Diplomatic Interference and the Law

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Diplomatic Interference:
A Historical Overview

1. DIPLOMATIC INTERFERENCE IN STATE PRACTICE

In September 1888, Lord Lionel Sackville-West, the British Minister to the United States, received a letter from a US citizen who asked for advice. 1 1888 was election year in America: The incumbent President, the Democrat Cleveland, faced a challenge by the Republican candidate Harrison.

Sackville’s correspondent, who appeared to be a naturalised American of English birth, wanted to know the Minister’s opinion about Cleveland. He had his doubts about the man: The President who at some time had appeared so ‘favorable and friendly’ towards the ‘mother land’, had now adopted policies which gave ground for concern. 2

Sackville, it appears, saw no harm in replying. 3 The political climate was currently not favourable for the old country: ‘any political party which openly favored the Mother Country at the present moment would lose popularity’, said the Minister, adding that the Democrats were, in his opinion, ‘still desirous of maintaining friendly relations with Great Britain’. This might have been the end of the affair, if Sackville’s correspondent had been who he said he was—one Charles Murchison from Pomona who ‘privately and confidentially’ asked for information and promised to keep it secret. But Murchison did not exist: The letter had been written by the Californian George Osgoodby, who counted the President of the local Republican club among his acquaintances. 4

It did not take long for Sackville’s missive to find its way into the press (it was reprinted in the New York Tribune under the headline ‘The British

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1 The letter and Sackville’s reply are reproduced in Hinckley, 360, 361; 81 State Papers (1888–1889), 483, 484.
2 On Cleveland’s policies, see Hinckley, 359. Republicans had accused Cleveland of being too favourable to the United Kingdom—accusations which were arguably part of an effort to win over the Irish vote. See Harpweek, ‘1888. Harrison v Cleveland’ 3.
4 Hinckley, 365, 366.
Lion’s paw thrust into American Politics to help Cleveland’).\textsuperscript{5} The cry of ‘interference’ soon arose, but it was made not only by Cleveland’s opponents.\textsuperscript{6} US Secretary of State Bayard raised the question whether it was ‘compatible with the dignity, security and independent sovereignty’ of the United States to allow a diplomat to ‘interfere in its domestic affairs by advising persons formerly his countrymen concerning their political course as citizens of the United States’.\textsuperscript{7}

When the British government showed itself reluctant to recall Sackville, Bayard, acting on the President’s instructions, told the Minister that ‘it would be incompatible with the best interests and detrimental to the good relations of both governments’ if he continued in his current position, and sent him his passports.\textsuperscript{8} (It did not help Cleveland: The 1888 presidential election was decided in favour of Harrison.)\textsuperscript{9}

Over the years, the Sackville case became the \textit{locus classicus} of diplomatic interference\textsuperscript{10}—due, arguably, to the comparably detailed evaluation to which the Minister’s conduct was subjected. It also highlighted the consequences which conduct of this kind can generate, both for the diplomatic agent and for the receiving State. For the purposes of contemporary analysis, its outstanding significance lies in its illustration of the complexity of the assessment of diplomatic conduct in situations in which competing interests exist—a point to which this study will return.\textsuperscript{11}

But the rule against diplomatic interference was already well established by the time of the Sackville incident. It can trace its roots to the very beginnings of permanent diplomacy. Its basis was not a conscious effort at codification—it evolved naturally and corresponded to a need. By accepting diplomats, States opened the channels of communication; but they also allowed into their territory persons whose specific aim was the promotion of foreign interests.

Some ambassadors were influential:\textsuperscript{12} They were shrewd, blessed with a silver tongue and golden coins, and sent by powerful masters. Not all of them were unduly burdened by scruples or the good manners becoming a guest.

One of the earliest reported cases illustrates the extent to which some diplomats were willing to go to serve their sovereigns abroad. It is that of the Spanish Ambassador to England in the 1580s, Don Bernardino

\textsuperscript{5} Reitano, 123.
\textsuperscript{6} ‘The British Minister’ \textit{The Times} (London, 25 October 1888).
\textsuperscript{7} ‘Lord Sackville’ \textit{The Times} (London, 1 November 1888).
\textsuperscript{8} ‘The Recall of Lord Sackville’ \textit{The Times} (London, 14 January 1889).
\textsuperscript{9} Cleveland won the popular vote, but did not obtain enough votes in the electoral college.
\textsuperscript{10} cf Satow (1979), 133, para 15.32; Denza, 464; Rousseau, 167.
\textsuperscript{11} See ch 3.
\textsuperscript{12} Gaxotte, for instance, points out that the French envoy to Sweden in 1756, Louis de Cardevac, had more influence with the Senate than Queen Louisa Ulrika: Gaxotte, 370.
de Mendoza, who was involved in the ‘Throckmorton Plot’—a conspiracy to overthrow the rule of Elizabeth 1. The general expectation at the time was that Mendoza would be prosecuted ‘with fire and sword’, but the government, acting on the advice of Alberico Gentili, decided to merely order his expulsion.

Later cases betray the sensitivity with which receiving States considered particular diplomatic statements. After the battle of Culloden in 1746, in which the last Jacobite rising was crushed by the British government, the Dutch envoy to France, van Hoey, wrote a message to the British Secretary of State, in which he advocated a policy of mercy towards the Young Pretender and his associates. The British government took exception to this and complained to States General of the Netherlands, which in turn instructed van Hoey to write ‘a decent and polite letter, to acknowledge his impudence, confess the fault he has committed, and beg pardon, promising to behave himself more prudently for the future’.

That is not to say that Britain herself had always scrupulously abstained from conduct which was perceived as meddling. After the French revolution of February 1848 for instance—and in the middle of the storm it unleashed over Europe—the British Minister in Spain (Bulwer), was instructed by the British Foreign Secretary Palmerston to advise the Spanish government to adopt ‘a legal and constitutional system’. Palmerston also thought it fit to add that the Queen of Spain would act ‘wisely’ if she called to her counsels ‘some of the men in whom the Liberal Party places confidence’. The Spanish cabinet protested ‘in the most energetic manner’ against this form of unwanted advice.

The Bulwer incident is of particular interest because of the detailed evaluation which the British conduct received by the Spanish side. In a letter to Bulwer, the Spanish Foreign Secretary referred to ‘interference’ on three occasions: In relation to Palmerston’s conduct, in relation to Bulwer’s conduct, and in relation to a list of hypothetical examples that, in his view, would constitute interference. The list included a scenario in which the Spanish government would ‘in the name of humanity’ demand a better treatment ‘of the unfortunate people of Asia’ by Britain—conduct which today would be considered under the headings of human rights involvement and assistance towards the realisation of self-determination.

13 On the Mendoza case, see Satow (1979), 179, para 21.16, and Merriman at 392 and 393.
14 Camden, 263–64, quoted in Satow (1979), 179, para 21.16.
15 Merriman, n 13, 393. Some good came of the affair: Gentili’s De Legationibus Libri Tres was a result of that case. Coquillette, 55, n 266.
17 ibid, 304, 305.
18 ibid, 319.
19 ‘Mr. Bulwer’ The Times (London, 26 April 1848).
20 ibid.
21 ie, to the word in its verbal form, ibid.
22 ibid.
Seventeen years before the Sackville case, another diplomat to the United States—the Russian Minister Catacazy—triggered charges of interference. Catacazy was accused of a multitude of sins, including the hassling of Senators and Representatives and thus ‘embarrass[ing] the free course of legislation’. But there was also the suspicion that Catacazy had written or inspired articles in American newspapers which were ‘very abusive of the President and his administration’, and the US Secretary of State expressed the view that Catacazy, in his personal conversations, had been ‘severe and unrestrained, and employed abusive and vituperative language toward very many persons, including several in public positions’.

The Catacazy case, too, has ensured its place in the history books partly due to the fact that a fairly explicit evaluation of the Minister’s conduct survives in official correspondence. Even today, such appetite for investigative enterprise is rare: Neither State stands much to gain by extended scrutiny and the inevitable chain of accusations.

If anything, this attitude gained in strength in the twentieth century. But there were situations when the contours of diplomatic interference received clarification through discussions by domestic legislators. In 1931 for instance, when fear of Communist propaganda had reached a high point in British public debate, Sir Austen Chamberlain drew Parliament’s attention to a recent address given by a member of the Soviet Embassy in the Committee room of the House and asked the Prime Minister if the ‘interference of diplomats in the internal affairs of other countries’ had not led to the dismissal of these diplomats and if he did not think that diplomats should in the future refrain ‘from delivering addresses of that character’. The Prime Minister agreed, but showed himself reluctant to raise the matter directly with the legations.

After the Second World War however, when allegations of diplomatic interference were made by an American lawmaker, the official reply by the US administration showed a greater level of discernment. Congressman Klein complained in 1949 about propaganda in favour of the Spanish (fascist) regime, which apparently emanated from the Spanish
diplomatic mission.\textsuperscript{30} In his reply, Assistant Secretary of State Gross affirmed the general rule that applied to diplomats of the United States themselves, to ‘scrupulously … abstain from interfering in the domestic policies of the countries where they reside’. But he distinguished that from the function to create a favourable sentiment for their own government. Since American diplomats abroad engaged in that function, it would be ‘embarrassing’ for the State Department to object to the respective activities of the Spanish embassy as long as they did not become offensive.\textsuperscript{31}

With this statement, Gross highlighted the fundamental difficulty that inhabits the concept of interference: What critics of the diplomatic agent call ‘interference’, may be considered by the sending State (and, on this occasion, even the receiving State) the fulfilment of tasks which belong to an envoy’s lawful brief. Gross was one of few observers to appreciate this difficulty; but he was not able to offer a satisfactory solution: ‘Offensiveness’ is not a test that provides sufficient objective parameters for the evaluation of interference.

In November 1950, the ICJ had, for the first time, the opportunity to assess a situation in which accusations of interference commonly arise—the provision of diplomatic asylum on mission premises.\textsuperscript{32} The Court found that the grant of diplomatic asylum was, prima facie, ‘an intervention in matters which are exclusively within the competence’ of the receiving State.\textsuperscript{33} This reference to ‘exclusivity’ has some significance for the evaluation of interference: As will be seen, the question whether a matter falls squarely within the ‘internal affairs’ of a receiving State did occupy the ILC in its deliberations on diplomatic duties a few years later.\textsuperscript{34}

The view of the ICJ is of note also because of its position on the rationale of the rule against intervention in the field of diplomatic asylum: It referred in that regard to the ‘territorial sovereignty’ of the receiving State.\textsuperscript{35} It is a view which holds true for diplomatic interference in general: It is the sovereignty of the receiving State as an independent member of the international community which calls for limitations of diplomatic conduct which encroaches upon that right.

At the same time, the ICJ recognised that sovereign rights were not absolute. In the context of diplomatic asylum, it envisaged the possibility of ‘derogations’ (but noted that a ‘legal basis’ had to be established ‘in each particular case’).\textsuperscript{36} This, too, is a point which has wider applicability: Wherever allegations of interference are concerned, there may be

\textsuperscript{30} Whiteman (1970), 145.
\textsuperscript{31} ibid.
\textsuperscript{32} Asylum Case, 272, 273. See ch 11, at n 9.
\textsuperscript{33} Asylum Case, 274.
\textsuperscript{34} See ch 2, at nn 18 ff.
\textsuperscript{35} Asylum Case, 272, 273.
\textsuperscript{36} ibid, 274, 275.
legitimate interests on the side of the sending State whose simultaneous application would lead to a restriction of the sovereignty of the receiving State.37

From the cases which have risen to prominence in the history of diplomatic interference, it appears possible to identify specific topical areas—fields which have traditionally provided more fertile ground for charges of meddling than others. Partisanship in dealing with the political affairs of the receiving State occupies a position of some significance: The cases of Sackville, Mendoza and van Hoey are all instances in which a diplomat made himself the subject of criticism after lending support to a particular faction in the receiving State.

Lobbying activities directed at the government of the receiving State have likewise met with charges of interference, as the Bulwer case demonstrates. Diplomatic conduct has furthermore triggered objections from the receiving State when it was perceived as insulting or as containing sharp criticism—the Catacazy case is by far not the only instance in which this form of conduct met with negative reactions.38

Charges of interference arising out of contact with the public, and in particular, propaganda activities aimed at a public audience, appear to have gained prominence only from the last century onwards—a development for which the rise in means of mass communication must be held at least partially responsible. In a similar vein, diplomatic engagement with the human rights of the receiving State appears to have become a prominent issue of contention only in the relatively recent past—although diplomatic history knows of some precursors to conduct of this kind.39

But what the various cases of alleged interference also reveal, is the fact that receiving States considered this form of behaviour as more than occasional infractions of protocol. They accorded significance to diplomatic interference, and they were right to do so. The consequences of diplomatic activities which arose in the field of interference, are often felt not only in relations between the two States concerned, but also within the internal organisation of the receiving State itself. The Sackville and Mendoza cases attest to that.

Since the conclusion of the Vienna Convention, incidents of alleged interference have not become less frequent—nor has the sensitivity of receiving States on this matter diminished. Some of these instances will be discussed in more detail in Part II of this book, as far as they are relevant for an understanding of the concept of interference.

The subjects which attract the attention of diplomatic agents may have changed: Today’s diplomats are interested in the situation of private

37 This aspect will be discussed in more detail in ch 3.
38 For further instances, see ch 9.
39 See Behrens (2014b), 193, 194.
television and radio stations, \(^{40}\) they express concern about drug trafficking activities, \(^{41}\) lobby for the building of power plants, \(^{42}\) comment on the membership of the receiving State in an international organisation \(^{43}\) and are involved in the monitoring of human rights. \(^{44}\)

But the underlying methods are still recognisable: In the pursuit of their aims, diplomatic agents still approach the government or the opposition in the receiving State; they employ occasionally harsh and critical language; they are known to resort to ‘megaphone diplomacy’ to air their concerns instead of discussing the relevant matters behind the closed doors of the foreign office. And these forms of conduct still trigger negative reactions and accusations of ‘meddling’. To that degree, the attitude of the actors involved in situations of this kind does not appear to have changed very much in the course of diplomatic history. If a change has occurred, it lies in the increasing awareness of sending States and their diplomats of the fact that the rules of diplomacy not only impose restrictions upon them, but grant them certain rights too, and that they therefore may be able to rebut charges of interference on a legal basis. \(^{45}\)

2. THE CODIFICATION OF THE RULE OF NON-INTERFERENCE

At the time of the *Asylum Case*, first attempts had already been made to present the law of diplomatic relations in a systematic and comprehensive form. From the nineteenth century onwards, several sets of systematic rules on this topic were published—draft codes on diplomatic law, written by legal scholars. As private projects, their authority was limited; but several of their provisions reflected customary law as it existed at that time. That is certainly the case where the rule of non-interference is concerned, whose existence was even then supported by ample evidence—not only reactions by receiving States to conduct they perceived as interfering, but also, on occasion, admissions of wrongdoing by sending States.

One of the earliest draft codes—that by Johann Caspar Bluntschli (1868)—contained a ban on interference which was already more explicit than the equivalent provision in the VCDR (Vienna Convention on Diplomatic Relations). It linked the rule of non-interference to the

\(^{40}\) See the 1995 case of Brazeal (A.111).

\(^{41}\) As in the 2008 case of Patrick Duddy, A.237 and ‘Xinhua World News Summary’ *Xinhua* (China, 1 September 2008).


\(^{44}\) See on this point below, ch 3, s 2.

\(^{45}\) See for instance, ch 3 at n 66, n 83, n 94, n 103, n 197.
obligation to respect the ‘independence and honour’ of the receiving State and referred to some common fields of interference (provocations, threats and the making of certain promises). Like Bluntschli, Pasquale Fiore’s draft (1890) condemned provocations and threats; but Fiore also outlined some other emanations of interference and mentioned in particular interference with administrative or judicial authorities. He also emphasised the particular difficulty caused by diplomats who intend to protect the interests of nationals of the sending State. Fiore would have given only limited space to diplomatic conduct in this regard: Diplomats could take action only (‘with proper reserve’) before the Foreign Ministry or help their nationals to seek justice through ‘the regular channels’. The draft also condemned the stirring up of conflicts between political parties and the involvement in ‘intrigue to approve or disapprove’ governmental acts.

By comparison, later draft codes were somewhat laconic on the question. The 1925 Project of the American Institute of International Law simply stated that diplomatic agents may not ‘interfere in the internal or external political life’ of the receiving State; similar wording was used in the Project of the International Commission of American Jurists in 1927. Lord Phillimore, while not mentioning the word ‘interference’ in his draft code (1926), did refer to the diplomatic duty to ‘consider the welfare’ of the receiving State and would have prohibited acts such as engagement in conspiracies against the government of that State. The Harvard Law School Draft on ‘Diplomatic Privileges and Immunities’ (1932)—arguably the most famous of the draft codes—made no mention of diplomatic interference at all.

By that time, attempts at codification had already been undertaken. The earliest initiatives, on a multilateral level, can be traced back to the nineteenth century, but they did not refer to diplomatic obligations. In 1925, a more comprehensive attempt was undertaken under the auspices of the League of Nations. The project was not successful: In 1927, it was decided that the subject of diplomatic immunities and privileges should

46 Annex B.1, para 225 (trans).
47 Annex B.2, para 482.
48 ibid.
49 ibid, para 483.
50 Annex B.3, art 16.
51 Annex B.4, art 16.
52 Phillimore, 180, art 34.
53 The draft was to exert considerable influence in other areas of diplomatic law, see Young, 176, 177. It is reproduced in Reeves, 19 ff.
54 1815 Règlement; see also Strupp (1911), 160 with further references.
Codification History

In the next year, however, the Havana Convention on Diplomatic Officers was signed, which addressed various fields of diplomatic relations and ultimately entered into force with the participation of several American States. While being a relatively short instrument (the Convention has only 27 articles), the rule on non-interference was considered important enough for inclusion. Its Article 12 provides that diplomats ‘may not participate in the domestic or foreign politics’ of the receiving State.\(^{56}\)

After the Second World War, the United Nations returned to the question of the codification of international law. In 1949, the ILC decided to include the subject of ‘diplomatic intercourse and immunities’ in its list of topics suitable for codification;\(^{57}\) and in December 1952, the General Assembly requested the ILC to deal with the subject as a matter of priority.\(^{58}\)

The Special Rapporteur on this topic, the Swedish Judge Emil Sandström, must be credited with one of the most influential contributions in this context. The draft on diplomatic privileges and immunities—28 articles and commentaries—which he submitted\(^{59}\) was to form the basis of the subsequent ILC debates, which began in April 1957.\(^{60}\)

Given the prominence of the rule of non-interference in the existing draft codes and the Havana Convention on Diplomatic Officers, it is somewhat surprising that the Sandström draft made no mention of it. Sandström referred to diplomatic duties in Article 27, but that article only stipulated a general obligation on diplomatic agents to conduct themselves in a manner compatible with the internal order of the receiving State and to conform to its laws and rules\(^{61}\) — a separate duty, which is today enshrined in the first sentence of Article 41(1) of the Vienna Convention.

That the ban on interference formed part of the discussions at all, was due to an initiative by the Mexican ILC member, Luis Padilla Nervo, and his Cuban colleague Francisco García Amador: On 5 June 1957, Padilla Nervo introduced their joint amendment to the Rapporteur’s Article 27, which

\(^{55}\) League of Nations Report (1927), 2. In 1928, the League of Nations also abandoned an initiative to engage in a ‘revision of the classification of diplomatic agents’ when it was found that international codification of this topic would not be realisable. League of Nations Report (1928), 6. See also Secretariat Memorandum (1956), 136 ff for an examination of the work done by the Committee of Experts and its Sub-Committee.


\(^{57}\) YILC (Yearbook of the International Law Commission) 1949, 49, paras 21–23 and 53, para 69.

\(^{58}\) GA Res 685 (VII) (1952).

\(^{59}\) Sandström Report, 9–12.

\(^{60}\) YILC 1957/I, 2, para 6. For a general overview of the ILC debates in 1957 and 1958, see Bruns, 28–34.

\(^{61}\) Annex B.5, art 27.
included the duty ‘not to interfere in the domestic or foreign politics’ of the receiving State. The article was discussed in several meetings in the same month and formed part of the set of draft articles which the ILC included in its Report to the General Assembly. The relevant sentence now stated that beneficiaries of diplomatic privileges and immunity ‘also have a duty not to interfere in the internal affairs of that State’.

What were the main points of debate in the International Law Commission?

Most of the debate on interference was taken up by questions about the authorship of the offending act—would it make sense to include cases of interference in which a diplomat had acted on instructions of the sending State? Opinions on this issue were much divided, with Special Rapporteur Sandström stating that it was that particular point which had made him refrain from including an article on ‘non-intervention’ in his draft.

Another issue related to diplomatic interference in the ‘foreign politics’ of the receiving State, as the amendment had phrased it. On this point, the observation was made that it might be part of the very task of diplomats to occupy themselves with foreign policy, and the reference was, in the end, scrapped.

Other members of the ILC referred to particular fields of interference—Padilla Nervo in particular mentioned ‘dictatorial interference’ (a term which had been used in academic debate at that time). The way in which he understood the concept, approaches a field of potential interference which might today best be described as the posing of threats and ultimatums.

It is also possible to discern, in some contributions, a foreshadowing of the difficulty caused by the existence of legitimate, competing interests which may have an impact on allegedly interfering conduct. The ILC members Khoman and Bartos, for instance, both referred to ‘interests of the sending State’ which a diplomatic agent, in principle, should be able to defend. In a similar vein, Sandström pointed out that it might sometimes be the ‘duty’ of a diplomatic agent ‘to make representations in connexion with the [receiving] State’s internal affairs’ and referred to a case in which

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62 Annex B.6, para 55.
64 See Annex B.7 (art 33).
65 YILC 1957/I, 144, para 67 [Sandström]. See ch 2, s 3.
66 YILC 1957/I, 145, para 76 [Fitzmaurice]. See ch 2, s 2.
67 YILC 1957/I, 145, para 83 [Padilla Nervo].
68 Padilla Nervo himself referred to Lauterpacht (1950), 167, 168. See also Falk, 172; Q Wright, 5 (highlighting, in particular, diplomatic ‘intervention’).
69 YILC 1957/I, 145, para 71 [Khoman]; YILC 1957/I, 145, para 80 [Bartos].

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Sweden had made such representations to protect her interests in the Federal Republic of Germany.70

When the 1957 debates had come to an end, States had the opportunity to offer their views on the ILC’s set of draft articles. Comments were received from 21 governments,71 but few of them dealt with the duty of non-interference. Italy wanted a clearer distinction between the addressees of diplomatic duties;72 Switzerland suggested putting the article in a different section of the draft.73 But when the ILC reviewed the comments in its 1958 session, it decided to leave the text of the rule on non-interference unaltered,74 and the norm was thus included in the final set of draft articles (now renumbered as Article 40).75 A comment received by Yugoslavia bears observation: Its Foreign Ministry suggested, with some foresight, that the article be ‘reconsidered and elaborated in more detail’ since it had been ‘formulated in a rather incomplete manner’ and required ‘as comprehensive [an] analysis as possible’.76 But Yugoslavia did not explain what parts of the rule she had found deficient, and the ILC does not appear to have even discussed her proposal.

In December 1959, the General Assembly decided to convene a conference at Vienna to consider, on the basis of the ILC work, the matter of ‘diplomatic intercourse and immunities and to embody the results of its work in an international convention’.77 Delegates from 81 States met at the Neue Hofburg in Vienna from 2 March to 14 April 1961,78 with the Austrian academic and member of the ILC Alfred Verdross as President of the Conference.79

States had made several suggestions to the conference which concerned Draft Article 40, but none of them referred to the particular rule of non-interference.80 It was therefore not discussed in the Committee of

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70 YILC 1957/I, 149, para 34 [Sandström]. The case concerned the introduction by Germany of a ‘capital levy on property’, from which she did however except nationals of those States that had formerly been at war with the Third Reich. According to Sandström, Sweden had ‘intervened to complain of discrimination’, and this representation ‘had been taken in good part’, ibid.
72 YILC 1958/II, 120. Italy suggested a reference to ‘all diplomatic agents’ and to ‘members of the administrative or technical staff’.
73 YILC 1958/II, 128. The VCDR dispensed with the grouping of articles into sections altogether.
74 YILC 1958/I, 181, para 7 et seq; YILC 1958/I, 249, after para 23.
75 YILC 1958/II, 104, art 40.
76 YILC 1958/II, 139.
79 ibid, para 6.
80 For references to other parts of art 40, see Albania and Czechoslovakia, Vienna Conference Records Vol 2, 43; Japan, Vienna Conference Records Vol 2, 43.
the Whole,\textsuperscript{81} and in plenary session, paragraph 1 was ‘adopted without discussion’.\textsuperscript{82}

It was one of the last items on the agenda. One day later, on 14 April 1961, the conference concluded its business and adopted the Vienna Convention on Diplomatic Relations—with 72 votes to none and with only one abstention.\textsuperscript{83} It entered into force on 24 April 1964, when 22 States had become party to the treaty.\textsuperscript{84} At the time of writing, the VCDR has 190 parties,\textsuperscript{85} making it a treaty of nearly global applicability.

And the appeal of the ban on interference (which had now been enshrined in the second sentence of Article 41(1)), was to extend far beyond the confines of the VCDR. It seems remarkable that the rule, in precisely the same wording it had received in the ILC discussions, was adopted in subsequent instruments which deal with privileges and immunities—among them the Vienna Convention on Consular Relations (VCCR) (1963),\textsuperscript{86} the Convention on Special Missions (CSM) (1969),\textsuperscript{87} the Convention on the Representation of States in their Relations with International Organizations of a Universal Character (CRSIO) (1975),\textsuperscript{88} the Agreement on the Privileges and Immunities of the Special Tribunal for the Law of the Sea (1997)\textsuperscript{89} and the Agreement on the Privileges and Immunities of the International Criminal Court (2002).\textsuperscript{90}

But this wide acceptance of the rule masks the fact that it received the most general wording, allowing for a wide range of interpretations. This undoubtedly contributed to its success, but it comes at a price: As a guideline on forms of diplomatic conduct which are acceptable under international law, its use is limited.

That gives room for further examination. But the contemplation both of the codification history and the history of diplomatic interference in State practice retains its value for this endeavour. What it shows is that the rule against interference is, at least in this general form, well established in customary international law; and had been so long before the adoption of the VCDR.

What is more: Incidents in which accusations of interference were made throughout the centuries show the sensitivities of receiving States in this

\textsuperscript{81} cf Vienna Conference Records Vol 1, 210, 211, 35th Meeting of the Committee of the Whole, 29 March 1961.

\textsuperscript{82} ibid, 38, 10th Plenary Meeting, 13 April 1961.

\textsuperscript{83} ibid, 47, 12th Plenary Meeting, 14 April 1961.

\textsuperscript{84} The USSR ratified the VCDR on 25 March 1964.

\textsuperscript{85} UN Treaty Collection (Online), VCDR (as of 1 January 2015).

\textsuperscript{86} VCCR art 55(1)2.

\textsuperscript{87} CSM art 47(1)2.

\textsuperscript{88} CRSIO Art 77(1) 2 (not yet in force).

\textsuperscript{89} Privileges Agreement ITLOS (1997) art 19(2).

regard; and as these sensitivities have, on the whole, retained their significance, they are helpful in delineating the fields in which interference is likely to be perceived even today. Part II of this book will return to this issue.

Most of all, however, the examination of interference by members of the ILC (and, to a lesser degree, by other commentators) has led to the identification of difficulties in its assessment—such as the problem of interference in external matters and the existence of competing interests in cases in which interference was alleged. These are difficulties which were not resolved in the VCDR or the subsequent instruments, yet—as will be seen in the subsequent examination—their importance remains undiminished, and their consideration is indispensable for a comprehensive understanding of the concept of diplomatic interference.