

PROTECTION OF DIPLOMATIC PERSONNEL AND PREMISES
THE PRACTICAL ASPECTS OF PROTECTION

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The views contained in this paper are those of the author and not necessarily those of the Department of Foreign Affairs or the Australian Government.

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Introduction

The practice of making diplomatic and consular Missions and their personnel the target of political and other discontents has expanded considerably throughout the world in recent times. Australia has not escaped this trend. The incidents in 1977 involving the Military Attache of the Indian High Commission and the assassination of the Turkish Consul-General in Sydney in 1980 are only two examples which illustrate that Australia cannot regard itself as being immune from an international movement directing violence against diplomatic and other representatives of a friendly Government. This is attributable to the attempts to influence the activities or affect the interests of foreign Governments and usually has little or no relationship to Australian Government attitudes or policies.

The Australian Government accepts, as an obligation under the Vienna Convention on Diplomatic Relations and the Vienna Convention on Consular Relations, its special duty to protect the premises of diplomatic Missions, Consular Posts and international organisations, and to prevent any disturbance of their peace or impairment of their dignity. It also accepts its obligations to take all appropriate steps to prevent any attack on the personal freedom or dignity of a diplomatic agent or consular official.

In practice we interpret this as an obligation on the Government to ensure that the Mission or Post can continue to function correctly, that there is unhindered access and egress and that those within the Mission are not in fear that the Mission might be damaged or its staff injured.

The Minister for Foreign Affairs administers, in Australia, the Diplomatic Privileges and Immunities Act 1967 and the Consular Privileges and Immunities Act 1972, which brought the two Vienna Conventions into force in Australian law. It is under these Acts that steps are taken to honour Australia's obligations under the Conventions.

This paper attempts to address the manner in which the Government handles its responsibilities when there are threats made against diplomatic Missions in Australia, the practical difficulties which can be encountered by enforcement authorities, and the measures adopted by the Government to protect diplomatic personnel and premises.

Notification of Demonstrations and Action Taken

Generally, information that demonstration is planned outside a Foreign Mission is received in advance of the demonstration. This information may come from a number of channels, the most usual means being advice to the Australian Federal Police by the organisers of the demonstration. Other channels by which the information is obtained are from Foreign Missions advising either

the Department of Foreign Affairs, the AFP, or from other Protective Security Organisations. There are, of course, demonstrations which occur annually to commemorate significant events or Spontaneous demonstrations dictated by world-wide 'issteS.

Upon receipt of information that a demonstration is to take place at a diplomatic Mission, the Department of Foreign Affairs and the Australian Federal Police will Consult. The Protective Services Co-ordination Centre (PSCC), a Division of the Department of the Special Minister of State, is informed. PSCC is the Commonwealth co-ordinating body for protective security arrangements for Australian and visiting VIPs and other individuals of a protective security Concern.

Protection is currently provided by the AFP and it is this organisation which will make the decision on what form of action will be taken in regard to a demonstration. However, if there are political, legal or international factors involved or particular information available to other Government Departments or Authorities, these can be conveyed to AFP either directly, or through the PSCC. If it is considered that there is a high risk factor involved in a demonstration or an unknown threat, a Special Incident Task Force may be set up to assess the situation and make recommendations to the AF?.

Difficulties Associated with Demonstrations at Diplomatic Missions

Article 22(2) of the Vienna Convention on Diplomatic Relations and Article 31(3) of the Vienna Convention on Consular Relations provide that the Receiving State is under a special duty to take all appropriate steps to protect the premises of Missions and Consulates against any intrusion or damage, and to prevent any disturbance of the peace or impairment of its dignity. This duty to protect the peace of a Mission has not, however, been interpreted to disallow demonstrations outside them. In the last twelve months there have been 45 demonstrations outside Foreign Missions in the ACT.

The police officer's role in demonstrations and protest activity at Foreign Missions is often onerous as he must allow protesters their full rights of expression yet at the same time maintain the rights of Missions and maintain law and order. He must decide in the circumstances when to act and when to exercise his discretion and it is here that difficulties arise.

The Commonwealth Act usually relied on in situations when persons are assembled for protest purposes is the Public Order (Protection of Persons and Property) Act. Although this Act defines offences and confers certain powers to Police to control assemblies, it does not clearly

define guidelines giving directions to police on how to respond. It does not, for example, define "harassment" nor does it give a yardstick to allow police to keep demonstrations at a certain distance from Embassy boundaries.

What constitutes a peaceful demonstration has different meanings depending on one's point of view. The burning of a flag or effigy may not constitute offence from a police viewpoint but could be regarded by the Mission concerned as an "impairment of its dignity".

There are situations where demonstrations include acts which, to some degree, may challenge the authority of the Government represented by the diplomatic Mission. At a demonstration by members of the Australian Sikh community against the Indian High Commission in 1984 which extended for a considerable period, a caravan was parked near the High Commission for several weeks. While the immediate purpose of the caravan could have been interpreted as simply providing a shelter from the elements, it could also have been interpreted as being in some way the "Embassy of Khalistan" particularly as the Khalistan flag was flown from it. This not only provided difficulties for the police but also had sensitive implications for the Government's bilateral relations with India.

Whilst co-ordinators of demonstrations consider that a demonstration will be peaceful there is always the risk that other persons with ulterior motives will infiltrate demonstrations and manipulate the conduct

the gathering to their own advantage. Even if the police consider a demonstration to be peaceful, demonstrators can be tempted to take liberties against the law if police are not present. Even if Police are present they may not always be able to prevent a determined demonstrator protected by the crowd from hurling a missile or engaging in some other hostile or aggressive activity.

Every demonstration has its own peculiarities and idiosyncracies. A simple act can turn a peaceful demonstration into one that violates the law, as happened at the South African Embassy recently. Opposing factions can upset what started out as a peaceful demonstration. Outside influences such as the presence of alcohol can also turn a peaceful demonstration into a violent one.

There are, of course, two sides to a demonstration—the demonstrator's and those being demonstrated against. The actions of the latter group can turn a peaceful demonstration into one of violence, the most glaring example of this being the actions of personnel from the Libyan Embassy in London in 1984.

Should an incident occur which is judged by Police to be a violation of the law, demonstrators are arrested and can be charged on a variety of offences. While Police testimony in Court is often sufficient for the purposes of a fair trial the prosecution case is sometimes hindered

by the unwillingness or inability of a diplomatic Mission to allow one of its staff to appear in court. To do so would imply a waiver of diplomatic immunity as a witness is subject to cross examination. Any such waiver must be express and exercised on behalf of the officer by his home Government, usually through the local Head of Mission.

Difficulties can also arise for the Department of Foreign Affairs in the event that decisions are taken by the Authorities not to proceed with a prosecution. In the guidelines issued earlier this year by the Director of Public Prosecutions for civil disobedience prosecutions, mention was made of the fact that police officers and the Director of Public Prosecutions may exercise discretion in deciding whether to lay charges against persons who may have committed an offence. Similarly, prosecutors may on occasion form the view that it would not be in the public interest for a matter to be pursued. The Department has challenged these guidelines as they affect Missions and their staff. In cases where arrests have been made at demonstrations in front of foreign Missions, surprise has been expressed by these Missions that alleged offenders are not properly dealt with by the prosecuting authorities.

Mention should be made of the role of the police at demonstrations. It could be argued by some that the mere presence of police at an apparently peaceful demonstration can be inflammatory. However, as has been instanced earlier,

a police presence at a demonstration assures that the Government's international obligations are protected, it can act as a deterrent and, in most cases, assists the demonstrators in conducting the demonstration in peaceful and orderly manner.

Physical Protection of Diplomatic Missions and Personnel

Although the Government has a special duty to protect Missions, we encourage them to take physical and other measures to protect themselves. In many cases this is being done, naturally in response to international trends of attacks on or threats to diplomatic premises. Moreover, Missions are able to contact Police quickly should they be threatened or feel that they are at risk. Some Missions have in addition either home-based and/or contracted security guards on patrol inside or outside their premises 24 hours

day. This is exemplified by the United States Embassy which has its Marine Guards as well as a local security authority. Other Missions have similar arrangements.

The Australian Federal Police maintain mobile patrols around Diplomatic Missions and Residences. In instances where there is a specific threat to Missions or their personnel, these patrols are either stepped up or a static guard or guards are placed on the premises. The manner of this guarding is dependent upon the perceived level of threat and the available manpower of the **AFP** at the time.

The other type of guard for Diplomatic Personnel is the personal bodyguard. This can be an officer or officers from the AFP assigned to protect the person of a Diplomatic Agent, normally the Head of Mission, where there is a particular threat against him/her. Some Heads of Mission also have their own home-based bodyguards which are on the staff of the Mission.

As an extension of its obligations under Article 22 of the Vienna Convention on Diplomatic Relations and Article 31(3) of the Vienna Convention on Consular Relations, the Australian Government has on occasion, as an act of grace, undertaken to make good any malicious damage to properties belonging to diplomatic and consular posts. The Government will not, however, meet the cost of malicious damage to premises leased to foreign Missions as the lessor is expected to maintain full insurance cover.