VII—AVIATION AND SPACE LAW

Air law—civil aviation agreements—Australia

On 16 April 1985 the Minister for Aviation, Mr Peter Morris, provided the following written answer to a question on notice in the House of Representatives (HR Deb 1985, 1228):

> Rights for the international airlines of other countries to operate services to Australia and for Qantas to operate services to those countries are generally embodied in Air Service Agreements which are documents of treaty status. Australia has Air Service Agreements with the following countries: Austria, Burma, Canada, People's Republic of China, Egypt, Fiji, France, Federal Republic of Germany, Greece, India, Indonesia, Ireland, Italy, Japan, Lebanon, Malaysia, Nauru, Netherlands, New Zealand, Papua New Guinea, Philippines, Singapore, South Africa, Sri Lanka, Thailand, United Kingdom, United States of America, Yugoslavia.
>
> Australia also has air service arrangements which are documents of less than treaty status and provide for the operation of direct air services between Australia and the following countries: Brunei, Solomon Islands, Tonga, Vanuatu, Western Samoa.
>
> Services between Australia and Zimbabwe are operated in accordance with a permit issued by the Government of Zimbabwe which recognises the Commercial Agreement which exists between Qantas and Air Zimbabwe.
>
> Air service agreements or arrangements under which scheduled services are not currently conducted by either Australia or the relevant bilateral partner are: Austria, Burma, Egypt, Ireland, Lebanon, Sri Lanka, Tonga.
>
> Rights granted in these dormant agreements or arrangements continue indefinitely unless termination provisions included in each agreement or arrangement are invoked by either party.
>
> The Government has received no application in recent times from the Governments of Austria, Burma, Ireland, Lebanon or Tonga to commence schedule passenger air services to Australia.
>
> Representatives of the Government of Sri Lanka held informal discussions with officials in Canberra on 4 and 5 March 1985 on the possibility of re-establishing direct air services between Australia and Sri Lanka. The matter continues to be under consideration by both Governments.
>
> The Egyptian Government recently raised the possibility of Qantas resuming services to Cairo en route to Europe. The matter has been referred to the Company for comment.

On 9 December 1987 the Minister for Transport and Communications, Mr Duncan, provided the following answer to a question on notice about which countries had international air agreements with Australia (HR Deb 1987, 3144–3145):

COUNTRIES WITH AIR SERVICES AGREEMENTS OR ARRANGEMENTS WITH AUSTRALIA

Country	*Agreement Arrangement or other*	*Year Signed*	***Entitlement Utilised*** *By Qantas*	*By Other country*
Austria	Agreement	1967	No	No
Bahrain	Agreement between Qantas and Government of Bahrain	1978	Yes	No
Brunei	Arrangement	1984	No	Yes
Burma	Agreement	1974	No	No
Canada	Agreement	1946	Yes	Yes
China	Agreement	1984	Yes	Yes
Cook Islands	Arrangement	1986	No	Yes
Egypt	Agreement	1952	No	No
Federal Republic of Germany	Agreement	1959	Yes	Yes
Fiji	Agreement	1973	Yes	Yes
France	Agreement	1965	Yes	Yes
Greece	Agreement	1971	Yes	Yes
India	Agreement	1949	Yes	Yes
Indonesia	Agreement	1969	Yes	Yes
Italy	Agreement	1963	Yes	Yes
Japan	Agreement	1956	Yes	Yes
Lebanon	Agreement	1954	No	No
Malaysia	Agreement	1972	Yes	Yes
Nauru	Agreement	1969	No	Yes
Netherlands	Agreement	1951	Yes	Yes
New Zealand	Agreement	1961	Yes	Yes
Papua New Guinea	Agreement	1975	Yes	Yes
Philippines	Agreement	1971	Yes	Yes
Republic of Ireland	Arrangement	1957	No	No
Singapore	Agreement	1967	Yes	Yes
Solomon Islands	Arrangement	1981	No	Yes
Sri Lanka	Agreement	1950	No	No
Thailand	Agreement	1960	Yes	Yes
Tonga	Arrangement	1984	No	No
United Kingdom	Agreement	1958	Yes	Yes
United States	Agreement	1946	Yes	Yes
Vanuatu	Arrangement	1980	Yes	No
Western Samoa	Arrangement	1983	No	Yes
Yugoslavia	Agreement	1974	No	Yes
Zimbabwe	Arrangement between Airlines	1983	Yes	Yes

Air law—civil aircraft—use of force—amendment to Chicago Convention

On 30 May 1984 the Minister for Aviation, Mr Beazley, said in answer to a question without notice concerning the extraordinary assembly of the International Civil Aviation Organization convened following the shooting down of a Korean Airlines aircraft by the Soviet Union in 1983 (HR Deb 1984, 2450):

> Honourable members will recall that in answering questions on this matter late last year I informed the House that as soon as I had information to hand on the deliberations of the extraordinary assembly I would provide it to the House. Honourable members will remember that the extraordinary and ordinary meetings of the ICAO assembly last year referred the question of the tightening of procedures for intercepting and intercepted aircraft to its Air Navigation Commission, the deliberations of which were subject to subsequent consideration by an extraordinary assembly. That assembly stated on 24 April this year and concluded on 11 May to examine the question of an amendment to the Chicago Convention involving an undertaking to abstain from the use of force against civil aircraft.
>
> The Australian delegation, in its opening statement to the assembly, strongly reiterated the position which this Government has consistently taken on the issue: that is, that the indiscriminate use of force against civilian aircraft cannot be justified in any circumstances and, in the event of its occurring, represents a clear and flagrant violation of international law. The Australian delegation contributed actively to the debate, both formal and informal, which took place on the issue in the period of the assembly.
>
> I think honourable members will be pleased to note that the 107 nations which were represented to the assembly adopted unanimously an amendment to the Convention which embodies these principles. For the interest of honourable members I shall table the text of the amendment to the Chicago Convention so that it can be read at their leisure. Australia will in due course need to consider ratifying the amendment and honourable members can be assured that I will be pressing strongly for this course of action.

On 4 September 1984 the Minister for Foreign Affairs, Mr Hayden, provided the following written answer to a question on notice in the Senate concerning the possibility that the Korean airliner shot down in 1983 had been engaged in espionage activities (Sen Deb 1984, 429):

> We place no credence on claims such as those in the article to which Senator Maguire refers that the Korean Airlines aircraft was engaged in espionage activities. The Government reacted with shock and grave concern to the shooting down of the aircraft and strongly expressed the view, both directly to the Soviet Union and in international forums, that there is no circumstance in which the shooting down of an unarmed civilian aircraft can be justified.

Air law—Civil aircraft—use of force—amendment to Chicago Convention—Implementing legislation in Australia

On 12 March 1986 the Minister for Aviation, Mr Peter Morris, introduced the Air Navigation Amendment Bill 1986 into the House of Representatives, and

explained the purpose of the Bill as follows (HR Deb 1986, 1198–1199):

> The purpose of the Air Navigation Amendment Bill 1986, which seeks to amend the Air Navigation Act 1920, is twofold. Firstly, it will enable Australia to ratify the protocol signed in Montreal on 10 May 1984 amending the Convention on International Civil Aviation. This Convention is known as the Chicago Convention. Secondly, it will give effect in Australian law to the provisions of that protocol.
>
> The origins of this Bill can be traced to the tragic event that took place on the first day of September 1983, when Soviet military aircraft intercepted and shot down a Korean Air Lines Boeing 747 aircraft with the loss of all 269 persons on board. The International Civil Aviation Organisation—ICAO—convened an extraordinary assembly in May 1984 in Montreal to discuss measures that could be taken to prevent a recurrence of such an incident. Australia played an active role at this meeting, where unanimous agreement was reached by the 107 countries participating to amend the Chicago Convention through the inclusion of a new article, known as Article 3 bis. Article 3 bis represents a significant step by the international community to ensure greater safety in international aviation by requiring States to refrain from using weapons against civil aircraft flying in their air space. In return, States are required to ensure that civil aircraft under their jurisdiction operate flights over foreign countries for legitimate aviation purposes only, as envisaged in the Chicago Convention.
>
> To implement the first part of this obligation, the Government is taking the necessary administrative action to ensure that weapons are not used against foreign civil aircraft operating in Australian air space. The second part of Australia's obligation, which is to prevent aircraft under Australian jurisdiction from operating overseas in any manner that is not in accordance with legitimate civil aviation requirements, must be implemented by legislation. The Bill incorporates this requirement. The Bill also contains provisions to enable Australia to ratify Article 3 bis and to have it included as a Schedule to the Act. This is consistent with the practice that has been adopted in the past regarding ratification of amendments to the Convention.
>
> The proposed amendment to the Air Navigation Act which will give effect to Australia's above-mentioned obligation will apply to Australian registered aircraft, or foreign registered aircraft operated by an operator whose princip[al] place of business or permanent residence is in Australian territory, which fly over the territory of another country. If an aircraft is flying without the authority of that country or is being used for a purpose inconsistent with the aims of the Convention, then it must comply with an order to land or with any other instruction that is given. The bill also reflects the requirement of Article 3 bis for Australia to take appropriate measures to prohibit the deliberate use of its aircraft in these circumstances. The pilot in command of an aircraft who breaches the above requirements may be prosecuted under this legislation and, if found guilty, would be subject to the penalties prescribed. These penalties are maximum penalties, and are consistent with those applying to breaches of the Air Navigation Act generally. However, the pilot may decline to obey a direction if he

believes that compliance with that direction would endanger the safety of the aircraft and persons on board. There may be other parties involved in the offences, such as the operator, and action against these ancillary offenders could be taken under the provisions of Crimes Act.

It is important to recognise that there is nothing in the proposed legislation which derogates from obligations which any other law, including the law of a foreign country, might impose. An Australian aircraft, for example, which is flying over the territory of a foreign country, is required to obey a direction legally given by the aeronautical authorities of the country concerned, just as a foreign aircraft flying over our territory is required to obey a lawful direction given by us.

Australia has undertaken to prosecute offenders in the specific circumstances laid down by Article 3 bis. If a pilot refuses to obey a direction to land given by an overseas country it could be difficult for that country to prosecute the pilot, once the pilot is outside its jurisdiction. However, the Bill does stipulate that a person convicted of an offence by a foreign country cannot be convicted in Australia for the same offence under this legislation. Because of the importance the Government attaches to this issue, the Bill provides for the legislation to become effective by proclamation prior to the entry into force of Article 3 bis. The Government wishes this legislation, which will enhance the safety of civil aviation, to come into effect as soon as possible. The protocol itself will come into force when one hundred and two countries have ratified it, which is approximately two-thirds of the ICAO's membership. Before the legislation is proclaimed, the Government will ensure that the aviation publications issued for the use of pilots clearly explain these new requirements in the case of interception of Australian controlled aircraft operating overseas.

The proposed amendments will have no financial impact on government expenditure. The Government, the Opposition, the pilots' associations and indeed the Australian people generally, have denounced the use of force against civilian aircraft. It is fitting, therefore, that every endeavour be made to promote the safety of international civil aviation. The passage of this Bill and the ratification of Article 3 bis will be a tangible demonstration to the international community of our strong and continuing commitment to this objective. I commend the Bill to the House.

Air Law — shooting down of Korean airliner—death of Australians—compensation

On 11 April 1986 the following written answer was provided to the respective questions (HR Deb 1986, 2175):

Mr MacKellar asked the Minister for Foreign Affairs, upon notice, on 12 March 1986:

(1) Did his Department request the Embassy of the USSR, in September 1983, to provide prompt, adequate and effective compensation to the Australian Government for the lives and property of the 4 Australian nations aboard the Korean Airlines flight No 007?

(2) Did his Department subsequently advise the Soviet Union of specific losses, damage and injury for which Australia considers the Soviet Union

responsible under international law?

(3) Has the Soviet Union provided all of the required compensation; if not, (a) why not and (b) what additional action is his Department proposing to take?

Mr Hayden—The answer to the honourable member's question is as follows:

(1) Yes.

(2) No. The next-of-kin of the Australian victims have all been seeking compensation through litigation in the United States and direct contact with Korean Airlines. None has requested the Australian Government to pursue claims on his or her behalf.

(3) The Soviet Union has not accepted responsibility for the destruction of the Korean aircraft, and has refused to accept claims for compensation by all claimant Governments. The Australian Government nevertheless maintains that the Soviet Union is responsible for shooting down the KAL aircraft and will continue to assert its position at all appropriate times.

Air law—international air traffic—cabotage rights of foreign airlines in Australia

On 19 August 1986 the Minister for Aviation, Mr Morris, provided the following written answer in part to a question on notice (HR Deb 1986, 6):

In regard to cabotage, in common with the practice followed by most countries, no international airlines have rights to carry domestic traffic between points in Australia.

Air law—State aircraft—United States military overflights of Australia

On 27 March 1985 the Minister representing the Minister for Defence in the Senate, Senator Gareth Evans, said in part in answer to a question without notice (Sen Deb 1985, 877–878):

I can say in relation to Operation Glad Customer that, under a 1981 agreement, and subject to individual approval, B52 aircraft carry out low level navigation training over Queensland, land at Darwin and then undertake sea surveillance and navigation training over the Indian Ocean.

Under Operation Busy Boomerang Delta, pursuant to a 1982 agreement, and again subject to individual approval, B52 aircraft carry out low level navigation training over Queensland, land at Darwin and subsequently conduct more low level training over selected low jet routes in the Northern Territory and Western Australia. The United States is not prepared to disclose which of its aircraft are nuclear-armed and which are armed with conventional weapons. Its policy in this respect is identical to that which prevails in relation to ships. Our current arrangements for B52 flights through Darwin are, however, an extension of the low level navigation training flights approved by the Minister for Defence in late 1979 when it was agreed—and I am sure that Senator Chipp will remember this—they would be unarmed and carry no bombs. It is certainly the Government's clear understanding that that is the basis on which those two operations continue to be carried out.

Senator Evans gave a supplementary answer later in question time, part of which was as follows (ibid, 886):

> The final part of the question sought an undertaking about the operations involving non-armed bombers and about the operational loading procedures in relation to them, to which I am given the following answer: The United States B52 bombers operating over Australia are unarmed and carry no bombs. The question of the armament carried by these aircraft on other operations is an operational matter for the United States Air Force on which the Minister has no comment.

Air law—sovereignty over airspace—Soviet air space—RAAF aircraft

On 20 March 1985 the Leader of the Government in the Senate, Senator Button, said in part in answer to a question without notice (Sen Deb 1985, 487):

> I was not aware, until the report in the *Sydney Morning Herald* was drawn to my attention this morning, of the discussion between Squadron Leader Armstrong and the Soviet air traffic controllers on that issue. I am aware that great attention was given by the RAAF and other authorities to ensure that people understood we were coming; that was on the way to the Soviet Union. Certainly it is true that the crew of the aircraft concerned, once we had crossed into Soviet air space, was very appreciative of the assistance given throughout the trip by the Soviet air traffic control authorities. I take it that Senator Lajovic is seeking to make some sort of political point. That was the first occasion that an RAAF aircraft has ever been in Soviet air space. I do not think it is the practice of Australians to fly into the Soviet Union on that particular route so I do not think any warning is necessary. I certainly would not give it because that would seem to be in pursuit of an ideological political point which in this particular instance I do not share.

Airspace—sovereignty over territorial airspace—denial of entry by Qantas aircraft into Syrian and Egyptian airspace

On 11 November 1986 the Minister representing the Minister for Foreign Affairs in the Senate, Senator Gareth Evans, said in answer to a question without notice (Sen Deb 1986, 1867):

> Qantas has advised the Department of Foreign Affairs that its flight QF10 from London to Australia was initially denied entry into Syrian air space on 9 November. The aircraft diverted and intended to use Egyptian air space but was refused entry there too. It again sought and was granted entry into Syrian air space. As a result of these manoeuvres the aircraft then made an unscheduled stop at Bahrain to take on fuel. It does seem that the denial of entry into Syrian air space was only of short duration. Denial of entry to Egyptian air space may have been caused by a misunderstanding on the clearance procedure. Clarification of these matters is being sought by the Department of Foreign Affairs in co-operation with the Department of Aviation.

On 14 November 1986 Senator Evans added (Sen Deb 1986, 2255):

> Syria has now confirmed that flight QF10 was temporarily denied entry but has advised that the temporary closure was in response to the proximity of United States war planes, on exercise in Turkey, and had nothing whatsoever

to do with any particular reaction to Australia. Furthermore, it has been confirmed that denial of entry into Egyptian airspace was caused by the Qantas aircraft quoting a wrong clearance number to the Egyptian traffic controllers. So again no significance at all can be attached to that particular incident.

A further statement about the need for a refuelling stop at Bahrain was made by Senator Evans on 25 November 1986: see Sen Deb 1986, 2664.

Air law—airport security—International Civil Aviation Organization measures

On 5 June 1986 the Minister for Aviation, Mr Morris, provided the following written answer to a question on notice (HR Deb 1986, 4834):

> Security arrangements at Australian airports are appropriate to meet Australia's needs at the present time. The arrangements in place meet the requirements of Australian Air Navigation Regulations, Air Navigation Orders and Annex 17 of the Chicago Convention of the International Civil Aviation Organisation (Safeguarding International Civil Aviation Against Acts of Unlawful Interference). Security procedures presently in place allow for upgraded measures if required.

On 19 August 1986 Mr Morris further wrote (HR Deb 1986, 87–88):

> Assessments of the threat to civil aviation operations in Australia continue to indicate a low likelihood of terrorist attack. It would be inappropriate for me to reveal details of the measures which apply at each of the 12 designated security airports. Nevertheless these measures are in accordance with the Airport Security Programmes approved under Air Navigation Order 99.1 and the Airline Aviation Security Programmes approved under Part XVIA of the Air Navigation Regulations and Air Navigation Order 99.0.

Air law—aircraft accidents—New Zealand legislation for compensation

On 20 November 1985 the Minister for Foreign Affairs, Mr Hayden, provided a written answer to a question on notice in the House of Representatives on the compensation for fatal aircraft accidents in New Zealand: see HR Deb 1985, 3366–3367.

Air law—security of aircraft—domestic Australian measures

On 5 November 1985 the Minister for Aviation provided the following written answer to a question on notice in the Senate (Sen Deb 1985, 1601):

> Qantas Airways is required to operate in accordance with an Aviation Security Program approved by the Secretary to the Department of Aviation. In complying with this program the airline is required to provide the necessary technical security equipment.
>
> Security staffing is a matter for the airline in consideration of its security program requirements.
>
> All Qantas aircraft are subject to routine security checks as part of normal pre-flight preparations and in accordance with their approved airline security program. Passengers on all departing Qantas flights are subject to pre-boarding security screening.

On 29 November 1985, the Minister representing the Special Minister of

State in the Senate, Senator Gietzelt, said in part in answer to a question without notice (Sen Deb 1985, 2598–2599):

> [T]he Department of Aviation is responsible for the security standards and, to that extent, it liaises with the Australian Security Intelligence Organisation, as well as with the Australian Federal Police. I think it goes without saying that the Australian Government deplores acts of terrorism in all its manifestations. Whilst it is true that we have not had any hijackings of any major international significance as spectacular as those we have seen in recent times, nevertheless the Department of Aviation has kept this matter constantly under review. That has applied particularly since 1960, when strong domestic law was passed by the Parliament relating to an unlawful interference with aircraft.

Air law—air crimes—hijacking of aircraft—United States and Egyptian aircraft

On 28 June 1985 the Minister for Foreign Affairs, Mr Hayden, issued the following statement following the hijacking of a United States aircraft in Beirut (Comm Rec 1985, 996–997):

> The Minister for Foreign Affairs, the Hon Bill Hayden, said today that the Australian Government joined with other nations in appealing for the unconditional release of the passengers and crew of the TWA aircraft in Beirut.
>
> The Australian appeal was being passed to Mr Nabih Berri, the Minister for Justice and the South in the Lebanese Government. Mr Hayden said that he was pleased that Mr Berri had arranged the release of one hostage, and noted also some reports of positive movement in the negotiations.
>
> Mr Hayden said that the Australian Government called on all nations to work to combat the spread of terrorism and to take whatever action was necessary to discourage and to counter terrorist acts. It would only be through concentrated international co-operation that terrorism could be combatted.
>
> He believed all Australians will have been appalled by the recent upsurge in acts of international terrorism which had taken and threatened the lives of so many innocent people, including Australians. The Australian Government has expressed its deep sympathy to those families whose relatives have been affected by the recent acts of terrorism.

On 25 November 1985 the Minister for Foreign Affairs, Mr Hayden, answered a question without notice following the storming of a hijacked Egyptian aircraft in Malta and the death of 63 passengers: see HR Deb 1985, 3555–3556.

Air law—interception of aircraft—United States interception of Egyptian aircraft carrying suspected terrorists

On 15 October 1985 the Attorney-General and Acting Prime Minister, Mr Bowen, issued the following statement following the interception by United States aircraft of the Egyptian airliner carrying the suspected terrorists involved in the seizure of the Italian cruise ship *Achille Lauro* on 7 October 1985 while en route from Alexandria to Port Said (Comm Rec 1985, 1820–1821):

The Acting Prime Minister, the Hon Lionel Bowen, this morning sent the following message to President Reagan:

> The Government of Australia understands and shares the deep concern of the Government of the USA at the acts of the terrorists who illegally seized the *Achille Lauro* and murdered an American passenger.
>
> It agrees with, and has complete sympathy with, the declaration of the Government of the USA that terrorists should be proceeded against according to the established legal processes and that all countries in the international community should meet their proper obligations in this process. Australia certainly will meet its responsibilities in this respect and we have conveyed this commitment to your Government. The Government of Australia understands the concerns of the Government of the USA to make these terrorists subject to legal accountability.
>
> This incident is the latest in a cycle of violence and counter-violence in the Middle East which will not stop until the underlying causes of the Middle East dispute are addressed and resolved.

Later on 15 October 1985 the Acting Prime Minister said in answering a question without notice in the House of Representatives (HR Deb 1985, 2019–2020):

> The position is very clear. We support the United States in bringing these terrorists to justice. There has been an argument, not in our terms but in terms of international law. For example, President Mubarek of Egypt regards what happened as a breach of international law.
>
> Mr Howard—Do you?
>
> Mr BOWEN—No, I think it can be argued that it is not. From that point of view, let me argue this issue. It could be argued that by definition it was not a hijack of a ship and it could be argued that it was not a hijack of an aircraft in the strict meaning of hijacking on the high seas or in the air. These were the matters that apparently were bedevilling the Foreign Affairs Department as to what it though[t] might be the issue that affected Australia's position in international law vis-a-vis the attitude taken by the President of Egypt. Honourable members will also have noticed that the President of the United States has been very anxious to ensure—to guarantee, in other words—that the Egyptian President is in no way upset by the fact that there may have been, according to the Egyptian story, a breach of international law.
>
> Mr Howard—What is your view?
>
> Mr BOWEN—In my view, there is no breach of international law.

Mr Bowen repeated his view in another answer on the subject: see ibid, 2021. The Minister for Foreign Affairs, Mr Hayden, said later in question time of the statement Mr Bowen had sent to the United States President (ibid, 2024):

> The statement is quite explicit. It agrees with and has complete sympathy for all legal actions which are taken in this area, and that is a proper statement. Insofar as an explicit statement is required as a legal opinion as to the legality of that action or otherwise, that is outside my ambit either of ministerial authority and responsibility or of expertise. It is certainly within the area of responsibility and expertise of the First Law Officer of this country, which is the Attorney-General, and he has made his statement on that matter.

On 17 October 1985 the Attorney-General and Acting Prime Minister, Mr Bowen, said further in answer to a question without notice (ibid, 2328–2329):

> The issue is a matter of debate with academics who, of course, do not have the difficulty of having to look at it from the point of view of international terrorism. Certainly it is understandable that the Egyptians, from their point of view, feel—I can understand that—that there might have been an invasion of what they regard as their air-space. From the point of view of international law, we start with the question of whether there has been an act of piracy, and in fact there was. I do not think there is any disagreement about that. There are lots of legal opinions to support the view that the United States, particularly as one of its citizens had been murdered, was entitled to protect its citizens and also to follow those who committed the act of piracy.
>
> Mr Peacock—It is an offence against mankind.
>
> Mr BOWEN—Yes. The honourable gentleman must have looked at the same thing as I was about to say that the act of piracy is an offence against the whole of mankind. It is not limited to any territory. Of course we would have to respect the rights of sovereign states which were able to hold those people in custody; but when they are out of custody one can look to the principle which states:
>
> > Where the apprehension of an international terrorist is the objective, factors of foreign and domestic politics impinge upon the extradition process and often outweigh any concern for extradition as a means of carrying out a state's obligation as a member of the international community to enforce its commitments with respect to...international criminal law.
>
> One can see also this principle:
>
> > The principle of universality—the right to assume jurisdiction, despite nationality or place of crime—is recognized as applying only to crimes that affect the international community and are against international law.
>
> The crime of piracy is one of those. This point of view also ought to be made very clear: The action that the United States was obliged to take did not involve the use of any weapons. The action was taken by the United States as a protection by the United States in response to unlawful attacks in international areas, particularly the seas, by terrorists on the lives of its citizens and other citizens, including the murder of a paraplegic. The force used was proportional and reasonable. It did not threaten greater destruction of international values of peace and security than the protection of human rights at stake. From all those principles it is very clear that the United States had to take the action in accordance with provisions of international law. Let me make it clear that I understand that there are other people in Australia who are well versed in international law and who quite appropriately take the view that that is a dubious proposition. I do not think it is a dubious proposition.
>
> Mr Peacock—You are right and they are wrong.
>
> Mr BOWEN—I have a feeling that the more the honourable member agrees with me the more he lessens the weight of my argument. I was trying to put

the matter on the basis that I have been mentioning. There was no act of piracy or hijacking by the United States. That is one of the views that have been put forward. One must understand the sensitivities of the Egyptian Government. I can understand that. I notice that to some extent President Reagan also is saying that he would be apologetic to what might be regarded as the sensitivities of the Egyptian people. The fact is that the terrorists had left Egyptian soil. They were not in custody. Action had to be taken to bring them to justice. I think everybody in the world would think that that is the appropriate action to take and that justice will be done.

Air law—interception of aircraft—Israeli interception of a Libyan aircraft—United States interception of an Egyptian aircraft

On 6 February 1986 the Minister for Foreign Affairs issued the following statement (Comm Rec 1986, 127):

The Minister for Foreign Affairs, the Hon Bill Hayden, said today that the Australian Government deplored the interception of a Libyan private aircraft over international waters by the Israeli Air Force on 4 February. Such an interception could scarcely ever be justified and was not in this case.

The matter was before the Security Council. Mr Hayden recalled that Australia was also a member of the Security Council in 1973 when the Council unanimously condemned Israel's action in a similar incident over Lebanon, saying that such acts could jeopardize the lives and safety of passengers and crew and that they violated international conventions safeguarding civil aviation.

Mr Hayden also said that Australia condemned all acts of violence and terrorism wherever and whenever they occurred. He could understand the motive of Israel in seeking to act against international terrorism, but that did not justify the interception of a civil aircraft in international air space.

On 29 May 1986 the Minister for Foreign Affairs, Mr Hayden, provided the following written answer to the question: why did Australia abstain in a vote on a Security Council resolution condemning Israel for the interception of the Libyan aircraft (HR Deb 1986, 4326):

On 6 February 1986, Australia, with Denmark, France and the United Kingdom, abstained in the Security Council on a draft resolution (S/17796/Rev 1) concerning the interception by Israel of a Libyan aircraft.

In an explanation of vote, Australia expressed understanding for Israel's motives in seeking to act against international terrorism. The explanation of vote also made clear that the Government deplored the interception of the Libyan aircraft over international waters which, in the circumstances, could not be justified.

There were elements in the draft resolution which Australia could support but there were some aspects with which we could not agree. One example was the portrayal of the interception as "piracy". The accepted definition of piracy is that it is an act perpetrated for private purposes. The Israeli action did not fit into this definition.

The United States vetoed the draft resolution.

On 30 April 1986 the following written answer was provided to the respective question (HR Deb 1986, 2815):

Mr Peacock asked the Minister for Foreign Affairs, upon notice, on 20 March 1986:

(1) On what basis (a) was he able to express an understanding of the interception of an Egyptian aircraft conveying suspected terrorists by American airforce planes and (b) did he deplore the recent Israeli airforce planes' interception of Libyan aircraft suspected of conveying terrorists.

(2) Is he able to say how the interception of a civil aircraft in international air space can be justified.

Mr Hayden—The answer to the honourable member's question is as follows:

(1) (a) The Government was able to express understanding of the interception of an Egyptian aircraft on a non-scheduled flight by American airforce planes following the *Achille Lauro* incident on the basis that the United States was apprehending and helping to bring to justice persons known to have just committed specific acts of terrorism against United States citizens on the high seas.

(b) I deplored the interception by Israeli airforce planes of a Libyan civil aircraft suspected by Israel of carrying persons whom the Israelis suspected of having committed acts of terrorism, on the basis that such action could be regarded as a precedent jeopardising the lives and safety of perfectly innocent passengers and crew, which is our paramount concern.

(2) It is not possible to state in a general way how or when the interception of a civil aircraft in international air space may be justified. Much will always depend on the prevailing circumstances at the time.