Eileen Denza. ***Diplomatic Law, Commentary on the Vienna Convention on Diplomatic Relations.*** Oxford: Oxford University Press, 2008, 3rd edition. Pp. 556. $85.00. ISBN: 9780199216857.

Rarely is an international law reference text, let alone an article-by-article commentary on a convention, both authoritative and entertaining. Eileen Denza's third edition of *Diplomatic Law* is, however, an exception. Earlier editions of this text, first published in 1976 and then revised in 1998, quickly became the practitioner's standard reference. Drawing on her long and practical experience, Denza has thoroughly updated and revised the text; the third edition consolidates the reputation of *Diplomatic Law, Commentary on the Vienna Convention on Diplomatic Relations*, as the authoritative text in its field. Since diplomacy and espionage are often (uncomfortable) bedfellows, some of the state practice reads like episodes from a spy novel.

The commentary on each article or group of articles sets out the customary international law context, negotiating history to the extent that it remains relevant, difficulties or ambiguities in interpretation, and subsequent state practice. As Denza freely admits, the practice is weighted in favour of the US and the UK, for which she worked as Legal Counsellor in the Foreign and Commonwealth Office. However, there is abundant reference to other states' practice and to sources in several languages.

As well as a commentary on each article, the work includes annexes with the full text of the 1961 Vienna Convention and lists, as at the date of publication, the parties to the Convention (185 parties) and the two related optional protocols concerning the compulsory settlement of disputes (66 parties) and acquisition of nationality of the receiving state by members of the mission and their families (53 parties). The index is comprehensive and, in practice, facilitates quick reference.

Perhaps of greatest general interest to the international lawyer is Denza's 12-page introduction. The 1961 Convention is a

cornerstone of the international legal order, codifying the rules for exchange of embassies among sovereign states which, Denza states, are the 'oldest established and the most fundamental rules of international law' (at 1). Even though the Convention contained elements of progressive development when it was adopted, it now has almost universal participation and represents settled law.

The Convention is notable for 'winning both formal support and a remarkably high degree of observance'. Denza outlines three reasons for this. First, the legal rules codified in the Convention had long been stable. Secondly, reciprocity is a constant and effective sanction for observance of nearly all the Convention's rules. For example, imposition of a ceiling on the size of a diplomatic mission is normally followed by retaliatory action. When the US expelled 50 members of the Soviet embassy in Washington during the Cold War to reach parity with the size of the US mission in Moscow, the USSR retaliated by ordering many Soviet-national employees at the US mission to withdraw, forcing the US to use its staff entitlement to supply chauffeurs and cleaners rather than diplomats from the US. Denza dryly observes that this experience 'appears to have dampened US enthusiasm' (at 99) for imposing ceilings on diplomatic missions. Thirdly, those involved in the preparatory process in the International Law Commission and in the Vienna Conference leading to the Convention 'never lost sight of the need to find solutions which would be acceptable to governments and to national Parliaments as a whole' (at 2–3).

In light of the *Pinochet* and *Arrest Warrant* cases and the indictment issued recently by the International Criminal Court against the sitting President of the Sudan, it might be thought that human rights and notions of international criminal accountability would have made significant inroads into diplomatic law. However, Denza states that the Convention's clear description of the limited functions of diplomatic missions in Article 3 – 'which [for example] could not by any stretch of the imagination include torture' (at 446) – and 'judicial pronouncements emphasizing the unchallenged validity of rules of personal immunity for those still in office have . . . ensured that the impact of this challenge on the Convention regime has been very limited' (at 8). Denza considers that *Pinochet* is of limited relevance to the interpretation of the Convention because the difficulties in that case arose from the UK State Immunity Act transposing to heads of state the privileges and immunities of a head of mission 'with necessary modifications', which, as Lord Nicholls of Birkenhead said, was 'not an altogether neat exercise, as their functions are dissimilar' (at 446).

Human rights issues have presented some interesting challenges to the interpretation and application of the Convention. For example, receiving states have had to balance their 'special duty to take all appropriate steps . . . to prevent any disturbance of the peace of the mission or impairment of its dignity' (Article 22(2)) with the constitutional and international human rights of individuals to freedom of expression and of peaceful assembly. States and their courts have identified various means of balancing these obligations. Public demonstrations outside embassies will not necessarily involve a 'disturbance of the peace of the mission'. The UK view is that the 'essential requirements are that the work of the mission should not be disrupted, that mission staff are not put in fear, and that there is free access for both staff and visitors' (at 174).

Denza also notes that 'a matter of increasing controversy is the tension between the duty of a diplomat under Article 41 of the Convention not to interfere in the internal affairs of the receiving State and the opinion of many liberal States that human rights in all countries are a matter of legitimate international concern whose active promotion is a major object of their foreign policy' (at 11). For example, in 2000 the Burmese Government accused the British Ambassador of 'meddling' in its domestic affairs and overstepping 'universal diplomatic norms' by attempting to

meet the pro-democracy opposition leader Aung San Suu Kyi.

The commentary demonstrates the practical importance of 'subsequent practice in the application of the treaty' to treaty interpretation generally (compare the 1969 Vienna Convention on the Law of Treaties, Article 31(3)(c)). For example, how much like a bag must a 'diplomatic bag' look? The commentary to Article 27 indicates that usually the bag resembles a sack, but limits on its size and weight cannot be deduced from practice. Although the Federal Republic of Germany did not accept a Soviet assertion in 1985 that a truck with a payload of 9,000 kilogrammes could be considered a single diplomatic bag, occasionally customs authorities have accepted shipping containers as such (at 232).

This commentary is important not only to practitioners in diplomatic missions and departments of foreign affairs, but also to United Nations practitioners. Notably, the 1946 Convention on the Privileges and Immunities of the United Nations obliges parties to accord to very senior UN officials the privileges, immunities, exemptions, and facilities accorded to diplomatic envoys (see Article V, Section 19; Article VII, Section 27) and the UN's diplomatic pouch has the same privileges and immunities as diplomatic bags (Article III, Section 10). Denza lucidly analyses the contentious issue of requests to x-ray diplomatic bags, the state practice relating to which informs the UN's position that such bags should not be x-rayed. Furthermore, although there are important differences between diplomatic privileges and immunities under the 1961 Vienna Convention and the UN's privileges and immunities under the 1946 Convention, some of the concepts and language are comparable. Notably, the premises, archives, and documents of the mission and the United Nations 'shall be inviolable' under both the 1961 Convention (Articles 22(1) and 24) and the 1946 Convention (Article II, Sections 3 and 4).

Many other areas of international law, such as human rights and international humanitarian law, are depressingly replete with examples of a combination of widespread formal support for conventions and blatant non-observance in practice. As stated above, overall the 1961 Convention is not in this category. Nonetheless, the fundamental duty on the receiving state under Article 27(1) to 'permit and protect free communication on the part of the mission for all official purposes' appears, Denza concludes, to be 'very widely disregarded by those States which have the technical capacity to intercept embassy communications' (at 11). The examples of relevant state practice and state breaches expose the underbelly of international intercourse. In 1999, the US found a listening device in a State Department conference room, monitored from outside the building by a Russian Embassy attaché (soon thereafter expelled). In 2001 an espionage trial revealed that the FBI had constructed a tunnel complex under the Soviet Embassy in Washington for eavesdropping purposes, and even ran guided tours for senior FBI officials to display its capacities (at 220).

In an era when criticisms of international law, such as the law on the use of force or international humanitarian law, are routinely followed by calls to change the law, it is refreshing to read Denza's observation that states have addressed abuses of immunity under the Convention – particularly some flagrant examples during the 1970s and 1980s – not by altering the law, but by using administrative, legal, and diplomatic means already available to enforce the law.

In no small way, Denza's third edition of *Diplomatic Law* is likely to continue to contribute to the consistent implementation of the 1961 Convention because it is an authoritative source of analysis and state practice.

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