

X. Diplomatic and Consular Relations

Diplomatic relations – Establishment of diplomatic relations – Croatia and Slovenia

On 16 January 1992 the Minister for Foreign Affairs and Trade, Senator Gareth Evans, issued a news release which read in part:

The Minister for Foreign Affairs and Trade, Senator Gareth Evans, announced today that Australia will establish diplomatic relations with Croatia and Slovenia. ...

Senator Evans advised that Australia will be proposing accreditation to Croatia and Slovenia by the Australian Ambassador in Vienna.

Senator Evans also confirmed that Australia intended to establish a Consulate in Zagreb to be headed, in the first instance, by an Honorary Consul.

(On aspects of Senator Evans' statement concerning recognition, see Chapter III p 414 of this volume.)

On the same day, Senator Evans wrote to his counterpart in Croatia, Dr Zvonimir Separovic, in the following terms:

Dear Minister

It is my honour to inform you that the Australian Government has taken the decision today, 16 January 1992, to recognise the independence of Croatia. Accordingly, Australia seeks to establish diplomatic relations with Croatia. It is also my honour to convey to you the wish of the Australian Government that Australian accreditation to Croatia be undertaken by our Ambassador in Vienna.

It remains Australia's intention to establish a consulate in Zagreb headed by an honorary consul. I shall nominate a candidate for this position in the near future.

The Croatian community in Australia has played an important role in the economic and cultural affairs of this country. It constitutes a significant and special link between our two nations. I am sure that the Croatian community in Australia will continue to play an important and constructive role in fostering ties between our two countries.

I look forward to the development of a productive relationship between Australia and Croatia and take this opportunity to wish you and your people well.

Senator Evans also wrote to the Slovenian Foreign Minister, Dr Dimitrij Rupel, on 16 January 1992. That letter read as follows:

Dear Minister

It is my honour to inform you that the Australian Government has taken the decision today, 16 January 1992, to recognise the independence of Slovenia.

Accordingly, Australia seeks to establish diplomatic relations with Slovenia. It is also my honour to convey to you the wish of the Australian Government that Australian accreditation to Slovenia be undertaken by our ambassador in Vienna.

The Slovenian community in Australia has played an important role in the economic and cultural affairs of this country. It constitutes a significant and special link between our two countries. I am sure that the Slovenian community in Australia will continue to play an important and constructive role in fostering ties between our two countries.

I look forward to the development of a productive relationship between Australia and Slovenia and take this opportunity to wish you and your people well.

Diplomatic and consular relations – First Australian ambassador to Ukraine – Opening of Australian consulate in Ukraine

On 10 March 1992 the Department of Foreign Affairs and Trade issued a news release which read in part:

The Australian Ambassador in Moscow, Mr Cavan Hogue, presented credentials to the President of Ukraine, Mr Leonid Kravchuk, in Kiev yesterday (Monday 9 March).

This makes Mr Hogue Australia's first Ambassador to Ukraine and the second Ambassador from any country to present credentials. (The first was from Germany.) Mr Hogue will be resident in Moscow.

Australia welcomed Ukraine into the international community on 26 December 1991 with diplomatic relations established from that date.

On 5 November 1992 the Acting Minister for Foreign Affairs and Trade, Dr Neal Blewett, issued a news release which read in part:

The Acting Minister for Foreign Affairs and Trade, Dr Neal Blewett, today announced the opening of an Australian consulate in the Ukrainian capital, Kiev. ...

The new Australian Consulate in Kiev was officially opened today by Mr Garry Conroy, an assistant Secretary of the Department of Foreign Affairs and Trade and Australia's non-resident Ambassador to Ukraine, Mr Cavan Hogue. The consulate will be headed by Mr Serhij Berezovenko as Honorary Consul.

Diplomatic relations – Protection of missions – Attack on Iranian Embassy in Canberra

On 6 April 1992 the Acting Minister for Foreign Affairs and Trade, John Kerin, issued a news release which read as follows:

The Acting Minister for Foreign Affairs and Trade, John Kerin, today strongly condemned the attack on the premises of the Iranian Embassy in Canberra. This was one of a number of similar attacks on Iranian diplomatic missions throughout the world.

Mr Kerin described the incident, in which the Chancery was entered and vandalised and members of the staff assaulted, as a deplorable act. He said that

police had not yet identified those responsible, but were interviewing a number of people.

Mr Kerin said he understood that between 10 and 15 protesters ran through the gate of the Embassy as it was opening to allow a car to leave. They damaged cars in the grounds of the Embassy, broke windows in the foyer, and forced their way into the Embassy where they set fire to papers, destroyed furniture, painted slogans on walls and injured three members of the staff.

Mr Kerin expressed the Australian Government's sincere regrets to the Iranian Government and to the Ambassador and staff of the Embassy. He said the Government would ensure that all necessary action was taken to prosecute the perpetrators. Mr Kerin added that the Department of Foreign Affairs and Trade would, of course, pay for the damage, in accordance with its obligations relating to the protection of diplomatic premises.

In answer to a question without notice on 28 April 1992 in relation to the attack on the Iranian Embassy on 6 April 1992, the Minister for Foreign Affairs and Trade, Senator Gareth Evans, tabled a report which had been endorsed by relevant Ministers and which read, in part, as follows (Sen Deb 1992, Vol 152, p 1635):

The Government was seriously concerned at inadequacies in the official response to threats to the Iranian Embassy in Canberra on Monday 6 April 1992 which led to a violent incident involving injury to persons and considerable damage to property. Ministers, as a consequence, directed departments and agencies to prepare a full report on the incident in the context of Australia's obligations to protect its diplomatic community and the protective security measures which are maintained to provide that protection. This report contains the conclusions reached by officials in reporting to Ministers about the incident.

Australia's International Obligations

2. The international legal regime obliges Australia to take all appropriate steps to give special protection to diplomatic and consular representatives and missions in Australia.
3. These obligations arise from the Vienna Convention on Diplomatic Relations, the Vienna Convention on Consular Relations and the Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, including Diplomatic Agents.
4. These obligations include the requirements:
 - to take appropriate measures to prevent any attack on the personal freedom or dignity of diplomatic agents while in Australia for the purposes of performing their functions;
 - to take appropriate measures to protect the premises of a diplomatic or consular mission and the private residences of diplomatic officers and administrative and technical staff of a diplomatic mission against any intrusion or damage and to prevent any disturbance of the peace or impairment of the dignity of such premises; and
 - should protective measures fail, to apply the full force of the law to obtain the arrest and bring to trial offenders.

5. Australia has enacted legislation establishing a statutory basis for the provision and enforcement of this special protection. This legislation creates particular offences in relation to offences against missions and members of missions. Moreover, Australia maintains special protective measures for the diplomatic community in the form of the guarding and patrolling of premises of missions and other buildings, and (for members of missions who are at high risk) police escorts. These are important special measures which supplement the general protection the diplomatic community enjoys through the existence and enforcement of the general criminal laws within each jurisdiction in Australia, and the general preventive measures such as immigration barrier controls which are maintained to protect Australia from acts of politically motivated violence. Certain diplomatic missions maintain their own security arrangements, eg United States, Saudi Arabia.

6. Around 1500 offices and residences within Australia are occupied by diplomatic and consular staff, including honorary representatives and trade and other officials. Of this total there are 725 premises in the ACT, 397 in New South Wales, 117 in Victoria, 42 in South Australia, 60 in Western Australia, 59 in Queensland, 17 in the Northern Territory and 22 in Tasmania. Particular measures have been implemented for high-risk missions: Israel, Turkey, and (since the 6 April incident) Iran.

7. General and specific threats against diplomatic and consular representation in Australia are constantly assessed and responded to. The APS [Australian Protective Service] over the last eighteen months, has responded to some 300 demonstrations and other significant security incidents involving the diplomatic community. The PSCC [Protective Security Coordination Centre] has, over the last twelve months, formally requested and received about twenty-five threat assessments from ASIO [Australian Security Intelligence Organisation] about diplomatic security in addition to information provided during day-to-day consultations and during regular and special coordination meetings. ...

12. Officials found that the major reason for the failure of protective procedures was that critical information was not communicated promptly enough or in sufficient detail to the right people to trigger appropriate responses, and that as a result the decisions made and actions taken by those to whom information was provided, in the event, were either insufficient or inappropriate. ...

16. In response to officials' conclusions about the events of 6 April, Ministers directed departments and agencies to take steps immediately to correct the deficiencies identified in the arrangements and procedures relating to the security of diplomatic and consular missions. The measures which departments and agencies adopted to correct the deficiencies [were then set out].

The Minister for Foreign Affairs and Trade, Senator Evans, reiterated Australia's regret concerning the April attack on the Iranian Embassy when he met with the Iranian President, Foreign Minister and other Iranian Ministers in Tehran on 11–12 May 1992 (see the Department of Foreign Affairs and Trade publication *Background*, Vol 3 No 10, 5 June 1992).

On 28 October 1992 the Minister for Foreign Affairs and Trade, Senator Gareth Evans, issued a news release which read as follows:

The Minister for Foreign Affairs and Trade, Senator Gareth Evans, announced today that the Federal Government had decided to pay \$469,700 in compensation for the loss and injuries caused by the attack in April on the Iranian Embassy in Canberra.

Senator Evans said that the Australian Government strongly condemned the attack on the Embassy when it occurred and had previously expressed regret to Iran, the Iranian Ambassador and Embassy staff.

He said it was in accordance with international practice that Australia should pay compensation for the loss and damage caused by the attack.

The amount includes a payment of \$187,200 to the Iranian Government and \$282,500 to be shared among Embassy staff and their dependants who suffered physical and other injuries in the attack.

The direct compensation to the Iranian Government includes \$47,500 for damage to embassy fixtures and fittings, reimbursement for US\$65,000 stolen during the attack and \$50,000 for miscellaneous loss and damage.

Payments for individuals vary from \$55,000 for the most seriously injured Embassy staff member to \$10,000 for children of Embassy staff present during the attack and \$3,000 for other dependants.

The injury payments were assessed by the Australian Government Solicitor.

Diplomatic privileges and immunities – Demonstrations outside diplomatic missions – Vienna Convention on Diplomatic Relations – Impairment of dignity of mission – Amendments to Diplomatic and Consular Privileges and Immunities Regulations

The Diplomatic and Consular Privileges and Immunities Regulations were amended in January 1992 in response to a demonstration outside the Indonesian Embassy against the "Dili massacre" of November 1991. Further amendments followed in February and April after litigation concerning the January amendments. (See pp 342–46 in this volume for a discussion of the litigation in question.) Extracts from the Explanatory Statements of each set of amending regulations are set out here below the extract from a transcript of a press conference of 16 January 1992 held by the Minister for Foreign Affairs and Trade, Senator Gareth Evans:

As to the Indonesian Embassy situation, let me say this. I think we have reached a reasonably satisfactory resolution of what has been a difficult and delicate problem involving a balance between, on the one hand the right to demonstrate which I and the Government fully respect, but on the other hand our obligations under the Vienna convention, which involves a very wide-ranging set of responsibilities towards missions with premises and personnel in our country, including, not only an obligation to avoid disturbances of the peace or other physical assaults on the integrity of the mission, but also this question of avoiding impairment of dignity which does raise, obviously, even more delicate and difficult questions. ...

... So far as the first three categories of material are concerned, the hut, the flagpole and the banners, there has been agreement to relocate that material to a new position diagonally across the road some 50 metres away forced upon me, as an appropriate compromise, based on my desire to fully respect the right of people to demonstrate but anxious as I was to find some way of that right being exercised in a way that did not run into continuing problems with our obligations under the Vienna Convention. Thus, that particular compromise was amicably reached... .

A different situation applies with respect to the crosses. ...

The crosses while of immense symbolic significance to the East Timorese people, also are, for obvious reasons, immensely provocative to the Indonesians and in their present location, immediately outside the Embassy stretched along the fence, do create a problem for the Australian Government, again, given our obligations under the Vienna Convention. Under those circumstances I do propose to exercise the authority that is now explicitly made available to me under regulations which were put in place yesterday and gazetted at 1100 am this morning to take the necessary steps to not remove completely the crosses but, again, simply to relocate them across the road to the other site with the other material. Unless there is some change of heart the steps that will be followed in this respect are those that are set out in the regulations and I am happy to quickly take you through them so you fully understand what is involved.

The first step is for me to certify in the form that is here set out that, in my opinion, removal of the crosses from their present position would be an appropriate step within the meaning of Article 22 of the convention. Article 22, you will see from the explanatory statement which we have also circulated, says that a receiving State (that is, in this instance Australia) is under a special duty to take all appropriate steps to protect the premises of a mission against any intrusion or damage and prevent any disturbance of the peace of the mission, or impairment of its dignity. So the language of appropriate steps is there. So what I do is certify that the removal of this material would be an appropriate step. Removal, of course, is a word that does not imply, necessarily, remove and take away never to be seen again. Removal also extends to this exercise in relocation of the kind that I have just described. I, having issued a certificate of that kind, then disappear from the picture and it becomes the responsibility of the Australian Federal Police, or Australian Protective Service as the case may be – and in this instance it will be the AFP – to take the appropriate action. What they do is then spelt out in regulation 5B. What it says there is that a prescribed officer with such assistance as he reasonably believes is necessary and with such force as is necessary and reasonable may remove a prescribed object described in a certificate. "Such force as is necessary and reasonable", is a standard provision in regulations for legislation of this kind and ought not to be taken as implying that anything in the nature of force necessarily will be used. It is completely a matter for the discretion of the police as to how they exercise their responsibility here. The regulation goes on to say the prescribed officer must not remove an object that is subject of a certificate before giving a reasonable opportunity to a person apparently in charge of it to himself or herself remove that object and take it to another location. The regulation refers to more than

100 metres away, but that is, again, a matter for the descretion of the policy and I have made it perfectly clear that from a Government point of view we would regard it, in the present circumstances, as a sufficient discharge of our concerns under the Vienna Convention if the crosses were to be taken across the road and put along with the information centre in that same location. ...

... I am by no means making the assumption that any demonstration that takes place outside any mission, anywhere, anytime, necessarily involves the impairment of the dignity of that mission within the meaning of the Vienna Convention. That is not a position the courts would be likely to, and is certainly not something that I would be likely to agree with and is certainly not something that I think appropriately acknowledges the right of freedom of speech, free dissent, free protest. You have got to give a great deal of weight to that right in applying and interpreting these obligations. However, when you have objects of the kind that are here involved with the degree of proximity that is presently involved to the Indonesian Mission – right alongside the fence across the full 70 yard spread – and when they have been there as long as they have – two months – then the question really does arise as to a breach of the convention and a need does arise for a government to respond to that. We are responding directly to our obligations. It is not a matter of succumbing to diplomatic pressure or other language of that kind. It is a matter, simply of recognising that governments have to get along with each other in international discourse, that they do have responsibility to each other. We expect other governments to respect our concerns of this kind and there comes a point at which we just have to take action of the kind that I have in this instance. ...

... I think any single demonstration, a one-off demonstration, although it might be argued to be an impairment of dignity to the mission, simply cannot properly be characterised as such when you take into account the other values that are involved. To that extent the nature of the objects that are involved and their degree of proximity to the mission, while important in characterising whether there has been an assault on the dignity or an impairment of the dignity, aren't the whole story. I think a third criterion does come into play and that is the criterion of duration and what might be something that ought reasonably to be managed over a two-day or two-week period starts to get a little difficult to manage from the point of view of a mission and its concerns when it is extended over two months. ... It is theoretically a very effective demonstration. It is spread right across the full 70 metre width of the Indonesian Embassy. ... The whole thing really does amount to a fairly comprehensive intrusion on the integrity, in that sense, of the mission. And it is something, I think, that a mission might reasonably be expected to put up with for a reasonable period, a short period of time. But when it is extended in a potentially open ended way there just comes a point where enough is enough in terms of the obligations that our Government has to act in these ways. Might I say that the issue was raised with me in Jakarta when I was there in December and I resisted taking any action at that stage on the basis that while we were asked to respect Indonesian norms and values, so too, reciprocally, there should be some respect for ours. And a robust tradition of free speech and demonstration and so on is very much a part of that. ... My job is to balance the concerns of the mission as they are translated into obligations of international law against, on the other hand, the right to freedom of demonstration. And all

the stuff that I have been reading in the press about ordering the stopping of the demonstration, all the removal stuff, should be seen in that context. It is only taking steps to secure a relocation across the road so as to give some appropriate buffer zone. ...

Q: You said that the East Timorese Embassy was now to be known as the East Timorese Information Office. Is that what the Australian Government will now recognise it as, and if so what does that mean?

GE: The important thing is that the terminology "Embassy" cannot be used consistently with another bit of reasonably well known Australian law and that is the provisions under the Diplomatic and Consular Missions Act which relate to the improper use of diplomatic and consular signs and titles. ... And it would be possible for us to seek an injunction under that law, quite apart from any of these other regulations, to require the "Embassy" part of the title to be removed. So having made that particular point, with very good grace the demonstrators agreed to change the title and of course anyone is entitled to call themselves an information office or an information centre in this kind of context. And that is entirely a matter for them and it does not imply any degree of recognition or formal endorsement by us of that title of choice.

The Explanatory Statement for the Diplomatic Privileges and Immunities Regulations (Amendment) (SA 1992, No 7), which were gazetted and commenced operation upon 16 January 1992, read in part as follows:

Sub-section 7(1) of the Act provides, *inter alia*, that Articles 22 and 29 of the Vienna Convention on Diplomatic Relations ("the Vienna Convention") have the force of law in Australia and every external Territory. Articles 22, paragraph 2, and 29 of the Vienna Convention provide:

22.2. The receiving State is under a special duty to take all appropriate steps to protect the premises of the mission against any intrusion or damage and to prevent any disturbance of the peace of the mission or impairment of its dignity.

29. The person of a diplomatic agent shall be inviolable. He shall not be liable to any form of arrest or detention. The receiving State shall treat him with due respect and shall take all appropriate steps to prevent any attack on his person, freedom or dignity.

Paragraph 7(2)(a) of the Act provides that references in the Vienna Convention to the "receiving State" shall be read as references to Australia, or where the context permits, to every State and Territory.

Australia has international obligations under the Vienna Convention to take appropriate steps to prevent not only violence or disturbance of the peace in relation to a foreign mission but also impairment of its dignity. Situations can arise where, as a consequence of the nature, proximity and duration of a demonstration, even one wholly non-violent in character, steps such as the removal or relocation of material associated with a demonstration may have to be taken if Australia is to properly discharge its international obligations. Regulations to enable such "appropriate steps" to be taken are necessary because, although Section 7 of the Act imposes a duty on the Commonwealth, it does not expressly confer any powers to enable the discharge of that duty, and existing Commonwealth legislation does not explicitly authorise the

removal or relocation of material associated with a demonstration outside a diplomatic mission.

The purpose of the Regulations is to amend the Diplomatic Privileges and Immunities Regulations to enable Australia to meet its obligations under the Vienna Convention by empowering the Australian Police, or the Australian Protective Service, to remove or relocate material or objects associated with a demonstration away from mission premises, or the private residence of a diplomat, when the Minister for Foreign Affairs and Trade certifies that such removal or relocation is an "appropriate step" under Articles 22.2 or 29 of the Vienna Convention to prevent an attack on or disturbance of, or impairment of the dignity of a mission or diplomat.

The Explanatory Statement for the Diplomatic Privileges and Immunities Regulations (Amendment) (SR 1992 No 41), which were gazetted and commenced operation upon 11 February 1992, read in part as follows:

In the light of comments made by Mr Justice Ryan of the Federal Court of Australia concerning the validity of Statutory Rules 1992 No. 7, the amendment proposed puts beyond doubt that the power of the Minister for Foreign Affairs and Trade to certify that removal or relocation of objects is an "appropriate step" to give effect to Articles 22.2 or 29 arises only when a disturbance of the peace, or impairment of the dignity, of a mission or diplomatic agent is in fact occurring or threatened. Other ancillary amendments are also proposed.

The Explanatory Statement for the Diplomatic Privileges and Immunities Regulations (Amendment) (SR 1992 No 118), which were gazetted and commenced operation upon 28 April 1992, read in part as follows:

In the light of comments made by Mr Justice Ryan of the Federal Court of Australia concerning the validity of Statutory Rules 1992 No. 7, the Regulations were amended to clarify that the power of the Minister for Foreign Affairs and Trade to certify that removal or relocation of objects is an "appropriate step" to give effect to Articles 22.2 or 29 arises only when a disturbance of the peace, or impairment of the dignity, of a mission or diplomatic agent is in fact occurring or threatened. Other ancillary amendments were also made.

In the light of comments made by Mr Justice Olney in the Federal Court of Australia on 16 April 1992, a further amendment is proposed which seeks to make clear that the "impairment" of dignity is an objective precondition for the issuing of a certificate under the regulations. An amendment seeking to put beyond doubt the powers of the police and members of the Australian Protective Services to relocate objects which have been removed and other ancillary amendments are also proposed.

Details of the Regulations are set out in the Attachment.

Diplomatic relations – Expulsion of Australian diplomat from Vanuatu

On 3 July 1992 the Minister for Foreign Affairs and Trade, Senator Gareth Evans, issued a news release which read as follows:

The Australian Government very much regrets, and regards as a serious matter, the decision of the Vanuatu Government to expel from Vanuatu the Acting Australian High Commissioner, Mr James Pearson.

The apparent ground for the decision was Australia's confidential representations to the Vanuatu authorities on the country's new business licence legislation.

On all the information available to us, the Australian Government does not believe that there is any reasonable foundation for the action taken.

The Australian Government is urgently seeking clarification from the Vanuatu Government before deciding its response.

We are conveying to the Vanuatu Government our hope that it will not act precipitately in this matter.

A further news release issued by Senator Evans on 4 July 1992 read as follows:

The Vanuatu Government today reconfirmed its decision to expel Acting Australian High Commissioner James Pearson, but extended the time limit for his departure from 24 hours to two days.

Prime Minister Maxime Carlot Korman told me in a telephone conversation today that he was willing to discuss the issue with me and Prime Minister Keating when we meet at the South Pacific Forum in Honiara next week, but the decision of the Vanuatu Government would not be reviewed.

In all the circumstances, the Australian Government has decided that it would not be appropriate to proceed with the visit to Vanuatu of the two naval ships HMAS *Jervis Bay* and HMAS *Derwent* scheduled for 9–12 July.

The Australian Government remains of the view that, on all available information, there is no reasonable foundation for the decision taken by the Vanuatu Government. We will, however, await the outcome of discussions in Honiara before making any further response.

Diplomatic and consular relations – Mandatory United Nations sanctions – Serbia and Montenegro – Reduction in diplomatic and consular presence

On 1 June 1992 the Prime Minister, Paul Keating, issued a news release which read in part:

Australia welcomes the decision by the United Nations Security Council in Resolution 757 to impose a range of mandatory sanctions against Serbia and Montenegro. These sanctions include ... a reduction in Belgrade's diplomatic representation. ...

Australia has already downgraded its own diplomatic representation in Belgrade. Cuts to the Yugoslav diplomatic and consular presence in Australia will be introduced.

(On other aspects of the Prime Minister's statement concerning SCR 757, see Chapter VIII p 464 of this volume.)