**The Function of Diplomatic Missions in Times of Armed Conflict or Foreign Armed Intervention**

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**1. Introduction**

Raul Wallenberg was a remarkable individual and a remarkable diplomat.[[1]](#footnote-1) Although some controversy exists as to the precise number of Hungarian Jews saved by Wallenberg during his brief service as the First Secretary to the Swedish Legation in Budapest,[[2]](#footnote-2) it is undoubtedly the case that he was responsible for saving the lives of many thousands, if not tens of thousands, of Hungarian Jews during the second half of 1944.[[3]](#footnote-3) What is also not in doubt is that Wallenberg could not have achieved this remarkable humanitarian effort had it not been for his status as a diplomat.[[4]](#footnote-4) Wallenberg, along with a small but committed group of fellow diplomats stationed in Budapest at the time, used their diplomatic status, and the rights that status provided, to facilitate the rescue of Jews from the clutches of Nazi forces under the leadership and direction of Adolph Eichmann.[[5]](#footnote-5)

The purpose of this article is to consider Wallenberg’s legacy in relation to the function of diplomatic missions, particularly in times of armed conflict or foreign armed intervention. After considering Wallenberg’s appointment and his work in Budapest, the article will turn to examine the development of diplomatic law after the Second World War in order to determine the impact, if any, of Wallenberg’s actions on the development of diplomatic law. Particular attention will be paid to the provisions of the Vienna Convention on Diplomatic Relations 1961[[6]](#footnote-6) leading to an initial conclusion that the impact of the Vienna Convention was to close many of the opportunities that Wallenberg had used to facilitate his humanitarian activities. Nevertheless, having briefly identified the changing nature of armed conflict, it will be argued that diplomats constitute a central element of an emerging ‘new’ diplomacy of the globalised and increasingly complex world.[[7]](#footnote-7) This new diplomacy eschews realist perspectives on international relations in favour of a more constructivist approach that focuses on the shared interests of the international community.[[8]](#footnote-8) It envisages diplomacy being conducted by a range of actors engaging in a process of ‘complexity management’.[[9]](#footnote-9) Echoing the work of Wallenberg in his attempts to protect Hungarian Jews from the Holocaust, it is arguably the case that at the heart of this new diplomacy is the emerging commitment of the international community, operating primarily through the mechanisms and processes of the United Nations, to the so-called doctrine of ‘responsibility to protect’, which is concerned primarily with the protection of civilians in the face of genocide, war crimes, ethnic cleansing and crimes against humanity.[[10]](#footnote-10)

**2. Raul Wallenberg the Diplomat**

Wallenberg’s training as a diplomat was as limited as it was unconventional. Although he was well-travelled, having lived previously in the United States of America, South Africa, Palestine and, indeed, Germany, Wallenberg’s training was as an architect and businessman.[[11]](#footnote-11) In relation to his business career, Wallenberg was latterly a partner in a small import-export firm which required him regularly to travel in Hungary and Eastern Europe.[[12]](#footnote-12) Nevertheless, it is worth noting at this point that, during this time Wallenberg had shown little concern about rising anti-Semitism or, indeed, the plight of Jews in Germany and Eastern Europe more generally, a problem of which he was undoubtedly aware.[[13]](#footnote-13) Given Wallenberg’s lack of training in diplomacy, let alone his apparent lack of interest in the plight of the Jews in Europe, it is surprising that Wallenberg was sought out for a position in the Swedish diplomatic service and, indeed, that he would accept such a position.[[14]](#footnote-14)

2.1 *Wallenberg’s Appointment*

There remains significant controversy about the motives for and the circumstances of his appointment. A number of authors have highlighted the role that the United States’ War Refugee Board (WRB) played in Wallenberg’s appointment. [[15]](#footnote-15) The WRB had been set up in Washington as recently as January 1944 and was charged with ‘the task of saving Jews and other potential victims of Nazi persecution.’[[16]](#footnote-16) A key tactic of the WRB was to encourage neutral states to send diplomats and consuls as observers to Eastern Europe, including Hungary, in order to discourage the transportation and large-scale extermination of Jews.[[17]](#footnote-17) Having failed to secure the service of their first choice Count Folke Bernadotte,[[18]](#footnote-18) the Americans turned their attention to Wallenberg.[[19]](#footnote-19) Wallenberg was ‘interviewed’ by Iver Olsen, the WRB representative in Sweden, and by Herschel V Johnson, the US Ambassador to Sweden, who were both impressed by Wallenberg’s enthusiasm and commitment.[[20]](#footnote-20) The nomination was turned over to the Swedish government which had ‘agreed in principle to send a special envoy to Budapest with diplomatic cover’.[[21]](#footnote-21) Wallenberg was summoned to the Swedish Foreign Office on 13 June 1944 where he negotiated with Swedish officials about the purpose of his mission before being formally appointed as a Swedish diplomat and issued with a Swedish diplomatic passport before leaving to take up his post in Budapest on 7 July 1944.[[22]](#footnote-22)

Given the circumstances of his appointment there remained significant controversy about who, in fact, Wallenberg would be serving in Budapest. A number of writers have asserted that Wallenberg was essentially working for the Americans. Thus, the WRB considered that Wallenberg’s mission had a considerably broader purpose than mere observation, which included acting to save as many Jewish lives as possible.[[23]](#footnote-23) On the other hand, Levine asserts that ‘there is no evidence whatsoever that UD [Swedish Utrikesdepartementet or Foreign Office]officials saw Wallenberg as a representative of the Americans however unorthodox his appointment had been.’[[24]](#footnote-24) As far as the Swedish government was concerned, Wallenberg had a simple role, which was to report to them from Budapest about the treatment of Jews during a short two-month posting.[[25]](#footnote-25)

The key player in this controversy was, of course, Wallenberg himself. Unimpressed by the formalities and bureaucracy of conventional diplomatic method,[[26]](#footnote-26) Wallenberg drafted a nine-point memorandum in which he detailed the ‘rules’ under which he was to operate.[[27]](#footnote-27) The memorandum provides a clear indication as to Wallenberg’s lack of orthodoxy and his desire to have powers that operated beyond traditional restraints. Of particular importance to the present discussion are Wallenberg’s attempts to circumvent traditional diplomatic channels by communicating personally with the Swedish Foreign Office.[[28]](#footnote-28) In terms of his relations with the receiving state, Wallenberg indicated his desire to deal directly with the Hungarian government without having to go through the ambassador,[[29]](#footnote-29) and, perhaps most controversially, his right officially to seek an audience with Admiral Miklós Horthy, the Hungarian Regent.[[30]](#footnote-30) He further stated his desire to have a free hand to use whatever methods he saw fit, including bribery,[[31]](#footnote-31) and his desire to provide protection to whomever he could through the use of asylum and protective passes.[[32]](#footnote-32) There is some controversy as to the official status of this memorandum, particularly as to whether it was formally accepted by the Swedes.[[33]](#footnote-33) However, what is apparent from the text is that Wallenberg did not regard himself as a ‘mere’ diplomat.

*2.2 Wallenberg in Budapest*

Wallenberg arrived in Budapest on 9 July 1944 and immediately began to set about the process of not just observing the treatment of the Jews but actively intervening on their behalf. It is not possible in the confines of the present article, to examine in detail Wallenberg’s work during his short time in Budapest.[[34]](#footnote-34) However, it is clear from the many accounts of his work that Wallenberg used his diplomatic status directly to influence the treatment of Hungarian Jews through a variety of unconventional diplomatic ‘tools’ including bribes,[[35]](#footnote-35) personal interventions,[[36]](#footnote-36) the granting of Swedish protective passes or ‘Schutzpass’, and the use of so-called Swedish Houses. The latter two ‘tools’ are worthy of particular note at this time.

The issuance of protective passes to citizens of a receiving state is not a normal practice of diplomats. Indeed, there is little evidence in the literature that such passes had ever been used before. The idea that the passes were Wallenberg’s idea can be refuted by evidence that similar documents had been used previously by other members of the Swedish legation in Hungary, as well as by other neutral embassies. The issuance of emergency passports is, and was at the time, a recognised diplomatic or, more specifically, a consular practice. However, the norm is that such passports should only be given to nationals. During the early part of 1944, members of the Swedish legation had been issuing emergency passports to Swedes and to nationals of other states who could evidence close ties with Sweden. It was generally accepted that these passports protected the holder from interference by both Hungarian and German officials. However, the availability of emergency passports was limited and they could not be produced quickly enough to satisfy the demand, especially from those whose ties to Sweden were more limited. Indeed, the vast majority of Hungarian Jews were not entitled to such assistance. Nevertheless, the Swedes, and other neutral diplomats, developed other, less official, documents, known as *Schutzpass*, which were nonetheless effective to a greater or lesser extent.[[37]](#footnote-37) Although Wallenberg was not the first to use such documents, he made considerable effort to make ‘his’ *Schutzpass* as official looking as possible by including on them significant ‘bureaucratic’ detail.[[38]](#footnote-38) Although described by one writer as ‘a brash bluff’ these documents were effective. According to the Jewish Virtual Library, Wallenberg ultimately negotiated permission to issue 4,500 passes but it estimates that he eventually issued three times that number.[[39]](#footnote-39)

Wallenberg’s use of safe houses is also worthy of particular comment. During his time in Budapest, Wallenberg increasingly eschewed use of the premises of the Swedish mission in favour of working directly in the city with a view initially of alleviating the conditions in which Jews were being held. As Bierman puts it ‘Wallenberg was ... setting up hospitals, nurseries, and soup kitchens throughout the city, buying food, medicine and clothing with the unlimited funds available to him’.[[40]](#footnote-40) Funds for these endeavours were being provided by the WRB and the American-Jewish Joint Distribution Committee.[[41]](#footnote-41) It is interesting that Wallenberg was effectively coordinating all of the other neutral embassies in Budapest in carrying out similar endeavours, setting up a ‘joint commission of heads of mission with the papal nuncio’. Perhaps most importantly, Wallenberg encouraged the creation of safe-houses. Relying on the perceived “exterritoriality” of diplomatic premises,[[42]](#footnote-42) Wallenberg ensured that each of the houses flew a Swedish flag at its door and proclaimed them to be Swedish territory.[[43]](#footnote-43) The so-called Swedish houses alone accommodated up to 15,000 Jews.[[44]](#footnote-44) Other embassies followed suit and effectively created an international ghetto which ‘consisted of Swedish, Swiss and Red Cross “protected houses”’[[45]](#footnote-45) and which ultimately housed 35,000 Jewish holders of foreign ‘passports’.[[46]](#footnote-46)

It seems clear that Wallenberg was not alone in his endeavours in seeking to rescue the Jews of Budapest, with many of these practices having been operated by the Swedes and other neutral status, as well as the International Red Cross, even before Wallenberg’s arrival in Budapest. Nevertheless, Wallenberg’s apparent disregard for the use of ‘official’ channels ensured that his work stood out from the efforts of others in a similar position. What emerges from a study of Wallenberg the diplomat is not a picture of an educated, rational, conservative thinker but rather an unorthodox and challenging idealist who was full of self-confidence and single-mindedness. Most importantly he was a quite extraordinarily brave individual. Whatever his motivations, be they purely humanitarian or, as some would have it, motivated by self-interest, few individuals have ever willingly put themselves in such a precarious position, whether or not ‘protected’ by the legal status of diplomatic immunity, in order to save the lives of others. On the other hand, perhaps one can read no more into Wallenberg’s story other than that he was simply in the right (or wrong) place at the right (or wrong) time. As Levine has noted, ‘saving lives in Budapest in 1944 was less a matter of lofty humanitarian goals than the result of certain individuals choosing to act in a certain way at a certain time ... the involvement and presence of a handful of neutral governments, officially represented by a handful of men who found themselves in unprecedented circumstances, utilized what during the Holocaust was a possibly unique political space in which something *could* be done – if the will to do it existed’.[[47]](#footnote-47)

*2.3 Exploiting the Political and Legal Gaps*

One of the factors that created this unique political space for Wallenberg and his colleagues was the failure of the Hungarians, and latterly, the Germans, to enforce the rules of diplomatic law.[[48]](#footnote-48) The law of diplomatic privileges and immunities have developed over many centuries and some elements, such as the principle of diplomatic inviolability, can be traced back many centuries.[[49]](#footnote-49) Although diplomatic law was not fully codified until the Vienna Convention on Diplomatic Relations 1961 (Vienna Convention), the vast majority of rules contained therein were well established in 1944. Nevertheless, although there was general agreement on the content of the law during peacetime, its status during armed conflict was less clear. Even the most basic concepts of the law have frequently been challenged during armed conflict and this was certainly the case during the Second World War.[[50]](#footnote-50) For example in relation to the present discussion, while Hungary had initially observed the rights and privileges of neutral diplomats in Budapest, this waned after the German invasion in 1944.[[51]](#footnote-51) This change in attitude came to a head on 24 December 1944 when the Swedish and Finnish embassies were invaded and ransacked by Hungarian militia and police.[[52]](#footnote-52) That this was an illegal act was clear, even in the context of an armed conflict and could not be denied by either the Hungary or Germany. However, in relation to other provisions of diplomatic law there was considerably less clarity. For example, in relation to the *Schutzpass*, it is surprising that Hungarian officials and, latterly, the German military appeared continuously, over a significant time period, to give effect to these despite the fact that they had no value in international or domestic law.[[53]](#footnote-53) Similarly the practice of declaring houses and, ultimately, whole parts of cities to be foreign territory was of dubious legality, even in 1944. Thus, the notion of ‘exterritoriality’ as a juridical foundation of diplomatic law had been rejected by theorists and practitioners alike around the turn of the twentieth century as ‘a fiction which has no foundation either in law or in fact ... the mere employment of this unfortunate expression is liable to lead to errors and to legal consequences which are absolutely inadmissible’[[54]](#footnote-54) Once again, it is surprising that the Hungarian and German authorities allowed Wallenberg and his colleagues to get away with the practice of creating safe-houses.

Perhaps most surprising of all is the fact that Wallenberg was never expelled from Hungary as his activities became more and more unacceptable in the eyes of the Hungarian authorities. The right to declare individual diplomats *persona non grata* has been a ‘fundamental principle’ of diplomatic law that has ‘existed from the earliest period of diplomatic practice’.[[55]](#footnote-55) It would seem that, initially at least, the Hungarians sought to maintain good relations with Sweden and treated its diplomats well. In this context, the declaration of *persona non grata* might have appeared inappropriate. However, after the German invasion and the installation of the *Nyilas[[56]](#footnote-56)* as the Hungarian government on 15 October 1944 it seems that the opportunity to expel Wallenberg and other ‘renegade’ diplomats was still not seriously considered. It is unclear why this might have been the case but it reflected a more general political and legal void which manifested itself in an apparent uncertainty, among both the Hungarians and the invading German forces, about what to do with Wallenberg and his colleagues.

**3. Diplomatic Relations after the Second World War and the Codification of Diplomatic Law**

The lack of clarity about aspects of diplomatic law during the Second World War may have fed into the decision of the United Nations General Assembly in 1952 to request the recently formed International Law Commission to undertake a codification of the law of diplomatic intercourse and immunities.[[57]](#footnote-57) A number of provisions of the resulting Vienna Convention are of particular significance to the present discussion. Before considering these in detail, it is worth considering the effect that codification of the law has had. First and foremost, it has brought greater clarity and precision to many of the provisions of the Convention. Secondly, it has provided a framework for ensuring that virtually all states are bound by the same set of rules. Finally, and perhaps most problematically in the context of the present discussion, the agreed provisions are based on an essentially state-centric approach to diplomacy and diplomatic law. Thus, the primary focus of the Convention is to secure the formal processes of diplomacy conducted through normal processes involving formal representatives of states who are expected to act in certain ways in accordance with particular practices. If we have learned one thing so far in this discussion, it is that Wallenberg was unimpressed with established diplomatic practices and eschewed the normal conventions of traditional diplomacy. Accordingly it would be surprising if Wallenberg’s legacy had contributed much to the Vienna Convention and, to some extent, that proves to be the case. Nevertheless, it is important to consider a number of key provisions of the Vienna Convention that are concerned with the function of diplomatic missions in armed conflict and foreign armed intervention in order to develop this analysis

First and foremost, Article 3 sets out the functions of a diplomatic mission. These include the tasks of representation,[[58]](#footnote-58) negotiation,[[59]](#footnote-59) and the promotion of friendly relations.[[60]](#footnote-60) Article 3(1)(d) permits diplomatic agents to ascertain conditions and developments in the receiving state and to report on these to the Government of the sending state.[[61]](#footnote-61) However, the ascertaining of such information can only be done ‘by lawful means’.[[62]](#footnote-62) Perhaps more importantly for present purposes Article 3(1)(b) of the Vienna Convention permits diplomatic agents to ‘protect in the receiving state the interests of the sending state and of its nationals, within the limits permitted by international law’.[[63]](#footnote-63) A strict reading of Article 3, and in particular Article 3(1)(b), may leave little room to argue that diplomatic agents are permitted to represent non-nationals. Nevertheless, it might be possible, through a more permissive interpretation, to argue that the interests of the sending state can include the protection of the nationals of the receiving state. In particular, in the context of modern day international relations and the development of international law, the phrase ‘within the limits of international law’ may, in fact operate to extend the range of actions open to a diplomat within his or her functions. Thus, for example, the securing of better treatment of nationals of sending states may nowadays be part of the justification for increased involvement of embassies in promoting human rights in certain receiving states. This is a matter to which we will return later.

Even in the context of a permissive interpretation of Article 3(1)(b) two further provisions of the Vienna Convention significantly limit the freedom of action of diplomatic agents, particularly in the context of armed conflict. These are Article 9 and Article 41. Article 9 deals with the notion of *persona non grata*, or the right to require the withdrawal of a diplomatic agent. According to Article 9, this right is operable by the receiving state at any time, without having to give reasons. As has already been discussed, this right was well established in customary international law prior to the entry into force of the Vienna Convention, and caused little controversy in the drafting and negotiation of the Convention.[[64]](#footnote-64) Given the clarity that Article 9 brings to the issue, it would seem likely that diplomatic agents in the context of armed conflict and foreign armed intervention, if they were not to leave of their own volition, would be expelled as *persona non grata* if their activities overtly interfered with the internal affairs of the receiving state.

The notion of respect for local laws and non-interference with the internal affairs of the receiving state is directly addressed in Article 41(1) of the Vienna Convention, which provides that ‘without prejudice to their privileges and immunities, it is the duty of all persons enjoying such privileges and immunities to respect the laws and regulations of the receiving state. They also have a duty not to interfere in the internal affairs of that state’.[[65]](#footnote-65) The question whether Nazi laws in Germany were properly regarded as law has been fully considered in the academic literature and it would seem on the basis of this discussion that many would consider that immoral laws do not constitute laws at all and should not be complied with.[[66]](#footnote-66) However, this is extremely rare. Generally, the obligation to comply with local law will limit the activities of diplomatic agents even in the context of armed conflict or foreign armed intervention.

In relation to the duty not to interfere in the internal affairs of the receiving state, Denza makes clear that this provision relates not to the duty of the sending state to intervene in domestic affairs of the receiving state which she recognises as ‘an important rule of international relations, but one which it was ultimately agreed was not suitable for inclusion in a codification of diplomatic law’. It concerns, rather, the more restricted but no less important duty of a diplomat ‘in his personal affairs not to meddle in the domestic affairs of the receiving state’.[[67]](#footnote-67) She points out that this is a well-established rule of diplomatic law which has historically led to ‘offending diplomats being declared *persona non grata*’[[68]](#footnote-68). Denza highlights the difficulty diplomats might face in complying with this duty when promoting the interests of the sending state in cases of gross violations of human rights or, indeed, when promoting individual cases of human rights abuse. This difficulty will be particularly acute in situations of armed conflict and especially cases of foreign armed intervention where the diplomat will potentially be faced with considering the affairs of two different states. According to Denza, ‘the duty not to interfere in the internal affairs of the receiving state cannot override the responsibility of the diplomat to protect the interests of his sending state, within the limits permitted by international law. Criticism must be accepted as proper if it is made in the course of protecting the interests of the sending state’[[69]](#footnote-69) Of course voicing criticism is different from positively working against the interests of the receiving state, except, of course, where acting in such a way is permitted by international law.

Before leaving this discussion of the Vienna Convention, it is necessary to highlight the only two provisions that specifically reference the notion of armed conflict. The first of these is Article 44. Article 44 imposes a duty on the receiving state to provide for the prompt and safe departure of members of the mission and their families in all circumstances where departure is necessary for whatever reason. The provision is, as Denza points out, ‘firmly grounded in a near universally observed custom of international law’.[[70]](#footnote-70) She highlights that ‘in the case of deterioration of relations between sending and receiving state ... and in particular on breach of relations or outbreak of war or armed conflict, the right of safe departure assumed great importance’.[[71]](#footnote-71) In some cases this has been achieved through the simultaneous exchange of officials, although this can, at times, lead to rather prolonged internment of diplomats until arrangements for simultaneous exchange have been put in place. Writers such as Frey and Frey[[72]](#footnote-72) and Berridge[[73]](#footnote-73) have commented on the legitimacy of such internment, and all document occasions when obstacles have been put in the way of departing diplomats who can, occasionally, be put in situations of extreme discomfort or fear. Nevertheless, as Denza points out, ‘the interest of each state in securing the return of its own diplomats was normally sufficiently strong to guarantee its observance’.

The specific situation of armed conflict is covered by the terms of Article 44, particularly where the conflict results in a breach of diplomatic relations between the sending and receiving state, but the article will also apply where no breach occurs. Thus, the Article applies to *all* situations of departure, the phrase ‘even in the case of armed conflict’ having been inserted to make it clear that armed conflict cannot be used as a reason not to comply with the terms of Article 44. The practice of many states is to close their embassies and other diplomatic and consular establishments in situations of armed conflict in order to provide for the safety of their officials. Additionally states will call upon their own nationals to leave the receiving state and will provide assistance, wherever possible, to secure the evacuation of their officials and their ordinary citizens. The key point here is that the normal reaction of states engaged, directly or indirectly, in armed conflict is to withdraw their diplomatic personnel and close their embassy. The Vienna Convention recognises this and seeks to ensure the full protection of diplomatic personnel in the process of their departure. It is worth noting, however, what Berridge describes as an encouraging development, that is, the increased willingness of states not to break diplomatic relations on the outbreak of armed conflict ‘usually because of a desire on the part of both parties to minimise the significance of the fighting and certainly to signal an intention to avoid all-out war’.[[74]](#footnote-74) This is as much to do with the changing nature of conflict towards the end of this century and the beginning of the present century.[[75]](#footnote-75) As Berridge further notes: ‘This can also have other practical advantages, notably in the fields of intelligence-gathering and propaganda.’[[76]](#footnote-76) In the context of modern international relations, one might also highlight the benefit of the maintenance of diplomatic relations in situations of internal armed conflict. The interests of the international community are increasingly focussed on the protection of civilians in internal armed conflict.[[77]](#footnote-77) In such situations there may be an emerging expectations that diplomats should play an increasingly important role in reporting on and facilitating the securing of such protection in situations of conflict.

Where armed conflict does result in the breaking of diplomatic relations, Articles 45 of the Vienna Convention will apply. Article 45 deals in paragraph (a) with the protection of the premises of the mission as well as its property and archives which the receiving state is under an obligation to protect, ‘even in the case of armed conflict’. Paragraphs (b) and (c) allow the sending state to ‘entrust the custody of the premises of its mission together with its property and archives’,[[78]](#footnote-78) as well as ‘the protection of its interests and those of its nationals’[[79]](#footnote-79) to a third state ‘acceptable to the receiving state’.[[80]](#footnote-80) The protection of interests in situations of armed conflict normally falls to the embassy of a neutral state.

Before leaving this discussion, it is worth considering the recent work of G.R. Berridge, which specifically addresses the question of *Embassies in Armed Conflict*. Berridge’s work provides a detailed and compelling overview of embassies in different types of armed conflict including, most notably, the situation of embassies in enemy states and neutral embassies to belligerents. It is rather surprising that Wallenberg does not merit a single mention in the book. On the other hand, Berridge is not slow to recount examples of the conduct of other diplomats during the Second World War, including an analysis of the activities of the Swedish embassy to Germany in 1940-42.[[81]](#footnote-81) The only explanation for this omission appears to be that Berridge is of the opinion that Wallenberg’s activities went well beyond those expected of a diplomatic agent representing a neutral state in the situation of an armed conflict or foreign armed intervention and, accordingly, ought not to be considered in a modern account of the role of embassies in armed conflict.

Combined with the analysis of the Vienna Convention set out above, Berridge’s failure to discuss Wallenberg’s activities suggests that Wallenberg’s legacy in the field of diplomatic law is very limited, if not non-existent. However, on the contrary it will be argued in the following section that Wallenberg’s legacy, although limited in terms of the development of international law, is central to the development of the so-called ‘new‘ diplomacy and the emerging norms of international law directed at saving populations from genocide, as well as war crimes, ethnic cleansing and crimes against humanity. As a matter of international law, and, in particular, the Vienna Convention on Diplomatic Relations, it will be argued that a permissive interpretation of, in particular Articles 3 (1)(b) and Article 41(1) leave scope for an interplay between treaty-based law and customary international law that operates in favour of a ‘new’ approach to diplomacy, particularly in the context of armed conflict.

**4. Wallenberg’s Legacy in a Changing Diplomatic World**

In recent years the practice of diplomacy has increasingly been subject to critical analysis. While many authors continue to regard diplomacy as a state-centric process directed at normalising state-to-state relations, others have spoken of a new diplomacy that eschews the usual ‘state-centric’ approach to diplomacy in favour of an expanded process of conflict management involving a wide range of actors and recognising the complexity of modern international relations.[[82]](#footnote-82) It rejects realist conceptions of power and the state in favour of more constructivist notions of intersubjectivity and international society.[[83]](#footnote-83) This new diplomacy is based on what has been described by Jorge Heine as a ‘network’ model, and forms a process of ‘complexity management’ that engages not only state officials and other diplomats but also ‘a vastly large number of players in the host country [receiving state]’.[[84]](#footnote-84) According to Michelle Acuto, this new diplomacy requires a ‘critical ontological shift’ that identifies the object of international crises, including armed conflict or foreign armed intervention, as people rather than states.[[85]](#footnote-85) Crucially, although the state-centric or ‘club’[[86]](#footnote-86) model is rejected, Acuto makes clear that ‘the role of the state cannot be jettisoned outright and the core place occupied by state diplomats in taming disruptive relations [cannot be] sidelined.[[87]](#footnote-87)

The ability of diplomats to ‘intervene’ in crisis situations is enhanced by the approach of the new diplomacy, particularly where these crises involve gross and systematic human rights abuse and where the abuse is widespread. In such cases, the role of the diplomat ought to be to engage widely in the receiving state, particularly with members of civil society to raise concerns and intervene directly with officials of the receiving state. A major obstacle to the intervention by diplomats in such situations is, of course, Article 41(1) of the Vienna Convention which, it will be recalled, imposes a duty on persons benefitting from privileges and immunities not to interfere in the *internal affairs* of the receiving state. However, as international law is developing, the question as to what constitutes the internal affairs of a state is also developing and is increasingly limited. Thus states more and more involve themselves in the analysing and critiquing the human rights records of other states. One of the primary mechanisms for the communication of concern is through ‘diplomatic channels’.

In the context of armed conflict, a more interventionist approach is becoming increasingly important as the nature of armed conflict changes. Wallenberg had to confront a genocide that was occurring in the context of an international armed conflict. Today’s genocides, crimes against humanity and even war crimes occur far more frequently within the context of internal armed conflicts. International law generally and, in particular international criminal law has sought to deal with this change.[[88]](#footnote-88) The role of diplomats and diplomatic missions similarly needs to change. But even where armed conflict is international, particularly in the situation of foreign armed intervention, the safety of civilian populations is becoming increasingly important.

One of the major developments in international diplomacy in recent years has been the emergence of the concept of ‘responsibility to protect’. Responsibility to protect is founded on the work of another eminent Swedish intellectual and humanitarian, Dag Hammarskjöld, the Second United Nations Secretary General, who devised the notion of international executive authority.[[89]](#footnote-89) Responsibility to protect is built upon two basic principles. First, that "[s]tate sovereignty implies responsibility, and the primary responsibility for the protection of its people lies with the state itself". Secondly, "[w]here is population is suffering serious harm, as a result of internal war, insurgency, repression or state failure, and the state in question is unwilling or unable to halt or avert it, the principle of non-intervention yields to the international responsibility to protect".[[90]](#footnote-90) Responsibility to protect has been the subject of a great deal of critical analysis in the international legal and political literature and it is not intended to engage in a lengthy discussion of the concept in this article.[[91]](#footnote-91) Nevertheless, based on the ‘definition’ outlined above, the relevance of the concept to the present discussion should be immediately apparent.

When the responsibility of the international community is engaged, in cases of genocide, war crimes, ethnic cleansing and crimes against humanity, the primary role of implementing the responsibility to protect lies with the United Nations. Nevertheless, diplomats resident in the state where the conflict is taking place undoubtedly play a crucial role in the implementation of the concept. Clearly their importance in observing and reporting back on developing conflicts is essential. Although not expected to become personally involved in the conflict they might be expected to intervene with the receiving state to remind it of its obligations under international law, particularly in relation to its own obligations to its civilian population, Diplomats remaining in the receiving state might further be expected to engage directly with the efforts of the international community to bring the conflict to an end. They might also, where possible, seek to engage with entities in the state, other than the government, to identify humanitarian needs and to seek to facilitate broader humanitarian efforts. In doing so, they would expect to work alongside humanitarian agencies such as the International Red Cross to provide humanitarian relief.

This is all framed in ‘mights’ and ‘coulds’ because ultimately diplomats remain subject to the control of and receive instructions from their sending state. On the other hand, the emergence of the concept of ‘responsibility to protect’, which itself seeks to limit the notion of sovereignty in international law, is having an effect on the attitude of states towards receiving states that are engaged in systematic violations of human rights directed against their own citizens. Increasingly sending states are instructing their representatives to work to limit the impact of illegal measures by receiving states against their own citizens thereby enhancing the interests of those sending states and, indeed, the international community more generally on the protection of citizens of receiving states in such situations. Such an approach does not run contrary to the terms of the Vienna Convention on Diplomatic Relations. Thus, the open-ended character of Article 3(1) and the use in Article 41(1) of the always flexible concept of the ’internal affairs of a state’ leave open the possibility of greater intervention by diplomatic representatives of sending states in the affairs of receiving states when the activities of the latter are themselves in breach of emerging norms of international law through a process of customary interpretation of treaty-based rules.

In this context the doctrine of responsibility to protect, together with the strengthening of the international regime of human rights law and the development of international criminal law together form the backdrop to the emergence of the ‘new’ diplomacy outlined above. In relation specifically to the responsibility to protect, this has been fully endorsed by the United Nations General Assembly[[92]](#footnote-92) and, although the normative status of responsibility to protect remains hotly debated,[[93]](#footnote-93) many states are already prepared to support the efforts of the international community to provide a better response to armed conflict than has previously existed.

On the other hand, the current situation in Syria raises a significant question mark not only about the concepts of responsibility to protect but also the prospects for the new diplomacy Following on the ‘successful’ intervention in Libya in the summer of 2011, many commentators identified the developing situation of human rights abuse in Syria as the perfect opportunity for the further crystallisation of the responsibility to protect idea. What ensued, however, was a return to realist power-dominated international politics played out in the rarefied atmosphere of the United Nations Security Council. It is unfortunate, if understandable, that many states, including the United Kingdom,[[94]](#footnote-94) have chosen to symbolise their criticism of the Syrian regime by withdrawing their diplomats and closing down their embassies. However, a number remain, including the Swedish Embassy.[[95]](#footnote-95) It is difficult to assess what impact, if any, the diplomats who remain in Syria will be having in relation to the on-going crisis. However, it is suggested, albeit in the full knowledge of the potential dangers facing diplomatic staff in Damascus, that a full cohort of diplomatic missions remaining there might have significantly increased the pressure on the Syrian regime.

**4. Conclusions**

Raul Wallenberg’s diplomatic legacy is undoubtedly controversial. Although a hero to many, he has been criticised for his unorthodox approach and dismissive attitude to traditional diplomatic practices. There is no doubt that his approach was unique and, to some extent, the uniqueness of his approach assisted his endeavours insofar as Hungarian officials, and latterly German bureaucrats were unclear as to what precisely to do about him. However, the uniqueness of his approach has undoubtedly limited his legacy in terms of the development of diplomatic practice and diplomatic law, particularly in the form of the Vienna Convention on Diplomatic Relations 1961.

On the other hand, Wallenberg’s legacy is increasingly reflected in the emergence of the so-called ‘new’ diplomacy. As international law continues to break through the sovereignty barrier, the opportunities for diplomats to engage more fully with a broader range of actors in their country of residence are significantly increasing. A particular development in the form of the doctrine of ‘responsibility to protect’ provides significantly more opportunities for diplomats in situations of armed conflict and foreign armed intervention to do more than merely observe and report but also to engage in the process of protecting civilian populations in times of internal strife. The new approach to diplomacy is in its infancy and requires practitioners of diplomatic practice to undertake a significant reassessment of their principles and values as well as a reappraisal of accepted doctrinal interpretations of the provisions of diplomatic law. The on-going conflict in Syria reminds us that we are not there yet. Nevertheless, the opportunities remain for Raul Wallenberg’s legacy to impact significantly more on the diplomats of the future than it has been allowed to do on the diplomats of the present and recent past.

1. \*I am indebted to my colleagues Malcolm Ross and Mark Walters for comments on earlier drafts of this article as well as to the editors of the *Nordic Journal of International law* both for their invitation to contribute to this Special Issue and, in particular to Ulf Linderfalk, for his specific comments on Sections 3 and 4 of this Article. As ever, all errors remain my own.

   There are many biographies and films documenting Wallenberg’s life. Research for this article has focused primarily on three of these: K. Marton, *Wallenberg Centennial Edition* (New York: Arcade Publishing, 2011); J. Bierman, *Righteous Gentile* (Revised ed, New York: Penguin Books, 1995); and perhaps the most critical and focussed analysis, P. Levine *Raul Wallenberg in Budapest Myth, History and Holocaust* (London: Vallentine Mitchell, 2010) [↑](#footnote-ref-1)
2. Wallenberg arrived in Budapest on 9 July 1944 and disappeared from there on 17 January 1945. It is known that Wallenberg was arrested by Soviet forces on or around that date and was then transferred to Moscow. It is believed that he spent the remainder of his life within the Russian penal system. For a full analysis of Wallenberg’s arrest, subsequent detention and attempts to find him see Marton, *op cit* Chapters 20-28 and Bierman, *op* cit, pp. 123-219. [↑](#footnote-ref-2)
3. The most commonly cited figure of Jews saved through Wallenberg’s intervention is put at 100,000. However, this figure has been challenged by some as a myth. See, for example, Levine, *op cit* at p. 11. Levine argues that this myth, which is based on over-reliance on the oral testimony of survivors, as well as an inadequate reliance on contemporary Swedish sources has created a picture of Wallenberg “more akin to a Hollywood caricature than to a real man, a businessman and an ad hoc diplomat who chose to help others in Nazi-dominated, mid 1940s Central Europe”, p. 8. For a fuller discussion of the problems of distinguishing myth from history, particularly in the context of the Holocaust, see Levine, *op cit,* pp 7-16. [↑](#footnote-ref-3)
4. In particular, Wallenberg benefitted personally from personal inviolability and immunity from jurisdiction as guaranteed by customary international law. See Denza, *Diplomatic Law* (Oxford: Clarendon Press, 1998) at pp. 210-22 and pp.229-32. [↑](#footnote-ref-4)
5. Eichmann, who had participated in the development of the so-called ‘Final Solution’ at the Wannsee Conference in 1942, was sent to Hungary in March 1944 to oversee the deportation of Hungarian Jews to concentration and extermination camps in Poland including Auschwitz-Birkenau. During his time in Budapest Eichmann oversaw the deportation of 437,000 Hungarian Jews. Many of these deportations occurred during the first few months of the German invasion of Hungary and before Wallenberg’s arrival in Budapest. See D. Cesarani, ‘Adolf Eichmann: The Mind of a War Criminal’ at <http://www.bbc.co.uk/history/worldwars/genocide/eichmann\_01.shtml>. [↑](#footnote-ref-5)
6. 500 *U.N.T.S.* 95. Hereinafter the Vienna Convention. [↑](#footnote-ref-6)
7. See S. Riordan, *The New Diplomacy*, (London: Polity, 2003). See also J. Heine ‘On the Manner of Practising the New Diplomacy’ Centre for International Governance Innovation (CIGI) Working Paper No. 11, October 2006. It is interesting to note that both of these authors are former serving diplomats. Riordan worked for the British government while Heine was the Ambassador of Chile to India and was Vice-President of the International Studies Association. He is now Distinguished Fellow at CIGI. [↑](#footnote-ref-7)
8. R Wolfe, ‘Still Lying Abroad? On the Institution of the Resident Ambassador’ 9(2) *Diplomacy and Staecraft* 23 (1998) at 31. [↑](#footnote-ref-8)
9. Heine, *op cit*, pp. 4-5. [↑](#footnote-ref-9)
10. See, in particular, “The Responsibility to Protect”: Report of the International Commission on Intervention and State Sovereignty, December 2001. Available at <http://responsibilitytoprotect.org/ICISS%20Report.pdf>. Hereinafter ICISS Report. [↑](#footnote-ref-10)
11. Having been brought up in one of Sweden’s most wealthy and distinguished families, Wallenberg spent his early adult years training as an architecture student attending Ann Arbour University in Michigan, USA. Wallenberg then spent time in South Africa working unpaid with a Swedish firm based in Cape Town. Thereafter Wallenberg travelled to Palestine where he worked for a short period in a Swedish bank. On returning to Sweden, Wallenberg found that his American qualifications in architecture were not well regarded “making it well-nigh impossible to find professional work in Sweden”. (Levine *op cit* 51). Wallenberg’s uncle, Marcus Wallenberg Sr, offered Wallenberg a temporary job in his one of his companies which was doing business at that time in Nazi Germany. Wallenberg accepted the position with enthusiasm and found himself working in provincial Germany. (*Infra*) [↑](#footnote-ref-11)
12. In 1941 Wallenberg went into partnership with Koloman Lauer, a Hungarian-Jewish immigrant to Sweden who had set up a small import-export business working in Hungary and Central Europe. With his Swedish passport and family business connections, Wallenberg was an ideal partner for Lauer and travelled regularly to Hungary and other parts of Eastern Europe promoting the business which was seeking to exploit Lauer’s patent for a new kind of zip fastener. See Levine, *op cit*, p. 55-56; Bierman, *op cit* 26. [↑](#footnote-ref-12)
13. Levine asserts that there is no evidence of Wallenberg being personally affected by the growing anti-Semitism in Germany during his time there. While working in Palestine during, Wallenberg had been witness to both the growing influx of Jews who were already fleeing Nazi Germany and the Arab Uprising of 1936. However, based on his detailed writings to his paternal grandfather Wallenberg did not appear to have been overly concerned with the position of the Jews of Germany or Central Europe. [↑](#footnote-ref-13)
14. One explanation for Wallenberg’s decision to commit himself to the Jewish cause and motivated him to go to Budapest was that he had ‘Jewish blood’ and was one-sixteenth Jewish. (See Bierman, p. 25 and, particularly, Marton, *op cit*, Chapter 3) However, Levine lists this ‘fact’ as one of the many myths about Raoul Wallenberg. See Levine, *op cit*, p. 25. He further declares this to be ‘one of the more fanciful theories’ and directly criticises the work of both Bierman and Marton before concluding that: ‘There is no evidence whatsoever that any provable “trace” of Jewish blood, from either side of the family, influenced Wallenberg in any way, including any notion – sound or silly – about Jewish “blood”, culture or memory.’ Levine, p. 60. It is interesting that Levine does not deny that some Jewish blood link existed. He asserts merely that this did not influence him in his decision to go to Budapest to save the Hungarian Jews. [↑](#footnote-ref-14)
15. See, for example, Marton, *op cit*, Chapter 4 and Bierman, *op cit,* pp. 29-37 [↑](#footnote-ref-15)
16. Levine, *op cit,* pp. 134-6; Bierman, *op cit*  30-32. [↑](#footnote-ref-16)
17. In relation to Hungary, a cable from Cordell Hull, the US Secretary of State, to Herschel V. Johnson, the US Ambassador in Stockholm indicates the level of concern that existed in the US about the situation in Hungary, as well as clarifying the policy of the US in relation thereto: ‘The lives of 800,000 human beings in Hungary may well depend on the restraint that may result from the presence in that country of the largest possible number of foreign observers. To this end, please urge appropriate authorities in the interest of most elementary humanity to take immediate steps to increase to the largest possible extent the numbers of Swedish diplomatic and consular personnel in Hungary and to distribute them as widely as possible throughout the country’. Quoted in Bierman, *op cit*, at 30-31. (Unfortunately no date for this cable, nor a proper citation, is provided therein.) [↑](#footnote-ref-17)
18. Levine, *op cit*,p. 137 & 150; Bierman, *op cit* 32. [↑](#footnote-ref-18)
19. Wallenberg had been recommended to Iver Olsen, the WRB representative in Sweden, by one of Olsen’s own advisers about the Jewish situation in Hungary who just happened to be Wallenberg’s business partner Kolomon Lauer. Levine, *op cit*, p. 138; Bierman, *op cit*, 32. [↑](#footnote-ref-19)
20. Levine, *op cit* 138-42;Bierman, pp. 32-3, [↑](#footnote-ref-20)
21. Bierman, *op cit* p. 32. [↑](#footnote-ref-21)
22. Levine, *op cit*, pp. 146-54; Bierman, *op cit*, pp. 33-7. [↑](#footnote-ref-22)
23. Biermann, *op cit*, 34-6. [↑](#footnote-ref-23)
24. Levine, *op cit,* 147. Perhaps in light of this limited mandate, Wallenberg appears not to have received any formal

    training and what he learned about the role and function of diplomats appears to have been essentially self-taught. See Marton, Chapter 5 [↑](#footnote-ref-24)
25. *Infra*. [↑](#footnote-ref-25)
26. Bierman, *op cit*, p. 33. [↑](#footnote-ref-26)
27. According to Bierman, the Memorandum stipulated that: “(1) [Wallenberg] should have a free hand to use any methods he saw fit, including bribery; (2) if the need arose for personal consultation with the Foreign Office, he should be free to return to Stockholm without going through the lengthy procedure of getting permission; (3) if his financial resources proved insufficient, a propaganda campaign would be launched in Sweden to raise more money; (4) he should have adequate status to do the job, so he should be appointed first secretary at the legation with a salary of 200 crowns a month; (5) he should have the right to contact any persons he wished in Budapest, including avowed enemies of the regime; (6) he should be empowered to deal directly with the prime minister or any other member of the Hungarian government without going through the ambassador; (7) he should be able to send dispatches direct to Stockholm via diplomatic courier, again without using normal diplomatic channels; (8) he might officially seek an interview with the regent, Horthy, to ask for his intercession on behalf of the Jews; and (9) he should be authorized to give asylum in buildings belonging to the legation, to persons holding protective Swedish passes.’ *Infra*. [↑](#footnote-ref-27)
28. Point 2. [↑](#footnote-ref-28)
29. Point 6. [↑](#footnote-ref-29)
30. Point 8. [↑](#footnote-ref-30)
31. Point 1. [↑](#footnote-ref-31)
32. Point 9. [↑](#footnote-ref-32)
33. Levine, *op cit*, 154-7. [↑](#footnote-ref-33)
34. For a fuller discussion of Wallenberg’s life and work during his time in Budapest see, in particular, Marton, *op cit,* Bierman, *op cit*, and Leveine’s more focussed and critical account in *Raul Wallenberg In Budapest op cit*. [↑](#footnote-ref-34)
35. See Levine, *op cit*, pp. 185-7. [↑](#footnote-ref-35)
36. It is alleged that Wallenberg personally met with both Admiral Horthy and Adolf Eichmann, although both of these meetings are refuted as myth by Levine. See *ibid*, pp.27-8. One of the most infamous examples of Wallenberg’s personal intervention concerned the march of 800 Jews to Mauthausen during which Wallenberg claimed custody of all those who raised their hands to indicate possession of a Swedish passes, including many who raised their hands even without having passes. See Bierman, *op cit*, p. 89. [↑](#footnote-ref-36)
37. Levine, *op cit*, 123-6. [↑](#footnote-ref-37)
38. According to Levine: ‘[Wallenberg] was an accomplished draughtsman and clearly crafted [‘his’ Schutzpass] to impress authorities. He drafted it with considerable attention to ‘bureaucratic’ detail (much more so than the other ad hoc Swedish documents issued in Budapest), including an essentially ‘nonsense number’ for each individual document – at least it is a detail remembered by survivors. In essence, however, the document was a brash bluff. [Per] Anger [who was the chargé d’affaires at the Swedish Legation in Budapest] remembers that ‘Wallenberg saw our certificates for the visa, and he made it [a] more spectacular protective passport, in colour, in [the] blue and yellow Swedish colours, with the Swedish coat of arms.’ *Ibid*, p. 124. See also Bierman, *op cit*, 50, in which he describes the ‘Wallenberg passport’ as ‘a stroke of genius’. [↑](#footnote-ref-38)
39. See Jewish Virtual Library at ,http://www.jewishvirtuallibrary.org/jsource/biography/wallenberg.html>. [↑](#footnote-ref-39)
40. Bierman, *op cit*, 51. [↑](#footnote-ref-40)
41. *Infra*. [↑](#footnote-ref-41)
42. The fiction of “exterritoriality”, by virtue of which diplomatic missions and their surrounding areas were regarded as the territory of the sending state was popular both in practice and among writers as a justification for diplomatic law but was rejected as a juridical basis of that law during the early part of the twentieth century. (See further below). For a full discussion of this assertion, see J.C. Barker, *The Abuse of Diplomatic Privileges and Immunities: A Necessary Evil* (Aldershot: Dartmouth Publishing Company, 1996) 39-55. [↑](#footnote-ref-42)
43. Jewish Virtual Library, *op cit*. [↑](#footnote-ref-43)
44. *Infra*. [↑](#footnote-ref-44)
45. Bierman, *op cit*, 86. [↑](#footnote-ref-45)
46. *Infra.* [↑](#footnote-ref-46)
47. Levine 158. [↑](#footnote-ref-47)
48. A particular story that highlights both the personal courage and the combined failures of the authorities to Control Wallenberg’s activities is recounted by Bierman and is worth repeating in full here. One day in November 1944 Wallenberg learned of a trainload of Jews who were about to be deported he drove to the station, swept past the SS officer supervising the transport and began to hand out protective passes. German and Hungarian soldiers began shooting at him but he continued to hand out the passports. His driver recounts that ‘After Wallenberg had handed over the last of the passports he ordered all those who had one to leave the train and walk to a caravan of cars parked nearby, all marked in Swedish colours. I don’t remember exactly how many, but he saved dozens off that train, and the Germans and Arrow Cross [members of the Hungarian Nazi Party]were so dumfounded they let him get away with it.’ See Bierman, *op cit*, p. 90. [↑](#footnote-ref-48)
49. J.C. Barker, *The Abuse of Diplomatic Privileges and Immunities* (Aldershot: Dartmouth Publishing Company, 1996) , Chapter 1. [↑](#footnote-ref-49)
50. For an interesting account of the treatment of envoys during The Spanish Civil War and the Second World War see L.S. Frey & M.L. Frey, *The History of Diplomatic Immunity* (Columbus Ohio: Ohio State University Press, 1999), pp. 432-4 [↑](#footnote-ref-50)
51. Certainly by the end of 1944, members of the Swedish embassy came under assault from Hungarian and German forces [↑](#footnote-ref-51)
52. Ref to this assertion ? While Wallenberg escaped arrest at this time, he found himself in an even more treacherous position. Motivated by fears that both the Hungarian government and Nazi forces were planning to kill him, he contacted the invading Soviet forces with a request for them to provide for his security. Unfortunately, as history has shown, the Soviets were no more willing to be bound by diplomatic law in the circumstances which led to Wallenberg’s lifelong incarceration in the Soviet Union. [↑](#footnote-ref-52)
53. *Infra*. [↑](#footnote-ref-53)
54. See Diena, Special Rapporteur for the Sub-Committee on Diplomatic Immunities to the League of Nations’ Committee of Experts for the Progressive Codification of International Law, League of Nations Document C.45.M.22 (1926) 20 *American Journal of International Law* 153 (Supp. 1926). For a discussion of the demise of the ‘exterritoriality’ theory see Barker, *op cit*, pp. 53-4. [↑](#footnote-ref-54)
55. Denza, *Diplomatic Law* (Oxford: Clarendon Press, 1998) at p. 59. [↑](#footnote-ref-55)
56. Literally, the Arrow Cross, which constituted the Hungarian Nazi Party under the leadership of Pál Szalai and which was responsible for many Jewish deaths in Hungary during 1944. See Levine, *op cit* 123 and 298-308. [↑](#footnote-ref-56)
57. See General Assembly Resolution 685 (VII) of 5 December 1952. [↑](#footnote-ref-57)
58. Vienna Convention, Article 3(1)(a). [↑](#footnote-ref-58)
59. Vienna Convention, Article 3(1)(c) [↑](#footnote-ref-59)
60. Vienna Convention, Article 3(1)(e) [↑](#footnote-ref-60)
61. Vienna Convention, Article 3(1)(d) [↑](#footnote-ref-61)
62. *Infra*. [↑](#footnote-ref-62)
63. Vienna Convention, Article 3(1)(b). [↑](#footnote-ref-63)
64. Denza, *op cit*, pp-.59-61. [↑](#footnote-ref-64)
65. Vienna Convention Article 41(1) [↑](#footnote-ref-65)
66. See the infamous debate between Herbert Hart and Lon Fuller in the pages of the *Harvard Law Journal* specifically H.L.A. Hart, ‘Positivism and the Separation of Law and Morals’71 *Harvard Law Review* 593 (1958) and L.L. Fuller ‘Positivism and Fidelity to Law: A reply to Professor Hart’ 71 *Harvard Law Journal* 630 (1958). [↑](#footnote-ref-66)
67. Denza, *op cit*, p.375-6. [↑](#footnote-ref-67)
68. *Ibid*, p.376. [↑](#footnote-ref-68)
69. *Ibid,* p.378 quoting Richsteig, *Wiener Uberinkommen űber diplomatische und konsularische Beziehungen,* (Nomos Verlagsgesellschaft, 2010) p. 98. [↑](#footnote-ref-69)
70. *Ibid*, p. 389. [↑](#footnote-ref-70)
71. *Infra*. [↑](#footnote-ref-71)
72. Frey & Frey, *op cit,* p. ??? [↑](#footnote-ref-72)
73. G.R. Berridge, *Embassies in Armed Conflict* (London: Continuum, 2012) at pp. 36-56. [↑](#footnote-ref-73)
74. Berridge, *op cit*, 67. [↑](#footnote-ref-74)
75. On the changing nature of armed conflict see further below. [↑](#footnote-ref-75)
76. *Ibid*. [↑](#footnote-ref-76)
77. See the discussion of ‘responsiblity to protect’ below. [↑](#footnote-ref-77)
78. Vienna Convention, Article 45(b) [↑](#footnote-ref-78)
79. Vienna Convention, Article 45(c) [↑](#footnote-ref-79)
80. *Ibid*. [↑](#footnote-ref-80)
81. Berridge, *op cit*, 77-9 [↑](#footnote-ref-81)
82. *Ibid*, p. 528. [↑](#footnote-ref-82)
83. Wolfe, *op cit*, 31. [↑](#footnote-ref-83)
84. Heine, *op cit*, p. 4. Heine lists other actors, both domestic and international, as including ‘NGO’s private companies, churches, business associations and the always critical “foreign policy community”’ *Infra*. [↑](#footnote-ref-84)
85. Acuto ‘Diplomats in Crisis” 22 *Diplomacy and Statecraft* 521 (2011) at 525. [↑](#footnote-ref-85)
86. For Heine in the ‘club’ model, diplomats meet only with government officials, among themselves, and with the occasional businessman or woman and give an interview or speech here or there. By and large, however, they restrict themselves to fellow members of the club, with whom they also feel most comfortable, and focus their minds on “negotiating agreements between sovereign states”. Heine, *op cit*, 4. [↑](#footnote-ref-86)
87. Acuto, *op cit*, 526 [↑](#footnote-ref-87)
88. See generally C. de Thain & E. Shorts, *International Criminal Law and Human Rights* (London: Sweet 7 Maxwell, 2003) and R. Cryer, H. Friman. D. Robertson and E. Wilmshurts, *An Introduction to International Criminal Law and Procedure* (Cambridge: Cambridge University Press, 2010, (2nd Ed.)) [↑](#footnote-ref-88)
89. A. Orford, *International Authority and the Responsibility to Protect* (Cambridge: Cambridge University Press , 2011) at p. 45. [↑](#footnote-ref-89)
90. ICISS Report, *op cit*, p. xi. [↑](#footnote-ref-90)
91. For a fuller, critical discussion of the concept see. J.C. Barker ‘Who Cares: R2P and the Limits of Responsibility in International Law’ in C. Stahn (Ed.) *Peace Diplomacy, Global Justice and International Agency: Rethinking Human Security and Ethics in the Spirit of Dag Hammarskjöld* (Cambridge, Cambridge University Press, Forthcoming 2013) [↑](#footnote-ref-91)
92. G.A. Res. 60/1, U.N. Doc. A/RES/60/I (Oct. 24, 2005). [↑](#footnote-ref-92)
93. See Barker, Who Cares? *op cit*. [↑](#footnote-ref-93)
94. The United Kingdom closed its embassy in Damascus on 6 February 2012 ‘in protest at the continued onslaught against civilians by Bashar al-Assad’s regime’. See <http://www.telegraph.co.uk/news/worldnews/middleeast/syria/9065056/Syria-Britain-recalls-ambassador-as-US-closes-Damascus-embassy.html>. [↑](#footnote-ref-94)
95. On 29 March 2012, because of the continuing security situation, the Swedish Foreign Ministry decided to reduce the staff and activities of the Swedish Embassy in Damascuc. It is now staffed by the Ambassador and four support staff. See <http://www.swedenabroad.com/en-GB/Embassies/Damascus/About-us/About-the-Embassy>/ [↑](#footnote-ref-95)