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THE ROLE OF TELECOMMUNICATIONS IN THE CONDUCT OF FOREIGN AFFAIRS

THOMAS J. RAMSEY*

The Diplomatic Communications Mission of the Department of State

The Secretary of State, as principal adviser to the President on foreign policy matters, directs the Department in the implementation of foreign policies, including representation of the United States in relations and negotiations with other countries, with the United Nations and with other international organizations. The continuing need to communicate with posts abroad is inherent in this mission. The reporting function is essential to the formulation and implementation of United States foreign policy and accounts for the greatest volume of record communications. The Department of State also provides telecommunications services abroad to many federal agencies including: the Agency for International Development, the United States Information Agency, the Department of Justice, the Department of Labor, the Department of Commerce and the Department of Agriculture.

The Department of State is responsible for providing those methods of communications which are deemed necessary to accomplish its mission. It is implicit in the Secretary's duties to communicate effectively, utilizing the most appropriate and efficient channels, with representatives of foreign governments, international organizations and the United States. The Department's Office of Communications is the entity responsible for providing worldwide communications support to the Secretary's foreign affairs missions.¹

The functions of the Office of Communications are extensive, and include:

—developing and implementing policies, plans and procedures to provide dependable, responsive and secure communications for the conduct of United States foreign policy. Communications services include record, voice (HF, VHF/UHF Radio and

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The following commentary is taken from an article appearing in a book, soon to be published by the American Bar Association, entitled TOWARD THE LAW OF GLOBAL NETWORKS.

1. See U.S. DEPT OF STATE, 1 FOREIGN AFFAIRS MANUAL 243 (1981).

telephone), secure voice, facsimile, high-speed electronic distribution and electronic file management for classified information;

—providing other government agencies having overseas presence, with mail and pouch as well as telecommunications services, including telegraphic and high-speed data transmission; and

—providing special communications services supporting domestic and overseas security programs.²

The Department provides these services utilizing its Diplomatic Pouch and Courier Service and the Diplomatic Telecommunications Service as well as the communications systems of other government agencies. The Department's overall system is particularly complex due to the varied nature of the services provided and the broad geographical area over which the network operates. For example, the Department communicates with over 250 posts in approximately 150 countries. The transmission media include commercially leased circuits from, for example, the International Record Carriers, United States military circuits, United States controlled high frequency (HF) radio and United States owned satellite circuits. The commercially leased circuits ("leased lines") follow many paths, such as oceanic cables, land lines, microwave (radio) and commercial satellite.

Official Communications

From a technical point of view, the diplomatic communicator is not unlike his counterpart in the private sector. New systems capabilities resulting from the merging technologies of telecommunications and computers are creating increased demand pressure by the government-user community. For example, there is increasing interest in real-time distributed information systems. Government managers, when designing new Government information networks, must take into account the same design considerations as those obtainable in the private sector: availability of economical high-speed transmissions facilities; location of electronic switching facilities with advanced multiplexing equipment and maintenance of the associated peripheral hardware and software at each terminal point.

From a legal or regulatory perspective, however, the diplomatic communicator enjoys certain privileges not available to private users, i.e. the privilege to transmit and receive official communications. Arti-

2. *Id.*

cle 27 of the Vienna Convention on Diplomatic Relations,³ for example, requires that "the receiving State shall permit and protect free communication on the part of the mission for all official purposes"⁴ and that "official correspondence of the mission shall be inviolable."⁵ Article 27 of the Vienna Convention conforms to the generally accepted principle that there should be full freedom of communication, including the right to use the diplomatic pouch, between diplomatic missions and the Government of the sending state.

Emerging Issues: National Restrictions on Diplomatic Communication

The rules and practices associated with the transmission of diplomatic communications evolved when low speed teletype and the diplomatic pouch were the primary means of conveying official correspondence. Interesting new issues, however, may arise as diplomatic communicators around the world rely more and more on new technologies to meet their communications and information handling needs.

Initiatives to develop and maintain technologically advanced systems for the diplomatic community may be frustrated if regulatory authorities in certain countries or regions promulgate laws, rules, or policies which restrict the flow of information. Such constraints could include privacy protection laws, restrictive tariffing of long-haul leased circuits, stiff terminal equipment accessing standards and procedures regarding the processing of data outside national boundaries. Thus far, the national or international fora responsible for the development of this evolving body of law and policy have not directly addressed the issue of whether such regulatory regimes would impact upon the recognized privileges associated with diplomatic communications. Unanswered questions include:

—To what extent do the evolving data protection laws apply to the transmission of diplomatic correspondence? For example, would diplomatic missions be required to register with locally controlled data projection boards? May national privacy protection authorities monitor diplomatic transmissions?

—Would the distributed information networks of diplomatic communication systems be subject to the emerging national laws relating to the processing of data outside the territory of the host-regulating State?

3. Vienna Convention on Diplomatic Relations, *opened for signature* April 18, 1961, 23 U.S.T. 3227, T.I.A.S. No. 7502, 500 U.N.T.S. 95.

4. *Id.*

5. *Id.*

—Could a foreign government levy a transborder data tax on diplomatic correspondence as it might on private conveyors of data?

—To what extent may a host government regulate the type and installation of terminal equipment of a diplomatic mission?

—Should foreign missions be immune from increasingly restrictive telecommunications tariffs such as those which might effectively eliminate the availability of dedicated international high-speed circuits?

—To what extent should a host government impose its local telecommunications rules regarding overseas switching to the official traffic of a sending state?

To the degree that such national laws or policies do erect barriers to the free flow of official correspondence, one must immediately consider the applicability of certain articles of the Vienna Convention on Diplomatic Relations⁶ and the Vienna Convention on Consular Relations.⁷

Future Mechanisms to Protect the Free Flow of Diplomatic Correspondence

Thus far, the Department of State has had little difficulty establishing and maintaining its worldwide communication systems. It is the hope of the Department of State that its success in this area will continue as United States Government agencies enter into the new era of telecommunications and information handling. It is an open question, however, as to whether those foreign laws and regulations which are likely to restrict the free flow of non-official private information will effect diplomatic interchange. To the extent they do, future solutions might take the form of bilateral or multilateral agreements. The privilege of free communication between sending and receiving States might prove an important principle for the private sector to adopt. The privilege is certainly relevant to the New World Information Order agenda.

6. *See id.* art. 31.

7. Vienna Convention on Consular Relations, *opened for signature* April 24, 1963, 21 U.S.T. 77, T.I.A.S. No. 6820, 596 U.N.T.S. 487.