# Diplomatic and Consular Relations

**Establishment of diplomatic relations. Libya. Qatar. Yemen Arab Republic**

On 4 January 1978 the Minister for Foreign Affairs, Mr Peacock, issued a statement containing a joint communique announcing that Australia and Libya had agreed to the exchange of diplomatic missions. The joint communique read (Comm Rec 1978, 6):

> The Governments of the Commonwealth of Australia and the Socialist People's Libyan Arab Jamahiriya, guided by the desire to promote friendly relations and the development of co-operation between their two countries, have decided to exchange diplomatic missions at ambassadorial level.

On 1 May 1980 Mr Peacock announced that the Australian Government and the Government of the State of Qatar had agreed to enter into formal diplomatic relations. The joint communique made by the two Governments read (Comm Rec 1980, 583):

> Wishing to strengthen the ties of friendship and co-operation between Qatar and Australia, both countries have decided to enter into diplomatic relations at the level of Ambassadors.

On 20 December 1980 Mr Peacock announced that the Australian Government and the Government of the Yemen Arab Republic had agreed to enter into formal diplomatic relations. The joint communique made by the two Governments read (Comm Rec 1980, 1868):

> In accordance with the mutual desire of the Yemen Arab Republic and Australia to widen the field for development of relations and co-operation between the two countries, the Governments of the Yemen Arab Republic and Australia have decided to establish diplomatic relations at Embassy level based on non-resident accreditation from the date of the simultaneous release of his statement in both Sana'a and Canberra.

**Establishment of consular relations. China**

On 12 October 1978, in answer to the following question (HR Deb 1978, Vol 111, 1890–1):

> (1) Was an agreement signed by representatives of Australia and the People's Republic of China enabling a Chinese Consulate to be opened in Sydney with appropriate rights for Australia to open a Consulate in China.
>
> (2) If so, did the Australian representative seek at any time during the negotiations to clarify or renegotiate the 1973 Articles of Agreement governing diplomatic relations between Australia and the People's Republic of China.

the Acting Minister for Foreign Affairs, Mr Sinclair, wrote:

> (1) Letters were exchanged in Peking on 18 September between the

Chinese Foreign Minister on behalf of the Government of the People's Republic of China and the Australian Ambassador on behalf of the Government of Australia, which constitute an agreement between the two Governments for the establishment of Consulates-General in the two countries. The agreement provides for a Chinese Consulate-General in Sydney and an Australian Consulate-General in either Canton or Shanghai.

(2) No.

**Diplomatic relations. Relationship to policies of government**

In the House of Representatives on 18 September 1980, the Minister for Foreign Affairs, Mr Peacock, in answer to a question asking what diplomatic, military, political and trade relations Australia had conducted with Chile following the coup which overthrew the Allende Government on 11 September 1973, said as follows (HR Deb 1980, Vol 119, 1593):

> Australia maintained diplomatic relations with Chile following the coup of 11 September 1973 and after a lapse of some three years appointed an Ambassador to Santiago in July 1976. It has been the policy of the Government that the maintenance of diplomatic relations with any particular country does not necessarily imply acceptance of the policies or actions of that country . . .

**Diplomatic relations. Negotiations to restore diplomatic relations with Kampuchea**

On 24 November 1978 Mr Peacock wrote in answer to a question (HR Deb 1978, Vol 112, 3531–2):

> Australia recognised the Government of Democratic Kampuchea on 17 April 1975 but has not yet established diplomatic relations with it. In response to a recent approach from Kampuchea to enter into diplomatic relations the Kampuchean Ambassador in Peking was told that Australia attached importance to the maintenance of Kampuchea's independence and territorial integrity, that we did not rule out the possibility of establishing diplomatic relations in the future and that we wanted to continue to maintain contact through our Embassies in Peking.

**Diplomatic relations. Agricultural attaches. Trade Commissioners. Australian Security and Intelligence Organisation officers**

On 24 November 1978 the Minister for Primary Industry, Mr Sinclair, wrote in answer to a question about the role and location of agricultural attaches and Trade Commissioners (HR Deb 1978, Vol 112, 3555):

> The role of a Counsellor (Agriculture), with somewhat differing emphasis in each post, is broadly to evaluate and report on agricultural, forestry and fisheries policy developments; make representations at appropriate level to the host government on agricultural, forestry and fisheries matters; participate in delegations on primary industry issues including negotiations on world commodity arrangements; and assess

> demand/supply trends and other information on agricultural production and consumption.
>
> The basic role of a Trade Commissioner is to provide commercial intelligence and promotional support to Australian exporters and the Government in the interest of developing and maintaining Australia's overseas markets.

On the same day the Minister for Trade and Resources, Mr Anthony, wrote in anwer to a similar question (HR Deb 1978, Vol 112, 3561):

> The essential role of Trade Commissioners is to provide the commercial intelligence and support required by Australian exporters and the Government to enable commercial opportunities in overseas markets to be developed and maintained in the manner most suited to Australia's needs.

On the same day the Prime Minister, Mr Fraser, wrote in answer to a question asking whether the Australian Security and Intelligence Organisation had a charter to operate overseas (HR Deb 1978, Vol 112, 3476):

> The ASIO charter is contained in the ASIO Act. Some of the Organisation's functions require that officers are posted abroad. In all cases they are declared to the host Government. In particular, ASIO has a charter 'To co-operate with such departments and authorities of other countries as are capable of assisting the Organisation in the performance of its functions'.
>
> Any activities of ASIO, at home or abroad, are carried out within the terms of its charter.

**Consular functions performed overseas for Australians**

In the House of Representatives on 26 May 1978, the Minister for Foreign Affairs, Mr Peacock, made a statement concerning the consular services provided for Australians overseas. In the course of his statement the Minister gave a general description of Australian consular functions and services as follows (HR Deb 1978, Vol 109, 2596):

> Broadly speaking, they fall into two parts: The provision of notarial and documentation services, and the protection of Australian citizens. The first requires that Australian consular officers perform functions including the following: Notarial acts, oaths, affirmations and declarations such as the authentication or legalisation of various documents, from wills and contracts to school certificates and driving licences; the issue and renewal of passports and visas; the solemnisation and registration of marriages; payment of or advice on social security provisions including medical benefits; advice on the importation and registration of motor vehicles; advice on acquisition or loss of citizenship, particularly on dual nationality problems; provision of information on Australian Customs' requirements; the provision of facilities for voting in Australian elections overseas; the administration of regulations arising from the Navigation Act in regard to seamen;

liaison with overseas legal authorities on instructions from Australia to arrange extradition; advice on exchange control and currency matters for personal or investment purposes; serving writs and taking evidence; advising visitors to Australia of health and quarantine requirements and reporting on outbreaks of diseases in foreign countries.

The second part, consular protection, arises from international practice of sovereign states recognising an obligation to protect the civil and legal rights of their citizens when abroad. An important consular duty is to ensure that Australian citizens arrested overseas are treated with due process in accordance with the laws of the state where the offence may have occurred and that they receive the same benefits of the law which the foreign state affords to its own subjects. We must ensure that an Australian arrested overseas knows his rights under local law and how to obtain legal assistance if he wishes it. Protection services also include assistance arising from the deaths of Australians abroad, including funeral arrangements, return of remains to Australia and the protection of estates and property willed to Australians. In addition to its internationally accepted obligations the Australian Government provides a range of services which are designed to assist Australians in trouble and distress of various kinds and which come, generally, within the scope of protection work. This assistance includes: Inquiries relating to the welfare and whereabouts of Australians; repatriation and financial relief of distressed Australians in the form of a repayable loan as already mentioned; welfare visits to persons in gaol, hospital or in an asylum; assistance in natural disasters or emergencies; and making available to Australian citizens who have been arrested a list of local lawyers who may be able to assist them.

**Diplomatic personnel in Australia. Status. Recognition by the Government**

On 6 December 1979 the Federal Court of Australia delivered its judgment in *Duff v R* (28 ALR 663). The Court (Brennan, McGregor and Lockhart JJ) said on the question of the status of two members of the Indian High Commission in Canberra in part as follows (at 695):

> Recognition of the status of diplomatic personages is the prerogative of the Government of Australia, and a person who is so recognised as having a particular status has that status for the purpose of a court of law. Lord Warrington of Clyffe said in *Engelke* v *Musmann* [1928] AC 433 at 457 and 458:—
>
> "The Attorney-General states explicitly in para 26 of his case that it is a necessary part of His Majesty's prerogative in his conduct of foreign affairs and his relations with foreign States and their representatives to accord or refuse recognition to any person as a member of a foreign ambassador's staff exercising diplomatic functions. The fact of recognition is, of course, peculiarly within the knowledge of the Department according it, and a statement by or on behalf of the Department that it has been accorded to any person must in my opinion come within the principles above referred to and be conclusive as to the status of that person . . .

"I have not thought it necessary to discuss the many cases which were cited in this House. It is enough to say that some of them support and no one of them is opposed to the views I have above expressed."

See also the speech of Lord Phillimore in the same case at pp 449 and 450; and *Duff Development Co v Kelantan Government* [1924] AC 797, especially at 823 and 824, per Lord Sumner.

The facts certified by the Attorney-General as being recognised are clearly relevant to the status of Colonel and Mrs Singh as internationally protected persons. As a member of the diplomatic staff, Colonel Singh is a diplomatic agent, and thus an internationally protected person. As a member of the family of such a person, Mrs Singh is likewise an internationally protected person.

In our opinion, by certifying that the Government of the Commonwealth of Australia recognises Colonel Singh and his wife in the terms stated in the certificate, the Attorney-General is certifying to facts which are relevant to the question whether Colonel Singh and his wife was each an internationally protected person at the relevant time. The certificate was both admissible and probative, if not conclusive, of their respective status.

The certificate of the Minister of State for Foreign Affairs was objected to on substantially the same grounds, but what we have said as to the first certificate applies equally to this certificate. Section 14(1) of the Act is in all material respects the same as s 14(1) of the 1976 Act.

The certificates of the Attorney-General and the Minister for Foreign Affairs were reproduced in the judgment as follows (at 693–4):

The first-mentioned certificate is in the following terms:—

"I, PETER DURACK, Attorney-General of the Commonwealth and the Minister of the Commonwealth for the time being administering the Crimes (Internationally Protected Persons) Act 1976 HEREBY CERTIFY pursuant to sub-section 14(1) of the said Act that:—

(a) COLONEL IQBAL SINGH of 105 Endeavour Street Red Hill in the Australian Capital Territory as from the 25th day of September 1976 has been recognised and as at the date of this Certificate continues to be recognised by the Government of the Commonwealth of Australia as an official of the State of India being the Military Naval and Air Adviser to the High Commission of India in Canberra and as a member of the diplomatic staff of the said High Commission; and

(b) DARSHAN KAUR SINGH the wife of COLONEL IQBAL SINGH as from the 25th day of September 1976 has been recognised and as at the date of this Certificate continues to be recognised by the Government of the Commonwealth of Australia as a member of the family of the said COLONEL IQBAL SINGH forming part of his household.

Dated this 1st day of May 1978

(sgd) P Durack
Peter Durack
Attorney-General"

The second certificate is in the following terms:—
"I, ANDREW SHARP PEACOCK the Minister for Foreign Affairs of Australia and Minister of the Commonwealth for the time being administering the Diplomatic Privileges and Immunities Act 1967 HEREBY CERTIFY pursuant to sub-section 14(1) of the said Act that:—

(a) COLONEL IQBAL SINGH of 105 Endeavour Street, Red Hill in the Australian Capital Territory was recognised at the 14th and 15th days of September 1977 by the Government of the Commonwealth of Australia as a diplomatic agent within the meaning of the Vienna Convention on Diplomatic Relations.

(b) In accordance with Article 10 of the said Vienna Convention on Diplomatic Relations the Department of Foreign Affairs of the Commonwealth of Australia had been notified prior to the 14th and 15th days of September 1977 of the appointment of the said COLONEL IQBAL SINGH as a member of the High Commission of India in Canberra being the Military Naval and Air Adviser to the said High Commission and at the date of this certificate no notification of the termination of that function of the said COLONEL IQBAL SINGH has been received by the said Department of Foreign Affairs.

(c) On the 14th and 15th days of September 1977, Australia and India were parties to the said Vienna Convention on Diplomatic Relations.

IN WITNESS WHEREBY I have hereunto set my hand and affixed my seal on this ELEVENTH day of May 1978.

(sgd) Andrew Peacock
Minister of State for Foreign Affairs."

**Diplomatic personnel in Australia. Attack on a member of the Indian High Commission. Report by Australia to the United Nations**

Following the conclusion on 15 August 1980 of legal proceedings against John William Duff in respect of an attack on 15 September 1977 on a military attache of the Indian High Commission in Canberra and his wife, the Australian Government reported the outcome in a Note to the Secretary-General of the United Nations as follows:[58]

**ATTACK ON INTERNATIONALLY PROTECTED PERSONS**
**Canberra, 15 September 1977**

Australia is a party to the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents (the "Convention"). The Convention was signed for Australia on 30 December 1974 and was ratified on 20 June 1977. Article 11 requires a State Party, where an alleged offender is prosecuted, to

58. Text provided by the Department of Foreign Affairs. The Report submitted on 7 January 1981 was transmitted to all States parties to the Convention on 6 March 1981 under cover of a Note Verbal LE 221/1 (3–11).

communicate the final outcome to the Secretary-General of the United Nations, who shall transmit the information to the other States Parties.
The purpose of this note is to communicate the outcome of proceedings in which an alleged offender was prosecuted following an attack upon Col. I. Singh, Military, Naval and Air Attache with the Indian High Commission in Canberra, and his wife, on 15 September 1977.
The alleged offender was tried before a judge and jury in the Supreme Court of the Australian Capital Territory. The details of the attack were outlined by the judge as follows:

> "In the early hours of the morning of 15 September 1977, the Crown case was that the prisoner went to the dwelling house of Colonel Singh. The prisoner was a member of the Ananda Marga sect: the members of this sect in Australia were at the time concerned that the leader of their sect was imprisoned in India.
> Colonel Singh was the military attache at the Indian High Commission in Canberra and lived with his wife and family in a private dwelling house in Endeavour Street, Red Hill.
> The prisoner removed a globe from an external light at the rear of the house. He then forced open a bathroom window through which he gained entry to the house. He had with him the rifle he had bought in Sydney which was loaded and certainly, during parts of the incident, in a firing position.
> He also had a knife. He cut the wires leading to the telephone in the hall of the house. He was wearing gloves and left no fingerprints. He went to the bedroom where Colonel and Mrs Singh were asleep. He was wearing a mask which covered his face below the eyes. Colonel Singh was lying in bed on his back and the prisoner stabbed him in the chest with the knife through a quilt. Colonel and Mrs Singh awoke and the prisoner by gesturing with the rifle ordered them out of bed and hit Colonel Singh in the stomach with the rifle. He then required Colonel Singh to produce some car keys. He continued to point the gun at them and thus took them out of the house. He ordered Colonel Singh into the driving seat of a car and he got into the back seat with Mrs Singh. He then held a rifle against Colonel Singh's back and ordered him to travel by an indicated route until they reached a spot on the Cooma Road some kilometres south of Canberra. At this stage Colonel Singh engaged the prisoner in a struggle for the gun and knife in the course of which the prisoner stabbed him again in the chest. Mrs Singh helped her husband in this struggle. After quite a long and difficult struggle they gradually overcame the prisoner and he got out of the car and fled." (*The Queen v John William Duff* SCC No 51 of 1978), Transcript of Proceedings, Canberra, 7 November 1978, pages 1848–1849.

The alleged offender, referred to above by the judge as the "prisoner", was tried in the Supreme Court on four charges. First, he was charged with attempting to murder Colonel Singh, an internationally protected person, contrary to section 8(1) of the Crimes (Internationally Protected Persons) Act 1976. The jury found him not guilty of this charge but guilty

of an attack upon the person of Colonel Singh which did not cause serious bodily harm. Second, Mr Duff was charged with kidnapping Colonel Singh contrary to section 8(1) of the Act. The jury found him not guilty of this charge but guilty of an attack on the liberty of Colonel Singh which did not cause bodily harm. Third, he was charged with kidnapping the wife of Colonel Singh. The jury found him not guilty of this charge but guilty of an attack on the liberty of Mrs Singh. Lastly, he was charged with breaking and entering the dwelling house of Colonel Singh and, being therein, inflicting grievous bodily harm upon him. The jury found him not guilty of this charge.

The judge then sentenced the offender, and in dealing with the question of penalty he looked to the Crimes (Internationally Protected Persons) Act 1976. This Act approved of the ratification by Australia of the Convention. The judge referred to paragraph 2 of Article 2, which requires a State Party to make crimes such as those committed against Colonel Singh and Mrs Singh punishable by appropriate penalties which take into account their grave nature, and to the preamble to the Convention, and said:

> "The legislature, by adopting this Convention, seems to me to have plainly taken the view that internationally protected persons, of whom Australia has many in countries around the world, are in need of special protection. They come to Australia in the service of their own country, in the course of their duty and generally at the direction of their own governments. They live here not amongst their own people. Any person in Australia may find that he disapproves strongly of some actions of the government of another country. The 1976 Act, it seems to me, makes it a serious crime to express that disapproval by acts of violence against diplomatic agents of that country or their families who happen to be in Australia."

The judge considered several other matters relevant to the question of penalty and then sentenced the offender, on each of the charges, to three years imprisonment with hard labour. In each case he fixed the period of 18 months as a period during which the offender would not be eligible for parole. He further ordered that the terms of imprisonment be served *consecutively*.

Finally, having sentenced the offender, the judge said:

> "I add that there was no evidence before me one way or the other as to whether the Ananda Marga sect, to which the prisoner belongs, was involved in these crimes or that other members of the sect knew or approved of what the prisoner did. I have not approached this matter of sentence on the footing that the prisoner was working in concert with other people. It seems that he was not. I have sentenced him for what he has done as an individual person. His membership of the Ananda Marga has not been a factor in the sentences." (Transcript of Proceedings, page 1855).

The offender appealed to the Federal Court of Australia against the convictions and sentences on various grounds. The court unanimously

rejected each of the grounds, with the exception of one which related to the conviction of an attack on the person of Colonel Singh. This ground was based upon the submission that it was not open to the jury to convict the prisoner of that offence upon the indictment as it was framed. The appeal on this ground succeeded, and the conviction for that offence was set aside by a majority of the court which observed:

> "The argument which has succeeded may be said to be a technical matter of criminal pleading, but it is fundamental to criminal procedure that a person must first be accused of the crime for which he is to be tried, and then tried and proved guilty of that crime before he is punished. In this case, he was not charged with the crime for which he was punished on the first count, and his conviction on the first count must be set aside and his sentence must be amended accordingly." (*Duff v R* (1979) 28 Australian Law Reports 663, 698–9)

The prisoner's sentence was accordingly reduced to a total of six years imprisonment with hard labour, with a non-parole period of three years. Both the Crown and the prisoner applied to the High Court of Australia for special leave to appeal against the decision of the Federal Court of Australia. The High Court refused the applications for special leave on 15 August 1980. The proceedings were accordingly concluded on that date.

**Consular immunity. Murder of Turkish Consul-General**

On 18 December 1980, following the murder in Sydney of the Turkish Consul-General the previous day, the Minister for Administrative Services, Mr Newman, the Minister responsible for the Australian Federal Police, issued a statement part of which read (Comm Rec 1980, 1853–4):

> In co-operation with State authorities, we are ensuring that the preventive measures which have been developed jointly in Australia are at a state of readiness. This also applies to ensure that adequate protection is maintained for diplomatic representatives in Australia and that this is increased where necessary.

**Diplomatic and consular immunity. Persons entitled to immunity in Australia**

On 4 April 1978 the Minister for Foreign Affairs, Mr Peacock, wrote in answer to a question (HR Deb 1978, Vol 108, 980):

> The diplomatic and consular communities in Australia, including family members, total more than 2,000 persons . . .
>
> Diplomatic immunity, which does not mean immunity from the law of the receiving State, but from the jurisdiction of its courts, relates to the diplomatic staff of diplomatic missions in Canberra and their families and, in respect of criminal jurisdiction only, to those members of their Administrative and Technical staff and their families, who are not Australian nationals or permanently resident in Australia. The Vienna Convention on Diplomatic Relations, annexed to the Diplomatic

Privileges and Immunities Act 1967–72, sets out the position (Articles 1, 29–32 and 37–38 especially apply) . . .

There are no diplomatic missions outside Canberra. The more limited immunities of consular officers, both career and honorary, and consular employees, are set out in the Vienna Convention on Consular Relations, annexed to the Consular Privileges and Immunities Act 1972 (especially Articles 40–45, 63 and 71) . . .

Persons entitled to diplomatic and consular privileges and immunities, are required under Articles 41(1) and 55(1) of the respective Conventions, to respect the laws and regulations of the receiving State.

**Diplomatic immunity. Importation of motor vehicles into Australia by diplomatic personnel. Customs clearances**

On 14 November 1978 the Minister for Business and Consumer Affairs, Mr Fife, wrote in answer to a question (Sen Deb 1978, Vol 79, 2002):

Australia has an obligation under an international convention to permit entry of and grant exemption from Customs duties and taxes on motor vehicles for the official use of foreign embassies, and the personal use of foreign diplomats or members of their families forming part of their households.

Embassies are permitted to import a reasonable number of vehicles for official use, and individuals, one vehicle per eligible person each two years.

If a vehicle imported under diplomatic privilege is sold within two years of its entry for home consumption, full Customs duty and sales tax must be paid unless the owner has been recalled or transferred to another country, in which case these duties are payable at the rate of one twenty fourth of the total, for each month or part of a month by which ownership falls short of the mandatory two years retention period.

Embassies and individual diplomats must obtain permission from the Department of Business and Consumer Affairs to sell motor vehicles which have been in their possession less than two years from the date of entry for home consumption.

On 22 November 1979, Mr Fife wrote (HR Deb 1979, Vol 116, 3528):

. . . officers of the Department of Business and Consumer Affairs, as a matter of routine, check clearances of goods on which the diplomatic or consular concessions are claimed. These checks apply to all diplomatic and consular establishments in Australia and are not confined to any particular establishment.

On 7 June 1979 in answer to the following question:

(1) Is it a fact that during 1978 allegations were made against 2 officials of the Philippine Embassy in Canberra, relating to the alleged falsification of customs documents in order to obtain various goods under diplomatic privilege.

(2) If so, when the Australian customs officers sought to interview officers of the Philippine Embassy in relation to these allegations, did the then Philippines Charge d'Affaires, Mrs Rosalinda Tirona, claim

diplomatic immunity and refuse to allow the customs officers to conduct interviews.

(3) Did the Philippine Government recently make a complaint to Australian authorities alleging that a former Philippine Charge d'Affaires, Mr Joselito Azurin, had embezzled Philippine Government funds and that the Philippine Government was waiving any diplomatic immunity he may have had so that the allegations could be investigated by the Australian police.

(4) If so, will the Government now press the Philippine Government to also waive immunity in the case of the alleged defrauding of Australian customs revenue referred to in part (1) so that the allegations may also be fully investigated.

Mr Fife wrote (HR Deb 1979, Vol 114, 3140):

(1) An allegation was made in 1978 relating to the alleged falsification of Customs documents emanating from the Philippines Embassy in order to obtain various goods under diplomatic privilege but the allegation was not specifically made against any official in the Embassy.

(2) In the course of inquiries a Customs officer did make an informal request to interview persons in the Philippines Embassy. This request was declined at the time by the recently arrived Charge d'Affaires who indicated that she wanted the opportunity to make a personal assessment of the situation.

(3) Yes.

(4) The investigation did not disclose any abuse of diplomatic privilege by any official in the Philippines Embassy and the Bureau of Customs is satisfied that further inquiries in that direction are not warranted.

**Diplomatic immunity. Submission of diplomatic personnel to security searches at Australian airports**

On 15 September 1978 the Department of Foreign Affairs circulated a note to all Diplomatic Missions in Canberra, part of which read as follows:[59]

The Department of Foreign Affairs presents its compliments to Their Excellencies and Messieurs the Heads of Diplomatic Missions in Canberra and, with reference to its Circular Notes of 14 June 1974 and 20 May 1976, has the honour to update the security procedures in force on the principal Australian airports in respect of flights by passenger aircraft.

2. As previously stated, the Australian Government, while fully conscious of its obligations under the 1961 and 1963 Vienna Conventions on Diplomatic and Consular Relations, has nevertheless to take into consideration the serious threat to air safety which has arisen with the world-wide incidence of hijacking and sabotage of civil aircraft, and the need to honour its responsibilities under the Chicago Convention on International Civil Aviation.

3. For this reason, all Australian diplomatic and consular officials abroad are instructed to comply with the aviation security procedures in

59. Text provided by the Department of Foreign Affairs.

force in other countries, including, if necessary, searches of their persons and baggage. Indeed, the Prime Minister and other members of the Australian Government when travelling equally accept and comply with such procedures.

4. The Department requests the continued co-operation of Their Excellencies and Messieurs and of the members of their Missions and of Consular Posts coming under their control, in observing the aviation security procedures currently in force in Australia.

5. Heads of Mission and members of Diplomatic Missions and Consular Posts, may be regularly faced with the requirement to submit themselves and their handbaggage to security checking before departure of an aircraft. On occasions when a higher degree of security is required, the hold baggage of passengers will be also inspected. Such precautions, which are designed to detect the presence of firearms, weapons or explosives, are now mandatory for all international flights leaving from Australia and are carried out as necessary in respect of flights within Australia. (It might be mentioned that the Australian international airline, Qantas, conducts checks of embarking passengers and their handbaggage, without exemptions, on all flights throughout its network.) While passengers' handbaggage is liable to inspection, there is of course no question of examination of official or personal papers . . .

8. The Department wishes to stress that these procedures do not affect the immunity from opening of clearly marked and sealed diplomatic and consular bags. Diplomatic and consular couriers are, however, regarded as subject to the security precautions in respect of their persons and personal baggage.

**Diplomatic privileges. Rights of Soviet Ambassador in Australia**

On 27 November 1980 Senator Dame Margaret Guilfoyle, the Minister representing the Minister for Foreign Affairs, said in answer to a question concerning some remarks made by the Ambassador of the USSR at a formal luncheon given by the Tasmanian Government on 17 November 1980 (Sen Deb 1980, Vol 87, 107):

> . . . technically, the remarks which the Ambassador is reported to have made do not constitute a departure from customary diplomatic behaviour . . .
>
> In Australia the Soviet Ambassador enjoys rights of free speech and access to a generally free Press which neither he nor any other Soviet citizen nor any foreign visitor can enjoy in the Soviet Union.

**Diplomatic hostages held in United States Embassy in Tehran**

On 13 November 1979, the Minister for Foreign Affairs, Mr Peacock, said in answer to a question about the holding of hostages in the Embassy of the United States of America in Tehran (HR Deb 1979, Vol 116, 2880):

> . . . the Government has made it perfectly clear that attempts to use either political or commercial blackmail as a tool of international relations are to be deplored. These views have been made clear in firm and

unequivocal terms to the Charge d'Affaires of the Iranian Embassy in Canberra, who was asked to convey them to the Iranian authorities. The Charge d'Affaires was told that such behaviour is in total breach of international law and conventions to which Iran is a party, including, of course, the Vienna Convention . . .

On 20 November he said (HR Deb 1979, Vol 116, 3165):

> The holding of hostages at the United States Embassy in Tehran quite clearly is in total conflict with Iran's obligations under international law, and such action cannot be justified in any circumstances whatsoever.
>
> I am most disturbed, and the Government is disturbed, to hear reports that Ayatollah Khomeini and those occupying the Embassy have said that the hostages who are not to be released will be on so-called trial before Islamic revolutionary courts on charges of espionage. Under the Vienna Convention on Diplomatic Relations, to which Iran is a party, a diplomatic agent is immune from the criminal jurisdiction of the receiving state, and if the threatened action were carried out it would compound what is already a serious violation of international law. I reiterate, although perhaps in different words, the feeling of the Australian Government that it and, I think, every other government which respects the accepted norms of international behaviour would strongly deplore such action.

On 2 December 1979 Australia's Permanent Representative to the United Nations Mr Anderson, said in the course of the Security Council debate on the crisis in relations between Iran and the United States (Comm Rec 1979, 1854):

> The actions which have been taken in Iran are indeed in clear conflict with Articles 22 and 29 of the Vienna Convention on diplomatic relations and are inconsistent with Iran's responsibilities as a party to that Convention and as a party to the Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons . . .
>
> In the letter which he addressed to the President of the Council on 25 November, the Secretary-General referred first to the problem of the seizure of the United States Embassy in Tehran and the detention of its diplomatic personnel. He noted also that the Government of Iran seeks redress for injustices and abuses of human rights which, in its view, were committed by the previous regime.
>
> Australia, which has a long history of friendly and co-operative relations with the people of Iran, believes that appropriate procedures can be devised within the framework of international relations and international law to meet these grievances and resolve these problems.

On 21 December, the Minister for Foreign Affairs added (Comm Rec 1979, 1890):

> The situation in Tehran represents not only a threat to international peace and security but is also a flagrant breach of the accepted conduct of foreign relations and, as such, action under Chapter 7 of the UN Charter — which deals with threats to international peace and security — was justified.

Following the failed rescue attempt by the United States, the Minister issued a statement on 25 April 1980 which read in part (Comm Recc 1980, 581):

> The United States attempt to rescue its hostages is understandable and its failure regretted. One must hope that the lives of the hostages are not now further imperilled. The fundamental blame for this tragic situation still rests with Iran. By incarcerating United States citizens it continues its flagrant breach of international law.

On 26 May 1980 the Acting Minister for Foreign Affairs, Mr MacKellar, issued a statement in response to the judgment of the International Court of Justice in the case concerning United States Diplomatic and Consular Staff in Tehran on 24 May (ICJ Rep 1980, p 3) part of which reads (Comm Rec 1980, 738):

> The Acting Minister for Foreign Affairs, the Hon MJR MacKellar, today welcomed the judgment of the International Court of Justice that the unlawful detention of United States diplomatic and consular officials in Iran should be terminated immediately. He said that the judgment was confirmation from the highest legal authority that Iran had violated general international law and specific obligations owed by it to the United States of America by taking and holding the hostages.

**Diplomatic hostages held in Iranian Embassy in London**

On 6 May 1980 the Minister for Foreign Affairs, Mr Peacock, sent the following message to the British Foreign Secretary, Lord Carrington (Comm Rec 1980, 618):

> Please accept my sincere congratulations on your Government's courageous and decisive action in rescuing the hostages from the Iranian Embassy in London. This action will, I am sure, be a deterrent to others, will strengthen international resolve to combat terrorism against diplomatic hostages, and thereby assist the preservation of international laws.

**Diplomats. Measures for the protection of**

On 10 October 1980 the Australian representative, Mr Brook, is reported to have said in the Sixth Committee of the United Nations General Assembly (A/C.6/35/SR.17, 6):

> 21. The protection of diplomatic representatives against perils threatening their lives and property was an ancient axiomatic principle based on the need of Governments to maintain communication with each other. That was the origin of the system of diplomatic missions, which was currently threatened, with a consequent deterioration of international relations.
>
> 22. The customary norms were clear and it was of prime necessity to have them universally applied. Those norms had been codified in the form of conventions, and efforts had also been made to protect diplomatic representatives, including in particular the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons. including Diplomatic Agents (General Assembly

resolution 3166 (XXVIII)). It was likewise already recognised that similar status should be accorded to representatives of international organisations.

**Embassies. Inviolability of premises**

An article on the inviolability of embassies concluded with the following observation (Aust FA Rec, May 1980, 149–150):

> The host country has an obligation to protect diplomatic and consular premises from intrusion or damage and to prevent any disturbance of the peace of missions or impairment of their dignity. In Australia this obligation of protection, which extends to personnel, has been given effect to by the provisions of the Public Order (Protection of Persons and Property) Act 1971 and the Crimes (Internationally Protected Persons) Act 1976.

For details of attacks on diplomatic and consular premises in Australia during the years 1972–1978, see the information provided in Parliament by the Minister for Foreign Affairs, Mr Peacock, on 23 May 1978: HR Deb 1978, Vol 109, 2350–1.

**Embassies. Australian Embassy in Moscow. Discovery of listening devices**

On 14 November 1978 the Minister for Foreign Affairs, Mr Peacock, said (HR Deb 1978, Vol 112, 2728):

> . . . a network of listening devices was discovered in the Australian Embassy in Moscow in June of this year. The devices were carefully hidden in the walls of rooms used by Australian diplomatic officers. Obviously the Government and its advisers could conclude only that the devices had been installed by agencies of the Soviet Government for the purpose of overhearing private conversations between Australian officials. The Government protested in the strongest possible terms to the Soviet Government at what it regarded as a flagrant and serious breach of diplomatic propriety. I summoned the Soviet Ambassador to inform him that the Government could interpret this evidence of intensive Soviet intelligence activity only as implying hostile intent towards Australia.

**Espionage. Activities by foreign governments in Australia**

On 24 November 1978 the Attorney-General, Senator Durack, wrote in answer to a question concerning alleged KGB infiltration of the Australian Security and Intelligence Organisation (Sen Deb 1978, Vol 79, 2656):

> The Government adheres to the policy established by the former Prime Minister, Mr Chifley, in 1949 which has been followed by successive governments since that time and endorsed by the Royal Commission on Intelligence and Security that allegations concerning the Australian Security Intelligence Organisation or its operations are neither confirmed nor denied.

On 9 October 1979 the Prime Minister, Mr Fraser, wrote in answer to a question asking whether the Australian Government assisted foreign governments in gathering information on Australian citizens resident in Australia (HR Deb 1979, Vol 116, 1799):

> The Australian Government may exchange information relating to Australian citizens with some foreign Governments pursuant to international conventions, such as those dealing with narcotics and hijacking, and under Australian law. Co-operation also takes place between law-enforcement agencies. This has been a continuing practice of Australian Governments over many years and takes account of the need to protect the civil liberties of Australians.

**Embassies. "Croatian Embassy". Action by Government to close "Embassy"**

On 5 April 1978 the Minister for Foreign Affairs, Mr Peacock, said (HR Deb 1978, Vol 108, 993–5):

> I wish to make clear the Government's position with respect to the creation of establishments, institutions or organisations which can, because of the diplomatic terminology used, result in substantial difficulties in Australia's relations with other countries and impede the operations of Australia's foreign policy, the effective conduct of which is vital to the well-being of the nation. This is particularly so when such an establishment is referred to as an 'embassy'. Australia is a party to the Vienna Convention on Diplomatic Relations. That Convention, in article 22 — which has the force of law in Australia — imposes on Australia a special duty to prevent any impairment of the dignity of a diplomatic mission accredited to this country. It is not a matter which can be dealt with in any sense of compromise. It is a matter of our international obligations and the domestic law which gives effect to these obligations. I need hardly add that this would not apply to such establishments as the so-called Aboriginal Embassy as it did not affect the standing of any other nation with which Australia has diplomatic relations.
>
> It has not been necessary in the past to treat this matter as one for legislative action. However, this has now become necessary because of the establishment in Canberra late last year of a so-called Croatian Embassy. It is because the establishment of the so-called Embassy has had important ramifications for Australia — ramifications with respect to the Vienna Convention, Australia's responsibilities under it, the effective operation of Australia's foreign policy, and our long-standing relations with a universally recognised nation, namely Yugoslavia — that the Government now feels it necessary to consider legislation to put an end to this anomaly and to guard against any recurrence.
>
> I therefore wish to set out the Government's position with regard to this matter. The so-called Croatian Embassy has been set up in Canberra by certain persons who may or may not be fully aware of the serious implications of their actions, which impede the correct and orderly conduct of Australia's international relations, for which I am directly responsible. It is therefore necessary that I now make clear to this House

> beyond any possibility of doubt the Government's views and intentions on this matter. These are in short that an establishment such as the so-called Croatian Embassy is damaging to the national interest and that such an establishment cannot therefore be tolerated.
>
> Yugoslavia acceded to independence in the context of the post-World War I settlement, to which Australia was a party. Australia has long-standing and friendly relations with that country. By mutual agreement many people from Yugoslavia have settled in Australia. This has strengthened our ties. We respect Yugoslavia's sovereignty. The Government cannot therefore view with indifference an attempt to establish and maintain on Australian territory any organisation which not only is openly dedicated to the destruction of a state in friendly relations with Australia but which also arrogates to itself an unacceptable title and status which could in turn disrupt the orderly conduct of Australia's relations with another universally recognised member of the international community. This could clearly have a substantial adverse effect on our international standing, the conduct of Australia's foreign policy and our national interest, thus affecting all Australians . . . .
>
> The only course of action for the authors of this enterprise is for them to abandon it forthwith and revert to the means by which dissent may be peacefully asserted within the law as it prevails in our society. In order to leave no doubt of the seriousness with which this matter is being regarded, and consistent with the provisions of article 22 of the Vienna Convention, I wish to inform the House that the Government will introduce legislation specifically prohibiting institutions or bodies falsely representing themselves as diplomatic, consular or other official missions of another country or part of another country.

On 25 May the Minister for the Capital Territory, Mr Ellicot, wrote in answer to a question (Sen Deb 1978, Vol 77, 1912):

> The Government has not granted and would not grant a lease for the establishment of a foreign mission other than to a Government which it recognised and with whom it had diplomatic relations.

On 15 August 1978 the Minister for Post and Telecommunications, Mr Staley, wrote in answer to a question (HR Deb 1978, Vol 110, 298):

> . . . an applicant for telephone service in the name of the Croatian Embassy was advised by Telecom that the application was not acceptable because it was understood that he was not a member of a diplomatic mission of a sovereign government with which Australia had established diplomatic relations.

On 9 October 1979 the Federal Court of Australia (Blackburn, St John and Northrop JJ) in the case of *Despoja v Durack* ((1979) 27 ALR 466) affirmed an order made on 7 August 1979 restraining, in effect, an individual from carrying out activities in relation to the "Croatian Embassy". Part of the Court's judgment was as follows (at 468):

> This is an appeal from an order made by the Federal Court constituted by a single judge restraining the appellant from engaging or attempting

to engage in conduct described in the order and being conduct within s 4 of the Diplomatic and Consular Missions Act 1978, hereinafter called "the Act", and from an order that a warrant issue under s 5 of the Act. The facts are not in dispute. In November 1977 the appellant established what purported to be a Croatian Embassy at 34 Canberra Avenue, Forrest, in the Australian Capital Territory. The Act came into operation on 24 August 1978 . . .

Here followed the text of sections 4 and 5 of the Diplomatic and Consular Missions Act 1978. The Court continued (at 471–3):

The Socialist Federal Republic of Yugoslavia is recognised by the Government of the Commonwealth of Australia as a sovereign State and the Socialist Republic of Croatia is a constituent Republic thereof. The Republic of Yugoslavia is a country within the meaning of the Act and Croatia is a part of that country. The Republic of Yugoslavia has established a diplomatic mission in Australia with the consent of the Commonwealth. Since 24 August 1978 the appellant has engaged in conduct which clearly comes within the conduct described in s 4 of the Act.

The Attorney-General, by letter dated 6 June 1979 wrote to the appellant making reference to the Act and the conduct of the appellant with respect to the premises at 34 Canberra Avenue, Forrest. The letter contained the following paragraphs:—

"I am writing to give you notice that unless within 14 days the signs, shield and flag have been removed from the premises and also I receive from you undertakings to refrain from certain conduct as set out below, I will apply to the Federal Court of Australia for injunctions restraining you from engaging in that conduct, and for a warrant authorising the Sheriff of the Court to remove the signs, shield and flag from the premises.

The undertakings I seek are that you will not henceforth:—

(a) display or cause or permit to be displayed within, on or outside the said premises or any other premises any sign, flag or insignia which states or implies or is reasonably capable of being taken to imply that there is located at such premises any office of a mission or residence of a member of a mission that represents in a diplomatic or consular capacity a part of Yugoslavia, namely Croatia, or the people of such part of Yugoslavia; or

(b) make or publish or cause to permit to be made or published any representation that states or implies or is reasonably capable of being taken to imply that there is located in Australia a mission (other than a diplomatic or consular mission of Yugoslavia) that represents in a Diplomatic or consular capacity a part of Yugoslavia, namely Croatia, or the people of such part of Yugoslavia."

By letter dated 19 June 1979 the solicitors for the appellant replied to the letter from the Attorney-General as follows:—

"We are instructed to deny that anything displayed at the premises 34

Canberra Avenue, Forrest, A.C.T. is in breach of any valid law of the Commonwealth.
The undertakings that you seek are therefore not given."
On 21 June 1979 the Attorney-General gave notice of the motion which led to the order under appeal.
Counsel for the appellant contended that the Act was invalid as being beyond the powers of the Parliament. The power in question is that given by s 51(xxix) of the Constitution, to make laws for the peace, order, and good government of the Commonwealth with respect to external affairs. This argument was put to the learned judge at first instance, but he did not refer to it in his reasons for judgment.
In our opinion the Act is plainly within the power granted by s 51(xxix). The establishment and maintenance of normal and proper diplomatic relationships between Australia and other countries is a matter within the category of "external affairs". Public recognition that a particular diplomatic mission has sole authority within Australia to represent its Government is obviously a part of the maintenance of normal diplomatic relationships. A claim by a person who is not a member of a particular mission, that he has diplomatic status as a representative of a part of, or an element in, a country which that mission does in fact represent, is a claim inconsistent with the authority of that mission to represent its Government, and an assertion that the diplomatic status and authorities of that mission are challenged or limited. Legislation to provide machinery whereby such claims, or conduct implying such claims, may be judicially restrained at the suit of the Attorney-General, is legislation with respect to the maintenance of normal diplomatic relationships, and thus legislation with respect to Australia's external affairs . . . .
The essential feature of the conduct by the appellant is that the conduct implies that there is located at the premises, 34 Canberra Avenue, Forrest, an office of a mission namely Croatia that represents in a diplomatic or consular capacity a part of a country namely the Republic of Yugoslavia, which has established a diplomatic mission in Australia with the consent of the Commonwealth. It is beside the point that the conduct may have been politically inspired as a protest against the Republic of Yugoslavia. What is relevant is that the conduct gives rise to the necessary implication and constitutes a representation within the meaning of s 4 of the Act. Accordingly, the order granting the injunction was properly made.