

Change in Consular Assistance and the Emergence of Consular Diplomacy

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Introduction*

This paper analyses the consequences of change in individual and collective (crisis) assistance by foreign ministries to diplomacy at large. There can be little doubt that consular assistance poses a growing challenge to government officials. Globalization encourages people to travel overseas in increasingly large numbers and instability may cause them to get into trouble and call more often upon consular officers for assistance. Citizens become increasingly assertive, the media more engaged and news reporting more international. As a consequence of these developments, points of contact as well as links between diplomats and the public increase. The number of highly mediatized cases grows and internationally coordinated attempts to bring consular assistance to a higher level are on the rise.

Consular affairs increasingly involve what I will posit here as ‘consular diplomacy’: international negotiations on a consular (legal) framework and individual consular cases that attract substantial attention from the media, public and politicians. Relatively low-priority service tasks of the foreign ministry move up the agenda and gain a distinctly diplomatic character. This is not to argue that consular affairs *always* involve a degree of diplomacy or international, high politics. Rather, the paper draws attention to substantial developments in consular affairs since the late 1990s that necessitate a qualification of assumptions about the relationship between consular affairs

*) This paper will appear as a book chapter in: Ana Mar Fernandez and Jan Melissen (eds). *Consular Affairs and the Transformation of Diplomacy* (forthcoming 2010).

and diplomacy. The media's growing power and citizens' rising expectations play a central role in this process. As will be shown, consular affairs become a window for the general public into diplomatic dealings and an incentive, as well as tool, for foreign ministries to communicate with the public. Consular affairs change diplomacy by making it more visible to the public and, in certain countries, more open to potential partners in service delivery. These trends will only strengthen in the future. The emerging consular diplomacy is thus unlikely to be a temporary phenomenon and is therefore worthy of attention.

Throughout this paper, the term 'consular affairs' generally refers to assistance to a state's own citizens in distress abroad and, when necessary, their family or other designated contacts at home. The concepts of 'assistance', 'citizen' and 'distress' are deliberately left open to interpretation, in line with foreign ministry practice. In most countries, consular assistance includes documentary services, individual assistance to citizens in distress and assistance at times of crisis. Since documentary services are relatively straightforward and at a fairly equal level in all countries,¹ they are not included in the discussion here. Visa services and other assistance to foreign rather than to own nationals are also excluded from the analysis. The most pressing challenges to the foreign ministry in terms of communication with the domestic public and protecting the national interest are in the field of individual and collective (crisis) assistance. Developments in these areas illustrate how changes in society, diplomacy and consular affairs relate and have contributed to the emergence of consular diplomacy.

1) This is not to say that documentary services are in all ways clear-cut or routine work. For example, travel document and identity fraud, as well as the introduction of biometric data into travel documents, are growing challenges that require substantial attention from consular departments.

Diplomacy and Consular Assistance

Developments in contemporary consular affairs need to be understood in the framework of discussion about the evolving relationship between the state and its citizens, and of changes in the foreign ministry and in diplomacy. Consular affairs, as such, are nothing new and the motivation of the consul to help nationals has remained fundamentally unaltered throughout the centuries.² What has changed is the character of ‘the citizen in distress’ and the environment in which consular services are delivered. The focus of assistance has shifted from representing traders’ interests to responding to the interests of the general public. Consular activity of old was by and large provided to businessmen who themselves also had a strong interest in maintaining friendly relations with the countries they visited or in which they resided. This is hardly the case for the herds of tourists who travel the world nowadays on short visits, often not returning to the same place twice. While consular protection used to be required in only a limited number of countries with which a government held strong trade links, ministries of foreign affairs (MFAs) these days need to be prepared to assist citizens anywhere in the world. The surge in consular activity that has accompanied these changes triggered many governments to ‘professionalize’ service. Reviews of consular

2) See the historical chapters of the book edited by Ana-Mar Fernandez and Jan Melissen, *Consular Affairs and the Transformation of Diplomacy* (forthcoming 2010). Also, Maaïke Heijmans and Jan Melissen, ‘Foreign Ministries and the Rising Challenge of Consular Affairs: Cinderella in the Limelight’, in *Foreign Ministries: Managing Diplomatic Networks and Optimizing Value* (Geneva: DiploFoundation, 2007), p. 195.

practice in recent years have sought to outline the changed environment and new challenges. Ultimately, these reports were to provide clues to foreign ministries on how to improve their performance.³

The upgrading of consular services that began in the 1990s involved defensive as well as offensive reasons. Primarily, on the defensive side, foreign ministries aim to meet the growing demands of citizens and—as a consequence and extension of this—of politicians and high-ranking government officials. Managing practical as well as accountability expectations, foreign ministries guard themselves against criticism from citizens. At the same time they recognize the potential marketing value of consular affairs, which makes for offensive reasons to upgrade consular assistance. If properly dealt with, the foreign ministry can boost its image among the public through communication with citizens about consular protection in general and individual consular assistance in particular. Clearly, developments in consular affairs are thus part of a trend towards diplomacy's increased dealings with the general public. Conscious efforts by foreign ministries and the European Commission to engage the public are one aspect of this. Overall, however, foreign ministries are on the defensive side, with their media exposure growing as consular issues take the limelight in daily papers, television and on the internet. Publicity facilitates individual citizens' ability to pressure the foreign ministry to improve the quality and intensity of consular service.

As the challenges facing consular departments grow at a faster pace than the (financial) resources to address citizens' demands, an increasingly diverse group of actors becomes involved in service delivery. Increased dealings with the public are thus not only with citizens as customers, but also in the upgrading of assistance. As mentioned earlier, countries with extensive diplomatic networks that are confronted with large numbers of consular cases tend to seek help from other ministries, the police, private companies and non-governmental organizations (NGOs) to deal with the increased workload. Consular challenges that foreign ministries cannot address through this 'privatization' of diplomacy are the ones that require communication with other governments. Because of their high profile and, accordingly, extensive media coverage, these events bring the ministry closer to the public and vice versa. This results in a growing divergence between what might be labelled

3) An internal review by the Canadian Ministry of Foreign Affairs and International Trade was published in November 2004: *Review of Consular Affairs—Final Report*. The National Audit Office in November 2005 published the report *The Foreign and Commonwealth Office: Consular Services to British Nationals*. The Dutch government commissioned a confidential review: see Maaïke Heijmans and Jan Melissen, *Consulaire Zaken en Diplomatie: Buitenlandse Zaken met Binnenlandse Prioriteiten* (The Hague: Netherlands Institute of International Relations 'Clingendael', 2006, unpublished). The European Commission launched a public debate on diplomatic and consular protection: *Green Paper: Diplomatic and Consular Protection of Union Citizens in Third Countries*, COM(2006)712 final (Brussels: European Commission, 28 November 2006).

common consular affairs—constituting the large majority of issues, dealt with in cooperation with partners through standard procedures—and *ad hoc* consular diplomacy.

Putting Citizens First

While the growing consular activity creates substantial difficulties for officials, this is not the *primary* challenge of foreign ministries. The main challenge that consular affairs pose to foreign ministries today concerns the expanding role of the media and of politicians in consular affairs. In other words, what is really new and constitutes the largest test to foreign ministries around the world is the increase in expectations. Assertive citizens nowadays demand high quality and quantity of services and—when necessary—find their way to the media or parliamentarians to make their voices heard by government. This in turn begs the question of whether, at times, certain governments are pushing assistance too far. One may question, for example, whether former French President Jacques Chirac spent his limited time and (financial) resources correctly when he spared no effort to arrange and personally attend the commemoration of a plane crash in Venezuela that had killed 154 French citizens in 2004.

High-profile consular assistance poses a new, growing challenge to foreign ministries. The death sentence of a citizen detained abroad, a case of international child abduction, a large-scale natural disaster or terrorist attack in a tourist area can dominate the news for weeks or even months. In those cases, consular affairs become directly related to the image and prestige of individual politicians, the foreign ministry and even the government at large. One could even say that the concept of a diplomatic crisis is changing from ‘opportunities lost’, such as in the failure of major economic or political negotiations, to a sudden, instant and/or life-threatening interruption of a diplomat’s daily work. When a consular issue receives widespread attention from the press and politicians, diplomats high up the ranks spare little effort in negotiating a satisfactory agreement. High-profile consular events thereby offer unexpected opportunities for diplomatic contact at the highest level. Generally, however, consular issues tend to gobble up precious time at high-level meetings dealing with a range of issues. Highly mediatized consular assistance thereby risks rendering diplomacy overly emotive and sometimes in conflict with broader national interests.

Examples of highly publicized consular cases where high-ranking officials spared little effort to show their human face to the public include the case of Machiel Kuijt—a Dutchman convicted in Thailand of smuggling drugs. Queen Beatrix of the Netherlands and then Foreign Minister Ben Bot took up the issue during a state visit to Thailand in 2004, calling for the signing of a prisoner transfer agreement and the effective transfer of Kuijt. In 2007 French President Nicholas Sarkozy mounted a diplomatic offensive to

free five Bulgarian nurses and a Palestinian doctor who had been sentenced to death in Libya. The prisoners eventually left Libya on a French government plane, together with EU Commissioner for External Affairs Benita Ferrero-Waldner and the (then) wife of the French President. Both the European Union and France, which held the rotating EU presidency at the time, gained high and generally positive media exposure. At the same time, however, Sarkozy was criticized by opposition socialists for secretive diplomacy and personal practice of power. In a similar vein, the EU commissioner pointed to the pitfalls of ‘freelance diplomacy’ and dealing with the Libyan leader.⁴

While public initiatives by upper-ranking officials are laudable in terms of what they try to achieve for the victims, there are clear drawbacks when considering a country’s goals and ambitions in international affairs in the long term. What is particularly problematic is that such occasions raise public expectations to a level that may be difficult to sustain generally. Consular officials who deal with similar but less publicized or smaller-scale issues are thereby put in a difficult position. In this perspective, much is to be said for the decision by Australian Prime Minister John Howard to remain largely (publicly) uninvolved in Schapelle Corby’s case of 2004–2005, wherein an Australian citizen was convicted in Indonesia for smuggling drugs. This example is, however, the exception that proves the rule that there is a growing trend towards consular diplomacy, where modern consular services—under close scrutiny from the media—go hand in hand with (quiet) diplomacy and international negotiation. The media closely follow individual cases, which set precedents and raise public expectations further. Consular departments have difficulty meeting these standards on other, less mediatized occasions.

What adds to the matter’s difficulty is that the definition of consular affairs as ‘assistance to citizens in distress abroad’ remains rather vague. In fact, although governments have the *responsibility* to protect citizens in distress abroad, most countries do not grant citizens the legal *right* to consular assistance. Germany is exceptional in having a Consular Law that stipulates the right to consular assistance.⁵ The law nevertheless does not specify what consular help should consist of—partly because this is dependent on the laws of the host country. Indeed, the interpretation of what constitutes ‘assistance’, a ‘citizen’ and ‘distress’ varies according to culture and national norms, values and time. Canadian consular officials, for example, deliver consular assistance from a ‘Royal Prerogative’. This has made the consular bureau relatively susceptible to political pressure, resulting in a continuous demand for higher and better consular services. Consular officials of the French foreign ministry, on the other hand, have a tool to limit (financial) consular assistance. They refer to Articles 205 and 206 of the *Code Civil*, which places financial

4) ‘Libya Frees Bulgarian Nurses in AIDS Case’, *New York Times* (online), 24 July 2007.

5) Law on consular officers, their functions and powers (Consular Law, 1974), articles 1 and 5 (1).

responsibility for children and parents with one another. For better or for worse, consular assistance remains thereby, in the words of a consular official, largely a matter of ‘push and pull’ and ‘trial and error’.

It should be emphasized that the trend of governments responding to rising public expectations is by no means limited to consular affairs. Such developments need to be considered within the broader development of changing relations between the state and citizens of the last decade, whereby the state takes up corporate standards and the citizen increasingly comes to be seen as a consumer who wants ‘value for money’.⁶

Towards Greater Maturity?

Responding to the growing challenges on the consular front, an increasing number of foreign ministries pay attention to assistance to citizens abroad at the highest level. As one diplomat described his superiors’ attitudes towards consular affairs, ‘the people at the top are like reborn Christians’.⁷ New positions and public centres are created to give consular affairs a face and a voice. The Canadian foreign ministry, for example, now has an assistant deputy minister for consular services and emergency management, and in 2009 the Japanese foreign ministry established a Centre for Consular Services. The Swedish case, however, shows that the pendulum may swing back when the sense of (political) urgency is lost. The disastrous experience of the Asian tsunami in 2004–2005 led to the creation of the position of director-general for consular affairs in the Swedish foreign minister’s office in late 2005. With the momentum and immediate political and media pressure gone, however, the post was abolished when the person holding it retired two years later.⁸

The discrepancy between the call of the public and politicians for high-quality services and the tools available to consular practitioners is

6) See, for example, the ongoing debates about the ‘transaction state’ and ‘drama democracy’: Frank Ankersmit, ‘De Plaag van de Transactiestaat’, in Frank Ankersmit and Leo Klinkers (eds), *De tien plagen van de staat: de bedrijfsmatige overhead gewogen* (Amsterdam: Van Gennip, 2008); and Mark Elchardus, *De Dramademocratie* (Tiel: Lannoo, 2003). The trend towards managerialism and marketization is particularly recognizable in the current British consular strategy, which uses terminology such as customers, service, value for money and efficiency: see Foreign and Commonwealth Office, *Delivering Change Together: The Consular Strategy 2007–2011* (London: FCO, 2007), available online at: http://www.fco.gov.uk/resources/en/pdf/pdf13/fco_pdf_consularstrategy2007.

7) British consular official in a personal meeting with the author, London, 21 February 2006.

8) It is telling that the media did not take notice of this important change in the foreign minister’s office. Although the tasks of the director-general are taken over by officials in the consular department, the clout of having an officer in the higher spheres of the ministry has clearly faded. Communication with a representative of the Swedish foreign ministry, December 2008.

becoming increasingly difficult to manage. One consular official commented that ‘we are the victims of our own success’, meaning that internally the consular bureau gets little recognition because officers ‘hang in’, while externally citizens are not satisfied despite—or because of—what have come to be called ‘Cadillac consular services’.⁹ The prioritization of consular affairs by high officials remains, indeed, more an *ad hoc* response to practical challenges that relate to the reputation of individuals and the ministry alike, than a matter of intrinsic vision. The upgrading of consular assistance to Dutch prisoners abroad and their contacts at home in the early 2000s, for example, was pursued under intense pressure from the parliament and press. The result—including a monthly allowance to prisoners in certain countries outside the EU, which for security reasons is not rarely delivered personally by diplomats to prisoners—may well be called an extension of the welfare state and in turn raises (ethical) questions, including whether perpetrators are receiving too much attention relative to victims. While Dutch excellence in this field may be upheld as an example for other countries, it is also a clear case of consular affairs responding to pressure from parliament and the press.

Only recently, calls are growing to shift from a merely operational approach to consular affairs, to an awareness of the need to develop a distinct policy agenda. In the words of one consul, ‘we have been busy like children, handling cases, but now we need to become adults’.¹⁰ This slowly but steadily unfolding process signals a profound shift in thinking about consular affairs.

At the core of this development is the changing context wherein citizens are increasingly able and willing to make a consular issue a political matter through media exposure, and wherein a growing number of officials at various levels argue for the development of a consular framework. The government’s responsibility to protect its citizens is no longer just a consular matter, but increasingly a diplomatic concern.

9) Interviews by the author at the Foreign and Commonwealth Office, London, and the Department of Foreign Affairs and International Trade, Ottawa, April–May 2006.

10) Canadian consular official in a personal meeting with the author, The Hague, 19 September 2008.

Theoretical Debates

To substantiate such a bold claim as the emergence of a new sort of diplomacy requires some theoretical underpinning. The analysis here follows the traditional distinction between diplomacy as an institution and diplomacy as a method or a profession. Distinguishing between the two notions of diplomacy helps us to see more clearly that developments in consular affairs and diplomacy move in different directions. This facilitates our understanding of the diverse set of challenges in consular affairs that foreign ministries face, and how this in turn drives the emergence of two distinct expressions of consular diplomacy.

Diplomacy as an Institution: Changing Role of the State

International relations (IR) theory, dominated by (neo)realist and (neo)liberalist thought, has not given much attention to in-depth study of diplomacy as such, let alone to consular affairs. In a general sense, the root of diplomacy's marginalization in IR theory is found in the bottom-up conceptualization of political space and the fact that most IR theories tend to be substantialist rather than relationalist.¹¹ Classical realist Hans Morgenthau characterized diplomacy—with war—as one of two instruments of political

11) Christer Jönsson and Martin Hall, *Essence of Diplomacy* (Hampshire: Palgrave Macmillan, 2005), pp. 12–15.

action available to states in the struggle for power.¹² In the eyes of Robert Keohane, one of the founders of neo-liberalism, diplomacy takes place in a context of international rules, institutions and practices that influence the motives of actors.¹³ Illustrative of both variants of mainstream IR (and their subvariants), diplomacy is not regarded as constitutive of international society and, as a result, is not a prioritized object of theoretical development.¹⁴

Hedley Bull introduced the idea of diplomacy as an institution in the international order.¹⁵ Bull characterized diplomacy—with the balance of power, international law, war and the Great Powers—as a regulating mechanism that contributes to order in international society. He did not deny the growing influence of other actors, but posited that governments are the key players in the society of states. Transnational civil society and the global economy obviously play an increasingly important role in the international order, but these structures have not taken over the role of the state.¹⁶ More precisely, the last decade's developments transform rather than transcend the role of the state. Even Robert Cooper's argument about the breakdown of state control over violence—such as the spread of terrorism and weapons of mass destruction—and the rise of a stable, peaceful post-modern order in Europe does not rebuff the continuously important role played by the state.¹⁷ The same can be said of the argument that contractual international law and multilateralism have become the dominant institutional practices governing modern international society.¹⁸ The response of European and US governments to the rise of (non-state) terrorism and to the financial and economic crisis in 2008–2009 may be the most recent example of the

12) Hans J. Morgenthau, *Politics among Nations: The Struggle for Power and Peace* (New York: Alfred A. Knopf, 1968 [1948]).

13) Robert O. Keohane, 'Theory of World Politics: Structural Realism and Beyond', in Robert O. Keohane (ed.), *International Institutions and State Power: Essays in International Relations Theory* (Boulder CO: Westview, 1989).

14) For a detailed elaboration, see Jönsson and Hall, *Essence of Diplomacy*, pp. 15–19.

15) Hedley Bull, *The Anarchical Society: A Study of Order in World Politics* (New York: Columbia University Press, 2002 [1977]). By the international order, Bull means a pattern of activity that sustains the elementary or primary goals of the society of states, or international society.

16) Andrew Hurrell, in Bull, *The Anarchical Society*, p. xxi (foreword to the third edition).

17) Robert Cooper, *The Breaking of Nations: The Order and Chaos in the Twenty-First Century* (London: McClelland & Stewart, 2005). Moreover, the excessive emphasis on the declining role of the state relative to that of other actors may be the greatest shortcoming of Haass' otherwise useful argument about the 'age of nonpolarity'. See Richard N. Haass, 'The Age of Nonpolarity: What Will Follow US Dominance', *Foreign Affairs*, 87 (5), May/June 2008. This essentially Western-centric view underestimates the continuously crucial role being played by the state to achieve order and manage the disorder in the security, economic and financial fields. The state retains primacy, for example, in intelligence-gathering and managing global challenges, including intervention in financial markets.

18) Christian Reus-Smit, *The Moral Purpose of the State: Culture, Social Identity and Institutional Rationality in International Relations* (Princeton, NY: Princeton University Press), p. 14.

continued power and importance of the state in the fields of security and economics. Paradoxically, globalization has induced new limits on the power of central governments, but has at the same time enlarged their responsibility for conflict management and the well-being of citizens. And while the challenge of terrorism gives the state in general and diplomats in particular a formidable test that requires long-term and profound interaction with a *foreign* public,¹⁹ the consular challenge is mostly practical and involves a large *domestic* dimension.

The changing reality with regard to consular affairs confirms this dual trend: it suggests that while the role of the state is declining in certain fields, it is expanding in other areas. The role and responsibilities of the state increase with the growing and changing demands of citizens in trouble in foreign lands. Practically, this puts greater burden on the financial and human resources of consular departments in the foreign ministry. At a more abstract level, it affects the functions of diplomacy. Diplomacy between states and other entities in world politics involves not only high political goals, but increasingly also needs to address the interests of individual citizens. While concerns for the national interest and for individual citizens may complement one another, governments find that the two areas may conflict at times. Politically sensitive travel advisories and consular issues gobbling up precious time at high-level summits are but two examples.

With the burden of its responsibility growing, the foreign ministry may—somewhat paradoxically—outsource certain aspects of its growing activism in consular affairs to third parties. In states where the pressure on consular resources is particularly large, for example, governments increasingly turn to private companies to assist diplomats in providing high-quality services.²⁰ Attempts to improve services—sometimes with the help of other government agencies, NGOs and private companies—are commonly referred to as the ‘professionalization’ or ‘privatization’ of consular assistance. There can be no doubt that the growing involvement of (semi-)private institutions profoundly changes the relationship of the foreign ministry with society and the role of the state at large.

19) James Mayall, ‘Introduction’, in Paul Sharp and Geoffrey Wiseman (eds), *The Diplomatic Corps as an Institution of International Society* (New York: Palgrave Macmillan, 2008), pp. 1–12.

20) The British foreign ministry, for example, discusses its strategy and cooperates with a ‘Consular Stakeholder Panel’ (earlier, the Consular Strategy Board and Travel Advice Review Group). This group includes associations of travel agents and operators, insurers, airlines, airports and travel guides as well as non-governmental organizations such as the Muslim Council and the Red Cross; see Foreign and Commonwealth Office, *Delivering Change Together*. As discussed in forthcoming volume on consular affairs edited by Fernandez and Melissen, especially in the chapter by Wesseling and Boniface, a similar trend towards outsourcing is recognizable at the European level with regard to the collection of visa requests.

Diplomacy as a Profession: Cinderella Moving Up the Agenda

Changes in consular affairs also have an impact on the notion of diplomacy as the management of International Relations.²¹ Aptly captured in D.C.M. Platt's description of consular affairs as the 'Cinderella Service',²² service tasks have traditionally been of a relatively low-priority within the foreign ministry. As consular protection increasingly has the potential to gain political significance, it moves up the agenda. High officials more often (wish to) become involved in the negotiation of individual cases while diplomats of all ranks receive increasingly professional consular training. Although some governments call upon the help of private actors to assist in service, no entity other than the state has the (legal) capacity to manage or deal with the core of consular issues. The management task cannot be outsourced because, as per the Vienna Convention of Consular Relations, citizens can turn to the state of their nationality for protection and—certain limits notwithstanding—consular officials have the legal right to have access to and communicate with citizens, even when they are in prison, custody or detention.²³ Since no person other than the consular official is granted these special rights, citizens depend on their government for protection. This reliance of the citizen on the state—or the responsibility of the state and the expectations of citizens, depending on which perspective you take—is enhanced by the fact that only the state has the legal capacity to issue (emergency) travel documents and to negotiate with other governments on its citizens' behalf.

All of this implies that the responsible government needs to know and to direct the movement of its citizens to guarantee safety. Professional diplomats and the embassy as an institution, which guarantees diplomatic protection on its grounds, are managers to assure this protection. Diplomacy as a profession that governs relations between nations becomes particularly important in consular affairs when consular assistance attracts the attention of press and politicians. High-level negotiation by government officials is then put under substantial pressure. Being the only entity with direct access to foreign governments, the state plays a critical role in this process. Pressure on the foreign ministry grows as citizens, directly and through the media, more often and more successfully urge their government to take up a consular issue with a foreign government.

When assessing the changes in consular affairs in their broader context, it becomes obvious that a string of developments in domestic and international society pose growing challenges to the core responsibility of the

21) On this understanding of diplomacy, see R.P. Barston, *Modern Diplomacy* (Essex: Pearson Education Limited, 2006 [1988]).

22) D.C.M. Platt, *The Cinderella Service: British Consuls since 1825* (Hamden CT: Archon, 1971).

23) Article 36 of the Vienna Convention on Consular Relations, 1963.

state to protect its citizens. Globalization, increasing threats of natural disasters and terrorist attacks, and other changes in global society, make travellers more prone to risk. Since the state bears primary responsibility for assisting its citizens at home and abroad, consular help becomes an increasingly burdensome task for government. These challenges directly affect the diplomatic institution and profession, and thereby alter the very essentials of diplomacy at large. Complementing the *ad hoc* consular diplomacy wherein governments increasingly take up consular issues with foreign governments, as described earlier, is the trend towards international cooperation in the consular field. This generates what I propose to call preventive consular diplomacy.

Improving Efficiency Multilaterally

As citizens travel more and to more remote places, and find their way to the ministry when in trouble, the demand for high-quality and quantity services increases. Responding to the growing challenges in consular affairs, foreign ministries in many countries started to improve their service from the 1990s. They upgraded the quality of assistance and the efficiency of delivering consular services to citizens by professionalizing services within their own consular departments and by elevating levels of cooperation between states. Professionalization by individual foreign ministries includes the acquisition of better tools and more human resources, improving policy standards and information-sharing between the ministry and representations abroad, enhancing access for citizens to consular departments, and strengthening cooperation with other parties. This upgrading of service has relatively little impact on the relationship between consular affairs and diplomacy, however, since it largely involves ‘in-house’ developments that can be achieved by any government alone.

Multilateral efforts aiming to improve the level of consular services do, however, enhance the diplomatic character of consular affairs. Negotiations in this field can be considered as a kind of preventive consular diplomacy. Between like-minded countries, adhering to similar standards of consular assistance, such efforts have focused on the exchange of best practices and the enhancement of pragmatic cooperation—that is, to be well-prepared and well-informed so that foreign ministries of different countries do not spend precious time for the same purpose in cases of emergency. The coordination of visits to medical or emergency centres to confirm whether citizens have

been hospitalized, for example, leaves hands available for much-needed help elsewhere. This type of bottom-up cooperation has been taking place at different levels and in various ways. The Scandinavian countries, for example, have coordinated consular affairs for many years, mostly on-the-spot in third countries and by attuning consular policy and travel advice. Taking cooperation yet a step further, representatives of the ‘Group of Five’ of English-speaking countries—consisting of Australia, Canada, New Zealand, the United Kingdom and the United States—undertake proactive diplomatic efforts towards third countries to improve the framework wherein consular assistance is provided. Other than consulting one another regularly and cooperating in crisis or emergency situations, they undertake *démarches* to third countries’ governments, requesting for example that foreign representations be included in the contingency plans of local cities and airports. In doing so, they increasingly seek cooperation with other like-minded countries, such as Japan and the Netherlands. The general aim is preventive: to increase preparedness for relief efforts at times of crisis.

Negotiation in the consular field also involves discussion about practical arrangements relating to consular assistance between states. Bilateral treaties and multilateral arrangements are sought with other countries on consular matters such as prisoner exchange, child abduction and dual citizenship. Negotiation and cooperation in these fields differ from the above, in the sense that they take place not only between like-minded countries, but—more importantly—between countries that have different ideas about concepts that lie at the core of consular assistance, such as human rights and (dual) citizenship. Prisoner transfer agreements, for example, allow citizens that are convicted or imprisoned abroad to serve (part of) their sentence in the country of their own nationality. Such arrangements are mostly sought by Western countries that are concerned about the well-being of citizens detained abroad. Negotiations also take place on international and bilateral agreements concerning international child abduction. While relatively small in number, child abduction has become an increasing challenge to consular departments, because of the surge in international marriages and, sometimes, dual citizenship of children. Problems arise when one parent, against the wish of the other parent, takes a child away from the country of residence to the country of his or her own nationality. Although the Hague Convention on the Civil Aspects of International Child Abduction of 1980 provides a general framework to address these issues, there is no legal way to take up a conflict with countries that have not joined the convention, including Islamic countries.

Negotiating treaties and defending the state’s interests is, of course, the very essence of diplomacy; in this sense consular diplomacy is nothing new. As foreign ministries step up their role as service provider, however, national interests may be at odds with the interests of citizen travellers. A negative travel advice, for example, constitutes a strong political statement and is used with extreme caution by risk-averse governments seeking to avoid

offending friendly nations. At the same time, an overly lenient approach that downplays an actual threat to travellers carries in it the risk of a domestic backlash and negative overexposure in the media in cases when a citizen *does* encounter serious trouble.²⁴ Preventive consular affairs may thus conflict with broader political goals.

Increasing efforts for multilateral cooperation in the consular field beg the question of whether general standards for assistance that provide guidance for (large) groups of countries are viable. Put differently: can bottom-up cooperation in consular affairs be substantiated with top-down arrangements? While substantial benefits could in theory be derived from greater cooperation in consular affairs, in practice the limits are as obvious as the opportunities. The primary reason why governments do not easily or necessarily approve of formal multilateral arrangements stems from the (potential) impact of consular activity on domestic politics. At the end of the day, citizens in distress expect and desire assistance from representatives of their own government and, if applicable, hold this institution accountable. Therefore, foreign ministries are interested in cooperation only to the extent that it does not distract from their responsibility towards their *own* domestic constituencies. While improved efficiency at the international level may thus be desirable in itself, certain foreign ministries—particularly the large ones with high standards of consular assistance—fear that cooperation might go at the expense of the quality of service to their own citizens. Differences in basic values and norms, such as the balance between state and individual responsibility, are obstacles to cooperation. Practical issues such as language and cultural barriers also play a role in this process. All of these factors increase political sensitivities at home and hamper multilateral efforts towards greater cooperation. The European experience illustrates the challenges to multilateral cooperation in the consular field.

Limits and Opportunities of International Cooperation: The European Example

The Vienna Convention on Consular Relations of 1963 and the subsidiarity principle of the European Union stipulate that consular affairs are a national affair. In other words, the primary responsibility to protect citizens lies with individual member states. The legal restraint has not, however, prevented EU member states from developing policy and cooperating in the consular field. A first step was taken with the adoption of the European Convention on consular functions and its Protocols in 1967.²⁵ It took almost three decades,

24) The chapter by William Maley in the forthcoming volume on consular affairs and diplomacy (Fernandez and Melissen, eds) addresses this issue in more detail.

25) The European Convention is still open to signature by member states of the Council of Europe. Since the subject of consular privileges, immunities and relations was already

however, before EU member states made actual steps towards consular cooperation in (crisis) assistance to EU citizens in distress outside the Union.²⁶ The so-called ‘Maastricht Treaty’ of 1992 created citizenship of the Union, and Article 8c of this treaty laid down the right to consular protection from the authorities of any EU member state in cases where a person’s country is not represented in a non-Union country.²⁷ The practical implementation of this article was given impetus in 1995 by the adoption of the member states’ representatives within the Council of the ‘Decision regarding protection for citizens of the European Union by diplomatic and consular representations.’²⁸ It took as long as seven years for this decision to become valid, illustrating the many obstacles that characterize the debate on increased EU cooperation in the consular field. With the upcoming review of the decision’s document, the debate on consular cooperation and protection intensified in 2007.

The first practical steps in cooperation on consular (crisis) assistance between EU member states date back to 1993, when the Council of the European Union established the consular working group COCON (*Groupe Affaires consulaires*).²⁹ COCON is primarily a forum for discussion on practical consular matters between representatives of member states, the Council Secretariat and—on an *ad hoc* basis—other institutions, notably the European Commission. Like at the national level, the renewed interest in consular affairs was more coincidental than stemming from long-term vision. Although professionalizing after 1997, the consular commission remained for several

covered in the Vienna Convention on Consular Relations of 1963, the scope of the European Convention was limited to consular functions.

- 26) This section draws on Maaïke Heijmans and Jan Melissen, ‘Consular Affairs, Society and the Changing Nature of Diplomacy’, paper presented at the International Studies Association (ISA) 48th Annual Convention, Chicago, 28 February–3 March 2007 (unpublished paper).
- 27) This Article is currently known as Article 20 of the Treaty of Amsterdam of 1997.
- 28) The preamble of Decision 95/553/EC states that representatives resolve ‘to continue building a Union ever closer to its citizens’. The decision outlines possible action by member states in cases such as arrest or detention, accident or serious illness, an act of violence against a citizen, death, help for a distressed citizen or his repatriation. Article 6 stipulates the duty to undertake to repay to the full value any financial advance or help and expenditure incurred. Article 7 states that a review is due five years after the decision entered into force, which was in May 2002.
- 29) The main purpose of COCON is the exchange of experience, best practice-sharing and identifying areas where cooperation can be useful. The group started in 1993 as ‘*Groupe de travail*’ (as per Article 8c), and was changed to its current name once the 1995 Decision was adopted. Interestingly, the Committee of Permanent Representatives in the EU (COREPER) never gave it a clear mandate or terms of reference. Communication by the author with a representative of the Council Secretariat, January 2009.

years a ‘club of port and cigars’.³⁰ Only after the attack on the Twin Towers in New York City on 11 September 2001 were consular affairs seriously put on the agenda of EU member states.

The European Commission’s interest in consular affairs was then ignited several years later, when crisis situations in third countries with a large consular dimension—such as the Asian Tsunami of 2004—caught the attention. Although the role of the European Commission is formally limited to assisting member states and making proposals, Commission officials are speaking with an increasingly louder voice. The Commission is sceptical about the results achieved through member states’ practical and pragmatic cooperation within the consular working group, and the group’s efficiency has reportedly been decreasing with the increase in the group’s membership as a result of EU enlargement.³¹

The interest of the European Commission in consular affairs should be understood in the broader context of Brussels’ rediscovery of the European citizen and efforts to mount support for the European project as a whole. The Commission is keen to increase citizens’ awareness of their rights in the field of consular protection. A *Eurobarometer* survey of 2006—the first to take up consular protection—showed that only a minority of EU citizens (23 per cent) are aware of the rights that EU citizenship provides in terms of consular protection from other EU member states.³² This was interpreted to mean that European citizens want ‘the European profile to be raised’:³³ a bold and somewhat premature conclusion that may be more representative of the Commission’s aspirations than of EU citizens’ wishes.

Several (larger) member states—including the UK, Germany, France and the Netherlands—have mixed feelings about attempts by the Commission to ‘assist’ in consular cooperation at the EU level. The Commission presents far-reaching proposals for consular cooperation and protection and launched a discussion with member states, the Council of the Union, the European Parliament, NGOs and civil society. Comments by senior officials as well as various research reports and official communications to the public underline the Commission’s consular zeal.³⁴ In each case it is argued that the Union

30) Interview by the author with a representative of the Council Secretariat, June 2006.

31) Interviews with representatives of the European Commission, member states (the UK, France and the Netherlands) and the Council of the EU between February and June 2006.

32) *Eurobarometer*, no. 188 of July 2006.

33) See *Green Paper: Diplomatic and Consular Protection of Union Citizens in Third Countries* (presented by the Commission), COM(2006)712 final, 28 November 2006, p. 4, http://ec.europa.eu/justice_home/news/consulting_public/consular_protection/com_2006_712_en.pdf.

34) For example, comments by Vice-President and Commissioner Frattini and Commissioner Ferrero-Waldner, both quoted in IP/06/1638. Ferrero-Waldner commented that ‘Consular cooperation is important for our citizens to experience the added-value of the EU working together when they are abroad. Through its extensive network of delegations around the world, the Commission is ready to further support Member States, in particular in crisis

needs to foster cooperation in the field of consular affairs in order to protect EU citizens in third countries more fully, and to enable every European citizen to be aware of and enjoy full access to their existing rights. The so-called 'Barnier Report' goes even further in proposing the establishment of European consulates and consular flying squads. It maintains that member states endorse these views, but the discussion is more complicated than this would lead one to believe.³⁵ While recognizing in principle the benefits of cooperation, representatives of large member states in particular emphasize that other aspects need to be factored in, especially public perception and national sensitivities.³⁶ At the same time, these countries' willingness to increase consular cooperation may rise as political pressure mounts to cut government spending and to reduce bureaucracy.

Clearly, the debate on greater EU consular cooperation evolves slowly. It can thereby be regarded as a typical example of EU incrementalism. At the same time, the European example is indicative of the practical challenges to international cooperation in the consular field. Furthermore, it confirms the renewed attention for consular affairs at the national level and the emerging practice of consular diplomacy. This involves nothing less than a 'clash of cultures'.³⁷ Consular 'technicians' recognize the advantages of increased cooperation in the consular field but prefer the pragmatic, bottom-up approach and resist immediate, far-reaching arrangements. This group consists of representatives of a group of (larger) member states and, to a lesser extent and mostly for legal reasons, the Council. They oppose the 'visionaries', the European Commission and a number of smaller member states, who see great advantages in a broader, institutionalized framework for consular cooperation.

The Commission is at least partly motivated by the desire to engage its 'constituency': the European citizens. This mirrors the offensive motivations of foreign ministries at the national level to use consular affairs as a marketing tool. The official justification of the Commission's proactivism is, of course, support for increased cooperation in order to enhance effectiveness

situations'. Examples of documents are: '*A citizens' agenda*', COM(2006)211 final, available online at http://ec.europa.eu/commission_barroso/president/pdf/com_2006_211_en.pdf; and the 'Barnier Report', officially entitled *For a European Civil Protection Force: Europe Aid*, 9 May 2006, available online at http://ec.europa.eu/commission_barroso/president/pdf/rapport_barnier_en.pdf.

35) The 'Barnier Report' does not present the Commission's official views, but was written in close cooperation with representatives of the Commission; interviews undertaken for the study commissioned by the Consular Department of the Netherlands Foreign Ministry between March and June 2006. Also see Heijmans and Melissen, *Consulaire Zaken en Diplomatie*.

36) See also Giorgio Porzio, 'Consular Assistance and Protection: An EU Perspective', *The Hague Journal of Diplomacy*, vol. 3, no. 1, March 2008, pp. 93–97.

37) Interviews with a representative of the Council of the EU, June 2006 and January 2007.

and thereby to achieve high-quality service delivery through cooperation. Clearly, however, the Commission also recognizes the potential of consular affairs for improving the EU's image and enhancing its visibility.³⁸

Both at the national and European levels, consular affairs have the effect of bringing foreign ministries closer to domestic society. Points of contact between individual citizens and government officials increase—both directly and through politicians and the media—and the foreign ministry opens up to cooperation with various parties. Consular affairs increasingly gain a distinctly diplomatic dimension during this process. While this trend offers possibilities for improving the image of the foreign ministry, the downsides of excessive public attention for consular assistance also need to be recognized and addressed. As diplomats become preoccupied with satisfying the needs of individual citizens and marketing the foreign ministry (as part of the government at large) at home, their actions may be increasingly at odds with the national interest of the state at large. Long-term international efforts of high-level political importance risk being overruled by individual consular issues, pursued in an attempt to engage the domestic public. Consular affairs become directly related to individual politicians' gain and the image of the foreign ministry and government at large. Highly publicized consular protection, in particular, thereby transforms common consular assistance into consular diplomacy.

38) These very ambitions are expressed in official documents, such as the *Green Paper: Diplomatic and Consular Protection of Union Citizens in Third Countries*, COM(2006)712, adopted on 28 November 2006.

Conclusion: Towards a Consular Diplomacy

Because of changes in society spurred by globalization, consular activity increasingly has the potential of being ‘upgraded’ to a diplomatic matter that becomes a concern in relations between two (or more) countries. Such consular diplomacy takes place at two levels. When considering the shifts in the role of the state, it is found that governments attach increasing importance to and are becoming more involved in consular affairs at the practical as well as policy level. Consular diplomacy here involves the negotiation of preventive, practical arrangements of consular assistance between states. Foreign ministries continuously engage in consular diplomacy in such general terms. Best-practice exchange and practical cooperation take place with like-minded countries, while treaties and general arrangements on consular matters—including prisoner exchange, child abduction and dual citizenship—are sought with countries that employ different standards of consular services and human rights. As foreign ministries step up their role as service providers, however, national interests may be at odds with the interests of citizen travellers. This obviously creates new challenges for governments. The European experience with consular cooperation suggests that expectations of developing a broad legal framework and a multilateral task force should not be taken lightly. Since foreign ministers face stringent media scrutiny, countries with extensive networks and high-level services are reluctant to hand over responsibilities to a higher authority.

The second, more visible category of consular diplomacy involves immediate consular assistance that is under close scrutiny from the media and politicians, and that attracts attention from senior government officials. This

includes *ad hoc* management and communication with the domestic public and foreign government(s) in crisis situations. These developments have a substantial impact on what diplomacy is as a profession. The newness of this trend lies primarily in the way by which individual and collective consular assistance is publicized to a wide public through the media. It thereby attracts more attention from high-level officials, which in turn increases the pressure on consular agents to provide instant, high-quality service. In certain high-profile issues, such as a case of international child abduction or an emergency that necessitates assistance to and repatriation of citizens, consular diplomacy becomes the highest priority of high-ranking diplomats for an extended period of time. This means that diplomats of all ranks need to be prepared to engage the public and the media. At the same time, it may be opportune for officials, politicians and the public to rethink the balance between state and individual responsibilities in the consular field. As consular challenges grow and government funding decreases, foreign ministries in the years ahead need a forward-looking consular diplomacy strategy to balance the tension between securing national interests and protecting the narrow interests of individual citizens.

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