

CONFIDENTIAL FILING

HOME AFFAIRS

Demonstrations outside Embassies

October 1987

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ROYAL COURTS OF JUSTICE

LONDON, WC2A 2LL

01x405x7641xExtn

01 936 6602

The Rt Hon John Wakeham MP  
Lord President of the Council  
Privy Council Office  
Whitehall  
London  
SW1

*cc PC*  
*dead.*  
*BF // Jwat comments*  
*on*  
*SH* February 1988

*Dear John:*

DEMONSTRATIONS OUTSIDE EMBASSIES

I have seen a copy of Geoffrey Howe's minute of the 29th January which enclosed a draft clause. *at Hay*

I was struck immediately by the all-embracing nature of the offence which the clause creates. Any demonstration, with whatever object, and no matter how conducted, will be caught. This reflects, no doubt, the difficulty of singling out particular demonstrations as objects for the proposed offence; it is not possible to identify a demonstration as a corporate and on-going body, since individual demonstrators may come and go.

The catch-all nature of the offence, moreover, is likely in my view to make it unenforceable consistently. As drafted, moreover, the clause will also render the Government vulnerable to challenge under the Articles of the European Commission on Human Rights which deal with freedom of expression and freedom of assembly. While an offence which was tied more closely to the fulfilment of our obligations under Article 22 of the Vienna Convention would be





justifiable under the European Convention, an offence drawn in such wide terms as this is not likely, in my view, to meet the requirement of proportionality laid down by the Court in Strasbourg.

In short, I do not think it will do.

I have already said, in my letter dated 28th September, that I am broadly in favour of the "cordon tranquil" solution to the problem, which is the basis of the clause proposed by Geoffrey Howe. I would continue to be in favour of such a provision if a greater degree of selectivity were to be introduced. One way to achieve this might be to build on the provisions of the existing law in Part II of the Public Order Act 1986. For example, provisions could be added to ss.12(1) and 14(1) providing an additional reason for imposing directions on the organisers of demonstrations: namely, that the procession or assembly is likely to breach the peace of diplomatic premises or impair the dignity. This provision could apply to any procession or assembly which was going to pass within 100 feet of diplomatic premises. A provision of this type would give a senior police officer the opportunity to prevent the kind of disturbance which has caused so much trouble outside South Africa House over a long period of time, and at the same time give him the discretion to permit normal processions and assemblies which do not constitute any substantial breach of the peace of a mission or impair its dignity to take place without hindrance. I do appreciate that for the purposes of the 1986 Act assemblies must consist of 20 or more people, and that this might not solve the sort of problem encountered outside South Africa House, but there may be ways of circumventing this difficulty.



I put forward this suggestion as an example of the type of approach which has occurred to me in the light of studying Geoffrey Howe's proposal. I recognise that there may be other possibilities, such as strengthening legislation concerned with levels of noise: noise is, of course, at the root of the trouble experienced outside South Africa House.

I am copying this letter to the Prime Minister, the Lord Chancellor, the Foreign Secretary, the Home Secretary and Sir Robin Butler.

*Home Sec.*

*Atk*



HOME AFFAIRS: Remor.

outside Embassies Oct 87



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ce BG



QUEEN ANNE'S GATE LONDON SW1H 9AT

5 February 1988

Await Attorney-General's  
comment  
C/O  
at Hqs

Dear Lord President,

Geoffrey Howe has sent me a copy of his note of 29 February to you with the draft clause which he wishes to see included in the Criminal Justice Bill.

As you know I expressed serious reservations in the past about the proposal to legislate on this issue. These reservations have included the principle, the practical effect and the Parliamentary and broader political reaction to the proposed legislation, as well as the suitability and practicality of using the Criminal Justice Bill as a vehicle. My reservations are not diminished now that I have seen the proposed new clause in print.

The proposed offence is by any standards sweeping and draconian. It upsets the careful balance between the rights of the peaceful protester and those of the ordinary citizen which we went to such pains to get right in the Public Order Act 1986. Although Geoffrey Howe has emphasised in previous correspondence (his note of 13 November) that he would not argue against the right of peaceful demonstration outside Embassies, the proposal would ban all protest within 100 feet of an Embassy whatever its purpose and however peacefully it was conducted. A simple illustration shows just how far reaching in its implications for peaceful protest and the rights of the individual this would be. A member of Parliament who wished to make a silent protest on his own outside the Soviet Embassy about the plight of Soviet Jews would be committing a criminal offence and liable to arrest under sub-section 6. The Chief Rabbi who advocated this peaceful protest and the person who made the administrative arrangements would render themselves liable to imprisonment under sub-sections 7 and 5 respectively. This would not be all that far removed from the sort of treatment the Soviet Jew who protests in Russia can expect. As I have mentioned before, the dignified, silent protest of the "black sash" ladies in South Africa does not seem to be illegal even under their restrictive laws. Yet the proposed offence would criminalise it if it took place on the public highway outside South Africa House. It is by no means certain that the offence would not also catch the person who steps forward from a march which has stopped outside the 100 foot limit simply to deliver a letter of protest to an Embassy.

The offence would also catch demonstrations which are not directed at foreign missions. For example, demonstrators on a Festival of Light march on its way to an anti-abortion rally in

/Trafalgar

The Rt Hon John Wakeham, MP

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Trafalgar Square would be breaking the law by the simple act of walking on the public highway directly outside the Canadian High Commission or South Africa House. Trafalgar Square demonstrations which attracted significant popular support and spilled over in the "protest-free zone" would also be caught. Technically, every single person in that demonstration would be committing an offence if one of their number set foot within the proscribed area. The burden would be on them to prove that they had no reasonable grounds for expecting that the demonstration would contravene sub-section 6.

The power therefore goes beyond what is clearly the aim - the protection of the peace and dignity of diplomatic missions required by the Vienna Convention. It imposes significant limitations on the right to protest and would, I think, leave us open to accusations that we were unnecessarily restricting the right to freedom of expression and peaceful assembly provided for in Article 10 and 11 of the European Convention on Human Rights. I recognise the argument that the requirement for the Attorney General to sanction prosecutions would weed out the more dubious ones. Patrick Mayhew will no doubt have views on the role proposed for him. But it is wrong in principle for Parliament to criminalise conduct which should not be criminal and rely on the Attorney General to ensure that its effect is not what the statute says. It would involve the Attorney General in taking decisions on cases which were highly contentious politically and expose him to accusations that foreign policy considerations determined prosecution policy.

At the same time, the noise nuisance problem would be left largely unaffected by the proposal. The South African Ambassador, whom I saw earlier this month, tells me that he is not particularly bothered by the presence of demonstrators outside his Embassy as long as they remain peaceful and behave themselves; it is the noise they make that irritates him. There would be nothing in the proposed clause which would stop demonstrators 100 feet away from South Africa House each using a loud-hailer at maximum volume to overcome the distance. This may seem far-fetched but the Iraqi Ambassador has recently complained to me about the noise from peaceful demonstrations which are already kept 90 to 100 feet away from the Embassy by the police. This demonstration, which Geoffrey cites in support of the line taken in his proposal, would not be affected by the new clause in any significant way.

Quite apart from its failure to tackle the noise problem, the proposed offence would, while criminalising the peaceful protester, do nothing to deter the violent one. Indeed, I consider it highly likely that it would lead to a greater amount of violent protest outside Embassies than exists at present. Although Geoffrey has in earlier correspondence described the situation outside South Africa House as "acute", it is important to bear in mind that the 24 hour demonstration usually consists of no more than 5 or so people and a megaphone. It is for the most part orderly but noisy and attract surprisingly little support, given the strength of feeling about apartheid. When there are

/disorderly,



disorderly, large-scale demonstrations - and this is infrequent - the law enables the police to take firm and decisive action, and they do. But there are always demonstrators who are prepared to break the law to make their protest. These people are not going to be put off by a "cordon sanitaire". It is more likely to attract them. There will be no shortage of "martyrs to the cause" who publicly invite arrest by protesting within it. The present small-scale protest could escalate into something more serious. The concept of a "cordon sanitaire" will be a gift to the violent protester. In the case of South Africa House, it could well turn Trafalgar Square into a place of violent confrontation.

The objections I have to the proposed offence - that it is wrong in principle, out of step with public order legislation and that it would not work, as well as some more technical points - apply whatever the legislative vehicle proposed for it. (In this regard, I notice that Geoffrey Howe has proposed specific legislation on the issue next Session.) But I have objections over and above these to the suggestion that it should form part of the Criminal Justice Bill.

We last discussed this matter at the meeting of the Home Affairs Committee on 17 November, when Geoffrey was remitted to draw up a clause for possible inclusion in the Criminal Justice Bill and consult colleagues further. There have been significant developments with the Bill since that time. In December, in the light of the decision to legislate on steel privatisation this Session, business managers took a decision that there were to be no further additions of substance to the Criminal Justice Bill. This was because of the fear that adding anything else controversial to an already heavily-loaded Bill would seriously delay its passage through Parliament and create particular problems for the workload of the Lords when they considered Commons amendments. As a result, I had to agree, reluctantly, to drop important but controversial proposals on the right of silence and war criminals. In fairness colleagues must practice the same self-denial and I hope that Geoffrey Howe will accept this. If, however, he wishes to take the matter further, the next convenient meeting of the Home Affairs Committee is the best forum for deciding the issues, and the related one of noise nuisance legislation which Nicholas Ridley has been considering. Geoffrey Howe's note and this letter would serve as papers for the meeting.

I am copying this letter to <sup>Geoffrey Howe and to</sup> the recipients of Geoffrey Howe's note of 29 January.

Yours sincerely  
 R. Lawson.

(Approved by the  
 Home Secretary and  
 signed in his absence)

HOME AFFAIRS 1 Demonstrations Against Evictions

Oct 1967







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FCS/88/021

LORD PRESIDENT OF THE COUNCIL

Demonstrations outside Embassies

- attached*
1. As agreed at 'H' Committee on 18 November, I enclose a copy of a draft clause prepared by Parliamentary Counsel for your consideration and that of colleagues.
  2. I hope that an amendment to the Criminal Justice Bill along these lines will enable the Government to fulfil our international obligations under Article 22 of the Vienna Convention on Diplomatic Relations and at the same time preserve the rights of those who wish to demonstrate. The need for us to introduce restrictions on demonstrations outside diplomatic premises has been reinforced by the hostile picketing of the Iraqi Embassy by Iraqi opposition elements.
  3. The clause, which makes it an arrestable offence to demonstrate within 100 feet of a diplomatic mission, is designed to remedy the current situation in which the law has proved to be inadequate and difficult to apply. It will do so by enabling the police without warrant to arrest one or more demonstrators who insist on carrying on a demonstration close to diplomatic or consular premises.

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4. I commend the draft clause as a basis for discussion, and look forward to receiving your comments as soon as possible.

5. I am sending copies of this minute and its enclosure to the Prime Minister, the Lord Chancellor, the Home Secretary, the Law Officers and Sir Robin Butler.

A handwritten signature in dark ink, appearing to be 'G. Howe', written in a cursive style.

(GEOFFREY HOWE)

Foreign and Commonwealth Office

29 January 1988

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STANDING COMMITTEE  
CRIMINAL JUSTICE BILL (LORDS)  
NEW CLAUSE

Demonstrations near diplomatic or consular premises etc.

Mr John Patten

To move the following clause -

'(1) A demonstration which takes place wholly or partly within 100 feet of premises to which this section applies contravenes this section.

(2) The premises to which this section applies are -

- (a) diplomatic premises;
- (b) consular premises; and
- (c) premises of any organisation to which this section for the time being applies by virtue of an Order in Council under subsection (3) below.

(3) Her Majesty may by Order in Council direct that this section shall apply to any organisation specified in an Order in Council under subsection (2) of section 1 of the International Organisations Act 1968 as an organisation to which that section applies.

(4) No recommendation shall be made to Her Majesty in Council to make an Order under this section, other than the first such Order, unless a draft of the Order has been laid

before Parliament and approved by a resolution of each House of Parliament.

(5) A person who organises a demonstration which contravenes this section shall be guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding 3 months or a fine not exceeding level 4 on the standard scale or both.

(6) A person who takes part in such a demonstration together with other persons or who demonstrates on his own within 100 feet of premises to which this section applies shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(7) A person who incites another to commit an offence under subsection (6) above shall be guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding 3 months or a fine not exceeding level 4 on the standard scale or both, notwithstanding section 45(3) of the Magistrates' Courts Act 1980.

(8) It shall be a defence for a person charged with an offence under subsection (5) above to prove that he had no reasonable grounds for expecting that the demonstration would contravene this section.

(9) It shall be a defence for a person charged with an offence under subsection (6) above to prove that he had no reasonable grounds for believing that the demonstration was contravening this section.

(10) A constable in uniform may arrest without warrant



anyone he reasonably suspects of committing an offence under this section.

(11) Proceedings for an offence under this section shall not be instituted against any person except by or with the consent of the Attorney General.

(12) This section shall not have effect in relation to anything done before it comes into force.

(13) In the application of this section to Northern Ireland the reference in subsection (7) above to section 45(3) of the Magistrates' Courts Act 1980 shall be construed as a reference to Article 60(1) of the Magistrate's Courts (Northern Ireland) Order 1981 and the reference to the Attorney General shall be construed as a reference to the Attorney General for Northern Ireland.'

#### AMENDMENTS

Mr John Patten

Clause 152, page 100, line 1, at end insert -  
'section [Demonstrations near diplomatic or consular premises etc.];'

Clause 153, page 101, line 28, at end insert -  
'section [Demonstrations near diplomatic or consular premises etc.];'

Clause 153, page 102, line 1, at end insert -  
'section [Demonstrations near diplomatic or consular premises etc.];'

Title, line 17, after 'weapons' insert 'to create offences in relation to demonstrations near diplomatic and consular premises and the premises of certain international organisations,;'

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file DTSDZ

bc: pc

10 DOWNING STREET  
LONDON SW1A 2AA

From the Private Secretary

17 November 1987

Dear Mike,

DEMONSTRATIONS OUTSIDE EMBASSIES

The Prime Minister has been following the correspondence about the Foreign Secretary's proposal to use the Criminal Justice Bill to bring in fresh legislation to tackle the problem of demonstrations outside Embassies. She has seen most recently the Home Secretary's letter of 30 October to the Foreign Secretary and the Foreign Secretary's minute in reply of 13 November. She understands that the matter is to be considered at H Committee shortly.

The Prime Minister's view is that the law never envisaged a permanent situation of the kind which we now have outside South Africa House, and that it would therefore be right to amend the law to keep demonstrators a specific distance away from diplomatic premises. She understands this to be the practice in the United States, to take one example. Acknowledging the likely parliamentary difficulties, she nonetheless lends her support to the Foreign Secretary's proposal for an amendment to the Criminal Justice Bill.

I am copying this letter to the Private Secretaries to the Home Secretary, the Foreign Secretary, members of the Home Affairs Committee, the Attorney General and Sir Robert Armstrong.

yours sincerely,  
Charles Powell

C D POWELL

Mike Eland, Esq.  
Lord President's Office

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ccpk

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QUEEN ANNE'S GATE LONDON SW1H 9AT

17 November 1987

COO 17/11

Dear Geoffrey,

DEMONSTRATIONS OUTSIDE SOUTH AFRICA HOUSE

Thank you for your note of 13 November.

— will RCP?

This is obviously something that we shall need to discuss at the "H" Committee meeting on 18 November if, as seems clear, it remains your intention to take forward the idea of legislation. You will have noted in his letter of 3 November Willie Whitelaw's conclusions about the Parliamentary difficulties, which led him to the view that we should not legislate. The Criminal Justice Bill is already carrying much extra weight. You and colleagues will also have noted the points in my letter of 30 October about the substance and the wider implications of your original proposal. To this I would only add that, while your revised proposal of a straightforward 100 feet cordon sanitaire may be a simplification in operational policing terms, it would in my view be a complication in political and presentational terms and likely to add to, rather than reduce, the Parliamentary difficulties. Nor does it do anything to get over the fundamental objections of principle set out in my letter. I note the point you make about the European Convention on Human Rights. Paddy Mayhew will no doubt have a view on this but in my view the straightforward cordon sanitaire you propose will still run Strasbourg risks.

I am copying this letter to members of "H" Committee, the Attorney General, who I understand will be coming to the meeting on 18 November, and Sir Robert Armstrong. I note that you have copied your note of 13 November to the Prime Minister. I am therefore sending to her a copy of this one and my letter of 30 October.

Yours,  
Douglas.

The Rt Hon Sir Geoffrey Howe, QC, MP

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PRIME MINISTER

## DEMONSTRATIONS OUTSIDE EMBASSIES

You will recall that the Foreign Secretary is very worried about the activities of demonstrators outside the South African Embassy. They have got themselves right up to the door: and because of a gap in the law, they cannot be moved further away. The Foreign Secretary argues that, in order to fulfil our obligations under the Vienna Convention to protect diplomatic premises, the Government should take powers to keep demonstrators a specific distance away from diplomatic premises (he suggests 100 feet). He asks for an amendment to the Criminal Justice Bill in this sense. He has the support of the Attorney-General and of the Deputy Commissioner of the Metropolitan Police.

The Home Secretary has strong reservations. He argues that such a restriction:

- (a) would in effect criminalise even peaceful and orderly demonstrations, simply for taking place in the immediate vicinity of an Embassy;
- (b) would be challenged in the European Court of Human Rights;
- (c) would be politically difficult in Parliament because we would seem to be taking action which was in practice designed to help the South Africans. (In fact, of course, the legislation would apply to any Embassy.)

The matter is to be discussed in H Committee tomorrow. The Foreign Secretary is very exercised and asks whether he can have your support for his proposal. Can he?

C.D.P.

CHARLES POWELL  
16 November 1987

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Yes not  
The law never envisaged a permanent situation of the kind we have now



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FCS/87/232

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Demonstrations Outside Embassies

1. Thank you for your letter of 30 October. *attached*
2. I am disappointed that you still have reservations about my proposals. The problem is clear and pressing. Under present law we are unable to fulfill our international obligations under Article 22/2 of the Vienna Convention on Diplomatic Relations. Perhaps sooner rather than later we could face even more serious incidents at missions in London. There is a strong and urgent case for remedying the law's inadequacies.
3. The situation outside South Africa House is acute. But I believe it unwise to assume that other missions will be immune. There have been many demonstrations in recent years which have risked getting out of hand. I have in mind incidents at the US, Canadian, Indian, Iranian, Iraqi, Sri Lankan, Turkish and Chilean Missions, to cite just a few examples. As recently as 10 November a group of 70 Bangladeshis converged on their High Commission and took up position directly outside the entrance. On that occasion they were dissuaded from entering the mission itself. The police retained control. But we cannot necessarily expect all such incidents to pass off without serious trouble.

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4. I therefore very strongly hope that you will agree to limited, effective legislation while we have the opportunity of the Criminal Justice Bill. I see that the Deputy Commissioner agrees in his letter to your officials that legislation is required. So does Patrick Mayhew, in his letter to you of 28 September. The Deputy Commissioner rightly stresses the need to have the power to act quickly, before demonstrators acquire a firm foothold (as has regrettably happened at South Africa House). We take a very firm line if missions in London infringe the Vienna Convention. In turn we are rightly expected to fulfill our international obligations.

5. I am not under any illusions about the sensitivities. I would not press for legislation if I were not convinced that failure to act is storing up even greater problems for the future. Of course we should strike the right balance. I would not for a moment argue against the right of peaceful demonstration outside diplomatic missions. But we also have a duty to all who wish to go about their lawful business free of personal harassment and abuse. My view is that the legislation proposed would be unlikely to be regarded by the European Commission on Human Rights as a breach of Article II of the Convention. It imposes sensible, easily understandable, and strictly limited restrictions on abuses of the right to peaceful demonstration.

/I

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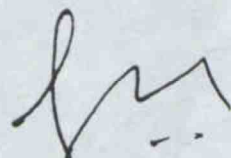


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6. I agree that the key to successful presentation, and application, is simple legislation, easy to enforce. I am therefore ready to simplify my proposal. I would no longer press for the right of police to specify distances less than 100 feet, but settle for the 100 foot limit. This has been used successfully in Washington for many years. The police would be able to establish what Patrick Mayhew has called a "cordon tranquil" between the entrance of the mission and the demonstrators. The general public would be able to pass freely and avoid being caught up in the demonstration. This should also avoid the recurrent (and expensive) paint throwing incidents at South Africa House.

7. You referred to the use of electronic megaphones. This is a serious element of the problem. I agree we should tackle this complicated issue in the longer term.

8. We discussed at 'H' Committee how to proceed. I am circulating this letter to members of the committee as the further paper for the meeting on 18 November. I am also sending a copy to the Prime Minister. I again invite colleagues to agree to the introduction of an amendment into the Criminal Justice Bill. This would make it an arrestable offence to demonstrate within 100 feet of the entrance of a diplomatic mission. I trust this can be introduced after the Christmas recess.



(GEOFFREY HOWE)

Foreign and Commonwealth Office  
13 November 1987

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QUEEN ANNE'S GATE LONDON SW1H 9AT

*over*  
30 November 1987

Dear Secretary of State,

At the meeting of the Home Affairs Committee on 30 September (H(87)14th Meeting), I undertook to consider the proposal in your note of 18 September to use the Criminal Justice Bill to bring in fresh legislation to tackle the problem of demonstrations outside South Africa House. I have now had the chance to seek the view of the Metropolitan Police on what you propose.

I understand and share your concern to fulfil our international obligations under Article 22 of the Vienna Convention on Diplomatic Relations in respect of the South African Embassy. As you know, both our Departments and the Metropolitan Police have devoted considerable time and effort to doing this. I am sure you will recall that the proposal for a "cordon sanitaire" around diplomatic missions was one of the options which I considered when we reviewed fully the powers available under the existing law and what might be achieved if we decided to legislate, at the end of last year. I have to say that the serious reservations which I had at that time about legislation on this issue still remain. These reservations relate to the principle, the practicality and the Parliamentary and broader political reaction to the proposed legislation.

I accept that a new arrestable offence "for a person to demonstrate within a distance of 100 feet of the entrance to a diplomatic or consular premise" would have the virtue of introducing certainty into the policing of demonstrations outside embassies. Any change which brought certainty and simplicity would be supported by the police, who share the frustration you express over the slow progress and disappointing outcome of some of the cases so far determined under the existing law. The Deputy Commissioner welcomes the idea of suitable legislation. I enclose a copy of his letter. The certainty in your proposal is achieved by an absolute prohibition of all demonstrations within a fixed limit, regardless of the conduct of the demonstrators. I fear that such a provision would be regarded as too arbitrary.

You have recognised the difficulty of the 100 feet limit. As South Africa House adjoins Trafalgar Square, a 100 feet limit would be even more sweeping than is intended. Your suggested modification of allowing the police to specify a lesser limit than 100 feet removed some of the simplicity and clarity: the police would then face a number of difficult decisions in defining a boundary for a place like South Africa House, and would face criticisms that they were making law.

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More important, our public order law seeks to criminalise conduct which is not peaceful, orderly and law-abiding. To make it a criminal offence to demonstrate in the vicinity of an embassy, regardless of how well the demonstrators behave, would be contrary to the principles underlying our public order legislation. It would criminalise behaviour such as the dignified protest by the "black sash" ladies in South Africa itself. It would mean that people who felt strongly about the policies of governments such as Libya, Iran or the Soviet Union, could not go near the embassies of those countries to demonstrate their feelings, however peacefully and properly they conducted themselves. I mention the Libyan Embassy because the shooting of WPC Fletcher occurred when she was accompanying a protest demonstration to which the embassy staff objected. It could be argued in favour of your proposal that it would have prevented the demonstration which led to her death: it could also be argued that we are now accepting the Libyan view that peaceful demonstrations within sight of an embassy are such an affront that the host government has to prevent them. I foresee substantial difficulty in persuading Parliament to accept this view. If passed, such a law would be a gift to demonstrators, who would find it much easier to win public opinion to their side in breaking a law which would be generally regarded as unreasonable.

From the point of view of our international obligations, Article 11 of the European Convention on Human Rights provides for a right of free assembly, and limits the restrictions which may be placed on that right. The European Court of Human Rights might well be influenced by the kind of argument I have outlined above if a provision on the lines proposed came before them - as it would.

One could meet this point by adding a test or tests which required some element of disorderly behaviour, or excessive noise, to constitute the offence. Such qualifications would destroy the simplicity which is a major attraction in your proposal, and take us back close to the present law which criminalises disorderly behaviour.

The real difficulty is that the proposed new offence is not accurately targeted. The problem about the demonstration outside South Africa House is not the presence of the demonstrators. Most of the time there are five or fewer people, and they are not disorderly. The major nuisance - and the principal bone of contention with the Ambassador - is the noise which the demonstrators make with their megaphone. Whatever view the South Africans may take, I see no reason why people should be prohibited from making a peaceful, orderly demonstration outside the embassy. The South Africans are entitled to complain if that demonstration is so noisy that it interferes with the work of the embassy. Here the law is not as effective as I would wish. The present law is, as I understand it, designed to protect householders who want to sleep at night rather than office workers who need quiet for their work. My office has suffered persistent noisy demonstrations on a number of issues, such as Viraj Mendis. One quickly learned how megaphones, and rhythmically organised chanting, can penetrate even double glazing. I would be sympathetic to any review of noise nuisance legislation, especially if it tackled the problem generally, not just for embassies or South Africa House. But I recognise that such a review would be a tricky exercise which would not produce instant results.



Meanwhile, the existing provisions of the law are bringing convictions even for use of the megaphone. The very considerable efforts of the police and the Crown Prosecution Service have brought a number of successful convictions and the most recent court decision has been to uphold a test case appeal against a conviction, which leaves the way clear to proceed with other outstanding cases. The existing law is cumbersome and difficult, but it is being made to apply. We should press ahead with bringing good cases under the existing provisions.

I appreciate that these continuing demonstrations are embarrassing for you as they are difficult for the police. I believe, however, the advantages of meeting South African Government complaints have to be weighed against the political embarrassment which the Government would suffer, in Parliament and more widely, from attempting to legislate on lines so different from the principles which underlie our public order legislation (including the Public Order Act of 1986). Such legislation would be controversial at the best of times, but to introduce it when it would be widely, and understandably, perceived as for the benefit of South Africans would add an extra dimension of difficulty. I am not eager to add that to a full and controversial Criminal Justice Bill.

I am copying this letter to the other members of the Home Affairs Committee, the Attorney General and Sir Robert Armstrong.

*Yours sincerely,*

*A. J. Gardner*

*(Approved by the Home Secretary  
and signed in his absence)*

FROM: J A DELLOW CBE



DEPUTY COMMISSIONER OF POLICE  
OF THE METROPOLIS

CONFIDENTIAL

NEW SCOTLAND YARD  
BROADWAY LONDON SW1H 9RG

J A Chilcot Esq  
Deputy Under Secretary of State  
Home Office  
Queen Anne's Gate  
London SW1H 9AT

16 October 1987

*Dear John.*

Your letter of 13 October resurrects the problems posed by static demonstrations outside diplomatic premises which were the subject of previous correspondence with David Belfall and a number of meetings attended by senior representatives of Home Office, F & CO, Crown Prosecution Service, Attorney General's office and ourselves. Our views remain unchanged in that we support the introduction of suitable legislation which will enable police to effectively discharge their responsibilities under the Vienna Convention.

You will be aware of the shortcomings in existing legislation and the difficulties which have been encountered in the Courts with recent prosecutions. The proceedings have been instituted under various statutes, but have failed mainly on the question of enforcement, application and in particular interpretation by the judiciary.

A notable example of this is our experience in respect of the cases brought for breaches of the Commissioner's Directions made under Section 52 of the Metropolitan Police Act 1839. As you are aware these directions enable Constables to keep order and prevent obstruction in the streets specified by these directions. These have been in force in respect of the streets surrounding South Africa House since the commencement of the CLAAG picket, and therefore available to be implemented as circumstances dictate.

Following a paint throwing incident at South Africa House the senior police officer took a view that the incident was of sufficient gravity to warrant enforcing these directions, which in effect moved the CLAAG picket from a position directly outside the building to a point 150 feet (45 metres) from the main entrance. This effectively reduced the potential for a repetition and also restored the peace and dignity of the Embassy.

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Some 142 persons who failed to conform to the directions were arrested and charged. There was much legal debate as to this particular use of the Commissioner's Directions, which culminated in what has now been seen as a test case. Sir David Hopkins, the Chief Metropolitan Magistrate, adjudicated and whilst satisfied that the directions were *intra vires* and therefore lawful he dismissed the charges as he felt that the defendants had not been sufficiently 'acquainted' with the directions. His reasoning centred on the fact that the arresting officer did not specify the streets designated in the directions or his grounds for enforcement.

I have perhaps laboured the point but I think it indicates that any new legislation must be clear, concise and unambiguous. This will ensure that potential demonstrators are left in no doubt as to their rights and limitations. Additionally police officers whilst respecting the right of persons to demonstrate will have a clear and unequivocal understanding of what can be permitted and therefore better enabled to discharge their equally important duty of ensuring the dignity of the diplomatic premises in question is not impaired. I think it important to mention here that the problems are not confined to demonstrations outside South Africa House. Other Embassies and Consulates in London and elsewhere are similarly effected on a not infrequent basis.

I mentioned earlier a number of meetings that have already taken place between interested parties. As I understand it, something along the following lines was considered:-

That a person would be guilty of an offence if, within 30 metres of Diplomatic premises, he:-

- a) demonstrates support for, or opposition to the views or actions of any person or body of persons, or
- b) publicises a cause or campaign, or
- c) marks or commemorates an event.

A person would be guilty of an offence if he incited another to commit an act as outlines above.

The creation of such an offence would need to carry a power of arrest without warrant. I am advised that the offence wording is taken from Section 11 of the Public Order Act 1986 which effectively defines a demonstration. Legislation along these lines would undoubtedly be of considerable value but would by no means be a total solution to the problem.

In your letter you rightly identified a number of difficulties which might arise from any attempt to legislate on this sensitive issue. However, by adequately defining the term "to demonstrate" as indicated, should avoid the scenario of the innocent person being caught with the Cordon Sanitaire. In appropriate cases we would no doubt also seek to make use of the Attorney General's Guidelines.

The problem outside South Africa House is indicative of the potential for demonstrations associated with future political events at a wide range of diplomatic premises in London. A power as described would permit police to act early and prevent demonstrators gaining a firm foothold as has been the case with CLAAG.

You will gather from these comments that, even allowing for the very real problems to which you refer, we feel that operationally there would be an advantage in seeking a change in legislation on the lines proposed. This would give rise to difficulties especially in the early stages but in this respect it is interesting to note the way in which those who actively campaigned against the recent changes in the Public Order Act are now actively seeking to comply with the law and co-operate with police.

Finally, and on the positive side, legislation along the lines proposed would do much to reassure the diplomatic community in London who currently feel that we as the host country are not always fulfilling our obligations under the Vienna Convention.

Yours as  
John Dello





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