to review developments relating to this Agreement.

Article 16

1. This Agreement shall enter into force on the day of signature.
2. This Agreement shall remain in force for a period of five years and thereafter shall remain in force until the expiry of six months from the date on which either Contracting Party shall have given written notice of termination to the other through the diplomatic channel.

In witness whereof the undersigned, being duly authorised thereto by their respective Governments, have signed this Agreement.

Done at London this Twenty-first day of March 1994 in the English and Kazakh languages, both texts having equal authority.

For the Government of the
United Kingdom of Great
Britain and Northern Ireland:
Douglas Hogg

For the Government of the
Republic of Kazakhstan:
T. Suleimenov

An interesting and unusual example of developing state practice in the cultural-technical cooperation field is the treaty concluded in 1993 between the UK and the Ukraine on Principles of Relations and Cooperation.⁴⁷ In addition to undertakings on political and security cooperation, the agreement contained a wide range of other provisions on economic cooperation (Article 11); environmental protection (Article 12); freedom of contact and travel (Article 13); and industrial cooperation (Article 17). The treaty is in effect a mixture of political aspiration and legal obligation. Article 23 makes provision for registration of the treaty with the UN Secretariat in accordance with Article 102 of the UN Charter.

Treaty on the principles of relations and cooperation between the United Kingdom of Great Britain and Northern Ireland and Ukraine

The United Kingdom and Ukraine, hereinafter referred to as the Parties;

Reflecting the aspiration of their peoples to develop friendship and co-operation;

Stressing the fundamental significance of the historic changes resulting from the end of the era of ideological and military confrontation in Europe;

Noting that Ukraine is one of the successor states to the former Soviet Union;

Guided by the aims and principles of the UN Charter,⁴⁸ the provisions of the Helsinki Final Act,⁴⁹ the Paris Charter for a new Europe⁵⁰ and other CSCE documents;

Conscious of their responsibility to help preserve peace and strengthen security in Europe and the whole world;

Convinced of the need to help strengthen the atmosphere of friendship, mutual confidence, understanding and co-operation in international relations and determined to play an active part in this process;

Seeking to create a Europe of peace, democracy, freedom and common human values, and to encourage the deepening of the CSCE process through, inter alia, development of security and co-operation mechanisms;

Fully determined to develop their co-operation in political, economic, scientific and technological, environmental, cultural and humanitarian fields on the basis of equality and mutual benefit, and in the spirit of new partnership and co-operation exemplified by the Joint Declaration by the United Kingdom of Great Britain and Northern Ireland and Ukraine signed in London on 15 September 1992,⁵¹

Have agreed as follows:

Article 1

Peace and friendship are and shall remain the basis of relations between the United Kingdom and Ukraine. These relations shall be built on mutual confidence and understanding, partnership and co-operation.

Article 2

The Parties, reaffirming their obligations under the Charter of the United Nations, undertake to work closely together in upholding the purposes and principles of the United Nations Charter, in strengthening the United Nations Organisation and in ensuring that the United Nations responds effectively to threats to international peace and security.

Article 3

The Parties shall collaborate within the framework of other international organisations of which they are members, as well as at international conferences and fora, in order to help consolidate a framework of lasting co-operation between countries of the world.

Article 12

The Parties, agreeing that environmental protection is a high priority, shall encourage co-operation between relevant authorities in the fields of preservation and improvement of the environment and its protection from damage due to pollution, including exchanges of appropriate information and experts in the event of natural catastrophes, ecological disasters (such as Chernobyl) and major industrial accidents.

Article 13

The Parties shall encourage wide and free contacts between the citizens of the United Kingdom and Ukraine. They welcome the provisions of the Memorandum

of Understanding on Unrestricted Freedom to Travel signed in London on 15 September 1992.⁵² The Parties shall operate their respective arrangements for the issue of visas with the greatest possible degree of speed and efficiency.

Article 14

The Parties shall extend to each other all appropriate assistance in the operations of diplomatic missions in each other's country.

Article 15

The Parties shall encourage exchanges between members of their respective legislatures. They shall encourage co-operation and exchanges of experience in parliamentary procedures and practice, and in the preparation of legislation. The Parties shall also encourage contacts and exchanges of experience in public administration; in the judiciary and between legal bodies; and between press and media organisations.

Article 16

The Parties shall promote the development of cultural and educational contacts and co-operation and exchanges between organisations and individuals in the two countries. The Parties shall welcome each other's efforts to promote their respective languages in each other's country.

Article 17

The Parties shall encourage co-operation between their respective authorities in other fields, and consider that the following are likely to be particularly appropriate in this respect:

- (a) scientific and technological co-operation, including exchanges of appropriate information and specialists and direct links between researchers and research institutes;
- (b) civil nuclear energy, in particular safety;
- (c) transport, including infrastructure, research and development, science and technology;
- (d) construction.

Article 18

The Parties condemn all forms and acts of terrorism regardless of motives and objectives and reaffirm their conviction that terrorism cannot be justified in any circumstances. The Parties shall work closely together in the fight against terrorism, crime, including organised crime, drug trafficking and illegal international dealing in cultural treasures.

Article 19

The Parties envisage that the development of relations between them may lead to the conclusion of separate agreements and arrangements in different areas of co-operation.

Article 20

The Parties declare that this Treaty does not detract from or otherwise displace the Parties' respective rights and obligations either under existing or future bilateral and multilateral agreements to which they are party or arising from their membership of international organisations, and that co-operation under this Treaty shall proceed to the extent that it is compatible with those rights and

obligations. They declare that this Treaty is not intended to affect the interests of any other State or groups of States.

Article 21

Each of the Parties shall notify the other of the completion of the procedures required by its law for the entry into force of the Treaty. The Treaty shall enter into force on the date of the later of these notifications.

Article 22

This Treaty shall be of unlimited duration but shall cease to be in force six months after the day upon which one Party notifies the other Party in writing of its intention to terminate its validity.

Article 23

This Treaty shall be registered with the UN Secretariat pursuant to Article 102 of the Charter of the United Nations.

Done in duplicate at London this tenth day of February 1993 in the English and Ukrainian languages, both texts being equally authoritative.

For the United Kingdom of
Great Britain and Northern Ireland:
John Major

For Ukraine:
L. Kravchuk

The Antarctic Treaty extract below illustrates the drafting of a multilateral environmental management plan for a vulnerable area. The aim of the treaty is to regulate tourist and other visits to the Cape Evans area of Ross Island, and to ensure conservation of artefacts and relics of the Scott Expedition.⁵³

*Management plan For Antarctic Specially Protected Area
No. 155 CAPE EVANS, ROSS ISLAND*

(including Historic Site and Monument Nos. 16 and 17, the historic Terra Nova hut of Captain Robert Falcon Scott and its precincts and the Cross on Wind Vane Hill)

1. Description of Values to be Protected

The significant historic value of this Area was formally recognised when it was listed as Historic Site and Monument Nos. 16 and 17 in Recommendation 9 (1972). An area containing both sites was designated as Specially Protected Area No. 25 in Measure 2 (1997) and redesignated as Antarctic Specially Protected Area 155 in Decision 1 (2002).

The Terra Nova hut (Historic Site and Monument No. 16) is the largest of the historic huts in the Ross Sea region. It was built in January 1911 by the British Antarctic Terra Nova Expedition of 1910–1913, led by Captain Robert Falcon Scott, RN. It was subsequently used as a base by the Ross Sea party of Sir Ernest Shackleton's Imperial Trans-Antarctic Expedition of 1914–1917.

Historic Site and Monument No. 17 consists of the Cross on Wind Vane Hill, erected in the memory of three members of Shackleton's Ross Sea party who

died in 1916. In addition to this, two anchors from the ship Aurora of the Imperial Trans-Antarctic Expedition, two instrument shelters (one on Wind Vane Hill and the other near the Terra Nova hut), several supply dumps and numerous artefacts are distributed around the site.

Cape Evans is one of the principal sites of early human activity in Antarctica. It is an important symbol of the Heroic Age of Antarctic exploration and, as such, has considerable historical significance. Some of the earliest advances in the study of earth sciences, meteorology, flora and fauna in Antarctica are associated with the Terra Nova Expedition based at this site. The data collected can provide a bench mark against which to compare current measurements. The history of these activities and the contribution they have made to the understanding and awareness of Antarctica therefore contribute to both the historic and scientific value of the site.

A revised version of the Management Plan was adopted by means of Measure 2 (2005) and changes to the access and movement provisions were adopted by means of Measure 12 (2008).

2. Aims and Objectives

The aim of the Management Plan is to provide protection for the Area and its features so that its values can be preserved. The objectives of the Management Plan are to:

- avoid degradation of, or substantial risk to, the values of the Area;
- maintain the historic values of the area through planned conservation work which may include:
 - a. an annual 'on-site' maintenance programme,
 - b. a programme of monitoring the condition of artefacts and structures, and the factors which affect them, and
 - c. a programme of conservation of artefacts to be conducted on and off site;
- allow management activities which support the protection of the values and features of the Area including:
 - a. mapping and otherwise recording the disposition of historic items in the hut environs, and
 - b. recording other relevant historic data; and prevent unnecessary human disturbance to the Area, its features and artefacts through managed access to the Terra Nova hut.

3. Management Activities

The following management activities will be undertaken to protect the values of the Area:

A regular programme of conservation work shall be undertaken on the Terra Nova hut and associated artefacts in the Area.

Visits shall be made as necessary for management purposes.

- Systematic monitoring shall be put in place to assess the impacts of present visitor limits, and the results and any related management recommendations included in reviews of this Management Plan.

National Antarctic Programmes operating in, or those with an interest in, the Area shall consult together with a view to ensuring the above management activities are implemented.

- Copies of this Management Plan, including maps of the Area, shall be made available at adjacent operational research/field stations.

4. Period of Designation

Designated for an indefinite period.

Helicopter landings may be made at either of the existing designated landing sites marked on [Maps A](#) and B. One site is approximately 100 metres to the north of the hut, just outside the Area. The other is located adjacent to the New Zealand refuge hut approximately 250 metres beyond the south western boundary of the Area.

6(iii) Location of structures within and adjacent to the Area

All structures located within the Area are of historic origin, although a temporary, modern protective enclosure around the magnetic hut remains in place. A major feature of the Area is Scott's Terra Nova hut located on the north western coast of Cape Evans at Home Beach. The hut is surrounded by many historic relics including the two anchors from the Aurora, dog skeletons, an instrument shelter, two dog lines, meteorological screen, fuel dump, magnetic hut, coal stores, a flag pole and the experimental rock hut/rubbish dump which is an historic rock structure linked with the 'Worst Journey in the World' to Cape Crozier (1911) containing a small collection of artefacts. A memorial cross to three members of Shackleton's Ross Sea party of 1914–1917 stands on Wind Vane Hill. All these features are included within the boundaries of the Area.

A New Zealand refuge hut, camp site and helicopter landing site are situated approximately 250m to the south west of the Area.

The former Greenpeace year-round World Park Base was sited to the north east of Scott's Terra Nova hut from 1987 to 1992. No visible sign of the base remains.

6(iv) Location of other Protected Areas in the vicinity

ASPAs 121 (previously SSSI No. 1), Cape Royds, and

ASPAs 157 (SPA No. 27), Backdoor Bay, Cape Royds are 10 kilometres north of Cape Evans.

ASPAs 122 (SSSI No. 2), Arrival Heights and

ASPAs 158 (SPA No. 28), Hut Point are approximately 22 kilometres south of Cape Evans at Hut Point Peninsula.

ASPAs 130 (SSSI No. 11), Tramway Ridge is approximately 20 kilometres east of Cape Evans.

All sites are located on Ross Island.

6(v) Special Zones within the Area

There are no special zones within the Area.

7. Terms and Conditions for Entry Permits

Entry to the Area is prohibited except in accordance with a Permit. Permits shall be issued only by appropriate national authorities and may contain both general and specific conditions.

A Permit may be issued by a national authority to cover a number of visits in a season.

Parties operating in the Area shall consult together and with groups and organisations interested in visiting the Area to ensure that visitor numbers are not exceeded. Permits to enter the site may be issued for a stated period for:

- activities related to conservation, research and/or monitoring purposes; management activities in support of the objectives of this Plan;
- activities related to educational or recreational activities including tourism, providing they do not conflict with the objectives of this Plan; and
- any other activity specifically provided for in this Plan.

7(i) Access to and movement within or over the Area

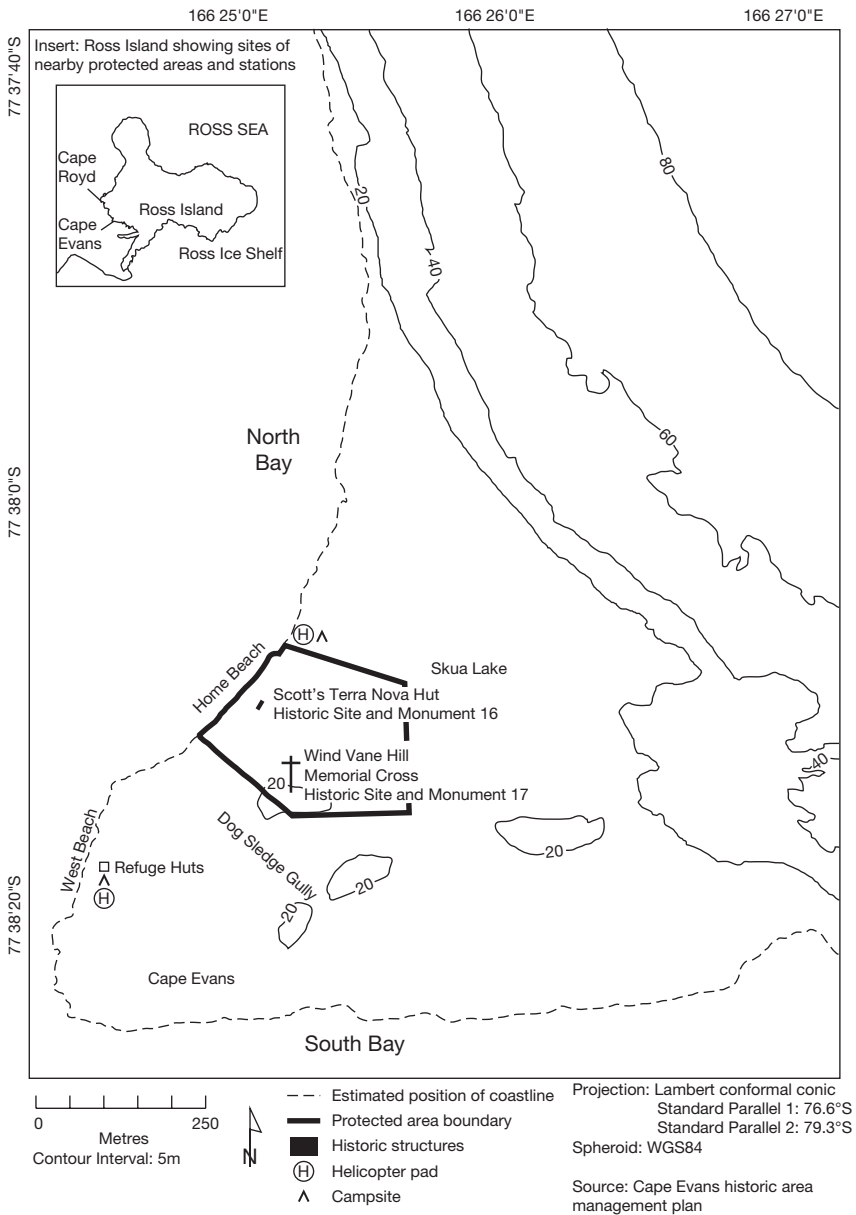
Control of movement within the Area is necessary to prevent damage caused by crowding around the many vulnerable features within the Area. The maximum number in the Area at any time (including guides and those within the hut) shall be: 40 people.

- Control of numbers within the hut is necessary to prevent damage caused by crowding around the many vulnerable features within the hut. The maximum number within the hut at any time (including guides) shall be: 12 people.

Avoidance of cumulative impacts on the interior of the hut requires an annual limit on visitor numbers. The effects of the current visitor levels (average 1127 per year between 1998 and 2009) suggest that a significant increase could cause significant adverse impacts. The maximum annual number of visitors shall be: 2,000 people.

- These limits have been set based on current visitor levels and on the best advice available from conservation advisory agencies (which include conservators, archaeologists, historians, museologists and other heritage protection professionals). The limits are based on the proposition that any significant increase in the current level of visitor numbers would be detrimental to the values to be protected. An ongoing monitoring programme to assess the effects of visitors is required to provide the basis for future reviews of the Management Plan, in particular whether the current limits on numbers of visitors are appropriate.

Map A – Cape Evans, Ross Island, Antarctic Specially Protected Area 155: Regional Map



Notes

1. Vienna Convention on Diplomatic Relations (1961), UN A/CONF. 20/13, 16 Apr. 1961; 55 *AJIL* 1961, 1062–82.
2. Vienna Convention on Consular Relations, Cmnd. 5219, Treaty Series, No. 14, Cmnd. 5219.

3. Convention on Relations Involving International Institutions.
4. See, for example, United Kingdom–USSR, Cm. 1930, Treaty Series, No. 27, 1992, para. 3.
5. Agreement between the United Kingdom and Oman Concerning the Vacation of British Embassy Compound in Muscat and the Provision of New British Embassy Premises, Muscat, 4 Jan. 1993, Treaty Series, No. 45, 1993, Cm. 2298.
6. Agreement between the United Kingdom and People's Republic of China on the Establishment of a British Consulate-General at Shanghai and a Chinese Consulate-General in Manchester, 17 Apr. 1984, Treaty Series, No. 14, 1985, Cm. 9472.
7. Treaty Series, No. 14, 1973, Cmnd. 5219.
8. The Agreement entered into force on 14 January 1985.
9. For example the Romania–Zambia Agreement on Economic and Technical Cooperation (with annex), Bucharest, 14 May 1970, *UNTS*, vol. 971, 1975, p. 421.
10. *UKTS*, no. 64, 1977, Cmnd. 6874.
11. For a discussion of the concept of MFN, see John H. Jackson, 'Equality and discrimination in international economic law: The General Agreement on Tariffs and Trade', *The Yearbook of World Affairs* (Sweet & Maxwell, London, 1983), pp. 224–39.
12. Ministry of Trade, Malaysia, 1973.
13. Malaysia–Czechoslovak Socialist Republic Trade Agreement, 1972, Article 3, pp. 14–16.
14. Federation of Malaya–Republic of Korea Trade Agreement, 5 Nov. 1962, Article II(2).
15. Malaysia–Czechoslovak Socialist Republic Trade Agreement, 20 Nov., 1972, Article 2.
16. Republic of Singapore, *Government Gazette*, Treaties Supplement, no. 11, 14 Mar. 1980. Trade Agreement between the Government of the Republic of Singapore and the Government of the People's Republic of China, 29 Dec. 1979.
17. See Trade Agreement between the Federation of Malaya and the Republic of Korea, 5 Nov., 1962, Article vi(2) and Article iv of the Trade Agreement between Malaysia and Hungary, 2 Feb. 1970; and Article iv(2) with Czechoslovakia, 20 Nov. 1972, Ministry of Trade, Malaysia.
18. 2 Nov. 1972, *UNTS*, vol. 975, p. 195.
19. *UNTS*, vol. 957, p. 174.
20. Malaysia has concluded bilateral shipping agreements with Bangladesh, Turkey and Indonesia; and has identified the USA, People's Republic of China, South Korea, Japan and Sri Lanka for future negotiations. *Lloyds List*, 13 June 1984. For the arrangements with Argentina and Turkey, see *Lloyds List*, 20 June 1984.
21. See, for example, Article 7 of the Soviet–Zambian Trade Agreement: 'the two parties shall promote the development of transit trade'; *UNTS*, vol. 958, pp. 18–19.
22. For example in the Soviet Union–Nigeria Trade Agreement, 29 Oct. 1971; *UNTS*, vol. 941, p. 24.
23. See Soviet Union–Costa Rica Trade Agreement, 16 June 1970; *UNTS*, vol. 957, p. 342, Article 5; and Soviet Union–Nigeria Trade Agreement, *op. cit.*
24. Brazil–Egypt Trade Agreement, 31 Jan. 1973; *UNTS*, vol. 957, p. 219, Article III. See also Soviet Union–Bolivia Trade Agreement, 17 Aug. 1970, Article 4, *UNTS*, vol. 957, p. 361.

25. Australia–People’s Republic of China Trade Agreement, 24 July 1973; *UNTS*, vol. 975, p. 59.
26. As an exception, see Soviet Union–Bolivia Trade Agreement, *op. cit.*, and Soviet Union–Costa Rica trade agreement, *op. cit.*
27. See *The World Bank Annual Report 1985* (The World Bank, Washington, DC), Table 3.1, pp. 50–1.
28. Sector-adjusting lending accounted for 14 per cent of total IBRD and IDA commitments during fiscal 1986 (\$2.28 billion up from 1.1 per cent five years previously in 1981 when this technique was first set up). See *The World Bank Annual Report 1986* (The World Bank, Washington, DC), p. 47.
29. See *The World Bank Annual Report 1985*, pp. 52–4. Structural adjustment lending in fiscal 1986, made up of IBRD loans, IDA credits and African facility credits, remained small at \$777.2 million. These funds were disbursed to programmes in Burundi, Chile, Guinea, Ivory Coast, Malawi, Niger, Senegal and Togo.
30. *World Bank Annual Report 1986*, p. 29.
31. IBRD Document, March 1982.
32. *Commitment Procedure* (Overseas Economic Co-operation Fund, Tokyo, 1983).
33. *Kertas Statut*, 43, 1982, Malaysia.
34. *Kertas Statut*, 116, 1983, Malaysia.
35. *Kertas Statut*, 116, 1983, Article 2(07). See also Article 2(01), of the technical assistance project agreement between Jamaica and the IBRD, 12 April 1985.
36. *Kertas Statut*, 43, 1982, Article 2(03).
37. See *Financial Times*, 29 Jan. 1986.
38. See *Annual Report 1982* (ADB, Manila, 1985) p. 38.
39. See Harry Sasson, ‘World Bank co-financing with commercial banks: the new instruments’, *Arab Banker*, Sept. 1983, pp. 15–16; Harry Sasson, ‘Co-financing with the World Bank’, *The World of Banking*, March–April 1984, pp. 6–8; *World Bank Annual Report 1986*, p. 29.
40. The countries involved included Thailand, Hungary, Chile, Colombia and Ivory Coast.
41. *World Bank Annual Report 1986*, p. 29.
42. William Holden, *Common Fisheries Policy* (Fishing News Books, Oxford, 1994).
43. FAO Flagging Agreement (Rome, 1993); UK Misc. no. 11, 1995.
44. United Nations Convention on Straddling and Highly Migratory Fish Stocks, Dec. 1995.
45. Protocol Establishing the Fishing Rights and Financial Contribution of the EC, provided for in the agreement between the EC and Republic of Angola, 3 May 1987.
46. European Communities *Official Journal*, no. 38, 1988, Cmnd. 9896.
47. Treaty Series, no. 16, 1995, Cm. 2769.
48. Treaty Series no. 67 (1946), Cmd. 7015.
49. Cmnd. 6198.
50. Cm. 1464.
51. Not published.
52. Not published.
53. See The Antarctic Treaty. Measures adopted at the thirty-third Consultative Meeting, Punta del Este, Uruguay, 3–14 May, 2012. Cm8917. See also *Geographical*, Royal Geographical Society, Special Issue (Scott), Jan. 2012.

Conclusion

In examining the purposes and conduct of contemporary diplomacy, certain changes since 2000 have been particularly striking, whilst others fit within an evolving model. Diplomacy, in terms of purposes, can be thought of in terms of traditional categories, including representation, information, explanation, negotiation and contributing to what Watson called 'orderly change, and, order'. It is in this latter function that significant changes have occurred in relationship to diplomatic practice. The extension of an architecture of rules from the middle and latter parts of the twentieth century across a wide range of sectors including environment, international trade regulation, transportation, contrasts with the relative failure of multilateralism in core areas such as the Doha Development Round; difficulties over negotiating climate change regimes and debt write-off for developing countries. These represent striking examples of the failure to agree binding universal norms and obligations at a multilateral level. Rather, they suggest diplomacy shaped by narrower or localised interests – the diplomacy of disengaged states. Diplomacy at a multilateral level is another arena.

In terms of the setting of diplomacy, the international system post-2000 can be conceptualised as a contested system; that is one in which there are substantial differences over norms and purposes. Two other operating features have affected the conduct of diplomacy since 2000: the rapid pace of change in the international system, and the shift in the axis of central political power to New Economic Powers.

The changing players since 2000 are important elements of the evolving diplomatic setting. Whilst the number of sovereign states in the international system had stabilised by the end of the 20th century, statehood, nevertheless, remained an aspiration and factor in diplomacy. Statehood issues arising from civil conflict include Sudan, Libya and Kurdistan (Iraq). A further important feature is the growth of a variety of NGOs since 2000. In part these are communications-based entities, set up to exploit this dimension of international relations. A further factor in the importance of NGOs is that some may be used by states as a proxy for putting forward ideas and policy whilst allowing the states some 'distance' or separateness from an issue. The so-called 'disguised state' is a key element in the battle for ideas in the contemporary international system.

Diplomatic methods have undergone important changes especially after 2000. Changes include the emergence of a number of new groupings and institutions; bilateral link-ups between regional organisations and individual states; and interregional organisation dialogues. The demise of the G-8, and replacement, in effect by the G-20, reflects the shift in the axis of contemporary political power, but also underlines the limitations of shared notions about international order. The report of the chairman of the WTO Rules Negotiating Group drew attention to the limited progress in the group and particularly expressed concern over the quite different concepts of international trade order of members of the group. The contrast between the G-8 Declaration on the Rule of Law at the Heligendamm Summit and subsequent G-20 documents is also particularly notable. The G-20 itself has had important effects on diplomatic methods, particularly the establishment of informal network governance groups, set up in parallel to existing international institutions.

Other important changes affecting diplomatic methods are related to the rapid development of communications technologies. These have introduced greater pace and informality into diplomacy. Not all diplomatic exchanges or processes, however, conform to that model. Many negotiations and exchanges have a different dynamic, patterned by conflicting interests and core issues, which create parameters for knowledge, compromise and negotiation.

The growth of bilateralism is especially significant post-2000. The emergence of bilateralism has occurred as regionalism has faltered. Bilateral relations are pursued across a variety of sectors, and are seen as an important device for stability at a local level, and, extra-regionally, an opportunity for balance and diversification. In some instances, a clutch of bilateral MOUs reflect political illusions of power, rather than operational reality, and remain unfulfilled.

The style of much modern diplomacy has also changed significantly. It is distinguished above all by pace and elements of informality. The volume of diplomacy, particularly at a regional level has become very extensive and in some respects predictable and repetitive. Contested norms and values also mean that a lot of diplomatic activity has become compartmentalised, that is kept within discrete 'boxes', as states and other actors move through and across issues. In the diplomacy of paradoxes, contradictions occur in which one norm is cancelled by the supremacy of another. Nevertheless, the essential tasks of diplomacy remain: the management of external relations and contribution to international order and stability.

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