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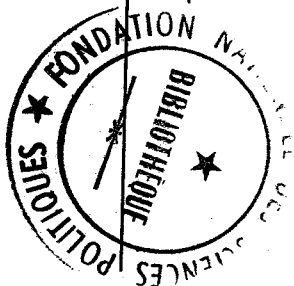
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R.P. Barston



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Contents

1	The changing nature of diplomacy	1
2	Foreign policy organisation	16
3	Diplomatic methods	36
4	Negotiation	48
5	Developing diplomatic practice	70
6	International financial relations	104
7	Trade, foreign policy and diplomacy	134
8	Environmental diplomacy	150
9	Environmental diplomacy: case examples	169
10	Disaster and emergency diplomacy	193
11	Diplomacy and security	206
12	Diplomacy, violence and change	222
13	Diplomacy and mediation	233

40. The 'Fortress Falklands' policy was symbolised in Margaret Thatcher's visit to the Falkland Islands in January 1983. See *Hansard* (House of Commons), 17 Feb. 1983, col. 218; *The Times*, 10 and 13 Jan. 1983.
41. *Financial Times*, 18 July 1995.
42. F. C. Iklé, *How Nations Negotiate* (Harper and Row, New York, 1964) p. 14.
43. See note 19.
44. The UK decision to remove trade relations restrictions would appear to have been taken surprisingly quickly. Contrast the reply of the Prime Minister to Hoyle, rejecting exceptions, *Hansard* (House of Commons) 19 April 1985, Col. 293, with Eggar's statement explaining the lifting of restrictions in July 1985, *Hansard* (House of Commons) 18 Nov. 1985, Col. 30. Argentina did not lift trade restrictions on direct British goods until 1 Aug. 1989. See *Financial Times*, 3 Aug. 1989.
45. S. Smith and M. Clarke (eds), *Foreign Policy Implementation* (Allen and Unwin, London, 1985).
46. The 20 August UK proposals were based on an arbitration formula and set of principles for compensation. The small incremental, concessions (carrot and stick) announced in Sept. 1952, which characterised the British approach, were limited to the delivery of 16 railway locomotives to Iran. See Middleton to FO, Tel750, 27 Sept. 1952.
47. Yemen had been in conflict with the UK after a Yemeni Airways aircraft had been impounded in London on debt grounds. A UK-Yemen Investment Agreement was subsequently signed during the later visit of the North Yemen Foreign Minister. See *Keating*, April 1980, 30200.

CHAPTER 15

Diplomatic correspondence: case examples

In modern diplomatic practice, states generally use four methods for communicating directly with one another and other international actors. These are notes, letters, memoranda and *cables-memoires*. In addition, political leaders and other national personalities communicate with one another directly or indirectly through speeches, statements, *communiqués* and interviews with the press. Declarations, too, have become an important feature of modern international political life. We are, however, mainly concerned in this chapter with the four methods of diplomatic communication noted above. Examples are provided of some of the different usages of each of the forms of communication, although the variety of state practice makes it difficult to lay down hard-and-fast rules as to when one method should be used rather than another. The examples themselves have been chosen from a wide variety of international problems as a way also of introducing the reader to the documentation on some of the post-war issues. From this range of material it is hoped to convey some of the flavour and scope of post-war diplomacy and diplomatic exchanges.

Notes

Notes are the most widely used form of diplomatic correspondence. It is necessary to distinguish those notes that form a correspondence and may either be in the first or third person, from notes or letters that are used to bring an agreement into effect. The note is probably, despite the range of usage, the most formal of the four methods under discussion. When used in the third person the note generally commences with customary courtesies (the Embassy of – presents its compliments to) and concludes in a similar manner (avails itself of the opportunity, etc.). In certain circumstances, for example protest notes or in third-person correspondence

sometimes with an international organisation, customary formalities may be partly or wholly dispensed with. Paragraphs in the note are not normally numbered and the note is initialised but not signed. In some state practice, for example Japan, the third-person note is styled a *note verbale*. In these instances, the title *note verbale* is put at the head of the note, but there are no other significant differences. The *note verbale* is used in diplomatic practice within the UN, as an alternative to a letter, for the circulation to members of statements, or reports.¹

Note verbale dated 2 December 1994 from the Secretary-General addressed to the President of the Security Council

The Secretary-General presents his compliments to the President of the Security Council and, in accordance with paragraph 8 of Security Council resolution 816 (1993) of 31 March 1993, has the honour to bring to his attention further information received by the United Nations Protection Force (UNPROFOR) regarding apparent violations of the ban on flights in the airspace of Bosnia and Herzegovina.

Between 29 November and 1 December 1994, there appear to have been 18 flights of fixed or rotary-wing aircraft in the airspace of Bosnia and Herzegovina other than those exempted in accordance with paragraph 1 of resolution 816 (1993) or approved by UNPROFOR in accordance with paragraph 2 of that resolution. Details as to the itinerary of flights in the reporting period are attached as an annex to the present note verbale. The total number of flights assessed as apparent violations is now 3,317.

Uses of diplomatic notes

Diplomatic notes are used for a variety of purposes ranging from routine matters of administration between an embassy and host foreign ministry; registration of treaties, granting or refusing overflight clearance; and peace proposals, through to official protests at the actions of other states and actors.

Protest notes

When states find it necessary to protest at certain actions this may be done verbally, by calling the ambassador or chargé to the foreign ministry. Alternatively, depending on the context and type of protest, a protest note may be issued. When put in the form of a note, the purpose is usually to place on record for political or legal purposes the state's position. This may form the basis for a claim or counter-claim at a subsequent date, or be a means of seeking political support in a wider forum.

A number of reasons for protests can be distinguished, such as seeking to stop a policy developing (e.g. to contest a state's offshore maritime legislation); second, to protect interests (e.g. to maintain or counter a boundary claim by another state, or the occupation of territory); third, to affirm

the right to do something (e.g. offshore exploration); or fourth, to condemn an action (e.g. repeated or serious violation of air or sea space, arrest of vessels or breaches of ceasefire) with a view to exerting pressure to get a government to halt a policy or violations stopped.

Nuclear testing

The following examples illustrate these and other uses. The first illustration is taken from New Zealand's dispute with France over the French decision in 1963 to alter the location of its long-term nuclear test programme from the Sahara to the South Pacific. A number of protests and other diplomatic efforts were made by New Zealand to try and change the French decision. New Zealand subsequently took the case to the International Court of Justice (ICJ) on 9 May 1973.² The following are extracts from the second New Zealand note of protest, the French reply of 25 June 1963³ and the New Zealand position on overflight.⁴

Note from New Zealand Embassy to French Ministry of Foreign Affairs, 22 May 1963

The French authorities have been aware for some time of the grave concern felt by the New Zealand Government at various reports concerning France's plans to conduct test explosions of nuclear devices in the South Pacific region. The New Zealand Government has sought clarification of the intentions of the French Government in this respect through the New Zealand Embassy both in interviews with officials of the Ministry of Foreign Affairs and in the Embassy's Note of March 1963. In that Note it was indicated that if reports concerning the French Government's intention to test in the South Pacific were confirmed, the New Zealand Government would wish to convey certain other views to the French authorities. In spite of recurrent and increasingly detailed reports, which have produced growing public anxiety in New Zealand, it has continued to await official confirmation, in response to the Embassy's Note, that a decision to proceed with the establishment of a nuclear testing centre in the area has been taken.

On and about 2 May, reports of a press conference given in Papeete by General Thiry, head of a French civil and military mission, appeared both in the French metropolitan press and in New Zealand. It appeared from the statements attributed to General Thiry that a decision to establish a nuclear test zone in the area of Mururoa Atoll had been taken. Oral confirmation that a nuclear test zone had been decided on in the area described was subsequently given by the Ministry in response to enquiries by the Embassy.

In these circumstances, and even though it is understood that a period of some years may elapse before the first test can be held, the New Zealand Government feels compelled without further delay to present its views to the French authorities ...

The New Zealand Government must therefore protest strongly against the intention of the French Government to establish a nuclear testing centre in the South Pacific. It urges that the French Government reconsider, in the light of the views advanced in this Note, any decisions which may already have been taken.

Note from French Ministry of Foreign Affairs to New Zealand Embassy, 25 June 1963

Le Ministère des affaires étrangères présente ses compliments à l'Ambassade de Nouvelle-Zélande et a l'honneur de lui faire part de ce qui suit:

Le Ministère des affaires étrangères a pris connaissance avec attention de la note 1963/10 du 22 mai par laquelle l'Ambassade de Nouvelle-Zélande faisait connaître le point de vue de son gouvernement sur la création d'un polygone de tir français pour des essais nucléaires en Polynésie et au sujet de la cessation des essais nucléaires.

La position de la France à l'égard des expériences nucléaires est bien connue et n'a pas varié. A de nombreuses reprises ses représentants ont rappelé que l'immense pouvoir de destruction que représenterait pour l'humanité les armes nucléaires demeurerait intact si la suspension des expériences n'était pas accompagnée de l'arrêt contrôlé des fabrications nouvelles et l'élimination progressive et vérifiée des stocks d'armes existants.

Le Gouvernement français demeure prêt à s'associer à tout moment à une politique de désarmement qui soit efficace et contrôlée. Mais en l'absence d'une telle politique et aussi longtemps que d'autres puissances posséderont les armes modernes il estime de son devoir de conserver sa liberté dans ce domaine. C'est dans cette perspective qu'une décision tendant à l'établissement d'un polygone de tir pour des essais nucléaires en Polynésie française a été prise. Un délai assez long s'écoulera encore avant que ce champ de tir soit équipé et que des expériences nucléaires puissent y être effectuées.

Au demeurant le Gouvernement français croit devoir rappeler qu'il ne sera pas le premier à effectuer de telles expériences dans le Pacifique. D'autres Etats l'ont fait avant lui ainsi que le sait le Gouvernement de la Nouvelle-Zélande et il pourrait en être encore de même à l'avenir.

Le Ministère des affaires étrangères croit devoir également souligner que les services français chargés de la réalisation des essais nucléaires dans cette région veilleront tout particulièrement à assurer la protection des populations des pays riverains de l'océan Pacifique Sud. A cet égard le Gouvernement français se propose, ainsi qu'il en a déjà été fait part à l'Ambassade de Nouvelle-Zélande, de faire connaître aux autorités néozélandaises, au moment opportun, les conditions dans lesquelles se dérouleront ces expériences et les mesures prises pour éviter tout risque de retombées et éventuellement d'en discuter avec ces autorités.

Le Ministère des affaires étrangères saisit cette occasion pour renouveler à l'Ambassade de Nouvelle-Zélande les assurances de sa haute considération.

Note from New Zealand Ministry of External Affairs to French Embassy, 15 April 1966

The Ministry of External Affairs presents its compliments to the Embassy of France and has the honour to refer to the Embassy's Note No. 23 of 13 April 1966, which requested authorization for an aircraft of the French Air Force to overfly the islands of Niue and Aitutaki in the course of a flight from Noumea to Hao.

The Ministry desires to inform the Embassy that steps have been taken to advise the Ministry of Foreign Affairs in Paris that if the French Government proceeds with its intentions to conduct a series of nuclear weapons tests in the South Pacific Ocean, New Zealand, consistent with its obligation under the Partial Nuclear Test Ban Treaty of 1963, will be unable to grant authority for any visits to New Zealand territory by French military aircraft or ships or overflights of New Zealand by French military aircraft, unless assured that they are not carrying material intended for the test site, or for the monitoring of the tests, or for the support of forces and personnel engaged in the tests or in monitoring the tests, other than monitoring to detect possible health hazards ...

Note from New Zealand Ministry of External Affairs to French Embassy, 18 April 1966

The Ministry of External Affairs presents its compliments to the Embassy of France and has the honour to refer to the Embassy's Note No. 23 of 13 April and the Ministry's Note No. PM 59/5/6 of 15 April 1966.

The Ministry has been in consultation with the Government of the Cook Islands concerning the Embassy's request for authorization of the DC8 of the French Air Force to overfly Aitutaki on 24 April in the course of a flight from Noumea to Hao. The Government of the Cook Islands has requested that the Embassy be informed that its position is precisely the same as that of the New Zealand Government and that it cannot grant permission for the overflight without a similar assurance to that requested by the New Zealand Government.

The Ministry of External Affairs avails itself of this opportunity to renew to the Embassy of France the assurances of its highest consideration.

Note from French Embassy to the New Zealand Ministry of External Affairs, 21 April 1966

L'Ambassade de France présente ses compliments au Ministère des affaires extérieures, et a l'honneur de lui accuser réception de ses notes en date des 15 et 18 avril derniers, qui contiennent la réponse du Gouvernement néozélandais à la demande d'autorisation de survol de l'île Niue et de l'archipel des Cook présentée au nom de son Gouvernement.

Les modalités de la réponse néozélandaise ont été communiquées au Gouvernement français. Celui-ci a fait savoir à l'Ambassade qu'il souhaitait annuler sa demande. De ce fait, au cours de l'étape Noumea-Hao, qui avait fait l'objet de cette demande, l'appareil militaire français se tendra à l'écart de tout territoire et eaux territoriales néozélandais.

L'Ambassade de France saisit cette occasion pour renouveler au Ministère des affaires extérieures les assurances de sa très haute considération.

Protests at dumping wastes

The growing use of the coastal and ocean areas for land-based sourced discharges, toxic dumping and other activities, such as the disposal of the military bi-products of the Cold War, has led to increases in the number of protests in this area. For example, Japan has protested on a number of occasions over Russian Federation nuclear dumping in the Sea of Japan, off the Maritime Provinces.⁵

Maps, boundaries and claims

States regard questions to do with boundaries and territory, such as the publication of maps by other states, claims and boundary adjustments, as highly sensitive matters. For example, India made a formal protest to the People's Republic of China about the map attached to the Burmese-Chinese Boundary Treaty. India contested the map, which showed the western extremity of the Sino-Burmese boundary as ending at the Diphu L'Ka Pass, whereas on Indian and other maps the trijunction was 5 miles north of the pass.⁶

Note from India to China, 30 December 1960

The Government of India present their compliments to the Government of the People's Republic of China, and with reference to the text and the maps attached to the Burmese-Chinese Boundary Treaty of 1 October 1960 which were recently presented to the Parliament of the Union of Burma, have the honour to bring to the attention of the Government of the People's Republic of China the following facts pertaining to the western extremity of the Burma-China boundary, where it meets the eastern extremity of the India-China boundary.

Although Article 5 of the Treaty does not specify the exact location of the western extremity of the Sino-Burmese boundary, in the map attached to the Treaty the boundary is shown as ending at the Diphu L'Ka Pass. The traditional boundary of India west of the Sino-Burmese boundary follows the watershed between D-chu in India and Lat-te in the Tibet region of China; and the tri-junction of India, Burma and China is five miles north of the Diphu L'Ka Pass, and not at the Diphu L'Ka Pass itself. The coordinates of the tri-junction are approximately longitude 97° 23' east and latitude 28° 13' north. The fact that the traditional boundary running along the Himalayan watershed passes through this point has in the past been accepted by the Governments of Burma and China and it has for many years been shown correctly on official maps published in India.

The Government of India recognise that the text of the Treaty has left the exact location of this point unspecified. The Government of India are however obliged to point out that the extremity of the boundary between the two countries has been shown on the maps attached to the Treaty in an erroneous manner. As the location of the tri-junction at the Diphu L'Ka Pass has an adverse implication on the territorial integrity of India, the Government

of India wish to make clear to the Government of the People's Republic of China that they would be unable to recognise this map in so far as it prejudicially affects Indian territory.

The Government of India take this opportunity to renew to the Government of the People's Republic of China the assurances of their highest consideration.

In the case of land or maritime boundaries that have been left incomplete and undelimited due to political disputes, difficulties can arise if attempts are made to close gaps or enclaves in a boundary. For example, Argentina issued a protest note on 24 August 1994 after the UK closed a gap in the 200-mile fisheries boundary of the Falkland Islands.⁷

Letter dated 23 August 1994 from the Permanent Representative of Argentina to the United Nations addressed to the Secretary-General

I have the honour to transmit to you the text of the protest note, dated 22 August 1994, from the Government of the Argentine Republic, regarding the unilateral measure taken by the United Kingdom of Great Britain and Northern Ireland extending its alleged maritime jurisdiction in the waters adjacent to the Malvinas.

I request that this note and its annex be circulated as an official document of the General Assembly, under item 45 of the provisional agenda of the forty-ninth session of the General Assembly entitled 'Question of the Falkland Islands (Malvinas)', and of the Security Council, and drawn to the attention of the Special Committee on the Situation with regard to the Implementation of the Declaration of the Granting of Independence to Colonial Countries and Peoples.

(Signed) EMILIO J. CARPENS
Ambassador
Permanent Representative

The general construction of new maritime boundaries after the 1982 Law of the Sea Convention has been a source of conflict in a number of regions, such as the South China Sea, Caribbean, Central America, Adriatic and Middle East. Issues have arisen over the appropriate use of straight baselines, remote uninhabited rocks and offshore installations to create territorial seas, and economic zones. In some instances states have re-adjusted their initial maritime boundaries to bring them more into conformity with 1982 Law of the Sea Convention by modifying the co-ordinates of base lines to reduce the amount of maritime space claimed (e.g. Vietnam), or re-quired zonal claims based upon dubious or uninhabited rocks (e.g. the UK, Rockall, Scotland).

Nevertheless, maritime boundary disputes continue as an important source of friction and conflict between states in contemporary international relations. For example, St Kitts and Nevis issued a general protest through the UN Secretary-General,⁸ to forward to parties to the

1982 United Nations Convention on the Law of the Sea over the use by Venezuela of Isla Aves, and adjacent installations, in bilateral maritime boundary treaties with the Netherlands, France and the USA, and the associated impact of these on St Kitts and Nevis:

Note verbale dated 26 November 2001 from the Ministry of Foreign Affairs of St. Kitts and Nevis addressed to the Secretary-General of the United Nations

The Ministry of Foreign Affairs of St. Kitts and Nevis ... has the honour to refer to the Venezuelan territory known as 'Isla Aves' and to the bilateral Maritime Boundary Delimitation Treaties arising therefrom and made between:

1. The Republic of Venezuela and the Kingdom of the Netherlands, which entered into force on 15 December 1978;
2. The Republic of Venezuela and the United States of America, which entered into force on 24 November 1980;
3. The Republic of Venezuela and the French Republic, which entered into force on 28 January 1983.

The Government of St. Kitts and Nevis wishes to recall that, as recognized in customary international law and as reflected in the 1982 United Nations Convention on the Law of the Sea, rocks which cannot sustain human habitation or an economic life of their own shall have no exclusive economic zone or continental shelf.

The Government of St. Kitts and Nevis wishes further to recall that, as recognized in customary international law and as reflected in the 1982 United Nations convention on the Law of the Sea, the artificial installation and structure erected adjacent to 'Isla Aves' shall not possess the status of an island and shall have no territorial sea of its own and its presence does not affect the delimitation of the territorial sea, the exclusive economic zone or the continental shelf.

The maritime boundary treaties referred to above appear to grant 'Isla Aves' full status of territorial sea, exclusive economic zone or continental shelf. The Government of St. Kitts and Nevis has not acquiesced in the maritime boundary treaties referred to above.

The Government of St. Kitts and Nevis protests the status granted to 'Isla Aves' in the above-mentioned maritime boundary treaties and kindly requests the United Nations Secretary-General in his capacity as the depositary of the 1982 United Nations Convention on the Law of the Sea to communicate this note to the Parties to the said Convention.

Basseterre
26 November 2001

The maritime boundary arrangements between Venezuela (potentially zone-locks) and Trinidad and Tobago were protested by Guyana in the following note.⁹

Notes verbales dated February 2002 from the Ministry of Foreign Affairs of Guyana addressed to the Ministry of Enterprise Development and Foreign Affairs of Trinidad and Tobago and to the Ministry of External Affairs of Venezuela

The Ministry of Foreign Affairs of the Cooperative Republic of Guyana presents its compliments to the Ministry of External Affairs ... and has the honour to refer to the Treaty on Delimitation of Marine and Submarine Areas between the Republic of Trinidad and Tobago and the Bolivarian Republic of Venezuela signed at Caracas on 18 April 1990 and entered into force on 23 July 1991.

The Government of Guyana wishes to inform that it has concluded a review of its provisional maritime boundaries and of its potential claims to its extended continental shelf areas. It has emerged from that review that the aforementioned Treaty concluded between the Bolivarian Republic of Venezuela and the republic of Trinidad and Tobago purports to give to the parties to that Treaty rights over certain maritime areas which are a portion of Guyana's maritime space.

The Government of Guyana wishes to draw attention to article II of the said Treaty, wherein the geographical coordinates of the maritime boundaries between the Republic of Trinidad and Tobago and the Bolivarian Republic of Venezuela as defined in the aforesaid Treaty are set out.

The Government of the Cooperative Republic of Guyana wishes to inform the Government of ... that the encroachment by [Trinidad and Tobago] [Venezuela] into Guyana's maritime space is contrary to international maritime law and practice and does not affect Guyana's sovereignty and its exercise of sovereign rights over its maritime areas which are subject to the encroachment.

The Government of Guyana further wishes to advise that the coordinates that represent an encroachment of Guyana's maritime space are not recognized by the cooperative Republic of Guyana and cannot be opposable against Guyana.

The Government of the Cooperative Republic of Guyana wishes to bring to the attention of the Government of the Bolivarian Republic of Venezuela that the geographical coordinates forming the boundary lines which encroach upon Guyana's Maritime Space should be reviewed.

Georgetown, February 2002

Note verbale dated 27 March 2002 from the Ministry of Foreign Affairs of Trinidad and Tobago addressed to the Ministry of Foreign Affairs of Guyana (extracts)¹⁰

The Ministry of Foreign Affairs of the Republic of Trinidad and Tobago presents its compliments to the Ministry of Foreign Affairs of the Cooperative Republic of Guyana and has the honour to refer to the latter's note No. 102/2002 dated 1 February 2002, concerning the Trinidad and Tobago-Venezuela Treaty on the Delimitation of Marine and Submarine Areas which was signed on 18 April 1990 and entered into force on 23 July 1991.

The Ministry of Foreign Affairs wishes to inform the Ministry of Foreign Affairs that the Government of the Republic of Trinidad and Tobago has taken careful note of the timing of note 102/2002, and of its contents.

